



C A L I F O R N I A

DEPARTMENT OF JUSTICE

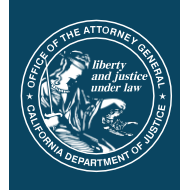
Report on the Investigation into the Death of Joseph Thomas Tracy IV on January 18, 2022

Riverside County AB 1506

June 2024

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INVESTIGATION OF OFFICER INVOLVED SHOOTING

BACKGROUND—AB 1506

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

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

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

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

PRIVACY STATEMENT

This report includes redactions of the names and other identifying information of witnesses and any family members of Mr. Tracy. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure outweighs any public interest in disclosure.

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

- Witness 1 (“W-1”), Mr. Tracy’s underage female companion.
- Witness 2 (“W-2”), W-1’s father
- Witness 3 (“W-3”), W-1’s grandfather
- Witness 4 (“W-4”), Mr. Tracy’s father
- Witness 5 (“W-5”), Mr. Tracy’s mother
- Witness 6 (“W-6”), person present during the officer-involved shooting

INTRODUCTION

On January 18, 2022, the Gang Impact Team of the Riverside County District Attorney’s Office conducted surveillance on Joseph Thomas Tracy IV at the Travelodge Hotel in the City of Hemet. The team had information that Mr. Tracy was selling large quantities of fentanyl, he was armed with a P80 handgun with a high capacity magazine, and he was staying at the hotel with an underage female. After attempts to lure Mr. Tracy out of the hotel room, Mr. Tracy saw the officers and fled. During the pursuit, Detective Christopher Porrazzo, Deputy Joshua Smith, Detective Richard Kerr, and Sergeant Arthur Paez shot and fatally wounded Mr. Tracy under the belief that he was armed and intended to shoot the officers. Mr. Tracy did possess a handgun, which he dropped during the pursuit and before the officer-involved shooting (“OIS”) occurred, and the officers were unaware Mr. Tracy had dropped the gun.

The DOJ investigated and reviewed the officer-involved shooting pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506 (2019-2020 Reg. Sess.)). This report is the final step in the DOJ’s review of the fatal OIS of Mr. Tracy, and is limited solely to determining whether criminal charges should be brought against the involved officers, and potential 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). Upon thorough examination, and as discussed in detail below, we conclude that no criminal charges will be filed because the evidence is insufficient to prove that the involved officers committed a crime.

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

SUMMARY OF INCIDENT

In early January 2022, Murrieta Police Department (“MPD”) Detective Blake Williams, a member of the Riverside County District Attorney’s Office (“RCDA”) Gang Impact Team (“GIT”)¹, received information from a confidential informant (“CI”) that Mr. Tracy was in possession of a P80 handgun with a high capacity magazine, was selling large amounts of fentanyl, and was staying at the Travelodge located at 2625 West Florida Avenue, City of Hemet. The CI stated Mr. Tracy has been staying at the location for about two months with his girlfriend and dog. The CI said Mr. Tracy had associated with gang members, had been known to be violent, and would likely flee from law enforcement. The CI had purchased fentanyl from Mr. Tracy on past occasions and saw Mr. Tracy with a handgun about one week earlier. The CI told Detective Williams that Mr. Tracy was staying in room 221 and identified Mr. Tracy’s car as a silver Cadillac SUV.

On January 15, 2022, Detective Williams observed a silver Cadillac SUV (California license plate number 8JNB710) in the hotel parking lot. A subsequent DMV records check performed by Detective Williams revealed the vehicle was registered to Mr. Tracy. Detective Williams learned, through a records check, that Mr. Tracy was on felony probation with search terms as a result of a conviction for possession of a controlled substance while armed with a firearm. His probation was set to expire on May 12, 2023. Mr. Tracy had also been arrested for burglary on November 24, 2020, and arrested for felon in possession of a firearm, carrying a loaded concealed firearm, and felon in possession of ammunition on September 22, 2021. Mr. Tracy was currently out on bail for the firearms case.

Detective Williams conveyed all of this information to Riverside Police Department (“RPD”) Detective Richard Kerr, a member of the RCDA GIT, who then briefed the GIT, including Supervising Investigators Benjamin, Cervello, and, Kwan; Senior Investigators Cupersmith and Monis; Detective Kerr, Deputy Smith, Detective Porrazzo, and Detective Lee, of the situation prior to the OIS. The GIT also learned that the female with Mr. Tracy was underage, and to prevent a potential hostage situation, the GIT decided to try and lure Mr. Tracy out of the hotel room.

The GIT team reached out to Hemet Police Department (“HPD”) Sergeant Arthur Paez, a member of the Region 3 Riverside County Gang Task Force (“GTF”), and asked for assistance covering the northern perimeter of the hotel parking lot. Sergeant Paez, Deputy Salvador Waltermire, and CHP Officer Michael Bell arrived on scene and were briefed of the investigation. Specifically, the GIT informed Sergeant Paez and his team that they needed assistance contacting Mr. Tracy, who was suspected of selling fentanyl and possessing a firearm. They were shown photographs of Mr. Tracy and were told that he had prior weapons arrests. According to Investigator Monis, the team planned to contact Mr. Tracy outside of his room, and then do a probation search of his room, to see if they could recover firearms and fentanyl.

Surveillance began at approximately 9:52 PM on January 18, 2022. Senior Investigator Ryan Monis checked the hotel’s roster for room 221, which showed that the room was rented out to a woman, later identified as W-1, who paid for the room in cash. The GIT team determined that W-1 was a 17-year-old girl and possible victim of human trafficking.

¹ The GIT is a multi-agency undercover police unit that specializes in apprehending violent and dangerous suspects, particularly when gang activity and firearms could be involved. Members of GIT involved in this incident worked for several agencies in Riverside county. Supervising Investigators Dean Benjamin, Chuck Cervello, and Robert Kwans, and Senior Investigators Gary Cupersmith and Ryan Monis were employed by the Riverside County District Attorney’s Office. Detective Daniel Lee was employed by the Beaumont Police Department. Detective Blake Williams was employed by the Murrieta Police Department. Officer Michael Bell was employed by the CHP.

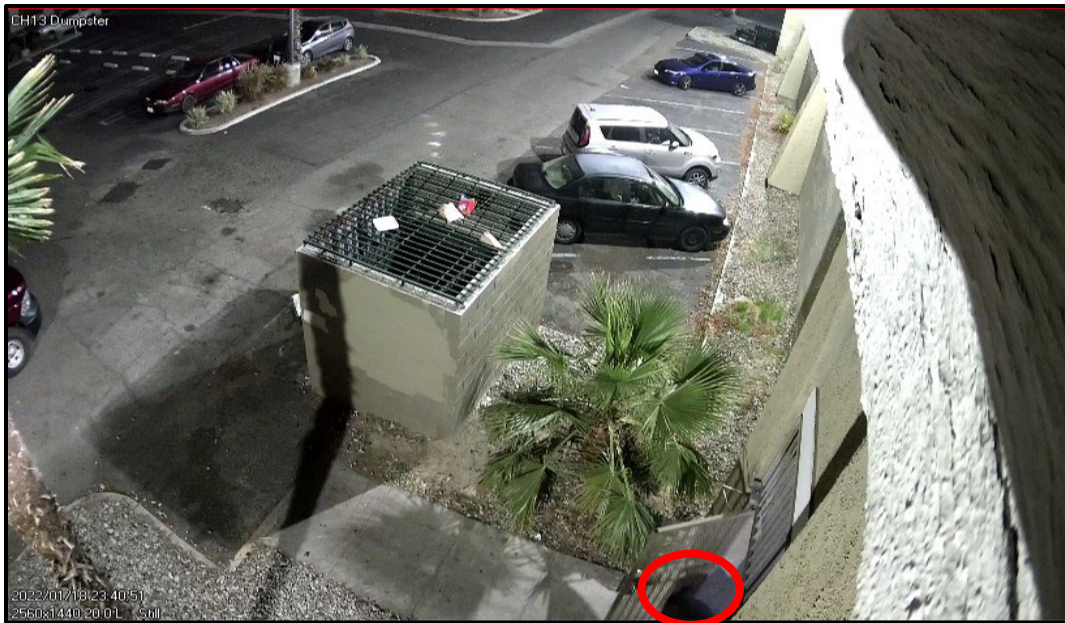
Mr. Tracy's room had south-facing windows that allowed Mr. Tracy to view his Cadillac in the hotel parking lot. The surveillance team attempted various ruses to lure Mr. Tracy out of his room and prevent a hostage situation. They attempted to set off Mr. Tracy's car alarm, took off Mr. Tracy's car cover, and Supervising Investigator Cervello also tried turning on the alarm for his undercover vehicle. But these attempts to lure Mr. Tracy out of his hotel room were unsuccessful.

At one point, Detective Kerr threw a water bottle at Mr. Tracy's hotel window, causing the window to break. Supervising Investigator Gary Cupersmith observed the interior light of the room switch on and observed a male and female looking out the window. Cupersmith positively identified Mr. Tracy and notified the team that Mr. Tracy was leaving the room.



View of the south exit door of the hotel and the rear of Mr. Tracy's silver Cadillac SUV. The upper right window was Mr. Tracy's hotel room.

Mr. Tracy exited the hotel at approximately 11:40 PM through the south exit of the hotel. Mr. Tracy peaked his head out to survey the situation. Mr. Tracy walked east toward the southeast corner of the hotel, and at 11:41:24 PM, encountered the GIT team who ordered him to stop and surrender. Mr. Tracy was given commands including "hands, hands, let me see your hands," and "get on the ground." Mr. Tracy fled west.



Surveillance still photograph showing Mr. Tracy exiting the hotel.

Deputy Smith and Detective Porrazzo were armed with 40-millimeter less lethal sponge round launchers. Deputy Smith fired four rounds from his less lethal launcher at Mr. Tracy during the pursuit. These rounds made contact with Mr. Tracy, causing him to flinch. But they failed to stop Mr. Tracy, who continued to flee. As later recounted during his interview, Investigator Monis was in the parking lot in a truck that was unmarked but had emergency lights at the front, and he saw Deputy Smith reloading and firing so quickly that he wondered whether Mr. Tracy was firing back at the officers.

Investigator Monis drove toward Mr. Tracy with the emergency lights on, and exited his truck to contact Mr. Tracy. Mr. Tracy turned north at the southwest corner of the hotel. Mr. Tracy ran through the hotel's parking lot between a row of parked cars and the hotel's western wall. Detective Porrazzo, RSO Deputy Joshua Smith, Detective Kerr, Investigator Cervello, and Investigator Monis, continued to pursue Mr. Tracy.

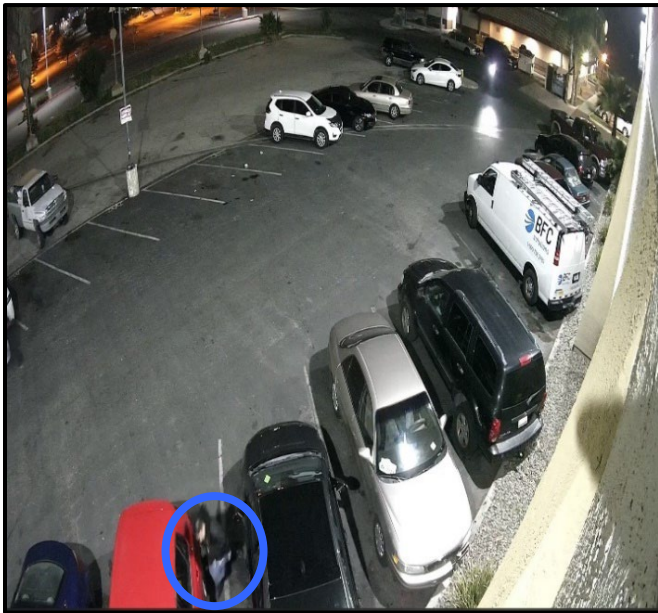


Mr. Tracy's path of travel west, along the hotel's south side, and then north between a row of parked cars and the western wall.

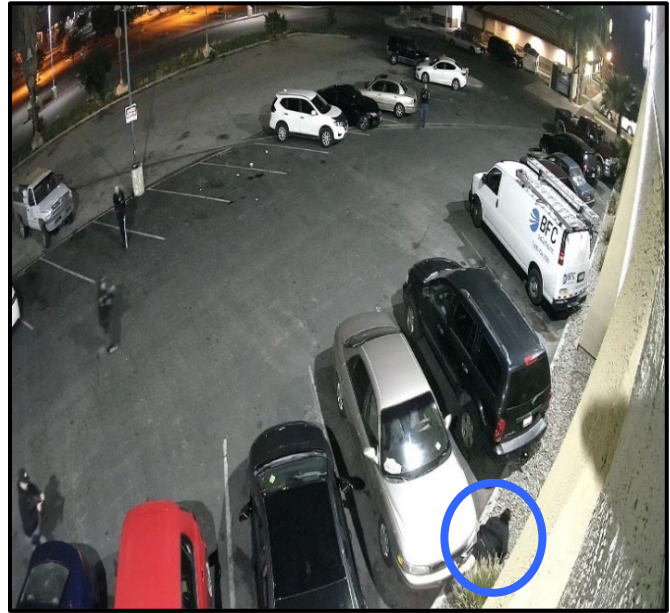
Mr. Tracy ran with his right hand kept close to his side, tucked in either his waistband or jacket pocket.² Based upon these observations, Detective Porrazzo believed that Mr. Tracy was holding a handgun. Investigator Monis was “positive” that Mr. Tracy had a firearm. Mr. Tracy ran crouching, between the vehicles and the wall.

During the pursuit, Deputy Smith shouted, “Hand, hands, let me see your hands,” “He’s reaching, he’s reaching,” and “I don’t know what he’s reaching for,” as recorded by his body worn camera and attested to by the other officers.

During the pursuit, as Mr. Tracy ran north, he passed through two cars before tripping and falling on a rocky parkway area. Mr. Tracy got up and continued moving between two other parked cars and toward the officers in the parking lot, crouching low. Officers that were later interviewed stated they believed Mr. Tracy intended to find a location from which he could ambush and shoot the officers, which was based his actions of crouching low behind parked vehicles, and their belief that he was armed.



Mr. Tracy running between two cars.



Mr. Tracy tripping at a rocky parkway.

Mr. Tracy began to emerge from between the vehicles and into the officers’ views. Several officers later stated in interviews that, in that moment, they were afraid that Mr. Tracy was armed and intended to fire at them. Detective Porrazzo noted that Mr. Tracy was initially in a squatting position as he started to rise with his hand rising from his waistband. Detective Porrazzo stated that Mr. Tracy “was coming up towards a low ready position.” He saw Mr. Tracy’s hand “clear that waistband” and “saw was his hand coming up and coming into, kind of, to grip and to come out.” Sergeant Paez saw Mr. Tracy lift his hands from his waistband and move them “up and out.”

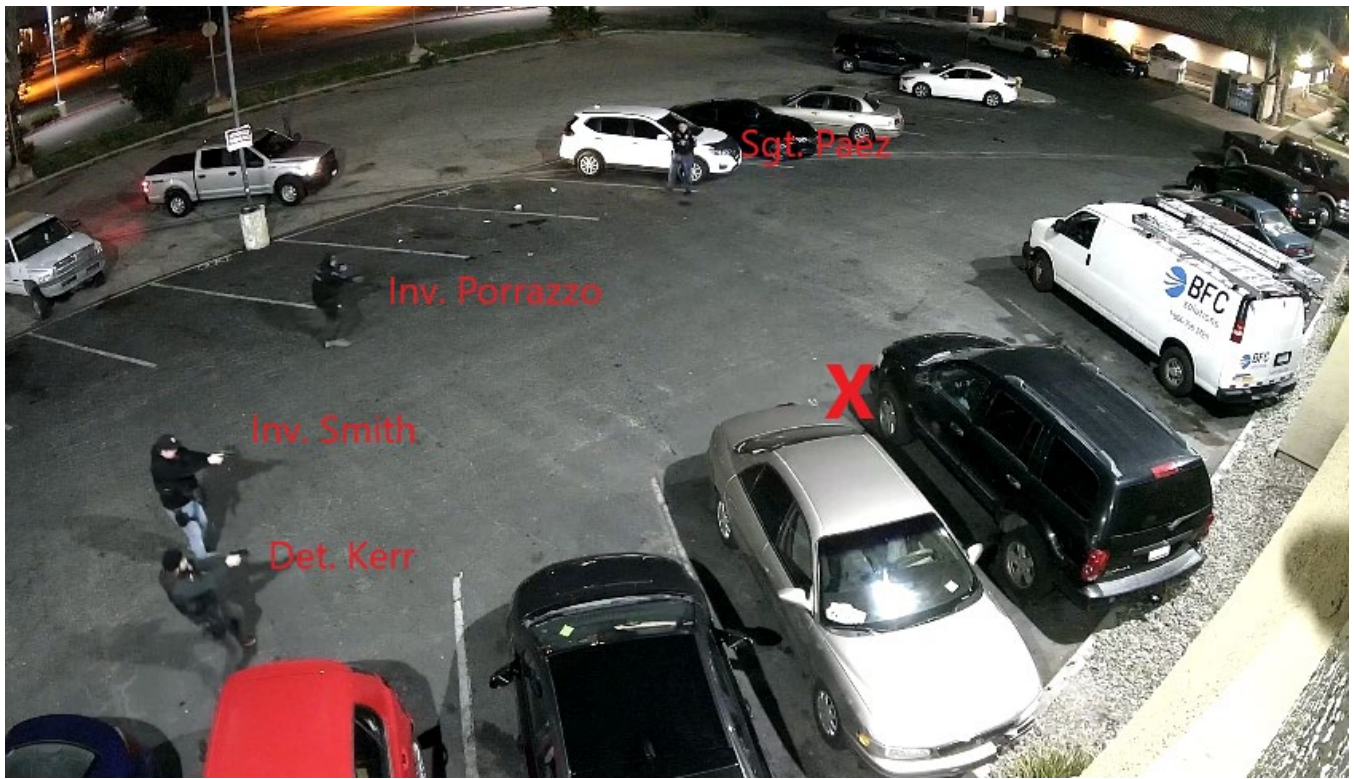
² According to Detective Porrazzo, Mr. Tracy’s “right hand was tucked right in that waistband that entire time.” In contrast, Investigator Cervello stated that he saw Mr. Tracy’s “his right hand in his jacket pocket.” Also, Investigator Monis observed that “both hands were in front of [Mr. Tracy’s] body by his waist and his right hand he could not see as if it was tucked in his clothes.”



This diagram depicts the positions of all involved parties shortly before the OIS.

Officers fired their weapons at Mr. Tracy at 11:41:30 PM, and fired approximately fifteen rounds.³ Specifically, Detective Porrazzo fired six rounds, Deputy Smith fired two rounds, Detective Kerr fired one round, and Sergeant Paez fired six rounds.

³ There were eleven gunshot wounds noted in the coroner's report.



This diagram depicts the positions of all involved parties shortly after the OIS.



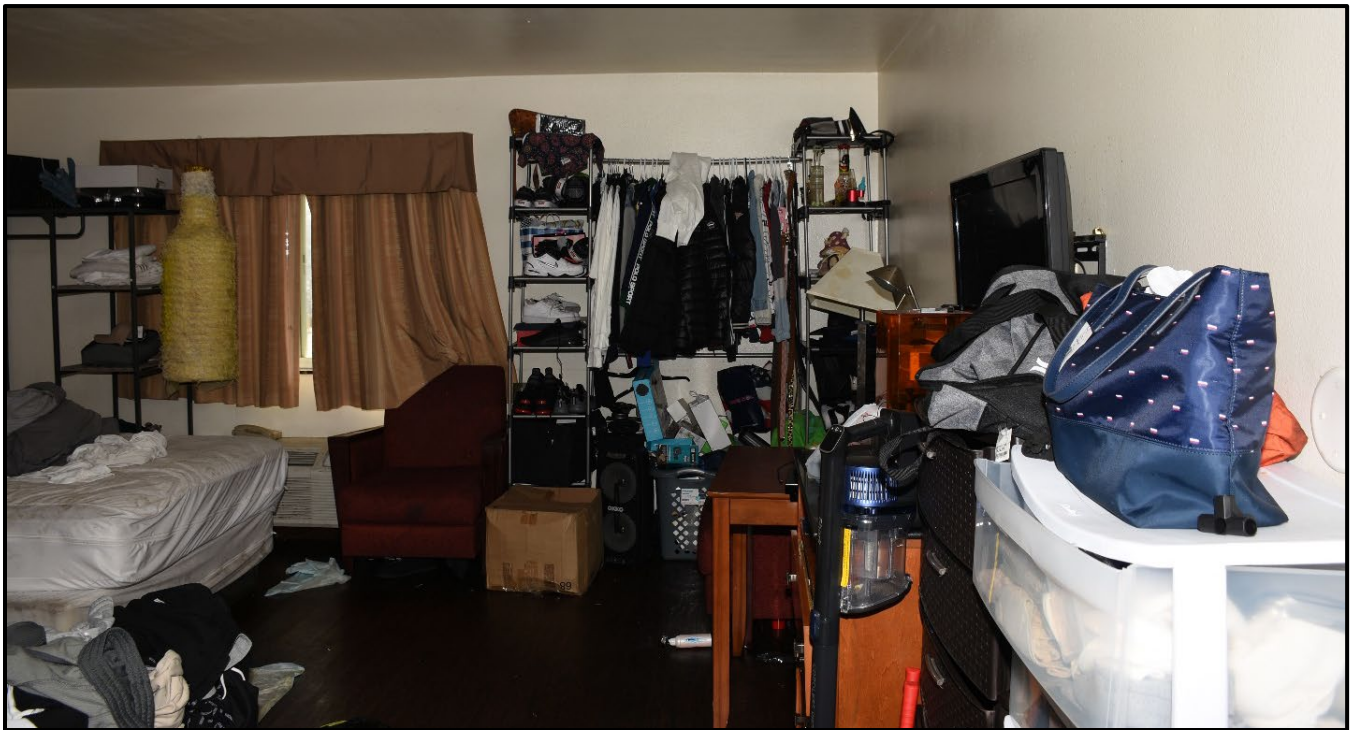
Still image from Sergeant Paez's body worn camera footage showing the OIS.

Officers continued to command Mr. Tracy to show his hands. At 11:42 PM, Sergeant Paez approached Mr. Tracy, handcuffed him, and checked for a pulse. Sergeant Paez determined Mr. Tracy did not have a pulse. At 11:48 PM, the Hemet Fire Department (“HFD”) arrived on scene. HFD Paramedic Daniel Sprague pronounced Mr. Tracy dead at 11:55 PM. No officers were injured during the OIS incident.

W-1 was detained at the hotel room. She was later transported to the Hemet Police Department station and interviewed.

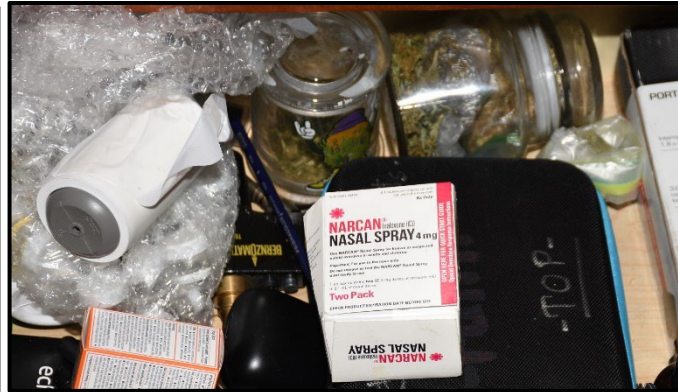
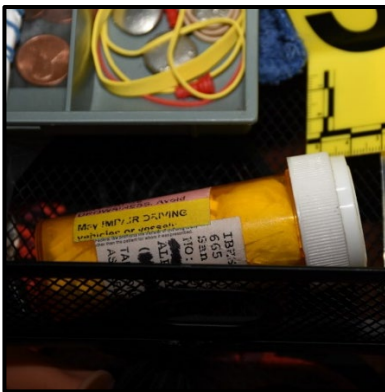
Investigator Monis located an un-serialized handgun approximately 22 feet from where Mr. Tracy’s body ultimately came to rest. The firearm was a tan P80 un-serialized “ghost” gun. During the autopsy of Mr. Tracy, a Taser was located inside his left front pocket.

On January 19, 2022, at 11:35 AM, a search warrant was executed on Mr. Tracy’s hotel room. HPD officers⁴ executed the search warrant and located a black holster, glass vials, \$5,500 in cash, cellular phones, several different unknown substances suspected to be narcotics, and a locking safe.



Hotel room #221 where Mr. Tracy and W-1 were staying

⁴ The search of Mr. Tracy’s hotel room was conducted by HPD Investigator Willison, Corporal Reynoso, Detective Wood, CST Murphy, and Officer Jarad Preston.



Unknown substances (suspected of being narcotics) found in Mr. Tracy's hotel room.

INVESTIGATION

Overview

On January 18, 2022, RCDA GIT members were involved in an OIS incident at the Travelodge Hotel in Hemet, California. On January 24, 2022, the DOJ Division of Law Enforcement (“DLE”) California Police Shooting Investigation Team (“CaPSIT”) received notification of the OIS. The incident was determined to be a qualifying event under AB 1506. The delayed notification to DOJ was because Mr. Tracy was armed with a firearm during the incident, but it was later determined that he was unarmed for purposes of AB 1506 once he dropped his firearm immediately prior to the OIS.

CaPSIT responded to the scene to initiate a criminal investigation on behalf of the DOJ. When CaPSIT agents arrived, however, the OIS scene had been processed and evidence collected by the Riverside County Sheriff's Office (“RCSO”) and the Hemet Police Department (“HPD”), who provided reports and evidence packets to the DOJ.

In the weeks and months after the OIS incident, the DOJ conducted interviews of sworn and non-sworn witnesses, reviewed video evidence of the OIS, examined the shooting scene, collected and analyzed evidence, and examined the officers' weapons. The DOJ investigation into the death of Mr. Tracy was comprehensive, thorough, objective, and independent. In total, four law enforcement officers and 31 civilian witnesses were interviewed as part of this investigation, and one incident scene was processed for evidence. This report represents hundreds of hours of investigation conducted by the DOJ, HPD, and RCSO.

Evidence Reviewed

The DOJ received and reviewed extensive investigative materials regarding this incident, including: reports from investigating officers; the coroner's report; 511 crime scene photographs; 355 autopsy photographs; 57 aerial photographs; 211 officer processing photographs; dispatch records and logs of the incident; video recordings (42 surveillance videos from the hotel's security cameras and body worn camera ("BWC") footage from the four involved shooting officers); 35 witness interviews (including four law enforcement officers and 31 civilians); physical evidence (including shell casings, fired bullets, and other items obtained from the scene); and analyses on deoxyribonucleic ("DNA") and ballistics and firearms conducted by the DOJ's Bureau of Forensic Services ("BFS").

Incident Scene Description

There is only one location associated with this incident. The OIS took place in the west parking lot of the Hemet Travelodge, located at 2625 West Florida Avenue, Hemet, California. The portions of the hotel's parking lot, where the pursuit and OIS took place, form an L-shape around the hotel, wrapping around the hotel's southern and western sides.

The main entrance of the hotel is on the eastern side. The hotel is located in a commercial park bounded by West Florida Avenue to the north, North Kirby Street to the east, West Acacia Avenue to the south, and South Sanderson Avenue to the west. The hotel is located in the northeastern portion of the commercial park, very close to West Florida Avenue and North Kirby Street; the area is primarily a commercial area.

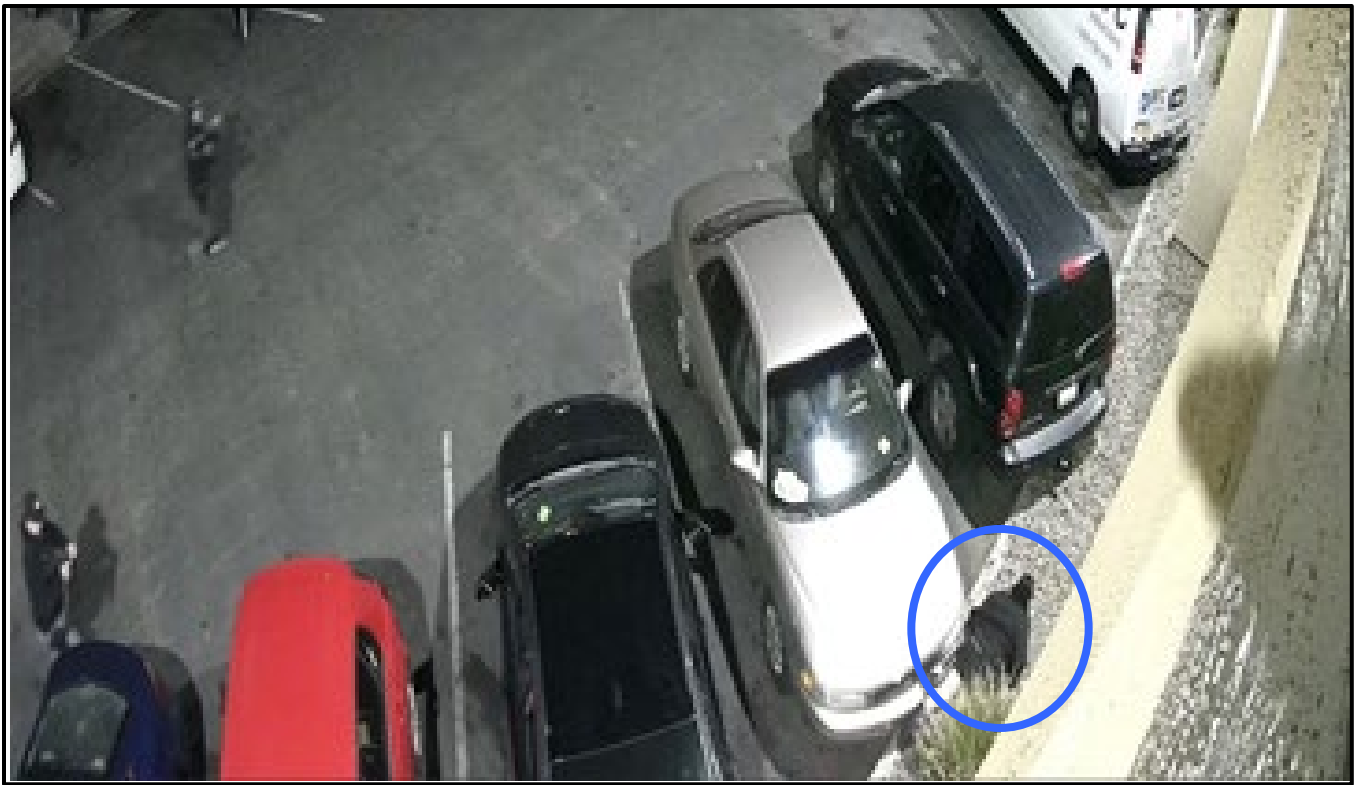


Google Maps satellite view of the Hemet Travelodge at 2625 West Florida Avenue and the surrounding area

Incident Scene Evidence Recovery

The evidence at the incident scene was processed, which included evidence recovery, scene documentation, and photographs. More than 40 items of evidence were recovered and booked in conjunction with this investigation.

After the OIS occurred, Investigator Monis searched the area and found the “ghost gun.” The tan Polymer 80 un-serialized, semi-automatic pistol was found where Mr. Tracy had tripped and fallen during the pursuit by GIT team members.



Still image from a hotel surveillance footage showing where Mr. Tracy tripped during the pursuit

The “ghost gun” was located approximately 22 feet from Mr. Tracy’s body.



The location where Mr. Tracy’s firearm was recovered



The firearm found approximately 22 feet from Mr. Tracy's body

The pistol had a PMAG 10 GL 9 magazine with six cartridges and one in the chamber.



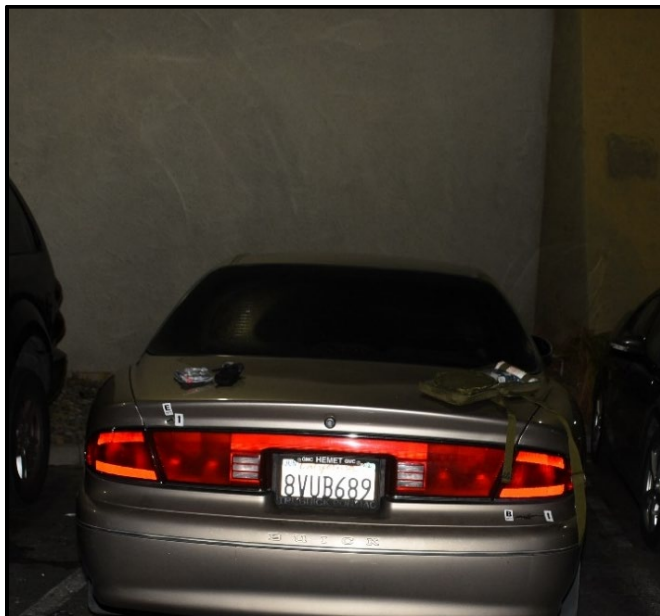
The magazine and bullets found in the un-serialized semi-automatic pistol

Firearms and Ballistics Evidence

A total of fifteen rounds were fired during the incident. Five projectiles and one jacketing were recovered from Mr. Tracy's body and clothing. Detective Porrazzo fired six rounds. Deputy Smith fired two rounds. Detective Kerr fired one round. Sergeant Paez fired six rounds. The investigation showed that rounds fired landed in multiple locations at the Travelodge Hotel, opposite the firing positions of the officers. None of the bullets recovered, however, were suitable for comparison.



Diagram of the calculated shooting distances between the involved officers and Mr. Tracy.



One bullet strike mark on a car in the area



The location of further bullet strike marks, near where Mr. Tracy came to rest



Bullet strike marks on the western wall of the Travelodge



One bullet strike mark on a nearby car



One bullet strike mark on a nearby car

DNA Analysis

The Bureau of Forensic Services within the Department of Justice conducted a DNA analysis on Mr. Tracy's tan P80 un-serialized firearm found at the OIS scene. The BFS took swabs from the firearm and compared them to a sample of Mr. Tracy's DNA. The DNA analysis provided "very strong support" that Mr. Tracy contributed to the DNA mixture detected on the left side of the firearm.

Body-Worn and Civilian Camera Footage

Body-worn camera ("BWC") and stationary surveillance cameras captured different portions of the OIS from different angles and positions. The footage captured Detective Porrazzo and Deputy Smith, stationed at the hotel's southeastern side, making contact with Mr. Tracy after he exited the hotel, with officer giving commands including "hands, hands, let me see your hands," and "get on the ground."

Mr. Tracy ran west, turning north at the southwest corner of the hotel, and the officers pursued. On the other side of the hotel, Sergeant Paez and his team made their way south. Most of his team moved southeast, into the hotel's central courtyard, while Sergeant Paez broke off and turned towards the western parking lot, moving south toward Mr. Tracy and the GIT team. Mr. Tracy, moving north through the western parking lot, proceeded between parked cars and the hotel's western wall and continued northbound. However, Mr. Tracy tripped on a plant and his pants fell to his ankles. He got up, and while crouching, moved between two cars in the direction of the officers, who had fanned out to various positions in the parking lot.



As Mr. Tracy emerged from between the cars into the officers' view, he lifted his hands up from his waistband and out toward the officers, and he was immediately fired upon by the officers. Mr. Tracy

fell to the ground, and the officers handcuffed Mr. Tracy, checked for his pulse, and proceeded to secure the scene.

Body-Worn Camera Video (BWC)

During the investigation, the DOJ obtained BWC video from Deputy Smith, Detective Porrazzo, and Sergeant Paez. The DOJ also obtained BWC video from W-1's interview at Hemet PD, BWC video of W-1's father's interview, BWC video from Beaumont PD Detective Daniel Lee, BWC video from CHP Officer Michael Bell, 12 BWC video clips from RSO Deputy Salvador Waltermire, surveillance camera from W-2's interview at Hemet PD, and seven BWC videos from witness canvasses.

Sergeant Paez, Detective Porrazzo, and Deputy Smith had body-worn cameras that captured portions of the investigation and pursuit. Of these, only Sergeant Paez's department-issued body worn camera directly captured the OIS. Detective Kerr was not wearing a body worn camera. Uniformed officers that arrived on scene after the shooting had body worn cameras, but their cameras did not capture the OIS incident.

Sergeant Arthur Paez's BWC

Footage from Sergeant Paez's BWC captured the OIS. The footage depicts Sergeant Paez waiting with his team at the northwestern corner of the hotel's parking lot, making sure that the perimeter of the parking lot was secure. At 11:41:06 PM, he and his team moved south toward the hotel.

Sergeant Paez eventually turned toward the hotel's western parking lot, with Sergeant Paez still on the north end. When the pursuit occurred, Sergeant Paez ran south through the western parking lot. As he moved south, Paez's handgun can be seen in his right hand. Other officers also came from the opposite end of the parking lot. As Sergeant Paez reached the other officers, he faced Mr. Tracy. Mr. Tracy appeared in the BWC's view, in between two vehicles, taking a crouching position, and moving his hands upwards.

Detective Christopher Porrazzo's and Deputy Joshua Smith's BWC

Footage from department-issued BWC for both Detective Porrazzo and Deputy Smith captured the initial contact the GIT team had with Mr. Tracy. The footage depicts Detective Porrazzo waiting with Deputy Smith at the southeastern corner of the hotel, behind its eastern wall. At approximately 11:41 PM, Mr. Tracy appeared. Detective Porrazzo yelled "hands," and Deputy Smith yelled "hands, hands, let me see your hands." Detective Porrazzo and Deputy Smith were standing next to each other. Mr. Tracy immediately fled, and the officers pursued him. At the time of the OIS, Deputy Smith's BWC lens was covered by his 40-millimeter less lethal launcher and it did not capture the OIS itself. Detective Porrazzo's BWC deactivated during the pursuit and did not capture the OIS.

Stationary Video

A total of 42 surveillance videos were recovered from the hotel. Of these, only three captured parts of the OIS incident.

There was a camera that captured footage of the southern side of the hotel. The footage provided parts of Mr. Tracy's initial contact with officers. Mr. Tracy opened the exit doors, surveyed the area, and exited. He walked out, turned east, and momentarily exited the surveillance camera's view. Shortly after, the footage shows Mr. Tracy running westward from multiple officers, and turning north along the western side of the hotel.

Another camera captured the view of the western side of the hotel. The footage shows Mr. Tracy running from officers and moving behind parked cars alongside the western wall. Mr. Tracy fell near a

plant. His pants dropped to his ankles, and he struggled to get up. By then, officers fanned out around the parking lot. Mr. Tracy moved between two vehicles, crouched, and as he emerged, raised his hands outward from his chest. As Mr. Tracy raised his arms and emerged from the two vehicles, the officers fired upon Mr. Tracy. Mr. Tracy fell to the ground.



Another camera captured a separate view of the western side of the hotel. The footage shows Mr. Tracy running from officers and moving behind parked cars along the western wall. Mr. Tracy fell near a plant. His pants dropped to his ankles, and he struggled to get up. By then, the officers had fanned out around the parking lot. Mr. Tracy moved between two vehicles. At this point, his movements were obscured from view by a large vehicle. As Mr. Tracy emerged from the vehicles, the officers fired on Mr. Tracy.

Officer Processing

The officers who discharged their firearms were photographed on the night of the OIS.

Deputy Smith was wearing a black hooded long sleeved sweatshirt, blue jeans, black baseball hat and a department issued black Riverside Sheriff load bearing vest (LBV). On the front right side of the LBV were name tags that read "SMITH" and "SHERIFF." Deputy Smith had a green and black cloth badge on the left side of his LBV which said "Deputy Sheriff Riverside County." On the back of his LBV were three patches. On the drag strap was "SMITH." The center patch was a "SHERIFF GANG IMPACT TEAM" patch and below that was a "US MARSHALS FUGITIVE TASK FORCE" patch. The lettering was in white over a black background. He was wearing a personal nylon type belt with only his thigh holster attached to it. The rest of his equipment was located on his LBV.

Detective Kerr was wearing a black hooded sweatshirt, black jeans, black knit cap and a department issued black Riverside Police LBV. On the front right side of the LBV were name tags that read "1697" and below it, "POLICE." Detective Kerr had a yellow cloth Riverside Police badge on the left side of his LBV. He was wearing a nylon Sam Brown belt with a thigh holster and a set of keys attached to it. On the back of his LBV was a large "POLICE" patch. All lettering was in yellow over a black background. The rest of his equipment was located on his vest.

Detective Porrizzo was wearing a black hooded sweatshirt, olive drab running pants, brown tactical gloves, black and grey baseball hat and a department issued black Riverside Sheriff LBV. The black

sweatshirt had "SHERIFF" in grey lettering on both arm sleeves. On the front right side of the LBV were name tags that read "PORRAZZO" and "sheriff." Detective Porrazzo had a green and gold cloth Sheriff badge on the left side of his LBV. On the back of his LBV were three patches. On the drag strap was "PORRAZZO." The center patch was "SHERIFF" and below that was "GANG IMPACT TEAM." All the lettering was in white over a black background. He was wearing a Sam Browne style belt with suspenders. The belt consisted of a triple magazine pouch with three 17-round magazines, a tourniquet and a Safariland drop down thigh holster. He had a US Marshall badge affixed to the leg strap of the thigh holster. The rest of his equipment was on located on his vest.

Sergeant Paez was wearing a black shirt, blue jeans and a department issued black Hemet Police LBV. His black long sleeve shirt had printed Hemet patches on each shoulder and "POLICE" on each arm. On the front right side of the LBV were name tags that read "A. PAEZ" and below it, "POLICE." Sergeant Paez had a silver cloth Hemet Police badge on the left side of his LBV. He was wearing a nylon Sam Brown belt with a thigh holster, set of keys, flashlight and tourniquet attached to it. He had a Hemet Police badge affixed to the leg strap of the thigh holster. On the back of his LBV was a large "POLICE GANG TASK FORCE" patch and a nameplate "A. PAEZ" patch on the LBV drag strap. All lettering was in white over a black background. The rest of his equipment was located on his vest.

Autopsy

Mr. Tracy was born on August 23, 2001. At the time of the OIS incident, he was five feet and six inches tall, and he weighed 135 pounds.

Chief Forensic Pathologist Doctor Mark Fajardo, M.D., assisted by Coroner Technician Haylee Solomon, conducted the autopsy of Mr. Tracy at the Riverside County Sheriff-Coroner's facility on January 20, 2022.

During the autopsy, Dr. Fajardo located a Taser from Mr. Tracy's left, front coat pocket. Dr. Fajardo also recovered a projectile from the inner portions of Mr. Tracy's garments.



The Taser found in Mr. Tracy's left coat pocket

Dr. Fajardo identified 11 gunshot wounds on Mr. Tracy's body. The following is a list of the gunshot wounds; they are not necessarily listed in accordance with the sequencing of the gunfire.

- **Gunshot Wound No. 1.** The wound was present at the midline portions of the chin, lips, and nose. The wound was a vertically oriented graze. The projectile traversed sharply upward, only involving the skin and epidermis of the midportion of the face.
- **Gunshot Wound No. 2.** The entrance wound was present at the left temporal region of the head, located four inches from the top of the head and four inches left of the anterior midline. The projectile traveled sharply downward and minimally from back to front; the path travel involved the scalp and musculature of the left temporalis muscle, as well as the muscles of mastication on the left with no vital structures encountered. There was no exit wound, and a deformed jacket without the core was recovered immediately adjacent to the left orbit.
- **Gunshot Wound No. 3.** The entrance wound was present at the ulnar aspect of the right wrist. The projectile traveled sharply upward and minimally from left to right, and involved the skin and musculature of the right forearm with no vital structures encountered. The exit wound was present at the medial aspect of the flexor right forearm, and no projectile was recovered.
- **Gunshot Wound No. 4.** The entrance wound was present on the right lateral thigh. The projectile traveled right to left, and upward, and involved the hamstring muscles with no vital structures encountered. The exit wound was present to the medial and superior portions of the posterior right thigh, and no projectile was recovered.
- **Gunshot Wound No. 5.** The entrance wound was present at the medial right calf region. The projectile traveled primarily from front to back, and from left to right. The path of travel included the musculature of the right calf with no vital structures encountered. The exit wound was present to the posterior aspect of the right calf area, and no projectile was recovered.
- **Gunshot Wound No. 6.** The entrance wound was present at the left upper quadrant of the abdomen. The projectile traveled sharply downward, minimally from front to back, and minimally from right to left. The path of travel involved the skin and musculature of the left abdomen, traversed across the left hip musculature, and lodged immediately adjacent to the head of the femur. No vital structures were encountered. There was no exit wound, and a minimally deformed jacketed projectile was recovered from the left hip region.
- **Gunshot Wound No. 7.** The entrance wound was present at the mid-left extensor forearm. The projectile traveled sharply upward and minimally from right to left. The path of travel involved the skin and musculature of the left forearm with no vital structures encountered. The exit was present to the left elbow region, and a projectile was not recovered.
- **Gunshot Wound No. 8.** The entrance wound was present on the anterior aspect of the left lateral thigh. The projectile traveled primarily from front to back and involved the musculature of the left thigh with no vital structures encountered. The exit wound was present on the left buttock region, and no projectile was recovered.
- **Gunshot Wound No. 9.** The entrance wound was present on the right upper back region. The projectile traveled from right to left, downward, and from front to back. The path of travel involved the skin and musculature of the right back (with an associated fracture of the ribs adjacent to the entrance wound). The projectile traversed across the posterior aspect of the

right hemithorax, resulting in a contusion to the lower lobe of the right lung. The projectile continued to traverse across the anterior aspect of the spinal column, resulting in a perforating injury through the aorta. The projectile produced perforating defects through the small and large intestines and lodged within the mesentery on the left side. Liquid and clotted blood was present within the pleural spaces and liquid blood was present within the abdominal cavity. There was no exit wound, and a moderately deformed jacketed projectile was recovered from the mesentery of the left side abdomen.

- **Gunshot Wound No. 10.** The entrance wound was present on the left midback region. The projectile traveled from back to front, slightly upward, and from left to right. The path of travel involved the skin and musculature of the left side of the back, which resulted in a perforating and graze injury to the lower lobe of the left lung. The projectile continued to the left lobe of the liver and caused perforated defects through the stomach. As stated before, internal bleeding was present. There was no exit wound, and a moderately deformed jacketed projectile was recovered in the soft tissues adjacent to the sternum.
- **Gunshot Wound No. 11.** The entrance wound was present on the left midback region. The projectile traveled from back to front, slightly upward, and from left to right. The path of travel was similar to gunshot wound No. 10, with a similar injury pattern to the lower lobe of the left lung, stomach, and liver. There was no exit wound, and a moderately deformed jacketed projectile was recovered from the soft tissues adjacent to the sternum.

Dr. Fajardo located an abrasion on the left upper supraclavicular region but could not determine the cause of the injury. He also located a possible “graze” injury on the right anterior thigh, but due to the shallow nature of the injury and lack of apparent directionality, he could not provide a definitive determination of whether a gunshot caused the injury. In addition, the toxicology test of Mr. Tracy tested positive for the presence of various substances, including fentanyl and benzodiazepines. Based on the autopsy, Dr. Fajardo concluded the manner of death to be homicide and cause of death to be from “multiple gunshot wounds.”

Interviews of Law Enforcement Officers

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

An employer may compel public employees, including police officers, 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.

Detective Porrazzo and Sergeant Paez provided voluntary interviews to the Department of Justice. Two officers uninvolved in the OIS, but involved in the operation, Supervising Investigator Chuck Cervello and Senior Investigator Ryan Monis, provided voluntary interviews to the Riverside County Sheriff’s Office, and additional officers provided statements through their own law enforcement reports.

The following statements are summaries of the officers' 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, and other witnesses, that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

Detective Christopher Porrazzo, Riverside County Sheriff's Office

Detective Christopher Porrazzo from the RCSO provided a voluntary statement on February 4, 2022, after having reviewed his BWC footage from the OIS incident. Special Agent Jon Genens from the Department of Justice, Investigator Felipe Munoz from the Riverside County District Attorney's Office, and Deputy Attorney General Nicholas Schultz from the Department of Justice were present for the interview. Jesse James, attorney for Detective Porrazzo, was also present.

Detective Porrazzo had worked with the RCSO since October 2001. Prior to joining the Sheriff's Office, he was in the United States Marine Corps from 1997 to 2001, and he was recalled back to active duty in 2003. In the Marines, he was assigned to a reconnaissance team primarily stationed in Camp Pendleton, but he was deployed overseas several times in an infantry unit.

In October 2001, Detective Porrazzo attended the Sheriff's Basic Academy at Ben Clark Training Center. From there, he was assigned to patrol at the southwest sheriff's station. From early 2002 through 2005, the RCSO took over a couple of contract cities, and he was transferred from the southwest station to the Perris station. He worked as a patrol deputy at the Perris station, from 2005 to 2006. At the Perris station, he was also assigned to the Special Enforcement Team dealing with street-level narcotics and vice operations.

In 2008, Detective Porrazzo was promoted to the rank of corporal. He remained at the Perris station until 2014, when he was promoted to an investigator and transferred to the Hemet station where he investigated numerous, primarily violent, crimes. After, he was assigned to the Special Investigations Bureau, and at the time of the interview, he was in his third year on the team; the Bureau is under the direction and supervision of the District Attorney's Office within the Gang Impact Team.

Within the Gang Impact Team, Detective Porrazzo was cross-sworn with the United States Homeland Security Investigations and the United States Marshals Service. The team conducts narcotics investigations that are usually tied to gang members domestically and internationally. The team, with the Marshals Service, also locates and apprehends wanted fugitives. The Gang Impact Team is an "undercover based unit." The officers generally operate in plain clothes and conducts lengthy surveillance operations.

On January 18, 2022, Detective Porrazzo started his shift at 7:00 AM, and his shift was scheduled to end at 5:00 PM. He drove an unmarked police vehicle, and he had no partner that day. The direct supervisor for the day was Supervising Investigator Gary Cupersmith. The Gang Impact Team had two very similar operations planned, but Detective Porrazzo could not make it to the second operation. The second operation was similar; it involved another person armed with a gun and selling fentanyl from a hotel about three blocks from the Travelodge.

Detective Porrazzo was dressed in plain clothes, but with a black sweatshirt that stated "Sheriff" and a hat with the Gang Impact Team seal on it. He also wore his vest that had the Riverside Sheriff's five-point star on the front and his name, "Sheriff," and "Gang Impact Team" as well. He was equipped with an expandable baton, Taser, handgun (nine-millimeter Sig Sauer P320), magazines for his

handgun, a spare magazine for an AR-15, handheld radio, 40-millimeter less lethal launcher (Lewis Machine & Tool), and a Special Deputy U.S. Marshals badge.

Detective Porrazzo also activated his body camera before their initial contact with Mr. Tracy. The body camera, however, stopped recording when Detective Porrazzo made transition from his 40-millimeter launcher to his handgun. He explained, "I must have hit it or something happened to it[.]"

Detective Porrazzo was familiar with the Travelodge in Hemet that Mr. Tracy was staying at from previous criminal activities that occurred there. He knew that gang activity, narcotics and gun crimes, prostitution, and human trafficking occurred in the general area.

At the time of the OIS, Detective Porrazzo was aware that law enforcement had received information from a confidential informant (CI) that Mr. Tracy was selling fentanyl out of a hotel room. The CI told law enforcement that Mr. Tracy was armed with a handgun and identified Mr. Tracy's vehicle. There was also discussion about Mr. Tracy potentially having a rifle.

Additionally, Detective Porrazzo was familiar with Mr. Tracy's previous interactions with law enforcement. Detective Porrazzo knew that Mr. Tracy had several narcotics arrests and contacts, as well as a "handgun violation" about three and a half months prior, during which time Mr. Tracy had a handgun taken off him. Detective Porrazzo also believed that Mr. Tracy was already on probation or Post Release Community Supervision (PRCS) and suspected that Mr. Tracy would be under the influence of fentanyl during the operation.

Detective Porrazzo also noted that the team was aware of a 17-year-old female, later identified as W-1, who was supposed to be staying with Mr. Tracy in the hotel room. Detective Porrazzo recognized the woman's name from what he remembered to be a 2017 sexual assault allegation involving her as a victim. He remembered that the woman was involved with human trafficking in the area. Given that she was a minor and in a hotel room with an armed suspect selling fentanyl, GIT did not want to contact Mr. Tracy in the hotel room directly, thereby risking him barricading himself with the female. Instead, GIT developed a ruse to lure Mr. Tracy out of the hotel.

GIT formulated a plan to determine which room Mr. Tracy was staying in and to monitor it. The team set up surveillance at the hotel, with undercover operators spread throughout the entire parking lot area. During the surveillance the officers confirmed that Mr. Tracy was staying in Room 221. They determined which direction the windows of his room were facing; the windows gave him a view of the parking lot at which his vehicle was parked. Detective Porrazzo recalled that, during the course of the surveillance, one of the officers positively identified both Mr. Tracy and the minor woman through the window.

Officers set up around the hotel and especially around the door from which Mr. Tracy was most likely to emerge. Detective Porrazzo and Deputy Smith were assigned the less lethal launchers, and along with two other officers, were stationed at a relatively concealed and covered area on the east side of the building.

One of the attempted ruses succeeded in luring Mr. Tracy out of the hotel through the south facing, iron bar security door, on the south east corner of the motel building on the first floor that led to a parking lot. Detective Porrazzo heard over the radio channel that Mr. Tracy appeared to methodically peek his head in and out through the door. Detective Porrazzo interpreted this movement as akin to how a police officer might clear a corner and as an indication that Mr. Tracy was attempting to choose a target among the police officers.

Further informed over the radio, the officers were told, “He’s coming our direction...” and “Watch it guys. He’s got his hands in the waist [or waistband].” Mr. Tracy was positively identified as the person exiting the door. When Mr. Tracy emerged, the first thing Detective Porrazzo saw was Mr. Tracy placing his right hand on his waistband. To Detective Porrazzo, this quickly signaled that Mr. Tracy was armed with a handgun. The officers then came out and starting shouting “show us your hands” and “hands” repeatedly.

Detective Porrazzo deployed the less lethal launcher and fired it at Mr. Tracy. Detective Porrazzo believed that this was the appropriate action because, beyond the fact that the officers were in a high-crime area and had just recently taken a gun from another suspect, Mr. Tracy’s mannerisms and the officer’s intelligence were enough to indicate that Mr. Tracy was armed with a handgun. Detective Porrazzo noted that “the first thing I saw was his right hand was in the waistband... I knew at that moment in time, he’s armed with a handgun.” Detective Porrazzo noted that Mr. Tracy “was very, very protective of that right hand the entire time I saw him.”

Mr. Tracy was hit center mass by the round fired from the less lethal launcher. Detective Porrazzo noted that usually, when someone is shot with the less lethal launcher, that person falls down and his hands move out. However, Mr. Tracy did not react this way, instead running west along the side of the building and then turning north. While Detective Porrazzo did not know Mr. Tracy’s toxicology, based on his experience, he believed it likely that Mr. Tracy was under the influence of a narcotic. To him, this would have explained why the less lethal launcher—usually a very effective tool—failed to stop Mr. Tracy.

Detective Porrazzo stated that in his experience, armed suspects often dropped their guns at some point during a chase, find a spot to hide, and wait out the police. However, he believed that this situation was different, observing that Mr. Tracy appeared to keep the handgun he was carrying. Detective Porrazzo believed that Mr. Tracy planned to find a spot with cover and ambush the officers when the opportunity arose. Detective Porrazzo knew that there were officers staged in the direction that Mr. Tracy was heading and that they would converge at some point during the chase.

As Mr. Tracy turned north around a corner, Deputy Smith fired several additional rounds at him using the less lethal launcher and possibly hit him two to three times. Detective Porrazzo began to hear other officers shouting, “He’s reaching,” “I don’t know that he’s reaching for,” and “He’s got a gun.” Deputy Smith also shouted, “He’s reaching in the waistband. He’s reaching in the waistband. I don’t know what he’s reaching for.” Detective Porrazzo states that by then, he was “99.4 percent positive” that Mr. Tracy was armed with a gun.

Detective Porrazzo stated that he could not recall ever actually seeing the gun. As he chased Mr. Tracy north along the west side of the building, Detective Porrazzo never saw Mr. Tracy remove his right hand from inside his waistband. At one point, Mr. Tracy moved downward between three vehicles alongside the building, and Detective Porrazzo lost sight of him. From his peripheral view, Detective Porrazzo knew that Mr. Tracy had not moved past the gap between the last two of the three vehicles. Detective Porrazzo believed that Mr. Tracy was trying to find a suitable position to ambush one of the officers.

At that point, Detective Porrazzo slowed down and started to fan around the front ends of the vehicles. He partially spotted Mr. Tracy between the second and third vehicles. Mr. Tracy appeared to be in a squatting position with his right knee closer to the ground and his left knee up. Mr. Tracy appeared to have his left hand on the left side of his body, while his right hand still seemed to be around his

waistband. Detective Porrazzo's view of Mr. Tracy's left side was better than his view of Mr. Tracy's right side.

As Mr. Tracy stood up, Detective Porrazzo perceived that Mr. Tracy's momentum shifted forward and that his right hand lifted from his waistband and "saw was his hand coming up and coming into, kind of, to grip and to come out." Detective Porrazzo also noticed that Mr. Tracy's pants or shorts appeared to be falling down.

Investigator Monis started to say, "He's got a gun," or, "He's reaching for a gun," however, he may not have gotten the word "gun" out by the time the officers started firing at Mr. Tracy.

Detective Porrazzo was worried that his life was in danger and that he would have to protect himself. At the moment at which Mr. Tracy started to stand up, Detective Porrazzo believed Mr. Tracy was going to fire a gun. Detective Porrazzo states that he "100 percent" believed that at the moment he shot Mr. Tracy, he was in danger of great bodily injury or death. Detective Porrazzo fired six rounds at Mr. Tracy, although he perceived that he fired four to six rounds from his handgun.

Mr. Tracy immediately fell to the ground. During the shooting, due to the stress of the moment, Detective Porrazzo did not hear any of the other gunshots from the other officers. By then, Detective Porrazzo had developed a fear that Mr. Tracy was going to shoot him or possibly run into the other officers.

Detective Porrazzo knew that, during the shooting, Deputy Smith and Detective Kerr were located to his right. Detective Porrazzo began to call out commands, but from that angle he could not clearly see Mr. Tracy's right hand. Mr. Tracy's hand appeared to be partly covered by the jacket he was wearing but still in a gripping position. Sergeant Paez and Investigator Benjamin joined them and together they moved in to arrest Mr. Tracy. Detective Porrazzo believed that it was Sergeant Paez and Investigator Benjamin who handcuffed Mr. Tracy.

Detective Porrazzo noticed that Mr. Tracy had been shot in the face, and he felt that any medical treatment he needed was beyond the officers' capabilities. Someone requested an ambulance and another person had taken out a trauma kit. However, Detective Porrazzo believed that little could be done to treat such an injury and noticed that Mr. Tracy's chest was not rising.

HPD Sergeant Arthur Paez

On January 26, 2022, Sergeant Paez agreed to give a voluntary statement after having reviewed his BWC footage from the OIS incident. Sgt. Paez was represented by Attorney Vanessa Munos. DOJ Special Agent Jon Genens, Riverside County DA Investigator Felipe Munoz, and Hemet PD Detective Katie Rabago interviewed Paez. The following is a summary of the relevant portions of the interview:

Sergeant Paez had worked for about ten and a half years at the Hemet Police Department. At the time of the OIS, Sergeant Paez was the Region 3 Sergeant of the Gang Task Force (GTF). The GTF focuses on the proactive establishment of contacts with gang members for the purposes of arresting suspects with firearms or felony warrants. Through his work in the GTF, Sergeant Paez often encountered gang members armed with firearms and other weapons. His training had prepared him to anticipate that in situations such as the OIS, the suspect is often armed with at least one or two firearms.

During the operation, Sergeant Paez was wearing his uniform, with his badge and shirt and vest markings clearly identifying him with police and the Gang Task Force. He was armed with a nine-millimeter Sig Sauer P320 handgun.

Based on his training and experience, Sergeant Paez knew that hotels in the City of Hemet are often centers for criminal activity. He was familiar with the particular hotel at which the OIS took place, stating it was the hotel most afflicted by criminal activity in Hemet. In fact, he was aware of a murder involving a firearm that occurred at the hotel two years earlier and that the hotel was still used for prostitution, and was a location where shooting and narcotics sales and overdoses occurred.

Sergeant Paez had often responded to incidents occurring at the hotel and had made several arrests of individuals with firearms and individuals with firearms selling narcotics. Sergeant Paez noted that the area had known difficulties. Routinely, at least three times a night, he would drive through it.

On the night of the incident, Sergeant Paez was contacted by Investigator Dean Benjamin from GIT to assist with an operation involving a subject suspected of having a firearm and selling fentanyl. At a parking lot near the hotel where the operation was taking place, Investigator Benjamin briefed Sergeant Paez, showing him a picture of Mr. Tracy, and indicated that Mr. Tracy had several prior weapons arrests, had a firearm, and that GIT was working with a confidential informant.

Sergeant Paez stated that he considered GIT informants to be reliable, and he did not take their information lightly. Sergeant Paez did not recall being told whether Mr. Tracy was a gang member, but he noted that carrying firearms when selling drugs was behavior consistent with that of gang members. Sergeant Paez also stated that he neither knew nor had ever encountered Mr. Tracy before the OIS. Nonetheless, Sergeant Paez was on high alert due to the information about Mr. Tracy, his prior experiences at the hotel, and his experiences with similar suspects armed and selling narcotics.

Sergeant Paez, Investigator Benjamin, and two other members of Sergeant Paez's team, were stationed at the northern end of the hotel. While positioned there, Investigator Benjamin remained in contact with other GIT members. This group's role was to protect the northern perimeter of the hotel and apprehend Mr. Tracy if he attempted to flee in that direction.

After receiving communication from other GIT members that Mr. Tracy had exited the hotel, Sergeant Paez and his group began to move toward the front of the hotel. Sergeant Paez allowed his two team members and Investigator Benjamin to take the lead as he fell back a few steps. As he approached the northwest corner of the hotel, Sergeant Paez began to hear what he believed was small caliber gunfire, which immediately diverted his attention. He also noticed other officers stationed undercover in what he remembered to be a truck with emergency lights on approaching the hotel from the southwest corner very quickly.

Sergeant Paez began to hear yelling, including an unidentified person stating "gun" or the phrase "the gun." After reviewing his and other officers' body worn camera footages, he noted that the phrase "He's reaching" was also shouted. He un-holstered his firearm and moved toward the parking lot of the hotel. He noticed GIT members approaching him and directing their attention to the hotel's western wall where several cars were parked.

At this point during the operation, Sergeant Paez was fearful of someone quickly appearing in his view. While Sergeant Paez did not observe Mr. Tracy running from the other officers, he noticed that the other officers coming from the hotel's south end were converging in their approach. Sergeant Paez

kept his firearm out in a “low, ready” position as he continued to move southward. He then saw a black SUV in the parking lot, and as he moved past it, he could see Mr. Tracy.

Mr. Tracy appeared to be hunched over in a “low, ready, bent over position” with his hands at his waist. Sergeant Paez gauged, based on his training, experience, and Mr. Tracy’s stance, that Mr. Tracy was concealing a firearm and lying in wait to attack the first person he saw. At this time, the general area was well lit. However, between the cars where Mr. Tracy was crouching, the lighting was much dimmer. Mr. Tracy was also wearing dark clothing and bent over.

As Sergeant Paez moved in, he and Mr. Tracy saw one another. Sergeant Paez believed that there was not enough time for him to give Mr. Tracy any commands, nor did Sergeant Paez have any cover. Mr. Tracy began to come out from behind the car and lift his hands. Sergeant Paez, believing Mr. Tracy to be armed and prepared to fire on him, lifted his own firearm. At that moment, Sergeant Paez heard a gunshot. Believing Mr. Tracy had shot him, Sergeant Paez began to fire several times at Mr. Tracy. He did not aim at a particular spot on Mr. Tracy, but just generally at him.

At the time, Sergeant Paez recalled firing three to four rounds. However, he acknowledges that subsequent analysis shows that he fired six rounds.⁵ He did not stop firing until Mr. Tracy was on the ground, feeling that Mr. Tracy was no longer a threat. At the time, Sergeant Paez believed that if he did not fire on Mr. Tracy that Mr. Tracy would have shot and killed him. Sergeant Paez intended to stop the threat posed by Mr. Tracy. While he was firing, Sergeant Paez took several steps backward, as he felt that Mr. Tracy was making several steps toward him.

Sergeant Paez’s observations of Mr. Tracy occurred very quickly, over the span of only several seconds. Sergeant Paez stated that because he had already heard gunshots earlier and, given his knowledge of the circumstances, he had used his firearm rather than the taser or pepper spray that he was carried. Regardless, Sergeant Paez states that there would not have been enough time to take out either less lethal option.

Sergeant Paez then moved in toward Mr. Tracy with the GIT members. When initially approaching Mr. Tracy’s body, Sergeant Paez recalled that Mr. Tracy was face-up. To handcuff him, Sergeant Paez turned Mr. Tracy over with the help of Investigator Benjamin. In the process, Sergeant Paez noticed a significant amount of blood on Mr. Tracy’s jacket, as well as a number of gunshot wounds. Several of these gunshot wounds were on Mr. Tracy’s head. Sergeant Paez did not notice Mr. Tracy’s chest rise and fall, and so he concluded that Mr. Tracy was dead. Sergeant Paez then stepped away and called his administration.

GIT Supervising Investigator Chuck Cervello

On January 24, 2022, Supervising Investigator Chuck Cervello agreed to give a voluntary statement. Supervising Investigator Cervello was represented by Attorney Vanessa Munos. DOJ Special Agent Jon Genens, Riverside County DA Investigator Felipe Munoz, and Hemet PD Detective Katie Rabago interviewed Cervello. The following is a summary of the relevant portions of the interview:

Investigator Cervello had worked in law enforcement for about 29 and a half years, mostly focusing on gang, narcotics, and homicide policing. At the time of the incident, he served as one of the three

⁵ Review of surveillance footage demonstrates that Sgt. Paez fired six shots at Mr. Tracy.

supervisors of the Riverside County District Attorney's Office Gang Impact Team (GIT). He had served as a supervisor of this task force since its inception around 2015 to 2016.

GIT focuses on policing gangs, narcotics, guns, and organized crime. It makes use of informants, wiretaps, undercover operations, and other policing strategies, regularly encountering violent, career criminals—usually gang members. GIT also focuses on assisting other law enforcement agencies. Investigator Cervello had also served on the District Attorney's Office's Special Activities Unit, a special weapons and tactics (SWAT) team, for 19 years. He had attended SWAT school and serves as a commander on the team.

During the operation, Investigator Cervello's sweatshirt and vest markings and badge clearly identified him with police and the Gang Impact Team. He was armed with a handgun, a pepper spray, and a flash-bang.

On the day of the incident, Investigator Cervello was called to the Hemet GIT office, where he was asked to assist with the operation and was briefed. GIT had received information from a confidential informant that Mr. Tracy was at the hotel, armed with a handgun and possibly rifles, and in possession of and selling an unknown amount of fentanyl. The informant also gave the room number of Mr. Tracy's room and identified his vehicle. Reviewing Mr. Tracy's criminal history, he saw that Mr. Tracy had several previous firearm offenses. Investigator Cervello could not recall ever encountering him before.

The operation focused on surveilling the hotel and determining if Mr. Tracy was there. After about an hour into the operation, the GIT identified and confirmed Mr. Tracy's car, hotel room, and one of the room's windows, which looked directly on to his car. Mr. Tracy's car was covered with a tarp. The team's goal was to see Mr. Tracy outside of his room and arrest him, rather than make direct contact with him while he was still in the room. During the night, the team confirmed that a young woman might have been in the room with Mr. Tracy. She was later identified as W-1, a minor, and a local to Hemet that some of the officers knew and was suspected to have been a victim of human trafficking, forced into prostitution.

Investigator Cervello was concerned that if the officers made direct contact with Mr. Tracy while he was still in the room, a hostage situation could develop involving the young woman. Therefore, Investigator Cervello and the team decided to try to lure Mr. Tracy out of the room or wait him out.

Investigator Cervello recalled that the location at which the incident occurred was a "pretty high-crime area." He stated that several hand-to-hand drug deals occurred while he and the officers were in the parking lot. He recalled a great deal of foot traffic in the parking lot, as well as people "checking out cars."

The initial plan assigned Detective Porrizzo, Deputy Smith, and Detective Kerr on foot in full police uniform to the southeast side of the building. Investigator Cervello was in his car in the parking lot to the east. GIT Investigator Gary Cupersmith was also east of the building. Investigator Monis was on the southwest corner of the building, Investigator Benjamin was on the northwest area of the building, and Hemet GTF was on the inside of the building.

The officers made several attempts to lure Mr. Tracy out of his room. They tried to make Mr. Tracy's car alarm turn on and alert him, but this was unsuccessful. The officers then took the car's cover off, but this did not alert Mr. Tracy either.

The officers then decided to try turning on Investigator Cervello's car alarm, hoping that it and the uncovering of Mr. Tracy's car would alert Mr. Tracy and lure him out. However, unbeknownst to Investigator Cervello, turning on his car's alarm caused its dome lights to turn on, revealing Investigator Cervello in uniform inside the car. Realizing his exposure, Investigator Cervello immediately exited his car and met Detective Porrazzo, Deputy Smith, and Detective Kerr on the side of the hotel building. However, the alarm going off still did not lure Mr. Tracy out.

The officers then decided to throw a water bottle at Mr. Tracy's hotel room window. Detective Kerr took a soda bottle and threw it at Mr. Tracy's room window. Investigator Cervello heard, but did not see, the window break. This caused Mr. Tracy to come near the window.

Investigator Cupersmith communicated to the other officers that he could see the window and that he saw a female and a male putting on clothes. He did not yet make an identification. The officers expected that Mr. Tracy would come out soon. Detective Porrazzo, Deputy Smith, and Detective Kerr were assigned near a door that the officers expected Mr. Tracy to use when stepping out.

At one point, Investigator Cervello began to hear Detective Porrazzo and Deputy Smith begin giving orders. He recalls the content of the orders to be something like "police" and "lemme see me your hands," but could not remember them with specificity as he was simultaneously speaking on the radio.

Based on hearing the commands, Investigator Cervello knew that Mr. Tracy had come out. Investigator Cervello fanned out east through the parking lot and had about a half-second view of Mr. Tracy by the passenger side of Mr. Tracy's car. He recalled seeing Mr. Tracy facing north, toward Detective Porrazzo and Deputy Smith, and appearing to crouch down. Investigator Cervello could not see Mr. Tracy's hands.

Investigator Cervello then heard one of the less lethal launchers fire. At that point, he saw Mr. Tracy flinch and then run west, exiting Investigator Cervello's view. He then saw Detective Porrazzo, Deputy Smith, and Detective Kerr pursue Mr. Tracy. Investigator Cervello started chasing Mr. Tracy as well, broadcasting over the radio, possibly already having his gun in his hand, and had two glimpses of Mr. Tracy in the process. Investigator Cervello heard at least one, perhaps two, more rounds fire from the less lethal launcher. He again saw Mr. Tracy appear to flinch.

Investigator Cervello noticed that Mr. Tracy had his right hand in what may have been his jacket or sweater pocket, only freely swinging his left hand. The sweater was moving around as Mr. Tracy ran. Investigator Cervello heard officers shouting commands throughout the entire foot pursuit, saying, for example, "show me your hands," and identifying themselves as police officers. Investigator Cervello recalls hearing at some point the word "gun."

Mr. Tracy turned north at the corner of the hotel and ran north along the wall. Investigator Cervello then heard another round fire from the less lethal launcher. Investigator Cervello was the last of the officers in the pursuit. He stated that in his experience as a police officer, having chased hundreds of suspects with firearms, he was sure that Mr. Tracy had a firearm while he was running from the officers. Investigator Cervello also recalled that he had never seen anyone who had been struck with that many rounds from the less lethal launcher keep running; he was confident that the rounds had made contact with Mr. Tracy based on his flinching.

As Investigator Cervello turned the corner, he caught another glimpse of Mr. Tracy before he moved between several cars. Mr. Tracy was no longer in Investigator Cervello's view. Investigator Cervello could not identify which cars Mr. Tracy was in between. Investigator Cervello was worried that Mr.

Tracy might try to ambush the officers, having previously worked a case with a similar encounter during which a suspect ambushed and shot at officers.

Given the positions of the various officers, Investigator Cervello was also worried that Mr. Tracy might try to double-back and run south along the wall. Therefore, Investigator Cervello stuck near the wall and moved upward, anticipating Mr. Tracy possibly doubling-back. Investigator Cervello caught another quick glimpse of Mr. Tracy between the cars at which he would later be found. Mr. Tracy appeared to pop up and then back down, once more exiting Investigator Cervello's view. Investigator Cervello, at most, only saw Mr. Tracy's shoulders and his dark clothes. It appeared that Mr. Tracy had ducked down, crouching.

Investigator Cervello was apprehensive that Mr. Tracy was going to head back south and have a one-on-one encounter with him. Investigator Cervello did not believe that using the pepper spray or flash bang was feasible, considering either tackling Mr. Tracy or firing at him. At this point, Investigator Cervello heard shots being fired. Investigator Cervello held his position, and then raised his hand to identify where he was, ensuring he would not be in the line of fire. Moving west, he arrived to where the shooting officers were, and saw Mr. Tracy face down on the ground.

Investigator Cervello then asked the officers if anyone had gloves on to handcuff Mr. Tracy. An officer from Hemet Police Department, possibly a sergeant, said that he had gloves, and Investigator Cervello asked him to put on gloves and handcuff Mr. Tracy. As the officers moved in to Mr. Tracy's position, they were giving orders such as "show me your hands" and noting that they could not see Mr. Tracy's right hand.

Investigator Cervello noted that Mr. Tracy appeared dead. The scene was secured. At one point, Investigator Cervello broke off and asked other officers to go secure Mr. Tracy's hotel room and make contact with the female. They then began conducting administrative tasks.

GIT Senior Investigator Ryan Monis

On January 24, 2022, Senior Investigator Ryan Monis agreed to give a voluntary interview. Riverside County Sheriff Investigator Dan Moody, Hemet PD Investigator Craig Willison, Deputy DA Marcus Garrett, Senior DA Investigator Anthony Johnson, and attorney Jesse James were present for the interview. The following is a summary of the relevant portions of the interview:

Investigator Monis had worked in law enforcement for about 28 years, focusing on gang, narcotics, and homicide policing, canine handling, and field training. At the time of the incident, Investigator Monis served on Riverside County District Attorney's Office Gang Impact Team (GIT) with Investigator Cervello as his partner.

GIT focuses on the long-term investigation of violent criminals, guns, and others. All of the officers are cross-sworn with other agencies, including federal ones. He also mentioned that over the prior year, GIT had trended toward fugitive apprehension operations, but could still conduct long-term investigations. During the operation, Investigator Monis wore a sweatshirt and vest with markings and badge that clearly identified him with police and the Gang Impact Team.

On the day of the incident, Investigator Monis was called to the Hemet GIT office, where he was briefed on the circumstances regarding Mr. Tracy. Specifically, the team had received information from an informant that Mr. Tracy was at the hotel, armed with firearms, dealing fentanyl, and on active

probation. The team planned to contact Mr. Tracy outside of his room, confirm which room was Mr. Tracy's, and then do a probation search of his room, to see if they could recover firearms and fentanyl.

Investigator Monis stated that he treated this case the same way he would treat chasing a murder suspect, noting that these situations were unpredictable—anything could happen depending upon Mr. Tracy's actions. Investigator Monis mentioned that the team had prepared a "continuum of force," including the less lethal launchers. Investigator Monis also stated that he did not know Mr. Tracy and to his knowledge had never encountered Mr. Tracy before.

The team debated making direct contact with Mr. Tracy at the hotel. They wanted to first confirm that Mr. Tracy was in room 221 and took steps to make that determination. The plan was to somehow see Mr. Tracy outside of his room, make contact, and then conduct a probation search of his room. Investigator Monis was assigned to check the hotel's roster.

The team received information about the room occupied by Mr. Tracy, indicating that it was being rented by a woman who paid in cash. Investigator Monis was then assigned to his own vehicle, a dark gray Chevy Silverado with concealed emergency lights (red and blue) that could be turned on. He parked west of Mr. Tracy's room. His role was to cover the western perimeter of the area. The team also located Mr. Tracy's vehicle and stationed additional officers outside the general area where they expected Mr. Tracy to exit the hotel and go to his vehicle.

At one point, Investigator Monis heard another officer notifying the team over radio that he saw someone coming down out of the room and hotel. Mr. Tracy had exited his room and emerged from the hotel. Officers stationed nearby made contact with him. Investigator Monis began to hear calls over the radio stating, "he's running." At that point, Investigator Monis, still in his truck and with a clear line of sight to where the initial contact took place, saw Mr. Tracy running directly towards him.

Investigator Monis activated his red and blue lights and drove forward, hoping to make Mr. Tracy believe he might be hit and fall backwards. However, as Mr. Tracy saw Investigator Monis' car approach him, he turned around and started to run back along a line of parked cars at the west side of the hotel. At this point, Investigator Monis' car lights were still on.

Investigator Monis noted that Mr. Tracy could have kept running westbound, but instead headed towards the cars, running low to provide cover for his upper body. Investigator Monis pointed out that Mr. Tracy seemed to be making a "zig-zagging" movement as he ran. Investigator Monis jumped out of his car, firearm already in hand, worrying that a lethal confrontation might occur at that moment, and pursued Mr. Tracy yelling, "show me your hands, let me see your hands."

As Mr. Tracy was running away, Investigator Monis saw Mr. Tracy tightly holding something at his waistband with his hand. Investigator Monis stated that, given his years of experience, he was "very comfortable and positive" that Mr. Tracy had a firearm. Investigator Monis reiterated in the interview that, based on his training and experience, he had no doubt that Mr. Tracy was armed. However, Investigator Monis stated that he never saw Mr. Tracy take anything out from his waistband and never saw the firearm; at that point, Mr. Tracy was largely trying to escape.

Once Mr. Tracy reached the cars, Investigator Monis stated that Mr. Tracy appeared to be preparing to engage the officers. Mr. Tracy was also starting to duck and might have actually fallen. Investigator Monis recalled that Mr. Tracy was dressed in a black hoodie that may have been zippered and dark black or grey sweatpants. All of Mr. Tracy's clothing appeared "baggy."

At some point, Investigator Monis, believing that Mr. Tracy was acting as if he had a firearm, yelled, “he’s got a gun, he’s got a gun.” He recalled Deputy Smith yelling “he’s reaching” several times and firing at Mr. Tracy with the less lethal launcher. Investigator Monis noted that Deputy Smith was reloading and firing so quickly that at one point he questioned whether Mr. Tracy was firing back at the officers. Investigator Monis heard shouts of “less lethal,” “gun,” and “police! Stop!”

Investigator Monis noticed that the less lethal launcher was not stopping Mr. Tracy. He also determined that pepper spray would not be effective at stopping Mr. Tracy. Investigator Monis pursued Mr. Tracy, coming in wide and trying to create distance, as he had no cover but Mr. Tracy did. Mr. Tracy was primarily focused on the other officers. At some point, Investigator Monis lost sight of Mr. Tracy behind the cars.

Investigator Monis then saw Mr. Tracy momentarily pop out from behind the cars. Between Investigator Monis and Mr. Tracy were Deputy Smith, Detective Porrazzo, and Detective Kerr. Detective Porrazzo was directly in front of Investigator Monis, thereby preventing Investigator Monis from having a clear shot of Mr. Tracy. Investigator Monis was not aware of Sergeant Paez’s presence at that time and only believed there were three shooting officers.

When the firing began, almost instantaneously after Mr. Tracy came out from behind the cars, Investigator Monis could not see Mr. Tracy well but could see him being hit with rounds, including one that struck Mr. Tracy’s face. When Mr. Tracy fell, Investigator Monis knew that he was likely deceased.

After the firing stopped, Investigator Monis went to see if there was a firearm in the area. While the team was assessing Mr. Tracy himself, Investigator Monis went near the row of parked cars where Mr. Tracy had been running and fell down. Investigator Monis found a black and tan handgun around ten feet from where Mr. Tracy came to rest.

Investigator Monis notified the other officers that he found a firearm. Detective Kerr came over to Investigator Monis. Investigator Monis took a piece of paper from Detective Kerr and placed it on the firearm, marking its location. Detective Kerr stayed with the firearm while Investigator Monis went back to the other officers.

Officer Michael Bell, California Highway Patrol

On January 19, 2022, Officer Michael Bell of the California Highway Patrol provided a statement through a law enforcement incident report.

On January 18, 2022, Officer Bell was assigned to the Region 3 (Hemet/San Jacinto) Riverside County Gang Task Force (“GTF”). He wore a police uniform, badge, and a ballistic vest with “Police” written on the vest. He was equipped with a body camera, which was activated and captured portions of the incident. He was with his partner Deputy Salvador Waltermire of the RCSO. The GTF team was assisting with surveillance for the Gang Impact Team (“GIT”) at the Travelodge.

GIT Riverside County District Attorney Senior Investigator Dean Benjamin provided a briefing regarding the subject (Mr. Tracy) who was on probation, known to be selling drugs, and in possession of a firearm.

Officer Bell was positioned on foot just north of the pool area of the hotel. Officers notified Officer Bell that the subject was fleeing from officers on the south side of the hotel. Officer Bell ran to the west side of the hotel and heard what Officer Bell perceived to be gunshots. As Officer Bell reached the west side of the hotel parking lot, he saw numerous officers on that side of the building, and the

officers faced a northeasterly direction with their guns drawn. He also observed Mr. Tracy moving in between parked cars next to the west exterior wall of the hotel.

Officer Bell was unable to see what Mr. Tracy was doing while he was between the parked cars, and at that time Officer Bell saw multiple officers fire their weapons at Mr. Tracy. Mr. Tracy fell to the ground and failed to obey commands from the officers to show his hands. Officer Bell and other officers slowly approached Mr. Tracy and handcuffed him. Officer Bell heard officers immediately advise dispatch to start medical personnel to the scene.

Officer Bell conducted a safety sweep of room 221 with Deputy Waltermire and other officers. A female subject, W-1, was located and detained as the room was searched for people. Once the room was clear, Officer Bell and officers exited the room and secured the room from the outside. Deputy Waltermire and Officer Bell stood by the front entrance of the room with W-1 until W-1 was taken to the Hemet Police Department.

Supervising Investigator Robert Kwan, Riverside County District Attorney's Office

On February 3, 2022, Supervising Investigator Robert Kwan of the Riverside County District Attorney's Office provided a statement through a law enforcement incident report.

On January 18, 2022, Investigator Kwan was assigned to the Riverside County Gang Impact Team. The GIT, in an attempt to locate Mr. Tracy, were at the Travelodge. Mr. Tracy was on probation, and the GIT learned he was selling fentanyl and in possession of firearms.

The GIT developed a plan to try and lure Mr. Tracy out of his hotel room. Investigator Kwan was instructed to park in a lot on the eastside of the hotel. His assignment was to "contain" the eastside of the hotel, near where Mr. Tracy's vehicle was positively identified and parked. Mr. Tracy's vehicle was parked near a rear security door leading from the hotel into the parking lot. The team believed that Mr. Tracy was inside a room above the security door, but did not have positive confirmation at this time, and also believed Mr. Tracy would utilize the security door to get to his vehicle. Investigator Kwan's instructions were to detain Mr. Tracy if he were to come to his vehicle, and as such, Kwan sat in his vehicle until a ruse could be used to bring Mr. Tracy out to his vehicle.

The team conducted several ruses to get Mr. Tracy out to his vehicle. After one of the ruses, a surveillance unit advised a male and female were looking out the window from the hotel room. A short time later, the surveillance unit advised the male was walking out the security door and positively identified him as Mr. Tracy.

Investigator Kwan was inside his vehicle, about 30 feet from the "corner." Once he heard the positive identification, he got out of his vehicle and walked towards the "corner." He immediately heard less lethal weapons being deployed. He ran to the corner, and when he turned the corner, he saw the team running westerly through the parking lot. He ran back to his vehicle to drive to the location he last saw them running. As he drove, he heard what he believed to be gunshots.

When Investigator Kwan arrived at the location, he parked his vehicle next to Senior Investigator Gary Cupersmith's vehicle. Investigator Kwan saw Mr. Tracy lying on the ground.

Investigator Kwan instructed a few officers from the Hemet Police Department to help him secure the room they believed Mr. Tracy had been staying in with a female. The team knocked on the hotel room door and announced their presence. A female answered the door. The female gave the team

permission to enter the hotel room to conduct a safety sweep. During the sweep, Investigator Kwan observed what appeared to be an empty holster for a gun on the bed. Once the room was secured, he had Deputy Waltermire secure the room and the female until detectives arrived.

Detective Daniel Lee, Beaumont Police Department

On January 28, 2022, Detective Daniel Lee of the Beaumont Police Department provided a statement through a law enforcement incident report. Detective Lee was aware that the GIT had received information that Mr. Tracy was in possession of a handgun and selling narcotics from the Travelodge.

Several members of the GIT responded to the hotel and located Mr. Tracy's unoccupied silver Cadillac SUV (California license no. 8JNB710) in the south parking lot underneath a car cover. The team also learned Mr. Tracy was staying in room 221 with a female named W-1. The room was on the second floor towards the southeast portion of the hotel and overlooked the Cadillac.

To draw Mr. Tracy out of the room, Detective Lee was tasked to set off the alarm of Mr. Tracy's vehicle. The task was met with "negative results" after several attempts. The team made a plan to park a GIT vehicle next to the Cadillac, activate the GIT vehicle alarm to draw Mr. Tracy's attention, and Detective Lee was tasked to remove the car cover, which was done without incident. Afterwards, Detective Lee returned to his vehicle and donned his police equipment.

Several GIT members were positioned along the east wall near an entrance/exit pedestrian gate, which led into the south parking lot. Detective Lee's role was to block Mr. Tracy's potential escape route to the south. He was positioned east of the hotel in the Petco parking lot and had a clear view of the Cadillac.

Several minutes after the GIT vehicle alarm was activated, Mr. Tracy approached the passenger side of his vehicle. The apprehension team converged onto Mr. Tracy, and Mr. Tracy ran westbound through the parking lot. Detective Lee activated his emergency police lights and siren and drove southbound through the lot. When Detective Lee reached the end of the parking lot, he drove westbound through the Coastline Beauty College parking lot and northbound towards the hotel's west parking lot.

When Detective Lee reached the northwest corner of the college, he heard several gunshots and saw the apprehension team giving commands to Mr. Tracy. Mr. Tracy was lying at the rear of a tan vehicle in the parking lot. Detective Lee stopped his vehicle, facing it in a northeasterly direction towards Mr. Tracy. He re-grouped with the apprehension team and a request was made for a medical kit. Detective Lee returned to his vehicle and retrieved medical supplies, which he placed on a trunk next to Mr. Tracy.

Detective Lee responded to room 221. W-1 was detained without incident. W-1 claimed she was alone and denied having any knowledge of Mr. Tracy.

Detective Blake Williams, Murrieta Police Department

On January 29, 2022, Detective Blake Williams of the MPD provided a statement through a law enforcement incident report.

In January 2022, Detective Williams was assigned to the Riverside County Gang Impact Team. He received information from a confidential informant that Mr. Tracy was in possession of a P80 handgun with a high capacity magazine. The CI advised Detective Williams that Mr. Tracy was also selling large amounts of fentanyl. The CI had bought fentanyl from Mr. Tracy in the past and observed Mr. Tracy with a handgun about one week earlier. The CI stated that Mr. Tracy was staying at the Travelodge,

located at 2625 West Florida Avenue, City of Hemet, Riverside County, in unit number 221. The CI stated Mr. Tracy has been staying at the location for about two months with his girlfriend and dog. The CI further said that Mr. Tracy associated with gang members, he was known to be violent, and he would run from law enforcement. The CI also stated that Mr. Tracy drove a silver Cadillac SUV.

On January 15, 2022, Detective Williams located a silver Cadillac SUV parked in the parking lot of the Travelodge. A records check revealed the vehicle was registered to Mr. Tracy. The CI positively identified Mr. Tracy through a photograph obtained from law enforcement databases. A records check revealed Mr. Tracy was on felony probation with search terms for possession of a controlled substance while armed with a firearm. His probation was set to expire on May 12, 2023. Mr. Tracy had also been arrested for burglary on November 24, 2020, and arrested for felon in possession of a firearm, carrying a loaded concealed firearm, and felon in possession of ammunition, on September 22, 2021. Mr. Tracy was currently out on bail for the possession of firearms case.

Detective Williams planned to conduct a probation check on Mr. Tracy at the Travelodge, in room 221, on January 17, 2022. But based on the CI advising Mr. Tracy was armed, violent, and would be uncooperative with law enforcement, the GIT instead decided to lure Mr. Tracy out of the room to eliminate the potential for a barricade or hostage situation. Detective Williams was not on scene at the time of the incident, but he was monitoring the radio. He provided Detective Richard Kerr the information on Mr. Tracy, and Detective Kerr briefed the GIT as to the information prior to the incident. Detective Williams responded to the scene after he heard on the radio shots were fired.

Deputy Salvador Waltermire, Riverside County Sheriff's Department

On January 19, 2022, Deputy Salvador Waltermire of the RCSO provided a statement through a law enforcement incident report.

On January 18, 2022, Deputy Waltermire was assigned to the Riverside County Gang Task Force, Region 3 (Hemet/San Jacinto). His partner was Officer Michael Bell of the California Highway Patrol. The two were inside Deputy Waltermire's assigned patrol vehicle, equipped with functioning lights and sirens. He wore a police uniform, ballistic vest with "SHERIFF" written on the vest, and a gold patch with the RCSO star.

Sergeant Arthur Paez, Officer Bell, and Deputy Waltermire responded to the Travelodge to assist the GIT with a narcotics investigation. Investigator Dean Benjamin advised them that the GIT was conducting an investigation of Mr. Tracy regarding the sales of narcotics. Investigator Benjamin said Mr. Tracy was on probation, possibly armed with a firearm, and staying in room 221. Investigator Benjamin requested assistance in covering the north end of the hotel, near the courtyard, while the GIT members covered the remainder of the location.

At around 11:42 PM, the GTF set up at the north end of the complex. Investigator Benjamin advised them that Mr. Tracy was running from the rear of the location towards the GTF. Sergeant Paez ran toward the west parking lot area and Officer Bell followed. Deputy Waltermire continued covering the courtyard and heard what sounded like approximately four gunshots being fired from the west parking lot area. He ran toward the west parking lot and heard what sounded like approximately eight gunshots being fired.

Once the gunfire ceased, Deputy Waltermire saw Sergeant Paez and GIT members pointing their weapons at Mr. Tracy. Mr. Tracy was lying on his back in the middle of the parking lot. One of the GIT members was giving Mr. Tracy commands to show his hands. Investigator Benjamin requested a trauma kit and medical personnel to respond to the scene via his radio. The GIT members approached

Mr. Tracy, and Deputy Waltermire advised dispatch, via his hand held radio, that shots were fired and requested medical aid for Mr. Tracy. Deputy Waltermire was unable to see Mr. Tracy's injuries from his location.

While the GIT members tended to Mr. Tracy, Investigator Benjamin asked for assistance to clear room 221. Investigator Benjamin, Officer Bell, Deputy Waltermire, and assisting Hemet police officers, went to room 221. They announced themselves, and a female (later identified as W-1), opened the door. W-1 was ordered out of the room and detained while they cleared the room. Once the room was cleared, Officer Bell and Deputy Waltermire stayed with W-1 at the doorway and the other officers left the room. Officer Bell and Deputy Waltermire stayed with W-1 until about 3:16 AM, when Detective Wood of the Hemet Police Department transported W-1 to the Hemet Police Department. Officer Bell and Deputy Waltermire maintained their position until they were relieved by Detective Preston of the Hemet Police Department at about 5:48 AM.

Senior Investigator Gary Cupersmith, Riverside County District Attorney's Office

On June 14, 2022, Senior Investigator Gary Cupersmith of the Riverside County District Attorney's Office provided a statement through a law enforcement incident report.

On January 18, 2022, Investigator Cupersmith was assigned to the Riverside County Gang Impact Team, and he was one of the on-scene supervisors. The GIT were at the Travelodge in Hemet to locate probationer Mr. Tracy. Detective Blake Williams notified Investigator Cupersmith that he had information Mr. Tracy was selling fentanyl and in possession of firearms.

Supervising Investigator Chuck Cervello and Investigator Cupersmith developed a plan to lure Mr. Tracy out of his hotel room. Once the plan was developed, Cupersmith was assigned to find a spot in the parking lot and be the "point" vehicle. He positioned his vehicle on the south side of the hotel and had a clear view of Mr. Tracy's vehicle and the window to his hotel room.

Mr. Tracy's vehicle was parked near a rear security door leading from the hotel to the parking lot. Detective Williams believed Mr. Tracy to be inside a room directly above the security door, but they did not have positive confirmation at that time. From Cupersmith's view, he believed Mr. Tracy would utilize the security door to get to his vehicle if Mr. Tracy was to exit.

Investigators Cervello and Cupersmith instructed the team on the east side of the hotel to exit their vehicles and "stack up" around the corner from Mr. Tracy's vehicle. Several ruses were conducted in attempts to get Mr. Tracy out to his vehicle. During surveillance, and after one of the ruses, Cupersmith notified the team that an interior light of Mr. Tracy's hotel room turned on, and he could see movement. Cupersmith saw a male and female look out of the window from the room. A short time later, Cupersmith notified the ground units that a male was walking out of the security door and positively identified him as Mr. Tracy.

As Investigator Cupersmith observed Mr. Tracy walk east towards Mr. Tracy's vehicle, Cupersmith heard less lethal weapons being deployed. Cupersmith saw Mr. Tracy and the east side team run west through the parking lot. As Cupersmith drove west on the southside of the hotel towards the team and positioned his vehicle on the west side of the hotel. As he exited his vehicle, he heard what he believed to be gunshots. After the gunfire stopped, he walked towards Investigator Cervello and several GIT personnel.

Cupersmith saw a person lying on the ground. Soon after, AMR personnel arrived at the scene and attended to Mr. Tracy.

Interviews of Emergency Responders

Paramedic Daniel Sprague

On February 1, 2023, DOJ Special Agents Jon Genens and Alvin Hernandez interviewed Paramedic Daniel Sprague.

At the time of the OIS incident, Paramedic Sprague had been a paramedic for over six years. He was hired as a paramedic for the Hemet Fire Department in May 2018, and was with the HFD for about four years. He left the HFD in February or March of 2022, and, at the time of the interview, he worked at the Orange County Fire Department. His general duties at the HFD were to respond to medical aids, assess the patient, and determine the level of care required.

On the night of the OIS incident, the HFD received a call of a gunshot wound at the Travelodge at approximately 11:42:04 PM. Paramedic Sprague responded, along with two other paramedics, and he was the primary paramedic on scene. He arrived on scene at approximately 11:54:22 PM. Only Paramedic Sprague was allowed into the crime scene perimeter in order to preserve the scene. He assessed the injuries of Mr. Tracy, and the officers told Paramedic Sprague that Mr. Tracy was involved in a shooting incident. Paramedic Sprague placed EKG pads on Mr. Tracy and connected him to a cardiac monitor. Mr. Tracy was unresponsive, not breathing, and he had no pulse (with a heartrate of 20 beats per minute). Paramedic Sprague also checked Mr. Tracy for injuries. Under the “do not resuscitate” protocol for Riverside County, if the deceased has a pulse-less rhythm, with less than 40-beats per minute, and has a penetrating traumatic injury, the protocol is to not resuscitate the deceased. Paramedic Sprague pronounced Mr. Tracy deceased at 11:55:22 PM according to protocol.

Interviews of Civilian Witnesses

Witness 1

W-1 was Mr. Tracy’s 17-year-old female companion who was with him in the hotel room. On January 19, 2022, at approximately 4:46 AM, HPD Detective Katie Rabago and Riverside County District Attorney Senior Investigator Felipe Munoz interviewed W-1 at the Hemet Police Department.

At the date of the interview, W-1 lived at the Travelodge, and she paid rent for her room. She had lived there for about three months. Her parents (biological mother and stepfather) used to live with her at the Travelodge, but the parents were kicked out, and moved to the Days Inn in Hemet. She provided her mother’s name and phone number to the investigators. She also provided investigators with her biological father’s name and phone number, who lived in Perris. She now lived at the Travelodge alone, along with her dog. Sometimes W-1 had people visit her hotel room. She asked for her dog during the interview.

W-1 stated she had no visitors the night of the incident, and she stayed in room 221. She said that she and her dog were alone in the room. She stated, “I don’t even know why I’m in any of this.” She was confused, she did not know why she was there, and she was “just like sleeping and I woke up to all these things and my dog.”

W-1 woke up when she heard the car alarm go off. She noticed her hotel room window broken, saw police outside her window, and the police eventually came to her room and “pound[ed]” on her door. Her window faced the parking lot, and the window was not broken when she fell asleep. She had no idea why the police were present.

W-1 was aware that the situation was a major incident because many police were present. Detective Rabago asked for more information about the person that the investigators believed was staying in W-1's room, and W-1's relationship to that person. W-1 replied, "Well, were they involved in the shoot thing." W-1 denied being involved in narcotics, and at this point in time, asked to leave if she was not being detained. She did not want to be involved with the investigation because "it doesn't have anything to do with me" and she did not want to talk.

W-1 reiterated she did not know who Mr. Tracy was, and she did not want to involve herself in anything that had nothing to do with her, and asked to leave. When Investigator Munoz asked about W-1's relationship with "Joshua or Joseph," W-1 replied, "I speak to Joseph." She said she did not want to answer more questions, and that she did not have a relationship with Mr. Tracy. She requested her parents to pick her up. W-1 denied that she told anyone to "run" and she denied any relationship to Mr. Tracy.

Witness 2

W-2 is W-1's father, and W-3 is W-1's grandfather.⁶ On January 19, 2022, HPD Detective Katie Rabago interviewed W-2 and W-3 together.

When asked about Mr. Tracy, W-2 stated he "knew [Mr. Tracy] wasn't a good guy." W-2 never met Mr. Tracy since W-1 never let W-2 meet Mr. Tracy, because "she knew I'd beat his ass." W-2 believed W-1 had been with Mr. Tracy for a couple of months. W-2 did not speak with W-1's mother, and W-2 and W-3 believed W-1 was living with her mother. W-2 confirmed that W-1's mother was "motel hopping" in Hemet. W-2 did not know Mr. Tracy's name, and W-1 never told W-2 Mr. Tracy's name. W-2 did not know of any form of prostitution occurring with W-1.

W-2 had heard "bad things about [W-1's] boyfriend." He heard Mr. Tracy was a "dope dealer," and a few months earlier, W-2 and W-3 had to pick up W-1 from the hospital because W-1 overdosed on fentanyl with her girlfriend. W-1 told W-2 that they "just smoked some weed" and "it wasn't good weed," which W-2 did not believe. After the incident, W-1 began talking about a "new guy."

W-2 did not know what W-1 had been doing for the last six months, and he only talked to W-1 when "she calls and needs something." W-2 was unaware of what W-1 might have been involved in.

W-2 recalled an instance when Mr. Tracy asked W-2, in a telephone conversation, for a firearm. W-2 denied Mr. Tracy's request.

Witness 4 and Witness 5

Witness 4 ("W-4") is the father of Mr. Tracy, and Witness 5 ("W-5") is the mother of Mr. Tracy. On January 19, 2022, Senior Investigator Felipe Munoz of the Riverside County District Attorney's Office interviewed W-4 and W-5 together. Investigator Munoz provided the death notification of Mr. Tracy to W-4 and W-5. W-4 and W-5 were in grief and crying during the interview due to their son's recent death.

W-4 and W-5 generally tried to visit Mr. Tracy in Hemet, or Mr. Tracy would visit his parents' home. Mr. Tracy spoke to his parents every day. W-5 spent time with Mr. Tracy, took him out to eat, and tried to take him to church with W-5. Mr. Tracy was with W-4 and W-5 during Christmas, and W-5 last visited Mr. Tracy one week earlier to eat and get W-5's nails done. Mr. Tracy lived at the Travelodge, but also spent a few nights at W-5's home. W-5 tried to bring Mr. Tracy home because she knew Mr. Tracy had a

⁶ W-3 was not interviewed.

“drug problem,” but Mr. Tracy was a “good kid.” Previously, police officers unrelated to this incident had told W-4 and W-5 that Mr. Tracy was a “good kid.” W-5 believed Mr. Tracy used fentanyl, and Mr. Tracy tried to become sober by attending AA classes. W-5 said Mr. Tracy sold drugs to hire a lawyer to get his brother out of jail. Mr. Tracy did not sell firearms. W-5 told Mr. Tracy to stop what he was doing, and that he would get in trouble, but she could not “get him out.” W-5 stated that she did not understand why police shot Mr. Tracy because he was always respectful to law enforcement.

W-5 stated that W-1 was Mr. Tracy’s girlfriend. W-5 said W-1 was a “good girl,” but she came from the “streets” and a “broken family.” W-5 said W-1 and Mr. Tracy both lived at the Travelodge together. W-5 tried to bring W-1 into W-5’s home and bring W-1 to church, but W-1 chose to live at the Travelodge and be with Mr. Tracy. W-4 stated W-1 had “nothing to do with this,” and W-5 said W-1 was “just a lost girl.”

W-5 last spoke with Mr. Tracy at 5:30 PM on the day before this interview. Mr. Tracy called W-5 because another car had hit Mr. Tracy’s vehicle, and Mr. Tracy did not have a driver’s license. Mr. Tracy called W-5 because he did not know what to do. Mr. Tracy’s silver Cadillac was involved in the accident, and W-5 had assisted Mr. Tracy in purchasing that vehicle. Mr. Tracy and W-1 brought the vehicle back to the hotel and placed a cover on the vehicle. W-5 tried to call Mr. Tracy later that night, but he did not answer. W-1 called W-5 and told W-5 that the police had killed Mr. Tracy.

W-5 had seen Mr. Tracy with a weapon. W-5 knew Mr. Tracy had a Taser. W-5 knew he had a gun because Mr. Tracy “always liked guns.” Mr. Tracy did not intend to “hurt people” with the gun and that it was used for protection. Mr. Tracy never had a gun around W-5 because W-5 did not like guns. W-4 and W-5 stated Mr. Tracy would try to run from officers and get away, but he would never have used the gun to shoot an officer. W-4 believed the police shot Mr. Tracy in the back because Mr. Tracy would never “shoot a cop.” W-1 told W-4 and W-5 that Mr. Tracy was running away when the police shot Mr. Tracy and then shot Mr. Tracy in the head. W-1 said she received this information from a police officer. W-4 and W-5 said the police could have shot Mr. Tracy with Tasers or shot Mr. Tracy in the leg. Investigator Munoz clarified that he was the investigator who had interviewed W-1, that W-1 was uncooperative from the beginning, and that he told W-1 he was investigating a homicide. Investigator Munoz said he never told W-1 that Mr. Tracy was shot in the head or anything to that extent.

Mr. Tracy was out on bail for a gun-related criminal case. W-5 was not present during the prior incident, but she said it involved a security guard who slammed Mr. Tracy to the ground. The police officer said he had to do his job and arrest Mr. Tracy, but Mr. Tracy was a “good kid.” Mr. Tracy also had a separate case related to drugs and guns.

Mr. Tracy was never violent to police officers. In regards to the OIS, W-5 said Mr. Tracy probably ran because the police officers were shooting at Mr. Tracy, and that was why the parents believed the officers shot Mr. Tracy in the back. W-4 stated that if Mr. Tracy wanted to shoot the officers, Mr. Tracy would have shot the officers when the officers were firing less lethal weapons.

W-5 was surprised to learn W-1 was 17 years old and a juvenile. W-5 thought W-1 was over 18 years old.

Witness 6

On January 19, 2022, HPD Detective Katie Rabago interviewed Witness 6 (“W-6”). On the night of the incident, W-6 pulled into the hotel parking lot and turned off his vehicle. He had been staying at the Travelodge for about one month. He saw a vehicle with four people inside it, driving slowly, staring at

W-6. He also heard a “bang” around this time. He did not know the individuals, and they eventually “took off.”

Another vehicle, which W-6 believed to be a gray Honda, appeared. W-6 heard a “bang” similar to glass shattering. W-6 heard another “bang” and the Honda “took off [sic] skidding.” W-6 did not know how many people were in the Honda, but he saw four or five officers “chas[e]” the “guy in the vehicle.” The marked police vehicles had their sirens on, but the unmarked vehicles did not. The officers said, “he’s reaching, he’s reaching,” and to “get him” or “go after him.” The person inside the vehicle turned the corner and W-6 heard a “bunch of bangs” and numerous gunshots. W-6 did not see anyone running from the officers and did not know the person in the vehicle. W-6 also saw four police vehicles near a Jack in the Box and Arby’s nearby on a separate incident.

Interviews of Occupants of the Travelodge

On January 19 and 20, 2022, investigators attempted to interview or interviewed the occupants of the Travelodge for potential witnesses. Investigators interviewed 27 occupant witnesses. No one saw the shooting. A few witnesses heard gunshots, ranging from 4 to 12 gunshots. Other witnesses heard people running down the hall yelling, heard what sounded like someone throwing glass, or heard a “loud boom.” One witness saw police running, but did not know the person the police were chasing, and another witness said Mr. Tracy was a “good soul” but did not hear anything. Other witnesses were not at the location when the OIS occurred, and others did not want to be identified, did not want to say anything, and did not know anything.

One witness, who lived in room 222, said she knew Mr. Tracy and W-1 from passing them in the halls, but did not know them personally. She heard the two “argue a lot.” The witness did not hear anything leading up to the shooting, and she heard four or five gunshots, which woke her up.

Another witness, who lived in room 224 with his partner and his child, said he had seen Mr. Tracy and W-1 arguing. His partner said Mr. Tracy and W-1 would fight often. Mr. Tracy had been aggressive and appeared territorial against the witness. But on the night of the incident, the witness and partner did not hear or see anything because they were asleep.

APPLICABLE LEGAL STANDARDS

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

Murder

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

Second degree murder is the unlawful killing of a human being with malice aforethought but without the additional elements of willfulness, premeditation, and deliberation, that would support a conviction of first degree murder. (*People v. Knoller* (2007) 41 Cal.4th 139, 151.) The malice required for second degree murder may be express or implied. (Pen. Code, § 188; *People v. Hernandez, supra*, 183 Cal.App.4th at p. 1332.) Malice is express when there is an “intent to kill.” (Pen. Code, § 188; *People v. Delgado* (2017) 2 Cal.4th 544, 571.) Malice is implied “when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately

performed by a person who knows that his [or her] conduct endangers the life of another and who acts with conscious disregard for life.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1215.)

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

Self-Defense

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

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

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

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

A threat of death or serious bodily injury is “imminent” when, based on the “totality of the circumstances,” a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a, subd. (e)(2); see *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305-1306 [imminent peril is “immediate and present” and “must be instantly dealt with”; it is not prospective or even in the near future].)

“Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. (Pen. Code, § 835a, subd. (e)(3).) De-escalation methods, tactics, the availability of less than lethal force, and department

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

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

Burden of Proof

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

Further, the prosecution has the burden of proving beyond a reasonable doubt that a killing is not justified. It is not a criminal defendant's burden to prove that the force was necessary or reasonable. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384; see *People v. Breverman* (1998) 19 Cal.4th 142, 156 [when defendant claims self-defense or defense of others, or there is substantial evidence supportive of defense, the jury will be instructed that prosecutor bears the burden of disproving this defense beyond a reasonable doubt].) Thus, in an officer-involved shooting, the prosecution must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others.

LEGAL ANALYSIS

The DOJ has completed an independent investigation and review of the facts and circumstances that led to the death of Joseph Thomas Tracy IV. This analysis is based on the totality of the evidence provided to the DOJ in this matter, including voluntary statements from the officers that witnessed and were involved in the shooting, witness statements, forensic evidence, the coroner's report, BWC footage, police reports, and surveillance footage from the incident location.

A successful prosecution of Detective Christopher Porrazzo, Sergeant Arthur Paez, Deputy Joshua Smith, and/or Detective Richard Kerr would require proof beyond a reasonable doubt that these officers did not act in lawful self-defense of themselves or others.

A detailed analysis of the evidence surrounding the conduct of the officers demonstrates that a prosecution would not be able to establish that Detective Christopher Porrazzo, Sergeant Arthur Paez, Deputy Joshua Smith, and Detective Richard Kerr were objectively unreasonable in their determination that lethal force was necessary to protect themselves or others, or that they did not actually hold this view. Accordingly, the examined evidence does not support the contention that the shooting or Mr. Tracy violated any criminal law.

Detective Christopher Porrazzo, Riverside County Sheriff's Office

Moments before the OIS, Detective Porrazzo saw Mr. Tracy move downward between vehicles alongside the hotel's western wall and lost sight of him. During his interview, Detective Porrazzo stated that, at the time, he suspected Mr. Tracy was attempting to find a position with cover and ambush one of the officers. This is corroborated by the fact that, in preparing for the operation, Detective Porrazzo understood that Mr. Tracy was likely armed with a handgun, was in possession of a deadly narcotic, and had a criminal history involving guns and narcotics. Indeed, when interviewed, Sergeant Paez stated a similar concern that Mr. Tracy was attempting to ambush the officers.

As Detective Porrazzo and other officers moved through the parking lot, and Mr. Tracy came back into view, Detective Porrazzo heard Investigator Monis warning other officers that Mr. Tracy was armed. Detective Porrazzo saw Mr. Tracy between two parked vehicles, starting in a crouched position and then moving upward. He saw Mr. Tracy's hand rise up, as if gripping something and bringing it out. In that moment, Mr. Tracy's actions and surrounding circumstances led Detective Porrazzo to believe that Mr. Tracy was going to fire a gun. Thus, based on the evidence, Detective Porrazzo had a subjective belief that Mr. Tracy was going to cause imminent danger of great bodily injury or death.

Further, a criminal prosecution could not prove, beyond a reasonable doubt, that Detective Porrazzo's actions were objectively unreasonable. From inception, Detective Porrazzo was aware of Mr. Tracy's prior criminal history and that Mr. Tracy was possibly armed. Mr. Tracy did possess a loaded handgun and a taser upon encountering the officers (which he dropped shortly before the OIS incident). Detective Porrazzo was also aware of the general dangers of the location, including the prevalence of narcotics and gun crimes. Notably, in preparing for the surveillance, Detective Porrazzo prepared a non-lethal force option—the less lethal launcher—indicating his consideration for the degree of force that he may need to use. These actions support Detective Porrazzo having a reasonable concern for his safety and the safety of other officers.

Upon initial contact with Mr. Tracy, to the OIS incident, Mr. Tracy refused to surrender, disobeyed officers' commands to stop, and fled. As the chase pursued, Detective Porrazzo deployed the less lethal launcher at Mr. Tracy. The fired round struck Mr. Tracy, but it did not stop him. As such, Detective Porrazzo was faced with a fleeing and armed suspect.

During the foot pursuit, Detective Porrazzo saw Deputy Smith fire several additional rounds from the less lethal launcher, which also failed to stop Mr. Tracy. Detective Porrazzo heard shouts from other officers that Mr. Tracy was reaching for something and had a firearm. He also noticed Mr. Tracy not moving his right hand from inside his waistband. Under the circumstances, it would not have been unreasonable for the detective to believe that Mr. Tracy was armed.

In the moments before the OIS, Detective Porrazzo saw Mr. Tracy move downward between vehicles alongside the hotel's western wall and lost sight of him. During his interview, Detective Porrazzo stated that, at the time, he suspected Mr. Tracy was attempting to find a position with cover and ambush one of the officers; Sergeant Paez stated the same.

As Detective Porrazzo and other officers moved through the parking lot, Mr. Tracy came back into view. Detective Porrazzo heard Investigator Monis warning other officers that Mr. Tracy was armed. Detective Porrazzo saw Mr. Tracy between two parked vehicles, starting in a crouching position, and moving upward. He saw Mr. Tracy's hands rise up as if gripping something and bringing it out. In response, and believing that Mr. Tracy was going to shoot the officers, Detective Porrazzo fired approximately six rounds.

Although Detective Porrazzo did not directly see the firearm at any point, in the totality of the circumstances, he could have reasonably believed that Mr. Tracy had the present ability, opportunity, and apparent intent to kill or seriously injure him and the other officers. This is based upon Detective Porrazzo's prior knowledge (about Mr. Tracy's possession of a handgun and prior offenses), Mr. Tracy's non-compliance with officers' commands, the fact that Mr. Tracy was armed with a loaded handgun right before the OIS, and Mr. Tracy's movements right before the OIS. A reasonable officer in Detective Porrazzo's situation could, therefore, reasonably believe that Mr. Tracy was armed and intended to shoot, and as such, posed an imminent threat of death or great bodily injury. In other words, the DOJ is unable to prove, beyond a reasonable doubt, that Detective Porrazzo did not act reasonably.

Sergeant Arthur Paez, Hemet Police Department

The evidence shows that Sergeant Paez had a subjective belief that Mr. Tracy was armed and intended to shoot at the officers. Sergeant Paez, during the initial briefing, was told that Mr. Tracy was likely armed with a handgun, in possession of fentanyl, and had prior weapons arrests. In addition, Sergeant Paez was familiar with the location, including information that the area had a high prevalence of narcotics and gun crimes.

Further, once Mr. Tracy exited the hotel and fled, Sergeant Paez heard what he believed were small caliber gunfire. He heard other officers yelling the word "gun." He also observed officers approaching his direction, and as such, he pulled out his firearm. These facts support a subjective belief, by Sergeant Paez, that Mr. Tracy was armed at this point in time.

Sergeant Paez then saw Mr. Tracy's positioning. Mr. Tracy appeared to be crouching, with his hands at his waist. Mr. Tracy stopped running north at a certain point. During his interview, Sergeant Paez stated Mr. Tracy appeared to be positioning himself to ambush an officer rather than attempting to escape. As Mr. Tracy emerged from his location, he moved toward the officers in the parking lot, and began lifting his hands "up and out." Sergeant Paez, believing Mr. Tracy was going to shoot him or other officers, fired approximately six rounds at Mr. Tracy. As such, the evidence shows that Sergeant Paez had a subjective belief of imminent death or great bodily injury against him or the other officers.

Further, the DOJ cannot prove beyond a reasonable doubt that Sergeant Paez acted unreasonably. Sergeant Paez had prior knowledge that Mr. Tracy was likely armed. He was briefed by GIT that Mr. Tracy was likely armed with a handgun, in possession of fentanyl, and had several prior weapons arrests. In addition, Sergeant Paez was familiar with the area and the prevalence of narcotics and firearms. As such, from the beginning, Sergeant Paez had a reason to be cautious.

During the surveillance operation, and after being informed that Mr. Tracy had exited the hotel, Sergeant Paez and his team began to move to Mr. Tracy's location. Around this time, Sergeant Paez heard what sounded like small caliber gunfire. He also heard other individuals yelling, including the word "gun." He also saw officers approaching his direction, and in response, Sergeant Paez took out his firearm. Mr. Tracy was actually armed with a loaded handgun and a taser during the incident, but dropped his gun during the police pursuit and moments before the OIS. These facts support that, at this point in the incident, and with Paez's prior knowledge about Mr. Tracy, Sergeant Paez reasonably believed that Mr. Tracy carried a firearm.

As Sergeant Paez approached Mr. Tracy's location, he saw brief glimpses of Mr. Tracy. Mr. Tracy appeared to be crouching with his hands at his waist. At a certain point, Mr. Tracy discontinued running north. During his interview, Sergeant Paez stated that Mr. Tracy appeared to be lying in wait to ambush the officers, rather than escaping. Detective Porrazzo voiced a similar concern during his interview, supporting the inference that Sergeant Paez's assessment was reasonable.

As Sergeant Paez moved in, he saw Mr. Tracy. Sergeant Paez had no cover. In that moment, Mr. Tracy emerged from his location, moved toward the officers in the parking lot, and began lifting his hands toward the officers. Sergeant Paez, in response, lifted his firearm and also heard a gunshot. In that moment, Sergeant Paez believed that Mr. Tracy had fired at him. As such, Sergeant Paez fired six rounds at Mr. Tracy, believing his life was in imminent threat of death or serious bodily injury.

Based on the totality of the circumstances and evidence available to the DOJ, it cannot be proved beyond a reasonable doubt that Sergeant Paez acted unreasonably when he fired his weapon at Mr. Tracy. The circumstances support a reasonable belief that Mr. Tracy presented an imminent threat of death or great bodily injury at Sergeant Paez or the other officers.

Deputy Joshua Smith, Riverside County Sheriff's Office

As noted above, Deputy Joshua Smith did not provide an interview. Footage from Deputy Smith's BWC shows him waiting at the southeast corner of the hotel and the GIT's initial contact with Mr. Tracy. However, after Mr. Tracy fled and Dep. Smith pursued him, the BWC's lens was blocked by Deputy Smith's 40-millimeter less lethal launcher. As such, there is limited direct information about his thought process. But the evidence surrounding this OIS investigation, as well as voluntary statements from Detective Porrazzo and Sergeant Paez are instructive in inferring Deputy Smith's state of mind.

Deputy Smith was part of the GIT briefing regarding the arrest operation and would have had a similar background and understanding of the surveillance operation as Detective Porrazzo, including information that Mr. Tracy was armed with a handgun. Deputy Smith was stationed with Detective Porrazzo at the incident scene and likely observed the same events as Detective Porrazzo. BWC video from Deputy Smith and Detective Porrazzo show them positioned at the southeast corner of the hotel waiting for Mr. Tracy. Deputy Smith was also assigned the less lethal launcher, which he deployed before the OIS incident and before resorting to his firearm, which demonstrated an awareness of the degree of danger. Notably, Deputy Smith stated during the pursuit of Mr. Tracy, "He's reaching in the waistband. He's reaching in the waistband. I don't know what he's reaching for," indicating he may

have suspected Mr. Tracy was armed. Taken with statements by Detective Porrazzo, who believed that Mr. Tracy had a gun and was about to shoot him and other officers, Deputy Smith's actions and statements suggest that he also believed that Mr. Tracy posed an immediate lethal threat.

Further, based on other officers' voluntary statements and the available evidence, a prosecution could not prove beyond a reasonable doubt that Deputy Smith acted unreasonably. As stated before, Deputy Smith likely had a similar background and knowledge of the operation as Detective Porrazzo. He likely encountered the same circumstances as Detective Porrazzo, since they were stationed together. Like Detective Porrazzo, Deputy Smith was also assigned the less lethal launcher, which he deployed multiple times during the pursuit, indicating that Deputy Smith was aware of some level of danger. Based on Mr. Tracy's reactions to being hit by 40-millimeter less lethal rounds, Detective Porrazzo also believed that Mr. Tracy was under the influence of a narcotic.

Further, other officers heard Deputy Smith call out during the pursuit, "He's reaching in the waistband. He's reaching in the waistband. I don't know what he's reaching for." This statement indicates that Deputy Smith may have suspected that Mr. Tracy was reaching for a weapon in his waistband. Indeed, Mr. Tracy had a loaded firearm and taser during the pursuit, and Detective Porrazzo and Sergeant Paez stated that they believed Mr. Tracy was armed. As such, a similar assessment by Deputy Smith would not have been unreasonable under the circumstances.

Moments before the OIS, Detective Porrazzo and Sergeant Paez believed that Mr. Tracy's movements indicated he was going to ambush the officers. Deputy Smith, as an officer in a similar situation, likely believed the same. This belief is corroborated by the fact that, as Mr. Tracy was between the two vehicles, Deputy Smith took out his firearm. And as Mr. Tracy began to emerge from between the two vehicles, Deputy Smith fired at Mr. Tracy. It appears that Deputy Smith only fired after the other officers had begun firing, indicating that like Sergeant Paez, Smith may have believed the gunfire was from Mr. Tracy's gun. Thus, based on the totality of circumstances present during the OIS and the assessments by other officers of the imminent threat and danger posed by Mr. Tracy, it could not be proven beyond a reasonable doubt that Deputy Smith acted unreasonably in using deadly force.

Detective Richard Kerr, Riverside Police Department

As noted above, Detective Richard Kerr did not provide an interview. Additionally, Detective Kerr was not wearing a body worn camera. As such, there is limited direct information regarding Detective Kerr's thought process during the OIS. However, the evidence gathered in this investigation, including the voluntary statements from Detective Porrazzo and Sergeant Paez, are instructive in inferring Detective Kerr's understanding and intent.

Detective Kerr likely had similar knowledge of the surveillance operation as Detective Porrazzo and Deputy Smith, particularly as Detective Kerr was responsible for briefing the GIT team about Mr. Tracy's drug sales, possession of a gun, presence of a minor female, and criminal history, as well as the hotel being a high-crime location. He also likely encountered the same initial circumstances during the incident as Det. Porrazzo and Deputy Smith, since he was stationed with them and was in a similar position in the parking lot as Deputy Smith, when Mr. Tracy first appeared and was told to stop and to show his hands. Detective Kerr would have been in a position to hear Deputy Smith's statement that Mr. Tracy was reaching for an unknown object in his waistband. Further, Detective Kerr fired his weapon about the same time the other officers fired theirs, as Mr. Tracy emerged from the two vehicles, indicating that he believed Mr. Tracy intended to shoot at the officers. Thus, the circumstances indicate that Detective Kerr, like Detective Porrazzo and Deputy Smith, held a subjective belief in the need to use lethal force to protect himself and other officers from death or serious injury.

Further, moments before the shooting, Detective Porrazzo, Deputy Smith, and Investigator Monis stated that they were certain or nearly certain that Mr. Tracy had a gun, based on the manner he held his hand at his waistband and his movements in the parking lot. Mr. Tracy failed repeatedly to respond to orders to show his hands and was undeterred by 40-millimeter less lethal launcher rounds striking him. According to Detective Porrazzo, Mr. Tracy was trying to find a suitable position to ambush one of the officers. Investigator Monis stated that Mr. Tracy was running in a “zig-zagging” motion, and Sergeant Paez considered Mr. Tracy to be in a “low-ready” crouching position. When Mr. Tracy began to emerge from between two vehicles, Detective Kerr was in a similar position within the parking lot as Deputy Smith and would have had the same or substantially the same view of Mr. Tracy and his final movements. He would have had the ability to hear Investigator Monis’s statement that Mr. Tracy was reaching for his waistband, to hear Deputy Smith’s announcement of a “gun,” and to see Mr. Tracy rise up with his hands extended. As Mr. Tracy emerged from between the cars, Detective Kerr began to fire around the same time the other officers fired. This suggests that Detective Kerr’s assessment of the situation was consistent with the other shooting officers and that, based on the totality of the circumstances, Mr. Tracy could have reasonably posed an imminent deadly threat and that lethal force was necessary to stop the threat. Thus, Detective Kerr’s actions cannot be shown, beyond a reasonable doubt, to be objectively unreasonable.

CONCLUSION

The totality of the evidence gathered in DOJ investigation is insufficient to prove beyond a reasonable doubt that Detective Christopher Porrazzo, Sergeant Arthur Paez, Deputy Joshua Smith, and Detective Richard Kerr fired their weapons without the intent to defend themselves and others from what they reasonably believed to be an imminent threat of death or serious bodily injury posed by Mr. Tracy, who they believed was armed and about to shoot at them. Therefore, there is insufficient evidence to support a criminal prosecution of the officers, and no further action will be taken in this case.



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Policy and Practice Recommendations for Riverside County Law Enforcement Agencies Related to the Officer-Involved Shooting of Joseph Thomas Tracy IV on January 18, 2022

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

June 2024



POLICY AND PRACTICE RECOMMENDATIONS

The Attorney General is required to include “[r]ecommendations to modify the policies and practices of the law enforcement agency, *as applicable*” as a component of this report. (Gov. Code, § 12525.3, subd. (b)(2)(B)(iii).) (Emphasis added.) Therefore, the Department of Justice (DOJ) through its Police Practices Section (PPS) conducts a supplemental review of the information obtained through the criminal investigation, which may include a review of policies concerning body-worn camera footage, interview recordings, video recordings, witness statements and other records, as well as the publicly-available policies of the agency employing the officers who are subject to the criminal investigation.

Because of the nature of this process, the PPS does not generally obtain additional information from the employing law enforcement agency, or conduct an independent investigation of the agency’s practices outside of the single incident under review, which makes this process different from the DOJ’s formal Civil Code section 52.3 investigations and oversight reviews of local law enforcement agencies.¹

As background, on January 18, 2022, law enforcement officers from the Riverside County Sheriff’s Office, Riverside Police Department, and Hemet Police Department (HPD) shot and fatally wounded Joseph Thomas Tracy IV. Officers lured Mr. Tracy, who was under investigation for selling fentanyl, out of his room at the Travelodge Hotel in Hemet. When Mr. Tracy exited the hotel, he saw the officers and fled. During the pursuit the officers shot Mr. Tracy.

After a thorough review of the Division of Law Enforcement’s investigation, which included discussions with the Division of Law Enforcement special agents, PPS’s evaluation of the evidence, and the involved agencies’ policies, PPS concluded that it does not have recommendations to modify the policies and practices of the involved agencies as it concerns this specific shooting.²

¹ PPS limited its review to the information obtained through this criminal investigation. Two of the shooters were employed by the Riverside County Sheriff’s Office (RCSO), which is currently under civil investigation by the DOJ pursuant to Civil Code section 52.3. PPS’s conclusions herein will not serve to limit or otherwise prevent PPS from making findings and/or recommendations after it concludes its active civil investigation.

² Although not detailed in this report, it must be noted that PPS thoroughly reviewed and evaluated HPD policies relating to witness interrogation, and it is clear from the facts and evidence that the HPD detective who interrogated the minor girl, W-1, at HPD after the officer involved shooting violated the minor’s constitutional and statutory rights. The HPD detective failed to provide the minor with the required *Miranda* warnings, repeatedly failed to honor the minor’s invocation of her right to remain silent, and neglected to provide the minor with the advisements required by Welfare and Institutions Code section 625.