



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: September 21, 2023

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Deputy Jonathan Galindo
San Bernardino County Sheriff's Department

Deputy Kyle Smit
San Bernardino County Sheriff's Department

Involved Subject: Bilal Ibn Shabazz Winston (Deceased)
Date of Birth 01/17/92

Date of Incident: May 31, 2021

Incident location: Crestview Drive and Barberry Avenue
Yucca Valley, CA

DA STAR #: 2022-30700

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Edward Hernandez

Report Number#: DR# 232101237 / H# 2021-067

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PREAMBLE

This was a fatal officer involved shooting by deputies from the San Bernardino County Sheriff's 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, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 232101237 and H# 2021-067.

FACTUAL SUMMARY

On May 31, 2021, at around 12:33 in the afternoon, Deputy Jose Ortiz, from the San Bernardino County Sheriff's Department Morongo Basin Patrol Station observed a male subject riding a red and black motorcycle without a license plate near the area of Paxton Road and Imperial Drive in the City of Yucca Valley. Deputy Ortiz activated the overhead emergency lights on his patrol vehicle and attempted to conduct a traffic stop of the motorcycle but the male subject, later identified as Bilal Ibn Shabazz Winston¹, failed to yield and a vehicle pursuit ensued. At around 12:40 in the afternoon, deputies briefly lost sight of Winston during the pursuit. Deputy Kyle Smit, from the San Bernardino County Sheriff's Department Morongo Basin Patrol Station then spotted Winston going westbound on Highway 62 at Kickapoo Trail and deputies reinitiated the pursuit.

At around 12:49 in the afternoon, Winston abandoned his motorcycle near **** Sage Avenue and fled on foot through nearby residences. Deputy Ortiz pursued Winston on foot but lost sight of him. At around 12:51 in the afternoon, Sergeant Dominic Vaca, from the San Bernardino County Sheriff's Department Morongo Basin Patrol Station, contacted Winston near a residence located at ***** Crestview Drive. Sergeant Vaca attempted to detain Winston. Winston resisted and a fight ensued. During the physical altercation, Winston shot at Sergeant Vaca and Sergeant Vaca was struck by gunfire. Winston then fled from the scene on foot with his handgun. Civilians who witnessed the shooting directed Deputy Ortiz to an injured Sergeant Vaca. Deputy Ortiz broadcasted over the radio that there were shots fired and a deputy was down. Deputy Ortiz stayed with Sergeant Vaca until medical assistance arrived.

Deputy Jonathan Galindo, from the San Bernardino County Sheriff's Department Morongo Basin Patrol Station, and Deputy Smit responded to the scene. Deputy Galindo and Deputy Smit saw Deputy Ortiz attending to Sergeant Vaca. Deputy Ortiz pointed the deputies in the direction Winston was last seen. Deputy Galindo and Deputy Smit attempted to locate Winston.

At around 12:53 in the afternoon, Deputy Smit saw Winston walking. Winston was holding a handgun in his right hand. Deputy Smit ordered Winston to drop his weapon. Winston failed to comply. Winston raised his gun and pointed it at the deputies. Deputy

¹ Winston has an aka of Bilal Winston Shabazz.

Smit fired his weapon at Winston. Deputy Smit saw Winston fall to the ground. After Winston fell to the ground, he pulled his gun back up and started shooting at the deputies. Deputy Smit returned fire until he ran out of ammunition. Deputy Smit then reloaded his weapon.

As he was searching for Winston, Deputy Galindo heard Deputy Smit shooting but was unable to see who Deputy Smit was shooting at. Deputy Galindo heard someone returning fire. Eventually Deputy Galindo saw Winston in the distance holding a gun. Winston had his arm pointed back towards Deputy Galindo and Deputy Smit. Deputy Galindo saw some flashes coming from Winston's gun. Deputy Galindo fired his weapon at Winston. Deputy Galindo believed Winston was struck by gunfire when Winston fell to the ground and Deputy Galindo lost sight of Winston.

Deputy Galindo and Deputy Smit sought cover behind a parked motor vehicle. Due to the gunshot wound he suffered Winston fell to the ground in front of a residence at **** Barberry Avenue. It was unclear to Deputy Galindo and Deputy Smit whether Winston was still alive or exactly where he was located.

At around 1:00 in the afternoon, deputies with the San Bernardino County Sheriff's Department Specialized Enforcement Division (SED) arrived on scene. SED deputies provided medical aid to Sergeant Vaca. Sergeant Vaca was transported from the scene and airlifted to a hospital where he later died.

40-King, the helicopter from the San Bernardino County Sheriff's Department Aviation, arrived and located Winston supine in the front yard of **** Barberry Drive. SED deputies were able to determine Winston was not moving. At around 1:36 in the afternoon, SED deputies approached Winston and began to render medical aid. At around 1:50 in the afternoon, Winston was pronounced deceased at the scene. Winston had suffered a gunshot wound to the torso. A loaded Polymer P80, 9mm Glock style handgun was located at the scene near Winston.

STATEMENTS BY POLICE OFFICERS²

On June 4, 2021, at approximately 9:17 in the morning, **Deputy Kyle Smit** was interviewed by Detective Adrian Bustamante and Detective Edward Hernandez.³

On May 31, 2021, Deputy Kyle Smit, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Morongo Basin station. Deputy Smit was wearing a San Bernardino County Sheriff's Department "Class D" uniform and driving a

² All interviews submitted were reviewed in their entirety. Not all of the law enforcement officers interviewed were present when the lethal force encounter occurred. Therefore, summaries of those particular interviews will not be included in the memorandum.

³ Deputy Smit reviewed audio and video recordings from the incident under review prior to being interviewed by Detective Bustamante and Detective Hernandez.

marked patrol vehicle. On that date, at around 12:20 in the afternoon, Deputy Smit was in the north area of Morongo Basin. Deputy Smit had just parked his patrol vehicle and got out when he heard Deputy Jose Ortiz call out a traffic stop on a motorcycle. Deputy Ortiz advised he was northbound on Highway 247. Deputy Smit immediately got back into his patrol vehicle and drove southbound on Highway 247. Deputy Smit activated the overhead lights and siren on his patrol vehicle and attempted to catch up to the pursuit.

Deputy Ortiz continued to update his location over the radio. Deputy Ortiz described the motorcycle as red and black and indicated the rider was wearing a black helmet and backpack. Deputy Smit turned off his lights and siren when he heard other units joined the pursuit. Deputy Smit continued to drive to where the pursuit was headed. Deputy Smit heard Deputy Ortiz call off the pursuit when he lost sight of the motorcycle. Deputy Ortiz requested another patrol unit conduct an area check to see if the motorcycle could be located.

Deputy Smit checked the area for the motorcycle. When he reached the intersection of Kickapoo and Highway 62, Deputy Smit saw a motorcycle turn onto the highway heading eastbound. As the motorcycle went past Deputy Smit, he noticed the motorcycle matched the description of the suspect vehicle Deputy Ortiz had attempted to stop. Deputy Smit made a U-turn to follow the motorcycle. At that time, Deputy Anthony DeCecio reinitiated the pursuit of the motorcycle. Deputy Ortiz also rejoined the pursuit. Deputy Ortiz called out over the radio the locations of the pursuit. Deputy Ortiz advised the suspect made a northbound turn on Sage. Deputy Smit and another patrol unit, being driven by Deputy Jonathan Galindo turned onto Palm Avenue. Deputy Smit wanted to get to Sunnyslope so he could intercept the pursuit.

Deputy Smit saw the suspect motorcycle cross Sunnyslope at Sage. Deputy Ortiz was behind the motorcycle. Deputy Smit continued east on Sunnyslope until he reached Highway 247. Deputy Smit turned west on Crestview. Another patrol unit had made a U-turn in front of Deputy Smit. Deputy Smit believed that unit was being driven by Sergeant Dominic Vaca. Deputy Smit told that patrol unit it was in a better position to pursue the motorcycle. Deputy Smit followed that patrol unit on Crestview. Deputy Smit then made a northbound turn onto Barberry Avenue.

During this time, Deputy Smit heard Deputy Ortiz say he found the motorcycle but not the driver. Deputy Ortiz called out "foot pursuit" and advised he was chasing the suspect through the backyard areas behind some homes. When Deputy Smit arrived in the area of Barberry Avenue, he did not see Deputy Ortiz or the suspect. Deputy Smit heard Deputy Ortiz call out "shots fired." Deputy Smit estimated he heard "shots fired" twenty seconds after the foot pursuit was initiated. Deputy Smit had not heard anything and was unsure who shot. Deputy Ortiz then said, "deputy down." Deputy Smit started driving back south on Barberry trying to locate Deputy Ortiz. Deputy Smit thought his partners were in danger and feared for their lives. Deputy Smit also feared for the public safety because there was likely an armed suspect running in the area.

Deputy Smit saw civilians frantically waiving their hands and jumping up and down. Deputy Smit drove down to a wash area and then got out on foot. Deputy Ortiz advised over the radio that a deputy was shot, and he needed a helicopter and ambulance immediately. Deputy Smit ran toward the civilians who then pointed Deputy Smit towards Deputy Ortiz. Deputy Smit saw Deputy Ortiz on the ground hunched over someone lying on the ground. Deputy Smit was unable to see who was lying on the ground. Deputy Smit could only see the person's legs. Deputy Smit yelled to Deputy Ortiz, "Where's, where's the suspect, where's the suspect?" Deputy Ortiz just pointed and went back to rendering aid. One of the civilians pointed north and indicated to Deputy Smit that is the direction the suspect went.

Deputy Smit ran back northeast towards his patrol unit. At that time, Deputy Smit was scared. Deputy Smit was afraid both for the deputy who was down and for Deputy Ortiz who was by himself. Deputy Smit also feared for his own life. Deputy Smit was by himself and knew the suspect had already shot one person. Deputy Smit was unsure where exactly the suspect was and feared the suspect would "pop out and shoot me too."

As he was running, Deputy Smit saw Deputy Galindo running up with a rifle. Deputy Galindo ran directly north towards the eastern side of the residence located at **** Barberry. Deputy Smit ran, in a northwest direction, past his unit and crossed the east side of **** Barberry. Deputy Smit was able to see behind the north side of the house, but his view was partially blocked by some vehicles.

As Deputy Smit walked northeast, he saw a black male adult walking. The person, later identified as Bilal Ibn Shabazz Winston, was wearing a black leather jacket. Winston had on a blue shirt and was not wearing a helmet. However, the jacket Winston was wearing matched the jacket the suspect on the motorcycle had been wearing. At this time, Deputy Smit immediately yelled to Deputy Galindo, "I have eyes on him." As he was yelling, Deputy Smit saw Winston was armed with a handgun.

Although Deputy Smit was at a lower elevation than Winston, Deputy Smit could clearly see a black handgun in Winston's right hand. Deputy Smit pointed his firearm at Winston. Deputy Smit yelled for Winston to drop the gun. Winston stopped walking and turned this body towards Deputy Smit. Before Deputy Smit was able to finish yelling the verbal command, Deputy Smit saw Winston start to lift his gun up and point it at Deputy Smit. Deputy Smit feared for his life and believed he was going to be killed. Deputy Smit fired approximately six to seven rounds at Winston. Deputy Smit saw Winston fall down on his back with the gun still in his hand. Deputy Smit stopped firing so he could reassess what Winston was doing.

After Winston fell, Deputy Smit saw Winston grab his legs and believed Winston had been struck by gunfire. However, when Winston hit the ground, he pulled the gun back up and fired at Deputy Smit. Deputy Smit saw the slide on the top of Winston's handgun was actually moving back and forth. Deputy Smith also saw the flash of the muzzle of Winston's gun from the rounds being fired. Deputy Smit estimated Winston fired ten rounds at him.

Deputy Smit saw some of the rounds hitting the ground in front of him and heard them going past his right shoulder. Deputy Smit felt Winston was “putting pretty accurate gunfire” on Deputy Smit while Winston was laying on his back. Deputy Smit returned fire until his firearm was out of ammunition. Deputy Smit estimated two seconds had passed between the first time he fired at Winston and the second time he fired at Winston. Deputy Smit estimated he was thirty to forty yards away from Winston both times Deputy Smit fired his duty weapon.

Deputy Smit started to reload his firearm while at the same time putting out information to Deputy Galindo. Deputy Smit heard Deputy Galindo fire his weapon. Deputy Smit was afraid for Deputy Galindo because he believed Deputy Galindo was out in the open when he was firing at Winston. Deputy Smit was unsure how many rounds Deputy Galindo fired and where exactly Deputy Galindo was when he fired his weapon. Deputy Smit ran directly east to get cover. The last thing Deputy Smit saw was Winston lying on the ground and firing at him.

Deputy Smit was able to move to the back of a Volkswagen Bug facing northwest. Deputy Smit yelled for Deputy Galindo to come to Deputy Smit’s location for cover. Deputy Galindo was at the back of the vehicle facing northeast. Deputy Smit told Deputy Galindo, “I fired many rounds at him, and the suspect ah um pointed the gun at me and shot at me.” Deputy Smit told Deputy Galindo he last saw Winston at the northeast corner of ****Barberry. After Deputy Galindo saw Winston shooting at Deputy Smit, Deputy Galindo said that is when he fired his shots at Winston. Winston was at the same location where Deputy Smit saw him. Deputy Galindo told Deputy Smit he saw Winston get up and move west while he was shooting at Deputy Smit. Deputy Smit was unable to see Winston from his location at the back of the Volkswagen Bug.

Deputy Smit and Deputy Galindo remained at the back of the Volkswagen Bug. Deputy Smit saw movement inside the residence at **** Barberry. The civilians inside advised the deputies there was nobody inside the residence with them. Deputy Smit told the residents to stay in the house, lock the doors, get on the ground and find something to hide behind. Around this time, SED deputies started to arrive.

Deputy Smit and Deputy Galindo started giving the SED deputies the information they knew at the time. They advised the SED deputies Winston was armed and also provided Winston’s last known location. The SED deputies formulated a plan of what to do next. Deputy Smit heard the SED deputies indicate they had eyes on Winston. The SED deputies used a Flash-Bang and a robot to try to provoke some movement from Winston. After no movement was observed, three SED deputies approached Winston on foot. The SED deputies started to render medial aid to Winston. Winston was pronounced deceased at the scene.

Deputy Smit went to **** Barberry to contact the occupants inside the residence. Deputy Smit wanted to advise them that the situation was over and that they needed to stay inside the residence. The occupants provided their contact information to Deputy Smit and advised him there were cameras at the house and how the cameras could be

accessed. Deputy Smit provided the occupants with a business card and told them to call dispatch if they needed to leave the house. Deputy Smit next went to the command post which had been set up and then was subsequently taken back to the station.

On June 7, 2021, at approximately 2:17 in the afternoon, **Deputy Jonathan Galindo** was interviewed by Sergeant Justin Giles and Detective Edward Hernandez.⁴

On May 31, 2021, Deputy Jonathan Galindo, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Morongo Basin station. Deputy Galindo was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. Deputy Galindo was headed towards the San Bernardino County Sheriff's Department Yucca Valley substation when he heard over the radio that Deputy Ortiz had initiated a pursuit of a motorcycle. Deputy Galindo knew the pursuit was headed in his direction. When Deputy Galindo saw the pursuit pass by him, he observed the motorcycle rider was wearing a black jacket and the motorcycle was black with red stripes on it. Deputy Galindo activated the overhead emergency lights and siren on his patrol vehicle and joined the pursuit. Deputy Galindo's patrol vehicle was behind Deputy Ortiz' patrol unit. Deputy Galindo estimated the motorcycle was traveling over 100 miles per hour on streets in residential areas. Deputy Galindo believed the suspect was driving recklessly and had no regard for the other vehicles on the road or the pedestrians in the residential areas. At times, the suspect was driving on the wrong side of the road and cutting off other vehicles as he drove in an out of traffic. At one point, Deputy Ortiz and Deputy Galindo lost sight of the motorcycle.

The deputies conducted an area check to try and locate the motorcycle. Deputy Galindo heard somebody over the radio say they saw the motorcycle going eastbound on Highway 62. Deputy Galindo was unsure who reinitiated the pursuit. Deputy Galindo drove eastbound on Highway 62 and eventually saw the pursuing deputy. Deputy Galindo rejoined the pursuit. Deputy Galindo got stuck behind traffic but heard over the radio which direction the pursuit was headed. Deputy Galindo thought he knew where the pursuit was headed and drove north on Highway 247.

Deputy Galindo drove westbound on Crestview Drive from Highway 247. Deputy Galindo saw Sergeant Vaca's patrol unit parked. Deputy Galindo believed Sergeant Vaca was still inside the vehicle. Deputy Galindo drove past Sergeant Vaca's patrol unit. Deputy Galindo heard someone over the radio advise it was now a foot pursuit. Deputy Galindo knew suspects that fled on foot posed a danger to any deputy who was in pursuit of the suspect. There was a potential risk the suspect could ambush a deputy. Deputy Galindo thought the pursuit may come towards the brick wall that was at the dead end of the street. Deputy Galindo heard Deputy Ortiz call out over the radio "shots fired." Deputy Galindo did not hear the shots fired and got out of his patrol vehicle. Deputy Galindo

⁴ Deputy Galindo reviewed audio and video recordings from the incident under review prior to being interviewed by Sergeant Giles and Detective Hernandez.

started looking behind the brick wall waiting for somebody to pop up. At that time, Deputy Galindo heard Deputy Ortiz call out "deputy down."

Deputy Galindo ran back to his patrol unit. Deputy Galindo drove back towards Sergeant Vaca's patrol vehicle. Deputy Galindo saw that Sergeant Vaca was not inside his vehicle. Deputy Galindo exited his patrol vehicle and grabbed his Mini 14 rifle. Deputy Galindo ran to Deputy Ortiz who had flagged him down. Initially, Deputy Galindo thought Deputy Ortiz may have been the person who was hit. As he ran towards Deputy Ortiz, Deputy Galindo chambered a round in his rifle. Deputy Galindo looked down and saw a person on the ground. Deputy Ortiz told Deputy Galindo that Sergeant Vaca had been hit. Deputy Galindo was scared. He saw Sergeant Vaca was bleeding from his head. Deputy Galindo asked Deputy Ortiz where the suspect was at. Deputy Ortiz pointed towards the north.

Two civilians stepped out of a house and started yelling to Deputy Galindo. The civilians pointed northbound from their direction and were yelling he's over there. Deputy Galindo looked to his east and saw Deputy Smit. Deputy Galindo heard Deputy Smit yell for Winston to "drop" something. Deputy Galindo heard gunshots being fired. Deputy Galindo turned and looked at Deputy Smit. Deputy Galindo saw Deputy Smit shooting his handgun. Deputy Galindo could hear gunshots being fired back. Deputy Galindo could see the direction Deputy Smit was shooting but was not able to see anybody shooting back. Deputy Galindo could only hear gunshots. Deputy Galindo was afraid for himself, his partners, and the civilians in the homes nearby.

Deputy Galindo thought he was going to be shot and kept asking where the suspect was at. The two civilians told Deputy Galindo, "They're over there. He's over there." Deputy Galindo continued to ask, "Where, where?" Deputy Galindo yelled at Deputy Smit, "Where, where's the guy?" Deputy Galindo heard Deputy Smit shooting as well as shots being fired from someone else at a distance. Deputy Galindo heard rounds coming by his direction. Deputy Galindo asked the civilians what the suspect looked like. They told Deputy Galindo the suspect was "a black male with afro" and a black and white jacket.

Deputy Galindo looked up and saw "a black male with an afro" and black jacket heading in a westbound direction. The subject, later identified as Bilal Ibn Shabazz Winston, was on a hillside behind a house north of Deputy Galindo. Deputy Galindo could hear gunshots coming from Winston's direction. Winston's arm was pointed backwards toward Deputy Galindo and Deputy Smit. Deputy Galindo could see Winston was holding a gun and he saw some flashes coming from the weapon.

Deputy Galindo was scared because Winston kept shooting. Deputy Galindo knew he had to stop Winston from shooting and possibly killing him, Deputy Smit, or the civilians in the nearby homes. Deputy Galindo aimed his Mini 14 rifle at Winston's center mass and shot approximately four times. Deputy Galindo estimated he was 100 yards away from Winston when he fired his Mini 14 rifle. As Deputy Galindo was shooting at Winston, Deputy Galindo saw Winston immediately go down. Deputy Galindo then lost sight of Winston. Deputy Galindo was unsure whether Winston went down after the first

round or the fourth round that he shot. However, Deputy Galindo was sure Winston fell to the ground within the time he fired the four rounds. Deputy Galindo reassessed to make sure neither he nor Deputy Smit were hit.

Deputy Galindo and Deputy Smit got behind a Volkswagen Bug for cover. Deputy Galindo watched the east side and Deputy Smit watched the west side. Deputy Galindo did not know where Winston was at. Deputy Galindo waited for more rounds to be fired at them. Deputy Galindo did not hear any additional gunfire. Deputies with SED started to arrive at the location. The SED deputies were able to locate Winston. Deputy Galindo and Deputy Smit remained at their location until SED deputies were able to determine whether Winston was moving. When SED deputies approached Winston, they saw he was injured and started providing medical care. Deputy Galindo left the location while the SED deputies were rendering medical aid to Winston.

On June 3, 2021, at approximately 11:54 in the morning, **Deputy Jose Ortiz** was interviewed by Detective Adrian Bustamante and Detective Edward Hernandez.

On May 31, 2021, Deputy Jose Ortiz, from the San Bernardino County Sheriff's Department, was assigned to the Morongo Basin station working a special off-highway vehicle assignment. Deputy Ortiz was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. At around 11:54 in the morning, Deputy Ortiz was parked in the dirt on the northeast corner of Paxton Road and Balsa Avenue. Deputy Ortiz observed a rider on a black and red motorcycle without a rear license plate traveling west on Paxton Road. The rider was later identified as Bilal Ibn Shabazz Winston. Deputy Ortiz activated the overhead emergency lights on his patrol unit and followed Winston to conduct a traffic stop.

Winston slowed to a stop on Paxton Road, at Imperial Drive, and looked back over his shoulder. Winston shrugged his shoulders upward, revved the engine, and accelerated westbound on Paxton Road. Deputy Ortiz activated the siren on his patrol vehicle and broadcasted the failure to yield over the radio. Deputy Ortiz indicated Winston was on a red and black motorcycle wearing a dark helmet, black jacket, and blue jeans. Winston failed to stop for a posted stop sign and turned south on Highway 247. Winston rode south on Highway 247 in the northbound lane against traffic. Deputy Ortiz was not able to follow Winston due to cross traffic on Highway 247 but advised over the radio Winston's direction of travel.

Deputy Ortiz entered southbound on Highway 247 a few seconds after Winston and pursued him. Two marked San Bernardino County Sheriff's Department patrol vehicles drove in front of Deputy Ortiz when he turned onto Highway 62. The two deputies were later identified as Deputy Galindo and Deputy Brandon Narcisse. Deputy Ortiz was the third patrol vehicle in the pursuit. Winston continued to flee on his motorcycle, traveling west on Highway 62. Deputy Ortiz indicated Winston was driving between vehicles and running red lights. Deputy Ortiz estimated Winston's speed to be approximately 75 miles per hour or faster. Deputy Ortiz was traveling at approximately 60 miles per hour, yet

Winston still pulled away from Deputy Ortiz's patrol vehicle. Deputy Ortiz believed Winston had no regard for public safety, was traveling at unsafe speeds, and was moving between vehicles to avoid apprehension.

Winston turned north on Church Street, toward the Apache Mobile Home Park on Twentynine Palms Highway, where Deputy Ortiz lost sight of Winston. Deputy Ortiz broadcasted over the radio that Winston rode north on Church Street into the mobile home park. Deputy Ortiz asked other patrol units to check the mobile home park while he waited at the entrance. Deputy Ortiz knew there was only one entrance at the mobile home park and a back gate that remained locked. After a few minutes, a deputy broadcasted the back gate to the mobile home park was open. Deputy Ortiz and the other patrol deputies were unable to locate Winston.

Approximately five minutes later, Deputy Smit broadcasted he saw Winston travel east on Highway 62 at Kickapoo Trail. At that time, Deputy Ortiz was stopped on Elk Trail, at Highway 62, which was east of Kickapoo Trail. Deputy Ortiz waited for Winston to travel east. Deputy Ortiz saw Winston traveling east on Highway 62. Deputy Ortiz saw Winston was wearing the same clothing and riding the same motorcycle as he was earlier. Deputy Ortiz activated the overhead emergency lights and siren on his patrol vehicle and pursued Winston east on Highway 62. Deputy Ortiz was the second patrol vehicle in the pursuit. Deputy Ortiz, however, was unable to recall who was in the first patrol vehicle that drove past. Winston was traveling fast and was able to accelerate away from the first patrol vehicle.

Winston turned north on Sage Avenue. Deputy Ortiz observed the first patrol vehicle drive past Sage Avenue. Deputy Ortiz turned north on Sage Avenue and continued to pursue Winston. Winston traveled north on Sage Avenue, past Sunnyslope Drive, to where Sage Avenue turned into a dirt road. Sage Avenue turned into a dead-end at its far north end. Deputy Ortiz advised over the radio that Winston had turned east into a wash area. Deputy Ortiz stopped his patrol vehicle at **** Sage Avenue, at the dead-end. Deputy Ortiz was unable to drive any further due to sand and the lack of roadway.

Deputy Ortiz exited his patrol vehicle and walked east. Deputy Ortiz heard the sound of a motorcycle engine revving coming from the wash, east of his location. Deputy Ortiz walked further east and then saw Winston. Winston was in the wash near the red and black motorcycle, which laid on its side. Winston was still wearing a dark helmet and dark jacket. Winston ran east across the wash. Deputy Ortiz chased Winston on foot. Deputy Ortiz estimated he was sixty feet behind Winston. Deputy Ortiz yelled, "Sheriff's Department, stop!" Winston refused to stop and continued to run east into the neighborhood. Deputy Ortiz ran across the wash but lost sight of Winston.

Deputy Ortiz stopped on a paved roadway in front of ***** Crestview Drive and looked east. Deputy Ortiz saw a patrol vehicle traveling west on Crestview Drive towards him. Deputy Ortiz broadcasted over the radio that Winston ran east and directed that patrol vehicle to stop and set up a perimeter. The driver of the westbound patrol vehicle was later identified as Sergeant Vaca. Deputy Ortiz advised Sergeant Vaca that he should

get out on foot for a perimeter because Winston had run towards Sergeant Vaca's position. Sergeant Vaca stopped his patrol vehicle on Crestview Drive at Barberry Avenue.

Deputy Ortiz walked north in between ***** and ***** Crestview Drive. As Deputy Ortiz opened the west gate leading into the back yard of ***** Crestview Drive, he heard two gunshots east of his location. Deputy Ortiz immediately recognized the sounds as gunshots. Deputy Ortiz did not know who was shot at the time. Deputy Ortiz broadcasted "shots fired" over his radio. Deputy Ortiz withdrew his duty weapon from its holster and ran east. Deputy Ortiz saw a male subject, later identified as Witness #2, in the back yard of ***** Crestview Drive. Initially Deputy Ortiz thought Witness #2 was the suspect, but then Witness #2 yelled that Winston ran north with a handgun. Witness #2 told Deputy Ortiz that a deputy, later identified as Sergeant Vaca, was shot and down on the ground. Witness #2 pointed in a southeast direction from the east fence-line toward Sergeant Vaca.

Deputy Ortiz ran to the east fence-line and observed Sergeant Vaca lying face down. Deputy Ortiz jumped over the chain link fence and ran to Sergeant Vaca. Deputy Ortiz saw a pool of blood around Sergeant Vaca's head. Deputy Ortiz broadcasted over the radio that a deputy had been shot and requested medical aid and additional units to respond to his location. Deputy Ortiz noticed Sergeant Vaca had a gunshot wound to the back of his head. Deputy Ortiz yelled to Witness #2 and asked what the address was. Witness #2 responded ***** Crestview Drive. Deputy Ortiz broadcasted his location over the radio. Deputy Ortiz rolled Sergeant Vaca onto his left side. Sergeant Vaca was wheezing and groaning. Deputy Ortiz looked for any additional wounds on Sergeant Vaca's body but did not locate any.

Deputy Ortiz kept Sergeant Vaca in a recovery position and tried to comfort him. Deputy Ortiz did not know what else to do because of the gunshot wound to Sergeant Vaca's head. Deputy Ortiz remained with Sergeant Vaca until help arrived. Deputy Smit was the first deputy to arrive on scene. Deputy Smit asked Deputy Ortiz where the suspect went. Deputy Ortiz told Deputy Smit that Winston ran north. Deputy Smit ran north and searched for Winston. Approximately one minute later, Deputy Galindo arrived on foot and asked Deputy Ortiz who was shot. Deputy Galindo was carrying a Ruger Mini-14 rifle. Deputy Ortiz told Deputy Galindo that Sergeant Vaca was shot and Winston ran north with a handgun. Deputy Galindo ran north to search for Winston. Deputy Ortiz broadcasted over the radio that Winston was armed with a handgun.

Deputy Ortiz remained with Sergeant Vaca. Deputy Ortiz kept Sergeant Vaca in a recovery position until medical assistance arrived. Approximately one minute later, Deputy Ortiz heard multiple gunshots north of his location, somewhere near the wash. The gunshots were in rapid succession. Deputy Ortiz broadcasted additional shots fired over the radio and requested an update on the medical aid for Sergeant Vaca.

Deputy Ortiz did not want to leave Sergeant Vaca alone. While Deputy Ortiz was waiting with Sergeant Vaca, he noticed one fired cartridge casing (FCC) and one live cartridge on

the ground approximately nine inches southeast of Sergeant Vaca. Deputy Ortiz believed the cartridges were 9mm, based on their size. Deputy Ortiz observed Sergeant Vaca's Glock 21 .45 caliber handgun was out of its holster, on the ground, approximately three feet southeast of Sergeant Vaca. Approximately two minutes later, two emergency medical technician (EMT) deputies from SED arrived on scene and helped Deputy Ortiz with Sergeant Vaca. Sergeant Vaca was placed into ambulance and transported to Yucca Valley Airport where a rescue helicopter waited to transport Sergeant Vaca to a trauma center.

On May 31, 2021, at approximately 8:08 in the evening, **Deputy Sean Byrne** was interviewed by Detective Gerad Laing and Detective Jonathan Cavender.

On May 31, 2021, Deputy Sean Byrne was assigned to Squad Four of the SED. Deputy Byrne was a certified EMT. Deputy Byrne was assigned as Squad Four's Tactical Emergency Medical Services (TEMS) provider. Deputy Byrne was driving an unmarked vehicle equipped with a siren and emergency red and blue lights. On that date, Deputy Byrne and members of Squad Four were conducting surveillance in the Yucca Valley area attempting to locate a parolee-at-large. After they concluded their operation, Deputy Byrne was monitoring the patrol radio for the San Bernardino County Sheriff's Department Morongo Basin station.

Deputy Byrne heard deputies were in pursuit of a suspect on a red and black motorcycle for failure to yield. At some point during the pursuit, the suspect, later identified as Bilal Ibn Shabazz Winston, abandoned his motorcycle and ran through the desert. Deputy Byrne was continuing to monitor the patrol radio when he heard deputies broadcast shots were fired and a deputy was down. After he heard the "deputy down" call, Deputy Byrne traveled west on Highway 62 and approached Sunnyslope Drive in the City of Yucca Valley. Within two minutes, Deputy Byrne along with other members of Squad Four arrived at the incident location.

SED Sergeant Jerred Besheer directed Deputy Byrne to the location of the downed officer, later identified as Sergeant Vaca. Deputy Byrne observed Deputy Ortiz standing next to Sergeant Vaca. Sergeant Vaca was on the ground and laying on his left side. Deputy Byrne observed an FCC on the ground approximately one foot east of Sergeant Vaca's head. Sergeant Vaca's duty firearm was on the ground, approximately six to seven feet south of Sergeant Vaca. Deputy Byrne observed a gunshot wound to Sergeant Vaca's head. Deputy Byrne observed Sergeant Vaca was breathing but unresponsive. Deputy Byrne rendered medical aid to Sergeant Vaca until paramedics from the San Bernardino County Fire Station 41 arrived on scene. Deputy Byrne told the paramedics to contact Sheriff's Air Rescue to coordinate a location for Sergeant Vaca to be airlifted to a trauma center.

After Sergeant Vaca was transported by fire paramedics, Deputy Byrne had a deputy secure the equipment and evidence Deputy Byrne observed while treating Sergeant Vaca. Once that was done, Deputy Byrne and SED Deputies Josh Stone and Kenneth

Bubier proceeded toward the remainder of Squad Four to attempt to locate Winston. SED Corporal David King advised Deputy Byrne over the radio he believed he had seen Winston. Corporal King advised Winston was just north of a red vehicle in a residential driveway. Deputy Byrne moved east to try to get a better view of Winston.

Deputy Byrne saw Winston, supine on the ground, next to a small retaining wall. Deputy Byrne advised the other deputies of Winston's location. Deputy Bubier gave Winston verbal commands to come toward the deputies with his hands in the air. Winston did not respond to the verbal commands and the deputies observed no movement from Winston. Members of SED utilized a Light Sound Diversionary Device (LSDD) to try and stimulate some movement from Winston. After the LSDD was deployed, the deputies observed no movement from Winston. At the same time, San Bernardino County Sheriff's Department Aviation Helicopter 40-King-4 (40K4) was overhead and broadcasted to deputies on the ground they observed no movement from Winston. 40K4 also advised they observed a firearm south of Winston. Deputy Byrne then utilized a robot equipped with a camera and operated by remote control to get closer to Winston. After Deputy Byrne observed no movement by Winston, deputies approached Winston on foot. Deputies observed a firearm directly south of Winston.

Deputy Besheer instructed Deputy Byrne to come to their location to render medical aid to Winston. After he arrived at the location, Deputy Byrne was unable to locate a pulse on Winston. Deputy Byrne observed a firearm with a green handle south of Winston, on the opposite side of the retaining wall. Deputy Byrne did not see any serial numbers on the firearm leading Deputy Byrne to believe it was a "ghost gun." Deputy Byrne also observed a FCC on the same side of the retaining wall as the firearm.

Deputy Byrne handcuffed Winston to the front and began life saving measures. Deputy Byrne observed one entry gunshot wound to Winston's left torso. Paramedics from San Bernardino County Fire Station 41 arrived on scene and rendered medical aid to Winston. One of the paramedics placed a 12-lead device on Winston to check for vitals. The paramedics did not observe a heart rhythm on Winston. Paramedics contacted a doctor via telephone regarding continuing treatment to Winston. At around 1:50 in the afternoon, the doctor advised the paramedics Winston was deceased and to discontinue medical aid. After Winston was pronounced deceased, Deputy Byrne maintained scene security until he was instructed by Corporal King to go to the Morongo Basin Sheriff Station.

On May 31, 2021, at approximately 7:12 in the evening, **Sergeant Jerred Besheer** was interviewed by Deputy Kevin Riberich and Detective Nicolas Craig.

On May 31, 2021, Sergeant Jerred Besheer, from the San Bernardino County Sheriff's Department, was assigned to the SED. On that date, at around 1:00 in the afternoon, Sergeant Besheer and his SED team were near Highway 62 and Avalon Avenue. They were conducting surveillance to locate a suspect's cellular device. Sergeant Besheer and his team completed their surveillance duties and drove west on Highway 62 toward

San Bernardino. Sergeant Besheer monitored the Morongo Basin Sheriff's Station radio channel as he drove. Sergeant Besheer heard an unknown deputy over the radio advise he was in pursuit of a motorcycle. Sergeant Besheer then heard the deputy say he lost sight of the suspect, later identified as Bilal Ibn Shabazz Winston, and conducted an area check.

As Sergeant Besheer drove west on Highway 62 he heard another deputy state they had located Winston driving east on Highway 62 near Kickapoo Trail. Sergeant Besheer saw Winston flee east from three patrol vehicles. The patrol vehicles had their overhead emergency lights and sirens activated. Sergeant Besheer waited for Winston and the deputies to pass him and then turned around on Highway 62 and drove east behind the pursuit. Sergeant Besheer wanted his SED team to be available to assist deputies if necessary. Sergeant Besheer saw Winston drive through a red light at an unknown intersection. Sergeant Besheer estimated he was one mile behind the pursuit when he heard a deputy say he was in a foot pursuit with Winston near Sunnyslope Drive and Barberry Avenue.

While Sergeant Besheer was driving toward Sunnyslope Drive, he heard an unknown deputy broadcast "shots fired." That broadcast was followed with another broadcast advising a deputy was injured and request for medical aid. Sergeant Besheer did not know the condition of the injured deputy. A deputy stated they were near 56995 Barberry Avenue. At the time he heard the radio broadcasts, Sergeant Besheer estimated he was two minutes away from the incident location. Sergeant Besheer heard deputies requesting medical aid and aviation units for the injured deputy.

Sergeant Besheer observed a patrol vehicle with its overhead emergency lights activated stopped near the area of Barberry Avenue and Crestview Drive. Sergeant Besheer drove north on Barberry Drive and slowed as he approached Crestview Drive. As he was slowing his truck, Sergeant Besheer heard approximately six gunshots. The windows on Sergeant Besheer's truck were up so he was uncertain as to where the shots came from. Sergeant Besheer parked his truck and quickly got out. Sergeant Besheer put on his ballistic plate carrier and retrieved his rifle. He walked north of Crestview Drive when he saw a deputy, later determined to be Sergeant Vaca, on the ground. Sergeant Vaca was unconscious. There was another deputy standing next to Sergeant Vaca. Sergeant Besheer saw a black handgun approximately five feet from Sergeant Vaca's body on the dirt. Sergeant Besheer recognized the weapon was a deputy's gun because it had the San Bernardino County Sheriff's Department logo on the bottom of the tactical light.

There were two unknown white males armed with rifles north of Sergeant Besheer on the hill. The two males were not moving toward the deputies. Sergeant Besheer saw Corporal King run toward two uniformed deputies near a yellow Volkswagen sedan. A deputy told Sergeant Besheer over the radio that the two males were witnesses who lived nearby. Sergeant Besheer turned his attention back to Sergeant Vaca's location. Approximately thirty seconds after his arrival, Sergeant Besheer saw Deputy Bubier and Deputy Byrne exit their vehicles on Crestview Drive. Both deputies were TEMS trained

so Sergeant Besheer instructed them to immediately provide medical attention to Sergeant Vaca.

Sergeant Besheer approached the two males who were carrying rifles. The witnesses told Sergeant Besheer they saw "a Black male adult with an afro haircut" and a blue shirt run northeast of their location after the suspect shot Sergeant Vaca. Sergeant Besheer broadcasted the suspect's description and direction of travel over the radio. Sergeant Besheer requested deputies form a perimeter to contain the suspect away from the occupied houses nearby. Sergeant Besheer returned to Sergeant Vaca's location. Deputy Byrne and Deputy Bubier were rendering medical aid to Sergeant Vaca. An ambulance arrived at the scene. Paramedics quickly placed Sergeant Vaca on a gurney and put him in the back of the ambulance. The ambulance took Sergeant Vaca to the Yucca Valley Airport for a medical airlift.

Sergeant Besheer walked to Corporal King's location on the dirt extension of Barberry Avenue, north of Crestview Drive. Sergeant Besheer saw Deputy Jonathan Arden drive his marked patrol vehicle to Corporal King's location for the deputies to use as cover. Corporal King told Sergeant Besheer he located the suspect, later identified as Bilal Ibn Shabazz Winston, approximately fifty yards north of his location. Winston was at a higher elevation up the hillside. Winston was on the ground behind a rock and a railroad tie. Winston's upper body was hidden but Winston did not appear to be moving. Sergeant Besheer did not know Winston's condition and believed he could have been waiting to shoot additional deputies. Sergeant Besheer did not want deputies to approach Winston too quickly.

Sergeant Besheer asked Deputy Byrne to throw a LSDD toward Winston to see if he was responsive. Deputy Byrne threw the LSDD approximately ten yards from Winston, but Winston did not move. Deputy Byrne then maneuvered a robot toward Winston. The robot was equipped with a camera which Sergeant Besheer and Deputy Byrne monitored. Sergeant Besheer did not see Winston moving.

Sergeant Besheer, Corporal King, and Deputy Ryan Nerenberg approached Winston on foot. Winston laid on the ground behind a large rock. Sergeant Besheer did not see any wounds on Winston. Winston stared forward with his eyes open and was not breathing. Sergeant Besheer believed Winston was deceased but asked Deputy Byrne to provide him medical care. Sergeant Besheer saw a black and green Glock-style handgun next to Winston. The gun appeared real to Sergeant Besheer.

Sergeant Besheer walked to Crestview Drive to contact the deputies and check on their condition. Sergeant Besheer asked Deputy Galindo and Deputy Smit how many rounds they fired and in what direction. Sergeant Besheer made the necessary notifications and requested Morongo Basin Sheriff's deputies secure the scene.

On June 21, 2021, at approximately 7:33 in the morning, **Deputy Eric Bradshaw** was interviewed by Detective Edward Hernandez.

On May 31, 2021, Deputy Eric Bradshaw, from the San Bernardino County Sheriff's Department, was assigned as a Tactical Flight Officer for the San Bernardino County Sheriff's Department Aviation's helicopter. On that date, Deputy Bradshaw and his pilot, San Bernardino County Sheriff's Department Deputy David Negrón, were assigned to aerial valley patrol as 40K4. At approximately 12:25 in the afternoon, they were in flight towards Victorville regarding a carjacking investigation. At around 12:35 in the afternoon, while in flight, Sheriff's dispatch redirected them to Yucca Valley regarding a vehicle pursuit of a red and black motorcycle. After a few minutes, Sheriff's dispatch broadcasted patrol deputies lost sight of the motorcycle. Deputy Bradshaw and Detective Negrón continued responding to the carjacking investigation in Victorville.

Approximately eight minutes later, Sheriff's dispatch broadcasted a deputy was down in the area of Crestview Drive and Barberry Road in Yucca Valley. Deputy Bradshaw estimated the flight time to Yucca Valley was twenty-one minutes. While they were in flight to Yucca Valley, Deputy Bradshaw heard a deputy, later identified as Deputy Smit, broadcasted, "I believe he's down. He shot and I returned fire." The suspect was later identified as Bilal Ibn Shabazz Winston. Deputy Smit broadcasted a description of Winston as "a Black male with an afro, wearing a black jacket, a dark shirt, and dark jeans." Deputy Smit also advised Winston had a black handgun and ran north towards the wash. Deputy Bradshaw later heard another broadcast over the radio that Winston was located near a residence on Barberry Road. Deputy Bradshaw also heard a request made for paramedics for the downed deputy.

Approximately ten minutes later, 40K4 arrived at Crestview Drive and Barberry Road and began a counterclockwise orbit, approximately 500 feet above ground. Deputy Bradshaw sat in the left seat of the helicopter which allowed him to see the ground clearly. Deputy Bradshaw observed Winston on his back wearing a black jacket. Winston appeared non-responsive. Winston did not move as 40K4 orbited. Deputy Bradshaw observed a black handgun on top of its slide with the pistol grip pointed up. The handgun was approximately two feet from Winston's right side. Deputy Bradshaw relayed that information to the deputies on the ground.

SED deputies eventually approached Winston while he was on the ground. Deputy Bradshaw saw the SED deputies check Winston for a pulse and the deputies also appeared to look for wounds. After orbiting for approximately ten minutes, 40K4 left the location for fuel.

On June 1, 2021, at around 11:00 in the morning, **Deputy David Negrón** was interviewed by Detective Jonathan Cavender and Detective Chris Crosswhite.

On May 31, 2021, Deputy David Negrón, from the San Bernardino County Sheriff's Department, was assigned as a pilot at the San Bernardino County Sheriff's Department Aviation Emergency Operations Division. He was assigned to the support helicopter 40K4. Deputy Bradshaw was assigned as the Tactical Flight Officer. On that date, Deputy Negrón and Deputy Bradshaw received a call over the radio requesting they

respond to Victorville to assist deputies with a carjacking call. As they were flying to the location, Victorville Sheriff's dispatch asked 40K4 to break from the Victorville call to assist deputies from Yucca Valley Sheriff's Station on a failure to yield involving motorcycle. A few minutes later, the deputies in pursuit of the motorcycle advised they had lost sight of the motorcycle. The deputies on the ground told Deputy Negrón and Deputy Bradshaw they were no longer needed.

Deputy Negrón turned the helicopter and flew back toward Victorville. As they were nearing the scene in Victorville, dispatch again notified 40K4 they were needed in Yucca Valley and advised a deputy was down. Deputy Negrón turned the helicopter again and flew back toward Yucca Valley. As they flew, Deputy Negrón monitored the radio traffic. Deputy Negrón heard a deputy on the ground broadcast the officer down had a head wound. Deputy Negrón heard a different deputy on the ground broadcast the deputies were chasing the suspect, later identified as Bilal Ibn Shabazz Winston, on foot. That same deputy advised he and Winston were exchanging gunfire and he believed Winston sustained a gunshot wound.

SED deputies were already in the area and broadcasted they were assigning ground deputies by setting up a perimeter. As 40k4 got closer to the scene, Deputy Negrón saw patrol vehicles on the ground. Deputies on the ground continued to describe the location Winston was last seen. One deputy then advised Winston was on the ground, near a small retaining wall.

Deputy Bradshaw activated the video camera on the helicopter. Using the camera, Deputy Bradshaw was able to locate Winston. Deputy Negrón was focused on flying the helicopter but on occasion was able to look down at the video screen. Deputy Negrón saw Winston lying on his back on the ground. He saw a handgun on the ground approximately two to three feet away from Winston. Deputy Negrón was unable to see any injuries on Winston.

Deputy Negrón and Deputy Bradshaw continued to orbit and broadcasted updated information as SED deputies used a "flashbang" to see whether Winston would move. After the "flashbang" discharged and Winston did not move, SED deputies used a robot to get a better view of Winston. The robot approached Winston and made contact with Winston several times. Winston did not move and appeared to be unconscious. SED deputies then approached Winston on foot. The SED deputies then requested a medic move to their location. One of the SED deputies broadcasted Winston had no pulse and said they would be performing cardiopulmonary resuscitation (CPR) on Winston until additional medical personnel arrived.

Deputies broadcasted they were "Code 4" meaning they were okay. Deputy Negrón notified the ground units the helicopter was low on fuel. Deputy Negrón and Deputy Bradshaw left the scene before any additional medical personnel arrived.

STATEMENTS BY CIVILIAN WITNESSES

On May 31, 2021, at around 9:46 in the evening, **Witness #1** was interviewed by Detective Eric Ogaz and Detective Brett Chandler.

On May 31, 2021, Firefighter Paramedic Witness #1 was employed with the San Bernardino County Fire Department. Witness #1 was assigned to Engine 41. At approximately 12:52 in the afternoon, Medic Ambulance 41 was dispatched to a subject with a gunshot wound in the area of Barberry Avenue and Crestview Drive. Engine 41 was at Station 41 and heard the radio broadcast. Engine 41 assigned themselves to assist Medic Ambulance 41 with the call for service. Witness #1 learned through a dispatch application on his phone that an officer had been shot. The officer was later identified as Sergeant Vaca. Engine 41 arrived at the staging area in about six minutes.

Medic Ambulance 41 staged for approximately three to five minutes before being cleared to respond to where Sergeant Vaca had been shot. Engine 41 and Medic Ambulance 41 went to the incident location. The paramedics assigned to Medic Ambulance 41 rendered aid to Sergeant Vaca. They then loaded Sergeant Vaca into the rear of an ambulance and drove to where Engine 41 was parked. Witness #1 then exited Engine 41 and got into the rear of Medic Ambulance 41 to help with Sergeant Vaca's medical care. The ambulance transported Sergeant Vaca to Yucca Valley Airport to have him air lifted to a nearby hospital. Witness #1 helped the crew from Air Rescue 308 with loading Sergeant Vaca into the helicopter. Witness #1 then returned to Engine 41 and they put themselves in service for available calls.

Engine 41 was requested to confirm the death of Bilal Ibn Shabazz Winston. Engine 41 arrived at Winston's location in approximately five minutes. Witness #1 grabbed his medical bag and walked to Winston's location. Witness #1 saw two SED deputies performing CPR on Winston. Witness #1 was unable to locate a pulse on Winston. Witness #1 attached leads from his electrocardiogram machine onto Winston to check for cardiac activity. Winston had no cardiac activity. SED deputies continued CPR while Witness #1 requested additional medical supplies from the engine. Witness #1 called Arrowhead Regional Medical Center (ARMC) to report Winston's condition.

Witness #1 cut off Winston's right neoprene knee brace and inserted an intraosseous (IO) infusion into Winston's right leg while he waited to hear from the doctor. The mobile intensive care nurse at ARMC told Witness #1 to discontinue care just after he inserted the IO into Winston. Time of death for Winston was called at approximately 1:50 in the afternoon. The only injury Witness #1 observed on Winston was a single gunshot wound to Winston's left chest. The gunshot wound had been covered by a chest seal.

On May 31, 2021, at around 7:50 in the evening, **Witness #2** was interviewed by Detective Michael Gardea and Detective Ian Gosswiller.

On May 31, 2021, Witness #2 was living at a residence in the City of Yucca Valley with his son, his sister, Witness #5, her husband, Witness #4, and their seven children. On that date, sometime between 9:00 and 10:00 in the morning, Witness #2 was outside doing yard work when he heard what he believed to be law enforcement chasing someone. Witness #2 heard sirens going from east to west on Highway 62. The sirens got louder and continued north toward Witness #2's neighborhood.

Witness #2 ran to the west edge of the property to get a closer look. Witness #2 heard deputies yelling at somebody and he heard someone jump a chain-link fence. Witness #2 heard a rustling on a chain-link fence on the west side of the house directly to the south. Witness #2 knew it was deputies yelling at someone because of the tone of their voice. Witness #2 indicated law enforcement officers have a distinct stern voice when they speak. Witness #2 heard two to three deputies yell at someone to the west of his property but Witness #2 was unable to recall what specifically the deputies yelled.

Witness #2 ran from the west to the east of his property. To his south, Witness #2 heard the east fence of the property rustle. Witness #2 believed it was the person deputies were chasing because he heard deputies yelling further west from where he heard the rustle of the fence. Witness #2 saw a subject, later identified as Bilal Ibn Shabazz Winston, on the ground. There was a deputy, later identified as Sergeant Vaca, over Winston. Witness #2 estimated Winston and Sergeant Vaca were thirty feet or less southeast from Witness #2's location. There was nothing blocking Witness #2's view of Winston and Sergeant Vaca. Witness #2 saw that Sergeant Vaca was wearing a uniform with a tan shirt, green pants, and black boots. It was clear to Witness #2 that Sergeant Vaca was a police officer.

Witness #2 said Sergeant Vaca had his left hand down toward Winston and his right hand held back by his ear. According to Witness #2, Sergeant Vaca held a black Taser in his right hand. Witness #2 heard Sergeant Vaca say, "Quit resisting." Witness #2 was focused on the Taser in Sergeant Vaca's hand and did not see exactly when Winston turned around, but Winston was face to face with Sergeant Vaca. Sergeant Vaca got on top of Winston and was chest to chest with Winston on the ground. Sergeant Vaca and Winston were close enough that their bodies contacted one another.

Witness #2 heard three pops and saw white smoke between Sergeant Vaca and Winston. Witness #2 did not see a flash and initially thought Sergeant Vaca had shot Winston. Witness #2 saw Sergeant Vaca go limp and fall onto his side. Immediately after the shots, Winston stood up and ran west. After Winston stood up, Witness #2 was able to see he was a Black male with hair that was similar to an afro, and a blue checkered shirt. Winston was holding a gun in his hands as he ran away from Sergeant Vaca. Winston took a two-handed shooting position and pointed the gun at Witness #2. Witness #2 believed Winston was going to try to kill him because Witness #2 had witnessed what happened. Witness #2 heard another deputy yell, "Get on the ground." Witness #2 turned to Winston, pointed to the north, and yelled, "Run. There's a wash right there. Run." Witness #2 was scared. Witness #2 told Winston to run to the wash

because he wanted Winston to leave without shooting Witness #2 or Witness #2's family. Witness #2 said Winston ran north toward the wash.

Witness #2 estimated there was less than a minute between the time Witness #2 ran to the fence to when he saw Sergeant Vaca get shot. Witness #2 said he never saw Winston's gun. Witness #2 believed Winston grabbed Sergeant Vaca's gun from Sergeant Vaca's duty belt. Witness #2 estimated from the time he saw Sergeant Vaca hold the Taser up to when the shots were fired was approximately five seconds.

Witness #2 jumped the fence and ran toward Sergeant Vaca. He heard Sergeant Vaca barely breathing. Witness #2 saw blood on the ground near Sergeant Vaca's chest and face. Two uniformed deputies arrived on scene. Witness #2 yelled to the deputies that there was an officer down. The deputies asked Witness #2 where Winston went. Witness #2 pointed north to where Winston ran. Witness #2 then ran west back to his residence.

Witness #2 was going to retrieve his shotgun when he heard a deputy yell, "Everyone get out of the house." Witness #2 turned and saw a deputy approximately 120 to 140 feet to the east. The deputy was in uniform and holding a pistol with both hands. Witness #2 recognized the deputy as one of the two deputies who ran past Witness #2 when Witness #2 was standing near Sergeant Vaca. The deputy fire three shots in rapid succession toward the north. Witness #2 heard the deputy say, "I think I got him." Witness #2 continued to run back toward his house.

Witness #2 was concerned Winston would go to someone else's house or possibly return to Witness #2's residence and hold them up because Witness #2 "told on him." Witness #2 went inside his residence, where he and his brother-in-law, Witness #4, retrieved firearms from a safe inside Witness #4's bedroom. Witness #2 told his family to stay in the house and keep the doors locked. Witness #2 took a shotgun and ran with Witness #4 out of the north side of the property. Witness #2 was unsure what type of firearm Witness #4 took with him.

Witness #2 and Witness #4 ran east toward the deputies. After Witness #2 came out of the house, he saw there were additional deputies with rifles at the location. The deputies ran north. Witness #2 and Witness #4 changed direction and ran northwest until they got to the wash. Witness #2 and Witness #4 stopped in the wash and took cover. Approximately one minute later, several additional deputies arrived on scene. According to Witness #2, those deputies were dressed like "SWAT" with green clothing. The "SWAT" deputies told Witness #2 and Witness #4 to go back to the house.

Once Witness #2 got back to his house, he did not leave the property again. Witness #2 stood on the northeast corner of the property. Witness #2 was worried Winston would sneak around. Witness #2 estimated he was in his front yard twenty to thirty minutes. Sergeant Vaca remained at the location during that period of time. Witness #2 saw two deputies that appeared to be comforting Sergeant Vaca.

Witness #2 yelled across to the deputies to advise them there was a valley in the area where Winston could have escaped. After approximately twenty to thirty minutes, Witness #2 heard one pop. The pop was loud but muffled. Witness #2 yelled to one of the deputies and asked if they got Winston or if it was safe. The deputy responded, "No. Go back in the house." Witness #2 went back inside the house. During that time, an ambulance arrived on scene. When Witness #2 went back outside, Sergeant Vaca had been transported.

Supplemental Information

On June 8, 2021, at around 4:26 in the afternoon, Detective Gosswiller contacted Witness #2 by telephone. Detective Gosswiller asked Witness #2 to review a portion of Deputy Ortiz's belt recording. On the recording, Deputy Ortiz was heard asking, "What's the cross streets here?" A male subject was heard replying, "Crestview and Barberry." In the background of the belt recording, a male was heard saying, "F***ing n****r." Witness #2 confirmed to Detective Gosswiller that he was the person that said it. Witness #2 was cussing out loud because of what Winston had just done. Witness #2 indicated he was sorry for what he said. Witness #2 was certain it was not a deputy who said those things.

On May 31, 2021, at around 9:19 in the evening, **Witness #3** was interviewed by Detective Nicolas Craig and Deputy Kevin Riberich.

On May 31, 2021, Witness #3 was living with family at a residence in the City of Yucca Valley. On that date, between 1:00 and 2:00 in the afternoon, Witness #3 was outside arranging his military gear in the trunk of his vehicle. Witness #2, the uncle of his wife, was somewhere in the front yard. Witness #3 heard yelling coming from the south of him. Witness #3 heard someone yell, "Get down on the ground. Stop resisting." Witness #3 did not hear any sirens or vehicular traffic prior to the yelling. Witness #3 looked to the south, but his view was blocked by bushes and he was unable to see anyone. Witness #3 walked approximately two to three feet southwest by the driver's side of his vehicle. Witness #3 had a better view. He saw a marked San Bernardino County Sheriff's Department sport utility vehicle (SUV) with a push bar parked on Crestview Drive, about fifty to seventy feet to the south of Witness #3. The overhead emergency lights on the SUV were not activated.

Witness #3 saw a uniformed deputy leaning over a male subject who was on his back on his ground. The uniformed deputy was later identified as Sergeant Vaca. The male subject was later identified as Bilal Ibn Shabazz Winston. Witness #3 was unable to see Sergeant Vaca's feet. Witness #3 was unable to determine whether Sergeant Vaca was kneeling on the ground, but it appeared Sergeant Vaca was "low to the ground." Witness #3 estimated it was two to three seconds from when he heard yelling to when he heard Sergeant Vaca yell, "Get down on the ground."

Witness #3 saw a yellow and black Taser in Sergeant Vaca's right hand. The Taser was raised up near Sergeant Vaca's right ear. Sergeant Vaca had the Taser pointed to the ground. Witness #3 was unable to see Sergeant Vaca's left hand. Witness #3 did not hear any sound indicating Sergeant Vaca had deployed the Taser. Sergeant Vaca and Winston moved their arms back and forth in a flailing motion as they struggled with each other. Sergeant Vaca's right hand did not stay up near his ear as he struggled with Winston. Witness #3 did not see any laser or light from the Taser, nor did he see any recoil from the Taser.

Witness #3 heard three to four gunshots within about three to four seconds when Witness #3 saw Sergeant Vaca leaned over Winston. The gunshots did not overlap each other. According to Witness #3, it sounded like the gunshots came from the same weapon system. Witness #3 indicated the first and second gunshots were fast. There was a pause for about one second in between the second and third gunshot and another one second pause in between the third and fourth gunshot. Witness #3 was proficient in firearms due to his experience as a Marine. Witness #3 was unable to determine who got shot.

Sergeant Vaca fell forward to the west and landed on his left side. Winston stood up. Winston's back was to Witness #3. Witness #3 did not know if Winston shot Sergeant Vaca with Sergeant Vaca's pistol or his own pistol. Witness #3 did not see a muzzle flash or see any puffs of smoke. Witness #3 estimated it was seven to eight seconds from the time Witness #3 heard the yelling to when he heard the gunshots. Winston took two to three steps in a southeast direction and limped when he walked. Witness #3 was unable to see whether Winston had anything in his hands when Winston ran away. A uniformed deputy ran toward Sergeant Vaca. Witness #3 ran inside his house and told his wife a deputy had just been shot. Witness #3 called 9-1-1.

On May 31, 2021, at around 10:22 in the evening, **Witness #4** was interviewed by Detective Edward Hernandez.

On May 31, 2021, Witness #4 was living with his family at a residence on Crestview Drive in the City of Yucca Valley. Witness #4 was knowledgeable about firearms and was a retired armorer in the United States Marine Corps. On that date, at around 12:45 in the afternoon, Witness #4 was inside his residence. His brother-in-law, Witness #2, who also lived with Witness #4, entered the residence through the back door and said there was a shooting outside.

Witness #2 told Witness #4 he was in the backyard and heard sirens in the neighborhood. Witness #2 saw a sheriff's department patrol vehicle traveling west on Crestview Drive. Witness #2 said he then saw a deputy sheriff, later identified as Sergeant Vaca, tackle a male suspect to the ground. Witness #2 said Sergeant Vaca and the suspect, later identified as Bilal Ibn Shabazz Winston, struggled on the ground. Witness #2 told Witness #4 he thought Sergeant Vaca was going to tase Winston. During the struggle, Witness #2 said he heard two gunshots in rapid succession and then

saw Winston stand up. Winston looked at Witness #2 and pointed a black handgun at Witness #2 with his right hand. Winston did not shoot at Witness #2. Instead, Winston ran north toward the wash. Witness #4 said Witness #2 described Winston as a Black male adult, who wore a black shirt, black jacket, and had “an afro.”

Witness #4 told his wife, Witness #5 and their eight children, to get down and move to the most western part of the residence for protection from any gunfire. Witness #4 grabbed his AR-15 rifle from his bedroom and prepared to defend his home and Sergeant Vaca. Witness #2 grabbed a shotgun. Witness #4 and Witness #2 exited the house through the front door and walked north towards the wash to look for Winston. Witness #2 pointed south and told Witness #4 where Sergeant Vaca was on the ground. Witness #4 saw a Sergeant Vaca lying on his back being helped by an unknown deputy.

As Witness #4 and Witness #2 walked north into the wash, Witness #4 saw two unknown male deputies. The deputies were approximately fifty feet east of Witness #4’s location. The two deputies were wearing blue jeans and green tactical vests with the word “Sheriff” in yellow lettering on their backs. The two deputies were carrying Colt M4 rifles. Witness #4 heard approximately five gunshots in rapid succession from a small caliber firearm, possibly a handgun, east of his location. Approximately five seconds later, Witness #4 heard approximately five gunshots from a louder, larger caliber weapon in rapid succession. Witness #4 did not see the two deputies in tactical vests shoot their rifles.

Witness #4 and Witness #2 remained in the wash, until one of the deputies told them to drop their firearms and return to their residence. Witness #4 and Witness #2 placed their firearms on the ground and walked back toward their property. Approximately three minutes later, Witness #4 asked one of the unknown deputies if he and Witness #2 could retrieve their firearms. The deputy allowed Witness #4 and Witness #2 to retrieve their firearms and return to their residence. Witness #4 and Witness #2 remained inside their residence for the remainder of the afternoon.

INCIDENT VIDEO AND AUDIO

VIDEO RECORDINGS AND BELT RECORDINGS. All belt recordings and video recordings submitted were reviewed in their entirety. The summaries of these recordings will only cover the period of time from the beginning of each recording through the occurrence of the lethal force encounter.

DEPUTY KYLE SMIT

Deputy Smit had his belt recorder activated and recording during the incident under

review. The recording was approximately 52 minutes in length.⁵

Deputy Smit can be heard driving his patrol vehicle. Radio traffic can be heard in the background. A deputy was calling out the pursuit of Winston. The deputy was providing Winston's direction of travel. Deputy Smit's vehicle can be heard accelerating. Deputy Smit broadcasted, "9-William-1, I'll be northbound Palm to Sunnyslope." Radio traffic can be heard in the background regarding the pursuit and Winston's direction of travel. Deputy Smit advised he was enroute.

Deputy Smit can be heard saying, "Hey Sarge. If that's you, you're going to be first." A deputy can be heard saying he was at "247 and Sunnyslope." A deputy can be heard on the radio advising Winston was running on foot. Deputy Smit asked, "Dispatch. What's his last 20?" Dispatch advised Winston was north of Crestview and Barberry. A deputy can be heard saying he lost visual of Winston. Deputy Smit asked if Winston was on foot. A deputy can be heard saying, "Affirmed." Deputy Smit responded, "Show me Dumosa and north of Sunnyslope."

Deputy Smit continued driving his patrol vehicle. A deputy can be heard telling another deputy to stop and get out on foot because Winston was running in his direction. A deputy broadcasted, "Shots fired." Deputy Smit can be heard saying, "20, 20." The deputy also broadcasted "Deputy down." Deputy Smit's patrol vehicle can be heard accelerating. The dispatcher can be heard asking, "What's the 20?" The deputy can be heard responding, "*****. We have a deputy shot." The deputy can be heard saying, "*****. We have a deputy down. Deputy down." The deputy can be heard requesting a helicopter. Another deputy asked, "What's your street?" The deputy responded, "Crestview." Dispatch broadcasted "***** Crestview."

Sounds can be heard consistent with Deputy Smit stopping and getting out of his patrol vehicle. Deputy Smit can be heard running. Deputy Smit can be heard asking, "Where's he at? Where's he at? Which way? Where'd he go?" A voice can be heard saying, "He ran down that way." Deputy Smit can be heard running. Deputy Smit said, "We need a unit north of us to start containing." It sounded like Deputy Smit stopped running. Deputy Smit yelled, "Hey, I'm over here. Galindo, I'm over here." Sirens can be heard in the background. Deputy Smit can then be heard trying to set up a perimeter.

Deputy Smit yelled to someone, "Where? Where's he at? I can't see him." Deputy Smit then said, "Oh, I see him. I see him. Galindo, he's walking across the property." Deputy Smit can be heard running. Deputy Smit can be heard broadcasting his location and which direction Winston was walking. Deputy Smit broadcasted he had "visual" on Winston. Deputy Smit ordered, "Drop the gun." Several gunshots can be heard. There was a pause. Deputy Smit yelled, "He's right here." Several more gunshots can be heard. Deputy Smit broadcasted, "9-William-1. Suspect down. He's shot." Deputy Smit

⁵ There were two audio files submitted for Deputy Smit's belt recorder. The second recording involved Deputy Smit's contact with civilians in a nearby residence after the lethal force encounter occurred. Therefore, the second recording will not be included in this summary.

yelled, "Drop it." More gunshots can then be heard. Deputy Smit asked, "Do you see him Galindo?" Deputy Smit yelled, "He's down. He's down. He's shooting back." Deputy Smit told someone, "Move to me. He's just behind this house. He shot back at me dude. He fell. He's just behind this house. He's just behind this house." Deputy Smit told Deputy Galindo where he thought Winston was located.

Deputy Smit advised Dispatch, "9-William-1. The residence to the north of us has a uphill wash. I believe I hit the suspect. He's down. He returned fire to me. Confirmed armed with a gun." Sirens can be heard in the background. Deputy Smit then focused his attention on the people in a nearby residence. Deputy Smit and Deputy Galindo can be heard talking about where Winston fell. Additional deputies can be heard talking to Deputy Smit and Deputy Galindo about where Winston may be located.

DEPUTY JONATHAN GALINDO

Deputy Galindo had his belt recorder activated and recording during the incident under review. The recording was approximately 49 minutes in length.

Deputy Galindo appeared to be inside his patrol vehicle. Radio traffic can be heard in the background. Deputy Ortiz can be heard telling a deputy to get on foot because Winston was running in the deputy's direction. Deputy Galindo can be heard asking, "Southbound or north?" Deputy Ortiz gave additional information about Winston going behind some houses and possibly being in a backyard.

Deputy Galindo can be heard continuing to drive his patrol vehicle. Radio traffic can be heard in the background. A deputy can be heard broadcasting "I can hear shots fired." Deputy Galindo can be heard stopping and exiting his patrol vehicle. Sounds consistent with Deputy Galindo running can be heard. Deputy Ortiz requested a helicopter. Another deputy can be heard asking Deputy Ortiz, "What's your street?" Deputy Ortiz responded. Dispatcher can be heard relaying, "***** Crestview." Dispatcher can be heard saying, "Breaking. They're going to be at ***** Crestview. Cross is going be Barberry. We have a deputy shot." Additional radio traffic can be heard in background. Deputy can be heard advising Winston is armed with a gun.

Deputy Galindo can be heard saying, "Hey which way did he go? Where? Who's down? Who's down?" Deputy Ortiz responded, "Sergeant Vaca." Deputy Galindo asked where Sergeant Vaca was shot. Deputy Ortiz told Deputy Galindo "In the back of the head." Deputy Galindo can be heard running.

Someone yelled at Deputy Galindo. Deputy Galindo responded to the person, "Where? Where?" Deputy Galindo can be heard running. Deputy Galindo asked, "Where? Where? In the RV? In the RV?" Deputy Galindo talked to two people trying to get more information on where Winston went and what Winston looked like. A person told Deputy Galindo, "At this house, right here, right here. He may have ran up the wash." Deputy Galindo asked the person, "What's he wearing? The person responded, "He's got like a

checked. He's got an afro. He's Black. You're not going to miss him. He's an African American." Deputy Galindo asked, "Do you see him on the left?" Multiple gunshots can then be heard.

Deputy Galindo can be heard running. Multiple gunshots can be heard. There was a pause. Additional gunshots can then be heard. Deputy Galindo yelled, "Get over here." A voice can be heard yelling, "He's down. He's down." Deputy Galindo broadcasted, "9-Paul-21, shots fired." Deputy Galindo asked, "Where you at?" Deputy Galindo told someone, "Hey, get behind cover." Deputy Galindo asked, "Is he down? Is he down?" People can be heard yelling in the background. Deputy Galindo and Deputy Smit talked about where Winston was located. Additional deputies can be heard yelling at people in the background. Deputy Galindo and Deputy Smit can be heard talking to the SED deputies about where they last saw Winston.

DEPUTY JOSE ORTIZ

Deputy Ortiz had his belt recorder activated and recording during the incident under review. The recording was approximately 53 minutes in length.⁶

Deputy Ortiz can be heard driving his patrol vehicle. Sirens and radio traffic can be heard in the background of the recording. Deputy Ortiz can be heard giving Winston's direction of travel. Deputy Ortiz can be heard stopping and exiting his patrol vehicle. Deputy Ortiz can be heard walking. Deputy Ortiz told someone, "Sheriff's Department. It's the Sheriff's Department ma'am. Stay in your house. Please."

Deputy Ortiz advised over the radio that he has visual of Winston. Deputy Ortiz can be heard running. Deputy Ortiz yelled, "Sheriff's Department. Stop." Deputy Ortiz can be heard running. Deputy Ortiz advised dispatch he lost visual of Winston. Sirens can be heard in the background. Deputy Ortiz can be heard walking. Deputy Ortiz told a patrol unit that was approaching him to stay there. Deputy Ortiz advised the other patrol unit to get on foot because Winston should be running in the patrol unit's direction. Deputy Ortiz advised Winston was going eastbound and that he lost visual of Winston behind the houses. Deputy Ortiz can be heard saying Winston may be in one of the backyards.

Deputy Ortiz can be heard moving at a quicker pace. Gunshots can be heard in the background. Deputy Ortiz can be heard running. Deputy Ortiz can be heard saying, "Shots fired. Shots fired. Shots fired. Shots, shot. Sheriff's Department. Show me your hands." A person yelled, "They're over there." There were people yelling in the background. Deputy Ortiz advised, "23-William-1, I think there are shots fired." Deputy Ortiz asked, "Where's he at?" A person yelled, "Cop down. Man down. He's been shot." Deputy Ortiz said, "23-William-1. Deputy down. Where's he at? Where's he at?" Deputy Ortiz can be heard running.

⁶ There were two audio files submitted for Deputy Ortiz's belt recorder. This summary will be of the second recording which starts after deputies reinitiated a pursuit of Winston for failing to yield during a traffic stop.

Deputy Ortiz yelled, "What's the address here? What's the address?" A person responded, "*****." Deputy Ortiz advised dispatch, "It's gonna be *****. We have a deputy shot." Deputy Ortiz asked someone for the cross streets. A person responded, "Crestview and Barberry." Deputy Ortiz broadcasted, "It's gonna be Crestview and Barberry." A voice in the background can be heard saying, "F***ing n****r." Deputy Ortiz broadcasted, "It's *****. We have a deputy down, deputy down." Deputy Ortiz can be heard talking to Sergeant Vaca. Deputy Ortiz told Sergeant Vaca, "It's going to be okay Sarge." Sergeant Vaca can be heard groaning in the background. Deputy Ortiz advised dispatch, "23-William-1. We're going to need a helicopter. It looks like. It's Crestview." Deputy Ortiz reassured Sergeant Vaca by saying, "It's gonna be alright Sarge." Deputy Ortiz yelled to Deputy Smit, "The guy went down that way. Smit. He ran down that way."

A voice can be heard saying, "F**k." Sergeant Vaca can be heard in the background groaning. Deputy Ortiz broadcasted, "Just be advised. He's going to be armed with a gun." Deputy Ortiz reassured Sergeant Vaca, "It's gonna be okay Sarge." Deputy Galindo asked Deputy Ortiz, "Hey, which way did he go?" Deputy Ortiz responded back, "He went that way where Smit is at. That way. That way. That way." Deputy Galindo asked Deputy Ortiz, "Who is down?" Deputy Ortiz responded, "Sarge. Sergeant Vaca." Deputy Galindo said, "F**k. Where's he shot?" Deputy Ortiz responded, "He's shot, looks like the back of the head." Deputy Galindo exclaimed, "F**k." Deputy Ortiz said, "Over there Galindo."

Deputy Ortiz asked, "Where's he at?" Someone responded, "Right there." Deputy Ortiz said, "Galindo. They're advised that he's down there." Deputy Galindo asked, "Where?" People can be heard yelling in the background. Sergeant Vaca can still be heard in the background groaning. Deputy Ortiz told someone, "That's the RP." Deputy Ortiz asked dispatch, "23-William-1. Do we have an ETA on fire?" Multiple gunshots can be heard in the background. Deputy Ortiz advised, "23-William-1. Shots fired. Shots fired." Additional gunshots can be heard. Sirens can be heard in the background of the recording. Deputy Ortiz asked, "Hey, do you guys have a medic with you? Where's he at?" Deputy Ortiz advised another deputy where Winston is at. Deputy Ortiz reassured Sergeant Vaca, "It's gonna be okay Sarge." Deputy Ortiz asked again, "Hey, where's the medic at?" Radio traffic can be heard in the background. Multiple deputies can be heard asking where the medic is at.

SERGEANT DOMINIC VACA

Sergeant Vaca had his belt recorder activated and recording during the incident under review. The recording was approximately nine hours in length.⁷

Sergeant Vaca can be heard driving his patrol vehicle. There was radio traffic in the background. Deputy Ortiz can be heard broadcasting, "Looks like he's going through the desert, behind the residence, eastbound. That's affirm, he should be coming up to the

⁷ The length of the recording was the result of Sergeant Vaca's belt recorder not being deactivated.

247, start a unit over there.” Deputy Smit broadcasted, “Yeah, I’m enroute.” Sergeant Vaca can be heard continuing to drive his patrol vehicle.

Deputy Smit broadcasted, “Hey Sergeant. He’s past you. You’re going to be first.” Deputy Arden broadcasted, “931. I’m at 247 and Sunnyslope.” The 10-33 emergency radio tone can be heard on the radio. Deputy Ortiz broadcasted, “He’s over here. He’s running eastbound on foot.” Dispatch responded, “Copy. Running on foot. Unit advise to back?” Deputy Ortiz broadcasted, “Looks like southbound. He’s coming out to the street.”

Sergeant Vaca’s patrol vehicle can be heard accelerating. Deputy Smit asked, “Dispatch, what’s the last 20?” Dispatch advised, “He’s running north of Crestview and Barberry.” Deputy Ortiz broadcasted, “I lost visual of him.” Deputy Smit asked, “Hey, is he on foot?” Deputy Ortiz responded, “Affirm.” Deputy Smit advised, “Okay, show me Dumosa and north of Sunnyslope, I’m nine William one.” Deputy Ortiz broadcasted on the radio to Sergeant Vaca, “Unit coming up to me, stay right there. Get on foot, should be running your direction.” Deputy Galindo asked, “Southbound or north?” Sergeant Vaca can be heard stopping and exiting his patrol vehicle. Sounds consistent with Sergeant Vaca running can be heard. Sergeant Vaca yelled, “Stay right there. Hey, get down. Get down. Get down on the ground. Get on the ground. Get down here. Stop moving. Stop moving.” Muffled sounds can be heard on the recording. Two gunshots, less than a second apart, can be heard on the recording.

Witness #2 can be heard yelling, “No. Stop. Stop. Run. Run, that way to the wash.” Deputy Ortiz can be heard saying, “Sheriff’s Department. Show me your hands.” Sergeant Vaca’s labored breathing can be heard on the recording. Witness #2 yelled to Deputy Ortiz, “Man down. Man down. He’s shot. Get over here. He’s been shot. It was a Black guy too. He’s over there. He’s over there. Going to the neighbors. He’s over there. Get him. He’s right there. Go, go, go, go, he’s right there.” Sergeant Vaca’s labored breathing continued to be heard on the recording.

Deputy Ortiz asked Witness #2, “Hey, what’s the address here, what’s the address?” Witness #2 responded, “Uh, *****.” The sound of Sergeant Vaca’s labored breathing was getting louder. Deputy Ortiz told Dispatch, “It’s gonna be *****. We have a deputy shot.” Deputy Ortiz asked Witness #2, “What’s the cross street here?” Witness #2 told Deputy Ortiz, “It’s gonna be Crestview and Barberry.” Witness #2 can then be heard in the background saying, “F***ing n****r.” Deputy Ortiz can be heard saying, “*****. We have a deputy down, deputy down. It’s gonna be okay Sarge.”

Deputy Ortiz said, “23-William-One (23W1). We’re gonna need a helicopter, looks like. It’s gonna be alright Sarge.” Deputy Ortiz said, “The guy went down that way, he split, he ran down that way. Hey that, f**k. Just be advised he’s going to be armed with a gun. It’s gonna be okay Sarge.” Deputy Galindo asked, “Where’d he go?” Deputy Ortiz responded, “He went down that way where Smit is at.” Deputy Galindo asked, “Where?” Deputy Ortiz told Deputy Galindo, “That way, that way, that way.”

Deputy Galindo asked Deputy Ortiz, "Who's down?" Deputy Ortiz answered, "Sarge." Deputy Galindo asked, "Who?" Deputy Ortiz told Deputy Galindo, "It's Sergeant Vaca." Deputy Galindo responded, "F**k. Where's he shot?" Deputy Ortiz told Deputy Galindo, "He's shot, looks like the back of the head." Deputy Galindo responded, "F**k." Deputy Ortiz said, "Go over there Galindo. Where's he at? Galindo, they advised that he's down there. Yeah, that's the RP. 23W1, do we have an ETA on fire?" Sirens can be heard in the background. Deputy Ortiz broadcasted, "23W1, shots fired, shots fired." Gunshots can be heard in the background of the recording.

40 KING VIDEO RECORDINGS

40 King had its camera recording during part of the incident under review. There were two video files submitted as having come from 40 King. Both video recordings started after the lethal force encounter occurred. A handgun can be seen on the ground near Winston's body.

SERGEANT VACA

Witness #6, Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division conducted the autopsy of Sergeant Dominic Vaca on June 2, 2021. Witness #6 determined the cause of death was a gunshot wound to the head.

A 1 x ¾ inch stellate shape entry gunshot wound was located 2 ½ inches below the top of the head and 3 inches left of the anterior midline. The bullet perforated the lateral left frontal scalp, lateral left frontal bone, brain, and lateral right parietal bone, lateral right parietal scalp. A 1 ¼ x 1 inch exit gunshot wound was located 2 ½ inches below the top of the head and 1 ½ inches posterior to the external acoustic meatus. The direction of the wound path was left to right and front to back.

WEAPON

A loaded Polymer P80, 9mm Glock style handgun was located at the scene. The Polymer P80 had a subdued green lower receiver and a black slide. The Polymer P80 had one live yellow metal 9mm cartridge, head stamped with "LAX 9mm LUGER" in the chamber. The ammunition magazine, which was locked into the pistol grip, contained five live 9mm yellow metal cartridges, each head stamped with "LAX 9mm LUGER." There was no serial number on the weapon.

There were three yellow metal 9mm FCCs within inches of each other on the ground. There was one yellow metal 9mm FCC approximately nine inches southwest of the group of three yellow metal 9mm FCCs. The yellow metal 9mm FCCs were all head stamped

“LAX 9mm LUGER.” The yellow metal 9mm FCCS were located a few feet away from the Polymer P80, 9mm Glock style handgun.

DECEDENT

AUTOPSY. Witness #7, Forensic Pathologist for the Coroner-Public Administrator Division of the Riverside County Sheriff’s Department, conducted the autopsy of Bilal Winston on June 8, 2021. Witness #7 determined the cause of death was a gunshot wound to the torso.

Gunshot Wound to Torso:

Located on the left flank, 21 inches below the top of the head and 5 ½ inches left of the midline, was an entrance gunshot wound. The direction of the wound path, with respect to the standard anatomic position, was left to right, upward, and back to front.

TOXICOLOGY. A blood, urine, and vitreous sample were collected from Bilal Winston on June 8, 2021.

Toxicology results for the blood sample were listed as follows:

- Ethyl alcohol – 0.011% (W/V)
- Cannabinoids – detected
 - Delta-9-THC, LC/MS/MS – 0.0121 mg/L
 - 11-Hydroxy-Delta-9-THC, LC/MS/MS – 0.0015 mg/L
 - 11-Carboxy-Delta-9-THC, LC/MS/MS – 0.058 mg/L

Toxicology results for the urine sample were listed as follows:

- Ethyl alcohol – 0.012% (W/V)
- Cannabinoids – detected
 - 11-Carboxy-Delta-9-THC, LC/MS/MS – 0.0160 mg/L

Toxicology results for the vitreous sample were listed as follows:

- Ethyl alcohol – 0.000% (W/V)
 - 10-Panel Drug Screen – None detected

CRIMINAL HISTORY.

2017, 594(a) of the Penal Code, Vandalism. Los Angeles County case number ATPMA06880401, a felony.

DE-ESCALATION

The incident under review escalated rapidly leaving both Deputy Smit and Deputy Galindo little to no time to attempt to de-escalate. Throughout the incident, Winston made no effort to comply with the deputies. At no time did Winston give any indication he intended to cooperate with deputies and surrender. Every attempt by deputies to de-escalate was met with resistance and violence. Deputy Smit and Deputy Galindo felt they were left with no choice but to fire their weapons at Winston.

The incident began with Deputy Ortiz attempting to conduct a traffic stop of Winston's motorcycle for a minor traffic violation. Winston failed to yield and led deputies on a reckless high-speed pursuit. Winston eventually abandoned his motorcycle and tried to evade deputies on foot. Deputy Ortiz chased after Winston on foot. Deputy Ortiz yelled at Winston, "Sheriff's Department. Stop." Winston did not comply and ran east into the nearby residential neighborhood. Sergeant Vaca was the next deputy to attempt to contact Winston on foot. Sergeant Vaca gave Winston verbal commands to get down on the ground and to stop moving. Winston failed to comply with those commands and a physical altercation ensued. During the physical altercation, Winston shot Sergeant Vaca in the head. Deputy Ortiz called out "shots fired" over the radio. A few seconds later, Deputy Ortiz called out "deputy down" over the radio. Deputy Smit and Deputy Galindo heard both of Deputy Ortiz's radio broadcasts.

When Deputy Smit arrived at the scene, he saw civilians frantically waving their hands and jumping up and down. Deputy Smit saw Deputy Ortiz on the ground hunched over Sergeant Vaca who was lying on the ground. Deputy Smit asked Deputy Ortiz where the suspect was. Deputy Ortiz pointed and went back to rendering aid to Sergeant Vaca. Deputy Smit saw Deputy Galindo, carrying a rifle, running up to the scene. Deputy Smit and Deputy Galindo took off on foot to search for Winston.

Deputy Smit and Deputy Galindo were both wearing San Bernardino County Sheriff's Department uniforms which clearly identified them both as law enforcement officers. Deputy Smit saw Winston walking. Winston had a black handgun in his right hand. Deputy Smit yelled for Winston to drop the gun. Deputy Smit, however, was unable to finish giving his verbal command. Winston had already lifted his gun up and pointed it at Deputy Smit. Deputy Smit saw Winston's gun cycling and knew Winston was shooting at him. Deputy Smit fired six to seven rounds at Winston. Winston went down after the first volley of gunfire but continued shooting at Deputy Smit.

Deputy Galindo heard gunshots being fired. Deputy Galindo saw Deputy Smit shooting with his handgun. Deputy Galindo could see the direction that Deputy Smit was shooting. Deputy Galindo heard gunshots being fired back at Deputy Smit but was unable to see the person who was shooting. Deputy Galindo heard rounds coming in his direction and thought he was going to be shot. Eventually Deputy Galindo saw Winston in the distance holding what appeared to be a gun. Deputy Galindo saw flashes coming from Winston's firearm. Deputy Galindo then aimed his Mini 14 rifle and shot approximately four times at Winston. Winston then went down and Deputy Galindo lost visual of him. SED deputies

arrived at the scene and used a flash bang and a robot to determine whether Winston was still a threat.

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 C. §835a(b).)⁸ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §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 C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing, In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. Both of these 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 §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

⁸ All references to code sections here pertain to the California Penal Code.

fleeing felon would cause further death or serious bodily injury unless immediately apprehended,

(Penal C. §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal C. §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 C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,⁹ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C. §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 C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §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:

⁹ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;¹⁰
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

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

¹⁰ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

- (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 more recently defined in the context of use of force to effect an arrest, is similar:

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

(Penal C. §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.)¹¹ To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

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

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an

¹¹ The legislative findings included in Penal C. 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.

officer's use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.") Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when "necessary to account for the totality of the circumstances in a given case." (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

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

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

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

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

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

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

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

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. “[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed.” (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham [v. Connor]* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.) Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson, supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed “lethal force” the instrumentality must be force that “creates a substantial risk of death or serious bodily injury.” (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson, supra*, 630 F.3d at 825; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject’s mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson, supra*, 630 F.3d at 831; *Deorle v. Rutherford, supra*, 270 F.3d at 1283-84.)

Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

ANALYSIS

In this case, both Deputy Galindo and Deputy Smit had an honest and objectively reasonable belief Winston posed an imminent risk of serious bodily injury or death. When Deputy Ortiz attempted to conduct a traffic stop of Winston’s motorcycle, Winston failed to yield, and a high-speed pursuit ensued. Winston rode his motorcycle with no regard for the public’s safety. Winston ran red lights and a stop sign. Winston also rode his motorcycle southbound on the Highway in the northbound lanes against traffic. Winston could easily have caused a traffic collision resulting in serious injuries or death to any of the individuals on the road that day. Winston eventually abandoned his motorcycle in his attempt to evade deputies. The danger Winston posed to others, however, did not end when Winston abandoned his motorcycle and fled on foot.

Deputies continued to search for Winston on foot. Sergeant Vaca contacted Winston on a residential driveway. When Sergeant Vaca attempted to detain Winston, a fight ensued between the two of them. During the physical altercation Winston shot at Sergeant Vaca. Sergeant Vaca was struck by the gunfire and fell to the ground. After Winston shot Sergeant Vaca, Winston fled north on foot with his handgun. Deputy Ortiz broadcasted over the radio that there were shots fired and a deputy was down.

When Deputy Galindo and Deputy Smit arrived at the scene, they observed Deputy Ortiz caring for an injured Sergeant Vaca. Deputy Galindo and Deputy Smit attempted to locate Winston. Deputy Galindo and Deputy Smit knew Winston was armed with a gun. Both Deputy Galindo and Deputy Smit were aware Winston had led deputies on a dangerous high-speed pursuit and that Winston had shot a deputy. Deputy Galindo and Deputy Smit honestly and reasonably believed they were in pursuit of an armed and extremely dangerous suspect. Both deputies were in uniform which clearly identified them as law enforcement officers.

When Deputy Smit observed Winston walking, Deputy Smit could clearly see Winston was holding a black handgun in his right hand. Deputy Smit yelled for Winston to drop the gun. However, before Deputy Smit was able to finish giving his verbal command, Winston lifted the gun up and pointed it toward Deputy Smit. Winston was approximately thirty to forty yards away from Deputy Smit. Fearing for his life, Deputy Smit fired his weapon six to seven times at Winston. Winston fell to the ground and then started shooting at Deputy Smit. Deputy Smit saw a muzzle flash and could see Winston's gun cycling. Deputy Smit knew Winston had already demonstrated a willingness to kill a deputy. Deputy Smit had mere seconds to react to the immediate threat posed by Winston. Deputy Smit reasonably believed he would be killed if he did not fire his weapon at Winston.

Deputy Galindo heard gunshots being fired before he had a visual of Winston. Deputy Galindo saw Deputy Smit shooting with a handgun. Deputy Galindo could hear gunshots being fired back. Deputy Galindo heard Deputy Smit stop shooting. Deputy Galindo then heard more gunshots being fired. Deputy Galindo heard rounds coming towards the deputies. Deputy Galindo honestly and reasonably believed he was going to be shot. Deputy Galindo eventually saw Winston in the distance. Winston had his arm pointed backwards toward Deputy Galindo and Deputy Smit. Winston appeared to be holding a gun and Deputy Galindo could see some flashes coming from it. Deputy Galindo feared for his life and the life of Deputy Smit. Deputy Galindo knew Winston had already shot Sergeant Vaca. Like Deputy Smit, Deputy Galindo reasonably believed he would be killed if he did not fire his Mini-14 rifle at Winston. Deputy Galindo fired his weapon four times at Winston to try and stop the threat.

Throughout the incident, Winston gave no indication to deputies he intended to comply with the deputies and surrender. Winston led deputies on a dangerous high-speed pursuit which put the safety of the deputies and the civilians on the road at risk. Winston ignored Deputy Ortiz's verbal commands. Winston also refused to comply with Sergeant Vaca's verbal commands to get on the ground and stop moving. Instead, a physical

altercation between Winston and Sergeant Vaca ensued which ended only when Winston shot Sergeant Vaca in the head. Deputy Smit ordered Winston to drop his weapon. Winston still refused to comply with law enforcement officers. Instead, Winston fired his weapon multiple times at Deputy Galindo and Deputy Smit. Given those circumstances, the only reasonable conclusion for Deputy Galindo and Deputy Smit to reach was Winston was determined to kill any law enforcement officer that crossed his path. Therefore, the decision by both Deputy Galindo and Deputy Smit to use deadly force was justified.

CONCLUSION

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

Based on the facts presented in the reports and the applicable law, Deputy Smit's use of lethal force was a proper exercise of Deputy Smit'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

