



PUBLIC RELEASE MEMORANDUM

Subject: Fatal Officer-Involved Shooting

Involved Officers: Detective Michael Corral
San Bernardino County Sheriff's Department

Deputy Adam Duncan
San Bernardino County Sheriff's Department

Involved Subject/DOB: David Perez
11/10/1987

Subject's Residence: Transient

Incident Date/Time: December 28, 2020
1:20 p.m.

Case Agent/Agency: Detective Eric Ogaz
San Bernardino County Sheriff's Department

Agency Report Number: DR # 612000089
H# 2020-148

DA STAR Number: 2023-00-0010358

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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, and audio recordings submitted by the San Bernardino County Sheriff's Department.

FACTUAL SUMMARY

David Perez was wanted for multiple felonies, including attempted murder, home invasion robbery, and assault with a deadly weapon. On August 10, 2020, judicially authorized arrest warrants in two pending criminal cases were issued for Perez's arrest by the San Bernardino County Superior Court.

Perez had evaded capture for many months, fleeing the state to New Mexico. Through investigation, San Bernadino County Sheriff's Department deputies learned of Perez's location in New Mexico and alerted the United States Marshals Service. Thereafter, deputies with the U.S. Marshals Service attempted to take Perez into custody in New Mexico. The deputies surrounded Perez's car with their vehicles, but Perez broke free of their vehicle containment, and a vehicle pursuit began. Perez escaped capture when, during the pursuit, he slammed on his vehicle's brakes and caused one of the deputy marshals to crash. The deputies were forced to call off the pursuit, but they succeeded in recovering multiple firearms, including an assault rifle, from Perez's home. Perez returned to California and was looking to buy a gun.

On December 28, 2020, personnel from the San Bernardino County Sheriff's Department, Specialized Enforcement Division (SED), received information regarding the whereabouts of Perez. SED deputies learned Perez would arrive at the Stater Bros.' parking lot, located at the 15000 block of Main Street, in Hesperia, intending to buy a firearm. Several SED deputies set up surveillance in the parking lot, waiting in their undercover vehicles for Perez to arrive. At approximately 1:20 p.m., Perez arrived in a black Toyota Avalon driven by Witness #1. Witness #1 parked beside an undercover SED van occupied by Deputy Adam Duncan, Detective Michael Corral, and Detective Scott Bibeau. After positively identifying Perez in the front passenger seat, additional SED deputies nearby drove their undercover vehicles toward the Toyota Avalon and surrounded it. Perez yelled to Witness #1, "It's a setup," and told her to "Go!" Witness #1 briefly stepped on the gas pedal, but the SED vehicles had locked her car in place, so she could not drive away. SED personnel exited the van to contact Perez. The deputies identified themselves and told Witness #1 and Perez to show their hands. Witness #1 obeyed commands to show her hands, raising them into the air, but Perez refused. Deputies gave Perez multiple orders to show his hands and to exit the vehicle, but Perez continued his refusal, instead yelling obscenities at the deputies.

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SED personnel continued giving commands to Perez, addressing him by his first name, but Perez still cursed at the deputies, refusing to comply. In an effort to gain Perez's compliance, SED personnel breached the front passenger window and deployed less lethal blunt-impact projectiles, striking Perez. Perez still refused to show his hands or exit the vehicle, instead arming himself with a large machete. Witness #1 screamed as Perez began moving toward her with the machete, pushing against her as he tried to move into the driver's seat. Recognizing the potential hostage situation, multiple deputies yelled at Perez to let Witness #1 go, but Perez refused. As the deputies yelled that they needed to get her out of the car, Witness #1 began trying to climb out of the driver's door. As Witness #1 tried to get out of the car, Perez slid his left leg over the center console, pinning Witness #1's knee against the door. Perez began stepping on the gas pedal with his left foot. The Avalon was locked in place and surrounded on all four sides. Nevertheless, Perez continued trying to break free of the containment, shifting the car's transmission from drive to reverse while redlining the engine as he stepped on the accelerator. While Witness #1 tried to escape, the Avalon moved back and forth because of Perez's efforts to flee. Recognizing the danger to Witness #1, Deputy Walsh, whose SUV was nosed in at the driver's door, backed his vehicle away from the Avalon to give her more space to flee. Deputy Walsh yelled to Witness #1 to climb onto the hood of his SUV. Witness #1 successfully escaped by climbing onto the hood and then over the roof of Deputy Walsh's SUV.

Perez climbed over the center console and into the driver's seat, ignoring the deputies' continued commands to show his hands and get out of the car. While Perez stepped on the gas pedal, furiously spinning the Avalon's tires, the deputies deployed additional less-lethal blunt-impact rounds at Perez. Though the blunt-impact rounds struck Perez, he refused to surrender. With the blunt-impact rounds proving ineffective, the deputies prepared to deploy tear gas into the Avalon to force Perez to exit. While Deputy Duncan headed to the passenger side of the SED van to grab a tear gas canister, Perez began spinning the Avalon's tires continuously, creating so much smoke that it began to obstruct the deputies' view of Perez and one another. Deputy Duncan returned to the passenger side of the Avalon with the tear gas. Knowing Perez had armed himself with a large machete, Detective Corral provided lethal cover with his rifle as Deputy Duncan tossed the tear gas canister into the car through the Avalon's broken passenger window. As soon as the gas canister landed inside the Avalon, Perez grabbed it and threw it back out. Deputy Duncan returned to the van's passenger side to grab another gas canister. Deputy Duncan planned to have one of his partners break one of the Avalon's back windows so he could deploy the gas canister into the back of the car where Perez could not reach it.

Suddenly, Perez got out of the passenger side of the Avalon and jumped into the driver's seat of the SED van. Inside the SED van, Deputy Duncan's loaded, and fully automatic rifle was stowed between the driver's seat and the center console. Perez closed the van door and reached for Deputy Duncan's stowed rifle. Detective Corral and Deputy Duncan, on either side of the van, fired their guns at Perez as he grabbed the rifle, stopping him. The deputies pulled Perez from the van and rendered assistance until medics arrived.

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Medics began administering medical aid, but Perez succumbed to his injuries and was declared deceased at approximately 1:35 p.m.

STATEMENTS BY POLICE OFFICERS¹

All San Bernardino County Sheriff's Department (SBSD) Specialized Enforcement Division (SED) deputies involved herein wore distinctively marked SBSB tactical ballistic plate carrier vests over plain clothes. High-visibility SBSB patches adorned the ballistic vests. In bright yellow letters on the front and back of the vests was the word "SHERIFF." A yellow cloth SBSB badge adorned the front.² The SED deputies wore belt recorders. The deputies drove unmarked SBSB units, each equipped with red and blue flashing lights, a solid red light, and a siren.

On January 14, 2021, at approximately 2:20 p.m., **Deputy Jeffrey Henry** was interviewed by Detectives James Tebbetts and Simon DeMuri of the San Bernardino County Sheriff's Department.

Deputy Henry was employed by the San Bernardino County Sheriff's Department and was assigned to the Specialized Enforcement Division (SED).

On December 28, 2020, Deputy Henry was on duty. Deputy Henry drove an unmarked Sheriff's Department white Chevy Silverado truck. Deputy Henry's call sign was 61 Zebra 32. Deputy Henry wore a drop-down holster that held his department-issued handgun. Deputy Henry's Colt M4 was inside his truck between the driver's seat and the center console during the incident under review. Deputy Henry's belt recorder was activated and recorded the deputies' contact with Perez.

At approximately 8:00 a.m., Deputy Henry met with other members of the SED team at the Hesperia Sheriff's Station to attend a briefing regarding the apprehension of David Perez. Deputy Pollick, the case agent, led the briefing.³ Deputy Pollick told the team that Perez was wanted for multiple violent felonies for which three felony arrest warrants had been issued. One of the warrants was for attempted murder, a second was for home invasion robbery, and a third was for a no-bail probation violation. Perez had been identified as a suspect in a home invasion robbery and attempted murder out of Barstow. During the home invasion robbery, Perez had reportedly discharged a shotgun through a hotel room, nearly striking two people inside, and had stolen a vehicle from the victims. The following day, Perez returned to the hotel and violently assaulted one of the victims with a knife, stabbing that victim multiple times in the face and torso while another male struck the victim in the back of the head multiple times with a baseball bat, before fleeing the scene.

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

² Detective Corral also wore a green ballistic helmet.

³ In addition to the team members, their supervisor, Sergeant Mike Sandlin was present for the briefing.

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Deputy Pollick shared the history of a previous attempt that had been made to apprehend Perez: Deputy Pollick had received information that Perez had fled to New Mexico. Deputy Pollick had sent investigative leads to the United States Marshal Service out of Albuquerque, New Mexico. Deputies with the U.S. Marshal Service in Albuquerque had located, positively identified, and attempted to apprehend Perez as he got into a vehicle. The deputy marshals attempted to contain Perez's vehicle using their unmarked U.S. Marshal's vehicles and attempted to gain his compliance to take him into custody. Perez did not follow the commands and instead used his vehicle to ram the U.S. Marshal's vehicles to escape. A pursuit ensued after Perez successfully pushed away one of the Marshal's vehicles. During the pursuit, Perez slammed on his vehicle's brakes, causing one of the deputy marshals behind him to rear-end Perez's vehicle before swerving into the center median on the freeway, nearly causing the deputy marshal's vehicle to roll over. Perez was able to escape capture that day.

Deputy Pollick had received information that Perez was back in Hesperia and would be at the Stater Bros. off Main Street to buy a firearm. Perez was known to have possessed an AR-style rifle and a handgun while he was in New Mexico, but the deputies with the U.S. Marshal Service recovered those firearms. Because of this, Perez was looking to buy another firearm and flee the state again.

Deputy Pollick went over the primary plan for the apprehension of Perez. Because of Perez's violent history of violence against law enforcement and civilians, the team was to conduct a vehicle containment technique (VCT) with vehicle contact against Perez's vehicle to ensure he would not be able to avoid capture. The plan was for Deputy Henry, with his Chevy Silverado truck, and Detective Eugene Mondragon, with his unmarked Chevy Silverado truck, to block Perez's vehicle from the front and the rear. Deputy Adam Duncan, Detective Michael Corral, and Detective Scott Bibeau would be in an unmarked silver Dodge Grand Caravan (SED van) as the "van team" and would assist in the apprehension of Perez. Once Deputy Henry's and Detective Mondragon's trucks made contact with Perez's vehicle to ensure the vehicle could not escape, the van team would safely take Perez into custody using the least amount of force possible.

After Deputy Pollick's briefing, Sergeant Sandlin designated Deputy Henry and Detective Mondragon as the front and rear block for the VCT. Deputy Henry knew his job was to be the front block. The other team members were briefed on their responsibilities and understood their assignments. The team left the Hesperia station and went to the Stater Bros. parking lot off Main Street. A business in the shopping center was no longer operating, so the team knew that area of the shopping center would have fewer people and vehicles, making it a safer spot to conduct the apprehension. A Del Taco was just north of the area, and an abandoned business was just to the east.

The team conducted surveillance in the parking lot for approximately three hours, waiting for Perez. Perez arrived in a black Toyota Avalon. Deputy Henry recalled Sergeant Sandlin saying Perez was in the Avalon. Deputy Henry's partners in the van team also

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positively identified Perez, advising that Perez was in the front passenger seat and that an unidentified female was in the driver's seat. Deputy Henry was sitting in his truck, parked just west of the Del Taco, facing east. From there, Deputy Henry could see the other team members. The van team was southeast of Deputy Henry. The SED van faced west in the parking lot. Detective Mondragon was east of Deputy Henry and was nosed into a parking spot at Del Taco. Deputy Henry watched the black Toyota Avalon drive through the parking lot of Stater Bros. and come around and park on the driver's side of the SED van. Deputy Henry estimated that the distance between the driver's side of the SED van and the passenger side of the Avalon was six to eight feet.

Over the radio, Deputy Duncan told Deputy Henry and Detective Mondragon to move toward the vehicle. Sergeant Sandlin gave a five-second countdown, going from five to one to ensure Deputy Henry and Detective Mondragon would both make physical contact with Perez's vehicle at the same time. If one vehicle made contact early and the other vehicle was a little behind, there was a better chance Perez's vehicle would be able to escape the vehicle containment, allowing Perez to escape capture. Deputy Henry drove his truck at about 10 miles per hour and made physical contact with the front end of the Avalon, while Detective Mondragon drove and made physical contact with the rear end. When Deputy Henry made physical contact with the front end of the Avalon, it rolled back into Detective Mondragon's truck. Deputy Henry accelerated forward again to ensure there was no gap between their trucks and Perez's Avalon. When the Avalon rolled back into Detective Mondragon's truck, the Avalon was offset from the SED van by about four feet. The SED van was facing opposite Deputy Henry's truck. Deputy Henry activated his truck's emergency lights. From his vantage point, through the Avalon's windshield, Deputy Henry could see Perez from about mid-chest level up, seated in the front passenger seat and a female in the driver's seat. The Avalon's tinted windows and the overcast weather made it difficult to see into the Avalon. Deputy Henry heard the Avalon's engine rev, its front tires squeal, and felt some pressure on his truck as the Avalon tried to push his truck out of the way. After a few seconds, the female stopped revving the engine, took her hands off the steering wheel, and put them up in the air.

Once Deputy Henry knew the Avalon was contained, he watched the van team exit the SED van, identify themselves to Perez as the Sheriff's Department, and give Perez commands to exit the vehicle. During this time, Deputy Henry cracked his driver's door open to hear what his partners were saying. Deputy Henry heard his partners identify themselves multiple times as the Sheriff's Department, tell Perez to show his hands and give him multiple commands to exit the vehicle. Perez ignored their commands and did not exit the vehicle. Deputy Henry watched the van team go from the driver's side of the SED van over to the passenger side of the SED van, where he lost sight of them. Deputy Henry could still hear the van team and heard Detective Bibeau say he was going to grab a window break.⁴ Deputy Henry watched Detective Bibeau go to the front passenger window of the Avalon and break the window out so they could better see Perez and give him more commands.

⁴ A window break is a handheld metal rod specifically designed to break windows.

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Deputy Henry heard Sergeant Sandlin say Perez had something in his hands. Deputy Henry could not see Perez's hands from where he was. Perez was still in the front passenger seat at this time. Sergeant Sandlin then said Perez had a machete. Deputy Henry heard his partners say they would deploy less-lethal munitions (40 mm BIP⁵ rounds) but could not see his partners because they were all on the passenger side of the SED van, out of Deputy Henry's view. Deputy Henry heard his partners say, "Less lethal, less lethal," as they deployed the munitions. Deputy Henry did not see who deployed the less lethal munitions because he was focused on Perez. The less-lethal munitions were ineffective. Deputy Henry heard his partners tell Perez multiple times to put his hands up, and at one point, Perez replied, "Fuck you." Deputy Henry then heard Deputy Duncan say he would "get gas," the term they use for chemical agents. Because the 40 mm BIP rounds were ineffective, the next step was to deploy chemical agents to gain Perez's compliance. Deputy Henry heard Deputy Duncan yell, "Gas, gas, gas," which signifies to the team that he was about to deploy the chemical agents. Deputy Henry watched Deputy Duncan toss the chemical agents through the broken passenger window and saw Perez lean over and then throw the chemical agents back out of the passenger window.

At this point, Deputy Henry heard the female scream and saw Perez pushing the female out of his way to get into the driver's seat. Deputy Walsh's vehicle was positioned on the driver's side of the Avalon, near the driver's door. Deputy Walsh backed his vehicle a little, and the female got out and took off running.⁶ Deputy Henry did not see where she went because he was focused on Perez because Perez was now in the driver's seat. This concerned Deputy Henry because he knew Perez had previously intentionally rammed the U.S. Marshals to get away and avoid capture. As soon as Perez got into the driver's seat, Perez instantly started revving the engine, spinning the tires, and trying to push Deputy Henry's truck out of the way. The Avalon was revving at the highest RPM, as Perez used as much power as the car would allow, "redlining" the engine, trying to push Deputy Henry's truck away. Deputy Henry felt pressure against the front of his truck. The Avalon rocked his truck back, which was an indicator that his truck might start moving. To counteract this, Deputy Henry accelerated his truck against the Avalon to make sure Perez could not push his truck out of the way. Deputy Henry watched Perez use the gear shifter to go from drive to reverse repeatedly like he was trying to rock his way out of the vehicle containment. Perez did this several times. Every time he felt a little pressure against his truck, Deputy Henry accelerated against the Avalon to make sure Perez couldn't push his way out of the containment.

Perez started spinning the Avalon's front tires continuously, creating a lot of smoke and obstructing Deputy Henry's view. The smoke was so thick that Deputy Henry could barely see the front end of his truck. Deputy Henry could not see where anybody was. Deputy Henry closed his door to ensure the smoke would not fill his truck's cabin and completely impair his vision. After a couple of seconds, Deputy Henry cracked his door again to make

⁵ Blunt Impact Projectile.

⁶ Deputy Henry believed the chemical agents were deployed after the female had gotten out of the Avalon.

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sure he could hear what was happening and heard Detective Corral yell, "He's out, he's out!" Deputy Henry looked around to see where Perez was because he believed Perez was out of the Avalon and was going to escape on foot. Deputy Henry could not see where Perez was. As he looked for Perez, some smoke started to blow past his truck, and Deputy Henry saw Perez running toward the driver's side of his truck, where the SED van was parked.

Deputy Henry saw Perez getting into the driver's seat of the SED van and closing the door. This was a "huge concern" because multiple loaded rifles were inside the SED van. Deputy Henry knew there were rifles inside the SED van because he saw two of the van team members armed with their pistols instead of their rifles when they deployed the chemical agents. Deputy Henry knew the rifles were loaded because their standard procedure dictated that their rifles be loaded before starting an operation. Deputy Henry had also seen Deputy Duncan load his rifle before they left the Hesperia station, and he knew that Deputy Duncan's rifle would have been inside the van's cabin, where it was readily accessible to him during the operation. Deputy Henry believed Perez was going to try to leave in the SED van, which presented a danger to the safety of the public and law enforcement because of the two rifles inside the SED van. Deputy Henry believed Perez knew how to use a rifle based on the AR15 platform because Perez had such a rifle seized in New Mexico. Because of this, Deputy Henry knew Perez could operate those rifles and potentially injure or kill innocent civilians or law enforcement members.

Deputy Henry was in fear for the safety of his partners, civilians present in the shopping center, and his own safety. Perez had a history of violence and fleeing law enforcement and now possessed two rifles that he could use against law enforcement or civilians. As Perez started to close the van door, Deputy Henry began to put his truck into reverse because he "was not going to let Perez leave in that van." Deputy Henry planned to immobilize the SED van so it could not leave the parking lot. As Deputy Henry started to reverse, he saw Detective Corral was on the hood of the Avalon and heard six to seven gunshots from Detective Corral, a brief pause, and then a second set of seven to eight gunshots which sounded like they came from the passenger side of the SED van. Deputy Henry did not know who fired the gunshots from the other side of the SED van. When Detective Corral fired, he fired at a downward angle into the driver's front window of the SED van. Detective Corral was about four feet away from the window. Deputy Henry estimated that only a minute and a half had elapsed from the time they performed the VCT until the gunshots were fired. When the gunfire stopped, Detective Corral opened the SED van door. Sergeant Sandlin announced over the radio that shots were fired and requested medical aid. Deputy Henry saw his partners remove Perez from the SED van and immediately start rendering medical aid to him.

Deputy Henry saw that the Avalon's engine compartment was on fire, so he backed his truck away from the fire. As he backed his truck, Deputy Henry did not see who got into the driver's seat to move the SED van away so it would not catch fire. Had any of their law enforcement vehicles caught on fire, the ammunition and chemical agents inside their

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vehicles could discharge, endangering everyone in the immediate area. Deputy Henry retrieved a fire extinguisher from the bed of his truck and began trying to extinguish the Avalon's engine fire. Deputies Duncan and Pollick and Detective Bibeau provided medical aid to Perez until paramedics arrived.

On January 14, 2021, at approximately 8:10 a.m., **Detective Eugene Mondragon** was interviewed by Detectives James Tebbetts and Simon DeMuri of the San Bernardino County Sheriff's Department.

Detective Mondragon was employed by the San Bernardino County Sheriff's Department and was assigned to the Specialized Enforcement Division (SED).

On December 28, 2020, Detective Mondragon was on duty. Detective Mondragon drove an unmarked Sheriff's Department silver Chevy Silverado truck. Detective Mondragon's SBSB tactical ballistic plate carrier vest contained the following equipment: An olive drab green triple rifle magazine holder with three loaded rifle magazines, a double pistol magazine holder with two loaded magazines, a tourniquet, a breaching tool, medical supplies, a smoke canister, a Taser, and a black hand-held radio. Detective Mondragon wore a black tactical holster containing his department-issued Kimber 1911 .45 caliber handgun, a digital belt recorder, a knife, handcuffs, a medical supply pouch, a black multi-tool, and a light-sound diversionary device. Detective Mondragon had a Lewis Machine and Tool Co., 40-millimeter single-shot launcher. Detective Mondragon's belt recorder was activated prior to the incident under review and did not capture any of the deputies' contact with Perez.

Detective Mondragon attended the briefing regarding Perez at the Hesperia Sheriff's Station with the other SED team members at 8:00 a.m.⁷ During the briefing, Detective Mondragon was assigned to be the rear block during the vehicle containment technique (VCT). Because Perez was known to be dangerous, the team's goal was to minimize all possible threats. To that end, the VCT was to be conducted with physical contact⁸ between the SBSB and Perez's vehicles so that Perez could not flee from deputies. Detective Mondragon and his SED partners had previously received training on properly carrying out VCTs. Deputy Adam Duncan, Detective Michael Corral, and Detective Scott Bibeau were assigned to the van team and were to carry out the arrest of Perez after the VCT.

After the briefing, Detective Mondragon and his SED team partners drove to the Stater Bros. at Main Street and 8th Avenue in Hesperia, where Perez would attempt to buy a gun. The SED team set up surveillance in the parking lot. Detective Mondragon was parked facing north in the north portion of the parking lot near the Del Taco. The van team

⁷ Detective Mondragon provided the details of the briefing. Those details were largely consistent with the details given by the other SED members.

⁸ Not all VCT's require physical contact between the vehicles.

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was set up behind Detective Mondragon near a more desolate area of the parking lot where there weren't a lot of other cars. After conducting surveillance for about three hours, at approximately 1:00 p.m., the team received information that Perez would be arriving in a black vehicle. At about 1:20 p.m., the team saw a black Toyota Avalon driving through the parking lot. The team identified Perez in the front passenger seat of the Avalon. Detective Mondragon pulled his truck next to the van team. A "coordinated takedown" was in place, and Sergeant Sandlin gave the countdown from five to one. With their trucks, Deputy Henry made contact with the front of the Avalon, and Detective Mondragon made contact with the rear of the Avalon, locking it in place. Deputy John Walsh drove from the south side of the parking lot to the driver's side of the Avalon, blocking the driver's side. Detective Mondragon did not know if Deputy Walsh's vehicle made physical contact with the Avalon.

Detective Mondragon heard his partners give loud and clear commands to Perez to show his hands and exit the vehicle. The deputies called Perez by his first name and said, "David, show us your hands," "David, exit the vehicle." However, Perez did not respond to the commands. Detective Mondragon was certain that Perez heard the commands because he could hear his partners' commands even though his truck windows and doors were closed. Detective Mondragon got out of his truck after ensuring the Avalon was locked in place with his truck. The deputies continued to give Perez loud and clear commands to show his hands and to exit the vehicle, but he refused to comply. Detective Mondragon announced to his partners, "less lethal, less lethal," to let them know he was going to fire a less-lethal munition before deploying a 40-millimeter BIP round to the front passenger side window of the Avalon to break it. The announcement, "less lethal, less lethal," was so his partners would know what he was doing so they would not mistakenly believe Perez was shooting at them or that Detective Mondragon was firing a lethal weapon. The 40-millimeter BIP round did not break the window, so Detective Scott Bibeau broke the front passenger window.

Perez continued to ignore their commands to exit the car and yelled, "Fuck you," several times at the deputies. Detective Mondragon approached the passenger side of the Avalon again and, with his 40-mm single-shot launcher,⁹ deployed a less-lethal round to Perez's upper torso to gain his compliance. When he deployed the BIP round, Detective Mondragon was about four to five feet away from Perez. Detective Mondragon believed the BIP round struck Perez on the arm or upper torso but did not see exactly where the BIP round struck because Perez was moving around and trying to get over into the driver's seat onto the female seated there. Perez yelled out in pain but still refused to comply with the deputies' commands. Perez was wearing a heavy jacket which likely shielded much of the impact from the BIP round. Perez continued to yell, "fuck you," at the deputies. Detective Mondragon saw a large machete near the center console of the Avalon and knew Perez could have easily gotten out of the Avalon with the machete to stab the deputies. Detective Mondragon backed away and returned to his truck.

⁹ A 40-millimeter launcher is a tool that allows law enforcement to use less than lethal force to effect an arrest without causing great bodily injury or death.

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At this point, the female in the Avalon's driver's seat got out of the car, and Perez got into the driver's seat. Perez began trying to ram the SBSB vehicles, spinning the Avalon's tires and causing them to smoke. As Perez accelerated against Detective Mondragon's truck, Detective Mondragon felt the "momentum carrying into" his truck, pushing the truck back slightly. Detective Mondragon accelerated against the Avalon's rear to ensure Perez could not escape. Detective Mondragon activated his truck's lights and sirens so Perez would know they were law enforcement. Perez continued spinning the Avalon's tires, which created "a lot of smoke." Detective Mondragon heard one of his partners¹⁰ announce that he would deploy gas. Deputy Duncan deployed a hand-held chemical munition (gas canister) into the Avalon. Perez threw the gas canister right back out of the car. As Perez continued spinning the Avalon's tires, the "smoke enveloped the whole cab in front" of Detective Mondragon's truck, obscuring Detective Mondragon's view of Perez.

The smoke from the tires slowly moved north toward the SED van still parked on the passenger side of the Avalon. The van, 15 to 20 feet away from Detective Mondragon, was mostly obscured by the smoke. Detective Mondragon could see Detective Michael Corral off to his left, near the driver's side of Deputy Walsh's SUV. Detective Corral yelled that Perez was getting out of the vehicle. The smoke was still heavy, obscuring the entire passenger side of the Avalon from Detective Mondragon's view. Detective Mondragon did not see Perez get out of the car, but Perez was no longer in the driver's seat of the Avalon. Detective Mondragon got out of his truck. Detective Mondragon could not see where Perez went due to the smoke. Knowing Perez was out of the car, armed with a large machete, and that he was a violent felon with arrest warrants, Detective Mondragon feared for his life and the lives of his partners. Detective Mondragon also feared for innocent civilians nearby because Perez seemed "pretty desperate," refusing to comply with their commands.

Within five to 10 seconds of hearing Detective Corral yell that Perez was getting out of the car, Detective Mondragon saw Detective Corral box-jump onto the hood of the Avalon. Detective Corral had his "rifle pointed down toward the ground where the van was." Detective Mondragon suspected Perez had gotten into the van, which Detective Mondragon knew contained weapons. Detective Mondragon then heard Detective Corral's semi-automatic rifle fire as Detective Corral fired 10 to 15 shots. Detective Mondragon did not see Detective Corral when he fired. The initial gunshots were loud, but toward the end, there were gunshots that were not as loud. Detective Mondragon knew there was a possibility that Perez had gotten into the van, obtained a weapon inside the van, and was now firing at the deputies. When the gunfire stopped, Detective Mondragon ran to the back of his truck to assist and saw his partners taking Perez out of the van. Perez's machete was on the ground near the van. Detective Mondragon noticed a fire underneath the Avalon, so he got back into his truck and backed it away from the Avalon so the truck wouldn't catch fire. Detective Mondragon returned to Perez to see if he could help with any medical aid, but several deputies were already rendering assistance to Perez. Detective Mondragon believed Sergeant Sandlin called in the fire

¹⁰ Deputy Mondragon believed it was Deputy Duncan.

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department to render medical assistance to Perez. After the fire department arrived and pronounced Perez deceased, Detective Mondragon transported Detective Corral to the Hesperia Sheriff's Station.

On January 13, 2021, at approximately 1:53 p.m., **Detective Michael Corral** was interviewed by Detectives James Tebbetts and Gerad Laing of the San Bernardino County Sheriff's Department.

Detective Corral was employed by the San Bernardino County Sheriff's Department and was assigned to the Specialized Enforcement Division (SED). Detective Corral completed basic Special Weapons and Tactics (SWAT) School. As a detective assigned to SED, Detective Corral had also trained and received the following certifications: Select Carbine Instructor, Long-Rifle Instructor, and Large Caliber Operator and Instructor.

On December 28, 2020, Detective Corral was on duty, assigned to work from 7:00 a.m. to 4:00 p.m. Detective Corral's call sign was 61 Zebra 51. Detective Corral's SBSD tactical ballistic vest contained the following equipment: Communications gear attached to the top front, one 1911 ammunition magazine and three M4 ammunition magazines, a small pry tool, a tourniquet, a Taser, and handheld police radio. Detective Corral wore a tactical belt with the following equipment: a drop-down leg holster containing his department-issued Kimber 1911 handgun, a digital recorder, a light and sound diversionary device, a medical kit, one M4 ammunition magazine, and two 1911 handgun ammunition magazines. Detective Corral was also equipped with a Colt M4 rifle¹¹, loaded with one cartridge in the chamber and 27 cartridges in the magazine.¹² The cartridges were head-stamped, "WIN USA .556." Detective Corral's equipment also included a 40-mm Lewis Machine Tool less-lethal launcher.

At approximately 9:00 a.m., Detective Corral attended a briefing at the Hesperia Sheriff's Station. Detective Corral was assigned to assist SED Squad Three with a fugitive apprehension case. The case agent, Deputy Pollick, had been investigating and attempting to apprehend David Perez for an attempted murder warrant on a case out of Barstow. Perez had been on the run since the date of the attempted murder. Perez was considered armed and dangerous.¹³ During the briefing, the team reviewed the facts surrounding the attempted murder case and Perez's criminal history. Additionally, Detective Corral had prior contact with Perez in 2016 when he investigated Perez for an assault with a deadly weapon on a peace officer. Deputy Pollick had information that Perez was at a house in Apple Valley and was expected to go to the Stater Bros.' parking lot on Main Street near 9th Avenue in Hesperia to purchase a gun that day. Surveillance

¹¹ Detective Corral's rifle was processed as evidence after the officer-involved shooting and was found to contain one cartridge in the chamber and 15 cartridges in the magazine.

¹² The magazine had a 30-round capacity. Detective Corral explained that he only loaded his magazine with 28 rounds because loading it to capacity can cause the weapon to malfunction. After loading the magazine into the rifle, Detective Corral chambered a round, leaving 27 rounds in the magazine and one round in the chamber.

¹³ Detective Corral provided the details of the briefing and the assignments given to each member. Those details were largely consistent with the details given by the other SED members.

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units were set up to watch the Apple Valley house and follow Perez when he left the house and headed to the Stater Bros.' parking lot. The team had no information on what type of vehicle Perez would be driving but believed a female would accompany him. Detective Corral could not recall her name but thought her last name was Witness #1. Witness #1 had a criminal history for past use of narcotics but no convictions for violence.

After the briefing, a group discussion was had, and the team assignments were set with Sergeant Michael Sandlin's approval. Detective Corral was assigned to the van team, with Deputy Duncan and Detective Bibeau. They were responsible for taking Perez into custody when he arrived to buy the gun. Detective Corral was assigned the less-lethal launcher and was responsible for deploying less-lethal munitions if the team needed them. The team drove to the Stater Bros.' parking lot. Deputy Duncan was in the driver's seat, Detective Bibeau was in the back portion of the van, and Detective Corral was in the front passenger seat. If Perez was not compliant and a window needed to be broken, Detective Bibeau had the window break. Deputy Duncan was a grenadier and had chemical agents in his gas bag inside the van if required. Deputy Duncan also had a medical kit in his van in case anyone was injured.

In their undercover SBSD vehicles, each member of the SED team set up in strategic positions in the Stater Bros' parking lot for surveillance, awaiting Perez's arrival. The parking lot consisted of a Stater Bros. to the south, a fast-food restaurant and gas station to the north, small businesses and restaurants to the west, and a closed tire shop business to the east. The van team parked close to the closed tire shop in the least populated area to limit any hazards to civilians and allow sufficient space for the other team members to conduct the VCT. While it was the least populated area of the parking lot, there were still people walking and vehicles driving within it. Deputy Duncan parked the van, leaving a parking space on both sides so that Perez could park on either side of the van. Deputy Jeff Henry was in a white Chevy truck, Detective Mondragon was in a silver Chevy Truck, Deputy John Walsh was in a silver Chevy Traverse, and Sergeant Sandlin was in a silver Ford F150 truck. Perez was expected to arrive and pull up next to the van team. Because Perez had previously used his vehicle as a weapon against deputy marshals, they knew that if their containment left Perez any room to maneuver his vehicle, he could again hurt a law enforcement officer and escape capture. Therefore, once Perez parked next to the van, other team members were to conduct the VCT to block Perez's vehicle by making physical contact with the front bumper, rear bumper, and either the driver's or front passenger door, depending upon which side was open.

While the team conducted surveillance in the parking lot, Deputy Pollick kept the team up to date with the information he received regarding Perez. Deputy Pollick advised that, based on the ongoing surveillance at the Apple Valley house, Perez was not there. Not knowing where Perez was or what vehicle he'd be driving caused Detective Corral concern. Deputy Pollick told the team that Perez would be arriving soon and that Perez had been told to look for their van. Perez arrived at the parking lot in a black Toyota Avalon. The Avalon traveled east through the parking lot toward the van team. The van

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team was sitting inside the van with the sunshade up in the windshield, but Detective Corral could see through a crack on the passenger side of the windshield. Detective Corral saw the Avalon coming their way but lost visual because of the sunshade. Deputy Duncan was sitting in the driver's seat and confirmed that the Avalon was coming their way. Deputy Duncan called out the license plate, confirmed Perez was sitting in the passenger seat, and that a female was driving. The Avalon came straight toward the van, passed by the van, made a U-turn, and then parked right next to the driver's side of the van. The distance between the van and the Avalon was about two feet. Both the van and the Avalon were facing west in the parking lot. Once the Avalon parked beside the van, Deputy Duncan positively identified Perez in the passenger seat. Detective Corral was able to peek over and was also able to identify Perez positively. Detective Corral alerted the other team members over the radio, and the team started the countdown to ensure each deputy contacted Perez's car simultaneously.

At this point, Detective Corral did not believe Perez knew they were law enforcement. The goal was to take Perez by surprise. Deputy Henry and Detective Mondragon began moving their trucks to block Perez's car. Deputy Henry drove his truck to the front of the Avalon while Detective Mondragon drove his truck to the Avalon's rear to contain it. When Deputy Henry's truck made contact with the front of the Avalon, it pushed the Avalon back about three to four feet, so the front of the van was no longer even with the front end of the Avalon. This provided Deputy Duncan with "a little bit of room to be able to get out of his van safely and not be in a position to where he's stuck within arm's reach of Perez." Perez's window was closed and had window tint, but Detective Corral was still able to see Perez. Deputy Walsh drove to the driver's side to block the door where the female was sitting. When the countdown reached "one," Detective Corral got out of the van with the 40 mm less-lethal launcher. As he exited, Detective Corral heard the police sirens sound.

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Detective Corral believed that at this point, Perez knew they were law enforcement because they all wore their SBSB vests, verbally identified themselves as the Sheriff's Department, and the undercover SED vehicles' lights and sirens were activated.

Detective Corral ran around the front of the van. Deputy Duncan identified them as the Sheriff's Department and told Perez, "Let me see your hands, let me see your hands." As Detective Corral got to Deputy Duncan's driver's door and the front quarter panel of the Avalon, he saw Perez in the passenger seat and the female in the driver's seat. The deputies yelled at Perez to show his hands, but he did not comply. Not being able to see Perez's hands caused Detective Corral to fear that Perez had a gun.

Perez continued refusing to comply with their commands. Sergeant Sandlin requested a "less-lethal for the window." They often use the less-lethal blunt impact projectile to break a window when needed, and the goal was to break the window so they could safely get Perez out of the car. Detective Mondragon, who was positioned at the rear portion of the van and the Avalon, deployed a less-lethal round at the passenger window, but it did not break the window. Detective Corral moved to the van's rear to better visualize Perez in the passenger window. Detective Mondragon and Sergeant Sandlin were near the back of the van. Sergeant Sandlin requested Detective Bibeau to use the window break to break the window, and Detective Bibeau did so. Detective Sandlin yelled, "David, show me your hands." Perez yelled back, "Fuck you." At that point, it was clear that Perez knew they were law enforcement and that he was surrounded, yet Perez still refused to comply with any of their commands to show his hands and to get out of the car.

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When Detective Corral moved to the back of the van, he heard the female in the driver's seat screaming. Detective Corral realized the situation changed from a high-risk takedown to a potential hostage situation. They told Perez to let her go, but Perez told them, "She's not going anywhere."

Sergeant Sandlin yelled that Perez had something in his hand. As Detective Corral tried to see what Perez had, Perez pulled a machete out of a sheath. The machete was red and looked like a sword about two feet long. Perez knew they were law enforcement and armed himself with a knife. At this point, Detective Corral knew the female sitting next to Perez had become a hostage. Detective Corral feared for her safety and knew they needed to get her out of the car. Detective Corral heard the Avalon's engine start revving and knew Perez was trying to escape. Detective Corral saw that the female's hands were up in the air, so he didn't believe she was the one trying to move the vehicle. Detective Corral believed Perez was stepping on the accelerator.

Sergeant Sandlin deployed a 40-mm BIP round at Perez, hitting him in the right shoulder. Detective Corral deployed a 40-mm BIP round, which also struck Perez in the right shoulder. All the while, they kept ordering Perez, "Show us your hands, show us your hands, get out of the car, get out of the car!" Perez continued to ignore their commands, climbed over the center console, and got into the driver's seat. Detective Corral deployed another 40-mm BIP round at Perez, immediately backed up to the van, reloaded the next BIP round, and ran to deploy another round at Perez. The BIP round struck Perez in the right shoulder again, but Perez still refused to comply. Detective Corral was out of 40-mm BIP round munitions.

Detective Corral knew at this point that the BIP rounds were "ineffective" and that Perez would not comply with their commands. Detective Corral ran to the van's passenger side and stowed his 40-mm launcher inside the van. Detective Corral grabbed his Colt M4 rifle from the rear passenger seat of the van. Detective Corral started seeing smoke. The smoke was coming from the front end of the Avalon. Perez was spinning the tires on the Avalon, creating so much smoke that Detective Corral lost sight of the window and could not see what was happening inside the Avalon. Detective Corral had last seen Perez in the Avalon's driver's seat. Detective Corral knew they needed to keep their vehicles in contact with the Avalon to make sure Perez could not gain any momentum with his car to escape the vehicle containment. Detective Corral could not see where Deputy Duncan or Deputy Henry were. Detective Corral last saw Deputy Duncan at the front of the Avalon, so he knew that if Perez gained any momentum, then Deputy Duncan could be in the path of the Avalon. Detective Corral yelled for Deputy Duncan to deploy gas. Because of all the smoke, Detective Corral knew this would be difficult. The smoke was coming from the spinning tires and was traveling north.

Detective Mondragon was in the driver's seat of his truck, applying pressure to the back of the Avalon to make sure Perez could not escape. Detective Corral told Detective Mondragon they were going to deploy gas and asked him for a "rat trap," a handheld

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spike strip. Detective Corral knew the back tires on the Avalon were not spinning and thought that if he could set up the spike strip before Perez got away, it would help the deputies in the event of a pursuit. Detective Corral never retrieved the spike strip and instead moved to the next vehicle, Sergeant Sandlin's Ford F150. Detective Corral reached the driver's side of Sergeant Sandlin's truck. Sergeant Sandlin was grabbing additional less-lethal munitions. Detective Corral told Sergeant Sandlin they would deploy gas, and he acknowledged him. Detective Corral moved to Deputy Walsh's vehicle. Deputy Walsh was standing at the driver's side door of his car near the driver's side of the Avalon. Detective Corral saw Deputy Duncan and Detective Bibeau on the passenger side of the Avalon and told Deputy Duncan to deploy the gas. Deputy Duncan yelled, "Gas, gas, gas," to let everyone know he was deploying gas. Deputy Duncan threw the gas into the Avalon, and then Detective Corral saw the gas can fly right back out. Detective Corral knew Perez was doing everything he could to escape, including causing himself physical injury. The gas cans get hot quickly, yet Perez was willing to grab the gas can and throw it back out of the car. Perez was in the driver's seat, still spinning the tires and creating smoke.¹⁴ The Avalon's tires were spinning, and the car "was also moving a little bit forward" and a "little bit backward."

Sergeant Sandlin came to where Deputy Walsh and Detective Corral were near the driver's side of the Avalon. Sergeant Sandlin deployed another less-lethal round at Perez. Sergeant Sandlin then returned to his truck, and Detective Corral saw Perez start making his way to the passenger seat of the Avalon. Detective Corral yelled, "He's getting out, he's getting out!" Detective Corral saw Perez at the passenger window of the Avalon.¹⁵ Detective Corral looked to the left, saw the van's driver's door was open, and saw Deputy Duncan's rifle inside the van. Perez began to run, and Detective Corral yelled, "He's running!" When Perez started to run, he shifted to the right like he was going to run toward the smoke screen he had created, but then Perez immediately darted left, right toward the van's open driver's door. Perez was armed with a machete, and Detective Corral knew that now Perez had access to Deputy Duncan's loaded fully automatic AR-15 rifle¹⁶ sitting near the van's driver's seat. Based on his training and experience, Detective Corral believed Deputy Duncan's rifle was loaded. Detective Corral believed Perez was familiar with how to use the AR-15 rifle because Perez had previously possessed a rifle based on the AR platform. In possession of that rifle, Perez was a danger to law enforcement and "the public within the area." Perez had demonstrated that he "was willing to do whatever he needed to do to either hurt us or get away."

Detective Corral ran toward the front of the Avalon and jumped onto the Avalon's hood as Perez got into the van's driver's seat. By getting into the SED van, not only had Perez armed himself with a fully automatic rifle, but he had also armed himself with the SED

¹⁴ Detective Bibeau reported that the "smoke was so thick" that he could not see the Avalon, "or even the outline of it," even though he was only two to three feet away from the Avalon's passenger side. The smoke also caused Detective Bibeau to lose sight of his partners.

¹⁵ According to Deputy Walsh, Perez climbed out of the Avalon's passenger window.

¹⁶ Deputy Duncan's "AR-15 rifle" was a Geissele M4, 5.56 mm rifle, essentially the military version of the AR-15 with the ability to fire in full-auto.

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van, which could be a weapon based on Perez's history of using vehicles as a weapon against law enforcement. From his position on top of the Avalon's hood, Detective Corral saw Perez in the van's driver's seat with his body turned to the right, reaching with his right hand toward the fully automatic rifle while shutting the van door with his left hand.

Detective Corral was "afraid for every one of [his] teammates at that point, not knowing where they were at" "or whether they were in the van with [Perez] or not." Fearing that Perez was going to use the vehicle and the rifle as weapons against the deputies and the public, Detective Corral turned his Colt M4 rifle from safe to fire and, from his position on the top of the Avalon's hood,¹⁷ fired three rounds in quick succession toward the driver's window of the van. Detective Corral's point of aim was for Perez's "center mass." To that end, Detective Corral knew he had to aim close to the B pillar of the van, at a downward angle rather than straight through the van where the rounds could potentially hurt one of his partners or a member of the public. Because Detective Corral was shooting at glass, he knew his first rounds "could potentially have deviated from the glass." Immediately after the first three rounds, Detective Corral acquired his reticle using the sight on his rifle. Through the initial hole created by the first three bullets, Detective Corral could see Perez's clothing moving. Detective Corral followed up with eight shots toward the void the first three rounds created. When Detective Corral began firing, he was on the hood, about six yards away. Detective Corral moved closer to the van as he fired, moving from the hood of the car to the ground as he fired. Detective Corral canted his rifle downward to ensure the trajectory of the bullets would still be at a downward angle. When Detective Corral stopped firing, he was within arm's reach of the van's driver door. Detective Corral didn't want Perez to be able to reach for his gun and believed there was no longer a threat, so he stopped shooting.

When Detective Corral stopped shooting, he heard additional gunfire. Detective Corral immediately backed up toward the driver's side rear tire of the van, thinking there was still a threat, but couldn't see it. As Detective Corral backed, he heard a volley of five to seven gunshots. The gunfire sounded like it was from a handgun, similar to their department-issued Kimber 1911 handguns, and sounded like it came from outside the van. Detective Corral yelled, "Stop firing, stop firing, stop firing," to let everyone know he was on the other side of the van. The firing stopped, and Detective Corral immediately went to the van's driver's door, opened it up, grabbed Perez's left shoulder, and pulled him out of the van. Perez was hunched over with both arms wrapped around the machete. Detective Bibeau approached the van's driver's door and said he would go for the machete. Detective Corral held his rifle as lethal cover to protect Detective Bibeau as he pulled the blade from Perez.

Sergeant Sandlin requested medical aid. Deputy Duncan made his way from the van's passenger side to the driver's side and started attending to Perez. Sergeant Sandlin then advised that the Avalon was on fire. Concerned about all the SED vehicles being in close proximity to the fire, Detective Corral told his partners to move their vehicles back. Deputy

¹⁷ Detective Corral estimated his elevated platform on top of the hood was 36 to 40 inches above the ground.

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Henry, Detective Mondragon, and Deputy Walsh moved their vehicles away from the Avalon. Detective Corral got into the van and moved it about 15 feet forward. After moving the van, Detective Corral heard the Avalon's engine still running. Detective Corral ran over to the driver's side of the Avalon, put the transmission into park because it was still in drive, and then turned off the ignition. Deputy Henry and Sergeant Sandlin used fire extinguishers to put out the fire. Detective Corral assisted by grabbing the fire extinguisher from Sergeant Sandlin and continued using the fire extinguisher until the flames were completely out. The flames ignited again, and Detective Corral used the fire extinguisher again to extinguish the flames. By then, the fire department medics had arrived and provided medical aid to Perez.

On January 13, 2021, at approximately 9:53 a.m., **Deputy Adam Duncan** was interviewed by Detectives Gerad Laing and Simon DeMuri of the San Bernardino County Sheriff's Department.

Deputy Duncan was employed by the San Bernardino County Sheriff's Department and was assigned to the San Bernardino County Sheriff's Department Specialized Enforcement Division (SED).

On December 28, 2020, Deputy Duncan was on duty. Deputy Duncan drove an unmarked Sheriff's Department silver Dodge Caravan. Deputy Duncan's call sign was 61 Zebra 31. Deputy Duncan's SBSD vest was equipped with a small black pry bar, a handheld police radio, a microphone that ran to the top of the left shoulder, an olive drab green rifle magazine holder with two loaded rifle magazines, handcuffs, a rapid containment baton, and a Taser. Deputy Duncan's tactical belt held a digital belt recorder, a knife, handcuffs, a medical kit, one rifle magazine, and one pistol magazine. Deputy Duncan wore a black drop-down holster containing his department-issued Kimber 1911 .45 caliber handgun loaded with one cartridge in the chamber and eight cartridges in the magazine.¹⁸ The cartridges were head stamped "WIN 45 AUTO." Deputy Duncan carried three additional pistol magazines, each containing eight cartridges. Each cartridge was head stamped "WIN 45 AUTO." Deputy Duncan's duty rifle was a 5.56 mm, Geissele M4, loaded with 27 rounds in the magazine and one in the chamber. Deputy Duncan's rifle had full-automatic firing capability. Deputy Duncan's belt recorder was activated during the incident.

At approximately 9:00 a.m., Deputy Duncan attended a briefing with other members of the SED team at the Hesperia Sheriff's Station.¹⁹ Deputy Pollick reviewed the operational plan for the apprehension of Perez with the team. Deputy Pollick provided each team member with Perez's criminal history, booking photographs, and his driver's license photo. Because of Perez's violent history of violence against law enforcement and civilians, the team was to conduct a vehicle containment technique (VCT) with their

¹⁸ Deputy Duncan's handgun was processed as evidence after the officer-involved shooting and was found to contain one cartridge in the chamber and none in the magazine.

¹⁹ Deputy Duncan provided the details of the briefing. Those details were largely consistent with the details given by the other SED members.

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vehicles, making physical contact against Perez's vehicle to ensure he would not be able to use the vehicle as a weapon to avoid capture. Once that was accomplished, the team would give Perez commands and would ask him to exit the vehicle where they could safely apprehend him. Deputy Pollick assigned duties to each team member. Deputy Henry, with his Chevy Silverado truck, and Detective Eugene Mondragon, with his unmarked Chevy Silverado truck, were assigned to conduct the VCT to block Perez's vehicle from the front and the rear. Deputy Adam Duncan was assigned to be part of the "contact team" along with Detectives Michael Corral and Scott Bibeau. The contact team would be positioned inside Deputy Duncan's van in the parking lot at Stater Bros. The objective was to contain Perez inside his vehicle so the contact team could safely apprehend Perez and take him into custody. Because Deputy Duncan was certified as an EMT, he was also tasked with being the medic in case of any injuries to officers, the suspect, or civilians. Deputy Pollick and Deputy David Moore were assigned as grenadiers and could deploy chemical munitions if Perez barricaded himself. Deputy Duncan was also a grenadier and could deploy chemical munitions if needed. The team planned to use a baffled munition with 20 grams of CS gas (tear gas) because it could safely be inserted into residences and vehicles without catching fire.

After the briefing, Deputy Duncan drove his unmarked silver Dodge Caravan to the Stater Bros.' parking lot with Detectives Corral and Bibeau as passengers. Detective Corral rode in the front passenger seat, and Detective Bibeau rode in the back passenger side seat. As they arrived at the parking lot, Deputy Duncan was mindful of the vehicles around them, paying attention just in case Perez was already there. Deputy Duncan drove around the parking lot and chose a location on the northeast side near a closed business, away from other vehicles and civilians. Deputy Duncan parked facing west, two stalls south of an electrical box, so that Perez could pull up and park on either the passenger or driver's side of the van. Other SED team members were set up in positions nearby in order to conduct the VCT. Deputy Duncan estimated they sat in the parking lot conducting surveillance for over three hours, watching for Perez to arrive.

At about 1:23 p.m., Deputy Duncan saw a black Toyota Avalon approaching from the west, heading east through the parking lot. The Avalon drove straight through parking stalls, which Deputy Duncan thought was "kind of weird." Deputy Duncan provided the license plate number to the team.²⁰ The Avalon drove toward Deputy Duncan's van. Deputy Duncan could see into the Avalon through the front windshield as it got closer. Deputy Duncan was able to positively identify Perez, who was seated in the front passenger seat. A Hispanic female adult was in the driver's seat. At about the same time, Deputy Pollick confirmed that their suspect, Perez, was in the black Toyota Avalon. The driver of the Avalon drove past Deputy Duncan's van, continuing eastbound, made a U-turn, and parked directly beside the driver's side of Deputy Duncan's van, facing the same direction. Deputy Duncan estimated the distance between the driver's side of his van and

²⁰ While conducting surveillance in the parking lot, the team communicated over the police radio via their SWAT channel. Deputy Duncan provided the license plate number to Deputy Curtis, who was assigned to use the computer system to run names and license plates.

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the passenger side of the Avalon was three feet. Because the Avalon was parked so close to the van, Deputy Duncan knew it would be disadvantageous to use his rifle because he would have difficulty manipulating the rifle with the steering wheel in the way when he had to get out of the van quickly. Deputy Duncan staged his rifle between the van's driver's seat and center console, opting to use his handgun if Perez was armed with a weapon. The back of Deputy Duncan's van was equipped with a large lock box for storing firearms and weapons when the SED team was not conducting an active operation; however, given that Perez was known to be violent, Deputy Duncan needed to have his rifle readily available during the operation to apprehend Perez.

Sergeant Sandlin gave the countdown for the VCT, and Deputy Henry and Detective Mondragon drove into position, blocking the Avalon. When Sergeant Sandlin reached "one" in the countdown, Deputy Duncan, Detective Corral, and Detective Bibeau quickly got out of the van to approach Perez so he wouldn't have a chance to run. All three were wearing their SBSV vests, clearly identifying them as law enforcement when they exited the van. Detectives Corral and Bibeau exited on the passenger side and maneuvered to the van's rear. Deputy Duncan exited the van from the driver's door, and, leaving the driver door open,²¹ yelled at Perez, "Do not fucking move! Do not fucking move! Sheriff's Department, don't move!" Deputy Duncan gave the commands in this way in order to take Perez by surprise because Perez had proved to be "real crafty" by previously identifying the Marshall's task force vehicles and evading capture. Deputy Duncan stood at the Avalon's right front passenger door with his handgun pointed at Perez as he gave the commands. Perez's window was rolled up, but Deputy Duncan believed Perez heard him because Perez looked at him and yelled out, "Fuck you," while Deputy Duncan gave the commands.

Deputy Duncan saw Perez was very agitated and was constantly looking around for an avenue of escape. Deputy Duncan ordered Perez to show his hands. Detectives Corral and Bibeau also gave commands to Perez, telling him to show his hands, calling him by his first name, and telling him to give up. Perez hit his hands against the vehicle's ceiling in an aggressive manner. Perez continued yelling, but Deputy Duncan could not make out what exactly Perez was saying. The female began accelerating the Avalon's engine.²² Deputy Duncan heard the engine revving and the tires screeching, but the car did not move because they had it contained.

Deputy Duncan did not like his position between his van and the Avalon because of how close he was to the Avalon and because the female was spinning the tires. Not wanting to get stuck between his van and the Avalon, Deputy Duncan repositioned near the front of the Avalon. From there, Deputy Duncan had a better view of the car's interior through the windshield. One of Deputy Duncan's partners attempted to break the Avalon's front passenger window by deploying a blunt impact projectile, but it was unsuccessful. Another team member utilized a "window break" to break the window. After the window

²¹ Deputy Duncan did not shut the driver's door to the SED van at any point before the officer-involved shooting.

²² The female ultimately stopped spinning the tires and put her hands up in the air as directed.

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was broken, one of the team members deployed a blunt impact projectile, striking Perez. The pain caused by a blunt impact projectile was ordinarily sufficient to gain compliance with a subject, forcing them to surrender. However, Perez did no such thing. Deputy Duncan realized that Perez's mindset was such that he "does not want to give up; he is not gonna peacefully surrender to law enforcement."

Perez turned his back toward Deputy Duncan and reached into the back seat. Deputy Duncan could not see what Perez was reaching for and alerted his partners, who were positioned near the van's rear. Deputy Duncan kept his eyes on Perez and saw Perez grab a long item inside a black cloth sheet. Perez then removed an approximate foot-and-a-half-long sword or machete-type weapon from the sheet. Deputy Duncan alerted his partners that Perez had armed himself with a weapon. Perez held the machete with "a very firm grip" about a foot away from his body and "kept turning side to side as if he was trying to fend us off." Perez started moving toward the female with the weapon. Fearing Perez would take her hostage, Deputy Duncan told his partners, "We need to get that female out of the vehicle." Deputy John Walsh had his undercover vehicle positioned at the driver's door and successfully rescued her by having her crawl through the driver's window and onto his vehicle. The female ran away toward a local business.

Perez moved into the driver's seat and accelerated the car's engine, spinning the tires. Deputy Duncan heard the "RPMs in the vehicle start to redline" and the "tires screeching." The spinning tires created "a lot of smoke," the smoke was "billowing," and "rubber was getting torn off" of the tires.

Detective Corral told Deputy Duncan, "Hey, we need to implement gas." Pursuant to their plan, they were to implement gas into the vehicle if Perez did not want to get out of it. The chemical munitions were inside a bag in the rear cabin area of Deputy Duncan's van. Neither Deputy Pollick nor Deputy Moore, the assigned grenadiers, were on scene,²³ so Deputy Duncan went from the driver's side of his van toward the rear and then around to the passenger side to remove the baffled chemical munitions. Deputy Duncan opened the sliding door on the van's passenger side and grabbed a gas canister. Before deploying the gas canister through the Avalon's front passenger window, Deputy Duncan announced to his partners that he was going to deploy gas by yelling, "Gas, gas, gas!" The tremendous amount of smoke from the spinning tires obscured Deputy Duncan's vision, so he waited until the smoke dissipated. Detective Corral provided lethal cover for Deputy Duncan in case Perez exited the vehicle still armed with the machete. Deputy Duncan used his right hand to deploy the gas canister into the car through the Avalon's broken passenger side window and backed away from the vehicle. Perez grabbed the gas canister and tossed it back out of the window. Deputy Duncan smelled the chemical munitions as the canister passed by his face and heard it hit somewhere behind him. Deputy Duncan told his partners, "Hey, he threw it out."

²³ Deputy Pollick was elsewhere conducting an investigation related to the case, and Deputy Moore was conducting surveillance at a house where they believed Perez to be.

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Deputy Duncan returned to the passenger side of his van to grab another gas canister. Deputy Duncan grabbed the bag of gas canisters from the rear cabin area of his van and moved it to the front passenger seat. Deputy Duncan planned to have one of his partners break out the Avalon's rear window so he could place the canister in the back seat where Perez could not grab it, forcing Perez to exit the vehicle so they could safely apprehend him. As Deputy Duncan was positioned at the van's open front passenger door, about to retrieve the second gas canister, he heard one of his partners²⁴ yell with a sense of urgency, "He's out, he's out, he's out," referring to Perez. Deputy Duncan estimated fewer than five seconds had elapsed from the time Perez tossed the canister out of the Avalon until his partner yelled, "He's out, he's out, he's out!"

Deputy Duncan scanned the area, looking for Perez but could not see him. There was still so much smoke in the area, including the van's interior, that as Deputy Duncan stood at the front passenger door to his van, he could not see anything in front of him beyond the van's front passenger and rear passenger seats.²⁵ Deputy Duncan could not see his partners and listened for them to give Perez's direction of travel. Unable to see past the smoke screen and believing Perez was still armed with the machete, Deputy Duncan feared for the safety of his partners and nearby civilians, as well as his own. Deputy Duncan looked to his left, right, and back behind him, trying to get a visual of Perez and his partners, but he did not see them.

Deputy Duncan heard 10 to 12 gunshots but did not know who was shooting, whether it was one of his partners or Perez. The gunshots started less than two seconds after his partner yelled, "He's out, he's out, he's out!" The smoke dissipated inside the van, and Deputy Duncan found himself staring right at Perez. Perez was seated in the van's driver's seat with his hands on Deputy Duncan's rifle, which Deputy Duncan had previously staged between the driver's seat and the center console. Deputy Duncan's "heart dropped." Perez was seated with his torso turned to the right, his left shoulder canted, and both hands positioned on the rifle. Deputy Duncan did not notice any injuries or see any blood on Perez. Perez was trying to pull the rifle up from between the driver's seat and the center console to arm himself with Deputy Duncan's rifle. Deputy Duncan's rifle, with full-automatic firing capability, was loaded with a magazine and a round in the chamber, ready to fire. Fearing Perez was about to kill him, his partners, or nearby civilians, Deputy Duncan withdrew his pistol from his holster and fired approximately six to eight rounds at Perez, aiming for his chest/thoracic area.

When he fired his handgun, Deputy Duncan was positioned outside the front passenger door, standing in the wedge between the van's body and the door, less than nine feet away from Perez. Deputy Duncan did not have time to give any commands before he fired at Perez. As Deputy Duncan fired the first five rounds, he saw the tension in Perez's hands as Perez continued to grab the buttstock and the top of Deputy Duncan's rifle. To

²⁴ Deputy Duncan was not certain but believed Detective Corral was the one who yelled, "He's out, he's out!"

²⁵ Deputy Walsh reported that the smoke was so great that he lost sight of the van team and all of his other partners, all of whom were located at the rear/passenger side of the van.

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stop Perez, Deputy Duncan continued firing until he saw Perez's head drop forward because he knew he had successfully stopped him. Deputy Duncan believed that Perez would have killed him and his partners if he hadn't shot Perez.

Deputy Duncan advised his partners, "Shots fired, shots fired." One of Deputy Duncan's partners removed Perez from the van's driver's seat and took him into custody. Sergeant Sandlin requested medical aid. Deputy Duncan retrieved his medical bag from the van and went to Perez. Perez's machete was still on the right side of his body as Deputy Duncan assessed him and checked for his pulse. Perez still had a pulse. Deputy Duncan started cutting Perez's clothing to remove them to expose his wounds. Perez had a gunshot wound to the left groin area that was not actively bleeding. Deputy Duncan continued his assessment, cutting Perez's shirt, and saw gunshot wounds to Perez's right armpit. Deputy Duncan also saw gunshot wounds to Perez's left armpit area just below the shoulder that were actively bleeding and applied a tourniquet. Deputy Duncan applied occlusive dressings to Perez's right thoracic chest and directed Detective Bibeau to apply a tourniquet to Perez's left leg. Deputy Pollick provided respirations to Perez with a bag valve mask. Deputy Duncan believed Deputy Pollick used a pulse oximeter to check Perez's pulse, respiration, and oxygen levels. While they rendered medical aid to Perez, a fire started in the Avalon. Other team members moved the SED cars away from the Avalon and extinguished the fire while Deputy Duncan continued rendering aid to Perez. Medical aid arrived approximately two minutes later, and the deputies relinquished medical care to the paramedics.

STATEMENTS BY CIVILIAN WITNESSES²⁶

On December 28, 2020, at approximately 7:06 p.m., **Witness #1** was interviewed by Detectives James Tebbetts and Gerad Laing of the San Bernardino County Sheriff's Department.

Witness #1 lived at a residence located in Apple Valley with several roommates and her eleven-year-old son. The father of Witness #1's son was the brother of David Perez. In June 2020, Witness #1 was introduced to David Perez by her friend. The meeting between Witness #1 and Perez was brief, and they went their separate ways. Thereafter, Witness #1 and Perez exchanged messages via Facebook. Perez called Witness #1 a few times over the course of six months. Their conversations were short. Perez mostly spoke with Witness #1's son (his nephew) and asked him how he was doing.

On December 27, 2020, Perez contacted Witness #1 and said he wanted to visit her home to see his nephew because he didn't think he would be around much longer. At about 8:00 p.m., when Witness #1 returned home from the store, Perez was at her house. Perez had been dropped off by one of his girlfriends. Perez had a gray backpack with him, which Witness #1 believed contained hygiene products. Perez and Witness #1 smoked methamphetamine together. Perez talked about how he was wanted by the police for the

²⁶ All reports of civilian statements made were reviewed, though not all are summarized here.

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attempted murder of a police officer. Perez told Witness #1 that he “got raided in New Mexico,” and that when he was contacted by the police there, he fled from them. Perez said that during the chase, he “brake checked” one of the police officers, causing the officer’s car to flip. Perez told Witness #1 he was “not gonna go out like that with the cops.” Witness #1 believed Perez was telling her that “he’s not gonna go to jail,” and that “he’s gonna die before he goes to jail.”

At an unknown time, Perez went to bed in Witness #1’s son’s bedroom. Before going to sleep, Witness #1 let Perez use her cell phone and let him keep it through the night. At an unknown time in the late evening, Witness #1’s boyfriend arrived. Witness #1 and her boyfriend stayed up smoking methamphetamine in the garage. Witness #1 went to sleep in the early morning hours at an unknown time, and her boyfriend left.

At about 11:00 a.m., Witness #1 was awoken by Perez. Perez asked her to take him to the Stater Bros.’ parking lot at the 15000 block of Main Street in Hesperia. Witness #1 did not know why Perez wanted to be taken to the parking lot or whom he was meeting there. Witness #1 drove Perez, in her boyfriend’s black 2007 Toyota Avalon, from her residence in Apple Valley to the Stater Bros. in Hesperia. When Witness #1 drove into the parking lot, Perez directed her to park near a silver Dodge Caravan, parked north of Stater Bros., west of the tire shop on the east side. Witness #1 stopped her car beside the driver’s side of the silver Dodge Caravan, facing west. A white truck pulled up to the front of Witness #1’s car. Almost immediately, Perez yelled at Witness #1, “It’s a setup!” Witness #1 was seated in the driver’s seat, and Perez was in the front passenger seat. Witness #1 looked up and saw the white pickup truck stop at her car’s front end. Witness #1 looked at the rearview mirror and saw another vehicle at the rear of her car. To her left, Witness #1 saw an additional vehicle near the driver’s door.

Perez yelled at Witness #1 to go, but her car was blocked in by the other vehicles. Witness #1 told Perez she couldn’t go. Witness #1 was unsure if her car was in drive or in reverse, but she pressed the accelerator to show Perez that she could not move her car because of the other vehicles. Witness #1 looked through the windshield and saw several police officers pointing guns at her and Perez. Witness #1 knew they were police officers because of the firearms they held and the ballistic helmets and vests they wore. Witness #1 believed they were undercover “SWAT” officers. Witness #1 was afraid she would be shot if she reached down or made any sudden movements, so she kept her hands raised so the officers in front of her car could see her hands through the windshield.

Perez continued yelling at Witness #1 to move the car as she raised her hands. Witness #1 heard the officers address Perez as “David,” and heard them say, “Get your hands up,” “Get out,” and “Get out of the car.” Perez refused to comply with the police and said, “he was not going out like that.” Witness #1 did not look at the passenger side of the car where Perez was seated. Witness #1 focused on the police officer before her and made eye contact with him because she didn’t want to get shot. Witness #1 did not know if Perez was armed with any weapons but knew there was a katana sword in the map

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pocket of the front passenger door panel beside Perez’s right side. Witness #1 also had a knife in the glove box but didn’t know if Perez had gotten ahold of it. Witness #1 heard the officers say, “Put the knife down.” Perez tried manipulating the gearshift lever and yelled at Witness #1 to move the vehicle. Perez moved his leg over the center console and used his foot to push the gas pedal.

Witness #1 knew Perez didn’t want to go to jail and that Perez “wasn’t going to let the cops take him.” Witness #1 tried to get out of the car, but Perez got into the driver’s seat beside her, and her knee got pinned against the door. Witness #1 continued trying to get out of the car, but she “felt the car trying to go.” Witness #1 thought she was going to get smashed between the two vehicles. The police officer in the car next to the driver’s door told Witness #1 to get onto the hood of his car. Witness #1 got onto the hood, climbed onto the roof, over the top of the car, and jumped to the ground to escape. Witness #1 heard glass breaking. Witness #1 took off running because she didn’t want to get shot or hit by a stray bullet.

INCIDENT AUDIO AND VIDEO

BELT RECORDING²⁷

Deputy Duncan’s Belt Recording

Deputy Duncan’s belt recorder was activated while he was inside the SED van with Detectives Corral and Bibeau. The deputies alerted one another to multiple vehicles in the parking lot as potential suspect vehicles. At approximately 55:17 minutes, one of the deputies in the SED van said, “Watch out for this black Toyota here.”

- 55:27 An unidentified deputy said, “He’s in that Avalon.” The other deputies acknowledged this.
- 55:27 Deputy Duncan read out loud the license plate number of the Avalon.
- 55:39 A deputy said, “Female driver. Looks like he’s the passenger.”
- 55:48 A deputy said, “They’re gonna be parked on our driver’s side.
- 56:06 Sergeant Sandlin was heard over the radio, counting down from five. Deputy Duncan said, “He’s looking around.”
- 56:14 Deputy Duncan exited the vehicle and yelled, “Don’t you fucking move! Don’t you fucking move!”
- 56:24 Multiple deputies yelled, “Don’t move!” “Hands up!” “Hands up now!”
- 56:30 A deputy asked, “Hey, want to smash the window?” A deputy yelled, “Exit the car now!”
- 56:32 Multiple commands of, “Hands up,” continued. A deputy said, “I can’t see his hands.” Another deputy yelled, “Hands up now!”

²⁷ Belt recordings from all involved deputies were reviewed in their entirety. Due to the close proximity of the deputies to one another, their belt recorders captured substantially the same audio. Only Deputy Duncan’s belt recording will be summarized herein. The summary will cover the events from the point immediately before the contact with Perez and immediately after the incident under review. Times noted are from the media player bar.

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56:36 A deputy yelled, "Less lethal, less lethal!" Wind could be heard in the background. A deputy yelled, "Copy."

56:39 A bang was heard as the BIP round impacted the Avalon.

56:42 A deputy yelled, "Hey, window break now!"

56:44 A deputy yelled, "Window break, window break." Another deputy said, "Stay there."

56:48 A deputy yelled, "Get those hands up, David!" Perez replied, "Fuck that!"

56:50 A deputy yelled, "David, get your hands up." Perez replied, "Fuck that!"

56:53 Hands-up commands continued. A deputy yelled, "Less lethal," and a BIP round impact was heard.

56:56 A female (Witness #1) shrieked. A deputy said, "He's got something in his hands." Another deputy said, "What's he got? What's he got?" A deputy said, "Hit him again, hit him again." Another deputy said, "I can't tell." A deputy exclaimed, "It's a knife!" Multiple deputies yelled, "Hands up!"

57:01 A deputy said, "I've got less lethal. Less lethal! Less lethal!" "Back up!"

57:07 A BIP impact was heard. Witness #1 screamed, "Please, my hands are up!" A deputy yelled, "Get your hands up, David!"

57:09 A deputy yelled, "It's a machete. It's a machete, dude." Witness #1 continued shrieking, in obvious fear.

57:13 Witness #1 said, "My hands are up." A deputy yelled, "Get her out!" Another deputy asked, "Get her out?"

57:15 A deputy yelled, "Leave her alone!" A deputy said, "Hey, if he goes toward her-" and was interrupted by another deputy who yelled, "Less lethal, he's got the machete!"

57:22 Witness #1 continued shrieking and began screaming. The Avalon's engine began revving loudly. Deputy Duncan said, "Hey, hey, hey."

57:27 A deputy yelled, "Less lethal, less lethal!"

57:30 A deputy said, "Move it, move it, get her out, get her out!"

57:34 A deputy yelled, "Less lethal, less lethal!" A BIP impact was heard.

57:42 Deputy Duncan said, "I'm in a bad spot here."

57:46 A BIP impact was heard. The sound of the Avalon's engine revving and tires spinning grew louder, making it difficult to hear the deputies' voices. A deputy was heard asking about getting gas.

57:52 Deputy Duncan said, "Huh? It's in the back of the van."

57:57 The sound of the engine revving and tires squealing faded in the background as Deputy Duncan apparently moved away from the Avalon.

58:08 The sound of the engine revving and the tires spinning on the asphalt grew extremely loud. (This continued until 59:23.)

58:35 Police sirens sounded briefly.

58:49 A deputy yelled, "Hey!" Multiple deputies yelled, but their precise words could not be ascertained due to the noise of the revving engine and spinning tires.²⁸ A deputy yelled, "Ready? Go!" Deputy Duncan replied, "Copy!"

²⁸ Detective Bibeau's belt recording captured Detective Bibeau saying, "I can't see," just before Deputy Duncan yelled, "Gas, gas, gas!"

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59:01 Deputy Duncan yelled, "Gas, gas, gas!"
59:06 Multiple deputies yelled, "He tossed it out," as the sound of the engine revving and spinning tires continued.
59:23 The sound of the engine revving and the tires spinning stopped, and Detective Corral yelled, "Hey, he's out!"
59:27 Deputy Duncan yelled, "Where's he at?"
59:28 Multiple gunshots rang out, faintly at first, followed by loud and rapid gunfire.
59:31 Deputy Duncan yelled, "Ugh!" Eight additional gunshots immediately followed.
59:34 Detective Corral yelled, "Stop, stop," immediately after the gunshots had stopped.
59:36 Deputy Duncan said, "Shots fired, shots fired."
59:45 Sergeant Sandlin yelled, "Let's get medical started right now!"
59:48 Deputy Duncan replied, "Copy. Coming up."
59:59 Deputy Duncan said, "Coming up, coming up."
01:00:06 A deputy said, "Car's on fire, car's on fire."

The remainder of the belt recording captured audio of the deputies as they provided medical aid to Perez, asked for fire extinguishers, and doused the fire.

SURVEILLANCE CAMERA VIDEOS²⁹

STATER BROS.' PARKING LOT

The surveillance camera was affixed to the exterior of the Stater Bros. and faced northeast into the parking lot.



Silver SED van, parked in the lot, waiting for Perez's arrival.

²⁹ The surveillance cameras were far from the scene. Due to the distance, the specific identities of each deputy and the witnesses could not be made by visual observation of the surveillance footage. However, identities have been noted herein based on witness statements regarding the relative positions of the deputies, Perez, and Witness #1, during the incident. For the specific timing of each event, see the belt-recording summary.

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The black Toyota Avalon pulled up beside the SED van.



VCT complete. Note that the position of the Avalon shifted backward, the front end of the Avalon was near the middle of the van.



Witness #1 ran away from the scene.

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Light gray smoke billowed from the Avalon's spinning front tires and quickly obscured the SED van from camera view. The smoke traveled in a northwest direction, directly toward the SED van.



Detective Corral briefly stood on top of Avalon's hood, moved northwest toward the SED van, and then jumped onto the ground on the passenger side of the Avalon. Light gray smoke continued to obscure the van from camera view as a SBSD patrol car arrived on scene.



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Black smoke began billowing from beneath the front end of the Avalon. Deputy Henry backed his truck away from the fire. The relative position between the SED van and the Avalon can be seen.



Deputies began moving the SED van and other SED vehicles away from the fire while Deputy Duncan and others rendered aid to Perez.



Deputies extinguished the fire while Deputy Duncan and others continued rendering aid to Perez.

GAS STATION

The gas station surveillance camera faced southwest toward the parking lot.

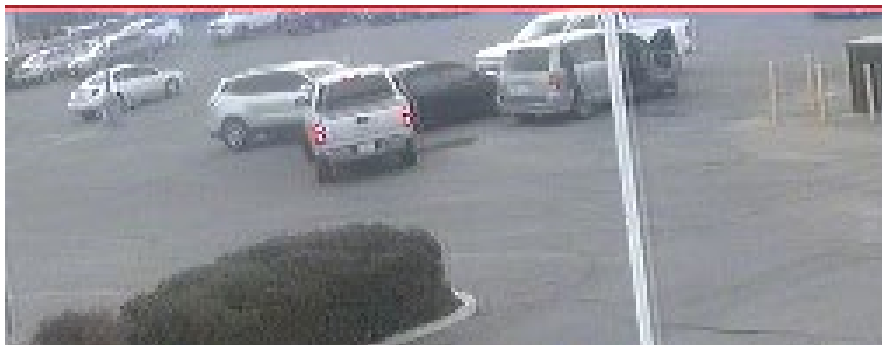
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VCT complete. Note the Avalon's position in relation to the SED van.



Deputies stood near the passenger side of the Avalon. Sergeant Sandlin's SED truck arrived and partially blocked the deputies from camera view.



Witness #1 climbed over the hood and roof of Deputy Walsh's vehicle and ran away from the scene. Deputies ran around Deputy Mondragon's truck as they tried to get Perez to exit the Avalon. Civilian vehicles drove by the scene, slowing down as they passed.



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Sergeant Sandlin's truck moved toward Deputy Walsh's vehicle as light gray smoke began billowing toward the SED van from the Avalon.



Light gray smoke obscured the camera view of the Avalon and the SED van.



Two deputies moved to the passenger side of Deputy Henry's truck as the smoke obscured the camera's view of the Avalon and the SED van.



Smoke continued to billow and obstruct the camera view of the Avalon and the SED van. A marked SBSB patrol unit arrived and stopped just northeast of the scene.



The smoke screen blocked the camera view of all SED vehicles, with the exception of the back half of Sergeant Sandlin's truck.

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The smoke screen traveled northwest, partially revealing the scene, but blocked the Avalon and the SED van from the camera view. A marked SBSD patrol car arrived and stopped on the south side of the scene. Footage of the Stater Bros.' surveillance camera showed the SBSD patrol car arrived when Detective Corral was on top of the Avalon's hood. The smoke blocked Detective Corral from the gas station camera's view.



Dark smoke and flames billowed from beneath the Avalon.

INCIDENT SCENE INVESTIGATION

Detective Malcolm Page of the San Bernardino County Sheriff's Department processed the crime scene at the northwest portion of the Stater Bros.' shopping center parking lot at the 15000 block of Main Street, Hesperia. The parking lot was on the south side of Main Street, between 8th Avenue and 9th Avenue. Prior to the documentation or collection of the evidence, Crime Scene Specialist Natalie Rosales took overall, midrange, and closeup photographs of the scene and the evidence. Evidence locations were measured using a Lieca Disto Handheld laser measuring device.³⁰

Deputy Jeff Henry's white, unmarked Sheriff's Chevrolet Silverado pickup truck was located in the parking lot. Deputy Henry's Silverado was equipped with emergency lights on the front grill and above the front visors. The front of the truck faced east, and the rear of the truck faced west. White and black paint transfer and several dents were visible on the front bumper.

Located in the parking lot, north of Deputy Henry's Silverado, was Deputy Adam Duncan's grey, unmarked Sheriff's Dodge Caravan. The van faced northwest, and multiple bullet entry strikes were located on the front driver's window. The van's front driver's door and both passenger sliding doors were open.

³⁰ For specific distances and locations, see Placard Measurements below.

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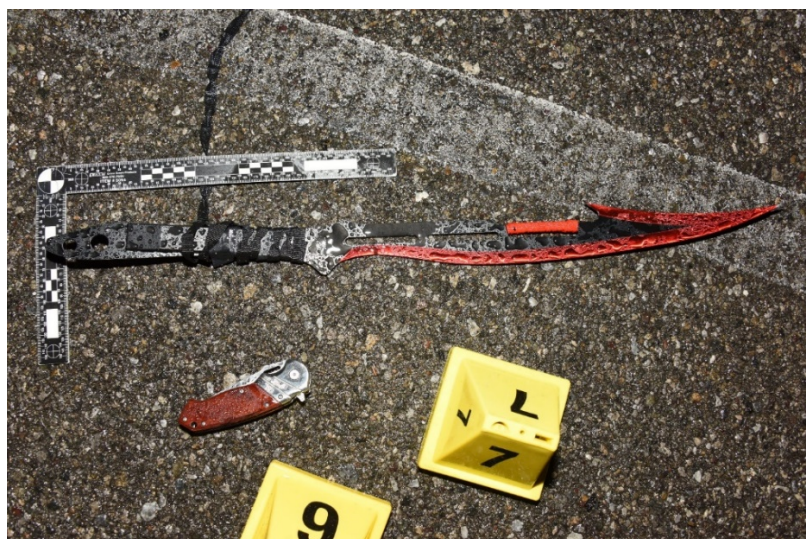
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Located between the driver's seat and the center console of Deputy Duncan's vehicle was a loaded Geissele, 5.56 MM, M-4 rifle. The rifle was loaded with one round in the chamber and 27 additional rounds in the attached magazine.



The body of Perez was located in the parking lot, north of a used fire extinguisher. Perez was supine on the asphalt with his head toward the west and his feet toward the east. Perez's clothes were cut off, and multiple medical apparatuses were affixed to his body.

A closed, wood-handled folding knife was located in the parking lot, southeast of Perez's body. North of the folding knife was a black and red machete. The machete's blade was approximately 26" long, and the handle was wrapped with black tape.



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Located in the parking lot, east of the machete, partially in a parking stall, faced west, was a black, 4-door Toyota Avalon. The front passenger door window was broken, and the front driver's side door was open. Dents and suspected white paint transfer were on the front bumper. Fire damage to the passenger side rocker panel, and yellow powder, similar to the fire extinguisher powder, coated the front, driver's, and passenger's side of the vehicle.



Damage to the right rear bumper, trunk lid, and broken rear passenger side tail lamp of the Avalon was located. Broken red plastic, consistent with the broken taillight, was on the ground below the rear passenger side of the vehicle.

Multiple fired cartridge casings, blunt impact projectiles (BIP), an empty CS gas canister, and a window-breaking tool were located within the crime scene.

DECEDENT

David Perez was pronounced deceased at approximately 1:35 p.m. by San Bernardino County Firefighter Paramedic Jake Gallagher.

AUTOPSY

Witness #2, M.D., Forensic Pathologist for the Riverside County Sheriff's Department, Sheriff-Coroner-Public Administrator Division, conducted the autopsy of David Perez on January 20, 2021, 2021. Witness #2 determined that the cause of death was multiple gunshot wounds and that death occurred within seconds.

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TOXICOLOGY

Chest blood, vitreous, gastric, liver, bile, urine, and brain specimens were collected during the autopsy.

Toxicology results for the blood sample were listed as follows:

- Methamphetamine 5.960 mg/L
- Amphetamine 0.997 mg/L
- Betaphenethylamine Detected
- Ethyl Alcohol Less than .010%
- Morphine Less than 0.005 mg/L
- Oxycodone 0.005 mg/L

Toxicology results for the urine sample were listed as follows:

- Ethyl Alcohol 0.021% (W/V)
- Methamphetamine Greater than 50,000 mg/L
- Amphetamine 11.900 mg/L
- Opiates Detected
- Codeine 0.502 mg/L
- Monacetylmorphine 0.019 mg/L
- Oxycodone 1.040 mg/L
- Oxymorphone Total 0.197 mg/L
- Fentanyl 0.0002 mg/L (0.2 ng/mL)
- Norfentanyl 0.0065 mg/L (6.5 ng/mL)
- 11-Carboxy-Delta-9-THC 0.011 mg/L
- Phenylpropanolamine Detected

CRIMINAL HISTORY

David Perez has a criminal history that includes the following convictions:

2009, 30-03-16 (C) of the New Mexico Criminal Statute, Aggravated Battery with Deadly Weapon on Household Member, a felony.

2012, 422 of the Penal Code, Criminal Threats, San Bernardino County case number FVI1202040, a felony.

2014, 69 of the Penal Code, Resisting a Peace Officer with Threat or Violence, San Bernardino County case number FVI1303607, a felony.

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2015, 664/236, of the Penal Code, Attempted False Imprisonment by Violence, San Bernardino County case number FVI1404221, a felony.

2018, 69 of the Penal Code, Resisting a Peace Officer with Threat or Violence, San Bernardino County case number FVI18002367, a felony.

2020, 496d of the Penal Code, Receiving Stolen Motor Vehicle, San Bernardino County case number FVI20000634, a felony.

BENCH WARRANTS

On August 20, 2020, the San Bernardino County Superior Court issued bench warrants for the following pending criminal cases:

FVI20002043

Penal Code section 211, First Degree Residential Robbery, a felony, with allegations of Penal Code section 213(a)(1)(A), acting in concert with two or more persons and Penal Code section 12022.7(a), personal infliction of great bodily injury; Penal Code section 459, First Degree Burglary, Person Present, a felony, with an allegation under Penal Code section 12022.7(a), personal infliction of great bodily injury, Penal Code section 245 (a)(1), Assault With a Deadly Weapon, a felony, with an allegation under Penal Code section 12022.7(a), personal infliction of great bodily injury, and Penal Code section 136.1(a)(1), Dissuading a Witness From Testifying, a felony. To all charges, an additional allegation under Penal Code section 1170.12(a) through (d) and 667(b) through (i), prior serious or violent felony conviction, was charged.

FVI20002140

Penal Code section 664/187(a), Attempted Willful, Deliberate, and Premeditated Attempted Murder, a felony, with an allegation of Penal Code 12022.7(a) personal infliction of great bodily injury, and an allegation of Penal Code section 12022(b)(1), personal use of a deadly and dangerous weapon, to wit, Ball Bat, and an allegation of Penal Code section 1170.12(a) through (d) and 667 (b) through (i), prior serious or violent felony conviction.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes the person arrested has committed a public offense. (Calif. Penal Code §835a(b).)³¹ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal Code §835a(d).) An officer may

³¹ All references to code sections here pertain to the California Penal Code.

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use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal Code §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest if he knows or should know that he is being arrested. (Penal Code §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing*, *In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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

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

(Penal Code §835a(c)(1).)

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

While the appearance of these principles is new to section 835a in 2020,³² the courts have been defining the constitutional parameters of use of deadly force for many years.

³² Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter "AB-392"]

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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, 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 case law 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 case law pertaining to the use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal Code §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal Code §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal Code §835a(c)(2).)

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;³³

³³ Penal Code §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the

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

(Penal Code §835a(a).)

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

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

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

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

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 is relevant to

Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal Code §835a (a)(3).

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determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

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

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

(Penal Code §835a(e)(2).)

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

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

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

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

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and

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consider 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.)³⁴ 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, and whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

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

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

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.

³⁴ The legislative findings included in Penal Code section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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(*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 Emphasis added.)

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

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

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

ANALYSIS

Determining whether there was justification for a deputy's use of deadly force is factually driven and requires an analysis of the facts and circumstances leading up to the use of force. In the morning hours of December 28, 2020, deputies with the Sheriff's Specialized Enforcement Division, including Detective Corral and Deputy Duncan, met for a briefing to discuss the planned apprehension of David Perez for multiple bench warrants that had been issued for his arrest. During the briefing, the deputies learned that Perez was wanted for several violent felonies, including attempted murder, home invasion robbery, and assault with a deadly weapon. The team of deputies discussed the underlying facts and circumstances of Perez's alleged involvement in each case for which the bench warrants had been issued. The deputies reviewed Perez's criminal history, which showed a propensity for violence, particularly toward law enforcement. Further, the deputies were briefed about the prior attempted apprehension of Perez by the United States Marshal's Service in New Mexico.

During the briefing, the deputies formulated a plan to ensure the arrest was executed in the safest manner possible. Because Perez had successfully broken free from the prior vehicle containment conducted by the U.S. Marshals Service, the team recognized that their vehicles needed to make physical contact with Perez's car during the vehicle

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containment so that he could not escape. Once Perez's vehicle was contained, the plan was to take Perez into custody using the least amount of force possible.

Pursuant to the plan, the deputies set up surveillance and waited for Perez to arrive. Once Perez arrived at the Stater Bros.' parking lot, the deputies conducted the vehicle containment procedure, successfully locking Perez's vehicle into place. All went according to plan until Perez realized he was trapped in the vehicle containment and that his arrest was imminent. Perez knew he was a wanted man. As soon as Perez realized he was surrounded by law enforcement, he began resisting arrest. Perez's actions dictated the deputies' response and the events that unfolded.

As soon as Perez's Toyota Avalon was contained, Deputy Duncan quickly exited the SED van, leaving his driver's door open. Deputy Duncan stood at the passenger side of the Avalon, only feet away from Perez, who was in the passenger seat. Deputy Duncan advised that they were with the Sheriff's Department and gave Perez loud and clear commands to show his hands. Perez refused to comply. Multiple deputies told Perez to show his hands and to get out of the car. Still, Perez refused. Because Perez refused to follow orders, the deputies progressed to the next step in their plan, breaking the front passenger window of the Avalon so they could better see Perez, ensure he heard their commands, and safely get him out of the vehicle.

The deputies continued their commands, addressing Perez by his first name and telling him to show his hands and get out of the car. Perez refused. Perez cursed at the deputies, making it clear that he had no intention of following their commands. Because of Perez's continued defiance, the deputies deployed less-lethal BIP rounds to force Perez into complying. The BIP rounds struck Perez, yet he still refused to comply. Perez then armed himself with a large machete. The belt recordings reveal that Perez armed himself with the machete only 42 seconds³⁵ after Deputy Duncan's first command to Perez. As Perez moved toward Witness #1 with the machete, the deputies justifiably feared for her safety. Perez's actions forced the deputies to shift their focus to Witness #1 to get her out of the vehicle safely. While Witness #1 tried to escape, Perez swung his left leg over the center console and began stepping on the accelerator to break free of the vehicle containment. The belt recordings captured the sound of the Avalon's engine loudly revving as Witness #1 shrieked and screamed. At this point, only a minute and 14 seconds had elapsed.

As soon as Witness #1 escaped, Perez got into the driver's seat of the Avalon. Perez floored the gas pedal, redlining the engine as he moved the car's gear shifter from drive to reverse. Locked in place by the deputies' heavy, full-sized trucks, the Avalon's tires spun against the asphalt, and smoke began to billow. The belt recordings captured the reverberating sound of the Avalon's engine revving and the tires rapidly spinning against the ground. The engine and the tires created so much noise that even though the deputies yelled, their voices were difficult to hear on the belt recordings. The tires turned at breakneck speed as Perez tried to free his car. Deputy Henry and Deputy Mondragon,

³⁵ Further references to times herein are based on the belt recordings.

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positioned at the front and back of the Avalon, felt pressure against their trucks as Perez attempted to gain enough momentum to break free. As Deputy Henry and Deputy Mondragon accelerated their trucks against the Avalon to prevent his escape, the other deputies continued their efforts to gain Perez's compliance. Additional BIP rounds struck Perez, but he still refused to comply with the deputies' commands.

Perez continued accelerating the car's engine, spinning the tires so rapidly that they began to disintegrate, throwing off bits of rubber and creating so much smoke that it obscured the deputies' ability to see Perez and one another. The dense smoke drifted northwest toward the SED van, surrounding it and completely blocking it from the surveillance cameras' view.

As Perez continued trying to break his car free of the vehicle containment, Deputy Duncan ran around the rear of the SED van to the passenger side to grab the chemical munitions. The next step in their plan was to deploy CS gas into the Avalon to force Perez to exit. As Deputy Duncan approached the passenger side window of the Avalon to deploy the CS gas into the car, Detective Corral stood near the front driver's side of the Avalon with his duty rifle to provide Deputy Duncan with lethal coverage. Deputy Duncan tossed the gas canister into the Avalon, but Perez quickly grabbed it and tossed it out of the vehicle. Deputy Duncan ran back to the SED van to grab another gas canister.

Detective Corral's Use of Deadly Force

Based on his training and experience, Detective Corral knew that CS gas canisters get hot quickly. So, when he saw the gas canister fly back out of the Avalon, Detective Corral knew Perez was doing everything he could to escape, including causing himself physical injury. Perez was still in the driver's seat, spinning the tires and creating smoke, when he tossed the gas canister out of the car. The dense smoke billowing from the Avalon's spinning tires drifted northwest away from Detective Corral, who was south of the Avalon at its front driver's side. While Deputy Duncan returned to the SED van to grab another gas canister, Sergeant Sandlin deployed another BIP round at Perez. Sergeant Sandlin then returned to his truck parked behind the Avalon.

Detective Corral saw Perez start making his way to the passenger seat of the Avalon. Detective Corral alerted his partners by yelling, "He's getting out! He's getting out!" As Perez climbed out the front passenger window, Detective Corral looked to his left and saw that the SED van's driver's door was open. Detective Corral saw Deputy Duncan's rifle inside the van, near the driver's seat. Based on his training and experience, Detective Corral knew that Deputy Duncan's fully automatic rifle was loaded. Knowing that Perez had previously possessed a similar rifle, Detective Corral reasonably believed Perez knew how to use it.

When Perez started to run from the Avalon, Detective Corral yelled, "He's running!" Detective Corral saw Perez immediately dart left toward the van's open driver's door.

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Detective Corral jumped onto the Avalon's hood as Perez entered the van. Still armed with the machete, Perez now had access to Deputy Duncan's rifle. In possession of Deputy Duncan's rifle, Detective Corral reasonably believed Perez was a danger to law enforcement and anyone nearby. Perez had already demonstrated that he would do whatever he needed to escape. Based on Perez's history of using a vehicle as a weapon against law enforcement, Detective Corral reasonably viewed the SED van as a weapon in Perez's possession. Getting into the SED van, Perez presented a grave danger to the deputies and the public because he now had access to the weaponry inside the van, the ability to use the van as a weapon, and the means to escape.

Detective Corral stood upon the Avalon's hood, about six yards away from Perez. From this elevated position, Detective Corral saw Perez in the van's driver's seat, turning his body to the right, reaching with his right hand toward Deputy Duncan's fully automatic rifle while shutting the van door with his left hand. Fearing that Perez was about to use the van and the rifle as weapons against the deputies and the public, Detective Corral fired three rounds in quick succession from his rifle at the driver's window of the van to stop Perez. Detective Corral's point of aim was for Perez's center of mass. Knowing that his rounds could have potentially deviated from the glass, Detective Corral immediately looked through his rifle's sights and saw Perez's clothing moving. Detective Corral fired eight more rounds toward the hole his initial bullets had created in the glass. While firing his rifle, Detective Corral continued moving closer to the van, moving from the hood of the Avalon to the ground. When Detective Corral was within arm's reach of the van's driver's door, he stopped firing. Detective Corral did not want Perez to be able to reach for his rifle and believed there was longer a threat.

Deputy Duncan's Use of Deadly Force

Having returned to the passenger side of the SED van to obtain another CS gas canister, Deputy Duncan was standing at the van's open front passenger door when he heard one of his partners yell with a sense of urgency, "He's out, he's out, he's out!" Seconds later, Deputy Duncan can be heard on the belt recording yelling, "Where's he at? Deputy Duncan knew his partner was referring to Perez, so he scanned the area, looking for Perez but could not see him. Positioned at the van's front passenger door, Deputy Duncan faced south. The van and the Avalon were parked beside each other, with the van north of the Avalon. The front end of the van and the front end of the Avalon were slightly offset so that the van sat north and slightly west of the Avalon. As revealed by the surveillance videos, the smoke from the Avalon's spinning tires traveled northwest directly toward the SED van. With this, it is evident that the smoke drifted into the SED van through its open driver's door, filling the cabin. Deputy Duncan explained that there was still so much smoke in the area, including the van's interior, that as he stood at the open front passenger door to his van, he could not see anything beyond the van's front passenger and rear passenger seats. The surveillance video footage corroborates the vast amount of smoke described by Deputy Duncan and his partners at the scene. The SED van was

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so completely shrouded in smoke that it was no longer visible in either of the surveillance videos.

Deputy Duncan believed Perez was still armed with the machete. Unable to see past the smoke screen, Deputy Duncan could not see Perez or any of his partners. Deputy Duncan justifiably feared for his safety and the safety of his partners and nearby civilians. Perez had shown that he was willing to do whatever it took to escape, and with Perez out of the car and likely still armed with the machete, it was reasonable for Deputy Duncan to believe that everyone nearby was in danger.

Deputy Duncan heard gunshots as he quickly looked around, trying to get a visual of Perez. The belt recordings reveal that Detective Corral's gunshots began to ring out less than one second after Deputy Duncan yelled, "Where's he at?" Deputy Duncan could not see who was shooting and did not know if the shooting was from one of his partners or Perez. The smoke dissipated inside the van, and Deputy Duncan found himself staring right at Perez. Perez was seated in the van's driver's seat with his hands on Deputy Duncan's loaded rifle. Deputy Duncan saw Perez was trying to pull the rifle from its place between the driver's seat and the center console. Deputy Duncan's "heart dropped." Deputy Duncan's reaction was audible on his belt recording as he yelled out, "Ugh!" and immediately began firing his handgun. Deputy Duncan's belt recording reveals that Deputy Duncan started to fire his gun only three seconds after Detective Corral began firing his rifle. Deputy Duncan fired eight rounds at Perez's chest/thoracic area. While firing at Perez, Deputy Duncan saw Perez's hands tense as he continued grabbing the buttstock and top of Deputy Duncan's rifle. When Deputy Duncan saw Perez's head drop forward, he knew he had successfully stopped Perez, so he stopped firing. Only three seconds after Deputy Duncan began firing, all sounds of gunfire ceased.

Both Detective Corral and Deputy Duncan saw Perez in the van's driver's seat, turning his body to the right. From his position on top of the Avalon's hood and upwind from the smoke, Detective Corral was the first to see Perez. Detective Corral saw Perez reaching toward Deputy Duncan's rifle with his right hand and fired at Perez to stop him. Deputy Duncan, facing into the smoke-filled van, saw Perez just after Detective Corral's gunshots began to ring out. When Deputy Duncan saw Perez, Perez was trying to pull the rifle from between the driver's seat and the center console.

Perez's actions during the entire encounter made it clear that he was willing to do whatever he could to get away. When Perez reached for the rifle, his intentions were undeniable: Perez intended to use the rifle to shoot his way out of being taken into custody. The threat he posed was imminent. Detective Corral and Deputy Duncan both believed that Perez posed an imminent threat to their lives, their partners' lives, and the lives of nearby civilians. Their belief was honest and objectively reasonable.

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CONCLUSION

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

Submitted By:
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303 West Third Street
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Dated:

