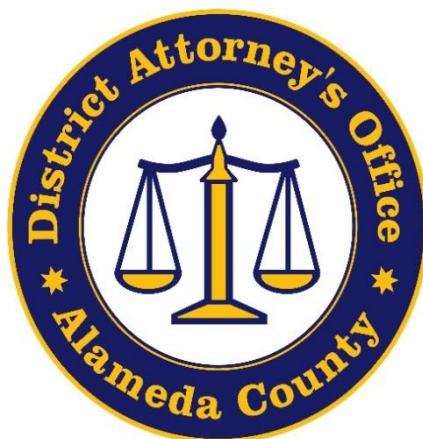


DISTRICT ATTORNEY'S SUPPLEMENTAL REPORT

OFFICER INVOLVED SHOOTING

OF

CODY BRANDON CHAVEZ



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Public Accountability Unit

Incident Date: February 17, 2022
Report Date: November 27, 24
Effective Date: December 3, 2024

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Introduction

District Attorney Pamela Price was elected to serve the people of Alameda County in November 2022 and took office on January 3, 2023. On January 31, 2023, DA Price created a Public Accountability Unit (PAU) to focus on holding law enforcement and public officials accountable for misconduct. As part of that work, the new Unit was directed to re-review 8 in-custody deaths and officer-involved shootings to assess whether criminal charges are warranted and make pertinent recommendations to the involved agency. The shooting death of Cody Chavez by Pleasanton Police Officers Mario Guillermo and Brian Jewell is one of those cases.

The Public Accountability Unit (hereinafter referred to as PAU) includes experienced Senior and Deputy District Attorneys as well as experienced District Attorney Inspectors. The PAU investigates every death of a person caused by an officer involved shooting, unless that person was unarmed and the shooting took place after 2020, in which case the Office of the Attorney General investigates. The PAU investigates in-custody deaths as well, unless they occurred while the prisoner was receiving medical care for known diagnosed diseases or conditions and the death was medically expected. An agreement between the District Attorney's Office and all local law enforcement agencies serving Alameda County permits the District Attorney's Office to conduct its own investigation into the circumstances leading to the death of the person.

Summary of Review

On February 17, 2022, at approximately 3:39 p.m., Pleasanton Police Officers Mario Guillermo and Brian Jewell shot and killed Cody Chavez in front of 4899 Willow Road, Apartment #105, Pleasanton. That morning, before upon leaving her apartment at 4899 Willow Road, #105, to go to work, Jane Doe, Mr. Chavez' girlfriend, called 911 to report that Mr. Chavez had tried to suffocate her with a pillow the night. She told the officers who initially responded that Mr. Chavez was alone in her apartment, may have had one drink containing alcohol, and was not in possession of any firearms. She later told crisis negotiators that Mr. Chavez was likely intoxicated due to his severe alcoholism and was recently diagnosed with depression and Post Traumatic Stress Disorder (PTSD). When police went to her apartment, Mr. Chavez refused to open the door, effectively barricading himself inside. The Pleasanton Police Department tried for hours, unsuccessfully, to get him to come outside and even used a negotiator. The Department responded with militarized equipment and ultimately broke her window to gain entry, at which point Mr. Chavez emerged from the apartment with a kitchen knife. Wielding the knife, he was nearing Officers White and Leonardo, when he was shot and killed by Officers Guillermo and Jewell. Officer Jewell fired five shots and Officer Guillermo fired two shots. The autopsy report of Mr. Chavez noted three bullet wounds: one to his head and two to his back.

Officers Jewell and Guillermo were interviewed separately on February 18, 2022, and provided voluntary statements. At these interviews, both Officers were represented by counsel from the Law Offices of Rains-Lucia-Stern.

A month prior to District Attorney Pamela Price taking office, the District Attorney's Office prepared and issued a Report of the Officer Involved Shooting of Cody Chavez, dated December 5, 2022. That Report focused solely on whether Officer Jewell or Officer Guillermo violated any applicable laws when they shot Mr. Chavez. The detailed facts of the case along with the summaries of involved officers' interviews, civilian witness statements, autopsy findings, and video evidence are included in that Report.

The PAU thoroughly reviewed, with fresh eyes, the prior Alameda County District Attorney's Office report, Pleasanton Police Department policies, the complete case file materials, including but not limited to all available body worn camera footage, news footage, investigative reports, witness statements, and dispatch recordings.

A PAU Inspector and one of PAU's experienced Deputy District Attorneys also went to the scene. The PAU Inspector has received use-of-force academy training, in addition to 40 hours of POST certified officer-involved-shooting and in-custody-death training. The Inspector has been assigned to officer misconduct cases for three years, during which time he responded to dozens of officer-involved-shootings and in-custody-deaths.

At the scene, the PAU Inspector and the Deputy District Attorney took measurements and charted out the locations of the involved officers and Mr. Chavez at the time of the shooting.

While this is certainly a tragic outcome and series of events, the PAU has concluded that Officers Guillermo and Jewell cannot be held criminally liable for the killing of Mr. Chavez. The prosecution cannot prove, beyond a reasonable doubt, that the use of lethal force by Officers Jewell and Guillermo was unjustified.

There are, however, lessons to be learned from the actions of the Pleasanton Police Department on February 17, 2022: they deployed at least 19 police officers from Pleasanton and Livermore Police Departments, with militarized equipment (an ARV - armed recovery vehicle), to arrest the suspect of a domestic violence incident that occurred 12 hours earlier, knowing the suspect posed no imminent threat to the victim, was alone, unarmed, likely under the influence of alcohol and experiencing mental health issues. These facts point to an unnecessary escalation of force and multiple violations of Pleasanton Police Department policies for mental-health crisis interventions and de-escalation at minimum, and procedures for determining the appropriate level of force necessary to respond to this type of situation.

Applicable Law

Possible criminal charges against an officer involved in a shooting include murder (Cal. Penal Code § 187); manslaughter (Cal. Penal Code § 192); assault with a deadly weapon (Cal. Penal Code § 245); and assault by a police officer (Cal. Penal Code § 149). To convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that the homicide committed by the peace officer was not justified. (*People v. Adrian* (1982) 135 Cal. App. 3d 335, 340-42.)

Because the killing by a police officer occurred after January 1, 2020, amended Penal Code Sections 196 and 835a apply. According to Penal Code Section 196, Penal Code Section 835a sets forth the circumstances in which a peace officer is justified in using deadly force.

Penal Code Section 835a(a)(2) allows a police officer to “use deadly force only when necessary in defense of human life. In determining 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.”

Pursuant to Section 835a(a)(4), “[t]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to 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 judgements about using force.” “‘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”, as explained in Penal Code Section 835a(e)(3) and the accordant jury instruction on Justifiable Homicide by a Peace Officer, CALCRIM 507.

Pursuant to Penal Code Section 835a(c)(1) and CALCRIM 507, a peace officer is justified in using deadly force upon another person only when the officer “reasonably believes, based on the totality of the circumstances, that such force is necessary for the following reasons: (A) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; (B) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” Dating back to 1977, the court held that the use of deadly force was justified to effectuate the arrest of fleeing person suspected of having committed a violent, forcible, and atrocious felony that threatened death or serious bodily harm, or there are other circumstances which reasonably create a fear that the person will cause death or serious bodily harm to the officer or another person if not apprehended. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325.)

According to Penal Code Section 835a(e)(2) and CALCRIM 507, 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 another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” The court in *People v. Lopez* (2011) 199 Cal. App. 4th 1297, 1305-06, further explained that imminent peril is not prospective but “immediate and present” and must be addressed right then and there. In *People v. Bates* (2019) 35 Cal. App. 5th 1, 9-10, the court determined that 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.

According to *People v. Hardin* (2000) 85 Cal. App. 4th 625, 629-30, “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.”

And according to the court in *Tatum v. City and County of San Francisco* (2006) 441 F.3d 1090, 1095, the severity of the crime that prompted the use of force, the threat posed by the suspect, and whether the suspect was resisting arrest, can factor into the objective reasonableness of the force used; in *Koussaya v. City of Stockton* (2020) 54 Cal. App. 5th 909, 936, the court clarified that as long as an officer’s action falls within the range of reasonable conduct given the circumstances, there is no requirement the officer choose the “most reasonable” action or the action that is most likely to result in apprehension and yet least likely to cause harm to a violent suspect.

Although not an element in the jury instruction, in Penal Code 835a(a)(5), the legislature declared, “[t]hat individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.”

Burden of Proof

A prosecutor bears the burden of proving a criminal defendant’s guilt beyond a reasonable doubt. (Cal. Penal Code, § 1096.) A prosecutor should file charges only if they believe, based on all the evidence from the complete investigation, 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*, Part IV § 2 at 52-53 (3d ed. 2009; United States Department of Justice Manual § 9-27.220; Kenneth Melilli, *Prosecutorial Discretion in an Adversary System*, B.Y.U. L. Rev. 669, 684-85 (1992) [surveying ethical standards used in the exercise of charging discretion by prosecutors].) A prosecutor should not seek a conviction unless they will be able to promptly establish guilt beyond a reasonable doubt. (*People v. Catlin* (2001) 26 Cal. 4th 81, 109.)

It is not the burden of the criminal defendant but rather the prosecution to prove beyond a reasonable doubt that the killing was not justified, in accordance with the jury instruction on Penal Code Section 835a, CALCRIM 507, Justifiable Homicide by a Peace Officer. (*People v. Banks* (1976) 67 Cal. App. 3d 379, 383-84). The jury would be instructed that if the prosecution has not met this burden, they are to find the peace officer not guilty of murder or manslaughter. CALCRIM 507.

Factual Summary

A series of events that took place at the residence of Cody Chavez’ partner, Jane Doe, ultimately led to his death. During the evening on February 16, 2022, Jane Doe alleged that Mr. Chavez smothered her with a pillow, took her cell phone, and prevented her from leaving her apartment. On February 17, 2022, at 11:51 a.m., Ms. Doe called 911 and reported these events from the prior evening and early morning.

At 12:04 p.m., Officers Jones and Repetto received the call from dispatch that a domestic violence incident had taken place at around 2:00 a.m. on February 17. They were informed that Mr. Chavez beat up the victim (Ms. Doe), who fled the apartment where the domestic violence occurred, and that Ms. Doe was awaiting the officers' arrival in the lobby of the apartment complex. Dispatch informed Officer Jones that there were "priors" at the address, and Mr. Chavez had multiple restraining orders issued against him listing Ms. Doe as the protected party.

At 12:08 p.m., Ms. Doe met with Officers Jones and Repetto--the first officers to arrive on scene--at the leasing office of the apartment complex where Ms. Doe lived. In subsequent interviews, Officers Jones and Repetto recounted their interactions with Ms. Doe. Ms. Doe told the Officers that the night before, Mr. Chavez had beaten her, smothered her with a pillow, and taken her cell phone. Officer Jones recalled that Ms. Doe told him that Mr. Chavez had threatened to either physically harm or kill her if she called the police (he could not remember). Officer Repetto recalled that Ms. Doe stated that Mr. Chavez would kill her if she called the police.

Officers Jones and Repetto observed that Ms. Doe had a visible injury to her lip. Ms. Doe told Officers Jones and Repetto that she had a prior restraining order against Mr. Chavez that had expired. She told the Officers that Mr. Chavez removed the screen from the back window and would flee if he saw the police. Ms. Doe showed the Officers her apartment (redacted) on the ground floor. The blinds were drawn in all windows preventing officers from seeing inside. She provided details about the apartment's layout. Officer Jones stated he asked Ms. Doe if Mr. Chavez used drugs or alcohol and Ms. Doe responded that Mr. Chavez may have had one drink at the time of the incident. Also, Officer Repetto's body camera showed that Ms. Doe told Officers Jones and Repetto that Mr. Chavez was alone in her apartment, did not possess a firearm, and there were knives in the apartment.

Officer Jones requested backup. Officers Batt and Koumiss, and Sergeant Gora all arrived on the scene. Officer Jones then looked Mr. Chavez up on CRIMS and discovered that Mr. Chavez had prior domestic violence incidents and a parole violation. Officer Jones asked dispatch for further information--dispatch responded that Mr. Chavez had prior incidents of battery on a police officer, resisting a police officer, and assault with a deadly weapon (although Officer Jones was not certain this last charge was relayed to him at the time). Officer Jones did not learn that Mr. Chavez had any history of possession or use of firearms.

Officer Repetto stated that around this time, he learned that Mr. Chavez had a prior history of domestic violence against Ms. Doe, and prior incidents of assault with a deadly weapon, resisting a police officer, and battery on a police officer.

At 12:54 p.m., Officers Batt and Koumiss positioned themselves by the rear bedroom window of Apartment #105, the one without the screen, in case Mr. Chavez attempted to flee. At that time, Officers Jones and Repetto and Sergeant Gora unsuccessfully attempted to contact Mr. Chavez by phone and by knocking on the front door of Apartment #105.

At 1:02 p.m., Sergeant Gora requested that a canine unit and medical respond to the scene; he requested a "code three" response from the canine unit.

At 1:03 p.m., Officers Jones and Repetto began attempting to contact Mr. Chavez using a PA (public address) system. The officers briefly saw a male looking through the blinds of the west window in Apartment [REDACTED]. Ms. Doe gave her consent to Officers Jones and Repetto to enter her apartment and the code to unlock the front door.

At 1:09 p.m., Officers Jones and Repetto attempted to unlock the front door of Apartment [REDACTED] using the electronic code provided by Ms. Doe. Mr. Chavez continued to lock the door after the Officers unlocked it multiple times. At this time, Officers Jones and Repetto obtained Mr. Chavez's correct cell phone number¹ and began texting and calling Mr. Chavez. Mr. Chavez did not answer, and Officer Jones left a voicemail message informing Mr. Chavez that Officer Jones was with the Pleasanton Police Department and asking Mr. Chavez to come outside to talk.

At 1:23 p.m., Sergeant Gora requested an Unmanned Aerial Vehicle (drone), which was provided by the Alameda County Sheriff's Office (ACSO), along with its operating personnel. Upon hearing the call for the drone team, multiple members of the East Bay Tactical Team (EBTT), a SWAT team comprised of officers from the Pleasanton and Livermore Police Departments, responded to the scene within 17 minutes.² According to their statements, Lieutenant Stocking notified Sergeant Albert that the suspect had barricaded himself and asked Sergeant Albert to prepare the armored recovery vehicle (ARV). Sergeant Albert then left the Pleasanton police station in the ARV with Sergeants Pittl and Lewellyn.

At some point prior to 1:40 p.m., Officer Martens arrived on scene with a canine. Lieutenant Gamez arrived shortly after Officer Martens.

At 1:40 p.m., EBTT SWAT officers ("tactical team") arrived at the apartment complex with an ARV—a nine-ton, heavily fortified carrier originally designed to transport infantry and provide protection from shrapnel and small arms fire on the battlefield. Three tactical team members arrived in the ARV (Sergeants Albert, Lewellyn, and Pittl) and parked the ARV directly outside the front door of Apartment [REDACTED]. The ARV took over the attempts to contact Mr. Chavez through the PA system. A family with young children, living directly above the apartment, watched and filmed through the window as the police presence expanded outside their home.³

Around the same time that the ARV arrived on scene, Officer White arrived on scene and met with the tactical team at the ARV. Officer White had followed Sergeants Albert, Lewellyn, and Pittl to the scene, and they had told Officer White that the incident to which they were responding

¹ Officers Jones and Repetto previously obtained Mr. Chavez's cell phone number from Ms. Doe when they first arrived on scene. They later realized that the number had one incorrect digit.

² According to the Pleasanton Police Department, EBTT/SWAT was not formally activated for this incident, though many of its members happened to be working during the call and responded to the scene with most of their specialized equipment, and then deployed their specialized tactics, including use of a remote-controlled robot, a breach of the door, and a "brake and rake" of the dining room window. Thus, even if not officially designated as such, the incident largely resembled an EBTT/SWAT deployment.

³ Many families and other bystanders were in the immediate vicinity; some recorded the ARV and SWAT officers from their windows.

involved domestic violence with corporal injury⁴. Officer White stated that once on scene, Officer Jones informed him that the prior evening, Mr. Chavez had hit the victim (Ms. Doe), put a pillow over her face, taken her phone away, and locked her in the apartment. Officer White stated that he learned that Mr. Chavez had a prior history of assault with a deadly weapon, assault on an officer, and a history of being on parole. Officer White said he learned that Pleasanton Police Department had responded to a similar domestic violence incident involving Mr. Chavez two or three weeks prior, when Mr. Chavez had barricaded himself inside or something similar.

Between 1:40 and 2:00 p.m. and in no particular order, Officers Leonardo, and Kroutil, Sergeant Shuffield, and Lieutenant Stocking arrived on scene.

At 1:41 p.m., the drone team (“ACSO team”) arrived on scene. Lieutenant Stocking stated he saw two deputies from the Alameda County Sheriff’s Office in a black SUV as part of the drone team but did not indicate who the deputies were.

At some point between 1:40 and 2:00 p.m., Officer Guillermo arrived on scene. Officer Guillermo indicated that he and Officer White had been at the Pleasanton police station and were told to head out to a domestic violence incident. Officer Guillermo was told to bring the transport, which is the white box truck that carries all the SWAT gear. It is unclear who gave Officer Guillermo these orders. When Officer Guillermo arrived on the scene, he met with Sergeant Pittl behind the ARV; he was then told by Officer Jones that the victim (Ms. Doe) had a bloody lip, that Mr. Chavez had snatched the victim’s phone and covered her face with a pillow, and that Mr. Chavez had made 422 threats to the victim. Officer Guillermo stated 422 means threats to cause harm to or kill another individual, but he did not know what exact threats Mr. Chavez had made. Officer Guillermo stated he learned there was a prior domestic violence incident between Mr. Chavez and the victim, Mr. Chavez had a prior incident involving assault with a deadly weapon, and he heard someone request Mr. Chavez’s CII (criminal) history but did not hear the response if there was one.

Around 2:00 p.m., Officer Jewell arrived on scene for the start of his shift. Officer Jewell was called to the scene by Sergeants Albert, Lewellyn, and Pittl. Officer Jewell is a patrol officer and part of the tactical team. Officer Jewell stated he was told there was a barricaded domestic violence suspect on scene. Officer Jewell indicated that upon arriving on scene, he was not given any other details about the domestic violence incident. Upon arrival, Officer Jewell was told to meet other officers at the back of the ARV and then to relieve the officer in the turret of the ARV.

Meanwhile, officers sought a (Ramey) arrest warrant for Mr. Chavez based on the reported domestic violence conduct. Detective Sheldon was the investigator assigned to obtain the warrant. While waiting for a magistrate to sign the warrant, police formulated a plan for entry into the apartment. They temporarily cleared the adjacent unit, Apartment [REDACTED], and conducted a walk-through, familiarizing themselves with the mirrored layout.

⁴ Penal Code Section 273.5(a) criminalizes the infliction of a corporal injury resulting in a traumatic condition upon a person with whom the offender has or had a dating relationship, and 273.5(e) defines traumatic condition as a condition of the body, such as a wound, or external or internal injury, including injury as a result of strangulation or suffocation. “[S]trangulation” and “suffocation” include impeding the normal breathing or circulation of the blood by applying pressure to the throat or neck.

At around 2:10 p.m., the Crisis Negotiation Team (CNT) arrived on scene. The team consisted of two specially trained and certified crisis negotiators: Officer Lengel, who assumed the role of “primary negotiator,” and Officer Furphy, who assumed the role of “coach.” The CNT first met with Ms. Doe around 2:18 p.m. and gathered information to help build rapport with Mr. Chavez. Around 2:37 p.m., Officer Lengel left to go outside and talk with the other officers on scene. Officer Furphy’s body camera showed that Officer Furphy continued talking with Ms. Doe.

At 2:39 p.m., Ms. Doe told Officer Furphy that Mr. Chavez had a “severe alcohol addiction” and was probably currently intoxicated. Ms. Doe also told Officer Furphy that Mr. Chavez was recently diagnosed with depression and Post Traumatic Stress Disorder (PTSD) and had been prescribed medicine that he would take with alcohol. Ms. Doe told Officer Furphy about Mr. Chavez’s history of intense childhood trauma and subsequent struggles with mood dysregulation and alcoholism. Ms. Doe told Officer Furphy that no other officers had obtained this detailed information from her at that time. At 2:47 p.m., Officer Furphy ended her conversation with Ms. Doe and went outside to talk with the other officers on scene. At 2:48 p.m., Officer Furphy told Officer Lengel about Mr. Chavez’s mental health diagnoses and prescribed medication, history of childhood trauma, and that he was likely currently intoxicated from alcohol use and severely alcoholic. There is no indication that either Officer Furphy or Lengel conveyed this information to any other officers while on scene before Mr. Chavez emerged from the apartment.

At 2:52 p.m., the CNT (Officer Lengel) called Mr. Chavez’s cell phone from inside a patrol car parked around the corner from Apartment [REDACTED]. Mr. Chavez answered the call, denied being in the apartment, claiming he was in San Jose, and then hung up after an extended pause. The CNT called Mr. Chavez right back, but the call went to voicemail. Over the next several minutes, the CNT called Mr. Chavez approximately 20 times in succession, hanging up each time the call went to voicemail, other than the two times Officer Lengel left voicemail messages. The CNT also sent Chavez several text messages, requesting that Mr. Chavez come out peacefully and inviting him to tell his side of the story.

At 3:18 p.m., Mr. Chavez answered the CNT’s call from Officer Lengel. Mr. Chavez sounded agitated and said, “hey officer, man, you keep calling me, what’s going on?” He asked Officer Lengel what the allegation against him was and why the police were looking for him. Officer Lengel replied that he was not the investigating officer and did not know much about what was going on, other than it involved a “domestic incident.” Officer Lengel explained that he was just trying to get Mr. Chavez to come outside and would be happy to hear Mr. Chavez’s side of the story. Mr. Chavez stated he was in San Jose again and trying to “figure this shit out.” Mr. Chavez asked Officer Lengel where they would meet if Mr. Chavez left his job. Officer Lengel did not answer Mr. Chavez’s question and questioned Mr. Chavez’s assertion that he was in San Jose, telling him that officers knew he was inside the apartment. Mr. Chavez next said, “I’m not in the apartment, but if I do go over there and talk to you guys, it sounds like you’re gonna arrest me.” Mr. Chavez then asked what charges he was facing. Officer Lengel told Mr. Chavez that he most likely would be arrested but did not know for what charges. Mr. Chavez appeared skeptical and frustrated when Officer Lengel repeatedly claimed not to know anything about the underlying allegation. Mr. Chavez told Officer Lengel that he seemed trustworthy and asked the Officer to “keep it real” and acknowledge that Mr. Chavez would definitely go to jail if he were to meet up

with police, based on the state's strict domestic violence laws. After Officer Lengel said he would "keep it real," Mr. Chavez got flustered and abruptly ended the call at 3:23 p.m., after asking the Officer to stop calling and texting him.

At 3:24 p.m., the crisis negotiators updated the commanding Officer, Lieutenant Stocking, about their contact with Mr. Chavez and asked if "something happened over there" (outside Apartment [REDACTED] that may have caused Mr. Chavez to abruptly get off the phone. Lt. Stocking replied, "no, but something's about to happen," and then slowly looked both ways and walked back to the ARV. The CNT resumed their attempts to reach Mr. Chavez by phone, calling him an additional 20 times over the next several minutes while sitting in their vehicle; their last call was made at 3:39 p.m. Overall, the CNT called Mr. Chavez over 40 times and sent him approximately ten text messages interspersed between the phone calls.

During the time that the CNT was attempting to make contact with Mr. Chavez in Apartment [REDACTED], Ms. Doe notified the officers that Mr. Chavez had sent her a series of texts, starting after officers had arrived on scene. Officer Jones later stated that he heard dispatch announce that Ms. Doe said that Mr. Chavez sent her text messages acknowledging that that police were outside in front of the apartment. Officer Jones recalled that one of the text messages from Mr. Chavez to Ms. Doe stated that the police would kill Mr. Chavez.

At 3:25 p.m., the Ramey warrant for arrest was issued. At 3:27 p.m., the officers on scene learned the court authorized an arrest warrant for the domestic violence charge.⁵

The tactical team then decided to breach the front door of Apartment [REDACTED] and use a wheeled robot—containing a camera and two-way communication system—to re-establish communication with Mr. Chavez and gain intelligence about what he was doing inside the apartment. Officers Jewell, Guillermo, and Repetto, and Sergeant Albert, were assigned to provide cover from the ARV to the three-person team approaching the front door. Officer Jewell was posted in a turret on top of the ARV and armed with a .223 caliber Primary Weapons System (PWS) MK111 AR-15-style assault rifle with suppressor/silencer. Officer Jewell also had his Glock 17 9mm handgun and a taser, holstered. Officer Guillermo was posted on the passenger side of the ARV and was armed with a PWS MK111 assault rifle, aimed across the front hood toward Apartment #105. Officer Guillermo also had his Sig Sauer P320 handgun and a taser, holstered. Sergeant Albert was posted to Officer Guillermo's right, closer to the front of the ARV, and was armed with a PWS AR-15 style assault rifle. Sergeant Albert also had his Sig Sauer P320 handgun holstered. Officer Repetto was standing close to Officer Guillermo and Sergeant Albert, to the right of the ARV, which was facing the apartment; Officer Repetto was armed with his Glock 17 9mm handgun and had a taser and a collapsible baton, holstered.

At 3:33 p.m., the three-person "breach team" swiftly and in tight formation left the ARV and approached the front door of Apartment [REDACTED]. Officer Jones placed the remote-controlled robot just outside the front door. Officer Jones was covered by Sergeant Pittl, who was armed with an unholstered handgun and a ballistic shield, and by Officer White, who was armed with a FN303 "less lethal" riot launcher that could fire thick plastic projectiles filled with metallic powder and

⁵ Officers never announced to Mr. Chavez, through the PA system or otherwise, that there was a warrant for his arrest.

chemical irritants to deter and incapacitate targets and had an effective firing range of 70 meters (77 yards). Officer White also had his Glock 17 9mm handgun and a taser, holstered. The breach team retreated after placing the robot near the door. During the time the robot was placed, officers continued to make loud announcements identifying themselves and commanding Mr. Chavez to surrender.⁶

Officer Jones obtained a battering ram from behind the ARV and returned to the front door of Apartment #105, again covered by Sergeant Pittl and Officer White. Immediately prior to Officer Jones breaching the front door, Officer Kroutil, standing near the rear of the ARV, lobbed a flashbang stun grenade—a diversionary device used to temporarily disorient the senses—around the corner of the building toward the main face of the apartment complex.



On the left, Officer Kroutil lobbed a flashbang stun grenade just before Officer Jones breached the front door. On the right, the red circle indicates the flashbang at the peak of its arc outside the main face of the apartment complex.

At 3:33 p.m., with three swings of the battering ram, Officer Jones breached the front door, permitting the robot's entry just beyond the door's threshold.



From inside the apartment, Mr. Chavez tried closing the door and pushed the robot back outside. The robot, as well as a piece of the door frame broken off by the battering ram, prevented the door from closing fully. Mr. Chavez cleared the path of the robot and damaged wood and was able to completely close the door. The front door of Apartment [REDACTED] had a large window extending

⁶ At this time, the police canine could be heard whining and barking, alternately, in the background.

vertically nearly its entire length, covered by a shade. Mr. Chavez was seen moving in the apartment, occasionally pulling back the shade to look outside.



The remote-controlled robot and a scrap of broken wood prevented the door from closing fully, permitting the officers to see inside.

At 3:34 p.m., from the ARV's turret, Officer Jewell positively identified the male in Apartment [REDACTED] as Mr. Chavez, and repeatedly shouted commands for Mr. Chavez to "come out with [his] hands up." Officer Jewell was designated as the only officer to provide commands to Mr. Chavez. Officer Jewell stated he heard someone call out that Mr. Chavez had a knife but did not indicate who made that statement. Officer Jewell could see Mr. Chavez had an object in his hand, could not see what the object was, but believed it to be a knife based on the statement made by another officer. Officer Jewell's body camera showed that at 3:35 p.m., a supervising officer standing close by, Sergeant Lewellyn, stated, "come out with your hands up or else we will send in the dog." Sergeant Lewellyn's body camera showed that Sergeant Lewellyn was speaking those words into a handheld device, and he appeared to provide canine announcements to Mr. Chavez through the device.⁷

Sergeant Albert could see into the apartment and observed Mr. Chavez holding a knife. At 3:35 p.m., Sergeant Albert broadcast over the radio that he had positively identified Mr. Chavez, and that Mr. Chavez had a knife. Officer Murphy's body camera showed that at 3:35 p.m., a radio announcement was made, stating Mr. Chavez "was armed with a knife in his hand." Officer Kroutil said at this time, he observed Mr. Chavez with a knife and also heard an announcement that Mr. Chavez had a knife but did not indicate who made that announcement. The Officers did not observe any firearms inside the apartment. Officer White stated he did not see Mr. Chavez at the time the door was breached. Officer Jones said during this breach, he did not see that Mr. Chavez had a knife but heard an officer announce that Mr. Chavez had a knife (Officer Jones did not state which officer made the announcement). The breach team again withdrew from the apartment and retreated behind the ARV.

⁷ In his formal interview following this incident, Lieutenant Gamez, who was also on scene, said, from his experience as a former canine officer, that most people surrender peacefully following canine announcements and barking.

At 3:35 p.m., Officer Jewell announced that he saw Mr. Chavez pushing the door closed and then moving between the door and the window, armed with a knife. Officer Jewell repeated his command for Mr. Chavez to come outside. Officer Jewell gave the officers on scene loud updates on Mr. Chavez's movements every few seconds ("At the door... still at the door... still at the door...opening the shutter to the door...at the door...appears to be barricading the door... looking out the door.").

At 3:37 p.m., the robot began running into the front door of Apartment #105. The robot continued backing up and running into the front door until 3:38:42 p.m. After Mr. Chavez had closed the front door, the remote-controlled robot was repeatedly reversed then driven forward, slamming into the front door approximately 15 times. As the robot drove into the door, Mr. Chavez pulled back the door's window shade and briefly waved his cell phone toward the ARV. It is unclear whether or what Mr. Chavez was attempting to communicate with the officers.

When the tactical team saw the wheeled robot was not succeeding in breaching the door of Apartment #105, the team devised a plan to break the front living room window of the apartment and insert a drone into the broken window. A team of four officers (Officers Jones, Kroutil, Leonardo, and White) planned to break the window.

At 3:37:50 p.m., while the robot continued to slam into the door, the four-officer team approached the front window just to the left of the front door with their weapons drawn. They were tasked with smashing out the window glass so the ACSO team could fly their drone into the apartment.



From left to right: Officers White, Kroutil, Leonardo, and Jones form the "break and rake" team.

At 3:37:58 p.m., Officer Jones used the "break and rake" tool to repeatedly smash the glass and clear a path for the drone by tearing away the shade. Officer Jones was covered by Officers Kroutil, Leonardo, and White; Officers Kroutil and Leonardo were both armed with unholstered handguns, tasked with providing lethal cover for Officer White; and Officer White was armed with his FN303 riot launcher.



Officer Leonardo covered Officer Jones with a handgun as Office Jones used a “break and rake” tool to smash out the front window and clear the shade.



As captured by the drone’s thermal imaging system, a neighbor upstairs peeked out their window as Officer Jones smashed out the front window and the remote-controlled robot repeatedly drove into the front door of Apt. 105.

While the officers continued dismantling the window with multiple swings of the “break and rake” tool, Mr. Chavez stood at the front door, recessed behind a small patio, and peered through the shade toward the ARV. Officer Repetto stated that at this time, someone indicated that Mr. Chavez had a knife (Officer Repetto did not indicate who made that statement). Officer Repetto was then told by Sergeant Albert to get a less lethal shotgun from Officer Repetto’s car. Officer Repetto obtained a Remington 870 shotgun, loaded with “less lethal” bean bag impact rounds that had an effective firing range of 40 meters (44 yards).

At 3:38:41 p.m., as the window continued to shatter and collapse inward, Mr. Chavez opened the front door and walked outside, stepping over the robot. Mr. Chavez had a kitchen knife in his right hand, hanging down at his side. Both Officer Jewell and Officer Guillermo indicated that at this time, they confirmed Mr. Chavez was holding a knife. Officer Jewell described the knife

held by Mr. Chavez as a large kitchen knife that would be the largest in a block of knives. Officer Guillermo described the knife held by Mr. Chavez as a large black knife that looked pretty big from his position at the ARV. In a later interview, Officer Jones estimated that Mr. Chavez was at most ten yards away from Officer Jones when Mr. Chavez first exited the apartment. Officer Leonardo estimated that Mr. Chavez was six to seven yards away from Officer Leonardo when Mr. Chavez first walked outside.

Mr. Chavez crossed the threshold of the door and took four steps towards the walkway from the small patio. As he was walking in a straight line out the door, he turned his head towards Officers Jones, Leonardo, White, and Kroutil; Officer Jones was continuing to break the window and smash the blinds, and Officer White was shouting at Mr. Chavez to put his hands up. Officers Jewell and Guillermo both gave Mr. Chavez commands to drop the knife.

Officer White stated he observed Mr. Chavez holding a knife when Mr. Chavez exited the apartment. Officer White described the knife held by Mr. Chavez as a large kitchen knife with a fixed blade that would be used to cut up steak or something similar. Officer White indicated when Mr. Chavez saw the group of officers by the window, Mr. Chavez fixated on the officers and started heading straight for them.

Officer Leonardo stated he did not see that Mr. Chavez was holding a knife and thus holstered his firearm and prepared to tackle Mr. Chavez should Mr. Chavez have come towards Officer Leonardo and the other officers at the window. Officer Leonardo said his backdrop was not clear, meaning he could not shoot his firearm because there were support staff in the background who could have been injured if he fired.

Officer Jones stated that he saw that Mr. Chavez was holding a knife in Mr. Chavez's right hand, and Officer Jones then drew and raised his pistol and moved toward Officer White. Officer Jones observed Mr. Chavez look at Officer White and run toward Officer White with the knife in his hand. Officer Jones indicated that his backdrop was not clear, meaning that there were people in the background, so Officer Jones moved around to find a better location to shoot Mr. Chavez from.

Officer Kroutil stated he was behind Officer White and did not see that Mr. Chavez had a knife. Officer Kroutil had his gun in his hand but was unable to provide lethal cover because Officer White was directly in front of him. Officer Kroutil observed the knife held by Mr. Chavez after the knife was on the ground; he described the knife as a large butcher knife, black with gold or copper trim, that would be one of the largest knives in a standard butcher block of 16 knives.

Officer Repetto stated he saw that Mr. Chavez was holding a knife when Mr. Chavez exited the apartment. Officer Repetto described the knife held by Mr. Chavez as a large silver knife that would be the biggest knife in a cutting block of knives. Officer Repetto observed Mr. Chavez run straight toward the group of officers by the window holding the knife in his hand.

At 3:38:45 p.m., as Mr. Chavez took his fifth step forward, Officer Repetto shot him with a "less lethal" bean bag round from the Remington 870, which struck the left side of his body and

ricocheted off his left wrist. When that round struck Mr. Chavez, he could be seen flinching and moving his left arm upward from an extended position as he took his sixth step.



As pictured on the left, red arrows indicate the trajectory of the first bean bag impact round at the moment it was fired by Officer Repetto. As pictured on the right, Mr. Chavez moved his left arm upward from an extended position, after being struck by the round.

Approximately one second after getting struck with the bean bag round, Mr. Chavez abruptly pivoted to his right and lowered his body as if in preparation for a sprint. Mr. Chavez was then facing Officer White, who was flanking the “break and rake” group and armed with his FN303 launcher.

A supplemental report based on drone footage estimated that Mr. Chavez was approximately 16 feet from Officers White and Leonardo at the time Mr. Chavez headed towards Officers White and Leonardo. Officer Kroutil estimated that when Mr. Chavez first moved towards his break and rake group at the window, Mr. Chavez was 10-15 feet away from Officer Kroutil and 5-8 feet away from Officer White, who was in front of Officer Kroutil.



After pivoting, Mr. Chavez lunged forward a single step, which, given his 6’4” stature, was relatively far. By the time Mr. Chavez’s front foot touched the ground, he had been shot in the

upper thigh with a second bean bag round fired by Officer Repetto, hit in the chest, arm, and back by five FN303 “less lethal” plastic projectiles fired by Officer White, and hit by three lethal .223 rounds fired between Officers Jewell and Guillermo, one in Mr. Chavez’s head and two in his back. Immediately upon being struck by the projectiles and ammunition, Mr. Chavez dropped the knife and turned away from the group of officers, falling forward, his chest striking the ground. Before he completed his step, Mr. Chavez was taken down to the ground, where he lay motionless. At 3:38:46 p.m., Mr. Chavez was on the ground. Officer Jones estimated that Mr. Chavez was 8-10 feet away from Officer White when Mr. Chavez fell to the ground. Mr. Chavez was pronounced dead on the scene by Faulk Ambulance personnel at 3:48 p.m.

Other than the initial bean bag round, all shots were fired within a two-second window. In total, Officer Repetto fired his Remington bean bag shotgun twice, Officer Jewell fired his rifle five times, Officer Guillermo fired his rifle two times, and Officer White fired his FN303 launcher nine times, with at least four “less lethal” plastic projectile shots having been fired after Mr. Chavez was already on the ground.



Officer White’s body camera showed that Mr. Chavez lunged, dropped the knife, and collapsed to the ground, his back to Officer White. Other than the initial bean bag round, all shots were fired within this two-second window.

As captured by the drone’s thermal imaging system, Officer Jewell fired his assault rifle after Officer Repetto fired his second bean bag round, but before Officer White’s “less lethal” plastic projectile round struck Mr. Chavez’s body (near his right calf); it was nearly simultaneous. As pictured below on the left, the red arrows indicate the trajectory of the “less lethal” bean bag round. On the right, the large red circle indicates the moment that Officer Jewell fired his rifle, and the small red circle indicates the bean bag round just before it impacted Mr. Chavez’s raised leg.

As pictured below, photographs were taken of the knife dropped on the ground by Mr. Chavez. The blade of the knife was longer than the six-inch ruler that was placed next to the knife for the photograph.



Officer Jewell fired his rifle at nearly the exact moment the bean bag round impacted Chavez's raised leg.



When Mr. Chavez lunged forward, Officer Leonardo holstered his firearm as he prepared to tackle Mr. Chavez, later stating he did not see the knife.



Photo taken of the knife at the scene that was dropped on the ground by Mr. Chavez; a six-inch ruler was placed on the ground next to the knife.

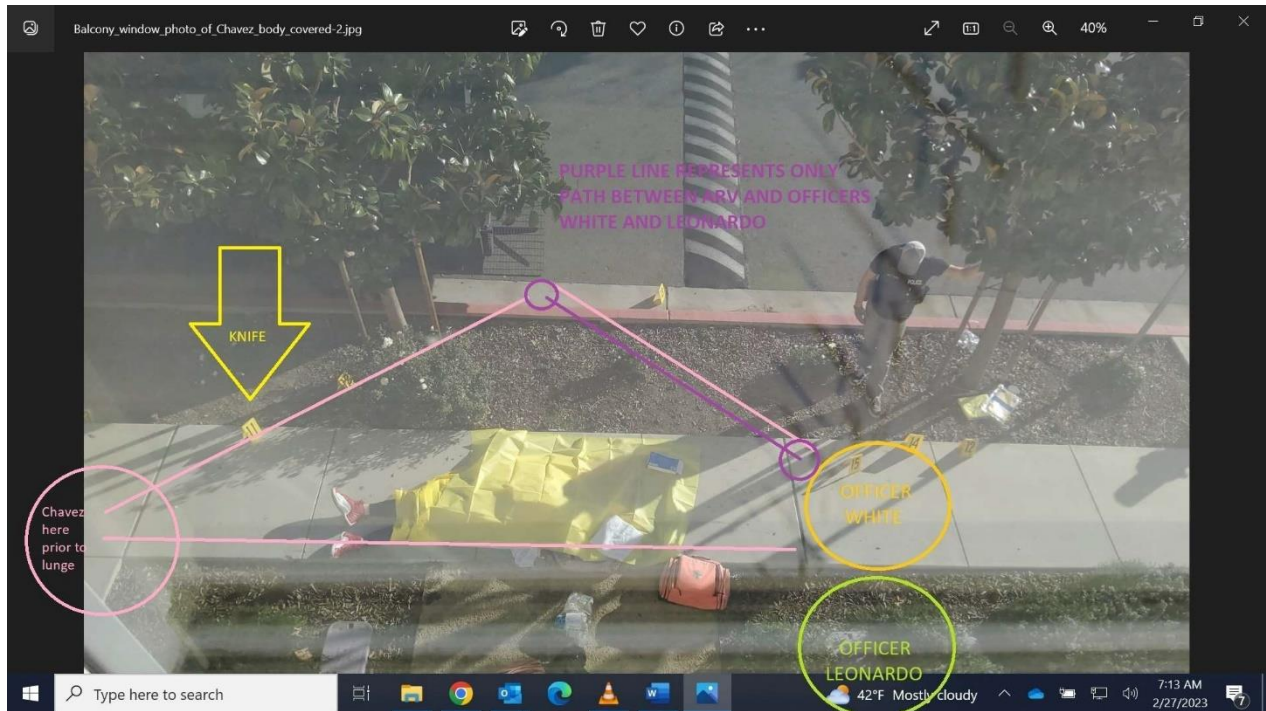


Photo of Mr. Chavez's body in the position in which it landed and in relation to where he started to lunge, and the respective positioning of Officers White and Leonardo.

The above photograph was marked and labeled by the PAU Inspector who visited, measured, and diagrammed the scene. According to the Inspector, due to the limited distance Mr. Chavez traveled once he exited and before he was shot, it is not possible to determine from the footage towards what or whom Mr. Chavez was moving. Nonetheless, peace officers are trained to respond to a subject in possession of dangerous or deadly weapon with weaponry or force that is, at minimum, equally dangerous or deadly; the PAU Inspector opined that had he been one of the responding officers, seen Mr. Chavez coming at him or another with a knife from as little as 8 or 10 feet away, consistent with his training and in defense of self or others, he would have shot at him too.

Immediately after the shooting, Sergeant Lewellyn identified and assembled the “involved” Officers and escorted them, in a group, away from the immediate scene. The group included Officers Jewell, Guillermo, Repetto, and White, all of whom used either lethal or “less lethal” force during the incident. At 3:40 p.m., after assembling the four Officers, Sgt. Lewellyn instructed them to turn off their body-worn cameras, which had been running up to that point. All four officers complied. Sgt. Lewellyn did not provide a reason (to dispatch, the computer aided dispatch or CAD log, or in the police report) for why he ordered the Officers to turn off their body cameras.



Immediately after the shooting, Officers Guillermo, White, Repetto, and Jewell, and Sergeant Lewellyn (left to right) assembled in a huddle and turned off their body-worn cameras.

Lieutenant Gamez's body camera showed that at 3:44 p.m., after the involved officers were assembled, Sgt. Lewellyn separated from the group and told Lieutenant Gamez that Sgt. Lewellyn "need[s] to get these guys out of here; it doesn't look good that they're all standing together and talking." Lt. Gamez replied, "you want to transport them for me?" Sgt. Lewellyn then interrupted Lt. Gamez to ask, "are you off," at which point Lt. Gamez immediately terminated his body-worn camera recording. Officers Jewell and Repetto traveled together in a vehicle driven by Sgt. Lewellyn. It is unclear by what means of transport and with whom Officers Guillermo and White returned to the station.

Officers Jewell and Guillermo provided voluntary statements between the evening of February 17 and the morning of February 18; both Officers were represented by counsel from RLS law firm when they gave their statements.

Officers Jewell and Guillermo stated they shot Mr. Chavez to protect the lives of the officers near the window who were in immediate danger of being stabbed. Officer Jewell indicated that once Mr. Chavez exited the apartment, he saw Mr. Chavez charging towards officers at the bedroom window who were trying to break that window; Officer Jewell believed Mr. Chavez was going to kill those officers by the window with the knife in his hand. Officer Jewell indicated he did not know the identity of the officers who were trying to break the window. Officer Jewell stated he believed had he not fired his gun at that point, Mr. Chavez was going to reach the officers at the window with a knife. Officer Jewell stated he feared for the safety of his fellow officers. Further, Officer Jewell described the training he received for domestic violence situations and that he was aware that domestic violence incidents were often very violent situations that required police intervention.

Officer Guillermo stated at the time he fired his gun he believed Mr. Chavez was within reach of the officers by the window who were breaking the window and the blinds. Officer Guillermo stated prior to firing his gun, he had seen that the "less lethal" bean bag rounds fired on Mr. Chavez were ineffective, they had not stopped Mr. Chavez from advancing towards the officers. Officer Guillermo was scared for the lives and safety of the officers by the window because Mr. Chavez was moving directly toward those officers with a large knife. Officer Guillermo was concerned that the officers by the window could not defend themselves because they were

concentrating on breaking the window and may not have seen Mr. Chavez coming. Officer Guillermo believed lethal force against Mr. Chavez was the only option available to prevent Mr. Chavez from stabbing one of the officers by the window. Further, Officer Guillermo described the training that he received for domestic violence situations and that domestic violence calls are considered one of the most dangerous calls to which an officer responds.

Several other officers provided voluntary statements between February 17 and 18, including the four officers by the window (Officers White, Leonardo, Kroutil, and Jones), and Officer Repetto who used less lethal force against Mr. Chavez. Officer White stated he feared for his life when Mr. Chavez exited the apartment with a knife because Mr. Chavez was fixated on Officer White and started coming toward Officer White. Officer White thought Mr. Chavez was going to stab him and wanted to switch from his “less lethal” gun to his handgun but did not believe he had the time or space to make the switch before Mr. Chavez would have reached him. Officer White stated he believed that had lethal force not been used by another officer, Mr. Chavez would have stabbed Officer White or Officer Leonardo, who had been standing next to Officer White.

Officer Leonardo stated he was scared when Mr. Chavez exited the apartment, even though he did not see that Mr. Chavez had a knife, because Mr. Chavez was taller and larger than Officer Leonardo, looked like a young and capable guy, was moving very quickly, and was facing Officer Leonardo, looking determined to hurt Officer Leonardo or the other officers by the window. After Mr. Chavez fell to the ground, Officer Leonardo saw the knife and felt a rush of fear because he believed Mr. Chavez would have used the knife to stab Officer Leonardo had Mr. Chavez reached him. Officer Leonardo felt confident the other officers on scene did what was necessary to protect him from being harmed by Mr. Chavez.

Officer Kroutil stated he observed Mr. Chavez running toward his group of officers at the window and was in fear because in his opinion, it was not normal behavior for a suspect to run toward a group of officers. Officer Kroutil observed that Mr. Chavez did not appear to react after being hit with less lethal rounds but kept running toward the officers. Officer Kroutil indicated he knew there were other people in better positions providing full coverage, but he was unable to safely discharge his firearm because his backdrop was not clear.

Officer Jones stated when he observed Mr. Chavez moving toward Officer White while holding a knife in his hand, Officer Jones believed Mr. Chavez was going to stab Officer White. Officer Jones indicated Mr. Chavez was heading toward the officers at the window and specifically looked to be targeting Officer White. Officer Jones believed it was necessary to use lethal force to stop Mr. Chavez from harming Officer White, but right before Officer Jones took a shot, Mr. Chavez was on the ground.

Officer Repetto conveyed he responded to a dispatch call for a domestic violence incident. Officer Repetto stated he feared for his life when Mr. Chavez exited the apartment carrying a knife, because Officer Repetto was by himself on the right side of the ARV, armed with only “less lethal” force, without the kind of weapon needed should Mr. Chavez have advanced towards him. Officer Repetto indicated after he hit Mr. Chavez with the first less lethal round, it looked like Mr. Chavez continued running towards Officers White and Leonardo to try and kill them.

Officer Repetto stated he believed Mr. Chavez had a clear path to run away from the apartment but instead chose to run towards the group of Officers.

Bystander cell phone videos were reviewed and showed a family with children watched the standoff from their window directly above the apartment occupied by Mr. Chavez. They screamed and dove for cover when police started firing their weapons. They cried and consoled each other as they watched officers remove Mr. Chavez's body from the sidewalk. Two bullet holes were found in the kitchen wall of Jane Doe's apartment, just feet below the unit in which the children lived.

The Alameda County Coroner's Office performed an autopsy on Mr. Chavez and identified three gunshot wounds as his cause of death: one to the right side of his head, one to the right side of his upper back, and one to the left side of his mid-back. Ballistics reports showed that the bullet in Mr. Chavez's upper back came from Officer Jewell's rifle, and that the bullet in Mr. Chavez's mid-back came from Officer Guillermo's rifle; due to excessive fragmentation, the origin of the bullet in Mr. Chavez's head could not be determined.

Legal Analysis

Our analysis focused on the question of whether there is sufficient evidence to prove beyond a reasonable doubt that Officer Jewell or Officer Guillermo committed a crime in connection with the shooting death of Mr. Chavez. The evidence shows that Officers Jewell and Guillermo acted lawfully and in defense of Officers Jones, White, Kroutil, and Leonardo.

Based on the totality of the circumstances, Officers Jewell and Guillermo reasonably believed that Mr. Chavez had the present ability, opportunity, and intent to cause death or serious bodily harm to other officers on the scene when Officers Jewell and Guillermo discharged their firearms at Mr. Chavez.

First, Officers Jewell and Guillermo both had credible information about Mr. Chavez that indicated that Mr. Chavez posed a danger to officers on scene. Knowledge of another person's prior threatening or violent conduct is evidence supporting the reasonability of the belief in imminent harm. When Officer Guillermo arrived on scene, he was informed by Officer Jones that Ms. Doe had reported that the prior evening Mr. Chavez had snatched Ms. Doe's phone, covered her face with a pillow and made 422 threats to Ms. Doe, and that Ms. Doe currently had a bloody lip. Officer Guillermo stated 422 means threats to cause harm to or kill another individual. Officer Guillermo also learned that Mr. Chavez had a prior history of domestic violence against Ms. Doe and a criminal history including assault with a deadly weapon. Prior to arriving on scene, Officer Jewell was told that there was a barricaded domestic violence suspect on scene. Officers Jewell and Guillermo both received training on domestic violence incidents and were aware that these incidents were often dangerous for officers.

Second, Officers Jewell and Guillermo were both aware that Mr. Chavez was carrying a knife. Prior to Mr. Chavez exiting Apartment [REDACTED] Officer Jewell, from his position in the turret of the ARV, positively identified Mr. Chavez as the person inside the apartment. Officer Jewell could

see that Mr. Chavez was carrying an object; based on another officer's statement that Mr. Chavez was carrying a knife, Officer Jewell believed that what Mr. Chavez was holding was a knife while inside the apartment. Officer Jewell confirmed that what Mr. Chavez was carrying was a knife when he observed Mr. Chavez with the knife while Mr. Chavez closed the front door and moved between the door and window inside the apartment. Officer Jewell again saw that Mr. Chavez was carrying a knife when Mr. Chavez exited the apartment. Officer Guillermo also observed that Mr. Chavez was carrying a knife when Mr. Chavez exited the apartment.

Third, several attempts to arrest Mr. Chavez without the use of force were unsuccessful. That a suspect is resisting arrest and with lethal weaponry or force factors into whether officers' use of lethal force was reasonable. Officers Jewell and Guillermo were both on scene when CNT attempted, and failed, to convince Mr. Chavez to come outside and talk with CNT. Officers Jewell and Guillermo both observed the unsuccessful attempt to breach the front door of Apartment #105 and Mr. Chavez's refusal to exit the apartment after several commands were made to Mr. Chavez. Officer Jewell repeatedly used the PA system from the ARV to instruct Mr. Chavez to come out with his hands up. And Officers Jewell and Guillermo both gave commands to Mr. Chavez to drop the knife when Mr. Chavez first exited the apartment, while Officer White told Mr. Chavez to put his hands up. Despite the repeated attempts by several officers to convince Mr. Chavez to surrender peacefully, Mr. Chavez did not leave the apartment for several hours and when he did finally leave, he did not drop his weapon and approached the officers with it in hand.

Fourth, when Officers Jewell and Guillermo used lethal force against Mr. Chavez, circumstances indicated that Mr. Chavez posed an immediate and present danger to the four officers breaking the window, Officers White, Leonardo, Jones, and Kroutil ("officers by the window"). In sum, Mr. Chavez was carrying a deadly weapon (a large knife), did not respond to commands to drop the weapon, and did not cease moving towards the officers by the window when less lethal force was used against him. Officer Leonardo estimated that Mr. Chavez was six to seven yards (about 18-21 feet) away from Officer Leonardo when Mr. Chavez first walked outside at 3:38:41 p.m. Drone footage estimated that Mr. Chavez was approximately 16 feet from Officers White and Leonardo at the time Mr. Chavez first moved towards the officers by the window at 3:38:45 p.m. Officer Jones estimated that Mr. Chavez was 8-10 feet away from Officer White when Mr. Chavez fell to the ground at 3:38:46 p.m. Therefore, Mr. Chavez, who was described as 6'4", closed a distance of approximately 8 feet within one second of being shot.

Evidence photographs taken after Mr. Chavez was shot showed the knife held by Mr. Chavez had a blade that was more than six inches long. Given Mr. Chavez's close proximity to the officers by the window, that he was armed with a knife, and how fast he was closing the distance between himself and the officers by the window, it was reasonable for Officers Jewell and Guillermo to believe that lethal force was required to stop Mr. Chavez from reaching and seriously wounding or killing the officers by the window. Officers Jewell and Guillermo both feared for the lives and safety of the officers by the window and acted in defense of those officers by shooting their rifles at Mr. Chavez.

From the point of his exit to the point Mr. Chavez was shot dead, no more than five seconds passed (Mr. Chavez exited the apartment at 3:38:41 p.m., and he was on the ground by 3:38:46 p.m.). Three seconds after Mr. Chavez walked out the front door, Officer Repetto was the first to shoot at Mr. Chavez, firing a less lethal bean bag round. Mr. Chavez flinched, pulled his left arm up from an extended position, pivoted to the right, and lunged forward one step. One second later, seeing that Mr. Chavez did not stop moving toward the Officers after being hit with the first bean bag round, nor did Mr. Chavez drop the knife, Officer Repetto shot Mr. Chavez with a second bean bag round. Almost simultaneously, Officer White shot at Mr. Chavez with nine successive less lethal plastic projectile rounds; five of these less lethal plastic projectile rounds hit Mr. Chavez, with four being fired after Mr. Chavez had fallen to the ground. Officer Jewell fired his AR-15 assault rifle before the second bean bag round or any of the plastic projectile rounds touched Mr. Chavez. Officer Jewell then immediately fired four additional shots from his AR-15, and Officer Guillermo fired two shots from his AR-15 assault rifle as well. The volley of shots (the second bean bag round fired by Officer Repetto, nine plastic projectile rounds fired by Officer White, five AR-15 shots by Officer Jewell, and two AR-15 shots by Officer Guillermo) occurred within a two-second window starting when Mr. Chavez abruptly pivoted to the right to face the officers by the window, after he was hit with the first bean bag round. After Mr. Chavez was struck by the second less lethal bean bag round, five plastic projectile rounds, and three AR-15 shots, he dropped the knife and fell to the ground.

Given the circumstances detailed above, their knowledge of the situation and Mr. Chavez's propensity for violence, Officers Jewell and Guillermo both believed it necessary to use lethal force to protect the officers by the window. Officers Jewell and Guillermo both observed Mr. Chavez moving toward the officers by the window while holding a large knife. Mr. Chavez did not stop moving, nor did he drop the knife, after being hit with the first less lethal bean bag round fired by Officer Repetto. Therefore, Officers Jewell and Guillermo had reason to believe that Mr. Chavez had the imminent opportunity and the intent to use deadly force against the officers by the window.

We cannot prove beyond a reasonable doubt that Officer Jewell's conduct or Officer Guillermo's conduct rose to the level of criminal liability. The perceptions of the PAU Inspector and other officers on scene support the reasonability of the belief of Officer Jewell and Officer Guillermo that Mr. Chavez posed an imminent threat to the officers by the window.

The PAU's own Inspector opined that had he been one of the officers to respond on February 17, 2022, seen Mr. Chavez coming at him or another with a knife from as little as 8 or 10 feet away, consistent with his extensive training on and experience with officer-involved shootings, and in defense of self or others, he would have shot at him too.

The statements of other officers on the scene, including those of the officers by the window (Officers White, Leonardo, Kroutil, and Jones), support that Officers Jewell and Guillermo justifiably used lethal force to protect the officers by the window. Some of the officers by the window had an obstructed view such that they could not see Mr. Chavez carrying a knife. When Mr. Chavez ran towards the officers by the window, Officer Leonardo had holstered his weapon because he did not see that Mr. Chavez had a knife and was preparing to tackle Mr. Chavez. Officer Kroutil had his firearm drawn but could not see that Mr. Chavez had a knife. In addition,

Officer Jones saw that Mr. Chavez had a knife, but Officer Jones was not in a position to use lethal force against Mr. Chavez, because Officer Jones's backdrop was not clear, meaning that Officer Jones could not shoot at Mr. Chavez without endangering others in the vicinity. This left Officer White without lethal cover from the other officers by the window.

Officer White stated he feared for his life when Mr. Chavez came towards him with a knife; Officer White wanted to switch to lethal force from his less lethal plastic projectiles to defend himself but did not have time to make the switch before Mr. Chavez reached him. Officers Jones and Repetto believed that Mr. Chavez was running towards Officer White to stab Officer White. Officer Repetto also feared for his own safety, because he was armed with only less lethal force and Mr. Chavez was armed with a large knife. Lethal force by Officers Jewell and Guillermo was necessary to protect: Officer White from being stabbed by Mr. Chavez; Officer Leonardo, who was preparing to tackle Mr. Chavez and unaware that Mr. Chavez was carrying a knife; Officer Jones, who could not adequately defend himself because he did not have a clear line to shoot at Mr. Chavez; and Officer Kroutil, who could not see that Mr. Chavez was carrying a knife.

Failures to De-escalate: an Overmilitarized Response

The District Attorney believes the continual improvement of the criminal justice system requires a cause-focused analysis of the issues facing the people of Alameda County. In that spirit, it is worthwhile to highlight how tactics deployed by Pleasanton Police and the involved Officers violated the Department's own policies and escalated a domestic violence incident to tragedy.

By the time the first officer arrived on scene, the threat of domestic violence to Jane Doe was no longer imminent. Approximately 12 hours had passed since Mr. Chavez allegedly abused her. Ms. Doe was safe, in a separate location from Mr. Chavez, surrounded by employees of the apartment complex as well as police officer. Mr. Chavez, meanwhile, was alone in the apartment, without a firearm, most likely intoxicated and experiencing mental health issues. While he was barricaded inside the apartment, he was not holding anyone hostage.

Nevertheless, at least 19 police officers responded to the call, including members of the SWAT team, bringing with them a nine-ton armored recovery vehicle (ARV), which they parked in front of the apartment, as well as AR-15 style assault rifles, flashbang stun grenades, a canine unit, a remote-controlled robot, and a surveillance drone. The CNT had been informed that Mr. Chavez was experiencing mental health issues, including PTSD and depression, suffered from severe alcoholism, and was likely intoxicated at the time of the incident. Yet the CNT did not convey to any other officers on scene the information that Mr. Chavez was experiencing mental health issues and was likely intoxicated. CNT did not calm Mr. Chavez down. Instead, CNT called Mr. Chavez on the phone over 40 times and sent Mr. Chavez approximately ten text messages.

In addition, other officers on scene used the Public Address system to order Mr. Chavez out for nearly 40 minutes, repeatedly unlocked the front door with the door code as he kept re-locking it, threw a flashbang stun grenade outside the unit, used a battering ram to breach the front door, directed a robot to cross the threshold of the front door, slammed the robot into the front door approximately 15 times, and used a break and rake tool to smash in the glass window next to the

front door. As the ARV came into Mr. Chavez's view, the number of officers who could be seen pointing their firearms at him grew. The police canine on scene was also heard barking and whining.

The Pleasanton Police Department characterized the tactics they deployed that did not involve lethal force as examples of de-escalation. Their investigative report refers to the following as "de-escalation tactics" used by officers during this incident:

- Contacting Mr. Chavez by telephone and text message;
- Contacting Mr. Chavez in person at the door;
- Utilizing trained crisis negotiators to contact Mr. Chavez;
- Numerous hours of requests for Mr. Chavez to surrender via public address system;
- A show of overwhelming police presence;
- Breaching the door and introducing a robot to establish communication; and
- Breaching the front window to establish communication with Mr. Chavez and gain further intelligence.

Contrary to their report, however, the Department's overmilitarized response to a relatively routine domestic violence call did nothing to de-escalate the situation. The tactics enumerated in the final three bullet points, including smashing out the front window with a "break and rake" tool and breaching the door with a battering ram and remote-controlled robot, were aggressive--violent even, and invasive. Their tactics clearly escalated the situation and led up to Mr. Chavez emerging from the apartment with a knife in hand.

The overmilitarized response to the already neutralized threat also created an unnecessary risk of danger to those in the immediate vicinity. This incident unfolded in a large, densely populated apartment complex. There were multiple residents, including young children, in all-too-close proximity. While not technically a SWAT deployment, the Department's response was tantamount to one. The Department did not initiate any protocols to protect innocent civilians in the face of a SWAT deployment.

In 2015, the Federal Law Enforcement Equipment Working Group acknowledged concerns about the "militarization" of police with respect to the type of equipment deployed by law enforcement and the nature and timing of those deployments.⁸ There had been a rise in SWAT team missions that involved officers carrying military-grade weapons, such as semi-automatic guns, "rams, ballistic shields, 'flashbang' grenades, smoke grenades, pepper spray, and tear gas."⁹ Much of this equipment came from the U.S. Department of Defense, who between 2006 and 2016, transferred more than \$2 billion in equipment to local police departments, including pistols, assault rifles, night vision equipment, grenade launchers, and armored vehicles.¹⁰

⁸ Law Enforcement Equipment Working Grp., Exec. Off. of the President, *Recommendations Pursuant to Executive Order 13688: Federal Support for Local Law Enforcement Equipment Acquisition* 6 (2015), https://bja.ojp.gov/sites/g/files/xyckuh186/files/publications/LEEWG_Report_Final.pdf.

⁹ Radley Balko, Cato Institute, *Overkill: The Rise of Paramilitary Police Raids in America* 5 (2006), https://www.cato.org/sites/cato.org/files/pubs/pdf/balko_whitepaper_2006.pdf.

¹⁰ R. Ian Evans, *Who Watches the Stormtroopers? Judicial Oversight As A Remedy for Excessive Deployment of Battlefield Technology in Search Warrant Execution*, 25 Temp. Pol. & Civ. Rts. L. Rev. 109, 130 (2016).

According to a 2014 review published by the Executive Office of the President, police chiefs and authority figures lacked proper training on when and how military-style equipment was appropriately deployed.¹¹ In addition to the Federal Law Enforcement Equipment Working Group, then-President Obama established a Task Force on 21st Century Policing, charged with identifying best police practices to promote effective crime reduction while building public trust.

The Task Force issued its final report in 2015, which included Action Item 2.2.1: “[l]aw enforcement agency policies for training on use of force should emphasize de-escalation and alternatives to arrest or summons in situations where appropriate.”¹² The report also cited the testimony of Chuck Wexler, Executive Director of the Police Executive Research Forum, who stated: “[i]n traditional police culture, officers are taught never to back down from a confrontation, but instead to run toward the dangerous situation that everyone else is running away from. However, sometimes the best tactic for dealing with a minor confrontation is to step back, call for assistance, de-escalate, and perhaps plan a different enforcement action that can be taken more safely later.”¹³

As recently as last year, several former Task Force members reconvened and produced a report calling for the demilitarization of police and transition to community safety initiatives.¹⁴ Specifically, the report advised police leaders to “[m]ove away from a military-style, hierarchical, command-and-control structure for managing routine operations. Officers must be trusted and empowered to make appropriate decisions at the level necessary to facilitate collaboration with community members and organizations.”¹⁵

At the state level, in 2019, the California Commission of Peace Officer Standards and Training published Operational Guidelines and Standardized Training Recommendations for SWAT deployment that included a Threat Assessment Template.¹⁶ The Template identified risks associated with both pre-planned and spontaneous events, with an eye towards location-based challenges, including, but not limited to, the presence of children, multi-storied or adjoining apartment buildings, or heavy foot traffic.

These location-based challenges did not appear to factor heavily into the Department’s response here. Whether the Department considered the long-term impacts of experiencing violent events

¹¹Exec. Off. of the President, *Review: Federal Support for Local Law Enforcement Equipment Acquisition* 4 (2014), https://obamawhitehouse.archives.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf.

¹² President’s Task Force on 21st Century Policing, Off. of Community Oriented Policing Serv., *Final Report of The President’s Task Force on 21st Century Policing* 20-21 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

¹³ *Id.* at 21.

¹⁴ 21CP Solutions, *Task Force on 21st Century Policing: A Renewed Call to Action* 3 (2023), https://static1.squarespace.com/static/5ad62e3aec4eb7c4b00e03a0/t/644718fc677c5618827f6d40/1682381053513/Task_Force_Call_to_Action_Final_42523.pdf.

¹⁵ *Id.* at 10.

¹⁶ Cal. Comm’n on Peace Officer Standards and Training, *S.W.A.T.: Operational Guidelines and Standardized Training Recommendations* 49 (2019), https://post.ca.gov/Portals/0/post_docs/publications/SWAT-2019.pdf.

on witnesses, particularly on children, was unclear.¹⁷ The officers here squandered the opportunities highlighted by Chuck Wexler to de-escalate and devise a plan that could be safely executed at a later time. Their response clearly failed to utilize their opportunity to strategically assess the situation, communicate and coordinate the best response, and de-escalate the situation. “When in doubt, wait them out.”

Violations of Departmental Policies and Recommendations

Some of the tactics utilized by the officers on scene appear to be in violation of Pleasanton Police Department’s own policies regarding mental-health crisis intervention, de-escalation, bystander safety, body-worn-camera usage, and preserving evidence. The “unofficial deployment” of the SWAT team also did not appear to follow the chain of command or any applicable procedures.

Policy 419.2 states, “[t]he department will collaborate, where feasible, with mental health professionals to develop an overall intervention strategy to guide its members’ interactions with those experiencing a mental health crisis. This is to ensure equitable and safe treatment of all involved.”

Here, Jane Doe gave the Crisis Negotiation Team information about Mr. Chavez’s mental health issues, including his recent dual diagnosis of PTSD and depression. She told them he had been consuming his medication with alcohol and was most likely under the influence at the time. That he was in crisis was apparent as he barricaded himself inside the apartment for hours while police tried relentlessly to get him to surrender. However, in the almost four (4) hours that the Pleasanton Police Department expanded its presence outside Apt. 105, there is no indication that they sought the help of any mental health professionals to develop an intervention strategy. In contrast, as noted earlier, the police presence was expanded to include at least 19 police officers, including members of the SWAT team, a nine-ton armored recovery vehicle (ARV), multiple AR-15 style assault rifles, flashbang stun grenades, a canine unit, a remote-controlled robot, and a surveillance drone.

It is recommended that officers communicate signs and indicators that a suspect is in the throes of a mental health crisis or intoxicated to all other responding officers. It is also recommended that responding officers collaborate with mental health professionals. Law enforcement agencies should provide officers with guidance, techniques, response options, and resources for collaboration, so mental health crises can be resolved in a safe, humane manner. Better coordination between the CNT and the commanders and officers on scene should be a goal.

Policy 419.6 provides that officers are to consider “taking no action or passively monitoring the situation” in response to crisis incidents. They are further instructed to generally avoid tactics that can be “interpreted as aggressive.” Finally, pursuant to **Policy 414.4.1**, which specifically covers barricade situations, officers are directed to “avoid forceful confrontation in favor of stabilization.”

¹⁷ See, generally, Bernard van Leer Foundation, *Community Violence and Young Children: Making Space for Hope* (2012), https://vanleerfoundation.org/wp-content/uploads/2015/12/ECM119_Community-violence-and-young-children-making-space-for-hope.pdf.

The circumstances of this case were ripe for passive monitoring and stabilization. Officers knew Jane Doe was safe; they knew Mr. Chavez was alone in the apartment; they knew Chavez did not possess a firearm; and the CNT knew he was likely intoxicated and suffering from depression and PTSD. Mr. Chavez would have come outside eventually. Unfortunately, some of the Department's tactics could only be interpreted as aggressive; at least nineteen armed officers responded, they parked a nine-ton ARV directly outside the apartment, breached the door with a battering ram and surveillance robot, and smashed out the dining room window. According to the PAU inspector who went to the scene, these actions significantly contributed to the escalation of force on February 17.

It is recommended that when an unarmed suspect barricades themselves alone, posing no active threat to another, the police avoid aggressive tactics and forceful confrontation and passively monitor the situation by waiting for the suspect out.

Policy 408.1.2 defines a "SWAT team" as "a designated unit of law enforcement officers specifically trained and equipped to work as a coordinated team to resolve critical incidents that are so hazardous, complex, or unusual that they may exceed the capabilities of first responders or investigative units."

Policy 408.5.4 provides, "it is recognized that the SWAT team and/or the Sniper Team may be activated independently" in the event of an unplanned event or emergency, such as when a "suspect is barricaded." To activate the SWAT Team independently, "the On-Scene supervisor should make a request to the Watch Commander for the Tactical Unit. The Watch Commander should then contact the SWAT Commander or Tactical Commander, or if unavailable the SWAT Team Leader or a SWAT Assistant Team Leader. The SWAT Commander or his/her designee will evaluate the request and determine if the incident justifies a tactical response. The Watch Commander will then notify the Operations Division Commander of the critical incident as soon as practical."

The only formal request here was for a drone, not a Tactical Unit or SWAT Team. As a result, no SWAT Commander or designee evaluated the situation to determine whether a tactical response was warranted, contrary to policy. Once Sergeant Gora requested a drone team, multiple members of the SWAT Team heard the request for a drone and responded to the scene with most of their specialized equipment, including the ARV, surveillance robot, and break and rake gear, as if a tactical response by the SWAT team had been formally authorized. Had these officers followed the proper chain of command procedure, it is possible the SWAT Commander or other designee would have determined, after evaluation, that the incident did not justify a tactical response. Regrettably, all the fatal shots in this case were fired by members of the SWAT team.

Policy 414.4.1 specifically covers barricade situations and directs officers to "evacuate bystanders, residents and businesses within the inner and then outer perimeter as appropriate."

The only apartment that was evacuated was the apartment adjacent to and mirroring Jane Doe's unit. The purpose was to gain intel about the layout of the apartment in which Mr. Chavez was harboring. Steps were not taken to evacuate the apartment immediately above that of Jane Doe.

Nor were steps taken to move bystanders away from the outer perimeter, over the course of the three and a half hours in which the officers expanded their presence and deployed increasingly dangerous tactics. The neighbors, children included, and staff persons were not out of harm's way, and some were visibly traumatized by the killing. The gunfire was far too close to neighbors.

In addition to avoiding overmilitarized responses, it is recommended that in barricade situations such as this one, where the police have the time and resources, both the inner and then the outer perimeters be evacuated.

Policy 450 addresses body worn camera (hereinafter referred to as BWC) systems, and **Policy 450.3.1** the termination of body worn camera recordings: “[o]nce a BWC recording has been activated as provided in this Policy, it shall not be terminated until the incident has concluded and no further communication with the participants or witnesses is reasonably anticipated. Recording may also be stopped when the member or Supervisor reasonably determines that there would be no further evidentiary or documentary value in continuing to record an incident. The reasons for termination of recording before the conclusion of an incident shall be articulated in the appropriate CAD entry or report of the incident.”

Pursuant to Sgt. Lewellyn's instruction, the four “involved” Officers, Jewell, Guillermo, Repetto, and White, terminated their body-worn camera recordings prematurely. No reason was provided by Sgt. Lewellyn in the CAD log or police report as to why he instructed the Officers to turn off their body cameras. Further communication between themselves, as well as with other participants and witnesses, was reasonably anticipated at the point the officers turned off the cameras. There was evidentiary value in continuing to record the incident in its immediate aftermath. The BWC would have recorded interactions between and the emotional states of involved parties and witnesses; it would have captured the scene. These kinds of recordings afford an accuracy absent from written reports and would have become an essential part of the court record. BWC recordings are critical to transparency, building public trust, and truth-finding.

Whether or not the incident involves officers, it is recommended that all officers at the scene wait to turn off their body-worn cameras until not only the conclusion of the incident itself but also the last of the communications between any officers and any participants or witnesses has taken place.

Policy 310 specifically addresses officer-involved shootings and deaths, and **Policy 310.5.1(g)** the duties of the initial on-scene-supervisor: “[a]s soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction.... Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.”

The initial on-scene supervisor, Sergeant Lewellyn, did not follow this procedure. In the immediate aftermath, he should have told the involved Officers not to discuss the incident with one another, rather than assemble them, tell them to turn off their body-worn cameras, and drive two of them together to the station. Sergeant Lewellyn provided an opportunity for the involved Officers to coordinate their stories. He did not try to preserve their independent recollections of the incident.

It is recommended in all cases of officer-involved-shootings and in-custody-deaths, the on-scene supervisor separate the involved officers from one another as soon as possible and instruct each to not discuss the incident with any other involved officer or percipient witness.

Conclusion

This tragedy provides a learning opportunity for improvements to public safety and policing for the Pleasanton Police Department and all of Alameda County law enforcement agencies.

The overmilitarized police response and the failure to reach out to mental health professionals despite actual knowledge of Mr. Chavez' mental health issues and the existence of appropriate department policies are both very troubling. The lack of appreciation by the officers of the impact of their actions on the residents witnessing the situation, particularly the children who were obviously present, is also concerning. The instructions given by the Sergeant to the involved officers after the shooting were also very problematic and not consistent with transparency, building public trust and truth-finding.

These problems are not unique to the Pleasanton Police Department or Alameda County. Cody Chavez might be here today if not for the Pleasanton Police Department's policy violations and overmilitarized response to a domestic violence complaint with no active safety threat. Had the officers not further agitated Mr. Chavez, even after Jane Doe told crisis negotiators that Mr. Chavez was experiencing mental health issues and was most likely intoxicated, his death might have been avoided. This tragedy provides critical lessons-learned and the opportunity for improvements to public safety and policing for the benefit of the residents of Pleasanton and the entire Alameda County.

Nevertheless, the homicide of Mr. Chavez was justifiable under the law, and the Alameda County District Attorney's Office will not file criminal charges against Officers Brian Jewell and Mario Guillermo. Given the totality of the circumstances, Officers Jewell and Guillermo had a reasonable belief that Mr. Chavez posed an imminent threat of death or serious bodily injury to their fellow officers. Based upon the review of all evidence obtained by the Alameda County District Attorney's Office and the applicable law, Officers Jewell and Guillermo acted in lawful defense of others when they shot and killed Mr. Chavez.