



C A L I F O R N I A

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# DEPARTMENT OF JUSTICE

## **Report on the Investigation into the Death of Trent Millsap on July 15, 2022**

Orange County AB 1506

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July 2025

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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. 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, 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 and any family members of the decedent. 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 and key locations will be identified as follows:

- Decedent 1: Homicide Victim (76 Gas Station Homicide)
- Witness 1 (W-1), Female witness inside apartment #239
- Witness 2 (W-2), Mr. Millsap's girlfriend
- Witness 3 (W-3), Resident of apartment complex
- Witness 4 (W-4), Resident of apartment complex
- Witness 5 (W-5), Resident of apartment complex

## INTRODUCTION

On the evening of July 15, 2022, Westminster Police Department (WPD) Detective Miguel Gradilla (Detective M. Gradilla) and Detective Alejandro Lopez shot Trent Millsap at an apartment where he was staying, while serving an arrest warrant for his suspected involvement in a murder two days earlier. Mr. Millsap died from the injuries he sustained during the shooting.

The Department of Justice (DOJ) investigated and reviewed the OIS pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506). This report is the final step in the DOJ's review of the fatal OIS of Mr. Millsap. The scope of this report is limited to determining whether criminal charges should be brought against the involved officers, and offering possible policy and practice recommendations as required by Government Code section 12525.3, subdivision (b)(2). The review does not encompass or comment on any potential administrative or civil actions. Based on the criminal investigation, review of the evidence, and evaluation of the case, we have determined that there is insufficient evidence to support the filing of criminal charges against Detectives M. Gradilla or Lopez.

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

## SUMMARY OF INCIDENT

### The Murder Leading to the July 15 Arrest Warrant

In the early evening of July 13, 2022, WPD officers responded to a 76 Gas Station in the City of Westminster regarding a male subject who had been stabbed by an assailant. Upon arrival, the officers rendered aid and arranged for the adult victim to be transported to UCI Medical Center, where he later succumbed to his injuries. The male subject was later identified as Decedent 1. WPD officers initiated a homicide investigation.<sup>1</sup>

The investigation, which included witness statements and review of closed-circuit television footage provided by the 76 station, identified Mr. Millsap as the person suspected of the murder of Decedent 1. Additional investigation and surveillance traced Mr. Millsap's whereabouts to an apartment unit in the Lexington Courtyard apartment complex located at 3360 W. Lincoln Avenue #239, in the City of Anaheim.

### The OIS

On July 15, 2022, WPD Detective Andrew Travis (hereafter, "Detective Travis") obtained a search warrant to search 3360 W. Lincoln Avenue, #239 and arrest Mr. Millsap.

WPD Sergeant Daniel Pinvidic, who served as SWAT Operations sergeant, requested that West County SWAT<sup>2</sup> assist with the execution of the warrant. Sergeant Pinvidic completed a SWAT Authorization for Use Checklist that included the following information known about Mr. Millsap:

- Involved in recent violent/armed felony: Homicide suspect, weapon used was a knife;
- Violent criminal history: Prior PC 211 (Robbery) and PC 69 (Obstruct/Resist Officer);
- Parole: Suspect on parole for PC 211;
- Previous weapons arrest;
- Previous violence against law enforcement: Prior PC 69 charge;
- Gang affiliation: White Supremacist (no known specific affiliation)
- Mental illness/Suicidal: Made statements that he would not be taken alive

Based upon these factors, the use of SWAT was authorized and the risk level was assessed as being "high." The SWAT established a Tactical Operation Center (TOC) at Cypress College, in the City of Cypress, where an operation briefing was conducted. Sergeant Pinvidic decided not to create a written operation plan because the search warrant met the criteria for an unplanned event, where written operational plans are not required due to time constraints. SWAT traveled to the search warrant location immediately after the operation briefing.

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1 Neither Detectives M. Gradilla nor Lopez were involved in the law enforcement response at the 76 Gas Station.

2 West County SWAT is a regional Special Weapons and Tactics team serving the cities of Cypress, Los Alamitos, Westminster, Seal Beach and Fountain Valley. West County SWAT includes Tactical Officers, Crisis Negotiators, and Tactical Dispatchers. Members of the SWAT team are referred to as "Operators"

Upon arrival, SWAT Team operators entered the Lexington Courtyard on the west driveway, south of Lincoln Avenue. Once positioned, the Entry Team exited their armored vehicle and walked up an exterior staircase towards apartment #239. The entry team was positioned against the west side of the building. Detective Godoy was positioned at the rear, behind Sergeant Adam, Sergeant Gallagher, and SWAT operators Detectives M. Gradilla, Lopez and Sansenbach, although he did not recall the order in which the others were positioned ahead of him.

According to Detective M. Gradilla's body worn camera, SWAT arrived at the Lexington Courtyard apartments at about 8:49:37 PM to serve the warrant. At about 8:50:55 PM, Detective M. Gradilla arrived at unit #239, the apartment unit where Mr. Millsap was believed to be. He switched from rifle to handgun while holding a ballistic shield with his left hand. Detectives M. Gradilla and Lopez positioned themselves a few feet from the doorway. At about 8:51:42 PM, Detective M. Gradilla announced: "West County SWAT, search warrant. West County SWAT, search warrant. Anyone inside apartment 239, come out with your hands up."

As seen on video from Detective M. Gradilla's body worn camera, at about 8:52 PM, an adult woman (W-1) holding a small dog in her hands opened the front door of apartment 239. W-1 stepped away from the door and was escorted down the walkway, away from the apartment. The door remained partially opened.

W-1 was interviewed at the scene by Orange County Probation Department Officer Carlos Meza to ascertain Mr. Millsap's whereabouts in the apartment and to determine whether he was armed. W-1 told Probation Officer Meza that Mr. Millsap was inside the apartment hiding in a closet located next to the kitchen. She also stated that she did not know whether Mr. Millsap was in possession of any firearms or other weapons, but that she did not believe so. During a subsequent interview, W-1 stated that she told Probation Officer Meza, "[Y]eah, he stopped me, and he was like where's he at? I said he's in the closet. They didn't know where exactly the closet was. So, I told them to go in the left to the bathroom and it's to the right, you know? He's probably hiding. He's not armed, but he's in there. I wasn't going to lie to them. They knew he was here. I knew what was coming. I just didn't know they were going to kill him."

At about 8:52:51 PM, Detective M. Gradilla, who along with Detective Lopez, was positioned in front, about 4-6 feet from the front door to the apartment, announced, "West County SWAT, search warrant. Trent Millsap. Trent Millsap, if you're inside apartment 239, make yourself known. We have a search warrant."

At 8:53:17 PM, Detective M. Gradilla again announced, "Trent Millsap, this is the West County SWAT team. We have a search warrant. Come out with your hands up. If you do not come out with your hands up, a canine will be used. If the canine finds you, he may bite you. Come out with your hands up and surrender now."

At 8:54:06 PM, Detective M. Gradilla again made an announcement, "Trent Millsap, this is the West County SWAT team, we have a search warrant. We know you are inside the closet. Come out with your hands up and nothing in your hands. If you do not come out with your hands up, a dog, a canine, will be used to find you. If he finds you, he may bite you. Come out with your hands up."

At 8:54:36 PM hours, Detective Lopez announced, "Trent, show me your hands, dude. Show me your hands." Detective M. Gradilla's body worn camera footage shows that Mr. Millsap emerged from his

hiding place and appeared in the center of the front room with his left arm down at about 8:54:37 PM. At 8:55:04, Mr. Millsap stated to Detectives M. Gradilla and Lopez, “I can’t go back to jail.”

At 8:55:20 PM, canine handler Officer Brook Marshall and his police service dog moved to the front of the SWAT team members and positioned himself and the canine on Detective M. Gradilla’s left side. Detective M. Gradilla’s body worn camera showed that at approximately 8:55:36 PM Cypress Police Department canine handler, Officer Marshall, provided verbal commands to Mr. Millsap, stating *“get down, or I’m going to send my dog.”* Detective M. Gradilla then informed Mr. Millsap, *“there’s a canine here, if you don’t comply, he will be sent in to bite you. Turn away from me and walk backwards.”*

At 8:55:48 PM, Mr. Millsap turned away from Detective M. Gradilla. Detective M. Gradilla further instructed Mr. Millsap to “keep your hands up, walk back to the sound of my voice, keep your hands all the way up, Trent. If you do not comply with my commands, there’s a canine right here, he’s going to bite you.”



Figure 1 – Still image of Mr. Millsap taken from Detective M. Gradilla’s body worn camera



At 8:55:58, Mr. Millsap turned and faced Detective M. Gradilla with both hands partially up. At about 8:56:07, Mr. Millsap fully extended his hands up behind a sheet hanging from the ceiling. As a result, the sheet visually obstructed the view of Mr. Millsap's left arm/hand.

At 8:56:07 PM, Mr. Millsap shouted, "I don't want to get bit either, I just want to talk, please."

At 8:56:28 PM, canine handler Officer Marshall stepped in front of Detective M. Gradilla's ballistic shield and then warned Mr. Millsap that "last warning, turn around, otherwise, you are going to get bit."

At approximately 8:56:50 PM, Officer Marshall released Police Service Dog (PSD) Kubo into the apartment. Detective Gradilla advanced forward and entered the apartment.

At approximately 8:56:53 PM, Mr. Millsap picked up and wrestled with PSD Kubo as Mr. Millsap moved toward his right. PSD Kubo momentarily disengaged from Mr. Millsap. At about 8:56:55, Mr. Millsap faced Detectives Mr. Gradilla and Lopez and pulled up the bottom part of his sweatshirt with his left hand while he reached for his waistband area with his right hand. At about 8:56:56, Detectives M. Gradilla and Lopez commenced firing a total of eight shots at Mr. Millsap in about one second. As the shots were being fired, Mr. Millsap twisted his torso from right to left exposing his right side and back to the gunshots.



Figure 2 (Left) – Still image of police service dog engaging Mr. Millsap taken from Detective Gradilla's body worn camera



Figure 3 (Right) – Still image of Mr. Millsap lifting sweatshirt and reaching into waistband taken from Detective Gradilla's body worn camera



At 8:57:57 PM, Mr. Millsap was rolled over on his back and life saving measures were performed by the SWAT officers until emergency medical personnel arrived.

At 9:03 PM, Anaheim Fire Department (“AFD”) personnel arrived at the scene of the OIS and took over rendering life saving measures to Mr. Millsap. Paramedics assessed that Mr. Millsap was in cardiac arrest.

At about 9:14 PM, AFD Ambulance Operator Zachary Lombardo, transported Mr. Millsap from the scene of the OIS to UCI Medical Center, Emergency Department, where his care was transferred to trauma staff. After attempting lifesaving medical treatment, Dr. Ronald Rivera pronounced Mr. Millsap deceased at approximately 9:43 PM

## **INVESTIGATION**

### **DOJ Response**

On July 15, 2022, after the OIS incident occurred, the Orange County District Attorney, WPD, Anaheim Police Department and Orange County Crime Lab were notified and responded to the scene. Shortly thereafter, the DOJ’s California Police Shooting Investigation Team (“CaPSIT”) was notified, and DOJ Special Agents, Special Agent Supervisors, and the assigned Deputy Attorney General responded to the scene. The DOJ team was briefed on what was known about the OIS incident and surveyed the scene. They then traveled to the Westminster Police Department where they reviewed body-worn camera footage of the OIS incident.

The DOJ conducted an independent and thorough investigation of the facts and circumstances related to this OIS incident and reviewed all evidence and legal standards.

### **Evidence Reviewed**

The DOJ obtained and reviewed extensive investigation materials related to this OIS incident. DOJ independently reviewed numerous witness interviews; photographs of the crime scene and other evidence; video recordings from body cameras worn by the involved officers; physical evidence (including shell casings, fired bullet projectiles); items obtained from the scene; an autopsy report; and analysis on ballistics and firearms.

### **Crime Scene Description**

The OIS occurred inside an apartment unit at the Lexington Courtyard apartment complex located at 3360 W. Lincoln Avenue #239, in the City of Anaheim. Lexington Courtyard is a three-story apartment complex located on the south side of Lincoln Avenue, between Knott Ave. and S. Westminster Dr. Unit #239 is a studio apartment located on the second-floor southwest corner of the complex.

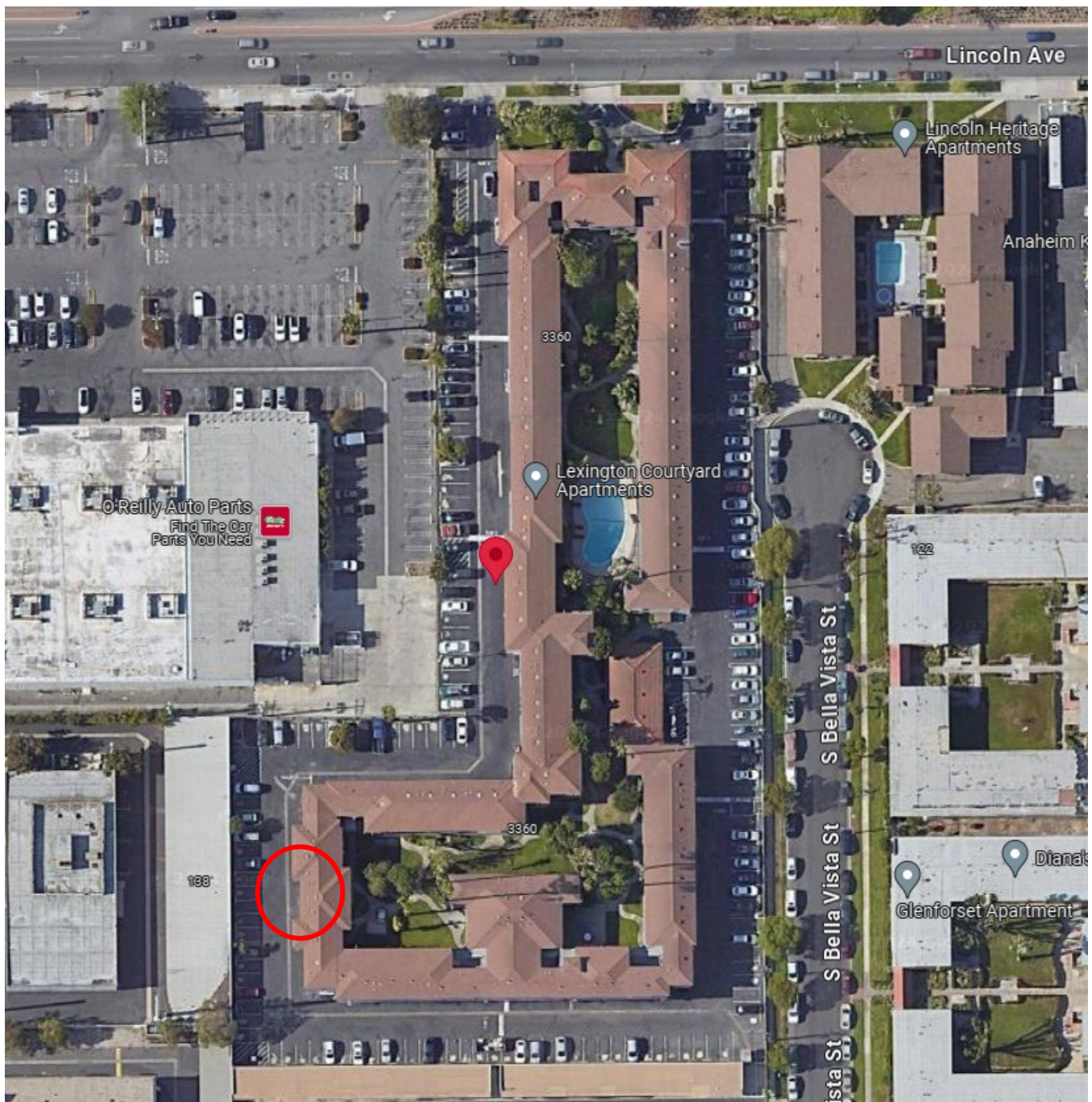


Figure 4 – Google Maps Aerial view of Lexington Courtyard apartments with location of Unit #239 circled in red





Figure 5 – Unit #239 as seen from unit #126 (first floor)



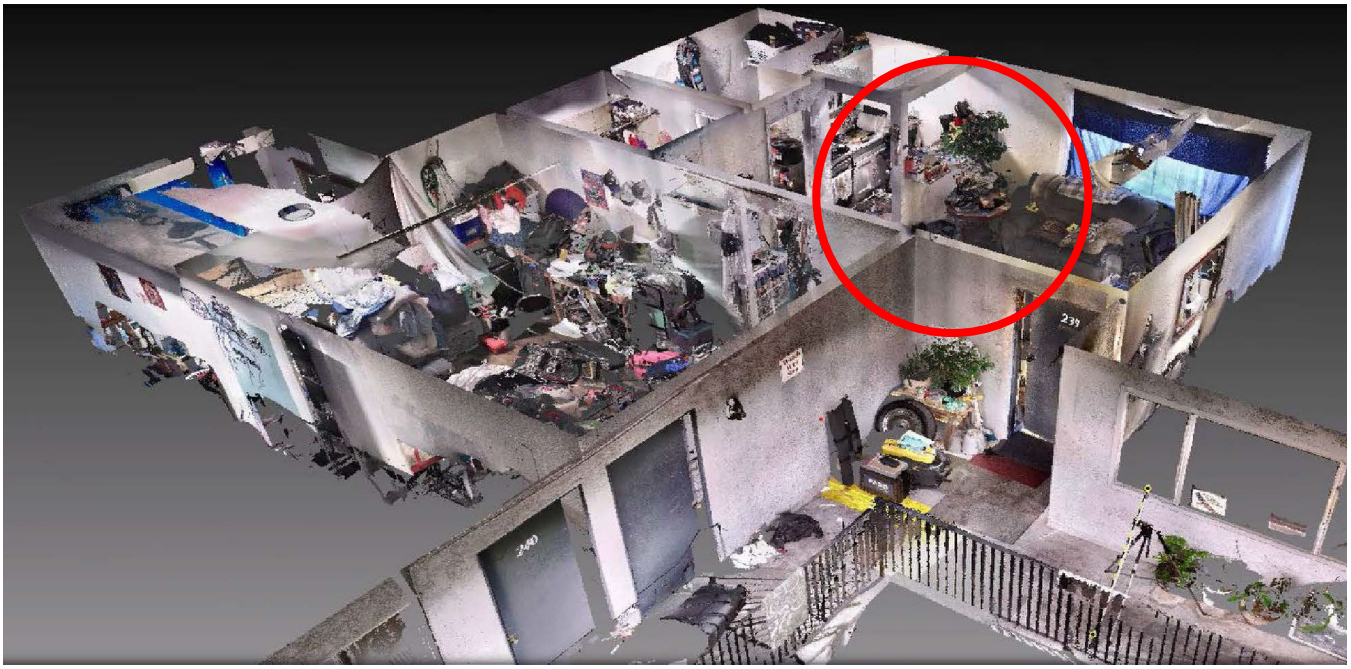


Figure 6 – Unit #239 interior view captured by FARO Scene2Go Application. Area where OIS occurred is indicated by red circle

## **Evidence Recovery**

On July 16, 2022, criminalists from the California Department of Justice, Bureau of Forensic Services, Riverside, processed apartment unit #239 where the OIS incident occurred. They documented the scene with notes, sketches, photography, and FARO 3D scanning.

Personnel with the Orange County Crime Lab also processed the OIS scene and collected all evidence, including clothing, fired cartridge cases, and projectiles.

No weapon was recovered from the scene.

## **OFFICER PROCESSING**

### **Video Recordings**

DOJ obtained video footage from body-worn cameras and video surveillance footage from the 76-gas station and a Home Depot related to the murder investigation involving Decedent 1 and Mr. Millsap. DOJ reviewed all the video recordings.

### **Body Worn Cameras**

Detectives M. Gradilla and Lopez, and two other SWAT operators at the scene had their body worn cameras activated and were recording video and audio during the OIS incident.

### **Firearms and Ballistics Analysis**

Based on analysis of the body worn video and evidence collected at the scene of the OIS, Detectives M. Gradilla and Lopez fired a total of eight (8) rounds at decedent Mr. Millsap. Of the fired bullets, four were recovered at the scene of the OIS and three (3) were recovered from Mr. Millsap's body during

the autopsy. The remaining round exited the apartment and headed in a southwesterly direction. After an extensive search, it was not recovered.

On July 16, 2022, at approximately 0217 hours, a Forensic Specialist from the Orange County Crime Lab processed Detectives M. Gradilla and Lopez at the Anaheim Police Department.

### **Detective M. Gradilla Weapon Processing**

Detective M. Gradilla was equipped with his department issued Smith & Wesson, M&P Model 2.0, nine-millimeter pistol and department approved ammunition. A round count was conducted immediately after the OIS. Detective M. Gradilla had two (2) rounds short of maximum capacity, indicating that two shots had been fired from his weapon.

### **Detective Lopez Weapon Processing**

Detective Lopez was equipped with a Sig Sauer, Model MPX, nine-millimeter caliber semi-automatic rifle with a collapsible stock and a single point sling. It had a 30-capacity magazine seated in the magazine well of the rifle. Detective Lopez indicated that he usually loaded 28 cartridges into his rifle magazines and one cartridge in the chamber (total of 29 cartridges). At the conclusion of processing, Detective Lopez's rifle had 23 cartridges, indicating that six shots had been fired.

The Orange County Crime Lab determined that Lopez's rifle malfunctioned during test firing. It delivered a light firing pin strike to one of the cartridges while it was being fired in full auto.

## **AUTOPSY**

Mr. Millsap was a White male, with a bald head, and blue eyes. He had numerous tattoos on his face and scalp. He stood six feet five inches tall and weighed approximately 210 pounds. Mr. Millsap was 27 years old on the date of the OIS.

Doctor Etoi Davenport, a Forensic Pathologist employed by the Orange County Coroner's Office, conducted the autopsy on Mr. Millsap on July 19, 2022. Dr. Davenport concluded the cause of death was gunshot wound to the torso. Dr. Davenport located five gunshot wounds. The order in which the gunshot wounds were sustained, is unknown. However, Dr. Etoi described various gunshot wounds, including entry and exit (where applicable), as shown in the diagram below.

The first was a penetrating gunshot wound to the right upper back. Doctor Davenport determined that the bullet traveled back to front, right to left, and downwards. The bullet was found protruding from the anterior body of the stomach. There was no exit wound.

The second gunshot wound was a perforating wound to the right back. Doctor Davenport located an exit wound on the chest. Doctor Davenport determined the bullet traveled back to front, right to left, and upwards.

The third gunshot wound entered the lower right back. Doctor Davenport determined that the bullet traveled back to front, right to left, and upwards.

The fourth gunshot wound was a penetrating gunshot wound to the right elbow. There is no exit wound. The bullet traveled back to front, slightly right to left, and upwards.

The fifth gunshot wound was a perforating gunshot wound that entered the dorsolateral right forearm. There is an exit wound of the ventrolateral right forearm. The bullet traveled back to front and slightly downward.

Doctor Davenport determined the cause of death to be a gunshot wound to Mr. Millsap's torso and the manner of death to be homicide.

The autopsy also included a toxicology analysis detected of the presence of controlled substances Amphetamine, Fentanyl, and Methamphetamine in Mr. Millsap's system.





## INTERVIEWS OF POLICE OFFICERS

Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of police questioning. ) See *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436, 467.) Detectives M. Gradilla and Lopez both declined to provide voluntary statements.

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 from Detectives M. Gradilla and Lopez were considered as part of this investigation.

The other members of the SWAT team, who did not use lethal force against Mr. Millsap, provided voluntary statements.

The following statements are summaries of interviews of law enforcement officer percipient witnesses, which describe the incident from their points of view. Please note that the interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as currently understood.

### ***Westminster Police Department Sergeant Anil Adam***

On September 6, 2022, DOJ Special Agent (SA) Hernandez and Orange County District Attorney Investigator Tom Toth interviewed Westminster Police Department Sergeant Anil Adam who agreed to give a voluntary statement.

At the time of the interview, Sergeant Adam had been employed by the WPD for 13 years. He had served in his assignment as the Special Operations Sergeant for 18 months.

On July 15, 2022, Sergeant Adam's assignment was to conduct surveillance at the Lexington Courtyard apartment complex. Sergeant Adam was informed by other detectives that Mr. Millsap was the suspect in a murder where he stabbed someone in the chest for no apparent reason, and that his whereabouts had been traced to the Lexington Courtyard apartment complex. The detectives did not know specifically which apartment, but he had been linked to two units, 239 and 270. The hope was that Mr. Millsap would exit the apartment complex so that he could be detained outside the apartment complex because it was deemed safer to confront him outside. The neighborhood was known to be a high crime area.

As the surveillance progressed, Sergeant Adam was informed that detectives had learned additional information about Mr. Millsap, including that he had an extensive criminal history, that he was a White supremacist, and that he was a large man who stood at six feet five inches tall, and weighed 250 pounds. He also learned that Mr. Millsap had stated to others that he would not return to jail.

Sergeant Adam arrived at the command center and participated in the formulation of an operations plan to serve the warrant on Mr. Millsap. Ordinarily, an operations plan can take days to plan. However, in this case, the search warrant was based upon intelligence that Mr. Millsap was at a particular address, and that could change at any time without notice, and therefore they did not have time to draft a written operations plan.

Sergeant Adam, as the entry team leader, and Sergeant Kent, as the containment team leader, were the two primarily responsible for the planning. Sergeants Adam and Kent briefed the SWAT team on the plan. The plan called for snipers to provide cover at certain locations, a ballistic shield, and gas launchers to the front and rear of apartment unit 239. The gas launcher is a less-lethal 40-millimeter launcher also capable of firing 40-millimeter beanbag rounds. They also assigned a K-9 unit as another non-lethal force option. They assigned a medic to the entry team to attend to anyone who might be injured during the operation, including the suspect.

The plan was that if fired upon, they would deploy gas through the back window and from the front if they had the opportunity.

The SWAT members had intelligence that a woman was also in unit 239.

When the SWAT members approached the north facing front door to unit 239, Detectives M. Gradilla and Lopez executed knock notice. They announced that they had a warrant and instructed that anyone in the apartment needed to come out with hands up. After two or three announcements, a woman opened the door. She exited the apartment holding a dog in her hands and was patted down and then led away by a detective for debrief. Detectives M. Gradilla and Lopez continued to announce commands but received no response from inside the apartment. In the meantime, the woman told the detective that Mr. Millsap was hiding in a closet inside the apartment. Sergeant Adam believed that Mr. Millsap was essentially lying in wait and potentially preparing for an ambush. Mr. Millsap was directed to keep his hands up, turn around, and drop to his knees. Sergeant Adam heard one of the SWAT operators relay that Mr. Millsap said he did not want to go back to jail, which caused Sergeant Adam to believe that Mr. Millsap presented even more of a threat. The SWAT operators continued to try to persuade Mr. Millsap to surrender, but he did not. At the same time, people in the apartment complex started to approach in a confrontational manner, which Sergeant Adam believed “slightly divided” the SWAT operators’ attention.

After a minute to a minute and a half of attempting to negotiate with Mr. Millsap, Sergeant Adam instructed Officer Marshall to move to the front of the stack and give police service dog announcements. Sergeant Adam positioned himself so he could see Mr. Millsap. He observed that Mr. Millsap was a very large man and that he kept raising and lowering his hands. Mr. Millsap was talking to Detective M. Gradilla and Lopez, but Sergeant Adam could not discern what he said. Sergeant Adam also noticed the sheet hanging from the ceiling. The sheet was three or four feet wide and obstructed the SWAT operators’ view of what might have been behind it.

Sergeant Adam’s observations of Mr. Millsap’s behavior caused him concern that he may have been trying to formulate a plan to get out of the situation. This worried Sergeant Adam and caused him to evaluate the potential use of less lethal options to gain Mr. Millsap’s compliance. Sergeant Adam determined that the use of a taser would be unadvisable because Mr. Millsap was wearing an oversized, baggy sweatshirt which would make it difficult for the taser darts to make contact and be effective. He also did not feel comfortable moving SWAT operators out of the way in order to use 40-millimeter less lethal rounds. Sergeant Adam did not consider the use of gas to be a viable option because that would have required the SWAT officers to move back and put on gas masks and then deploy the gas, which risked loss of visual contact with Mr. Millsap.

As Sergeant Adam considered less lethal options, Officer Marshall deployed the police service dog. Sergeant Adam did not direct Officer Marshall to do so but he agreed with the decision given that Mr. Millsap's failure to comply with numerous commands, the serious threat he posed, and the impracticality of other available less lethal options.

As soon as the police dog was deployed, it became imperative to move fast to take Mr. Millsap into custody and to prevent the dog from harming him. Sergeant Adam, along with Detectives M. Gradilla and Lopez, immediately entered the apartment to effectuate an arrest. Detective M. Gradilla dropped his shield as trained, to get it out of the way. Sergeant Adam observed that Mr. Millsap was throwing the dog around, which heightened his concern that Mr. Millsap did not intend to be taken into custody without a fight.

At some point, Mr. Millsap threw the dog off himself and turned around. He squared up and had a very aggressive, angry look in his eyes. Mr. Millsap "made a very big overt movement to grab his sweatshirt, pull it up and then reach into his waistband." As a firearms instructor, Sergeant Adam recognized the movement as looking exactly like how someone would draw a pistol concealed in a waistband. Sergeant Adam stated, "[I]t was textbook. He went over the top, reached for his hoodie, lifted it up and then made a big movement into his waistband. In my mind, in that moment, he was trying to shoot us, and he had no reason to shoot us, other than to try and kill us, all of us or one of us."

Sergeant Adam stated that at that moment he would have shot Mr. Millsap but for the fact that Detectives M. Gradilla and Lopez were in front of him and he did not want to risk striking them. Sergeant Adam further stated, "So I'm very happy that Mike (Detective M. Gradilla) and Alex (Detective Lopez) did what they did, because they protected themselves or they protected me, and they protected the rest of the team."

#### ***Los Alamitos Police Department Sergeant Kain Gallagher***

On October 18, 2022, SA Baca and SA Hernandez interviewed Los Alamitos Police Department Sergeant Kain Gallagher regarding this officer-involved shooting in the presence of his attorney. Sergeant Gallagher agreed to provide a voluntary statement.

Sergeant Gallagher was the assistant team leader of the entry team for the West County SWAT. On July 15, 2022, Sergeant Gallagher responded to the tactical operation center where he received information about Mr. Millsap. Sergeant Gallagher was told that Mr. Millsap was the primary and only suspect in a homicide where he allegedly stabbed somebody to death. He was told that Mr. Millsap had a lengthy criminal record, had spent time in jail, and had indicated to people that he would not go back to jail alive. He remembers being told that Mr. Millsap had the moniker of "monster" because even among the criminal element he associated with, he was considered to be crazy. Sergeant Gallagher and the SWAT Team members were told that Mr. Millsap was a large individual, around six feet five inches in height and around 250 pounds. They were also informed that detectives had tracked Mr. Millsap to a particular location and that location was under surveillance.

Sergeant Gallagher was involved in planning the service of the warrant. While the SWAT team's work generally involves extensive preplanning, this was an active callout that did not provide time for a formal written operations plan. Sergeants Gallagher and Adam did most of the preplanning and Sergeant Gallagher was in charge of supervising the members of the team immediately before him, including Detectives M. Gradilla and Lopez, and Detective Samuel Gradilla.



As the SWAT team approached apartment #239, they successfully evacuated occupants of the adjacent apartments for their safety. Detective M. Gradilla and Lopez commenced knock and notice announcements in which they identified themselves as police officers with SWAT team and announced they had a warrant.

In response to the notifications, a woman holding a dog exited apartment #239. At the same time, the SWAT team operators continued to repeat the notifications but received no response from inside the apartment. The woman informed the SWAT team operators that Mr. Millsap was inside the apartment hiding in a closet. With that information, the SWAT team operators gave more specific commands, such as “Trent, we know you’re in the closet. Come out.” It was Sergeant Gallagher’s understanding that eventually, after repeated specific commands, Mr. Millsap came within view of the SWAT team operators. Sergeant Gallagher did not see Mr. Millsap because his view was obstructed by the operators in front of him, but he knew Mr. Millsap had presented himself because he could hear the operators giving him instructions and attempting to reassure him that everything would be alright if he complied with their commands. Sergeant Gallagher concluded from the fact that the operators had to repeat the commands over and over that Mr. Millsap was not complying.

During this time, the SWAT team operators were also giving Mr. Millsap police dog announcements, stating that a police dog was on scene and may be used to find him if he did not present himself, and that if the police dog did find him, it might bite him. Based upon Mr. Millsap’s lack of cooperation, the operators brought the police dog unit up front to the entrance of the apartment. A police dog officer typically does not have a weapon in his hands because he needs his hands free to control the dog, so he needs another operator to provide lethal cover. Sergeant Gallagher moved to the front door of the apartment to use his gun to provide protection for police dog handler Officer Marshall. At that time, Mr. Millsap could see the police dog and Officer Marshall and Sergeant Gallagher were able to observe Mr. Millsap.

Mr. Millsap had his hands up and was “somewhat cooperating” but still refusing to follow any orders to come out of the location. Officer Marshall then provided additional police dog announcements warning Mr. Millsap that the police dog may be used to apprehend him and that it would bite him. Mr. Millsap did not move.

Based upon Sergeant Gallagher’s experience, he was concerned that Mr. Millsap’s non-compliance indicated that he might be formulating a plan to attempt to escape or commit an assault. Based upon the fact that Mr. Millsap failed to comply with numerous commands, they deployed the police dog to apprehend Mr. Millsap. The police dog bit Mr. Millsap’s left arm and he moved out of Sergeant Gallagher’s field of view. Sergeant Gallagher was concerned because the loss of visual observation of a suspect is a tactical disadvantage.

Due to the loss of visual observation, Detective M. Gradilla and Lopez entered inside the apartment to reestablish visual observation of Mr. Millsap. As they did so, they continued to give Mr. Millsap commands to surrender. Sergeant Gallagher recalled that either Detective M. Gradilla or Detective Lopez led the way inside followed by Sergeants Adam and then Gallagher. Just before Gallagher crossed the threshold, he heard shots fired. He went inside the apartment and observed Mr. Millsap on the ground with gunshot injuries. The SWAT team cleared the bedroom, kitchen and hallway area and attended to Mr. Millsap’s injuries.

### ***Cypress Police Department Detective Sergio Godoy***

On November 17, 2022, Special Agent Hernandez received Cypress Police Department Detective Sergio Godoy's written statement regarding the officer-involved shooting that occurred on July 15, 2022. The written statement is summarized as follows.

On July 15, 2022, Detective Godoy received a text message and email alert from West County SWAT's notification system regarding a SWAT callout. As instructed in the notification, he responded to Cypress College where he was briefed on a SWAT operation to serve a warrant on a murder suspect at the Lexington Courtyard apartment complex. He was advised that the murder suspect, Mr. Millsap, was suspected of stabbing the victim to death. He was also advised that the suspect had an outstanding parole violation warrant and was considered armed and dangerous.

Detective Godoy was also advised that the other entry team members included Sergeants Adam and Gallagher, and SWAT operators Detectives M. Gradilla, Lopez and Sansenbach.

After being briefed on the warrant, he considered the following factors: Mr. Millsap was a homicide suspect, he was considered armed and dangerous, he had a propensity for violence given the fact that he had stabbed the victim to death and had an outstanding parole warrant for his arrest.

Upon arrival, the SWAT operators entered the Lexington Courtyard on the west driveway, south of Lincoln Avenue. Once positioned, the Entry Team exited the Bearcat (armored vehicle) and walked up an exterior staircase towards apartment #239. The entry team was positioned against the west side of the building. Detective Godoy was positioned at the rear, behind Sergeant Adam, Sergeant Gallagher and SWAT operators Detectives M. Gradilla, Lopez and Sansenbach, although he did not recall the order in which the others were positioned ahead of him.

When the Entry Team reached apartment #239, he heard one of the SWAT operators announce something to the effect of "This is the West County SWAT Team, search warrant." At the same time, he was also directed to contact the occupants of the apartment directly north of apartment #239. As directed, he contacted the elderly residents and advised them of their activity. The elderly residents decided to exit their apartment and were escorted away from the scene for their safety.

As the announcements continued, Detective Godoy was unable to hear exactly what was said because he was positioned at the end of the entry team as the last operator and was occupied with contacting residents of the other apartment and keeping rear security. He also could not see inside apartment #239 due to his position and the layout of the building.

After several announcements, a woman exited apartment #239 and was detained without incident. At that time, operators positioned at the front continued to order Mr. Millsap to surrender. He also heard numerous police dog announcements, although he did not recall the specific content of those announcements.

Detective Godoy heard operators positioned at the front state something to the effect of "let me see your hands" and "turn around." Due to his positioning, he could not see inside the apartment or the immediate surrounding area. However, based on the commands he heard, he believed the operators had visual and/or verbal contact with a subject inside. During that time, numerous commands were given to the subject to come out and surrender.



Detective Godoy then observed Officer Marshall and the police dog walk toward the front door of apartment #239 and position themselves near operators at the front of the entry team. He heard operators positioned at the front continue to order Mr. Millsap to surrender. He then heard an operator relay over the police radio that Mr. Millsap stated something to the effect of “I’m not going back to jail.”

Due to the police dog commands and the totality of the circumstances, he believed the police dog was being deployed. He then heard 3-4 gunshots coming from inside the apartment. He did not see who fired the gunshots nor anything leading up to the shooting inside the apartment.

After the shots were fired, the SWAT operators entered the apartment. As Detective Godoy entered the apartment, he saw Mr. Millsap lying on the floor and several operators providing him with medical aid. He believed that Sergeant Adam immediately directed him to relieve Officer Marshall. While he was covering the room, he heard an unknown operator who was providing medical aid to Mr. Millsap ask for a “chest seal,” which is used for chest-related injuries. He immediately reached into his Individual first aid kit, retrieved a chest seal, and handed it to the operator.

After several minutes, he was relieved from his position and immediately began to assist the operators with providing medical aid to Mr. Millsap. At that time, he heard an operator who was positioned near Mr. Millsap’s chest/head area state that he was not breathing and did not have a pulse. SWAT operators began CPR by giving Mr. Millsap chest compressions. To avoid fatigue, operators took turns giving Mr. Millsap chest compressions. At one point, he relieved Detective M. Gradilla and gave Mr. Millsap chest compressions. He then observed paramedics arrive on-scene and begin to assess Mr. Millsap. Paramedics then took over rendering medical aid to Mr. Millsap, who was ultimately transported to a trauma center.

### ***Interview of Detective Samuel Gradilla***

On August 9, 2002, SA Hernandez interviewed WPD Detective Samuel Gradilla (“Detective S. Gradilla”) regarding the OIS. Also present was Detective S. Gradilla’s attorney, Robert Baumann. Orange County District Attorney Investigator Toth was present. Detective S. Gradilla’s interview is summarized as follows:

At the time of the interview, Detective S. Gradilla had been employed by the WPD since January 2016. He was assigned to the Criminal Apprehension/Gang Enforcement Unit. Detective S. Gradilla is Detective M. Gradilla’s brother.

On July 13, Detective S. Gradilla responded to the scene of the homicide at the 76 Gas Station. He was tasked with locating the suspect, Mr. Millsap. Detective S. Gradilla contacted five or six transients in the area who knew Mr. Millsap because he had repeatedly robbed them, and they feared him because he had a propensity for violence. Detective S. Gradilla also examined Mr. Millsap’s criminal rap sheet and recalled that it listed violent offenses such as Penal Code section 242 and 245.

Detective S. Gradilla interviewed a female friend of Mr. Millsap’s who had been arrested on a warrant. She was a percipient witness to the homicide at the 76 Gas Station. She said that Mr. Millsap got angry at her for obtaining “bad” fentanyl earlier in the day and expressed a need to get more. She said Mr. Millsap suddenly walked toward a transient in the parking lot who was facing away from Mr. Millsap and toward the gas pumps. Mr. Millsap “hit” the transient from behind and returned to his girlfriend with blood on his hands, which caused her to assume that Mr. Millsap had stabbed the transient.

She left the area of the 76 Gas Station and walked to a nearby Home Depot. Mr. Millsap followed her, but then “split.” She was arrested on a warrant soon thereafter.

On July 15, 2022, Detective S. Gradilla was assigned to conduct surveillance at the apartment complex where the OIS occurred. He was in plain clothes and driving an unmarked car. He had learned that Mr. Millsap was a gang member, White supremacist, and a violent person. He associated Mr. Millsap’s tattoos with White supremacist gangs. Moreover, Detective S. Gradilla interviewed transients who told him that Mr. Millsap was affiliated with the “Aryan Brotherhood” or “Public Enemy Number 1.” They also said that he was a violent person who was prone to random acts of violence toward people when he was angry.

Detective S. Gradilla then met with the apartment complex manager and obtained a key to a vacant apartment that had a direct line of sight to the apartment that they thought Mr. Millsap was in so they could continue surveillance. Detective M. Gradilla and Detective Tran conducted surveillance from within the vacant apartment while Detective S. Gradilla resumed surveillance from a position outside the apartment. After an hour or so, Detective Kramer relieved Detective S. Gradilla.

Detective S. Gradilla observed Mr. Millsap’s girlfriend exit the apartment complex westbound with a friend. Detective Lopez spoke to Mr. Millsap’s girlfriend. At that point, Detective S. Gradilla was assigned to relieve Detective Tran who was conducting surveillance from within the vacant apartment.

Detective S. Gradilla received information that SWAT had been activated. SWAT requested that Detective S. Gradilla and the probation officer serve as the “hands team,” which meant they would assist with the detention of anyone exiting the apartment during the operation. Detective S. Gradilla was not involved in SWAT’s pre-operation meeting and was not provided an operation plan to review.

When SWAT arrived at the apartment complex, Detective S. Gradilla and Probation Officer Meza positioned themselves behind the “stack.” At that point, Detective M. Gradilla began giving knock notice announcements, which he said continued throughout the operation and never really stopped. Detective S. Gradilla described the announcements as clear and concise. A woman opened the door of apartment #239 and SWAT called for “hands.” Detective S. Gradilla went to the front, contacted the woman and then handed her off for debriefing to Probation Officer Meza. Detective S. Gradilla stayed in front of the stack for about a minute or two and told Probation Officer Meza to debrief the woman who had exited the apartment. The woman stated that Mr. Millsap was hiding inside a closet in the apartment. He believed that Detective Ramirez, who was with Probation Officer Mesa, broadcast over the radio that the woman said that Mr. Millsap was inside of a closet in the apartment.

While Detective S. Gradilla had not been briefed on the SWAT operation to serve the warrant, he had learned that Detective Marcelo Lopez had interviewed one of Mr. Millsap’s girlfriends who stated that Mr. Millsap had told her that “he wasn’t going back to jail or he wasn’t going easy, something along those lines.” Detective S. Gradilla believed that this information heightened everyone’s concern about safety.

At that point, Detective S. Gradilla’s view inside the apartment was obstructed by a wall that he was standing behind, near the front door. He heard SWAT operators Detectives M. Gradilla, Lopez and the police dog handler continue to give Mr. Millsap verbal commands including face away from me, walk backwards towards the sound of my voice, keep your hands up, don’t put your hands in your waistband, to take his hands out of his waistband or to show them his hands, turn around and walk backwards.

Detective S. Gradilla's impression was that Mr. Millsap was not complying because the SWAT operators continued to give commands. He described them as "pleading with him to comply." Detective S. Gradilla said he felt worried and fearful for his life and everyone else's life.

At some point he observed the deployment of the police dog. Detective S. Gradilla thought it was Lopez, Detective Adam and Detective M. Gradilla, who went inside the apartment. He could see inside the apartment when the shots were fired and after a few seconds he went inside and rendered aid. He heard five or six shots fired by Detectives Gradilla and Lopez. He was about six or seven feet back from the entrance of the front door when the shots were fired.

Immediately after the shots were fired, Detective S. Gradilla entered the apartment and observed Mr. Millsap on the floor. He handcuffed Mr. Millsap, rolled him over onto his back, ripped open his sweatshirt and shirt and commenced first aid, applying occlusive dressings to the entry and exit wounds and administered CPR more than five minutes. Paramedics arrived approximately five to seven minutes later and took over Mr. Millsap's care.

#### ***Seal Beach Police Department Officer G. Kiehl***

On July 15, 2022, at approximately 5:50 PM, Officer Kiehl received notification of a West County SWAT activation regarding serving of a search warrant on Mr. Millsap at an apartment in Anaheim. Officer Kiehl learned that Mr. Millsap was on parole for robbery and was considered armed and dangerous. Officer Kiehl reported to the tactical operations center at Cypress College and completed a chemical agents plan in the event it was needed and authorized. Officer Kiehl was assigned to the entry team and positioned as the third operator in the stack behind Detectives M. Gradilla and Lopez. Officer Kiehl was also assigned the responsibility to handle chemical agents in the event they were needed.

After WPD obtained the search warrant, Officer Kiehl and the other SWAT members traveled to the Lexington Yard apartments to serve the warrant. They entered the apartment complex from the west vehicular entrance off Lincoln Ave. and continued southbound and stopped prior to making a westbound turn. The SWAT members dismounted their vehicle and continued their approach to the apartment complex on foot. They entered the complex through a pedestrian walkway north of the target apartment. Once inside the complex, operators accessed the second-floor balcony by a staircase and walked south towards the target apartment. The target apartment, unit #239, was in the southwest corner of the second floor. Detective M. Gradilla, equipped with the shield, stopped outside the target apartment with Detective Lopez to his right with lethal coverage. Officer Kiehl covered an apartment door on the south wall, which was reported to be associated with the target apartment. From his position, Officer Kiehl had no visibility of the apartment door due to it being recessed in the hallway.

Detective M. Gradilla advised the occupants inside apartment #239 that they were the West County SWAT team and had a warrant. Almost immediately a woman opened the front door and exited the apartment. She was directed to waiting WPD detectives where she was debriefed for additional information. The front door remained open and did not need to be breached. Detective M. Gradilla made another announcement through the open front door into the apartment, this time advising Mr. Millsap that they had search warrant for the apartment and to make himself known. After no response from inside, Detective M. Gradilla provided a police dog announcement to the apartment's occupants. Shortly thereafter, SWAT operators learned that Mr. Millsap was hiding inside a closet in the apartment. Detective M. Gradilla announced to Mr. Millsap that they knew he was hiding in the closet and instructed him to come out and present himself with his hands up and empty and gave Mr. Millsap another warning

about the use of a police dog if he did not comply. After a short time, Detective Lopez yelled, “Trent show me your hands.” Officer Kiehl could not see Mr. Millsap’s position inside the apartment because his view was obstructed by a hallway wall and his primary focus was to watch for potential threats that might appear from outside the apartment. Officer Kiehl did hear Detective M. Gradilla relay that Mr. Millsap had stated that he did not want to go back to jail. He also heard Detective M. Gradilla continue to attempt to convince Mr. Millsap to comply and heard him assure Mr. Millsap that he did not want to hurt him. At this time, Officer Kiehl observed Officer Marshall and his police dog make their way to the front of the SWAT entry team and take a position to the left of Detective M. Gradilla. Officer Kiehl heard Officer Marshall order Mr. Millsap to get on the floor or he would deploy his dog. Detective M. Gradilla continued to try to get Mr. Millsap to surrender peacefully. During this time, Sergeant Adam, who had taken a position behind Officer Marshall, asked to swap positions with him. Officer Kiehl moved behind Officer Marshall to cover the south hallway from any potential threats. From that position, he had no observation of the interior of the apartment or Mr. Millsap.

Shortly after taking his position, Officer Kiehl heard Officer Marshall deploy the police dog. He heard Detective Lopez yell something at Mr. Millsap which he could not understand. He then heard the sound of approximately six-to-seven-gun shots coming from behind his position inside the apartment. He heard Sergeant Adam state that shots were fired over the radio. He maintained his position on the balcony outside and began to assess additional threats as numerous residents exited their apartments and began yelling.

SWAT members began to render aid to Mr. Millsap until paramedics arrived, and he was taken to the hospital.

***Statement of Cypress Police Department Officer Brook Marshall***

On August 2, 2022, Special Agent Hernandez received a Memorandum dated July 20, 2022, that contained Cypress Police Department Canine Police Officer Brook Marshall’s written voluntary statement regarding the OIS, which is summarized as follows:

Officer Marshall stated that he was member of the West County SWAT team. He handled a police canine that was integrated into the SWAT team. Officer Marshall commented that “SWAT operations are inherently dangerous. Knowing this, we strive to utilize less lethal options such as a police canine, to reduce the likelihood of deadly force and to gain compliance.”

On July 15, 2022, at approximately 6:19 PM, Officer Marshall was notified of a SWAT callout. He responded to the tactical operation center set up at Cypress College. Upon arrival, Officer Marshall was told that WPD had located Mr. Millsap, a suspect wanted in connection with a homicide that had occurred two days earlier at a 76-gas station in the City of Westminster. Officer Marshall was informed that Mr. Millsap stabbed the victim in the chest causing fatal injuries and that he had fled the scene of the homicide and was considered armed and dangerous. Officer Marshall was further informed that Mr. Millsap had an outstanding parole violation warrant for robbery. He was informed that Mr. Millsap was inside apartment #239, which belonged to his girlfriend, and that he had been using methamphetamine and Fentanyl earlier that day. It was unknown whether Mr. Millsap was armed or had access to weapons inside the apartment.

Officer Marshall was informed by SWAT team leader, Sergeant Adam, that he was preparing the entry team and that she would be assigned to the entry team with his police service dog.

Sergeant Adam briefed the SWAT entry team regarding their entry to the apartment, any areas of danger, the public's safety, less lethal options, additional subjects inside the apartment, the possibility of Mr. Millsap being under the influence of narcotics, that Mr. Millsap was suspected of a brutal stabbing resulting in death, and that it was unknown whether weapons were inside the apartment.

Officer Marshall stated that in deciding to utilize PSD Kubo he considered several factors, including that Mr. Millsap was wanted for committing a brutal murder, that he was considered armed and dangerous, and that he had a significant criminal history that included violent crimes. As instructed, Officer Marshall followed the SWAT team vehicle to the Lexington Courtyard and entered the driveway on the west side. The SWAT vehicle stopped approximately 100 yards south of Lincoln Avenue and the entry team exited. Officer Marshall parked his police unit next to the west wall and removed the PSD from the police unit. As Officer Marshall entered a large courtyard, he observed several people standing in the courtyard holding cellphone cameras, and he detected a strong smell of marijuana in the air.

Officer Marshall and his PSD entered an exterior staircase, walked to the second floor, and observed the entry team standing facing south against the west side of the building. Officer Marshall stopped approximately ten feet north of the east-facing door to apartment #239.

The SWAT operators in front of him were Detectives Gradilla, Lopez, Sansenbach, Kiehl, Sergeant Gallagher, Sergeant Adam, and Detective Godoy. One of the SWAT members announced something like "West County SWAT team, search warrant, anyone inside apartment #239, come out with your hands up." Officer Marshall stated that due to the PSD Kubo's barking and his position behind the entry team, he could not hear every word of the announcements.

After approximately 40 seconds and several verbal announcements, a woman exited apartment #239. The woman was carrying a small dog and was escorted past the entry team and behind her. Officer Marshall heard the woman state something like, "He's hiding in the closet." Thereafter, Detective M. Gradilla made another announcement like, "Inside the closet, come out with nothing in your hands, if not the dog may bite you." Officer Marshall then asked Sergeant Adam to confirm the closet's location and mentioned that, if needed, they could make a limited entry and utilize his police service dog.

Officer Marshall asked the entry team to make a canine announcement inside apartment #239. An operator, either Detective M. Gradilla or Lopez, announced something like, "West County SWAT, if the canine finds you, he will bite you, surrender now."

Officer Marshall stated that approximately 15 seconds later another announcement was made like, "Trent Millsap, West County SWAT, surrender now, if the dog finds you, he will bite you."

Officer Marshall heard either Detectives M. Gradilla or Lopez make verbal announcements inside apartment #239 like, "Show me your hands." He also heard one of the operators issue verbal commands, "turn around" and "get your hands up," which he assumed meant that the SWAT operators had established visual contact with someone inside the apartment. Officer Marshall noticed the commotion had attracted the attention of several people who had gathered in the courtyard and others who were looking out through their apartment windows. The exterior door facing north and directly in front of the entry team was being covered by Sergeant Gallagher. Officer Marshall became concerned about a possible threat to the SWAT operators through the closed exterior door facing them that was being covered by Sergeant Gallagher. He told the operators in front of him to step aside and allow him to pass

with his police service dog. Officer Marshall passed Detectives M. Gradilla and Lopez who were standing in apartment #239's doorway facing in and pointing their duty weapons at Mr. Millsap.

Officer Marshall observed Mr. Millsap standing in the northwest side of the room wearing a grey hooded sweatshirt, and he had multiple facial tattoos. He observed a light-colored blanket hanging down from the ceiling near Mr. Millsap's left hand. Mr. Millsap moved his left hand behind the blanket. He could not tell if there was something concealed behind the blanket.

Mr. Millsap was partially facing the door. Officer Marshall passed behind Detectives M. Gradilla and Lopez and positioned himself behind stucco on the south side of the open door. Both Detectives M. Gradilla and Lopez were standing in the doorway and continued to give Mr. Millsap verbal commands to surrender for the next approximately two minutes. Officer Marshall then stepped to the right and placed himself next to Detective M. Gradilla's left side where he was then able to see Mr. Millsap standing approximately five to six feet inside the room.

Officer Marshall stated that both Detectives M. Gradilla and Lopez gave multiple commands to Mr. Millsap to "Get your hands up, turn around, slowly turn around and face away from us, come out and turn around, Trent turn around." Officer Marshall could not hear Mr. Millsap's responses clearly, but he indicated that he stated something like, "I'm not going back" and "I can't go to prison."

Officer Marshall observed that Mr. Millsap continued to stand near the blanket hanging from the ceiling. His hands were partially up, and his body turned from facing forward toward the door to turning away from the door. He noticed that there were numerous places where a weapon could have been concealed, including furniture, clothing, and trash. Mr. Millsap was also wearing a large grey hooded sweatshirt that he believed could easily conceal a weapon.

Officer Marshall observed Mr. Millsap's eyes darting around the room and said that his behavior was indicative of someone "pretending to comply." Officer Marshall's perception was that Mr. Millsap "appeared to be feigning surrender."

Officer Marshall explained that Mr. Millsap's behavior caused him to fear that he was going to run towards the SWAT operators and possibly cause a crossfire situation or perhaps push an operator over the balcony. He was mindful that Mr. Millsap had spent time in prison and jail and recalled based on his own experience as a jail deputy, that inmates would sometimes lure officers into their cells and then attack the officers in close quarters.

Officer Marshall considered non-lethal options for responding to Mr. Millsap's non-compliance and the apparent danger that he believed Mr. Millsap posed. He ruled out the use of a Taser because of the clothing Mr. Millsap was wearing. He also considered requesting an operator use a 40-millimeter less lethal foam or gas round but concluded that due to Mr. Millsap's proximity and behavior, such an option would place SWAT members in further danger.

As Mr. Millsap continued to look around the room, Officer Marshall decided that the safest less lethal option was to deploy the police service dog. Officer Marshall stated that he considered the facts that multiple verbal canine commands had been given, that Mr. Millsap could see and hear the police service dog, and that Mr. Millsap had been given multiple opportunities to surrender peacefully. Based upon these facts, Officer Marshall gave his police service dog an apprehend command and sent the dog into the room. The police service dog was off leash due to the proximity and the amount of debris on



the floor around Mr. Millsap. Officer Marshall immediately stepped to his left to allow the entry team operators to enter the room and close the distance to Mr. Millsap to allow them to use their hands to control him while he was engaged by the police service dog.

Officer Marshall observed several operators pass. He also heard yelling and then approximately five gunshots originating from the room. He entered the room and observed Mr. Millsap on the ground. He saw that that the police service dog had a hold of Mr. Millsap's left arm.

Officer Marshall heard someone yell, "Get the dog off." He gripped the dog's vest and looked to see if someone had control of Mr. Millsap's right arm. He observed a handcuff on his right wrist and told the SWAT operator holding the handcuff to secure Mr. Millsap's left arm. At this time, he did not know the extent of Mr. Millsap's injuries. He gave the dog a verbal command to release his hold which the dog obeyed. Officer Marshall did not observe an injury to Mr. Millsap's arm caused by the police service dog. As SWAT operators attempted life-saving measures on Mr. Millsap, Officer Marshall noticed the dog's right ear was bleeding and immediately administered medical treatment. The police service dog was transported to a veterinarian where he received nine stitches in his left ear. Officer Marshall stated that the injuries appeared to be consistent with a gunshot wound.

#### ***Interview of Probation Officer Carlos Meza***

On October 11, 2022, Orange County Probation Officer Carlos Meza, accompanied by his legal representative Lewis R. Rosenblum, was interviewed by SA Hernandez and SA Tony Baca, and Orange County District Attorney Investigators Thomas Toth and Claudia McCarthy. Probation Officer Meza stated as follows:

At the time of the interview, Probation Officer Meza had been employed by the Orange County Probation Department for approximately 23 years. His current position was Probation Officer II. His assignment was with the Gang Violence Suppression Team.

On July 13, 2022, Probation Officer Meza was on duty conducting gang suppression activity. He and his partner responded to the scene of the homicide at the 76 Gas Station. When they arrived, they were directed to a nearby Home Depot based upon a lead from a woman that the homicide suspect might be inside. Probation Officer Meza and Detective S. Gradilla searched inside the Home Depot and determined the suspect was not present.

Probation Officer Meza then returned to the WPD and interviewed a woman who identified herself as Mr. Millsap's girlfriend.

The woman stated that she and Mr. Millsap had been at the 76 Gas Station. They had obtained bad drugs and were feeling sick. They noticed a man at the 76 Gas Station who appeared in mental distress, as he was yelling at the gas pumps. The woman observed Mr. Millsap walk toward the man and then return shortly thereafter holding a knife in his hand with blood on his hands. The woman stated that she did not see the actual attack.

During the investigation, Probation Officer Meza learned that Mr. Millsap had recently been released from prison. He did not recall the charges, but thought they involved a crime of violence.

The next day, Thursday, July 14, 2022, Probation Officer Meza assisted in the effort to locate Mr. Millsap. Probation Officer Meza learned from another officer who was conducting surveillance at the

Lexington Courtyard apartment complex that they had observed Mr. Millsap exit the apartment and ride a skateboard north of the complex. Before reaching Lincoln, Mr. Millsap turned around and went back inside the apartment complex.

On Friday, July 15, 2022, Probation Officer Meza and Detective S. Gradilla were again assigned to conduct surveillance at the apartment complex where Mr. Millsap was believed to reside. As they maintained surveillance on Mr. Millsap's apartment, they were informed that a search warrant had been obtained and that SWAT was on its way to the apartment complex to execute the warrant. Probation Officer Meza learned that SWAT would first conduct a briefing, but he and Detective S. Gradilla were told to continue to maintain surveillance and thus did not attend the briefing.

When SWAT arrived, Probation Officer Meza and Detective S. Gradilla were assigned as the hands team. When SWAT arrived at the apartment front door, they knocked and made announcements. About a minute later, a woman opened the door. The SWAT team directed her back to Detective S. Gradilla, who then handed her off to Probation Officer Meza. He walked the woman about 30 or 40 yards away from the apartment and he and Detective Ramirez interviewed her. She stated that Mr. Millsap was inside the apartment hidden in a closet located next to the kitchen. Probation Officer Meza asked her if Mr. Millsap had any firearms or weapons. She responded that she did not know, but that she did not believe so. Probation Officer Meza stated that Detective Ramirez relayed the information provided by the woman to the SWAT team.

After approximately three to five minutes, he heard gunshots. Immediately thereafter, Probation Officer Meza assisted in preventing residents of the apartment complex from getting too close to the apartment. He did not go inside the apartment. He recalled that paramedics arrived within approximately two to five minutes and took Mr. Millsap out of the apartment.

#### ***Interview of Sergeant Daniel "Andy" Pinvidic***

On September 1, 2022, WPD Sergeant Andy Pinvidic was interviewed by SA Hernandez and Orange County District Attorney Investigator Toth. Also present was Sergeant Pinvidic's legal representative, Brett Rutkowski. Sergeant Pinvidic stated as follows:

At the time of the interview, Sergeant Pinvidic was employed by the WPD and assigned to the Patrol Division. He had also been assigned to the West County SWAT for ten years as an operation sergeant.

On July 15, 2022, he was on the patrol day shift from 6:00 AM to 6:30 PM as the watch commander. At some point that afternoon, he became aware that the detective bureau had leads on a homicide suspect's whereabouts in Anaheim, that they were conducting surveillance, and that at some point they might ask SWAT for assistance with service of a search warrant. Sergeant Pinvidic informed SWAT Commander Kevin MacCormick of the possibility of a SWAT operation at some point in the evening. Sergeant Pinvidic also established contact with Detective Andy Travis, who was working on the warrant.

While Detective Travis worked on the warrant, Sergeant Pinvidic prepared the SWAT authorization form required to obtain authorization to conduct a SWAT operation. He submitted it to Commander McCormick, who distributed it to the other SWAT commanders on the SWAT.

After completing the SWAT authorization form, Sergeant Pinvidic drove to Cypress College, about a half mile from the apartment complex, where they had established the command post for the operation.

Sergeant Pinvidic included in the SWAT authorization information about Mr. Millsap that indicated this would be a high-risk operation. He knew about the “unprovoked” homicide where the victim was stabbed at the 76 Gas Station, that Mr. Millsap had an extensive criminal record that included crimes of violence including robbery and fighting with the police, that he was associated with White supremacy, and that Mr. Millsap had expressed that he would not return to prison. Based upon this information, Sergeant Pinvidic believed that Mr. Millsap would be inclined to kill or injure law enforcement officers or innocent civilians to escape and avoid being returned to prison. Sergeant Pinvidic included all this information when he briefed the SWAT operators prior to the operation because he considered it important that they understand the risks. Sergeant Pinvidic also described the tactical planning for the operation. He stated that due to the totality of circumstances, the operation met their policy manual’s criteria as an emergency response rather than a pre-planned event. He listed the fact that the operation involved a violent homicide suspect who was potentially armed, the location of the operation involved an apartment complex where there was potential for him to harm other people, and the approach into the apartment complex, which he described as “extremely tough for police officers” to approach. The apartment complex had a layout where all the doors and windows face toward the courtyard. Thus, it would be impossible to walk through the courtyard without being exposed to multiple levels of doors and windows.

Sergeant Pinvidic stated that it was about 6:00 PM when it looked like the warrant was about to be signed.

Sergeant Pinvidic stated that he could not remember whether he had information as to whether Mr. Millsap was armed, but he did indicate that given the facts that Mr. Millsap was suspected of committing an unprovoked murder and that he had stated that he would not return to prison, he considered Mr. Millsap to be dangerous.

Sergeant Pinvidic acknowledged that the SWAT operators were equipped with less lethal weapons including 40-millimeter gun with sponge rounds, gas, Tasers and the K-9. He stated that they had developed a plan to use gas if Mr. Millsap had barricaded himself inside the apartment. However, Sergeant Pinvidic stated that no request was made to use gas because everything happened so fast that there was no time to do so.

Sergeant Pinvidic stated that the decision to release the police service dog would have come from the dog’s handler (Officer Marshall) on a threat assessment. According to Sergeant Pinvidic’s understanding of police service dog policy, the dog’s handler has discretion to deploy the dog in a use of force situation without prior approval or notification to supervisors.

### ***Interview of Detective David Ramirez***

On December 1, 2022, WPD Detective David Ramirez was interviewed by SA Hernandez and Orange County Investigator Toth about the OIS. Detective Ramirez made a statement as follows.

At the time of the interview, Detective Ramirez was employed by the WPD as a detective assigned to work property crimes.

On July 13, 2022, Detective Ramirez was called to the 76 Gas Station regarding a report that someone had been stabbed. He reviewed the gas station’s surveillance video that showed a man and woman that the clerk described; in the video he saw these individuals coming from the area where the victim

was stabbed. He also received information that one of the suspect's parents was staying at the Motel 6 across the street. The woman had approached the 76 Gas Station and asked whether her daughter had been assaulted because she was with her violent boyfriend. She gave the names of her daughter and Mr. Millsap. Detective Ramirez showed still images of the gas station video surveillance to the mother, who positively identified her daughter and Mr. Millsap.

Detective Ramirez received information that the woman identified in the video was located at a nearby Home Depot. He went to the Home Depot and spoke to the woman identified as Mr. Millsap's girlfriend. She told him that Mr. Millsap had entered the Home Depot approximately an hour earlier. The Home Depot was searched but Mr. Millsap was not located. The woman was arrested and brought to the Westminster Police Department.

On July 15, 2022, Detective Ramirez assisted with surveillance at the apartment complex where they had determined Mr. Millsap was staying. At some point he noticed two women exit apartment #239. The two women were detained and questioned. They confirmed that Mr. Millsap was inside apartment #239. He was then told that the SWAT team was on the way to the scene. He was not part of the SWAT team but was assigned to assist with the detention of anyone who exited the apartment.

As the SWAT announced their presence to the occupants of apartment #239, Detective Ramirez was positioned on the second floor a few doors down. After the woman holding a dog exited the apartment, Detective Ramirez interviewed her to determine Mr. Millsap's whereabouts and whether he was armed. She stated that Mr. Millsap was inside the apartment in a closet without doors that was near the entrance of the apartment on the left side. She stated that there were no firearms inside the apartment to best of her knowledge. Detective Ramirez relayed her answers to the SWAT operators.

As he interviewed the woman, he suddenly heard approximately three gunshots. A few moments later, Detective M. Gradilla exited the apartment and approached him. Detective Ramirez led Detective M. Gradilla away from the scene toward Detective Ramirez's vehicle. He observed Detective Lopez walk away from the scene with Officer Stanley Cobol.

#### ***Seal Beach Police Department Sergeant J. Sansenbach***

On July 22, 2022, Sergeant J. Sansenbach prepared a case supplemental report that included the following information:

Sergeant J. Sansenbach was an Operations Sergeant on the West County SWAT. The role of Operations Sergeant includes establishing and managing the Tactical Operation Center during a SWAT callout, prepare/review tactical plans, brief the Team during a SWAT operation, and coordinate logistics with all SWAT team members.

On July 15, 2022, Sergeant Sansenbach received notification of a SWAT activation and responded to the command post at Cypress City College. At approximately 8:48 PM, he responded along with the other SWAT operators to serve the warrant at the Lexington courtyard apartment complex where Mr. Millsap had been observed. Sergeant Sansenbach was equipped with a ballistic vest with two pouches containing less lethal munitions in the form of Defense Technology 40-millimeter Direct Impact crushable foam rounds and 12-gauge drag stabilized bean bag rounds, for officers in possession of less lethal firearms who may need additional resources. He also carried a department issued handgun, patrol rifle, and Taser Electronic Control Device.

Sergeant Sansenbach was assigned as the “breacher” for the service of the warrant, meaning his focus was to gain entry to barricaded areas associated with service of the warrant.

Approximately two minutes and thirty seconds after the team’s arrival, the SWAT operators reached apartment #239. He and Detective Godoy contacted the occupants of apartment #238 and requested they evacuate the location until the scene had been deemed safe for them to return. Both occupants left the apartment and were directed to officers closer to the officers’ initial arrival point.

After approximately one minute, Sergeant Sansenbach heard officers at the front of the stack make knock and notice announcements of their presence as police officers and that they had a warrant. He also heard the SWAT operators instruct the occupants of apartment #239 to exit the apartment with hands up.

Approximately one minute after announcements were made, a woman exited the location holding a small dog and was directed toward detectives standing behind him. Immediately after the woman was directed to detectives another announcement was made, again announcing the presence of officers and the existence of a warrant for the location, as well as police dog announcements. At that time, and for the remainder of the warrant service, his primary focus was providing security for the officers at the door by facing apartment #240 to his right, adjacent to apartment #239, as well as the interior courtyard of the complex, both of which required that he face away from apartment #239.

Sergeant Sansenbach continued to hear announcements, including police dog announcements, being made behind him for approximately two minutes until officers indicated they had contact with Mr. Millsap at the door. Officers began giving commands directly to Mr. Millsap to step out with his hands up. Sergeant Sansenbach could hear officers tell Mr. Millsap that they did not want to hurt him, continue to give him commands, and relay information from the front of the stack that Mr. Millsap had said he did not want to go back to jail. At that time, police service dog handler Officer Marshall and his dog moved from a position behind him to the front of the stack.

For approximately the next two minutes, officers continually gave Mr. Millsap commands and warned him about the potential deployment of the police dog. After about two minutes, Officer Marshall deployed the dog. Approximately four seconds after the dog was deployed, Sergeant Sansenbach heard three to four gunshots, immediately followed by an advisement of shots fired over the radio and requests for paramedics. SWAT team operators rendered emergency first aid to Mr. Millsap while Sergeant Sansenbach continued to maintain security until relieved by the Anaheim Police Department.

## **INTERVIEWS OF CIVILIAN WITNESSES**

The following statements are summaries of interviews of civilian witnesses. Please note that the interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as currently understood.

### ***Witness 1 (W-1)***

On July 16, 2022, W-1 gave a statement to Anaheim Police Department Officer C. McCutcheon who was assigned to interview civilian witnesses at the scene of the OIS. W-1 was inside apartment # 239 with Mr. Millsap when police arrived. She heard the police tell Mr. Millsap to come outside and that he would be fine. She then grabbed her small dog due to her concern about the presence of a police

service dog. W-1 exited the apartment and was detained by police and taken to the stairs between the second and third floors north of unit #239.

W-1 stated that Mr. Millsap was unarmed, lying face down and was shot for no reason. She stated that Mr. Millsap was a good person and that she had recently learned that he was accused of murder.

W-1 made spontaneous statements that Mr. Millsap had an anger issue and had stated in the past that he was going to stab someone in the face. W-1 stated that she often had to calm Mr. Millsap to avoid him fighting people. She explained that Mr. Millsap was often mistaken for being violent because he was a large man, but that he was not a violent person.

On August 29, 2022, Special Agents Hernandez and Baca conducted a follow-up interview with Witness 1 who stated as follows:

W-1 lived in unit #239 with her husband. Mr. Millsap had lived there as well for about eight months. She described him as “really sweet, really kind,” and like a “little brother” to her. W-1 stated that after she exited unit #239, she told one of the officers that Mr. Millsap was “probably hiding” in a closet and described the closet’s location. W-1 also stated that she told the officer that Mr. Millsap was unarmed.

W-1 stated that she was with Mr. Millsap earlier in the day. During the morning, Mr. Millsap told her that he was at the scene of a crime and that he expected that he would go back to prison. He did not specifically refer to the homicide at the gas station and told W-1 she was better off not knowing the details about his crime. She described him as “very depressed” and that he was on “lots of fentanyl.” She stated that he received two deliveries of fentanyl that day and estimated that he may have taken two grams. She opined that Mr. Millsap may have been trying to kill himself by overdosing on fentanyl. She said he was “very low” and the most depressed she had ever seen him. W-1 denied that he had suicidal ideation that day, but that he repeatedly stated that he did not want to go back to prison. He talked to her about surrendering. W-1 also stated that Mr. Millsap’s mood lightened toward the end of the day, and he appeared to be more accepting of what might happen. She said that Mr. Millsap always carried a knife on him, but did not think he had a knife on his person the night of the OIS. She added that she had not seen him possess firearms.

W-1 stated that she and Mr. Millsap were about to leave the apartment when the OIS incident occurred. W-1 stated that everything happened so quickly and that the officers did not give Mr. Millsap enough time to surrender, “They just yelled and then gunfire.”

### ***Witness 2 (W-2)***

On August 29, 2022, Special Agents Hernandez and Baca interviewed W-2 who stated as follows:

W-2 stated that she had known Mr. Millsap for about a year and that he was her boyfriend. She also stated that she was not present when the OIS occurred. W-2 described Mr. Millsap as a “good man” who was “hard on the outside” and that he had been “locked up basically his whole life.” She also described him as “scary on the outside, but he really wasn’t.”

Mr. Millsap had mental issues. At times he appeared happy and at others he appeared depressed. He was not taking medication for his mental issues but was smoking methamphetamine and Fentanyl. W-2 stated that Mr. Millsap had suicidal ideations “all the time.” Mr. Millsap would say that he was “tired of this world” and “why not kill himself.” However, she did not think he would commit “suicide by



cop.” W-2 stated the last time Mr. Millsap had spoken to her about suicide was a couple of months earlier. She also stated that Mr. Millsap had expressed a desire to turn himself in to police, but she was unclear about whether that related to the murder at the gas station.

### ***Witness 3 (W-3)***

On July 16, 2022, Anaheim Police Department Officer C. McCutcheon interviewed W-3 who stated the following:

W-3 lived in unit #240, which is immediately adjacent to unit #239. W-3 stated she was inside her apartment with her husband and minor child at the time of the OIS. She stated that she knew the residents of unit #239 as a married couple. She described the man as White, short and thin with a buzz haircut. She described the woman as White, medium build and tall, with her hair always up.

W-3 stated that she heard the police loudspeaker, a knocking sound, and dogs barking. When she looked out her window to see what was happening, a police officer told her to move back. W-3 went to her son’s bedroom (at the southeast corner of her apartment) to comfort him. From her son’s bedroom, she heard the police call the name “Trent.” W-3 also heard the police stating things such as “search warrant, drop what’s in your hands,” and “walk toward me.” W-3 then heard two or three shots. W-3 denied that she had seen a large man with tattoos all over.

### ***Witness 4 (W-4)***

On July 15, 2022, Anaheim Police Department Officer V. Flynn was assigned to interview civilian witnesses at the scene of the OIS. On that date, Officer Flynn interviewed W-4 who stated the following:

W-4 stated that she was inside her apartment, unit #235, at the time of the OIS. She stated that while she did not observe any of the events, she heard a lot of commotion coming from outside her apartment. W-4 recalled that she heard a police officer yell, “Get down on the ground, get down on the ground, get down on the ground!” Thereafter, she heard two gunshots. She was unable to discern any other words or commands by the officers or the suspect.

### ***Witness 5 (W-5)***

On July 16, 2022, Anaheim Police Department Officer B. Castro was assigned to interview civilian witnesses who were at the scene of the OIS. On that date, Officer Castro interviewed W-5 who stated the following:

W-5 stated that at the time of the OIS he was inside his residence, unit #340. He heard the police announce, “[W]e have a warrant we are coming in . . . Trent Millsap.” W-5 then heard what sounded like scuffling, a taser, and two shots.

## 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. (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; *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.5th 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 a person 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. Moya* (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 that 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 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**

DOJ has completed an independent investigation and review of the facts and circumstances that led to the death of Mr. Millsap. This analysis is based on all the evidence obtained by DOJ in this matter, including police reports, witness statements, forensic evidence, Coroner's report, and body worn camera footage.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Detective M. Gradilla and Detective Lopez did not act in lawful defense of themselves or others, this is the primary issue in determining whether criminal charges should be filed. A detailed analysis of the evidence pertaining to the OIS shows that Detective M. Gradilla and Detective Lopez actually and reasonably believed that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers or others. Therefore, the evidence is insufficient to support criminal charges.

Because Detectives M. Gradilla and Lopez declined to provide voluntary statements, their subjective intent must be inferred from their actions. Several factors show that both detectives likely actually and reasonably believed that, at the time of the OIS, Mr. Millsap posed an imminent threat of death or great bodily injury to themselves, other law enforcement personnel and possibly civilian bystanders.

It can be reasonably inferred from the evidence that Detectives M. Gradilla and Lopez believed that Mr. Millsap was armed and dangerous. Prior to the incident, Sergeant Pinvidic briefed the SWAT team, including Detectives M. Gradilla and Lopez, that a warrant had been issued for Mr. Millsap's arrest in a brutal stabbing murder that occurred two days earlier. Sergeant Pinvidic informed them that Mr. Millsap had a violent criminal history, had been informed that he affiliated with a violent gang, and that he had stated he would not return to jail.

During the incident, Mr. Millsap did not comply with SWAT's commands. According to law enforcement statements and body worn camera video, Mr. Millsap failed to respond to four commands to present himself and surrender over a period of two minutes and 54 seconds before he presented himself. He then failed to comply with three additional commands to keep his hands up and surrender. Before the involvement of the police dog, Mr. Millsap was warned several times that if he did not surrender a police dog would be sent in and would bite him. The police dog was brought to the entrance of the apartment where he appeared to be in Mr. Millsap's line of site. The dog's loud and continuous barking provided Mr. Millsap further notice of the dog's presence and readiness to be deployed if Mr. Millsap continued to fail to surrender as instructed. Mr. Millsap was clearly aware of the presence of the dog given the numerous warnings and the dog's loud barking.

In the aggregate, Mr. Millsap failed to comply with approximately eight SWAT commands to present himself and surrender, including four warnings that the police dog would be deployed before the police dog was eventually deployed.

During the two minutes 54 seconds between SWAT's initial notification and the release of the police dog, Mr. Millsap argued with Detectives M. Gradilla and Lopez, including stating specifically, that "I can't go back to jail."

Most importantly, the body-camera video shows that after the police service dog was released into the apartment, Mr. Millsap was able to briefly fend him off and then, as he squared up to SWAT operators, lifted his sweatshirt and reached into his waistband in a manner that Sergeant Adam described as a "textbook" movement consistent with reaching for a concealed firearm. The video shows that directly after this provocative act Detectives Gradilla and Lopez fired shots at Mr. Millsap. Based upon Mr. Millsap's actions and the totality of the circumstances, it is reasonable to infer that Detectives M. Gradilla and Lopez actually and reasonably believed that Mr. Millsap was reaching into his waistband for a concealed deadly weapon and that he intended to use it against them and others at the scene. The fact that it was later learned that Mr. Millsap was unarmed does not undermine the conclusion that Detectives M. Gradilla and Lopez could reasonably have acted upon an actual belief that Mr. Millsap posed an imminent threat of death or great bodily injury.

The autopsy findings that three gunshot entrance wounds were found on Mr. Millsap's back and that the bullets traveled from back to front. As scene on the body camera video, Mr. Millsap was facing Detective M. Gradilla and Lopez when he lifted his sweatshirt and reached into his waistband. Detectives M. Gradilla and Lopez immediately commenced firing a total of eight shots within a period of about one second. As they fired, Mr. Millsap twisted his torso from right to left exposing his right side and back to the path of the bullets, which explains the back to front trajectory of the entrance and exit wounds.



A reasonable officer, under the same circumstances, and with the same knowledge, would have believed that deadly force was necessary to defend against imminent threat to life. The evidence is also fully consistent with the conclusion that Detectives M. Gradilla and Lopez subjectively believed that the use of deadly force was necessary to defend themselves and others at the scene from imminent deadly attack and that this belief was objectively reasonable. Accordingly, in any criminal prosecution, the people would be unable to meet their burden of proving beyond a reasonable doubt that the use of force resulting in Mr. Millsap's death was not justified.

## **CONCLUSION**

Based on the investigation and review of evidence, along with the applicable statutes, legal principles, and subsequent analysis, there is insufficient evidence to support a criminal prosecution of Detective M. Gradilla or Detective Lopez. As such, no further action will be taken in this case.



C A L I F O R N I A

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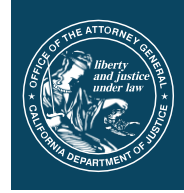
# DEPARTMENT OF JUSTICE

## **Policy and Practice Recommendations for the Westminster Police Department Related to the Officer-Involved Shooting of Trent Millsap on July 15, 2022**

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

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July 2025



## 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).) Therefore, the Department of Justice (DOJ) through its Police Practices Section (PPS) conducts a review of the information obtained through the criminal investigation, which may include a review of policies concerning 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 officers who are subject to the criminal investigation. PPS uses the review process to identify applicable recommendations, including any recommendations to modify policies and practices that may reduce the likelihood that officers use deadly force, as well as recommendations to address any other deficiency or concern related to the officers’ conduct or the agency’s response. PPS’s goal is that these recommendations will assist the agency and the officers involved in the incident in understanding, from an independent perspective, improvements that may be made to address what was observed through this incident.

As background, on July 15, 2022, at approximately 8:49 p.m., Westminster Police Department officers, and other peace officers with West County Special Weapons and Tactics team or “SWAT” (WCS), were executing a search warrant to arrest Trent Millsap. Mr. Millsap was suspected of murdering a man at a local gas station two days earlier. Mr. Millsap was also a parolee with a history of violence and association with the Aryan Brotherhood. WCS met to conduct an operational briefing, but did not prepare a written operational plan. Mr. Millsap was located in an apartment and WCS directed him to keep his hands up and exit the apartment. After several minutes of non-compliance, Officer Marshall released into the apartment a canine to apprehend Mr. Millsap. Mr. Millsap wrestled the canine away and reached for his waistband in a way that led officers to believe he was reaching for a weapon. Detectives Gradilla and Lopez, both members of WCS and employed by Westminster Police Department, fired their service weapons at Mr. Millsap, striking and killing him.

PPS evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), PPS advises Westminster Police Department to review and implement the following four recommendations:

### RECOMMENDATION ONE: OPERATION PLAN AND TACTICS

The responding officers were executing a search warrant at 3360 West Lincoln Avenue, Apartment 239, Anaheim, California 92801, which also included an arrest warrant to apprehend Mr. Millsap who was suspected of murdering a man on July 13, 2022. Westminster Police Department officers initiated surveillance at the apartment complex on July 14, 2022, at approximately 4:30 p.m. On July 15, 2022, at approximately 3:30 p.m., Lieutenant Pinvidic completed the WCS Authorization for Use Checklist regarding the request by Westminster Police Department. At approximately 6:19 p.m., WCS was activated, with a Tactical Operations Center posted at Cypress College, where the operational briefing was conducted. The warrant was signed at approximately 7:45 p.m. According to Westminster Police

Department Sergeant Adam, WCS deployed to the Lexington Courtyard Apartments, where Mr. Millsap was believed to be, almost immediately after the operational briefing. According to body worn camera videos, WCS first arrived at the Lexington Courtyard Apartments at approximately 8:49 p.m.

Although the officers completed an operational briefing, they did not prepare a written operational plan, in conformance with Westminster Police Department policy or the National Tactical Officers Association guidelines. Furthermore, the investigation revealed that some of the officers involved in apprehending Mr. Millsap were not informed of the strategies discussed during the operational briefing by WCS. Consequently, it is difficult to determine what resources and tactics were used by WCS, and whether any strategies developed during the operational briefing were followed.

According to Sergeant Pinvidic, a member of WCS employed by Westminster Police Department, WCS agreed that they would use a surround and call out event, in which an announcement would be made over a loud public announcement system. Sergeant Pinvidic noted that this would “...prevent us from ... kicking in a door and running in, and possibly getting into a preventable use of force ....” (Interview of Sgt. Pinvidic at p. 15.) As outlined above, more than two hours passed between the time WCS was activated and their deployment to the apartment complex. Despite having the time to do so, WCS did not prepare a written operational plan. Absent a written operational plan, it is difficult to determine whether alternative tactics, such as the use of a crisis negotiation team, surround and call out<sup>1</sup>, or diversion<sup>2</sup> were carried out in accordance with the operational briefing.

Westminster Police Department Policy No. 408 sets forth the policies applicable to WCS. Policy No. 408.3.3 provides that “[t]he operational procedures should include, at minimum, the following: ... (b) Plans for mission briefings conducted prior to an operation, unless circumstances require immediate deployment.” Policy No. 408.3.3 further provides that “[t]he operational procedures should be patterned after the National Tactical Officers Association Suggested SWAT Best Practices.”

The National Tactical Officers Association (NTOA) Tactical Response and Operations Standard manual (TROS) provides that “[t]he planning processes should include location scouting, *development of detailed written operations orders*, detailed operations order briefings, operation rehearsals and pre-mission inspections.” (NTOA TROS Section 6.1.) (Emphasis added.) The TROS also specifically identifies contain and call out and diversionary device tactics as techniques to be trained for high-risk warrant service. (NTOA TROS Section 3.1.4.1.)

PPS recommends Westminster Police Department and WCS revise their policies to include language emphasizing the importance of preparing a written operational plan, consistent with NTOA guidelines. The policies should also address the means for distribution of the written operational plan. PPS further recommends that Westminster Police Department and WCS personnel receive additional training and instruction regarding the importance of preparing a written operation plan when possible.

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<sup>1</sup> Surround and call out is a technique associated with a tactical element surrounding and establishing containment of an incident location before contact with occupants to facilitate a subsequent call out of those occupants in a controlled manner to a secured and safe area. Also known as “contain and call out.” (NTOA TROS Section 8.0)

<sup>2</sup> Diversion is a physical or psychological tactic used to draw a suspect away from the principal point of contact, used to draw attention away from the primary action. (*Ibid.*)

In this matter, the records suggest that there was adequate time to prepare a written operation plan and fully brief all officers involved.

## **RECOMMENDATION TWO: DE-ESCALATION POLICY AND TRAINING**

Government Code section 7286, subdivision (b) requires officers to use de-escalation techniques and other alternatives to force when feasible. Additionally, Westminster Police Department, Policy No. 300.3.1 provides that “[a]s time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force.” The policy specifically suggests “[s]ummoning additional resources that are able to respond in a reasonably timely manner,” and “[f]ormulating a plan with responding officers before entering an unstable situation.”

The Westminster Police Department policy regarding de-escalation, as presently worded, suggests that de-escalation techniques are an *optional* alternative for officers to consider. Government Code section 7286 *requires* that this language be mandatory. PPS recommends that Westminster Police Department revise its de-escalation policy to clarify that personnel must use de-escalation techniques when feasible. PPS recommends the following language:

### **300.3.1 Alternative Tactics – De-Escalation**

Officers have an affirmative duty whenever feasible to attempt to slow down, reduce the intensity of, or stabilize any situation through de-escalation. Officers are required to use de-escalation techniques, crisis intervention tactics, or other alternatives to force when feasible. (Gov. Code, § 7286, subd. (b)(1).) Officers shall not use tactics that unnecessarily escalate an encounter or create a need for force. Where feasible, officers must take action to attempt to stabilize the situation and reduce the immediacy and severity of the threat with the goal of allowing for more time, options, and resources to resolve the situation. This requirement to use de-escalation techniques continues throughout the course of an incident; even after force is administered, officers must still consider techniques to de-escalate the situation.

Without a written operation plan, it is difficult to determine the extent to which WCS considered de-escalation techniques in their operational briefing. Based upon the body worn camera videos, the officers announced their presence and initiated their efforts to communicate with Mr. Millsap approximately four minutes before the canine was released into the apartment. After Mr. Millsap presented himself to the officers, the verbal interaction between the officers and Mr. Millsap lasted approximately two minutes and fifteen seconds before the canine was released into the apartment. During that time, Mr. Millsap refused to comply with numerous orders to walk backwards toward the officers. However, Mr. Millsap was largely compliant with orders to keep his hands up, stated that “he could not go back to jail,” and repeatedly stated that he “just wanted to talk,” which is supported by the body worn camera footage. It appears from the body worn camera footage that further efforts to communicate with Mr. Millsap before the deployment of the canine were not used. Written reports further indicate that negotiators were available on scene, but were not used.

Furthermore, the evidence and body worn camera footage support that the situation seemed to present an opportunity to de-escalate and further communicate with Mr. Millsap before using force. Notably, Officer Gradilla advised the other officers that Mr. Millsap was complying approximately one minute before the shooting. Shortly thereafter, Mr. Millsap can be heard saying “Can you please put



the dog away, I just want to talk.” However, the canine handler then brought the canine into the doorway, where the canine continued barking at Mr. Millsap. The canine was released into the apartment approximately twenty seconds later. The officers fired their service weapons less than ten seconds after the canine was released.

PPS recommends that Westminster Police Department and WCS consider de-escalation techniques pursuant to Westminster Police Department policies. (Gov. Code, § 7286, subd. (b)(1).) Additionally, PPS recommends that Westminster Police Department and WCS consider further training and instruction regarding the need to use de-escalation techniques when feasible.

## **RECOMMENDATION THREE: TRAINING ON USE OF CANINE**

To execute the arrest warrant, the officers were prepared to use 40-millimeter less lethal launchers, gas, and a canine. Under these circumstances, WCS determined that a canine would likely be the best option in the event of Mr. Millsap’s continued refusal to comply with commands. PPS recognizes that the canine was released during a high-risk warrant service, with a non-compliant homicide suspect who was considered to be armed and dangerous. Multiple warnings and commands were given to Mr. Millsap to show his hands, to comply, and if he did not, a canine would be released, and he may be bitten. However, the body worn camera footage supports that at the moment of release of the canine into the apartment by the canine handler, Mr. Millsap was complying with orders to keep his hands up and had not yet reached for his waistband.

Canine handler Officer Marshall is a member of WCS employed by the Cypress Police Department<sup>3</sup> (CPD). CPD Policy No. 300.3 provides that “Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Pen. Code, § 835a.)”

CPD Policy No. 317.6, regarding the use of canines, provides, in relevant part:

A canine may be used to locate and apprehend a suspect if the canine handler reasonably believes that the individual has committed, is committing, or is threatening to commit any serious offense and if any of the following conditions exist:

- (a) There is a reasonable belief the suspect poses an imminent threat of violence or serious harm to the public, any officer, or the handler.
- (b) The suspect is physically resisting or threatening to resist arrest and the use of a canine reasonably appears to be necessary to overcome such resistance.
- (c) The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.

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<sup>3</sup> Because canine handler Officer Marshall is employed by the Cypress Police Department, Cypress Police Department policy is the subject of this recommendation. Notably, the Westminster Police Department canine policy is virtually identical to the Cypress Police Department canine policy.

CPD Policy No. 317.6 further states: “Absent a reasonable belief that a suspect has committed, is committing, or is threatening to commit a serious offense, mere flight from a pursuing officer, without any of the above conditions, shall not serve as the basis for the use of a canine to apprehend a suspect.”

PPS recommends that CPD and WCS further evaluate whether the deployment of the canine was appropriate under the circumstances presented, and pursuant to CPD policy. At the moment the canine was released, Mr. Millsap was complying with orders to keep his hands up. Mr. Millsap did not reach for his waistband until after the canine was released. PPS also recommends that CPD and WCS provide further training and instruction regarding the appropriate circumstances for the deployment of a canine to apprehend a suspect.

## **RECOMMENDATION FOUR: UNIFORM POLICY**

Westminster Police Department Policy No. 1045.2 provides, in relevant part:

Police employees wear the uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis, or other time of need.

(f) Civilian attire shall not be worn in combination with any distinguishable part of the uniform.

Westminster Police Department Policy No. 408.5.1 dictates the uniform requirements for West County SWAT members:

SWAT teams from this agency should wear uniforms that clearly identify team members as law enforcement officers. It is recognized that certain tactical conditions may require covert movement. Attire may be selected appropriate to the specific mission.

It is apparent from the photos and videos obtained through the investigation that several of the Westminster Police Department officers who were part of the WCS team were wearing cargo shorts and skate-style shoes at the time of the incident. This operation does not appear to be of a type that would suggest the need for attire consistent with covert movement. Further, it does not appear that any time constraint would have presented officers from dressing in appropriate attire consistent with uniform requirements. However, it is not entirely clear from the Westminster Police Department policies if and when this type of attire might be permitted.

As outlined above, the Westminster Police Department policy manual itself identifies various reasons for the importance of wearing a complete and professional uniform while on duty. Namely, the uniform plays an important role in identifying the police officer as a source of authority and assistance in an emergency or crisis. The policy specifically states that civilian attire shall not be worn in combination with any distinguishable part of the uniform. While the policy suggests certain circumstances under which deviations may be permissible, the policy is not particularly clear in defining these circumstances.

PPS recommends that Westminster Police Department clarify its policies regarding uniforms and attire to specify if and when shorts and casual footwear are permitted.