

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

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REPORT ON THE SHOOTING OF THOMAS BARRERA
BY OXNARD POLICE DEPARTMENT SERGEANT ANDREW SALINAS
ON OCTOBER 3, 2007

GREGORY D. TOTTEN
DISTRICT ATTORNEY

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INTRODUCTION

On October 3, 2007, at approximately 3:21 a.m., Sergeant Andrew Salinas of the Oxnard Police Department was on patrol on 5th Street near G Street when he saw Thomas Barrera (age 22) attempting to break into a pickup truck parked on 5th Street. Sergeant Salinas was in a full uniform in a marked Oxnard Police Department patrol car.

Sergeant Salinas attempted to detain Barrera, who fled eastbound down the street toward Hobson Way. Barrera threw an object, which turned out to be a set of wrenches, at Sergeant Salinas, who had ordered Barrera to stop. After throwing the wrench set at Sergeant Salinas, Barrera pulled out a knife and turned toward Sergeant Salinas, who was 5 to 7 feet away from him. As Barrera turned toward Sergeant Salinas swinging the knife, Sergeant Salinas fired four shots. Barrera was hit with three shots and died from his wounds.

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. On October 3, 2007, at approximately 5:00 a.m., Senior Deputy District Attorney Richard Simon and District Attorney Senior Investigator Mike McKendry were notified of the shooting and responded to the scene.

The Oxnard Police Department conducted a detailed investigation of the shooting. This investigation included interviews with all known witnesses, collection of physical evidence, preparation of detailed scene diagrams, photographs of all evidence and surrounding areas, and

requests for the Ventura County Sheriff's Department crime laboratory to perform forensic testing of various evidence items collected.

The Oxnard Police Department's investigation reports were submitted to the District Attorney's Office for the purpose of determining whether the shooting of Barrera by Sergeant Salinas was justified and, if not, whether criminal charges should be filed. The scope of the District Attorney's review was limited to those issues.

Senior Deputy District Attorney Richard Simon, who drafted this report, conducted the District Attorney's review. The District Attorney's review included: viewing the scene of the shooting; examining over 500 pages of reports and documents detailing interviews of witnesses, including Sergeant Salinas; reviewing autopsy records; viewing scene and autopsy photographs; reviewing background information on Thomas Barrera; and listening to tape recorded interviews.

After a complete review of all the evidence, it is the conclusion of the District Attorney that Sergeant Andrew Salinas acted lawfully when he shot Barrera, and Barrera's resulting death was a justifiable homicide.

STATEMENT OF FACTS

The statement of facts is based upon the statement of Sergeant Salinas, as well as physical evidence collected, photographed, and/or tested from the scene of the shooting. The details of the shooting death of Thomas Barrera will be contained in the statement of Sergeant Salinas.

After the shooting took place, Sergeant Salinas participated voluntarily in a walkthrough of the scene, followed by a detailed interview conducted by Oxnard Police Detectives Chase and Mancha. Also present with Sergeant Salinas during the interview was his attorney, Howard Lieberman.

A walkthrough is a procedure in which the officer who was involved in a shooting retraces the events with investigators. A walkthrough involves literally walking through the incident from the point of first contact until the actual shooting. This involves the officer relating what was going through his mind at each step. Walkthroughs are re-creations that are both audiotaped and videotaped.

The Oxnard Police Department conducted a neighborhood canvas to see if any actual eyewitnesses to the shooting existed. No eyewitnesses were found.

STATEMENT OF SERGEANT ANDREW SALINAS

On October 3, 2007, at 3:21 a.m., Sergeant Salinas was eastbound on 5th Street, driving alone in his marked patrol car. As he was approaching the intersection of 5th Street and G Street, he saw a blue-over-white, 1982 Chevrolet pickup truck (see Attachment 1, Vehicle 1) just east of G Street. He noticed that the passenger door was open and saw an orange bicycle on the sidewalk next to the open door. (See Attachment 2 for photograph of truck and bicycle, and Attachment 3 for diagram of the area.) Sergeant Salinas then drove to the next intersection and made a U-turn. As he was making the U-turn, he notified dispatch via police radio that he was investigating

suspicious circumstances and stopped at the location where his car was still parked after the incident. (See Attachment 1, V-2.) This area was well-lit by a streetlight near the location of the parked truck.

As Sergeant Salinas approached the truck, he saw the suspect, later identified as Thomas (Tommy) Barrera (age 22). Sergeant Salinas saw Barrera at the front of the truck. This is the first time Sergeant Salinas was aware of Barrera's presence. Barrera began walking away toward the middle of 5th Street.

Barrera stood 6'3" and weighed 233 pounds at the time of his death. Once he neared the middle of 5th Street, he fled westbound and Sergeant Salinas advised dispatch that he was in foot-pursuit. He gave his location as he was pursuing what he described as a suspect of a burglary in progress. Sergeant Salinas was standing at a light pole near the front of the truck when Barrera began fleeing. Barrera was running in the street alongside the cars parked on the north side of 5th Street. Sergeant Salinas crossed the street as he began chasing Barrera. As Barrera reached the north corner of G Street and 5th Street, he was about 10 to 15 feet ahead of Sergeant Salinas.

Once Barrera reached the Honda Civic (Vehicle 15 on Attachment 1), he ran onto the south sidewalk, and Sergeant Salinas crossed over onto the sidewalk in his pursuit. Barrera continued running on the sidewalk until he reached Vehicle 21 (see Attachment 1), at which point he moved back onto the street and Sergeant Salinas continued to pursue him there. Sergeant Salinas yelled toward Barrera to stop on several occasions and even yelled that he (Salinas) was a marathon runner and that he would eventually catch Barrera. This did not deter Barrera from

fleeing, as Barrera continued running westbound without hesitation. As Sergeant Salinas continued to pursue Barrera, he was slowly closing the gap between the two of them. Barrera was periodically looking over his left shoulder as he continued to flee.

When they neared the spot marked No. 4 on Attachments 1 and 4, Barrera turned to his right and with his right hand threw an object at Sergeant Salinas. Barrera turned by pivoting his body in the direction of Sergeant Salinas. Sergeant Salinas could tell by the way Barrera's hand was cupped that the object was not a knife or a gun, so he did not draw his firearm at that time. Sergeant Salinas estimates that Barrera was about 15 feet away when the object was thrown. As the object was thrown, Sergeant Salinas turned his body away and the object glanced off him and landed on the ground. The object turned out to be a folding wrench set. (See Attachment 5.) Salinas thought Barrera may have said something as he was throwing the object, but he does not know what it was.

After being struck by the wrench set, Sergeant Salinas sprinted toward Barrera and closed the gap between them to about 8 to 10 feet. As Barrera continued fleeing, Sergeant Salinas drew his Beretta 9-millimeter handgun. He did this because Barrera had already thrown an object at him, was continuing his flight, and Salinas had closed to a more dangerous proximity to Barrera. When Salinas got to within 5 to 7 feet of Barrera, Barrera began to turn toward Salinas and Salinas could see the shiny blade of a knife in Barrera's right hand. Barrera began to swing his right hand around toward Salinas with the knife blade up. Barrera was swinging the knife toward Salinas as he was turning to face him. This occurred all in one motion. As soon as Salinas saw this, Salinas raised his firearm and then began to fire. Barrera began to turn away

from Salinas, sheltering his own body by moving his body to his left with his side and back facing Salinas as Salinas fired four shots. As he was going to the ground, Barrera dropped the knife to the ground. Salinas heard the knife fall. (See Attachment 6 for ledger listing objects and corresponding numbers, and Attachment 7 for photo of the knife.) Salinas believes Barrera was 5 to 7 feet away from him when he fired the shots. By the time Sergeant Salinas fired his last shot, Barrera was staggering and went down. Sergeant Salinas then jumped on him and handcuffed him. Sergeant Salinas was standing in the area between No. 4 and No. 6 of Attachments 1 and 3 when he fired his duty weapon.

Immediately after handcuffing Barrera, Sergeant Salinas notified dispatch that shots were fired and that the suspect was down. A backup officer arrived soon after and Salinas told him that the suspect tried to stab him.

When asked what was going through his mind when he fired, Sergeant Salinas said that he was in fear for his life due to the fact that Barrera had a knife. He said that in training he was taught a 21-foot rule that essentially means that if a subject is within 21 feet of an officer and is armed with a knife, the officer's life is very much in danger due to how quickly that gap can be closed before a shot can be fired.

Barrera was standing in the area between Nos. 2 and 4 on Attachment 1 when Sergeant Salinas fired his first shot. The entire chase covered two blocks and approximately 540 feet.

The tool set that was thrown at Sergeant Salinas was collected and sent to the crime lab.

STATEMENT OF CRIME SCENE ANALYST KRISTIN ROGAHN

Crime scene analyst Kristin Rogahn was able to recover over 60 blue fibers from the tool set. Sergeant Salinas' uniform and the blue pants worn by Thomas Barrera were provided to Ms. Rogahn for comparison purposes.

Initial microscopic analysis revealed a red and black polymeric material in the pocket of Barrera's jeans as well as in the trace evidence recovered from the set of Allen wrenches. No such material was found in Sergeant Salinas' uniform. Ms. Rogahn concluded that the fibers from the wrenches came from inside Thomas Barrera's pants pocket.

STATEMENT OF ASSISTANT MEDICAL EXAMINER JANICE FRANK

On October 3, 2007, at 10:25 a.m., Dr. Janice Frank of the Ventura County Coroner's Office performed the autopsy on decedent Thomas Barrera. The cause of death was determined to be three gunshot wounds. No definitive shot sequence could be determined, so the numbered sequences were randomly selected. For a location of the wounds, see Attachment 8, which is an anatomical diagram of the victim's body showing bullet entrances. Gunshot wound No.1 entered the upper back and perforated both lungs and the heart. The gunshot wound entered the upper back at a 60-degree upward angle. The direction of fire was left to right. Gunshot wound No. 2 entered the lower back and perforated the spinal cord. Gunshot wound No. 2 entered straight without any significant variation on the angle. Gunshot wound No. 3 entered Mr. Barrera's right

buttock at a slightly upward angle. The direction of fire was right to left. This wound would not have been fatal by itself. Bullets from gunshot wounds Nos. 1 and 2 were recovered at autopsy. Gunshot wound No. 3 exited the left anterolateral thigh and was not recovered. Sergeant Salinas did not recall his exact position relative to Barrera at the time of the shooting. Dr. Frank explained that the thigh is actually slightly higher than the lower buttock. This explains how gunshot wound No. 3 exited the thigh after having entered the buttock at a slightly upward angle.

A toxicology screen was done on Mr. Barrera from a blood sample. Mr. Barrera did not have any alcohol in his system, but he did test positive for methamphetamines, opiates and marijuana.

STATEMENT OF PAMELA RABIDOUX

Pamela Rabidoux lives at 837 5th Street. This location is close to the corner of Hobson Way and 5th Street where the shooting took place. She said she was sleeping when she heard noises from outside. She stated she could hear yelling, but was unable to make out anything that was said. She said she heard about four shots right after the yelling.

STATEMENT OF VERONICA TAFOYA

Veronica Tafoya (age 33) lives at 500 Hobson Way #1. This residence is on the corner of 5th Street and Hobson Way, which is the intersection where the shooting occurred. She told Officer Enrique Alvarez that she was half asleep when she heard somebody yelling, "Hey, don't shoot me, man." She said she then heard three shots. She then went to check on her kids and after that

she saw police officers and police cars on her street. Her house is approximately 30 yards from the scene of the shooting.

STATEMENT OF DELIA RAMIREZ

Delia Ramirez lives at 500 Hobson Way #2. This is the corner of 5th Street and Hobson Way right next to the residence of Veronica Tafoya. She told Officer Alvarez that she heard numerous bangs outside, after which she heard someone yell, "Give me your hands." She did not see any of the actual shooting or any of the events leading up to it.

STATEMENT OF ELIAS OLMOS

Elias Olmos (age 50) lives at 452 South H Street. This residence is at the north corner of 5th Street where the shooting occurred. He said he was sleeping when he was awakened by a commotion outside of his house. He heard a voice yell, "Get your ass on the ground." He then heard four shots in quick succession. He heard a different voice say, "No, don't." Olmos said he got up, put on some clothes and went outside. He saw an officer handcuffing a downed man. The officer was asking the man if he was all right.

STATEMENT OF MARGARET OLMOS

Elias Olmos' wife Margaret was interviewed and she said she heard a male voice yelling, "Stop running. Stop running." She then heard four or five gunshots in rapid succession. She and her

daughter Sara went outside afterwards and she saw the police officers asking a handcuffed man what his name was. Sara said she heard four gunshots, but did not hear anything else.

STATEMENT OF ANTONIO MENDOZA

Antonio Mendoza (age 30) was contacted by police outside of 837 5th Street. This is the same residence as witness Pamela Rabidoux. He said he was lying down in his living room when he heard what he knew was a foot-pursuit. He heard the officer yell, "Get down on the ground, stop running. You better get your ass down on the ground." He said he then heard feet stopping and heard five or six shots immediately after. When Mendoza got outside, he saw that the officer was on top of the man and was handcuffing him and asking him what his name was.

STATEMENT OF ELSA CERVANTES

Elsa Cervantes (age 33) also lives at 500 Hobson Way in apartment #4 and she said she was lying in bed when she heard footsteps outside that sounded like running. She heard someone yell, "Ahh," and then heard four or five shots in rapid succession.

PHYSICAL EVIDENCE

The Silverado pickup truck that Barrera attempted to break into belonged to Luis Garcia. Garcia is the resident at the home in front of where the Silverado pickup truck was parked. This truck

was examined and it was discovered that the ignition had been punched, leading to the conclusion that Barrera had been attempting to steal it.

Inside the truck, a folding knife was found on the passenger seat. Mr. Garcia said that he did not recognize the knife and it did not belong to him. A knife was also found on the street where Sergeant Salinas said that Barrera had swung a knife at him. This knife, which had a broken tip, was collected (see Item 1, Attachments 1, 4 and 6). Metal fragments collected from inside the punched ignition showed similarity in size, color, edge contour, physical appearance, and continuity of random striations with the broken knife blade.

A bent coat hanger was found in the street near the truck at the intersection of 5th Street and G Street, further corroborating the fact that Barrera was in the process of committing an auto burglary or attempted auto theft. This evidence was photographed in place and collected by the Oxnard Police Department. There were also some metal fragments collected from the driver's floorboard.

At autopsy, an empty knife sheath was located connected to a belt that Barrera wore. Barrera also had a spoon and syringe in his pocket. The syringe was half-bent. This evidence corroborates other information concerning Barrera's background as a narcotics abuser.

The tool set that Barrera threw at Sergeant Salinas was tested for DNA. It contained a mixture of four sources. Barrera was included among the population that could have contributed to the mixture. Because the DNA levels are low, the corresponding population numbers are too low to

call it a match. With low levels of DNA, few genetic markers can be found. With higher levels, enough markers can be located to make the probability that some other person contributed the sample astronomically remote. In this case, because of the limited number of genetic markers, one can only determine that one in seven Hispanics and whites would share those same limited genetic characteristics as Barrera and the DNA from the tool set. One in nine African Americans would also share those same few genetic markers.

All of the evidence from the scene was photographed in place and collected. Although Barrera was hit with three shots, it is clear from the evidence that Sergeant Salinas actually fired four rounds. There were four shell casings collected from the scene. The bullet that was fired and missed was not recovered, but that is not unusual as unimpeded spent rounds can travel substantial distances. Even the bullet that exited the thigh was not recovered.

OFFICER REACTION TIMES AND SHOOTING DYNAMICS IN LETHAL FORCE ENCOUNTERS

Dr. Bill Lewinski is one of the nation's foremost experts in shooting dynamics in a law enforcement setting. Dr. Lewinski is a behavioral scientist specializing in law enforcement-related issues. He has a Ph.D. in police psychology and is a tenured full professor in the law enforcement program at Minnesota State University, Mankato, where he has taught for the last 23 years. He is also the founder and director of Force Science Research Center at the school.

Much of his research has focused on subject and officer movement in lethal force encounters, as well as action and reaction time parameters. His research has been published in peer-reviewed national law enforcement publications and has also been highlighted on the television program *48 Hours Investigates*. His recent work involved a technologically sophisticated investigation into the perceptual and psychological factors that impact on an officer's reaction time. In an article first published in September 2005 for *The Scene, Journal of the Association of Crime Scene Reconstruction*, Dr. Lewinski and three other researchers¹ studied the phenomena where an officer perceives a frontal threat, yet shots entered the suspect's back or side.

Dr. Lewinski points out that studies of reaction time in response to stimuli (known as mental chronometry) go back as far as 1865. This type of research had not permeated the law enforcement field until the last decade, despite the fact that an understanding of the principles of mental chronometry is sometimes critical in understanding the dynamics of a police shooting. Dr. Lewinski notes several studies that address reaction time in such a way that they can extrapolate the results to apply to the analysis of police shootings. For example, in one study published in 1997², researchers measured the reaction times in firing drawn sidearms in response to stimuli and compared those measurements with the time it takes for a person to turn their torso away (90 to 180° from the officers after posing a threat). The average time to fire a drawn weapon was .677 seconds. They also found that the average person can turn his or her torso 90° in .31 seconds and 180° in .676 seconds. In other words, in the time it took an officer with a

¹ Jeffery Baumgarner, Ph.D., Texas Christian University; William Hudson, Ph.D., Minnesota State University; Sergeant Craig Sapp, Tempe Police Department.

² Tobin and Fackler, "Officer Reaction Response in Firing a Handgun," *Wound Ballistics Review Journal of the International Wound Ballistics Association*, 3, 1997, pp.1, 6-9.

drawn firearm to fire his or her weapon at a threat, the suspect could have already turned 180° away from the officer at the moment of discharge.

In his article for *Police Marksman* (November/December 2000), Dr. Lewinski published his own research on time measurements of various movements by suspects that can occur in police shooting scenarios. In this study, Lewinski used undergraduates in the law enforcement program at Minnesota State University, Mankato. The students were asked to perform motions that were similar to real life actions known to have taken place in actual officer-involved shootings and reflect real life threats or circumstances. The motions were recorded on a digital video camera in frame mode. The speed of the camera was 30 frames per second. The camera and motions were cross-matched with a digital timer that was accurate to 1/1,000 of a second. One motion studied was similar to that which occurred in the shooting of Mr. Barrera, only the weapon simulated was a gun rather than a knife. The average time from the start of the pulling of the gun to turning toward the officer to firing was 23/100 of a second. The fastest was a mere 9/100 of a second. This demonstrates that the threat that Sergeant Salinas encountered occurred in mere fractions of a second.

Another movement that was studied by Dr. Lewinski was where the subject would turn toward the officer, fire the weapon, and then continue the turning motion until his back was facing the officer. This is very close to the movement by Mr. Barrera absent the firing of the weapon. The actual time for this motion was less than one second, and of most significance was that the time for the person to go from lowering the weapon to the full back position facing the officer was just 37/100 of a second. Some made the turning movement much more quickly. In one case, the

subject was able to go from a drop-off position after firing to a square back position in just 10/100 of a second. Since Barrera's momentum was already going towards Salinas, his turning motion away to the square back position would have likely been very rapid and 10/100 of a second is not unreasonable to cover that movement. Given the reaction time of an officer to fire in response to a threat stimulus, it is not surprising that shots entered Barrera's back. Dr. Lewinski did find that where a subject's momentum was already heading in the direction of the turn, they were able to complete the turn much more rapidly. Where momentum was going with the turn, the entire movement, including the firing of the weapon and turning to a full back position took just 58/100 of a second on the average. The fastest time was 33/100 of a second. In those circumstances, an officer reacting as quickly as humanly possible to the perceived threat would still end up shooting the subject in the back with an accurate shot. Once an officer perceives a threat, the research shows that it takes a minimum of .33 seconds up to as long as two full seconds for the officer's brain to process the information, complete his reaction, and fire his weapon in full self-defense. That is why Dr. Lewinski concludes that "in some deadly force confrontations which are fully justified, the threatening suspect may end up being hit in the back as a result of your reactive deadly force response."

A corollary to the implications of the time measurements is the difficulty an officer (or any human being) has in "turning off" a reactionary decision made in a moment once the danger ceases. Once an officer decides to shoot at a suspect in response to some threatening stimulus, it is nearly impossible to abort that decision.

Dr. Lewinski studied reaction time in starting and stopping in response to a threat stimulus using the Tempe (Arizona) Police Department³. In the Tempe study, Dr. Lewinski used 102 police officers from the Tempe Police Department in experiments to measure the following four things: (1) reaction time to a visual stimulus, (2) the time it takes to stop pulling the trigger once the threat has passed, (3) simple decision-making and, (4) the role of anticipation.

Reaction time was measured by use of a stimulus board that displayed a pattern of nine clusters of lights, three on each row. Officers were told to observe the light clusters in the upper left hand corner with their firearms drawn and their fingers on the trigger. They were told to pull the trigger immediately once a particular green light was illuminated. This study revealed that, as previously discussed, the average trigger pull was .31 seconds after illumination. It took .25 seconds to process that the light was on and .06 to pull the trigger. Less than adequate lighting conditions could also slow down reaction by delaying perception of the threat. The area of 5th Street and Hobson Way, although lit by a street lamp, does not provide optimal lighting conditions and could have slowed down Sergeant Salinas' reaction slightly.

In studying the stop time, officers were asked to fire as many times as they could when they saw the green light. However, they were also told to immediately stop when the light would go off. On average, participating officers stopped pulling the trigger within 0.35 seconds from when the light went out. Many officers fired one or two shots after the light went out.

³ "The Impact of Visual Complexity, Decision-making and Anticipation, the Tempe Study," *The Police Marskman*, November/December 2003.

In measuring decision-making, Dr. Lewinski repeated the first experiment, but added a go or no go component. In this case, the subjects were told to only pull the trigger if all three of the lights in a cluster were illuminated instead of just one. This requirement delayed the reaction time to an average of .56 seconds. The range was .44 seconds to .69 seconds. This means that reaction time was slowed with a more complex set of stimuli. Another experiment conducted in this study presented participants with a pattern of lights on the stimulus board illuminating at intervals. The lights were of different colors. Participants were instructed to fire when the pattern of green was complete and not before. Anticipation sped up reaction time to an average of .46 seconds.

The implications of the Tempe study are evident when evaluating officer-involved shootings. The study demonstrates that not only does reaction take time, but so does turning off a reaction.

Dr. Lewinski also studied how quickly rounds can be discharged once an officer begins to fire. Dr. Lewinski has worked with Dr. Parris Ward, who heads a computer animation firm named Biodynamics Engineering. They were able to determine that the officers in a particular police lethal force case were able to shoot in the range of .233 to .268 of a second per round⁴. Drs. Lewinski and Ward determined that in that particular case 11 rounds were fired by just two officers in only 1.6 seconds. Jim Roberts, firearms analyst for the Ventura County Sheriff's Department crime laboratory, confirms that Salinas' duty weapon, the 9-millimeter Beretta, will fire shots at the same rate as the Glocks used by the two officers in the above case. There is always some minor variation in considering the human element. Many shots can be discharged

⁴ Joshua Lego, *Shooting Dynamics*, Force Science Institute, 2008 CDAA Summer Conference.

in a very short period of time in high-stress, lethal-force encounters. Virtually no human being can immediately cease firing under high stress circumstances.

Given reaction times and delays in processing information, as well as the rapidity of human body dynamics combined with the fact that officers cannot stop shooting instantaneously, it is not surprising that 70 percent of officer-involved shootings involve shots to the back or side⁵.

BACKGROUND OF THOMAS BARRERA

Thomas Lazos Barrera was a methamphetamine user with a moderate to extensive criminal history. In 2004, he was convicted by a jury of being under the influence of narcotics, pursuant to Health and Safety Code section 11550(a). In 2005, he was convicted of a felony for possession of methamphetamine, pursuant to Health and Safety Code section 11377(a). Later that same year, he was convicted again on a misdemeanor violation of Health and Safety Code section 11550(a). In 2006, he was arrested for possession of narcotics, as well as vandalism, but was not convicted for that arrest. That same year, he was convicted of resisting, obstructing, or delaying an officer in the performance of his/her duties, pursuant to Penal Code section 148. In 2007, he was convicted of another 11550(a), as well as providing false information to an officer. For this offense, he received a 90-day jail sentence.

In addition to his drug use, Barrera was a known associate of the Colonia Chiques criminal street gang. Oxnard police have documented Barrera as being present on 16 separate occasions with other Colonia Chiques gang members. Barrera had no obvious gang tattoos, but did have "OX"

⁵ *What Happens When Police Kill*, BBC News, October 13, 2006, Tom Tanner, Producer.

(for Oxnard) tattooed on his left bicep. On November 13, 2000, while a student at Pacifica High School in Oxnard, Barrera was involved in a fistfight with another student. In his interview with the police on that occasion, he openly admitted that he “backs up Colonia” and that the boy he was fighting was from Southside Chiques, a rival criminal street gang in south Oxnard and Port Hueneme.

In June 2006, there was a rivalry between Colonia gang members and a local tagging (graffiti) crew. Barrera was a known Colonia associate, and a confidential witness was a member of the tagging crew. The confidential witness was advised that Barrera was in the area, armed with a knife. The confidential witness said he later ran into Barrera, who showed a knife concealed in his pant leg, and said in a challenging way, “What’s up?” The confidential witness told Barrera to put his weapon away and said, “I got something for your ass, too.” Barrera reached for the large knife in his pant leg, and the confidential witness pulled out a gun. Barrera said, “If you’re gonna pull out a gun on me, you better use it.” The confidential witness then hit Barrera over the eye twice with the butt of the gun and Barrera fled. For purposes of keeping the confidential witness safe, his identity has been withheld.

LEGAL PRINCIPLES

Homicide is the killing of one human being by another. Homicide can be either lawful or unlawful. Lawful homicide is excusable or justifiable. The shooting of another person in self-defense is justifiable.

The law of self-defense is currently set forth in Penal Code sections 197, 198 and 199 as it relates to homicide cases. The killing of another person is not unlawful when the person who does the killing *actually* and *reasonably* believes: (1) that there is imminent danger that the person will either kill him or inflict great bodily injury, and (2) that it is necessary under the circumstances to use deadly force to prevent death or great bodily injury from being immediately inflicted upon him. This principle is set forth in California Criminal Jury Instructions (CALCRIM) No. 505. The test of self-defense is one of apparent necessity. Accordingly, the slayer must harbor an honest and reasonable belief in the apparent peril and the need to use deadly force. (Also see 1 Witkin CALCRIM Law Defenses No. 6.)

In determining whether a person using deadly force in self-defense 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 to the same degree as a person who is not being confronted with an emergency situation.

ANALYSIS

Sergeant Salinas did not fire his weapon when Barrera threw the wrench set at him. Sergeant Salinas did not believe he was confronted with deadly force at that time. When Barrera pulled out a knife and swung it in the direction of Sergeant Salinas, Barrera created a circumstance which caused Sergeant Salinas to have an honest and reasonable fear for his own life. Based upon his training and experience, Sergeant Salinas was well aware of the dangers of a knife-wielding man seven to ten feet away from him.

As soon as Barrera pulled the knife out, Sergeant Salinas' focus was completely on the knife and the immediate threat that was within seven to ten feet of him. Sergeant Salinas was acting under the stress and adrenalin of the moment, and it is reasonable to believe that once he saw the knife he did not hear clearly what, if anything, was said by Barrera. Sergeant Salinas exercised his right of self-defense when he fired his duty weapon. To fail to do so could have put his own life at great and unnecessary peril. Sergeant Salinas acted out of fear for his own life when he fired and fatally shot Barrera.

Dr. Lewinski reports that a study of the Los Angeles County Sheriff's Department published in 1998 revealed that in 348 officer-involved shootings, 90 percent of the officers experienced some perceptual disturbance, 51 percent involved sounds being quieter and 45 percent experienced tunnel vision. This is not surprising given the obvious stress in sudden lethal-force encounters. It would be reasonable to conclude that words could have been spoken by Barrera that Salinas may not have heard or understood due to the stress of the situation creating some perceptual loss.

Witness Veronica Tafoya said she heard someone say, "Hey, don't shoot me, man." This is a statement that was not heard by other witnesses, including Elias and Margaret Olmos, Antonio Mendoza, Delia Ramirez, and Pamela Rabidoux, who were just as close to the incident as Tafoya. However, assuming that statement was made, once Barrera pulled the knife out and turned towards Sergeant Salinas swinging the knife, it was simply too late. Sergeant Salinas was focused on the knife and Barrera's immediate actions. It is reasonable to believe that he did not hear words spoken by Barrera.

The physical evidence corroborates the sequence of events related by Sergeant Salinas. The wrench set and knife Barrera wielded were found in the street. The knife was previously used by Barrera to try to punch out the ignition of the truck for the purpose of stealing it. The knife itself had a broken blade from that incident.

Dr. Lewinski has documented the incredible speed in which officer-involved shootings can occur. The Tempe Study demonstrated how principles of perception, processing, and reaction apply to officer-involved shootings. The study documented that it was impossible to stop or interrupt a trigger pull once the process has begun, and that shots were often fired after the light stimulus to stop the shooting occurred.⁶

As previously detailed, research by Dr. Lewinski shows that a person can turn toward an officer, fire a weapon, disengage and turn away with his back to the officer in as quickly as 33/100 of a second. It takes longer than that to perceive the threat and fire back.

When Barrera swung the knife toward Salinas, it is likely that Salinas' gun was visible to Barrera. Upon seeing the gun, Barrera likely continued the same motion, pivoting his body so that his back was facing Sergeant Salinas who had begun firing once he saw the knife blade. By the time the shots entered Barrera's body, his back was facing Salinas.

Barrera's death is unfortunate, but was the result of poor choices that he made. Barrera was caught in the act of trying to steal a truck. Rather than surrender, he tried to run away from a

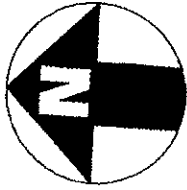
⁶ *Reaction Times In Lethal Force Encounters* by Dr. Bill Lewinski and Dr. Bill Hudson, published in *The Police Marksman*, September/October 2003.

uniformed officer who had a right to detain him. When it appeared he might be apprehended, he threw a wrench set at the pursuing sergeant. Barrera refused to comply with all lawful orders and ultimately made the conscious choice of pulling out a knife and swinging it in the direction of Sergeant Salinas. Once that happened, Sergeant Salinas was justified in the use of deadly force. It is also evident from the statement of the confidential witness that this is not the first time that Barrera has shown a willingness to pull out a knife and use it.

CONCLUSION

It is the conclusion of the District Attorney that the death of Thomas Barrera was the result of Sergeant Salinas' acting in lawful self-defense and is, therefore, a justifiable homicide.

ATTACHMENT 1



Overhanging Traffic Control Standard



Lamp Post



Utility Pole



Stop Sign



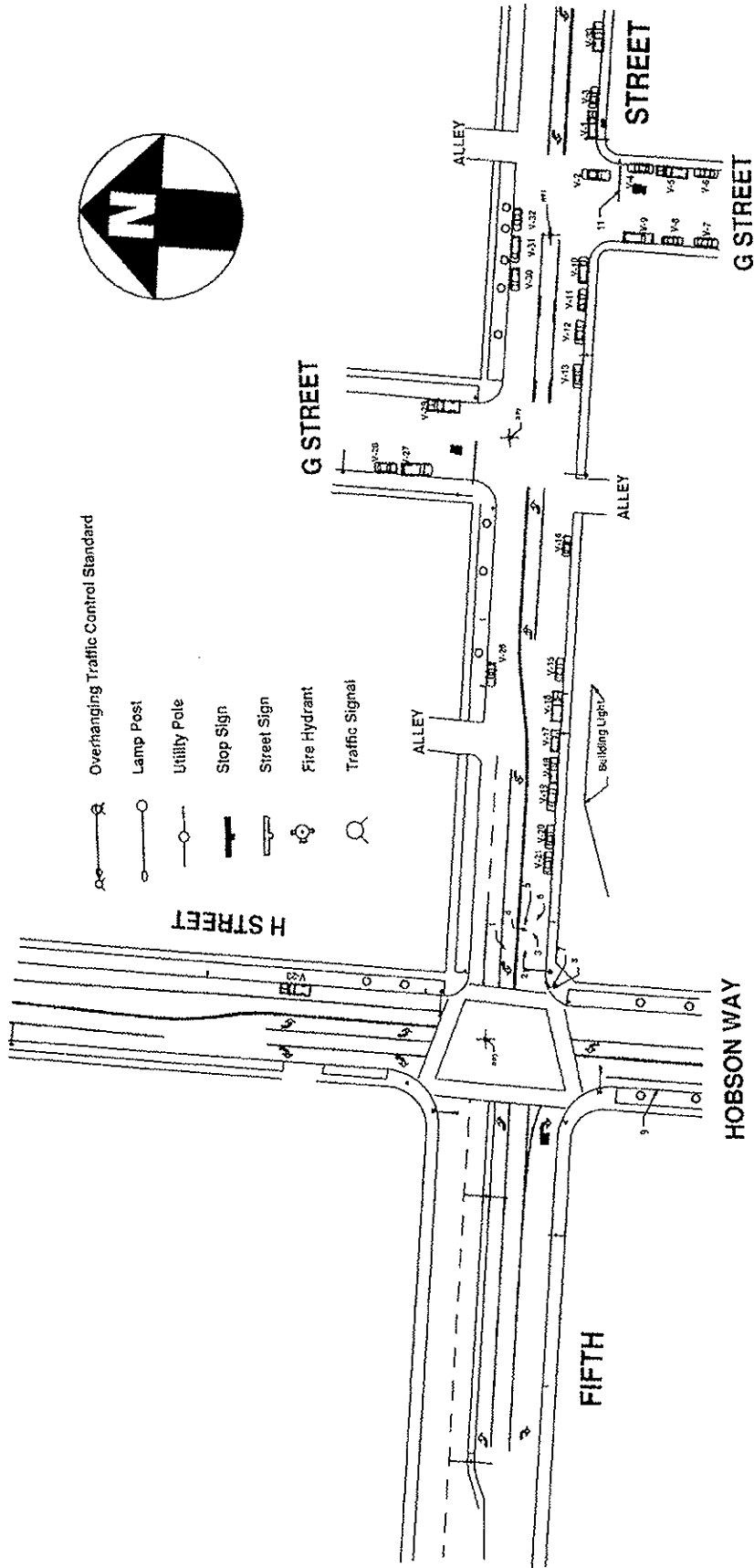
Street Sign



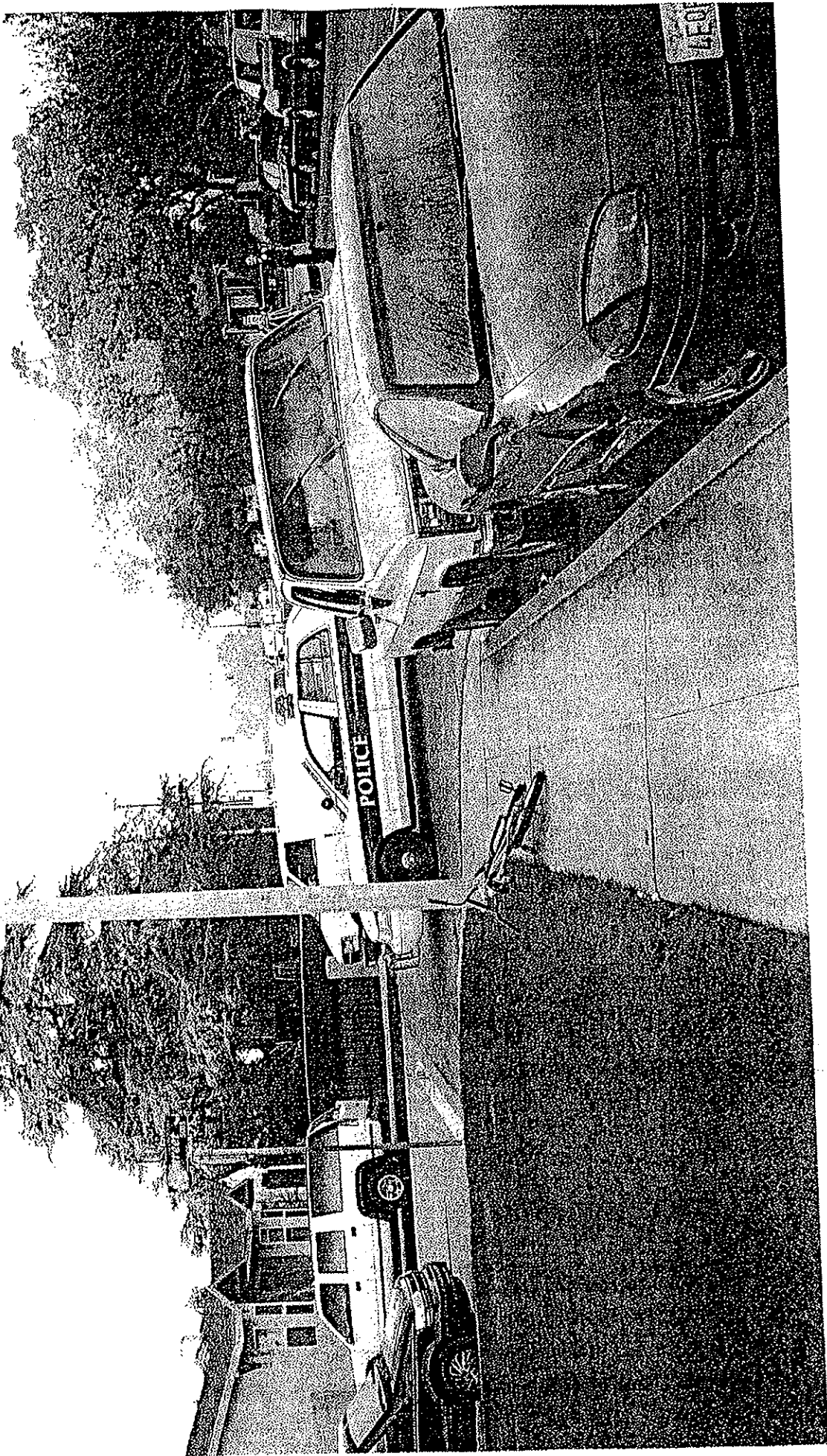
Fire Hydrant



Traffic Signal

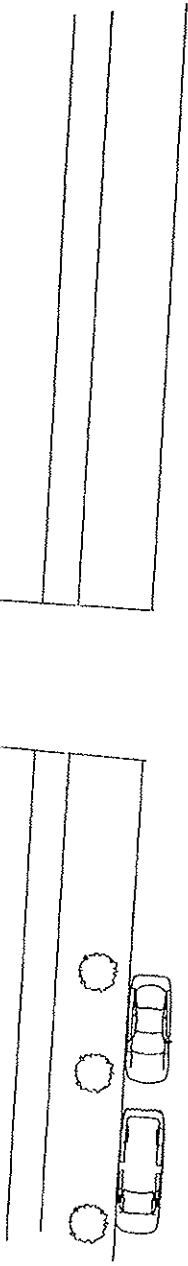


ATTACHMENT 2



ATTACHMENT 3

ALLEY

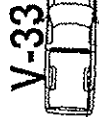
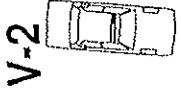


V-31 V-32

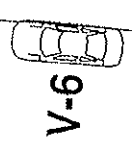
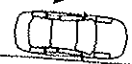
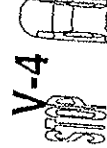
RP1



FIFTH



11



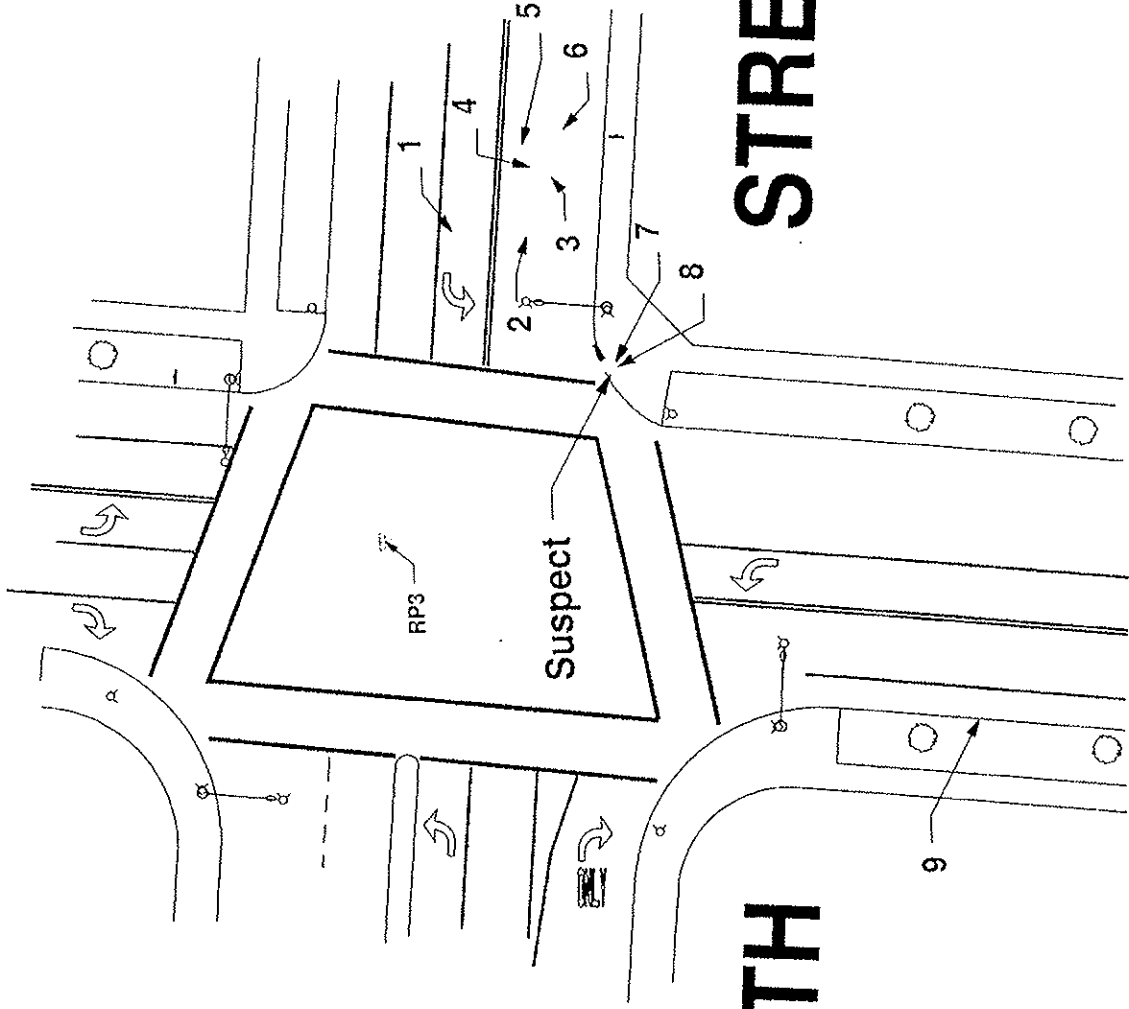
STREET

Suspect's Bicycle

G STREET

ATTACHMENT 4

H STREET



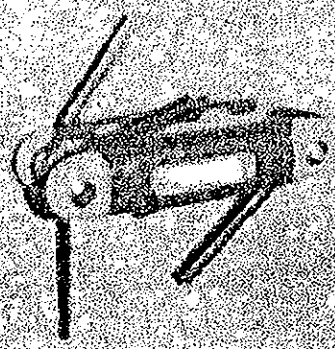
STREET

FIFTH

HOBSON WAY

ATTACHMENT 5

9



ATTACHMENT 6

132.536	-38.037	-0.453	
121.490	-37.347	-0.457	(Nikon Item Numbers 15 – 18)

PHYSICAL EVIDENCE

PHYSICAL EVIDENCE DESCRIPTIONS:

The physical evidence described in this section corresponds with the numbered items in the Physical Evidence Measurement List and Physical Evidence Diagram. At the crime scene,

Item 1:

This item is a knife (1) left by Suspect Barrera. (Nikon item number 22 from third set of measurements)

Item 2:

This item is a bullet casing (2) left by Sergeant Andrew Salinas's weapon upon being fired. (Nikon item number 21 from third set of measurements)

Item 3:

This item is a bullet casing (3) left by Sergeant Andrew Salinas's weapon upon being fired. (Nikon item number 20 from third set of measurements)

Item 4:

This item is a bullet casing (4) left by Sergeant Andrew Salinas's weapon upon being fired. (Nikon item number 19 from third set of measurements)

Item 5:

This item is a bullet casing (5) left by Sergeant Andrew Salinas's weapon upon being fired. (Nikon item number 18 from third set of measurements)

Item 6:

This item is a Pittsburg multi-set Allen Wrench (6) possibly left by Suspect Barrera. (Nikon item number 17 from third set of measurements)

PHYSICAL EVIDENCE

PHYSICAL EVIDENCE DESCRIPTIONS (Continued):

Item 7:

This item is a cell phone (7) belonging to Suspect Barrera. (Nikon item number 23 from third set of measurements)

Item 8:

This item is coagulated blood (8) from Suspect Barrera. (Nikon item number 24 from third set of measurements)

Item 9:

This item is a possible bullet strike (9) left by a bullet fired by Sergeant Andrew Salinas. (Nikon item number 63 from third set of measurements)

Item 10:

This item is a coat hanger (20) possibly left by Suspect Barrera. (Nikon item number 4 from first set of measurements)

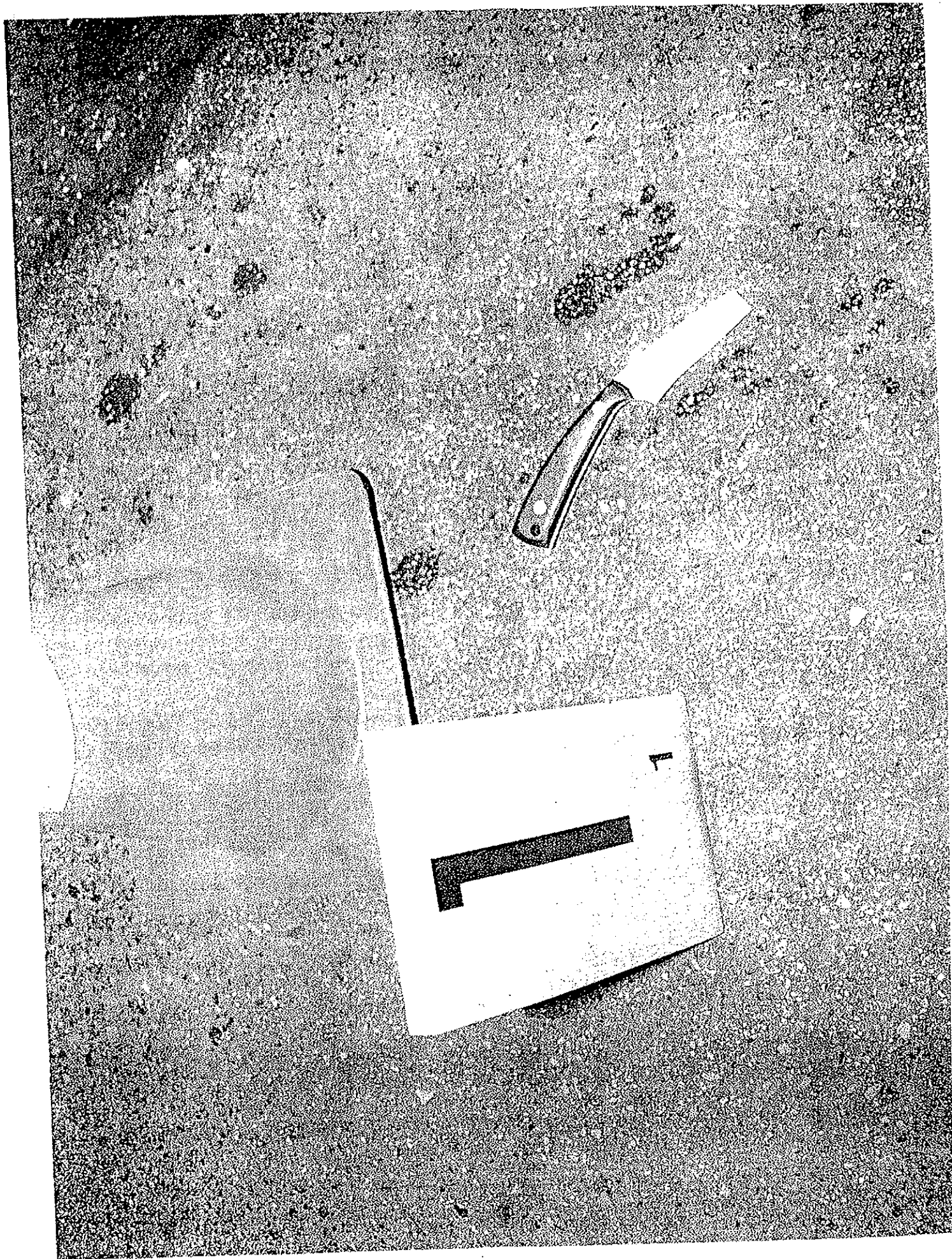
Item 11:

This item is an orange 1-speed boys bicycle (BIKE) used by Suspect Barrera. (Nikon item numbers 5 – 6 from first set of measurements)

Item V-1:

This item (V1) is a white over blue Chevrolet Silverado pick-up truck, California License Plate 8H10852. Vehicle 1 (V-1) was located upright on its wheels facing in a easterly direction along the south curb of Fifth Street just east of G Street. (Nikon item numbers 7 – 10 from first set of measurements)

ATTACHMENT 7



ATTACHMENT 8

