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Report of the Law Enforcement Involved Fatal Incident /Officer-
Involved Shooting of Salvador MORALES by
Pittsburg Police Department, on October 22, 2018

Table of Contents

Privacy Statement.....	3
Executive Summary.....	4
Introduction.....	6
Investigation.....	8
Overview.....	8
Evidence Reviewed.....	10
Factual Summary.....	10
Scene Description.....	12
Vehicular and Body-worn Camera Footage.....	16
Interviews of Involved Police Officers.....	17
Interviews of Civilian Victims and Witnesses.....	24
Autopsy.....	26
Crime Scene Evidence Recovery.....	27
Findings.....	27
Legal Analysis.....	28

Privacy Statement

This report includes redactions of the names and other identifying information of victims, witnesses, neighbors, and Mr. Morales' family members. Specific addresses are also not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

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

- Victim 1 (V-1), is the brother-in-law of MORALES.
- Victim 2 (V-2), is the estranged wife of MORALES.
- Witness 1 (W-1), is the brother of MORALES.

EXECUTIVE SUMMARY

On October 22, 2018 at approximately 7:51 pm Salvador MORALES assaulted his estranged wife, V-2, at a residence on Carolyn Dr, in Pittsburg, California. V-2's brother-in-law attempted to assist her, but MORALES drew a handgun from his waistband and fired a round at him striking him in the neck. MORALES then ordered V-2 and their infant son to leave the residence and enter his truck at gunpoint.

As MORALES was driving away from the residence police officers from Pittsburg Police Department (PPD), who had been called by witnesses to the shooting, located his truck and immediately started following him. The officers attempted to conduct a traffic enforcement stop on MORALES' truck, however, he refused to pull over and led the officers on a high-speed pursuit from Pittsburg to Concord, and back to Pittsburg for approximately 27 minutes. Ultimately, MORALES led the pursuit back to his residence on W. 10th St. in Pittsburg, California.

At approximately 8:24 pm, pursuing officers observed MORALES stop his truck in the driveway of his home on W. 10th St. Shortly after stopping in the driveway, MORALES exited the truck with a semi-automatic handgun in his hand and ran into the residence through the front door. Although MORALES wanted V-2 to go inside the residence with him, she was able to escape by running towards the officers who had been pursuing MORALES. Fortunately, V-2 and their infant son were able to escape without physical injury. With the assistance of officers from the California Highway Patrol (CHP), PPD officers established positions around the residence that would allow them to view the front and rear doors, as well as prevent citizens from entering the area around the location in question.

MORALES refused to exit the residence and submit to arrest. Due to the serious nature of the alleged crimes and the danger MORALES represented to the community, the PPD supervisor on scene requested the SWAT React Team to respond to the incident. While the officers on scene were waiting for the SWAT team to arrive, MORALES stepped out onto the front porch. The officers advised him to surrender, however, he retreated into the residence. A short time later, MORALES called into the PPD dispatch center and said he wanted to surrender but wanted to see his mother first. MORALES' primary language is Spanish, however there was not a PPD officer on scene who was able to speak with him in Spanish. A request was made to neighboring law enforcement agencies and Oakley PD sent a Spanish-speaking officer to negotiate with MORALES until the Crisis Negotiations Team arrived on scene.

The PPD SWAT team arrived at approximately 9:40 pm. Pittsburg Police personnel negotiated with MORALES until he exited his residence at 10:54 pm. At 10:54 pm, MORALES walked out the front door of his residence with a semi-automatic handgun pointed at his own head. Office Baker fired a .40 mm sponge round at MORALES, striking him in the upper torso.

EXECUTIVE SUMMARY

MORALES recovered from the impact of the round and raised his handgun in the direction of the officers on the perimeter. MORALES then fired one round at the officers, and they returned fire incapacitating him.

MORALES was given emergency medical aid and transported to John Muir Medical Center where he was pronounced dead at 11:27 pm.

On October 24, 2018, the Contra Costa County Sheriff's Coroner's Office conducted an autopsy on MORALES' remains. The pathologist determined that he died of multiple gunshot wounds to the head and extremities.

On the night in question, the Contra Costa County District Attorney's Office was notified of the incident and responded by sending an investigative team comprised of a Deputy District Attorney and six Senior Inspectors to investigate the incident.

After interviewing the involved police personnel, reviewing all the relevant evidence, and applying the appropriate legal standard, the Contra Costa District Attorney's Office determined that the officers justifiably feared for their lives and their subsequent use of deadly force was legal and necessary under the circumstances.

Accordingly, in applying the applicable law and the California District Attorney's Uniform Crime Charging Standards to the present case, there is insufficient evidence to support a criminal prosecution against Sergeant William Hatcher, Sergeant Gabriel Palma, Corporal Alex McCray, or Sergeant Chuck Blazer. As such, no further action will be taken in this case.

INTRODUCTION

This report is the Contra Costa County District Attorney's Office (CCDAO) investigation of the PPD's (PPD) fatal officer-involved shooting of Mr. Salvador MORALES on October 22, 2018, in Pittsburg, California.

The CCCDAO and every law enforcement agency in Contra Costa County have adopted the *Law Enforcement Involved Fatal Incidents Protocol* (LEIFI or Protocol)¹ to investigate incidents when officers or civilians are shot, killed, or die during an encounter with law enforcement.

Under the Protocol, the CCCDAO investigates all officer involved shootings in Contra Costa County for the purpose of making an independent determination of criminal liability. The sole purpose of the District Attorney investigation is to determine if there is proof beyond a reasonable doubt that a law enforcement official committed a crime in connection with the shooting.

Pursuant to the Protocol, immediately after a fatal officer-involved shooting the involved law enforcement agency is required to notify the appropriate district attorney personnel. Once notified, trained and experienced members of the CCCDAO respond to the scene to begin the criminal investigation. In addition, criminal investigators from the law enforcement agency involved in the incident and from the jurisdiction where the incident occurred, if different, respond to the scene as well. It is important to note that although the investigations happen simultaneously, each agency is conducting its own independent investigation.

As part of the criminal investigation, law enforcement officers and civilians who witnessed the incident may be interviewed, evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any other relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff's Office Crime Lab responds to every incident and is responsible for evidence collection of all officer-involved shootings.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may voluntarily choose to provide a statement, physical evidence, or other relevant information during the criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to give a statement as part of a criminal investigation. However, an officer may be compelled to provide a statement during the law enforcement agency administrative investigation only. (*See*, Public Safety Officers Procedural Bill of Rights Act, Government Code sections 3300 et seq.) In accordance with the law, the CCCDAO does not participate in compelled administrative investigation interviews and does not review them as part of the independent criminal investigation. There are very narrow circumstances where an exception to this rule is allowed.

¹ Contra Costa County was one of the first counties in the country to adopt a fatal incident protocol between the District Attorney and the law enforcement agencies within the county. The complete LEIFI Protocol document can be located on the Contra Costa County District Attorney's Office website.

Independent of the CCCDAO and in accordance with the Protocol, the Coroner's Division in the Contra Costa Sheriff's Office (CCCSO) conducts a Coroner's Inquest following most deaths that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County.

The Inquests are open to the public, are conducted by a private attorney hired by the Coroner's Division and are held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the Inquest, the hearing officer questions witnesses, and additional evidence may be presented. The role of the jury is to decide whether the death was by (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e., homicide). The jury's decision has no legal bearing on the civil or criminal investigations or liability of any person(s) involved in the incident.

*Note – This report contains sensitive information, photos, and descriptions of an officer involved shooting that resulted in the death of a person.

INVESTIGATION

Overview

On October 22, 2018, at approximately 11:00 pm, Deputy District Attorney (DDA) Barry Grove received a call from Lieutenant Deplitch (PPD) that an officer involved shooting had occurred in the city of Pittsburg. DDA Grove then called Paul Mulligan, Chief of Inspectors for the CCCDAO, to discuss the incident, as well as other logistical issues related to the investigation with him. During this call the decision was made that DDA Grove and six District Attorney Senior Inspectors would respond to the scene to conduct the criminal investigation on behalf of the District Attorney's Office.

When the CCCDAO investigative team arrived at the location of the incident on W. 10th St., the crime scene and the residence associated with the address were being physically guarded by PPD personnel and the entire surrounding area was being marked off with crime scene tape to aid in the preservation of any physical evidence. Our team also observed the location of key items of evidence, paying particular attention to the areas where the exchange of gunfire had taken place. After CCCDAO investigators reviewed the shooting scene, the CCCSO Forensics Division (Crime Lab) was notified and arrived on scene to document their findings and collect evidence.

After walking through the crime scene and reviewing the associated evidence, the CCCDAO investigative team joined the PPD detectives at the Pittsburg Police Department. At approximately 12:45 am on October 23, 2018, a joint briefing with both agencies was held to give an overview of the incident to ensure that everyone with an active role in the investigation had the same information before any further steps were taken.

After the briefing, DDA Grove assigned each of the six CCCDAO senior inspectors different investigative tasks. The investigative assignments were as follows:

- Senior Inspector Edward Sousa – Interview the PPD SWAT officers who used force and/or fired their weapons (the actors) at MORALES.
- Senior Inspector John Conaty – Interview the victims and witnesses of the attempted murder and kidnapping at the residence on Carolyn Dr.
- Senior Inspector David Lewellyn – Interview the law enforcement personnel from PPD and the CHP.
- Senior Inspector Robert Pamplona – Interview the other members of the PPD SWAT team.
- Senior Inspector John Garcia – Interview the PPD SWAT team Commander and the Crisis Negotiations Team (CNT) members who negotiated with MORALES; and
- Senior Inspector Tim Jung – Interview the paramedics and firefighters who responded to this incident.

Overview (cont'd)

Consistent with the Protocol, each senior inspector was accompanied by a PPD detective when performing the assigned investigative tasks. As the investigation progressed, assigned senior inspectors reported the results of their activity to DDA Grove and the leadership team. Every PPD officer directly involved in the incident was sequestered² following the incident. Each officer was interviewed separately and represented by a defense attorney during questioning by CCCDAO and PPD personnel.

Prior to interviewing the officers who used force and/or fired their weapons at MORALES, DDA Grove, Senior Inspector Sousa, and other PPD detectives reviewed the body-worn camera footage of this incident. The involved officers did not view the footage from their body-worn cameras prior to being interviewed.

Once the scene was processed and all the interviews were completed, the next steps in the investigation were to await the formal autopsy results, the completion of the crime lab testing, and the Coroner's Inquest hearing.

Overall, the CCCDAO investigation of the PPD shooting death of Mr. Salvador MORALES was comprehensive, thorough, objective, and independent. In all, (27) police officers, (9) firefighters/emergency medical personnel, and (7) civilian victims and witnesses were interviewed; along with two significant crime scenes being processed for evidence (location on Carolyn Dr and W. 10th St). This report represents hundreds of hours of investigation conducted by the CCCDAO, PPD, and the CCCSO Crime Lab.

Evidence Reviewed

The CCCDAO obtained and reviewed the following evidence and information regarding this incident:

- The crime scenes, located at a residence on Carolyn Dr, Pittsburg, CA; and on W 10th St, Pittsburg, CA
- Dispatch records and logs of the incident
- 9-1-1 audio recordings
- California Department of Justice criminal history information involving Salvador MORALES
- Prior police reports involving Salvador MORALES, PPD case: C14-3104
- Vehicular and body worn camera footage from the officers involved in this incident
- Interviews of all the officers categorized as actors (5), and witnesses (16)
- Interviews of the victims and civilian witnesses associated with this incident (7)

² The process whereby the involved officers are physically separated and isolated immediately following a use of force incident and are ordered not to discuss the incident with anyone except their attorney.

- Interviews of the responding support personnel from the CHP (6), CON-Fire (6) and AMR emergency medical personnel (3)
- Autopsy of Salvador MORALES, by CCC Sheriff's Coroner's Report, 18-4936
- CCC Forensic Services Division Report, 18-4100 (1&2)
- Coroner's Inquest testimony and findings

Factual Summary

On the evening of October 22, 2018, at approximately 7:51 pm, the PPD Dispatch Center began receiving 911 calls about Salvador MORALES (37 yrs) assaulting his estranged wife, V-2, at a residence on Carolyn Dr, in Pittsburg³. While PPD Dispatch was processing the 911 calls, the dispatcher heard, and the caller confirmed that a gun had been fired inside the residence. In order to give the reader a detailed understanding of how the events unfolded, the remainder of this summary will be relayed according to a chronological timeline⁴:

7:53 pm – PPD Officers Kevin Barkley (9Y5) and Curtis Kingman (9Y4) were dispatched to the residence on Carolyn Dr. regarding the above referenced information.

7:54 pm – PPD Dispatch developed information from 911 callers that MORALES shot V-1 in the neck. V-1 survived his injuries. The investigation later determined that V-1 is the brother-in-law of MORALES.

7:55 pm – Officers Barkley and Kingman arrive at the residence on Carolyn Dr. Shortly after arriving, Ofc. Kingman obtains information from the victims and witnesses that MORALES had just left the area in a black truck⁵.

7:57 pm – Ofc. Barkley located MORALES driving the black truck westbound on Leland Lane. He attempted to conduct a traffic enforcement stop on the black truck, however, MORALES failed to yield, and a pursuit ensued.

7:59 pm – Ofc. Rae Ann Thompson (9Y3), responded to the residence on Carolyn Dr and obtained information that MORALES was armed with a handgun and that V-2 and their infant son were in the truck with him. This information was immediately broadcast via police radio to all the police officers who were involved in this aspect of the incident.

³ MORALES had been estranged from V-2 for approximately one year. He had a history of alcohol and domestic violence arrests and convictions and had been the subject of multiple restraining orders of which his wife was named as the protected person.

⁴ The times given are approximate and the information is a summary of what occurred, for more detailed information see the CAD printouts and interviews with the referenced personnel.

⁵ Initial information from Dispatch and witnesses on scene described the make of the truck as being a Dodge or Toyota. In actuality, it was a Chevrolet.

8:00 pm – Ofc. Barkley continued to pursue MORALES at speeds up to 80 mph. He was able to get close enough to MORALES’ speeding vehicle to successfully apply the Starchase device⁶. MORALES was tracked at various locations in Pittsburg and Concord. While he was being tracked, the preliminary investigation of the shooting at the residence on Carolyn Dr. confirmed that MORALES was wanted for attempted murder of V-1 and kidnapping V-2 and their infant son.

8:19 pm – PPD received information that MORALES had called his brother and informed him that he was heading home to the location on W. 10th St.

8:24 pm – After a 27-minute pursuit, MORALES arrived at the location on W. 10th St. After he stopped the vehicle, pursuing PPD personnel saw him run into the residence with a handgun in his hand. V-2 was able to escape with her infant son as MORALES fled into his residence. They were able to escape from MORALES without sustaining serious injuries.

8:24 pm – With the assistance of officers from the CHP and Oakley PD, PPD officers place police personnel in front and to the rear of the location on W. 10th St, establishing a physical perimeter around the residence.

8:34 pm – Perimeter units observed MORALES walk out the front door of the residence onto the porch and then turn and re-enter the home.

8:47 pm – PPD Dispatch broadcasted over police radio that they were talking to MORALES via 911. MORALES advised Dispatch that he would surrender but he wanted to see his mother first.

9:40 pm – PPD SWAT react team⁷ arrived at the location on W. 10th St.

10:15 pm – Sgt. Hatcher and the rest of the SWAT team arrived at W. 10th St. in the ballistic armored tactical transport vehicle⁸ (BATT).

10:54 pm – MORALES walked out the front door of his residence with a semi-automatic handgun pointed at his own head. Ofc. Baker fired a .40 mm sponge round at MORALES, striking him in the upper torso. MORALES recovered from the impact of the round and raised his handgun in the direction of the officers on the perimeter. MORALES then fired one round at the officers, and they returned fire incapacitating him.

10:55 pm – Emergency medical personnel who were already on scene responded and rendered medical aid to MORALES.

⁶ Starchase is pursuit management technology, that allows a pursuing police vehicle to launch a gps tracker onto the vehicle being pursued. The pursuing officers are then able to track the vehicle from a safe distance, minimizing the danger to other motorists, pursuing police officers, and the person being pursued.

⁷ React Team – A team of officers who are able to respond to tactical contingencies (e.g., arrest, surrender, emergency entry), that unfold inside the perimeter of a barricaded subject incident.

⁸ The BATT is a tactical transport truck that has ballistic armor to protect the officers from small arms gunfire.

11:02 pm – PPD personnel on scene advised Dispatch that the Protocol was being invoked⁹.

11:12 pm – CCCDAO Chief Mulligan was notified of the incident by Lieutenant Deplitch.

Scene Description

There are two significant crime scenes associated with this incident: (1) a residence on Carolyn Dr., Pittsburg, CA; and (2) a residence on W. 10th St, Pittsburg, CA.

The residence on Carolyn Dr., is the location where the initial set of events took place. MORALES' estranged wife, 10-year-old daughter, and infant son, were living at this location with V-1 and other close family members.

The residence on W. 10th St, Pittsburg, CA, is the location where the LEIFI occurred. It is a residential dwelling (single-story) on W. 10th St in Pittsburg, CA. The residence is yellow in color, with a small raised (four steps), partially enclosed, and attached porch off the front door that extends east and west along the front of the home. The small porch extends to touch the driveway that runs south to north on the east side of the front yard area of the home. The front door is located in the center of the home and there is a black screen door attached to the front door. The handle for the black screen door is on the right side of the doorway. There are large mature palm trees in the front yard of the home that obscure the view of the porch area.

MORALES' black Chevrolet, S-10 pick-up truck was parked in the driveway east of the front porch area. The physical evidence indicates that MORALES fired a round from his handgun at PPD officers in the area in between the porch and his Chevrolet pick-up truck (see photos below)

⁹ The invocation of the Protocol initiates the independent criminal investigative process that involves the CCCDAO. After the Protocol is "invoked" PPD personnel call the CCCDAO and advise them of the incident.



(View of residence on W. 10th St, from the rear of MORALES' truck to the eastside of the porch)



(View of residence on W. 10th St, the east driveway in front of MORALES' truck)



(View of residence from the front of MORALES' truck, towards the east side of the porch)



(View of residence on W. 10th St, front porch east to west)



(View of residence on W. 10th St, front door with screen)

Vehicular and body-worn camera footage

There is in-car video¹⁰ and body-worn camera (BWC) footage that capture key portions of the incident¹¹. Most of the video footage retrieved from the BWC's was obscured because the officers were taking cover behind the ballistic armored tactical transport vehicle (BATT) and other patrol vehicles. However, the relevant footage captures (1) MORALES talking to the officers from the porch of the residence with what appears to be a handgun in his right hand pointed to the right temple area of his head; (2) intermittent portions of the negotiation between Officers Ernesto Mejia, Fernando Salamanca and MORALES; (3) MORALES walking toward his truck and being struck with a .40 mm less lethal sponge round; (4) MORALES firing his semi-automatic handgun towards the officers on the perimeter; (5) the return gunfire by the officers; and (6) some of the post-incident administrative details.

The key video comes from the in-car video system of PPD patrol vehicle #116, with AXON in-car video camera #X81264100. The entire length of the video is approximately 4:00:02 (four hours and two seconds).

¹⁰ In-car video – A video camera mounted in the passenger compartment of a vehicle. The viewing area is through the windshield toward the front of the police vehicle.

¹¹ The original BWC footage is maintained by PPD. PPD released footage of the incident in October of 2018 and it is available to view from several public sources on the internet.

The vehicle was parked in front of the residence, with the front of the vehicle facing west. Officer Salamanca and Sergeant Hatcher are visible in the foreground of the video taking cover to the rear of the BATT. The relevant portion of the in-car video depicts the following information¹²:

- T05:48:11Z (2248:11 hrs, PST) – Officer Salamanca calls out MORALES’ name.
- T05:48:19Z (2248:19 hrs, PST) – MORALES appears in/around the doorway of his residence and Officer Salamanca negotiates with him in Spanish.
- T05:52:57Z (2252:57 hrs, PST) – MORALES stepped out onto the porch with his right hand pointed at the right temple area of his head.
- T05:53:05Z (2253:05 hrs, PST) – MORALES turns and starts to walk toward his vehicle.
- T05:53:10Z (2253:10 hrs, PST) – MORALES reached the stairs of his porch and turned toward the street. He appeared to be holding a handgun in his right hand, and the firearm is pointed at the right side of his head. Officer Salamanca continued to negotiate with him in Spanish.
- T05:53:44Z (2253:44 hrs, PST) – MORALES stepped from his porch onto the driveway.
- T05:53:45Z (2253:45 hrs, PST) – MORALES took another partial step towards his vehicle, while still holding the handgun to the right side of his head. Officer Baker appeared in the foreground of the video and fires the .40 mm less lethal sponge round.
- T05:53:46Z (2253:46 hrs, PST) – MORALES reacted to being shot with the .40 mm less lethal round by yelling, bending forward at the waist, and turning slightly so that he is facing the left front quarter panel of his vehicle.
- T05:53:47Z (2253:47 hrs, PST) – Officers around the inner perimeter can be heard yelling, “Drop the gun!” As the officers are yelling commands at MORALES, he fired his handgun. Officers immediately returned fire.
- T05:53:49Z (2253:49 hrs, PST) – The officers stop firing.
- T05:53:55Z (2253:55 hrs, PST) – The officers break cover to check the status of MORALES who is on the ground in between the vehicle and the front porch.

It is important to note, that none of the involved officers viewed the in-car video footage or their BWC’s prior to being interviewed.

Interviews of Involved Police Officers

There were (27) sworn law enforcement officers involved in this incident. Of that number, five used force against MORALES and are considered actors¹³ under the Protocol. Due to the number of law enforcement personnel involved in this incident, we will only detail the interviews of the officers who were actors, or those who witnessed a key portion of this incident and can help provide a more complete picture of what occurred¹⁴.

¹² The video lists the date and time according to the UTC (Universal Time Coordinated) standard. UTC is approximately seven hours ahead our time zone (Pacific Standard Time).

¹³ Actors – Law enforcement personnel whose conduct was actually or conceivably a factor in the fatality (CCC Protocol, pg. 14).

¹⁴ The original records are retained by agencies involved in this incident. Copies can be obtained by contacting them directly.

During the course of the criminal investigation, an officer has the right to be represented by an attorney. The officer may choose to provide a statement, physical evidence, and other relevant information. It's important to note that, neither an officer or civilian can be compelled to provide a statement or any other evidence in a criminal investigation. An officer can only be compelled to provide a statement or other relevant information during an internal administrative investigation by the officer's employer¹⁵. In this investigation, all the involved officers provided voluntary statements to the CCCDAO and PPD with their defense attorney present. Each police officer was interviewed separately from the others within hours of the incident and after being subject to sequestration.

Sergeant William Hatcher

Sergeant Hatcher was interviewed on October 23, 2018, at 7:15 am, by Sr. Inspector Sousa, PPD Det. Jacob Stage, and DDA Grove. Jonathan Murphy, his defense attorney, were present for the interview.

The following information is a summary of the relevant portions of Sergeant Hatcher's interview.

Sergeant Hatcher was wearing his PPD SWAT team uniform and carrying the following firearms during this incident: Sig Sauer P320, .40 ca., semi-automatic handgun; and an AR-15, .223 ca., semi-automatic rifle.

Sergeant Hatcher arrived at PPD at approximately 9:00 pm on October 22, 2018 and was the PPD SWAT team leader for this incident. As the team leader, he was responsible for developing a tactical plan of action, as well as the deployment of personnel on scene.

Initially, he sent a react team of PPD officers consisting of Sergeant Blazer, Officer Mejia (fluent in Spanish), Officer Willie Glasper, and Officer Hatcher to the scene located on W. 10th St. He later sent Sergeant Joshua Reddoch and Corporal McCray to the scene as a sniper team element.

After developing a plan and briefing the other members of the SWAT team, Sergeant Hatcher responded to the scene. Although not present at the scene, Sergeant Hatcher was able to monitor the activity via the portable police radio he carried on his person.

The plan of action was to use Spanish speaking officers to negotiate with MORALES, and to respond tactically depending on his actions.

As he neared the scene, Sergeant Hatcher heard (via police radio) officers describing that MORALES had exited the front door of his residence to obtain cigarettes from his vehicle and was standing on the porch pointing a semi-automatic handgun at his own head.

¹⁵ Public Safety Officers Procedural Bill of Rights Act, Government Code sections 3300 et seq.

Based on this information, he directed Officer Baker to load the .40 mm launcher with a sponge round¹⁶ and to take a position in the turret¹⁷ of the BATT. MORALES retreated into the residence and PPD continued negotiating with him.

After arriving on scene, Sergeant Hatcher directed the repositioning of the BATT and other police vehicles to maximize protection for the officers and to ensure that the police emblems on the patrol vehicles would be visible to MORALES.

Because of the potential danger to the officers on the perimeter, as well as to the public in general, Sergeant Hatcher advised Officer Baker to shoot MORALES with one of the less lethal sponge rounds if he attempted to re-enter his vehicle.

MORALES re-appeared on the front porch of his home with a semi-automatic handgun (with extended magazine) in his right hand, and a cellphone in his left hand. Officer Salamanca negotiated with him from a kneeling position to the rear of the BATT, speaking directly to MORALES in Spanish. Officer Salamanca was in an exposed position, because of this Sergeant Hatcher assumed a defensive position where he was standing behind and over the top of him with his rifle.

MORALES appeared to be upset. In between speaking with MORALES, Officer Salamanca translated between him and Sergeant Hatcher. MORALES made comments about going to his truck, not caring if he got shot, and that he had children. Sergeant Hatcher told him that the person he shot was going to be “okay,” that he needed to drop the gun, and that his children needed a father.

Despite being warned not to do so, MORALES walked off the porch towards his truck that was parked in the driveway. As he neared the truck, Officer Baker shot him with one .40 mm sponge round. Sergeant Hatcher saw the round impact the upper torso of MORALES. After being hit with the sponge round, he made an audible sound while bending forward at the waist.

Almost instantly, MORALES recovered from being hit with the less lethal round and brought the firearm up to where it was pointed in the general area of Sergeant Hatcher and Officer Salamanca. Fearing for his and Officer Salamanca’s safety, Sergeant Hatcher fired “three or four rounds” from his AR-15 at MORALES.

Officer Kyle Baker

Officer Baker was interviewed on October 23, 2018, at 5:42 am, by Sr. Inspector Sousa, Det. Stage, and DDA Grove. Jonathan Murphy, his defense attorney, were present for the interview.

¹⁶ A less lethal blunt force projectile.

¹⁷ The turret is a manhole-sized opening in the top of the vehicle allowing for an elevated 360-degree vantage point.

The following information is a summary of the relevant portions of Officer Baker's interview.

Officer Baker was wearing his PPD SWAT team uniform and carrying the following firearms during this incident: .45 ca., 1911 style semi-automatic handgun; and an AR-15, .223 ca., semi-automatic rifle. He was also carrying a .40mm less lethal grenade launcher¹⁸.

Officer Baker is a member of the PPD SWAT team. He arrived at PPD in response to this incident at approximately 9:00 pm on October 22, 2018. After he and his team members were briefed about what had taken place up to that point, they formulated a plan and drove to the location on W. 10th Street. Officer Baker arrived in the BATT with other SWAT team members. The BATT and two other vehicles were parked directly on the street in front of the house, including one vehicle which blocked the driveway and MORALES' car. This was done so that the light from the vehicles could be used to illuminate the front of the home.

Officer Baker relayed that he brought a .40 mm less-lethal launcher to the scene in the event it was needed to take MORALES into custody.

Upon arrival at the scene, Baker could see MORALES standing in the front doorway holding a gun to his head. He could also hear a police negotiator conversing with MORALES in Spanish, asking him to put the gun down.

After positioning the BATT and two other police vehicles, SWAT team members took up defensive positions behind the vehicles.

At some point, Officer Baker remembered hearing Corporal Robert McSorley relay that MORALES wanted to leave the house to retrieve his cigarettes from his car in the adjoining driveway. He then remembered that Sergeant Hatcher told Officer Salamanca and McSorley to tell MORALES that they would not allow him to go to the vehicle, but that they would get him cigarettes from the store.

Officer Baker then recalled, MORALES did come out of the front door of the house a few minutes later. When MORALES appeared at the front door, he was again holding a handgun to his head.

Officer Baker made the decision that he would shoot MORALES with a .40 mm less lethal round if he advanced off the front porch of the house, either toward the driveway or toward the officers. MORALES did indeed advance off the front porch and walked toward his vehicle in the driveway with the handgun pointed at his own head.

Officer Baker then fired the less lethal round and saw it strike MORALES in the chest. He remembered that MORALES was momentarily stunned and bent over at the waist but still held onto the handgun, which was now hanging down at his side.

¹⁸ This tool is designed to fire less lethal munitions. Less lethal munitions are not intended to be lethal, nor are they considered deadly force.

As MORALES recovered from the momentary shock, he straightened up his body and brought the gun back up to a level position pointed in the direction of the SWAT officers. It was at this point that he heard multiple shots being fired.

Sergeant Gabriel Palma

Sergeant Palma was interviewed on October 23, 2018, at 6:18 am, by Sr. Inspector Sousa, Det. Stage, and DDA Grove. Jonathan Murphy, his defense attorney, were present for the interview.

The following information is a summary of the relevant portions of Sergeant Palma's interview.

Sergeant Palma was wearing his PPD SWAT team uniform and carrying the following firearms during this incident: Sig Sauer P226, .40 ca., semi-automatic handgun; and an AR-15, .223 ca., semi-automatic rifle.

Sergeant Palma arrived at the police department at approximately 9:00 pm on October 22, 2018, in response to a PPD SWAT call out. After discussing the situation and formulating a plan, Sergeant Palma rode to 110 W. 18th St in the BATT vehicle. Sergeant Palma was armed with a Sig Sauer 226 .40 ca. semi-automatic handgun, and an AR-15, .223 ca. semi-automatic rifle.

After he arrived, Sergeant Palma and other SWAT members found positions of cover behind the BATT vehicle and other vehicles parked on the curb outside the residence. After moving positions multiple times, Sergeant Palma settled on a position at the front of the BATT vehicle, which gave him a view of the front door.

During this time, he was aware of the ongoing negotiations with MORALES. After approximately 30 minutes, MORALES came to the door and Officer Salamanca, who is fluent in Spanish, began talking to MORALES. At this point MORALES was in the front doorway and was approximately 20-25 yards from Sergeant Palma's position.

Sergeant Palma recalled approximately five to ten minutes of conversation between the negotiator, Officer Salamanca, and MORALES. The conversation centered around cigarettes and MORALES insisting on retrieving cigarettes from his truck.

Sergeant Palma then saw MORALES leave the front doorway and walk toward his truck with a handgun pointed at his head. MORALES appeared distraught and emotional. As MORALES left the front porch of the house, Sergeant Palma saw the less lethal strike him in the upper torso of his body. He then saw MORALES keel over. Since his line of sight was obstructed by his positioning, which was designed to give him a view of the front door, Sergeant Palma only had a partial view of MORALES and his movement after he was struck by the less lethal round. Sergeant Palma saw some movement by MORALES and the next thing he heard was gunshots. He believed that MORALES had fired his gun and that he was now in an exchange of gunfire with his fellow officers. In defense of the other officers in the perimeter, Sergeant Palma fired one shot in the direction of MORALES with his AR-15 rifle.

Corporal Alex McCray

Corporal McCray was interviewed on October 23, 2018, at 6:48 am, by Sr. Inspector Sousa, Det. Stage, and DDA Grove. Jonathan Murphy, his defense attorney, were present for the interview.

The following information is a summary of the relevant portions of Corporal McCray's interview.

Corporal McCray was wearing his PPD SWAT team uniform and carrying the following firearms during this incident: Sig Sauer P320, .40 ca., semi-automatic handgun; and a Colt AR-15, .223 ca., semi-automatic rifle.

Corporal McCray, a member of the PPD SWAT team, arrived at the PPD at approximately 9:00 pm on October 22, 2018, in response to the MORALES incident. After discussing the case and formulating a plan with his team, Corporal McCray drove to 110 W. 18th St in a police vehicle and took up a defensive position in the turret of the BATT vehicle.

After a period of time, Corporal McCray recalled the suspect coming to the front door with the handgun to his head. He also remembered extensive conversation between MORALES and Officer Salamanca. Corporal McCray observed MORALES to be agitated and erratic.

MORALES then left the doorway and stepped off the front porch and walked in the direction of his vehicle parked in the driveway. Corporal McCray then heard a verbal announcement that the less lethal was about to be deployed.

He heard the shot from the deployment of the less lethal round, saw the round strike MORALES in the upper torso, and saw him double over in pain. He then saw MORALES straighten up and bring the handgun to a level position pointing it in the direction of the SWAT officers at the scene. Fearing for the safety of his fellow officers, Corporal McCray fired one round from his AR-15 rifle at MORALES.

Sergeant Chuck Blazer

Sergeant Blazer was interviewed on October 23, 2018, at 7:43 am, by Sr. Inspector Sousa, Det. Stage, and DDA Grove. Jonathan Murphy, his defense attorney, were present for the interview.

The following information is a summary of the relevant portions of Sergeant Blazer's interview.

Sergeant Blazer was wearing his PPD SWAT team uniform and carrying the following firearms during this incident: Sig Sauer P229, .40 ca., semi-automatic handgun; and an AR-15, .223 ca., semi-automatic rifle.

Sergeant Blazer responded to the call out and arrived at PPD at approximately 9:20 pm on October 22, 2018. Sergeant Blazer was sent to the location on W. 10th St, along with Officer Mejia and Officer Hatcher, to serve as the react team.

After arriving on scene, Sergeant Blazer contacted Sergeant Keefe who told him, that he believed MORALES was alone inside the residence and that he was talking to his brother by cellphone.

Sergeant Blazer recalled being on scene for at least 20 minutes, when he was told that MORALES was planning to walk out of the residence. Several additional minutes passed, the front door opened, and MORALES could be seen standing at the front door while pointing a semi-automatic handgun at himself. Officer Mejia spoke directly to MORALES, ordering him to put the gun down and not to walk outside the residence with the firearm. After several more minutes of this back and forth, MORALES physically dove back into the residence and then reached up with one hand and closed the front door.

Once at the scene, Sergeant Blazer, who was equipped with a rifle, positioned himself behind a parked car across the street from the MORALES residence. Sergeant Blazer witnessed MORALES come to the door with a gun pointed at his head. At this point, Officer Mejia began instructing MORALES in Spanish to put down the gun and not to advance. After approximately ten minutes, MORALES dove back into the house.

Approximately 20 minutes later, MORALES opened the front door a second time. Sergeant Hatcher and the rest of the PPD SWAT had arrived and taken up defensive positions around the front of the home. Sergeant Blazer heard Sergeant Hatcher advise the team that if MORALES walked out of the residence with the firearm, less than lethal force would be the first option.

Sergeant Blazer heard Sergeant Hatcher negotiating with MORALES with Officer Salamanca acting as the translator.

MORALES eventually walked out of the doorway and advanced toward his vehicle in the adjoining driveway. Sergeant Blazer estimated that MORALES was approximately 10-15 yards from his position behind one of the patrol cars in front of the residence. Once off the porch, Officer Baker shot MORALES with a .40 mm sponge round striking him in the chest. Sergeant Blazer saw MORALES bend over at the waist and then raise up his gun pointing it in his general direction, as well as that of the team. Fearing for his safety as well as the rest of the team, Sergeant Blazer fired his rifle at MORALES two to three times.

Sergeant Michael Keefe

Sergeant Keefe was interviewed on October 23, 2018, at 4:45 am, by Sr. Inspector Lewellyn and Det. Jonathan Elmore.

The following information is a summary of the relevant portions of Sergeant Keefe's interview.

Sergeant Keefe was a patrol supervisor at the time of the incident, as such, he led and coordinated the response to the incident prior to the arrival of the PPD SWAT team.

Sergeant Keefe arrived at the location on Carolyn Dr. as MORALES was driving away from that crime scene. He decided to leave the senior officer in charge at the residence so that he could supervise the pursuit. He trailed the pursuing vehicles and observed the vehicle as it arrived at the location on W. 10th St. After he exited his vehicle MORALES was confronted by PPD Officers Gregory Simpson, Armando Montalvo, and Barkley. MORALES drew his firearm and ran inside of the residence. His wife then ran towards the officers with their infant son.

Among other things, Sergeant Keefe requested a Spanish speaking officer be sent to the scene. However, the only officer available was Officer Garrett Wayne from neighboring Oakley PD. Officer Wayne arrived and spoke to MORALES by phone, in what was ultimately an unsuccessful attempt to have him surrender.

Approximately 25 to 30 minutes later, MORALES' brother, W-1, waved Sergeant Keefe down from the perimeter.

Sergeant Keefe then allowed W-1 to talk with MORALES by phone for another 30 minutes. This conversation was not recorded. Over the course of their conversation, MORALES told his brother he was going to come out of the residence and surrender; even going so far as to state that he was going to come outside with, "the gun to his head."

MORALES did not surrender and Sergeant Keefe later relinquished control of the scene to the SWAT team. He moved to the outer perimeter of the scene where he heard the exchange of gunfire. However, Sergeant Keefe did not see what occurred.

Sergeant Cassandra Wilkerson

Sergeant Wilkerson was interviewed on October 23, 2018, at 2:59 am, by Sr. Inspector Garcia and PPD Det. Chunliam Saechao.

The following information is a summary of the relevant portions of Sergeant Wilkerson's interview.

Sergeant Wilkerson is the Crisis Negotiations Team (CNT) supervisor. After receiving a call from Lieutenant Lester Galer, she responded directly to the Command Post (W. 10th and Black Diamond Sts).

Sergeant Wilkerson assessed the status of negotiations and learned that because of equipment malfunctions they had not been able to speak with MORALES on a recorded line. They opted to use a department cellphone to communicate with him.

At Sergeant Wilkerson's direction, Officer Arturo Fernandez (Spanish speaking CNT officer) called MORALES and maintained contact with him throughout the duration of the incident.

Sergeant Wilkerson personally passed information obtained from MORALES by Officer Fernandez on to the Command Post.

Sergeant Wilkerson heard the shots being fired but did not see the exchange of gunfire between MORALES and the officers on the inner perimeter.

Interviews of Civilian Victims and Witnesses

The civilian victims and witnesses involved in this incident did not observe the interactions between MORALES and PPD personnel, or the use of deadly force at the location on W. 10th St.

The civilians are victims and witnesses of MORALES' criminal conduct at the location on Carolyn Dr., as well as his actions prior to arriving at the location on W. 10th St. MORALES' actions at the location on Carolyn Dr. are relevant and provide context for the incident, however, the focus of this report is his conduct and the subsequent use of deadly force at the location on W. 10th St. For these reasons, as well as those related to privacy (see Privacy Statement), only a summary of their statements will be detailed in this report¹⁹.

In summary, MORALES and his wife, V-2, were separated and had been living in separate households a year prior to this incident. MORALES lived at the residence on W. 10th St., while V-2 and the children lived with her sister and her family at the residence on Carolyn Dr. They were legally married at the time and had two children together, a daughter and an infant son; both of whom were present for the events that occurred on Carolyn Dr.

MORALES had recently been abusive and violent with V-2. On October 13, 2018, V-2 and their infant son went to the residence on W. 10th St. to retrieve some mail. Unbeknownst to her, MORALES was at the residence. MORALES refused to allow her to leave, bound her hands together with a belt, and attempted to gag her by placing a sock in her mouth. While she was bound, MORALES punched her in the side of the head and brandished a semi-automatic handgun at her. He threatened her and said if they could not be together, he would kill her and her family. He also threatened to shoot himself. She was able to convince MORALES to allow her and the baby to leave the home. Fearing that MORALES would harm her family, she decided not to tell them what had occurred.

On the date in question, MORALES had been out shopping with their daughter. He showed up unannounced at the residence on Carolyn Dr. and knocked on the door to her in-law unit. She told him he wasn't allowed to be at her home and picked up the phone to call the police. He snatched the phone out of her hand to prevent her from calling for help. The daughter observed the interaction between her parents and ran into the main house.

¹⁹ The original records are retained by the agencies involved in this incident. Copies of those records can be obtained by contacting them directly.

A few moments later V-2's brother-in-law walked into the in-law unit. MORALES then drew a semi-automatic handgun from his waistband and shot V-1 one time. V-2 could see him attempting to fire at V-1 a second time, but the gun malfunctioned, and V-1 fled out of the unit with MORALES and V-2's daughter. MORALES then forced V-2, who was still holding the baby, out of the in-law unit and into his truck at gunpoint.

As they drove away from the residence on Carolyn Dr., V-2 saw a marked police unit following them with lights and siren activated. MORALES was running all the red lights and V-2 pleaded with him to stop the vehicle. He responded, "I don't want to go to jail, I'm dead already." V-2 overheard a cellphone conversation between MORALES and his brother (W-1). She heard him tell W-1 to bring their mother to the location on W. 10th St. and he would surrender.

At several different times during the pursuit MORALES pointed the gun at her head and threatened to kill her.

At some point, V-2 noticed the police vehicles had stopped following them. MORALES then drove back to Pittsburg from Concord. When they arrived at the residence on W. 10th St., he parked in the driveway, pointed the firearm at her and told her to get in the house. He then got out of the truck and ran into the home through the front door. V-2 seized upon the opportunity and ran to one of the officers on the perimeter of the residence. V-2 did not sustain any injuries requiring hospitalization.

Autopsy

MORALES was pronounced dead on October 22, 2018, 11:27 pm, at John Muir Medical Center, Walnut Creek, CA.

Dr. Ikechi Ogan (Forensic Pathologist) performed an autopsy on October 24, 2018, at the Contra Costa County Sheriff's Coroner's Office. In summary, the autopsy findings are as follows:

- Multiple gunshot wounds to the head and extremities. The numbers describing the gunshot wounds do not describe the sequence in which the lethal shots were fired. Dr. Ogan was not able to determine the sequencing of the gunshot wounds or which officer's firearm was responsible for a specific gunshot wound.
 - Gunshot Wound #1 – Entrance gunshot wound is present one inch below the top of the head and two inches to the right of the anterior midline. The direction of injury is back to front and downwards. A projectile was recovered and given to the attending criminalists.
 - Gunshot Wound #2 – This wound is to the left temple. The entrance gunshot wound is present four inches below the top of the head and four inches to the left of the anterior midline. The direction of injury is left to right and downward. There was no projectile recovered from this wound.
 - Gunshot Wound #3 – This wound is on the right side of the back of the head. The entrance gunshot wound is present three inches below the top of the head and

two inches to the right of the posterior midline. The direction of injury is back to front, right to left and downwards. There was no projectile recovered from this wound.

- Gunshot Wound #4 – This gunshot wound is on the back of the left arm. The entrance gunshot wound is located six inches below the shoulder tip. The direction of injury is back to front horizontally. There was no projectile recovered from this wound.
- Gunshot Wound #5 – This gunshot wound is on the left forearm. The entrance gunshot wound is located on the medial aspect of the forearm six inches below the elbow. The direction of injury is front to back and upwards. A fragment of copper jacketing was recovered from the exit wound and given to the attending criminalists.
- Non-lethal Injury – The mid-chest shows a round contusion measuring 4 X 4 cm. This injury came from the .40 mm sponge round that was fired at MORALES.
- Toxicology – The urine screen was positive for methamphetamine and cocaine. The blood toxicology was positive for methamphetamine, cocaine, and ethanol (drinking alcohol). At the time of the autopsy, MORALES had a blood alcohol concentration (BAC) of 0.162.

CAUSE OF DEATH: Multiple gunshot wounds to the head and extremities.

Crime Scene Evidence Recovery

The evidence at the crime scene located on W. 10th St was processed by criminalists from the Contra Costa County Sheriff's Office, Crime Lab.

Evidence recovery, scene documentation and photographs were done by the Contra Costa County Crime Lab. A .40 Glock handgun was recovered near MORALES' body and a spent .40 caliber shell casing was also recovered in the general vicinity of his body. Ballistic comparison tests revealed that the shell casing was expended from the recovered .40 caliber Glock handgun found near MORALES.

(8) .223 rifle shell casings were found in the vicinity of the SWAT officers. A .40 mm grenade launcher with an expended round in the chamber was also found in the same vicinity.

FINDINGS

The CCCDAO investigation determined the following key factual findings:

- In an attempt to murder his brother-in-law, MORALES shot him with a semi-automatic handgun.
- MORALES kidnapped his estranged wife, V-2, and their infant son at gunpoint, and transported them against their will to the location on W. 10th St.
- MORALES led officers from the PPD and the CHP on a high-speed pursuit throughout the cities of Concord and Pittsburg for approximately 27 minutes.
- MORALES barricaded himself in the location on W. 10th St. with a loaded firearm and refused the lawful orders of PPD personnel to surrender and exit the residence.
- In an attempt to deescalate the situation, PPD personnel negotiated with MORALES for approximately two hours.
- After being warned repeatedly by PPD personnel, MORALES exited the residence with a semi-automatic handgun and attempted to gain access to his vehicle in the driveway.
- To prevent MORALES from gaining access to his vehicle, Officer Baker fired a .40 mm sponge round, striking him in the chest.
- Subsequent to being hit by the sponge round, MORALES raised the semi-automatic handgun and fired one round towards Sergeant Hatcher and Officer Salamanca.
- Fearing for their lives, as well as the lives of their fellow officers, Sergeant Hatcher, Sergeant Palma, Corporal McCray, and Sergeant Blazer fired their service rifles at MORALES. Based on the available evidence, we were not able to determine the sequence in which the officers fired their weapons.

LEGAL ANALYSIS

The sole question to be decided by the CCCDAO is whether Officer Baker, Sergeant Palma, Corporal McCray, Sergeant Hatcher or Sergeant Blazer violated any criminal laws. Whether an officer is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

The California District Attorney's Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

The applicable California Penal Code Sections are as follows:

Section 187: Murder is the unlawful killing of a human being or fetus with malice aforethought.

Section 188: Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

Section 192: Manslaughter is the unlawful killing of a human being without malice.

Section 196: Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either –

1. In obedience to any judgement of a competent Court; or
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or
3. When necessarily committed when retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with a felony, and who are fleeing from justice or resisting arrest.

Section 197: Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends or endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or
4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Section 199: The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Any killing of a human being at the hands of another is a homicide. A homicide may be criminal or justifiable depending upon the circumstances. It is justifiable if done while resisting a violent felony or in self-defense or in defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he or she actually and reasonably believed that he or she or another was in imminent danger of great bodily injury or death. (*See People v. Williams* (1977) 75 Cal. App. 3rd 731.) In protecting oneself or another, a person may use all force which he or she believes reasonably necessary, and which would appear to a reasonable person, in similar circumstances, to be necessary to prevent the injury, which appears imminent. (*See* CALCRIM 505.) In order to justify killing another person in self-defense or in the defense of another, actual danger of death or great bodily injury is not necessary. (CALCRIM 505.)

Pursuant to CALCRIM 505:

A homicide is justifiable and not unlawful when committed by a person who:

1. Reasonably believed he or she or someone else was in imminent danger of being killed or suffering great bodily injury;
2. Reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and

3. Used no more force than was reasonably necessary to defend against that danger.

Pursuant to CALCRIM 507:

A homicide by a peace officer is justifiable and not unlawful when:

1. The killing was committed while overcoming actual resistance to some legal process or while performing any other legal duty;
2. The killing was necessary to accomplish one of those legal purposes; and
3. The officer had probable cause to believe that someone posed a threat of death or serious bodily harm, either to the officer or to others.

Probable cause exists to believe that someone poses a threat of death or serious bodily harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or serious bodily harm to another. (CALCRIM 507.)

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. (CALCRIM 505 and 507.) It is not a criminal defendant's burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others. Absent direct evidence that an officer did not actually or reasonably believe in the need for force, circumstantial evidence must be used. If two reasonable conclusions can be drawn from circumstantial evidence, however, and one of those reasonable conclusions points to innocence, jurors are instructed that they must accept the one that points to innocence. (CALCRIM 224.)

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. The Supreme Court stated, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 US 386, 396-397.

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal. Moreover, if an act is committed by reason of a mistake of fact which disproves any criminal intent, it is not a crime. Therefore, a person is not guilty of a crime if he or she commits an act under an actual belief in the existence of certain facts and circumstances which, if true, would make the act lawful. (See CALCRIM 3406.)

In the present case, the forensic pathologist determined the cause of death for MORALES was multiple gunshot wounds to the head and extremities.

There is no conclusive way to determine the order in which each gunshot wound occurred, or which officer is responsible for each individual gunshot wound.

To establish criminal liability, the evidence must show beyond a reasonable doubt that Sergeant Hatcher, Officer Baker, Sergeant Palma, Corporal McCray, and Sergeant Blazer killed MORALES and the officers did not reasonably believe that they or another person was in imminent danger of death or great bodily injury.

LEGAL ANALYSIS & CONCLUSION

The CCCDAO conducted an independent investigation and review of the facts and circumstances that lead to the death of MORALES.

The evidence shows that all five officers (Sergeant Hatcher, Officer Baker, Sergeant Palma, Corporal McCray, and Sergeant Blazer) acted in what each of them actually and reasonably believed to be self-defense and defense of others. The examined evidence does not support the contention that the shooting of MORALES was criminal.

On the evening of October 22, 2018, at approximately 7:51 pm, the PPD Dispatch Center began receiving 911 calls about MORALES assaulting his estranged wife. While PPD was dispatching the 911 calls, the dispatcher heard, and the caller confirmed that a gun had been fired inside the residence. The evidence shows that MORALES was in possession of a gun when he arrived at the residence and witnesses both saw and heard him shoot his brother-in-law in the neck. In her statement to the police, V-2 said she could see MORALES attempting to fire at her brother a second time, but the gun malfunctioned, and her brother was able to run out of the unit with her older daughter. The fact that MORALES shot his brother-in-law once and attempted to shoot at him a second time constitutes a felony offense and is clear and uncontroverted evidence that he posed a threat of serious bodily harm and death to another individual.

MORALES then committed two additional felonies when he kidnapped V-2 and their baby when he forced them into his truck at gunpoint. He then led officers from PPD and the CHP on a high-speed pursuit at speeds up to 80 mph throughout the cities of Pittsburg and Concord for approximately 27 minutes. Committing yet another felony, reckless evasion of a police officer.

Once MORALES returned to the Pittsburg residence, pursuing PPD officers saw him run into the residence with a handgun in his hand. A physical perimeter was set up around the residence he barricaded himself inside the home with a loaded firearm and refused the lawful orders of the officers to surrender and exit the residence. Great efforts were taken to deescalate the situation. PPD personnel negotiated with MORALES for over two hours and allowed him to speak with his brother in an effort to get him to surrender peacefully and safely.

Nearly two hours into the standoff, MORALES exited the residence with a handgun pointed at his head. He was ordered by PPD officers to put the gun down.

MORALES then wanted to retrieve his cigarettes from his car which was parked in the driveway of the residence. He was ordered not to approach his car. He returned inside the residence and then appeared again outside the residence a short time later. When he exited the front door, he was seen holding the handgun and pointing it at his head.

Having committed multiple violent felonies up to this point including the attempted murder of his brother-in-law, and refusing to peacefully surrender after nearly two hours, the officers on scene were operating with the knowledge that MORALES was not only a danger to others, but he was also clearly a danger to himself.

When MORALES exited the residence for a second time, still armed with the handgun, Officer Baker made the decision to use less than lethal force against MORALES if he defied the officer's orders and moved toward his vehicle or the officers. MORALES did in fact leave the front porch of the residence and walked toward his vehicle with the handgun pointed at his head. At this point, Officer Baker fired the less than lethal round and saw it strike MORALES in the chest. Impacted by the round, MORALES bent over at the waist. The handgun he was holding was not hanging by his side. As he stood upright, recovering from the round, MORALES brought the handgun to a level position and pointed it in the general direction of Sergeant Hatcher and Officer Salamanca, and fired one round in the direction of the officers.

Sergeant Hatcher

Fearing for his safety and the safety of Officer Salamanca, Sergeant Hatcher fired three or four rounds at MORALES. Given the uncontroverted evidence in this case, it cannot be proven beyond a reasonable doubt that Sergeant Hatcher's belief that he or someone else was in imminent danger of being killed was unreasonable. Sergeant Hatcher knew that MORALES had already shot his brother-in-law in the neck earlier in the evening. When MORALES returned from the high-speed chase Sergeant Hatcher knew MORALES was armed with the handgun when he entered the residence. He also witnessed MORALES exit the residence twice holding the handgun. He witnessed MORALES disobeying the commands to not approach his vehicle. He then witnessed MORALES stand upright after being hit in the chest by the less than lethal round and level the handgun pointing it in his and Officer Salamanca's general direction. To say that it would be unreasonable for Sergeant Hatcher to believe that MORALES was about to fire the handgun he possessed is untenable given these facts and the totality of the circumstances.

Sergeant Palma

According to Sergeant Palma MORALES appeared distraught and emotional when he exited the residence for the second time. As MORALES left the front porch of the house, from his vantage point, he saw the less than lethal round strike him in the upper torso of his body. He saw MORALES keel over after being hit.

Due to the fact that his positioning, which focused his line of sight on the front door was somewhat obstructed Sergeant Palma only had a partial view of MORALES. He then saw MORALES continue to show signs of movement and the next thing he heard was gunshots.

He believed MORALES had fired his gun and that his officers were being shot at by MORALES. In defense of the officers in the perimeter Sergeant Palma fired one shot in the direction of MORALES.

Given the uncontroverted evidence in this case, it cannot be proven beyond a reasonable doubt that Sergeant Palma's belief that his fellow officers were in imminent danger of being killed was unreasonable. Sergeant Palma knew that MORALES had already shot his brother-in-law in the neck earlier in the evening. When MORALES returned from the high-speed chase Sergeant Palma knew MORALES was armed with the handgun when he entered the residence. He also witnessed MORALES exit the residence twice holding the handgun. He witnessed MORALES disobeying the commands to not approach his vehicle. He then witnessed MORALES exhibiting movement after being hit in the upper torso by the less than lethal round. To say that it would be unreasonable for Sergeant Palma to believe that MORALES had fired his handgun at his fellow officers is untenable given these facts and the totality of the circumstances.

Corporal McCray

Corporal McCray recalled MORALES twice exit the residence with a handgun pointed at his head. He observed MORALES to be agitated and erratic. Once MORALES exited the residence a second time, he saw him step off the front porch and walk in the direction of his car that was still parked in the driveway. Corporal McCray then heard the announcement that the less than lethal round was about to be fired at MORALES. He heard the less than lethal round being fired, saw the round strike MORALES in the upper torso, and saw him double over. He then saw MORALES straighten upright and bring the handgun to a level position and point it in the direction of the SWAT officers at the scene. Fearing for the safety of his fellow officers, Corporal McCray fired one round.

Given the uncontroverted evidence in this case, it cannot be proven beyond a reasonable doubt that Corporal McCray's belief that his fellow officers were in imminent danger of being killed was unreasonable. He knew that MORALES had already shot his brother-in-law in the neck earlier in the evening. When MORALES returned from the high-speed chase, he knew MORALES was armed with the handgun when he entered the residence. He also witnessed MORALES exit the residence twice holding the handgun. He witnessed MORALES disobeying the commands to not approach his vehicle. Describing him as agitated and erratic, he then witnessed MORALES exhibiting movement after being hit in the upper torso by the less than lethal round. He further witnessed MORALES straighten upright and bring the handgun to a level position pointing it at the SWAT officers at the scene.

To say that it would be unreasonable for Corporal McCray to believe that MORALES was about to fire the handgun in his possession at his fellow officers is untenable given these facts and the totality of the circumstances.

Sergeant Blazer

Sergeant Blazer recalled being on scene for at least 20 minutes when he was told that MORALES was planning to walk out of the residence. Soon thereafter, the front door to the residence opened and he saw MORALES standing at the front door pointing a handgun at himself. He heard Officer Mejia speak directly to MORALES ordering him to put the gun down and not to walk outside the residence with the firearm. After several minutes of going back and forth, MORALES retreated back inside the residence with the firearm.

Sergeant Blazer ultimately positioned himself behind a parked car across the street from the residence. He witnessed MORALES at the door of the residence with a handgun pointed at his head. He heard Officer Mejia instruct MORALES in Spanish to put down the gun and to not take a step further. After several minutes he saw MORALES return back inside the residence. After approximately 20 minutes MORALES opened the door again.

He heard Sergeant Hatcher advise the team that if MORALES walked out of the residence with the firearm less than lethal force would be used as a first option against MORALES. He then heard Sergeant Hatcher further negotiate with MORALES with the assistance of Officer Salamanca as the Spanish translator.

MORALES eventually left the porch of the residence and walked toward his vehicle parked in the driveway. He estimated MORALES was approximately 10-15 yards from where he was positioned. He then saw Officer Baker use less than lethal force against MORALES firing a .40 mm sponge round striking him in the chest. He then saw MORALES bend over at the waist and then raise the handgun he was holding and point it in his general direction, as well as that of the team of officers positioned in front of the residence. Fearing for his safety as well as the safety of the rest of the team, Sergeant Blazer fired at MORALES two or three times.

Given the uncontroverted evidence in this case, it cannot be proven beyond a reasonable doubt that Sergeant Blazer's belief that he or someone else was in imminent danger of being killed was unreasonable. Sergeant Blazer knew that MORALES had already shot his brother-in-law in the neck earlier in the evening. When MORALES returned to the residence from the high-speed chase Sergeant Blazer knew MORALES was armed with the handgun when he entered the residence. He also witnessed MORALES exit the residence twice holding the handgun. He witnessed MORALES disobeying the commands to put the gun down and to not leave the front porch of the residence. He then witnessed MORALES stand upright after being hit in the chest by the less than lethal round and level the handgun pointing it in his general direction and that of his teams.

To say that it would be unreasonable for Sergeant Blazer to believe that MORALES was about to fire the handgun he possessed is untenable given these facts and the totality of the circumstances.

Additional Legal Analysis

The analysis of this investigation includes consideration of whether it was reasonable for each officer to act when they did, rather than waiting to see if MORALES would actually fire his gun. It is important to note, that although none of the officers mention in their statements they saw or heard MORALES fire his weapon, the evidence shows otherwise. The video footage from the shooting depicting the officers stationed at the inner perimeter of the residence reveals them yelling at MORALES, "Drop the gun!" As the officers yelled this command, MORALES can be heard in the video firing one round from his handgun. The video also shows the officers immediately and almost simultaneously returning fire. The evidence collected at the scene corroborates the video footage. The Contra Costa County Crime Lab recovered a .40 caliber Glock semi-automatic handgun near MORALES and a spent .40 caliber shell casing were recovered in the general vicinity of his body. The investigation determined this handgun did not belong to any of the officers at the scene.

Furthermore, the events that transpired just before lethal force was used took place in a very narrow window of time. Each officer knew that MORALES had used deadly force against his brother-in-law just a few hours before the stand-off began. Each officer knew that MORALES kidnapped his wife and infant child at gunpoint and lead officers on a 27-minute-high speed chase through the cities of Concord and Pittsburg. The reckless disregard he had for his safety, the safety of his wife and infant son, the safety of the officers, and the safety of the other drivers and pedestrians on the street during the chase exhibited his extreme disregard for human life. MORALES then refused, for nearly two hours, to surrender peacefully. He continued to ignore the orders of the officers to put his gun down and to not move off the front porch or walk toward his vehicle. He was described by the officers as appearing agitated, emotional, and erratic. Instead of collapsing, surrendering, or putting his gun down after being hit with the less than lethal round, MORALES stood upright and raised his hand level with the ground pointing it in the direction of the officers in front of him. It was not unreasonable for the officers to believe that MORALES was an imminent deadly threat to each individual officer or to the officers in MORALES' line of sight. Each officer made a rapid decision to shoot when faced with imminent danger. The law requires that the reasonableness of the officer's actions be assessed with the understanding that "police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." This was such a circumstance. Moreover, had any of the officers waited to take action, the consequences of such inaction could have resulted in any of their deaths. Given the totality of the circumstances, the officers belief that their safety and the safety of their fellow officers was in imminent danger of death or great bodily injury was more than reasonable.

Accordingly, in applying the applicable law and the California District Attorney's Uniform Crime Charging Standards to the present case, there is insufficient evidence to support a criminal prosecution against Sergeant William Hatcher, Sergeant Gabriel Palma, Corporal Alex McCray, or Sergeant Chuck Blazer. As such, no further action will be taken in this case.

END OF REPORT