

OFFICE OF THE DISTRICT ATTORNEY

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REPORT ON THE JANUARY 30, 2013  
SHOOTING OF JOSUE JIMENEZ  
BY DEPUTY JAMES TEDDER OF  
THE VENTURA COUNTY SHERIFF'S OFFICE

GREGORY D. TOTTE  
DISTRICT ATTORNEY  
COUNTY OF VENTURA

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## I. INTRODUCTION

On January 30, 2013, Ventura County Sheriff's deputies were notified that a man possessed a handgun at Mountain Vista Elementary School in the city of Fillmore, California. The subject was linked to 716 ½ Blaine Avenue in Fillmore. Sheriff's Deputies James Tedder, Russell Grant and Leonardo Vazquez responded to 716 ½ Blaine Avenue. When they arrived, they encountered Josue Jimenez who was standing in his driveway and holding a handgun. The deputies unholstered their weapons and immediately and continuously ordered Mr. Jimenez to put his weapon down.

Instead, Mr. Jimenez walked to the southern side of his property, chambered a round into his handgun and fired a shot through his fence at a dog in the neighboring yard. He then began turning toward Deputy Tedder. Deputy Tedder fired two shots at Mr. Jimenez, killing 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. Once the District Attorney's Office was notified of the shooting, Senior Deputy District Attorney Christopher Harman (who authored this report) and District Attorney Investigators Tom Mendez and Robert MacInnes responded to the shooting scene and consulted with the investigating officers.

The Ventura County Sheriff's Office conducted an investigation of the shooting, which included interviewing witnesses, collecting physical evidence, and photographing the area of the shooting. All three involved deputies individually conducted a voluntary walkthrough to criminal investigators where they described the incident.

The Ventura County Sheriff's Office's investigation reports were then submitted to the District Attorney's Office for a determination of whether the shooting of Josue Jimenez was justified and, if not, whether criminal charges should be filed. The scope of the District Attorney's review was limited to those issues.

The District Attorney's review included reviewing approximately 580 pages of reports and documents which included interviews of police and civilian witnesses, diagrams, photographs, numerous recorded interviews and records, recordings of radio transmissions, and examining the scene of the shooting.

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 the shooting of Josue Jimenez by Ventura County Sheriff's Deputy James Tedder was justified and was not a criminal act.

## II. STATEMENT OF FACTS

### A. JOSUE JIMENEZ'S CRIMINAL HISTORY

Josue Jimenez had a criminal record that included three convictions for possession of methamphetamine for sale and several firearms violations. In 2009, he was sentenced to the California Department Corrections for five years for the possession of methamphetamine for sale and possession of a firearm by a felon. He was paroled in 2011. Evidence uncovered after this incident indicated that, at the time he was shot, he was actively involved in selling controlled substances and weapons.

### B. VENTURA 911 CALL

At approximately 4:18 p.m. on January 30, 2013, a Ventura Police Department dispatch received a call reporting a man with a gun in a parking lot at Goodyear Avenue. The

caller was a receptionist at a healing practitioner's office who was relaying information conveyed from a patient's relative. Blanca Jimenez, the wife of Josue Jimenez, was inside the facility to receive treatment and rushed outside as people in the office spoke about the man with a gun. Blanca Jimenez left the office without completing treatment. The man was eventually identified as Mr. Jimenez. Numerous Ventura police officers were dispatched to the scene but were unable to locate any suspect in that area.

### C. FILLMORE 911 CALL

At approximately 4:45 p.m. -- less than 30 minutes after the Ventura 911 call -- an anonymous male called the Sheriff's Communication Center and reported that a Hispanic man in a grey Jeep had a handgun in his waistband at Mountain Vista Middle School in Fillmore. The caller later clarified that it was a green Jeep with a "Monster" sticker on the back and that the license plate was 6BYP366. The suspect was described as in his early twenties wearing blue jeans, a black long-sleeved "LBZ" t-shirt and a black "Monster" hat. The caller further advised that students had gotten into the Jeep and that the suspect had driven the Jeep away from the school and turned right on "B" Street.

The dispatcher assigned the call to Ventura County Sheriff's Deputy James Tedder. Deputies Russell Grant and Leonardo Vazquez individually notified dispatch that they would also respond to the call.

Dispatch clarified that the actual license plate was 6BYP386 and was registered to Blanca Jimenez Romande and Josue Jimenez, who lived at 716 ½ Blaine Avenue. Shortly after that, Deputies Tedder, Grant and Vazquez arrived at the Blaine Street residence and contacted Mr. Jimenez.

#### D. THE SHOOTING

Deputy Vazquez was the first to arrive at the scene. The residence at 716 ½ Blaine Avenue was a duplex that shared a common driveway with another duplex residence at 714 Blaine Avenue.<sup>1</sup> The driveway extended south from Blaine Avenue to a fence at the back of the property. Deputy Vazquez spotted an individual who was later identified as Josue Jimenez standing in the driveway in front of 716 ½ Blaine Avenue next to a green Jeep Compass. Mr. Jimenez had a silver colored handgun in his right hand. Deputy Vazquez unholstered his handgun and began shouting at Mr. Jimenez to drop the gun.

Deputy Tedder and Deputy Grant arrived immediately after Deputy Vazquez. They both heard Deputy Vazquez shouting, and unholstered their own handguns. They both also began shouting at Mr. Jimenez to drop his gun.

Mr. Jimenez raised his handgun about 45 degrees and dropped it back down, then turned and began walking toward the southern side of the property. All three deputies began following Mr. Jimenez, constantly shouting at him to drop his weapon and to get on the ground.

All three deputies took cover behind the green Jeep Compass, while Mr. Jimenez continued walking to a fence at the southern end of the driveway. Deputies Vazquez and Grant moved behind a Dodge pickup truck on the eastern side of the driveway and Deputy Tedder began approaching Mr. Jimenez along the western side of the driveway.

Deputy Tedder again requested Mr. Jimenez to drop his gun, and added that “this is going to end badly.” Mr. Jimenez racked the handgun’s slide, chambering a round, and pointed

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<sup>1</sup> / The four residences sharing the common driveway were 712, 712 ½, 716 and 716 ½ Blaine Avenue.

his handgun at dogs barking on the other side of the fence. He then pulled the trigger and shot one of the dogs.

Mr. Jimenez put both hands on his gun and began turning toward Deputy Tedder with the gun. Deputy Tedder then fired at Mr. Jimenez. Mr. Jimenez continued turning and Deputy Tedder fired a second shot. Deputy Tedder hit Mr. Jimenez in the left rear shoulder and the back of his head, and it is unclear in which order the bullets hit him.

Mr. Jimenez fell after he was shot and he was handcuffed by Deputies Grant and Vasquez. Mr. Jimenez dropped a Taurus 9mm pistol as he fell. An expended .380 casing was still in the handgun's chamber.

#### E. ADDITIONAL POLICE RESPONSE AND INVESTIGATION

A crime scene was established and marked off. Emergency medical personnel arrived on scene to treat Mr. Jimenez, and the handcuffs were removed. Deputy Vasquez searched Mr. Jimenez and found a loaded .380 handgun in his pocket along with a second loaded magazine for a 9mm handgun. Mr. Jimenez was still breathing and had a pulse, so he was transported to the Ventura County Medical Center where he was pronounced dead at 6:13 p.m. that evening.

Evidence seized at the scene included two .40 caliber expended casings fired by Deputy Tedder, the two handguns and five cellphones possessed by Mr. Jimenez, and Mr. Jimenez's wallet, which contained approximately \$1,402.

Bear, the dog Mr. Jimenez shot, was transported to a veterinary hospital, where he died. His body was retained as evidence and transported to a different veterinarian who

recovered a .380 caliber bullet from Bear's body. The bullet was examined by a firearm expert who confirmed that it had been fired by Mr. Jimenez's 9mm handgun.<sup>2</sup>

Deputies Tedder, Grant, and Vazquez all were individually interviewed about the shooting and each conducted a separate on-scene walkthrough of the incident.

#### F. WITNESS STATEMENTS

Numerous individuals were interviewed including the involved officers, Mr. Jimenez's wife, Blanca Jimenez, and most of the neighbors. Summaries of the most pertinent witness statements are set forth below.

##### 1. DEPUTY JAMES TEDDER

Deputy James Tedder was interviewed by Detective David Brantley at approximately 10:30 p.m. on January 30, 2013. He conducted an on-scene walkthrough of the incident as part of that interview.

On January 30, 2013, Deputy Tedder was assigned to patrol in the city of Fillmore. His shift was due to end at 6:30 p.m. He received a dispatch call<sup>3</sup> regarding a man with a firearm at the Mountain Vista School on Fifth Street. The suspect's vehicle had been described as a green Jeep.

Deputy Tedder drove to the school and looked for the green Jeep but did not find it. Dispatch then reported that the Jeep was registered to 716 ½ Blaine Avenue. Deputy

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<sup>2</sup> / The Taurus 9mm handgun was test fired with a 9mm cartridge and a .380 cartridge from the magazine found in the gun. The .380 cartridge fired successfully from the handgun but did not automatically load the next round.

<sup>3</sup> / Dispatch records show Deputy Tedder received the call at approximately 4:45 p.m.



Tedder informed dispatch that he was unable to locate the Jeep near the school and was responding to the Blaine Avenue address.

Deputy Tedder arrived just behind Deputy Vazquez. Deputy Vazquez swerved his car and parked across the street from the Blaine Avenue address. Deputy Tedder suspected something had caused Deputy Vazquez to make that maneuver. Deputy Tedder parked behind Deputy Vazquez's car and, as he exited his own car, could hear Deputy Vazquez yelling, "Drop the gun! Drop the gun!" Deputy Tedder was unable to see the person Deputy Vazquez was yelling at, but he unholstered his firearm and stood on the passenger side of Deputy Vazquez's car.

When Deputy Tedder reached Deputy Vazquez's car, he was able to see a male subject (Josue Jimenez)<sup>4</sup> standing in driveway facing Deputy Vazquez and holding a silver colored handgun in his right hand. Deputy Tedder was afraid of getting shot, so he tried to open the patrol car door for cover, but it was locked. Deputy Tedder tried to crouch behind Deputy Vazquez's car.

Both deputies shouted at Mr. Jimenez to drop his weapon. Mr. Jimenez failed to comply with any of the commands being shouted at him. Deputy Tedder described Mr. Jimenez's demeanor as a "thousand-yard stare, just totally unresponsive." He explained that it appeared as if Mr. Jimenez was looking beyond them and was not paying any attention to them.

Mr. Jimenez's handgun was pointed at the ground. Deputy Tedder did not know what Mr. Jimenez's intent was, but Deputy Tedder felt that he was secure as long as the gun

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<sup>4</sup> / Deputies Tedder, Grant and Vasquez did not know Josue Jimenez's identity at the time of this incident but his name is used for clarification.

remained pointed at the ground. He felt that he would begin fearing for his life if the gun rose. At one point, Mr. Jimenez stopped and began raising his handgun about 45 degrees and then lowered it and did not point it at any of the deputies.

Mr. Jimenez turned around and began walking away from the deputies with his handgun held down at his side. Deputies Vazquez and Tedder continued to shout at him to “stop” and “drop the gun and get on the ground!” Mr. Jimenez did not walk straight down the driveway but curved around a green Jeep which was parked in the driveway. Deputy Tedder was focused on Mr. Jimenez but noticed Deputy Vazquez on the opposite side of the driveway. Deputy Tedder thought he saw a woman and small child in his peripheral vision.

Deputy Tedder was becoming concerned because he did not know the layout of the location. He did not know if Mr. Jimenez could walk out of the yard and was concerned about what Mr. Jimenez might do with his gun. Mr. Jimenez continued walking toward a fence on the southern side of the property and Deputy Tedder continued to follow. Deputy Tedder could hear a woman screaming in the background and was concerned about other people in the area being injured by Mr. Jimenez. Deputy Tedder began closing the distance between them.

Deputy Tedder saw Deputy Vazquez to his left, and both Deputies Tedder and Vazquez continued to tell the suspect to “drop the gun,” “get on the ground.” Deputy Tedder said he knew Deputy Grant was at the scene but he could not recall where Grant was located during the incident. Deputy Tedder held cover behind the green Jeep until the suspect got about 40 feet away from him.

Deputy Tedder had been continually giving the suspect commands during this incident but Mr. Jimenez was not listening to them. Deputy Tedder realized that “there’s something going on, you know, other than, you know, this isn’t your -- your typical call.” Deputy Tedder did not want Mr. Jimenez to hurt someone else or himself, so he “closed the gap” between them to a distance of about 20 feet.

Mr. Jimenez stood facing the southern fence with his back toward Deputy Tedder. Mr. Jimenez still held the gun in his right hand and Deputy Tedder continued to order him to drop the gun. Deputy Vazquez also closed the gap on the east side of the driveway.

Deputy Tedder had his handgun aimed at Mr. Jimenez and told him, “Dude, it’s not worth it, this is going to end bad, drop the gun.” Deputy Tedder said the suspect was still a threat at this point, but he felt safe because he had his sights trained on the suspect and the suspect was not pointing his gun at him.

Deputy Tedder saw two dogs on the other side of the fence. Mr. Jimenez brought the gun up towards his chest and Deputy Tedder heard Mr. Jimenez release his gun’s safety, say “I’m next,” and load a round into the firing chamber. Mr. Jimenez extended his arm and shot one of the dogs on the other side of the fence. Mr. Jimenez turned to look at Deputy Tedder over his left shoulder, and then turned back to the fence.

Deputy Tedder thought that Mr. Jimenez was suicidal and shot the dog to provoke Deputy Tedder into shooting him. Deputy Tedder became scared that Mr. Jimenez was mentally preparing to shoot Deputy Tedder.

Mr. Jimenez put both hands on his gun and started to turn to his left, bringing the gun toward Deputy Tedder. Deputy Tedder continued to order Mr. Jimenez to drop the gun, but Mr. Jimenez continued swinging the gun toward Deputy Tedder.

Deputy Tedder had mentally determined that Mr. Jimenez's gun would be a threat if it crossed a 90 degree plane between them. Once Mr. Jimenez's gun crossed that plane, Deputy Tedder fired one shot at Mr. Jimenez. Mr. Jimenez continued turning his gun toward Deputy Tedder, so Deputy Tedder shot him one more time. Mr. Jimenez then dropped his gun and fell to the ground. Deputy Tedder kicked the gun away from Mr. Jimenez and Deputy Vazquez handcuffed him.

## 2. DEPUTY LEONARDO VAZQUEZ

Deputy Leonardo Vazquez was interviewed by Detective Russ King at approximately 9:34 p.m. on January 30, 2013. He conducted an on-scene walkthrough of the incident as part of that interview.

On the day of the incident, Deputy Vazquez was assigned as the School Resource Officer for the Fillmore Unified School District. As part of that assignment, he was responsible for all the elementary schools, including Mountain Vista School.

At approximately 4:45 p.m., he had returned to the Fillmore Police Department to end his work day. As he exited his patrol car, he heard dispatch traffic regarding a man with a handgun at Mountain Vista School and that the man was driving a green Jeep. As the call related to one of his schools, Deputy Vazquez notified dispatch that he would also respond to the call.

Deputy Vazquez and Deputy Russell Grant drove out of the station at the same time to respond to the call. Deputy Vazquez drove around the area of Mountain Vista School looking for a green Jeep CG-5, as that was the type of Jeep he pictured from the dispatch description. He drove down Blaine Avenue and stopped outside the quadplex that included the Jimenez residence. He explained that he stopped because “I’ve been here so many times on domestics or other calls, and saw a green vehicle, not realizing it [was] a Jeep.”<sup>5</sup>

Deputy Vazquez got out of his car and saw a man (Josue Jimenez) next to the driver’s door of the green vehicle which was parked in the driveway. Deputy Vazquez also saw Deputy Grant arriving at the location. Deputy Vazquez called for Mr. Jimenez to come over to him, and Mr. Jimenez began walking around the green vehicle toward Deputy Vazquez. When Mr. Jimenez stepped out from behind the green vehicle, Deputy Vazquez noticed a handgun in Mr. Jimenez’s waistband.

Deputy Vazquez began yelling, “Put your hands up!” at Mr. Jimenez. Deputy Tedder had appeared on Deputy Vazquez’s right side and yelled at Mr. Jimenez as well. Deputy Vazquez began yelling the commands in Spanish -- “Pararse! Manos arriba!”<sup>6</sup> Mr. Jimenez did not raise his hands and continued walking up the driveway toward the deputies.

Mr. Jimenez walked about 15 feet toward the deputies and then stopped. Deputy Vazquez noticed a woman and two to three children “cowering” to his left. Mr. Jimenez stared at the deputies. Deputy Vazquez described Mr. Jimenez’s demeanor as, “He just stared off

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<sup>5</sup> / The green Jeep in the driveway was a Jeep Compass which had a large Monster energy drink decal on the rear window.

<sup>6</sup> / “Stop! Hand’s up!”

into space. It's like he's not listening to anything. Nothing. No emotions, no nothing." Mr. Jimenez then turned around and started walking away back toward the green vehicle.

The deputies followed Mr. Jimenez, ordering him to put his hands in the air the whole time. Mr. Jimenez continued walking to a fence at the rear of the property. Deputy Vazquez and Deputy Grant stood behind a Dodge pickup truck on the east side of the driveway. Deputy Vazquez explained that he was afraid of being shot, stating, "That's why I was running from cover to cover; I didn't want to get shot."

Deputy Tedder was south of the green vehicle on the west side of the driveway. The deputies continued to yell at Mr. Jimenez to put his hands up. Mr. Jimenez did not comply with any of their commands. Deputy Vazquez is not sure when Mr. Jimenez drew his gun, but he saw Mr. Jimenez "rack"<sup>7</sup> the handgun twice while he stood near the fence at the rear of the property. Two to three dogs were visible on the other side of the fence.

Mr. Jimenez fired two shots at the dogs on the other side of the fence, then began turning away from Deputy Vazquez and toward Deputy Tedder who was about 20 feet away. Mr. Jimenez was holding his handgun with both hands. As Mr. Jimenez turned toward Deputy Tedder, Deputy Tedder fired one shot at Mr. Jimenez.

Deputy Tedder approached Mr. Jimenez with his handgun still aimed at him. Deputy Vazquez holstered his handgun, approached Mr. Jimenez, and he and Deputy Grant secured Mr. Jimenez in handcuffs.

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<sup>7</sup> / "Racking" a semi-automatic handgun refers to moving the weapon's slide to load a round into the chamber to ready it to fire.

Emergency medical personnel arrived and requested the handcuffs be removed. Deputy Vazquez removed the handcuffs and searched Mr. Jimenez. He located a second handgun in Mr. Jimenez's right pocket and an extra magazine for the handgun he had used to shoot at the dogs.

Deputy Vazquez was asked why he did not also shoot Mr. Jimenez and he replied, "I know if he would have turned towards me I would've shot him." He explained, "After shooting the dog, after the -- his stare, after not complying with our orders, clear orders, yeah, he's -- he was a danger to everybody around here." He further explained that, "I know if he would -- would have passed the plane on my side, I would've shot him. He had a mentality -- in my opinion, he had a mentality to shoot somebody. So yeah, I think we were -- we were all in danger at that point."

### 3. DEPUTY RUSSELL GRANT

Deputy Russell Grant was interviewed by Detective Steve Michalec on January 30, 2013, at approximately 9:05p.m. He conducted an on-scene walkthrough of the incident as part of that interview.

Deputy Grant was working patrol in the city of Fillmore on January 30, 2013. He was requested by dispatch to respond to a school on Fifth Street to assist Deputy Tedder with a call regarding a man with a gun.

While en route, Deputy Tedder advised over the radio that the suspect had left the school in a green Jeep. Deputy Grant proceeded to drive down B Street to look for the suspect's car. Dispatch then notified him that the green Jeep they were looking for was linked to 716 ½ Blaine Avenue. Deputy Grant drove to Blaine Avenue where he met up with Deputy Vazquez. Both deputies then drove toward the 700 block of Blaine Avenue.

Deputy Grant parked his patrol SUV just east of 716 ½ Blaine Avenue and Deputy Vazquez parked his patrol car in the driveway, facing south. As Deputy Grant was getting out of his patrol SUV, he noticed a green Jeep parked in the driveway. He also noticed a man with a silver handgun in his right hand (Mr. Jimenez) walking around the back of the Jeep toward Deputy Vazquez.

Deputy Grant unholstered his handgun and began shouting at Mr. Jimenez to drop the gun. He also heard Deputy Vazquez giving Mr. Jimenez commands in Spanish. Deputy Vazquez was holding his handgun and was standing beside the driver's door of his patrol car. A short while later, Deputy Tedder joined Deputy Vazquez at his patrol car.

Mr. Jimenez did not comply with any of the demands that he drop his weapon. He stopped about 15 feet away from the deputies and stood "just gun in hand with a dead, blank look on his face. He's staring. He never looks at me, he never looks at [Deputy Vazquez], doesn't look at anybody, just stands there" for 10 to 15 seconds while the deputies were telling him to drop his gun. Mr. Jimenez then slowly turned and slowly started walking away.

The deputies began following Mr. Jimenez. Deputies Tedder and Vazquez went to the northeast corner on the west duplex and Deputy Grant went to the northwest corner of the east duplex. Mr. Jimenez continued walking toward a fence at the rear of the yard. All three deputies took cover behind the green Jeep. Mr. Jimenez continued walking with the gun in his right hand and continued ignoring the deputies. He reached the southern fence and a dog began barking at him from the other side of the fence.

Deputy Grant moved down the driveway and took cover behind a pickup truck on the southeast part of the driveway. Deputy Grant kept his handgun aimed at Mr. Jimenez and



continued to order him to drop his gun. Deputy Tedder began approaching Mr. Jimenez on the west side of the property. Deputy Grant is not sure where Deputy Vazquez was at that time but recalls him continuously ordering Mr. Jimenez to drop his gun in Spanish.

Mr. Jimenez appeared to notice the dog barking on the other side of the fence.

Mr. Jimenez pointed the gun at the dog and made a jerking movement with the gun, but it did not fire. Mr. Jimenez made a clicking noise with the gun and then racked a round into the chamber. Mr. Jimenez began turning toward Deputy Grant's left (toward Deputy Tedder) and Deputy Tedder shot Mr. Jimenez. Deputy Grant recalled hearing three distinct gunshots. Deputy Grant did not see Mr. Jimenez fire his weapon at any time.

Deputy Grant stated that at the time Deputy Tedder fired his handgun, Deputy Grant "was probably within just a fraction" of shooting also, but since Mr. Jimenez went down so quickly he did not feel that he also needed to shoot.

Mr. Jimenez dropped to the ground after he was shot. Deputies Grant and Vazquez then handcuffed Mr. Jimenez and Deputy Tedder called for emergency medical personnel to respond. Deputy Grant recalled a woman with two young boys nearby crying and asking, "why, why, why?"

When the emergency medical personnel arrived, Deputy Grant removed the handcuffs from Mr. Jimenez. Deputy Vazquez did a cursory search of Mr. Jimenez and located an additional handgun magazine and a second handgun.

#### 4. BLANCA JIMENEZ

Blanca Jimenez was married to Josue Jimenez and she witnessed the incident.

Ms. Jimenez primarily speaks Spanish. She was initially interviewed by Deputy Sean

Martin with the assistance of an unknown woman who acted as translator. She was then interviewed by Deputy Gabe Gonzalez at the scene, and then more fully interviewed by Senior Deputy Ray Dominguez that evening. Both Deputies Gonzalez and Dominguez are certified by the Sheriff's Office as Spanish speakers and their interviews were conducted in Spanish.

a. Martin Interview

Deputy Martin spoke with Ms. Jimenez with the assistance of an unknown translator. Ms. Jimenez was extremely emotionally upset and crying very hard. Ms. Jimenez initially said that she hadn't seen her husband with "it" and they had no reason to shoot him. When asked directly, she admitted she had seen her husband with a gun. She did not know when Mr. Jimenez got the gun and denied he had been having any problems with their neighbors.

Ms. Jimenez stated that she and her husband Josue Jimenez had driven their Jeep to Mountain Vista Elementary to pick up their children and returned to their home. Ms. Jimenez did not know if Mr. Jimenez had the gun with him and did not see him display the gun at the school. Deputy Martin was unable to obtain much additional information from her, and asked her to remain at the scene.

b. Gonzalez Interview

Deputy Gonzalez spoke with Ms. Jimenez at approximately 5:35 p.m. on January 30, 2013. Ms. Jimenez stated that she and her husband had picked up their children from school in her green car (the Jeep Compass) shortly before the police arrived. Ms. Jimenez stayed in the Jeep while Mr. Jimenez walked onto the school grounds to get their children. Ms. Jimenez did not remember her husband with a gun at any point when they were picking up the children.

They drove back home and Ms. Jimenez walked out to the mailboxes. She then noticed police officers telling Mr. Jimenez to drop a gun. At that point, she saw Mr. Jimenez was holding a gun.

Mr. Jimenez did not listen to the police but turned around and walked away. She pointed to the south as she explained where he walked. At one point, he turned toward some dogs. The police again yelled at Mr. Jimenez to drop the gun and then they shot him. Ms. Jimenez said that she never saw Mr. Jimenez point the gun at police.

Ms. Jimenez told Deputy Gonzalez she had never seen her husband with a gun before and did not know where Mr. Jimenez obtained the gun. She also was unaware of who would have called the police to the school.

c. Dominguez Interview

Detective Dominguez spoke with Ms. Jimenez at approximately 7:10 p.m. on January 30, 2013. She stated that they had lived at 716 ½ Blaine Avenue for about seven years but were in the process of moving to another location in Fillmore. She lived there with her husband, Josue Jimenez, their two sons, ages 10 and 6, their daughter, age 4, as well as a cousin who was not there during the shooting.

Ms. Jimenez stated that they had just arrived home from picking up their two sons at their school. She and her son walked to the mailbox at the end of the driveway and Mr. Jimenez stayed by their green Jeep. Three police cars arrived and the officers began yelling at Mr. Jimenez to get on the ground. She was not sure if the commands were given in English or Spanish and she did not remember if the officers' weapons were out at that time. Ms. Jimenez stated that Mr. Jimenez only spoke a little bit of English.

Mr. Jimenez stared at the officers, then turned and began walking away from them toward a chain link fence at the southern end of their driveway. She noticed that Mr. Jimenez was holding a pistol in his hand. Mr. Jimenez pointed the pistol at a dog at the southern end of their driveway and the officers shot him. She heard a total of three shots—one shot followed by a pause before the second two shots. The officers then approached Mr. Jimenez.

Ms. Jimenez denied that Mr. Jimenez had shot at any dogs and stated that Mr. Jimenez never pointed his gun at any of the officers, and had not even said anything to the officers.

Ms. Jimenez was unsure if she had ever seen the pistol Mr. Jimenez held before that day, although she admitted he had owned a gun in the past. She also stated that in 2009 Mr. Jimenez had been sent to prison on a weapons charge but that he had been out of prison for about a year and was off parole at the time of the shooting.

Ms. Jimenez stated that she got home from work at approximately 3:00 p.m. She and Mr. Jimenez then drove to Ventura because she had a doctor's appointment.<sup>8</sup> They then drove to Mountain Vista School to pick up their sons at approximately 4:45 p.m.

Ms. Jimenez remained in the Jeep and Mr. Jimenez went on campus to get the kids. He lagged behind the kids and arrived at the Jeep after them. Her oldest son told her that Mr. Jimenez was talking to a teacher about the younger son's progress in the class.

Mr. Jimenez's demeanor appeared normal when he reached the Jeep.

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<sup>8</sup> / According to eyewitness reports, Ms. Jimenez rushed out of the doctor's office after she heard a report of a man with a gun in the parking lot. Mr. Jimenez was eventually identified by Ventura Police as the subject with the gun.

Ms. Jimenez said they drove directly home after picking up the boys at school and no one had entered the home before the police arrived. Ms. Jimenez thought Mr. Jimenez must have already had the gun in his possession when they arrived at the house because he had never gone into their home. Ms. Jimenez denied ever seeing Mr. Jimenez store guns in their home.

Approximately an hour after the interview ended, Detective Dominguez notified Ms. Jimenez that her husband had died while at the hospital.

#### 5. RENAY PAVICH

Renay Pavich lived at 713 Blaine Avenue and witnessed the shooting. She also took photographs of the scene shortly after the shooting. She was interviewed by Detective Regan at approximately 7:00 p.m.

At the time of the shooting, Ms. Pavich and her husband lived at 713 Blaine Avenue, which is across the street from the quadplex where the Jimenez family lived. She refused to give her husband's name to Detective Regan and told her that her husband did not want to be involved and "won't talk to cops."

Ms. Pavich stated that her husband was watering the grass in front of their residence when he yelled, "Babe, they're tazing! Get your camera equipment!" Ms. Pavich quickly grabbed her camera bag from inside the living room and ran outside. She took out her camera and ran onto Blaine Avenue.

Ms. Pavich heard an officer yell either, "Stay where you are!" or "Stay back!" She was unsure who the officers were yelling at. She looked across the street and saw two uniformed officers with their guns drawn and pointed at "Bibo" (Josue Jimenez), who

was standing facing the officers near a trash bin in his driveway. Jimenez was holding both of his hands above his head. She also noticed Blanca Jimenez and her children getting out of their Jeep, which was parked nearby.

Ms. Pavich shouted, “Do not shoot him! You don’t need to shoot him!” She then heard three gun shots, one right after the other. Ms. Pavich heard the children screaming and Ms. Jimenez yelling, “Don’t! You don’t need to shoot him!” Ms. Pavich stated that the first shot happened while Mr. Jimenez was standing and he dropped to the ground. The other two shots occurred after Mr. Jimenez was lying on the ground. She also stated that, “the dog is dead because they [the officers] shot the dog.”

Deputies began arriving and moved Ms. Jimenez and her children away from the scene. Ms. Pavich stated she took photographs of the incident after it happened. She explained that she didn’t take photographs immediately because she was so nervous and her hands were shaking from observing the shooting. The photographs all occurred after the shooting and after Mr. Jimenez had been handcuffed. Ms. Pavich gave Sr. Deputy Burgess the memory card from her camera as evidence.

## 6. ROSIE ARIAS

Rosie Arias lived at 713 3rd Street in Fillmore, the residence immediately south of 716 ½ Blaine Avenue. Josue Jimenez shot her dog, Bear, on the evening of January 30, 2013. Bear was transported by Deputy Ognowski to the Fillmore Animal Hospital for treatment and died at the hospital. Ms. Arias was interviewed by Deputy Tejada that night.

Ms. Arias stated that she didn’t really know her Blaine Avenue neighbors but had never had any problems with them. At the time of the gunshots, she was seated in the living room with her mother, her granddaughter, and her son. She heard four very loud

gunshots, “one right after the other.” She knew they were gunshots by how loud and close they sounded. She then heard nothing but their dogs barking. She locked their door and her son went outside to search where the shots had been fired.

Her mother went into the back yard and Ms. Arias went to bring her mother back inside the house. She noticed the dogs barking and then saw her dog, Bear, lying on the ground with blood all around him.

#### 7. FILLMORE FIRE CAPTAIN BILLY GABRIEL

Captain Gabriel was interviewed by Deputy Alamazan at approximately 8:45 p.m. on January 30, 2013. Captain Gabriel stated that he was dispatched to a call relating to a gunshot victim on Blaine Avenue. He parked on A Street and walked to the scene with other fire personnel.

When he reached the patient (Josue Jimenez), he was face down and handcuffed. The handcuffs were removed and the patient was rolled over. Deputy Vazquez searched the patient’s pockets and located a gun. The patient was still breathing and had a pulse; he was transported to the hospital.

### III. PHYSICAL EVIDENCE

#### A. 716 ½ BLAINE AVENUE

716 ½ Blaine Avenue is a quadplex—two residential duplexes on the southern side of Blaine Avenue that share a common driveway which runs between them. The residences at 712, 712 ½, 716, and 716 ½ Blaine Avenue are all located on that same parcel.

A green Jeep Compass, license number 6BYP386, was parked partially in the carport for 716 ½ Blaine Avenue. The Jeep was registered to Blanca Romande Jimenez and Josue

Jimenez at that address. The Jeep had a large Monster energy drink decal in the top center of the rear window.

A Taurus 9mm handgun was recovered from the scene where Mr. Jimenez dropped it. The Taurus had an expended .380 cartridge in the chamber, and the magazine contained 11 unexpended 9mm cartridges and two unexpended .380 cartridges. Ballistics tests confirmed that the .380 bullet that killed the dog Bear was fired from the Taurus handgun.

Mr. Jimenez was treated on scene and then transported to the hospital. Prior to his transport, he was searched and numerous items were recovered from his person. The items included five cell phones, a .380 handgun, and a magazine for a 9mm handgun that was loaded with 15 rounds. His wallet was also recovered and it contained \$1,402.

The cell phones were reviewed and contained evidence that Mr. Jimenez was actively involved in the illegal sales of guns and controlled substances. Some of the phones also contained multiple photographs of handguns that appear to be the two handguns Mr. Jimenez had with him on January 30.

Two Speer .40 caliber expended cartridge cases were also recovered approximately 25 feet from the location Mr. Jimenez fell. Ballistics tests confirmed that those casings had been fired by Deputy Tedder's handgun.

#### B. JOSUE JIMENEZ

Josue Jimenez was pronounced dead at the Ventura County Medical Center at 6:13 p.m. on January 30, 2013. An autopsy was performed on January 31, 2013, by Dr. Jon Smith,



the Ventura County Medical Examiner. He found that Mr. Jimenez died from gunshot wounds and that the killing was a homicide, meaning a death at the hands of another.

Dr. Smith located two gunshot wounds. One bullet entered Mr. Jimenez's back on the left shoulder, broke his left rear shoulder blade, nicked his left lung and lodged in his left pectoral muscle. The second bullet entered the rear of Mr. Jimenez's head just left of center and lodged in his brain. Both bullets were .40 caliber.<sup>9</sup>

Mr. Jimenez's blood was collected at the hospital and at the autopsy. The blood was analyzed for drugs and alcohol by forensic scientists with the Ventura County Sheriff's Office Forensic Sciences and found to be positive for amphetamine and methamphetamine.

#### 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

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<sup>9</sup> / Ballistics tests confirmed that both bullets were fired by Deputy Tedder's handgun.

being killed or suffering great bodily injury”; 2) that person “reasonably believed that the immediate use of deadly force was necessary to defend against that danger”; and 3) that person “used no more force than was reasonably necessary to defend against that danger.”

Under CALCRIM 550, a jury would be instructed that in deciding whether that person’s beliefs were reasonable, they must “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, 807.) 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.)

“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.)

#### B. JOSUE JIMENEZ’S CRIMINAL CONDUCT

Josue Jimenez 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:

- Assault With A Deadly Weapon in violation of Penal Code section 245(a)(1)
- Assault On A Peace Officer in violation of Penal Code section 245(c)
- Discharging a Firearm in Grossly Negligent Manner in violation of Penal Code section 246.3
- Cruelty to Animals in violation of Penal Code section 597(a)

- Possessing a Firearm on School Grounds in violation of Penal Code section 626.9(f)
- Carrying a Loaded Firearm in Public in violation of Penal Code section 25850
- Exhibiting A Deadly Weapon in violation of Penal Code section 417(a)(1)
- Resisting A Peace Officer in violation of Penal Code section 148(a)

## V. ANALYSIS

On January 30, 2013, Josue Jimenez carried two loaded handguns with him to Mountain Vista School in Fillmore. Mr. Jimenez was a convicted felon and had no right to even possess those weapons. An anonymous individual reported Mr. Jimenez's possession of a handgun on school grounds and Deputies Grant, Tedder and Vazquez responded to that urgent call.

Mr. Jimenez had already left the school when Deputy Tedder arrived, but the vehicle he was driving was linked to his Blaine Avenue home. Deputy Vasquez stopped in front of the home and contacted Mr. Jimenez who was holding a handgun. Deputies Grant and Tedder both arrived immediately after Deputy Vazquez.

All three deputies ordered Mr. Jimenez to put down the gun. At that point, Mr. Jimenez was in control of the situation. He could have easily complied with the deputies' commands, but instead he chose to ignore them. While they shouted, he stared, and then turned and walked away. All three deputies commented on the lack of response or emotion in Mr. Jimenez's demeanor.

Mr. Jimenez walked to the back fence of his property. To that point, his gun had remained at his side. Mr. Jimenez then chose to load a round into his gun's chamber and

shoot Bear, a dog barking at him from the other side of the fence. By doing so, he elevated the threat he posed by demonstrating that his gun was functioning and loaded.

Both Deputies Tedder and Vazquez had envisioned a plane of safety between them and Mr. Jimenez's handgun. Deputy Tedder shot Mr. Jimenez only when Mr. Jimenez began turning his gun toward Deputy Tedder and broke that plane of safety with his gun.

Mr. Jimenez was shot twice, once in the rear left shoulder and once in the back of his head. Dr. Smith was not able to determine the order of shots but based on Deputy Tedder's description of the shooting, it is most likely that the first shot hit Mr. Jimenez's rear left shoulder as he was turning toward Deputy Tedder and the shot to Mr. Jimenez's head was the second shot as Mr. Jimenez continued to move. As the neck can move independently of the body, the trajectory of that shot does not establish Mr. Jimenez's body position relative to the handgun at the time the shot was fired other than the officer's weapon was behind Mr. Jimenez. The location of the wound to the head does not indicate the position of Mr. Jimenez's body at the time Officer Tedder fired the second shot. The neck can move independent of the body and Mr. Jimenez may well have turned his head in the reaction to the first shot.

Deputy Tedder's description of the events appears to be the most accurate because it is the only statement that is corroborated by the forensic evidence. That evidence establishes that Mr. Jimenez fired one shot at the dog and Deputy Tedder fired two shots at Mr. Jimenez. Deputy Tedder accurately reported that Mr. Jimenez fired one shot and he fired two shots. Deputy Grant thought that Deputy Tedder fired three shots and Deputy Vasquez thought Deputy Tedder fired one shot. Renay Pavich, who was approximately 200 feet away from the officers, stated that Mr. Jimenez had his hands in the air and never fired a shot.

Ms. Pavich's statement is not reliable as almost everything she described is contradicted by other evidence. For example, Ms. Pavich stated that Ms. Jimenez and her children were getting out of the car at the time of the shooting, which is inconsistent with every other witnesses's description, including Ms. Jimenez's. Ms. Pavich incorrectly blamed the dog's shooting on the deputies and also incorrectly claimed that Mr. Jimenez was shot while he was on the ground.

The evidence collected in this investigation establishes that Deputy Tedder allowed Mr. Jimenez multiple opportunities to put the gun down and Mr. Jimenez never did. Even after Mr. Jimenez chambered a round into his handgun and fired his gun at Bear, Deputy Tedder did not fire his own handgun. It was only after Mr. Jimenez began moving his gun toward Deputy Tedder that Deputy Tedder feared for his life enough to shoot Mr. Jimenez. Deputy Tedder fired a second time because he believed Mr. Jimenez was still turning his gun towards him. Thus, Deputy Tedder shot Mr. Jimenez under an honest and reasonable belief that Mr. Jimenez posed an imminent threat of death or great bodily injury to himself.

## VI. CONCLUSION

It is the conclusion of the District Attorney that:

1. At the time Deputy Tedder fired his weapon at Josue Jimenez, Deputy Tedder honestly and reasonably believed that he was in imminent threat of death or great bodily injury;
2. At the time Deputy Tedder fired his weapon at Josue Jimenez, Deputy Tedder honestly and reasonably believed that the immediate use of deadly force was necessary to defend himself against the danger posed to him by Josue Jimenez;

3. Deputy Tedder used no more force than was reasonably necessary to defend against the danger posed to him by Josue Jimenez; and
4. Deputy Tedder's fatal shooting of Josue Jimenez was a justifiable homicide.