



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: February 22, 2024

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Corporal Cory McCarthy
San Bernardino County Sheriff's Department

Deputy David Moore
San Bernardino County Sheriff's Department

Deputy Cristina Olivas
San Bernardino County Sheriff's Department

Deputy Andrew Pollick
San Bernardino County Sheriff's Department

Involved Subject: Albert Ruiz Perez Jr. (Deceased)
Date of Birth **/**/**

Date of Incident: August 29, 2021

Incident location: ***** Zenda Street
Victorville, CA

DA STAR #: 2023-18200

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Bryan Sprague

Report Number#: DR# 172108196 / H# 2021-107

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PREAMBLE

This was a fatal officer involved shooting by deputies from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 172108196 and H# 2021-107.

FACTUAL SUMMARY

On the evening of August 29, 2021, Witness #1 and Albert Perez were inside the garage of her residence at ***** Zenda Street in the City of Victorville. The two argued during which time Perez took out a handgun from a shower bag. Perez put the gun in his right front pant pocket. Witness #1 asked Perez why he would bring a gun to her home. Witness #1 asked Perez to leave the residence, but Perez refused. Witness #1 backed away from Perez, went back inside her home and locked the door. Witness #1 told her mother, Witness #2, who also lived at the residence, to call the police because Perez had a gun. At around 7:26 in the evening, San Bernardino County Sheriff's Department Dispatch received a 9-1-1 call from Witness #2. Witness #2 reported Perez caused a disturbance and was armed with a gun. Witness #1 also spoke with the dispatcher. Witness #1 advised the dispatcher that Perez thought people were after him. Witness #1 stated Perez produced a black handgun and was in the garage.

At around 7:28 in the evening, Deputy Steven Carter, from the San Bernardino County Sheriff's Department Victorville station responded to the location. Deputy Carter located Perez in the garage. Perez was holding a handgun in his right hand. Deputy Carter ordered Perez to drop the weapon, but Perez did not comply. Deputy Carter requested additional deputies respond to the location to assist. Deputies Jeramey Salas, Eshton Smith, Garrett Wolff, Roberto Morales, Julian Mata, and Patrick Guthaus along with Sergeant Nicholas Clark and Sergeant Corey Lafever responded to the call.

Deputies attempted to speak with Perez, but Perez would not communicate with them. Deputy Mata attempted to speak with Perez for over three hours. There was little to no response from Perez. During this time, Perez was seen holding a handgun in his right hand with his finger on the trigger. Deputy Mata continued to negotiate with Perez and tried to convince Perez to put the gun down. Perez would not comply with Deputy Mata's requests.

After several hours of communication with minimal response from Perez, San Bernardino County Sheriff's Department Specialized Enforcement Division (SED) was requested to assist with an armed, barricaded subject in a garage. Deputy Anthony Alcalá, a trained crisis negotiator assigned to SED, was the first to arrive. Sergeant Lucas Gaytan and his team were next to arrive at the location. The team included Corporal Greg Gary, Corporal Cory McCarthy, Deputy David Moore, Deputy Cristina Olivas, Deputy Andrew

Pollick, and Deputy Joshua Stone. At around 9:30, SED relieved the patrol deputies who were positioned at both sides of the open garage.

SED formulated a plan involving less-lethal and lethal coverage. The intended goal was to negotiate a peaceful surrender. At one point during the incident, Perez put his gun down on the ground near a pool table. Perez then slowly stood up and started walking toward the deputies. It appeared that Perez intended to cooperate with the deputies but then Perez suddenly stopped in the middle of the garage.

Sergeant Gaytan gave Perez verbal commands to get down on the ground. Sergeant Gaytan explained to Perez that the deputies needed to detain Perez and search Perez for additional weapons. Perez would not comply with Sergeant Gaytan's commands. When Perez took a step back and appeared to be headed back towards where he left the gun on the ground, Deputy Stone fired a less-lethal munition at Perez. Sergeant Gaytan also fired a less-lethal munition at Perez. The less-lethal rounds were ineffective in gaining any compliance from Perez. Perez ran back toward his gun.

Corporal McCarthy, Deputy Moore, Deputy Olivas, and Deputy Pollick feared Perez would retrieve his gun and start shooting. Corporal McCarthy, Deputy Moore, Deputy Olivas, and Deputy Pollick fired their weapons at Perez to prevent anyone from being injured or killed. Perez was struck by gunfire. After the shooting, SED approached Perez as he was laying on the ground. SED started to administer medical aid to Perez when they saw he was injured. Perez was transported to the hospital where he later died.

A loaded black Smith and Wesson M&P 45 Shield semi-automatic handgun was located at the scene. The handgun was south of the door leading to the interior of the residence. The serial number for the gun was obliterated.

STATEMENTS BY POLICE OFFICERS¹

On August 30, 2021, at approximately 10:33 in the morning, **Deputy Steven Carter** was interviewed by Detective Michael Gardea.

On August 29, 2021, Deputy Steven Carter, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Carter was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, at around 5:31 in the evening, dispatch broadcasted over the radio a call of a subject disturbance on Zenda Street. Dispatch advised him the reporting party had a friend at her residence who was drinking and brandished a black

¹ All interviews submitted were reviewed in their entirety. Not all of the law enforcement officers interviewed were present when the lethal force encounter occurred. Therefore, summaries of those particular interviews will not be included in the memorandum.

handgun. Deputy Carter acknowledged the call and advised over the radio that he would respond.

As Deputy Carter drove to the location, he received an update that the reporting party and her mother were locked inside of the residence and the subject, later identified as Albert Perez, was inside the garage. The reporting party was unsure whether Perez had left the location. Deputy Carter stopped his patrol vehicle on the west end of Zenda Street and checked the updates to the call on his vehicle's mobile data computer. The call gave a suspect description of a Hispanic male adult wearing a blue shirt.

Deputy Carter drove east on Zenda Street past the residence. Deputy Carter drove to the end of the block and turned west into an alley south of the residence. As Deputy Carter drove through the alley, he looked for an open garage door. Deputy Carter observed an open garage with several subjects inside but that did not appear to be related to the call for service. Deputy Carter continued driving west. Deputy Carter saw a second open garage door closer to the west end of the alley. Deputy Carter looked inside the garage as he drove past. Deputy Carter saw Perez standing inside the garage. Deputy Carter made a U-turn and parked in the alley, west of the garage.

Deputy Carter exited his patrol vehicle and approached the open garage from the west. As he approached, Deputy Carter unholstered his handgun and held it in a low ready position. There were two vehicles in the driveway which obstructed Deputy Carter's view of the interior of the garage. When Deputy Carter looked inside the garage, he observed Perez standing with his back to him. Deputy Carter told Perez, "Hey man." Perez turned around and faced Deputy Carter. Deputy Carter observed a black handgun in Perez's right hand. Deputy Carter lifted his duty weapon and pointed it at Perez and asked Perez to drop the gun several times. Perez did not comply with Deputy Carter's verbal commands. Perez did not say anything. Perez stood in the garage and shook his head back and forth. Deputy Carter believed Perez shook his head "no."

Deputy Carter used his radio to ask dispatch to clear the radio channel for emergency traffic because Perez was armed and not complying with his commands. Additional deputies advised they were responding to the scene. Deputy Carter maintained his observation of Perez and held Perez at gunpoint. Deputy Carter continued to order Perez to drop the gun. Perez would not comply with Deputy Carter's commands.

Deputy Carter switched tactics and told Perez he wanted to offer Perez help. Deputy Carter asked Perez to drop the gun. Deputy Carter stated he pled with Perez because he did not want anything bad to happen. Deputy Carter estimated additional deputies started to arrive three minutes after Deputy Carter broadcasted Perez had a gun. Perez walked east and sat in a chair behind a pool table in the middle of the garage. Deputy Carter estimated Perez sat about fifteen feet away from the garage opening.

Deputy Eshton Smith arrived with his trainee, Deputy Garrett Wolff, and relieved Deputy Carter at the west side of the garage. Deputy Smith was armed with his handgun. Deputy Carter walked back to his patrol vehicle and retrieved his Ruger Mini-14 patrol

rifle. Deputy Carter wanted to transition to the rifle because it was a more accurate weapon. Deputy Carter relocated to the east side of the open garage door. Deputy Smith took over and continued to communicate with Perez. Perez continued to shake his head back and forth. Deputy Jeramey Salas arrived shortly after and held a position on the east side of the garage with Deputy Carter. Perez was holding the handgun with both of his hands. Perez periodically transitioned the gun from his lap to the center of his chest, as if he was going to raise it toward the deputies. Deputy Carter was nervous and feared Perez was going to shoot one of them.

Sergeant Nicholas Clark arrived a few minutes after Deputy Smith, Deputy Wolff, and Deputy Salas. Sergeant Clark requested medical aid to stage in the area. Sergeant Clark was armed with a less-lethal 40mm multi-launcher. About thirty minutes into the call, Deputy Wolff transitioned to the less-lethal beanbag shotgun. Deputy Julian Mata arrived at the scene and positioned himself near Deputy Smith and Deputy Wolff on the west side of the garage. Deputy Mata took over the primary role of communicating with Perez.

During the incident, deputies gave clear commands and never spoke over each other. The deputies remained calm as they negotiated with Perez. As Deputy Mata spoke to Perez, Deputy Carter did not hear Perez respond back. Perez periodically looked at the deputies on the west side of the garage and then changed his focus to the deputies on the east side of the garage. The chair Perez sat in swiveled so he would move back and forth as he changed his focus on the deputies. Deputy Roberto Morales was on the north side of the location. Deputy Carter heard Deputy Morales on the radio coordinating the evacuation of surrounding residences.

Sergeant Clark requested canine support from California Highway Patrol and Barstow Police Department but was unsuccessful. Sergeant Clark was able to get a canine officer to respond from Rialto Police Department. Sergeant Clark told Deputy Carter to retrieve the pepper ball gun from his patrol vehicle. After Deputy Carter retrieved the pepper ball gun, Sergeant Clark told Deputy Carter that if Perez stood up from the chair, they would deploy the less-lethal force options. It was getting dark outside so an unknown deputy moved Deputy Carter's patrol vehicle to the base of the driveway and used the floodlights to illuminate the interior of the garage.

Deputy Carter never heard Perez speak during the entire incident. There were a few times Perez had a glazed look over his face and he closed his eyes. Deputy Carter said, at times, Perez appeared tired or sleeping. Deputy Carter estimated he was at the scene for five hours before he was relieved by members of SED. Deputy Carter was fatigued from holding the rifle up for several hours but said he was okay. Deputy Carter heard over the radio that SED members were moving in. Deputy Carter got into his patrol vehicle and backed it up so the SED members could park their armored rescue vehicle in the driveway.

Deputy Patrick Guthaus and Deputy Salas remained on the east side of the driveway. Deputy Carter backed up about forty feet into a dirt field, south of the armored rescue

vehicle. After Deputy Carter parked his vehicle, he got out to get water. Deputy Carter returned to his vehicle. Deputy Carter saw several subjects in the field south of Deputy Carter's patrol vehicle that appeared agitated. Deputy Carter posted as perimeter security so the SED members could deal with the situation.

Deputy Carter stood near the passenger front fender of his patrol vehicle, approximately eighty to one hundred feet from the garage. Deputy Carter looked back at the garage and saw Perez standing near the driveway with his hands crossed in front of his body. Deputy Carter did not see the gun in Perez's hands. Perez stood in the same spot for about three minutes. Deputy Carter saw a less-lethal round deploy from the east side of the driveway and strike Perez in the chest. Deputy Carter knew it was a less-lethal round because he saw a large object bounce off Perez's chest. Perez jumped after he was struck, turned, and ran north into the garage. Deputy Carter was unable to see Perez after he ran into the garage. Deputy Carter's view was obstructed by the armored rescue vehicle and the other vehicles in the driveway.

About two seconds after the less-lethal deployment, Deputy Carter heard ten to fifteen rounds of gunfire in rapid succession from multiple firearms. After the gunfire, Deputy Carter heard a radio transmission of shots being fired and the suspect was down. Deputy Carter remained in his position and was unable to see Perez. Deputy Carter heard SED members broadcast that they were unable to see Perez's hands and they gave verbal orders for Perez to show them his hands. SED members broadcasted they were going to deploy a robot. After the robot was deployed, SED members advised Perez's hands were underneath his body and they were going to send in a team to contact Perez. After SED members contacted Perez, they transitioned to providing Perez medical care. Deputy Carter remained in his position and was unable to see anyone enter the garage. Deputy Carter estimated paramedics arrived at the scene five minutes after the shots were fired.

On August 31, 2021, at approximately 9:14 in the morning, **Deputy Julian Mata** was interviewed by Detective Bryan Sprague.

On August 29, 2021, Deputy Julian Mata, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Mata was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, Deputy Mata was at the station getting ready to start his shift when he heard Deputy Carter, over the radio, advise he was with a male with a gun. Deputy Carter requested additional deputies to assist him. Deputy Mata entered his patrol vehicle, logged on to the Mobile Data Computer (MDC) at around 5:49 in the evening and responded to the scene on Zenda Street.

Deputy Mata drove to the alleyway, south of Zenda Street. Deputy Mata drove from east to west and parked east of the incident location. Deputy Mata walked and met with Sergeant Clark. Sergeant Clark retrieved a ballistic shield from the trunk of his vehicle and handed the shield to Deputy Mata. Deputy Mata walked west and saw four vehicles

parked in the driveway. The garage door to the location was open. Deputy Mata walked to the west side of the garage.

Deputy Mata met with Deputy Smith and Deputy Wolff. Deputy Mata saw Deputy Salas and Deputy Guthaus were on the east side of the garage. Deputy Carter was on the driveway between two parked vehicles. The deputies were all positioned at the entry to the garage. Deputy Mata saw the suspect, later identified as Albert Perez, seated in a chair in the center of the garage. Perez was armed with a handgun. Perez was holding the handgun in his right hand at a "low ready" position near his crotch area. Deputy Mata observed Perez had his right index finger on the trigger of the handgun.

Deputy Mata heard Deputy Carter and another deputy tell Perez to put the gun down. Deputy Mata took over communication with Perez. Deputy Mata had received Crisis Intervention Training after his graduation from the Sheriff's Academy and knew it was better to only have one person communicating with someone during a crisis.

Deputy Mata told Perez to put the gun down several times. Deputy Mata attempted to build a rapport with Perez. Deputy Mata told Perez he did not know what Perez was going through and pleaded with Perez to put the gun down. Deputy Mata told Perez about two of his friends who had committed suicide. Deputy Mata told Perez it would be an honor and a privilege to help him, and Deputy Mata would personally take Perez to get some help. Deputy Mata advised Perez he wanted the incident to end peacefully, with no one getting hurt.

Perez was verbally non-responsive as Deputy Mata attempted to communicate with him. Perez shook his head from left to right, indicating to Deputy Mata that he was not going to put the gun down. Deputy Mata saw Perez grin several times which caused Deputy Mata to believe Perez felt the situation was funny. Deputy Mata continued to communicate with Perez despite Perez not verbally responding to anything Deputy Mata said.

After approximately thirty minutes, Deputy Mata asked Perez to take his finger off the handgun's trigger. Perez moved his right index finger from the trigger and placed it on the slide of the handgun. Deputy Mata stated Perez never took his finger off the gun. Deputy Mata explained to Perez they were taking baby steps and asked Perez again to put the gun down. During the time Deputy Mata was speaking to Perez, Perez remained in the center of the north side of the garage. Perez was seated in a wooden chair that swiveled from left to right. Perez sometimes looked to the left and right, but Deputy Mata did not know what specifically Perez was looking at.

A couple of times when Deputy Mata asked Perez to put the gun down, Perez did respond, "no." Deputy Mata would ask Perez why he would not put the gun down, but Perez would not answer. Deputy Mata believed Perez was armed because he may want to kill himself or a crime may have occurred. Deputy Mata told Perez that he did not want anything bad to happen to Perez. As time passed, Deputy Mata became exhausted holding the shield which he estimated weighed between twenty to twenty-five pounds. Deputy Mata used the garage wall to support himself while holding the shield up. After

about two and half hours, Sergeant Clark told Deputy Mata to take a break. Deputy Mata gave the shield to Deputy Smith and walked away so he could stretch his back.

As Deputy Mata stretched his back, he overheard Sergeant Lafever speaking to someone. Deputy Mata heard Sergeant Lafever say Perez did not live at the residence. Sergeant Lafever said the residence belonged to a friend of Perez. Sergeant Lafever stated, Perez and the friend exchanged words, Perez became angry and pulled a gun from a black bag. Deputy Mata believed this incident led to the call for service. After approximately ten minutes, Deputy Mata took the shield back from Deputy Smith and re-initiated communication with Perez.

Deputy Mata heard Sergeant Clark ask Perez if he wanted water. Perez did not respond and appeared to have a blank look on his face. Deputy Salas got a bottle of water and rolled it toward Perez. The water bottle hit the northwest leg of the pool table as it was rolling and did not reach Perez. Perez did not get out of the chair to get the water bottle. At one point, Perez requested to smoke. Perez removed his left hand from the gun, touched a pocket on his left side, and then put his left hand back on the gun. Sergeant Clark told Perez they were not going to go inside the garage and told Perez to put the gun down so he could smoke. Deputy Mata asked Perez to put the gun down on the table to Perez's left side. Perez did not put the gun down.

After approximately three hours, Perez used his left hand to cover the trigger of the gun. Deputy Mata believed Perez was trying to conceal the trigger so the deputies could not see it. The barrel of the gun was faced downward toward the wood seat. Perez grinned several times when he was asked to put the gun down. Deputy Mata believed Perez thought the commands were humorous. Deputy Mata remained composed and continued to give Perez verbal commands.

There were two moments during the incident when Perez appeared to fall asleep for a second before opening his eyes. Perez was sweating profusely, and Deputy Mata believed Perez was fatigued. Deputy Mata saw Perez cry three times. Deputy Mata thought there was a chance he was getting somewhere with Perez but then Perez wiped his eyes and returned to being non-verbal.

After approximately three and a half hours, Deputy Alcalá, a SED negotiator, arrived and spoke with Perez. Deputy Mata allowed Deputy Alcalá to take over communication with Perez. Perez told Deputy Alcalá that he had two daughters and referred to them by name. Perez asked to speak with his daughters. Perez said his daughters were seven and eleven years old. Deputy Mata heard Deputy Alcalá try to find common ground with Perez by pointing out they were both fathers.

Perez spoke at a low volume during the incident. Deputy Mata had trouble hearing what Perez said. Deputy Mata repeated what he heard Perez say because he believed Deputy Alcalá was unable to hear what was being said due to the background noise. Deputy Alcalá asked what they could do for Perez and how the situation could be ended peacefully. Perez was told he did not do anything wrong and had not hurt anyone.

SED personnel arrived at the scene and approached from an unknown street on the west side of the alleyway. Deputy Mata remained focused on Perez and did not pay attention to the movements of the SED personnel. SED members relieved the deputies at the garage from their positions. Deputy Mata was the last patrol deputy to be relieved. Deputy Mata walked to the west to a patrol vehicle. Deputy Mata placed his shield in a patrol vehicle and removed his ballistic vest. Deputy Mata felt exhausted and drank some water.

After approximately five to ten minutes, Deputy Mata heard, over the radio, someone instruct Perez to put the gun down. Deputy Mata did not know who told Perez to put the gun down. Deputy Mata walked to the east and saw Perez in the garage. Deputy Mata saw Perez standing, approximately five feet north of where the rolling garage door would be if it were down. Perez was on the west side of the pool table. Deputy Mata estimated Perez was standing seven feet from the SED personnel. Deputy Mata could see Perez had his arms down, but Deputy Mata could not see if Perez was holding the gun.

Deputy Mata heard an unknown person on the radio say if Perez made any sudden movements to deploy a less-lethal 40mm munition. Deputy Mata heard an unknown individual giving Perez verbal commands to turn around and put his hands behind his back. Perez remained still and faced SED personnel. Deputy Mata could not hear whether Perez was speaking. Deputy Mata heard additional commands given to Perez ordering Perez to turn around and put his hands behind his back. Perez continued to face SED personnel. Perez appeared to have no emotion.

Deputy Mata saw Perez get shot by a less-lethal 40mm round. Deputy Mata knew Perez had been struck but was unsure where. Deputy Mata could not see whether Perez moved before being struck by the less-lethal 40mm round. Deputy Mata said Perez pushed his hands outward, turned, and ran toward the back of the garage. Deputy Mata could no longer see Perez after Perez ran backward. Deputy Mata heard gunfire. Deputy Mata was unsure how many gunshots were fired. Deputy Mata heard an unknown person say, "Cease fire." Deputy Mata then heard radio traffic saying they could not see Perez's hands.

After the shooting, Deputy Mata walked to the west and heard an unknown person telling Perez to show his hands. The unknown person requested a robot. Deputy Mata saw the robot go into the garage. Within approximately one minute of the robot being deployed, SED members entered the garage. Deputy Mata could not see what happened after SED personnel entered the garage. American Medical Response (AMR) had been staged in the area and responded within three to four minutes. Deputy Mata saw Perez on a gurney being taken to an ambulance.

Deputy Mata believed there was only one reason why Perez ran back into the garage, which was to retrieve the gun. Deputy Mata did not know where the gun was at that moment. Earlier during the incident, an unknown person on the radio said the door in the garage which led to the residence was locked. Deputy Mata said Perez could not have gone into the residence to barricade himself.

On August 30, 2021, at approximately 8:55 in the morning, **Deputy Anthony Alcalá** was interviewed by Detective Michelle Del Rio and Detective Ian Gosswiller.

On August 29, 2021, Deputy Anthony Alcalá, from the San Bernardino County Sheriff's Department, was assigned to the SED Crisis Negotiation Team. Deputy Alcalá was off duty on that date. At around 6:45 in the evening, Sergeant Scott Abernathy contacted Deputy Alcalá and requested he respond to 16567 Zenda Street in the City of Victorville regarding a call of a barricaded subject. Deputy Alcalá agreed to respond. Deputy Alcalá arrived at the scene a little after 8:00 in the evening. Deputy Alcalá was wearing a black San Bernardino County Sheriff's Department Crisis Negotiator long-sleeved polo, green pants, and a green, Point Blank, ballistic plate carrier with the word "SHERIFF" in yellow lettering on the front and back.

When Deputy Alcalá arrived at the scene, he observed several patrol vehicles with their emergency lights activated. Deputy Alcalá met with Sergeant Lafever at the incident location. Sergeant Lafever was talking to two females, later identified as Witness #1 and Witness #2. Deputy Alcalá indicated Sergeant Lafever had Witness #1 sign an order of arrest form for a violation of Penal Code Section 602: Trespassing. Deputy Alcalá signed the form as a witnessing party. Witness #1 walked away after she signed the form. Deputy Alcalá told Witness #2 to wait out of the area.

Sergeant Lafever briefed Deputy Alcalá about the incident. Sergeant Lafever said there was a barricaded subject, later identified as Albert Perez. Perez was at Witness #1's home when he and Witness #1 got into an argument. Witness #1 told Perez he needed to leave the residence. Perez refused to leave and brandished a firearm in Witness #1's presence. Deputy Alcalá's understanding of the briefing was that Perez had not pointed the firearm at Witness #1. Sergeant Lafever said Perez was inside the garage on the south side of the residence when deputies arrived. Sergeant Lafever advised Deputy Alcalá that there several deputies approximately seven to ten feet away from Perez. Sergeant Lafever told Deputy Alcalá to get a plate carrier from a deputy.

At approximately 8:36 in the evening, Deputy Alcalá approached the garage. Deputy Alcalá stood on the east side of the garage with the patrol deputies. Deputy Alcalá did not know the patrol deputies. One of the deputies had a handgun and the other deputy had a less-lethal shotgun. Deputy Alcalá told the deputies he was going to use them as cover as he negotiated with Perez.

When Deputy Alcalá got to the garage, he observed Perez seated in a chair on the north end of the garage. Perez faced south toward the open garage door. Perez's back was toward the door leading into the residence. There was a pool table directly in front of Perez. Deputy Alcalá saw Perez was holding a black handgun in his right hand. Deputy Mata was communicating with Perez before Deputy Alcalá's arrival. Deputy Alcalá took over as the person who communicated with Perez.

Deputy Alcalá identified himself to Perez and told Perez he was there to help him. Perez did not say anything. Perez had a blank look on his face and appeared to stare off in

space. Deputy Alcala noticed Perez continually looked back and forth, but it did not appear that Perez looked at any deputy individually. There was no music or other distracting noise in the area. Deputy Alcala did not see anything that would have prevented Perez from clearly hearing Deputy Alcala. Deputy Alcala told Perez they did not want to hurt him, and they were there to help.

Perez stared off into the distance and switched the handgun multiple times between his left and right hands multiple times. When Perez switched the handgun between his hands, he reached up to his face with the hand not holding the handgun. Based on Deputy Alcala's training and experience, Deputy Alcala believed Perez was trying to bait the patrol deputies to shoot him when he raised his hand to his face. The goal for Deputy Alcala was to resolve the situation peacefully. Perez continued to look around with a blank stare.

Deputy Alcala tried to find something to relate to Perez. Deputy Alcala asked Perez if he had family. Perez told Deputy Alcala he had two daughters. Deputy Alcala asked Perez how old his daughters were. Perez answered but Deputy Alcala did not hear what Perez said. Deputy Mata heard Perez's answer and relayed to Deputy Alcala that the two daughters were eleven and seven years old. Deputy Alcala asked what Perez's daughters' names were. Perez answered, but Deputy Alcala did not hear what Perez said. Deputy Mata heard Perez and relayed the names to Deputy Alcala. Deputy Alcala told Perez to think of his children and to put them first. Throughout the incident, Deputy Alcala broadcasted to dispatch that Perez was not cooperating.

At approximately 9:27 in the evening, Deputy Alcala walked over to the west side of the garage. Deputy Alcala wanted Deputy Mata to speak with Perez. Deputy Alcala thought Deputy Mata may have built a rapport with Perez by talking to Perez before Deputy Alcala arrived. Deputy Alcala stood with Deputy Mata and coached him. Deputy Alcala had Deputy Mata explain to Perez that they were there to help him. Deputy Mata asked Perez to put the gun down several times, but Perez did not cooperate. The whole time Perez looked around without providing any response to Deputy Mata.

At approximately 9:29 in the evening, Deputy Alcala returned to the east side of the garage and continued to talk to Perez. Deputy Alcala told Perez the deputies did not want to hurt him. Deputy Alcala attempted to get Perez to think of his daughters and surrender peacefully. Deputy Alcala described Perez as looking through him. At approximately 9:30 in the evening, SED arrived and relieved the patrol deputies of their positions.

Deputy Alcala was on the east side of the garage with SED Deputy Joshua Stone and SED Deputy Cristina Olivas. SED members, Sergeant Luke Gaytan, Deputy David Moore, and Deputy Andrew Pollick were on the west side of the building. Deputy Alcala was not able to brief with SED before they took over the scene. Deputy Alcala continued to talk to Perez. Deputy Alcala noticed Perez started to pay more attention to SED when they arrived with their gear. Deputy Alcala continued to tell Perez he had not done anything against deputies. Deputy Alcala pleaded with Perez to end the situation

peacefully. Deputy Alcalá asked Perez to come out of the garage and talk with him, but Perez would not respond and continued to ignore Deputy Alcalá.

At approximately 9:38 in the evening, Deputy Stone advised Perez dropped the handgun. Deputy Alcalá could not see where Perez dropped the handgun. Deputy Alcalá told Perez he appreciated Perez for putting the gun down. Approximately thirty-three seconds after Perez put the handgun down, Deputy Stone said Perez stood up. Deputy Alcalá moved closer to the garage so Perez could see him. Deputy Alcalá wanted Perez to know who was talking to him.

Deputy Alcalá continued to talk to Perez and got him to walk forward. Perez stopped in the middle of the garage next to the pool table, approximately five feet, south of the chair. Deputy Alcalá encouraged Perez to continue to cooperate. Sergeant Gaytan told Deputy Alcalá to have Perez walk further forward. Perez took an additional two steps forward. Perez was approximately eight to nine feet away, south of the chair. Deputy Alcalá praised Perez for his cooperation.

Perez was approximately two to five feet away from SED members on the west side of the garage. Perez was approximately four to six feet from the SED members on the east side of the garage. As Perez got closer, Sergeant Gaytan took over commands to allow SED to effect an arrest. Sergeant Gaytan told Perez he needed to get down on his knees. Perez did not comply with Sergeant Gaytan's commands. Perez did not appear to be listening while Sergeant Gaytan was talking. Perez stayed standing and was looking around. Deputy Alcalá was unsure whether Perez was armed or not.

Deputy Alcalá believed Perez spoke English and understood the commands being given by Deputy Alcalá and Sergeant Gaytan. The times Perez replied to the deputies was in English. Perez asked why he was being arrested. Deputy Alcalá told Perez he was being detained because he possessed a handgun. Perez said Deputy Alcalá told him he did not do anything wrong. Deputy Alcalá explained to Perez it was a misdemeanor for Perez not to leave Witness #1's home. Deputy Alcalá and Sergeant Gaytan tried to explain to Perez that there was a charge, but Perez was not being charged with a felony at that point in time. Perez looked around. Deputy Alcalá thought Perez was thinking about where he could run.

Perez stepped back slowly with his left foot. Deputy Alcalá believed Perez stepping back was Perez telling deputies he was going to walk back to the handgun. Deputy Alcalá felt Perez was not going to cooperate with commands given to him. Based on Perez's demeanor and movements, Deputy Alcalá believed Perez was trying to commit suicide by having deputies shoot him. Deputy Alcalá tried talking to Perez, but Perez gave no indications he was going to cooperate.

As soon as Perez took a step back, Deputy Stone fired the less-lethal 40mm Blunt Impact Projectile (BIP). Deputy Alcalá believed if the deputies did not fire the less-lethal and/or lethal rounds, Perez was going to get the handgun, raise it, and shoot it. Deputy Alcalá did not recall hearing Deputy Stone give any commands before he deployed the BIP.

Deputy Alcalá saw the BIP hit Perez in the left rib cage. Perez bent over on the left side where he was hit by the BIP. Deputy Alcalá took cover on the east side of the garage and did not see what Perez did next. There was a brick wall on the side of the house. Deputy Alcalá jumped over the wall and laid down on the ground until the gunshots stopped.

Based on the noise of the BIP being discharged, Deputy Alcalá thought he heard two to three additional BIP rounds followed by what Deputy Alcalá believed was lethal gunfire. Deputy Alcalá was unsure if the lethal gunfire came from SED or Perez. Deputy Alcalá estimated the three to four BIP shots occurred within one to three seconds. Deputy Alcalá heard the lethal rounds being fired within a second or two from the last BIP shot. Deputy Alcalá estimated he heard between five and fifteen lethal rounds fired.

Deputy Alcalá was very stressed when the shots were fired. Deputy Alcalá did not know what was happening or whether Perez had made it back to the handgun. Deputy Alcalá was afraid for the safety of the SED members. Shots were fired for approximately three to five seconds until Sergeant Gaytan yelled cease fire. Immediately after Sergeant Gaytan yelled cease fired, the gunfire stopped. At that point, Deputy Alcalá knew the scene was safe. Deputy Alcalá stood up and gathered his items. SED members provided medical aid to Perez.

On August 30, 2021, at around 7:22 in the morning, **Deputy Joshua Stone** was interviewed by Detective Michael Gardea and Detective Ian Gosswiller.²

On August 29, 2021, Deputy Joshua Stone, from the San Bernardino County Sheriff's Department, was assigned to SED Team One, which is responsible for the City of Victorville. Deputy Stone was not on duty but was on call that day. At around 7:00 in the evening, Deputy Stone received a text message from Sergeant Gaytan that the Victorville station was requesting SED to respond to a location off Zenda Street. The request was in reference to a male barricaded in a garage with a handgun. Deputy Stone gathered his gear and responded to the location. Deputy Stone was wearing a SED Crye G3 operational uniform.

When Deputy Stone arrived at the scene, Sergeant Gaytan gave the SED members a quick briefing on the situation and what the plan was going forward. Deputy Stone learned the suspect, later identified as Albert Perez, was confirmed to be in the garage and armed with a handgun. Sergeant Gaytan handed Deputy Stone the multi-launcher and told him to position on the right side of the garage. Deputy Stone was a less-lethal operator. The SED personnel used an Armored Rescue Vehicle to take their positions at the garage.

² Deputy Stone reviewed his belt recording prior to being interviewed by Detective Gardea and Detective Gosswiller.

Deputy Stone positioned himself behind Deputy Olivas because she had the pistol shield. Deputy Olivas set up the pistol shield up in front of Deputy Stone. Deputy Stone positioned himself between the outside wall and behind the shield. Deputy Stone was approximately twenty to thirty feet away from Perez. Deputy Stone was able to see Perez sitting behind a pool table. Deputy Stone was able to see from Perez's kneecaps up. Sergeant Gaytan told Deputy Stone if Perez made any affirmative movements, any sudden movements, to deploy less-lethal so Deputy Stone kept his focus on Perez. Deputy Stone did not do a lot of talking.

During the time that Deputy Stone was watching Perez, Deputy Stone did not hear Perez say a word. Deputy Stone observed Perez looking around every time somebody moved but Perez was not talking. Deputy Alcala was trying to negotiate with Perez, but Perez did not respond. At one point, Deputy Stone saw Perez's hands go down under the pool table. Perez placed the gun slowly on the ground. Deputy Stone was able to see the gun on the ground. Perez then stood up like he was going to surrender. Deputy Stone estimated he was there ten minutes prior to Perez standing up.

Deputy Alcala continued to give Perez verbal commands. Perez moved away from the pool table and slowly walked through the garage towards the deputies. Deputy Stone was able to see both of Perez's hands. Next, for an unknown reason, Perez stopped walking forward. Sergeant Gaytan tried to help with the negotiations and told Perez to put his hands up. Deputy Stone indicated Perez's hands were out at his sides with palms of his hands visible. Perez, however, would not put his hands up. SED members wanted Perez to move forward some more because Perez was still near where he put the handgun on the ground.

Sergeant Gaytan told Deputy Stone, over the radio, that if Perez makes any movements backwards Deputy Stone should deploy less-lethal. Perez was instructed to get down on his knees. Deputy Stone saw Perez shaking his head "no." Shortly after Perez was told to get down on his knees, Perez took a step backwards. Deputy Stone immediately deployed his first less-lethal round. The less-lethal round struck Perez on his left side, in the shoulder and chest area. Deputy Stone estimated Perez was standing in the middle of the garage three to five minutes before he fired his first less-lethal round. Deputy Stone estimated when he fired his first less-lethal round, Perez was ten feet away from where Perez placed the gun on the ground.

After Perez was hit, he immediately started darting back towards the back of the pool table where the gun was. Deputy Stone fired two more less-lethal rounds. Deputy Stone indicated if those rounds struck Perez, it would have been in Perez's back. Perez had already turned all the way around and was going towards the gun. Deputy Stone lost sight of Perez when he went down onto the ground on top of the gun. Deputy Stone took cover. Deputy Stone unloaded his spent rounds and reloaded the chambers in case he needed additional less-lethal rounds.

Deputy Stone heard gunfire but could not see what was going on because he was behind cover. The gunfire stopped after a few seconds. Deputy Stone was unsure whether

Perez ever returned fire. Deputy Stone checked that his partners were all good. Deputy Stone saw Perez laying on the floor. Deputy Stone could not see the gun but could hear Perez breathing. Sergeant Gaytan instructed Deputy Stone to reposition to his side. Deputy Stone went around the Bearcat that was parked in the driveway over to where Sergeant Gaytan was located.

Deputy Stone and Sergeant Gaytan were the first to approach Perez. Perez was not moving. Deputy Stone could see the firearm sticking out from Perez's stomach. Deputy Stone kicked the gun away from Perez and started helping render medical aid. Deputy Stone applied a tourniquet to one of Perez's legs. Medical personnel came in approximately two minutes after the lethal force encounter. Deputy Stone then assisted with clearing the rest of the residence.

On September 1, 2021, at approximately 1:23 in the afternoon, **Corporal Gregory Gary** was interviewed by Detective Michael Gardea and Detective Ian Gosswiller.

On August 29, 2021, Corporal Gregory Gary, from the San Bernardino County Sheriff's Department, was assigned to SED Squad One. On that date, at around 4:30 in the afternoon, Corporal Gary was at home when he received a text from Sergeant Gaytan. Sergeant Gaytan was requesting Corporal Gary respond to a location on Zenda Street, in the City of Victorville, regarding a barricaded subject with a gun. Sergeant Gaytan requested Corporal Gary retrieve the Armored Rescue Vehicle Desert Bearcat (Bearcat) from the desert SED office. On that date, Corporal Gary was wearing a SED Crye G3 operational uniform. Corporal Gary retrieved the Bearcat and responded to the meeting location at Victorville Library. Deputy Pollick text Corporal Gary a digital photograph of the barricaded subject with the name "Alberto Perez."

Corporal Gary arrived at the library and met up with the rest of Squad One. Sergeant Gaytan briefed Squad One and said Perez and the reporting party argued at the incident location, during which time Perez pulled out a gun. Sergeant Lafever advised Sergeant Gaytan there were people in the west unit of the duplex at the incident location. Squad One loaded into the Bearcat and drove to Zenda Street. Corporal McCarthy and one other member of SED went to the west unit of the duplex to evacuate the residents. Corporal McCarthy advised over the radio that the occupants of the residence were going to shelter in place.

Squad One got back into the Bearcat and drove to the alleyway south of Zenda Street. Corporal Gary parked the Bearcat in the alleyway west of the incident location. Squad One got out of the Bearcat, stood behind it, and observed the incident location. Sergeant Gaytan gave Squad One their assignments. Corporal Gary was to drive the Bearcat past the garage, in front of the incident location. Corporal McCarthy, Deputy Olivas, and Deputy Stone would walk behind the Bearcat and use it as cover until they were past the garage. Corporal Gary, Deputy Olivas, and Deputy Stone would approach from the east and relieve the patrol deputies positioned on the southeast side of the garage. Deputy Moore, Deputy Pollick, and Sergeant Gaytan would approach the garage from the west

side of the garage and relieve the patrol deputies positioned on the southwest corner of the garage.

Sergeant Gaytan told Squad One that they were going to wait for a signed search warrant before implementing their plan. Squad One waited approximately forty-five minutes. The patrol deputies who were on scene had been there for several hours in a high stress situation and were getting tired. Given those circumstances, Sergeant Gaytan changed the plan and had Squad One relieve the patrol deputies before the search warrant was signed.

Squad One put the plan in motion. Sergeant Gaytan, Deputy Moore, and Deputy Pollick went to the southwest corner of the garage. Corporal Gary drove the Bearcat east and Corporal McCarthy, Deputy Olivas, and Deputy Stone walked behind it. Corporal Gary parked the Bearcat next to the homeowner's jeep in the driveway faced north. The Bearcat was approximately seventeen feet south of the garage opening. Corporal Gary parked where he did to prevent Perez from being able to run out of the garage. Corporal Gary saw Perez seated behind the pool table. Corporal Gary was able to see from Perez's chest up. Corporal Gary recognized Perez as the subject in the photograph sent to him by Deputy Pollick.

Corporal Gary activated the Bearcat's two forward facing white spotlights and pointed them into the garage at Perez. The garage was well lit by patrol vehicles, the Bearcat, and flashlights. Perez was seated in the garage with his hands on his thighs. Perez looked back and forth between the members of Squad One on each side of the garage. Perez was approximately sixteen feet away from the garage opening. Corporal Gary indicated Perez seemed calm and did not appear nervous.

Corporal Gary sat inside the Bearcat with the engine running to keep the lights on. The noise from the Bearcat's engine prevented Corporal Gary from hearing anything from outside of the Bearcat other than radio traffic. Corporal Gary heard over the radio that Deputy Alcala was at the incident location as the crisis negotiator. The plan was to negotiate a peaceful surrender by Perez. From inside the Bearcat, Corporal Gary could see SED members' heads but not their bodies.

Corporal McCarthy asked Corporal Gary over the radio if the turret would allow for a better vantage point. Corporal Gary told Corporal McCarthy he believed the Bearcat's turret would provide him a better view of Perez. Sergeant Gaytan told Corporal McCarthy to go to the turret. Corporal Gary set up the Bearcat to allow Corporal McCarthy to take his position in the turret. Corporal Gary was unable to see Perez's gun. Corporal Gary heard other members of Squad One, over the radio, indicate they could see the gun in Perez's lap. Shortly after Corporal McCarthy took his position in the Bearcat's turret, Perez stood up. Corporal Gary never saw Perez drop the gun, but he believed the gun was by the stool behind the pool table.

After approximately five to ten minutes, Perez walked toward the front of the garage and then stopped about eight feet north of the garage opening. When Perez first started

walking toward the front of the garage, Sergeant Gaytan broadcasted over the radio that Perez was cooperating. When Perez stopped walking forward, Sergeant Gaytan broadcasted over the radio that Perez was no longer complying. Sergeant Gaytan, over the radio, said if Perez turned around and moved toward the gun, Deputy Stone was to deploy the 40mm less-lethal BIP. Sergeant Gaytan told Deputy Stone to hit Perez with the BIP rounds to prevent Perez from retreating to the firearm.

Corporal Gary's view of Perez was obstructed by the Jeep parked in the driveway. Corporal Gary saw Perez standing with his hands up. Perez shook his head back and forth without making eye contact with anyone. Corporal Gary said Perez had an irritated look and appeared to be frustrated. It appeared to Corporal Gary that Perez was thinking to himself. Corporal Gary believed Perez had no intention of cooperating with Squad One. Corporal Gary estimated Perez was eight feet away from his gun at this time.

Approximately five minutes after Perez stopped walking forward, Perez turned slightly east, stepped back with his left leg, and pivoted on his right foot. As soon as Perez stepped back, Deputy Stone deployed the BIP round. Corporal Gary saw the BIP strike Perez in the right shoulder, upper chest area. Corporal Gary saw two additional BIP rounds bounce off Perez. Corporal Gary estimated the BIP rounds were fired within a second to a second and a half. The BIP rounds were ineffective. Perez turned around, accelerated, and ran towards where Corporal Gary believed the handgun was located. Corporal Gary believed Perez was trying to get to the handgun to shoot someone.

As Perez ran toward the handgun, Corporal Gary heard Corporal McCarthy fire approximately seven to eight rounds from his rifle. Corporal Gary knew it was Corporal McCarthy firing his rifle because the sound came from where Corporal McCarthy was positioned in the Bearcat. Perez fell to the ground and out of view of Corporal Gary. Deputy Moore then went to the back of the Bearcat and retrieved the SED robot. Deputy Moore drove the robot into the garage to Perez's location. Deputy Moore broadcasted over the radio that Perez was not moving, and Perez's hands were underneath him.

Sergeant Gaytan arranged for Squad One to approach Perez. After they approached Perez, Corporal Gary heard Sergeant Gaytan broadcasted Deputy Pollick and Corporal McCarthy were providing medical aid to Perez. Corporal McCarthy requested, over the radio, for fire personnel to respond to the scene. Corporal Gary stayed inside the Bearcat for the entire incident. Corporal Gary was staged for evacuations in the event someone from law enforcement was injured.

Corporal Gary exited the Bearcat after fire personnel were requested. Fire personnel arrived approximately thirty to sixty seconds after Corporal McCarthy requested them to respond. Corporal Gary saw fire personnel load Perez onto a gurney and wheel the gurney to an ambulance. Fire personnel loaded Perez into the ambulance and drove away.

On September 1, 2021, at approximately 1:11 in the afternoon, **Sergeant Luke Gaytan** was interviewed by Detective Michelle Del Rio and Detective Bryan Sprague.³

On August 29, 2021, Sergeant Luke Gaytan, from the San Bernardino County Sheriff's Department, was assigned to SED. On that date, Sergeant Gaytan was off duty but on call. At around 6:40 in the evening, Sergeant Gaytan received a phone call from Lieutenant Tim Visosky advising him that the Victorville station had an armed barricaded person in a garage at a location off Zenda Street. Lieutenant Visosky requested Sergeant Gaytan's team respond to the location.

Sergeant Gaytan was wearing a SED Crye G3 operational uniform. On his way to the location, Sergeant Gaytan spoke with Sergeant Lafever. Sergeant Lafever said the suspect, later identified as Albert Perez, was sitting with a gun in his hand and his finger on the trigger. Sergeant Lafever told Sergeant Gaytan he felt that Perez was going to try and shoot it out with deputies. Sergeant Lafever explained the garage was open and the door behind where Perez was sitting had been locked and secured to keep Perez from going inside the residence. Sergeant Lafever also advised Sergeant Gaytan he had patrol deputies that were on the flanks of the garage, and they were attempting to negotiate with the suspect. Sergeant Gaytan believed at the time he spoke with Sergeant Lafever, deputies had been unsuccessfully attempting to negotiate with Perez for over an hour.

It was Sergeant Gaytan's understanding that Perez and a female who lived at the residence were talking in the garage when the two got into an argument. Sergeant Gaytan did not know the nature of the relationship between Perez and the female. Sergeant Gaytan said at some point during the argument, Perez told the female he had demons, and it was her fault. Perez then pulled out a handgun. The female asked Perez what he was going to do and whether he was going to kill her or shoot her. The female then fled the garage, went back inside the house, locked the door, and called the police. When the patrol deputy arrived at the scene, Perez was sitting on the stool in the garage.

Sergeant Gaytan asked Sergeant Lafever what crimes they believed Perez had committed. Sergeant Lafever believed Perez had committed a trespassing and they were speaking with the female subject to see whether there was also an assault with a deadly weapon, a brandishing, or a criminal threat. When Sergeant Gaytan arrived, he met with the rest of the SED members at a library parking lot west of the location. Sergeant Lafever met Sergeant Gaytan at the command post at the library parking lot and they discussed what they were going to do moving forward. Sergeant Clark came over and updated Sergeant Gaytan. Sergeant Clark said Perez was not talking and Perez was just staring at the deputies with his finger on the trigger of the gun.

³ Sergeant Gaytan reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Sprague.

Sergeant Gaytan was concerned for the safety of the public if Perez started shooting. It also concerned Sergeant Gaytan that the negotiations were not going well, and Perez was not allowing the deputies to de-escalate the situation. Sergeant Gaytan confirmed with Sergeant Clark that there were less-lethal tools available to the deputies. Sergeant Clark then returned to the scene to monitor the situation. Sergeant Gaytan then started formulating a plan with the SED members.

Corporal McCarthy worked on getting a medical plan together. Corporal McCarthy also confirmed that fire and AMR were staged. Corporal McCarthy also requested the air medics. Corporal McCarthy discussed the medical plan with Deputy Pollick, the other medic on the team, about what would happen if Perez, a civilian, and/or a deputy was shot. During this time, Sergeant Gaytan gave a 40-millimeter launcher to Deputy Stone. Sergeant Gaytan told Deputy Stone he would be responsible for less-lethal. Sergeant Gaytan told Deputy Moore to retrieve his robot. The robot was equipped with a camera, a speaker, and a microphone.

Sergeant Lafever told Sergeant Gaytan that there were two apartments that were part of the same structure. Perez was in apartment number one. Sergeant Lafever advised there was an elderly 90-year-old female in apartment number two. Sergeant Gaytan formulated a plan with his team on how to get to that apartment to determine whether the female was mobile enough to be evacuated or whether the team could find a good place for her to shelter in place. Deputy Pollick was able to contact the female's son who advised Deputy Pollick that his mother was bedridden and should be in the apartment with his sister. Contact was made with the two females, and it was determined that they would shelter in place.

On the right side of the garage, Sergeant Gaytan assigned Deputy Olivas with a shield. Corporal McCarthy stood behind Deputy Olivas with lethal coverage. Deputy Stone was behind and off to the side of Corporal McCarthy with the 40mm multi-launcher. On the left side of the garage, Sergeant Gaytan assigned Deputy Moore with a shield. Deputy Pollick was behind Deputy Moore with lethal coverage. Sergeant Gaytan was going to be a less-lethal operator with a 40mm multi-launcher. Sergeant Gaytan was positioned behind Deputy Moore but stayed out of view of the garage. Sergeant Gaytan was going to be able to use less-lethal if the opportunity arose.

Sergeant Gaytan made the decision to relieve the patrol deputies at the scene after Sergeant Lafever and Sergeant Clark expressed concern about the patrol deputies' level of fatigue. Corporal Gary pulled the Bearcat up to the garage. The patrol deputies were switched out one at a time while lethal coverage was maintained on Perez. It appeared to Sergeant Gaytan that Perez was paying attention to what was going on at that time. SED continued to let Deputy Alcalá to negotiate with Perez. At one point, Deputy Alcalá looked at Sergeant Gaytan and threw his hands up at the fact Perez was not negotiating. Sergeant Gaytan indicated to Deputy Alcalá he should keep trying to negotiate with Perez.

Sergeant Gaytan had Corporal McCarthy get into the turret of the Bearcat. After approximately ten to fifteen minutes, Deputy Pollick said he could see one or both of Perez's hands and Deputy Pollick did not see the gun. Sergeant Gaytan then heard Deputy Stone say he could see both of Perez's hands and Perez was not holding the gun. Sergeant Gaytan was hopeful they were getting somewhere and perhaps Perez was getting tired. Sergeant Gaytan said, "Well hey if he put the gun down, start giving him commands to stand up and walk out and give up."

Deputy Alcala told Perez to stand up and walk towards the deputies. Deputy Alcala told Perez to do the right thing and give up. Perez walked about three quarters of the way out of the garage. Sergeant Gaytan saw Perez was walking directly towards the deputies and realized he needed to stop Perez. Sergeant Gaytan knew they needed to keep some distance between them and Perez. Sergeant Gaytan told Perez to stop. Sergeant Gaytan told Deputy Alcala to move into a high-risk cuffing situation. When that did not appear to happen, Sergeant Gaytan took over giving Perez verbal commands.

Sergeant Gaytan told Perez to stop and advised Perez they needed to see his hands. Perez stopped but he did not put his hands up. It was clear, however, that Perez's hands were empty. Sergeant Gaytan identified himself to Perez and said, "Hey I'm the supervisor on scene. We want this to end peacefully. We don't want anything silly to happen, but I need you to follow directions." Sergeant Gaytan told Perez they were not there to hurt him. Sergeant Gaytan told Perez he needed Perez to get on his knees and put his hands up. At that point, Sergeant Gaytan said Perez's demeanor started to change a little. Sergeant Gaytan could see Perez was looking around. It appeared to Sergeant Gaytan that Perez was second guessing his decision to put down the gun and walk out.

Sergeant Gaytan explained to Perez that they needed to search him to make sure he did not have any weapons. Sergeant Gaytan asked Perez to turn around, put his hands up, and to get on his knees. Perez shook his head like "no" and then asked what they were arresting him for. Deputy Alcala told Perez he had a gun, so the deputies needed to detain Perez. Perez responded that was not what Deputy Alcala told him earlier. Deputy Alcala tried to tell Perez it was probably a misdemeanor and a cite release. Sergeant Gaytan became concerned Perez possibly had another firearm on his person and was taking the opportunity to get closer to deputies and start shooting.

Sergeant Gaytan's main concern was not letting Perez get back to his gun. Given that Perez appeared to be second guessing his decisions to put down the gun and walk out of the garage, Sergeant Gaytan told the SED team, over the radio, not to let Perez get back to the gun. Sergeant Gaytan said if Perez did anything other than what the deputies told him to do, the deputies should immediately deploy less-lethal. Sergeant Gaytan thought if Perez were struck with the less-lethal munitions the deputies may be able to gain compliance from Perez. Based on Perez's body language at that time, Sergeant Gaytan believed Perez was getting up the courage to run back towards the gun. Sergeant Gaytan was scared. Perez appeared ready for an attack. Sergeant Gaytan did not want one of the people on his team to not go home.

Sergeant Gaytan asked Perez, "Hey what is it that you would like to happen tonight?" Perez did not respond. Sergeant Gaytan said to Perez, "You know, I imagine you probably want to go home tonight." Perez responded, "Huh like huh yeah." Sergeant Gaytan said to Perez, "Okay well uh this is not a big deal. It's a misdemeanor. It's not the end of the world." Perez told Sergeant Gaytan that he was told he would not be arrested. Sergeant Gaytan said to Perez, "Well I said I imagine you're going to go home. I said I don't know if you're going to go home tonight but you know at some point, you're gonna go home."

Next, Sergeant Gaytan saw Perez take a step back and start to turn to the right. Perez was turning back towards the direction he had walked. Once Perez took the step back, Deputy Stone hit Perez with a BIP round and struck Perez center mass. Sergeant Gaytan believed Perez was hit somewhere in the stomach area. Perez continued turning and took a step and started running back towards the gun. Sergeant Gaytan hit Perez once with the single BIP he had. After Sergeant Gaytan hit Perez, Sergeant Gaytan heard Deputy Stone hit Perez twice again. The BIP rounds appeared to have no effect on Perez. Perez took off sprinting back towards his gun. The other deputies with lethal weapons started firing at Perez.

Sergeant Gaytan was worried that if Perez got back to his gun, Perez would be able to take cover behind the pool table. Sergeant Gaytan indicated he would also have shot Perez if he was armed with his rifle and not assigned to less-lethal. There was no question in Sergeant Gaytan's mind that Perez was running to get the gun. The door leading to the interior of the house had been locked so Perez would not have been able to get inside.

After the other deputies started firing their weapons, Sergeant Gaytan took a step back behind the other deputies. Sergeant Gaytan could see the rounds hitting the area where Perez was located. Once Perez reached the pool table, Perez jumped right behind it and out of sight of the deputies. Sergeant Gaytan was able to see Perez's legs and it appeared Perez was trying to push his body behind the pool table. At that point, Sergeant Gaytan believed Perez got back to his gun, was trying to get behind cover, and was going to start "putting rounds on us." Sergeant Gaytan estimated the number of gunshot wounds he heard to be in the twenty range. Sergeant Gaytan believed if the deputies had not fired, Perez would have been able to retrieve his gun and had the opportunity to get at least one round off.

Sergeant Gaytan then saw Perez's legs stopped moving and kind of went straight. Sergeant Gaytan saw some blood start to pool. Sergeant Gaytan called "hold" which let his team know not to push into the situation. Sergeant Gaytan then called out "cease fire" when he felt Perez's body was not moving. Sergeant Gaytan told Deputy Moore to retrieve the robot from the armored rescue vehicle and told the other deputies to hold their positions.

Sergeant Gaytan asked Deputy Olivas to give Perez verbal commands to show the deputies his hands. Deputy Olivas gave Perez verbal commands to show his hands.

Sergeant Gaytan asked Deputy Olivas whether she could see Perez's hands. Deputy Olivas said she was unable to see Perez's hands. Sergeant Gaytan had Deputy Olivas give Perez additional commands to show his hands and not to grab the gun. Deputy Moore retrieved the robot and set it on the ground. Deputy Moore deployed the robot into the garage. Deputy Moore advised Sergeant Gaytan he could not see Perez's hands since they were underneath Perez's body. Deputy Moore also advised he did not see Perez moving.

Sergeant Gaytan looked at the screen on Deputy Moore's control device. Sergeant Gaytan could see Perez appeared to have a gunshot wound to the head. Since it did not appear Perez was moving, Sergeant Gaytan called the deputies from the right side of the garage to come down to his location so they could formulate a plan to go inside. At that time, Sergeant Gaytan felt Perez was no longer a threat to the deputies or the public. Sergeant Gaytan's main goal was now to secure Perez and start rendering medical aid.

Deputies handcuffed Perez and searched him for firearms or additional weapons. Sergeant Gaytan observed Perez was losing a lot of blood. Sergeant Gaytan saw a gunshot wound to Perez's head. Sergeant Gaytan also saw a firearm right next to Perez's left elbow forearm area. A deputy then moved the gun away from Perez. Sergeant Gaytan requested AMR to respond to the garage. Corporal McCarthy and Deputy Pollick immediately started rendering medical aid to Perez. Sergeant Gaytan grabbed Deputy Stone and another deputy to clear the front of the house. When Sergeant Gaytan returned to the garage, he saw medical personnel loading Perez onto a gurney.

On September 22, 2021, at approximately 10:30 in the morning, **Corporal Cory McCarthy** was interviewed by Detective Michelle Del Rio and Detective Bryan Sprague.⁴

On August 29, 2021, Corporal Cory McCarthy, from the San Bernardino County Sheriff's Department, was assigned to SED. On that date, Corporal McCarthy was off duty but on call. At around 7:00 in the evening, Corporal McCarthy received a text message from Sergeant Gaytan. Sergeant Gaytan told the members of SED Team One to head to Victorville. Sergeant Gaytan advised the Victorville station had a suspect armed with a gun barricaded in a garage. Corporal McCarthy changed and headed to the location. Corporal McCarthy was wearing a SED Crye G3 operational uniform.

As he drove to the location, Corporal McCarthy checked his computer to see what had been happening at the call prior to SED being called out. Corporal McCarthy learned a female who lived at the residence called the police. The female reported her male friend, who had been drinking, was arguing with her and had a gun. The gun was described as a black semi-automatic handgun. The female subject went inside the residence and

⁴ Corporal McCarthy reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Sprague.

locked the door. The male subject with the gun remained in the garage and did not have access to the house. Corporal McCarthy learned Victorville patrol deputies arrived on scene and confirmed there was a male subject inside the garage with a gun. The male, later identified as Albert Perez, was refusing to put the gun down.

Corporal McCarthy notified the other members of his team that a command post had been set up at the Victorville City Library. The library was west of the residence where Perez was barricaded. Corporal McCarthy asked Victorville Fire Department and AMR to respond to the area and stage in case they were needed. Corporal McCarthy started to create a medical plan should Perez, any deputies, or any civilians get hurt. Corporal McCarthy requested Air Rescue fly out and stage. Corporal McCarthy also requested a K9 from Rialto Police Department.

Corporal McCarthy and the other SED members discussed planning as to how to relieve the patrol deputies that were currently set up on both sides of the garage. There were also discussions as to lethal and less-lethal coverage. The decision was made to have 3 SED members on each side of the garage. Sergeant Gaytan, Deputy Pollick, and Deputy Moore would be on the west side of the garage. Corporal McCarthy, Deputy Stone, and Deputy Olivas would be on the east side of the garage along with Deputy Alcala who was negotiating with Perez. The SED members discussed Deputy Stone or Sergeant Gaytan deploying less-lethal munitions if Perez failed to follow Deputy Alcala's instructions. The hope would be to gain compliance from Perez who would then stop and safely surrender. The SED members also planned to position the Armored Rescue Vehicle in the driveway so they could use the vehicle's lights to illuminate the garage.

Around this time, Corporal McCarthy learned there was an elderly female who was bedridden with medical issues, and her daughter in the apartment west of where Perez was seated in the garage. The decision was made to attempt to evacuate the two females or at least talk to them about sheltering in place. Corporal McCarthy and Deputy Pollick contacted the females who advised they would prefer to shelter in place. Corporal McCarthy told the females not to leave the room and deputies would contact them after the incident was over.

Next, Corporal Gary used the Armored Rescue Vehicle to drive the SED members to the alleyway. They stopped short of the garage that Perez was in. Corporal Gary saw the patrol deputies on each side of the garage. Corporal McCarthy could hear Deputy Alcala talking to Perez. Throughout this time, the patrol deputies were advising the negotiations were ineffective and Perez was still holding the firearm in his right hand.

Sergeant Gaytan advised the SED members they were going to relieve the patrol deputies while the Victorville station prepared a warrant. Corporal McCarthy, Deputy Stone, and Deputy Olivas walked on the right side of the Armored Rescue Vehicle so Perez would not see them. A deputy moved a patrol vehicle out of the driveway so the Armored Rescue Vehicle could pull straight up into the driveway. Corporal McCarthy saw Perez sitting in a chair directly behind a pool table. Corporal McCarthy, Deputy Stone, and Deputy Olivas relieved the patrol deputies from their positions one at a time.

Corporal McCarthy stood with his rifle in a low ready position. Corporal McCarthy was able to see a black semi-automatic handgun in Perez's right hand. Perez looked up at Corporal McCarthy and then looked back down. Perez then looked up again and made eye contact with Corporal McCarthy and smirked. Perez's smirk caused Corporal McCarthy to fear Perez was attempting to determine the deputies' locations so he could begin to shoot at them. Corporal McCarthy could hear Deputy Alcalá negotiating with Perez. Deputy Alcalá asked Perez to put his gun down and come out and talk to him. Corporal McCarthy did not recall Perez responding.

Corporal McCarthy asked Sergeant Gaytan whether he could move to the turret of the Armored Rescue Vehicle. Corporal McCarthy hoped he would be able to get a better vantage point where he would see more inside the garage. Sergeant Gaytan agreed, and Corporal McCarthy took his position in the Armored Rescue Vehicle. Corporal McCarthy was able to see Perez from the belly button up. The pool table that Perez was sitting behind appeared to be a hardwood pool table. Sergeant Gaytan asked Corporal McCarthy whether he could see the gun in Perez's hands. Corporal McCarthy advised he could not see the gun. Deputy Alcalá continued to negotiate with Perez. Corporal McCarthy could not make out any responses Perez may have made to Deputy Alcalá.

At one point, Corporal McCarthy saw Perez lean forward at the waist. Corporal McCarthy was worried Perez was trying to get underneath the pool table. Corporal McCarthy knew it would take multiple bullets to penetrate through the pool table. Corporal McCarthy asked Corporal Gary if Perez had put the gun down. Corporal Gary said he believed Perez had put the gun down. Perez sat back up in his chair and then stood up. Corporal McCarthy heard Sergeant Gaytan over the radio say to start giving Perez commands. Sergeant Gaytan also reiterated that if Perez were to go for his gun, less-lethal would be deployed.

Corporal McCarthy saw Perez begin walking to his right which was to Corporal McCarthy's left side. Perez walked around the pool table and stopped approximately two feet from the edge of the pool table. Perez's hands were by his side and then he would cross his hands in front of his body. Based on the radio traffic, Corporal McCarthy knew Perez had placed the gun down. However, Corporal McCarthy did not know whether Perez had any other guns on his person or whether Perez may have placed any additional guns throughout the garage. Corporal McCarthy continued to watch Perez's hands and any movements Perez made.

Deputy Alcalá was speaking to Perez. It appeared to Corporal McCarthy that Perez would respond, but Corporal McCarthy could not make out what Perez said. As the negotiations continued, Corporal McCarthy saw Perez start to turn his body to the left and take a step back with his left foot. Perez was turning towards where he put the gun down behind the pool table. Deputy Stone deployed a less-lethal munition from the right side of the garage. Corporal McCarthy saw it struck Perez in the middle of his stomach area.

Perez did not stop and comply after being struck by the less-lethal munition. Corporal McCarthy saw Perez continued to turn further to his left. Corporal McCarthy heard

approximately one to three additional less-lethal munitions being deployed from the 40mm launcher. Perez then began to run towards the location where he left the gun. Corporal McCarthy hoped the less-lethal munitions would stop Perez where he was, and Perez would not reach the firearm. Corporal McCarthy feared Perez would start shooting if he reached the firearm. Corporal McCarthy estimated Perez ran ten to fifteen feet from where Corporal McCarthy was standing.

As the less-lethal munitions were deployed, Perez continued to run. Corporal McCarthy saw Perez use his right hand to reach for where the firearm was. Corporal McCarthy saw Perez begin to bend slightly forward at the waist as he was running. At that point, Corporal McCarthy knew Perez was reaching for the firearm he laid down and was afraid Perez was going to attempt to shoot his partners. Corporal McCarthy took the safety selector and placed it onto fire. Corporal McCarthy placed the red dot that is mounted to his rifle on the back of Perez's head and fired approximately two rounds.

It appeared to Corporal McCarthy that Perez had reached the gun and got behind the pool table. Corporal McCarthy feared for his safety and the safety of his partners. Corporal McCarthy was also afraid that Perez would start shooting over the top of the pool table at Corporal McCarthy. Based on his training and experience, Corporal McCarthy knew he would need to fire multiple times to get a bullet to pass through the object. Corporal McCarthy fired approximately three bullets at the outside of the pool table. Corporal McCarthy could not see Perez peeking over the pool table. Corporal McCarthy thought Perez was still hiding behind the pool table trying to shoot his partners. Corporal McCarthy decided to continue to try to shoot through the pool table. Corporal McCarthy fired approximately five to six more rounds at the pool table. Corporal McCarthy realized the bullets were not going to penetrate through such a hard object and stopped firing.

Corporal McCarthy looked to see if Perez was poking out on the left or right side of the pool table. Corporal McCarthy also looked to see whether Perez was attempting to come over the top of the pool table to shoot at the deputies. During this time, Corporal McCarthy heard approximately three handgun rounds being fired. Corporal McCarthy saw a flash near the bottom right side of the pool table. Corporal McCarthy believed what he saw was a muzzle flash and that Perez was now shooting at Deputy Olivas and Deputy Stone who were on the right side of the garage. If Perez was able to shoot Deputy Olivas and Deputy Stone, Corporal McCarthy thought Perez would be able to come around the pool table and attempt to shoot at him and his partners on the left side of the garage.

Corporal McCarthy knew he could not shoot through the pool table. The pool table was too hard of an obstruction. Based on the training he received through the academy and SED, Corporal McCarthy knew that a person is able to skip bullets off of concrete in an attempt to hit something or hit an object on the other side of a piece of cover. In this case, the piece of cover would be the pool table. Corporal McCarthy put his red dot on the concrete just below the pool table and fired approximately three rounds. Corporal

McCarthy hoped that he would stop the threat and Perez would stop shooting at his partners on the right side of the garage.

Corporal McCarthy stopped shooting and reassessed the situation. He saw Deputy Olivas and Deputy Stone on his right and saw Deputy Pollick, Deputy Moore, and Sergeant Gaytan were still to his left. Corporal McCarthy saw Perez's hand underneath the pool table. Corporal McCarthy put out over the radio, "I think I see his hand under the pool table, let me know before you guys go and make contact." Corporal McCarthy did not want his gun pointed at his partners.

After the shooting had stopped, Corporal McCarthy heard verbal commands being given to Perez. There was no response by Perez. Sergeant Gaytan then put out over the radio that Deputy Moore was going to send in the robot to Perez to try and get a location on Perez's hands. Sergeant Gaytan wanted to see whether Perez had the gun in his hands or whether Perez was trying to get deputies to come closer so Perez could ambush them. Once the robot approached Perez, Sergeant Gaytan said Perez's hands were underneath Perez's body. Sergeant Gaytan asked Corporal McCarthy to come to his location on the left side of the garage. Sergeant Gaytan wanted Corporal McCarthy to move up, provide medical aid for Perez, and secure Perez.

When Corporal McCarthy approached Perez, he saw a black semi-automatic handgun near Perez's left hand and arm. Deputy Stone secured the handgun. Corporal McCarthy and Deputy Pollick secured Perez and made sure Perez had no additional weapons on his person. Corporal McCarthy and Deputy Pollick then started to render medical aid to Perez. Fire department and AMR personnel entered the garage and administered medical aid to Perez. Corporal McCarthy helped get Perez onto a backboard so Perez could be placed onto a gurney.

On October 5, 2021, at approximately 8:08 in the morning, **Deputy Cristina Olivas** was interviewed by Detective Ian Gosswiller and Detective Bryan Sprague.⁵

On August 29, 2021, Deputy Cristina Olivas, from the San Bernardino County Sheriff's Department, was assigned to SED. On that date, Deputy Olivas was off duty but on call. At around 7:00 in the evening, Deputy Olivas received a notification on her phone from Sergeant Gaytan. Sergeant Gaytan requested the team respond to an address in Victorville for an armed barricaded suspect. The suspect was refusing to leave the house. Sergeant Gaytan also advised Deputy Alcalá would be enroute. Deputy Olivas changed her clothes and put on a SED Crye G3 operational uniform.

Corporal McCarthy asked Deputy Olivas to read the call history and give them a summary of what was going on. Deputy Olivas advised the team that there was a

⁵ Deputy Olivas reviewed her belt recording prior to being interviewed by Detective Gosswiller and Detective Sprague.

subject, identified as Albert Perez, that was at the incident location. Deputy Olivas told them that the reporting party indicated Perez was paranoid and that he had pulled out a black handgun. Deputy Olivas advised an armed Perez was currently located in the garage, refusing to leave the house, and refusing to comply with deputies' commands. After Deputy Olivas gave the team a short summary, she started driving to the incident location.

After Deputy Olivas arrived at the incident location, Sergeant Gaytan gave a briefing and told them their assignments. Deputy Olivas was assigned to the right side of the garage. Deputy Olivas was going to be lethal coverage and holding the shield. Deputy Olivas was also told by Corporal McCarthy that she was going to be the "medic evac van." Deputy Olivas learned there may be two females in Unit 2 that needed to be evacuated. When Deputy Olivas went to Unit 2, the females let the deputies know they were going to shelter in place. Deputy Olivas went back to the incident location to set up.

Sergeant Gaytan notified the SED members to respond to the scene. Deputy Olivas walked behind the Armored Rescue Vehicle and then set up. SED took over the patrol deputies' positions. Deputy Olivas set up on the right side of the garage with her shield and her handgun. Deputy Olivas saw Perez seated in a chair. Perez seemed to be nodding off like he was sleepy. Deputy Alcala was talking to Perez. Deputy Alcala was telling Perez to put the gun down and that the deputies wanted to end the situation peacefully. Deputy Olivas indicated the negotiations trying to get Perez to surrender went on for a long time. Deputy Olivas did not hear Perez respond to Deputy Alcala which caused her concern that Perez was not going to comply.

During the negotiations, Perez decided to put the gun down on the ground. Deputy Olivas heard Deputy Stone state Perez had placed the gun down on the ground. Deputy Olivas heard verbal commands being given to Perez. Perez was told to stand up and walk forward. Perez walked forward on the side where Deputy Olivas was positioned. Perez stopped short of where the deputies wanted him to. Sergeant Gaytan began giving Perez commands while Deputy Alcala was still negotiating with Perez. Sergeant Gaytan told Perez to continue to walk forward. Perez did not move and remained where he had stopped. Sergeant Gaytan told Perez to put his hands up, but Perez's hands remained at his sides.

Deputy Olivas saw that Perez was getting agitated. Deputy Olivas heard Perez ask what he was getting arrested for. Deputy Alcala explained to Perez that he had a gun on him and was trespassing. Deputy Olivas saw Perez shaking his head in a "no" motion. Sergeant Gaytan took over commands. Sergeant Gaytan asked Perez if he was looking to go home. Perez nodded yes. Sergeant Gaytan told Perez it was just a misdemeanor and he wanted Perez to sit down so they could search him for weapons. Deputy Olivas heard Sergeant Gaytan tell Perez that he could not promise Perez would go home tonight. At that point, Deputy Olivas saw Perez take a step back with his left leg.

After Perez took a step backwards, Deputy Olivas heard Deputy Stone fire two BIP rounds. The BIP rounds hit Perez in the chest. It appeared to Deputy Olivas that Perez

“got pissed.” Perez turned around and dove for the gun that was located near the pool table. Deputy Olivas was afraid for her safety and the safety of her partners. Deputy Olivas thought Perez was going to grab his gun and start shooting. Deputy Olivas fired her handgun three times in rapid succession at Perez. Deputy Olivas estimated Perez was two to three feet from reaching his gun when she fired her second round.

After Deputy Olivas fired her weapon, she saw Perez was on the ground behind the pool table. Deputy Olivas heard Sergeant Gaytan yell out “Cease fire.” Sergeant Gaytan asked Deputy Olivas if she had seen any movement and she replied, no. Sergeant Gaytan asked Deputy Olivas if she could see Perez’s hands and she again replied, no. Perez’s hands were underneath Perez’s body. Deputy Olivas advised Sergeant Gaytan that she could see Perez’s head and she could see that Perez had shallow breathing.

Next, Deputy Moore deployed the robot. The SED team on the left side of the garage approached Perez. Deputy Olivas approached once it was deemed safe and Perez was taken into custody. Deputy Olivas provided a tourniquet off her vest. Deputy Olivas was then told to set up near the door leading to the interior of the residence. During this time medical aid was being rendered to Perez.

On September 22, 2021, at approximately 8:08 in the morning, **Deputy Andrew Pollick** was interviewed by Detective Ian Gosswiller and Detective Bryan Sprague.⁶

On August 29, 2021, Deputy Andrew Pollick, from the San Bernardino County Sheriff’s Department, was assigned to SED. On that date, Deputy Pollick was off duty but on call with SED Squad One. At around 7:00 in the evening, Deputy Pollick received a text message from Sergeant Gaytan telling him to respond to an address off Zenda Street in the City of Victorville regarding an armed barricade. The initial information was that there was a male subject armed with a handgun in a garage. Patrol deputies were at the scene and had the subject, later identified as Albert Perez, was contained in the garage. Deputy Pollick responded to the scene. Deputy Pollick was wearing a SED Crye G3 operational uniform.

Deputy Pollick met with the other SED members at the Victorville library. The library was west of the incident location. The SED team gathered their gear and developed their plans. Deputy Pollick was tasked with identifying and attempting to evacuate some people in the unit next door to the incident location. Deputy Pollick contacted one of the females in the unit number two. She explained her elderly mother was bedridden and it would take five to ten minutes to get her mother ready. Deputy Pollick and Corporal McCarthy asked the woman if she would be more comfortable just sheltering in place and she said she was fine with that. Deputy Pollick and Corporal McCarthy returned to the south side where SED was staged at the end of the street.

⁶Deputy Pollick reviewed his belt recordings prior to being interviewed by Detective Gosswiller and Detective Sprague.

Deputy Pollick got some preliminary information from Sergeant Gaytan about Perez. Perez had showed up at the house in the garage area, met with a female, and showed her that he had a handgun on him. Perez did not point the gun at the female. The female asked Perez, "What are you going to do shoot me?" Perez responded by saying, "and." The female locked the main door leading from the garage into the residence and called 9-1-1. Perez remained, by himself, in the garage with the firearm when patrol deputies arrived on scene. The patrol deputies contained Perez and called SED to assist.

There were patrol deputies on the left and right side of the two-car garage. There was a deputy with lethal cover and a deputy with less-lethal cover on both sides of the garage. The roll up door to the garage was open. There were two vehicles parked in the center of the driveway. There was also a vehicle to the left and to the right of those two vehicles. As they were staged, Sergeant Gaytan made it clear that if Perez were to separate himself from the firearm, they would not allow Perez to retrieve the weapon. They did not want Perez to shoot at the deputies.

A plan was formulated that there would be a team on the left side and a team on the right side of the garage. Deputy Pollick, Deputy Moore, and Sergeant Gaytan were designated to be on the left or west side of the garage. Deputy Olivas, Corporal McCarthy, and Deputy Stone were designated to be on the right or east side of the garage. SED would also position the Armored Rescue Vehicle in the center of the driveway to provide additional lighting inside the garage. Sergeant Gaytan told Deputy Pollick that if there was an opportunity and a less-lethal round was deployed on Perez, Deputy Pollick should try to throw a flash bang device. Deputy Pollick also had chemical agents if needed to try and disorient Perez.

After Sergeant Gaytan was advised the patrol deputies on scene were becoming fatigued, Sergeant Gaytan decided SED would take over. SED used the Bearcat to move up to the house and get into position. They pulled the Bearcat into the center of the garage. The SED members swapped positions with the patrol deputies one by one. During that time, Deputy Alcala continued negotiating with Perez.

Deputy Pollick took his position behind Deputy Moore on the west side of the garage. Deputy Pollick saw Perez sitting on a chair in the back of the garage. Deputy Pollick observed a black handgun in the Perez's hand. There was a pool table between the deputies and Perez. Perez appeared to be staring off through the opening of the garage toward the deputies while Deputy Alcala was negotiating with him. Deputy Alcala had been negotiating with Perez for a long time. Deputy Pollick could hear Deputy Alcala trying to establish a dialogue with Perez, but Perez was not responding.

After approximately one hour, Deputy Alcala appeared to make a little bit of headway with Perez. Deputy Pollick saw Perez had shoved the gun between his thigh and the seat and now Perez's hands were free. Deputy Pollick advised Sergeant Gaytan that Perez no longer had the gun in his hand. Deputy Pollick estimated from the time SED took their positions in the garage to the point Perez put the gun between his leg and the seat was

twenty-five to thirty minutes. Deputy Pollick also estimated Perez was ten to fifteen yards away from the deputies.

Deputy Pollick heard Deputy Alcalá continue to talk to Perez about being there for his daughters and doing the right thing. Deputy Alcalá told Perez to put the gun down and come out and talk to the deputies. After a certain point, Perez slowly took the gun, bent over, and put it on the floor by his feet. Perez sat back up. Deputy Pollick felt that Perez was starting to listen to the deputies and starting to obey commands.

Perez was told to stand up and walk toward the deputies at the front of the garage. Perez complied and started walking toward the deputies. Perez then stopped approximately five yards from Deputy Pollick's team on the west side of the garage. Deputy Alcalá told Perez to turn around and put his hands behind his back so they could take Perez into custody. Perez would not listen to any commands. Perez appeared to get frustrated. Deputy Pollick heard Perez say something to the effect of "that's not what you said." Deputy Alcalá tried to let Perez know it is a misdemeanor but because Perez had a firearm, they needed to detain him. It appeared to Deputy Pollick that Perez was getting a little agitated.

Deputy Pollick heard Sergeant Gaytan step in and start talking to Perez. Sergeant Gaytan told Perez they had to make sure everything was okay, and they needed to detain Perez to make sure he did not have any weapons. Sergeant Gaytan told Perez he needed to follow instructions and Perez was not following instructions. Sergeant Gaytan told Perez something about Perez not going home that night. Deputy Pollick saw Perez take a step back with his left foot toward where the gun was on the floor. Deputy Stone fired a less-lethal round at Perez, striking Perez in the left shoulder. After Perez was struck in the shoulder, Perez immediately turned around and ran full sprint back to where the gun was on the floor.

When Perez was within a couple of yards of the gun, Deputy Pollick saw Perez's body lowering, getting closer to the gun. At that point, Deputy Pollick fired his rifle at Perez. Deputy Pollick believed Perez was getting his gun to shoot the deputies. Perez was facing away from Deputy Pollick, crouched down, going to grab the gun near the pool table. Deputy Pollick was afraid for his safety and the safety of his partners. Deputy Pollick estimated he fired five to eight rounds at Perez's center mass. Deputy Pollick estimated Perez was ten to twelve yards away from him. Deputy Pollick stopped shooting momentarily so he could reassess. Perez dove behind the pool table and just his feet were visible. Deputy Pollick could see Perez making furtive movements with his feet. It appeared to Deputy Pollick that Perez was trying to gain a position of cover and concealment and maneuver on his team.

Deputy Pollick could hear what he believed were pistol rounds at the time. Deputy Pollick felt the concussion of somebody else firing. The concussion was coming back from the garage and Deputy Pollick could feel it on his body. Deputy Pollick thought Perez was shooting at the deputies with a pistol. Deputy Pollick fired a second volley of five to eight rounds into Perez's legs, which was the only area exposed. Deputy Pollick then stopped

shooting so he could reassess. Perez was no longer moving. Sergeant Gaytan yelled for everybody to cease fire, and everybody stopped shooting.

Sergeant Gaytan told Deputy Stone to start giving Perez commands to put his arms out so the deputies could see there were no weapons in his hands. Deputy Pollick heard multiple commands given to Perez to put his arms out, but Perez did not comply. Sergeant Gaytan decided to utilize the robot to get closer to Perez and make sure Perez was not lying in wait to shoot the deputies. The robot was deployed. Perez did not react to the robot. Deputies approached Perez. Deputy Pollick and Corporal McCarthy handcuffed Perez. When they rolled Perez over onto his back, Deputy Pollick saw Perez was laying on top of the black handgun that Perez was holding earlier. Deputies secured the handgun. Deputy Pollick and Corporal McCarthy then began to render medical aid to Perez.

On September 22, 2021, at approximately 12:31 in the afternoon, **Deputy David Moore** was interviewed by Detective Michelle Del Rio and Detective Ian Gosswiller.⁷

On August 29, 2021, Deputy David Moore, from the San Bernardino County Sheriff's Department, was assigned to SED. On the date Deputy Moore was off duty but on call. At around 7:00 in the evening, Deputy Moore received a text message from Sergeant Gaytan requesting Deputy Moore respond over to Zenda Street, in the City of Victorville, for a barricade situation. Deputy Moore responded to the location. Deputy Moore was wearing a SED Crye Precision uniform. As Deputy Moore was enroute to the location, Sergeant Gaytan updated the SED team that a subject, later identified as Albert Perez, threatened a female with a firearm and that Perez was barricaded in the garage of the multi-unit complex.

When Deputy Moore arrived at the location, he met up with the rest of the SED team at a library just west of the incident location. The team gathered their gear and determined which members would be assigned to which jobs. Deputy Moore heard over the radio that commands were still being given to Perez and that Perez was still sitting inside the garage with a gun on his lap. The patrol deputies were attempting to de-escalate the situation and convince Perez to surrender peacefully.

The decision was made for SED to take over for the patrol deputies that were positioned on both sides of the garage. Corporal McCarthy, Deputy Olivas, and Deputy Stone were positioned on the southeast corner of the garage. Deputy Moore, Deputy Pollick, and Sergeant Gaytan were positioned on the southwest corner of the garage. Deputy Alcala, the crisis negotiator, was present at the garage trying to convince Perez to surrender. As the negotiations continued, SED members relieved the patrol deputies. Deputy Moore

⁷ Deputy Moore reviewed his belt recordings prior to being interviewed by Detective Del Rio and Detective Gosswiller.

took the front position of the first deputy on the southwest corner. Deputy Moore held the shield and had his pistol out.

Deputy Moore could see Perez was seated on a stool. Perez still had the gun near his lap. Deputy Pollick assisted Deputy Moore who was having difficulty seeing due to his night vision goggles on his helmet. Deputy Moore also had a breaching hammer, a 40-millimeter ammunition for emergency gas, and a single launcher to deploy the 40-millimeter gas. Deputy Moore was getting fatigued, so Deputy Pollick helped Deputy Moore remove his night vision goggles. Deputy Pollick also took the single launcher and sledgehammer and set it off to the side.

Deputy Moore heard Deputy Alcala telling Perez to think about his family. Deputy Alcala told Perez to come out and to put the gun down. Deputy Moore heard Deputy Alcala telling Perez the deputies did not want to hurt Perez and he just wanted Perez to cooperate. Perez put the gun down in front of his stool and appeared to be cooperating. Deputy Alcala thanked Perez and told him to stand up and walk toward the deputies.

Perez eventually stood up and started walking toward the deputies. Deputy Alcala asked to see Perez's hands. Deputy Moore did not see Perez place his hands up. It was unknown whether Perez still had additional weapons in his waistband or underneath his shirt. Deputy Moore estimated Perez walked eight to ten feet away from the gun and then stopped. Deputy Moore heard Deputy Alcala continue to give Perez commands to walk forward. Perez, however, did not move. Deputy Alcala asked Perez if he could take a couple more steps, but Perez was hesitant. Perez was asked to get down on his knees, but Perez refused.

Deputy Moore heard Sergeant Gaytan start attempting to negotiate with Perez. Sergeant Gaytan asked Perez what he wanted and what the deputies could do for Perez to get Perez to surrender peacefully. Sergeant Gaytan explained to Perez that they deputies needed to detain Perez. Sergeant Gaytan asked Perez to get down on his knees, but Perez still refused. Deputy Moore had earlier been advised over the radio that if Perez made any movement back towards the gun, deputies would deploy less-lethal munitions. Deputy Moore saw Perez take a step back towards the direction of the firearm. Deputy Moore heard Deputy Stone deploy BIP rounds. It appeared that Perez was struck in the stomach area by at least three BIP rounds. It did not appear to Deputy Moore that the BIP rounds were effective. Perez immediately turned and ran towards his firearm.

Deputy Moore did not believe there was any reason for Perez to run back towards the firearm. Deputy Moore was aware that the door leading from the garage into the residence was locked. Deputy Moore feared Perez was going to grab the gun and start shooting at the deputies. Deputy Moore shot five rounds at Perez. Deputy Moore heard his partners fire as well. Deputy Moore estimated Perez was three to five feet from the gun when he fired at Perez. Deputy Moore also estimated Perez was nine to ten feet from him when he fired his gun at Perez.

As Deputy Moore was shooting, Perez cornered the pool table and jumped over on top of the gun. Deputy Moore stopped shooting to reassess and heard Sergeant Gaytan saying hold your fire. Sergeant Gaytan asked Deputy Moore to retrieve his robot so they could see whether Perez had the gun in his hands and what movements Perez was making. Deputy Moore went back to the Bearcat and retrieved the robot.

Deputy Moore deployed the robot. Deputy Moore drove the robot up toward Perez's head. Perez was laying down and still breathing. Deputy Moore advised over the radio there was still movements and Perez was still breathing. Deputies gave Perez commands to show his hands. Deputy Moore believed the firearm was underneath Perez. Deputies approached Perez. Deputy Pollick and Corporal McCarthy provided medical aid to Perez. AMR and fire personnel were requested to respond to the scene. Perez was loaded onto a gurney and transported to the hospital.

STATEMENTS BY CIVILIAN WITNESSES

On August 30, 2021, at around 3:42 in the morning, **Witness #1** was interviewed by Detective Michelle Del Rio and Detective Michael Gardea.

On August 29, 2021, Witness #1 was living in a duplex on Zenda Street in the City of Victorville. Witness #1 lived there with her daughter⁸ and Witness #1's mother, Witness #2. Witness #1 had lived at the duplex for approximately five years.

Witness #1 and Perez had been in an intimate dating relationship, on and off, for approximately a year and a half. At the time of the incident under review, Witness #1 and Perez were not dating anymore. Perez, however, would come over, play pool, and help fix things around the house. Witness #1 stated Perez has used methamphetamine and marijuana in the past. Witness #1 indicated she had never used drugs with Perez and Perez had never used drugs around her.

Witness #1 described an incident involving Perez that occurred at her house three months earlier. Witness #1 said Perez lit his black Honda on fire at her residence. Witness #1 was not home at the time of the incident but believed the police had responded. Witness #1 indicated Witness #2 was home during the incident. Witness #2 said Perez went into Witness #1's bedroom and would not come out. Witness #2 said Perez had a blank stare on his face. Witness #1 returned home the next day and found Perez hiding in her room. Perez told Witness #1 that his children's mother put a spell on him, and the demons made him do it. Witness #1 told Perez to leave, and Perez left the residence on foot.

⁸Caudillo's daughter was temporarily staying at a sober living house in Encino and was not present during the incident under review.

Witness #1 did not see Perez again for about two weeks. Perez called Witness #1. Witness #1 told Perez he was no longer allowed to come over because he put her family in danger. Perez apologized to Witness #1 and Witness #2 over the phone. After the apology, Witness #1 and Perez remained in contact. Perez told Witness #1 that his children's mother put a "Brujeria" on him. Witness #1 described "Brujeria" as witchcraft and spells. Witness #1 told Perez not to believe in it and helped Perez with him.

On August 29, 2021, between 2:00 and 3:00 in the afternoon, Witness #1 received information that a hurricane was going to hit where her son was stationed in Louisiana. Witness #1 was upset and started crying because she was worried. Perez comforted Witness #1 and told her that everything would be alright. Perez then stood up and walked to the garage without saying anything. Witness #1 thought Perez may be upset. Witness #1 went into the kitchen to get some water. After approximately ten minutes, Witness #1 walked into the garage and asked Perez what was wrong. Perez said "Nothing." Witness #1 felt Perez responded with an attitude.

Witness #1 told Perez she was upset about her son. Witness #1 said to Perez, "At least I still have my family." Perez responded, "What the fuck does that mean?" Witness #1 believed Perez thought she was being sarcastic because Perez did not have custody of his children. Witness #1 asked Perez what was wrong with him, and Perez replied, "Nothing."

Witness #1 and Perez were standing approximately three to four feet away from one another. Witness #1 and Perez faced one another. Perez had a black zipper shower bag in his hands and opened it. Perez reached inside the bag, pulled out a dark colored handgun, and put it in his right front sweatpants pocket. Witness #1 asked Perez why he brought a gun to her house and backed away toward the garage door that led back into the residence. Perez kept his hand in his pocket with the gun. As she walked toward the door, Witness #1 told Perez he had to leave the residence. Witness #1 told Perez, "If you're going to shoot me, don't shoot me in the back." Witness #1 walked into the house backward because she was afraid to turn her back and take her eyes off Perez.

Perez told Witness #1 he was not going to shoot her. Perez walked to the edge of the garage, near the driveway. Witness #1 closed and locked the door. Once inside, Witness #1 told Witness #2 to call the police because Perez had a gun. Witness #1 did not know what Perez could do, but Witness #1 did not believe Perez would shoot anybody. Witness #1 feared Perez was going to shoot himself. Perez did not look like himself and had a blank stare. Perez told Witness #1, "It's you and your demons."

Witness #2 called the police. Witness #1 told Perez, "You have to go, AJ⁹. Just go." Perez refused to leave. Witness #1 told Perez that the police were going to respond. Perez replied, "We'll see what happens." Witness #1 believed Perez wanted the police to respond and kill him. Witness #1 said Perez was not going to leave, he was armed with a gun, and he was not going to put it away. Witness #2 remained on the phone with the

⁹Caudillo referred to Perez as "AJ."

police as she and Witness #1 walked out of the front door. Witness #1 tried to look through the fence to see what was going on in the back of the property. Deputies arrived at the scene within five to ten minutes. A deputy contacted Witness #1 and Witness #2 in the front yard. The deputy told Witness #1 and Witness #2 to walk across the street. As she was waiting, Witness #1 saw an ambulance show up.

Witness #1 looked through her gate and observed deputies at the rear of the residence. Witness #1 heard deputies giving Perez multiple commands to put the gun down. Witness #1 did not hear if Perez responded. Witness #1 and Witness #2 moved to the library on Culley Street. Witness #1 was unable to see Perez from that location. While at the library, Witness #1 and Witness #2 gave permission for deputies to enter the residence. A deputy told Witness #1 that Perez was going to be arrested for trespassing and brandishing a firearm. A deputy showed Witness #1 two photographs to identify Perez. Witness #1 did not recognize the person in the first photograph but was able to identify Perez in the second photograph. Churchgoers drove by and told Witness #1 the "SWAT"¹⁰ team was at the library. Witness #1 asked the churchgoers to pray for Perez. Witness #1 estimated she stayed at the library for about two hours.

Witness #1 and a friend of Perez walked to the dirt lot, which was south of Witness #1's residence. Deputies had Witness #1's garage illuminated. Witness #1 heard a deputy talking to Perez. Witness #1 saw Perez in the garage, seated on a wooden barstool behind a pool table. Perez appeared to be falling asleep. A negotiator at the garage was trying to talk Perez down, but Perez was sleeping. Witness #1 heard the deputies order Perez to put the gun on down and lay on the ground. Witness #1 never heard Perez respond. Witness #1 focused on the garage door that led into the residence because she thought deputies might use the door to contact Perez. A crowd had formed in the dirt lot. A deputy came over and ordered them back to the roadway.

Witness #1 estimated the standoff lasted three to five hours. During the standoff, Witness #1 estimated she heard deputies order Perez to put the gun down one hundred times. Witness #1 did not know whether Perez ever complied with the deputies' orders. Witness #1 could see Perez but was unable to see the gun. Witness #1 prayed that Perez would put the gun down. Witness #1 indicated the negotiator was loud and everyone standing around could hear him. Witness #1 said Perez was close enough to hear the negotiator.

Witness #1 said there were approximately twenty deputies in front of her residence wearing green vests with the word "Sheriff" on them. According to Witness #1, SED eventually moved toward the residence with an armored vehicle. She estimated there were eight SED members walking next to the armored vehicle. Witness #1 said a patrol vehicle backed out of the driveway and the SED armored vehicle parked in its place. One SED member ran into the back of the armored vehicle and opened a hatch on top of

¹⁰ "SWAT" referred to the Specialized Enforcement Division (SED) of the San Bernardino County Sheriff's Department.

the vehicle. Witness #1 indicated she was not able to see inside the garage after the armored vehicle parked in the driveway.

Approximately twenty minutes after the SED units arrived, Witness #1 heard two shots. Witness #1 described the two shots as not a loud or "real" gunshot. She said the shots sounded like they came from a paintball gun. Witness #1 indicated there was a slight pause between the two shots, another pause, followed by six to seven louder shots which she believed were gunshots. Witness #1 did not see who fired the shots.

Witness #1 said she loved Perez and did not understand why deputies shot him. After the shooting, a male subject came over and said Perez was shot by the deputies and was deceased. Witness #1 ran back toward the library and met with Witness #2. Witness #1 looked down the alley and saw paramedics wheeling Perez on a stretcher. Witness #1 had never seen Perez with a gun before. Perez never spoke about having a gun or made suicidal statements. Witness #1 did not think Perez was going to shoot anyone but believed the situation would have ended differently had he complied with the deputies.

On August 30, 2021, at around 5:30 in the morning, **Witness #2** was interviewed by Detective Michael Gardea and Detective Michelle Del Rio.

On August 29, 2021, Witness #2 shared a duplex with her daughter, Rene Witness #1, and her granddaughter.¹¹ The duplex was located on Zenda Street in the City of Victorville. Witness #2 said her daughter had a friend who she knew as "AJ" but believed AJ's first name was Albert. AJ was later identified as Albert Perez. Witness #2 described Perez as a very nice and quiet guy. Witness #2 has known Perez for about one year but did not have many conversations with him when he visited Witness #1.

On August 29, 2021, at around 4:00 in the afternoon, Witness #2 was at home. Perez exited Witness #1's bedroom and walked into the garage. Witness #2 was in the living room watching television. Witness #2 walked into the kitchen to refill her water cup. Witness #2 looked in the garage and saw Perez leaning over the edge of the pool table, near the pedestrian door. The outdoor heat made the garage hot. The garage roll up door was partially open. Witness #2 asked Perez if he was okay. Perez told Witness #2 he was okay, after which she walked back to the living room. Witness #2 estimated Perez was in the garage for twenty minutes before he returned to Witness #1's bedroom.

At around 4:30 in the afternoon, Witness #2 was in her kitchen dining room area when she saw Perez walk from Witness #1's bedroom to the garage. Perez was holding a small black case or bag in his hands. Witness #2 did not know what was inside the bag. Witness #1 walked out behind Perez. Witness #1 remained in the residence for a few

¹¹ Witness #2's granddaughter was temporarily staying at a sober living house in Encino and was not present during the incident under review.

seconds and then walked into the garage. Witness #2 thought Perez was about to leave because he usually left through the garage.

After Witness #1 stepped into the garage, Witness #2 heard Witness #1 ask Perez, "What are you doing with that gun?" Witness #1's question caught Witness #2's attention. Witness #2 stood up from the couch and walked toward the garage. Witness #1 told Perez, "You better leave. Take that gun and get out of here, and don't come back." Witness #2 looked at Witness #1 and asked, "What?" Witness #1 replied, "He's got a gun!" Witness #2 asked, "What do you mean?" Witness #1 told Witness #2, "He's got a gun right there." Witness #2 stepped back slowly from the doorway and stood behind the door. Witness #2 never saw Perez with the gun.

Witness #2 asked Witness #1, "What's he gonna do, what's gonna happen?" Witness #1 told Witness #2, "I don't know. I don't know." Witness #2 became terrified and told Witness #1, "That was scary" and she did not really like that. Witness #1 told Witness #2 she did not like that either and asked Witness #2 to call the police. Witness #2 asked Witness #1 if she was sure she wanted Witness #2 to call the police. Witness #2 told Witness #1 to try to talk to Perez and find out what exactly was going on with him. Witness #1 told Witness #2, "Mom, call the police." Witness #2 told Witness #1 she would call the police, but Witness #1 needed to get in the house first. Witness #1 entered the residence from the garage and locked the door.

Witness #2 described Perez's behavior in the garage as very strange. Witness #2 said, "[Perez] was there, but he wasn't there! His body was present, but his mind wasn't." Witness #2 said Perez was unusually quiet, which made Witness #2 feel extremely nervous and uncomfortable because Perez was in possession of a gun.

After Witness #1 was inside the residence and the door was locked, Witness #2 went to check on an elderly neighbor. Witness #2 was afraid for her safety. Witness #2 told her neighbors to lock their doors because Perez was at her residence and had a gun. Witness #2 walked back to her residence, called 9-1-1, and spoke to a dispatcher. Witness #2 gave the dispatcher a physical description of Perez and said he was armed with a gun. Witness #1 wanted to step out of the front of the residence to see whether she could see Perez. Witness #2 told Witness #1 to stay inside the residence and get away from the windows. The dispatcher told Witness #2 that she and Witness #1 needed to remain inside their residence. Witness #2 turned the television in the living room off and went inside her bedroom, the farthest room from the garage. The dispatcher advised Witness #2 that deputies were on their way to her residence.

Deputies from the San Bernardino County Sheriff's Department Victorville station arrived at Witness #2's residence minutes later. Witness #2 remained on the phone with the dispatcher. Approximately fifteen minutes later, the dispatcher told Witness #2 that she and Witness #1 needed to exit their residence. Witness #2 and Witness #1 exited through the front door of the residence. The two walked out to the street where Witness #2 saw Sheriff's Department patrol vehicles and deputies. Witness #2 ended her phone call with the dispatcher.

Witness #2 and Witness #1 walked across the street and waited for further instruction from the deputies at the scene. Witness #2 and Witness #1 walked about one block to a nearby library. Witness #2 and Witness #1 remained in the library parking lot for approximately thirty minutes before they moved in front of some orange apartments. Witness #2 stayed in front of the orange apartments until it became dark outside while Witness #1 walked to a different area in the neighborhood.

According to Witness #2, sometime during the night, additional deputies who drove a Sheriff's Department armored vehicle with a tank arrived at the scene. Witness #2 stood with neighbors by the orange apartments, near an empty field. Witness #2 did not have a direct view of her garage and was unable to hear what the deputies spoke with Perez about. Witness #2 estimated the deputies talked to Perez from about 4:30 in the afternoon to 9:00 in the evening. Witness #2 believed Perez ignored the deputies because he never surrendered during that time.

Witness #2 was speaking to some neighbors and churchgoers when she heard a loud "boom" followed by about eight "pops" in rapid succession. Witness #2 was startled and believed the "boom" and "pops" were gunshots. Witness #2 heard unknown people scream. The deputies told everyone who stood in the area to leave. Witness #2 walked back toward the library and located Witness #1. Witness #1 cried and told Witness #2 the deputies shot Perez. Witness #2 told Witness #1 the deputies gave Perez several chances to give up, but he chose not to surrender. When Witness #2 initially called 9-1-1 on Perez, she expected the deputies would arrive at her residence and take the gun from Perez without incident.

INCIDENT VIDEO AND AUDIO

BELT RECORDINGS. All belt recordings submitted were reviewed in their entirety.

AXON VIDEO RECORDINGS. Two AXON video recordings from the Rialto Police Department K9 officer were submitted and reviewed in their entirety. The lethal force encounter was not captured on either recording.

WEAPON

A loaded black Smith and Wesson M&P 45 Shield semi-automatic handgun was located at the scene. The handgun was south of the door leading to the interior of the residence. The serial number for the gun was obliterated.

GUNSHOT RESIDUE RESULTS

Perez's right and left hand were examined for gunshot residue. The right and left hand adhesive discs booked into evidence were examined for gunshot residue particles at the San Bernardino County Sheriff's Department Scientific Investigations Division. There were six characteristic gunshot residue particles identified on the right hand adhesive disc. There was one characteristic gunshot residue particle identified on the left hand adhesive disc.

Characteristic gunshot residue particles can be deposited on the hands by firing a firearm, being in proximity of a discharging firearm, or by coming in contact with a surface that has gunshot residue on it, including handling a firearm or ammunition.

DECEDENT

AUTOPSY. Witness #3, Forensic Pathologist for the Coroner Division of The San Bernardino County Sheriff's Department, conducted the autopsy of Albert Perez on September 13, 2021. Witness #3 determined the cause of death was multiple gunshot wounds.

Number One - Gunshot Wound of the Head¹²:

Located on the left parietal scalp, was an approximately 7.5 x 4.5 cm irregular stellate gunshot wound, centered approximately 3 cm below the top of the head and 5.5 cm posterior to the superior attachment of the left ear. Based upon the wound characteristics, the direction of the bullet could not be determined.

Number Two – Ricochet Gunshot Wounds of the Head:

A 2cm oblique linear wound involved the right nostril and the skin below. The wound was located 15 cm below the top of the head and 1.5 cm to the right of the midline. The wound penetrated the underlying soft tissue, partially perforating the oral mucosa above the upper lip. There were variably contused scattered abrasions and superficial lacerations involving the mid forehead, the glabella, and the eyelids which were compatible with having been caused by fragments of an intermediate target and/or projectile fragments. There was a 0.5 x 0.3 cm wound involving the skin posterior to the inferior attachment of the right ear. The wound extended into the subcutaneous tissue. There was a 1 cm roughly vertical

¹² The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshot wounds occurred.

linear wound involving the anterior aspect of the right ear above the external auditory canal that was compatible with having been caused by a fragment of an intermediate target or a projectile fragment.

Number Three – Ricochet Gunshot Wounds of the Right Upper Back/Shoulder:

On the posterior right shoulder, there was a 2.5 x 1.7 cm rounded wound with a near circumferential 0.1 cm marginal abrasion, located 1.5 cm below the top of the right shoulder and 19.5 cm to the right of the midline of the back. The direction of the wound path was back to front, right to left, and downward. On the right upper back, there was a 2.1 x 0.6 cm wound extending into the subcutaneous tissue. The direction of the wound path was back to front, right to left, and downward. There were 5 wounds, ranging from 0.2 x 0.1 to 2 x 0.5 cm, involving the right upper back/shoulder, and were compatible with having been caused by fragment of an intermediate object or projectile fragments. One wound is limited to the skin and the remaining four wounds penetrate the underlying subcutaneous tissue.

Number Four – Gunshot Wound of the Abdomen:

On the right lower abdomen, there was a 1.5 x 0.8 cm ovoid gunshot entrance wound, located 75 cm below the top of the head and 10 cm to the right of the abdominal midline. A marginal abrasion up to 0.6 cm extended from the wound edge from 8 to 12 o'clock. On the left lower abdomen, there was a 2.3 x 1 cm stellate exit wound with a dry margin, located 73 cm below the top of the head and 6.5 cm to the left of the abdominal midline. The direction of the wound path was right to left, upward, and slightly back to front.

Number Five – Gunshot Wound of the Right Upper Extremity:

On the posterior right arm above the elbow, there was a 2.5 x 1.1 cm ovoid gunshot entrance wound, located 29 cm below the top of the right shoulder and 2 cm to the right of the posterior midline of the right arm. A circumferential marginal abrasion averaging 0.2 cm was present. Below the point of the right elbow, there was a 2 cm gaping slip-like exit wound located 33.5 cm below the top of the right shoulder and 2 cm of the right of the posterior midline of the right forearm. The direction of the wound path, with right upper extremity in the anatomic position, was downward.

Number Six – Gunshot Wound of the Right Thigh:

On the anterior right knee, there was a 0.7 cm round gunshot entrance wound with a 0.3 cm marginal abrasion extending from 1 to 2 o'clock. Immediately below, there was a 3 x 2 cm irregular gaping gunshot entrance wound. The two wounds were located approximately 123 cm below the top of the head and in the anterior midline of the right knee. A 0.6 tear was adjacent to the entrance wounds. Centered on the posteromedial right leg is a 35.5 x

14 cm gaping irregular defect which extended onto the posteromedial aspects of the right knee and right thigh. The exit wound was centered 132 cm below the top of the head and 6 cm medial to the posterior midline of the right leg. There was a second, irregular, stellate exit wound, measuring 6 x 3 cm, centered immediately posterior to the medial right ankle, with exposure of comminuted bone fractures. The direction of the wound path, with the right lower extremity in the anatomic position, was downward, right to left, and front to back.

In addition, within the distal posterolateral aspect of the right leg, there were five wounds, ranging from 0.2 x 0.2 cm to 1 x 0.2 cm, extending into the underlying subcutaneous tissue. A 0.3 x 0.1 cm punctate wound extending into the underlying soft tissue involved the mid lateral aspect of the sole of the right foot. The aforementioned wounds of the posterolateral right leg and the sole of the right foot were compatible with having been caused by fragments of an intermediate object or projectile fragments.

Number Seven – Graze Gunshot Wound of the Left Leg:

On the upper aspect of the left calf, there was a 3.7 x 1.5 cm horizontally oriented graze gunshot wound, centered 128 cm below the top of the head and 0.5 cm lateral to the posterior midline of the left leg. The direction of the wound path was right to left.

Number Eight – Gunshot Wounds of the Left Leg:

On the left mid-calf, there was a 6 x 5 cm stellate gunshot entrance wound along with a 8.5 x 4 cm elongate stellate gunshot entrance wound. The two gunshot wounds were located approximately 145 cm below the top of the head and 3 cm to the left of the posterior midline of the left leg. On the distal medial left leg, centered 146 cm below the top of the head and in the medial midline of the left leg, there was a 16 x 11 cm stellate exit wound. Three smaller defects were anterior to the exit wound. The direction of the wound path tracked left to right and back to front.

TOXICOLOGY. Femoral blood, cardiac blood, and urine sample were collected from Albert Perez on September 13, 2021.

Toxicology results for the femoral blood sample were listed positive as follows:

- Amphetamine – 200 ng/mL
- Methamphetamine – 1400 ng/mL

CRIMINAL HISTORY.

No known adult criminal history.

DE-ESCALATION

The incident under review began when Perez and Witness #1 argued in her garage. During the argument, Perez pulled out a handgun. Witness #1 asked Perez to leave the residence, but Perez did not go. Witness #1 went back inside the residence, closed the door, and locked it. Once she was inside, Witness #1 told Witness #2 to call the police. Deputy Carter responded to the call for service. When he arrived at the scene, Deputy Carter saw Perez in the garage and armed with a gun. Deputy Carter held Perez at gunpoint and ordered Perez to drop the gun. When Perez refused to comply with Deputy Carter's orders to put the gun down, additional units responded to assist.

Deputy Carter did not want anything bad to happen to Perez and attempted to communicate with Perez. Deputy Carter told Perez he wanted to help him. Deputy Carter requested 40 King respond. Fire department personnel was staged as a precaution. Additional deputies arrived at the scene and tried talking to Perez in order to de-escalate the situation. Deputy Mata would eventually take over communications with Perez. Deputy Mata had crisis intervention training and tried to build a rapport with Perez. Deputy Mata wanted Perez to put the gun down and peacefully surrender.

The effort at de-escalation was not limited to Deputy Mata's negotiations. Some of the patrol deputies were equipped with less-lethal munitions. The less-lethal munitions would provide the patrol deputies an opportunity to end the incident without anyone being killed. In addition, Sergeant Lafever requested the deputies check with other agencies to see whether an apprehension dog could be brought to the scene. This would also provide the patrol deputies a possible way to end the barricade without anyone being killed.

As the armed barricade continued into the evening, the decision was made to request assistance from SED. Deputy Alcalá responded to the scene and took over communications with Perez. Once the SED team arrived, they swapped out the patrol deputies who were positioned on both sides of the garage. The SED team members were equipped with both lethal and less-lethal munitions. SED continued to negotiate with Perez with the hope that Perez would put the gun down and peacefully surrender. Deputy Alcalá tried to build a rapport with Perez. Perez, however, continued to ignore Deputy Alcalá. Deputy Alcalá went over to the west side of the garage and asked Deputy Mata to try talking to Perez again. Deputy Mata was unsuccessful in his attempts to get Perez to put the gun down. Deputy Alcalá then returned to the east side of the garage and continued talking to Perez.

For several hours, Perez made no effort to cooperate with deputies. Perez refused to put his gun down and surrender peacefully. As the barricade continued into the evening, Perez appeared tired and eventually put his gun down. Deputy Stone advised the other deputies that Perez had put the gun down. Deputy Alcalá had Perez walk forward toward the deputies. It appeared that Perez was finally going to surrender. Perez, however, stopped walking in the middle of the garage. Sergeant Gaytan then took over communicating with Perez. Perez refused to comply with Sergeant Gaytan's orders to get on his knees so deputies could detain him and search him for additional weapons. Sergeant Gaytan

advised the SED members that if Perez made any effort to go back to the gun, less-lethal munitions should be deployed. Sergeant Gaytan feared if Perez were able to retrieve his weapon he would start shooting at the deputies.

Perez took a step back towards the direction of his weapon. Deputy Stone fired BIP rounds in accordance with the agreed upon plan. The BIP rounds were ineffective in gaining compliance from Perez. Perez turned and ran back toward where he had placed the gun on the ground. At that time, Perez clearly demonstrated to the deputies he would not cooperate. Corporal McCarthy, Deputy Moore, Deputy Olivas, and Deputy Pollick feared Perez was going to arm himself and start shooting. The deputies felt they had no option but to fire their weapons at Perez.

From the time Deputy Carter was on scene to the time the lethal force encounter occurred was approximately four hours. During that time period there was a coordinated and concerted effort to de-escalate the situation. The deputies took the time to communicate with Perez to try and determine how to best help Perez. The deputies showed a willingness to wait if that would help achieve a peaceful resolution. Deputies maintained a safe distance from Perez while they attempted to get Perez to peacefully surrender. There were deputies tasked to provide less-lethal coverage. In addition, resources such as SED, 40 King, an apprehension dog, and a crisis negotiator with specialized training were all requested in an effort to get Perez to give up.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)¹³ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

¹³ All references to code sections here pertain to the California Penal Code.

Graham v. Connor (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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

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

(Penal C. §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) The “ ‘[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,¹⁴ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan.

¹⁴ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;¹⁵

¹⁵ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncoded, unlike the aforementioned portion of Penal C. §835a (a)(3).

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

(Penal C. §835a(a).)

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

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

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

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

IMMINENCE. “Imminence is a critical component” of self-defense. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, *imminent* threat of death or great bodily injury. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at

1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

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

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

(Penal C. §835a(e)(2).)

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

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

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

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

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would

have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)¹⁶ To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

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

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

¹⁶ The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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

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

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

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

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. "[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed." (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham v. Connor* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed "lethal force" the instrumentality must be force that "creates a substantial risk of death or serious bodily injury." (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as "deadly force" as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject's mental infirmity can also be

considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.) Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

ANALYSIS

Witness #2 called 9-1-1 to report Perez was refusing to leave the location and was armed with a weapon. Patrol deputies who arrived at the scene found Perez in the garage, armed with a gun. Perez was uncooperative and refused to comply with the deputies’ commands to put the gun down. Patrol deputies attempted for several hours to get Perez to peacefully surrender. When the negotiations proved unsuccessful, SED was requested to respond to the location to assist.

In this case, Deputy Moore, Corporal McCarthy, Deputy Olivas, and Deputy Pollick each had an honest and objectively reasonable belief that Perez posed an imminent risk of serious bodily injury or death. Each deputy was aware they were responding to a call of an armed suspect barricaded in a garage. The armed barricade had been going on for several hours by the time SED arrived. When SED arrived at the location, they saw Perez in the garage. Perez was holding a gun and seated in a chair behind a pool table.

Deputy Alcalá was trying to communicate with Perez but Perez, for the most part, was nonresponsive. The SED team members were wearing uniforms which clearly identified them as law enforcement officers. The interior of the garage was illuminated. It is unlikely there was any confusion on Perez’s part that he was interacting with law enforcement officers. At one point during the incident under review, it appeared Perez was going to cooperate and surrender. Perez put his gun down on the ground and started to walk toward the deputies. Perez, however, stopped in the middle of the garage. When Perez was asked to get down on his knees, Perez refused.

Deputy Moore observed Perez take a step back towards where he placed the firearm on the ground. Deputy Moore heard Deputy Stone deploy a BIP round which struck Perez. The BIP round was ineffective, and Perez immediately turned and bolted towards the gun. It did not appear to Deputy Moore that Perez was running towards the garage door leading to the interior of the residence. Deputy Moore feared Perez was going to grab the gun and start shooting at deputies. When Perez was approximately three to five feet from grabbing his gun, Deputy Moore shot five rounds at Perez. Deputy Moore had an honest and objectively reasonable belief that if Perez were to get a hold of the gun, Perez would shoot him and or his partners.

Like Deputy Moore, Corporal McCarthy observed Perez take a step back and begin to turn to where he had put the gun on the ground. When Perez took another step back, Corporal McCarthy heard Deputy Stone deploy less-lethal munitions. Perez was struck by the BIP round. Corporal McCarthy then heard two or three more less-lethal rounds fired. The less-lethal rounds were ineffective, and Perez ran approximately fifteen feet back towards where Perez had left the gun on the ground. Corporal McCarthy saw Perez bend at the waist and use his right hand to reach for the gun. Corporal McCarthy had an honest and objectively reasonable belief that Perez was going to get the gun and start shooting. Corporal McCarthy feared for the lives of his partners and fired two rounds from his rifle.

It appeared to Corporal McCarthy that Perez was able to get to his gun. Corporal McCarthy fired three more rounds at Perez. At that point, Perez had moved behind the pool table. Corporal McCarthy fired five to six more rounds even though he knew the bullets would not penetrate the pool table. When Corporal McCarthy stopped shooting, he heard handgun rounds being fired. Corporal McCarthy saw a flash near the bottom right side of the pool table. Corporal McCarthy believed what he saw was a muzzle flash. At that time, Corporal McCarthy reasonably believed Perez was shooting at his partners. Corporal McCarthy fired three more rounds just below the pool table to try to get Perez to stop shooting at his partners.

Deputy Olivas also observed Perez take a step back with his left leg. At the time, Sergeant Gaytan had been explaining to Perez that it was not a big deal and the deputies needed to search Perez. After Perez took the step back, Deputy Olivas heard Deputy Stone deploy BIP rounds. Deputy Olivas saw the rounds strike Perez. The BIP rounds appeared ineffective. At that point, it appeared to Deputy Olivas that Perez got agitated and appeared upset. Perez turned around and dove for the gun that was ground behind the pool table. It did not appear Perez was making any effort to reach the door leading to the interior of the house.

Deputy Olivas reasonably feared for her life and the lives of her partners. Deputy Olivas was scared that if Perez retrieved his gun, he would start shooting at her and her partners. Deputy Olivas fired three rounds at Perez with her duty weapon. At the time she fired, Deputy Olivas estimated Perez was two to three feet from where he placed his gun on the ground. Deputy Olivas described Perez as going down and reaching for the firearm. Deputy Olivas heard other deputies fire their weapons at the same time. After she fired, Deputy Olivas saw Perez on the ground behind the pool table. Deputy Olivas advised Sergeant Gaytan she could not see Perez's hands, but she was able to see Perez was breathing.

Similar to the observations made by his partners, Deputy Pollick saw Perez take a step back with his left foot. Deputy Pollick observed Deputy Stone hit Perez in the left shoulder with a less-lethal round. The less-lethal round appeared ineffective. Perez immediately turned around and ran back to where his gun was on the ground. As Perez got within a couple of yards of the weapon, Deputy Pollick saw Perez's body lowering closer to where the gun was on the ground. Deputy Pollick feared for his life and the

lives of his partners. Deputy Pollick fired approximately five to eight rounds from his rifle at Perez. At that time, Perez was facing away from Deputy Pollick, crouched down, and going to grab the gun on the ground.

Deputy Pollick then stopped shooting and reassessed the threat. Perez had dived behind the pool table. Deputy Pollick was able to see Perez's feet sticking out. It appeared to Deputy Pollick that Perez was trying to gain a position of cover and concealment to maneuver on Deputy Pollick's team. Deputy Pollick could hear what he thought were pistol rounds. Deputy Pollick felt the concussion of somebody else firing. The concussion was coming from the back of the garage. Deputy Pollick was able to feel the concussion on his body. Deputy Pollick reasonably believed Perez was shooting at the deputies with a pistol. Deputy Pollick fired a second volley of approximately five to eight rounds at Perez's legs, which was the only part of Perez's body that was exposed. Deputy Pollick then stopped shooting and again reassessed the threat. At that time, Deputy Pollick no longer saw Perez moving.

Throughout the incident, Perez was uncooperative and refused to comply with the deputies' verbal commands to put the gun down and surrender. Although Perez finally did put the gun on the ground and start to walk forward towards the SED deputies, Perez's level of cooperation was minimal. Perez stopped walking in the middle of the garage. Perez refused to comply with Sergeant Gaytan's verbal commands to get down on his knees so Perez could be detained and searched for additional weapons. Instead, Perez became agitated and noncompliant. Perez then took a step back and ran back towards the area where he placed his gun on the ground.

Although Deputy Stone and Sergeant Gaytan both fired BIP rounds at Perez, the BIP rounds were ineffective. Perez continued to rush towards where he left the gun on the ground. Corporal McCarthy, Deputy Moore, Deputy Olivas, and Deputy Pollick each had an honest and objectively reasonable belief that Perez posed an imminent threat of serious bodily injury or death. The door leading to the interior of the garage was locked and Perez did not appear to be trying to gain entry through that door. Given those circumstances, the only reasonable conclusion for Corporal McCarthy, Deputy Moore, Deputy Olivas, and Deputy Pollick to reach was Perez intended to retrieve his weapon and start shooting at deputies. Therefore, the decision by Corporal McCarthy, Deputy Moore, Deputy Olivas, and Deputy Pollick to use deadly force was justified.

CONCLUSION

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

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

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

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