



PUBLIC RELEASE MEMORANDUM

Date: January 22, 2021

Subject: Fatal Officer-Involved Incident

Involved Officers: Officer Jarrod Randall Zirkle
Rialto Police Department

Officer Matthew Anthony Lopez
Rialto Police Department

Involved Subject/DOB: Erick Aguirre (Deceased)
Date of Birth 07/15/1992

Subject's Residence: Bloomington, CA

Incident Date: July 14, 2018

Case Agent/Agency: San Bernardino Sheriff's Department

Agency Report #: DR#601800101

DA STAR #: 2019-63471

PREAMBLE

This was a fatal officer-involved shooting by two officers from Rialto Police Department and was investigated by the San Bernardino County Sheriff's Department. This memorandum is based on a thorough review of all the investigative reports, audio and video recordings submitted by the San Bernardino Sheriff's Department DR#601800101.

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PRINCIPAL INVOLVED PARTIES

Erick Aguirre (D.O.B. 07/15/1992) of San Bernardino, California, was killed during the incident under review.

Officer Zirkle and Officer Lopez, both officers with Rialto Police Department, fired their respective weapons, resulting in the death of Erick Aguirre.

SCENE

This incident began on at approximately 11:50 p.m. July 13, 2018 in the city of Rialto. After a lengthy pursuit, the incident ended in an open field near ***** Canfield Way, in the city of Bloomington.

ERICK AGUIRRE CRIMINAL HISTORY

- FVA1100176 (San Bernardino County): Aguirre was convicted on or about March 17, 2011 of violating Penal Code section 475(b), Possession of Blank Check, etc. to Defraud and Penal Code section 12020(a)(1), Manufacture a Dangerous Weapon, both felonies.
- FSB1201074 (San Bernardino County): Aguirre was convicted on or about May 10, 2012 of violating Penal Code section 29800(a)(1), Felon in Possession of a Firearm, a felony.
- FVI1201349 (San Bernardino County): Aguirre was convicted on or about June 14, 2013 of violating Penal Code section 245(a)(4), Assault with a Deadly Weapon with Force, a felony.
- FWV1405318 (San Bernardino County): Aguirre was convicted on or about April 29, 2015 of violating Vehicle Code section 2800.2(a), Evading Peace Officer, Disregard Safety, a felony.
- 16CR015874 (San Bernardino County): Aguirre was convicted on or about August 11, 2016 of violating Vehicle Code section 2800.2, Evading Peace Officer, Disregard Safety, a felony.

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FACTUAL SUMMARY

Officer Jarrod Zirkle was working patrol with Rialto Police Department on Friday, July 13, 2018. Officer Zirkle had his K9 dog, Boda, with him that evening. At approximately 11:50 p.m., Officer Zirkle was traveling eastbound on Valley Boulevard approaching Pepper Avenue. Officer Zirkle observed a black Nissan in front of him. Officer Zirkle ran a record check on the vehicle and learned that the vehicle registration had expired in 2017. Officer Zirkle attempted to conduct a traffic stop on the vehicle for the expired registration.

The vehicle did not stop and began driving erratically. When Officer Zirkle activated his forward red facing light and overhead siren, the vehicle sped away at a high rate of speed and entered the 10-westbound freeway. The driver of the vehicle, later identified as Erick Aguirre, turned off the headlights and running lights.¹ The vehicle remained blacked out during the entire pursuit. Aguirre cut across lanes of traffic and reached speeds in excess of 100 miles per hour. Officer Zirkle continued to follow Aguirre and broadcast his location to dispatch. The pursuit continued as Aguirre exited the freeway and ran a red light. Aguirre continued to drive at speeds that varied between 70 to 90 miles per hour.

At that time, Officer Matthew Lopez and Explorer Witness #1² were on a non-priority call when they heard Officer Zirkle broadcast that he was involved in a pursuit. Officer Lopez and Explorer Witness #1 jumped in their unit and responded to the pursuit. They waited in a specific area to see if the pursuit was going to head in their direction. When Aguirre reached Cedar Avenue, Officer Lopez joined in the pursuit.

Aguirre eventually went through a neighborhood and turned into a dirt field. Officer Zirkle pulled up behind Aguirre's vehicle in the dirt field. Aguirre's vehicle appeared to have stalled out. Officer Zirkle exited his vehicle and gave the occupants commands to exit the vehicle. Officer Lopez arrived and pulled up alongside Officer Zirkle's vehicle. When Officer Lopez arrived, Officer Zirkle told him to get a gun on the car. At that time, the passenger door swung open and a female, later identified as Witness #2, exited the vehicle. She was ordered to the ground.

Officer Zirkle advised Officer Lopez to provide lethal coverage so that K9 Boda could be utilized. Both officers approached the vehicle. Due to the tint on the windows, it was difficult to see inside. Officer Zirkle attempted to open the passenger door, but it was locked. Officer Zirkle instructed Officer Lopez to break out the passenger window to allow K9 Boda to crawl through the window. Officer Lopez holstered his gun and used his straight stick to shatter the front passenger window and backed up. Officer Zirkle

¹ When a vehicle turns off all headlights and running lights, virtually making it difficult to see or follow, officers refer to this as the vehicle "blacking out."

² Witness #2 was assigned as a Police Explorer "Ride-Along" with Officer Matthew Lopez.

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instructed Aguirre to get out with his hands up and told he was going to get bit. Aguirre responded that he had a gun and started to reach down. Officer Zirkle observed Aguirre pull out a shotgun and aim it straight at him. Officer Zirkle immediately pushed K9 Boda out of the way and fired his duty weapon 3 or 4 times. At that point, Officer Zirkle's gun jammed and he backed away from the vehicle.

Officer Zirkle yelled to Officer Lopez to shoot Aguirre as he did not believe the threat had diminished. Officer Lopez initially could not see what the threat was due to the dark tint on the windows. As he approached the vehicle, Officer Lopez could see Aguirre with his hand on the shotgun and the shotgun started to move up. Officer Lopez fired two shots and backed up to get distance. Officer Lopez immediately yelled at Aguirre to get his hands up and told him not to touch the gun. He then backed away and fired a third shot. He continued to give commands but Officer Lopez eventually noticed that Aguirre wasn't moving anymore.

Both officers held Aguirre at gunpoint until other officers arrived on scene. The front driver's window was broken out and the gun was removed from Aguirre's lap. Aguirre was pronounced dead at the scene by a paramedic at 12:30 a.m. on July 14, 2018.

LAW ENFORCEMENT WITNESS STATEMENTS

Officer Jarrod Zirkle

As of July 2018, Officer Zirkle had been employed by the Rialto Police Department as a police officer for 3 ½ years. His most recent assignment was as a K9 police officer. Officer Zirkle had on a Class C uniform with a duty firearm on his left side and his department issued taser and heat sensor door pop for his K9, Boda. Officer Zirkle was equipped with a body worn camera that was activated.

On July 13, 2018, Officer Zirkle was working patrol with his K9 Boda, driving eastbound on Valley Boulevard, approaching Pepper Avenue. In front of him was a black colored Nissan that Officer Zirkle conducted a computer records check on. When the records check revealed that the registration expired in 2017, Officer Zirkle attempted to make a traffic stop on the vehicle. The vehicle then accelerated at a high rate of speed and began cutting off cars. Officer Zirkle operated his forward-facing red lights and overhead siren. Aguirre blacked out the vehicle and continued at a high rate of speed, approximately 70 miles per hour, and a pursuit ensued.

Aguirre entered the 10 westbound freeway and cut across the freeway, narrowly missing a collision with another vehicle. Aguirre's vehicle reached speeds in excess of 100 miles per hour. Officer Zirkle was concerned due to the erratic driving and high rate of speed. In his mind, he believed it was possible that Aguirre had possibly stole the

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vehicle or committed a serious crime because it didn't make sense to him that Aguirre would flee over expired registration. Officer Zirkle continued in the pursuit and provided updates over the radio.

Aguirre exited the freeway at Sierra Avenue and made a southbound turn, running a red light. Aguirre continued with speeds ranging from 80 to 90 mph and cut off two vehicles at Sierra and Slover. Officer Zirkle had to maneuver his vehicle through this area due to traffic. Aguirre continued over the hill and past Jurupa. Officer Zirkle noticed that Aguirre had started to drift into oncoming traffic. As he approached Armstrong Road, Aguirre went through a small neighborhood and continued at a high rate of speed, ranging from 70 to 90 mph. Officer Zirkle noted that when he conveyed information, the digital radio would interrupt his communication with dispatch for a short period of time on Armstrong Road.

Aguirre made an eastbound turn onto Seventh Street and ran a red light at Cedar when he turned southbound onto Cedar. He then turned onto El Rivino Road. Officer Zirkle noted that Aguirre didn't yield for any vehicles; he drove in and out of vehicles. As they approached El Rivino Road, it became extremely dark in that area. Aguirre eventually turned into a large dirt field right before Agua Mansa.

Officer Zirkle followed Aguirre into the field but he had no idea where Aguirre was taking him. At that point, it appeared to him that Aguirre's vehicle had stalled out. Officer Zirkle observed lights on the vehicle were flickering. Officer Zirkle exited his vehicle and drew his duty gun; at the same time, he could hear the turning of the ignition, indicating to him that Aguirre was trying to start the vehicle. Officer Zirkle yelled commands to the Aguirre, telling him to get out of the car now. At that time, the passenger door swung open and Witness #2 jumped out of the vehicle. Officer Zirkle gave her commands to get on the ground. Officer Matthew Lopez arrived on scene as Witness #2 exited.

With Witness #2 on the ground, Officer Zirkle believed it would be best time to approach the vehicle with K9 Boda and stop the situation before it got worse. Once they approached the passenger side of the vehicle, Officer Zirkle tried to open the door but it was locked. After discovering the passenger side door was locked, Officer Zirkle instructed Officer Lopez to break the window. Officer Zirkle had his duty weapon in his left hand, and K9 Boda in his right hand. Officer Zirkle believed that if he could get K9 Boda through the window, they would have coverage and could get the situation under control.

Officer Lopez broke out the window and backed away, allowing Officer Zirkle to be closer to the window. Officer Zirkle continued giving commands to Aguirre to get out, get his hands up, and told him he was going to get bit by his dog. Officer Zirkle had given K9 Boda the command to bite when Aguirre said he had a gun. Officer Zirkle saw him reach and pull out a shotgun, pointed straight at him. Officer Zirkle immediately feared for his life. As soon as Officer Zirkle saw the barrel of the shotgun pointed at him, he believed

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that if he didn't shoot Aguirre, Aguirre would kill him. All he could think about was that he was going to die. He pushed K9 Boda out of the way and fired his gun 3 to 4 times before his gun jammed. Officer Zirkle backed away but did not believe that the threat from Aguirre was over. The field they were in did not provide much in the way of cover and he believed that Aguirre was in a position to easily kill them. He yelled to Officer Lopez to shoot Aguirre while he ejected his magazine. Officer Lopez fired his gun and after he shot, it appeared that Aguirre wasn't moving anymore.

Officer Zirkle maintained lethal cover while yelling to Aguirre that they were getting him some help. Other officers arrived and used a shield to approach the vehicle given that Aguirre still had the gun on his lap. At that time, Officer Zirkle had to deal with K9 Boda, who had received a command to bite and targeted on Witness #2 outside of the vehicle. Officer Zirkle removed K9 Boda from Witness #2 and took her back to the vehicle. Medical aid responded and rendered aid to Aguirre as well as to Witness #2.

Officer Matthew Lopez

Officer Matthew Lopez was interviewed on July 17, 2018 by the San Bernardino County Sheriff's Department. At the time of the interview, Officer Lopez had been employed by Rialto Police Department since March of 2016, and prior to that, he spent two years with the Riverside Sheriff's Department of Corrections. Officer Lopez was wearing a Rialto Police Department Class "C" uniform. Officer Lopez had a Sam Brown duty belt on that contained a Taser X26 and holster, two magazines loaded with 14 .40 caliber cartridges, Baton ring holder, HT radio with microphone and ear piece, OC spray and handcuffs, a Glock 22 handgun loaded with 10 cartridges in the magazine and one in the chamber and an Axon body camera battery pack.

Officer Lopez was on duty on July 13, 2018, working the graveyard shift. He had an Explorer with him that was on a ride along. He had a body worn camera on and it was activated during the incident. At approximately midnight on July 14, 2020, he was on a civil call when he heard Officer Zirkle put out a call reference a vehicle that failed to yield eastbound on Valley approaching Pepper. Shortly thereafter, he heard Officer Zirkle state that he was in pursuit. Officer Lopez was on a non-priority call so he and Explorer Witness #1 left to respond to the call. Pursuant to the last update from Officer Zirkle, Officer Lopez made his way to the area of Valley and Cedar in case they exited.

Officer Lopez headed west of San Bernardino Ave. when the pursuit was on Sierra. He did not believe he had a chance to catch up to them at that point, so went and waited in the area of Cedar and Jurupa in the event the pursuit came back that way. He heard Officer Zirkle say the pursuit was headed eastbound on Seventh. Officer Lopez also heard Officer Zirkle state that their speeds reached in excess of 100 miles per hour and the driver of the vehicle had turned off all the lights on the vehicle. At that time, Officer Zirkle broadcast that they were approaching Cedar. Given that Officer Lopez was in the area, he sent a message letting others know he was posted at the area of Cedar. Shortly

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after he sent out the message, Aguirre turned southbound onto Cedar with Officer Zirkle in pursuit.

Officer Lopez turned on his lights and sirens and joined the pursuit. When the pursuit was on El Rivino, Officer Lopez broadcast that Aguirre and Officer Zirkle were flying because their speeds were 80 to 90 mph and they were pulling away from him. He then heard Officer Zirkle over the radio informing dispatch that Aguirre's vehicle had stopped in a field. As Officer Lopez got to the area, he couldn't see any lights from either vehicle but he could see dust clouds off on a little side street that turned into a field. He swung around and drove onto the little side street all the way to the end and could see Officer Zirkle standing outside of his vehicle with Aguirre's vehicle stopped. Officer Lopez positioned his vehicle to the right of Officer Zirkle's vehicle. Officer Zirkle told him to get a gun on Aguirre's car. Officer Lopez pulled his duty weapon and pointed it at Aguirre's vehicle while simultaneously letting dispatch know he was with Officer Zirkle.

At that time, Witness #2 exited from the vehicle and said, "He's gone, I'm alone, he's gone...he took off running." Officer Lopez ordered Witness #2 to get on the ground and show him her hands. Officer Lopez described how Aguirre's vehicle started to roll backwards and Aguirre was either trying to start the vehicle or prevent it from rolling backwards. Officer Zirkle had his white lights on and Officer Lopez stated that it was hard to see, that you could only see shadows, but he could see someone in the driver's seat moving their head. Officer Zirkle walked around the vehicle with K9 Boda and approached the passenger side door of the vehicle. Witness #2 was on the ground yelling and Officer Zirkle tried to open the passenger door, but it would not open. Officer Lopez could also hear Aguirre actively trying to start the vehicle, but it was not moving. At that time, Officer Lopez was directed by Officer Zirkle to break the window.

Officer Lopez grabbed his straight stick and smashed out the front passenger window. He backed up because he knew Officer Zirkle wanted to send his K9 into the vehicle. Officer Lopez made his way towards the back of the vehicle where he could see the driver's side door in the event Aguirre decided to run. He wasn't there for more than two seconds when he heard the shots. Officer Lopez ran and conveyed that shots fired on the radio and made his way to where Officer Zirkle was. Officer Zirkle was telling him to shoot but Officer Lopez couldn't see due to the darkness as well as the extremely dark tint on the windows. Officer Lopez immediately knew by the tone of Officer Zirkle's voice that he was afraid. He had his gun out and as he cleared the B pillar³, he could see the driver with his hand on a shotgun and the shotgun started to come up. Officer Lopez was in fear that he would either be killed or at least shot by Aguirre. Officer Lopez immediately fired two quick shots and then backed up to get some distance and fired a third time. He ordered Aguirre to get his hands up, and his right hand went up, then his left. During this time period, multiple commands were given to Aguirre to show his hands, put his hands

³ A B pillar refers to a specific location on the frame of a vehicle. The B pillar is the upper portion of the frame which is located between the front passenger window and the rear passenger window.

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up and not to reach for the gun. He then noticed Aguirre was not moving his hands anymore.

Once Aguirre's hands stopped moving, Officer Lopez held his gun on him until other officers arrived and used the ballistic shield to retrieve the gun from Aguirre. After the gun was removed from Aguirre, Officer Lopez was directed off to the side by Officer Martinez. Medical aid was administered to Aguirre during this time. Officer Lopez sustained a small cut to his arm but did not receive any medical treatment. During the encounter with Aguirre, Explorer Witness #1 remained in vehicle.

Explorer Witness #1

Explorer Witness #1 was interviewed on July 14, 2018 at approximately 5:27 a.m. by the San Bernardino Sheriff's Department. On Friday, July 13, 2018, Explorer Witness #1 was assigned as a Police Explorer "Ride-along" with Rialto Police Department Officer Matthew Lopez. Explorer Witness #1 wore a Class B Explorer uniform and rode in the front passenger seat of the marked Ford Explorer police vehicle.

Officer Lopez and Explorer Witness #1 were on an unrelated call when they heard over the radio that Officer Zirkle was involved in a pursuit. They immediately left their call and drove to an area where Officer Zirkle might pass. They eventually ended up in the pursuit, behind Officer Zirkle's vehicle. They ended up in an open dirt field and parked to the right, parallel to Officer Zirkle's vehicle.

Explorer Witness #1 observed Aguirre's vehicle stopped and there was dust in the air. She was unable to see inside the vehicle due to the dark tint on the windows. Witness #2 exited the front right door with her hands above her head and facing the officers. Explorer Witness #1 did not see reverse lights but believed that she saw Aguirre's vehicle move slowly in reverse. She heard Officer Zirkle yell at Witness #2 to get back in the car and not move, and Officer Lopez yelled at Witness #2 to get on the ground. Witness #2 got down on the ground on her knees and faced the officers.

Officer Zirkle told Aguirre he would deploy his K9 if Aguirre did not exit the vehicle. Officer Zirkle then got his K9 from his police unit and they approached the passenger side of the Aguirre's vehicle. Officer Lopez followed Officer Zirkle to the vehicle and both officers had their guns out while they ordered Aguirre out of the vehicle. Explorer Witness #1 heard one of the officers give a command to Aguirre to lower his window, but he did not comply. She then heard Officer Zirkle tell Officer Lopez to break out the window. Officer Lopez broke out the window with his baton and then tossed the baton to the side. Officer Zirkle lifted his K9 to insert the dog into the vehicle when she heard him yell "Gun!" Officer Zirkle backed up, set his K9 on the ground and shot his gun into the passenger compartment. She believed that he fired four to five rounds and Officer Lopez fired three to four rounds.

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Explorer Witness #1 described Witness #2 as being hysterical and yelling that it wasn't her fault. She also thought that K9 Boda got "hyped up" and bit Witness #2 on the leg. Officer Lopez kept his gun on Aguirre's vehicle while Officer Zirkle removed K9 Boda from Witness #2's leg. Explorer Witness #1 heard an unknown officer state that there was a gun on Aguirre's lap.

Explorer Witness #1 assisted Officer Michael Gaspar⁴ assemble the ballistic shield. Three unknown officers approached the vehicle with the ballistic shield but Explorer Witness #1 was unable to see what happened after that due to an obstructed view.

Sergeant Joseph Viola

Sergeant Joseph Viola was interviewed July 14, 2018 by San Bernardino Sheriff's Department Detective Michael Cleary. At the time of the interview, Sergeant Viola had worked for the Rialto Police Department for almost 17 years. Prior to that, he worked for the San Bernardino Sheriff's Department for 5 years and 6 months. On July 13, 2018, he was on duty and worked the graveyard shift. He wore a Class C uniform and a Sam Brown belt. He also wore a body worn camera and it was activated. He was a witness to the shooting but was not involved in the incident directly.

Sergeant Viola was alerted to the call when Officer Zirkle tried to initiate a traffic stop. During the communication, there was some transmission issues and he wasn't always able to understand Officer Zirkle. He eventually was able to understand Officer Zirkle and arrived on scene when Aguirre's vehicle was parked in the field and Officer Lopez was already there. He heard the officers give commands to the occupants of the vehicle, specifically, to exit the vehicle. He observed the officers approach the vehicle when they didn't receive any response. He knew that one of the officers broke out a window but did not know which officer it was. He then observed Witness #2 get apprehended by the K9 unit, followed by one officer stating a subject had a gun. He then heard both officers fire three to four rounds each. Two additional units arrived on scene and he worked with them to formulate a plan to approach the vehicle and safely remove the gun.

Once they formulated a plan, a ballistic shield was put together to approach the vehicle. Sergeant Viola assisted with Witness #2 was on the ground and continued to ask for updates on whether Aguirre was moving or not. He was updated that there was no movement, and when the window was broken out on the driver's side, he was able to

⁴ Officer Michael Gaspar and Officer Michael McDonagh, as well as additional officers, arrived on scene after they heard over the radio that shots had been fired. Their participation in the incident was limited to assembling a shield to approach Aguirre's vehicle and recovery of the shotgun off Aguirre's lap. Given that they were not present when the incident that is related to the use of force unfolded, or when shots were fired, their statements have not been included in this summary.

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observe Aguirre, who looked deceased. Officer McDonagh removed the weapon and placed it into a security drawer. Medical assistance was rendered at the scene.

CIVILIAN WITNESSES

Witness #2

Witness #2 was interviewed at Arrowhead Regional Medical Center on July 14, 2018 at approximately 3:25 a.m. by San Bernardino County Sheriff's Department. Witness #2 was at Arrowhead Regional Medical Center to receive treatment for a dog bite.

Witness #2 had been staying with Aguirre for several days at his mother's house on Tenth Street in Bloomington. Witness #2 knew Aguirre as "Crazy Legs." Witness #2 also knew that Aguirre carried a shotgun on him because he was "green lit." Witness #2 described that as meaning that Aguirre had a bounty on him because he stole drugs. Aguirre was given \$1500 worth of drugs and he was supposed to violate his probation so he could get taken into custody and get the drugs into the jail. Instead, Aguirre took the drugs and went to Las Vegas.

On Saturday, July 14, 2018, Witness #2 and Aguirre were at a gas station in Rialto. While there, they met a man and decided to follow him to his house. Aguirre drove and Witness #2 was in the passenger seat. Witness #2 had gotten out of jail in May of 2018 and Aguirre had the vehicle they were in at that time, so she believed it belonged to him. Aguirre had his shotgun with him in the front seat of his vehicle near his hip. As they left the gas station, a police officer attempted to pull them over by activating the emergency lights on the police vehicle. Aguirre told Witness #2 "I'm gone fool, I'm fucking gone" and then accelerated away from the police officer. The officer behind them followed them even at high rates of speed. Aguirre wanted to get to his mom's house so he could get rid of the shotgun. At one point during the chase, when they exited the freeway, Witness #2 tried to get of the car. Aguirre pulled her back in and told her he'd kill her. Witness #2 stated she told Aguirre numerous times during the chase she wanted to get out of the vehicle.

Aguirre turned onto a dirt road when the vehicle died. The officer was behind them and began ordering them to get out of the vehicle with their hands up. Witness #2 told Aguirre she was getting out of the vehicle and she loved him. Aguirre told Witness #2 he was going to kill her, although she did not believe him when he said that, and he also told her he was going to die that night. Aguirre rolled up the windows and locked the doors. Witness #2 told Aguirre she was not going to die. She opened the door and exited the vehicle with her hands up. She did not want to watch an officer or Aguirre die that night.

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She followed commands to lay on her chest. Aguirre reached across and pulled her door closed.

Officers started to break out the window and glass fell all around her. She stated that officers saw a shotgun in the vehicle and fired their guns at Aguirre. She was face down on her stomach during this and did not see either Aguirre's actions or the officers' actions; she only heard gunshots. Witness #2 stated she knew the difference between the sound of a shotgun being fired and a handgun being fired; she heard 10 rounds fired. Witness #2 said she heard officers fire their handguns and Aguirre fire his shotgun. While she was following officers' instructions, the dog bit her in her left leg.

AXON BODY CAMERA SUMMARY

Officer Jarrod Zirkle

Officer Zirkle was equipped with a body worn camera during the incident. The entire incident was captured on his body camera video and is approximately 21 minutes and 26 seconds long. The audio for the body worn camera was not activated until approximately 31 seconds into the video.

The video was consistent with Officer Zirkle's statement. The video began with Officer Zirkle driving behind the black Nissan and then he activated his overhead lights. Aguirre accelerated and pulled away from Officer Zirkle's vehicle. Aguirre turned off the lights on the vehicle and remained blacked out during the pursuit. Officer Zirkle provided updated information about the direction of travel and the speed at which Aguirre was traveling during the pursuit. Several times during the pursuit, only the license plate of the vehicle Aguirre was driving was visible.

At approximately 10 minutes and 43 seconds into the video, Aguirre's vehicle pulled into a field and then stopped. Seconds later, Officer Zirkle exited his vehicle, drew his duty weapon and aimed it at Aguirre's vehicle. Officer Zirkle ordered Aguirre to turn off the car three times. When he received no response, Officer Zirkle then yelled to Aguirre that he was going to get bit two times. At 11 minutes and 34 seconds into the video, Officer Lopez arrived on scene and Officer Zirkle informed him that the vehicle appeared to be disabled and that "he's still trying to get out."⁵ Officer Zirkle told Officer Lopez to get a gun on Aguirre.

Officer Lopez yelled multiple times for Aguirre to get out of the car. Witness #2 exited the vehicle from the passenger side door and yelled at the officers that "he wants

⁵ The context of the statement appeared to refer to the fact that Aguirre's vehicle wasn't moving, but that Aguirre was trying to get out, referring to the fact that Aguirre was still trying to leave the situation in the vehicle, not that Aguirre was trying to get out of the vehicle.

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to leave.” Officer Zirkle yelled at Aguirre to get out of the car or he was going to get bit. K9 Boda began to bark as both officers approached the passenger side of the vehicle. Once they were at the passenger side of vehicle, Officer Zirkle directed Officer Lopez to break the window. Officer Lopez started to break out the front passenger window; Officer Zirkle ordered Aguirre out of the vehicle and to put his hands up. At 12 minutes and 28 seconds into the video, Aguirre stated he had a gun and reached into his lap area and raised both arms. Officer Zirkle then fired four rounds at Aguirre when his gun malfunctioned. Officer Zirkle stepped back and began to yell “shoot him” multiple times; Officer Lopez stepped forward and fired 3 rounds.

Officer Zirkle then turned his attention to Witness #2 as K9 Boda had bitten her lower leg. Officer Zirkle removed K9 Boda from Witness #2 while Officer Lopez kept his attention on Aguirre. Officer Lopez yelled that he found a gun and he ordered Aguirre to keep his hands up and not to move for the gun. At 13 minutes and 15 seconds into the video, Sergeant Viola arrived and Officer Zirkle yelled to him that Aguirre had pulled a gun on him. The video continued to record the events that were documented in the witness statements, ending at 21 minutes and 26 seconds.

Officer Matthew Lopez

Officer Matthew Lopez was equipped with a body worn camera that he activated during the incident. The video is approximately 12 minutes and 48 seconds long and the audio portion of the incident did not begin until 30 seconds into the video.

Officer Lopez started his body worn camera when he arrived in the field where Officer Zirkle was already parked. Lopez exited his vehicle and drew his service weapon. Officer Zirkle was standing at the passenger side of Aguirre’s vehicle with K9 Boda in his left hand. Witness #2 was on her knees with her arms extended out to her sides. Officer Zirkle attempted to open the passenger door of Aguirre’s vehicle but it was locked. Officer Lopez approached Aguirre’s vehicle and hit the front passenger window, shattering the window. Officer Lopez then backed up from the vehicle and walked near the trunk. Officer Lopez pointed his duty weapon at the driver’s side of Aguirre’s vehicle. At this point, audio was activated and within 2 seconds, Officer Zirkle fired four rounds at Aguirre. Officer Lopez walked back to the rear of the passenger side and Officer Zirkle yelled at Officer Lopez to shoot him. Officer Lopez approached the B pillar of Aguirre’s vehicle and fired his weapon three times.

Officer Lopez yelled at Aguirre to show him his hands. Aguirre’s hands were on his lap and as Officer Lopez continued to yell at Aguirre to show his hands, Aguirre slowly started to raise his right hand. Officer Lopez saw the gun in Aguirre’s lap and yelled “I got a gun” to convey Aguirre had a gun, and Aguirre then began to raise his left hand. Officer Lopez again commanded Aguirre to get his hands up and not to reach for the gun. Officer Lopez yelled that medics should be called. Officer Lopez continued to give commands to Aguirre to keep his hands up and not to reach for the gun. Officer Lopez

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reported that the gun was in Aguirre's lap and he was no longer moving. The body worn camera continued to record events that were documented in witness statements, ending at 12 minutes and 48 seconds.

WEAPON

A shotgun was recovered between the legs of Aguirre with the butt of the shotgun in Aguirre's lap and the barrel facing down toward the floorboard. In addition, when officers entered the vehicle, they observed a brown pellet gun underneath Aguirre's right foot.

DE-ESCALATION

Officer Zirkle operated his forward-facing red lights and overhead siren to conduct a traffic stop on Aguirre. Aguirre failed to respond. Aguirre led Officer Zirkle on a high-speed pursuit that, at times, reached speeds in excess of over 100 mph. Officer Zirkle did not attempt to use any traffic maneuvers and continued to follow Aguirre on a pursuit for over 10 minutes. The pursuit ended in an open field where it appeared that Aguirre's vehicle had stalled out. Officer Zirkle exited his vehicle and gave Aguirre commands to turn off the car. Aguirre did not follow commands; in fact, he did the opposite and continued to try to start the vehicle. Officer Zirkle tried another approach and warned Aguirre that he was going to get bit.

Officer Zirkle then prepared his K-9 Boda and believed that if he could get his dog in there, he would have coverage and could open the door to Aguirre's vehicle. Officer Zirkle thought this approach would de-escalate the situation. When Officer Zirkle and Officer Lopez approached the car, Officer Zirkle tried to open the door, which was locked, and Officer Lopez yelled at Aguirre to get out of the car. Aguirre did not comply. Officer Zirkle then yelled at Aguirre multiple times to get out of the car or he would get bit. Once again, Aguirre did not follow commands.

Officer Zirkle told Officer Lopez to break the window, with the intent of putting K-9 Boda through the window. Officer Zirkle still believed that he could de-escalate the situation. At that moment, the situation changed when Aguirre stated he had a gun and pointed it at Officer Zirkle. Officer Zirkle fired four rounds when his weapon malfunctioned.

Officer Lopez was told to shoot at Aguirre by Officer Zirkle. Officer Lopez approached the vehicle and did not shoot until he physically saw Aguirre with a shotgun that Aguirre started to raise up at him. Officer Lopez then fired three rounds and stepped away from the vehicle for distance. He continued to give commands to Aguirre to get his hands up and not to move for the gun, which Aguirre complied with.

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POSTMORTEM EXAMINATION

Aguirre was pronounced dead on July 14, 2018 at 12:30 a.m. by a paramedic that responded to the location of the incident.

A postmortem examination was conducted on July 23, 2018 by a Forensic Pathologist at the San Bernardino County Sheriff-Coroner. The doctor noted the cause of death to be gunshot wounds to the chest.

The doctor noted following gunshot wounds to the chest:

1) **Gunshot wound of the right upper chest:** The entry wound was located in the anterior right upper arm, exited in the medial right upper, approximately 17 inches below the head and re-entered in the lateral right upper chest. The bullet traveled from the anterior right upper arm, exited the medial right upper arm and re-entered the right chest. Of note is that the bullet perforated the right lung, pericardial sac, heart, and left lung, and terminated in the muscles of the left chest. A copper jacket was recovered from the pericardial sac and a bullet was recovered from the muscles of the left chest.

2) **Gunshot wound in the lateral right back:** The entry wound was in the lateral right back. Of note is that the bullet perforated the right chest wall, the 6th and 7th right ribs, the right lung, and the left lung, and terminated in the left upper back. The bullet was recovered from the left upper back.

Aguirre also was noted to have a graze wound to the anterior right forearm. Also noted during the external examination was an old above knee amputation of the right leg, with a right leg prosthesis with the body. A hole on the outer surface of the thigh of the leg prosthesis of unknow origin was also noted during the examination.

Toxicology

Chest blood samples were collected from Aguirre during the autopsy. The toxicology results revealed a Blood Alcohol Concentration (BAC) of .017% as well as 51 ng of amphetamine and 930 ng of methamphetamine.

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APPLICABLE LEGAL STANDARDS

LAWS OF ARREST

California Penal Code section 834a

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

California Penal Code section 835a

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

LAWS OF SELF-DEFENSE

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is justifiable when committed by any person in any of the following cases: (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person...(4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace." Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable

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person would be placed in fear for his safety and the person act out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) "He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures." (*People v. Collins, supra*, 189 Cal.App.2d at p. 588.)

**CAL CRIM 3470 (REVISED 2012)
RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER**

Self-defense is a defense to the unlawful killing of a human being. A person is not guilty of that/those crimes if he/she used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;
2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The person used no more force than was reasonably necessary to defend against that danger.

When deciding whether a person's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

The person's belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

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USE OF DEADLY FORCE BY A PEACE OFFICER

The use of deadly force by a police officer is analyzed under the Fourth Amendment's "objective reasonableness" standard. (*Brosseau v. Haugen* (2004) 543 U.S.194, 197.) This analysis is governed by the principles enunciated in *Tennessee v. Garner* (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386.

The US Supreme Court explained that "it is unreasonable for an officer to 'seize an unarmed, non-dangerous suspect by shooting him dead..... However, where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force.'" (*Tennessee v. Garner, supra*, 471 U.S. at p. 11.)

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. 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. (*Id.* at p. 396-397.) The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

Graham set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. (*Graham v. Connor, supra*, 490 U.S. at p. 396.) The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (*Tennessee v. Garner* (1985) 471 U.S. at p. 8-9. The most important of these factors is the threat posed by the suspect. (*Smith v. City of Hemet* (2005) 394 F.3d 689,702.)

Thus, under *Graham* court, the high court advised 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." (*Smith v. Freland*, 954 F.2d 343, 347 (6TH Cir. 1992)).

SELF-DEFENSE AND DEFENSE OF ANOTHER

The legal doctrine of self-defense and defense of another is codified in Penal Code Sections 197 through 199. Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be

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sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

A homicide committed in self-defense or defense of another is justified and lawful if:

1. The person who killed reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
2. The person who killed reasonably believed that the immediate use of deadly force was necessary to defend against that danger; AND
3. The person who killed used no more force than was reasonably necessary to defend against that danger.⁶

A belief in future harm is not enough. The person claiming self-defense or defense of another must have reasonably believed that death or great bodily injury was imminent.⁷

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the person act out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) "He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures." (*Collins, supra*, 189 Cal.App.2d at p. 588.)

Reasonableness: The Two Prongs

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a "reasonable ground to apprehend" a design to commit a felony or to do some great bodily injury. Further, Penal Code section 198 requires that such fear be "sufficient to excite the fears of a reasonable person." This is clearly an objective standard. In shorthand, perfect

⁶ See CALCRIM 505 (Revised 2012); see also Penal Code sections 197-199.

⁷ See Penal Code section 198; see also CALCRIM 505 (Revised 2012).

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self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

When specific conduct is examined under the analytical standard of reasonableness the concepts of apparent necessity and mistake are invariably, and necessarily, discussed, for they are part of the same equation. "Reasonableness," after all, implies potential human fallibility. The law recognizes, as to self-defense, that what is being put to the test is human reaction to emotionally charged, highly stressful events, not mathematical axioms, scientifically provable and capable of exact duplication.

While the test is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self-defense or defense of another. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) We must take into consideration all the facts and circumstances that might be expected to operate in the person's mind. (*Ibid.*) Reasonableness is judged by how the situation appeared to the *person claiming self-defense*, not the person who was injured or killed as a result.

Imminence of Perceived Danger

Imminence is a critical component. (*Humphrey, supra*, 13 Cal.4th at p. 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. Reasonableness and immediacy of threat are intertwined. Self-defense and defense of another are based on the reasonable appearance of imminent peril of death or serious bodily injury to the party assailed.

"Imminent peril" is peril that must have existed or appeared to the person to have existed at the very time the fatal shot was fired. In other words, the peril must appear to the defendant as immediate and present and not prospective or even in the near future. "An imminent peril is one that, from appearances, must be instantly dealt with." (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1187-1190, overruled on other grounds in *People v. Humphrey* (1996) 13 Cal.4th 1073.) This was later cited with approval by the California Supreme Court. (See *In re Christian S.* (1994) 7 Cal. 4th 768,783)

The question is whether immediate action was required so as to avoid great bodily injury or death. There is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate.

Retreat and Avoidance

Under California law, one who is face with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat even if safety could have been achieved by retreating. (CALCRIM 3470.) In California, the retreat rule has been expanded to encompass a reasonably perceived necessity to pursue an assailant to secure oneself from danger. (See *People v. Holt* (1944) 25 Cal.2d 59, 63; *People v. Collins* (1961) 189 Cal. App.2d 575, 588.) One may stand his/her ground and use deadly

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force against an imminent threat of great bodily injury or death. There is no duty to retreat even if safety could have been achieved by doing so. (*People v. Hughes* (1951) 107 Cal.App.2d 487, 493).⁸

Nature and Level of Force

The right of self-defense and defense of another is limited to the use of such force as is reasonable under the circumstances. (See *People v. Gleghorn* (1987) 193 Cal.App.3d 196, 200; *People v. Minifie*, *supra*, 13 Cal.4th at p. 1065; *People v. Moody* (1943) 62 Cal.App.2d 18,22.)

Case law does not impose a duty to use less lethal options. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." (*People v. Collins*, *supra*, 189 Cal.App.2d at p. 578.)

The rationale for vesting the police officer with such discretion was explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the *least* intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.

(*Scott v. Henrich*, 39 F.3d 912 at 915 (9th Cir. 1994.)).

In summary, an honest and objectively reasonable belief that lethal force was necessary to avoid what appeared to be an imminent threat of death or great bodily injury will justify the use of deadly force. The killing/homicide, then, would be justified and not unlawful.

⁸ See also CALCRIM 505 (Revised 2012).

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ANALYSIS

In determining whether the use of deadly force by Officers Zirkle and Lopez was legally justified, we must first analyze each officer's subjective belief individually to assess their belief that Aguirre was about to inflict great bodily injury on either of them or someone else. Beginning with Officer Zirkle, he attempted to conduct a traffic stop on the vehicle that Aguirre was driving due to expired registration. Not only did Aguirre fail to pull over for Officer Zirkle, he then endangered himself and other vehicles on the road by engaging in a high-speed pursuit. Officer Zirkle then used his lights and sirens to attempt to stop Aguirre, but Aguirre did not comply. Officer Zirkle noted that in the initial stages of the pursuit, Aguirre blacked out his vehicle to make it more difficult for Officer Zirkle to follow. However, that also made it more difficult for other motorists to observe and avoid, creating a dangerous situation for other motorists. In addition, during the pursuit, Officer Zirkle noted that Aguirre ran red lights, cut off other motorists, and at times, drove at speeds in excess of 100 mph. The conduct by Aguirre lead Officer Zirkle to believe that his behavior was indicative of some greater criminal activity; it did not make sense to him that Aguirre would flee over expired registration.

When Officer Zirkle followed Aguirre into a big, dark open field, he had no idea what Aguirre's intent was. Officer Zirkle noted that it appeared Aguirre's vehicle stalled out on him because the reverse lights were flickering. Officer Zirkle immediately exited his vehicle, drew his duty gun and yelled to Aguirre to get out of the vehicle three times. Aguirre did not follow Officer Zirkle's commands and remained in the vehicle; Officer Zirkle heard Aguirre try to start the vehicle as he could hear the ignition turn. Officer Zirkle tried to gain control of the situation by warning Aguirre that he was going to get bit and to get out of the vehicle. Once again, Aguirre failed to follow commands. At this point, Officer Zirkle had no reason to believe that Aguirre would comply with his commands.

Officer Zirkle then prepared K9 Boda to make entry into the vehicle in an attempt to use non-lethal force to stop the situation from becoming worse. Officer Lopez had arrived so the two of them approached Aguirre's vehicle from the rear passenger side. Witness #2 had exited from the passenger side. Officer Zirkle tried to open the passenger side door and it was locked. He continued to warn Aguirre that he was going to get bit, but Aguirre failed to respond. Officer Zirkle instructed Officer Lopez to break out the window while he held lethal coverage on the vehicle. When Officer Lopez had broken out the window, Officer Zirkle instructed Aguirre to get his hands up as he moved towards the door with K9 Boda. At that moment, Officer Zirkle faced Aguirre; Aguirre said he had a gun and started to point the shotgun at him. Officer Zirkle's first thought was that Aguirre was going to kill him and he fired his duty weapon four times before it malfunctioned.

The incident was captured on Officer Zirkle's body worn camera. Furthermore, Witness #2 corroborated Officer Zirkle's statement. She was aware that Officer Zirkle activated Emergency lights and that Aguirre refused to pull over. She further stated that

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Aguirre drove at high rates of speed because he wanted to get to his mom's house to get rid of the shotgun he had. Witness #2 tried to exit the vehicle, but she was unable to do so because Aguirre pulled her back in and threatened to kill her. Witness #2 heard the officer ordering them out of the vehicle and to get their hands up. Lastly, Aguirre also told her he was going to die that night.

Officer Zirkle had an objectively and reasonable believe that Aguirre posed an imminent threat of serious bodily injury or death. Officer Zirkle's first thought when he saw the shotgun pointed at him was that Aguirre was going to kill him. Aguirre had failed to yield for a traffic stop, endangered the public while he led Officer Zirkle on a high-speed chase to a deserted, wide open field, and failed to follow commands to exit the vehicle or put his hands up. Aguirre had failed to respond when Officer Zirkle warned him he was going to get bit and approached the vehicle with K9 Boda. Coupled with the statements by Witness #2 about Aguirre's state of mind, Officer Zirkle was justified in using deadly force against Aguirre.

Officer Lopez, who responded to the high-speed pursuit, was aware of all the events that had unfolded prior to his arrival at the field. When he arrived, Witness #2 had just jumped out of the vehicle. Officer Lopez grabbed his straight stick and joined Officer Zirkle at Aguirre's vehicle. Officer Lopez followed Officer Zirkle's instructions and broke out the passenger window; he then stepped back to allow Officer Zirkle to utilize K9-Boda. Standing at the rear of the vehicle with his duty weapon aimed at the vehicle, the next thing Officer Lopez heard was Officer Zirkle firing shots. He immediately broadcast that shots were fired, and Officer Zirkle was telling him to shoot. It is important to note that Officer Lopez did not immediately fire his gun because he couldn't see what the threat was. Once he approached the B pillar on Aguirre's vehicle, he was able to see the direct threat – Aguirre with his hand on a shotgun and the shotgun raising up. Officer Lopez fired his duty weapon to stop the immediate threat. Officer Lopez backed away and told Aguirre get his hands up. Initially, Aguirre put his right hand up and then his left hand. Officer Lopez continued to give him commands not to touch the gun because the gun was sitting in Aguirre's lap. Officer Lopez continued to hold Aguirre at gun point until the ballistic shield was used to recover the shotgun from Aguirre's lap.

Officer Lopez had an objectively and reasonable believe that Aguirre posed an imminent threat of serious bodily injury or death. Officer Zirkle's first thought when he saw the shotgun pointed at him was that Aguirre was going to kill him. Officer Lopez was aware that Aguirre had led Officer Zirkle on a high-speed chase to a deserted, wide open field, and failed to follow commands to exit the vehicle or put his hands up. Aguirre had failed to respond when Officer Zirkle warned him he was going to get bit and approached the vehicle with K9 Boda. Coupled with the statements by Witness #2 about Aguirre's state of mind, Officer Lopez was justified in using deadly force against Aguirre.

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The statement by Witness #2 and the body worn camera videos all corroborate Officer Zirkle and Officer Lopez' accounts that Aguirre continued to pose a threat to both officers until the use of deadly force.

Under all of the circumstances, it was objectively reasonable for Officer Zirkle and Officer Lopez to believe Aguirre posed an immediate and serious threat to both of the officers' physical safety and thus, their decision to use deadly force was justified.

CONCLUSION

Based on the facts presented in the reports and the applicable law, the use of lethal force by both Officer Zirkle and Officer Lopez was a proper exercise of their right of self-defense and therefore both officers' actions were legally justified.

Submitted by:

San Bernardino County District Attorney's Office