



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 Juan Luis Olvera-Preciado  
on August 21, 2021**

Santa Barbara County AB 1506

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JANUARY 2023



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

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

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

## Privacy Statement

This report includes redactions of names, addresses, and other identifying information of family members of Juan Luis Olvera-Preciado and witnesses to the officer-involved shooting. The public interest in such information is limited because it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure outweighs the public interest in disclosure.

For privacy reasons, as well as readability of this report, the witnesses, family members, and key locations are indexed as follows:

- Location #1, Mr. Olvera-Preciado's residence
- Location #2, residence on the northeast corner of Obispo Street and Birch Street
- Location #3, a commercial business located west of the Obispo Street and Birch Street intersection
- Family Member #1 ("FM-1"), wife of Mr. Olvera-Preciado
- David C. or DC, suspect

## Introduction

On the night of August 21, 2021, an officer-involved shooting ("OIS") occurred at the intersection of Obispo Street and Birch Street in the City of Guadalupe, Santa Barbara County. During an attempt to apprehend an individual suspected of having committed a crime, Officer Jaimes fired three rounds at the suspect. The bullets missed the suspect; one bullet ricocheted and fatally wounded Juan Luis Olvera-Preciado, an uninvolved bystander.

The Department of Justice 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. Olvera-Preciado. The scope of this report is limited to determining whether criminal charges should be brought against the involved officer, and offering possible policy and practice recommendations. The review does not encompass or comment on any potential administrative or civil actions. It does, however, include policy and practice recommendations, as required by Government Code section 12525.3, subdivision (b)(2)(B)(iii). Based on the criminal investigation, review of evidence, and evaluation of the case, we have determined that there is insufficient evidence to support the filing of criminal charges against Officer Jaimes.

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

## Summary of Incident

On Saturday, August 21, 2021, Guadalupe Police Department (“GPD”) Officer Christopher Orozco was on patrol in the City of Guadalupe. At approximately 9:10 p.m., he noticed smoke drifting from a grassy area on the north side of Central Park on 10th Street. Officer Orozco notified the Guadalupe Fire Department (“GFD”) about the incident. GPD Officer Miguel Jaimes, Officer Heath Miller, and Miller’s trainee, Officer Amelia Silva, also responded to the fire.

Around 9:14 p.m., GFD Fire Captain Fernando Garcia and Fire Engineer Jacob Nuno responded to the fire. They were on scene by 9:18 p.m. and extinguished the fire.

A nearby witness described the person who had ignited the fire. Officer Miller saw a person familiar to him, David C. (“DC”),<sup>1</sup> nearby earlier in the evening. The witness’s description matched the identity of DC. Officers Orozco and Miller had had prior contacts with DC and had arrested him on prior occasions. They knew he was an active gang member. Officer Miller knew that DC often had outstanding warrants. Officers Jaimes and Orozco, in separate patrol cars, searched for DC. Meanwhile, Officers Miller and Silva drove back to the station in their patrol car to determine whether DC had any outstanding arrest warrants.

Officer Orozco spotted DC walking northbound on Obispo Street near Main Street. In the meantime, Officer Miller verified DC had two outstanding warrants—a felony no-bail warrant and a \$5,000 misdemeanor warrant. He notified Officer Orozco about the warrants.

Officer Orozco told Officer Miller he intended to make contact with DC and asked Miller to head to his location. Officer Orozco drove past DC on Obispo Street and parked at the corner of Cedar Street. Officer Jaimes arrived to assist at approximately 9:47 p.m. and parked near Officer Orozco. The two officers exited their vehicles and approached DC.

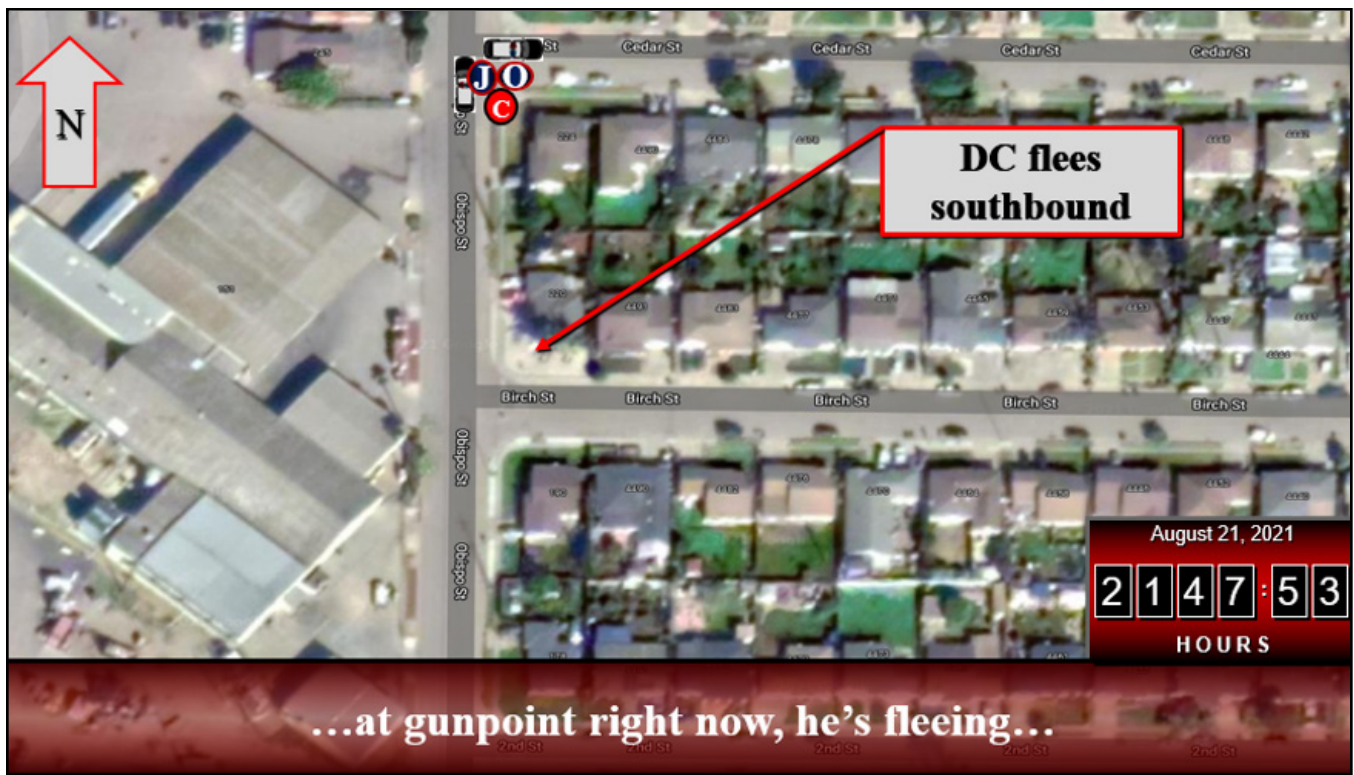
At 9:47:28 p.m., Officer Orozco radioed that the officers had contacted DC near the intersection of Obispo and Cedar Streets. Officers Orozco and Jaimes pointed their flashlights at DC. According to Officer Orozco, upon contact with the officers, DC’s hands were initially visible. Officer Orozco told DC, “Hey, [DC], we got to talk to you really quick,” to which DC replied, “For what?” Before Officer Orozco could tell DC he was under arrest, he saw DC placing his right hand into his sweater pocket in an “aggressive” manner. Officer Orozco believed DC was armed, and both Officers Jaimes and Orozco immediately unholstered their department-issued handguns and aimed them at DC. Officer Orozco ordered DC to show his hands.

At this time, Officers Jaimes and Orozco faced southbound on Obispo Street, with Officer Jaimes closer to the street on the west and Officer Orozco on the sidewalk to the east. DC had been heading northbound on Obispo Street in the officers’ direction. DC then changed direction and began “backpedaling.” Officer Orozco continued to tell DC to show his hands.

At 9:47:53 p.m., Officer Orozco radioed, “The person has got one arm in his pocket. We’re gonna have him on gunpoint right now. He’s fleeing right now.” DC fled southbound towards the intersection of Obispo and Birch Streets. DC later reported that he ran from the officers because police officers (DC was not sure whether it was these same officers) had beaten him and his friends on prior occasions, and DC did not want to get hurt by the officers. The officers gave chase with their handguns drawn.

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<sup>1</sup> David C. was a suspect in criminal activity and discussions of his criminal history were relevant to the OIS, so his name is partially anonymized.



Officer Orozco told DC, “multiple” times, “Let me see your hands.” Orozco attempted to seek “cover” behind parked vehicles on the east side of Obispo Street. Despite multiple commands to show his hands, DC refused to comply and kept his hand concealed in his sweater pocket. Officer Orozco did not see anyone else in the background.

A few seconds later, Officer Orozco saw DC “punch[] out” his right arm. Although DC denied having anything in his hand prior to the shooting, he also later admitted he “could’ve” held a black butane torch in his right hand, that the torch “probably” looked like a gun when he took it out, and he thought that was why the officer fired at him. Officer Orozco was in fear and his “heart dropped” because he believed DC was going to shoot him or Officer Jaimes when he “punched out” his arm. Officer Jaimes immediately fired three rounds from his handgun in quick succession, southbound, towards DC. DC fell to the ground, and Officer Orozco briefly thought that DC had fired at him.

At 9:48:03 p.m., Officer Orozco transmitted over the radio, “Shots fired, shots fired.”





The OIS occurred on the northeast corner of Obispo and Birch Streets in the City of Guadalupe. At the time of shooting, DC stood near the stop sign on the northeast corner.



The photograph above is a frame from Officer Miller's body-worn camera video. The time on Officer Miller's body-worn camera was off by several minutes. Miller arrived on scene with Officer Silva after the OIS occurred. The photograph is a view from the northeast corner of Obispo and Birch Streets (where officers arrested DC). Officers later found Mr. Olvera-Preciado in his vehicle, which is circled in red; the lights in the circle are reflective lights from the vehicle and officers' flashlights. The next photograph depicts the same scene during daylight hours.



DC lay on the ground, motionless, and in a prone position. His hands were underneath him. Officer Orozco told DC, “Let me see your hands, let me see your hands.” Officer Orozco noticed DC blinking, but DC stayed motionless and did not obey commands. Officers Miller and Silva arrived and took cover behind a vehicle with Officer Jaimes. The officers repeatedly gave commands, but DC refused to move.

At approximately 9:50 p.m., the officers moved in and handcuffed DC. Officers Miller and Orozco searched DC for weapons and checked for gunshot wounds. DC was unarmed and uninjured. DC provided a false name of “Alfredo.” Officer Miller found a blue bandana, black butane torch, and other miscellaneous items when searching DC.

During the search, the officers heard a woman screaming (“FM-1”) from the residence across the street at Location #1. She screamed in Spanish, “Lo mataron, lo mataron” (translated to English, “They killed him, they killed him”). At first, Officer Orozco thought FM-1 was screaming about DC. When Officer Jaimes checked on FM-1, he discovered a person in the background had been shot. He yelled for the other officers, and Officers Miller and Silva rushed to assist while Officer Orozco stayed with DC.

Due to insufficient lighting, the officers used their flashlights to look around. They found Mr. Olvera-Preciado sitting upright in the driver’s seat of his 2004 Toyota Highlander; he was unresponsive. FM-1 was the wife of Mr. Olvera-Preciado. The vehicle was parked on the driveway of the residence at Location #1. The driver’s side door was slightly ajar (8 to 10 inches open), the windows were rolled up, and the dome light was inoperable and provided no illumination despite the door being ajar. There were no bullet marks on the vehicle, but officers observed a bullet wound on Mr. Olvera-Preciado’s left cheek. Later investigation indicated that the officer’s bullet likely ricocheted off the ground, traveled approximately 174 feet, entered a slightly ajar car door, and penetrated Mr. Olvera-Preciado’s body.

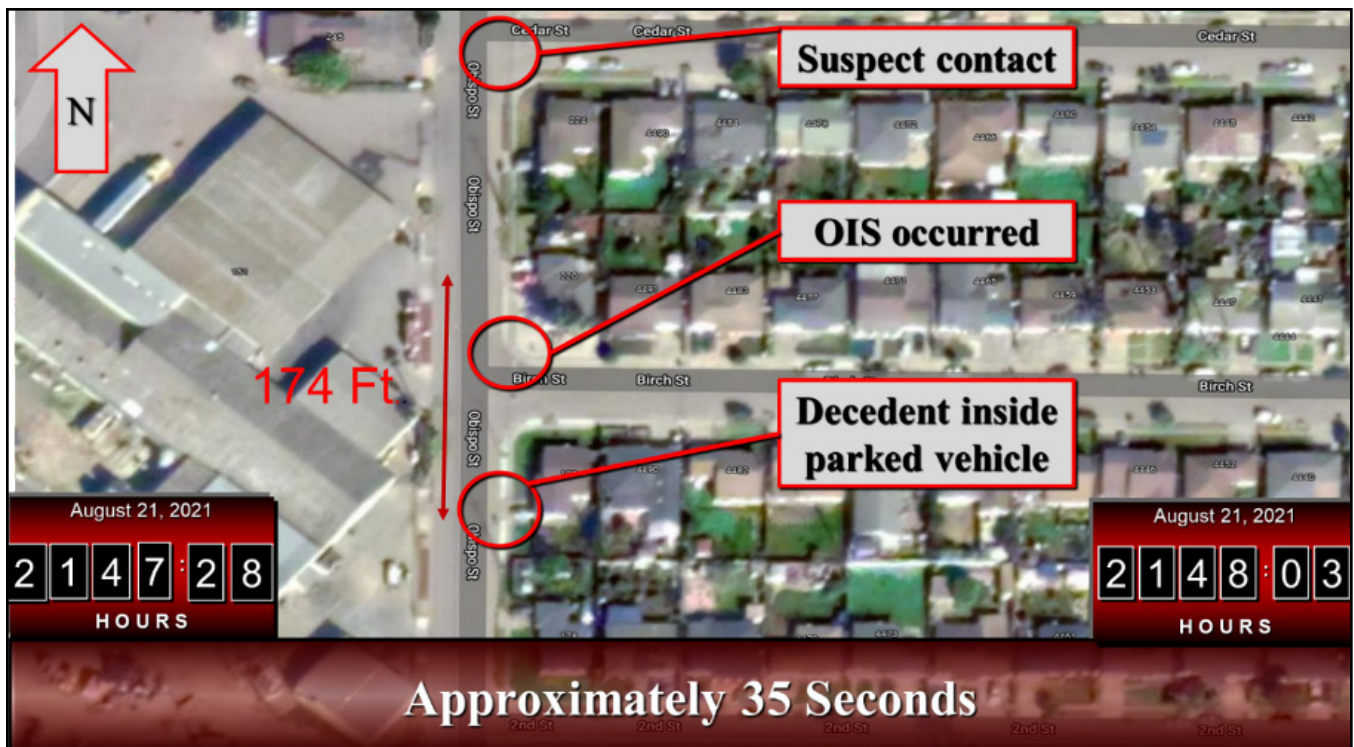




The photograph above is a frame from Officer Miller's body-worn camera video. The photograph is a view of the Toyota Highlander, porch, and driveway of Location #1. The photograph below is a closer view taken during daylight hours.



Officers Jaimes and Miller immediately removed Mr. Olvera-Preciado from the vehicle to administer first aid and cardiopulmonary resuscitation ("CPR"). The officers radioed dispatch and requested that the fire department and paramedics respond. Officer Silva assisted Officer Orozco in the arrest of DC because DC began to kick and flail around.



Officers Jaimes and Orozco made initial contact with DC at about 9:47:28 p.m. They held DC at gunpoint at 9:47:53 p.m., and Officer Jaimes fired his weapon at 9:48:03 p.m. The entire incident, from initial contact to shots being fired, lasted about 35 seconds. The shooting took place within a ten-second period between 9:47:53 p.m. and 9:48:03 p.m. The distance between the officers and Mr. Olvera-Preciado at time of shooting was approximately 174 feet; the distance between the officers and DC was approximately 58.5 feet. After the OIS incident, Officers Orozco and Jaimes returned to the Guadalupe Police Department, in the same vehicle, with Orozco driving and Jaimes in the passenger seat.

At 9:58 p.m., Captain Fernando Garcia and Fire Engineer Jacob Nuno from the GFD arrived and assumed care of Mr. Olvera-Preciado. They continued CPR and other lifesaving measures. At 10:03 p.m., Paramedic Ian Sharp and Emergency Medical Technician (“EMT”) Megan Turich from the American Medical Response (“AMR”), Medic No. 28, responded. They examined Mr. Olvera-Preciado for heart rate and injuries and noticed Mr. Olvera-Preciado was in asystole (no cardiac activity). With additional lighting, they observed gunshot wounds on the cheek and back of Mr. Olvera-Preciado’s head. Due to obvious signs of death, and because Mr. Olvera-Preciado failed to respond to lifesaving measures, Mr. Olvera-Preciado was pronounced dead at 10:13 p.m. by medical personnel on the scene.

Officers from the Santa Maria Police Department (“SMPD”) responded and set up a perimeter and assisted with the scene. The Santa Barbara County Sheriff’s Office (“SBCSO”) arrived as well to handle the OIS incident. Upon realizing this event qualified under Assembly Bill 1506, the SBCSO notified the Department of Justice, and the Department responded to the scene.

The first DOJ Special Agents arrived on scene at about 2:45 a.m. After providing an initial briefing and walkthrough of the scene, the SBCSO relinquished the investigation to the Department.





The photograph above shows the location where investigators found expended shell casings on the night of August 21, 2021. The location was illuminated to allow for photography. The red circle depicts the location of Mr. Olvera-Preciado and his vehicle. The photograph below is a closer view of the location with additional lighting.



# Investigation

## Overview

DOJ special agents, supervising special agents, and the assigned Deputy Attorney General responded to the scene of the shooting on August 22, 2021, at approximately 2:45 a.m. DOJ criminalists from the Bureau of Forensic Services (“BFS”) also responded to document the scene and to collect and preserve evidence.

SBCSO supervisory personnel walked the DOJ team through the shooting scene. They were shown the location of Mr. Olvera-Preciado and evidence. DOJ special agents conducted interviews of civilian and sworn witnesses.

On the date of the shooting, and in the weeks and months thereafter, the shooting scene was examined, evidence was collected and analyzed, and the officers’ weapons were examined.

The DOJ has conducted an independent and thorough investigation of the facts and circumstances regarding this incident and has reviewed all evidence and legal standards impartially.

## Evidence Reviewed<sup>2</sup>

For this matter, the Department, with some assistance from the Santa Barbara County Sheriff’s Office, conducted 24 witness interviews (two police officers, four emergency responders, and 18 civilians). The Department reviewed the following: photographs of the crime scene and other pieces of evidence; video recordings (footage from body-worn cameras, in-car video systems, and surveillance cameras); communications evidence (printouts from the computer aided dispatch system and corresponding radio calls); a digital 3D representation of the scene from the FARO Focus S 150 laser scan station; physical evidence (including expended shell casings, fired bullets, and items obtained from the scene); autopsy report; and analyses on ballistics and firearms, fingerprints, and deoxyribonucleic acid (“DNA”).

## Incident Scene Description

The OIS occurred in a residential neighborhood on the northeast corner of the intersection of Obispo and Birch Streets in the City of Guadalupe. The blocks northeast and southeast of the intersection are lined with residential homes. Location #3, a commercial business, is to the west of the intersection. Mr. Olvera-Preciado was sitting in his vehicle, which was parked in the driveway of his residence at Location #1; the residence is on the southeast corner of the intersection.

## Evidence Recovery

Special agents, DOJ criminalists, and crime scene technicians (“investigators”) began processing the scene on the night of August 21, 2021. They recovered several items of evidence. Among the evidence items recovered were one black butane torch, one blue bandana, one red plastic toy gun, three 9-millimeter discharged cartridge casings, and one fired bullet.<sup>3</sup>

The three spent cartridge casings were recovered from the sidewalk and curb in front of the residence at Location #2. The three casings lay north of the northeast corner of Obispo and Birch Streets.

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<sup>2</sup> Only evidence pertinent and relevant to the OIS incident is summarized in this report.

<sup>3</sup> The toy gun appears to have been irrelevant to the OIS.





Diagram depicting the locations of the three shell casings (shown in yellow).



Evidence placards indicating the locations of the three shell casings in front of the residence at Location #2.

DC was searched on the northeast corner of Obispo and Birch Streets. Investigators recovered a black butane torch, a blue bandana, a red toy plastic gun, and other items.



Photographs above depicting DC's possessions at time of arrest on the northeast corner of Obispo and Birch Streets, including one black butane torch, one red toy plastic gun, and one blue bandana. Photograph below is an up-close image of the black butane torch.





Investigators also located and photographed a bullet entry on the north wall of the residence at Location #1.



Investigators received permission from the residents at Location #1 to search for the bullet. Investigators recovered the bullet from the exterior side of the north wall and collected it for analysis.



The bullet that investigators collected from the north wall of the residence at Location #1

In addition, investigators processed Mr. Olvera-Preciado's 2004 Toyota Highlander. At the time of the shooting, the vehicle was on the driveway of the residence at Location #1. Investigators observed blood on the exterior driver's side passenger door and on the driver's seat and center console. They examined the vehicle for possible bullet strikes with no findings. At the time of examination, all doors were closed and unlocked, and the windows were rolled up. The door did not work properly in that the hinges on the driver's side door did not keep the door open. The vehicle's interior dome light was not working. A towing company towed the vehicle to the SBCSO's Santa Maria substation for additional processing.



The photograph on the left depicts blood on the driver's seat of the Toyota Highlander; the photograph on the right depicts blood on the driver's side passenger door.

On August 26, 2021, with consent from Mr. Olvera-Preciado's wife, investigators processed the vehicle for additional evidence. They observed blood inside the vehicle, which they swabbed and tested. The test detected blood. They examined the vehicle for possible bullet impacts but found none.

DOJ criminalists also utilized the FARO Focus S 150 laser scan station to create a digital 3D representation of the OIS scene.

During the course of the investigation, investigators recovered two bullets: one from the exterior side of the north wall at the residence at Location #1 and one from Mr. Olvera-Preciado's body. The third bullet could not be located.

On August 30, 2021, in an attempt to locate the final bullet, investigators returned to the OIS scene. In addition to a visual inspection, they also used a metal detector to search for the bullet, but they could not find it. Investigators examined the scene and observed three strike marks near the northeast corner of Obispo and Birch Streets. Two of the three possible strike marks tested presumptively positive for copper.

Investigators measured the distances from Officer Jaimes's position at the time of the shooting (based on the location of the three expended shell casings) to the location of DC's arrest, and Officer Jaimes's position to Mr. Olvera-Preciado's location. The distance between Officer Jaimes and DC was approximately 58.5 feet, and the distance between Officer Jaimes and Mr. Olvera-Preciado was approximately 174 feet.

## Video Recordings

After an exhaustive investigation, including an attempt to locate video recordings of the OIS incident, it was determined that there is no video footage of Officer Jaimes's or Officer Orozco's contact with DC or the subsequent shooting.

## Body-Worn Cameras

The investigation revealed that at the time of the OIS, Officer Jaimes wore a body-worn camera ("BWC") but he failed to activate the camera. Officers Orozco and Silva did not wear BWCs because the



cameras assigned to them did not work properly.<sup>4</sup> Officer Miller's BWC recorded the aftermath of the OIS because he arrived after the shooting.

### **In-Car Video Systems**

The GPD patrol cars were equipped with in-car video systems. The in-car video systems are designed to turn on when all of the vehicle's emergency lights are activated. Neither Officer Orozco nor Officer Jaimes turned on all of their vehicle's emergency lights, and neither manually activated their in-car video systems. Therefore, the officers' contact with DC and the OIS were not recorded by the in-car video system.<sup>5</sup> Officer Miller's in-car video system was activated, but Miller arrived after the OIS occurred.

### **Surveillance & Other Cameras**

On August 21, 22, and 23, of 2021, investigators canvassed the area surrounding the OIS scene to obtain any surveillance video that may have captured the incident. Investigators collected footage from surveillance cameras installed on Location #3, a commercial business just west of the incident. The cameras, however, did not capture the OIS incident.

Investigators also searched for surveillance cameras affixed to residential homes. No surveillance cameras captured the OIS incident. A neighbor, who did not witness the shooting, indicated his house was equipped with a surveillance camera on the night of August 21, 2021. He resided about one block south of the OIS incident. His video showed a person walking northbound on Obispo Street at about 9:38 p.m. The physical descriptors of the person could not be determined due to dark and unclear footage.

### **Interviews of Law Enforcement Officers**

Officer Jaimes (the shooting officer) and Officer Silva (one of the responding officers) did not provide voluntary statements. Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.)

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

Officer Orozco, who was present during the shooting, and Officer Miller, one of the responding officers, did provide voluntary statements. The following statements are summaries of their interviews, which describe the incident from the point of view of the individual officers. Please note that 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.

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<sup>4</sup> In his interview, Officer Miller stated it was not uncommon for BWCs to be inoperable and that most BWCs were "obsolete." Officer Miller also stated that Officer Silva did not wear her BWC because it was inoperable. On September 10, 2021, Officer Silva stated that she intended to provide a voluntary statement, but ultimately declined to provide a statement. Soon after, she went on medical leave and resigned. In March 2022, after her resignation, the GPD found one BWC in Officer Silva's locker. According to the GPD, the BWC was kept in the locker the entire time prior to her resignation. The DOJ forensics team examined the BWC and was unable to retrieve any data from the BWC.

<sup>5</sup> Due to the direction the vehicles were facing when parked, even if the in-car video systems were activated, the systems likely would not have captured the OIS incident.

## Interview of Officer Christopher Orozco

Guadalupe Police Department Officer Christopher Orozco provided a voluntary statement on September 10, 2021. Department of Justice Special Agent Tony Baca and Special Agent Supervisor Samuel Richardson conducted the interview. Robert Baumann, Officer Orozco's attorney, was also present.

Officer Orozco graduated from the San Bernardino County Sheriff's Academy in March 2017. He joined the Desert Hot Springs Police Department for six months as a police officer but left after failing his field training. He then worked as a Public Safety Officer for a Tribal Casino in Coachella, California before joining the GPD as a patrol officer in August 2019.

On August 21, 2021, Officer Orozco was assigned night patrol from 7:00 p.m. to 7:00 a.m. There was no roll call briefing. Officer Orozco was in full uniform and equipped with his department-issued 9-millimeter Glock 17 (with mounted lights and sights), baton, pepper spray, handcuffs, Taser, flashlight, and magazines. He did not wear a body camera because the camera assigned to him did not work properly. He drove a marked patrol vehicle with an in-car video system. Officer Orozco did not activate the system during the OIS incident.

At approximately 9:00 to 9:10 p.m., Officer Orozco noticed smoke drifting from a grassy area in Central Park on 10th Street in the City of Guadalupe. He broadcast over the police radio that there was smoke and a "little bit" of fire and notified the GFD.

The GFD arrived and extinguished the fire. Officer Orozco observed that the fire had been caused by a T-shirt, which had been lit on fire. Officers Miller, Jaimes, and Silva were also present at the scene of the fire. A witness on the far side of the park provided a description of the person who had started the fire to Officer Miller. Based on the description, Officer Miller believed DC ignited the fire, and Miller drove back to the police station to run a warrant check on DC.<sup>6</sup>

Officer Orozco was familiar with DC from prior contacts. He had arrested DC on two prior occasions for methamphetamine-related offenses. Approximately three months prior to August 2021, Orozco had also helped another officer tow DC's vehicle. DC was unarmed and non-combative during these prior contacts. Officer Orozco knew of DC's gang affiliation and that his moniker was "Baby Shrek."

Officer Orozco recalled that he had seen DC walking at the intersection of Main Street and Highway 1 earlier in the evening. He searched for DC while driving his patrol vehicle, and Officer Jaimes assisted in a separate patrol vehicle. Officer Orozco found DC walking northbound on Obispo Street from the intersection of Obispo and Main Streets. Officer Miller called Officer Orozco by phone and notified him that DC had two outstanding arrest warrants—a no-bail warrant and a misdemeanor warrant. Officer Orozco told Officer Miller he would be making contact with DC because of the outstanding warrants and directed Officer Miller to head his way.

Officer Orozco drove past DC as DC continued north on Obispo Street. Officer Orozco parked his patrol vehicle facing eastbound on the corner of Obispo Street—he was not sure whether the cross street was Cedar Street or Third Street. Officer Jaimes parked facing northbound next to Officer Orozco.

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<sup>6</sup> Officer Miller stated that he was unable to run a warrant check for DC in the field because the officers did not know DC's birthdate; due to DC being a common name, any search would have disclosed multiple records for people with the same name. At the station, officers could identify suspects with their full names and dates of birth. Once officers had the full information, they could run the suspect's information for outstanding warrants.

Officers Jaimes and Orozco exited their vehicles and contacted DC near the intersection of Obispo and Cedar Streets. The officers pointed their flashlights at DC due to the poor lighting, and Officer Orozco did not see anyone else in the background. Officers Jaimes and Orozco moved together on the residential side of the sidewalk, with Officer Jaimes closer to the street (west) and Officer Orozco on the sidewalk (east). They faced southbound from the Obispo Street and Cedar Street intersection while DC approached them heading north.

Upon contact, DC's hands were initially visible. Officer Orozco told DC, "Hey, [DC], we got to talk to you really quick" to which DC replied, "For what?" Before Officer Orozco could advise DC he was under arrest, DC placed his right hand into his sweater pocket in an "aggressive" manner. DC was 15 to 20 feet from the officers, and he took a few steps back and began "backpedaling." Officers Jaimes and Orozco immediately unholstered their handguns and aimed them at DC. Based on DC's actions, Officer Orozco believed DC had a gun and said, "Let me see your hands." Officer Orozco broadcast over the radio, "[DC] is reaching into his pocket." Officer Orozco attempted to seek "cover" next to a parked vehicle on the east side of Obispo Street.

Officer Orozco ordered DC to show his hands "multiple" times. DC refused to comply and kept his hand concealed in his pocket. A few seconds later, DC "punched out" his right arm as if he had a gun. In response, Officer Jaimes immediately fired three rounds in quick succession, and DC fell to the ground. In the moment when DC pointed at the officers, Officer Orozco was scared and his "heart dropped" because he thought DC was going to shoot the officers.

When shots were fired, Officer Orozco flinched and briefly thought DC had shot at him. Officer Orozco did not fire his weapon as he had been able to find cover behind a vehicle. He broadcast over the radio, "Shots fired, shots fired." Orozco estimated that the time from initial contact to the shooting was one minute or less.

DC lay motionless in a prone position with his hands concealed under his sweater, towards his stomach. Officer Orozco broadcast, "Suspect is not moving," and gave DC voice commands, "Let me see your hands, let me see your hands." DC was blinking but ignored the commands.

Officers Miller and Silva arrived to assist in the arrest. Officer Miller stood next to a parked vehicle, with Officers Silva and Jaimes standing behind him. Officer Orozco, with his gun still aimed at DC, was able to gain full cover. With Officer Orozco's gun pointed at DC, the other three officers moved from behind the vehicle towards DC to arrest him. Once handcuffed, the officers searched DC for gunshot wounds and weapons. DC was uninjured and unarmed.

During the search, Officer Orozco heard a woman ("FM-1") screaming in Spanish from the residence at Location #1. She screamed, "Lo mataron, lo mataron" (translated to English, "They killed him, they killed him"). At first, Officer Orozco thought the woman was speaking about DC. He then noticed that the woman was looking into a vehicle. Upon closer observation, Officer Orozco was able to make out a human figure inside the vehicle. He directed Officer Jaimes to look into the situation. Officer Jaimes rushed to the vehicle and notified the other officers that a person had been shot. Officers Miller and Silva raced to assist in CPR and lifesaving measures.

Officer Orozco was left alone with DC. He told DC that he (DC) had no gunshot wounds. DC began to flail and squirm. Officer Orozco advised him to calm down, but DC continued to kick his legs and move his arms. DC yelled, "Baby Shrek," and, "I'm not proud to be Guada." Officer Orozco was aware "Guada" was short for "Guadalupe," a gang in the City of Guadalupe. Officer Silva returned to help Officer Orozco place DC into a patrol car.

Santa Maria officers instructed Officers Jaimes and Orozco to head back to the Guadalupe police station, which they did.

### **Interview of Officer Heath Miller**

Guadalupe Police Department Officer Heath Miller provided a voluntary statement on September 10, 2021. Department of Justice Special Agent Daniel Ibarra and Special Agent Supervisor Samuel Richardson conducted the interview. Robert Baumann, Officer Miller's attorney, was also present.

Miller graduated from the Allan Hancock College police academy in December 2016 and completed his training in June 2017. He worked for about one year as a police officer for the City of Santa Maria but left after failing his field training. Miller had been employed by the GPD as a patrol officer and field-training officer since September 2017.

On August 21, 2021, Officer Miller was on duty as watch commander on the 7:00 p.m. to 7:00 a.m. shift. Officer Amelia Silva was assigned to him; Officer Silva had been a trainee with the GPD since she was hired in May 2021. Officer Miller was in full uniform and equipped with his department-issued 9-millimeter Glock 17 handgun, Taser, baton, pepper spray, and magazines.

At approximately 8:30 p.m., Guadalupe police officers noticed a burning T-shirt in Central Park, near 10th Street. They radioed the GFD to extinguish the fire. The officers had seen DC walking in the area earlier in the evening. A witness provided a description of the suspect who started the fire, which matched DC.

Officer Miller had had prior contacts with DC. Miller had arrested DC once or twice, and had additional contacts as a backup officer during other police contacts with DC. Officer Miller knew DC was a gang member, heavily used methamphetamine, was unpredictable, and carried knives. DC never assaulted Miller, but DC was "verbal" with officers and challenged them to fight. Miller knew that DC often had outstanding warrants.

Officers Jaimes and Orozco searched for DC while Officers Miller and Silva returned to the police station to check for outstanding warrants. The process to check for warrants would have been difficult without DC's age or middle name, and the officers did not have that information in the field. For that reason, Miller drove back to the station to confirm DC's full information and to run his name for warrants. Officer Miller verified that DC had two outstanding arrest warrants—one no-bail felony warrant and one \$5,000 misdemeanor warrant. Officer Miller notified Officer Orozco of the warrants by phone, and Officer Orozco stated he intended to make contact with DC.

Over the radio, Officer Miller heard Officer Orozco making contact "with one" near the intersection of Obispo and Cedar Streets. From the radio call, Officer Miller knew Officer Orozco had contacted DC. Though he did not recall the exact words, Miller heard Orozco say over the radio that the suspect was running, and reaching or had something in his hand. Miller also heard Orozco state that there were guns pointed, and shots fired. Officer Orozco's voice, calm at first, became more excited.

As he drove to the OIS location, Miller activated the siren and lights on his patrol vehicle, which activated the vehicle's in-car camera. Officers Miller and Silva were approximately three blocks away from the scene when Miller heard gunshots over the radio. He believed there was danger, and the officers needed assistance.

Officer Miller parked between Officer Jaimes's and Officer Orozco's patrol vehicles on Cedar Street. Officers Miller and Silva joined the two other officers at the intersection of Obispo and Birch Streets. Miller wore a body camera, which he activated when he arrived at the scene.



DC lay face down on the northeast corner of the intersection, on the sidewalk, with both hands concealed underneath him. Officers Orozco and Jaimes, also on the northeast corner, were positioned about 10 to 15 yards north of DC. When Officer Miller arrived, Officers Jaimes and Orozco already had their weapons drawn and shots had been fired. Officer Miller was unaware who fired the shots (he later learned Officer Jaimes fired three rounds at DC).

Officer Miller gained cover next to a truck. Officers ordered DC to show his hands because he had his hands concealed underneath him. Officer Miller observed DC open and close his eyes, but DC did not acknowledge the officers and refused to move. He did not show his hands. Officers “stacked” behind each other behind the truck, moved in, and arrested DC.

Officers searched DC for injuries and weapons. DC was uninjured and unarmed during the incident. Officer Miller located a “black butane torch about five inches” in size on DC; it had a “little pedestal on the bottom with a handle” and pointed outward. At the time of the interview, Officer Miller could not remember if the torch was in DC’s pocket hanging out, or underneath his body completely. He also found a blue bandana, cellphone, and other items on DC. He found the blue bandana “hanging out of [DC’s] pocket.”

Officer Miller heard a woman (“FM-1”) screaming from outside a residence across the street. Officer Jaimes hurried across Birch Street to check on the woman. He yelled there was a person in a vehicle who had been shot who the officers had not seen. Officers Miller and Silva went to assist Officer Jaimes.

Once there, Officer Miller observed an adult male sitting upright inside the driver’s seat of the vehicle. The man did not show any signs of response. Immediately, Officers Jaimes and Silva pulled the man out of the car and began lifesaving measures. Officer Miller retrieved his first aid kit and assisted Officer Jaimes with chest compressions. Officer Jaimes said that he was the shooter. The officers radioed the GFD and continued with chest compressions and lifesaving measures until the AMR ambulance arrived and advised them to stop. In the meantime, Officer Silva assisted Officer Orozco with DC because he was resisting arrest.

The location was dark, and the nearby house provided insufficient lighting, so Officer Miller used a flashlight to look around the scene. The driver’s side door of Mr. Olvera-Preciado’s vehicle was partially open (about 8 to 10 inches). The vehicle’s dome light was nonfunctional, and there were no bullet holes on the door. Officer Miller noticed blood on the right front side of Mr. Olvera-Preciado’s chest and face, and he had a bullet wound on his left cheek.

Officers from the SMPD arrived and set up a perimeter with Officer Miller’s assistance. Officers Miller and Silva remained at the scene for the rest of the night. SMPD officers instructed Officers Jaimes and Orozco to head back to the Guadalupe police station, and the two officers departed in one of their patrol vehicles.

## **Interviews of Emergency Responders**

### **Interview of Captain Fernando Garcia**

On August 26, 2021, Special Agents Tony Baca and Daniel Ibarra from the Department of Justice interviewed Captain Fernando Garcia from the Guadalupe Fire Department.

Captain Garcia had been a captain with the GFD for 24 years. On the night of August 21, 2021, Captain Garcia was on duty with his partner Fire Engineer Jacob Nuno. Dispatch notified them of a possible shooting on Obispo Street in the City of Guadalupe, and they responded.

When the fire crew arrived, they used floodlights and LED lights due to the darkness. The streetlights were on as well. Captain Garcia saw Officer Miller conducting chest compressions and CPR on the subject. The subject lay on the ground next to the driver's side of the vehicle, and Captain Garcia observed a gunshot wound on the subject's cheek.

Engineer Nuno checked for a pulse with negative results. Neither Captain Garcia nor Engineer Nuno saw an exit wound. While Officer Miller continued CPR, Engineer Nuno placed automated external defibrillators ("AED") pads on the subject and took over CPR.

AMR arrived quickly. The paramedics hooked up the AED pads to their monitor and conducted a detailed search for exit wounds. The paramedics located an exit wound and advised Engineer Nuno to cease CPR. The paramedics called the time of death, and with Engineer Nuno translating, told the subject's wife the reason for stopping CPR.

### **Interview of Fire Engineer Jacob Nuno**

On September 20, 2021, Special Agents Tony Baca and Daniel Ibarra from the Department of Justice interviewed Fire Engineer Jacob Nuno from the Guadalupe Fire Department.

Engineer Nuno began with the GFD as a volunteer in 2013, and he was promoted to a full-time engineer in May 2020. On August 21, 2021, Nuno was on duty with Captain Garcia. Dispatch notified them of two incidents, which they responded to: an incident in Central Park and an incident on Obispo Street, both in the City of Guadalupe.

About one hour prior to the shooting incident, Engineer Nuno responded to a fire in Central Park in the City of Guadalupe. The fire was approximately 10 inches in diameter; it was a small vegetation fire. Engineer Nuno extinguished the fire.

Later, when the fire crew responded to the shooting incident, Engineer Nuno saw Officer Miller performing CPR on the subject. The subject was unresponsive and on the ground. Although the streetlights were operating, the location was dark with "zero visibility." Engineer Nuno utilized a moderately strong flashlight to view the subject. He retrieved his medical bags and AED and instructed the officer to continue with CPR. Engineer Nuno connected the AED and took over CPR; Captain Garcia assisted with CPR as well.

Once the AMR ambulance arrived, the paramedics brought additional, brighter lighting. The paramedics observed an exit wound on the back of the subject's head. The paramedics confirmed death upon inspection.

### **Interview of Paramedic Ian Sharp**

On September 30, 2021, Special Agents Tony Baca and Jon Genens from the Department of Justice interviewed Paramedic Ian Sharp from American Medical Response.

Paramedic Sharp had been with AMR as a paramedic for about four years, and he had previously worked as an EMT for about five years. He obtained his EMT license in 2010 and his paramedic license in 2016. He was the lead EMT instructor at the Santa Barbara City College and an adjunct instructor with the UCLA Center for Prehospital Care. His previous experience included working with gunshot victims, as he responded to multiple calls involving gunshot victims when he worked in Los Angeles County and the Inland Empire.

On August 21, 2021, Paramedic Sharp was stationed in the City of Santa Maria, and was on the night shift with his partner EMT Megan Turich. Around 9:53 p.m., they received a call about a shooting in the City of Guadalupe. They arrived at the scene by about 10:04 p.m.

When they arrived, Paramedic Sharp saw the fire crew performing chest compressions on the subject. Paramedic Sharp noticed a gunshot wound to his left cheek. He spoke with the fire crew, and Paramedic Sharp and EMT Turich placed their cardiac monitor on the subject. The subject was in asystole (he had no cardiac activity). They lifted the subject's head and observed what appeared to be an exit wound on the back of his head. Due to the obvious signs of death, they terminated resuscitation efforts. Paramedic Sharp believed he pronounced the subject dead at 10:06 p.m.

### **Interview of EMT Megan Turich**

On September 30, 2021, Special Agents Daniel Ibarra and Peter Stone from the Department of Justice interviewed Paramedic Megan Turich from American Medical Response.

EMT Turich had been with AMR as an EMT for about five years. On August 21, 2021, EMT Turich was stationed in the City of Santa Maria with her partner Paramedic Ian Sharp. They were working the night shift on overtime.

About five hours into their shift, dispatch notified them about a potential shooting on Obispo Street in the City of Guadalupe. They responded from the City of Santa Maria.

When they arrived, EMT Turich saw two firefighters conducting chest compressions on the subject. The subject lay on his back next to a vehicle. Paramedic Sharp attended to the subject, and EMT Turich retrieved equipment and spoke to the police officers. While the firefighters continued with chest compressions, Paramedic Sharp examined the subject for heart rate and facial injuries.

EMT Turich and Paramedic Sharp switched the AED pads to their monitor. EMT Turich also examined the subject's face and head. Due to poor lighting, EMT Turich and Paramedic Sharp required a flashlight to observe the subject. Although the floodlights from the ambulance and the streetlights were operating, they provided insufficient lighting. Without the flashlight, they would have needed to bring the subject into the ambulance to search for injuries.

EMT Turich located a gunshot entrance wound on the subject's cheek and an exit wound on the back of his head. Turich knew they would not be able to resuscitate the subject, and per policy, Paramedic Sharp called the time of death. EMT Turich covered the subject's body so that the body would be presentable for the family, and Paramedic Sharp updated the family as to the death.

## Interviews of Civilian Witnesses

### Interview of FM-1

On August 22, 2021, DOJ Special Agents Tony Baca and Daniel Ibarra, who both speak Spanish, interviewed FM-1 in Spanish.

FM-1 was Mr. Olvera-Preciado's wife. They were married for nearly 40 years. Mr. Olvera-Preciado worked in irrigation for the Freitas Brothers Farms. He was hardworking and dedicated to his family.

On August 21, 2021, around 9:30 p.m., FM-1 and her husband decided to go out for a late dinner. As they left, because the night was cold, FM-1 went back inside their home to retrieve a sweater.

FM-1 heard several loud bangs like "fireworks." She also heard police officers screaming at somebody. When she walked outside, she noticed the family's vehicle door slightly ajar and her husband motionless. At first, she thought her husband was playing a joke on her. But when she realized there was blood on her husband's face and shirt, she tried to shake her husband. Her husband did not respond, and she called 911 for assistance. The officers who were dealing with a person across the street rushed towards her. They pulled her husband out of the vehicle and began rendering first aid, but her husband died as a result of his injuries.

### Interview of David C.

On August 23, 2021, DOJ Special Agents Tony Baca and Sok Kyong interviewed David C., which was audio recorded. DC was advised of his *Miranda* rights. DC acknowledged that he understood his rights, waived his rights, and agreed to speak with the DOJ agents.

DC was 29 years old. He lived in the City of Guadalupe. On August 21, 2021, DC was with his girlfriend, Isabelle, lying in bed all day in her room. Around 7:00 or 8:00 p.m., DC woke up, showered, and began walking home. He wore blue pants, a black hoodie, a snapback cap, and black and white Puma shoes.

As DC walked home, he carried a blue bandana in his hand. In his pockets, he had a cellphone, lighter, papers, and a black torch. The torch had a handle and bore an image of a skull. DC denied having a red toy gun.

During his walk home, police officers contacted him on Obispo Street. The officers pointed flashlights at him and yelled, "[DC], get down on the ground!" DC walked backwards, and the officers told him to stop. DC asked, "What's going on?"

DC recognized the officers but did not know their names. DC said the same officers had arrested him on two previous occasions for conspiracy. The first arrest was three to four months earlier and the second arrest about one month earlier.

As the officers approached, they told DC, "Hey! Just put your hands up." DC retreated backwards on Obispo Street, southbound, because the officers approached "aggressive." He ran backwards (facing the officers) because he thought the officers "were going to hurt [him]." He thought the officers were going to hurt him because he had been beaten by officers and he had heard police officers "kicked some of my—my buddies' asses ...for no reason." DC was not sure whether it were these same officers involved in prior incidents. DC ran backwards about half a block. At a certain point, he began turning right to "take off running." He pulled his hands out from his hoodie, and the officers fired their weapons at DC: "Right when I ran, when I pulled out my hands, they started shooting." He also said, "They probably thought I had something and that's when they probably shot."



Initially, DC said he only had a bandana wrapped around his right hand so he could throw himself over a fence. Later, DC said he also possessed on his person a black torch with a handle and an image of a skull. He noted he could have had the torch in his right hand when the officers fired their weapons: “It could've probably look like, probably when I took it out, probably it could've look like a gun...I think that's why they shot.” He reiterated, “Probably look like a gun, 'cause, see, that's how it is. It's like, shaped like that.” He believed his drawing the torch was the reason the officers fired their weapons at him.

When the officers fired their weapons, DC fell to the ground and hit his head. DC thought the gunshots hit him and believed he heard five or six gunshots. The shooting occurred during the night, and it was dark outside.

During the recorded portion of the interview, DC denied gang membership and denied a tattoo on his wrist read “GUADA.” However, after the recorder was turned off, he admitted membership and that his “hood” claimed “13,” indicating he identified as a gang member from the southern half of the state. He also admitted that the tattoo on his left wrist read “GUADA,” which is a phrase affiliated with a known gang.

### **Interviews of Neighboring Witnesses**

On the night of August 21, 2021, and the morning of August 22, 2021, investigators canvassed the neighborhood near Obispo and Birch Streets for witnesses. Investigators interviewed 16 people, including some who had attended a family party at a residence on the northeast corner of the intersection. Most heard loud bangs and assumed the bangs to be fireworks—they learned only later that the sounds were gunshots. A few did not hear or see anything, and some observed events that occurred after the shooting. No witnesses saw the shooting.

### **Autopsy**

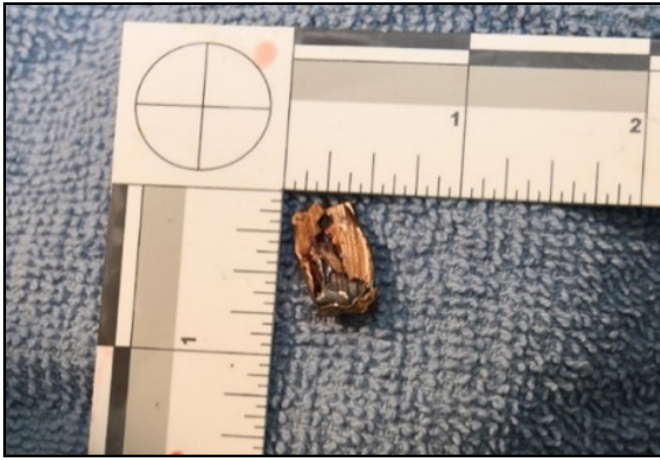
On August 30, 2021, the Coroner’s Bureau of the Santa Barbara County Sheriff’s Office conducted an autopsy of Mr. Olvera-Preciado. Doctor Manuel Montez, a forensic pathologist, handled the autopsy, and Sheriff Coroner Detective Kyle Bibby and Coroner Forensic Technician Larry Gillespie assisted.

Dr. Montez located a gunshot entrance wound on the left side of Mr. Olvera-Preciado’s face, overlying the cheek and below the eye. After piercing the skin, the bullet perforated the left side of the face, the left sinus system, the base of the skull, the inferior aspect of the brain, and the brainstem, before lodging in the right temporal lobe of the brain.

Dr. Montez recovered a medium caliber, deformed, jacketed bullet from the right temporal lobe. The bullet’s direction of travel was from front to back, left to right, and slightly upward. Several abrasions were located on Mr. Olvera-Preciado’s body as well.

Dr. Montez stated the size of the entry wound was unlikely from a 9-millimeter caliber round. Officer Jaimes’s department-issued firearm was a 9-millimeter caliber weapon, and the ballistic analysis determined his weapon fired the bullet recovered from Mr. Olvera-Preciado. The Department of Justice’s investigation revealed that the bullet ricocheted off the street, and it is probable that the bullet tumbled when it made entry into Mr. Olvera-Preciado, thereby creating a larger-than-normal gunshot wound.

Dr. Montez concluded that the cause of death was a homicide by a single penetrating gunshot wound of the head.



Bullet recovered from Mr. Olvera-Preciado's body.

## Communication Evidence

Investigators obtained printouts of the computer aided dispatch ("CAD") system for calls related to the OIS incident on August 21, 2021. The CAD printouts correspond to the radio callouts that the police officers were transmitting, and also include the 911 call made by FM-1. The investigation team matched the radio callouts with the CAD printouts to determine the timeline of the OIS incident. The relevant communications are listed here:

- 9:47:28 p.m.** Officer Orozco radioed, "Out with one on Obispo and Cedar."
- 9:47:53 p.m.** Officer Orozco radioed, "The person has got one arm in his pocket. We're gonna have him on gunpoint right now. He's fleeing right now."
- 9:48:03 p.m.** Officer Orozco radioed, "Shots fired, shots fired."
- 9:48:22 p.m.** Officer Orozco radioed, "We're gonna be facing southbound, and we're currently on Obispo and Birch."
- 9:48:26 p.m.** Officer Orozco radioed, "Suspect is currently laying on the ground."
- 9:48:31 p.m.** Officer Orozco radioed, "We currently can't see his left and right arm."
- 9:48:36 p.m.** Officer Orozco radioed, "He's currently on the ground."
- 9:49:16 p.m.** Officer Orozco radioed, "We have fire stage... We are currently facing southbound on Obispo and Cedar...correction Birch."
- 9:49:35 p.m.** Officer Miller radioed, "Subject is on the north corner of Obispo and Birch."
- 9:50:38 p.m.** Officer Miller radioed, "We have handcuffs on him."

## DNA Analysis

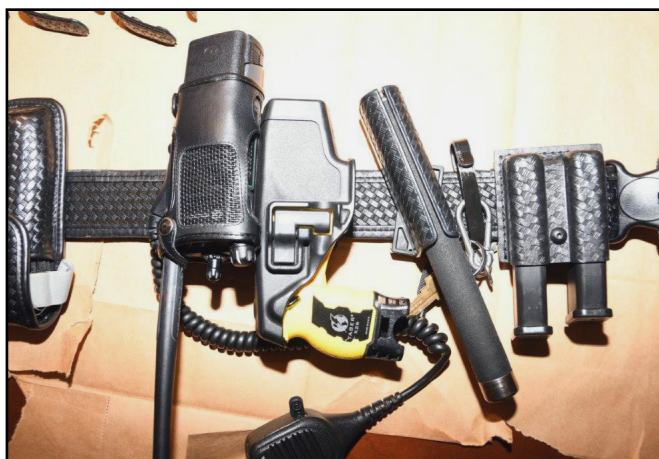
Investigators compared DC's DNA to the swabs obtained from the items recovered at the crime scene: the plastic toy gun, blue bandana, and black butane torch. After a DNA analysis, forensics concluded that the analysis provided very strong support that DC was a contributor to the DNA mixture recovered from the plastic toy gun, blue bandana, and black butane torch.

## Ballistic & Firearm Analysis

### Weapon Processing

Investigators processed Officers Jaimes and Orozco on the night of the shooting. The two officers were placed in separate rooms, and both officers declined to provide a voluntary blood draw.

Officer Jaimes was equipped with a Glock 17, Generation 4, 9-millimeter semiautomatic pistol (Serial No. BCHE005). The pistol, as configured, had an 18-round capacity with one round in the chamber and 17 rounds in the magazine. Officer Jaimes possessed two additional magazines, each with a capacity of 17 rounds. An examination of the firearm and magazine indicated that three shots were potentially fired: the pistol was loaded with 15 rounds of ammunition, with one round in the firing chamber and 14 rounds in the magazine. By this count, three rounds were missing. Officer Orozco's firearm was also examined and found not to have been discharged.



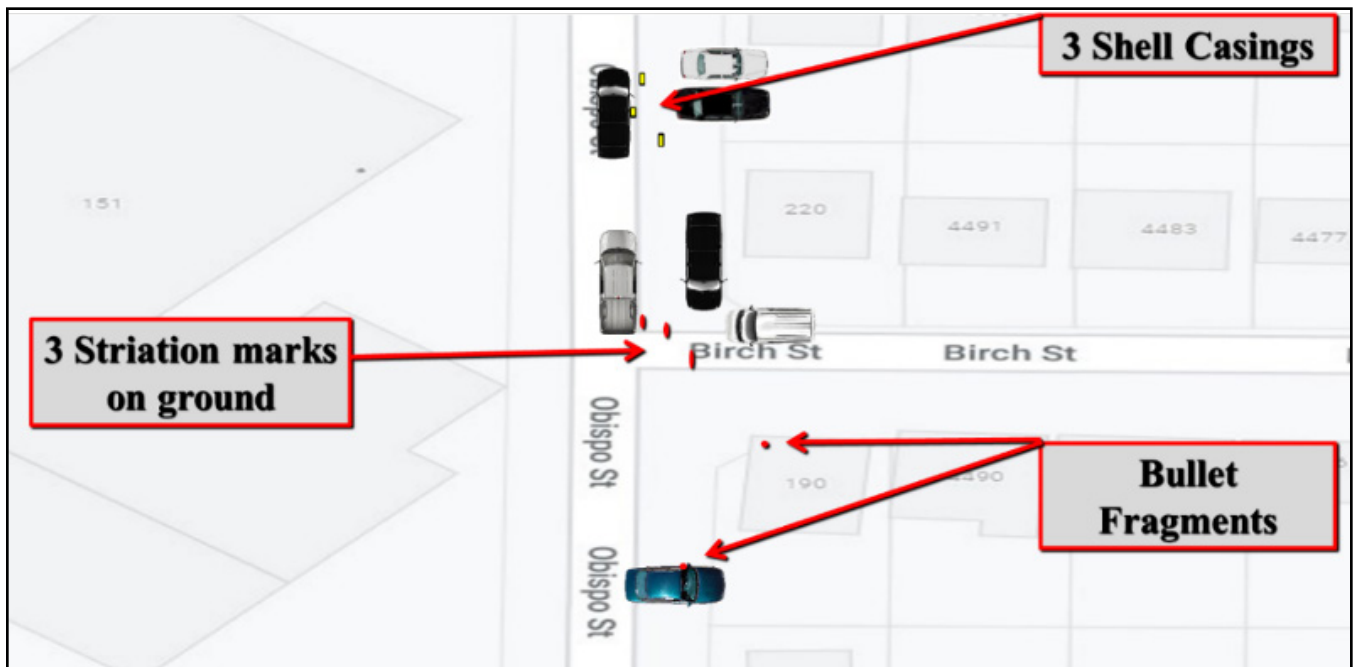
The photographs above depict Officer Jaimes's duty belt along with the items he carried at the time of the shooting. The photographs below depict Officer Jaimes's department-issued firearm, magazine, and ammunition.



## Evidence of Ricochet & Striation Markings

On August 30, 2021, DOJ investigators met with law enforcement personnel from the SMPD, including Sergeant Michael McGehee, Officer David Brewer, and Officer Johnathan Uhl, at the intersection of Obispo and Birch Streets.

Sergeant McGehee, Officer Brewer, and Officer Uhl specialized in traffic investigations and collision-reconstruction investigations. With their expertise, they assisted investigators with an examination of the sidewalks and roadways for any deviations consistent with a fired bullet striking the ground. Officer Uhl identified three deviations (possible strike marks) that were consistent with a bullet striking the ground. The deviations were consistent with the known direction of fire. Investigators tested the three markings for the presence of copper, and the analysis determined that two of the three markings tested positive for copper (consistent with the raw materials used in the production of bullets).





The prior diagram depicts the locations of the expended shell casings, striation marks, and bullet fragments. The photograph below shows, in red and orange circles, the location of the three striation marks.



The three photographs below are close-up images of the striation marks.





## Firearm & Ballistic Analysis

Analysts conducted a firearm and ballistic analysis on Officer Jaimes's firearm, the two bullet fragments, and the three shell casings obtained from the OIS scene. The following is a summary of the findings.

Item No.	Description
<b>BS4</b>	The fired bullet fragment recovered from the north stucco wall of the residence at Location #1 was unsuitable for comparison.
<b>BS7</b>	The fired bullet fragment recovered from Mr. Olvera-Preciado's right temporal lobe was fired from Officer Jaimes's department-issued weapon.
<b>007-001</b>	One WIN 9-millimeter Luger expended shell casing was fired from Officer Jaimes's department-issued weapon.
<b>007-002</b>	One WIN 9-millimeter Luger expended shell casing was fired from Officer Jaimes's department-issued weapon.
<b>007-003</b>	One WIN 9-millimeter Luger expended shell casing was fired from Officer Jaimes's department-issued weapon.

Officer Jaimes's department-issued firearm (Serial No. BCHE005) was test fired three times. The firearm discharged all three cartridges without malfunction. The submitted magazine contained 9x19 millimeter cartridges and was designed to carry 17 rounds of ammunition. The cartridges were imprinted with a "Win 9mm Luger" head stamp.

Items labeled 007-001, 007-002, and 007-003 were the fired cartridge cases from the OIS scene with the "Win 9mm Luger" head stamp. After microscopically comparing the cartridge cases and based on the agreement of all discernible class characteristics and the sufficient agreement of individual characteristics in the firing pin aperture shear mark, analysts concluded that items 007-001, 007-002, and 007-003 were fired in the same firearm. Analysts then microscopically compared one of the evidence cartridge casings to one of the test fires from Officer Jaimes's pistol. Based on the agreement of all discernible class characteristics and the sufficient agreement of individual characteristics in the firing pin aperture shear mark, analysts concluded that items 007-001, 007-002, and 007-003 were fired in Officer Jaimes's pistol.

The bullet fragment from Mr. Olvera-Preciado's right temporal lobe was labeled as item BS7. Item BS7 was an approximately 144 grain damaged copper-jacketed hollow-point bullet. Based on the agreement of all discernible class characteristics and the sufficient agreement of individual characteristics, they concluded that item BS7 was fired from Officer Jaimes's pistol.



The image on the left depicts a microscopic photograph of the bullet fragment from Mr. Olvera-Preciado's right temporal lobe; the image on the right depicts a microscopic photograph of the bullet fragment from the residence at Location #1..

The bullet fragment from the north stucco wall of the residence at Location #1 was labeled BS4. Item BS4 was an approximately 144 grain damaged copper-jacketed hollow-point bullet. Item BS4 was too damaged for the analyst to make a suitable comparison.

## 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. Moye* (2009) 47 Cal.4th 537, 549.)

Imperfect self-defense is the killing of another human being under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury and 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.)

### Transferred Intent

Under the doctrine of transferred intent, an individual that fatally kills a bystander may be liable for criminal homicide of the bystander. The doctrine is a “classical formulation” created within California’s common law: an individual who shoots with the intent to kill a certain person, misses, and hits a bystander instead, is subject to the “same criminal liability that would have been imposed had the fatal blow reached the person for whom intended.” (*People v. Bland* (2002) 28 Cal.4th 313, 321, citation and internal quotation marks omitted; see *People v. Scott* (1996) 14 Cal.4th 544, 551 [the doctrine does not denote an actual transfer of intent based on its literal meaning, but rather a policy—that an individual who shoots at an intended target and hits a bystander should be subject to the same criminal liability had the individual hit the intended mark].) The individual’s criminal intent of the intended target transfers to the unintended bystander, and as such, “the [individual] is deemed as culpable as if [the individual] had accomplished what he [or she] set out to do.”<sup>7</sup> (*Scott, supra*, 14 Cal.4th at p. 546; *Bland, supra*, 28 Cal.4th at pp. 323-324.)

The doctrine of transferred intent, however, applies equally to self-defense and defense of others. Where an individual uses deadly force in lawful self-defense or defense of others, the individual’s lack of criminal intent for homicide of the intended target transfers to the killing of the bystander. In such an event, where the individual intends to “injure or kill the person who poses the threat” and “inadvertently kills an innocent bystander,” the individual’s actions “insulate[s] [him or her] from criminal responsibility.” (*People v. Curtis* (1994) 30 Cal.App.4th 1337, 1357 [“[U]nder the doctrine of transferred intent, self-defense may also apply where the defendant intends to injure or kill the person who poses the threat, but inadvertently kills an innocent bystander instead”]; *People v. Mathews* (1979) 91 Cal. App.3d 1018, 1024 [“[W]e conclude that the doctrine of self-defense is available to insulate one from criminal responsibility where his act, justifiably in self-defense, inadvertently results in the injury

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<sup>7</sup> Depending on whether the intended target is killed in addition to the bystander, the shooter can be liable for two criminal homicides if both are killed (*People v. Souza* (2012) 54 Cal.4th 90, 120 [“[A] person maliciously intending to kill is guilty of the murder of all persons actually killed”], citing *Bland, supra*, 28 Cal.4th at pp. 323-324), or liable for an attempted murder of the intended target (if not killed) and criminal homicide of the bystander (if killed) (*Scott, supra*, 14 Cal.4th at p. 551 [“In their attempt to kill the intended victim, defendants committed crimes against two persons”]). But if the bystander is not killed, the shooter cannot be liable for attempted murder of the bystander under the theory of transferred intent. (*People v. Falaniko* (2016) 1 Cal.App.5th 1234, 1243.)



of an innocent bystander”].) Thus, “one’s criminal intent follows the corresponding criminal act to its unintended consequences...the reasoning applies equally to carry the lack of criminal intent to the unintended consequences and thus preclude criminal responsibility.” (*Mathews, supra*, 91 Cal.App.3d at p. 1023.)

## **Burden of Proof**

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

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

## **Legal Analysis**

The Department of Justice bases this analysis on all of the evidence reviewed, including: witness interviews; law enforcement reports; autopsy report; analyses of firearms, ballistics, and DNA; physical evidence; photographs; video recordings; and communications evidence.

The Department reviewed the evidence to determine whether there is evidence sufficient to support charges against Officer Jaimes for homicide of Mr. Olvera-Preciado, which in turn is dependent on whether Officer Jaimes acted in lawful self-defense against DC. We conclude that the evidence is insufficient to support criminal charges.

First, the evidence shows that Officer Jaimes did not intend to strike or kill Mr. Olvera-Preciado. Officer Jaimes was at the scene because of the encounter with DC, and from the evidence we have, we conclude that he drew his firearm and fired in response to DC’s actions, not because of anything Mr. Olvera-Preciado did.

The lack of lighting supports this conclusion. Officer Miller’s BWC shows that the lighting was minimal, and the scene was pitch black at the intersection where the OIS incident occurred and the driveway where Mr. Olvera-Preciado was located. The officers, emergency responders, and DC stated the intersection was dark with poor lighting and zero visibility despite the operating streetlights. Mr. Olvera-Preciado could not be seen from the officers’ position at the time of the shooting. In regards to

the driveway, the officers and emergency responders required additional light (flashlights, LED lights, or floodlights) to complete their tasks. The dome light in Mr. Olvera-Preciado's vehicle was not working, and his home was not otherwise illuminated. The evidence suggests that Officer Jaimes had no way of knowing whether Mr. Olvera-Preciado was in the line of fire.

The evidence further suggests that Mr. Olvera-Preciado was not in the direct line of fire. The investigation revealed that the officer's bullet ricocheted off the ground, traveled 174 feet, entered a slightly ajar car door, and penetrated Mr. Olvera-Preciado's body.

However, Officer Jaimes's mental state toward DC would apply to any possible crime as to Mr. Olvera-Preciado under the doctrine of transferred intent. Therefore, the question becomes whether the evidence shows that Officer Jaimes acted in self-defense towards DC.

Because Officer Jaimes did not provide a statement, it is unclear how much he knew about DC prior to the encounter. According to DC, Officer Jaimes (and Officer Orozco) had arrested him on two prior occasions. Officer Jaimes was also at the scene of the fire in the park when DC was identified as a suspect in the setting of the fire. He, along with Officer Orozco, went looking for DC, at a minimum, to investigate the fire.

Other officers were aware of additional information. Officers Orozco and Miller, in their interviews, said they had arrested DC on prior occasions, they were aware of DC's gang membership, and they knew he had a criminal history. DC was not violent during these prior contacts, but he was unpredictable, carried knives, and had challenged officers to fight. DC admitted in his interview that he was a gang member. On the night of the OIS, Officer Miller also discovered that DC had active warrants for arrest, and he conveyed this information to Officer Orozco. However, it is unclear whether Officer Jaimes was aware of DC's warrants or his prior history (beyond his own personal interactions at the two arrests).

In the encounter itself, DC was noncompliant and acted as though he was armed. When initially confronted, DC's hands were visible. But when Officer Orozco asked to speak with him, DC replied, "For what?," and he placed his right hand into his hoodie pocket. Officers Orozco and Jaimes immediately unholstered their firearms and pointed them at DC. Officer Orozco stated that he believed DC was armed, and it seems likely, given that Officer Jaimes responded the same way, that he shared the same belief in DC being armed.

The officers repeatedly told DC to show his hands and get down on the ground. Instead of complying, DC evaded, and the officers chased him with their weapons drawn. DC was noncompliant from the time the officers contacted him through and after the time of the shooting. The officers gave chase and ordered DC to show his hands multiple times. DC ignored their orders and kept his hand concealed in his hoodie pocket. Officer Orozco was so concerned that he sought cover next to a parked vehicle.

A few seconds later, DC "punched out" his right arm. DC stated he probably pulled out his hand while holding the black butane torch. The torch is shaped like a handgun. Officer Orozco was afraid and his "heart dropped" because he thought DC intended to shoot the officers. In response, Officer Jaimes immediately fired three rounds at DC in quick succession. Again, based on DC's actions, Orozco's assessment of the situation, and Officer Jaimes's response, it seems likely that Officer Jaimes believed that DC was going to fire at him and that therefore DC presented an imminent threat of great bodily injury or death.

Officer Orozco's statements are instructive because, as an officer in the same situation, he can be presumed to be a "reasonable officer," possessing the same observations of the incident as Officer

Jaimes. Orozco believed that DC had the imminent ability and intent to shoot the officers. Orozco did not shoot because he was able to take cover behind a parked vehicle. Jaimes responded to this apparent imminent threat of death or great bodily harm by firing three times at DC. The entire incident lasted less than 35 seconds.

Notably, DC, in his interview, provided additional insight as to the likely reason why Officer Jaimes fired his weapon. DC said the shooting began the moment he pulled his hands out of his pocket and stated that the officer “probably thought I had something and that's when they probably shot.” He later clarified and said the officer likely shot because of the torch in DC’s hand: “probably when I took it out, probably it could've look like a gun...I think that's why they shot.” He explained that his black butane torch was shaped like a gun, and he believed the torch was the reason the officer fired his weapon.

The officers’ subsequent actions evidenced that they believed DC was still armed after the shooting. The officers continued to provide voice commands to DC because he had his hands concealed underneath him. They took cover behind a vehicle, demonstrating that they thought DC was armed. And with Officer Orozco having his gun aimed at DC for coverage, the other officers moved from behind the vehicle and towards DC to make the arrest. After the arrest, the officers searched DC for weapons and gunshot wounds, further indicating the officers’ belief that he was armed.

All of this evidence strongly suggest that Officer Jaimes firing at DC in self-defense was objectively reasonable. Officer Jaimes’s actions were reactions to DC’s movements and his failure to comply with commands, which ultimately led Officer Orozco to believe that DC posed an imminent danger of great bodily injury or death. It seems likely that Officer Jaimes possessed the same belief. Moreover, such a belief, under the totality of the circumstances, was reasonable. DC was a suspect in a fire, he attempted to evade the officers, he failed to comply with commands to show his hands, and ultimately “punched out” his arm, possibly holding the torch, which was shaped like a firearm. These facts would support a reasonable though mistaken belief that DC posed an imminent threat of great bodily injury or death.

Given the totality of the circumstances, including the threat that Officer Jaimes likely believed, and could reasonably believe, that he faced, the evidence does not show that Officer Jaimes’s use of deadly force failed to comply with the requirements of self-defense under Penal Code section 835a. Because Officer Jaimes’s use of deadly force was to defend against an imminent threat, the officer’s lack of criminal intent of the intended target transfers to the homicide of Mr. Olvera-Preciado. Thus, Officer Jaimes is not criminally liable for the death of Mr. Olvera-Preciado.

## Conclusion

Based on the investigation and review of evidence, along with the applicable statutes, legal principles, and the subsequent analysis, Officer Jaimes acted in lawful self-defense and the defense of others when he fired his weapon at DC. Officer Jaimes’s shooting of DC was not a criminal act because the officer acted in lawful self-defense. This lack of criminal intent transfers to the accidental killing of Mr. Olvera-Preciado, and as such, Officer Jaimes is not criminally liable for Mr. Olvera-Preciado’s death. Therefore, there is insufficient evidence to support a criminal prosecution of Officer Jaimes for the death of Mr. Olvera-Preciado. As such, no further action will be taken in this matter.

## Policy and Practice Recommendations

This report prepared by the Attorney General is required to include "[r]ecommendations to modify the policies and practices of the law enforcement agency, as applicable." (Gov. Code § 12525.3 subd. (b)(2)(B)(iii).) In order to comply with this requirement, the DOJ conducts a review of the information obtained through the criminal investigation (e.g., body-worn camera footage, interview recordings, video recordings, witness statements, and other records) as well as the publicly-available policies of the agency employing any officers who are subject to the criminal investigation. Because of the nature of this process, and unlike DOJ's formal Civil Code section 52.3 investigations and oversight reviews of local law enforcement agencies, the DOJ may choose not to obtain additional information from the employing law enforcement agency or conduct independent investigation of the agency's practices outside of the single incident under review in this process. The Legislature has mandated that the DOJ provide recommendations that will assist the agency and the officer(s) involved in the incident in understanding, from an independent perspective, improvements that could be made to address what we have observed through this incident.

As required by Government Code section 12525.3, subdivision (b)(2)(B)(iii), the DOJ offers the following recommendations:

1. Activation of Body Worn Cameras: GDP Policy 421.5 governs when a body worn camera should be activated. It states:

The portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify Dispatch
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

In the present case, the Officer Jaimes was equipped with a body worn camera but failed to activate it. Under the governing body worn camera policy, Officer Jaimes should have activated his body worn camera prior to approaching DC. This is based on the following facts detailed in this report: (1) DC was likely suspected of committing arson; and (2) Officers Jaimes and Orozco were planning on arresting DC regarding a felony warrant. Officer Jaimes's failure to activate the body worn camera in this case not only violated policy, but deprived the Department and the public from obtaining valuable information regarding the shooting and killing of Mr. Olvera-Preciado.

The DOJ recommends that GPD revise their policy on body-worn camera footage to state that officer "shall" activate their body worn cameras rather than state that officers "should" activate them. Further, the DOJ recommends that GPD require that any time an officer does not activate their body-worn camera, the reason for not doing so must be documented and reviewed by a supervisor to ensure compliance with the policy. In addition, GPD should review, on a regular basis, a random sampling of



incidents to determine whether officers are activating their body-worn camera and if not, whether the reason for failing to activate them is documented appropriately. If the policy is not being complied with, GDP must mandate re-training of noncompliance officers and engage in appropriate discipline. Undertaking these measures will enable GDP to have more clarity for the public and for officers, and to determine if revisions to policy and/or additional training is needed to ensure that body-worn cameras are activated according to any new policy.

2. Communication among officers involved in or witness to an officer-involved shooting: The DOJ recommends that the GDP revise its Officer Involved Shooting policy, GDP Policy 310.5.1, to prohibit officers who deploy lethal force or witness an officer involved shooting from discussing the incident with one another and to avoid scenarios where these officers are alone with one another. The current GPD policy states:

(g) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction.

1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.

Here, Officers Orozco and Jaimes drove back to the station together. To maintain the integrity of any officer-involved shooting investigation, the GDP should require any involved or witnessing officers to remain separate once the scene has been stabilized. Nor should officers involved in the shooting or witnesses to the shooting be left together in a vehicle or on scene outside the presence of a supervisor which will ensure the integrity of the ensuing investigation. As such, we recommend that GPD make clear in its policy that the shooting officer(s) and witness will be separated unless “not possible” as opposed to “if feasible.” The policy should further require that if such separation is not possible, the supervisor on scene must document the reasons why such separation was not possible and the steps taken to try to ensure that the witnesses and shooting officer(s) were not separated, and require that the documentation and justification be reviewed by the next level of the supervisor’s chain of command.

3. In October 2018, Senate Bill 978 added Section 13650 to the California Penal Code, which provides:

Commencing January 1, 2020, the Commission on Peace Officer Standards and Training and each local law enforcement agency shall conspicuously post on their Internet Web sites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

In conducting its review, the California Department of Justice sought to review various policies of GPD that should have been easily located on the GDP website pursuant to Penal Code section 13650; however, these policies were not conspicuously posted as required by law. Indeed, it was challenging for the Department of Justice to locate these policies and would be even more challenging for a member of the public seeking out information to which they are statutorily entitled access. In light of the mandate that law enforcement agencies be more transparent with the community they serve and specifically that these policies be more accessible to the public, GDP should immediately revise its internet website to comply with state law.

4. In reviewing GPD’s Use of Force Policy 300, DOJ notes that the policy was last updated on July 29, 2020. It contains provisions that are not considered to be best practices and it even authorizes the

use of the carotid restraint which was outlawed in California in 2021 under Government Code section 7286.5 (“A law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency.”) GPD should immediately update its use of force policy to comply with state law.

5. In reviewing GPD’s policies and the facts and circumstances of the incident, the DOJ has two additional policy revisions that GPD should implement related to de-escalation and situational and positional awareness.

The GDP should revise its de-escalation policy to ensure it is consistent with existing law. The GDP’s current de-escalation policy states that officers “should” (1) consider actions to decrease the need for force and (2) “consider and utilize reasonably available alternative tactics and techniques” including “attempts to de-escalate a situation” when such actions are “feasible.” This language does not clearly require that officers use de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible, as mandated by Government Code section § 7286, subd. (b). The DOJ recommends that the GDP revise its de-escalation policy to require de-escalation and to include a non-exhaustive list of specific de-escalation tactics and techniques that an officer can employ, including verbal persuasion, warnings and advisements, the use of other resources (such as crisis intervention teams), and avoiding language or behavior that would escalate the stress or tension in the environment. The GDP should also mandate additional training for all staff on these policies.

GPD should also review its policies and training regarding situational and positional awareness of officers when engaging in the firing of a service weapon during a static encounter. In accordance with Government Code section 7286(b), GPD’s Use of Force Policy Manual states that “[t]o the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm.” (GPD Manual Section 300.4.) Here, the officers had DC stopped and at least one of the officers had taken cover behind parked vehicles, with a defensible distance between themselves and DC, on a residential street with many homes and vehicles at a time of day when people are likely to be at home. If it has not already done so, GPD should develop guidance for officers to support them in developing techniques for using deadly force in a manner that minimizes the risk of harm to innocent bystanders in residential locations under these circumstances.

DOJ recommends that GDP implement the above policy changes to bring their policies into compliance with current California law within 90 days of the date of this report, and thereafter provide mandatory training to all staff on the revised policies.