



PUBLIC RELEASE MEMORANDUM

Date: April 20, 2023

Subject: Fatal Officer-Involved Incident

Involved Officers: Sergeant James Farner
California Highway Patrol, Rancho Cucamonga

Involved Subject: Charley C. McMurtry, Jr. (DOB 12/24/1969)
Subject's Residence: Rancho Cucamonga, CA

Incident Date: February 5, 2021

Case Agent: Sergeant James Tebbetts
San Bernardino County Sheriff's Department

Agency Report #: 602100027/H#2021-017

DA STAR #: 2022-10925

TABLE OF CONTENTS

PREAMBLE..... 3

FACTUAL SUMMARY 3

STATEMENTS BY LAW ENFORCEMENT 6

 Sergeant James Farner 6

 Officer Mark Telford..... 9

 Officer Andrew Ornelas 10

 Additional Law Enforcement Personnel..... 11

STATEMENT BY CIVILIAN WITNESSES 13

 Reporting Party 13

 Motorists..... 14

SUBMITTED MEDIA 16

 Dispatch Recordings..... 16

 Body Worn Camera Video Recordings 18

 Mobile Video/Audio Device Recording 20

 Civilian Video Recordings..... 21

INCIDENT SCENE INVESTIGATION 23

AUTOPSY & CRIMINAL HISTORY 24

APPLICABLE LEGAL PRINCIPLES..... 24

ANALYSIS 29

CONCLUSION..... 37

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 3

PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The original case agent for this submission was SBCSD Detective James Tebbetts.¹

The submission reviewed included the following: reports of law enforcement witnesses, police dispatch audio recordings, body-worn camera (BWC) video recordings, a patrol unit video recording, audio recordings of law enforcement and civilian witness interviews, civilian video recordings, law enforcement photographs, a three-dimensional digital rendering of the scene and law enforcement scientific investigation reports.

FACTUAL SUMMARY

On February 5, 2021, at approximately 3:26 p.m., California Highway Patrol (CHP) Sergeant James Farner fired his duty weapon at Charley McMurtry, Jr., in the eastbound lanes of Interstate Freeway 10 ("I-10") in the city of Upland. Mr. McMurtry sustained multiple gunshot wounds as a result. Mr. McMurtry was transported from the scene to a local hospital, where he was later pronounced deceased. At the time he was shot, Mr. McMurtry was armed with a steak knife with an approximately four and a half inch long pointed and serrated metal blade. No other persons were reported to be injured during this incident.

The officer-involved shooting was the culmination of a series of events set into motion by a 9-1-1 call made by [REDACTED] (RP) at approximately 2:46 p.m. RP called 9-1-1 to report that her husband was in crisis and suicidal. RP stated that she was driving westbound on the I-10 near Mountain Avenue with her husband (Mr. McMurtry), when she saw him cutting his wrists with a knife. RP reported that Mr. McMurtry then got out of her moving car and started walking away. Before RP could pull over, Mr. McMurtry walked out of RP's sight. CHP dispatch alerted their units that there was a suicidal subject on the westbound I-10, east of Mountain Avenue, who had cut his wrists and jumped out of a moving vehicle. A CHP dispatcher relayed that Mr. McMurtry was a Black male adult with a knife, wearing a black sweatshirt and black pants. Multiple CHP units, including Sergeant Farner, immediately radioed in response that they would assist in locating Mr. McMurtry. Sergeant Farner also requested that an aviation unit be summoned to assist in locating Mr. McMurtry. CHP dispatch, in addition, enlisted the help of the local area police—Upland Police Department (UPD).

Within minutes of RP's initial 9-1-1 call, multiple CHP and UPD units, both on the ground and in the air, began to scour the area between Mountain and Euclid Avenues and the I-10 freeway. Initial search efforts were unsuccessful. As such, at approximately 3:04 p.m., CHP dispatch called RP for additional details about where Mr. McMurtry was last seen. While providing all the

¹ After the initial submission of investigation materials, Detective Tebbetts was promoted to the rank of Sergeant and the case was reassigned to another detective for future handling. At the time this memorandum was prepared, SBCSD Detectives Eric Ogaz and Malcolm Page were assigned as case agents.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 4

information she could, RP also relayed that Mr. McMurtry was a veteran, who was struggling lately with symptoms of post-traumatic stress disorder (PTSD). At approximately 3:12 p.m., RP called 9-1-1 again, this time to report that Mr. McMurtry had called her to say, "Goodbye." CHP dispatch subsequently relayed the additional information to CHP units that were still actively searching for Mr. McMurtry in the field.

At 3:21 p.m. (about 35 minutes after the search for Mr. McMurtry began), 9-1-1 calls started pouring in to CHP dispatch from motorists on the westbound side of the I-10. These motorists reported a man (Mr. McMurtry) walking or running in front of cars in freeway lanes. It was further reported that cars were swerving and colliding to avoid hitting Mr. McMurtry. Mr. McMurtry was described as being shirtless, bleeding onto his chest by a gaping wound at his neck and holding a bloodied knife. Some motorists believed that Mr. McMurtry had been hit by a car. It was also reported that Mr. McMurtry was slicing his throat, stabbing himself, and deliberately trying to get hit by motorists. Another 9-1-1 caller reported that Mr. McMurtry was going after people in their cars by stopping in front of them and going up to passenger doors. This caller reported Mr. McMurtry went after her, but that she swerved around Mr. McMurtry to get away. CHP dispatch subsequently advised patrol units that Mr. McMurtry, sliced his throat, was stabbing himself, and was trying to open car doors.

At 3:23 p.m., CHP Officer Mark Telford radioed from aboard CHP aviation unit *Air-83*, that a traffic collision could be seen in the westbound lanes of the I-10, east of San Antonio Avenue, with one involved vehicle facing the wrong way. Upon hearing Officer Telford's broadcast about the collision, Sergeant Farner immediately turned on his patrol unit's emergency lights and siren and drove towards the Mountain Avenue on-ramp to the I-10 eastbound lanes. Two additional CHP patrol units driven by Officers Michael Migliacci and Jesus Garcia trailed behind Sergeant Farner. UPD Sergeant Maurice Duran followed behind Officers Migliacci and Jesus Garcia onto the freeway. At the time, the area of the Mountain Avenue on-ramp to the I-10 was under construction. All four patrol units were met with heavy afternoon traffic. The officers and sergeants used their respective unit emergency lights and sirens to slowly maneuver through the backup of motorists.

At approximately 3:25 p.m., Officer Telford communicated through CHP dispatch that he could see a shirtless Black male on the eastbound side of the I-10 center divider, east of San Antonio Avenue. Mr. McMurtry had climbed over the center median from the westbound side to the eastbound side and was walking westbound towards eastbound traffic along the left shoulder. In response, Sergeant Farner alerted dispatch that he was already in the area. Sergeant Farner approached on the eastbound side. Meanwhile, CHP Officer Andrew Ornelas entered the I-10 east of San Antonio Avenue (at Euclid Avenue), conducted a traffic break, and stopped westbound traffic. Officer Migliacci was the first of the approaching ground units in the eastbound lanes to announce via dispatch that *he could see* Mr. McMurtry walking westbound in the center median, just east of the San Antonio Avenue overpass. Officer Migliacci was approximately 300 to 400 feet west of Mr. McMurtry at the time. Officer Jesus Garcia also saw

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 5

Mr. McMurtry from behind Officer Migliacci's position. Eventually, Officers Migliacci and Jesus Garcia left their units in the #1² lane and began to move forward on foot.

Ahead of Officers Migliacci and Jesus Garcia in the eastbound lanes of I-10, Sergeant Farner drew near to Mr. McMurtry's location. At about the same time, UPD Officer Andres Garcia was driving southbound atop the San Antonio Avenue overpass. Officer Andres Garcia saw Mr. McMurtry running westbound in the lanes below. Officer Andres Garcia stopped his patrol unit, made a U-turn to park along the east side of the overpass. From that elevated position, Officer Andres Garcia saw Sergeant Farner arrive east of the overpass. Officer Ornelas, who was in his patrol unit on the westbound side of the I-10, also watched Sergeant Farner make contact with Mr. McMurtry.

Sergeant Farner explained that after he spotted Mr. McMurtry that he drove his patrol unit across lanes to prevent motorists from stopping in front of Mr. McMurtry. Sergeant Farner's patrol unit ended up in a canted position within the #3 lane as Mr. McMurtry stood on the shoulder of the #1 lane. Sergeant Farner saw that Mr. McMurtry was shirtless and bleeding from a neck wound onto his neck and chest. Sergeant Farner also noted that Mr. McMurtry held a bloodied knife in his left hand. Sergeant Farner immediately got out of his patrol unit, drew his sidearm and maintained it at a "low ready" position. Sergeant Farner walked out into open lanes in front of his patrol unit in an effort to draw Mr. McMurtry away from frightened motorists. Cars were stopped next to or at varied distances immediately behind Sergeant Farner's patrol unit, across lanes #1 through #4. Even though Mr. McMurtry and Sergeant Farner were already on foot upon the freeway lanes, some motorists continued drive through the traffic break at the #5 lane.

At first, Sergeant Farner attempted to talk to Mr. McMurtry. The sergeant asked Mr. McMurtry to, "Please, drop the knife." Sergeant Farner went on to explain to Mr. McMurtry that he wanted to help and was not there to hurt Mr. McMurtry. Without saying anything in response to Sergeant Farner, Mr. McMurtry began to walk towards the sergeant. As Mr. McMurtry walked towards Sergeant Farner, the sergeant retreated by walking backwards and side-stepping (west) along the passenger side of his patrol unit, then (north) behind the rear of the patrol unit. Sergeant Farner continued to plead with Mr. McMurtry to stop and to drop his knife. Mr. McMurtry continued forward with his knife in front of him and tracked the sergeant's path; Sergeant Farner described Mr. McMurtry to be "hunting" him at this point. Suddenly, as Sergeant Farner rounded the left rear fender of his patrol unit, Mr. McMurtry charged at the sergeant from the passenger side of the patrol unit. In response, Sergeant Farner quickened his retreat (west) along the left side of his patrol unit. Sergeant Farner's retreat brought him back to the front of his patrol unit as Mr. McMurtry momentarily stopped near the trunk of the patrol unit. Then, Sergeant Farner saw Mr. McMurtry roll his shoulders forward with his knife in front of him and make a full-speed sprint at the sergeant. Sergeant Farner fired at Mr. McMurtry.

² For ease of reference, the furthest lane to the left and going in the same direction of travel will be referred to as the "#1 lane." Any additional lanes to the right of the #1 lane will be referred to in numerical sequence, i.e., the lane to the right of the #1 lane will be referred to as the #2 lane.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 6

Less than 15 seconds passed between the time Mr. McMurtry stepped toward Sergeant Farner from the #1 lane shoulder, to the time Sergeant Farner fired his weapon.

From the San Antonio Avenue overpass approximately 93 feet west, Officer Andres Garcia saw Mr. McMurtry tumble to the ground. From approximately 1000 to 1200 feet above ground level in *Air-83*, Officer Telford alerted dispatch that Mr. McMurtry charged Sergeant Farner and that Mr. McMurtry was on the ground. Just as Officer Telford did so, Officer Ornelas radioed, “Shots fired” and requested that medical aid be routed to the scene. Albeit from a distance of approximately 50 yards, Officer Ornelas also witnessed the shooting. Officers Migliacci and Jesus Garcia heard Sergeant Farner’s gunfire as they approached the scene on foot, but neither officer saw the sergeant shoot Mr. McMurtry. By the time Officers Migliacci and Jesus Garcia arrived, Mr. McMurtry was on the ground. Sergeant Duran was still in his patrol unit in the #5 lane at the time he heard Sergeant Farner’s gunfire.

Sergeant Farner and Officers Andres Garcia, Migliacci and Ornelas, each assisted in administering basic life saving measures to Mr. McMurtry, until the San Bernardino County Fire Department (SBFD) arrived at the scene at approximately 3:35 p.m. SBFD assumed care of Mr. McMurtry and transported Mr. McMurtry by ambulance to a nearby hospital. Mr. McMurtry arrived in the hospital emergency department at 4:00 p.m. Despite receiving additional medical treatment, Mr. McMurtry succumbed to his injuries and was pronounced deceased at approximately 4:07 p.m.

After an examination of the scene and the collection of evidence, it was determined that a combined total of three rounds were fired by Sergeant Farner. The weapon used by Sergeant Farner was collected and examined by a SBCSD Scientific Investigations Division (SID) criminalist. No damage or malfunction was noted in Sergeant Farner’s weapon.

STATEMENTS BY LAW ENFORCEMENT OFFICERS³

Sergeant James Farner gave a voluntary interview to SBCSD Detectives Tebbetts and Simon DeMuri on February 9, 2021, approximately four days after the shooting incident and in the presence a CHP peer representative. Sergeant Farner was 46 years old. Sergeant Farner acknowledged that prior to giving his interview that he reviewed audio or video recordings of the shooting incident.

The following is a summary of relevant information disclosed by Sergeant Farner during his interview:

Sergeant Farner had been a CHP officer since March 1997—almost 24 years. This was Sergeant Farner’s first officer-involved shooting.

³All investigative reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person’s name until investigations revealed it, or as otherwise specified. All references to any witness or Charley McMurtry, Jr., by name are made here for ease of reference.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 7

On the day of the incident, Sergeant Farner was at the Rancho Cucamonga CHP station when he heard dispatch radio announcements regarding a pedestrian (Mr. McMurtry) on the freeway in the area of Mountain Avenue and the I-10 Freeway. Sergeant Farner learned that Mr. McMurtry was armed with a knife and had jumped out of a moving vehicle. Sergeant Farner recalled the given description of Mr. McMurtry was that he was a bald Black male wearing a black sweatshirt and black pants. Sergeant Farner and four or five other patrol units advised dispatch that they would respond to the call.

Sergeant Farner relayed that he grew up in the area and his familiarity with local streets made him an asset in the search for Mr. McMurtry. During this search, Sergeant Farner drove a white Dodge Charger patrol unit with large CHP markings on both front doors. Sergeant Farner also requested that an air unit respond to aid in the search. While searching for Mr. McMurtry, Sergeant Farner received updated information via dispatch that Mr. McMurtry was a combat veteran suffering from PTSD. Sergeant Farner expressed that he didn't want to see Mr. McMurtry get hurt. Sergeant Farner had a specific desire to help Mr. McMurtry because the sergeant's son was also in a combat military unit.

Sergeant Farner recalled he searched for Mr. McMurtry for approximately 40 minutes when he heard dispatch announcements regarding a collision on the westbound lanes of the I-10 near Euclid Avenue, with a pedestrian running in traffic. Sergeant Farner also received an additional update from an aviation unit that a Black male matching Mr. McMurtry's description was walking in westbound traffic lanes. Sergeant Farner immediately activated his patrol unit's emergency lights and siren and drove to the eastbound I-10 on-ramp at Mountain Avenue.

Sergeant Farner described the freeway area of the I-10 at Mountain Avenue as being under construction at the time. Despite using his emergency lights and siren, Sergeant Farner's approach was hampered by heavy afternoon traffic. On his continued approach, Sergeant Farner heard a CHP unit announce that Mr. McMurtry was at the freeway center divider and appeared to be cutting himself. At approximately 3:25 p.m., Sergeant Farner advised dispatch that he was in the area, and then saw Mr. McMurtry standing shirtless on the yellow fog line on the eastbound side of the center divider with a knife in his hand. Sergeant Farner noticed that Mr. McMurtry's neck, chest, and both wrists were cut with deep and bloody gashes. Sergeant Farner had previously heard that Mr. McMurtry had been trying to open car doors, so the sergeant moved his patrol unit across lanes to keep other cars from stopping in front of Mr. McMurtry.

Once Sergeant Farner stopped his patrol unit on the freeway, the sergeant noticed that Mr. McMurtry locked his eyes on the sergeant. Sergeant Farner got out of his patrol car and drew his duty weapon. Sergeant Farner stated that he was about two lane widths—an estimated 25 feet, away from Mr. McMurtry and off to the sergeant's left side. Sergeant Farner described Mr. McMurtry to be similarly sized to himself; he estimated Mr.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 8

McMurtry to stand approximately six feet and one inch tall and weigh 250 pounds. Sergeant Farner described himself as being approximately six feet and one inch tall and weighing 230 pounds. Sergeant Farner explained that he held his gun at a “low ready” so as not to seem as “overly threatening” to Mr. McMurtry. Sergeant Farner expanded, “I told [Mr. McMurtry] that I wasn’t there to hurt him, that I wanted to help him, uh, please drop the knife, we want to get you some help.”

Sergeant Farner stated that Mr. McMurtry offered no response to his attempt to de-escalate the situation. Instead, Mr. McMurtry walked toward Sergeant Farner. Sergeant Farner didn’t want Mr. McMurtry to get close to the people “stuck” in their stopped cars. Sergeant Farner noted at least two civilians in their cars, within four feet of Mr. McMurtry, appeared to be scared. As such, Sergeant Farner walked from the front of his car and towards the right to lure Mr. McMurtry away. To add to his concerns, Sergeant Farner noted that traffic and civilians were “literally right on top” of the sergeant. Sergeant Farner explained that he hoped to create more distance between himself and Mr. McMurtry. Soon thereafter, Sergeant Farner stated that he was out in the middle of lanes, without any cover, side-stepping and walking backwards. Sergeant Farner stated that he continued to plead with Mr. McMurtry to put the knife down as he walked. However, Mr. McMurtry continued to make no verbal response. Sergeant Farner believed Mr. McMurtry was angry. Mr. McMurtry was “clenched up in an aggressive manner.” Sergeant Farner saw that Mr. McMurtry’s body muscles were tensed. Mr. McMurtry had both of his fists clenched as if he were taking a fighting stance, was breathing heavy, and kept his eyes fixed on Sergeant Farner.

As Mr. McMurtry continued to walk toward Sergeant Farner, the sergeant next attempted to put his patrol unit in between himself and Mr. McMurtry. Sergeant Farner moved in a crescent shape from the front of his patrol unit to the trunk. As Sergeant Farner side-stepped around the trunk of his patrol car, Sergeant Farner saw Mr. McMurtry start to run towards him from a distance of about 20 to 30 feet. Sergeant Farner did not want to hurt Mr. McMurtry, repeated commands and recalled saying to Mr. McMurtry, “please stop, don’t do this, don’t do this.” Sergeant Farner continued to retreat around the back of his trunk and along the driver’s side of the patrol unit. Sergeant Farner stated he felt Mr. McMurtry was “hunting” him.

As Mr. McMurtry came around the sergeant’s trunk, Mr. McMurtry paused. Then, from a distance of approximately 12 to 15 feet, as Sergeant Farner stood towards the front of the driver’s side of his patrol unit, Sergeant Farner saw Mr. McMurtry roll his shoulders forward, clench up and make a full-speed sprint at the sergeant, while still holding the knife up. With his back facing the east and still moving backwards, Sergeant Farner fired his duty weapon at Mr. McMurtry three times. Sergeant Farner stated that he waited to the “last possible second” in his efforts *not* to shoot at Mr. McMurtry. Sergeant Farner stated that he believed Mr. McMurtry would kill him if he did not fire his weapon when he did. Sergeant Farner estimated that Mr. McMurtry was less than 15 feet away when he ultimately fired. Sergeant Farner explained that he stopped firing at Mr. McMurtry once

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 9

Mr. McMurtry “crumpled” to the ground. After he stopped firing, Sergeant Farner saw that Mr. McMurtry’s knife lay on the ground within Mr. McMurtry’s reach. Sergeant Farner recalled stepping on Mr. McMurtry’s knife and kicking it behind him just as two additional officers arrived at the scene. After Mr. McMurtry was handcuffed, Sergeant Farner and those officers provided Mr. McMurtry with medical aid until paramedics arrived.

Sergeant Farner explained that he did not consider using any other force options (other than lethal force) because Mr. McMurtry was armed with a knife and “coming at” him. Sergeant Farner had previously been trained that a person armed with a knife can cover a distance of at least 21 feet before a person armed with a pistol and perceive, react and fire at the knife-wielding aggressor. Additionally, Sergeant Farner assumed Mr. McMurtry was a “professional” or otherwise experienced with using weapons due to Mr. McMurtry’s reported background as a combat veteran. Sergeant Farner stated that had he attempted to engage Mr. McMurtry in hand-to-hand combat, that Mr. McMurtry would have cut the sergeant. Sergeant Farner expanded that he had no time to use less-lethal methods to defend against Mr. McMurtry’s armed approach. Sergeant Farner was not carrying a taser. However, the sergeant did have a less-lethal shotgun in the trunk of his patrol unit. To use it, the sergeant would have had to get the less-lethal shotgun out of the trunk and load it before it could be fired. Sergeant Farner believed that, under the circumstances of Mr. McMurtry’s immediate approach, had the sergeant taken those additional steps to retrieve and load the less-lethal shotgun, that Mr. McMurtry would have killed him. In addition, Sergeant Farner was by himself at the time he encountered Mr. McMurtry’s charge. Sergeant Farner was previously trained to use less lethal methods only where another officer can provide “lethal coverage.”

Based upon Sergeant Farner’s interview, the examination of his duty weapon and the collection of evidence at the scene, it was determined that Sergeant Farner fired three rounds at Mr. McMurtry during the shooting incident.

Officer Mark Telford gave a voluntary interview to SBCSD Detectives Tebbetts and Page on February 19, 2021, approximately two weeks after the shooting incident. The following is a summary of relevant information disclosed by Officer Telford at the time of the interview:

Officer Telford had been a CHP officer for approximately 20 years. For the last seven of those years, Officer Telford served as a flight officer assigned to CHP’s Inland Division Air Operations. Officer Telford explained that his duties as a flight officer included monitoring radio transmissions for calls, directing the pilot where to go, and assisting ground units by providing information.

On the day of the shooting incident, Officer Telford’s partner pilot was Officer Ruben Olivera. Officer Telford and Olivera’s assigned fixed-wing aircraft bore the call sign, *Air-83*. Officer Telford recalled being airborne in the Moreno Valley area when dispatch alerted them to a suicidal subject in Rancho Cucamonga. Officer Telford stated that he

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 10

also received information that the subject was armed with a knife and had self-inflicted wounds. Once Officers Telford and Olivera arrived in the area above Mountain and Euclid Avenues, Officer Telford used his gyro-stabilized binoculars to observe what was happening on the ground. As Officer Telford did so, he saw what he believed to be the aftermath of a traffic collision in the I-10 westbound lanes. As Officer Telford continued to watch, he saw a man walking westbound on the eastbound side of the center divider (Mr. McMurtry). Officer Telford described Mr. McMurtry as a Black male with no shirt. Officer Telford alerted dispatch to what he saw while continuing to watch Mr. McMurtry. Next, Officer Telford saw that an officer (Sergeant Farner) arrived, got out of his car, and appeared to unholster his gun. Officer Telford then saw Mr. McMurtry stop and look in the direction of Sergeant Farner before beginning to walk towards the sergeant. As Mr. McMurtry pursued Sergeant Farner, Officer Telford saw Sergeant Farner walking backwards. It appeared to Officer Telford that Mr. McMurtry was agitated and “walking with a purpose.” Officer Telford stated Mr. McMurtry went from “just wandering” to moving “like a bee to honey.” Officer Telford described Mr. McMurtry as looking “very animated” and appearing to move his arms and body like Mr. McMurtry was shouting. When Officer Telford saw Sergeant Farner retreat towards the right side of his patrol car, Officer Telford recalled alerting dispatch that Mr. McMurtry was “charging the officer.” Soon thereafter, Officer Telford saw Mr. McMurtry drop to the ground towards the front of Sergeant Farner’s patrol unit. Although Officer Telford believed at first that Mr. McMurtry had been tazed, soon thereafter Officer Telford heard someone announce over the radio that shots had been fired. Officer Telford estimated that less than a minute passed from the time Sergeant Farner stopped his patrol car to the time Mr. McMurtry was on the ground.

Officer Andrew Ornelas also witnessed the shooting incident. Officer Ornelas submitted a written report regarding his involvement and observations. The following is a summary of Officer Ornelas’s written report:

Officer Ornelas recalled he and other CHP units were searching for a Black male adult wearing a black sweatshirt and pants, when he received information about a pedestrian walking in the westbound lanes of the I-10 near Euclid Avenue. Officer Ornelas drove his marked unit in that direction and when he entered the westbound lanes of the I-10 at Euclid Avenue, he began initiating a traffic break. Because traffic was so heavy, Officer Ornelas paused his traffic break. After doing so, at approximately 3:25 p.m., Officer Ornelas saw a Black male adult (Mr. McMurtry) in the eastbound lanes of the I-10, east of the San Antonio overpass, walking in the center median. The sight caused Officer Ornelas to reinitiate his efforts to effectuate a traffic break. Then, Officer Ornelas saw Sergeant Farner outside of his patrol unit, also on the eastbound side of the I-10. Officer Ornelas estimated his unit was 50 yards east of where he saw Sergeant Farner.

Next, Officer Ornelas “observed [Mr. McMurtry] begin walking in a fast [and] aggressive manner” toward Sergeant Farner, with a knife in his left hand. Then, Officer Ornelas saw Sergeant Farner walked backwards and away from Mr. McMurtry. Officer Ornelas saw

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 11

that Sergeant Farner had his weapon out and pointed in a northeasterly direction. Officer Ornelas parked his unit and heard Sergeant Farner giving commands, though at the time, those commands were unintelligible to Officer Ornelas. Meanwhile, Officer Ornelas saw Mr. McMurtry increase his speed in advancing towards Sergeant Farner, still with the knife in his left hand. Officer Ornelas saw Sergeant Farner had his pistol pointed in the direction of Mr. McMurtry. Then, immediately after Officer Ornelas got out of his own patrol unit, Officer Ornelas saw Sergeant Farner fire his pistol three times at Mr. McMurtry, causing Mr. McMurtry to drop to the ground. Officer Ornelas immediately broadcasted "11-99," "shots fired" and requested medical assistance. Thereafter, Officer Ornelas approached the scene on foot to assist with providing Mr. McMurtry medical aid.

Additional Law Enforcement Personnel were interviewed regarding their involvement in the location of Mr. McMurtry and their associated investigations. All law enforcement officers identified in the submitted investigation who participated in the location of Mr. McMurtry in or around areas of the I-10 freeway between Mountain and Euclid Avenues, did so while on duty, in department-issued uniforms including departmental patches, and traveled in marked law enforcement vehicles.

CHP Officer Sergio Vasquez determined based upon his investigation that prior to the shooting incident, Mr. McMurtry caused a traffic collision between a black pickup truck and a white sedan on the I-10 westbound lanes. (See *Statements by Civilian Witnesses*, TC Motorist #1 and TC Motorist #2, *infra*.) Officer Vasquez approximated that the collision occurred 500 feet east of the east edge of the San Antonio Avenue overpass and 22 feet north of the south roadway edge of the westbound lanes of I-10.

After the traffic collision in the westbound lanes, Mr. McMurtry was reported to have walked westbound on the eastbound side of the I-10 center divider. The following four officers saw Mr. McMurtry and/or Sergeant Farner on the eastbound side of the I-10 shortly before the shooting occurred and *heard* the subsequent sound of gunfire but did not see the shooting itself: CHP Officers Jesus Garcia and Michael Migliacci, UPD Sergeant Maurice Duran and UPD Officer Andres Garcia. Prior to seeing Mr. McMurtry, Officers Jesus Garcia and Migliacci heard through dispatch that Mr. McMurtry was suicidal. Officers Jesus Garcia and Migliacci were also with RP when Mr. McMurtry called her to say "goodbye." (See *Statements by Civilian Witnesses*, RP, *infra*) While Officers Jesus Garcia and Migliacci spoke with RP, CHP dispatch relayed via radio that Mr. McMurtry was running in westbound lanes of the I-10 near Euclid Avenue, bleeding and stabbing or cutting himself. Immediately thereafter, Officers Jesus Garcia and Migliacci got in their patrol units and drove to the I-10 eastbound on-ramp at Mountain Avenue. Officers Jesus Garcia and Migliacci saw Sergeant Farner enter the freeway at the same on-ramp, ahead of them. Sergeant Farner was followed by Officer Migliacci, then Officer Jesus Garcia. Officer Jesus Garcia stated that Sergeant Duran entered the freeway behind his unit.

When Officer Migliacci first saw Mr. McMurtry, it was from an estimated 300 to 400 feet. Officer Migliacci recalled that Mr. McMurtry was holding a knife upright in his hand while walking westbound on the eastbound lanes. Officer Jesus Garcia also saw Mr. McMurtry as Mr.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 12

McMurtry walked along the freeway center divider but could not tell what Mr. McMurtry was holding. Heavy traffic prevented the officers from moving forward quickly. Officer Migliacci stopped his unit in the #1 lane and began approaching on foot while Mr. McMurtry was approximately five to six car lengths ahead. Officer Jesus Garcia also stopped his unit and got out. As Officer Migliacci moved forward, he lost sight of Mr. McMurtry. Officer Jesus Garcia was two to three car lengths behind Officer Migliacci. Initially, Officer Jesus Garcia was going to retrieve a less-lethal shotgun from the trunk of his unit when he saw Mr. McMurtry run from the center divider toward the direction of Sergeant Farner's unit. This prompted Officer Jesus Garcia to close his trunk without retrieving the less-lethal shotgun and start running towards Sergeant Farner, himself. As Officer Jesus Garcia moved forward, he saw Sergeant Farner with his service weapon out and yelling commands at Mr. McMurtry. Officer Migliacci, who was also moving forward with an unholstered taser in his hand, heard shouting to include Sergeant Farner saying, "stop." Officer Migliacci could not see Sergeant Farner nor Mr. McMurtry when he heard the sound of gunfire. Officer Jesus Garcia was near the front of his patrol unit when he heard the same gunfire. By the time both Officers Jesus Garcia and Migliacci reached Sergeant Farner's patrol unit, Officers Jesus Garcia and Migliacci saw that Mr. McMurtry was laying on the ground.

Sergeant Duran also entered the I-10 eastbound lanes at Mountain Avenue, behind Officers Jesus Garcia and Migliacci. Sergeant Duran noted seeing three CHP units ahead of him, the first of those being Sergeant Farner's white CHP unit. As all four units attempted to move through traffic along the #1 lane, Sergeant Duran saw Mr. McMurtry walking westbound in the eastbound lanes of traffic. Sergeant Duran recalled that traffic came to a stop at around the time he saw Mr. McMurtry. As such, Sergeant Duran used his emergency lights to maneuver his patrol unit to the right. Sergeant Duran heard gunfire while he was still in his unit. Sergeant Duran got out of his unit, drew his weapon and moved forward until he saw Sergeant Farner. Sergeant Duran also saw a "steak knife" on the ground in front of Sergeant Farner's unit.

Prior to the shooting incident, Officer Andres Garcia was assisting in CHP's effort to locate Mr. McMurtry in the area of Mountain Avenue, north of the I-10. During his search, Officer Andres Garcia recalled hearing radio announcements that there was a subject on the freeway trying to get hit by vehicles. While driving southbound on the San Antonio Avenue overpass, Officer Andres Garcia saw Mr. McMurtry. Mr. McMurtry was shirtless, bloody, and running westbound in the eastbound lanes of the I-10, below. Officer Andres Garcia made a U-turn and pulled over to the east side of the overpass, when he saw a lone CHP unit (Sergeant Farner) arrive. Officer Andres Garcia then saw Sergeant Farner put Mr. McMurtry at gunpoint. Officer Andres Garcia saw Sergeant Farner move from behind his patrol unit to the front of his patrol unit. Officer Andres Garcia moved to an opening in the overpass fencing to gain access to the scene when he heard the sound of three gunshots. Officer Andres Garcia did not see Sergeant Farner fire his weapon but did see Mr. McMurtry fall to the ground. Within seconds of the gunfire, Officer Andres Garcia saw additional law enforcement officers arrive in the eastbound lanes of the I-10.

Officer Ruben Olivera was the pilot flying *Air-83* at the time of the incident. Officer Olivera stated that his partner—Officer Telford, provided dispatch with his observations of Mr.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 13

McMurtry on the ground. Officer Telford sat on the left side of the aircraft. For his part, Officer Olivera sat on the right side of the aircraft and maintained the aircraft in a left-handed (counterclockwise) orbit approximately 1000 to 1200 feet above the ground, to allow Officer Telford to be in a position to watch.

An inventory of what Sergeant Farner was wearing at the time of the shooting incident was taken by Detective Laing. Sergeant Farner wore a long-sleeved blue CHP utility shirt with CHP patches on both outer shoulders and a cloth CHP badge on the left breast. "J. Farner" was embroidered in yellow block letters on the right breast. Sergeant Farner also wore long blue cargo pants and black boots. In addition to his duty-weapon, Sergeant Farner had a Smith & Wesson, .38 caliber revolver loaded with five rounds in an ankle holster worn on the sergeant's left ankle. Sergeant Farner also had two .40 caliber Smith & Wesson magazines containing 15 rounds each, affixed to his *Sam Browne* belt.

Sergeant Farner's department-issued weapon was collected and examined by a SBCSD SID Criminalist. The criminalist found that Sergeant Farner's duty weapon was a Smith & Wesson, model M&P 40, 40 S&W caliber semi-automatic pistol. Sergeant Farner's pistol was test-fired and found to operate without malfunction or defect. All ammunition found within Sergeant Farner's duty weapon and the FCC's recovered from the scene, bore identical headstamps—"FC 18 40 S&W."

STATEMENTS BY CIVILIAN WITNESSES⁴

██████████ (RP) was interviewed by Detective DeMuri in a detective vehicle approximately four and a half hours after the shooting occurred. RP stated that she had been married to Mr. McMurtry for a year but had known him for approximately 20 years. RP relayed that she was driving to pick up a family member and Mr. McMurtry rode in the front passenger seat, when she heard Mr. McMurtry say, "I should have died with 'em." RP explained that Mr. McMurtry was a former marine who suffered from PTSD and that it was this time of year when three of Mr. McMurtry's friends were deployed and killed. RP stated that Mr. McMurtry would want to hurt himself and felt that he should not be alive. RP stated that Mr. McMurtry experienced "episodes" like this through the years. RP disclosed that Mr. McMurtry had been regularly seeking care by a psychiatrist in the year prior. RP also stated that Mr. McMurtry was recently weaned from medication that caused Mr. McMurtry to hallucinate. RP managed Mr. McMurtry's medications and specified that Mr. McMurtry was not overmedicating.

RP stated that she called 9-1-1 earlier in the day because as she drove westbound on the I-10 freeway, Mr. McMurtry jumped out of the car. RP recalled that before Mr. McMurtry jumped out of the car that Mr. McMurtry refused to put his seatbelt on. This prompted RP to ask Mr.

⁴ Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement and recorded statement submitted was reviewed in totality. However, only selected parts of those statements are included here. No civilian witness used the name of any person involved in the lethal force encounter, unless otherwise indicated. Names are included in this summary for ease of reference only.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 14

McMurtry, “what’s wrong?” Unbeknownst to RP, Mr. McMurtry took a steak knife from their kitchen and used it to re-open sutured wounds that Mr. McMurtry had on the left side of his neck and both of his wrists. RP explained that Mr. McMurtry attempted to kill himself the week prior and was just released from the hospital. RP stated that this was the third time Mr. McMurtry had attempted to kill himself since November. RP stated that after Mr. McMurtry got out of the car, he walked next to the car. RP planned to pull over to the shoulder and get out too, but Mr. McMurtry had climbed up an adjacent retaining wall on the north side of the freeway and out of her sight. RP told detectives that Mr. McMurtry was “in a mental health crisis.” After calling 9-1-1, RP recalled getting a phone call from Mr. McMurtry. Mr. McMurtry told RP, “Baby, just know that I love you,” “I don’t want no more dreams,” and “It’s not working, I can’t get rid of it no matter what I do.” Mr. McMurtry asked RP to let him go, to let him “bleed out.”

After RP was informed that Mr. McMurtry charged at an officer and was shot, RP surmised that in his state of mind, that Mr. McMurtry probably figured that he would be going to prison when he saw the officer. Though ultimately, RP stated that Mr. McMurtry bore no “malice” towards law enforcement.

Motorists who saw Mr. McMurtry on foot in lanes of the I-10 were interviewed by investigators. Approximately 32 witness motorists provided voluntary statements. The first motorists to see Mr. McMurtry were traveling in the westbound lanes prior to the time the shooting incident occurred. Two of those westbound motorists: TC Motorist #1 and TC Motorist #2, were involved in a traffic collision that was investigated by CHP Officer Vasquez (See *Statements by Additional Law Enforcement, supra*). TC Motorist #1 reported driving a white sedan in the #3 lane. TC Motorist #1 stated that as traffic had slowed in the #4 and #5 lanes, TC Motorist #1 saw Mr. McMurtry suddenly jump from the #4 lane to the front of TC Motorist #1’s car in the #3 lane. TC Motorist #1 and his front passenger both noted that Mr. McMurtry was covered in blood, shirtless, and carrying a knife in his left hand. TC Motorist #1 told Officer Vasquez that he had to steer to the left to avoid hitting Mr. McMurtry, but doing so caused TC Motorist #1’s car to strike the right side of TC Motorist #2’s black pickup truck in the #2 lane. TC Motorist #2 reported that she saw Mr. McMurtry in lanes and slowed down for him when her truck was suddenly struck on the right side. TC Motorist #2 recalled that her truck spun and came to rest facing the wrong way while blocking the #5 lane and the adjacent shoulder.

Approximately a dozen westbound motorists who witnessed the traffic collision between TC Motorists #1 and #2 or its immediate aftermath also reported seeing Mr. McMurtry walking in lanes towards traffic. Generally, Mr. McMurtry was described as being shirtless, injured or bloodied, and armed with a knife. One westbound motorist described Mr. McMurtry as having “slit his throat” and “stabbing himself.” Another westbound motorist reported Mr. McMurtry was “sawing at his neck.” Several westbound motorists described Mr. McMurtry as appearing angry and getting in front of cars. Multiple westbound motorists told detectives that they were afraid of Mr. McMurtry. One westbound motorist stated that Mr. McMurtry was “yelling at cars.” Another westbound motorist stated that Mr. McMurtry was “stalking” the freeway and “going after people in their cars.” Yet, other westbound motorists specifically stated that Mr.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 15

McMurtry was *not* trying to get into cars. It appeared to others that Mr. McMurtry was lost or disoriented.

At some point after causing the traffic collision on the westbound side of the I-10, Mr. McMurtry was reported by motorists to be on the eastbound side of the I-10. Before Sergeant Farner arrived at the scene east of the San Antonio Avenue overpass, motorists reported seeing Mr. McMurtry walking westbound along the center divider on the eastbound side—again walking towards traffic. Mr. McMurtry was again reported to be bloodied and slicing at the left side of his neck while he walked. Multiple eastbound motorists reported feeling afraid by the sight of Mr. McMurtry’s gaping neck wound. One eastbound motorist described the sight as a “scene of a horror movie.”

Upon Sergeant Farner’s arrival, eastbound motorists reported that traffic was stopped. The eastbound motorist in the first position of the #1 lane (“Mercedes Driver”) reported that two cars ahead of him had to swerve to avoid hitting Mr. McMurtry. It appeared to Mercedes Driver that Mr. McMurtry was already “agitated.” Those eastbound motorists who saw Mr. McMurtry at the time of Sergeant Farner’s arrival uniformly noted that Mr. McMurtry approached the sergeant. Mercedes Driver told detectives that Sergeant Farner yelled at Mr. McMurtry to put down his knife, but that Mr. McMurtry charged the sergeant, causing the sergeant to shoot Mr. McMurtry. The eastbound motorist in the first position of the #2 lane (“Range Rover Driver”) reported that Sergeant Farner cut her off then stopped his unit in the #3 lane before getting out and standing behind his driver door. Range Rover Driver also saw Mr. McMurtry near the center divider, shirtless, bleeding, appearing “disoriented” and holding a “little knife” in his left hand. Although Range Rover Driver’s windows were up, Range Rover Driver heard Sergeant Farner tell Mr. McMurtry to drop his knife but Mr. McMurtry continued to hold the knife and walk towards the sergeant. Range Rover Driver saw Mr. McMurtry walk across the front of her car and the patrol car, then around the patrol car. After that, Range Rover Driver ducked down inside her vehicle, during which time she heard what she believed might be three gunshots.

The eastbound motorist in the #3 lane at the first position behind Sergeant Farner’s unit (“Van Driver”) recalled that Sergeant Farner pulled in front of his van, with his emergency lights and siren activated. Van Driver stated that the sergeant immediately got out of his unit and pulled out his gun. Despite having his windows up, Van Driver heard Sergeant Farner command Mr. McMurtry to stop at least a dozen times, during which Mr. McMurtry jogged towards the sergeant. Van Driver perceived Sergeant Farner to be “panicked” and trying to get away from Mr. McMurtry, but that Mr. McMurtry kept running after the sergeant. Van Driver reported being afraid for Sergeant Farner’s safety and characterized Mr. McMurtry as “charging” the sergeant with the knife.

Corolla Driver was the eastbound motorist stopped behind Range Rover Driver in the #2 lane. Corolla Driver reported a series of events consistent with the other front row witnesses to the shooting incident. In addition, Corolla Driver reported hearing Sergeant Farner repeatedly command Mr. McMurtry to stop and drop his knife. Corolla Driver also heard Sergeant Farner tell Mr. McMurtry, “I don’t want to shoot you.”

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 16

SUBMITTED MEDIA⁵

Dispatch Recordings. The case agent's submission included audio files from CHP appearing to be recordings of calls made to 9-1-1 and CHP dispatch radio communications. The submitted CHP audio recordings were audibly timestamped. RP's initial 9-1-1 call was recorded on February 5, 2021, at 2:46 p.m. Beginning with that call, the following is a summary of audio recordings provided by CHP:

At 2:46 p.m., RP reported to 9-1-1 that her husband (Mr. McMurtry) was in "crisis." RP stated that she was driving westbound on the I-10 with Mr. McMurtry when she saw Mr. McMurtry cutting his wrists with a knife. RP reported that Mr. McMurtry got out of the car and started walking away. RP pulled to the right shoulder to try to stop Mr. McMurtry but before she could do so, Mr. McMurtry climbed a fence, walked behind a tree, and out of RP's sight. The dispatch operator asked RP whether she believed Mr. McMurtry was suicidal. In response, RP said, "yes." As the dispatcher subsequently began coordinating units to respond to RP's location, RP let the dispatcher know that she would exit the freeway and wait for responding units in a nearby parking lot.

During RP's initial 9-1-1 call, CHP units were alerted to respond to RP's location. At approximately 2:48 p.m., patrol units were informed that there was a suicidal subject on the westbound I-10, east of Mountain Avenue, who had cut his wrists, jumped out of a vehicle and was hiding behind a tree on the right shoulder. Mr. McMurtry, who was identified by first and last name, was described as being a Black male adult, wearing a black sweatshirt and black pants. Within a minute of this broadcast, multiple patrol units affirmed their response to either make contact with the RP or locate Mr. McMurtry, including Sergeant Farner. Subsequently, the CHP dispatcher also contacted UPD and asked for their assistance in locating Mr. McMurtry.

Despite their coordinated searching efforts, CHP patrol units were initially unable to locate Mr. McMurtry. At approximately 2:56 p.m., Sergeant Farner requested that an aviation unit respond to assist in locating Mr. McMurtry. Two minutes later, Officer Telford aboard *Air-83* advised dispatch that they were in route to the scene from Moreno Valley.

As the search for Mr. McMurtry continued, at 3:03 p.m., Officer Ornelas requested that dispatch call RP for additional information about where Mr. McMurtry was last seen. At 3:04 p.m., CHP dispatch contacted RP by phone. RP relayed to the dispatch operator that Mr. McMurtry went into the tree line near the exit at Mountain Avenue. RP also advised the dispatch operator that Mr. McMurtry was a marine veteran, struggling with PTSD, armed with a knife, standing five feet and nine inches tall, and weighing 220 pounds.

⁵ All submitted photographs and audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are mentioned here. The submitted video footage was reviewed at slowed speeds.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 17

While RP spoke to the dispatch operator, RP announced that Mr. McMurtry was calling her. Meanwhile, CHP dispatch coordinated with an Ontario Police Department airship that had also arrived to assist.

At 3:12 p.m., RP called 9-1-1 again to report that Mr. McMurtry had just called her. RP relayed that Mr. McMurtry said: “Goodbye, “ “I’m just gonna bleed out,” “I won’t be no more trouble,” “I won’t have no more dreams.” RP stated that Mr. McMurtry would not tell her where he was, and instead Mr. McMurtry told RP to, “Just let [him] go.” At approximately 3:16 p.m., Officer Jesus Garcia made personal contact with RP. At or around the same time, Officers Telford and Olivera arrived overhead and reported that they were unable to locate Mr. McMurtry on either the eastbound or westbound lanes of the I-10, between Mountain and Euclid Avenues.

Starting at about 3:21 p.m., CHP dispatch fielded calls to 9-1-1 from multiple motorists on the westbound side of the I-10, who made varied reports of a man (Mr. McMurtry) walking or running in freeway lanes. Some reported that Mr. McMurtry had been hit by a car, or that cars may have swerved and/or collided to avoid hitting Mr. McMurtry. Some 9-1-1 callers reported seeing Mr. McMurtry was armed with a knife and stabbing himself. Some saw that Mr. McMurtry was bleeding on his chest and had a big cut across his neck. At approximately 3:22 p.m., one 9-1-1 caller reported, “There was an African American guy with a bloody knife in his hand, walking on the freeway with blood all over his chest, like stalking the freeway and going after people in their cars.” This caller continued to report, “[Mr. McMurtry] went after me and my car but I had to swerve out of the way.” Less than a minute after this call was completed, CHP dispatch relayed that M. McMurtry was trying to open car doors.

At approximately 3:25 p.m., Officer Telford reported from *Air-83* that he saw a Black male (Mr. McMurtry) with no shirt and black pants, on the eastbound side of the center divider, east of San Antonio. Within seconds, Sergeant Farmer announced via radio that he was in the area, Officer Ornelas advised that he had all westbound traffic stopped, and Officer Migliacci affirmed that he also saw Mr. McMurtry walking westbound in the center median, east of the San Antonio Avenue overpass. As officers arrived to make contact with Mr. McMurtry on the eastbound side of the I-10, 9-1-1 calls continued to stream into CHP dispatch regarding the bloodied man, walking in freeway lanes with a knife.

At 3:26 p.m., Officer Telford aired that Mr. McMurtry was “charging the officer,” and that the subject was down and “possibly tazed.” On the heels of Officer Telford’s broadcast, Officer Ornelas announced “shots fired” on the eastbound side of the I-10, just east of San Antonio, and requested assistance from the fire department. Subsequent radio traffic included additional calls to 9-1-1, efforts made to secure the scene, and to facilitate emergency medical services to Mr. McMurtry.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 18

Body Worn Camera Video Recordings. Video recordings made by the body-worn camera (BWC) devices of Sergeant Duran and Officer Andres Garcia were submitted by the case agent. Both BWC recordings included visual date and timestamping for the events recorded. It does not appear that the indicated timestamp of each recording was in unison with each other, however. For clarity, the times indicated here reflect the timestamp indicated in the recording being referenced. Sergeant Duran's recording was noted to begin on February 5, 2021, at 3:25:55 p.m., and ran continuously for approximately 27 minutes and 50 seconds. Sergeant Duran's BWC recording did not capture the shooting incident. Officer Andres Garcia's BWC recording was marked as beginning on February 5, 2021, at 3:26:23 p.m., and ran continuously for approximately two minutes and 36 seconds. Officer Andres Garcia's BWC recording *does* include the shooting incident. However, as was true with both submitted BWC recordings, each began with an approximate 30-second segment without audio.⁶ Officer Andres Garcia's BWC device recorded the shooting incident within the first four seconds of the submitted footage.

Sergeant Duran and Officer Andres Garcia both gave interviews regarding their recollection of the recorded events. The BWC device of each officer was worn at mid-sternum. The resulting footage, therefore, was limited to the environment that existed in close proximity to each officer's BWC device at the time, place and manner in which the BWC device was worn. The BWC footage does not recreate what the wearing officer perceived by his combined senses. The resulting footage was also limited by capabilities of the BWC device mechanism. With these parameters in mind and in the context of all other material submitted, the following is a summary of portions of the submitted BWC footage:

Officer Andres Garcia's BWC footage began while he was already outside of his parked patrol unit and standing at the east sidewalk on the south end of the San Antonio Avenue overpass. Officer Andres Garcia appeared to be facing east/northeast toward the eastbound lanes of the I-10, below, through a chain link fence that obstructed the BWC device's view. Traffic appeared to be stopped further east of that location on the westbound side of the I-10; Officer Ornelas's patrol unit was parked along the center median ahead of stopped traffic. (See *infra*, *Mobile Video/Audio Device Recording*.) After tugging on the chain link fence, Officer Andres Garcia walked northbound along the fence. Doing so, put the eastbound lanes of the I-10 in view. By that time, Sergeant Farner's patrol unit was noted at the front of halted eastbound traffic.

At approximately 3:26:25 p.m., Officer Andres Garcia continued moving northbound, but his BWC captured Sergeant Farner standing on the driver's side of his patrol unit, near the front left fender. As Sergeant Farner moved backwards around the front of his patrol unit in the next second, Mr. McMurtry appeared near the rear left fender of Sergeant Farner's patrol unit. As Sergeant Farner moved backwards across the front of his unit and toward the front right fender, Mr. McMurtry moved forward and towards the front left fender in pursuit of Sergeant Farner. At approximately 3:26:27 p.m., Mr. McMurtry

⁶ The absence of audio for 30 seconds at the beginning of a segment of body worn camera (BWC) video footage is known as "buffering." The attachment of buffering video at the beginning of BWC video footage can be a standard feature of a BWC device.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 19

appeared to double over near the driver door of Sergeant Farner's patrol unit, pivot north, and tumble to the ground with a northeasterly momentum. Officer Andres Garcia quickened his pace north along the overpass, likely to get a better vantage point on the scene below, until approximately 3:26:54 p.m., when he stood above the center median. By that point, Officers Jesus Garcia and Migliacci were already assisting Sergeant Farner and Sergeant Duran stood near the right front fender of Sergeant Farner's patrol unit. Sergeant Farner's driver's door was open. After the audio portion of the BWC recording began, at approximately 3:27:27 p.m., Officer Andres Garcia spoke with a motorist who had pulled over near to where the officer was standing; the motorist reported almost hitting Mr. McMurtry on the freeway below.

Sergeant Duran's BWC footage began while he was driving his patrol unit and slowly moving through traffic on the I-10 eastbound lanes. After passing under the San Antonio Avenue overpass, Sergeant Duran maneuvered his unit towards the #5 lane, stepped out of his unit and walked forward along the #5 lane with his duty weapon drawn. At approximately 3:26:35 p.m., Sergeant Duran made a radio announcement stating, "Sam-3, I'm out with him. Shots fired." Sergeant Duran's hand obscured the video frame each time the sergeant accessed his radio and happened throughout Sergeant Duran's video footage. As soon as Sergeant Duran finished making his first announcement, Sergeant Farner's white patrol unit came into view. At the same time, Officer Migliacci approached from between Sergeant Farner's patrol unit and the Range Rover in the #2 lane. Sergeant Farner stood in front of his patrol unit with his weapon drawn and pointed in a north/northeast direction. Sergeant Duran continued to walk forward when Sergeant Duran alerted Sergeant Farner that he was behind him.

At 3:26:51 p.m., Sergeant Duran made a radio request for medical aid and provided specific instructions on how emergency vehicles should access the scene. After doing so, at approximately 3:27:06 p.m., video footage showed Sergeant Farner standing west of where Mr. McMurtry laid and pointing his duty weapon downward at Mr. McMurtry. Officer Jesus Garcia was squatting down on the ground over Mr. McMurtry, who was on his stomach. Officer Jesus Garcia appeared to be trying to handcuff Mr. McMurtry behind his back. Officer Migliacci, meanwhile, approached Mr. McMurtry and Officer Jesus Garcia, while toting an emergency medical bag he retrieved from Sergeant Farner's patrol unit trunk. Shortly thereafter, Officer Migliacci appeared to assist Officer Jesus Garcia in handcuffing Mr. McMurtry. Sergeant Duran then announced to Sergeant Farner and Officers Jesus Garcia and Migliacci that motorists were recording them, that Sergeant Duran was recording them, and that medical assistance had been requested. At approximately 3:27:39 p.m., Sergeant Farner holstered his weapon. Mr. McMurtry had been handcuffed. Sergeant Farner proceeded to put on medical-type gloves and advised Sergeant Duran to do the same. Sergeant Farner and Officers Jesus Garcia and Migliacci appeared to be administering first aid to and attempting to speak with Mr. McMurtry, who had been rolled onto his back. The first-responding officers were later assisted by Officer Ornelas, who arrived on foot from the westbound lanes of the I-10 at about 3:31:34 p.m.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 20

Sergeant Duran's recorded footage continued to show Sergeant Farner, and Officers Jesus Garcia, Migliacci and Ornelas administer medical aid to Mr. McMurtry. Prior to the arrival of additional medical resources, Sergeant Farner was heard saying, "I didn't want to shoot him" and "I told him to stop, I don't know how many fucking times." San Bernardino County Fire Department medical engines arrived at the scene at approximately 3:36 p.m., and fire personnel resumed medical care of Mr. McMurtry.

Mobile Video/Audio Device Recording. The case agent's submission included a video recording made by Officer Ornelas's patrol unit mobile video/audio recording device (MVAR) on the day of the shooting incident. The submitted MVAR recording was neither date-stamped nor timestamped but appeared to include real-time footage. The video recording is approximately nine minutes and 36 seconds long (9:36). In the context of all other material submitted, the following is a summary of portions of Officer Ornelas's MVAR footage:

Officer Ornelas was not yet at the scene when the video began; he appeared to be driving upon surface streets. The view of the MVAR device appeared to be over the front hood of Officer Ornelas's patrol unit. The sound that can be heard during the video included CHP dispatch radio broadcasts and sound captured by a mic that was likely worn by Officer Ornelas. At 1:16, Officer Ornelas activated his unit's emergency siren and made haste to the Euclid Avenue on-ramp to the westbound lanes of the I-10.

At the 2:10 mark, the dispatcher announced that Mr. McMurtry was seen slicing his throat and stabbing himself. Officer Ornelas confirmed momentarily thereafter that he heard that announcement. At the 2:44 mark, the dispatcher was heard saying, "male party was trying to open car doors." At 3:10, Officer Ornelas entered the westbound on-ramp at Euclid Avenue and announced the same; at the end of the on-ramp, westbound traffic crawled in the right two lanes. As Officer Ornelas weaved westerly through yielding traffic, *Air-83* announced that they had a visual of Mr. McMurtry walking eastbound, east of San Antonio Avenue and in the center divider. Subsequently, at 3:44, Officer Ornelas drove his unit towards the center divider and began initiating a weaving traffic break. As Officer Ornelas did so, Sergeant Farner was heard announcing his presence in the area.

At 3:54, Officer Migliacci radioed that he had a "visual" of Mr. McMurtry walking in the center median. At 4:21, an unidentified officer twice announced that he had "less lethal." Meanwhile, Officer Ornelas completed his traffic break of westbound traffic. At 4:47, Officer Ornelas stopped his patrol unit in the left shoulder, facing west, in a position east of the San Antonio Avenue overpass. Traffic on the eastbound side of the I-10 appeared to be stopped. Due to the position of the sun in the sky toward the top left corner of the video frame, a glare obscured visibility of what occurred in front of stopped traffic in the eastbound lanes. Flashing lights appeared where Sergeant Farner's unit was presumed to be. At 4:48, the sound of Officer Ornelas opening his unit door was heard. At 4:50, the sound of three consecutive gunshots was heard. During gunfire, a shadow (presumably Sergeant Farner) moved across the front of Sergeant Farner's unit beginning at the left

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 21

front fender at the time the first shot was fired and continuing to the right front fender at the time the last shot was fired at 4:51. Simultaneous to the sound of gunfire, a figure (presumably Officer Andres Garcia) can be seen moving from south to north, along San Antonio Avenue overpass. (See *supra*, *Body Worn Camera Video Recordings*.)

At 4:55 of the device footage, Officer Ornelas appeared on foot outside of his unit and announced “11-99” [officer needs assistance] and “shots fired.” Officer Ornelas went on to provide dispatch with the scene location, that four patrol units were on scene and asked that fire be sent (for medical aid).

The remainder of Officer Ornelas’s MVAR footage included the coordination of medical assistance to the scene, Officer Ornelas’s movement towards the scene on foot and back, and Officer Ornelas’s communication with westbound motorists.

Civilian Video Recordings. The case agent’s submission included 24 video files attributable to civilian motorists who were at the scene on the I-10 eastbound lanes immediately before, during, and after the shooting incident occurred. Some of the submitted video files submitted were duplicates of the same video. A 40 second (:40) video made by Mercedes Driver from the inside of his vehicle, was the only submitted civilian video of the shooting incident. In the context of all other material submitted, the following is a summary of portions of Mercedes Driver’s video:

The opening video frame included Mr. McMurtry wearing black sweatpants, no shirt, and black and white athletic-type shoes. Mr. McMurtry walked south from the #1 lane (in front of Mercedes Driver’s stopped vehicle), into the #2 lane (in front of Range Rover Driver’s stopped vehicle). Multiple vehicles across all eastbound lanes appeared east of Mr. McMurtry, necessarily indicating that they had just driven past Mr. McMurtry. At :01 mark, Mr. McMurtry had his left arm stretched out and away from his body at shoulder level, with his elbow at chest-height and bent at a 45-degree angle; Mr. McMurtry held a knife by its handle in his left hand, with the metal blade pointed forward.

At :03, Mercedes Driver shifted the camera view across to the right front windshield and then through his front passenger window, showing Sergeant Farner on foot behind his patrol unit, with his firearm drawn and held in a two-handed grip and pointed east. At :06, via Mercedes Driver’s right sideview mirror, Officer Migliacci can be seen approaching on foot from behind (west), in between cars in the #1 and #2 lanes. As Officer Migliacci continued forward, a taser can be seen in Officer Migliacci’s right hand. At :07, although Mercedes Driver’s windows are closed, Sergeant Farner appeared to be saying something in Mr. McMurtry’s direction as Sergeant Farner stepped backwards (north).

At :08, the video frame panned out from Sergeant Farner and showed Mr. McMurtry now walking westbound along the rear passenger side of Sergeant Farner’s unit, in the #4 lane. Mr. McMurtry appeared to be looking at Sergeant Farner and was still holding his knife

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 22

up with his left hand at chest-level and pointed in Sergeant Farner's direction. Sergeant Farner pointed his gun at Mr. McMurtry as the sergeant took retreating steps in the #3 lane.

At :10, Mr. McMurtry suddenly quickened his steps towards Sergeant Farner while maintaining his knife in front of him. Sergeant Farner side-stepped to the east then pivoted to face west while still maintaining his weapon pointed in Mr. McMurtry's direction. Through the sideview mirror, Officer Migliacci stopped moving forward at the rear of Mercedes Driver's vehicle and appeared to take a shooting stance. At :11, Mr. McMurtry slowed his pursuit of Sergeant Farner after running (north) around the rear of Sergeant Farner's patrol unit. Mr. McMurtry paused slightly behind the left rear fender of Sergeant Farner's patrol unit and turned east (presumably) to face Sergeant Farner once again. As he did so, Mr. McMurtry continued to hold the knife in his left hand at shoulder height, in front of him, with the bloody blade protruding upwards. Officer Migliacci, meanwhile, appeared to be manipulating the taser in his hands.

At :12, Mr. McMurtry again quickened his pace and stepped east towards Sergeant Farner. Mr. McMurtry stepped out of camera view as he did so, disappearing behind the passenger side of Range Rover Driver's vehicle. At the same time, Officer Migliacci could be seen taking a few steps east (forward) then pivoting south. Then, at :13, three gunshots were audible. Neither Mr. McMurtry nor Sergeant Farner were visible at the time the gunshots were heard.

At :14, Mercedes Driver moved his camera view towards his right front windshield, once more. At that time, Sergeant Farner could be seen, now facing north with his gun still in a two-handed grip in front of his chest. As Mercedes Driver panned the camera view to the left and towards the front hood of his car, Mr. McMurtry could be seen tumbling backwards with his feet flying over his head, to the ground and out of view.

At :18, Mr. McMurtry came into view once more after Mercedes Driver adjusted his recording position. Mr. McMurtry could be seen laying on top of both of his arms in the #2 lane, with his head oriented to the west and feet to the east. Mr. McMurtry's knife was on the ground, south/southwest of McMurtry's head. McMurtry appeared to be facing north, with his right ear upwards and his left cheek flushed with the ground. Sergeant Farner was temporarily outside the camera view.

At :21, Sergeant Farner stepped forward (north), near to where Mr. McMurtry lay on the ground. At :22, Sergeant Farner put his right boot on the knife while maintaining his duty weapon in his right hand. At :23, Sergeant Farner slid the knife behind him and to stepped backwards once more before resuming his two-handed stance and pointing his duty weapon at Mr. McMurtry where he lay on the ground. The rise and fall of Mr. McMurtry's chest indicated that Mr. McMurtry was breathing while Sergeant Farner slid the knife away.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 23

No other officers came into view of this video recording before it ended at :40.

INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by Detective Page, with the assistance of two SBCSD SID crime scene specialists. The shooting occurred in the eastbound lanes of the I-10 freeway, approximately 122 feet east of the San Antonio Avenue overpass east support. There were five marked lanes at that location. An asphalt shoulder abutted the #5 lane to the south. A possible blood trail was noted between an eight-foot retaining wall to the north of westbound lanes and a location east of there, where the blood trail continued (south) across the westbound lanes to a four-foot high concrete center median. The center median divided the eastbound and westbound lanes. Blood was noted at the top of the center median, from which a blood trail continued for approximately 800 feet west in the asphalt shoulder, (south) across the eastbound lanes to the front of Sergeant Farner's patrol unit, (west) along the passenger side, (north) around the rear, and (east) along the driver's side.

Sergeant Farner's 2020 Dodge Charger was discovered by Detective Page to be in the #3 lane and facing northeast, with its ignition in the "on" position and its emergency red and blue lights activated. Sergeant Farner's front driver door was opened. Detective Page determined that the front left tire of Sergeant Farner's patrol unit as approximately 122 feet east of the San Antonio Avenue overpass east support and nearly 40 feet north of the I-10 south retaining wall. Detective Page noted the presence of presumed blood spatter on the exterior of Sergeant Farner's patrol unit, specifically on the driver door and front left fender. Photographs taken by the crime scene specialist showed the CHP agency seal and markings on the exterior of both front doors. Photographs also showed the red and blue flashing lights in the front grill and windshield of the patrol unit; Sergeant Farner's unit was not equipped with a roof-mounted light bar. Sergeant Farner's unit also appeared to contain a rifle mounted in the interior, next to the driver's seat.

No bullet strike marks were noted at the scene or in any vehicles. Blood spatter was noted upon the right front fender of the Range Rover in #2 lane.

Mr. McMurtry's knife was recovered from a position on the ground immediately to the front of Sergeant Farner's patrol unit and approximately 10 feet south of where Mr. McMurtry fell after he was shot. As photographed, Mr. McMurtry's knife appeared to be covered in blood and was approximately nine inches long, including a fixed four-and-a-half-inch metal serrated silver metal blade with a pointed tip.

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PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 24

AUTOPSY & CRIMINAL HISTORY

Mr. McMurtry was 51 years old at the time of his death. Following an investigation by a SBCSD-Coroner Division investigator, an autopsy of Mr. McMurtry's remains was conducted by a SBCSD-Coroner Division forensic pathologist on February 23, 2021. The forensic pathologist identified Mr. McMurtry as a Black male, appearing 51 years old, approximately 71" long, and weighing 199 pounds. The forensic pathologist opined that Mr. McMurtry sustained four separate gunshot wounds to the upper body and left arm, each bearing a front-to-back trajectory. The forensic pathologist opined that only one of the four gunshot wounds was fatal—the gunshot wound that entered Mr. McMurtry's right chest, approximately one and an eighth inches right of midline. The fatal bullet was recovered from Mr. McMurtry's right lower back. The forensic pathologist noted that Mr. McMurtry had partially sutured vertical incised wounds to both of his wrists, both at a depth of up to a quarter inch, and both involved a transected tendon. Mr. McMurtry was also noted to have partially sutured lateral neck wounds on the left and right sides. The neck injury to the left side was noted to be up to an inch deep and was five and three-quarter inches long. The forensic pathologist opined that the deeper incision on the left neck "probably injured the left external jugular vein." Blood collected at the time of the autopsy was later found to contain measurable amounts of substances consistent with antidepressant medication. No illegal narcotics were noted in Mr. McMurtry's blood. "Gunshot wound of the chest" was listed as Mr. McMurtry's cause of death. The forensic pathologist estimated that Mr. McMurtry's death would have occurred within minutes of sustaining the noted injuries.

Mr. McMurtry was convicted of voluntary manslaughter in 1992, for which he was sentenced to 12 years in state prison. Mr. McMurtry was later imprisoned for multiple felonies in the ensuing years, including the following: theft-related felonies in 1999, 2002, and 2005, a drug-related felony in 2008, criminal threats in 2010, and prison battery in 2011. Most recent to the shooting incident, Mr. McMurtry was convicted of misdemeanor theft and assault in 2018.

APPLICABLE LEGAL PRINCIPLES

To preface, the public "expects" a responding officer to investigate a 9-1-1 call, as part of the officer's proper exercise of his duties. (*People v. Brown* (2015) 61 Cal.4th 968, 981-982.) Distinct from their duties to investigate crime, police officers are also expected to serve a "community caretaking" function by providing emergency services or helping those in danger of harm. (*People v. Ray* (1999) 21 Cal.4th 464, 471-472.) It is not unusual for police contact to begin with a 9-1-1 call for help and subsequently turn into a criminal investigation. Even where the basis of the police contact is a threatened suicide, responding officers must concern themselves with more than the safety of the suicidal person; "protection of the physical safety of the police officers and other third parties is paramount." (*Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 271.)

A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 25

overcome resistance. (Calif. Penal Code §835a(b)).⁷ 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 Penal Code section 835a (c) and the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (See *People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

PENAL CODE SECTION 196. Police officers may use *deadly* force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a(c)(1) 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 "defend against an imminent threat of death or serious bodily injury to the officer or another." The "[t]otality of the circumstances' means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." (Penal C. §835a(e)(3).)

A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense using objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

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

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

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

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

⁷ All references to code sections here pertain to the California Penal Code.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 26

Although these principals did not appear in section 835a until 2020,⁸ 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 “threatened infliction of serious physical harm” to the officer, 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 state statutory requirements may also be 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, California’s pre-2020 caselaw is still relevant.

There is one additional pertinent factor in section 835a that did not appear before 2020: deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

In addition, the legislature included generalized findings and declarations at subsection (a) of section 835a that are instructive. These findings and declarations lend guidance to our analysis but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;⁹

⁸ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

⁹ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 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 C. §835a(a).)

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

Imminence more recently defined in the context of police use of lethal force is similar:

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

(Penal C. §835a(e)(2).)

In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 348.) The court in *Scott* explained:

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

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

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 28

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.) Even where there may be disagreement upon the tactics used by law enforcement to diffuse a highly volatile situation involving a subject experiencing a mental crisis, once the use of force is deemed objectively reasonable, that disagreement becomes irrelevant to the analysis. (*City of Simi Valley v. Sup. Ct.* (2003) 11 Cal.App.4th 1077, 1086.)

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.)

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.) An officer may reasonably use deadly force when he confronts an armed suspect in close proximity whose actions indicate an *intent* to attack. (*Id.*) Aggressing a police officer with a large knife or a steak knife can justify an officer’s use of lethal force against the aggressor. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 345 [large knife], *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695 [steak knife].) 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.)

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 29

Lastly, 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. 9, *supra*.)

Another key guiding principal when undertaking this analysis is that courts do not engage in *Monday Morning Quarterbacking*, and nor shall we. Our state appellate court has warned,

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.) 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, supra*, 42 F.3d at 695.)

ANALYSIS

This memorandum examines the use of deadly force by Sergeant James Farner on February 5, 2021. As indicated above, there are legal bases that must be met before the right to self-defense ripens and a use of lethal force is justified. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent's submission.

A use of force must be "reasonable" in order to be deemed lawful. When considered in the context of self-defense, whether the shooting officer was justified in employing lethal force involves a two-part analysis: (1) did the officer subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was the officer's belief in the need to protect himself from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Sergeant Farner at the time of the use of lethal force is stated here based upon the sergeant's statement.

On the afternoon of the incident, Sergeant Farner responded to the area of Mountain Avenue and I-10, to assist other patrol units to locate a pedestrian (Mr. McMurtry) with a knife, who had jumped out of a moving car. Sergeant Farner was advised that Mr. McMurtry was a Black male, wearing a black sweatshirt and pants. Although Sergeant Farner had an intimate familiarity the with local area that would aid in his search for Mr. McMurtry, the sergeant also requested that an

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 30

air unit respond to the area to assist in locating Mr. McMurtry. During his search, Sergeant Farner learned that Mr. McMurtry was a combat veteran who suffered from PTSD. Sergeant Farner revealed that his son was also in a combat military unit and as such had an acute interest in helping Mr. McMurtry and did not want to see Mr. McMurtry get hurt.

After approximately 40 minutes of searching for Mr. McMurtry, Sergeant Farner heard announcements over the radio regarding a collision on the westbound lanes of the I-10 near Euclid Avenue, with a pedestrian running in traffic. Sergeant Farner immediately activated his patrol unit's emergency lights and siren and drove to the eastbound on-ramp of the I-10 at Mountain Avenue. Shortly thereafter, Sergeant Farner heard an aviation unit announce that a Black male matching Mr. McMurtry's description was walking in westbound traffic lanes.

Sergeant Farner was met with heavy traffic as he entered the freeway. As Sergeant Farner crawled through traffic, he heard additional radio announcements that Mr. McMurtry was in the freeway divider and appeared to be cutting himself. At approximately 3:25 p.m., Sergeant Farner saw Mr. McMurtry standing on the eastbound side of the center divider, shirtless, on the yellow fog line, with a knife in his hand. Sergeant Farner saw deep bloody gashes on Mr. McMurtry's neck, chest and both wrists. Sergeant Farner previously heard that Mr. McMurtry had been trying to open car doors, so the sergeant moved his patrol unit across lanes to keep other cars from stopping in front of Mr. McMurtry.

Once Sergeant Farner brought his patrol unit to a stop, Mr. McMurtry locked eyes with the sergeant. Sergeant Farner got out of his patrol car, immediately drew his weapon and held it at a "low ready" position so as not to seem "overly threatening." Sergeant Farner estimated Mr. McMurtry to be similarly sized to himself and stood approximately 25 feet away from him. Sergeant Farner began to talk to Mr. McMurtry and explained that he was there to help Mr. McMurtry and not to hurt Mr. McMurtry. Sergeant Farner asked Mr. McMurtry to drop the knife so that the sergeant could get Mr. McMurtry some help. Mr. McMurtry offered no response, and instead began to walk across lanes and towards the sergeant. In an effort to steer Mr. McMurtry away from frightened motorists, Sergeant Farner walked from the front of his car to the right. As Mr. McMurtry continued to advance, Sergeant Farner found himself to be out in the middle of lanes, without cover, side-stepping and walking backwards, and pleading with Mr. McMurtry to put his knife down all the while. Sergeant Farner stated that he had been trained that a person armed with a knife could cover a distance of at least 21 feet before a person armed with a pistol would be able to perceive, react and fire at the knife-wielding aggressor. As such, Sergeant Farner appreciated how volatile a situation he was in. Additionally, Sergeant Farner perceived Mr. McMurtry to be "professional" or otherwise experienced in using weapons due to Mr. McMurtry's training as a combat veteran, such that had the sergeant engaged Mr. McMurtry in hand-to-hand combat, that surely the sergeant would be injured.

Sergeant Farner began to move from the front of his patrol unit and around to the rear of it to try to place a barrier (the patrol unit) between himself and Mr. McMurtry. However, Mr. McMurtry started to run at Sergeant Farner. The sergeant pleaded with Mr. McMurtry, "Please stop, don't do this." Sergeant Farner described feeling as if Mr. McMurtry was "hunting" him. Sergeant

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 31

Farner continued to retreat from the rear of his patrol unit and (east) along the driver's side, when he noticed Mr. McMurtry paused in his approach. By then, Mr. McMurtry had closed the distance between them to approximately 12 to 15 feet. Sergeant Farner then saw Mr. McMurtry roll his shoulders forward, clench up and make a full-speed sprint at the sergeant. Sergeant Farner stated he waited to the "last possible second," and was less than 15 feet away when he shot Mr. McMurtry. Sergeant Farner stated that had he not shot at Mr. McMurtry that Mr. McMurtry would have killed him.

The stated account of the circumstances by Sergeant Farner that were at play *prior* to and culminating with the officer-involved shooting is consistent with the submission as a whole. Furthermore, the submission supports Sergeant Farner's conclusion that Mr. McMurtry intended to kill Sergeant Farner. Based upon the foregoing, it is reasonable to conclude that Sergeant Farner bore an honest and subjective belief that he was under threat of imminent deadly harm or bodily injury at the time he used lethal force on Mr. McMurtry.

Reasonable Belief of Imminent Need to Protect. Penal Code section 835a(c)(1) requires a "reasonable" belief of an imminent threat of death before lethal force authorized. A definition of "reasonable" is not included within section 835a. Instead, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a self-defense claim: a finding that the involved shooting officer had an objectively reasonable belief of the need to use deadly force to protect himself from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. Initially, Officers were dispatched to assist in locating Mr. McMurtry. Mr. McMurtry was reported to be suicidal and was not the subject of a crime investigation. Multiple law enforcement officers in patrol units on the ground and in the air, from multiple agencies could not locate Mr. McMurtry for almost 40 minutes from the time that RP first reported losing sight of Mr. McMurtry. When Mr. McMurtry resurfaced on the freeway, he appeared to want to provoke contact with others. For his conduct, Mr. McMurtry may be found to have violated Vehicle code section 21954 [pedestrian on a roadway], as noted by Officer Vasquez. Albeit dangerous—as evidenced by the traffic collision that occurred, Vehicle code section 21954 was a traffic violation and not a crime. Yet, it would be incomplete to state that Mr. McMurtry was simply walking in freeway lanes. Rather, as one motorist described it, this was a "scene of a horror movie." Mr. McMurtry frightened motorists; he presented as an angry or agitated large shirtless man walking in freeway lanes with a bloodied knife and gaping bloody wounds. Drivers swerved around Mr. McMurtry, risking harm to themselves and others. Moreover, the facts evidenced by the submission support a finding that Mr. McMurtry intended to *stay armed* as he contacted others. Mr. McMurtry had ample opportunity to discard his weapon. Instead, Mr. McMurtry sought out public contact and police attention by reappearing in freeway lanes with the knife. Although Mr. McMurtry may have exhibited an interest in hurting himself, Mr. McMurtry wielded the knife in front of him in such a way that others also believed that Mr. McMurtry might use the knife against them. At least one motorist reported that Mr. McMurtry was going after people in their cars, including herself. As such, it was also reasonable to believe that Mr. McMurtry had the *apparent* intent, opportunity

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 32

and ability to hurt others.

Any reasonable doubt as to whether Mr. McMurtry intended to assault another person can be resolved when considering the encounter between Mr. McMurtry and Sergeant Farner. It appeared that Mr. McMurtry wanted to make contact with law enforcement. Mr. McMurtry walked toward the sirens and lights of Sergeant Farner and Officers Jesus Garcia and Migliacci's patrol units. Motorists yielded and stopped. It would be reasonable to conclude, therefore, that persons at the scene recognized that law enforcement had arrived, including Mr. McMurtry, who immediately locked eyes with Sergeant Farner. When Sergeant Farner stepped out of his patrol unit, Sergeant Farner's uniform was another indicator that Sergeant Farner was indeed a peace officer acting in the course of his duties. Sergeant Farner's blue uniform included agency badges on both outer shoulders and a CHP cloth badge on the left breast. Sergeant Farner told Mr. McMurtry that he was there to help and asked that Mr. McMurtry drop his knife. Mr. McMurtry had a duty to comply with Sergeant Farner's request to disarm himself. Mr. McMurtry's initial refusal in doing so, would qualify as a violation of Penal code section 148 [delay or obstruction of a peace officer], a misdemeanor.

As soon as Mr. McMurtry began to pursue Sergeant Farner, the gravity of Mr. McMurtry's conduct intensified. Motorists who witnessed Mr. McMurtry on the eastbound I-10 uniformly reported that it was Mr. McMurtry who approached the sergeant in lanes. Even from the sky, Officer Telford described Mr. McMurtry movement toward Sergeant Farner as being "like a bee to honey." Fifty yards to the east, Officer Ornelas could hear Sergeant Farner giving commands at Mr. McMurtry. While running forward through traffic, Officers Jesus Garcia and Migliacci could hear Sergeant Farner giving commands at Mr. McMurtry. Sergeant Farner was heard by motorists sitting inside their cars with their windows up, repeatedly telling Mr. McMurtry to put his knife down. It can be reasonably concluded that Mr. McMurtry heard what the sergeant was saying to him and deliberately chose to ignore him. One motorist heard the sergeant say, "I don't want to shoot you." It appeared to multiple motorists that Sergeant Farner was trying to get away from Mr. McMurtry. Sergeant Farner recalled telling Mr. McMurtry, "Please, don't do this." Yet, Mr. McMurtry persisted and made two sprints toward Sergeant Farner: first, at the rear of the patrol car (from roughly the rear right fender to the rear left fender), then again along the driver's side of the patrol car (from the rear left fender to the front left fender). Multiple witnesses described Mr. McMurtry as having charged at Sergeant Farner, including Officer Telford, who had a bird's eye view.

Although Mr. McMurtry was not reported as having said anything both times he charged at Sergeant Farner, the manner in which Mr. McMurtry held up his knife and plunged head-long toward the sergeant conveyed an apparent and immediate intent to assault Sergeant Farner. On one end of the spectrum, Mr. McMurtry could be deemed to violate Penal Code section 245, subdivision (c) [assault with force likely to cause great bodily injury to pursuing law enforcement]. It is reasonable to believe that when an armed subject aggresses a police officer who is poised to fire upon that armed aggressor, that the aggressor means to inflict lethal harm upon the officer. Mr. McMurtry was clearly a large man, with the physical ability to apply lethal force even with a small bladed knife. Hence, on the other end of the spectrum, Mr. McMurtry's

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 33

relentless pursuit of Sergeant Farner could amount to attempted murder per Penal Code sections 664/187. Assault on a peace officer is a “serious” felony per Penal Code section 1192.7, subdivision (c). Attempted murder is both a “serious” and a “violent” felony per Penal Code section 667.5, subdivision (c)(12). The most serious crimes potentially being committed by Mr. McMurtry, therefore, took place immediately prior to the use of lethal force by Sergeant Farner. As such, it was reasonable for Sergeant Farner to believe immediately prior to using lethal force that Mr. McMurtry was engaged in increasingly dangerous felonious conduct and was continuing to place the sergeant at imminent risk of serious injury and/or death.

Resistance is another essential consideration in a *Graham* analysis. Sergeant Farner was authorized to use reasonable force to effectuate Mr. McMurtry’s detention as soon as the sergeant had a reasonable suspicion that Mr. McMurtry committed a crime or traffic violation. Mr. McMurtry had a duty to refrain from using any force or weapon to resist detention or arrest. As discussed above, Mr. McMurtry was aware or should have been aware that his detention by a peace officer was imminent. Sergeant Farner attempted to gain Mr. McMurtry’s compliance by issuing Mr. McMurtry verbal commands, which Mr. McMurtry disregarded. Mr. McMurtry demonstrated passive resistance by not surrendering or responding to Sergeant Farner’s commands. Moreover, Sergeant Farner attempted to maintain his distance from Mr. McMurtry. This approach would have given Mr. McMurtry additional time and space to reconsider his armed approach of the peace officer. Instead, Mr. McMurtry showed that he wanted to engage Sergeant Farner in a physical confrontation. Mr. McMurtry engaged in active resistance when he chose to step towards Sergeant Farner with a knife in-hand.

Mr. McMurtry could have disarmed himself many different times from the first 9-1-1 call, to appearing before Sergeant Farner. As discussed above, Mr. McMurtry chose to remain armed. Additionally, Mr. McMurtry made clear that he did not want to be detained. Mr. McMurtry was no stranger to law enforcement contact, as evidenced by his criminal history. It can be reasonably concluded that Mr. McMurtry was well aware of what was expected of him in the face of detention by a peace officer. Yet, Mr. McMurtry made no indication of a desire to surrender. Instead, Mr. McMurtry made a relentless pursuit of the armed sergeant, until finally provoking the sergeant. As Mr. McMurtry faced Sergeant Farner, Mr. McMurtry could have chosen to stand still in the shoulder of the freeway or to run away as he had done before. Mr. McMurtry made the distinct choice to retain his weapon and to step toward Sergeant Farner while doing so. As Sergeant Farner retreated, Mr. McMurtry chose to sprint towards the sergeant. When sprinting once at Sergeant Farner didn’t cause the sergeant to shoot Mr. McMurtry, Mr. McMurtry chose to make a repeated charge at the sergeant. Self-armament in the face of detainment by a uniformed and armed law enforcement officer is an extreme level of resistance. Sergeant Farner initially retreated from Mr. McMurtry’s advances, demonstrating his strong desire not to want to hurt Mr. McMurtry. However, Sergeant Farner was under no obligation to continue in his retreat when doing so posed a lethal risk to his own life. Sergeant Farner did not forfeit the right to defend himself from the apparent lethal threat posed by Mr. McMurtry. The submission supports a finding that Mr. McMurtry was engaged in active resistance using a knife at the time Sergeant Farner used lethal force.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 34

Immediacy is the “most important” *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. Here, Mr. McMurtry sought out an armed confrontation with a peace officer. Initially, Sergeant Farner tried talking to Mr. McMurtry and tried not to point his gun directly at Mr. McMurtry. To draw Mr. McMurtry away from frightened motorists, Sergeant Farner walked out into lanes in front of his patrol unit. Mr. McMurtry responded by moving towards the sergeant with the knife in hand. Sergeant Farner continued in his effort *not* to shoot at Mr. McMurtry by beginning his retreat along the passenger side of his patrol unit, despite the risk to himself in doing so. Mercedes Driver’s video showed that traffic was still moving around them while Sergeant Farner retreated. Sergeant Farner’s backward retreat placed the sergeant in danger of tripping, falling, and becoming additionally vulnerable to attack by Mr. McMurtry or being struck by inattentive motorists.

Mr. McMurtry’s response to Sergeant Farner’s slow retreat and continued commands was to charge at Sergeant Farner and shorten the distance between them. Sergeant Farner quickened his retreat but still did not fire at Mr. McMurtry. Then, Mr. McMurtry doubled his charge at Sergeant Farner and forced the sergeant to make a split-second choice to defend against the perceived imminent danger Mr. McMurtry posed. Mr. McMurtry was a large man who appeared to Sergeant Farner to be in excess of six feet tall and 250 pounds, who was reportedly a combat veteran. It was reasonable for Sergeant Farner to believe that Mr. McMurtry would be skilled in hand-to-hand combat, astute in weapons handling, and physically capable of levying lethal force against the sergeant. In addition, Mr. McMurtry appeared to Sergeant Farner to be angry, with muscles tensed, fists clenched, breathing heavy and taking a fighting stance. It would have been reasonably apparent to Sergeant Farner that Mr. McMurtry intended to inflict immediate harm upon him. Still, Sergeant Farner made an extended attempt *not* to shoot at Mr. McMurtry.

Only when the threat to Sergeant Farner became most acute did the sergeant finally fire his weapon to save himself. Mr. McMurtry’s gunshot wounds were described by the forensic pathologist to have a front-to-back trajectory, which would be consistent with a conclusion that Mr. McMurtry faced the sergeant at the time Mr. McMurtry was shot. Moreover, the submitted video footage supports Sergeant Farner’s recollection that the sergeant was near the front of his unit when he fired at Mr. McMurtry. Sergeant Farner estimated that the distance between him and Mr. McMurtry at the time he fired, was less than 15 feet. The discovery of blood-spatter on the front left door and fender of the sergeant’s patrol unit and on the front right fender of the Range Rover would indicate that the sergeant’s estimate was a conservative one. Furthermore, even after the incident, Sergeant Farner bemoaned how he did not want to shoot Mr. McMurtry. It is also important to note that less than 15 seconds passed from the time that Mr. McMurtry stepped toward Sergeant Farner to the time that Sergeant Farner fired his weapon. Sergeant Farner was faced with a tense, uncertain and rapidly evolving situation during which he could be killed by Mr. McMurtry, or an inattentive driver. Mr. McMurtry’s conduct in total, demonstrated that Mr. McMurtry had the present ability, opportunity and *apparent* intent to immediately cause death or serious bodily injury to Sergeant Farner. Sergeant Farner reasonably believed that his action was instantly required to avoid his immediate death or great bodily injury. As such, the necessity of the use of deadly force by Sergeant Farner cannot be second-guessed.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 35

Based on the foregoing, each of the primary *Graham* factors as applied support a finding that the use of lethal force by Sergeant Farner was reasonable. As such, the use of lethal force by Sergeant Farner is also justifiable under Penal Code §197.

Pre-Shooting De-escalation. Section 835a(a) does advise that lethal force be used only “when necessary to defend human life” and that safe and feasible de-escalation should be employed. The submission as a whole supports a reasonable conclusion that Mr. McMurtry *knew* that armed and uniformed officers were approaching to detain him and that deadly force would be used against him. Normally, the mere presence multiple law enforcement vehicles, multiple uniformed law enforcement officers and the issuance of verbal commands can serve as a de-escalation technique. One faced with such a law enforcement response might reasonably find there is no likely escape and choose to surrender. Mr. McMurtry, however, did not appear intimidated and did not surrender. Mr. McMurtry’s behavior of presenting a knife and charging at Sergeant Farner negated any reasonable conclusion that Mr. McMurtry intended either to comply or peaceably surrender. Sergeant Farner made specific choices to try *not* to provoke Mr. McMurtry, including an initial attempt to maintain distance and talk to Mr. McMurtry. The sergeant told Mr. McMurtry that he was there to help and not hurt Mr. McMurtry. Instead of immediately pointing his weapon at Mr. McMurtry, Sergeant Farner held his weapon at a “low ready, “ so as not to present himself as a blatant threat. Despite Sergeant Farner’s efforts, as discussed above, Mr. McMurtry insisted upon relentlessly pursuing the sergeant. It is without question that charging at an officer with a knife in such a manner would reasonably give rise to an immediate and necessary lethal force response.

Regardless of whether Officers Jesus Garcia and Migliacci had the present ability to use less-lethal means to subdue Mr. McMurtry, it was Mr. McMurtry who dictated the urgency of Sergeant Farner’s actions. Before Officers Jesus Garcia and Migliacci could get to a position where they might be able to use less-lethal means to stop Mr. McMurtry, Mr. McMurtry had already posed an immediate lethal threat to Sergeant Farner. Any additional delay in administering lethal force would only have given Mr. McMurtry an opportunity to physically assault Sergeant Farner. It is unreasonable to expect Sergeant Farner to risk grave harm to himself for the possibility that less lethal tools *might* have stymied Mr. McMurtry’s attack. Indeed, Mr. McMurtry faced an officer who was pointing a firearm at him and Mr. McMurtry still charged that officer. If the potential for sudden death by gunfire would not dissuade Mr. McMurtry’s attack on Sergeant Farner, then it is reasonable to conclude that no measure of less lethal force would have, either. In any event, the presence and readiness of less than lethal tools would not have changed the lethal and immediate character of the threat Mr. McMurtry met Sergeant Farner with, as discussed *supra*. In sum, Mr. McMurtry’s actions dictated a circumstance where there was no further feasible, safe or reasonable opportunity for officers to de-escalate.

Other Statutory Considerations. The additional considerations included in §835a(a) also

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 36

support a conclusion that the use of deadly force by Sergeant Farner was lawful.¹⁰ First, the submission in total does not support a conclusion that Sergeant Farner acted excessively. Deadly force was not employed as a knee-jerk reaction. Sergeant Farner was aware that Mr. McMurtry was armed and suicidal. Even when Mr. McMurtry made his initial charge towards Sergeant Farner, Sergeant Farner did not use lethal force. Instead, Sergeant Farner chose to retreat further at added risk to himself and gave additional commands. Sergeant Farner did not fire his weapon until it was apparent that retreat would not keep Mr. McMurtry at bay or stop Mr. McMurtry from advancing. Sergeant Farner had received prior police training where he learned that a subject armed with a blade could cover a distance of 21 feet quicker than it would take an officer to perceive and react to the armed assailant with his firearm. It was not until Mr. McMurtry came within 15 feet of Sergeant Farner that the sergeant fired his duty weapon. As such, Sergeant Farner tolerated the risk of harm to himself for much longer than his training advised to try to avoid shooting Mr. McMurtry. Moreover, an inventory of Sergeant Farner's weapons and spare ammunition magazines indicated that the sergeant could have fired many more rounds at Mr. McMurtry but did not. The submitted evidence supports a conclusion that gunfire did not continue after Mr. McMurtry fell to the ground and no longer held the knife. Sergeant Farner stopped utilizing lethal force when it appeared that the lethal threat ceased. As such, Sergeant Farner can be found to have well-appreciated the gravity and consequence of his use of lethal force, evidenced by the judicious way he employed lethal force in this instance.

RP did indicate to investigators that Mr. McMurtry may have suffered from certain diagnosed mental conditions and had a recent history of multiple suicide attempts prior to and during this incident. There was nothing in the case agent's submission that supports a finding that whatever Mr. McMurtry's mental condition, Mr. McMurtry was prevented from understanding that he was being pursued by law enforcement or from complying with the commands he was given. At a minimum, Mr. McMurtry knew that Sergeant Farner had an instant capability to kill him; Sergeant Farner drew his weapon and pointed it at Mr. McMurtry as Mr. McMurtry's gaze was fixed on the sergeant. As discussed above, Mr. McMurtry's criminal record would also support an inference that he has had multiple contacts with law enforcement such that he might readily identify when he was being so contacted and how he might be expected to respond to the presence of law enforcement. It is apparent that Mr. McMurtry understood what Sergeant Farner's response might be and may have *intended* for Sergeant Farner to shoot him. Mr. McMurtry's conduct, when considered with the statements he made to RP immediately prior to the shooting incident, was consistent with one trying to commit suicide. Any reasonable opportunity Sergeant Farner had to show deference to Mr. McMurtry due to his present mental condition was supplanted when Mr. McMurtry posed an immediate threat of lethal harm to Sergeant Farner's life.

It bears mention that Mr. McMurtry had a measurable amount of anti-depressant medication in his blood at the time of the autopsy, and therefore the same may be true of Mr. McMurtry at the

¹⁰ This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any use of force policy was violated.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR #2022-10925

May 4, 2023

Page 37

time of the shooting incident. Even if it might be inferred that Mr. McMurtry's decision-making was impacted by his recent use of anti-depressant medication, Mr. McMurtry's physical conduct towards Sergeant Farner was all that could be instantly appreciated by the sergeant under the circumstances. Ultimately, Mr. McMurtry's choice to provoke Sergeant Farner was a perilous one and proved that irrespective of whatever may have been going on with Mr. McMurtry, physically and mentally, that Mr. McMurtry was a danger to more than himself. Specifically, Mr. McMurtry presented himself as an immediate lethal threat to Sergeant Farner.

CONCLUSION

Under the facts, circumstances and applicable law in this matter, the use of deadly force by Sergeant James Farner was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability should result based on Sergeant Farner's conduct during the shooting incident.

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
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Dated: April 20, 2023

