



PUBLIC RELEASE MEMORANDUM

Subject: Fatal Officer-Involved Shooting

Involved Officers: Corporal Albert Alvarado
Ontario Police Department

Involved Subject/DOB: Joseph Anthony Benavente, 12/05/1997

Subject's Residence: San Bernardino, California

Incident Date: February 22, 2021

Incident Time: 11:56 p.m.

Case Agent/Agency: Ontario Police Department

Agency Report #: 210200936

DA STAR #: 2021-54963

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PREAMBLE

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

FACTUAL SUMMARY

Just before midnight on February 22, 2021, Ontario Police Department Officer Varela attempted a traffic stop on a red Hyundai Accent for tinted windows, in violation of Vehicle Code section 26708 (a)(1). The driver of the red Hyundai, Joseph Benavente, refused to stop and a pursuit ensued. Benavente drove erratically, speeding through residential neighborhoods and failing to stop at multiple stop signs. A second marked police vehicle, driven by Officer Escobar and with Corporal Alvarado in the front passenger seat, backed Officer Varela during the pursuit. A third marked Ontario Police Department unit, driven by Officer Lopez-Vasquez joined the pursuit just prior to its termination on North Beverly Court.

After turning onto North Beverly Court, a cul-de-sac, Benavente abruptly stopped, forcing the pursuing officers to also stop abruptly. Preparing for the possibility of a foot-pursuit, Corporal Alvarado quickly opened the door and began to step out of his unit. At that moment, Benavente put his car into reverse and accelerated quickly toward the police vehicles that had stopped behind his car. Benavente's car first struck the passenger side of Officer Varela's unit and then headed straight for Corporal Alvarado who had just stepped out of his patrol unit.

Corporal Alvarado was standing in the apex of the front passenger door and the patrol unit when Benavente's car slammed into his unit. Benavente's car struck the front end of Corporal Alvarado's patrol unit on the passenger side bumper and continued reversing along the passenger side of the unit straight toward Corporal Alvarado, who stood behind the patrol unit's open passenger door. As Benavente's car crashed into the patrol unit and continued heading toward him, Corporal Alvarado fired three rounds from his handgun at Benavente. Benavente, who was only a few feet away from Corporal Alvarado, was struck by Corporal Alvarado's gunfire. Benavente's car continued in reverse, striking a third patrol unit, driven by Officer Vasquez-Lopez, before coming to a stop. Benavente's car then rolled forward where it struck and rolled up onto the curb before striking a tree and coming to a rest.

Benavente was removed from the vehicle but was declared deceased by medics at the scene at 12:11 a.m. on February 23, 2021.

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STATEMENTS BY POLICE OFFICERS¹

All Ontario Police Department officers who responded to the scene on February 22, 2021, wore readily identifiable police uniforms. Their uniforms consisted of navy-blue cargo pants, black boots, navy-blue shirts with Ontario Police Department patches on both sleeves, Ontario Police Department badges on the shirt's left chest, and their names on the shirt's right chest. Some officers wore black uniform jackets over their uniform shirts. The uniform jackets were adorned with Ontario Police Department patches on both sleeves, Ontario Police Department badges on the jacket's left chest, and the officer's name on the jacket's right chest. Unless otherwise noted, the officers wore cameras² which were positioned near the center of their chests.

On February 25, 2021, at approximately 5:03 p.m., **Corporal Albert Alvarado** was interviewed by Detectives Darryl Lauritzen and Gary Naranjo of the Ontario Police Department.

Corporal Alvarado was employed as a police officer for the Ontario Police Department. On February 22, 2021, Corporal Alvarado was on duty and assigned to graveyard patrol from 9:00 p.m. until 7:00 a.m. Corporal Alvarado's call sign was Victor 8. Corporal Alvarado rode in the front passenger seat while his trainee, Officer Alex Escobar, drove the patrol unit. The patrol unit was a marked black and white police Ford Explorer equipped with emergency lights and sirens. Corporal Alvarado's duty belt was equipped with his handgun, pepper spray, police radio, a Taser, a tourniquet, a flashlight, a baton, and handcuffs. Corporal Alvarado wore a lapel microphone attached to his uniform near his chest for communications with police dispatch. Corporal Alvarado's handgun was a 9 mm Glock 17 and held 17 rounds in the magazine and one round in the chamber. A stream light tactical light was attached to the front bottom of Corporal Alvarado's handgun. Corporal Alvarado's body-worn camera was activated shortly after the incident.

At approximately 11:53 p.m., Corporal Alvarado and Officer Escobar were heading northbound on Mountain Avenue toward 4th Street in the city of Ontario. Officer Escobar was about to drive into the westbound turn lane to head west on 4th Street when Corporal Alvarado saw another Ontario Police Department unit (later found to be driven by Officer Andres Varela) stopped in the number one lane at the intersection of Mountain Avenue and 4th Street for a red light. As Officer Escobar drove into the turn lane, Corporal Alvarado saw a red compact sedan in the number one lane coming up behind Officer Varela's unit. Corporal Alvarado looked over at the red sedan and made eye contact with the driver (later found to be Joseph Benavente). Benavente gave Corporal Alvarado a "deer in the headlight look." To Corporal Alvarado, when Benavente saw him, it was clear

¹ Herein is a summary only. All reports of officer statements made were reviewed, though not all are referenced here.

² The officers herein were equipped with Axon body-worn cameras. The camera system turns on when the operator activates the camera. When the camera is activated, the previous 30 seconds of video are included but without any audio.

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Benavente did not want to be there. Benavente “took some evasive actions, that he’s going to get out of there and pretty much anywhere we weren’t going to go, that’s where he was going to go.” At that moment, instead of stopping behind Officer Varela’s unit, Benavente cut over into the number two lane, ran the red light, and headed eastbound on 4th Street.

Upon seeing Benavente run the red light, Corporal Alvarado told Officer Escobar to pull up to Officer Varela. Corporal Alvarado rolled his window down, and as Officer Varela began to roll down his window, Corporal Alvarado told him, “Hey, that red car that’s going eastbound, that’s a good stop.” Officer Varela³ replied, “Alright,” and began to drive into the number two lane to head eastbound on 4th Street after the red sedan. The traffic light was still red, but as Officer Varela began moving into the number two lane, the light turned green. Another vehicle was approaching the intersection in the number two lane and Corporal Alvarado alerted Officer Varela. Officer Varela stopped as the other vehicle stopped and honked its horn. Officer Varela then followed after Benavente’s vehicle. Corporal Alvarado told Officer Escobar to follow Officer Varela.

As they headed eastbound on 4th Street from Mountain Avenue, Officer Varela called out the traffic stop to dispatch. Officer Varela’s emergency lights were activated to initiate the traffic stop. Over the radio, dispatch assigned another unit to back Officer Varela. Officer Escobar had the police radio in his hand, waiting on dispatch to finish so he could tell them they were with Officer Varela. At the same time, they were heading eastbound on 4th Street, passing Boulder Avenue and Corporal Alvarado saw Benavente was not stopping. Corporal Alvarado told Officer Escobar that it didn’t look like Benavente was going to stop. Corporal Alvarado’s attention was drawn to Benavente’s car because instead of driving straight, the vehicle was “fidgeting,” as if Benavente was turning the steering wheel to the left and the right. Based on his training and experience, this driving pattern occurs when drivers reach for things in their back seat and cannot control their car. Corporal Alvarado thought, “something’s not right with that car,” and believed that a pursuit was going to occur. Because Officer Escobar was new to the department and was not yet familiar with the city streets, Corporal Alvarado prepared to help Officer Escobar by telling him, “Hey, get ready to start calling this out.”

As they approached San Antonio Avenue, Corporal Alvarado could see Officer Varela still following behind Benavente’s vehicle which was still heading eastbound on 4th Street. Benavente ran the stop sign at the intersection of 4th Street and San Antonio Avenue and headed northbound on San Antonio Avenue. At that point, Corporal Alvarado knew they were going to be in pursuit. When Benavente took off, Corporal Alvarado thought, “okay, he accomplished whatever he needed to do in that car: grabbed a gun, started to get rid of stuff.” Corporal Alvarado thought Benavente might roll down his window and start throwing drugs out of the window.

³ Officer Varela did not see Benavente run the red light but did see Benavente’s vehicle had window tint in violation of Vehicle Code section 26708 (a)(1). See the summary of Officer Varela’s interview for additional details.

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Corporal Alvarado activated the patrol unit's overhead emergency lights and then briefly activated and deactivated the police unit's siren. The officers pursued Benavente as he drove through residential areas at speeds between 50 to 70 miles per hour. As the pursuit continued northbound on San Antonio Avenue, Officer Escobar began calling out the pursuit over the radio, providing the direction of travel, the speed, and road conditions. Corporal Alvarado assisted Officer Escobar by letting him know which streets were coming up so Officer Escobar could call out the streets to dispatch. As Benavente continued northbound on San Antonio Avenue, he failed to stop at any of the stop signs. The traffic was light because of the time of day, but when Benavente ran a stop sign at either 5th or 6th Street, he nearly collided with a large grey truck. When Benavente passed 6th Street, he began jerking his vehicle side to side again. Benavente sped up and continued north on San Antonio Avenue.

When Benavente got to the north side of the I-10 freeway bridge, he stopped along the east curb line. Corporal Alvarado believed Benavente was either going to give up or run from the officers on foot. Officer Varela stopped his patrol unit behind Benavente's car. Corporal Alvarado and Officer Escobar were still approaching and were too far behind to help Officer Varela so Corporal Alvarado told Officer Escobar to speed up. As they reached Officer Varela's vehicle, Corporal Alvarado could see that Officer Varela had not yet gotten out of his unit. Benavente then made a U-turn and headed southbound on San Antonio Avenue. The area was well lit by streetlights. Benavente's vehicle had medium window tint, but as Benavente drove past their unit, Corporal Alvarado was able to see through the windshield that there were two occupants in Benavente's car. Corporal Alvarado saw the driver (Benavente) was a male Hispanic in his late twenties, early thirties with visible tattoos or "something" on his face. Corporal Alvarado knew Benavente saw both of their patrol units and "there was no missing our lights and sirens." Officer Varela made a U-turn and continued pursuing Benavente. Officer Escobar and Corporal Alvarado followed behind Officer Varela.

As they pursued Benavente southbound on San Antonio Avenue, Benavente sped up and then slammed on his brakes. Corporal Alvarado believed Benavente was trying to cause Officer Varela to slam into his car. Corporal Alvarado told Officer Escobar, "Hey, he's trying to get us to ram his car." Corporal Alvarado wanted Officer Escobar to call this out over the radio but was not sure if he did. Corporal Alvarado continued helping Officer Escobar by telling him their direction of travel and cross-streets so he could update dispatch. Benavente continued speeding up and slamming on his brakes in front of Officer Varela's patrol unit. At this point, Corporal Alvarado knew "this was going into a much more dangerous situation rather than him just trying to elude us because the action didn't happen just once. It happened multiple times." Corporal Alvarado estimated Benavente did this two or three more times and believed Benavente was using his car in an attempt to disable Officer Varela's patrol unit and to hurt Officer Varela.

Benavente quickly came to a stop at 6th Street and the reverse lights on his car illuminated. Corporal Alvarado believed Benavente was going to back his car into Officer

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Varela's unit. Instead, Benavente quickly speed off and headed eastbound on 6th Street, driving on the wrong side of the road, going eastbound in the westbound lanes at a high rate of speed. Officer Varela followed Benavente. Officer Escobar and Corporal Alvarado followed behind Officer Varela, but their patrol unit was still too far behind. Corporal Alvarado knew they needed to be closer to Officer Varela in order to provide him with any back-up assistance he might need. Benavente headed north on Beverly Court with Officer Varela behind him. Beverly Court was a dead-end cul-de-sac residential street. Benavente drove north on Beverly Court, past three or four houses north of 6th Street, and stopped facing north along the east curb line. As Officer Escobar and Corporal Alvarado turned north on Beverly Court, Corporal Alvarado saw Officer Varela's patrol unit stop behind Benavente's car. Officer Varela's vehicle was positioned as if he was setting up a felony traffic stop behind Benavente's car but offset with the passenger side of his patrol unit directly behind the driver's side of Benavente's car. There was "some distance" between Officer Varela's unit and the curb. Corporal Alvarado could not tell whether Benavente was giving up or if he was going to run from the officers on foot because he and Officer Escobar were still trying to catch up to Officer Varela and Benavente.

As Officer Escobar drove up to the scene, Corporal Alvarado began opening his door because he knew he needed to be able to get out of the car quickly in order to assist Officer Varela in any way that he needed. Corporal Alvarado was concerned Benavente had been reaching for a weapon when his car had made "fidgeting movements." In addition, because Benavente had driven "like a mad man" and had attempted to get Officer Varela to slam into his car, Corporal Alvarado believed Benavente was "trying to close the gap" to attack or ambush Officer Varela.

Officer Escobar stopped their patrol unit and Corporal Alvarado got out. Their patrol unit was about two car length's away from Officer Varela's unit, offset so their passenger side was directly behind the driver's side of Officer Varela's unit. Corporal Alvarado was standing just outside the car near the still open passenger door when he saw the reverse lights on Benavente's car illuminate. Benavente "put the thing in reverse and just slammed on the gas." Benavente's car accelerated backward in a southbound direction at a high rate of speed and crashed into Officer Varela's patrol unit. Benavente's car continued backing past Officer Varela's unit. Benavente did not stop, nor did he slow down as he turned his vehicle westward and continued in a southwest direction straight toward Corporal Alvarado and Officer Escobar's patrol vehicle. Corporal Alvarado had no doubt Benavente was intentionally trying to hit either their patrol unit or him. Corporal Alvarado was standing at the door frame, in the "V" between the right front passenger door and the patrol unit as Benavente's car headed straight toward them. Corporal Alvarado heard Officer Escobar yell, "Oh shit." Corporal Alvarado knew Benavente's car was going to hit their unit and that he was going to be smashed by Benavente's car. Corporal Alvarado couldn't reposition or run away because doing so would have put him in an "even worse position" where he would have been run over by Benavente's car. Corporal Alvarado heard the impact of the crash as the rear driver's side of Benavente's

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car struck the front passenger side of their unit and continued running along the passenger side, heading straight for Corporal Alvarado. Corporal Alvarado recalled:

“I remember the car hitting. I’m standing in between the passenger door and the car, and I, that’s when I was like, I’m gonna get smashed by this car, this like, that’s when everything went not good. I was like I’m going to get ran over by this car right now because I’m out, I’m standing outside of it and his car’s hitting our police car. I can hear the sounds, I can see, you hear the impact of the crash and then when he hits my car, that’s when I’m thinking, okay, the, the, his car’s going to crush my passenger door and I’m going to get crushed in between the door and my police car.”

Corporal Alvarado realized he had nowhere to go and believed he was going to “get killed or seriously injured.” It happened so fast that Corporal Alvarado had no time to yell any commands to Benavente. As the rear driver’s side of Benavente’s vehicle was “running along-side” the passenger side of their patrol unit, heading directly toward Corporal Alvarado, Corporal Alvarado discharged his handgun, aiming for Benavente through Benavente’s “back driver’s door.” Corporal Alvarado estimated Benavente’s car was three to four feet away from him when he fired his first round. As Corporal Alvarado fired, Benavente continued reversing until his driver’s door window was right next to and “within hands reach” of Corporal Alvarado. At this point, Corporal Alvarado believed he was “getting crushed by the car.” Corporal Alvarado stopped firing when Benavente’s driver’s door was right next to him. Corporal Alvarado estimated Benavente’s car was one to two feet away from him when he fired his last round. Corporal Alvarado believed he fired three to four rounds in total.

Corporal Alvarado kept his eye on Benavente, who was “slumped over,” and Benavente’s vehicle started going forward, rolling away from Corporal Alvarado. Corporal Alvarado quickly looked down at his own legs because he was “worried about his legs.” Benavente’s vehicle rolled forward and hit a tree. Corporal Alvarado began approaching the car and giving commands to the occupants. Officer Vasquez-Lopez was on the passenger side of Benavente’s car. Because of what Benavente had just done, Corporal Alvarado realized their position near Benavente’s car was not safe. Corporal Alvarado didn’t believe they should use Benavente’s car for cover or concealment because that was Benavente’s “weapon of choice.” Corporal Alvarado was concerned Benavente was waiting to ambush the officers and that when they approached, Benavente would put the car back into reverse and take “everybody out.” Corporal Alvarado told Officer Vasquez-Lopez they needed to get back to their patrol units until they figured out what was going on. As they retreated to their patrol units, additional officers began arriving on scene.

They needed to determine whether Benavente needed help and who the passenger of the vehicle was. Corporal Alvarado started coordinating with the other officers to give commands to get the passenger out of the car. Corporal Alvarado believed the commands to her were, “If you want help, you need to come out of the car.” The passenger got out

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of the car and yelled, "His mom's on the phone." Corporal Alvarado could hear a female voice yelling over the Bluetooth in Benavente's car. Corporal Alvarado assigned Officer Vasquez-Lopez to take the female passenger into custody. The female passenger was placed into a patrol car. Corporal Alvarado had additional officers on scene set up on the driver's side of his patrol unit where they could use the engine block for coverage. Corporal Alvarado had everyone move back from his patrol unit so they would have some distance in case Benavente rammed their patrol vehicle again. The engine of Benavente's car "started accelerating" and the tires were burning as the car was pinned against a tree. Corporal Alvarado did not know if Benavente was going to reverse his car into their patrol units again or if he would try to take off. Corporal Alvarado believed Benavente must have taken his foot off the gas pedal or that something happened to make the vehicle's engine stop accelerating and the tires stop spinning. Corporal Alvarado directed Officer Escobar to start giving commands to Benavente. Corporal Alvarado asked Officer Vasquez-Lopez to call for the fire department and to have them staged nearby.

As Corporal Alvarado and the other officers set up a team to approach Benavente to take him into custody, Corporal Alvarado told Officer Acosta to ask the female if Benavente had any weapons. Officer Acosta did so and said that Benavente reportedly had no weapons. Because Benavente was not responding to any of their commands, Corporal Alvarado believed Benavente had been shot. Corporal Alvarado decided they needed to get up to the car to take Benavente into custody and get him medical attention. They approached the driver's side of Benavente's car, got him out of the car, made sure he had no weapons, and placed him into handcuffs. Corporal Alvarado then started making sure the integrity of the crime scene stayed in place by making sure the officers were not walking around on everything.

Corporal Alvarado was in shock and was scared. Corporal Alvarado said, "I kept grabbing my pants and I kept checking my legs because I thought I was going to, I thought I was crushed, and I just didn't realize it yet. I thought the adrenaline got the best of me and I was still going through it. So, I remember I kept grabbing my, both my legs and then I had to even go down to my, my, towards my boots and I was checking my legs and I was checking to see if there was any blood or anything." Sergeant Melendez arrived on scene after they had taken Benavente into custody and told Corporal Alvarado to stand down.

On February 25, 2021, at approximately 12:28 p.m., **Officer Alex Escobar** was interviewed by Detectives Patrick Woolweaver and Jeffrey Zeen of the Ontario Police Department.

Officer Escobar was employed as a police officer for the Ontario Police Department. On February 22, 2021, Officer Escobar was on duty and was assigned to patrol. Officer Escobar had been employed with the Ontario Police Department for approximately one month after having worked as a police officer for the Huntington Park Police Department from 1998 to 2021. Officer Escobar's call sign was Victor 8. Officer Escobar drove a marked black and white police Ford Explorer, unit number 1024, equipped with

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emergency lights and sirens. Officer Escobar's partner, Corporal Alvarado, rode as a passenger in the patrol unit. Officer Escobar's duty belt was equipped with his handgun, pepper spray, police radio, a Taser, a flashlight, a baton, and handcuffs. Officer Escobar wore a radio earpiece in his right ear for communications with police dispatch. Officer Escobar's body-worn camera was attached to his shirt in the center of his chest and was activated during the incident.

At approximately 11:55 p.m., Officer Escobar and Corporal Alvarado were at Mountain Avenue and 4th Street and stopped at a red light when they observed a red car traveling north on Mountain Avenue. Officer Escobar noticed the red car had tinted windows in violation of the vehicle code. Coincidentally, Officer Varela⁴ was also stopped at the intersection. Officer Escobar was waiting to turn left on 4th Street while Officer Varela was waiting to go straight on Mountain Avenue. The red vehicle turned east on 4th Street. Officer Varela turned east, following the red vehicle, and Officer Escobar followed Officer Varela. Officer Varela initiated a traffic stop on the red car and radioed to dispatch the vehicle's license plate number and the location, but the car failed to stop. Officer Varela activated his patrol unit's overhead lights and siren, but instead of pulling over, the car increased its speed.

Officer Escobar realized the car would not stop, and they would be involved in a pursuit. Over the radio, Officer Escobar told dispatch they had a failure to yield and provided their direction of travel. Officer Varela was the lead officer in the pursuit. Officer Escobar was the secondary unit and was assigned radio broadcast, providing direction of travel and other pertinent information during the pursuit. Officer Escobar activated his unit's overhead emergency lights and believed Corporal Alvarado activated the siren. As the pursuit began, Officer Escobar noted the time of night, that there was no traffic on the street, and the road conditions were dry. The red car accelerated to about 50 to 60 miles per hour. Officer Escobar kept seeing the "vehicle turning on its brake lights and kind of swerving on the roadway, which was kind of odd for me because in, from my training and experience, usually that's done when there's a lot of traffic to swerve and avoid. But there was no, no traffic at all." Officer Escobar began to think the driver was desperate and wanted to get away. As they continued on 4th Street, the first major intersection was at San Antonio Avenue. The driver of the red car turned northbound on San Antonio Avenue and continued to speed away, driving recklessly, swerving, and hitting the brakes.

When the red vehicle reached the I-10 freeway, it suddenly pulled over to the right on the east curb line. Believing the driver was going to stop and surrender, Officer Escobar began to position his patrol unit as the secondary unit for a high-risk traffic stop. The driver of the red car then made "an abrupt sudden U-turn in front of the east curb line," went across into the southbound lanes," and started heading south on San Antonio Avenue away from the officers. Although this surprised Officer Escobar, it also verified what he had already been thinking, that the driver was "desperate," or was "playing with us," or "he just wants to get away." Officer Varela made a U-turn and followed the red car. Officer

⁴ Officer Escobar referred to Officer Varela as Officer Valera during the interview.

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Escobar followed, maintaining his secondary position, and continued to call out the pursuit to dispatch. The driver of the red vehicle continued driving recklessly, speeding, weaving, running stop signs and red lights, and occasionally hitting the brakes.⁵ There was still no traffic on the road.

When the vehicle got to 6th Street, it turned eastbound and accelerated away from the officers. Officer Escobar maintained a visual on the car and saw it driving on the wrong side of the road. The vehicle then headed northbound on Beverly Court. Officer Escobar was unfamiliar with the city, so he did not know Beverly Court was a cul-de-sac or a dead-end street. Officer Varela turned north on Beverly court, and Officer Escobar followed. When Officer Escobar turned onto Beverly Court, he saw the red vehicle swerve to the left, driving north in the southbound lane and then to the right back into the northbound lane, before stopping abruptly. When the red car stopped, Officer Escobar thought the driver had nowhere to go. Still, because the driver was driving so desperately, Officer Escobar thought the driver was going “to try to either hit one of the lawns and try to get into a lawn and make a U-turn.” Officer Escobar stopped behind Officer Varela’s patrol unit, trying to set up an “L stop position as a secondary unit, to the left of Officer Varela.” Officer Escobar had not yet put his unit into park when the red car’s reverse lights illuminated, and the car started accelerating backward straight toward Officer Varela’s patrol unit. The red car hit the right passenger side of Officer Varela’s vehicle. This shocked Officer Escobar. Officer Escobar realized the driver wanted to hurt the officers and that he would do anything to get away. Officer Escobar feared for Officer Varela’s safety.

After crashing into Officer Varela’s unit, Officer Escobar saw the red car heading straight for his patrol unit “even faster, accelerating faster.” Officer Escobar was initially in “disbelief,” and then he was “scared and afraid for the officers” as well as himself because the driver’s “desperation mode turned now into violence.” Both Officer Varela’s and Officer Escobar’s patrol units had their overhead emergency lights and sirens activated, so the driver “must have known” there were police cars behind him. Officer Escobar explained, “The vehicle kept accelerating toward my unit, and it happened so fast. I was like, he’s going to hit us; he intentionally wants to hit us, to get away, to hurt us.” The red car initially traveled straight back southbound, but then it turned in a westerly direction and “just intentionally hit our car.” Right before impact, Officer Escobar “grabbed the steering wheel hard with both” of his hands and turned the wheel to the left to avoid the collision, but he didn’t have enough time. The red car struck their patrol unit’s right front fender, and Officer Escobar felt their unit get pushed back and to the left.

Right before the car hit their patrol unit, Officer Escobar saw Corporal Alvarado in his peripheral vision opening the passenger door of the patrol unit “almost like if we were going to get out to like, he was going to run” or he was going to “go in some type of foot chase, and once I heard the door open and the car hit us, I thought honestly he got hit or

⁵ Because he was new to the city and unfamiliar with the street names, Officer Escobar was unable to provide the names of the intersections where the traffic violations occurred.

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he was going to get hit by the car that was coming at us.” Officer Escobar felt “hopeless, helpless in a sense because he [Corporal Alvarado] was outside” of the patrol unit when the red car “almost simultaneously” struck the right front fender of their patrol unit.

The red car didn’t stop and instead continued to accelerate. Officer Escobar heard the engine “revving up” and the car “still moving backwards” toward Corporal Alvarado’s open passenger door. Officer Escobar believed Corporal Alvarado was either partially or entirely outside the patrol unit, standing between the door frame and the passenger door. Officer Escobar thought, “Oh shit, he’s [Corporal Alvarado] going to get hurt or hit by the car.” “Almost simultaneously,” Officer Escobar heard two or three gunshots. Officer Escobar “knew it was Corporal Alvarado” who had shot because “it came from that side where he [Corporal Alvarado] was at.” Officer Escobar was scared that Corporal Alvarado had gotten hit by the car, and the shots had been fired because of that. Officer Escobar didn’t know if Corporal Alvarado had gotten hit by the car and was trapped in between the red vehicle and the police unit, or if he was down on the ground. Officer Escobar put his vehicle into park and immediately got out and ran toward the back of his unit to check on Corporal Alvarado.

When Officer Escobar reached the other side of his unit, he saw Corporal Alvarado was not down on the ground and was standing “at a distance.” The red car was moving forward slowly. Officer Escobar saw Officer Kevin Vasquez-Lopez had arrived at the scene and did not know whether the car had hit him.⁶ Additional officers began arriving on scene. The officers started yelling commands to the driver, telling him, “Let me see your hands.” The red car’s engine was still revving, and then the vehicle came to a stop at the east curb in front of a tree. As the officers continued yelling commands, Officer Escobar saw a female passenger in the front passenger seat of the car screaming. Officer Escobar knew shots had been fired at the vehicle based on what he had heard and because the vehicle’s driver’s side window was shattered. Officer Escobar saw the driver slumped forward in his seat, not moving. Officer Escobar heard someone yell, “He’s still moving, he’s still moving.” Officer Escobar was concerned the driver could be reaching for a weapon or something to use against the officers. Officer Escobar explained, “he just rammed our police cars, and he’s that desperate, and his car is disabled; he might be willing to use a weapon to, to attack us.” Officer Escobar was “scared and worried” for his safety and that of the other officers present.

Corporal Alvarado redirected the team of officers to redeploy to the back of their patrol unit, number 1024, to move away from the red car. While behind their patrol unit, Officer Escobar watched the red car as its “tires started to burn” and “white smoke” began to emanate from the red car. Officer Escobar explained that it was “almost like the gas was still being hit. He was making, in my opinion, it looked like he was still making an effort to, to leave, which means it was really bad because we just, shots were fired into the car and he still wants to leave.” Once the car tires stopped rotating, the female passenger opened

⁶ During Officer Vasquez-Lopez’s interview, he reported that his patrol unit was struck by Benavente’s car. Body-worn camera video and physical evidence gathered during the crime scene investigation confirmed this.

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the car door. Officer Escobar did not know if she had been the victim of domestic violence and the driver was her boyfriend. Officer Escobar's goal was to get her out of there in order to avoid a hostage situation. Officer Escobar yelled to the female passenger, telling her to get out of the car. Officer Escobar told her they would help get the driver out of the car. The female passenger got out of the car, they gave her verbal commands to walk backward toward them, and she complied. Officer Vasquez-Lopez placed her into handcuffs and put her in the back of a police car.

Corporal Alvarado set up an arrest team and ensured the fire department was staged nearby. The arrest team approached the red vehicle from the rear to get the driver out and to provide medical aid. When they reached the back of the car, the officers broke off, and Officer Escobar approached the driver's side. As he passed the driver's door, Officer Escobar saw the driver (later identified as Benavente) had a bullet hole in the left side of his neck and that there was "a lot of blood on the driver's side floorboard and seat." Benavente was not moving; to Officer Escobar, it looked like Benavente had died. Officer Vasquez-Lopez used his rescue knife to cut the seatbelt and took Benavente out of the vehicle with the assistance of other officers. Benavente was placed onto the roadway face down, handcuffed, searched for weapons, and then turned over face up. Once Benavente was taken out of the vehicle, Corporal Alvarado told the fire department they were clear to approach along on the west side of the crime scene to render aid to Benavente.

On February 25, 2021, at approximately 2:33 p.m., **Officer Andres Varela** was interviewed by Detectives Jeff Zeen and Shahrouz Sadeghian of the Ontario Police Department.

Officer Varela was employed as a police officer for the Ontario Police Department. On February 22, 2021, Officer Varela was on duty and assigned to graveyard patrol from 9:00 p.m. until 7:00 a.m. Officer Varela's call sign was Paul 311. Officer Varela drove a marked black and white police Ford Explorer equipped with emergency lights and sirens.⁷ Officer Varela's duty belt was equipped with his handgun, pepper spray, police radio, a Taser, a flashlight, a baton, and handcuffs. Officer Varela wore a radio earpiece in his left ear for communications with police dispatch. Officer Varela's body-worn camera was attached to his belt, just to the left of the belt buckle, and was activated during the incident.

At approximately 11:55 p.m., Officer Varela was in the number one lane of Mountain Avenue and stopped at a red light at the intersection of Mountain Avenue and 4th Street. Corporal Alvarado and Officer Escobar pulled up in the turning lane to the left of Officer Varela. Officer Varela believed Officer Escobar was driving the patrol unit because Corporal Alvarado was training him. Corporal Alvarado and Officer Escobar were in one unit; their call sign was Victor 8. Officer Varela saw a red car pass by his patrol unit in the number two lane and then make a right turn onto 4th Street, heading eastbound. Officer Varela noticed that the red vehicle had tinted windows in violation of the law. Officer Varela made a right turn on 4th Street behind the red car and activated his patrol unit's

⁷ Officer Varela's patrol unit number was 1849.

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forward-facing red light to initiate a traffic stop. Officer Varela called out the traffic stop to dispatch and provided them with the vehicle's license plate number. The red vehicle was driving at a "normal speed."

As they approached San Antonio Avenue, the red car swerved and then proceeded northbound on San Antonio Avenue, failing to stop at the stop sign. The red car continued northbound on San Antonio Avenue, running multiple stop signs along the way. Officer Varela activated his patrol unit's emergency lights and sirens. The general traffic conditions were light as it was late at night; however, while driving north on San Antonio Avenue between 4th and 6th Street, the red car almost crashed into another vehicle that was heading westbound through the intersection. The driver in the other vehicle had to slam on its brakes to avoid the collision with the red car. Office Varela grew concerned because now it seemed like "something was bigger than just a minor vehicle violation." The red car continued heading north on San Antonio Avenue, swerving in and out of lanes and running another stop sign. Officer Varela believed the driver in the red car was trying to misdirect him by making it seem like he might make a left turn, a right turn, or continue straight. When the red car got to the I-10 freeway overpass, it appeared to pull over to the right. Officer Varela turned on his patrol unit's spotlight, preparing for a high-risk traffic stop, but the car suddenly made a U-turn. When the car made the U-turn, Officer Varela could see the driver of the vehicle because his spotlight was still activated and shined right through the windshield. The driver (later identified as Benavente) appeared Hispanic or white with tattoos on his face. When Officer Varela saw Benavente's face had tattoos, he thought Benavente might be a gang member. Based on his training and experience, Officer Varela knew gang members often had such tattoos, and that gang members often carried guns. Officer Varela did not know if Benavente was a gang member, but he perceived this as "a threat" and realized it would not be safe to approach this as a "normal traffic stop at this point." Additionally, Officer Varela felt a little uneasy about the pursuit because in his experience, people do not typically run from a simple vehicle code violation.

Officer Varela made a U-turn and followed Benavente's car south on San Antonio Avenue. Victor 8 also made a U-turn and followed behind Officer Varela. Benavente drove at a high rate of speed and ran a stop sign at 6th Street. Benavente headed east on 6th Street, driving on the wrong side of the road. Sixth Street was in a two-lane residential area, and Benavente was driving around "like it was a racetrack." Benavente then made a left turn going northbound on Beverly Court. Officer Varela turned left on Beverly Court and realized the street was a dead-end. At that point, Officer Varela knew Benavente was "not going anywhere else," and anticipated Benavente would have to make a U-turn. Benavente's car slowed down and abruptly stopped on Beverly Court. Officer Varela slowed down and stopped directly behind Benavente's car, approximately 15 to 20 feet away. Believing Benavente was going to get out of his vehicle, Officer Varela turned on his spotlight and prepared to get out when suddenly, Benavente put his car into reverse, stepped on the gas, and headed straight for Officer Varela's patrol unit. It was a short distance, and Benavente "picked up pretty good speed," so it seemed like Benavente

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“slammed on the gas.” The rear driver’s side bumper and fender of Benavente’s car rammed into Officer Varela’s patrol unit, striking the front passenger side near the headlight and front fender of his patrol unit. Officer Varela could not see into Benavente’s vehicle because its windows were tinted. Officer Varela explained, “I’m scared at this point because, well, why is he trying to intentionally ram my vehicle? It just doesn’t make sense. If you’re trying to flee from somebody, that’s fine, but now you’re trying to actually hurt me. So that didn’t, didn’t put a good feeling into my stomach.” Officer Varela believed Benavente intentionally crashed into him because “he had every opportunity to make a U-turn.”

Benavente continued reversing along the passenger side of Officer Varela’s unit. When Benavente backed beside his patrol unit and was for “that split second parallel” to him, Officer Varela could not see inside Benavente’s car. Officer Varela was afraid Benavente might have a gun and that he would shoot him. Benavente had run from officers at high speeds, had driven in opposite lanes, had put his vehicle into reverse, and had intentionally rammed into his vehicle, trying to disable his car and hurt him. After Benavente reversed past his patrol unit, Officer Varela heard another crash. When Officer Varela heard the second crash, he believed Benavente struck Victor 8’s patrol unit because it had been behind him. Officer Varela then heard two pops that sounded like fireworks. Officer Varela was unsure if that sound was from the vehicle collision, the sound of airbags deploying, or if Benavente was shooting a gun. Benavente was behind him, and he could no longer see Benavente’s vehicle. Not knowing what was happening, Officer Varela made a U-turn to “get out of the situation” and so he could continue pursuing Benavente if Benavente had been able to “ram” into his partners and “get away.” Officer Varela was not sure if Benavente was still trying to flee, but when Officer Varela made the U-turn, he saw Benavente’s car was disabled onto the east curb line of Beverly Court with its front tires spinning.

Officer Varela stopped his unit facing southeast on Beverly Court, north of and facing toward the front end of Benavente’s vehicle. Officer Varela stepped out and saw the front driver’s side window of Benavente’s car was possibly shattered. Officer Varela heard a female screaming. Officer Varela then saw Benavente’s window was still intact, with two holes in it, and he realized someone had shot or thrown something. Officer Varela thought, “Did he shoot, did, did, were my partners injured?” Officer Varela was concerned for the safety of his partners. Officer Varela drew his handgun as he went around the rear of his patrol unit to the passenger side. Officer Varela opened his passenger side door to “get covered” and pointed his duty weapon at Benavente’s driver’s side door. Officer Varela heard Corporal Alvarado and Officer Escobar giving commands.

From his position, Officer Varela’s only point of view was through the driver’s side window of Benavente’s car. Benavente’s driver’s door was closed, the driver’s window was up, and because the window was tinted and cracked, it was difficult to see inside. Officer Varela could see Benavente’s shadowy figure inside, and it appeared he was hunched over or slumped over in the driver’s seat. Officer Varela let Corporal Alvarado and Officer

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Escobar know he was “not seeing any movement in the driver’s side” and that it looked “like he’s slumped over, like he’s hunched over.” Officer Varela saw a lot of movement in the front passenger seat of Benavente’s car where a female was screaming. The officers told the female passenger, “Hey, you need to come out. Come out to us so we can help you.” The female came out of the car, still screaming. An unknown officer took the female away from the scene. Officer Escobar continued giving commands, telling Benavente, “Driver, put your hands up in the air so we can provide medical attention,” and, “Hey, put your hands up so we can come help you. If you can’t do that, move your head.” Benavente did not move. Officer Varela did not know if Benavente had gotten shot or if he was “playing possum” or playing up the part to lure the officers in while he reached for a gun.

Additional officers arrived, and Officer Varela heard them making plans for an arrest team to approach Benavente’s vehicle. While the officers coordinated the arrest team, Officer Varela kept his gun pointed at Benavente’s driver’s door in case Benavente came out with a gun and started shooting at the officers. Officer Varela heard Corporal Alvarado making sure an officer continued giving commands. Officer Varela heard Officer Escobar get on the public address system and address Benavente by name saying, “Joseph, we need to give you help. We’re trying to give you help. Put your hands up in the air. If you can’t do that, move your head side to side.” Officer Varela still saw no movement. Officer Varela heard an officer call over the radio for medical aid to be staged near the scene. A couple of minutes passed, and the officers approached the vehicle to clear it and give medical attention to Benavente. Officer Varela had his spotlight on Benavente’s front driver’s window and pulled it down after the officers pulled Benavente from the vehicle and placed him into handcuffs.

Officer Varela heard the other officers asking each other if they were okay. Because the officers were all okay, Officer Varela assumed it had been their officers who had discharged a firearm; however, he did not know which officer or officers had fired. Officer Varela’s back was injured during the collision, and he received emergency medical treatment for the injury.

STATEMENTS BY CIVILIAN WITNESSES⁸

On February 23, 2021, **Witness #1 and Witness #2** were interviewed by Officer Benjamin Myers of the Ontario Police Department.

Witness #1 and Witness #2 lived at a residence on the 1500 block of North Beverly Court in Ontario. On February 22, 2021, before the incident under review, both were sleeping in their bedroom when they were awoken. Witness #1 heard a loud crash, followed by two loud bangs which he believed were gunshots. Witness #2 heard “alarms,” followed by a crash and two “pops” which she believed were gunshots. Their bedroom was located on the northeast corner of the house and faced Beverly Court. Their Ring camera faced the scene, but the camera only showed live-feed video and did not record.

⁸ All reports of civilian statements made were reviewed, though not all are summarized here.

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On February 23, 2021, at approximately 12:54 p.m., **Witness #3** was interviewed by Detective Eric Quinones of the Ontario Police Department.

Witness #3 lived at a residence on the 1500 block North Beverly Court in Ontario on February 22, 2021. In the evening hours, Witness #3 was awoken by his dog. Witness #3 looked out of his bedroom and saw officers with guns pointed at a red Hyundai. Witness #3's bedroom window was the furthest window on the southeast portion of the house and faced Beverly Court. Witness #3 watched the incident unfold, moving to the living room at some point, where he watched the incident from the window there. The living room window faced Beverly Court and was on the northeast portion of the house.

Witness #3 watched as a female passenger walked back to the officers from the red Hyundai. After the female was secured, Witness #3 heard an officer over a PA system say, "Raise your hands." Witness #3 then listened to the officer announce over the PA, "Joseph, if you're injured, move your head and we'll get you some help." According to Witness #3, the driver of the red Hyundai did not respond. Witness #3 watched the officers approach the vehicle a couple minutes later. Witness #3 assumed the driver was sitting in the driver's seat, but he could not see for sure. Witness #3 advised there were some vehicles partially blocking his view of the scene. Witness #3 saw officers pull the driver out of the vehicle, lay him on the ground, and handcuff him. After that, the officers began "controlling the scene," and contacting people around the neighborhood.

On February 23, 2021, **Witness #4** was interviewed by Detective Eric Quinones of the Ontario Police Department.

On February 22, 2021, Witness #4 lived at a residence on the 1500 block North Beverly Court in Ontario. Witness #4 was inside his bedroom playing video games. Witness #4's bedroom faced Beverly Court and was the third window on the northeast side of the house. At approximately 12:05 a.m., Witness #4 heard tires squealing, saw flashing lights from police cars, and heard four or five gunshots. Witness #4 went outside onto the driveway of his house. Witness #4 heard an officer tell the driver of a red car, "Tell us if you need help." Witness #4 saw the officers approach the red vehicle and pull a subject out of the car.

On February 23, 2021, **Witness #5** was interviewed by Detectives Clinton and Marszalek of the Ontario Police Department.

Witness #5 lived with Benavente's mother, Witness #6, at an apartment in Ontario. Witness #5 had known Witness #6 for approximately one year. Witness #5 had only known Benavente for a few months and had just recently started hanging out with him.⁹

⁹ Witness #5 was in the front passenger seat during the pursuit and at the time of the officer-involved shooting. Witness #5 was taken into custody at the conclusion of the pursuit for an outstanding warrant and transported to the Ontario Police Department.

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Witness #5 knew Benavente had gotten out of jail in Las Vegas about a week prior to February 22, 2021 after he had been arrested on a warrant there. Witness #5 had been trying to help Benavente calm down because he had been "acting a little mental." Witness #5 knew that Benavente had personal issues "dealing with his mother" and with having been incarcerated.

On February 22, 2022, Witness #5, Benavente, and Witness #6 were at Witness #6's home in Ontario. Witness #5 wanted to go pick up a friend who was in Fontana. Benavente agreed to give her a ride to her friend's house. Before they left, Witness #6 told Witness #5, "Take care of him," referring to Benavente. Witness #5 told Witness #6 she would. Witness #5 and Benavente left in his car. Instead of driving to Mountain Avenue, which was the nearest major street, Benavente drove away from Mountain Avenue. Witness #5 was not familiar with the streets Benavente took, but they eventually made their way back to Mountain Avenue near an O'Reilly's Auto Parts Store.¹⁰

Witness #5 and Benavente were stopped at a light when a police car drove past them going northbound on Mountain Avenue. When the light turned green, Benavente drove northbound on Mountain Avenue as well. They came to a stop at a red light and were stopped right next to a police car. Witness #5 did not want to look over at the police car because Benavente was not wearing a shirt and he had tattoos. Witness #5 pointed out the police car to Benavente, but he did not appear to be phased or nervous by it. Benavente was talking to Witness #5 and then made a turn onto an unknown street. Witness #5 asked him why he turned, and he said he didn't know, that "the light took too long, and here come the cops." Benavente used the mirrors to look behind him at the police car and told Witness #5 he was not going to stop. Witness #5 looked in the mirror and saw the police car behind them with the emergency lights on. Witness #5 could not remember if she heard a siren at that point. Benavente said he was "serious," and he was not going to stop. Witness #5 was nervous because he wouldn't stop, and she did not want it to turn out the way it did. Witness #5 did not know why Benavente would not stop. She believed he might have had a warrant but was unsure.

Witness #5 did not want to scream or say anything to Benavente while this was happening but didn't know what to do. Witness #5 called Witness #6 on her cell phone and, using the speaker phone, told her Benavente was not stopping for the police car. Witness #6 started screaming and said to Benavente, "Why? Not with her in the car. What are you doing?" Benavente replied, "I'm not fucking stopping." Witness #5 did not say anything to Benavente because he was on the phone with Witness #6. As they continued to drive, Witness #6 asked Witness #5 what she wanted her to do. Witness #5 did not know what to do and felt like she had no control.

Witness #5 was not sure of the streets Benavente had taken during the pursuit but described one street as having small islands in the roadway. Witness #5 recalled Benavente making a U-turn one time during the pursuit and that when they made the U-

¹⁰ There was an O'Reilly's Auto Parts Store located on the southeast corner of Mountain Avenue and J Street.

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turn, Witness #5 saw there were two to three black and white police cars involved. Witness #5 did not recall if the police cars' sirens were activated.

When Benavente turned onto a street with a cul-de-sac, Witness #5 told him it was a dead-end. Benavente told Witness #5, "Oh yeah, watch this," and said that he was going to get away. Benavente started to turn but then stopped and looked towards the officers. Witness #5 was not sure what Benavente was planning to do but she imagined he was going to turn around and drive across the front lawns. Benavente then drove backward and hit one of the police cars. Witness #5 didn't think Benavente was going that fast because they had been at a stop, but he was going faster than someone would when backing out of a parking space.

Witness #5 described Benavente's driving during the pursuit as "weird, pausing, and hesitating." Witness #5 was not sure if Benavente was trying to figure out what to do or if he was just unfamiliar with the streets. When asked if she believed Benavente was driving dangerously, Benavente replied that she had her seatbelt on the entire time. Witness #5 believed Benavente's driving was only dangerous once they turned onto the dead-end street.

At the time of the collision, Witness #5 was looking at her phone. She did not see them collide into the police car, but she did feel the collision. The collision knocked her head backward and she felt pain in her legs. Witness #5 pointed out small red marks on the skin on her legs, caused by the collision, to the detective. Witness #5 was not sure how many police cars were behind them or how close they were. Witness #5 thought they were close because they had been right behind them during the pursuit. Witness #5 did not hear any commands given by the police prior to the collision. Witness #5 only heard the officers' voices after her car door was opened.

After the collision, Witness #5 looked over at Benavente and saw bullet holes in the driver's door window. Benavente's head was down and blood was squirting from his neck. Witness #5 believed Benavente was going to die because of the amount of blood. Witness #5 shook Benavente, but he did not respond in any way. Witness #6 was still on the phone and asked Witness #5 if Benavente was dead. Witness #5 told Witness #6 that she thought he was. Witness #5 did not hear any gunshots and did not realize any shots had been fired until she saw the holes in the window.

Witness #5 turned off the car's ignition because she saw the car was smoking. She did not put the car into park or remove the key from the ignition. Witness #5 was not sure what caused the smoke, but believed it was coming from the engine area. Witness #5 did not hear the wheels squealing. Witness #5 wanted to get out of the vehicle but could not tell what the officers were saying. Witness #5 opened the passenger door and got out with the cell phone still in her hand. Witness #5 wanted to tell the officers to help Benavente. The officers told her to get out so they could help him. Witness #5 followed

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their commands and walked backward toward the officers. The officers took the cell phone from her and put it in the back of one of the police cars.

Witness #5 thought the officers shot Benavente because she was “pretty sure he ran into them.” When asked if there was anything Benavente could have done to prevent the outcome, Witness #5 replied, “He should have stopped.” Witness #5 said if Benavente had pulled over, “he wouldn’t be dead.”

On February 23, 2021, at approximately 3:00 a.m., **Witness #6** was interviewed at her residence by Detectives Patrick Woolweaver and Eric Quinones of the Ontario Police Department.

Witness #6 was Benavente’s mother. On February 22, 2021, Witness #6 went to the scene of the officer-involved shooting on North Beverly Court after her daughter,¹¹ Witness #5, called and told her she and Benavente were involved in a high-speed pursuit and her son was driving. Officers at the scene told Witness #6 to return to her residence. Thereafter, Detective Woolweaver interviewed Witness #6 at her home. Witness #6 asked Detective Woolweaver if the person involved in the incident was her son. Detective Woolweaver advised that the investigators had not yet confirmed if the person was her son and explained that he was there to determine what she knew about the incident. Witness #6 provided Detective Woolweaver with her son’s information and identified her son as Joseph Benavente with a date of birth of 12/05/1997. Witness #6 believed that her son was currently living in a hotel. Witness #6 provided her son’s cell phone number.

Witness #6 said her son and daughter were going to Fontana and ended up in a high-speed chase. Witness #6’s daughter did not want to leave her son’s side, so she stayed with him. Witness #6 had not heard from her son since the phone call. Witness #6 identified her daughter as Witness #5. Witness #6 explained that her daughter called her phone and told her they were in a high-speed chase and that her son was driving. The phone was connected to the car during the pursuit, and she “heard a lot of things,” but she did not hear “gunfire.” Witness #6 heard officers telling her son, who they called by name, to put his hands out of the window on the loudspeaker. Detective Woolweaver asked Witness #6 what her daughter said during the phone call and Witness #6 said her daughter told her, “Mom, we’re in a high-speed chase.” When Detective Woolweaver asked Witness #6 if she heard her son say anything during the phone call, Witness #6 replied, “He was driving. He shouldn’t have been driving. He wouldn’t let her drive.” Witness #6 only heard her son make the sound of, “Phew.” Witness #6 did not remember her son saying anything. Witness #6 said her daughter was crying and could not remember anything else her daughter told her during the phone call. Witness #6 said her son should not have been driving because he was “under the influence” and was “in the middle of having a mental episode.”

¹¹ Witness #6 referred to Witness #5 as her daughter. However, according to Witness #5, she and Witness #6 were just friends and had only known each other for a year.

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Witness #6 said her son was under the influence of methamphetamine and possibly heroin. When Detective Woolweaver asked Witness #6 how she knew this, Witness #6 answered, "He told me." Witness #6 explained that her son had been at her house that day and "it was obvious he was on something," and that he told her that day. Witness #6 said her son had a "needle groove; he was all over the place." Witness #6 demonstrated what she meant by slowly waving her arms in a waving motion to show Detective Woolweaver how her son was moving. Witness #6 further explained, "He was like a slinky, and he was mumbling really bad." Witness #6 said, "It was apparent he was messed up on white, on speed, and there was speech patterns and other behavior patterns he was messed up on heroin as well." Witness #6 said she called her son out on his drug use, and he did not deny it.

Witness #6 said her son was not violent when he was under the influence of drugs, but he was "all over the place," and was "animated." Witness #6 said her son made sense when she spoke to him, but "he was emotional." Detective Woolweaver asked Witness #6 if she believed her son knew what was going on, and she replied, "No." Witness #6 thought her son knew who he was talking to when they spoke but that he was "stuck in his feelings." Detective Woolweaver asked Witness #6 if she knew why Benavente was emotional. Witness #6 answered that Benavente had recently gotten out of jail; he told her he was "feeling stretched thin because everybody wanted his attention, and he had had enough of it." Witness #6 advised that her son had spent 60 days in jail from a prior commitment for which he had not followed through. Witness #6 said her son had been in jail in Las Vegas and that he had been released six days earlier. Witness #6 said her son was on probation in San Bernardino County but did not know why he was on probation or who his probation officer was.

Witness #6 said her son has never been one to run from the police. When Detective Woolweaver asked if she believed he was capable of running from the police, Witness #6 nodded her head as if she was replying in the affirmative. Detective Woolweaver asked Witness #6 to clarify her response, and she replied that she didn't know what had happened. Detective Woolweaver asked Witness #6 what she believed caused the incident, and she replied, "He was under the influence of drugs."

INCIDENT AUDIO AND VIDEO

DISPATCH RECORDING / CALL HISTORY

In conjunction with the dispatch recording, the call history was also reviewed. The following is a summary of the general timeline of events.

| | |
|----------|--|
| 23:54:50 | Call created regarding traffic stop |
| 23:54:50 | License plate number entered |
| 23:54:50 | Location: W 4 th Street/N Boulder |
| 23:54:55 | Officer Vasquez-Lopez to backup Officer Varela |

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23:54:57 Officer Vasquez en route
23:55:32 "50 MPH LIGHT DRY"
23:55:52 "Till [sic] NB Passing La Deney"
23:56:06 "UTurn"
23:56:16 "SB San Ant 40 mph"
23:56:24 "EB 6th"
23:56:35 "Wrong side of the road – NB Beverly"
23:56:58 "Shots fired – veh stoped [sic]"

Officer Varela called out the initial traffic stop to dispatch, giving the location as 4th and Boulder, and providing the vehicle's license plate number.

Officer Escobar: "Victor 8. It's going to be failure pursuit. We're going to be northbound San Antonio from 4th." From this point forward, sirens were audible during the officers' radio transmissions.

Dispatch: Northbound San Antonio from number four.

Officer Escobar: "We're uh northbound. Few blocks from the uh (unintelligible) 50 miles per hour. Traffic conditions light and dry."

Dispatch: Ontario is code 777 for Victor 8. Northbound San Antonio from number four.

Officer Escobar: "Yeah, we're still on San Antonio, continuing northbound. Passing La Deney."

Dispatch: "La Deney. When you can, plate or description."

Officer Escobar: "Vehicle's going to be turning eastbound (unintelligible).

Dispatch: "Confirm eastbound where?"

Officer Escobar: "Okay, he's making a U-turn. We're going southbound San Antonio. Up the forty miles per hour."

Dispatch: "Forty miles per hour southbound San Antonio."

Officer Escobar: "We're going east on 6th."

Dispatch: "Eastbound number 6."

Officer Escobar: "We're on the wrong side of the road. Going northbound on Beverly. Two hundred block north."

Dispatch: "Northbound Beverly. When you can, a want and a description."

Corporal Alvarado: "Victor 8 shots fired. Victor 8 shots fired. Vehicle stopped.

Dispatch: "Copy shots fired. Number six and north Beverly."

Corporal Alvarado: "Vehicle's facing northbound. Driver is shot. Still moving. Start OFD¹²."

Dispatch: "Copy driver shot. Facing northbound. Affirm, we're starting them."

Corporal Alvarado: "Female still in the front passenger seat. Looks like the driver's still revving the engine. (Unintelligible) moving."

Dispatch: "Copy. Passenger seat."

Dispatch: "Officer status?"

Corporal Alvarado: "We're doing a high-risk traffic stop. Female passenger extracted.

¹² Ontario Fire Department.

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Male still inside the car.”
Dispatch: “I copy. Advise on officer injuries.”
Corporal Alvarado: “Code 4. Officers are okay. We’re doing a L-Stop¹³ on the vehicle.
Driver still seated inside.”

BODY-WORN CAMERA¹⁴

Corporal Alvarado’s Body-Worn Camera

As indicated in his interview, Corporal Alvarado activated his body-worn camera shortly after the officer-involved shooting. When the camera was activated, this was the first image captured.



An individual was briefly seen inside Benavente’s vehicle, but it is not clear if the person was Benavente or his passenger, Witness #5. Benavente’s car was in motion, slowly rolling forward. The overhead emergency lights from Corporal Alvarado’s patrol unit and the light on Corporal Alvarado’s handgun were seen reflecting onto Benavente’s car. Corporal Alvarado’s right arm was extended to the front of his body as he pointed his handgun at Benavente’s car. Officer Varela’s patrol unit, with its headlights and overhead emergency lights activated, was seen driving south, slowly toward the scene. The right front quarter panel of Corporal Alvarado’s patrol unit was seen in the roadway to the west

¹³ The term “L-stop” refers to the Ontario Police Department’s tactic of strategically placing police units during a high-risk traffic stop in order to create cover and concealment.

¹⁴ All body-worn camera videos were reviewed in their entirety. All videos were reviewed though not all are summarized here. The summaries of the videos will only cover the events from the beginning through the point immediately after the incident under review. The times noted are from the media player bar.

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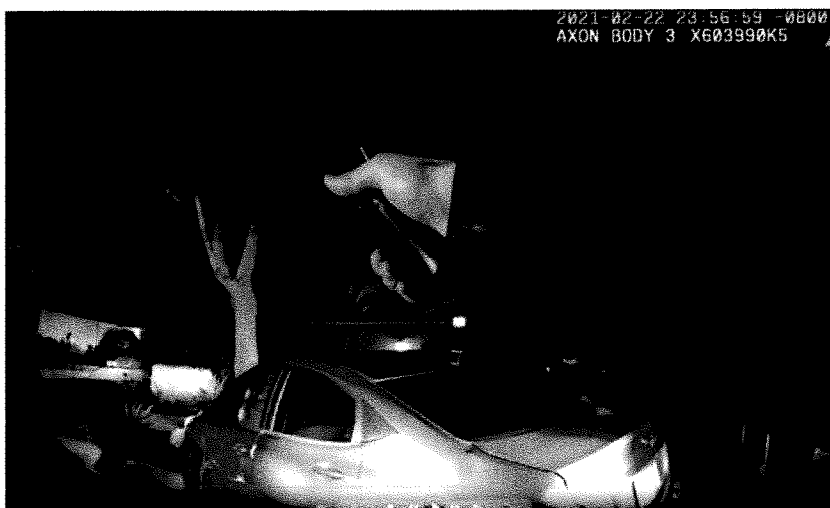
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of Benavente's car, facing north. Debris from the motor vehicle collision was seen on the roadway north of Corporal Alvarado's patrol unit.

Benavente's car continued to slowly roll forward in a northeast direction and up onto the east curb where the vehicle stopped with the front end of the car against a tree. Corporal Alvarado brought his left hand up to his handgun, grasping his gun with both hands, while still pointing his handgun at Benavente's car. Corporal Alvarado walked toward Benavente's car. To the right of Corporal Alvarado, Officer Vasquez-Lopez was seen walking toward the rear of Benavente's car while holding his handgun with both hands, arms extended to the front, pointing his handgun toward the rear of Benavente's car. Nine seconds have elapsed at this point.

Corporal Alvarado walked toward the driver's side rear while Officer Vasquez-Lopez walked toward the passenger side rear of Benavente's car. As Corporal Alvarado approached, multiple scratches and dents were visible along the driver's side of Benavente's car. The driver's side rearview mirror was missing from Benavente's car, deeper scratches and dents were visible on the driver's door. The driver's side window was rolled up and intact but was shattered and had two apparent bullet holes in it.



Officer Vasquez-Lopez stood at the rear quarter panel of Benavente's car and appeared to be speaking at the 14 second mark. Officer Vasquez-Lopez pointed his left arm over the top of Benavente's car in a northwest direction. At the 17 second mark, Corporal Alvarado began motioning with his left hand in an apparent attempt to call Officer Vasquez-Lopez to back away from Benavente's car. Corporal Alvarado quickly backed away while still pointing his handgun toward the front of Benavente's car. Officer Vasquez-Lopez was briefly captured in the camera's view also backing away from Benavente's car.

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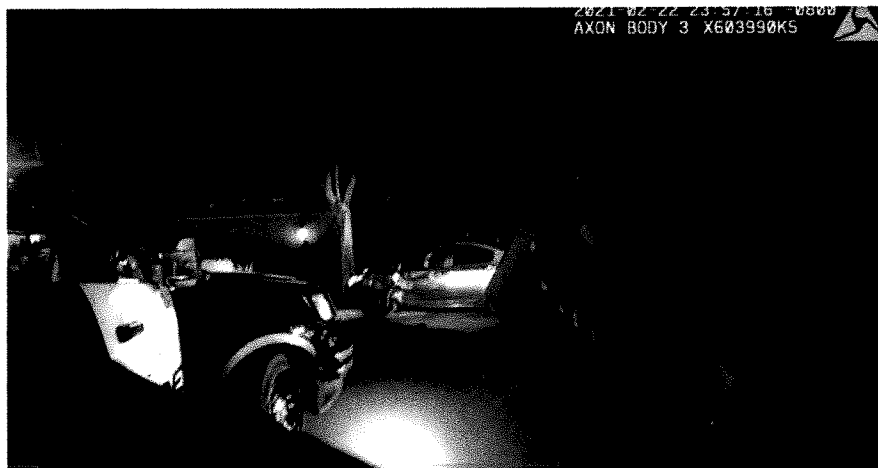
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Corporal Alvarado continued backing away, taking cover behind Officer Varela's patrol unit, which was stopped in the roadway, facing southeast toward the scene.



At the 29 second mark, Corporal Alvarado reached toward his body-worn camera with his left hand, while still pointing his handgun toward Benavente's vehicle. Audio was captured from this point forward. Sirens and radio traffic were heard.

At the 30 second mark, the front driver's side wheel on Benavente's car began spinning rapidly while the sound of the engine revving was captured. Smoke began to emit from the front end of Benavente's car. A male voice was captured saying, "A female is still in the front passenger seat. It looks like the driver's still-" before Corporal Alvarado loudly said, "Hey, listen guys, listen," before pausing briefly. When Corporal Alvarado paused his speech, other officers could be heard yelling commands, "Get out of the car, get out of the car." Corporal Alvarado finished his sentence saying, "Listen, hey Alex is on commands, okay." As Corporal Alvarado spoke, he turned to his right and faced south toward his patrol unit. An officer was heard saying, "I know, I got it." Three uniformed officers stood on the driver's side of Corporal Alvarado's patrol unit, taking cover behind the patrol unit, pointing their duty weapons toward Benavente's car. Corporal Alvarado moved toward the officers. A female voice was heard yelling unintelligibly while the officers quickly moved toward the rear of Corporal Alvarado's patrol unit and looked toward Benavente's car. An officer was heard saying, "Let me get a long gun." Two additional marked police units were stopped facing north on the roadway, behind Corporal Alvarado's patrol unit. One officer ran south toward one of those additional units while holstering his handgun. The remainder of the video shows the officers getting Witness #5 to exit Benavente's car, giving commands to Benavente to exit the car, and then ultimately pulling Benavente from the vehicle.

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Officer Vasquez-Lopez's Body-Worn Camera

When Officer Vasquez-Lopez's body-worn camera video began, he was he was driving his patrol unit. The view from the camera showed the steering wheel, the unit's mobile computer, portions of the front windshield and the driver's door. During the first 30 seconds of the video, Officer Lopez-Vasquez's arms were seen turning the steering wheel as he drove. Only trees and streetlights were visible through the windshield.

When the audio began, radio traffic between Officer Escobar and dispatch were heard. Officer Escobar said, "approximately 40 miles per hour." The dispatcher replied, "Approximately 40 miles per hour, southbound on San Antonio Avenue.¹⁵ Sirens and engine noise from the patrol unit's engine accelerating were audible. At the 36 second mark, emergency lights were captured through the patrol unit's front windshield.

Officer Vasquez-Lopez made a right-hand turn after dispatch repeated "Eastbound number 6," in response to Officer Escobar providing their direction of travel. The overhead emergency lights on the patrol unit in front of Officer Vasquez-Lopez's unit were seen through his patrol unit's windshield. At the 48 second mark, Officer Escobar advised over the radio that they were going northbound on Beverly Court. At the 52 second mark, Officer Vasquez-Lopez turned left. From the 54 second mark until the 58 second mark dispatch said, "North on Beverly. When you can, a want and description." At the 59 second mark, a loud crash was heard as Officer Vasquez-Lopez's vehicle, still driving forward, is suddenly stopped, causing the video to shake with the jolt of the impact. This is immediately followed by the sound of three gunshots in quick succession, 59 seconds to 1:00 minute. At the 1:00 minute mark, Officer Vasquez-Lopez quickly opened his driver's door and began to get out of the patrol unit. By the 1:01 minute mark, Officer Vasquez-Lopez was out of his patrol unit with both arms extended to the front of his body, pointed toward Benavente's red car. With Officer Vasquez-Lopez out of his patrol unit, images of the scene were captured.

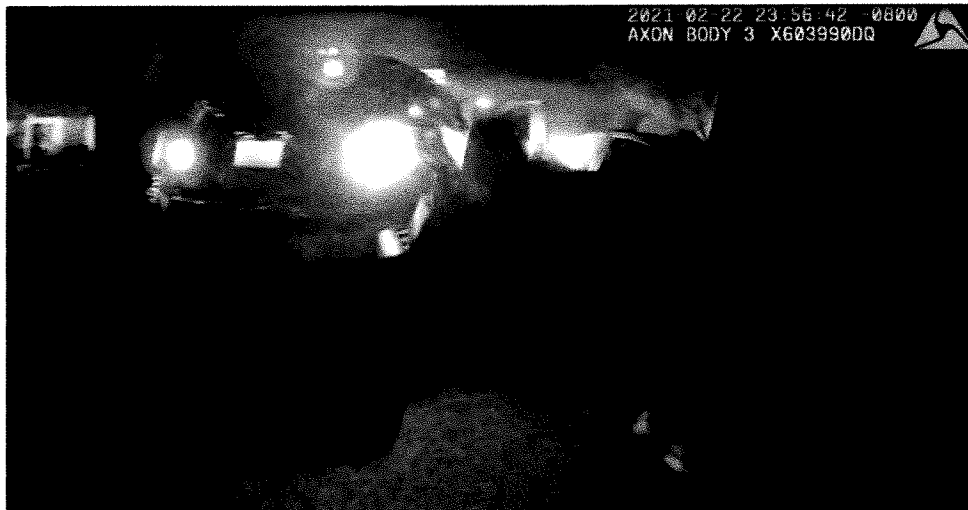
At 1:02 minutes, the passenger side of Corporal Alvarado and Officer Escobar's unit, with the front passenger door open, was directly beside and appeared to be in contact with the driver's side of Benavente's car. Corporal Alvarado was seen at the open front passenger side door with his right arm extended to the front of his body, pointing his handgun at Benavente's driver's door. Corporal Alvarado's gun light reflected onto Benavente's driver's door window. Collision damage to the driver's side of Benavente's car was visible. The back bumper of Benavente's car appeared to be in contact with the front of Officer Vasquez-Lopez's unit.

¹⁵ For further details of the radio traffic, see summary of Dispatch Recording.

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Less than a second later, Officer Escobar was briefly captured in the recording as he ran around the back end of his patrol unit toward the passenger side.



Sirens were audible in the background. Officers were heard yelling commands, "Get down, get down," "Put your hands up," and "Put your hands in the air." At the 1:03 minute mark, Corporal Alvarado stood at the apex of the patrol unit and the front passenger side door, arms extended to the front, pointing his handgun at Benavente's driver's door window. The officers continued to yell commands.

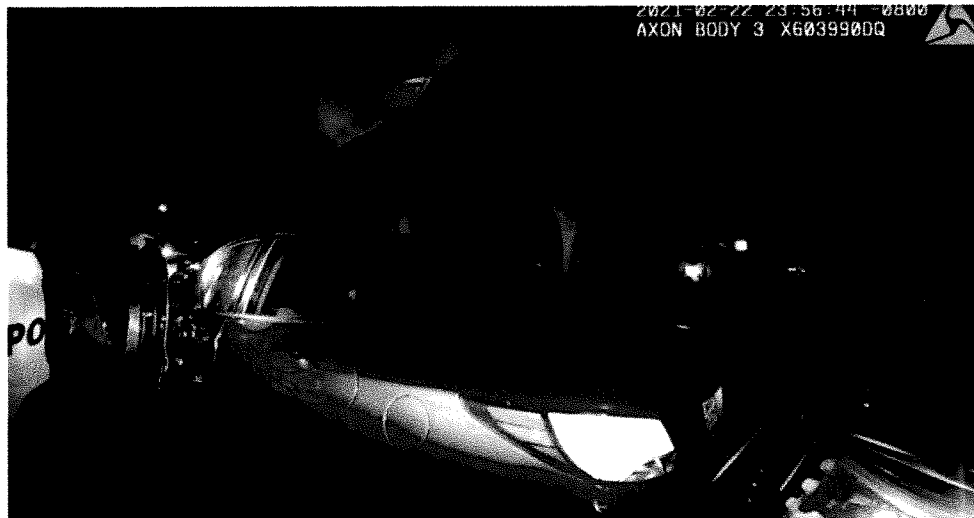
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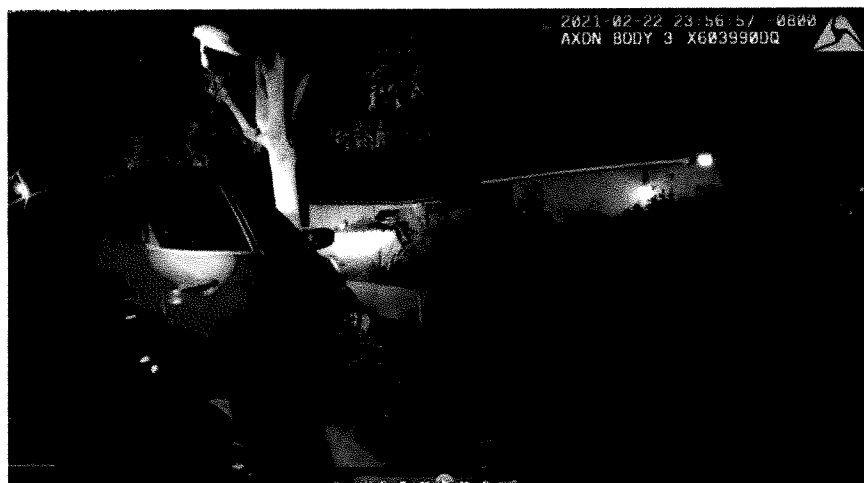
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At the 1:06 minute mark, Benavente's car began to drive forward and Witness #5 was heard screaming. At the 1:08 minute mark Corporal Alvarado said, "Victor 8, shots fired." The front passenger tire of Benavente's car struck and rolled up onto the curb. The vehicle's forward motion was stopped when the front end struck a tree at the 1:15 minute mark. Witness #5' screams were still audible. At 1:17 minutes, Officer Vasquez-Lopez approached the rear passenger side of Benavente's car and yelled, "Let me see your hands."



At 1:22 minutes, Officer Vasquez-Lopez moved closer to the front passenger door of Benavente's car as he continued to yell commands, "Let me see your hands," and yelled, "Put your hands on the dash, put your hands on the dash!" A second later, Officer Vasquez-Lopez yelled, "Hey, he's moving, he's moving. Back up, back up!" Officer Vasquez-Lopez quickly backed away from Benavente's car. Corporal Alvarado was heard saying, "Hey guys, back up over here. Back up over here." As Officer Lopez-Vasquez

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backed away and onto the street, collision damage to the driver's side and the driver's side rear bumper of Benavente's vehicle was seen.

Additional officers were captured on video as they took cover behind Officer Escobar and Corporal Alvarado's patrol unit. Officer Vasquez-Lopez moved toward those officers and told them to stay there because shots had been fired. Witness #5's screams were still audible. At 1:39 minutes, Officer Vasquez-Lopez loudly said, "Hey, he's still moving." Shortly thereafter, officers were heard giving commands to Witness #5, "Hey, female, get out of the car. Get out of the car. Lady, get out of the car." The front passenger door of Benavente's car opened. Corporal Alvarado was heard saying, "Hey, Alex is on commands." An officer was heard responding, "I know, I got it." The remainder of the video shows the officers getting Witness #5 to exit Benavente's car and ultimately removing Benavente from the vehicle.

CIVILIAN VIDEO¹⁶

Surveillance video from a residence located on the 1500 block of North Beverly Court was obtained. The camera view was toward the southwest portion of the property. The video is black and white; there is no audio. The video captured images of the home's front driveway, the portion of Beverly Court in front of the residence, and two homes across the street. Three vehicles were parked in the driveway. A large tree or bush in the front yard partially obstructed the view of Beverly Court to the south. For ease of reference and to provide a sense of the speed in which the events transpired, timestamps, as reflected in the media player, are included.

00:00 A small sedan (Benavente's car) drove north on Beverly Court, followed by Officer Varela's marked patrol unit. The patrol unit's emergency overhead lights were activated.

00:01 Benavente's car stopped abruptly on the street near the south portion of the driveway apron to the residence. The abrupt stop caused the front end of Benavente's car to dip down and the rear end to rise up slightly. Officer Varela's vehicle quickly stopped behind and offset to the left (west) of Benavente's car.

¹⁶ All civilian and surveillance videos submitted were reviewed, though not all are summarized here.

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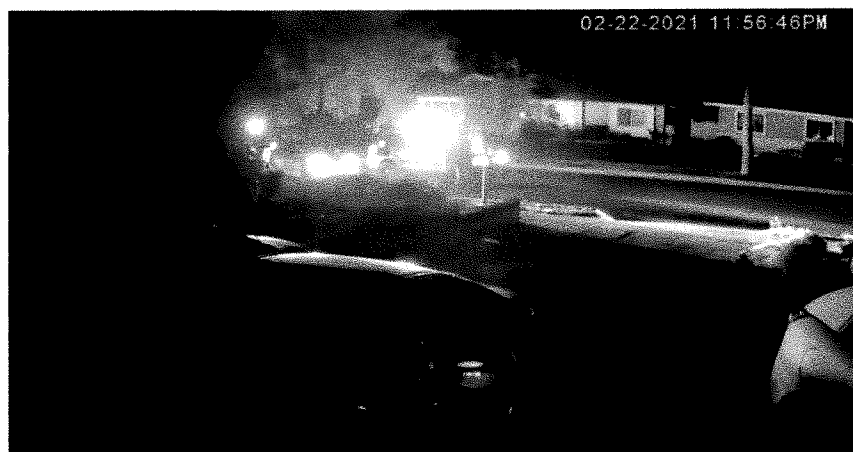
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00:02 Immediately after stopping, Benavente's car quickly reversed. Simultaneous to this, a second patrol unit (Officer Escobar and Corporal Alvarado's), with its emergency overhead lights activated, pulled up and began to stop just south and slightly west of Officer Varela's patrol unit.¹⁷ Benavente's sedan backed straight, passing directly beside the passenger side of Officer Varela's unit.

00:03 Once past Officer Varela's unit, the rear end of Benavente's car then veered to the left (west) directly toward the second marked police unit which appeared to have just stopped, behind and slightly west of Officer Varela's unit.



00:04 – 00:05 The rear driver's side of Benavente's car struck the second patrol unit's front passenger side, causing the unit to shake abruptly in a westward and then eastward direction. During the collision, debris could be seen flying from the vehicles.

00:06 – 00:14 Officer Varela's patrol unit drove forward and began to make a three-point U-turn to head southbound toward the scene of the collision.

¹⁷ The large tree or bush in the front yard blocked the view of all but the front end of the second patrol unit.

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00:14 - 00:21 Benavente's car drove forward slowly, heading in a north and slightly eastward direction toward the east curb line. Simultaneously, Officer Varela's patrol unit drove south, southeast toward the scene of the collision.

00:21 The front end of Benavente's vehicle bounced as it rolled up and onto the curb and then stopped. The headlights on Benavente's car faced northeast toward the camera. Officer Varela's patrol unit stopped in a southeast direction with the front end facing toward Benavente's car. The driver's door to Officer Varela's patrol unit opened.

00:24 An officer,¹⁸ holding a light shining toward Benavente's car, walked from the south, northbound toward Officer Varela's patrol unit. This officer stopped and stood on the street, facing east toward Benavente's car.

00:32 – 00:37 The officer backed away from Benavente's car, gesturing his arm as if to tell others to follow him. The officer backed toward the front passenger side of Officer Varela's patrol unit. At the same time an officer, believed to be Officer Varela,¹⁹ exited and ran from the driver's side of his unit, around the back end, and to the passenger side. Two additional officers approached the scene on foot from the south, moving north.

00:37 The officer believed to be Corporal Alvarado, walked backward, behind the passenger side of Officer Varela's unit, and was blocked from camera view behind the unit.

00:41 The two additional officers moved south and out of camera view.

00:45 Smoke was seen coming from the front of Benavente's car.

INCIDENT SCENE INVESTIGATION

Ontario Police Department Corporal R. Ronveaux conducted an investigation of the scene on February 23, 2021 at approximately 1:14 a.m. Forensic Specialist Witness #7 processed and photographed the scene. Within the crime scene, Corporal Ronveaux observed six marked black and white Ontario Police Department vehicles²⁰ parked on Beverly Court north of 6th Street. Corporal Ronveaux also observed a red Hyundai Accent parked up over the curb along the east side of the street in front of [redacted] North Beverly Court.

¹⁸ This officer was possibly Corporal Alvarado; however, due to the quality of the video, his identity is uncertain.

¹⁹ The identity of the officer is based upon the fact that the officer exited from the driver's side of Officer Varela's patrol unit.

²⁰ The three police vehicles located closest to 6th Street were not involved in the pursuit but were within the crime scene.

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Corporal Ronveaux noted that due to the time of the day, the residential area was very dark. There was an illuminated streetlight at the northwest corner of Beverly Court and 6th Street. There was an additional illuminated streetlight on the west side of North Beverly Court. The residence at [redacted] North Beverly Court had a wall light turned on that was affixed to the exterior of the residence. The residence at [redacted] North Beverly Court had a front porch light which provided minimal light to the street.



Aerial photograph taken during daylight hours showing the overall scene.

Ontario Police Department Units 1883, 1024, and 1849 were involved in the pursuit and had traffic collision damage due to the red Hyundai Accent crashing into them.

Police Unit 1883

Unit 1883 was parked north of Unit 1033 on Beverly Court. The vehicle had been driven by Officer Vasquez-Lopez and was the third vehicle during the pursuit. The vehicle was parked along the eastside of the street facing north; the engine was running. The doors were closed, and all the windows were rolled up. The overhead police lights were off. The headlights were on. The driver's side spotlight was turned on and facing the rear of the Hyundai Accent. The passenger spotlight was off.

Corporal Ronveaux located traffic collision damage on the front right and also center of the push bumper. On the left-center portion of the push bumper was a red paint chip. There was a cell phone on the top of the unit's engine hood. The phone belonged to the female passenger who was previously in the Hyundai Accent.

Police Unit 1024

Unit 1024 was parked north of Unit 1883. This vehicle had been driven by Officer Escobar. Corporal Alvarado was in the front passenger seat during the pursuit. Unit 1024 was the

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second vehicle in the pursuit. The unit was parked facing north in the middle of the street on Beverly Court; the engine was running. The front passenger door was open. The remaining doors were closed. The windows were all rolled up. The overhead police lights were turned on along with the headlights. The driver's spotlight was turned off and facing the engine hood.

Corpora Ronveaux observed the following collision damage to Unit 1024: The front right push bumper and quarter panel of the vehicle, the front right plastic headlight assembly, and the front passenger door. Corporal Ronveaux observed a red paint chip in the front passenger tire tread of the police vehicle. There was also traffic collision debris located along the passenger side along with several red paint chips. The color of the paint chips matched that of the red Hyundai Accent. The paint chips found in the street were labeled with Placards 4 and 5.



Three fired cartridge casings (FCC's), with headstamp "FC 9 mm Luger," were in the street on the passenger side of Unit 1024. The FCC's were marked with Placards 1, 2, and 3.

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Unit 1849

Unit 1849 was parked north of Unit 1024. This was the police vehicle parked furthest north on Beverly Court. The vehicle was along the west side of the street and was facing in a southeast direction. The engine was running. The front of the vehicle was facing the driver's side of the red Hyundai Accent. This vehicle was driven by Officer Varela and was the first vehicle during the pursuit. The overhead police lights and headlights were both turned on. Both the driver and passenger spotlights were turned on and facing down towards the engine hood. All the doors were shut. All the windows were rolled up.

Corporal Ronveaux observed traffic collision damage to the front passenger push bumper of the vehicle. There were two blue latex gloves on the hood of the vehicle.

Red Hyundai Accent

The red 4-door 2015 Hyundai Accent was parked along the east side of the street. The vehicle had both front and rear plates. The vehicle appeared to have come to a rest against a tree in the front "plater"²¹ of [redacted] N. Beverly Court. The vehicle was facing in a northeast direction. The front tire of the vehicle was up and over the east curb. The Hyundai was parked between Unit 1849 and Unit 1024. The driver's door, passenger door, and trunk were open. Corporal Ronveaux noted, "The Deceased, later identified as Joseph Benavente, was outside of the vehicle along the driver's side.

²¹ Corporal Ronveaux used the term, "plater," in his report. This area is commonly known as the road verge or nature strip and is located in the space between the roadway and the sidewalk.

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The exterior of the Hyundai had traffic collision damage above the driver's front tire, the driver's door, and back left quarter panel. The vehicle was missing some of its paint due to the damage. There was damage to the front right quarter panel which appeared to be caused by the vehicle having travelled up, and over the east curb. The front driver's side mirror was torn off. The inner housing of the side mirror was in the street nearby. The driver side mirror was located near the east curb along the passenger side of the Hyundai.



The vehicle had window tint on all the windows except for the front windshield. The driver's window had three bullet holes. The window tint allowed the glass window to remain intact and resembled a spider web. Witness #7 detailed the bullet holes as follows:

- Bullet hole B, approximately 3'9" from the ground, approximately 2'5" from the left edge of the driver's door.
- Bullet hole C, approximately 3'4" from the ground, approximately 2'4" from the left edge of the driver's door.
- Bullet hole D, approximately 3'3" from the ground, approximately 2'4" from the left edge of the driver's door.

Forensic Specialist Witness #7 located a projectile on the interior of the passenger side rear door. The projectile was located just underneath the window.

The driver's seatbelt, which had been cut to remove the driver from the vehicle, was hanging outside of the driver's door. Corporal Ronveaux observed a large amount of dried blood on the driver's seat. There was also dried blood on the interior of the driver's door. A key was in the ignition; the engine was not running. The vehicle was in neutral. The driver's headlights were off, but the rear taillights were on.

Forensic Specialist Witness #7 collected Benavente's clothing as evidence. A glass pipe was found in the front right pocket of the shorts worn by Benavente.

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A subsequent search of the Hyundai Accent was conducted by Detective C. Robledo. During the search, Detective Robledo found a syringe containing a black liquid substance. The syringe was submitted to the San Bernardino County Sheriff's Department's Scientific Investigation Division for analysis and the liquid substance was found to contain methamphetamine.

EVENT DATA RECORDER

Ontario Police Department Detective Jeffrey Mirtich, a qualified Collision Safety Institute Crash Data Retrieval Data Analyst, reviewed the Event Data Recorder (EDR) Image from the 2015 Hyundai Accent driven by Benavente during the incident under review. Detective Mirtich prepared a report regarding his analysis of the EDR.²²

Detective Mirtich's summary of the data obtained from the EDR is as follows:

About 5 seconds before time 0, the vehicle has a slight steering input to the right at 5 degrees. This vehicle gives a steering input to the left until 3 seconds to time 0. At that 3 second mark, the steering input is to the left and at 55 degrees. During that 3 – 2.5 second time, the steering input changes to the right and now has a 50-degree input to the right. At 2 seconds before time 0, the steering input is 250 degrees to the right, which is the maximum value. Between 2 – 1.5 seconds before time 0, the steering wheel input again changes and is 65 degrees to the right. At 1.5 seconds to time 0 and time 0, the steering input remains at 250 degrees to the left.

The increments in times are in .5 second increments starting about 5 seconds before time 0.

5 seconds before time 0, the speed is about 13.67 mph²³ with the brake pedal activated.
4.5 seconds before time 0, the speed is about 6.83 mph with the brake pedal still activated.

4 seconds before time 0, the speed is about 2.48 mph, and the brake pedal is not activated. The acceleration pedal is now at 99%.

3.5 seconds before time 0, the speed is about 1.24 mph, and the brake pedal remains not activated. The acceleration pedal remains at 99%.

3 seconds before time 0, the speed is about 3.1 mph, and the brake pedal remains not activated. The acceleration pedal remains at 99%.

²² Per Detective Mirtich: "As noted in the Data Definitions, time zero (T0) does not ordinarily mean the time the collision occurred. Time zero is often when the onboard computers wake up and begin assessing the situation preceding a collision. The imaged data collection contained two forms of time. One form of time is in seconds, and the other form of time is in milliseconds. The times in seconds will generally refer to the times before the collision (Pre-Crash). The times in milliseconds will generally refer to the time succeeding the collision (Crash Pulse).

²³ Detective Mirtich noted, the speeds obtained from the EDR were recorded in kph. Conversion of measurement was done to show the speeds in mph for easier reading.

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2.5 seconds before time 0, the speed is about 5.59 mph, and the brake pedal remains not activated. The acceleration pedal remains at 99%.

2 seconds before time 0, the speed is about 8.69 mph, and the brake pedal remains not activated. The acceleration pedal remains at 99%.

1.5 seconds before time 0, the speed is about 12.42 mph, and the brake pedal remains not activated. The acceleration pedal remains at 99%.

1 second before time 0, the speed is about 14.29 mph, and the brake pedal remains not activated. The acceleration pedal is now at 0%.

.5 seconds before time 0, the speed is about 313.67 mph, and the brake pedal is activated. The acceleration pedal remains at 0%.

Time 0 remains the same data as the .5 seconds before time 0.

DECEDENT

Benavente was pronounced deceased by EMT-Paramedic Witness #8 of the Ontario Fire Department at 1:11 a.m. on February 23, 2021.

AUTOPSY

Witness #8, D.O., Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Joseph Benavente on March 4, 2021. Witness #8 noted three gunshot wounds. Witness #8 determined the cause of death was multiple gunshot wounds and that death occurred within minutes.

Gunshot Wound of the Neck²⁴

Entrance: Left posterior neck with no evidence of close-range firing.

Path: Skin and subcutaneous tissues of the neck and C4 vertebra.

Exit: Right posterior neck.

Recovery: None.

Direction: Left to right and downwards.

Associated injuries: Hemorrhage throughout the wound path.

Gunshot Wound of the Chest

Entrance: Left upper chest with no evidence of close-range firing.

Path: Skin and subcutaneous tissues of the left upper chest; left clavicle; left subclavian artery; left upper lung; right upper lung; posterior right 4th rib; and soft tissues of the right upper back.

Recovery: Jacketed bullet from back.

Direction: Front to back, left to right, and downwards.

Associated Injuries: Hemorrhage throughout the wound path and bilateral hemothoraces (right – 800 mL and left – 700 mL).

²⁴ The gunshot wounds are arbitrarily listed and do not reflect the chronological order in which the shots were fired.

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Gunshot Wound of the Left Arm

Entrance: Posterior left distal arm with no evidence of close-range firing.

Path: Skin and subcutaneous tissues of the left arm and the left humerus.

Recovery: Jacketed bullet from left arm.

Direction: Back to front, left to right, and upwards.

Associated Injuries: Hemorrhage throughout the wound path.

Additional Injuries

Dicing-type injuries of the face, neck, and left upper extremity.

Contusions of the left knee and left lower leg.

TOXICOLOGY

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

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

- Ephedrine, 20 ng/mL
- Phenylpropanolamine, 33 ng/mL
- Amphetamine, 150 ng/mL
- Methamphetamine, 1600 ng/mL

CRIMINAL HISTORY

Joseph Benavente has a criminal history that includes the following convictions:

2020, 20002 (a) of the Vehicle Code, Hit and Run Driving Resulting in Property Damage, San Bernardino County case number MWV20012616, a misdemeanor.

2020, 243 (c)(2) of the Penal Code, Battery With Injury on a Peace Officer, and 243 (c)(2) of the Penal Code, Battery With Injury on a Peace Officer, San Bernardino County Case number FWV20001164, felonies.

2017, 10.02.010 of the Las Vegas Municipal Codes, Trespass Not Amounting to Burglary and False Statement To/Obstruct Public Official, Las Vegas Municipal Court tracking number 38489389, misdemeanors.

2017, 200.481.2 of the Nevada Revised Statute, Battery on a Protected Person, Eight Judicial District Court tracking number 25674621, a gross misdemeanor.

2017, 454.351 of the Nevada Revised Statute, Possession of a Drug Not for Interstate Commerce, Las Vegas Justice Court tracking number 25814746, a misdemeanor.

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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).)

²⁵ 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, *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).)

²⁵ All references to code sections here pertain to the California Penal Code.

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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 2020,²⁶ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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

²⁶ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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is reasonable, safe and feasible to do so;

- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;²⁷
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, 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*.

²⁷ 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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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 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

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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.)²⁸ To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

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

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

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.*)

²⁸ 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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When undertaking this analysis, courts do not engage in *Monday Morning Quarterbacking*, and nor shall we. Our state appellate court explains,

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

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

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

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

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

ANALYSIS

After recklessly leading officers on a pursuit just minutes before midnight, Joseph Benavente abruptly stopped his car in a dimly lit residential neighborhood. When the officers stopped behind him, and as they prepared to get out of their patrol units, Benavente put his car into reverse and slammed on the gas pedal. Benavente first crashed into Officer Varela's patrol unit before turning his car westward and heading straight toward Officer Escobar and Corporal Alvarado's patrol unit. Corporal Alvarado had just stepped out of the patrol unit and was standing behind the open passenger door when Benavente headed straight for their patrol unit. Corporal Alvarado saw Benavente's

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car heading straight for him and “knew he was going to be smashed by Benavente’s car.” Corporal Alvarado had no time to reposition as Benavente’s car crashed into the front passenger side of the patrol unit and continued backing, heading straight for him. As Benavente’s car reversed straight toward Corporal Alvarado and was only three to four feet away, Corporal Alvarado fired three rounds in quick succession from his handgun at Benavente.

In the driver’s seat of the patrol unit, Officer Escobar watched helplessly as Benavente’s car struck their patrol vehicle and headed straight for Corporal Alvarado. Right before Benavente’s car slammed into their unit, in his peripheral vision, Officer Escobar saw Corporal Alvarado opening the passenger door as if to get out. Officer Escobar knew Corporal Alvarado was either partially or entirely out of the patrol vehicle and was between the door frame and the passenger door when Benavente’s car struck the right front fender of their unit. After crashing into their patrol unit, Benavente did not slow down, nor did he stop. Instead, Benavente continued reversing his car along the passenger side of their vehicle, straight for Corporal Alvarado. Officer Escobar heard the engine of Benavente’s car “revving up,” and saw Benavente’s car “still moving backwards” toward Corporal Alvarado’s open passenger door. It was at this moment when Officer Escobar heard Corporal Alvarado’s gunfire. Officer Escobar was “scared that Corporal Alvarado had gotten hit by the car,” and the shots had been fired because of that. Officer Escobar didn’t know if Corporal Alvarado had gotten hit and was trapped in between the patrol unit and Benavente’s car or if Corporal Alvarado was down on the ground.

The physical evidence clearly shows how fast Benavente’s car was moving as it headed straight for Corporal Alvarado. When Corporal Alvarado began firing, his aim at Benavente was through the rear driver’s side window of Benavente’s car. In fact, Corporal Alvarado’s rounds passed through the driver’s window, not the rear window. When Corporal Alvarado fired his last round, the driver’s window was right next to and “within hands reach” of Corporal Alvarado. The video recordings and the data from Benavente’s car’s event data recorder also make clear just how fast Benavente was reversing toward Corporal Alvarado. That the threat to Corporal Alvarado’s life was imminent is without question. Corporal Alvarado was forced to react quickly to prevent what was no doubt an imminent threat to his life.

Corporal Alvarado believed Benavente intended to seriously injure or kill him. During the pursuit, Corporal Alvarado had seen Benavente driving erratically, jerking his car as if he were reaching for something in the back seat. Corporal Alvarado’s training and experience had taught him to be wary of this driving behavior as it was indicative of someone trying to hide evidence or, worse, someone trying to reach for a gun. Corporal Alvarado had seen Benavente run multiple stop signs and nearly strike an innocent civilian’s truck. Corporal Alvarado had watched as Benavente pulled his car over and stopped on San Antonio Avenue, only to start driving again when Officer Varela stopped behind him. Corporal Alvarado had also seen Benavente speeding up and slamming on his brakes in what Corporal Alvarado interpreted as an attempt to get Officer Varela to

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crash into him and to “close the gap” to attack or ambush Officer Varela. After Benavente stopped for the second time, Corporal Alvarado saw Benavente put his car into reverse and slam onto the gas pedal, heading southbound straight for Officer Varela’s unit. Then Corporal Alvarado watched as Benavente turned his car westward and reversed in a southwest direction, straight for him.

Based upon the totality of the circumstances, Corporal Alvarado’s belief that Benavente intended to seriously injure or kill him was both honest and objectively reasonable. In the same situation, a reasonable officer would have believed the same. Corporal Alvarado was not alone in this belief. Officer Escobar and Officer Varela both thought Benavente was intentionally trying to crash into the officers’ patrol units. Benavente had the “present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury” to the officers, particularly Corporal Alvarado, who was in a highly vulnerable position outside of the patrol unit. (Penal Code §835a(e)(2).)

CONCLUSION

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

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