



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Report on the Investigation into the
Death of Angel Nelson on April 2, 2021**

Riverside County

SEPTEMBER 2022



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INVESTIGATION OF OFFICER INVOLVED SHOOTING

I. Privacy Statement

This report includes redactions of the names and other identifying information of witnesses, victims, and family members of Angel Nelson (“decedent”). Specific addresses of witnesses, victims, and family members are not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

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

- Infant who was Decedent’s Niece and Daughter of Witness 1 (“Infant”)
- Father of Decedent’s Niece
- Witness 1 (“W-1”), First Sister of Decedent
- Witness 2 (“W-2”), Second Sister of Decedent
- Witness 3 (“W-3”), Mother of Decedent
- Witness 4 (“W-4”), Hotel Guest Outside
- Witness 5 (“W-5”), Occupant in Parked Vehicle
- Witness 6 (“W-6”), Pedestrian in Parking Lot
- Witness 7 (“W-7”), Minor Occupant in Parked Vehicle

II. Introduction

While attempting to arrest Angel Nelson (decedent), age 23, in the City of Corona on April 2, 2021, Investigator Supervisor Robert Kwan (“DAI Kwan”) and Senior Investigator Matthew Borden (“DAI Borden”) of the Riverside District Attorney’s Office fatally shot the decedent. Due to the involvement of its personnel in the incident and a potential conflict of interest, the Riverside District Attorney’s Office referred the matter to the California Department of Justice (DOJ) for review, and DOJ accepted the matter on December 20, 2021. This report is the final step in the DOJ’s review of the fatal OIS of Angel Nelson (decedent), and is limited solely to determining whether criminal charges should be brought against the involved officers. The review does not encompass or comment on any potential administrative or civil actions. Upon thorough examination, and as discussed in detail below, we conclude that no criminal charges will be filed because the evidence is insufficient to prove that the officers committed a crime.

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

III. Summary of Incident

April 1, 2021 – One Day Before the Shooting Incident

On April 1, 2021 at approximately 8 p.m., the decedent and his sister (W-1), went to their mother’s (W-3) house in the City of Corona, County of Riverside. At the house were W-3, decedent’s infant niece (W-1’s daughter), father of the infant, and decedent’s other sister (W-2). As soon as the decedent and W-1 arrived at the house, the decedent went into the house using the front door, while W-1 stayed in their vehicle. The family was not expecting the decedent to show up at the house unannounced.

The decedent then asked the father of the infant to step into the backyard to talk. While the father and decedent were conversing, W-1 walked into the house and grabbed the infant (her daughter) from a playpen in the downstairs family room. The father of the infant noticed what occurred and went to stop W-1 from taking the infant. As the father walked over, the decedent pulled out a revolver from his waistband, pointed it at him, and stated, “Back away or I’ll do it!” W-2 then jumped in between the decedent and the father. At the same time, W-1 grabbed the infant and started to walk out of the residence toward her vehicle. W-3 followed behind to prevent W-1 from taking the infant. A physical altercation then ensued between W-1 and W-3. When W-3 told W-2 to call the cops, the decedent yelled, “If you call the cops, I’m gonna have a shootout!”

W-3 was able to retrieve the infant and take her back into the house. When police officers arrived on scene, the decedent had already fled the location. W-1 was still at the house. According to W-2, the night prior, W-1 was transported and admitted on a 72-hour mental health evaluation hold. (Welf. & Inst. Code, § 5150.) W-1 stated to officers during her interview that she was released earlier in the day from Riverside County Department of Mental Health, Emergency Treatment Services. She did not give a reason why she was released early.

April 2, 2021 – Day of Shooting Incident

On April 2, 2021, at approximately 6 a.m., a wanted flyer for the decedent was disseminated at Corona Police Department (“Corona PD”) for brandishing a firearm at family members, making various threats toward family members, and stating that he would “have a shootout” if police are called. His charges

were listed as Penal Code sections 664/207 (attempted kidnapping), 417 (brandishing a weapon), 245(a)(2) (assault with a firearm), and 422 (criminal threats).

Detective Jessica Carbajal (“Det. Carbajal”), Corona PD, assigned to the GIT (Gang Impact Team), a multiagency task force led by the Riverside County District Attorney’s Office Bureau of Investigation, took the lead in apprehending the decedent. The GIT team’s objectives are to investigate crimes committed by criminal street gang members and violent offenders, as well as assure coordinated suspect apprehensions, regional enforcement, and intelligence sharing between the various participating law enforcement agencies.

Det. Carbajal spoke with the father of the infant. The father provided W-1’s cell phone number. Det. Carbajal then provided that cell number to her investigative technician who requested an emergency GPS ping from the identified subscriber, AT&T. Based on geographical data gleaned from the cell data, Det. Carbajal was able to ascertain that W-1 was in the area near the Welcome Inn located at 1248 W. 6th Street, in the City of Corona. Upon learning of W-1’s location, Det. Carbajal requested the help of the GIT members. Nine GIT members, including DAI Kwan, DAI Borden, Deputy Daniel Shaffer of the Riverside County Sheriff’s Department (“Deputy Shaffer”), and Det. Christopher Tooth of the Desert Hot Spring Police Department (“Det. Tooth”) responded to assist.

Det. Carbajal then conducted an operations briefing with the members of the GIT that included case facts, suspects, their relationships, whereabouts, and operation tactics. DAI Borden and Kwan, as part of GIT, were given information regarding the decedent’s actions from the day prior, an information flyer, and an operations plan. They were also provided information on the decedent’s criminal history and warrant status. The decedent had a 2018 conviction in San Bernardino County for a felony violation of Vehicle Code section 10851(a) [taking a vehicle without consent] and felony Penal Code section 530.5(a) [identity theft]. He also had an active California state felony arrest warrant for a violation of Vehicle Code section 10851. Furthermore, the decedent had active federal and Arizona state warrants for weapons and human trafficking.

Once the members of the GIT were briefed, at approximately 3:50 p.m., they set up surveillance at 1248 W. 6th Street. At approximately 5:30 p.m., Det. Carbajal observed the decedent accompanied by W-1 walking north through the parking lot toward 6th Street. Det. Carbajal then relayed her observations to the members of the GIT. Once Det. Carbajal positively identified both the decedent and W-1, she made the decision to have the two detained. Below are images obtained from surveillance video retrieved from the property. The time stamp on the images were 16 minutes behind the correct time.



1248 W. 6th St., Shooting Location



First appearance in surveillance video from Decedent and W-1

DAI Borden made first contact with the decedent. DAI Borden drove his truck forward and stepped out of the driver side of his truck. He identified himself by stating, "Police." He gave his commands once to the decedent to get on his knees and to raise his hands in the air. While giving commands to the

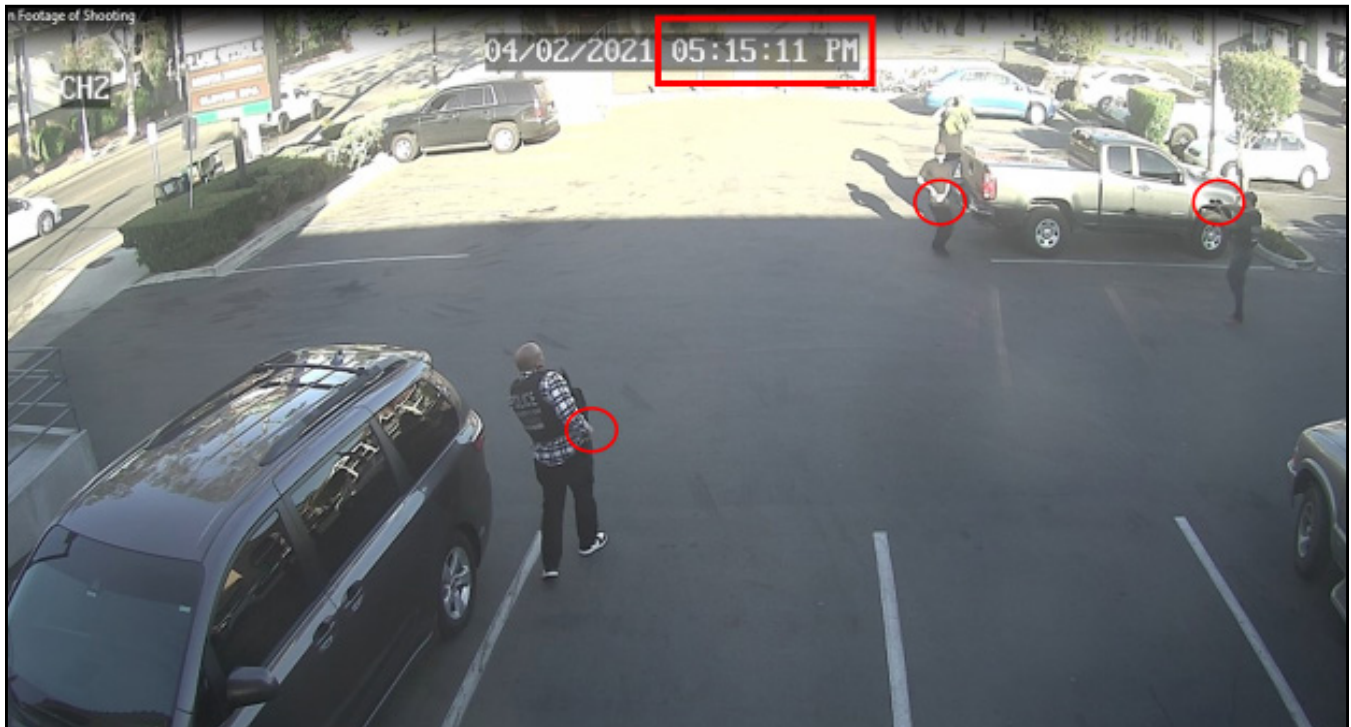
decedent, DAI Borden had his handgun drawn and began pointing it at the decedent, who started back peddling away from DAI Borden. DAI Borden drew his handgun based on information received at the GIT briefing that the decedent was armed and dangerous.



Two different camera angles placed side by side to show position of DAI Borden. As he exits his vehicle, he has his handgun drawn.



As the decedent back peddled away from DAI Borden, DAI Kwan exited his surveillance vehicle and drew his weapon because he had knowledge that the decedent was armed and dangerous. At the same time, Deputy Shaffer stepped out of his vehicle and approached the decedent from behind.



As DAI Borden got closer to the decedent, the decedent looked toward DAI Kwan and started to reach toward his waistband.



As the decedent continued to back pedal with his hands in his waistband, DAI Kwan drew his handgun at a low ready position. The decedent then turned his head to the right as if looking out of the corner of his eye and appeared to notice Deputy Shaffer.



Deputy Shaffer then tried to tackle the decedent from behind. At the same time, the decedent pulled a handgun from his waistband. DAI Borden kept his handgun pointed at the decedent while Deputy Shaffer tackled the decedent.



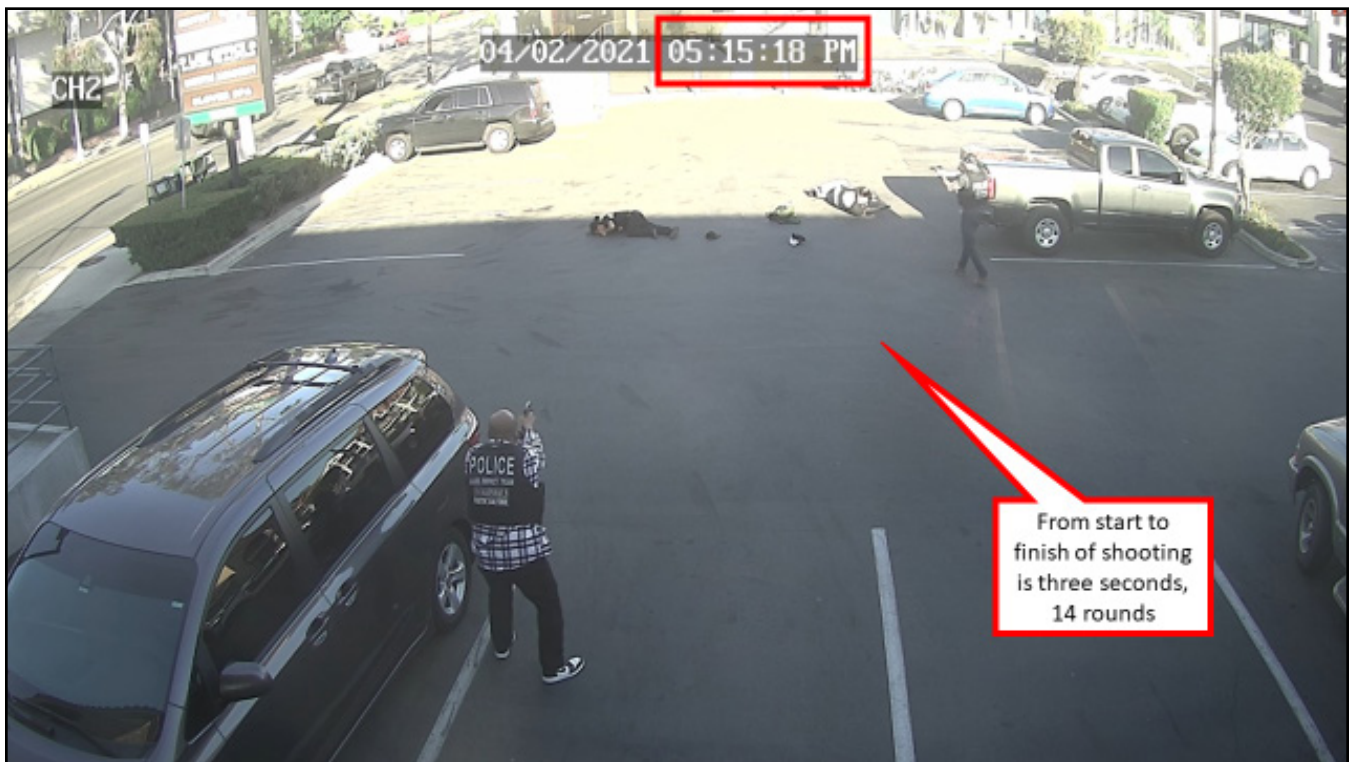
Deputy Shaffer rolled to the ground with the decedent. As the decedent recovered from the roll, the decedent pointed his revolver at DAI Kwan. DAI Kwan then brought his handgun to eye level, and DAI Borden had his handgun pointed at the decedent.



As soon as the decedent pointed the revolver at DAI Kwan, DAI Borden and Kwan fired their handguns at the decedent.



DAI Kwan moved away from the decedent as he fired his handgun.



From start to finish of shooting is three seconds, 14 rounds

From 5:15:15 – 5:15:18, three seconds, DAI Borden and Kwan fired 14 rounds. Five rounds were shot from DAI Borden's handgun and nine were fired from DAI Kwan's handgun.

The decedent was struck by 10 rounds fired between DAI Kwan and Borden. After shots were fired, Det. Tooth pulled his vehicle into the parking lot. He immediately conducted CPR and started to render emergency medical aid to the decedent. Paramedics arrived on scene and noted the obvious signs of death to include no pulse and traumatic injuries (gunshot wounds) so no life saving measures were performed on the decedent. The decedent succumbed to multiple gunshot wounds and was pronounced dead at the scene by paramedics at 5:38 p.m.

IV. Investigation

A. Evidence Reviewed

The DOJ received and review extensive investigation materials regarding this incident. The Corona Police Department Investigation Bureau (CPD) (case no. 21-16644) and the Riverside County Sheriff's Department Central Homicide Unit – Force Investigations Detail (CHU-FID) (case no. MB210920001) conducted an investigation of the OIS. CPD and CHU-FID submitted a packet with numerous reports from investigating officers to the DOJ with substantial supporting evidence from the investigation. The packet included supplemental reports from officers on scene, various photographs of the OIS scene, the Coroner's report, surveillance footage from buildings showing the OIS, and a 3D rendering of the OIS scene. The packet also included interview transcripts of the four investigators involved in the OIS (DAI Kwan, DAI Borden, Deputy Shaffer, and Det. Tooth) and approximately 56 civilian witnesses. The combined transcripts are approximately 84 pages in length, representing approximately two and a half hours of digitally recorded interviews. The interviews were independently reviewed by the DOJ and are summarized herein. Additionally, the packet included the following evidence: 14 Body Worn Videos (BWV), 3 dash camera videos, 4 car radio traffic recordings, 8 surveillance videos of the parking lot, 29 drone images, 265 autopsy photos, and 795 crime scene photos.

B. Crime Scene Description

The shooting occurred within a strip mall located at 1248 W. 6th Street in the City of Corona. The strip mall is on the western side of the commercial lot and makes an L-shape. To the east of the shooting location is a Welcome Inn. The main office of the Welcome Inn faces the shooting location and faces west. The Welcome Inn runs north-south along the eastern edge of the commercial lot. The incident occurred in the parking lot between the L-shape strip mall and Welcome Inn. The shooting location has Sherman Avenue to the west, 6th Street to the north, and 7th Street to the south.

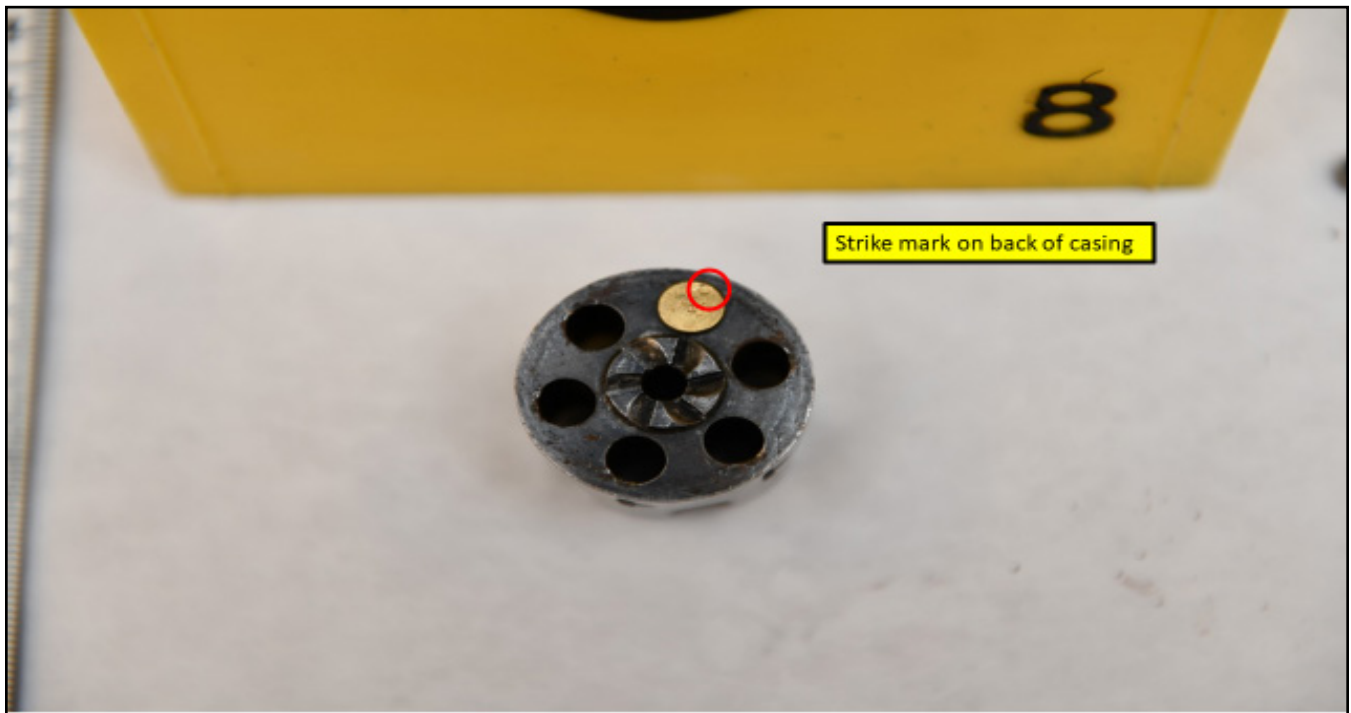
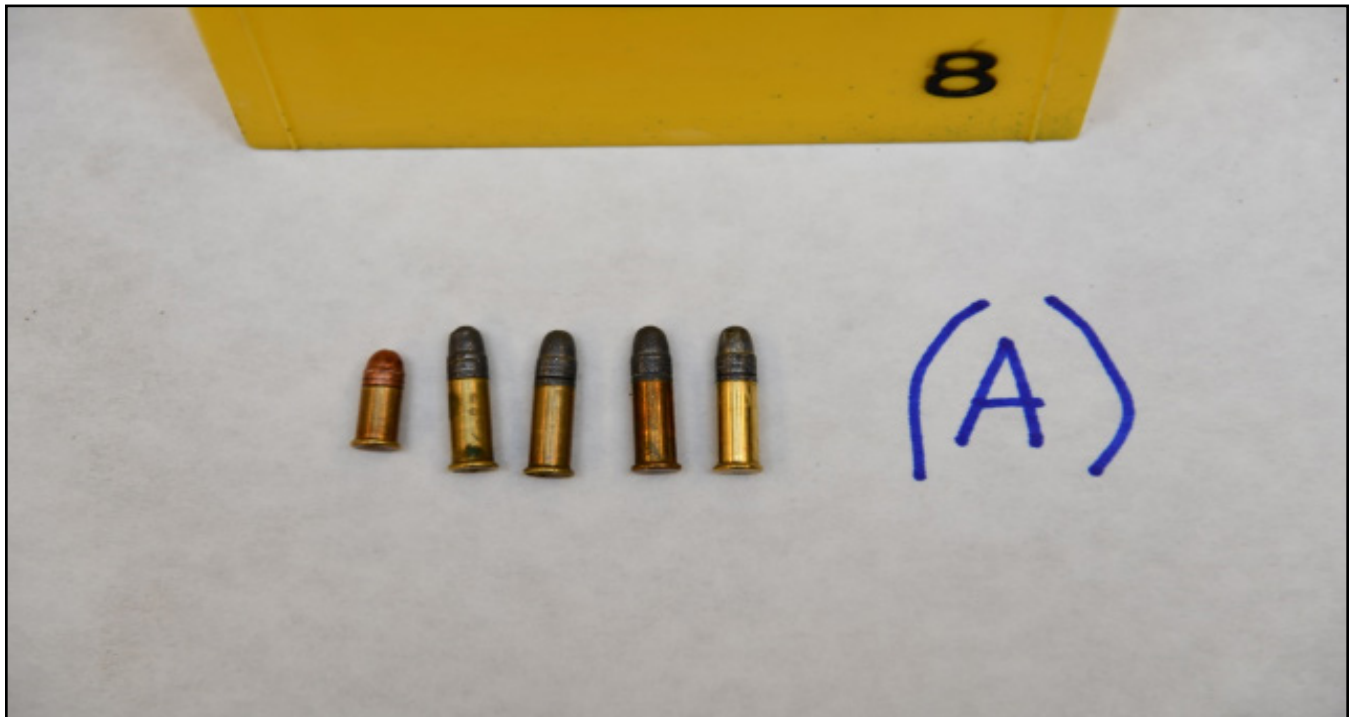
C. Crime Scene Recovery

Firearm of Decedent

A revolver was recovered next to the body of the decedent at the incident location. The revolver was originally discovered under the decedent's body.



Examination of the revolver revealed that it contained five live rounds and one casing that was stuck in the cylinder.



Further examination of the casing stuck in the cylinder revealed that the hammer of the revolver struck the back of the casing indicating that this particular round may or may not have been fired during the incident. The investigation found no bullets or visible bullet ricochet marks in the area near DAI Kwan's position during the shooting. During interviews, neither DAI Borden nor Kwan could not recall whether the decedent fired a round at DAI Kwan.

Firearm / Ballistics Evidence

A total of 14 rounds were fired during the incident. 14 casings were recovered. DAI Kwan fired nine rounds. DAI Borden fired five rounds. The decedent was in a cross fire between DAI Kwan and DAI Borden. The incident location investigation showed that rounds fired from the shooting landed in multiple locations at the Welcome Inn, opposite the firing positions of the DAIs.



Two bullet strike marks on the parking bollards



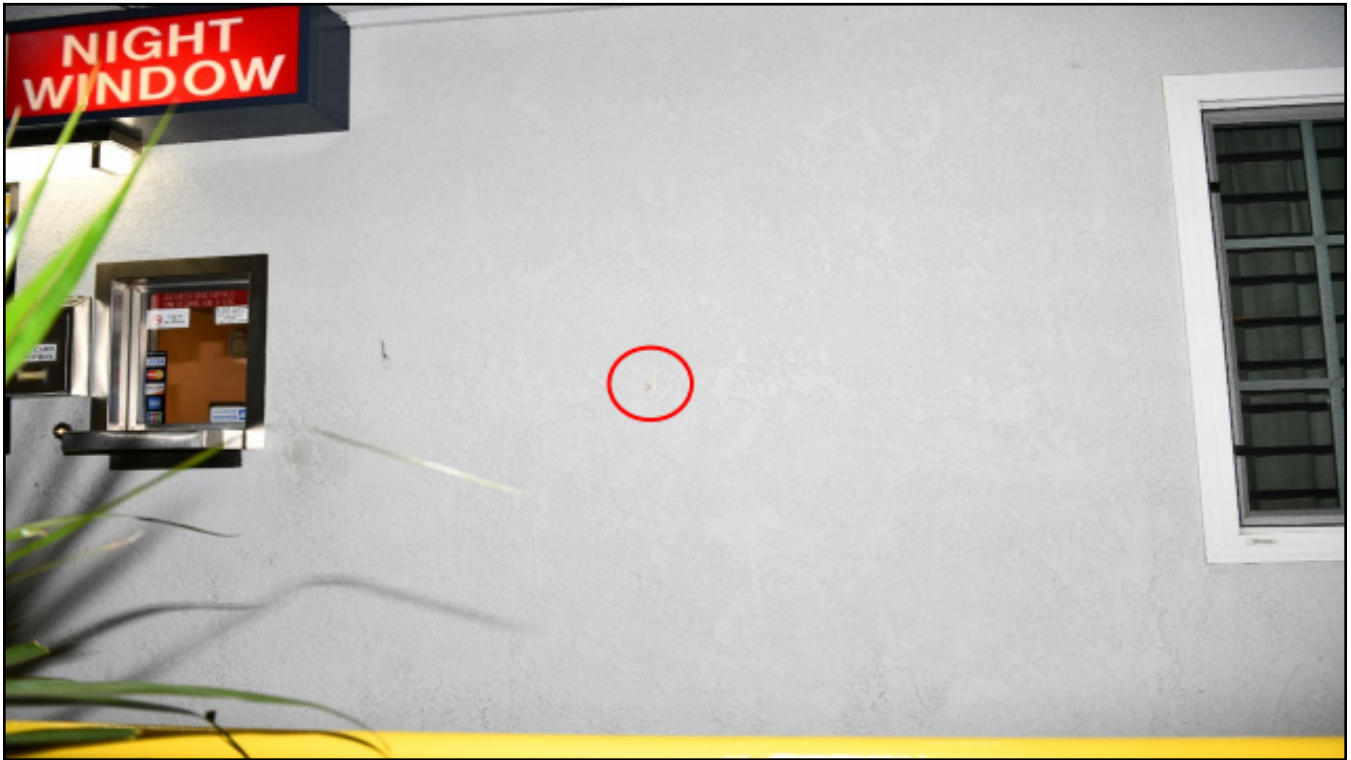
Center bollard bullet strike mark



Left bollard bullet strike mark



Welcome Inn Main Office



Examination of the wall next to the main office of the Welcome Inn showed a strike mark from a round fired during the incident.



First room to the left of the Main Office



Strike marks on screen door and interior door

D. Body Worn Camera and Other Recordings

Body worn camera footage was turned over for review by the Corona Police Department. Uniformed officers that arrived on scene after the shooting had body worn cameras. DAI Borden, DAI Kwon, and Det. Tooth did not have body worn cameras during the incident. Deputy Shaffer had a body worn camera on his vest. However, the camera was not activated before the incident. Deputy Shaffer did not have his vest on inside his vehicle in order to prevent anyone from identifying him as a police officer. As the decedent passed his vehicle, he stepped out and began to place his vest on his torso, but due to the close proximity of the decedent, he tried to tackle the decedent prior to having his vest completely on. Dash cameras from responding units were also reviewed but none of them captured the shooting.

Eight surveillance videos were recovered from various positions at the strip mall. Only one angle shows a clear video of the entire shooting. The freeze frames from that video were used in this report.

E. Interviews of Involved Officers

There were four officers involved in this incident. Each officer was interviewed. The following statements are summaries of their interviews, which describe the incident from the point of view of the individual officers. The interviews contain facts relayed by the officers that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

DAI Matthew Borden

On April 6, 2021, DAI Borden agreed to give a voluntary statement. The following people were present during the interview: Detective Lisa Larios, Corona Police Department; Investigator Nelson Gomez,

Riverside County Sheriff's Department; Robert Todd, Attorney with Riverside Sheriff's Association; and Deputy District Attorney John Brandon, Riverside County District Attorney's Office. DAI Borden's statement is summarized below.

At the time of the shooting, DAI Borden had been a sworn peace officer for over 19 years. He first served as a deputy sheriff with the Riverside County Sheriff's Department and, in 2017, joined the Riverside County District Attorney's Office. He is currently assigned to the Fugitive Apprehension Unit, serves as a field training officer, and is cross-sworn as a United States Marshal. DAI Borden and his team are tasked with investigating, locating, and arresting persons wanted for serious crimes, including murder and attempted murder, and who are sexually violent predators. DAI Borden has been involved in the apprehension of over 50 wanted persons, and over 85% of them were armed and dangerous. DAI Borden was in compliance with all training requirements related to his firearms, the use of force and apprehension, and detention and arrest procedures which were set by the California Commission on Peace Officer Standards and Training and the Bureau of Investigation for the Riverside District Attorney's Office.

On April 2, 2021, Borden was notified and briefed by the Corona PD about an operation involving the apprehension of the decedent. DAI Borden was provided with background and suspect information, including the operations plan. DAI Borden was briefed about an incident the night before involving the decedent, who had attempted to kidnap an infant, threatened family members, and brandished a firearm. During the same incident, the decedent made statements that he would shoot it out with the police if he was contacted. Additionally, the decedent was wanted in the State of Arizona for human trafficking and/or firearms and had an outstanding felony warrant in San Bernardino County for a stolen vehicle.

Upon his arrival at the Welcome Inn, DAI Borden parked at the liquor store across from the Welcome Inn. He had a good visual of the hotel and listened to radio communications. As other units were moving and leaving the parking lot area of the hotel, DAI Borden decided to move closer to the front office area of the hotel. He noticed Deputy Shaffer nearby and observed heavy pedestrian traffic in the parking lot and nearby areas. At some point, DAI Borden heard radio communications about a positive identification of the decedent. Shortly after, DAI Borden noticed the decedent and a female walking around the corner into the parking lot. As the decedent approached and walked past DAI Borden's vehicle, DAI Borden was able to confirm the decedent's identity and notified the team over the radio.

DAI Borden moved his vehicle into the parking lot to prevent pedestrians from being hit in the event of shots being fired. Next, DAI Borden, who was wearing a vest with "POLICE" markings, contacted the decedent by identifying himself as police and, with his duty weapon drawn, ordered the decedent to get on his knees, and put his hands up. DAI Borden drew his handgun based on information received at the GIT briefing that the decedent was armed and dangerous. The decedent did not comply with the commands and, instead, turned toward DAI Borden. The decedent, who had one hand in his pocket already, placed the other hand in his waistband. He looked around with a void expression on his face and backed away from DAI Borden. With the decedent not complying with commands and reaching for his waistband, DAI Borden became very concerned and nervous.

As the decedent continued to back away, DAI Borden observed the decedent pull out something from his waistband. At the same time, DAI Borden saw Deputy Shaffer grab the decedent and tackle him to the ground. Next, DAI Borden saw that the item the decedent pulled out of his waistband was a revolver. Deputy Shaffer and the decedent were still in a physical fight on the ground. DAI Borden immediately called out, "Gun, gun, gun!" DAI Borden explained that he was too far away from Deputy

Shaffer and the decedent to assist Deputy Shaffer. He became fearful for Deputy Shaffer, because he was not sure whether Deputy Shaffer was aware of the gun in the decedent's hand. DAI Borden was very concerned that Deputy Shaffer would be shot by the decedent. Eventually, Deputy Shaffer moved away from the decedent and the decedent got up. As the decedent got up, he raised his gun and, at that point, DAI Borden shot him.

DAI Borden then noticed additional shots being fired and realized that they were coming from DAI Kwan, another member on his team. DAI Borden stopped shooting and noticed Detective Tooth running toward their position. Det. Tooth checked to see if DAI Borden was alright. DAI Borden told Det. Tooth that the decedent was down and was lying on his gun. Det. Tooth and Deputy Shaffer approached the decedent, rolled him over, and started CPR on the decedent. Both continued CPR until paramedics arrived on scene and took over.

DAI Robert Kwan

On April 6, 2021, DAI Kwan agreed to give a voluntary statement. The following were present during the interview: Detective Lisa Larios, Corona Police Department; Investigator Nelson Gomez, Riverside County Sheriff's Department; Robert Todd, Attorney with Riverside Sheriff's Association; and Deputy District Attorney John Brandon, Riverside County District Attorney's Office. DAI Kwan's statement is summarized below.

At the time of the shooting, DAI Kwan had been a sworn peace officer for 21 years. He had been with the Riverside District Attorney's Office for 13 years and with the Gang Impact Team ("GIT") for over 5 years. He first served as a deputy sheriff with the Riverside County Sheriff's Department and, in 2009, joined the Riverside County District Attorney's Office. After various assignments, including the Domestic Violence Unit, Gang Unit, and Gang Task Force, DAI Kwan became a supervising DAI assigned to the Riverside County GIT, a multi-agency task force responsible for takedowns, fugitive detentions and arrests, and violent offender apprehensions. With over one hundred apprehensions, arrests, and takedowns of suspects wanted for murders, kidnapping, assaults and other violent crimes, Kwan estimated more than 50% of the suspects were armed. DAI Kwan was in compliance with all training requirements related to his firearms, the use of force and apprehension, and detention and arrest procedures which were set by the California Commission on Peace Officer Standards and Training and the Bureau of Investigation for the Riverside County District Attorney's Office.

On April 2, 2021, DAI Kwan was briefed and provided with the same facts and background information as DAI Borden. DAI Kwan subsequently arrived at the surveillance/apprehension location at the Welcome Inn. He parked in one of the spots in front of a market strip mall, when he saw DAI Borden and Deputy Shaffer already in position in the parking lot. A few minutes later, members of GIT identified and provided information on the decedent's whereabouts and movements. DAI Kwan decided to gear up, putting on his agency-issued "POLICE" vest, when he noticed the decedent and W-1 walking around the corner past DAI Borden's vehicle. DAI Kwan next heard DAI Borden ordering the decedent to get down on the ground.

DAI Kwan noticed that the decedent did not follow DAI Borden's commands and instead just looked around the parking lot. DAI Kwan then stepped out of his vehicle and drew his handgun because he had knowledge that the decedent was armed and dangerous. As he was stepping out, he saw the decedent back pedal and pull out a revolver. At the same time, Deputy Shaffer approached the decedent from behind, grabbed the decedent, and tackled him to the ground. DAI Kwan was fearful of Deputy Shaffer being shot by the decedent, so he called out "gun" hoping that Deputy Shaffer would move away from the decedent. At some point, DAI Kwan ordered the decedent to get to the ground

but the decedent did not comply. Shortly after, Deputy Shaffer let go and moved away from the decedent. DAI Kwan then saw the decedent come up with his firearm pointed at him.

DAI Kwan recalled looking at the decedent and the decedent looking at him with his firearm directly pointed at DAI Kwan. DAI Kwan believed that the decedent would have shot him if the decedent had not been shot first. When asked whether the decedent had the ability, opportunity, and apparent intent to shoot and kill Deputy Shaffer and himself, DAI Kwan answered yes. DAI Kwan indicated that less lethal force was not an option: "He pulled out a gun and I'm not going to pull out pepper spray." The decedent immediately pointed his firearm at DAI Kwan, ready to shoot. DAI Kwan braced himself expecting to get shot and simultaneously started firing at the decedent. DAI Kwan stopped shooting when he no longer saw the firearm. DAI Kwan then informed everyone over the radio about the shooting and made sure that all members of his team were safe and the scene was secured.

Detective Christopher Tooth, Desert Hot Springs Police Department

On April 6, 2021, Det. Tooth agreed to give a voluntary statement. The following were present during the interview: Detective John Garcia, Corona Police Department; Investigator James Dickey, Riverside County Sheriff's Department; Robert Todd, Attorney with Riverside Sheriff's Association; and Deputy District Attorney John Brandon, Riverside County District Attorney's Office. Det. Tooth's statement is summarized below.

Det. Tooth had been a sworn peace officer for over 9 years. He served three years with the McFarland Police Department and over six years with the Desert Hot Springs Police Department. Det. Tooth was previously assigned to the Post-Release Accountability Team and was currently assigned to the GIT as a detective.

On April 2, 2021, Det. Tooth was briefed by the Corona PD about an operation involving the apprehension of the decedent. Det. Tooth was provided all relevant background and suspect information, including the incident involving the decedent that had occurred the night before and the decedent's outstanding warrants. Det. Tooth drove toward the Welcome Inn coming westbound on 6th Street when he heard the positive identification of the decedent over the radio. As Det. Tooth entered the driveway into the parking lot, he heard shots fired. As he pulled into the parking lot, he saw a few officers and the decedent's body facing downward with one arm exposed and the other arm tucked underneath his body.

Officers still had the decedent at gunpoint when Det. Tooth approached the decedent and placed him in handcuffs. Officers pointed out to Detective Tooth that the decedent had a gun. Det. Tooth then pulled the decedent's body toward himself and then grabbed the decedent's right arm. As Det. Tooth pulled out his right arm from underneath his body which was face down, a revolver came out as well. Det. Tooth asked for gloves and then started CPR on the decedent until he was relieved by the fire department.

Deputy Daniel Shaffer, Riverside County Sheriff's Department

On April 6, 2021, Deputy Shaffer agreed to give a voluntary statement. The following were present during the interview: Detective John Garcia, Corona Police Department; Investigator James Dickey, Riverside County Sheriff's Department; Robert Todd, Attorney with Riverside Sheriff's Association; and Deputy District Attorney John Brandon, Riverside County District Attorney's Office. Deputy Shaffer's statement is summarized below.

Deputy Shaffer had been a sworn peace officer for over 13 years. He first served as a deputy sheriff with the Riverside Sheriff's Court Services, was assigned to patrol, and then joined the Problem-

Oriented Policing Team. Approximately five or six weeks prior to the shooting, Deputy Shaffer joined the GIT.

On April 2, 2021, Deputy Shaffer was briefed and tasked by the Corona PD to assist with the apprehension of the decedent. During the briefing, Deputy Shaffer was made aware of an incident involving the decedent that had occurred the night before. The decedent was wanted for attempted kidnapping of his sister's 2-month old infant, for brandishing a firearm at family members, and for making criminal threats. Additionally, the decedent had federal warrants and warrants in Arizona and California for human trafficking and vehicle theft.

At the Welcome Inn, Deputy Shaffer initially parked at the south end of the complex but was asked by Corona PD detectives to cover the north side at the end of the parking lot. Deputy Shaffer heard radio traffic and noticed that someone had identified the decedent and that the decedent was looking into vehicles. Deputy Shaffer then observed the decedent and W-1 around a corner and walking into the parking lot. The decedent walked right past Deputy Shaffer's vehicle and looked directly at Deputy Shaffer, which prevented him from grabbing his radio or vest in that moment. As Deputy Shaffer saw DAI Borden get out of his truck, Deputy Shaffer got out of his vehicle, too. Deputy Shaffer saw the decedent from behind and noticed that the decedent was backing away from DAI Borden.

Next, Deputy Shaffer saw that the decedent took a fighting stance position and was possibly getting ready to run away. Due to the amount of people in the surrounding areas, Deputy Shaffer decided to grab the decedent, who appeared not to have noticed Deputy Shaffer's presence behind him. As Deputy Shaffer took the decedent to the ground, he heard DAI Borden yell, "Gun, gun, gun!" Deputy Shaffer immediately disengaged and decided to create as much distance between himself and the decedent as possible. Deputy Shaffer saw both DAI Borden and DAI Kwan when he heard multiple shots being fired. Deputy Shaffer quickly took a position behind his truck. When Deputy Shaffer heard Detective Tooth arrive on scene and call out for a medical kit, Deputy Shaffer brought over his kit and he and Detective Tooth started CPR on the decedent.

F. Interviews of Civilian Witnesses

Civilian witnesses were interviewed by detectives from the Corona Police Department. The following statements are summaries of their interviews, which describe the incident from the point of view of each person. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

W-1

On April 3, 2021, W-1 was interviewed by Senior Detective Gail Gottfried and Detective John Garcia and provided a detailed statement of the events.

W-1 is the younger sister of the decedent. W-1 has an infant daughter (decedent's niece) who is living with, and is being cared for, by the infant's father, W-2 (infant's aunt), and by W-3 (infant's grandmother). W-1 advised officers that the day before the shooting, she had discharged herself from a 72-hour psychiatric hospitalization after being evaluated as a possible danger to herself or others, or for being gravely disabled. She was picked up by the decedent. After a drive to Palm Desert, she was taken to W-3's residence in Corona. Upon their arrival, the decedent entered the residence and asked the infant's father to step out into the backyard with him. Shortly thereafter, W-1 walked into the living room and grabbed her infant daughter.

When the father noticed that W-1 was about to walk out with their infant daughter, he told W-1 to give him the daughter and leave the home. At that point, the decedent pulled out a firearm from his waistband and pointed it at the father. W-2, living at the residence, stepped in between the decedent and the father. W-1 continued to leave the residence and got into the decedent's vehicle, when W-3 came outside and tried to take the infant from W-1. A struggle ensued and W-3 eventually got a hold of the infant and was able to return her to the home. The decedent fled the scene.

The following day, the decedent visited W-1 at the Welcome Inn, in Corona, where she had stayed the night. W-1 was aware that the decedent had outstanding warrants and she believed that he was wanted for murder. The decedent had told her that he would "go full out," meaning get into a gun fight with the police so he would not have to go back to prison. The decedent turned off his phone and started using W-1's phone to get more guns. At some point, the decedent and W-1 left the hotel room and walked toward the CVS on 6th Street.

Next, W-1 explained the police came out and the decedent pulled out his gun. W-1 knew that they were police because they were wearing bullet-proof vests marked as "POLICE" and "Sheriff" and were carrying radios. Two police officers ordered the decedent to turn and get on the ground. W-1 stated that she knew that the decedent would not comply with the commands given by the police. When the decedent pulled out his gun, she heard one of the officers say "gun." At that point, the shooting occurred and W-1 turned and walked away.

W-4

On April 2, 2021, W-4 gave a voluntary statement to Detective Daniel Matson. W-4 was a hotel guest waiting outside the hotel area at the time of the incident. W-4 observed a female and male who matched the description of the decedent leaving the hotel and walking into the parking lot. W-4 saw a vehicle pull up near the male and female and another male, whom she later identified as a police officer, stepped out of the vehicle. Next, she heard someone say "he got a gun," and then saw the police officer point a gun at the decedent. W-4 saw a police officer shoot. W-4 did not see any muzzle flashes and saw the decedent fall to the ground. W-4 saw several officers arrive and noticed that the vehicle that had pulled up earlier had its police lights activated.

W-5

On April 2, 2021, W-5 gave a voluntary statement to Detective Daniel Clary. W-5 was seated inside her vehicle, which was parked at the Seafood Market, which shared its parking lot with the Welcome Inn. W-5 stated that her mother, W-6 had just ordered food at the Seafood Market and was standing outside the vehicle when she told W-5 to look. When W-5 looked over, she saw two males in a physical altercation. Isabel then noticed that another male had joined in the fight and she noticed that two were undercover police officers, identifiable as such by their body armor. W-5 saw two males fall to the ground and then saw a man, who she believed to be the "suspect," reach into his waistband. One officer tried to tackle the suspect when she heard another yell. Then the shooting occurred.

W-6

On April 2, 2021, W-6 gave a voluntary statement to Detective Daniel Clary. W-6 was standing outside her daughter's vehicle in the Seafood Market and Welcome Inn parking lot waiting for their food. W-6 saw a male adult in a physical altercation with two police officers, whom she identified as police by their vests marked as "POLICE." W-6 pointed out the altercation to her daughter, W-5, who then told Maria to get inside the car so they could leave. W-6 got inside the car when she saw two officers fall to the ground and one pulled out a handgun and shot the adult male.

W-7

On April 2, 2021, W-7, a minor, in the presence and with the permission of his father, gave a voluntary statement to Detective Jesse Marquez. W-7 was seated in the front passenger seat of his father's vehicle, which was parked in the parking lot that was shared by restaurants and the Welcome Inn. W-7 noticed a male adult get out of a truck parked directly in front of him. A second vehicle pulled up and the sole male occupant, wearing a black vest with the letters "POLICE" on it, exited the vehicle. W-7 assumed the male was a police officer due to the vest and the fact that he had a gun in his hand. W-7 also noticed that the emergency lights were on.

W-7 saw that the "suspect," the adult male who had exited the truck, looked like he was getting ready to run away. W-7 then saw the officer run around the vehicle and toward the suspect. W-7 was unable to see all of the suspect or the officer due to vehicles in his line of sight. W-7 could not hear what the officer was saying but he eventually heard gunshots. When he heard the shots, W-7 immediately went behind the vehicle and ducked down.

G. Autopsy Report

Dr. Mark A. Fajardo M.D. conducted the autopsy of the decedent. He concluded that the decedent sustained 10 total gunshot wounds on his body with the following locations:

GS wound 1: left upper forehead region, 2 fragments/projectile recovered

GS wound 2: right bicep, no projectile recovered

GS wound 3: right upper chest region, projectile recovered

GS wound 4: left pectoral region, projectile recovered

GS wound 5: tip of left shoulder, projectile recovered

GS wound 6: left anterior thorax region, no projectile recovered

GS wound 7: immediately anterior to the pubic bone, no projectile recovered

GS wound 8: anterior aspect of the left thigh, projectile recovered

GS wound 9: inner aspects of the right thigh, no projectile recovered

GS wound 10: left lower extremity, no projectile recovered

Toxicology reports show that THC, amphetamines, and phenylpropanolamine were present in the decedent's system.

DRUG	ITEM TESTED	RESULTS
Methamphetamine	Blood	1.320 mg/L
Amphetamine	Blood	0.164 mg/L
Ethyl Alcohol	Urine	Less than 0.010 %
Methamphetamine	Urine	19.500 mg/L
Amphetamine	Urine	2.060 mg/L
11-Carboxy-Delta-9-THC	Urine	0.008 mg/L
Phenylpropanolamine	Urine	Detected
Methamphetamine	Vitreous	1.910 mg/L
Amphetamine	Vitreous	0.223 mg/L

The Coroner concluded that the cause of death was multiple gunshot wounds.

V. Applicable Legal Principles

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

Murder

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

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

A homicide may also be reduced to second degree murder if premeditation and deliberation are negated by heat of passion arising from subjective provocation. If the provocation precludes 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.)

Self-Defense

A homicide is justified and lawful if committed in self-defense. Self-defense is a complete defense to a homicide charge, 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. Specifically, Penal Code section 197 lists the circumstances where homicide is justifiable, which includes self-defense or the defense of others. (Pen. Code, 197, subd (1).) Self-defense arises when a person actually and reasonably believed in the necessity of defending against imminent danger of death or great bodily injury. (People v. Randle (2005) 35 Cal.4th 987, 994.) There is both a subjective and objective component to a self-defense claim. (People v. Humphrey (1996) 13 Cal.4th 1073, 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.) The objective element also requires that the person's belief be objectively reasonable. In assessing the objective element, the trier of fact must consider what would appear to be necessary to a reasonable person in a similar situation with similar knowledge by assuming the point of view of a reasonable person in the position of the accused. (People v. Brady (2018) 22 Cal.App.5th 1008, 1014, citing People v. Humphrey, supra, 13 Cal.4th at pp. 1082-1083.)

When considering the objective reasonableness of a person's belief, it is worth noting that reasonableness is assessed in terms of a person of ordinary and normal mental and physical capacity. A person's individual background is not the standpoint from where reasonableness is considered. (People v. Brady, supra, 22 Cal.App.5th at pp. 1014-1015.) However, a jury may take into account the knowledge a person had which might increase his or her ability to accurately predict the risk of impending violence. (Id. at p. 1017.) For example, 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. (People v. Bates (2019) 35 Cal.App.5th 1, 9-10.)

Another aspect of self-defense is the assessment of whether danger was imminent. Mere fear that a danger will become imminent is not sufficient. (People v. Lopez (2011) 199 Cal.App.4th 1297, 1305.) Fear of future harm, regardless of how great the fear or the likelihood of the harm, will not suffice. (In re Christian S. (1994) 7 Cal.4th 768, 783.) Imminent peril has been defined as appearing to a person as "immediate and present and not prospective or even in the near future. An imminent peril is one, that from appearances, must instantly be dealt with." (People v. Lopez, supra, 199 Cal.App.4th at p. 1306, quoting People v. Aris (1989) 215 Cal.App.3d 1178, 1187.)

The amount of force used by a person is also something that must be found to be reasonable by the trier of fact. "[O]nly that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified." (People v. Hardin (2000) 85 Cal.App.4th 625, 629, quoting People v. Clark (1982) 130 Cal.App.3d 371, 380.) In a related vein, "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." (Id. at pp. 629-630.) Even if an individual was in actual and reasonable belief of imminent danger, the use of force may not exceed what is reasonably necessary to repel the attack. (Ibid.)

Penal Code section 196 also provides a justification for homicide committed by a peace officer when the use of force complies with Penal Code section 835a. Under section 835a, subdivision (a)(2), peace officers may lawfully use deadly force "only when necessary in defense of human life." 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).)

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).)

An officer may use deadly force only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary when: (1) defending against an imminent threat of death or great bodily injury to the officer or another person or (2) to apprehend a fleeing person who has committed a felony that threatened or resulted in death or great bodily injury and the officer reasonably believes the person will cause death or great bodily injury if not immediately apprehended. (Pen. Code, § 835a, subds. (c)(1)(A), (B).)

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).) 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).)

“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.” (Graham v. Connor (1989) 490 U.S. 386, 396.) “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (Id. at pp. 396-397.) The question is whether the officers’ actions were “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (Id. at p. 397.)

The People have the burden of proving beyond a reasonable doubt that the killing was 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.) The People 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.

VI. Legal Analysis

This review and analysis is based on the totality of evidence provided to the Department of Justice in this matter, including voluntary statements from the officers involved in the shooting (DAI Kwan, DAI Borden, Det. Tooth, and Deputy Shaffer), police reports, witness statements, forensic evidence, Coroner’s report, autopsy photos, body-worn camera footage, drone photos, dash camera footage, and surveillance footage from the incident location. The issue in this shooting is whether DAIs Kwan and Borden acted lawfully in self-defense or defense of others, and whether their actions are subject to criminal prosecution.

The day before the shooting, the decedent pointed his firearm and threatened the father of the infant (decedent’s niece) stating, “Back away or I’ll do it!” The decedent even stated to his family, “If you call the cops, I’m gonna have a shootout!” Based on this information, Det. Carbajal organized the GIT to apprehend the decedent because he was armed and dangerous. Det. Carbajal informed DAIs Kwan and Borden and other members of the team of the decedent’s threats.

The next day, during the GIT operation, DAI Kwan and Borden were located in the parking lot between the Welcome Inn and the strip mall waiting for the decedent and W-1. As soon as Det. Carbajal was able to identify the decedent, DAI Borden moved his vehicle from a parked position, drove forward, and made contact with the decedent. As he stepped out of his vehicle, DAI Borden drew his handgun because he was briefed that the decedent was armed and dangerous. Furthermore, he identified himself as “police” and gave commands to the decedent. Simultaneously, DAI Kwan stepped out of his parked vehicle and began to draw his weapon in order to apprehend the decedent and support DAI Borden.

While DAI Borden was giving commands, the decedent immediately back peddled, ignored the repeated commands, and reached for his waistband, eventually producing a handgun. Deputy Shaffer approached the decedent from behind and tried to tackle the decedent to the ground. At the same time, DAIs Borden and Kwan saw a firearm in the decedent’s hand and called out “gun.” The decedent then recovered from the tackle, rolled to a crouching position facing DAI Kwan, and extended his two arms with his firearm pointing at DAI Kwan. At that moment, DAIs Borden and Kwan fired their handguns at the decedent.

There is both a subjective and objective component to a self-defense claim. (*People v. 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*, supra, 93 Cal.App.4th at p. 1262.)

Here, in his interview, DAI Borden expressed his subjective beliefs by stating that he was not close enough to assist Deputy Shaffer in physically apprehending the decedent and was fearful that Deputy Shaffer was not aware that the decedent had a firearm. DAI Borden was concerned that Deputy Shaffer would get shot by the decedent. DAI Borden also believed that there was an imminent threat of death or great bodily injury toward Deputy Shaffer when the decedent pulled out a firearm from his waistband.

In DAI Kwan’s interview, he expressed his subjective beliefs by stating that he was fearful that Deputy Shaffer would get shot by the decedent, so he called out, “Gun!,” hoping that Deputy Shaffer would move away from the decedent. DAI Kwan also stated that he saw the decedent’s firearm pointed directly at him and braced himself to get shot so he simultaneously started firing his handgun at the decedent. DAI Kwan fired his handgun because he believed there was an imminent threat of death to himself the moment that the decedent extended his arms and pointed the firearm at DAI Kwan. DAI Kwan fired his handgun nine times to defend against that deadly force.

The objective element of self-defense requires that an officer reasonably believes, based on the totality of circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. (Pen. Code, § 835a, subs. (c)(1)(A),(B).) 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).) (Pen. Code, § 835a, subd. (a)(4).)

Here, DAI Borden reasonably believed, based on the totality of circumstances, that the threat of death was imminent and that the decedent had the present ability, opportunity, and intent to cause death or great bodily injury to Deputy Shaffer, because the decedent did not heed DAI Borden’s commands, back peddled away from him, and pulled out a handgun from his waistband. An officer’s use of force must be evaluated “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).)

Other circumstances known to DAI Borden included information from the pre-incident briefing that the decedent told his family the previous day that he would “have a shootout” with police if he encountered them. At the briefing, DAI Borden and the other officers were also informed that the decedent had attempted to kidnap an infant, threatened family members, and brandished a firearm at the father of the infant on April 1, 2021. Knowledge of a decedent’s prior threatening or violent conduct or reputation for dangerousness may support a reasonable belief in imminent harm. (People v. Bates, supra, 35 Cal.App.5th at pp. 9-10.) The 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).)

DAI Kwan also reasonably believed that there was a present ability and intent by the decedent to cause death or great bodily injury to himself because the decedent did not heed his commands, back peddled away from DAI Borden, pulled out a handgun from his waistband, pointed the handgun toward DAI Kwan, and expressly stated the day before he would “have a shootout” with the police should he encounter them. DAI Kwan, like DAI Borden, had prior knowledge from their briefing of the decedent’s criminal conduct and threatening statements on April 1, 2021.

Penal Code section 196 also provides a justification for homicide committed by a peace officer when the use of force complies with Penal Code section 835a. Under section 835a, subdivision (a)(2), peace officers may lawfully use deadly force “only when necessary in defense of human life.” Here, as the encounter escalated quickly when the decedent drew a handgun, DAI Borden and Kwan immediately used deadly force by firing rounds at the decedent to defend Deputy Shaffer and themselves. The use of lethal force, as opposed to non-lethal options, was reasonable given the quick moving circumstances of the encounter.

Self-defense arises when a person actually and reasonably believed in the necessity of defending against imminent danger of death or great bodily injury. (People v. Randle, supra, 35 Cal.4th at p. 994.) Self-defense is a complete defense to a homicide charge, and if found, the killing is not criminal. (People v. Sotelo-Urena, supra, 4 Cal.App.5th at p. 744.) DAIs Borden and Kwan actually and reasonably believed in the necessity of defending against the decedent’s actions. DAIs Borden and Kwan fired their handguns in self-defense and defense of others, to stop the decedent from shooting his firearm and potentially killing or injuring police officers or bystanders. Given the totality of the circumstances, DAI Borden’s and Kwan’s use of deadly force to defend against an imminent threat of death from the decedent was reasonable and justified.

VII. Conclusion / Recommendation

Based upon the review of all of the evidence obtained by the Department of Justice, the applicable statutes, legal principles, and totality of the circumstances, it is determined that DAI Kwan and DAI Borden acted in lawful defense of self and defense of others, when they used deadly force against the decedent. Given the facts and applicable law, there is insufficient evidence to support a criminal prosecution of either DAI Borden or DAI Kwan. As such, no further action will be taken in this case.