

OFFICE OF THE DISTRICT ATTORNEY

December 9, 2021



REPORT ON THE NOVEMBER 5, 2020,  
SHOOTING OF JAVIER MAGAÑA  
BY  
VENTURA POLICE OFFICER JOAQUIN ORTEGA

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## I.

### INTRODUCTION

On October 12, 2020, in Oxnard, Loma Flats gang member Javier Magaña physically assaulted and shot a fellow Loma Flats gang member. Pursuant to the investigation, a detective from the Oxnard Police Department (OPD) obtained a search warrant authorizing the placement of a tracking device on a black 1999 Honda Accord that Magaña was known to drive.

On November 5, 2020, officers from OPD's Special Enforcement Unit set up surveillance on Magaña's black Honda which was parked on a public street. Officers observed a man, later identified as Magaña, as he drove the vehicle and committed a traffic infraction. A marked OPD patrol vehicle pulled in behind the Honda and attempted to conduct a traffic stop. The officer activated his overhead lights. Magaña did not yield to the OPD unit and fled at high speed as multiple OPD units pursued.

During the pursuit within Oxnard, Magaña reached speeds of up to 70 mph as he raced down commercial and residential streets. Magaña drove erratically and hit a curb, causing his front right tire to go flat. Despite the damage, Magaña continued driving at speeds of 40 to 50 mph as he entered the U.S. Highway 101 northbound onramp at Vineyard Avenue. Magaña reached speeds of up to 80 mph and eventually exited at Main Street in Ventura. Once on surface streets, Magaña again reached speeds of up to 70 mph and ran multiple red lights.

Ventura Police Department (VPD) Officer Joaquin Ortega took over as the lead vehicle in the pursuit in Ventura. OPD broadcast to VPD units that Magaña was wanted for a violation of Penal Code section 245, assault with a deadly weapon, and was possibly armed.

Magaña traveled across the western section of Ventura before turning toward Seaward Avenue and sideswiped a civilian motorist, causing minor damage to her

vehicle. He turned south on Seaward Avenue where VPD officers deployed a spike strip at Seaward Avenue and Alessandro Drive, just before the traffic bridge passing over U.S. Highway 101.

Magaña drove over the spike strip, sustained damage to his remaining tires, and slowed but continued southbound on Seaward Avenue, over U.S. Highway 101, and eastbound onto Harbor Boulevard. Magaña lost control of his vehicle and drifted across the opposing westbound lanes and onto the westbound shoulder of Harbor Boulevard, where he came to a stop.

Officer Ortega was the first officer to stop and exit his vehicle. He commanded his K-9 to come to him but his K-9 never left the patrol vehicle. Simultaneous to Officer Ortega exiting his vehicle, Magaña exited his car, armed with a handgun, and fled on foot down the north shoulder of Harbor Boulevard toward oncoming traffic, a residential neighborhood, and a shopping center.

Officer Ortega unholstered his semi-automatic 9mm handgun with his right hand as he began his foot pursuit of Magaña. At that time, multiple VPD officers stopped their vehicles behind Officer Ortega's patrol vehicle.

Magaña fired a round from his gun within four seconds of when Officer Ortega exited his patrol vehicle. Officer Ortega believed that Magaña had fired at him. Magaña tripped, stumbled, and turned toward Officer Ortega. Magaña aimed his handgun at Officer Ortega from a seated position. Magaña rose to a knee and leveled his handgun at Officer Ortega at a range of about 25 feet. At that time, Officer Ortega, fired three shots from his handgun at Magaña.

Magaña immediately stood, turned, and continued to flee on foot. Officer Ortega fired two more shots at Magaña. Magaña stumbled, dropped his handgun, and picked it up. At that time, Officer Ortega fired two final shots at Magaña. Magaña let go of his handgun, stumbled to the ground, got back up, but stumbled to the ground again and rolled over onto his back. VPD officers rushed to potentially disarm Magaña and to render first aid. Paramedics pronounced Magaña dead at the scene.

The Ventura County District Attorney's Office (VCDA) officer-involved shooting team was available to assist in the investigation of the officer-involved shooting. Once VCDA was notified of the shooting, Senior Deputy District Attorney Maeve Fox and District Attorney Investigator Brandon Conger responded to the shooting scene and consulted with the investigating officers.

VPD investigated the shooting, which included interviewing witnesses, collecting and examining physical evidence, and photographing the area of the shooting. In December 2020, VPD submitted investigation materials to VCDA for a determination of whether the shooting of Javier Magaña was justified and, whether criminal charges should be filed. The scope of the District Attorney's review was limited to those issues.

Senior Deputy District Attorney Tate McCallister was assigned to review this case. He examined all materials generated by the investigation, including over 500 pages of reports, more than 30 hours of audio and video recordings, and more than 500 photographs.

Based on the reviewed evidence, VCDA's independent investigation, and the applicable legal authorities, it is the opinion of the District Attorney that the shooting of Javier Magaña by VPD Officer Joaquin Ortega was justified and not a criminal act.

II.  
STATEMENT OF FACTS

A. Witness Statements

Numerous individuals were interviewed, including all the relevant involved officers, emergency medical personnel, and civilian witnesses. Summaries of the most pertinent witness statements are set forth below.<sup>1</sup>

1. Detective Carey Everhart

On October 12, 2020, a Loma Flats gang member was shot and assaulted. OPD Detective Everhart developed evidence indicating Loma Flats gang member Magaña was the shooter. Detective Everhart obtained a signed search warrant authorizing the placement of a tracking device on a black 1999 Honda Accord that Magaña was known to drive.

On November 5, 2020, at approximately 6:35 p.m., Detective Everhart used information generated by the tracker and located the Honda in Oxnard. Detective Everhart immediately dispatched officers from the Special Enforcement Unit to the Honda's location to set up surveillance.

2. Officer Tim Eglin

On November 5, 2020, OPD Officer Eglin was working as part of the Special Enforcement Unit. Officer Eglin and Officer Randall Gonzales were briefed on the investigation of Magaña and conducted surveillance on the Honda at the 1000 block of

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<sup>1</sup> Officer Ortega gave a compelled statement regarding the incident to his police department pursuant to *Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d. 822, and the Public Safety Officers Procedural Bill of Rights Act. A compelled statement would be inadmissible in a criminal proceeding against Officer Ortega. Officer Ortega's compelled statement was not provided to the District Attorney's Office and was not reviewed for this report. All statements made by Officer Ortega which are referenced in this report were either made to other witnesses or were recorded by his body-worn camera.

Junewood Court. In addition to knowing Magaña to be a suspect in an assault with a firearm investigation, Officer Eglin knew Magaña was recently released from prison and was on parole.

Senior Officer Jose Velasquez, stationed in an under-cover surveillance vehicle, communicated to Officer Eglin that he witnessed the driver of the Honda commit a traffic violation. Officer Eglin positioned his marked police unit behind the Honda to initiate a traffic stop.

Officer Eglin activated his overhead red and blue lights with a solid forward-facing red light. The Honda's driver did not yield but continued down the street at a low speed. The driver's window was down, and Officer Eglin was able to see the face of the driver, later identified as Magaña, in the reflection of the side rear-view mirror as he looked back at Officer Eglin. Magaña slightly jerked the car side to side and slowed down before quickly speeding up and fleeing.

Officer Eglin activated his siren and pursued Magaña while Officer Gonzalez notified dispatch that they were in pursuit of the Honda. Within the first few minutes of the pursuit, the Honda traveled between 40 and 60 mph through residential neighborhoods and ran multiple stop signs. As the Honda traveled northbound on Oxnard Boulevard, it slowed down at the intersection with Gonzales Road and the front passenger, later identified as Loma Flats gang member Richard Navarro, opened the door, jumped from the vehicle, and ran.<sup>2</sup> Other units broke off to chase the passenger and Officer Eglin continued his pursuit of Magaña in the Honda.

During the pursuit, Magaña reached speeds of up to 70 mph as he raced down Oxnard Boulevard. Magaña turned eastbound onto Vineyard Avenue, collided with the center median on Vineyard Avenue, lost control, overcorrected, crossed all three lanes of traffic, and collided with the southern curb of the sidewalk causing the front right tire to

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<sup>2</sup> Navarro told investigators he had been with Magaña briefly. He stated he was getting a ride and did not know why Magaña chose to evade officers. He asked to be let out before he exited the vehicle.

go flat. Despite the damage, Magaña traveled on Vineyard Avenue at speeds of 40 to 50 mph and drove onto the U.S. Highway 101 northbound onramp at about 30 mph.

Once on U.S. Highway 101, Magaña sped up to 80 mph as the damaged tire shed debris on the roadway. Officer Eglin observed that Magaña would appear to lose control and slow down to 35 to 40 mph before speeding up again. Additional OPD units drove ahead to stop traffic from entering U.S. Highway 101 as Officer Eglin continued his pursuit. The Honda exited at Main Street in Ventura and immediately ran a red light at Main Street and a second at Mills Road.

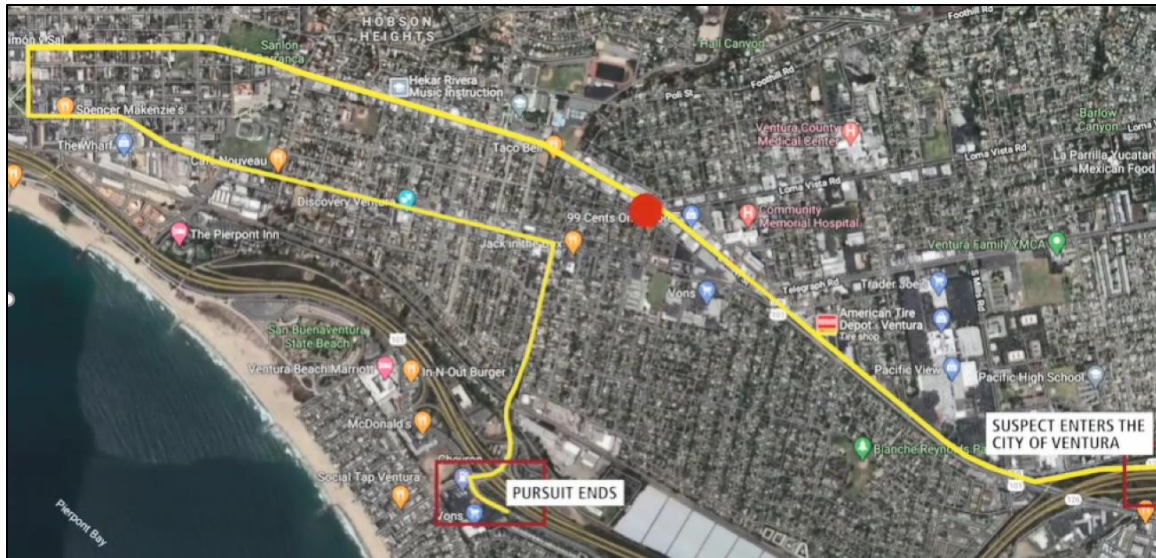
Magaña continued on Main Street, driving up to 70 mph and ran red lights at Telegraph Road, Loma Vista Road, and Seaward Avenue. As the Honda approached Aliso Lane, Officer Eglin was informed by dispatch to discontinue his pursuit and allow VPD units to take over as the lead vehicles. Officer Eglin's pursuit spanned 9.5 miles.

### 3. Officer Jameson Spies

On November 5, 2020, VPD Officer Spies was on duty in uniform and driving a marked patrol vehicle in Ventura. That evening, as he cleared an unrelated call for service, Officer Spies heard VPD Officer Ortega broadcast over the radio that OPD was pursuing a vehicle headed toward Ventura. A short time later, dispatch broadcast that OPD needed assistance and requested a K-9 unit. Officer Ortega responded that he was en route to the location broadcast by dispatch.

Officer Spies joined the Honda pursuit near the intersection of Loma Vista Road and Katherine Drive. He assumed the number two position behind Officer Ortega and took over radio communications for the pursuit from Officer Ortega. At that time, the OPD units pulled out of the pursuit.





*This map shows the path Magaña traveled from the location where he exited U.S. Highway 101 in Ventura to the location where his car stopped. The red dot shows the approximate location where VPD Officer Ortega took over the pursuit of Magaña from the OPD.*

Officer Spies received a communication over the radio that the occupant of the vehicle was wanted for a violation of Penal Code section 245, assault with a deadly weapon, and was possibly armed. The Honda continued southbound on Seaward Avenue. Officer Spies heard over the radio that VPD officers deployed a spike strip at Seaward Avenue and Alessandro Drive.

Officer Spies saw the Honda drive over the spike strip and sustain damage to its remaining tires. The Honda slowed down but continued southbound on Seaward Avenue, over U.S. Highway 101, and eastbound onto Harbor Boulevard. As the Honda turned onto Harbor Boulevard, Officer Spies noticed smoke coming from the vehicle and saw the Honda drift across the westbound lanes and onto the westbound shoulder of Harbor Boulevard, where it came to a stop.



*The red dot shows the approximate location where Magaña ran over the spike strip deployed by VPD.*

Officer Spies saw a Hispanic male, later identified as Magaña, wearing a black shirt and blue jeans exit the driver's door as the car stopped. Magaña ran eastbound on Harbor Boulevard on the shoulder of the road. Officer Spies also saw Officer Ortega exit his vehicle and pursue Magaña on foot.

Officer Spies drove around Officer Ortega's parked vehicle to cut off Magaña. As he drove around Officer Ortega's vehicle, Officer Spies heard at least six rounds fired and saw flashes but could not pinpoint the origin of the flashes or audible gunshots. Simultaneously, Officer Spies saw Magaña look and turn toward Officer Ortega, turn back away, continue running, and stumble to the ground.

Officer Spies brought his vehicle to a stop in the westbound lanes of traffic on Harbor Boulevard. Officer Spies broadcast that shots were fired and exited his patrol car. Officer Spies approached Magaña as he lay on the ground and did not see any weapons in Magaña's hands. Officer Spies heard Officer Ortega give verbal commands to Magaña but did not hear what they were. Other officers rushed to Magaña, and Officer Spies saw Officer Ortega step away from the area.

Officer Spies spotted a firearm and detached magazine on the shoulder of Harbor Boulevard, a few feet behind Officer Ortega. Officer Spies stood by the weapon until it could be marked by crime scene investigators.

#### 4. Corporal William Griffin

On November 5, 2020, at approximately 7:15 p.m., Corporal Griffin was on duty in a marked VPD patrol vehicle when he was notified over the radio that OPD officers were pursuing a Honda into Ventura. Dispatch announced that the pursuit was heading southbound on Seaward Avenue toward U.S. Highway 101. Corporal Griffin traveled to the Mobile Gas station at 779 Seaward Avenue, just north of the U.S. Highway 101 onramp and overpass. Once at that location, Corporal Griffin deployed spike strips across the southbound number one lane of Seaward Avenue and communicated the deployment over the radio. A short time later, the Honda ran over the spike strips, which appeared to damage its remaining tires to the point where it lost speed and appeared more difficult to control. The Honda continued southbound on Seaward Avenue, over U.S. Highway 101 and eastbound on Harbor Boulevard and out of Corporal Griffin's view.

#### 5. Sergeant Rick Payne

On November 5, 2020, Sergeant Payne was on duty in a marked patrol vehicle when he heard Officer Ortega broadcast he was pursuing a vehicle in the area of Victoria Avenue and U.S. Highway 101. Sergeant Payne responded and joined the pursuit on westbound Main Street, west of Mills Road.

During the pursuit, Sergeant Payne was advised over the radio that the occupant of the vehicle was a suspect in a "245 [assault] with a gun." Sergeant Payne was the sixth or seventh unit in the pursuit, and he watched the suspect vehicle veer into oncoming traffic on Harbor Boulevard and come to a stop. Sergeant Payne saw the driver's door of the suspect vehicle open and saw the suspect exit the vehicle and run east on Harbor Boulevard. Sergeant Payne drove around the other units to cut off the suspect.

During this time, Sergeant Payne heard two shots that he suspected were fired from the fleeing suspect, as they did not sound like they were fired from a VPD standard issue

Sig Sauer handgun. Sergeant Payne heard Officer Ortega say, “Shots fired” over the radio and heard what he thought were multiple shots fired by Officer Ortega.

As he came around the other patrol units, Sergeant Payne saw the suspect look back and continue running down Harbor Boulevard. Sergeant Payne heard three to four more shots fired. Sergeant Payne stopped his vehicle to avoid driving into any crossfire and saw the suspect fall to the ground and stay down. Sergeant Payne parked his vehicle and exited to assist. Sergeant Payne saw multiple motorists stopped in their cars on Harbor Boulevard in front of the suspect’s path of travel.

#### 6. Officer James Dillard

On the evening of November 5, 2020, Officer Dillard was working in a marked patrol vehicle and joined the pursuit on westbound Main Street in the number three position behind Officer Ortega and Officer Spies. Officer Dillard followed the Honda as it made its way from westbound Main Street onto eastbound Thompson Boulevard and onto southbound Seaward Avenue. Officer Dillard watched the Honda drive over a spike strip deployed at 779 Seaward Avenue and continue onto eastbound Harbor Boulevard.

Officer Dillard saw the Honda drive into oncoming traffic and stop at the north curb line of Harbor Boulevard. Officer Dillard was approximately 50 to 60 feet from the Honda when he saw Magaña exit the driver door and run east on Harbor Boulevard.

Officer Dillard drove closer to Magaña and saw Magaña turn toward Officer Ortega. Magaña lifted his arms in front of him in what appeared to be a “shooting stance.” Officer Dillard could not see any object in Magaña’s hands, but it looked to him as though Magaña was shooting at Officer Ortega. Officer Dillard heard multiple gunshots.

As he exited his vehicle, Officer Dillard heard two to three additional shots fired. Officer Dillard saw Magaña fall to the ground and get back up. Officer Dillard ran toward Magaña and yelled at Magaña to get on the ground. Magaña fell and rolled over onto his back. Officer Dillard assisted other officers in handcuffing Magaña and rendering aid.

## 7. Officer Jaclyn Stone

On November 5, 2020, Officer Stone joined the pursuit of the Honda in her marked patrol vehicle in Ventura. When the Honda stopped on Harbor Boulevard, Officer Stone parked her unit near Officer Ortega's and saw Magaña exit his vehicle and run away from Officer Ortega.

While still in her vehicle, Officer Stone saw Magaña turn his upper body toward her and Officer Ortega's position, Officer Stone heard two shots and heard someone state, "Shots fired" over the radio as she exited her vehicle. She pursued Magaña on foot. During her pursuit, Officer Stone heard two to three more shots fired. Officer Stone saw Magaña fall, get back up and fall again.

Officer Stone, along with VPD Officer George Orozco, were the first to contact Magaña when the shooting ceased. Officer Stone and Officer Orozco immediately placed handcuffs on Magaña. Officer Stone noticed what appeared to be a bullet hole in the upper left side of Magaña's torso and applied pressure to the wound with a "chest seal," a first aid device designed to stop bleeding. Officer Orozco found another bullet wound located on Magaña's lower torso and worked with other responding officers to stuff the wound with gauze to stop the bleeding. Officer Stone and Officer Orozco started CPR on Magaña.

Officers had not yet determined if other suspects were in the Honda. Officer Stone, with the help of other officers, picked up Magaña and carried him behind nearby police vehicles a few feet away so that they would have cover should another confrontation take place at the Honda. Once behind cover, the officers continued CPR.

Shortly thereafter, the officers were informed that paramedics were unable to access their location due to the number of police vehicles in the roadway. Officer Stone and the other officers again picked up Magaña and carried him a few yards away to the Chase Bank

parking lot. Once there, paramedics took over life saving measures. At 7:38 p.m., paramedic Jeremy Kohlhepp informed Officer Stone that Magaña was deceased.

8. Witness R.H.

R.H. was driving westbound in the number two lane on Harbor Boulevard with her two nieces and her daughter. She saw police vehicles with their overhead lights turning from Seaward Avenue onto eastbound Harbor Boulevard. R.H. immediately pulled over to the right shoulder of Harbor Boulevard and parked to allow the police to pass her.

R.H. noticed that the police were pursuing a vehicle with its headlights out. The pursued vehicle swerved into the westbound lanes, heading toward R.H. where she was parked. R.H. quickly drove into the shopping center parking lot at 2499 East Harbor Boulevard. She parked her vehicle in the third stall up from the entrance to the parking lot and had an unobstructed view of Harbor Boulevard through her windshield.

R.H. saw the pursued vehicle had stopped on the far shoulder of Harbor Boulevard. From approximately 100 feet, she saw Magaña emerge from the driver's side of the vehicle and run eastbound down the shoulder. Police vehicles had stopped in the eastbound lanes of Harbor Boulevard and three to four officers exited their vehicles, guns unholstered, yelling at the male, "Stop" and, "Freeze!" R.H. said that her windows were rolled up, but she could clearly hear the officers shouting their commands.

As the male continued to run, R.H. heard multiple shots fired. R.H. thought that each officer shot two to four times and estimated the male was 15 to 20 feet from the officers when the shots were fired. R.H. said that the male fell to the ground, got back up and continued to run. R.H. said the officers again told the male to stop and fired again when he did not comply. The male fell to the ground again.

R.H. believed that each officer shot their weapon because she could see their fingers on the triggers. R.H. thought that the second burst of shots consisted of six shots fired. R.H.

added that she did not see muzzle flashes or smoke emanate from the firearms. R.H. said she did not hear any gunshots other than the two bursts of gunfire she described. R.H. stated that she did not see the male in possession of a gun.

#### 9. Juvenile A.

Juvenile A. was seated in the front passenger seat of R.H.'s vehicle as they drove westbound on Harbor Boulevard. Juvenile A. noticed several police cars chasing another car on Harbor Boulevard, traveling eastbound toward her. The car being chased swerved into the westbound lanes and R.H. stopped her vehicle. The windows were rolled up, the radio was off, and Juvenile A. had a clear, unobstructed view out the windshield. Juvenile A. saw a male get out of the car and begin running down the shoulder of Harbor Boulevard. The male ran approximately seven to eight feet before Juvenile A. heard three to four gunshots. The male fell to the ground, got up, and took a couple of steps. Juvenile A. heard one more gunshot and the male fell face down on the pavement. Juvenile A. estimated that there were three to four officers present with their guns drawn when she heard the gunshots but did not see who fired the gunshots. Juvenile A. was unable to see the male's hands as he ran and fell and did not know if he had anything in them.

#### 10. Amber Donovan

Investigators located Amber Donovan, Magaña's fiancé, and interviewed her regarding the incident. She stated she had known Magaña about seven months prior to this incident. Magaña told her multiple times that he was not going back to prison. On one such occasion, Donovan asked Magaña if he was going to have the "cops take [him] out," to which Magaña replied, "Fuck it. I'm not gonna go spend life in prison and do the things I have to do in prison and I'm never gonna get out if that[']s the case."

Donovan told investigators that on November 5, 2020, she drove her black 1999 Honda Accord to work at BJ's Restaurant in Thousand Oaks. Magaña went with her and waited

in the car in the parking lot as he often did. She took a soda out to him at about 4:45 p.m. Shortly thereafter, Magaña texted Donovan telling her he was going to see a friend and would be back to pick her up.

At about 6:45 p.m., Donovan texted Magaña and asked where he was. Magaña said he was on his way back. At approximately 7:21 p.m., Donovan noticed she had eight missed phone calls from Magaña starting at 7:15 p.m. Donovan immediately walked outside the restaurant and called Magaña back, but his phone went to voicemail.

At about 7:22 p.m., Donovan called Magaña again and he answered. Magaña was hysterical and yelled that he was being chased by the police on the freeway in Ventura. Donovan could hear the sirens and told Magaña, “Get away. Run. Do something.” Magaña said he could not get away and that his tires were flat. Magaña said, “I’m not going back to prison.”

Magaña told Donovan that he loved her, that she was the best thing that ever happened to him, and that she should go on with her life. Donovan said she “knew what he was going to do” and pleaded with Magaña, “Don’t do this.” Magaña told Donovan that he would stay on the phone with her the whole way. Donovan told Magaña not to “do anything stupid,” to which he replied, “I love you.”

At that point, Donovan heard Magaña exit his vehicle and heard police yell, “Put your hands up!” and “Get down!” Donovan heard Magaña reply, “Fuck you.” Donovan heard what she thought was “Fuck you” a second time.<sup>3</sup> Donovan heard four to five gunshots followed by police speaking. Donovan remained on the phone for approximately two hours, and 38 minutes until Magaña’s phone died. Donovan later consented to allow police to search the contents of her phone where they located a photo of Magaña with a handgun that may have been the gun used in the incident.

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<sup>3</sup> The audio recorded by Officer Ortega’s body-worn camera does not corroborate Donovan’s statement regarding what she heard over the phone once Magaña exited his car.



B. Description of Video Recorded by Officer Ortega's Body-Worn Camera

Officer Ortega's body-worn camera was attached to the outside of his uniform on his chest. Officer Ortega's body-worn camera footage, from when he first activated it at 19:18:09 to when he deactivated it at 19:29:26, is 11 minutes, 16 seconds long. The date and time are displayed in the upper-right corner of the video image and the time is displayed in 24-hour clock format.

Officer Ortega's body-worn camera was activated by Officer Ortega pressing a button on the device. Once activated, there is a period of about 30 seconds where video is actively recording, but audio is not. The footage contained the following relevant events. All distances noted are approximate and were based on the body-worn camera footage using the traffic lines which are approximately five feet long and 15 feet apart:

19:18:38: Officer Ortega's body-worn camera begins recording audio. While Officer Ortega is seated in his vehicle, the camera points up at the dashboard and windshield toward the sky.

19:18:47: Officer Ortega asks over the radio if Oxnard Police is requesting Ventura Police to take over the pursuit.

19:19:12: Officer Ortega receives confirmation that he will take over the pursuit.

19:20:56: Officer Ortega requests a "stop stick"<sup>4</sup> and indicates that he will deploy his K-9 if the driver flees. Over the radio other officers can be heard updating the direction of the pursuit, the speed of the Honda, and Magaña's multiple traffic violations as they occur.

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<sup>4</sup> A "stop stick" is a type of tire deflation device similar to a spike strip.

19:25:18: Dispatch advises Officer Ortega that the suspected occupant of the Honda was confirmed by Oxnard Police Department to have a “245 want”<sup>5</sup> and is possibly in possession of a firearm.

19:25:35: Officer Ortega states over the radio that the Honda went over the “stick.”

19:26:13: Officer Ortega stops his vehicle, puts the vehicle in park and opens the driver’s door. He gets out of the vehicle while he simultaneously unholsters his handgun with his right hand and yells “Miles, fuss! Miles, fuss! Miles, Miles, fuss!”<sup>6</sup>

19:26:14: Magaña exits the Honda from the driver’s seat and begins running around the left side of the hood and away from Officer Ortega along the curb line. Officer Ortega runs in pursuit. Officer Ortega has a handgun in his right hand and his left hand is empty.

19:26:17: Magaña is running along the curb line approximately 50 feet ahead of Officer Ortega.

19:26:18: Magaña trips approximately 40 feet in front of Officer Ortega and Magaña’s handgun fires. Magaña does not lose possession of the handgun.

19:26:19: Magaña rolls over into a seated position facing Officer Ortega, who is approximately 30 feet away. Magaña’s hands are together, arms extended straight out, and his face is lined up behind his outstretched hands, as if aiming and preparing to shoot Officer Ortega. Officer Ortega raises his firearm and aims at Magaña but does not shoot.

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<sup>5</sup> A “245 want” is a reference to the existence of probable cause or a warrant to arrest for a felony violation of assault with a deadly weapon in violation of Penal Code section 245.

<sup>6</sup> “Miles fuss” (foos) is a German command to Officer Ortega’s K-9 “Miles” to exit the vehicle and come to Officer Ortega’s side and await further instruction.



*Magaña in a kneeling shooting stance, left arm braced on his left knee, hands together, arms outstretched in front of his face as he attempts to fire his weapon at Officer Ortega.*

19:26:20: Magaña rises to one knee with his right knee on the pavement. Magaña assumes a kneeling shooting stance with both hands out in front of him, his left elbow planted on top of his left knee, and his face tucked behind his hands and aiming his handgun straight at Officer Ortega, who is approximately 20 feet away. Officer Ortega fires three times in quick succession. Magaña stands, turns, and runs away from Officer Ortega.

19:26:21 to 19:26:23: Magaña stumbles and falls on the pavement, gets back up and continues running away as Officer Ortega follows him.

19:26:23 to 19:26:24: Officer Ortega fires two more shots at Magaña in quick succession. Magaña stumbles forward again and continues moving away from Officer Ortega.

19:26:24: Magaña grabs his gun which had fallen onto the pavement. Officer Ortega fires two more shots in quick succession and Magaña releases the gun and stumbles to the ground.

19:26:25 to 19:26:28: Officer Ortega continues moving toward Magaña and commands Magaña to, “Stop moving!” Magaña rolls to a seated position and faces Officer Ortega. Magaña gets back to his feet, turns away from Officer Ortega and again runs. Officer Ortega orders Magaña to, “Stop moving” and orders Magaña to, “Get on the ground!”

19:26:28: Another officer orders Magaña to the ground.

19:26:30: Magaña stumbles to the ground.

19:26:33: Officer Ortega walks past Magaña’s handgun towards Magaña and alerts the officers on scene that there is a “Gun behind us.”

19:27:04: Officer Ortega lowers his weapon and walks away from Magaña as other officers render aid to Magaña. Officer Ortega walks back toward his vehicle, passing Officer Spies, who is standing over Magaña’s gun. Officer Spies asks Officer Ortega if he is okay and Officer Ortega replies, “I’m good, I’m good.”

19:27:18: Officer Ortega asks an unknown person, “Where’s my dog?” Officer Ortega calls, “Miles, fuss!”

19:28:05: Officer Ortega confirms that Miles is in Officer Ortega’s vehicle.

19:28:31: Officer Ortega walks back to his vehicle and closes the driver’s door. Officer Ortega walks to Sergeant Sutherland who asks him if he is alright. Officer Ortega replies, “Yeah.” Officer Ortega asks, “Can you double check? I think he fired at me.” Sergeant Sutherland points his flashlight at Officer Ortega’s body. Officer Ortega walks to the rear passenger door and opens it remotely and pets Miles and asks Miles if he is okay. Another officer asks Officer Ortega if he is okay, to which Officer Ortega responds, “I’m good. I’m pretty sure he took a – I’m pretty sure he fired at me.”

C. Javier Magaña's Background

Javier Magaña was born on November 19, 1987. At the time of his death, he was six feet tall and weighed 239 pounds. He lived with Amber Donovan in Thousand Oaks. He was a documented Loma Flats gang member. Loma Flats is an active turf-based criminal street gang that operates in central Oxnard.

Magaña had a lengthy criminal record. He was convicted in Ventura County Superior Court of multiple misdemeanor offenses beginning in 2006. In 2008, Magaña was convicted of felony carjacking for which he was sentenced to three years in state prison, followed by a parole violation in 2011. His next felony conviction was in 2012 for vandalism for which he was sentenced to eight months in state prison. Also in 2012, Magaña was convicted of felony possession of a firearm by a convicted felon, misdemeanor participation in a criminal street gang, and misdemeanor obstruction of a peace officer for which he was sentenced to five years in state prison. In 2013, while incarcerated in state prison, Magaña was convicted of a felony possession of a deadly weapon by a prisoner for which he was sentenced to four additional years in state prison.

III.

PHYSICAL EVIDENCE

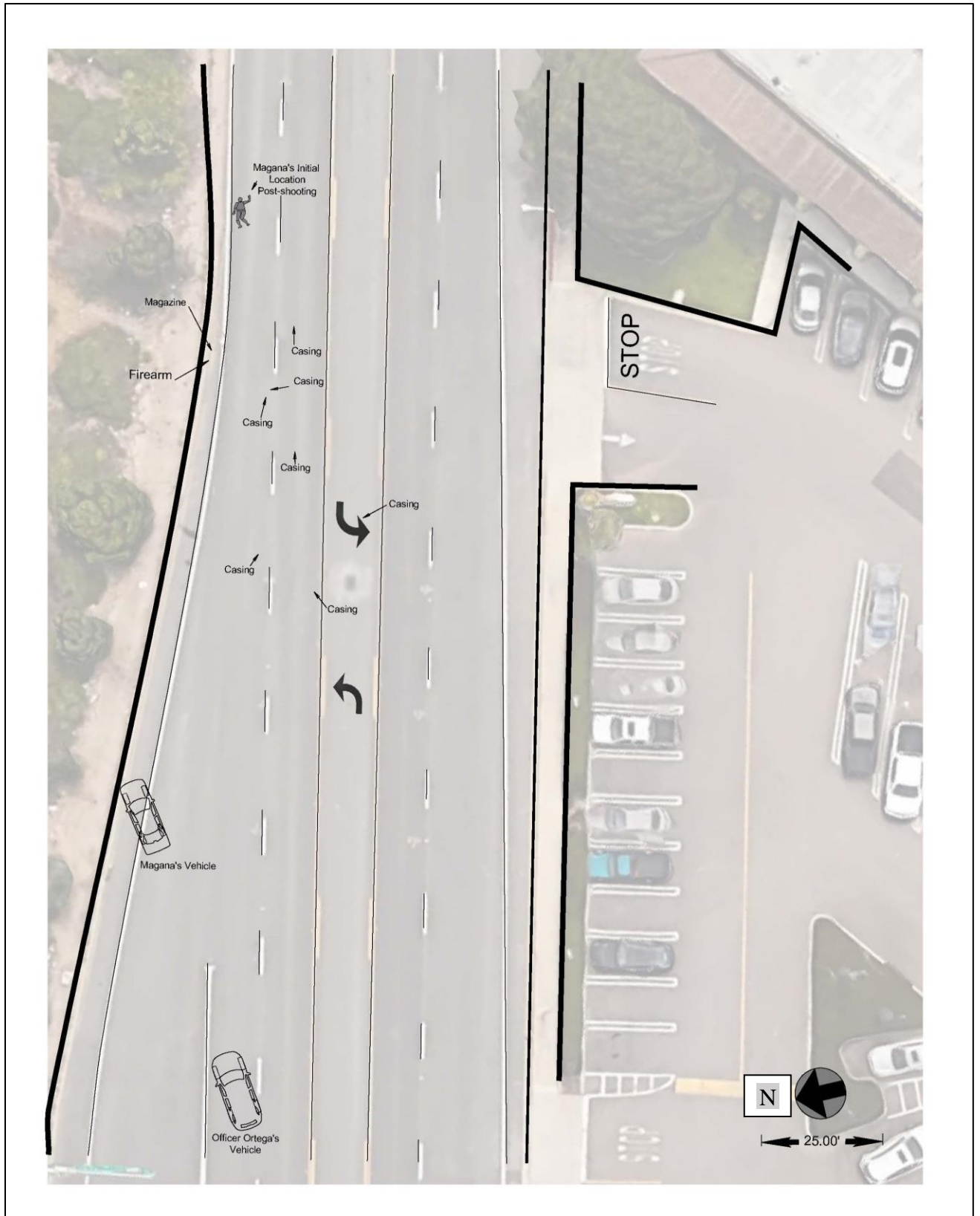
A. Incident Scene

Harbor Boulevard is a wide-open expanse of asphalt, bordered to the north by U.S. Highway 101 and a shopping center to the south. The shopping center includes multiple businesses and a large parking lot. Officers canvassed this entire area looking for physical evidence and witnesses.

Officer Spies located Magaña's weapon. The magazine had dislodged from the gun when Magaña dropped it on the pavement and was lying beside the gun. Both were collected as evidence. The magazine held seven live 9mm cartridges. The spent casing from the bullet

fired by Magaña was lodged in the chamber of his handgun indicating the weapon malfunctioned and failed to eject the casing after the bullet was fired.

VPD crime scene technicians processed the scene and collected evidence.



*The diagram summarizes the relevant physical evidence found and collected at the scene based on measurements taken by VPD crime scene technicians.*

VPD examined and identified the handgun as a “ghost gun”<sup>7</sup> with no serial number on any of its parts. It had a “Polymer 80” plastic housing, a metal barrel designed to fire a 9mm bullet, and a metal Glock 9mm magazine with a 10-round capacity.



*Magaña’s gun can be seen here with the spent 9mm casing that was stuck in the chamber being manually extracted by pulling back the slide.*

Seven expended 9mm casings were located at the scene but no expended bullets were found. Officers and technicians searched surrounding businesses and residences to try and locate expended bullets but were unsuccessful.

Magaña’s handgun and the spent casing recovered from the chamber were submitted to the Ventura County Crime Lab. They were analyzed by a forensic scientist who determined that Magaña’s handgun fired the casing. Forensic scientists also examined Magaña’s handgun and magazine for the presence of fingerprints and DNA and found no usable fingerprints. They did locate Magaña’s DNA on the handgun’s trigger, grip, magazine release, and on the magazine.

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<sup>7</sup> A “ghost gun” is a firearm assembled from separate plastic and metal parts. Because they have no serial numbers, they are untraceable.





*Magaña’s gun can be seen here with the spent 9mm casing that was stuck in the chamber when the gun was recovered, along with the magazine and the seven live 9mm cartridges that were removed from the magazine.*

Officer Ortega’s handgun, a Sig Sauer P226, was also collected at the scene. The magazine was designed to hold 15 9mm rounds. At the time Officer Ortega’s gun was collected, the magazine contained nine live 9mm cartridges, indicating Officer Ortega fired no more than seven rounds.<sup>8</sup>

Seven expended 9mm casings were located at the scene. Two 9mm bullets were recovered from Magaña’s body. A forensic scientist with the Ventura County Crime Lab examined Officer Ortega’s handgun, the seven expended casings and the two recovered bullets and determined the casings and bullets were fired by Officer Ortega’s handgun.

There was no evidence found at the scene that indicated any other officer fired at Magaña or used any other weapon against him.

Surveillance footage was obtained from all businesses in the immediate area and none of the footage recorded the shooting.

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<sup>8</sup> While the magazine held 15 rounds, the gun was capable of holding 16 rounds if one cartridge was in the chamber and the gun held a full magazine.

## B. Vehicle Inspections

On November 9, 2020, VPD searched the black Honda Accord driven by Magaña pursuant to a search warrant. Items found in the vehicle included 18.1 grams of small rock-like substances later determined to be methamphetamine, a methamphetamine pipe, and a 9mm handgun barrel. The damage to the vehicle included damage to the windshield and front passenger window caused after the shooting when officers made entry into the vehicle to confirm nobody else was inside. There was also damage to the front bumper, minor damage to the rear bumper on the passenger side, a flat front driver's side tire, a flat rear driver's side tire with spikes lodged in it, and the front passenger side tire was missing.

On November 12, 2020, VPD Detective Tyler Buck conducted an examination of Officer Ortega's patrol vehicle and found no evidence of bullet strikes or damage of any kind. A mechanical inspection of the vehicle revealed it was in perfect working condition. The automatic rear door opening system, which opens the rear passenger door of the vehicle when activated by a remote control worn on Officer Ortega's utility belt, was found to be working properly.<sup>9</sup> Detective Buck tested the remote and found it to work by pressing any combination of the three buttons on the remote.<sup>10</sup>

The condition of the partition separating the front and backseats of Officer Ortega's vehicle was not noted at the scene or during the vehicle inspection, however, Officer Ortega's body-worn camera briefly recorded the interior of the backseat when Officer Ortega contacted Miles after the shooting. A still from that video depicting the partition was examined by VPD K-9 Officer Anthony Avila. Officer Avila's opinion was that the door in the partition appeared to be open.

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<sup>9</sup> The remote-control device allows a K-9 officer to allow his dog to exit a patrol vehicle while the officer is away from the vehicle

<sup>10</sup> A photo was taken of Officer Ortega in full uniform at VPD on November 5, 2020, after the shooting. The black remote door control with three buttons can be seen on Officer Ortega's right side, just to the right of his belt buckle.

C. Daniel Inglis – Police K-9 Expert

Daniel Inglis is an independent police K-9 instructor and runs the Inglis Police Dog Academy. Inglis currently trains dogs for 22 different police departments in California, Arizona, Colorado, and Oregon, including the Ventura Police Department. Inglis has personal knowledge of Officer Ortega's training and experience as a K-9 handler from working with him for the last 10 years. During that time, Officer Ortega has used three dogs including his current dog, Miles. Inglis stated that Miles was trained for work in patrol, hard surface tracking, and explosive ordinance detection.

On November 11, 2020, Inglis was shown Officer Ortega's body-worn camera footage by VPD officers. Inglis believed that Officer Ortega properly handled his K-9 during the incident. Inglis stated that Officer Ortega's command of "Miles, fuss!" was an order to Miles to come to Officer Ortega's side and await further command. Inglis believed Officer Ortega thought that Miles had exited the vehicle after the "fuss" command because after the shooting, Officer Ortega asked where his dog was, and went back to his vehicle to confirm Miles was still inside.

Inglis stated that a door remote is used to open the rear passenger door of a patrol vehicle by pushing a button on the remote for two or three seconds. Inglis opined that there were three possible reasons for Officer Ortega's patrol vehicle's door not opening:

- 1) Officer Ortega may have chosen not to open the door remotely to protect Miles due to the fact that multiple police units were passing on the passenger side of the vehicle;
- 2) Officer Ortega may have tried to use the remote but did not hold down the button long enough to open the door; or 3) Officer Ortega may have used the remote properly and the door opening system malfunctioned.

D. Autopsy

On November 6, 2020, Dr. Christopher Young, Chief Medical Examiner at the Ventura County Medical Examiner's Office, conducted an autopsy on Javier Magaña.

Dr. Young found three separate gunshot wounds on Magaña's body.<sup>11</sup> Gunshot wound number one entered the left upper chest, penetrating the pericardial sac, right ventricle of the heart, right hemidiaphragm, and the liver. The trajectory was left to right, front to back and downward. Gunshot wound number two entered the right lower back where the back curved and transitioned to the side of Magaña's body and perforated subcutaneous tissues. The trajectory of the bullet was upward, slightly left to right and slightly back to front. Gunshot wound number three struck the interphalangeal knuckle of the right fourth finger traveling toward the fingertip. Dr. Young recovered bullets from gunshot wounds one and two. They were collected by VPD detectives and booked into evidence.

Dr. Young also noted abrasions on Magaña's face, extremities, and torso in addition to methamphetamine intoxication and moderate atherosclerotic artery disease. Toxicology testing of Magaña's blood detected caffeine, cotinine (a metabolite of nicotine), amphetamine (a metabolite of methamphetamine), and methamphetamine.<sup>12</sup> Magaña was also examined for gunshot residue. Lead particles commonly associated with gunshot residue were found on both of Magaña's hands.

Dr. Young determined that the cause of death was a "gunshot wound of the chest."

#### IV.

#### LEGAL PRINCIPLES

##### A. Law of Homicide and Self-Defense

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

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<sup>11</sup> The numbering of the wounds does not reflect the order in which they occurred.

<sup>12</sup> The level of methamphetamine in Magaña's blood was measured at 5300 ng/ml. According to the toxicological report from NMS Labs, "[b]lood levels of 200 to 600 ng/ml of methamphetamine have been reported in methamphetamine abusers who exhibited violent and irrational behavior."

Homicide is justifiable when committed by any person “resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” (Pen. Code section 197(1).)

CALCRIM 505 sets forth the specific jury instructions on self-defense. It provides 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.” (*Judicial Council of California Criminal Jury Instructions (November 2020 Update), CALCRIM 505, “Justifiable Homicide: Self-Defense or Defense of Another.”*)

CALCRIM 505 further provides that in deciding whether that person’s “beliefs were reasonable, consider all the circumstances as they were known to and appeared to [that person] and consider what a reasonable person in a similar situation with similar knowledge would have believed. If [that person]’s beliefs were reasonable, the danger does not need to have actually existed.” It also provides that “[a person] is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger has passed. This is so even if safety could have been achieved by retreating.” (*Ibid.*)

Police officers may use deadly force “only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” (Pen. Code § 835a(a)(2).)

“[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight,

and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” (Pen. Code section 835a(a)(4).)

A police officer “is justified in using deadly force upon another person only when the officer reasonably believes based on the totality of the circumstances, that such force is necessary...[t]o defend against an imminent threat of death or serious bodily injury to the officer or to another person” or “[t]o apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonable believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” (Pen. Code section 835a(c)(1)(A) & (B).)

A police officer “need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested.” However, retreat does not mean tactical repositioning or other de-escalation tactics. (Pen. Code section 835a(d).)

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.” (*Ibid.*)

Under the Fourth Amendment, police are “not required to use the least intrusive degree of force possible” but may use only such force as is objectively reasonable under the circumstances. (*Forrester v. City of San Diego* (9th Cir. 1994) 25 F.3d 804, 807.) An officer’s use of deadly force is reasonable only if “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” (*Tennessee v. Garner* (1985) 471 U.S. 1, 3.) Furthermore, “if police officers are justified in firing at a suspect in order to end a severe threat to public safety,

the officers need not stop shooting until the threat has ended.” (*Plumhoff v. Rickard* (2014) 572 U.S. 765, 777; 134 S.Ct. 2012, 2022.)

“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, supra*, 490 U.S. at 396.)

#### B. Javier Magaña’s Criminal Conduct

Magaña engaged in criminal conduct immediately prior to the shooting, and at the time of the shooting he posed an imminent danger to Officer Ortega and all others in the vicinity. Had he survived, Magaña could have been charged with the commission of the following crimes for his actions on November 5, 2020:

- Attempted murder of a peace officer in violation of Penal Code sections 664 & 187 and the special allegation, use of a handgun in violation of Penal Code section 12022.53(c).
- Assault on a peace officer with a firearm in violation of Penal Code section 245(d)(2) and the special allegation, use of a handgun in violation of Penal Code section 12022.53(c).
- Negligent discharge of a firearm in violation of Penal Code section 246.3(a);
- Illegal possession of a loaded firearm in violation of Penal Code section 25850(a);
- Illegal possession of a firearm by a felon in violation of Penal Code section 29800(a)(1);
- Resisting a peace officer with force in violation of Penal Code section 69;
- Hit and run, in violation of Vehicle Code section 20002(a);
- Evading a peace officer with reckless driving in violation of Vehicle Code section 2800.2; and

- Strike prior pursuant to Penal Code sections 667 and 1170.12.

## V.

### ANALYSIS

At approximately 4:45 p.m. on November 5, 2020, Magaña was parked in Amber Donovan's car in a parking lot in Thousand Oaks. At 6:35 p.m., he was in the same car in Oxnard. It is unknown where he went during the hours between 4:45 p.m. and 6:35 p.m., but what is known is that at 6:35 p.m., Magaña and fellow Loma Flats gang member Richard Navarro were in that car along with a loaded handgun and more than 18 grams of methamphetamine.

OPD officers attempted to stop Magaña based on an observed traffic violation and his involvement in a recent shooting. Magaña fled, leading them on a high and low speed pursuit even after one of his tires had been damaged. During the pursuit, Magaña slowed to allow Navarro to exit the car and flee on foot. Although the pursuing officers were unaware, Magaña had previously told Donovan that he would not go back to prison and confirmed to her that he would force the police to "take [him] out."

VPD Officer Ortega joined the pursuit as it entered Ventura. During that pursuit, he was informed that there was probable cause to believe that the Honda driver, Magaña, had committed an assault with a deadly weapon and was wanted by the Oxnard Police Department for that crime. He further learned that Magaña was possibly armed with a firearm; that Magaña led multiple OPD officers on a long-distance, high-speed pursuit from Oxnard into Ventura; that during the pursuit Magaña committed multiple traffic violations including speeding, running red lights, and driving into oncoming traffic in a complete disregard for the lives of innocent motorists and pedestrians; that Magaña



continued to flee despite not having a front passenger side tire and after having two more tires disabled from a spike strip; and that Magaña continued to flee despite his awareness of an overwhelming police presence.

During the pursuit, Officer Ortega was able to observe Magaña veer into oncoming traffic and stop his vehicle a matter of yards from other motorists, a residential neighborhood directly in front of him, and directly across the street from a shopping center containing businesses that were still open. Magaña exited his vehicle and fled on foot toward numerous potential innocent civilians. Officer Ortega exited his vehicle, called for his K-9, and began pursuing Magaña on foot.

Magaña held a loaded handgun as he fled. He tripped and stumbled, and his weapon fired a single shot. Magaña turned while on the ground and pointed his handgun at Officer Ortega. Magaña assumed a shooting position and aimed his loaded handgun at Officer Ortega. At that point, Officer Ortega was the only officer on foot in pursuit of Magaña. His K-9 was not at his side, he had no cover and no less-lethal weapon that could be deployed in time to stop Magaña from firing at him. At the same time, other officers were pulling up and stopping their vehicles behind Officer Ortega, in Magaña's line of fire.

After Officer Ortega fired the first three shots, Magaña regained his footing and continued fleeing. From the body-worn camera, it is unclear if any of the three shots struck Magaña. Magaña continued running toward civilian motorists, a residential neighborhood, and a shopping center while still armed with a loaded weapon that Officer Ortega reasonably perceived had been fired at him. Officer Ortega still had no cover and possessed no less-lethal option that would be effective at the distance between him and Magaña.

Officer Ortega fired two additional shots at Magaña. Magaña dropped his gun and stumbled to the ground. He grabbed his gun from the pavement. Officer Ortega still had no cover or effective less-lethal option while Magaña was trying to regain his gun. Officer Ortega fired two additional shots at Magaña.

Officer Ortega's use of deadly force was necessary to defend his life and the lives of others based on all the circumstances known to him at the time, and as seen through the eyes of a reasonable officer in his position. Officer Ortega fired seven shots at Magaña. When he fired his weapon, Officer Ortega had probable cause to believe Magaña had committed a violent felony with a deadly weapon. Officer Ortega had witnessed Magaña endanger the lives of others while driving to escape arrest. Once his car stopped, Magaña fled with a firearm which was discharged, confirming he presented an imminent threat of harm to nearby civilians and peace officers. Magaña aimed his handgun at Officer Ortega in a shooter's position, posing an imminent risk of death to Officer Ortega.<sup>13</sup>

Officer Ortega's use of deadly force was necessary to defend his life and the lives of others based on all the circumstances known to him at the time and as seen through the eyes of a reasonable officer in his position. The facts and circumstances known to Officer Ortega at each moment he fired his weapon would have led a reasonable officer to believe that lethal force was absolutely necessary to protect himself and others from Magaña's threat.

Initially, Officer Ortega only fired three of the 16 rounds available in his gun. Thus, it was clear that Officer Ortega was only using that force absolutely necessary to counter Magaña's threat. When the first three bullets fired did not stop Magaña, and Magaña continued to flee while armed with the weapon that had already fired, Officer Ortega had

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<sup>13</sup> Neither Magaña nor Officer Ortega appear to have been aware that an expended casing was jammed in the chamber of Magaña's handgun from an apparent failure of the extraction mechanism. This malfunction prevented Magaña from firing any further shots from his handgun.

no choice but to fire again. Officer Ortega showed restraint by firing only two of the remaining 13 rounds.

After Magaña dropped his firearm, Officer Ortega only fired when Magaña grabbed his firearm on the ground. Officer Ortega fired his weapon for the last time, again showing restraint by only firing two of the remaining 11 rounds. Officer Ortega did not fire as Magaña fell to the ground a second and last time. Instead, Officer Ortega waited to confirm Magaña was no longer holding a weapon. After realizing Magaña no longer posed a threat, Officer Ortega backed off as assisting officers immediately converged on Magaña to secure him and start life-saving measures.

Another testament to Officer Ortega's restraint was in his attempt to first deploy non-lethal force by releasing his K-9. Immediately upon exiting his vehicle, before Magaña fired his weapon, Officer Ortega could clearly be heard ordering his K-9 to exit the vehicle and come to him. From the video, it appeared that the rear passenger door was completely closed when Officer Ortega returned to the vehicle. Officer Ortega appeared to open the door remotely. At that moment, the remote door system worked. Thus, it is possible that when Officer Ortega first exited his vehicle, he attempted to open the back door of his vehicle via the remote on his utility belt but could not operate it properly under the stress of the situation or the system did not function properly in that moment.<sup>14</sup>

Despite the fact that the K-9 did not deploy as commanded, Officer Ortega was under no obligation to continue his attempt to use the K-9 given the totality of the circumstances. An officer "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." (Pen. Code section 835a(a)(2).) The rapid lethality of Magaña's actions demanded an almost instantaneous response from Officer Ortega of a magnitude great enough to immediately incapacitate Magaña. The only reasonable way to neutralize Magaña in that moment was to use deadly force with a firearm.

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<sup>14</sup> It is also possible that Officer Ortega chose not to open the door and intended for Miles to exit the vehicle through the partition opening and out the open driver's door, which Miles did not do.

Less than four seconds passed between when Officer Ortega exited his vehicle and gave his first command to Miles and when Magaña discharged his gun. Less than a second later, Magaña aimed his gun at Officer Ortega. Not only was the K-9 not “available” but to wait for the K-9 or try to deploy any other less-lethal weapon in that moment would not have been “reasonably safe” or “feasible to an objectively reasonable officer.” As noted above, because of the restraint exhibited by Officer Ortega, he barely had enough time to use his gun even though it was already in his hand. Had Magaña’s firearm not jammed, it is likely that Officer Ortega would not have had time to use his firearm before being shot at by Magaña.

Finally, the location and trajectory of the gunshot wound that struck Magaña in the lower right back does not affect the conclusion that Officer Ortega was justified in shooting Magaña. There is no way to establish which of the seven gunshots caused that injury. It could have happened when Magaña quickly turned his body as the first of Officer Ortega’s shots were fired, when Magaña reached for his firearm on the pavement, or when he grabbed the firearm with his left hand.

A person’s body position can drastically change between the time the decision to fire a weapon is made and the time a bullet physically impacts the target. Throughout this incident, Magaña was attempting to fire his handgun at Officer Ortega, fleeing while armed, or attempting to rearm himself. Each time Officer Ortega fired his weapon, he was justified in firing his weapon to protect himself, his fellow officers, and the civilians in the area.

## VI.

### CONCLUSION

It is the conclusion of the District Attorney that:

- A. Magaña committed numerous violent and serious felonies in the presence of officers and civilians. He was armed with deadly force;

- B. At the time Officer Ortega fired his handgun at Magaña, Officer Ortega honestly and reasonably believed that he and others were in imminent threat of death or great bodily injury;
- C. Officer Ortega honestly and reasonably believed that the immediate use of deadly force was necessary to defend himself and others against the danger posed by the armed Magaña each time Officer Ortega fired his weapon;
- D. Officer Ortega used no more force than was reasonably necessary to defend against the apparent danger posed by Magaña; and
- E. The fatal shooting of Magaña by Officer Ortega was a justifiable homicide.