

**Fatal Officer Involved Shooting of Christian Rigoberto  
Chavez**

**South Gate Police Department  
Huntington Park Police Department**

**Detective Daniel Bernabe, #10098**

**Detective George Chaves, #10123**

**Officer Adam Cook, #10141**

**Officer Anthony Reyes, #10205**

**Officer Gilberto Varela, #10215**

**Sergeant Steve Thoreson, #556**

**J.S.I.D. File #17-0546**



**Justice System Integrity Division**

**November 20, 2020**

**MEMORANDUM**

TO: CHIEF RANDY DAVIS  
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Fatal Officer Involved Shooting of Christian Rigoberto Chavez  
J.S.I.D. File #17-0546  
S.G.P.D. File #17-13932  
H.P.P.D. File #171127-0089  
L.A.S.D. File #017-00125-3199-013

DATE: November 20, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 27, 2017, fatal shooting of Christian Rigoberto Chavez by South Gate Police Department (SGPD) Detectives Daniel Bernabe and George Chaves, Officers Adam Cook, Anthony Reyes, and Gilberto Varela, and Huntington Park Police Department (HPPD) Sergeant Steve Thoreson. We have concluded that the officers acted in lawful self-defense and in the lawful defense of others when they fired their duty weapons.

The District Attorney's Command Center was notified of this shooting on November 28, 2017, at approximately 1:35 a.m. The District Attorney Response Team (DART) responded to the location, where they received a briefing and walk-through of the scene.

The following analysis is based on investigative reports, radio transmissions and records, recorded interviews, crime scene photographs and diagrams, video recordings, autopsy and laboratory reports, ballistic reports, and other evidence submitted to this office by the Los

Angeles County Sheriff's Department (LASD) Homicide Bureau. Voluntary statements of the involved officers were considered in this analysis.

## **FACTUAL ANALYSIS**

On November 26, 2017, at approximately 11:00 a.m., Marcia's boyfriend and father of her three daughters, Christian Rigoberto Chavez, struck her in the head with a semiautomatic handgun, placed the handgun against her head, and punched her in the face. Chavez took Marcia's cell phone and ordered her to get ready to go out. When Marcia and Chavez walked out to his truck to leave, she told him to go without her. Chavez pulled Marcia by her hair, broke a beer bottle over her head, and choked her. Marcia was able to escape with her daughters and call police. SGPD Detective George Chaves responded and interviewed Marcia regarding the incident. Marcia was treated at St. Francis Medical Center hospital for her injuries. Chaves obtained a Ramey arrest warrant for Chavez.

On November 27, 2017, at approximately 7:00 p.m., SGPD Officers Adam Cook and Byron Austin responded to a 9-1-1 call from Marcia's residence on Illinois Avenue. Marcia told the officers when she and her children returned home earlier, the door was chained, and she believed she heard Chavez inside. The officers did not locate Chavez inside the residence. SGPD contacted Chavez's cell phone company, who located his cell phone in the vicinity. Additional SGPD officers were dispatched to search the area.

At 8:22 p.m., SGPD Lieutenant Ignacio Patino and Sergeant Jonathan Sekiya located Chavez's truck parked eastbound along the south curb of the 2700 block of Illinois Avenue and parked their black and white patrol vehicle behind it. Austin and SGPD Officer Anthony Reyes confirmed Chavez was inside the truck. Over a public address (PA) system, officers gave Chavez numerous commands in both English and Spanish to surrender. Patino called Chavez's cell phone several times with no answer. Between 8:45 p.m. and 8:54 p.m., officers deployed several bean bag rounds and a flash bang device at the truck, but Chavez did not respond. Around 9:00 p.m., the officers were informed that Chavez left Marcia voicemail messages saying he was "not going to give up." SGPD requested an LASD airship and an HPPD Bearcat to assist observing Chavez's movements inside the truck and to prevent Chavez from escaping.<sup>1</sup>

At 9:47 p.m., HPPD Officer Sal Duran drove the Bearcat to Illinois Avenue and parked westbound, directly in front of Chavez's truck. HPPD Sergeant Steve Thoreson arrived at the location separately. Duran illuminated the interior of the truck with spotlights and informed the officers that Chavez was reclined in the driver's seat, and he was unable to see Chavez's right hand. SGPD Officer Kenneth Haley fired three tear gas canisters through the rear window of the truck. Chavez covered his face with a cloth and remained inside.

Officers continued giving Chavez commands to surrender. Around 10:40 p.m., SGPD officers devised a plan to break out the passenger window with a "bang pole" and have a K-9 remove Chavez from the truck. As Cook, Haley, Austin and Detective Daniel Bernabe were preparing to approach the passenger side of the truck, Chavez fired several rounds from a pistol through the truck's passenger door. The officers retreated. SGPD requested their SWAT team respond to

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<sup>1</sup> A Bearcat is an armored vehicle.

the location. Duran informed the officers that Chavez was using the rearview mirror to watch their movements. Cook disabled the passenger-side rear-view mirror of the truck with a bean bag round.

SGPD decided to move their patrol vehicles from the scene to prepare for the SWAT team vehicle. At 10:58 p.m., Cook, Varela and Reyes were crossing southbound on Illinois Avenue towards Cook's SUV when Chavez fired his pistol in their direction. Cook, Reyes, Varela and Chaves returned fire. As shots were being fired, Bernabe entered the rear door of the Bearcat and took position in the turret with his rifle. At 11:01 p.m., officers observed Chavez raise his handgun again. Believing that Chavez was preparing to shoot the officers again, Bernabe, Chaves, Cook, Reyes, Thoreson and Varela fired at Chavez. After the gunfire stopped, the K-9 was deployed, and Chavez was removed from the truck. Officers attempted to render medical aid until the Los Angeles Fire Department (LAFD) arrived. LAFD pronounced Chavez deceased at 11:15 p.m.

### **Statement of Cook**

Investigators interviewed Cook on November 28, 2017.<sup>2</sup> On the date of the incident, Cook was working in full uniform as a K-9 officer. Cook responded to a call for service and spoke with Marcia. Cook knew Chavez was wanted for assault from a flier at the SGPD station. Cook requested a "ping" of Chavez's cell phone to pinpoint his location. When officers located Chavez's truck, Cook drove to the location and parked his black and white SUV on the lawn of the house west of Chavez's truck. When Cook and other SGPD officers began moving towards the passenger side of the truck with the bang pole, Chavez fired five to six gunshots through the passenger door.<sup>3</sup> Cook saw a muzzle flash inside the truck and fragments coming from the passenger door. Duran broadcast that Chavez was pointing a handgun directly at the SGPD officers. Believing Chavez was using the passenger-side mirror to observe the officers' movements, Cook disabled the truck's passenger-side mirror with a bean bag round.

Cook was instructed to move his SUV. As Cook, Reyes and Varela were crossing the street southbound behind a patrol vehicle parked behind the truck, Chavez fired at Cook through the back window of the truck. Cook saw a muzzle flash and could hear rounds being fired in his direction. Fearing he or other officers were going to be struck by gunfire, Cook returned fire with his rifle and took cover behind his SUV. Cook felt another round travel past his head and returned fire. There was a break in the gunfire. Officers in the Bearcat informed them Chavez was still moving. Cook observed Chavez raising his arm up and out, holding a handgun. Believing Chavez intended to fire at him again, Cook fired his rifle at Chavez. After the gunfire stopped, Cook deployed his K-9, Maiko, through the window. K-9 Maiko removed Chavez from the truck.

Cook was equipped with a department issued Heckler & Koch 416 .223 rifle. Before the incident, Cook had two magazines loaded with 28 rounds each. Cook conducted one tactical reload during the incident. LASD Homicide Bureau Sergeant Marc Boskovich and Sergeant Guillermo Morales located Cook's rifle inside Cook's SUV. Cook's rifle contained one live

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<sup>2</sup> All interviews were recorded.

<sup>3</sup> Cook said he was about 30-35 feet away when Chavez initially fired his weapon.

round in the chamber, 25 rounds in the seated magazine, and 18 rounds in the attached dual magazine. Cook fired 12 rounds from his rifle during the incident.

### **Statement of Reyes**

Investigators interviewed Reyes on November 28, 2017. On the date of the incident, Reyes was aware that Chavez was wanted for assault and responded to assist in the search. Reyes was standing behind a patrol vehicle when he heard two to three gunshots fired from Chavez's truck. As Reyes, Varela and Cook were crossing the street southbound towards Cook's SUV, Reyes saw Chavez fire his handgun in their direction. Reyes saw muzzle flashes coming from the back window of the truck. Reyes took cover behind the door of Cook's SUV. In fear for his life, Reyes returned fire at Chavez. Reyes repositioned himself behind Cook's SUV and reloaded. Reyes heard additional gunshots being fired from Chavez's truck. Reyes again returned fire, took cover and reloaded again. Reyes observed Chavez moving his arm inside the truck and believed Chavez fired additional rounds. Reyes fired at Chavez again. Reyes heard Bernabe issue a ceasefire. Reyes fired two bean bag rounds to break out the passenger-side window to allow the K-9 to be deployed inside the truck but was unsuccessful in breaking out the window.

Investigators recovered Reyes' department issued .40 caliber Glock 22, which contained one live round in the chamber and 15 rounds in the magazine. Investigators inspected two additional magazines, one which contained seven rounds and the other 13 rounds. Reyes stated he typically loaded one round in the chamber and 15 rounds in the magazines. Reyes fired ten rounds.

### **Statement of Chaves**

Investigators interviewed Chaves on November 28, 2017. On November 26, 2017, Chaves handled the initial investigation of Chavez's assault on Marcia and obtained an arrest warrant.<sup>4</sup> Chaves distributed a wanted flier at the SGPD station. On November 27, 2017, Chaves was informed that officers located Chavez on Illinois Avenue and responded to the scene. A plan was formed to extract Chavez from the truck. Chaves moved behind Cook's SUV with a shotgun to provide cover for the officers. As the officers approached the truck, Chaves heard five to six gunshots and observed a muzzle flash coming from inside the truck.

Chaves was assigned to provide cover in order for Cook to move his SUV. Chaves observed a muzzle flash coming from the rear window of the truck. Fearing he and Cook would be struck by gunfire, Chaves fired four rounds from his shotgun at Chavez. Chavez continued firing at the officers. When the gunfire stopped, Chaves reloaded. Chaves heard another officer say, "His arms are coming up!" and observed Chavez raising the handgun in the window. Fearing Chavez would shoot at the officers again, Chaves attempted to fire his shotgun, but it jammed. Chaves drew his handgun and fired at Chavez.

Investigators recovered Chaves' department issued Smith & Wesson .40 caliber M& P handgun, which contained one live round in the chamber and five rounds in the magazine. Chaves told investigators he typically loaded one round in the chamber and 15 rounds in the magazine. Chaves fired ten rounds from his handgun. LASD Homicide Bureau Sergeant Marc Boskovich

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<sup>4</sup> Chaves told investigators that Chavez also had a pending misdemeanor domestic violence case.

and Sergeant Guillermo Morales located Chaves' shotgun at the scene. Chaves' shotgun contained one misfed round and one round in the attached carrier.

### **Statement of Bernabe**

Investigators interviewed Bernabe on November 28, 2017. Bernabe was assigned as a detective and was Chaves' partner. On November 27, 2017, Bernabe received a call regarding the search for Chavez. Bernabe and Chaves responded to the scene when they heard officers located Chavez barricaded inside his truck. During the standoff, Bernabe was assigned to provide lethal cover when the officers approached the truck with the flash bang pole. As the officers approached the truck, Chavez fired four to five rounds in the officers' direction. After the officers retreated, Bernabe drove around the block, proceeded westbound on Illinois Avenue, and parked behind the Bearcat. As Bernabe was entering the rear door of the Bearcat, he heard a volley of gunfire coming from Chavez's truck and from the officers. Bernabe was able to distinguish the sound of Chavez's gunfire from the officers' gunfire. Once inside the Bearcat, Bernabe climbed into the turret and saw Chavez waiving and pointing a handgun at the SGPD officers. Fearing Chavez was going to fire at the officers again, Bernabe fired four rounds from his rifle at Chavez. After Bernabe stopped firing, he heard additional gunfire but could not determine who was firing. When Bernabe saw Chavez was no longer moving, he gave the order to cease fire.

Investigators recovered Bernabe's department-issued Heckler & Koch 416 .223 caliber rifle, which contained one live round in the chamber and 25 rounds in the magazine. Bernabe told investigators the magazine was filled to capacity with 30 rounds before the shooting. Bernabe fired four rounds.

### **Statement of Varela**

Investigators interviewed Varela on November 28, 2017. Varela was aware Chavez was wanted for assault with a deadly weapon when he arrived at the scene. After the flash bang device was deployed, Varela heard three gunshots fired from Chavez's truck. A plan was made to move the SGPD patrol vehicles. As Varela, Reyes and Cook were crossing the street towards Cook's SUV, Chavez fired four rounds in their direction.<sup>5</sup> Varela felt the rounds pass close by him. The officers took cover behind Cook's patrol vehicle. Varela saw Chavez pointing a black handgun out the rear window of the truck. In fear for his safety, Varela fired his handgun at Chavez. Varela lost sight of Chavez briefly. When Chavez reappeared in the window, Chavez was pointing the handgun in Varela's direction. Believing Chavez was going to fire at the officers again, Varela fired at Chavez. After the shooting stopped, Varela fired bean bag rounds to break out the driver's side window.

Investigators recovered Varela's 9mm Glock semiautomatic handgun, which contained one live round in the chamber and nine rounds in the magazine. Varela said the magazine capacity was 17, but he typically loaded 16 rounds. Varela conducted one tactical reload but did not fire his weapon after reloading. Varela fired six rounds.

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<sup>5</sup> Varela estimated he was 40 feet from the truck when the shots were fired.

## **Statement of Thoreson**

Investigators interviewed Thoreson on November 30, 2017. Thoreson and Duran responded to SGPD's request for a Bearcat. Thoreson took a position behind an SGPD patrol vehicle that was parked behind the truck's rear bumper. As SGPD officers were preparing to move towards the truck, Thoreson heard the sound of several small caliber gunshots being fired from the truck. Duran advised the officers Chavez appeared to be reloading his handgun and was pointing the handgun near the rear window. Thoreson observed Chavez raise an object to the rear window, saw muzzle flash and heard gunshots coming from inside the truck. Believing Chavez was firing in his and the other officers' direction, Thoreson fired three to four rounds at Chavez with his handgun. Duran advised the officers that Chavez was still moving and holding the firearm. A short time later, Thoreson heard Chavez fire his small caliber handgun once or twice and saw glass from the driver's side window blown out in Thoreson's direction. Thoreson believed Chavez was firing at him and returned fire.

Investigators recovered Thoreson's .45 caliber Glock semiautomatic handgun, which contained one live round in the chamber and 12 rounds in the magazine. Thoreson had an additional 13 round capacity magazine that contained four rounds.<sup>6</sup> Thoreson conducted one tactical reload during the incident but did not fire after reloading. Before the incident, Thoreson's said his handgun was loaded with 14 rounds. Thoreson fired nine rounds.

## **Statement of Austin**

Investigator's interviewed Austin on November 28, 2017. Austin was working patrol in full uniform and responded to the radio call with Cook. When Chavez's truck was located, Austin and Reyes confirmed Chavez was inside. To prevent Chavez from observing the officers, Austin disabled the driver's side rearview mirror with a bean bag round. Sekiya instructed Austin to break the driver's side window with bean bag rounds, but the window deflected the rounds. Austin was assigned as the shield to cover other officers when they approached the truck to break the passenger window. As the officers were getting ready to approach, Austin heard four to five gunshots fired from inside the truck through the passenger door.<sup>7</sup> Austin took cover behind Cook's vehicle and moved to the north side of the street. Later, Austin heard two to three more gunshots fired from inside Chavez's truck and saw Cook return fire. After a short pause in the gunfire, Austin heard Chavez fire additional rounds and saw Cook return fire.

## **Statement of Duran**

Investigators interviewed Duran on November 30, 2017. Duran was seated in the driver's seat of the Bearcat during the standoff. Duran conveyed information regarding Chavez's movements to the officers over the radio. Duran observed Chavez seated in the driver's seat of the truck, drinking beer and smoking a cigarette with his left hand. Duran initially could not see Chavez's right hand. As SGPD officers started to approach the truck, Duran saw Chavez raise his right hand and fire approximately five shots through the passenger side of the truck. As Bernabe

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<sup>6</sup> Thoreson said he kept 12 rounds in his magazine pouch.

<sup>7</sup> Austin said he was in front of Cook's vehicle approximately 20 feet away from the truck when he heard Chavez fire.

entered the Bearcat, Duran heard several gunshots. Based on the sounds of the gunfire, Duran believed Chavez fired his weapon and the officers returned fire. After the shooting stopped, Duran saw Chavez moving inside the truck and reloading his handgun. Duran saw Chavez point the barrel of the handgun to his temple. Bernabe took a position in the turret. Duran saw Chavez fire the handgun towards the SGPD officers who were behind the truck. The officers returned fire. After Chavez was removed from the truck, Duran retrieved a defibrillator and he and another officer rendered medical aid to Chavez.

## **Voicemails**

Investigators obtained recordings of four voicemails Chavez left on Marcia's cell phone between 8:31 p.m. and 10:39 p.m. In the first voicemail, Chavez said, "Please take care of my girls... Take care and until never Marcia. Bye." In the second voicemail at 8:52 p.m., Chavez said, "Look what your actions have come to. This will last until this ends. Take great care of yourself." In the third voicemail at 8:57 p.m., Chavez said, "Are you listening to what you've started or not? You are the last one who will hear me..." In his final voicemail, Chavez said, "But please then, we are almost at the end... bye Marcia."

## **Video Evidence**

Investigators obtained surveillance video from a residence near the scene. There is no audio. The video is recorded in several separate, short clips.<sup>8</sup> The video shows Chavez's truck arriving and parking eastbound along the south curb at 8:02 p.m. Around 8:22 p.m., a black and white patrol vehicle parks behind the truck. Additional black and white patrol vehicles arrive and park on the street behind the first patrol vehicle. At 8:32 p.m., two officers approach the rear passenger side of the truck and quickly retreat. At 8:45 p.m., an object hits the driver's side of the truck.<sup>9</sup> At 8:54 p.m., a flash bang device detonates on the truck's passenger side.

At 9:46 p.m., the Bearcat arrives and parks facing westbound directly against the truck's front bumper. The inside of the truck is illuminated. Chavez can be seen sitting in the front seat, smoking a cigarette. At 9:49 p.m., two rounds of tear gas are fired into the rear window of the truck. At 9:51 p.m., another round of tear gas is fired at the truck. Chavez covers his head with a cloth. For over thirty minutes, Chavez sits up in the driver's seat, smoking and drinking.

At 10:37 p.m., the patrol vehicle behind the truck drives forward and parks closer to the truck's rear bumper. Several officers gather behind the patrol vehicle near the passenger side. At 10:41 p.m., two muzzle flashes can be seen inside the passenger window of the truck.

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<sup>8</sup> The timestamps on the videos are approximately three hours ahead of the actual time the events occurred. All relevant times have been adjusted from the original video timestamps by three hours.

<sup>9</sup> This object is consistent with a bean bag rounds fired by the officers.





Still photo of the first muzzle flash inside the truck.



Still photo of the second muzzle flash inside the truck.

The officers take cover behind the patrol vehicle. One of the officers moves back to the passenger side of the patrol vehicle and a muzzle flash fires from the officer's weapon in the direction of the passenger side of the truck.<sup>10</sup>

At 10:58 p.m., a second camera shows a patrol vehicle arrive and park east of the Bearcat. An officer (Bernabe) walks towards the rear of the Bearcat. At the same time on the first camera, Chavez, who appears to be lying down or reclining in the driver's seat, moves and points a black object resembling a handgun towards the rear of the truck. Several gunshots are fired. The video does not clearly show from where the first shots are fired.

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<sup>10</sup> This round is consistent with the bean bag round Cook fired at the passenger-side rearview mirror.



Still photo of Chavez holding an object resembling handgun.

Chavez brings his right arm back down over his head away from the rear window and across his torso. After the gunfire stops, Chavez points an object to the right side of his head with his right hand. Chavez continues moving his right arm holding the object near or above his head.



Still photo of Chavez pointing the object behind him.

At approximately 11:01 p.m., Chavez points the object behind him then raises the object above his head. Several gunshots impact the truck's windshield. Officers approach the truck, and the K-9 enters the driver's window. Chavez is removed from the driver's side of the truck.

Investigators recovered a video of the incident from the internet.<sup>11</sup> When the video begins, it immediately zooms to the driver's side of the truck as several gunshots are being fired. The interior of the truck is obscured by bright lights and smoke. After a brief pause, gunfire erupts again. Several gunshots are fired through the driver's side window and glass falls onto the street. After a few seconds, the video stops and restarts. Several people can be heard near the camera

<sup>11</sup> The video is labeled "Loudlabs," which is an online news gathering organization.

saying, “He’s still alive! He’s still moving!” Gunfire erupts again. After the gunfire stops, someone says, “He’s still moving!... He’s out now.” The video stops and restarts again. Officers approach the driver’s side of the truck, and the K-9 enters the driver’s window. Chavez is removed from the truck and placed onto the street.

### **Firearms Evidence**

LASD Scientific Services Bureau completed crime scene investigation and laboratory examinations reports regarding the ballistic evidence recovered from the scene and from Chavez’s vehicle during further inspection. An unloaded .380 caliber Bersa semiautomatic pistol was recovered between the driver’s seat and the center console in the truck. The safety of the pistol was off, and the hammer was cocked.



Location of the handgun recovered from the driver’s seat of the truck.

Seven expended and 22 live .380 caliber cartridges were recovered inside Chavez’s truck.<sup>12</sup> Criminalists identified seven bullet holes travelling left to right into the interior of the passenger door, which is consistent with Chavez firing his weapon from the driver’s seat. Bullet fragments were recovered inside the panel of the passenger door, which were also consistent with bullet holes in the interior of the door. Three of the seven bullets exited the passenger door. Criminalists identified two bullet holes in the grass on the passenger side of the truck, which were consistent with the exit holes in the passenger door. The seven expended .380 caliber cartridges and corresponding damage to the interior and exterior of the truck corroborate the officers’ statements that Chavez fired his weapon through the passenger door.

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<sup>12</sup> Four fired bullet fragments and bullets were also recovered inside the truck; however, the origin of these fragments and bullets were not identified.





Interior view of the truck's passenger door.



Exterior view of the truck's passenger door.

Criminalists identified numerous additional bullet holes and impacts to the truck's exterior, interior, and windshield.<sup>13</sup> Bean bag impacts were identified on the windshield and driver's side mirror. Criminalists identified a hole in the front passenger window consistent with a tear gas canister observed on the dash. The driver's door window, right rear passenger window, and rear window of the truck were completely shattered.

Criminalists recovered six fired 9mm cartridges, fourteen fired .223 cartridges, 17 fired .40 caliber cartridges, nine fired .45 caliber cartridges, and 12 fired 12 gauge shotshells from the scene. Bullet impacts were observed on the Bearcat, a patrol vehicle, and a nearby storage container. Ten additional bullets or bullet fragments were recovered from various locations at the scene as well as several less-lethal rounds.

### **Postmortem Examination**

Los Angeles County Deputy Medical Examiner Timothy Dutra performed a postmortem examination on Chavez and determined the cause of death to be multiple gunshot wounds. The toxicology report revealed Chavez had methamphetamine and alcohol in his system at the time of his death. Both of Chavez's hands tested positive for gunshot residue, indicating he may have discharged a firearm, been in the vicinity of the discharge of a firearm, or touched a surface with gunshot residue on it.

### **LEGAL ANALYSIS**

A police officer may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime. Penal Code section 835a. An officer “may use all the force ‘that appears to him as a reasonable man to be necessary to overcome all resistance, *even to the taking of life,*’ ... the resistance must be such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him.” *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146 (quoting *People v. Bond* (1910) 13 Cal.App.175, 189-190). The officer may use no more force than would appear necessary to him as a reasonable person. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.

A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of death or great bodily injury to the officer or others, or (b) the decedent had committed a forcible and atrocious crime and that crime threatened the officer or others with death or great bodily injury. CALCRIM No. 507; Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another.” CALCRIM No. 507. The prosecution has the burden of proving beyond a reasonable doubt that the killing was not justified. CALCRIM Nos. 505, 507.

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<sup>13</sup> The general direction of bullet holes and impacts were identified in the crime scene investigation report; the exact origin of each bullet hole and impact was not determined.

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that she or others were in imminent danger of great bodily injury or death. Penal Code section 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also* CALCRIM No. 505. In protecting himself or another, a person may use all the force which she believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470.

In evaluating whether a police officer's use of force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. The evaluation of reasonableness should look to "the facts and circumstances of each case, including the severity of the crime, the threat posed by the suspect, and whether the suspect is resisting or attempting to evade arrest." *Graham v. Connor* (1989) 490 U.S. 386, 396. "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... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation supports the conclusion that the officers fired at Chavez in fear for their lives and the lives of other officers. The SGPD and HPPD officers who responded to this incident were aware that Chavez was wanted for felony assault with a firearm. For over two hours, Chavez ignored the officers' repeated commands to surrender and did not answer his cell phone. Chavez did not respond to the deployment of bean bag rounds, a flash bang device, and tear gas. As SGPD officers prepared to approach the passenger side of the truck, Chavez fired several rounds through the passenger door. When Cook, Reyes and Varela crossed the street behind the truck, Chavez fired his pistol at them. In fear for their lives and the lives of the other officers, Cook, Reyes, Varela and Chaves returned fire. When the officers observed Chavez raising the handgun again, Chaves, Cook, Reyes, Thoreson and Varela fired at Chavez in fear for their lives and the lives of others. When Bernabe observed Chavez raising the handgun again, he fired at Chavez in order to prevent the other officers from being shot.

## **CONCLUSION**

We find that Bernabe, Chaves, Cook, Reyes, Thoreson and Varela acted in lawful self-defense and in the lawful defense of others when they fired their duty weapons. We are closing our file and will take no further action in this matter.