



PUBLIC RELEASE MEMORANDUM

Subject: Fatal Officer-Involved Shooting

Involved Officers: Sergeant Jesse Shank
San Bernardino Police Department

Corporal Serbando Saenz
San Bernardino Police Department

Officer Andrew Saibene
San Bernardino Police Department

Officer Ryan Schuelke
San Bernardino Police Department

Involved Subject: Shyheed Robert Boyd

Date of Birth: 01/10/1999

Subject's Residence: Transient, San Bernardino

Incident Date: December 29, 2020

Incident Time: 3:42 p.m.

Case Agent/Agency: Detective Simon DeMuri, Detective Justin Carty
San Bernardino County Sheriff's Department

Agency Report #: DR# 602000224
H# 2020-149

DA STAR #: 2021-0012961

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PREAMBLE

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

FACTUAL SUMMARY

On December 29, 2020, officers with the San Bernardino Police Department's Special Investigations Unit were attempting to locate Shyheed Robert Boyd, a wanted murder suspect. The warrant for Boyd's arrest was issued by The Honorable Judge Khymberli S. Apaloo on December 11, 2020 for the charge of Penal Code section 187 (a), Murder. Boyd was alleged to have used a handgun in the commission of the murder. It was daylight and the team of plainclothes officers, in unmarked patrol units, set up surveillance in two locations known to be frequented by Boyd. One of those locations was a residential area on Elm Street in the city of Highland. The team of officers at the Elm Street location consisted of Sergeant Jesse Shank, Corporal Serbando Saenz, Officer Andrew Saibene, and Officer Ryan Schuelke.

While parked at the intersection of Elm and Baseline Street, Corporal Saenz spotted a male subject who he believed was a close match to Boyd. The subject was walking north on Elm heading toward Baseline. Corporal Saenz notified his partners, described the clothing worn by the subject, and asked them to take a look at him. In response, Officer Schuelke drove past the male subject, looked at him, and told his partners he believed the male subject looked like Boyd. The officers continued to watch the male subject as he walked across Baseline and headed east. At approximately 3:34 p.m., the male subject walked into a liquor store just north of Baseline Street and Sterling Avenue. Officer Saibene drove to the front of the liquor store and parked near the liquor store's entry door. When the subject walked out of the liquor store, at approximately 3:37 p.m., Officer Saibene was able to positively identify the subject as Boyd. Officer Saibene told his partners he was "100% certain" the subject was Boyd. Officer Saibene saw an extended gun magazine sticking out of Boyd's left pants' pocket. Officer Saibene noticed Boyd held his right hand inside his jeans and appeared to be holding a firearm. Officer Saibene then saw what appeared to be the black handle of a firearm slightly protruding from the right-side front of Boyd's waistband. Officer Saibene told his partners he believed Boyd had a gun.

At approximately 3:38 p.m., the officers requested marked patrol units respond to the scene so uniformed officers could stop and arrest Boyd for the warrant. Dispatch informed the officers that no marked units were currently available but as soon as they were available, marked units would respond to their location. In preparation for backing the uniformed officers, the surveillance team donned their outer ballistic vests with San

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Bernardino Police Department identifiers. They maintained surveillance on Boyd while waiting for marked units to arrive. Because Boyd was a wanted murder suspect and was believed to be armed with a firearm, the officers did not want to lose sight of him. The officers watched as Boyd headed west on Baseline and back toward Elm Street. The officers drove to Elm Street where they could maintain surveillance on Boyd. Officer Saibene was parked on the west side of Elm Street, just south of Baseline when Boyd walked past him. Boyd was headed south on Elm Street, walking on the east sidewalk toward an apartment complex he was known to frequent.

As Boyd continued walking south on the sidewalk toward the apartment complex, Sergeant Shank told the team they could no longer wait for marked units to respond to their location and that they would have to apprehend Boyd on their own. The officers parked their unmarked units on Elm Street, creating a perimeter around Boyd, in preparation for their approach on foot. Sergeant Shank parked on the east side of Elm Street, approximately 30 to 50 yards south of Boyd. Corporal Saenz parked on the west side of Elm Street, west of Boyd. Officer Schuelke stopped his unmarked unit on the east side of Elm Street, west of and parallel to Boyd. When Officer Schuelke put his vehicle in park and activated the unit's forward facing red and blue emergency lights, Boyd looked at Officer Schuelke's vehicle and emergency lights but continued walking south.

When Boyd walked past an open field next to the sidewalk, affording the officers the best opportunity to safely apprehend him, the officers began to get out of their vehicles. Officer Saibene, who was approximately 15 to 20 yards north of Boyd, got out his vehicle as soon as he saw Sergeant Shank open his vehicle door. Believing Boyd would likely run from the officers when they tried to stop him, Officer Saibene began running south toward Boyd while Sergeant Shank, Officer Schuelke, and Corporal Saenz got out of their vehicles. When Officer Schuelke and Corporal Saenz stepped out of their vehicles wearing their ballistic vests, Boyd looked directly at them. Corporal Saenz yelled, "Police, hands up!" Boyd immediately took off running, still heading south. Sergeant Shank saw Boyd running from the officers. Sergeant Shank could see Boyd was running in his direction, but he could only see the top of Boyd's head because cars parked along the curb blocked his view of Boyd's body. Sergeant Shank began jogging in the street, heading north toward Boyd, using the parked cars as cover and concealment.

As Boyd ran past the last parked car, his entire body became visible to Sergeant Shank. Sergeant Shank saw Boyd had a firearm in his hand. Boyd was five to seven yards away from Sergeant Shank and when Boyd ran past the last parked car, there was nothing between Sergeant Shank and Boyd. Boyd, still running, raised his handgun and began shooting at Sergeant Shank. Sergeant Shank returned fire, but Boyd continued shooting, striking Sergeant Shank in the leg. As Sergeant Shank fell to the ground, Boyd continued shooting at him. Corporal Saenz and Officer Schuelke fired their handguns at Boyd. Boyd was struck by gunfire and fell to the ground. Taking cover behind parked vehicles, Corporal Saenz, Officer Schuelke, and Officer Saibene began to approach Boyd. Boyd had fallen onto the sidewalk but was still moving. The officers yelled at Boyd to stop

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moving. Officer Saibene stepped onto the sidewalk to approach Boyd but could not see Boyd's hands because they were beneath his chest. Officer Saibene saw Boyd's arms moving down as Boyd began reaching for his waistband. Officer Saibene yelled at Boyd to stop reaching for his waistband, but Boyd continued to do so. As Boyd reached for his waistband, Officer Saibene fired one round from his handgun at Boyd.

The officers then approached Boyd, placed him into handcuffs, and called for medical aid for Boyd and Sergeant Shank. Sergeant Shank put a tourniquet on his own leg. The officers administered medical aid to Boyd until medics arrived. Boyd was transported to St. Bernadine's Medical Center but succumbed to his injuries and was declared deceased at approximately 4:13 p.m.

STATEMENTS BY POLICE OFFICERS¹

During the incident under review, each officer wore plain clothes and drove unmarked police vehicles equipped with emergency lights and sirens. The vehicles were not equipped with cameras. Each officer wore tactical ballistic outer vests over their civilian shirts with the following identifiers: The word "POLICE" in large white letters on the right chest and on the back of the vest, the last name of the officer wearing the vest, and a cloth San Bernardino Police Department badge on the left chest. The officers' tactical vests held tactical gear, including magazines for a rifle and pistol, medical kits, handcuffs, and handheld radios with shoulder-mounted microphones. In addition to the aforementioned tactical gear, Officer Saibene's tactical belt held an X26 Taser and Officer Schuelke's tactical vest held a black rapid containment baton. None of the officers wore body-worn cameras or belt recorders.

On December 29, 2020, at approximately 9:02 p.m., **Sergeant Jesse Shank** was interviewed by Detective S. DeMuri and Detective M. Page of the San Bernardino County Sheriff's Department.

Sergeant Shank was employed by the San Bernardino Police Department as a police officer sergeant. On December 29, 2020, Sergeant Shank was on duty and drove an unmarked charcoal gray Nissan Pathfinder. In addition to a tactical ballistic outer vest, Sergeant Shank wore a black drop-down tactical holster which held his duty weapon, a SIG Legion 226, 9 mm handgun and a black cloth medical kit.

Sergeant Shank's duty weapon was examined and was found to have one cartridge in the chamber of the firearm and 12 cartridges in the magazine. The headstamps of each cartridge bore, "WIN 9mm LUGER." Two pistol magazines were located on Sergeant Shank's outer vest and each magazine contained 20 live ammunition cartridges. Sergeant Shank typically loaded his duty weapon to capacity, with one round in the chamber and 20 rounds in the magazine. Sergeant Shank explained that while each magazine's capacity is 20 rounds, some magazines are only able to be loaded with 19 rounds due to

¹ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

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tight springs in the magazines. Sergeant Shank also had a rifle which was mounted inside his vehicle; however, he did not remove the rifle from the vehicle at any point during the incident.

Sergeant Shank and his team had two active arrest warrants for homicide, one of which was for Shyheed Boyd. Sergeant Shank and his team had conducted a criminal history check and noted Boyd² had been arrested several times for felonies and was currently on both probation and parole. Additionally, the officers noted that the weapon used in the underlying murder case for which Boyd was wanted was a 9 mm handgun. Attempting to locate Boyd, Sergeant Shank had divided his team of officers. Some of the officers were assigned to conduct surveillance at the 500 block of West 16th Street, while others, including Corporal Saenz, Officer Saibene, and Officer Schuelke were assigned to conduct surveillance on Elm Street, near an apartment complex they had identified as being Boyd's mother's address. As the team leader, Sergeant Shank positioned himself in a location between the divided team members to ensure he was able to assist each team of officers as needed. The officers communicated with each other via a function on their cellular phones. Their goal was to apprehend Boyd safely, without injury to Boyd, the public, or themselves. It was daylight, mid-day, with clear skies.

Almost immediately, the officers on Elm Street observed a male subject who was "a close match to Boyd" walking northbound on Elm Street. The officers watched as the subject walked northbound to Baseline Street and then walked eastbound on Baseline. As the subject walked into a liquor store on the north side of the street, Officer Saibene confirmed the subject was Boyd. Officer Saibene observed that Boyd had a gun in his pocket and saw the gun's clear magazine protruding from Boyd's pocket. Officer Saibene informed the other officers of this. Officer Saibene told the officers Boyd was wearing acid washed jeans and a black or blue sweater. When Officer Saibene confirmed that the subject was Boyd, Sergeant Shank directed the officers who had set up on 16th Street to start heading their way. In addition, marked patrol units were requested to respond to the location to make contact with Boyd; however, the dispatch operator advised there were no patrol units available at that time to assist. The San Bernardino County Sheriff's Department airship was also called in to assist.

While driving to the location, Sergeant Shank saw Boyd walking on Baseline near Elm Street. Sergeant Boyd pulled into a nearby parking lot off of Baseline and put on his outer tactical vest. Sergeant Shank watched as Boyd walked southbound across Baseline and then south on the east side of Elm Street. Knowing Boyd's mother lived in an apartment complex on Elm Street, Sergeant Shank believed Boyd was heading to the apartment complex. Sergeant Shank drove to Elm Street and headed south. At the end of Elm Street,³ Sergeant Shank made a U-turn and headed back north on Elm. Sergeant Shank learned the marked units were still en route to the location and that the Sheriff's airship was still about a minute out. Concerned Boyd was going to enter his mother's apartment

² Each officer had viewed photographs of Shyheed Boyd and were familiar with his physical description and age.

³ Elm Street is a dead-end street.

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complex and knowing Boyd was armed, Sergeant Shank told his team they could no longer wait for the marked units and they needed to make contact with Boyd. Boyd continued walking southbound on the east side of Elm Street. It became apparent that Boyd knew he was being watched because he was looking around and even stepped out into the street and looked down the street. Boyd continued walking southbound on the east side of Elm Street, passing beside a vacant field. The officers decided the location was ideal for them to make contact with Boyd because if Boyd ran from the officers, they believed he would most likely run into the vacant field instead of the into one of the apartment complexes or nearby businesses where he could endanger the public.⁴

Sergeant Shank stopped his vehicle facing north, approximately 30 to 50 meters south of Boyd. Sergeant Shank double parked beside civilian vehicles that were parked on the east side of Elm Street. Sergeant Shank's goal was to stay south of Boyd so he could block Boyd's path toward the apartments. As Sergeant Shank got out of his vehicle, he heard the officers say they were getting out of their vehicles to contact Boyd. Because Boyd was armed, Sergeant Shank drew his duty weapon from its holster.

Sergeant Shank then heard the officers say Boyd was running from them. Over the top of the parked vehicles, Sergeant Shank saw the top of Boyd's head as he ran from the officers. Sergeant Shank believed the officers chasing Boyd were Officers Saibene and Schuelke. Boyd ran southbound on the east sidewalk, east of the parked cars. Sergeant Shank was south of Boyd and west of the parked vehicles in the roadway. Sergeant Shank began jogging in the street, west of the parked vehicles, heading north. Sergeant Shank stayed west of the parked vehicles, using them as cover and concealment. Sergeant Shank could see Boyd was running in his direction but could only see the top of his head because the parked cars blocked his view of Boyd's body.

As Boyd came to the south edge of the field area, Boyd passed the last parked car and as he did so, Sergeant Shank saw Boyd had a firearm in his hand as he ran. Sergeant Shank estimated Boyd was only five to seven yards away from him. There was nothing between Sergeant Shank and Boyd. As soon as Boyd passed the last parked car, Boyd immediately raised his handgun, pointed it at Sergeant Shank, and began shooting at Sergeant Shank. Sergeant Shank had no time to give any announcements or commands because as soon as he saw Boyd had the gun in his hand, Boyd began shooting at him. Boyd turned toward Sergeant Shank and continued running as he fired. Boyd held the gun in his right hand as he fired at Sergeant Shank. Boyd fired at least one round before Sergeant Shank was able to return fire. Sergeant Shank believed Boyd was trying to kill him. Sergeant Shank estimated he fired two to four rounds at Boyd, aiming for Boyd's center of mass. Sergeant Shank then saw the muzzle flash as Boyd again fired his gun at him, this time hitting Sergeant Shank in the right shin. The impact of the bullet knocked

⁴ Sergeant Shank explained that in this location, Elm Street was a "busy street with a lot of apartments, a lot of kids, a lot of people out walking around." Single family residences were also located on either side of Elm Street in the location.

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Sergeant Shank's leg out from under him and Sergeant Shank fell to the ground, landing on his elbow. Sergeant Shank quickly got back up and from a crouched position, fired one additional round at Boyd. As he fired the round, Boyd began falling to the ground. Sergeant Shank did not fire any additional rounds. When Boyd fell, he fell forward, toward Sergeant Shank. Sergeant Shank did not hear or see any of the other officers shoot at Boyd.

Sergeant Shank heard his partners running up and yelling, "show us your hands, show us your hands!" Officer Schuelke, Officer Saibene, and Corporal Saenz began advancing on Boyd in order to secure him. Because Sergeant Shank had been shot in the left shin, he moved behind a parked car where he removed a tourniquet from his vest and put it onto his left leg. Sergeant Shank then saw several civilians running toward the scene while the other officers were attempting to secure Boyd. Sergeant Shank ordered the civilians to stay back and they did so. Once Boyd was secured, medical aid was called for Boyd and dispatch was notified that an officer had also been injured. Sergeant Shank was transported in a marked patrol unit to Loma Linda.

Sergeant Shank believed he fired between three and five rounds in total. Sergeant Shank fired his gun in order to stop the threat Boyd posed to his life. Sergeant Shank received a gunshot wound to his left shin and an injury to his left elbow when he fell after being shot in the leg.

On December 29, 2020, at approximately 11:02 p.m., **Corporal Serbando Saenz** was interviewed by Detective S. DeMuri and Detective G. Laing of the San Bernardino County Sheriff's Department.

Corporal Saenz was employed by the San Bernardino Police Department as a police officer. On December 29, 2020, Corporal Saenz was on duty and drove an unmarked charcoal gray GMC Terrain SUV. In addition to a tactical ballistic outer vest, Corporal Saenz wore a cloth tactical belt with a black plastic paddle holster on his right hip.⁵ Corporal Saenz's duty weapon was a Rock Island Armory, RIA A2FS, semi-automatic 9 mm handgun.

Corporal Saenz's duty weapon was examined and was found to have one cartridge in the chamber of the firearm and 16 cartridges in the magazine. The headstamps of each cartridge bore, "WIN 9mm LUGER." One pistol magazine was located on Corporal Saenz's outer vest and it contained 19 live ammunition cartridges. Corporal Saenz typically loaded his duty weapon to capacity, with one round in the chamber and 19 rounds in the magazine.

⁵ Corporal Saenz's duty belt, equipped with additional items, was inside his unmarked police unit. The circumstances unfolded quickly and did not afford Corporal Saenz with sufficient time to don his duty belt prior to making contact with Boyd

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Corporal Saenz was assigned to the Special Investigations Unit which consisted of several officers, including Sergeant Shank and Officers Saibene and Schuelke, among others. In the afternoon, the team began conducting surveillance in an effort to locate Boyd so they could arrest him for the murder warrant. Half of the team began to set up on 16th Street while Corporal Saenz and Officers Saibene and Schuelke began to set up on Elm Street near Boyd's mother's home. Sergeant Shank floated in between the two locations so he could assist each group as needed. All members of the team were in communication with each other. The plan was to locate Boyd, either in a vehicle or on foot. If they located Boyd, then marked patrol units were to be called in to make a traffic or pedestrian stop and the Special Investigations Unit team would assist, if needed, with the arrest.

Members of the team had previously been to the Elm Street location and knew surveillance in that particular location was difficult to conduct because there were often many people out and about. Officer Saibene was the first officer to get to Elm Street. Officer Saibene told members of the team there were a couple of open spots where they could park. Corporal Saenz drove south on Elm Street and passed Officer Saibene who was driving north on Elm Street. Corporal Saenz saw there were too many people out in the area for him to be able to park and not be "challenged or checked," so he drove to the end of Elm Street, made a U-turn, and drove back north toward the intersection of Elm and Baseline. Corporal Saenz told his partners he was going to set up at the intersection where he could watch people coming and going. Corporal Saenz parked his vehicle and began looking at the pictures the team had of Boyd. Within approximately five minutes, Corporal Saenz saw a black male adult wearing a blue hoodie, "some kind of bandana or do-rag a lighter color than the hoodie," blue acid washed jeans, and white tennis shoes, walking northbound along the east curb on Elm Street. Corporal Saenz told the other team members about this and asked someone to drive by the person to get a better look at him so they could determine if he was Boyd.

Officer Schuelke drove past the male and reported that he thought the male looked a lot like Boyd. Corporal Saenz suggested they all just "stay on him" and request a marked unit to come to the location and conduct a pedestrian check on the male so they could determine if it was Boyd. Officer Schuelke told the team that he saw the male walk across Baseline and then head past a hamburger restaurant located just north of Baseline. The male then walked into the liquor store located just north of the hamburger restaurant. Corporal Saenz pulled into the hamburger restaurant's parking lot and parked. Corporal Saenz saw Officer Saibene pull into the parking lot of the liquor store. Officer Saibene parked where the male would have to either walk directly in front of Officer Saibene's van or alongside it. Officer Saibene watched as the male walked out of the liquor store and past Officer Saibene's van. Officer Saibene positively identified the male as Boyd. Officer Saibene advised that Boyd had a gun and that he saw a clear gun magazine sticking out of Boyd's left pant pocket.⁶

⁶ Corporal Saenz did not say whether Officer Saibene had indicated whether the gun magazine was protruding from Boyd's front or back pocket.

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The team asked dispatch to send marked units to the location, but dispatch advised they were "Code Zero," which meant no units were available to assist. Because Boyd was a wanted murder suspect and was armed, the officers knew they could not let Boyd get inside the apartment on Elm Street. Sergeant Shank told the team they would have to stop Boyd and conduct a pedestrian check themselves. Sergeant Shank told the team to put on their gun belts and their tactical vests.

Corporal Saenz put on his outer vest but did not have time to put on his gun belt. Corporal Saenz then drove out of the parking lot, keeping his eyes on Boyd. Corporal Saenz watched as Boyd walked west on the north side of Baseline and then south across Baseline to Elm Street. As Boyd walked south on the sidewalk along the east side of Elm Street, Corporal Saenz turned onto Elm Street and drove past Boyd. There was a big open field on the east side of Elm Street a couple of car lengths down from the intersection of Elm Street and Baseline. As Boyd walked past the big open field, Sergeant Shank drove south on Elm Street past Boyd. Sergeant Shank made a U-turn and then drove north on Elm Street. Corporal Saenz parked his car on the west side of Elm Street, next to the curb in anticipation of meeting up with Boyd who was walking southward. Sergeant Shank was located south of Boyd, Officers Saibene and Schuelke were north of Boyd, and Corporal Saenz was on the west side of Elm Street, west of Boyd who continued walking south on the east sidewalk.

Corporal Saenz saw Sergeant Shank get out of his vehicle. Corporal Saenz began to get out of his vehicle just as Boyd was walking past it. When Corporal Saenz stepped out, Boyd turned and looked at Corporal Saenz. Corporal Saenz was in the middle of the roadway; Boyd was in the middle of the east sidewalk, approximately 10 to 16 yards away. Boyd and Corporal Saenz "locked eyes." Corporal Saenz yelled, "Police, hands up!" Corporal Saenz heard other officers yelling the same commands. Boyd leaned forward to run, digging into the front waistband of his pants with his right hand, and began running south on the sidewalk. As Boyd ran, he pulled out a black semi-automatic handgun, and began shooting at Sergeant Shank who was located in the roadway southwest of Boyd. Fearing for Sergeant Shank's life, Corporal Saenz ran south in the roadway, paralleling Boyd, trying to keep up with him. Corporal Saenz pulled his handgun and was tracking Boyd in his gun's sights but because Sergeant Smith was in Corporal Saenz's line of fire, Corporal Saenz was unable to fire his gun. Boyd was very close⁷ to Sergeant Shank as Boyd fired at him. Corporal Saenz heard Boyd's gunfire and also heard other gunshots but did not see who else was firing. As Boyd continued running south on the sidewalk, he passed Sergeant Shank, who was in the roadway. Boyd turned and fired backwards at Sergeant Shank. Sergeant Shank fell backwards onto the ground. Corporal Saenz believed Sergeant Shank had been shot and as Boyd continued to shoot at Sergeant Shank, Corporal Saenz feared Sergeant Shank was "done," that he was being killed by Boyd.

⁷ Corporal Saenz did not give an estimated distance between Boyd and Sergeant Shank.

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When Sergeant Shank fell to the ground, he fell out of Corporal Saenz's line of fire and Corporal Saenz was able to shoot at Boyd, who was still shooting at Sergeant Shank. Corporal Saenz fired in a southeast direction, over the top of Sergeant Shank, aiming for Boyd's center of mass, trying to get Boyd to stop shooting. Corporal Saenz estimated he was between 20 to 25 yards away from Boyd when he fired his duty weapon. Corporal Saenz believed he fired two rounds at Boyd. Corporal Saenz was not absolutely certain his rounds struck Boyd, but he believed the first round struck Boyd in the right flank or rib area and the second round struck Boyd in the right shoulder blade area. Boyd fell to the ground on the sidewalk next to a car that was parked next to the curb. Corporal Saenz saw Sergeant Shank was alive and was on the other side of a parked vehicle, putting a tourniquet on his left leg. Corporal Saenz estimated Boyd ultimately fired five or six times at Sergeant Shank. During the shooting, Corporal Saenz did not know whether Officers Saibene and Schuelke had any cover or concealment from Boyd's gunfire, but he believed both officers were located on the east sidewalk, north of Boyd.

When Boyd fell to the ground, Corporal Saenz advanced toward Boyd, using the engine block area of the parked vehicle for cover. Corporal Saenz leaned past the vehicle and saw Boyd moving down on the ground. Boyd's hands were underneath his body. Boyd began to look back at Corporal Saenz. Corporal Saenz yelled commands, telling Boyd to show his hands, but Boyd did not comply. Corporal Saenz heard Officers Schuelke and Saibene running up behind him as he asked for support. Officer Saibene came up to Corporal Saenz and together they approached Boyd. Corporal Saenz pulled Boyd's right arm out from underneath his body while Officer Saibene pulled Boyd's left arm out from underneath him. Corporal Saenz placed Boyd into handcuffs. Corporal Saenz noticed a lot of people approaching the scene, so Corporal Saenz stood up and pushed past Boyd and Officer Saibene to hold a security perimeter. Officer Schuelke approached and assisted Officer Saibene with checking Boyd. Corporal Saenz asked where Boyd's gun was and Officer Schuelke told him it was "behind them."

Corporal Saenz saw the black semi-automatic handgun used by Boyd on the ground near Boyd. Corporal Saenz saw either Officer Saibene or Officer Schuelke doing chest compressions on Boyd but because he was focused on crowd control, he was not sure which officer it was. The fire department arrived on scene within three to four minutes.

Corporal Saenz said the everything happened very quickly and estimated only six to ten seconds elapsed from the moment Corporal Saenz got out of his car until the last shot was fired.

On December 30, 2020, at approximately 2:41 a.m., **Officer Andrew Saibene** was interviewed by Detective M. Page and Detective G. Laing of the San Bernardino County Sheriff's Department.

Officer Saibene was employed by the San Bernardino Police Department as a police officer. On December 29, 2020, Officer Saibene was on duty and drove an unmarked

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silver Toyota Sienna van. In addition to a tactical ballistic outer vest, Officer Saibene wore a black cloth tactical belt with a drop-down leg holster on his right thigh. Officer Saibene's duty weapon was a Sig Sauer P320, 9 mm, semi-automatic handgun.

Officer Saibene's duty weapon was examined and was found to have one cartridge in the chamber of the firearm and 14 cartridges in the magazine. The headstamps of each cartridge bore, "WIN 9mm LUGER." Two pistol magazines were located on Officer Saibene's outer vest, each contained 17 live ammunition cartridges. Officer Saibene typically loaded his gun with one round in the chamber and 16 rounds in the magazine.⁸ Officer Saibene loaded his duty weapon on Monday, December 28, 2020 with one round in the chamber and 16 rounds in the magazine.

Officer Saibene was assigned to the Special Investigations Unit. Duties of the Special Investigations Unit included criminal investigations, apprehension of suspects, and surveillance for violent crime. Officer Saibene was working with other members of the unit, including Sergeant Shank, Corporal Saenz, and Officer Schuelke.⁹ The Special Investigations Unit team was tasked with locating and arresting Shyheed Boyd, who was a murder suspect with an arrest warrant for murder. The officers were briefed with regard to the underlying murder for which Boyd was wanted and were advised Boyd had allegedly shot the victim in the head with a 9 mm handgun during the commission of the crime. Officer Saibene and the other officers on the team viewed the surveillance video that captured images of Boyd just prior to the commission of the underlying murder. In that video, Boyd was seen with the black handgun. Based on this information, Officer Saibene believed Boyd was a violent criminal and as such, realized Boyd posed a potential "lethal threat" to the officers. In addition, Officer Saibene and the other officers learned Boyd had a warrant outstanding for a probation violation out of Riverside County.

At approximately 12:30 p.m., the team began conducting surveillance at two separate locations in an attempt to locate and arrest Boyd. Half of the team set up surveillance at a location on West 16th Street in San Bernardino. Officer Saibene and Sergeant Shank went to check another location on the east side of San Bernardino regarding a separate investigation. After about 2 ½ hours, Sergeant Shank directed that they transition to the Boyd investigation. Sergeant Shank, Officer Saibene, and Corporal Saenz headed to the apartment complex located at the 7000 block of Elm Street, which was a location they had previously identified as Boyd's mother's home.

Officer Saibene was familiar with the area surrounding Elm Street as he had previously worked cases and calls for service on Elm Street. The location was a known gang area and the "Alley Boy criminal street gang does hang out in that area [...] and it's a one-way

⁸ When loaded to capacity, Officer Saibene's duty weapon held 17 rounds in the magazine and one round in the chamber.

⁹ Additional members were assigned to the unit but were not present at the scene where the officer-involved shooting occurred.

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street in and out.” Officer Saibene knew that some of the gang members were good at “catching on to” the unmarked officers. With regard to the area, Officer Saibene explained, “Everybody knows each other in that neighborhood, they know who’s a cop and who’s not a cop. Everybody’s friends, everybody’s homies with each other. It’s a pretty dangerous area.”

Officer Saibene believed he was the first to arrive at the Elm Street address. Officer Saibene saw there were some free parking spaces and notified other members of the team that the area was fairly quiet at the moment. Officer Schuelke and Corporal Saenz arrived in the location shortly thereafter. Officer Saibene parked his van at the end of the cul-de-sac just south of the 7000 block of Elm Street and began conducting surveillance at approximately 3:15 or 3:30 p.m. Within approximately 10 minutes, Corporal Saenz reported he had a possible matching subject walking north on Elm Street toward Baseline Street. Officer Schuelke was in the area and he advised he saw the subject but was “not 100 percent sure” the subject was Boyd. Sergeant Shank directed the team members who were on 16th Street to come to Baseline Street and Elm Street to focus on matching the subject who was possibly Boyd. Officer Saibene told Corporal Saenz he would drive by the subject in an attempt to identify him. Officer Schuelke advised that the subject had gone into a liquor store just north of Baseline Street and Sterling Avenue. Officer Saibene drove his van to the front of the liquor store and parked his van facing east in the parking lot with his driver’s side door approximately ten feet away from the liquor store’s entrance doors.

At approximately 3:35 or 3:40 p.m., Officer Saibene saw the subject walking out of the liquor store. The subject matched Boyd’s description and was approximately 5’9” tall and weighed approximately 140-150 pounds. Officer Saibene was able to identify the subject as Boyd. Officer Saibene told the other team members he was “100 percent” certain the subject was Boyd. Boyd was wearing acid washed blue jeans, a black sweater, white Nike shoes, and a yellow bandana.¹⁰ Officer Saibene saw Boyd had a clear extended gun magazine sticking out of his left pants pocket.¹¹ Boyd had his right hand inside his jeans and appeared to be holding a firearm. Officer Saibene saw what appeared to be the black handle of a firearm, slightly protruding from the right-side front of Boyd’s waistband. Officer Saibene told his partners he believed Boyd had a gun. At that point, they were attempting to get marked units into the area but were told by dispatch there were no units available. The team requested the Sheriff’s helicopter respond to the location just in case Boyd took off running and a pursuit ensued.

Boyd walked west, away from the liquor store and then headed south through an alley toward Baseline, just west of Sterling Avenue. Officer Saibene pulled out of the liquor store parking lot, headed south on Sterling and then west on Baseline. Boyd was walking west on the north side of Baseline. Boyd was looking around as if looking for something.

¹⁰ Officer Saibene recalled the surveillance video footage he previously viewed had shown Boyd wearing white Nike shoes, a blue Puma jumpsuit, and a yellow bandana or do-rag around his forehead.

¹¹ Officer Saibene did not specify whether the magazine protruded from the front or back pants pocket.

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Boyd looked over both of his shoulders as if he was expecting someone or was looking out for the police. Boyd looked “extremely nervous.” As Officer Saibene watched Boyd, he saw the handgun in Boyd’s waistband multiple times.

Officer Saibene drove past Boyd and again saw what he believed was the black handle of a gun sticking out of the right side of his jeans. Officer Saibene told his partners he was going to go back to Elm Street to set up and watch for Boyd who appeared to be walking back to Elm Street. As Officer Saibene turned south onto Elm Street, Sergeant Shank told the team to put all their gear on and said they were not going to let Boyd get back into the apartment on Elm Street. Officer Saibene parked his van on the west side of Elm Street, just south of Baseline, and put on his gun belt and tactical vest. Boyd walked to Elm Street and headed south on the east side of Elm. As Boyd walked south on Elm Street, he passed by Officer Saibene, who was parked on the west side of Elm Street. Several cars were parked on the east side of the street, partially blocking Officer Saibene’s view of Boyd who walked on the sidewalk, east of the parked vehicles. “Boyd would come into view, go out of view, and then come back into view.” Boyd was holding a black bag within unknown items inside. Boyd had his right hand in the right side of his waistband. Based on this, Officer Saibene still believed Boyd was armed with a gun. Sergeant Shank then advised that once everyone was set up, they were going to attempt to take Boyd into custody. Officer Saibene saw Sergeant Shank drive south on Elm Street and then make a U-turn. Sergeant Shank asked if everyone was ready. Corporal Saenz, Officer Schuelke, and Officer Saibene advised they were ready to go.

Boyd walked approximately half-way down the block, still on the east sidewalk. Officer Saibene saw Sergeant Shank pull up just south of where Boyd was “potentially walking.” As soon as Sergeant Shank opened his vehicle door, Officer Saibene got out of his van and began running toward Boyd. Officer Saibene was approximately 15 to 20 yards north of Boyd and assumed Boyd was going to run as soon as the officers tried to stop him. Officer Saibene’s view of Boyd was partially obscured by the vehicles parked on the east side of the street, but Officer Saibene could see Boyd was still on the sidewalk heading south toward Sergeant Shank who was heading northeast toward Boyd. Officer Saibene heard someone yell, “Police, stop!” and then heard, “He’s running.” Officer Saibene continued to run down the middle of the street, going toward the eastern curb line when he saw Boyd holding a gun in his right hand and shooting toward Sergeant Shank and Officer Schuelke. Officer Saibene could see the top half of Boyd’s body over the parked cars and saw Boyd holding what appeared to be a black handgun and shooting in a western direction towards Sergeant Shank and Officer Schuelke. Boyd was “maybe five feet” away from Sergeant Shank. After the first few gunshots, Officer Saibene could no longer see Sergeant Shank. Officer Saibene pulled his duty weapon as ran toward Boyd. Officer Saibene saw Officer Schuelke running south of him and believed Officer Scheulke went in between a couple of the parked cars. Officer Saibene heard six to eight gunshots in rapid succession but did not see who was shooting.

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As Officer Saibene got to the eastern curb line, near 7395 Elm Street, Corporal Saenz came into view and Officer Saibene saw Boyd fall forward to the ground. Boyd was down but was not completely flat on the sidewalk. Boyd was turned to the "left side of his hip with his legs kind of ah curled up towards his chest and his arms were underneath his chest going towards his waistband area." Boyd looked at Officer Saibene who was north of him, looked away and looked back at Officer Saibene. Officer Saibene could hear Corporal Saenz telling Boyd to stop reaching and to let him see his hands. Officer Saibene could not see Boyd's hands because they were both underneath his chest, but he saw Boyd's arms moving toward his waistband, where Officer Saibene had previously seen Boyd holding a black handgun. Officer Saibene believed Boyd was reaching for his gun to continue shooting at the officers. Officer Saibene yelled at Boyd to stop reaching for his waistband and to stop moving. Boyd ignored Officer Saibene's commands and continued reaching for his waistband. In fear for his own life, the lives of his partners, and nearby citizens, Officer Saibene fired one shot from his duty weapon, aiming for Boyd's center of mass. Officer Saibene believed the bullet struck Boyd in his left or right shin. Officer Saibene estimated two to three seconds elapsed from the time he told Boyd to stop reaching until Officer Saibene fired the round at Boyd.¹²

Corporal Saenz said, "Sergeant Shank's hit." Boyd continued moving and looking back at the officers so Officer Saibene told Corporal Saenz they needed to move up to Boyd and get him into handcuffs. Officer Saibene and Corporal Saenz approached Boyd. As Corporal Saenz removed his handcuffs, Officer Saibene grabbed ahold of Boyd's right hand. Officer Saibene placed his hand on Boyd's left arm and pulled it behind his back. Officer Saibene noticed Boyd's left arm was bloody. Together, Corporal Saenz and Officer Saibene were able to place Boyd into handcuffs. They turned Boyd over onto his back and saw Boyd appeared to have several gunshot wounds to his chest. Officers advised shots had been fired and Officer Saibene requested medical aid respond to the scene. Several citizens started coming toward the scene yelling and recording. Officer Saibene requested additional units respond to the location for crowd control and scene security. Officer Saibene saw the clear extended gun magazine was on the ground where Boyd's chest had been before they turned him onto this back. Officer Schuelke began patting down Boyd and then said, "Hey, gun's not here. We need to look for it." Officer Saibene stood up and began looking for the black handgun. Officer Saibene saw the gun was on the ground just a couple feet north of Boyd. Officer Saibene stood over the gun and waited for other police officers to arrive to assist. Officer Schuelke began attending to Boyd's medical needs.

Sergeant Shank was limping and advised he had been hit in the leg. Patrol units arrived and Officer Saibene was able to have another officer stand over the gun. Officer Saibene

¹² Officer Saibene initially said, "As I was giving him commands, um I remember him looking back at me and he was still moving left to right kind of still facing down and his arms, like I said, it looked like his arms were, his hands, he was reaching inside of his waistband, um for about 15 seconds, he, he wouldn't stop um, wouldn't stop moving." Officer Saibene later clarified that the 15 second estimate was in reference to the entire length of time of the lethal force encounter.

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saw Officer Scheulke begin chest compressions on Boyd who had become unresponsive. After approximately three to four minutes, Officer Scheulke said, "Hey I need a break, I'm getting tired;" Officer Saibene began giving chest compressions while Officer Schuelke stood to the front of Boyd to assist with crowd control. Officer Saibene continued the chest compressions until the fire department arrived and took over Boyd's care.

On December 30, 2020, at approximately 1:02 a.m., **Officer Ryan Schuelke** was interviewed by Detective M. Page and Detective G. Laing of the San Bernardino County Sheriff's Department.

Officer Schuelke was employed by the San Bernardino Police Department as a police officer. On December 29, 2020, Officer Schuelke was on duty and drove an unmarked silver Hyundai Tucson SUV. While the vehicle was unmarked, emergency lights were positioned at the top of the windshield inside the vehicle. The vehicle was also equipped with an audible siren and police radio. In addition to a tactical ballistic outer vest, Officer Schuelke wore a black cloth tactical belt with a drop-down leg holster on his right thigh. Officer Schuelke's duty weapon was a Generation Four Glock 17, 9 mm, semi-automatic handgun.

Officer Schuelke's duty weapon was examined and was found to have one cartridge in the chamber of the firearm and 11 cartridges in the magazine. The headstamps of each cartridge bore, "WIN 9mm LUGER." Two pistol magazines were located on Officer Schuelke's outer vest, each contained 17 live ammunition cartridges. Officer Schuelke loaded his duty weapon to capacity, with one round in the chamber and 17 rounds in the magazine.

Officer Schuelke was assigned to the Special Investigations Unit. The team had been conducting an investigation regarding a homicide suspect, Shyheed Boyd, and were attempting to locate and arrest him on an active arrest warrant for murder. Once the team located Boyd, the plan was that they would have a marked unit stop Boyd while the Special Investigations Unit team members staged nearby in the event support was needed. The goal was to apprehend Boyd as safely as possible. The team was given Boyd's physical description, had reviewed photographs of Boyd, and had viewed surveillance video of Boyd captured shortly before the murder for which he was the primary suspect. Boyd had used a 9 mm handgun in the commission of the underlying murder, the handgun had not been recovered, and Boyd was presumed to still be in possession of it. The team had also learned Boyd was currently on probation with a no bail warrant. Officer Schuelke realized all of these factors meant there was a high risk that their attempted apprehension of Boyd could turn into a dangerous situation. Officer Schuelke knew homicide suspects were generally "more willing to fight with police officers, to be aggressive, or shoot it out in an attempt to get away, knowing that they're gonna spend a larger amount of time in custody or in jail for their crime." Also, the fact that Boyd was wanted for a murder led Officer Schuelke to believe Boyd had "more violent tendencies."

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In their efforts to locate and arrest Boyd, the team had set up surveillance at an address near 16th and E Street in San Bernardino, which was the home of one of Boyd's relatives. The team communicated with each other via a program on their department issued phones that enabled them to use the phones as they would a radio. After conducting surveillance at this location for some time, the officers did not see Boyd. Sergeant Shank told the team they were going to split up and that half of the team would head to Elm Street to conduct surveillance there near an apartment complex where Boyd's mother lived. Elm Street was a "one way in, one way out" street from Baseline and had a dead end at the south end of the street. Apartments were located on both sides of Elm Street. It was daylight and Officer Schuelke was able to see clearly. Officer Schuelke, Corporal Saenz, and Officer Saibene were chosen to go to the Elm Street address. Sergeant Shank was going to "bounce back between the two addresses wherever he was needed."

Officer Saibene arrived at the Elm Street location first and began surveillance on the apartment. Corporal Saenz was further north on Elm Street and Officer Schuelke was located nearby on Baseline Street. At approximately 3:00 p.m., Corporal Saenz advised that he saw a subject walking north on Elm Street, close to Baseline, wearing a blue hoodie and white-washed jeans, that he believed matched Boyd. Officer Schuelke left his location in an attempt to get a better look at the subject. Officer Schuelke drove on west on Baseline, passed Elm Street, and made a U-turn. As Officer Schuelke drove east on Baseline, he saw the subject on the south side of the street, walking east. The subject's back was to Officer Schuelke, so he wasn't able to get a great view of him, but the subject appeared to match Boyd. Officer Schuelke notified the other team members and told them the subject appeared to be a close match. Officer Schuelke told his partners he was going to park nearby and let the subject walk past him so he could use his binoculars to get a good visual of him. Officer Schuelke parked in the Jack in the Box parking lot¹³, in the furthest north-west parking spot, facing north, and waited for the subject to walk by him. Officer Schuelke saw that the subject had transitioned to the north side of the street and continued walking east.

Once the subject reached the north/south driveway on the west side of a burger shop, Officer Schuelke was able to use his binoculars to get a good visual of him. Officer Schuelke positively identified the subject as Boyd and notified his partners. However, because he was so far away from Boyd, 80 to 100 yards, Officer Schuelke wanted a second opinion on the identification. Officer Schuelke asked his partners to attempt to look at the subject. Officer Schuelke directed Corporal Saenz to the east side of the burger shop and watched as Boyd walked north through the south alleyway. Officer Schuelke lost visual as Boyd walked behind the burger shop where Sterling Liquor was located. Officer Schuelke did not see Boyd come out onto Sterling Avenue so he assumed Boyd had gone into the liquor store. Officer Schuelke advised his team members of this and Sergeant Shank instructed them to call for a marked unit to come to the location to stop

¹³ The Jack in the Box was located on the southwest corner of Baseline Street and Sterling Avenue. Directly across Baseline, on the northwest corner of Baseline Street and Sterling Avenue was a hamburger restaurant. Directly north of the hamburger restaurant was a liquor store.

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Boyd. Officer Schuelke asked dispatch to send out a unit. Dispatch advised no units were available at that time, but they would work on getting a unit out to them as soon as one was available. Officer Schuelke also requested the Sheriff's Department airship head to their location to assist in case Boyd ran from the officers and a foot pursuit ensued.

Officer Saibene drove to the entrance of the liquor store and was able to identify Boyd as Boyd came out of the liquor store. Officer Saibene advised that he saw Boyd had a gun and that he could see a magazine sticking out of Boyd's left pocket.¹⁴ Upon hearing this, Officer Schuelke grew more concerned that Boyd would use the firearm against the officers. Officer Saibene advised that Boyd was walking back towards Baseline. From the Jack in the Box parking lot, Officer Schuelke watched as Boyd walked back down the alley and headed west on Baseline Street toward Elm Street. As Boyd walked west on Baseline, Officer Schuelke saw a black object protruding back towards Boyd's buttocks on his right hip area. Officer Schuelke was approximately 100 to 150 yards away from Boyd and could not tell if the object was a gun but the "object did not look like a cell phone or anything similar to a cell phone." Officer Schuelke told the other team members Boyd had a black object on his right hip area that could be a gun.

Officer Saibene advised he was going to position himself near Boyd's mother's apartment. Corporal Saenz and Sergeant Shank also headed to Elm Street. As Boyd turned south onto Elm Street, they were still unable to get a marked unit to the location. Boyd was walking south, toward the direction of his mother's apartment. Sergeant Shank advised that they were going to stop Boyd themselves. They did not want Boyd, who was an armed and wanted murder suspect, to get into his mother's apartment or inside another apartment where they would be unable to apprehend him. Officer Schuelke put on his ballistic vest and then drove west on Baseline and then south on Elm Street, arriving last. Officer Saenz, Officer Saibene, and Sergeant Shank were already on Elm Street. Officer Schuelke saw Sergeant Shank's unmarked police vehicle parked on the east side of Elm Street, facing north. Sergeant Shank advised that he saw Boyd and said he was going to wait for Boyd to get closer to him, at which time he would stop Boyd. As Officer Schuelke drove south on Elm Street toward Sergeant Shank's location, Officer Schuelke requested dispatch give them priority traffic on their radio channel and told dispatch they were going to stop Boyd.

Officer Schuelke heard Officer Saenz say Boyd was near a field where Boyd would have the opportunity to run east if they attempted to stop him there. Officer Schuelke stopped in the road facing south against the east side of the street beside vehicles that were parked next to the east curb.¹⁵ Officer Schuelke was west of and parallel to Boyd. There was a large SUV parked in between Officer Schuelke and Boyd, blocking Boyd's view of Officer Schuelke's vehicle. Officer Schuelke put his vehicle in park and activated his

¹⁴ Officer Schuelke did not remember whether Officer Saibene had said the magazine was protruding from Boyd's sweater or pant pocket.

¹⁵ For clarity, Officer Schuelke parked facing south in the northbound lane of Elm Street.

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vehicle's forward facing red and blue emergency lights. Because his vehicle was in park, the siren was not activated. As Boyd came out from behind the large SUV, Officer Schuelke saw Boyd look at Officer Schuelke's vehicle and his vehicle's emergency lights as if trying to see what was going on. Boyd appeared to be nervous, which made Officer Schuelke more nervous because he believed there was a higher chance Boyd would do something. With Boyd's attention focused on Officer Schuelke, he knew that if Boyd was going to fight with the police, then Officer Schuelke would be the one Boyd would shoot or take action against.

Boyd continued walking and Officer Schuelke waited until Boyd was closer to a block wall located on the south end of the field. Boyd was in the open and by himself, affording the officers the best opportunity to safely apprehend him. Boyd would not be able to run into any buildings and barricade himself or take anyone hostage. Officer Schuelke saw Sergeant Shank get out of his vehicle. Officer Schuelke got out of his vehicle and Boyd looked directly at him. Officer Schuelke was wearing his ballistic vest and Boyd could clearly see he was a police officer. Someone yelled, "Police, get on the ground."¹⁶ The command was ineffective, and Boyd immediately took off running southbound on the east sidewalk. Officer Schuelke gave chase. Officer Schuelke ran to the sidewalk which was only a car's length away and as soon as Officer Schuelke got to the sidewalk, he saw Boyd raise up his right arm with a handgun in his hand and begin shooting at Sergeant Shank.¹⁷ Boyd had only run about five yards before he started shooting. Boyd's arm was fully extended towards Sergeant Shank. Officer Schuelke heard two gunshots and saw Boyd's hand rise with the recoil when the gunshots were fired. When he saw Boyd shooting at Sergeant Shank, Officer Schuelke feared Boyd's rounds were going to strike Sergeant Shank. Boyd was only "ten yards, if that," from Sergeant Shank and Officer Schuelke knew at that distance a person "didn't need to have much skill with a handgun and could just point and shoot and there's a good chance that you're gonna hit your target, which at that time, was [...] Sergeant Shank."

To protect Sergeant Shank's life, Officer Schuelke, still running on the sidewalk behind Boyd, fired approximately three rounds from his handgun at Boyd. Officer Schuelke estimated he was 15 yards away from Boyd when he fired at him. Officer Schuelke saw his rounds were ineffective because Boyd continued running. Boyd was running south, with the gun still in his hand, toward Officer Saibene's location and toward the location of apartments where civilians were located. Officer Schuelke could not see Officer Saibene at that moment but knew Officer Saibene was located south of Boyd and was therefore in Boyd's direction of travel. Officer Schuelke feared Boyd was going to catch Officer Saibene off guard or that Boyd would take someone hostage in an attempt to get away. Because Officer Schuelke was running when he fired the first three rounds, he had a hard

¹⁶ Officer Schuelke believed he may have given the command, but was not absolutely certain of this, and it may have been another officer who gave the command.

¹⁷ Officer Schuelke did not see from where Boyd retrieved the handgun because Boyd's hands were in front of his body and Officer Schuelke was trying to move in between the parked cars, which partially blocked his view of Boyd.

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time keeping his gun's sights on Boyd, so Officer Schuelke stopped running to obtain a better shooting platform and fired four additional rounds at Boyd. When he fired at Boyd, Boyd was looking over his right shoulder, "trying to open up towards me or in our direction." Officer Schuelke could not see if Boyd was turning his entire body because Officer Schuelke's gun's sights blocked the "majority of the lower half of his body." Officer Schuelke estimated Boyd was 20 to 30 yards away when he fired the second volley of rounds at Boyd. Officer Schuelke did not hear or see any other officers fire their guns at this time.

Officer Schuelke saw the rounds he fired "were effective" because Boyd immediately started falling to the ground. When Boyd fell to the ground, Officer Schuelke stopped shooting and began to approach him. As he made his approach, Officer Schuelke saw Officer Saibene come out from in between some cars parked in front of Officer Schuelke. Officer Saibene held lethal coverage on Boyd. Officer Saibene was in between Officer Schuelke and Boyd and Officer Schuelke could no longer see Boyd. Officer Schuelke looked to his right and saw Sergeant Shank and Corporal Saenz in the street. Just as Officer Schuelke began to ask them if they were okay, he heard Officer Saibene yell, "Don't reach for the gun," and heard a gunshot from Officer Saibene's gun. Officer Schuelke heard both the command and the gunshot almost simultaneously. Officer Schuelke did not see Officer Saibene fire his gun but knew it was Officer Saibene who fired based upon Officer Saibene's location and the sound of the gunshot. Officer Schuelke estimated only two seconds had elapsed from the time of the initial volley of fire until Officer Saibene's single gunshot.

Officer Schuelke moved west so he could see Boyd and saw Boyd was no longer moving. Together, Officer Schuelke and the other officers began to approach Boyd. Officer Schuelke announced over the radio that shots had been fired and the suspect was down. Officer Saibene and Corporal Saenz approached Boyd and placed him into handcuffs. Officer Schuelke then saw Sergeant Shank was limping and Sergeant Shank told him he had been hit in the lower leg.

A large crowd immediately started gathering so the officers positioned themselves around Boyd. Officer Schuelke searched Boyd for any further weapons and did not find any. Officer Schuelke saw a large clear plastic extended magazine next to Boyd's body. Officer Schuelke saw the magazine was loaded with bullets. The crowd began to grow larger and Officer Schuelke kept an eye on the crowd to ensure there were no other threats. Officer Schuelke requested medical aid for Boyd and for Sergeant Shank who had informed him he had been shot in the leg. Boyd was unresponsive so Officer Schuelke began doing chest compressions on Boyd. Officer Schuelke heard air coming out of one of the bullet wounds in Boyd's left abdomen so he took the black grocery bag Boyd had gotten from the liquor store and placed it over the bullet hole as a seal while he continued the chest compressions. Officer Schuelke continued chest compressions until he became fatigued, at which point, Officer Saibene took over the chest compressions until medical aid arrived.

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STATEMENTS BY CIVILIAN WITNESSES¹⁸

On December 29, 2020, multiple officers with the San Bernardino Police Department arrived on scene shortly after the incident occurred. The officers canvassed the area and contacted witnesses who were living in the apartments surrounding the scene on Elm Street. The officers attempted to contact and interview over 90 separate civilian witnesses; however, the overwhelming majority of the citizens said they did not see or hear anything. Several witnesses refused to provide statements.

Corporal Sumrel and Officer Berceda of the San Bernardino Police Department contacted residents of the apartment complex located at the 7000 block of North Elm Street. The residents who witnessed or heard the incident provided the following information to the officers:

Witness #1 advised she was inside her apartment during the time of the incident and heard eight gunshots. Witness #1 did not see any part of the incident.

Witness #2 advised he heard more than five gunshots but did not see anything.

Officer M. Alvarez of the San Bernardino Police Department contacted residents of the apartment complexes located at the 7000 block of Elm Street. The residents who witnessed or heard the incident, provided the following information:

Witness #3 was the apartment manager and she lived in Apartment #1. Witness #3 was inside her apartment during the incident and heard approximately 10 gunshots outside. Witness #3 did not see the incident. Witness #3's adult son, who wished to remain anonymous, told Officer Alvarez he saw officers picking up casings.¹⁹ Witness #3 told Officer Alvarez her adult son was inside the apartment during the incident, but said he was wearing headphones at the time. Witness #3 believed her son did not hear or see anything. Witness #3 advised the apartment complex had exterior cameras, but they did not work.

Witness #4 reported she did not see the incident, but she heard about seven to ten gunshots outside. Witness #4 said she then walked outside and saw officers doing CPR until the fire department arrived.

¹⁸ All reports of civilian statements made were reviewed, though not all are summarized here.

¹⁹Officer Alvarez noted that the male adult had bloodshot watery eyes and the strong odor of burned marijuana coming from his person.

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Witness #5 heard about four gunshots outside and about a minute later, he heard about three or four more gunshots outside. Witness #5 did not see anything.

SURVEILLANCE VIDEO

On Thursday, December 31, 2020, San Bernardino County Sheriff's Deputy S. Lafond obtained surveillance video footage from Sterling Liquor, located at the 7000 block of Sterling Avenue in Highland. The video footage was captured on December 29, 2020 between the hours of 2:56 p.m. and 3:56 p.m.²⁰ Multiple cameras recorded Boyd outside and inside the store. The locations of each camera were provided by Detective S. DeMuri.

Camera 2 was located inside the entry/exit door and faced northwest. At approximately 3:34 p.m., Boyd walked into the liquor store. Boyd was wearing a navy-blue sweatshirt, with the hood up on his head, a yellow or beige bandana around his forehead, acid washed blue denim jeans, and white tennis shoes. Boyd walked to a few areas within the store and purchased two rolls of toilet paper before exiting at 3:37 p.m. While inside the liquor store, Boyd continually held his right hand in the area of his right front waistband.

Camera 9 was located high on the north wall inside the store and faced south. At 3:35 p.m., Boyd was in the snack food isle. Boyd held his right hand over his right front pants waistband. Boyd carried a cell phone in his left hand and looked at it several times while walking in the store. Boyd placed two rolls of toilet paper on the nearby checkout counter and returned to the snack isle. Boyd moved his right hand toward the cell phone in his left hand, revealing a black handgun grip visible near Boyd's right front waist.

Camera 10 was located near the southeast corner of the exterior of the building and faced southwest. At approximately 3:34 p.m., Boyd walked east through the parking lot of Sterling Liquor and into the front door. Boyd held his right hand near his right front waistband as he walked. At approximately 3:37 p.m., Officer Saibene drove his silver Toyota Sienna van east into the parking lot and stopped facing east, parallel to the liquor store's front entry door. Several seconds later, Boyd exited the store and walked past Officer Saibene's van into the parking lot and headed back in the same direction from which he initially came.

Camera 12 was located inside the store near the refrigerated area and faced west. At approximately 3:34 p.m., Boyd was in the store with a cell phone in his left hand. Boyd's right hand gripped the handle of the handgun in his waistband.

²⁰ Deputy Lafond noted the video surveillance camera system's timestamp was ahead in time by approximately one hour and four minutes. The events captured by the video surveillance cameras incorrectly reflected the time frame was from 4:00 to 5:00 p.m. The correct time frame covered by the video surveillance cameras was from 2:56 p.m. to 3:56 p.m. For ease of reference, the correct times will be noted.

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Camera 16 was above the entry/exit door and faced north. At approximately 3:34 p.m., Boyd walked into the liquor store. At approximately 3:35 p.m., Boyd approached the front checkout counter holding two rolls of toilet paper stacked on top of each other in his right hand. With his right hand, Boyd placed the two rolls of toilet paper on the counter. When he did so, the black handgun grip was visible as it protruded from the right-side front of his waistband. Boyd turned away from the checkout counter and continued walking around the liquor store. At approximately 3:36 p.m., Boyd approached the checkout counter. As he stood at the checkout counter, Boyd continuously held his right hand near his front waistband while using his left hand to pay for the toilet paper. At approximately 3:37 p.m., Boyd walked toward the front door to exit the store. Boyd held the handle of the handgun with his right hand.

INCIDENT SCENE INVESTIGATION

San Bernardino County Sheriff's Detective J. Tebbetts conducted the scene investigation. Evidence was marked with placards and measurements were obtained from a fixed reference point (Edison pole) located at the northwest corner of the 7000 block of Elm Street.

The scene was located on the paved asphalt roadway, east landscape median and east sidewalk of the 7300 and 7400 blocks of Elm Street in Highland. The area was residential with multiple single-family homes, multi-family homes, and apartment complexes. Elm Street was a paved asphalt roadway, which ran north and south. There were concrete sidewalks along the east and west sides of Elm Street. There were landscape medians, which separated the sidewalks from the street.

Several fired cartridge casings (FCC's) were found within the scene. The officers' FCC's (17 total) bore the headstamp: "WIN 9MM LUGER." The FCC's were found on the asphalt roadway of Elm Street (10), east concrete sidewalk (2), the dirt landscape median (3), the east concrete gutter (2).

Located on the east landscape median was an FCC bearing the headstamp, "Hornady 9 MM Luger." Located on the east sidewalk was an FCC bearing the headstamp, "S&B 20 9X19."²¹

Located on the landscape median, to the south of the driveway apron to 7391 and 7397 Elm Street, was a black, "Polymer80 Inc.," 9 mm, model PF940V2, handgun. The handgun had a Streamlight TLR8 weapon-mounted light affixed to the Picatinny rail. The weapon-mounted light was damaged and was missing the lens and retraining ring.²² There were no serial numbers on the handgun frame or slide. There was one FCC in the

²¹ The FCC's, along with the Polymer80 Inc., 9 mm handgun were submitted to the San Bernardino County Sheriff's Department Scientific Investigations Division for analysis. The FCC's were found to have similar firing marks as those observed on test-fired cartridge cases from the Polymer80 Inc. 9 mm handgun.

²² The lens for the Streamlight TLR8 weapon-mounted light was located on the paved asphalt roadway.

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firing chamber. The FCC was head stamped, "S&B 20 9X19." There was a magazine inserted into the magazine well, which contained 16 live 9 mm cartridges. Three of the cartridges were head stamped, "FCNX 9 MM Luger." The remaining 13 cartridges were head stamped, "S&B 20 9X19."

Located on the east sidewalk, south of the Polymer80 Inc., 9 mm handgun, were two rolls of toilet paper, a pair of men's acid washed blue denim jeans,²³ which were cut, and a white, left, men's Nike Air shoe. Located south of these items, on the east sidewalk, in front of the stairs leading to 7397 Elm Street, was a high capacity magazine containing 31 live 9 mm cartridges. Five cartridges were head stamped, "S&B 9X19 20," 11 cartridges were head stamped, "FCC 9 MM Luger," and 15 cartridges were head stamped, "GECO 9MM Luger." Located west of the high capacity magazine, on the concrete sidewalk, was a suspected blood stain.

Distances were as follows:

FCC "Hornady 9 MM Luger"	45'4" South	0' West
FCC "S&B 20 9X19"	54'2" South	6'7" East
Streamlight TLR8 lens ring	48'9" South	27'4" West
Polymer 80 Inc., 9 mm handgun	83'6" South	1'9" East
Suspected bloodstain	104'8" South	3'1" East
Men's jean jacket, men's Nike Air shoe	100'8" South	5'2" East
High capacity magazine	103'1" South	7'7" East

INJURED PARTY/DECEDENT

Shyheed Boyd was pronounced deceased by Witness #6 at approximately 4:13 p.m. at St. Bernadine's Medical Center.

AUTOPSY

Witness #7, M.D., Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Shyheed Boyd on January 10, 2021. Witness #7 determined the cause of death to be multiple gunshot wounds to the chest and abdomen and that death occurred within minutes.

TOXICOLOGY

Chest blood, vitreous fluid and urine specimens were collected during the autopsy.

Toxicology results for the blood sample were listed as follows:

²³ In his report, Detective Tebbetts described this item as a men's jean jacket, however, upon review of the crime scene photographs, along with all other evidence, it is apparent the item was in fact the acid washed blue denim jeans worn by Boyd at the time of the officer-involved shooting.

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- 11-Hydroxy Delta-9 THC 2.7 ng/mL
- Delta-9 Carboxy TCH 24 ng/mL
- Delta-9 THC 5.1 ng/mL

CRIMINAL HISTORY

Shyheed Boyd has a criminal history that includes the following convictions:

2018, 182 (a)(1) of the Penal Code, Conspiracy to Commit a Crime, Riverside County case number INF1702178, a felony.

2018, 21810 of the Penal Code, Possession of Metal Knuckles, San Bernardino County case number FSB18003685, a misdemeanor.

2020, 459 of the Penal Code, First Degree Residential Burglary, San Bernardino County case number FSB19002544, a felony.

Crimes Upon Peace Officers

Attempted Murder of a Peace Officer

California Penal Code section 664/187

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

(e) [...] if attempted murder is committed upon a peace officer or firefighter, [...], and the person who commits the offense knows or reasonably should know that the victim is a peace officer [...] engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

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

Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also charged and admitted or found to be true by the trier of

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fact that the attempted murder was willful, deliberate, and premeditated, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement. (Penal Code section 664/187, summarized in pertinent part.)

Assault With a Deadly Weapon

California Penal Code section 245 (d)

- (1) Any person who commits an assault with a firearm upon the person of a peace officer, and who knows or reasonably should know that the victim is a peace officer or engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

- (2) Any person who commits an assault upon the person of a peace officer with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years. (Penal Code 245, summarized in pertinent part.)

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 Code §835a(b).)

²⁴ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal Code §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal Code §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 Code §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,

²⁴ All references to code sections here pertain to the California Penal Code.

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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 sections 196 and 197. Both code sections are pertinent to the analysis of the conduct involved in this review and are discussed below.

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code Section 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 Code §835a(c)(1).)

Discharge of a firearm is “deadly force.” (Penal Code §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 Code §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,²⁵ 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

²⁵ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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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 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 Code §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 Code §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal Code §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;²⁶
- (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

²⁶ Penal Code §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 Code §835a (a)(3).

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greater instance of fatal encounters with law enforcement, therefore.

(Penal Code §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 section 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 newly 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

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likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal Code §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.)²⁷ To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

²⁷ The legislative findings included in Penal Code 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.

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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.” Emphasis added.) 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

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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.)

ANALYSIS

During the daylight hours on the afternoon of December 29, 2020, officers from the San Bernardino Police Department’s Special Investigations Unit were tasked with conducting surveillance in an attempt to locate and arrest Shyheed Robert Boyd pursuant to a lawfully issued arrest warrant for the crime of murder.

Corporal Saenz, Officer Schuelke, and Officer Saibene each had the opportunity to observe Boyd as he walked in the neighborhood they were surveilling. Once the officers were certain they had correctly identified Boyd, they called for uniformed officers in marked units to respond to the location to stop Boyd and effectuate his arrest. During their surveillance, Officer Saibene correctly observed what he believed to be a firearm in Boyd’s waistband and an extended gun magazine protruding from Boyd’s pocket. Officer Saibene alerted his partners to this. After asking dispatch to send the marked units to the location, Corporal Saenz, Officer Schuelke, Officer Saibene, and Sergeant Shank donned their distinctively marked San Bernardino Police Department ballistic outer vests. Their plan was to provide back-up assistance to the uniformed officers in the event they were needed.

When no units were available to respond to the location immediately, the officers maintained their surveillance, keeping an eye on Boyd, while they waited for the marked units to arrive. Because Boyd was a wanted murder suspect and was armed with a firearm, the officers knew they could not take the risk of losing him. As Boyd began walking south on Elm Street, in the direction of his mother’s apartment complex, the officers reasonably assumed Boyd was heading to her apartment. The officers knew they could not allow Boyd to get into the apartment complex because if Boyd was able to get inside the apartment, there was a risk Boyd would barricade himself inside. In addition, because Boyd was armed with a firearm and was a wanted murder suspect, he posed a

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significant risk to residents living in the apartment complex as well as anyone located in the vicinity of the apartment.

As Boyd got closer to his mother's apartment complex, Sergeant Shank told the team they could no longer wait for the marked units to arrive and that they would have to stop and arrest Boyd themselves. The team of officers parked their vehicles on Elm Street, forming a perimeter around Boyd. Boyd was walking on the sidewalk on the east side of the street. Officer Schuelke stopped his vehicle on the east side of the street, closest to Boyd. When Officer Schuelke put his vehicle into park, he activated his unit's forward facing red and blue lights, alerting Boyd to the fact that he was a police officer. Boyd looked directly at Officer Schuelke's vehicle with the activated lights but continued walking south toward his mother's apartment complex. Corporal Saenz had also stopped his vehicle nearby, parking on the west side of Elm Street adjacent to and only 10 to 16 yards away from Boyd. When Officer Schuelke and Corporal Saenz stepped out of their vehicles, Boyd looked directly at them. Officer Schuelke and Corporal Saenz were wearing their ballistic outer vests which were clearly visible to Boyd. As soon as Boyd made eye contact with Corporal Saenz, Corporal Saenz yelled, "Police, hands up!" In response, Boyd immediately reached into his waistband, pulling a handgun, and took off running south on the east sidewalk away from Corporal Saenz and Officer Schuelke. Corporal Saenz and Officer Schuelke gave chase. The officers yelled at Boyd, "Police, stop," but Boyd ignored their commands and continued running.²⁸ Corporal Saenz ran in the roadway while Officer Schuelke ran on the sidewalk, behind Boyd. Officer Saibene, who was in the roadway north of his partners and Boyd, also gave chase. Officer Saibene's view of Boyd was partially blocked by the vehicles parked along the east curb.

Boyd's direction of travel took him toward Sergeant Shank who was located south of Boyd on Elm Street. Sergeant Shank saw Boyd running on the sidewalk away from the officers. Sergeant Shank began running north toward Boyd in an attempt to stop him. Sergeant Shank could only see the top of Boyd's head because several vehicles parked on the east curb line blocked Sergeant Shank's view of Boyd's body. Because of this, Sergeant Shank did not see that Boyd had a gun in his hand until Boyd ran past the last parked car. By that point, Boyd was only five to seven yards away from Sergeant Shank. As soon as Boyd saw Sergeant Shank, Boyd immediately began shooting at him. Because Boyd immediately began shooting, none of the officers had any chance at further attempts to deescalate the situation.

Sergeant Shank's Use of Deadly Force

Sergeant Shank knew he was in grave danger as Boyd shot at him. Fearing for his life, Sergeant Shank returned fire. Because Boyd began shooting immediately, Sergeant Shank was forced to react quickly by returning gunfire in an effort to save his own life. Sergeant Shank had no time to give any announcements or commands in order to attempt

²⁸ This turned out to be the only opportunity the officers were given in their attempts to deescalate the situation because very shortly thereafter, Boyd began shooting at Sergeant Shank.

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to deescalate the situation. Boyd was only five to seven yards away from Sergeant Shank when Boyd shot at him. Boyd was aiming at Sergeant Shank and at that distance, Boyd was likely to hit his target. Sergeant Shank returned fire at Boyd in an attempt to save his own life, but Boyd continued shooting at him. Sergeant Shank was struck in the leg and fell to the ground. Even still, Boyd continued shooting at Sergeant Shank. As Boyd continued firing his gun, Sergeant Shank remained in grave danger. In an effort to save his own life, Sergeant Shank got back up and from a crouched position, fired an additional round at Boyd. Under these circumstances, Sergeant Shank's belief that his life was in imminent danger was honestly and objectively reasonable.

Corporal Saenz's Use of Deadly Force

Corporal Saenz saw Boyd shooting at Sergeant Shank and was immediately afraid for Sergeant Shank's life. In an effort to protect Sergeant Shank, Corporal Saenz raised his gun to shoot at Boyd but was unable to fire because Sergeant Shank was in his line of fire. Boyd continued shooting at Sergeant Shank and Sergeant Shank was struck. Upon being shot, Sergeant Shank fell to the ground. Boyd continued shooting at Sergeant Shank. Fortunately, when Sergeant Shank fell to the ground, he fell out of Corporal Saenz's line of fire and Corporal Saenz was able to shoot at Boyd. Corporal Saenz was attempting to stop the deadly threat Boyd posed to Sergeant Shank's life. Given these facts and circumstances, Corporal Saenz's belief that Sergeant Shank's life was in imminent danger was honestly and objectively reasonable.

Officer Schuelke's Use of Deadly Force

Officer Schuelke saw Boyd shooting at Sergeant Shank and was immediately afraid for Sergeant Shank's life. Based upon this, Officer Schuelke's belief that Sergeant Shank's life was in imminent danger was reasonable. In an effort to protect Sergeant Shank's life, Officer Schuelke, still running, began firing his handgun at Boyd. Officer Schuelke's rounds missed Boyd and Boyd continued to shoot at Sergeant Shank. When Officer Schuelke saw that his initial volley of gunfire missed Boyd, Officer Schuelke stopped running so he could obtain a more stable shooting platform and fired four additional rounds at Boyd.

When Officer Schuelke fired the second volley of gunfire, Boyd was still running south with the gun in his hand while looking over his right shoulder, as if "trying to open up towards me or in our direction." In addition, as Boyd continued running south, Officer Schuelke believed Officer Saibene was directly in Boyd's direction of travel. While Officer Schuelke did not see Officer Saibene at that exact moment, he honestly and reasonably believed Officer Saibene was in a position of grave danger. Officer Schuelke knew the vehicles parked along the curb blocked his view, so even though he could not see Officer Saibene, his fear that Officer Saibene was in Boyd's path was reasonable. Because Boyd had already shot at Sergeant Shank, it was reasonable for Officer Schuelke to believe

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Boyd would also shoot at Officer Saibene. Therefore, Officer Schuelke's belief that Officer Saibene's life was in imminent danger was honestly and objectively reasonable.

In addition to this, Officer Schuelke feared for the safety of nearby civilians. Boyd was running south toward an apartment complex in a densely populated residential neighborhood. Officer Schuelke had been conducting surveillance in the area moments before Boyd began shooting and therefore knew first-hand multiple civilians were nearby. That these civilians were in danger was obvious. Boyd was armed and had shown he was willing to do whatever it took to avoid arrest. As such, Officer Schuelke's belief that Boyd would attempt to take a civilian hostage in an attempt to get away was honestly and objectively reasonable.

Officer Saibene's Use of Deadly Force

Officer Saibene was running south in the roadway toward the east curb line when he saw Boyd shooting in a western direction toward Sergeant Shank and Officer Schuelke. Officer Saibene saw Boyd was "maybe five feet" away from Sergeant Shank. Officer Saibene was not asked why he did not fire at that moment, but taking note of each officer's position, it is apparent that both Corporal Saenz and Officer Schuelke were likely both in between Boyd and Officer Saibene, and therefore in Officer Saibene's line of fire. Officer Saibene, who was running toward the east sidewalk, did not see Sergeant Shank get shot nor did he see Sergeant Shank fall to the ground. As Officer Saibene ran, he lost sight of his partners and could no longer see any of them. Officer Saibene heard six to eight gunshots in rapid succession and then saw Boyd when Boyd fell forward onto the sidewalk.

Knowing they were still in danger, Officer Saibene and his partners nonetheless had to make their approach to get Boyd into handcuffs so he would no longer pose a threat. Boyd continued moving around while down on the sidewalk. Officer Saibene and his partners yelled at Boyd to stop moving but Boyd ignored their commands. Taking cover behind parked vehicles, the officers continued to order Boyd to stop moving and to show his hands. Boyd ignored their commands. Officer Saibene, who was on the sidewalk closest to Boyd, saw Boyd was turned to his left side. Officer Saibene could not see Boyd's hands because they were beneath his chest. As Boyd continued moving, Officer Saibene saw Boyd's arms moving down as he reached for his waistband. Fearing Boyd was reaching for a gun in his waistband so he could continue shooting at the officers, Officer Saibene yelled at Boyd to stop reaching for his waistband and to stop moving. Boyd ignored Officer Saibene's commands and continued reaching for his waistband. In fear for his life, the lives of his partners, and the lives of nearby citizens, Officer Saibene fired his gun at Boyd.

Officer Saibene's belief that Boyd was reaching for a gun to continue shooting the officers, thereby putting their lives in imminent danger, was honestly and objectively reasonable. Officer Saibene knew Boyd was armed with at least one firearm and had seen Boyd

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shooting that firearm at Sergeant Shank and Officer Schuelke. Officer Saibene also knew Boyd had an extended magazine. Because the magazine was transparent, Officer Saibene was able to see the magazine was loaded. When Boyd was down on the sidewalk, still moving and ignoring the officers' commands, he continued to pose a threat to the officers. Officer Saibene reasonably believed that Boyd still maintained possession of the gun. Boyd had shown he was unwilling to comply and in fact had done everything he could do to escape capture. When Boyd continued to reach for his waistband even after he was down, he clearly demonstrated that he was willing to kill any police officer who tried to apprehend him. Accordingly, it was objectively reasonable for Officer Saibene to believe Boyd posed an imminent threat to his life, the lives of his partners, and the lives of nearby citizens.

Given these facts and circumstances, it was objectively reasonable for each officer herein to believe that Boyd presented an imminent and deadly threat to human life. As such, each officers' belief that the immediate use of deadly force was necessary to defend against that danger was reasonable. Any officer confronted with the same facts and circumstances, would believe the same.

CONCLUSION

Based on the facts presented in the reports and the applicable law, Sergeant Shank's use of deadly force was a proper exercise of Sergeant Shank'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, Corporal Saenz's use of deadly force was a proper exercise of Corporal Saenz'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, Officer Saibene's use of deadly force was a proper exercise of Saibene'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, Officer Schuelke's use of deadly force was a proper exercise of Officer Schuelke's right of self-defense and defense of others and therefore his actions were legally justified.

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