

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

December 30, 2015

REPORT ON THE JULY 28, 2012,
FATAL SHOOTING OF
EDGAR GARCIA
BY OFFICER HECTOR RAMIREZ OF THE
SANTA PAULA POLICE DEPARTMENT



GREGORY D. TOTTEN
DISTRICT ATTORNEY

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS 4

 A. INITIAL DISTURBANCE 5

 B. POLICE RESPONSE TO 911 CALL 6

 C. THE SHOOTINGS..... 6

 1. Shots Fired at Responding Officers, Striking Officer Chad Peplinski 6

 2. The Shooting of Edgar Garcia 7

 D. WITNESS STATEMENTS 9

 1. Raul Vasquez 9

 2. 911 Call..... 12

 3. Hilda Vasquez..... 13

 4. Ivan Escobedo..... 16

 5. Kimberly Vasquez 18

 6. Sergio Perez 19

 7. Magdalena Rodriguez 20

 8. Lila Gonzales 22

 9. Reserve Officer Chad Peplinski..... 23

 10. Reserve Sergeant Damien Shilo..... 28

 11. Officer Scott Varner..... 32

 12. Officer Frank Huerta..... 35

 13. Officer Hector Ramirez..... 36

 14. Ventura County Fire Department and Paramedics 42

III. FORENSIC EVIDENCE 43

 A. CRIME SCENE..... 43

 B. PHYSICAL EVIDENCE COLLECTED AT THE SCENE 44

 C. CAUSE OF DEATH..... 46

 D. TOXICOLOGY RESULTS 46

 E. CONTENTS OF PLASTIC BAGGIE 47

 F. BALLISTICS RESULTS 47

 G. GUNSHOT RESIDUE TESTING..... 48

IV. LEGAL PRINCIPLES 48

 A. LAW OF HOMICIDE AND SELF DEFENSE 48

 B. EDGAR GARCIA’S CRIMINAL CONDUCT..... 51

V. ANALYSIS..... 53

VI. CONCLUSION..... 55

I. INTRODUCTION

On July 28, 2012, at approximately 5:20 p.m., Raul Vasquez went to the Santa Paula Police Department to report that his stepson, Edgar Garcia, was causing a disturbance at his residence at 1117 New Street, in Santa Paula. Mr. Vasquez reported to Officer David Keathley that his stepson, Garcia, brandished a firearm at him and Mr. Vasquez wanted to know how to remove Garcia from the house, but did not want to file charges.

Later that day, at 7:40 p.m., Mr. Vasquez called 911 and reported that Garcia was armed with a handgun and had assaulted him.

Reserve Sergeant Damien Shilo, Officers Frank Huerta, Shane Norwood, and David Keathley, and Reserve Officer Chad Peplinski, of the Santa Paula Police Department, responded to the front of the New Street residence in full uniform and marked patrol cars. Upon arrival, they encountered several subjects standing in the driveway of the home. Some of the subjects ran to the rear of the residence; others were detained in the driveway. The garage door was open, as was the interior door of the garage that led to interior portion of the home. Officer Huerta detained an individual (later identified as Sergio Perez) near a pickup truck parked in the driveway. In order to maintain a perimeter at the scene, other officers took up positions near the threshold of the garage door and Officer Hector Ramirez responded to the rear of the residence.

As the officers were standing near the threshold of the garage and calling for Mr. Vasquez to come and speak with them, Garcia came out of the interior garage door, concealing himself behind Mr. Vasquez, who had just entered the garage to speak with the officers. Garcia immediately fired three shots at the officers standing near the threshold of the driveway and fled back into the home.

Officer Peplinski was struck by one of the rounds fired toward him and the other officers. The fired round struck Officer Peplinski's duty belt. As he ducked for cover, he fell to the ground. Other officers ran to assist the fallen officer and eventually discovered that the bullet had not penetrated Officer Peplinski's body.

Officer Ramirez secured a position along a retaining wall at the rear of the residence that separated the commercial business from the suspect's home. From this position, Officer Ramirez heard three to four shots being fired from an area near the front of the home and heard "999"¹ transmitted over the radio. He saw the suspect enter the back yard from the house.

Officer Ramirez saw Garcia jump up onto the wall. Upon making eye contact with Officer Ramirez, Garcia dropped back down into the yard. Officer Ramirez stood up on some tires behind the wall, and as he looked over the wall at Garcia, he saw Garcia pointing a handgun directly at him. Officer Ramirez believed that Garcia was actually firing the gun because of the jerking movements of Garcia's hand as he held the gun extended toward Officer Ramirez. Officer Ramirez ordered Garcia to drop the gun and get down on the ground. When Garcia failed to comply, Officer Ramirez fired several shots toward Garcia. Ramirez again looked over the wall and saw Garcia stop and turn towards him holding the gun as if he was going to shoot at him. Officer Ramirez again fired his weapon. The suspect went to the ground after this second volley of shots. Other officers entered the rear yard from the house and eventually handcuffed Garcia. Fire and ambulance personnel responded; however, Garcia was pronounced deceased at the scene

¹ "999" is a radio call used to indicate "officer emergency, officers need help" and is also used for "shots fired, officer down."

at approximately 8:08 p.m. A .22 caliber handgun was located near Garcia's body and emergency personnel observed a [DJ1] plastic baggie with a white powdery substance which they removed from his shorts pocket and placed next to him.

The District Attorney's Office has a 24-hour, on-call, officer-involved shooting team available to all Ventura County law enforcement agencies to assist in the investigation of officer-involved shootings. Chief Deputy District Attorney Chuck Hughes and District Attorney Investigator Robert Coughlin responded to the shooting scene and consulted with the investigating officers.

The Santa Paula Police Department requested the assistance of the Ventura County Sheriff's Office to help investigate the shooting, and detectives from the Sheriff's Major Crimes Unit responded to the scene. Officers from the Ventura and Oxnard Police Departments as well as officers from the California Highway Patrol also responded to the scene after the shooting.

The Ventura County Sheriff's Office conducted a detailed investigation of the shooting, which included interviewing witnesses, collecting physical evidence, photographing the area of the shooting, and conducting interviews with the involved officers, as well as other personnel who responded to the scene. On or about February 27, 2013, the Ventura County Sheriff's Office investigation reports were first submitted to the District Attorney's Office for a determination of whether the shooting of Garcia was justified and, if not, whether criminal charges should be filed. Additional investigation was requested regarding the .22 caliber gun recovered from the scene and the final reports were received

on June 11, 2013.² Additional follow-up requests were sent to the crime lab regarding DNA analysis in April 2015, and the final amended report was sent to this office on July 23, 2015. The scope of the District Attorney's review was limited to those issues.

The District Attorney's review included reviewing more than 630 pages of reports and documents, including interviews of police and civilian witnesses, diagrams, photographs, recorded interviews, records of radio transmissions, interviews of civilian and expert witnesses, and an examination of the scene of the shooting by District Attorney investigative staff. A 37-page submittal dated June 18, 2014, by the attorney representing Edgar Garcia's family was also reviewed and considered.

Based on the information available for review, the District Attorney's investigation, and the applicable legal authorities, it is the opinion of the District Attorney that Officer Ramirez acted lawfully when he shot at Garcia and that Garcia's resulting death was a justifiable homicide.

II. STATEMENT OF FACTS

Edgar Garcia was 25 years old and a member of Santa Paula's "Crimies" street gang. His monikers or nicknames were "Crippler"³ and "Chedgar."⁴ Garcia lived at 1117 New Street in Santa Paula, with his mother, Hilda Vasquez; stepfather, Raul Vasquez;

² On May 28, 2015, District Attorney Investigator Robert Coughlin completed his follow-up investigation regarding the FIE .22 caliber semiautomatic handgun recovered from the crime scene and lodged into evidence. It was determined that the serial number of the firearm listed in the crime report was erroneously listed as A317540. The true serial number was identified by the crime lab as AB117540. Further investigation revealed that the weapon had been reported stolen during a home burglary between 1989 and 1992.

³ Tributes posted on the Santa Paula Funeral Home memorial Web site included photographs and a tribute, "In Loving Memory of Edgar 'Crippler' Garcia." A memorial carwash was also organized "In Loving Memory of Edgar 'Crippler' Garcia."

⁴ Officer Ramirez testified at the preliminary hearing in Ventura Superior Court Case 2011018286 that he believed Garcia was a Crimies gang member and was also referred to or known as "Chedgar."

brothers, Ivan Escobedo, Juan Cardona, and Ricardo Cardona; and sister, Kimberly Vasquez.

A. Initial Disturbance

On July 28, 2012, at 5:20 p.m., Raul Vasquez went to the Santa Paula Police Department and reported to Officer David Keathley that Garcia had brandished a firearm at him.

Mr. Vasquez reported that he asked Garcia to move his truck from the middle of the driveway to allow Mr. Vasquez room to also park in the driveway. Mr. Vasquez stated that Garcia became upset at him and pointed a handgun at him. The firearm was described as a black and brown semi-automatic handgun. Mr. Vasquez did not want Garcia prosecuted, but he wanted assistance in removing Garcia from the home. Officer Keathley advised Mr. Vasquez that the police department could not remove Garcia from the residence without an eviction order. Mr. Vasquez was told to call 911 if Garcia brandished the firearm again or became violent. This incident was reported to officers at the roll call briefing and all officers on duty were mindful of the fact that Garcia was reported to have brandished the gun at his stepfather in an aggressive manner.

At approximately 7:40 p.m. on July 28, 2012, Mr. Vasquez called 911 to report that after the initial confrontation when Garcia brandished the handgun at him, Garcia became aggressive with him and told Mr. Vasquez he was going to “knock his teeth out.” Garcia then punched Mr. Vasquez in the face three times.⁵ Mr. Vasquez went into the backyard and called 911.

⁵ Kimberly Vasquez also told the officers that Garcia and Raul Vasquez were having a dispute and heard her mother screaming that Garcia had pushed Raul Vasquez to the ground in the garage. Kimberly Vasquez helped Raul Vasquez up from the ground.

B. Police Response to 911 Call

On July 28, 2012, at approximately 7:42 p.m., officers from the Santa Paula Police Department responded in full uniform and marked patrol cars to a “subject with a gun” call at 1117 New Street. The reporting party, Raul Vasquez, had advised that the suspect was Edgar Garcia, further described as a Hispanic male with no shirt, black shorts and “armed with a gun.” The dispatch call also related that Vasquez advised that Garcia “struck him in his arm with a gun.”⁶ Sergeant Shilo and Officer Peplinski were among the first officers to arrive on scene. They observed several subjects in front of 1117 New Street. Some of the people entered the residence via the open garage door and the open door leading into the kitchen. Sergio Perez, a neighbor and friend of Garcia, who was in the driveway with Garcia, was ordered to the ground as the officers approached. Sergeant Shilo recognized Garcia as one of the subjects who entered the kitchen from the garage and he told Officer Peplinski, “That’s him.”

C. The Shootings

1. Shots Fired at Responding Officers, Striking Officer Chad Peplinski

Officer Peplinski and Sergeant Shilo drew their weapons and approached the open garage door along the west side of the driveway. The inside of the garage was dark.⁷ Officer Peplinski focused on the interior garage door leading into the kitchen. Officer Peplinski saw a female and then a male exit the door from the kitchen into the garage. Officer Peplinski saw that the male (later identified as Raul Vasquez) had “a large contusion over his left eye” and Officer Peplinski ordered the male to come out towards him. As the two walked towards Officer Peplinski and Sergeant Shilo, Officer Peplinski saw a muzzle flash from behind the male. Officer Peplinski was struck on the abdomen and fell to the

⁶ On the 911 call, the dispatcher clarified that Raul Vasquez was struck, but not with a gun, and that Garcia was armed with a gun. When officers interviewed Raul Vasquez, he stated that Garcia threatened him and punched him three times in the face prior to Raul Vasquez calling 911.

⁷ On July 28, 2012, sunset was at 7:57 p.m.

ground. Officer Peplinski was not sure of the number of shots he heard fired at him, but he “heard more than one.” Sergeant Shilo described the shots as a “rapid succession of fire” and he believed there were three or four shots. Officer Peplinski was later found to have been struck on the plastic belt buckle of his duty belt, but the bullet did not penetrate his skin. Three spent .22 caliber cartridge casings were located in the residence. Two .22 caliber cartridge casings were located in the kitchen near the interior refrigerator and under the kitchen table. The third .22 caliber cartridge casing was located in the living room.

2. The Shooting of Edgar Garcia

Santa Paula Police Officer Hector Ramirez responded to the call at 1117 New Street, at 7:43 p.m. Upon his arrival on New Street, he saw a male subject wearing a white tank top run into the garage of 1117 New Street. Officer Ramirez had prior contacts with Garcia and he recognized Garcia as the subject who ran into the garage and was wearing the white tank top. Officer Ramirez ran to the rear of 1117 New Street via 11th Street and into the open area of Pepe’s Automotive, which backed up to 1117 New Street. As Officer Ramirez ran towards the rear wall of 1117 New Street, he heard three or four gunshots coming from the direction of the suspect’s residence. While still on the north side of the wall, Officer Ramirez saw Garcia climbing over the block wall.

Officer Ramirez ordered Garcia to stop and stay where he was, but Garcia dropped off the wall and out of sight in the backyard. Officer Ramirez holstered his weapon in order to jump over the wall, but when he looked over the wall, Garcia was running toward the northeast side of the residence, away from the officer. Officer Ramirez saw Garcia turn towards him, pointing a handgun at him. Officer Ramirez ducked down and drew his weapon. Officer Ramirez stood on a stack of tires near the block wall and looked back

over the wall. Officer Ramirez saw Garcia pointing the gun at him with his right hand and Garcia's hand was making "jerking movements" as if he were firing the gun. Fearing for his life, Officer Ramirez yelled at Garcia to stop and drop the weapon then fired at Garcia. Officer Ramirez ordered Garcia to get on the ground. Garcia then turned around, Officer Ramirez kept yelling commands and when Garcia started turning around again, Officer Ramirez fired additional shots. He continued yelling at Garcia to get on the ground. Officer Ramirez fired a total of eight⁸ shots at Garcia, lethally wounding him. A .22 caliber handgun was located to the right of Garcia's right hand.⁹

Emergency medical personnel were summoned to the scene and unsuccessfully attempted life saving measures. While cutting Garcia's clothing, emergency personnel removed a clear plastic baggie containing a white powdery substance from his pocket and placed the item on the ground next to Garcia.¹⁰ Garcia was declared deceased at the scene.

Officer Huerta responded to the scene right behind Officer Peplinski and Sergeant Shilo. And the entire incident was recorded.¹¹ The recording captured the initial three shots which were fired from the kitchen area toward the officers. The recording captured additional shots fired in the backyard 15 seconds later.¹²

⁸ Seven expended cartridges were found at the scene that evening. In March 2014, the family notified police that they observed a shell casing in a cinder block in the backyard. The recovered cartridge was consistent with the cartridges from Officer Ramirez's service weapon.

⁹ The handgun was determined to have been stolen in a residential burglary in Palmdale, California, between 1989 and 1992. See footnote 2.

¹⁰ The contents of the clear plastic baggie were not analyzed, but were consistent with the appearance of methamphetamine. Toxicology reports indicated that Garcia had methamphetamine in his system at the time of his death.

¹¹ Officer Huerta had activated his tape recorder during a previous stop. The audio of the recording indicates that the tape was running for 40 minutes prior to Officer Huerta responding to the scene, and the recording captured the entire incident.

¹² Officer Scott Varner also activated his recording device as he responded to the scene. His recording captured the sound of three additional shots, followed by three shots, and within seconds, two shots.

D. WITNESS STATEMENTS

Numerous individuals were interviewed, including all police officers involved in the incident and most of the neighbors. Summaries of the most pertinent witness statements are set forth below.

1. Raul Vasquez

Raul Vasquez is Edgar Garcia's stepfather. He was interviewed in Spanish by Detective Albert Ramirez on July 28, 2012. When Mr. Vasquez spoke with Detective Ramirez, Mr. Vasquez had fresh injuries to his left eye and upper lip. There was dried blood in both of nostrils and blood on his shirt and his left pant leg. Mr. Vasquez stated that his injuries had been caused when Garcia punched him.

Mr. Vasquez lived at 1117 New Street in Santa Paula with Hilda Vasquez and their daughter, Kimberly Vasquez. Hilda Vasquez's sons, Juan Cardona, Ricardo Cardona, Edgar Garcia, and Ivan Escobedo, also lived with them.

At about 5:00 p.m. on July 28, 2012, Raul Vasquez returned home. Garcia's pickup truck was parked in the driveway. The cab of the truck was inside the garage and the bed of the truck protruded out of the garage. The garage door was partially closed, with the bottom of the door laying across the bed of Garcia's truck. Mr. Vasquez asked Garcia to move his truck so that Mr. Vasquez could park his own vehicle. Garcia became upset for being told to move his truck. All four doors on Garcia's truck were opened. Garcia reached inside the cab of his truck through the right passenger side. He pulled a small handgun from the truck, pointed it at Mr. Vasquez and told him he would not move his truck. The handgun was a small semiautomatic pistol, approximately eight inches long. It appeared to be used and was gray and black in color. Mr. Vasquez went into the house to ask his daughter Kimberly to go with him to the police department. As Mr. Vasquez

and his daughter walked out of the garage, Mr. Vasquez told Garcia that he was going to report him to the police. Mr. Vasquez and Kimberly drove to the police department to report the incident. Garcia threw a pocket knife at Mr. Vasquez's truck as he drove away.

Mr. Vasquez reported the incident to the police, but stated that he did not want to press charges. Instead, he wanted help in evicting Garcia. He was told that he would have to obtain a court order to have Garcia evicted.

Mr. Vasquez returned home at about 6:00 p.m. Garcia's truck had been moved and Garcia was in the front yard trimming the palm trees. Mr. Vasquez parked his vehicle and went inside the house.

Hilda Vasquez arrived home around 7:00 p.m., with her son, Ivan Escobedo. At around 7:30 p.m., Mr. Vasquez entered the garage to do laundry. The stereo in Garcia's truck was blasting loud music. Mr. Vasquez went to the front yard and asked Garcia to turn the music down. Garcia had been on a ladder and climbed down. Garcia became "aggressive," followed Mr. Vasquez into the garage, and told Mr. Vasquez that he was going to knock his teeth out. Mr. Vasquez asked Garcia to calm down and Garcia punched Mr. Vasquez three times in the face.¹³

Mr. Vasquez stated that a neighbor named "Sergio" was also in the front yard with Garcia when Garcia assaulted Mr. Vasquez, but was not sure if Sergio witnessed the assault.

¹³ At the scene, blood droplets were observed in the garage, consistent with the injuries observed on Mr. Vasquez.

Mr. Vasquez fell to the ground from the punches. He stood up and walked into the backyard, where he called 911. He told the 911 operator that Garcia had assaulted him and that Garcia had a gun.

The police arrived on scene and Garcia went into the backyard. Garcia told Mr. Vasquez to tell the police that nothing had happened. Garcia had his right hand inside his right front pants pocket. Mr. Vasquez did not see the handgun, but believes that Garcia was holding the gun inside his right front pants pocket.

Mr. Vasquez told Garcia that if the police were there, it was for a reason. Mr. Vasquez walked into the house, followed by Garcia. When Mr. Vasquez was at the kitchen door, about to walk out into the garage, Mr. Vasquez heard two to three gunshots from behind him. He turned to see Garcia running away. He did not notice if Garcia was holding a gun. He saw a police officer assisting another police officer who had fallen to the ground.

Mr. Vasquez believed that a third police officer fired two shots at Garcia as he ran.¹⁴ That officer and another officer pursued Garcia into the house. Mr. Vasquez ran out of the house into the front yard, where he remained. He heard six to seven gunshots from the backyard. He said it sounded like two separate guns were being fired, but then admitted that all of the shots sounded similar. After the shooting, police officers directed Mr. Vasquez, Mrs. Vasquez, and Kimberly Vasquez to the front yard so that they could be interviewed.

¹⁴ The evidence indicated that Officer Hector Ramirez was the only officer to fire any shots that night.

Mr. Vasquez admitted that Garcia had assaulted him in the past and said that he thought it occurred when Garcia was under the influence of drugs. He felt that Garcia had been under the influence of drugs that evening. He did not know what type of drug Garcia used. He added that Garcia used alcohol but he did not see Garcia drinking alcohol that day. He believed that the drugs had caused Garcia to fire at the police, and that they had acted appropriately in defending themselves.

Mr. Vasquez did not know whether Garcia was involved in gangs. He had seen Garcia with handguns before but had never seen the handgun that Garcia brandished that day.

Mr. Vasquez had injuries to his face, including, swelling and redness above his left eye, three linear scrapes on his upper left eyelid, swelling and redness on the inner left side of his upper lip, and dried blood inside both his nostrils. He also had blood drops and blood smears on the front of his shirt and on the front of his left pant leg. Mr. Vasquez stated that the injuries were caused that day when Mr. Vasquez punched him in his face while in the garage.

2. 911 Call

Raul Vasquez made a telephone call to 911 at 7:40 p.m. The call was transferred from the California Highway Patrol to the Santa Paula Police Department as a “Spanish speaker needed” call. Mr. Vasquez reported that Garcia was armed with a gun and that Garcia had hit him. The dispatcher asked a clarifying question and Mr. Vasquez indicated that Garcia hit him with his hand, and was armed with a gun. The dispatch transmitted to the officers indicated that Garcia had hit Mr. Vasquez in the arm with the gun and was armed with a gun.

3. Hilda Vasquez

Hilda Vasquez is Garcia's mother. She was interviewed in Spanish by Ventura County Sheriff's Detective Ray Dominguez¹⁵ at approximately 11:10 p.m. on July 28, 2012.

Hilda Vasquez stated that she returned home from work at about 6:00 p.m. At that time, Garcia and a friend (later identified as Sergio Perez) were working in the front yard, cleaning up after trimming a palm tree. Perez's younger brother was also in the front yard of his house. Her daughter, Kimberly Vasquez, and her son, Ivan Escobedo, were also home at the time. She mentioned that Ivan had the mental capacity of a three-year-old. She did not see her husband when she first arrived home.

She stated that Garcia was living in the home, and that she had never seen him in possession of a firearm. She denied that Garcia was a gang member and explained that the police were trying to document him as a gang member, but thought they had insufficient evidence.¹⁶ She explained that Garcia has consistently been in trouble with the police, and that he had an active criminal case. He was supposed to return to court on August 3, 2012.¹⁷

Mrs. Vasquez said everything happened very quickly. Her husband, Raul Vasquez, had been in the backyard, and then she heard her husband and Garcia arguing in the garage. She did not know whether there was a physical confrontation but stated that Garcia and

¹⁵ Senior Deputy Raymond Dominguez is a certified Spanish interpreter for the Sheriff's Office.

¹⁶ Officer Hector Ramirez testified on November 3, 2011, at the preliminary examination in Ventura Superior Court Case 2011018286 that Edgar Garcia was an active member of the "Crimies" Santa Paula criminal street gang.

¹⁷ Garcia was pending trial on charges of unauthorized entry of a dwelling house in violation of Penal Code section 602.5, having a concealed firearm in his vehicle in violation of Penal Code section 12025 (a)(1), being a gang member while having a concealed firearm in his vehicle in violation of Penal Code section 12025(b)(3) within the meaning of Penal Code section 186.22, carrying a concealed weapon with a previous felony conviction, in violation of Penal Code section 12025(b)(5) and being under the influence of a controlled substance while in possession of a firearm in violation of Health and Safety Code 11550(e). Ventura Superior Court Case 2011018286.

her husband constantly argued because her husband was trying to run Garcia out of the house. Raul Vasquez commented that he was going to call the police. Mrs. Vasquez noted that her husband and Garcia were arguing when she got home from work at approximately 6:00 p.m.

Mrs. Vasquez stated that she heard a physical fight between Garcia and her husband. She saw that her husband had a black eye and assumed that Garcia had hit him, but she had not seen the fight. Her husband called the police immediately after the fight.

She told her other children to prepare to leave the house because she did not want to be around when Garcia and her husband were arguing. Garcia then tried to leave the house, but her husband's truck was blocking his truck. Mrs. Vasquez went outside and moved her husband's truck, then returned to the kitchen. Her husband also told her that he had called the police.

Garcia was outside loading his belongings into the truck when the police arrived. He ran into the house and told his mother, "He called the police." Garcia then ran into the backyard.

Mrs. Vasquez said she told Garcia not to run, but then followed behind him and ran outside. Mrs. Vasquez said the whole family, including herself, Ivan, Kimberly, Raul Vasquez, and Garcia, ran outside via the sliding glass door.

Mrs. Vasquez said the entire family ran down the concrete walkway on the west side of the residence toward the backyard. Mrs. Vasquez said the family returned inside the

residence via another sliding glass door located on the north side of the house that leads into her bedroom.

Mrs. Vasquez commented that she saw all the officers with their handguns drawn and pointing at them. Mrs. Vasquez said once inside the residence, she hid in her closet and yelled at Kimberly as she continued running down the hallway toward the bathroom. She added that Ivan, Garcia, and Mr. Vasquez had also run back into the house.

Mrs. Vasquez said she heard the police yelling at Garcia to stop. Mrs. Vasquez said Mr. Vasquez and Garcia ran down the hallway and outside the residence toward the front of the residence. Mrs. Vasquez said she heard three gunshots but was not sure if they were coming from the hallway or the backyard. Mrs. Vasquez said she went outside into the backyard and saw that her son (Garcia) had fallen around the corner from the house. Mrs. Vasquez described seeing the front of Garcia's body covered in blood.

Mrs. Vasquez said she saw a police officer at "Pepe's Used Car" pointing his firearm at Garcia and telling him to "stop." Mrs. Vasquez said Garcia fell down and started spitting out blood. Mrs. Vasquez said another officer came up and asked Garcia, "Why didn't you stop?" Mrs. Vasquez stated that she knew it was clearly the police and they were all pointing their guns at Garcia while telling her to be quiet and get back inside the house.

Mrs. Vasquez did not see whether Garcia had a gun, and denied knowing whether he possessed one. Mrs. Vasquez stated that she had never seen Garcia in possession of a firearm. Mrs. Vasquez was unsure whether there was a face-to-face confrontation between the police and Garcia. She said she only noticed the police chasing him.

Mrs. Vasquez said she was not sure how Garcia ended up in the corner, and if he had been shot there or ran there after being shot. Mrs. Vasquez thought Garcia had possibly been shot while in front of the residence and then ran to the backyard and died. Mrs. Vasquez stated she thought Garcia died within a minute of being shot.

Mrs. Vasquez commented she overheard the police officers yelling that four suspects had fled the scene, but stated there was no one else inside the house at the time of the incident.

Mrs. Vasquez did not see anyone shooting and only heard the shots being fired. Vasquez stated that she heard three “heavy” gunshots. Mrs. Vasquez indicated it sounded to her as if the gunshots had come from the same firearm, and the shots were in rapid succession.¹⁸

Following the shooting, Mrs. Vasquez tried to go outside to see Garcia, but was stopped by police and told to go back inside the house. Mrs. Vasquez indicated that she speaks limited English, but understands much of what is said. She could not, however, relate what the officers said.

4. Ivan Escobedo

On July 28, 2012, Ivan Escobedo was interviewed by Sergeant Steven Rhods of the Ventura County Sheriff’s Office. Escobedo stated that he was present when the shooting occurred.¹⁹

¹⁸ During her interview, Mrs. Vasquez never mentioned the initial three shots that were fired from within the residence into the garage, one of which struck Officer Peplinski.

¹⁹ Escobedo gave conflicting statements about what he observed, and at one point indicated that he had been in the bathroom of the residence and did not see anything. His mother, Hilda Vasquez, told the police that Escobedo was hiding in the closet with her and his sister Kimberly.

Escobedo stated when he arrived home, his brother Edgar, his sister, and his father were all home. Garcia was in the process of cutting down a tree in the front yard. Escobedo said his father was in the backyard pulling weeds Escobedo had been in the bathroom for 10 to 15 minutes prior to the shooting and did not hear any arguing or fighting between Garcia and his father. Escobedo stated he had never seen Garcia with a gun and did not know him to be violent.

When Escobedo came out of the bathroom, he found his mother and his sister crying. Garcia was coming into the house from the garage into the kitchen. Escobedo said he saw Garcia fixing his truck before he came into the house.

When asked what he saw the police doing when they got to the house, Escobedo stated, "They were coming into the garage to get Edgar but he was already in the backyard."

When asked where he was when the police were in the garage and his brother was in the backyard, Escobedo said he was in front of the house near the mailbox.

Once in front of the house, Escobedo stated that he saw the police approaching from the driveway near the open garage door on the left side of a pickup truck parked in the driveway. Escobedo then said he thought Edgar had gone into the backyard. Escobedo saw three or four police officers and they had their guns out. When asked if he heard the shooting, Escobedo said he heard one or two shots fired. He thought the shooting was coming from the backyard. He thought his sister was in the front yard with him.

Escobedo stated that he never went into the house or the backyard. He said nobody in his family asked him what happened. Escobedo stated that his father was in the garage and his mother was in the house.

When asked if he saw one of the officers in the front yard fall down, Escobedo stated he saw an officer stumble and go down on one knee somewhere in front of the garage and on the left side of the truck that had been between him and the officer.

Escobedo thought Garcia saw the police. Escobedo said he thought Garcia was in the hallway in the house. Escobedo said the police were in the garage. Escobedo explained that once you enter the garage you can gain access to the inside of the house via the garage and walk through the kitchen.

Once in front of the house, Escobedo explained that he saw the police approaching from the driveway near the open garage door on the left side of a pickup truck parked in the driveway. Escobedo said the police were going into the pedestrian door at the back of the garage which leads to the kitchen.

Escobedo said he thought Garcia had gone into the backyard. Escobedo said he saw three or four police officers and they had their guns out. Escobedo said he heard one or two shots fired and he thought the shooting sounded like it was coming from the backyard. Escobedo said he had never seen any guns in the house.

5. Kimberly Vasquez

On July 28, 2012, at approximately 8:00 p.m., Kimberly Vasquez was contacted and interviewed by Santa Paula Police Officer Shane Norwood. Kimberly stated that at approximately 7:30 p.m., she was inside her residence at 1117 New Street and heard an argument between her brother, Edgar Garcia, and her stepfather, Raul Vasquez. She could not hear specifically what they were arguing about; however, she heard Mr. Vasquez tell Garcia that he wanted him to leave the residence. She heard her mother

screaming from the garage and yelling that Garcia had pushed Mr. Vasquez to the ground. Kimberly ran to the garage to assist her stepfather, and helped him up off the ground. Mr. Vasquez walked out of the garage and into the backyard. A short time later, Garcia walked back into the garage, and got into his Toyota Tacoma that was parked in the garage. He backed the truck out and onto the driveway.

After he got out of the truck, Garcia began talking to a neighbor, whom Kimberly knew as “Sergio.” Kimberly returned to the kitchen. A few seconds later, she saw Garcia run into the kitchen from the garage screaming and saying something about the police being at the scene. Kimberly stated she was frightened and took refuge in a closet inside her parents’ bedroom. She told Officer Norwood, “That’s when I heard the shooting.” She stated that after she heard the gunshots, within a few minutes she exited the closet and looked out the sliding glass door in her parents’ bedroom which gave her a view of Garcia and the police officers who were standing in the backyard. She said she saw the officers shooting her brother and she watched him fall to the ground. She believed that there were five or six officers. She said she did not see a gun or any other objects in Edgar’s hand, but thought that he owned a gun. After seeing Edgar get shot, she retreated back to the closet for several minutes. When she felt it was safe, she left the closet and walked to the front of her residence with the rest of her family members. She was unable to provide any additional information.

6. Sergio Perez

On July 28, 2012, at approximately 10:00 p.m., Santa Paula Police Officer John Coffelt interviewed Sergio Perez. Perez indicated that he was helping “Eddie” move some speakers from the back of a truck and into Eddie’s garage.²⁰ The next thing he saw was

²⁰ When asked, Perez indicated he did not know “Eddie’s” last name.

police cars arrive at their location. He said he did not know why the police were at the scene, but knew that the family had been arguing earlier. He saw approximately six police officers arrive on scene. He said he was paying attention to the police and did not know what Eddie was doing. Perez was ordered to the ground by Officer Huerta. He complied with Huerta's orders. Perez suddenly heard gunshots and got scared and closed his eyes. After the gunshots, Officer Huerta ordered him to cross his ankles and stay where he was. He was not sure how many gunshots he heard, and was not sure if he heard any additional shots after the initial volley. Perez indicated he did not move until he was re-contacted by an officer and placed in the back of a patrol car. He stated that he never saw Eddie with a gun, and did not hear Eddie say anything when the police arrived.

7. Magdalena Rodriguez

On August 1, 2012, Magdalena Rodriguez was interviewed Senior Deputy Raymond Dominguez.²¹

Rodriguez stated that she was at home with her children at the time of the shooting. She noticed that the neighbor (Garcia) and two other young male subjects were outside, and she commented that Garcia appeared angry. Rodriguez did not know Garcia personally, but recognized him from a flyer that had previously been circulated in the neighborhood and had his photo on it.

Rodriguez noticed that police patrol cars began arriving in the area. Rodriguez said she was curious about what was going on outside so she went to her back door which is adjacent to the bathroom on the southwest side of the residence. The back door has a small window in it that offers a view west toward 1117 New Street, Garcia's residence.

²¹ Rodriguez was initially interviewed the night of the incident by Santa Paula Police Detective Hoppin, and later interviewed in detail in Spanish.

As she looked out of the window, she saw two policemen standing in the driveway in front of a gray truck parked at the residence. Rodriguez said she also noticed two other policemen standing at the rear of the truck on the driveway. Rodriguez said she observed the officers yelling something at someone who she presumed was inside the garage because the garage door was open. She stated she did not know who or how many subjects were inside the garage.

Rodriguez said the officers were yelling, but she was unable to determine what they were yelling because it was in English, and she does not speak English. Rodriguez said she heard three gunshots and saw one of the police officers fall to the ground. Rodriguez further described seeing two officers standing next to each other near the threshold of the garage near a large palm tree.

Rodriguez said she understands very limited English, but recalled hearing one of the officers telling the other officer that had fallen, "Get on the ground." Rodriguez said the two officers who were standing toward the back of the truck in the driveway advanced forward (north) toward the open garage, and all the officers began returning gunfire.²²

Rodriguez described one officer as being taller and older than the other and having gray hair (consistent with a description of Sergeant Shilo). She described the second officer as the officer that was shot and fell to the ground as shorter, younger, and a "blonde American" (consistent with a description of Officer Peplinski).

²² Rodriguez later indicated that she did not see any muzzle flashes, but assumed that the officers had returned fire.

Rodriguez said she saw the gray-haired officer fire his weapon.²³ Rodriguez said she could not tell which of the officers behind the gray-haired officer fired their weapon.

Rodriguez did not know how many officers may have fired weapons; however, she stated she could hear the difference between when the suspect fired and the officer(s) fired. She said that when the suspect fired from inside the residence, it made a much softer sound than when the officer(s) fired their weapons. Rodriguez said she thought that five or six shots were fired by the officer(s). The three shots fired by the suspect were in rapid succession, and there was a short period of time between the volleys of gunfire.

After the shots were fired, the taller officer knelt down to check on his partner who had been shot.

During questioning, it was determined that Rodriguez did not actually see the officers firing their weapons, but associated the sound of gunfire in the area with them firing.

Rodriguez believed that one of her neighbors had also witnessed the incident as he came outside. Rodriguez indicated that her children did not witness the events.

8. Lila Gonzales

On July 29, 2012, at 1:08 a.m., Lila Gonzales was interviewed by Santa Paula Police Detective Paul Spencer. Gonzales reported that she arrived home around 6:00 p.m. She was in the backyard with her two children when she heard three gunshots. She initially thought they were fireworks, and she heard people yelling. She took the kids into the house and began to hear people yelling, “No don’t!” She then heard two other voices

²³ An examination of the service revolvers for Officers Peplinski and Sergeant Shilo revealed that neither had fired their weapon.

yelling and a man's voice yelling, "Get down, get down, get down, get down!"²⁴ She then heard five more shots. She took the kids in the house and began praying with her children.

9. Reserve Officer Chad Peplinski

On July 28, 2012, at 10:03 p.m., Ventura County Sheriff's Senior Deputy Steve Michalec interviewed Officer Peplinski in the emergency room where he was being evaluated by medical staff. Officer Peplinski was also interviewed at the scene by Detective Ray Dominguez early in the morning on July 29, 2012.

Officer Peplinski indicated that "just before briefing" for his shift, at approximately 5:45 p.m., one of the Santa Paula Police Officers had responded to a call of a brandishing.²⁵ Officer Peplinski indicated they discussed the brandishing call at briefing. The officers were told the suspect was Edgar Garcia and he had brandished a firearm at his stepfather. The officers conducted a records check and learned the description of Garcia's vehicle. Officer Peplinski wrote down the number of the license plate so that if he were to have contact with the vehicle or Garcia, he would be aware of the possibility of a gun being in the vehicle. Officer Peplinski noted that they also discussed prior contact with Garcia that involved firearms and they were going to be very careful and very aware of him if they had contact with Garcia.

²⁴ Several other civilian witnesses reported hearing the commands "get down, get down" prior to hearing the numerous gunshots.

²⁵ The officer responding to that call actually contacted Raul Vasquez in the lobby of the Santa Paula Police Department, as Mr. Vasquez went down to the police department to report the brandishing, rather than having the police respond to the house at that time.

Officer Peplinski explained that there had been a lot of activity in the city of Santa Paula lately and he, along with the other officers on his shift, had made it a point to conduct extra patrol of the residence at 1117 New Street.

Officer Peplinski indicated that he and Reserve Sergeant Shilo had gone past Garcia's residence approximately 20 minutes prior to the call that resulted in Officer Peplinski being shot, and Officer Peplinski noticed Garcia's truck was at the residence. Officer Peplinski did not see Garcia outside at that time. Officer Peplinski was then sent to another call elsewhere in the city. While at the other call, dispatch directed Officer Peplinski and other officers to respond "Code 3"²⁶ for a battery at 1117 New Street.

Officer Peplinski said the call was that Garcia had struck his stepfather with the firearm. Officer Peplinski said he and Sergeant Shilo were in the area of 8th Street and Ventura Street when they got the call. Officer Peplinski said he drove and was "first or almost first" on scene, with another unit arriving at approximately the same time.

Officer Peplinski indicated that as he exited the vehicle, there was "a large group of people in front of the house." Officer Peplinski said some of the people went inside of the house, but he could not tell if Garcia was one of them or not. Officer Peplinski stated, "There was one subject outside that was put on the ground, um, obviously because we knew, at this point, that a firearm had been brandished earlier, um, this person (Garcia) has a history, I mean, we talked about contacts with him in the past, um, in terms of having firearms and to be very careful. We were going to be very aware of him, look for him if possible. Since the call had come in that he had struck his stepfather with a

²⁶ "Code 3" requires lights and siren and is considered an emergency response.

firearm, we were obviously concerned where the gun was.” Officer Peplinski said he walked toward the residence from his patrol car with his duty weapon drawn.

Officer Peplinski was on the west side of the driveway, looking into the open garage and he noticed there was an open door going into the residence. Officer Peplinski saw “a heavy set guy, a big guy” with a shaved head, wearing a white tank top, walk from the right to the left inside the kitchen. He knew this person was not Garcia. Officer Peplinski said the suspect later came out from the right side when he shot at Officer Peplinski, so he knew the first subject he saw was not the shooter. Officer Peplinski said the inside of the garage was getting dark because the sun was going down, so he activated the flashlight on his handgun to illuminate the garage area. Officer Peplinski said other officers were setting a perimeter on the house, so he was going to “hold long” on the door leading into the residence from the garage.

Officer Peplinski watched the door and a female came out, followed by a male subject who had “a large contusion over his left eye.” Officer Peplinski believed this person was Garcia’s stepfather. Officer Peplinski motioned for the stepfather to come out towards him. As he walked toward Officer Peplinski, and had “literally cleared the line [at the kitchen/garage threshold] then Garcia stepped out and just fired the first shot.” Officer Peplinski saw a muzzle flash from behind the stepfather and heard a gunshot. Officer Peplinski said he never even saw the suspect’s gun because it was dark inside the kitchen. Officer Peplinski said, “Garcia had stepped out and just fired. I don’t know how many shots he fired.” When asked if he saw Garcia shoot him, Officer Peplinski said that “I couldn’t tell it was him. All I saw was the muzzle flash and I heard it.” Officer Peplinski said that as he saw the muzzle flash, he thought about moving out of the line of fire. Officer Peplinski thought Garcia was wearing a white tank top and shorts when he shot at

Officer Peplinski. Officer Peplinski said it was “pretty dark” and he could only “make out a silhouette.”

Officer Peplinski indicated that he was “three or four feet off the (southwest) corner of the garage.” Officer Peplinski explained that he was using the left side of the garage for cover. Officer Peplinski remembered there being a vehicle parked in the driveway of the residence, but he could not recall what it was. Officer Peplinski also remembered there being another male subject in the driveway who was “proned out” by another officer. Officer Peplinski said he had “advanced past him” and made his way towards the garage and then he was shot.

Officer Peplinski felt a round hit him. He fell backwards and to his left to the ground in order to get cover and out of the line of fire.

Officer Peplinski said Senior Officer Varner was near the cinder block wall at the end of the driveway, near the sidewalk. Officer Peplinski remembered turning and making eye contact with Officer Varner who asked if he’d been hit. Officer Peplinski told him he had been hit and Officer Varner put out the code “999” over the radio to let it be known an officer had been shot.

Officer Peplinski noticed his plastic belt buckle had opened up and he saw the impact from the bullet on the buckle. Officer Peplinski said he opened his pants up and checked for blood or a bullet wound, but he found none. Officer Peplinski said he had felt an impact, but it felt like “simunition.”²⁷ Officer Peplinski said he did not feel any wounds

²⁷ Simunition are training rounds designed to be fired through police service weapons through the installation of a conversion kit that does not permanently alter the weapon and can be easily removed. Simunition ammunition rounds are fired with reduced pressure and velocity.

or further pain, other than a sting. Officer Peplinski heard someone yelling and it was kind of “chaotic” at that point. Officer Peplinski indicated that he had “a little red mark” where the bullet hit his plastic buckle on his gun belt.

Officer Peplinski pulled his pants back up and followed Sergeant Shilo into the house via the kitchen door. They walked through a large sliding door on the west wall that went to the side yard of the residence. Sergeant Shilo “pied” the corner to check for the suspect. Officer Peplinski then heard “additional shots from the rear of the house” and a female screaming. Officer Peplinski heard Officer Ramirez put out over the radio that shots had been fired.

Officer Peplinski and Sergeant Shilo went to the rear of the house and Officer Peplinski saw Officer Ramirez “on top of the wall” along the rear of the residence. Officer Ramirez had his firearm pointed toward the corner of the house and Officer Peplinski looked in that area and saw Garcia on the ground. Officer Peplinski said Garcia was lying “face down,” and he recognized Garcia from photos that had been provided at briefing. Officer Peplinski said Garcia had “several gunshot wounds” and there was “a lot of blood.” Sergeant Shilo and Officer Peplinski approached Garcia and Sergeant Shilo handcuffed Garcia. Officer Peplinski said he noticed that a firearm was on the ground, but he could not tell what caliber the gun was, just that it was a small semi-automatic pistol.

One of the other officers on scene asked Officer Peplinski if he had been hit and told Officer Peplinski to sit down. Officer Peplinski again checked himself for any other injuries. Officer Peplinski said other officers walked him from the backyard, through the garage and out to the front yard of the residence where he sat on the curb in front of the

residence with Officer Ip. Officer Peplinski said he was just about to be transported to the hospital when he asked for photos to be taken of him at the scene, still in his uniform. Officer Ip got his camera and took photos of Officer Peplinski in his uniform, the damage to his belt buckle and his injury. Officer Ip then collected the duty belt, still containing Officer Peplinski's duty weapon and took it to the station as evidence. Officer Peplinski said he did not fire any shots during the incident. Officer Peplinski was then transported to the hospital for evaluation/treatment.

10. Reserve Sergeant Damien Shilo

On July 29, 2012, at approximately 1:21 a.m., Reserve Sergeant Damien Shilo was interviewed by Ventura County Sheriff's Senior Deputy Steve Michalec. Sergeant Shilo noted the brandishing that had been reported prior to the beginning of his shift and was discussed during briefing. Sergeant Shilo learned the suspect in the brandishing was Garcia, who was possibly still in possession of a gun. Sergeant Shilo and the other officers in attendance at briefing discussed the brandishing as an officer safety issue and knew to keep an eye out for the suspect's vehicle.

Sergeant Shilo and Officer Peplinski drove past Garcia's residence at 1117 New Street in Santa Paula approximately a half hour before they received the call that brought them back to the residence. As they drove past the residence, Officer Peplinski told Sergeant Shilo that Garcia's pickup truck was at the residence. Sergeant noticed two trucks, but at the time was not sure which one was Garcia's.

Approximately 30 minutes later, Officer Peplinski and Sergeant Shilo received a radio call to respond to a subject causing a disturbance, possibly with a gun, at the 1117 New Street location. Officer Peplinski drove east onto New Street from 11th Street and they

both exited the vehicle. Sergeant Shilo saw two subjects near a truck that was parked in the driveway of 1117 New Street. One of the subjects was wearing shorts and a tank top, and Sergeant Shilo recognized him as Garcia. Garcia immediately started walking “with purpose” into the garage. Sergeant Shilo told Officer Peplinski, “That’s him (Garcia),” and they walked up to the open garage door.

Sergeant Shilo indicated there was another male subject near the left rear tire of the vehicle in the driveway. Sergeant Shilo ordered that subject (later identified as Sergio Perez) to put his hands on the vehicle and then Officer Huerta commanded that subject to get down on the ground.

Sergeant Shilo and Officer Peplinski advanced past the subject in the driveway toward the open garage. They looked towards the open door going from the garage into the house and Sergeant Shilo believed Garcia had gone inside the house. Sergeant Shilo and Officer Peplinski both had their guns drawn. Sergeant Shilo was standing shoulder to shoulder with Officer Peplinski and was on Officer Peplinski’s left side. Officer Peplinski saw Garcia go “all the way in (the house) to where we couldn’t see him.” Sergeant Shilo “peeked” to his left and down the west side of the house.

Sergeant Shilo saw four males “bail out the back slider and into the back yard.”²⁸

Sergeant Shilo knew Officer Ramirez was headed to the rear of the residence, so Sergeant Shilo advised over the radio that “four suspects were fleeing in the backyard.” Sergeant Shilo indicated that he knew the subjects who went toward the backyard were not Garcia because they were all wearing tee shirts and Garcia had been wearing a tank top.

²⁸ No other witnesses described seeing the four other subjects; however, Hilda Vasquez noted that she, Ivan, Kimberly, and Edgar all went into the backyard at one point.

Sergeant Shilo went back toward Officer Peplinski and the large garage door where Officer Peplinski was calling for someone inside to “Get out here, get out here.” As Officer Peplinski was making the commands, Sergeant Shilo heard “two to three” gunshots and saw debris in the air. Sergeant Shilo described the shots as in “rapid succession, boom, boom, boom.” There was a bullet hole in a section of the roll-up garage door approximately six inches above where Sergeant Shilo indicated that he and Officer Peplinski were standing when he called for the subject inside to come out.

Sergeant Shilo said that just before the shots were fired, Officer Peplinski indicated something to the effect that he “saw him coming back.” Sergeant Shilo believed Officer Peplinski was referring to Garcia, and just before the shots were fired, Sergeant Shilo heard Officer Peplinski calling for whoever he saw to come out. Just as Officer Peplinski was calling for the subject to come out, Sergeant Shilo heard the gunshots.

Sergeant Shilo looked at Officer Peplinski and asked him if he was okay. Officer Peplinski said he was okay and looked down towards his belt buckle. They both noticed Officer Peplinski’s buckle had popped open and Officer Peplinski said, “I’m hit.” Sergeant Shilo grabbed Officer Peplinski and pulled him down onto the ground on the west side of the driveway. Once Officer Peplinski was on the ground, Sergeant Shilo turned his attention back to the garage to look for Garcia, but Sergeant Shilo did not see him.

Sergeant Shilo moved forward to the door leading into the house from the garage. Sergeant Shilo still did not see Garcia, but he heard “the rustling of somebody running out.” Sergeant Shilo moved forward into the residence and heard “the clatter of somebody moving through.” Sergeant Shilo noticed that the curtains on the sliding glass

door on the west wall of the residence “had movement.” Sergeant Shilo then heard an “exchange of gunfire.” Sergeant Shilo said he heard two distinct weapons being fired. Sergeant Shilo peeked out the sliding glass door and out to the backyard of the residence.

Sergeant Shilo came around the northwest corner of the residence into the backyard and saw Officer Ramirez on the north side of the back wall “peeking over.” Officer Ramirez had his gun drawn and pointed towards the east side of the residence. Sergeant Shilo asked Officer Ramirez, “Where?” and then Sergeant Shilo saw Garcia on the ground near the northeast corner of the residence. Garcia was lying face down on the ground, with his left hand underneath him, near his waistband. Sergeant Shilo saw Garcia’s right hand next to his body and a gun a few feet away, on the ground, just to the south of Garcia.



Handgun found near Garcia



Overview of proximity to Garcia

Sergeant Shilo said he approached Garcia and “was startin’ to squeeze the trigger” because he was not sure if Garcia was still a threat or not. Sergeant Shilo still had his service weapon pointed at Garcia as he got closer to Garcia. Sergeant Shilo put one foot on Garcia’s right hand and “nudged” Garcia’s hip to see if Garcia would react. When there was no reaction, Sergeant Shilo reholstered his weapon, dropped his knees onto Garcia’s back, and handcuffed Garcia. Sergeant Shilo then got up and again removed his

weapon from its holster because he did not know where the other four subjects he had seen had gone. Sergeant Shilo yelled to the other officers to be aware of other possible subjects.

Sergeant Shilo recalled seeing Garcia's mother as he ran through the house. Sergeant Shilo did not recall anyone else in the garage when he went into the house. Sergeant Shilo estimated it was approximately five to ten seconds from when he got into the house and when he heard the shots.

Sergeant Shilo could not recall the number of shots he had heard coming from the backyard while he and Officer Peplinski were in the house. Sergeant Shilo said he had definitely heard "two distinct weapons" being fired in the backyard.

11. Officer Scott Varner

Officer Scott Varner was interviewed on July 29, 2012, at 3:28 a.m. by Ventura County Sheriff's Senior Deputy Steve Michalec.

Officer Varner was the on-duty watch commander for the police department on the evening of July 28. Patrol units received a "call of a subject who had brandished, armed with a handgun at the front of 1117 New Street." Officer Varner was aware of the brandishing at the same residence earlier in the shift. He noted that officers would be "actively looking for the individual if he was out and about" that night.

When the call came in regarding the disturbance at 1117 New Street, Officer Varner recognized the address as that of the earlier brandishing call. Officer Varner responded, and while en route, Officer Varner heard Officer Peplinski and Sergeant Shilo arrive on

scene. Officer Varner believed Officer Huerta and Officer Ramirez arrived on scene at approximately the same time as Officer Peplinski and Sergeant Shilo. Officer Varner drove his marked K-9 unit to the scene and parked behind two other police cars west of 1117 New Street.

While driving to the garage, Officer Varner heard radio traffic indicating that the suspect had possibly run into the garage. Officer Varner heard Officer Ramirez advise over the radio that he believed the suspect was being detained. Officer Varner requested a patrol vehicle set up a perimeter on Main Street, north of the residence at New Street.

Officer Varner exited his vehicle and as he walked east on the north sidewalk of New Street he asked over the radio if the suspect was being detained. He noticed that the officers in front of the residence at 1117 New Street had their weapons drawn and were looking north toward the garage area, yelling for people to get down. Officer Varner drew his duty weapon and continued east on the sidewalk towards the residence. Officer Varner stopped near a cinder block pillar near the west entrance of the driveway. He did not see anyone in the garage at that time.

While still on the sidewalk west of the driveway, he heard two or three gunshots. Sergeant Shilo and Officer Peplinski were near a palm tree in the front of the southwest corner of the garage. Officer Huerta was standing to the west of the pickup truck that was parked in the driveway of the residence. Huerta was with a subject whom Officer Varner believed was Sergio Perez.

Officer Varner stepped back when he heard the gunshots because he did not know where they had come from. Officer Varner noticed Sergeant Shilo and Officer Peplinski stepped

back as well. Officer Varner saw Officer Peplinski look down and grab towards his abdomen. Officer Varner noticed Officer Peplinski's gun belt buckle had opened up and Officer Peplinski "eye locked" with Officer Varner. Officer Varner asked Officer Peplinski if he was "hit" and Officer Peplinski answered, "I'm hit." Officer Varner broadcast that shots were fired, advised that an officer was down, and requested assistance.

Officer Varner saw Sergeant Shilo and Officer Huerta advance north through the garage. Officer Varner went to Officer Peplinski and checked for wounds, but did not find any. While in the front yard with Officer Peplinski, Officer Varner heard five or six more gunshots.

Officer Varner had Officer Ip stand by with Officer Peplinski while Officer Varner went towards the door leading into the kitchen. He did not follow the other officers into the residence. Officer Varner walked through the west pedestrian door of the garage that went to the west side yard of the residence. Once Officer Varner was in the side yard, he noticed Sergeant Shilo and Huerta near the northwest corner of the residence.

Officer Varner had his weapon out and cleared the northwest corner of the residence. He saw Officer Ramirez standing in the area of the built-in brick barbeque on the east side of the backyard. Officer Varner indicated as he started walking into the backyard, he still did not know the location of the suspect and yelled "Where's he at? Where's he at?" It was at this point that he realized the suspect was "down" near the northeast corner of the residence. Officer Varner could tell that the suspect was bleeding. Because he was not sure whether there were other suspects in the residence, Officer Varner turned his back to

the other officers in order to cover the north side of the yard in case of additional suspects.

When Officer Varner arrived on scene at 7:43 p.m., he activated his recorder noting that he was responding to the 1117 New Street address regarding subject Edgar Garcia armed with a handgun. Forty seconds after arrival, a transmission "Subject went into the garage" is heard and transmitted. Seventy seconds after arrival, Officer Varner requests a unit to respond on Main Street to establish a perimeter. Ninety-one seconds after arriving on scene, commands "Get in the house! Get in the house!" are heard. Ninety-six seconds after arriving on scene, the recording captures three shots being fired. Fifteen seconds later, a series of three shots, followed by three more shots, are heard on the recording. Then at 116 seconds and 118 seconds after arriving on scene, two additional shots are heard. All shots were fired within seven seconds. Three and a half minutes later, in response to a question "Who fired?" Officer Ramirez can be heard saying, "I did, I hit him- I was the only one- he pointed the gun at me. I shot back." Officer Peplinski stated that he was hit in the gun belt.

12. Officer Frank Huerta

On July 28, 2012, at 9:21 p.m., Ventura County Sheriff's Detective Billy Hester was briefed by Officer Frank Huerta. Officer Huerta indicated that he and other officers responded to a family disturbance/man with a gun call at 1117 New Street. As officers approached the open garage, a male subject named Edgar Garcia fired shots at them, hitting one officer in the belt buckle. Officer Huerta noted that the officer was not injured. Garcia fled to the backyard where he was confronted by other officers. Officer Ramirez shot and killed Garcia in the backyard.

Prior to responding to the New Street call, Huerta was on patrol and activated his recorder during a traffic stop, 42 minutes prior to the call to the New Street residence. Huerta's tape recorder was still running from the traffic stop when he received the dispatch call to the New Street residence. At 42:13 into the recording, the recording captures the dispatch "Subject with a gun- 1117 New Street. The reporting party advised that Edgar Garcia struck him in his arm with a gun." A description is provided. The recorder indicates at 42:42 that Huerta is en route. At 43:16, the radio call transmits that the "DP was last seen in the front yard." At 43:39, Huerta is out of the car and notified that the subject went into the garage.

Sergio Perez is ordered to the ground next to the truck in the driveway. Radio traffic indicates that officers are coordinating setting up a perimeter. At 44:39, three shots are heard. Officer Huerta transmits "Shots fired, shots fired!" Another officer can be heard saying "I know, I know it!" At 44:48 "999, 999" is transmitted. An officer down call is transmitted at 44:52. At 44:54, three shots were fired, immediately followed by three additional shots, and then another shot. Officers respond to the backyard and emergency services are requested at 45:31.

13. Officer Hector Ramirez

Officer Hector Ramirez was interviewed by Ventura County Sheriff's Senior Deputy Brian Richmond on July 29, 2012 at 12:45 a.m. and participated in a walk-through interview at the scene at 3:40 a.m.

Officer Ramirez indicated he has been with the Santa Paula Police Department for 16 years as a sworn peace officer. On the date of the shooting he was wearing his assigned uniform and gun belt. Officer Ramirez stated that he was issued and carrying a Sig

Sauer .40 caliber handgun. The weapon carried 13 rounds and he believed he had 13 rounds in his weapon along with additional ammunition magazines on his gun belt.

Officer Ramirez was assigned to the evening shift which started at 5:45 p.m. At the time of the call, he was alone in his marked police vehicle. Officer Ramirez was wearing a police uniform that included a badge and patches, identifying him as a peace officer with the Santa Paula Police Department. Officer Ramirez was assigned as rover or back-up officer and was not assigned as a specific beat car.

Officer Ramirez stated that either he or other officers received a call of a subject battering his father with a handgun at 1117 New Street.²⁹ As he drove from the station to the call, he heard that other officers were responding to the same call.

As he continued to the call, Officer Huerta and Officer Peplinski were driving in a vehicle in front of him. Officer Ramirez arrived on New Street and parked behind other police vehicles. As he was getting out of his car, he saw officers walking toward the driveway of the house. Officer Ramirez saw what he believed was the suspect in the driveway wearing a white tank top. Officer Ramirez thought he used his radio and said the suspect was walking back and forth in the driveway, but he was not sure. At some point he saw the suspect run into the garage with uniformed officers following him. He could not hear anything specific being said but he did hear yelling.

Officer Ramirez saw other people in the driveway but he did not know who they were. After seeing the suspect run into the garage, Officer Ramirez ran to the rear of the house

²⁹ The call was dispatched at 5:42 p.m. to “421” (Ramirez) and “452” (Reserve Officer Peplinski and Sergeant Shilo.)

via 11th Street and into the open area of Pepe's Automotive. Officer Ramirez explained that the automotive area backed up to the suspect's residence.

Officer Ramirez's initial thought was to cover the rear of the house. Officer Ramirez did not want anyone to leave the backyard and escape. Officer Ramirez described running north on 11th Street to the corner of 11th and Main Street and into a car lot. Officer Ramirez moved east through the lot and next to a cement wall when he heard shots coming from the area of the house. Officer Ramirez thought the shots were coming from the garage because they were not loud.

After hearing the gunfire, Officer Ramirez described being scared but because of training and experience he had to "get out there" and explained this to mean he needed to broadcast the 999 radio information.

Officer Ramirez used his radio and completed a 999 broadcast. Officer Ramirez waited at the auto dealership to see what was occurring. While waiting, he saw Garcia climbing up the cement wall, trying to pull himself over. Officer Ramirez told Garcia to stop and stay where he was at. The two looked at one another and Garcia dropped off the wall and back into his backyard.

He was not sure if he called Garcia by name. Officer Ramirez was sure that he told Garcia to stop and saw that he was wearing a white tank top, the same clothes he was wearing as he ran into the garage. Officer Ramirez stood on tires that were stacked on the ground to look over the wall. He was scared at this point, because he had heard gunfire, and wondered if Garcia still had the gun.

Officer Ramirez holstered his weapon so he could climb and go over the wall. As he looked over the wall, he saw Garcia running toward the northeast side of the residence and running away from him. Garcia stopped running, and turned toward him. Officer Ramirez saw Garcia holding a handgun in his right hand and his right arm was extended toward him, pointing the gun at him. Officer Ramirez had taken his weapon from his holster and was pointing the weapon at Garcia. Officer Ramirez told Garcia to stop and drop the weapon. Officer Ramirez saw two “jerking movements³⁰” coming from Garcia’s right hand as if he was pulling the trigger.

Officer Ramirez ducked down behind the wall, thinking that he had been shot at. Officer Ramirez said he did not hear anything and thought Garcia’s handgun had jammed.³¹ After not hearing shots, Officer Ramirez came back up over the wall and saw Garcia still standing there facing in his direction, looking directly at him.

Officer Ramirez yelled at Garcia to stop and Officer Ramirez began to fire at Garcia. Officer Ramirez said he shot three times and he did not think he hit Garcia. Garcia continued to stare and look at him.³²

Officer Ramirez stated that after he shot three times, Garcia turned around and Officer Ramirez kept yelling commands at him. Ramirez stated, “He starts turning around again and I again I fired a few more shots.” Officer Ramirez thought that he had missed Garcia,

³⁰ Ramirez described seeing his hand move twice, jerking his hand in an up-and-down motion, with the gun pointed at Officer Ramirez.

³¹ Forensic examination of the pistol, indicated that the firearm was missing the extractor but due to the blowback action of the firearm, the discharged cartridge cases were extracted *two out of the three times* it was test-fired. The examination corroborates the observation that it appeared that Garcia was attempting to fire at Ramirez, but the firearm malfunctioned and did not fire.

³² In the walk through interview at 3:40 a.m., Ramirez stated that after shooting three times, he had “totally lost sight of his hands. I don’t know where they were at. And I don’t remember seeing the gun anymore in his hand but I—I do remember seeing—him and I making eye contact.”

and Garcia started running toward the east side of the residence away from Officer Ramirez. Officer Ramirez saw him “turning around” and as he saw him turning around, Officer Ramirez fired a few more shots at Garcia. Officer Ramirez saw blood in Garcia’s torso area and knew that he had been hit.

Officer Ramirez described looking at the suspect and not seeing a gun anymore. The suspect continued to face him, with both fists clinched and yelling at him. Officer Ramirez said he “freaked out” because he thought the suspect had “super powers” because he did not “go down” after being shot.

Officer Ramirez continued to give Garcia verbal orders and to get on the ground. Officer Ramirez was telling Garcia to “get down the ground, get down on the ground.” Officer Ramirez could not remember how many times he gave these commands to Garcia, but believed that he yelled it several times. Garcia began to kneel on the ground with his hands in the air.

Officer Ramirez saw Garcia look toward the west. Officer Ramirez saw Garcia was now on the ground and on his stomach. At this time, Officer Ramirez saw uniformed officers coming into the backyard. Officer Ramirez thought he saw a young female come out from inside the residence, but he did not know who she was. Officer Ramirez jumped over the wall and into the backyard.

Officer Ramirez initially estimated the distance from the brick wall to where Garcia was standing to be approximately 25-30 feet.³³ Officer Ramirez described that as he stood

³³ During an initial interview, Ramirez estimated the distance to be approximately 30 yards; however, during the walk-through the distance was clarified and estimated to be 25 to 30 feet.

behind the wall and on tires, he was looking down at Garcia. Officer Ramirez could not remember what the backyard looked like in regards to dirt, grass or cement.

As Officer Ramirez ran toward the suspect, he saw Sergeant Shilo standing over the suspect. Officer Ramirez told Sergeant Shilo to handcuff the suspect.

Officer Ramirez said at that time he heard that one of his fellow officers had been shot. Officer Ramirez looked around and saw everyone he thought was involved in the incident and they were fine. He could hear the dispatcher on the radio was upset and trying to put information out over the radio. Officer Ramirez told the dispatcher everyone was fine and that he needed fire and ambulance at their location.

Officer Ramirez thought Officer Varner told him that his partner, Officer Peplinski, had been hit. Officer Ramirez found Officer Peplinski, who claimed to be “ok,” in the backyard. Officer Peplinski, Officer Varner, and Officer Ramirez moved to the front of the house where Officer Ramirez sat with Officer Peplinski and tried to comfort him. Officer Peplinski was trying to take his gun belt off and show Officer Ramirez where he was shot. As the two of them looked over Officer Peplinski’s body and belt area, they determined he was not seriously injured.

Officer Ramirez said that at the time of the shooting Garcia was the only person that he saw in this area and he did not see anyone else in the backyard near Garcia. Officer Ramirez said that the business where he was standing was closed.

As other officers were handcuffing Garcia, Officer Ramirez saw a handgun on the ground to the left of, and near Garcia.

Officer Ramirez began to organize a perimeter of the area with the assistance of responding agencies and the residence was searched for outstanding suspects. At that point, Officer Ramirez did not do anything else involved in the incident.

Officer Ramirez believed that he had been to that specific house in the past. Officer Ramirez indicated that he thought it was a probation search involving Garcia or his brother, Ricardo. Officer Ramirez also recently testified in a gang case involving Garcia. Officer Ramirez explained he had prior contacts with Garcia in the street but not arrest situations.³⁴

14. Ventura County Fire Department and Paramedics

a. Santa Paula Fire Station 81

Santa Paula Fire Station 81 staff Captain Steve Lazenby and Engineer John Harber were interviewed on July 30, 2012, by Ventura County Sheriff's Senior Deputy Brian Richmond. Captain Lazenby stated that he and Engineer Harber were on duty and heard the initial call for police assistance on the scanner. As they continued to listen, they were dispatched to the same area for an unknown problem. Once on scene, they waited for permission to enter. After a few minutes, they were escorted to the rear yard of 1117 New Street.

In the backyard, they saw a male subject on the ground, face down, and handcuffed. Both Engineer Harber and Captain Lazenby rolled the subject over and began life saving measures. At some point, AMR paramedic staff arrived and continued lifesaving measures.

³⁴ Ramirez testified at the preliminary examination on November 3, 2011, that his earliest contact with Garcia was in 2001, and the last contact between a year to a year and a half prior to the shooting.

Both Captain Lazenby and Engineer Harber noted the weapon lying on the ground next to the injured subject. Captain Lazenby indicated that as lifesaving measures progressed, he used scissors to cut the shirt and pant leg of the subject. As he was cutting the shorts on the subject's right leg, he found a plastic bag with white powdery substance inside the right front pocket of the subject. He took the bag and placed it on the ground next to the subject.

a. American Medical Response (AMR)

On July 30, 2012, Senior Deputy Brian Richmond interviewed AMR staff Mark Peterson, Kevin Wong, and Gian Carlo Galimberti.

Escorted by Santa Paula Police Officers, Peterson, Wong, and Galimberti entered the crime scene. All three saw a subject on the ground face down with handcuffs. Once the subject was rolled onto his back, Wong started placing lifesaving equipment on the body of the subject. They attempted lifesaving efforts, without success. Supervisor Peterson pronounced death at 8:09 p.m. on July 28, 2012.

III. FORENSIC EVIDENCE

A. Crime Scene

The shooting occurred at the residence located at 1117 New Street in the city of Santa Paula. The area is a residential area with residences on the north and south side of New Street. The scene is bordered by South 11th Street, to the west, South Oak Street to the east, South Main Street to the north and East Ventura Street to the south. New Street is an east/west residential roadway. There are three houses that face New Street: 1117 New Street is in the middle of the three, 1111 New Street is to the west, and 1121 New Street is to the east.

There is an open lot to the west of 1111 New Street. The open lot on South 11th Street extends to Pepe's Used Cars that is located on the southeast corner of East Main Street. The rear of the used car lot borders the properties of 1111 and 1117 New Street.

When detectives from the Ventura County Sheriff's Office arrived on scene, there were four, fully marked Santa Paula Police vehicles in the roadway. Police Unit number 459 was facing westbound and positioned just to the east of 1117 New Street. Police Unit number 457 was facing eastbound positioned just west of 1117 New Street. Police Unit number 458 was facing eastbound and positioned west of unit number 457. Police Unit number 454 was facing eastbound and positioned west of unit 458. A silver Toyota Tacoma, registered to Edgar Garcia, was parked in the driveway of 1117 New Street.

B. Physical Evidence Collected at the Scene

- The suspect was located on his back facing in a westerly direction with his hands cuffed behind him. He had been wearing a white tank top t-shirt and grayish black plaid shorts. He was located 41 feet from the block wall where Officer Ramirez was standing at the time of the shooting.
- A black semi-automatic pistol was located just south of the suspects' right leg. There was one live .22 cartridge in the chamber and two in the magazine.³⁵
- Ten bullet fragments were recovered. The fragments were submitted for comparison, but were insufficient to enable any comparison.
- Four cartridge cases matching Officer Ramirez's service weapon were recovered from the car lot on the north side of the block wall separating the lot from the 1117 New Street backyard.

³⁵ The magazine of the pistol has the ability to hold 10 cartridges.

- In March 2014, the family discovered a cartridge case in the backyard by the block wall inside a cinder block that was laying on the ground. It was recovered by the Ventura County Sheriff's Office and matched Officer Ramirez's service weapon.
- A plastic baggie with a white powdery substance was located near Garcia's right leg.
- A blood droplet was collected from the floor of the garage.
- Two .22 caliber cartridge cases were located in the kitchen.
- A flashlight was located west of the garage door on the concrete walkway.³⁶
- A .22 caliber cartridge case was located in the living room.
- Several photographs were taken of bullet strikes along the north residence wall near the suspect's body. Bullet strikes were also located on the east side concrete block wall. Another bullet strike was located on the inside of the roll-up garage door that exited outward towards the street.
- Expended shell casings found in the kitchen near the doorway were compared by the Ventura County Sheriff's Forensic Sciences Laboratory and matched the handgun found next to Garcia. Several items resembling fragments of bullet slugs were located in the garage, but were insufficient for comparison. Ventura County Sheriff's deputies observed a bullet strike that was from the inside of the roll-up garage door that exited outward towards the street.
- A wooden rifle stock and various caliber ammunition was seized from bedroom number one, which was determined to be the bedroom of Edgar Garcia.

³⁶ During the walk-through interview, Officer Peplinski believed that the flashlight was his.

- An SKS rifle³⁷ with a thirty-round magazine and miscellaneous smoking devices were located inside Edgar Garcia's Toyota Tacoma truck.

C. Cause of Death

On July 29, 2012, Dr. Ronald O'Halloran, a forensic pathologist and the chief medical examiner of Ventura County, conducted an autopsy of Garcia.

The examination revealed Garcia had sustained two gunshot wounds. One gunshot wound was a through and through wound of the left forearm. Associated with this wound was a fracture of the left ulna. The direction of the wound was front to back and downward. The second gunshot wound was of the upper torso. The entrance was located at the mid back, with the exit being located in the left anterior chest. The direction of this wound was back to front, slightly right to left, and slightly downward. The shot exited the chest, it went through the wrist exiting the front of the wrist.

At the conclusion of the examination, Dr. O'Halloran ruled the cause of death to be a gunshot wound of the upper torso, and the manner of death a homicide.

D. Toxicology Results

At the time of his death, blood and urine samples were obtained and submitted to the Ventura County Forensic Services Laboratory for analysis. Garcia's blood and urine tested positive for methamphetamine and lorazepam.³⁸

³⁷ An SKS rifle is a semi-automatic rifle, considered an assault rifle, many of which are prohibited in California. Magazines with capacities greater than 10 are also prohibited in California, absent exemptions, not applicable here.

³⁸ Lorazepam is a high potency, intermediate duration, 3-hydroxy benzodiazepine drug, often used to treat anxiety disorders. It is also the most common benzodiazepine used to decrease the likelihood of agitation and seizures in patients who have overdosed on stimulant drugs.

E. Contents of Plastic Baggie

The contents of the plastic baggie were consistent with methamphetamine, but were not analyzed.

F. Ballistics Results

The Sig Saur model P229 pistol carried by Officer Ramirez was test-fired and determined to be in normal operating condition. The seven discharged cartridge casings recovered from the crime scene were microscopically compared to the test-fired cartridge casings and found to have been fired from the same Sig Saur P229. The bullets and fragments recovered from the crime scene were found to be unsuitable for comparison with the exception of one bullet recovered near to where Garcia's body was located which was determined to have been fired from the Sig Saur P229.

The pistol that was found next to Garcia was examined and test-fired using the submitted magazine. The firearm was observed to be missing the extractor, but due to the blowback action of the firearm, the discharged cartridge cases were extracted two out of the three times it was test-fired.

The .22 caliber discharged cartridge cases collected from inside the kitchen area of the residence, next to the garage door, were microscopically compared to test fire cartridge cases from the pistol and determined to have all been fired from the .22 semi-automatic pistol located next to Garcia.

G. Gunshot Residue Testing

At the scene, Garcia's hands were "bagged" to preserve gunshot residue (GSR) evidence.³⁹ A GSR kit of particles taken from the inmate's right and left hands, backs and palms, was submitted to the County of Los Angeles, Department of Medical Examiner-Coroner for analysis. The samples were tested by Scanning Electron Microscopy/Energy Dispersive Spectroscopy (SEM/EDS) to determine the presence of gunshot residue on Garcia's hands. The results of the testing revealed one characteristic particle and many consistent particles of gunshot residue on the left back hand and several consistent particles of gunshot residue on the right back hand. The conclusion is consistent with Garcia having discharged the .22 caliber handgun.

IV. LEGAL PRINCIPLES

A. Law of Homicide and Self Defense

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide encompasses murder and manslaughter, which are unlawful, and acts of excusable and justifiable homicide, which is lawful.

Homicide is justifiable when committed by any person "resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person." Penal Code section 197(1). CALCRIM 550 provides the specific jury instructions on the defense of self-defense, which provide that a person is not guilty of murder or manslaughter if 1) That person "reasonably believed that [the person] [or] someone else . . . was in imminent danger of being killed or suffering great bodily injury"; 2) that person "reasonably believed that the immediate use of deadly force was necessary to

³⁹ GSR testing is used to determine if particles of gunshot residue is evident, indicating that the individual may have discharged a firearm or had his hands otherwise in an environment of gunshot residue. To preserve such evidence the suspect's hands are "bagged" or covered by paper bags to prevent degradation or destruction of any gunshot residue evidence.

defend against that danger”; and 3) that person “used no more force than was reasonably necessary to defend against that danger.”

CALCRIM 550 further provides that in deciding whether that person’s “beliefs were reasonable, consider all the circumstances as they were known to and appeared to [that person] and consider what a reasonable person in a similar situation with similar knowledge would have believed. If [that person]’s beliefs were reasonable, the danger does not need to have actually existed.” It also provides that “[a person] is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger has passed. This is so even if safety could have been achieved by retreating.”

A killing by a peace officer is justifiable when it was “necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty” or “when necessarily committed in arresting persons charged with [a] felony, and who are fleeing from justice or resisting such arrest.” Penal Code section 196.

Police officers have a duty “to maintain peace and security” and “to protect citizens from harm.” *Batts v. Superior Court* (1972) 23 Cal.App.3d 435, 438. A police officer may use deadly force when the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

Reasonableness includes “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.*

Under the Fourth Amendment, police are “not required to use the least intrusive degree of force possible” but may use only such force as is objectively reasonable under the circumstances. *Forrester v. City of San Diego*, (9th Cir. 1994), 25 F.3d 804, *Scott v. Hendrick* (9th Cir. 1994) 39 F.3d 912, 915.⁴⁰ An officer’s use of deadly force is reasonable only if “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” *Tennessee v. Garner*, (1985) 471 U.S. 1, 3, [85 L.Ed.2d 1, 105 S.Ct. 1694].

“The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene. It is also highly deferential to the police officer’s need to protect himself and others.” *Martinez v. County of L.A.* (1996), 47 Cal.App.4th 334, 343 (quoting *Graham* 490 U.S. at 396-397). The reasonableness test requires careful attention to the facts and circumstances of each particular case, including: (1) “the severity of the crime at issue”; (2) “whether the suspect poses an immediate threat to the safety of the officers or others”; and (3) “whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396.

As the Court noted in *Foster v. City of Fresno* (2005) 392 F.Supp.2d 1140, “With respect to deadly force, the Court has explained that ‘it is unreasonable for an officer to ‘seize an unarmed, non-dangerous suspect by shooting him dead.’ But ‘[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using

⁴⁰ “Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.” *Scott*, 39 F.3d at 915.

deadly force.” Id (citations omitted) The “broad discretion that must be afforded to police officers who face a tense situation, “ must be extended to mistakes of fact concerning “the existence of probable cause” as well as to mistakes as to what the law requires under particular circumstances. *Jeffers v. Gomez*, 267 F.3d 895, 909 (9th Cir. 2001)

“Reasonableness is an objective analysis and ‘must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.’ *Graham*, 490 U.S. at 396, 109 S.Ct. 1865. The ‘question is whether the officer’s actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.’ Id at 397, 109 S.Ct. 1865 (citations omitted).” 392 F.Supp.2d at 1148

B. Edgar Garcia’s Criminal Conduct

Edgar Garcia engaged in felony and misdemeanor criminal conduct immediately prior to the shooting. Had he survived, he could have been charged with the commission of the following crimes:

- Attempted Murder of a Peace Officer in violation of Penal Code section 664/187
- Assault on a Peace Officer in violation of Penal Code section 245©
- Exhibiting a Deadly Weapon in violation of Penal Code section 417(a)(2)
- Battery in violation of Penal Code section 242
- Resisting a Peace Officer in violation of Penal Code section 148(a)

Edgar Garcia was known to the Santa Paula Police Department. He had convictions for theft, drugs, and weapons. He was pending trial in Ventura County Superior Court

case 2011018286 for unauthorized entry of a dwelling house in violation of Penal Code section 602.5, having a concealed firearm in his vehicle in violation of Penal Code section 12025 (a)(1), being a gang member while having a concealed firearm in his vehicle in violation of Penal Code section 12025(b)(3) within the meaning of Penal Code section 186.22, carrying a concealed weapon with a previous felony conviction, in violation of Penal Code section 12025(b)(5) and being under the influence of a controlled substance while in possession of a loaded gun in violation of Health and Safety Code 11550(e).⁴¹

As a juvenile in 2003, Garcia was arrested for assault with a deadly weapon, possession of methamphetamine, possession of paraphernalia, and for being under the influence of a controlled substance. In 2004, he was in possession of methamphetamine and a smoking device. As an adult in 2005, he was convicted of theft, possession of methamphetamine, being under the influence of a controlled substance, and possession of smoking devices for drugs. In 2006, Garcia was convicted of being in possession of a loaded firearm.⁴²

Ventura County jail incident reports from June 2011 indicate Garcia was considered a “Crimies” affiliate. Officer Hector Ramirez testified at Garcia’s preliminary examination on November 3, 2011, in case 2011018286 that Garcia was a known Santa Paula Crimies gang member.

⁴¹ At the time of his death, Garcia was scheduled to be in court on August 3, 2012, for an early disposition conference in Ventura County Superior Court case 2011018286. Upon his death, the case was abated and dismissed.

⁴² Ventura County Superior Court Case 2006040596. The firearm was a Ruger .357 revolver

V. ANALYSIS

Officer Ramirez was familiar with Edgar Garcia. He testified regarding Garcia's gang membership at a preliminary examination in a case where Garcia was in possession of drugs and a loaded handgun,⁴³ a few months before the incident at 1117 New Street. He previously responded to the residence at 1117 New Street in conjunction with a probation search for either Garcia or one of his brothers.

On July 28, 2012, Officer Ramirez was aware of the fact that Garcia had brandished a firearm at his stepfather, and he was later dispatched to a call at 1117 New Street, advising him that the reporting party stated that Garcia had assaulted him with a gun. When Officer Ramirez arrived on scene, Garcia was uncooperative and ran into the house. As other officers approached the open garage door, Officer Ramirez responded to the rear of the house, in the lot of Pepe's Used Cars behind the house on New Street in order to prevent escape over the back fence.

Officer Ramirez heard a series of gunshots from the front of the house. A review of the audio transmission indicates several "999" transmissions were broadcast. Officer Ramirez was confronted with a subject reported to have assaulted Raul Vasquez with a gun, who appeared to be fleeing the residence, after gunshots were fired.

Upon seeing Officer Ramirez, Garcia dropped down from the wall and pointed a handgun directly at Officer Ramirez while making jerking type movements, consistent with firing a gun. It appears that Officer Ramirez correctly surmised that the handgun jammed. Upon forensic examination, the extractor was missing from the handgun; however, the

⁴³ Ventura County Superior Court Case 2011018286. The firearm was a loaded Remington Arms 1911 .45 caliber handgun

“blowback action” of the gun resulted in two out of three cartridges being expelled from the gun.

Officer Ramirez fired at Garcia. The first volley of shots did not deter Garcia. Garcia appeared to turn to flee the scene, turned back toward Officer Ramirez, and Officer Ramirez fired the next few shots, ultimately lethally wounding Garcia.

Garcia was an armed fleeing felon. He had just shot at several police officers, hitting one in the abdomen. Fortuitously, no officers were seriously injured or killed. Seconds later, Garcia attempted to flee the residence. Garcia pointed his loaded handgun⁴⁴ directly at Officer Ramirez. Officer Ramirez believed that Garcia was attempting to shoot him. Officer Ramirez did not act unreasonably when he fired his weapon at Garcia. He gave orders for Garcia to stop, and get down. The orders were ignored. To find that Officer Ramirez did not act reasonably would require the conclusion that Officer Ramirez should have simply taken a chance that Garcia was not going to pull the trigger (again) and allow Garcia to run off, armed with a gun, and perhaps assault or shoot again.

Police officers are trained to respond to danger and not retreat from it. It is unreasonable to expect having heard shots fired and upon seeing the handgun pointed at him, Officer Ramirez should have retreated behind the wall and taken no further action. A police officer should not have to wait to see if someone pointing a gun is going to pull the trigger, before shooting. Nor is it reasonable that a police officer should retreat from danger, leaving other officers or citizens in danger.⁴⁵ Police officers are trained to react

⁴⁴ Upon examination, the pistol had a live cartridge in the chamber and two live cartridges in the magazine. Three discharged cartridge cases were recovered from the residence.

⁴⁵ During an interview, Ramirez stated after realizing that Garcia was armed, he had to get over the brick wall because “we were trained that, you know, try to clear everything as we’re going, make sure that everything’s okay. So I am like all right, well, I got to get over there, over the brick wall.”

to displays of deadly force, and training exercises reinforce the fact that hesitation can get you killed. Garcia was an armed felon, fleeing the scene of an assault with a firearm, after having shot a police officer.

The fact that Garcia's fatal wound was in the back does not change the evaluation that the shooting was justified. Officer Ramirez heard shots fired and reported that to dispatch. Officer Ramirez reported that Garcia turned away and then turned back with a pistol pointed at him making jerking motions indicating that it was being fired.

VI. CONCLUSION

It is the conclusion of the District Attorney that:

1. At the time Officer Ramirez fired his weapon at Edgar Garcia, Officer Ramirez honestly and reasonably believed that he was in imminent threat of death or great bodily injury;
2. At the time Officer Ramirez fired his weapon at Edgar Garcia, Officer Ramirez honestly and reasonably believed that the immediate use of deadly force was necessary to defend himself against the danger posed to him by Edgar Garcia;
3. At the time Officer Ramirez fired his weapon at Edgar Garcia, Officer Ramirez honestly and reasonably believed that other officers were in imminent threat of death or great bodily injury;
4. At the time Officer Ramirez fired his weapon at Edgar Garcia, Officer Ramirez honestly and reasonably believed that the immediate use of deadly force was necessary to defend against the danger posed to other officers by Edgar Garcia;
5. Officer Ramirez used no more force than was reasonably necessary to defend against the danger posed by Edgar Garcia; and
6. Officer Ramirez's fatal shooting of Edgar Garcia was justifiable homicide.