



PUBLIC RELEASE MEMORANDUM

Date: June 3, 2021

Subject: Fatal Officer-Involved Incident

Involved Officers: Deputy Dominick Martinez
San Bernardino County Sheriff's Department

Deputy Fernando Figueroa
San Bernardino County Sheriff's Department

Deputy Juan Frias
San Bernardino County Sheriff's Department

Involved Subject/DOB: Jose Gonzalez, 9/13/1966
Subject's Residence: Chino Hills, California

Incident Date: July 16, 2019
Incident Time: 8:00 p.m.

Case Agent/Agency: San Bernardino County Sheriff's Department

Agency Report #: DR# 221902271
H# 2019-060

DA STAR #: 2020-00-29198

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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, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department.

FACTUAL SUMMARY

On July 16, 2019 at approximately 7:45 p.m., the first of six¹ separate 911 calls was made regarding a male who was brandishing knives while walking through a residential neighborhood near Pipeline Avenue in the city of Chino Hills. The first 911 caller reported that a Hispanic male subject, who was possibly under the influence of drugs or alcohol, had come to his house with knives, tried to get inside his house, and had said he wanted to kill someone. A second 911 call came in at approximately 7:47 p.m., reporting a "really nervous" Hispanic male, in his late 40's, wearing a tan shirt and black shorts who was holding a knife, "freaking out," and was possibly on drugs. After this second 911 call was received, the two calls were linked as possibly related.

Deputies Fernando Figueroa and Dominick Martinez were dispatched to the Pipeline Avenue location regarding the male subject at approximately 7:52 p.m. At approximately 7:53 p.m., Deputy Juan Frias was dispatched to assist Deputies Figueroa and Martinez. While the deputies drove to the location, additional 911 calls were received reporting a male subject who was brandishing knives near Pipeline Avenue. The additional callers provided the location of the subject and described him as a Hispanic male, wearing a tan shirt and black shorts, and added that the subject was wearing eyeglasses and had black gloves on his hands. As the 911 calls came in, dispatch provided the updated information to the responding deputies.

At approximately 7:58 p.m., Deputies Figueroa and Martinez were heading south in their marked patrol unit on Pipeline Avenue approaching Village Drive when Deputy Martinez observed a male matching the description of the subject in the 911 calls. The male subject, later identified as Jose Gonzalez, was walking north on the east side of Pipeline Avenue with two large kitchen knives, one in each hand, and was walking in a "very aggressive manner,"² with his hands up and yelling. Deputy Figueroa stopped the patrol unit and both deputies quickly got out, pointed their guns at Gonzalez, and began ordering him to drop the knives.

¹ A total of seven 911 calls were received, however, one of them was received after deputies had already contacted Gonzalez.

² Description as given by Deputy Martinez.

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At about the same time, Deputy Frias was heading south on Pipeline Avenue approaching Rosewood Avenue when he noticed Gonzalez walking on Pipeline Avenue heading north towards Village Drive. Deputy Frias saw Gonzalez appeared to be agitated. Deputy Frias made a U-turn and parked his patrol unit in the roadway in an attempt to stop northbound vehicle traffic. Deputy Frias began to get out of his vehicle and saw Deputies Figueroa and Martinez, approximately 30-35 feet south, at the intersection of Pipeline Avenue and Village Drive. Deputy Frias saw that both deputies were out of their patrol unit with their guns drawn, ordering Gonzalez to drop the knife.³ Gonzalez stood on the sidewalk facing Deputies Figueroa and Martinez. Deputy Frias got out of his patrol unit, yelled to the other deputies to watch their cross-fire, and began running toward them. Deputy Frias pointed his handgun at Gonzalez and began ordering him to drop the knife. Deputy Martinez reholstered his handgun and retrieved the less-lethal shotgun from his patrol unit.

Deputies Figueroa, Martinez, and Frias continued ordering Gonzalez to drop the knives, but Gonzalez refused to do so. Gonzalez held a knife in each hand and repeatedly told the deputies to shoot him and kill him. One of the knives Gonzalez held had an approximate 8 ¼-inch blade; the other had an approximate 4 ¾-inch blade. While the deputies continued ordering him to drop the knives, Gonzalez stood on the sidewalk on the east side of Pipeline Avenue and continued refusing to drop the knives, repeatedly telling the deputies they would have to shoot him. The deputies told Gonzalez they were there to help him and they did not want to shoot him. Gonzalez grew increasingly agitated and aggressive. Gonzalez put a knife to his own neck and said, "Do it or I'll do it myself." Deputy Martinez yelled, "Bean bag, bean bag, bean bag," to let his partners know he was going to deploy a less-lethal bean bag round. Deputy Martinez then fired the less-lethal shotgun at Gonzalez in an attempt to get him to drop the knives. It is not clear whether this bean bag round struck Gonzalez because it had no effect on him and Gonzalez continued to refuse to drop the knives. Deputy Martinez fired a second bean bag round at Gonzalez. It is not clear if this round struck Gonzalez, but Gonzalez turned away from Deputy Martinez, and began running with the knives in his hands, southbound on the sidewalk toward Deputy Frias' patrol unit and private citizens who were stopped in traffic behind Deputy Frias' unit. Multiple civilians also stood nearby on Pipeline Avenue and Village Drive. As Gonzalez ran, Deputy Martinez fired a third bean bag round, but Gonzalez continued holding onto the knives and running southbound.

All three deputies began running after Gonzalez; Deputies Martinez and Figueroa ran on the sidewalk while Deputy Frias ran on the street. When Gonzalez reached Deputy Frias' patrol unit, he ran around the back of it, turning right and running westward into the street with both knives raised in his hands, straight toward Deputy Frias who was on foot in the middle of the roadway. Deputy Martinez fired a fourth, and final bean bag round at Gonzalez, but this round did not strike Gonzalez, and Gonzalez continued running toward Deputy Frias. Deputy Frias quickly retreated backwards but Gonzalez was gaining ground on him. Deputy Frias continued to retreat backwards and fired two rounds from his

³ It should be noted, the deputies were ordering Gonzalez to "drop the knives" because Gonzalez held a knife in each hand. From 30-35 feet away, Deputy Frias only saw one of the knives that Gonzalez held.

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handgun at Gonzalez. This did not stop Gonzalez and he continued to run toward Deputy Frias.

When Deputy Frias fired his handgun, Deputy Figueroa was running southbound on the sidewalk and did not see who had fired. Deputy Figueroa then ran around the back of Deputy Frias' patrol unit and westward into the street where he saw Gonzalez running straight toward Deputy Frias. Deputy Figueroa saw Deputy Frias retreating, but Gonzalez was gaining ground on him. Deputy Figueroa fired his handgun at Gonzalez as Deputy Frias fired his handgun at Gonzalez again. Gonzalez was struck and fell forward onto the ground. The deputies began to approach Gonzalez, who still held onto the knives. The deputies ordered Gonzalez to drop the knives. Gonzalez complied and was taken into custody. At approximately 8:11 p.m., Gonzalez was transported to Pomona Valley Hospital where he underwent emergency surgery. However, Gonzalez succumbed to his injuries and was pronounced deceased at approximately 12:29 a.m.

STATEMENTS BY PEACE OFFICERS⁴

All San Bernardino County Sheriff's Deputies who responded to the scene on July 16, 2019, wore readily identifiable Sheriff's Department approved Class A uniforms consisting of tan shirts with San Bernardino County Sheriff's Department patches on both shoulders, an American flag, a gold metal name plate with each deputy's name, a gold metal deputy sheriff badge on the right chest, and green uniform pants. Each deputy also wore duty belts equipped with the following tactical gear: Taser, rapid containment baton, HT radio, two handcuff pouches, flashlight, Glock handgun, magazine pouch containing magazines for Glock handgun, pepper spray, and a belt recorder.

On July 17, 2019, at approximately 3:27 a.m., **Deputy Brad Gomez** was interviewed by Detective D. Lara of the San Bernardino County Sheriff's Department.

Deputy Gomez was employed by the San Bernardino County Sheriff's Department as a deputy sheriff. On July 16, 2019, Deputy Gomez was on duty, assigned to patrol out of the Chino Hills Station. Deputy Gomez drove a marked Sheriff's Department patrol vehicle and his call sign was 22 Paul 12.

At approximately 7:10 p.m., Deputy Gomez attended briefing at the Chino Hills station with several other deputies, including Deputy Figueroa, Deputy Frias, and Deputy Martinez. During the briefing, a Sheriff's dispatcher broadcasted a call for service regarding a male subject who appeared to be under the influence of drugs, carrying multiple knives while walking near Pipeline Avenue and Descanso Avenue in Chino Hills.⁵ When they heard the call, they broke from briefing and Deputy Martinez and Deputy

⁴ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

⁵ San Bernardino County Sheriff's dispatch log shows this initial call for service came in at approximately 7:47 p.m.

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Figueroa requested the call for service. Deputy Gomez knew Deputies Martinez and Figueroa were riding together in one patrol unit.

Shortly after Deputies Martinez and Figueroa requested the call for service, dispatch broadcasted that an additional caller had reported his neighbor was brandishing three knives.⁶ The reporting party described his neighbor as a Hispanic male, about 40 years old, and said he was last seen wearing a tan shirt and black shorts and was carrying three knives. The caller reported his neighbor was walking on Pipeline Avenue and Glen Ridge Drive and appeared to be heading toward Chino Hills Parkway. The dispatcher broadcasted that the two calls could be related because the subject's description was similar. Deputy Gomez was familiar with the area and knew the two calls for service were in close proximity to each other.

Deputy Gomez assigned himself to assist Deputies Martinez and Figueroa and began driving to the location given in the call. Deputy Gomez heard Sergeant Rodriguez broadcast over the radio for a deputy to utilize "less-lethal." While Deputy Gomez was driving on Chino Hills Parkway, he heard Deputy Martinez advise he had arrived on scene. Shortly thereafter, he heard Deputy Martinez say over the radio that he saw the subject with the knives. Shortly after that, he heard Deputy Martinez say the subject was uncooperative and was "saying he wants to die."

Deputy Gomez had worked with Deputy Martinez for the previous six months and was familiar with his usual voice and demeanor over the radio. When Deputy Martinez put this information out over the radio, it sounded like he was in distress because he spoke loudly and quickly. This led Deputy Gomez to believe Deputy Martinez was dealing with a threat. Deputy Gomez activated his emergency overhead lights and sirens and rushed to the scene. As Deputy Gomez approached Pipeline Avenue from Chino Hills Parkway, over the radio, he heard Deputy Martinez say the "subject has been bean-bagged."

As Deputy Gomez turned onto Pipeline Avenue and headed south, he saw two marked patrol units with their lights and sirens activated stopped near the intersection of Pipeline Avenue and Village Drive. As he got closer, he saw Deputy Martinez and Deputy Figueroa walking toward the subject (Gonzalez). Deputy Martinez had the less-lethal shotgun.⁷ Gonzalez was wearing a tan shirt, black shorts, and black gloves. Gonzalez was holding a knife in each hand and was waiving the knives around in the air while walking away from the deputies. Deputy Gomez had his driver's side window rolled down as he approached, and he could hear the deputies giving loud and clear commands to "drop the knives, drop the knives, drop the knives!" Gonzalez did not obey their commands and continued to walk away from them. The area where this occurred is "one of the most highly populated areas of Chino Hills." There are apartment complexes that house

⁶ San Bernardino County Sheriff's dispatch log shows this call for service came in at approximately 7:45 p.m. This call was linked by Sheriff's Dispatch as possibly related at approximately 7:49 p.m.

⁷ Deputy Gomez knew Deputy Martinez had the less-lethal shotgun because their less-lethal shotguns are painted yellow and black.

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“thousands of” residents on Village Drive as well as multiple single-family homes along the length of Pipeline Avenue and there are several stores, restaurants, and gas stations nearby at Pipeline Avenue and Chino Hills Parkway.⁸

Deputy Gomez saw a civilian vehicle parked in the northbound number one lane of Pipeline Avenue but was not sure if anyone was inside the vehicle. Deputy Gomez also saw approximately 10 civilians standing on the corner of Village Drive and Pipeline Avenue. Deputy Gomez was afraid Gonzalez was going to attack one of the civilians, so he parked his patrol unit in front of the vehicle that was stopped in the northbound number one lane of Pipeline Avenue in order to “cut Gonzalez off and try to keep him from advancing toward the civilians.” Gonzalez was heading south on the sidewalk, on the east side of Pipeline Avenue. Deputy Gomez began getting out of his patrol unit, when he saw Gonzalez run from the sidewalk into the middle of Pipeline Avenue. Deputy Gomez heard approximately three gunshots in rapid succession. Deputy Gomez did not see from where the shots had been fired. Deputy Gomez knew Deputy Martinez did not fire the shots because Deputy Martinez still had the less-lethal shotgun.

When Deputy Gomez initially pulled up, Gonzalez was approximately 25 yards away from Deputy Gomez and approximately 10 yards away from the other deputies on scene, which included Deputy Frias. When Gonzalez ran into the street, “it was near Deputy Frias’s position.” Gonzalez was holding the knives up with both hands and it “looked like he was going to attempt to cause harm to one of the deputies.” After Deputy Gomez heard the three gunshots, he saw Gonzales fall to the ground onto his stomach in the southbound number one lane of Pipeline Avenue. Deputy Gomez saw “smoke” coming from Deputy Figueroa’s handgun. Deputy Gomez pulled out his gun and began to approach Gonzalez while holding him at gunpoint. Deputy Gomez gave Gonzalez, who was still holding onto the knives, loud and clear commands to drop the knives. Gonzalez rolled over onto his back and Deputy Gomez saw the knives appeared to be in a fixed position, affixed to Gonzalez’s gloves. Gonzalez pulled the knives out from his gloves one at a time. After Gonzalez removed the knives and dropped them on the ground, Deputy Gomez and Deputy Figueroa approached and kicked the knives away so Gonzalez was not able to reach them. Gonzalez was then placed into handcuffs and then transported via ambulance to the hospital.

On July 17, 2019, at approximately 12:51 a.m., **Deputy Dominick Martinez** was interviewed by Detective Gerad Laing and Detective Simon Demuri of the San Bernardino County Sheriff’s Department.

Deputy Martinez was employed by the San Bernardino County Sheriff’s Department as a deputy sheriff. On July 16, 2019, Deputy Martinez was on duty, assigned to patrol in the area of Chino Hills. Deputy Martinez rode as passenger with his trainee partner, Deputy

⁸ Per Google maps, the distance from the scene where Gonzalez was contacted to the shopping center, gas stations, and restaurants at Chino Hills Parkway and Pipeline Avenue is 0.1 mile.

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Figueroa, in a marked Sheriff's Department patrol vehicle. Deputy Martinez's call sign was 22 Paul 13. Deputy Martinez activated his belt recorder prior to the incident.

While in the parking lot of the Chino Hills Sheriff's station, Deputy Martinez and Deputy Figueroa reviewed the calls holding via their patrol unit's mobile data computer. Deputy Martinez saw there were two priority one calls holding, one for a subject brandishing a weapon and one for a suspicious person. Deputy Martinez explained the patrol unit's mobile data computer allows the deputies to receive calls from Sheriff's Dispatch and to receive updates regarding the calls for service. After reading the information given in the calls, Deputy Martinez asked his partner, Deputy Figueroa to ask the dispatcher to dispatch them to the call. The call was dispatched to them along with additional calls that appeared to be related. Deputy Martinez read the circumstances given in the dispatched calls and saw the subject in the calls was described as a Hispanic male adult in his 40's, wearing a tan shirt and black shorts, carrying two knives. It was reported that the male had approached multiple subjects with the knives and that the male had said he wanted to kill someone.

Deputy Martinez and Deputy Figueroa left the station and began driving to the reported location, Pipeline Avenue and Descanso Avenue. As they drove to the location, dispatch continued to provide updates to the deputies that the subject had brandished the knives to "multiple other subjects." Because they were getting calls from multiple reporting parties, Deputy Martinez knew this increased the priority of the initial call and also made the initial report more credible because multiple people were calling in fear for their lives. As they were driving southbound on Pipeline Avenue, approaching Village Drive, Deputy Martinez saw an adult Hispanic male who matched the description given in the calls. It was approximately 8:00 p.m.⁹ and although the sun was setting, there was still enough daylight that Deputy Martinez could see the male subject was wearing a tan shirt, black shorts and eyeglasses. The male subject (Gonzalez) was walking northbound on the east side of Pipeline Avenue towards Village Drive. Deputy Martinez saw Gonzalez was carrying two knives, one in each hand, and he was walking in a "very aggressive manner," with his hands up and yelling. Because the patrol vehicle's windows were rolled up, Deputy Martinez could not hear what Gonzalez was yelling.

Deputy Martinez described the location where they encountered Gonzalez as a highly populated residential area, with single family homes and apartment complexes. In addition, Pipeline Avenue intersects with Chino Hills Parkway, just north of the location. At that intersection there is a shopping center with "a lot of pedestrian traffic." Because that shopping center was very close by, Deputy Martinez knew Gonzalez could easily run to the shopping center and it would only take him about 30 seconds to reach it. Because this location was so highly populated, Gonzalez's possession of the knives and aggressive demeanor posed a greater risk to the public.

⁹ Dispatch records show Deputies Martinez and Figueroa arrived on scene at 7:58 p.m.

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Deputy Figueroa activated the patrol unit's overhead emergency lights and parked the unit on the east side of Pipeline Avenue, facing south in the northbound lane, at the intersection with Village Drive, approximately 20 feet away from Gonzalez. Gonzalez had two knives. One knife was larger than the other. The larger knife appeared to be a butcher knife and the smaller appeared to be a steak knife. Deputy Martinez immediately got out, telling his partner he was going to grab the less-lethal bean bag shotgun. When Deputy Martinez got out of his patrol unit, Gonzalez was approximately 20 feet away. Deputy Martinez told Deputy Figueroa to keep lethal coverage¹⁰ on Gonzalez because Gonzalez had knives. Deputy Figueroa stood beside the driver's side front door of the patrol unit, holding Gonzalez at gunpoint. Deputy Martinez went to the rear of the unit, opened the lift gate, removed the Velcro locking mechanism from the bean bag shotgun, and grabbed the bean bag shotgun. Deputy Martinez loaded the bean bag shotgun with four bean bag rounds.¹¹

When Deputy Martinez came back around to the passenger side of the patrol unit, Gonzalez was standing in a fighting stance with his hands up, his fists clenched tightly around the knives saying, "Shoot me, shoot me, kill me, I want to die." Gonzalez was moving around aggressively like he wanted to fight the deputies or to stab them. Deputy Martinez stood next to the open passenger side door of the patrol unit. Deputy Martinez and Deputy Figueroa gave Gonzalez multiple commands to drop the knives and told him they were not there to kill him, they were there to help him, and they did not want to shoot him. As they continued to order Gonzalez to drop the knives, Gonzalez grew more uncooperative and more agitated. Gonzalez appeared to be under the influence and was very aggressive. Gonzalez remained approximately 20 feet away from Deputy Martinez.

Deputy Martinez saw Deputy Frias arrive on scene, driving southbound on Pipeline Avenue. Deputy Frias made a U-turn and parked his patrol unit facing northbound in the northbound lane on the east side of Pipeline Avenue. Deputy Frias got out of his unit and was on foot south of Gonzalez. Deputy Martinez and Deputy Figueroa were north of Gonzalez. Deputy Frias yelled out, "Watch crossfire," just in case there was a shooting that occurred. Deputy Frias then came closer to Deputy Martinez and Deputy Figueroa.

After multiple commands to drop the knives, Gonzalez refused to drop them. Gonzalez put a knife up to his neck and said, "Please kill me." The deputies again told him they did not want to kill him and told him to drop the knives. Gonzalez did not drop the knives and took two steps toward Deputy Martinez while saying, "Shoot me, shoot me, shoot me," getting within approximately 15-feet of Deputy Martinez. Deputy Martinez knew at this distance, if Gonzalez started sprinting, he would be able to reach Deputy Martinez and stab him before Deputy Martinez could react and shoot him with his firearm.¹²

¹⁰ At gunpoint.

¹¹ Deputy Martinez explained that bean bag rounds are distinctively different than live ammunition shotgun shells. The casing around bean bag rounds is clear, allowing the observer to see the white/yellow bean bag inside. Live shotgun ammunition shells are solid brass or copper.

¹² Deputy Martinez described training he received regarding the "21-foot zone of danger." Deputy Martinez explained this training taught him that a subject armed with a sharp edged weapon, "who is within 21-feet of you,

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Deputy Martinez yelled, "Bean bag, bean bag, bean bag," to let the other deputies know he was going to fire the bean bag shotgun in an attempt to get Gonzalez to drop the knives. Deputy Martinez then fired a bean bag round, aiming for Gonzalez's center of mass (chest and stomach area), because he was "scared Gonzalez was going to stab him with the knives." When he fired the bean bag round, Gonzalez was approximately 15 feet¹³ away. Deputy Martinez did not know if this round struck Gonzalez because Gonzalez gave no reaction. Gonzalez did not drop the knives and was still holding them up and saying, "Shoot me, shoot me, shoot me!"

In his training and experience, Deputy Martinez knew it was not normal for someone who is struck with a less-lethal bean bag round to continue to be aggressive and disobey commands. Deputy Martinez fired a second bean bag round, again aiming for Gonzalez's center of mass area, from an approximate 15-foot distance. Deputy Martinez believed this round struck Gonzalez because Gonzalez jumped in the air as if he had gotten hit. Gonzalez still held onto the knives and began running southbound on the sidewalk, toward Deputy Frias's patrol unit and civilian vehicles that had stopped in traffic behind Deputy Frias's unit. Deputy Martinez could see there were people sitting in their vehicles there.

Deputy Martinez followed Gonzalez and fired a third bean bag round because Gonzalez still had the knives and was running towards the civilians who were sitting in the stopped cars. Deputy Martinez's point of aim was Gonzalez's middle to lower back. As Gonzalez ran, his body "was bladed, kind of angled facing towards Deputy Frias, [...] and I had more of like uh I would say side or back angle." Deputy Martinez saw that the third bean bag round missed Gonzalez and instead struck the brick wall just to the left of Gonzalez. Gonzalez continued to run with the knives in his hands. When Gonzalez reached Deputy Frias's patrol unit, Gonzalez ran into the street toward Deputy Frias, who was standing in the middle of the street on Pipeline Avenue. As Gonzalez ran toward Deputy Frias, Gonzalez's hands were raised even higher. Deputy Martinez fired a fourth bean bag round at Gonzalez. Deputy Martinez did not know if this bean bag round struck Gonzalez.¹⁴ After this, Deputy Martinez was out of bean bag rounds because the shotgun only held four rounds. Deputy Martinez yelled, "I'm reloading, I'm reloading" to his partners as he watched Gonzalez still running toward Deputy Frias. Deputy Martinez saw Deputy Frias fire his handgun at Gonzalez, but Gonzalez kept on running toward Deputy Frias. Gonzalez still had the knives in his hands and was now close enough to Deputy Frias that he could have reached out and stabbed him. After firing his handgun, Deputy Frias ran to the right and Gonzalez ran past him and fell to the ground in the street, close to the west curb line of Pipeline Avenue.

can advance towards you and stab you before you are able to perceive the danger, react, draw your gun, point it, and fire it." It should be noted that when asked about the distance, Deputy Martinez initially answered that believed the danger zone was 10 to 12 feet.

¹³ Deputy Martinez indicated he knew from his training that a less-lethal bean bag round could be lethal if fired at a subject from a distance of one to two feet.

¹⁴ This ballistic projectile missed Gonzalez and was found at the scene in the west gutter of Pipeline Avenue.

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Deputy Martinez did not know where Deputy Figueroa was while Gonzalez was running toward Deputy Frias because his focus was on Gonzalez and the threat he posed as he ran toward Deputy Frias.

After Gonzalez fell to the ground, he continued to hold onto the knives. The deputies gave Gonzalez multiple commands to drop the knives. Gonzalez then took both knives and threw them to his left and his right, approximately three to four feet away.¹⁵ The deputies then approached Gonzalez and Deputy Figueroa handcuffed Gonzalez. Deputy Martinez noticed a methamphetamine pipe on the ground, lying next to Gonzalez, like it had fallen out of Gonzalez's pocket. Deputy Martinez saw Gonzalez had a gunshot wound to his back and a bean bag wound to his upper chest. After placing Gonzalez into handcuffs, he was searched for other weapons. Medical aid was called. Deputy Martinez asked Deputy Figueroa to take pictures of the scene and of Gonzalez. The deputies began taping off an area to create a perimeter around the crime scene. About three minutes after they called for medical aid, the fire department arrived on scene and began treating Gonzalez.

During the encounter, Deputy Martinez used the less-lethal bean bag shotgun because he knew a taser would have been ineffective unless got closer to Gonzalez. Because Gonzalez had knives, Deputy Martinez knew he could not get close enough to Gonzalez to use a taser or a baton without running the risk Gonzalez stabbing him. Deputy Martinez used the less-lethal force option along with his commands to try to deescalate the situation by getting Gonzalez to drop the knives. When Gonzalez did not obey their commands, Deputy Martinez was scared because he believed that at any minute Gonzalez could have sprinted toward him or the other deputies and stabbed one of them. Deputy Martinez believed if he had not fired the bean bag shotgun, Gonzalez would have run toward him and tried to kill him.

On July 17, 2019, at approximately 8:29 p.m., **Deputy Fernando Figueroa** was interviewed by Detective Tramayne Phillips and Detective David Lara of the San Bernardino County Sheriff's Department.

Deputy Figueroa was employed by the San Bernardino County Sheriff's Department as a deputy sheriff. On July 16, 2019, Deputy Figueroa was on duty, assigned to patrol in the area of Chino Hills. Deputy Figueroa drove a marked Sheriff's Department patrol vehicle. Deputy Figueroa's call sign was 22 Paul 13 and he was partnered with Deputy Martinez who was his field training officer. Deputy Figueroa's duty weapon was a 9-mm Glock 17 which held a total of 18 9-mm rounds. Deputy Figueroa activated his belt recorder prior to the incident.

At approximately 7:45 p.m., after station briefing, Deputy Figueroa and Deputy Martinez got into their patrol unit where they checked the dispatch call history on the patrol unit's

¹⁵ Deputy Martinez believed one of the knives was picked up by a deputy but did not know which deputy it was.

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mobile data computer. Deputy Figueroa saw there were multiple calls, approximately two or three, which seemed to be regarding the same incident. The first call was a brandishing a weapon call reporting a subject carrying two knives, one in each hand, and saying he wanted to kill someone. In each of the calls, the subject was described as a Hispanic male adult, wearing a tan t-shirt, black pants, and glasses. The calls stated the subject was walking northbound on Pipeline Avenue from Descanso Avenue and the subject was walking through traffic saying he was going to kill people. Deputy Figueroa requested the brandishing a weapon call from dispatch so he and Deputy Martinez could respond to the call. As Deputy Figueroa drove through the gate from the Sheriff's station parking lot, he heard Deputy Frias assign himself to the call to assist.

Deputy Figueroa drove quickly to the call, concerned for the safety of the public because the subject was reported to be armed with two knives and was making threats. Deputy Figueroa was familiar with the area where the subject was reported to be. The location was surrounded by residences and nearby there were businesses. As Deputy Figueroa drove eastbound on Chino Hills Parkway, he asked Deputy Martinez how they were going to approach the subject in the call. Deputy Martinez said they would provide lethal coverage because the subject had two knives and they would wait for another deputy to assist them, and then one of them could provide less-lethal coverage for them. As they approached the intersection of Chino Hills Parkway and Pipeline Avenue, Deputy Frias passed in front of them, making a right turn onto Pipeline Avenue. Deputy Figueroa then turned right onto Pipeline Avenue and headed south. Dispatch then broadcasted that another caller had seen a Hispanic male holding two knives walking northbound on Pipeline Avenue, passing Clubhouse Way.

Deputy Martinez then said, "Hey, I think that's the subject described in the call." Deputy Martinez pointed southeast, and Deputy Figueroa looked and saw a subject on foot on Pipeline Avenue approaching Village Drive. Deputy Figueroa pulled into the northbound lanes on the east side of Pipeline Avenue where it intersects with Village Drive, stopping in front of the subject, approximately 30 to 35 feet away. Deputy Figueroa could see the subject was carrying two knives, one in each hand, and he was wearing black gym gloves. Deputy Figueroa opened his door, drew his weapon, and pointed it at the subject (Gonzalez). Deputy Figueroa told dispatch they were on scene. Deputy Figueroa started giving Gonzalez commands, "Sir drop the knives, drop the knives." Gonzalez didn't follow the commands, he continued holding onto the knives while yelling and screaming, "Kill me, kill me, shoot me!" Deputy Figueroa told dispatch they had found the subject, that he had two knives in his hands, and the subject was saying, "Kill me, kill me."

Gonzalez continued holding onto the knives. Both knives were kitchen knives, one was approximately 8 to 10 inches long and the other was smaller, like a steak knife. Deputy Figueroa and Deputy Martinez continued giving him commands to drop the knives; both deputies had their weapons pointed at Gonzalez. Deputy Frias arrived in his patrol unit, made a U-turn, and pulled up facing north, stopping at the scene, south of them. Deputy

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Frias got out of his patrol unit and began approaching. Deputy Figueroa and Deputy Martinez continued telling Gonzalez to put the knives down, but he refused, saying, "No,

no, no." As the deputies continued telling Gonzalez to drop the knives, Gonzales said, "I'm not doing it." Deputy Figueroa told Deputy Martinez to get the "bean bag gun" and Deputy Martinez told him he was already getting it. They now had Deputy Frias there and he was providing lethal coverage. As Deputy Martinez was getting the bean bag shotgun, Deputy Figueroa continued telling Gonzalez to drop the knives. Gonzalez continued to refuse to drop the knives, so Deputy Figueroa told him, "Drop the knives, we don't want to hurt you." Gonzalez replied, "Shoot me, shoot me, shoot me." The deputies told Gonzalez they did not want to hurt him and to just lie down on the ground.

Deputy Figueroa looked to his right and saw Deputy Martinez with the less-lethal shotgun. Gonzalez then put a knife to his own throat and told the deputies, "Do it, or I'll do it myself." Deputy Figueroa told Deputy Martinez, "Shoot him," and then clarified and said, "Shoot bean bag!" Deputy Figueroa was scared and thought, "This guy's serious." Deputy Figueroa thought Gonzalez was going to kill himself by slicing his throat and that if Deputy Martinez fired the bean bag round, it would keep Gonzalez from slicing his throat. Deputy Martinez said, "Less-lethal, less-lethal, less-lethal,"¹⁶ and Gonzalez pulled the knife away from his throat. Gonzalez said, "Do it, shoot me!" Deputy Martinez was about to deploy a bean bag round, but Deputy Figueroa just heard a click as if the bean bag gun wasn't loaded. Deputy Martinez then loaded a bean bag round and announced again that he was going to deploy a less-lethal round before firing a bean bag round at Gonzalez. Deputy Figueroa saw the bean bag round strike Gonzalez in the chest area and saw Gonzalez move back, raise his shoulders up, and moan, "Ouch." Gonzalez then turned around and started quickly walking southbound on the sidewalk, away from them and toward Deputy Frias' patrol unit. Deputy Frias' patrol unit was parked on Pipeline Avenue, in the number two northbound lane. Deputy Figueroa saw vehicles were stopped behind Deputy Frias's patrol unit.

Deputy Figueroa followed Gonzalez, still pointing his gun at Gonzalez because he was afraid Gonzalez was going to turn around and start charging at him. As Gonzalez walked southbound on the sidewalk, Deputy Figueroa heard a second bean bag round being deployed. Deputy Figueroa did not see where the round hit Gonzalez, but Gonzalez lifted his leg to his chest and said, "Awe, you hurt me." Gonzalez then took off, still holding the knives, running southbound on the sidewalk toward Deputy Frias' patrol unit. Deputy Figueroa ran after Gonzalez, trying to make sure Gonzalez did not hurt anyone. Gonzalez then made a sharp turn to the right, behind Deputy Frias' patrol unit and sprinted westward onto the street. Deputy Figueroa heard two gunshots but could not see who fired.

¹⁶ Belt recordings reveal Deputy Martinez actually said, "Bean bag, bean bag, bean bag!"

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Deputy Figueroa then ran around the back of Deputy Frias' patrol unit onto Pipeline Avenue and saw Gonzalez was running with both knives in his hands after Deputy Frias. Gonzalez ran in a half-moon path¹⁷, toward Deputy Frias. Deputy Figueroa's focus was

on Gonzalez, but he could see Deputy Frias in his peripheral vision, running away from Gonzalez. Deputy Figueroa could not tell whether Deputy Frias was running away with his back to Gonzalez or if he was running backwards away from Gonzalez; but he could see Deputy Frias was retreating from Gonzalez as Gonzalez ran toward him. Deputy Figueroa pointed his handgun at Gonzalez and saw there were vehicles behind Gonzalez. Because of this, he was not able to fire at Gonzalez. Deputy Figueroa kept his handgun pointed at Gonzalez. Gonzalez continued running toward Deputy Frias, gaining distance on Deputy Frias, getting to within five to 10 feet of Deputy Frias.

Deputy Figueroa saw the backdrop behind Gonzalez was clear and Deputy Figueroa fired one round from his handgun at Gonzalez, but Gonzalez continued running toward Deputy Frias. Deputy Figueroa fired a second round and Gonzalez moaned and went down to the ground, falling onto one knee before going all the way down onto his stomach onto Pipeline Avenue, in the southbound lanes, near the west curb. Deputy Figueroa was approximately 20-feet away from Gonzalez when Deputy Figueroa fired his gun at him. Deputy Figueroa fired in a westward direction and was standing in the northbound lanes of Pipeline Avenue when he fired his duty weapon at Gonzalez.

Gonzalez then rolled over onto his back; Deputy Figueroa could see he was still holding onto the knives. Deputy Figueroa told Gonzalez to "get rid of your knives, throw them, get rid of your knives!" Gonzalez appeared to have had one of the knives embedded in his glove. Gonzalez took one of his gloves off and threw it to the side. Once the knives were away from Gonzalez's hands, Deputy Gomez kicked the knife that was near Gonzalez's right side away from him. Deputy Figueroa kicked the other knife away from the left side Gonzalez. Deputy Figueroa radioed, "Shots fired, shots fired." One of other the deputies called for medical aid.

Deputy Figueroa turned Gonzalez over onto his stomach and handcuffed him with his hands behind his back. They told Gonzalez medical aid was on the way. Deputy Martinez then turned Gonzalez over onto his side in a resting position. Within three to five minutes medical aid arrived and began rendering aid to Gonzalez. As the paramedics cut off Gonzalez's shirt, Deputy Figueroa saw a bullet wound to Gonzalez's right shoulder blade and a wound to Gonzalez's chest where a bean bag round could be seen stuck in the muscle area near Gonzalez's collar bone. Deputy Martinez told Deputy Figueroa to get his camera and to take pictures of the scene. Deputy Figueroa took approximately 10 pictures of the scene, including pictures of the knives, the fired cartridge casings,

¹⁷ Detectives did not ask Deputy Figueroa to clarify what he meant by "half-moon path," but video of the officer-involved shooting coupled with diagrams and descriptions from witnesses show Gonzalez initially ran due west into the street and then began heading northwest as he ran toward Deputy Frias who had stopped running south and was retreating backwards away from Gonzalez. This direction of travel could be described as a "half-moon path."

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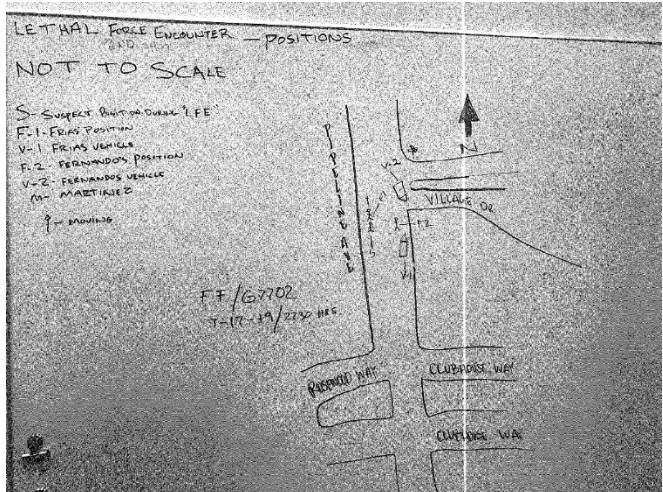
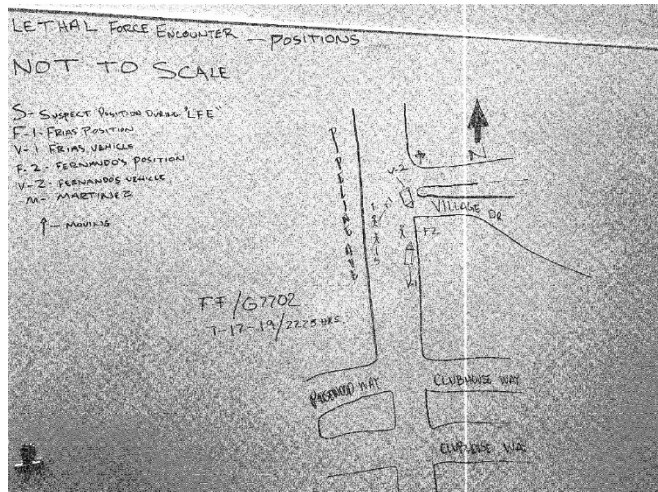
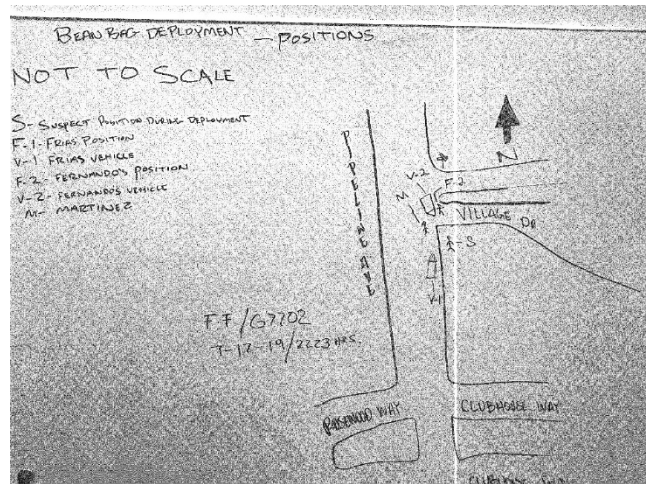
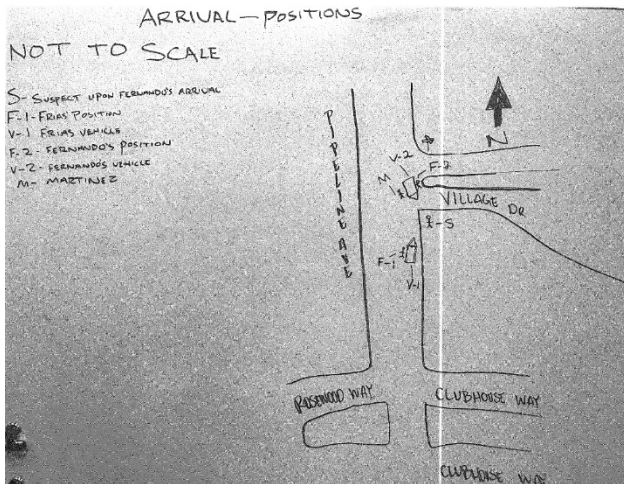
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Gonzalez's t-shirt which was cut in half by paramedics, and the bean bag round that was stuck in Gonzalez.

Deputy Figueroa drew four scene diagrams, each representing the deputies' and Gonzalez's locations at different times during the encounter.



On July 17, 2019, at approximately 4:47 p.m., **Deputy Juan Frias** was interviewed by Detective D. Lara and Detective T. Phillips of the San Bernardino County Sheriff's Department.

Deputy Frias was employed by the San Bernardino County Sheriff's Department as a deputy sheriff. On July 16, 2019, he was assigned to patrol in the area of Chino Hills. Deputy Frias drove a marked San Bernardino County Sheriff's patrol vehicle and his call sign was 22 Paul 14. Deputy Frias' duty weapon was a .45 caliber Glock 21 which held a total of 14 .45 caliber rounds. Deputy Frias activated his belt recorder prior to the incident.

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At approximately 7:47 p.m., Deputy Frias was in the parking lot at the Chino Hills Sheriff's station when he heard a call from dispatch regarding a subject, wearing a khaki shirt and black shorts, brandishing a knife on Pipeline Avenue. Deputy Frias was familiar with the reported area and was concerned about public safety because he knew the area was largely residential with single family homes and apartments and that at this time of day there would be heavy foot traffic with people out walking, going for jogs, and taking their dogs for walks. In addition to the foot traffic, there was also heavy vehicle traffic in the area. Deputy Frias also knew there was an elementary school nearby.

Deputy Frias asked dispatch to send him the call and immediately began driving to the location on Pipeline Avenue. While en route to the call, dispatch radioed the responding units that they were receiving additional calls, possibly related, reference a subject brandishing a knife. Dispatch advised the subject was last seen on Pipeline Avenue and Glen Ridge Drive. As Deputy Frias was driving southbound on Pipeline Avenue, approaching Rosewood Way, he heard someone yelling something. Deputy Frias saw a vehicle stopped in front of him facing northbound on Pipeline Avenue. The female driver of this vehicle pointed her finger north into the roadway of Pipeline Avenue, directing Deputy Frias' attention northbound. Deputy Frias looked in his side-view mirror and he saw a subject behind him approximately 25 to 30 feet away, walking on the sidewalk on the east side of Pipeline Avenue toward Village Drive. It was still daylight out and Deputy Frias could see the subject appeared to be a Hispanic male adult, wearing a khaki shirt, shorts, and he was holding a kitchen knife. Deputy Frias made a U-turn and parked his patrol unit in the middle of the intersection¹⁸ to stop northbound traffic. Deputy Frias wanted to prevent vehicles from approaching the area because of the subject who was armed with a knife.

As Deputy Frias got out of his patrol unit, he saw Deputy Martinez and Deputy Figueroa were already on scene, giving the subject (Gonzalez) commands to drop the knife. Deputy Martinez and Deputy Figueroa were standing in the roadway in front of their patrol unit on the east side of Pipeline Avenue at the intersection of Village Drive, approximately 25 feet north of the subject and approximately 30 to 35 feet north of Deputy Frias. Both deputies had their guns drawn. Deputy Frias drew his handgun and immediately ran toward the deputies, not wanting to be in the crossfire if the deputies began shooting. Deputy Frias yelled out, "Grab the less-lethal," in the hopes they could de-escalate the situation, take the subject into custody, and not have to resort to lethal force. Deputy Martinez ran to the trunk of his patrol unit and came back with the less-lethal shotgun. Deputy Frias began giving the subject commands to drop the knife. Gonzalez was "really agitated" and was raising his arms. Deputy Frias saw Gonzalez was holding a large kitchen knife but could not recall in which hand he held the knife. The blade of the knife was approximately 11 inches and was protruding from the top of Gonzalez's hand, near his thumb. Deputy Frias recalled seeing only one knife in Gonzalez's hand at this moment.

¹⁸ Crime scene photographs show Deputy Frias parked just south of the intersection of Pipeline Avenue and Village Drive.

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As the deputies all continued yelling at Gonzalez to drop the knife, Gonzalez was yelling, "Shoot me, shoot me!" Deputy Frias told Gonzalez, "Sir, I don't want to shoot you. Just drop the knife. Drop the knife." Over the radio, Deputy Frias told dispatch the subject was telling them to shoot him. Gonzalez was agitated and upset and raised both of his arms as he shouted and yelled at the deputies. Gonzalez refused to drop the knife. Gonzalez faced the deputies and at one point, Gonzalez put the knife up to his own throat, as if he was going to cut his throat. Deputy Martinez shouted, "Less-lethal, less-lethal," and then racked the less-lethal shotgun. Deputy Frias heard a shot from the less-lethal shotgun being fired. Deputy Frias saw the less-lethal projectile strike Gonzalez somewhere in the chest area.

Gonzalez then grew more agitated and began running southbound on the sidewalk, on the east side of Pipeline Avenue. Deputy Frias and Deputy Martinez began chasing Gonzalez, telling him to drop the knife. Deputy Frias saw there were several vehicles with occupants inside stopped in the northbound lanes on Pipeline Avenue. Deputy Frias feared Gonzalez was going to try to get inside one of the vehicles and take one of the occupants hostage. Deputy Frias was also concerned for the safety of any pedestrians who might have been nearby.

Deputy Frias ran past the front of his patrol unit and into the street. Deputy Frias saw Deputy Martinez fire another round from the less-lethal shotgun at Gonzalez, hitting him in the backside. When he fired the less-lethal shotgun, Deputy Martinez was approximately 15 to 20 feet from Gonzalez. At that point, Gonzalez stopped, looked at Deputy Frias, and began running toward Deputy Frias. As Gonzalez ran toward Deputy Frias, Gonzalez was agitated and was raising his hands, still holding the knife. Deputy Frias was afraid for his life, fearing Gonzalez was going to stab him. Deputy Frias began stepping backwards, away from Gonzalez, and fired one round from his handgun at Gonzalez. When Deputy Frias fired this round at Gonzalez, Gonzalez was approximately 10 to 15 feet away. Deputy Frias did not know whether he hit Gonzalez because Gonzalez "made a flinching movement," and continued running toward Deputy Frias. Deputy Frias saw the round was ineffective and Gonzalez was still running toward him, getting closer to him. Deputy Frias fired two to three more rounds at Gonzalez. Each time he fired his duty weapon, Deputy Frias was taking steps backwards to get away from Gonzalez. Deputy Frias was not able to use his gun's sights when he fired because he was retreating backwards away from Gonzalez. Deputy Frias aimed for Gonzalez's center of mass when he shot. Gonzalez then fell face down in the roadway. Deputy Frias did not fire any additional rounds.

Deputy Frias then saw Gonzalez had a second knife in his other hand. The other deputies continued telling Gonzalez to drop the knife repeatedly. Gonzalez was having a hard time dropping the knife; it appeared the knife was wrapped around his glove with the blade sticking out from the glove. Deputy Frias believed a portion of Gonzalez's glove was cut and the handle was inside the glove while the blade stuck out of the glove. The other knife

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Deputy Frias originally saw, the larger kitchen knife was no longer in Gonzalez's hand but was on the ground eight feet away from Gonzalez. Eventually, Gonzalez dropped the second knife and was then placed into handcuffs. Deputy Frias saw what appeared to be a gunshot wound to Gonzalez's upper back and immediately requested medical aid respond to the scene. Deputy Frias grabbed the larger kitchen knife from the street and secured it in the back of his patrol unit because he was concerned the scene was not secure. Deputy Frias returned to Gonzalez and reassured him that medical aid was on the way. Deputy Frias saw there were people standing nearby as well as people in their nearby vehicles and knew he needed to secure the scene. Deputy Frias grabbed yellow crime scene tape and blocked the intersection of Rosewood Way and Pipeline Avenue. An ambulance arrived on scene and transported Gonzalez to the hospital.

STATEMENTS BY CIVILIAN WITNESSES¹⁹

On May 14, 2020, at approximately 4:15 p.m., **Witness #1** was interviewed by Detective Mike Gardea of the San Bernardino County Sheriff's Department.

On July 16, 2019, at approximately 7:45 p.m., Witness #1 called 911 regarding his neighbor, Jose Gonzalez. Witness #1 had lived at his residence for about 25 years and during those 25 years, Gonzalez had always lived across the street from him. Witness #1 had known Gonzalez and his family for many years.

Prior to the 911 call, at about 7:40 p.m., Witness #1's father, Witness #16, informed him that Gonzalez had walked over from across the street and accused Witness #16 and Witness #1 of trying to break into Gonzalez's garage. After Gonzalez made this accusation, Gonzalez told Witness #16 he would be back. Gonzalez then walked back to his residence. Witness #16 told Witness #1 that Gonzalez was acting weird, so Witness #1 sat outside on the front porch. A short time later, Witness #1 watched as Gonzalez walked from his house across the street back to Witness #1's residence. Gonzalez had about three to four knives in his hands. Witness #1 described the knives as being four to five inches in total length, with silver blades, and black handles. Witness #1 was not certain, but believed Gonzalez wore a white shirt and gray pants. It was daylight when Witness #1 encountered Gonzalez.

A wrought iron fence surrounded Witness #1's residence and there was a rolling vehicle gate that blocked access to the driveway. Gonzalez walked to the center of the driveway gate and yelled at Witness #16 and Witness #1, accusing them of trying to break into his garage. Witness #1 walked from his porch to the driveway gate because he thought Gonzalez was going to try to open the gate and enter his property. Witness #1 told Gonzalez to stay off his property. Witness #1 told Gonzalez that neither he nor Witness #16 had tried to break into his garage. In response, Gonzalez said, "Oh yeah, you did,

¹⁹ All reports of civilian statements made were reviewed, though not all are summarized here.

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motherfucker. I know you did!" Witness #1 told Gonzalez, "No, we didn't. Man, get out of here." Witness #1 then said, "Get out of here before I kick your ass." Gonzalez told Witness #1 to come out into the street and Witness #1 told him, "No." Witness #16 was going to walk out of the gate to talk to Gonzalez but Witness #1 stopped him because Gonzalez had knives. Witness #1 believed if he went outside the gate, then Gonzalez would have tried to hurt him. Witness #1 did not have any weapons or other items he could have used to defend against Gonzalez. During the confrontation, Gonzalez held the knives in front of himself and passed them from hand to hand. The knives appeared to be sharp and they could have cut Witness #1 and Witness #16. Witness #1 estimated the confrontation with Gonzalez lasted about one minute and then Gonzalez left, walking southeast.

Witness #1 said Gonzalez appeared to be under the influence of something because Gonzalez acted out of the ordinary. Witness #1 did not know if Gonzalez used drugs, but Gonzalez was angry and stared at Witness #1 like he did not know who he was. About two days before the incident, Witness #1 saw an ambulance at Gonzalez's residence. Gonzalez was taken away by ambulance but Witness #1 did not know why. About two years earlier, Gonzalez had called him on the phone and accused him of trying to break into his garage. Witness #1 told Gonzalez he was not trying to break into his garage and then hung up the phone.

Gonzalez's mother, Witness #10, then came out of her residence and walked across the street to Witness #1's residence. Witness #10 told Witness #1, "Please, don't hurt my son." Witness #1 assured Witness #10 that nothing would happen as long as Gonzalez did not come onto his property. Witness #10 asked Witness #1 to call the police. Witness #1 asked her if she was sure she wanted him to do this and she told him she was because Gonzalez was not listening to her. Witness #1 then called 911.

As Witness #1 called 911, Gonzalez walked southeast on Los Serranos Boulevard and then headed south on Vista drive, whereupon Witness #1 lost sight of him. Witness #1 gave the dispatcher Gonzalez's description and told the dispatcher Gonzalez had threatened him and tried to get into his residence. Witness #1 explained that when he told the dispatcher Gonzalez had tried to get into his residence, he had meant to say the gate to his driveway. Witness #1 said Gonzalez never tried to open the gate but Witness #1 was panicked because Gonzalez had the knives and Witness #1 did not know what was going on with Gonzalez.

About 20 minutes after the encounter with Gonzalez, Witness #1 saw some neighbors, whose names he did not know, walking by. The neighbors said they had seen Gonzalez running down Pipeline Avenue, where he was contacted by the police. The neighbors said there had been a shooting.

On July 18, 2019, at approximately 5:43 p.m., **Witness #2** was interviewed by Detective Chuck Phillips of the San Bernardino County Sheriff's Department.

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On July 16, 2019, at approximately 7:30 p.m., Witness #2 walked toward his mailbox to retrieve his mail when he saw a man walking briskly westbound on Descanso Avenue and then northbound on Pipeline Avenue while holding a knife. Witness #2 described the male as Hispanic, in his 50's, with short black hair, wearing a tan colored shirt, black shorts, black work gloves, and was carrying a 12-inch black handled kitchen knife in his left hand. As the male subject walked, he held and shook the 12-inch knife in front of his body above his waist. The male subject did not speak to anyone as he walked. Witness #2 called 911 at approximately 7:47 p.m.

On July 18, 2019, at approximately 5:09 p.m., **Witness #3** was interviewed by Detective Chuck Phillips of the San Bernardino County Sheriff's Department.

On July 16, 2019, at approximately 7:45 p.m., Witness #3 was driving home from work. When she was heading south on Pipeline Avenue, near Gird Street, at about 20 miles per hour, Witness #3 saw a Hispanic male coming out of the bushes on the east side of Pipeline Avenue. Witness #3 described the male as Hispanic, in his 40's, with short black and gray hair, wearing a tan shirt with a comic or cartoon emblem on the front, black shorts, long white socks, and said he looked like a gang member. The male was armed with a large butcher knife in his right hand and ran west onto Pipeline Avenue toward Witness #3's car. The male was jumping up and down and running in the street, toward the driver's side of her car while yelling, and got to within approximately three to five feet of Witness #3's car. The male had "incredible energy" and seemed like he was "out of control." The male "held the knife like he was going to stab someone," and swung the knife up and down in a stabling motion. The male yelled something but Witness #3 could not understand what he said. The male scared Witness #3 and it reminded her of "Freddy, or Halloween or Friday the 13th," so she increased her speed to get away from him. Witness #3 then saw another male walking nearby, so she slowed down and yelled to the male to be careful. When Witness #3 got home, she told her husband what she had seen, and her husband called Sheriff's dispatch to report what she had seen.²⁰

On July 19, 2019, at approximately 10:19 a.m., **Witness #4** was interviewed by Detective Chuck Phillips of the San Bernardino County Sheriff's Department.

On July 16, 2019, at approximately 7:55 p.m., Witness #4 drove north on Pipeline Avenue near Clubhouse Way where he saw a male walking north on Pipeline Avenue's east sidewalk. Witness #4 described the male as an older Hispanic man, who looked like he had previously spent time in prison, with short gray hair, possibly wearing eyeglasses, wearing a tan shirt with an emblem on the front, black shorts, and tennis shoes. The male held a knife in his hand. Witness #4 believed he held it in his left hand but was not certain. Witness #4 continued driving north for approximately 100-200 yards, then made a U-turn, and drove back south on Pipeline, west of the male. Witness #4 saw that the male had

²⁰ At 7:55 p.m., an unidentified male called 911 and reported that his wife had seen a man with a knife on Pipeline Avenue and Gird Avenue.

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a six-inch knife in his left hand, at his side, with the blade pointed up. The male's right hand was concealed inside his front right pocket. The male appeared to be under the influence and was holding the knife in a way that "looked like he was about to attack." Witness #4 passed by the male and then made another U-turn, heading back north on Pipeline. Witness #4 pulled up close to the male to try to talk to him, but the male would not look him in the eye. Witness #4 noticed "a bunch of people walking, including an elderly couple," and saw "a family with kids" about 400 feet away. Witness #4 thought, "This is not going to be good."

Several people were walking in the area and Witness #4 thought he should watch the male and intervene if the male attempted to harm someone. Witness #4 called 911 at approximately 7:57 p.m. Witness #4 made three to four U-turns to make sure the male did not hurt anyone. Witness #4 watched the male wandering back and forth between Pipeline Avenue's east sidewalk and northbound lanes a couple of times. Witness #4 drove parallel and close to the male to keep the male from wandering into the roadway or crossing the street. The male then returned to the east sidewalk along Pipeline Avenue.

The male then removed a six-inch knife from his right pocket and mumbled something but Witness #4 could not understand what he said. Three to four deputies arrived, and Witness #4 began to drive away from the area. As he drove away, Witness #4 heard the deputies telling the male to stop, to put the knives down, and to put his hands up. The male "walked fast-paced toward the deputies,"²¹ getting to within 20-30 feet of them, and yelled, "You want to shoot me? Go ahead and fucking shoot me!" The male had a knife in each hand while walking toward the deputies and the male was in a "combat stance." Witness #4 left the area and did not hear any gunshots or see anyone shoot a firearm.

On July 16, 2019, at approximately 10:15 p.m., **Witness #5** was interviewed by Detective Tramayne Phillips of the San Bernardino County Sheriff's Department just outside of the emergency room at Pomona Valley Hospital.

On July 16, 2019, at approximately 8:06 p.m., Witness #5 called 911 to report his brother, Jose Gonzalez, had gone "berserk" from drugs, had damaged his parents' house, and had cut the telephone lines at the residence. Witness #5 told the dispatcher his father had called him and told him this. Witness #5 also advised that his father told him Gonzalez was saying people were in the television and they were trying to kill him. Witness #5 also told the dispatcher that he spoken to his mother on the phone and when he did so, his mother was whispering, leading him to believe she was scared. Witness #5 provided his mother's address to dispatch but explained that Gonzalez had already left the residence.

Gonzalez was 52 years old and lived with his parents, Witness #11 and Witness #10 at 4344 Los Serranos Boulevard in Chino Hills. Gonzalez lived in a bedroom inside the residence. Gonzalez was single and had two adult children, but he and his family had not

²¹ It is not clear if the deputies were on foot or in their patrol unit at this point and Mr. Ortiz was not asked to clarify this.

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seen them since 1999. Gonzalez intermittently used methamphetamine for approximately the last eight years and Gonzalez was a "functional addict." Gonzalez displayed symptoms of bipolar disorder and schizophrenia since he was a juvenile. Gonzalez was paranoid and believed unknown people were looking for him. Due to his paranoia, Gonzalez generally stayed inside his bedroom. Witness #5 did not believe Gonzalez had ever been evaluated by a doctor for this and when Witness #5 had tried to get Gonzalez to seek medical treatment from a mental health professional, Gonzalez refused. Witness #5 did not believe Gonzalez had ever been prescribed or taken medications associated with a mental health disorder.

Witness #5 had seen Gonzalez under the influence of methamphetamine in the past. On an unknown day in June 2019, Gonzalez overdosed on aspirin in an attempt to commit suicide at his parents' house. Witness #10 had found Gonzalez on the bathroom floor and called 911 for medical aid. Gonzalez was subsequently placed on a mental health evaluation hold for 72-hours at Chino Valley Medical Center. Witness #5 said Gonzalez was not violent but that he would defend himself if necessary. Witness #5 never knew Gonzalez to instigate or initiate a fight.

On Sunday, July 12, 2019, Witness #5 had gone to his parents' house. While he was there, Gonzalez briefly came out of his bedroom, walked into the living room, and greeted Witness #5. Gonzalez acted "shady" when he did so. Gonzalez then returned to his bedroom and did not come back out while Witness #5 was there. Based on Gonzalez's behavior, Witness #5 believed Gonzalez was under the influence of methamphetamine that day.

On Tuesday, July 16, 2019 at about 7:40 p.m., Witness #5's wife received a phone call from Witness #10's cell phone. Witness #10 asked if Witness #5 would call the telephone company to schedule an appointment to fix the severed exterior telephone line at her house. Witness #5 was driving so he told Witness #10 he couldn't speak to her at that moment. When Witness #5 reached his destination about ten minutes later, he called Witness #10 on her cell phone. Witness #10 told him the telephone line at her home had been severed. Witness #5 asked her who had cut the phone line and Witness #10 did not want to tell him who had done it. Witness #5 asked her if it was Gonzalez who had severed the line and she told him it was. Witness #10 told him Gonzalez had severed the telephone line that day between 3:00 p.m. and 4:00 p.m.²² and she believed Gonzalez was under the influence of methamphetamine when he did so. Witness #5 asked Witness #10 where Gonzalez was, and she said she did not know because he had taken off running.

Witness #5 explained that his mother, Witness #10, called the police around 6:00 p.m. from her neighbor's phone because Gonzalez "was on a good one," which Witness #5 described as being under the influence of methamphetamine and Gonzalez had

²² Witness #15 arrived during the interview and said that Witness #10 had actually called her at 10:00 a.m. on July 16, 2019 and told her Gonzalez had cut the telephone line but she had asked Witness #15 not to tell Witness #5.

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attempted to fight the neighbor across the street. Witness #10 then asked Witness #5 to call the police to report Gonzalez's behavior. Witness #5 called the police at about 8:00 p.m. to report this.

On July 18, 2019, at approximately 7:49 p.m., **Witness #6** was interviewed by Detective Chuck Phillips of the San Bernardino County Sheriff's Department.

Witness #6 lived down the street from Jose Gonzalez. Whenever Witness #6 saw Gonzalez, he would waive to him, and Gonzalez would waive back. However, for the past year, whenever Witness #6 would waive to Gonzalez, Gonzalez would no longer waive back to him.

On Tuesday, July 16, 2019, at about 6:00 p.m., Witness #6 and his wife walked to the Magic Wok restaurant on the northeast corner of Chino Hills Parkway and Pipeline Avenue for dinner. Witness #6 and his wife walked near Gonzalez's residence on Los Serranos Boulevard and saw Gonzalez talking to himself loudly as he walked away from his house. Witness #6 did not understand what Gonzalez was saying. Witness #6 waived at Gonzalez, but Gonzalez did not waive back. Gonzalez was wearing a light tan colored shirt, black shorts and eyeglasses with thin wire frames.

After Witness #6 and his wife finished dinner, at about 7:45 p.m., they walked south on the east side of Pipeline Avenue, to Clubhouse Way. There, they saw Gonzalez walking north in the middle of the street at the intersection of Pipeline Avenue and Clubhouse Way armed with a "big butcher knife," approximately six to seven inches long. Witness #6 heard Gonzalez mumble something but did not understand what Gonzalez said. Witness #6 and his wife then walked west in the crosswalk. Gonzalez then walked to the east side of Pipeline Avenue and then headed north. Witness #11 walked within 15 feet of Witness #6.

As Gonzalez walked north on Pipeline Avenue, he wandered back and forth between Pipeline Avenue's east sidewalk and Pipeline Avenue's east curb. Witness #6 told his wife he was going to call Sheriff's Dispatch and report Gonzalez was walking around armed with a knife. When Witness #6 reached for his phone, he saw a deputy sheriff driving south and another driving north on Pipeline Avenue and then stop near Village Drive. Since the deputies had arrived, Witness #6 did not call Sheriff's Dispatch.

Witness #6 and his wife did not see what happened between the deputies and Gonzalez because they headed home right away because he had to use the restroom. However, as they walked away, heading south on Pipeline Avenue, Witness #6 heard two gunshots but did not see who was shot. Witness #6 turned around and saw Gonzalez running south, away from the deputies. Witness #6 turned back around and continued walking south and heard three more gunshots, but again, did not see who was shot. Witness #6 did not hear the deputies say anything because of the distance. As Witness #6 continued walking south, he turned around and saw there was a police car and several civilian cars blocking

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his view. A civilian bystander wearing shorts was crouched down while running west across Pipeline Avenue. Witness #6 and his wife continued walking home, but stopped and informed Gonzalez's mother that Gonzalez may have been shot.

On July 18, 2019, at approximately 5:59 p.m., **Witness #7** was interviewed by Detective Chuck Phillips of the San Bernardino County Sheriff's Department.

On July 16, 2019, at approximately 7:47 p.m., Witness #7 drove her vehicle, with her mother as a passenger, south on Pipeline Avenue and stopped at the stop sign at the intersection of Pipeline Avenue and Rosewood Way. Witness #7's vehicle windows were rolled up. Witness #7 saw a male walking north in the middle of Pipeline Avenue. Witness #7 described the male as Hispanic, 40-50 years old, 5'9" tall, skinny, black messy hair, possibly wearing black pants. This male passed within six inches of Witness #7 front driver's side door. The male was armed with a knife; the blade was approximately 9 to 12-inches and was "jagged" or "serrated." The knife blade was oriented down. Witness #7 could not recall with which hand the male held the knife. The male appeared to be in "a total trance," and was "walking crazily with the knife." Witness #7 said it was "like something out of a scary movie" and she was trying to find the lock so she could lock her door. The male subject then walked east, toward a nearby mobile home park.

Witness #7' then saw her neighbors, Witness #6 and his wife, walking from the east side to the west side of Pipeline Avenue. Because of the armed male subject, Witness #7 was concerned for her neighbor's safety and decided to turn her vehicle around to check on them. Witness #7 drove to the intersection of Pipeline Avenue and Glen Ridge Drive where she made a U-turn. Several sheriff's patrol vehicles were parked on Pipeline Avenue near Village Drive. After making the U-turn, Witness #7 then drove north on Pipeline and stopped at the intersection of Pipeline Avenue and Rosewood Way, behind a silver Toyota Tacoma. The Tacoma partially obstructed Witness #7' view of the male subject and the police.

One sheriff's patrol vehicle was parked facing east in the northbound lanes of Pipeline Avenue, near Village Drive. Witness #7 believed there was possibly another patrol vehicle parked nearby, but she was not certain. A sheriff's patrol vehicle drove south and parked in the southbound lanes of Pipeline Avenue, near Village Drive.

The male subject walked north, just east of Pipeline Avenue. A sheriff's deputy stood in Pipeline Avenue's southbound lane and pointed his pistol east at the male subject. Witness #7 believed another sheriff's deputy stood in Pipeline Avenue's northbound lane, but she was not certain because a patrol vehicle and the Tacoma partially blocked her view. Witness #7 did not hear the either the deputies or the male subject say anything. Witness #7 estimated the deputies and their patrol units were approximately 100 to 200 yards away from her. The driver of the Tacoma vehicle did not proceed north and instead remained parked at the stop sign.

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Witness #7 heard a gunshot but did not see who shot. Witness #7 then saw the male subject running south. A deputy stood in the southbound lanes of Pipeline Avenue. Witness #7 assumed this deputy shot east with his pistol, but she was not certain. Witness #7 thought the deputies shot the male subject with a less-lethal gun because the gunshot was not loud. Since a shot was fired, Witness #7 did not want to be in the area, so she drove north in Pipeline Avenue's southbound lane and then west on Rosewood Way. Within 10 to 15 seconds, Witness #7 heard two or three additional gunshots. Witness #7 drove around the neighborhood and found Witness #6 and his wife. Witness #6 told Witness #7 it looked like the male subject had gone down.

On May 8, 2020, at approximately 2:05 p.m., **Witness #8** was interviewed by Detective Mike Gardea of the San Bernardino County Sheriff's Department.

On Tuesday, July 16, 2019, between 6:00 and 7:00 p.m., Witness #8 left his residence to go to the movies. It was still light outside. Witness #8 turned north onto Pipeline Avenue from Glen Ridge Drive and transitioned into the number two lane on Pipeline Avenue. Witness #8 continued driving north and stopped at a stop sign at Clubhouse Way. As Witness #8 continued on through this intersection, he saw a marked San Bernardino County Sheriff's patrol vehicle drive south on Pipeline Avenue with its overhead emergency lights activated. The patrol unit's siren was not on. The patrol vehicle turned east, in front of Witness #8's car and blocked northbound traffic at Clubhouse Way. Clubhouse Way is an entrance to a mobile home park.

Witness #8 stopped his car about five feet from the patrol unit. A white male deputy sheriff got out of the patrol unit and raised his hand in the air, making sure Witness #8 remained stopped. The deputy ran northwest on Pipeline Avenue toward three to four other male deputies who stood on the west²³ side of Pipeline Avenue. There were two marked sheriff's Ford Explorer patrol vehicles parked, facing south, on Pipeline Avenue, just north of the three to four other deputies. All the deputies had their handguns pointed at a Hispanic male (Gonzalez)²⁴ who stood in the middle of the street on Pipeline Avenue. Witness #8 had no obstructions to his view and could see the left side of Gonzalez and the deputies from where he was stopped behind the patrol unit. Witness #8 estimated Gonzalez and the deputies were approximately 100 feet north of him. Gonzalez stood about 20 to 25 feet away from the deputies. Witness #8 saw an object in Gonzalez's hand and believed it was a knife. Witness #8 believed Gonzalez held the knife in his left hand.

Witness #8 heard the deputies yelling at Gonzalez but could not hear what they were saying because his car windows were rolled up. Gonzalez stood, facing the deputies for about 30 seconds and then he walked at a brisk pace west toward the deputies. One of the deputies backpedaled as Gonzalez walked toward them. Gonzalez held the knife in front of his body, just above his waist as he walked toward the deputies. Gonzalez got to within about 15 feet of the deputies and Witness #8 heard at least three gunshots. Witness

²³ Other witness statements, photographs, and video indicate the deputies encountered Gonzalez on the east side.

²⁴ Witness #8 did not identify Gonzalez by name, however, for ease of reference, Gonzalez will be used herein.

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#8 did not see who fired the shots. The shots were consecutive with a slight pause in between each shot. Gonzalez then took about two steps forward and fell to the ground on his stomach. Witness #8 estimated that Gonzalez fell approximately 10 feet from the deputies. After Gonzalez fell, the deputies continued to point their guns at him. Witness #8 did not hear any additional gunshots.

Witness #8 believed Gonzalez may have been under the influence of drugs or mentally ill because when the deputies were yelling at him, Gonzalez just stood there doing nothing for a while before approaching the deputies. Witness #8 described Gonzalez's actions as "suicide by cop." Gonzalez did not appear to listen to the deputies, and he approached them in a threatening manner. Witness #8 believed Gonzalez was either trying to threaten or hurt the deputies. It did not appear that Gonzalez was willing to comply with anything the deputies were asking him to do.

On Tuesday, July 16, 2019, at approximately 11:29 p.m., **Witness #9** was interviewed by Detective David Lara of the San Bernardino County Sheriff's Department.

Witness #9 explained that the incident he had witnessed occurred quickly, in the span of only three minutes, and he was unable to recall some details. However, on Tuesday, July 16, 2019, sometime between 7:50 and 8:10 p.m., Witness #9 left his residence to buy gas. Witness #9 drove his car north on Pipeline Avenue toward Chino Hills Parkway in Chino Hills.

When Witness #9 was driving north on Pipeline Avenue, he saw two sheriff's patrol vehicles heading south on Pipeline Avenue toward him. One of the two patrol vehicles made an abrupt U-turn in front of Witness #9's vehicle and stopped approximately two to three car length's north of Witness #9's vehicle. The male deputy then got out of his patrol vehicle and immediately approached a Hispanic male who stood on the east sidewalk of Pipeline Avenue near a fire hydrant. The male subject (Gonzalez)²⁵ was wearing a light-colored baggy t-shirt, dark trousers, wearing something on his hands, possibly gloves and said he had a small to medium build and short black hair. When Witness #9 saw Gonzalez, he noticed Gonzalez was yelling and held a large butcher knife in his hand.²⁶ Witness #9 could not decipher what Gonzalez was yelling. According to Witness #9, Gonzalez made no attempt to hide the knife and instead held the knife out in front of him. The blade on the knife was between 6 to 8 inches long.

Witness #9 was uncertain of what maneuver the deputy who drove the second patrol vehicle made prior to stopping, but he knew the second patrol vehicle parked near Gonzalez. Witness #9 believed he saw two male deputies get out of the second patrol unit.

²⁵ Witness #9 did not identify Gonzalez by name, however, for ease of reference, Gonzalez will be used herein.

²⁶ Witness #9 could not recall with which hand Gonzalez held the knife.

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Witness #9 heard an unknown number of deputies repeatedly yell, "Drop the knife!" Witness #9 believed he heard the order to drop the knife at least five times and the orders were clear and loud. Gonzalez did not comply with the deputies' orders. Witness #9 initially saw one deputy, the one who made the U-turn, holding his handgun using a two-handed shooting stance while he stood in southbound traffic lanes of Pipeline Avenue, approximately 40 feet west of Gonzalez.

About a minute after the deputies arrived, Gonzalez ran south, away from the deputies and toward Witness #9's location. Witness #9 realized the deputies' line of gunfire shifted and that he was now within range. Witness #9 feared he would be in the line of gunfire if he stayed in his vehicle, so he quickly got out of his car. At about the same time, a fourth sheriff's deputy arrived at the scene and parked at an angle in front of Witness #9's vehicle.

After Witness #9 got out of his car, he ran toward the west side of Pipeline Avenue toward a dirt berm and heard Gonzalez yell, "Kill me!" Witness #9 heard Gonzalez say "kill me" at least twice. Witness #9 then saw Gonzalez running south and then west around the patrol vehicle that was parked in front of Witness #9's car. Witness #9 again saw the two deputies from the second patrol vehicle. While Witness #9 ran northwest, Gonzalez ran parallel with Witness #9, about 30 feet from him. One of the two deputies held his handgun pointed at Gonzalez, using two-hands. The other deputy had a shotgun but Witness #9 believed the shotgun had something yellow attached to it. The deputy held the shotgun using two-hands. Witness #9 heard the sounds of the shotgun being fired, but he thought it sounded differently. Witness #9 believed the different sound was because it was a bean bag shotgun, but he was not sure. Witness #9 did not see the deputy fire the shotgun.

Witness #9 continued west and saw Gonzalez run toward a deputy. The deputy was about 30 to 40 feet away from Gonzalez. Gonzalez ran about 10 feet and was closing the distance on the deputy. Witness #9 believed if Gonzalez sprinted, the deputy would have been "in trouble." Within seconds, Witness #9 heard three gunshots. From Witness #9's previous military experience, he knew the gunshots came from small arms (possibly 9 mm or .45 caliber.) Witness #9 did not see which deputy fired or where Gonzalez was hit by gunfire.

Immediately after the gunshots, Witness #9 saw Gonzalez fall to the ground onto his stomach. Once Gonzalez fell to the ground, Witness #9 did not hear any additional gunshots. Even after falling, Gonzalez held onto the knife. The deputies yelled at him to drop the knife.

Witness #9 returned to his vehicle and did not see anything further. Witness #9 knew he needed to wait and provide a statement because he was an eye-witness. Witness #9 waited on the east side of Pipeline Avenue, away from where Gonzalez had fallen. Witness #9 did not video or photograph the incident. Once additional deputies arrived,

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Witness #9 was contacted. He left his vehicle at the scene and a deputy drove him to the station.

Witness #9 did not know Gonzalez and did not believe he would be able to identify him by photograph or in person. Witness #9 described Gonzalez as between 20 to 30 years of age, between five feet to six feet tall, medium to small build, with short hair. Witness #9 could not recall if Gonzalez had tattoos. Witness #9 believed Gonzalez may have had on a glove, but he was not certain. Witness #9 was certain, however, that he did not see the skin on Gonzalez's hands, which led him to believe Gonzalez had something on his hands.

Witness #9 did not understand why Gonzalez ran at the deputy with the knife. Witness #9 thought if Gonzalez had run in a different direction, southeast, then he would have been a threat to the public. Based on Gonzalez's erratic and unstable behavior, Witness #9 thought Gonzalez would have hurt someone. Witness #9 believed what Gonzalez did was "stupid" and that "his actions caused the shooting." Witness #9 said if he had been in the deputies' shoes, he would have shot Gonzalez as well.²⁷ Had Gonzalez not been shot, he could have hurt someone with the knife, "it seemed like that was what was on his mind." Witness #9 did not understand why Gonzalez wanted to get shot and he suspected Gonzalez was on drugs.

On Wednesday, July 17, 2019, at approximately 1:08 a.m., **Witness #10** was interviewed by Detective A. Alvarado of the San Bernardino County Sheriff's Department.²⁸

Witness #10 lived with her husband, Witness #11, and her son, Jose Gonzalez. Witness #10's three other adult children lived elsewhere. Witness #10's residence was approximately one mile southeast from where the shooting occurred.

Witness #10 described her son, Gonzalez, as a habitual methamphetamine abuser. When Gonzalez used methamphetamine, he talked nonsensically and would become paranoid. Gonzalez often believed people were "after him and were out to kill him." Approximately three to four weeks prior, Gonzalez had a drug-induced episode and attempted to kill himself by overdosing on prescription medication. Gonzalez heard voices which told him to kill himself. After this attempt, Gonzalez was placed on a mental evaluation hold at Chino Hospital.

On Monday, July 15, 2019, Gonzalez told Witness #10 if the police ever tried to detain him, he would not allow them to get him. Witness #10 warned Gonzalez that police could

²⁷ Witness #9 admitted to being pro-law enforcement and said he did not like "bad" people. Witness #9 said he believed the deputies reacted quickly, doing their job, and they did the "right thing."

²⁸ Detective Alvarado spoke to Witness #10 in a visitor lobby at Pomona Valley Hospital Medical Center. The interview was conducted in Spanish.

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harm him if he did not follow their instructions. Gonzalez told her he did not care if the police hit him and said he was "not afraid to die."

On Tuesday, July 16, 2019, at approximately 3:00 p.m., Gonzalez was acting paranoid. Witness #10 saw Gonzalez search their residence for surveillance cameras. Gonzalez told Witness #10 people had placed cameras throughout their house to keep track of him. Witness #10 noticed the house phone was not working and believed Gonzalez had cut the phone line sometime during the day. At approximately 6:00 p.m., Gonzalez approached Witness #10 in the living room and told her the neighbors were out to kill him. Witness #10 believed Gonzalez was under the influence of methamphetamine. Gonzalez went into the kitchen and then returned to the living room holding two knives. One of the knives was large and the second was smaller. Gonzalez approached Witness #10, holding one knife in each hand and hugged and kissed her. Gonzalez told her, "I am going mom. Forgive me for what I am about to do."

Gonzalez then ran out of the house, yelling people wanted to kill him. Witness #10 followed him as he ran into the street. Gonzalez yelled obscenities and attempted to fight their neighbor, Witness #16, and his son who lived across the street. Witness #16 stood on his property and Gonzalez yelled at him. Gonzalez asked him, "Why are you trying to kill me? Why are you trying to kill me?" Witness #10 told Witness #16 to ignore Gonzalez because Gonzalez "was crazy." Witness #16 ignored Gonzalez and did not engage him. Gonzalez then ran northbound on Los Serranos Boulevard, still holding the two kitchen knives. Witness #10 did not follow Gonzalez. Witness #10 last saw Gonzalez wearing a dark colored shirt and shorts. Witness #10 waited outside for Gonzalez to return.

Witness #10 was approached by an unidentified couple. They asked her if she knew a male subject who wore glasses and was armed with knives. Witness #10 believed they were describing Gonzalez. The couple told her the male subject had been shot by law enforcement. Witness #10 said over the past several days, Gonzalez had claimed unknown people were trying to kill him. Witness #10 believed Gonzalez's paranoid thoughts were a direct result of his drug use.

INCIDENT AUDIO AND VIDEO

911 CALLS

Witness #1 called 911 and said he was trying to help his neighbor whose son was carrying knives as he walked down the street. Witness #1 said that about 10 minutes earlier his neighbor, "Jose," was not feeling well and had tried to commit suicide a couple of days ago. Today, Jose came by Witness #1's residence at 4000 block of Los Serranos Boulevard in Chino Hills, tried to get inside, and said he wanted to kill someone. Witness #1 kept Jose from coming into his house and told him to leave. Jose ran down the street holding three knives in his hands. According to Witness #1, Jose's mother was concerned about Jose hurting someone and she wanted a sheriff to come and find him. Witness #1

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said Jose brandished the knives and was “really distraught.” Witness #1 described Jose as Hispanic, in his 40’s, wearing a green shirt, black pants, and having pocket-knives. Witness #1 said Jose had threatened people with the knives and Jose was “on some type of drugs because I’ve never seen him act like this.” Witness #1 said Jose ran south on Los Serranos Boulevard toward the Descanso Market, located at 4283 Descanso Avenue.

Witness #2 reported he was in Chino Hills and saw a “really nervous man” holding a knife while walking on Descanso Avenue toward Pipeline Avenue. Witness #2 described the subject as a Hispanic male in his late 40’s, approximately 5’7” tall, 140 lbs., black hair, wearing a tan shirt, black shorts, and black gloves on his hands. Witness #2 said the knife looked like a kitchen knife that was maybe two inches long. Witness #2 said the subject was “freaking out” and appeared to be on drugs, but he did not see him threatening anyone. Witness #2 reported the subject had turned onto Pipeline Avenue and was heading toward Chino Hills Parkway.

Unidentified Male Caller. This caller reported a man with a knife on Pipeline Avenue and Gird Avenue. The caller explained that his wife had just passed by there about five minutes prior and saw a Hispanic male wearing a black t-shirt, armed with a knife. The male subject was walking in and out of traffic between the sidewalk and the street, yelling, and he appeared to be under the influence.

Witness #4 reported there was a male walking on Pipeline Avenue, near Glen Ridge Drive, holding a knife. Witness #4 described the male as Hispanic, in his 50’s, wearing black basketball shorts, a light tan shirt, and black gloves on his hands. Witness #4 described the knife as a large kitchen knife. Witness #4 said the subject was holding the knife in his hand and was “walking around like he’s about to do something.” Witness #4 said the subject’s behavior was “erratic” and that he appeared to be on drugs.

Witness #12 reported a subject walking down the street at the intersection of Pipeline Avenue and Glen Ridge Drive with a big white kitchen knife in his hand. She described the subject as a Hispanic male, wearing black basketball shorts, a brown shirt, black eyeglasses, and black gloves on his hands. Witness #12 said the subject had the knife up near his torso, not at his side, and he was headed in the direction of Chino Hills Parkway.

Witness #13 reported a male subject with a knife was walking southbound on Pipeline Avenue toward Chino Hills Parkway. The male was described as being in his 40’s, wearing a tan shirt, brown shorts, and carrying a plastic bag.

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BELT RECORDING SUMMARY²⁹

Deputy Martinez activated his belt recorder while he and Deputy Figueroa were en route in the patrol unit; the patrol unit's engine and radio were heard. Deputy Martinez was then

heard saying, "Show us 97.³⁰ Here we go. Tan Shirt, black shorts. Stop, stop." The encounter with Gonzalez then began.

Deputy Martinez was heard yelling, "Watch cross-fire," three times. Another deputy was heard saying, "Hey, grab bean bag." Gonzalez could then be heard saying, "Shoot me, please shoot me," followed by unintelligible yelling. Deputy Frias was heard saying, "Hey, grab the less-lethal." Deputy Martinez replied, "Hey, I, I got less-lethal," and several deputies could be heard repeatedly yelling, "Drop the knives! Drop the knives!" Deputy Martinez then said, "I got you, I got you, I got you, keep gunpoint on him." While the deputies were heard in the background continuing to tell Gonzalez to drop the knives, Deputy Martinez could be heard breathing heavily. This was followed by the sound of Velcro ripping apart. In the background Gonzalez was heard yelling, "Shoot me! Shoot me! You have to shoot me!"

As the deputies continued telling Gonzalez to drop the knives, Gonzalez continued telling them to shoot him. An unknown deputy yelled, "No! We're trying to help you out!" Gonzalez continued yelling, "Shoot me, shoot me!" Deputy Frias was heard yelling, "I'm trying to help you out," while Gonzalez continued to yell, "Shoot me," and other unintelligible words. Deputy Frias told Gonzalez, "Just calm down, calm down," with Gonzalez responding, "No! Shoot me! Shoot me!" Deputy Frias responded, "I don't want to shoot you." Gonzalez said, "I want you to shoot me!" Deputy Frias again responded, "I don't want to shoot you," but Gonzalez continued telling him to shoot him. Deputy Frias repeated, "I do not want to shoot you," and Gonzalez replied, "Well, you're gonna have to." Multiple deputies were then heard telling Gonzalez several times to drop the knives. One deputy was heard saying, "Sir, drop the knives." The deputies continued yelling at Gonzalez to drop the knives.

What follows is a transcription of the recording in the seconds leading up to and during the officer-involved shooting.

Deputy Figueroa: Shoot him!

Multiple deputies: Multiple commands to drop the knives.

Deputy Martinez: Drop the knives! Bean bag, bean bag, bean bag!

²⁹ All involved deputies' belt recordings were reviewed in their entirety. All recordings were largely identical as they recorded the same conduct. Deputy Martinez's belt recording will be summarized herein, however, where additional information is gleaned from other deputies belt recordings, that information will also be included. The summary will only cover the events from the beginning through the point immediately after the incident under review.

³⁰ On scene.

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Gonzalez: He said shoot me!
Deputy Figueroa: Bean bag!
Gonzalez: He said shoot me! (Sound of shotgun racking.)
Multiple deputies: Commands to drop the knives continue.
Martinez: Drop the knives, drop the knives! Bean bag (unintelligible)! (Sound of less-lethal deployment and shotgun racking.)
Martinez: Drop the knives! (Sound of less-lethal deployment and shotgun racking.)
Martinez: Drop the knives! Drop the knives! Drop the knives!
Multiple deputies: Drop the knives, drop the knives!
(Sound of less-lethal deployment and shotgun racking.)
Martinez: Drop the knives! (Martinez breathing heavily.)
Audible sirens in background.
Martinez: Drop the knives!
Sirens grew louder.
Martinez: Drop the knives
Multiple deputies: Drop the knives!
(Sound of less-lethal deployment and shotgun racking.)
Martinez: I need to reload, reload, reload! Reload! Reload!
In background: Loud gunshot, brief pause, loud gunshot, brief pause, loud gunshot.
Martinez: Continues yelling, "Reload!" Don't! Watch my fire! Watch my fire!
In background: Two loud gunshots.
Martinez: You all, don't shoot anymore.
Martinez: Put your hands out, put your hands out!
Gonzalez: Unintelligible.
Martinez: Hey, hey watch it, he's still got a knife in his hand! Drop the knife!
Unknown: Drop the knife! Drop the knife!
Multiple deputies: Drop the knife!
Martinez: Drop the knife!
Multiple deputies: Drop the knife!
Martinez: Throw them out to your side! Throw them out to your side!
In background: Multiple commands to drop the knife continue. Sirens heard in background, approaching and getting louder.
Martinez: Oh, they're stuck in his hands! Throw them out! Throw it out!
Multiple deputies: Drop the knife!
In background: One siren stops, another is heard getting louder.
Martinez: Turn over on your belly! Turn over on your stomach! Turn over on your stomach! Get the knives.
Gonzalez: Thank you, sir. Thank you.
Unknown: Don't mover (sic), don't mover (sic), roll him over. Cuff him up. Cuff him.
In background: Siren stops.
Unknown: Cuff him.

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In Deputy Figueroa's belt recording, after Deputy Figueroa told dispatch they were on scene, Gonzalez was heard saying, "Shoot me. You guys shoot me, you guys shoot me. Please shoot me, please. Please shoot me. Please shoot me, please shoot me, please shoot me." Gonzalez was also heard telling the deputies, "I wanna die. I wanna die, let's do this, please! Please let's do this now!" Deputy Figueroa told Gonzalez, "No sir!" Gonzalez responded, "We're gonna be here all night then." Deputy Figueroa ordered Gonzalez multiple times to drop the knives. Deputy Figueroa was also heard telling Gonzalez, "Sir, listen! We do not want to shoot you!"

In Deputy Frias' belt recording, Deputy Frias was heard giving multiple commands to Gonzalez to drop the knife, including telling Gonzalez, "Do me a favor and drop the knife man." Deputy Frias told Gonzalez to drop the knife multiple times and Gonzalez told him, "No!" Deputy Frias was heard telling Gonzalez, "Stop. Stop right there," and Gonzalez said, "Shoot me" four times. Deputy Frias told Gonzalez he was there to "help him out." To this, Gonzalez replied, "Don't help me." When Deputy Frias told Gonzalez to calm down, Gonzalez replied, "Fuck no! Shoot me!"

CIVILIAN VIDEO³¹

The video begins with Deputy Martinez standing near the open front passenger door of his patrol unit, which was stopped at an angle, pointing southwest in the northbound number one lane of Pipeline Avenue at the intersection with Village Drive. The lift gate on the patrol unit was open. Detective Martinez pointed a less-lethal shotgun³² at Gonzalez as Gonzalez stood on the east sidewalk of Pipeline Avenue, facing Deputy Martinez. Gonzalez wore black shorts, a tan colored t-shirt, and had black gloves on his hands. Gonzalez moved his body around and waved his arms up and down. Deputy Martinez stepped away from the patrol unit, taking two steps toward Gonzalez. Deputy Frias' patrol unit was south of Gonzalez where it was parked facing north in the northbound number two lane on Pipeline Avenue with the overhead emergency lights activated.

Deputy Figueroa stood near the closed driver's side door of his patrol unit (opposite side of the vehicle from Deputy Martinez). Deputy Figueroa pointed his handgun³³ toward Gonzalez. Both Deputies Figueroa and Martinez repeatedly yelled, "Drop the knives!" Gonzalez moved his arms up and down as he faced the deputies. Gonzalez yelled unknown words back at the deputies. Gonzalez took two steps toward Deputies Figueroa

³¹Witness #14 uploaded video footage of the officer-involved shooting to the internet. The video appears to have been recorded from inside a vehicle that was stopped in the southbound lanes, facing south toward the deputies. There is audio but it is muffled. The video is 1 minute, forty-one seconds long.

³² It should be noted, the shotgun itself is not visible due to the distance from which the camera captured the images, however, based upon the positioning of Deputy Martinez's arms and body combined with witness statements, it is clear he is pointing the less-lethal shotgun.

³³ Deputy Figueroa's handgun is not visible due to the distance from which the camera captured the images, however, based upon the positioning of Deputy Figueroa's arms, it is clear he is pointing his handgun.

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and Martinez and raised his left hand toward his own neck. (No knife can be seen on the video due to the distance from which the camera captured the images, but from all witness accounts, Gonzalez held a knife in each hand.) Deputy Martinez took two steps toward Gonzalez. Deputies Figueroa and Martinez continued yelling, "Drop the knives! Drop the knives!"

Deputy Frias was on foot in the middle of Pipeline Avenue. Deputy Frias side-stepped toward Deputy Martinez and pointed his handgun at Gonzalez. Several civilian vehicles were stopped in the roadway behind Deputy Frias' patrol unit. Gonzalez turned his head as he looked in the direction of Deputies Martinez and Figueroa and then at Deputy Frias. Gonzalez held his left hand up near his neck. Gonzalez turned his body south, away from the deputies and looked over his right shoulder, in the direction of Deputy Martinez. Deputy Martinez walked toward Gonzalez. Gonzalez walked south on the sidewalk, away from Deputy Martinez. The shiny glint of a knife blade could be seen protruding from Gonzalez's right hand.³⁴

First Beanbag Deployment-

Gonzalez turned around while placing his left hand near his neck and his right hand near his waist and faced Deputy Martinez. A less-lethal beanbag deployment was heard. Gonzalez flinched, turned his body south, and began running south on the sidewalk, away from Deputy Martinez. Deputy Martinez quickly walked south on the street, following Gonzalez, while pointing the less-lethal shotgun at Gonzalez.

Second Beanbag Deployment-

As Gonzalez continued running south on the sidewalk, a less-lethal deployment was heard. A siren was heard, growing louder. Gonzalez abruptly stopped, turned around, and faced Deputy Martinez. Gonzalez retreated backwards, away from Deputy Martinez. At this point, a large knife could be seen in Gonzalez's left hand. Deputy Martinez ran south on the street toward Gonzalez. Deputy Figueroa walked on the sidewalk quickly toward Gonzalez, pointing his handgun at Gonzalez.

Third Beanbag Deployment-

As the deputies continued advancing on Gonzalez, they continued telling Gonzalez to drop the knives. Gonzalez jumped around and turned to face Deputy Martinez and then side-stepped to his right, while facing Deputy Martinez. Still facing Deputy Martinez, Gonzalez then quickly side-stepped to his left, toward Deputy Martinez. A less-lethal deployment was heard. Gonzalez turned and ran south. Deputies Martinez and Figueroa pursued Gonzalez.

³⁴ Due to the distance of Gonzalez from the video camera, it is difficult to see the knives he held in his hands.

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Fourth Beanbag Deployment-

Gonzalez stopped and turned to face toward Deputies Martinez and Figueroa. Gonzalez started running west toward Deputy Martinez when Deputy Gomez's patrol car, with lights and siren activated, drove in front of the video camera, momentarily blocking view of Gonzalez and the deputies and a less-lethal deployment was heard.³⁵ Gonzalez jumped into the air and quickly shook his arms.

Gunshots-

Gonzalez then turned and started running west toward the street. Deputy Frias was west of Gonzalez on foot near the center yellow line of Pipeline Avenue, in the number one southbound lane, pointing his handgun east. Deputy Martinez ran south in the street, next to the driver's side of Deputy Frias' patrol unit. Two gunshots were heard as Deputy Frias retreated backwards quickly. From behind Deputy Frias' patrol unit, Gonzalez was seen running on the street, toward Deputy Frias. Deputy Martinez quickly side-stepped north, away from Gonzalez. Deputy Gomez began getting out of his patrol unit.

Gonzalez continued running with the knives toward Deputy Frias and a third gunshot was heard. Gonzalez continued running toward Deputy Frias and Deputy Frias continued retreating backwards. Gonzalez turned his upper body as he ran west and then turned in a complete circle and then continued running west toward Deputy Frias. South of Gonzalez, Deputy Gomez ran west toward the west side of Pipeline Avenue. Gonzalez continued running toward Deputy Frias and a fourth gunshot was heard. Gonzalez continued running toward Deputy Frias and Deputy Frias jumped to his left as Gonzalez got closer to him. Gonzalez's left arm was extended out to his front as he held the knife in his left hand, running toward Deputy Frias. Two gunshots, in quick succession, were heard, and Gonzalez fell forward onto the ground. Deputy Gomez stood on the west sidewalk and began approaching Gonzalez. A civilian was on foot on the west sidewalk south of the scene. Gonzalez was prone on the ground in the southbound number one lane of Pipeline Avenue, near the west curb line. Several civilian vehicles were seen pulling westward, making U-turns, and heading away at the intersection just south of the scene.³⁶

Multiple deputies approached Gonzalez and multiple commands to "drop the knives" were heard. As the deputies moved closer to Gonzalez, Gonzalez rolled over onto his back and held his hands to the front of his body. Gonzalez then moved both hands together and pulled them apart. Due to the distance from the camera to Gonzalez, the black gloves on Gonzalez's hands could be seen, but no knives were visible. As Gonzalez continued

³⁵ Deputy Gomez's patrol unit stopped behind Deputy Frias's patrol unit and directly in front of civilian vehicles that were stopped in lanes behind Deputy Frias' unit.

³⁶ The intersection just south of the scene was Pipeline Avenue and Rosewood Way. Per Google Maps, the distance from the intersection of Pipeline Avenue and Village Drive to the intersection of Pipeline Avenue and Rosewood Way is 413 feet.

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to move his hands, putting them together and then pulling them apart, another patrol unit arrived with lights and sirens activated. This patrol unit pulled in front of the camera and then stopped in front of the scene, blocking the camera view.

INJURED PARTY/DECEDENT

Gonzalez was transported to Pomona Valley Hospital where he underwent emergency medical treatment before succumbing to his injuries.

AUTOPSY

Witness #17, M.D., Deputy Medical Examiner for the County of Los Angeles, Department of Medical Examiner-Coroner, conducted the autopsy of Jose Gonzalez July 19, 2019. Witness #17 noted one ballistic injury and one gunshot wound to the chest of Mr. Gonzalez's body. Witness #17 determined the cause of death was "ballistic wounds of the chest."

Ballistic Injury of the Chest³⁷

A ballistic entrance wound is on the chest, 29 cm below the top of the head and 2.5 cm right of the anterior midline. The ovoid wound measures 3 x 1.5 cm. Soot and stippling are not present. The wound path involves skin, subcutaneous tissue, muscle, the anterior aspect of the right first interspace, and the junction of the right internal jugular and subclavian veins (repaired). No projectile is recovered from the wound path. There is no associated exit wound. The wound path is directed front to back. Associated with the wound path is a right hemothorax (1520 ml of blood).

Gunshot Wound of the Chest

A gunshot entrance wound is on the back, 35 cm below the top of the head and 7 cm right of the posterior midline. The ovoid wound measure 0.9 x 0.5 cm with a 0.1 cm concentric marginal abrasion. Soot and stippling are not present. The wound path involves skin, subcutaneous tissue, muscle, the seventh thoracic vertebra and underlying spinal cord, the left lung (partially resected), the anterior aspect of the left fourth interspace, muscle, and subcutaneous tissue. A deformed jacketed bullet is recovered from the soft tissues of the left arm. There is no associated exit wound. The wound path is directed back to front, right to left. Associated with the wound path is hemorrhage within the wound tract and epidural hemorrhage around the spinal cord.

³⁷ Crime scene photographs reveal this injury was caused by a beanbag round. The projectile was removed by emergency room physicians.

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Other Injuries

On the left cheek are a 1.5 cm linear abrasion and a 0.9 x 0.6 cm abrasion. On the right buttock are two linear abrasions, 2.5 and 1.5 cm long. A 2.6 x 2 cm abrasion is on the right shoulder. There is a 1 x 0.9 cm abrasion on the right elbow. A 3 x 2 cm contusion is on the posterior right forearm. A 0.9 cm contusion is on the posterior left shoulder.³⁸ On the left knee is a 2 x 2 cm abrasion.

TOXICOLOGY

Bile, femoral blood, chest blood, gastric contents, liver, urine, and vitreous fluid were collected during the autopsy.

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

- Amphetamine 0.14 ug/mL
- Methamphetamine, 0.70 ng/mL

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

- Amphetamine 0.17 ug/mL
- Methamphetamine, 0.90 ng/mL

CRIMINAL HISTORY

Jose Gonzalez has a criminal history that includes the following convictions:

1989, 11352 of the Health and Safety Code, Transportation of Sale of a Controlled Substance, Los Angeles County case number A481848, a felony.

1995, 211 of the Penal Code, Robbery, Los Angeles County case number VA03128, a felony.

1999, 14601.2 (a) of the Vehicle Code, Driving on a Suspended License, Los Angeles County case number WC71597A, a misdemeanor.

2002, 148 (a)(1) of the Penal Code, Resisting or Obstructing a Peace Officer, 14601.5 (a) Driving on a Suspended License, Los Angeles County case number 2JM0390301, misdemeanors.

³⁸ Detective T. Phillips was present during the autopsy and reported that Witness #17 associated this injury with Gonzalez being struck by a less-lethal ballistic round.

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2010, 21955 of the Vehicle Code, Jaywalking, Los Angeles County case number B354232192, an infraction.

Crimes Upon Peace Officers

California Penal Code section 664/187 (summarized in pertinent part)

Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(a) If the crime attempted is punishable by imprisonment in the state prison, or by imprisonment pursuant to subdivision (h) of Section 1170, the person guilty of the attempt shall be punished by imprisonment in the state prison or in a county jail, respectively, for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact...

(e) Notwithstanding subdivision (a), if attempted murder is committed upon a peace officer or firefighter, as those terms are defined in paragraphs (7) and (9) of subdivision 9a) of Section 190.2, a custodial officer, as that term is defined in subdivision (a) of Section 831 or subdivision (a) of Section 831.5, a custody assistant, as that term is defined in subdivision (a) of Section 831.7, or a nonsworn uniformed employee of a sheriff's department whose job entails the care or control of inmates in a detention facility, as defined in subdivision (c) of Section 289.6, and the person who commits the offense knows or reasonably should know that the victim is a peace officer, firefighter, custodial officer, custody assistant, or nonsworn uniformed employee of a sheriff's department engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

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(f) Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also charged and admitted or found to be true by the trier of fact that the attempted murder was willful, deliberate, and premeditated, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement.

California Penal Code section 245(c) (Summarized in pertinent part)

Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer, and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

Other Crimes

California Penal Code section 245(a)(1)

Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

California Penal Code section 245(a)(4)

Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Assault With A Deadly Weapon

Like other types of assault, the crime of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1) (section 245(a)(1)) requires only "the general intent to willfully commit an act the direct, natural and probable consequences of which if successfully completed would be the injury of another." (*People v. Rocha* (1971) 3 Cal.3d 893, 899; similarly, see *People v. Colantuono* (1994) 7 Cal.4th 206, 214.)

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[W]e hold that ***assault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.***

(*People v. Williams* (2001) 26 Cal.4th 779, 790, emphasis added; see also *People v. Golde* (2008) 163 Cal.App.4th 101, 108.) “This defines the mental state as a species of negligent conduct, a negligent assault. Where the negligent conduct involves the use of a deadly weapon ... the offense is assault with a deadly weapon.” (*People v. Wright* (2002) 100 Cal.App.4th 703, 706.)

As to the “deadly weapon” theory of Penal Code section 245(a)(1), some objects, such as dirks and blackjacks, are deadly weapons as a matter of law. (*In re D.T.* (2015) 237 Cal.App.4th 693, 698; *People v. Brown* (2012) 210 Cal.App.4th 1, 6.) But any object can be a deadly weapon when used in a manner capable of producing death or great bodily injury. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029; *People v. Brown, supra*, 210 Cal.App.4th at pp. 7, 11; *In re Brandon T.* (2011) 191 Cal.App.4th 1491, 1496.) In determining whether an object not inherently deadly becomes so, the trier of fact may look at the nature of the weapon, the manner of its use, and all other factors that are relevant to the issue. (*In re D.T., supra*, 237 Cal.App.4th at p. 699; *In re Jose R.* (1982) 137 Cal.App.3d 269, 276-276.) The question is essentially one for the trier of fact. (*Id.* at p. 277; cf. *People v. Page* (2004) 123 Cal.App.4th 1466, 1473 [sharp pencil held up to neck]; *People v. Henderson* (1999) 76 Cal.App.4th 453, 467-470 [pit bull can be a deadly weapon under Pen. Code, § 417.8]; *People v. Simons* (1996) 42 Cal.App.4th 1100, 1106-1108 [screwdriver can be a deadly weapon under Pen. Code, § 417.8]; but see *In re Brandon T., supra*, 191 Cal.App.4th at pp. 1496-1498 [small rounded butter knife not deadly weapon].)

Assault with a deadly weapon does not require that the defendant actually try to use the weapon on the victim’s person. The test is whether the defendant demonstrates the “present ability” to complete the attack. The present ability element is satisfied when a defendant has attained the means and location to strike immediately, which means that the defendant must have the ability to inflict injury on the present occasion although the defendant need not have the ability to inflict injury instantaneously. (*People v. Chance* (2008) 44 Cal.4th 1164.) “Numerous California cases establish that an assault may be committed even if the defendant is several steps away from actually inflicting injury, or if the victim is in a protected position so that injury would not be “immediate,” in the strictest sense of that term.” (*Id.* at p. 1168.)

As this court explained more than a century ago, “Holding up a fist in a menacing manner, drawing a sword, or bayonet, presenting a gun at a person who is within its range, have been held to constitute an assault. So, any other similar act, accompanied by such circumstances as denote an intention existing

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at the time, coupled with a present ability of using actual violence against the person of another, will be considered an assault.” [Citations.]

(*People v. Colantuono* (1994) 7 Cal.4th 206, 219.)

The defendant in *People v. Chance, supra*, 44 Cal.4th 1164 was held to have the “present ability” to inflict injury, as required for the crime of assault on police officer, even though there was no round in the firing chamber of his gun, and he did not point gun at officer. The defendant hid behind a trailer and pointed the loaded gun at a place where he believed Officer Murdoch would appear. The officer instead approached defendant from behind thwarting the defendant’s plan.

Defendant contends he lacked the present ability to inflict injury not only because he was aiming in the opposite direction from Murdoch, but also because Murdoch had him covered and would have shot him first. However, this argument cannot be squared with cases demonstrating that an assault may occur even when the infliction of injury is prevented by environmental conditions or by steps taken by victims to protect themselves.

(*Id.* at p. 1173.)

Here, defendant’s loaded weapon and concealment behind the trailer gave him the means and the location to strike “immediately” at Sergeant Murdoch, as that term applies in the context of assault. Murdoch’s evasive maneuver, which permitted him to approach defendant from behind, did not deprive defendant of the “present ability” required by section 240. Defendant insists that ... he never pointed his weapon in Murdoch’s direction. That degree of immediacy is not necessary

(*Id.* at pp. 1175-1176.)

Other case examples also illustrate when a defendant’s behavior is sufficient to complete the crime of assault with a deadly weapon. In *People v. Nguyen* (2017) 12 Cal.App.5th 44, the appellate court upheld the defendant’s conviction for aggravated assault on a police officer when he wielded a large knife and stepped toward the officer, rejecting the argument that being 10 to 15 feet away deprived the defendant of the present ability to inflict injury. In *People v. Escobar* (1992) 11 Cal.App.4th 502, the appellate court upheld a conviction when the victim heard the defendant cock a loaded firearm, even though the gun was concealed in a leather purse, and the defendant never pointed the weapon. In *People v. Orr* (1974) 43 Cal.App.3d 666, the defendant pointed a loaded rifle at the victim, backed him into a ditch, then fled. The defendant’s conviction of assault with a deadly weapon was upheld. In *People v. Thompson* (1949) 93 Cal.App.2d 780, the defendant pointed a loaded pistol towards police officers and said he would not submit to arrest. Again, the conviction of assault with a deadly weapon was affirmed. (Similarly, see *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1326.)

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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)³⁹ 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 arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing, In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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.)

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

³⁹ 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 became effective on January 1, 2020 and do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

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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.

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(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. 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

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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

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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. (*Baldridge v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

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, 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. Connor]* (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.)

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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].)

When the use of a police dog to apprehend a suspected felon resulted in that felon's death, the court of appeal found that deadly force was not used. The court explained:

"We do not dispute the fact that trained police dogs can appear to be dangerous, threatening animals. The dogs' ability to aid law enforcement would be minimal if they did not possess this trait. **However, the mere recognition that a law enforcement tool is dangerous does not suffice as proof that the tool is an instrument of deadly force.** As we already have stated, **the totality of the factors present in a particular case determine whether deadly force was used to apprehend a suspect.** Accordingly, we affirm the district court's conclusion that, although in this particular case the use of a police dog to apprehend a suspected felon resulted in that felon's death, deadly force was not used to seize the felon. (*Robinette v. Barnes*, 854 F.2nd 909, 913, 1988 U.S. App. LEXIS11435, *9-10.)

ANALYSIS

In this case, non-lethal and lethal force were used against Gonzalez. Because the non-lethal use of force was found to have contributed to Gonzalez's death, the use of this force will be analyzed. Both non-lethal and lethal force must be justified. In order to determine whether the force used against Gonzalez was justified, we must look at the facts and circumstances that led up to each use of force.

On July 16, 2019, deputies with the San Bernardino County Sheriff's Department encountered Gonzalez in the area of Pipeline Avenue and Village Drive in the city of Chino Hills. The area in which they encountered Gonzalez was a densely populated residential neighborhood. Gonzalez was armed with two large knives. The deputies had

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responded to the location after multiple 911 callers reported a male subject was brandishing knives in the area.

Deputy Figueroa and Deputy Martinez saw Gonzalez was armed with two large kitchen knives and he was walking in a “very aggressive manner,” with his hands up and yelling. The deputies immediately got out of their patrol units, pointed their handguns at Gonzalez, and began ordering him to drop the knives. Deputy Martinez was approximately 20 feet away from Gonzalez, with only the open front passenger door between him and Gonzalez at this point. Deputy Figueroa was positioned on the driver’s side of the patrol unit.

Deputy Frias arrived and stopped his patrol car south of Gonzalez and the deputies. Out of concern for the safety of the public, Deputy Frias stopped his patrol unit in the northbound lanes of traffic in order to keep vehicles from coming too close. Deputy Frias got out of his patrol unit and began approaching on foot. All three deputies continued ordering Gonzalez to drop the knives. With Deputy Frias now on scene to assist in providing lethal coverage, Deputy Martinez re-holstered his handgun, moved to the back of his patrol unit, and grabbed the less-lethal bean bag shotgun. After doing so, Deputy Martinez returned to the passenger side of the patrol unit and saw that Gonzalez was standing in a “fighting stance” with his hands up with his fists clenched tightly around the knives. All three deputies continued to order Gonzalez to drop the knives. Gonzalez refused to drop the knives and instead, held onto them while asking the deputies to kill him. In response to this, the deputies told Gonzalez they were there to help him. The deputies explained this to Gonzalez several times, attempting to deescalate the situation. The deputies also told Gonzalez multiple times that they did not want to shoot him. The deputies told Gonzalez he needed to “just calm down, calm down,” and to drop the knives. However, Gonzalez continued to hold the knives in his hands and told the deputies to shoot him and to kill him.

Deputy Martinez’s Use of The Less-Lethal Shotgun

As the deputies continued ordering Gonzalez to drop the knives, Gonzalez continued refusing to comply. Instead, Gonzalez stood in a fighting-stance with his fists clenched tightly around the knives and argued with the deputies, telling them they were “going to have to shoot” him. Gonzalez grew more uncooperative and agitated. Gonzalez then put a knife up to his neck and told the deputies to kill him. Gonzalez took two steps toward Deputy Martinez and said, “Shoot me, shoot me, shoot me,” getting to within 15 feet of him. Deputy Martinez knew Gonzalez was too close and that at this distance, he was in grave danger.

Deputy Martinez yelled out, “Bean bag!” three times to let his partners know he was going to fire the less-lethal shotgun at Gonzalez before firing one bean bag round at Gonzalez’s chest and stomach area. At the time he fired, Deputy Martinez was “scared Gonzalez was going to stab him with the knives.” This fear was reasonable given the fact that Gonzalez

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had refused multiple commands to drop the knives, had grown increasingly uncooperative and agitated, and then took two steps toward Deputy Martinez, getting to within 15-feet of him. Deputy Martinez further explained that his goal in firing the less-lethal round at Gonzalez was to get him to drop the knives. Indeed, all three deputies continued yelling at Gonzalez to drop the knives throughout the duration of the encounter.

Under the law, less-lethal shotguns have been categorized as intermediate non-lethal force. "Less than deadly force, like deadly force, may not be used without sufficient reason; rather, it is subject to the *Graham* balancing test." (*Bryan v. MacPherson*, 63 F.3d 805, 825.) While Deputy Martinez did not use deadly force against Gonzalez, the force he used did contribute to Gonzalez's death. Accordingly, Deputy Martinez's use of the less-lethal shotgun will be discussed.

Gonzalez's possession of two large knives posed a threat to the safety of the public. Gonzalez walked down a public street with a knife in each hand, in and out of traffic, approaching moving vehicles, and caused sufficient fear in those who encountered him that they called 911 to report it. During their interviews, two different witnesses said when they saw Gonzalez with the knives, it reminded them of a horror movie. When the deputies encountered Gonzalez on Pipeline Avenue with the knives, they recognized this threat and immediately pointed their guns at him and began ordering Gonzalez to drop the knives. At this point, Gonzalez posed a threat to the safety of the officers as well as the public.

Deputy Martinez was 15-feet away from Gonzalez when he fired the first bean bag round from the less-lethal shotgun. Deputy Martinez aimed for Gonzalez's "center of mass." Deputy Martinez said he did not know if the first bean bag round hit Gonzalez, because Gonzalez gave no reaction and Gonzalez remained aggressive, still refusing to drop the knives. Deputy Martinez knew it was "not normal" for someone who was struck with a bean bag round to continue to be aggressive and disobey commands. Video footage shows Gonzalez flinched, turned his body south, and began running south, away from Deputy Martinez. Deputy Martinez continued telling Gonzalez to drop the knives and fired the less-lethal shotgun a second time. Deputy Martinez said when he fired the less-lethal shotgun the second time, he aimed for Gonzalez's center of mass, again from an approximate 15-foot distance. Gonzalez then jumped in the air, as if he had gotten hit, turned away from Deputy Martinez, and began running south on the sidewalk, still holding onto the knives, toward Deputy Frias' patrol unit.

Deputy Martinez fired the first and second bean bag rounds at Gonzalez in an attempt to force Gonzalez to comply with the orders to drop the knives. When he fired these first two rounds, Deputy Martinez was approximately 15-feet away from Gonzalez. Deputy Martinez aimed for Gonzalez's center of mass, which Deputy Martinez described as the chest and stomach area. Firing the less-lethal shotgun in this manner was not a use of deadly force. Deputy Martinez did not fire at close range, nor did he aim for Gonzalez's head. While a bean bag round did strike Gonzalez in the upper chest and was found to

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have contributed to Gonzalez's death, it is clear Deputy Martinez did not intend this result. Deputy Martinez made a deliberate choice to re-holster his handgun and to arm himself instead with the less-lethal shotgun so that the deputies would have a non-lethal force option. The deputies ordered Gonzalez to drop the knives multiple times. The deputies also tried to calm Gonzalez and to deescalate the situation by telling him they were there to help him, and they did not want to shoot him. Gonzalez refused to comply with the deputies orders to drop the knives and grew more aggravated and aggressive. Because of this, Deputy Martinez fired the less-lethal shotgun at Gonzalez in an attempt to force Gonzalez to drop the knives. The first round was ineffective, and Gonzalez continued to hold onto the knives, so Deputy Martinez continued ordering him to drop the knives and fired the less-lethal shotgun at Gonzalez a second time.

The courts have held that active resistance can justify multiple applications of non-lethal force to gain compliance and that multiple applications of such force would therefore not be deemed "excessive" nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182. Gonzalez actively resisted the deputies every step of the way. Deputy Martinez fired the less-lethal shotgun more than once because Gonzalez continued to actively resist the deputies. Deputy Martinez used the less-lethal shotgun because he knew the taser would have been ineffective unless he got closer to Gonzalez; so too with the baton. Given the fact that Gonzalez had two knives, Deputy Martinez was not able to get close enough to him to use anything other than the less-lethal shotgun to try to force Gonzalez to comply with their commands. As such, Deputy Martinez's use of the less-lethal shotgun was objectively reasonable.

After Deputy Martinez fired the second less-lethal round at Gonzalez, Gonzalez continued to hold on the knives. Gonzalez turned away from Deputy Martinez and began running south on the sidewalk toward Deputy Frias' patrol unit and toward several civilians who were stopped in their vehicles behind the unit. Deputy Martinez saw the civilians sitting in their vehicles and knew they were in danger. One of those civilians, Witness #9, saw Gonzalez running toward his location. In addition to these civilians, there was a busy shopping center, where private citizens would be out on foot, only one-tenth of a mile away. Deputy Martinez ran south on the street, after Gonzalez, and fired the less-lethal shotgun at Gonzalez a third time. It should be noted, that just prior to this third less-lethal deployment, video footage showed Gonzalez had jumped and turned around to face Deputy Martinez and then side-stepped to his right while facing Deputy Martinez. Deputy Martinez said he fired the third round at Gonzalez because Gonzalez was running with the knives still in his hands toward civilians. When he fired the third round, Deputy Martinez's aim was Gonzalez's middle to lower back. Deputy Martinez was approximately 10 to 15 feet away from Gonzalez. Deputy Martinez saw Gonzalez's body was angled toward Deputy Frias, who was running south in the middle of the street, after Gonzalez.

Deputy Martinez saw the third bean bag round missed Gonzalez and instead hit the nearby block wall. Gonzalez continued running south with the knives raised in his hands. When Gonzalez reached the back of Deputy Frias' patrol unit, he made a hard-right turn

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and ran out into the street, straight toward Deputy Frias. When Gonzalez ran toward Deputy Frias, his hands were raised even higher. Upon seeing this, Deputy Martinez fired the less-lethal shotgun at Gonzalez a fourth and final time. Deputy Martinez did not know if this round struck Gonzalez.

Deputy Martinez fired the third and fourth beanbag rounds in an attempt to protect others who were in imminent danger because they were in Gonzalez's path. Gonzalez was running toward civilians with two knives in his hands. Deputy Martinez was aware of the fact that one of the 911 callers had reported Gonzalez had said he wanted to kill someone. Deputy Martinez fired the less-lethal shotgun a third time in an effort to stop Gonzalez and to get Gonzalez to drop the knives. Deputy Martinez was trying to protect civilians, and this was not only reasonable, but expected. Six different civilians reported Gonzalez after seeing him walking through the neighborhood with knives. Deputy Martinez was aware of the danger posed by Gonzalez before he even arrived on scene. When Gonzalez started running toward civilians, Deputy Martinez saw the threat was imminent. Deputy Martinez's fear for the safety of the civilians was honest and was objectively reasonable. After Deputy Martinez fired the third round, Gonzalez still did not drop the knives. Instead, Gonzalez made a hard-right turn and ran into the street with his knives raised even higher directly toward Deputy Frias. At this point, the threat to Deputy Frias' life was imminent and when Deputy Martinez saw this, he fired the less-lethal shotgun at Gonzalez. Deputy Martinez's fear for the safety of Deputy Frias was honestly and objectively reasonable.

Review of the video and the witness statements make it abundantly clear that Deputy Martinez did not have sufficient time to switch from the less-lethal shotgun to his handgun before firing the third or fourth bean bag rounds. Deputy Martinez used the only tool he had at his disposal to try to protect the nearby civilians and Deputy Frias and this was objectively reasonable.

Use of Deadly Force

When Gonzalez turned abruptly to his right, running from the sidewalk and into the street toward Deputy Frias, Deputy Frias was running south in the middle of the street. Deputy Frias saw Gonzalez suddenly change course and begin running toward him. Deputy Frias had already seen Gonzalez had a knife, but did not know Gonzalez, in fact, had two knives. Deputy Frias stopped running and quickly started retreating backwards away from Gonzalez. Gonzalez continued running toward Deputy Frias with the knives raised and Deputy Frias continued retreating backwards but Gonzalez was gaining ground and getting closer. Fearing for his life, Deputy Frias fired his handgun twice⁴⁰ at Gonzalez. When he fired, Gonzalez was approximately 10 to 15 feet away from him. Gonzalez made a "flinching movement" but continued running toward Deputy Frias, getting closer.

⁴⁰ Deputy Frias believed he fired one round, but in the video, two gunshots were initially heard

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Deputy Figueroa also saw Gonzalez abruptly change course and run from the sidewalk past the back of Deputy Frias' parked unit, and into the street. Deputy Figueroa heard Deputy Frias' gunshots, but did not know that it was Deputy Frias who had fired. Deputy Figueroa ran from the sidewalk, past the back of Deputy Frias' parked unit, and into the street. It was at this point when Deputy Figueroa saw Gonzalez was running straight toward Deputy Frias. Deputy Figueroa knew Gonzalez had two knives in his hands and when he saw him running toward Deputy Frias, he knew Deputy Frias was in imminent danger. Deputy Figueroa saw Deputy Frias was retreating away from Gonzalez, but that Gonzalez was gaining ground, and was only five to 10 feet away from Deputy Frias. Deputy Figueroa fired two rounds from his handgun at Gonzalez. When Deputy Figueroa fired, Deputy Frias was also firing his handgun at Gonzalez again because the initial rounds he fired did not stop Gonzalez. When Deputy Figueroa and Deputy Frias fired their handguns, Gonzalez was struck and fell forward onto the ground.

When Deputy Frias and Deputy Figueroa fired their handguns at Gonzalez, Gonzalez posed immediate threat to Deputy Frias. In the video, it was clear that Gonzalez was running straight toward Deputy Frias. The video also corroborated what the deputies said during their interviews. Gonzalez had his left arm extended out in front of his body. Gonzalez held two large knives, one in each hand. One of the knives had a blade that was over eight inches in length, while the other had a blade that was nearly five inches long. The knives were deadly weapons and Gonzalez used them as such when he ran straight toward Deputy Frias.

We know Deputy Frias was honestly in fear for his life because the video footage reveals Deputy Frias' reaction upon seeing Gonzalez running ran straight toward him: Deputy Frias quickly stopped running forward and began rapidly stepping backwards, retreating away from Gonzalez. This clearly demonstrates the fear Deputy Frias had. Deputy Frias was honestly afraid for his life and this fear was objectively reasonable. Any officer in this position, with an aggravated and aggressive man armed with knives running toward him or her, would have been afraid.

Upon seeing that Gonzalez was running straight toward Deputy Frias with the knives raised, Deputy Figueroa realized that Deputy Frias was in imminent danger. Deputy Figueroa saw that Deputy Frias was retreating away from Gonzalez but was gaining ground on Deputy Frias. As such, Deputy Figueroa's fear for his partner's life was honestly and objectively reasonable.

CONCLUSION

Based on the facts presented in the reports and the applicable law, Deputy Martinez's use of force was a proper exercise of Deputy Martinez's power of arrest, right of self-defense, and defense of others and therefore his actions were legally justified.

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Based on the facts presented in the reports and the applicable law, Deputy Frias' use of deadly force was a proper exercise of Deputy Frias' 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 Figueroa's use of deadly force was a proper exercise of Deputy Figueroa's right of self-defense and defense of others and therefore his actions were legally justified.

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