



## PUBLIC RELEASE MEMORANDUM

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**Date:** December 29, 2022

**Subject:** Fatal Officer-Involved Incident

**Involved Officers:** Deputy Daniel Bagwill  
San Bernardino County Sheriff's Department

**Involved Subject/DOB:** Rocky Brandon  
10/19/1955

**Subject's Residence:** Sugarloaf, California

**Incident Date:** December 18, 2020

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

**Agency Report #:** DR# 072003547  
H# 2020-142

**DA STAR #:** 2021-27317

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### PREAMBLE

This was a fatal officer involved shooting by Deputy Daniel Bagwill from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department Specialized Investigations – Homicide. This factual summary is based on a thorough review of all the investigative reports, photographs, video recording, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR # 072003547.

### PRINCIPAL INVOLVED PARTIES

**Rocky Brandon** (D.O.B. 10/19/1955) of Sugarloaf, California, was killed during the incident under review.

**Deputy Daniel Bagwill**, a Deputy with the San Bernadino County Sheriff's Department, fired his weapon, resulting in the death of Rocky Brandon.

### **SCENE**

This incident began at approximately 5:20 a.m. The scene consisted of the Sinclair gas station, located at 32787 Highway 18, and the Valero gas station, just west of the Sinclair gas station, and located at 32687 Highway 18. Both gas stations are located on the south side of Highway 18 in Lucerne Valley. The LFE occurred directly in front of the Sinclair gas station's main entry door, and Brandon's vehicle left the Sinclair gas station and ultimately came to rest against the Valero gas station.

### **CRIMINAL HISTORY**

**Rocky Brandon, Sr.** has a prior criminal history that includes convictions of the offenses listed below:

1977, 459 of the Penal Code, Second-degree Burglary, San Bernardino County Case number VCR170, a felony.

1978, 23103 of Vehicle Code, Reckless Driving, San Bernardino County Case number T15917, a misdemeanor.

1995, 11377(a) of the Health and Safety Code, Possession of a Controlled Substance, San Bernardino County Case number FBV2576, a felony.

1995, 11377(a) of the Health and Safety Code, Possession of a Controlled Substance, San Bernardino County Case number FBV2599, a felony.

2000, 11360(a) of the Health and Safety Code, Sell/Furnish Marijuana, San Bernardino County Case number TBV3220, a felony.

2003, 23152(a) of the Vehicle Code, Driving Under the Influence, San Bernardino County Case number TBV29477, a misdemeanor.

2005, 23152(a) of the Vehicle Code, Driving Under the Influence, San Bernardino County Case number TBV29640, a misdemeanor.

### **FACTUAL SUMMARY**

On December 17, 2020, Deputy Daniel Bagwill contacted a subject that was parked in the Lucerne Valley Sheriff's Station parking lot on two separate occasions. This subject

was later identified as Rocky Brandon. Brandon was inside his car on or near the Lucerne Station from approximately 9 p.m. to 5 a.m.

At approximately 5 a.m. Brandon left the station parking lot and went to a nearby Sinclair gas station. Brandon brandished a knife at the Sinclair gas station employee Witness # 1, who called 911 and reported the crime. Deputy Bagwill responded to the Sinclair gas station and observed Brandon in the driver's seat, with the car running, parked between the first row of gas pumps and the entrance doors of the convenience store.

Bagwill approached the vehicle and saw Brandon armed with a knife. With the windows still up, Brandon swiped the knife toward Bagwill and refused orders to drop the knife and exit the vehicle. Bagwill continued to give commands to Brandon, to no avail. Additional deputies arrived on scene and continued to give commands that were not headed by Brandon. Deputy Cara Umphlett was a responding deputy and positioned herself along the passenger side of Bagwill's vehicle, and then behind Bagwill who was directly behind Brandon's vehicle.

Deputy Tyler McGee deployed multiple less than lethal beanbags towards Brandon's car, with one eventually breaking through the front driver's side window. Brandon was struck in the arm and chest area. Brandon put his vehicle in reverse, looked behind him and made eye contact with Bagwill. In response, Bagwill moved back and away from Brandon's vehicle's driver side to try and get cover. Brandon reversed his vehicle and slammed into the front of Bagwill's vehicle which was still positioned directly behind him.

Brandon drove his car forward after the impact with Bagwill's patrol vehicle and continued to ignore commands. Brandon again put his car in reverse and slammed into the front of Bagwill's vehicle a second time. Bagwill discharged his duty weapon and fired one shot towards Brandon in the driver's seat. Brandon drove his car forward and exited the Sinclair gas station and entered into traffic towards Hwy 18.

Bagwill and other responding deputies returned to their vehicles to follow Brandon's vehicle as it left the scene. Brandon drove his vehicle and turned left out of the gas station and then made a left at the stop sign onto to Highway 18. Brandon's vehicle then veered left across oncoming traffic on Highway 18, struck and ran over a stop sign, and went up over a curb finally coming to rest against the outside of a neighboring Valero gas station.

Brandon continued to not comply with orders to exit the vehicle but was eventually pulled from the car. Life saving measures were unsuccessful and Brandon was pronounced deceased at the scene. A knife was recovered from inside Brandon's vehicle.

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### STATEMENTS BY POLICE OFFICERS<sup>1</sup>

On December 30, 2020, at approximately 1:18 p.m., **Deputy Daniel Bagwill** was interviewed by Detective Nicolas Craig and Deputy Amy Bilbao of the San Bernardino County Sheriff's Department.

Deputy Bagwill was employed by the San Bernardino County Sheriff's Department as a deputy sheriff. On December 18, 2020, Deputy Bagwill was on duty, assigned to patrol out of the Victor Valley Station, specifically the Lucerne Valley sub-station. Deputy Bagwill drove a marked Sheriff's Department patrol vehicle and his call sign was 27P11. Deputy Bagwill wore a readily identifiable Sheriff's Department approved Class A uniform which had San Bernardino County Sheriff Department badges on both shoulders, Bagwill's name over his right chest, and Sheriff's badge on his left chest. Deputy Bagwill also wore his duty belt which was equipped with the following department issued gear: audio belt recorder, pepper spray, holster containing his Glock 21, handcuffs and handcuff case, taser, Rapid Containment Baton, and radio. Bagwill was driving a 2020 marked Sheriff's Ford Expedition.

Deputy Bagwill began his shift at 7 p.m. and worked on a report until approximately 9 p.m., when at that time he left the Lucerne Station and began to walk towards his Sheriff's unit. Upon exiting the station Bagwill saw a vehicle he did not recognize parked in front of the station. Bagwill made contact with solo occupant in the driver's seat and asked him if he was okay, the driver, later identified as Brandon, replied he was okay. Bagwill left the station for almost three hours, and upon returning back to the station noticed that Brandon's vehicle was still at the station but parked in the visitor parking lot. Bagwill approached the vehicle and tried to engage with Brandon about whether he needed help. Bagwill asked Brandon if he could roll down his window and Brandon replied, "no." Bagwill asked Brandon how long he would be there, and Brandon replied "about ten minutes." Bagwill entered the station to continue his shift.

At approximately 2 a.m. Bagwill heard Brandon start his vehicle and rev the engine. Bagwill looked outside and Brandon turned off his car and continued to sit in the parked vehicle. At approximately between 4:30 a.m. and 5 a.m. Bagwill again heard Brandon's car start up and this time Bagwill heard a crashing sound. Bagwill exited the station to investigate the sound and saw that Brandon's car was gone – Bagwill checked for damage and surmised that Brandon had driven his vehicle over the curb and the crashing sound was the back of Brandon's car hitting the curb.

At approximately 5:20 a.m. a call for service aired that a man was wielding a knife at the Sinclair gas station. Bagwill left the station to respond. Upon arrival Bagwill recognized the subject as the man who had been parked at the Lucerne Station for most of the night.

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

Upon arrival at the Sinclair gas station Bagwill saw the solo occupied vehicle between the convenience store door and the first row of gas pumps. Bagwill pulled behind the stopped vehicle and exited his patrol vehicle and began a driver's side approach. Upon approach Bagwill saw that Brandon was seated in the driver's seat and saw a knife in Brandon's hand. Bagwill commanded that Brandon put the knife down. The window of the vehicle was up, but Brandon made a swiping motion with the knife, towards Bagwill, causing him to step back. Bagwill continued to give commands to Brandon to drop the knife, raising his voice each time to denote the seriousness for Brandon.

Bagwill moved to the back of Brandon's vehicle to await back up's arrival. Bagwill continued with the verbal commands to Brandon to drop the knife. Bagwill could hear Brandon revving the engine of his car, and Bagwill began to give verbal commands to turn off the vehicle.

Bagwill walked toward the back passenger side, toward the entrance to the convenience store and motioned to the clerk who was inside to make sure the doors were locked. Back at his vehicle Bagwill turned on his "take down" lights, which consisted of solid red and solid blue forward facing lights and pointed his spotlight toward Brandon. Bagwill also switched to his vehicle's PA system to continue giving verbal commands to Brandon. Bagwill told Brandon to turn his motor off and to drop the knife.

Multiple backing officers arrive, beginning with Deputy Cara Umphlett who took a position on the back passenger side of Brandon's vehicle. Deputy Tyler McGee arrived and took the left most flank position in between the two rows of gasoline pumps.

Bagwill continued to give commands along with the other deputies, and Brandon began to pull his vehicle forward approximately twenty feet. Bagwill believes that Brandon was going to flee the scene. Bagwill ran back to his vehicle and pulled closer behind Brandon who stopped suddenly. Bagwill got back out of his vehicle again and continued giving verbal commands.

Bagwill witnessed Deputy McGee deploy less than lethal beanbags towards Brandon who is still seated in his running vehicle. Finally, one of the bean bags penetrated Brandon's front window and Bagwill saw Brandon react or "flinch" in the front driver's seat from the strike. Bagwill saw Brandon moving around inside the vehicle and noticed that Brandon had put the car in reverse. Bagwill stepped back to try and take cover behind a gas pump, and Brandon looked at Bagwill and made eye contact.

Brandon looked at him and then "just lit it up and came back towards me." Brandon reversed and struck the front of Bagwill's patrol vehicle. Bagwill described his fear for his partner Umphlett who, last Bagwill saw, was on the passenger side of Bagwill's vehicle before it was struck by Brandon. Bagwill saw his car move in response to Brandon hitting it but did not know exactly where Umphlett was. Bagwill said that he "was really scared that she was going to get pinched in between the two vehicles and the building."

Bagwill saw Brandon drive forward again, and for a second time put Brandon's vehicle into reverse and looked back before again ramming into the front of Bagwill's patrol vehicle. Bagwill stated that he still could not see Umphlett and was still worried that she was stuck between the two vehicles.

Bagwill had his duty weapon out of his holster and pointed toward Brandon. After the second strike, Bagwill had a line of sight in which he felt he could take a shot. Bagwill discharged his duty weapon once towards Brandon in the driver's seat. Brandon's vehicle moved forward after the shot and Bagwill re-holstered his weapon and ran back to his unit to follow Brandon.

Brandon drove forward out of the gas station parking lot and Bagwill and other deputies followed behind him. Bagwill followed Brandon as he left the gas station and turned left, and then made another hard left onto the main road. Bagwill continued to follow Brandon as he went across lanes of traffic, hit a stop sign, and then eventually came to rest against the side of the Valero gas station.

Brandon was ordered to turn off his vehicle and exit. Brandon again did not comply. Brandon was eventually removed from the vehicle and Bagwill was "shaken" and escorted back to the station.

On December 28, 2020, at approximately 8:04 a.m., **Deputy Cara Umphlett** was interviewed by Detective Robert Hoag and Detective Nicolas Craig of the San Bernardino County Sheriff's Department.

Deputy Umphlett was employed by the San Bernardino County Sheriff's Department as a deputy sheriff. On December 18, 2020, Deputy Umphlett was on duty, assigned to patrol out of the Apple Valley Station. Deputy Umphlett drove a marked Sheriff's Department patrol vehicle and her call sign was 18P11. Deputy Umphlett wore a readily identifiable Sheriff's Department approved Class D uniform which consisted of a tan polo shirt with San Bernardino County Sheriff's Department patches on both shoulders, a cloth badge on her chest, and green cargo pants.

Umphlett was in Apple Valley near Central Road and Highway 18 when she was contacted by dispatch about Deputy Bagwill's location at the Sinclair gas station, and that the call involved a man with a knife. Umphlett was the closest backing officer to that location and used the computer in her vehicle to look up the call as she responded to the location. While en route Umphlett heard Bagwill say over the radio that the suspect was in a vehicle, had revved the engine, was not cooperative with orders, and armed with a knife.

Upon arrival at the Sinclair gas station Umphlett located the vehicle in between the first row of pumps and the front door to the convenience store with Bagwill's patrol vehicle parked directly behind Brandon's vehicle. Umphlett pulled in behind Bagwill's patrol vehicle, parked, and approached Bagwill where he stood, on the driver's side of his

patrol vehicle. Umphlett heard Bagwill give multiple commands to Brandon to drop the knife and exit the vehicle, Brandon did not comply.

Umphlett walked to the driver's side of Bagwill's patrol vehicle and opened the front passenger side door for cover and pointed her handgun at Brandon still seated in his vehicle. Bagwill used his public address system to give further commands to Brandon who remained seated inside the vehicle and did not comply with orders. Umphlett saw Brandon moving around inside his vehicle but could not see what he was doing from her vantage point and Umphlett did not see a weapon.

At this point Umphlett noticed that other backing officers had arrived, but she did not immediately know where they had parked, just that Deputy Tyler McGee had a less than lethal shotgun positioned on the other side of the pumps. Umphlett heard Brandon rev his engine, and thought that he was going to flee the scene. Umphlett saw Brandon drive his vehicle forward suddenly and then abruptly stop. Umphlett ran back to her patrol vehicle, and she saw Bagwill do the same and get inside Bagwill's own patrol vehicle. Umphlett saw Bagwill drive his patrol vehicle directly behind where Brandon had stopped. Umphlett again exited her patrol vehicle and ran to Bagwill's driver side door near the pumps.

Umphlett stood behind Bagwill and pointed her duty weapon at Brandon who was still seated in his vehicle and continued to ignore commands given to him to drop the knife and exit the vehicle. To get a better sight on Brandon, Umphlett moved to the front area of Bagwill's vehicle near a gas pump for cover, both she and Bagwill were still behind Brandon's vehicle.

Umphlett saw and heard McGee use the less than lethal shotgun. Umphlett could not remember the exact number of rounds that McGee shot of the less than lethal but estimated it to be approximately four or five.

Brandon suddenly revved the engine of his car and quickly reversed his vehicle. Umphlett was directly behind Bagwill who was directly behind Brandon's car at this point with no cover. Brandon suddenly reversed his vehicle and hit the front of Bagwill's patrol vehicle. Both Umphlett and Bagwill quickly stepped back, and side stepped toward a gas pump to avoid being hit by either Brandon's or Bagwill's vehicle. Umphlett estimated the distance covered by Brandon was approximately twelve feet.

Umphlett pointed her gun at Brandon but was unable to obtain a clear shot. As Umphlett raised her handgun Brandon abruptly pulled his car forward again and stopped. Umphlett again saw Brandon's white reverse lights come on and again accelerated backwards towards Bagwill and Umphlett, striking Bagwill's patrol vehicle a second time. Umphlett raised her handgun again but could not get a clear shot because Bagwill was still in front of her, and she was worried about Bagwill moving into her line of fire.

Umphlett saw Bagwill hold his handgun with two hands and arms extended in front of him, and fire one shot towards Brandon. Brandon drove his vehicle forward and exited the parking lot. Umphlett ran back to her patrol vehicle and followed. Umphlett followed Brandon's vehicle to the Valero gas station next door.

Umphlett approached Brandon's driver side door with a ballistic shield and other deputies to remove Brandon from his vehicle. Brandon did not comply with commands to exit. Brandon was removed from the vehicle and Umphlett checked for a pulse and began chest compressions until paramedics arrived.

On December 29, 2020, at approximately 10:32 a.m., **Deputy Tyler McGee** was interviewed by Detective Robert Hoag and Detective Eric Ogaz of the San Bernardino County Sheriff's Department.

Deputy McGee was employed by the San Bernardino County Sheriff's Department as a deputy sheriff. On December 18, 2020, Deputy McGee was on duty, assigned to patrol out of the Apple Valley Station. Deputy McGee drove a marked Sheriff's Department patrol vehicle and his call sign was 18R11. Deputy McGee wore a readily identifiable Sheriff's Department approved Class D uniform which consisted of tactical pants, a tan polo short, and duty belt, and work boots. The left and right arms of McGee's shirt displayed San Bernardino County Sheriff's Department patches on both shoulders, and a gold metal deputy sheriff badge on the chest.

McGee was at the Apple Valley station when he heard dispatch broadcast the incident with Bagwill at the Sinclair gas station. McGee and another deputy responded to the location with lights and sirens and arrived in approximately fifteen minutes. Upon arrival, McGee saw Bagwill's patrol vehicle's front driver's side door open and Bagwill positioned behind it with Bagwill's handgun pointed at Brandon who was seated in his vehicle.

McGee exited his patrol vehicle and retrieved a department issued less than lethal shotgun from the trunk. This beanbag shotgun deploys a 12-gauge tail stabilized bean bag and is department approved as a less than lethal option. McGee positioned himself by the northwest gas pumps facing Brandon's driver's side door with a clear line of sight.

McGee saw Brandon moving inside the vehicle toward the center console but could only make out a silhouette because of the tinted windows on Brandon's vehicle. McGee told the other deputies present that he would deploy the less than lethal beanbags to try and break the front driver's side window of Brandon's vehicle.

McGee deployed two less than lethal beanbags at Brandon's driver's side window, but they did not break the window. McGee yelled at Brandon, "[s]how me your hands, motherfucker," and used profanity specifically in an attempt to deescalate the situation, but Brandon continued to refuse to comply.



McGee then deployed four beanbag rounds towards the driver's side window of Brandon's vehicle. The final beanbag may have caused a small hole in the window, but the tint kept the window from shattering. McGee loaded and fired an additional two beanbags. Brandon, still seated in the driver's side then rapidly accelerated forward and stopped. Brandon placed his vehicle in reverse and accelerated backwards towards Bagwill, striking Bagwill's patrol vehicle; at the same time McGee was firing his final round which broke open Brandon's driver's side window, McGee also heard a single gunshot. McGee did not see Bagwill and believed that Bagwill may have been struck by Brandon's vehicle.

McGee watched Brandon's vehicle drive towards the exit of the gas station and turn left onto the street, and McGee jumped into the patrol vehicle he had arrived in and they followed Brandon. Brandon's vehicle crossed over the highway making a "sweeping" left and crashed into the side of the Valero gas station next door. McGee approached Brandon's door, unlocked it from the inside, and pulled Brandon out while Umphlett performed CPR until paramedics arrived.

### **STATEMENTS BY CIVILIAN WITNESSES<sup>2</sup>**

#### **Witness # 1**

On December 18, 2020, at approximately 2:48 p.m., **Witness # 1** was interviewed by Detectives Eric Ogaz and Nicolas Craig of the San Bernardino County Sheriff's Department.

Witness # 1 was employed as a gas station clerk at the Sinclair gas station at the incident location and was the initial reporting party. Witness # 1 told detectives that she was scheduled to work from 3 a.m. to 11:30 a.m. on December 18, 2020, and she arrived timely for her shift. She prepared the store for opening from 3 a.m. until approximately 4:57 a.m. when she unlocked the front doors of the gas station to allow customers inside.

Witness # 1 saw Brandon's vehicle pull up between the front door of the station and the first row of gas pumps; the vehicle parked directly in front of the doors and not near the gas pumps. Brandon stayed inside the vehicle for approximately five additional minutes, and then exited his car and approached the front doors.

Brandon tried to open the front door to the gas station, and despite it being unlocked, appeared to pull the handle but not open the door. Brandon stood in front of the door and, appeared to be angry and "raging." Witness # 1 said Brandon was "pale," "disturbed," and like "he was hurting, or he was drugged out," and said that she thought "something was wrong with him." Witness # 1 indicated to Brandon that the door to the convenience store was open, but Brandon only shook it like it was still locked.

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<sup>2</sup> All reports of civilian statements made were reviewed, though not all are summarized here.

Initially, Witness # 1 said she did not see a knife in Brandon's hand at first, but he turned away from the doors, walked back to his car, and then quickly walked back toward the glass doors, and Witness # 1 saw he had a knife in his right hand. Brandon brandished the knife and held it in front of his face and waived the knife back and forth. Brandon did not say anything or communicate any type of need.

When Brandon turned and went back to his car, Witness # 1 ran and locked the convenience store doors and called her manager who advised her to call police. Witness # 1 called 9-1-1 and spoke to a dispatcher.

Witness # 1 stayed inside the gas station when deputies arrived, and confirmed that deputies gave multiple commands, and that Brandon remained in his vehicle, non-compliant. Witness # 1 heard Brandon rev his engine and became worried that there would be a shooting. Witness # 1 retreated to the back of the store in a back office. Witness # 1 heard an estimated eight to ten shots while in the back office but did not see when Brandon drove off. Witness # 1 eventually returned to the front of the store and was contacted by law enforcement personnel.

#### Witness # 2

**Witness # 2** also provided a statement to Detectives Nicolas Craig and Eric Ogaz of the San Bernardino County Sheriff's Department, shortly after the officer-involved shooting.

Witness # 2 was employed at the Sinclair gas station as a manager. At approximately 5 a.m. on December 18, 2020, Witness # 2 was on her way to the Sinclair gas station to begin her managerial shift when she was contacted by her employee Witness # 1. Witness # 1 told Witness # 2 that a "crazy person" waived a knife at Witness # 1 and was still at the location Witness # 2 was driving towards. Witness # 2 advised that Witness # 1 call the police and that Witness # 1 sounded "shaken up." When Witness # 2 arrived at the location, rather than going directly to the gas station where Witness # 2 saw police activity, Witness # 2 parked across the street at the China House Restaurant parking lot.

Witness # 2 could see Brandon's station wagon parked in front of the doors of the Sinclair gas station from her vantage point and noted that the vehicle was not parked at a pump. It was still dark but Witness # 2 faced the Sinclair gas station and observed Deputy Bagwill arrive and Witness # 2 believe that Bagwill gave commands based on his body language. Witness # 2 estimated that after approximately ten minutes additional deputies arrived on scene. Witness # 2 observed the deputies speak with each other and believed that the incident would be over quickly given the number of deputies on scene.

After a few minutes, Witness # 2 saw the suspect's vehicle suddenly pull forward and then abruptly stop. Witness # 2 believed she heard one gunshot. Witness # 2 then saw Brandon's vehicle suddenly reverse quickly and accelerate backwards as quickly as the

vehicle could move and “ram” Bagwill’s patrol vehicle. Witness # 2 described that Brandon “floored it.”

Brandon’s vehicle then went forward again a few feet and again suddenly stopped. Witness # 2 saw the station wagon again reverse and ram Deputy Bagwill’s patrol vehicle a second time. Witness # 2 heard multiple gunshots, saw Brandon’s vehicle pull forward again and then heard multiple gunshots. Because of the lighting at the gas station as well as the ambient lighting where Witness # 2 was across the street, coupled with the distance, Witness # 2 was unable to clearly see how many deputies fired; she did not see the deputies with shotguns or rifles and did not see any muzzle flashes.

Finally, Brandon’s vehicle drove away from the deputies and slowly drove out of the gas station parking lot. The vehicle pulled out of the east parking lot and turned north onto Highway 18. The vehicle turned left on Highway 247 and slowly swerved back across Highway 247 striking the side of the Valero gas station. Witness # 2 observed deputies follow to the Valero gas station but then based on lighting and distance could not see what was happening while there. Witness # 2 did not hear any other shots, but saw the ambulance arrive. Witness # 2 was the manager of the Sinclair gas station and had access to the surveillance video and provided that to officers upon request.

## **INCIDENT AUDIO AND VIDEO**

### **911 CALL**

On Friday, December 18, 2020, at approximately 5:23 a.m. Witness # 1 called 9-1-1 and reported to dispatch that a person, later identified as Rocky Brandon, approached the glass door of the Sinclair gas station where Witness # 1 worked as a clerk. The call to 9-1-1 lasted approximately six minutes and fifty-nine seconds. Witness # 1 reported to the dispatcher that Brandon had been unable to enter the gas station store through the glass door and went back to his car and retrieved a knife. Witness # 1 stated that Brandon had waived the knife at her through the glass door and that Brandon was still in front of the gas station seated in his vehicle.

Witness # 1 reported she was able to lock the door and call her manager before calling 9-1-1. Witness # 1 sounded distressed during the call with dispatch and said that she was “freaked out.” She described Brandon as “old, pale, his mouth sunken in,” and described that he appeared to be “raving.” Witness # 1 stated she had been scared by Brandon and stayed on the line until she saw a deputy arrive.

### **SURVEILLANCE VIDEO**

The Sinclair gas station is equipped with cameras on the outside of their building. The video shows Brandon arrives and parks outside of the convenience store doors in between the doors and the first row of gas pumps. After sitting in his car for less than

one minute Brandon gets out, appears to drop something, and walks to the convenience store doors. The video quality and the angle prevent a clear shot of exactly what happens at the door, but then Brandon retreats to his car and sits in the driver's seat. Deputy Bagwill arrives shortly thereafter and approaches the driver's side door and then retreats to his patrol vehicle which is parked directly behind Brandon's vehicle.

Bagwill gets out of his vehicle again and stays back along the driver's side of his vehicle. There is no sound, and the angle shows Bagwill standing and moving around near his vehicle. It appears that Brandon may be flashing his light at some point before more deputies arrive. Brandon then drives his vehicle forward and Bagwill follows and stops directly behind Brandon's vehicle. Bagwill approaches and other deputies on scene can be seen taking positions around behind the gas pumps.

Bagwill approaches with other deputies behind him and quickly backs up as Brandon reverses his vehicle and slams into Bagwill's parked patrol vehicle. Bagwill appears to have his handgun out and pointed toward Brandon. Brandon pulls forward and then quickly reverses into Bagwill's patrol vehicle a second time. Then Brandon pulls forward out of the view of the camera and deputies run back to their patrol vehicles and follow in their cars.

The video does not appear to run smoothly, as if it has a frame delay built in, and some of the sequences are difficult to see with the patrol vehicle lights distorting some of the frames. The frame rate is poor quality and does not capture the incident in real time that can be mirrored with the supplied and reviewed audio. However, Brandon is clearly seen ramming Bagwill's vehicle twice.

Likewise, the video from inside the convenience store suffers from the same poor quality frame rate, but a man can be seen approaching the doors, the clerk waiving at him, the man shakes the door, and then stands in front of the doors before leaving. The clerk runs over and locks the door and then makes a phone call. The video angle from inside the convenience store, and the frame rate do not allow the viewer to see in real time what happened at the door.

### **WEAPON**

At the scene, a knife was located inside the driver's side door pocket.

### **POSTMORTEM EXAMINATION**

Dr. Jolie R. Rodriguez, Forensic Pathologist, Riverside County Sheriff's Department, Coroner-Public Administrator, conducted the autopsy of Rocky Brandon, Sr. on December 24, 2020. Dr. Rodriguez noted one gunshot wound. Dr. Rodriguez determined the cause of death was a gunshot wound of the torso. In addition, there

was a penetrating defect of the upper left arm, and a dry abrasion on the upper left shoulder.

**Entrance of the gunshot wound:** Upper left back, approximately 40 centimeters below the top of the head; it is round with a 1-centimeter defect without soot or stippling. The projectile entered the left pleural cavity near the 5<sup>th</sup> rib and continued upward, crossing the midline of the neck, resting in the right side of the face.

**Trajectory of Projectile:** The projectile traveled from back to front, left to right, and upward.

**Recovery of Projectile:** The intact, jacketed projectile was recovered from the soft tissues of the right cheek.

### TOXICOLOGY

Blood (left chest), bile, urine, gastric contents, brain, liver, and vitreous were obtained for toxicology. Chest blood, vitreous, and urine were collected from Dawson during the autopsy.

There was no alcohol in Brandon's system, and toxicology results were as follows:

1. Gabapentin<sup>3</sup>: 6.8 mg/L
2. Amphetamines: Detected
  - a. Methamphetamine: 0.378 mg/L
  - b. Amphetamine: 0.207 mg/L
3. Cannabinoids: Detected
  - a. Delta-9-THC: 0.0023 mg/L
  - b. 11-Hydroxy-Delta-9-THC: None Detected
  - c. 11-Carboxy-Delta-9-THC: 0.036 mg/L
4. Opiates: Detected
  - a. Codeine: 0.009 mg/L
  - b. Hydrocodone: less than 0.005 mg/L
5. Acetaminophen: less than 0.5 mg/L

Toxicology of Brandon's urine showed similar results, but also Morphine: 1.050 mg/L, as well as detected amounts of Albuterol and Phenylpropanolamine<sup>4</sup>.

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<sup>3</sup> Gabapentin is in the class of medication known as an anticonvulsant, and can be used to treat seizures, and may be used to relieve pain.

<sup>4</sup> Albuterol and Phenylpropanolamine are generally associated with over-the-counter cold medications; however Phenylpropanolamine has been excluded from the U.S. market since November of 2000 due to the FDA's association of the drug with an increased risk of cardiac distress or stroke.

## **APPLICABLE LEGAL PRINCIPLES**

### **Assault With a Deadly Weapon**

**PENAL CODE SECTION 245 (a)(1).** Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars, or by both fine and imprisonment.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years. (Penal Code 245, summarized in pertinent part.)

### **Reasonable Force**

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).)<sup>5</sup> 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.4<sup>th</sup> 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.

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<sup>5</sup> All references to code sections here pertain to the California Penal Code.

**PENAL CODE SECTION 196.** Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code Section 196 states that homicide by a public officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

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

(Penal Code §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal Code §835a(e)(1).) The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal Code §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,<sup>6</sup> 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).)

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<sup>6</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;<sup>7</sup>
- (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.

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<sup>7</sup> 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).



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

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

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

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

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

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal Code §835a(e)(2).)

**REASONABLENESS.** Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer’s right to use force in the course of an arrest,

stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment's "reasonableness" standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

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

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

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

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4<sup>th</sup> 1125, 1147.)<sup>8</sup> 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.*)

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<sup>8</sup> 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.

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

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

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

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

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at 343, citing *Smith v. Freland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9<sup>th</sup> 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.4<sup>th</sup> at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1<sup>st</sup> Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide “zone of protection” when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

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

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

### **ANALYSIS**

To determine whether the deadly force used against Brandon was justified, we must look at the facts and circumstances that led up to the use of force. On December 18, 2020, at approximately 5:32 in the morning, Deputies from the San Bernardino County Sheriff's Department were dispatched to a report of a man with a knife that attempted to enter a convenience store. The female party reporting the incident told the dispatcher that the man, later identified as Rocky Brandon, had attempted to enter the store, and then brandished a knife at her through the window of the door. The clerk who reported this told the dispatcher that Brandon was still inside of his vehicle parked directly in front of the store door.

First to arrive was Deputy Daniel Bagwill who responded from the nearby Lucerne Valley Sheriff's sub-station. Upon arrival Deputy Bagwill attempted to contact Brandon who was seated in the driver's seat of his running vehicle. Brandon did not respond to commands, and as Deputy Bagwill approached, Brandon brandished a knife at him and made a motion toward Deputy Bagwill while seated in the driver's seat and with the window up.

Deputy Bagwill withdrew his duty weapon and created distance from Brandon while other deputies arrived on scene to assist. Deputy Tyler McGee arrived and when Brandon was uncooperative with commands, deployed less than lethal beanbags towards Brandon who was still seated in his vehicle.

Brandon continued to rev his engine as he had throughout the incident and reversed his vehicle rapidly toward where Deputy Bagwill stood and struck Deputy Bagwill's patrol vehicle. After Brandon hit Deputy Bagwill's vehicle, he drove forward and deputies on scene believed he was attempting to flee. Brandon however looked back and made eye contact with Deputy Bagwill and again reversed into Deputy Bagwill's patrol vehicle striking it again. Deputy Bagwill shot Brandon once. Brandon continued to drive forward and left the gas station. Brandon drove forward, made a left hand turn out of the gas station, then another left onto Highway 18, and then seemingly lost control of his vehicle knocked over a stop sign, and then crashed into the side of another gas station. Brandon was pronounced deceased at the scene.

In this case, Deputy Bagwill had an honest and objectively reasonable belief that Brandon posed an imminent threat of serious bodily injury or death to Deputy Bagwill as well as the other Deputies that were on scene. Brandon refused multiple commands to surrender the knife, turn off his car, exit the vehicle, and ultimately used his vehicle to ram Deputy Bagwill's patrol vehicle while Deputies were on scene and in the immediate area. It was reasonable for Deputy Bagwill to believe that Brandon would continue to

use his car as a weapon or use the weapon Deputy Bagwill had seen him with earlier against Sheriff's personnel.

Throughout this incident Brandon was non-compliant with commands, and Deputy McGee's less than lethal deployment of beanbags was ineffective at gaining Brandon's compliance. Video surveillance confirms what Deputy Bagwill, and all witnesses said in their written and recorded statements. Additionally, the physical evidence at the scene corroborates the statements as well. Under all those circumstances, and based upon a review of the evidence herein, it was objectively reasonable to believe that Brandon posed an immediate and serious threat to Deputy Bagwill's and others' physical safety and thus Deputy Bagwill's decision to use deadly force was justified.

### **CONCLUSION**

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

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