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April 4, 2017

**PUBLIC REPORT ON OFFICER INVOLVED SHOOTING OF
JAVIER GARCIA GAONA
BY LAW ENFORCEMENT OFFICERS ON JULY 20, 2016**

The Santa Barbara County District Attorney's Office has completed its review of the investigation, conducted by the Santa Barbara County Sheriff's Office, of the homicide of Javier Garcia Gaona. A homicide which occurred on July 20, 2016, in Santa Maria, California.

The District Attorney finds the shooting was a justifiable homicide under Penal Code section 196(2).

SUMMARY

On July 20, 2016, at 8:44 a.m., the Santa Maria Police Department ("SMPD") received a 911 call reporting a suspicious male subject attempting to open the doors and staring into the window of Coast Hills Federal Credit Union, located at 1203 S. Broadway in the City of Santa Maria. The caller further reported that the subject was wearing all black and carrying two black bags. A second 911 caller reported seeing the same subject holding what appeared to be an eight-inch kitchen knife. The second caller also reported that the subject put the knife in his pants and was walking out of Wells Fargo Bank located at 1450 S. Broadway.

SMPD Officers Kevin Cota and Matthew Holton arrived in separate marked black and white Santa Maria Police Department vehicles; both were in full police uniform. The subject, later identified as Javier Garcia Gaona, was located near the center median on Broadway near the Foods Co. shopping center. As Officers Cota and Holton approached, Gaona removed a large knife from his pocket and yelled at the officers. Gaona then refused to drop the knife despite numerous orders to do so. Gaona instead walked towards Officer Holton with the knife. At that point Officer Holton had his firearm drawn. He pointed it at Gaona, but could not safely fire his weapon because of the number of people in the area. Gaona then continued to approach Officer Holton with the knife, which forced Officer Holton to back up in an attempt to keep a safe distance between himself and Gaona. Officer Holton then requested help from other officers and asked for someone to respond with a 40 mm less lethal launcher. Gaona then spoke intermittently in both English and Spanish, telling Officer Holton to shoot him. He also told Officer Holton that Officer Holton did not respect Gaona. As other officers arrived on scene, Gaona quickly walked towards the northwest corner of Enos and Broadway by the adjacent Foods Co. sign. Based upon Gaona's behavior, Officer Holton was concerned for the safety of the citizens in the parking lot. Officer Holton ran past Gaona in an effort to contain Gaona as

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well as prevent him from hurting anyone. At that point Gaona was holding the knife to his throat. He was also highly agitated, yelling and demanding to be shot by the officers.

Officers Ricardo Arias and Rafael Torres began talking to Gaona in Spanish. Officers Arias and Torres were asking him what they could do to help him while repeatedly telling him to drop the knife. Gaona refused to drop the knife. Several members of the Crisis Negotiation Team arrived on scene. At that point, Detective Diaz, a fluent Spanish speaker and trained member of the Crisis Negotiation Team took over the negotiation. Gaona was, once again, holding what appeared to be a large butcher or chopping knife to his throat. Detective Diaz tried to establish a rapport with Gaona by talking about his family; however, Gaona said, "I have no family, they all left me. I have nothing." Detective Diaz then attempted to talk to Gaona about work, his birthplace and other topics but Gaona would not respond to him. Because Gaona mentioned God, Detective Diaz tried to talk to Gaona about religion stating, "You know it's a sin to kill yourself." Gaona replied, "I am not going to kill myself, you are going to kill me. You guys are here to hurt me." Detective Diaz repeatedly told Gaona that they did not want to hurt him. Detective Diaz described Gaona as agitated, angry and upset during their entire contact. During this time Gaona either had the knife to his own throat or was waving it around refusing to drop the knife when repeatedly told to do so.

Gaona eventually made a gesture as if he was zipping his lips closed. He then refused to interact with officers any further. At that point, Detective Diaz informed Officer Holton that negotiations had broken down. Officer Holton then relayed that information to Sergeant Mengel. At this point, Sergeant Mengel noted that Gaona was moving to his left and to his right, while looking behind him and around the gas sign. Sergeant Mengel was concerned that Gaona was going to try to run into the parking lot behind him thereby endangering citizens. Sergeant Mengel then ordered officers to fire the less lethal rounds. Several officers fired less lethal 40 mm and bean bag rounds at Gaona, striking him multiple times. Unfortunately, the less lethal rounds did not have the desired and intended effect. Gaona grimaced and moved around, but he did not drop the knife. At one point, Gaona was moving around in what looked like an effort to avoid more less lethal rounds. He then tripped and fell over a bush, but quickly rose. Throughout, he maintained control over the knife. Gaona next took the knife and attempted to stab himself in the abdomen. He then attempted to cut his throat, yet no visible blood appeared in either location.

Gaona next charged directly at Officers with the knife in his hand, and pointed it in their direction. In a matter of seconds, Gaona ran approximately twenty-five feet towards officers with the knife. The first lethal rounds were not fired until Gaona took this action. Approximately fourteen lethal rounds struck Gaona. The location where Gaona fell to the ground was between thirteen and fourteen feet from where Officer Jackson was standing when he began firing his gun.

Later, during their private individual interviews, Officer Jackson, Officer Alvarez, and Officer Salinas stated they feared they or their partners would be seriously injured or killed by Gaona.

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Immediately after the shooting, Officer Cota began administering CPR chest compressions to Gaona. One minute later medics arrived. Gaona was then transferred to the hospital where he was pronounced dead. The Emergency Physician, Dr. Bailey and the Forensic Pathologist, Dr. Montez both opined that Gaona sustained non survivable injuries from the lethal rounds.

The District Attorney's duty in reviewing this homicide is to determine whether the shooting of Javier Garcia Gaona was lawful. We also feel it is our responsibility to provide a detailed explanation, to the public, about the facts and the law in that regard. As stated in *Graham v. Connor* (1989) 490 U.S. 386, this process "requires careful attention to the facts and circumstances." Hence, the analysis below will give careful attention to both the facts and circumstances of the fatal shooting of Javier Garcia Gaona.

PART I - STATEMENT OF FACTS BY INDIVIDUAL WITNESSES

SMPD 911 calls and Radio Traffic

911 calls

Kristina Harshbarger

On July 20, 2016 Kristina Harshbarger was working at Coast Hills Credit Union located at 1203 S. Broadway. At approximately 8:45 a.m., she and eight other employees were preparing to open the bank. At that time Harshbarger noticed a man, later identified as Gaona, walk up to the front door and attempt to open it. Gaona then stood in front of the door and stared into the windows. Harshbarger said it is not uncommon for customers to try to open the door early, but Gaona's appearance and demeanor made her feel uneasy. He was wearing all black with a hoodie over his head. Gaona was also carrying a small black plastic bag in each hand, similar to the kind one receives from a liquor store. During this time he stood and stared, with what she described as "a dead stare in his eyes." She also noticed he had no expression on his face and looked as though there was "nothing there."

She and the other employees then walked out of his sight, hoping it would prompt him to leave. He walked away momentarily, but then he approached the window again, staring inside for some time. Eventually he left, walking south on Broadway and then jaywalking across the street in front of J.C. Penny. During this time he caused cars to slow down so as to avoid hitting him. As Gaona walked away, she noted he threw his arms up in the air as if he was angry or yelling, but Harshbarger could not see his face or hear him. Harshbarger was so concerned about his behavior she called 911.

Kevin Guggia

On July 20, 2016 at around 8:45 am, Kevin Guggia drove into the parking lot of In Shape, located at 1318 S. Broadway. He parked near the Wells Fargo Bank Building. At this time, Guggia saw a Hispanic male adult, later identified as Gaona, walking southbound on Broadway. He noted Gaona was wearing black clothing with a black hoodie and was carrying, in his right hand, what Guggia believed to be an eight inch kitchen knife. He then saw Gaona

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yelling at another person who was walking northbound on the same side of the street. At this point, he could no longer see the knife. Next he saw Gaona walk into Wells Fargo Bank and then back out of the bank. Guggia was so concerned about Gaona's strange actions he decided to call 911.

Radio Traffic

At 8:45 am Dispatch advised over the radio that there was a male subject wearing all black, carrying two black bags, attempting to open the doors, while staring into the windows, at Coast Hills Federal Credit Union. A second reporting party had seen him holding what appeared to be an 8-inch kitchen knife. It was reported by the second person that the male put the knife in his pants and was walking out of Wells Fargo Bank.

At 8:51 am, Officer Holton reported that Gaona was holding the knife to his stomach and telling officers to shoot him. At 8:53 am, Dispatch reported that an officer was in route with less lethal force. At 9:02 am, the subject was reported to be holding the knife to his throat. At 9:08 am, it was reported that he was getting more animated and starting to cry. At 9:14 am, it was further reported he was starting to get more animated and was now yelling. At 9:20 am, officers were still negotiating with Gaona who was now somewhat calm. At 9:22 am, it was reported he was challenging officers to kill him. At 9:23 am, he was getting more animated and raising his voice. At 9:28 am, negotiations were continuing, but at 9:30 am, it was reported he was highly agitated and holding the knife to his throat. At 9:33 am, Sergeant Russ Mengel asked for less lethal to be ready. Within that same minute shots were fired, followed by a request for medics and a report that officers had started chest compressions.

Less than one minute later, Officer Jackson stated that a mob was forming and they were becoming increasingly hostile to law enforcement. Officers then requested the assistance of all SMPD units as well as the California Highway Patrol and Santa Barbara County Sheriff's Office.

Relevant Officers' Statements^[1]

Officer Kevin Cota

On July 20, 2016 Officer Cota was working patrol. At that time he had been a police officer with the Santa Maria Police Department for two and a half years. He was assigned as the primary officer for the initial call regarding this incident and was the first officer on scene. Officer Cota said the initial call was regarding a suspicious person wearing dark clothing, acting erratically and trying to open the door to Coast Hills Bank.^[2] A second reporting party called and said the subject was carrying an eight-inch kitchen knife. Officer Cota was driving his marked patrol car northbound on Broadway when he saw the suspect in the center median on Broadway. Officer Cota parked his car and saw Gaona was talking to several landscapers, who were working in the center median. Gaona looked at Officer Cota, flipped him off and said something like, "fuck you

^[1] The following are summaries of the listed Officers' statements.

^[2] Coast Hills Bank is on Broadway north of Stowell in the City of Santa Maria.

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police.” Officer Holton then arrived from the opposite direction on Broadway. Both immediately approached Gaona.

Gaona had his hands in his pockets which made it impossible for the officers to see if he had a weapon. Officer Cota asked Gaona to show him his hands. Gaona pulled his hands out of his pockets, his hands were empty. Gaona then quickly put them back in his pockets. Gaona removed his hands a second time and was holding a knife. Officer Cota and Holton both drew their firearms and asked Gaona to drop the knife. The knife was a large kitchen knife with a rounded tip. Officer Cota attempted to communicate with Gaona, but Gaona would only yell at him. Officer Cota had a hard time understanding what Gaona was saying. Gaona did not follow the instructions given by officers. Gaona next took off his sweatshirt and tossed it on the ground. He then walked across the street to the sidewalk by the Foods Co. sign, at the corner of Enos and Broadway.

Multiple other officers then arrived on scene. A number of officers brought less lethal options to the scene, including three bean bag shotguns and two 40 mm launchers^[3]. Officer Cota was assigned as “lethal cover” for the officers who had less lethal weapons. Officer Cota was eventually given a shotgun by Sergeant Mengel. Sergeant Mengel told Officer Cota that SMPD negotiators would attempt to resolve the situation by negotiating with the suspect, but if they were unable to do so, he would give a signal to be ready to deploy less lethal weapons.

Officer Cota said that Detective Diaz spoke to Gaona in a mixture of English and Spanish. Officer Cota understood Gaona said to “shoot him” and “you (police) are corrupt.” Gaona spoke about work and money. Gaona then held the knife to his throat and his finger to his lips. In a zipper-like motion, he acted as if he was zipping his lips shut. Gaona then moved the knife from hand to hand and held it up to his own throat. Officer Cota then saw Gaona stabbing himself. Officers next fired multiple bean bag and 40 mm rounds at him. The rounds hit Gaona, but did not have a significant effect. Gaona flinched and was able to shake it off, squatting down at one point. Gaona then got “super mad,” and started walking forward, while yelling and screaming. Gaona then dragged the knife across his throat and made stabbing motions towards his stomach. Officer Cota next saw Gaona holding the knife by the handle with two hands with the blade pointed down. Then he began making motions towards his

[3] The beanbag shotgun is a 12-gauge shotgun designated to be used to fire Kinetic Energy Projectiles only. These specifically designated shotguns typically have brightly colored markings which make them easily identifiable as “less-lethal” weapons and differentiate them from typical patrol shotguns. The purpose of the brightly colored markings or equipment on the gun is also to ensure no ammunition other than Kinetic Energy Projectiles are loaded into the gun, and to indicate to potential users that the gun is likely loaded with projectiles rather than typical shotgun ammunition. This is to prevent regular ammo from being mistakenly used when non-lethal force is intended. There are several manufacturers of shotgun-fired Kinetic Energy Projectiles which vary in design and capability. Typical beanbag rounds consist of a piece of material filled with lead shot or rubber pellets. The 40 mm launcher fires 40 mm projectiles from either a single-shot or multiple-shot platform. 40 mm rounds come in a variety of designs for various purposes. Typical 40 mm Kinetic Energy Projectiles have a spongy tip and come in regular or extended range varieties.

One intended use of Kinetic Energy Projectiles fired from both the shotgun and 40 mm launcher is to de-escalate potentially deadly situations, with a reduced risk of death or serious physical injury.

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stomach^[4]. Officer Cota said at that point Gaona had substantially shortened the distance between himself and officers. Gaona was then only about twelve feet from officers. Officer Torres moved in front of Officer Cota and fired the bean bag rounds. Officer Torres' action caused Officer Cota to decide to change position and go around the car in order to have an unobstructed view. It was while Officer Cota was in the process of moving that Gaona charged the officers. This action caused several officers to use lethal force. Officer Cota ducked down to protect himself from possible crossfire. Officer Cota estimated hearing twelve or thirteen gunshot rounds and believed Officer Jackson, Officer Salinas and Officer Alvarez had all used lethal force.

After that, Gaona fell down off the curb and on to the ground in front of them, landing next to the passenger side of the patrol car. Officers kicked the knife away, immediately rolled Gaona on his stomach and handcuffed him. Officer Cota then rolled Gaona on his back and began performing chest compressions. Medics arrived on scene quickly and took over emergency medical care.

Officer Matt Holton

On July 20, 2016, Officer Matt Holton was working patrol. At that time he had been a police officer with the Santa Maria Police Department for nine years. Officer Holton responded to a call of a suspicious male carrying black bags on Broadway. Upon arrival, Officer Holton saw Gaona in the center median, talking to some city workers who were tending to plants in the median. Gaona appeared to see Officer Holton as he got out of his patrol car, which was approximately twenty feet from Gaona. At this point, Gaona had his hand in the front pocket of his hoodie. Meanwhile, Officer Holton heard over the radio traffic that Gaona may have a knife, therefore he ordered Gaona to take his hand out of his pocket. Gaona removed his hand, which was empty, but then refused to comply with any other commands. Gaona then immediately put his hand back in his pocket, which caused Officer Holton to remove his weapon from his holster. Gaona then removed his right hand a second time and was holding what Officer Holton described as a twelve to fourteen-inch knife.

Officer Holton ordered Gaona to drop the knife numerous times, but Gaona failed to comply. Instead, Gaona walked towards Officer Holton, causing Officer Holton to back up to maintain some space between them. Officer Holton estimated that Gaona was within ten feet of him, as Officer Holton backed away and ordered Gaona to drop the knife. At this point, Officer Holton said he was in fear for his safety as Gaona held the knife out, continued to approach him, and refused to follow any commands. Officer Holton was prepared to use lethal force, but maintenance workers were behind Gaona, in the line of fire, therefore Officer Holton was forced to continue to back up and try to maintain space between himself and Gaona. Gaona spoke in both English and Spanish, telling Officer Holton to shoot him, and that he did not respect Gaona.

^[4] As discussed in the autopsy report (*infra*), Gaona had a number of superficial wounds on his neck, chin, chest, and abdomen. These wounds were consistent with hesitation marks made with a knife.

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Officer Holton then requested assistance from other patrol units in order to get the southbound traffic on Broadway stopped to prevent Gaona and himself from getting hit by a car. He also requested a unit to respond with a 40 mm less lethal launcher. At that point, Gaona quickly walked towards the northwest corner of Enos and Broadway by the Foods Co. sign. Officer Holton became concerned for the safety of citizens in the parking lot due to Gaona's behavior, therefore he ran past Gaona to contain Gaona and prevent him from hurting anyone. Gaona remained highly agitated, as he held the knife to his throat, yelling, and demanding to be shot.

Officer Holton saw that Sergeant Mengel had blocked traffic and began moving law enforcement vehicles in locations around Gaona to enable other officers to use them as cover. Sergeant Mengel paired officers together so that one who had a less lethal weapon was covered by an officer with a lethal weapon. Officer Holton was given a 40 mm launcher and was paired with Officer Jackson, who had a lethal weapon. Officer Holton and Officer Jackson were behind Officer Holton's unit (#346). Officer Holton remained in that position the entire time and provided updates over the radio regarding Gaona's apparent state of mind and the status of the negotiations. Sergeant Mengel spoke with each pair of officers and told them to be prepared to try to safely end the incident if negotiations fail. Sergeant Mengel said that if negotiations failed or Gaona tried to flee, he would tell the officers with less lethal launchers to prepare to deploy and would follow up with a command to deploy the less lethal launchers.

At one point Gaona became highly agitated and appeared as if he was preparing to flee or charge the officers. Officer Holton was about to broadcast that information over the radio when Sergeant Mengel gave the command to prepare to deploy less lethal. A moment later Sergeant Mengel gave the command to deploy less lethal weapons. Officer Holton fired one 40 mm **munition** at Gaona, which appeared to strike him in the abdomen. Other officers fired their less lethal rounds at the same time and Gaona was struck by multiple rounds. All of the less lethal rounds appeared to have little to no effect on Gaona, which surprised Officer Holton, having seen them used on other suspects very effectively.

It then appeared to Officer Holton that Gaona began slashing his throat and arms as officers continued to fire less lethal rounds which continued to have little to no effect on him. Notably, Gaona did stumble briefly, but then regained his footing and charged at Officer Holton and Officer Jackson. Officer Holton estimated Gaona was fifteen feet away, with the knife in his hand, when he started charging them. At that point, Officer Holton was in fear for his safety and the safety of his partners. When Gaona began to charge the officers, multiple officers fired lethal rounds at Gaona. Officer Holton then saw Gaona was hit with lethal rounds, which caused him to fall to the ground. Officer Holton then moved towards Gaona and placed him in handcuffs. Officer Cota, (who had prior experience as an emergency medical technician), immediately began chest compressions on Gaona.

Officer Holton heard the crowd calling the officers murderers, as they approached the officers. He also heard someone in the crowd say they were going to leave and come back and that the officers "would be next." Officer Holton and other officers were able to contain the

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crowd behind the crime scene tape until the Strategic Weapons and Tactics (SWAT) team arrived to assist with crowd control.

Sergeant Russ Mengel

Sergeant Russ Mengel has been an officer with the Santa Maria Police Department for 16 years. He was the day shift supervisor on July 20, 2016. He responded to a call of a man with a knife who was making statements about wanting the police to kill him. Sergeant Mengel arrived and positioned his patrol car to block oncoming traffic. He saw Gaona standing in the middle of the street as he got out of his patrol car. Sergeant Mengel took a 40 mm less lethal launcher and three 40 mm rounds of ammunition with him. At that time, Gaona had a knife to his throat and was moving around while still in the middle of South Broadway. Gaona then began to run towards westbound Enos, causing Sergeant Mengel to run up to the embankment and position himself in front of Gaona, with the 40 mm at the ready. Gaona looked at Sergeant Mengel and then walked back towards the front of the Foods Co. sign.

Gaona then brought the knife to his throat and made statements that he wanted the officers to kill him. Next, Sergeant Mengel gave the 40 mm launcher to Officer Holton and began coordinating units. Sergeant Mengel directed patrol units to be placed in between Gaona and officers in order to provide cover for the officers as they attempted to negotiate with Gaona until the Crisis Negotiator, Detective Felix Diaz arrived and took over. Sergeant Mengel comprehends Spanish and believed he heard Gaona say words suggesting he was going to force officers to kill him, while he simultaneously pointed the knife at the officers. Sergeant Mengel felt the situation was getting worse because Gaona was not responding to attempts to talk to him. Sergeant Mengel then made sure officers with less lethal weapons had an officer with a lethal weapon covering them. He next instructed each officer that if negotiations failed, he would give the order to engage with less lethal.

Approximately thirty to forty-five minutes elapsed before Sergeant Mengel received the signal from negotiators that the negotiations had deteriorated to the point where Gaona was not responding to officers. Sergeant Mengel then saw Gaona start moving to the left and the right while looking around, as if he was seeking an avenue of escape. Sergeant Mengel did not believe it would be safe to allow Gaona to enter the busy shopping center behind him. In response, Sergeant Mengel instructed officers to deploy less lethal rounds. Sergeant Mengel estimated Gaona was struck with between ten to fifteen less lethal projectiles, yet the collective effect only caused him to stumble. (Sergeant Mengel was surprised the less lethal rounds failed to stop Gaona and knew that officers were running out of less lethal rounds.) Gaona then began making stabbing motions towards his stomach and throat^[5]. Gaona next advanced on officers with the knife in his right hand. In response, officers fired lethal rounds. Gaona fell to the ground. Subsequently, officers began immediately rendering aid to him.

Officer Ricardo Arias

^[5] As discussed in the autopsy report (*infra*), Gaona had a number of superficial wounds on his neck, chin, chest, and abdomen. These wounds were consistent with hesitation marks made with a knife.

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Officer Ricardo Arias has been a police officer with the Santa Maria Police Department for 16 years. On July 20, 2016 he was working as a Community Service Officer. Upon arrival at Foods Co. gas station, Officer Arias started evacuating bystanders. He then positioned Officer Jackson's patrol car to provide cover for officers on scene. At this point, Gaona was speaking Spanish. In response, Officer Arias began talking to him in Spanish. Officer Arias was attempting to get Gaona to put the knife down which he was then holding to his neck. Gaona appeared upset and his words were not making sense to Officer Arias. Gaona was then talking about going to jail and about "the presidents." Gaona also said he did not have any family and was unhappy. Officer Arias noticed Gaona becoming increasingly agitated and more animated, leading Officer Arias to believe Gaona may harm people in the shopping center. Officer Arias further believed Gaona's behavior was potentially aggressive and did not know what Gaona was capable of doing. Numerous less lethal rounds were then fired. Immediately thereafter, Gaona moved towards Officer Holton and Officer Jackson with the knife still in his hand. At that point Officer Arias heard gunshots and saw Gaona fall to the ground. Officer Arias immediately began assisting with crowd control, while other officers attended to Gaona.

Officer Rafael Torres

On July 20, 2016, Officer Rafael Torres was working patrol. He had been an officer with the Santa Maria Police Department for nineteen years. Officer Torres heard the initial call come out and the update that the suspect had a knife. He then heard Officer Holton request additional officers and responded. Upon arrival, he retrieved his less lethal "bean bag" shotgun. He also saw several other officers with less lethal weapons and Gaona standing near the Foods Co. sign, holding a knife to his neck. Sergeant Mengel told Officer Torres to move to the north side of the scene in order to provide less lethal options from that location. Officer Torres moved to that location and then began talking to Gaona in Spanish, asking him what was wrong; how they could help; and requesting he put the knife down. Gaona told Officer Torres he did not want help but did want the officers to leave. Gaona further said it was all the officers' fault and he was not gay. Gaona then mentioned being previously arrested and "some gay guys" got to him. Gaona gave Officer Torres his name and date of birth, but would not say where he lived. Officer Torres and Officer Arias continued to talk to Gaona in Spanish until the Crisis Negotiators arrived. Detective Diaz, a trained crisis negotiator, spoke to Gaona for a while until Gaona started making hand gestures portraying zipping his lips, followed by his refusing to speak to them anymore. When Gaona refused to continue talking and negotiations failed, and it appeared Gaona was possibly preparing to flee, Sergeant Mengel gave the signal to deploy less lethal rounds. Officer Torres then deployed four to six rounds until his less lethal shotgun was empty. At that point, Officer Torres could see that Gaona was hit with both the bean bag and 40 mm rounds. Still, Gaona never lost control of the knife (which Officer Torres found to be unusual, having seen other people hit with less lethal rounds, which effectively ended similar situations. Officer Torres also noted that he had recently seen an increase of people under the influence of drugs that seemed to give them "super human strength," causing him to suspect Gaona may be under the influence of drugs).

Gaona then started moving the knife across his neck and making stabbing motions with the knife toward his stomach. However, the knife did not appear to cut his neck or penetrate his

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abdomen. At that point, Gaona began running towards the officers with his knife in his hand. The officers who were in the center of the scene responded with lethal rounds. (Officer Torres believed Gaona would have stabbed the officers if he reached them.) The crowd then immediately started angrily yelling at officers.

Afterward, Officer Torres helped with crowd control.

Detective Shane Armstrong

Detective Shane Armstrong was working in the Santa Maria Police Department Detective Bureau on July 20, 2016 when he heard a call broadcast over the radio of a suicidal subject in the area of Enos Drive and Main Street. He heard that the subject had a knife and was holding it to his neck as he crossed lanes of traffic towards Foods Co. Detective Armstrong is a member of the Crisis Negotiation Team, thus he continued to monitor the radio traffic. Soon, Lieutenant Van Meel told Detective Armstrong that units on scene were requesting a negotiator.

Detective Armstrong arrived on scene and was informed by Sergeant Mengel that Gaona was Spanish speaking. Armstrong knew that Detective Felix Diaz, who is fluent in Spanish and also a crisis negotiator, was already on his way. Detective Armstrong approached a patrol unit where Officer Arias and Officer Salinas were speaking to Gaona in Spanish. At one point, there was a lull in the conversation. Detective Armstrong then asked Gaona if he spoke English. This upset and further agitated Gaona. Gaona indicated he was upset about racism and people asking if he spoke English. Detective Armstrong immediately asked Officer Arias to apologize to Gaona for him. Detective Armstrong withdrew from the conversation so that Officer Arias could continue talking to Gaona in Spanish. Detective Diaz soon arrived on scene and took over negotiations in Spanish.

Detective Armstrong noted that officers on scene had both less lethal as well as lethal weapons. He also noted that they were positioned so Gaona could not leave the area of the Food Co. sign. Detective Armstrong saw Gaona look to the rear of the sign several times during the incident. (This action increased Detective Armstrong's level of concern that Gaona would be a threat to the public within the surrounding area.) Sergeant Mengel told Detective Armstrong if negotiations were unsuccessful, less lethal rounds would be used in an attempt to safely end the situation. Detective Armstrong then informed Detective Diaz of Sergeant Mengel's plans. Approximately twenty-five minutes into the negotiations, Detective Armstrong asked Detective Diaz to tell him when to give the appropriate signal to Sergeant Mengel. Soon thereafter, Gaona stopped talking to Detective Diaz when he made gestures indicating he was no longer willing to speak with officers. Detective Armstrong then conferred with Detective Diaz who agreed that negotiations were no longer effective, resulting in Detective Armstrong giving Sergeant Mengel the signal that negotiations had failed.

Moments later, Detective Armstrong heard Sergeant Mengel give the signal over the radio to fire less lethal rounds. Less lethal rounds were fired by multiple officers. Gaona was struck by numerous less lethal rounds, both 40 mm and bean bag rounds, yet, Gaona never lost control of the knife. (Detective Armstrong was very surprised because he had been present when other

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people were shot with less lethal rounds and it was immediately effective in ending the situation.) Eventually, Gaona momentarily fell to his knees, but was still holding the knife and making slicing gestures across his neck. Gaona next made cutting gestures at his left wrist and began sticking himself in the stomach with the knife. Detective Armstrong did not see any blood despite the fact that the knife had a thick blade, and was nine or ten inches in length, (including the handle). Shortly thereafter, Gaona regained his footing and lunged towards the officers, who were standing by a patrol car. As Gaona lunged towards the officers, lethal shots were fired. Detective Armstrong estimated that when Gaona started lunging towards them, the distance between Gaona and the officers was between twelve to fifteen feet. After the lethal rounds were fired, Detective Armstrong heard members of the crowd shouting that the officers were murderers. He next turned to deal with the crowd while other officers rendered aid to Gaona.

Detective Felix Diaz

Detective Felix Diaz has been with the Santa Maria Police Department since 2007. He is also a member of the Crisis Negotiation Team. On July 20, 2016, Detective Diaz was working at the Santa Maria Police Department when Lieutenant Paul Van Meel asked him to respond to an incident on Broadway and Enos. Detective Diaz and Detective Michael Parker, also part of the Crisis Negotiation Team, responded to the incident Code 3 (with lights and sirens activated).

Upon arrival, Detective Diaz took a position of cover behind a police car that was parked near Gaona. At that moment, Gaona was standing in front of the Foods Co. sign speaking with officers. Gaona was also holding up a twelve-inch butcher or chopping knife to his throat. Detective Diaz tried to establish a rapport with Gaona by talking about his family; however, Gaona said, "I have no family, they all left me. I have nothing." Detective Diaz attempted to talk to Gaona about work, his birthplace and other topics but Gaona would not respond to him. Gaona mentioned God, so Detective Diaz tried to talk to Gaona about religion saying, "You know it's a sin to kill yourself." Gaona replied, "I am not going to kill myself, you are going to kill me." "You guys are here to hurt me." Detective Diaz repeatedly told Gaona that they did not want to hurt him. Detective Diaz described Gaona as agitated, angry and upset during their entire contact. Detective Diaz offered Gaona food to which he responded, "I don't want food, I want your girl....find me a woman." During the entire contact, Gaona was either holding the knife to his own throat or was waving it around. Even after being told repeatedly to do so, Gaona refused to drop the knife.

Detective Diaz eventually told Sergeant Mengel that he was not having any success with Gaona. Sergeant Mengel then decided to attempt less lethal force as a means to disarm Gaona. Detective Diaz saw about ten less lethal rounds fired at Gaona, but Gaona did not drop the knife, he simply flinched from the impact, paused and then started attempting to cut his own throat. This was followed by him jumping up and down while trying to stab himself with the knife. Gaona was approximately twenty to thirty feet from the officers when he started running straight towards the officers who were standing near one of the police cars. At that point, Gaona had the knife in his right hand pointing the blade towards the officers as he ran toward them. Detective Diaz believed Gaona was trying to kill, stab, or engage the officers with the

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intention of them shooting him. Gaona was then shot with a lethal weapon, dropped to the ground, and nearly fell on the passenger side front hood of a police car. Officers immediately secured the knife and Officer Cota began performing chest compressions on Gaona.

Detective Michael Parker's recording

Detective Michael Parker is a detective with the Santa Maria Police Department and a member of the Crisis Negotiation Team. Once he arrived, he began recording the negotiations between Detective Diaz and Gaona. He later provided this recording to the Santa Barbara County Sheriff's Office.

The recording is just over nineteen minutes long. It is difficult to understand what Gaona was saying due to background noise and officers talking. However, Gaona can be heard speaking about how his life was ruined by law enforcement. Detective Diaz offered Gaona food at one point, but Gaona responded, "no more speaking for you fucking police." Detective Diaz told Gaona that they were there to help him, to which Gaona told him he was a liar. Detective Diaz attempted to redirect Gaona by telling him that he has a lot to live for. Detective Diaz told him that no one wanted to harm him and they were there to help. Gaona said, "no, si you killing me." Detective Diaz offered to help him get food and housing if he would just put down the knife. Gaona responded that he needed a woman, not food and he was not gay. Gaona said he does not like or care about his life. Detective Diaz continued to try to get him to drop the knife, but Gaona responded by asking to speak to President Obama. He then said, "Obama, Bush, right now motherfucker." Detective Diaz asked Gaona if he believed in God and Gaona said he did. Detective Diaz asked him if he knew it was a sin to harm himself and Gaona said, "You killing me...in the chest." Detective Diaz again tried to convince Gaona that no one was there to hurt him. Gaona said, "here is the story, I am your fucking king mother fucker." "Your king, the king of your fucking bullets."

Detective Diaz told another officer that he was not making any progress. A couple of minutes later, less lethal rounds can be heard, followed by an officer saying shoot him again (with less lethal).^[6] The next thing on the recording is gunshots followed by several people in the crowd yelling "murderers" and "you killed an unarmed man."

Officer William Jackson

Officer William Jackson has been a police officer with the Santa Maria Police Department for more than fourteen years. He was working uniform patrol on July 20, 2016 when he heard a call of a suspicious subject carrying two black bags and a large knife in the vicinity of Coast Hills Bank.

When he arrived on scene, after a couple of other officers, he saw Gaona standing in the lanes of traffic with a large knife in his hand. Officers were trying to talk to Gaona while he was in the

^[6] On the video footage, officers fire the less lethal rounds then there was a very short pause before more less lethal rounds were fired. Approximately 30-35 seconds elapse from the moment less lethal rounds are heard until lethal shots are heard.

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street. Shortly thereafter, Gaona moved in front of the Foods Co. sign. Officer Jackson noticed that Gaona placed his back up against the sign as if in a “strategic type move” so no one could approach him from behind. (Officer Jackson commented that the Taser works best on the back because that is the largest muscle group and the sign would prevent them from effectively using the Taser on Gaona’s back.) Officer Jackson then noticed Gaona glanced right and then left as if to make sure no one was sneaking up behind him. Gaona appeared extremely agitated, holding the knife with the blade to his throat while ranting and raving. He mostly spoke in Spanish but would also say “fuck” in English and referred to President Obama. Officer Jackson noticed that Gaona was sweating, shifting, and appeared as if he may be under the influence of a stimulant.

Officer Torres and Detective Diaz tried to calm Gaona down, which worked for a short time, but then he would get very excited and agitated again. He never put down the knife. Officer Jackson said that it seemed like “this went on for an eternity.” At one point Officer Jackson and Officer Holton shifted to the right to use the police car as a shield. (They feared they were too close to Gaona if he decided to charge them.) Officer Jackson then turned the camera in the patrol car towards Gaona to make sure it was recording what was going on. During this time, Sergeant Mengel ensured that one officer with a less lethal weapon was covered by one officer with a lethal weapon. Officer Jackson was assigned lethal coverage for Officer Holton, who had a less lethal weapon. At one point, a female carrying a very small infant was standing directly in the line of fire on the other side of the Foods Co. sign. Meanwhile, the crowd continued to grow. California Highway Patrol Officers then began assisting with blocking traffic and crowd control.

When the negotiations started to fail Sergeant Mengel gave the order to use less lethal force, which was deployed by multiple officers. Gaona was hit several times. Officer Jackson saw him grimace, move a bit, but never drop the knife. (Officer Jackson is an instructor for the bean bag less lethal weapon course. He has seen less lethal weapons used numerous times in the past.) Officer Jackson believed that all of the less lethal rounds that were fired struck Gaona, yet they did not have the expected effect of subduing him. (Officer Jackson has seen people in a state of “excited delirium”. During the last week and a half on his shift, he had come across people in this state approximately three times.)

In spite of being hit by the less lethal weapons, Gaona proceeded to try to cut his neck with the knife and then tried to stab himself in the stomach.

Officer Jackson heard Sergeant Mengel give the command to reload the less lethal weapons. Suddenly, Gaona charged directly at Officer Holton and Officer Jackson, causing Officer Jackson to fire his handgun. Officer Jackson felt he was going to get stabbed and seriously injured if he did not fire his weapon. Officer Jackson said it was like a nightmare because he was firing and it was not working since Gaona was still coming right at him.^[7] Gaona finally

^[7] Gaona made it twenty five feet from the point where he started charging Officer Jackson to the point where he fell to the ground and he came within approximately thirteen to fourteen feet of the location where Officer Jackson was standing when he started shooting.

went down. Officer Jackson then saw the knife inches from Gaona's hand where he fell. Officer Cota immediately began performing chest compressions on Gaona.

At this point, the crowd had broken the containment line and was shouting things at the officers like, "you're the next one to die; you're the next cop; and you shot him too many times." The crowd surrounded a patrol vehicle, causing Officer Jackson to fear they were going to light it on fire. Officer Jackson and other officers started pushing the crowd back and attempting to control them. Officer Jackson then saw the SWAT trucks arriving to assist with crowd control.

Officer Gabriel Alvarez

Officer Gabriel Alvarez has been a police officer with the Santa Maria Police Department for two years. He was previously a custody deputy with the Santa Barbara County Sheriff's Office; he held that position for seven years. Officer Alvarez was working as a uniformed patrol officer during the day shift on July 20, 2016. Officer Alvarez responded to this incident with his bean bag shot gun. Upon arrival he took a position between Officer Torres and Officer Cota, standing behind a patrol car. Gaona was standing in front of the gas sign, holding a knife to his neck while talking to Detective Diaz. Gaona appeared agitated and angry. He was yelling at Detective Diaz in Spanish. Officer Alvarez understands Spanish and remembers Gaona talking about President Obama and making a homosexual comment. Officer Alvarez also remembered Gaona's behavior as being very erratic. Because Officer Torres had a less lethal bean bag gun, Officer Alvarez needed to cover him with lethal force. However, Officer Alvarez still had his less lethal bean bag shot gun with him. Sergeant Mengel told Officer Alvarez that they were going to continue to try to negotiate with Gaona, but if negotiations failed he would give the order to use less lethal force.

When Sergeant Mengel gave the command to use less lethal force, Officer Alvarez fired his less lethal bean bag rounds at Gaona. Meanwhile, Officer Torres continued to fire less lethal rounds while moving closer to Gaona. When Officer Alvarez became concerned that Officer Torres was getting too close to Gaona, he took out his hand gun and switched to lethal coverage of Officer Torres. (Officer Alvarez also indicated he was shocked to see Gaona hit with numerous less lethal rounds without going down.) Gaona then started trying to stab himself in the stomach and tried to cut his throat. During this time, Officer Alvarez noticed that there was no blood where Gaona was trying to stab or cut himself. Moments later, Gaona charged at the officers. Seeing Gaona run toward the officers at "full sprint" with the knife still in his hand, Officer Alvarez became greatly concerned that Officer Torres was too close to Gaona.⁸ (According to Officer Alvarez he has seen the extent of damage a razor blade can do to people from his experience in the jail, therefore he knew that the large knife could cause serious injury to his fellow officers.) Scared and shocked to see Gaona coming at them with the knife, and being concerned

⁸ On the video footage Officer Torres was between the patrol car and the curb and is the officer who was physically closest to Gaona's location.

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for his safety and the safety of other officers, Officer Alvarez fired his handgun. Officer Alvarez stopped firing when Gaona went down at which point he saw officers immediately begin CPR.

Officer Ernest Salinas

Officer Ernest Salinas has been a police officer with the Santa Maria Police Department for thirteen years. He was working uniform patrol on July 20, 2016. When he heard the call of a man with a knife, as well as Officer Holton's request for units with less lethal, he responded to the scene with a 40 mm less lethal launcher and an extra 40 mm ammunition round in his pocket. Upon arrival, Officer Salinas saw Gaona standing in front of the gas sign with a large knife in his hand. Gaona was yelling in Spanish and English, saying words like "fuck you," "go to hell," and "leave me alone." Officer Torres repeatedly told him to drop the knife in Spanish. Officer Salinas also told him to put the knife down in Spanish. Officer Salinas next got behind a patrol unit for cover. Officer Arias then started speaking to Gaona in Spanish and asked him to put the knife down, but Gaona responded, "No, fuck no, I am going to kill myself." At that point, Officer Gwo arrived. Gaona turned to Gwo, stating, "fuck you Japonés [Japanese in Spanish]" and continued to insult Officer Gwo.

When Detective Felix Diaz arrived, Officer Salinas heard him start negotiating with Gaona. Officer Salinas felt as if the negotiations went on for quite some time during which Gaona seemed to be getting more agitated. Sergeant Mengel then gave the order to use less lethal force. Officer Salinas deployed his 40 mm launcher at Gaona's chest. Officer Salinas then saw Officer Holton also deployed less lethal and struck Gaona, as did a couple of other officers. Officer Salinas immediately reloaded and again struck Gaona with his 40 mm launcher. Again, the less lethal rounds did not stop Gaona, it appeared to only further agitate him. Officer Salinas noted Gaona was stabbing his neck, but did not see any blood. Gaona then charged Officer Jackson and Officer Holton, running straight at them while bringing his knife up. At this point, Officer Salinas was in fear for his safety and the safety of other officers. In response, Officer Salinas unholstered his firearm and fired at Gaona. Gaona fell to the ground after he reached the patrol car where Officer Holton and Officer Jackson had been standing. When he fell, the knife came out of his hand. Officer Salinas helped handcuff Gaona and Officer Cota began CPR^[9].

SMPD In-Car Video Footage

Santa Maria Police Department vehicles captured the incident with the in-car video cameras from multiple patrol cars. Car #346 was the car Officer Holton drove to the scene and was closest to Gaona. It was Officer Jackson who turned the camera on, in an effort to capture the entire incident. Unfortunately, there was a street light pole right in the middle of the field of view of the camera. Gaona can still be seen on this video as he moved around and when he charged at officers, but much of the time he was obscured by the light pole. The wide screen camera on car #346 was not turned by Officer Jackson, therefore it was still filming the view

^[9] According to medical personnel on scene (*infra*), Gaona was breathing and had a slow pulse when paramedics arrived. Gaona was pronounced dead at Marian Medical Center.

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straight in front of the car. On the wide screen angle, Officer Jackson can be seen backing away from Gaona as he was shooting. (This will be explained in further detail below.)

Car #3425 was the car that Officer Jackson drove to the scene and was parked back behind car #346. Car #3425 has video footage covering the area in front of it and it captures the entire incident from the point where Gaona is standing in the traffic lanes, taking off his sweatshirt, to everything that occurred in front of the Foods Co. sign, including when Gaona charged directly at the officers with a knife.

On the video, Gaona can be seen standing next to the center divider in the southbound lanes of traffic. He then takes off his sweatshirt and throws it in the turn lane on Broadway, while holding a large knife that he was switching between his right and left hands. More patrol cars then arrive on scene at which point Gaona walks towards the Foods Co. sign, while officers scramble to block him from heading into the strip mall parking lot.

Gaona then walked over to the front of the Foods Co. sign, waving one arm in the air while holding the knife to his throat with his other hand. The patrol cars were then moving closer to Gaona and the officers began using them as cover. Gaona repeatedly motioned toward, and yelled at, officers; however, on the video in car #3425 you cannot hear what he is saying due to the radio playing in the background. Gaona then continued to hold the knife to his neck for more than forty minutes, while gesturing at officers and yelling at them. He then stopped talking to officers and started looking left and right multiple times. A command was given over the radio and in response the officers raised their weapons toward Gaona. Meanwhile, Gaona continued to hold the knife to his neck with his right hand while using his left hand to gesture come towards, or with, him. Officers soon deployed numerous less lethal rounds, striking Gaona many times.

Gaona then started jumping in the air as he was struck with the less lethal rounds. Next, he took the knife and started attempting to stab himself in the stomach multiple times. After that, he attempted to slice his neck with the knife. More less lethal rounds were then deployed, striking Gaona. Gaona next moves and trips over a plant, causing him to fall to the ground momentarily; however, he immediately jumps up with the knife still in his right hand. Gaona then ran head first at the police officers with the knife in his right hand which was pointed at the officers, before the first lethal rounds were fired. As Gaona continued to run toward Officer Jackson with the knife, Officer Jackson can be seen backing up while shooting at Gaona. Gaona still continued to run directly at the officers as they fired at him and continued to quickly close the distance between them. Gaona made it approximately two thirds of the way between where he started his run at them and where the officers were standing, before he went down.

Detectives used photographs and the videos of the incident to measure the distance from where Gaona began charging at officers to the location where he fell to the ground. Gaona was able to run at the officers with his knife for approximately twenty five feet before he fell to the ground, which he did in a matter of seconds. The location where he fell to the ground was approximately thirteen to fourteen feet from the spot where Officer Jackson was standing when Gaona began

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charging at him.^[10] The distance between where Gaona fell and where Officer Jackson was originally standing was less than the width of the traffic lane.^[11]

Immediately afterwards the crowd can be heard screaming at the officers but it is not possible to hear exactly what they are saying. Officers requested medics instantly (who were already staged in the area) and began performing CPR on Gaona within seconds. Medics then arrived within a minute, took over emergency medical care on Gaona and subsequently transported him to Marian Medical Center.

Officers requested SMPD SWAT and back up from all agencies to assist with the hostile crowd. At one point over the radio traffic, one of the officers estimated between one hundred and fifty and two hundred people were in the crowd.

Statements of Medical Staff

Eddie Camacho

Eddie Camacho is a paramedic who was working on an ambulance for AMR. He was sent to the In-Shape gym parking lot to stand by on a call of a suicidal subject. Camacho observed a male holding a knife to his throat as they drove the ambulance in the parking lot and parked in front of the Vallarta Shopping Center. Upon arrival, he rolled his window down and heard the male making statements similar to wanting the cops to kill him, but Camacho was not close enough to hear the exact statements. Dispatch then directed them to relocate to the Minami Community Center parking lot. After waiting several minutes, they were asked to respond to Gaona's location. Camacho saw a SMPD officer administering CPR as Camacho got out of the ambulance. Gaona was breathing but his breathing was not effective, and his pulse was slow. He was in cardiac arrest by the time they put him in the ambulance. They immediately attempted to revive Gaona, but were unsuccessful.

Dr. Caleb Bailey

Dr. Caleb Bailey is an emergency medical physician, who was working in the emergency department at Marian Medical Center when Javier Garcia Gaona arrived by ambulance on July 20, 2016. Dr. Bailey said that CPR was in progress by paramedics when Gaona arrived. Dr. Bailey determined that Gaona had multiple gunshot wounds to his body and a non-survivable head injury. He performed an ultrasound of Gaona's heart and found no electrical activity. Life saving measures were stopped at that point. He pronounced Gaona dead at 9:51 a.m.

Statements of Relevant Civilian Witnesses

Juan Rubalcava Perez

^[10] Officer Jackson backed away as he was shooting in an attempt to maintain a safe distance from the charging Gaona.

^[11] The number three traffic lane on Broadway, just before Enos measures sixteen feet in width.

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Juan Rubalcava Perez is the owner of Super Muffler located at 926 W. Main Street. On July 20, 2016, at around 7:15 a.m., Perez stated that Javier Garcia Gaona was outside Garcia's business, wearing a "hoodie style" sweatshirt, rambling in Spanish and English. Perez said he knew Gaona through Gaona's cousin, Gerardo Garcia. Garcia owns Gera's Auto Repair at 922 W. Main Street. Perez estimated that he had seen Gaona approximately twenty times over a five-year period and had never had any issues with him. According to Perez, on this morning Gaona was looking for his cousin and said, "I'm going to fuck him up" and "get him." Perez saw Gaona had his hands in his hoodie pockets at the time and looked unstable. Perez was very nervous and scared by Gaona's behavior. Gaona then said, "Fuck the police" and "I hate the police." Perez did not know why Gaona brought up the police. Perez was so frightened he decided to open up the side doors of his business and walk around because he did not want to stay in one place fearing Gaona was going to do something. Perez then told Gaona that Garcia (Gaona's cousin) would not be in until around 9:00 a.m. Gaona eventually walked across the street and sat on the wall by the car wash for about thirty-five minutes. Perez then saw Gaona walk away, but did not see where he went. As soon as Gaona left, Perez called a coworker to tell him about Gaona's behavior and advise his coworker not to come to the shop unless he was ready for a confrontation. Perez described Gaona as having, "the devil in his eye," "looks off," and "doesn't look right at all." Perez did not see a knife or any weapon, but Gaona did have a plastic bag with him. Perez believed Gaona was possibly drunk or on drugs. He knew Gaona to be a methamphetamine user. Perez considered calling the police after Gaona left the shop, but Perez decided not to do so based on Gaona's comments about the police, fearing what Gaona would do when the police arrived.

Video footage from Super Muffler

The surveillance footage obtained from Super Muffler shows a male in all black, with a black hoodie over his head, carrying a black bag. He entered the business at 7:21 a.m. on July 20, 2016^[12]. At 7:23 a.m., the male (Gaona) was making gestures with his hands in the air and Perez began moving slowly towards the door. At 7:26 a.m., Perez walked Gaona out of the business and Perez walked back inside.

Armando Reyes Lopez

Armando Reyes Lopez started work with his landscaping crew on the center median on Broadway at about 8:45 a.m. on July 20, 2016. They were closing a turning lane with cones and setting up their equipment when Gaona started to cross the street. Lopez knew Gaona, but had not seen him in over a year. A Santa Maria Police Officer called to Gaona, but Gaona started walking towards the Foods Co. shopping center. The officer then told Lopez and his crew to move towards Stowell. Lopez saw Gaona take off his sweatshirt. He also saw him remove a large knife from a plastic bag he was carrying. Gaona then placed the knife to his neck and told the officers to leave. He noted that Gaona was speaking in both English and Spanish. Lopez and his crew then moved out of the area.

^[12]The time on the actual video shows 6:21 a.m., but it was determined that it had not been adjusted to reflect daylight savings time.

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James Jepsen

James Jepsen was on the south-east corner of Enos Drive and South Broadway. Jepsen saw a male, later identified as Gaona, pacing back and forth in front of the Foods Co. sign, while holding a knife to his neck. Jepsen described the knife as a long bladed carving knife similar to what a chef might use. He estimated the blade to be between eight to ten inches in length. Jepsen took several short videos of Gaona with his cell phone. He could hear Gaona talking about money, but could not understand everything he was saying. He could not hear what the police officers were saying, but he could tell they were talking to Gaona. Several of the officers had their handguns pointed in the direction of Gaona, but not directly at him. He also saw several officers with “non-lethal” guns that had orange markings on them. He next heard several, of what he believed to be less lethal, rounds being fired and saw Gaona go to the ground. Once Gaona went to the ground, Jepsen temporarily could not see him because a patrol car was blocking his view.

Jepsen then saw Gaona stand up, still holding the knife. Next, he saw Gaona begin to move towards some of the officers. Gaona was ranting and randomly lunging in the officers’ direction, while holding the knife in an upward direction towards the officers. Gaona then moved in the direction of officers in what Jepsen described as a “stumble run.” Jepsen then heard what he thought was several shots of lethal gun fire. Officers next moved towards Gaona and placed him in handcuffs. A moment later an officer rolled Gaona over and began performing CPR. An ambulance arrived on scene less than a minute after the shooting.

Jepsen showed the video clips he took to deputies and provided them with a copy. He also showed them a male on the video and said that the male had told him he witnessed Gaona harassing gardeners in the area prior to the police arriving at which time Gaona was acting crazy. Jepsen said the same male became one of the most vocal after the shooting, shouting at the police. Jepsen said the police handled themselves well after the shooting despite how “ugly” the crowd became.

Video footage taken by James Jepsen

Jepsen provided six video segments that show various stages of the incident. Gaona can be seen holding his right hand to his neck and gesturing with his left hand, while shouting at the officers. The final video clip shows Gaona moving around in front of the Foods Co. sign with the knife. Less lethal rounds were then fired at Gaona. He appeared to be struck by less lethal rounds, but the rounds did not subdue him. The video shows Gaona charging the police followed by lethal shots being fired. Gaona then fell to the ground, at which point the officers handcuffed him and immediately began CPR. After Gaona was shot, a male started screaming at the police. On the video, the male screamed things like, “you guys are just a bunch of murderers.” “You guys sure are proud of yourself now aren’t you?” “I hope you get paid, get paid for murdering someone today.”

Claudia Gretlein

Claudia Gretlein was at JDX Pharmacy at 1504 Broadway on the morning of July 20, 2016 at around 9:00 am. She looked out the window and saw a male by the Foods Co. sign, holding

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something to his throat. At first she thought it was a gun, but then realized by the way he was waving it that it was a knife. She responded by walking away from the window. Sometime between 9:30 - 9:45 am she heard less lethal shots being fired and returned to the window to look out again. This time she saw the male was jumping around and possibly stabbing himself. She next saw him lunge at the police officers, with the knife in his hand and immediately heard gunshots.

Alan Common

Alan Common was driving northbound on Broadway on July 20, 2016 when he saw a crowd of people whereupon he stopped to see what was going on. He was at the far corner (southeast) of the intersection of Broadway and Enos when he captured some of the incident on his cell phone. (He later provided that video to law enforcement.) Common said he saw Gaona running around with a knife. He added that he thought Gaona, by his body language, appeared to be egging the officers on. He also saw Gaona cutting himself, but Gaona did not appear to be hurting himself. Officers fired less lethal rounds, but the rounds also did not appear to hurt him. Gaona then ran away, fell down, got up and ran almost directly at the officers.

Common said Gaona was definitely trying to get the officers to do something. Common felt that officers were trying to reach a peaceful resolution and they were simply doing their job. Common said based on Gaona's refusal to comply and his body language, he believed Gaona was trying to commit suicide by cop.

Rosie Torres

Rosie Torres arrived at the location of the incident at approximately 8:30 am. At that time she saw a crowd gathering and decided to stay and watch. She made her observations from the parking lot of the business In Shape. (This parking lot is across the street from the incident).

On July 20, 2016, on the day of the incident, Torres was interviewed by a number of different news outlets. At that time she said she did not believe officers should have used lethal weapons on Gaona. She further stated they should have tried to take the knife away from him. Torres said she believed officers should have negotiated for a longer period of time because Gaona was not a threat to them.

Torres was interviewed by Santa Barbara County Sheriff's Detectives a few months after the incident. Torres told detectives that since that day she had watched video of the incident and had spoken to people about it. She said on the day of the incident she got caught up in the moment, since then she has had time to realize that Gaona never dropped the knife. She said her opinion has changed after watching those videos of the incident.

Torres told detectives that she remembers Gaona was talking about how he did not want to live and how he was going to kill himself. Gaona continued to scream, throw his hands in the air and was talking belligerently in Spanish (which she understood). He said things like he did not care anymore. Torres and other people in the crowd told Gaona to drop the knife in Spanish. She believed Gaona was on drugs or was having a bad day. Her observations of Gaona caused her to

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become emotionally involved because she had gone through hard times herself. Torres stated Gaona did not drop the knife during the entire incident. She said that officers used less lethal bean bag rounds, which hit Gaona, but did not have any effect on him. She also said there was not a break between the less lethal rounds and the lethal rounds. She said in her opinion the number of rounds was excessive and she thinks they should have negotiated longer.

Torres said she did not think Gaona was trying to hurt the officers. She said she was far away and things could have happened that she did not see. She said it seemed Gaona was on a mission to kill himself. She further stated if she was an officer, she might have thought Gaona was trying to hurt them. She then added it was the officer's job to figure out what to do or if anyone's life was in danger and officers have a right to protect themselves. She said after watching the video, she realized that Gaona did keep the knife in his hand and did take a step forward towards the officers. Torres left flowers and a candle on the day of the incident.

The crowd started yelling "fuck the police!" and that "it was a race thing." Torres said it was not a race thing at all because the police were also Mexican.

Adan Partida

Adan Partida was interviewed by the media after the incident on July 20, 2016. During the interviews Partida said he believed that Gaona only had a knife; therefore, one shot would have been enough to stop him. He told the news he believed the police murdered Gaona and that the police department was abusing their authority by maintaining such a large perimeter around the crime scene.

Partida was interviewed by the Santa Barbara County Sheriff's Detectives a few months after the incident. Partida said the morning of the incident he saw Gaona in the road yelling at the maintenance workers about being owed money. Partida was across the street on the side of Broadway near the In Shape parking lot. He noted that police officers and police cars were between Gaona and the location where Partida watched the incident.

Partida had seen Gaona on a couple of other occasions, panhandling in the area near Foods Co. He said Gaona never threatened anyone with the knife and did not point it at the police but, Gaona did say if anyone tried to approach him, he would cut himself. Partida said the police negotiator was the one threatening Gaona. Partida believed the police should have used the Taser on Gaona. He said the police should have brought a Catholic Priest to negotiate. He said they also should have flown a drone over Gaona and dropped a net on him or used a gun with a net like they have at the zoo. He said when the police shot Gaona with the bean bag guns, he thought it would be effective, but it did not work on Gaona. He said the officers did reload and shoot the bean bag weapons multiple times. Partida said he did not see Gaona take a step towards the officers.

Partida said he thought someone should have approached Gaona and hit the knife out of his hand with a billy club. Partida said he (Partida) "lost it" when the officers shot Gaona. Partida said they should have shot Gaona in the hand or shoulder, not the chest. Partida said afterwards the

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officers were unreasonable to put up the barrier tape and in his opinion they were moving the crowd back because the officers were trying to hide something. Partida yelled at the police that they should be ashamed of themselves for what they did and the police were all murderers.^[13]

Forensic Documentation of Shooting Scene

The scene was processed by forensic personnel. They located a large knife, with a dark colored handle, and Gaona's clothing. They also found numerous bean bag casings, bean bag and 40 mm projectiles, in addition to seven .45 caliber shell casings and seven .40 caliber shell casings. There were some bullet fragments.

The knife was later examined by a detective. The knife was extremely dull and was not sharp enough to cut the rubber gloves that the detective was wearing.

Autopsy

The autopsy of Javier Garcia Gaona was performed on July 25, 2016 by Doctor Manuel Montez, who is a forensic pathologist employed by the Santa Barbara County Sheriff's Office. Dr. Montez located fourteen gunshot entrance wounds to Gaona's body; however, in his opinion some of the wound tracks could be overlapping and could have been caused by the same bullet. Several of the gunshot wounds were fatal and were not survivable even with immediate medical intervention. Dr. Montez also found just under a dozen abrasions on Gaona's chest, abdomen, and arms that were consistent with being struck with less lethal projectiles. In addition, Gaona had a number of incised wounds on his neck, chin, chest and abdomen that would be consistent with a knife. The wounds were very superficial and were characteristic of "hesitation" marks. A toxicology report showed that Gaona had methamphetamine in his system. Dr. Montez characterized the level as a significant amount of methamphetamine and stated that it could cause aggressive behavior, irrational thinking, hyperactivity, hallucinations, inability to focus, and confusion. Dr. Montez added that methamphetamine is a central nervous system stimulant that can give a person "super human strength" and cause them to be immune to pain.

Suspect History

Javier Villalobos Garcia

Javier Villalobos Garcia is the father of Gaona. He said that he suspected his son had been involved in drugs during the past year or two. He had noticed his son would not come home often and would sometimes appear paranoid. He described Gaona as sometimes aggressive and would do things like disconnect the telephone or televisions, as well as being bothered by light. He never actually saw his son use drugs or with drugs, but his son's behavior is what made

^[13] It appears that Adan Partida is the person described by James Jepsen and is the person on the video footage taken by Jepsen, where Partida can be heard screaming at the police that they are murderers, etc.

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him suspect drug use. He said Gaona did not have any mental health issues that he knew of and he believed the drugs were what made Gaona behave that way. Garcia said Gaona went to a drug treatment program in Los Angeles approximately six months prior to the incident for about three months. Garcia said when Gaona returned to Santa Maria he did well for about two months, but ultimately relapsed.

Garcia said Gaona made comments like nobody cared for him and that he was going to kill himself. According to Garcia, he never mentioned how he would kill himself and he had not previously ever hurt himself to Garcia's knowledge. On July 17, 2016, Gaona was home and was under the influence of drugs in Garcia's opinion. Gaona walked in and out of the house throughout the day and at one time said something about wanting to kill himself. Garcia reported Gaona did not sleep there, but he did show up again the next day on Monday the 18th at which point he appeared to be heavily under the influence of drugs. Gaona then left that evening and Garcia did not see or hear from him again. Garcia commented that he thought something like this would occur because Gaona lived dangerously on the streets.

Armando Garcia-Gaona

Armando Garcia-Gaona is the brother of Javier Gaona. Armando Garcia-Gaona said that growing up his brother Javier Gaona was a social person who did not drink alcohol and stayed away from trouble. Approximately ten years prior, Armando Garcia-Gaona got married and drifted apart from his brother. He would occasionally see his brother at their father's house and noticed that approximately four to five months ago, his brother became less social. Garcia-Gaona had not seen his brother drink alcohol or use drugs personally nor did he know Javier Gaona to be a violent person. Armando Garcia-Gaona believed his brother was mentally stable. Additionally, he did not know about Gaona having any mental health disorder including depression.

Part II - LEGAL ANALYSIS AND CONCLUSION

Applicable Law

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide which are lawful. The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful. Penal Code section 196(2) defines justifiable homicide by public officers. "Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty." Under California law anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.

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A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Connor* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334. In *Graham*, the United States Supreme Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Id.*, at 396). Further the Court states, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight.” (*Id.*, at 397). Moreover, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make a split-second judgment—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.*, at 397-398). Under *Graham*, we must avoid substitution of our personal notions of proper police procedure for the instantaneous decision of an officer at the scene. “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347. *Graham’s* definition of reasonableness has been described as “comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present” (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police “...a fairly wide zone of protection in close cases....*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

Legal Analysis

Officers responded to a call of a suspicious person acting erratically while holding a knife near businesses in the City of Santa Maria. Upon arrival, officers devised a plan to contain and negotiate with the suspect in order to keep the suspect and the public safe. When negotiations broke down, a Sergeant on scene directed officers to use less lethal force to subdue the suspect. The suspect refused to comply with any of the officers’ commands. When officers deployed less lethal rounds on the suspect, the rounds had little effect on him. When the suspect ran towards officers holding a knife pointed at them, officers fired lethal rounds, striking the suspect, causing him to fall to the ground and die.

All of the officers’ actions were reasonable under the standard set forth in *Graham* based on the totality of circumstances in this case.

CONCLUSION

The circumstances created a reasonable fear of death or great bodily injury in the minds of Officer Jackson, Officer Alvarez, and Officer Salinas. Based on the investigation by the Santa Barbara County Sheriff’s Office, applying the law as set forth in PC 196(2), and the cases cited *supra* in this report, the officers acted reasonably in their use of deadly force; therefore, the shooting of Javier Garcia Gaona is a justifiable homicide.

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