



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Report on the Investigation into the Death of Che Noe Zuniga, Jr. on August 7, 2021

Kern County AB 1506

July 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 (“the Department” or “DOJ”) is required to investigate all incidents of an officer-involved shooting resulting in the death of an unarmed civilian in the state. Historically, these critical incidents in California have been handled primarily by local law enforcement agencies and the state’s 58 district attorneys.

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

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

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

PRIVACY STATEMENT

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

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

- Witness 1 (W-1), father of decedent
- Witness 2 (W-2), mother of decedent
- Witness 3 (W-3), security guard at construction site
- Witness 4 (W-4), security guard at construction site
- Witness 5 (W-5), resident of 2308 Brazil Avenue
- Witness 6 (W-6), grandmother of decedent

INTRODUCTION

On August 7, 2021, officers from the Bakersfield Police Department were searching a residential neighborhood for Che Noe Zuniga, Jr. (Mr. Zuniga), a suspect who had been involved in a car chase and had exchanged gunfire with police officers on a public street. During the search, a police officer came across a trash can in the backyard of a residence that appeared to have a bulge in which he suspected Mr. Zuniga may be hiding. When police officers converged in the backyard, Mr. Zuniga emerged from a trash can in which he was hiding and ran directly at police officers. Three officers, believing Mr. Zuniga had an object in his hands, fatally shot Mr. Zuniga as he advanced toward them. Because Mr. Zuniga was unarmed at the time of his death, the California Department of Justice (DOJ) investigated and reviewed the second and fatal Officer-Involved Shooting (OIS) pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506 (2019-2020 Reg. Sess.)). DOJ also reviewed the first OIS incident, because it was closely connected to the circumstances involving the second OIS. This report is the final step in DOJ's review of the OIS incidents, and is limited solely to determining whether criminal charges should be brought against the involved officers. The review does not encompass or comment on any potential administrative or civil actions. 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 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 INCIDENT¹

In the evening on Friday, August 6, 2021, Che Noe Zuniga Jr. (decedent), and his father (W-1) and mother (W-2) were drinking at a retirement party at a friend's home. They got in an argument in the car on the way home, which continued until they were in their house. The house was located at 2309 Brazil Avenue in the City of Bakersfield. At the house, Mr. Zuniga struck W-2. Mr. Zuniga and W-1 then got in a fight. W-1 tried to escort Mr. Zuniga to his room. According to W-1, Mr. Zuniga punched him in the face and threatened to kill him. W-2 saw Zuniga strike W-1, and she took W-1 to their bedroom. W-1 woke up in his room with his face hurting. Mr. Zuniga broke W-1 and W-2's cell phones, and left the residence with a rifle he placed in his truck. W-1 also said that Mr. Zuniga showed him a nine millimeter semi-automatic pistol. W-1 went to the neighbor's house at 2308 Brazil Avenue and called the police.

On Saturday, August 7, 2021, at 12:35 AM, W-1 contacted the Bakersfield Police Department (BPD) Dispatch Center and reported that his son had threatened to assault him and that his son (Mr. Zuniga) was going to get a firearm. Mr. Zuniga left his father's home at 2309 Brazil Avenue in a green Chevrolet Silverado pickup truck (CA license plate no. 6M73304) with a camper shell.

At 12:35 AM, BPD Dispatch sent information to officers by Computer Aided Dispatch (CAD) that W-1 had reported his son (Mr. Zuniga) had threatened to commit a battery and to get a firearm, and then fled in a green Chevrolet Silverado.

Later the same night at 12:56 AM, W-3, a security guard at a construction site at Jaydyn Lane and Lautner Drive, called BPD Dispatch and informed them that a male subject had arrived at the site in a green pickup truck with license plate number 6M73304 and fired a gun at another security guard. This location was approximately eight miles from Mr. Zuniga's residence. Neither W-3 nor W-4 (the other security guard at the site) saw the subject with a firearm, but both heard a loud noise that was consistent with a gunshot. Also, W-3 saw a flash come from the pickup and believed it was from a gun being fired. After the loud noise the subject left the construction site. Neither security guard was able to identify Zuniga as the subject from a photo lineup.

At 12:56 AM, BPD Dispatch sent information to officers by CAD that a male subject in a green pickup had arrived at the new subdivision. At 1:01 AM, BPD Dispatch sent follow-up information by CAD that the subject had fired a shot at a security guard.

Also at 1:01 AM, BPD Dispatch sent out the following audio message: "Respond to possible shots fired at Lautner and Jaydyn Lane in the new subdivision. [Unintelligible]. Subject arrived in a green Chevrolet pickup. [Unintelligible]. Exited the vehicle and shot at a security guard."

At 1:33 AM, BPD Dispatch received a call from W-5, the resident of 2308 Brazil Avenue and a neighbor of the Zuniga family, who stated that Mr. Zuniga had returned to his parent's home. In a later interview, W-5 said that Mr. Zuniga appeared angry and had a handgun. Mr. Zuniga pointed it at his own house. He also began hitting the windows of his grandmother's (W-6) car and told her to give him his stuff back. Mr. Zuniga said W-6 had taken his rifle. W-5 said he saw Mr. Zuniga with a rifle earlier in the evening but thought that W-2 had taken it from him. W-5 went back inside his house and heard two gunshots outside. W-1 also heard the shots but did not know who fired them. W-2 later came to W-5's house and said that Mr. Zuniga had fired the shots. W-5 told BPD that Mr. Zuniga left with a

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

firearm in the truck. At approximately 2:12 AM, another neighbor from the same address called and said they heard gunshots outside of the residence.

At 1:37 AM, BPD Dispatch sent out information to officers by CAD as a follow-up to W-1's report that a neighbor reported Mr. Zuniga had returned. W-1 had seen Mr. Zuniga put a rifle into his vehicle.

At 2:19 AM, BPD Dispatch sent out a follow-up audio message to the earlier call from W-1 at 2309 Brazil Avenue. Dispatch reported, "We just received information from an anonymous [reporting party] he heard two shots from the residence. Probably [unintelligible] vehicle fleeing at high speeds."

At 2:21 AM, BPD Dispatch sent out another follow-up audio message that "per one [reporting party] prior to the subject leaving the first time, he was seen putting a rifle in his vehicle."

At 2:20 AM, Officer Christopher De La Cruz arrived with other officers at 2309 Brazil and spoke with W-1. W-1 told him that his wife (W-2) and son (Mr. Zuniga) had been out drinking. When they returned home, Mr. Zuniga began arguing with him and his wife. Mr. Zuniga fled the residence and W-1 went to his neighbor's house at 2308 Brazil to be safe in case Mr. Zuniga returned to assault him. W-1 was inside his neighbor's home when Mr. Zuniga returned to W-1's residence. W-1 heard two shots but did not see Mr. Zuniga fire the shots or know where the shots had been fired. He said that Mr. Zuniga was in possession of an unregistered nine millimeter pistol. It was the only firearm he knew that Mr. Zuniga possessed.

At approximately 2:31 AM, W-6 called 911 from 4512 Blossom Valley Lane and reported her grandson (Mr. Zuniga) was at her residence and armed with a gun. He would not give her the gun and she was afraid that he would shoot himself or kill somebody.

At 2:32 AM, BPD Dispatch sent information to officers by CAD that W-6 reported her grandson (Mr. Zuniga) arrived at her residence in possession of a firearm. She said he had been drinking and was angry. The information also said, "NO THREATS TO HARM ANYONE OR HIMSELF WITH THE FIREARM."

While still at the Zuniga home, Officer De La Cruz received a radio update that Mr. Zuniga was at his grandmother's home at 4512 Blossom Valley Lane and in possession of a firearm. He heard officers respond to that location and set up a perimeter for Mr. Zuniga.

Prior to his arrival, Officer De La Cruz saw notes attached to W-1's call to BPD Dispatch stating that W-1 reported that his son had been drinking, had threatened W-1, and had threatened to retrieve a firearm. These notes are put on the call by members of BPD Dispatch to inform officers and to limit radio traffic. They can be seen on the computers in the police vehicles. Officer De La Cruz was also aware of a call for service in which a security guard reported shots fired and the vehicle matched the description for the call he was responding to. He noted that while en route to the call, a neighbor reported that Mr. Zuniga fired two rounds near the front yard of 2309 Brazil Avenue.

Vehicle Pursuit and OIS on Stine Road

Officers Carson Puryear and Scott Mann arrived at 4512 Blossom Valley Lane at approximately 2:38 AM. They had read the call notes indicating that there was a family disturbance, the subject might have a firearm, and that the subject might be at his grandmother's house. The officers saw a green 2001 Chevy Silverado with CA license plate 6M73304 at the scene. Officers Dana Silva and Cisneros also arrived, and Officer Jauch arrived with a K-9 police dog. The officers discussed a tactical plan to approach the residence.

The green Silverado left the driveway and drove toward the officers. Officer Puryear had seen Mr. Zuniga's photograph prior to approaching the residence and recognized him as the driver and sole occupant of the truck. Mr. Zuniga looked in the direction of the officers, nodded his head upward, and put his right hand in the air with his pinky finger and thumb extended.

At approximately 2:50 AM, Officers Puryear and Mann began following Mr. Zuniga and attempted to stop his vehicle. Officer Mann, the passenger, activated the overheard emergency lights and siren. Mr. Zuniga did not yield to them. Mr. Zuniga drove westbound on Harris Road and then southbound on Stine Road. Mr. Zuniga's truck struck the west curb of Stine Road and stopped at the brick wall. The driver's door of the Silverado opened, and Mr. Zuniga began firing a handgun at the officers.

When Mr. Zuniga began firing, Officers Puryear and Mann got out of the patrol vehicle. Officer Puryear did not put the vehicle in park before exiting because he believed he would be killed if he stayed in the car. The patrol vehicle continued moving slowly forward as both officers exited the vehicle and stayed behind the doors of the car as it rolled forward. Officer Puryear could hear bullets striking the vehicle and saw Mr. Zuniga holding a firearm with both hands. Officer Mann saw Mr. Zuniga fire approximately five shots. The officers stated that Mr. Zuniga started firing at them when he exited the driver's side door, he then advanced toward them while walking to the rear of his truck and then ran along the bumper to the passenger side of the truck near the wall that his truck had struck.

Both officers fired at Mr. Zuniga in return. Officer Puryear believed he fired 13 shots, and Officer Mann believed that he fired four to six times. One of the bullets fired by Mr. Zuniga hit the "driver window" that Officer Puryear was behind, and Puryear was hit by glass in the face and the neck. Officer Puryear believed he had been shot.

As later reported by a civilian witness, Mr. Zuniga jumped over a block wall and into a residential neighborhood. At 2:56 AM, BPD Dispatch received a call from a woman who was in the residential neighborhood west of the location of the shooting; the caller reported that there was a person hiding in their backyard. At 2:56 AM, BPD broadcasted this information to officers in an audio message: "We have an RP advising 5714 Autumn Crest. There is a suspect hiding in her backyard."

Search of Neighborhood and Fatal OIS Incident

BPD established a perimeter around the area where Mr. Zuniga was believed to be hiding. Sergeant Cason led a tactical briefing regarding the search due to the fact that Mr. Zuniga was armed and the residences were occupied. Sergeant Cason assigned a role to each officer, some were "hands on," others "Taser," and other lethal force. Officer Jauch was also present with his dog. They requested police helicopters from three agencies, but none were available.

As the search was beginning, a resident at 5706 Autumn Crest reported to the officers at the scene that there was a gun in his backyard. The rear wall of the backyard was adjacent to Stine Road where Mr. Zuniga had jumped following the initial OIS. Officers located the gun in the backyard, and an officer was assigned to stay in the backyard and maintain security over the gun. The gun was subsequently determined to be a Hi-Point model C9 nine-millimeter semi-automatic pistol.

At 3:03 AM, the search team began looking for Mr. Zuniga at 5714 Autumn Crest Drive. The resident of 5714 Autumn Crest Drive gave them consent to search his rear yard because he thought there was a person hiding there. The officers approached the rear yard by entering a gate located on the north side of the front of the house. The gate into the backyard of 5714 Autumn Crest was next to the gate into the backyard of 5710 Autumn Crest. Officer Ramseur opened the gate and K-9 Officer Jauch gave

several loud announcements that the police were present with a dog and requested that Mr. Zuniga surrender. The resident of 5714 Autumn Crest Drive said he heard the announcements from inside of his house. Mr. Zuniga did not respond although it was later determined that he was approximately fifteen feet from where the announcements were made.



Location of K-9 officer announcements – 5710 Autumn Crest Dr. is on the left, and 5714 Autumn Crest Dr. is on the right.



Location of K-9 officer announcements at 5714 in relation to 5710 Autumn Crest.

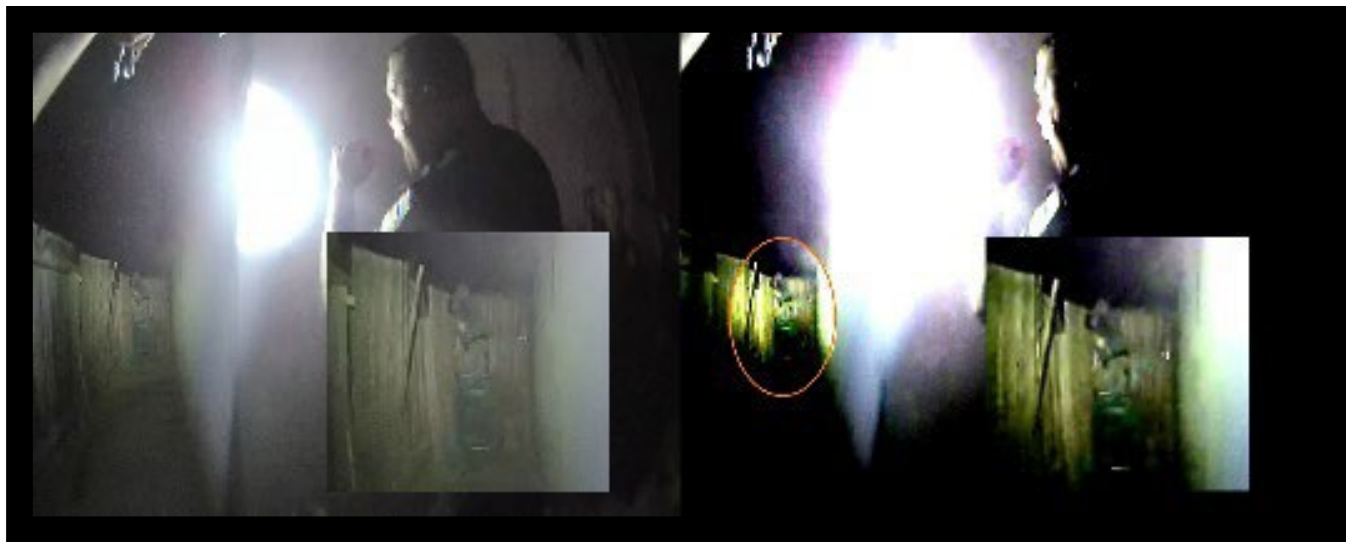
The officers initially searched the backyard of 5714 Autumn Crest but found nothing. They then began to search the yard of 5710 Autumn Crest Drive. The officers entered the rear yard of 5710 Autumn Crest

Drive through the residence because the exterior gate was blocked by items. The team that entered the backyard consisted of Sergeant Cason, Officers Ramseur, Dickson, Pena, Orozco, and Jauch. Sergeant John Bishop later entered the yard from the adjacent residence at 5706 Autumn Crest.

Sergeant Cason saw a trash can on the south side of the residence (adjacent to 5714 Autumn Crest) at the end of a breezeway near a gate leading out of the yard. The lid of the trash can was closed, and the front of the trash can faced the rear yard. Sergeant Cason pushed on it with his foot and it felt full. Officer Dickson thought that the can appeared to “bow” at the bottom. He had an officer ask the residents about the trash can, and they said it should not feel that full. At approximately 3:15 AM, Sergeant Cason formed the belief that Mr. Zuniga was hiding in the trash can and alerted the other officers.

As Sergeant Cason was sending a request over his police radio to have the police dog sent to the south side of the yard, Mr. Zuniga emerged from the trash can. Officers Ramseur and Dickson were to Sergeant Cason’s left and in a direct line with the path from the trash can to the breezeway. Officer Ramseur believed he was approximately 10 to 15 feet from the trash can. Officers Ramseur and Dickson saw Mr. Zuniga had a dark object in his hands which were extended at chest level. Officers Ramseur and Dickson believed it was a gun. Officer Ramseur yelled, “he has something in his hands, he has something in his hands.” Officer Ramseur fired two shots at Mr. Zuniga while he was still in the trash can.

Unaltered BWC photos show Mr. Zuniga emerging from the trash can.



After exiting the trash can, Mr. Zuniga began to run toward the officers. He ran alongside the house and got within six to eight feet of the glass door of the house where the residents were located.

Officer Ramseur saw Mr. Zuniga running toward him with his left hand covering his face and his right hand extended. Officer Ramseur thought Mr. Zuniga was still holding a dark object that he believed to be a gun in his right hand. Officer Ramseur fired another seven shots. Officer Dickson believed Mr. Zuniga still had an object in his hands, and he fired four shots at Mr. Zuniga. Officer Pena saw Mr. Zuniga appear around the corner of the house, and it appeared that Mr. Zuniga had a weapon in his right hand. Officer Pena fired one shot from his rifle, reassessed, and fired a second shot. Mr. Zuniga fell to the ground with his right hand underneath him near his waistband.



Image from BWC.



Image from Officer Dickson's BWC.

Sgt. Cason requested medical assistance at 3:15 AM. Officers began life-saving measures and had paramedics enter the rear yard. Mr. Zuniga was pronounced dead at the scene at 3:22 AM.

INVESTIGATION

Overview

On August 7, 2021, at approximately 4:12 AM, DOJ's Division of Law Enforcement (DLE) California Police Shooting Investigation Team (CaPSIT) received notification of an OIS from the Bakersfield Police Department (BPD). The incident involved the BPD and was determined to be a qualifying event within Government Code section 12525.3.

At approximately 8:00 AM, CaPSIT personnel arrived at the command post set up by BPD. A Deputy Attorney General (DAG) from DOJ also responded. BPD Crime Scene Unit was present to collect and find evidence and to document the scene. A Senior Criminalist from the California Department of Justice Bureau of Forensics (BFS) monitored and observed the collection of evidence.

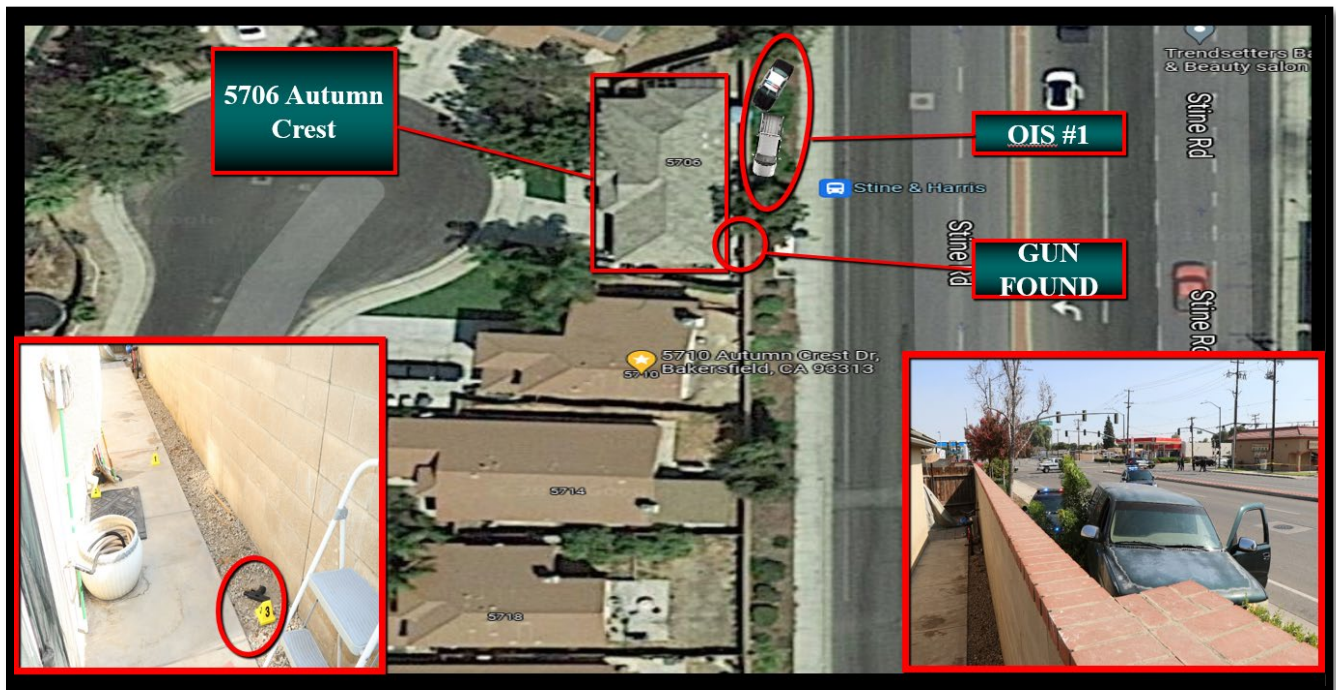
BPD personnel walked DOJ team through the shooting scene. They were shown the location of the decedent and evidence. DOJ agents participated in the interviews of civilian and sworn witnesses.

Evidence Reviewed

DOJ received and reviewed extensive investigation materials regarding this incident, including numerous reports from investigating officers; supplemental reports from the on-scene investigation; the Coroner's report; interview transcripts and audio recordings from the interviews conducted by the BPD and DOJ of the BPD officers involved in the two OIS incidents and from witnesses; BWC footage from two officers at the first OIS incident and seven of the officers at the second OIS scene; police radio channel recordings; Mr. Zuniga's prior criminal history; crime scene photographs; and autopsy photographs.

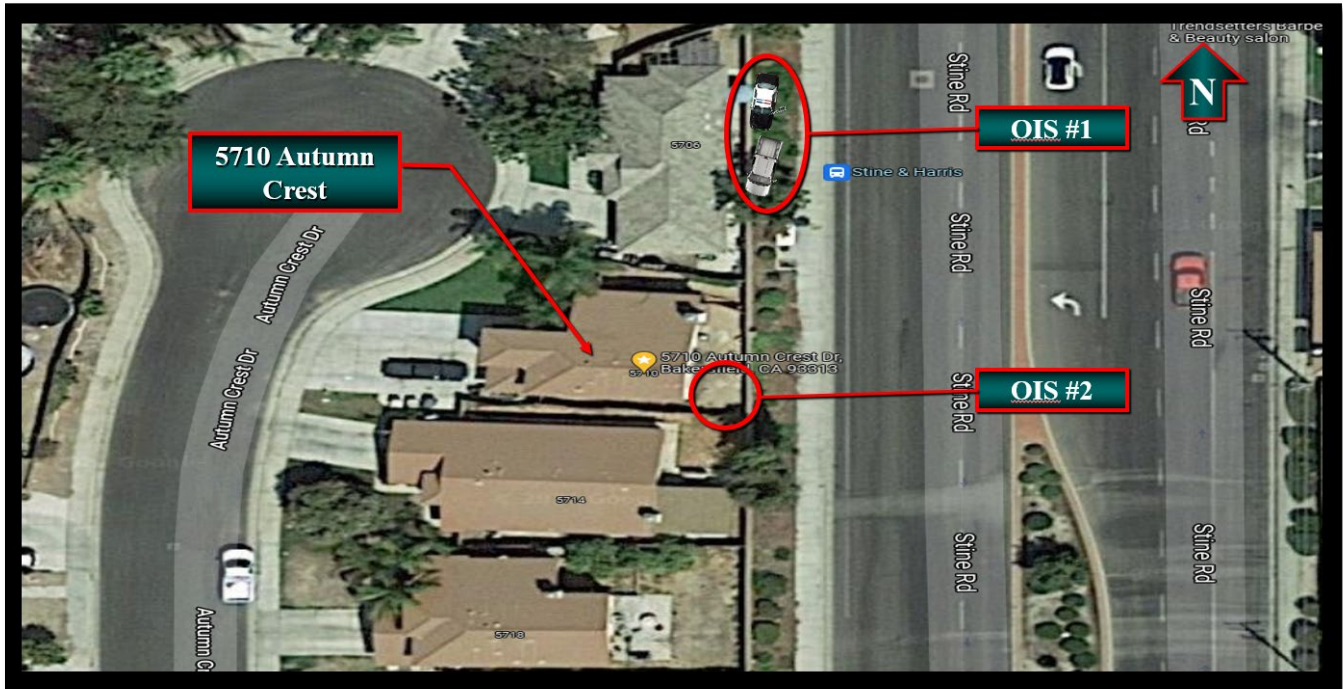
Incident Scene Description

OIS #1- The Area of Stine Road and Harris Road, Bakersfield CA



The first OIS occurred on the west side of Stine Road south of Harris Road. When this OIS occurred, Mr. Zuniga was near and in front of his vehicle which was in the bushes west of the west sidewalk. The officers were north of his location in the southbound lanes of Stine Road. The OIS occurred when it was dark but there were street lights and vehicle lights illuminating the area.

OIS #2- Backyard of 5710 Autumn Crest Drive, Bakersfield CA



The second OIS occurred in a residential neighborhood and specifically in the rear yard of 5710 Autumn Crest Drive. The residence is a two story structure comprised of a mostly stucco exterior. It had a smaller breezeway type areas on both the north and south sides of the rear yard. The main yard was east of the sliding rear door and had an empty kiddie pool. The shooting occurred on the south side of the residence.

Incident Scene Evidence Recovery

On August 7, 2021, BPD Det. Tsang and Det. Hernandez, Crime Scene Unit (CSU) Technician Jimenez, and CSU Technician Harrelson were assigned to the crime scenes. Furthermore, the DOJ's Bureau of Forensic Services (BFS) Senior Criminalist R. Booth responded to the incident to monitor and assist in the processing of the crime scenes.

Multiple locations were processed for evidence: 2309 Brazil Avenue, the area of Stine Road and Harris Road, 5710 Autumn Crest Drive, 5706 Autumn Crest Drive, 5714 Autumn Crest Drive, Mr. Zuniga's vehicle, the BPD patrol unit #5890 driven by Officers Puryear and Mann, and the body of Mr. Zuniga during the autopsy.

Numerous items of evidence were collected from these locations. The items, such as the weapons described below, are documented in reports prepared by BPD detectives and CSU technicians and are included in a master log. BPD CSU Technicians Jimenez and Harrelson took numerous digital photographs of multiple locations, including the interior and exterior of 2309 Brazil Avenue, OIS scene at Stine Road and Harris Road, OIS scene at 5710 Autumn Crest Drive, 5706 Autumn Crest Drive, 5714 Autumn Crest Drive, Mr. Zuniga's vehicle, and at the autopsy of Mr. Zuniga. BPD CSU also conducted 3-D scans of the crime scenes using a Leica scanning machine.

DOJ received and reviewed all investigation reports, including photographs of evidence items, provided by BPD.

Patrol Vehicle Involved in OIS 1

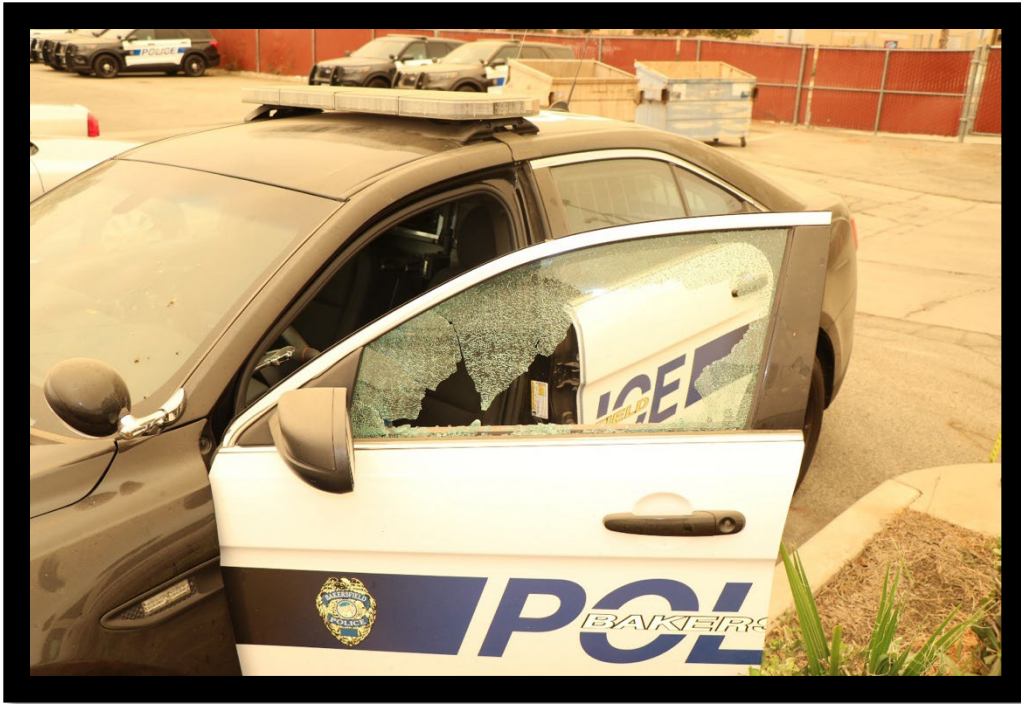
Officer Mann and Puryear’s patrol vehicle sustained damage from four bullet strikes. There was a hole in the front driver’s side fender of the vehicle. There was an additional bullet hole in the driver’s side door. The driver’s side window was shattered. The spotlight on the passenger side of the vehicle was hit by a bullet.



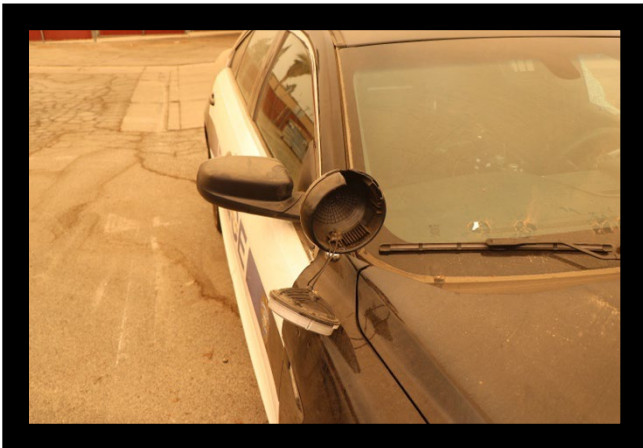
Bullet hole in driver’s side fender.



Bullet strike to driver’s side door.



Shattered driver's side window.



Broken spotlight on passenger side of patrol vehicle.

Firearms and Sandals Associated with Mr. Zuniga

A black Hi-Point model C9 nine-millimeter semi-automatic pistol found in the rear yard of 5706 Autumn Crest Drive.





Four Hornady nine-millimeter casings were found by Mr Zuniga's vehicle (the location of the first OIS) and three nine-millimeter casings and one live round in the area of 2309 Brazil Avenue. On September 23, 2021, BPD sent the casings and the Hi-Point model C9 nine-millimeter handgun (serial #146063), found at 5706 Autumn Crest Drive, to Kern Regional Crime Laboratory for comparison. On October 26, 2021, the analysis was completed and confirmed that all the casings were fired from the Hi-Point nine-millimeter handgun.

On September 23, 2021, BPD also sent a DNA swab from the Hi-Point nine-millimeter (serial #146063) and several DNA swabs from the Hornady nine-millimeter casings to Kern Regional crime laboratory for examination. On February 4, 2021, the examination was completed and found a mixture of DNA. Mr. Zuniga could not be ruled out as a contributor of the DNA.

A total of 29 nine millimeter casings were found at the scene of the first OIS, as a result of shots fired by Mr. Zuniga as well as the shots fired by Officers Puryear and Mann. The ammunition counts of the officers guns indicate that they fired 23 shots. There were six shell casings found in close proximity of Mr. Zuniga's truck (four Hornady and two Winchester) which suggests that Mr. Zuniga fired six shots. The two Winchester casings were not submitted for any testing. The officers' patrol vehicle had damage from four bullet strikes indicating that Mr. Zuniga fired at least four shots.

Two black sandals were also recovered from the rear yard of 5710 Autumn Crest Drive. One of the sandals was outside of the trash can and one was inside the trash can. The residents at the address told BPD officers that the sandals were not theirs. At the time of his death, Mr. Zuniga was not wearing shoes.



Sandals located at 5710 Autumn Crest.

A shotgun was found in the yard at 2309 Brazil Avenue while the police were investigating whether shots had been fired at that scene. The officers determined that the shotgun had not been used during the incident. The shotgun was not loaded but a live round was found in the vicinity of the gun. An AR-15 style rifle was found at 4512 Blossom Valley Lane. The rifle was loaded with one round in the chamber and 27 rounds in a magazine with the capacity to hold 40 rounds. W-6 told the police that she took it from Mr. Zuniga's truck and brought it back to her residence.



Shotgun located at 2309 Brazil.



Rifle located at 4512 Blossom Valley.

Officer Firearms

At the time of the first OIS, Officer Puryear was armed with a Glock 17, nine-millimeter semi-automatic pistol. The pistol as configured had a capacity of 17 rounds of ammunition consisting of one round in the chamber and 16 rounds in the magazine. Officer Puryear possessed two additional magazines, each loaded with 16 rounds for a total of 49 nine-millimeter rounds.

On August 7, 2021, at 7:42 AM, BPD Detectives Schlect and Arvizu conducted a post-incident examination of Officer Puryear's pistol. The pistol had one round in the firing chamber and three rounds were in the magazine of the pistol for a total of four. Officer Puryear possessed two additional magazines on his duty belt, which were each contained 16 rounds of Winchester, department issued, nine-millimeter ammunition. By this count, a total of 13 rounds were missing.

Officer Mann was armed with a Glock 17, nine-millimeter semi-automatic pistol. The pistol as configured had a capacity of 17 rounds of ammunition with one round in the chamber and 16 rounds in the magazine. Officer Mann possessed two additional magazines, each loaded with 16 rounds for a total of 49 nine-millimeter rounds.

On August 7, 2021, at 11:31 AM, DLE Special Agent Zurawski, along with BPD Detectives Schlect and Arvizu, conducted a post-incident examination of Officer Mann's pistol. The pistol was loaded with one round in the firing chamber and 16 rounds in the magazine of the pistol for a total of 17. Officer Mann stated he did a tactical reload during the OIS thus inserting a full magazine into his firearm. Officer Mann possessed two additional magazines on his duty belt, one was loaded with 16 rounds and the other with six rounds of nine-millimeter ammunition. By this count, a total of 10 rounds were missing.

At the time of the second OIS, Officer Ramseur was armed with a Glock 17, nine-millimeter semi-automatic pistol. The pistol was loaded with 17 rounds of ammunition consisting of with one round in the chamber and 16 rounds in the magazine. Officer Ramseur possessed two additional magazines, each loaded with 16 rounds for a total of 49 nine-millimeter rounds.

On August 7, 2021, at 11:15 AM, DLE Special Agent Zurawski, along with BPD Detectives Schlect and Arvizu, conducted a post-incident examination of Officer Ramseur's pistol. The pistol had a capacity for 17 rounds, consisting of one round in the chamber and 16 rounds in the magazine. When examined, the pistol had one round in the firing chamber and one round was in the magazine of the pistol for a total of two. Officer Ramseur possessed two additional magazines on his duty belt, which were loaded with 16 rounds of nine-millimeter ammunition. By this count, a total of 15 rounds were missing.

At the time of the second OIS, Officer Dickson was armed with a Colt M-4 5.56 rifle. The rifle as configured had a capacity of 27 rounds of ammunition consisting of one round in the chamber and 26 rounds in the magazine.

On August 7, 2021, at 10:52 AM, DLE Special Agent Zurawski, along with BPD Detectives Schlect and Arvizu, conducted a post-incident examination of Officer Dickson's rifle. The rifle contained one round in the firing chamber and 19 rounds were in the magazine of the rifle for a total of 20. By this count, a total of seven rounds were missing. The ammunition was .223 caliber.

At the time of the second OIS, Officer Pena was armed with a Colt M-4 5.56 rifle. The rifle as configured had a capacity of 27 rounds of ammunition with one round in the chamber and 26 rounds in the magazine.

On August 7, 2021, at 7:20 AM, BPD Det. Schlect and Det. Arvizu conducted a post-incident examination of Officer Pena's rifle. The rifle was contained one round in the firing chamber and 24 rounds in the magazine of the rifle for a total of 25. By this count, a total of two rounds were missing. The ammunition was .223 caliber.

The total number of rounds missing from the officers' firearm (because they had been fired) was consistent with the number of casings found at the two OIS scenes.

Video and Audio Recordings

Body Worn Camera (BWC)

CaPSIT Special Agents, along with BPD Detectives, obtained the BWC of the five officers involved in the two OIS's, as well as the BWC of four witness officers who were present during the second OIS. Officers Puryear and Officer Mann's BWC did not capture the first OIS due to the rapidly unfolding nature of the event. It did capture them taking cover behind their police unit and the events following. The three officers involved in the second OIS (qualifying event) had BWC activated at the time of the incident and recorded their response to the radio call, search, the OIS, and the events following. There were numerous other officers searching for Mr. Zuniga. Their body worn camera captured portions of the search for Mr. Zuniga, some captured the OIS, and some captured the events after the shooting.

Digital In-Car Video System (DICVS)

Bakersfield Police Department did not have cameras in their patrol cars at the time of this OIS.

Outside Video

Video footage from surveillance cameras in the area of Stine Road and Harris Road was recovered.

Social Media

An open source social media search was conducted and nothing of significance was found related to this incident. On October 12, 2021, the Bakersfield Police Department released a statement and a portion of the BWC to the public.

Communications

Communications from 911 calls, dispatch to officer communications, and officer to dispatch communications were retained for the investigation.

Coroner's Investigation

On August 7, 2021, at 3:45 AM, BPD Sergeant Bishop reported Mr. Zuniga's death to the Kern County Coroner's office. At 1:05 PM, Deputy Coroner Gonzalez took possession of Mr. Zuniga's body.

On August 27, 2021, Deputy Medical Examiner Dr. Carpenter performed a post-mortem examination and documented his findings in an autopsy report.

Dr. Carpenter classified the manner of death as homicide and ascribed the cause to gunshot wounds. Doctor Carpenter identified sixteen gunshot wounds. The gunshot wounds consisted of entrance, entrance/exit, and grazing wounds. The gunshot wounds were caused by handgun and high-velocity weapons. Six bullets and three bullet fragments were recovered. There were four significant wounds, any of which could have been fatal: one through the top of the head that travelled through the brain, one through the aorta, one through the lungs, and one through the liver.

The coroner made the following findings as to the various gunshot wounds:

1. A gunshot wound to the head traveling from left to right and downward toward the back of the head. It went through the skull and brain. It was lethal.
2. A through and through gunshot wound to the anterior abdomen traveling from left to right and slightly downward. It was most likely not lethal.
3. A gunshot wound similar to shot 2.
4. A gunshot wound similar to shots 2 and 3.
5. A graze wound traveling left to right and hitting the upper interior lateral right thigh. It was not lethal.
6. A graze wound hitting the lower lateral right thigh. It was not lethal.
7. A graze wound hitting the lower lateral right thigh. It was not lethal.
8. A through and through wound passing through skin, muscle and bone causing severe fracturing of the upper tibia. This was a probable lethal wound.
9. A wound to the upper lateral left back traveling downward to the right and forward. This was a lethal wound.
10. A wound to the left upper arm traveling through the arm and into the chest, downward to the right. This was a lethal wound.
11. A wound into the lower part of the left upper arm.
12. A wound to the right lower back through skin and subcutaneous tissues for about six inches. This was not a lethal wound.
13. A wound probably from a bullet that went through the left forearm and traveled into the abdomen to the right, downward, and to the front. This was a lethal wound.

14. This wound was probably caused by the same bullet as 13 and passed through the left forearm.
15. A graze wound to the posterior lateral pelvis. This wound was nonlethal.
16. A wound to the lower lateral left pelvis. This wound was probably not lethal.

Mr. Zuniga had THC (in both active and inactive forms), alcohol (a Blood Alcohol Concentration of 0.144), and Benzoyllecgonine 570 ng/ml, in his system at the time of his death. Benzoyllecgonine is the chemical breakdown of cocaine.

Decedent Information

Che Zuniga Jr, was 21 years old at the time of the OIS. He was six feet and two inches tall, and he weighed 236 pounds.

Statements of Police 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.) Here, the involved officers who fired shots at the two OIS events, as well as officers who witnessed the second OIS, declined to be interviewed. However, they all voluntarily provided written statements.

The following are summaries of the written statements submitted by the involved officers, which describe the incident from the point of view of the individual officers. Please note that the statements contain facts relayed by the officers that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

First OIS-Involved Officers

Officer Carson Puryear

Officer Carson Puryear provided a written statement describing the first OIS incident. In the statement, he related the following:

On Saturday, August 7, 2021, Officer Carson Puryear was working the west side of Bakersfield in a patrol car with Officer Scott Mann as his partner. At that time, Officer Puryear had been employed by the BPD for six years and eight months. Officer Mann and he heard officers in the south zone responding to a call for service involving a subject with a firearm. Officer Mann told Puryear that the notes in the call stated a subject was involved in a family dispute, the subject had discharged a firearm, and he had fled in a green Chevrolet Silverado. The officers decided to drive in that general direction and look for the suspect vehicle.

A few minutes later, the officers received a radio message from the BPD Communications Center that the grandmother of the suspect in the original call for service stated that her grandson was now at her residence armed with a handgun and a rifle. The call for service was only a few blocks from the officers' location; they began driving toward the grandmother's residence on Blossom Valley Lane. Officers Puryear and Mann were the first officers on scene. Because the notes in the call advised that the subject was armed with a rifle and a handgun, Officer Puryear retrieved his department-issued PWS .223 caliber M4 rifle which was loaded with 27 rounds of ammunition. The officers gathered just west of the residence at the intersection of Arbor Glen Way and Blossom Valley Lane. Officer Puryear noticed there was a truck in the driveway of what appeared to be the residence of interest.

Officers Puryear and Mann waited for additional units to arrive. The officers expressed concern for the well-being of the grandmother but did not want to rush into a potentially dangerous situation with an

armed suspect without a plan. Officer Silva, K-9 Officer Jauch, and Officer Cisneros arrived, and they made a plan to approach the residence with officers on foot and two officers in patrol vehicles. The officers designated a less lethal officer with a Taser, hands on officers, a K-9 officer, and Officer Puryear as lethal coverage with the rifle. During the planning discussion, Officer Puryear learned that the same suspect was likely involved in a shooting with a security guard earlier in the evening.

While making the plan, Officer Puryear was worried that “we could be facing someone with similar or greater firepower than us.” About a week before this incident, Officer Puryear was aware of a subject who killed his family members with a high-powered rifle in Wasco, California, and killed a deputy responding to the residence. He had just attended the funeral for the deputy within 24 hours of this incident and the safety concerns were fresh in his mind. He asked the officers that went to the original call for service if shell casings were located, and they confirmed shell casings were located, confirming that Mr. Zuniga had at least one operable firearm in his possession.

Prior to approaching the house, Officer Puryear observed a DMV photograph of the suspect. The officers were about to approach the residence when Officer Puryear noticed a lifted green Silverado truck with a camper shell approaching from the north. The truck drove past the officers very slowly, and Officer Puryear saw Mr. Zuniga driving; no one else was in the truck. Mr. Zuniga nodded his head in an upward manner and threw his right hand in the air as drove by.

Based on Mr. Zuniga’s taunting behavior, Officer Puryear believed Mr. Zuniga was not intimidated by officers’ presence. Officers Puryear and Mann got into their patrol vehicle and pursued Mr. Zuniga. The officers traveled northbound on Country View Lane where they activated the patrol vehicle’s overhead flashing red and blue lights, and forward-facing red lights and audible siren. The officers pursued the vehicle through the neighborhood at speeds of about 50 miles per hour. Officer Mann put out a radio message as they turned southbound onto Stine Road.

At about 2:50 AM, Mr. Zuniga’s truck turned southbound onto Stine Road, lost control, drove onto the west curb, and struck the wall. The truck slowed to a stop and Mr. Zuniga opened the door, jumped out, and immediately began shooting at the officers as their patrol vehicle approached. Officer Puryear believed that he had to get out of the patrol vehicle as soon as possible or else he would be killed. He believed Mr. Zuniga was using a semi-automatic handgun. Officer Puryear opened the driver door and stepped out of the patrol vehicle while it was still in drive, rolling forward at about 5 miles per hour, with the lights flashing, and the audible siren blaring. He did not take the time to come to a complete stop and put the vehicle in park, because he believed he would be hit by a bullet and killed.

The street was dark and not well lit but Mr. Zuniga and his truck were illuminated by the flashing red and blue lights and the headlights of the patrol vehicle. Mr. Zuniga walked from his driver’s door toward Officer Puryear. Officer Puryear had a clear view of Mr. Zuniga who was holding his handgun with both hands, with the gun pushed out from Mr. Zuniga’s chest in what Officer Puryear recognized to be a typical shooting stance. Officer Puryear began shooting at Mr. Zuniga with his handgun. Officer Puryear was walking next to his vehicle and behind his driver door as the vehicle was rolling forward and exchanged gunfire for what felt like about 10 seconds.

Officer Puryear estimated he got within approximately 50 feet of Mr. Zuniga who was shooting directly at him and the door he was standing behind. Officer Puryear believed that he could not turn around or else he would be shot in the back or Mr. Zuniga would start shooting at Officer Mann. Officer Puryear continued to return fire in an attempt to stop Zuniga from killing someone. He shot 12 times in a row while Mr. Zuniga fired at him. Then, the “driver window” that Officer Puryear was standing behind

shattered, glass struck his face and neck, and he thought he had been shot. Mr. Zuniga then ran westbound along the back of his truck toward the brick wall that his truck crashed into. Officer Puryear stated that he thought Mr. Zuniga was tactically repositioning in order to have better aim at the officers. Officer Puryear shot another round at Zuniga as he was running along the rear bumper of his truck. Officer Puryear stated that he was concerned that Mr. Zuniga was moving closer to Officer Mann as Zuniga moved closer to his side of the vehicle. Mr. Zuniga then disappeared along the west side of the truck, and Officer Puryear became concerned that Mr. Zuniga would flee into the residential neighborhood and possibly harm civilians.

Officer Puryear yelled at Officer Mann to throw him the rifle which Officer Mann did. Officer Puryear then retreated to the trunk of the patrol vehicle and looked along the west side of the truck from a distance "with [his] rifle." He did not see the Zuniga. Officer Puryear then walked eastbound from the trunk of the patrol car while looking southbound to see if Zuniga was running south along the sidewalk but did not see him. Officer Puryear believed he shot 13 rounds with his handgun and did not fire the rifle.

Officers Puryear and Mann were not sure if they had shot and wounded Mr. Zuniga, so they used a patrol vehicle as cover and walked southbound in the northbound lanes of traffic to clear the front of the truck. They did not see Mr. Zuniga; therefore, Officer Jauch deployed his police dog into the truck which did not locate Mr. Zuniga. The officers then cleared the inside of the truck. At this point, they concluded that Mr. Zuniga had jumped the wall into the residential neighborhood. Officer Puryear returned to his patrol vehicle, turned off the engine and placed it in park. Sergeant Abshire approached him, noticed blood on his neck, checked for bullet wounds, and did not locate any. The injuries on Officer Puryear's neck were from the glass of the driver window shattering after it was shot by Mr. Zuniga.

Officer Puryear was standing near his patrol vehicle when he heard a subject yell something from the other side of the block wall. He looked and observed a resident standing on the other side of the wall who stated he had located a firearm on the ground on the opposite side of the wall. Another officer maintained control of the firearm, and Sergeant Abshire relieved Officers Puryear and Mann from the scene.

Officer Scott Mann

Officer Scott Mann provided a written statement describing the first OIS incident. In the statement, he related the following:

On August 7, 2021, Officer Scott Mann and Officer Puryear were operating as a two-man unit in a marked patrol car when they heard over the radio that a domestic disturbance was in progress on Brazil Avenue. The radio message indicated that shots had been fired. At that time, Officer Mann had been employed by the BPD for approximately eight months.

The BPD Dispatch advised that the suspect was Che Noe Zuniga Jr., described as a Hispanic male, 21 years of age, who was driving a lifted green early 2000s Chevrolet Silverado and was possibly armed with a firearm. The BPD Dispatch advised that Mr. Zuniga fled the scene and was en route to a family member's residence located on Blossom Valley Lane. The officers responded to Blossom Valley Lane and awaited additional officers to coordinate a tactical and safe approach. Officers Cisneros, Officer Jauch, and other officers began to arrive on scene, and they began discussing a tactical plan to approach the suspect vehicle.

During this time, Officer Mann viewed the DMV photo of Mr. Zuniga. He also learned from Officers Cisneros and Jauch that a vehicle matching the description of Mr. Zuniga's vehicle was involved in an earlier call in which the driver shot at a security guard. Another reporting party had also reported gunfire at the initial scene, which was said to be a family disturbance.

While waiting for additional officers, Mr. Zuniga drove a lifted green Chevrolet Silverado by them, at slow rate of speed, going approximately 5 miles per hour. Officer Mann identified the driver as Mr. Zuniga based on the photo he had seen earlier. As Mr. Zuniga drove by, he looked directly at Officer Mann and the other officers on scene, all of whom were in police uniforms and standing next to marked police vehicles. Mr. Zuniga made a gesture with his hand. He appeared to have his thumb and pinky up, and his remaining fingers closed in a fist. Upon driving past the officers, Mr. Zuniga accelerated his vehicle at a high rate of speed.

Officers Mann and Puryear immediately got back into their patrol vehicle, with Officer Mann in the passenger seat and Officer Puryear in the driver's seat. Officer Mann activated the overhead emergency lights and sirens to initiate a traffic stop. Officer Mann got on the radio and began broadcasting information regarding the pursuit. Mr. Zuniga continued driving at a high rate of speed through the neighborhood, reaching speeds of approximately 45 miles per hour. Mr. Zuniga made a westbound turn onto Harris Avenue, then turned southbound onto Stine Road. Shortly after turning onto Stine, Mr. Zuniga's truck appeared to lose control and struck a brick wall on the west side of Stine. Mr. Zuniga exited his truck and positioned his body towards the patrol vehicle, raised a pistol that he was holding with both hands and pointed it directly at the patrol vehicle. Mr. Zuniga fired his weapon approximately five times. Officer Mann was clearly able to see Mr. Zuniga as he exited the truck because he was illuminated by the headlights of the patrol car, the taillights of his truck, the patrol vehicle's overhead lights, and the streetlights. At the time Zuniga began firing, Office Mann estimated that the patrol vehicle was approximately 50 yards away, but continued to get closer as the vehicle was still moving. While under fire, Officer Puryear quickly exited the vehicle without putting the vehicle in park and then began to return fire at Mr. Zuniga.

Prior to exiting the vehicle, Officer Mann handed Officer Puryear's department-issued rifle to him. As he exited the patrol vehicle, Officer Mann observed Mr. Zuniga to be moving from the driver's side of his truck to rear, and then to the passenger side of his truck. Officer Mann perceived Mr. Zuniga's actions and movements as taking a new tactical position so he could effectively fire at the officers to kill them. Officer Mann was positioned behind the passenger's side door and aiming over the door but believed he was still vulnerable to attack and feared that he would be killed. Officer Mann recalled firing his handgun "approximately four to six times" at Mr. Zuniga.

Officer Mann observed Mr. Zuniga continue to move from the passenger's side of his vehicle to the front of his vehicle. Officer Mann again perceived these movements of Mr. Zuniga as taking a new tactical position. Once Mr. Zuniga got to the front of his vehicle, Officer Mann lost sight of him and ceased firing. He then proceeded to move back to the rear of the patrol vehicle in an attempt to adjust his cover. While concealed behind the patrol vehicle, Officer Mann believed Mr. Zuniga was positioned in the front of his truck and was using it for cover and concealment. At this time, Officer Mann did a tactical reload of his firearm.

Officer Puryear gave multiple commands for Mr. Zuniga to show himself and his hands. At no point did Mr. Zuniga comply. Additional officers arrived on scene, and Officers Puryear and Mann repositioned themselves behind another BPD patrol vehicle to get a better viewpoint of the area in front of Mr. Zuniga's vehicle.

Officer Jauch and his police dog arrived on scene. Officer Jauch stated that he may have seen Mr. Zuniga run southbound. Believing that Mr. Zuniga may have been potentially wounded and in front of the truck, it was decided to send the police dog to clear the area around the truck. The police dog cleared the inside of the truck only. Officer Puryear maintained lethal coverage. Officer Mann switched to less lethal with his taser and planned to go “hands on” with the suspect if they took him into custody. Together, they approached Mr. Zuniga’s truck and cleared the front and inside the truck but found no signs of Mr. Zuniga. Shortly after clearing the vehicle, the BPD Dispatch advised that a reporting party stated there was a Hispanic male in their backyard. Officer Mann remained on scene near the patrol vehicle and suspect vehicle.

Second OIS- Involved Officers

Officer Desmond Ramseur

Officer Desmond Ramseur provided a written statement describing the second OIS incident. In the statement, he related the following:

On August 7, 2021, at approximately 2:50 AM, Officers Desmond Ramseur and Chad Dickson and were driving to a call for service (unrelated to this OIS) when they heard over the police radio that Officers Puryear and Mann had initiated a vehicle pursuit. At that time, Officer Ramseur had been employed by the BPD for three years and four months.

Officers Puryear and Mann advised that the vehicle they were pursuing was possibly related to a shooting that just occurred. Officers Ramseur and Dickson joined the pursuit. While en route to Officers Puryear’s and Mann’s location on Stine Road, Officer Ramseur heard a call over the radio that the suspect was shooting at Officers Puryear and Mann. Officer Ramseur next heard over the radio that the subject fled on foot. Officers were also advised over the dispatch radio and in call notes that the subject possibly had more than one firearm in his possession.

At approximately 2:56 AM, BPD Dispatch advised over the police radio that they received a 911 call from a resident at 5714 Autumn Crest Drive who was said there was a person in her backyard crouching down and appearing to hide. The resident described the person as a male of unknown race who was wearing a gray hooded sweatshirt. Officer Ramseur and other officers drove to 5714 Autumn Crest Drive to locate the possible suspect.

Upon arriving at Autumn Crest Drive, Officer Sergeant K. Cason was flagged down by a homeowner, located at 5706 Autumn Crest Drive, who found a firearm located in his backyard. Sergeant Cason had an officer stand watch over the firearm while other officers began a search for the suspect. Sergeant Cason then advised officers to set up a perimeter around the front yard of 5714 Autumn Crest Drive. Officer Ramseur contacted the resident who had reported to BPD Dispatch that there was a subject in their backyard. She had seen a person in her backyard jumping over fences. The resident did not know if the subject was still in her backyard and gave Officer Ramseur a key to unlock their side gate, which led to the backyard.

Prior to unlocking the side gate, Sergeant Cason assigned officers as lethal, less lethal, and as an arrest team, in case the officers encountered Mr. Zuniga. Officer Jauch gave verbal commands, stating, “Bakersfield Police Department, Police K-9. We know you are in one of these yards, come out with your hands up! Surrender peacefully or we will send a dog, he will find you, he will bite you! Bakersfield Police Department Police K-9. We know you are here, just give up now come out with your hands up! We are going to send dog, he is going to find you, he is going to bite you! Bakersfield Police

Department, come out now or you are going to get bit!” The officers then went through the side gate, entered the backyard, and searched, but could not find the suspect in the backyard.

After the search of 5714 Autumn Crest Drive was complete, Sergeant Cason advised officers that they next needed to conduct an extensive search of 5710 Autumn Crest Drive. Officer Dickson spoke with the homeowners of 5710 Autumn Crest Drive who said that they heard movement in their backyard and gave the officers consent to search it.

Upon entering the backyard of the residence, the officers began conducting a search but did not locate the suspect. Sergeant Cason noticed a green lawn trash can with a closed lid located on the south side of the residence. Officer Ramseur saw Sergeant Cason slowly retreating backwards in a tactical manner, as if he had been alerted to something. Sergeant Cason quietly told Officer Ramseur to ask the homeowners how full their green lawn trash can was. The homeowners told Officer Ramseur that their trash can was approximately a quarter full and should not be heavy. Officer Ramseur relayed that statement to Sergeant Cason.

Sergeant Cason immediately used his handheld police radio and requested K-9 Officer Jauch to meet with officers by the trash can. Sergeant Cason also stated over police radio that the suspect was possibly hiding inside the trash can. Officer Ramseur was standing approximately 10 to 15 feet east of the trash can and had a clear view of the trash can. He had his firearm unholstered. As Officer Jauch started to give another verbal command, Officer Ramseur saw the lid of the trash can swing open. As the lid swung open, Officer Ramseur saw Mr. Zuniga simultaneously jump to his feet while still inside the trash can and fully extend both of his arms with a dark colored object in his hands. Officer Ramseur saw the dark colored object pointed directly at him. He believed Mr. Zuniga was pointing a firearm to shoot him. Officer Ramseur believed he discharged his firearm approximately two times, and did not know if his rounds hit Mr. Zuniga.

After discharging his firearm, Officer Ramseur heard a loud rumbling sound as if Mr. Zuniga was trying to get out of the trash can. Mr. Zuniga immediately disappeared out of his view. Officer Ramseur began yelling to the officers, “he has something in his hands; he’s got something in his hands!” Officer Ramseur said that Mr. Zuniga “[s]uddenly” reappeared from the south side of the rear yard and was sprinting directly toward him. Due to other officers being directly beside and behind him, Officer Ramseur was not able to move out of Mr. Zuniga’s path. Mr. Zuniga was hunched over with his left arm covering his face and his right hand fully extended towards him. Mr. Zuniga still appeared to have the dark colored object in his right hand. Officer Ramseur believed Mr. Zuniga was running at him and would fire directly at him. Officer Ramseur again discharged his firearm at Zuniga to “stop the threat to [his] life.” He believed he fired approximately seven additional times until Mr. Zuniga fell to the ground and the threat had ceased. He observed Mr. Zuniga land on the right side of his face with his left hand fully extended out. Mr. Zuniga’s right hand was tucked under his stomach near his front waistband. Officer Dickson stated that he was able to see both of Zuniga’s hands. Sergeant Cason gave officers commands to cease fire and holster their firearms.

After holstering his firearm, Officer Ramseur was immediately escorted from the scene to a patrol vehicle. Sergeant Cason later took his department-issued body worn camera for downloading.

Officer Chad Dickson

Officer Chad Dickson provided a written statement describing the second OIS incident. In the statement, he related the following: On August 7, 2021, Officer Chad Dickson was on patrol with Officer Ramseur when he heard a radio message about a vehicle pursuit that was in progress. The

suspect vehicle was a green pickup truck, which was similar in description to a vehicle from a call earlier in the morning. In that call, the suspect had shot at a security guard. The text of the current call for service noted that a neighbor had seen the suspect place a rifle inside of the truck prior to leaving a residence. Also, prior to the suspect leaving the residence, the suspect was still armed after firing shots and having an altercation with family members. At that time, Officer Dickson had been employed by the BPD for two years and two months.

While driving to assist with the vehicle pursuit, Officer Dickson heard over the radio that the pursuit had ended near the intersection of Stine Road and Harris Road, and that an officer-involved shooting had occurred. The suspect had fled on foot southbound into the neighborhood. The suspect's clothing description was described as a grey hooded sweatshirt and shorts. A reporting party located at 5716 Autumn Crest Drive called BPD and said that a subject was hiding in her backyard.² She described the subject as an unknown race male wearing a grey hooded sweatshirt. Officer Dickson and his partner responded to the 5700 block of Autumn Crest Drive.

Upon arrival, Officer Dickson retrieved his assigned patrol rifle from the trunk of his patrol vehicle. Officer Dickson chose the rifle due to the information that the suspect was armed and had engaged police officers with lethal force. He walked to where Sergeant Cason was standing with other officers. Sergeant Cason advised that the suspect had just shot at officers and then fled on foot. He also told the officers that they could not allow the suspect to enter any residences in the area, because it could become a hostage situation.

Sergeant Cason and the other officers present discussed a tactical plan to search backyards in the neighborhood for the suspect. Officer Dickson learned that the suspect had discarded a firearm while fleeing on foot. However, Sergeant Cason reminded the officers that just because a weapon was discarded does not mean that the suspect was not still armed with another firearm or other weapon. Based on the information in the call, and that the suspect had fired a handgun and had loaded a rifle into his truck, Officer Dickson believed that the suspect was armed with more than one gun.

Sergeant Cason and the officers formed a team to search the backyards in the 5700 block of Autumn Crest Drive. Sergeant Cason stated he wanted those officers carrying rifles to be first in the team. Other officers were assigned other roles, including less lethal options. Officer Dickson was assigned as lethal cover because he had a rifle. A police dog was also with the search team.

A resident located at 5706 Autumn Crest Drive contacted the officers and said that he wanted them to take a firearm that was found in his backyard. Sergeant Cason then asked BPD Dispatch for updated information regarding which residence had the suspect possibly hiding in the backyard. BPD Dispatch advised that the address was 5714 Autumn Crest Drive. The officers responded to that residence and checked the side gate entrance to the backyard, which was locked. The residents of 5714 Autumn Crest Drive advised that there had been someone in their backyard and the subject was wearing a grey sweater. Officers asked for a key to their side gate, so they could check the backyard of the residence.

Officer Jauch made several announcements identifying the officers as being from the Bakersfield Police Department and telling the suspect to surrender peacefully. He specifically announced, "Bakersfield Police Department, Police K-9. We know you are in one of these yards. Come out with your hands up. Surrender peacefully or we will send a dog. He will find you; he will bite you. Bakersfield Police Department Police K-9. We know you are here, just give up now. Come out with your hands up. We

² The resident was actually located at 5714 Autumn Crest Drive.

are going to send dog, he is going to find you, he is going to bite you. Bakersfield Police Department. Come out now or you are going to get bit.”

The search team then entered the backyard of 5714 Autumn Crest Drive. They checked the backyard of the residence and did not locate the suspect. Sergeant Cason then directed the officers to clear the rear yard of 5710 Autumn Crest Drive. Officer Dickson received the consent of the residents to search the backyard, and officers went through the residence and entered the backyard through a sliding glass door.

Officer Dickson was the first officer into the backyard. The rear yard of 5710 Autumn Crest Drive was not well-lit, so he utilized the mounted light on his rifle as he cleared the backyard. After clearing the north side of the residence, Officer Dickson went to where Sergeant Cason, Senior Officer Orozco, and Officer Ramseur were standing on the other side of the residence. Sergeant Cason had asked via police radio for Officer Jauch to come to the backyard of the residence. As he looked at the side yard of the residence, Officer Dickson could see there was a green trash can at the other end of the side yard, which was approximately 20 feet away, near the side gate of the residence. The trash can appeared to bow out at the bottom. There was nothing else on the side yard of the residence.

Sergeant Cason said that “the suspect is possibly hiding in the trash can on the south side of 5710. Any officers to the front of the residence --- to the south.” Without warning, Mr. Zuniga opened the trash can. Mr. Zuniga matched the description of the suspect who had just attempted to kill two police officers, specifically, a male with a gray sweatshirt. Mr. Zuniga used his head to lift the trash can lid as he stood up. While standing up, he extended his arms out in front of his body at chest level. His hands were positioned together and joined in the center of his chest. Officer Dickson saw him holding something in his hands which appeared to be a black object, consistent in size to a firearm. Mr. Zuniga was holding it in the same manner in which one would hold a firearm. Due to his training and experiences, Officer Dickson recognized Mr. Zuniga’s stance as a shooting position.

An officer yelled, “Show me your hands!” As Mr. Zuniga stood in that position while holding something in his hands, Officer Dickson heard one shot. Officer Dickson believed Mr. Zuniga had just shot at him and the other officers. Believing that Mr. Zuniga was shooting at him, Officer Dickson immediately took cover behind the house so he would not be shot and killed by Mr. Zuniga. Officer Dickson heard Officer Ramseur yelling that Mr. Zuniga “had something in his hands.”

As Officer Dickson was attempting to take cover, Mr. Zuniga, who was no longer in the trash can, started to charge toward officers. Mr. Zuniga put his head down with his hands in fists, while running at a fast pace, while still holding something in his hands. Mr. Zuniga continued running eastbound and came to the corner of the house. At this point, Mr. Zuniga came within approximately six to eight feet of the open sliding glass door that led into the residence. Once Mr. Zuniga appeared from the side of the building, Officer Dickson realized that there was nowhere for him or the other officers to take cover.

Officer Dickson heard another (unknown) officer yell, “Get down!” but Mr. Zuniga did not comply. Officer Dickson fired at Mr. Zuniga as he neared the officers’ position with the object in his hands. Officer Dickson was concerned that Mr. Zuniga would make entry into the home and harm the residents. Officer Dickson had a clear shot at Mr. Zuniga. He fired four shots at Mr. Zuniga, aiming at his torso, and Mr. Zuniga fell to the ground. As he was no longer advancing, Officer Dickson believed the threat had somewhat ceased and he quit firing. Officer Dickson said he used lethal force because he believed Mr. Zuniga was imminently going to use lethal force against him and others.

After Mr. Zuniga fell to the ground, Officer Dickson could see Mr. Zuniga's left hand and part of his right hand. Officer Dickson informed other officers that, "I got both hands, I got both hands," in order to communicate that he could see both hands. Officer Dickson stopped and checked to ensure that he was not struck by gunfire from Mr. Zuniga. While Officer Dickson maintained lethal cover, officers placed Mr. Zuniga in handcuffs. Officers called by police radio for medical aid to enter the scene. Officer Cisneros began to check Mr. Zuniga for his weapon and to render medical aid. Officer Dickson then went to the front of the residence and stood by in the 5700 block of Autumn Crest Drive awaiting instructions from an on-scene supervisor. Sergeant Cason then took his body worn camera for downloading.

Officer Joshua Pena

Officer Joshua Pena provided a written statement describing the second OIS incident. In the statement, he related the following:

On August 7, 2021, while assigned to patrol the east side of the city, Officer Joshua Pena heard a BPD radio call for service stating that shots were being fired on the west side of the city. There was an additional call for service stating that a subject fired shots at security guards and was seen in a green pickup truck. A green pickup truck was mentioned in both calls, which led Officer Pena to believe they were related. He began reading the call notes entered by the BPD Dispatch, which stated that a reporting party witnessed the suspect armed with a handgun as well as a rifle. Further, the notes mentioned that the suspect fled in the green truck while in possession of both firearms. At that time, Officer Pena had been employed by the BPD for approximately six years.

Officer Pena heard on the radio that officers had located the suspect vehicle and were in pursuit. Shortly thereafter, officers advised via radio that an officer-involved shooting had occurred. Officer Pena immediately responded to assist. Officers said over the radio that they did not have a visual of the suspect and that they believed he fled on foot. Officer Pena went to the scene of the shooting and observed that the green truck had crashed into a cinder block wall. Officer Pena also saw a patrol car parked directly behind the truck with multiple bullet strikes, including the window of the driver door and the front windshield. This led Officer Pena to believe the suspect had fired at officers. Officer Pena knew that the suspect was still outstanding and noticed there was a residential area with multiple dwellings to the west of the incident location.

Officer Pena then heard via radio that a resident had observed the suspect in their backyard. Officers advised via radio that they were conducting multiple searches of residences in the area of Autumn Crest Drive. Officer Pena parked his patrol vehicle off of Harris Road and retrieved his department-issued Colt M4 Carbine Rifle. He chose this weapon because of the dispatch call note reporting that the suspect's family stated he was armed with a rifle. Officer Pena therefore believed his department-issued handgun would not be sufficient should the suspect engage police officers at a distance.

Officer Pena saw officers gathering in the front yard of a house to start searching the area and joined the group. He and other BPD officers began conducting searches of backyards, where nighttime lighting was minimal.

Officer Jauch gave several announcements prior to entering the backyard from the north side gate of the residence located at 5714 Autumn Crest Drive. Officer Jauch loudly and clearly stated "Bakersfield Police Department, Police K-9. We know you are in one of these yards. Come out with your hands up. Surrender peacefully or we will send a dog, he will find you, he will bite you. Bakersfield Police Department Police K-9. We know you are here. Just give up now come out with your hands up. We are going to send dog, he is going to find you, he is going to bite you. Bakersfield Police Department,

come out now or you are going to get bit.” These announcements were given directly adjacent to a fence where it was later determined that Mr. Zuniga was hiding. Officer Pena believed the announcements would have been clear and audible to the suspect.

The backyard of 5714 Autumn Crest Drive was searched and Mr. Zuniga was not located. At the conclusion of the search, the officers moved over one residence to the north to continue the search. Prior to entering the second yard, Officer Pena learned that a weapon had been located in another yard. However, based on the call notes and his training and experience, he believed that the suspect was still armed with at least one other weapon. Officers contacted the homeowners of that residence who gave them permission to enter their backyard to search. Officer Pena used his rifle light to illuminate the area because the lighting was poor.

Officer Pena cleared the northern portion of the yard and did not locate Mr. Zuniga. Officer Pena saw Sergeant Bishop and held the gate open for him to enter. As he was holding the gate, Office Pena heard officers yelling “Show me your hands!” from the southeast corner of the backyard, which caused him to immediately turn around. Within seconds, he heard the sound of multiple gunshots and heard officers yelling to Mr. Zuniga to “Get down!” and that he had “something in his hands,” multiple times. At this time, he believed Mr. Zuniga was still armed with one of the two firearms.

Officer Pena said that he was afraid for his life, as well as the lives of the other officers, because Mr. Zuniga had already shot at other officers earlier. Having previously observed bullet strikes to a patrol vehicle and seen call notes that Mr. Zuniga had already shot at security guards and threatened to kill his own family, Officer Pena believed that Mr. Zuniga intended to kill officers to evade arrest, and possibly anyone else who came in contact with him. Officer Pena was also concerned that Mr. Zuniga might enter the home and harm the family inside. He was aware that the sliding glass door where officers had exited to enter the backyard was open, and the residents were just inside the door.

Officer Pena next saw Officer Ramseur moving side to side and heard him yelling in a manner that sounded as if he was in pain. Officer Pena simultaneously heard multiple gunshots that sounded as though the gunshots were overlapping one another. Officer Pena believed Mr. Zuniga was firing at officers, specifically at Officer Ramseur, due to the way he was moving his body side to side. At this point, Officer Pena was in the center of the backyard and Mr. Zuniga was on the south side of the residence, which prevented him from having a clear view of Mr. Zuniga. Based on previously seeing the side portion of the home where the trash can was located, Officer Pena knew Mr. Zuniga was 30 feet, at most, from officers. Officer Ramseur was directly in the line of fire from where Office Pena believed Mr. Zuniga to be on the south side of the house.

As Officer Pena stood in the center of the backyard, Mr. Zuniga suddenly appeared into the backyard, going from west to east, and running at officers. The left side of Mr. Zuniga’s body was facing Officer Pena and his left hand was covering his face and neck area. Office Pena stated that it appeared that there was a weapon in his right hand which he was attempting to conceal with the top portion of his left body.

Officer Pena noticed Mr. Zuniga was charging straight at Officer Ramseur and was approximately within 2-3 feet of him. Mr. Zuniga was in the same position, in which his right arm was bent and it appeared that there was a weapon in his right hand with his elbow bent and raised to almost eye level directly towards Officer Ramseur. Officer Pena was approximately 4-5 feet away from Officer Ramseur. Officer Pena believed that Officer Ramseur had previously been struck by gunfire and that Mr. Zuniga was not done with his attack. Officer Pena believed Mr. Zuniga was still armed with a

firearm and intended to close distance and shoot Officer Ramseur. Officer Pena aimed his rifle at Mr. Zuniga's stomach and fired one round as he was still charging full speed towards Officer Ramseur. He did not have time to give any verbal commands, and in light of Mr. Zuniga's failure to comply with the prior commands or demand to surrender, he did not believe they would have been effective. At the time Officer Pena fired, Mr. Zuniga was fully illuminated by his and other officers' gun lights.

The shot did not appear to be effective, as Mr. Zuniga continued moving towards Officer Ramseur with his right arm still appearing to have something in it which was pointed in the direction of Officer Ramseur. Officer Pena fired a second shot which caused Mr. Zuniga to drop to the ground with his right hand under his body. Officer Pena believed Mr. Zuniga was wounded by this shot. Officer Pena ceased firing because he believed the immediate threat had ceased. Officer Dickson then stated he could see both of Mr. Zuniga's hands. Officers gave commands to Mr. Zuniga which he did not respond to. Officers approached Mr. Zuniga and placed him in handcuffs while Officer Pena maintained lethal cover. Once Mr. Zuniga was handcuffed, Officer Pena placed his rifle on safe. Mr. Zuniga and the immediate area were searched for weapons and medical aid was provided.

Second OIS-Witness Officers

Sergeant Cason

On August 7, 2021, Sergeant Cason was working his shift when he heard information over the radio regarding two shootings that occurred on the west side of Bakersfield. He responded to the scene and observed a patrol vehicle positioned directly behind a green full-size truck with a camper shell that was against a wall near the southbound lanes of Stine Road, just south of Harris Road. He observed damage to the front of the patrol vehicle and the driver's door glass window. He was informed at the scene that the suspect shot toward officers and fled the scene into the neighborhood to the west. Sergeant Cason and K-9 Officer Jauch responded to the neighborhood to start conducting a search for the suspect. When he arrived in the neighborhood, several officers were already there and he formed a search team. A call was broadcast over the radio that a resident at 5706 Autumn Crest Drive had reported that a firearm was in his backyard. There was also a radio announcement that the resident of 5714 Autumn Crest Drive had notified the police that someone was in the backyard.

Sergeant Cason was concerned that they were looking for a suspect who had been involved in several shootings that night and who was willing to fire at officers. Due to the time of night, he knew that most residences in the neighborhood would be occupied, and he was concerned that the suspect might force entry into a residence and possibly harm civilians or take hostages. Sergeant Cason formed a search team and informed officers that the suspect was possibly armed and might be in possession of more than one firearm. Sergeant Cason felt at the time that there was a large risk to the public, so he told officers that they would conduct "call outs," which generally means that they would announce their presence and order the suspect to surrender. Sergeant Cason wanted the officers to follow after the police dog. He formulated a tactical plan and assigned Senior Officer Orozco and Officer Ramseur to be the hands-on team with them also having their tasers available, together with the police dog as less lethal options. He asked for air units to assist in the search, however, none were available.

Sergeant Cason assigned an officer to respond to 5706 Autumn Crest Drive to stand guard over the firearm found in the backyard, in the event the suspect attempted to return and recover it. Sergeant Cason then took his contact team to 5714 Autumn Crest Drive, where the resident reported a subject was in their backyard. The officers conducted several call outs as they opened the gate to the backyard. They cleared and secured the backyard to 5714 Autumn Crest Drive. The trash can in the backyard of 5710 Autumn Crest Drive, where the defendant was later located, was approximately 10 feet from where they were conducting call outs. Sergeant Cason then decided to clear the residence at

5710 Autumn Crest Drive, since it had not been cleared and was between the houses at 5706 Autumn Crest Drive (where the firearm had been found) and 5714 Autumn Crest Drive (where a person had been reported in the backyard).

They contacted the residents of 5710 Autumn Crest Drive who allowed them to walk through the house to access the rear yard. Sergeant Cason, Officer Dickson, Senior Officer Pena, Officer Ramseur, and Senior Officer Orozco entered the rear yard. Sergeant Cason looked down the breezeway of the south yard and observed a trash can. The trash can had a noticeable bulge, so he pushed against it with his foot at which time he felt it contained something heavy.

As he approached the area of the trash can, he observed a men's black slide-on sandal on the ground. Sergeant Cason backed away from the trash can and requested over the radio for the K-9 officer to respond to the rear yard. He believed that the suspect might be in the trash can, and he was going to utilize the police dog to take him into custody. The resident informed him the trash can was approximately a quarter full which further raised his suspicions. As the K-9 officer entered the rear yard, Sergeant Cason heard Officer Ramseur yell out, "there he is, there he is, he has something in his hands," or something to that effect. Sergeant Cason stated he then heard a volley of gunfire at which time he yelled out to send the dog to engage the suspect.

Sergeant Cason said that from where he was positioned, he was not initially able to view Mr. Zuniga when he heard the shots, but Mr. Zuniga later ran out from the south breezeway of the residence. Sergeant Cason heard an additional volley of gunfire and saw Mr. Zuniga fall onto the ground. Sergeant Cason searched the area and observed the trash can was now fallen over. He noticed a sandal inside the trash can that matched the one he had previously seen outside the trash can. Sergeant Cason believed Mr. Zuniga had pointed a sandal towards officers.

Officer Cisneros

On August 6, 2021, at approximately 11:40 PM, Officer Cisneros responded to a possible shots fired call for service at Lautner Drive and Jaydyn Lane. Cisneros was unable to locate evidence of a shooting, but the witnesses provided a license plate number that matched Mr. Zuniga's vehicle with a similar description. These witnesses advised the driver was a Black male accompanied by a dog.

At 12:40 AM on August 7, 2021, Officer Cisneros was dispatched to the residence at 2309 Brazil Avenue regarding a peace disturbance and possible discharge of a firearm. He took statements from W-5 who saw Mr. Zuniga in possession of a rifle which he placed in his car. W-5 said that Mr. Zuniga's mother had taken the rifle but Mr. Zuniga had a second firearm. W-5 heard two shots fired but he did not observe the shots being fired as he was inside of his residence. He was able to see Mr. Zuniga flee the residence in a green pickup truck. Officer Cisneros later observed two spent nine-millimeter casings on the west side of the residence.

Officer Cisneros then received an additional call for service at 2:36 AM. The text of the call advised that Mr. Zuniga was located at 4512 Blossom Valley causing a peace disturbance, and was still armed according to his grandmother. Officer Cisneros left the residence accompanied by other officers who were at Brazil Avenue and responded to Blossom Valley. Upon arrival, several officers gathered to the west of the residence and attempted to formulate a plan to approach in the safest manner as Mr. Zuniga was still armed. However, as they were waiting, a vehicle approached us from the north, and Cisneros saw that the driver of the vehicle was Mr. Zuniga.

The officers got in their patrol vehicles and began to pursue Mr. Zuniga. Officer Puryear and Officer Mann were first in the pursuit, Officer Jauch was second, and Officer Cisneros was third. Mr. Zuniga began to travel westbound on Harris Road towards Stine Road. At Stine Road, Zuniga attempted to make a left turn onto south Stine Road. As Officer Cisneros approached the intersection, he saw that the vehicle driven by Mr. Zuniga had jumped onto the western curb and was disabled. Officer Puryear and Officer Mann's vehicle was on the curb behind Zuniga's vehicle. Officer Cisneros noticed both officers had their firearms drawn. Officer Cisneros heard shots being fired. He exited his vehicle and took cover on the center block wall along the west side of the sidewalk. Officer Cisneros used his handheld radio to advise responding units of the gunfire exchange. Officer Cisneros was unable to see who was shooting or how many shots had been fired. Once additional officers arrived on scene, Mr. Zuniga's vehicle was cleared, and it was determined he had fled. The patrol vehicle of Officers Puryear and Mann had sustained multiple gunfire strikes from Mr. Zuniga's firearm.

Officer Cisneros was part of the team that searched the residences on Autumn Crest Drive. He was positioned at the southwest corner of 5710 Autumn Crest Drive when he heard the gunshots. There was a pause, then additional gunshots were fired. He ran toward the shots and arrived at the location of the other search team members after the gunshots had stopped. Mr. Zuniga was lying face down on top of his arms in the rear yard. Officer Cisneros and Senior Officer Orozco secured Mr. Zuniga and began to administer chest compressions in an attempt to provide life saving measures.

Officer Jauch

On August 7, 2021, Officer Jauch, the K-9 handler for the patrol division, was working his regular shift. He heard calls related to a green Silverado truck, including one regarding shots fired at a construction site. He responded to that call as it was a priority 1 call. While looking for the pickup, he drove to the area of Panama Lane and Allen Road; however, officers on scene put out that the shots were heard only. Officer Jauch circled the area but was unable to locate the suspect vehicle. Officer Jauch was later dispatched to an earlier call at 2309 Brazil Avenue, which had been upgraded to a "priority 1," because neighbors were reporting shots heard and a male loading a rifle into a green pickup truck. While en route to 2309 Brazil Avenue, the suspect's grandmother called and reported the suspect was at her residence, 4512 Blossom Valley Lane, in possession of a handgun.

Officer Puryear and Officer Mann arrived in the area of Blossom Valley and set up a staging point at Blossom Valley Lane and Arbor Glen Way, where Officer Jauch and other officers met prior to contacting the suspect. At this briefing they discussed the following topics:

1. Description of two firearms, a pistol and rifle
2. The subject was armed and under the influence of alcohol
3. The potential for a hostage situation
4. The grandmother called 911 in front of suspect
5. The suspect knew police were coming
6. The taillights of the vehicle in the driveway were on and the subject was possibly inside the vehicle
7. The vehicle could possibly be used as a weapon or to flee from Officers
8. Perimeter considerations to contain the suspect
9. Possible plan for evacuation of neighboring residences
10. Force options including hands-on, less lethal, and lethal force

The briefing was interrupted when Officer Jauch observed a Green Chevrolet pickup with a green camper shell driving south on Arbor Glen Way. The vehicle passed the officers and Officer Jauch recognized Mr. Zuniga as the driver from a mugshot that he had previously viewed. As the Mr. Zuniga passed the officers, he slowed down and waved. Officer Jauch noted that the license plate on the green pickup matched the license plate of the suspect vehicle which was broadcasted earlier.

The officers entered their vehicles to stop Mr. Zuniga, with Officer Puryear and Officer Mann in front, and Officer Jauch behind them. The pursuit traveled eastbound on Blossom Valley Lane then northbound on Country View Lane. Officer Jauch stated that he lost sight of Officer Puryear and Officer Mann's vehicle when they turned west on Harris Road. He caught up with them at Harris Road and Stine Road, where he observed Mr. Zuniga's vehicle colliding with the wall on the east side of Stine Road, south of Harris Road.

Officer Jauch observed Officer Puryear standing outside the driver's door of his patrol vehicle, and observed muzzle flashes from Officer Puryear's service pistol. Officer Jauch parked his vehicle approximately 15 to 20 yards behind Officer Puryear's vehicle and approximately 10 feet off of the curb line. Officer Jauch stated he was in fear because he could see Officer Puryear firing his pistol, but he could not see Mr. Zuniga. Officer Jauch knew that Mr. Zuniga had fired at officers because he could see broken glass from Officer Puryear's shattered front driver side window. Officer Jauch stated that he also overheard Officer Puryear or Officer Mann confirm there was a "245 on an officer."³ Officer Jauch observed a subject running south bound on the west sidewalk of Stine Road wearing a gray hooded sweatshirt and shorts. Officer Jauch was not certain if this was the suspect. Officer Puryear then stated he believed the suspect was to the front of the green pickup and requested that Officer Jauch utilize his K-9 to clear the front of the vehicle. When the police cleared the front of the vehicle, Mr. Zuniga was not there.

The resident of the house that backed up to the location where the suspect vehicle stopped (behind 5706 Autumn Crest Drive) spoke to officers over a block wall and advised them that there was a firearm lying in the rear yard of his residence. After confirming that the suspect had fled, Officer Jauch put out the description of the subject that he observed running southbound at the time of his arrival. Next, the resident of another nearby house at 5714 Autumn Crest Drive called 911 and reported that a subject wearing a gray sweatshirt was in their rear yard.

Officer Jauch, Senior Officer Pena, Officer Dickson, Officer Ramseur, Sergeant Cason, and Senior Officer Orozco formed a search team. They first met in the 5700 block of Autumn Crest Drive where they conducted a briefing and discussed that the suspect they were searching for had already fired shots at police, and that one firearm had been located, but there was reason to believe that the suspect had another firearm in his possession. Sergeant Cason assigned roles to each of the team members and they began searching in the rear yard of 5714 Autumn Crest Drive. Prior to the search, a female resident came outside and told officers that she believed the suspect had fled in a southbound direction.

Officer Jauch began by making three surrender "call outs" similar to: "Bakersfield Police Department Police K-9. I know you are in one of these backyards. Come out, surrender peacefully, or we will send this dog, he will find you, and he will bite you!"

The announcements were made 10-15 feet from the location where Mr. Zuniga was later found. After clearing 5714 Autumn Crest Drive, the team began to search the yard at 5710 Autumn Crest Drive.

³ "245" refers to the crime of assault with a deadly weapon, which is prohibited by Penal Code section 245.

Officer Jauch and his dog waited at the front of the residence, while the search team made an initial entry into the rear yard. At this time, Sergeant Cason began to suspect that Mr. Zuniga was hiding in a trash can on a walkway just south of the residence and asked Officer Jauch to respond to the rear yard. As he entered the rear yard, Officer Jauch heard officers shouting. He then heard the sound of two gunshots being fired, which he believed were from Mr. Zuniga. Officer Jauch's K-9 was startled and began to pull away from the shots in a northbound direction. As a result, Officer Jauch had his back turned away from the direction of the shots and did not witness shots being fired. After the last shot, he attempted to calm his dog, and when he turned around, he could see officers surrounding Mr. Zuniga on the ground in the southeast corner of the yard.

Interviews of Civilian Witnesses

The following statements are summaries of civilian interviews, which describe the incident from the point of view of each person. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood. An additional two witnesses were interviewed, but they only heard the incident and did not observe the OIS.

Witness 1

W-1, the decedent's father, stated that, on Friday, August 6, 2021, he, his wife (W-2), and Mr. Zuniga (their son) went to a retirement party of a family friend. They arrived at the party at approximately 6:00 PM, and stayed for approximately four hours. He could not remember the exact time of their departure. While at the party, W-1 and Mr. Zuniga had "a couple" of drinks. W-1 also said he observed Mr. Zuniga consume approximately six to eight Michelob Ultra beers.

When W-2 advised them it was time to go, W-1 was upset because he was not ready to leave. However, he said this was just a minor disagreement that did not result in an argument. W-1 stated that W-2 and Mr. Zuniga went to the car and were waiting on him. W-1 used the restroom prior to leaving, but W-2 and Mr. Zuniga thought he might have started walking home. When W-1 arrived at the car, he could see that Mr. Zuniga was upset. When they arrived home, W-1 got undressed and went into his room to lie down, but he could still hear Mr. Zuniga being upset and asking why W-1 and W-2 were arguing. W-1 got out of bed and attempted to escort Mr. Zuniga back to his room, trying to calm him down and get him to go to sleep.

W-1 did not remember what happened next, but later woke up in his room with his face hurting. When he awoke, W-1 could hear W-2 and Mr. Zuniga arguing in another part of house. Because he wanted to avoid any further confrontation with Mr. Zuniga, W-1 exited the residence through his bedroom window, walked across the street to his neighbor's house, and called 911. W-1 did not remember what time he made the 911 call, but he knew that the police arrived approximately 45 minutes to one hour later. W-1 was inside of his neighbor's residence after calling the police, and he did not hear any gunshots being fired. While waiting for the police to arrive, W-1 heard Mr. Zuniga's truck leave the house and return a short time later, then the truck left again. W-1 said that Mr. Zuniga's truck had a loud recognizable exhaust.

After the police left, W-2 told W-1 that they needed to leave because the police were after Mr. Zuniga. They left to go to W-2's parents' residence at 4512 Blossom Valley Lane. However, while driving on Harris Road they observed flashing emergency lights from police vehicles at the intersection of Harris Road and Stine Road. W-1 said they observed Mr. Zuniga's truck in the roadway; then a short time later they heard gunshots.

W-1 said that approximately two months before the incident Mr. Zuniga showed him a black nine-millimeter semi-automatic pistol, which he had acquired from an acquaintance. W-1 could not provide the make or model of the pistol. He told Mr. Zuniga that he did not want the firearm in his residence. W-1 believed that Mr. Zuniga understood and got rid of the firearm. W-1 was unaware of any threat to Mr. Zuniga that required a firearm for protection. W-1 was not aware of Mr. Zuniga possessing any other firearms.

Witness 2

W-2, W-1's wife, had two children with W-1, Mr. Zuniga and a daughter, who both resided with them at 2309 Brazil Avenue. They had lived at that residence for approximately seven years. According to W-2, Mr. Zuniga was employed at Frontier Plumbing as a plumber for new construction homes. Mr. Zuniga worked Monday through Friday and normally left the home around 5:30 AM and returned around 2:30 PM. She advised he went to work the day before the incident (August 6, 2021), and appeared to be tired, but behaved normally.

W-2 did not know whether Mr. Zuniga was in a current relationship, but he had recent problems with an ex-girlfriend that he had dated since high school. She said that Mr. Zuniga had been arrested for a domestic violence incident and, one week before the shooting, he had seen a judge who gave him three years of probation plus a fine.

According to W-2, Mr. Zuniga always had a short fuse and temper, but she thought she could always calm him down. She felt guilty because that was possibly a sign of something, and she did not notice it. When asked if Mr. Zuniga had any behavioral issues or got into trouble at school, she said he was slacking off and smoked marijuana occasionally. She was not aware of him using any illegal drugs. He would drink alcoholic beverages occasionally, but it was not a daily habit.

W-2 said that during the week before the incident, Mr. Zuniga was mowing their front lawn when a friend of his (that W-2 had not seen in a long time) came over to visit him. Since then, Mr. Zuniga had been acting differently and sleeping a lot. W-2 thought it was due to Mr. Zuniga working outside in the heat and being tired, but she noticed that any little thing would bother him. His demeanor appeared to be low, so W-2 asked him if he was smoking marijuana, which he denied. She noticed that Mr. Zuniga would get very edgy and they were not able to talk to him. W-2 said that Mr. Zuniga always brought up things from the past that bothered him, and he would not let certain things go. She stated she would try to talk to him about it, and would tell him to let things go, but "he snapped."

On the evening of the OIS, W-2, W-1, and Mr. Zuniga went to a retirement party for a family friend. At the party, Mr. Zuniga was fine; he was laughing and talking with others. They left the party at approximately 10:00 PM, but as soon as they got in their vehicle, Mr. Zuniga's attitude changed and he became angry. W-2 did not understand his attitude change because no one did anything to him. As she was driving home, Mr. Zuniga questioned her on the route she was taking. When they arrived home, she told Mr. Zuniga to go to his room and go to sleep. W-2 went to her bedroom, where W-1 was already lying in bed. As she was preparing for bed, Mr. Zuniga entered her bedroom and asked why they were arguing. She told Mr. Zuniga that his father was already asleep, she was getting ready for bed, and no one was arguing. Mr. Zuniga exited her bedroom, and W-2 went to check on her daughter who had just returned home from work, which made Mr. Zuniga more upset.

After W-2 returned to her bedroom and was sitting on a recliner, Mr. Zuniga entered, began to argue with her, and slapped her on her face. He then grabbed her cell phone and threw it, causing damage. After Mr. Zuniga struck her, W-1 woke up and asked him what his problem was. Mr. Zuniga starting

“cussing” and “just went crazy.” W-1 attempted to calm Mr. Zuniga down. However, according to W-2, Mr. Zuniga wanted to fight. Mr. Zuniga and W-1 then began to fight and W-1 pushed Mr. Zuniga out of their room, while telling him to calm down, go to his room, and go to sleep. When Mr. Zuniga and W-1 were in the hallway and she was in her room, W-2 saw W-1 fall onto the ground, passed out with blood on his face.

Mr. Zuniga then went to his sister’s bedroom and broke the door down. W-2 attempted to calm Mr. Zuniga, but was unsuccessful. She was then able to get W-1 off the ground and escort him to their room, as Mr. Zuniga continued to yell at them. Mr. Zuniga then took W-1’s cell phone and broke it, leaving them with no operable telephones.

W-2 estimated the argument began between 10:30 and 11:00 PM. W-2 did not know what caused Mr. Zuniga to behave the way he did. He drank some beers but was not drunk. W-2 said that Mr. Zuniga had behaved that way before, and had punched holes in the walls, but they were able to calm him down. After the argument, W-2’s daughter went to her grandmother’s house, and W-1 went to a neighbor’s house (W-5). Mr. Zuniga then put his belongings and his dog in his vehicle and left.

Mr. Zuniga later returned to their house to retrieve his cell phone charger. While he was there, W-6 (W-2’s mother and Mr. Zuniga’s grandmother) and W-2’s daughter also arrived. Mr. Zuniga was still angry and they again attempted to calm him down. When Mr. Zuniga exited the house, W-6 was sitting in his truck to prevent him from leaving. As Mr. Zuniga approached the front bumper of his truck, he reached behind his back and pulled out a firearm. He began tapping the gun on the top of his head and laughing hysterically. He said, “This is what you guys want.” Mr. Zuniga then pulled W-6 out of his vehicle and left.

After hearing that Mr. Zuniga had gone to his grandmother’s house, W-2 began to drive there but saw police lights. She parked at a nearby Circle K (5634 Stine Road) and saw Mr. Zuniga’s truck. W-2 then heard several gunshots.

Witness 3

W-3 was working as a security guard at a home construction site at the intersection of Lautner and Jaydyn Lane on the night of August 7, 2021. As he was driving around the site, he observed a dark green Chevy Silverado truck with license number 6M73304 parked at the rear of one of the buildings. W-3 saw a heavy set Black man with curly hair, wearing a white shirt and shorts, walk out of a building and grunt at W-3. He walked outside towards the front of the building where a second security guard (W-4) was located. The man got into the truck and drove away.

W-3 did not observe a firearm or see the subject discharge a firearm, but he believed the man discharged a firearm because he heard a loud bang.

Witness 4

W-4 stated he was working as a security guard at the construction site with W-3. He was at the front of a building when a man exited the building. The man was agitated and was approaching him. W-4 was returning to his vehicle when he heard a loud sound consistent with a possible gunshot. W-4 did not observe a firearm or a shot being fired. He continued to walk to his vehicle and left the area.

Witness 5

On August 7, 2021, W-5 was at his home at 2308 Brazil Avenue. W-5 had recently arrived home from work and was getting ready for bed when he had a bad feeling that someone was possibly trying to open his front door. He went outside to check, but no one was there. He saw W-1 exit the front gate of his residence (2309 Brazil Avenue) and slowly walk towards him. W-1 appeared frightened, as if he was looking for someone in the area. W-1 asked W-5 to borrow his phone. W-5 went into his house to retrieve his phone, handed it W-1, and asked W-1 what happened. W-1 said he “was done” and thought his son was crazy. W-1 said he was in his room lying in bed, when Mr. Zuniga entered the room, punched him in the face, and told him he was going to kill him. W-5 observed that W-1 had visible injuries to the right side of his chest, right shoulder, and left cheek.

While W-1 called the police and was on the phone, W-1 went back to his own house and knocked on the door, then walked back towards W-5’s location. W-2 exited the house, approached the men, and began to curse at W-1 loudly. W-2 was yelling at W-1, but W-1 remained quiet and did not respond. While outside, W-5 observed Mr. Zuniga exit his house holding a rifle along his side, enter his vehicle, and leave. Mr. Zuniga returned a short time later and continued to argue with family members on the street. Other neighbors spoke with Mr. Zuniga, and then he left the area again.

W-5 saw Mr. Zuniga return to the house again, and also saw W-6 (Zuniga’s grandmother) there. As Mr. Zuniga walked towards the front of his own house, he looked back toward W-5 and told W-5 to please go back into his house.

W-5 told W-1 to come into his (W-5’s) house, and both men went inside. From inside, W-5 looked out his front window and saw Mr. Zuniga exit his own house holding a handgun. Mr. Zuniga was arguing with his mother and grandmother, at which time he pointed the handgun towards W-5’s residence. Mr. Zuniga did not aim the handgun in a shooting stance, but appeared to be use the handgun to point in the direction of W-5’s house. Mr. Zuniga appeared to be very angry, and at some point during the argument, he punched the windows of his grandmother's vehicle, trying to gain access and yelling at her to give him his stuff back. W-5 assumed that Mr. Zuniga’s grandmother had taken the rifle away from Mr. Zuniga and put it in her vehicle. While W-5 was in his house with W-1, he heard two gunshots which he thought Mr. Zuniga fired, because he had seen Mr. Zuniga with a handgun. W-2 later came to W-5’s house looking for W-1, and said that Mr. Zuniga was the person who had shot a gun.

Witness 6

W-6, Mr. Zuniga’s grandmother and the mother of W-2, went to her daughter's house when the incident was occurring. Her daughter was panicking because Mr. Zuniga had a gun. When Mr. Zuniga returned to the house, he told W-6 that he had a handgun and showed it to her. W-6 tried to convince Mr. Zuniga to give her the gun, but he refused and put it in his pocket.

When Mr. Zuniga arrived at the house, he parked his vehicle and left the door open. While Mr. Zuniga was inside the house, W-6 searched his vehicle and located the rifle on the rear passenger seat. She removed the rifle and placed it in her vehicle. She later transported it to her residence and told her husband to hide the rifle.

W-6 did not tell her daughter about the rifle, because W-2 probably did not know Mr. Zuniga had a gun. W-6 stated she did not see Mr. Zuniga handle or fire the rifle during the altercation at 2309 Brazil Avenue, but she was afraid that Mr. Zuniga would harm himself or others, so she had to take the rifle.

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

DOJ has completed an independent investigation and review of the facts and circumstances that led to the death of Mr. Zuniga. This review and analysis is based on the totality of evidence provided to DOJ in this matter, including voluntary statements from the officers involved in the shooting (Puryear, Mann, Pena, Ramseur, and Dickson), witness statements, forensic evidence, coroner's report, autopsy photographs, BWC footage, and police reports.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Officer Carson Puryear, Officer Scott Mann, Officer Joshua Pena, Officer Desmond Ramseur, and Officer Chad Dickson did not act in lawful defense of themselves or others, this is the primary issue in determining whether their actions are subject to criminal prosecution.

A detailed analysis of the evidence surrounding the conduct of the officers demonstrates that a prosecuting agency would not be able to establish that Officer Puryear, Officer Mann, Officer Pena, Officer Desmond Ramseur, and Officer Chad Dickson 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 conclusion that the shooting of Mr. Zuniga violated any criminal law.

Officer Involved Shooting #1

On August 7, 2021, Mr. Zuniga began a course of erratic behavior that ultimately ended with his involvement in two separate shooting incidents with police. The first incident occurred at the corner of Harris and Stine Roads with Officers Mann and Puryear. Prior to the shooting, both officers had heard calls from dispatch that Mr. Zuniga had been in a domestic disturbance where a firearm had been discharged. They also had responded to a call that Mr. Zuniga was at his grandmother's house armed with a rifle and a handgun. Additionally, both officers were aware that Mr. Zuniga had allegedly fired shots at a security guard. Immediately prior to the shooting, Officers Mann and Puryear were involved in a vehicular pursuit of Mr. Zuniga that ended when his truck struck a curb and was stopped by a brick wall. Mr. Zuniga exited the vehicle and began to fire a handgun at the two officers.

Subjective Element of Self-Defense

When interviewed, both officers stated that they subjectively believed that they needed to use force to defend their lives when they fired shots at Mr. Zuniga.

Officer Puryear said that he began firing when he heard bullets striking his vehicle. He further stated that Mr. Zuniga began walking toward him with a gun, took a shooter's stance, and began taking aim directly at the door of the patrol vehicle that Officer Puryear was seeking cover behind. Officer Puryear's neck was wounded by broken glass when a window was struck by a bullet from Mr. Zuniga. Officer Puryear stated that he could not turn around for fear that Mr. Zuniga would shoot him in the back, or fire at Officer Mann. He stated that he began returning fire to "stop him from killing me or anyone else." Officer Puryear estimated that he fired 12 times prior to Mr. Zuniga disappearing around the side of his Silverado truck.

Officer Mann stated that Mr. Zuniga exited the Silverado and fired at the officers approximately 5 times. Officer Mann exited the moving car and stayed behind the passenger door. He observed Mr. Zuniga move around the truck from the driver's door, to the rear of the truck, and then to the passenger side. Officer Mann interpreted the movement as Zuniga seeking a "new tactical position so he could effectively fire at myself and Officer Puryear to kill us." Officer Mann estimated that he fired four to six times because he believed Zuniga was trying to kill the officers.

The evidence supports that both officers actually believed that they needed to use deadly force to protect themselves and others from Mr. Zuniga. Both officers had received information over the police radio indicating that Mr. Zuniga was armed and had fired a weapon on prior occasions that evening, which would give them reason to fear that he presented a threat to their lives.

Officer Puryear stated that once Mr. Zuniga started firing at him, he had to get out of the car before putting it in park, because he feared that he would be killed if he stayed in the vehicle long enough to come to a complete stop. The BWC footage of the officers shows their police vehicle moving forward during the incident while they walked behind it. The fact that Officer Puryear did not put the vehicle in park before exiting it supports that he believed he faced an imminent threat, and had to get out of the vehicle in order to save his own life.

Both officers saw Zuniga exit his vehicle and begin firing his weapon at them. Moreover, Officer Puryear was also injured by glass from a car window that was struck by Mr. Zuniga's bullets. He believed he had been shot. Being fired upon and, in Officer Puryear's case, being injured further supports that the officers had a subjective belief that deadly force was necessary to defend their lives. Consequently, there is nothing in the evidence to suggest that the officers' statements of their subjective belief that they needed to use force to protect themselves was not sincerely held.

Objective Element of Self-Defense

The evidence also supports that Officers Puryear and Mann objectively and reasonably believed, based on the totality of the circumstances, that the threat of death was imminent, and that Mr. Zuniga had the present ability, opportunity, and apparent intent to cause death or serious bodily injury to them. Again, the officers were informed prior to the OIS incident that Mr. Zuniga was armed and had fired shots during prior incidents that evening. Mr. Zuniga had also shown no fear of the officers when he drove past them before the car chase that led to the OIS incident. Thus, both officers had information that would objectively and reasonably make them concerned for their safety and the safety of the public even prior to the shooting.

Mr. Zuniga failed to stop his truck when the officers pursued with sirens and flashing lights, and instead increased his speed in an apparent attempt to evade the officers. He only stopped when his truck crashed and became disabled.

As stated by both officers, Mr. Zuniga exited his vehicle and began firing at them after he ran his truck up a curb into a wall. His act of opening fire on the officers shows that the officers' belief that their lives were in danger was objectively reasonable.

Additionally, even after Officer Puryear returned fire, Mr. Zuniga was seen advancing on the officers, which the officers interpreted as Mr. Zuniga seeking a tactical position from which to kill them. Given this change of position, even after officers returned fire, it was reasonable for them to believe that Mr. Zuniga was actively seeking to kill them or cause serious bodily injury.

The objective and reasonable nature of their fear for their lives and safety is further supported by the fact that Officer Puryear sustained neck injuries from Zuniga's firing of the gun. While he was not hit by a bullet, Officer Puryear sustained cuts to his neck due to broken glass coming from a car window shattered by Mr. Zuniga's gunfire.

Therefore, the evidence demonstrates that a reasonable officer in the same situation as Officers Puryear and Mann would reasonably have believed that that Mr. Zuniga posed an imminent threat of great bodily injury or death. Both officers fired their firearms based on their belief that they needed to stop Mr. Zuniga from continuing to shoot his firearm and potentially kill or injure them. Given the totality of the circumstances, the involved officers' use of deadly force to defend against what they believed to be an imminent threat of death from Mr. Zuniga was reasonable and justified.

Officer Involved Shooting #2

The second OIS incident occurred in the backyard of 5710 Autumn Crest Drive where Mr. Zuniga had been hiding in a trash can. When he stood up in the trash can and began to run at the officers in the backyard, Officers Dickson, Ramseur, and Pena all fired weapons at Mr. Zuniga, which resulted in his death.

Subjective Element of Self-Defense

All three officers expressed their subjective concern that Mr. Zuniga presented a threat to them and the public. Officers Dickson and Pena were aware of the prior incidents where Mr. Zuniga had discharged a firearm at his parents' home and at the construction site, and all three officers were aware of the prior OIS where Mr. Zuniga had fired at Officers Puryear and Mann approximately 25 minutes earlier. Additionally, all of the officers expressed concerns for the residents of the houses in the area and a concern that Mr. Zuniga could take them hostage since he was fleeing from the police. Thus, knowledge of these events support a subjective fear that Mr. Zuniga was threat to the officers' lives and safety.

Officer Dickson stated that the defendant opened the trash can "[w]ithout warning," and appeared to hold a dark object in his hands which were positioned before his chest. Officer Dickson said he believed Mr. Zuniga was in a shooting stance. Officer Dickson heard a shot which he believed had been fired by Mr. Zuniga. Officer Dickson immediately took cover behind the house due to his fear the defendant would shoot him. Mr. Zuniga began running toward the officers and Dickson noted that he was no more than six to eight feet from an open door that would give him access to the house and he feared for the civilians inside. Additionally, Mr. Zuniga had ignored commands to show the officers his hands and get down. Officer Dickson fired four shots, stating "I used lethal force because I believed the suspect was imminently going to, and intending to use lethal force on myself and others."

Officer Ramseur stated that he was 10 to 15 feet from the trash can when he saw the trash can lid swing open and Mr. Zuniga “jumped” up in the can. He said that Zuniga had his arms fully extended with a dark colored object in his hands which was pointed at Officer Ramseur. Officer Ramseur said that he believed Mr. Zuniga was pointing a firearm at him and then fired twice at Mr. Zuniga. Mr. Zuniga attempted to get out of the trash can and Ramseur yelled, “he has something in his hands.” BWC footage confirms that he yelled that Mr. Zuniga had something in his hands. Officer Ramseur saw Mr. Zuniga running toward him and he was unable to get out of Mr. Zuniga’s way because other officers were beside and behind him. He believed Mr. Zuniga still had the dark colored object in his right hand. Officer Ramseur stated he believed that Mr. Zuniga was armed and would fire at him. He fired approximately seven shots to stop “the threat to my life.”

Additionally, Officer Ramseur’s reaction to the shooting was captured on his body cam. His behavior was consistent with him being extremely frightened by the encounter. He was audibly breathing rapidly and heavily after the incident. He can be heard repeatedly stating, “He pointed that shit right at me.” The body cam also shows that he appeared so focused on mentally processing the shooting, that another officer had to tell him to holster the gun after the shooting was over. The recording also shows him leaving the scene of the shooting with another officer while repeating, “He pointed that shit right at me, bro.”

Officer Pena stated that he did not initially see Mr. Zuniga stand up in the trash can as he was positioned in the center of the backyard and not near the trash can. He heard officers yell, “show me your hands” and then multiple gunshots. Officer Pena said that he thought that Mr. Zuniga was armed and, based on the fact he had fired at officers earlier, that he would try to kill officers to evade arrest. He was also concerned about the family in the residence. He saw Officer Ramseur moving side to side and yelling in a way that sounded like he was in pain. Officer Pena believed Mr. Zuniga was shooting at Officer Ramseur. Mr. Zuniga then appeared and was running at the officers. Based on the way he was holding his right hand, Officer Pena believed he had a gun. Officer Pena fired his rifle but it did not appear to have any effect on Mr. Zuniga. Seeing Mr. Zuniga still running toward Office Ramseur with his right hand still appearing to have something in it, he fired again and this time Mr. Zuniga dropped to the ground.

The evidence supports that the officers had a subjective belief that Mr. Zuniga was a threat to their lives and safety. The prior calls indicated he was armed and had fired his weapon which is sufficient to raise a fear that he had a firearm and was willing to use it. The prior shooting with Officers Mann and Puryear demonstrated that he was willing to fire upon police officers. While the BWC footage is too blurry to see whether Mr. Zuniga was holding anything in his hand, it also does not contradict the officers’ perceptions. The BWC footage also confirms that the officers sought cover behind the house after Mr. Zuniga emerged from the trash can, further indicating they had a subjective fear of him. Additionally, Officer Ramseur is heard clearly saying that Mr. Zuniga had something in his hand. Consequently, the evidence supports that the three officers’ subjective fear that Mr. Zuniga was a threat was genuinely held.

Objective Element of Self-Defense

The evidence further supports that, Officers Dickson, Ramseur, and Pena reasonably believed that Mr. Zuniga presented an imminent threat of death or serious bodily harm to them and others. Mr. Zuniga’s prior behavior could reasonably lead them to believe he was a threat. Officers Dickson and Pena were both aware of the prior calls for service where Mr. Zuniga had been seen with firearms and had fired shots. All three officers were aware that Mr. Zuniga had fired a handgun at Officer Puryear and Mann

about 25 minutes before. Thus, this information that Mr. Zuniga was armed and willing to fire his weapon at police officers supported an objectively reasonable belief that he posed an ongoing threat to their lives and safety.

Additionally, Officer Jauch had announced the presence of the officers and ordered Mr. Zuniga to surrender. Even though he was about 15 feet from Officer Jauch at the time of the announcements, Mr. Zuniga failed to surrender. Similarly, when Sergeant Cason kicked the trash can to determine how full it was, Mr. Zuniga continued to remain concealed even though the officers were in the backyard with him.

Further, Officers Dickson and Ramseur both saw Mr. Zuniga stand up suddenly in the trash can holding an item in his hand that they feared might be a gun. After the shooting, Sergeant Cason believed Mr. Zuniga had pointed a black sandal towards officers, but the officers could reasonably have feared the object was a gun in light of Mr. Zuniga's prior gun use.

Mr. Zuniga also ran at the officers. The BWC footage shows that Mr. Zuniga did stand up in the trash can and run at the officers. Given that Mr. Zuniga had previously been armed and fired at police officers, this was not an objectively unreasonable fear at that point in time, even though it was later determined that Mr. Zuniga did not have a gun. Given his aggressive actions toward them in a short amount of time, it was not unreasonable for them to believe the item he was holding was a firearm and to fear he would use it against them.

As for Officer Pena, he heard gunfire and saw the other officers attempting to get away from Mr. Zuniga. Given that Mr. Zuniga had previously been armed and shot at Officers Puryear and Mann, it was not unreasonable for him to interpret the activity as Mr. Zuniga firing at a new group of officers to evade arrest. Further, once Mr. Zuniga became visible to him, Officer Pena saw something in Mr. Zuniga's right hand that he believed was a gun. Still photos from the BWC footage show Mr. Zuniga running toward the officers with his right hand hidden by his head and body. However, because Mr. Zuniga had previously been armed, and because of the way that the other officers were reacting to Mr. Zuniga, it was not unreasonable for Officer Pena to believe that Mr. Zuniga was armed at the time he fired even though his belief was mistaken.

Additionally, there was a family inside the residence at 5710 Autumn Crest Lane. After jumping out of the trash can, Mr. Zuniga ran toward the open glass door that led into the house. Officers Dickson and Pena both expressed their concern that Mr. Zuniga might run into the residence and attempt to take the family hostage. Coupled with fears for their own safety, it was not unreasonable for the officers to believe that they needed to use force to also protect the civilians in the home from imminent harm.

While the officers had been informed that a handgun had been recovered in the backyard of 5706 Autumn Crest Drive, the officers were not certain that Mr. Zuniga did not have another firearm. The 911 calls from earlier in the evening indicated that Zuniga was also armed with a rifle. Further, the fact that one handgun had been recovered did not preclude the possibility that Mr. Zuniga possessed another handgun. Viewing the totality of the circumstances, a prosecution would be unable to prove beyond a reasonable doubt that the officers lacked an objectively reasonable belief that Mr. Zuniga presented an imminent threat to their lives and safety, as well as a threat to the lives and safety of the residents of 5710 Autumn Crest Drive.

CONCLUSION

The evidence gathered in this investigation shows that Officers Puryear, Mann, Dickson, Pena, and Ramseur acted with the intent to defend themselves and others from what they believed to be imminent death or serious bodily injury. The totality of evidence, including Mr. Zuniga's prior behavior involving the use of guns that was known to officers, or was reported to them, also tends to show that the officers' belief in the need to use deadly force was not unreasonable under the circumstances. As a result, criminal charges against the officers cannot be proved beyond a reasonable doubt and are, therefore, unwarranted. No further action will be taken in this matter.



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for
the Bakersfield Police Department Related to the
Officer-Involved Shooting of Che Noe Zuniga, Jr.
on August 7, 2021**

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

July 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).) 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. PPS uses the review process to identify applicable recommendations, including any recommendations to modify policies and practices that may reduce the likelihood that officers use deadly force, as well as recommendations to address any other deficiency or concern related to the officers’ conduct or the agency’s response. PPS’s goal is that these recommendations will assist the agency and the officers involved in the incident in understanding, from an independent perspective, improvements that could be made to address what was observed through this incident.

The shooting officers in this case are Bakersfield Police Department (BPD) officers. BPD and the City of Bakersfield entered into a stipulated judgment with the Attorney General on August 27, 2021.¹ The judgment followed the Attorney General’s civil investigation of the BPD pursuant to Civil Code section 52.3, and the judgment implementation is being overseen by the independent Bakersfield Monitor. The judgment requires BPD to make extensive revisions to its use of force policies and practices. This PPS report is separate from the judgment and ongoing monitoring of BPD, and will not limit that process.

As background, on August 7, 2021, BPD officers were searching a residential neighborhood for Che Noe Zuniga, Jr., who had been involved in a car chase and exchanged gunfire with police officers on a public street earlier that evening. During the search, officers believed that they located Mr. Zuniga hiding in a trash can on the side of a house. Shortly after officers located Mr. Zuniga, he came out of the trash can and started running, and officers shot and killed him. PPS reviewed both shooting incidents in this case.

PPS evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), PPS advises that BPD review and implement three recommendations,² in consultation with the Bakersfield Monitor, the Chief’s Advisory Panel, and DOJ.

1 <https://static1.squarespace.com/static/61bcb5437bc9701c216d1b9c/t/620e920177c90271fbbbe861/1645122053663/Bakersfield%2C+CA+Stipulated+Judgement+Order.pdf>.

2 PPS notes that several minutes prior to the second shooting, BPD gave K-9 commands in the surrounding area. BPD policy states in the relevant part that: “[W]hen reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b) [sic]). Such alternatives may include but are not limited to: (a) Attempts to de-escalate a situation. (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.” (BPD Policy Manual, Policy No. 300.3.6.) California law and the BPD judgment require officers to, when feasible, utilize de-escalation techniques. The BPD Monitor is evaluating BPD’s compliance with the requirement that BPD policy provides for, and officers employ, de-escalation techniques when feasible.

1. ACTIVATION OF BODY WORN CAMERAS

At approximately 2:45 a.m., Officers Carson Puryear and Scott Mann responded to the call of a subject with a firearm, at the residence of Mr. Zuniga's grandmother. The officers, operating as a two-person unit, arrived on the scene and saw Mr. Zuniga driving away. The officers attempted to conduct an investigative stop, but Mr. Zuniga failed to yield, and a vehicle pursuit ensued. They began to pursue Mr. Zuniga through the neighborhood streets. Both officers were wearing department-issued body worn cameras (BWC), but neither activated their BWC until after the first OIS had occurred.

BPD provides BWCs to specified sworn personnel for use while on duty. (BPD Policy Manual, Policy No. 425.1.) BWCs benefit both officers and members of the public by providing footage of officers' interactions with the public, including incidents like this one that led to deadly force. BWC footage can assist BPD, the public, and officers in determining administrative violations, civil liability, deficiencies in training, tactics, and equipment, and positive interactions that merit commendation.

Under the BPD Policy Manual, generally all public assistance, enforcement and investigative contact or activity, as well as all contacts specifically related to a call for service, are to be recorded to collect evidence for use in criminal investigations. (BPD Policy Manual, Policy No. 425.1.) BPD policy requires officers to activate their BWC to the "On/Record" status prior to any anticipated public assistance, enforcement activity, investigative contact, police activity, and all contacts specifically related to a call for service. (BPD Policy Manual, Policy No. 425.5.) Officers are expected to activate their BWC prior to arrival on a call for service in anticipation of a contact or an enforcement activity, or when an officer identifies a subject/vehicle upon whom an enforcement stop is warranted. The officer should activate the BWC prior to initiating the stop in anticipation of the contact and enforcement activity. (BPD Policy Manual, Policy No. 425.5.)

PPS recommends that BPD amend its policy, to specifically provide that "enforcement activity" includes a vehicle pursuit, and thus officers must activate their BWC at the time that an officer begins a vehicle pursuit. BPD should also evaluate whether it provides sufficient training on activation of BWCs.

2. MUTING THE AUDIO OF BODY WORN CAMERAS

After the second OIS, there were numerous instances of BPD officers muting the audio on their BWCs, prior to conversations with another officer or a supervisor. The purpose of a BWC is to record entire encounters so that it can serve as an accurate record of the events. When officers silence microphones, it may create an unnecessary suspicion of law enforcement and could act as a denial of public access to all the information regarding what transpired in a given incident.

Nonetheless, BPD policy allows for muting, though only where necessary for administrative conversations that need to take place outside the presence of the involved community members. (BPD Policy Manual, Policy No. 425.5.) The policy's broad language allows for the muting during non-call or incident-related conversations with other officers or employees of BPD, or other law enforcement personnel while not in near-proximity to members of the public. (BPD Policy Manual, Policy No. 425.5.) However, BPD policy further requires that, in any event in which the audio mute is enabled, personnel are required to verbalize and articulate the reason for muting prior to initiation. (BPD Policy Manual, Policy No. 425.5.)

In this event, it appears that BPD officers on scene did not comply with BPD's Policy No. 425.5 because, although the policy specifically provides that saying only, "Admin," is an insufficient justification to mute

the audio (BPD Policy Manual, Policy No. 425.5), numerous officers at the scene merely said “Admin” prior to turning off their audio. Because BPD officers muted many of the post-OIS conversations, a full, independent, contemporaneous record of what transpired cannot now be ascertained.

PPS recommends that BPD emphasizes the requirements of its current policy across the department, and specifically ensures that all officers are trained on the appropriate circumstances in which BWC recordings may be muted, the required actions an officer needs to take prior to effectuating a mute, and the allowable duration of a mute.

3. ENSURING OFFICERS DO NOT DISCUSS THE SHOOTING AMONG THEMSELVES BEFORE MAKING STATEMENTS

From a review of Sergeant Keith Cason’s BWC footage, immediately after the second shooting Sergeant Cason assembled the officers who were involved in the shooting. Sergeant Cason asked, “where’s his gun?” After no gun was located, Sergeant Cason saw a black sandal on the ground, and then said to the officers, “it looks like he was pointing the sandal at you guys.” Then Sergeant Cason said, “Admin,” and all of the officers muted their BWC audio. This series of events could leave an impression that the officers may have been discussing what occurred during the shooting, with their audio muted. Conversely, the officers may not have been discussing the events of the shooting. However, when all officers simultaneously muted the audio on their BWCs, there is no audio record available memorializing the conversation immediately following the shooting.

BPD Policy Manual, Policy No. 304.4.1(d), provides, in relevant part:

3. As soon as practical [after an OIS], the involved and witness officers should be transported to the police station. If officers are removed they should be accompanied by an uninvolved officer who will remain with the officer(s), at all times, until relieved by a supervisor. . . . [¶] 6. [The on-scene supervisor should admonish] involved officers and witness officers not to discuss the incident except with authorized personnel or representatives.

Because the policy does not define “authorized personnel or representatives,” this policy leaves open the possibility that officers may discuss the shooting incident with other officers at the scene.

PPS recommends that BPD amend its policy, to explicitly state that, following an officer involved shooting, the officers may not discuss the shooting with other officers, except to provide a public safety statement, prior to providing a formal criminal or administrative statement.