



## PUBLIC RELEASE MEMORANDUM

**SUBJECT:** Officer Involved Shooting (Non-Fatal)

**Officers:** Sergeant David Johnson  
Deputy Michael Martinez  
Hesperia Sheriff's Station

**Involved Subject:** Oligario Puente (Injured)  
Date of Birth 07/08/1986  
Hesperia, CA

**Date of Incident:** December 4, 2018

**Incident location:** \*\*\*\*\* Hemlock Avenue  
Hesperia, CA

**Investigating Agency:** Hesperia Sheriff's Station

**Case Agent:** Detective Max Kunzman

**DR #:** 191809482

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### PREAMBLE

This was a non-fatal officer-involved shooting by a deputy sheriff from San Bernardino Sheriff's Department, Hesperia Station. The shooting was investigated by the San Bernardino Sheriff's Department, Homicide Detail. This factual summary is based on a thorough review of all the investigative reports, photographs, and audio recordings submitted by the San Bernardino Sheriff's Department, DR #191809482.

### PRINCIPAL INVOLVED PARTIES

**Oligario Puente**, DOB: 07/08/1986, of Hesperia, California, was injured during the incident under review.

**Sergeant David Johnson**, of the San Bernardino Sheriff's Department, was one of the two deputy sheriffs involved in the shooting of Oligario Puente.

**Deputy Michael Martinez**, of the San Bernardino Sheriff's Department, was the second deputy sheriff involved in the shooting of Oligario Puente.

### SCENE

This incident occurred on December 4, 2018, at around 9:44 p.m. Location of occurrence was \*\*\*\*\* Hemlock Avenue in the City of Hesperia, California.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 2

#### **BACKGROUND INFORMATION**

**Oligario Puente** has a prior criminal history that includes convictions of offenses listed below:

2006, 23152(b) of the Vehicle Code, Driving with a Blood Alcohol Level of 0.08% or Higher, Los Angeles County Case number 6RI0624401, a misdemeanor.

2006, 14601(a) of the Vehicle Code, Driving with a Suspended License, Los Angeles County Case number 6RI0624401, a misdemeanor.

2007, 14601.1(A) of the Vehicle Code, Driving with a Suspended License, Los Angeles County Case number SBA7SY1063001, a misdemeanor.

2011, 245(A)(1) of the Penal Code, Assault with a Deadly Weapon not Firearm: Great Bodily Injury Likely, San Bernardino County Case number FWV1100983, a felony.

2018, 11550(a) of the Health and Safety Code, Under the Influence of Controlled Substance, Los Angeles County Case number ELM6EM0379501, a misdemeanor.

2018, 273.6(A) of the Penal Code, Violation of a Court Order to Prevent Domestic Violence, Riverside County Case number RIM1707168, a misdemeanor.

2018, 273.6(A) of the Penal Code, Violation of a Court Order to Prevent Domestic Violence, Riverside County Case number RIM1707747, a misdemeanor.

2018, 23103 of the Vehicle Code, Reckless Driving, Los Angeles County case number 7BL0600601, a misdemeanor.

#### **RELATED CASE**

Because of this incident, criminal charges were filed against Oligario Puente in San Bernardino Superior Court, case number FV118003470. The case resolved on July 29, 2019. Puente entered a plea of guilty to a violation of Penal Code §245(a)(1), Assault with a Deadly Weapon, not a Firearm or Force: GBI Likely, and to a violation of Penal Code §69, Obstructing or Resisting an Executive Officer. Puente was sentenced to two years and eight months in state prison.

#### **FACTUAL SUMMARY**

On December 4, 2018, at approximately 9:31 p.m., dispatch broadcasted a report of a subject causing a disturbance at \*\*\*\*\* Hemlock Avenue in Hesperia. The reporting party, Witness #1, advised that her brother, Oligario Puente, had attempted to harm one of their family members and had fled the location. Witness #1 said that Puente was armed with a gun and a knife. Puente was described as wearing a black sweatshirt and a pair of black sweatpants. Deputies from the Hesperia Sheriff's Station responded.

At approximately 9:36 p.m., Deputy Shawn Thurman arrived at the Hemlock residence. As he spoke with family members, he learned that Puente had just left the residence and was headed south. He heard yelling and screaming coming from the south of the residence. Deputy Thurman walked out, looked south, and saw Deputy Shawn Martin and Probation Officer Heather Stoops heading south in a vehicle on Hemlock Avenue, toward Sycamore Street. Deputy Thurman got in his car and followed them.

Deputy Thurman parked his car 100 to 200 feet north of Sycamore Street and saw a man matching Puente's description walk towards him on the east side of Hemlock Avenue. Thurman saw that Puente had a knife in his hand that he held by his waist, which he described as a tomahawk with a wooden handle and silver blade. Deputies Justin Carty and Graff Geerlings were in pursuit of Puente.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 3

Deputy Thurman directed Puente to get on the ground and drew his Taser, but Puente started to walk toward Deputy Thurman. Deputy Thurman deployed his Taser, but it appeared to have no effect on him as Puente ran north on Hemlock Avenue, away from Deputy Thurman. Deputy Thurman ran behind Puente with the Taser gun in his hand; Puente still had the Taser darts attached to his body.

Deputies pursued Puente, giving commands to “stop running” and to “get on the ground.” Puente crossed the street and got into the driver’s seat of a gray Chevrolet Suburban that was parked outside of the Hemlock Avenue residence.<sup>1</sup> Puente held the knife in his hand as he attempted to start the car. Deputy Carty gave commands to “get out of the vehicle” and “don’t start the vehicle.” Puente eventually exited the car and ran north into the driveway of the Hemlock Avenue family residence, where he stopped. Puente tried to enter the family residence, but it was locked.

Deputy Anthony Alfaro, Sergeant David Johnson, Deputy Michael Martinez, Deputy Martin, and Probation Officer Stoops joined Deputies Carty and Geerlings at the Hemlock Avenue residence, where Puente was in the driveway. Deputy Carty designated himself as the person to give commands; Puente did not comply with orders to stop, drop the knife, or show his hands. He continued to scream incoherently and make erratic movements such as laying down and jumping back up in a frog-like position. Deputies Alfaro and Martin deployed multiple less-lethal beanbag munitions, which struck Puente but did not seem to affect him. After Puente yelled that he did not speak English, Deputy Martinez gave commands in Spanish. Puente did not comply with them. At one point, Sergeant Johnson deployed his Taser at Puente; although it struck Puente, it did not affect him. Puente’s family members, as well as Probation Officer Stoops, stated that Puente charged at Sergeant Johnson and Deputy Martinez with the knife in his hand. When Puente was about 12 feet from Sergeant Johnson and 10 feet from Deputy Martinez, both deputies fired.

The deputies’ rounds struck Puente in his abdomen, right flank, left thigh, left hamstring, left buttock, his left hand, and his right hand. Puente fell to the ground and continued to scream incoherently. The knife in Puente’s possession was recovered as well as a pocket-knife that was found after the shooting. Emergency personnel treated Puente at the scene and then transported him to Arrowhead Medical Regional Center for further medical treatment.

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<sup>1</sup> This was later determined to be one of Puente’s family member’s vehicles.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 4

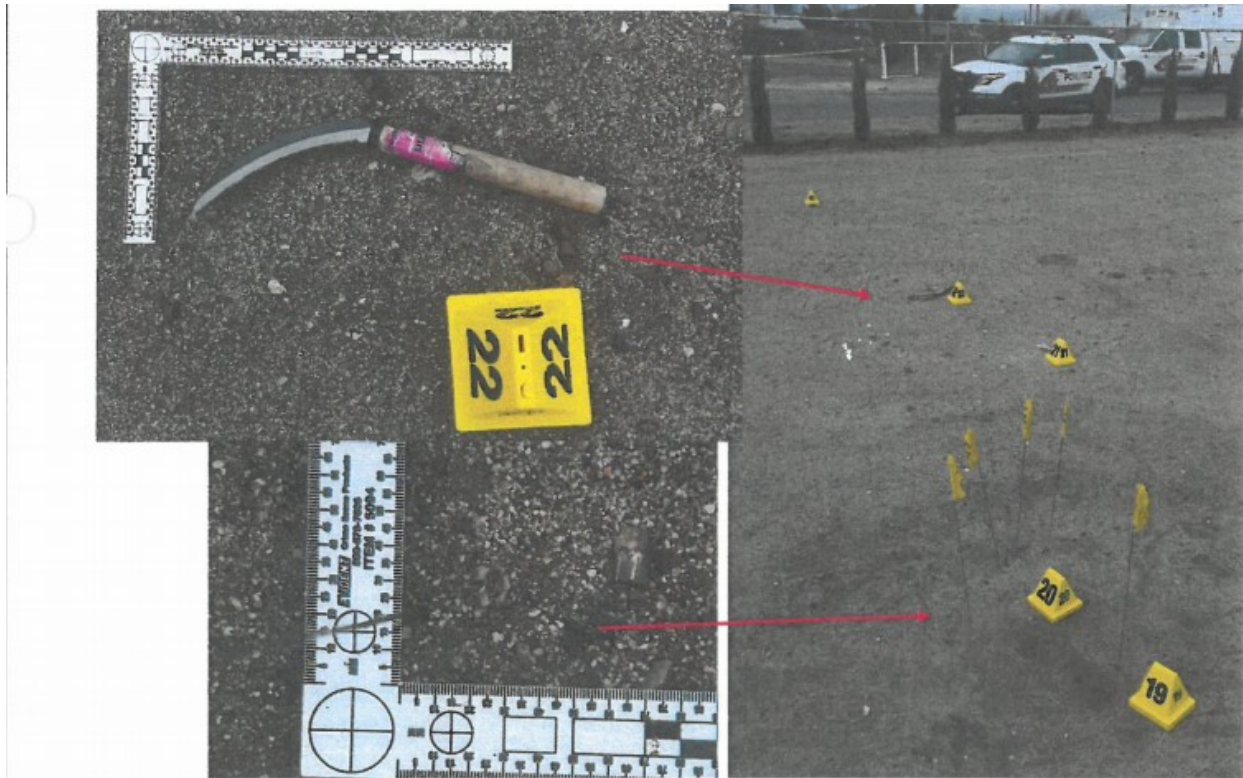


Photo of one of the knives that Puente had in his possession (a pocketknife was also found in his pocket after the shooting).

**SERGEANT DAVID JOHNSON**

Sergeant David Johnson heard the dispatch broadcast about a subject armed with a knife, possibly under the influence of methamphetamine, and threatening the safety of family members. The call included information that the subject was a Hispanic male, dressed in a black sweater or jacket, and black pants. At approximately 9:33 p.m., he responded to the call. While driving to the incident location, dispatch broadcast that the subject had, to Sergeant Johnson’s recollection, “multiple” or “numerous” priors for assault with a deadly weapon and had priors for being under the influence. Before Sergeant Johnson arrived, he heard that Puente was armed with a knife. Sergeant Johnson also heard, through cross-traffic radio, mention of the less-lethal munition of a beanbag being used, and for the peace officers to watch the crossfire with the beanbag.

Sergeant Johnson arrived at Hemlock and located Puente and the other deputies. He was dressed in a Class “A” San Bernardino County Sheriff’s Department uniform, consisting of a tan, long-sleeve, button-down shirt, and green pants.

As he stepped out of the car, Sergeant Johnson heard the beanbag munition being fired. He then saw Deputy Anthony Alfaro running through the gate with the less-lethal beanbag. The gate was part of a chain-link fence surrounding the house and led to the concrete walkway. Deputy Alfaro positioned himself in the center of the front yard.

Deputies Carty and Thurman were approximately 10 feet away from where Puente was by the square two-foot-by-two-foot pillar north of the front door in the front porch of the house. Deputy Carty was closest to the garage, and Deputy Thurman was to his left. Sergeant Johnson joined Deputy Thurman on his left. Sergeant Johnson removed his Taser and pointed it toward the front door.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 5

From his vantage point, Sergeant Johnson could see Puente on the ground, diagonally, behind the pillar of the front porch of the house. Sergeant Johnson could see part of Puente's head and half of his chest. Deputy Carty shouted commands at Puente to crawl out toward him. Puente responded that he did not speak English. Deputy Carty directed Deputy Martinez, who was fluent in Spanish, to take over giving commands in Spanish.

Deputy Martinez began to give commands in Spanish. Puente moved from behind the pillar, but not in a crawl; he moved quickly and rapidly. He then got up, at which point a beanbag was fired and hit him. Puente went down and began to crawl out. When Puente reached the west side of the pillar, he sat up on his knees. Puente's jacket was unzipped and Sergeant Johnson was able to see what he believed to be the wooden handle of the knife tucked into Puente's waistband. Sergeant Johnson then closed the distance between himself and Puente so that they were 10 to 12 feet apart in order to deploy his Taser.

Sergeant Johnson fired his Taser once. Puente began to scream, in a "woo" fashion<sup>2</sup>. Sergeant Johnson again fired his Taser. The Taser was ineffective, as Puente was not incapacitated and Sergeant Johnson said the Taser "was not having the effect" he wanted. As best as Sergeant Johnson could tell, he was sure at least one dart made contact with Puente's chest, but was not sure whether the second dart made contact at all. Sergeant Johnson then disposed of his Taser, retreated back to his previous position and drew his handgun.

Deputy Alfaro deployed three more beanbags. Each beanbag made contact with Puente, but each time after he got hit, Puente got back on his feet. Sergeant Johnson observed that Puente did not "flinch", "double over", or move his hand to the area on his body where the beanbag had struck. After the last beanbag was deployed, Puente headed toward Sergeant Johnson and Deputy Martinez. Puente got to approximately 15 feet in front of the two deputies. Puente started to pull the wooden object out of his waistband. When Puente was approximately 12 feet in front of the two deputies, Sergeant Johnson fired. Deputy Martinez also fired. According to Sergeant Johnson, he fired first, before Deputy Martinez did.

After the sixth or seventh shot by both deputies in total, Puente fell to the ground. Medical personnel were called to treat him.

#### **DEPUTY MICHAEL MARTINEZ**

On December 5, 2018, at approximately 8:04 a.m., Detectives Max Kunzman, Narcie Sousa, and Sergeant Angelo Gibilterra interviewed Deputy Michael Martinez. Attorney Russel Perry was present.

On December 4, 2018, at approximately 9:31 p.m., Deputy Martinez responded to a call for service about a male who was high on methamphetamine and armed with a knife. Deputy Martinez was on duty and dressed in a department-issued Class "A" uniform. He arrived at \*\*\*\*\* Hemlock Avenue, parked at the north of the house, and saw Deputies Carty, Geerlings, and Thurman in pursuit of Puente, who was headed toward the family residence on Hemlock Avenue. He heard Deputy Carty advise over the radio to "watch for crossfire". He heard that Puente had a knife in his hand.

Deputy Martinez exited the vehicle and heard Puente yell "ahhhhh"<sup>3</sup>. He heard Deputy Carty command him to drop the knife. Deputy Martinez ran toward his partners and was approximately 30 feet away from Puente when he saw that Puente had a knife in his right hand. Deputy Martinez was not able to see the handle, but he could see that the blade was hooked and was approximately 8 inches long.

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<sup>2</sup> Sergeant Johnson described the noise Puente was making as "screaming that doesn't make sense to me" and "this weird sound like woohoo almost like...it wasn't like an ouch, stop, like it was like almost like excitement"; Deputy Martinez described it as "gibberish [he] couldn't even understand"; Deputy Alfaro described it as "laugh[ing] and scream[ing] loud[ly], but his sounds were not common with pain"; and Joel Puente, Puente's brother, described it as "yelling 'like a crazy person.'"

<sup>3</sup> Deputy Martinez stated that Puente was standing "in a manner just like yelling 'ahhhh'" as if Puente "wanted to charge [the deputies] or come at [the deputies][...]."

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 6

Deputies Carty, Thurman, and Martin formed a half-circle facing Puente. Puente continued to disregard commands to put the knife down. Deputy Martin fired a less-lethal beanbag round, which struck Puente, but Deputy Martinez saw that it had no effect on Puente, who continued to stand and scream incoherently.

A second less-lethal beanbag round was fired, which hit Puente. Puente went behind the stucco pillar. Deputy Martinez was not able to see Puente's hands, so he moved closer to get a visual observation. Deputy Martin deployed more bean bag rounds, which struck Puente. Puente lay down with his palms out, face down in the dirt. Deputy Martinez began giving commands in Spanish for him to put his hands in front and to "come this way". Puente instead jumped back up on his feet. As deputies got closer, he also gave the order for Puente to put his hands behind his back.

Seconds after that command, Puente jumped to his feet in a frog-style manner and then jumped into the bush. Deputy Martinez thought Puente was going to charge the deputies because of the ineffectiveness the less-lethal munitions had had on Puente as well as Puente's demeanor, which Deputy Martinez described as "amped up." Puente then popped up from the bush, and Deputy Martinez said that Puente appeared tense and wanted to fight.

Sergeant Johnson deployed his Taser, however, Puente did not go down on the ground; he stood straight back up. At this point, Deputy Martinez described that Puente was "still pumped up" and "yelling gibberish stuff". There was no indication that Puente was going to comply with the deputies' orders.

Puente then advanced towards Sergeant Johnson and Deputy Martinez, but would stop and stare around before continuing to take several more steps. The deputies continued to give him commands to get on the ground, to stop, and to drop the knife, but Puente continued to walk toward the deputies. Puente held the knife in his right hand, above his chest. The pointed end of the hooked blade was facing the outer portion of his body.

When Puente got within 10 to 15 feet from Sergeant Johnson and Deputy Martinez, both discharged their weapons.

### **WITNESSES AND CORROBORATION**

#### **DEPUTY SHAWN THURMAN**

On December 5, 2018, Detective Narcie Sousa and Deputy Brian Lovasco interviewed Deputy Shawn Thurman.

At approximately 9:30 p.m., Deputy Thurman assisted with a call at \*\*\*\*\* Hemlock Avenue in Hesperia. Deputy Thurman was on duty and dressed in a department-issued SMASH uniform with patches, badges, and Sam Browne belt.

Dispatch relayed that the reporting party, Witness #1, said that her brother, Oligario Puente, was high on methamphetamine, going crazy, and was armed with a gun and knife. Deputy Thurman arrived at the incident location and spoke briefly with several family members in the front yard, who informed him that Puente had just left the residence and was headed south.

While going to check Puente's room for any firearms, Deputy Thurman heard yelling from the south and saw that Deputy Martin and Probation Officer Stoops were headed south in a vehicle on Hemlock, toward Sycamore Street<sup>4</sup>. Deputy Thurman got in his car and followed them.

Deputy Thurman parked his car 100 to 200 feet north of Sycamore Street and saw Puente walk toward him on the east side of Hemlock. Deputies Carty and Geerlings were in pursuit. Deputy Thurman saw that Puente had a knife in his hand that he held by his waist, which Deputy Thurman described as a tomahawk with a wooden handle and

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<sup>4</sup> Hemlock Avenue and Sycamore Street are perpendicular and intersecting streets in Hesperia.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 7

silver blade. Deputy Thurman drew his Taser and instructed Puente to “get on the ground”, but Puente only looked at him blankly.

Puente started to walk toward Deputy Thurman and was 7 to 12 feet away when Deputy Thurman deployed his Taser. Deputy Thurman attempted to split the Taser darts between Puente’s upper and lower body and believed at least one dart made contact with Puente, but it appeared to have no effect on him as Puente ran north on Hemlock Avenue and away from Deputy Thurman. Deputy Thurman ran behind Puente with the Taser gun in his hand; Puente still had the Taser darts attached to his body. He was prepared to deploy the Taser again should Puente stop and turn toward him.

Deputies pursued Puente, giving commands to “stop running” and to “get on the ground.” Deputy Thurman yelled for other deputies to “grab the less lethal!” Puente crossed the street and got into the driver’s seat of a gray Chevrolet Suburban, holding the knife in his hand as he attempted to start the car. Deputy Thurman was afraid that Puente would start the car and run the deputies over. Deputy Carty stood near the passenger door and gave commands to “get out of the vehicle” and “don’t start the vehicle.” Puente eventually exited the car and ran north into the driveway of the Hemlock residence.

Deputies continued to give commands to Puente to stop, drop the knife, and get on the ground. Puente attempted to open the front door of the residence, but it was locked. Puente turned to face the deputies, and Deputy Carty assumed the primary role of giving commands. Puente stared at them, and Deputy Thurman feared he would charge the deputies. Deputy Thurman saw Puente make a throwing motion with the hand that he held the knife in, as if he were going to throw the knife at the deputies.

Deputies deployed multiple less-lethal bean bag munitions, but Puente continued to stand and look at them. Puente then got on the ground behind the stucco pillar. Deputy Thurman saw the handle of the knife in Puente’s waistband from his vantage point.

Puente then quickly pushed himself to his feet, the knife in his hand. He walked toward the deputies, which caused Deputy Thurman to backpedal. Deputy Thurman saw Sergeant Johnson standing near Deputy Thurman with a Taser.

More less-lethal bean bag munitions were fired at the same time that handgun rounds were fired. Puente fell to the ground and was eventually treated by paramedics at the scene.

#### **DEPUTY JUSTIN CARTY**

On December 5, 2018, at approximately 4:38 a.m., Deputy Brian Lovasco and Detective Narcie Sousa interviewed Deputy Carty.

At approximately 9:30 p.m., Deputy Carty and his partner, Deputy Geerlings (who was also his trainee), heard dispatch broadcast a call for service at \*\*\*\*\* Hemlock Avenue about a male who was high on methamphetamine and had a gun and knife. Deputy Carty was on duty and dressed in a department-issued Class “A” uniform. Dispatch related that Puente wore a black sweatshirt and black pants. Both deputies responded to the incident location, where they met Deputy Thurman. Deputy Thurman advised them that Puente had just left the location three to five minutes before he had arrived.

Dispatch broadcast information about a male who had thrown a rock at a house just two houses east of the Hemlock residence. Thinking the male might be Puente, Deputy Geerlings made a left turn on Sycamore Street and both deputies saw a man matching Puente’s description running north.

Deputy Carty exited his vehicle and began to pursue Puente. He saw Puente had a knife with a large curved blade and a wooden handle in his hand. Deputy Carty gave commands to stop running and put the knife down. When he caught up to Puente near Sycamore Street and Hemlock Avenue, Puente turned to Deputy Carty, held the knife in

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 8

the air near his chest with the blade pointed up, and shouted in Spanish. Deputy Carty commanded Puente to “Stop! Get on the ground! Drop the knife!” Puente instead turned and ran north.

Deputy Thurman, who had been driving south, stopped his car and met up with Deputies Carty and Geerlings. Deputy Carty continued to give commands, and he and Deputy Geerlings had their firearms drawn. Puente continued to yell and scream unintelligibly.

Deputy Thurman deployed his Taser as Puente ran by his car. Deputy Carty saw that one Taser dart made contact with Puente’s chest, but was not sure whether the second dart made contact. Puente pulled the Taser dart out from his chest and continued to run north on Hemlock Avenue, seemingly unaffected.

Deputy Carty and other deputies continued to pursue Puente and gave him verbal commands to stop running and get on the ground. Puente then approached a gray Chevrolet Suburban that was parked one house south of the Hemlock residence. Puente got in the driver’s seat and made the motion of turning the ignition on and starting the Suburban, but the car did not actually start. Deputy Carty opened the front passenger door and instructed Puente to stop and drop the knife. Although Deputy Carty did not see the keys to the Suburban, he was afraid that Puente would manage to turn on the vehicle and run over the deputies.

Puente ran out from the car and into the driveway of the Hemlock Avenue residence. Deputies continued to instruct Puente to stop, drop the knife, and get on the ground. Puente attempted to open the front door of the house. Deputy Carty did not want Puente to enter the front door of the house because he had received information that six children were inside the family residence on Hemlock Avenue. Deputy Carty believed the front door was locked because Puente then turned to face the deputies.

Puente held the knife near his chest with the blade facing up. He walked 10 feet in Deputy Carty’s direction with the knife. He raised the knife above his head while yelling in Spanish. Again, deputies gave commands for Puente to drop the knife and get on the ground.

Deputy Carty assumed the primary role of giving Puente commands. At this point, Deputy Carty was 20 to 25 feet away from Puente. Puente raised the knife over his head again and made a throwing motion, which Deputy Carty described as similar to throwing a baseball. Deputy Carty ducked. When he looked up, the knife was between Puente’s legs. Puente then grabbed the knife and repeated the throwing motion, which caused Deputy Carty to fear that Puente would throw the knife at the deputies.

Deputy Martin fired a less-lethal bean bag round at Puente, which struck Puente. Puente stared at Deputy Martin and did not drop his knife. Two more less-lethal munitions were fired. Puente continued to stand and look at deputies. He then lay on the ground between the stucco pillar and the front door. Deputy Carty saw Puente put the knife in his waistband.

Puente yelled in Spanish that he did not understand English, so Deputy Martinez began to give commands in Spanish. Puente initially appeared to obey the commands and crawled toward the pillar. Sergeant Johnson, Deputy Carty, and another deputy approached Puente. Puente then pushed himself to his feet and grabbed the knife from his waistband.

A deputy deployed a Taser, which hit Puente in the chest. Puente pulled the darts out and ran south toward the deputies with the knife in his right hand, close to his chest. Deputy Carty backpedaled as Puente closed the distance between them. Deputy Carty looked down to secure his footing and when he looked back up, Puente was 15 feet away. Deputy Carty thought Puente was going to stab him.

Deputy Carty positioned his gun and saw Deputy Martin in the backdrop. He attempted to get into a different position so that Deputy Martin would not be caught in the crossfire. Immediately after, Sergeant Johnson fired his handgun. Puente dropped to the ground. Deputies moved to handcuff Puente. Deputy Martinez moved the knife



## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 9

from underneath Puente's right side of his body. Deputy Carty conducted a pat-down search for weapons and found a pocketknife near Puente's right hip area.

#### **DEPUTY GRAFF GEERLINGS**

On December 5, 2018, at approximately 5:36 a.m., Detective Max Kunzman interviewed Deputy Graff Geerlings.

Deputy Geerlings and his training officer, Deputy Carty, were dispatched to a call for service about a male who was "acting crazy", armed with a knife and gun, and had just left the incident location on Hemlock Avenue. Deputy Geerlings was on duty and dressed in a department-issued Class "A" uniform. As the two deputies responded to the call, dispatch updated them and described Puente as a Hispanic male adult wearing a black sweatshirt and black pants.

Deputy Geerlings drove slowly through the area of Sycamore Street, checking the area for Puente. Eventually the deputies saw a male matching Puente's description run past their patrol vehicle near the intersection of Sycamore Street and Hemlock Avenue. Puente had a metallic object in his hand.

Deputy Geerlings parked and exited the vehicle. He gave Puente orders to "stop" and "come here". He then saw the metallic object in Puente's hand was a knife with a curved blade of five to six inches in length, which he deemed a threat to both himself and to Deputy Carty. He drew his firearm while repeatedly ordering Puente to drop the knife.

Puente turned and ran, with Deputies Geerlings and Carty pursuing him. After 30 feet, Puente turned, faced the deputies, and yelled incoherently. Puente held the knife in his right hand and clenched his left hand into a fist. Again, both deputies ordered Puente to drop the knife. Puente turned and began to run again.

Puente ran towards a patrol vehicle that was approaching south on Hemlock Avenue. Deputy Shawn Thurman exited the patrol vehicle, pointed his firearm at Puente, and ordered him to drop the knife. Puente did not comply. Deputy Thurman deployed his Taser when Puente was approximately 12 to 15 feet away from Deputy Thurman, but the Taser was ineffective as Puente turned away from Deputy Thurman and began to run again toward the Hemlock Avenue residence. Deputy Thurman ran after Puente with the Taser in his hand; the Taser darts were still attached to Puente's body.

Deputies Geerlings, Carty, and Thurman pursued Puente while giving him commands to stop. Puente ran towards a SUV parked near the Hemlock Avenue residence and got in the driver's seat. Deputy Geerlings feared that if the keys were inside the vehicle, Puente would drive the car toward himself and Deputy Thurman, as they stood in front of the car.

Puente exited the vehicle and ran into the driveway of the residence. He attempted to open the front door of the house. He then walked towards deputies, ignoring commands to drop the knife. Deputy Martin deployed one less-lethal bean bag munition, which struck Puente yet appeared to have no effect on Puente as he took two steps forward. Deputy Martin deployed a second less-lethal bean bag round at Puente, which struck Puente and caused him to stop and slouch forward. Puente did not comply with multiple commands to drop the knife. Deputy Martin deployed a third less-lethal munition at Puente, which struck Puente and caused him to drop to the ground.

Puente crawled behind a stucco pillar, which caused deputies to lose visual observation of him. They gave multiple commands for Puente to come out behind the pillar, and Deputy Martinez gave the same commands in Spanish. Puente did not comply with the orders.

Deputy Martin deployed a fourth bean bag munition at Puente. From his vantage point, Deputy Geerlings did not see whether the munition struck Puente, but it appeared to him to be effective as Puente came out from behind the pillar and lay face-down in the front yard.

As Deputy Carty approached Puente, Puente jumped to his feet and advanced toward Deputy Carty, Sergeant Johnson, and Deputy Martinez in the driveway. Deputy Carty began to move back as Puente closed the distance

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 10

between himself and the three deputies. Deputy Carty tripped and looked down to get his footing. When he looked back up, Puente was 15 feet away. Deputy Carty believed that Puente was going to stab him.

Deputy Carty pointed his firearm at Puente but saw Deputy Martin in the backdrop. Deputy Carty attempted to get into another position in order to avoid crossfire. A second later, Sergeant Johnson fired his handgun. Deputy Carty heard multiple shots but did not know how many deputies fired their handgun. Deputy Geerlings observed Puente to be approximately 10 feet away from Sergeant Johnson and Deputy Martinez when Sergeant Johnson fired at Puente.

#### **DEPUTY SHAWN MARTIN**

On December 5, 2018, at approximately 2:46 a.m., Detective Max Kunzman interviewed Deputy Shawn Martin.

Deputy Martin and his partner, Probation Officer II Heather Stoops, responded to a call for service that a man was armed with a gun and knife and had threatened his family. Deputy Martin was on duty and dressed in a department-issued SMASH uniform. While en route, he heard responding deputies identify the man as Oligario Puente. He also heard via dispatch that Puente had an active warrant for his arrest. He drove south on Hemlock Avenue from Sequoia Street<sup>5</sup>. As he did so, Deputies Carty and Geerlings broadcasted that they were in pursuit of subject on foot that matched the description given by dispatch. Deputy Martin located the deputies chasing Puente on Hemlock Avenue and parked his patrol car along 100 feet north of Puente, about three houses south of \*\*\*\*\* Hemlock Avenue.

Puente stopped running and began to walk north, away from deputies. Deputy Martin heard Deputies Carty and Geerlings give multiple commands to “stop” and “drop the knife”. Puente did not obey the commands. He continued to walk and yell incoherently. Two of Puente’s family members had followed the deputies and pleaded with Puente to listen to the police.

As Deputy Martin approached Puente, he could see that Puente had a knife in his right hand. The knife had a wooden handle and curved blade. Puente held the knife by his side and swung it from front to back. Deputies Martin, Carty, and Geerlings, and Probation Officer Stoops continued to pursue Puente while giving him commands to drop the knife.

Deputy Martin saw Deputy Thurman arrive and park his car. He estimated that Deputy Thurman was approximately 50 feet north of Puente and the other deputies. Puente then changed direction and walked toward Deputy Thurman with the knife in his hand. When Puente was approximately 10 feet from him, Deputy Thurman deployed his Taser. The Taser was ineffective. Puente then ran north and continued along the shoulder of Hemlock Avenue.

Deputy Martin drove to \*\*\*\*\* Hemlock Avenue and armed himself with his department-issued less-lethal Remington 870 shotgun, which was loaded with four less-lethal bean bag munitions. He walked onto the property of \*\*\*\*\* Hemlock Avenue and saw Puente standing on the front porch. Sergeants Armando Avila and David Johnson, as well as Deputies Martinez and Thurman, had their weapons drawn at Puente and gave him verbal commands to drop the knife.

Puente did not comply with the commands. Fearing he would enter the house and place the residents at risk, Deputy Martin fired one bean bag muniton at Puente from approximately 30 feet away. The muniton hit Puente in the upper abdomen, but Puente remained standing and holding the knife. Deputy Martin fired a second bean bag at Puente, which hit Puente in the same area as the first. Puente then dropped to his knees, moved behind a stucco pillar, and put his hands underneath his body.

Deputy Martin moved until he was again approximately 30 feet northwest of Puente. Throughout their interaction with Puente, deputies continued to give commands to Puente to disarm himself, which Puente did not obey. Deputy Martin deployed his third bean bag muniton, which hit Puente’s right side of his body. It appeared to have no effect, as Puente remained in the same position.

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<sup>5</sup> Sequoia Street runs east-west. It turns into Hemlock Avenue when one turns south.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 11

Puente then got to his feet, and Deputy Martin discharged his fourth, and last, bean bag munition. Puente went to the ground. Commands were given, in both English and Spanish, for Puente to disarm himself and come out from behind the pillar. Puente began to crawl out, over a bush, and into the front yard. He then put his left hand under his body and extended his right hand out, with his face down.

Puente then yelled and quickly rose to his feet. Deputy Alfaro, who was several feet southeast of Deputy Martin and armed with a less lethal shotgun, fired one bean bag munition at Puente. Although Deputy Martin was unsure whether the munition made contact, Puente seemed unaffected as he continued to walk toward deputies.

Another deputy deployed a Taser, which did not appear to be effective as Puente switched direction and began to walk south toward Sergeant Johnson and Deputy Martinez. He ignored multiple commands to stop. Deputy Martin observed that Puente appeared angry and began walking faster than before. Deputy Martin believed that Puente was going to use the knife to harm the deputies. When Puente was about 10 feet away from Sergeant Johnson, Sergeant Johnson fired multiple shots and Puente went down.

#### **PROBATION OFFICER II HEATHER STOOPS**

On December 5, 2018, at approximately 3:29 a.m., Detective Narcie Sousa and Deputy Brian Lovasco interviewed Probation Officer Heather Stoops.

At approximately 9:30 p.m., Probation Officer Stoops and her partner, Deputy Martin, heard dispatch broadcast a call for service about a subject armed with a gun and knife and who was high on methamphetamine. Probation Officer Stoops was on duty and dressed in a department-issued SMASH uniform with patches, badge, and a Sam Browne belt. They drove south of the incident location and saw Puente standing in the middle of the road, north of Sycamore Street. Deputies Carty and Geerlings were also present.

Deputy Martin stopped the patrol vehicle and they took up positions. Probation Officer Stoops heard Deputy Carty give Puente commands to get on the ground. Stoops saw that Puente held a knife in his right hand, which she described as having a long blade and wooden handle. Puente moved the knife from the left to right as he paced back and forth.

Puente continued to ignore commands from Deputy Carty to drop the weapon and get on the ground. Puente then turned and walked north on Hemlock Avenue, toward his residence. At that moment, Deputy Thurman arrived in his patrol vehicle. Puente ran toward Deputy Thurman, who then deployed his Taser. Probation Officer Stoops saw a Taser dart strike Puente but noticed it did not appear to affect him.

Deputy Martin and Probation Officer Stoops got in their patrol car and followed Puente to the Hemlock Avenue residence. Deputy Martin got the less-lethal Remington 870 shotgun and Probation Officer Stoops retrieved the Remington 870 shotgun. They joined deputies at the driveway of the residence.

Probation Officer Stoops was approximately 10 to 12 feet away from Puente, with Sergeant Johnson and Deputy Carty on her right and Deputies Martinez, Thurman, and Deputy Alfaro on her left. Puente stood at the front door of the family residence on Hemlock Avenue with the knife in his right hand, his arms flailing back and forth. Deputies gave commands to drop the knife and get on the ground. Puente's family members also told Puente to put the knife down and put his hands up.

Probation Officer Stoops heard Deputy Martin deploy at least four less-lethal bean bag rounds at Puente. Two of them struck Puente in his stomach but did not affect him as he continued to hold the knife in his hand and flail his arms back and forth. Probation Officer Stoops described that Puente moved his hand as if he were going to throw the knife, as one would a baseball. Probation Officer Stoops feared for her safety as well as that of her partner.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 12

Puente got on the ground behind a stucco pillar. Probation Officer Stoops saw him reach into the front waistband with his left hand and believed he was reaching for a gun, as she remembered information early on that indicated Puente might be armed with a gun. She yelled, "He's going for his waist! He may be going for a gun!"

A less-lethal bean bag struck Puente while he was still behind the stucco pillar. Puente got to his feet with his knife in his hand and ran at Probation Officer Stoops. He moved his knife up and down as he did so. Deputy Alfaro fired three more less-lethal munitions. Probation Officer Stoops was not sure if the bean bags made contact with Puente, but Puente did not respond. Probation Officer Stoops raised her shotgun to fire, but just then a deputy stepped in front of her. At the same time, Probation Officer Stoops heard Sergeant Johnson and Deputy Martinez fire at Puente. Puente went to the ground.

#### **DEPUTY ANTHONY ALFARO**

On December 5, 2018, at approximately 4:11 a.m., Detective Julius McChristian interviewed Deputy Anthony Alfaro.

At approximately 9:32 p.m. the night before, Deputy Alfaro heard dispatch broadcast a call for service involving a male at \*\*\*\*\* Hemlock Avenue that had a gun and knife and was "going crazy". While en route to the location, Deputy Alfaro received information about a subject breaking into a home not far from the incident location. He thought the two were connected because of the proximity of the locations.

Deputy Alfaro saw that Deputies Carty, Martin, Martinez, and Thurman were at the residence, along with Probation Officer Stoops. Deputy Alfaro could see that Puente had a shiny object that looked like a knife in his right hand. Deputy Alfaro went to get a less lethal shotgun, as he did not see that any of the deputies at the scene at that time had a less lethal option.

Deputy Alfaro returned to the scene with a less lethal shotgun, loaded with four bean bag munitions. At that time, he noticed Deputy Martin had a less lethal shotgun. Puente was behind the stucco pillar and did not follow several verbal commands. Deputy Martin deployed two bean bag rounds when he was approximately 20 feet away from Puente, causing Puente to go down. As Puente lay on his stomach, deputies gave commands to him not to grab the knife. Puente used his hands to push his upper body off the ground, and Deputy Alfaro saw a brown knife handle in Puente's waistband.

Puente yelled several things in Spanish, so Deputy Martinez began giving commands in Spanish to Puente. Puente then crawled out from behind the pillar to the north side of the front door, over a bush. When he got to the top of the bush, he jumped to his feet.

At that point, Deputy Martin deployed one bean bag round at Puente, which struck him on his right upper torso but did not have an effect. Sergeant Johnson deployed his Taser, which also did not appear to have an effect. Puente began to laugh and scream, but it did not sound like he was in pain. Deputy Alfaro asked Deputy Martin whether he still had any bean bag rounds left, and Deputy Martin advised that he was out.

Puente began advancing toward Sergeant Johnson and Deputy Martinez. Deputy Alfaro fired one less lethal bean bag round from approximately 18-20 feet away from Puente, striking him in the upper torso. Puente did not respond and continued to advance towards Sergeant Johnson and Deputy Martinez. Deputy Alfaro gave verbal commands to Puente, and then fired a two-round burst from his less lethal bean bag ammunition. The rounds hit Puente in his right arm and right upper torso. Again, Puente did not respond.

At this point, Deputy Alfaro feared for Sergeant Johnson and Deputy Martinez's safety and was afraid due to Puente's lack of reaction to the less lethal munitions. Puente began to walk faster and reach into his waistband with his right hand as he advanced towards deputies. Deputy Alfaro fired one less lethal munition at the same time as Sergeant Johnson and Deputy Martinez fired their firearms at Puente. At that point, Puente was 10 feet away from Sergeant Johnson and Deputy Martinez.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 13

#### **DEPUTY PAUL KOWALSKI**

On December 11, 2018, at approximately 12:15 p.m., Detectives Max Kunzman and Julius McChristian interviewed Deputy Paul Kowalski.

On December 4, 2018, Deputy Kowalski was assigned to Desert Aviation at the Apple Valley airport. Deputy Kowalski was on duty and dressed in a department-issued aviation flight suit. At approximately 9:32 p.m., he heard dispatch broadcast a call for service involving a subject at \*\*\*\*\* Hemlock Avenue in Hesperia. Deputy Kowalski and his partner, Deputy Larry Scott, responded. Deputy Scott was the assigned tactical flight officer.

Both deputies arrived at the incident location approximately 15 minutes later via helicopter. Deputy Kowalski began to orbit the area and could see several deputies out in the front yard of the incident location. He used night vision goggles and camera monitor in Forward Looking Infrared Mode (“FLIR”)<sup>6</sup>. He was able to see that Puente was in the vicinity of a stucco pillar. He also heard the transmission of a less lethal bean bag round fired at Puente.

He saw a semi-circle of deputies lined up near the driveway at the front of the residence. Puente was north of the front door, on the porch, on his stomach. Deputy Kowalski observed Puente use his hands to push his upper body several times off the ground, similar to a push-up. Puente then jumped to his feet and advanced towards the deputies.

Through the camera, Deputy Kowalski saw three more less lethal bean bag rounds fired in Puente’s direction. He believed all of them struck Puente in the torso but had no effect on him. He heard Puente screaming in the background as the deputies transmitted updates over the radio, describing the sound as laughter.

Immediately after being struck with the less lethal rounds, Puente turned toward Sergeant Johnson and Deputy Martinez. He ran toward the two deputies. Both deputies fired lethal rounds at Puente, who fell to the ground.

#### **DEPUTY LARRY SCOTT**

On December 11, 2018, at approximately 12:10 p.m., Detective Bruce Southworth interviewed Deputy Larry Scott.<sup>7</sup> Deputy Scott was on duty and dressed in a department-issued aviation flight suit.

#### **WITNESS #2**

On December 5, 2018, at approximately 8:39 a.m., Detective Julius McChristian interviewed Witness #2, Puente’s brother.<sup>8</sup>

On December 4, 2018, at approximately 9:00 p.m., Witness #2 and his wife, Witness #3, were at their residence in Oak Hills. At 9:30 p.m., Witness #2 received a text from his mother, Witness #5, asking him to go to her residence on Hemlock Avenue in Hesperia. Witness #2 then received a text from his sister, Witness #6, asking Witness #2 to do the same because Oligario Puente was “not right.”

Witness #2 and Witness #3 drove to the Hemlock Avenue residence together. Witness #2 knew that Puente had a history of methamphetamine use and Puente was aggressive and violent when under the influence of drugs.

The couple arrived at 10:00 p.m. and Witness #4, Witness #2’s brother-in-law, let him inside the house. Upon entering the living room, Witness #2 saw Puente standing near the kitchen with a garden knife in his right hand. Witness #2 told Puente to leave the house and Puente told everyone to stay away from him.

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<sup>6</sup> While the camera monitor measures 17 inches and is in full color, images are displayed in black and white when it is used in FLIR. The FLIR detects heat, which is shown in bright white on the camera monitor.

<sup>7</sup> Deputy Scott’s interview contained the same information as Deputy Kowalski’s statement.

<sup>8</sup> As most of Oligario Puente’s family members share the same last name, Oligario Puente will be referred to as “Oligario Puente” or “Puente”, and family members will be referred to by their first names.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 14

Witness #2 stepped toward Puente, intending to force Puente out of the front door and away from the family. Puente grabbed Witness #3 and held the knife close to her neck. Witness #3 screamed, and Puente immediately released her and ran out the front door. Witness #6 called 911.

Witness #2 followed Puente as Puente ran south on Hemlock Avenue toward Sycamore Street, but eventually lost sight of him and began walking back to the residence. He then saw Puente walk from the rear of a house on Sycamore Street and told him to calm down and drop the knife. Deputies had arrived and told Puente to stop walking. One deputy deployed a Taser, but it was ineffective: Puente pulled the Taser dart from his clothing and continued walking. Puente also continued to ignore commands to drop the knife.

Puente approached the Hemlock Avenue residence just as Witness #7, Oligario and Witness #2's brother, pulled up and got out of the car. Oligario Puente got into the driver's seat and attempted to start Witness #7's car, but he did not have the keys. He got out and went to the front door of the Hemlock Avenue residence and attempted to open it. Deputies followed, giving commands to drop the knife and get on the ground.

Deputies fired several rounds from the less-lethal shotgun. Puente was screaming and yelling "like a crazy person." Puente dropped to the ground, the knife still in his hand, and appeared to crawl toward the direction of the deputies. He then jumped to his feet and started to wave the knife in the air as if he were going to throw the knife at the deputies. He did not obey commands to drop the knife. Puente then walked toward the deputies with the knife his right hand, at which point deputies fired several shots at him and he dropped to the ground.

#### **WITNESS #3**

On December 5, 2018, at approximately 9:00 a.m., Detective Julius McChristian interviewed Witness #3, Puente's sister-in-law.

Witness #3 said that she and Witness #2 Jr. arrived at the Hemlock Avenue residence at 10 p.m. the night before in response to a text message from her mother-in-law, Witness #5, requesting help with Puente. Witness #2 confronted Oligario Puente and told him not to be aggressive with their parents. An argument ensued. As Witness #2 got closer to Puente, Puente ran toward Witness #3. Puente grabbed Witness #3 and held a knife to her throat. Thinking that Puente was going to kill her, Witness #3 screamed, and Puente fled.

After some time, Witness #3 saw deputies in front of the house. At this point, a family member closed and locked the front door of the house. Puente walked up to the door and attempted to get in. Witness #3 heard deputies give Puente multiple verbal commands to drop the knife and get on the ground. She stated the commands were clear and lasted for five minutes. She did not think Puente complied because the commands were repeated.

#### **WITNESS #7**

On December 5, 2018, at approximately 8:49 a.m., Detective Narcie Sousa interviewed Witness #7, Puente's brother.

Witness #7 said that Puente used methamphetamine and had entered at least one drug treatment program in the past. On December 4, 2018, Witness #7, Puente, and other family members worked a construction job in Los Angeles. Witness #7 described Puente's behavior as agitated and said he talked to himself and tried to get out of the car while the family was driving on the I-10 freeway. Witness #7 recognized this behavior as consistent with Puente being under the influence of methamphetamine.

The family arrived at the Hemlock Avenue residence at approximately 7:30 p.m., and Witness #7 left to his own residence. His mother, Witness #5, then texted him and asked if he could come over. Witness #7 knew it had to do with Puente's behavior and told his mother to call the police.

Witness #7 arrived at the Hemlock Avenue residence at the same time the first responding deputy did. The deputy asked Witness #7 if Puente had a weapon. Witness #7 said that he knew Puente did not have a gun, but that Puente always carried a knife.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 15

Oligario Puente was at the corner of Hemlock Avenue and Sycamore Street when Witness #7 arrived. Puente ran at Witness #7, and deputies shouted for Witness #7 to move back. Witness #7 began to move toward Puente to try to help him to comply with the orders and could see that Puente was "out of it". Puente got into Witness #7's Suburban and said, "Let's go, fool."

Puente exited the vehicle and ran to the front door of the Hemlock Avenue residence. Witness #7 yelled for his family inside the house to lock the doors. Puente was approximately 15 feet from the front door when deputies deployed less-lethal bean bag rounds. Witness #7 heard approximately 4 to 5 bean bag rounds fired and saw the first one hit Puente in his upper torso. Puente raised his arms up with the knife in his hand. Witness #7 described Puente's actions as if he was about to throw the knife, not as if Puente was surrendering or giving up. Puente was struck with a second beanbag and did not comply with orders to drop the knife. Puente attempted to crawl away.

Deputies deployed a Taser, but it did not affect Puente as Puente did not obey commands to drop the knife. Puente jumped to his feet and charged at them while still armed. At that point, deputies fired their handguns and Puente dropped to the ground. Medical staff were called to render aid. Puente continued to scream and be aggressive while being treated.

Witness #7 said the deputies used every non-lethal option available and did everything they could to not shoot him. They shot when Puente charged at them with the knife.

#### **WITNESS #4**

On December 5, 2018, at approximately 8:49 a.m., Detective Narcie Sousa interviewed Witness #4, Puente's brother-in-law.

Witness #4 said that Puente has used methamphetamine since Puente was younger. On December 4, 2018, Witness #4, Puente, and other family members worked a construction job in Los Angeles. On the drive home, Puente acted strangely and not like himself and yelled at cars on the freeway.

The family arrived at the Hemlock Avenue residence at approximately 7:00 p.m. Puente began to run around the house, turn the lights on and off, and cause a loud commotion. Puente ignored orders to stop and go to sleep, and got into a verbal argument with his parents, Witness #2 and Witness #5. Puente then exited the house and went into the backyard.

Witness #2 arrived at the Hemlock Avenue residence and Witness #4 let him in the house. Witness #4 saw Puente show a knife to Witness #2. An argument ensued between Puente and Witness #2. Puente started screaming at Witness #2. Puente then walked to the door where he grabbed Witness #3 and Witness #6. Witness #6 pushed him away. Witness #4 did not want to discuss what Puente did to Witness #3, but said that Witness #3 experienced a panic attack. Puente ran out the door. Witness #4 and Witness #2 followed him.

Witness #4 and Witness #2 saw Puente walk out of a house on the corner of Hemlock Avenue and Sycamore Street and told him to stop and drop the knife. Puente responded, "Back off." Deputies arrived and Puente walked away from them, screaming, "Do you want to kill me?" Witness #4 said that Puente became more aggressive and began to wave his knife from side to side. Witness #4 saw a deputy deploy a Taser at Puente, but it had no effect.

Puente ran to a Suburban, entered it, exited, and ran toward the family residence on Hemlock Avenue. He tried unsuccessfully to get in. He then walked to the front yard. He was about 15 to 20 feet away from deputies when they shot a less-lethal beanbag munition at him, which caused him to crouch over. Witness #4 heard multiple less-lethal munitions being shot.

Puente got on the ground, near the bushes, and did not drop the knife. When commanded to move to the side, Puente got to his feet. Deputies deployed a Taser, and again it was ineffective.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 16

Puente walked toward deputies, waving his knife from side to side. He ignored commands to put the knife down and get on his stomach. Witness #4 described the deputies' commands as stern, but not aggressive. Witness #4 believed Puente to be approximately 5 to 6 feet away from deputies when they began shooting from their handguns. Puente fell on the ground and was treated by medical staff.

### **BELT RECORDING SUMMARIES**<sup>9</sup>

#### **SERGEANT DAVID JOHNSON**<sup>10</sup>

Sergeant Johnson was equipped with a belt recorder on the date of the incident under review. The belt recording was activated during the incident under review. The recording is approximately 2 minutes and 58 seconds long.

The helicopter can be heard at the beginning of the recording. Intelligible screaming can also be heard in the distance, which grows progressively louder. Deputies give commands, such as "crawl outwards towards me". A deputy yells, "Only one person talk!" After multiple commands are given, Puente is heard yelling several times, "No habla ingles." At that point, Deputy Carty instructs Deputy Martinez to "take over, he don't [sic] speak English. Tell him to crawl out towards us."

Deputy Martinez is heard speaking in Spanish, yelling several times for "Los manos!" Other people, presumably the family members, are also yelling in Spanish in the background, and a deputy instructs them to be quiet and "to back up please!"

Deputy Martinez continues to give commands in Spanish. A deputy says, "It's in his waistband. It's in his waistband." Then, at one point, Puente starts to scream loudly, "Whoo! Whoo!" Multiple bean bag shots can be heard, as well as shouts of "get down! Get down!" Multiple shots from a firearm are then heard.

Deputies then tell people to "get back, get back!" Crying is heard. A female voice<sup>11</sup> says "I'm right behind you." A deputy says, "Approaching and cuffing. Approaching and cuffing. Approach and cuff." Puente is heard mumbling incoherently and groaning. A deputy directs someone to keep the flashlight on him. Sergeant Johnson says to "start controlling them" and to get medical aid.

#### **DEPUTY MICHAEL MARTINEZ**<sup>12</sup>

Deputy Martinez was equipped with a belt recorder on the date of the incident under review. The belt recording was activated during the incident under review. The recording is approximately 4 minutes and 52 seconds long.

The recording starts with someone screaming, "Woo! Woo!" Deputies yell back while a helicopter can be heard in the background. Someone asks, "Where is the less-lethal?" Then, different males give repeated commands to "Drop the knife!" "Drop it!"

Multiple bean bags are deployed. There is unintelligible screaming in Spanish. Someone says, "Back up! Back up!" Another person commands, "Throw the knife onto the right side!"

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<sup>9</sup> This memo contains summaries of the recordings of Sergeant Johnson, Deputy Martinez, Deputy Carty, and Deputy Martin. The recordings of Deputy Geerlings, Deputy Alfaro, and Probation Officer Stoops were also reviewed, and they contained the same information.

<sup>10</sup> The following is a summary of the pertinent parts of the recording.

<sup>11</sup> Probation Officer Stoops was the only female law enforcement officer on scene.

<sup>12</sup> The following is a summary of the pertinent parts of Deputy Martinez's recording.



## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

July 9, 2021

Page 17

Then someone says, "Only one person talk!" "I got it," a male deputy responds, before ordering, "Crawl towards me." There is an unintelligible response, and someone says, "Martinez, tell him to pull out towards us."

Family members try to communicate, and someone says, "Hey! Quiet." Deputy Martinez gives commands in Spanish, including "Los manos! Los manos!" A deputy says to the family members, "You two, back up please!" Deputy Martinez continues to give commands in Spanish. While he does so, Puente can be heard yelling, "Woo!"

Multiple bean bags are deployed. Then gunshots are fired. Crying can be heard. A deputy directs family members: "Everybody back!" Puente can be heard screaming unintelligibly in the background. After some time, a deputy says, "Move that knife out the way a little bit. Right there..." Puente says, "Ahhhh...oohhh." The deputy asks, "You got any guns on you, boss?" Puente says, "[unintelligible] knife" and continues to scream and babble in Spanish.

#### DEPUTY JUSTIN CARTY<sup>13</sup>

Deputy Carty was equipped with a belt recorder on the date of the incident under review. The belt recording was activated during the incident under review. The recording is approximately 15 minutes and 41 seconds long.

The recording begins with Deputy Carty and Deputy Geerlings in their patrol car, driving, and looking for Puente. Deputy Carty directs Deputy Geerlings to drive more slowly in order to be able to see and locate Puente. Dispatch relays information over the radio. At one point, Deputy Thurman also speaks over the radio. Deputy Carty asks Deputy Thurman how long it has been since Puente left the residence. He then directs Deputy Geerlings where to drive, where to look, and to keep the spotlight on the patrol car on.

At one point, they see Puente and exit the vehicle. Deputy Carty yells, "Hey, stop! Come here!" Screaming in Spanish can be heard. Deputy Carty yells, "Boss, drop the knife!" as he gives pursuit on foot. He yells out, "Watch crossfire, guys, watch crossfire!"

Multiple deputies give repeated commands numerous times as Deputy Carty gives pursuit: "Get down! Get down on the ground!" "Drop the knife!" "Hands out of your pockets!" "Drop it, boss!" "Drop the weapon!" "You, drop the knife, now!" "Get down!"

Puente screams, "Woo! Woo!" A male voice is heard yelling, "Oligario, drop that shit, fool! You have your daughter!" A deputy asks, "Where is the less-lethal?"

Multiple bean bags can be heard being fired. Deputies command Puente numerous times to "Drop the knife." Deputy Carty yells, "Hey, crossfire, watch out!" A male voice says, "He's reaching into his waistband." Deputy Carty directs Puente: "Throw the knife out to your right side." Deputy Thurman says, "Only one person talk!" Deputy Carty says, "I got it. Crawl towards me. Crawl outwards toward me. Crawl out towards me."

Puente says something, and Deputy Carty says, "Martinez, take over, he don't speak English. Tell him to crawl out towards us." Deputy Martinez yells commands in Spanish.

Deputy Carty says, "You two, back up please!" A male voice says, "It's in his waistband. It's in his waistband."

Puente is heard screaming "Woo!" repeatedly as munitions are fired. A deputy says, "Get down! Get down!" More munitions are fired. Then, gunshots are fired. The family members begin crying. A deputy says, "Everybody back!"

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<sup>13</sup> The following is a summary of the pertinent parts of Deputy Carty's recording.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 18

A deputy says, "Move that knife out the way a little bit. Right there's good." After some time, he asks Puente, "You got any guns on you, boss?" Deputies tell Puente they need to check his body. Puente continues to mumble, scream, and babble in Spanish.

A family member asks a deputy to take off the hoodie, to which the deputy says, "I can try." The family member asks the deputy to take off the handcuffs, but the deputy says he cannot do that. The family member asks if the deputy can handcuff Puente in the front, but the deputy says, "I can't do that. He already came at me with a knife. I can't do that."

"Can you pull the pocketknife out?" a deputy asks. "Stay down, boss," another deputy tells Puente.

The family members continue to urge the deputy to remove the handcuffs. The deputy declines.

A female voice asks, "Was he Tased?" A deputy responds, "He was Tased multiple times and shot multiple times."

The female directs Puente to stand up. She tells Puente to "stop yelling. Stay still. We're trying to help you."

A deputy cautions someone to "watch the FCCs," and there is conversation about who shot and how many shots were fired. A helicopter can be heard whirring throughout.

#### **DEPUTY SHAWN MARTIN**<sup>14</sup>

Deputy Shawn Martin was equipped with a belt recorder on the date of the incident under review. The belt recording was activated during the incident under review. The recording is approximately 7 minutes and 18 seconds long.

A male deputy yells, "Go to the outside!" as he is running. He then commands, "Stay over there!" Different voices give commands multiple times to "Drop the knife!" "Drop the knife!"

There is rambling and screaming heard in Spanish. Deputy Martin says, "I don't know if we have time to get less-lethal or not." A male voice commands, "Drop to the ground!" Sounds of running can be heard, before a male deputy says, "The fuck is this?" Heavy breathing follows. Then Deputy Martin advises, "Get the shotgun...less-lethal. Not that one, Heather!"

Probation Officer Stoops responds, "I racked the shotgun." There are exchanges between Deputy Martin and Probation Officer Stoops. Deputy Martin announces loudly, "Less lethal!" before firing. He yells, "Drop it, drop it!" Other male voices yell, "Drop the knife!" Again, Deputy Martin announces, "Less lethal!" and fires. Commands can be heard: "Crawl towards me!" "Towards me!" Family members shout at Puente, and a deputy says loudly, "Quiet!" Deputy Martinez can be heard giving commands in Spanish.

In response, Puente yells, "Woo! Woo!" Bean bags are fired. Male deputies yell, "Get down!" and "Watch the crossfire!" Then, gunshots are fired. The family members begin to cry. A deputy commands, "Get back! Get back now! Everyone back!" Throughout the interaction with Puente, a helicopter can be heard in the background.

At the end of the belt recording, an unidentified male voice asks, "Is that your car?" Deputy Martin responds, "I don't know whose car this is. I think Sergeant Johnson?"

#### **WEAPONS**

A sickle with a seven (7) inch curved blade and wooden handle was located in the front yard of the incident location.

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<sup>14</sup> The following is a summary of the pertinent parts of Deputy Martin's recording.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 19

A Smith and Wesson Extreme Ops folding knife with a three (3) inch blade was also located in the front yard of the incident location.<sup>15</sup>

#### **DE-ESCALATION**

In reviewing Sergeant Johnson and Deputy Martinez's belt recordings, as well as those of the other deputies, multiple peace officers can be heard attempting to de-escalate the situation with verbal commands, both in English and Spanish. In their interviews, Deputies Carty, Geerlings, Martin, and Thurman stated multiple times commands were given to Puente during various locations: in the area of Sycamore Street and Hemlock Avenue, when Deputies Carty, Geerlings, and Thurman were in pursuit; outside of Hemlock Avenue, when Puente got into the driver's seat of the SUV; and when Puente was in the front yard of the Hemlock Avenue residence. In most cases Puente did not obey the commands; when he did obey, it was after repeated commands and then he would become non-compliant<sup>16</sup>.

Several deputies gave commands to Puente to "stop running", "drop the knife", "put the knife down", and, when Puente was behind the pillar, to "roll toward [them]." Each command was given multiple times, and "roll toward [them]" was given in both Spanish and English. Puente did not obey any of these commands.

Multiple deputies also tried to de-escalate the situation by employing less lethal methods. When he was in pursuit of Puente in the area of Hemlock Avenue and Sycamore Street, Deputy Thurman deployed a Taser at Puente. The Taser did not seem to affect Puente, and Deputy Thurman shouted at Deputy Martin to "grab the less-lethal" as Puente ran off with the Taser darts still attached to him.

When the deputies were attempting to get Puente to stop and disarm at the Hemlock Avenue residence, Sergeant Johnson also deployed his Taser. Deputies Martin and Alfaro both deployed less lethal bean bag munitions multiple times.

#### **INJURIES**

Oligario Puente was transported to Arrowhead Regional Medical Center for treatment. Puente sustained the following injuries<sup>17</sup>:

- one gunshot wound to the upper abdomen;
- one gunshot wound to the lower abdomen;
- one gunshot wound to the right flank;
- one gunshot wound to the left upper thigh;
- one gunshot wound to the left hamstring (consistent with a gunshot exit wound);
- one gunshot wound to the left upper buttock;
- one gunshot wound to the top of the left hand;
- one gunshot wound to the outer portion of the left hand (consistent with a gunshot exit wound);
- one gunshot wound to the inner portion of the right wrist; and
- one gunshot wound to the outer portion of the right wrist (consistent with a gunshot exit wound).

Puente also had redness to the left and right chest areas, consistent with being struck with a less lethal bean bag munition.

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<sup>15</sup> This folding knife was removed from Puente's person by Deputy Carty pursuant to a pat-down search after Puente was handcuffed.

<sup>16</sup> For example, he did begin to crawl out slowly from behind the stucco pillar, but then popped to his knees and did not get back on the ground as directed.

<sup>17</sup> Both Sergeant Johnson and Deputy Martinez fired their handguns. It is unknown which strikes were from which handgun.

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

July 9, 2021

Page 20

#### 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.)

[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; 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 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 firing chamber of his gun and he did not point gun at

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

July 9, 2021

Page 21

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.)

### APPLICABLE LEGAL STANDARDS

#### Laws of Arrest

##### California Penal Code section 834a

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

##### California Penal Code section 835

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

##### California Penal Code section 835a

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

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 22

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

#### **Laws of Self-Defense**

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is justifiable when committed by any person in any of the following cases: (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person...(4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace."

Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

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

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

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

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

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

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

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

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

July 9, 2021

Page 23

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

#### USE OF DEADLY FORCE BY A PEACE OFFICER

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

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

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary. (*Id.* at p. 396-397.) The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

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

Thus, under *Graham*, the high court advised we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. "We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." (*Smith v. Freland* (1992) 954 F.2d 343, 347.)

#### Reasonableness: The Two Prongs

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a "reasonable ground to apprehend" a design to commit a felony or to do some great bodily injury. Further, Penal Code section 198 requires that such fear be "sufficient to excite the fears of a reasonable person." This is clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

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

While the test, as mandated by section 198, is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self- defense. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) We must

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

July 9, 2021

Page 24

take into consideration all the facts and circumstances that might be expected to operate in the persons mind. (*Ibid.*) Reasonableness is judged by how the situation appeared to the *person claiming self-defense*, not the person who was injured or killed as a result.

#### **Imminence of Perceived Danger**

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

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

The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate.

#### **Retreat and Avoidance**

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

#### **Nature and Level of Force**

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

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

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

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



## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

July 9, 2021

Page 25

guessing of police decisions made under stress and subject to the exigencies of the moment.

*Scott v. Henrich (1994)* 39 F.3d 912, 915.

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

### ANALYSIS

In this case, per the *Graham* factors, both Sergeant Johnson and Deputy Martinez had an honest and objectively reasonable belief that Puente posed an imminent threat of serious bodily harm or death.

The first *Graham* factor contemplates the severity of the crime at issue. Here, Puente's actions were highly dangerous to others. According to multiple family members, he grabbed his sister-in-law and held a knife with a curved, serrated blade to her neck. This placed the sister-in-law in so much fear that she was unable to speak to the dispatcher after she called 911.

The second *Graham* factor analyzes whether the suspect poses an immediate threat to the safety of the officers or others. Here, Puente's erratic behavior and the fact that he was armed with a knife meant that he posed an immediate threat to the safety of the officers, his family members, and the public. Based on their prior experience, family members suspected Puente was being on methamphetamine and described Puente's demeanor while on drugs as aggressive. Throughout his contact with deputies, Puente shouted incoherently, laughed at times, and made sudden, unexpected movements such as lying down on the ground with his hands concealed before jumping onto his feet.

Moreover, Puente was armed with a large and potentially lethal knife. Family members described the knife as a garden knife with a serrated blade. The deputies who pursued and attempted to subdue before Sergeant Johnson and Deputy Martinez's arrival also saw Puente with the knife and described it as having a hooked blade that was somewhere between six to eight inches longer and with a wooden handle. The knife recovered on Puente's person after Puente was taken into custody was described as a "sickle with a 7" curved blade and wooden handle."

Puente's actions with the knife posed an immediate threat to the deputies and to the safety of others. When deputies pursued Puente in the area of Hemlock Avenue and Sycamore Street, Puente advanced on Deputy Thurman with the knife in his hand. When Puente retreated back to the Hemlock Avenue residence, he continued to keep the knife in his hand and advanced on Sergeant Johnson and Deputy Martinez while armed.

Puente was also an immediate threat because he did not respond to or obey not only the deputies' commands to stop and drop the knife, but his families' entreaties as well. When Deputies Thurman, Carty, and Geerlings pursued Puente in the area of Hemlock Avenue and Sycamore Street, Puente's brother and nephew followed and told Puente multiple times to calm down and drop the knife. Puente did not drop the knife.

When Puente ran back to the Hemlock Avenue residence, Puente's brother Witness #2 saw and heard deputies tell Puente to drop the knife and get on the ground. Witness #2 saw Puente remain standing. Witness #2 himself told Puente to listen to the deputies and continued to get Puente to comply with the deputies' commands. Puente did not comply with the commands.

Witness #3, Puente's sister-in-law and Witness #2's wife, was inside the residence when Puente was in the front yard interacting with deputies. She heard deputies give Puente commands to drop the knife and get on the ground. She stated that the commands were clear and were given for approximately five minutes. She said it was clear that Puente did not comply because deputies continued to give commands.

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

July 9, 2021

Page 26

Witness #7, another of Puente's brothers, was one of the family relatives who followed Puente into the area of Hemlock Avenue and Sycamore Street. Before Puente got into the driver's seat of the SUV, Witness #7 walked toward Puente to attempt to show him that deputies were trying to help.

Witness #7 heard deputies ask for a non-lethal weapon to be brought to the Hemlock Avenue residence. Witness #7 said that the deputies simply wanted Puente to stop and used every non-lethal option available, but that nothing would bring Puente down. Witness #7 said that deputies talked about backing up as they gave commands for Puente to get on the ground. Witness #7 heard deputies command Puente to drop the knife, but Puente did not. He saw deputies use a Taser on Puente, but that the Taser had no effect because of, in his opinion, Puente's thick clothing. Right before Sergeant Johnson and Deputy Martinez shot their handguns, Witness #7 heard deputies command Puente to put down the knife, but Puente charged at them with the knife. Witness #7 said that the deputies did everything they could to avoid shooting Puente, but eventually had to do so when Puente charged at them with the knife.

The third *Graham* factor takes in account whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Here, immediately after holding his sister-in-law and placing a knife blade to her neck, Puente fled the Hemlock Avenue residence.

Deputies Carty and Geerlings located Puente in the area of Hemlock Avenue and Sycamore Street. Puente did not comply with the deputies' commands to stop and disarm. Puente ran away from the deputies. Deputy Thurman joined in the pursuit, but Puente evaded him as well. When Puente ran back near the Hemlock Avenue residence, he got into a truck and acted as if he were turning over the engine to start the car and drive away. Puente retreated to the Hemlock Avenue residence, where he continued to disregard deputies' commands to drop the knife and get on the ground. All of his actions indicated that he was evading arrest by flight.

Shortly before they used their firearms, Sergeant Johnson and Deputy Martinez had seen that verbal efforts by both deputies and family members to de-escalate the situation, as well as less-lethal weapons such as bean bags and Tasers, had been unsuccessful. They also observed that Puente did not seem physically affected or impacted by the multiple bean bags that had made contact with his body. As Puente closed the distance between himself and Sergeant Johnson and Deputy Martinez, and his hand went into the waistband where Sergeant Johnson had seen the wooden handle of what he believed to be the knife, it was reasonable for Sergeant Johnson to believe that Puente posed an imminent threat which could result in himself or other deputies suffering serious bodily injury or death. When Puente was 12 feet from Sergeant Johnson, Sergeant Johnson fired.

It was also reasonable for Deputy Martinez to believe that Puente posed an imminent threat that could result in himself or other deputies suffering serious bodily injury or death. Deputy Martinez relayed that he saw Puente with the knife in his hand, the blade pointing away from Puente's body, as Puente advanced on him. When Puente was 10 feet from Deputy Martinez, Deputy Martinez fired.

Deputy Carty, Deputy Martin, Deputy Thurman, as well Probation Officer Stoops, corroborated that Puente had the knife because they were able to actually see the knife from their vantage points. They observed Puente had the knife out and was swinging it back and forth, as one would a baseball. Probation Officer Stoops, who said that she was on Sergeant Johnson's left, said that Puente "charged" at her with the knife.

Puente's family members who were present at the time of the shooting also corroborated the fact that Puente had a knife. Witness #2 said that after Puente dropped to the ground, Puente jumped back up onto his feet with the knife in his right hand. Witness #2 said that Puente waved the knife in the air as if Puente were going to throw the knife at the deputies. Witness #7 said that after Puente was hit with multiple beanbag rounds, Puente raised his arms up with the knife in his hand, not to surrender, but as if to throw it at the deputies.

In either case, whether Puente had the knife out in his hand or was reaching into his waistband for the knife, Sergeant Johnson and Deputy Martinez possessed a reasonable belief that Puente posed an imminent threat which could result in either deputy or other deputies suffering serious bodily injury or death.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

July 9, 2021

Page 27

**CONCLUSION**

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

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