



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: September 29, 2021

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officer: Deputy Jason Causey
San Bernardino County Sheriff's Department

Deputy Jonathan Cordova
San Bernardino County Sheriff's Department

Deputy Brent Miller
San Bernardino County Sheriff's Department

Sergeant John Scalise
San Bernardino County Sheriff's Department

Deputy Michael Sellers
San Bernardino County Sheriff's Department

Involved Subjects: Cara Burghardt (Injured)
Date of Birth 09/01/82
Yucca Valley, CA

Date of Incident: August 5, 2020

Incident location: **** Avalon Ave.
Yucca Valley, CA

DA STAR #: 2021-9985

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Michael Gardea

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PREAMBLE

This was a non-fatal officer involved shooting by deputies from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 092001323 and H# 2020-075.

RELATED CASE

Because of this incident, the San Bernardino County Sheriff's Department, Morongo Basin Sheriff Station, submitted a case to the San Bernardino County District Attorney's Office to review for potential criminal charges against Cara Burghardt. Criminal charges were filed against Burghardt in San Bernardino County District Attorney Case # 2021-00-0010041. There are five counts in the felony complaint alleging a violation of Penal Code Section 245(c) Assault Upon a Peace Officer.¹

FACTUAL SUMMARY

On August 5, 2020, at around 2:14 in the afternoon, Cara Burghardt called 9-1-1. Burghardt sounded distraught. Burghardt told the dispatcher, "I just want you to come here and shoot me, please." Burghardt claimed to be in possession of a loaded weapon and warned the dispatcher, "I will act with force." Burghardt also told the dispatcher she wanted to get shot. During the phone call, Burghardt indicated her husband, Witness #1, and her 10-year-old son, Witness #2, were inside the residence. At one point during the 9-1-1 call Witness #1 was able to get on the telephone and provide his name and address to the dispatcher. Witness #1 said Burghardt was acting "irrational" and that he and Witness #2 were leaving the residence to wait outside. During the 9-1-1 call, the dispatcher could hear Burghardt yelling in the background. At various times, Burghardt yelled, "You want me to be crazy? Get the f** off. Get the f** away from me. I'll f**ing kill you. Back off!" The dispatcher also heard sounds consistent with glass breaking or shattering.

Dispatch advised deputies of the unknown problem call. Dispatch relayed the information that was obtained during the 9-1-1 call. Dispatch also advised deputies that Burghardt was acting erratically. Deputy Jason Causey, Deputy Michael Sellers, Deputy Brent Miller, Deputy Jonathan Cordova, and Sergeant John Scalise, from the San Bernardino County Sheriff's Department, all responded to the location. Deputy Causey and Deputy Sellers were the first of the deputies to arrive at the scene. Deputy

¹ Burghardt has not yet been arraigned and there was no court case number listed on the San Bernardino County Superior Court website.

Causey and Deputy Sellers contacted Witness #1 and Witness #2 and obtained initial statements about what transpired inside the residence with Burghardt.

Witness #1 said Burghardt broke out the windows inside the residence and was rolling around in the glass. Witness #1 also told Deputy Causey that Burghardt broke out the windows to a truck parked in front of the residence and Burghardt wanted law enforcement to kill her. When asked about any weapons inside the residence, Witness #1 said there was a black rifle pellet gun inside the home and no other weapons. Deputy Causey and Deputy Sellers were able to determine no crime had been committed. Neither Witness #2 nor Witness #1 indicated they had been injured or threatened by Burghardt.

When Deputy Cordova, Deputy Miller, and Sergeant Scalise arrived at the scene they met up with Deputy Causey and Deputy Sellers. Deputy Causey and Deputy Sellers updated the other deputies of the information they learned from their initial investigation. The deputies were increasingly concerned about Burghardt's well-being and whether she posed a risk to herself or to others. As the deputies discussed how they would attempt to contact Burghardt, Burghardt exited the residence armed with a pellet rifle.

The deputies heard Burghardt fire the weapon. The deputies ran for cover at a nearby patrol vehicle. Burghardt was holding what appeared to the deputies to be a real rifle. Burghardt was walking towards the deputies' location. Burghardt had the rifle raised and pointed at the deputies. Sergeant Scalise and Deputy Sellers gave Burghardt verbal commands to drop the weapon. Sergeant Scalise warned Burghardt she would be shot if she did not drop the weapon. Burghardt failed to comply with the deputies' verbal commands.

As Burghardt continued walking towards the deputies with the rifle pointed in their direction, Deputy Causey, Deputy Cordova, Deputy Miller, Deputy Sellers, and Sergeant Scalise each believed Burghardt intended to kill them. The deputies feared for their physical safety as Burghardt continued to move closer to their location and fired their duty weapons simultaneously at Burghardt. Burghardt was struck by gunfire, fell to the ground, and dropped the rifle. The deputies were able to move up towards Burghardt and handcuff her.

Deputies requested medical aid respond to the scene to treat Burghardt. After the shooting, deputies rendered medical aid to Burghardt. San Bernardino County Fire Department personnel responded to the scene and Burghardt was subsequently transported to Desert Regional Medical Center in the City of Palm Springs for treatment. Burghardt sustained one gunshot wound near her lower right abdomen and one gunshot wound near her lower back.

A black and silver Beeman Precision Airguns break-open rifle, model Sportsman RS2 Series, 177 caliber, serial number 181406861725 was located at the scene.

STATEMENTS BY POLICE OFFICERS

On August 7, 2020, at approximately 3:00 in the afternoon, **Deputy Jason Causey** was interviewed by Detective David Lara and Detective Michelle Del Rio.²

On August 5, 2020, Deputy Jason Causey, from the San Bernardino County Sheriff's Department Morongo Basin station, was assigned to patrol. Deputy Causey was wearing a short sleeve "Class A" San Bernardino County Sheriff's Department uniform and driving a marked patrol vehicle. On that date, Deputy Causey was dispatched to a call in Yucca Valley involving an unknown female, later identified as Cara Burghardt, on the line saying erratic things like, "Come and get me" and "I'm going to kill you." Dispatch could hear a male voice and what sounded like a disturbance between the two individuals. Burghardt said she had a weapon and was going to use it. However, it was unclear from the call what type of weapon Burghardt had in her possession.

As Deputy Causey drove to the location, dispatch advised the male, later identified as Witness #1, was on the phone and stated that Burghardt was inside the home breaking windows and acting erratically and there was a child involved. Witness #1 advised that he and the child, later identified as Witness #2, had left the residence and were waiting for law enforcement near the street in front of the residence. Deputy Causey called for medical aid to stage in the area due to a child being at the scene. When Deputy Causey arrived at the location, he staged at Avalon and Aberdeen and waited for additional deputies to arrive. The staging area was approximately one mile away from the residence. Deputy Michael Sellers arrived and the two spoke briefly about their concern for the safety of Witness #2 and Witness #1 who were waiting in the street. Deputy Causey and Deputy Sellers decided it was in the best interest of Witness #2 and Witness #1 to approach the residence. Deputy Causey was concerned for the safety of Witness #2 and Witness #1 and wanted to secure them in a safe place.

Deputy Causey activated the emergency lights on his patrol vehicle and parked his vehicle on the west side of the roadway. Deputy Causey saw Witness #2 and Witness #1 and asked them to walk to the rear of his patrol vehicle, near the passenger side taillight. Witness #2 said he knew a neighbor in the area. Deputy Causey heard Deputy Sellers ask Witness #1 whether it was okay for Witness #2 to go to the neighbor's house. Deputy Causey heard Witness #1 tell Deputy Sellers it was okay.

Deputy Causey spoke to Witness #1 about the incident. Witness #1 told Deputy Causey that Burghardt, his wife, was inside the residence. Witness #1 said Burghardt had broken out the windows to the house and was rolling around in the glass. Witness #1 also told Deputy Causey that Burghardt broke out the windows to a truck parked in front of the residence and Burghardt wanted law enforcement to kill her. Witness #1 advised Deputy Causey that there was a black rifle pellet gun inside the residence but no other weapons. Deputy Causey had experience with pellet guns and knew it could

² Deputy Causey reviewed his belt recording and the dispatch recording prior to being interviewed by Detective Lara and Detective Del Rio.

do almost the same damage as a .22 caliber bullet. Deputy Causey had Witness #1 sit in the rear of Deputy Sellers' patrol vehicle which was parked directly behind Deputy Causey's vehicle. Witness #2 returned to the location and said the neighbor was not home. Deputy Sellers also had Witness #2 sit in the rear of his patrol vehicle and then moved the vehicle across the street on the east side of the roadway, further south of the residence, to protect Witness #2 and Witness #1.

Next, Deputy Brent Miller, Deputy Jonathan Cordova, and Sergeant John Scalise arrived on scene in their patrol vehicles. Deputy Causey continued to periodically look at the residence to check for any movement inside the house. Deputy Causey did not see anyone inside the residence and did not hear anything coming from inside the residence. Deputy Causey and Deputy Sellers continued their investigation into any possible child abuse or domestic violence that may have occurred. Although a preliminary statement was obtained from Witness #1, the deputies decided to also speak with Witness #2 to determine what else may have occurred inside the residence.

Deputy Causey asked Witness #2 to step out of Deputy Sellers' patrol vehicle and walked Witness #2 back to the passenger side taillight so he could question Witness #2 about what happened. Witness #2 was visibly upset. Witness #2 told Deputy Causey that Burghardt and Witness #1 had gotten into an argument over who owned the truck that was near the residence. Witness #2 said Burghardt was extremely upset and told Witness #1 and Witness #2 to leave the residence. After Witness #2 and Witness #1 left, Witness #2 said Burghardt broke the windows in the house. Witness #2 said Burghardt never tried to harm him. At that time, Deputy Causey decided to speak with Witness #1 and asked Witness #1 to step out of Deputy Sellers' patrol vehicle.

Deputy Causey asked Witness #1 what Burghardt meant when she said she was going to kill somebody. Witness #1 said Burghardt had not threatened him. Witness #1 explained that Burghardt's threat was directed to the dispatcher who was speaking with Burghardt on the phone. Witness #1 said he had not sustained any injuries from Burghardt or the broken glass. Witness #1 told Deputy Causey there was nobody else inside the house besides Burghardt. Witness #1 told Deputy Causey that Burghardt planned to have deputies shoot her. After the interview, Deputy Causey had Witness #1 sit back inside the rear of Deputy Sellers' patrol vehicle. Deputy Causey had determined there was no crime that had been committed but Burghardt probably met the criteria of a "5150" hold.³

At this time, there were multiple deputies standing near the front of Deputy Sellers' patrol vehicle. Deputy Causey was updating the deputies about his interviews when he heard a whiz noise close to him. The whiz noise sounded like a projectile moving toward Deputy Causey at a fast pace. Deputy Causey said the whizzing sound he heard was traveling in a west to east direction. As a result, Deputy Causey was unable

³ Welfare and Institutions Code §5150(a) states, in part, "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer...may, upon probable cause, take, or cause to be taken, the person into custody for a period of 72 hours for assessment, evaluation, and crisis intervention."

to provide to the other deputies the description of the weapon that Witness #1 had provided to him. Deputy Causey heard Burghardt near the house screaming. Deputy Causey ducked his head and moved closer to the front passenger side of Deputy Sellers' patrol vehicle which was his only cover.

Deputy Causey drew his duty weapon and looked up toward the residence where he thought the threat was coming from. Deputy Causey estimated he was in front of the residence fifteen minutes before he actually saw Burghardt. Deputy Causey estimated Burghardt was approximately 50 yards away from the deputies. Burghardt was holding a large black rifle. It appeared to Deputy Causey that Burghardt was trying to load or reload the rifle. Deputy Causey moved to the front passenger side of his patrol vehicle, near the right passenger headlight, for concealment and cover. Deputy Causey saw other deputies move near the northeast fence of the property. Deputy Causey heard Sergeant Scalise give Burghardt verbal commands to put down the weapon. Deputy Causey estimated he gave two verbal commands for Burghardt to drop the gun. It did not appear to Deputy Causey that Sergeant Scalise was in a good position to see whether Burghardt was complying with the deputies' verbal commands.

Deputy Causey saw Burghardt raise the rifle up to her shoulder. It appeared Burghardt was panning the rifle from left to the right from where she was standing. Burghardt raised the rifle in the direction of Deputy Causey and the other deputies. Burghardt was saying something as she raised the rifle but Deputy Causey could not recall what Burghardt was yelling. A projectile had already been fired in the direction of the deputies so Deputy Causey feared for his life and the lives of the other deputies that were on scene. Deputy Causey believed Burghardt was going to kill him and/or possibly kill another deputy. As Burghardt raised her rifle, Deputy Causey fired his duty weapon at Burghardt approximately eleven times. Deputy Causey wanted to stop the threat or get Burghardt to drop the firearm.

Deputy Causey did not see any reaction from Burghardt to the rounds that were being fired. Burghardt still had the firearm in her hands with the weapon pointed at Deputy Causey and the other deputies. On his last trigger pull, Deputy Causey saw an immediate reaction from Burghardt indicating she had been struck by the gunfire. Burghardt fell to the ground and her rifle ended up on the ground directly in front of her. Deputy Causey stopped firing after Burghardt was struck.

After the shooting, Deputy Causey ran up to where Burghardt was laying on the ground. Deputy Causey did not want Burghardt to have an opportunity to pick the firearm back up and try to shoot the deputies. Deputy Causey observed a gunshot wound to Burghardt's lower right abdomen and a gunshot wound to Burghardt's lower back. Deputy Causey handcuffed Burghardt. Deputy Cordova arrived shortly after and had a medical pack with him. Deputy Causey put gloves on, took gauze from the medical pack, and applied pressure to the gunshot wound to Burghardt's back. Deputy Cordova took gauze and applied pressure to the gunshot wound to the front of Burghardt's lower abdomen. Burghardt told the deputies she wanted them to kill her and to just let her bleed out. Deputy Causey heard Sergeant Scalise request medical aid to arrive and

cleared the Fire Department to come into the scene. Deputy Causey estimated it took ten to fifteen minutes before the San Bernardino County Fire Department arrived at the scene. Once the fire department personnel arrived, they took over rendering medical aid to Burghardt.

On August 5, 2020, at approximately 5:57 in the evening, **Deputy Jonathan Cordova** was interviewed by Detective Michelle Del Rio and Detective David Lara.⁴

On August 5, 2020, Deputy Jonathan Cordova, from the San Bernardino County Sheriff's Department Morongo Basin station, was assigned to patrol. Deputy Cordova was wearing a short sleeve "Class A" San Bernardino County Sheriff's Department uniform. On that date, as Deputy Cordova was getting ready to start his shift, Deputy Cordova noticed a nail in the tire of his patrol vehicle. Around that time, Sergeant John Scalise walked past Deputy Cordova. Sergeant Scalise told Deputy Cordova to get into his patrol vehicle and said they were going to respond to a call for service.

Deputy Cordova got into the front passenger seat of Sergeant Scalise's patrol vehicle. Deputy Cordova checked the computer in the patrol vehicle for the call history. Deputy Cordova saw the call for service was in reference to a female who seemed distressed and was stating she was going to shoot somebody. The female, later identified as Burghardt, stated she had a weapon and was threatening to use force. Dispatch indicated they heard Burghardt breaking items in the background. The call indicated Burghardt may have broken a window and was trying to jump on the glass or cut herself with the glass. On the way to the scene, Deputy Cordova and Sergeant Scalise briefly discussed less lethal options that could be utilized. When Deputy Cordova and Sergeant Scalise arrived at the location, Deputy Cordova saw that there were other deputies already at the scene.

The deputies staged across the street from the residence. Deputy Michael Sellers advised the other deputies that Witness #2 and Witness #1, Burghardt's son and husband, were in his patrol vehicle which was parked down the street. The deputies discussed whether any crime had been committed or whether this may be a "5150" situation. Given that Witness #2 and Witness #1 were already out of the residence, it did not appear to Deputy Cordova that there was any exigency requiring the deputies to break down the front door. Deputy Cordova and the other deputies started to formulate a plan about how to approach the house with their patrol vehicles so they could make Public Address (PA) announcements for Burghardt to come out.

Around this time, Deputy Cordova heard someone say, "She's running out of the house. She has a gun." Deputy Cordova heard a "ting" which he was unsure whether it was a bullet whizzing by or if it was the sound of a gun going off. Deputy Cordova believed Burghardt was shooting at the deputies. Deputy Cordova took cover behind a vehicle.

⁴Deputy Cordova reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Lara.

Deputy Cordova then eventually moved up to where he and Sergeant Scalise parked their patrol vehicle, which was north of a driveway on the fence line. Deputy Cordova pulled out his duty weapon. Deputy Cordova saw Burghardt walking towards the deputies with what appeared to be a long rifle with a scope attached to the top of it. Deputy Cordova was afraid Burghardt was going to shoot him or shoot his partners.

Burghardt appeared to be yelling something but Deputy Cordova could not hear what she was saying. Deputy Cordova estimated Burghardt was 40 to 50 yards away from the deputies. Burghardt appeared to have the butt of the gun rested on her right shoulder with her right hand around the trigger or near the trigger. Burghardt's left hand was at the other end of the stock, holding the gun up. Deputy Cordova heard someone say that it was a pellet gun. Deputy Cordova then heard Deputy Sellers say it was a rifle. Deputy Cordova believed Burghardt was holding a long rifle. Deputy Cordova heard multiple deputies giving Burghardt commands to drop the gun. Deputy Cordova heard Sergeant Scalise warn Burghardt to drop the gun or the deputies would shoot her.

Deputy Cordova heard other deputies start firing. Deputy Cordova was behind the other deputies and did not have a clear shot. Deputy Cordova looked behind to make sure there was nobody shooting behind him and then shifted to his right. When Deputy Cordova saw that there was nobody behind him and he had a clear shot at Burghardt, Deputy Cordova fired his weapon once. Deputy Cordova realigned his sights and fired a second time. Deputy Cordova estimated he fired the second shot within a second or two of the first shot. Deputy Cordova estimated Burghardt was 50 yards away from him when he fired his weapon. Deputy Cordova saw Burghardt fall to the floor. After Burghardt fell, the deputies stopped shooting.

The deputies reassessed the situation and moved towards Burghardt with their weapons pointed at her. Deputy Causey and Deputy Cordova rolled Burghardt on to her back and handcuffed her. Deputy Cordova noticed Burghardt had two wounds. One wound was in Burghardt's abdomen area and the other wound was to Burghardt's back. Deputy Cordova ran back to Sergeant Scalise's patrol vehicle and grabbed a trauma pack. When he returned, Deputy Cordova dumped out the contents of the trauma pack and got out some gauze so Deputy Causey was able to start putting pressure on one of Burghardt's wounds. Deputy Cordova opened up a bandage with quick clot and put it on both of Burghardt's wounds. While they waited for medical personnel to arrive, Burghardt told the deputies she wanted to die and asked them to just let her bleed out. The deputies tried to reassure Burghardt that medical personnel were on their way and they were not going to let Burghardt die. Medical personnel eventually arrived at the scene and took over rendering medical aid to Burghardt.

On August 11, 2020, at approximately 9:18 in the morning, **Deputy Brent Miller** was interviewed by Detective Michelle Del Rio and Detective Michael Gardea.⁵

⁵ Deputy Miller reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Gardea.

On August 5, 2020, Deputy Brent Miller, from the San Bernardino County Sheriff's Department Morongo Basin station, was assigned to patrol. Deputy Miller was wearing a short sleeve "Class A" San Bernardino County Sheriff's Department uniform and driving a marked patrol vehicle. On that date, dispatch aired an unknown problem call. The call for service was in reference to a female, later identified as Cara Burghardt, saying to come and get her and she wanted to shoot somebody. Burghardt refused to give her name to the dispatcher, said they knew who she was, and she wanted the deputies to kill her. Deputy Miller responded to the call to assist and told the other responding units to stage at Aberdeen and Avalon. While he was driving to the location, Deputy Miller heard Deputy Causey ask for fire and medical to stage. Deputy Causey and Deputy Sellers advised over the radio they were going to the scene to ensure the safety of Burghardt's son, Jacob Witness #2, and Burghardt's husband, Witness #1.

When Deputy Miller arrived at the location on Avalon, he saw Deputy Causey speaking to Witness #1. Deputy Causey's patrol vehicle was parked on the east shoulder of Avalon, directly east of the entry gate of the property. Deputy Miller parked his patrol vehicle behind Deputy Causey's unit. Deputy Miller listened to Deputy Causey interview Witness #1. Witness #1 stated Burghardt was breaking stuff inside the home. Witness #1 said Burghardt was rolling around in broken glass inside the residence and may have possibly injured herself. Witness #1 wanted the deputies to enter the residence immediately. Deputy Miller and Deputy Causey told Witness #1, for everyone's safety, they were unable to go inside right away. The deputies said they needed to figure out what was going on so they could help Burghardt.

Witness #1 also advised Deputy Causey that Burghardt had a pellet gun and wanted the deputies to kill her. Witness #1 described the pellet gun as a rifle type that a person would have to break the barrel down in order to load it to fire. Deputy Miller and Deputy Causey told Witness #1 those can still be deadly weapons and they were going to try to figure out some more information so they could help Burghardt. They had Witness #1 sit in the back of Deputy Sellers' patrol vehicle with Witness #2. Deputy Sellers then moved his patrol vehicle behind Deputy Miller's unit on Avalon so that it would not be in view of the house.

Deputy Miller, Deputy Causey, and Deputy Sellers began to discuss the information they received, what information was going on in the call, and whether Burghardt had committed any crime or whether she was possibly "5150." Around this time, Sergeant Scalise and Deputy Cordova arrived together in the same patrol vehicle. They parked on the west side of Avalon and got out of their vehicle. Deputy Miller and the other deputies started giving Sergeant Scalise and Deputy Cordova the information that they had based on the call. The deputies were discussing what type of plan they could come up with to contact Burghardt in an attempt to help her but to also help Witness #1 and Witness #2 since that was their home as well. At this time, Deputy Miller heard Burghardt yelling. Deputy Miller was unable to make out what Burghardt was yelling because she was too far away.

Deputy Miller saw Burghardt step out of the front door of the residence. Deputy Miller estimated they were outside for two minutes developing a tactical plan before Burghardt exited the residence. Deputy Miller saw Burghardt was armed with a black rifle. Burghardt aimed the rifle in the direction of the deputies. Deputy Miller heard a loud ping noise, which Deputy Miller believed to be a round being fired from Burghardt's weapon and hitting a metal object. Deputy Miller alerted the other deputies that Burghardt was outside. The deputies moved to the west side of the road, near Sergeant Scalise's patrol vehicle. Deputy Miller moved around the front passenger side of the vehicle and stayed behind the engine block. Deputy Miller was able to see Burghardt from his position.

As Burghardt walked out of the residence, Burghardt reached into a truck parked in front of the front door. Burghardt reached into the driver's side window and grabbed an unknown object. Due to the distance, Deputy Miller was unable to make out what the object was. Burghardt continued to walk towards the deputies. Deputy Miller heard a snap which caused him to believe Burghardt was shooting at the deputies as she walked towards them. Deputies were giving Burghardt commands to drop the weapon. Burghardt refused to comply with those commands and continued to walk towards the deputies with the rifle up against her shoulder and aimed in the deputies' direction.

It appeared to Deputy Miller that Burghardt was holding a rifle. Deputy Miller had heard the ping hit the metal object, which sounded like metal on metal. Deputy Miller aimed his handgun at Burghardt. Burghardt continued to refuse to comply with the deputies' commands to drop her weapon. Deputy Miller feared for his life and the lives of his partners and fired approximately eight to ten rounds through a chain-link fence at Burghardt's direction. Deputy Miller heard other deputies firing their duty weapons. Deputy Miller saw Burghardt go down and then stopped firing.

The deputies approached Burghardt while she was down on the ground. Deputy Miller and the other deputies gave Burghardt commands to show them her hands. Deputy Miller saw Burghardt's weapon was next to her. The deputies handcuffed Burghardt to the rear of her person. Deputy Miller held Burghardt's head and shoulders down so she would not be able to get up and reach for another weapon. Deputy Miller, Deputy Sellers, and Sergeant Scalise approached the residence. The deputies cleared the residence to ensure there were no additional suspects remaining that could harm the deputies or any civilians. After the residence was cleared, Sergeant Scalise and Deputy Sellers approached Burghardt and began assisting with medical aid.

On August 11, 2020, at approximately 11:12 in the morning, **Sergeant John Scalise** was interviewed by Detective Michelle Del Rio and Detective Michael Gardea.⁶

On August 5, 2020, Sergeant Scalise, from the San Bernardino County Sheriff's Department Morongo Basin station, was assigned as the day shift patrol watch

⁶ Sergeant Scalise reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Gardea.

commander. Sergeant Scalise was wearing a short sleeve "Class A" San Bernardino County Sheriff's Department uniform and driving a marked patrol vehicle. On that date, just after 2:00 in the afternoon, a call came in regarding a disturbance at a residence located at **** Avalon Avenue in Yucca Valley. Dispatch advised the female caller, Cara Burghardt, stated she "will act with force." Sergeant Scalise heard Burghardt's husband, Witness #1, and Burghardt's son, Jacob Witness #2, were in the house. Sergeant Scalise subsequently heard Witness #1 and Witness #2 were no longer in the house. During the call there was some information about weapons being in the house. Witness #1 indicated Burghardt had a pellet gun. Dispatch advised they heard Burghardt damaging property inside the home and they could hear Witness #1 and Burghardt yelling and screaming over the open telephone line.

About fifteen minutes after the initial call came in, Sergeant Scalise heard dispatch advise Burghardt stated she was going to make deputies shoot her. At that point, Sergeant Scalise self-assigned himself to assist the responding deputies that were already on scene. As he was walking to his patrol vehicle, Sergeant Scalise saw Deputy Cordova. Deputy Cordova advised he had a flat tire. Sergeant Scalise told Deputy Cordova to come with him and they were going to respond to the call. Deputy Cordova used the computer in the patrol vehicle to read up on the details of the call while Sergeant Scalise drove them to the location. Sergeant Scalise and Deputy Cordova briefly discussed less lethal options that could be utilized once they got to the scene and figured out what was going on.

When they arrived at the location, Sergeant Scalise saw that Deputy Sellers, Deputy Causey, and Deputy Miller were already on scene. Sergeant Scalise parked his patrol vehicle and walked to the east side of the roadway where the deputies were standing. Sergeant Scalise asked the deputies to brief him on what information they had up to that point. Deputy Sellers explained that Burghardt was inside the house acting crazy. Deputy Sellers said Witness #1 and Witness #2 were no longer in the house and were safe in the backseat of one of the patrol vehicles. Deputy Sellers explained to Sergeant Scalise they were still investigating whether a crime had been committed or whether Burghardt was possibly "5150." Deputy Sellers went back to the patrol vehicle and spoke with Witness #1 and Witness #2 for a few moments. Deputy Sellers returned and advised Sergeant Scalise that he was unable to establish any crime had been committed. The deputies discussed Burghardt's mental stability and decided she may need help.

Sergeant Scalise told the other deputies they were not going to force entry into the home since no crime had been committed. However, given the information provided by dispatch and the description of how Burghardt was acting, Sergeant Scalise decided he wanted to check on Burghardt's welfare. Sergeant Scalise's intention was to have dispatch make telephone contact with Burghardt and ask Burghardt to step outside of the house so the deputies could speak with her. Sergeant Scalise believed another option was to have the deputies move one of the patrol vehicles towards the house and use the PA system to call Burghardt out of the house so the deputies could speak with

her. Around this time, Sergeant Scalise heard Deputy Miller alert the other deputies that Burghardt had a gun and was shooting at them.

Sergeant Scalise looked at the front of the residence and saw Burghardt coming out of the front door or standing in the front door. Sergeant Scalise estimated Burghardt was 50 to 60 yards away from him. Burghardt had a rifle in her hands. Sergeant Scalise heard the sound of a gunshot whizzing over the deputies' heads. Sergeant Scalise ducked and drew his duty weapon. Sergeant Scalise was scared and thought he was going to die. The deputies took cover behind the right rear bumper of Sergeant Scalise's patrol vehicle, which was on the west apron of the roadway, the northernmost vehicle.

Sergeant Scalise looked up and saw Burghardt moving towards a red colored truck that was parked in front of the residence. Burghardt paused at the front of the truck. Sergeant Scalise saw Burghardt fumbling with the firearm she was carrying. It appeared to Sergeant Scalise that Burghardt was reloading the firearm. The firearm looked like a break-action shotgun. The weapon appeared to Sergeant Scalise to have a compensator or a silencer on the muzzle. After Burghardt finished reloading the firearm, Burghardt closed it and was holding it at her waist. Burghardt then started rapidly moving towards the opening of the driveway and in the direction of the deputies. Sergeant Scalise's view of Burghardt became obstructed so he moved in a south-westerly direction toward the center of the apron of the driveway.

Burghardt started to close the distance between herself and the deputies. Sergeant Scalise started giving Burghardt verbal commands to drop the weapon. Sergeant Scalise also heard other deputies yelling, "Drop the weapon!" Sergeant Scalise yelled at Burghardt, "Drop the weapon! Stop or you're going to be shot!" Sergeant Scalise estimated Burghardt was 35 to 40 yards away from the deputies. At that point, Sergeant Scalise saw Burghardt raise her weapon and shoulder it to her right shoulder. Sergeant Scalise feared for his life and feared for the lives of his partners. Sergeant Scalise began firing rounds at Burghardt. Sergeant Scalise fired a total of six rounds at Burghardt. Sergeant Scalise heard other deputies fire their weapons. Sergeant Scalise estimated the shooting lasted three to four seconds. Sergeant Scalise saw Burghardt fall to the ground. The rifle Burghardt was holding landed approximately five feet away from her.

After the shooting, the deputies ran up to where Burghardt fell to the ground. Sergeant Scalise kept cover on the home. Sergeant Scalise put out on the radio to dispatch that there were shots fired, the suspect was down, and requested medical aid respond. Two deputies placed Burghardt in handcuffs and started to render medical aid. Sergeant Scalise told Deputy Miller to get the trauma kit from the patrol vehicle. Deputy Miller retrieved the trauma kit and gave it to the deputies who were providing Burghardt medical aid. Sergeant Scalise, Deputy Sellers, and Deputy Miller went and cleared the residence of any additional persons. After they cleared the house, the deputies went back to where Burghardt was on the ground. Deputy Causey and Deputy Cordova were

still providing medical care to Burghardt. Sergeant Scalise saw Burghardt had two wounds, one to her abdomen and one to her upper buttocks area.

Sergeant Scalise felt it was taking the fire department personnel a long time to respond. Sergeant Scalise got on the radio and requested an estimated arrival time for the fire department. The ambulance eventually arrived at the scene and the fire department personnel took over providing medical aid to Burghardt.

On August 7, 2020, at approximately 12:31 in the afternoon, **Deputy Michael Sellers** was interviewed by Detective David Lara and Detective Michael Gardea.⁷

On August 5, 2020, Deputy Sellers, from the San Bernardino County Sheriff's Department Morongo Basin station, was working as the Juvenile Officer. Deputy Sellers was wearing a short sleeve "Class A" San Bernardino County Sheriff's Department uniform and driving a marked patrol vehicle. On that date, Deputy Sellers was in Yucca Valley doing paperwork when he heard a radio dispatch call of an unknown problem at a residence on Avalon Avenue. Deputy Sellers reviewed the call and saw it appeared to reference a female breaking items in the house and talking about wanting to shoot somebody. Deputy Sellers also saw there was information that there were weapons in the home. Deputy Sellers decided to assist Deputy Causey who was responding to the call. As he drove to the location, there was an update that the female, Cara Burghardt, said she had a loaded weapon and she wanted deputies to shoot her. Deputy Sellers also learned Burghardt was on psychiatric medications and had possibly been drinking.

When Deputy Sellers arrived at the location he met up with Deputy Causey in the area of Avalon and Aberdeen so they could try and get a plan together. Deputy Sellers felt the call was escalating rapidly and believed Burghardt was a threat to both her 10-year old son, Witness #2, and her husband, Witness #1. Witness #2 and Witness #1 were waiting outside on the street near the residence. Deputy Sellers decided not to wait for additional units and instead drove up to the location so that he could move Witness #2 and Witness #1 to a safer area prior to making any attempts to contact Burghardt. Witness #1 advised the deputies that the gun in the house was potentially a pellet gun.

Deputy Sellers drove up to the location he saw Witness #2 and Witness #1 waiting out on the street for law enforcement officers. Deputy Causey parked his patrol vehicle on the west side of Avalon Avenue. Deputy Sellers parked his patrol vehicle directly behind Deputy Causey's unit. Witness #2 came up to Deputy Sellers. Witness #2 was visibly upset, crying and shaking. Deputy Causey spoke to Witness #1. Witness #2 asked Deputy Sellers if he could go to a neighbor's house. Deputy Sellers put Witness #2 in the backseat of his patrol vehicle and drove him to the neighbor's house, but nobody was home. Deputy Sellers returned to the location with Witness #2. Deputy Causey was still speaking with Witness #1. After Deputy Causey finished interviewing

⁷ Deputy Sellers reviewed his belt recording prior to being interviewed by Detective Lara and Detective Gardea.

Witness #1, Witness #1 sat in the back of Deputy Sellers' patrol vehicle with Witness #2.

After Sergeant Scalise and Deputy Cordova arrived at the scene, the deputies spoke about their belief that no crime had been committed and the possibility that Burghardt was "5150." Deputy Miller also arrived at the location to assist. The deputies decided they would approach the house and make PA announcements to see if Burghardt would exit the house voluntarily. If Burghardt was uncooperative, the deputies planned to leave the location. While the deputies discussed what they were going to do, Deputy Sellers heard someone indicate Burghardt had a gun. The deputies ran across the street around the front of Sergeant Scalise's patrol unit. As they were running, Deputy Sellers told the other deputies it was a pellet gun, since that was the information they received from Witness #1. However, when Deputy Sellers saw the gun Burghardt was holding, it appeared to Deputy Sellers the weapon was a rifle.

Deputy Sellers saw Burghardt reach into the back of a pickup truck. After Burghardt reached into the back of the truck, she shouldered the weapon. Deputy Sellers heard what he believed was a rifle round go past his head, making a "buing" noise. Deputy Sellers believed he was being shot at by Burghardt. It appeared to Deputy Sellers that the rifle had a silencer on it. Deputy Sellers tried to position himself with some cover and concealment. Deputy Sellers saw Sergeant Scalise walk up to the front of the fence.

Deputy Sellers saw Burghardt walking fast towards the deputies' location. Burghardt had the rifle in a firing position as she was walking. Burghardt had the rifle lifted up and supported with her left hand. The butt of the rifle was in Burghardt's shoulder. Burghardt was pointing the weapon at the deputies. Deputy Sellers was afraid Burghardt was going to try to kill the deputies. Deputy Sellers ordered Burghardt to drop the weapon multiple times. Deputy Sellers heard Sergeant Scalise say to Burghardt, "Drop the weapon, or you're going to be shot." Burghardt failed to comply with the deputies' verbal commands. Burghardt continued to approach with the weapon pointed at the deputies. Deputy Sellers fired approximately ten rounds at Burghardt. Deputy Sellers heard Sergeant Scalise fire his weapon. Burghardt fell on her back and then grabbed her side. Burghardt's weapon fell in front of her. Deputy Sellers stopped shooting after he saw Burghardt fall to the ground. Deputy Sellers estimated Burghardt was 50 yards away from him at the time of the shooting.

After the shooting, the deputies approached Burghardt where she fell on the ground and handcuffed her. Deputy Sellers focused on the rest of the house since it had not been secured yet. Deputies started to render medical aid to Burghardt. Deputy Sellers, Sergeant Scalise, and Deputy Miller entered the residence and cleared it to make sure there were no other persons still inside the home. After they cleared the residence, Deputy Sellers told Deputy Miller to move his patrol car up the road to block traffic. Deputy Sellers was concerned that shell casings in the road could be lost. Deputy Sellers also wanted Witness #2 and Witness #1 moved out of sight of what was happening. Deputy Miller also moved the other patrol units north on Avalon to block the

north and south traffic. Fire department personnel eventually arrived and took over rendering medical aid to Burghardt.

STATEMENTS BY CIVILIAN WITNESSES

On August 5, 2020, at approximately 5:30 in the evening, **Cara Burghardt** was interviewed by Detective Michelle Del Rio.

Burghardt was awake and alert when Detective Del Rio spoke to her in the hospital. Burghardt told Detective Del Rio she had drank four to five “shots” of “99”, (750 ml, alcohol/volume 49.5%, and 99 proof) all within a few hours of each other, and no longer felt the effects of the alcoholic beverages. Burghardt complained of physical pain to her gunshot wound. When asked if she was okay, Burghardt told Detective Del Rio, “I got shot. I did it on purpose. I was hoping they’d kill me. I just want to end it.” Burghardt and her husband, Witness #1 have been in a seven-year relationship and married over a year ago. Burghardt had a 10-year-old son, Witness #2, from a previous relationship.

Burghardt said she and Witness #1 were in an argument after he had assured her they would not argue anymore. According to Burghardt, Witness #1 mistreated Burghardt the past three to four months and Burghardt could not take the abuse anymore. Witness #1 told Burghardt she had smoked methamphetamine the morning of August 5, 2020, but Burghardt had no recollection of that. Later during the interview, Burghardt told Detective Del Rio she had smoked methamphetamine the night before the incident under review. Witness #1 threatened to report Burghardt to law enforcement because she had methamphetamine in her system and was a “bad mother.”⁸ Burghardt said Witness #1 “brainwashed” her family, turned them against her, and manipulated Witness #2.

Burghardt no longer wanted Witness #1 to be a part of her life or Witness #2’s life. Burghardt believed the “only way out” was to have deputies kill her. Burghardt said, “I wanted the deputies to shoot me in the face; whatever, just kill me.” Burghardt explained to Detective Del Rio she knew she would not keep custody of Witness #2 and stated, “I’ll just pull my pellet rifle on the deputies, and I was just hoping that they would just shoot me and kill me, so I didn’t have to live through this.”

When asked what led to the incident under review, Burghardt said, “I pulled a rifle in front of them, and it looks real. It’s a pellet rifle, and it looks very real, and I fired one off on my own car so that they would hear it, so they knew that it was live, and they shot me.” Burghardt admitted she pointed the pellet rifle at the deputies. Burghardt said, “Yeah, I did it on purpose. I wanted them to kill me. I did it on purpose.” Burghardt did not feel bad about what she did because it took her away from Witness #1. Burghardt

⁸ Detective Del Rio advised Burghardt of her Miranda rights during the interview. Burghardt indicated she understood her rights and was willing to speak with Detective Del Rio.

said she kept the pellet rifle loaded by her front door because she often shot birds and squirrels in her garden.

On August 5, 2020, at around 4:00 in the morning, Burghardt said she woke up to Witness #1 wanting to argue with her for no apparent reason. After a few hours, Witness #1 and Witness #2 drove to the dump to cash in recyclables. The landfill was approximately one mile away and only took five minutes to get there. Burghardt said Witness #1 and Witness #2 should have returned within one hour at the most. After one hour, Burghardt called Witness #1 on his cell phone and asked him why they had not returned home yet. Witness #1 told Burghardt he needed to stop by urgent care and was waiting to be seen.

Approximately two hours later, Witness #1 and Witness #2 still had not returned home. Burghardt called Witness #1 again and demanded he bring Witness #2 home before she called 9-1-1 and set up an Amber Alert for an abducted child. Burghardt and Witness #1 continued to argue on the phone when Witness #1 refused to take Witness #2 home. Burghardt asked Witness #1 for a divorce which upset Witness #1. According to Burghardt, Witness #1 threatened her over the phone and said she would never see Witness #2 again because she was a horrible mother and smoked methamphetamine the night before. Burghardt told Witness #1 she would take off with his diesel truck if Witness #1 did not return with Witness #2. Burghardt hid Witness #1's truck in the backyard where he could not see it when he returned home.

Witness #1 and Witness #2 returned home between noon and 1:00 in the afternoon. Burghardt and Witness #1 started arguing as soon as Witness #1 and Witness #2 walked through the front door. Burghardt was upset with Witness #1 and became suicidal. Burghardt did not want Witness #2 to witness the arguing between Burghardt and Witness #1 so she told Witness #2 to go outside and sit in Witness #1's vehicle. Burghardt and Witness #1 continued to argue, scream, and curse at one another. Burghardt was enraged and went to her bedroom and shut the door behind her.

Minutes later, when she was in the bathroom, Burghardt heard her vehicle start and noticed Witness #1 left the residence with Witness #2 without her consent. Burghardt immediately called Witness #1 and threatened to call law enforcement and report Witness #1 kidnapped Witness #2. Burghardt demanded Witness #1 return home with Witness #2. Witness #1 returned home with Witness #2 before Burghardt was able to contact law enforcement. After Witness #1 returned, the arguing between Burghardt and Witness #1 continued.

When Witness #1 attempted to take Witness #2 from the residence for a second time, Burghardt called law enforcement but the phone call was disconnected. Burghardt called Witness #1 and told him she would put in an Amber alert for kidnapping. Witness #1 knew Burghardt would call 9-1-1 so he and Witness #2 returned to the residence and remained in the front yard. Burghardt was distraught and told Witness #1, "I'll just have suicide by cop."

According to Burghardt, she was in the front yard of the residence and Witness #1 and Witness #2 were in the front yard, seated in Burghardt's Dodge Dakota, when she called 9-1-1 and said, "Kill me, kill me, come kill me." Burghardt hung up the phone after she made the 9-1-1 call. The 9-1-1 dispatcher called Burghardt back but Burghardt could not recall if she answered the phone because she was in "such a blur." Burghardt said if she did answer the phone she would have said something to the effect of "shoot me."

Burghardt walked back inside the residence. Witness #1 and Witness #2 remained outside. Burghardt was inside the residence when deputies arrived. Burghardt used the butt of her pellet rifle to break out the living room windows from the inside out. Burghardt wanted the deputies to take her seriously. Burghardt then walked outside the residence with the pellet rifle pointed toward the deputies and fired one round. Burghardt walked toward her Dakota, which was parked approximately fifteen to twenty feet east of the front door of her residence. Burghardt "cocked" the pellet rifle and fired another round at the ground in the direction where the deputies were located. Burghardt said she wanted the deputies to know she was serious and the pellet rifle was real. Burghardt said she intended to get the deputies to fire their weapons at her and kill her. Burghardt did not know where Witness #1 and Witness #2 were when she came out of the residence.

According to Burghardt, seconds later, an unknown number of deputies fired their weapons at her but they missed. The gunshots came from the location where the patrol vehicles were parked. Burghardt knew the deputies had shot and missed because she heard the whizzing sound of bullets go by her and hit the wall of her residence. Burghardt said, "They gave me an opportunity, to straighten up, to come out unarmed." Burghardt was unsure what the exact commands were that the deputies gave her but Burghardt was sure they told her several times to unarm herself. According to Burghardt, the deputies warned her they would fire their weapons if she did not put her gun down. Burghardt refused to comply with the deputies' verbal commands to drop her rifle. Burghardt fired another shot at the deputies. Burghardt estimated she was a half-acre away from the deputies. Burghardt said the deputies fired their weapons at her again. Burghardt was struck and she fell to the ground.

Burghardt described her pellet rifle as a black "very high power" pellet rifle with a scope on it. Burghardt said her rifle looked like an assault rifle. According to Burghardt, if someone did not know her rifle was a pellet rifle, the person would believe it was "more powerful" than a .22 caliber rifle. Burghardt knew her rifle was a danger to the officers. Burghardt was asked what she thought would happen if she pointed the rifle at the deputies. Burghardt said, "I was hoping I was gonna get shot and killed." Burghardt said she told deputies to kill her and she would not put the rifle down.

On August 6, 2020, at approximately 2:19 in the morning, Burghardt was interviewed by Detective Michelle Del Rio and Detective David Lara at the San Bernardino County Sheriff's Department Morongo station.⁹

Burghardt said she and Witness #1 fought and argued a lot. During the arguing, Burghardt told Witness #1 she was suicidal and could not take his picking on her any longer. Burghardt told Witness #1 she could not do it any longer. Burghardt said she was going to call the police and point her pellet rifle at the deputies.

When the deputies arrived at the location, Burghardt broke the windows to her residence to get the deputies' attention. Burghardt walked outside the residence and saw the lights of the deputies' patrol vehicles. Burghardt knew the individuals at her residence were deputies because they wore sheriff's uniforms. Burghardt was unsure where Witness #1 and Witness #2 were when she exited the residence. Burghardt said she walked "aggressively fast toward the officer," cocked the pellet rifle, and pointed it at the patrol vehicle's emergency lights. Burghardt was immediately shot by the deputies and then fell to the ground. Burghardt wanted to get shot by deputies and did not want anyone hurt but herself. Burghardt expressed remorse during the interview.

On August 5, 2020, at approximately 7:32 in the evening, **Witness #1** was interviewed by Detective David Lara and Detective Michelle Del Rio.

Witness #1 is married to Burghardt. Witness #1 and Burghardt live together with Burghardt's 10-year-old son, Witness #2, at a residence located at **** Avalon Avenue in the City of Yucca Valley. According to Witness #1, Burghardt had an alcoholic beverage dependency and drank excessively. Burghardt's alcoholic beverage of choice was "straight" vodka. Witness #1 said he prohibited alcoholic beverages in their residence to try and prevent Burghardt from consuming alcoholic beverages. Witness #1 said he was told by Burghardt's father that Burghardt had been diagnosed in the past with an unknown mental health disorder and prescribed unknown medications.

According to Witness #1, he had helped Burghardt get "clean" and sober and Burghardt had stopped drinking alcoholic beverages approximately six to seven months prior to the incident under review. Witness #1 believed Burghardt may have started drinking again when he was admitted to the hospital for low blood pressure on July 19, 2020. When Witness #1 returned home on July 21, 2020 he found Burghardt intoxicated and bathing in their bathtub with a bottle of vodka. Witness #1 also believed Burghardt was overwhelmed with deaths that had occurred in her family.

On August 3, 2020, Witness #1 drove Burghardt and Witness #2 to their follow-up medical appointments. Burghardt was been seen for depression and anxiety disorders. During the appointment, Witness #1 said the doctor gave Burghardt trial medications for

⁹ Burghardt was asked if she remembered being advised of her Miranda rights and was advised the same rights still applied prior to this interview. Burghardt acknowledged she understood her rights and wanted to continue to speak with the detectives.

depression and anxiety. According to Witness #1, Burghardt acted out irrationally when she drank alcoholic beverages with her medications. Burghardt would hallucinate and accuse Witness #1 of having a "secret cellphone." Burghardt told Witness #1 she believed Witness #1 planned to leave her and take Witness #2 with her.

On August 5, 2020, at around 11:00 in the morning, Witness #1 and Witness #2 left their residence and drove into the town of Yucca Valley for Witness #1 to check his blood pressure and to pick up medications from the Vons market. Soon after they left, Burghardt called Witness #1 and demanded he return to the residence with Witness #2. Burghardt threatened to report Witness #1 kidnapped Witness #2 and have an Amber alert activated. Witness #1 did not immediately return to the residence. Witness #1 and Witness #2 returned at approximately 12:30 in the afternoon. Burghardt was upset with Witness #1 and Witness #2 and accused Witness #1 of conspiring to take Witness #2 from her.

Burghardt and Witness #1 argued about Burghardt's false allegations and her drinking. Burghardt admitted to driving to the market and purchasing ten to fifteen, one serving, bottles of vodka. After Burghardt returned from the market, she took the bottles of alcohol into the master bedroom. When Witness #1 went into the master bedroom he saw Burghardt drinking from the vodka bottles. Burghardt and Witness #1 continued to argue. During the argument, Burghardt told Witness #1 she no longer wanted to live. Burghardt threatened to "call the cops and have them shoot me." Burghardt told Witness #1 that when deputies arrived, she planned to aim her pellet rifle at the deputies in order to have them shoot her. Witness #1 tried to dissuade Burghardt but she was too upset.

Witness #1 saw Burghardt call 9-1-1. Burghardt's cell phone was on speaker while she spoke to the dispatcher. Witness #1 heard Burghardt threaten to "kill" the dispatcher. Burghardt told the dispatcher to send deputies to the residence because she wanted the deputies to kill her. Since Burghardt's cell phone was on speaker, Witness #1 also spoke to the dispatcher. Witness #1 told the dispatcher that Burghardt was drunk and armed with a pellet gun. When the dispatcher asked Witness #1 whether Burghardt had tried to harm anyone, Witness #1 said, "No." Witness #1 knew deputies would be dispatched to the residence. To prevent Witness #2 from seeing what was occurring, Witness #1 decided to walk with Witness #2 to the entrance of the driveway to wait for deputies.

As Witness #1 and Witness #2 were walking away, Burghardt broke out the windows to the residence. Witness #1 did not see how Burghardt broke the windows but heard the windows shatter while he was walking. Witness #1 called 9-1-1 and spoke to a dispatcher who said deputies had been dispatched to the residence. Witness #1 estimated deputies arrived ten minutes after 9-1-1 was called.

Witness #1 told the deputies who arrived at the scene that Burghardt had not threatened or hurt anyone. Witness #1 let the deputies know Burghardt had broken the windows to the residence. Deputies told Witness #1 there was nothing they could do

since Burghardt had not committed a crime and the property she destroyed was community property. Witness #1 was concerned Burghardt could have injured herself with the broken glass and urged the deputies to check on Burghardt's well-being.

Witness #1 watched as the deputies stood on the roadway and discussed how they would contact Burghardt. Additional deputies arrived and parked near the residence. Witness #1 estimated the deputies were 200 feet away from the front of the residence. Approximately fifteen minutes after deputies arrived, Witness #1 and Witness #2 were seated in the backseat of a patrol vehicle. Witness #1 was seated in the rear passenger seat and Witness #2 was seated in the rear driver side seat. The vehicle was parked facing northeast, slightly away from the residence, and south of the driveway. The windows to the patrol vehicle were rolled up.

Within a few minutes of the additional deputies arriving, Witness #1 saw Burghardt outside of the residence and deputies "scatter" and take cover behind their patrol vehicles. Witness #1 saw a figure of a person walk toward the deputies "aggressively." Witness #1 said he suffered chemical burns to his face, body, and eyes during an accident when he was younger which affected his ability to see objects at a distance and up close. However, because Burghardt was the only person at the residence when Witness #1 and Witness #2 left, Witness #1 knew it was Burghardt walking toward the deputies. Witness #1 said he did not see Burghardt with the pellet rifle. Witness #1 said he was unable to clearly see Burghardt's actions due to his bad vision as well as his view being obstructed by the property's chain link fence.

Burghardt was approximately 100 feet away from the deputies when Witness #1 heard gunshots. Witness #1 estimated he heard between ten and twelve gunshots and the gunfire lasted approximately three seconds. Witness #1 believed Burghardt may have been struck in the lower torso or abdomen. Once Burghardt was hit by gunfire, she fell to the ground. Witness #1 said deputies did not initiate the contact with Burghardt.

Witness #1 said if Burghardt pointed the pellet gun at deputies, the deputies reacted appropriately. Witness #1 had seen the pellet gun on previous occasions and knew it looked like an "assault rifle." Witness #1 believed when the pellet rifle was fired it sounded like a .22 caliber rifle. According to Witness #1, if he were in a similar situation, he would have reacted the same way as the deputies. Although Witness #1 told deputies Burghardt was armed with a pellet rifle, Witness #1 said he would not expect the deputies to take his word because he could be lying to them. Witness #1 believed the deputies shot Burghardt because they feared for their lives. Witness #1 believed Burghardt walked out of the residence armed with the pellet rifle, knowing the deputies would react.

After the shooting, the deputies walked to where Burghardt was laying on the ground. Witness #1 was unable to see what, if any, lifesaving measures the deputies performed when they reached Burghardt. Witness #1 estimated the paramedics arrived ten minutes after Burghardt was shot.

About seven months prior to the incident under review, Witness #1 said Burghardt overdosed on medications at their residence. Witness #1 believed Burghardt became suicidal when her grandmother died. According to Witness #1, Burghardt had never talked about committing suicide by cop.

On August 5, 2020, at approximately 7:00 in the evening, **Witness #2** was interviewed by Detective Shaunna Ables and Detective Alan Pennington.

Witness #2 is Burghardt's 10-year-old biological son.¹⁰ Witness #2 lived at the residence at **** Avalon Avenue with his Burghardt and his stepfather Witness #1. Witness #2 denied any physical abuse by Burghardt. Witness #2 described Burghardt as an alcoholic who frequently drank beer and vodka. On August 4, 2020, at around 10:00 in the evening, Witness #2 saw Burghardt on the couch drinking vodka. Witness #1 told Witness #2 that Burghardt drank vodka. Witness #2 laid in bed but could not sleep because Burghardt was drunk in the house. Witness #2 was scared because Burghardt was drunk.

On August 5, 2020, Witness #2 woke up at 8:00 in the morning and saw Burghardt and Witness #1 in the living room. At around 10:00 in the morning, Witness #2 saw Burghardt asleep on the sofa in the living room. Witness #1 told Witness #2 vodka made Burghardt fall asleep. Witness #2 and Witness #1 left the residence. Witness #1 drove the two of them in their red truck to Witness #1's doctor's appointment, to the dump, and to get gas. When they returned to the residence, Burghardt was awake. According to Witness #2, Burghardt "got weirder and weirder by the minute until she got mad" and then she yelled "louder and louder."

Burghardt was upset that Witness #1 had taken their truck to the dump and got gas. Burghardt told Witness #1 and Witness #2 that they were teaming up against her. Burghardt yelled at Witness #1 and Witness #2 and demanded they be quiet and get out of her residence. Burghardt grabbed a pellet rifle which was kept by the front door of the residence. According to Witness #2, Burghardt walked into the kitchen and called 9-1-1. Burghardt held the pellet rifle and said, "I am going to have the cops take my gun and shoot me in the head."

Witness #2 moved from the living room to his bedroom. From his bedroom, Witness #2 heard Burghardt repeat, "I am going to have the cops shoot me in the head. Just come over here and shoot me!" Witness #2 said he heard Burghardt say that "over and over." Witness #2 thought Burghardt called the police because Witness #1 drove their truck. Burghardt yelled at Witness #1 and Witness #2 to get out of their house. Witness #1 and Witness #2 left the residence and went outside by the fence surrounding the property. Witness #1 called dispatch and stayed on the phone line until the deputies arrived.

¹⁰ Before questioning, Witness #2 promised to tell investigators the truth and only answer questions he understood and to which he knew the answers.

Witness #2 saw Burghardt exit the residence, grab a rock from the garden and break the windshield to the truck that was parked in the driveway. Witness #2 said Burghardt also broke the stem of the first flower he ever grew. Witness #2 and Witness #1 were outside of the residence when deputies arrived at the scene. The deputies had Witness #2 and Witness #1 sit in the rear of a patrol vehicle. Later, one of the deputies took Witness #2 to a neighbor's house. The neighbor was not home so the deputy drove Witness #2 back to the residence.

The deputy had Witness #2 and Witness #1 remain in the back of the patrol vehicle which was parked outside the gate surrounding Burghardt's property. While he was sitting in the back of the patrol vehicle, Witness #2 saw Burghardt run out of the house with the pellet rifle and point it at deputies. The deputies were talking at the time and Witness #2 did not believe the deputies initially saw Burghardt. Witness #2 saw Burghardt shoot the pellet rifle at the deputies and heard a "whizzing" sound pass by the patrol vehicle that he was sitting in. Witness #2 believed the deputies first noticed Burghardt after she fired at them. According to Witness #2, Burghardt lowered the pellet rifle after the deputies shot at her.

According to Witness #2, at one point, Burghardt was "reloading" the pellet rifle. Witness #2 knew the pellet rifle must be bent in order to load another round. Witness #2 saw deputies get behind the patrol vehicles and shoot at Burghardt. Witness #2 estimated he heard deputies fire ten shots from their weapons at Burghardt. Witness #2 believed the deputies were firing at the ground near Burghardt. Witness #2 said he saw a "red mark" appear on Burghardt's leg and Burghardt fall the ground. Witness #2 believed Burghardt had been struck by the deputies' gunfire.

Witness #2 said he did not hear anything the deputies said. Witness #2 saw the deputies run forward to where Burghardt was on the ground. Witness #2 saw Burghardt struggle to get back up and reach for the pellet rifle which was on the ground. Witness #2 estimated the pellet rifle was ten feet away from Burghardt. Witness #2 said the deputies held Burghardt's arms and legs down. Witness #2 was unable to see what happened after that because his view was blocked.

When asked what he thought when Burghardt shot at deputies, Witness #2 said, "Her goal was trying to make them shoot her." When asked what he thought Burghardt was trying to do to the deputies, Witness #2 said, "Trying to get them to shoot." Witness #2 felt the deputies reacted "normal" to a gun being shot at them.

INCIDENT AUDIO AND VIDEO

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

Deputy Jason Causey

Deputy Causey had his belt recorder activated on and off during the incident under review. Deputy Causey's belt recorder was not activated during the lethal force encounter.

Deputy Jonathan Cordova

Deputy Cordova activated his belt recorder after the lethal force encounter occurred.

Sergeant John Scalise

Sergeant Scalise activated his belt recorder after the lethal force encounter occurred.

Deputy Brent Miller

Deputy Miller activated his belt recorder after the lethal force encounter occurred.

Deputy Michael Sellers

Deputy Sellers had a belt recorder activated during the incident under review. The recording was approximately nine minutes and nine seconds in length. The summary will cover from the start of the belt recording and end at the point immediately following the lethal force encounter.

Deputy Sellers shouted, "Pellet gun! Drop the weapon! It's a rifle!" Another deputy shouted, "Drop it! Drop it or you're gonna get shot! Drop it or you're gonna get shot! Drop it!" Deputy Sellers said, "I'm walking up with sarge." Multiple simultaneous gunshots were heard. Deputy Sellers said, "Shots fired. Start medical. She's down." Two deputies shouted for Burghardt to show her hands. A deputy instructed Burghardt to "crawl" onto her stomach. Burghardt could be heard crying and a deputy told Burghardt not to move. A deputy broadcasted that Burghardt was injured and requested medical aid. The deputy also broadcasted that no deputies were injured.

WEAPON

A black and silver Beeman Precision Airguns break-open rifle, model Sportsman RS2 Series, 177 caliber, serial number 181406861725 was located at the scene.

The air rifle was examined and test fired by the Scientific Investigations Division of the San Bernardino County Sheriff's Department. The air rifle fired without malfunction. No modifications or defects were observed.

INVOLVED SUBJECT

INJURIES. Cara Burghardt was transported to Desert Regional Medical Center in the City of Palm Springs for treatment. Burghardt sustained the following injuries: one gunshot wound near Burghardt's lower right abdomen and one gunshot wound near Burghardt's lower back.

TOXICOLOGY RESULTS. Urine sample was collected from Burghardt at the hospital. Drug screen results were as follows: positive for amphetamine, methamphetamine, and oxycodone.

A blood sample was collected from Burghardt. Toxicology results for the **Blood** sample were listed as follows:

- Ethyl Alcohol – 0.210% (W/V)
- Amphetamines – detected
 - Methamphetamine, LC/MS/MS – 61 ng/mL
 - Amphetamine, LC/MS/MS – 14 ng/mL
- Opiates
 - Oxycodone, LC/MS/MS – 7 ng/mL
 - Morphine, LC/MS/MS – less than 5 ng/mL
- 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 – 13 ng/mL

CRIMINAL HISTORY. 2002, 23152(b) of the Vehicle Code, Driving Under the Influence with Blood Alcohol .08 Percent or Higher. San Bernardino County case number TVI049055, a misdemeanor.

2003, 12500(a) of the Vehicle Code, Driving Without a License, San Bernardino County case number 2054445, an infraction.

2010, 23152(b) of the Vehicle Code, Driving Under the Influence with Blood Alcohol .08 Percent or Higher. San Bernardino County case number TVI1001161, a misdemeanor.

DE-ESCALATION

Deputies responding to the 9-1-1 call made by Burghardt were in San Bernardino County Sheriff's Department uniforms and driving marked patrol vehicles. Deputy Causey and Deputy Sellers attempted to investigate what had occurred in an effort to accurately assess what type of response was needed. Once Burghardt's husband and child were interviewed, the deputies realized no crime had been committed. The deputies, however, were concerned Burghardt may be "5150" and started to discuss how to approach the house and contact Burghardt. The deputies hoped to make PA announcements and get Burghardt to voluntarily exit the residence. The deputies did not have time to implement their plan. The incident quickly evolved when Burghardt exited the residence, armed with an air rifle, and fired at the deputies. The deputies took cover and tried to de-escalate the situation by giving Burghardt several verbal commands to drop her weapon. Sergeant Scalise warned Burghardt that she would be shot if she did not drop her weapon. At no time did Burghardt comply with the deputies' commands.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)¹¹ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

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

¹¹ All references to code sections here pertain to the California Penal Code.

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 homicide by a public officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or
- (2) to apprehend a fleeing felon who threatened or caused death or serious bodily injury, if the officer also reasonably believes that the fleeing felon would cause further death or serious bodily injury unless immediately apprehended,

(Penal C. §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) The “ ‘[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,¹² the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has 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.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer

¹² Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis, but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;¹³
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement,

¹³ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

therefore.

(Penal C. §835a(a).)

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

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

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required under section 835a(c)(1), as stated *supra*.

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

Imminence more recently defined in the context of use of force to effect an arrest, is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation

would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal C. §835a(e)(2).)

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

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

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

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) 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.) It was previously held that 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.)¹⁴ To be clear, the

¹⁴ The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

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

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

The use of force policies and training of an involved officer's agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 3, *infra.*)

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

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

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles, supra*, 47

Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide “zone of protection” when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

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

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

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

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed “lethal force” the instrumentality must be force that “creates a substantial risk of death or serious bodily injury.” (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

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

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

ANALYSIS

In this case, Deputy Causey, Deputy Cordova, Deputy Miller, Deputy Sellers, and Sergeant Scalise each had an honest and objectively reasonable belief Burghardt posed an imminent risk of serious bodily injury or death. Dispatch provided information to the deputies that Burghardt called 9-1-1, she indicated she was armed with a weapon, she would use force, and she wanted deputies to respond to her house and shoot her. Dispatch advised they could hear yelling and things being broken during the 9-1-1 call. Dispatch also advised Burghardt's husband, Witness #1, and 10-year-old son, Witness #2 were inside the residence.

Deputy Causey and Deputy Sellers were the first of the deputies to arrive at the location. By that time, dispatch advised the deputies that Witness #1 and Witness #2 had exited the residence and were waiting outside for law enforcement officers. Deputy Causey and Deputy Sellers were concerned for the well-being of Witness #1 and Witness #2 and decided to pick them up and move them to a safer area away from the residence. The deputies were able to speak with Witness #1 and Witness #2 and determined that Burghardt had not committed a crime. However, based on the initial statements from Witness #2 and Witness #1, Deputy Causey and Deputy Sellers were concerned Burghardt was "5150." According to Witness #1, Burghardt was armed with a pellet gun and had stated she wanted deputies to come shoot her. Witness #1 also advised Burghardt had broken out the windows inside the house and was rolling around in the broken glass.

When Deputy Cordova, Deputy Miller, and Sergeant Scalise arrived at the location, they met up with Deputy Causey and Deputy Sellers. As Deputy Causey and Deputy Sellers were updating the other deputies with the information that they had learned, Burghardt came out of the residence holding a weapon and started walking towards the deputies. As Burghardt closed the distance between herself and the deputies, Burghardt had the weapon raised and pointed in the deputies' direction. It appeared to the deputies that the weapon Burghardt was holding was a rifle. Deputies heard a noise that they believed was consistent with Burghardt shooting at them. Burghardt admitted she fired rounds from her pellet rifle at the deputies so they would know she was serious and believe the pellet rifle was a real weapon. Burghardt said she wanted the deputies to return fire and kill her.

Sergeant Scalise and Deputy Sellers gave Burghardt verbal commands to drop her weapon. Sergeant Scalise warned Burghardt that she would be shot if she did not drop the weapon. Burghardt failed to comply with any of the deputies' verbal commands and continued to advance towards the deputies armed with what deputies believed to be a rifle. Burghardt had the weapon up and pointed towards the deputies. Given those circumstances as well as the fact deputies had already heard a sound consistent with Burghardt having already shot at them, the deputies reasonably feared for their individual lives as well as the lives of their partners when they fired their weapons at Burghardt. Under those circumstances, the decision by Deputy Causey, Deputy

Cordova, Deputy Miller, Deputy Sellers, and Sergeant Scalise to use deadly force was justified.

CONCLUSION

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

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

**Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
San Bernardino, CA 92415**

