



PUBLIC RELEASE MEMORANDUM

Date: March 22, 2021

Subject: **Fatal Officer-Involved Incident**

Involved Officer: Officer Matthew Hall,
Chino Police Department

Involved Subject: Gary Hardy, Jr. (DOB 06/20/1979)
Subject's Residence: Chino, CA

Incident Date: July 30, 2020

Case Agent: Detective Nicolas Craig
San Bernardino County Sheriff's Department

Agency Report #: 602000133

DA STAR #: 2020-56286

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PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The case agent for this submission was SBCSD Detective Nicolas Craig.

The submission reviewed included the following: reports of law enforcement witnesses, reports summarizing the entire investigation, transcripts of interviews of involved law enforcement, police dispatch audio recordings, officer body-worn camera (BWC) recordings, civilian surveillance camera video recordings, reports summarizing video recordings, audio recordings of law enforcement and civilian interviews, law enforcement photographs, and scientific investigation reports.

FACTUAL SUMMARY

On July 30, 2020, at approximately 3:58 p.m., Chino Police Department (CPD) Officer Matthew Hall fired his duty weapon at 41-year-old Gary Hardy, Jr., in the City of Chino. Mr. Hardy suffered two gunshot wounds as a result and died at the scene. No law enforcement officers sustained physical injury.

The series of events that culminated in this officer-involved shooting was initiated by Mr. Hardy, who called the CPD dispatch line at 3:43 p.m. Mr. Hardy requested that an officer respond to his location because he was receiving threatening messages on his phone. Mr. Hardy stated that organized crime may be involved and that they were able to read his text messages. Mr. Hardy was asked multiple times to come to the front of the police station, but Mr. Hardy declined. Mr. Hardy stated he was afraid to come to the station and appear to be "snitching." Mr. Hardy stated that he was already parked about 500 yards south of the station and this was as close as he wanted to get. A few minutes after Mr. Hardy's phone call, Officer Hall was assigned to make contact with Mr. Hardy; a CPD dispatch operator alerted Officer Hall to Mr. Hardy's complaint and location.

Approximately seven minutes after being dispatched, Officer Hall made contact with Mr. Hardy at a rear business parking lot located at 12460 10th Street in Chino. There were no other people present in the parking lot at the time. Mr. Hardy was in a vehicle matching the description given to CPD dispatch. Initially, Officer Hall spoke to Mr. Hardy through the open driver's window of his marked black and white CPD patrol unit. Mr. Hardy confirmed that he was the person who called for help, so Officer Hall parked his patrol unit and got out. Officer Hall walked towards Mr. Hardy as Mr. Hardy sat in his truck; they spoke to each other through Mr. Hardy's open driver's window. Mr. Hardy told Officer Hall that people were sending text messages threatening to kill his family. Officer Hall asked Mr. Hardy who had sent him those messages and what their number was. Before Mr. Hardy was able to give that information, Officer Hall turned away from Mr. Hardy and reached inside his patrol unit to turn on the patrol unit's air conditioning.

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As Officer Hall returned to face Mr. Hardy again, Mr. Hardy stepped out of his truck with a 10-inch fixed-bladed knife in his right hand and a rifle bolt in his left hand. Mr. Hardy stepped towards Officer Hall and said, "sorry, man." At the time, Officer Hall believed that Mr. Hardy would be presenting the officer his cell phone. Without noticing what was in Mr. Hardy's hands, Officer Hall said, "It's alright." But When Officer Hall saw that Mr. Hardy instead had a large knife, Officer Hall drew his duty weapon with his right hand and pointed it at Mr. Hardy. Mr. Hardy, took a few steps backwards and away from Officer Hall. Officer Hall also took a few steps backwards and away from Mr. Hardy. Officer Hall told Mr. Hardy to "put it down." Officer Hall continued to step backwards, but Mr. Hardy began to step towards the officer and said, "kill me." Officer Hall repeated himself and told Mr. Hardy to "put it down." Mr. Hardy continued to step towards Officer Hall and again stated, "kill me." Officer Hall was by this time able to radio to his dispatch, "he has a knife." Mr. Hardy repeated, "kill me" while appearing to quicken in his steps toward the retreating officer. Without further delay, Officer Hall fired his weapon at Mr. Hardy. Officer Hall believed Mr. Hardy to be approximately 10 to 15 feet away at the time. Mr. Hardy fell to the ground and onto his right side. Officer Hall immediately attempted to radio, "shots fired, shots fired."

Approximately nine seconds passed between the time Mr. Hardy first stepped out of his truck, and the time that Officer Hall first fired his weapon at Mr. Hardy.

Just as Officer Hall fired his weapon and Mr. Hardy fell to the ground, Officer Frank Wilson and Corporal David Thompson arrived on scene. Corporal Thompson radioed "shots fired" and both he and Officer Wilson got out of their marked CPD patrol unit. Corporal Thompson and Officer Wilson quickly drew their pistols and pointed them at Mr. Hardy as he lay on the ground. Initially, it appeared to Corporal Thompson and Officers Hall and Wilson that Mr. Hardy still had his knife and was reaching for it. Corporal Thompson, Officers Hall and Wilson all gave Mr. Hardy commands to drop his knife. Corporal Thompson and Officers Hall and Wilson took cover behind another vehicle in the parking lot as additional officers arrived at their location.

Less than five minutes after Officer Hall fired his weapon, a team of eight or nine CPD officers approached Mr. Hardy behind a wall of three ballistic shields. Mr. Hardy's knife was noted at his feet and the rifle bolt was under him; both of those weapons were moved away from their original position on the ground as a safety precaution. Mr. Hardy was handcuffed and officers immediately began applying first aid. A few minutes later, Chino Valley Fire Department (CVFD) medics arrived and took over administering life-saving measures. Mr. Hardy succumbed to his injuries, however, and was pronounced dead at the scene at 4:39 p.m.

The case agent, with the assistance of a SBCSD Crime Scene Specialist, processed the scene and collected evidence. After an examination of the scene and Officer Hall's weapon, it was determined that Officer Hall fired his Sig Sauer P320 RX, 9mm semi-automatic pistol four times during this lethal force encounter.

A SBCSD Forensic Pathologist determined after an autopsy that Mr. Hardy suffered two gunshot wounds to the right shoulder, both with a front to back trajectory. Only one of the wounds was

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determined to have been fatal. The forensic pathologist opined that the fatal gunshot would have caused Mr. Hardy's death within minutes.

STATEMENTS BY LAW ENFORCEMENT OFFICERS¹

Officer Matthew Hall gave a voluntary statement to SBCSD Detectives Craig and Eric Dyberg, in the presence of Officer Hall's attorney on August 4, 2020, almost five days after the shooting incident. Officer Hall was permitted to review his BWC video footage of the incident prior to his interview. At the time of the shooting incident, Officer Hall was 34-years-old and had been a California peace officer for approximately seven years. Officer Hall served the last three years at CPD. This was Officer Hall's first officer-involved shooting.

During his contact with Mr. Hardy, Officer Hall drove a marked black and white CPD patrol unit and wore a department-issued uniform. Officer Hall's uniform included black pants, a short-sleeved shirt with CPD patches on both shoulders and a black tactical vest. The tactical vest bore a CPD badge on the left chest area. The word "POLICE" and the officer's name appeared in distinctive white lettering across the right chest area of the vest. The word "POLICE" also appeared in large white block letters across the back of the officer's vest. During the shooting, Officer Hall carried a department-issued Sig Sauer, model P320, 9mm Luger caliber semi-automatic pistol that the officer had previously loaded with 22 rounds.

Additional relevant portions of Officer Hall's statement can be summarized as follows:

Officer Hall was the primary unit dispatched to respond to Mr. Hardy's call for service. Officer Hall understood the call involved a reporting party (Mr. Hardy) who received text messages threatening to kill him, was being followed or that someone was listening to his phone calls. Officer Hall was also informed that the threats may have been associated with organized crime. Officer Hall stated that this type of call, while "weird," was actually "fairly common."

Officer Hall estimated that it took approximately five to ten minutes to make contact with Mr. Hardy. While driving to the scene, Officer Hall sent a text message to another officer stating: "It makes me want to mess with this guy LOL." Officer Hall explained that this message was a joke between he and the receiving officer and that Officer Hall neither planned nor wanted to get into a dispute or conflict with Mr. Hardy. Rather, Officer Hall stated that the goal of his initial response was to determine whether the caller was experiencing a mental crisis or was an actual victim of crime.

¹ Herein is a summary only. All shooting and witness officers were from the Chino Police Department (CPD). The primary investigating officers were from the San Bernardino County Sheriff's Department. However, investigation reports prepared by CPD were also submitted. All reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Gary Hardy, Jr., by name are made here for ease of reference.

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At the scene, Officer Hall recalled that Mr. Hardy was in a vehicle matching the description provided by dispatch, but that the vehicle was in a different location than originally dispatched. So, Officer Hall confirmed with Mr. Hardy that he was indeed the person who called the police and advised dispatch that he had arrived at the scene.

After getting out of his patrol unit, Officer Hall perceived Mr. Hardy to be behaving in a “totally normal” manner. Officer Hall did not suspect that Mr. Hardy was armed, nor did Mr. Hardy appear to the officer to be particularly agitated. So, Officer Hall turned back to his patrol unit to turn on his unit air conditioner. Officer Hall explained that he believed Mr. Hardy was going to grab his cell phone to show the officer the threatening text messages, but when he turned back toward Mr. Hardy, Mr. Hardy was also opening his car door, and the two men were about ten feet apart.

Next, Officer Hall recalled Mr. Hardy walked towards him, getting to within three to four feet before he also noticed Mr. Hardy clutched a large “hunting-type knife” with a six-inch blade in his right hand. To describe his feelings in this moment, Officer Hall stated, “I thought he was going to kill me.” In addition, Officer Hall stated that Mr. Hardy was physically imposing, appearing to stand at approximately six feet and six inches to the officer’s five feet and eight inches. Officer Hall immediately drew his duty weapon, took a step backwards and told Mr. Hardy to “Drop it.” Officer Hall recalled that Mr. Hardy also took a step back and put his hand up, and this indicated to Officer Hall that Mr. Hardy might have thought Officer Hall was going to shoot at him. Officer Hall stated that Mr. Hardy then continued to walk towards him. Officer Hall continued to retreat and alerted dispatch that Mr. Hardy had a knife; this was the officer’s way to communicate that the was in a “life or death situation.” Officer Hall believed that Mr. Hardy was approaching faster than the officer could retreat, and Mr. Hardy also said something to the effect of “kill me” or “shoot me” in doing so. It appeared to Officer Hall that Mr. Hardy was not going to comply with the officer’s command to drop his weapon. When it appeared that Mr. Hardy was about to run at the officer, Officer Hall fired his weapon four times.

Officer Hall explained that Mr. Hardy was between 10 to 15 feet away when he fired his weapon. Officer Hall believed that he was in danger of being immediately stabbed, disarmed and/or killed by Mr. Hardy. Officer Hall stated that he would hold the same belief if Mr. Hardy was at an even greater distance of 21 feet. Officer Hall feared that he would fall backwards if he continued to retreat and risked further vulnerability to attack. Officer Hall explained that he had no cover or concealment at the time he fired his weapon. Officer Hall was also trained to believe that his bullet proof vest would not prevent the officer from being stabbed. Officer Hall further stated that he was trying to de-escalate the situation by giving commands and retreating. Moreover, Officer Hall explained that the situation unfolded too quickly, Mr. Hardy was too close, and the officer was faced with a lethal situation making any other less-lethal methods ineffective to save his own life.

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Officer Hall recalled that Mr. Hardy fell to the ground and dropped the knife after he was shot. However, Mr. Hardy continued to move and reach for his knife. Officer Hall recalled commanding Mr. Hardy to not reach for his weapons. As additional officers arrived with shield protection, Officer Hall recalled that Mr. Hardy was approached and medical aid was started.

Corporal David Thompson gave a witness statement to SBCSD Detectives Eric Ogaz and Stacey Spurlock at 8:53 p.m., approximately five hours after the shooting incident. Corporal Thompson was permitted to review his BWC video footage of the incident prior to his interview. At the time of the shooting incident, Corporal Thompson had been a California peace officer for approximately seven years, serving all of those at CPD. During his response to the lethal force incident, Corporal Thompson was a passenger in a marked black and white CPD patrol unit and wore a CPD department-issued uniform. Corporal Thompson carried but did not fire his department-issued pistol. Additional relevant portions of Corporal Thompson's statement can be summarized as follows:

Corporal Thompson was serving as a field training officer to Officer Frank Wilson on the day of the shooting incident. Corporal Thompson recalled that he and Officer Wilson were returning to the station when Corporal Thompson heard via dispatch that Officer Hall was responding to a call near the station. Corporal Thompson decided that he and Officer Wilson would provide a backup response to Officer Hall since he and Officer Wilson were already going to the station.

Prior to arriving at the scene, Corporal Thompson was aware that the circumstances of the call for service involved a complaint of threats and phone tapping. Corporal Thompson believed that this situation involved someone that may be experiencing a mental health crisis, who could be extremely unpredictable or even act out violently.

Corporal Thompson stated that he was still in his unit when he heard Officer Hall broadcast, "He's got a knife." Corporal Thompson and Officer Wilson raced to the scene, but the officers were still about 30 feet away from Officer Hall when shots were fired. From his vantage, Officer Thompson saw that Mr. Hardy walked toward Officer Hall, who was walking backwards. Corporal Thompson estimated that there was approximately 15 feet between Mr. Hardy and Officer Hall. Corporal Thompson explained that by walking backwards, Officer Thompson appeared to be trying to create distance between himself and Mr. Hardy. Corporal Thompson stated that officers are trained to create distance to protect themselves and others. At the time Officer Hall fired, Corporal Thompson estimated that Mr. Hardy was approximately 10 to 12 feet away from Officer Hall.

Once Corporal Thompson and Officer Wilson arrived at the scene, they got out of their patrol unit and saw Mr. Hardy on the ground. Corporal Thompson recalled that Mr. Hardy was still making "significant movement" with his left hand toward what the

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corporal believed was the knife. Corporal Thompson ordered Mr. Hardy to drop his knife three to four times. Later, Corporal Thompson saw that the item Mr. Hardy may have been reaching for earlier was a rifle bolt.

Corporal Thompson explained that while keeping Mr. Hardy at gunpoint, that he and his partners retreated to find cover and create more space between them and Mr. Hardy. Corporal Thompson stated that this was done in case Mr. Hardy resumed his attack. There was also concern for potential subsequent attack from yet undiscovered people in Mr. Hardy's truck or from undiscovered weapons on Mr. Hardy's person. The officers waited to approach with additional officers bearing ballistic shields. On approach, Corporal Thompson grabbed both of Mr. Hardy's hands and assisted Officer Wilson in applying the handcuffs. After taking Mr. Hardy into custody, Corporal Thompson immediately started life-saving measures.

Officer Frank Wilson gave a witness statement to SBCSD Detectives Dyberg and Gerardo Moreno at 7:57 p.m., approximately four hours after the shooting incident. Officer Wilson was permitted to review his BWC video footage of the incident prior to his interview. At the time of the shooting incident, Officer Wilson had been a California peace officer for approximately five years, but it was only his second day of service with CPD. During his response to the lethal force incident, Officer Wilson drove a marked black and white CPD patrol unit and wore a CPD department-issued uniform. Officer Wilson carried his department-issued pistol but did not fire it. Additional relevant portions of Officer Wilson's statement can be summarized as follows:

Officer Wilson recalled responding to the scene involving Officer Hall earlier that day. Corporal Thompson was Officer Wilson's field training officer and unit passenger at the time. While driving to the scene of the call, Corporal Thompson told Officer Wilson about the circumstances of the call. Officer Wilson understood the call to involve someone who was "51-50," who may be experiencing paranoia, erratic thoughts or was otherwise a "troubled individual." Officer Wilson further detailed that one who is "51-50" is "gravely disabled" or is a danger to themselves.

Officer Wilson stated that as he was driving to the scene, he saw Officer Hall outside of his unit and pointing his gun. At the time Officer Wilson first saw Officer Hall, Officer Wilson estimated he was about 200 to 300 feet behind Officer Hall. It appeared to Officer Wilson that Mr. Hardy was "coming at Officer Hall." Officer Wilson described Mr. Hardy as being about six feet and two inches tall, appearing taller than Officer Hall. Officer Wilson stated that he sped up towards Officer Hall because he knew it was a serious situation and it appeared to him that Mr. Hardy "was charging towards Officer Hall" with intent "to cause some physical harm."

Officer Wilson stated that as soon as he arrived at Officer Hall's location, he got out of his patrol unit. Immediately, Officer Wilson drew his gun out of concern for Officer Hall's safety and because it was not apparent what kind of weapon Mr. Hardy had. Officer Wilson believed that Mr. Hardy had to have had a weapon based upon Mr.

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Hardy's physical demeanor in the way Mr. Hardy advanced on Officer Hall. Officer Wilson did not hear any gunshots, but did see a window shatter behind Mr. Hardy and Mr. Hardy slump over and fall. By the time Officer Wilson got out of his patrol unit and approached, Mr. Hardy was on the ground. As Mr. Hardy lay, Officer Wilson could see a metallic object in Mr. Hardy's left hand. Later, Officer Wilson recalled that Mr. Hardy was grabbing at the metallic object and that he and another officer ordered Mr. Hardy not to touch it. At the time, Officer Wilson believed that the object could be a baton or an "improvised shooting device."

Officer Wilson did also recall hearing Corporal Thompson or Officer Hall issue a command to the effect of "don't touch the knife, put the knife down, or get your hands off the knife." Later, after shifting his position to move closer to Officer Hall, Officer Wilson also noticed a knife lay about an inch or two away from Mr. Hardy's feet. Officer Wilson described the knife as a fixed bladed knife with a six to seven-inch blade and a three to four-inch handle.

Officer Wilson stated that he, Corporal Thompson and Officer Hall took cover and didn't approach until a plan was in place. Officer Wilson stated Mr. Hardy was perceived as a threat because Mr. Hardy had a knife within his reach. Officer Wilson also considered the possibility that Mr. Hardy had other weapons. Later, Officer Wilson stated that he approached Mr. Hardy with additional officers. During that approach, Officer Wilson recalled Corporal Thompson grabbing Mr. Hardy's hands and that Officer Wilson handcuffed Mr. Hardy.

Additional CPD Personnel. No other CPD personnel were interviewed by SBCSD detectives. With the exception of the interviewed officers noted above, CPD personnel submitted reports regarding their involvement at the scene of the lethal force encounter and the subsequent investigation. CPD's investigation included reports of CPD's initial response to the scene including medical aid, CPD's contacts with Mr. Hardy's family and girlfriend, canvassing the immediate surrounding area for witnesses, taking witness statements, identification and collection of available surveillance video and notation of photographs taken.

CPD Officer Sajit Singh reported that when he arrived at the scene, Corporal Thompson and Officers Hall and Wilson still had their guns pointed at Mr. Hardy as Mr. Hardy lay on the ground. Officer Singh also stated that he later watched officers approach Mr. Hardy with shields and move Mr. Hardy several feet away from where he lay initially. Then, Officer Singh stated that medical aid was administered. As he stood by, Officer Singh stated that he had to move the rifle bolt inches away from its original location to prevent it from becoming contaminated with blood.

CPD Officer George Cortes reported that he was a part of the team of officers that approached Mr. Hardy after the shooting incident. Officer Cortes stated that prior to approach he saw the knife at Mr. Hardy's feet and that he pushed the knife a few feet away from Mr. Hardy. Mr. Hardy was subsequently handcuffed.

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CPD Sergeant Cloke reported on his immediate response and management of the scene, including an interview he conducted with Officer Hall. Prior to Officer Hall's departure from the scene, Officer Hall told Sergeant Cloke that he fired three to four shots in a southbound direction and heard glass break as he did so. Officer Hall explained that when he fired his weapon, he was in a position north of where Mr. Hardy lay on the ground. Officer Hall also told Sergeant Cloke that as he fired he was walking backwards and away from Mr. Hardy.

CVFD personnel were allowed into the scene without staging delay. Two CVFD medic teams arrived at the same time and took over life-saving measures already being applied by CPD officers. CVFD had CPD officers remove Mr. Hardy's handcuffs. CVFD personnel found that Mr. Hardy was unresponsive, unconscious, not breathing and with visual fixation. CVFD personnel noted two gunshot entry wounds in Mr. Hardy's upper right shoulder and no exit wounds. While at the scene, a CVFD medic noted seeing an unsheathed nine to 10-inch "hunting or combat knife" on the ground behind him as he administered aid. CVFD attempted to revive Mr. Hardy for approximately 25 minutes, before they consulted a medical doctor from Chino Valley Medical Center (CVMC). The CVMC doctor pronounced Mr. Hardy's death and CVFD ceased all further treatment at the scene. The case agent determined that CVFD personnel arrived at the scene at 4:03 p.m. and that Mr. Hardy's death was pronounced at 4:39 p.m.

SBCSD Criminalists were tasked with examining a gunshot residue particle (GSR) test applied to Mr. Hardy's hands. No identifiable GSR was detected. SBCSD Criminalists were also asked to test the weapon fired by Officer Hall during the lethal force encounter. Officer Hall's weapon was test-fired and determined to be functioning normally.

STATEMENTS BY CIVILIAN WITNESSES²

Many civilians in the surrounding area heard gunshots likely attributed to the officer-involved shooting; this incident occurred on a Thursday afternoon in an area flanked by a hospital (CVMC), a post office and surrounded by numerous businesses. However, only one civilian both saw and heard the incident.

Chino Motorists. As Officer Hall was contacting Mr. Hardy at the scene, Witness#1 of Chino was driving by in his truck. Witness #2, a 27-year-old Upland resident, was a passenger in Witness #1's truck. As both men moved through the parking lot at 12460 10th Street, Witness #2 noticed Officer Hall was engaged in what Witness #2 believed to be a traffic stop. Witness #1 drove his truck past the area north of where Mr. Hardy and Officer Hall were, and then turned south onto 10th Avenue. Witness #2 stated that he saw the shooting incident unfold from his open

² Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement and recorded statement submitted was reviewed in totality. However, only selected parts of those statements are included here. No civilian witness used the name or was previously familiar with any person involved in the lethal force encounter, unless otherwise indicated. Names are included in this summary for ease of reference only.

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passenger window and without obstruction. Witness #1 stated that he did not see the incident from the driver's seat because the view through the rear cab window was obstructed by items loaded in the truck bed. However, Witness #1 recalled that Witness #2 had his head sticking out the window and was intently watching the incident.

Witness #2, explained that he automatically paid special attention to officers on traffic stops to make sure the officer was "okay" because he has had several family members serve in law enforcement. From a distance of approximately 25-30 feet and as Witness #2 was stopped at a red light, Witness #2 stated that he saw Mr. Hardy get out of his truck with a "big knife." Witness #2 specified that the knife was an eight-inch fixed-bladed *Smith & Wesson* tactical-type knife. Witness #2 got the impression that Mr. Hardy might have known Officer Hall based on the way Mr. Hardy approached the officer. Witness #2 stated that Mr. Hardy "started to make a few forward motions that were pretty repetitive fast long-stride steps and that was when the knife came out and became a threat." Witness #2 explained that Mr. Hardy was "coming at the officer." Witness #2 recalled that Mr. Hardy looked like he was trying to stab at the officer or may have been "testing the officer to see what he was going to do." Witness #2 believed that Mr. Hardy and the officer were yelling at each other, but Witness #2 could not hear what was being said before the officer fired his weapon.

Witness #2 believed he heard five or six gunshots. Witness #2 stated that Mr. Hardy appeared to be in a "slow-start to a sprint" or "almost running" at the officer, while the officer was moving backwards. Witness #2 stated that the officer let Mr. Hardy "get pretty close to him before he shot" at Mr. Hardy; Witness #2 estimated the distance to be approximately 15 feet. Witness #2 told detectives that it looked like Mr. Hardy "wanted to die" and "suicide by police is what he was going for" based upon the way he charged the officer.

INCIDENT AUDIO/VIDEO³

Dispatch Recordings. The case agent's submission included Mr. Hardy's call to CPD and CPD's radio dispatch broadcasts before, during and immediately after the subject incident. The actual timing of these recordings was not apparent from the recordings themselves. There is some indication of timing when the audio recordings are considered alongside the dispatch logs prepared by CPD, which notes approximate timestamps for radio communications delayed only by the time to receive and record the information.

Below are summaries of select notable communications:

Mr. Hardy's call to CPD was received at approximately 3:43 p.m., and lasted for just under three minutes. The call began as follows:

³ All submitted audio and video recordings were reviewed but only selected items are summarized here.

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Operator: **Chino Police, this is [REDACTED].**
Hardy: **Ah yes, I'd like to speak with an officer, um, if I could. I've got a pretty bad situation. So...**
Operator: **What's going on?**
Hardy: **Some people... um I keep getting these threatening messages on my phone.**
Operator: **Do you know who it is?**
Hardy: **Um, I, I. I think so. I, I, I don't know if its like something provable.**
Operator: **Ok and do you live in Chino?**
Hardy: **Yeah**
Operator: **Mmm, and your address?**
Hardy: **I'm in my car, I'm in my right now, kinda outside the station. I wanted to talk to an officer and see if, if it is something I need to worry about or**
Operator: **Ok, so I can start a call for service, I need your home address.**

Mr. Hardy provided his name and contact information but informed the dispatch operator, **"I'm at a parking lot down the street from you guys."** The operator tried multiple times to get Mr. Hardy to come directly to the station, but Mr. Hardy refused. Mr. Hardy stated the following:

Hardy: **Um, I'm kinda afraid to.**
Operator: **Why would you be afraid to?**
Hardy: **Well, I'm getting all kinds of uh, like threatening messages. And some of 'em are I think, I don't know, um but possibly like organized crime or something.**
Operator: **Ok so are they telling you not to go to the police? Is that why you're afraid to come to the department?**
Hardy: **Um, yeah. I don't wanna kinda...you know, this is as close as I wanna get without looking like I'm snitching or something.**
Operator: **Oh.**
Hardy: **You know what I mean?**
Operator: **What kind of car are you in?**
Hardy: **I'm in a big white truck**
Operator: **What kind of truck?**
Hardy: **Uh, just a Ford F-150.**
Operator: **A 4-door F-150?**
Hardy: **Just my phone...No...two door. Uh oh. Cause they can hear what I, on my phone...so...**
Operator: **Ok, they can't hear what's on your phone.**
Hardy: **Well yeah, trust me, they can. They can hear. They got acc...well maybe I don't know about voice but I know definitely text [inaudible] and shit like that.**
Operator: **Ok, well I'll have an officer meet you there on Guardian Way.**

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Hardy: **Ok.**
Operator: **Ok.**
Hardy: **Yeah, I think that's it. Ok thank you.**

After the call ended, at approximately 3:49 p.m., Officer Hall was dispatched to respond. The Dispatch Operator aired the following information on the call:

5-11. There towards the station there's a R-P whose on Guardian Way in a white two-door Ford F-150. He called reference threatening phone calls he is receiving. However, he is possible 51-50. Subjects can hear his conversations on his phone. They also can read his texts and he believe its organized crime.

Officer Hall announced his arrival at 10th Street and Walnut Avenue at approximately 3:57 p.m. CPD's call log indicated that the officer's response time to the call was 13 minutes and 54 seconds. At 3:58 p.m., Officer Hall was noted to have aired, "**5-11. He has a knife.**" Three seconds later, Corporal Thompson radioed, "**Charlie-5. Shots fired.**"

Body Worn Camera Video Recordings. The case agent's submission included video recordings from cameras worn by CPD officers. The identity of the officer from whom the footage was received can be inferred by the name given to these video files as submitted as well as from the video content. The BWC recordings do include the date and time being recorded. Nineteen BWC recordings from 17 CPD officers were submitted. However, only the BWC footage of Officer Hall captured the officer-involved shooting. All other BWC footage pertained to incidents occurring after the shooting occurred. Each recording was reviewed in light of the interview given by the person to whom the recording is attributed. The submitted BWC recordings were generally consistent with the wearing-officer's interview. The timing of events noted in the dispatch recordings and companion logs appear to be consistent with the timestamps indicated by these BWC recordings.⁴

Officer Hall was noted to have been wearing his BWC device atop his right shoulder, in the area above his clavicle. It is therefore understood that the resulting footage is subject to the limitations of the camera recording mechanism and the vantage available from the camera's position; BWC footage cannot recreate what the wearing-officer perceived by his senses. With those conditions in mind, below is a summary of events captured by Officer Hall's BWC recording:

Officer Hall's video begins at approximately 3:57 p.m. Officer Hall appeared to be inside his patrol unit and Mr. Hardy could be seen sitting in his truck, with his left forearm resting on a closed driver's door. There was no immediate sound, but it does appear that Mr. Hardy and Officer Hall were interacting based upon Mr. Hardy's facial and body

⁴ The timestamps included in all submitted BWC footage are made in Universal Coordinated Time or "Zulu Time." For the ease of discussion here, all references to time in BWC footage were converted to local time.

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movements. Officer Hall then opened his unit door, got out and took a couple steps toward Mr. Hardy as Mr. Hardy continued to sit in his truck. The following exchange occurred:

Hardy: **Got a text message that they're going to kill my family.**
Hall: **From who?**
Hardy: **I'm not 100% sure.**
Hall: **What's the number?**

Mr. Hardy can next be seen reaching inside his truck to his right. Officer Hall appeared to turn around, step back toward and reach inside his patrol unit to touch a dial on the dashboard. Mr. Hardy opened his driver door at the same time that Officer Hall seemed to turn back towards Mr. Hardy.

As soon as Mr. Hardy stepped out of his truck, a rifle bolt was visible in Mr. Hardy's left hand and a knife was in Mr. Hardy's right hand. Mr. Hardy then said, "**Sorry, man**" as he took three quick steps closer to Officer Hall. Officer Hall said reflexively, "**It's alright.**" Officer Hall then quickly drew his weapon with his right hand. Mr. Hardy's momentum shifted back onto his left foot.

Officer Hall appeared to be moving backward, while his left hand appeared to be reaching towards his right chest, perhaps to reach for his radio. At the same time, Mr. Hardy took four small steps backwards then began to step toward the officer once more. Officer Hall told Mr. Hardy to "**Put it down.**" Mr. Hardy could then be heard saying, "**Kill me.**" Officer Hall repeated, "**Put it down.**" Mr. Hardy echoed as before, "**Kill me.**" Officer Hall then appeared to find his radio transmit button and aired, "**5-11. He has a knife.**"

Officer Hall resumed a two-handed grip on his firearm, just as Witness #1's truck was noted to the left of the frame moving southbound on 10th Street. Mr. Hardy again stated, "**Kill me**" before taking three steps forward at a quickening pace. Officer Hall stated, "**don't**" and fired four shots.

Mr. Hardy doubled forward after the second shot. The third shot shattered Mr. Hardy's rear truck cab window on the driver's side, and Mr. Hardy fell to the ground as Officer Hall fired his fourth shot. Immediately after the last shot, Officer Hall's left hand appeared to go to his radio again, and he stated, "**Shots fired, shots fired.**"

Approximately seven seconds passed from the time Officer Hall drew his weapon to the time he began firing at Mr. Hardy. All shots were fired within about a second.

The BWC video footage of Corporal Thompson captured Mr. Hardy falling to the ground at approximately 3:58 p.m. The BWC video footage of Officer Wilson showed Witness #1's truck pass north of Officer Hall's unit and turn southbound onto 10th Street. Both Corporal Thompson

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and Officer Wilson were out of their patrol unit with their weapons drawn and pointed at Mr. Hardy less than five seconds after Officer Hall's last shot was fired.

The BWC footage of both Corporal Thompson and Officer Wilson showed Mr. Hardy laying on his left side and moving his head and arms. Less than fifteen seconds after arriving, Officer Wilson's BWC footage showed Mr. Hardy's left hand reach toward his left knee. Officer Wilson yelled, "Hey, keep your hands off of it." In his footage, Corporal Thompson can be heard also saying, "Don't reach for it," "Let go of the knife," "Drop the knife" and "Drop what's in your left hand." Officer Hall yelled, "Don't! Let it go. Drop it."

Post-shooting BWC footage by multiple officers showed that a cluster of eight or nine officers approached Mr. Hardy simultaneously at approximately 4:02 p.m., with weapons drawn and behind several ballistic shields. On approach, Officer Wilson's BWC footage captured Officer Wilson saying, "bolt in his hands." Moments later, the same video showed Mr. Hardy's knife just under Mr. Hardy's left foot. Sergeant Chinnis's BWC video next showed Officer Wilson drag Mr. Hardy in a northerly direction by his left arm and Mr. Hardy's rifle bolt on the ground east of Mr. Hardy's legs. Both Corporal Thompson and Officer Wilson's BWC footage showed the officers working together to place handcuffs on Mr. Hardy's wrists. Several officers' BWC videos then captured Corporal Thompson turn Mr. Hardy onto his back and immediately begin chest compressions. Meanwhile, Sergeant Chinnis's BWC footage showed Officer Wilson move to the east of Mr. Hardy and kick Mr. Hardy's rifle bolt further east and against a concrete curb. Officer Wilson's BWC footage thereafter showed that Mr. Hardy's knife had also been moved to a position under Officer Hall's patrol unit rear bumper. Officer Singh's BWC footage later showed that he picked up and moved Mr. Hardy's rifle bolt from abutting the concrete curb to several inches west of the curb. Life-saving measures taken by CPD officers appeared to continue until about 4:06 p.m., when CVFD personnel took over.

The BWC footage of CPD Officers Marcus Carmona and Alejandro Gil taken nearly two hours after the shooting incident captured a phone call appearing to be broadcast by phone speaker to Mr. Hardy's girlfriend—Jane Doe. Ms. Doe spoke in a loud and frantic tone and sounded like she was crying. Ms. Doe told Officer Gil that Mr. Hardy "was so freaked out last night" and that people were out to kill them. Ms. Doe explained that Mr. Hardy dropped her off at a hotel about three hours prior to the call. Ms. Doe stated, "I know he's going to kill someone."

Surveillance Video Recordings. No civilian surveillance video recordings of the officer-involved shooting were submitted. However, the case agent did submit copied CVMC civilian surveillance video of the immediate area surrounding the shooting location. The CVMC surveillance video cannot be heard. When considered with all other video submitted, the CVMC surveillance video showed Mr. Hardy pulling into the parking lot at 12460 10th Street and parking there. The timestamp for the surveillance indicated that Mr. Hardy was parked at approximately 3:36 p.m. About 19 minutes later, Officer Hall's patrol unit can be seen driving by and parking near Mr. Hardy's truck. In the next 45 seconds, Witness #1's truck can be seen driving by the scene and turning southbound onto 10th Street. Officer Wilson's patrol unit can be seen driving to the scene immediately after Witness #1 turned onto 10th Street. Witness #1

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remained on 10th Street, stopped behind another car at a red light at the intersection of 10th Street and Walnut Avenue for about 20 seconds.

The case agent also submitted RING surveillance video footage from Mr. Hardy's residence, that appear to have been captured on the day of the shooting incident. These videos showed Mr. Hardy appearing to be pensive and pacing outside his residence throughout the morning and afternoon.

INCIDENT SCENE INVESTIGATION

The case agent managed the incident scene investigation with the assistance of a SBCSD Crime Scene Specialist. The officer-involved shooting occurred in the parking lot of a strip mall at 12460 10th Street in the Chino. This location is in an area at the northwest corner of 10th Street and Walnut Avenue. Tenth Street consisted of single-lane traffic running north-south. Walnut Avenue had an east-west orientation. A total of 620 photographs were submitted by the case agent, including photographs of the scene, evidence, and of CPD officers, vehicles and weaponry.

The black and white CPD marked patrol unit that was occupied by Corporal Thompson and Officer Wilson was parked along the west curb of 10th Street, facing south, in a position northeast of Officer Hall's black and white CPD marked patrol unit. At the scene, a small dirt embankment and short fence spanned the length of the parking lot between the lot and the sidewalk on the west side of 10th Street. Corporal Thompson and Officer Wilson's unit was parked east of the parking lot fence. Officer Hall's patrol unit was parked west of the fence and at an angle facing southwest across two parking stalls marked by east to west oriented lines. The front hood of Officer Hall's patrol unit was pointed towards the rear of Mr. Hardy's white truck. Mr. Hardy's truck was parked within a marked parking stall facing 10th Street (east) in a position south of Officer Hall's patrol unit.

A total of four 9mm fired cartridge casings (FCC's) with a headstamp of "9mm Luger FC" were identified and recovered at the scene. All four casings were clustered together on the ground within a single marked parking stall, two stalls north of Officer Hall's patrol unit and west of the hood of Corporal Thompson and Officer Wilson's patrol unit. A fired bullet was identified on the ground just below and south of the passenger-side window of Mr. Hardy's truck. No fired bullet strikes were noted in the parking lot or surrounding buildings.

The case agent described Mr. Hardy's knife as a 10-inch fixed-bladed "*Smith & Wesson* search and rescue knife," with a five-inch blade. The knife was located on the ground and under Officer Hall's patrol unit rear bumper. Mr. Hardy's body laid supine, approximately five feet and four inches east of the knife. Mr. Hardy's head laid to the north and closest to the knife. Mr. Hardy's feet laid to the south; his legs were perpendicular to parking stall lines and parallel to the concrete parking curb. The case agent noted Mr. Hardy's rifle bolt on the ground, east of Mr. Hardy's feet.

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A SBCSD Deputy Coroner Investigator conducted her investigation and retrieved Mr. Hardy's body from the scene on July 31, 2020. The Coroner Investigator noted that Mr. Hardy appeared to have two gunshot entry wounds to the right front shoulder and a possible fired bullet near the back of the right shoulder.

On August 4, 2020, the case agent processed Mr. Hardy's truck off-scene with the assistance of a SBCSD Crime Scene Specialist, who took photographs and collected evidence. The 1999 Ford F150 truck was white with a four-door cab. The truck had a white camper shell. The rear of the truck was cluttered with clothes, tools and trash. A series of fired bullet strikes appeared to enter the exterior driver-side, continued through the cabin and struck the interior of the passenger side. A second bullet strike appeared to have entered through the driver's-side rear passenger window, shattering the window. The case agent opined that the second fired bullet lodged into the camper shell from the interior. Two large fixed-bladed knives were discovered in their sheaths in the truck cabin rear passenger area. A box of rifle-sized ammunition was located in the truck bed.

DECEDENT

AUTOPSY. A SBCSD Forensic Pathologist performed the autopsy of Mr. Hardy. In his examination, the forensic pathologist found Mr. Hardy to be a 41-year-old white male, six feet tall and weighing 189 pounds. The forensic pathologist noted two gunshot wounds to Mr. Hardy's upper right shoulder. Both wounds were determined to have a front to back and left to right trajectory. One fired bullet came to rest at the scapula and the other bullet came to rest at the right kidney. In the forensic pathologist's opinion, the latter gunshot is likely to have been fatal within minutes.⁵

DECEDENT'S FAMILY. Detectives Dyberg and Moreno made contact with Mr. Hardy's parents at their home, hours after the shooting incident. Mr. Hardy's father indicated that Mr. Hardy was living in the back house at the residence with his girlfriend. Mr. Hardy's father showed the detectives RING surveillance video capturing Mr. Hardy leaving the home at approximately 2:43 p.m. on the afternoon of the shooting incident.

Earlier in the evening, Detectives Dyberg and Moreno interviewed Mr. Hardy's girlfriend—Ms. Doe. Ms. Doe told the detectives that Mr. Hardy had been out of work for six months. Ms. Doe stated that she and Mr. Hardy were lately fearful of being kidnapped and beaten to death by the mob. She explained that Mr. Hardy was so fearful that he would sleep with a knife and also carried a knife on his person. Ms. Doe described the knife as a 12-inch, "big and heavy," "Rambo Knife." Ms. Doe told the detectives that Mr. Hardy was "freaked out" the evening prior. Ms. Doe stated that Mr. Hardy mentioned something about killing himself that afternoon. The couple checked into a hotel that afternoon at approximately 3:00 p.m. Ms. Doe stated that Mr.

⁵ An autopsy protocol report was not submitted by the case agent. This summary is based upon the case agent's report of attendance during the procedure and his interview of the forensic pathologist.

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Hardy gave her \$500, told her he was going out for gas and never returned. Ms. Doe stated that it was odd for Mr. Hardy to give her that large amount of money. She also mentioned that Mr. Hardy did not bring his packed bag up to the hotel room, though he carried her bags to the room.

Ms. Doe admitted methamphetamine use with Mr. Hardy two months prior, but not any recent use. Also in months prior, Ms. Doe recalled talking to Mr. Hardy about wanting to “do something stupid” to get the cops to kill her.

CRIMINAL HISTORY. The case agent’s submission included Mr. Hardy’s criminal history, which included multiple misdemeanor convictions for drug possession, possession of drug paraphernalia and/or being under the influence of drugs, in 2005 and 2008.

APPLICABLE LEGAL PRINCIPLES

To preface, the public “expects” a responding officer to investigate a reliable 9-1-1 call, as part of the officer’s proper exercise of his duties. (*People v. Brown* (2015) 61 Cal.4th 968, 981-982.) Here, Officer Hall was summoned to the scene based upon Mr. Hardy’s call for assistance. Although Officer Hall was not engaged in the process of an arrest or detention, he maintained the right to defend himself as any other member of the public. In this instance, whether the self-defense applies to this officer-involved shooting is determined by California Penal Code sections 197 and 835a.⁶

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;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

⁶ All code sections included here pertain to the California Penal Code.

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(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required for a police officer to use lethal force under section 835a(c)(1), as stated below.

Section 835a(c)(1) specifies, *inter alia*, that a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another. Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) The “[t]otality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

While the appearance of these principals was new to section 835a for 2020,⁷ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend has “threatened infliction of serious physical harm” to the officer, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that state statutory requirements may also be satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw is still relevant.

There is one additional pertinent and new factor in section 835a that did not appear in the section previously, nor was it developed in prior caselaw: deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force by officers are set forth at subsections (b) through (d) of Section 835a, only subsection (c) pertains to conduct *not* arising from an attempted arrest or detention. In addition, the legislature included generalized findings and declarations at subsection (a) of Section 835a that are instructive. These findings and declarations lend guidance to our analysis, but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

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

⁷ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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safe and feasible to do so;

- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;⁸
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

Imminence newly-defined in the context of police use of lethal force is similar:

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

⁸ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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(Penal C. §835a(e)(2).)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (*Scott v. Henrich, supra*, 39 F. 3d at 915. 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, 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. Connor, supra*, 490 U.S. at 395.)

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

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

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

The *Graham* court plainly stated that digestion of the "totality of the circumstances" is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, "reasonableness" cannot be precisely defined nor can the test be 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.*)

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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 knife is just 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.)

The use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 8, *supra*.)

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

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

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

ANALYSIS

This report evaluates the use of deadly force by Chino Police Department Officer Matthew Hall. As indicated above, there are legal bases that must be met before the right to self-defense ripens and the use of deadly force can be deemed justified. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances made apparent by the case agent’s submission.

A use of force must be “reasonable” in order to be deemed lawful. The analytical framework for determining what is “reasonable” is included in *Graham, supra*. When considered in the context of self-defense, whether Officer Hall was justified in his use of lethal force involves a two-part

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analysis: (1) did the officer subjectively and honestly believe he needed to protect himself from an apparent, imminent threat of death or great bodily injury; and (2) was the officer's belief in the need to protect himself from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Officer Hall is stated here based upon the officer's statement and the video footage of his conduct. Prior to arriving on scene, Officer Hall stated that the goal of his contact was to determine whether Mr. Hardy was experiencing a mental crisis or was an actual victim of crime. Officer Hall stated that when he first contacted Mr. Hardy, that Mr. Hardy acted "totally normal" and did not appear agitated. Officer Hall believed that Mr. Hardy was going to show him the text messages on his phone. The video footage of the initial exchange between Officer Hall and Mr. Hardy confirms Officer Hall's recollection. However, the tone of the contact changed once Officer Hall noticed Mr. Hardy stood approximately three to four feet away with a large knife in his hand. Officer Hall described Mr. Hardy's knife as a hunting knife with a six-inch blade. In addition, Officer Hall assessed that Mr. Hardy stood imposingly at approximately six feet and six inches tall, compared to the officer's five feet and eight inches.

In immediate response to observation of a comparatively large man with a large knife and at just beyond an arm's length in distance, Officer Hall stated that he drew his weapon and pointed it at Mr. Hardy. Officer Hall believed in this moment that Mr. Hardy was going to kill him. Officer Hall recalled stepping away from Mr. Hardy and telling him to drop his weapon. Officer Hall indicated that when he radioed that Mr. Hardy had a knife, that it was his way to communicate that he was in a "life or death situation." Officer Hall perceived Mr. Hardy as ignoring his commands, quickening his steps and advancing faster on the officer than the officer could retreat. Indeed, Officer Hall recalled and his BWC footage also indicated that Officer Hall continued to retreat away from Mr. Hardy as Mr. Hardy advanced. Mr. Hardy also appeared to continue forward towards Officer Hall as gunfire erupted and until Mr. Hardy fell to the ground.

Officer Hall believed that based upon his training, a distance of 21 feet would be "a very deadly zone," within which the officer was in danger of being immediately stabbed, disarmed and/or killed by Mr. Hardy. Officer Hall explained that within 21 feet, a person with a knife could reach him, stab him multiple times and not be stopped, even if he shot at them. Officer Hall explained that he fired his weapon at Mr. Hardy at a distance of 10 to 15 feet, indicating the officer faced heightened exposure to a lethal threat. Officer Hall also explained that he had no cover or concealment at the point when he fired. Indeed, no immediate obstructions were noted between Mr. Hardy and Officer Hall in the officer's BWC footage. Moreover, Officer Hall was trained and believed that his tactical vest would not prevent Mr. Hardy from stabbing him, and that as he continued to retreat backwards, he also risked falling down and becoming especially vulnerable.

Based upon the foregoing, it is reasonable to conclude that Officer Hall bore an honest and subjective belief that he was under threat of imminent deadly harm or bodily injury at the time he used lethal force.

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Reasonable Belief of Imminent Need to Protect. More than the stated belief of Officer Hall, the totality of the submission supports a finding that Officer Hall had an objectively reasonable belief of the need to use deadly force to protect himself.

As in *Graham*, we first consider the severity of the crime at issue. It would have been reasonable for Officer Hall to believe that at the time Mr. Hardy approached with his knife that Mr. Hardy intended to assault or kill an officer in the course of performance of his duties. It is without question that Mr. Hardy was aware that Officer Hall was a peace officer; Mr. Hardy summoned police help to his location. Officer Hall asked and Mr. Hardy confirmed that the latter called for police. Officer Hall arrived at Mr. Hardy's location in a CPD-marked vehicle and wearing a CPD uniform. Subsequently, Mr. Hardy began to tell Officer Hardy about the text messages threatening to kill his family, like a victim would so relay to a police officer. Thus, at all times during this lethal force encounter, Officer Hall was acting as a peace officer in the course of performance of his duties.

The circumstances also support a finding that Officer Hall reasonably believed Mr. Hardy intended to assault or kill him. As soon as Corporal Thompson heard Officer Hall announce that Mr. Hardy had a knife via radio, Corporal Thompson believed that someone was trying to kill Officer Hall. All witnesses of Mr. Hardy's advancement on Officer Hall—Corporal Thompson, Officers Hall and Wilson and Witness #2, agreed that Mr. Hardy looked like he intended to stab Officer Hall.

The nature of the knife at play here further supports this reasonable inference. Everyone who noted seeing Mr. Hardy's knife at the scene described Mr. Hardy's knife as being "big." CVFD personnel described the knife as being a "hunting or combat" knife. AMR personnel referred to the knife as a "KA-Bar"—the name of a military-grade combat weapon. Witness #2 described the knife accurately as a "Smith and Wesson" tactical knife. Ms. Doe, though she did not see what knife was recovered at the scene, described Mr. Hardy as carrying a "big and heavy" 12-inch "Rambo knife" on his person and not unlike the 10-inch Smith & Wesson search and rescue knife discovered at the scene. Photographs of Mr. Hardy's knife showed that the metal blade bore a curved tip. The knife handle was topped with an extended guard, included rubber traction and a metal pommel to allow a firm fist grip. It is clear that Mr. Hardy's knife was not only intimidating, but perhaps was also designed for use with force. The weapon was certainly capable of being wielded to kill. Moreover, the weapon was being wielded by someone with a physical size advantage over Officer Hall. The forensic examiner indicated that Mr. Hardy was six feet tall, but both Officers Hall and Wilson believed Mr. Hardy stood in excess of six feet. It is reasonable to believe therefore that Mr. Hardy would have a notable reach advantage over Officer Hall, had their contact involved close contact.

As such, it would have been reasonable for Officer Hall to consider in his deliberative process that Mr. Hardy was committing a crime against him that is among the most serious and violent under California statute—the assault or attempted murder of a peace officer in the course of performance of his duties.

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Resistance is another essential consideration in a *Graham* analysis. As discussed above, the submission supports an overwhelming conclusion that Mr. Hardy knew he was in contact with a police officer. Mr. Hardy chose to exit his truck when Officer Hall's attention was momentarily diverted. Officer Hall had not asked Mr. Hardy to come out of his vehicle, nor did the officer say or make any actions to provoke Mr. Hardy. Yet, Mr. Hardy armed himself and approached Officer Hall. Based upon Mr. Hardy's instinctive flinch and few back-peddling steps, Mr. Hardy fully appreciated that Officer Hall had drawn his firearm and pointed it at him. As such, it can be said that Officer Hall would have reasonably believed that Mr. Hardy knew he was being contacted by a police officer who may shoot at him, obviating a need by the officer to either announce himself or issue a spoken warning that deadly force may be used. In a remarkably cool tone despite the circumstances, Officer Hall twice ordered Mr. Hardy to put down his weapon. Mr. Hardy ignored Officer Hall's orders and not only maintained the weapons in his hands, but also continued to aggress forward towards the retreating officer.

Any doubt that Mr. Hardy understood that he was in danger of being fired upon if he continued in his course can be resolved by Mr. Hardy's own demands that Officer Hall kill him. One who would refuse to obey commands given at gunpoint by a uniformed officer must be perceived to be especially dangerous, irrational and unpredictable. What's more, Mr. Hardy's armed advance despite Officer Hall's own threat of lethal force indicated to Officer Hall that Mr. Hardy intended to kill and/or be killed. The facts and evidence support a finding that Mr. Hardy was actively resisting Officer Hall at the time the officer used lethal force.

Immediacy is the "most important" *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. Officer Hall began his contact with Mr. Hardy under the presumption he was dealing with a distressed person with a criminal complaint. Instead, the officer found himself being aggressed by a large man with a large knife. The surprise aspect of this contact highlights that Officer Hall was making split-second judgments under tense, uncertain and rapidly-evolving circumstances. Officer Hall appreciated that he was well-within striking distance by Mr. Hardy, yet the officer's first impulse upon drawing his weapon was not to fire it. Rather, Officer Hall retreated and gave Mr. Hardy an opportunity to check his resolve. Mr. Hardy ignored commands and quickened his steps towards Officer Hall with a large knife grasped in his right fist. Mr. Hardy's conduct revealed that he had the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury to Officer Hall. Officer Hall only fired his weapon when it appeared that Mr. Hardy could not be persuaded to cease lethal attack against the officer. Based on the foregoing, each of the primary *Graham* factors as applied, support a finding that the use of force by Officer Hall was reasonable.

The additional considerations mentioned in §835a(a) further support a conclusion that the use of deadly force by Officer Hall was lawful.⁹ First, there is no indication that Officer Hall acted excessively. Officer Hall's conduct discussed herein appears to have been judiciously exercised;

⁹ This review does not undertake additional examination of whether agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any use of force policy was violated.

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deadly force was employed only when it became blatantly clear to the officer that he was in immediate danger of being killed. In fact, it appears that the officer was in danger of attack for moments longer than he even perceived. This is made evident by the fact that Mr. Hardy was within three to four feet of the officer with a knife in hand and Officer Hall was still under the impression that Mr. Hardy would be presenting a cell phone. Officer Hall drew his weapon only after he saw that Mr. Hardy was instead presenting a *Rambo* knife. Furthermore, Officer Hall did not fire his weapon immediately upon appreciating that Mr. Hardy was armed with a fixed-bladed weapon and despite his training that he was well within a “deadly zone.” It appears that Officer Hall remained in that deadly zone for additional time to issue commands to Mr. Hardy. Moreover, Officer Hall did not continue to fire his weapon at Mr. Hardy after Mr. Hardy fell to the ground, even though Mr. Hardy appeared to be reaching for his weapon. In spite of Mr. Hardy’s conduct, Officer Hall was judicious in the manner in which he used lethal force.

There was evidence that Officer Hall sent a message to a fellow officer prior to contacting Mr. Hardy, wherein he stated he wanted to “mess with” Mr. Hardy. Officer Hall explained that this was a joke and he did not in fact “mess with” Mr. Hardy on scene. Officer Hall’s BWC footage showed that the officer approached Mr. Hardy with professionalism, listened to Mr. Hardy’s complaint and appeared to try gathering information. Officer Hall stated that he recognized Mr. Hardy’s complaint was typical of someone experiencing a mental breakdown, but was also open to the fact that Mr. Hardy might be a bona fide crime victim. The officer’s conduct on scene supports his veracity in that statement. The officer’s message was certainly off-color and not condoned, but of greater weight was the officer’s conduct demonstrating his respect for Mr. Hardy’s dignity in the manner Mr. Hardy was approached at the scene.

Section 835a(a) does advise that lethal force be used only “when necessary to defend human life.” As discussed above with reference to the “immediacy” factor in *Graham*, Officer Hall unexpectedly found himself in a lethal situation and was only afforded seconds to respond. Approximately seven seconds passed between the time Officer Hall drew his weapon and the time he fired his first shot at Mr. Hardy. Despite this short period of time, Officer Hall *still* attempted to de-escalate the situation. Retreat was Officer Hall’s first effort in de-escalation. By creating space between the officer and Mr. Hardy and ordering Mr. Hardy to put down his weapon, Officer Hall gave Mr. Hardy an opportunity to change course. Mr. Hardy ignored Officer Hall’s commands. By advancing on Officer Hall with a large knife, Mr. Hardy dictated a circumstance where there was no further feasible, safe or reasonable opportunity for Officer Hall to de-escalate.

Officer Hall’s seven seconds delay in shooting also supports a finding that the officer considered the gravity and consequence of the lethal force situation being foisted upon him, as well as that which he ultimately had to use to defend himself. Mr. Hardy made apparent that no use of verbal commands would change Mr. Hardy’s course. It is further reasonable to infer that if having a firearm pointed at Mr. Hardy had no effect in dissuading Mr. Hardy from advancing, that any less-lethal defense would also have no material effect. Based upon their observations of the scene, both Corporal Thompson and Officer Wilson also recognized that Officer Hall’s life was in danger. Moreover, all witnesses to Mr. Hardy’s movements before the shots were fired

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consistently reported that Mr. Hardy was advancing on Officer Hall. The forensic pathologist's findings are also consistent with the witness accounts, in that Mr. Hardy's injuries indicate gunshot wounds with a front to back trajectory. The trajectory of Mr. Hardy's wounds may also indicate that Mr. Hardy was so intent in his charge that he did not turn away from the shots fired at him, or that he was so close to the officer that even if Mr. Hardy did turn, that he was still impacted from front to back.

The statements of Corporal Thompson and Officer Wilson do suggest that Mr. Hardy may have been experiencing a mental crisis based upon the complaint he relayed to the CPD dispatch operator. Indeed, that complaint was reiterated by Ms. Doe. Yet, nothing in the case agent's submission supports a finding that Mr. Hardy suffered a mental disability at the time of the shooting incident that would have rendered Mr. Hardy unable to understand and comply with commands. Rather, Mr. Hardy's conduct suggests that his interaction with a police officer was by his own volition and design. Ms. Doe described Mr. Hardy to have left her with money and without bringing his things to their hotel room, allowing an inference that Mr. Hardy was not intending to return. Less than an hour thereafter, Mr. Hardy positioned himself outside police gates, where it was likely that a police officer would be able to contact him immediately. Mr. Hardy then called CPD's dispatch line and requested that an officer meet him. When Officer Hall arrived, Mr. Hardy engaged the officer in an innocuous manner at first, perhaps lulling the officer outside of his patrol unit. The officer's BWC footage showed Mr. Hardy speaking in an even tone, without excitement or agitation. Then, when the officer was exposed and his attention diverted, Mr. Hardy made the tactical decision to approach. In this context, that Mr. Hardy prefaced his approach of Officer Hall with the words, "sorry, man" seeming to suggest that Mr. Hardy was fully aware of what was about to take place. The submission included information that Mr. Hardy may have borne some suicidal ideation prior to this incident. Immediately prior to being shot, Mr. Hardy started to say, "kill me." This review must keep in mind, however, that at the time Mr. Hardy made those demands, that he was simultaneously advancing on Officer Hall with a large knife. In those moments, Mr. Hardy was a danger to more than himself. Mr. Hardy presented himself as a lethal threat to Officer Hall, who reasonably believed Mr. Hardy intended to kill the officer.

Based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation, the use of lethal force by Officer Hall was reasonable and justifiable pursuant to Penal Code §197.

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CONCLUSION

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Officer Matthew Hall was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability based on the officer's conduct attaches in this incident.

Submitted By:

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Dated: March 22, 2021

