



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Report on the Investigation into the Death of Luis Garcia-Arias on August 9, 2021

Orange County AB 1506

MARCH 2024

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INVESTIGATION OF OFFICER INVOLVED SHOOTING

BACKGROUND—AB 1506

Pursuant to California Assembly Bill 1506 (AB 1506), the California Department of Justice is required to investigate all incidents of an officer-involved shooting resulting in the death of an unarmed civilian in the state. Historically, these critical incidents in California had been primarily handled by local law enforcement agencies and the state's 58 district attorneys.

AB 1506, signed into law on September 30, 2020 and effective July 1, 2021, provides the California Department of Justice (DOJ) with an important tool to directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor to investigate and review officer-involved shootings of unarmed civilians across California. The DOJ investigates and reviews, for potential criminal liability, all such incidents covered under AB 1506, as enacted in California Government Code section 12525.3. Where criminal charges are not appropriate, the DOJ is required to prepare and make public a written report, like this one, communicating:

- A statement of facts, as revealed by the investigation;
- An analysis of those facts in light of applicable law;
- An explanation of why it was determined that criminal charges were not appropriate; and
- Where applicable, recommendations to modify the policies and practices of the involved law enforcement agency.

Recommendations to modify policies and practices of the involved law enforcement agency will be based on the facts of the incident, any known policies and practices of the relevant law enforcement agency, and the experience and expertise developed by DOJ personnel.

PRIVACY STATEMENT

This report includes redactions of the names and other identifying information of witnesses. Specific addresses of witnesses and other personal identifying information are not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as readability of this report, the witnesses will be indexed as follows:

- Witness 1 (“W-1”), Saddleback Mobilodge Resident and Reporting Party
- Witness 2 (“W-2”), Saddleback Mobilodge Resident
- Witness 3 (“W-3”), Saddleback Mobilodge Resident
- Witness 4 (“W-4”), Driving Witness
- Witness 5 (“W-5”), Saddleback Mobilodge Resident

INTRODUCTION

On August 9, 2021, while investigating a 911 call for a possibly armed unhoused male, Officer Estela Silva (“Officer Silva”) of the Tustin Police Department (“TPD”) fatally shot and killed Luis Manuel Garcia-Arias (decedent), age 39, in the City of Tustin. The California Department of Justice (DOJ) investigated and reviewed the Officer-Involved Shooting (“OIS”) pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506 (2019-2020 Reg. Sess.)). This report is the final step in the DOJ’s review of the fatal OIS of Luis Garcia-Arias, and is limited solely to determining whether criminal charges should be brought against the involved officer, and possible policy and practice recommendations. The review does not encompass or comment on any potential administrative or civil actions. It does, however, include policy and practice recommendations, as required by Government Code section 12525.3, subdivision (b)(2)(B)(iii).

CAUTION: The images and information contained in this report may be graphic and disturbing. Therefore, viewer discretion is advised, especially for young children and sensitive individuals.

SUMMARY OF INCIDENT¹

August 7, 2021 – Two Days Prior to the Shooting Incident

On August 7, 2021, two days prior to the officer involved shooting, W-1 was contacted by her neighbor W-2. W-1, W-2, and W-3 are all residents of the Saddleback Mobilodge, a mobile home park. W-2 told W-1 that her neighbor W-3 had located a knife on a wall near their backyard. W-1 met with W-3 at her home. W-3 showed W-1 where the knife was located. W-1 observed a knife with a wooden handle and a ten-inch blade. W-1 indicated that she had previously seen an unhoused man living on the other side of the wall in the bushes where the knife was located. W-1 pushed the knife off their side of the fence and into the bushes below.

August 9, 2021 – Day of Shooting Incident

On August 9, 2021, at 10:05 a.m., W-1 contacted Tustin police on the non-emergency phone line. W-1 reported to Tustin Police dispatch that her neighbor had seen an unhoused man living in the bushes two days prior near the front of their mobile home park. W-1 told dispatch that the unhoused individual had a large steak knife. W-1 told Tustin police dispatch that she was retired from Anaheim Police Department, and she had advised her neighbor to wait until they saw the unhoused man again before they called the police for assistance. On that morning, W-1 checked the bushes around the west sidewalk of Williams street. W-1 told dispatch that she heard the unhoused person, later identified as Mr. Garcia-Arias, rustling and mumbling in the bushes.

W-1 told Tustin police dispatch that she would guide the police to Mr. Garcia Arias' location once they arrived. W-1 also told dispatch that they had seen the same unhoused person walking with the knife, swinging it around, talking to himself, one day prior. W-1 described the individual as a white male, in his thirties, slim build, five feet six inches tall, with blonde hair.

At 10:05 a.m., the Tustin Police Department generated a patrol-service radio call. The comments of the radio call stated:

“Yesterday there was a male transient swinging a large steak knife and talking to himself. He left and he’s returned today and he is in front of unit number 4. Unknown if he has a knife and the RP doesn’t want to get close to see. She will 87 with you at her unit which is number Unit 13. She’s retired station 26. The Subject is a male white in his thirties, blonde hair, slim build, unknown clothing.”²

Officer Silva acknowledged the call via her radio, and was the first unit to respond. Officer Silva was the assigned primary unit to handle the radio call. After the initial broadcast, Officer Yuhas and Officer Frias responded.

After arriving on scene, Officer Silva met with W-1. W-1 walked with Officer Silva and Officer Yuhas to the entrance of the Saddleback Mobilodge on Williams Street. W-1 pointed towards the bushes where Mr. Garcia-Arias was seen last. Officer Silva instructed W-1 to wait at a safe distance while officers made contact.

¹ This report generally includes information about facts and circumstances leading up to the OIS, even if some of the information was unknown to the officers, in order to explain and give context to the entire incident.

² “RP” stands for Reporting Party. “87” means meet with someone.

Initial Contact

Officer Silva and Officer Yuhas proceeded southbound from the driveway toward the bushes where Mr. Garcia-Arias was reported to be located.



Figure 1 - Initial officer positions (Mr. Garcia-Arias location is notated by the orange circle)

At approximately 10:14:01 a.m., Officer Silva and Officer Yuhas were walking towards the bushes when Officer Frias arrived in his patrol vehicle. Officer Frias activated his digital in-car video and exited his vehicle.

Officer Silva approached the bushes where Mr. Garcia-Arias was located. As she approached, Officer Silva unholstered her service firearm and held it in her right hand in a low ready position. Officer Yuhas and Frias followed behind Silva. (Figure 1.)

Utilizing the flashlight attached to her service weapon, Officer Silva illuminated the area behind the bushes where she was able to observe Mr. Garcia-Arias. Mr. Garcia-Arias was lying on the ground behind the bushes with his eyes closed and his hands behind his head. According to Officer Silva, he appeared to be sleeping.

Officer Silva told Garcia-Arias to, “wake up and come out with your hands up.” In addition, she stated, “I know you, come on.” During the interaction, Officer Silva gave commands in both English and Spanish.

Prior Contacts with Mr. Garcia-Arias

Officer Silva immediately recognized Mr. Garcia-Arias from prior contacts, detentions, and arrests. Prior to the events that occurred on August 9, 2021, Officer Silva was directly involved in two prior incidents involving Mr. Garcia-Arias. On November 13, 2020, Officer Silva arrested Mr. Garcia-Arias for a robbery that occurred in Santa Ana, California. On May 6, 2021, Officer Silva arrested Mr. Garcia-Arias on an outstanding assault warrant. According to Officer Silva, Mr. Garcia-Arias was “confrontational” during their interactions.

Escalation of Incident

Officer Silva stood at the north side of the bushes where Mr. Garcia-Arias was located. Officer Silva was approximately one foot away from the opening in the bushes. Officer Silva stated, "I know you. Come out. Let's go, c'mon, get out!" Silva commanded Mr. Garcia-Arias to keep his hands up because she observed Mr. Garcia-Arias putting his hands into his pockets. Officer Silva continued, "Keep your hands up, keep your hands up." Mr. Garcia-Arias responded in Spanish, "Dejarme salir" (let me get out).

Officer Silva continued to command Mr. Garcia-Arias to keep his hands up. Mr. Garcia-Arias responded, "Pero, dejarme salir. Estoy esperando para un amigo" (ok, ok, let me get out. I'm waiting for a friend). Officer Silva replied, "No. Get out." Mr. Garcia-Arias responded, "Dejarme salir" (let me get out).

At approximately 10:15:53 a.m. Officer Silva directed Officer Frias to stand on the south side of the bushes. Officer Silva later stated that she was concerned that Mr. Garcia-Arias might try to run from the bushes on the opposite side of where she was standing. Officer Frias walked southbound on the sidewalk, past the bushes, where he stood to watch for Mr. Garcia-Arias. (Figure 2.)



Figure 2 - Officer positions during escalation of incident

Officer Frias warned Officer Silva of potential crossfire based on their positions. Officer Yuhas stood approximately one foot behind Officer Silva near the wall.

Officer Silva continued to command Mr. Garcia-Arias to come out. Officer Silva commanded him in Spanish, "Ensena me tus manos" (show me your hands). Officer Silva believed that Mr. Garcia-Arias was looking for something. Officer Silva was concerned that he could be looking for a knife based on the initial 911 call. Mr. Garcia-Arias said, "Dejame agarrar [inaudible]" (let me grab [inaudible]). Officer Silva interrupted, "Deja de jugar con tu bolsas" (stop playing with your pockets/bags). Mr. Garcia-Arias said, "Por que me estas agarrando. Haber dejarme sali" (why are you grabbing me/taking me. Ok, let me out).

In her statement, Officer Silva stated, "I said show me your hands. Come out with your hands up. And he wasn't listening. He continued to go in his pockets, but he was bent forward so I couldn't see what was in his waist band... "I had no idea what he was looking for...I don't know if he was looking for that knife he had."

Officer Silva continued standing approximately one foot away from the bushes while she gave commands to Mr. Garcia-Arias. Officer Silva continued to hold her service firearm in her right hand, across her chest, pointed downward in a low ready position.

Officer Silva again said, “C’mon let’s go, let’s go.” Officer Silva stepped backwards from the bushes. Mr. Garcia-Arias stood up and appeared to step toward the threshold of the bushes, but then turned back and went out of sight into the bushes.

Mr. Garcia-Arias said, “Porque me vas a llevar” (why are you taking me?). Officer Silva said to Officer Yuhas, “dude, I’m going in.” Officer Silva took a step closer to the bushes when Officer Yuhas replied, “hold on, no.” Officer Silva held her position at the entrance to the bushes where Mr. Garcia-Arias was inside. Mr. Garcia-Arias said, “dale” (go for it). Officers Frias and Silva observed Mr. Garcia-Arias pick up a plastic bag, which he held in his right hand and walked toward the threshold of the bushes where Officer Silva was standing. Silva continued to command Mr. Garcia-Arias out of the bushes. Mr. Garcia-Arias said, “Estoy juntando recicles” (I’m collecting recyclables).

Officer Silva took a step backwards approximately 1-2 feet away from the entrance to the bushes, which made room for Mr. Garcia-Arias to exit. (Figure 3.)



Figure 3 – Still frame Officer Yuhas body camera (left), Officer Frias body cam (right)

As Mr. Garcia-Arias approached the edge of the bushes, Officer Silva reached out with her left hand to grab him. Officer Yuhas reached out his right hand and attempted to grab Mr. Garcia-Arias from the top of the head to gain control. Officer Silva continued to have her firearm in her right hand. At about this time, a fourth officer, Officer Babb, arrived at the scene.

Almost immediately after Officers Silva and Yuhas attempted to grab Mr. Garcia-Arias, he retreated into the bushes away from both officers. After retreating into the bushes, Mr. Garcia-Arias said, “no me peges” (don’t hit me). It was unclear to Officers Silva and Yuhas what he was doing inside the bushes. Officer Yuhas later stated that he was concerned that Mr. Garcia-Arias was going back into the bushes to retrieve a weapon.

Officer Silva holstered her service firearm. Officer Silva believed that the situation was turning into a physical force situation, and wanted both her hands available to control Mr. Garcia-Arias. While inside the bushes, Mr. Garcia-Arias grabbed a wooden rod that was previously out of view from the officers. As Mr. Garcia-Arias came into view, all three officers saw Mr. Garcia-Arias holding a “pole” or “pipe.” At 10:15:34, Officer Yuhas yelled, “He’s got a- He’s got a stick! He’s got a stick!”

Officer Yuhas unholstered his TASER. Officer Silva walked backwards away from Mr. Garcia-Arias to the edge of the sidewalk, up against the thick shrubbery behind her. Officer Silva was approximately 4 to 6 feet away from Mr. Garcia-Arias.³ Mr. Garcia-Arias said, “Porque me vas a pegar?” (why are you going to hit me?).

Officer Silva unholstered her service firearm again and held it out in front of her in a two-hand grip. Officer Silva ordered Mr. Garcia-Arias, “get your hands up!” Mr. Garcia-Arias began to exit the bushes, placing his right foot on the sidewalk where Officer Silva had previously been standing. Mr. Garcia-Arias was holding the wooden rod in both hands, with his right hand above his left. The rod was in an upright, vertical orientation. Officer Silva attempted again to step backwards, this time entering the thick shrubbery behind her.



Figure 4 – Still frame from Officer Yuhas body camera (left), Still frame from officer Frias body Camera (right)

At 10:15:37, Mr. Garcia-Arias yelled, “dale, dale, pega me” (go for it, hit me) as he exited the bushes. Officer Yuhas deployed his TASER from a distance of approximately 4 to 6 feet. Mr. Garcia-Arias audibly yelled, and briefly stopped his forward motion towards Officer Silva. Mr. Garcia-Arias regained his mobility, and continued to step forward with the wood rod in both hands towards Officer Silva. (Figure 4). Officer Silva stepped further back into the thick shrubbery behind her. Mr. Garcia-Arias was approximately 3 to 5 feet away from Mr. Garcia-Arias as he completely exited the bushes.

³ Distances in this summary are approximations based on video and physical inspection of the scene.

At 10:15:40 a.m., Officer Silva fired two consecutive rounds at Mr. Garcia-Arias from a distance of 3 to 5 feet.⁴ Both rounds struck Mr. Garcia-Arias. (Figure 5, Figure 6.)



Figure 5 – First Shot Fired: Still frame from Officer Frias body camera (left), Officer Yuhas body camera (right)

⁴ CaPSIT personnel, using calculations based on frame rate from the video, estimated the time between the TASER deployment and the first shot fired by Silva, to be 2.06 seconds.



Figure 6 – Officer Frias body camera still: second shot fired



Figure 7 – Officer Yuhus body camera still



Figure 8 – individual positions when shots were fired

As Officer Silva fired the second round at Mr. Garcia-Arias, he ran southbound on the west sidewalk of Williams street directly towards Officer Frias. Officer Frias was able to push Mr. Garcia-Arias backwards and Mr. Garcia-Arias collapsed into the shrubbery that was between the sidewalk and the street.

After he collapsed, Officers Silva, Yuhas, Frias, and Babb, began life saving measures.

At 10:16:00 a.m., Officer Babb transmitted over police radio “shots fired.” Officer Babb requested the Orange County Fire Authority to respond to the scene. As a result of the shots fired radio call, several additional Tustin Police Department Officers responded to the scene. Within minutes, Orange County Fire and paramedics arrived on scene and continued lifesaving efforts. At approximately 10:36:00 a.m., Mr. Garcia-Arias was transported by Care Ambulance to Orange County Global Medical Center where he was placed into the care of Doctor Christopher Lane. Lifesaving efforts were unsuccessful and Doctor Lane pronounced Mr. Garcia-Arias deceased at 12:59 p.m.

INVESTIGATION

On August 9, 2021, Orange County District Attorney’s Office (“OCDA”) contacted the DOJ Division of Law enforcement (“DLE”) California Police Shooting Investigation Team (“CaPSIT”) alerting them to an OIS that occurred in Tustin, California at approximately 10:05 a.m. The incident involved the Tustin Police Department (“TPD”) and was determined to be a qualifying event within the meaning of Government Code section 12525.3 (For more information on the DOJ’s practices and procedures, see <https://oag.ca.gov/ois-incidents>.)

CaPSIT agents responded to the scene to initiate a criminal investigation on behalf of the DOJ. A Deputy Attorney General (DAG) from the Attorney General’s Special Prosecutions Section also responded. After arrival, CaPSIT agents made contact with the OCDA Investigators who were already on scene. DOJ Investigators walked the scene with Orange County Crime Lab (“OCCL”) Crime Scene Investigators. Members of the CaPSIT team also responded to the Tustin Police Department. There, they learned that Officer Silva, the shooting officer, was photographed, and her uniform, duty weapon, magazines, and clothing were collected. In addition, Officer Yuhas’ TASER was collected by OCCL. While at the Tustin police department, DOJ, TPD, and OCDA investigators reviewed all available body worn camera footage.

That evening, Officers Frias, Yuhas, and Babb provided voluntary statements to TPD, OCDA, and DOJ investigators. Officer Silva declined to make a voluntary statement on the day of the incident, but did provide a statement on a later date. In addition to the involved officers, statements were taken from civilian percipient witnesses.

The evidence considered is laid out below.

Evidence Reviewed

- The incident scene Figure 1, the southbound lane of Williams Street and the west sidewalk, south of the main entrance to the Saddleback Mobilodge Club located at 15401 William Street
- Dispatch records and logs of the incident
- 911 audio recording
- Criminal history information involving Mr. Garcia-Arias
- Prior Police contacts involving Mr. Garcia-Arias
- Body worn camera footage from the officers involved in the incident
- Patrol Vehicle Dash camera footage
- Voluntary statement from shooting Officer Silva
- Voluntary statements from involved non-shooting Officers Yuhas, Frias, and Babb
- Interviews of all civilian witnesses associated with this incident
- Orange County Coroner's Report
- OCDA Canvassing Reports
- OCFA Patient Care Report
- OCCL Scene Report and Evidence Recovery
- OCCL Criminalist Report: Wood Rood
- OCCL Firearms Report
- OCCL Crime Scene Photograph reports
- Expert report of Greg Meyer

Crime Scene Description



Figure 9 – Crime scene

The Officer-Involved Shooting occurred on the west sidewalk of Williams Street, south of East Main Street, in the City of Tustin, California. The scene encompassed the southbound lane of Williams Street and the west sidewalk, south of the main entrance to the Saddleback Mobilodge Club located at 15401 William Street. Bushes were between the sidewalk and street. A block wall was west of the sidewalk. The block wall had an inset with bushes.

Crime Scene Recovery

The evidence at the incident scene was processed by forensic scientists from the Orange County Crime Lab. The below items were collected and submitted to the Orange County Crime Lab Evidence Control Unit:

- #1 – One cartridge case head stamped “WIN 9mm LUGER” & one black beanie
- #2 – One white wooden dowel, approximately 4-foot long and 1-inch in diameter
- #3 – One AXON TASER 7, serial number X40003Y6V with two cartridges
- #4 – One green shirt with apparent blood stains and a single TASER probe
- #5 – One pair of blue jeans with apparent blood stains and a brown canvas belt and one pair of black and brown tennis shoes.

Wooden rod

The wooden rod held by Mr. Garcia-Arias was recovered at the scene and was examined by the Orange County Crime lab. A Supervising Forensic Specialist measured the rod and made the following observations of the item: “Wooden rod painted white (length 57 1/4 inches, diameter 1 1/4 inches)”

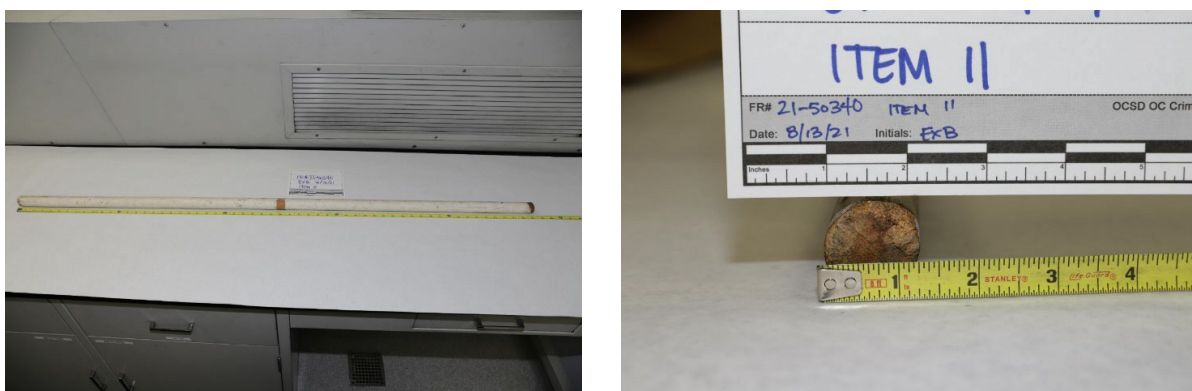


Figure 10 - measured photographs from OCCL

Firearm and Ballistics Evidence

Firearm

Officer Silva's firearm, a cartridge case recovered from the scene, and fragments retrieved from the autopsy of Mr. Garcia-Arias were analyzed by the Orange County Crime Lab. The results indicated that the firearm fired and operated without malfunction. The cartridge case retrieved from the scene, evidence item #1, was determined to have been fired from the firearm. In addition, several lead fragments were examined that were recovered during the autopsy of Mr. Garcia-Arias. The fragments were too small for further classification and comparison.

TASER

Data from Officer Yuhas' TASER was downloaded and analyzed. The Axon TASER summary report showed an electrical discharge duration of 4.97 seconds. Analysis of the TASER pulse graph demonstrated that at approximately 3.5 seconds into the electrical discharge, the TASER circuit appeared to be broken. This can occur when one or both probes become dislodged, disconnected, or blocked by something and the TASER is inhibited from maintaining a solid connection. After a connection is broken, a TASER would not be able to create neuro-muscular incapacitation.

Body Worn Camera and Other Recordings

Body worn camera footage was turned over by the Tustin Police Department for review. Officers Yuhas and Frias' body worn cameras recorded the relevant portions of the incident. In addition, investigators identified and recovered digital in-car video from one Tustin Police Department vehicle that also observed the incident.

Officer Silva, the shooting officer, was not wearing her body worn camera during the incident. Officer Silva stated that when she started her shift she was equipped with her body worn camera. In addition, she checked to make sure it was in good working order. When Officer Silva arrived at the Saddleback Mobilodge, she exited her vehicle and left her body worn camera docked in a charging cradle inside of her vehicle. Officer Silva stated that due to the urgency of the radio call she did not think to grab her camera.

Based upon a review of the video footage and an inspection of the scene, a CaPSIT agent estimated that Officer Silva was three to five feet away from Mr. Garcias-Arias when she unholstered her firearm immediately preceding the shooting, and at the time that she discharged her firearm.

Photographs

On August 9, 2021, after the OIS, OCCL forensic specialists photographed the area where the OIS occurred and various items of evidence located at the scene. OCCL also photographed Officers Silva, Yuhas, Frias, and Babb.

Interview of Involved Officers

Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.)

Public employees, including police officers, may be compelled by an employer to answer questions for administrative purposes, but the use of such statements in criminal proceedings is prohibited. (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 827-828, citing *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77-79, *Garrity v. State of New Jersey* (1967) 385 U.S. 493, 500.) Accordingly, no compelled statements were considered as part of this investigation.

There were four officers involved in this incident. Each officer was interviewed. The following statements are summaries of their interviews, which describe the incident from the point of view of the individual officers. The interviews contain facts relayed by the officers that may be inaccurate or inconsistent with the facts of this incident as they are currently understood. Some facts as relayed by the officers simply cannot be verified due to limitations of video footage (see below).

Tustin Police Officer Yuhas

On August 9, 2021, Officer Joshua Yuhas agreed to give a voluntary statement. The following individuals were present during the interview: Special Agents Peter Stone and Alvaro Arreola, from the California Department of Justice; Officer Graciela Melendrez, from the Tustin Police Department; Investigator Tom Toth, from the Orange County District Attorney's Office; and Attorney Sherry Lawrence, from Stone Bushalish, LLP representing Officer Yuhas. Officer Yuhas' statement is summarized below.

Officer Yuhas had been employed as a Patrol Officer with the Tustin Police Department for four and a half years. Before joining Tustin Police Department, Officer Yuhas worked four years for the San Diego Sheriff's Department, and spent approximately 15 years in the Navy working in the military police. As part of his training in the Navy, Officer Yuhas was trained in force options and defensive tactics related to baton, TASERS, deadly force, strikes, and control holds. Officer Yuhas has a Bachelor's Degree from Grand Canyon University for Emergency Management.

On August 9, 2021, Officers Yuhas and Frias had parked their respective patrol cars at an abandoned gas station and were working on writing reports. Officer Frias got into Officer Yuhas' vehicle to talk, and a call popped up on the computer screen. The call indicated there was a suspicious person hiding in the bushes near the Saddleback Mobilodge. The call also indicated that the individual had been seen walking around talking to himself and holding a knife, but not threatening anyone, the day before. Officer Yuhas felt that something about the call did not sound right, so decided to join the call.

Officer Yuhas arrived at the mobile home park. Officer Silva was already there speaking to the reporting party, W-1. Officer Yuhas got out of the car and asked Officer Silva if Mr. Garcia-Arias was still there. Officer Silva confirmed Mr. Garcia-Arias was still in the bushes and that W-1 would walk them to his location. Officer Yuhas returned to his patrol vehicle to grab his camera and gloves. As they walked over to Mr. Garcia-Arias' location Officer Frias arrived. Officer Silva told Officer Yuhas that

the reporting party indicated that Mr. Garcia-Arias was behind the bush in the little pocket between the bush and the wall.

Officer Yuhás looked down and observed that Officer Silva had drawn her firearm in her right hand. Officer Yuhás was not sure if it was verbalized, but based on his experience and common practice, he decided to “go less lethal”⁵ by drawing his TASER. Officer Frias walked past Yuhás and Silva. Officer Frias said, “I’m going past the bush just watch your cross-fire.” Officer Frias walked past the bushes. At this point Officer Frias was south of the bushes, while Officers Yuhás and Silva remained north of the bushes.

Officer Yuhás looked past Officer Silva and saw Mr. Garcia-Arias “kind of wrestling” in the leaves. Officer Silva ordered Mr. Garcia-Arias to come out and talk. Officer Yuhás heard Mr. Garcia-Arias say something in Spanish, and then Officer Silva again ordered him to come out. At that point, Officer Yuhás saw a figure stand up. Yuhás observed Mr. Garcia-Arias peer out from behind the bushes, but Mr. Garcia-Arias was still inside. Mr. Garcia-Arias appeared to be “taking his time” grabbing stuff. Officer Yuhás heard him grab what sounded like a grocery bag of recycling cans.

Officer Silva continued ordering him out. Officer Silva was speaking in Spanish and Officer Yuhás could not understand what she was saying. Officer Silva said in English to come out. Mr. Garcia-Arias appeared to come towards Officers Yuhás and Silva, but then retreated. Officer Silva stated, “I’m just going in to get him.” As Officer Silva said that, Mr. Garcia-Arias came towards them, and Officer Yuhás observed a trash bag of cans. Mr. Garcia-Arias still was not listening to commands to come out from the bushes. Mr. Garcia-Arias was within a foot of Officers Silva and Yuhás, when both officers simultaneously tried to grab Mr. Garcia-Arias. Mr. Garcia-Arias dropped the bag and turned out of view. Officer Silva continued giving commands to come out. Officer Yuhás believed that Mr. Garcia-Arias was grabbing a weapon.

A few seconds later Mr. Garcia-Arias emerged with a white pole in his hands. The pole was approximately three and a half feet long. Mr. Garcia-Arias was holding the pole with both hands upright towards Officers Yuhás and Silva. Officer Yuhás yelled, “drop it he’s got a pole” as he broke the threshold of the bush and onto the sidewalk.⁶ Mr. Garcia-Arias did not drop the pole, so Officer Yuhás fired his TASER. Officer Yuhás believed he hit Mr. Garcia-Arias in the right shoulder with one prong, but did not see where the other prong went. Mr. Garcia-Arias yelled incoherently, and Officer Yuhás realized the TASER was ineffective. Officer Yuhás feared that Mr. Garcia-Arias was going to hurt him or one of his partners with the pole. Specifically, he feared one of them could be hit in the head causing great bodily harm, or even killing them. At that moment, Officer Silva fired her weapon at Mr. Garcia-Arias once and Mr. Garcia-Arias turned towards Officer Frias. Officer Frias grabbed him with both hands and threw him down to the bushes. Officers hand cuffed him, and Mr. Garcia-Arias was still fighting and trying to kick officers. Officer Yuhás began administering first aid.

⁵ “Less lethal” refers to weapons that are likely to be less lethal than a firearm.

⁶ It should be noted that there is an early frame in this video in which it is possible that Mr. Garcia-Arias is thrusting the pole towards Officer Silva, as she said in her statement. However, given the position of the BWC and the two-dimensional nature of video, this cannot be verified. Further, the BWC did not capture the movements the decedent made while he was further back in the bushes.

In conclusion, Officer Yuhas Stated:

“I had my Taser out, and had I had my pistol out, I would’ve shot him as well. I feared he was gonna kill one of us with that stick. Like his intention wasn’t to stop, wasn’t to drop it after being told numerous times to drop it. After I shot him with the Taser and he still continued that assaultive behavior with the pole in his hand, I feel his intention wasn’t to give up, it was to hurt one of us. Or kill one of us with it.”

“[I’m] Just I’m very grateful that officer Silva did shoot him because had she not I think he would have used that pole to hit one of us or directly hit officer Frias. So, had she not done what she did, I think Frias either wouldn’t be here at all or would be in a hospital. And had I been in her shoes or had I have, had I been lethal and she would be non-lethal I would’ve shot him as well. I feared he was gonna hurt one of us. So, I’m glad she did what she did, and that she saved all of us.”

Tustin Police Officer Frias

On August 9, 2021 Officer Frias agreed to give a voluntary statement. The following people were present during the interview: Special Agents Peter Stone and Alvaro Arreola, from the California Department of Justice; Detective Eric Haug, from the Tustin Police Department; Investigator Tom Toth, from the Orange County District Attorney’s Office; and Attorney Sherry Lawrence, from Stone Bushalish, LLP representing Officer Frias. Officer Frias’ statement is summarized below.

Officer Frias had been a police officer for five years and was assigned to patrol. Officer Frias responded to the call at the mobile home park. When he arrived, he observed Officers Silva and Yuhas by the front gates speaking with the reporting party. Officer Frias parked his patrol car, and all three officers walked up to bushes that were up against the wall. Officer Frias could not see Mr. Garcia-Arias but could hear Officer Silva saying, “hey, wake up. Come out.” Frias stated that Mr. Garcia-Arias was not complying with her commands and “was like verbally confrontational like no. I don’t, I’m not gonna come out. I don’t like I don’t wanna listen to you. I don’t know the exact verbiage he used but it was along those lines.”

Officers Silva and Yuhas stayed at the north part of the bushes, and Frias walked on the other side to get a vantage point. Frias looked inside the bushes and saw Mr. Garcia-Arias inside. Frias was not able to see his hands. Officer Frias recalled Mr. Garcia-Arias being verbally defiant saying, “I don’t have to listen to you, I’m just back here recycling.” Officer Frias could see him putting his hands in his pockets and taking them out, shaking what sounded like coins.

Officer Frias stated that from his vantage point, Mr. Garcia-Arias kept turning around and he was unsure what he was reaching for. Officer Frias noted that Officer Silva was giving commands in English and in Spanish.

Officer Frias noticed Mr. Garcia-Arias picking up a large white metal pipe. Mr. Garcia-Arias held it up with both his hands and starting walking out of the bush with the pipe. Officer Silva pointed her gun at the Mr. Garcia-Arias and gave commands to drop the pipe. Officer Yuhas deployed his TASER. Officer Frias observed the prongs from the TASER make contact, but it had no effect on Mr. Garcia-Arias as he continued towards Officer Silva. Officer Frias stated that Mr. Garcia-Arias appeared angry as he held the pipe with both his hands. Mr. Garcia-Arias turned from Officer Silva and was walking directly at

Frias. The distance was approximately five feet. Officer Frias put his hand on his service weapon thinking he might need to stop the threat, when Mr. Garcia-Arias started collapsing in front of him. At that point, Officer Frias pushed him out of the way. Officers went down to the ground with Mr. Garcia-Arias and cuffed him. At that moment, Officer Frias noticed Mr. Garcia-Arias was bleeding and started assessing him for gunshot wounds. Officers applied gunshot wound patches and gauze until the fire department arrived.

Officer Frias stated that he had been concerned because, despite commands, Mr. Garcia-Arias did “not listen,” and, even with TASER and firearm drawn, Mr. Garcia-Arias came towards officers with a metal pipe. Officer Frias believed that Mr. Garcia-Arias was trying to hurt them. Officer Frias believed that the pipe was heavy and if they were to be hit it would cause a serious injury or kill them.

Officer Frias stated, “had Officer Silva not taken that shot like that, I probably wouldn’t be talking to you guys right now. I wouldn’t be here, been seriously injured in the hospital bed right now with like a head cut open or I would have been dead. So I’m just, I mean I’m grateful that things ended the way they did and none of us got hurt seriously.”

Tustin Police Officer Babb

On August 9, 2021 Officer Babb agreed to give a voluntary statement. The following people were present during the interview: Special Agent Tony Baca, California Department of Justice; Detective David Nguyen, Officer Garciella Melendrez, Tustin Police Department; Investigator Dave Melnyk, Orange County District Attorney’s Office; Officer Mike Wagner, Tustin Police Association Representative. Officer Frias’ statement is summarized below.

Officer Babb had been a police officer for five years with the Tustin Police Department. He was assigned to the patrol division. Officer Babb responded to the same call of a suspicious person waving a steak knife.

Officer Babb was the fourth officer to arrive on the scene. After parking his vehicle, Officer Babb exited his patrol vehicle and could hear verbal commands being given, ordering Mr. Garcia-Arias out of the bushes. Officer Babb saw Mr. Garcia-Arias exit the bushes with a pole in a threatening manner and ready to strike. Officer Babb believed the pole was metal, four feet long, and an inch diameter. Officer Babb heard the officers give commands to drop the pole.

Officer Babb observed Officer Yuhas deploy his TASER. The TASER was ineffective. At that point Mr. Garcia-Arias turned his attention to Officer Frias who was standing on the southernmost part of the bushes. Mr. Garcia-Arias turned and headed quickly towards Frias with the pole still in his hands at chest height and ready to be used as a blunt force instrument. As Mr. Garcia-Arias closed distance to Frias, Officer Silva fired her weapon. Officer Babb stated that Mr. Garcia-Arias fell to the ground. Officer Babb returned to his vehicle to obtain medical supplies. He went to Mr. Garcia-Arias and assisted giving aid. Officer Babb rode in the ambulance with Mr. Garcia-Arias to Orange County Global until another officer relieved him.

Tustin Police Officer Estela Silva

On October 21, 2021, Officer Silva agreed to give a voluntary statement. The following people were present during the interview: Special Agent Tony Baca, California Department of Justice; Detective Eric Haug, Tustin Police Department; Investigator Toth, Orange County District Attorney’s Office; Attorney Michael Schwartz, The Michael Schwartz Firm representing Officer Silva. Officer Silva’s statement is summarized below.

Officer Silva was five feet tall, 140 pounds, and was a police officer assigned to the south patrol quality of life unit. Officer Silva had been a sworn police officer for approximately two years. Prior to joining the Tustin Police Department, Officer Silva worked as a parking enforcement officer for the City of Tustin for approximately two years. Officer Silva has an associate's degree in criminal justice from Irvine Valley College and is fluent in Spanish.

Officer Silva had had multiple prior contacts with Mr. Garcia-Arias. When describing prior contacts with Mr. Garcia-Arias Officer Silva said Mr. Garcia-Arias has, "always been very confrontational. Um, he is a transient, um, in the city, um, as well as calls for service that I went for him...were violent crimes that he was involved with." Silva had been directly involved in prior calls for service concerning Mr. Garcia-Arias for crimes involving violence. Specifically, Silva recalled arresting Mr. Garcia-Arias on a robbery case (TPD CR #20-6666) and arresting him on an outstanding assault warrant (TPD CR #21-2801). Additionally, she was involved in another incident where it was reported that Mr. Garcia-Arias was holding and waving around a knife.

The first incident occurred on November 1, 2020, in Santa Ana, California. An ice cream vendor was pushing his ice cream cart near Lyon St. when he was approached by Mr. Garcia-Arias. Mr. Garcia-Arias said to the vendor, "Give me everything you have. If not I'll kill you!" The vendor feared for his life. Mr. Garcia-Arias was holding a large piece of wood in his right hand as he made the threats. The piece of wood was about ten inches by four inches in size. According to the vendor, Mr. Garcia-Arias held the wood up above his head, prepared to strike. Mr. Garcia-Arias then stated, "Give me everything you got or I'll toss the cart." The vendor handed Mr. Garcia-Arias his day's earnings, which was \$32.

On November 13, 2020, Officer Silva was sent to locate the suspect involved in the ice cream cart robbery. The victim from the robbery called police and indicated that he had just seen the man who had robbed him two weeks earlier. Officer Silva located the suspect, and conducted an in-field show-up. The victim confirmed that the Mr. Garcia-Arias was the man who robbed him on November 1, 2020. Officer Silva contacted Santa Ana PD and informed them that she had detained Mr. Garcia-Arias. Santa Ana PD took custody of Mr. Garcia-Arias.

The second interaction occurred on May 6, 2021. Officer Silva responded to a call of two males taking apart bicycles on the side of a jewelry store. One of the two males was identified as Mr. Garcia-Arias. Officer Silva requested a records check, which revealed Mr. Garcia-Arias had an outstanding warrant for a violation of Penal Code Section 245(A)(4), assault with a deadly weapon. Officer Silva arrested Mr. Garcia-Arias and took him into custody. She conducted a search incident to arrest of Mr. Garcia-Arias and found a substance that she suspected was methamphetamine.

According to Officer Silva, Mr. Garcia-Arias was "confrontational" in their prior interactions. She also indicated that she was aware of one other incident where a reporting party had seen Mr. Garcia-Arias wielding a knife. Silva Indicated that when she and her partner made contact with Garcia he did not have the knife on his person. However, officers did locate the knife in the area. Garcia was not arrested at the time, but the knife was taken.

On August 9, 2021, Officer Silva responded to a call for service for a suspicious person inside the bushes who was seen waving a knife the night prior. Officer Silva met with the reporting party (W-1). W-1 told her that she was known at the Mobilodge as a retired police officer. W-1 said it was common for individuals in the community to come to her with law enforcement related questions or concerns. W-1 told Officer Silva that she was familiar with the transient male living in the area right outside the

gated community. W-1 party told Officer Silva that the transient person was seen waving a knife on a prior day. W-1 party went for a walk and saw Mr. Garcia-Arias go behind the bushes, but was too afraid to make contact him herself. Officer Silva and W-1 walked towards the entrance of the mobile home park when Officer Yuhas and Officer Frias arrived.

Officer Silva had W-1 stand at a safe distance. When Officer Silva approached the bushes, she had a hard time seeing inside, but observed that branches near a small opening appeared disturbed as if someone was going in and out. Officer Silva drew her firearm close to her chest, pointing downward and used the flashlight attached to her firearm to illuminate the ground. She designated herself as the officer to use lethal force: "Because I was handle[r] of the call, um, I designated myself as lethal force, um, so, and I led, I led the way."

Officer Silva observed bags of property, as well as two feet and two legs. Officer Silva observed Mr. Garcia-Arias lying back with his hands behind his head, and his eyes closed. He appeared to be sleeping. Officer Silva told him to wake up. At that point, Officer Silva immediately recognized Mr. Garcia-Arias from prior interactions. Officer Silva said she knew that Mr. Garcia-Arias would be immediately confrontational:

"I knew he would be immediately confrontational. I knew he had the ability to assault people around him. Um, knowing that obviously we went to a call for service of him waving a knife in the air, I wouldn't be, I wasn't surprised that he would actually have have several knives on him or a knife with him in his possession, um, when I contacted him. So I knew he, he's more than willing to assault anyone around him."

Officer Silva said, "Hey I know you," hoping that it would calm him down.

Mr. Garcia-Arias stood up, turned his back towards Officer Silva, and started putting his hands in his pockets. Officer Silva instructed him to show his hands. Mr. Garcia-Arias did not listen. Mr. Garcia-Arias said something like, "Why are you arresting me?" Then Mr. Garcia-Arias bent over and began looking for something. Officer Silva was concerned that he might be looking for the knife.

Officer Silva commanded him in both Spanish and English to show his hands and take his hands out of his pockets. Mr. Garcia-Arias did not comply. Prior to that, Officer Silva had told Officer Frias to go to the left side of the bushes in case Mr. Garcia-Arias decided to run out of the other side of the bushes.

Mr. Garcia-Arias started walking out of the bushes and Officer Silva grabbed him with her left hand. Officer Silva still had her firearm out. Officer Yuhas reached around and grabbed him by the back of the head. Officers Silva and Yuhas were unsuccessful in gaining control; Mr. Garcia-Arias pulled away and went back into the bush.

Officer Silva holstered her firearm hoping that she might be able to control him using two hands, and to prevent Mr. Garcia-Arias from arming himself. Officer Silva stepped closer to the bush but could not see anything because it was dark. Officer Silva observed him pull out a white pole. Officer Silva described the object as a white metal pole, longer than a baseball bat. Mr. Garcia-Arias jabbed the pole towards Officer Silva's stomach. Officer Silva stepped backwards to create distance between herself and Mr. Garcia-Arias in order to prevent him from hitting her. Officer Silva could not retreat further due to the waist high bush behind her.

Mr. Garcia-Arias stepped out of the bush holding the pole like a baseball bat. Officer Yuhas deployed his TASER unsuccessfully which seemed to agitate Mr. Garcia-Arias. Officer Silva stated, “he took a step towards me. I knew he wanted to hit me. I knew he was mad at me. Um, and when he held it up as a baseball bat I thought he was gonna bash my face in. So, I had no choice and I shot him.” Officer Silva believed Mr. Garcia-Arias wanted to kill her or seriously injury her. She believed a hit from the metal pole would have knocked her unconscious.

Officer Silva fired one shot at Mr. Garcia-Arias. Silva turned and looked at Officer Frias. Officer Frias did not seem ready. Frias did not have a firearm or any other weapon out. Mr. Garcia-Arias took a running step towards Frias with the pole in a baseball grip. Officer Silva stated, “if he [Mr. Garcia-Arias] took either one step or just swung it at that point he would’ve been able to hit Frias. Then so I shot him one more time.”

Mr. Garcia-Arias continued to run but dropped the pole and landed on Officer Frias who pushed him off. Officer Silva stated, “I knew his goal was to either hit me or hit one of us. And if I ran away he would still reach me or Officer Yushas, or Frias ‘cause the distance was very close. I had nowhere to go.” Officer Silva explained that the bushes behind her were about waist level.

After that, Officer Silva handcuffed Mr. Garcia-Arias and performed first aid, Officer Silva scanned his body for chest wounds and she applied chest seals. After that, Sergeant Wright arrived on the scene and told Officer Silva to stop doing first aid and stand by her vehicle.

Interviews of Civilian Witnesses

Twenty-three Civilian witnesses were interviewed pursuant to this investigation by detectives from the Tustin Police Department, investigators from the Orange County District Attorney’s Office, and agents from the Department of Justice. Four of the witnesses had information relevant to the OIS investigation (the other 19 individuals did not directly observe the OIS). The following four statements are summaries of the relevant interviews, which describe the incident from the point of view of each person. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

Witness 1 (“W-1”)

On August 9, 2021 Tustin Police Department Detective Rojas and Orange County District Attorney Investigator Richard Ayres interviewed W-1.

On August 7, 2021, two days prior to the officer involved shooting, W-1 was contacted by her neighbor W-2. W-1, W-2, W-3, are all residents of the Saddleback Mobilodge. W-2 told W-1 that her neighbor W-3 had located a knife on a wall near their backyard. W-1 met with W-3 at W-3’s home. W-3 showed W-1 where the knife was located. W-1 described the knife as having a wooden handle and a blade that was approximately ten inches long. W-1 pushed the knife and it fell into the bushes bordering Williams Street. W-1 stated that another resident told W-1 that on August 8, 2021, they had seen the unhoused man who was living in the bushes walking with a knife in his hand. Then they observed the man go back into the bushes.

On August 9, 2021, W-1 walked by the bushes where W-1 had seen the unhoused male previously. As W-1 walked by the bushes, W-1 heard Mr. Garcia-Arias talking to himself and decided to call the police. W-1 told the 911 operator that there was a homeless person living in the bushes and that he had previously been seen with a knife.

W-1 waited by the front gate of the complex for police. W-1 spoke to a female officer who arrived a short time later. W-1 told the female officer that there was a transient male living in the bushes and that the individual had been seen with a 10-inch knife in the days leading up to the call. W-1 stated that the female officer walked away while W-1 remained at the front of the complex by the gate. W-1 could see the three officers attempting to speak with Mr. Garcia-Arias who was inside the bushes. W-1 stated that the bushes are dense and it would be difficult for officers to see Mr. Garcia-Arias, but easy for Mr. Garcia-Arias to see them.

W-1 heard the officers ordering Mr. Garcia-Arias to come out of the bushes. W-1 stated that she heard the officers ordering the subject to “drop the knife” three separate times. W-1 stated she heard Mr. Garcia-Arias yelling at the officers combatively. W-1 observed two officers draw their weapons. W-1 heard three shots and then observed the officers providing medical attention to Mr. Garcia-Arias. W-1 never had a clear view of Mr. Garcia-Arias because the officers obstructed W-1’s view.

Witness 2 and Witness 5

On August 9, 2021, Tustin Police Department Detective Rojas and Orange County District Attorney Investigator Richard Ayres interviewed W-2 and W-5.

On August 7, 2021, W-2 saw a knife sticking out near the bushes and wall near Williams Street. W-2 was concerned because her grandson was over and was playing outside. W-2 and W-1 went over to where the knife was and W-1 pushed the knife into the bushes on Williams Street.

On August 7, 2021, W-5 saw Mr. Garcia-Arias with a bag of bottles around noon. W-5 saw him rustling around in the bushes. W-5 did not tell W-2 because he did not want to concern her. On August 8, 2021, W-5 saw Mr. Garcia-Arias again mumbling to himself. In addition, W-5 saw Mr. Garcia-Arias with a knife in his hand. W-5 continued to look at him, and then Mr. Garcia-Arias went into the bushes.

On August 9, 2021, W-2 and W-5 were inside their residence when the OIS occurred. W-2 and W-5 did not see anything, but heard people talking loudly behind their residence that borders Williams Street. They heard three gunshots and then walked outside. They saw police officers providing medical attention to Mr. Garcia-Arias lying on the sidewalk. They have cameras that surround their property but neither of the cameras captured the incident.

Witness 4

On August 10, 2021, Orange County District Attorney Investigator Chris Peterson, Detective Rojas from Tustin PD, and Department of Justice Agent Supervisor Sok Kyong interviewed W-4.

On August 9, 2021, W-4 was returning home to the mobile home park when she noticed a marked Tustin police vehicle driving behind her. W-4 turned into the mobile home park and the police vehicle followed her vehicle. W-4 made another right hand turn through the entrance gate as the police vehicle turned the other direction and parked. W-4 parked her vehicle inside the mobile home park near the swimming pool and watched the police activity through her rear view mirror as she listened to her radio.

W-4 observed three officers near the bushes on the other side of the street from where she was parked. W-4 saw Mr. Garcia-Arias come out of the bushes towards the officers with a stick in his hands. W-4 described the stick as a four-foot rake that was possibly metal, wood, or plastic. W-4 stated Mr. Garcia-Arias might have struck or attempted to strike one of the officers with the stick as he tried to leave the bushes. W-4 looked to her right, and when she looked back into the rear view

mirror, she could see the man was on the ground with the police officers around him. She was listening to loud music on the radio in her vehicle and did not hear anything prior to seeing the man on the ground.

Autopsy

On August 11, 2021, Orange County Sheriff-Coroner Forensic Pathologist Doctor Aruna Singhania performed a post-mortem examination of Mr. Garcia-Arias. Singhania concluded that Mr. Garcia-Arias sustained four (4) entry or exit gunshot wounds on his body and were numbered as indicated below. The numbering of wounds was for descriptive purposes and does not imply or suggest sequence or severity of injuries.

- Gunshot Wound No. 1 was an exit-type of gunshot wound on the left side of the back of the body. This wound was 11 inches below the top of the right shoulder and about 2 inches right of the midline. There was one embedded, small, copper fragment which was removed by the criminalist and saved.
- Gunshot Wound No. 2 was an entry-type of gunshot wound on the right side of the upper chest. This wound was about 9 inches below the top of the right shoulder and 4 inches right of the midline.
- Gunshot Wound No. 3 was an exit-type of gunshot wound on the right side of the lower chest. This wound was about 14 inches below the top of the right shoulder and about 6-1/4 inches right of the midline.
- Gunshot Wound No 4 was an entry-type of gunshot wound on the left side of the lower chest. This wound was about 13-1/2 inches below the top of the left shoulder and about 4-1/3 inches left of the midline.

Singhania concluded that the cause of death was a through and through gunshot wound to the chest. The Toxicology report showed presumptive positive results for Amphetamine and methamphetamine.

DRUG	POSTMORTEM BLOOD	ANTEMORTEM BLOOD
Ethanol		0.012 ± 0.004 % (w/v)
Amphetamine	0.159 ± 0.012 mg/L	0.0903 ± 0.0067 mg/L
Caffeine	Detected	Detected
Intimidate	Detected	Detected
Methamphetamine	2.21 ± 0.16 mg/L	1.21 ± 0.09 mg/L
Midazolam	0.0209 ± 0.0029 mg/L	

Expert Report of Greg Meyer

The DOJ hired retired Los Angeles Police captain Greg Meyer to review the use of force in this OIS and draft an expert report. Meyer's report includes his training and experience, review process, and expert opinion. The following is a summary of the relevant portions of his report.

Greg Meyer retired in 2006 as a captain with the Los Angeles Police Department after 30 years of police service. He chaired both the LAPD's Use of Force Best Practices Work Group and the Tactics Training Review Committee. Since 1989, he has been engaged as a police tactics and procedures expert in numerous lethal and nonlethal police use-of-force and other police procedures cases. He has been an expert witness in numerous high-profile cases including Rodney King, Oscar Grant (the Oakland BART murder case), and George Floyd. He has been engaged in more than 400 cases involving shootings, TASERs, arrest-related deaths and other police procedure matters, including several outside independent reviews of use of force cases for various District Attorney offices in California.

He holds the Certified Force Analyst credential of the Force Science Institute and qualified for the Certified Litigation Specialist credential of the Americans for Effective Law Enforcement (AELE). He is a member of AELE's Faculty Advisory Committee and AELE's Monthly Law Journal review panel.

Mr. Meyer has more than 40 years of experience with TASER devices. He conducted LAPD's research and testing of TASERs in 1979-1980. He used TASERs on the street when he was a sergeant. He trained and certified hundreds of TASER instructors around the country. Since 2001, he attended four TASER instructor certification courses. He has personally experienced the TASER effects several times.

In order to form his opinion, Mr. Meyer reviewed the evidence in this investigation including but not limited to, dispatch traffic, police reports, photographs, BWC video, in-car video, and forensic reports. After reviewing the case materials, Mr. Meyer independently made findings and formed opinions about the use of force in this matter.

In his report, Mr. Meyer notes that video evidence of a police use of force incident is generally very valuable to an investigation, but it has several significant, potential limitations that investigators and adjudicators must be aware of. These include: videos do not always capture the officer's point of view; videos may capture things that the officer did not see; and videos may document lighting conditions, depth perception, and peripheral fields of view that are different from the human eye.

Mr. Meyer analyzed this incident under Penal Code section 835a. Specifically, he concluded that "Officer Silva used deadly force to overcome resistance in self-defense to the suspect's attack with a large solid pole, and in defense of Officer Frias who imminently faced the same danger." (Pen. Code, § 835a, subd. (b).) Further, he concluded that "Officer Silva used deadly force to overcome resistance in self-defense to the suspect's attack with a large solid pole, and in defense of Officer Frias who imminently faced the same danger." (Pen. Code, § 835a, subd. (c)(1)(A).) Based upon the videos, the suspect presented an imminent and immediate deadly threat to the nearby officers when he came out of the bushes wielding a large solid pole in a manner that appeared that he intended to use it to strike one or more of the officers at close range.

Mr. Meyer concluded that based upon the videos, Mr. Garcia-Arias presented an imminent and immediate deadly threat to the nearby officers when he came out of the bushes wielding a large solid pole in a manner that appeared that he intended to use it to strike one or more of the officers at close range.

DOJ ANALYSIS

Applicable Legal Standards

Homicide is the killing of one human being by another. (*People v. Beltran* (2013) 56 Cal.4th 935, 941.) There are two types of criminal homicide, murder and manslaughter.

Murder

Murder is the unlawful killing of a human being with malice aforethought. (Cal. Pen. Code, § 187, subd. (a).) Murder is divided into first and second degrees. A willful, deliberate, and premeditated killing is murder of the first degree. (Pen. Code, § 189; *People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332.)

Second degree murder is the unlawful killing of a human being with malice aforethought but without the additional elements of willfulness, premeditation, and deliberation, that would support a conviction of first-degree murder. (*People v. Knoller* (2007) 41 Cal.4th 139, 151.) The malice required for second degree murder may be express or implied. (Pen. Code, § 188; *People v. Hernandez*, supra, 183 Cal. App.4th at p. 1332.) Malice is express when there is an “intent to kill.” (Pen. Code, § 188; *People v. Delgado* (2017) 2 Cal.4th 544, 571.) Malice is implied “when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his [or her] conduct endangers the life of another and who acts with conscious disregard for life.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1215.)

A homicide may also be reduced to second degree murder if premeditation and deliberation are negated by heat of passion arising from subjective provocation. If the provocation precludes from deliberating or premeditating, even if it would not cause an average person to experience deadly passion, the crime is second degree murder. (*People v. Padilla* (2002) 103 Cal.App.4th 675, 678.)

Voluntary Manslaughter

Manslaughter is an unlawful killing without malice. (Pen. Code § 192; *People v. Thomas* (2012) 53 Cal.4th 771, 813.) Several factors may preclude the formation of malice and reduce a killing that would otherwise be murder to voluntary manslaughter including: (1) heat of passion, and (2) imperfect self-defense. (*People v. Moye* (2009) 47 Cal.4th 537, 549.)

Imperfect self-defense is the killing of another human being under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury and the use of deadly force is necessary to defend against that danger. Such a killing is deemed to be without malice and thus cannot be murder. (*People v. Cruz* (2008) 44 Cal.4th 636, 664.) The doctrine of imperfect self-defense cannot be invoked, however, by a person whose own wrongful conduct (for example, a physical assault or commission of a felony) created the circumstances in which the adversary’s attack is legally justified. (*People v. Booker* (2011) 51 Cal.4th 141, 182.)

Self-Defense

A homicide is justified and lawful if committed in self-defense. Self-defense is a complete defense to a homicide offense, and, if found, the killing is not criminal. (*People v. Sotelo-Urena* (2016) 4 Cal.App.5th 732, 744.) When a person is charged with a homicide-related crime and claims self-defense, the prosecution must prove beyond a reasonable doubt that the homicide was not committed in self-defense. (*People v. Winkler* (2020) 56 Cal.App.5th 1102, 1167.)

Penal Code sections 196 et. seq. set forth the law of self-defense in homicide cases. Penal Code section 196 provides that a homicide committed by a peace officer is justified when the use of force complies with Penal Code section 835a. (Cf. Pen. Code, § 197 [listing circumstances where homicide committed by “any person” is justifiable, which includes self-defense or the defense of others].)

Under Penal Code section 835a, an officer may use deadly force only when the officer “reasonably believes, based on the totality of the circumstances, that such force is necessary”: (1) “to defend against an imminent threat of death or serious bodily injury to the officer or to another person”; or (2) to apprehend a fleeing person who has committed a felony “that threatened or resulted in death or serious bodily injury,” and the officer “reasonably believes that the person will cause death or serious bodily injury” if not immediately apprehended. (Pen. Code, § 835a, subd. (c)(1); see Pen. Code, § 835a, subd. (a)(2) [peace officers may lawfully use deadly force “only when necessary in defense of human life”]; see *People v. Randle* (2005) 35 Cal.4th 987, 994 [self-defense arises when a person actually and reasonably believes in the necessity of defending against imminent danger of death or great bodily injury], overruled on other grounds by *People v. Chun* (2009) 45 Cal.4th 1172.)

To determine whether deadly force is necessary, “officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” (Pen. Code, § 835a, subd. (a)(2); *People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630 [“only that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified” and “deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury”].)

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 to another person. (Pen. Code, § 835a, subd. (e)(2); see *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305-1306 [imminent peril is “immediate and present” and “must be instantly dealt with”; it is not prospective or even in the near future].)

“Totality 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. (Pen. Code, § 835a, subd. (e)(3).) De-escalation methods, tactics, the availability of less than lethal force, and department policies may be used when evaluating the conduct of the officer. However, when an officer’s use of force is evaluated, it must be considered “from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” (Pen. Code, § 835a, subd. (a)(4); accord, *Graham v. Connor* (1989) 490 U.S. 386, 396-397 [“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”]; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083 [to determine whether use of force is objectively reasonable for self-defense, trier of fact must consider all the circumstances that were known or appeared to the officer as well as consideration for what a reasonable person in a similar situation with similar knowledge would have believed]; *People v. Bates* (2019) 35 Cal.App.5th 1, 9-10 [knowledge of another person’s prior threatening or violent conduct or reputation for dangerousness may provide evidence to support a reasonable belief in imminent harm].)

Self-defense also has a subjective component. (*Humphrey, supra*, 13 Cal.4th at p. 1082.) The subjective element of self-defense requires that a person actually believes in the need to defend against imminent peril or great bodily injury. (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262.)

Burden of Proof

A prosecutor bears the burden of proving a criminal defendant's guilt beyond a reasonable doubt. (Pen. Code, § 1096.) Where an investigation is complete and all of the evidence is available for review, prosecutors should file charges only if they believe there is sufficient admissible evidence to prove the charges beyond a reasonable doubt at trial. (See, e.g., Nat. Dist. Attys. Assn., National Prosecution Standards (3d ed. 2009) Part IV, § 2 pp. 52-53; United States Department of Justice Manual § 9-27.220; Melilli, Prosecutorial Discretion in an Adversary System (1992) B.Y.U. L.Rev. 669, 684-685 [surveying ethical standards used in the exercise of charging discretion by prosecutors]; accord, *People v. Catlin* (2001) 26 Cal.4th 81, 109 ["A prosecutor abides by elementary standards of fair play and decency by refusing to seek indictments until he or she is completely satisfied the defendant should be prosecuted and the office of the prosecutor will be able to promptly establish guilt beyond a reasonable doubt," quotation and internal quotation marks omitted]; *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1374 [explaining that a prosecutor may have probable cause to charge a crime but reasonably decline to do so if they believe there is a lack of sufficient evidence to prove the charge beyond a reasonable doubt at trial]; cf. Rules Prof. Conduct, Rule 3.8(a) [prosecutor should not initiate or continue prosecution of charge that is not supported by probable cause].)

Further, the prosecution has the burden of proving beyond a reasonable doubt that a killing is not justified. It is not a criminal defendant's burden to prove that the force was necessary or reasonable. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384.) Thus, in an officer-involved shooting, the prosecution must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others.

Legal Analysis

The DOJ has completed an independent investigation and review of the facts and circumstances that led to the death of Mr. Garcia-Arias. This analysis is based on all of the evidence provided to the DOJ in this matter, including police reports, witness statements, forensic evidence, Coroner's report, body-worn camera footage, and digital in-car video. This also includes the report of expert Greg Meyer. The issues presented in this OIS are whether Officer Silva acted lawfully in self-defense or defense of others, and whether her actions are subject to criminal prosecution.

Officer Silva stated that she believed the use of force was necessary to prevent imminent serious harm to herself or Officer Frias. Under the totality of the circumstances in this incident, it cannot be proved beyond a reasonable doubt that Officer Silva did not genuinely and reasonably believe that the use of deadly force was necessary to defend against an imminent threat of death or great bodily injury to herself and her fellow officers. Therefore, a criminal prosecution is unsupported by the evidence.

The evidence shows that Officer Silva subjectively believed she was acting in self-defense, and in the defense of her fellow officers, when she shot and killed Mr. Garcia-Arias. Officer Silva provided a voluntary statement on October 21, 2021. In her statement, Officer Silva explained, "he [Mr. Garcia-Arias] took a step towards me. I knew he wanted to hit me. I knew he was mad at me. Um, and when he held it up as a baseball bat I thought he was gonna bash my face in. So, I had no choice and I shot him." Officer Silva stated she believed Mr. Garcia-Arias wanted to kill her or seriously injure her. Officer Silva believed a hit from the pole, which she perceived as metal, would have knocked her

unconscious. Thus, Officer Silva said she fired the first shot at Mr. Garcia-Arias because she believed there was an imminent threat of great bodily injury or death to herself.

As to the second shot, Officer Silva stated that she turned and looked at Officer Frias. Officer Frias did not seem ready. Silva said that Frias did not have a firearm or any other weapon out. Mr. Garcia-Arias took a running step towards Frias with the pole in a baseball grip. Officer Silva stated, "if he [Mr. Garcia-Arias] took either one step or just swung it at that point he would've been able to hit Frias. Then so I shot him one more time." Here, Officer Silva fired the second shot because she believed there was an imminent threat of great bodily injury to Officer Frias.

Other Officers on scene held the same subjective belief that Officer Silva acted in both their defense and in self-defense. First Officer Yuhas stated after firing his TASER, he was concerned that the decedent was going to hurt him or one of the other officers with the pole. Yuhas stated, "I had my Taser out, and had I had my pistol out I, I would've shot him as well. I fear he was gonna kill one of us with that stick. Like his intention wasn't to stop, wasn't to drop it after being told numerous times to drop it. After I shot him with the Taser and he still continued that assaultive behavior with the pole in his hand, I feel his intention wasn't to give up it was to hurt one of us. Or kill one of us with it."

Officer Frias stated, "had Officer Silva not taken that shot like that, I probably wouldn't be talking to you guys right now. I wouldn't be here, been seriously injured in the hospital bed right now with like a head cut open or I would have been dead. So I'm just, I mean I'm grateful that things ended the way they did and none of us got hurt seriously."

Further, Officers Silva, Frias, and Babb all believed that the wooden rod was metal. Although the officers' perception of the rod's material was incorrect, the appearance of the rod itself does not immediately suggest what it was made of, especially given the very short time that the officers had to view it. Therefore, their subjective belief that the rod was metal would have enhanced the perceived threat presented by Mr. Garcia-Arias.

In addition, the evidence shows that Officer Silva's belief that the threat of death or serious bodily injury was imminent, and that Mr. Garcia-Arias had the present ability to cause that injury to her, or her fellow officers, was not necessarily unreasonable, based on the totality of circumstances.

The evidence shows that Mr. Garcia-Arias did not comply with officers' commands. Mr. Garcia-Arias was ordered repeatedly in both English and Spanish to come out with his hands up. According to officers' statements, Mr. Garcia-Arias repeatedly put his hands in and out of his pockets, turned his back to officers, and refused to comply with orders to exit the bushes with his hands up. The original radio broadcast indicated that, on the previous day, Mr. Garcia-Arias had been armed with a knife, which heightened Officers' concerns with Mr. Garcia-Arias' movements.

Body worn camera footage showed Mr. Garcia-Arias exit the bushes holding the wood rod in a vertical, ready to strike orientation. Officer Yuhas deployed his TASER in an attempt to subdue Mr. Garcia-Arias with less-lethal force. The TASER was not effective. Data from Yuhas' TASER summary report showed that the TASER circuit appeared broken and was unable to maintain a solid connection for more than a few seconds. Thus, the TASER did not create the intended neuro-muscular incapacitation. Body worn camera footage confirms that the TASER was ineffective in stopping Mr. Garcia Arias. Mr. Garcia-Arias continued forward toward Officer Silva.

Body worn camera footage also shows that Officer Silva had stepped back off the sidewalk into the almost waist-high shrubbery behind her. Due to the height, and thickness of the shrubbery, combined with the busy street behind her, Officer Silva backed up until she was unable to retreat any further. When Officer Silva fired the first shot, body-worn camera footage from Officer Frias shows Mr. Garcia-Arias holding the wooden rod in a vertical orientation and within striking range of Officer Silva. When Silva fired the second shot, Mr. Garcia-Arias was still within striking range of Officer Silva as he turned towards Officer Frias. The body-worn camera shows that Mr. Garcia-Arias could have struck Officer Silva with the wooden rod.

In addition, Mr. Meyer, an expert on the use of force, reviewed the evidence and concluded that Mr. Garca-Arias presented an imminent danger of causing death or great bodily injury. Further, he concluded that Officer Silva acted in self-defense.

Officer Silva's prior interactions with Mr. Garcia-Arias also support a reasonable belief that Garcia-Arias was going to harm her or her fellow officers. Knowledge of a decedent's prior threatening or violent conduct or reputation for dangerousness may support a reasonable belief in imminent harm. (*People v. Bates* (2019) 35 Cal.App.5th 1, 9-10.) In her statement, Officer Silva described a prior arrest where Mr. Garcia-Arias either struck, or threatened to strike and kill an ice cream vendor with a large wood object. In addition, Officer Silva had arrested Mr. Garcia-Arias on an outstanding warrant for assault. Lastly, Officer Silva had previously responded to a call with Garcia-Arias involving a knife. However, a knife was not found on his person during that call. Officer Silva's prior interactions with Garcia-Arias further support a reasonable belief that Mr. Garcia-Arias was capable of imminent harm.

Given the totality of the evidence, Officer Silva could reasonably have believed that Mr. Garcia Arias was going to strike her, or her fellow officers with the wooden rod. Further, it is reasonable for Officer Silva to believe that a strike from the wooden rod posed an imminent threat of great bodily injury or death to her or her fellow officers.

CONCLUSION

The evidence does not show, beyond a reasonable doubt, that Officer Silva acted without the intent to defend herself or other officers from what she reasonably believed to be an imminent threat of death or serious bodily injury. Therefore, there is insufficient evidence to support a criminal prosecution of Officer Silva. As such, no further action will be taken in this case.



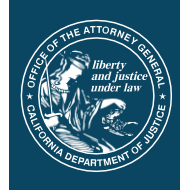
C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for the Tustin
Police Department Related to the Officer-Involved
Shooting of Luis Garcia-Arias on August 9, 2021**

ISSUED PURSUANT TO CALIFORNIA GOVERNMENT CODE
SECTION 12525.3, SUBDIVISION (B)(2)(B)(III)

MARCH 2024



POLICY AND PRACTICE RECOMMENDATIONS

The Attorney General is required to include "[r]ecommendations to modify the policies and practices of the law enforcement agency, as applicable" as a component of this report. (Gov. Code, § 12525.3 subd. (b)(2)(B)(iii).) To that end, the DOJ conducts an additional review of the information obtained through the criminal investigation (for example, body-worn camera footage, interview recordings, video recordings, witness statements and other records) as well as the publicly-available policies of the agency employing the officer(s) who are subject to the criminal investigation. The DOJ uses the review process to identify "applicable" recommendations, including any recommendation to modify policy and practices that may reduce the likelihood that officers use deadly force as well as recommendation to address any other deficiency or concern related to the officers' conduct or the agency's response that the DOJ observes. Because of the nature of this process, the DOJ does not generally obtain additional information from the employing law enforcement agency or conduct independent investigation of the agency's practices outside of the single incident under review, which makes this process different from the DOJ's formal Civil Code section 52.3 investigations and oversight reviews of local law enforcement agencies. DOJ's goal is that these recommendations will assist the agency and the officer(s) involved in the incident in understanding, from an independent perspective, improvements that could be made to address what we have observed through this incident.

Pursuant its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), the DOJ offers the following recommendations:

1. DE-ESCALATION AND OFFICER TRAINING AND TACTICS

Government Code section 7286, subdivision (b) requires officers to use de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible. Tustin Police Department (TPD) General Orders 300.3.1 and 390.3 also provide for de-escalation tactics and state, among other things, that "officers should consider . . . [f]ormulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention."

Here, the officers were informed that the subject of interest was located in some bushes and had been previously seen the prior day in possession of a knife. Per the reporting party's information, Dispatch described the individual in its bulletin and radio call to the officers as a "male white in his 30s, blonde hair, slim build, unknown clothing."

As an initial matter, Officer Silva spoke with the reporting party upon arrival and Officer Yuhas assessed that he had time to return to his vehicle to retrieve his BWC before they approached the entrance to the space in the bushes where Mr. Garcia-Arias was located. In light of the facts as we know them, it does not appear there was an immediate or apparent threat to a specific person.

Despite having the space and time to do so, the officers did not formulate a plan to approach the then-unknown individual in the bushes. Due to the limited space the sidewalk allowed for, the officers could have created a safe and secure perimeter around the area and/or sent an officer around to the other side of the wall behind the bushes to try to observe the subject.

When asked if there was any dialogue between the officers as to how the contact with Mr. Garcia-Arias should be undertaken, Officer Yuhas responded “[a]s far as the contact goes, no.” When asked “in your mind did you have a plan” to engage Mr. Garcia-Arias, Officer Yuhas said “[j]ust more or less talk to him trying get him to come out of the bushes and what he’s doing, why is he here.” When asked if the officers had “any kind of discussion on . . . how you planned to make contact” with Mr. Garcia-Arias, Officer Frias replied “[n]o, not with me.” Officer Silva’s interview does not include anything about her or her fellow officers formulating any sort of plan. Instead, she states that she “designated [her]self as lethal force . . . [and] led the way.” Without discussing it with her fellow officers, Officer Silva drew her duty weapon about 27 steps before reaching the entrance to the bushes, well before she made visual contact with Mr. Garcia-Arias. Officer Yuhas, seeing this, drew his taser and apparently announced that Officer Silva would be responsible for lethal force and that he (Officer Yuhas) would be responsible for non-lethal force. (Officer Yuhas’s BWC was not activated for sound at this point.) The officers did not discuss whether an officer armed with less-lethal force should take the lead in making contact. It appears there was time and the opportunity to discuss a tactical plan before making contact with Mr. Garcia-Arias.

When Mr. Garcia-Arias did not respond to the repeated commands to come out of the bushes, specifically with his hands up, the officers could have taken the opportunity to regroup and decide whether the approach they were taking was the most effective and the safest for all involved. The officers thereby missed the opportunity to regroup and formulate a plan, perhaps one involving safer positions for the officers away from the bushes to create space, cover, and time to deal with an individual with a known history of aggressive behavior.

Officer Silva’s tone and conduct throughout the interaction were inconsistent with de-escalation tactics. After 55 seconds of giving commands in English and Spanish to Mr. Garcia-Arias, Officer Silva announced to Officer Yuhas: “Dude, I’m going in” and began to step into the entrance to the bushes. However, Officer Yuhas responded, “hold on, no,” and Officer Silva paused. Entering the bushes to attempt to make contact with Mr. Garcia-Arias could have increased the danger for the officers and Mr. Garcia-Arias.

Despite Officer Frias’s earlier warning about potential crossfire, Officer Silva fired her second shot in Officer Frias’s general direction. Creation of tactical plan prior to approaching the scene may have averted this potential danger to officer safety.

TPD policy and training should ensure that officers not just consider, but be required to develop a tactical plan prior to engaging a subject, unless developing a plan is not feasible under the circumstances. TPD should then require officers to document why a plan was unfeasible if one was not developed. If not already included, officer training should include officer positioning when contacting a subject, the use of a cover officer, use of an electronic control device (ECW) officer, and training on what can and should occur in the event of ECW failure. Additionally, if not already included, training should include strategies and tips for de-escalation and how to engage with unhoused individuals. DOJ recommends that TPD evaluate those areas of concern noted here, update and revise any training or policy as needed, and ensure that the involved officers receive any remedial action warranted.

2. BODY WORN CAMERAS:

In 2017, TPD equipped its officers with body-worn cameras (BWC) to supplement their existing in-car camera system. Under General Order 446.5 of the TPD Policy Manual:

In the absence of exigent circumstances, the activation of a digital media device [including BWC] is required in any of the following situations:

- (a) Any call for service [or] field contact involving a crime or potential crime where a BWC...may aid in the apprehension and/or prosecution of a subject, such as:
 - 1) Domestic violence calls
 - 2) Disturbance of peace calls;
 - 3) Offenses involving violence or weapons.
- (b) All self-initiated activity in which an employee would normally notify Communications;
- (c) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording;
- (d) Any other circumstances where the employee believes that a recording of an incident would be appropriate.

Officers Yuhas and Frias were wearing their BWCs at the time of the incident and captured their initial approach of Mr. Garcia-Arias and events during and after the shooting. Officer Silva, however, left her BWC in her vehicle in a charging cradle when she arrived on scene. As a result, she did not record any portion of the incident, including her shooting of Mr. Garcia-Arias. When asked why she did not take her BWC, Officer Silva stated that “due to the urgency of the call I didn’t think to grab it before exiting my vehicle.” In addition, Officer Babb, who arrived on the scene before the shooting and was wearing his BWC, failed to activate it until after Mr. Garcia-Arias was shot and placed in handcuffs.

After viewing the available evidence, there were no exigent circumstances to justify Officer Silva’s failure to take and activate her BWC.

3. COMMUNICATION AMONG OFFICERS INVOLVED IN OR WITNESS TO AN OFFICER-INVOLVED SHOOTING:

TPD General Order 310.5.1(l) states that [a]s soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction” and that “[e]ach involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.”

At the end of the footage provided from Officer Frias’s BWC, an unidentified sergeant instructed Officer Frias to drive Officer Silva back to the station in her patrol vehicle. In the footage, the sergeant did not instruct Officer Frias not to discuss the incident with Officer Silva. On Officer Yuhas’s BWC footage, this same sergeant can be seen explaining to another officer that Officer Frias would take Officer Silva back to the station, shrugging and adding “everyone was involved, so . . .”

DOJ recommends that TPD ensures that its policies are being followed with regard to sequestering the officers and urges the department to always separate shooting and/or witness officers after an incident.