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DEPARTMENT OF JUSTICE

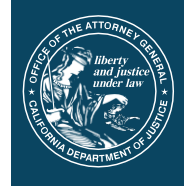
Report on the Investigation into the Death of Daniel Luis Valdivia on April 9, 2022

Los Angeles County AB 1506

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

- A statement of facts, as discovered 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, victims, and family members of Mr. Valdivia. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

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

- Witness 1 (“W-1”), Victim of Altercation with Mr. Valdivia
- Witness 2 (“W-2”), Witness to Altercation between W-1 and Mr. Valdivia
- Witness 3 (“W-3”), Employee of Country Liquor
- Witness 4 (“W-4”), Store Clerk at Country Liquor
- Witness 5 (“W-5”), Employee of Starbucks
- Witness 6 (“W-6”), Customer at Country Liquor
- Witness 7 (“W-7”), Shift Manager at Starbucks
- Registered Owner 1 (“RO-1”), Registered Owner of Black Honda
- Registered Owner 2 (“RO-2”), Registered Owner of Red Honda

INTRODUCTION

On April 9, 2022, at approximately 10:10 PM, officers from the Covina Police Department (“CPD”) were dispatched to a call of a man waving a handgun in the parking lot of a liquor store in the City of Covina. CPD Officers Cheng-Wei “Billy” Sun, Vanessa Cardoza, and David Meadows arrived on scene and gave commands to Daniel Luis Valdivia to put his hands up, to not reach for anything, and then to get on the ground. Mr. Valdivia assumed a partially prone position on the ground, then grabbed what appeared to be a gun from his waistband and pointed it at officers. The officers responded by discharging their firearms, killing Mr. Valdivia. It was subsequently determined that Mr. Valdivia was in possession of a BB gun.

The Department of Justice investigated and reviewed this Officer Involved Shooting (OIS) pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506). This report is the final step in the DOJ’s review of the fatal OIS of Mr. Valdivia. The scope of the report is limited 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 a thorough review of the investigation conducted by DOJ’s California Police Shooting Investigation Team (CaPSIT), 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, reader discretion is advised, especially for young children and sensitive individuals.

SUMMARY OF INCIDENT

On April 9, 2022, W-1, an employee of Country Liquor, located at 124 East Arrow Highway in the City of Covina, went to the parking lot in front of the store to smoke a cigarette. Shortly thereafter, Mr. Valdivia approached and informed W-1 that he was with a gang and that, “he kill[s] n[****]s like you, all day.” Mr. Valdivia walked away, but returned and asked who W-1 was affiliated with.¹ Mr. Valdivia showed W-1 a black handgun four to five times, but did not point it at W-1. He told W-1 that he was going to use the gun and threatened to shoot W-1. W-1 told him to put the gun away, but Mr. Valdivia continued to hold onto it. W-1 did not consider Mr. Valdivia’s words a direct threat, because Mr. Valdivia kept pointing the gun around “at the air,” and “at everything but us,” but W-1 was scared.

W-1 believed Mr. Valdivia was thinking about either taking his own life or someone else’s. In the meantime, W-1’s friend, W-2, arrived at the store and attempted to intervene. W-2 also spoke with Mr. Valdivia, who he believed to be under the influence of methamphetamine. W-2 walked Mr. Valdivia to some nearby apartments. Multiple other witnesses to the interaction called 911 to report the incident. At 10:10 PM, dispatch broadcasted that a 40-year-old Hispanic male with facial hair wearing a black sweater and shorts was at a liquor store “holding a can of beer and a black handgun in his hands.” Later, dispatch advised that the suspect was actively disturbing the peace with others in the area.

Officers arrived in the Country Liquor parking lot shortly after receiving reports from dispatch and parked out of sight. Officers Sun and Meadows approached Mr. Valdivia from the drive-thru area of a Starbucks, located next door to the liquor store, approximately 5 yards away from Mr. Valdivia. Upon their arrival to the scene at 10:16:45 PM, dispatch advised that another caller had reported that the subject had a gun in his front pocket. Officer Sun approached Mr. Valdivia, closely followed by Officer Meadows, both pointing their firearms directly at Mr. Valdivia. Officer Cardoza positioned herself near the sidewalk north of Mr. Valdivia, approximately 15 yards from him, facing southbound; she had her firearm drawn at “a low ready.” The officers observed two other individuals standing next to Mr. Valdivia.

¹ Mr. Valdivia posed a question commonly asked by gang members to ascertain the gang affiliation of strangers.



Figure 1 - Diagram showing approximate positions of Officers Sun, Meadows and Cardoza relative to Mr. Valdivia upon initial contact

At 10:16:54 PM, Officer Sun demanded to see Mr. Valdivia's hands and told him to put his hands up. Mr. Valdivia moved the bottle he held in his right hand to his left hand, and then reached for his waistband area near his right pocket with his right hand. Officer Sun again commanded Mr. Valdivia not to reach for his pockets. Mr. Valdivia said, "whatever," while raising his hands. Officer Sun believed Mr. Valdivia's behavior demonstrated that he did not care about anyone's safety. Officer Meadows also found Mr. Valdivia's response "strange" and "nonchalant" and caused him worry that Mr. Valdivia may be unpredictable.



Figure 2 - Image from video of Officer Sun's Body Worn Camera showing Mr. Valdivia reaching for his waistband prior to getting down on the ground

When Mr. Valdivia raised his hands, the handle of a black handgun was visible in his front waistband area.²

² The handgun was later determined to be a BB gun.



Figure 3 – Image from Officer Sun’s Body Worn Camera showing handgun in Mr. Valdivia’s waistband

Officer Meadows was concerned that Mr. Valdivia might take the two people next to him hostage or that he might run into the liquor store and endanger patrons. After multiple commands from Officers Sun, Cardoza, and Meadows, at 10:17:06 PM, Mr. Valdivia placed his beer bottle down and began to go down to the ground as directed. However, as he bent to the ground, he “posted himself on the ground with his left arm” and with his torso above the ground, before he reached for his waistband. Both Officers Sun and Meadows commanded him to stop reaching for his waistband, but he pulled out the handgun and pointed it at Officers Sun and Meadows.



Figure 4 - Mr. Valdivia reaching for his gun moments before OIS

Officers Sun, Cardoza, and Meadows believed that Mr. Valdivia was going to kill Officers Meadows and Sun and possibly civilians in the area. As a result, at 10:17:08 PM, after Mr. Valdivia drew his gun, all three officers shot their firearms until Mr. Valdivia stopped moving and dropped his gun an arm's length away.



Figure 5 - Mr. Valdivia dropping his gun after officers fired

Officer Sun secured Mr. Valdivia's gun, and, at 10:17:54, officers from CPD began rendering medical aid to Mr. Valdivia. Glendora Police Department Officers were also dispatched to the scene and began rendering aid upon arrival. The officers administered aid until the Los Angeles County Fire Department personnel arrived and took over. Mr. Valdivia was then transported to Pomona Valley Hospital, where he was pronounced deceased at approximately 11:06 PM.

INVESTIGATION

DOJ Response

After the officer-involved shooting occurred, CPD investigators were notified and responded to the scene. Thereafter, notification was made to CaPSIT.

DOJ Investigators, Supervising Investigators, and the assigned Deputy Attorney General responded to the scene of the shooting at approximately 1:30 AM on April 10, 2022. DOJ criminalists from the Riverside Office of the Bureau of Forensic Services (BFS) also responded to document the scene and to collect and preserve evidence.

The DOJ team walked through the shooting scene and observed the evidence of the shooting. On the date of the shooting and in the weeks and months thereafter, the shooting scene was examined, evidence was collected, and the officers' firearms were examined. In-car video was obtained from the officers' patrol car, body worn camera footage of the involved and uninvolved officers were provided, cell phone video from a civilian witness was obtained, and security video was located from nearby businesses. Computer assisted dispatch logs and 911 calls were obtained and reviewed. Additionally, photographs of the scene taken by CPD, photos of the scene, officer processing, and involved weapons taken by BFS, aerial photos, Care Ambulance Service Patient care report, Pomona Valley Hospital Medical Report, the autopsy report, and the toxicology report were all reviewed. Interviews of involved officers and witnesses to the OIS and the preceding events were examined.

Scene Description

The incident took place in a strip mall parking lot in front of Country Liquor, located at 124 E. Arrow Highway, Covina, California, in the nighttime hours of April 9, 2022.



Figure 6 - View of the OIS scene (facing south) with Country Liquor in the background

911 Calls and Dispatch Recordings

On April 9, 2022, at 10:12 PM and 10:13 PM, CPD Communications Center received two reports of a Hispanic male adult, approximately 40 years old with facial hair, wearing a black sweater and shorts, holding a can of beer and a black gun at Country Liquor market on 124 E. Arrow Highway. Three additional calls were received at 10:15 PM regarding a verbal altercation with two other subjects in front of the liquor store. A Starbucks employee reported that there was a group of three to four male subjects to the front of the location, and that a subject with a gun had placed the gun back into his front pocket.

Evidence Recovery - Decedent's Firearm

A BB gun that was in Mr. Valdivia's possession at the time of the OIS incident was recovered near his body. An inspection of that BB gun revealed it to be marked as a Glock 17, caliber 4.5 millimeter (.177 inch) pellet/bb gun, that had a serial number of DA522042. The magazine had the capacity to hold eighteen .177 BBs.



Figure 7 - Image of Mr. Valdivia's BB gun (right view)



Figure 8 - Image of Mr. Valdivia's BB gun (left view)

Scene Recovery

The officers discharged a total of 12 rounds during the incident. Officer Sun discharged six rounds. Officer Cardoza discharged five rounds. Officer Meadows discharged one round. Eleven cartridge cases were located at the scene. Three projectile fragments were found at the scene. An additional round fragment was found on the gurney used to transport Mr. Valdivia to the hospital. One round struck a black Honda Accord registered to RO-1, parked on the south row of parking stalls in front of Country Liquor, for which the related round fragment was found near the driver-side tire.



Figure 10 – Black Honda Accord with bullet strike to rear bumper



Figure 11 – Black Honda Accord (close up) with bullet strike to rear bumper

One round struck the rear bumper of a red Honda Accord registered to RO-2. This vehicle was located in the fifth parking stall to the east, along the south row. The round or round fragments related to this vehicle were not located.



Figure 12 - Red Honda Accord with bullet strike to rear bumper



Figure 13 – Red Honda Accord (close up) with bullet strike to rear bumper

Officer Processing

On April 9, 2022, Officers Sun, Cardoza, and Meadows were on patrol duty. Officer Sun was assigned to unit 14, Meadows to unit 22, and Cardoza to unit 7. All three officers were in full uniform at the time of the incident.

After the OIS incident, officer processing began at 5:40 AM.

At processing, Officer Sun was 5'8" and weighed 175 pounds. He wore a Class B Covina Police Department CPD Officer uniform with a load-bearing vest that had a Covina Police Officer Badge on the left chest and name plate on his right chest. Both shoulders displayed CPD patches. Officer Sun carried his duty firearm on a Sam Browne duty belt on his right hip. He carried a Glock 17, Generation 5, nine-millimeter pistol with one round in the chamber and 11 rounds loaded in the magazine. The magazine had a capacity of 17 rounds and was topped off with an additional round after the duty weapon was chambered to be patrol ready. Officer Sun carried two extra magazines with 17 rounds in each with the same capacity. He carried 52 rounds at the start of his service and during the processing, had 46 rounds located. Six rounds were missing or had been fired.

Officer Sun also carried a Ruger LCP 380 Pistol as a backup weapon. The weapon contained a magazine with six rounds. There were no missing or fired rounds from this weapon. He carried a Taser model X26P on his Sam Browne duty belt on his left hip and a baton on his load-bearing vest in a pouch on his right side.

At processing, Officer Cardoza was 5'7" tall and weighed 170 pounds. She was dressed in a class B Covina Police Department CPD Officer uniform with a load-bearing vest, which had a Covina Police Officer badge on her left chest and her nameplate on her right chest. Covina Police Officer patches were displayed on both shoulders. She carried a Glock 17, Generation 5, nine-millimeter pistol with one round in the chamber. There was a magazine seated in the duty weapon containing 12 rounds loaded in the magazine. The magazine had a capacity of 17 rounds and was topped off with an additional round after the duty weapon was chambered to patrol ready. She carried two extra magazines, each with a capacity of 17 rounds. One of the extra magazines had 17 rounds; the second had 18 rounds because Officer Cardoza had accidentally added an extra round. She carried 53 rounds at the start of her service and had 48 rounds located during processing. Five rounds were missing or had been fired.

Officer Cardoza also had two magazines in a magazine pouch and two handcuff cases on her load-bearing vest. She wore a Sam Browne duty belt with a holster for her duty weapon, a Glock 17 pistol in the duty holster, a TASER holster, a TASER X26P in the duty holster, a key ring, and a baton ring. Officer Cardoza was equipped with an Albatross folding knife and a flashlight in her pants pocket and a hobble device on her right ankle.

At processing, Officer Meadows was 5'10" and weighed approximately 220 pounds. He was dressed in a class D Covina Police Department CPD Officers uniform. He was wearing a load-bearing vest with a Covina Police Officer badge patch on his upper left chest and name tape on his upper right chest. The word "POLICE" was printed on a patch under his name tape and he was wearing a Covina Police Department ball cap. His loadbearing vest was equipped with two handcuff cases, a triple magazine pouch containing three magazines, and a flashlight.

Officer Meadows further wore a Sam Browne duty belt, which had a holster for his duty weapon, a Glock 17, generation 5, nine-millimeter pistol, seated in the duty holster. There was one round in the chamber. There was a magazine seated in the duty weapon containing 16 rounds. The magazine had a capacity of 17 rounds and was topped off with one additional round after the duty weapon was chambered to patrol ready. Officer Meadows carried three additional magazines, each with an additional capacity of 17 rounds. He carried a total of 69 rounds at the start of the shift and had 68 rounds at the time of processing. One round was missing or had been fired.

Officer Meadows also carried a Ruger, LCR, .357 Magnum as a backup weapon, which was loaded to capacity with five rounds. He carried a Smith and Wesson, special tactical folding blade knife in his right rear pants pocket. His duty belt also had a door pop holder for his K9 unit attached, a baton ring, a TASER holder, and a TASER X26.

Surveillance and Patrol Video Camera Footage

The CPD provided body worn camera footage from the night of the incident from Officers Sun, Meadows, and Cardoza. Officer Sun's body worn camera recorded a direct view of the OIS incident and Mr. Valdivia's actions prior to the shooting. Officer Sun's body worn camera recording shows him approaching Mr. Valdivia at the scene at 10:16:34 PM. Once Mr. Valdivia comes within view, Officer Sun commands Mr. Valdivia to show his hands three times and tells him not to move. Mr. Valdivia moves a bottle from his right hand to his left and reaches his right hand into the pocket. Officer Sun instructs Mr. Valdivia to remove his hand from his pocket. Mr. Valdivia raises both hands in the air, revealing the handle of a gun in his waistband, and says, "Whatever." Officer Meadows is heard in close proximity to Officer Sun commanding Mr. Valdivia to get on the ground and to not reach for anything. Officer Sun informs dispatch that Mr. Valdivia was "noncompliant." Mr. Valdivia starts placing his knees on the ground, the bottle in his left hand on the ground, and his right hand on the ground. Mr. Valdivia then puts his weight on his left arm, picks up his right hand, and reaches for his waistband. Both Officers Sun and Meadows are heard repeatedly yelling, "Don't reach! Don't reach!" As Mr. Valdivia's right hand swings out, shots are fired and Mr. Valdivia's gun falls out in front of him. The camera then shows Mr. Valdivia lying face down on the ground with arms bent over his head and the gun some distance away.

Although all three patrol vehicles driven by these officers contained in-camera video. However, because of the positioning of the patrol vehicles, the cameras did not capture the OIS incident. A video surveillance system recording retrieved from Covina Express Car Wash, located at 154 E. Arrow Highway, Covina, CA 91722, captured obstructed views of the OIS incident on two cameras.

Autopsy

Dr. Juan M. Carrillo, M.D. conducted the autopsy of Mr. Valdivia. He concluded that Mr. Valdivia sustained eight total gunshot wounds on his body in the following locations:

- GS wound 1: right scalp, projectile recovered.
- GS wound 2: left parietal scalp, projectile recovered.
- GS wound 3: right shoulder, projectile recovered.
- GS wound 4: abdomen, projectile recovered.

- GS wound 5: right thigh, projectile recovered.
- GS wound 6: right upper back, projectile recovered.
- GS wound 7: left lower back, projectile recovered.
- GS wound 8: posterior right leg, no projectile recovered.

Additionally, Dr. Carrillo observed an abrasion of the left thigh and abrasion of the left ankle.

Further, testing of Mr. Valdivia’s blood sample revealed the presence of alcohol and methamphetamine.

DRUG	ITEM TESTED	RESULTS
Ethanol	Blood, Chest	0.236 g%
Ethanol	Blood, Femoral	0.183 g%
Ethanol	Vitreous	0.243 g%
Methamphetamine	Blood, Chest	0.11 ug/mL
Amphetamine	Blood, Femoral	0.02 ug/mL
Methamphetamine	Blood, Femoral	0.04 ug/mL

The Coroner concluded that the cause of death was multiple gunshot wounds. Specifically, the coroner declared GS wounds 1 and 2 to the head, 3 to the right shoulder, and 4 to the abdomen were fatal.

Interviews of Involved 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.) Public employees, including police officers, may be compelled by an employer to answer questions for administrative purposes, but the use of such statements in criminal proceedings is prohibited. (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 827-828, citing *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77-79, *Garrity v. State of New Jersey* (1967) 385 U.S. 493, 500.)

Officer Cheng-Wei “Billy” Sun, Officer David Meadows, and Officer Vanessa Cardoza all gave voluntary statements. The following statements are summaries of their interviews, which describe the incident from the point of view of the individual officers. Please note that the interviews contain facts relayed by the officers that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

Officer Cheng-Wei “Billy” Sun

CPD Officer Cheng-Wei “Billy” Sun was interviewed on April 18, 2022, by DOJ Agent Paul Zurawski. Also present were CPD Detective Oswaldo Preciado, and the attorney for Officer Sun, Vanessa Muños.

On the night of the incident, Officer Sun had been a sworn peace officer for just over six years with CPD. He had training as a Special Weapons and Tactics operator and additional firearms training. Officer Sun was a range instructor, rifle instructor, red dot handgun instructor, Glock armorer, and a chemical agent instructor. Prior to his current employment, Officer Sun was an intern at Chino Police Department in the crime prevention unit, which was a non-sworn civilian unit.

On April 9, 2022, Officer Sun responded to a dispatch call just before 10:00 PM, regarding a possibly violent or physical incident at County Liquor. While en route, dispatch advised that the man was brandishing a gun in a threatening manner. Officer Sun began directing additional units to the scene. Shortly thereafter, dispatch advised of three additional calls of a man arguing and possibly fighting with other people in the area.

Officer Sun directed fellow officers to their positions. He knew Officer Meadows was driving behind him. At least five units responded with him, and other units were joining. He directed two units to set up on the east side of the location, and Officer Avila to set up on the west side; he and Officer Meadows set up behind the Starbucks. He told additional units arriving later to set up at the Salvation Army area to hold the containment area.

Officer Sun knew that Country Liquor was located in a high crime area that had generated multiple calls for service for stabbings, domestic violence, narcotics violations, and alcohol violations. He was also aware that transients, often on drugs, and active gang members resided in the area as well. This knowledge of the area and the information provided from dispatch put Officer Sun on high alert. He decided officers should undertake a stealth approach to maintain an element of surprise.

As he was leaving his vehicle, Officer Sun heard dispatch state that Mr. Valdivia had a gun in his right pocket. Officer Sun got out of the car, firearm in hand. He incorrectly heard over dispatch that Officer Marquez was already at the scene with the subject. Concerned for Marquez's safety, Officer Sun moved towards the scene and observed Mr. Valdivia who matched the description of a Hispanic male in his 40s wearing a black sweatshirt, about 20 to 25 yards away from him. Officer Sun took note of Mr. Valdivia's baggy clothing, and he was aware that people concealed weapons in such clothing.

As Officer Sun approached, firearm in hand, he observed Mr. Valdivia facing the liquor store and arguing with two other subjects. Worried about the rapidly evolving situation, concerned about the potential for hostages, and wanting to ensure he was close enough to react if necessary, Officers Sun and Meadows approached from the Starbucks drive-thru area and got within 7 to 10 yards away from Mr. Valdivia.

Officer Sun pointed his firearm at Mr. Valdivia and commanded him to show his hands. Mr. Valdivia looked at him. The two individuals next to Mr. Valdivia looked relieved, raised their hands, and backed away as Mr. Valdivia shifted his body towards the officers. Officer Sun told Mr. Valdivia to keep his hands up and to stay still. Mr. Valdivia put his hands down, switched the beer bottle he had from his right hand to his left hand and then put his hand down towards his right pocket. The officer once again commanded Mr. Valdivia to "put [his] fucking hands up." However, the officer's use of profanity had no effect on Mr. Valdivia. Again, the officer told Mr. Valdivia to keep his hands up and not to reach for his pocket. Mr. Valdivia put his hands up and said, "whatever," giving Officer Sun the impression that Mr. Valdivia did not care about anybody's safety. Officer Sun said, "don't fucking move," as he had observed Mr. Valdivia reach for the area in the baggy clothing where Officer Sun believed he was concealing a gun based on information from dispatch.

Officer Meadows also ordered Mr. Valdivia to get on the ground in an effort to clear him for weapons. The officers wanted to detain, handcuff and pat search Mr. Valdivia to investigate the brandishing allegation. Officer Sun indicated that the subsequent events felt like they were in slow motion. He observed Mr. Valdivia move his beer bottle from his right hand to his left hand, potentially freeing up his right hand to reach for a weapon. Mr. Valdivia then began getting to the ground, landing first on his knees, looking at the ground as if he was seeing exactly where he wanted to land, and putting his right palm and left elbow down. Officer Sun found that position to be unusual as Mr. Valdivia appeared to be in a triangle platform with his left elbow and two legs. Mr. Valdivia's torso was still up and he was leaning towards the left, stretching out his body. Mr. Valdivia looked directly at Officer Sun, who thought that Mr. Valdivia was about to reach for his waistband or his right pocket where he believed a gun was located. The officer thought to himself, "Please don't reach for the gun. Please don't reach for the gun. I don't want to have to make a decision."

As Officer Sun watched Mr. Valdivia, many thoughts ran through his head. He thought that Mr. Valdivia was going to pull out his gun, shoot either of the officers, and kill them. Officer Sun worried that Mr. Valdivia was going to kill whoever else the bullets hit behind the officers. Since the shopping center behind the officers was also busy, he was worried that Mr. Valdivia would shoot others in the plaza. He worried that Mr. Valdivia would barricade himself, create a hostage situation in the liquor store, and escalate to a shootout with officers, leaving mass casualties.

Mr. Valdivia looked at Officer Sun. Officer Sun believed that Mr. Valdivia was watching Officer Sun to determine where his target was located. Officer Sun had one hand on his own gun and notified others on the radio that Mr. Valdivia had already reached for his pocket. Mr. Valdivia brought his hand down. Officer Sun brought up his weapon and yelled as loud as he could to not reach for it. In his mind, Officer Sun felt as if he was begging Mr. Valdivia not to reach for his gun. Mr. Valdivia appeared to be experienced with guns, given how he quickly reached for the gun without hesitation. He directly and deliberately put his hands in his pocket and pulled out a black handgun.

Officer Sun did not believe that efforts to deescalate the situation were fruitful. Nor did he believe there was time to obtain or use nonlethal force. Mr. Valdivia was noncompliant with verbal commands and was believed to be in a possession of a gun.

When Mr. Valdivia lifted the gun, Officer Sun knew that if Mr. Valdivia managed to point the gun at the officers, they would be unable to react in time to protect themselves. Internally, Officer Sun begged Mr. Valdivia not to shoot and begged him to not force the officers to make the decision to shoot. He thought to himself that if Mr. Valdivia pointed the gun at them, he was going to kill the officers and other civilians. Officer Sun was afraid. As Mr. Valdivia pulled out his gun, he brought it forward towards Officer Sun with the barrel in the officers' direction. Officer Sun held his firearm with both hands, aimed at Mr. Valdivia's torso and pulled the trigger.

Officer Sun fired a sequence of shots, until he saw Mr. Valdivia stop moving and drop his gun, inches away from himself. He believed he shot five or six rounds.

Once he stopped shooting, Officer Sun assessed the scene to ensure there were no associates of Mr. Valdivia nearby, trying to engage with them. Unsure if Mr. Valdivia was still alive, Officer Sun told Officer Meadows that he was going to secure Mr. Valdivia, and Officer Meadows called for medical

assistance. Officer Sun moved the gun away from Mr. Valdivia to prevent any further contact with it. Officer Meadows and other officers began to administer first aid.

Officer Sun brought Mr. Valdivia's gun to his patrol vehicle. The weight of the gun was similar to his own duty weapon. The slide was metal. The finger grooves, the textured pattern on the grip, and the magazine release were consistent with the Generation 3 Glock 17. It also had all the markings of a Glock 17 on the side, just as the officer's own service weapon did. The gun looked worn down as if someone had unholstered and reholstered it multiple times. Officer Sun put the gun on the hood of the patrol vehicle. He put on gloves and then hit the slide release on the gun. The magazine came out. It looked different from his service weapon. It was a metal object that looked like a CO2 cartridge. He tried to slide the lock and noticed that the handgun could not chamber a round. At that point, the officer determined that the gun was an airsoft or an air gun that was made to be an exact replica of a Glock handgun.

Officer David Meadows

CPD Officer David Meadows was interviewed on April 18, 2022, by DOJ Agent Paul Zurawski. CPD Detective Oswaldo Preciado and an attorney for Officer Meadows, Vanessa Muños, were also present during the interview.

At that time, Officer Meadows had approximately eight years of experience as a police officer. Prior to his employment with CPD, Officer Meadows worked as an officer for the City of Montebello for three months. At the time of the OIS, Officer Meadows was assigned to the K-9 unit.

Officer Meadows and Officer Sun were in the downtown area when he heard a radio call regarding a male subject holding a beer, brandishing a gun, and arguing with customers at Country Liquor. Officer Meadows knew the area to be a high traffic area known for narcotics violations. The area was next to a bar where he had personally responded for fights. Stabbings, domestic violence, and other violent crimes had occurred in the bar or in the parking lot next to the liquor store. In light of the gun mentioned and his knowledge of the area, he chose to respond with Officer Sun. Both Officers Meadows and Sun got into their respective patrol vehicles and responded to the scene.

On the way to the location, Officer Meadows heard Officer Sun set up a containment at the location with other officers responding. Officer Cardoza came on the radio and either asked or told Officer Sun that she would retrieve the less lethal shotgun, a Remington 870, a dedicated bean bag shotgun that was purposed specifically for less lethal rounds. The initial plan was to contain the area and attempt to get the suspect's compliance by talking with him.

Officers Meadows and Sun arrived at approximately the same time. Dispatch informed them that another caller had reported that the subject put a gun in his pocket. They parked their vehicles in the parking lot of Starbucks, on the west side of Country Liquor, to stay out of sight. When Officer Meadows got out of his car, he unholstered his department-issued firearm because of the nature of the call and his knowledge of the area, and he jogged to Officer Sun, who was approaching the northwest corner of the Starbucks building.

As he turned the northwest corner with Officer Sun slightly ahead of him, Officer Meadows heard people arguing. He saw Mr. Valdivia standing without his gun with two other people. Officer

Meadows scanned the location and saw a couple other people further down the parking lot and several people in the liquor store.

Officer Sun continued to approach with Officer Meadows behind him. Officer Meadows kept a visual of Mr. Valdivia as he hugged the north wall of the Starbucks and stayed closer to the drive-thru area. They were about thirty feet away from the suspect when Officer Meadows pointed his firearm at Mr. Valdivia, announced their presence by saying, “police,” and ordered all three subjects to put their hands up. Two of them put their hands up, but Mr. Valdivia began reaching towards his waistband pocket area. Officer Sun told him not to reach for his pockets and to put his hands back up. Mr. Valdivia raised his hands and said something to the effect of “whatever.” Officer Meadows found Mr. Valdivia’s response strange since the typical response when officers approached in this way was either worry, a sense of urgency, or compliance. But Mr. Valdivia seemed nonchalant and in Officer Meadows’ experience, people like that were unpredictable.

As Mr. Valdivia raised his hands, his sweatshirt and shirt lifted up, exposing the handle of a black handgun in his front waistband area. Officer Meadows recalled seeing the finger grooves in the handle of the gun, which looked like a Glock pistol. He was worried that Mr. Valdivia was next to a couple of people whom he could take hostage, and/or that he could run into the liquor store where there were several other people. Officer Meadows ordered Mr. Valdivia to the ground in an attempt to get a little more control over the situation, and to make it harder for Mr. Valdivia to reach for his gun.

Mr. Valdivia placed the beer bottle down and began to get on the ground. However, he positioned himself on the ground with his left arm and torso facing up towards the officers and began to reach for his waistband again. Because Officer Meadows knew that Mr. Valdivia had a gun, he worried about what Mr. Valdivia was trying to do. Officers Meadows and Sun both commanded Mr. Valdivia to not reach for his waistband, but Mr. Valdivia ignored them and removed the gun from his waistband. Based on the information that Officer Meadows had at the time, he believed that Mr. Valdivia was looking to either get into a confrontation with someone or hurt someone. Mr. Valdivia’s actions appeared to be willful and deliberate.

As Mr. Valdivia started bringing the gun up in the officers’ direction, Officer Meadows felt time slow down. He was afraid that Mr. Valdivia was going to shoot and kill him or Officer Sun. Officer Meadows sidestepped, acquired his sights before Mr. Valdivia could get a round off, held his firearm with both hands, and pulled the trigger. He saw Mr. Valdivia’s body collapse and the gun fall out of his hand. When Officer Meadows saw that Mr. Valdivia was no longer a threat, he did not take another shot.

During the incident, Officer Meadows heard the volley of shots from other officers. However, he did not take another shot after he saw the gun fall out of Mr. Valdivia’s hand. Officer Meadows moved up and kept cover on Mr. Valdivia, while Officer Sun retrieved the gun and took it to a safer location. Officer Meadows immediately proceeded with lifesaving measures and other officers approached to assist.

Officer Vanessa Cardoza

On April 18, 2022, DOJ Agent Paul Zurawski interviewed Officer Vanessa Cardoza. Also present were CPD Detective Oswaldo Preciado and Attorney for Officer Cardoza, Vanessa Muños.

Officer Cardoza had been a police officer for three years and two months at the time of the OIS. She did not have any specialized training outside of her patrol duties.

On April 9, 2022, while on routine patrol on the downtown area, Officer Cardoza was getting gas around 10:00 PM. Her partners were dispatched to a call at Country Liquor about a man with a gun. Cardoza knew the area was known for high foot traffic, a lot of drug sales, and many physical altercations. When the call came, only three officers were dispatched, but Officer Cardoza decided to assist, as she was free at the time. On the way to the scene, she asked Officer Sun if she should retrieve the less lethal weapon, and he responded that she should if she had the time.

When Officer Cardoza arrived on scene, she parked behind a building some distance away to remain hidden. She had previously had many calls for service to this strip mall, and she knew the area to have a lot of drug sales, intoxicated bar patrons, and aggressively mannered people.

Officer Cardoza peeked into the parking lot and saw a man matching dispatch's description speaking with two other people about 10 to 15 feet from her location. As she watched for a couple of seconds, she heard her partners giving commands and she started running over to help them. She did not have time to get the less lethal weapon. She pulled her service weapon out and held it at the low ready position, in front of her body, pointed at the ground, and finger off of the trigger. She heard her partners command the suspect to not reach for anything and to keep his hands up. She heard the suspect yell back at her partners, though she could not recall exactly what was said.

Officer Cardoza was to the north of Country Liquor, and to the side of the suspect. Her partners were on the west side of Country Liquor, and in front of the suspect. Cardoza was able to see the suspect's entire right side. She made sure that her background was clear and there was nobody behind his location. She saw that the two people with whom the suspect had been conversing had walked away, and the suspect was not complying with Officer Sun's commands. Mr. Valdivia's hands were halfway up, not fully extended.

Mr. Valdivia began to lie down. As he did so, he lifted his sweater with his right hand and Officer Cardoza saw the handle of a black gun in the waistband of his pants. Mr. Valdivia reached for it with his right hand, pulled it out, and started to point it at Cardoza's partners. Officer Cardoza felt like events were unfolding in slow motion. Officer Cardoza believed that Mr. Valdivia was going to kill her partners, so she began firing her weapon, pointing at Mr. Valdivia's chest area. She believed she had fired two rounds and stopped firing when she saw that Mr. Valdivia's gun was no longer in his hands and that he was no longer a threat. Officer Sun secured the Mr. Valdivia's gun, and Officer Meadows ensured there were no more weapons on Mr. Valdivia. Officer Cardoza kept her eyes on the scene to make sure that no one was retaliating or trying to attack them.

Officer Cardoza did not feel she had enough time to obtain a less lethal weapon, given the speed with which the situation evolved. Attempts at de-escalation via verbal commands were unsuccessful.

Interview of Witness Police Officer

Sergeant Ryan Rasmussen

On August 5, 2022, DOJ Agent Paul Zurawski interviewed CPD Sergeant Ryan Rasmussen. Also present were CPD Detective Oswaldo Preciado and an attorney for Officer Cardoza, Vanessa Muños.

Sergeant Rasmussen had been a peace officer for ten years on the date of the incident. He had been a range master supervisor for three years and was a trained K-9 handler. In his role as a sergeant, he supervised the K-9 program, parking enforcement, and patrol equipment.

On April 9, 2022, Sergeant Rasmussen heard a radio call regarding a Hispanic male in dark clothing at the Country Liquor store with a beer in one hand and waving a gun around in the other. Because the call appeared to be serious, involving a man with a handgun in a location known to have a lot of pedestrian traffic, both Sergeant Rasmussen and Sergeant Statler responded to the scene in the same unit. Sergeant Rasmussen was familiar with the area due to multiple calls for service related to drugs, homeless individuals, and gang activity. They were concerned that this man was going to use the gun to harm the public.

Upon arrival, Sergeant Rasmussen saw officers running towards the liquor store. He followed and approached the north side of the Starbucks building towards the suspect's location approximately 20 feet away. He immediately saw Mr. Valdivia starting to lie down on the ground on his stomach, while officers were giving him orders. As Mr. Valdivia was lying on the ground, he grabbed near his rear waistband and then pulled out what appeared to be a black Glock semiautomatic handgun in front of the officers giving him commands. Officers Sun and Meadows were directly in front of Sergeant Rasmussen, who also had his service weapon out. Officers on the scene fired several shots. Sergeant Rasmussen did not fire his weapon because he would have hit the officers in front of him. Officer Sun took custody of Mr. Valdivia's gun. Sergeant Rasmussen ordered officers to begin first aid, and then began investigating the incident.

Interviews of Civilian Witnesses

Witness 1

W-1 was an employee of Country Liquor. On April 9, 2022, he was working at the store and went outside to smoke a cigarette. While W-1 was chatting with a friend outside, Mr. Valdivia approached him and said that he was from a gang. He mentioned the name of the gang, which had the word "flats" in it, but W-1 could not recall the exact name of the gang. Mr. Valdivia also told him, "I kill n[****]s like you, all day," before walking away and returning shortly after. During this initial interaction, W-1 did not know Mr. Valdivia and did not feel threatened.

When Mr. Valdivia returned, he said, "[Ethnic slur], what are you doing in my area?" W-1 said, "I'm not [ethnic slur]. I'm a Black dude." W-1 was a prior member of the Pirus blood gang and thought Mr. Valdivia was trying to target him. W-1 was wearing a red bandana. Mr. Valdivia displayed a black gun in his hand about four or five times, while stating that he was going to use it. He did not, however, point it toward W-1 at any time. W-1 believed the gun to be a real Glock, based on how Mr. Valdivia was holding it. Mr. Valdivia said he wanted to shoot somebody with the gun. W-1 told Mr. Valdivia to put the gun away, but Mr. Valdivia refused. Mr. Valdivia said, "I'll shoot you motherfucker." Because W-1 was, as he described himself, "from the streets," he did not consider Mr. Valdivia's statement a threat. However, when Mr. Valdivia was pointing the gun around, W-1 was scared. W-1 believed that Mr. Valdivia was thinking about either taking his own life or someone else's life. He told Mr. Valdivia to put the gun away, and told him to leave.

Mr. Valdivia appeared to be under the influence of an alcoholic beverage and methamphetamine based on his actions. Mr. Valdivia also asked W-1 if he wanted to smoke some methamphetamine. W-1 had consumed two shots of an unknown alcoholic beverage earlier that evening.

Officers arrived on scene quickly and ordered both W-1 and Mr. Valdivia to the ground. There were five officers on scene that "came out of nowhere." W-1 immediately got on the ground, but Mr. Valdivia did not. W-1 believed the officers knew about Mr. Valdivia's gun because they specifically told

him to drop the gun and get on the ground. After many commands from the officers, Mr. Valdivia began to go down to the ground. Mr. Valdivia reached for his pocket toward the left side of his waistband and appeared to grab the gun from his left pocket. He “slid” the gun out and “pointed that shit” towards the officers and the officers shot him. W-1 believed that the officers must have seen Mr. Valdivia pull his gun out, which caused them to respond by firing their weapons at him. W-1 heard six or seven gunshots. Shrapnel from the shooting struck W-1, but he did not have visible injuries nor did he seek medical attention.

Witness 2

On the evening of April 9, 2022, W-2 was staying at Shadow Brookshire Apartments. He saw Mr. Valdivia come out of the apartments located directly next door to Shadow Brookshire, from a side gate and walk with a gallon of brown liquor, possibly tequila, that was one fourth empty. W-2 observed Mr. Valdivia jaywalk across the street to the Country Liquor store.

W-2 also went to the liquor store. When he arrived, he saw Mr. Valdivia and W-1, who was W-2’s longtime friend, in front of the store. They were having a conversation that soon began to look like a minor verbal altercation. It seemed like Mr. Valdivia was intoxicated. Mr. Valdivia had a black gun, located in his waistband, at the front of his pants, on the left side by his groin area. W-2 could not see if it was a real gun, but it looked like a gun. He did not see Mr. Valdivia ever pull the gun out. W-2 did not believe that Mr. Valdivia was going to shoot anyone, since he did not pull it out and point it at anybody.

W-2 intervened and spoke with Mr. Valdivia. Mr. Valdivia smelled like alcohol, and he had the liquor bottle in his hand the entire time. There was a misunderstanding in which Mr. Valdivia, who was a little intoxicated, accused W-1 of calling him racial slurs that W-1 would not have said. W-2 attempted to calm Mr. Valdivia and walk him back toward the apartments. Mr. Valdivia apologized for the argument. Mr. Valdivia said he was all right by himself, and just walked. W-2 asked Mr. Valdivia if he was sure. Mr. Valdivia said, “But just, you know, I’m not a bitch. I’m not a bitch though.” W-2 replied, “Yeah bro, everybody knows. Bro, you’re good. Bro, you’re good.” At this point, the officers arrived.

The officers were positioned in the parking lot behind W-2, between the Starbucks drive-thru exit and the liquor store parking lot. W-2 observed about five officers with their guns pointed in the direction of W-1 and Mr. Valdivia. The officers yelled, “Hey! Get on the ground!” W-2, who was standing near Mr. Valdivia, did not get on the ground, but stepped three feet back towards the liquor store. W-2 said, “I’m not getting on the ground. I didn’t do anything. These are good clothes. I’m not getting on the ground.” He saw Mr. Valdivia get on the ground.

Officers ordered Mr. Valdivia to reach out in a cross position with his arms out. Mr. Valdivia seemed uncomfortable and reached for his waistband with his left hand. Officers told him to “stop moving.” Mr. Valdivia turned over on his right shoulder, reached for his waistband, officers commanded Mr. Valdivia, “Don’t go for it!” twice, and then immediately shot at Mr. Valdivia. From his position, W-2 could not see whether Mr. Valdivia pulled anything out from his waistband. Mr. Valdivia was not moving once the shots went off. Officers ordered W-2 to get on the ground, but he ran inside of the store in shock.

Witness 3

On April 9, 2022, W-3 was working as a stocker at County Liquor when he observed Mr. Valdivia in front of the store appearing to be extremely intoxicated. He recognized Mr. Valdivia from prior contacts as someone who was generally calm. However, at the time of the incident, Mr. Valdivia was “drunk” and an argument ensued between Mr. Valdivia and another person in the front of the location, after Mr. Valdivia accused the other person of calling him a racial slur. W-3 attempted to calm Mr. Valdivia and told him that no racial slur was uttered. Several times during the argument, W-3 saw Mr. Valdivia retrieve an “all black” semi-automatic gun, similar to a Glock 17 pistol, from his right pocket. Mr. Valdivia repeatedly said, “I’m just going to shoot this motherfucker up.” Concerned that Mr. Valdivia would begin firing, W-3 told his wife to go to the back of the business. W-3 heard Mr. Valdivia yell at the other person to leave or “he was going to take him out.” Specifically, Mr. Valdivia said, “Get the fuck out of here, or I’m going to fucking kill you.”

W-3 was inside of Country Liquor when the OIS occurred, and he did not see the shooting incident. When he heard the shots, he thought that Mr. Valdivia had begun shooting.

Witness 4

At about 9:30 PM on April 9, 2022, W-4, a store clerk at County Liquor Market, saw Mr. Valdivia shouting at W-1 in the parking lot in front of the store. He was familiar with both individuals because they frequented the business. W-4 told both Mr. Valdivia and W-1 to leave the parking lot and they left in different locations.

About twenty to thirty minutes later, W-4 heard a loud verbal argument coming from the front of the business. He walked out and saw Mr. Valdivia holding a black object in one hand and a bottle of beer in the other hand. W-4 had just sold Mr. Valdivia the bottle of beer before this incident. Mr. Valdivia put the black object into his waistband on his left side. Worried that it was a gun, W-4 called 911 to report a man with a gun.

CPD officers arrived around 10:16 PM, contacted Mr. Valdivia, and the officer-involved shooting occurred. W-4 did not witness the shooting.

Witness 5

On April 9, 2022, W-5 was working at the drive-thru window of Starbucks, west of Country Liquor. He observed five to six people arguing in front of Country Liquor, with Mr. Valdivia, who appeared to be drunk and was the primary aggressor. The altercation was making Starbucks customers nervous. W-5 switched places with another employee, who then informed him that Mr. Valdivia had a gun. W-5 was standing by the coffee grinder inside of Starbucks when he heard gunfire erupt, but he did not observe the incident. He could not hear any specific words or phrases by any subjects involved in the altercation prior to the shooting.

Witness 6

On April 9, 2022, W-6 was present at Country Liquor as a patron when he observed Mr. Valdivia in an argument with a man in the parking lot. He entered the store and heard Mr. Valdivia yell at the other man that he was going to start to shoot. While W-6 waited in the checkout line, he heard gunfire erupt, but he did not see the incident.

Witness 7

In the evening hours of April 9, 2022, W-7 was working as a shift manager at Starbucks when she observed a group of people arguing in front of Country Liquor. She did not pay much attention until an unknown customer in the drive-thru window informed her that Mr. Valdivia had pulled a gun from his pants. She immediately instructed her employees to move to the rear of the location and contacted CPD. Moments later, she heard gunfire, but she did not observe the incident.

APPLICABLE LEGAL STANDARDS

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

Murder

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

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

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

Self-Defense

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

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

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

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

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

“Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. (Pen. Code, § 835a, subd. (e)(3).) De-escalation methods, tactics, the availability of less than lethal force, and department policies may be used when evaluating the conduct of the officer. However, when an officer’s use of force is evaluated, it must be considered “from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” (Pen. Code, § 835a, subd. (a)(4); accord, *Graham v. Connor* (1989) 490 U.S. 386, 396-397 [“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”]; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083 [to determine whether use of force is objectively reasonable for self-defense, trier of fact must consider all the circumstances that were known or appeared to the officer as well as consideration for what a reasonable person in a similar situation with similar knowledge would have believed]; *People v. Bates* (2019) 35 Cal.App.5th 1, 9-10 [knowledge of another person’s prior threatening or violent conduct or reputation for dangerousness may provide evidence to support a reasonable belief in imminent harm].)

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

Burden of Proof

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

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

LEGAL ANALYSIS

The Department of Justice has thoroughly reviewed the evidence gathered in this investigation, including voluntary statements of the officers involved in the shooting, police reports, witness statements, body worn camera footage, Coroner's Report, medical report, forensic evidence, photos of the scene, photos of officer processing, aerial photos, and surveillance footage from the incident. The focus of this review is whether, based on the totality of circumstances, the evidence demonstrates, beyond a reasonable doubt, that Officers Cheng Wei "Billy" Sun, Vanessa Cardoza, and David Meadows acted unreasonably in using deadly force against Mr. Valdivia. We conclude the evidence does not show that their actions were unreasonable.

When interviewed, each shooting officer said they subjectively believed Mr. Valdivia posed an imminent deadly threat when he pointed what appeared to be a gun at Officers Sun and Meadows. Leading into the encounter, the officers' awareness and actions indicated that they perceived the situation to be dangerous. CPD dispatch reported that a man matching the description of Mr. Valdivia was arguing with people at the Country Liquor store, had brandished a gun, and had a gun in his pocket. When the officers arrived on scene, they drew their weapons and approached Mr. Valdivia in a tactical manner.

When they confronted Mr. Valdivia, Officer Sun told Mr. Valdivia to raise his hands. Instead of complying, Mr. Valdivia began to reach toward his clothing where a gun could be concealed, elevating Officer Sun's concerns. When Mr. Valdivia did raise his hands, Officers Meadows saw the handle of a handgun in Mr. Valdivia's waistband. Officer Meadows then ordered Mr. Valdivia to get on the ground. As he got down on the ground, Officer Cardoza saw a gun in Mr. Valdivia's waistband. However, after putting his knees and left hand on the ground, Mr. Valdivia suddenly shifted his weight onto his left arm, reached into his waistband with his right hand, drew a gun, and pointed it in the direction of Officers Sun and Meadows.

Each of the shooting officers saw Mr. Valdivia point his gun at Officers Sun and Meadows before they reacted. Indeed, because Mr. Valdivia's actions appeared to demonstrate an imminent threat of serious bodily injury or death, the officers felt lethal force was necessary to preserve their own safety and the safety of civilians in the area. As a result, each officer began shooting their weapons until they saw that Mr. Valdivia had dropped his gun.

In addition to the officer's subjective belief in the need to use lethal force against Mr. Valdivia, the totality of circumstances indicate that such force was objectively reasonable.

On the night of the OIS, the shooting officers received dispatch notifications that callers had reported a man at Country Liquor, who was in a verbal altercation and was displaying a gun and threatening to shoot. Upon arrival, Officers Sun, Meadows, and Cardoza proceeded toward the scene and observed Mr. Valdivia, who matched the description of the subject provided by dispatch, standing in front of Country Liquor, arguing with two subjects. Further raising concerns, the responding officers knew that they were in a high crime area where there had been multiple calls for service for violent and drug-related crimes. Officers also noted that other individuals were in the area who could be harmed or killed.

Officers did not initially see Mr. Valdivia holding a gun, but dispatch had earlier advised officers that the suspect had placed a gun in his pocket. The information from dispatch led them to believe that Mr. Valdivia was agitated and impaired, as he had been drinking, arguing with others, and threatening to shoot. Upon arrival, Officers Sun and Mendoza approached from the west side of Country Liquor and Officer Cardoza approached from the north side.

The officers' descriptions of events are consistent with Officer Sun's body worn camera recording of the fifteen-second interaction with Mr. Valdivia. Upon his approach, Officer Sun commanded Mr. Valdivia to show his hands. While the other two subjects raised their hands and started to back away, Mr. Valdivia shifted his body towards the officers. Officer Sun told him to keep his hands up and to stay still. Mr. Valdivia instead put his hands down, moved a beer bottle from his right hand to his left hand, and then put his right hand down towards his right pocket. After Officer Sun gave Mr. Valdivia another command to put his hands up, Mr. Valdivia raised his hands and said, "whatever." As Mr. Valdivia's hands moved up, Officer Meadows observed Mr. Valdivia's sweatshirt and shirt lift up, exposing the handle of a black gun in Mr. Valdivia's front waistband. Although Officer Sun did not mention observing Mr. Valdivia with a gun before he got on the ground, the officer was aware of dispatch reports that Mr. Valdivia had been seen with a firearm that he placed in his pocket. As a result, when Officer Sun saw Mr. Valdivia reach for the area in his baggy clothing where Officer Sun believed the gun was located, Officer Sun commanded Mr. Valdivia not to move again.

At this point, Officer Meadows ordered Mr. Valdivia to get on the ground. Mr. Valdivia placed the beer bottle down and began to get on the ground. Because of her position, Officer Cardoza had a side view of Mr. Valdivia. She saw Mr. Valdivia start to lie down and lift his sweater with his right hand, exposing the handle of the black firearm in his waistband. After his knees were on the ground, Mr. Valdivia looked at the ground, put his right palm on the ground, and posted his left elbow on the ground. At that point, Mr. Valdivia's torso was still off the ground. He then leaned toward the left, stretched out his body, looked directly at Officer Sun, and began to move his right hand toward his waistband. All three officers reported watching Mr. Valdivia pull the black gun out from his waistband and point it in the direction of Officers Sun and Meadows. W-1 corroborated this, and W-2, who had a more limited vantage point, confirmed that Mr. Valdivia reached for his waistband before the officers fired.

At that moment, Officers Sun and Meadows were reasonably concerned that Mr. Valdivia was going to shoot to kill. Officer Cardoza, who was watching from the side, was similarly afraid for the safety of Officers Sun and Meadows. Under the circumstances, it was reasonable for the officers to believe that Mr. Valdivia had the present ability, opportunity, and apparent intent to threaten Officers Sun and Meadows with death or serious bodily injury.

Based on information that the shooting officers knew at the time of the incident, it was reasonable for them to believe that Mr. Valdivia possessed and pointed a real Glock gun. Only after the OIS did they learn that the gun was a BB gun. Civilians had reported that Mr. Valdivia had a gun in his hand, threatened to shoot people, and later placed it in his pocket. Officer Meadows observed a black handgun in Mr. Valdivia's front waistband with finger grooves in the handle that looked similar to a Glock pistol. Officer Cardoza also saw the handle of a black gun. The officers' belief that Mr. Valdivia possessed a real gun was corroborated by W-1, W-2, and W-3, who also believed that Mr. Valdivia's gun was a real gun.

Even when Officer Sun secured the weapon after the incident, he believed it to be a gun because of its physical characteristics. The weight of the gun was similar to a Glock, the slide was metal, and the markings of a Glock 17 on the side was similar to the officer's service weapon. The finger grooves, the textured pattern on the grip, and the magazine release were similar to a Generation 3 Glock 17. It was not until Officer Sun attempted to slide the lock to chamber a round that he was able to determine that the weapon was an exact replica of a Glock handgun. The BB gun possessed by Mr. Valdivia looks nearly identical to an authentic Glock handgun. Therefore, it was reasonable for the officers to believe that Mr. Valdivia was pointing a real gun when they fired shots.

CONCLUSION

Based upon the review of all of the evidence obtained by the Department of Justice, the applicable statutes, legal principles, and totality of the circumstances, there is insufficient evidence to support a criminal prosecution of Officers Sun, Meadows, and Cardoza. Therefore, no further action will be taken in this case.



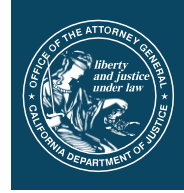
C A L I F O R N I A

DEPARTMENT OF JUSTICE

Policy and Practice Recommendations for the Covina Police Department Related to the Officer-Involved Shooting of Daniel Luis Valdivia on April 9, 2022

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

August 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 may be made to address what was observed through this incident.

As background, Covina Police Department (CPD) officers Cheng-Wei “Billy” Sun, David Meadows, and Vanessa Cardoza responded to a call for service for alleged violations of Penal Code section 415, which is fighting, noise, offensive words; and Penal Code section 417, which is brandishing a weapon or firearm; at Country Liquor in Covina, CA. Officers arrived on scene at the adjacent Starbucks at approximately 10:16 p.m., after which they immediately approached Mr. Valdivia who was standing outside of the liquor store with two other individuals. The officers yelled commands at Mr. Valdivia who ultimately complied by lying on the ground. While on the ground, Mr. Valdivia reached for his waistband and removed what was later determined to be a BB gun. At approximately 10:17 p.m. the officers shot and killed him.

PPS evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), PPS advises CPD review and implement two recommendations:¹

1 PPS reviewed and evaluated the entire event, including the service calls communicated to the officers by Dispatch. Dispatch is staffed and governed by CPD. Dispatch received three calls about a man with a gun outside of Country Liquor. The first call alerted CPD to a man brandishing a firearm and provided a description of the subject. The second call identified a man with a gun but reported that no one looked in distress when asked. The third call reported a man with the gun who was fighting with two other individuals. After the third call, Dispatch spoke with the second caller who had remained on the line to ask what the subject was doing. The caller reported that (1) the subject was standing and smoking with other individuals and (2) alerted Dispatch that the subject returned the gun to his pocket from which he had been brandishing it. Although Dispatch accurately relayed all information provided from the first and third calls, it did not fully provide all the information received from the second call, which would have provided officers additional information, even if conflicting, from which to formulate their opinion of the person and situation they would be facing upon arrival. CPD Dispatch should have relayed all information so that the officers would have had the benefit of making a more informed decision to assist in their tactical planning.

1. BODY-WORN CAMERA ACTIVATION

All three shooting officers involved in this incident were equipped with functioning body-worn cameras (BWC). One of the three shooting officers, Officer Cardoza, did not activate her BWC prior to the encounter. Officer Cardoza's failure to activate her BWC deprived CPD, investigative bodies including DOJ, and the public from obtaining valuable information regarding the shooting of Mr. Valdivia. CPD Policy 423.6² Activation of MAV and BWC states that the devices "should" be activated for "all contacts with the public including stops, field interview (FI) situations, calls for service and report calls." CPD should revise its policy on BWC activation to state that an officer "shall" activate their BWC rather than state that officers "should" activate them. Additionally, CPD's policy includes both mandatory and discretionary language regarding BWC activation that appears to provide conflicting direction regarding when, and under what circumstances an officer's BWC must be activated. CPD should review its policy to ensure that clear direction is provided to officers under the policy. Further, CPD Policy's 423.4.1³, Supervisory Responsibilities, should explicitly require supervisor review of an officer's "police report and/or inter-office memorandum" documenting the failure to activate BWC required under CPD Policy 423.16⁴, Officer Statements and Reporting, any time an officer does not activate their BWC to ensure compliance with the activation and reporting policies.

2. DE-ESCALATION POLICY

The encounter between CPD officers and Mr. Valdivia happened incredibly fast. Within 20 seconds of arriving on scene, Officer Sun made contact with Mr. Valdivia and gave his first command. Officers fired their first shots approximately 14 seconds later.

As Officers Sun and Meadows quickly approached Mr. Valdivia, they were both yelling and giving commands. Officer Sun yelled "let me see your hands," and Officer Meadows yelled "put your hands up" until they both yelled "put your hands up." That was immediately followed by Officer Sun yelling "Don't fucking move." Mr. Valdivia then moved his hand toward his waistband and Officer Sun yelled, "Hey get your hands out of your fucking pockets dude," to which Mr. Valdivia responded by putting his hands in the air. Immediately following this, Officer Meadows commanded Mr. Valdivia to get on the ground, which he did, before he reached toward his waistband, removed a gun, and the officers shot him.

CPD Policy Manual section 300.3.7; Alternative Tactics – De-Escalation states:

[officers] "should" (1) consider actions that may decrease the need for force and (2) "consider and utilize reasonably available alternative tactics and techniques" including "attempts to de-escalate a situation" when such actions are "feasible."

This language does not clearly *require* that officers use de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible, as mandated by Government Code section 7286, subdivision (b)(1).

² The relevant CPD policy in effect at the time of the incident was numbered 424.6 but is otherwise identical.

³ The relevant CPD policy in effect at the time of the incident was numbered 424.4.1 but is otherwise identical.

⁴ The relevant CPD policy in effect at the time of the incident was numbered 424.16 but is otherwise identical.

While the use of de-escalation techniques, crisis intervention tactics, and other alternatives to force may not have been feasible in this case, CPD should nonetheless amend its current policy on de-escalation as explained above. CPD should further review its other processes, procedures, and training related to de-escalation to ensure those too are consistent with existing law.