



PUBLIC RELEASE MEMORANDUM

DATE: March 18, 2021

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Deputy Roger Alfaro
San Bernardino County Sheriff's Department

Deputy Michael Sellers
San Bernardino County Sheriff's Department

Deputy Robert Stucki
San Bernardino County Sheriff's Department

Sergeant Mauricio Hurtado
San Bernardino County Sheriff's Department

Involved Subjects: Ray Vernon Wyatt (Deceased)
Date of Birth 07/22/59
Yucca Valley, CA

Date of Incident: May 21, 2018

Incident location: Yucca Trail and La Contenta Road
Yucca Valley, CA

DA STAR #: 2019-46829

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Floyd Stone

Report Number#: DR # 601800084 / H # 2018-041

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PREAMBLE

This was a fatal officer involved shooting by deputies from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 601800084 and H# 2018-041.

FACTUAL SUMMARY

On the evening of May 21, 2018, Witness #1 agreed to meet her ex-boyfriend, Ray Wyatt, at the intersection of La Contenta Road and Yucca Trail, to return some of Wyatt's property. Witness #1 called Witness #2, her friend and co-worker, and asked Witness #2 to monitor her meeting with Wyatt. Witness #1 said she would keep her phone line open and asked Witness #2 to mute his phone so he could listen to the conversation. Witness #1 was nervous about meeting Wyatt because of a recent domestic violence incident. As Witness #2 listened to Witness #1 and Wyatt talk, Witness #2 heard the two arguing. Witness #2 heard Witness #1 say something about Wyatt pulling a gun which caused Witness #2 to become concerned that the meeting would become violent. Witness #2 hung up his phone and called 911 for help.

On May 21, 2018, at around 8:19 in the evening, in response to Witness #2's 911 call, deputies from the San Bernardino County Sheriff's Department, Morongo Basin Station, responded to the area of La Contenta Road and Yucca Trail in reference to a suicidal subject possibly armed with a gun. Deputy Robert Stucki was the first deputy to arrive. As he pulled up in his patrol vehicle, Deputy Stucki saw Witness #1 and Wyatt standing near two blue pickup trucks. When the headlights on Deputy Stucki's patrol vehicle illuminated Witness #1 and Wyatt, Deputy Stucki saw Wyatt pull out a gun and shoot Witness #1. Witness #1 fell to the ground. Deputy Stucki immediately exited his patrol vehicle and started firing his duty weapon at Wyatt. Deputy Stucki put out "shots fired" over the radio. Wyatt retreated and ran into the desert.

Deputy Tyler Detrinidad ran up to Witness #1 and dragged her body back toward the patrol vehicles while Deputy Stucki, armed with a Mini 14 rifle, provided cover. Deputy Detrinidad started to render medical aid to Witness #1 who had suffered multiple gunshot wounds. A short time later, Deputy Roger Alfaro, Deputy Michael Sellers, and Sergeant Mauricio Hurtado arrived at location to assist. Deputy Stucki advised the other deputies at the scene that Wyatt had pulled out a gun and shot Witness #1. Deputy Stucki said he fired at Wyatt but was unsure whether he struck Wyatt. Deputy Stucki, Deputy Sellers, Deputy Alfaro, and Sergeant Hurtado, all armed with Mini 14 rifles, quickly formulated a plan to go out into the desert and look for Wyatt. Deputy Detrinidad stayed behind with Witness #1.

As the deputies were walking out into the desert, Deputy Stucki spotted Wyatt behind a bush. The deputies yelled out, "Sheriff's Department" and chased after Wyatt. Wyatt had a gun in his hand. The deputies ordered Wyatt to show his hands, but Wyatt would not comply with the commands. Wyatt raised the gun towards the deputies. One of the deputies yelled "gun" and the deputies started firing at Wyatt. Wyatt took off running and the deputies briefly lost sight of Wyatt. Shortly thereafter, deputies saw Wyatt start to run again and then fall to the ground.

Deputies approached Wyatt as he was lying face down on the ground. Deputies handcuffed Wyatt and rolled Wyatt over. A black handgun was located on the ground near Wyatt's body. Wyatt had suffered multiple gunshot wounds. Deputies started cardiopulmonary resuscitation (CPR) and called for an ambulance. Fire department personnel arrived at the scene and took over rendering medical aid to Wyatt. Wyatt was pronounced deceased at the scene.

After being shot by Wyatt, Witness #1 was transported to the Hi-Desert Medical Center for medical treatment. Witness #1 succumbed to her injuries and died at the hospital. An autopsy was conducted by Witness #3, Forensic Pathologist with the San Bernardino County Sheriff's Department. Witness #3 observed Witness #1 had nine gunshot entrance wounds, eight gunshot exit wounds, and two gunshot graze wounds. Witness #3 determined the cause of death for Witness #1 was multiple gunshot wounds and death occurred within minutes.

STATEMENTS BY POLICE OFFICERS

On May 22, 2018, at approximately 2:37 in the morning, **Deputy Tyler Detrinidad** was interviewed by Detective Arturo Alvarado and Detective Nicholas Ferronato.

On May 21, 2018, Deputy Tyler Detrinidad, from the San Bernardino County Sheriff's Department, Morongo Basin Station, was assigned to patrol. Deputy Detrinidad was driving a marked patrol vehicle and wearing a long sleeve "Class A" San Bernardino County Sheriff's Department uniform. On that date, Deputy Detrinidad was on his way to a call for service when he heard radio traffic regarding Witness #2's 911 call of a suicidal subject armed with a gun, in the county area of Joshua Tree. Dispatch advised the call involved a blue Chevy truck and a blue Ford truck.

Deputy Detrinidad decided to respond to the area of La Contenta and Alta Loma Road in Joshua Tree. Deputy Robert Stucki, from the San Bernardino County Sheriff's Department, Morongo Basin Station, followed Deputy Detrinidad to the location. Deputy Detrinidad had just turned right and was driving north on La Contenta when he heard Deputy Stucki broadcast, "Shots fired...Shots fired." Deputy Detrinidad made a U-turn, drove southbound on La Contenta, and parked north of Deputy Stucki's patrol vehicle, which was parked approximately forty-five to sixty feet north of two blue pickup trucks.

Deputy Detrinidad exited his patrol vehicle and ran to Deputy Stucki's patrol vehicle. Deputy Stucki was positioned near the right rear side of his patrol vehicle. Deputy Detrinidad took a prone position next to the patrol unit's open driver door. Deputy Detrinidad had his handgun out of its holster. Deputy Stucki announced, "Sheriff's Department." Deputy Detrinidad saw a female subject, later identified as Witness #1, on the ground between the two blue trucks. Deputy Detrinidad noticed the truck to the east had a shattered right passenger window.

Approximately ten seconds after Deputy Detrinidad took a prone position, he heard Deputy Stucki fire one round from his handgun. Deputy Detrinidad told Deputy Stucki to arm himself with the Mini 14 rifle. Within six to seven seconds of Deputy Stucki retrieving the Mini 14 rifle from his patrol vehicle, Deputy Detrinidad heard Deputy Stucki fire one round from the Mini 14. Deputy Stucki said the rifle was jammed. Deputy Stucki was able to clear the jam and then fired one additional round from the Mini 14 rifle. Deputy Detrinidad believed Deputy Stucki fired one round from his handgun and two rounds from the Mini 14. Deputy Detrinidad did not fire his weapon because he was unable to see the suspect from his position.

After Deputy Stucki fired at the suspect, later identified as Ray Wyatt, Deputy Stucki told Deputy Detrinidad that he observed Wyatt, dressed in dark clothing, shoot Witness #1 in the chest and run south into the desert. While the threat had not diminished, Deputy Detrinidad and Deputy Stucki formulated a plan to rescue Witness #1 and move her to a safe spot. Deputy Detrinidad and Deputy Stucki approached Witness #1 who was unconscious on the ground. Deputy Detrinidad dragged Witness #1 back to Deputy Stucki's patrol vehicle while Deputy Stucki provided cover with the Mini 14.

Approximately twenty seconds later, Deputy Michael Sellers, Deputy Roger Alfaro, and Sergeant Mauricio Hurtado, from the San Bernardino County Sheriff's Department Morongo Basin Station, arrived at the scene to assist. Deputy Sellers, Deputy Alfaro, and Sergeant Hurtado armed themselves with Mini 14 rifles. Deputy Stucki, Deputy Sellers, Deputy Alfaro, and Sergeant Hurtado then went into the desert to find Wyatt. Approximately one minute later, Deputy Detrinidad heard approximately twelve to fourteen gunshots from the desert area.

On May 24, 2018, at approximately 1:18 in the afternoon, **Deputy Robert Stucki** was interviewed by Detective Brendan Motley and Detective Tramayne Phillips.¹

On May 21, 2018, Deputy Robert Stucki, from the San Bernardino County Sheriff's Department, Morongo Basin Station, was assigned to patrol. Deputy Stucki was driving a marked patrol vehicle and wearing a long sleeve "Class A" San Bernardino County Sheriff's Department uniform. Deputy Stucki was at the station when he heard a call for service come out over the air. The call for service indicated a possible gun was

¹ Deputy Stucki reviewed his belt recording of the incident prior to his interview with Detective Motley and Detective Phillips.

involved as well as potentially a suicidal subject. Deputy Stucki decided to respond to the call.

When Deputy Stucki arrived at the incident location, which was off Yucca Trail and La Contenta, Deputy Stucki saw two blue pickup trucks. There was a male, later identified as Ray Wyatt, and a female, later identified as Witness #1, standing in between the trucks. Deputy Stucki said right when he pulled up, he saw Wyatt pull out a handgun and shoot Witness #1 two or three times. Witness #1 fell to the ground after being shot.

Deputy Stucki exited his vehicle, got on the running board², and started shooting at Wyatt with his duty weapon. Deputy Stucki was afraid Wyatt was going to continue to shoot Witness #1 or shoot at him. As Wyatt began to retreat, Deputy Stucki saw Wyatt reach over with his right hand and point back towards Deputy Stucki. Deputy Stucki was afraid he was about to be shot next. Deputy Stucki was unsure whether Wyatt fired a round toward him. Deputy Stucki stopped shooting when he lost sight of Wyatt.

Deputy Stucki feared Wyatt was going to circle around the trucks and begin firing at Deputy Stucki from a better angle. Deputy Stucki retreated to the other side of his patrol vehicle. Deputy Stucki was able to gain a visual of Wyatt again in front of Wyatt's truck. Deputy Stucki believed Wyatt still posed a threat not only to Deputy Stucki but also to Witness #1, vehicles passing by on the roadway, and Deputy Stucki's partners who would be arriving at the scene to assist. Deputy Stucki believed this could be his last chance to stop the threat and fired one more shot at Wyatt. The shot appeared to go through the passenger window and what Deputy Stucki believed was the windshield. Deputy Stucki heard Wyatt make a loud noise.

Deputy Stucki transitioned from his handgun to a Mini 14 rifle. Deputy Stucki saw Wyatt start running southbound through the desert. Deputy Stucki was concerned that Wyatt may be headed towards more civilians in a residential area or possibly trying to obtain more weapons he had hidden in the desert. Deputy Stucki fired approximately two to three additional shots from his Mini 14 rifle. Deputy Stucki lost sight of Wyatt again shortly after that. Deputy Stucki was unsure whether he struck Wyatt. Deputy Stucki then ran back to his patrol vehicle to come up with a plan to help move Witness #1 from where she was laying on the ground.

During this time, Deputy Tyler Detrinidad had arrived at the scene. Deputy Stucki and Deputy Detrinidad formulated a plan to help Witness #1. Deputy Stucki provided cover while Deputy Tyler Detrinidad ran up to Witness #1 and dragged Witness #1 back towards the patrol vehicles. Deputy Stucki and Deputy Detrinidad assessed Witness #1's injuries. Sergeant Mauricio Hurtado, Deputy Michael Sellers, and Deputy Roger Alfaro also arrived at the scene to assist.

Deputy Stucki provided Sergeant Hurtado a brief summary of what happened and advised that the suspect, Wyatt, was still outstanding. Deputy Stucki, Deputy Alfaro, Deputy Sellers, and Sergeant Hurtado formulated a quick plan to search for Wyatt.

² A running board is a footboard along the side of an automobile.

Deputy Stucki advised Wyatt was wearing a blue and black plaid shirt and told the other deputies he last saw Wyatt running south and east from their location. The deputies used their flashlights and fanned out in order to cover more ground; Sergeant Hurtado and Deputy Sellers moved east while Deputy Stucki and Deputy Alfaro stayed farther to the west.

When Deputy Stucki saw Wyatt again, Deputy Stucki noticed Wyatt was walking very quickly with the gun still in his hand. The deputies were yelling, "Sheriff's Department, Sheriff's Department, Show us your hands, Show us your hands." Deputy Stucki heard somebody yelling, "Gun." Deputies started firing their weapons. Deputy Stucki said he fired approximately two to three rounds when his rifle jammed. At that point, Deputy Stucki estimated he was approximately fifty to sixty yards away from Wyatt. Deputy Stucki cleared the jam and ran to catch up with Deputy Alfaro. The deputies lost sight of Wyatt briefly and then the deputies saw Wyatt begin running again. The deputies started firing at Wyatt around the same time. At the point Deputy Stucki regained sight of Wyatt and started firing his rifle again, Deputy Stucki estimated he was approximately forty to fifty yards away from Wyatt. After the shooting, deputies observed Wyatt fall to the ground.

When the deputies approached Wyatt, Deputy Stucki was unable to see Wyatt's hands. Wyatt was still moving around. The deputies ordered Wyatt to show his hands. When the deputies were close enough to Wyatt, Deputy Stucki got on top of Wyatt. Deputy Stucki yanked Wyatt's arms from underneath Wyatt's body and placed Wyatt's hands behind his back. Deputy Alfaro handcuffed Wyatt. Deputy Stucki said either Deputy Sellers or Sergeant Hurtado kicked the gun away from Wyatt.

Deputy Stucki rolled Wyatt onto his back. The deputies started cardiopulmonary resuscitation (CPR). When medical personnel arrived at the scene, they took over conducting chest compressions and rendering medical aid to Wyatt.

On May 24, 2018, at approximately 9:20 in the morning, **Deputy Michael Sellers** was interviewed by Detective Michael Cleary and Detective Gerardo Moreno.³

On May 21, 2018, Deputy Michael Sellers, from the San Bernardino County Sheriff's Department, Morongo Basin Station, was assigned to patrol. Deputy Sellers was driving a marked patrol vehicle and wearing a short sleeve "Class A" San Bernardino County Sheriff's Department uniform. On that date, Deputy Sellers was conducting some follow up investigation on an unrelated call. Deputy Sellers heard over the radio something about the desert and area of La Contenta and Yucca Trail. Next, Deputy Sellers heard Deputy Robert Stucki scream out "Shots fired." Deputy Sellers responded to the location with his lights and siren activated.

³ Deputy Sellers reviewed his belt recording of the incident prior to his interview with Detective Cleary and Detective Moreno. There was a break in Deputy Seller's belt recording which occurred when Deputy Sellers thought he was turning the recorder on but instead turned it off. When Deputy Sellers noticed the error, Deputy Sellers turned the belt recorder back on.

When Deputy Sellers arrived at the location, Deputy Sellers parked his patrol car and ran up to Deputy Stucki and Deputy Tyler Detrinidad. Deputy Sellers saw Deputy Stucki was covering for Deputy Detrinidad as Deputy Detrinidad pulled Witness #1 out of the danger zone. At that point, Deputy Sellers realized Wyatt's presence was unknown. Deputy Sellers observed a couple of holes in Witness #1's chest and Deputy Detrinidad started doing CPR.

Sergeant Mauricio Hurtado and Deputy Roger Alfaro arrived at the location to assist. Deputy Sellers moved his patrol vehicle to block off eastbound traffic on Yucca Trail. Deputy Sellers grabbed his Mini 14 rifle out of his patrol vehicle and went back to where Deputy Detrinidad and Deputy Stucki were located. Deputy Stucki gave a brief summary of what happened, and a description of what Wyatt was wearing. Deputy Stucki advised the others that Wyatt shot Witness #1 twice in the chest and Deputy Stucki got off some rounds, but he was unsure whether he had struck Wyatt. Deputy Sellers, Deputy Stucki, Deputy Alfaro, and Sergeant Hurtado decided to go out into the desert to try and locate Wyatt.

Deputy Stucki told the other deputies that Wyatt ran into the desert towards some homes up on a hill. That information concerned Deputy Sellers because Wyatt had already demonstrated "the mindset to murdering somebody in front of a Deputy Sheriff." Deputy Sellers heard Deputy Stucki yell out, "Hey, I see him. He's running south." Sergeant Hurtado told the deputies to spread out. Deputy Sellers then heard Deputy Stucki scream, "He's behind the bushes, behind the bush, behind the bush."

Deputy Sellers saw Wyatt start to run in a southwest direction towards homes. Deputy Sellers was able to illuminate Wyatt with his flashlight. Wyatt then started to run in a northeast direction towards the roadway. Deputy Sellers could see something in Wyatt's hand. Deputy Sellers assumed the object was a gun because he had just killed somebody with it. Deputy Sellers and the other deputies started yelling, "Sheriff's Department. Show us your hands, show us your hands." Wyatt was not following commands.

As Wyatt was running, Deputy Sellers observed Wyatt lift his arm. Wyatt raised his arm enough to cause Deputy Sellers to believe Wyatt was going to shoot at the deputies. Deputy Sellers was also concerned for the safety of the public. Deputy Sellers heard shots fired but was unsure who fired. Deputy Sellers fired approximately five to six rounds from his weapon. Deputy Sellers estimated Wyatt was approximately fifty to sixty yards away at the time of the shooting. Deputy Sellers said the deputies continued yelling at Wyatt, "Show us your hands. Show us your hands." Wyatt started walking away from the deputies and then lifted his arm. Wyatt was still approximately fifty to sixty yards away from the deputies. Deputy Sellers fired his weapon a second time. Deputy Sellers estimated he fired four to five more rounds at Wyatt. Wyatt ran away and Deputy Sellers lost sight of Wyatt behind a bush.

The deputies ran up toward Wyatt who was face down. Wyatt's gun was lying next to his body, approximately six inches from Wyatt's left hand. Deputy Sellers picked up

Wyatt's gun and moved it two to three feet away from Wyatt in case Wyatt was still alive. Deputy Stucki came up and handcuffed Wyatt. Deputy Alfaro came up and started CPR on Wyatt. The deputies continued CPR until medical personnel from the fire department arrived at the scene and took over.

Fire department personnel loaded Wyatt onto a backboard and Deputy Sellers assisted carrying Wyatt approximately forty-five to fifty feet towards where the ambulances had set up. As they were walking, Wyatt's leg started falling off the backboard, so they set Wyatt down on the ground. Additional fire department personnel arrived and continued to render medical aid to Wyatt. Deputy Sellers went back to the incident location to check that everyone else was okay.

On May 24, 2018, at approximately 2:01 in the afternoon, **Sergeant Mauricio Hurtado** was interviewed by Detective Michael Cleary and Detective Gerardo Moreno.⁴

On May 21, 2018, Sergeant Mauricio Hurtado, from the San Bernardino County Sheriff's Department, was a Patrol watch commander assigned to the Morongo Basin Station. Sergeant Hurtado was driving a marked patrol vehicle and wearing a long sleeve "Class A" San Bernardino County Sheriff's Department uniform. On that date, Sergeant Hurtado was at the station when a call came out regarding a possible suicidal male who made threats and may have a handgun on him. Deputy Robert Stucki and Deputy Roger Alfaro were going to handle the call. Deputy Stucki and Deputy Alfaro got into their patrol vehicles and left the station. Sergeant Hurtado was working on paperwork as additional information on the call came out. Sergeant Hurtado decided to respond to the location to assist Deputy Stucki and Deputy Alfaro.

A short time later, Sergeant Hurtado heard Deputy Stucki get on the radio and state, "Shots fired." As Sergeant Hurtado drove to the location of La Contenta and Yucca Trail, he heard Deputy Stucki giving updates that the suspect, later identified as Ray Wyatt, fled southbound and that he had a female subject, later identified as Witness #1, down. When Sergeant Hurtado arrived at the location, he saw two patrol vehicles and two blue pickup trucks parked.

When Sergeant Hurtado got out of his patrol vehicle, he saw Deputy Tyler Detrinidad on the ground with Witness #1, behind Deputy Stucki's patrol vehicle. Deputy Stucki was positioned at the left rear corner panel of his patrol vehicle with his Mini 14 rifle aimed into the desert. It appeared to Sergeant Hurtado that Witness #1 had two gunshot wounds to her chest. Deputy Stucki told Sergeant Hurtado that when he pulled up and put his headlights on the two blue pickup trucks, Wyatt shot Witness #1 twice in the chest. Deputy Stucki said he exchanged gunfire with Wyatt and Wyatt then fled.

Sergeant Hurtado told Deputy Detrinidad to stay with Witness #1. Deputy Michael Sellers had arrived at the location to assist. Sergeant Hurtado, Deputy Stucki, Deputy

⁴ Sergeant Hurtado did not have a belt recorder activated. Sergeant Hurtado reviewed belt recordings from other deputies involved in the incident under review prior to his interview with Detective Cleary and Detective Moreno.

Alfaro, and Deputy Michael Sellers went into the desert to look for Wyatt. Sergeant Hurtado now knew he had a possible murder or attempted murder suspect armed with a handgun running through the desert. Sergeant Hurtado was concerned that there were civilian residences east of their location as well as civilian vehicles and responding patrol vehicles traveling down Yucca Trail.

The deputies had walked out approximately ten feet into the desert when Sergeant Hurtado heard Deputy Stucki say, "I see him. There he is, he's running." Deputy Stucki said Wyatt was wearing a blue plaid shirt. The deputies ran after Wyatt. Sergeant Hurtado was not able to see Wyatt in the darkness. Deputy Stucki lost sight of Wyatt so the deputies slowed down and spread out as they continued to move into the desert.

Sergeant Hurtado and the rest of the deputies were approximately 100 to 150 yards from the patrol vehicles when he heard Deputy Stucki say, "There he is." Deputy Stucki shined his flashlight at Wyatt. Sergeant Hurtado saw a gun in Wyatt's right hand. Sergeant Hurtado estimated Wyatt was approximately fifteen to twenty yards away from the deputies. Wyatt started walking northwest towards the deputies' direction. Sergeant Hurtado saw Wyatt raise the gun up towards Deputy Stucki and Deputy Alfaro.

Sergeant Hurtado described Wyatt as walking with his hands swinging back and forth; the gun was coming up every time Wyatt's hand moved. Sergeant Hurtado said the deputies yelled, "Sheriff's Department. Let me see your hands." Sergeant Hurtado heard Deputy Stucki and Deputy Alfaro fire their Mini 14 rifles. Wyatt started walking northwest some more towards where Deputy Sellers and Sergeant Hurtado were standing. Sergeant Hurtado said the deputies ordered Wyatt, "Drop the gun. Let me see your hands. Let me see your hands."

Wyatt continued to point the gun at Deputy Stucki and Deputy Alfaro. Sergeant Hurtado thought Wyatt was going to try to kill the deputies. Wyatt started swinging the gun at Sergeant Hurtado and Deputy Sellers at which point Sergeant Hurtado thought Wyatt was going to try to kill them. Sergeant Hurtado fired his Mini 14 rifle once at Wyatt. Wyatt continued to advance towards the deputies' direction. The gun was still in Wyatt's hand. Sergeant Hurtado fired a second time at Wyatt. Sergeant Hurtado believed he saw Wyatt drop to the ground. The deputies ran up to where Wyatt was lying face down on the ground.

Wyatt's hands were underneath his stomach. Deputy Sellers yelled, "Gun, gun, gun." There was a gun on the ground right next to Wyatt's hip. Deputy Sellers moved the gun away from Wyatt. The deputies ordered Wyatt, "Let me see your hands. Let me see your hands." Deputy Alfaro handcuffed Wyatt and then Deputy Alfaro and Deputy Stucki rolled Wyatt over. Sergeant Hurtado could see Wyatt's face was blue and Wyatt had blood coming from his chest. The deputies immediately started to render medical aid. Sergeant Hurtado got on the radio and requested another ambulance. Medical personnel arrived at the location and took over administering medical aid to Wyatt. They subsequently declared Wyatt deceased at the scene.

On May 24, 2018, at approximately 9:20 in the morning, **Deputy Roger Alfaro** was interviewed by Detective Arturo Alvarado and Detective Floyd Stone.⁵

On May 21, 2018, Deputy Roger Alfaro, from the San Bernardino County Sheriff's Department, Morongo Basin Station, was assigned to patrol. Deputy Alfaro was driving a marked patrol vehicle and wearing a long sleeve "Class A" San Bernardino County Sheriff's Department uniform. On that date, Deputy Alfaro was at the station speaking with Deputy Robert Stucki and Sergeant Mauricio Hurtado. Deputy Alfaro was loading up his patrol vehicle when Deputy Stucki told him he needed to go back up Deputy Tyler Detrinidad. After Deputy Alfaro finished loading up his patrol vehicle, he looked on his computer to see what call Deputy Stucki was going to. The call was in reference a suicidal subject holding a gun to a female subject. Deputy Alfaro decided to respond to the location as well to assist.

As Deputy Alfaro was driving to the location on La Contenta and Yucca Trail, he heard that there were shots fired and Wyatt had shot Witness #1. When Deputy Alfaro arrived at the location, Deputy Detrinidad had already dragged Witness #1 over near a patrol vehicle and was administering medical aid. Deputy Stucki was near the front of the patrol vehicle standing with his Mini 14 rifle. Deputy Alfaro also saw two blue pickup trucks parked in a dirt field in front of a patrol vehicle. Deputy Michael Sellers was already present at the scene. Sergeant Hurtado arrived at the location a few seconds after Deputy Alfaro. Deputy Alfaro heard Deputy Stucki put out over the radio that Wyatt ran from the scene and was still outstanding.

Deputy Stucki advised Sergeant Hurtado that Wyatt shot Witness #1 and took off southbound, southeast into the desert. Sergeant Hurtado, Deputy Alfaro, Deputy Sellers, and Deputy Stucki formulated a game plan to go out into the desert to locate Wyatt. As they were moving, Deputy Alfaro heard Deputy Stucki say, "There he goes." Deputy Alfaro did not see anyone. Deputy Stucki said Wyatt was over near a bush and then Deputy Stucki immediately said he saw Wyatt running. Deputy Stucki said Wyatt was wearing a blue plaid shirt and was running southeast through the desert. As they headed southeast, the deputies fanned out.

Deputy Alfaro heard Deputy Stucki say, a second time, "He's right there by the bush and he's running." Even though Deputy Alfaro had a flashlight, he was still unable to see Wyatt running. Deputy Alfaro heard Deputy Stucki yell something to the effect of, "Let me see your hands." Deputy Alfaro heard Deputy Stucki fire a round. Deputy Alfaro saw Wyatt standing next to a tree. Wyatt pivoted and faced directly towards Deputy Alfaro. Deputy Alfaro estimated Wyatt was approximately forty to fifty yards away.

Deputy Alfaro saw Wyatt raise a black object and point it in Deputy Alfaro's direction. Deputy Alfaro believed the object was possibly the handgun Wyatt had used to shoot Witness #1. Deputy Alfaro heard one of the other deputies say, "Gun." Deputy Alfaro

⁵ Deputy Alfaro reviewed his belt recording of the incident prior to his interview with Detective Alvarado and Detective Stone.

said deputies gave Wyatt commands to drop the gun, but Wyatt did not drop it. Deputy Alfaro feared for his life and the lives of his partners. Deputy Alfaro fired at Wyatt with his Mini 14 rifle three to four times. Deputy Alfaro heard other deputies shooting as well.

At one point, Deputy Alfaro saw Wyatt turn to his right towards the direction of Sergeant Hurtado. Wyatt raised the gun again and then started running in a southeast direction. Deputy Alfaro yelled at Wyatt, "Stop mother f**ker." Deputy Alfaro was afraid Wyatt was going to try and kill Sergeant Hurtado or Deputy Sellers. Deputy Alfaro paused for about a second after he first shot at Wyatt and then fired several additional rounds at Wyatt. Deputy Alfaro estimated he fired approximately twenty total rounds.

As the deputies ran after Wyatt, Deputy Alfaro saw Wyatt drop face down by a bush. Because he had run out of bullets, Deputy Alfaro laid his Mini 14 rifle down and pulled his handgun out. Deputy Stucki and Deputy Alfaro ran towards Wyatt's direction. Deputy Alfaro noticed Wyatt was face down on the ground. There was a black semi-automatic handgun near the left side of Wyatt's body. Deputy Stucki jumped on Wyatt's back and pulled Wyatt's arms from underneath Wyatt. Wyatt was tensing up, so the deputies told Wyatt to stop moving. Deputy Alfaro handcuffed Wyatt. Deputy Alfaro rolled Wyatt over and started to search him. Deputy Alfaro felt a very light pulse and saw that Wyatt was breathing. Deputy Alfaro tore Wyatt's shirt open and started CPR. Deputy Alfaro saw two gunshot wounds to Wyatt's torso. The deputies continued CPR until medical personnel arrived at the scene and took over.

STATEMENTS BY CIVILIAN WITNESSES

On May 22, 2018, at approximately 12:50 in the morning, **Witness #2** was interviewed by Detective Michael Cleary and Detective Eric Dyberg.

Witness #2 and Witness #1 were co-workers at a mortuary. Witness #2 said Witness #1 had been in a dating relationship with Ray Wyatt. On May 21, 2018, Witness #1 sent Witness #2 a text message indicating she was going to meet Wyatt at a dirt lot to give Wyatt some of his stuff back. Witness #2 said Witness #1 was nervous to meet Wyatt because Wyatt had "beat" Witness #1 a week earlier. Witness #2 offered to go with Witness #1 to the meeting but Witness #1 declined the offer. Witness #1 said she was going to leave her cell phone on and asked Witness #2 to mute his cell phone so he could listen to the conversation.

When Witness #1 arrived at the location, Witness #2 listened to the conversation between Witness #1 and Wyatt which lasted approximately thirty minutes. Witness #2 heard Witness #1 and Wyatt arguing and decided to go closer to Witness #1's location in case something happened. Witness #2 was concerned the meeting was going to turn violent. Approximately fifteen minutes into the conversation between Witness #1 and Wyatt, Witness #2 heard Witness #1 say something that sounded like, "you're the one

who's pulling out a gun." Witness #2 said the argument between Witness #1 and Wyatt was getting heated so Witness #2 decided to drive toward the location.

Witness #2 said when he got near Witness #1's location, he heard Wyatt hitting Witness #1. Witness #2 heard Witness #1 scream for help. Witness #1 screamed, "Help me, [Witness #2]." Witness #2 did not hear Wyatt say anything. Witness #2 hung up the phone and called 911. Witness #2 tried to give the dispatcher directions to the location of the meeting.

Witness #2 saw Witness #1 and Wyatt in a dirt lot standing between their two blue trucks. Witness #2 was still on the phone with the dispatcher giving updates. Witness #2 was concerned Wyatt could see his vehicle, so Witness #2 drove down the roadway, approximately 300 yards, and parked. After Witness #2 parked, he heard two gunshots; Witness #2 knew it was gunfire only after the second shot was fired. Witness #2 was not sure where the shots came from but assumed Wyatt fired a weapon. Witness #2 turned his vehicle around. Approximately twenty to thirty seconds after the gunshots were fired, Witness #2 saw deputies start to arrive at the scene.

Witness #2 said the patrol vehicles had their red lights and sirens on. Witness #2 saw one of the deputies get out of his patrol vehicle and cross the road toward the dirt lot where Witness #2 had seen Witness #1 and Wyatt earlier. The deputy ran out of view and approximately five to six seconds after the deputy crossed the road, Witness #2 heard six or seven gunshots. Witness #2 did not know who fired. Witness #2 saw what appeared to be flashlights in the foliage to his west. Witness #2 heard shots being fired in very rapid succession a second time. Witness #2 stayed inside his vehicle.

INCIDENT AUDIO AND VIDEO

BELT RECORDING. Deputies with the San Bernardino County Sheriff's Department are equipped with belt recorders. All belt recordings submitted were reviewed in their entirety.

Deputy Michael Sellers

Deputy Sellers had a belt recorder activated during parts of the incident under review. The belt recorder was activated at the beginning of the incident under review and at the end of the incident under review. A break in the recording occurred when Deputy Sellers accidentally turned off his belt recorder. During the incident under review, another deputy reminded everyone to make sure their recorders were activated. When Deputy Sellers reached down to turn the belt recorder on, Deputy Sellers forgot he was already recording and as a result, turned the belt recorder off. Once Deputy Sellers realized the error, Deputy Sellers activated his belt recorder again.

Belt Recording Part 1

The recording was approximately 1 minute and 22 seconds in length. Deputy Sellers could be heard asking, "Hey, you got this?" and then saying he was going to do something with his car. Radio traffic can be heard. Someone over the radio said, "The female has multiple shots." There are sounds of running and a firearm being loaded. Deputy Sellers could be heard saying, "Coming in."

Belt Recording Part 2

The recording was approximately 6 minutes and 15 seconds in length. The recording covered the time period after the shooting took place to when medical personnel arrived at the scene.

Deputy Tyler Detrinidad

Deputy Detrinidad had a belt recorder activated during part of the incident under review. The recording was approximately 5 minutes and 18 seconds in length. The recording covered the time period of Deputy Detrinidad attending to Witness #1 after she was shot by Wyatt to when medical personnel arrived at the scene.

Deputy Roger Alfaro⁶

Deputy Alfaro had a belt recorder activated during part of the incident under review. The recording was approximately 15 minutes and 47 seconds in length.

Deputy Stucki can be heard saying there is a female victim down and the male subject is unknown. Deputy Stucki indicates he may have struck the male. Deputy Stucki says the suspect is walking into the desert and asks whether 40 King is available. The dispatcher says fire is staged and asks to be told when they are clear to go in. Sirens are heard on the recording. Dispatch asks whether the suspect on the shots fired call is outstanding and whether they have an outstanding vehicle. Dispatch says the reporting party is on the line.

Sergeant Hurtado can be heard on the radio verifying the location. Deputy Stucki confirms the location for Sergeant Hurtado and tells him the subject foot bailed southbound from the deputies' location and may be hit. Deputy Detrinidad says the female is still breathing but is wounded. Deputy Alfaro can be heard asking who shot

⁶ The summary of Deputy Alfaro's belt recording will only cover from the beginning of the recording through the point deputies handcuff Wyatt.

her. Deputy Stucki says that as soon as he pulled up, the suspect shot her twice. Deputy Detrinidad says it looks like she was shot four times.

An unknown deputy is heard yelling, "Show me your hands right now. Who's got a light?" Deputy Stucki says he has a light. Sergeant Hurtado says, "Light him up. Light him up." Deputy Stucki can be heard yelling, "He's right behind the bush straight in front of my light. He's running." Deputy Alfaro says, "He's wearing a plaid shirt." Deputy Alfaro yells out "Sheriff's Department." Minutes later, an unknown deputy can be hearing yelling out "Sheriff's Department."

Deputy Stucki can be heard telling Sergeant Hurtado to keep going east and that he was going to stay a little bit west. Deputy Stucki yells out "Sheriff's Department." One gunshot can be heard after that announcement. Deputy Alfaro asks, "Where's he at?" Multiple gunshots can be heard. An unknown deputy yells out "Show me your hands." Additional gunshots are heard on the recording. Deputy Alfaro then says, "I'm out."

Deputies can be heard running. An unknown deputy yells out, "Motherf**ker, show us your hands. Get on the ground." Multiple deputies can be heard yelling, "Hands. Hands. Let me see your hands." Deputy Alfaro yells, "Don't reach for nothing. Do not reach for nothing." Another deputy yells, "Show me your hands." A deputy says, "Cuff him. Cuff him." Deputy Alfaro advises, "One detained." Deputy Stucki says, "I got a gun." Sergeant Hurtado can be heard on the recording advising dispatch they have one in custody and requesting another ambulance.

Sergeant Mauricio Hurtado

Sergeant Hurtado did not have a belt recorder activated during the incident under review.

CRIME SCENE INVESTIGATION

A black Smith and Wesson 9mm, Model M&P 9 Shield, handgun was located on the ground in the desert south of Wyatt's body.

DECEDENT

AUTOPSY. Witness #4, Forensic Pathologist for the Office of the Riverside County Sheriff-Coroner, conducted the autopsy of Ray Wyatt on May 23, 2018. Witness #4 determined the cause of death was gunshot wounds of the torso.

Gunshot Wound of Chest:

There was a gunshot wound located on the left aspect of the chest, 15 inches below the top of the head and 3 inches left of the midline. There was an irregular partial exit gunshot wound located on the central chest, 15 inches below the top of the head and in the midline. The projectile passed through the soft tissue musculature of the underlying chest wall, focally fractured the second rib medially at the level of the sternum, continued across the midline and terminated in the soft tissue of the right lateral chest wall. The path of the projectile was front to back, right to left with minimal deviation upward or downward.

Gunshot Wound of Left Lateral/Mid Axillary Chest Wall:

There was an entrance gunshot wound located 16 inches below the top of the head and 3.5 inches below the left axilla, in the left mid axillary line. The projectile entered the left lateral chest wall, passed through the pericardial sac, left hemidiaphragm, and fragmented into multiple small pieces. Associated with this gunshot wound was fracture of left lateral ribs, six, and seven, 1650 milliliters of liquid blood in the left chest cavity, and defects of the left hemidiaphragm and pericardial sac. The path of the projectile was left-right, back-front, and downward.

TOXICOLOGY. Blood, vitreous, and urine samples were collected from Wyatt during the autopsy.

Toxicology results for the **Blood** sample were listed as follows:

- Ethyl Alcohol - Less than 0.010% (W/V)
- Fluoxetine – 0.132 mg/L
- Norfluoxetine – 0.457 mg/L
- Trazodone – 0.059 mg/L

Toxicology results for the **Urine** sample were listed as follows:

- Ethyl Alcohol – 0.000% (W/V)
- Fluoxetine – 0.202 mg/L
- Norfluoxetine – 0.745 mg/L
- Trazodone – 0.187 mg/L
- Cannabinoids – Detected
 - 11-Carboxy-Delta-9-THC – 0.014 mg/L

Toxicology results for the **Vitreous** sample were listed as follows:

- Ethyl Alcohol – 0.000% (W/V)
- 6-Panel Drug Screen – None detected

CRIMINAL HISTORY. Wyatt has no known criminal history.

DE-ESCALATION

The deputies involved in the incident under review were faced with an extremely violent suspect. The presence of a law enforcement officer did not prevent Wyatt from shooting Witness #1 multiple times. Nevertheless, even though the situation had escalated quickly, deputies did attempt to de-escalate the situation with verbal commands when the opportunity presented itself. Deputies identified themselves as "Sheriff's Department." Deputies also yelled multiple times for Wyatt to show his hands. Sergeant Hurtado heard someone order Wyatt to drop the gun. At no time did Wyatt comply with the deputies' commands.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a)⁷ Should the arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense or to use reasonable force to effect that arrest. (*Id.*) An arrestee has a duty to refrain from using force or any weapon to resist lawful arrest, if he knows or should know that he is being arrested. (Penal C. §834a.)

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. Both of these code sections are pertinent to the analysis of the conduct involved in this review and are discussed below.

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Penal Code §196 states that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are charged with a felony and who are fleeing from justice or resisting said arrest. Application of the section is broader than on its face; formal written charges are not required. (*People v. Kilvington* (1894) 104 Cal. 86, 92.) When a police officer has probable cause to believe that the suspect he is attempting to apprehend "has committed a crime involving the infliction or threatened infliction of serious physical harm" to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.)

⁷ All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

The relevant criminal jury instruction, as written by the Judicial Council of California, is set forth in CALCRIM 507 (“Justifiable Homicide: By Public Officer”). As it may be relevant in this case, a justifiable homicide by a peace officer requires finding a that the police officer acted as follows:

- (1) while arresting a person charged with a felony who was resisting arrest; while overcoming actual resistance to some legal process; or while performing any legal duty, and
- (2) the officer had probable cause to believe that the decedent posed a threat of death or great bodily injury either to the defendant or to others.

(CALCRIM 507)

No variation of the word “reasonable” appears in Penal Code §196, but the principle as applied necessarily requires that an officer’s conduct be reasonable. A homicide is justifiable under Penal Code §196 when the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349.) This standard under Penal Code § 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. Whether police actions are reasonable under Penal Code section 196 depends on the facts and circumstances known to the peace officer at the time of the arrest. This rule applies even if subsequent investigation reveals the suspect was not guilty of the suspected felony. (*Kilvington, supra*, 104 Cal. at 93.) Similarly, when a police officer reasonably believes a suspect may be armed, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment, the requirements of Penal Code § 196 are satisfied. (*Martinez v. County of Los Angeles, supra*, at 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.)

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

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

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger.

(CALCRIM 505.)

"Imminence is a critical component of both prongs of self-defense." (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. "An imminent peril is one that, from appearances, must be instantly dealt with." (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich* (9th Cir. 1994) 39 F. 3d 912, 915.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (*Id.*, see also CALCRIM 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 348.) The court in *Scott* explained:

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

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

REASONABLENESS. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer's right to use force in the course of an arrest, stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment's "reasonableness" standard. (*Graham v. Conner* (1989) 490 U.S. 386, 395.)

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

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

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) When considered in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.) To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

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

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

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

under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone

facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide "zone of protection" when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.'

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. "[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed." (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham [v. Conner]* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed "lethal force" the instrumentality must be force that "creates a substantial risk of death or serious bodily injury." (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject's mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.)

Failure to pass-muster under *Graham* can deem the use of non-lethal force as "excessive" and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed "excessive" nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

ANALYSIS

On the evening of May 21, 2018, Witness #1 agreed to meet her ex-boyfriend, Ray Wyatt, at the intersection of La Contenta Road and Yucca Trail, to return some of Wyatt's property. Witness #1 called Witness #2, a friend and co-worker, and asked Witness #2 to monitor her meeting with Wyatt. Witness #1 said she would keep her phone line open and Witness #2 could mute his phone so he could listen to the conversation. Witness #1 was nervous about meeting Wyatt because of a recent domestic violence incident. As Witness #2 listened to Witness #1 and Wyatt talk, Witness #2 heard the two arguing. Witness #2 heard Witness #1 say something about Wyatt pulling a gun which caused Witness #2 to become concerned the meeting would become violent. Witness #2 hung up his phone and called 911 for help.

On May 21, 2018, at around 8:19 in the evening, deputies from the San Bernardino County Sheriff's Department, Morongo Basin Station, responded to the area of La Contenta Road and Yucca Trail in reference to Witness #2's 911 call reporting a suicidal subject possibly armed with a gun. Deputy Robert Stucki was the first deputy to arrive. As he pulled up in his patrol vehicle, Deputy Stucki saw Witness #1 and Wyatt standing near two blue pickup trucks. When the headlights on Deputy Stucki's patrol vehicle illuminated Witness #1 and Wyatt, Deputy Stucki saw Wyatt pull out a gun and shoot Witness #1. Deputy Stucki immediately exited his patrol vehicle and fired his duty weapon at Wyatt. Deputy Stucki put out "shots fired" over the radio. Wyatt ran into the desert.

During this time, Deputy Tyler Detrinidad arrived at the scene. Deputy Stucki and Deputy Detrinidad formulated to help Witness #1. Deputy Detrinidad ran up to Witness #1 and dragged her body back toward the patrol vehicles as Deputy Stucki provided cover. Deputy Detrinidad started to render medical aid to Witness #1 who had suffered multiple gunshot wounds. A short time later, Deputy Roger Alfaro, Deputy Michael Sellers, and Sergeant Mauricio Hurtado all arrived at the scene to assist. Deputy Stucki advised the other deputies Wyatt had pulled out a gun and shot Witness #1. Deputy Stucki said he fired at Wyatt but was unsure whether he struck Wyatt. Deputy Stucki,

Deputy Sellers, Deputy Alfaro, and Sergeant Hurtado, armed with Mini 14 rifles, quickly formulated a plan to go out into the desert and look for Wyatt. Deputy Detrinidad stayed behind with Witness #1.

As the deputies were walking out into the desert, Deputy Stucki spotted Wyatt behind a bush. The deputies yelled out, "Sheriff's Department" and chased after Wyatt. Wyatt had a gun in his hand. The deputies ordered Wyatt to show his hands and drop the gun, but Wyatt would not comply with the commands. Wyatt started swinging his arms and raised the gun up towards the deputies. One of the deputies yelled "gun" and the deputies started firing at Wyatt. Wyatt took off running and the deputies briefly lost sight of Wyatt. Shortly thereafter, deputies saw Wyatt start to run again and then fall to the ground.

In this case, Deputy Stucki, Deputy Alfaro, Deputy Sellers, and Sergeant Hurtado each had an honest and objectively reasonable belief that Wyatt posed an imminent threat of serious bodily injury or death. As soon as Deputy Stucki pulled up to the incident location in his patrol vehicle, Deputy Stucki saw Wyatt pull out a handgun and shoot Witness #1 multiple times. Deputy Stucki immediately drew his weapon and started firing at Wyatt knowing that he needed Wyatt to retreat if there were to be any hope of helping Witness #1 who was lying injured on the ground. Wyatt started to retreat but then turned towards Deputy Stucki and extended his arm with a gun in his hand. Wyatt had already exhibited a brazen disregard for human life by shooting Witness #1 in front of a sheriff's deputy. Fearing for his life and fearing for Witness #1's physical safety, Deputy Stucki continued to fire until Wyatt completely retreated and Deputy Stucki lost sight of Wyatt.

When Deputy Alfaro, Deputy Sellers, and Sergeant Hurtado arrived at the scene to assist, Deputy Stucki advised them of what had transpired. The deputies understood Wyatt was an attempted murder or murder suspect who was armed, extremely dangerous, and on the run. Wyatt clearly posed an immediate threat to the deputies. Given the fact Wyatt's exact whereabouts were unknown, the deputies realized Wyatt also posed a threat to civilians in nearby homes, civilians that may be driving along the road, and other deputies who may be responding to the scene. In addition, the possibility that Wyatt could circle back and continue shooting at Witness #1 and the deputies also meant Wyatt continued to pose a threat to Witness #1. Therefore, the deputies knew they needed to act quickly to apprehend Wyatt.

When the deputies saw Wyatt in the desert, Wyatt was still armed with a gun. Despite repeated commands to show his hands, Wyatt continued to swing the gun in his hand and raised the weapon up toward the deputies. Deputy Stucki, Deputy Sellers, Deputy Alfaro, and Sergeant Hurtado feared for their lives and the lives of their partners. Wyatt failed to follow the deputies' commands to show his hands. Deputy Stucki, Deputy Sellers, Deputy Alfaro, and Sergeant Hurtado each had an honest and objectively reasonable belief that Wyatt intended to shoot and possibly kill one or more of the deputies. Wyatt had just gunned down Witness #1 in front of a law enforcement officer and fled on foot to avoid arrest. There was no reason to question Wyatt's willingness to

shoot and kill the deputies at the scene. Under all those circumstances, it was objectively reasonable for Deputy Stucki, Deputy Alfaro, Deputy Sellers, and Sergeant Hurtado to believe Wyatt posed an immediate and extremely serious threat not only to their physical safety but also the safety of Witness #1 and civilians in nearby homes or passing vehicles. Thus, the decision by Deputy Stucki, Deputy Alfaro, Deputy Sellers, and Sergeant Hurtado to use deadly force was justified.

CONCLUSION

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

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