

OFFICE OF THE DISTRICT ATTORNEY

March 17, 2014



REPORT ON THE JUNE 29, 2011
SHOOTING OF JESUS FARIAS
BY VENTURA POLICE
OFFICER CRAIG KELLY

GREGORY D. TOTTE
DISTRICT ATTORNEY
COUNTY OF VENTURA

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS	3
	A. THE MURDER IN NATIONAL CITY	3
	B. SWAT CALLOUT AND BRIEFING	3
	C. THE OPERATION BEGINS.....	5
	D. THE SHOOTING	6
	E. ADDITIONAL POLICE RESPONSE AND INVESTIGATION.....	7
	F. WITNESS STATEMENTS	9
	1. DETECTIVE TOM DI ZINNO	9
	2. DETECTIVE CORPORAL SARAH STARR.....	10
	3. OFFICER CRAIG KELLY.....	11
	4. OFFICER QUINN REDEKER.....	11
	a. June 29, 2011	11
	b. August 26, 2011	14
	c. January 9, 2012	15
	d. January 8, 2014.....	16
	e. Radio Traffic.....	17
	5. COMMAND POST AND DISPATCH RECORDINGS.....	18
	6. JESUS FARIAS.....	18
	7. RESIDENTS OF 220 POMO STREET	20
III.	PHYSICAL EVIDENCE.....	21
	A. 220 POMO STREET	21
	B. JESUS FARIAS	22
IV.	LEGAL PRINCIPLES	22
	A. LAW OF HOMICIDE, ATTEMPTED MURDER, AND ASSAULT....	22
	B. LAW OF ARREST AND SELF-DEFENSE	22
V.	ANALYSIS.....	25
VI.	CONCLUSION.....	27

I. INTRODUCTION

On June 27, 2011, while in National City, California, Jesus Farias shot Antonio Vargas II at point-blank range, killing him. He fled to Ventura, while still in possession of the murder weapon. National City Police followed leads to the city of Ventura and obtained a search warrant for 220 Pomo Street where Farias was hiding.

In the early morning hours of June 29, 2011, Ventura Police Officers surrounded the home at 220 Pomo Street. At approximately 4:49 a.m., they ordered Farias and the other residents to come out the front door with their hands up.

Farias chose to exit the rear sliding glass door which led into the backyard. Ventura Police Department Officers Craig Kelly and Quinn Redeker were covering the backyard when Farias exited the home. Officer Kelly identified them as police officers and ordered Farias to stop. Instead, Farias ran to the back of the yard, hesitated at the back wall as if thinking about jumping it, then ran back toward the house. Officer Kelly continued ordering Farias to stop and warned that he would be shot if he did not. Before Farias reached the house, Officer Kelly fired a single shot which hit Farias in the right side of his back.

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 Investigator Jim Seitz responded to the shooting scene and consulted with the investigating officers.

The Ventura Police Department conducted an investigation of the shooting, which included interviewing witnesses, collecting physical evidence, photographing the area of the shooting, and collecting reports from involved officers. Officer Kelly declined to make a voluntary statement to criminal investigators about the shooting, but did make a compelled statement to the Professional Standards Unit of the Ventura Police Department. The District Attorney's Office did not review that compelled statement as part of its investigation.

The Ventura Police Department's investigation reports were then submitted to the District Attorney's Office for a determination of whether the shooting of Jesus Farias 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 500 pages of reports and documents, including interviews of police and civilian witnesses, diagrams, photographs, recorded interviews, records of radio transmissions, interviews of civilian and expert witnesses, and 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 there is insufficient evidence to determine that the shooting of Jesus Farias by Ventura Police Officer Craig Kelly was legally justified. However, because a reasonable police officer in Officer Kelly's position could have been justified in shooting Jesus Farias, there is also insufficient evidence to charge Officer Kelly with any crime.

II. STATEMENT OF FACTS

A. THE MURDER IN NATIONAL CITY

On July 27, 2011, Jesus Farias, a parolee and gang member, shot and killed Antonio Vargas II in National City, California. Immediately after the shooting, Farias fled to Ventura, California. He stayed with acquaintances that lived at 220 Pomo Street in Ventura.

Detectives from the National City Police Department quickly traced Farias to Ventura and the Pomo Street address. The detectives requested assistance from the Ventura Police Department to assist them in capturing Farias. Officer Craig Kelly was among the officers who were assigned to keep the Pomo Street house under surveillance. He was briefed about the National City murder and provided a color photograph of Farias. Officer Kelly was also informed that Farias was a known gang member, should be considered armed and dangerous, and only approached with caution.

B. SWAT CALLOUT AND BRIEFING

At approximately 12:30 a.m., numerous officers from the Ventura Police Department's SWAT Team¹ were called to the department for a briefing on an operation at 220 Pomo Street. Officer Kelly met with National City detectives while his partner, Officer Quinn Redeker, attended the briefing which began at approximately 2:30 a.m. The officers were told about Farias and his shooting of Vargas. They were also informed that Farias was believed to still be in possession of the murder weapon. Photographs and descriptions of

¹ The acronym "SWAT" stands for Special Weapons and Tactics. Ventura Police Department describes its SWAT Team's mission as providing "highly trained personnel for use in incidents where disciplined teamwork, specialized weapons, and tactical skills are needed to resolve high risk law enforcement incidents." <http://www.cityofventura.net/pd/about/departments/field-services#9>

Farias were provided at the briefing, and detailed instructions as to each officer's role and position were diagrammed out.

The plan was for SWAT operators to surround the exterior of the house, positioned to contact anyone who chose to flee from the home. After the house was surrounded, the Hostage Negotiating Team would use a public address system to announce their presence and order anyone in the home to exit through the front door with their hands raised. Officers Kelly and Redeker were assigned to cover the northeast portion of the home, which included an attached garage and a fence leading into a side/backyard. Other officers were assigned to keep a visual on the side/backyard.²



An aerial view of 220 Pomo Street

² The SWAT operators referred to each side of the house by numbers: The north side facing the street was "1," the east side was "2," the rear was "3," and the west side was "4." Officers Kelly and Redeker's assignment on the northeast side of the home was referred to as the "1-2" side.

Detective William Dolan, who led the briefing, called Officer Kelly after the briefing to give Officer Kelly his particular assignment. He told Officer Kelly that Farias had an active parole warrant as well as an arrest warrant for the National City homicide, and that Farias was to be considered armed and dangerous.

C. THE OPERATION BEGINS

Numerous police officers convoyed to the area of 220 Pomo Street and deployed in yards around the home. A command post was set up in an armored vehicle stationed just west of 220 Pomo Street and an ambulance also staged nearby.

The home at 220 Pomo Street has an approximately five-foot high wooden fence separating the front yard from the back and side yards. The wooden fence continues on both sides of the home in the backyard. The back of the yard is contained by an approximately five-foot high wall.

The properties behind 220 Pomo Street, 2547 and 2549 Toltec Court, are several feet lower than 220 Pomo Street and a fairly steep bank descends from the wall to those properties. Officers were stationed in the Toltec Court yards directly behind 220 Pomo Street. However, because those homes are considerably lower than 220 Pomo Street, those officers were not able to see into the 220 Pomo Street backyard.

Officer Redeker met up with Officer Kelly and they proceeded to their location on the northeast corner of the home. The officers assigned to cover the backyard were stationed behind the fence at 238 Pomo Street. They reported that vegetation blocked their view of the side/backyard, so Officers Kelly and Redeker moved up to the fence line on the eastern portion of the home so that they could see into the side/backyard.

D. THE SHOOTING

At approximately 4:49 a.m., Detective Sarah Starr began announcements in Spanish and English over a public address system. Detective Starr ordered Jesus Farias and all residents of 220 Pomo Street to exit the front door of the home with their hands in the air. One resident, Guadalupe Hidalgo, exited the front door shortly after the announcements began.

Around the same time, Farias opened the rear sliding glass door and entered the backyard. Officer Kelly heard the sliding glass door open and reported “rear slider open” by radio to the command post. He and Officer Redeker moved into the backyard where they encountered Farias as he was running toward the back wall. Farias was wearing baggie jeans and no shirt. Officer Kelly loudly identified himself and Officer Redeker as police officers and began shouting commands at Farias to stop. He also warned Farias that if he did not stop he would be shot.



Two Views of the Backyard at 220 Pomo Street

Farias sprinted to the back wall and hesitated, as if deciding whether to jump the wall or not. He partially raised his hands in the air, and then ran a short distance parallel to the back wall. He then turned and ran back toward the sliding glass door, which was

approximately 50 feet away. Officer Kelly again commanded Farias to stop and again warned him he would be shot if he did not. Farias continued toward the open door. Before Farias reached the door, Officer Kelly fired one shot from his MP-5 rifle, which hit Farias in the right side of his back and effectively paralyzed him from the waist down.

E. ADDITIONAL POLICE RESPONSE AND INVESTIGATION

Farias fell into the house after the shot and then pulled himself further along the floor into the house. Officers Kelly and Redeker could hear him screaming but could not see him. Realizing they were standing in the open with no cover, they pulled back to their original position behind the gate.

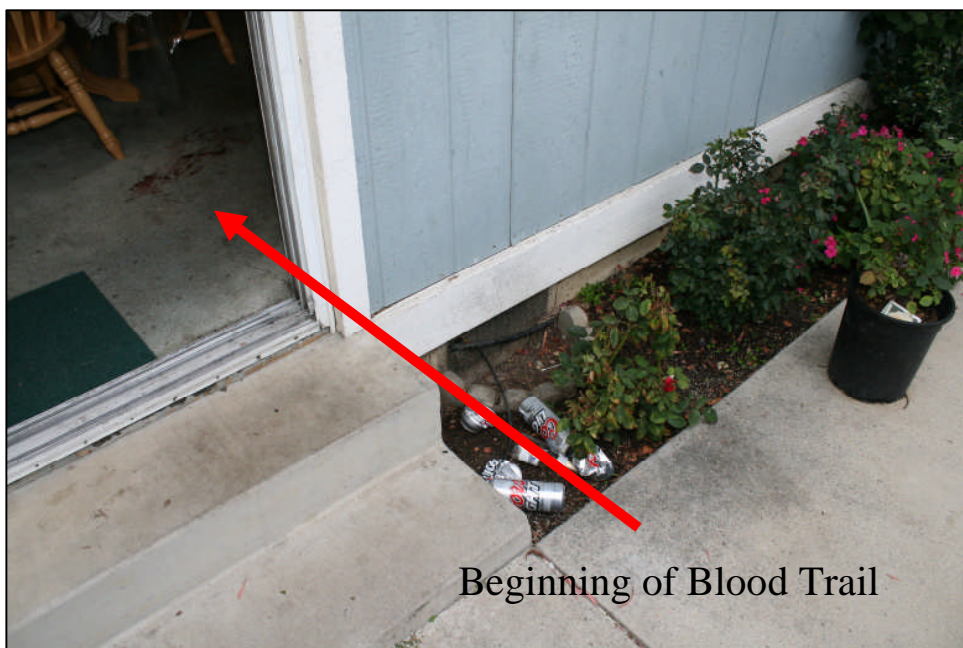
Garbled radio traffic can be heard immediately after the shot was fired. Thirty-seven seconds afterwards, the command post can be heard asking Officer Kelly to report his status. Kelly is not heard responding, so the command post contacted Officer Redeker, who reported that shots had been fired approximately 55 seconds after the shot. The command post requested further information and Officer Redeker related further details about the incident. Within approximately three minutes after the shooting, Officer Kelly reported, "I fired one shot at the suspect as he was fleeing, attempting to hop the back fence. He ran back inside. No weapon seen."

Three other residents of the home—Victoria Salazar, Wesley Hall and Gustavo Torres—exited the home through the front door, where they were contacted by police. All were detained and asked about the incident. Torres and Salazar refused to give any statement to police that morning. Salazar gave a statement at a later date but Torres has never agreed to be interviewed.

Farias dragged himself through the house and eventually to the front door, where he was taken into police custody at approximately 5:01 a.m. EMTs began treating his gunshot wound and Farias was transported by ambulance to the Ventura County Medical Center. Farias was interviewed about the shooting on July 1, 2011.

A crime scene was established and the home was searched. A loaded .22 caliber revolver consistent with the weapon Farias used to kill Vargas was recovered from a lock box/safe that was normally kept locked, but with the key in the lock, in one of the bedrooms. A green fanny pack belonging to Farias was recovered from a different bedroom. The fanny pack contained 16 loose rounds of the same type of .22 caliber ammunition found inside the revolver and was consistent with the type of bullet that killed Vargas.

A single 9 mm spent casing from Officer Kelly's weapon was found in the rain gutter along the back of the garage. Blood trails from Farias began just inside the sliding glass door and continued through the house, leading to the front porch. No blood trail was located in the backyard.



Officer Redeker was interviewed about the incident at approximately 7:41 a.m. that morning. Officer Kelly declined to give criminal investigators a voluntary statement about the shooting.

F. WITNESS STATEMENTS

Numerous individuals were interviewed including the involved officers, residents of the home, and most of the neighbors. Many of the officers at the scene wrote reports about their role in the incident. Officer Kelly provided a compelled statement pursuant to *Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d. 822, and the Public Safety Officers Procedural Bill of Rights Act. Such a statement is considered coerced and would be inadmissible in a criminal proceeding against Officer Kelly. Officer Kelly's compelled statement was not provided to the District Attorney's Office and was not reviewed for this report. Summaries of the most pertinent witness statements are set forth below.

1. DETECTIVE TOM DI ZINNO

Detective Tom Di Zinno is a detective with the National City Police Department. According to Detective Di Zinno, Antonio Vargas II was shot by Jesus Farias on June 27, 2011, in National City. Vargas died as a result of the shooting. Detectives from National City quickly identified Farias as the shooter and determined he had fled to 220 Pomo Street in the city of Ventura. Detective Di Zinno applied for and obtained a search warrant from the Ventura County Superior Court for 220 Pomo Street which also authorized entry into the residence to arrest Farias.³

³ Farias was charged in San Diego with the murder of Vargas. He pled guilty to voluntary manslaughter and use of gun on July 22, 2012. He was sentenced to the California Department of Corrections for 22 years and ordered to pay \$4,952.04 in funeral expenses for Vargas. San Diego County Superior Court Case Number SCS249301.

2. DETECTIVE CORPORAL SARAH STARR

Detective Corporal Sarah Starr was a member of the Ventura Police Department Crisis Negotiation Team. At approximately 12:45 a.m. on June 29, 2011, she responded to a callout. At the briefing for the callout, she learned that Jesus Farias was wanted for a murder in National City and was located at 220 Pomo Street in Ventura, and that National City detectives had obtained a warrant for his arrest. Starr also spoke with an acquaintance of Farias who told her that Farias would not give up willingly and would most probably run from police. She passed that information on to the SWAT officers with whom she was riding to 220 Pomo Street.

Police set up around the Pomo Street address. At approximately 4:44 a.m., Starr began calling Farias' cell phone number. She called the number four separate times. No one audibly answered the phone, but her telephone display depicted the word "connected" indicating that the call had been answered.

After the fourth unsuccessful call, Starr began making announcements over a loudspeaker that the Ventura Police Department had a search warrant for 220 Pomo and that the residents should come outside with their hands up. She made the announcements in Spanish and English. A short time after the announcements, a resident named Guadalupe Hidalgo emerged from the residence. Hidalgo appeared confused, but obeyed commands.

A few moments after Hidalgo exited the home, Starr heard a gunshot from the rear of the home. She then heard loud yelling coming from inside the home. Three other residents came outside. Approximately 10 minutes after the shot, Farias made his way outside and was taken into custody.

Farias appeared to have a gunshot wound to his left side and was screaming that he had been shot for no reason. Starr asked if he was “Jesus” and Farias denied it, claiming his name was “Jose.” Starr told Farias that she believed he was Jesus Farias and he replied, “Whoever I was, you still don’t have the right to shoot me.” Farias was loaded onto an ambulance and complained that he could not feel his legs.

3. OFFICER CRAIG KELLY

Officer Kelly was a SWAT Operator in addition to his other duties within the Ventura Police Department and was Officer Redeker’s partner at 220 Pomo Street on June 29, 2011.

Although he declined to make a voluntary statement to criminal investigators regarding the facts of the shooting, Officer Kelly did make statements over the radio during the incident. Just prior to the shooting, Officer Kelly relayed, “Rear slider open.” Approximately three minutes after the shooting, Kelly broadcast “CP. Kelly. I fired one shot at the suspect as he was fleeing, attempting to hop the back fence. He ran back inside. No weapon seen.”

4. OFFICER QUINN REDEKER

Officer Redeker was a SWAT operator in addition to his other duties with the Ventura Police Department, and was Officer Kelly’s partner during the operation at 220 Pomo Street on June 29, 2011. Officer Redeker was interviewed on four separate occasions about the events leading to the shooting of Jesus Farias during that operation.

a. June 29, 2011

Officer Redeker was first interviewed by Corporals Munger and Welch at approximately 7:41 a.m. on June 29, 2011, and stated that he received a call at approximately 12:30 a.m.

requesting him to respond to the police station for a SWAT operation. He attended a briefing where he was informed that a gang member from National City was a suspect in a murder committed there and was hiding in a house on Pomo Street in Ventura. The SWAT Team had put together a plan to arrest the suspect.

Officer Redeker recalled that photographs of the suspect were shared at the briefing as well as diagrams of the home, the street, and the particular assignments of the officers. Officer Redeker also recalled being informed that the suspect had used a .22 caliber handgun to shoot his victim and was believed to still be armed with that handgun, which he kept in a bag or a fanny pack of some type. He was assigned to meet Officer Kelly at the northeast corner of the house. He was also informed that the suspect was most likely located in a room on the northwest corner of the house. Officer Kelly was not at the briefing, and Officer Redeker was informed that Officer Kelly was already at the scene.

Officer Redeker met Officer Kelly on scene and they moved to their assigned location. The officers who were assigned to cover the backyard were unable to view the backyard from their location. Officer Redeker and Officer Kelly moved to a wooden fence leading into the backyard and opened it so that would be able to see the backyard of the home. Officer Kelly was a short distance in front of Officer Redeker, who was observing the front of the house.

Shortly after they reached their position, they heard the Hostage Negotiating Team begin making announcements for the residents to come outside. Officer Redeker heard what he believed was a window opening from the home. Officer Kelly broadcast on his radio that a sliding door was opening on the "2" side of the home. Officer Redeker then heard what he believed were footsteps. Officer Kelly started moving toward the footsteps and Officer Redeker went with him.

As soon as Officer Redeker reached the fence, he saw a subject in the backyard that resembled the photos of the suspect from the briefing. The suspect was approximately 25 feet from them and was sprinting toward the back fence or wall. The suspect was wearing baggy jeans and no shirt. Officer Redeker did not see a weapon in the suspect's hands, but was concerned that the suspect's baggy pants might be concealing a weapon. He was also concerned that officers were located in every direction that the suspect might run, and that those officers would be unaware of the approaching suspect and it might result in a shootout with officers who would be surprised by the suspect's sudden appearance.

Officer Kelly began yelling loudly at the suspect to stop. Officer Kelly identified them as police and told the suspect that he was going to get shot if he did not stop.⁴ The suspect ran very close to the back wall and hesitated, as if deciding what to do. He appeared to be about to go over the wall, then turned and faced the officers. The suspect was about 50 feet from the open sliding glass door that led into the house. He briefly put his hands in the air, then began to run along the back wall. He then turned and began to run toward the sliding glass door. Officer Kelly continued to command him to stop and the suspect did not react. When the suspect was approximately 12 to 15 feet from the door, Officer Kelly fired one shot at the suspect.

The suspect yelled in pain after the shot and dove or tripped at the threshold. Officer Redeker believed that Officer Kelly had hit the suspect with his shot. Officer Kelly yelled

⁴ Numerous officers in the area who did not see the shooting reported that, prior to the shooting, they heard yelling from the backyard. Officers Acquarelli and Vazquez related hearing Officer Kelly yelling, "Police! Stop!" and "Let me see your hands!" Officer Stegner heard Kelly shout, "Police! Stop!" and something he could not make out. Officer Cole heard Kelly tell the suspect to stop and to comply with his commands. Officer Ortega heard Officer Kelly yell, "Stop! Put your hands up!" and "Stop or I'll shoot!" A resident of the area, Greg Mercado, also reported hearing a police officer yell, "Stop right there or I'll shoot" several times before hearing a gunshot.

at the suspect not to go into the house but the suspect slowly pulled himself into the doorway. Officers Redeker and Kelly were concerned that the suspect had cover and they did not, so they fell back to their original position and communicated that shots had been fired. They then waited while the Hostage Negotiation Team continued ordering people out of the home. Officer Redeker believed that the time between the first announcement and he and Officer Kelly retreating to cover was 15 to 20 seconds.

Officer Redeker related that before they retreated to cover, he and Officer Kelly had a quick tactical discussion. Initially, Officer Redeker stated that Officer Kelly had said, "Okay, okay, let's move." Officer Redeker then explained that Officer Kelly had said, "I don't want to get shot, I don't want you to get shot, let's move." Once they were in cover, Officer Redeker noticed Officer Kelly appeared shaken, so he assumed primary responsibility and announced that shots had been fired.

A short time later, they were informed that the suspect was in custody. They maintained their position until the house was cleared. Officer Redeker stated that the only discussions he had with Officer Kelly at the scene after the shooting were making sure he was okay, a tactical discussion to relocate to cover so they would not be shot, and Officer Redeker informing Officer Kelly that he had been concerned about the suspect contacting other officers who were unaware of the suspect's location if they had not stopped the suspect.

b. August 26, 2011

Officer Redeker was briefly re-interviewed on August 26, 2011, at approximately 4:10 p.m. by Detective Donswyk. Officer Redeker described the lighting conditions on June 29 as night but not pitch dark. He remembered some light in the backyard at 220 Pomo Street but was not sure of the source. Officer Redeker recalled being able to see

fairly well in the backyard. Officer Redeker only recalled discussing with Officer Kelly whether the person in the backyard was the suspect after the shooting.

Officer Redeker stated he did not fire his weapon at the suspect because he was covering another area of the yard. He explained that once he noticed that Officer Kelly was covering the suspect, he pointed his weapon at a different part of the yard to cover any other threats from the home. He added that he would have shot the suspect based on the crime the suspect had committed, the fact that it was unclear if the suspect was still armed, as well as the risk posed by the suspect to other officers who were unaware of his location.

c. January 9, 2012

Officer Redeker was interviewed again on January 9, 2012, by Detectives Munger and Donsywk at approximately 2:20 p.m. He did not recall having any conversation with Officer Kelly about the shooting itself after it occurred, and just remembered having a tactical conversation about seeking cover after the suspect re-entered the home. Once they were in a safer location, he checked with Officer Kelly to make sure he was okay.

Officer Redeker said that he did not watch the suspect directly but was focused on covering the door to the home. He explained that once the suspect came out of the house, they had moved deeper into the yard. The suspect was within Officer Kelly's field of responsibility and Officer Redeker covered the area between the sliding glass door and the garage. Officer Redeker was unable to document exactly where the suspect raised his hands because he was not "watching any of that."

d. January 8, 2014

Officer Redeker was interviewed again on January 8, 2014, by Detective Caliento as well as Deputy District Attorney Harman and District Attorney Investigator Seitz. Officer Redeker related that when he arrived at the Pomo Street address, he met up with Officer Kelly and they discussed the information about Farias being wanted for murder and considered armed and dangerous, and discussed their roles in the SWAT operation.

Officer Redeker related that during SWAT operations, it is not unusual for SWAT operators to not broadcast information during an incident. Officer Redeker explained that activating the radio requires attention that needs to be focused on the incident and he explained he would not be responsible for having his partner shot while he was trying to use the radio.

However, Officer Redeker recalled that he related “shots away” or some similar phrase after the shooting. He has listened to a recording of the radio traffic for that day and did not hear that statement, but has a strong memory of activating his microphone and broadcasting that statement.⁵

Officer Redeker related that in training, SWAT operators usually fire two shots and reassess. They also train to shoot “failure drills” where the operator fires two at the body and one at the head. When asked how he felt about Officer Kelly only firing one shot, he remarked that it appeared him to be reasonable restraint by Officer Kelly who was likely

⁵ Neither Officer Kelly nor Officer Redeker was using a portable recording device during the incident. The radio traffic was recorded but there is no record of Officer Redeker broadcasting “shots away.” Immediately after the command post requested Officer Kelly to check in, the SWAT Incident Commander Al Davis broadcast “covered” which indicates someone’s transmission was stepped on or “covered” by a different transmission. It is possible that Officer Redeker’s broadcast of “shot’s away” was covered by the Command Post’s status check request, but there is no evidence of it other than Officer Redeker’s recollection.

aware that there were civilians inside the home and the officers did not know where any of the civilians were located.

e. Radio Traffic

Approximately 55 seconds after the shooting, Officer Redeker can be heard over somewhat garbled radio traffic, communicating details of the shooting to the command post. Officer Redeker's radio traffic after the shooting was as follows:

REDEKER: CP, Redeker.

COMMAND POST: CP.

R: Shots fired on two side. The DP⁶ ran back inside.

CP: Copy. Shots fired. Advise friendly or suspect fire?

R: Uh, friendly fire, Kelly. The DP is possibly hit.

CP: CP Copy.

...

CP: The location of the, uh, suspect when the shot was fired was where?

R: On the 2 side of the backyard.

CP: Confirming inside or outside of the residence?

R: The suspect was outside and ran back inside residence as the shot was fired.

⁶ The term "DP" means "disturbing party" and is used by some police agencies to indicate a suspect.

5. COMMAND POST AND DISPATCH RECORDINGS

Detective Starr activated her recording device just prior to her beginning to make the announcements. Radio traffic during the incident was also recorded and a chronological log was created as the radio communication occurred.⁷

Detective Starr began making the announcements at approximately 4:49 a.m. A distinct gunshot occurs approximately 7 minutes and 39 seconds later. SWAT officers at the command post discussed the shot, asked Officer Kelly to report his status 37 seconds after the shot and there is no audible response. Fifteen seconds later, Officer Redeker broadcast a description of the shooting as “shots fired on the two side. The DP ran back inside.”

Almost three minutes after he fired the shot, Officer Kelly broadcast “CP. Kelly. I fired one shot at the suspect as he was fleeing, attempting to hop the back fence. He ran back inside. No weapon seen.”

6. JESUS FARIAS

On July 1, 2011, Jesus Farias was interviewed by Detectives Caliento and Starr at the Ventura County Medical Center. Farias was not read his *Miranda* rights.

Farias asked the detectives why he “got shot for no reason.” He then related that he ran out of the back door to the house to see what was happening after hearing the announcements. He put his hands up in the air. He did not have anything on him or in his

⁷ The Starr recording is the most accurate depiction of the events as they unfolded but, based on her proximity to the command post and the public address loudspeaker, not all radio communications are audible. The radio traffic recording contains all communications, but was provided in a compressed manner that prevents it from acting as a timeline. Similarly, the dispatch log includes a chronology of events that were typed in as they were happening, but the timing is not exactly as the event unfolded.

hands. He knew that if he had something on him or in his hands they would shoot him. The police identified themselves and told him to “freeze” and “don’t move.” He was spooked, so he turned around to run back in the house, with his hands still raised, and they shot him before he made it to the door.

Farias denied owning a green fanny pack or any type of weapons. He denied owning a .22 caliber handgun that had been found in the home.⁸ He related that he was from southeast San Diego and came to Ventura by himself, and it was his first time in Ventura. He ran into “some girl” that he had met some time before but that he did not know her name and she probably did not know his name. He stated he met her before when he passed through Ventura getting gas.⁹

He claimed that he came up on Amtrak but could not say what train he arrived on or at what station he disembarked. He took a taxi and was dropped off on the “Avenue” and ran into the girl. Farias said he had no idea whose house he was at.

Farias was vague on knowing anyone other than “that girl” in the house. He was in the living room and ate and drank with the residents, but did not know anything about anyone at the home. After he was shot, his legs did not work and he had to drag himself around the house. He eventually dragged himself to the front porch and then the police dragged him from there. He stated that he could not feel his right leg at all and just a little bit of his left leg, and that they shot him for “no fucking reason.”

⁸ The handgun was matched to the gun that killed Antonio Vargas.

⁹ Farias had driven to Ventura with his girlfriend, Christina Sanchez, who was Gustavo Torres’ aunt and the sister of Guadalupe Hidalgo’s ex-wife.

Farias reiterated that sometime after dinner he heard police announcing, "Ventura Police Department, come out with your hands up." He admitted that he regularly runs from the police. Farias became impatient with the interview and terminated it. He refused to sign a medical release and refused a request to take photographs of him since "it isn't gonna help me."

7. RESIDENTS OF 220 POMO STREET

Four other individuals were in the home on the morning of June 29, 2011: Guadalupe Hidalgo, Victoria Salazar, Wesley Hall, and Gustavo Torres. Torres refused to give any statement to police about the incident and attempts to contact him have been unsuccessful. Police interviewed Hidalgo, Salazar, and Hall shortly after the incident. Further attempts to contact them have been unsuccessful.

Hidalgo was interviewed that morning. He stated that he lived in the home with four other people: Wesley Hall, Gustavo Torres, Victoria Salazar and Roberto Lopez. Torres is the nephew of Hidalgo's ex-wife. Lopez had already left for work at the time of the police operation. Hidalgo recalled seeing Christina Sanchez (Farias' girlfriend and the sister of his ex-wife) at his home on the day prior to the police operation, but claimed to have never seen Farias until he saw him that morning in police custody.

Salazar refused to give a statement on June 29, 2011. She was interviewed on July 6, 2011, when she attempted to retrieve her personal property taken during the search warrant. Salazar denied ever seeing Farias in the house prior to the police operation. She stated she was awoken by the police announcements but did not understand what was being said. She used the restroom and then went to Torres' room, where she saw a guy (Farias) on the ground saying, "I'm shot, I'm shot." She did not talk to Farias and had no

idea how a .22 caliber handgun had been found in her closet. She did mention that her roommate, Wesley Hall, had gone into her room after the police announcements began.

Hall was interviewed on the morning of June 29, 2011. Hall stated that he shared a room with Torres but was sleeping on the couch on the morning of the police operation because their room had mold in it. The sound of a gunshot woke him and he saw “that guy” (Farias) crawling inside the home. Farias was screaming that the police had shot him for no reason. Hall said that he had never seen Farias before but that he might have heard Farias in Torres’ bedroom the night before. Hall asked Victoria if he could go in her room and lay down next to her bed, because he thought it would be safer there. Eventually Hall went to the front door, put his hands over his head and got on his knees, and was taken into police custody.

III. PHYSICAL EVIDENCE

A. 220 POMO STREET

A search warrant was executed at 220 Pomo Street on June 29. Evidence recovered included a loaded .22 caliber revolver and a green fanny pack containing cash, a cell phone which belonged to Farias, 16 rounds of .22 caliber ammunition, syringes, and a folding knife. Blood trails led through the house. The blood trails began on the carpet just inside the rear sliding glass door, led through the kitchen and down the hallway, then back to the front porch. There were no blood trails in the backyard and the only blood located was a small smear at waist height on the northern side of the sliding glass door frame.

A single 9 mm expended casing was located in a backyard rain gutter above the southern portion of the garage. Officer Kelly’s MP-5 rifle fires 9 mm rounds and has an ejection

port on the right of the weapon. The location of the casing indicated that Officer Kelly had been standing in the backyard south of the garage at the time the shot was fired.

B. JESUS FARIAS

Jesus Farias was shot one time in the right side of his back. The bullet passed and impacted his spinal column. The impact of the bullet on his spine caused a paralysis below his waist. Two bullet fragments were extracted from Farias during surgery. Farias' blood was drawn when he was admitted to the hospital, and his blood indicated he had recently used methamphetamine and marijuana.

IV. LEGAL PRINCIPLES

A. LAW OF HOMICIDE, ATTEMPTED MURDER, AND ASSAULT

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.

“Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing.” (*People v. Lee* (31 Cal.4th 613, 623.)

An assault with a deadly weapon occurs when a person willfully does an act with a deadly weapon that would naturally result in application of force to another, and at the time of the act the person was aware that the act would result in an application of force to another and had the ability to apply force with the deadly weapon. (CALCRIM 875.)

B. LAW OF ARREST AND SELF-DEFENSE

Penal Code section 835a states that any “peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

A police officer may use deadly force to stop a fleeing suspect if the officer has a reasonable belief that the suspect poses a threat of serious physical harm. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) “Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Id.*¹⁰

Under the Fourth Amendment, police are “not required to use the least intrusive degree of force possible” but may use only such force as is objectively reasonable under the circumstances. (*Forrester v. City of San Diego*, (9th Cir. 1994), 25 F.3d 804; *Scott v. Hendrick* (9th Cir. 1994) 39 F.3d 912, 915.) An officer’s use of deadly force is reasonable only if “the officer has probable cause to believe that the suspect poses a

¹⁰ Ventura Police Department’s Shooting Policy mirrors *Garner*. “An officer may use deadly force to effect the arrest or prevent the escape of a suspected felon when the officer has probable cause to believe that the suspect has committed or intends to commit a felony involving the inflicting or threatened inflicting of serious bodily injury or death and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force where feasible. Ventura Police Department Policy 304.1(b).

significant threat of death or serious physical injury to the officer or others.” (*Garner*, 471 U.S. at 3, [85 L.Ed.2d 1, 105 S.Ct. 1694].)

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.* “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.)

Homicide is also 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.” (Pen. Code § 197(1).) CALCRIM 550 provides the specific jury instructions on the defense of self-defense, which provide that a person is not guilty of murder or manslaughter if 1) that person “reasonably believed that [the person] [or] someone else . . . was in imminent danger of being killed or suffering great bodily injury”; 2) that person “reasonably believed that the immediate use of deadly force was necessary to

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 further 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.”

V. ANALYSIS

At the time of his shooting, Jesus Farias was a known San Diego gang member with a history of violence. He was suspected of a cold-blooded killing two days prior to his shooting. Farias fled San Diego to Ventura, was still believed to be armed with the gun he used to kill Vargas, and had a history of fleeing from police. When ordered out of the front of the house, Farias ran into the backyard where he refused to comply with the commands of armed police officers. Those commands included warnings that Farias would be shot if he did not comply. Farias acted as if he was going to flee over the back wall and then attempted to flee back into the residence. Based on those circumstances, a reasonable peace officer in Officer Kelly’s position could have been justified in shooting Farias if he or she believed it was necessary to prevent Farias from escaping, from injuring other officers, or making hostages out of people who were still inside the residence.

Officer Kelly did not attend the briefing but Detective Dolan did call Officer Kelly and inform him of Farias’ background. Officer Kelly was also provided color photographs of Farias prior to beginning his surveillance of the home. Officer Kelly also warned Farias numerous times that if Farias did not comply with Officer Kelly’s commands he would

be shot. Thus it is reasonable to conclude that Officer Kelly believed that Farias was the wanted murder suspect at the time he fired the shot.

While it is not unusual for an officer in the midst of a dangerous situation to communicate sparsely until he is in a more protected situation, there was no response from either officer until Officer Redeker reported the shooting 55 seconds after it happened. During that duration, Officers Redeker and Kelly retreated back to their original position about 10 to 15 feet. Officers at the command post can be heard asking whether it was a shot and specifically asking Officer Kelly to report his status, but there was no immediate response.

When Officer Kelly did report the shooting, he stated that he fired as the suspect was “attempting to hop the back fence.” The evidence establishes that Farias was shot either just outside the sliding glass door or as he entered it—12-15 feet from the door.

Without a statement from Officer Kelly, there is insufficient evidence to deem the shooting justified, so the question becomes whether filing criminal charges against Officer Kelly would be supported by the evidence. In filing a criminal case, a prosecutor may only file criminal charges if he or she believes, based on the evidence available, that the accused is in fact guilty of a crime and that guilt can be proven beyond a reasonable doubt at trial. Moreover, a prosecutor must make that decision in light of the foreseeable defenses likely to be raised at trial.

CALCRIM 224 provides, “If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and

reject any that are unreasonable.” In this case, there are two reasonable interpretations of the evidence, one of which points to innocence.

While Officer Kelly’s statements and actions immediately after the shooting might raise questions, they do not of themselves prove that Officer Kelly was not justified in shooting Farias. Prior to shooting Farias, Officer Kelly loudly warned Farias several times that he would be shot if he did not follow Officer Kelly’s commands, indicating Officer Kelly believed Farias to be a murder suspect who was considered armed and dangerous.

Officer Redeker related that Officer Kelly was a little shaken after the shooting and Officer Redeker took over primary responsibilities for their team, including radio communication. Thus Officer Kelly may have relied upon Officer Redeker to report to the command post and in fact it was Officer Redeker who ultimately reported the shooting 55 seconds later.

A reasonable officer in Officer Kelly’s position could have believed that it was necessary to fire in order to prevent Farias from escaping, from injuring other officers, or making hostages out of people who were still inside the residence. An officer in such a situation would have been acting under the reasonable belief that Farias posed “a significant threat of death or serious physical injury to the officer or others.” Such a shooting would have been justified, and the officer would not be criminally liable for the shooting.

Because a reasonable officer in Officer Kelly’s position could have justifiably shot Jesus Farias, there is insufficient evidence to prove that Officer Kelly committed a crime when he shot Jesus Farias. Therefore, the filing of criminal charges against Officer Kelly is not justified by the facts.

VI. CONCLUSION

It is the conclusion of the District Attorney that:

1. A reasonable police officer would have been justified in shooting murder suspect Jesus Farias to prevent the escape of a violent criminal, to protect unsuspecting officers, and to prevent Farias re-entering the home and causing harm to the residents.
2. There is insufficient evidence to either justify this shooting or to charge Officer Kelly with a crime.