



## **PUBLIC INFORMATION RELEASE MEMORANDUM**

**DATE:** August 17, 2021

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

**Officers:**

Deputy Arootin Bandari  
San Bernardino County Sheriff's Department

Sergeant Joshua Conley  
San Bernardino County Sheriff's Department

Deputy Angel Mata  
San Bernardino County Sheriff's Department

Deputy Mateusz Nosek  
San Bernardino County Sheriff's Department

Deputy Zachary Pritchett  
San Bernardino County Sheriff's Department

Deputy Sergio Ramirez  
San Bernardino County Sheriff's Department

Deputy Sean Taylor  
San Bernardino County Sheriff's Department

Deputy Taylor Wetzel  
San Bernardino County Sheriff's Department

**Involved Subject:** Daniel David Messmer (Deceased)  
Date of Birth 12/14/94  
Victorville, CA

**Date of Incident:** February 23, 2019

**Incident location:** \*\*\*\*\* Bear Valley Road  
Victorville, CA

**DA STAR #:** 2020-30344

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

**Case Agent:** Detective Simon DeMuri

**Report Number#:** DR # 171901771 / H # 2019-018

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## **PREAMBLE**

This was a fatal officer involved shooting by deputies from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, video and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 171901771 and H# 2019-018.

## **FACTUAL SUMMARY**

On February 23, 2019, during the late afternoon hours, Daniel Messmer went into the Shell gas station located at \*\*\*\*\* Bear Valley Road, in the City of Victorville. Messmer spoke with Witness #1, a gas station attendant. Witness #1 noticed a strong odor of alcohol coming from Messmer. Witness #1 was unable to understand what Messmer was saying because Messmer was mumbling and slurring his words. Witness #1 asked Witness #2, the assistant manager, to help Messmer.

Messmer asked Witness #2 to call the police. Messmer wanted the police to pick him up and drop him off in Vegas. Witness #2 said she could not do that and Messmer walked out of the gas station. A few minutes later, Messmer returned and spoke to Witness #1. Witness #1 was still unable to understand what Messmer was saying. Messmer then took a handgun from his waistband and brandished it at Witness #1. Messmer left the business and Witness #1 asked Witness #2 to call the police. Witness #2 called 911 and reported Messmer had a gun.

Sergeant Joshua Conley, Deputy Sergio Ramirez, Deputy Sean Taylor, Deputy Angel Mata, Deputy Zachary Pritchett, Deputy Arootin Bandari, Deputy Mateusz Nosek, Deputy Taylor Wetzel, and several other deputies from the San Bernardino County Sheriff's Department responded to the location. 40 King, the San Bernardino County Sheriff's Department helicopter, arrived at the scene before the other deputies and observed Messmer with a gun in a dirt field east of the gas station. 40 King broadcasted over the radio that Messmer was armed with a gun and Messmer appeared to be loading ammunition into the weapon.

When the deputies arrived, they saw Messmer sitting in an open dirt field holding a black handgun. Messmer appeared distraught. Messmer was holding the gun up to his head and would then put the barrel of the gun into his mouth. Deputies gave Messmer multiple verbal commands to put the gun down and place his hands in the air. Concerned that Messmer was possibly suicidal, deputies attempted to reassure Messmer that they wanted to help Messmer and they were not there to hurt Messmer. Messmer told the deputies, "Just shoot me." As Messmer was moving the gun around, Messmer would point the gun in the direction of the deputies. Messmer's movements did not appear intentional and the deputies continued to try to get Messmer to put his gun down.

During the incident, Messmer threw his gun a couple of feet away from him and laid on his back. Sergeant Conley believed this was an opportunity to move closer to Messmer and use less lethal force to disarm Messmer. Deputy Black slowly drove his patrol vehicle forward. A small group of deputies, using the patrol vehicle as cover, walked behind the vehicle toward Messmer. The deputies were only able to move a few feet when Messmer sat back up and grabbed his gun.

Messmer pointed the gun in the direction of the deputies. This time Messmer's movement appeared intentional and deputies believed Messmer was going to shoot them. Messmer extended his arm out as he pointed the gun towards the deputies. Deputy Mata, Deputy Nosek, and Deputy Carbajal indicated they saw a muzzle flash come from Messmer's gun. Sergeant Conley, Deputy Mata, Deputy Pritchett, Deputy Bandari, and Deputy Wetzel feared for their lives and the lives of their partners and fired their weapons at Messmer. Deputy Ramirez, Deputy Taylor, and Deputy Nosek feared Messmer was about to shoot their partners and fired their weapons at Messmer. Messmer was struck multiple times during the shooting and was pronounced deceased at the scene.

After the shooting, Messmer fell back. Deputies approached Messmer. A deputy kicked Messmer's gun away from Messmer. Messmer was handcuffed and medical personnel were requested. Messmer was pronounced deceased at the scene. An autopsy was conducted, and the forensic pathologist determined Messmer's cause of death was multiple gunshot wounds.

A black, RG Industries, semi-automatic handgun was found in the dirt, approximately six feet east/northeast of Messmer's head.

### **STATEMENTS BY POLICE OFFICERS**

On February 23, 2019, at approximately 9:42 in the evening, **Sergeant Joshua Conley** was interviewed by Detective Gerardo Moreno and Detective Eric Dyberg.<sup>1</sup>

On February 23, 2019, Sergeant Joshua Conley, from the San Bernardino County Sheriff's Department, was a watch commander assigned to the Victorville station. Sergeant Conley was wearing a long sleeve, "Class A" San Bernardino County Sheriff's Department uniform. On that date, Sergeant Conley was in the watch commander's office reviewing reports when he heard a call of a man with a gun in the area of a Shell gas station near the intersection of Bear Valley Road and Tamarisk Road. The reporting party advised Messmer had been drinking and was waiving a gun around. Sergeant Conley decided to respond to the call. As Sergeant Conley got into his

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<sup>1</sup> Sergeant Conley was equipped with a belt recorder that was recording during the incident under review. Sergeant Conley reviewed the recording prior to being interviewed by Detective Moreno and Detective Dyberg.

marked patrol vehicle, he heard a second reporting party called in advising of similar circumstances as the first reporting party.

As Sergeant Conley was driving, he learned 40 King, the San Bernardino County Sheriff's Department helicopter, was in the air and confirmed Messmer had a gun. 40 King indicated it appeared Messmer was loading his gun with ammunition. Sergeant Conley advised over the radio for other deputies to take their long guns. When Sergeant Conley arrived at the location, there were already other patrol units at the scene. Sergeant Conley parked his patrol vehicle, put on his plate carrier vest, took a shield and his mini-14 rifle and went up to the other deputies who were already giving Messmer commands.

Sergeant Conley asked Deputy Seth Black to give public announcements (PA) to Messmer from the patrol vehicle. Sergeant Conley wanted to make sure Messmer heard the commands. Deputy Black got on the PA and told Messmer the deputies were there to help him and gave Messmer multiple commands to drop the gun and put his hands up. Sergeant Conley also told Messmer, "Don't do it" and "Put the gun down." Sergeant Conley wanted to have a less than lethal use of force option available and called Deputy Pulido, who was equipped with a less lethal bean bag shotgun, over to his location. Sergeant Conley decided the deputies needed to move closer to Messmer and asked Deputy Black to advise Messmer that the deputies were going to move closer to Messmer. Sergeant Conley was hoping the deputies could get close enough to Messmer to utilize the bean bag. Sergeant Conley wanted to use the bean bag to separate Messmer from his gun and then take Messmer into custody without Messmer hurting himself or anyone else.

During this time, Messmer was sitting on a dirt path. Messmer had a gun; the gun looked like a Luger to Sergeant Conley. Messmer was waiving the gun around. Messmer would go from putting the gun in his mouth to holding the gun up to his head, to holding the gun to his chin. It appeared to Sergeant Conley that Messmer was distraught. Messmer was not responding to the deputies' commands to put the weapon down and put his hands in the air. During the incident, there was a civilian on top of the roof of the Shell Station who had to be ordered back inside the store. Sergeant Conley also noted that although traffic had been blocked on Bear Valley Road, there was still some pedestrian traffic on the south side of Bear Valley Road.

Sergeant Conley and a few other deputies used a patrol vehicle as cover and started to move closer toward Messmer. At one point, Messmer tossed his gun on the ground in front of him. The gun landed approximately five feet away from Messmer. Sergeant Conley thought they were making progress in getting Messmer to comply with deputies' commands. Messmer laid down on his back but then got back up into a sitting position after a few seconds. Sergeant Conley and the other deputies stopped moving closer towards Messmer. Messmer still appeared distraught and started inching towards the gun. Messmer picked up the gun and started waiving it around again. Messmer continued to put the gun in his mouth and put the gun up to his head.

As Messmer waived his gun around, Messmer pointed the gun in the direction of the deputies. It appeared to Sergeant Conley to be unintentional; Sergeant Conley described Messmer's movement as fleeting and Messmer immediately waived the gun in another direction. Messmer then pointed the gun at the deputies a second time; Messmer was still seated on the ground at the time. Sergeant Conley felt this time was different and Messmer's movement seemed more intentional. Messmer's right arm was out and the muzzle of the gun was pointed directly at deputies. It appeared to Sergeant Conley that Messmer was more committed to shooting at the deputies. Sergeant Conley feared for his safety and the safety of the other deputies. Deputies opened fire. Sergeant Conley fired two to three rounds at Messmer. Messmer went down to the ground.

Sergeant Conley saw movement in his peripheral vision going towards Messmer. Sergeant Conley yelled for people to stop because Messmer was still moving. Sergeant Conley told someone to get the shield so the deputies could make a safer approach. As the group of deputies approached, Sergeant Conley could see Messmer's hands were empty, but the gun was still next to Messmer. Sergeant Conley kicked the gun further east of Messmer and deputies handcuffed Messmer. Sergeant Conley advised over the radio shots fired and requested medical aid to respond. Sergeant Conley estimated from the time he arrived at the scene to the time shots were fired was approximately seventeen minutes.

On February 27, 2019, at approximately 8:58 in the morning, **Deputy Sergio Ramirez** was interviewed by Detective Simon DeMuri and Detective Julius McChristian.<sup>2</sup>

On February 23, 2019, Deputy Sergio Ramirez, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Ramirez had an Explorer, later identified as Breanna Hernandez, riding with him. On that date, Deputy Ramirez was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On February 23, 2019, Deputy Ramirez and Hernandez were sitting in his patrol vehicle investigating a stolen vehicle in a parking lot. Deputy Ramirez heard a call come out over the radio of an intoxicated man with a gun. Deputy Ramirez decided to assist on the call and responded to the location.

As he drove to the location, Deputy Ramirez heard a second call over the radio regarding a man with a gun in the same area. This raised a red flag in Deputy Ramirez' head that the call was legitimate. 40 King, the San Bernardino County Sheriff's Department law enforcement helicopter, got to the location and put out over the radio that Messmer did in fact have a gun. 40 King indicated Messmer was in a dirt field east of the Shell gas station located near the intersection of Tamarisk Road and Bear Valley Road, in the City of Victorville. 40 King advised it appeared Messmer was fumbling with

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<sup>2</sup> Deputy Ramirez was equipped with a belt recorder that was recording during the incident under review. Deputy Ramirez reviewed the recording prior to being interviewed by Detective DeMuri and Detective McChristian.

rounds trying to load his gun. A Victor Valley College police officer was already at the scene and 40 King advised the officer not to approach Messmer.

When Deputy Ramirez arrived at the scene, traffic around the area was blocked off. Deputy Ramirez parked his patrol vehicle closest to the Shell gas station and pulled out his mini-14 rifle. Deputy Ramirez instructed Hernandez to go to the back of the patrol vehicle and stay there. Deputy Ramirez loaded a round into the chamber of his mini-14 rifle and pointed it in the direction of Messmer. Messmer was seated in the desert area east of the gas station and had a gun to his head. The gun appeared to be a black, older model gun. There were other deputies present giving Messmer commands to drop the gun and telling Messmer they were there to help him. A couple of times, Deputy Ramirez heard Messmer say "Just shoot me." Messmer appeared distraught and Deputy Ramirez believed Messmer wanted to end his life. Messmer moved the gun from his head to putting the gun in his mouth. Deputy Ramirez gave Messmer commands to drop the gun. There were civilians at the gas station that deputies ordered to go inside the gas station and lock the doors or get into their vehicles and leave immediately.

Based on Messmer's physical movements, it appeared to Deputy Ramirez that Messmer was intoxicated. Deputy Ramirez described Messmer's hand movements as "flimsy" and "wobbly." A couple of times Deputy Ramirez saw Messmer point the gun towards the deputies which caused Deputy Ramirez to fear for his life and the lives of his partners at the scene. One of the deputies at the scene grabbed a less lethal shotgun. At one point during the incident, Messmer threw the gun approximately one to two feet away from Messmer's right foot and then laid down. A group of deputies formulated a plan to approach Messmer using a patrol vehicle as cover.

The small group of deputies started to approach Messmer with both doors of the patrol vehicle open. Multiple commands were given for Messmer not to grab for his gun. During this time, Messmer sat back up and reached for his gun with his right hand. Messmer put the gun up to his head. Deputy Ramirez heard deputies tell Messmer, "Don't do it." Deputy Ramirez also heard deputies tell Messmer they wanted to help Messmer and to put the gun down. Deputy Ramirez saw Messmer put the gun in his waistband and shortly thereafter Messmer took the gun out and extended his arm, pointing the gun towards the deputies who were approaching him. When Deputy Ramirez saw Messmer point the gun towards the group of deputies, Deputy Ramirez feared for his life, the lives of his partners, and the lives of the civilians that were in the area. At that point, Deputy Ramirez fired his weapon approximately seven times. Deputy Ramirez heard other deputies also fire their weapons at Messmer.

The group of deputies who had been trying to get closer to Messmer approached Messmer first. They separated Messmer from his weapon and then handcuffed Messmer. After Messmer was handcuffed, Deputy Ramirez made sure to tell the other deputies to make sure their guns were rendered safe. Fire department personnel arrived soon after and Deputy Ramirez escorted them over to Messmer's body. Messmer was pronounced deceased at the scene. Deputy Ramirez estimated the time



from when he first arrived at the scene to when he fired his weapon was approximately twelve to thirteen minutes.

On March 5, 2019, at approximately 3:14 in the afternoon, **Deputy Sean Taylor** was interviewed by Detective Gerardo Moreno and Detective Simon DeMuri.<sup>3</sup>

On February 23, 2019, Deputy Sean Taylor, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Taylor was wearing a San Bernardino County Sheriff's Department uniform consisting of a long sleeve tan shirt, green pants, black boots, and duty belt. Deputy Taylor was driving a marked patrol vehicle. On that date, Deputy Taylor was at a call for service when he heard dispatch send out an emergency tone out.<sup>4</sup> Dispatch advised there was a call of a man with a gun at a Shell gas station located near Bear Valley Road. Deputy Taylor decided to respond to the call.

As Deputy Taylor was driving to the scene, he heard 40 King confirm over the radio there was a man with a gun. 40 King advised it observed Messmer in a field and he looked like he was loading rounds into a magazine. When Deputy Taylor arrived at the location, he saw other deputies already present. Deputy Taylor saw Messmer seated, facing the deputies. Deputy Taylor exited his patrol vehicle and took his mini-14 rifle out. Deputy Taylor racked the weapon and loaded a live round in the rifle. Deputy Taylor aimed his rifle at Messmer. Messmer was approximately twenty yards away from Deputy Taylor. Deputy Taylor heard Deputy Jaime Pulido giving Messmer verbal commands.

Messmer would put his gun to his temple and then put his gun in his mouth. Deputy Taylor could see it was a black handgun but was too far away to tell whether the gun was a revolver or semi-automatic type of gun. Deputy Taylor also observed Messmer drinking something from a bottle which caused Deputy Taylor to believe Messmer was intoxicated. At times, Messmer placed the gun down on his lap which resulted in the weapon being pointed in the direction of Deputy Taylor, Deputy Pulido, and Deputy Sergio Ramirez. Deputy Taylor described Messmer as "limp wristing the gun" at that time. Messmer continued to transition the gun from his lap to his mouth to his temple for approximately ten minutes. During this time, Deputy Pulido and other deputies tried to get Messmer to drop the gun. During the incident, Deputy Taylor recalled Messmer telling deputies, "Just shoot me."

At one point during the incident, Messmer threw his gun approximately two feet away from him. Messmer laid down on his back. After the gun had been thrown, a small group of deputies, using one of the patrol vehicles as cover, attempted to get closer to

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<sup>3</sup> Deputy Taylor was equipped with a belt recorder that was recording during the incident under review. Deputy Taylor reviewed the recording prior to being interviewed by Detective Moreno and Detective DeMuri.

<sup>4</sup> A tone out is a series of beeps that lets the deputies know dispatch is going to broadcast important information.

Messmer. Messmer then sat up and grabbed the gun. The small group of deputies stopped approaching. Messmer put the gun up to his temple and back down on his lap. Messmer then pointed the gun in the direction of the group of deputies who had been approaching him. Messmer's arm was extended but the gun was pointed down towards the ground. The deputies ordered Messmer not to point the gun at them and Messmer eventually put the gun in his waistband.

A second or two later, Messmer pulled the gun from his waistband and pointed it at the group of deputies who had been approaching. This time, Deputy Taylor saw that Messmer was looking at the deputies and he had the gun pointed directly at them. It appeared that Messmer was about to lock his arm out and Deputy Taylor believed Messmer was going to shoot and kill his partners. Deputy Taylor feared for the deputies' lives and fired his mini-14 rifle approximately six to ten times at Messmer. Deputy Taylor fired until he believed the threat was stopped.

Deputy Taylor approached Messmer with his mini-14 rifle still pointed at Messmer. Deputy Taylor was unsure whether Messmer was still alive and was unsure where Messmer's gun was. When the deputies reached Messmer, they handcuffed Messmer and kicked Messmer's gun away from Messmer. Deputy Taylor rendered his weapon safe and went back to his unit.

On February 27, 2019, at approximately 1:41 in the afternoon, **Deputy Angel Mata** was interviewed by Detective Julius McChristian and Detective Simon DeMuri.<sup>5</sup>

On February 23, 2019, Deputy Angel Mata, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Mata was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, Deputy Mata was at a missing child call when he heard dispatch put out a call of a man with a gun at a Shell gas station. Deputy Mata decided to respond to the call. As he was driving to the location, Deputy Mata saw Deputy Arootin Bandari trying to flag him down. Deputy Bandari indicated his patrol vehicle had malfunctioned and he needed a tow. Deputy Mata told Deputy Bandari to get into Deputy Mata's patrol vehicle and they would respond to the man with a gun call together.

40 King was already at hovering above the location and advised they saw Messmer walking into a dirt field with a gun to his head. When Deputy Mata and Deputy Bandari arrived at the scene, Deputy Mata saw other deputies were already present. Traffic around the area had been blocked. Deputy Mata parked his patrol vehicle, grabbed his mini-14 rifle, and ran to the closest vehicle that was parked in front of Messmer.

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<sup>5</sup> Deputy Mata was equipped with a belt recorder. However, the belt recorder was inside Deputy Mata's patrol vehicle transferring files onto the computer and not recording during the incident under review. Deputy Mata indicated he did review other audio recordings prior to being interviewed by Detective McChristian and Detective DeMuri.

Messmer was now sitting on the dirt and fumbling around with a gun. Deputy Mata described the gun as a black semiautomatic handgun with a brownish grip. Messmer was pointing his gun at himself, switching which hand he held the gun in, and pointing the gun at different sides of his head. Deputy Mata noticed Messmer was also drinking something out of a silver container. The other deputies were telling Messmer they could get him help and ordering Messmer to drop his gun and put his hands up. Messmer would not comply with the deputies' commands for Messmer to put his gun down. At one point, Messmer threw his gun out in front of him and then laid on his back. Next, Deputy Mata saw a small group of deputies, using a patrol vehicle as cover, start to slowly approach Messmer. Deputy Mata moved over to the left side of that vehicle. Deputy Mata had his mini-14 rifle pointed at Messmer.

Suddenly, Messmer sat back up and grabbed his gun. Messmer started to "rack it" and then picked something up off the ground and put it in the gun. Deputy Mata saw Messmer rack the weapon again. Deputy Mata's partners continued to give Messmer commands to drop the gun but Messmer refused to comply. Deputy Mata heard Messmer tell deputies, "Just do it. Just kill me." Messmer extended his arm out and pointed the gun at Deputy Mata and the other deputies. Deputy Mata was scared. Deputy Mata feared for his life and feared for the lives of his partners. Deputy Mata saw a muzzle flash and heard gunshots. Deputy Mata was unsure where the gunshots were coming from. Deputy Mata fired one round from his rifle. Deputy Mata heard other deputies firing their weapons. Messmer was approximately twenty to twenty-five yards away from the deputies at the time of the shooting.

After the shooting stopped, the small group of deputies approached Messmer, who was on the ground, and handcuffed him. Medical personnel were requested to respond and render medical aid to Messmer. Messmer was pronounced deceased at the scene.

On February 28, 2019, at approximately 9:01 in the morning, **Deputy Zachary Pritchett** was interviewed by Detective Julius McChristian and Detective Simon DeMuri.<sup>6</sup>

On February 23, 2019, Deputy Zachary Pritchett, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Pritchett was wearing a San Bernardino County Sheriff's Department "Class A" uniform and riding in a marked patrol vehicle. Deputy Pritchett's was partnered with Deputy Seth Black who was driving the patrol vehicle that day. On that date, Deputy Pritchett and Deputy Black were at a welfare check call for service with Deputy Jaime Pulido and Deputy Taylor Wetzel. Deputy Pritchett was scrolling through the computer in his patrol vehicle when he noticed a man with a gun call. Deputy Pritchett asked dispatch to place them on the call. Dispatch then immediately broadcast over the radio that there was a call of a man with a gun at a Shell gas station on Bear Valley Road. Deputy Black drove them to the location.

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<sup>6</sup> Deputy Pritchett was equipped with a belt recorder that was recording during the incident under review. Deputy Pritchett reviewed the recording prior to being interviewed by Detective McChristian and Detective DeMuri.

As they were driving, Deputy Pritchett heard 40 King was in the air and had located the suspect. Messmer was walking east of the Shell gas station in the desert area. 40 King advised Messmer was stumbling and was now sitting in the desert area east of the gas station. 40 King confirmed Messmer did have possession of a gun and that Messmer appeared to be picking bullets up off the ground and loading them into the gun. 40 King also advised Messmer was pointing the gun to his head, putting the gun in his mouth, and looked like he may be trying to commit suicide. Before Deputy Pritchett got to the scene, dispatch broadcast a second call of a man with a gun.

When they arrived at the scene, Deputy Pritchett had Deputy Black park their patrol vehicle in the westbound lanes of Bear Valley Road so they would block traffic. Deputy Pritchett exited the patrol vehicle with his mini-14 rifle and ran up to some other patrol vehicles and took cover. Deputy Pritchett heard other deputies giving Messmer verbal commands. The deputies were telling Messmer it was not worth it and ordered Messmer to drop the gun. The deputies told Messmer they did not want to hurt him and repeated their commands for Messmer to drop the gun. Deputy Pritchett kept his mini-14 rifle aimed at Messmer.

Deputy Pritchett saw Messmer still had the gun in his hand. Messmer would put the gun in his mouth and then move the gun up to the right side of his head. Deputies continued to tell Messmer they did not want to hurt him and repeatedly told Messmer to put his gun down. Deputy Pritchett heard Messmer twice say, "Just shoot me." Deputy Pritchett noticed vehicles driving westbound on Francesca Road. Deputy Pritchett got on the radio, asked someone to block traffic on Francesca Road and advised Messmer had the gun in his hand and was not complying with deputies' commands. Deputy Pritchett also noticed Messmer was drinking something from a green can.

Messmer was sitting on the ground and would continually move his gun around in different directions. Messmer would put the gun up to the side of his head, then place the gun in his mouth, and put the gun in his lap. Messmer would also transition holding the gun in both his left hand and his right hand. At one point during the incident, Messmer threw his gun out in front of him. After Messmer tossed his gun, Messmer laid down on his back and put his arms up in the air. Deputies told Messmer not to move and to stay where he was at. Deputy Pritchett saw what he believed to be the handle of another gun in Messmer's waistband. Earlier, 40 King also had seen something else in Messmer's waistband.

Deputies again told Messmer they did not want to hurt him and ordered Messmer not to reach for his gun. A small group of deputies attempted to get closer to Messmer by following behind a patrol vehicle as it slowly drove forward. Deputy Black slowly drove the patrol vehicle forward approximately thirty to forty feet closer to Messmer and stopped. Messmer sat up and started to reach around for his gun. Deputies told Messmer not to move and not to reach for the gun. Messmer stopped and initially put his hands up but then reached back down and grabbed his gun. Messmer placed the gun in his waistband.

A few seconds later, Deputy Pritchett saw Messmer reach into his waistband and pull the gun out. Messmer put the gun up to his head and then put the gun back in his mouth. As Messmer was transitioning the gun back and forth from his head to his mouth, the gun would be pointed in the direction of the deputies. Deputy Pritchett, however, did not feel Messmer was trying to shoot at the deputies. Deputy Pritchett believed Messmer was “being careless” in the way Messmer was controlling the firearm. Deputies continued to give Messmer verbal commands to “drop the gun” and “don’t point the gun.”

Messmer put the gun back up to his head and then back into his mouth. Messmer took the gun out of his mouth and pointed it down at the ground. Afterwards, Messmer pointed the gun upward towards Deputy Pritchett and the other deputies who had tried to get closer to Messmer. The barrel of the gun was pointed directly towards Deputy Pritchett and his partners. Deputy Pritchett believed Messmer was trying to injure or kill the deputies. Deputy Pritchett feared for his life and the lives of his partners. Deputy Pritchett fired one shot from his mini-14 rifle at Messmer. Simultaneously, Deputy Pritchett heard several other deputies firing their weapons. After the shooting, Messmer fell backward.

The small group of deputies approached Messmer. Deputy Pritchett could see Messmer’s arms were still moving a little bit. Deputies handcuffed Messmer and moved Messmer’s gun away from Messmer. Deputy Pritchett rendered his firearm safe and went back to his patrol vehicle to retrieve tape to start taping off the crime scene. Medical personnel responded and pronounced Messmer deceased at the scene. Deputy Pritchett estimated that after he arrived at the scene, deputies spent approximately ten to fifteen minutes trying to get Messmer to put down his gun.

On March 6, 2019, at approximately 2:37 in the afternoon, **Deputy Arootin Bandari** was interviewed by Detective Gerardo Moreno and Detective Simon DeMuri.<sup>7</sup>

On February 23, 2019, Deputy Arootin Bandari, from the San Bernardino County Sheriff’s Department, was assigned to patrol at the Victorville station. Deputy Bandari was wearing a San Bernardino County Sheriff’s Department “Class D” uniform and driving a marked patrol vehicle. On that date, Deputy Bandari was driving when he heard an emergency tone out from dispatch advising there was a call of a man with a gun at the Shell gas station near Bear Valley Road. Deputy Bandari put himself on the call and responded to the location.

As Deputy Bandari was driving, his patrol vehicle stalled, and a cloud of dust formed near the hood of the vehicle. Deputy Bandari pulled over and called dispatch to request a tow. While he waited for a tow truck, Deputy Bandari flagged down Deputy Angel Mata who was driving by. Deputy Bandari got into Deputy Mata’s patrol vehicle and

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<sup>7</sup> Deputy Bandari was equipped with a belt recorder that was recording during the incident under review. Deputy Bandari reviewed the recording prior to being interviewed by Detective Moreno and Detective DeMuri.

they proceeded to the Shell gas station. As they were driving, Deputy Bandari heard 40 King advise the suspect was walking into the north east area of a dirt lot on Tamarisk Road and Bear Valley Road. 40 King stated Messmer was loading ammunition into a firearm.

When Deputy Bandari and Deputy Mata arrived, Deputy Bandari saw other deputies were already present at the location. Deputy Bandari took a Remington 870 shotgun and exited Deputy Mata's patrol vehicle. Deputy Bandari saw Messmer sitting on the ground and had a gun pointed to his head. Messmer was approximately twenty to twenty-five yards away from Deputy Bandari. Based on the distance and unsure how the shotgun was loaded, Deputy Bandari placed the shotgun back inside the patrol vehicle and took one of his partner's mini-14 rifles.

Deputy Bandari and other deputies started giving Messmer commands. They told Messmer to "place the firearm down." Messmer appeared lethargic and was drinking what Deputy Bandari believed to be an alcoholic beverage. Messmer would move the gun from his head and place it in his mouth and then move the gun back up against his head. The deputies continued to give Messmer verbal commands. Deputy Bandari heard a deputy over the public announcement (PA) system tell Messmer to "drop the firearm and raise his hands in the air." The deputies repeatedly told Messmer they did not want to hurt Messmer and they were there to help him. Deputy Bandari tried to get Messmer to drop his gun and told Messmer not to hurt himself. Deputy Bandari estimated the deputies spent approximately ten to fifteen minutes trying to get Messmer to drop his weapon and put his hands up. Messmer, however, would not comply with the deputies' commands. Instead, Messmer continued to transition his gun back and forth from his head to inside his mouth.

As he moved his gun around, Messmer pointed the firearm in the direction of the deputies several times. Deputy Bandari, however, did not feel those movements were necessarily threatening because Messmer's hand movements were very slow and lethargic; Messmer's actions did not appear intentional. Deputy Bandari heard Messmer tell deputies, "Just do it. Just shoot me." Deputy Bandari told Messmer the deputies did not want to do that, and the deputies were there to help him.

At one point, Messmer placed his gun off to his side, approximately two feet away from him. Messmer laid on his back and put his hands up. Sergeant Joshua Conley decided to have a small group of deputies try to get closer to Messmer since Deputy Jaime Pulido was equipped with a less than lethal shotgun. The idea was to use less than lethal means to take Messmer's firearm away from him and detain Messmer without incident. Using a patrol vehicle as cover, the group of deputies slowly moved towards Messmer.

As the deputies walked behind the patrol vehicle that was inching forward, Messmer sat up and grabbed his gun. Deputy Bandari saw another dark bulky object in Messmer's waistband. Deputy Bandari was unsure if the object was another firearm but warned his partner. Messmer put the gun back up to his head and told deputies, "Hey, just shoot

me. Kill me.” Messmer moved the gun and placed it in his mouth and then placed the gun in his waistband. Deputies continued to give Messmer verbal commands to drop the gun. Deputy Bandari told Messmer he was going to help Messmer. It appeared to Deputy Bandari that Messmer was getting frustrated. Deputy Bandari heard Messmer say, “Just do it already.”

Next, Messmer looked at Deputy Bandari. Deputy Bandari said Messmer gave him what Deputy Bandari described as a “it’s either me or you” type of look. Deputy Bandari saw Messmer point his firearm in the direction of Deputy Bandari and his partners. This was not the same lethargic motion Deputy Bandari had observed Messmer make earlier. Messmer had stiffened his arm and had enough time to reflect when he pointed the gun in the direction of the deputies. Deputy Bandari could see Messmer’s finger was on the trigger of the gun. Deputy Bandari feared for his life and feared for the lives of his partners. Deputy Bandari fired approximately eight to ten shots from his mini-14 rifle at Messmer. Deputy Bandari heard a volley of gunshots after he fired.

After the shooting, the small group of deputies approached Messmer. One of the deputies was able to kick Messmer’s gun away from Messmer. Messmer was placed in handcuffs. Medical personnel were requested to respond. Medical personnel pronounced Messmer deceased at the scene. Deputy Bandari returned to the patrol vehicles and rendered his firearm safe. Deputy Bandari estimated it was approximately ten to twelve minutes from the time he arrived at the scene to the time he fired his weapon.

On February 28, 2019, at approximately 1:25 in the afternoon, **Deputy Mateusz Nosek** was interviewed by Detective Julius McChristian and Detective Simon DeMuri.<sup>8</sup>

On February 23, 2019, Deputy Mateusz Nosek, from the San Bernardino County Sheriff’s Department, was assigned to patrol at the Victorville station. Deputy Nosek was wearing a San Bernardino County “Class A” uniform and driving a marked patrol vehicle. Deputy Nosek’s partner on that date was Deputy Monique Carbajal. Deputy Nosek and Deputy Carbajal were on a call when Deputy Nosek heard a call come out of a male with a gun at a gas station on Bear Valley Road. Deputy Nosek and Deputy Carbajal got back in their patrol vehicle and responded to the location.

As Deputy Nosek was driving to the scene, additional information was put out over the radio. Messmer was described as wearing a black sweater, red shirt, and black pants. 40 King was already over the scene and advised Messmer was loading bullets into the gun he was holding. Deputy Nosek knew at that point the call was more serious and was concerned about the safety of the public and his partners who were already at the gas station. When Deputy Nosek arrived at the location, he parked near some other patrol vehicles in front of the gas station.

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<sup>8</sup> Deputy Nosek was equipped with a belt recorder. It was not recording during the incident under review. Deputy Nosek reviewed other audio recordings of the incident prior to being interviewed by Detective McChristian and Detective DeMuri.

When Deputy Nosek got out of his patrol vehicle he saw Messmer sitting in the dirt holding a gun. Deputy Nosek got his mini-14 rifle out of the patrol vehicle and went back to the trunk of the car where he put on his plate carrier. Deputy Nosek then moved to the passenger side of one of the patrol vehicles and opened the door to use as cover. Deputy Nosek aimed his rifle at Messmer since Messmer was armed with a gun.

The deputies tried to talk to Messmer. The deputies told Messmer to “put the gun down.” The deputies tried to reassure Messmer that they were not there to hurt Messmer and they only wanted to help Messmer. Deputy Nosek saw Messmer holding the gun to the side of his head and then putting the gun in his mouth. Deputy Nosek noticed Messmer had what looked to be a bottle of alcohol right in front of him. Messmer would take sips from the bottle as he moved his gun around. It appeared to Deputy Nosek that Messmer wanted to commit suicide. The deputies told Messmer not to hurt himself and not to pull the trigger. The deputies continued to reassure Messmer that they wanted to help Messmer and they were not there to hurt him. At one point, a civilian was seen standing on top of the roof of the gas station. Deputies ordered the civilian to come down for his own safety.

After some time, Messmer finally dropped his gun next to him and laid down with his hands above him. Deputy Nosek saw one of the patrol vehicles start to move closer to Messmer. There was a group of deputies following behind the moving patrol vehicle. Deputy Nosek heard other deputies giving commands, “Don’t reach for the gun.” Deputy Nosek saw Messmer sit back up and reach for the gun which was near his right leg. Messmer aimed the gun once or twice at the deputies who were trying to approach him. Deputies told Messmer not to aim the gun and again said they wanted to help Messmer. Deputy Nosek heard Messmer say, “Shoot me. Shoot me.” The deputies told Messmer they did not want to shoot him, and they wanted to help him.

At one point, Deputy Nosek saw Messmer again aim his gun at the group of deputies. As a result of this happening multiple times, Deputy Nosek believed Messmer was going to shoot the deputies. Deputy Nosek believed this time was different because Messmer made eye contact with the deputies when he extended his arm out and pointed the gun in the deputies’ direction. Deputy Nosek feared for the lives of those deputies. Deputy Nosek was also afraid if Messmer fired his gun and missed, the bullet would fly towards Bear Valley Road and possibly hit a pedestrian behind the deputies. While he was looking at his sights, Deputy Nosek heard a shot and saw a little flash from Messmer’s gun. Deputy Nosek was unsure where the shot came from but when he saw the flash, Deputy Nosek believed Messmer had fired his weapon. Deputy Nosek then fired one shot at Messmer from his mini-14 rifle to stop the threat.

After the shooting, a group of deputies approached Messmer. One of the deputies handcuffed Messmer. Medical personnel were requested. Messmer was pronounced deceased at the scene. Deputy Carbajal took Deputy Nosek’s mini-14 rifle and rendered it safe. Deputy Nosek then secured the rifle in his patrol vehicle. Deputy



Nosek estimated from the time he took cover behind the passenger door of the patrol vehicle to the time he fired his weapon was approximately ten minutes.

On March 4, 2019, at approximately 2:04 in the afternoon, **Deputy Taylor Wetzel** was interviewed by Detective Kevin McCurdy and Detective Simon DeMuri.<sup>9</sup>

On February 23, 2019, Deputy Taylor Wetzel, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Wetzel was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, Deputy Wetzel was finishing up a welfare check call when he observed a call of a man with a gun listed on the computer in his patrol vehicle. Dispatch then aired over the radio the call was a man with a gun at the Shell gas station near Bear Valley Road. Deputy Wetzel responded to the call.

As Deputy Wetzel drove to the location, he heard 40 King indicate it was over the scene and observed a subject with a handgun. Messmer was in a dirt field next to the gas station. 40 King advised over the radio that Messmer had the gun up to his head. After Deputy Wetzel arrived at the location, he took his mini-14 rifle and exited his patrol vehicle. Deputy Wetzel stood behind the open driver side door of his patrol vehicle and pointed his weapon at Messmer. Deputy Wetzel heard Deputy Jamie Pulido start giving Messmer commands to put his gun down. Deputy Pulido told Messmer, "You don't want to do this. We're here to help you."

Deputy Wetzel noticed Messmer was sitting on the ground in the dirt with his legs crossed. Messmer had the gun in his right hand and it was pointed to the right side of his head. Messmer appeared to be talking to himself but Deputy Wetzel was unable to hear what Messmer was saying. Deputy Wetzel told Messmer to drop the gun, that it was not worth it, and the deputies did not want anyone to get hurt. Deputy Wetzel asked Messmer if there was anyone he wanted to talk to or anyone Messmer wanted the deputies to call for him. During this time, Messmer would move the gun from his head to his mouth and down to his lap. Messmer would aimlessly twirl the gun in his hand, pointing it multiple times in the direction of the deputies. Additional deputies arrived at the scene.

Deputies tried to reassure Messmer that they wanted to help him, and they did not want to hurt Messmer. The deputies also continued to repeat their commands for Messmer to drop his gun. Messmer would not comply with the commands and continued to move his gun from his head, to his mouth, and to his lap. Deputy Wetzel heard Messmer say, "Just shoot me already." Deputy Wetzel also noticed Messmer was drinking from a small bottle in front of him that appeared to Deputy Wetzel to be a small bottle of alcohol. Sergeant Joshua Conley made the decision to have a small group of deputies

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<sup>9</sup> Deputy Wetzel was equipped with a belt recorder that was recording during the incident under review. Deputy Wetzel reviewed the recording prior to being interviewed by Detective McCurdy and Detective DeMuri.

try to move closer to Messmer. Sergeant Conley wanted to use less lethal force to try and detain Messmer. The deputies would use a patrol vehicle as cover.

At one point, Messmer finally tossed his gun approximately two to three feet away from him. The deputies then ordered Messmer to put his hands in the air, stand up, and walk back towards the deputies. Messmer failed to follow those commands. Messmer laid on his back. Sergeant Conley decided the group should start moving forward. Deputy Wetzel and the other deputies walked behind the patrol vehicle as it slowly inched forward closer to Messmer. Deputy Wetzel estimated they had only moved forward approximately five to ten feet when Messmer sat back up and grabbed his gun again. Messmer was approximately thirty yards away from the deputies when he picked his gun up off the ground.

The deputies stopped moving forward. The deputies started giving Messmer commands to throw the gun away. Messmer started moving the gun around again. Messmer would put the gun up to the side of his head, place the gun in his mouth, and then put the gun in his lap. When Messmer moved the gun around, Messmer would point it in the direction of the deputies. Deputy Wetzel lost sight of the gun when Messmer placed it down behind his leg.

At this time, Deputy Wetzel said Messmer looked over at the deputies and “locked eyes” with them. Up until that point, Messmer had been “nonchalantly” looking around but had never intentionally looked at the over at the deputies and locked eyes. Deputy Wetzel then saw Messmer bring the gun up over his leg and point it towards Deputy Wetzel and the other deputies. Deputy Wetzel heard Deputy Arootin Bandari say Messmer was pointing the gun. When Deputy Wetzel saw Messmer turning and start pointing the gun towards him, Deputy Wetzel feared for his life and the lives of his partners. Unlike the prior times, Deputy Wetzel believed Messmer’s intent was obvious when he purposefully pointed the gun towards the deputies. Deputy Wetzel believed Messmer was going to either kill him or his partners. Deputy Wetzel fired approximately five to six shots at Messmer from his mini-14 rifle. At the same time as he pulled the trigger, Deputy Wetzel heard Deputy Bandari fire his weapon. Deputy Wetzel also heard other deputies at the scene fire their weapons.

After the shooting, Messmer fell back onto the ground. The deputies moved forward towards Messmer. Deputy Jose Razo kicked Messmer’s gun off to the side and Messmer was handcuffed. Medical personnel were requested to respond. Medical personnel pronounced Messmer deceased at the scene. Deputy Wetzel returned to his patrol vehicle and rendered his weapon safe. Deputy Wetzel estimated from the time he arrived at the scene to when the shooting occurred was approximately fifteen minutes.

On February 23, 2019, at approximately 11:29 in the evening, **Deputy Jamie Pulido** was interviewed by Detective Arturo Alvarado.

On February 23, 2019, Deputy Jamie Pulido, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Pulido was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, Deputy Pulido was on a call for service when he heard a tone out over the radio. Dispatch broadcast over the radio that there was a call of an intoxicated man with a gun at the Shell gas station on Bear Valley Road. Deputy Pulido assigned himself to the call and responded to the location.

As he was driving, Deputy Pulido heard 40 King indicate it was over the scene. 40 King advised Messmer was on his knees loading his firearm in the desert, east of the gas station. 40 King stated Messmer had the gun in his right hand and was pointing it to his head. When Deputy Pulido arrived at the location, he parked his patrol vehicle on an empty dirt lot east of the gas station. Deputy Pulido saw Messmer in the dirt field. Messmer was on his knees with a gun in his right hand. Messmer was moving the gun up and down, pointing the gun back and forth from Messmer's head to the ground. Deputy Pulido armed himself with his mini-14 rifle and took cover behind his driver's door.

Deputy Pulido asked Messmer to toss his gun away and raise his hands. Deputy Pulido tried to talk to Messmer but Messmer would not respond. Messmer pointed his gun under his jaw and at one point placed the gun in his mouth. Deputy Pulido told Messmer several times to drop the gun but Messmer would not comply. Deputy Pulido told Messmer the deputies wanted to help him. Deputy Pulido heard another deputy order Messmer to drop the gun. Messmer would alternate from a kneeling position to a sitting position.

Deputy Pulido recognized that the deputies did not have any less lethal coverage and handed his mini-14 rifle off to Deputy Seth Black. Deputy Pulido retrieved the bean bag shotgun from the trunk of his patrol vehicle. Deputy Black used the public announcement (PA) system on Deputy Pulido's patrol vehicle to order Messmer to drop the gun. Messmer would not comply with commands. At some point, Messmer threw his gun approximately three feet in front of him and then laid on his back. Sergeant Joshua Conley formulated a plan for deputies to move closer to Messmer, using Deputy Pulido's patrol vehicle as cover.

Deputy Black slowly inched the patrol vehicle forward while Deputy Pulido and a small group of deputies walked behind the vehicle. Deputy Pulido saw Messmer sit back up and grab his gun. Deputy Black stopped the patrol vehicle. Messmer moved his gun around in several directions, at times pointing the gun towards the deputies. Deputies repeatedly ordered Messmer to drop his weapon. Messmer leaned back and placed the gun in his waistband. After a few seconds, Messmer grabbed his gun and started to move it around in several directions. A deputy told Messmer to stop pointing the gun at deputies.

A few seconds later, Deputy Pulido saw Messmer point the gun directly at deputies. Deputy Pulido heard a deputy say, "Don't do it. Don't do it. Put the gun down." Deputy

Pulido then heard several gunshots. Deputy Pulido estimated the gunfire lasted approximately two seconds and he heard approximately twenty to thirty gunshots. Messmer's body fell straight back on the ground. Deputy Pulido was unable to see whether Messmer was holding the gun.

After the shooting, Deputy Pulido and the other deputies slowly approached Messmer. Deputy Pulido saw blood coming from Messmer's stomach and believed Messmer had been shot. Messmer's gun was approximately one foot away from Messmer's left hand. A deputy kicked Messmer's gun away and Messmer was handcuffed. Medical personnel were requested to respond. Deputy Pulido returned to his patrol vehicle and retrieved rubber gloves which he used to search Messmer for additional weapons. Deputy Pulido did not locate any other weapons. Medical personnel pronounced Messmer deceased at the scene.

On February 23, 2019, at approximately 11:20 in the evening, **Deputy Monique Carbajal** was interviewed by Detective Eric Dyberg.

On February 23, 2019, Deputy Monique Carbajal, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Carbajal was wearing a San Bernardino County Sheriff's Department "Class A" uniform and riding in a marked patrol vehicle. Deputy Carbajal had a partner, Deputy Mateusz Nosek, riding with her; Deputy Nosek was driving the patrol vehicle. On that date, Deputy Carbajal and Deputy Nosek were leaving a call for service when Deputy Carbajal heard a tone out. Dispatch broadcast there was a call of a man with a gun at the Shell gas station on Bear Valley Road. The reporting party told dispatch that the man was loading the weapon and pointing it at his head. Deputy Carbajal told Deputy Nosek to respond to the location.

As they were driving to the scene, 40 King indicated it was over the scene and saw the subject in a field with a gun in his hand. 40 King advised Messmer had placed the gun in his mouth. Deputy Carbajal believed they were possibly dealing with an armed suicidal subject which caused her concern for her safety and the safety of Deputy Nosek. When Deputy Carbajal and Deputy Nosek arrived at the scene, they pulled into the gas station parking lot and partially blocked the entrance. Deputy Carbajal gave the mini-14 rifle to Deputy Nosek. Deputy Carbajal and Deputy Nosek went to the back of their patrol vehicle and put on their Department issued trauma plates. Deputy Carbajal saw an unknown female San Bernardino Sheriff's Department Explorer in the scene by a patrol unit. Deputy Carbajal feared for the Explorer's safety and moved the Explorer behind Deputy Carbajal's patrol unit for protection.

Deputy Carbajal drew her duty weapon, a Glock 17, and moved behind her driver's door. Deputy Sergio Ramirez took cover with Deputy Carbajal. Deputy Carbajal saw Messmer sitting in an open field approximately seventy to one hundred yards east of her location. Deputy Carbajal heard two deputies giving Messmer commands. Deputies told Messmer to drop his gun and that the deputies were going to help

Messmer. At one point, Deputy Carbajal heard Messmer say, “Just shoot me. Just shoot me.”

At one point during the incident, Messmer threw his gun approximately one to two feet away from him. A deputy told Messmer, “Don’t reach for it. Keep your hands in the air.” Deputy Carbajal saw Messmer pick up the gun and point it multiple times at his head, under his chin, and inside his mouth. Around the time Messmer threw his gun, Deputy Carbajal saw a small group of deputies move towards Messmer, using a patrol vehicle as cover. Messmer sat up and reached for his gun which caused the deputies to stop moving forward. Deputy Carbajal estimated Messmer was approximately fifty yards away from the group of deputies.

Messmer pointed his gun towards the deputies and Deputy Carbajal. Deputy Carbajal believed Messmer was going to shoot her or an innocent person behind her. Deputy Carbajal saw a muzzle flash and heard a bang. Deputy Carbajal believed Messmer fired his weapon at the deputies. Immediately after, Deputy Carbajal heard a very fast volley of gunfire from the deputies. Deputy Carbajal saw Messmer fall on his back. After the shooting, deputies approached Messmer and handcuffed him. Medical personnel arrived and pronounced Messmer deceased at the scene.

On February 23, 2019, at approximately 9:47 in the evening, **Deputy Seth Black** was interviewed by Detective Kevin McCurdy.

On February 23, 2019, Deputy Seth Black, from the San Bernardino County Sheriff’s Department, was assigned to patrol at the Victorville station. Deputy Black was wearing a San Bernardino County Sheriff’s Department “Class A” uniform and driving a marked patrol vehicle. Deputy Black’s partner on that date was Deputy Zachary Pritchett. On that date, Deputy Black and Deputy Pritchett were dispatched to a call of a man with a gun at the Shell gas station on Bear Valley Road. Deputy Black and Deputy Pritchett responded to the call.

As he was driving, Deputy Black heard 40 King broadcast over the radio it was above the gas station and saw the subject with a gun in the field east of the gas station. When Deputy Black and Deputy Pritchett arrived at the location, Deputy Black parked his patrol vehicle in the center of the west lanes of Bear Valley Road to block traffic. Deputy Black exited his patrol vehicle, ran up to another patrol vehicle, and stood behind the passenger door. Deputy Black pointed his handgun at Messmer.

Sergeant Joshua Conley told Deputy Black to give public announcements (PA) to Messmer from the patrol vehicle. Deputy Black moved to the driver’s seat of the patrol vehicle and used the PA system to give Messmer commands to drop the gun. Deputy Black could see Messmer was seated in the open dirt field, approximately twenty-five to thirty yards north of him. Messmer had a black handgun pointed to his head. Messmer moved the gun from his head and placed the barrel of the gun into his mouth. Messmer then placed the gun in his lap. Messmer continually moved the gun around and would

not comply with commands to put the weapon down. Deputy Black ordered Messmer several times to drop the gun. Deputy Black advised Messmer the deputies were there to get Messmer help.

At one point during the incident, Messmer threw his gun away from him and placed his hands in the air. Approximately twenty seconds later, Messmer picked the gun back up. Sergeant Conley decided to try and close the distance between the deputies and Messmer so the deputies could try to use less lethal force to disarm and detain Messmer. Sergeant Conley told Deputy Black to slowly drive the patrol vehicle north towards Messmer. Deputy Black continued to give Messmer commands over the PA system as he drove forward. Deputy Black estimated he drove approximately fifteen feet when Messmer started moving the gun around again.

Messmer was seated in the dirt field with the gun in his hand. Messmer pointed the gun towards the deputies and the patrol vehicle Deputy Black was driving. Deputy Black heard approximately ten to fifteen gunshots from deputies near him. Deputy Black estimated the gunfire lasted approximately five seconds. Messmer fell backwards. After the shooting, a group of deputies approached Messmer. Messmer's handgun was on the ground east of Messmer's body. Deputy Black and another deputy handcuffed Messmer. Medical personnel were requested to respond.

On February 23, 2019, at approximately 11:28 in the evening, **Deputy Jose Razo** was interviewed by Detective Kevin McCurdy.

On February 23, 2019, Deputy Jose Razo, from the San Bernardino County Sheriff's Department was assigned to patrol at the Victorville station. Deputy Razo was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, Deputy Razo was leaving a call for service when he heard Dispatch broadcast a call of a man with a gun at the Shell gas station on Bear Valley Road. The reporting party advised that the subject was loading the weapon and pointing the gun at his head. Deputy Razo responded to the call.

As he was driving, 40 King broadcast it was above the scene and saw the suspect in a field east of the gas station with a gun in his hand. 40 King advised Messmer had placed the gun into his mouth. This last update concerned Deputy Razo. Deputy Razo knew he was possibly dealing with an armed suicidal subject and that made Deputy Razo nervous for his safety, his partners' safety, and the public's safety.

When Deputy Razo arrived at the location, there were three patrol vehicles already at the scene. Deputy Razo blocked the intersection of Tamarisk Avenue and Francesca Road with his patrol vehicle. Approximately five to ten minutes later, Deputy Razo saw Corporal Daniel Maddox run east towards the east side of the gas station. Deputy Razo ran toward Corporal Maddox and took his less lethal bean bag shotgun from him. Deputy Razo and Corporal Maddox went to the east block wall of the gas station where they could see Messmer.

Deputy Razo saw Messmer facing west, approximately fifty feet southeast of him. Messmer was continually moving his gun around. Messmer would place the gun up to his head and then put it down on the ground. Deputy Razo saw Messmer pick the gun up off the ground and put it in his waistband. Messmer then pulled the gun from his waistband and twirled it in his hand. Deputy Razo was scared for himself and his partners because Messmer could shoot them.

While Messmer was moving the gun around, the barrel of the gun pointed toward the deputies on Bear Valley Road. Deputy Razo heard several gunshots. Deputy Razo estimated the gunfire lasted approximately ten seconds. Deputy Razo approached Messmer and kicked Messmer's gun away from Messmer. Messmer was laying on his back with his head to the north. Deputy Razo and another deputy handcuffed Messmer. Medical personnel were requested to respond.

On May 28, 2019, at approximately 8:16 in the morning, **Deputy Chris Mejia** was interviewed by Detective Kevin McCurdy.

On February 23, 2019, Deputy Chris Mejia, from the San Bernardino County Sheriff's Department, was assigned as a flight officer for the San Bernardino County Sheriff's Department Aviation Division. Among other duties, a flight officer is responsible for radio broadcast and observing what deputies are doing on the ground. Deputy Mejia was partnered with Sheriff's pilot John Anderson. On that date, at around 4:15 in the afternoon, Deputy Mejia heard Dispatch broadcast over the radio a call of a man with a gun at a Shell gas station on Bear Valley Road. Deputy Mejia and Deputy Anderson were flying in 40 King in the area so they responded to the call. As Deputy Anderson was flying them to the scene, Deputy Mejia, as the flight officer, asked dispatch for additional details and a suspect description.

When they arrived at the scene, Deputy Mejia saw Messmer in the parking lot and he matched the suspect description. Messmer was walking east into a vacant field east of the gas station. Messmer sat down on the ground. Deputy Mejia saw a gun in Messmer's right hand. Deputy Mejia used the helicopter's onboard camera to zoom in and confirmed it was a gun.<sup>10</sup> Deputy Mejia believed he saw Messmer load ammunition into the gun's magazine. Although Deputy Mejia could not see the ammunition from his position in the air, the movement of Messmer's hands was consistent with how Deputy Mejia loaded his gun at the shooting range.

Deputy Mejia saw Messmer point the gun to his head for a few seconds and then move the gun and place the barrel into his mouth. Deputy Mejia broadcast over the radio that Messmer had a gun to warn the deputies who were responding on the ground. Deputy Mejia continued to orbit above Messmer for approximately three minutes. During that time, Messmer continued to point the gun to his head or place the barrel of the gun into this mouth. Deputy Mejia saw patrol vehicles approaching the corner of Bear Valley

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<sup>10</sup> The camera on the helicopter was not recording during the incident under review.

Road and Tamarisk Avenue. Deputy Mejia instructed the deputies where to park to offer the best cover and safety.

Deputy Mejia saw three to four patrol vehicles parked in the southeast area of the gas station facing Messmer. Messmer put his gun on the ground and a few seconds later, Messmer picked the gun back up. While Messmer was facing south toward those deputies, Messmer quickly pointed the gun toward the deputies and then pointed it back at his head. Deputy Mejia saw Messmer point the gun again at the deputies. As Deputy Mejia was about to broadcast over the radio and warn the deputies, Deputy Mejia saw dust fly up around Messmer. Deputy Mejia believed the dust was a result of bullets striking the ground around Messmer. Deputy Mejia heard a deputy broadcast over the radio that shots were fired. Medical personnel responded and Deputy Mejia left the scene.

On February 24, 2019, at approximately 12:20 in the morning, **Detective Daniel Maddox** was interviewed by Detective Gerardo Moreno.

On February 23, 2019, Detective Daniel Maddox, from the San Bernardino County Sheriff's Department, was a detective assigned as a swing shift watch commander at the Victorville station. Detective Maddox was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, at around 4:19 in the afternoon, Dispatch broadcast an emergency call of a man with a gun at the Shell gas station on Bear Valley Road. Detective Maddox responded to assist with the call.

40 King was at the scene and broadcast that a subject matching the suspect description was in the dirt field, east of the gas station, holding a handgun. 40 King also advised it observed Messmer load his firearm with ammunition. When Detective Maddox arrived at the scene, he parked his patrol vehicle north of the gas station, south of Francesca Road. Detective Maddox exited his patrol vehicle, grabbed a police shield and a Remington 870 less lethal shotgun from the trunk. Detective Maddox also grabbed his mini-14 rifle from inside his patrol vehicle.

Detective Maddox approached the northeast corner of the retaining wall that surrounded the north and east side of the gas station. Detective Maddox was unable to see Messmer. Deputy Jose Razo approached Detective Maddox and took possession of the less lethal shotgun. Detective Maddox and Deputy Razo moved south through the desert, walking close to the outer edge of the retaining wall, until they were able to see Messmer. Detective Maddox and Deputy Razo took a kneeling position and used the police shield as cover. Detective Maddox was only able to see Messmer's head and shoulders.

Detective Maddox and Deputy Razo moved several feet south to where Detective Maddox was able to see Messmer holding a firearm with one hand. Messmer pointed the firearm at his head and then placed the firearm in his waistband. Detective Maddox



heard deputies telling Messmer to show his hands and that the deputies were there to help. During the incident, one of the patrol vehicles moved slowly toward Messmer while several deputies used the patrol vehicle as cover.

As the patrol vehicle moved closer to Messmer, Detective Maddox and Deputy Razo moved further south to get closer to Messmer. Detective Maddox estimated he was approximately 100 feet north from Messmer. Detective Maddox had a full view of Messmer who was sitting on the ground. Messmer placed his gun on the ground and had both hands in the air. Shortly thereafter, Messmer reached down, grabbed his gun, and waived the firearm in the air. Messmer then pointed the gun at the deputies. Deputies ordered Messmer “not to do it” and to “drop the gun.”

Messmer remained seated on the ground. Messmer extended his arm and pointed the gun at deputies. As Messmer raised the firearm, Detective Maddox heard one shot. Detective Maddox believed Messmer fired his weapon. Approximately half a second later, Detective Maddox heard a simultaneous volley of gunshots. Messmer fell backwards, turned over, and laid on his left side. Detective Maddox estimated he heard approximately forty gunshots. Detective Maddox believed Messmer could have injured or killed a deputy or civilians at the scene if deputies had not fired their weapons.

After the shooting, Detective Maddox and Deputy Razo approached Messmer. Messmer’s firearm was on the ground, near Messmer’s head. Messmer was handcuffed and medical personnel were requested. Messmer was pronounced deceased at the scene.

### **STATEMENTS BY CIVILIAN WITNESSES**

On February 23, 2019, at approximately 5:40 in the evening, November 19, 2019, at approximately 9:44 in the evening, **Witness #1** was interviewed by Deputy Jamie Pulido.

Witness #1 worked as a gas station attendant at the Shell gas station located on Bear Valley Road. On February 23, 2019, Witness #1 was working her regularly scheduled shift when Messmer walked into the gas station through the front entrance. Messmer was making statements Witness #1 could not understand. Messmer was mumbling and slurring his words when he tried to speak. Witness #1 asked her assistant manager, later identified as Witness #2, to come over and assist Messmer. Later, Witness #2 told Witness #1 about her interaction with Messmer. Witness #2 said Messmer wanted her to call the police. Messmer walked out shortly after Witness #2 said she could not do that.

Approximately two to three minutes later, Messmer returned to the store and made statements to Witness #1. Witness #1 was unable to understand what Messmer was saying. Messmer then pulled out a handgun from his waistband and brandished it at

Witness #1 and Witness #2. Witness #1 said Messmer smelled like a strong odor of alcohol. Messmer then left the business.

On February 23, 2019, at approximately 10:14 in the evening, **Witness #2** was interviewed by Detective Chris Crosswhite.

On February 23, 2019, Witness #2 was working as an assistant manager at the Shell gas station on Bear Valley Road. On that date, Witness #2 was near the front register counting cigarettes when she saw a male subject enter the business. Witness #2 heard her co-worker, Witness #1, tell Messmer that she did not understand what Messmer was saying. Witness #2 asked Messmer if there was anything she could do to help. Messmer replied, "I need for the police to come and pick me up, so they can drop me off in Vegas. I just need to get locked up for eight days." Messmer started mumbling after that. Witness #2 smelled a strong odor of alcohol and believed Messmer was drunk and messing around. Witness #2 picked up the phone to call 911 but Messmer walked out.

A few minutes later, Witness #2 saw Messmer back inside the business again. Suddenly, Witness #1 told Witness #2 that Messmer had a gun and to call the cops. Witness #2 did not see whether Messmer had a gun because Messmer ran out of the business. Witness #2 grabbed the phone and called 911. While Witness #2 was on the phone with the dispatcher, Witness #2 went outside to see where Messmer went. Witness #2 saw Messmer kneeling in the dirt field to east of the gas station. Messmer had a black gun in his hand and bullets were falling from Messmer's hands onto the ground. Witness #2 relayed to the dispatcher that Messmer appeared to be loading the gun. The dispatcher advised Witness #2 to go back inside the business and she complied.

As Witness #2 waited inside the gas station, Witness #2 saw deputies arrive at the scene. Witness #2 also heard a police helicopter over the location. Witness #2 heard what she believed was a deputy trying to communicate with Messmer and asking for Messmer's name. Witness #2 also heard a voice tell Messmer to put the gun down. Witness #2 estimated approximately five minutes later she heard gunfire.

## **INCIDENT AUDIO AND VIDEO**

**BELT RECORDING.** Deputies with the San Bernardino County Sheriff's Department are equipped with belt recorders. All belt recordings submitted were reviewed in their entirety.<sup>11</sup> All the belt recordings were consistent. Due to the duplicative nature of the

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<sup>11</sup> Belt recordings from Sergeant Conley, Deputy Pulido, Deputy Ramirez, Deputy Bandari, Deputy Wetzel, Deputy Black, Deputy Razo, Detective Maddox, Deputy Pritchett, Deputy Taylor, and Deputy

belt recordings, one general summary will be provided reflecting the verbal commands given by multiple deputies during the incident under review. The summary will end at the point immediately following the lethal force encounter.

## **Summary**

4:46<sup>12</sup> Come on Daniel. We want to help you. Put your gun down Daniel. Come on.

4:52 Is there any family members we can talk to? Is there somebody you want to talk to?

5:38 Come on Daniel. Put the gun down.

5:48 We want to help you Daniel.

6:13 Sergeant Conley said, "Start making announcements on the PA."

6:28 Daniel, we want to help you. We want to help you Daniel. Just put the gun down.

6:33 We're here to help you Daniel. We're here to help you.

6:43 Put the gun down. Don't do it brother. We'll help you. We're here to help you.

6:53 Daniel, it's not worth it brother. Don't do it. Listen to me.

7:05 It's not worth it brother. It's not. Put the gun down. Put the gun down. You won't be harmed.

7:28 Daniel, we don't want to shoot you.

7:44 Daniel, put the gun down.

7:51 Put the gun down Danny.

8:02 Daniel, don't do it.

8:20 Put it down Daniel.

8:24 Daniel, put the gun down. We're here to help you Daniel.

8:32 Daniel, we'll get you some help.

8:35 Daniel. Put the gun down. It's Deputy Black. We're here to help you. You don't need to do this. Is there anyone you want to talk to?

8:47 Daniel, I need you to put the gun down for us.

8:58 Daniel, you need to put the gun down.

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Carbajal were reviewed. The summary of the belt recording will cover the start of the recording and end at the point immediately following the lethal force encounter.

9:06 Daniel, put the gun down.

9:10 Daniel, drop the firearm.

9:16 You don't need to do this Daniel.

9:22 Is there anything we could do to help you right now?

9:29 Daniel, we don't want you to do this. Just put the gun down.

9:40 Daniel, we want to help you man. I'm here for you.

9:46 Is there anyone you want to talk to right now Daniel?

9:56 Just put the gun down Daniel. Put the gun down for us.

10:02 Daniel, you need to put the gun down for us. You need to put both hands in the air for me.

10:15 Daniel, put your hands in the air and come talk to me.

10:20 Put your hands in the air and come talk to me.

10:25 I want to talk to you Daniel.

10:28 I want to help you.

10:32 Put the gun down. Put your hands up and come talk to me.

10:45 Daniel, I want to help you. You gotta let me help you Daniel.

10:48 Daniel, put the gun down and come talk to me.

11:03 Daniel. I really want to help you Daniel.

11:06 You need to put the gun down for me. Put your hands in the air and come talk to me.

11:16 Daniel, I really want to help you.

11:23 Put the gun down form Daniel. I want to help you.

11:28 I want to get you the help that you need, the help that you want.

11:33 You need to put the gun down. Put your hands up and come talk to me man.

11:49 Daniel, let me help you man. Put the gun down and come talk to me man.

12:24 Daniel, I need you to put the gun down. Put your hands in the air. Come talk to us.

12:38 Daniel, we want to get closer to you man.

12:39 We're going to get closer to you to talk to ya.

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<sup>12</sup> The times listed are based upon times shown on for Sergeant Conley's belt recording. The times are for reference only.

12:44 Daniel, we want to get closer to help you man.

12:49 Just going to talk to ya.

12:50 Daniel, put the gun down for us man.

12:52 Put the gun down Daniel.

12:53 We're here to help man. We really really want to help you.

12:58 Keep your hands up high. Hands up high Daniel.

13:09 Daniel, do not move. Daniel, keep your hands up for me.

13:12 Daniel, don't go close to the gun.

13:16 Keep them up dude. Daniel, let us help you. You're alright. Keep your hands up. Stay away from the gun.

13:29 Leave it there. Leave it there Daniel.

13:31 Don't go for the gun. Don't go for the gun. Don't do it Daniel. We're here to help you.

13:40 Lay down on your back.

13:42 Keep your hands up in the air Daniel.

13:48 Hands up Daniel.

13:52 Keep your hands where we can see them.

14:01 Daniel, do not go for your gun. We want to help you. Stop reaching for the gun and keep your hands where we can see them.

14:14 We want to help you. I want to help you. I really want to help you Daniel.

14:22 Put it down.

14:25 Daniel, you don't want to do this man. You have a lot to live for man. Do not do this. Put the gun down. Throw the gun down to the side and put your hands up please.

14:35 Throw your gun to the side like you did Daniel. You could do it.

14:44 Do it Daniel. Throw the gun to the side. Throw the gun to the side so we can help you.

14:56 We want to help you. We want to hear you out.

15:03 Daniel, do not point your gun over here. Daniel don't do it. Throw the gun to the side. We want to help. Let us help you.

15:19 Daniel, throw your gun again.

15:23 Put the gun on the ground Daniel.

15:24 Daniel, throw the gun away from you. Away from us. I promise you. I will help you.

15:31 Daniel, if you get rid of the gun, we're able to help you.

15:35 Just put in on the ground Daniel.

15:39 I want to help you. We all want to help you here. You gotta allow us to do that. Throw the gun and keep your hands in the air.

15:49 Daniel, don't do it. Don't do it.

15:50 Multiple gunshots were heard.

### **CRIME SCENE INVESTIGATION**

A black, RG Industries, semi-automatic handgun was in the dirt, approximately six feet east/northeast of Messmer's head. The model and serial numbers on the handgun were obliterated and unreadable during the crime scene investigation.<sup>13</sup>

### **DECEDENT**

**AUTOPSY.** Witness #3, Chief Forensic Pathologist for the Office of the Riverside County Sheriff-Coroner-Public Administrator, conducted the autopsy of Daniel Messmer on February 25, 2019. Witness #3 determined the cause of death was multiple gunshot wounds.

#### **Gunshot Wound Number One<sup>14</sup>**

There was an entrance gunshot wound present to the left infraclavicular region, located 14 inches from the top of the head and 1 ½ inches left of the anterior midline.

#### **Gunshot Wound Number Two:**

There was an entrance gunshot wound present immediately superior to and medial to the left nipple. The wound was located 18 ½ inches from the top of the head and 3 inches left of the anterior midline.

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<sup>13</sup> There was no evidence recovered which indicated Messmer had ever fired his weapon at the deputies.

<sup>14</sup> The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshot wounds occurred.

### **Gunshot Wound Number Three:**

There was an entrance gunshot wound present inferior to gunshot wound number two in the midclavicular line. The wound was located 21 ¼ inches from the top of the head and 2 ¾ inches left of the anterior midline.

### **Gunshot Wound Number Four:**

There was an entrance gunshot wound present to the mid sternal region. The wound was located 19 ¼ inches from the top of the head and ¾ inch right of the anterior midline.

### **Gunshot Wound Number Five:**

There was an entrance gunshot wound present to the right lower chest region. The wound was located 21 inches from the top of the head and 3 inches right of the anterior midline.

### **Gunshot Wound Number Six:**

There was a large cavitory defect wound present in the right lower quadrant. The wound was located 31 ½ inches from the top of the head and 1 ½ inches right of the anterior midline. It could not be determined whether this was an entrance or exit wound.

### **Gunshot Wound Number Seven:**

There was an entrance gunshot wound present to the left lower quadrant. The wound was located 30 inches from the top of the head and 4 inches left of the anterior midline.

### **Gunshot Wound Number Eight:**

There was an entrance gunshot wound present to the left lateral torso in the midaxillary line. The wound was located approximately 22 to 25 inches from the top of the head.

### **Gunshot Wound Number Nine:**

There was an entrance gunshot wound present to the left lateral torso in the midaxillary line. The wound was located approximately 22 to 25 inches from the top of the head.

### **Gunshot Wound Number Ten:**

There was an entrance gunshot wound present to the left lateral torso in the midaxillary line. The wound was located approximately 22 to 25 inches from the top of the head.

### **Gunshot Wound Number Eleven:**

There was an entrance gunshot wound present to the right lateral torso. The wound was located 20 inches from the top of the head and slightly posterior to the midaxillary line.

### **Gunshot Wound Number Twelve:**

There was an entrance gunshot wound present to the left lower back region. The wound was located 24 inches from the top of the head and 3 inches left of the posterior midline.

### **Multiple Gunshot Wounds of Left Upper Extremity:**

There was a small entrance gunshot wound present to the anterior aspects of the left bicep region measuring approximately 1/4 inch in rough dimension. There was a small entrance gunshot wound present to the slightly inferior aspects of the left bicep region also measuring approximately 1/4 inch. A gunshot wound was located to the antecubital fossa region measuring up to 3/16 inch in rough dimension. There was a presumptive entrance gunshot wound present to the ulnar aspects measuring 1/2 inch to 1 inch.

### **Multiple Gunshot Wounds to Lower Extremities:**

There were two wounds present to the anterior and inner aspect of the right thigh. The superior injury measured 1/2 inch in rough diameter and the medial injury measured up to 3/16 inch by 1/4 inch. It was presumed that one of those defects represented the entrance gunshot wound to the right thigh with subsequent fracture of the right femur. However, that could not be definitively ascertained by Witness #3. There was an entrance gunshot wound present to the right lateral aspects of the pretibial surfaces, located midway between the knee and ankle, that measured 3/16 inch in rough diameter. There was a possible exit gunshot wound located medial measuring 1 /4 inch by 5/8 inch in dimension. A gunshot wound was located to the posterior aspects of the right thigh measuring 3/8 inch by 3/4 inch in dimension with an apparent irregular region of abrasion immediately surrounding the inferior margins of the injury for approximately 1 inch. It appeared to be an exit wound, although according to Witness #3, the adjacent abrasion confounded that interpretation. Witness #3 believed it may possibly represent



an exit wound secondary to the kinetic effect of the high-powered projectile. A possible entrance gunshot wound was located to the left anterior distal thigh measuring 3/8 inch by 1/2 inch and 6 inches proximal to the knee. A smaller possible entrance gunshot wound was located inferior to a large wound on the left lateral thigh; the wound measured 3/8 inch in dimension.

### **Gunshot Wounds to Posterior Body Surfaces:**

There were two gunshot wounds present to the right buttock region. The smaller gunshot wound was located superior and medial and measured 3/16 inch in diameter. The larger gunshot wound was located superior and lateral and measured 3/8 inch by 5/8 inch. Witness #3 believed the larger wound may possibly represent a shored exit gunshot wound. There was a grouping of three separate entrance gunshot wounds present to the inner aspects of the right thigh. The three wounds were approximately 1/4 inch in width by 3/4 inch in length. There were two similar injuries located more posterior and lateral, measuring 3/8 inch by 1/4 inch in dimension. There was a penetrating wound through the hypothenar area measuring 1/4 inch.

**TOXICOLOGY.** Chest blood, vitreous, gastric, liver, bile, urine, and brain samples were collected from Messmer during the autopsy.

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

- Ethyl Alcohol – 0.714% (W/V)
- Venlafaxine, LC/MS/MS – 0.175 mg/L
- Desvenlafaxine, LC/MS/MS – 0.423 mg/L
- Cannabinoids – detected
  - Delta-9-THC, LC/MS/MS – none detected
  - 11-Hydroxy-Delta-9-THC, LC/MS/MS – none detected
  - 11-Carboxy-Delta-9-THC, LC/MS/MS – less than 0.005 mg/L

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

- Ethyl Alcohol – 0.395% (W/V)
- Venlafaxine, LC/MS/MS – 8.310 mg/L
- Desvenlafaxine, LC/MS/MS – 23.900 mg/L
- Amphetamines – detected
  - Methamphetamine, LC/MS/MS – 0.335 mg/L
  - Amphetamine, LC/MS/MS – 0.173 mg/L
- Cannabinoids – detected
  - 11-Carboxy-Delta-9-THC, LC/MS/MS – 0.038 mg/L
- 9-Hydroxyrisperidone, LC/MS/MS - detected

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

- Ethyl Alcohol – 0.462% (W/V)
- 10 – Panel Drug Screen – none detected

**CRIMINAL HISTORY.** 2014, 484(a) of the Penal Code, Petty Theft. San Bernardino County case number MVI1400536, a misdemeanor.

2016, 459 of the Penal Code, Burglary. San Bernardino County case number FVI1403284, a felony.

### **DE-ESCALATION**

Several different attempts were made by law enforcement to de-escalate the situation. Patrol deputies who initially responded to the scene spent approximately fifteen minutes attempting to disarm Messmer. Deputies gave Messmer several verbal commands to put his gun down and to put his hands up in the air. Deputies tried to reassure Messmer that they did not want to hurt Messmer and they only wanted to help him. When Sergeant Conley realized the deputies were out of range to use less lethal force, Sergeant Conley formulated a plan to try and get closer to Messmer. Sergeant Conley hoped that by getting closer to Messmer, deputies could use less lethal force to disarm Messmer and take Messmer into custody. Sergeant Conley did not want anyone to get hurt. Sergeant Conley attempted to execute this plan by having Deputy Black slowly drive his patrol vehicle forward while the other deputies walked behind, using the patrol vehicle as cover. Deputy Pulido, who was armed with a less lethal bean bag shotgun, would move forward with Sergeant Conley and the other deputies. Although there was one moment during the incident when Messmer tossed his gun to the ground, the moment was extremely brief and Messmer quickly picked his gun back up off the ground. Throughout the incident, Messmer remained uncooperative with deputies and failed to comply with the deputies' verbal commands.

### **APPLICABLE LEGAL PRINCIPLES**

**PENAL CODE SECTION 245(a)(2).** Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

A peace officer may use reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a)<sup>15</sup> Should the arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense or to use reasonable force to effect that arrest. (*Id.*) An arrestee has a duty to refrain from using force or any weapon to resist lawful arrest, if he knows or should know that he is being arrested. (Penal C. §834a.)

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

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

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

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

(CALCRIM 507)

No variation of the word “reasonable” appears in Penal Code §196, but the principle as applied necessarily requires that an officer’s conduct be reasonable. A homicide is justifiable under Penal Code §196 when the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. County of Los*

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<sup>15</sup> All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

*Angeles* (1996) 47 Cal.App.4th 334, 349.) This standard under Penal Code § 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. Whether police actions are reasonable under Penal Code section 196 depends on the facts and circumstances known to the peace officer at the time of the arrest. This rule applies even if subsequent investigation reveals the suspect was not guilty of the suspected felony. (*Kilvington, supra*, 104 Cal. at 93.) Similarly, when a police officer reasonably believes a suspect may be armed, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.) California courts have held that when a police officer's actions are reasonable under the Fourth Amendment, the requirements of Penal Code § 196 are satisfied. (*Martinez v. County of Los Angeles, supra*, at 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at \*25.)

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

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

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

(CALCRIM 505.)

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

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (*Id.*, see also CALCRIM 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a

situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 348.) The court in *Scott* explained:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ANALYSIS**

On February 23, 2019, during the late afternoon hours, Daniel Messmer went into the Shell gas station located at \*\*\*\*\* Bear Valley Road, in the City of Victorville. Messmer spoke with Witness #1, a gas station attendant. Witness #1 noticed a strong odor of

alcohol coming from Messmer. Witness #1 was unable to understand what Messmer was saying because Messmer was mumbling and slurring his words. Witness #1 asked Witness #2, the assistant manager, to help Messmer.

Messmer asked Witness #2 to call the police. Messmer wanted the police to pick him up and drop him off in Vegas. Witness #2 told Messmer she could not do that and Messmer walked out of the gas station. A few minutes later, Messmer returned and spoke to Witness #1. Witness #1 was still unable to understand what Messmer was saying. Messmer then took a handgun from his waistband and brandished it at Witness #1. Messmer left the business and Witness #1 asked Witness #2 to call the police. Witness #2 called 911 and reported Messmer had a gun.

Sergeant Joshua Conley, Deputy Sergio Ramirez, Deputy Sean Taylor, Deputy Angel Mata, Deputy Zachary Pritchett, Deputy Arootin Bandari, Deputy Mateusz Nosek, Deputy Taylor Wetzel, and several other deputies from the San Bernardino County Sheriff's Department responded to the location. 40 King arrived at the scene before the other deputies and observed Messmer with a gun in a dirt field east of the gas station. 40 King broadcasted over the radio that Messmer was armed with a gun and Messmer appeared to be loading ammunition into the weapon.

When the deputies arrived, they saw Messmer sitting in an open dirt field holding a black handgun. Messmer appeared distraught. Messmer was holding the gun up to his head and would then put the barrel of the gun into his mouth. Deputies gave Messmer multiple verbal commands to put the gun down and place his hands in the air. Concerned that Messmer was possibly suicidal, deputies attempted to reassure Messmer that they wanted to help Messmer and they were not there to hurt Messmer. Messmer told the deputies, "Just shoot me." As Messmer was moving the gun around, Messmer would point the gun in the direction of the deputies. Messmer's movements did not appear intentional and the deputies continued to try to get Messmer to put his gun down.

During the incident, Messmer threw his gun a couple of feet away from him and laid on his back. Sergeant Conley believed this was an opportunity to move closer to Messmer and use less lethal force to disarm Messmer. Deputy Black slowly drove his patrol vehicle forward. A small group of deputies, using the patrol vehicle as cover, walked behind the vehicle toward Messmer. The deputies were only able to move a few feet when Messmer sat back up and grabbed his gun.

Messmer pointed the gun in the direction of the deputies. This time Messmer's movement appeared intentional and deputies believed Messmer was going to shoot them. Messmer extended his arm out as he pointed the gun towards the deputies. Deputy Mata, Deputy Nosek, and Deputy Carbajal indicated they saw a muzzle flash come from Messmer's gun. Sergeant Conley, Deputy Mata, Deputy Pritchett, Deputy Bandari, and Deputy Wetzel feared for their lives and the lives of their partners and fired their weapons at Messmer. Deputy Ramirez, Deputy Taylor, and Deputy Nosek feared Messmer was about to shoot their partners and fired their weapons at Messmer.



Messmer was struck multiple times during the shooting and was pronounced deceased at the scene.

In this case, Deputy Bandari, Sergeant Conley, Deputy Mata, Deputy Pritchett, and Deputy Wetzel each had an honest and objectively reasonable belief that Messmer posed an imminent threat of serious bodily injury or death to themselves and their partners at the scene. Likewise, Deputy Nosek, Deputy Ramirez, and Deputy Taylor each had an honest and objectively reasonable belief that Messmer posed an imminent threat of serious bodily injury or death to their partners at the scene. The deputies responded to a call for service regarding a man with a gun at a gas station. Prior to deputies arriving on the ground, 40 King was able to fly to the scene and confirm Messmer had a gun and appeared to be loading the gun with ammunition. That information was relayed to the deputies responding to the scene. Those deputies knew the fact Messmer was armed with a gun significantly increased the potential threat to their physical safety.

While at the scene, Messmer was uncooperative with deputies. Messmer refused to comply with multiple commands by deputies to put his gun down and place his hands in the air. Messmer was moving his gun around recklessly. At various times throughout the incident, Messmer had the gun pointed at his head, pointed inside his mouth, or pointed at deputies. Deputies were concerned that Messmer may be suicidal. Messmer's distraught mental state combined with Messmer's unwillingness to follow the deputies' commands only heightened the deputies' fears that someone could get hurt. Deputies were aware it would only take one shot for Messmer to injure or kill a deputy or nearby civilian.

Deputies spent approximately fifteen minutes trying to deescalate the situation. Deputies repeatedly told Messmer to put his gun down and place his hands in the air. Deputies attempted several times to reassure Messmer they were there to help Messmer and they did not want to hurt him. Messmer, however, was unconvinced and told the deputies, "Just shoot me." Sergeant Conley formulated a plan for deputies to get closer to Messmer to try and utilize less lethal force to disarm Messmer and avoid anyone getting injured or killed. Despite the deputies' efforts, Messmer remained uncooperative.

Once Messmer grabbed his gun up off the ground and pointed it at the deputies for the final time, it was completely reasonable for deputies to believe Messmer intended to shoot them. Deputies had warned Messmer that they were going to move closer to him. Messmer ignored the deputies' commands not to go for his gun. Instead, Messmer picked the gun up, extended his arm outward, and pointed the gun towards the group of deputies behind Deputy Black's patrol vehicle. The danger Messmer posed to the deputies' physical safety significantly increased as the deputies moved closer to Messmer.

Some of the deputies described the prior times Messmer pointed his gun in their direction as "muzzle swipes." In comparison, Messmer's actions in making eye contact

with the deputies, extending his arm with the gun outward, and pointing the gun in the deputies' direction this final time appeared much more purposeful. Also, important to note, Deputy Mata, Deputy Nosek, and Deputy Carbajal all indicated they saw a muzzle flash come from Messmer's gun. Deputy Bandari, Sergeant Conley, Deputy Mata, Deputy Pritchett, and Deputy Wetzel reasonably feared for not only their lives but the lives of their partners. Likewise, Deputy Nosek, Deputy Ramirez, and Deputy Taylor reasonably feared for the lives of their partners. Given the circumstances described, the deputies reached an honest and objectively reasonable conclusion that Messmer intended to shoot the deputies and posed an imminent threat of serious bodily injury or death.

## **CONCLUSION**

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

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

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

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

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

Based on the facts presented in the reports and the applicable law, Deputy Ramirez' use of lethal force was a proper exercise of Deputy Ramirez' right of defense of others and therefore his actions were legally justified.

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

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

**Submitted By:**  
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