



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Report on the Investigation into the
Death of Tahmon Wilson on August 18, 2023**

Contra Costa County AB 1506

September 2026

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INVESTIGATION OF OFFICER INVOLVED SHOOTING

BACKGROUND—AB 1506

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

AB 1506, signed into law on September 30, 2020, and effective July 1, 2021, provides the California Department of Justice (DOJ) with an important tool to directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor to investigate and review officer-involved shootings of unarmed civilians across California. 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 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 outweighs any public interest in disclosure.

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

- Witness 1 (W-1), passenger in the vehicle driven by Mr. Tahmon Wilson
- Witness 2 (W-2), unhoused individual present at the termination of the incident
- Witness 3 (W-3), legal owner of the blue Infiniti Q60 sedan
- Witness 4 (W-4), manager of the Velvet Cannabis Weed Dispensary

INTRODUCTION

On August 18, 2023, at approximately 3:30 AM, four officers from the Martinez Police Department (MPD) in Contra Costa County arrived at the Velvet Cannabis Weed Dispensary, located in the city of Martinez, after being alerted to an attempted break-in. A blue Infiniti Q60 sedan, driven by Mr. Wilson with W-1 in the front passenger seat, was observed in the dispensary parking lot. Officers ordered the Infiniti to stop, but Mr. Tahmon Wilson drove toward Officer Alexander Tirona, striking him. Mr. Tahmon Wilson then drove toward other officers as W-1 held a gun. Officer Marc Kahue initially fired at Mr. Tahmon Wilson. The other officers, believing that the gunfire was coming from the Infiniti, fired multiple shots, killing Mr. Tahmon Wilson and wounding W-1.

DOJ investigated and reviewed the OIS pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506 (2019-2020 Reg. Sess.)). This report is the final step in DOJ's review of the fatal OIS of Mr. Wilson 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 INCIDENT

On August 18, 2023, at approximately 3:24 AM, two vehicles drove into the parking lot of the Velvet Cannabis Weed Dispensary located at 4808 Sunrise Drive Suite A in the city of Martinez. The first vehicle, a 2017 blue two-door Infiniti Q60 (Infiniti), later discovered to be stolen, was driven by Mr. Wilson with W-1, a passenger in the front seat. The second vehicle was a small white Toyota SUV. Security cameras recorded video of the dispensary's parking lot and front entrance.



Image from security video of the parking lot showing two vehicles entering the parking lot of the Velvet Cannabis Weed Dispensary at 3:23 AM.

As seen on video, the blue Infiniti initially stops near the northeast corner of the parking lot, and the white SUV pulls behind. A security camera with a circular “fisheye” lens, located above the southeast entrance to the dispensary, shows the driver of the SUV exit and join five other individuals wearing masks and hoods who had walked from the parking lot entrance.

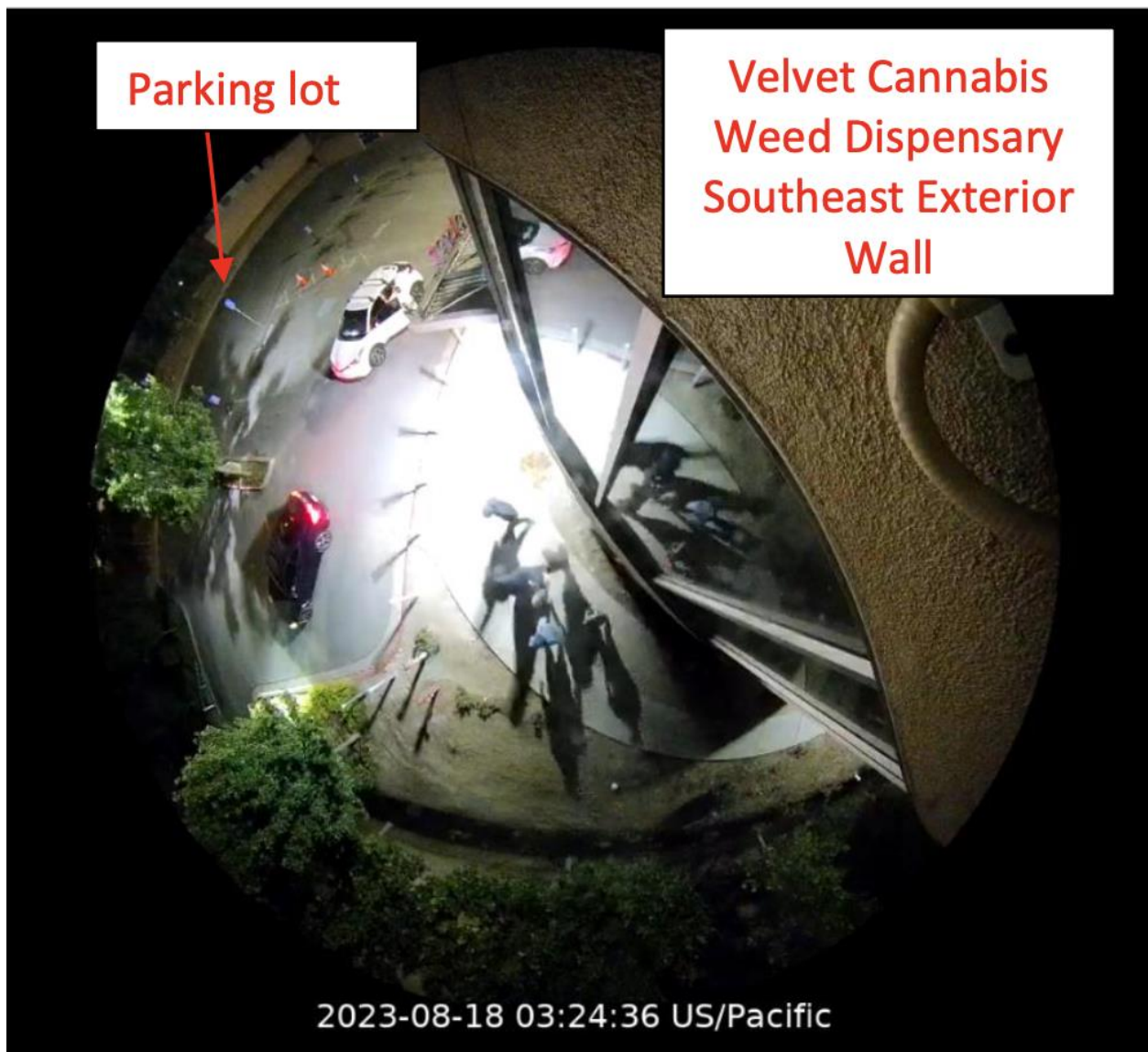


Image from security camera showing five individuals near the dispensary and the blue Infiniti and white SUV in the parking lot.

The individuals are seen congregating around the east and south sides of the dispensary building. One of the individuals walks to the Infiniti and appears to communicate with Mr. Wilson. The Infiniti then circles back around the parking lot, and the SUV attempts to back up to the dispensary entrance from the west, via a narrow walkway.

As this was occurring, MPD received a call at approximately 3:27 AM from Acadian Total Security reporting a "video verified attempted break-in" at the dispensary, and that a blue sedan and a white SUV were seen at the location. MPD Officers Alexander Tirona, Cole Bennett, Marc Kahue, and Raul Mendez-Ceja heard the call over the radio and started driving to the dispensary.

While MPD officers were in route, the Infiniti is seen on security video stopping in the northeast area of dispensary parking lot. Meanwhile, the white SUV abandons its attempt to approach the dispensary entrance from the west and abruptly leaves the parking lot at 3:29 AM. At the end of the driveway, the

SUV turns south onto Sunrise Drive and immediately turns left and drives up a dirt embankment toward the southeast corner of the dispensary.



Image from security camera shows the white SUV driving up a dirt embankment near the southeast corner of the dispensary and the blue Infiniti in the parking lot.

Video shows the SUV maneuvering onto a cement walkway in front of the building, where individuals exit the SUV and unsuccessfully attempt to open a metal door to the dispensary. W-1 is seen exiting the passenger door of the Infiniti holding a large black plastic bag and a flashlight and joining the individuals from the SUV.

Approximately one minute later, MPD patrol vehicles approached the location driving south on Sunrise Drive. Security video shows W-1 running back to the parking lot and entering the passenger side of the Infiniti. The other individuals jump into the white SUV, which travels back down the dirt embankment and turns left onto Sunrise Drive, just after MPD vehicles pass by and arrive at the entrance to the dispensary parking lot.

The Infiniti remained in the parking lot as Officers Tirona and Bennett drove two marked MPD patrol vehicles, with headlights and emergency lights activated, up the driveway to the dispensary parking lot. Officer Tirona parked his vehicle at the top of the driveway and Officer Bennett parked behind him. As the police vehicles reached the top of the driveway, they blocked the Infiniti from exiting down the driveway. The Infiniti then circled clockwise around the parking lot and drove back toward the driveway and police vehicles.



Image from security camera showing the positions of Officers Tirona and Bennet and the blue Infiniti.

Officer Tirona got out of his patrol vehicle and walked to the front of the vehicle. He drew his service firearm with his right hand and pointed it at the Infiniti. As the Infiniti moved forward, he grabbed a flashlight with his left hand and shined it at the Infiniti. At the same time, Officer Bennett exited his patrol vehicle and moved between his vehicle and Officer Tirona's vehicle. Officer Bennett drew his firearm and moved toward the Infiniti, pointing his firearm at the Infiniti as it approached Officer Tirona.

Mr. Wilson attempted to make a wide left turn around Officer Tirona's vehicle. However, he was unable to maneuver between the police vehicle and the opposite side of the driveway which was bordered by vegetation.



Image from Officer Bennett's BWC showing the Infiniti attempting to maneuver around Officer Tirona's vehicle.

Mr. Wilson reversed the Infiniti as Officer Bennett began striking the driver's side door with his firearm drawn and yelling verbal commands to "stop." Mr. Wilson failed to stop and drove forward, turning toward a narrow gap in the driveway with Officer Tirona standing between his patrol vehicle and the driver's side door of the Infiniti. The Infiniti then struck Officer Tirona and sideswiped his patrol vehicle.¹

As this was occurring, Officers Kahue and Mendez-Ceja arrived together in an MPD police vehicle at 3:31 AM and parked behind Officer Bennett's vehicle. The officers exited their vehicle and moved up the driveway with firearms drawn and as commands were being shouted for the Infiniti to stop.

¹ A medical examination of Officer Tirona later found he sustained an injury to his right knee and leg. Physical evidence also showed that the blue Infiniti came into contact with Officer Tirona's MPD vehicle.



Image from Officer Mendez-Ceja's BWC showing Officer Kahue's position as Mr. Tahmon Wilson drove out of the parking lot into the driveway.

As the Infiniti drove down the driveway, Officers Kahue and Mendez-Ceja moved to their right between parked police vehicles to avoid being struck by the Infiniti. Officer Kahue moved between Officer Tirona's and Officer Bennett's vehicles; Officer Mendez-Ceja moved in front of his own vehicle.

As the Infiniti continued down the driveway and onto Sunrise Drive, all four officers fired multiple shots at the Infiniti within an approximate span of three to four seconds. Evidence indicates that Officer Kahue fired before other officers. One of Officer Kahue's bullets struck the rear panel of the Infiniti from the side as it passed him on the driveway.² Another shot by Officer Kahue struck the rear window of the Infiniti as it left the driveway. The first shot visible on the dispensary's security camera came from Officer Kahue's position, and the other officers stated in subsequent interviews that they fired after hearing gunshots, which is supported by BWC video.

² Forensic analysis cannot determine the precise trajectory of shots fired by the officers, because the Infiniti was moving as shots were being fired.



Image showing bullet hole in right rear panel of Infiniti.

The bullet strike is visible in the following photograph taken from Officer Bennett's BWC.



Image from Officer Bennett's BWC showing a bullet strike to the rear window of the Infiniti and the positions of Officers Tirona, Kahue, and Mendez-Ceja.

Officers Bennett, Tirona, and Mendez-Ceja began firing their weapons immediately after the rear window was struck. Officers Bennett and Tirona fired next, followed by Officer Mendez-Ceja. Analysis of the involved officers' firearms and BWC video indicates: Officer Kahue fired 11 rounds between 3:32:04 and 3:32:07; Officer Bennett fired 6 shots between 3:32:04 and 3:32:06; and Mendez-Ceja fired 8 shots between 3:32:05 and 3:32:07. Officer Tirona fired 6 shots, but due to his BWC not being activated, the timing of the shots cannot be determined.

When interviewed after the incident on August 23, 2023, the shooting officers stated that they fired because they feared for their lives and the lives of other officers.

Officer Kahue later told investigators that he came up the driveway and yelled "stop and get out of the car." He saw the Infiniti strike Officer Tirona and drive straight at him and saw the slide of a gun on the passenger side of the Infiniti above the dashboard. Officer Kahue jumped to his right between patrol vehicles to avoid being struck. Officer Kahue believed that the Infiniti and the gun posed immediate threats. He thought he was going to be killed and feared for his life and the lives of other officers, including Officers Mendez-Ceja and Giani Arone. He fired at the driver of the Infiniti when the vehicle was approximately five feet away and stopped firing when the Infiniti left the driveway and turned onto Sunrise Drive.

Officer Bennett stated that he was near Officer Tirona at the top of the driveway. He pointed his pistol at the Infiniti, commanded the occupants to stop and get out of the car, and kicked the side of the Infiniti. Officer Bennett observed the passenger in the Infiniti holding a gun and saw the Infiniti "smash" into Officer Tirona's legs and move down the driveway. Officer Bennett then heard a gunshot that he believed came from the Infiniti. Officer Bennett believed that the armed passenger in the Infiniti was going to shoot him, officers at the scene, or officers arriving at the scene, including Officer Arone. In response, Officer Bennett fired at the passenger of the Infiniti, believing that the officers were in a gunfight.

Officer Tirona stated that when he arrived, he positioned himself in front of his patrol vehicle, drew his weapon, and ordered the Infiniti to stop. The Infiniti continued to move and struck his right leg, pinning him against his patrol vehicle. Officer Tirona believed the Infiniti struck him "purposely" because its wheels turned toward him after he had tried to get out of the vehicle's way. Officer Tirona feared he would be crushed or dragged by the Infiniti and that the Infiniti would purposely hit Officer Kahue or Officer Mendez-Ceja or Officer Arone, who was driving to the scene. Officer Tirona also believed that occupants of the Infiniti might be armed and heard what he believed were gunshots being fired at officers from the Infiniti. In response to threats posed by the gunfire and the Infiniti's movements, Officer Tirona fired at the driver of the Infiniti. When the Infiniti turned onto Sunrise Drive, Officer Tirona stopped firing to reassess the situation.

Officer Mendez-Ceja stated he was behind Officer Kahue on the driveway when he heard gunshots and saw the Infiniti coming at them. Through the front windshield of the Infiniti, he saw the passenger pointing a semiautomatic weapon at him and Officer Kahue. He believed the driver was trying to crush him and Officer Kahue and that the passenger was going to shoot them. Officer Mendez-Ceja moved behind his patrol vehicle and heard gunfire that sounded like a "gun battle" between the passenger of the Infiniti and other officers. Believing that he or his fellow officers were "going to die," Officer Mendez-Ceja fired at the passenger in the Infiniti and stopped shooting when his "sight picture" was no longer present.

After driving out of the driveway, Mr. Wilson turned right, heading south on Sunrise Drive as shots continued to be fired. When officers ceased firing, Officer Bennet is heard on his BWC broadcasting, “[S]hots fired, attempted 245 on an officer.”³ Another officer can be heard saying, “You guys good?”

The Infiniti travelled approximately 300 feet south of the dispensary, where it ran into a fire hydrant, veered up a steep embankment, struck a tree, rolled over, and came to rest right side up. Officers followed the vehicle and approached with guns drawn.

Officers directed W-1 to exit the disabled vehicle through the passenger window. At approximately 3:36 AM, Officer Kahue approached W-1, lifted his shirt and sweatshirt, and saw two wounds on his back. Paramedics arrived and observed Mr. Wilson barely breathing inside the Infiniti. At 3:47 AM, he was removed from the Infiniti by fire personnel. Paramedics provided aid and moved him to an ambulance. At 3:53 AM, Mr. Wilson was transported from the scene to John Muir Medical Center in Walnut Creek where he was pronounced deceased. A later autopsy concluded that Mr. Wilson was struck by two bullets and died from a bullet wound to his head. W-1 was treated at the scene by paramedics for two gunshot wounds and was transported to the medical center by a second ambulance at 4:02 AM.

When the Infiniti was searched after the collision, Officer Tirona located a loaded semiautomatic firearm on the front passenger floorboard of the vehicle. The firearm contained a loaded magazine with a 10-millimeter bullet in the chamber.



Image from Officer Tirona’s BWC showing a firearm on the floorboard of the Infiniti after W-1 was removed from the vehicle.

3 Section 245 of the California Penal Code prohibits assaults with a deadly weapon.



Evidence photograph of firearm found on front passenger floorboard of the blue Infiniti.

INVESTIGATION

Overview

On August 18, 2023, at approximately 6:30 AM, DOJ's Division of Law Enforcement (DLE) California Police Shooting Investigation Team (CaPSIT) received notification of the shooting incident involving the Martinez Police Department. The incident was determined to be a qualifying event within the meaning of Government Code section 12525.3 CaPSIT agents responded to the incident location and initiated an independent and thorough investigation of the facts and circumstances relating to the shooting of Mr. Wilson. DOJ's Bureau of Forensic Services (BFS) inspected and photographed the incident scene and later received and analyzed evidence that was initially photographed and collected by personnel from the Contra Costa County Sheriff's Office (CCCSO) Forensic Services Division.

Over the course of the ensuing investigation, DOJ reviewed extensive investigative materials, including documentation of the incident scene, security video footage, body worn camera (BWC) footage, MPD communication calls and records, and the autopsy report; interviewed witnesses, including the shooting officers; inspected the involved Infiniti vehicle; and conducted firearms and ballistic analysis.

Incident Scene Description

The OIS occurred in the driveway of the Velvet Cannabis Weed Dispensary in the city of Martinez and continued to Sunrise Drive just south of the driveway.



Aerial view of the dispensary and surrounding area. The red circle shows the driveway connecting the dispensary parking lot to Sunrise Drive

Sunrise Drive is a two-lane roadway which runs predominantly in a north-south direction. There is one lane in each direction, and the roadway is wide enough for parallel parking on both sides of the roadway. The location where the OIS occurred is a commercial area with multiple businesses on the west side of the street. The east side of the street had a large cinderblock wall and a concrete structure which was under construction.

The driveway to the dispensary parking lot was approximately 25 feet wide and 30 feet long. It had a two-piece swinging gate at the entrance to prevent vehicles from accessing the parking lot. Following the OIS, the gate was open and a padlock and a heavy chain were found in the bushes on the north side of the driveway.

The dispensary had exterior mounted security cameras which faced the parking lot and the areas surrounding the building. One of the cameras was located above the entrance to the dispensary and overlooked the parking lot.



Daytime photograph of the security camera overlooking the entrance and parking lot of the Velvet Cannabis Weed Dispensary.

Incident Scene Evidence Recovery

Personnel from the CCCSO Forensic Services Division responded to and documented the incident scene using photography, notes, and laser scanning. They collected evidence including bullets and cartridge casings and marked the location of evidence with placards. At 1:50 PM, criminalists from BFS arrived at the scene and inspected and photographed the area. MPD patrol vehicles and the blue Infiniti were on scene and documented. The Infiniti was then towed to a secure location for later processing.

Driveway and Officer Tirona's Patrol Vehicle

When CaPSIT arrived at the incident scene, Officer Tirona's MPD police vehicle was parked in the middle of the dispensary driveway and did not appear to have been moved. It was parked in such a way that it limited access to vehicles entering and leaving the parking lot. The rear bumper of the vehicle was approximately 25 feet into the parking lot from the western edge of the sidewalk on the west side of Sunrise Drive. Officer Tirona's vehicle had what appeared to be fresh damage and crumpling to the lip of the left front fender and left front bumper of the vehicle. There also appeared to be tire scrub marks and scratches along the lower edge of the driver's door. The marks continued into the forward edge of the left rear passenger door.



Photograph taken after OIS showing damage to the left fender of Officer Tirona's marked MPD.



Photograph taken after the OIS showing damage to the door of Officer Tirona's marked MPD vehicle.

Also observed were fresh tire marks and fresh damage to the raised concrete curb south of the left front tire of Officer Tirona's vehicle. A portion of the concrete was broken away from the curb and small pieces of concrete were observed on the ground, east of the impact site. Based on the appearance of the damage and concrete debris, it appeared that a wheel of a vehicle had recently collided with the curb while leaving the parking lot in an easterly direction. Using a 3D scan, CaPSIT measured the distance between Officer Tirona's police vehicle and the curb to be approximately 6.4 feet apart.



3D scan image showing the distance between Officer Tirona's vehicle and the curb of the driveway.

On the driver side of Officer Tirona's vehicle there were 22 expended shell casings, each marked with a triangular evidence marker. Three additional expended casings were found alongside an electrical box located in the bushes directly south of the driveway. Of the 25 expended casings found near the dispensary, 14 were nine-millimeter (headstamped "FC 9mm Luger") and 11 were .40-caliber casings (headstamped "Federal 40 S&W").



Photograph of the locations where expended cartridge cases were found as memorialized by green cones.

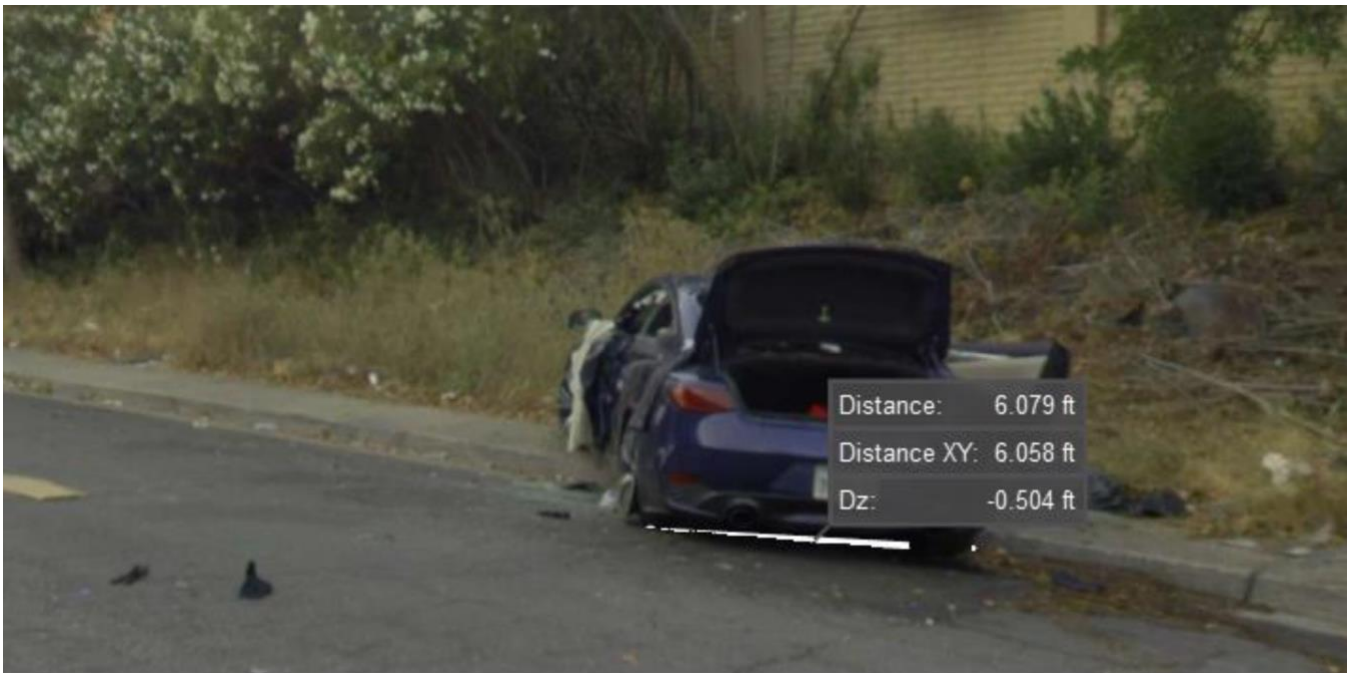
Approximately 50 feet south of the entrance to the Velvet Cannabis Weed Dispensary and approximately 20 feet east of the west curb, another evidence marker identified a bullet fragment on the asphalt in the middle of the street.

Also on Sunrise Drive, near the end of the dispensary driveway, a distinct line of vegetation, dirt, and leaves were on the street. The area between the vegetation and the west curb was damp although it had not rained, and the middle and east side of the street were dry. Based on the scene, a significant amount of water had apparently flowed through the area. The source of the water was later determined to be the fire hydrant that the Infiniti struck. Water had flowed down the street and could have washed expended cartridge cases into a drain located near Sunrise Drive and Pacheco Boulevard.

Approximately 60 feet south of the dispensary parking lot on Sunrise Drive, a 1999 Gray Honda Civic was parked parallel to the curb. W-2 was found sleeping inside the vehicle. W-2 did not witness the incident.

The Blue Infiniti Vehicle

CaPSIT agents observed a blue Infiniti vehicle on Sunrise Drive, approximately 55 feet south of a driveway for the ABC Supply Company, Inc. The vehicle faced in a southwesterly direction and was partially off the roadway. Both rear tires of the Infiniti were on the asphalt on the western edge of the roadway. There was a small pile of rubber pellets behind the right rear tire of the vehicle indicating the wheel was most likely spinning after the vehicle came to rest. The passenger door and the trunk of the vehicle were open, and the driver's door was shut. The roof of the car was damaged and had vegetation on it. Both the driver and passenger sides of the vehicle showed significant damage. The top edge of the windshield appeared to have been crushed while the lower portion remained intact.



Photograph showing the location where the Infiniti came to a stop after the OIS.

Based upon a review of the scene, CaPSIT determined that the vehicle was most likely driving southbound on Sunrise Drive, left the roadway at a high rate of speed, collided with the tree, and rolled over at least once, coming to its point of rest on its wheels, across the western sidewalk of Sunrise Drive.

The windshield of the Infiniti was the only intact piece of glass on the car. The side airbags for the driver and the passenger doors were deployed. Based on BWC footage, officers had cut the airbags to facilitate the removal of Mr. Wilson and W-1.

The metal skin on the exterior of the driver side door appeared to have been peeled back and the door forced open. There was a large piece of laminated safety glass on the ground on the passenger side of the Infiniti which came from the rear window. The glass itself was tinted, and a sheet of tinting had also been applied to the inner side of the glass. The rear window glass appeared to have a single hole from a bullet strike in the middle of the shattered safety glass with radiating fractures emanating from the hole.

CaPSIT determined there were multiple defects in the vehicle consistent with bullet impacts. There was a single defect in the left rear quarter panel of the vehicle along with multiple strikes in the rear bumper and trunk lid. There were at least four defects in the right rear fender above the right rear tire and a single grazing defect in the skin of the passenger side door. There was also an additional defect directly behind the right front tire of the vehicle.

Directly behind the Infiniti, approximately eight feet from the west curb of Sunrise Drive, a bullet fragment and its jacketing were found on the asphalt of the roadway. Further south on Sunrise Drive, approximately 130 yards south of the dispensary driveway and 20 feet from the west curb, another bullet fragment was found on the roadway. Further south on Sunrise Drive, approximately 145 yards south of the dispensary driveway and 20 feet from the west curb of Sunrise Drive, another bullet fragment was found on the roadway.

Processing of Blue Infiniti Vehicle

On September 12, 2023, several agencies participated in the processing of the blue Infiniti. CCCSO completed a three-dimensional scan of the Infiniti's interior and exterior and collected evidence, including latent fingerprints and DNA swabs. BFS took measurements of the seats and positions of the driver and passenger, collected four copper jacketed bullets from the inside of the vehicle (two bullets from the interior compartment and two bullets from the trunk), and collected a sample of the windshield. CHP downloaded digital information from the vehicle's computer system. On September 19, 2023, CHP's Multidisciplinary Accident Investigation Team checked the Infiniti's mechanical systems with CaPSIT and MPD present.

Officer Processing

Following the OIS, Officers Bennett, Kahue, Mendez-Ceja, and Tirona were transported to the Martinez Police Department by personnel from the Contra Costa County Sheriff's Office and were processed by a CCCSO criminalist.

Officer Bennett carried a Glock model 17, nine-millimeter handgun. When fully loaded, the firearm had a maximum capacity of 17 cartridges in the magazine and one additional cartridge in the chamber for a total of 18 cartridges. When examined, the firearm contained 11 cartridges in the inserted magazine and one additional cartridge in the chamber, for a total of 12 cartridges – six fewer than full capacity.

Officer Kahue carried a Glock model 22, .40-caliber handgun. When fully loaded, the firearm had a maximum capacity of 15 cartridges in the magazine and one additional cartridge in the chamber for a total of 16 cartridges. When examined, the firearm contained four cartridges in the inserted magazine and one additional cartridge in the chamber, for a total of five cartridges – 11 fewer than full capacity.

Officer Mendez-Ceja Kahue carried a Glock model 45, nine-millimeter handgun. When fully loaded, the firearm had a maximum capacity of 17 cartridges in the magazine and one additional cartridge in the chamber for a total of 18 cartridges. When examined, the firearm contained nine cartridges in the inserted magazine and one additional cartridge in the chamber, for a total of 10 cartridges – eight fewer than full capacity.

Officer Tirona carried a Glock model 17, nine-millimeter handgun. When fully loaded, the firearm had a maximum capacity of 17 cartridges in the magazine and one additional cartridge in the chamber for a total of 18 cartridges. When examined, the firearm contained 11 cartridges in the inserted magazine and one additional cartridge in the chamber, for a total of 12 cartridges – six fewer than full capacity.

Body Worn Camera and Security Video Recordings

Officers Bennett, Kahue, Mendez-Ceja, and Tirona were wearing BWCs at the time of the OIS but did not activate them until after the shooting. When the cameras were activated, video of the immediately preceding 30 seconds was also captured without audio. This feature captured critical aspects of the incident including shots being fired on the BWCs of Officers Bennett and Mendez-Ceja, but not on the BWCs of Officers Tirona and Kahue.

The Velvet Weed Cannabis Dispensary provided CaPSIT with video from its security cameras. The footage included approximately one hour of video prior to the initial activity on the property and approximately 30 minutes after the police arrived.

Communications

DOJ received and reviewed dispatch calls, 911 calls, radio communications, and Computer-Aided Dispatch (CAD) records.

Autopsy

On August 22, 2023, Pathologist Arnold Josselson, M.D. conducted an autopsy of Mr. Wilson at the Contra Costa County Sheriff's Office, Coroner's Division, located at 1960 Muir Road in Martinez, CA, 94553. The autopsy found:

- bilateral pleural effusions and peritoneal effusion
- a non-fatal gunshot wound of right shoulder
- a fatal gunshot wound of head with passage through cerebellum

Mr. Wilson's cause of death was determined to be "gunshot wound of head."

The toxicology test found Delta-9 THC, the active ingredient of marijuana, in Mr. Wilson's blood. The report did not list any other positive findings of toxicological significance.

Firearms Examination

CCCSO Forensic Services Division provided BFS with bullets and cartridge cases collected from the OIS incident scene; two bullets recovered during the autopsy of Mr. Wilson; and the pistols, magazines, and cartridges from the processing of Officers Bennett, Kahue, Mendez-Ceja, and Tirona.

BFS test-fired the firearms of the officers and examined the submitted bullets and cartridge cases. The examination determined that both bullets recovered during the autopsy of Mr. Wilson had been fired by Officer Bennett's Glock model 17 pistol.

The examination of the bullets and cartridge cases collected at the incident scene determined:

- Three of the nine-millimeter Luger cartridge cases were fired by Officer Bennet's Glock model 17 pistol.
- Three of the nine-millimeter Luger cartridge cases were fired by Officer Tirona's Glock model 17 pistol.
- Eleven of the .40-caliber S&W cartridge cases and three of the bullets were fired by Officer Kahue's Glock model 22 pistol.
- Eight of the nine-millimeter Luger cartridge cases and two of the bullets were fired by Officer Mendez-Ceja's Glock model 45 pistol.
- The remaining nine-millimeter bullet could not be identified or eliminated as being fired from any of the three nine-millimeter pistols.
- The two remaining .40-caliber bullets could not be identified or eliminated as being fired by Officer Kahue's .40-caliber pistol.

INTERVIEWS OF OFFICERS

The four MPD officers involved in this incident provided voluntary statements to DOJ in the presence of their attorneys. Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.)

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

The following statements are summaries of interviews, which describe the incident from the point of view of the individual officers. As with any witness, their recollections may be inconsistent with the facts ultimately determined by DOJ's independent review of the evidence, including video footage.

Officer Kahue

On August 23, 2023, Officer Kahue gave a voluntary statement. DOJ Special Agents Daniel O'Neil-Tennant and Brian Meeker conducted the interview at the Contra Costa Sheriff's Office.

Officer Kahue had been with MPD as a sworn peace officer for four years and was a field training officer. Officer Kahue went through a 40-hour course to become a field training officer. Prior to being sworn, Officer Kahue was a non-sworn officer with MPD.

On August 17, 2023, Officer Kahue started his shift at 6:00 PM, his regular start time. He had slept, per his regular sleep cycle, six to seven hours the evening before. During this shift Officer Kahue carried a department issued Glock 22 with one bullet in the chamber and 15 rounds in the magazine. He had an additional three magazines with 15 rounds of bullets in each of them. He wore his MPD uniform, which included his BWC.

Officer Kahue was driving his MPD police vehicle and Officer Mendez-Ceja, his trainee, was in the passenger seat. They received a call from dispatch regarding a "live video feed" at the Velvet Weed dispensary, noting that there was a blue sedan, white SUV and four subjects seen on the video feed. Officer Kahue began driving toward the dispensary on Pacheco Boulevard, with Officer Bennett and Officer Tirona following behind Officer Kahue's vehicle. He had his police lights activated but did not recall if his sirens were also on.

Officer Kahue and the other officers driving to the dispensary did not specifically discuss plans on how to approach the dispensary. However, he did know that another MPD Officer driving to the scene, Officer Arone, an officer who did not arrive before the OIS incident, was driving to the dispensary from the opposite direction. When Officer Kahue was driving to the dispensary, he missed the turn onto Sunset Drive, so he was the third vehicle to arrive at the dispensary. Officer Kahue believed everybody who was working this shift was responding to the dispensary.

When they arrived, Officer Kahue parked his patrol car behind the other two police vehicles and got out of his vehicle, turned on his BWC, and drew his pistol, staying beside his car. He did not know if Officer Mendez-Ceja got out of the car as well but believed he did. Once outside of his police vehicle,

Officer Kahue heard Officers Bennett and Tirona give verbal commands to “stop and exit.” Officer Kahue also yelled commands at the vehicle to “stop and get out of the car.”

After that, Officer Kahue stated, “it was almost like a big blur.” He remembered officers giving verbal commands to “stop and exit the vehicle” but when he looked around, he did not know Officer Mendez-Ceja’s location. Officer Kahue saw the Infiniti hit Officer Tirona. Next, the Infiniti started driving straight toward Officer Kahue and he saw the slide of a gun on the passenger side through the windshield of the Infiniti. He felt like the time between seeing Officer Tirona get hit and seeing the gun was “less than one second.” Officer Kahue could not recall if the gun was pointed at anyone. He saw the gun above the dashboard and saw it as the Infiniti was coming down the driveway, which was on a decline.

Officer Kahue did not know if Officer Tirona was being dragged behind the car, or was pinned between the cars, but as the car drove toward him, he had to physically jump in between two patrol cars to get out of the way of the Infiniti. Officer Kahue had to jump out of the way to avoid being hit. He did not know if the driver had hit or killed an officer, but he said he “felt like the car was going to kill me next and I feared for my life, I had to jump out of its way.” He later stated, “I thought I was going to die. I thought the car was going to kill me.”

Officer Kahue stated he felt that the vehicle that was used as a weapon against one of his officers, and used against him, was also going to be used as a weapon against the other responding officers, including Officer Arone. Officer Kahue was in fear for his life knowing that the driver had the means, the intent and the ability to kill an officer, and had just tried to kill him; he wasn’t sure if the driver of the vehicle was going to try to kill anybody else. He didn’t know where Officer Mendez-Ceja or the other officers were and did not know if the moving vehicle was going to try to kill him or other officers. He was in fear for his own life and the life of his fellow officers.

Officer Kahue started shooting after he jumped to his right between the second and third (his own) police vehicles. He was about five feet from the Infiniti when he made the decision to fire his gun. He stopped shooting once the Infiniti left the driveway and continued down Sunrise. He did not know the status of the other officers until after the Infiniti hit the fire hydrant.

When Officer Kahue shot, he was aiming for the driver because he could not tell the status of the other officers and because the driver of the Infiniti had tried to run him over. The officer stated that he fired at the driver of the Infiniti because the vehicle and the gun inside posed lethal threats to himself and other officers, including his trainee, Officer Mendez-Ceja. Officer Kahue stated, “I felt like that – that vehicle was used as a weapon against one of my officers and used against me was also going to be used as a weapon against other oncoming officers. And now that there’s a second weapon, which was a firearm, it – I felt like it was another mobile weapon.”

Once the Infiniti hit the fire hydrant, he jumped into his MPD police vehicle, drove down the road, and got out of his car with his gun drawn. He assisted the other officers as they got the passenger out of the vehicle.

After giving his initial statement, the interviewers allowed Officer Kahue to review his BWC after reading a video and audio recording admonishment.⁴ After watching his BWC footage he had nothing further to add.

Officer Mendez-Ceja

On August 23, 2023, Officer Mendez-Ceja gave a voluntary statement. DOJ Special Agents Allen Samano and TJ Lewis conducted the interview at the Contra Costa Sheriff's Office.

Officer Mendez-Ceja had been with MPD as a sworn peace officer for one month. During his first three weeks at MPD, he received firearm, taser, and baton training.

August 18, 2023, was Officer Mendez-Ceja's first day. He had slept six to seven hours the afternoon before that. Before beginning his shift, Officer Mendez-Ceja carried a nine-millimeter Glock 45 with one bullet in the chamber and 17 rounds in the magazine. He had an additional two magazines with 17 bullets loaded in each of them. He wore his MPD uniform, which included his BWC.

Officer Kahue was Officer Mendez-Ceja's field training officer. He trained Officer Mendez-Ceja regarding how their car would be set up, how to respond to a high-risk event, and how they would interact together. Officer Kahue trained Officer Mendez-Ceja to be cautious in a high-stress situation or a high-risk stop, but also to be ready to move fast.

Officer Mendez-Ceja had previously been briefed on the area where the Velvet Weed dispensary was located, one week prior to the incident when a sergeant drove him around. The sergeant told him the dispensary was a place that had been previously burglarized.

Officer Mendez-Ceja was a passenger in Officer Kahue's MPD police vehicle. Officer Mendez-Ceja and Officer Kahue were dispatched to a video alarm at the dispensary. While driving, they received a dispatch update stating there were multiple subjects at the dispensary. Officer Mendez-Ceja accidentally pressed a button on the computer that caused them to miss their turn, so they had to make a U-turn. The other two officers who were the cover units arrived at the dispensary before Officer Mendez-Ceja and Officer Kahue.

Once they arrived, Officer Kahue parked at the bottom of the driveway leading into the parking lot of the dispensary. The headlights of their vehicle and their red and blue flashing lights were on. As soon as they parked the car, Officer Mendez-Ceja got out of the MPD police vehicle and drew his service weapon. When he looked to his right, he saw a van that fled the scene. He did not have a chance to tell Officer Kahue about the van.

⁴ The admonishment statement reads: In this case, there is recorded video/audio evidence that you will have an opportunity to view. Recorded evidence has limitations and may depict the events differently than you recall, and it may not depict all of the events that you saw or heard. Video recordings have a limited field of view and may not capture events normally seen by the human eye. The "frame rate" and lighting as seen on the video recording may be different than that which is seen by the human eye. If viewing the video recording(s) and listening to the audio recording(s) provides additional clarity to what you remember, that is fine. Likewise, if it does not, that is fine, too. Keep in mind the video and audio recording(s) in this case are only one piece of evidence to be considered in the reconstruction and evaluation of the totality of the circumstance involved in this incident.

Once Officer Kahue began to close the driver's door of the police vehicle. Officer Mendez-Ceja walked to the driver's side of their vehicle. He closed the passenger door and walked behind their police car and stood at the bottom of the driveway about four to five feet behind Officer Kahue on the driver's side of their police vehicle. Officer Mendez-Ceja heard yelling but could not make out the words.

Officer Mendez-Ceja followed Officer Kahue up the driveway, seeing another police vehicle in front of them. That is when he heard a series of gunshots and "shots fired" over the radio. Then he saw the Infiniti driving directly toward him and Officer Kahue at a fast rate of speed. Officer Mendez-Ceja looked through the Infiniti windshield and saw a "semi-automatic weapon" in the passenger's hand. He saw this gun pointed in his and Officer Kahue's direction, above the dashboard.

Given the verbal commands, the officers in uniform, the police vehicle lights on, and the firearm visible above the dash, Officer Mendez-Ceja believed the driver was trying to crush him and Officer Kahue. Officer Mendez-Ceja describes freezing up, having almost an out-of-body feeling. He thought he would not make it home that night and felt bad because it was his first day of work and thought he might get crushed alive or shot. He also feared for Officer Kahue's life. Next, Officer Mendez-Ceja went to the rear of the patrol vehicle and stood there as the suspect vehicle was coming down the hill.

Officer Mendez-Ceja then heard a series of gunfire between what he believed were the officers and the Infiniti. He then pointed his service weapon at the passenger and shot approximately nine rounds at the passenger. Officer Mendez-Ceja stated, "I saw a firearm, I heard gunshots -- um -- thought my partners were being shot at and I thought they were probably going to die so I started shooting." He aimed for the passenger because he thought he would get shot, or one of his fellow officers "were going to die." He stopped shooting because his "sight picture wasn't there any longer." He holstered his weapon and got back inside his police vehicle with Officer Kahue, and they followed the Infiniti until it crashed.

After the crash, Officer Mendez-Ceja got out of the police vehicle and pulled out his weapon and gave verbal commands. At that time, W-2, a transient, was inside a car next to him and rolled down his window. Officer Mendez-Ceja then turned his focus to W-2 asking him if he had any weapons and if anyone else was inside the car. He also checked the license plate of that car. He stopped being concerned about W-2 once another officer informed him that W-2 was a known transient in the area.

Next, he saw the Infiniti's passenger, W-1, get out of the Infiniti. He quickly handcuffed him and pulled him away from the vehicle to a safer area to start searching him. W-1 started complaining about pain in his stomach. When Officer Mendez-Ceja lifted W-1's shirt, he saw two bullet wounds in W-1's back. Officer Mendez-Ceja asked W-1 for his information, and he declined to provide it. Officer Mendez-Ceja then went back to the Infiniti to look for any further weapons inside the vehicle and took several photographs.

Officer Mendez-Ceja forgot to operate his BWC until he was reminded to do so when he saw the functioning light on the other officers' BWCs. He activated his BWC right after he handcuffed the passenger.

After giving his initial statement, the interviewers allowed Officer Mendez-Ceja to review his BWC. He had nothing further to add.

Officer Tirona

On August 23, 2023, Officer Tirona gave a voluntary statement. DOJ Special Agents O'Neil-Tennant and Lewis conducted the interview at the Contra Costa Sheriff's Office.

Officer Tirona had been with MPD as a sworn peace officer for nine months.

Officer Tirona had slept seven to eight hours the day before the incident, which is his regular sleep cycle. Before beginning his shift, Officer Tirona carried a department issued Glock 17 with one bullet in the chamber and 17 rounds in the magazine. He had an additional two magazines with 17 rounds of bullets in each of them. He was wearing his MPD uniform which included his BWC.

Officer Tirona was in the downtown Martinez area, near the Marina, finishing up another call when he heard over the radio that there was a video alarm at the Velvet Weed dispensary. The video reportedly showed four individuals. He got into his police vehicle and, while driving to the dispensary, he was thinking about what he had seen happen at the dispensary before, specifically that one of the gates of the dispensary was rammed by burglars in a stolen vehicle. He also thought about the fact that people who do marijuana dispensary burglaries are usually armed with firearms and are not afraid to use their vehicles to ram into things.

When Officer Tirona arrived at the dispensary, he immediately saw a blue Infiniti with its lights on. The Infiniti started to back up, but there was "nowhere for them to back up into" because it was an enclosed space and the only way out was through the driveway. Officer Tirona got out of his vehicle, which had its red and blue flashing lights activated, and drew his firearm because he knew of the dangers associated with marijuana burglaries, typically being highly organized and armed, based upon his training and experience.

The Infiniti was about 30-40 feet in front of him. He could see through the windshield that there were two people in the car, and he saw the occupants looking in his direction. He knew the only way for the Infiniti to get out was to his left, the place where he parked his police vehicle, which he felt was a bad place for him, so he moved in front of his vehicle, trying to stay on the driver's side of the Infiniti so he would not put himself in extra danger. He also wanted to get up the incline to obtain a better line of vision into the Infiniti, and to decrease the gravity of the angle of the driveway.

Officer Tirona saw the car make erratic driving movements. The Infiniti was backing up and then going forward. Through the front windshield, Officer Tirona again saw there were two occupants in the Infiniti. He tried staying on the driver's side of the Infiniti so he would not be directly in front of the vehicle. There was heavy tint on the driver's side window. He could not recall seeing through it because he was focused on his own movement around the Infiniti. The parking lot was well lit.

Officer Tirona then gave verbal commands instructing the driver of the Infiniti to stop and get out of the car, but the car did not stop moving. At the time of these verbal commands, Officer Bennett was present and Officer Tirona knew that Officers Kahue and Mendez-Ceja were just a second behind him.

Officer Tirona repositioned himself and moved around his police vehicle to try to flank the back of his police vehicle. He saw the Infiniti still moving toward the location where he repositioned himself. At the time, he was focused on the Infiniti and was not certain where he was standing, but he knew he did not make it to the back of his police vehicle. That is when the Infiniti hit him. He believes the hit

was intentional because after he tried to get out of the Infiniti's way, the wheels of the car turned toward him, where he believed there was enough room for the Infiniti to exit.

Officer Tirona knew there were other officers behind him, because he looked back and saw a police vehicle behind Officer Bennet's vehicle and assumed Officers Kahue and Mendez-Ceja had arrived. He could hear Officer Bennett giving commands to the individuals in the car but could not hear what was being said. The Infiniti then pinned him against his own vehicle, hitting him on his left side. He could feel the pressure of the Infiniti against him. His concern at the time was that the occupants in the vehicle might be armed and that they could do something more violent to him because he could not move.

Officer Tirona tried to shimmy his leg out from being pinned between the two vehicles, but he was stuck. He feared he would get crushed or dragged under the Infiniti and knew that his chances of getting hurt or killed were extremely high. The Infiniti drove at Officer Tirona at least 15 miles per hour as it passed him. His focus then turned toward the officers behind him. After being struck, Officer Tirona feared the Infiniti might purposefully hit one of the officers behind him. He also heard gunshots coming from the Infiniti. Officer Tirona was certain the gunshots he heard were not from Officer Bennett because Officer Bennett was about 5 to 10 feet away from him and he did not hear gunshots coming from that close.

The combination of being struck, fearing the officers behind him might be killed, and hearing gunshots come toward him, caused Officer Tirona to fire shots. He fired about six shots. He started shooting at the Infiniti while it was still in the driveway, specifically aiming at the driver so he could prevent the driver from aiming the car at other officers, the officers in the driveway, and Officer Arone, who was approaching on Sunrise Drive. He knew Officer Arone was coming from that direction because Officer Arone said he would come to the dispensary from Highway 4 over the radio transmission.

Officer Tirona tried to get back into his car but could not. Over the radio, he heard Officer Bennett state, "Shots fired." Next, the Infiniti crashed. Officer Tirona ran to where the Infiniti crashed and reloaded his gun along the way, dropping the old magazine between the parking lot and the fire hydrant. At the Infiniti, he saw a firearm in the car. He was on the driver's side of the car and could see a firearm inside. Officer Tirona removed the firearm and set it on the trunk of the car.

Officer Tirona heard another officer say that medical aid was on the way. Mr. Wilson, in the driver's seat of the Infiniti, was talking to Officer Tirona and breathing when he got to the Infiniti. It was not until Officer Tirona pulled Mr. Wilson's beanie off that he realized Mr. Wilson was bleeding from his head. Officer Tirona was not able to render any medical aid because all he had on him was a tourniquet.

Officer Tirona rendered the firearm found in the Infiniti safe by taking the magazine out of the firearm and taking a bullet out of the chamber. He took pictures of the firearm. He did not have gloves on when taking the firearm from the Infiniti or rendering it safe. Sergeant Espinoza took possession of the firearm. Officer Tirona also found the magazine that he dropped while running to the Infiniti and did not alter it before it was processed.

Officer Tirona received medical treatment hours after the incident and was diagnosed with a contusion and strain of his right knee.

After giving his initial statement, the interviewers allowed Officer Tirona to review his BWC of the OIS and of events that happened shortly after the OIS. He had nothing further to add.

Officer Bennett

On August 23, 2023, Officer Bennett gave a voluntary statement. DOJ Special Agents Meeker and Lewis conducted the interview at the Contra Costa Sheriff's Office.

Officer Bennett had been with MPD as a sworn peace officer for nine months. Prior police service entailed working patrol for the San Pablo Police Department from December 2017 to April 2019.

Officer Bennett had slept seven to eight hours the day before the incident, which is his regular sleep cycle. Before beginning his shift, Officer Bennett carried a department issued Glock 17 with one bullet in the chamber and 17 rounds in the magazine. He had an additional two magazines with 17 rounds of bullets in each of them on his vest. He was wearing his MPD uniform which included a service vest and his BWC.

Officer Bennett was out on a medical call when he was dispatched to a burglary in progress at the Velvet Weed dispensary and was informed that there were two vehicles at the location, an SUV and a sedan. He took the Pacheco route to the dispensary and alerted another officer on the radio, so that the other officer would arrive from the direction of Highway 4 in order to close in on the suspects.

From his training and experience, Officer Bennett knew that there is typically more than one burglar when a dispensary burglary is attempted. He also knew, from prior knowledge and BOLO (Be on the Lookout) alerts, that dispensary burglary suspects usually have weapons and are organized.

Officer Bennett was behind Officer Tirona when they arrived at the driveway of the dispensary. When Officer Bennett arrived, he noticed the gate to the dispensary was wide open. He found this strange because he had driven past the dispensary an hour and a half before his arrival and the gate was chained shut with a locked padlock. His senses were heightened because of this.

Officer Tirona stopped his vehicle in the driveway and Officer Bennett parked right behind his vehicle. Officer Bennett got out of the car and lined up behind Officer Tirona. He walked up the driveway and saw the Infiniti with its lights on and driving in the parking lot. Officer Bennett drew his service pistol. He could see there were two people in the car through the front windshield, but he could not see through the side windows because they had a dark limousine tint. He could not see if anyone was in the back seat.

Officer Bennett then pointed his pistol at the Infiniti and gave commands for the occupants to stop the car and to get out of the car, but it did not stop. The Infiniti began driving around the parking lot in circles, which made Officer Bennett very nervous because he previously saw actions similar to this during another burglary call. On the previous call, which occurred a couple months before, the burglars drove over the curb and down a hill, so he thought that might happen with the Infiniti, since there was not enough room for the car to get out of the driveway. The Infiniti then stopped. Officer Bennett started kicking the Infiniti's door and continued yelling "stop the car." When the car stopped, he then yelled "get out of the car." There was no reaction from the occupants. Ignoring his commands, the Infiniti began to drive again, driving around in circles.

The Infiniti then repositioned and faced to the left of him and Officer Tirona. It then repositioned and faced him and Officer Tirona. Officer Bennet pointed his service weapon at the car. His service weapon had a flashlight attached to it, which was on. The parking lot lights were lit, which allowed him to look into the Infiniti. Officer Bennett then started walking toward the driver's side door of Officer Tirona's car and that is when the Infiniti came straight at the two officers. The Infiniti came within two feet of Officer Bennett.

Officer Bennett was able to jump out of the way of the Infiniti by going in front of Officer Tirona's vehicle. He looked into the vehicle "for like a millisecond" and saw the passenger through the windshield holding what looked like a firearm in the passenger's hand. The firearm was placed about midway across the passenger's chest. Officer Bennett gave a verbal warning that there was a gun.

Officer Bennett was "ridiculously scared" because the driver of the Infiniti was driving erratically, the Infiniti passenger had a gun, he saw Officer Tirona's legs being crushed, there were two officers behind him, and there were other patrol officers, including Officer Arone, that he knew was coming to the dispensary from the direction the Infiniti drove toward. As the Infiniti went by, Officer Bennett repositioned himself further into the parking lot and targeted where he saw the passenger sitting in the Infiniti. He then heard a gunshot come from the car and believed the officers and occupants of the car were in a gunfight, so he began firing his pistol at the passenger who he saw holding a gun. Officer Bennett did not believe the gunshots came from next to him. He estimated that he shot about four or five rounds.

Officer Bennett then activated his BWC and went on the radio and announced "shots fired. 245 on an officer." He then heard a crash and ran on foot toward the Infiniti. He called over the radio for fire and medical assistance. When he got to the Infiniti, Officers Arone, Kahue, and Mendez-Ceja were already there. Officer Bennett went to the passenger's side and heard the passenger moving around. He gave commands for the passenger to get out of the vehicle. He saw that the passenger's hands were free so he tried to open the door, but the door would not open. He broke the passenger side window and lifted up the airbag while continuing to have his service pistol drawn. Since the door wouldn't open, he told the passenger to crawl out of the window. When the passenger was out, someone handcuffed him.

Officer Bennett then turned his focus to the driver of the Infiniti who was not saying anything. He saw another officer pull off the driver's beanie and saw there was an injury to the back of his head. He then saw that the passenger had two gunshot wounds in his back.

INTERVIEWS OF CIVILIAN WITNESSES

W-1

On August 18, 2023, Senior Inspector L. Sanchez of the Contra Costa County District Attorney's Office and MPD Officer Engleberto interviewed W-1 at the John Muir Medical Center. W-1 stated that Mr. Wilson was driving the Infiniti and he was asleep in the rear seat. He woke up and got out of the vehicle to walk around the parking lot but did not know where he was. He then saw red and blue lights and knew they were police. The police hit the Infiniti and told them to "exit out the car." W-1 was sitting in the rear seat behind Wilson and saw a black and white vehicle out the front windshield.

Mr. Wilson then drove in the bushes and out of the parking lot. He estimated that approximately 6-8 seconds after leaving the parking lot shots were fired at the Infiniti. W-1 said he was struck two times

in the back and Mr. Wilson was shot in the head. W-1 said that he saw a firearm on the front passenger floorboard when he was climbing out of the vehicle.

W-2

W-2 was an unhoused individual who was present where the Infiniti struck the fire hydrant. W-2 was interviewed but did not witness the OIS. Therefore, a summary of the interview is not included here.

W-3

On September 11, 2023, DOJ Special Agent Oneil-Tenant interviewed W-3, the registered owner of the Infiniti. W-3 reported his vehicle stolen from the city of Livermore. W-3 last saw the Infiniti on August 11, 2023, and reported it stolen the next day. During the interview, W-3 stated he does not own any firearms and there were no firearms inside his vehicle when it was stolen.

W-4

On August 22, 2023, Special Agent Oneil-Tenant interviewed W-4, who was a manager at the Velvet Weed Cannabis Dispensary. The manager explained that part of his duties included accessing, viewing, and downloading security videos from the dispensary. W-4 confirmed that the security videos provided to DOJ of the burglary involved in this incident were captured on August 18, 2023, were recorded at or near the time of the incident and were reliable.

APPLICABLE LEGAL STANDARDS

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

Murder

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

Second degree murder is the unlawful killing of a human being with malice aforethought but without the additional elements of willfulness, premeditation, and deliberation that would support a conviction of first degree murder. (*People v. Knoller* (2007) 41 Cal.4th 139, 151.) The malice required for second degree murder may be express or implied. (Pen. Code, § 188; *Hernandez, supra*, 183 Cal.App.4th at p.1332.) Malice is express when there is an “intent to kill.” (Pen. Code, § 188; *People v. Delgado* (2017) 2 Cal.5th 544, 571.) Malice is implied “when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his [or her] conduct endangers the life of another and who acts with conscious disregard for life.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1215.)

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

Voluntary Manslaughter

Manslaughter is an unlawful killing without malice. (Pen. Code, § 192; *People v. Thomas* (2012) 53 Cal.4th 771, 813.) Several factors may preclude the formation of malice and reduce a killing that would otherwise be murder to voluntary manslaughter including: (1) heat of passion, and (2) imperfect self-defense. (*People v. Moya* (2009) 47 Cal.4th 537, 549.)

Imperfect self-defense is the killing of another human being under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury and that the use of deadly force is necessary to defend against that danger. Such a killing is deemed to be without malice and thus cannot be murder. (*People v. Cruz* (2008) 44 Cal.4th 636, 664.) The doctrine of imperfect self-defense cannot be invoked, however, by a person whose own wrongful conduct (for example, a physical assault or commission of a felony) created the circumstances in which the adversary's attack is legally justified. (*People v. Booker* (2011) 51 Cal.4th 141, 182.)

Self-Defense

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

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

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

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

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

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

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

Transferred Intent

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

accomplished what he [or she] set out to do.”⁵ (*Scott, supra*, 14 Cal.4th at p. 546; *Bland, supra*, 28 Cal.4th at pp. 323-324.)

The doctrine of transferred intent, however, applies equally to self-defense and defense of others. Where an individual uses deadly force in lawful self-defense or defense of others, the individual’s lack of criminal intent for homicide of the intended target transfers to the killing of the bystander. In such an event, where the individual intends to “injure or kill the person who poses the threat” and “inadvertently kills an innocent bystander,” the individual’s actions “insulate[s] [him or her] from criminal responsibility.” (*People v. Curtis* (1994) 30 Cal.App.4th 1337, 1357 “[U]nder the doctrine of transferred intent, self-defense may also apply where the defendant intends to injure or kill the person who poses the threat, but inadvertently kills an innocent bystander instead”]; *People v. Mathews* (1979) 91 Cal.App.3d 1018, 1024 “[W]e conclude that the doctrine of self-defense is available to insulate one from criminal responsibility where his act, justifiably in self-defense, inadvertently results in the injury of an innocent bystander.”).) Thus, “one’s criminal intent follows the corresponding criminal act to its unintended consequences ... the reasoning applies equally to carry the lack of criminal intent to the unintended consequences and thus preclude criminal responsibility.” (*Mathews, supra*, 91 Cal.App.3d at p. 1023.)

Burden of Proof

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

Further, the prosecution has the burden of proving beyond a reasonable doubt that a killing is not justified. It is not a criminal defendant’s burden to prove that the force was necessary or reasonable. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384.) Thus, in an OIS, the prosecution must prove

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

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. Wilson and the nonfatal injury of W-1. This analysis is based on all the evidence provided to DOJ in this matter, including witness interviews, law enforcement reports, analyses of firearms and ballistics, physical evidence, the autopsy and toxicology reports, BWC and security camera footage, photographs, and communication evidence.

The issues presented in this OIS are whether MPD Officers Tirona, Bennett, Kahue and Mendez-Ceja acted lawfully in self-defense or defense of others, and whether their actions are subject to criminal prosecution.⁶ A detailed analysis of the evidence pertaining to the OIS demonstrates that a prosecution cannot establish that Officers Tirona, Bennett, Kahue and Mendez-Ceja were objectively unreasonable in believing that lethal force was necessary to defend themselves or others against an imminent threat of death or serious bodily injury. Therefore, the evidence is insufficient to support criminal charges.

In voluntary interviews, each of the officers involved in the OIS expressed a subjective belief in the need to defend against the threat of death or serious bodily injury. Officer Kahue stated that when he arrived at the scene with his trainee, Officer Mendez-Ceja, he saw the Infiniti hit Officer Tirona and saw a gun on the passenger side above the dashboard. Officer Kahue said that as the vehicle drove directly at him, “I thought I was going to die. I thought the car was going to kill me.” Officer Kahue jumped out of the way and fired at the driver, who he believed intended to run him over and to kill him or other officers. Officer Kahue stated that the vehicle coming at him and the gun in the vehicle posed immediate threats to his life and to the lives of other officers who were on scene or arriving to the scene.

In his interview, Officer Tirona said he believed he was intentionally struck by the Infiniti and feared that the vehicle would also hit Officer Kahue, Mendez-Ceja, or Arone. Officer Tirona did not see a gun in the Infiniti, but he believed that the occupants of the Infiniti could be armed burglars. When Officer Tirona heard gunshots, he thought shots were being fired from the Infiniti at officers, so he fired his weapon at the driver of the Infiniti.

Officer Bennett stated that he saw the Infiniti hit Officer Tirona and saw the passenger in the Infiniti holding a gun. When the Infiniti continued down the driveway, Officer Bennett heard a gunshot that he believed came from the Infiniti. At that point, he believed officers were in a gunfight and that he or other officers would be shot, so he fired at the passenger in the Infiniti.

Officer Mendez-Ceja stated that as the Infiniti drove at him, he saw the vehicle’s passenger pointing a semiautomatic gun at him. He believed he was going to be crushed by the vehicle and shot by the passenger. He then heard gunfire and thought that officers were involved in a gun battle with the Infiniti, and that he or other officers were “going to die.” In response, Officer Mendez-Ceja fired at the passenger in the Infiniti.

⁶ Unrelated to this incident, Officer Kahue died in 2025 and is not a subject of this criminal review.

In addition to the officers' statements, video and other evidence indicate that the officers fired their weapons in response to a perceived threat posed by the Infiniti striking Officer Tirona and proceeding down the driveway toward other officers, and by seeing a gun in the vehicle and hearing gunfire. A prosecution, therefore, could not prove that the officers fired their weapons in the absence of an actual belief that deadly force was necessary to prevent serious physical harm or death.

Additionally, based on the totality of the circumstances involved in this incident, a reasonable officer in the same situation as the involved officers could similarly conclude that the Infiniti's driver and passenger demonstrated the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury.

A car can be used as a weapon to cause death or serious bodily injury. Security footage from the dispensary and BWCs show Mr. Wilson driving toward officers, causing them to believe that the vehicle would hit them or run them over. Mr. Wilson refused to comply with officers' demands to stop the vehicle and Officer Tirona stated the Infiniti was making "erratic movements." Security video and photographs of the scene show there was very little room for the Infiniti to exit down the driveway without hitting an officer. Indeed, before shots were fired, Mr. Wilson pinned Officer Tirona in between his patrol car and the Infiniti. Officer Tirona reasonably feared he would be crushed or dragged under the Infiniti, causing serious bodily injury or death.

After striking Officer Tirona and pinning him between vehicles, Mr. Wilson accelerated down the driveway toward Officers Kahue and Mendez-Ceja, forcing them to jump out of the way to avoid being struck. Both officers believed they would be injured or killed, and under the circumstances, their belief was not unreasonable as the Infiniti drove at them in such a confined space.

Adding to the lethal threat posed by the Infiniti's movements, Officers Bennett, Kahue, and Mendez-Ceja also observed the passenger with a gun. As the Infiniti drove down the driveway toward Officer Kahue, the evidence indicates that Officer Kahue fired his weapon before other officers. The first shot visible on the dispensary's security camera came from Officer Kahue's position on the driveway; video from BWCs indicate that other officers fired later; and the bullet hole in the rear left panel of the Infiniti is consistent with Officer Kahue's position. Officer Kahue stated that he fired at the driver of the Infiniti because the vehicle and the gun inside posed lethal threats to himself and other officers, including his trainee, Officer Mendez-Ceja.

Officer Tirona feared that the Infiniti would purposely turn into one of the officers as it had done to him. He decided to engage the Infiniti as it drove toward other officers but did not fire until he heard gunshots which solidified his decision. He did not believe the shots were fired by Officer Bennett, who was next to him, instead he thought they were coming from the Infiniti. According to Officer Tirona, "At that point that I heard the gunshots, and I believed we were getting shot at, that is when I pulled the trigger." Although Officer Tirona did not observe a gun, he understood from briefings that individuals committing burglaries like the one involved here could be armed and driving stolen vehicles.

Officer Bennett similarly stated that he fired after hearing a gunshot that he believed came from the Infiniti, and not Officer Tirona. After he initially saw the passenger holding a gun, he was "super scared" and thought he or Officers Tirona, Kahue, or Mendez-Ceja would be shot. He also believed that if the Infiniti left the scene, the passenger was going to shoot one of the other officers who were responding from the opposite direction on Sunrise Drive. Officer Bennett stated that he fired "at the

passenger who I had seen with the gun and who I now heard a gunshot come from the vehicle because I believe he was shooting at me.”⁷ Officer Bennett believed that if the passenger “wasn’t dealt with that he would go down and shoot the other officer that was coming on scene. So I discharged my service pistol ... and engaged in this gunfight that I’m now in.”

As the Infiniti drove down the driveway, Officer Mendez-Ceja thought that he or his training officer, Officer Kahue, would be crushed by the vehicle. He also saw the passenger with a semiautomatic weapon “raised up” “above the dashboard” and “pointing at us.” The officer stated, “[I] feared for my life of getting either crushed alive or I thought I was going to get shot.” He then moved behind his patrol vehicle. As the Infiniti got to the bottom of the driveway and turned, the officer stated, “I heard a series of gunfire which sounded like a gun battle between the passenger and my fellow officers. So, then that[’s] when I pulled up my firearm, I pointed it at the passenger, and I fired.”

The officers stopped firing when they no longer had clear views of their targets.

Based on officer statements, the threat posed by the Infiniti escalated when the passenger was seen with a gun. According to Officer Mendez-Ceja, the passenger raised the gun and pointed it at him and Officer Kahue. Even Officer Tirona, who did not see the gun, was aware that burglary suspects are often armed.

Officers Bennett, Tirona, and Mendez-Ceja fired their weapons after hearing gunfire that they believed emanated from the Infiniti. In actuality, DOJ’s investigation found no video or forensic evidence that shots were fired from inside the Infiniti. Rather, the shots heard by officers were likely fired by Officer Kahue. Even so, the officers’ perceptions were not unreasonable under the circumstances. They were faced with an approaching vehicle that had struck an officer and was driving at them in a dangerous and threatening manner. The vehicle was barely able to fit in the narrow space between the edge of the driveway and the parked patrol vehicles. If Officers Kahue and Mendez-Ceja had not moved between vehicles, they almost certainly would have been struck by the Infiniti. The vehicle, therefore, posed an imminent threat of death or serious bodily injury.

Based on the totality of circumstances, the shooting officers could have reasonably assessed that the Infiniti’s aggressive movements exhibited a desire to kill or injure them, and that the brandishing of a gun by the passenger and the gunshots they heard were likewise directed at them. Officer Kahue fired within a few feet of the Infiniti as it moved down the narrow driveway, and except for Officers Tirona and Bennett, who were next to each other during the incident, the officers could not see each other. Under such circumstances, it would have been difficult to determine from where the initial sounds of gunfire originated, and given the rapidly evolving situation facing the officers and the fact that they each made the same assessment, a prosecution could not prove that they unreasonably attributed the gunfire to the Infiniti.

As the Infiniti turned onto Sunrise Drive it was also not unreasonable for the officers to believe that shots could be fired at them or at other responding officers who were headed toward the Infiniti.

⁷ Although Officer Bennett stated that he aimed at the passenger in the Infiniti, forensic analysis determined that two of his bullets inadvertently struck and killed Mr. Wilson. Pursuant to the legal doctrine of transferred intent, this analysis applies Officer Bennett’s intent and corresponding claim of self-defense in shooting at W-1 to the unintended killing of Mr. Wilson.

Therefore, it cannot be established that the shooting officers were unreasonable in firing at Mr. Wilson who controlled the vehicle or at W-1 who they believed was firing at them in order to stop the imminent threat posed by the vehicle, which Officer Kahue described as a “mobile weapon.”

Thus, the totality of the evidence shows that Officers Bennett, Kahue, Mendez-Ceja, and Tirona held the subjective belief that deadly force was necessary to defend themselves and other officers from imminent deadly force, and it cannot be proven beyond a reasonable doubt that such belief was objectively unreasonable.

CONCLUSION

Based on the investigation and review of evidence, along with the applicable statutes, legal principles, and the subsequent analysis, there is insufficient evidence to support a criminal prosecution of Officers Bennett, Mendez-Ceja, or Tirona. As such, no further action will be taken in the matter.



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for the
Martinez Police Department Related to the
Officer-Involved Shooting of Tahmon Wilson on
August 18, 2023**

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

September 2026



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 conducts a 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. The Police Practices Section 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. The Police Practices Section’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, on August 18, 2023, at approximately 3:27 a.m., four Martinez Police Department (Martinez PD) officers responded to a call regarding a video alarm showing an attempted burglary at a marijuana dispensary. Officers Alexander Tirona and Cole Bennett were the first to arrive and attempted to approach, on foot, an Infiniti car associated with the burglary. The Infiniti circled the dispensary parking lot. As the Infiniti attempted to flee the parking lot, the Infiniti sideswiped Officer Tirona and struck him in the leg.

Officers Marc Kahue and Raul Mendez-Ceja¹ arrived on scene moments before the Infiniti struck Officer Tirona. They walked up the driveway towards the Infiniti. The Infiniti then traveled down the driveway exit in the direction of Officer Kahue and Officer Mendez-Ceja. Officer Kahue moved in between two patrol vehicles to avoid being struck by the Infiniti, and shortly thereafter, he discharged his firearm towards the Infiniti. At the same time, Officer Mendez-Ceja moved behind a patrol vehicle to avoid being struck by the Infiniti as well. Officers Bennett, Kahue, and Mendez-Ceja said in their interviews that they saw the front passenger holding a firearm while the Infiniti was in the driveway.

Officers Bennett, Tirona, and Mendez-Ceja began shooting at the Infiniti as it drove out of the driveway and away from them. According to their interviews, Officers Bennett, Tirona, and Mendez-Ceja heard Officer Kahue’s firearm discharge and believed that they were being shot at by the occupants of the Infiniti. In total, the four officers fired 30 shots.

Shortly after exiting the driveway, the Infiniti collided with a nearby tree and fire hydrant. It was later determined that Mr. Tahmon Wilson, the driver of the Infiniti, sustained two gunshot wounds in the shoulder and back of the head. He was pronounced dead at 4:57 a.m. at the hospital. The front

1 It was Officer Raul Mendez-Ceja’s first day of patrol. Officer Kahue was his Field Training Officer that shift.

passenger (W-1) sustained two nonfatal gunshot wounds to his back. A loaded firearm was found on the front passenger floorboard of the Infiniti.

The Police Practices Section evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), advises Martinez PD to review and implement the following eight recommendations:

Recommendation One: Provide Additional Training on Shooting at Moving Vehicles

The Police Practices Section recommends that Martinez PD provide additional training on shooting at moving vehicles and vehicle occupants.

Martinez PD Policy Manual No. 300.4.1 (May 2026) on shooting at moving vehicles provides:

Shots fired at or from a moving vehicle are rarely effective and may involve additional considerations and risks. When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Officers Tirona and Bennett were the first officers to contact the Infiniti at the dispensary. During this initial contact, Officer Tirona approached the Infiniti driver's window, placing his body in between the Infiniti and his patrol car at the mouth of the driveway, as the Infiniti was trying to exit the driveway. As Officer Bennett approached the Infiniti, the driver performed a three-point turn to drive out of the driveway. Right after the Infiniti backed up during the three-point turn, Officer Bennett kicked the moving Infiniti, causing a dent in the side panel. Immediately thereafter, the Infiniti struck Officer Tirona's leg as it drove down the driveway.

Then Officer Kahue arrived at the dispensary. He exited his patrol vehicle and walked up the driveway as the Infiniti was fleeing down the driveway.² According to Officer Kahue's statement, the Infiniti drove directly towards him, and he saw the passenger holding a firearm above the dashboard. To avoid being struck by the Infiniti, Officer Kahue moved out of the way and in between two parked patrol vehicles. He then fired his service weapon at the Infiniti driver, as the vehicle continued past him. According to Officer Kahue, he aimed for the driver because he observed the driver strike Officer Tirona with the Infiniti and believed the driver was attempting to run him over. However, Officer Kahue began firing after he moved out of the Infiniti's path.³

The Police Practices Section acknowledges that this was a rapid encounter and that the officers had to make split-second decisions. However, Officers Tirona, Bennett, and Kahue positioned themselves in

² Officer Kahue passed away in 2024.

³ According to their voluntary statements, Officers Bennet, Tirona, and Mendez-Ceja fired at the Infiniti for a different reason than Officer Kahue. They stated that they mistakenly believed Officer Kahue's gunshots were coming from the Infiniti's occupants and were directed towards them.

the path of a moving vehicle when they arrived at the dispensary. In addition, once Officer Kahue moved out of the Infiniti's path of travel, the Infiniti was no longer an imminent threat, and therefore, deadly force was no longer necessary pursuant to Martinez PD policy. Accordingly, the Police Practices Section recommends that Martinez PD provide additional training and guidance regarding the use of deadly force against vehicles and occupants of vehicles in a rapidly unfolding incident.

Recommendation Two: Develop Policy and Training on Officer Communications During Critical Incidents

The Police Practices Section recommends that Martinez PD develop policy and provide training on officer communications during critical incidents, especially the existence of known weapons within vehicles for officer safety and awareness.

Through the State of California Commission on Peace Officer Standards and Training (POST) Academy, officers are trained on procedures for reporting crime emergencies to dispatch. (POST Basic Course Workbook Series, Learning Domain 21: Patrol Techniques, Version 7.0 (2025) pp. 2-22 to 2-23.) As part of this training, officers are instructed to report "critical information" and warn other officers about the existence of a weapon. (*Id.*, Learning Domain 22: Vehicle Pullovers, Version 5.0 (2025) p. 3-7; *Id.*, Learning Domain 30: Crime Scenes, Evidence, and Forensics, Version 6.0 (2025) p. 1-8.)

In regard to high-risk vehicle pullovers, POST instructs that "[i]t is vital that the primary officer initiating any high-risk vehicle pullover maintain communication with dispatch and any assisting or backup officers involved in the situation. Such communication should include the: ... [e]xistence of any known or suspected weapons within the vehicles," among other things. (POST Basic Course Workbook Series, Learning Domain 22: Vehicle Pullovers, Version 5.0 (2025) at p. 3-7.) Martinez PD does not have policies specifically addressing communications during and after critical incidents.

Officer Bennett stated in his interview that immediately prior to the officer-involved shooting he observed the passenger of the Infiniti with a firearm, and believed he yelled, "Gun," to warn surrounding officers.⁴ According to the dispatch log and his body worn camera, Officer Bennett did not radio dispatch or yell "Gun!" Instead, after the shooting, he radioed, "Shots fired. Attempt 245 on an officer."⁵ Officer Tirona was standing next to Officer Bennett during the shooting and stated in his interview that he did not hear Officer Bennett yell, "Gun." Officer Tirona stated he may not have perceived all that occurred due to the chaos. Additionally, Officer Kahue and Officer Mendez-Ceja each stated in their interviews that they observed the passenger of the Infiniti with a firearm prior to the officer-involved shooting. Neither warned other officers of the gun.

As additional officers arrived on scene, none of the four shooting officers announced to the responding officers that the Infiniti's occupants were armed. Significantly, Officer Tirona, Officer Giani Arone, and Sergeant Gerardo Espinoza responded to the collision unaware that the occupants possessed a firearm. Shortly after Officer Arone arrived, he approached the driver's side door without knowledge that the

4 This was not captured on video because Officers Bennett and Tirona had not yet activated their body worn cameras.

5 "245" refers to Penal Code section 245 (assault with a deadly weapon). According to Officer Bennett's voluntary statement, he was referring to the Infiniti hitting Officer Tirona when he stated, "attempt 245 on an officer."

occupants had a gun. Officer Arone started breaking the tinted window with his visual into the car being further obscured because the airbags had deployed. In a voluntary statement, Sergeant Espinoza stated, “we wouldn’t have got that close” to the Infiniti had he known a firearm was present. Instead, Sergeant Espinoza indicated he would have had ballistic shields up, “delay[ed] making contact,” and used other measures to ensure officer safety.

The Police Practices Section recommends that Martinez PD develop a policy and corresponding training on the broadcast and warning of critical information during critical incidents, such as broadcasting and warning about armed suspects. Communicating this information at the earliest opportunity will provide enhanced officer safety and more efficient scene management.

Recommendation Three: Provide Additional Training on the Use of Force

The Police Practices Section recommends that Martinez PD provide additional training to ensure officers comply with its use of force policy.

Courts have found using force against a handcuffed person who is compliant to be excessive and unreasonable under the Fourth Amendment.⁶ According to Martinez PD’s Use of Force policy, “Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).” (Martinez PD Policy Manual No. 300.3.) The policy further provides a list of factors to determine the reasonableness of any force used. (Martinez PD Policy Manual No. 300.3.4, Factors Used to Determine the Reasonableness of Force.)

After the Infiniti collided with the fire hydrant, officers ordered the passenger, W-1, to exit the Infiniti. W-1 shouted he could not get out of the vehicle because the door was jammed. Officers ordered him to climb out of the front passenger window. W-1 complied and climbed out of the window with his arms and head first. As he did so, he informed Officer Bennett that he had been shot and cried out in pain as he maneuvered his way out of the window, then laid on his stomach on the ground. He continued to lay prone with his hands behind his back until Officer Mendez-Ceja handcuffed him.

Then Officer Mendez-Ceja attempted to drag W-1 away from the Infiniti. Officer Arone walked over to assist Officer Mendez-Ceja and together they lifted W-1 by the arms and carried him out into the street. W-1 was compliant throughout. According to body camera footage, while the officers dragged W-1, Officer Arone kneed W-1’s body multiple times, even though he was not resisting, and yelled out in pain.⁷

6 *Ross v. City of Toppenish* (9th Cir. 2004) 104 Fed. Appx. 26, 29 (“No reasonable officer could have thought ... that he was entitled to use such gratuitous force” when officers picked up a handcuffed and compliant man, “threw him to the ground and rubbed his face in the gravel.”).

7 Four months prior to this officer-involved shooting, Officer Arone was accused of employing unreasonable force in a separate encounter. He received additional training on the use of force in June 2023 and was disciplined by Martinez PD for that incident in November 2023. In addition, Martinez PD sustained administrative findings of officer misconduct related to kneeling W-1 in this shooting, among other reasons, and terminated Officer Arone’s employment on or about January 17, 2024, according to the Martinez PD Final Notice of Discipline.

Later, when W-1 discovered the driver was shot in the head, Officer Arone responded: “Play stupid games, win stupid prizes.”

The Police Practices Section recommends that Martinez PD provide additional training on the use of force, including the use of force on injured persons and on persons who are handcuffed. Officers can only use a level of force that they reasonably believe is proportional to the reasonably perceived level of actual or threatened resistance. (Gov. Code, § 7286, subd. (b)(2).)

Recommendation Four: Provide Additional Training on Rendering Medical Assistance and Notifying Medical Personnel About Injuries

The Police Practices Section recommends Martinez PD provide further training on rendering medical assistance after an officer’s use of force and notifying assisting medical agencies about the use of force applied and injuries that ensued.

Martinez PD policy on medical assistance following use of force provides, “Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident.” (Martinez PD Policy Manual No. 300.6, Medical Considerations; see Gov. Code, § 7286, subd. (b)(15).) California Government Code section 7286.5, subdivision (b) prohibits officers from using “techniques or transport methods that involve a substantial risk of positional asphyxia.”⁸

Additionally, Martinez PD policy states, “The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force.” (Martinez PD Policy Manual No. 300.6, Medical Considerations.) Specifically, such notification should “include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).”

There were many times when officers failed to render medical assistance to W-1 and failed to evaluate whether they could provide aid.

- At approximately 3:33 a.m. and 3:34 a.m., before exiting the Infiniti, W-1 told Officer Bennett he was shot. However, Officer Bennett did not relay W-1’s complaint to the other officers.
- From approximately 3:35 a.m. to 3:41 a.m., after handcuffing W-1, Officer Mendez-Ceja kept him in a prone position. W-1 cried out in pain and repeatedly commented about his injuries.

8 “‘Positional asphyxia’ means situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing,” which includes “positioning a restrained person without reasonable monitoring of signs of asphyxia.” (Gov. Code, § 7286.5, subd. (b)(4).) Officers are trained, and statute requires officers, to roll a handcuffed person on their side to avoid risk of positional asphyxia. (U.S. Department of Justice, National Law Enforcement Technology Center, Positional Asphyxia— Sudden Death (June 1995).)

During that time, Officer Mendez-Ceja did not attempt to evaluate W-1's injuries, provide medical assistance, or place him in a recovery position.⁹

- At 3:36 a.m., W-1 informed Officer Mendez-Ceja that he could not breathe. However, Officer Mendez-Ceja continued to leave W-1 lying handcuffed on his stomach, thereby ignoring his complaints of possible positional asphyxia.
- At 3:37 a.m., Officer Kahue lifted W-1's shirt, which revealed two gunshot wounds to his back, then walked away leaving W-1 on his stomach. Officer Kahue did not render medical assistance, attempt to determine whether medical aid was possible, or instruct other officers to provide assistance.
- At 3:38 a.m., Officer Tirona screamed at W-1, "Where's your fucking I.D.?" and repeatedly asked, "What's your name?" W-1, while bleeding from his mouth, asked where the ambulance was and if he had been shot twice. Officer Tirona never attempted to evaluate W-1's injuries or notify others about W-1's need for aid.

After W-1 made these statements to Officers Mendez-Ceja and Tirona, they failed to evaluate whether they could render aid or notify others that he needed aid.

Even when Emergency Medical Services arrived around 3:39 a.m., officers did not inform medics about W-1's injuries. At approximately 3:41 a.m., a firefighter asked if W-1 was injured. In response, Officer Mendez-Ceja reported W-1's gunshot wounds for the first time. Medics began administering medical treatment to W-1 at approximately 3:43 a.m. After W-1 was placed in the ambulance to be transported to the hospital, the attending firefighter heard one of his "lungs diminish."

The Police Practices Section recommends that Martinez PD provide additional training regarding an officer's duty to promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so. (Gov. Code, § 7286, subd. (b)(15).) Martinez PD should also provide additional training on an officer's responsibility to provide prompt notification of a person's injuries to medical personnel and to supervisors. Doing so will ensure that those injured can receive immediate and continued medical assistance.

Recommendation Five: Provide Additional Training on Officers Reporting Their Use of Force

The Police Practices Section recommends that Martinez PD provide additional training to their officers on the requirement that they immediately notify their supervisors when they use force, including when they discharge their firearm.

Martinez PD Policy requires any officer who discharges their firearm, intentionally or unintentionally, to verbally report said discharge to their supervisor "as soon as circumstances permit." (Martinez PD Policy Manual No. 307.7, Firearm Discharge.) Additionally, Martinez PD Policy requires supervisors to

⁹ Officer Kahue was Officer Mendez-Ceja's Field Training Officer at the time and Officer Kahue offered Officer Mendez-Ceja almost no direction during this time.

“[e]nsure that any injured parties are *examined* and treated” after a use of force incident. (Martinez PD Policy Manual No. 300.7, Supervisor Responsibility.) (Emphasis added).

Martinez PD Policy also requires an officer to *immediately* report any use of force to a supervisor if the following occur: “(a) The application caused a visible injury... [or] (c) The individual subjected to the force complained of injury or continuing pain.” (Martinez PD Policy Manual No. 300.5.2, Notification to Supervisors. (Emphasis added.); see Pen. Code, § 832.13.)

Officers Tirona, Bennett, and Mendez-Ceja did not timely inform Sergeant Espinoza that they discharged their firearms or that W-1 sustained gunshot wounds. Consequently, the three officers completed various tasks, assigned by Sergeant Espinoza, to preserve the scene. In a voluntary statement, Sergeant Espinoza said he would not have instructed them to preserve the scene had he known they were involved in the shooting. Since Sergeant Espinoza was unaware of W-1’s gunshot injuries, he told medics that W-1 was not injured. Sergeant Espinoza only became aware of W-1’s injuries when medics asked if W-1 could be released from the handcuffs because he was “dying.”

The Police Practices Section recommends Martinez PD provide additional training to ensure officers timely notify supervisors of their use of force. Additionally, it will allow the supervisor to ensure that injured parties receive medical treatment after a use of force incident. Timely reporting this information to a supervisor will foster prompt and proper management of the scene and will protect the integrity of the evidence.

Recommendation Six: Amend Policies and Provide Additional Training on Body Worn Camera Activation and Deactivation

The Police Practices Section recommends that Martinez PD amend their body worn camera policy to require officers to activate their body worn cameras prior to an investigative contact and announce the reason for deactivating their cameras. Additionally, the Police Practices Section recommends that Martinez PD provide additional training to ensure officers do not actively avoid capture by their body worn cameras.

Activation Policy: Martinez PD’s Body Worn Camera activation policy provides that an officer “should” activate their body worn camera during “enforcement and investigative contacts,” among other situations. (Martinez PD Policy Manual No. 425.6, Activation of the Body-Worn Camera.) The policy further provides that officers “should” activate their body worn cameras “before getting out of the car” (*Id.*)

Officers Tirona and Kahue each discharged their firearms in this incident, but they did not activate their body worn cameras until after the shooting and as they approached the Infiniti collision site. Officers Bennett and Mendez-Ceja activated their body worn cameras immediately after the actual shooting which allowed for some video footage of the events leading up to the shooting. However, there is no audio during the first 30 seconds of each activation because the camera was buffering pursuant to Martinez PD body worn camera settings.¹⁰ This resulted in the loss of critical

10 When Martinez PD officers activate their body cameras, the cameras capture video, but not audio, for 30 seconds prior to activation. This is called “buffering.”

information, including whether any officers gave commands in an attempt to de-escalate the situation, whether officers gave warnings about the presence of a firearm in the Infiniti, and audio when gunshots were fired.

Deactivation Policy: Martinez PD Body Worn Camera deactivation policy states, “the BWC should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation.” (Martinez PD Policy Manual No. 425.6.1, Cessation of Recording.) Martinez PD Policy allows officers to deactivate their body worn cameras during protected events and *suggests* officers announce their purpose for stopping the recording, “then resume recording if the situation still qualifies for recording.” (*Ibid.*)

All shooting officers and Sergeant Espinoza turned off their body worn cameras without announcing a reason for the deactivation. Moreover, there were several instances where officers turned their body worn cameras off and then the cameras re-activated themselves, capturing portions of officer discussions that were not otherwise fully recorded.

After the scene was secure, Officer Bennett asked Officer Arone to conceal a prohibited knife, that Officer Bennett was carrying.¹¹ Officer Bennet attempted to pass the knife to Officer Arone without being caught on camera.

Body worn cameras 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. Body worn camera footage can assist Martinez PD, the public, and officers in determining administrative violations, civil liability, deficiencies in training, tactics, and equipment, and positive interactions that merit commendation.

The Police Practices Section recommends that Martinez PD amend its body worn camera policy to (1) require officers to activate their body worn cameras prior to an investigative contact, and (2) require officers to announce the reason for deactivating their body worn cameras. The Police Practices Section further recommends that Martinez PD provide training that discourages officers from engaging in conduct or communication that avoids capture by body worn cameras.¹²

Recommendation Seven: Amend Policy and Provide Additional Training on Sequestration of Involved Officers Post-Shooting

The Police Practices Section recommends that Martinez PD amend its officer-involved shooting policy to require officers to sequester separately after an incident and refrain from discussing an officer-involved shooting with each other pending further direction from a supervisor.

11 Martinez PD investigated the conduct related to Officer Bennett’s possession of the knife and sustained findings of misconduct. However, Martinez PD did not discipline Officer Bennett because Martinez PD terminated his employment before the administrative findings.

12 This does not include protected or private communications excepted from capture.

Martinez PD policy requires supervisors to “[a]s soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction.” (Martinez PD Policy Manual No. 304.5.4, Supervisor Responsibilities.) Martinez PD policy also requires supervisors to give officers “an administrative order not to discuss the incident with other involved officers or MPD members pending further direction from a supervisor.” (*Id.*) Nothing in this policy places the affirmative responsibility on the officer to refrain from discussing the incident.

After the scene was secured following the incident, Officers Bennett and Tirona stood together while waiting to be transported to the station. During this time, Officers Bennett and Tirona discussed concealing Officer Bennett’s prohibited knife. Officer Bennett then transferred the knife to Officer Arone. Because the scene was secure, officers should have begun sequestering apart from one another at this point to avoid potential discussion of the shooting incident.

As previously mentioned above, there were several instances when officers’ body worn cameras activated themselves and captured portions of officer discussions that were not otherwise fully recorded. To the extent the officers may have discussed this incident with each other in the aftermath of the shooting while their cameras were off, officers should refrain from doing so.

The Police Practices Section recommends that Martinez PD amend its policy to require officers who have participated in officer-involved shootings to sequester separately as they await to be transported to the station and refrain from discussing the incident until further direction from a supervisor. The Police Practices Section also recommends that Martinez PD provide training on the amended policy.

Recommendation Eight: Amend Policy and Provide Additional Training on the Preservation of Evidence

The Police Practices Section recommends that Martinez PD amend its policy and provide additional training on the preservation of evidence to ensure that evidence is properly handled and preserved.

Martinez PD Policy states, “It is the policy of the Martinez Police Department to secure crime or disaster scenes so that evidence is preserved ...” (Martinez PD Policy Manual No. 410.2, Policy.) The policy further provides that the first officer who arrives at a scene are responsible for preserving the scene. (Martinez PD Policy Manual No. 410.3, Scene Responsibility.) Martinez PD policy requires first responders to “protect items of apparent evidentiary value.” (Martinez PD Policy Manual No. 410.4, First Responder Considerations.) Additionally, Martinez PD’s Officer-Involved Shooting Policy provides, “Care should be taken to preserve the integrity of any physical evidence present on the involved officer’s equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.” (Martinez PD Policy Manual No. 304.5.5, Involved Officers.) There are no additional policies specifically related to the preservation of evidence after an officer-involved shooting.

After the shooting, Officer Tirona discovered he dropped his firearm magazine on the ground near the Infiniti. Instead of leaving this evidence undisturbed where it fell, or where it was discharged, Officer Tirona picked the magazine up and put it back on his person.

Additionally, after W-1 was handcuffed, Officer Tirona located a handgun on the floorboard of the Infiniti. Officer Tirona handled the handgun by the grip and trigger guard without any gloves on. He then placed it on the Infiniti's trunk. When Sergeant Espinoza became aware of the handgun, he also handled it by the grip without gloves. Handling the grip of a handgun can compromise fingerprint and DNA evidence, especially when an officer does not wear gloves.

The Police Practices Section recommends that Martinez PD amend its policy to include instructions on handling and preserving evidence after a critical incident, such as an officer-involved shooting. The Police Practices Section also recommends Martinez PD provide training on the amended policy. The preservation of all evidence is critical in any kind of investigation as the evidence describes what occurred in an incident, and thus, the integrity of the evidence and investigation must not be compromised.