



## PUBLIC RELEASE MEMORANDUM

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Date: January 9, 2025

Subject: Fatal Officer-Involved Shooting

Involved Fontana Police Officers: Sergeant Brian McLane  
Corporal David Campa  
Officer Casey Mutter  
Officer Tyrell Jones  
Officer Leonard Sein

Involved Subject/DOB: Alejandro Diaz, 02/05/1978  
Subject's Residence: Fontana, California  
Incident Date/Time: August 15, 2023, 3:58 p.m.

Case Agent/Agency: Detective Nicholas Paslak  
San Bernardino County Sheriff's Department

Agency Report #: DR# 602300058  
H# 2023-089

DA STAR #: 2024-20205

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**PREAMBLE**

This was a fatal officer-involved shooting by officers from the Fontana Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, video, and audio recordings submitted by the San Bernardino County Sheriff's Department.

**FACTUAL SUMMARY**

On the afternoon of August 15, 2023, around 3:50 p.m., Alejandro Diaz stormed onto the Sierra Lakes Golf Course, shouting, and brandishing a black handgun. Sweating profusely and visibly agitated, Diaz waved the gun around, causing golfers to run and hide. Employees rushed inside the clubhouse and locked the doors.

At 3:54 p.m., multiple witnesses at the golf course began calling 911 for assistance. As the 911 calls came in, police were already on their way. Just six minutes earlier, Witness #1 had called 911 to report her husband, Alejandro Diaz, an off-duty Los Angeles County Sheriff's Deputy, was experiencing some sort of breakdown, had shot a gun inside their home, and had left the residence on foot, armed with two handguns. The Diaz residence was located within the Sierra Lakes Golf Course community in Fontana, only two-tenths a mile from the clubhouse. Witness #1, clearly in great distress, told the 911 operator that she did not know where Diaz had gone.

Fontana Police Sergeant Brian McLane, in his patrol unit near the scene, listened to Witness #1's 911 call on his unit's Live911 system and immediately headed for the golf course. As did Corporal David Campa and Officer Casey Mutter. Officer Leonard Sein and his trainee Officer Tyrell Jones were taking a theft report at a nearby store when they heard the triple tone, alerting all officers to an emergency in progress, over their unit radio. Breaking from the theft call, Officers Sein and Jones quickly headed for the golf course.

As the officers made their way to the course, they learned that multiple 911 callers were reporting a man with a gun was at the Sierra Lakes Golf Course. Fearing they were about to have an active shooter at the golf course, the officers raced to the scene. Several witnesses reported the man with a gun was near "the starter," or hole one, which the officers believed was near the clubhouse. The officers arrived at the course within minutes, stopping their units near the clubhouse. Sergeant McLane, Corporal Campa, and Officer Mutter grabbed their patrol rifles and headed on foot for the putting green in front of the clubhouse in search of Diaz. Officers Sein and Jones quickly caught up, running to join their partners. The officers promptly spotted Diaz about 40 yards away beside a golf cart parked on the cart path that ran along the putting green in front of the clubhouse.

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Diaz wore a gray shirt and black shorts and matched the description given by Witness #1 and the witnesses at the golf course. Sergeant McLane noted that Diaz was so drenched in sweat that it looked like someone had poured water on him. Confident this was the man they were looking for, the officers immediately ordered Diaz to show his hands and not to reach for anything as they moved in his direction. On his knees beside the golf cart, Diaz looked at the officers and raised his left hand but kept his right hand down near his side, hidden from view.

The five officers quickly and cautiously moved across the putting green toward Diaz, fanning out from one another and forming a half-circle between Diaz and the clubhouse. The officers repeatedly commanded Diaz to keep his hands up and not to reach for anything, but Diaz kept his right hand down by his side, hidden from the officers' view. The clubhouse was situated directly behind the officers as they moved across the putting green toward Diaz. Inside the clubhouse, frightened patrons and employees watched the situation unfold. Diaz remained on his knees, facing the officers. As the officers moved in closer, they saw Diaz reaching around on the ground behind his body, as if trying to find something. Believing Diaz was reaching for a gun, the officers told him repeatedly, "Don't do it!"

Diaz suddenly moved from a kneeling position down onto his side and reclined backward, still reaching with his right hand for something on the ground behind him. Officer Jones was close enough to see the black handgun on the ground near Diaz, but the other officers did not see the gun until Diaz sat up, holding it in his right hand. Diaz pointed the gun at the officers, prompting them to fire their weapons in response. Diaz was struck by gunfire and began falling backward, discharging his handgun into the air before falling onto his back and dropping the gun. No officers or civilians were hit by gunfire. Immediately after the shooting, Officer Sein radioed "shots fired" and requested medical aid at 3:58 p.m. The officers quickly approached Diaz, disarmed him, and began rendering aid. Diaz was transported to the hospital, where he later succumbed to his injuries and was pronounced deceased at 4:52 p.m.

**STATEMENTS BY POLICE OFFICERS<sup>1</sup>**

The involved officers were employed by the Fontana Police Department. Each officer drove distinctively marked patrol units and wore marked uniforms identifying them as police officers. The officers' body-worn cameras were activated during the incident under review and each officer was given the opportunity to review body-worn camera video of the incident prior to their interviews. The department issued firearms used by each officer during the officer-involved shooting and the number of shots fired by each is as follows:

Sergeant Brian McLane	Heckler and Koch MP5 rifle	2 shots
Corporal David Campa	Colt M4 Carbine rifle	5 shots
Officer Casey Mutter	Colt M4 Carbine rifle	9 shots

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<sup>1</sup> Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

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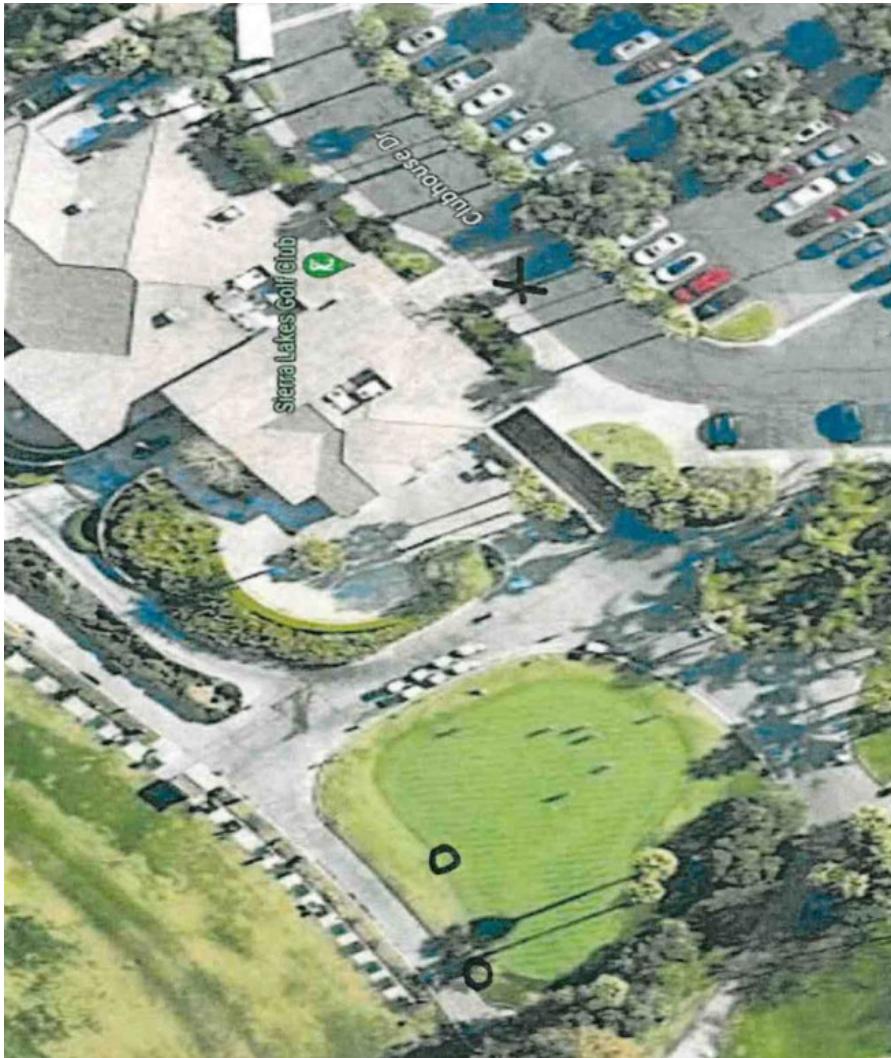
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Officer Tyrell Jones  
Officer Leonard Sein

Glock 17 9mm handgun  
Glock 22 40 caliber handgun

5 shots  
9 shots



Google map image of scene with markings by Officer Sein.<sup>2</sup>

On August 29, 2023, at approximately 1:22 p.m., **Sergeant Brian McLane** was interviewed by Detectives Nicholas Paslak and Justin Carty of the San Bernardino County Sheriff's Department.

On August 15, 2023, Sergeant McLane was on duty as a patrol sergeant for the day shift patrol team. Sergeant McLane's marked patrol unit was equipped with a program called Live911 which allowed him to listen to 911 calls as they were received by dispatch. The

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<sup>2</sup> Each involved officer individually marked his position relative to Diaz at the time of the shooting on a separate map page. During the shooting, the officers stood several feet apart from each other on the putting green. As such, the officers' markings were substantially similar.

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ability to listen to the 911 calls afforded supervising officers with the ability to manage and distribute resources before the call was entered into the system for the patrol units. While on patrol, Sergeant McLane always had the Live911 program running so he could listen to the 911 calls as they were received. Based on his experience, the Live911 program has about a three to seven second delay. Having listened to multiple calls since the program's inception, Sergeant McLane has learned to discern which calls may require the attention of a supervisor as opposed to the calls that require just a standard response from patrol officers.

On August 15, 2024, at about 3:30 p.m., Sergeant McLane was in his patrol unit on Palmetto Avenue, just south of Baseline Road. Sergeant McLane heard a 911 call come in over the Live911 system. The caller was a female (later determined to be Witness #1) and as she spoke to the dispatcher, Sergeant McLane noted Witness #1 had difficulty communicating and seemed very emotional. As the dispatcher tried to elicit more information, Witness #1 was unable to answer simple questions quickly with good information. Because Witness #1 seemed to have a hard time communicating what had happened, Sergeant McLane believed Witness #1 was emotionally overwhelmed. Sergeant McLane heard Witness #1 say something about, "There was a gunshot that had happened in the house." Upon hearing that a gun had been fired in the residence, Sergeant McLane began heading toward the house. Sergeant McLane heard the "triple tone" go out over their primary channel. The triple tone is used to put all officers on notice when a call requiring law enforcement response is dangerous, for instance, gunshots being fired or a felony crime in progress.

Sergeant McLane turned his unit radio down to focus on the Live911 system so he could hear the 911 call between Witness #1 and the dispatcher as it developed in "real-time." As he drove to the house, Sergeant McLane heard the dispatcher ask Witness #1 if it was her husband who had fired the shot and whether the shot was fired intentionally at her or at the wall. Witness #1 was unable to answer the dispatcher's question and replied something to the effect of, "Well, I hope it was intentionally at the wall." Witness #1 reported that her husband (later identified as Alejandro Diaz) was "off-duty and that his gun was his duty weapon."

Sergeant McLane quickened his response to the location, activating his lights and sirens to get around traffic when he came upon it. As Sergeant McLane reached an intersection at Sierra Lakes Parkway, he heard Witness #1 say that Diaz had left the house on foot, armed with two handguns. Sergeant McLane could see that the 911 call had originated from a house just north of Sierra Lakes Golf Club and confirmed this information with dispatch. Sergeant McLane believed that the "path of least travel" for Diaz was to go straight south to the golf course. Sergeant McLane knew he would drive past the golf course on his way to the Diaz residence, so when he got to Clubhouse Drive, he turned west and headed toward the golf course. Sergeant McLane got to the intersection of Augusta Drive and Clubhouse Drive, which was right before the start of the golf course.

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Sergeant McLane advised over his police radio that he was "97 in the area"<sup>3</sup> and would be standing by at Augusta and Clubhouse for more information. Sergeant McLane knew additional officers were responding to the location, so he staged at that intersection.

Sergeant McLane's thinking was, "We've got a man who was involved in some type of domestic incident that rose to the level of at least one gunshot being fired inside the property, the female who is clearly confused and in an emotionally heightened state and not really able to articulate answers to simple questions that the dispatcher is asking," and Sergeant McLane was concerned that even though Witness #1 said Diaz had fired into a wall, there was a possibility that someone in the house might have been injured. However, given the fact that Diaz had left the residence on foot and was armed with two handguns, Sergeant McLane was also concerned about the fact that Diaz was now in an open area which was heavily populated by people on the golf course and the golf club parking lot. Familiar with the area around the golf course, Sergeant McLane knew it was always packed at that time of day. Because of this, Sergeant McLane wanted to wait there for additional resources. Additionally, Sergeant McLane did not want to pass by Diaz while driving his marked police unit and push Diaz into a hiding spot. Sergeant McLane turned his unit radio back up and heard the dispatcher say they were now receiving multiple 911 calls about a man with a gun at the golf course and the golf clubhouse. Sergeant McLane looked at his screen and saw all the 911 calls populating regarding a man with a gun at the golf course.

At this point, Sergeant McLane's prevailing thought was that they had an active shooter situation unfolding. Sergeant McLane thought, "We've got a guy who's already willing to shoot, possibly injure somebody at his house," and "now, he's put himself into a populated area that is wide open, armed with two handguns." Based on Sergeant McLane's training and experience, he knew that public places with soft security were common targets for active shooter engagements. Sergeant McLane knew that civilians enjoying recreation at the golf course would not be "in a condition mentally to defend themselves, physically defend themselves, if they're just there for downtime, and this guy comes around with a handgun."

Sergeant McLane started driving slowly, heading westbound on Clubhouse Drive toward the clubhouse. The golf course was on the north side of the street, so Sergeant McLane drove slowly to ensure he didn't pass by Diaz without seeing him. Sergeant McLane unlocked his MP5 rifle from the unit lock and placed it on his lap so he could respond more quickly if he started being shot at while he drove.

Sergeant McLane saw a man wearing a maroon shirt and black shorts in the distance at the "start of the golf course," which was down the street from the location from which the original 911 call had originated. Sergeant McLane believed Diaz had been described as wearing a gray shirt and black shorts but asked the dispatcher to verify Diaz's description. While waiting for dispatch to reply, Sergeant McLane watched the man in the maroon

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<sup>3</sup> On scene.

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shirt. Dispatch advised that Diaz wore a gray shirt and black shorts. Based on this description and the behavior of the man in the maroon shirt, Sergeant McLane ruled the man out as the suspect.

Sergeant McLane drove into the golf course parking lot but did not park directly in front of the clubhouse because he didn't know where Diaz was. Dispatch had advised that the 911 callers were saying the man with a gun was near "the starter." Sergeant McLane did not know what "the starter" was but believed it was probably "hole one or near hole one," which Sergeant McLane surmised was near the clubhouse. Sergeant McLane got out of his unit and slung his MP5 onto his body to secure it. Concerned about an active shooter situation, Sergeant McLane's goal was to find Diaz and draw Diaz's attention toward himself. Sergeant McLane believed that drawing Diaz's attention to himself would ensure that Diaz would not be focused on golfers, staff, and any other nearby civilians. Residences surrounded the golf course, so Sergeant McLane was also concerned about Diaz making it to one of the houses. Sergeant McLane wanted to draw Diaz's attention to establish communication with him.

Corporal Campa and Officer Mutter arrived at the golf course parking lot and met up with Sergeant McLane as he exited his vehicle. Over the radio, Sergeant McLane asked for air support and advised that he, Corporal Campa, and Officer Mutter were "deploying on foot." Sergeant McLane believed air support was critical because they did not know where Diaz was. The officers started walking down a walkway west of the clubhouse, which led to a putting green. A split second after they began walking, Officers Sein and Jones arrived and joined Sergeant McLane, Corporal Campa, and Officer Mutter. Sergeant McLane had worked with the officers, both as a peer and as a supervisor. Sergeant McLane had attended multiple "movement trainings, active shooter trainings, range trainings, and de-escalation trainings" with the officers. He was confident the team did not need to verbalize their plan, which was to go out to approach Diaz on foot and try to establish communication.

The team of officers walked along the walkway toward the putting green. There was a "huge open area" to the officers' left, front, and right. Sergeant McLane saw golfers or staff to their north and west, down on the other side of a tree line. A golf cart was parked beside the putting green just before the tree line. Sergeant McLane saw Diaz wearing black shorts and a light gray shirt beside the golf cart. Diaz's light gray shirt had a dark U-shaped sweat line over the chest, up toward his shoulders, and around his neck. The sweat line was so dark that it looked like someone had poured water onto it or like someone's shirt would look after a very intense workout. Based on Diaz's appearance, combined with the statements given during the 911 call, Sergeant McLane believed Diaz was experiencing "some type of manic physical response to reality," whether it was fueled by alcohol, drugs, or lack of sleep, Sergeant McLane did not know. Sergeant McLane was confident this was the man who had reportedly left his house armed with two guns. Sergeant McLane did not initially see anything in Diaz's hands.

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Sergeant McLane estimated Diaz was 40 yards away. There was nothing between Diaz and the officers as they approached him, so there was no cover or concealment where the officers could stop and try to communicate to Diaz from a position of safety. Sergeant McLane knew they had to get closer to Diaz to draw his attention to them and establish communication. The goal was to talk to Diaz, to try to de-escalate the situation to a point where they could detain Diaz and conduct a criminal investigation or a mental health evaluation.

Sergeant McLane told his partners that he saw Diaz right ahead of them, and they continued walking down toward Diaz, closing the distance. The officers did not run toward Diaz but made a tactical approach, walking toward Diaz at a “nice, smooth, comfortable” pace. As they neared Diaz, Sergeant McLane said, “Hey man, hey bro, show me your hands. Let me see your hands.” Sergeant McLane repeated this multiple times. The other officers gave similar commands, and there was no panic, yelling, or vulgarity involved.

Diaz was standing near the rear passenger side of the golf cart. Diaz was facing the golf cart and was “just moving around.” Diaz’s “actions did not make a whole lot of sense or have any productive reasoning to them” as far as Sergeant McLane could decipher. When Sergeant McLane first started trying to communicate with Diaz, Diaz looked his way and made eye contact with him. Sergeant McLane was hopeful that they would be able to establish a positive line of communication. However, Diaz quickly “looked away and went back to these, these movements around his golf cart.” Because Diaz was moving his hands around, they were not always in view, which meant Sergeant McLane couldn’t always see them.

As the officers approached, Diaz turned away and went down to his knees. Diaz’s left side faced toward Sergeant McLane. Diaz’s elbows were bent and pointed to the ground and his hands were up by his head. Sergeant McLane thought Diaz was hearing what the officers were saying to him because he was in a submissive position that would allow the officers to safely detain Diaz. However, that was “very short lived,” because Diaz put his hands down onto the grass. Sergeant McLane still did not see a gun, but then the next moment, Diaz had a gun in his right hand. Sergeant McLane thought, “Fuck, he’s got a gun!” Sergeant McLane did not know where the gun came from, whether it came from the golf cart or somewhere on the ground. Sergeant McLane held his MP5 rifle at the low ready position, level with his chin, and wasn’t looking through the rifle’s sight up until that point.

When Diaz grabbed the gun, Sergeant McLane heard his partners giving verbal commands to the effect of, “Show us your hands! Don’t do it!” Sergeant McLane briefly stopped when he saw Diaz with the gun, assessed the situation, and then continued moving forward. Diaz was on his knees with the gun in his right hand as he turned to face Sergeant McLane. When Sergeant McLane saw Diaz with the gun, he focused on Diaz’s gun because he realized that the threat to his life and the lives of his partners was elevated. Sergeant McLane brought up his rifle and pointed it at Diaz’s center of mass.

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Diaz faced Sergeant McLane and rolled to his left side with the gun in his right hand. Diaz's gun was initially down, with Diaz's "palm facing down as he held it toward the putting green," but then Diaz brought the gun up and pointed it right at Sergeant McLane. As soon as Diaz raised the gun, Sergeant McLane saw the muzzle of the gun pointed right at him. Even though the gun was pointed at Sergeant McLane, Sergeant McLane's partners were right next to him. When Sergeant McLane saw the muzzle of Diaz's gun pointed right at him, he realized the threat to his and his partners' lives was imminent. Sergeant McLane's fear was "through the roof." Sergeant McLane fired two rounds in quick succession at Diaz to stop the threat he posed to his life and the lives of his partners. Sergeant McLane estimated he was 10 to 15 yards away from Diaz when he fired and believed he was the first officer in the group to fire at Diaz. Sergeant McLane side-stepped to his left as he fired and heard other officers' gunfire. Sergeant McLane saw several rounds hitting the grass around where Diaz sat. Sergeant McLane saw Diaz's gun "go up to the air and then the next thing" that Sergeant McLane remembered as he sidestepped to the left, Diaz's gun had fallen and was "now right underneath his arm." Sergeant McLane did not see Diaz fire his handgun.

When Sergeant McLane saw Diaz's gun fall to the ground, he told his partners to "cease fire" or to stop firing. Sergeant McLane believed Diaz was still a threat because he could see the gun beneath Diaz's arm, but with the gun no longer pointed at the officers, the threat was no longer imminent. Sergeant McLane believed Diaz had been struck by gunfire because Diaz was lying on his back with his arms bent and his hands by his head. Sergeant McLane kept his eyes locked on the gun as he and the other officers quickly approached Diaz. Sergeant McLane grabbed the handgun Diaz had pointed at him and moved it a few feet away so that it was out of Diaz's reach.

Sergeant McLane knew he and the officers needed to provide medical aid to Diaz. Diaz was positioned partly on the putting green and partly on the cart path. Sergeant McLane grabbed Diaz's arms and another officer grabbed Diaz's legs and they moved Diaz onto the putting green so they would have a solid foundation to render medical care. As they began assessing Diaz for injuries, Sergeant McLane requested medical aid come to the scene. While waiting for paramedics, the officers rendered medical aid.

Diaz had an empty holster on the waistband of his shorts, but Sergeant McLane never saw a second gun and did not know where the second gun was located. Sergeant McLane and the other shooting officers were transitioned away from the scene, relieved by other uninvolved officers. Sergeant McLane estimated only a minute and a half had passed between the time he stepped out of his patrol until the officers began rendering aid after officer-involved shooting.

On August 29, 2023, **Corporal David Campa** was interviewed by Detectives Nicholas Paslak and Justin Carty of the San Bernardino County Sheriff's Department.

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On August 15, 2023, Corporal Campa was on duty, assigned to the day shift patrol. Corporal Campa's patrol unit was equipped with the Live911 system which allowed him to listen to 911 calls when they came into their dispatch center. Shortly before 4:00 p.m., Corporal Campa listened to a 911 call placed by a female who was screaming and out of breath. Corporal Campa thought the call was "out of the ordinary" because the female sounded like she was scared and in distress. The Live911 system provided a "geo map" showing the area from which the call had been placed. Upon seeing the call had originated from the Sierra Lakes area, Corporal Campa began driving to the location. While driving to the location, Corporal Campa heard the female say that her husband had shot into the wall. The caller was not answering all of the dispatcher's questions, which Corporal Campa attributed to her being in shock or distress. The dispatcher asked the caller if her husband had shot at the wall "on purpose," and she answered, "I don't know. I hope so." Corporal Campa thought "somebody's life was in danger" because a rational person would not shoot a gun in their house. The female caller described her husband as wearing a gray shirt and black shorts and advised he had left the residence. Either the female caller or her son told dispatch that Diaz was armed with two guns when he left the residence.<sup>4</sup> The caller advised that her husband was a deputy with the Los Angeles County Sheriff's Department. Upon learning that Diaz was a law enforcement officer, Corporal Campa knew that Diaz was well trained, would know police tactics, and would therefore know the officers' tactics as they encountered him.

Corporal Campa and Officer Mutter were dispatched to the location; Sergeant McLane advised he was en route as well. As Corporal Campa drove down Clubhouse Drive, he saw Sergeant McLane staged near the scene at Sierra Lakes Golf Course, waiting for additional officers to arrive. Corporal Campa heard dispatch advise that several parties were reporting there was a man with a gun at Sierra Lakes Golf Course near hole number one. Corporal Campa thought, "Okay, this guy, he has some type of domestic argument with his wife. He shot a round in the house, at least one round that I know of. He's armed with two guns. Now he ran, drove, I don't know how he got there, but he's at the Sierra Lakes Golf Course, and you've got multiple people calling saying he's armed with a gun."

Corporal Campa feared they had an active shooter situation because Diaz had fired a gun in his house, had left the residence while armed with two handguns, and now there were multiple parties at the golf course reporting a man with a gun. Recognizing that people's lives were in danger, Corporal Campa knew they had to find Diaz. Corporal Campa's goal was to contact Diaz to detain or arrest him and conduct an investigation to determine what if any, crime he committed.

Corporal Campa and Sergeant McLane drove to the main entrance at the front of the clubhouse. Several cars were parked in the golf course parking lot, so Corporal Campa knew several people were present at the golf course. Corporal Campa parked his unit and retrieved his department-issued Colt M4 patrol rifle from the trunk, racking a round into the chamber. Corporal Campa retrieved his rifle because he knew they might

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<sup>4</sup> Corporal Campa could not recall which party told the dispatcher this.

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encounter Diaz from 100 yards away on the golf course, which was essentially an open field. The rifle would better equip Corporal Campa if he needed to defend his life, his partners' lives, or the lives of citizens from that distance.

Sergeant McLane called for 40-King, the Sheriff's helicopter, to assist in locating Diaz. Corporal Campa knew they did not have "the comfort to wait and see" whether Diaz started shooting people. With lives in danger, Corporal Campa knew they needed to find Diaz immediately. Officer Mutter joined Corporal Campa and Sergeant McLane as they began walking from the parking lot toward the golf course. Officer Sein and his trainee, Officer Jones, caught up shortly after. As the officers approached the course, Corporal Campa saw a small cart path west of the clubhouse's front entrance, which Corporal Campa believed led to hole one. Corporal Campa saw two golf carts on the cart path, about 30 to 40 yards away. Corporal Campa noticed a man wearing a gray shirt and black shorts, matching the description given by the 911 caller, sitting down near the two golf carts.

As they walked past the main clubhouse, Officer Campa saw people standing at the clubhouse. Corporal Campa yelled at them, "Where's he at?" The people pointed toward the man (later identified as Diaz) sitting near the golf carts. As the officers approached Diaz, Corporal Campa saw three to four golfers in the distance to the north. Seeing the golfers so far away from their golf carts was strange, and Corporal Campa thought, "Something's going on here." Corporal Campa was not sure whether Diaz had tried to kill his wife, but until the officers had a chance to speak with her, they did not know whether Diaz had shot at the wall or tried to kill her. As the officers made their approach, Diaz started "yelling something toward" the officers and pointed to his west "saying something like, 'Hey, he's over there, he's over there.'" Corporal Campa knew something was not adding up because everyone at the clubhouse was saying that Diaz was the man with the gun. Corporal Campa believed Diaz was trying to lure the officers into an ambush to kill them. Corporal Campa held his rifle at the low-ready, looking at Diaz over the top of his optic sights as they approached from a distance. Corporal Campa began looking at Diaz through his rifle's sights as he got closer to Diaz.

When the officers were about 20 yards away from Diaz, they began giving Diaz commands to show his hands. Diaz was sitting down, facing the officers with his legs extended forward. Diaz had his right hand behind his back, out of view. Sergeant McLane was positioned to the right of Corporal Campa. Officers Mutter, Jones, and Sein were to the right of Sergeant McLane, but Corporal Campa did not recall in which order they stood. The officers gave Diaz multiple commands to show his hands and told Diaz, "Don't do it." Diaz acknowledged the officers by lifting his left hand upward. Corporal Campa saw Diaz's left palm but could not see his right hand. As the officers neared Diaz, Corporal Campa heard what he believed, based on his training and experience, was a gun falling to the ground. Corporal Campa did not see a firearm near Diaz but could see that Diaz was moving his right arm, which he kept concealed from the officers. Corporal Campa believed that everyone stopped their approach toward Diaz at this point. Diaz was not

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listening to their commands and was concealing his right hand from their view. Corporal Campa and his partners were in front of Diaz without cover or concealment.

Corporal Campa believed Diaz had a gun and feared Diaz was going to shoot the officers. Diaz then leaned to his right side, reclining backward at a downward angle, and turned back to face the officers. When Diaz turned toward the officers, Corporal Campa saw a black semi-automatic handgun in Diaz's right hand. Diaz started "wheeling" the gun toward the officers. When Diaz pointed the gun directly at the officers, Corporal Campa had no doubt Diaz intended to kill him and his partners. Fearing that he and his partners were going to die, Corporal Campa fired several rounds from his rifle at Diaz to stop his attack. Corporal Campa aimed for Diaz's center mass area and estimated he fired "four to six rounds, maybe give or take one or two," in quick succession from a distance of 15 yards. As Corporal Campa fired, in his periphery, he saw Sergeant McLane also shooting. Corporal Campa knew his partners had also fired but did not know how many rounds they fired.

The officers immediately approached Diaz, who had fallen onto the pathway/curb area. The officers moved Diaz onto the grass, where they administered aid to him until medics arrived and took over Diaz's care.

On August 30, 2023, **Officer Casey Mutter** was interviewed by Detectives Nicholas Paslak and Francisco Demara of the San Bernardino County Sheriff's Department.

On August 15, 2023, Officer Mutter was on duty, assigned to the day shift patrol. Officer Mutter's patrol unit was equipped with the Live911 system, which allowed him to listen to 911 calls when they came into their dispatch center. Shortly before 4:00 p.m., Officer Mutter was sitting in his patrol unit behind Home Depot on Sierra Lakes Parkway and Citrus Avenue, preparing to make a phone call when he received a message on his computer from dispatch. Dispatch asked Officer Mutter to listen to a live 911 call.

Officer Mutter tuned into the 911 call and heard a female caller who sounded out of breath and scared. The caller stated that her husband had shot the wall inside their house. The dispatcher began asking the caller if she and her husband were arguing or if the shooting was accidental. The caller was "not forthcoming with a lot of information." When the dispatcher asked if the shooting was accidental, the caller said she thought it was but wasn't sure. Officer Mutter believed there was "something more going on," likely a domestic dispute, and that the shooting was more than "just an accidental discharge in the house."

Still listening to the 911 call, Officer Mutter began driving quickly toward the 911 caller's residence north of Sierra Lakes Golf Club. When Officer Mutter heard the caller say that her husband (later identified as Diaz) had left the residence, he slowed down because he believed there was no longer an immediate threat. Officer Mutter was close to the residence and wanted to ascertain where his backing officers were because he did not

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want to drive up to the house alone and find an armed suspect in a potential domestic dispute who had already fired a round inside the house waiting for him outside the home.

While Officer Mutter was driving north on Medinah Street, approaching Clubhouse Drive, dispatch advised they were receiving calls that there was a man (later identified as Diaz) armed with a gun on the golf course. Familiar with the golf course, Officer Mutter knew it was common for people to be there at that time of day. Recognizing the danger to the public and the potential for 30, 40, or 50 victims at the golf course, Officer Mutter immediately turned onto Clubhouse Drive and went directly to the golf course. As he drove into the golf course parking lot, Officer Mutter saw approximately 30 to 40 cars parked there. Based on this, Officer Mutter knew people were present at the golf course, and his main goal was to get in between them and Diaz. Officer Mutter estimated it took him about two to two and a half minutes to get to the golf course from the Home Depot parking lot. Diaz's home was north of the clubhouse, so Officer Mutter parked on the eastern side of the clubhouse, hoping to cut Diaz off if he was walking toward the clubhouse.<sup>5</sup> Officer Mutter grabbed his patrol rifle, got out his unit, and chambered a round. Officer Mutter chose his rifle because he believed it was the best weapon to have should he need to "take action at a distance" against someone armed with a handgun.

Dispatch advised that witnesses were reporting the armed man was near the starting point of the course. Having previously golfed at the Sierra Lakes Golf course, Officer Mutter knew the starting point would be closer to hole one on the south side of the clubhouse. Officer Mutter walked to the south side of the clubhouse, where he met Sergeant McLane, who had just arrived, along with Corporal Campa. When Officer Mutter met up with Sergeant McLane, he learned through dispatch that Diaz was reportedly armed with two guns.<sup>6</sup>

Officer Mutter heard over the radio that a BearCat (Fontana Police Department's large, armored vehicle) and the Sheriff's helicopter had been called to respond to the golf course. Multiple callers were reporting a man was waving a gun around at the golf course. Based on his training and experience, Officer Mutter knew that public places with soft security were common targets for active shooter situations. Officer Mutter did not know what Diaz's intentions were, but he knew they needed to quickly contain Diaz to prevent him from becoming an active shooter. Because of this, the officers did not have time to formulate a plan. However, Officer Mutter had worked with Sergeant McLane and Officer Campa for several years and knew, based on their collective training and experience, that they all recognized the need to immediately locate Diaz and contain him to prevent him from harming anyone.

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<sup>5</sup> As shown on Google Maps, there was no parking lot on the north side of the clubhouse; the parking lots were located south and east of the clubhouse.

<sup>6</sup> Officer Mutter did not learn that Diaz was an off-duty Los Angeles County Sheriff's deputy until after the officer-involved shooting.

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As the officers walked toward the golf course, Officer Mutter saw golfers running north on the driving range, which brought Officer Mutter's attention just to the left, where he saw two golf carts and Diaz on the pathway at the starting point area for hole one. Diaz was about 35 to 40 yards away from the officers. Diaz wore a gray shirt and black shorts, matching the description given by witnesses. Diaz's shirt was drenched in sweat. Diaz stood at the back of one of the golf carts and looked like he was trying to blend in as a golfer, rummaging as if he was getting something out of a bag on the back of the golf cart. Diaz pointed his arm southward toward a thick tree line, and Officer Mutter heard Diaz say there was someone with a gun in the bushes. It wasn't easy to see anything beyond the trees. Officer Mutter believed Diaz was trying to "bait" the officers in to get them closer and to divert their attention away from himself so "he could try to kill one of us."

Sergeant McLane began giving commands to Diaz to get down and to put his hands up. Diaz turned toward the officers, fell to his knees, and put his hands in the air. Officer Mutter felt a brief sense of relief because it appeared Diaz would surrender peacefully, and no one would get hurt. The officers walked along the ramp in front of the clubhouse, continuing their approach toward Diaz. Officer Mutter saw several people standing behind the pillars at the front of the clubhouse. To Officer Mutter's left were Officer Campa and Sergeant McLane. The officers fanned out, getting in between Diaz and the clubhouse. Officer Mutter wanted to get between Diaz and the clubhouse because he did not know Diaz's intentions. Officer Mutter saw that Officers Stein and Jones had joined the officers on the green as they approached Diaz.

To reach Diaz, the officers had to traverse a large putting green. There was no cover or concealment between Diaz and the officers. Officer Mutter held his rifle at the high-ready position, pointed to Diaz, and looked over his optics as they walked toward Diaz. The officers continued giving Diaz commands. Diaz dropped his right hand down to his side, out of Officer Mutter's view, and lowered his left hand, parallel with his shoulder, as if he was "complying with that one arm having it in the air, but in the meantime, his right hand was down moving around" out of Officer Mutter's view. Officer Mutter ordered Diaz to "stop reaching, stop reaching, don't grab it." Sergeant McLane was also giving Diaz commands, so Officer Mutter stopped giving commands to avoid confusing Diaz.

Still on his knees, Diaz then "kind of like almost falls to his right side and onto the ground, like he's kind of laying on his elbow," still facing toward the officers. Diaz's left hand was still up, but his right hand was out of sight and appeared to be reaching for something on the ground. Officer Mutter could not see what Diaz was reaching for, but based on the information he had received, he believed Diaz was reaching for a gun. Officer Mutter told Diaz, "Don't reach, don't reach!" Diaz turned from a side laying position onto his buttocks and back, and then Officer Mutter saw Diaz's right hand come up holding a black semi-automatic handgun. Diaz swung the handgun over and pointed it at Officer Mutter. Officer Mutter was terrified and thought, "This guy's gonna shoot out with me; he wants to kill me." To stop the threat posed by Diaz, Officer Mutter fired his rifle at Diaz, who was 15 to 20 yards away, aiming for his center mass/torso area. Officer Mutter fired in rapid

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succession and believed he fired five to seven rounds in a southwest direction. Officer Mutter stopped firing when Diaz fell onto his back with his arms out to the side of his body and was no longer pointing a gun at him.

The officers approached Diaz. Officer Mutter saw that Diaz's black handgun was lying on the green next to Diaz, so he kept his rifle pointed at Diaz until he was confident Diaz was no longer able to pick the gun back up to shoot the officers. Diaz had fallen onto the ground at the curb line of the cart path, so Sergeant McLane and another officer moved Diaz onto the grass, where they began administering medical assistance. The officers immediately called for medical aid to respond. Officer Mutter saw a second gun in Diaz's pocket. While officers tended to Diaz's injuries, Officer Mutter checked downrange from where the officers had fired to make sure no one had been hurt, and no houses had been hit by gunfire. Officer Mutter walked back to the scene and saw additional officers had arrived. Officer Mutter told the officers about the golfers he had seen running north through the driving range because he knew they had probably witnessed what had happened. Officer Mutter then waited in the parking lot to be transported back to the police station.

On August 30, 2023, **Officer Tyrell Jones** was interviewed by Detectives Francisco Demara and Nicholas Paslak of the San Bernardino County Sheriff's Department.

On August 15, 2023, Officer Jones was on duty, assigned to the day shift patrol. Officer Jones had been a police officer for eight weeks and was in field training. Officer Jones' field training officer was Officer Leonard Sein, who rode along with him in the patrol unit.

Officers Jones and Sein were handling a theft call at Kohl's on Summit Avenue, north of the 210 freeway in Fontana, when dispatch aired a call for service regarding a male who had fired two gunshots inside a residence at the Sierra Lakes Golf Course.<sup>7</sup> Officer Jones was not familiar with the area but was assisted by Officer Sein. Officer Jones activated his patrol unit's lights and sirens and headed to the location. While driving to the golf course, Officer Jones listened to dispatch as it updated details regarding the call for service. Dispatch advised that the male had left the residence with two firearms. Upon hearing this, Officer Jones was concerned about an active shooter situation because the male had geared up with more than one firearm. Officer Jones then heard dispatch advise that the male was an off-duty sheriff's deputy. This news increased Officer Jones' stress level because it meant the male suspect was trained in firearms tactics. Dispatch advised the male was wearing a gray shirt and black pants.

Officer Jones parked on the south side of the clubhouse. The parking lot was nearly full, with only a few parking spaces open on the south end. Seeing so many people at the golf course and knowing the suspect was a trained law enforcement officer, Officer Jones feared they might be facing an active shooter situation. Upon exiting his patrol unit, Officer Jones saw Sergeant McLane, Corporal Campa, and Officer Mutter armed with rifles

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<sup>7</sup> Officer Jones was not using the Live 911 system, so he did not hear the 911 call.

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walking across the putting green, west of the clubhouse, toward an individual on his knees just outside the putting green. Officer Jones heard his partners yelling commands at the individual (later identified through investigation as Diaz) to "Show me your hands, show me your hands!" Officer Jones ran to catch up to his partners. Officer Jones saw several civilians at the clubhouse beside the putting green.

Diaz wore a gray shirt and black pants, matching the description aired by dispatch. Diaz faced the officers, held his left hand up, palm flat, and waved at the officers as if to wave them off. Officer Jones saw the handle of a black handgun in a black holster on Diaz's waistband. Officer Jones drew his firearm and pointed it at Diaz. As the officers walked toward Diaz, Diaz kept his left hand in the air but reached with his right hand toward the ground beside him as if trying to find something on the ground. Officer Jones saw a black handgun on the ground next to Diaz, near his knee. The officers gave Diaz repeated commands to show his hands. Diaz ignored the commands. Diaz continued reaching with his right hand for the firearm on the ground but kept missing it because, instead of looking at the ground, Diaz looked at the officers and glanced to his left and right. Diaz was "mumbling," and Officer Jones could not understand what he said.

Officer Jones headed northwest. To Officer Jones' left were Officer Sein, Officer Mutter, Sergeant McLane, and Corporal Campa. The officers began walking across the putting green toward Diaz as a team. There was no cover or concealment between the officers and Diaz. As they approached Diaz, the officers gave multiple orders to Diaz, telling him not to grab the firearm and to show his hands. Officer Jones kept his handgun pointed at Diaz, looking alternatively over his gun's sights and through his gun's sights as he approached Diaz. Officer Jones was scared because Diaz was not following any of their orders and continued reaching for the gun on the ground. Diaz kept his head up and looked to his left and right while reaching toward the gun on the ground with his right hand, repeatedly missing it. This scared Officer Jones. As the officers got closer to Diaz, Officer Jones saw Diaz's right hand touch the handgun on the ground and heard one of his partners yell, "Don't do it! Don't do it! Don't do it!" Diaz grabbed the handle of the firearm and turned onto his back. Diaz held his head up, looking straight toward Officer Jones with the gun "slightly behind his shoulder." Diaz then aimed the handgun at Officer Jones and his partner, Officer Sein. Officer Jones was "absolutely terrified," and knew he could die. Officer Jones fired four to five rounds at Diaz's center of mass to stop the threat. Officer Jones stopped firing when Diaz fell onto his back, with both arms out to his side and dropped the firearm. Diaz's gun landed beneath Diaz's right armpit.

The officers approached Diaz. Sergeant McLane took the firearm from beneath Diaz's armpit and moved it away from Diaz. Officer Jones holstered his handgun and helped Sergeant McLane move Diaz onto the grass. Officer Jones used a towel to "plug up holes" in Diaz's abdomen to try to stop the bleeding. Officer Jones initiated CPR while another officer held the towels in place to control the bleeding. Medics arrived within about two minutes and took over Diaz's medical care.

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On September 6, 2023, **Officer Leonard Sein** was interviewed by Detectives Nicholas Paslak and Justin Carty of the San Bernardino County Sheriff's Department.

On August 15, 2023, Officer Sein was on duty, assigned as a field training officer to Officer Jones on the day shift patrol. As a field training officer, Officer Sein supervised Officer Jones and guided him as a trainee police officer. At about 3:45 p.m., Officers Sein and Jones were taking a theft report at Kohl's on Summit Avenue when they heard the triple tone (emergency in progress) from dispatch. Dispatch advised that a woman had called to report her husband had just fired a gunshot inside their residence. Dispatch advised that the husband (later identified as Diaz) had walked away from the residence and was headed toward the Sierra Lakes Golf Course. Officer Sein told Officer Jones to start heading toward the golf course, less than a quarter mile from the reporting party's home. As they drove to the scene code three (emergency lights and sirens), dispatch provided updates regarding the call. Dispatch alerted responding officers that Diaz was reportedly an off-duty police officer, and according to his son, Diaz had taken two firearms with him when he left the house.

Based on his training and experience, Officer Sein knew that public places with soft security were common targets for active shooters. Knowing that Diaz had already fired a gunshot in his house and was now walking toward the golf course with two guns, Officer Sein believed they would be facing an active shooter. Having golfed at the Sierra Lakes Golf Course many times, Officer Sein was "very familiar" with the location and knew multiple people would be present during that time of day, both on the course and in the clubhouse. Officer Sein knew it was a dangerous situation with golfers likely drinking alcohol, which would decrease their level of awareness and affect their ability to notice and react to someone on the golf course armed with a gun.

Officer Sein was anxious and feared for the safety of the public. Additionally, Officer Sein feared for his own safety and that of his partner, a new officer who had not yet experienced something like this in his career. Dispatch advised that Diaz had walked onto the golf course with the firearms and was reportedly near "the starter." Officer Sein knew the starter was located southwest of the clubhouse.

The golf course parking lot was full when they arrived. Officers Sein and Jones parked facing west in front of the front doors to the clubhouse. Sergeant McLane, Officer Mutter, and Corporal Campa had already arrived on scene and were exiting their patrol units. Sergeant McLane, Officer Mutter, and Corporal Campa walked toward the starter with their rifles in hand. Officers Sein and Jones joined them. Officer Sein did not grab his rifle because Sergeant McLane, Officer Mutter, and Corporal Campa were already armed with their rifles. Because the officers believed they had an active shooter situation unfolding, it was an emergency, and as a result, they had no time to develop a tactical plan. Based on their training, Officer Sein knew they needed to get to Diaz quickly. The five officers fanned out as they walked. Officer Sein veered off to his right, passing in front of the clubhouse but looking to his left toward the starter. In his periphery, Officer Sein saw

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people inside the clubhouse looking outside. In the distance, Officer Sein saw three people near the driving range who looked like they had scattered or run away.

Officer Sein heard his partners begin to yell at a subject (Diaz) who was about 40 or 50 yards away. Diaz was on his knees, leaning down in front of a golf cart stopped beside the curb on the “roundabout” cart path on the north side of the putting green. Diaz matched the description given in the call and wore a gray shirt and black shorts. Officer Sein “immediately started to approach [Diaz] off to the right of the other three officers,” who moved toward Diaz.<sup>8</sup> Officer Sein’s goal was to take Diaz into custody and to get him the help he needed. The clubhouse was directly behind the officers as they made their approach. Officer Sein held his handgun with both hands extended out toward Diaz. Diaz faced south. Diaz held his left hand up in the air but concealed his right hand. It looked like Diaz “was trying to grab for something with his right hand” in the grass on the putting green on the other side of the curb. Diaz looked at the officers, then back behind himself, and then back at the officers, and behind himself again multiple times. The officers were about 20 yards from Diaz.

Officer Sein could not see what Diaz was reaching for but, based on the reports detailed in the call for service, believed Diaz was reaching for a firearm to use against the officers. Officer Sein yelled at Diaz, “Don’t do it, don’t do it.” At that moment, Diaz rolled over onto his back and “kind of sits upright” and pointed a black handgun directly at Officer Sein. Officer Sein “absolutely knew that it was a firearm.” Diaz held the gun with one hand extended out straight from his body. There was no cover or concealment between Diaz and the officers. The clubhouse was directly behind Officer Sein. When Diaz pointed the gun at him, Officer Sein feared for his life, the lives of his partners, and the public. Officer Sein believed Diaz was going to use the gun to kill them. To stop the threat, Officer Sein fired his Glock 22 .40 caliber handgun at Diaz, aiming for his center mass/torso area. Officer Sein was about 15 to 20 yards from Diaz when he fired. Officer Sein fired in rapid succession and stopped firing when Diaz had fallen onto his back and was no longer pointing the gun at them. Officer Sein believed he fired seven to eight rounds but learned during the round count on his pistol that he had fired nine rounds. Officer Sein believed the other officers, including Officer Jones, who stood right next to Officer Sein, also fired their guns at Diaz.

The officers quickly approached Diaz and began rendering medical attention. The officers put a tourniquet on Diaz’s right leg. Officer Sein noticed that Diaz had no pulse, so he started giving chest compressions until another unidentified officer took over and relieved him. As the other officer gave Diaz chest compressions, Officer Sein saw the gun that Diaz had pointed at him on the ground off to Diaz’s side. Officer Sein saw the butt of a second handgun sticking out of Diaz’s left pocket and directed another officer to grab the gun and put it off to the side. Additional officers arrived, as did medics, and the involved shooting officers were transported back to the police station.

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<sup>8</sup> Officer Jones was to the right of Officer Sein.

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**STATEMENTS BY CIVILIAN WITNESSES<sup>9</sup>**

On August 15, 2023, at approximately 8:56 p.m., **Witness #2** was interviewed by Detective Francisco Demara of the San Bernardino County Sheriff's Department.

On August 15, 2023, Witness #2 was working in the clubhouse as the Food and Beverage Director at Sierra Lakes Golf Course. At about 3:51 p.m.,<sup>10</sup> Witness #2 went outside to straighten the Sunday brunch sign and saw a man (later identified as Diaz) walking toward the clubhouse's delivery gate. Diaz "looked weird, like he was on something." It was not uncommon for homeless people to walk onto the golf course, and Witness #2 thought Diaz was a homeless person because his "movement was off." Diaz pointed toward the delivery gate, and Witness #2 noticed Diaz had a black pistol in his hand. Diaz appeared to be talking to himself and, at times, would point the gun outward like he was going to shoot. As soon as Witness #2 saw Diaz had a gun, Witness #2 went back inside and locked the doors. Customers were inside, so Witness #2 warned them about what he had seen. Witness #2 ran over to the pro shop<sup>11</sup> to tell his coworkers to lock the doors because there was a man outside with a gun. Witness #2 then went to the lounge/bar area of the clubhouse and told his coworkers to lock the doors because there was a man with a gun outside. A customer was trying to come inside, but the door was locked, so after making sure the man was not with Diaz, Witness #2 unlocked the door to let him inside. Witness #2 told the customer, "Hey, just get in here, there's a guy with a gun."

Inside the clubhouse, Witness #2's coworkers and the customers looked out the windows toward the putting green. Witness #2 heard someone say, "He's by the putting green," and, "The cops are already here." Witness #2 heard about 10 to 12 gunshots but did not see the shooting because he was still ensuring that he had locked all the doors and was not focusing on what was happening outside. After the shooting, Witness #2 looked out the window and saw the police administering CPR to Diaz.

On August 15, 2023, at approximately 8:28 p.m., **Witness #3** was interviewed by Detectives Francisco Demara and Nicolas Craig of the San Bernardino County Sheriff's Department.

Witness #3 arrived at Sierra Lakes Golf Course to golf during the afternoon of August 15, 2023. Witness #3 did not recall the exact time. When Witness #3 arrived, the pro shop/clubhouse doors were locked. An employee let Witness #3 inside and told him there was a man outside with a gun. Other people were inside the pro shop, huddled by a door, watching out the windows. Witness #3 heard someone say, "There he is." Witness #3 saw a man (Diaz) outside with a gun, wearing a grey shirt. Diaz was very sweaty and appeared to be breathing heavily. Diaz was fidgety and seemed confused like he was

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<sup>9</sup> Investigators interviewed more than 25 civilian witnesses, most of whom were present at Sierra Lakes Golf Course at the time of the incident under review. All interviews were reviewed, although not all are summarized here.

<sup>10</sup> Witness #2 knew the time because he noted it when reviewing the surveillance footage after the incident.

<sup>11</sup> The pro shop and clubhouse were housed in the same building.

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possibly on drugs. Diaz pointed a gun at an employee who was outside wearing a hat. Diaz then held the gun downward and walked toward the putting green toward two parked golf carts. Diaz leaned against the golf cart parked closest to the clubhouse like he was resting. Diaz then went to the ground and put the gun down on the ground.

Witness #3 saw the police arrive about 10 to 15 seconds before Diaz leaned against the golf cart. The police had their weapons drawn and appeared to be talking to Diaz. Diaz picked the gun up as the officers yelled, “Don’t do it! Don’t do it!” Diaz “rolled on the ground” and then “waved” the gun at the officers like he was going to shoot, and the officers fired their weapons at him. Witness #3 heard at least 10 to 15 gunshots. Witness #3 estimated the officers were five to 10 feet away from Diaz when they fired. Witness #3 was not sure if Diaz fired his gun, but he did not see Diaz fire. Witness #3 recorded the officer-involved shooting with his cell phone.

On August 15, 2023, **Witness #4** was interviewed by Detective John Collopy of the Fontana Police Department.

Witness #4 was at the first hole tee box at the beginning of the course, which was located down a small hill near the clubhouse by the practice putting green.<sup>12</sup> A short distance from the first hole tee box was a podium where the “starter” stood. The “starter” was an employee of the golf course who helps keep golfers moving with their reservations. Witness #4 was taking practice swings when he heard the starter yell, “He has a gun! He has a gun!” Witness #4 saw a man walking near the podium where the starter stood. The man was carrying something but Witness #4 could not tell if it was a gun. Witness #4’s friend yelled out, “He has a gun,” so Witness #4 ran to his golf cart. Witness #4’s friend and his wife also ran to their golf cart. Witness #4 and his friends drove their carts down the course to get away from the man with the gun. As they drove away, Witness #4 looked back and saw the man sit down on the ground at the top of the hill near the starter podium.

Once Witness #4 got to the end of the first hole, he stopped. Witness #4 saw the man stand up and run toward the practice putting green and out of sight. Soon after, Witness #4 saw police arrive. Witness #4 could no longer see the man with a gun, but he heard approximately six to seven rapid-fire gunshots. Witness #4 could not describe the man because everything happened very quickly.

On August 15, 2023, **Witness #5** was interviewed by Detective Justin Moyer of the Fontana Police Department.

Witness #5 was an employee at Sierra Lakes Golf Course and was working as a bartender. Witness #5’s manager came in and said, “Lock the doors,” and told him there was someone there with a gun. Witness #5 saw a man walking to the putting green with a handgun in his hand. The man was pointing the gun around and looked like he was trying to hide. Witness #5 saw the man at the putting green when four to five police officers

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<sup>12</sup> The officer-involved shooting occurred on the practice putting green.

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"came around the corner." Initially, the man was on his knees with his hands up and appeared to be listening to the officers' commands, but as the officers approached the man, he "hesitated" and went to pick his gun back up. According to Witness #5, it looked like the man picked the gun up and "kind of rolled" and then pointed the gun at the officers before they shot him.

On August 15, 2023, **Witness #6** was interviewed by Detective Justin Moyer of the Fontana Police Department.

Witness #6 was an employee of the Sierra Lakes Golf Course and was inside the main office when she heard someone yelling, "Fuck this." Witness #6 heard someone banging on the office door and yell, "Fuck, fuck, fuck!" The person sounded like he was drunk. Witness #6 looked outside her window and saw the man with his back against the building, pointing his gun toward the parking lot. The man kept yelling, "Just fucking take it already, just take it already!" Witness #6's impression was that the man was arguing with himself. Witness #6 hid at that point and did not see or hear anything else.

On August 15, 2023, **Witness #7** was interviewed by Deputy Andrew Davis of the Fontana Police Department.

Witness #7 was golfing at Sierra Lakes Golf Course when he heard someone say, "He's got a gun." Witness #7 looked around and saw a man who yelled, "Help me, someone is after me!" The man raised his right hand while holding a black Glock-style handgun. Witness #7 began running northbound through the golf course. Witness #7 then heard several gunshots.

On August 15, 2023, **Witness #8** was interviewed by Deputy Corey Garcia of the Fontana Police Department.

Witness #8 was golfing at Sierra Lakes Golf Course and standing near the ball dispenser on the putting green, wearing his earbuds to focus on his golf game. Witness #8 saw ten people running west toward the 18th hole and heard someone yell, "He has a gun!" Witness #8 ran south through the putting green, past an open sidewalk area, and west toward the driving range. Witness #8 hid behind a large yellow "golf target" on the grass. Witness #8 saw five police officers walking toward the golf carts parked at the putting green, where a man was down on the ground. Witness #8 heard the officers say, "Drop the weapon," approximately five to six times. The officers walked with guns and yelled, "Don't do it!" approximately three to five times. Witness #8 heard about 10 to 15 gunshots and then saw the officers point their firearms down toward the ground. The officers immediately began to render medical aid and CPR to the man who had been shot.

**INCIDENT AUDIO AND VIDEO<sup>13</sup>**

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<sup>13</sup> All videos submitted were reviewed in their entirety. The summaries will cover the events from the beginning through the point immediately after the incident under review. Due to the distance of the cameras from the subjects,

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**911 Calls**

Witness #1 called 911 at about 3:48 p.m. The duration of the call was six minutes, 39 seconds. When the 911 operator answered the call, Witness #1 asked the operator to "dispatch police" to her residence and provided her address. The operator asked Witness #1 what the emergency was. Witness #1 replied, "My husband just threw [unintelligible] in the house, but he left, and I don't even know where he's at." The operator asked, "He threw a what?" Witness #1, out of breath, apologized and explained that she "didn't know how to put it." Witness #1 repeatedly and breathlessly asked, "Where did he go?" and said she didn't know where he went. The operator again asked Witness #1 what her husband threw, and Witness #1 did not answer. Instead, Witness #1 said, "Oh my God, where did he go." The operator persisted, asking Witness #1 again, "What did he throw?" Witness #1 replied, "Oh, I don't even know how to say it. He has two guns and he shoot the gun inside the house, and he left, but I don't even know where he left." Witness #1 breathed hard and rapidly and had difficulty speaking.

Eventually, the operator was able to gather more information from Witness #1. Witness #1 provided a description of what Diaz was wearing and advised that he left the house on foot, carrying his gun. Witness #1 explained that Diaz was upset and believed someone was going to kill him. Witness #1 told the operator that Diaz was "having an episode." Witness #1 told the operator that Diaz was "off duty" and was a deputy with the Los Angeles County Sheriff's Department, and that she believed the gun he had was his duty weapon. During the phone call, Diaz's son got on the phone and advised that Diaz was having a "manic episode," Diaz was convinced someone was "in the walls" of the house and was "trying to kill him," and that Diaz possessed two guns when he left the house. The 911 operator provided the information gathered during the 911 call to the officers.

**Additional 911 Calls**

At about 3:54 p.m., multiple witnesses began calling 911 to report a man with a gun at Sierra Lakes Golf course. One caller advised there was a man with a gun walking down the street waving a gun around on Medinah, off Colonial Drive, heading toward the golf course. Callers variously described the man with the gun as running around the golf course, in front of the pro shop, at the starter's box, and near the parking lot. Callers provided a physical description of Diaz and advised he was wearing a grey shirt and black shorts and reported the man was yelling. Some callers were unable to provide a description, explaining that they ran away when they saw the man with a gun.

As the 911 calls continued to come in, the dispatch operators began answering the calls and immediately asking if the caller was reporting a man with a gun at the golf course.

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Sirens could be heard in the background of the phone calls and the operators assured the callers that officers were on scene.

**Surveillance Videos**

Surveillance cameras from the area surrounding the Diaz home recorded Diaz carrying two black semi-automatic handguns, one in each hand. Diaz yelled loudly and cursed. While at Sierra Lakes Golf Course, Diaz jogged around the golf course and the clubhouse patios carrying a black semi-automatic handgun in his right hand. Diaz held onto the left side of his waistband with his left hand. A large, heavy object appeared to be in the left pocket of Diaz's black shorts. Diaz seemed to be breathing heavily and was sweating profusely, saturating his gray shirt.

Several employees and golfers were present at the golf course; some appeared unaware of Diaz's presence, while others were clearly aware of the danger, as shown by their facial expressions and reactions, running, and hiding, upon seeing Diaz with a gun. An employee driving a golf cart jumped out of the still-moving cart and ran away from Diaz. As Diaz scurried around the golf course property, he turned his head, looking in multiple directions, and appeared to take cover behind pillars and other objects. Diaz pointed the gun outward numerous times as if perceiving a threat but did not appear to fire it until the officer-involved shooting. Diaz attempted to open locked doors to the clubhouse and the manager's office. Golf course surveillance videos recorded all five officers as they arrived on scene. The golf course surveillance cameras did not face the putting green where the officer-involved shooting occurred.

**Cell Phone Video**

Witness #3 recorded the officer-involved shooting with his cell phone from inside the clubhouse/pro shop through the west facing windows overlooking the putting green. The video length was one minute, seven seconds.<sup>14</sup>

0:00:00 – 0:00:11 The video showed the putting green in the distance beyond the west clubhouse patio. Multiple people could be heard speaking inside the clubhouse, their voices overlapping. A golf cart was parked on the patio between the clubhouse and the putting green, partially obstructing the camera view of the officers as they walked on the putting green toward two white golf carts parked on the cart path beside the putting green. As the camera focus zoomed in, Diaz could be seen on his knees beside the rear driver's side of the golf cart parked on the cart path nearest the clubhouse. Diaz faced in a southwest direction, away from the officers.

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<sup>14</sup> Reference times are from the media player.

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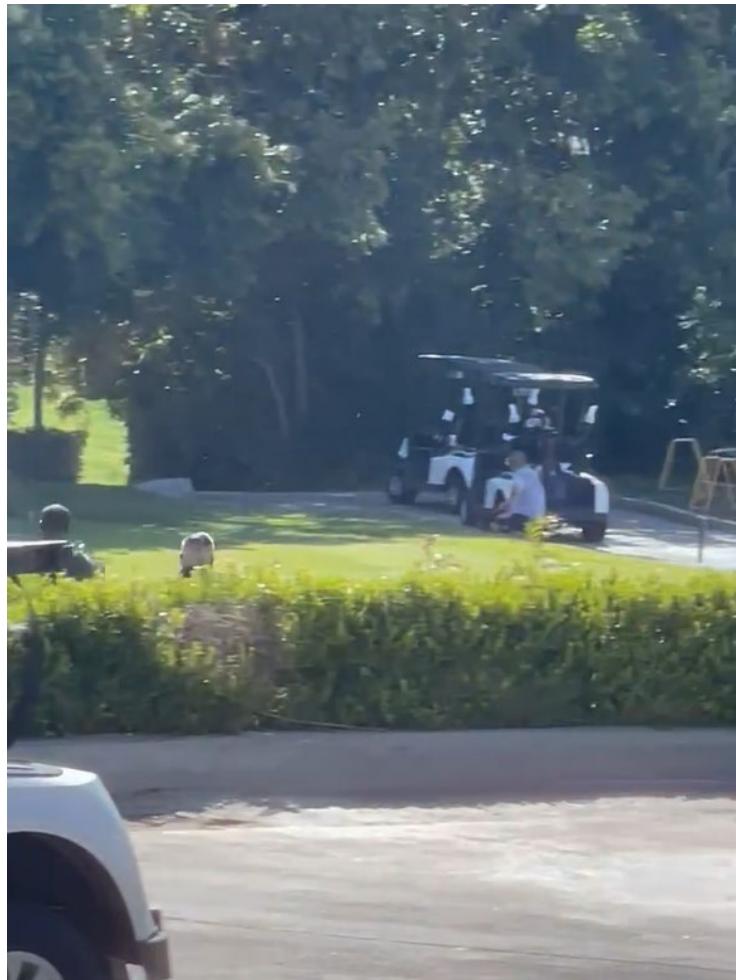
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0:00:11 to 0:00:13 Diaz turned his head to the left and raised his left hand into the air as the officers advanced toward him with their guns drawn and aimed in his direction. Diaz's right arm was not visible from the camera's view.

0:00:13 to 0:00:21 The officers walked toward the cart path, still aiming their firearms at Diaz. Two officers continued walking toward the cart path, out of camera view. Diaz, still holding his left hand in the air, twisted his torso to the right and reached toward the ground behind him as if trying to pick up an unseen object on the ground. Three additional officers came into camera view walking on the putting green toward Diaz. A person inside the clubhouse said, "They got him." Diaz lowered his left hand and twisted his torso further to the right as he grabbed for an object on the ground with his right hand.

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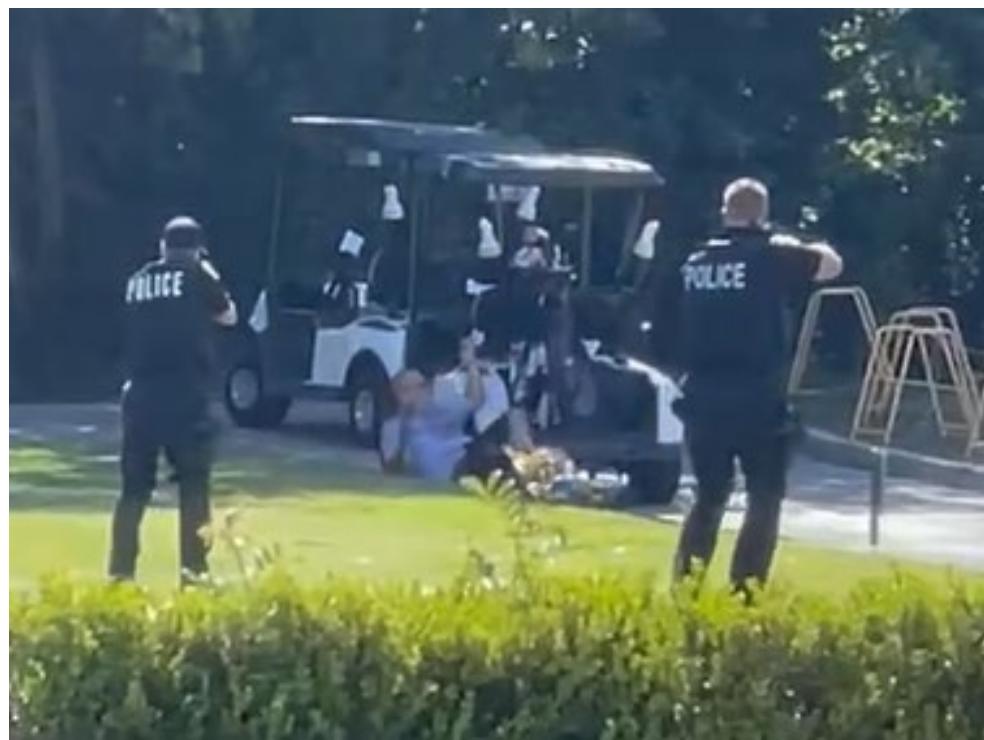
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0:00:21 to 0:00:24 Diaz maneuvered from a kneeling position onto his right hip and side with his right elbow and right hand on the ground. Diaz quickly turned his torso toward the officers, raising his left hand. Diaz promptly sat up and pointed a black handgun at the officers with his right hand.



0:00:24 to 0:00:25 A male voice from inside the clubhouse said, "Oh, he's got a—" before being interrupted by the sound of multiple gunshots as the officers began to fire their

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weapons at Diaz. The male voice then cursed loudly. Expelled gasses from the officers' handguns could be seen as they fired.

0:00:25 to 0:00:28 Diaz fell backward with his right hand holding the pistol in the air above his head. Diaz's right hand moved as the handgun recoiled.<sup>15</sup> Fired bullets from the officers' guns struck the ground around Diaz. Gunfire ended.

0:00:28 to 0:00:39 Multiple people inside the clubhouse commented on the shooting and said repeatedly, "Oh fuck," and "He grabbed the gun." The officers quickly approached Diaz who was on his back on the edge of the putting green and cart path. The officers carried Diaz onto the grass and began rendering aid. The remainder of the video showed the officers tending to Diaz.

**BODY-WORN CAMERA VIDEO<sup>16</sup>**

Sergeant McLane, Corporal Campa, Officers Mutter, Jones, and Sein activated their body-worn cameras prior to the officer-involved shooting. All body-worn camera footage recorded audio, except for Officer Jones' footage, which did not record audio due to a malfunction.

**Officer Sein's Body-Worn Camera Video**

00:00 to 00:30 Officer Sein ran in a north, northwest direction past the clubhouse toward the putting green. Officer Sein's partners were captured on video as they walked across the putting green, guns pointed in a northwest direction and yelling commands at Diaz. The officers ordered Diaz not to reach for anything and repeatedly told Diaz, "Don't do it," and "Don't do it, bud. Calm down." The distance between Officer Sein and Diaz, combined with dark shadows from multiple bushes and trees, make it difficult to see Diaz until the 00:28 second mark, when Officer Sein was positioned closer to Diaz. Diaz was on his knees beside a golf cart, but due to the dark shadows and video quality, it is unclear what Diaz was doing.

00:30 to 00:33 The officers continued giving commands to Diaz as they advanced toward him. Sergeant McLane, Corporal Campa, and Officer Mutter were to Officer Sein's left. As Officer Sein moved closer to the cart path and Diaz, Sergeant McLane, Corporal Campa, and Officer Mutter were lost from camera view. Officer Jones was to the right of Officer Sein.

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<sup>15</sup> During the scene investigation, two black handguns registered to Diaz (a Smith and Wesson 9mm M&P Shield and a Glock 45, 9mm handgun) and four "WIN 9mm Luger" fired cartridge casings were found on the ground where Diaz had been during the shooting.

<sup>16</sup> The officers were equipped with Visual Labs body-worn cameras which were mounted in the torso area. Times noted are from the media player bar. All body-worn camera videos were reviewed in their entirety though not at all summarized herein.

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00:33 to 00:34 Diaz abruptly turned his torso to the right, away from Officers Sein and Jones. Unknown officers yelled, "Hey!" Officer Sein yelled, "Don't do it!" as he raised his handgun in a two-handed grip and pointed it at Diaz. Officer Jones, to the right of Officer Sein, pointed his handgun at Diaz. Multiple officers yelled, "Don't do it! Don't do it! Don't do it!"



Timestamp 00:34

00:34 to 00:37 As the officers yelled, "Don't do it," Diaz rolled onto his side, leaned backward and then sat up on his buttocks facing the officers. Diaz then swung his right hand from behind his body and pointed a handgun at the officers.

00:37 to 00:40 Officer Sein fired his handgun at Diaz. Gunfire from the other officers' firearms rang out. Officer Sein fired his weapon approximately nine times. At the time the gunshots were fired by officers, Diaz was positioned on his buttocks and began leaning backward. Due to the gases expelled from Officer Sein's handgun, Diaz's hands cannot be seen. All gunfire ceased at the 00:40 mark.

00:40 to 01:05 Officer Sein began approaching Diaz. Sergeant McLane, Corporal Campa, and Officer Mutter came into camera view from Officer Sein's right, also approaching Diaz. Officer Sein announced, "I've got radio, I've got radio." Officer Sein announced that shots had been fired and requested medical aid. The officers approached Diaz, who lay on his back partly on the cart path, partly on the green. The officers moved Diaz onto the green and began administering medical aid.

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**Corporal Campa's and Sergeant McLane's Body-Worn Camera Video**

Corporal Campa's and Sergeant McLane's body-worn cameras did not clearly capture the officer-involved shooting due to the camera position on the officers' tactical vests and their shooting platform. However, their body-worn cameras did record the commands the officers gave as they moved across the putting green toward Diaz. When Corporal Campa reached the putting green, he pointed ahead and asked, "What's up bro? This guy?" Sergeant McLane calmly commanded, "Show us your hands, bro. Show us your hands. Show us your hands. Put your hands up, bro. Don't reach for nothing, bro. Don't reach for nothing, man." Corporal Campa said, "Don't do it, dude," followed by "Hand, hand, hand, hand!" Corporal Campa said, "Watch for his hand," and "Don't do it, dude. Keep your hands up, keep your hands up, keep your hands up. Don't do it." Corporal Campa then said, "Hey, hey, don't do it." Additional unknown officers yelled, "Don't do it." As the officers repeatedly yelled, "Don't do it," Diaz briefly came into Corporal Campa's body-worn camera view. Diaz in a seated position, quickly turned his upper body away from the officers.



Timestamp 00:32

Diaz was then briefly caught in the camera view as he turned his upper body back to face the officers at the 00:36 mark.

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Timestamp 00:36

Gunfire began to ring out at 00:37 and stopped at 00:40.

**WEAPONS**

During the crime scene investigation, detectives found the following weapons registered to Alejandro Diaz on the putting green, along with other property belonging to Diaz:

1. Black Smith & Wesson, 9mm M&P Shield. (Evidence Placard 39.) A magazine loaded with seven "F.C. 9mm Luger" cartridges was inserted into the Smith & Wesson. A "F.C. 9mm Luger" cartridge was in the chamber.
2. Black Glock 45, 9 mm handgun. (Evidence Placard 46.) A magazine loaded with 12 "WIN 9mm Luger" cartridges was inserted into the Glock. A "WIN 9mm Luger" cartridge was in the chamber. Four "WIN 9mm Luger" fired cartridge casings, consistent with the cartridges loaded into the Glock 45, were also found on the putting green. (Evidence Placards 44 and 45.)

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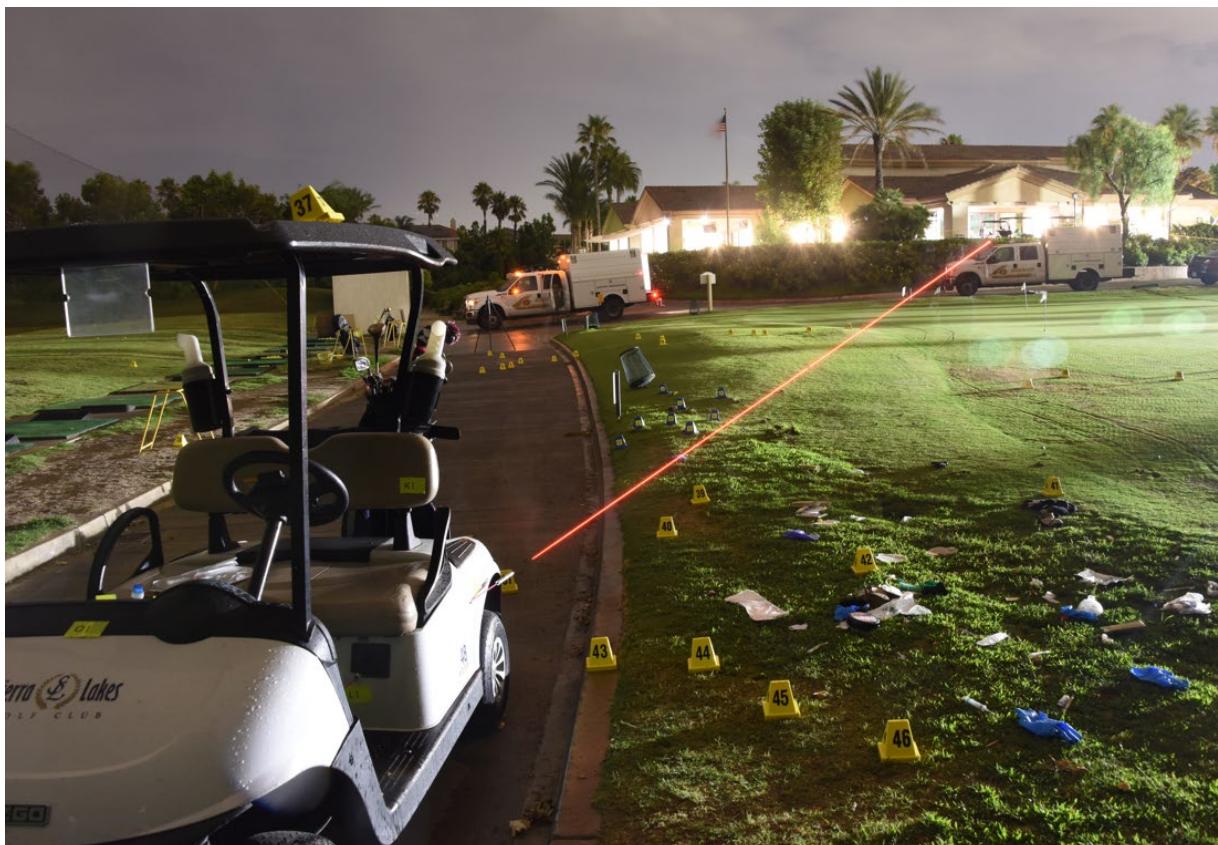
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Smith & Wesson M&P Shield



Glock 45



Scene investigation photo with evidence placards. Placards 39 and 46 identify the locations where Diaz's two handguns were found (foreground). The clubhouse is shown in the background.

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**DECEDENT**

Diaz was pronounced deceased by Witness #9, a medical doctor, at 4:52 p.m., on August 15, 2023, at [redacted] Hospital in Fontana.

**AUTOPSY**

Witness #10, Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Alejandro Diaz on August 17, 2023. Witness #10 noted six gunshot wounds. Witness #10 determined the cause of death was multiple gunshot wounds and that death occurred within minutes.

**TOXICOLOGY**

Vitreous fluid and femoral blood were collected during the autopsy. Toxicology results for the femoral blood sample were as follows:

- Amphetamine 200 ng/mL
- Methamphetamine 2200 ng/mL

**CRIMES UPON PEACE OFFICERS**

**Attempted Murder of a Peace Officer**

**California Penal Code section 664/187(a)** (Summarized in pertinent part).

Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(e) [...] if attempted murder is committed upon a peace officer or firefighter, [...], and the person who commits the offense knows or reasonably should know that the victim is a peace officer [...] engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

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Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also charged and admitted or found to be true by the trier of fact that the attempted murder was willful, deliberate, and premeditated, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement. (Penal Code section 664/187, summarized in pertinent part.)

**Assault With a Deadly Weapon**

**California Penal Code section 245(d)** (Summarized in pertinent part).

- (1) Any person who commits an assault with a firearm upon the person of a peace officer, and who knows or reasonably should know that the victim is a peace officer or engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.
- (2) Any person who commits an assault upon the person of a peace officer with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

**APPLICABLE LEGAL PRINCIPLES**

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)<sup>17</sup> Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 21, 332-333.) An arrestee or

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<sup>17</sup> All references to code sections here pertain to the California Penal Code.

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detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing, In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. Both code sections are pertinent to the analysis of the conduct involved in this review and are discussed below.

**PENAL CODE SECTION 196.** Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a specifies a **police officer is justified in using deadly force** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or
- (2) to apprehend a fleeing felon who threatened or caused death or serious bodily injury, if the officer also reasonably believes that the fleeing felon would cause further death or serious bodily injury unless immediately apprehended.

(Penal C. §835a(c)(1).)

Discharge of a firearm is "deadly force." (Penal C. §835a(e)(1).) The "[t]otality 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." (Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,<sup>18</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend "has committed a crime involving the infliction or threatened infliction of serious physical harm" to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a

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<sup>18</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter "AB-392"]

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police officer's actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Witness #6 v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at \*25.) There is also a vast body of caselaw that has demonstrated how to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to effect arrest. (Penal C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness, and consistency with agency policies;<sup>19</sup>

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<sup>19</sup> Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done "in order to ensure that officers use force consistent with law and agency policies." On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter "SB-230"), does explicitly state that "[a law enforcement agency's use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training." (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

**PENAL CODE SECTION 197.** California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code §197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

The pertinent criminal jury instruction to this section is CALCRIM 505 ("Justifiable Homicide: Self-Defense or Defense of Another"). The instruction, rooted in caselaw, states that a person acts in lawful self-defense or defense of another if:

- (1) He reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) He reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) He used no more force than was reasonably necessary to defend against that danger.

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required under section 835a(c)(1), as stated *supra*.

**IMMINENCE.** "Imminence is a critical component" of self-defense. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, *imminent* threat of death or great bodily injury. "An imminent peril is one that, from appearances, must be instantly dealt with." (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows, and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

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Imminence more recently defined in the context of use of force to effect an arrest, is similar:

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.

(Penal C. §835a(e)(2).)

**REASONABLENESS.** Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer’s right to use force in the course of an arrest, stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment’s “reasonableness” standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on 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.

(*Id.* at 396-397, citations omitted.)

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer”

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standard. (*People v. Mehsere* (2012) 206 Cal.App.4th 1125, 1147.)<sup>20</sup> To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

The *Graham* court plainly stated that digestion of the "totality of the circumstances" is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, "reasonableness" cannot be precisely defined, nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the "reasonableness" calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the "most important" *Graham* factor. (*Mattos v. Agarano* (9<sup>th</sup> Cir. 2011) 661 F.3d 433, 441-442.) **The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer's use of deadly force.** (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.") Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when "necessary to account for the totality of the circumstances in a given case." (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

The use of force policies and training of an involved officer's agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1. See fn. 3, *infra*.)

When undertaking this analysis, courts do not engage in *Monday Morning Quarterbacking*, and nor shall we. Our state appellate court explains,

Under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if

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<sup>20</sup> The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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subsequent investigation reveals the suspect was unarmed. (*Baldridge v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 \*1, 27-28.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide "zone of protection" when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.'

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor, [supra]* 490 U.S. 386, 396.)

**DE-ESCALATION**

Diaz was on a golf course where multiple civilians were present during a busy summer afternoon. The presence of civilians affected the officers' decision-making process, forcing them to take swift action to protect the public. The officers feared that Diaz would become an active shooter. Because the officers recognized this danger, they had no choice but to locate and attempt to contain Diaz with haste.

Upon seeing Diaz near the putting green, Sergeant McLane, Corporal Campa, Officers Mutter, Jones, and Sein approached him swiftly but with caution. Believing Diaz was armed with two handguns, the officers held their firearms in hand as they approached him. Sergeant McLane immediately began giving Diaz commands to show his hands, to put his hands up, and not to reach for anything.

Sergeant McLane's commands were loud, clear, and concise. The commands were simple and easy to follow. Sergeant McLane repeatedly told Diaz to show his hands, to put his hands up, and not to reach for anything. Sergeant McLane repeated the commands as the officers continued advancing toward Diaz. Though multiple officers gave commands, their commands were consistent with each other. The officers told Diaz precisely what he needed to do: Keep his hands in the air and not reach for anything. Though Diaz held his left hand in the air as if to comply with the officers, Diaz actively searched for his handgun with his right hand. Corporal Campa, who believed Diaz was reaching for a gun, warned his partners, telling them to watch Diaz's hand. Corporal

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Campa then told Diaz, "Don't do it, dude. Keep your hands up, keep your hands up!" Diaz still refused to comply and continued reaching for his gun. Corporal Campa repeated the commands, yelling, "Hey, hey! Don't do it!" The other officers also yelled, "Don't do it," multiple times.

Based on the body-worn camera video footage, the officers had less than 40 seconds from the time they first spotted Diaz before Diaz pointed a gun at them. Though the officers had little time to de-escalate the situation, they gave Diaz multiple commands and attempted to gain his cooperation so they could safely approach him and take him into custody. Despite the officers' best efforts to resolve the situation peacefully, Diaz remained uncooperative. Instead, Diaz showed he was unwilling to comply and instead picked up his gun and pointed it at the officers, thwarting every attempt the officers made to de-escalate the situation.

**ANALYSIS**

When Diaz showed up at the golf course armed with two handguns, his presence and behavior sparked fear in all who encountered him. Employees and golfers ran to seek cover and called 911 for help. Diaz was clearly in a state of mental distress and, armed with two loaded handguns, he posed a danger to those present at the golf course. Witnesses described Diaz's behavior as abnormal and told investigators they thought Diaz may have been under the influence of drugs or alcohol. Witness #1 told the 911 operator that Diaz was "having an episode," and had shot a gun inside the residence. Witness #1's son told the operator that Diaz was "having a manic episode" and believed someone was "in the walls of the house" and was trying to kill him. The toxicology results (200 ng/mL of amphetamine and 2200 ng/mL of methamphetamine) revealed that Diaz was under the influence of methamphetamine. It is possible Diaz was suffering from methamphetamine-induced psychosis.<sup>21</sup> Sergeant McLane, Corporal Campa, and Officers Mutter, Jones, and Sein knew what the witnesses had reported. While the officers did not know what was causing Diaz to behave this way, they correctly recognized that Diaz posed a danger to those around him. In the face of danger, Sergeant McLane, Corporal Campa, and Officers Mutter, Jones, and Sein responded to protect those present that day.

Sergeant McLane, Corporal Campa, and Officer Mutter listened to Witness #1's 911 call and heard first-hand her conversation with the dispatch operator. The distress in her voice made clear the urgency of the situation. Over the course of her six minute, 39 second phone call, Witness #1 advised that Diaz had fired a gun inside the house, that Diaz was upset, was having "an episode," and believed someone was going to kill him. Witness #1 told dispatch that Diaz was an off-duty sheriff's deputy and had left on foot armed with his duty weapon. During the 911 call, Witness #1's son got on the call to advise that Diaz had

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<sup>21</sup> Methamphetamine can induce a transient psychotic state that is characterized by hallucinations and persecutory ideation. Science Direct, Principals of Addiction, 2013, "Methamphetamine Addiction," Rebecca McKetin and Daniel Hermens.

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left the house with two guns and explained that Diaz was having a “manic episode” and was convinced someone was “in the walls” of the house, trying to kill him. Officers Jones and Sein did not have the benefit of hearing Witness #1’s 911 call, but they knew what Witness #1 and her son reported because the information was provided to all responding officers through dispatch.

The officers were aware that Diaz’s residence was located within the Sierra Lakes Golf Course community. Each of the officers knew that Diaz was in a state of crisis and that he was walking around the community armed with two handguns. Before the officers arrived, each of them felt a pressing concern that Diaz could become an active shooter at the golf course. Based on their training and experience, the officers understood that the golf course was a vulnerable target, where civilians, enjoying a summer afternoon of golf, would be unprepared and unable to effectively defend themselves. As the officers headed to the golf course, urgent 911 calls flooded in from witnesses reporting a man with a gun at the golf course, amplifying the officers’ fears and underscoring the gravity of the situation.

Sergeant McLane called the Sheriff’s air unit to respond to the scene to assist. Fontana Police Department’s armored vehicle was also dispatched to the scene to assist. However, each officer understood the urgency of finding Diaz as quickly as possible. Sergeant McLane, Corporal Campa, and Officers Mutter, Jones and Sein were the first officers to arrive at the golf course. Unable to wait for assistance and determined to prevent any potential harm to innocent lives, the officers immediately set out on foot to locate Diaz. With limited opportunity to develop a tactical plan, the officers relied on their collective training and experience. Almost immediately, the officers spotted Diaz about 40 yards away. Diaz was at the rear of two golf carts parked beside the putting green which lay in front of the clubhouse. Diaz matched the description given by multiple witnesses.

When Sergeant McLane first spotted Diaz, Diaz was standing near the rear passenger side of the golf cart. Sergeant McLane noted a ring of sweat on Diaz’s light gray shirt, dark like someone’s shirt would look after an intense workout. This, combined with the information relayed by Witness #1 and her son during the 911 call, led Sergeant McLane to believe Diaz was experiencing “some type of manic physical response to reality.” Diaz looked in Sergeant McLane’s direction and made eye contact but quickly looked away and went down to his knees.

Corporal Campa first saw Diaz sitting down near the two golf carts. Corporal Campa saw people standing at the clubhouse and asked them, “Where’s he at?” The people pointed at Diaz. Corporal Campa heard Diaz yell something and saw Diaz point westward, as if to direct the officers’ attention that direction. Corporal Campa believed Diaz was trying to lure the officers into an ambush to kill them because the witnesses were pointing at Diaz as the suspect, but Diaz was pointing the officers to the west, diverting their attention away from him. Before spotting Diaz, Corporal Campa had seen three to four golfers

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running north on the driving range, away from the two golf carts where Diaz sat, which also caused him concern.

Like Corporal Campa, Officer Mutter also saw golfers running north on the driving range. This is what brought Officer Mutter's attention to the two golf carts and to Diaz, who stood next to one of the carts. Officer Mutter saw Diaz point southward toward a thick tree line and heard Diaz say there was someone with a gun in the bushes. Officer Mutter shared Corporal Campa's concern that Diaz was trying to get the officers closer and to divert their attention away from himself so "he could try to kill" one of them. Like Sergeant McLane, Officer Mutter also noted Diaz was drenched in sweat. Officer Mutter saw Diaz turn toward the officers, fall to his knees, and put his hands in the air when the officers began giving him commands.

Because Officers Jones and Sein had to run to catch up to Sergeant McLane, Corporal Campa and Officer Mutter, they did not see Diaz until their partners were already walking across the putting green toward him. When Officers Jones and Sein first saw Diaz, Diaz was on his knees by the golf cart, just outside the putting green. Like Corporal Campa, Officers Jones and Sein saw several people at the clubhouse. Diaz faced the officers and held his left hand up, waving at the officers as if to wave them off. Officer Jones also saw the handle of a black handgun in Diaz's waistband. Officer Sein saw three people near the driving range who looked like they had run away from the location. With so many civilians in the vicinity, the officers knew they needed to contain Diaz as quickly and safely as possible.

Wasting no time, the officers began walking toward Diaz, and immediately began giving him commands. Sergeant McLane calmly told Diaz, "Show us your hands, bro. Show us your hands. Show us your hands," and "Put your hands up, bro." Diaz looked in Sergeant McLane's direction and made eye contact with him. Sergeant McLane was hopeful they would be able to establish a positive line of communication with Diaz. Each officer had the same goal: to safely establish communication with Diaz so they could de-escalate the situation to a point where they could detain him to investigate what had occurred or conduct a mental health evaluation to get Diaz assistance. To that end, the officers knew they needed to reach Diaz and to safely disarm him. The officers did not simply charge forward, running straight toward Diaz, and instead made their approach tactically, walking toward him with great caution, all the while telling Diaz what he needed to do.

As they approached Diaz, none of the officers saw a gun in Diaz's hand. However, because Diaz was reportedly armed with two firearms, the officers had their guns drawn and held them at the low-ready. As the officers continued advancing toward Diaz, they repeated their commands. Diaz held his left hand in the air as if to comply but kept his right hand concealed from the officers' view. Though the officers could not see Diaz's right hand, based on the movement of Diaz's right arm, it looked like Diaz was reaching around as if searching for something on the ground beside him. Based on the information and the officers' observations of Diaz, they each reasonably believed Diaz was reaching

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for a gun. Sergeant McLane told Diaz, “Don’t reach for nothing, bro. Don’t reach for nothing, man.”

To reach Diaz, the officers had to traverse the putting green, which offered no cover or concealment between the officers and Diaz. The clubhouse was adjacent to the putting green. Multiple witnesses were inside the clubhouse, where they sheltered in place, watching Diaz and the officers through the windows. Though inside the clubhouse, these witnesses were in danger because of their proximity to Diaz, particularly if he began shooting.

As the officers crossed the putting green, they fanned out to position themselves between the clubhouse and Diaz. Armed and in the midst of a severe mental health crisis, Diaz posed a danger to everyone nearby, including those inside the clubhouse and those still out on the golf course. While the officers did not see a gun in Diaz’s hands, they had every reason to believe he was armed or attempting to arm himself. To prevent Diaz from retrieving a weapon and potentially starting to shoot, the officers needed to contain him. They could not walk away from Diaz when civilians in close proximity were at risk. As law enforcement officers with the duty to safeguard the public, Sergeant McLane, Corporal Campa, and Officers Mutter, Jones, and Sein knew they had no alternative but to confront Diaz.

Corporal Campa warned his partners to watch Diaz’s hands. Corporal Campa distinctly heard what he suspected was a gun falling to the ground and saw Diaz concealing the movement of his right hand from the officers. Corporal Campa told Diaz, “Don’t do it, dude. Keep your hands up.” Officers Mutter and Sein also noted that Diaz’s right arm was down, moving around behind his body as if to find something on the ground. Unable to see what Diaz was reaching for, the officers all feared Diaz was reaching for a gun. This fear was reasonable based on everything the officers had learned and observed up to that point.

Officer Mutter yelled at Diaz, “Stop reaching, stop reaching, don’t grab it!” At the same time, Corporal Campa and Officer Sein repeatedly warned him, “Don’t do it!” Meanwhile, Officer Jones, who had moved to the right of his partners, noticed that Diaz was reaching for a black handgun lying on the ground beside him. Diaz continued to ignore the officers’ commands. Diaz went down onto his side and then onto his back, reaching behind him for the gun. Diaz then grabbed onto the gun, and began to sit back up, pointing it at the officers. When Diaz went down onto his back, Officer Jones saw Diaz grab onto the handle of the firearm. Sergeant McLane, Corporal Campa, Officer Mutter, and Officer Sein all saw Diaz fall onto his side or back, but they didn’t see that Diaz had grabbed the firearm until he sat back up, swung his right arm toward the officers, and pointed the gun at them.

When Diaz pointed his loaded handgun at the officers, the danger he posed escalated to an immediate threat. This created an urgent, life-threatening risk not only to the officers,

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but to the civilians sheltering in place inside the clubhouse. When the officers saw Diaz point the gun at them, they each believed Diaz was going to shoot them. Sergeant McLane, Corporal Campa, and Officers Mutter, Jones, and Sein honestly and reasonably feared for their lives and those of the civilians in the clubhouse behind them. Confronted with this critical threat to their safety and the safety of the nearby civilians, the officers had no choice but to fire their weapons at Diaz to stop the threat.

**CONCLUSION**

Based on the facts presented in the reports and the applicable law, Sergeant McLane's use of deadly force was a proper exercise of his right of self-defense and defense of others, and therefore, his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Corporal Campa's use of deadly force was a proper exercise of his right of self-defense and defense of others, and therefore, his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Officer Mutter's use of deadly force was a proper exercise of his right of self-defense and defense of others, and therefore, his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Officer Jones' use of deadly force was a proper exercise of his right of self-defense and defense of others, and therefore, his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Officer Sein's use of deadly force was a proper exercise of his right of self-defense and defense of others, and therefore, his actions were legally justified.

**Submitted By:**  
**San Bernardino County District Attorney's Office**  
**303 West Third Street**

