



PUBLIC RELEASE MEMORANDUM

Subject: Fatal Officer-Involved Shooting

Involved Officers: Nathaniel Arias
Barstow Police Department

Involved Subject/DOB: Kenneth Mackey
07/11/1976

Subject's Residence: Barstow, CA

Incident Date/Time: June 12, 2021, 1:16 a.m.

Incident Location: The 2000 block of East Main Street, Barstow

Case Agent/Agency: Detective Cory Drost
San Bernardino County Sheriff's Department

Agency Report Number: DR # 602100127
H# 2021-072

DA STAR Number: 2022-21274

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PREAMBLE

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

FACTUAL SUMMARY

A rap concert was held Friday night, June 11, 2021, at The Spot, a bar located at the 2000 block of East Main Street in Barstow. With about 250 to 300 patrons in attendance, the bar's parking lot was quickly filled to capacity, so attendees parked their cars along East Main Street and the immediate area around the bar. Witness #1 lived near the bar, and when several concert-goers began to park in his front yard, Witness #1 told them they could not park there as it was private property. The drivers argued with Witness #1 and parked in his yard anyway. Witness #1 had dealt with this issue in the past, but the parking issue had always been resolved with the assistance of the bar's owner or manager. On this night, however, patrons continued to park in Witness #1's yard despite attempts to resolve the issue. The bar owner suggested that Witness #1 have the vehicles towed. Witness #1 called several towing companies, but all declined to tow any vehicles from his property, recommending he call the police instead. So, at 11:32 p.m.,¹ Witness #1 called the Barstow Police Department's (BPD) non-emergency phone number for help. BPD Officer Nathaniel Arias arrived about ten minutes later. While there, Officer Arias recognized several bar patrons he had personally arrested previously for weapons and narcotics violations, some of whom were Riverside Drive Crip Gang members. After speaking with the owner or manager of the bar about the parking complaint, Officer Arias left the location.

By 12:17 a.m., bar patrons continued to park in Witness #1's yard. Witness #1 called the police department again, summoning officers back to the location. Officer Arias and BPD Officers Franklin, Perry, and Jaramillo returned. Officer Arias spoke with the owner or manager a second time. The issue was resolved when the owner agreed to have a security guard post at Witness #1's property to keep people from parking in his yard.

At about 12:50 a.m., Witness #1 was speaking with the security guard in his front yard when he saw multiple people running out of the bar. Witness #1 noticed several people were dressed in red clothing. Witness #1 alerted the security guard, who replied, "Oh, I gotta go," and left for the bar. Witness #1 heard people yell and heard one gunshot from the front of the bar. At 1:01 a.m., Witness #1 called 911 to report what was happening. BPD officers were dispatched to the bar. Due to the nature of the call, BPD dispatch asked the San Bernardino County Sheriff's Department (SBSD) to assist. Witness #1 saw more people running and watched as numerous vehicles fled the location. While law

¹ All times are approximate.

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enforcement was en route to the scene, more people called 911 to report the fight and active gunfire.

Dispatch told the responding officers that multiple parties were calling to report active gunfire at The Spot. Dispatch also relayed additional details given by Witness #1 while he remained on the line with 911. Witness #1 told dispatch that he saw a white Dodge Challenger drive east from the bar's parking lot and stop in front of his property. Witness #1 saw a "black skinny guy" run to the passenger side of the Challenger and say, "Here, hold my gun." The Challenger drove east on East Main Street. Witness #1 saw more people running and more vehicles racing away from the scene. Witness #1 heard gunshots and bullets ricochet as he hid behind a shed in his front yard. When the gunfire stopped, Witness #1 emerged from his hideaway and saw several people hiding nearby.

BPD officers and SBSD deputies began arriving at The Spot while Witness #1 was on the phone with 911. BPD Corporal Franklin arrived at 1:10 a.m., followed just a few minutes later by SBSD Deputies McCrystal, Kabluyen, Parks, and Portillo, and BPD Officers Arias, Hollister, and Santos. The officers and deputies parked their patrol units with emergency overhead lights activated along East Main Street, just north of the bar. Corporal Franklin went inside the bar to investigate while the others remained outside, assisting with crowd control. Deputy Portillo and Officers Arias and Hollister were in the parking lot on the north side of the bar when a gunshot rang out from the southwest side of the building. Within seconds, another gunshot, louder than the first, rang out. The gunfire sounded like it was getting closer to the bar, moving north and approaching the alley on the west side of the building. People in the crowd began yelling and screaming. Officer Arias swiftly walked toward the northwest corner of the building, heading toward the sound of the gunfire. Officer Hollister, Deputy Portillo, and Deputy Parks followed. Deputies McCrystal and Kabluyen were standing near the alley's north end, west of the building, assisting with crowd control as a large group of people headed away from the bar.

When a third gunshot rang out, Officer Arias sprinted to the northwest corner of the building toward the sound of the gunshots. Officer Hollister and Deputies Portillo and Parks followed Officer Arias. As the officers ran, they heard another gunshot. Deputies McCrystal and Kabluyen saw Kenneth Mackey in the alley, walking north toward their direction while firing a handgun into the air. Deputies McCrystal and Kabluyen yelled at people in the crowd to run and quickly ran for cover behind a limousine parked in the alley. Officer Arias saw Deputies McCrystal and Kabluyen ducking for cover behind the limousine just as he reached the northwest corner of the building. Officer Arias peered around the corner of the building and saw Mackey in the alley, 20 to 25 feet away, firing a handgun into the air. As Mackey fired the pistol, he walked north, at a quick pace, toward Officer Arias, the deputies, and the fleeing crowd. Mackey then lowered his gun and pointed it toward Officer Arias, the deputies, and the crowd. Fearing for his life, the lives of his partners, and the nearby civilians, Officer Arias fired several rounds from his rifle at Mackey. Mackey was struck and fell to the ground. The officers quickly approached Mackey to detain him and called for medical aid. Medics arrived and transported Mackey

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to the nearest hospital, but Mackey succumbed to his injuries and was declared deceased at 1:51 a.m.

STATEMENTS BY POLICE OFFICERS²

On June 29, 2021, at approximately 1:19 p.m., **Officer Nathaniel Arias** was interviewed by Detectives Nicolas Craig and Eric Ogaz of the San Bernardino County Sheriff's Department.

Officer Arias was employed as a police officer by the Barstow Police Department (BPD). Officer Arias was on duty and was assigned to patrol, working the night shift from 6:00 p.m. on Friday, June 11, 2021, to 6:00 a.m. Saturday, June 12, 2021. Officer Arias drove a distinctively marked black and white BPD patrol vehicle equipped with a camera. Officer Arias's call sign was P-9. Officer Arias wore a BPD Class C uniform consisting of a black short-sleeved shirt, cargo pants, black duty boots, and a black hat with "BARSTOW POLICE" in white lettering. BPD patches were affixed to both sleeves of Officer Arias's shirt. Officer Arias wore a black load-bearing vest over his uniform shirt. Affixed to Officer Arias's load-bearing vest were the following: A silver cloth BPD badge on the upper left chest, a name tag with "N. Arias" in white lettering on the upper right chest, and below Officer Arias's name tag, in large white lettering, was the word, "POLICE." Affixed to the upper back of the vest, in white lettering, was the word "POLICE."

Officer Arias's load-bearing vest was equipped with the following department-issued equipment: a digital recorder, a body-worn camera, a Taser, a handheld radio, three Sig-Sauer P220 ammunition magazines, handcuffs, a can of oleoresin capsicum spray. Officer Arias's body-worn camera was mounted to the center of his chest and was activated during the incident under review. Officer Arias's duty belt held a pair of handcuffs and a Sig Sauer P220, .45 caliber semi-automatic pistol with a Streamlight TLR-1HL tactical flashlight. Officer Arias's department-issued rifle was a Colt AR-15A3 Carbine, .223 caliber, semi-automatic rifle with 30 round capacity magazine. A foregrip, Streamlight ProTac flashlight, collapsible stock, and shoulder sling were attached to the rifle. Officer Arias typically kept his rifle magazine loaded with 28 to 29 cartridges.

During his night shift from June 11 to June 12, 2021, Officer Arias was dispatched³ to The Spot, a bar located on the 2000 block of East Main Street, three times. The first two times were in response to a call for service regarding a parking complaint. When Officer Arias arrived the first time, he saw many vehicles at the location. Officer Arias estimated there were 300 patrons at the bar. Officer Arias saw several people he knew from prior police contacts, some of whom he had personally arrested in the past for weapons and narcotics violations, who were Riverside Drive Crip Gang members. Officer Arias spoke to the

² Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

³ According to the Barstow Police Department's Computer Aided Dispatch Operations Report (CAD), Officer Arias was first dispatched to The Spot at 11:34 p.m. on June 11, 2021, a second time at 12:28 a.m. (June 12, 2021), and a third time at 1:10 a.m. (June 12, 2021.)

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club's owner or manager about the parking complaint they had received and left the location.

Officer Arias returned to The Spot after receiving a second call for service for the same issue. Officer Arias again saw active Riverside Drive Crip Gang members at the location. Knowing that there was a criminal element at the location raised Officer Arias's "situational awareness." Officer Arias had previously spoken with some of the same gang members who told him that, "if they are ever tested by people who are not from Barstow, and they challenge their [sic] validity of their gang, they will react to that, and they will react in, in a form of violence, and they don't take kindly to being ah not considered an official gang." Officer Arias saw a lot of "unfamiliar faces" and realized there was a potential for some problem. Officer Arias spoke with the person who had called to make the complaint regarding patrons from the bar parking on his property. Officer Arias spoke to the club owner a second time. The issue was resolved when the club owner agreed to assign someone to the reporting party's property to keep patrons from parking in front of his home. Officer Arias left the location.

At "around 12:55 or 0055 hours,"⁴ Officer Arias heard Barstow Police Dispatch broadcast a physical fight at The Spot on the 2000 block of East Main Street. The fight was reported to be both inside and outside the bar. Officer Arias was in the Lynwood area, about six minutes away, and began responding to The Spot. As he drove, dispatch advised that active shots were being fired in the parking lot. Only four officers were working that night, so Officer Arias knew that was "very few for the type of problems" they "could be facing going into a situation" where there were three hundred patrons or more. Officer Arias drove to the scene quickly because it was an emergency with lives potentially in danger. Officer Arias heard dispatch provide the description of the suspect as a black male wearing a white shirt and blue jeans. Officer Arias heard dispatch broadcast that "possible suspects" had fled the scene in a vehicle and were involved in a traffic collision. Officer Arias exited the I-40 freeway at Montara Road and continued onto East Main Street. As he approached the scene, Officer Arias did not see any vehicles matching the description given by dispatch.

When Officer Arias arrived, he saw several bar patrons in the parking lot in front of the bar. Officer Arias also saw patrons coming out of the bar and heading into the parking lot. Officer Arias estimated at least 200 people were still at the scene who looked like they were "trying to leave the area and, in a hurry." There were traffic jams with people trying to pull out, and it was "pretty chaotic," with "engines revving, cars driving at high rates of speed." Officer Arias saw that three San Bernardino County Sheriff's Deputies were already present. Officer Arias believed the three deputies were Portillo, Kabluyen, and McCrystal. The deputies had parked their marked San Bernardino County Sheriff's Department patrol units on the north side of East Main Street, north of the bar. Officer

⁴ According to the Barstow Police Department's CAD, the physical fight at The Spot was broadcast at 1:07 a.m. At 1:08 a.m., dispatch broadcasted, "shots fired." For additional details, see Dispatch Summary.

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Arias could not recall if the SBSB units' emergency overhead red and blue lights were activated.

Officer Arias pulled up on East Main Street, parking in a southeast direction near an alley on the northwest side in front of the establishment. His patrol unit's rear emergency lights were activated, and Officer Arias believed he had also activated his unit's overhead emergency lights. Another Barstow Police Department Officer arrived at about the same time as Officer Arias. Officer Arias believed that the officer was Officer Hollister.

Officer Arias saw patrons pouring out of the bar, chaotically fleeing the scene. Officer Arias heard engines revving and saw cars driving away from the scene at high rates of speed. Because of the reports of active gunfire, Officer Arias grabbed his rifle to be better equipped and prepared to engage an active shooter. Officer Arias got out of his patrol unit and headed to the parking lot in front of the bar to see if anyone was injured. The parking lot was located on the north side of the bar. Officer Arias also wanted to see whether anyone was still fighting and to look for evidence of a shooting. Officer Arias stood in the parking lot near the front door to the bar and scanned the crowd. While he stood in the parking lot, and within two minutes of his arrival at the scene, Officer Arias heard a gunshot from the southwest, on the south side of the bar's building. About five seconds later, Officer Arias heard another gunshot. The second gunshot sounded to be a little further west. The gunshots sounded like they were getting closer, approaching the alleyway on the west side of the building. Officer Arias began walking quickly toward the sound of the gunfire, which came from just on the other side of the bar on the southwest portion of the property. A third gunshot rang out a couple of seconds later. Officer Arias heard people in the crowd say, "Oh, he's still shooting." Officer Arias also heard an officer broadcast that he heard two gunshots. Upon hearing the third gunshot, Officer Arias believed somebody was being shot. Officer Arias began running toward the gunfire.

Officer Arias ran toward the northwest corner of the building, toward the sound of the gunshots. As he ran, he heard another gunshot. As Officer Arias came around the northwest corner of the building, he saw two deputies ducking down and taking cover behind a limousine parked along the west portion of the bar's driveway. Officer Arias turned the corner and saw the suspect (later identified as Kenneth Mackey) in the alley firing a dark-colored handgun into the air. Mackey fired the handgun with his right hand at a 45-degree angle. Officer Arias saw the muzzle flash when Mackey fired the gun.

Officer Arias stopped at the northwest corner of the building, and, using the building for some cover, Officer Arias peered around the corner at Mackey. Mackey was approximately 20 to 25 feet away and facing Officer Arias. It was dark outside, but a nearby light pole cast light onto Mackey. Mackey matched the suspect description broadcasted by dispatch: a black male wearing a white shirt and blue jeans. Mackey wore "some type of jacket" or a "button-up shirt or something like that over the white shirt." Mackey's jacket or button-up shirt was open in the front.

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Officer Arias estimated at least 200 patrons were still present, and maybe 50 to 100 of them were behind Officer Arias, within 20 yards, as they fled the scene. Mackey walked aggressively, taking fast and larger than normal steps, moving with a purpose north, straight down the alley toward Officer Arias, the multitude of patrons who were still leaving the scene, the deputies who were ducking behind the limousine, and the other officers who were alongside Officer Arias.

Immediately after firing the gunshot into the air, Mackey lowered the handgun and pointed it toward Officer Arias, the patrons, the deputies, and the other officers. Mackey held the gun in his right hand; his arm was extended out directly in front of his body at chest/shoulder level. Fearing Mackey was about to shoot him or the others behind him, Officer Arias fired several rounds from his rifle at Mackey. It happened so fast that Officer Arias had no time to yell commands or identify himself as an officer. When he fired at Mackey, Officer Arias used his rifle's iron sights and aimed for Mackey's center torso area. Officer Arias estimated he fired five to six rounds in rapid succession. Officer Arias's initial volley of gunshots proved to be "ineffective." Mackey didn't "flinch" and continued aggressively walking at "a deliberate pace" with the gun still pointed north toward Officer Arias, the patrons, and the other officers. Officer Arias fired additional rounds⁵ from his rifle, but Mackey continued advancing with the gun. Officer Arias fired a third volley of rounds. Mackey clutched his chest and stomach area before falling to the ground. Officer Arias stopped firing as soon as Mackey began falling to the ground. Officer Arias estimated he fired four rounds in the third volley. Officer Arias believed that if he had not fired at Mackey, then he, a patron, or one of his partners would have been struck by gunfire and killed by Mackey.

Officer Arias believed his sight picture was off when he fired the first volley of rounds and that, because of this, he missed Mackey. Mackey had quickly closed the distance between himself and Officer Arias by about 15 feet by the time Officer Arias successfully stopped him. As Mackey fell, he staggered to his right (east) toward the building, ultimately dropping the gun before falling to the ground. Officer Arias quickly advanced toward Mackey, ordering him to show his hands. Officer Hollister and Deputy Portillo followed Officer Arias. Officer Arias saw the handgun on the ground about two to three feet in front of Mackey. The handgun was an "off tan," or green" Glock style semi-automatic handgun with a darker colored slide. The slide on the gun was locked back. Officer Hollister did a quick pat down of Mackey's body for officer safety. They did not handcuff Mackey because he had suffered gunshot wounds. Mackey was still breathing, but his breaths were shallow. The officers and deputies assessed Mackey's injuries to render aid and monitored his condition until medics arrived. Medical aid had been staged nearby prior to the officer-involved shooting, so they arrived within three to four minutes. Because the gun was in close proximity to Mackey, Officer Hollister picked up Mackey's gun as the medics approached so the gun wouldn't be stepped on or touched by one of the medical personnel.

⁵ Officer Arias estimated he fired four rounds in the second volley.

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On June 29, 2021, at approximately 10:00 a.m., **Officer Andrew Hollister** was interviewed by Detectives Nicolas Craig and Brett Chandler of the San Bernardino County Sheriff's Department.

Officer Hollister was employed as a police officer by the Barstow Police Department (BPD). Officer Hollister was on duty and was assigned to patrol, working the night shift from 6:00 p.m. on Friday, June 11, 2021, to 6:00 a.m. Saturday, June 12, 2021. Officer Hollister drove a distinctively marked black and white BPD patrol vehicle equipped with a camera. Officer Hollister's call sign was P-22. Officer Hollister wore a BPD Class C uniform, clearly identifying him as a Barstow Police officer. Officer Hollister's body-worn camera was mounted to the center of his chest and was activated during the incident under review.

On Saturday, June 12, 2021, at approximately 11:00 p.m., Officer Hollister was at the Barstow Sheriff's Station jail, booking an unrelated person. Officer Hollister heard a radio broadcast from dispatch advising there was a fight at The Spot, a bar located at the 2000 block of East Main Street in Barstow. Dispatch asked for additional officers to respond to the bar, including officers from the California Highway Patrol and deputies from the San Bernardino County Sheriff's Department. Officer Hollister knew there had been two or three previous calls for service at the same location earlier that evening but did not know the details because he had handled other calls for service at the time. Officer Hollister heard an officer who had earlier responded to The Spot broadcast over the radio that approximately 400 to 500 people were at the bar.

Officer Hollister left the jail and headed to The Spot to assist other Barstow Police Department officers. As he drove, Officer Hollister heard dispatch broadcast that multiple 911 calls were coming in, reporting that gunshots were being fired in the bar's parking lot. Upon hearing this, Officer Hollister believed it was an "active shooter" situation which caused him to feel a rush of adrenaline and his heart rate to increase. Officer Hollister did not know if anyone had been shot or killed but believed someone was actively shooting people at the bar. Dispatch advised that the suspected shooter was a black male wearing a white shirt and blue jeans. Officer Hollister activated his unit's emergency lights and sirens and drove as quickly as possible to the bar.

As Officer Hollister neared the bar, dispatch advised that the suspect was reported to have left the location in a white Dodge Charger and may have been involved in a traffic collision at Montara Road and East Main Street. Officer Hollister was at the intersection of Montara Road and East Main Street when he heard the broadcast but did not see the suspect's vehicle or a collision. Officer Hollister drove around the area for about a minute looking for the suspect's car but did not see any suspicious vehicles or persons. Officer Hollister got to The Spot approximately six to seven minutes after hearing the initial call for service. When Officer Hollister arrived, he saw two BPD and two San Bernardino County Sheriff's patrol vehicles parked on the south side of East Main Street. Some patrol units had their emergency lights activated, but their sirens were off. Officer Hollister saw

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Officer Arias and BPD Corporal Montario Franklin standing in the parking lot in front of the bar. Officer Hollister parked his patrol unit on the east side of East Main Street, just north of the bar's property. As he parked, several bar patrons yelled at him, telling him to "get out of here," and complained that he was blocking traffic. The crowd was aggressive and argumentative.

Officer Hollister saw approximately 50 to 100 people in the parking lot, and more people were "funneling out" of the bar, "fleeing the scene." Officer Hollister walked to the middle of the parking lot to assist with crowd control and to assess the situation. While there, only about 45 seconds after arriving at the scene, Officer Hollister heard a gunshot. The gunshot came from the southwest corner of the building in the alleyway on the west side of the bar that led back to the trailer park. Officer Hollister thought, "Is someone really shooting right now with all these police officers here?" Officer Hollister's heart began racing, fearing what would happen next. Officer Hollister started to move toward the sound of the gunfire. About five seconds later, Officer Hollister heard another gunshot from the same area. People in the crowd started screaming and running away from the area west of the bar. People coming out of the bar were yelling about the fact that someone was shooting. Officer Hollister was afraid someone would be shot or had already been shot. Officer Hollister used his radio to tell his partners of the gunshots. Officer Hollister heard a third gunshot from the driveway on the west side of the bar. Based on his extensive training and experience with firearms, Officer Hollister knew the sounds were gunshots and not fireworks. Officer Hollister did not see any fireworks in the area. From the sound of the gunshots, Officer Hollister believed the shooter was moving north and getting closer to the northwest corner of the bar's exterior.

After the third gunshot, Officer Hollister saw Officer Arias run toward the northwest corner of the building with his rifle. Officer Hollister also ran toward the northwest corner, unholstering his gun. Deputy John Portillo followed behind Officer Hollister. Officer Hollister saw a white limousine parked facing south on the west side of the alley. Officer Hollister saw a male and a female deputy⁶ run behind the north side of the limousine, trying to avoid being struck by gunfire. Officer Arias reached the northwest corner of the building first. Officer Arias stood at the corner and faced south with his left shoulder against the exterior north wall of the building. Officer Arias pointed his AR-15 rifle southward down the alley on the west side of the building. Officer Hollister was a few feet behind Officer Arias. Deputy Portillo and San Bernardino County Sheriff's Corporal John Parks were behind Officer Hollister.

As Officer Hollister reached the northwest corner of the building next to Officer Arias, he heard another gunshot from the alley west of the bar. After the fourth gunshot, Officer Arias returned fire, shooting his rifle toward the south. Officer Arias fired approximately three to four rounds in quick succession. After a brief pause, Officer Arias fired a second volley of three to four rounds in quick succession. Officer Hollister could not see around the corner of the building and did not know whom Officer Arias was shooting but believed

⁶ The deputies were later identified as Deputies Kimberly Kabluyen and Nicholas McCrystal.

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Officer Arias had returned fire at someone shooting at him. Officer Hollister peaked his head around Officer Arias to look south down the alley but was quickly pulled back behind the building by Deputy Portillo. During that brief glance down the alley, Officer Hollister saw a black male adult (later identified as Mackey) wearing dark jeans and a white undershirt with an open white and blue button-down shirt. Officer Hollister estimated Mackey was 10 to 15 feet south of him. Mackey was near the southwest corner of the building, approximately a foot away from the west wall of the building. A light pole in the alley illuminated the area. Mackey's hands were near his waist, and he was hunched forward slightly as he walked north toward the officers. Officer Hollister did not see a gun in Mackey's hands, but his glance was so quick that he may not have been able to see if Mackey held a gun. Officer Hollister did not see any people near or behind Mackey. Nothing, except Officer Arias, was between Mackey and Officer Hollister.

After being pulled back behind the building by Deputy Portillo, Officer Hollister heard Officer Arias fire another three to four shots from his rifle in quick succession. Officer Hollister estimated that Officer Arias fired 10 or 11 gunshots in total. Officer Arias's gunshots were fired in a southern direction in the alleyway west of the bar. Officer Hollister did not hear any officers give commands or identify themselves before the shooting, as everything happened so quickly. A group of 10 to 15 people located only a few feet north of him in the parking lot would have been in danger of being shot if Mackey had not been stopped immediately.

After firing his last gunshot, Officer Arias used his radio to announce he had fired his gun and to request medical aid. Officer Hollister knew medical services had been staged nearby based on previous broadcasts. Officer Arias walked into the alley south toward Mackey, followed by Officer Hollister, Deputy Portillo, and Corporal Parks. As Officer Hollister turned the corner of the building, he saw Mackey take three or four steps backward, stumble, and fall in a seated position with his back against a chain link fence that was attached to the west side of the building. The officers and deputies yelled at Mackey to show them his hands, but he did not move. The officers approached Mackey, and Officer Hollister saw two women hunkered down, hiding behind a nearby vehicle. A Glock-style "P80," tan and gray colored semi-automatic handgun, was in the dirt about five feet south of Mackey. The slide on the gun was locked back, meaning the gun had cycled through all the ammunition and was empty.

Officer Hollister saw Mackey had gunshot wounds to his upper chest. Mackey was unconscious, so Officer Hollister did not handcuff him. Officer Hollister searched Mackey for weapons and found none. To the south, Officer Hollister saw two unknown females hiding behind a dark-colored car on the south side of the bar. The two females looked scared. Officer Hollister did not believe they were involved in the incident.

Barstow Fire Department paramedics arrived and provided medical care to Mackey approximately one minute after the shooting. Officer Hollister donned gloves and picked up the handgun from the dirt to protect it. Officer Hollister removed the magazine from the

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gun and found it was empty. Officer Hollister secured the handgun in the trunk of his patrol vehicle. Paramedics placed Mackey into the ambulance and transported him away from the scene.



Picture taken by Officer Hollister showing the gun's location before he secured it.

On June 17, 2021, at approximately 8:02 a.m., **Deputy Nicholas McCrystal** was interviewed by Detective Nicolas Craig and Sergeant Joseph Steers of the San Bernardino County Sheriff's Department.

Deputy McCrystal was employed as a deputy sheriff by the San Bernardino County Sheriff's Department (SBSD). Deputy McCrystal was on duty and was assigned to patrol, working the night shift from 7:00 p.m. on Friday, June 11, 2021, to 7:00 a.m. Saturday, June 12, 2021. Deputy McCrystal drove a distinctively marked Sheriff's Ford Explorer patrol vehicle identified as Unit 8-5. Deputy McCrystal wore a Class A SBSD uniform, clearly identifying him as a deputy sheriff. Deputy McCrystal's belt recorder was activated during the incident under review.

On June 12, 2021, at approximately 1:09 a.m., Deputy McCrystal was at the gas pumps near Old Highway 58 in Barstow with Deputy Kabluyen. While there, Sheriff's dispatch broadcasted an "assist another department" call for service. According to the dispatcher, there was a large fight, and gunshots were fired at The Spot, a bar located at the 2000 block of East Main Street in Barstow. The location was in the city of Barstow, but the Barstow Police Department requested SBSD's assistance for the emergency.

Deputy McCrystal and Deputy Kabluyen⁷ each told dispatch to assign them to the call for service. Deputy McCrystal, followed by Deputy Kabluyen, drove to the incident location in their patrol units with their emergency lights and sirens activated.

As Deputy McCrystal drove to the scene, he heard a radio broadcast that a black male adult in a white hat, white shirt, and blue jeans was shooting at the location. Deputy McCrystal was exiting Interstate 40 at Montara Road when he heard another broadcast that the suspect was reportedly driving a white Dodge Charger and may have been

⁷ Deputy Kabluyen was also interviewed by detectives. Her description of the events was generally consistent with that of Deputy McCrystal's.

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involved in a traffic collision on Montara Road near the Walmart. Deputy McCrystal slowed down and looked around the area for the suspect vehicle but did not see any white Dodge Chargers. Upon arriving at The Spot, Deputy McCrystal parked on the south side of East Main Street, west of the bar, near an empty lot. Deputy Kabluyen parked her unit behind Deputy McCrystal's vehicle. Both deputies arrived about six minutes after they heard the initial call for service.

Deputy McCrystal saw a BPD and an SBSD patrol vehicle parked on the north side of East Main Street. Several civilian vehicles were parked along East Main Street and in the bar's parking lot. In the parking lot, a large crowd of about 100 people wandered north of the bar. There were well over a hundred people scattered around the bar's property. Some in the crowd were standing around, some were acting belligerent, and others were walking away from the bar. Deputy McCrystal did not see any injured persons. Deputy McCrystal saw BPD Corporal Montario Franklin at the northwest corner of the bar's property. Deputy McCrystal got out of his patrol unit and activated his belt recorder. Corporal Franklin asked Deputy McCrystal and Deputy Kabluyen to assist him with moving the crowd away from the bar, so they began asking customers to leave the parking lot.

Based on the previous broadcast that the suspect had been involved in a collision on Montara Road, Deputy McCrystal believed the suspect was no longer at the incident location. However, about 15 to 20 seconds after Deputy McCrystal arrived at the bar, he heard one gunshot from the alley west of and behind the bar, south of his location. Based on the sound of the gunshot, Deputy McCrystal thought the shooter was at the south side of the building. Deputy McCrystal yelled for the crowd to flee the location because he thought someone might get shot if they didn't move away from the parking lot. Within five to 10 seconds of the first gunshot, Deputy McCrystal heard a second gunshot from the same area.

Deputy McCrystal looked south toward the alley on the west side of the bar and saw a black male adult (later identified as Mackey) in the alley approximately 180 feet south of him. Deputy McCrystal could see Mackey because lights on the exterior of the bar's building illuminated the alley. Mackey wore a white button-up shirt, which was unbuttoned, and dark denim pants. Mackey matched the suspect's description broadcasted by dispatch while Deputy McCrystal was on his way to the incident location.

Mackey walked at a fast pace north in the alley toward Deputy McCrystal and Deputy Kabluyen. Mackey put his right hand above his head and fired a handgun into the air three times. The gunshots were fired in a cadence of about three seconds. Deputy McCrystal could not clearly see the gun in Mackey's hand, but when Mackey fired, his hand moved with the gun's recoil, and Deputy McCrystal saw muzzle flashes. Deputy McCrystal did not see anyone else in the alley near Mackey or further south of Mackey near the trailer park. The patrons in the crowd were all north of Deputy McCrystal.

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Mackey continued walking quickly north toward Deputy McCrystal and Deputy Kabluyen as he fired in the air. Right after the third gunshot, Mackey fired a fourth gunshot. This time, the muzzle flash came directly from the front of Mackey near his waist and was aimed in Deputy McCrystal's direction. Based on the position of the muzzle flash, Deputy McCrystal believed Mackey was shooting at him and the crowd behind Deputy McCrystal. Deputy McCrystal ran for cover behind a limousine just a few feet west to avoid being shot. Deputy McCrystal unholstered his handgun as he ran behind the limousine. Deputy Kabluyen also ran behind the limousine for cover. Deputy McCrystal heard approximately six gunshots fired in rapid succession. Deputy McCrystal did not immediately know who fired the gunshots.⁸

Mackey was moving toward their location fast, and Deputy McCrystal believed Mackey would kill someone if he did not act. To that end, Deputy McCrystal peeked around the limousine and planned to shoot Mackey to stop him from killing anyone. However, Deputy McCrystal did not see Mackey. Deputy McCrystal thought Mackey was probably hiding so he could ambush one of the officers or someone in the crowd.

Deputy McCrystal looked east and saw Officer Arias, Deputy John Portillo, and Corporal John Parks at the northwest corner of the bar's building.⁹ Officer Arias was crouched down, pointing his rifle south in the alley. Deputy Portillo and Corporal Parks were behind Officer Arias, holding their handguns. Officer Arias walked around the corner of the building toward Mackey. Deputy Portillo and Corporal Parks followed Officer Arias. Deputy Kabluyen and Deputy McCrystal stayed on the west side of the alley and walked south. Deputy McCrystal believed Mackey was still a threat and might have been waiting to hurt people. As they walked south, Deputy McCrystal saw two females who were putting their hands up from behind a vehicle. Deputy McCrystal did not see them before or during the shooting.

As Deputy McCrystal walked south of the limousine, he saw Mackey lying on the east side of the alley. Mackey was on his back and was near the south end of the bar's building. Officer Arias, Deputy Portillo, and Corporal Parks walked toward Mackey. Deputy McCrystal did not approach Mackey and did not see his handgun. Deputy McCrystal saw a BPD officer approach Mackey and use his radio to request medical aid.

Deputy McCrystal focused on what was south of him to ascertain whether there was a second shooter or whether anyone else was injured. Deputy McCrystal saw a gray sedan on the west side of the alley with approximately three gunshot strikes on the rear window. Deputy McCrystal used his flashlight to illuminate the interior of the gray sedan to ensure no one was inside. Deputy McCrystal and Corporal Parks walked south of Mackey to look for additional suspects or victims. Deputy McCrystal and Corporal Parks walked through the trailer park to Armory Road but did not find anyone else in the area. Paramedics were

⁸ Deputy McCrystal did not see Officer Arias shoot his rifle and only learned afterward that Officer Arias had fired.

⁹ Deputy McCrystal did not recall seeing Officer Hollister in the group.

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already at the location, tending to Mackey when Deputy McCrystal returned from the trailer park about three to five minutes after the shooting.

STATEMENTS BY CIVILIAN WITNESSES¹⁰

On June 12, 2021, at 12:26 a.m., **Witness #1** was interviewed by Detectives Kevin Riberich and Amy Bilbao of the San Bernardino County Sheriff's Department.

Witness #1 lived at [redacted] East Main Street, near The Spot. Witness #1 knew the owner of The Spot, Witness #11. Witness #11 was cordial with Witness #1 and told him to call if he had any problems with the bar. Witness #11 also gave Witness #1 the name and phone number for the bar's manager. Since 2018, Witness #1 has experienced issues with bar patrons parking in his yard about once a month. Witness #1 called Witness #11 each time, and Witness #11 would resolve the issue by having the cars moved.

On Friday, June 11, 2021, at approximately 11:23 p.m., Witness #1 went outside to get something from his truck parked in his front yard. Witness #1 saw about 16 cars parked in his front yard. Witness #1's front yard was a dirt lot surrounded by a three-foot tall white ranch-style fence. There was no gate to block traffic from entering Witness #1's yard. Witness #1 told the drivers that his yard was private property and that they could not park there. The drivers argued with Witness #1 and continued to park in his yard.

Witness #1 called Witness #11 and told him about the people parking in his yard. Witness #11 said he would try to resolve the issue and suggested that Witness #1 have the cars towed if the drivers refused to move their vehicles. Witness #1 called eight tow companies, but all declined to remove any cars from his property without a contract. The tow companies suggested Witness #1 call the police.

At approximately 11:48 p.m., Witness #1 called the Barstow Police Department's non-emergency number to report the parking issue. On Saturday, June 12, 2021, at approximately 12:34 a.m., someone from the Barstow Police Department called Witness #1 to tell him that BPD officers were at The Spot. Witness #1 saw a marked BPD vehicle parked in front of The Spot. Witness #1 walked over to a BPD officer¹¹ outside the bar and talked to him. Witness #1 saw three BPD officers walk out of the bar while he spoke to the officer. The officer told Witness #1 they could not stop the business at the venue because there were about 500 people at the bar, and there were only four BPD officers. Witness #1 estimated over 100 cars were parked in the bar's parking lot and along East Main Street in front of the bar. Witness #1 saw numerous people at the bar but could not estimate how many. The four BPD officers left the bar at about 12:50 a.m., and a security guard posted at Witness #1's front yard. Witness #1 spoke with the security guard, who told him there was a rapper from Los Angeles at the bar.

¹⁰ All reports of civilian statements made were reviewed, though not all are summarized here.

¹¹ Witness #1 did not know the officer's name but described him as young.

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Around 1:08 a.m., Witness #1 saw multiple people running out of the bar. Witness #1 noticed that a lot of the people wore red clothing. Witness #1 told the security guard, "Hey, there's something going on." The security guard told Witness #1, "Oh, I gotta go." The security guard left. Witness #1 started hearing a "big ruckus." Witness #1 heard people yell, "Fuck you, punk," and, "You don't want none of this," at each other. Witness #1 heard one gunshot from the bar's front parking lot. Witness #1 called 911 to report the gunshot. Witness #1 saw a white Dodge Challenger drive east out of the bar's parking lot and then stop right in front of Witness #1's property. A "black skinny guy" clad in a hat, a shirt draped over his shoulders, and sagging skinny jeans with red undershorts exposed under the jeans ran to the passenger side of the Challenger and said, "Here, hold my gun."

Witness #1 heard a guy inside the Challenger say, "What?" Witness #1 guessed the male threw the gun inside the Challenger but did not see the gun. The male then ran to a Witness #13 Honda Accord with a black bumper parked in Witness #1's yard. The male got into the driver's seat of the Accord and drove west on Main Street with his lights turned off. The Challenger drove east on Main Street. Witness #1 saw more people running, and they "broke down" his fence "so they could start getting out." Witness #1 then saw a car stop in front of his property and watched a male, who wore a white sweatshirt and blue jeans, get out of the car. The male moved his hands back and forth in the air and yelled, "You don't know me," toward other people. The male then got back into the car and drove away. Numerous vehicles fled out of the area in various directions.

A Saturn SUV drove east on Main Street while an occupant seated in the passenger side fired six gunshots from the vehicle. Witness #1 was unable to see the occupant who fired the gun. The SUV crashed into a yellow car parked on the south dirt shoulder of Main Street, east of Witness #1's property. The SUV then crashed into the K-rail on the north side of Main Street. Witness #1 heard people in the bar's parking lot yell, "Yeah, motherfucker, that's what you get," and "Let's go get that motherfucker." Witness #1 did not see anyone get out of the SUV. Additional vehicles fled east and west out of the bar's parking lot. Witness #1 heard more gunshots, and it "just turned into literally like a war zone." Witness #1 heard bullets ricochet and heard more than 50 gunshots from about four to five different guns. Witness #1 hid behind a shed in his front yard. The shed was about 20 feet south of East Main Street and east of the bar. The gunshots lasted about 10 minutes. When the gunfire stopped, there was "dead silence." Witness #1 believed there would be "multiple bodies" and described it as "hellfire." When the gunfire stopped, Witness #1 stepped out and saw several people hiding behind a building beside where he had hidden.

Witness #1 was still on the phone with 911. Suddenly, the gunfire "started again." The 911 operator told Witness #1 that they had officers on scene. Witness #1 heard about 15 gunshots from behind the bar. These were followed by an additional 15 gunshots from a semi-automatic rifle. The gunshots from the rifle were a constant volley of shots. Witness #1 could not see where the gunshots or the rifle fire came from because the gunshots were behind the bar, and the building blocked his view. The gunshots stopped, and more

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cars fled out of the area. Witness #1 walked southwest from the shed and saw about six marked BPD police vehicles, two marked San Bernardino County Sheriff's vehicles, and one marked California Highway Patrol vehicle. The police vehicles faced east and had their overhead flashing lights and spotlights activated. Witness #1 saw a BPD officer walk through the parking lot with a rifle. Witness #1 believed that the semi-automatic rifle fire had come from that officer.

On June 12, 2021, at 4:38 p.m., **Witness #2 and Witness #3** were interviewed by Detectives Kevin Riberich and Amy Bilbao of the San Bernardino County Sheriff's Department.

Witness #2 was in a relationship with Kenneth Mackey for 18 years, and they were married for the past four years. Mackey helped raise Witness #2's three children from a previous relationship, and they had one child together. Witness #3 was Mackey's cousin and attended the interview with Witness #2 for moral support.

According to Witness #2, Mackey was a good person, father, and husband. Mackey did not own a gun and was not a violent person. Mackey spoke about firearms, but no more than anyone in Barstow. Mackey was never a gang member, and he got along with everyone. Mackey was a music producer and had a music studio in Barstow. Mackey was social and called any young male friends his "godson" as a term of endearment. Mackey was in good health, did not take prescription medication, and was not diagnosed with mental health issues. Neither Witness #2 nor Witness #3 had noticed any recent changes in Mackey's behavior.

On Friday, June 11, 2021, at approximately 9:00 p.m., Witness #2 and Witness #3 arrived at The Spot at the 2000 block of East Main Street in Barstow. They parked on the northeast side of the parking lot directly in front of the "big advertisement truck."¹² Mackey drove to The Spot separately because he wanted to wait until the concert started before arriving. Mackey planned to drive his grey Infinity sedan and meet with Witness #2 and Witness #3 later. Between 11:00 p.m. and midnight, Mackey arrived and joined Witness #2 and Witness #3. Witness #2 and Witness #3 did not know where Mackey parked his Infinity because they were inside the bar when he arrived. Neither Witness #2 nor Witness #3 saw Mackey argue with anyone at the bar, and it was not Mackey's personality to fight.

On Saturday, June 12, 2021, at approximately 1:00 a.m., an unknown friend of Mackey's told Witness #3 that some friends of Mackey's were fighting in the parking lot. Mackey ran outside to help. Witness #3 did not know who was supposedly fighting. At approximately 1:05 a.m., Witness #3 located Mackey in the parking lot. Mackey told Witness #3, "People are about to start shooting," and "People are talking about guns." Witness #3 did not know who spoke about guns or planned to start shooting. Witness #3 told Mackey to come inside the bar for safety, but Mackey refused and said he wanted to

¹² Witness #3 marked their parking location and other pertinent locations on an aerial Google photograph of The Spot and the surrounding parking lot.

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help his "godson." Witness #3 did not know to whom Mackey was referring and believed it could have been any of his friends. Witness #3 returned to the bar and told Witness #2 about the fight and possible gunfire in the parking lot.

At approximately 1:10 a.m., Witness #3 was inside the bar and heard several sporadic gunshots. The gunshots sounded like they came from different guns, "one large and one small." Witness #3 looked out the window but did not see Mackey or who fired the guns. Witness #3 heard several additional gunshots, which she described as "lots." Witness #3 and Witness #2 tried to go outside to the parking lot to look for Mackey but were stopped by a security guard. The security guard would not allow anyone to leave the bar. At approximately 1:12 a.m., Witness #3 called Mackey's cell phone and told him someone was shooting outside. Mackey told Witness #3 he was inside his car and was about to leave.

Approximately 10 minutes later, the security guard allowed everyone inside the bar to leave. Witness #3 and Witness #2 assumed Mackey had left the scene and did not attempt to look for him. The parking lot surrounding the bar was well-lit. Several police vehicles were parked north of the bar with their emergency overhead lights activated. Witness #3 and Witness #2 went to their car, parked on the northeast side of the parking lot. Witness #3 and Witness #2 stood near their car and saw three or four BPD officers in the dirt driveway on the west side of The Spot. The officers had their guns out and aimed south.

Witness #3 and Witness #2 saw all the BPD officers "shoot someone" in the alley west of the bar. Witness #3 saw "a body go down." Witness #3 and Witness #2 were approximately three car lengths east of the BPD officers but could not see if the officers shot handguns or rifles. Witness #3 did not hear any other gunshots when the BPD officers fired.

Witness #3 and Witness #2 drove out of the parking lot and expected to find Mackey waiting for them at home. They arrived at Witness #2 and Mackey's house about two minutes later. Witness #3 called Mackey's cell phone several times, but her calls went to voicemail. At about 2:15 a.m., Witness #2 and Witness #3 became concerned and drove back to the bar to look for Mackey or his vehicle. Witness #2 and Witness #3 drove around the parking lot and through the trailer park south of The Spot but did not see Mackey or his car. Witness #3's boyfriend, Witness #4, drove to the bar and found Mackey's car parked behind a trailer south of the bar. The trailer belonged to one of Mackey's friends. Because Mackey's friend was out of town, Witness #2 believed Mackey would not have parked there. Witness #2 and Witness #3 were baffled about why Mackey's car was parked at the trailer park and suspected BPD officers may have moved Mackey's car.

On June 12, 2021, at 7:06 p.m., **Witness #4**¹³ was interviewed by Detectives Amy Bilbao and Kevin Riberich of the San Bernardino County Sheriff's Department.

¹³ Witness #3 was present during Witness #4's interview to help ease Witness #4's tension toward law enforcement.

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Witness #4 was at The Spot inside the bar “when the commotion started” in the lounge area where people smoked cigarettes. A security guard told people inside that gunshots were going off outside. Witness #4 saw a black four-door Lexus with “gold trimming” in front of the building. A young male in the Lexus pulled out a firearm. Witness #4 told everyone else inside the bar to “get down.” Witness #4’s girlfriend was looking out of the window, and Witness #4 told her to get away from the window because “they were about to start shooting.” No one shot into the bar, but someone was shooting nearby.

Witness #4 began to take his paraplegic uncle out of the bar’s back door, but people rushed through and ran out of the back door. The bartender, who was also the security guard, went over and shut the door, and told everyone to use the door near the entrance. Witness #4 and his uncle left the bar through the side door near the front of the bar. Witness #4’s car was in the front parking lot near a billboard on the northeast side of the parking lot.¹⁴ Witness #4 saw an officer with an AR-15 rifle or something similar in his hand run from the front of the bar to the “tip of the driveway.” Witness #4 heard gunshots as he turned to help his uncle into the car. Witness #4 explained, “The first shot that I saw, came from his¹⁵ gun, but the other shots were already firing before he even got there.” To Witness #4, the officer looked like he was “trying to rush to hurry up and get him some shots in.” Witness #4 saw the officer firing the rifle “through a crowd,¹⁶ but at whoever was on the side of the building.” After the officer fired the AR-15, two other officers fired their handguns. All three officers fired¹⁷ and “never gave the man a chance.” Witness #4 did not know if the man the officers shot had a gun, but he did not see one. Witness #4 later learned that Mackey was the man who had been shot.

After the shooting, Witness #4 returned to The Spot to look for Mackey and found Mackey’s vehicle south of The Spot and north of the trailers. Mackey’s car was parked near a pole by a speed bump. Witness #4 believed law enforcement had “planted” Mackey’s car there because he did not see it parked there before the shooting.

Witness #4 believed the officers never gave Mackey a chance and that it was “very uncomfortable to see how they just slaughtered that man.” Mackey was not the kind of man who would have shot at the police. Witness #4 explained that if Mackey had a gun, he would have dropped it, and the officers would have been able to arrest him.

Witness #4 told the officers there had been threats against people’s lives throughout the night and explained that it was “a crip and blood matter.” Witness #4 said people threatened some of the performers Mackey had invited to The Spot. Mackey was a music producer and mentored some of the males who planned to perform. According to Witness

¹⁴ Witness #4 marked the spot where his car was on a Google map for the detectives.

¹⁵ Referring to the officer who ran with the AR-15 rifle.

¹⁶ No other witnesses reported seeing officers shoot through a crowd. The body-worn camera videos do not show the officers shooting through a crowd.

¹⁷ Physical evidence at the scene does not support this claim.

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#4, Mackey "was just being a responsible person like he always is." Witness #4 expressed, "We hate that this happened because Mackey had a big ass heart and was trying to check on somebody else, and that's how he ended up dying."

On June 12, 2021, at 6:21 a.m., **Witness #5** was interviewed by Detectives Brett Chandler and Eric Ogaz of the San Bernardino County Sheriff's Department.

On Friday, June 11, 2021, at approximately 11:39 p.m., Witness #5 arrived at The Spot with her wife, Witness #12, and cousin, Witness #13.¹⁸ They parked their vehicle, Witness #13's 2015 Volkswagen Passat, in an alley on the west side of the bar. Witness #5, Witness #12, and Witness #13 went inside the bar and watched the artists perform on stage on the east side. There were approximately 200 people at The Spot.

About an hour after they arrived, a fight broke out on the patio. The patio was a fenced-in area in front of the bar, west of the stage. People ran out of the bar from the patio to the front parking lot. Security closed the front doors and appeared to have the fight under control. Witness #5, Witness #13, and Witness #12 remained near the stage and continued to listen to the performance. Witness #5 did not see who was involved in the fight. People came back inside the bar and started "partying again." About an hour later, a fight broke out in the parking lot again. People ran outside. Witness #5 did not see the second fight but heard about it from other people inside the bar. Security kept the doors closed for about five minutes before letting people leave the bar.

Witness #5, Witness #13, and Witness #12 left the bar and headed to their car. Witness #5 saw a sheriff's deputy in the parking lot and a couple of police vehicles parked in the street with their emergency lights activated. Witness #5, Witness #13, and Witness #12 got into their car, and as soon as Witness #13 put the key into the ignition, Witness #5 saw a black male wearing a white t-shirt and blue jeans walk around a gate on the side of the bar and start shooting into the air. (The male was later identified as Kenneth Mackey.) Mackey walked north in the alley toward Witness #5, Witness #13, and Witness #12.

Mackey held a handgun in his right hand and fired three rounds into the air. There was about a two to three-second pause between the gunshots. Mackey said nothing as he walked north in the alley, firing a handgun in the air. Witness #5 believed Mackey was "possessed" because he walked toward law enforcement, shooting a gun. Witness #13 was driving but stopped their vehicle near the south gate of the bar after the second gunshot was fired. Witness #5, Witness #13, and Witness #12 feared Mackey would shoot them, so they exited their vehicle and hid on the passenger side. Mackey fired his third bullet as Witness #5, Witness #13, and Witness #12 exited their vehicle. Mackey walked past where they hid. Witness #5 heard Mackey shoot two more rounds. Mackey's last two gunshots were in rapid succession. Witness #5 did not see how Mackey held his gun or

¹⁸ Detectives also interviewed Witness #12 and Witness #13. Their statements were generally consistent with Witness #5's statement.

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where he aimed when he fired his last two rounds because she was hiding behind her vehicle.

Witness #5 heard approximately five or six gunshots immediately after Mackey shot his last two rounds. These gunshots came north from where she hid. The gunshots sounded like they came from a different caliber firearm than the gunshots from Mackey. Witness #5 did not see who shot these gunshots because she was hiding behind her car. Witness #5 saw flashlights approach her from the north and heard a BPD officer yell, "Get down!" Witness #5, Witness #13, and Witness #12 raised their hands in the air and told the officers they were behind the vehicle. Although Witness #5 did not see who shot Mackey, she believed it was an officer for two reasons: She had seen law enforcement in the parking lot when exiting the bar, and she was immediately contacted by law enforcement after the last gunshot. Witness #5 did not hear law enforcement say anything to Mackey before the shooting.

Witness #5 saw Mackey on the ground, against the west wall of the bar. Mackey did not move and did not appear to be breathing. The BPD officers handcuffed Witness #5, Witness #13, and Witness #12 and detained them behind their vehicle. Witness #5 saw Mackey placed on a gurney and into the rear of an ambulance. The ambulance then drove away from the bar.

On June 22, 2021, at 2:10 p.m., **Witness #6** was interviewed by Detectives Brett Chandler and Nicolas Craig of the San Bernardino County Sheriff's Department.

Witness #6 was employed as a limousine driver. Witness #6's limousine was a white stretch Cadillac Escalade. On Friday, June 11, 2021, at approximately 10:00 p.m., Witness #6's boss told him to pick up unknown occupants and drive them to The Spot in Barstow. Witness #6's boss accompanied him during the trip. Witness #6 and his boss picked up four black male adults in Helendale. The four males were musicians who planned to perform in Barstow. Witness #6 did not know their names.

At approximately 10:45 p.m., Witness #6 arrived at The Spot in his limousine with his boss and the four musicians. Witness #6 parked the limousine facing south in the alley west of The Spot. Several vehicles were parked in front of the bar, behind the bar, and along East Main Street. Witness #6 could not estimate the number of people at the bar but said it was a large crowd. The crowd was primarily composed of black males and females. Witness #6 believed he was the only white person at the location.

Witness #6's boss and the four musicians exited the limousine and entered the bar. Witness #6 waited inside the limousine for about two hours during the concert. During those two hours, Witness #6 saw uniformed BPD officers arrive at the front of the bar on three different occasions. Witness #6 did not know what the officers did or the exact times they arrived. Witness #6 said the officers caused no disturbances, and they left without incident.

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On Saturday, June 12, 2021, at approximately 1:09 a.m., Witness #6 sat in the driver's seat of his limousine in the alley west of the bar. Witness #6 faced south. The windows on Witness #6's limousine were heavily tinted, making it difficult to see through them at night. Witness #6 looked east toward the parking lot in front of the bar. Two black females argued and cursed at each other. A crowd formed around them. Witness #6 heard people yell and then heard gunshots. Witness #6 estimated he heard 30 gunshots which continued for at least a minute. Witness #6 did not see who fired the guns. Based on the sound, Witness #6 believed the gunshots came from the front parking lot, north of the bar. Witness #6 thought someone could have been struck by gunfire because a large crowd was gathered in front of the bar.

About three minutes after hearing the first gunshot, Witness #6 saw a marked BPD police vehicle stop and park in front of the bar on East Main Street. The police vehicle had its emergency lights activated, but Witness #6 did not hear sirens. Witness #6 saw another police vehicle stop and park behind the first vehicle on East Main Street. Witness #6 heard another gunshot from the front of the bar only seconds before the police officers arrived. Witness #6 saw people leave the location on foot and in their vehicles.

Witness #6 described the scene as "chaos," as people ran away from the bar and vehicles crashed into each other in front of the bar. Witness #6 saw the police officers walk toward the front door of the bar. About three minutes after the police officers arrived, Witness #6 sat in the driver's seat of his limousine and saw a firework¹⁹ launch about 200 yards south of him. The firework exploded into a yellow or white ball approximately 200 feet above the ground. Witness #6 described it as a "Fourth of July" aerial-style firework. Within 15 seconds of the firework explosion, Witness #6 saw a black male adult wearing "something white" walk toward him from the trailer park south of the bar. (Through investigation, the black male adult was identified as Mackey.) Mackey walked north in the alley toward the bar. Witness #6 did not see any guns in Mackey's hands. Witness #6 did not specifically focus on Mackey's hands but believed he would have seen a gun if Mackey had held one. Mackey walked south for about 15 seconds until he was about 25 feet south of Witness #6's limousine. Witness #6 was able to see Mackey because of the lights around the bar.

Mackey walked down the center of the alley.²⁰ Witness #6 heard approximately five gunshots. Based on the sounds, Witness #6 believed the gunshots came from the northwest exterior corner of the bar. Mackey raised both of his hands toward the north. Witness #6 demonstrated how Mackey raised his hands by extending his arms from his chest, with his palms straight out in a "stop" motion. Witness #6 heard voices yell to get down. Witness #6 said there was a pause for about two or three seconds, and then he heard approximately eight to 15 more gunshots fired in rapid succession. Witness #6 saw Mackey fall in the alley and crawl toward the west wall of the bar.

¹⁹ None of the other civilian or law enforcement witnesses interviewed by detectives reported seeing any fireworks.

²⁰ Witness #6 did not specify in which direction Mackey walked.

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Uniformed officers walked south in the alley to Witness #6's east. The police officers walked in a line, one behind the other, as they approached Mackey. One of the officers carried a rifle. One officer approached Mackey and turned him onto his stomach. Another officer handcuffed Mackey. A third officer walked south of Witness #6 toward the trailer park. Witness #6 saw an unknown number of people near a gray car south of the bar.

Witness #6 realized the police officers had shot Mackey and believed they must have confused the firework he saw for a gunshot. Witness #6 did not know from where the officers had fired. Witness #6 did not see any guns around Mackey and never saw any officers plant any firearms.

Witness #6 stayed inside his limousine until his boss and the four musicians returned to the limousine about a minute later. Witness #6's boss and the musicians told him they were locked inside the bar by security when the shooting started. They did not know what had happened outside the bar. Witness #6 was scared and left as his clients requested. Witness #6 drove his limousine south and passed the police officers. Witness #6 rolled down his window and told an officer he could not turn his limousine around. The officer did not reply. Witness #6 drove south out of the area. Witness #6 did not see an ambulance at the scene when he left. Witness #6 did not know anyone at the party.

Witness #6 later saw a Facebook post that said Mackey had shot at officers when they arrived at the bar. Witness #6 said he knew Mackey did not have a gun and did not shoot at the officers, so he wanted to tell the authorities what he had seen. Witness #6 also told Detectives Chandler and Craig, "I was going over and over in my mind why this happened that way, and the only thing I could come up with is that he accidentally shot, and the officers followed suit."

On July 8, 2021, at 8:13 a.m., **Witness #7** was interviewed by Detective Brett Chandler of the San Bernardino County Sheriff's Department.

Witness #7 was employed by the Barstow Fire Protection District as a firefighter paramedic. On Saturday, June 12, 2021, Witness #7 worked an overtime shift at the Barstow Fire Protection District station in Barstow. Witness #7 was assigned to Medic Squad 361 with Firefighter Paramedic Witness #9.

At approximately 1:00 a.m., Witness #7 and Witness #9 were dispatched by radio to a possible active shooter at The Spot, a bar at the 2000 block of East Main Street in Barstow. Witness #7 and Witness #9 responded to the location "Code 3" with lights and sirens activated. Witness #7 and Witness #9 intended to stage nearby until the scene was cleared; however, before arriving at their staging location, they were cleared to enter the scene by Barstow Police Department.

Witness #7 and Witness #9 arrived at the bar approximately five minutes after they were dispatched. Upon arriving, Witness #7 saw "a lot of bystanders" in the streets and multiple

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police cars. Barstow police officers directed Witness #7 and Witness #9 into the parking lot on the west side of the bar. Officers instructed Witness #7 and Witness #9 to park a "decent distance" away from the patient "due to the scene." Witness #7 estimated that they parked 40 feet away from the patient. The patient was identified as Kenneth Mackey. Mackey lay supine in the alleyway on the west side of the bar.

Witness #7 saw a handgun approximately one to three feet from Mackey's head. Witness #7 recalled that the handgun was either gray or black. Witness #7 asked one of the Barstow police officers to secure the firearm²¹ prior to Witness #7 and Witness #9 rendering medical aid. Witness #7 began assessing Mackey and saw he had several gunshot wounds. Mackey had a gunshot wound to his left arm, two to his stomach, and one to his left femur. Mackey was breathing but was not responding to their questions. Witness #7 applied a tourniquet to Mackey's left arm and a needle thoracostomy to the left side of Mackey's chest. Witness #9 assisted Mackey's breathing with a bag valve mask and nasopharyngeal airway tube.

Witness #7 and Witness #9 placed Mackey onto a backboard and carried him to the ambulance. Mackey was placed onto a gurney and into the rear of the ambulance. Witness #7 inserted an interosseous line into Mackey's right leg prior to transport. As they began transporting Mackey to meet the helicopter so he could be airlifted to a trauma center, Mackey lost his pulse and stopped breathing. Witness #7 started cardiopulmonary resuscitation (CPR) in the rear of the ambulance, and Mackey was transported Code 3 to the nearest hospital. The ambulance arrived at the hospital in approximately five minutes. Mackey was taken into the emergency room, where hospital staff took over Mackey's medical care.

On June 12, 2021, at approximately 5:59 a.m., **Witness #8** was interviewed by Detective Amy Bilbao of the San Bernardino County Sheriff's Department.

Witness #8 was an emergency physician for over 20 years and worked for [redacted] Hospital. On June 12, 2021, at approximately 1:30 a.m.,²² a medical unit broadcasted over the radio that they were en route to the hospital with a patient suffering from multiple gunshot wounds. The patient, later identified as Mackey, was reportedly not breathing, and CPR was in progress. While en route to the hospital, medics had placed an intravenous catheter into Mackey's chest to decompress air or gas trapped between the lungs and the chest wall.

Approximately eight minutes later, the ambulance arrived at the hospital with Mackey. Mackey had a nasal trumpet, also known as a nasopharyngeal airway, in his nostril, and a bag valve mask over his nose and mouth. Medics continued CPR and artificial respirations as Witness #8 assessed Mackey. Witness #8 used an ultrasound machine

²¹ Witness #9 told detectives during his interview that he saw a BPD officer photograph the gun and then place the gun into a bag.

²² Witness #8 did not recall the exact times related to this event.

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to look at Mackey's heart and saw no movement. Mackey's eyes were fixed and dilated. Mackey had multiple suspected gunshot wounds to his body, but the wounds did not actively bleed because Mackey's heart had already stopped. Based on Witness #8's training and experience as an emergency room physician, he believed Mackey died before he arrived at the hospital. Witness #8 discontinued CPR and artificial respirations because Mackey showed no signs of life. Witness #8 did not utilize an automated external defibrillator or give Mackey any medication. Witness #8 observed gunshot wounds on Mackey's upper left abdomen, left lower back, left lower abdomen, left thigh, and two on his left arm. Witness #8 also noted that Mackey's left arm and left femur were fractured. Witness #8 declared Mackey deceased approximately four minutes after Mackey arrived at the hospital.

INCIDENT AUDIO & VIDEO

Body-Worn Camera Summaries²³

Officer Arias' Body-Worn Camera

1:14:17²⁴ Officer Arias' body-worn camera began recording as Officer Arias walked south toward the bar from East Main Street. It was dark outside, but several exterior lights illuminated the parking lot and surrounding area. Multiple cars were parked in a wide area surrounding the bar's property and the parking lot. Officer Arias's camera recorded numerous people walking away from the bar and through the parking lot toward East Main Street. Officer Arias spoke to a civilian and provided directions for exiting the area. Radio broadcasts over Officer Arias' handheld radio provided information regarding a white Dodge Charger and gray SUV involved in a traffic collision.²⁵ As Officer Arias approached the bar, the crowd of people leaving the bar grew larger. Engines of nearby cars revved in the background.

01:15:02 Officer Arias continued walking toward the bar as large crowds of people walked away from the bar and past Officer Arias.

01:15:26 As Officer Arias approached the front of the bar, several lights on top of the bar illuminated the immediate area. Officer Arias walked toward Deputy Portillo, who stood beside the bar's outside patio fence. Officer Arias stopped in the parking lot and faced east. Multiple patrons streamed out of the bar and walked toward East Main Street.

²³ The BPD officers herein were equipped with Axon body-worn cameras. The camera system turns on when the operator activates the camera. When the camera is activated, the previous 30 seconds of video are included without audio. The summaries will cover the events from the beginning through the point immediately after the incident under review. All body-worn camera recordings were reviewed, though not all are summarized here. It should be noted that Corporal Franklin was inside the establishment when the officer-involved shooting occurred. As such, his body-worn camera did not contain footage of the shooting.

²⁴ The times noted are as they appeared in the upper right-hand corner of the video.

²⁵ Radio broadcasts from police dispatch and law enforcement officers continued throughout the video recording. For additional details, please see the summary of dispatch recordings.

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01:15:57 Officer Arias turned to his right (south) toward the front of the bar as crowds of people walked away from the bar toward East Main Street.

01:15:59 Officer Arias walked south toward the front of the bar and stopped next to Deputy Portillo, who stood beside the bar's outside patio fence. Crowds of people continued streaming out of the bar, into the parking lot, and walking toward East Main Street.

01:16:05 A faint gunshot rang out in the distance. A male who walked through the parking lot ducked and continued walking away from the bar. Just southeast of the male who ducked, Officer Hollister walked in a northwestern direction into the parking lot with his flashlight illuminated. Officer Hollister turned off his flashlight and placed it in his duty belt as he walked through the parking lot toward the front of the bar and Officer Arias.

01:16:16 A second gunshot, louder than the first, rang out in the distance. Over the police radio, an unknown officer broadcasted, "We've got two shots fired." The crowd of people leaving the bar grew louder, their words unintelligible as they spoke simultaneously. Officer Arias turned to his right (south), and Deputy Portillo came into camera view. Deputy Portillo looked up into the air westward. Several people in the crowd yelled and screamed.

01:16:21 A third gunshot rang out. Several people in the crowd yelled and screamed. Officer Arias turned to his left. As Officer Arias's camera panned to the north, multiple people were captured on video walking through the parking lot toward East Main Street. Red lights from patrol vehicles flashed on East Main Street.

01:16:23 Officer Arias continued turning to his left, and as his camera panned to the west, crowds of people were captured on video walking toward East Main Street. Two patrol units with flashing red lights were parked along East Main Street. People in the crowd continued to yell.

01:16:26 Officer Arias quickly walked westward along the exterior patio fence toward the northwest corner of the bar's exterior (hereafter, the building). Additional patrol units with activated emergency overhead lights were parked just west of the bar on East Main Street.

01:16:29 A fourth gunshot rang out loudly, and Officer Arias began running westward.

01:16:32 As Officer Arias ran westward, his body-worn camera shook, resulting in blurred images. However, upon pausing the video at 1:16:32, several pedestrians can be seen south and west of Officer Arias.

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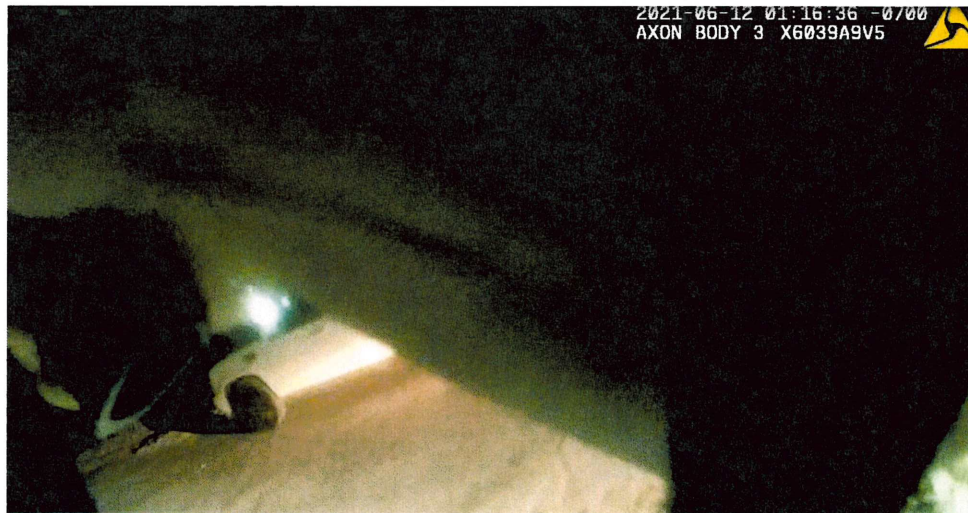
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01:16:35 Officer Arias reached the northwest corner of the building. Officer Arias stopped at the corner and pointed his rifle southward around the corner of the building.

01:16:36 The camera captured images of a white vehicle parked in the alley, west of Officer Arias. Officer Arias' rifle pointed south. The combination of the camera's angle, Officer Arias' right arm, and his rifle blocked the camera's view of the alley to the south.



01:16:37 A fifth gunshot rang out. Immediately thereafter, Officer Arias fired four shots from his rifle in quick succession. Officer Arias paused momentarily at timestamp 01:16:39 before resuming his gunfire at 1:16:40, firing five gunshots in quick succession. Officer Arias paused momentarily at timestamp 1:16:41 before firing an additional four gunshots at timestamp 1:16:43. Officer Arias fired a total of 13 gunshots in approximately

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six seconds, including the two momentary pauses. Officer Arias's body-worn camera did not capture where he aimed because his arm and rifle blocked the camera's view. No one was seen in the camera's view during the shooting.



01:16:46 Officer Arias lowered his rifle slightly and announced, "Barstow PD, shots fired, uh, suspect down, he's still moving."

01:16:51 Officer Arias quickly walked past the northwest corner of the building and yelled, "On me, on me, on me! Show me your hands. Dude, show me your fucking hands. Show me your hands. Show me your hands. Show me your hands, dude!" Officer Arias held his rifle at chest level, pointed it south, and quickly walked south in the alley. Officer Arias breathed rapidly and loudly. Officer Arias' body-worn camera did not capture where he aimed his rifle because his arm and rifle blocked the camera's view. The alley south of Officer Arias was illuminated by bright security lights affixed to the southwest corner of the building.

01:17:03 Still breathing rapidly and loudly, Officer Arias said, "All right, handgun is right there in front of him." Officer Arias continued walking south, breathing heavily.

01:17:09 Officer Arias neared the southwest corner of the building and announced, "Barstow Paul 9, standby." Two passenger vehicles were parked facing south beside a chain link fence on the west side of the alley. Another car was parked south of the building, on the east side of the alley.

01:17:14 Officer Arias reached the southwest corner of the building. Affixed to the corner was a chain link fence with green privacy slats. Officer Arias lowered his rifle, and his body-worn camera's angle shifted downward as he reached toward Mackey's left shoulder. Mackey's body, from the neck down, came into view. Mackey was lying supine

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on the dirt ground beside the chain link fence, where it met with the southwest corner of the building. Mackey laid at a slight northeast angle with his head northeast and feet southwest. Mackey wore dark navy or black pants, a white t-shirt, an unbuttoned blue and white over-shirt, and white tennis shoes. There was blood on Mackey's left shirt sleeve near the elbow.

01:17:15 Officer Arias turned Mackey onto his stomach. Officer Hollister came into camera view southwest of Officer Arias. Officer Hollister held a handgun in his right hand. The handgun's tactical flashlight was illuminated. Officer Hollister holstered his handgun as he approached Mackey and Officer Arias.

01:17:19 Officer Hollister bent forward and reached toward Mackey. Officer Arias asked, "You got gloves, dude?" Officer Hollister replied, "No." Officer Hollister and Officer Arias rolled Mackey onto his right side. Officer Arias asked, "Any other weapons on him?"

01:17:24 Deputy Portillo came into view as he approached the officers from the north and handed them a pair of disposable gloves. Officer Hollister took the gloves and began putting them onto his hands. As Mackey lay on his right side, he turned slightly onto his back. Blood was on his t-shirt near his lower abdomen and on the dirt beside his lower abdomen.

01:17:31 Deputy Portillo turned away from the officers and walked south down the alley with his gun drawn. From the north, Corporal Parks came into camera view. Corporal Parks carried a flashlight in his left hand and pointed it south, illuminating the alley, as he followed Deputy Portillo. Officers Arias and Hollister remained with Mackey.

01:17:39 A second BPD officer approached from the northwest armed with a rifle. Officer Arias said, "Hey, I shot. Did anyone else shoot?" Officer Hollister shook his head and said, "I didn't shoot." The second BPD officer walked south down the alley, following the sheriff's deputies and the other BPD officer. Officer Arias asked Officer Hollister if he had gloves. Officer Hollister spoke, but radio broadcasts overlapped, making his words unintelligible. Officer Hollister bent toward Mackey as Officer Arias said, "Yeah, please."

01:17:44 Deputies McCrystal and Kabluyen were captured on video as they walked south along the chain link fence on the west side of the alley. While the deputies and officers continued walking south, Officers Arias and Hollister stayed with Mackey. At this point in the video, loud voices from the crowd, located in the alley just north of Officers Arias and Hollister, can be heard. Officer Arias turned to his right and faced north. Officer Arias directed, "Everybody stay back." To the north, red and blue flashing lights from police units are visible.

01:17:48 Officer Arias turned to his left and faced south. Officer Hollister was briefly captured in the camera's view as he knelt beside Mackey. Officer Hollister said, "Keep breathing, bro." Officer Arias asked, "Hey, what's your name, dude?" Officer Hollister said,

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"Gotta keep breathing." Officer Arias breathed rapidly and loudly, making Officer Hollister's words difficult to hear on the recording. Officer Hollister said something about "a weapon" and Officer Arias replied, "Yeah, that's fine." Officer Hollister said, "Hey, I'm gonna put you on your side man. Come on, keep breathing on me." Officer Arias turned to face east, and the west side of the building came into camera view. The emergency lights from the patrol units parked north of the bar cast a blue and red glow that illuminated the west side of the building.

01:18:13 The sound of a vehicle's engine revving loudly can be heard. Officer Arias turned to the north and began to speak loudly. Officer Arias said, "Hey, tell someone to back up because I was right there when I shot." Officer Arias then said, "We're, we're administering aid. Please get back."

Officer Hollister's Body-Worn Camera²⁶

01:15:22 Officer Hollister arrived at The Spot Bar and Grill and exited his patrol unit. Officer Hollister walked away from his vehicle parked on the north side of East Main Street, just east of the bar. Multiple civilian vehicles were parked on East Main Street and in the dirt lot surrounding the bar. Some cars had their headlights on as they drove away from the scene. As Officer Hollister walked onto the property from the northeast, multiple people walked through the parking lot away from the bar.

01:16:01 As he reached the asphalt parking lot in front of the bar, Officer Hollister briefly turned on his flashlight and pointed it at the bar and the surrounding area. The crowd of patrons leaving the bar grew more prominent and louder. Officer Hollister's hand-held radio aired broadcasts between dispatch and officers.

01:16:06 A faint gunshot, followed by a louder echo of the gunshot, rang out in the distance.

01:16:15 Officer Hollister walked toward Officer Arias and Deputy Portillo, who stood next to the bar's outside patio fence. Officer Arias held his rifle at his right side, barrel pointed at the ground.

²⁶ Officer Hollister's body-worn camera recorded the same events as Officer Arias' body-worn camera, albeit from a different angle. As such, this summary will only cover the camera perspectives not captured by Officer Arias' body-worn camera.

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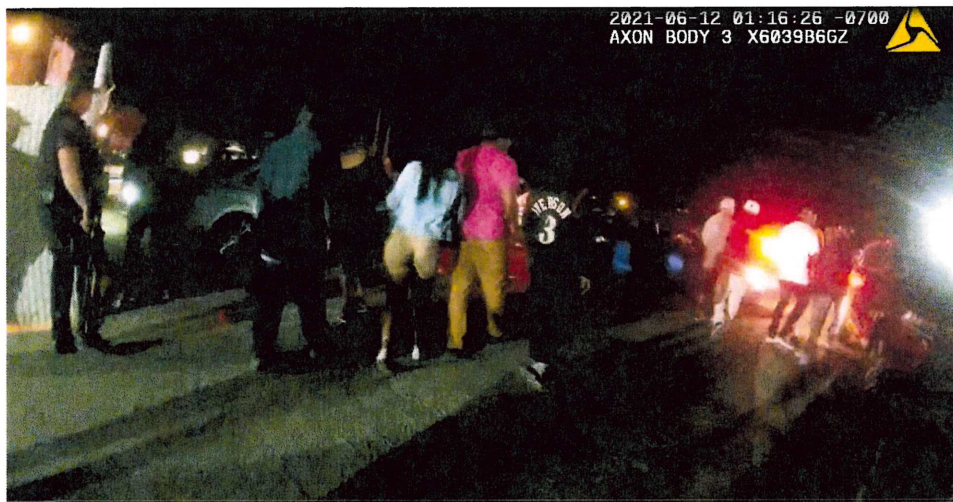
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01:16:18 A gunshot, louder than the first, rang out in the distance. Standing next to the patio fence, Deputy Portillo and Officer Arias looked to the left and right. Officer Hollister continued walking toward Deputy Portillo and Officer Arias. As he did so, the crowd passed between him and the other officers, momentarily obstructing the camera view.

01:16:22 A third gunshot rang out in the distance as Deputy Portillo turned to face the west and looked into the air. Officer Arias turned to his left, walked north to the corner of the patio fence, then turned to the left and headed west along the patio fence toward the northwest corner of the building.

01:16:26 Officer Arias turned left at the corner of the patio fence to walk westward toward the northwest corner of the building. Multiple bar patrons walked away from the bar in a northwest direction. Officer Arias held a rifle in his right hand, at his side, with the barrel pointed at the ground.



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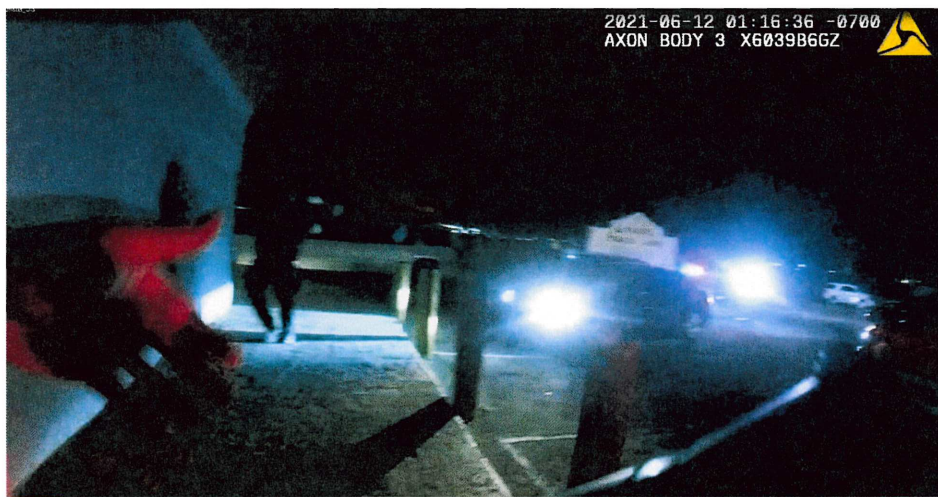
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01:16:31 A fourth gunshot, louder than the third gunshot, rang out in the distance, and Officer Arias ran west to the northwest corner of the building. Officer Hollister ran behind Officer Arias. Officer Hollister broadcasted over his radio that active shots were being fired. A white limousine with dark window tint was parked directly west of the officers on the west side of the alley.

01:16:36 Officer Arias reached the northwest corner of the building and stopped. With his body against the north side of the building, Officer Arias peeked around the corner and looked south down the alley. Officer Arias pointed his rifle around the corner of the building, southward down the alley. A patrol unit with its emergency overhead lights activated was parked on East Main Street, northwest of the alley. Multiple civilian vehicles drove through the parking lot just north of the alley.



01:16:39 A fifth gunshot rang out loudly, followed immediately thereafter by Officer Arias's rifle fire. Officer Hollister stood behind Officer Arias. Officer Hollister held his handgun with both hands in front of his body but did not shoot.

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While Officer Arias fired southward down the alley, civilian vehicles passed through the alley north of Officer Arias. Also, two unidentified people ducked behind the white limousine in the alley north of Officer Arias. A few feet north were two more unidentified people who ran behind a black vehicle parked directly behind the limousine.



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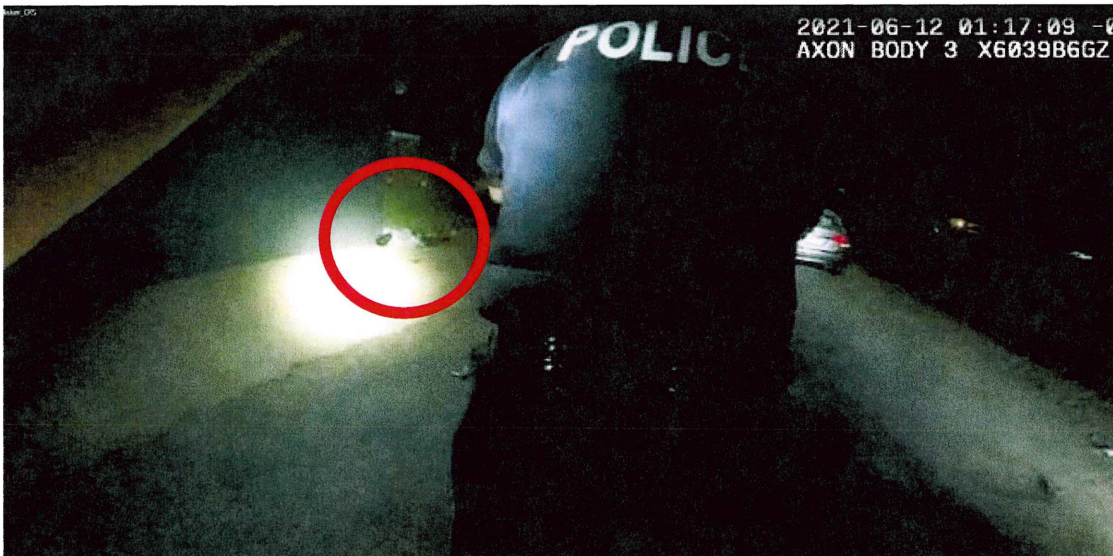


(Enhanced image.)

01:16:52 Officer Hollister followed Officer Arias as he walked around the northwest corner and headed south in the alley.

01:16:56 Officer Arias and Officer Hollister quickly walked toward Mackey, who sat against the southwest corner of the building. The officers yelled at Mackey to show them his hands.

01:17:04 As the officers approached Mackey, his upper body collapsed down to the ground, and Mackey lay on his back. A dark object can be seen on the ground near Mackey's head. Officers illuminated the dark object with their flashlights as they approached. An unidentified officer said, "Okay, handgun right in front of him."



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01:17:12 As Officer Hollister neared Mackey, the dark object came into closer view, revealing it to be a handgun.



Belt-Recording Summary

All SBSB deputies' belt recordings were reviewed in their entirety. The belt recordings were substantially similar to the audio the BPD officers' body-worn cameras recorded. This summary will include only the relevant portions not captured by the BPD officers' body-worn cameras.

Deputy Kabluyen

Deputy Kabluyen's belt recorder was activated while she drove to The Spot. Her patrol unit's siren was audible. The patrol unit's engine revved loudly as Deputy Kabluyen drove to the scene Code 3. Radio traffic can be heard. Deputy Kabluyen said, "There's multiple R.P.s."²⁷ Deputy Kabluyen spoke over the radio to her partners about the white Dodge Charger that had reportedly left toward Walmart. Additional radio traffic and the patrol

²⁷ Reporting parties.

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unit's engine revving can be heard while, over the radio, an unknown officer spoke about a possible shooter at the location.

The siren and engine noises ceased when Deputy Kabluyen arrived at the scene. Deputy Kabluyen said, "What the fuck?" Additional voices can be heard from the crowd assembled at the location. Deputy McCrystal can be heard in the background saying, "Get back, get back," while Deputy Kabluyen said, "Go ahead and get there, guys." With raised voices, Deputies McCrystal and Kabluyen told the crowd, "Guys, let's go, get back." Deputy Kabluyen yelled, "Get out of here!" An unknown male in the crowd commented that someone is shooting. Multiple people in the crowd spoke loudly, their voices overlapping one another. A gunshot rang out, and Deputy McCrystal said, "Watch out, watch out." A horn honked. Deputy Kabluyen yelled, "Let's go, ladies, go!" Deputy McCrystal yelled, "Let's go, let's go! Get outta here!" A loud gunshot rang out, and Deputy Kabluyen said, "Keep down, ladies!" Nearby vehicle engines revved loudly. An even louder gunshot rang out, followed three seconds later by another. Immediately thereafter, multiple gunshots rang out as Officer Arias shot his rifle. Deputy Kabluyen yelled, "Get outta here, get outta here, go!"

Dispatch Summary

BPD's CAD reports documented Witness #1' non-emergency phone calls to law enforcement regarding the vehicles parked in his yard near The Spot. Witness #1's first call was made on June 11, 2021, at 11:32 p.m. Witness #1's second call was placed on June 12, 2021, at 12:17 a.m. Officer Arias was dispatched to Witness #1's residence near The Spot for both calls.²⁸

Witness #1's third phone call²⁹ was to 911 on June 12, 2021, at 1:01 a.m. The 911 phone call and the subsequent communications between the Barstow Police dispatch operator and law enforcement were recorded by dispatch. During the 911 call, Witness #1 told the operator that it sounded like a fight was going on inside the bar, that "all kinds of people were running out" of the bar, and that he "heard someone say something about a gun." BPD officers were immediately dispatched to The Spot. The operator broadcasted to the officers the information Witness #1 gave during the 911 call.

While officers responded to the scene, multiple 911 calls were made by unnamed parties reporting fighting inside and outside the bar and that gunshots were being fired at the location. In addition to those 911 calls, Witness #1 called 911 several times and reported multiple gunshots were being fired. Witness #1 described the shooter as a black male adult wearing a white hat and denim jeans. Witness #1 said the shooter ran back toward the bar. During another call to 911, Witness #1 exclaimed, "Oh shit, they're shooting. Multiple shots, multiple shots." The operator reassured Witness #1 that officers were on

²⁸ Additional BPD officers assisted Officer Arias with these first two calls.

²⁹ Witness #1 placed two additional calls to 911 as the events unfolded. For further details, see the summary of Witness #1' interview with detectives.

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their way. Witness #1 said it was like “a gun war going off right now.” The operator asked Witness #1 if he saw any vehicles involved, and he told her everything was happening in the parking lot. The operator asked Witness #1 if he saw the shooter, and Witness #1 replied he did not because he was next door to his place. Witness #1 told the operator that people were “running everywhere.” The operator told Witness #1 to stay safe and that officers were on their way. Witness #1 called 911 again to report there was still active shooting at the bar, that someone had shot at a gray SUV that crashed along the bridge on East Main Street, and that someone in the gray SUV was shooting back at “all the other patrons.”

The operator updated responding officers and deputies via CAD with information obtained from the 911 calls as it was received. SBSD deputies were requested to respond to assist BPD officers with the 911 call at The Spot at 01:07:36 a.m. CHP also responded to assist.

BPD officers arrived at The Spot on June 12, 2021, at the following times:

01:10:55	Corporal Franklin
01:12:29	Officer Hollister
01:12:34	Officer Arias
01:14:51	Officer Santos

SBSD deputies arrived between 01:14:39 and 1:15:09 a.m.

Per SBSD CAD, the relevant timeline of events is as follows:

01:07:36	Assist other department. Priority 1
01:08:34	Large group in 415 ³⁰ – possible guns involved – inside and outside location. BPD en route and request deputies respond also
01:09:56	Per BPD, shots fired
01:10:52	Per CHP, they are also en route
01:11:02	RP called back shots fired
01:11:18	BMA, white hat with denim jeans
01:13:12	Suspect was involved in a TC ³¹ , left in a white Dodge Charger toward Walmart.
01:15:07	Per BPD, suspect vehicle possibly TC'd over by the bridge on E. Main Street.
01:15:53	Per BPD unit, CHP going 97
01:16:07	BPD unable to locate traffic collision on Montara/E. Main Street
01:16:20	TC possibly more toward the marine base
01:16:27	Per P25, two shots fired
01:16:41	P22 active shots
01:16:51	Shots fired

³⁰ Fighting in public.

³¹ Traffic collision.

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01:16:58 Suspect down, still moving
01:17:39 Per P25, BMA no breathing
01:18:05 Working on detaining two
01:19:07 Expedite meds
01:19:23 All ground units are Code 4³²

INCIDENT SCENE INVESTIGATION

On June 12, 2021, Detective Nicolas Craig of the San Bernardino County Sheriff's Department processed the scene at the 2000 block of East Main Street in Barstow. Detective Craig was assisted by Crime Scene Specialist Taylor Foster. The scene was documented using photographs. Evidence found within the scene was labeled using identification placards and photographed in place prior to being measured and taken as evidence. All measurements were approximate and taken using a Leica Disto Laser measuring device. The scene was also documented using a Faro Focus 3D scanner.

The incident location was the exterior of The Spot Bar at the 2000 block of East Main Street in Barstow. East Main Street was a two-lane road that traveled east and west, divided by a double yellow line. North of East Main Street was Interstate 40. Witness #1's residence was east of the bar. The bar was a large, single-story nightclub on the south side of East Main Street. The bar's front door was on the north side of the building. A paved parking lot was north of the bar's front door. A fenced patio area was west of the front door. A paved driveway, or alley, was on the west side of the bar.

³² No further assistance needed.

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An empty dirt lot was west of the alley. A dirt shoulder was south of East Main Street and north of the empty dirt lot. An approximate six-foot tall chain link fence surrounded the empty lot. An open gate in the fence created a driveway on the west side of the empty dirt lot. In the driveway were 12 fired cartridge casings (FCC's). The FCC's included 11 nine-millimeter caliber FCC's and one .40 caliber FCC. The FCC headstamps included, "WIN 40 S&W," "R-P" 9mm LUGER," "WIN 9mm LUGER," "A USA 9mm LUGER," "AMMO INC 9mm LUGER," and "NORMA 9mm LUGER." The FCC's in the driveway were identified as Placards 1 through Placard 6. The FCC's along East Main Street were all consistent with a shooting that occurred prior to law enforcement officers' arrival.

East of the driveway to the empty lot was a gray Chrysler 200 sedan.³³ The Chrysler was parked facing east on the dirt shoulder. There were two fired bullet impacts on the front hood of the Chrysler. Fired bullet fragments were collected from under the front bumper and from the inside of the hood. A broken laser sight was on the ground near the front bumper. A cartridge with headstamp, "WIN 40 S&W," was in the dirt near the rear bumper. An FCC with headstamp, "BLAZER 9mm LUGER," (Placard 9), was in the dirt north of the Chrysler's front driver's side tire. An FCC and a cartridge (Placard 7) were north of Placard 9, on the south side of East Main Street. Placard 7's headstamp was, "WIN 40

³³ While all evidence was labeled using identification placard numbers, specific placard numbers for each item will not be included herein.

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S&W." A .40 caliber FCC with headstamp, "WMA 15 40 S&W," was east of Placard 9 in the dirt shoulder. A .40 caliber FCC with headstamp, "WIN 40 S&W," was in the east lane of East Main Street.

Six FCC's with headstamp, "W9MM 2020," were east of the Chrysler. The six FCC'S were identified as Placard 14. A black and white BPD Dodge Charger patrol vehicle was east of Placard 14. The Charger was BPD Unit 8 and was assigned to Officer Arias. The Charger was parked on the south shoulder, facing east. The overhead lights were activated. Five FCC's with headstamp, "R-P 9mm LUGER," were south of the Charger's front passenger side tire. BPD patrol unit 7, was on the north shoulder of East Main Street. This vehicle was assigned to Corporal Franklin.

There were 13 .223 caliber FCC's with headstamps, "WINCHESTER 223 REM," in the alley on the west side of the bar. The 13 FCC's were identified as Placards 16 through 19. The .223 caliber FCC's were in a group west of the northwest corner of the bar. The FCC's were consistent with Officer Arias' shooting position near the northwest corner of the building. The FCC's were consistent with Officer Arias facing south and shooting toward the south. The northwest corner of the building had a small concrete sidewalk that stopped at the west side of the building. The backdrop to the south were multiple vehicles and trailers south of the location.

South of Placards 16 through 19 at the southwest corner of the building were items of blood-stained clothing. (Placard 20.) Placard 20 included a white and blue dress shirt, a white t-shirt, green plaid boxer shorts, and blue jean pants. The shirts were north of the pants. A pair of blue scissors were on the jeans. Black handcuffs were on the ground next to the shirts. A pair of white Reebok shoes, size 9, was south of the pants. A 4k Ultra HD camera was next to the jeans. The clothes were consistent with where Mackey was contacted after he was shot. Mackey's bloodstained clothes were approximately 71 feet south of the northwest corner of the bar, where Arias was believed to be at the time that he fired his rifle.

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A gray Honda Civic was on the west side of the alley, south of Placard 20. A black Nissan Versa was south of the Honda. Both vehicles were parked facing south. Four FCC's (Placards 21 through 24) were west of the Nissan's front driver's side tire. Placard 21 had headstamp, "BLAZER 9mm LUGER. Placards 22 through 24 had headstamps, "WIN 9 mm LUGER." An FCC with headstamp, "WIN 9mm LUGER," (Placard 26) was south of Placard 24. On the east side of the alley, south of Placard 26 was an FCC with headstamp, "WIN 9mm LUGER." The FCC's in the alley were all consistent with someone shooting from the same caliber firearm in multiple areas of the alley.

A gray Volkswagen Passat with its driver's side door open was parked in the gravel parking area southeast of the FCC's in the alley. The Passat was consistent with the vantage point of witnesses Witness #5, Witness #13, and Witness #12' when they witnessed Mackey firing the handgun.

A gray Dodge Challenger was parked facing south on the west side of the alley. There were fired bullet strikes on the Challenger's rear bumper, spoiler, trunk, and rear window. The fired bullet strikes were consistent with the Challenger being shot from the north to the south. An FCC with headstamp, "WIN 9mm LUGER" was south of the Challenger, in the alley near the trailer park.

An FCC with headstamp, "P-P 9mm LUGER" was in the parking lot in front of the bar. Three FCC's with headstamp, "P-9 9 mm LUGER" were on the north side of East Main Street in front of 2360 East Main Street. The FCC's north of the bar were likely associated with the shooting prior to the officers' arrival.

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A yellow and black Dodge Charger was parked facing west on the south shoulder in front of 2360 East Main Street. The Charger had substantial damage to its passenger side front quarter panel, consistent with a traffic collision. Vehicle debris was east of the Charger on the dirt and asphalt shoulder. A Ruger 9mm handgun was on the driver's seat. The Ruger was loaded with 10 cartridges with the headstamp, "HORNADA 9mm LUGER," and two cartridges with the headstamp, "N CCI R9mm LUGER." A Strum Ruger Ranch Rifle, 7.62 x 39 caliber, loaded with 10 cartridges, was in the trunk of the Charger. A Mossberg 12-gauge shotgun, loaded with five shotgun shells, was in the trunk.

A blue Saturn Vue sport utility vehicle was parked east of the Charger on the north side of East Main Street. The Saturn had front passenger side damage, and the windshield was broken. The vehicle came to a rest against a concrete barrier on the north side of East Main Street. The vehicle damage was consistent with a collision with the Charger. No weapons or relevant information were located inside the Saturn.

DECEDENT

Mackey was pronounced deceased at approximately 1:47 a.m. by Witness #7 at [redacted] Hospital.

AUTOPSY PROTOCOL

Witness #10, D.O., Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Kenneth Mackey on June 23, 2021. Witness #10 determined the cause of death to be multiple gunshot wounds, and that death occurred within minutes.

Description of Injuries

Gunshot Wound of the Upper Abdomen³⁴

Entrance: On the left upper quadrant of the abdomen, located 24 inches below the top of the head and 5-3/4 inches to the left of the anterior midline, is a 0.8 x 0.5 cm gunshot wound of entrance with a 0.2 cm wide abrasion extending from the 10 o'clock position. A portion of the omentum protrudes from the wound. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

Path: The bullet injures the skin and subcutaneous tissues of the abdomen, transverse colon, spleen, left kidney, diaphragm, and lateral aspect of the left 10th rib before exiting the body through the left flank.

³⁴ The gunshot wounds are arbitrarily listed and do not reflect the chronological order in which the shots were fired.

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Exit: On the left flank, located 24 inches below the top of the head and 5-3/4 inches to the left of the posterior midline, is a 1.5 cm lacerated gunshot wound of exit.

Recovery: None.

Direction: The direction of the wound path is front to back with no significant right/left or upward/downward deviation.

Associated Injuries: There is hemorrhage throughout the wound path. The left chest cavity contains 100 mL of blood. The peritoneal cavity contains 300 mL of blood (shared injury with the gunshot wound of the lower abdomen).

Gunshot Wound of the Lower Abdomen

Entrance: On the left lower quadrant of the abdomen, located 29-1/2 inches below the top of the head and 1-1/2 inches to the left of the anterior midline, is a 0.3 cm round gunshot wound of entrance with a 0.1 cm wide circumferential marginal abrasion. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

Path: The bullet injures the skin and subcutaneous tissues of the lower abdomen, mesentery, and left iliac artery before terminating within the sacrum.

Recovery: Two bullet fragments are recovered from within the sacrum.

Direction: The direction of the wound path is front to back, left to right, and downwards.

Associated Injuries: There is hemorrhage throughout the wound path. The peritoneal cavity contains 300 mL of blood (shared injury with the gunshot wound of the upper abdomen).

Gunshot Wound of the Left Arm

Entrance: On the left antecubital fossa, located 10-12 inches below the top of the left shoulder, is a 0.3 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring 0.3 cm wide at the 1 o'clock position. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

Path: The bullet injures the skin and subcutaneous tissues of the left antecubital fossa and the left distal humerus before exiting the body through the posteromedial aspect of the left distal arm.

Exit: On the posteromedial aspect of the left distal arm, located 10-1/2 inches below the top of the left shoulder, is a gaping 8.7 x 3.0 cm gunshot wound of exit.

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Recovery: None.

Direction: The direction of the wound path is front to back with no significant right/left or upward/downward deviation.

Associated Injuries: There is hemorrhage throughout the wound path.

Gunshot Wound of the Left Thigh³⁵

Entrance: On the anterior aspect of the left proximal thigh, located 29-1/2 inches above the bottom of the left heel, is a 0.3 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.1 cm at the 4 o'clock position. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

Path: The bullet injures the skin and subcutaneous tissues of the left thigh and the proximal femur before exiting the body through the left posterior thigh.

Exit: On the posterior aspect of the left proximal thigh, located 30 inches above the bottom of the left heel, is a 1.2 cm lacerated gunshot wound of exit with abraded margins.

Recovery: None.

Direction: The direction of the wound path is front to back, left to right, and slightly upwards.

Associated Injuries: There is hemorrhage throughout the wound path.

Additional Injury

The anterior aspect of the distal right lower leg has a vertically oriented linear abrasion measuring 1.7 cm in length by 0.5 cm in width.

TOXICOLOGY

Chest blood, peritoneal blood, and urine were collected during the autopsy.

Toxicology results for the chest blood sample were listed as follows:

- | | |
|-------------------------------|----------------|
| • Ethanol | 166 mg/L |
| • Blood Alcohol Concentration | 0.166 g/100 mL |
| • Methamphetamine | 25 ng/mL |
| • 11-Hydroxy Delta-9 THC | 11 ng/mL |

³⁵ The gunshot wounds are arbitrarily listed and do not reflect the chronological order in which the shots were fired.

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- Delta-9 Carboxy THC 48 ng/mL
- Delta-9 THC 7.9mg/L

Toxicology results for the urine sample were listed as follows:

- Methamphetamine Greater than 50,000 mg/L
- Amphetamine 17.800 mg/L

GUNSHOT RESIDUE

Mackey's hands were tested for gunshot residue. The results of that testing were as follows: One (1) characteristic gunshot residue particle was identified on the right-hand adhesive disc. No characteristic gunshot residue particles were identified on the left-hand adhesive disc.

CRIMINAL HISTORY

Kenneth Mackey has a criminal history that includes the following convictions:

1999, 11550 (a) of the Health and Safety Code, Under the Influence of a Controlled Substance, San Bernardino County case number TMB18763, a misdemeanor.

2001, 11351.5 of Health and Safety Code, Possession of Cocaine Base for Sale, Los Angeles County case number YA049408 01, a felony.

2004, 12500 (A) of the Vehicle Code, Driving Without a License, Los Angeles County case number 0BR00320-01, a misdemeanor.

2004, 11366 of the Health and Safety Code, Maintaining a Place for Unlawful Sale/Use of a Controlled Substance, San Bernardino County case number FBA007910, a misdemeanor.

2007, 23103 (a), of the Vehicle Code, Reckless Driving, San Bernardino County case number TBA700544, a misdemeanor.

2010, 12500 (a) of the Vehicle Code, Driving Without a License, Kern County case number BM737142A, a misdemeanor.

2010, 11379 (a) of the Health and Safety Code, Transportation of a Controlled Substance, Kern County case number BF133340A, a felony.

2012, 23152 (b) of the Vehicle Code, Driving Under the Influence of Alcohol, San Bernardino County case number TBA12000037, a misdemeanor.

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2017, 14601.1 (a) and 4000 (a), of the Vehicle Code, Driving on a Suspended License and Unregistered Vehicle, misdemeanors, and 16028 (a), of the Vehicle Code, Failure to Provide Evidence of Financial Responsibility, an infraction, San Bernardino County case number 3569271KM.

OTHER CRIMES

Assault With a Deadly Weapon

California Penal Code section 245 (d)

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

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal Code §835a(b).)

³⁶ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal Code §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal Code §835a(d).)

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

³⁶ All references to code sections here pertain to the California Penal Code.

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the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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

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

(Penal Code §835a(c)(1).)

Discharge of a firearm is “deadly force.” (Penal Code §835a(e)(1).) The “[t]otality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal Code §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,³⁷ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Witness #13 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,

³⁷ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in case law pertaining to the use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal Code §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal Code §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal Code §835a(c)(2).)

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe, and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;³⁸
- (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

³⁸ Penal Code §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncoded, unlike the aforementioned portion of Penal Code §835a (a)(3).

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greater instance of fatal encounters with law enforcement, therefore.

(Penal Code §835a(a).)

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

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

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

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

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

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

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of

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future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal Code §835a(e)(2).)

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

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

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

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

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)³⁹ To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

³⁹ The legislative findings included in Penal Code section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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

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

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

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

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

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

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th

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

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

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

ANALYSIS

Determining whether there was justification for an officer's use of deadly force is factually driven and requires an analysis of the facts and circumstances leading up to the use of force. On June 12, 2021, at approximately 1:07 a.m., police were summoned to The Spot after Witness #1 called 911 to report that a large group was fighting inside and outside the location, possibly with guns. As law enforcement made their way to the scene, additional people called 911 to report active gunfire. Dispatch told the responding officers that multiple parties were reporting active gunfire at the location.

Officer Arias had already been to The Spot twice in the hours leading up to the 911 calls. During those initial calls for service, Officer Arias saw a vast crowd had assembled there. Officer Arias recognized people he had previously arrested for weapons and narcotics violations, some of whom were Riverside Drive Crip Gang members. Knowing a criminal element was present, Officer Arias grew concerned that there was a potential for violence. When officers were dispatched to The Spot the third time, Officer Arias knew his earlier concern about the potential violence was well founded. Officer Arias also knew that law enforcement would face an enormous crowd.

Because of the size of the crowd, the fighting inside and outside the bar, and the active gunfire, BPD requested other agencies assist the BPD officers. Recognizing that several hundred lives were in grave danger, every law enforcement officer available in the Barstow area headed to the scene as quickly as possible with emergency lights and sirens activated. Upon arriving at The Spot, the officers parked their marked patrol units along East Main Street, just north of the bar. The patrol unit's' emergency overhead lights lit up the scene as the officers left their vehicles and walked toward the establishment.

When Mackey started shooting, Officer Arias and Deputy Portillo were on the north side of the bar, near the entry. Officer Hollister walked through the bar's north parking lot toward Officer Arias and Deputy Portillo. Deputies Kabluyen and McCrystal were south

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of the bar, near the alley. The gunshots drew the attention of everyone at the location, civilians and law enforcement officers alike. Officers Arias and Hollister and Deputies Portillo and Parks began moving toward the sound of the gunfire while the concert-goers yelled and tried to get out of the area. Meanwhile, at the north end of the alley, Deputies McCrystal and Kabluyen saw Mackey walking in their direction while firing a handgun into the air. Deputies McCrystal and Kabluyen yelled at the crowd to get down and to get out of there while they ducked behind the nearby limousine.

Mackey's actions presented a grave danger to all around him. First, Mackey pointed the 9 mm handgun into the air and fired it at a 45-degree angle over the bar. Several hundred patrons, Deputy Portillo, Officers Arias and Hollister were just on the other side of the bar where bullets from Mackey's gun could easily strike. Sensing the danger, Officers Arias and Hollister, and Deputies Portillo and Parks ran toward it. As they reached the northwest corner of the building, Officer Arias heard another gunshot and saw Deputies McCrystal and Kabluyen running for cover behind the limousine in the alley. Deputies McCrystal and Kabluyen yelled at the crowd to run as they ran for cover behind the limousine. Both Deputies McCrystal and Kabluyen saw Mackey firing into the air and feared for their lives and those in the crowd. Officer Arias saw this and knew the deputies and the crowd were all in danger.

Officer Arias peaked around the northwest corner of the building and saw Mackey with the gun walking quickly north toward the officers, the deputies, and the multitude of people still trying to leave the location. Officer Arias had no chance to identify himself as a police officer or to warn that he would use deadly force because immediately after peering around the corner, Mackey lowered the gun to his waist and pointed it north toward Officer Arias, the deputies, and the crowd trying to leave the area. In any event, such identification was unnecessary, given that several patrol units with emergency overhead lights activated were in Mackey's line of sight as he walked north. It was pretty evident that law enforcement was present. Multiple witnesses later commented about their shock and dismay that someone was shooting a gun when it was obvious the police were present.

When Mackey lowered the gun to the level of his waist and pointed it toward officers and civilians, he presented an imminent threat of death or serious bodily injury. Mackey's actions indicated an intent to attack, and Officer Arias reasonably believed Mackey was about to shoot him and the surrounding officers and civilians. Officer Arias' belief was honest and reasonable. In fact, unknown to Officer Arias, Mackey fired the handgun when he pointed it toward the officers and civilians. Deputy McCrystal saw the muzzle flash come directly from the front of Mackey near his waist. Deputy McCrystal unholstered his handgun as he ran for cover behind the limousine because he planned to use it to stop Mackey from killing anyone. Before Deputy McCrystal could do so, Officer Arias fired several rounds at Mackey to stop the threat he presented. The initial rounds fired by Officer Arias failed to stop Mackey, and Mackey continued heading toward the officers and the crowd with the gun. The imminent and deadly threat presented by Mackey

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remained as he walked toward the officers and civilians with the gun. Recognizing the continued threat posed by Mackey, Officer Arias fired additional rounds at Mackey until Mackey fell to the ground. Officer Arias' actions were reasonable and necessary to defend against the danger posed by Mackey.

CONCLUSION

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

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

