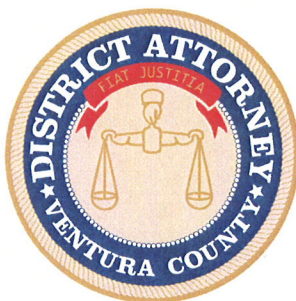


OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF VENTURA  
July 15, 2011

REPORT OF THE SHOOTING OF PHILLIP G. GUEVARA  
BY SENIOR OFFICER SCOTT VARNER  
OF THE SANTA PAULA POLICE DEPARTMENT  
ON OCTOBER 6, 2010



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## I.

### INTRODUCTION

On October 6, 2010, at about 11:40 a.m., Santa Paula Police Senior Officer Scott Varner and Santa Paula Police Officer Walter Harper conducted a routine call for service at 435 North 10<sup>th</sup> Street, Santa Paula. The officers arrived at the location and were greeted by resident Lourdes Tamayo. Ms. Tamayo explained that Phillip Guevara was in her garage and she wanted the police officers to tell him to leave. Ms. Tamayo was familiar with Guevara, as he was the stepson of her deceased husband. Ms. Tamayo called for police assistance because she knew Guevara was mentally ill and she feared him. The two officers entered the garage and located Guevara sitting on a couch watching television. Sr. Officer Varner immediately noticed a knife-like object in Guevara's hand. The object was in fact a pair of 10½ inch long steel sewing shears. Both officers stood back about 7 to 10 feet from Guevara. Sr. Officer Varner drew his handgun and Officer Harper drew his Taser.<sup>1</sup> Over the course of the two-minute interaction, Sr. Officer Varner requested, demanded, and warned Guevara to drop the sewing shears more than 40 times. Guevara did not comply, but rather stood up from the sofa, turned towards the officers, and began to move forward in their direction. During this movement, he slightly raised his hand which grasped the sewing shears in a manner that appeared to be a lunging motion. Both officers fired their weapons nearly simultaneously. Sr. Officer Varner fired two bullets from this handgun, both of which struck Guevara in the abdomen. Although Guevara survived his injury, he suffered a severed spinal cord.

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<sup>1</sup> "Taser" is a common term used in law enforcement to refer to an electroshock weapon that uses electrical current to disrupt voluntary control of muscles. One such manufacturer is Taser International. A Taser, like the one possessed by Officer Harper, fires two small dart-like electrodes, which stay connected to the main unit by conductive wire. The unit then sends an electric shock which stimulates the recipient's sensory nerves and motor nerves, resulting in strong involuntary muscle contractions.

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. The Santa Paula Police Department immediately notified the District Attorney's Office. A Major Crimes Unit deputy district attorney and district attorney investigator responded to the shooting scene and consulted the investigating officers.

Senior Deputy District Attorney John C. West wrote this report after reviewing the applicable legal authority and the following materials:

- All law enforcement reports
- Santa Paula Police Department dispatch records and audio recordings
- All police reports and audio recordings of percipient and related witnesses
- All statements of Phillip Guevara's family
- Sr. Officer Scott Varner's public safety interview
- Officer Walter Harper's public safety interview
- All crime scene photographs and diagrams
- Records of physical evidence noted and diagramed at the crime scene
- Audio recordings of the encounter between Phillip Guevara and Sr. Officer Scott Varner
- Photographs of Officers Varner and Harper as dressed on October 6, 2010
- Photographs of the sewing shears possessed by Guevara
- Guevara's California Department of Justice criminal history record
- Past reports pertaining to Guevara from the Ventura Police Department, Ventura County Sheriff's Department, and the Santa Paula Police Department.

The sole purpose of this report is to determine whether Sr. Officer Varner was legally justified as a matter of criminal law in using potentially lethal force against Guevara. The evidence establishes that Sr. Officer Varner discharged his weapon in an honest response to a perceived threat of deadly force. An objectively reasonable person in the same set of circumstances could deem it necessary to defend in the same manner. Based on these conclusions, Sr. Officer Varner acted in self defense and did not commit a criminal assault on Phillip Guevara.

## II.

### STATEMENT OF FACTS

#### Santa Paula Police Department Dispatch Records and Audio Recordings

The following sequence of events was derived from the real time audio recording of Lourdes Tamayo's telephone call for service and Santa Paula Police dispatch records.

On October 6, 2010, about 11:37 a.m., Lourdes Tamayo telephoned the Santa Paula Police Department and requested that an officer come to her residence at 435 North 10<sup>th</sup> Street. Based on the information provided, the dispatcher created a "call for service" at 11:37 a.m. The dispatcher transmitted to patrol officers that the reporting party (Lourdes Tamayo) requested to speak with an officer about Phillip Guevara, her deceased husband's stepson. The dispatch further stated that Guevara was inside the residence, possibly under the influence, and without a weapon. Guevara was described as a Hispanic male adult, wearing a blue jacket and blue jeans.<sup>2</sup>

Based on the dispatch records, the period of time between Sr. Officer Scott Varner's arrival and use of lethal force was 2 minutes 51 seconds. Within that time frame, the following events were reported in the dispatch records. Dispatch records are not precise as to time as there is some lag between events happening and notification to the dispatcher. Sr. Officer Varner and Officer Walter Harper both responded to the call for service at 435 North 10<sup>th</sup> Street. Sr. Officer Varner reported his arrival at 11:46:18 a.m. Officer Harper reported his arrival about 41 seconds later, at 11:46:59: a.m. One minute fifteen seconds after arriving, Sr. Officer Varner informed dispatch that he had a person at gunpoint who was armed with a knife. Thirty seconds later,

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<sup>2</sup> The radio dispatch to patrol officers: "Family dispute at 435 North 10<sup>th</sup> Street, the rear residence. Be advised her step son is UI, refusing to leave. Subject is wearing a blue jacket and blue jeans. No weapons."

Sr. Officer Varner upgraded his situation and requested other police units expedite their response to his location. At 11:49:09, Sr. Officer Varner reported, "shots fired."

#### October 6, 2010, Shooting Scene Description

The neighborhood is a residential area near the center of Santa Paula. The residence at 435 North 10<sup>th</sup> Street was that of Lourdes Tamayo. The structure at 435 North 10<sup>th</sup> Street is a two-story building. The residential living quarters are primarily on the second story above a 1½-car garage.

The shooting events took place inside the garage. The rollup garage door was on the south wall. Immediately inside the main garage door was clutter, boxes, and furniture, stacked four feet high. Various objects filled approximately 70 percent of the garage floor. Deeper inside the garage, about 14 feet from the rollup garage door, a couch faced the north wall. Across from the couch and up against the north wall sat a television on a table.

The couch was only accessible from the rollup garage door by passing thorough a narrow two-foot wide path among the objects and clutter. The pathway was nine feet from the threshold of the rollup garage door and six feet from the west end of the couch. The path went between a commercial sewing machine table to the left and a large heavy wooden seat-bench to the right.

#### October 6, 2010, Shooting Scene Investigation and Evidence Collection

Detective Dan Kiernan secured the garage immediately after the paramedics left with Guevara. He then obtained a Ventura County Superior Court search warrant. The search warrant was executed later that same day.

Detective Kiernan documented, measured, and photographed the interior of the garage at 435 North 10<sup>th</sup> Street. His report details the description and location of various evidence he seized. The following is a summary of evidence germane to this report. A commercial-grade sewing machine was situated about three feet from the end of a couch. Various sewing equipment was found in the area of the sewing machine table. In particular, two sewing shears were found lying on top of the sewing table. Another set of sewing shears was found on the floor in front of the couch, designated Item 10. The shears from the floor are made of steel and are 10½ inches long.<sup>3</sup> The metal blades of the shears measure six inches long. A single discharged bullet was also found on the floor in front of the couch. Two .40 caliber Smith and Wesson semiautomatic bullet casings were located on the garage floor. One casing was on the ground at the east end of the rollup garage door threshold. The other casing was about 5½ feet east of the narrow path

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<sup>3</sup> Photograph of Item 10, sewing shears.





between the sewing machine table, the couch, and the wooden bench. No other bullets or shell casings were found inside the garage.

Detectives documented the clothing worn by Officers Varner and Harper. Both officers were dressed appropriately for the rainy weather in Santa Paula that day. Sr. Officer Varner wore a department issued yellow rain suit. A reflective material was sewn along the outside seam of the arms and legs. The rain-suit did not designate the police department by name, symbol, or badge on the front. The word "POLICE" ran across the upper back between the shoulder blades. On his head, he wore a baseball-style cap. The front of the cap above the brim bore the words "Santa Paula" and "POLICE." Officer Harper was distinctively dressed as a police officer. He wore a department issued blue uniform with a badge affixed to his shirt. He also wore a department issued blue jacket over his uniform. The jacket had Santa Paula Police shoulder patches, a name tag, and a police badge patch on the front.

#### Audio Recordings of the Encounter Between Sr. Officer Varner and Phillip Guevara

Sr. Officer Varner and Officer Harper both activated their personal audio recorders during the encounter with Guevara. Officer Harper activated his recorder before the officers entered the garage and greeted Guevara. Sr. Officer Varner activated his recorder 1 minute 22 seconds before he discharged his firearm. The recordings are identical except for variations in sound levels due to movement of the individual officer.

The recordings are of very good quality.<sup>4</sup> Everyone spoke in English. Sr. Officer Varner's voice is clear and understandable. Officer Harper did not speak directly to Guevara. Guevara's voice can be heard and understood. He answered his name, "Phillip," when asked by Sr. Officer Varner. After many commands to drop the knife, Guevara can also be heard to say, "I can't. I can't. My life is in danger."

On the recording, Sr. Officer Varner can be heard repeatedly commanding Guevara to show his hands and drop the weapon. His voice is clearly understandable and even-toned. The commands began immediately after Sr. Officer Varner was unable to see Guevara's hands and continued fairly evenly and without interruption until the moment of gunfire. Sr. Officer Varner demanded to see Guevara's hands nine times. He ordered Guevara to drop the knife (which in fact were sewing shears) 26 times. He warned Guevara of the possible consequences for non-compliance eight times. Specifically, he stated that non-compliance would result in being "Tased." Additionally, Sr. Officer Varner stated twice that deadly force would be used. One minute twenty-five seconds after the first command to show hands, Sr. Officer Varner stated, "[I]f you do anything that we think is going to hurt us, you're going to be shot. Do you understand me?" After 10 seconds of additional unrelenting commands, Sr. Officer Varner fired two shots.

The clarity of the audio recordings makes clear not only what was said, but also underscores the short duration of the entire episode. The contact with Guevara begins with Sr. Officer Varner's salutation, "Hi. How are you? What's your name bud?" The full encounter from greeting to use of lethal force is 2 minutes 13 seconds. Within that time frame, several significant events take

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<sup>4</sup> The Forensic Multimedia Unit of the Ventura County District Attorney's Office enhanced both Officers' audio recordings with audio software which filtered background noise and amplified soft sounding voices. The enhanced recording did not reveal any additional audio details beyond that which can be heard on the original unaltered recording.

place. The elapsed time from the initial greeting to Sr. Officer Varner's first command to show hands is 24 seconds. The elapsed time from the initial greeting to the officers' first mention of a knife is 30 seconds.

The order of gunfire and Taser discharge can easily be discerned from either audio recording. The moment both officers discharged their weapons is immediately preceded by Sr. Officer Varner repeating "Drop it!" seven times in rapid succession. All of the commands are clearly understandable and the tenor of his voice is consistent and composed. Heard first is the sound of the Taser discharging its dart probes. This can be heard as a low popping sound. A half second later, a firearm can be heard discharging twice. Both gunshots are within a second of each other. This is followed by the familiar sound of a Taser gun cycling electricity. Less than four seconds after the gunfire, Sr. Officer Varner can be heard reporting to police dispatch, "Shots fired." At about 30 seconds after the gunfire, Sr. Officer Varner requests a fire/paramedic unit. And finally, the elapsed time from the gunfire to the arrival of uninvolved backup officers is about 40 seconds.

In less than a minute after firing his gun, Sr. Officer Varner can be heard twice stating why he shot. Seconds after contacting the dispatcher, he can be heard explaining to Officer Harper, "He started coming at you. I thought he was going to come at you with the knife." Officer Harper responds, "Absolutely, I Tased him." Immediately after the responding officers arrived, Sr. Officer Varner can be heard quickly advising them of the situation. Adrenaline and anxiousness are readily apparent in Sr. Officer Varner's voice. Varner stated, "He was armed with a knife or scissors in his hand. He started coming towards us. Walter Tased him, and I fired at the same time."

Statement of Lourdes Tamayo

Soon after the garage at 435 North 10<sup>th</sup> Street was secure, Sergeant Detective Ismael Cordero spoke to resident Lourdes Tamayo. Ms. Tamayo was interviewed a second time later the same day. The interviews were audio recorded. The following is in sum what she stated to Detective Cordero about the events of that day.

On October 6, 2010, Guevara knocked on her door and asked if he could come inside her home. Guevara is her late husband's stepson. She had known for a long time that Guevara had mental health issues. That day, Guevara appeared nervous and scared. She asked him if he had been taking his medication, to which he replied that his medications were not the problem. He said someone was looking for him, following him, and he wanted to hide. She told him he could not come inside her residence, but instead offered the garage. She opened the garage for him. He told her he wanted to hide there for 15 to 20 minutes. He also told her to close the garage door and return to her house so nothing would happen to her. Because she was home alone at the time and Guevara's remarks made her afraid, she returned to the house and called the police.

Ms. Tamayo telephoned the Santa Paula Police and explained the circumstances to the police dispatcher. She then went outside and waited for the police officers to arrive. Tamayo stated that a Caucasian police officer (Varner) arrived first, followed by an African-American officer (Harper). Upon their arrival, she spoke to them briefly and then escorted them to the garage. She opened the garage door and entered with the officers. A police officer wearing a yellow jacket (Varner) asked Guevara for his name numerous times. Guevara did not answer right away, but eventually responded with his full name. At that time, the other police officer asked Ms. Tamayo to go back to her house.

Ms. Tamayo walked out of the garage and returned to the residence portion of her home. As soon as she was inside the house, she heard an officer begin to tell Guevara to put down a knife. It sounded to Ms. Tamayo that Guevara was not complying with the officers. She then heard two gun shots.

Statement of Olivia Vera

On October 6, 2010, at about 7:18 p.m., Detective Wally Boggess interviewed Olivia Vera. The interview took place at Ms. Vera's home, several blocks away from 435 North 10<sup>th</sup> Street. Ms. Vera is Guevara's sister and he resides with her at her home in Santa Paula. The interview was audio recorded.

Ms. Vera provided the following information regarding her brother's mental health. Guevara is bipolar and takes prescribed medication for his condition. She showed police detectives his medications, which included Geodon and Seroquel.<sup>5</sup> Guevara had taken Geodon by way of a monthly injection for many years, but was now taking Geodon orally. Ms. Vera was aware that Guevara did not always take his medications and that he drank alcohol. About a week prior, she had spoken to him about the need to not drink alcohol and she thought he had stopped doing so. Ms. Vera also spoke to Guevara about the voices he heard in his head. He had told her about the voices as recently as a few days earlier.

According to Ms. Vera, on the morning of October 6, 2010, Guevara did not look well and made peculiar statements about bad premonitions. She inquired as to whether he had taken his

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<sup>5</sup> Both Geodon and Seroquel are antipsychotic medications used to treat schizophrenia and the manic symptoms of bipolar disorder.

medication that morning, and he said he had. She described Guevara as appearing very scared and his face was not its normal color. Whereas Guevara was usually happy, that morning his face was “real serious.” Guevara made remarks that he thought something bad was going to happen that day. He told Ms. Vera that he was scared and afraid, adding, “Something is going to happen, I can feel it.”

#### Statement of Officer Walter Harper

On October 6, 2010, Officer Walter Harper was interviewed by Santa Paula Police Sergeant Detective Ismael Cordero. The interview was monitored by District Attorney Investigators Mike Palmieri and Greg Hayes. Officer Harper was represented by legal counsel. The interview was audio recorded. Officer Harper gave the following account of events to questions propounded by the police detectives.

Officer Harper has been a sworn police officer for the City of Santa Paula for approximately five years. Other than assignment to Patrol Division, he is also the department’s chaplain and a member of both the Hostage Negotiators Team and Crisis Intervention Team, which deal with mentally ill persons.

On October 6, 2010, at approximately 11:42 a.m., Officer Harper was driving back to Santa Paula from Ventura after attending a court hearing. He heard the radio dispatch to Sr. Officer Varner and Sgt. Madison regarding 435 North 10<sup>th</sup> Street. Alerting dispatch that he was back in service in the city, the police dispatcher canceled Sgt. Madison and sent Officer Harper instead.

Officer Harper arrived at 435 North 10<sup>th</sup> Street about 15 seconds after Sr. Officer Varner. Upon arrival, he saw Sr. Officer Varner speaking to a man and woman at the end of the driveway. The woman was Lourdes Tamayo, the resident at 435 North 10<sup>th</sup> Street. The man, Eliy

Oseguera, was a neighbor who translated Ms. Tamayo's spoken Spanish for the police officers. Officer Harper, Sr. Officer Varner, and Ms. Tamayo walked up the driveway together towards the garage. Officer Harper activated his audio recorder at that time. Based on the dispatch and the conversation with Ms. Tamayo, Officer Harper was aware that there was an unwelcome person in Ms. Tamayo's garage who she wanted removed. At the garage, Ms. Tamayo entered a code into a keypad which opened the rollup garage door.

The garage was cluttered and untidy. A television was against the wall opposite the rollup garage door. Past much of the clutter near the garage entrance was a couch situated in front of a television. Guevara was seated on the couch watching television, such that his back was to the officers as they entered. The television volume level was moderate and did not hamper conversing. The two officers approached the couch from behind and attempted to contact Guevara. Neither officer had a weapon drawn as they entered the garage. Ms. Tamayo exited the garage and did not return.

Sr. Officer Varner initiated communication with Guevara. He spoke in a non-threatening tone and asked Guevara his name. Sr. Officer Varner soon began to instruct Guevara to show his hands. At this point in time, Officer Harper was unable to see Guevara's hands. Throughout the remainder of the interaction with Guevara, Sr. Officer Varner did all the communicating with Guevara. This is consistent with their training, explained Officer Varner, as they are taught to use one voice so the person addressed is not confused.

Sr. Officer Varner continued to request that Guevara show his hands. He also told Guevara to drop a knife. Officer Harper was uncertain as to what weapon Sr. Officer Varner was referring; nonetheless, he un-holstered his Taser. Sr. Officer Varner repeated the commands, "Let me see

your hands, get away from the knife, drop the knife.” It was about this moment that Officer Harper noticed that Sr. Officer Varner had his handgun aimed towards Guevara. As trained, Officer Harper targeted Guevara with the Taser’s red laser sight. His training taught him that in situations such as this, one officer draws a lethal weapon and the other draws a non-lethal weapon.

The warnings from Sr. Officer Varner were consistent. Sr. Officer Varner repeated numerous times to drop the knife. Officer Harper could not recall the exact number of warning or the specific language. But he was certain that Sr. Officer Varner clearly stated numerous times that if Guevara did not drop the knife, he would be “Tased,” and if he threatened the officers, he would be shot.

Officer Harper observed Guevara sitting on the couch. Officer Harper’s vantage point was to Guevara’s left side such that he could see Guevara’s left hand but not his right hand. After numerous orders and warnings, Guevara lifted both hands about an inch above his lap and then immediately dropped his right hand and clutched an object. Officer Harper was unable to see what the object in Guevara’s hand was, but he did notice it was an elongated metal object with a blade of some sort. It occurred to Officer Harper that the object seen was consistent with Sr. Officer Varner’s repeated calls to “drop the knife.” Guevara stood up from the couch and turned partially towards the officers. It was at this point that Officer Harper could see that Guevara was holding sewing shears in his hand, not a knife.

The area of the garage where Officer Harper and Sr. Officer Varner stood, when confronting Guevara to release the shears, was very constricted with furniture, boxes, piled clothing, and sewing equipment. There was very little room to move. To Officer Harper’s immediate left was



a large sewing machine table upon which other sewing shears laid. To Officer Harper's immediate right stood Sr. Officer Varner. Both officers stood facing Guevara in an open area of several square feet between the sewing machine table, the end of the couch, and a large wooden bench. Both officers took a step or two back to create some distance between themselves and Guevara. Still, the only path from the couch to the garage door was directly through where the officers stood.

Guevara spoke English, but only minimally responded to Sr. Officer Varner's commands. In response to being told to show his hands and drop the object in his hand, Guevara stated he needed it because he was afraid for his life and safety. At another time, Guevara said he couldn't put them down because he was afraid for his life. Officer Harper interpreted this to mean that Guevara understood what the police wanted him to do and that he did not want to comply.

As Guevara stood up from the couch, he held the shears in a manner consistent with a stabbing weapon. His right hand gripped the entire handle portion of the shears. The blades protruded forward. His right arm was slightly bent which placed his right hand below belt level. In this position, it appeared to Officer Harper that Guevara was ready to lunge and stab in a straight upward motion. Sr. Officer Varner was unable to see Guevara's right hand and so he asked Officer Harper if he still had the knife. Officer Harper verbally confirmed that he could still see the object in Guevara's hand. Sr. Officer Varner resumed his commands, "Drop it, drop it, drop it."

Guevara's facial expressions and body posture appeared aggressive. At first, Officer Harper thought Guevara was under the influence of a drug. He thought this because Guevara was unresponsive to requests for his name and repeatedly clenched and released his jaw, a behavior

indicative of methamphetamine use. He did not appear relaxed. His physical movements were intentional and deliberate. His face did not exhibit any mannerism showing passivity. And, he did not comply with any instructions. In all, Officer Harper believed that Guevara was showing progressive expressions of increasing anger.

Guevara made a physical motion with his arms and body which Officer Harper construed as an attack. After Guevara rose from being seated on the couch, he turned towards the officers and stood at a distance of five to seven feet from them. Moments later, Guevara tilted his upper body forward, flinched his right hand raising it above his belt line, and moved his shoulders towards Officer Harper. In Officer Harper's words:

He stood up. Turned and faced us. And made a move indicative of raising (sic) up. Just like I say, this was all a compressed time frame and my fear was that he was coming at us with the shears. That he was going to stab us, he did not seem to be friendly and non-threatening . . . To the best of my recollection, I saw an upper body forward tilt and a flinch of the right arm and shoulder because he was holding the shears in his right hand. I interpreted that as he was beginning to raise them. The distance separating us was very short and he could have crossed that in less than a second had he lunged.

Officer Harper deployed his Taser almost simultaneous with Sr. Officer Varner's gunfire. Next, Guevara dropped the shears and fell to the floor. Officer Harper could then clearly see the shears which had just been in Guevara's right hand. He observed that the shears were 8 to 10 inches long and constructed of metal for cutting heavy cloth. He also heard Sr. Officer Varner quickly inform the police dispatcher that gunshots had been fired.

Other police officers quickly entered the scene and began to order Guevara to stretch his arms out and roll over. Guevara complied and was handcuffed. Officer Harper observed the shears Guevara had just possessed on the floor a safe distance from Guevara and no longer posing a threat to officers.

#### Statement of Detective Allen Macias

On October 6, 2010, Santa Paula Police Detective Allen Macias responded to 435 North 10<sup>th</sup> Street to assist officers with a subject armed with a knife. While in route, he heard Sr. Officer Varner announce on the police radio that shots had been fired. Upon arrival, he found Sr. Officer Varner and Officer Harper inside the garage. Detective Boggess was also present at that time. Guevara was on the floor of the garage. Detective Macias and Detective Boggess checked Guevara for weapons and handcuffed him. Sr. Officer Varner stated he fired two bullets.

Detective Macias searched Guevara's body for injuries. He located a bullet wound on his right side hip. Another bullet wound was just below the chest cavity on his front. And a third bullet wound was found at about the center of his back.<sup>6</sup> None of the wounds bled profusely.

Detective Macias examined the garage for possible evidence. He located a spent bullet on the ground near where Guevara was lying. He preserved the bullet by placing it on a table out of the way of the paramedics treating Guevara. Other items he found included two discharged bullet casings and sewing shears. One bullet casing was positioned on the floor in the garage and the other was on the ground at the threshold of the rollup garage door. Large sewing shears were

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<sup>6</sup> The third wound was caused by a bullet exiting his body. Thus, Guevara had two entry wounds and one exit wound. This is consistent with number of shots fired (2) and the discharged bullet found on the floor of the garage where he collapsed.

found on the floor between the couch and the television set, which was the same area in which Guevara collapsed.

#### Statement of Detective Wally Boggess

Detective Walley Boggess responded to Sr. Officer Varner's radio calls requesting assistance. Detective Boggess arrived moments before Detective Macias and Sgt. Madison, and all three ran to the garage at 435 North 10<sup>th</sup> Street. They came upon Sr. Officer Varner and Officer Harper who were standing side by side approximately six to eight feet inside the garage beyond the threshold of the opened rollup garage door. Sr. Officer Varner was still holding Guevara at gunpoint. Guevara was on the floor, an additional six to eight feet inside the garage. Extending from Guevara's torso were the electrode wires of Officer Harper's Taser.

Soon after arriving, Detective Boggess observed a large pair of shears lying under a table near where Guevara collapsed. While Detective Boggess and the other responding backup officers were handcuffing Guevara and securing the scene, Officer Harper identified the shears as the weapon Guevara had in his hands just before being shot.

#### Statement of Sergeant Cody Madison

Sergeant Cody Madison responded to Sr. Officer Varner's request for additional police units. While in route, he heard the radio call that shots had been fired. Upon arrival, he joined Detectives Boggess and Macias at the garage. His observations were very similar to the other responding officers. He saw Sr. Officer Varner holding Guevara at gun point. Guevara was lying on the floor of the garage about three quarters of the way into the garage beyond the rollup door. Officer Madison also noticed a large pair of scissors on the ground near Guevara.

Sergeant Madison documented and photographed the clothing Sr. Officer Varner and Officer Harper wore at the time of the shooting episode. He also oversaw the removal and documentation of Sr. Officer Varner's handgun and spare bullet magazines. The handgun was a .40 caliber semiautomatic Sig Sauer P229R. The magazine removed from the pistol contained 10 rounds. Two additional pistol magazines containing 12 rounds each were recovered from the spare magazine pouches.

#### Statement of Phillip Guevara

On October 18, 2010, Detective Allen Macias interviewed Guevara at the Ventura County Medical Center. District Attorney Investigator Mike Palmieri and Officer Boggess were also present. The half-hour interview was audio recorded. Ventura County Sheriff records describe Guevara as five feet six inches tall and weighing 180 to 200 pounds. He would be 45 years old later that month. Guevara answered questions and gave the following account of his mental health and the events of October 6, 2010. He spoke in English and was easily understandable. His speech was not slurred nor gave an impression he was sedated. His answers to the detective's questions were responsive and thoughtful.

Guevara woke at about 6:30 a.m. on October 6, 2010. He was hearing voices in his head that morning. The voice told him that someone was going to "break his face." The voice said the person was also going to skin him alive, put golf balls in his ears, send him to Folsom [Prison], and cut off his legs. Hearing voices was not new to him and he receives medical treatment for his condition. His doctors prescribe him Geodon and Seroquel; however, he had not taken his medication since June 2010. And more specifically, he had not taken his medication on October 6, 2010. Although he believed he did not need the medications anymore, he readily admitted that

the prescription drugs “probably did help” and he felt better when he did take them. He denied using illegal street drugs or alcohol.

Guevara got dressed and left his residence. He wore blue jeans, a t-shirt, jacket, hat, and his eyeglasses. He walked to 435 North 10<sup>th</sup> Street. This is the home of Lourdes Tamayo, the wife of his deceased father. He knocked on the door and spoke to her. After he paid \$60 that he owed her, he asked if he could use the garage for 30 minutes. She agreed and opened the garage. He wanted to hide in the garage and rest until he felt better. He told Lourdes Tamayo to go back to the house because she would be “safer inside.” She left and shut the garage door. Guevara remained inside, sitting on the couch and watching television. Before he sat down, he picked up some “big scissors” from a sewing table. He had the scissors to cut something and to protect himself from the person that sought to harm him. While he was in the garage, he was not hearing voices in his head.

A short time later the garage door opened and two police officers entered. He was expecting to see the “person” who wanted to dismember him, not police officers. When the officers entered the garage, Guevara was seated on the couch with the scissors in his hand. Guevara explained that he continued to hold the scissors, even after being told to put them down, just in case the person that was after him managed to get past the police officers and attack him. He recognized the two men as police officers and heard their instructions. Because he knew Ms. Tamayo had given him permission to be in the garage and he was not bothering anybody, he didn’t understand why the officers were contacting him.

Guevara recalled the moments leading up to being shot. He stood up from the couch and was standing slightly sideways to the officers. He had the scissors in his right hand with the blades

pointed forward. The officers saw the scissors in his hand, “pulled their gun and Taser,” and said, “Drop it.” He was wondering if the person the voices in his mind warned him of could get past the officers and attack him. And in that mindset, he was more preoccupied by the threat of his assailant than concerned about the police officers actually harming him. The police officers told him to put the scissors down on the count of three. “If you don’t put it down, you’re done. That’s what they were trying to tell me,” he explained to the interviewing detectives. When the officers counted to three, they shot him.<sup>7</sup> He was shot twice and Tased once, all in succession.

Guevara explained his intentions and denied challenging the officers. He wanted to put the scissors back on the sewing table. In his mind it was not a “big deal.” He moved towards the table and the officer “took two shots for no reason at all.” He added, “It didn’t dawn on me that they would shoot.” He did not hold the scissors up in a threatening manner or do anything to harm them. In his opinion, it was not fair the officer shot him for such a minor transgression as not dropping the scissors quickly enough.

#### Statement of Senior Officer Scott Varner

On October 6, 2010, Sr. Officer Scott Varner consented to a formal interview by detectives of the Santa Paula Police Department. Sr. Officer Varner had been a full-time sworn police officer for the past six years. Sergeant Detective Ismael Cordero conducted the interview. Sr. Officer Varner was represented by an attorney, which is common practice with investigations of officer-involved shootings. The interview was audio recorded. Sr. Officer Varner gave the following account of events to questions propounded by the police detectives.

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<sup>7</sup> Guevara’s recollection that the police officers counted 1, 2, 3, and then fired, is not accurate. Neither Sr. Officer Varner nor Officer Harper’s audio recorder captured any dialogue involving counting. And although Sr. Officer Varner did warn Phillip he could be shot or tased if he threatened them, the officers did not make any ultimatums about the use of lethal force.

Sr. Officer Varner responded to the call for service at 435 North 10<sup>th</sup> Street directly from the police station. The call concerned a “subject disturbing”; however, he was unable to recall the details of the dispatch. Upon arrival at the location, he met Lourdes Tamayo and Eliy Oseguera on the driveway near the sidewalk. Less than 30 seconds later, Officer Harper arrived. Lourdes Tamayo did not speak English and Sr. Officer Varner does not speak Spanish. Through some translation by Mr. Oseguera, Sr. Officer Varner learned that a male subject was causing a disturbance inside Ms. Tamayo’s residence. The disturbing person was Guevara, and Ms. Tamayo did not want him there. Sr. Officer Varner learned additional information that the person in the garage was acting kind of paranoid and thought people were “out to get him” before entering the building, but was unable to recall who told him. Sr. Officer Varner listened as Officer Harper spoke in limited Spanish and Ms. Tamayo spoke in limited English. From all of this, Sr. Officer Varner believed that the person was a friend of her brother, that he was inside her garage, and he spoke English. Ms. Tamayo stated she did not know whether he had any guns, knives, or weapons.

Sr. Officer Varner, Officer Harper, and Ms. Tamayo walked up to the garage. Ms. Tamayo utilized a keypad to activate the rollup garage door. The door rose and all three entered. Guevara was seen sitting on a couch with his back to the officers watching television. He wore a blue jacket and blue jeans. Ms. Tamayo exited the garage as the officers began to contact him. The volume of the television was not so loud that it interfered with conversation and there were no other persons in the garage.

Sr. Officer Varner approached to within 5 to 10 feet of Guevara and attempted to start a conversation. Despite repeated attempts asking him his name, Guevara did not respond, but instead continued sitting on the couch and looking straight towards the television. Sr. Officer



Varner began to suspect that perhaps he was under the influence of a drug. At one point, Guevara looked back briefly at the officers, but then he turned forward to resume staring straight at the television. Sr. Officer Varner did not recognize Guevara as a person he had ever had contact with before that day.

Sr. Officer Varner made several observations as he stood to Guevara's left side. Guevara sat on the couch and appeared "lethargic." He had a "blank, distant stare." He did not appear aggressive, just non-compliant. Sr. Officer Varner noticed a "bladed object" clutched firmly in Guevara's right hand. It appeared to be a six to eight inch knife. Upon seeing the object, Sr. Officer Varner drew his duty weapon, a Sig Sauer semiautomatic .40 caliber handgun. He kept Guevara at gunpoint and activated the audio recorder in his front left shirt pocket.

The area in which Sr. Officer Varner and Officer Harper stood was cluttered and confined. They had little room to move. The only way for Guevara to exit the garage would have been a path through both officers and towards the open rollup garage door. Sr. Officer Varner recalled being conscious of these circumstances as he attempted to gain Guevara's compliance.

Sr. Officer Varner commanded Guevara to "drop the knife" and "get on the ground" several times. He did not respond and remained seated on the couch looking forward. One time, he released his grip on the bladed object. The object fell to rest on the couch next to his right side thigh. Sr. Officer Varner informed Guevara that he would be "Tased" and even shot if he did anything which appeared to endanger the officers' safety. During this time, Sr. Officer Varner noticed Officer Harper had drawn his Taser and had placed the Taser's red laser sight on Guevara's body.

Guevara remained non-complaint despite Sr. Officer Varner's continuous verbal commands. Still sitting on the couch, Guevara re-gripped the bladed object. Sr. Officer Varner persisted with orders to "drop the knife" and "get on the ground." Despite the orders, Guevara stood up from the couch and turned towards the officers. His motion was slow and deliberate. Sr. Officer Varner was unable to see Guevara's right hand or the weapon. Uncertain whether he still possessed the bladed object, Sr. Officer Varner asked Officer Harper if he saw it. Officer Harper verbally confirmed the object was still in Guevara's right hand. At this point, Guevara stood 10 to 15 feet away and faced the officers. Sr. Officer Varner could now see some type of sharp object in his right hand. Sr. Officer Varner used his mobile radio to inform the police dispatcher that he had a subject with a knife at gun point and requested additional officers.

Guevara stood facing the officers. He had no facial expression, just the same blank stare. Sr. Officer Varner was uncertain whether Guevara was under the influence of a drug or mentally impaired, but in any event, he was not acting normally. Sr. Officer Varner continued to command Guevara to "drop the knife" and "get on the ground" numerous times. He recalled for the interviewing detectives that he warned, "You're going to get Tased," and, "Drop the knife, you could be shot." Sr. Officer Varner could not recall how many times he made the commands, but approximated more than 10. During the confrontation, Guevara said something in English about trying to protect himself and that people were out to get him.

Sr. Officer Varner described Guevara holding the shears down by his right hip with the blade pointed out towards the officers. Guevara made a movement forward and began to raise his right hand. Sr. Officer Varner explained, "When he made a movement forward and began raising his right hand, in my opinion, it appeared he was coming towards either myself or Officer Harper. We're both in close proximity, there was no way out, and at the time I felt he was going to try

and attack us with the knife.” At another time in the interview, Sr. Officer Varner stated, “At one point he just, kind of continued to look forward. There was no expression on his face. It was just this blank stare. He made a movement, kind of jerking forward with his body, and started to raise his right hand with the bladed object in it. At that point I was in fear of my safety and Officer Harper’s safety that he was going to attempt to stab one of us and fearing that he could possibly kill us. I fired two rounds at the subject.”

By the manner in which Guevara clutched the knife-like object, combined with the forward movement of the his body and arm, and lack of compliance, it appeared to Sr. Officer Varner that Guevara was lunging towards him or Officer Harper in order to stab them with a knife. In response, Sr. Officer Varner fired two shots from his handgun from a distance of 10 to 15 feet away. Sr. Officer Varner heard Officer Harper’s Taser discharging almost simultaneously with his gun fire. Guevara collapsed to the floor of the garage. Unable to determine the location of the knife, Sr. Office Varner kept his weapon drawn and aimed towards Guevara. Detectives Macias and Boggess arrived within moments and proceeded to handcuff Guevara. At that point, Sr. Officer Varner walked out of the garage.

#### Neighborhood Canvas for Civilian Witnesses

Immediately after the shooting events, Santa Paula Police detectives began a neighborhood canvas for possible civilian witnesses. Officers went door-to-door in the area of 435 North 10<sup>th</sup> Street, but were unable to locate any percipient witnesses. They did, however, locate a couple of persons that were in their homes and heard two gun shots.

#### Injury to Phillip Guevara

Guevara was shot twice and was taken to Ventura County Medical Center. A medical doctor reported to Santa Paula Police Detective Cordero that one bullet passed completely through his

torso. The other remained lodged inside him. The bullets passed through his bowel and small intestine. One bullet severed his spinal cord. As of March 2011, family members of Guevara have informed Santa Paula Police detectives that he is paralyzed from the waist down and still remains in a medical facility.

#### Phillip Guevara's Past Contact with Law Enforcement

In the ten years preceding October 6, 2010, Guevara had several contacts with Santa Paula Police officers, as well as other police agencies. The following information is relevant to this report only as it pertains to understanding Guevara's mental health and credibility. Before October 6, 2010, Sr. Officer Varner had never met Guevara and knew nothing about his mental health or past criminal history.

On October 11, 2007, at 8:00 a.m., Santa Paula Police Officer H. Ramirez met Guevara at the police station. Guevara reported that people were after him. He said these people were attempting to sell his car and they were blaming him for stealing money. Officer Ramirez noticed Guevara was jittery and nervous. After further physical examination, he was arrested for being under the influence of a controlled substance. Laboratory testing of Guevara's urine determined that he had not used controlled substances. The District Attorney's Office rejected the case and no charges were filed.

On April 5, 2007, at 10:51 p.m., Santa Paula Police Officer D. Potter was dispatched to a gas station and met Guevara. Guevara was walking around in a confused state and unresponsive to the officer's questions. He did not know his name, where he lived, or where he was. He said, "I'm hearing voices again." The officer took him to a mental health facility.

On February 12, 2007, at 4:20 a.m., Santa Paula Police Officer J. Watson was dispatched to a payphone at a convenience store. Guevara had dialed 911 and was moaning into the receiver. The officer located him still on the phone with the police dispatcher. He was asked why he called 911 if he did not have an emergency. Guevara did not respond to questions, but only mumbled words with a blank stare. He refused to sit down on the curb as requested, and so the officer handcuffed him for safety. He then began to scream numerous times, "Can you hear that? I can hear it," while shaking back and forth. The officer took him to a mental health facility.

On November 23, 2003, Santa Paula Police Officer Spencer was dispatched to a restaurant regarding a trespasser. The officer contacted Guevara who had been inside the restaurant for five hours without making a purchase. He was told to leave. Guevara said he had no home and wanted to go back to jail. The officer offered him a ride to the south side of town and he accepted. When they arrived, Guevara would not exit the patrol car and insisted on being taken to a jail. The police officers struggled to remove him from the patrol car. Outside the car, Guevara threw his duffle bag at the officers. He charged at the officers with his fist raised up, even after having been sprayed in the eyes with pepper spray. He was ultimately convicted of the misdemeanor offense of delaying or obstructing a police officer in Ventura County Superior Court, case 2003038831.

Guevara has also been arrested and convicted for offenses occurring outside of the city of Santa Paula. On January 2, 2008, Ventura Police Officer Knupp was dispatched to a gas station. A clerk at the gas station accused Guevara of stealing a cup of coffee. Officer Knupp found a knife in Guevara's front pants pocket. The blade of the knife was 3½ inches long and was in an open and locked position. He was ultimately convicted of the felony offense of possession of a concealed dagger in Ventura County Superior Court, case 2008000065.

On July 12, 2008, Guevara entered a bank in Fillmore, passed the other costumers waiting in line, approached a teller and said, "I need money now." The teller asked for his account number and identification. He wrote on a deposit slip, "Give money that is available as much as 400. can give me. Phillip Mendez." (sic) Based on his odd behavior and intimidating manner, the police were summoned. A Ventura County deputy sheriff responded and located Guevara inside the bank. The deputy noticed he appeared very nervous and was sweating profusely. The deputy ordered him to get on the ground. Guevara did not react at first, so the deputy repeated the command more loudly. He gradually complied and was handcuffed. After the arrest, Guevara stated he was trying to escape from a spirit that was chasing him and he needed money "to get out." Guevara was convicted of misdemeanor attempted grand theft in Ventura County Superior Court, case 2008028376.

In 2001, Guevara was convicted of Health and Safety Code sections 11359 and 11360(a), felonious possession of marijuana for sale and furnishing marijuana. The Sacramento Superior Court sentenced him to two years in state prison.

### III.

#### LEGAL PRINCIPLES

##### 1. Law of Police Detentions, Use of Reasonable Force, and Seizure of Weapons

A police officer has the right to stop and temporarily detain someone for investigation whenever the officer has a “reasonable suspicion” some criminal activity is afoot and that the person was, . . . is, . . . or is about to be involved in that criminal activity.” Terry v. Ohio (1968) 392 U.S. 1, 27. A person has no right to resist a lawful detention. People v. Lloyd (1989) 216 Cal.App.3d 1425, 1429. Further, a person who resists a lawful detention has violated Penal Code section 148 by obstructing or delaying the office in the performance of his/her duties. People v. Andre P. (1991) 226 Cal.App.3d 1164, 1169.

Police officers are entitled to protect themselves during the detention of a person. “This is a rule of necessity to which a right even as basic as that of privacy must bow. To rule otherwise would be inhumanely to add another hazard to an already very dangerous occupation. Our zeal to fend off encroachments upon the right of privacy must be tempered by remembrance that ours is a government of laws, to preserve which we require law enforcement—live ones. Without becoming a police state, we may still protect the policeman’s status.” [Citation omitted]” In re Richard G. (2009) 173 Cal.App.4th 1252, 1255.

California statutes authorize a police officer to remove weapons from a detained or arrested person. Penal Code section 833. Further, a police officer may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Penal Code section 835. In doing so, a police officer “need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his

right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” Penal Code section 835a.

## 2. Applicable Penal Code Violations – Conduct of Phillip Guevara

The two officers were present in the garage at the specific request of resident Ms. Tamayo. She specifically asked them to contact Guevara and remove him from her garage. The fact that Guevara was not criminally trespassing at that point in time does not vitiate their authority to enter the garage and contact him.<sup>8</sup> At the start, the officers noticed the object in his hand and they became concerned for their safety. He was asked to put the “knife” down and he refused. In a very short time, the purpose for the initial contact by the officers developed into reasonable suspicion that Guevara was under the influence of a controlled substance or mentally distressed and a danger to himself or others. As the interaction developed, Guevara held the shears in a defiant and angry-appearing manner. At the very least, Guevara resisted and delayed the police officers in their duties. In any event, the police officers did not have to leave the garage and they were legally authorized to detain Guevara for further investigation.

There was ample information to support the officers’ suspicion that he was under the influence of a drug in violation of Health and Safety Code section 11550(a).<sup>9</sup> The police dispatcher’s radio call for service to 435 North 10<sup>th</sup> Street reported the person there was “UI,” meaning under the influence of drugs or alcohol. Guevara had an expressionless blank stare and was unresponsive

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<sup>8</sup> Guevara was not criminally trespassing on Ms. Tamayo’s property because he entered the garage with her consent and at no time did anyone inform him that the consent was withdrawn and he had to leave.

<sup>9</sup> California Health and Safety Code section 11550(a): No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of section 11054, specified in subdivision (b) or (c) of section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of section 11055, or (2) a narcotic drug classified in schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.



to verbal dialogue. He was seen repeatedly clenching his jaw. The overall impression for both officers was that Guevara had possibly been using illegal drugs.

Guevara's odd behavior, continuing defiance, and visible possession of the shears was perceived by the officers as angry and hostile. This is true whether Guevara intended to be threatening or not. Based on the totality of these circumstances, the officers also had reasonable suspicion to believe Guevara was also in violation of Penal Code section 417(a), exhibiting a deadly weapon in a rude, angry, or threatening manner.<sup>10</sup>

Prior to the gunshots, neither Sr. Officer Varner nor Officer Harper told Guevara that he was being detained or placed under arrest. Likewise, the officers never instructed him to leave Ms. Tamayo's property. In the heat of the moment, the officers were singularly focused on the shears and Guevara's abnormal behavior. The law does not require a police officer to state his or her reasons to detain a person antecedent to initiating the detention. Here, the officers' show of authority was evident. Their instructions clearly demonstrated their intent to detain and disarm him. Confronted with all of this, Guevara did not comply with their lawful orders.

Guevara's willful refusal to put down the shears, particularly after the numerous commands to do so, delayed and obstructed the officers in the performance of their duties. Therefore, in addition

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<sup>10</sup> California Penal Code section 417(a)(1): Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a deadly weapon other than a firearm in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days.

to the aforementioned crimes, either officer also had probable cause to detain or arrest Guevara for a violation of California Penal Code section 148(a).<sup>11</sup>

### 3. Law of Assault and Self-Defense

Assault is defined as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. Penal Code section 240; See also CALCRIM 915<sup>12</sup>. In this case, Sr. Officer Varner purposefully discharged his handgun twice towards Guevara. The bullets struck Guevara's body. It follows that Sr. Officer Varner assaulted Guevara unless he acted in self defense or defense of another.

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<sup>11</sup> California Penal Code section 148(a): Every person who willfully resists, delays, or obstructs any... peace officer,... in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

<sup>12</sup> CALCRIM 915, Simple Assault.

The defendant is charged with assault.

To prove that the defendant is guilty of this crime, the People must prove that:

1 The defendant did an act that by its nature would directly and probably result in the application of force to a person;

2 The defendant did that act willfully;

3 When the defendant acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone;

4 When the defendant acted, he had the present ability to apply force to a person;

AND

5 The defendant did not act in self-defense or in defense of someone else.

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

The People are not required to prove that the defendant actually intended to use force against someone when he acted.

No one needs to actually have been injured by the defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault, and if so, what kind of assault it was.

The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful. The law of self-defense and the defense of others was codified in 1872 and has remained substantially unchanged since then. See Penal Code sections 692 through 694; CALCRIM 3470<sup>13</sup>. It requires that the user of deadly force honestly believe that he or someone else is in imminent and deadly peril, and that a reasonable person in the same circumstances would believe the same and would deem it necessary to use deadly force in order to protect against such peril. People v. Humphrey (1996) 13 Cal.4th 1073, 1082-3 (whether a person acted in a manner in which a reasonable man would act in protecting his own life or bodily safety is judged from the point of view of a reasonable person in a similar situation and with similar knowledge). The means of force used, whether lethal or non-lethal, must be reasonable under the circumstances. People v. Herbert (1882) 61 Cal. 544 (where one without fault is attacked in

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<sup>13</sup> CALCRIM 3470, Right to Self-Defense or Defense of Another.

Self-defense is a defense to assault. The defendant is not guilty of assault if he used force against the other person in lawful self-defense or defense of another. The defendant acted in lawful self-defense or defense of another if:

- 1 The defendant reasonably believed that he or someone else was in imminent danger of suffering bodily injury;
  - 2 The defendant reasonably believed that the immediate use of force was necessary to defend against that danger;
- AND
- 3 The defendant used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of violence to himself or someone else. Defendant's belief must have been reasonable and he must have acted because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the defendant did not act in lawful self-defense defense of another.

When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

A defendant 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 of death or bodily injury has passed. This is so even if safety could have been achieved by retreating.

The People have the burden of proving beyond a reasonable doubt that the defendant did not act in lawful self-defense or defense of another. If the People have not met this burden, you must find the defendant not guilty of assault.

a manner which furnishes reasonable ground for apprehending a design to take his life or do him great bodily harm and for believing the danger imminent, he may act upon appearances and kill the assailant if necessary); *People v. Collins* (1961) 189 Cal.App.2d 575, 588 (Justification does not depend on the existence of actual danger but on appearances.)

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 where 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. *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4<sup>th</sup> 334, 343, citing *Graham*, stated:

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [Citation]... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation... [T]he ‘reasonableness’ inquiry...is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” [Citations]

*Graham Supra* 490 U.S. at 396-397.

As indicated by the above-language of the United States Supreme Court, when determining whether a person acting in self-defense, or in the defense of others, acted properly upon the appearance of danger, the law recognizes that a person experiencing a stressful event is not able to reflect upon his actions and the perceived threat against him or others, to the same degree as a person who is not being confronted by an emergency situation. When police officers encounter potential threats of deadly attack, the warning is often instantaneous and the danger immediate. As stated by the court in *Martinez*, supra, at 345:

Thus, “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer. The high numbers of officer mortalities in recent years illustrate the unreasonableness of such a notion.” [Citations]

Courts have also dealt with and rejected arguments that officers should have to use selected alternative measures before resorting to particular actions involving potentially deadly force. *In Scott v. Hendrick* (9th Cir. 1994) 39 F.3d 912, the court found that:

Requiring officers to find and choose the least intrusive alternative would require them to use 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.

Officers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.

#### IV.

#### ANALYSIS

The law provides that actual danger is not necessary to justify the exercise of self-defense. Thus, the right to self-defense is the same whether the danger is real or merely apparent. The honest and reasonable perceptions of the person utilizing the force are paramount - not the facts as later determined by others. Therefore, the question of whether the use of force on Guevara was justified must be examined from the perspective of Sr. Officer Varner. First, did he have an honest belief that his and Officer Harper’s lives were in imminent serious danger? And second,

would a reasonable person in the same circumstance deem it necessary to use deadly force to protect against such danger?

Before beginning to answer these two questions, it is useful to note that there is no significant inconsistency among the witnesses or evidence in this case. The audio recordings captured events in real time, unbiased, and without the imperfections of human memory. The evidence found in the garage matches the description of events described by both officers and Guevara. The sewing shears Guevara has admitted to holding were found on the floor near where he collapsed. Both Sr. Officer Varner and Officer Harper immediately pointed out the shears to responding officers. Within moments of the shooting, Sr. Officer Varner can be heard on the audio recording stating the reason why he shot. The interview statements of Ms. Tamayo, Officer Harper, Guevara, Sr. Officer Varner, and all responding police officers to the scene, are consistent and corroborate each other as to time, positioning, and sequence of events. Most important, Sr. Officer Varner, Officer Harper, and Guevara himself, all describe the same behavior and movement by Guevara leading up to the gunfire.

From all evidence, it certainly appears that Sr. Officer Varner acted under an honest belief that his or Officer Harper's life was in danger. His statements during and after the event have been consistent, compelling, and most importantly, unequivocal. Probably the most telling evidence as to his honest intent is the remark he made to Officer Harper seconds after shooting Guevara. The tenor of his voice on the audio recording is stressed and slightly nervous. Sr. Officer Varner said, "He started coming at you. I thought he was going to come at you with the knife."

Whether the assault on Guevara was objectively reasonable must be examined from the perspective of Sr. Officer Varner. Sr. Officer Varner entered the garage believing there was an

unwanted intruder inside who was possibly under the influence of drugs. Guevara was reluctant to say his name when asked. He looked forward at the television as he sat on the couch with his back to the officers. He maintained a blank stare while clenching his jaw. He remained unresponsive to Sr. Officer Varner's commands to "drop the knife." At an early point, he released his grip on the sewing shears, only to promptly clutch them again in his right hand. He said very little and did not engage the officers in conversation. He stood up in a purposeful and deliberate motion. He turned slightly towards the officers such that his right hip obscured his right hand which still held the sewing shears. Despite numerous orders, commands, and warnings, which persisted for two minutes, he did not drop the sewing shears. Sr. Officer Varner knew his commands were understood because Guevara did reply once in clear English.

The sewing shears possessed by Guevara could be considered a deadly weapon. A deadly weapon is any object or instrument that by its nature and manner used is capable of causing and likely to cause great bodily injury or death. People v. Page (2004) 123 Cal.App.4th 1466; see CALCRIM 983. The blade and hinge portion of the sewing shears are over six inches long. The overall length is more than ten inches. The blades and handle are constructed of rigid steel. Gripped by the handles and thrust like a knife, the sewing shears as held by Guevara could most certainly inflict great bodily injury.

Guevara never expressed by words or mannerism any intent to acquiesce or be passive. In fact, the opposite is true. By outward appearances, Guevara armed and positioned himself in front of the two officers to attack and escape. The two officers possessed overwhelming force, a gun and a Taser. Guevara stood about 10 feet away and could plainly see the officers and their drawn weapons. In this stand off, Guevara ignored their commands and appeared defiant. The only escape from the cluttered garage was a narrow path directly through where both officers stood.

Clearly visible to Sr. Officer Varner, Guevara made a quick flinching movement bringing his right hand forward towards the officers. In that moment, confronted with a deadly weapon capable of lethal force, Officer Varner responded with the same. As a matter of fact, both officers confronted with the same circumstances discharged their weapons in near synchronous timing.

The purpose of this report is to determine whether Sr. Officer Varner was legally justified as a matter of criminal law to assault Guevara. The evidence establishes that Sr. Officer Varner discharged his weapon in an honest response to a perceptible threat of deadly force. An objectively reasonable person in the same set of circumstances could deem it necessary to respond the same. Sr. Officer Varner was not obligated to retreat, but instead had the right to stand his ground and defend himself until the danger had passed.

## V.

### CONCLUSION

It is the District Attorney's conclusion that Santa Paula Police Senior Officer Scott Varner acted in self-defense under the circumstances he confronted on October 6, 2010.