



PUBLIC RELEASE MEMORANDUM

Subject: **Officer Involved Shooting (Fatal)**

Officer: **Officer Richard Vanderbilt**
Upland Police Department

Officer Jacob Waste
Upland Police Department

Officer Steven Wyno
Upland Police Department

Involved Subject: **Artur Timurovich Kaneev (Deceased)**
Date of Birth - 06/02/1992
Upland, CA

Date of Incident: **December 13, 2018**

Incident location: **11th Street and Benson Avenue**
Upland, CA

DA STAR #: **2019-61014**

Investigating Agency: **San Bernardino County Sheriff's Department**

Case Agent: **Detective Tramayne Phillips**

DR #: **601800182**

PREAMBLE

This was a fatal officer involved shooting by police officers from the Upland Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, videos, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 601800182.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 2

PRINCIPAL INVOLVED PARTIES

Artur Timurovich Kaneev (DOB: 06/02/1992) of Upland, California was killed during the incident under review.

Officer Richard Vanderbilt of the Upland Police Department was a police officer involved in the shooting of Artur Kaneev.

Officer Jacob Waste of the Upland Police Department was a police officer involved in the shooting of Artur Kaneev.

Officer Steven Wyno of the Upland Police Department was a police officer involved in the shooting of Artur Kaneev.

SCENE

This incident occurred on December 13, 2018, at approximately 3:33 a.m. The location of occurrence was near the intersection of West 11th Street and North Benson Avenue in the city of Upland, California. The area was a commercial and residential neighborhood. The four corners of the intersection included an apartment complex on the northeast corner, a storage facility on the northwest corner, a commercial strip mall on the southwest corner and an elementary school on the southeast corner. The area was illuminated by multiple streetlights in all directions.

BACKGROUND INFORMATION

Artur Timurovich Kaneev had a prior criminal history that included the following convictions:

2017, Penal Code section 148(a), Resisting, Obstructing or Delaying Arrest, San Bernardino County case number MWV17013313, a misdemeanor.

2018, Penal Code section 459.5, Shoplifting, Los Angeles County case number POM7PC0261401, a misdemeanor.

2018, Health and Safety Code section 11364(a), Possession of Controlled Substance Paraphernalia, Los Angeles County case number POM8PC0357801, a misdemeanor.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 3

MENTAL HEALTH BACKGROUND

Witness #1, Kaneev's mother, was interviewed by Detectives Chuck Phillips and Oscar Godoy of the San Bernardino County Sheriff's Department on December 13, 2018. She provided the following background information on Kaneev:

Between 2010 and 2012, Kaneev had anxiety and insomnia and was treated by an unknown psychiatrist in Rancho Cucamonga.

In 2013, Kaneev moved into a church in San Bernardino. Witness #1 did not know his whereabouts and reported him missing.

In 2013, Kaneev was diagnosed bipolar schizophrenic and prescribed antipsychotic medications Seroquel and Zyprexa.

Around 2015, Kaneev was order by the court to attend Narcotics Anonymous meetings. After he completed the required classes, he voluntarily continued to attend.

Sometime around September 2018, Kaneev stopped taking Seroquel and Zyprexa. Witness#1 reported that occasionally Kaneev had insomnia and became sad and reclusive.

Kaneev last saw his psychiatrist around the second week of November 2018.

At approximately 10:00 p.m. on December 12, 2018, Witness #1 had a conversation with Kaneev. Witness #1 discovered Kaneev was frustrated. She believed he was frustrated because he wanted to move out of their house. Witness #1 saw the prescribed Seroquel on a table in Kaneev's room and asked Kaneev if he was taking the medication. Kaneev told her he was not taking the prescribed Seroquel.

FACTUAL SUMMARY

On December 13, 2018, at 3:11 a.m., Upland Police Department received a call from "Frank" who reported seeing "some guy acting kind of weird" in the area of 1630 11th Street in the city of Upland. He explained the subject was walking around in a bush, either cutting leaves or picking stuff up and "acting weird" and was possibly a transient. He described the subject as a white male adult wearing a blue jacket and gray pants. This information was dispatched to officers and labeled a "suspicious subject" call.

At 3:27 a.m., Upland police officer, Richard Vanderbilt, was assigned to the call. Officer Vanderbilt had just finished as a "backing officer" at a "burglary audible" call in the 1200 block of East 16th Street and responded from that location. Officer Vanderbilt traveled westbound on 11th Street, in a marked Upland Police Department patrol vehicle, to the

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 4

intersection of Benson Avenue. After he crossed through the intersection, he observed a subject, later identified as Artur Kaneev, walking eastbound on the south sidewalk of 11th Street toward Benson Avenue. Kaneev was in the area of the strip mall located at 1680 11th Street, wearing a blue jacket and gray pants. When Officer Vanderbilt observed Kaneev, he made a U-turn in his patrol vehicle and waited for Kaneev to completely cross Benson Avenue. Once Kaneev reached the southeast corner of Benson Avenue and 11th Street, he continued to walk east in the direction of Cabrillo Elementary School. Officer Vanderbilt then initiated his overhead lights to the "two setting", with a steady red forward-facing light and at 3:33 a.m. he notified dispatch he would be "out with" the subject at 11th and Benson.

Officer Vanderbilt pulled his patrol vehicle up to curb near Kaneev, exited the vehicle and walked to the front of the engine block on the driver's side. Officer Vanderbilt told Kaneev something to the effect of "come over here and take a seat on the curb" or "come over here and I need to talk to you for a second". Officer Vanderbilt observed Kaneev hesitate before he turned around and walked back in the direction of Officer Vanderbilt. Kaneev walked toward Officer Vanderbilt with his hands in his pockets. Officer Vanderbilt instructed Kaneev to "take your hands out of your pockets please".

Kaneev stopped walking and took his left hand out of his pocket but not his right hand. Officer Vanderbilt told Kaneev again to take his hands out of pockets. Kaneev continued to keep his right hand in his pocket. Officer Vanderbilt gave a third command to Kaneev to take his hands out pockets. On this third command, Officer Vanderbilt unholstered his Taser and turned it on. Officer Vanderbilt then commanded a fourth time, "take your hands out of your pocket, do it now or I will tase you".

Kaneev took his right hand out of his pocket and immediately reached into his back-waistband area. Kaneev pulled out a black handgun with his right hand and brought it up and grabbed on to the top of it with his left hand as if to cock the slide back. Kaneev then pointed the firearm in the direction of Officer Vanderbilt. Officer Vanderbilt dropped his Taser to the ground, pulled out his firearm, and positioned himself by the driver's door of his vehicle. Officer Vanderbilt yelled "Drop it now!" and then fired 14 rapid consecutive shots at Kaneev.

Once Officer Vanderbilt finished firing, he crouched down beside his vehicle and put out "shots fired" over his radio. He moved toward the back of his patrol vehicle in order to gain cover and a better tactical position. Officer Vanderbilt yelled again at Kaneev "Drop it now! Do it now". Kaneev walked eastbound away from Officer Vanderbilt's vehicle. As Officer Vanderbilt reached the right rear bumper of his patrol vehicle, he reestablished a visual of Kaneev. Officer Vanderbilt saw Kaneev move quickly towards the front bumper of his patrol vehicle on the passenger side. Kaneev was positioned three to four feet from the front passenger side bumper of the patrol vehicle and facing Officer Vanderbilt with the gun still in his hand. Officer Vanderbilt inserted a new magazine into

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 5

his firearm and shot at Kaneev seven times. Kaneev fell to the ground on to his right side and dropped the firearm beneath his right leg.

At 3:35 a.m. Officer Vanderbilt broadcast over his radio "21, shots fired, one suspect down..." and asked for backing officers. Officer Vanderbilt maintained a visual of Kaneev from the rear of the vehicle and kept him at gunpoint. Kaneev rolled to his back and reached for the firearm under his right leg with his right hand. Officer Vanderbilt yelled, "Do not pick that up, do not pick that up, do not pick that gun up, drop it right now, drop it right now!" Kaneev raised the gun up in the direction of Officer Vanderbilt. Officer Vanderbilt then fired further shots at Kaneev.

During this time, Officer Waste arrived at the scene in a marked patrol vehicle with lights activated and briefly his siren. He exited his vehicle and inquired whether Officer Vanderbilt was "alright" and approached Officer Vanderbilt from behind. Officer Vanderbilt maintained visual on Kaneev and gave him commands not to move. At this point, Kaneev was on the ground in front of the patrol vehicle with the gun still in his hand pointed downrange at Officer Vanderbilt. Officer Waste notified dispatch to "stage fire" at Walmart. Officer Waste then remained with Officer Vanderbilt and maintained visual on Kaneev at gunpoint.

Approximately one minutes later, Officer Wyno arrived at the scene in a patrol vehicle with lights and siren activated. Upon his arrival, Officer Wyno approached Officers Vanderbilt and Waste from behind and advised them he was going to reposition to the front driver's side of Officer Vanderbilt's patrol vehicle. Officer Vanderbilt continued to have Kaneev at gunpoint. Officer Waste repositioned to the location of Officer Wyno. Kaneev moved slightly and was told by all three officers not to move. Kaneev tried to sit up while still having his hand on the firearm. Officer Wyno gave multiple commands for Kaneev to "put the gun down" and get his "hand off the gun". After approximately forty seconds of commands from all three officers to drop the gun, Kaneev lifted his right hand up and the gun fell out of his hand. During these commands, Sergeant Kirk arrived at the scene and positioned himself behind Officers Waste and Wyno.

Kaneev remained on the ground on his back. However, he turned his head to look in the direction of the gun. Officer Wyno told Kaneev not to reach for the gun several times. Officer Vanderbilt made his way to the other officers and they began strategizing how to approach Kaneev and get the gun away. Officer Vanderbilt holstered his gun and began to put on gloves as the other three officers kept Kaneev at gunpoint. Kaneev then rolled on to his side again and reached out for the firearm with his left hand. Officers Waste and Wyno fired their firearms at Kaneev. This resulted in Kaneev dropping the gun and not moving. Shortly after, all four officers then approached Kaneev. Sergeant Kirk kicked the firearm away from Kaneev. Subsequently it was determined the firearm was a BB/pellet gun.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 6

Officers Vanderbilt, Waste and Wyno assessed Kaneev's injuries and rendered life-saving efforts until San Bernardino County Fire Department (SBCFD) and American Medical Response (AMR) teams arrived at their location. SBCFD and AMR continued life-saving efforts on Kaneev. Kaneev was transported to the San Antonio Medical Center by ambulance. On December 13, 2018 at 4:06 a.m. Kaneev was pronounced deceased by a doctor at San Antonio Medical Center. Kaneev sustained the following injuries: a gunshot wound to his head, a gunshot wound to his neck, a gunshot wound to right upper back, gunshot wounds (2) to the middle of the upper back, gunshot wound to the mid back, gunshot wound to the right buttock, gunshot wound to the right forearm, gunshot wounds (2) to right proximal thigh, gunshot wounds (2) to right mid-thigh, gunshot wounds to right distal thigh, gunshot wound to left arm, gunshot wound to left hand and gunshot wound to left lower leg.

CIVILIAN WITNESS STATEMENTS

On December 13, 2018, at 6:33 a.m., **Witness #2** was interviewed by Detective Chuck Phillips from the San Bernardino County Sheriff's Department. On that date, at approximately 3:30 a.m., Witness #2 was at The Tint Shop where he was employed. The Tint Shop was located on the southwest corner of 11th Street and Benson Avenue. Witness #2 was sweeping the bay floor in the building when he heard four to five gunshots and yelling. Witness #2 then heard a siren, an engine accelerated, tires screeched, and a door slammed. About 15 seconds later he heard someone yell "Put the gun down" at least five times. During the yelling, Witness #2 opened the bay door to the shop and exited the building. Once outside, Witness #2 stood near a bush and started to video record the incident with his cell phone. Witness #2's three video recordings were collected by the San Bernardino County Sheriff's Department.

Witness #2's first video showed three marked patrol vehicles at the intersection of 11th Street and Benson Avenue with their overhead lights flashing. Almost immediately, Officer Wyno can be heard yelling "Get your hand off the gun, get your hand off the gun, don't move, don't move". In the second video recording by Witness #2 multiple officers were heard yelling (words are unintelligible) followed by multiple gunshots. The third video showed officers performing CPR on Kaneev. All videos are from a distance as Witness #2 was positioned across Benson Avenue from the incident.

Witness #2 told Detective Phillips that after the round of gunshots captured on the second video, he saw other officers in patrol vehicles arrive on scene. He specifically saw a female officer run toward the other officers. He heard officers instruct her to get the "trauma kit". He saw her run back to her vehicle and get something out of the back of a patrol vehicle and run back toward the other officers with it. Witness #2 then observed officers giving CPR to an individual. He next saw firetrucks arrive and within a couple minutes he saw the individual be taken away on a gurney.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 7

On Tuesday August 20, 2019, **Witness #3** was interviewed by Detective David Lara from the San Bernardino County Sheriff's Department. On December 13, 2018, Witness #3 was inside her apartment near the intersection of 11th Street and Benson Avenue. Sometime between 3:30 and 3:40 a.m., she was woken up by ten to twelve consecutive gunshots. There was a pause of less than a minute before she heard another ten to twelve consecutive gunshots. Within the pause she heard a male voice but could not recall what was said. After the second set of gunshots, Witness #3 heard an unknown person, possibly a police officer, shout "don't move" approximately three to four times. After the commands, in less than a minute, Witness #3 heard three to four more gunshots. Then Witness #3 saw police lights at the scene. Witness #3 never looked outside her window and did not record any of the incident.

LAW ENFORCEMENT STATEMENTS

On December 18, 2018, **Officer Richard Vanderbilt**, was interviewed by Detectives Chuck Phillips and Oscar Godoy from the San Bernardino County Sheriff's Department. Officer Vanderbilt has been employed since March 2018 as a peace officer with Upland Police Department. On December 12, 2018, he was assigned to patrol from 7:00 p.m. to 7:00 a.m. the following morning. He was driving a marked Ford Explorer patrol vehicle and wearing a Class B uniform with patches identifying him as an Upland police officer. Officer Vanderbilt was equipped with a HT radio, two flashlights, two pairs of handcuffs, a collapsible baton, a Taser, a Heckler and Koch USP .40 caliber handgun with TAC-light and two extra magazines (13 cartridge capacity, each).

During his patrol shift, at approximately 3:30 in the morning on December 13, 2018, Officer Vanderbilt was dispatched to a suspicious subject call in the area of 1600 block of West 11th Street. He had just finished with a burglary call on the 1200 block of East 16th Street. Prior to heading to the call on 11th Street, Officer Vanderbilt read the circumstances of the call as provided by dispatch and acknowledged he received the call by clicking the enroute button. He knew he was looking for a white male adult wearing a blue jacket and gray pants that was seen in the bushes in the area and possibly transient. Officer Vanderbilt was familiar with the area as well as the fact that there are multiple businesses located there. Based on the concern of a citizen calling in, the time of day being 3:30 a.m., and his past experiences with burglaries in that area, Officer Vanderbilt's intent was to detain the subject if located.

When Officer Vanderbilt arrived in the area of 1630 West 11th Street, he passed a subject, later identified as Artur Kaneev, who matched the description given by the reporting party. He was a white male adult and wore a blue jacket with gray pants. Kaneev walked eastbound away from 1630 West 11th Street and toward the intersection of 11th Street and Benson Avenue. Officer Vanderbilt conducted a U-turn in his vehicle and stayed behind Kaneev until he had safely crossed Benson Avenue. Officer

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 8

Vanderbilt then announced over the air that he would be “out with one at 11th and Benson”. Officer Vanderbilt activated his overhead lights, with no horn or siren, in order to get Kaneev’s attention.

Officer Vanderbilt stepped out of his patrol vehicle and walked to the front of the engine block on the driver’s side of his vehicle. Officer Vanderbilt said to Kaneev something to the effect of “come over here and take a seat on the curb” or “come over here and I need to talk to you for a second”. Then he activated his body worn camera. Officer Vanderbilt estimated that Kaneev was approximately ten to twelve meters from him and standing on the sidewalk when he initiated contact. Officer Vanderbilt saw Kaneev hesitate initially before he turned around and walked about three meters back toward Officer Vanderbilt. As Kaneev walked, Officer Vanderbilt saw he had on baggy clothing and his hands were in his pockets. Officer Vanderbilt instructed Kaneev to take his hands out of his pockets. Kaneev removed his left hand from his pocket but his right hand remained in his pocket. Officer Vanderbilt stated Kaneev motioned with his left hand, as if trying to show that his left hand was out. Given his right hand remained in his pocket, Officer Vanderbilt gave an additional command to take his hands out of his pocket.

Officer Vanderbilt felt increasingly concerned that Kaneev had something in his right pocket that could be used to harm him, so he gave a third command for Kaneev to take his hands out of his pocket. As he did so, he unholstered his Taser and turned it on. The light on the Taser was shining in the direction of Kaneev and the laser sight was on his chest. Kaneev still did not remove his right hand from his pocket. Officer Vanderbilt commanded him to take his hands out of his pockets and to “do it now or he was going to tase him.” Officer Vanderbilt then attempted to radio for “code three back”¹, but he forgot he had disconnected his lapel mic from his HT radio earlier on in the shift because it was not working properly. So, his attempt to radio to other officers failed.

Officer Vanderbilt then saw Kaneev take his right hand out of his pocket, brush back his jacket and reach into his back-waistband area. At this moment, Officer Vanderbilt saw Kaneev pull out a black handgun with his right hand and bring it up to his left. Kaneev grabbed the top of the gun with his left hand as if to cock the slide back. Kaneev raised the firearm up in the direction of Officer Vanderbilt. Fearing he was going to be shot, Officer Vanderbilt immediately dropped his Taser to the ground and pulled his firearm out of the holster and pointed in the direction of Kaneev. Officer Vanderbilt stepped backward in order to create some distance and gain cover behind his patrol vehicle. He commanded Kaneev to “Drop it now!” He saw Kaneev’s gun was still raised, so he began to fire at Kaneev in order to terminate the threat to his life. He fired until his magazine was empty, fourteen rounds.

¹ “Code three back” is an emergency code requesting backing officers get to the location as fast as possible with lights and sirens.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 9

Once he finished firing, Officer Vanderbilt ducked down slightly behind the unit and attempted to air “shots fired” over the radio. Officer Vanderbilt lost visual on Kaneev briefly at this point. He attempted to reestablish visual and saw Kaneev closing distance on him toward the police unit. Officer Vanderbilt dropped back and realized he was out of rounds in his magazine. He went to the rear of the unit and while doing so, he gave a few more commands to Kaneev to “drop the gun, drop it now.” Officer Vanderbilt continued to move around the back of the vehicle to gain a better position and reestablished visual on Kaneev who was now standing at the front passenger side bumper of the vehicle with the gun still in his hand. Officer Vanderbilt inserted a new magazine into his firearm, positioned himself at the rear passenger side bumper, and fired seven to nine controlled shots at Kaneev. Officer Vanderbilt saw Kaneev fall to the ground and drop the handgun. Officer Vanderbilt ceased fire but continued to hold Kaneev at gunpoint.

Officer Vanderbilt realized at this point, there was no radio traffic taking place. No additional units had responded. He reached for his HT radio with his left hand and communicated that shots had been fired and suspect was down. Immediately after he put that information out, he heard a siren in the background. Officer Vanderbilt held visual of Kaneev at gunpoint. Kaneev picked the gun up from under his right knee with his right hand. Officer Vanderbilt gave multiple commands to “drop the gun and do not touch the gun.” Kaneev lifted the gun up in the direction of Officer Vanderbilt. Officer Vanderbilt then fired two to four more shots at Kaneev. Officer Vanderbilt saw that Kaneev stopped moving, his right arm was on the ground and that the gun was still in his right hand.

At this time, Officer Waste arrived. Officer Vanderbilt told him he was “good” (meaning he wasn’t hit) and he was okay. Officer Waste contacted dispatch requesting fire and Officer Vanderbilt told them to “stage”² at the Walmart parking lot. Officer Vanderbilt provided additional radio traffic through his HT radio and informed Dispatch once again that one suspect was down, that Officer Waste was with him, they were “code four”³, but to continue units “code three”⁴. Both officers continued to keep Kaneev at gunpoint who was about sixteen to seventeen feet away from them with the gun still in his right hand.

Officer Vanderbilt remained focused on Kaneev but heard the voices of Officer Wyno and Sergeant Kirk. He heard them move around to the driver’s side of the vehicle. Officer Vanderbilt remained at his position as Officer Waste moved up with Officer Wyno and Sergeant Kirk. Officer Vanderbilt heard Officer Wyno give multiple commands to “drop the gun.” Finally, Kaneev dropped the gun to the ground. Although on the ground, Officer Vanderbilt noted that the gun remained inches from his right hand. Officer Vanderbilt joined Officers Waste and Wyno, and Sergeant Kirk on the

² To “stage” means that paramedics and firefighters wait at a nearby location until law enforcement notifies them it is safe to proceed to the scene.

³ “Code four” is the code used to let other responding officers know they are ok or all good.

⁴ “Code three” is emergency code for officers to proceed to location with lights and sirens.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 10

driver's side of the vehicle. All officers had their firearms pointed at Kaneev. At this point, Officer Vanderbilt holstered his gun in order to put gloves on his hands in anticipation of contacting Kaneev. Officer Wyno continued to provide commands to Kaneev, not to move and to not pick up the gun. Officer Vanderbilt realized there may still be a threat at this time, so he returned to his location of the rear passenger bumper of the vehicle. As he moved, shots were fired by Officers Waste and Wyno. Officer Vanderbilt reached the rear of the vehicle and unholstered his firearm and pointed it at Kaneev. Officer Vanderbilt held this position until he saw that Officers Waste and Wyno had moved out to Kaneev and deemed it safe to do so.

As Officer Vanderbilt approached Kaneev, he saw Officer Waste attempt to place Kaneev in handcuffs. Officer Wyno directed Officer Vanderbilt to get fire to the location, which he then requested over his HT radio. Officer Vanderbilt checked for a pulse on Kaneev's carotid artery and was unable to find a pulse, so he started chest compressions. Officer Vanderbilt conducted chest compression for about one minute and then Officer Waste took over. Officer Vanderbilt used a pair of trauma shears to cut off Kaneev's shirt exposing what appeared to be a gunshot wound to the center abdomen. Officer Waste continued compressions while Officer Vanderbilt applied pressure to Kaneev's right leg which had multiple gunshot wounds. Officer Vanderbilt maintained this pressure until fire arrived and relieved him.

Officer Vanderbilt obtained a work cell phone from Officer Waste and took pictures of scene. The Fire Department transported Kaneev out of the area and the scene was secured by yellow tape. Officer Vanderbilt stayed on scene until Lieutenant Matthews arrived and transported him back to the station for debrief.

On December 20, 2018, **Officer Jacob Waste**, was interviewed by Detectives Tramayne Phillips and David Lara from the San Bernardino County Sheriff's Department. Officer Waste was a sworn peace officer, since March 2018, with the Upland Police Department. On December 12, 2018, Officer Waste was assigned to patrol and he arrived for his shift around 6:30 p.m. He was driving a marked patrol vehicle and wearing a Class B long sleeved uniform with patches identifying him as an Upland police officer. Officer Waste was equipped with a HT radio, a flashlight, two pairs of handcuffs, Oleoresin Capsicum (OC) spray, a Taser, a Heckler and Koch USP .40 caliber handgun with a TAC-light and two magazines, each loaded with 13 cartridges.

During his patrol shift, at approximately 3:30 a.m. on December 13, 2018, Officer Waste heard Officer Vanderbilt put out over the radio that he was "out with one". Officer Waste looked at his computer screen and saw it was a suspicious subject call at 11th Street and Benson Avenue. Officer Waste was on his way to his lunch break and put out over the radio that he could back Officer Vanderbilt prior to his break. Officer Waste was only about a mile from the 11th and Benson location and started driving there. As he got closer, he heard Officer Vanderbilt put out over the radio "shots fired." Officer Waste

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 11

activated his overhead lights and pulled his vehicle behind Officer Vanderbilt's patrol vehicle. He could hear dispatch ask Officer Vanderbilt for his location, so Officer Waste went on to his radio and said 11th and Benson. As he did so, Officer Waste heard two gunshots coming from Officer Vanderbilt's direction.

Officer Waste exited his vehicle, activated his body worn camera and drew his firearm. He then moved quickly to the north side of 11th Street and got behind a pole for cover so that he had a better vantage point. He could see Kaneev laying on the front passenger side of Officer Vanderbilt's patrol vehicle. Officer Waste gave Kaneev a verbal command not to move. Officer Waste checked to make sure Officer Vanderbilt was okay and then moved to his location. Officer Waste could see Kaneev still had a grip on the handgun. Officer Waste could also see Kaneev was bleeding and called for fire and directed they stage at the Walmart about a block down the street. Officer Waste stood with Officer Vanderbilt and kept visual on Kaneev at gunpoint.

Officer Waste heard Officer Wyno arrive on scene and say he was going to move up to the front left side of the vehicle. Officer Vanderbilt warned Officer Wyno that Kaneev had a gun in his hands and was still moving. Officer Waste moved up with Officer Wyno because he was going to try to detain Kaneev. Officer Waste heard Officer Wyno give multiple commands to "drop the gun." While Officer Wyno gave commands, Officer Waste stepped back to put on gloves in anticipation of contacting Kaneev.

Officer Wyno gave a clear and assertive command "do not move". From that, Officer Waste believed Kaneev was still moving, so he unholstered his firearm again, cocked it and aimed it at Kaneev. Kaneev was approximately three to five feet away from them and Officer Waste had a clear view of him. Kaneev still had the firearm in his hand and looked back and made eye contact with the officers. Commands to drop the gun continued. Kaneev lifted the gun slightly and then it fell out of his hand. Officer Waste believed that Kaneev did not purposefully drop the gun. He believed Kaneev's intent was to point the gun at the officers but that due to wounds to his hand, he dropped the firearm. Because of this, Officer Waste still believed Kaneev was a threat to his and other officers' safety.

Sergeant Kirk was now on scene and Officer Waste told him he would kick the gun away from Kaneev when they approached to detain him. As Officer Waste began to move to the right of Sergeant Kirk, he kept a visual on Kaneev. Kaneev then moved again and reached for the gun. Kaneev began to lift the gun up and Officer Waste fired at Kaneev approximately five times. Officer Waste fired at Kaneev because he believed Kaneev was going to shoot at him or his partners. He was in fear for his own life and the life of his partners.

After he shot, Officer Waste could see the gun was no longer in Kaneev's hand. He and Officer Wyno and Sergeant Kirk moved forward to detain Kaneev. Officer Waste checked Kaneev for any other weapons and then began to place handcuffs on him.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 12

Sergeant Kirk told Officer Waste that if he confirmed there was no threat, the handcuffs weren't needed and to start medical aid. Officer Waste removed the handcuffs. Officer Vanderbilt started the chest compressions and then Officer Waste took over. Officer Waste did chest compressions for approximately eight minutes until medics arrived.

On December 20, 2018, **Officer Steven Wyno**, was interviewed by Detectives Tramayne Phillips and David Lara from the San Bernardino County Sheriff's Department. Officer Wyno was a sworn peace officer with the Upland Police Department since October 2013. On December 12, 2018, Officer Wyno was assigned to patrol from 7:00 p.m. to 7:00 a.m. He was driving a marked patrol vehicle and wearing a Class C uniform with patches identifying him as an Upland police officer. Officer Wyno was equipped with a HT radio, a flashlight, two pairs of handcuffs, a collapsible metal ASP, Oleoresin capsicum (OC) spray, a Taser, a Schrade knife, a Ruger LCP .380 caliber handgun, a Springfield Armory Operator .45 caliber handgun with a TAC-light and four extra magazines, each containing eight .45 caliber cartridges.

Officer Wyno responded to a call of an audible burglary alarm at Upland Hills and 16th Street. Officer Vanderbilt backed Officer Wyno on that call. As they completed the call, Officer Wyno saw Officer Vanderbilt leave the location and heard over the radio he was dispatched to another call. Officer Wyno remained at the burglary call location and put in the disposition for the call. While doing that, he heard Officer Vanderbilt state over the radio he was out with one at 11th and Benson. Officer Wyno also heard Officer Waste say he would back Officer Vanderbilt before going to his lunch. Officer Wyno then left the burglary alarm location and headed westbound on 16th Street. As he was driving, Officer Wyno heard Officer Vanderbilt, over the radio, say "shots fired". Officer Wyno immediately activated his lights and siren and started towards 11th and Benson. Officer Wyno activated his body worn camera during the drive. Officer Wyno heard Officer Vanderbilt air that one subject was down and he still needed "code three" backup.

Officer Wyno arrived at the scene and parked his vehicle facing eastbound so he could see Officers Waste and Vanderbilt standing to the right rear of Officer Vanderbilt's patrol vehicle. Officer Wyno could see Kaneev on the ground with a gun in his hand pointed at Officers Waste and Vanderbilt. Officer Wyno exited his vehicle and drew his firearm. Officer Wyno told the other officers that he was going to position to the left of the vehicle and confirmed there were no outstanding suspects. As Officer Wyno walked up to the front driver's side of Officer Vanderbilt's patrol vehicle, he temporarily used the tactical light on his firearm to illuminate Kaneev. Officer Wyno could see Kaneev was still moving so he gave multiple commands to "drop the gun". Officer Waste repositioned near Officer Wyno and Sergeant Kirk arrived at the scene. Officer Wyno still had a clear view of Kaneev, who was approximately five to eight feet away from him. He continued to give commands to "drop the gun." Officer Wyno observed Kaneev make a movement with his right arm and the gun fell out of Kaneev's hand. Officer Wyno didn't know if he dropped it due to injury but Officer Wyno felt relieved.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 13

The gun was still directly in front of Kaneev's hand and Officer Wyno gave further commands not to touch the gun. Officer Wyno could see blood on Kaneev but did not know the extent of the injuries. He knew Kaneev could still move, and with the gun directly in front of him, Officer Wyno still considered him a threat. Officer Wyno saw Kaneev make direct eye contact with him, looked to his right and then back at Officer Wyno. Kaneev then looked back at the gun and turned his entire upper body and placed his left arm directly on the gun. Officer Wyno believed that Kaneev was going to kill him or his partners with that gun. Officer Wyno then fired his gun approximately five times.

Officers Wyno and Waste and Sergeant Kirk moved up towards Kaneev. Sergeant Kirk kicked the gun away. Officer Waste checked Kaneev for further weapons. Officer Flores arrived and Officer Wyno told her to get the trauma bag. Officer Wyno assisted with first aid as other officers performed CPR until fire got there.

On December 20, 2018, **Sergeant Jacob Kirk**, was interviewed by Detectives Chuck Phillips and Oscar Godoy from the San Bernardino County Sheriff's Department. Sergeant Kirk has been a sworn peace officer for 14 years with Upland Police Department. On December 12, 2018, Sergeant Kirk was assigned to the patrol division as a Sergeant and his shift was from 7:00 p.m. to 7:00 a.m. He was wearing a Class B long sleeved uniform with patches identifying him as an Upland police officer.

At approximately 2:00 a.m. on December 13, 2018, Sergeant Kirk was at the Upland Police Department station. He was in the watch commander's office and at approximately 3:30 a.m. he heard over the radio "shots fired". Sergeant Kirk got up and ran out of the station. He got into his patrol unit and was unable to get information on the call via his laptop in the unit. He had not heard the original call broadcasted. He heard someone say Benson or something like that and he left the police department. Sergeant Kirk turned westbound on 13th Street and then went southbound on Benson Avenue. He saw Officer Wyno's unit "rolling code 3" southbound across Foothill and then saw additional lights at 11th and Benson and drove there. He parked his vehicle facing east on Benson and exited. Sergeant Kirk saw Officer Vanderbilt's unit and saw Officer Vanderbilt on the rear passenger bumper of the vehicle. He saw Officers Waste and Wyno on the driver's side of the vehicle near the front bumper. He could hear them yelling at Kaneev to drop the gun or something similar. Sergeant Kirk walked up to them. Officer Wyno was giving commands over and over. Sergeant Kirk could clearly see Kaneev lying on the ground near the front passenger side of the vehicle, six to eight feet from the officers, with what appeared to be a black semiautomatic handgun in his hand. Sergeant Kirk feared Kaneev could still use the firearm to shoot one of his officers.

Sergeant Kirk heard Officer Wyno continue to give commands to drop the gun and then he heard a clacking sound that he believed was the gun dropping. He asked the officers if Kaneev dropped it and they said "yes." Sergeant Kirk wanted to make a plan to approach Kaneev and asked Officer Vanderbilt to come to them to prevent potential

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 14

crossfire. While waiting for Officer Vanderbilt, Sergeant Kirk heard Officer Wyno giving commands of “don’t do it, don’t pick up the gun” or something to that effect. Sergeant Kirk then brought his gun up and saw Kaneev grab for the gun. Officers Wyno and Waste then started shooting. Sergeant Kirk was startled when the first shots were fired. He knew the rounds hit Kaneev because he saw his shirt move about two times, his head lift up, jolt forward and then drop to the ground. Officers Wyno and Waste backed up as the shots were fired and Sergeant Kirk could feel the concussion from their firearms and debris hitting him. He told the officers not to back up. Sergeant Kirk did not fire his weapon because he was in the middle of coordinating Officer Vanderbilt’s position and saw that the rounds that struck Kaneev were effective.

Sergeant Kirk and the other officers then approached Kaneev. Sergeant Kirk kicked the gun out of reach of Kaneev. Sergeant Kirk gave instructions to the officers as they rendered first aid and to other officers as they arrived on scene. Once Fire arrived and removed Kaneev and the scene was secured, Sergeant Kirk got preliminary information from Officer Vanderbilt. He coordinated other officers from other agencies as they arrived to assist. Sergeant Kirk called Lieutenant Cliff Matthews to notify him of the incident. Sergeant Kirk waited at the scene until Detectives from the San Bernardino County Sheriff’s Department arrived to conduct their investigation. Upon their arrival, Sergeant Kirk provided them with a briefing of the circumstances and then left and went back to the Upland Police Department Station.

VIDEO SURVEILLANCE

Surveillance videos were obtained from the storage facility located at 1675 West 11th Street in the city of Upland. This building was located on the northwest corner of the intersection of 11th Street and Benson Avenue. The cameras were motion-activated which caused time gaps between the recorded files. The timestamps were confirmed to be accurate and depicted the correct date and times. Four cameras captured portions of the incident on video. There was no audio on the videos. The cameras’ vantage points are from a significant distance and the view of the subjects is obstructed at times by multiple objects such as telephone and streetlight poles and the overhead lights of the patrol vehicles. While you can see the changes in location of the parties, you cannot discern any minor movements, objects in their hands or at what point shots are fired.

One camera was affixed to an exterior wall on the west side of the building and oriented southeast, facing the intersection of 11th Street and Benson Avenue. At 03:33:01 this camera recorded Officer Vanderbilt’s marked police vehicle traveling westbound on 11th Street. The vehicle stopped briefly at the light and then slowly proceeded through the intersection and out of view of the camera. At 03:33:45, Kaneev was seen walking eastbound on 11th Street on the south crosswalk of the intersection. Officer Vanderbilt’s patrol vehicle then entered the intersection heading eastbound on 11th Street. The overhead lights on Officer’s Vanderbilt’s patrol vehicle were illuminated as the vehicle pulled over to the south curb of 11th Street at 3:34:00. Officer Vanderbilt exited his

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 15

vehicle and stood toward the front driver side area of the vehicle. Kaneev continued to walk east away from the patrol vehicle, then turned around to walk back toward Officer Vanderbilt. Kaneev was then blocked from camera view by a light pole. Officer Vanderbilt moved from the front of vehicle at 3:34:23. Kaneev was seen walking eastbound away from the patrol vehicle at 3:34:32. Kaneev then walked back towards the front passenger bumper of the patrol vehicle at 3:34:39. Officer Vanderbilt was then at the rear passenger bumper of the vehicle.

A second camera was affixed to the exterior wall on the north side and oriented east facing the intersection of 11th Street and Benson Avenue. At 03:32:49, Officer Vanderbilt's patrol vehicle entered camera view from the east and drove west on 11th street through the intersection. From 03:32:52 to 03:33:12, Kaneev was seen walking eastbound on the south sidewalk on 11th Street toward Benson Avenue. Kaneev reached the intersection at 03:33:13 and proceeded through the intersection. Officer Vanderbilt's patrol vehicle re-entered the camera view, traveled eastbound on 11th Street, turned right on to Benson Avenue briefly, and then turned around with overhead lights illuminated. Officer Vanderbilt pulled the vehicle to the south curb of 11th Street and the remainder of the incident is blocked by the patrol vehicle and the illumination of its lights.

A third camera was affixed to an exterior wall and oriented east facing the intersection of 11th Street and Benson Avenue. This camera had the clearest and closest view of the incident; however, you still cannot discern minor movements of the parties or whether there was anything in their hands. At 03:32:40, Officer Vanderbilt's patrol vehicle entered the camera view traveling westbound on 11th Street. The vehicle stopped briefly at the light at the intersection and then slowly proceeded through the intersection. At 03:32:57, the patrol vehicle passed Kaneev as he walked eastbound on the south sidewalk of 11th street. At 03:33:17 Officer Vanderbilt's patrol vehicle drove eastbound on 11th Street. At 03:33:28 Kaneev walked across Benson Avenue. Officer Vanderbilt pulled his patrol vehicle to the curb next to Kaneev with the overhead lights illuminated. Officer Vanderbilt exited his vehicle and stood toward the front driver side bumper of the vehicle. Kaneev walked in the east direction, away from the patrol vehicle, then turned around to walk back toward Officer Vanderbilt. Kaneev stood on the sidewalk in front of Officer Vanderbilt's vehicle for approximately 20 seconds. By 03:34:06, Officer Vanderbilt had adjusted his location to near the driver's door of his patrol vehicle. At 03:34:10, Kaneev walked east away from the front of Officer Vanderbilt's patrol vehicle on the sidewalk and then off the curb and on to the street. As Kaneev moved, Officer Vanderbilt moved toward the back of his vehicle. At 03:34:17, Kaneev walked back toward the front of the patrol vehicle until he reached the front passenger bumper. Officer Vanderbilt was then positioned at the back passenger bumper of the patrol vehicle. Kaneev went down out of view at 03:34:27.

At 03:35:05 Officer Waste's patrol vehicle approached the intersection with lights illuminated and parked his vehicle behind Officer Vanderbilt's patrol unit. Officer Waste

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 16

exited the vehicle and ran to the northeast corner of the intersection. Officer Waste then walked toward Officer Vanderbilt at the rear passenger bumper of Officer Vanderbilt's patrol vehicle. Officers Waste and Vanderbilt stayed at that location until Officer Wyno arrived. At 03:36:57 Officer Wyno arrived at the intersection by driving southbound on Benson Avenue with his overhead lights illuminated. Officer Wyno walked to the front driver's side bumper of Officer Vanderbilt's patrol vehicle. Officer Waste walked to the location of Officer Wyno. Sergeant Kirk joined their location at 03:38:02. They remain at that location until 03:40:12. Another patrol vehicle traveled westbound on 11th Street with overhead lights illuminated and entered the camera view at 03:40:26. At 03:44:27 firetrucks arrived at the location.

Axon Body Camera Summary⁵

Officer Richard Vanderbilt

Officer Vanderbilt was equipped with a body camera on the date of the incident under review. The body camera was activated and recording during the incident under review. The recording is twenty-three minutes and twelve seconds in length.

There was no audio for the first thirty seconds of the recording. During this time, Officer Vanderbilt was driving in his patrol vehicle. Officer Vanderbilt stopped the vehicle, exited and walked along the driver side of the vehicle to the front bumper. Kaneev was on the sidewalk facing east and he looked west toward Officer Vanderbilt. Officer Vanderbilt motion with his right hand for Kaneev to walk toward him. Kaneev walked toward Officer Vanderbilt with his hands in his pockets. At 00:30 seconds in, the audio is activated, and Officer Vanderbilt instructed Kaneev to "take your hands out of your pockets please". Kaneev stopped and took his left hand out of his pocket and raised it out to the side at hip and took a step backward. Officer Vanderbilt repeated "take your hands out of your pockets, take your hands out of your pockets dude". At 00:38 seconds in, Officer Vanderbilt had his Taser pointed at Kaneev and said, "Take your hands out of your pockets, do it now, or I will tase you." As this was said, Kaneev removed his right hand from his pocket, brushed back his jacket and held his right arm behind him near the back of his right hip for a few moments. Kaneev looked directly at Officer Vanderbilt as he began to move his right hand forward. Immediately, Officer Vanderbilt said "21, code three back" and quickly backed up by the driver side door of his vehicle. Officer Vanderbilt dropped his Taser and transitioned to his firearm. The camera view of Kaneev became blocked by the patrol vehicle at this point.

At 00:47 seconds in, Officer Vanderbilt yelled, "Drop it now!" and then fired 14 times in rapid succession. At 00:54 seconds, Officer Vanderbilt stated, "21, shots fired" while he squatted down next to his patrol vehicle. Officer Vanderbilt removed the magazine from

⁵ The body camera recordings were reviewed in their entirety. There was a thirty second delay before the audio on the recordings could be heard. The summary will cover the initial arrival by officers until Kaneev is put into the ambulance and transported to the hospital.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 17

his firearm and moved toward the back of his patrol vehicle. His Taser could be seen on the ground with the tactical light on. Officer Vanderbilt yelled, "Drop it now, do it now!" as he made his way to the back-passenger bumper of the vehicle and inserted another magazine into his firearm. From behind his vehicle, Officer Vanderbilt fired another seven shots. At 01:12, Kaneev was seen lying on the ground in front of the front passenger side bumper of Officer Vanderbilt's patrol vehicle. He was positioned on his right side, facing Officer Vanderbilt, with his head to the north and feet to the south. A gun is not seen in his hands.

At 01:16, Officer Vanderbilt said, "21, shots fired, one suspect down. Requesting units to respond from the Benson side." For the next ten seconds all that can be heard is Officer Vanderbilt's heavy breathing while he kept his firearm pointed in the direction of Kaneev. Kaneev did not move during this time.

At 01:41, Officer Vanderbilt took out his hand-held radio and said "21, shots fired, one suspect down." While this was being said, Kaneev rolled onto his back, lifted his head and reached under his right knee with his right arm and retrieved the gun. Officer Vanderbilt shouted, "Do not pick that up! Do not pick that up!" and repositioned further behind his vehicle for cover and shot one time. At 01:49, a close siren was heard. Officer Vanderbilt continued to yell, "Do not pick that gun up, drop it right now, drop it right now!" and fired three more rounds in the direction of Kaneev.

At 02:03, Officer Waste yelled "Don't move! You alright?" Officer Vanderbilt responded, "I'm good". Officer Waste said, "Right behind you". At 02:12, Officer Vanderbilt aired over his hand-held radio, "21, I still have one suspect down, Waste is on scene with me. As of now, we're code four, continue to back code three". Officer Waste yelled to Kaneev, "Don't move dude, do not move!" Officer Waste then requested dispatch to "stage fire" at Walmart.

At 02:59, sirens are heard in the distance. Officer Vanderbilt remained at the rear passenger bumper of his vehicle with his firearm pointed at Kaneev. Kaneev was laying at the front passenger bumper of the patrol vehicle. His right arm is extended in the direction of Officer Vanderbilt, with the handgun in his hand. Officer Vanderbilt remained in this position for approximately one minute.

At 03:48, lights illuminate Kaneev. Officer Vanderbilt said to Officer Waste, "I think he's down, but let's approach from the other side, okay?" Officer Wyno arrived and notified then he was going to "reposition". Officer Vanderbilt told him, "He has a gun in his hand and he's still moving". Officer Wyno stated "I see it." Officer Waste told Officer Vanderbilt to hold his position and that he was going to change his position with Officer Wyno. Officer Vanderbilt maintained his position.

At 04:23, Kaneev moved his foot. Officer Wyno shouted, "Do not move." Officer Vanderbilt shouted, "Do not move!" Officer Wyno continued to shout "Do not move. Do

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 18

not move. Put your hand out. Don't, don't fucking move." Kaneev continued to move his legs and rolled to his back. Officer Wyno yelled "Down, put the gun down." Officer Vanderbilt shouted, "Drop the weapon now, do not touch the gun!" Officer Wyno yelled, "Gun down! Don't fucking move. Don't move. Get your hand off the gun. Get your hand off the gun now. Get your hand off the gun." At 05:06, Kaneev lifted his right hand slightly and the dropped the gun, it can be heard hitting the ground.

Officer Wyno shouted, "Don't move, don't move, don't move. Don't! Don't reach for it dude! Do not fucking reach for it". At 05:24, Officer Vanderbilt said, "coming to you" and moved his position to the front driver side of the patrol vehicle. Officer Wyno stated, "Do not reach for that gun!" paused and then repeated, "Don't reach for the gun". Officer Vanderbilt's camera view of Kaneev is blocked by the patrol unit at this time. Officer Vanderbilt is standing to the right of Sergeant Kirk who has his gun drawn and pointed in the direction of Kaneev. Officer Vanderbilt holstered his firearm and put on gloves. During this time, Officer Wyno shouted, "Don't!" and Sergeant Kirk yelled "Don't touch the gun." Officer Waste stepped in between Officer Vanderbilt and Sergeant Kirk and fired five consecutive rounds. Officer Vanderbilt moved his position back to the rear passenger bumper of his patrol vehicle. Kaneev was face down at the front passenger bumper of the vehicle and motionless.

Other sirens were heard approaching. At 07:05, Officer Vanderbilt said, "I'm going to come up and get it" and he approached the other officers and Kaneev. At 07:32, Officer Vanderbilt requested for medical aid to come to the scene. At 08:01, Officer Vanderbilt rolled Kaneev over and checked for a pulse. At 08:17, Officer Vanderbilt initiated chest compressions on Kaneev. At 08:50, Officer Waste takes over chest compressions. Officer Vanderbilt continued to assist with first aid. During this time, the video showed that Kaneev was wearing a blue jacket with a t-shirt underneath and gray sweatpants.

Medics arrived at 12:07 into the video and assessed Kaneev. Officer Wasted continued chest compressions until medics began to move Kaneev to the board at approximately 14 minutes into the video. The body camera continued while Officer Vanderbilt took pictures of the scene and other officers move around the scene.

Officer Jacob Waste

Officer Waste was equipped with a body camera on the date of the incident under review. The body camera was activated and recording during the incident under review. The recording is twenty-one minutes and forty seconds in length.

There is no audio for the first thirty seconds of the recording. During this time, Officer Waste was driving in his patrol vehicle. Officer Waste stopped the vehicle behind Officer Vanderbilt's vehicle. Officer Waste exited and walked to the northeast corner of 11th Street and Benson. Officer Vanderbilt was positioned at the rear passenger bumper of his patrol vehicle with his gun drawn and pointed in a southeast direction. The overhead

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 19

lights were illuminated on both patrol vehicles. Officer Waste shouted, "Don't move!" and then asked Officer Vanderbilt if he was "alright". Waste walked and stood behind Officer Vanderbilt on the rear passenger side of Officer Vanderbilt's patrol vehicle.

Kaneev came within the view of Officer Waste, who had his gun drawn and pointed in the direction of Kaneev. Kaneev was on his stomach at the front passenger bumper of Officer Vanderbilt's patrol unit. His head was facing northwest and feet facing southeast. His right arm was extended in the direction of Officers Vanderbilt and Waste and there was a handgun in his hand. Officer Waste shouted to Kaneev, "Don't move dude, do not move!" Officer Waste kept Kaneev in his sight while putting out over the radio "22, stage fire" and then requesting they stage at Walmart.

At 01:30 into the recording, sirens can be heard in the distance. Officers Vanderbilt and Waste are silent with guns drawn and pointed at Kaneev. At 01:40, Officer Waste communicated with Officer Wyno and dispatch. At 02:20, Kaneev is illuminated by headlights from Officer Wyno's vehicle. At 02:25, Officer Waste noted to Officer Vanderbilt that "he's still breathing". Officer Wyno advised that he was going to reposition. Officer Vanderbilt told Officer Wyno that Kaneev had a gun in his and was still moving. Officer Waste advised he was going to move up with Officer Wyno. He walked around the back of Officer Vanderbilt's patrol unit and up to the driver's side bumper, where Officer Wyno was located. Officer Wyno had his gun drawn and pointed in the direction of Kaneev.

Officer Waste stood behind Officer Wyno and put on gloves. Kaneev was lying on his right side with his right arm extended out holding a black handgun. Kaneev's left leg moved and officers yelled, "Do not move". Officer Wyno continued to shout, "Do not move. Do not move. Do not move. Put your hands out. Don't, don't fucking move." During this time, Officer Waste finished putting on his gloves and re-retrieved his firearm and directed it at Kaneev. Kaneev lifted his head, moved his legs and torso and continued his grip on the firearm. Officer Wyno shouted, "Sit down, put the gun down! Gun down. Gun down. Put the gun down!" Officer Waste then yelled "Don't move, don't move!" Kaneev rolled to his back and kept the firearm in his hand. Officer Wyno yelled, "Get your hand off the gun. Get your hand off the gun now! Get your hand off the gun. (pause) Get your hand off the gun!" At 03:39 into the video, Kaneev lifted his right hand and the gun fell out of it to the ground. His hand then fell to the ground right next to the gun. Officer Wyno shouted, "Don't move, don't move!"

Officer Waste said, "I'm going to kick that away okay?" Sergeant Kirk then asked, "Did he drop it?" Officers Waste and Wyno informed him that he did. Officer Wyno shouted, "Don't! Don't reach for it dude. Do not fucking reach for it. Do not reach for that gun. Don't reach for the gun!" During this time, Kaneev looked right at the gun and then back up at the sky. Officer Waste moved behind Officer Wyno and told Sergeant Kirk, "I'll move to your right sarge and I'll kick it away, okay?" Officer Waste then moved to the right of Sergeant Kirk at 04:16. Officer Waste's camera view of Kaneev is now blocked

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 20

by Officer Vanderbilt's patrol vehicle. Almost immediately upon reaching that location, Officer Wyno shouted, "Don't!" Sergeant Kirk yelled, "Don't touch the gun!" Officers Waste and Wyno fire multiple consecutive rounds at Kaneev. After the shots stopped, Sergeant Kirk removed his handheld radio and aired, "Sam 9, additional shots fired". Officer Wyno shouted, "Fuck. Why the fuck did he reach for it?" Officer Wasted moved to the left side of Officer Wyno.

At 05:24, Officers Waste and Wyno and Sergeant Kirk slowly approach Kaneev with their firearms pointed at him. Officer Waste stated, "Kick it away Sarge, I got everything else." At 05:32, Sergeant Kirk kicked the gun away from the reach of Kaneev. Officer Wyno stated, "It's a fucking toy gun." Officer Waste kneeled toward Kaneev, rolled him over and searched him for other weapons. Officer Waste put Kaneev's arms behind his back and checked his pulse. Officer Waste asked, "You want to go cuffs?" Officer Wyno stated "Yeah, cuff him." Officer Waste applied one handcuff. Sergeant Kirk said, "You can confirm he's not a threat right now." Officer Waste removed the handcuff from Kaneev. Officer Vanderbilt rolled Kaneev to his back. Officer Waste stepped back from Kaneev, placed the handcuffs on the road, and removed his gloves while he jogged toward his patrol vehicle parked on Benson Avenue. He threw his gloves on the hood and headed back to the other officers and Kaneev while he applied a new pair of gloves. At 07:23, Officer Waste took over chest compressions on Kaneev. Officer Waste continue chest compression for approximately eight more minutes until Kaneev was lifted into the ambulance.

Officer Steven Wyno

Officer Wyno was equipped with a body camera on the date of the incident under review. The body camera was activated and recording during the incident under review. The recording is nineteen minutes and forty-nine seconds in length.

There is no audio for the first thirty seconds of the recording. During this time, Officer Wyno was driving in his patrol vehicle. When the audio was activated, Officer Wyno was still driving with his overhead lights and siren activated. At 02:22 in the video, Officer Wyno parked his vehicle and exited. Officers Waste and Vanderbilt were at the rear of Officer Vanderbilt's patrol vehicle. The overhead lights on that vehicle were activated. Officer Wyno approached the rear driver side of Officer Vanderbilt's vehicle and said, "Hey, I'm going to reposition, I'm going around this side. Do you have any outstanding?" Officers Vanderbilt and Waste kept their sight on Kaneev.

Officer Wyno slowly approached the front driver side bumper of the vehicle after being told Kaneev is still moving and has a gun in his hand. Officer Wyno advised dispatch after confirmation that were none outstanding at this time. At 02:43, Officer Wyno obtained a visual on Kaneev and illuminated his tac light on his firearm for a second. At 02:56, Officer Wyno shouted, "Do not move! Do not move! Do not move, put your hand out. Don't, don't fucking move." Kaneev remained on the ground but was moving his

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 21

legs and torso so that he was laying on his right side. His right arm still extended toward Officer Vanderbilt and was holding the gun. Officer Wyno yelled, "Sir, put the gun down. Gun down. Gun down. Put the gun down!" Kaneev then moved to be on his back. Wyno shouted, "Don't fucking move. Don't move. Get your hand off the gun. Get your hand off the gun now. Get your hand off the gun! Get your hand off the gun." Kaneev lifted his right hand and a clanking noise was heard. Officer Wyno whispered, "Oh God. Oh God." Then yelled, "Don't move. Don't move!"

At 03:52, Kaneev moved his head from looking at the sky to looking at the gun. Officer Wyno yelled, "Don't! Don't reach for it dude." Kaneev turned his head to look at the sky. Officer Wyno continued to shout, "Do not fucking reach for it. Do not reach for that gun. Don't reach for the gun!" Kaneev was on his back with his head looking to the sky. His left hand was on his chest and his right arm was extended out to the side next to the firearm. At 04:15, Kaneev rolled back to his right side and extended his left arm out and grabbed the gun. Officer Wyno yelled, "Don't!" Sergeant Kirk shouted, "Don't touch the gun." Officer Wyno fired multiple shots in succession. Officer Wyno began breathing audibly heavy. At 04:43, Officer Wyno said, "Fuck. Why the fuck did he reach for it?"

At 05:30, Officer Wyno slowly began to approach Kaneev. The gun was kicked away from Kaneev and Officer Wyno said, "It's a fucking toy gun." Officer Wyno assisted with checking Kaneev for other weapons. Officer Wyno instructed Officer Vanderbilt to get fire coming in. At 06:08, Officer Wyno yelled, "Get your trauma bag. Get your trauma bag." Officer Wyno then told the other officers they needed to get going on first aid. Officer Wyno opened the trauma bag as Officers Vanderbilt conducted chest compressions. Officer Wyno opened multiple gauze pads and attempted to apply pressure to wounds to his head and neck. Officer Wyno further assisted with first aid of Kaneev by doing pulse checks while Officer Waste did chest compressions. Paramedics arrived, assessed Kaneev and transported him from the scene.

Sergeant Jacob Kirk

Sergeant Kirk was equipped with a body camera on the date of the incident under review. The body camera was activated and recording during the incident under review. The recording is 19 minutes and 38 seconds in length.

There is no audio for the first thirty seconds of the recording. Sergeant Kirk was driving in his patrol vehicle, parked and exited his patrol vehicle. He walked behind two patrol vehicles that had overhead lights illuminated. Officer Vanderbilt was standing at the rear passenger side bumper of his vehicle. Officers Waste and Wyno were standing at the front driver's side bumper of Officer Vanderbilt's patrol vehicle. All officers were facing and focused with guns drawn and pointed at the front passenger side bumper of Officer Vanderbilt's patrol vehicle. Sergeant Kirk walked up to where Officers Waste and Wyno were located.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 22

At 00:30, audio begins and Officer Wyno can be heard yelling, "Gun down. Put the gun down. Don't fucking move." Officer Waste said, "Don't move. Don't move!" Sergeant Kirk positioned himself behind Officers Waste and Wyno and slightly to their right where he had a visual of Kaneev laying on the ground in front of the patrol unit. At 00:55 seconds, Kaneev moved slightly. Sergeant Kirk asked, "Did he drop it?" Officer Wyno replied, "He did. He did." Sergeant Kirk then said "Uh, hey Vanderbilt. Come around here..." Officer Wyno shouted, "Don't! Don't reach for it dude. Do not fucking reach for it!" Sergeant Kirk continued "so we avoid a crossfire. Come around." Sergeant Kirk raised his firearm, with a two-handed grip, and pointed it in the direction of Kaneev. This obstructed his camera's view of Kaneev. Officer Wyno gave several commands to not touch the gun. Sergeant Kirk asked if they wanted to move up and kick the gun away. Sergeant Kirk continued to have his gun raised. Officer Wyno yelled, "Don't!" Sergeant Kirk shouted, "Don't touch the gun!" Approximately nine to ten consecutive gunshots are heard. Sergeant Kirk then broadcasted over the radio, "Sam 9, additional shots fired." He then asked for additional officers to respond to 11th Street and Birch to block traffic.

At 02:43, Sergeant Kirk began to slowly walk toward Kaneev with gun still drawn. Sergeant Kirk kicked the gun away from Kaneev twice. Sergeant Kirk told the officers, "Check for a pulse and see if there is anything we can do." He told an arriving officer that there was a trauma bag in his car. Sergeant Kirk observed as the officers began first aid and CPR. Sergeant Kirk then walked back to his patrol unit and back to the officers. Sergeant Kirk walked toward a male adult that was standing on the north sidewalk of 11th Street. Sergeant Kirk told him this was a crime scene and he had to move back. The subject asked, "Is he black or is he Mexican?" Then he stated he wanted to know if it was his brother-in-law. Sergeant Kirk advised he could not give him that information right now and walked back toward the officers and Kaneev.

At 05:30, Sergeant Kirk asked dispatch if the agencies coming to assist could start blocking intersections. Sirens could be heard approaching along with radio traffic. Sergeant Kirk continued to watch the officers provide first aid and CPR. At 07:52, firefighters arrived and prepared to transport Kaneev.

Weapon

The weapon Kaneev exhibited during the incident was a black Daisy Powerline, .177 Caliber BB gun (Serial#2318259944093785A).

De-escalation

When reviewing Officer Vanderbilt's body camera video, it was clear that the incident under review unfolded very quickly. Nevertheless, Officer Vanderbilt and the other officers did attempt to de-escalate the situation at several times during the incident. Officer Vanderbilt began the contact with verbal commands to Kaneev that were

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 23

something to the effect of “come over here and take a seat on the curb” or “come over here and I need to talk to you for a second”. Kaneev responded to those commands by turning and walking toward Officer Vanderbilt. He did so with his hands in his pockets. Officer Vanderbilt then told Kaneev, “Take your hands out of your pockets please.” Kaneev responded by taking his left hand out of his pocket. Officer Vanderbilt stated again, “Take your hands out of your pockets.” Kaneev lift his left hand as if to indicated he was complying with the command, but his right hand remained in his pocket. At this point, Officer Vanderbilt stated, “Take your hands out of your pocket dude.”

Officer Vanderbilt removed his Taser and pointed it at Kaneev in an effort to de-escalate the situation. Kaneev still did not comply with the commands to remove his right hand from his pocket. Officer Vanderbilt warned Kaneev to, “Take your hands out of your pockets, do it now, or I will tase you.” As this was said, Kaneev removed his right hand from his pocket and brushed back his jacket. He then deliberately held his right arm behind him near the back of his right hip for a few moments. Kaneev looked directly at Officer Vanderbilt as he moved his right hand forward. At this moment, Officer Vanderbilt saw Kaneev pull out a firearm on his right side, bring it up, and grab onto the top of it with his left hand as if to cock the slide back. Kaneev raised the firearm up in the direction of Officer Vanderbilt. Officer Vanderbilt’s prior attempts to gain compliance from Kaneev clearly had no effect. Given that Kaneev pulled out a gun and brought it up in the direction of Officer Vanderbilt, the entire situation changed. Officer Vanderbilt immediately dropped his Taser and pulled his firearm out of the holster and pointed it in the direction of Kaneev. Officer Vanderbilt continued to try and resolve the situation. He commanded Kaneev to “drop it now” but Kaneev raised his gun. Officer Vanderbilt feared for his life and began to fire his gun.

After this round of shots, Officer Vanderbilt removed the magazine from his firearm and began to move toward the back of his patrol vehicle. From the surveillance video obtained, Kaneev can be seen walking away from Officer Vanderbilt and the patrol unit eastbound on the south sidewalk of 11th Street. He walked away for approximately ten seconds and then turned around and walked back toward Officer Vanderbilt’s vehicle until he was right next to the front passenger bumper. Officer Vanderbilt again attempted to de-escalate the situation and shouted, “Drop it now, do it now!” Kaneev continued to disregard Officer Vanderbilt’s commands and approached him with the gun in his hand. Officer Vanderbilt fired at Kaneev. Kaneev fell to the ground and the gun fell out of his hand.

Officer Vanderbilt notified dispatch and requested backing officers. Kaneev then rolled onto his back, lifted his head and reached under his right knee with his right arm and retrieved the gun. Officer Vanderbilt still tried to manage the situation and shouted, “Do not pick that up! Do not pick that up!” and shot one time. Officer Vanderbilt continued to yell, “Do not pick that gun up, drop it right now, drop it right now!” When Kaneev still didn’t drop the gun, Officer Vanderbilt shot for his last time.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 24

When Officer Waste arrived, he gave a command to Kaneev, "Don't move!" When Officer Wyno arrived, he commanded, "Do not move! Do not move! Do not move, put your hand out. Don't, don't fucking move." Kaneev continued to move slightly while on the ground with the gun still in his hand. Officer Wyno shouted, "Sir, put the gun down. Gun down. Gun down. Put the gun down! Don't fucking move. Don't move. Get your hand off the gun. Get your hand off the gun now. Get your hand off the gun! Get your hand off the gun." Kaneev then lifted his right hand and the gun fell from his hand.

Clearly, with multiple officers having fired at Kaneev, as well as giving him commands that he refused to follow, all of the officers had no reason to believe that Kaneev would suddenly cooperate. The officers formulated a plan to approach Kaneev and get the gun away. While doing that Kaneev looked over at the gun. Officer Wyno yelled, "Don't! Don't reach for it dude. Do not fucking reach for it. Do not reach for that gun. Don't reach for the gun!" Kaneev rolled back to his right side and extended his left arm out directly on the gun. Officer Wyno yelled, "Don't!" Sergeant Kirk shouted, "Don't touch the gun." Officers Wyno and Waste fired at Kaneev.

The entirety of this incident, to this point, was approximately seven minutes. During that time, there were repeated attempts to de-escalate. Officers gave multiple commands to Kaneev to leave the gun, not to pick the gun up, not to move and not to touch the gun. Kaneev did not follow any of the officers' commands and directly defied every command that he was given.

Postmortem Examination

Artur Kaneev was transported to San Antonio Regional Hospital in the City of Upland for treatment. Kaneev was pronounced deceased by a doctor at 4:06 a.m. on December 13, 2018. On December 26, 2018, an autopsy was performed by a forensic pathologist, with the San Bernardino County Sheriff's Department Coroner Division. She determined the cause of death was multiple gunshot wounds. Kaneev sustained the following injuries: a gunshot entrance wound to the right parieto-occipital scalp with a partial exit wound to the right parieto-occipital scalp. An entrance wound to the posterior neck and an exit wound to the anterior neck. An entrance gunshot wound to the right upper back. An entrance gunshot wound to the middle of the upper back. An entrance gunshot wound to the middle of the upper back. An entrance gunshot wound to the right buttock. An entrance gunshot wound to the right proximal forearm and an exit wound to the right elbow. An entrance gunshot wound to the right proximal thigh. Another entrance gunshot wound to the right proximal thigh and exit wound to the lateral right proximal thigh. An entrance wound to the right mid-thigh with an exit wound to the posterolateral right mid-thigh. Another entrance wound to the right mid-thigh with an exit wound to the right posterior thigh. An entrance gunshot wound of the right distal thigh and exit wound to the posterolateral right distal thigh. An entrance gunshot wound to the left proximal arm and exit wound to the anteromedial left arm. An entrance gunshot wound to the left dorsal hand with an exit wound to the left thenar eminence. An entrance gunshot wound

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 25

to the mid left lower leg and an exit wound to the posterior mid left lower leg. None of the gunshot wounds presented any evidence of a close-range firing.

The toxicology screen was negative for any drugs or alcohol.

APPLICABLE LEGAL STANDARDS

STANDARD FOR DETENTION

“A police officer may stop and question persons on public streets...when the circumstances indicate to a reasonable man in a like position that such a course of action is called for in the proper discharge of the officer’s duties.” (*People v. Flores* (1974) 12 Cal.3d 85, 91.) Thus, a suspect may be detained if an officer has a reasonable suspicion that criminal activity is afoot and that the suspect is connected with it. (*Terry v. Ohio* (1968) 392 U.S. 1, 30 (*Terry*); *People v. Barnes* (2013) 216 Cal.App.4th 1508, 1514.) The circumstances amounting to reasonable suspicion justifying a detention encompass suspects who may be involved in any criminal activity, whether past, present or future. (*United States v. Sokolow* (1989) 490 U.S. 1, 7-8; *Terry, supra*, 392 U.S. at p. 22; *People v. Souza* (1994) 9 Cal.4th 224, 230.)

“The concept of reasonable cause ... is not ‘readily, or even usefully, reduced to a neat set of legal rules.’ ” (*United States v. Sokolow* (1989) 490 U.S. 1, 7 (*Sokolow*.) Reasonable cause demands some minimum level of objective justification, but considerably less than is required for probable cause to arrest. (*Ibid.*) Indeed, the justification standard is considerably less than a preponderance of the evidence. (*United States v. Arvizu* (2002) 534 U.S. 266, 274.) Reasonable suspicion can be established with information that is different in quantity, content, and reliability from that required for probable cause. (*People v. Souza* (1994) 9 Cal.4th 224, 230-231.)

Reasonable cause to detain must be supported by specific articulable facts, rather than inchoate suspicion or mere hunches. (*Sokolow, supra*, 490 U.S. at pp. 7-8; *People v. Hernandez* (2008) 45 Cal.4th 295, 299; *People v. Turner* (2013) 219 Cal.App.4th 151, 160.) The officer “ ‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ ” the detention. (*People v. Glaser* (1995) 11 Cal.4th 354, 363.) These facts can be drawn from an officer’s personal observations, citizen reports, or reports of other officers. The facts must be evaluated in light of the officer’s specialized training and experience. (*United States v. Mendenhall* (1980) 446 U.S. 544, 563-564 (Powell, J., concurring); *Terry v. Ohio* (1968) 392 U.S. 1, 22-23.)

An officer “who lacks the precise level of information necessary for probable cause to arrest” is not constitutionally required to “simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. [Citation.] A brief stop

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 26

of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.” (*Adams v. Williams* (1972) 407 U.S. 143, 145-146.) It is reasonable to expect diligent officers to investigate such unusual behavior through the relatively unintrusive means of a detention. (See *People v. Foranyic* (1998) 64 Cal.App.4th 186, 189.)

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 835

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

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.) Resistance sufficient to prevent injury may be used by the party about to be injured, or to prevent injury to someone else. (Pen. Code

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 27

§693.) Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense. (Pen. Code §694.)

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." (*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 crime 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.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 28

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.

USE OF DEADLY FORCE BY A PEACE OFFICER

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

In these decisions, the US Supreme Court explained "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.)

The US Supreme Court in *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.)

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 29

Thus, under *Graham*, 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* (1992) 954 F.2d 343, 347.)

Reasonableness: The Two Prongs

Penal Code section 197, subdivision (3) requires that one who employs lethal force in self-defense have a “reasonable ground to apprehend a design to commit a felony or to do some great bodily injury...” Penal Code section 198 requires that such fear be “sufficient to excite the fears of a reasonable person.” When viewed together, reasonableness has a subjective prong and an objective prong. In short, perfect 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, as mandated by section 198, is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self-defense. (*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 persons 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 of both prongs of self-defense.” (*People v. 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 is based on the reasonable appearance of imminent peril of death, or serious bodily injury to the party assailed.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 30

In *People v. Aris* the trial court clarified that imminent peril means that the peril must have existed, or appeared to the person to have existed, at the very time the shot was fired. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1188 disapproved on another ground in *People v. Humphrey* (1996) 13 Cal.4th 1073.) This was later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal. 4th 768,783 quoting *People v. Aris, supra*, 215 Cal.App.3d at p. 1187.)

The question is whether action was instantly required to avoid death or great bodily injury. In this regard, 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 faced 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 No. 3470.) Indeed, 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.)

Nature and Level of Force

The right of self-defense 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 in too 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. 589.) 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

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 31

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 (1994) 39 F.3d 912, 915.

In summary, an honest and objectively reasonable belief that lethal force is necessary to avoid what appears to be an imminent threat of death or great bodily injury will justify the use of deadly force. This is true even if the person acting in self-defense could have safely withdrawn or had available to him a less lethal means of defense.

ANALYSIS

On December 13, 2018, at approximately 3:30 in the morning, Upland police officer, Richard Vanderbilt, was dispatched to a "suspicious person" call. The information provided to him was that the reporting party observed a suspect acting strange and walking around in the bushes at 1630 11th Street. Based on the concern of a citizen calling in their suspicion, the time of day being 3:30 a.m., and his past experiences with burglaries in that area, Officer Vanderbilt intended to detain the subject for investigation when and if he located him.

As Officer Vanderbilt drove by 1630 11th Street, he observed Kaneev walking eastbound on the south sidewalk of 11th Street. Kaneev matched the suspect description given by the reporting party, in that he was a white male adult wearing a blue jacket and gray pants. Officer Vanderbilt drove by Kaneev in his marked patrol vehicle and then conducted a U-turn, so his vehicle was behind Kaneev. Once Kaneev crossed the intersection at 11th and Benson, Officer Vanderbilt activated his overhead lights, pulled to the curb beside Kaneev and exited his vehicle in order to contact Kaneev.

As Officer Vanderbilt exited his vehicle and walked toward the front of the engine block on the driver's side of his vehicle, he told Kaneev, something to the effect of "come over here and take a seat on the curb" or "come over here and I need to talk to you for a second." While Kaneev initially hesitated, he did comply with the command and walked towards Officer Vanderbilt. As Kaneev walked, he had his hands in his pocket. There is a potential threat to an officer that cannot see what is in the hands of a subject they are contacting. Thus, Officer Vanderbilt said, "Take your hands out of your pockets please". Kaneev partially complied, but then would not take his right hand out of his pocket. Officer Vanderbilt tried to de-escalate the situation by repeating his commands, telling Kaneev again to take his hands out of his pockets. Kaneev did not remove his right hand from his pocket. Fearing Kaneev had something in his right pocket to harm him with, Officer Vanderbilt removed his Taser and pointed it at Kaneev. Officer Vanderbilt then stated, "Take your hands out of your pockets, do it now, or I will tase you."

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 32

As this was said, Kaneev removed his right hand from his pocket, brushed back his jacket with his hand and held his right hand behind him, near the back of his right hip, for a few moments. Officer Vanderbilt's fears were confirmed as Kaneev moved his right hand forward and produced what appeared to be a black semi-automatic firearm. Kaneev brought the firearm up to his left hand, as if to cock the slide back. Officer Vanderbilt shouted at Kaneev, "Drop it now!" Kaneev continued to raise the gun up to point it at Officer Vanderbilt. At this moment, Officer Vanderbilt was clearly faced with imminent threat of death or great bodily injury. Officer Vanderbilt had to respond immediately to the threat presented. Officer Vanderbilt dropped his Taser, which he believed would be ineffective against Kaneev's firearm, and retrieved his own firearm and fired at Kaneev.

Officer Vanderbilt had a reasonable belief that Kaneev would use the gun against him. Kaneev demonstrated his intent to use the gun, when he lifted the gun to his left hand as if to cock the slide. Officer Vanderbilt immediately transitioned from his Taser to his firearm to match the perceived threat. Kaneev raised the firearm, Officer Vanderbilt yelled, "Drop it now!", and then fired. Based on the totality of the circumstances, when Officer Vanderbilt fired his duty weapon, he honestly and reasonably believed Kaneev would use the gun against him to cause death or great bodily injury and that the threat was imminent. As stated above, reasonableness 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.)

Officer Vanderbilt ducked for cover behind his car to put out "shots fired" over his radio and request "code three back". While he was doing that, the surveillance video showed that Kaneev walked away from Officer Vanderbilt in an eastbound direction on 11th Street. Officer Vanderbilt gave further commands to "drop it now" while he changed positions to the back-passenger bumper of his vehicle. When Officer Vanderbilt reached his position, he saw Kaneev headed back toward him, with the gun still in his hand, and when Kaneev reached the front passenger bumper of the vehicle Officer Vanderbilt shot again. At this point, Kaneev had pointed the gun at Officer Vanderbilt, refused to follow commands to put the gun down, walked away and distanced himself from Officer Vanderbilt only to turn around and walk back toward him with the gun still in his hand. Officer Vanderbilt fired his duty weapon at this time with an honest and reasonable belief that Kaneev was going to cause him great bodily injury or death and that the threat was imminent.

Kaneev went to the ground and dropped the gun out of his hand. Officer Vanderbilt kept him at gun point while he again aired over his radio, "shots fired." Officer Vanderbilt kept a visual of Kaneev, at gunpoint, while he waited for backup to arrive. While on the ground, Kaneev rolled onto his back, lifted his head, reached under his right knee with his right arm, and retrieved the gun. To a reasonable person, this demonstrated Kaneev's commitment to maintaining possession of the gun. Officer Vanderbilt shouted, "Do not pick that up! Do not pick that up! Do not pick that gun up, drop it right now, drop

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 33

it right now!" Kaneev raised the gun up in the direction of Officer Vanderbilt. Kaneev's actions again made it reasonable to infer, that his desire was to use the gun against Officer Vanderbilt. Officer Vanderbilt believed he was in imminent danger of death or great bodily injury and fired his duty weapon for the third time.

Officer Waste heard these shots by Officer Vanderbilt as he arrived at the scene. The only other information he had prior to his arrival was that this was a suspicious person call, that Officer Vanderbilt was out with the subject and that shots were fired. When he first saw Kaneev, he was on the ground with the gun still in his right hand and the gun was pointed down range at Officer Vanderbilt. Officer Waste notified Dispatch to "stage" medical. Officer Waste remained in position with Officer Vanderbilt and kept visual on Kaneev until Officer Wyno arrived.

When Officer Wyno arrived at the scene, the only thing he knew about the situation was that shots had been fired and one suspect was down. Upon his arrival he confirmed there were no outstanding suspects. Officer Wyno positioned himself at the front driver-side bumper of Officer Vanderbilt's vehicle. Officer Wyno saw that Kaneev was on the ground and still holding the gun in his hand and that the gun was pointed in the direction of his partners. Officer Wyno gave multiple commands for Kaneev to "drop the gun". Officer Waste repositioned with Officer Wyno while Officer Vanderbilt remained at the rear passenger bumper. After nearly one minute of repeated commands to "drop the gun", Kaneev raised his right hand up slightly and dropped the gun. Officers Waste and Wyno believed Kaneev may have dropped the gun due to his injuries and because of the proximity of the gun to Kaneev, they still considered him a threat to themselves and their partners.

All officers maintained a visual of Kaneev and formulated a plan for their approach and removal of his gun. Before they could start their approach, Kaneev began to look at the gun again. Officer Wyno gave several commands to not reach for the gun. Kaneev rolled to his right side and reached for the gun with his left hand. Officers Wyno and Waste fired their guns at Kaneev. At this moment, based on the totality of what was known to them; shots fired by their partner and a gun in the hand of the suspect pointed at their partner, they shot their firearms with the honest and reasonable belief that Kaneev was going to cause great bodily injury or death to them or their partner.

When the officers approached and Sergeant Kirk kicked the gun away, the sound it made caused Officer Wyno to believe it was not a real firearm. It was later determined the gun exhibited by Kaneev was in fact a BB gun. A review of the photographs showed that the BB gun looked like a black semiautomatic handgun. There were no obvious distinguishing characteristics to differentiate it from a real firearm. Importantly, as stated above, 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

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2019-61014

January 13, 2021

Page 34

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.) Under all of the circumstances stated above, it was objectively reasonable for the officers to believe Kaneev had a semi-automatic firearm and he was going to use it against them or their partners. Thus, their decision to use deadly force was justified.

CONCLUSION

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

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

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

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

