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September 19, 2013

**PUBLIC REPORT ON OFFICER INVOLVED SHOOTING OF ROBERT REYES BY LAW
ENFORCEMENT OFFICERS ON AUGUST 2, 2012**

The Santa Barbara County District Attorney's Office has completed its review of the investigation by the Santa Barbara County Sheriff's Department of the homicide of Robert Reyes that occurred on August 2, 2012, in Santa Maria, California.

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

It has been determined that Reyes was an associate of a known criminal street gang. Therefore, the District Attorney carefully balanced the public's right to know the identity of certain witnesses and the involved law enforcement officers versus the threat of harm to those witnesses or officers. At this time it is too dangerous for the safety of those individuals to release their names because there have been documented threats to retaliate against these law enforcement officers. The District Attorney may release the identity of the parties at a later time when it is determined that a threat no longer exists.

SUMMARY

On Thursday, August 2, 2012, Robert Reyes was upset due to many difficulties in his life. His wife died a few months prior and Reyes was struggling with her death and caring for their children. He recently learned his deceased wife had been pregnant with someone else's child and she was being investigated for criminal misconduct at work. It was also reported that Reyes used methamphetamine.

In the afternoon hours of August 2, 2012 Reyes picked up a female friend. Reyes' friend could tell something was wrong by the way he was acting. He was consuming alcohol and was in possession of what appeared to be a handgun. He was involved in several altercations that afternoon where he brandished this weapon at multiple people in Santa Maria, and four of these altercations were reported to 911 dispatch. These four people reported that a suspect driving a Chevrolet Tahoe was brandishing a black handgun, possibly a Glock pistol. Police Officers were attempting to locate the suspect throughout the afternoon and early evening hours. Reyes' friend was scared for her own safety while she rode in his vehicle, and she only learned later from the news that the handgun was not real. At approximately 1800 hours Reyes dropped off his friend at his residence and left.

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A short time after dropping off his friend, at around 1816 hours, Officer 1 responded to a radio call about the suspect vehicle that had been reported throughout the day. Officer 1 responded to the intersection of Mill Street and School Street where he saw Reyes' vehicle (a Chevrolet Tahoe) and attempted to contact him. Reyes fled from Officer 1, and this led to a vehicle pursuit which started in the City of Santa Maria, continued onto Highway 101, into San Luis Obispo County, and then back into the County of Santa Barbara. Officers in the pursuit reported seeing Reyes holding a firearm out of his car window and throwing objects out of the vehicle which were believed to be a cellular telephone and a beer can. Reyes stopped his vehicle multiple times during the pursuit for a short time and then continued driving. Reyes also drove his vehicle into oncoming traffic nearly striking other vehicles. During this pursuit, the California Highway Patrol made one unsuccessful attempt to utilize a spike strip which Reyes drove around. Two subsequent attempts were successful in the area of Black Road and Highway 1, which flattened all four tires on Reyes' vehicle.

Reyes' vehicle stopped in the southbound lane facing oncoming traffic on Highway 1 south of Black Road. The vehicle was angled toward the shoulder of the road and blocking traffic. The pursuing units, including a K-9 unit, positioned their vehicles behind the suspect vehicle. Reyes quickly exited the driver's door of his vehicle and pointed what appeared to be a handgun in the direction of the officers. Fearing for their own safety and the safety of their partners, three officers discharged their firearms, striking and killing Reyes.

The District Attorney's role in reviewing this homicide is to determine whether the shooting of Robert Reyes was lawful and 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 fact and circumstances." Hence this analysis will give careful attention to both the facts and circumstances of the fatal shooting of Robert Reyes.

**Information in this report compiled from
Sheriff's Department Investigation 12-10483**

PART I-STATEMENT OF FACTS

Officers' Statements

Officer 1 (Shooting Officer)

Officer 1 is a 24 year veteran of law enforcement. On August 2, 2012, Officer 1 was working a regular daytime patrol shift from 1100 – 2100 hours. During the afternoon, Officer 1 heard several radio calls of a person brandishing a weapon from a gold colored SUV with an "In Memory Of" sticker in the back window. Around 1800 hours dispatch advised there was another call involving the same vehicle with a suspect brandishing a gun, and it was parked at the intersection of Mill Street and School Street. Officer 1 responded to this radio call from his agency's station.

While eastbound on Mill Street, Officer 1 saw the suspect vehicle with a single male occupant driver. Officer 1 advised dispatch that he located the vehicle. As he approached with his lights on, he exited his vehicle, drew his weapon, pointed it at the driver, and advised him that he was the "Police" and to show his hands. The suspect made eye contact with Officer 1 then accelerated eastbound from the location. Officer 1 then began to pursue the suspect with lights and sirens activated. The suspect drove southbound

on Elizabeth Street, eastbound on Main Street, then northbound on the 101 freeway. While on the freeway, Officer 1 saw what appeared to be the suspect brandishing a pistol out of the driver's side window. Officer 1 broadcast this information on the radio. The suspect exited the freeway on Tefft Street in Nipomo. He began weaving on the road and at times drove on the wrong side of road but not at an excessive speed. Officer 1 saw the suspect talking on a cell phone, gesturing, and drinking from an aluminum can. The suspect drove southbound on the frontage road, parallel to the freeway, then turned on Division Road and headed towards the City of Guadalupe. While driving through Nipomo, Officer 1 clearly saw the suspect extend the gun out of the driver's side window and held it sideways. Officer 1 also broadcast this information on the radio. Several times the suspect began driving on the wrong side of the road, stopped his vehicle and then took off again.

Eventually, the pursuit turned southbound onto Highway 1. While on Highway 1, the CHP attempted to utilize a spike strip but the suspect was able to swerve and avoid it. The CHP set up a second set of spike strips near the intersection of Highway 1 and Black Road, and this one was successful as the suspect ran over the strips and all four of his tires deflated. Officer 1 also ran over the spike strips and one of his tires flattened. The suspect's vehicle came to a stop on the wrong side of the road so that the vehicle's nose was on the shoulder, and Officer 1 told other units to keep a distance back. Officer 1 stopped his vehicle in the southbound lane. Officer 2 stopped next to him and to the left. Officer 1 was still seated but had his weapon drawn and pointed at the suspect between the window and the A-frame area of his vehicle. Before Officer 1 could do anything, the suspect brought his gun up to point at the officers. Fearing for his safety and Officer 2's safety, Officer 1 fired three shots from his weapon. As he fired, Officer 1 could hear Officer 2 firing. The suspect fell onto the shoulder of the roadway and dropped down into the weeds so that all Officer 1 could see was the suspect's feet. Officer 1 broadcast on the radio that shots were fired and the suspect was down. Then he began assessing the officers' position to make sure everyone had cover because Officer 1 believed the suspect may have still posed a threat.

Eventually, other officers arrived with an armored vehicle and those officers cleared the suspect's vehicle and the scene.

Officer 2 (Shooting officer)

Officer 2 has been a peace officer for approximately five years. He was working a regular daytime shift on August 2, 2012. In the afternoon, around 1400 hours, Officer 2 heard a call on the radio of a man in a tan GMC Yukon or a Chevy Tahoe brandishing a weapon at a passerby. Later in the day he heard a similar call on the radio about a "man with a gun" and walked to his unmarked police unit, retrieved his patrol rifle from the trunk, charged the weapon system and placed it inside the vehicle. As he was responding to the location, he heard the suspect got back into his vehicle and began to flee. He reported on the radio that he would be responding to assist Officer 1 who was already in pursuit of the suspect. Officer 2 got into the pursuit around the 700 block of Main Street in Santa Maria and at that time he was the fourth or fifth unit in the pursuit. At this point Officer 3 was calling the pursuit over the radio and the units were traveling eastbound on Main Street until they followed the suspect northbound on the 101 freeway. As the pursuit left the city on Highway 101 northbound, Officer 3 asked for a unit equipped with a rifle to assume the third position because someone saw the suspect waving a firearm inside his vehicle. Officer 2 moved into that position as he was equipped with a rifle. Eventually the suspect exited the freeway on Tefft Street and traveled southbound on the frontage road towards Division Road. Then

the suspect stopped on Division Road, and the officers, including Officer 2, set up for a felony stop but the suspect accelerated and continued to drive. Officer 2 reported the suspect drove erratically on Division Road – swerving and trying to kick up dust, presumably in an attempt to keep the officers away from him. During the pursuit, Officer 2 did not see the suspect brandish a weapon but he did see him looking into the console area of his vehicle and Officer 2 thought he might be looking for a weapon.

As the suspect drove towards Highway 1 and into the city of Guadalupe, Officer 1 asked for a unit with a rifle to move into the second position. Officer 2 then moved into the second position. As they continued on Highway 1 the suspect started driving on the wrong side of the road at various points. At one point, the suspect drove directly towards a semi-truck and swerved to barely avoid it. CHP deployed a spike strip, but the suspect avoided it. While on Highway 1 the suspect threw what appeared to be a white iPhone out of the window. Officer 2 asked CHP to set up spike strips at Highway 1 and Black Road in the hope that the suspect would run over the strips and disable his vehicle. Officer 2 thought the suspect hit one of the spike strips at this location (Highway 1 and Black Road) because the suspect's vehicle stopped.

Officer 2 stopped just to the left of Officer 1's driver's side door. Both vehicles were about 20-25 yards away from the suspect's vehicle. Officer 3 was approximately 10-15 yards behind the suspect. Officer 2 already had his rifle slung across his chest while driving, and as he got out of his vehicle he saw the suspect's door open. Officer 2 saw the suspect doing something with the map pocket but he could not tell what he was doing because the suspect's back was towards them. Officers 1 and 2 shouted commands to turn around and put his hands up. The suspect did not respond. The suspect exited his vehicle and turned towards them. Officer 2 saw what looked like a can of beer in his left hand, and in his right hand what looked like a black, semi-automatic pistol. As the suspect turned toward them, he started to bring his right arm towards the officers. Officer 2 thought the suspect was going to shoot him or Officer 1, so Officer 2 fired his weapon. He continued to fire until the threat was eliminated when the suspect fell down. Officer 2 did not believe the suspect fired his weapon, and he saw casings from Officer 1's weapon in his peripheral vision. Officer 2 thought he fired 5-6 rounds, but later he realized he fired 10 times. He was not sure if his shots impacted the suspect but thought they did. Officer 2 did not realize that Officer 3 fired his weapon until afterwards when he was asked by a commanding officer who fired their weapons.

The suspect fell in a northbound direction, onto his back and into tall weeds or grass off the shoulder. Based on Officer 2's position and where the suspect was lying off the roadway, Officer 2 only had his car door for cover between him and the suspect. To get in a safer position, Officer 2 moved towards Officer 1's car and behind the engine block. Officer 2 heard someone say he wanted to approach the suspect, but Officer 2 instead suggested they use the K-9 on a long leash to pull the suspect out of bushes. Officer 6 didn't have a leash to do this, and Officer 3 directed them to wait for an armored unit. The officers then waited for the Peace Keeper (armored vehicle unit) to arrive. At some point after the Peace Keeper arrived, Officer 2 was instructed to leave the scene and stand-by with an uninvolved officer until he could be interviewed by investigators.

Officer 3 (Shooting officer)

Officer 3 is a 23 year veteran of law enforcement. On August 12, 2012, Officer 3 was working at his agency's main station as patrol watch commander when he heard a radio transmission about a man in a tan colored Yukon SUV brandishing a gun near the intersection of Miller Street and Main Street. After hearing this transmission, Officer 3 responded in a white, unmarked police vehicle to assist Officer 1 who was the first officer to arrive on scene. Shortly after leaving, Officer 3 heard the radio transmission that Officer 1 was in pursuit of the suspect, and Officer 3 drove to assist. Officer 3 eventually fell in behind Officer 1 around the 200 block of South School Street. As Officer 3 approached the intersection of School Street and Church Street, the suspect accelerated, and the officers continued to pursue him onto eastbound Main Street towards the 101 freeway. The pursuit traveled northbound on the 101 freeway and at one point while on the freeway, Officer 3 saw the suspect holding what he perceived to be a semi-automatic handgun in his left hand, with the barrel pointed downward, and he began waving it outside of the vehicle's window in an excited fashion as if to taunt the officers.

Eventually, the suspect exited on Tefft Street in Nipomo and the officers continued to pursue him. The suspect drove south on the frontage road then turned west onto Division Road. At some point the suspect slowed or completely stopped his vehicle and opened the driver's side door. The officers drove their vehicles in positions to conduct a high-risk vehicle stop, but then the suspect closed the door and continued driving. At times, the suspect would accelerate, slow down, and drive on the wrong side of the road. The pursuit continued on Highway 1 just north of the City of Guadalupe. Throughout the pursuit, Officer 3 asked for air support, called for K-9 assistance from any local agencies, requested five units to be in the pursuit, and advised the local agencies of the pursuit progress.

At some point, Officer 3 requested the CHP deploy a spike strip to stop the suspect's vehicle. Officer 3 observed attempts by CHP to deploy spike strips, and the suspect swerved around the strips to avoid them. Officer 3 saw a CHP officer on the side of the road attempting to deploy the spike strip, and as the suspect vehicle approached he saw the CHP officer fall backwards. Officer 3 feared that the suspect swerved toward the CHP officer's vehicle and the officer had to quickly back away to avoid being hit by the suspect.

As the pursuit continued on Highway 1, Officer 3 heard a transmission over the radio that the suspect threw something out of the window which appeared to be a cellphone and a blue Budweiser can. The suspect drove on the wrong side of the road and nearly collided with a semi-truck. At some time during the pursuit, Officer 3 called for a unit with a rifle to move into the number two position, and Officer 3 moved into the third position in the pursuit. Then Officer 3 called for a K-9 unit to respond, and a K-9 unit then moved into the third position in the pursuit.

As the pursuit continued south of Guadalupe on Highway 1, the suspect eventually drove over a spike strip and Officer 3 heard someone broadcast that the suspect's tires were flat or going flat. The suspect drove his vehicle into the oncoming northbound lane and came to a stop on the edge of the northbound lane. Officer 3 observed the vehicles in front of him move to the right of the suspect's vehicle and Officer 3 moved to the far left into the northbound shoulder area, approximately 70-75 feet behind the suspect's vehicle. As Officer 3 exited his vehicle he saw the suspect opening his door. As the suspect stepped out of his vehicle, he took one or two quick steps and Officer 3 thought he was going to run eastbound away from the road, but he stopped. Officer 3 then saw the suspect raise his right hand to a position parallel

with the road and he had what appeared to be a black firearm in his right hand. The suspect raised the gun higher and pointed it in the officers' direction. Officer 3 felt this was a clear threat to his and the other officers' safety, and he fired at the suspect a number of times. Officer 3 heard other shots fired that he was able to distinguish from his own. After the shots were fired, Officer 3 thought the suspect dove or jumped to his right into a tall grassy area. Officer 3 was concerned that the suspect had not been hit and was attempting to hide from the officers so that he could obtain a position of advantage and lure an officer towards him and shoot that officer.

Officer 3 told the other officers to stop moving towards the suspect until they could see him. At that point no one could see the suspect, and Officer 3 knew there was a deep ravine just east of the road. He was concerned that if the suspect was able to get into the ravine he could flee or continue to pose a threat to the officers. Officer 3 requested a CHP helicopter flying above them to look down to see if they could see the suspect. An officer from the helicopter reported they could see the suspect and he was lying in the weeds and had been hit or was pretending to be hit. Officer 3 then requested the SWAT "Peace Keeper" vehicle respond so that officers could safely approach the suspect. The "Peace Keeper" arrived with additional officers, and Officer 3 instructed the officers already on scene to take tactical positions and lower their weapons to avoid any potential cross fire situation. Officer 3 observed the officers who arrived on the "Peace Keeper" clear the suspect's vehicle and approach the suspect. Those officers eventually advised that the suspect was deceased. Officer 3 then turned the scene over to a commanding officer for supervisory purposes.

Officer 4

Officer 4 is a SWAT team member. He received a call from the SWAT team leader at 1915 hours on August 2, 2012. The team leader asked Officer 4 to respond to the main station for a SWAT response to an officer-involved shooting. Officer 4 arrived at the station at approximately 1930 hours. There, he received a briefing about the pursuit and subsequent shooting. The pertinent information provided was that shots had been fired, the suspect may have fired at officers, and the suspect may have been shot. Officers at the scene were unsure if the suspect was "lying in wait" for them and may still pose a risk. The SWAT team was asked to respond with their armored vehicle, the "Peace Keeper," and tasked with a safe approach to the suspect.

When the SWAT team arrived at the shooting scene on Highway 1 near Black Road, they were told by an officer on scene that the suspect vehicle had not been checked or cleared and they were asked to make the suspect vehicle safe. Two SWAT members approached the suspect vehicle in the "Peace Keeper," while three other officers approached on foot. Officer 4 was armed with a less lethal .40 millimeter gun loaded with impact sponge rounds and he carried his rifle. Three SWAT officers cleared the suspect's vehicle and determined there were no additional threats present in the vehicle. While clearing the vehicle, they could see the suspect who was lying on his back, approximately three to five feet from the open driver's door of his vehicle. Officer 4 and another SWAT Officer approached the suspect while another officer stayed back and covered them with a rifle. As Officer 4 approached the suspect, he could see that the suspect was not moving but had a handgun in his right hand on or near his right leg with his finger on the trigger. The handgun appeared to be "jammed" because the slide was depressed approximately one inch. Officer 4 described the suspect having an entry or exit wound on his right cheek or neck area, and there was a beer can near his groin or abdomen area.

Officer 4 approached the suspect and grabbed his right arm just above the wrist to control the weapon in case the suspect still posed a threat. When he grabbed the suspect's right wrist he checked for a pulse for several minutes and did not find a pulse. Officer 4 then used his other hand to remove the suspect's finger from the trigger. He did not remove the handgun from the suspect's hand because when they initially arrived at the scene, a commander told them if the suspect was deceased not to move any weapons. Officer 4 reported on the radio that the suspect appeared deceased, and he maintained cover on the suspect until he was relieved by a Santa Barbara Sheriff's Department detective.

Officer 5

Officer 5 was working patrol on August 2, 2012. He heard a call on the radio at approximately 1300-1400 hours reporting a Hispanic male subject with a black handgun, possibly a Glock. The reporting party indicated the suspect was possibly involved in a road rage incident and was driving a tan or gold colored Yukon SUV with an "In memory of" sticker on the rear window.

Later that evening, Officer 5 heard a similar call about a man in an SUV brandishing a gun, and heard Officer 1 broadcast over the radio that he was behind the suspect vehicle. That vehicle failed to yield and was now fleeing from Officer 1. Officer 5 immediately responded from Stowell Center Plaza towards Officer 1's location in the 400-500 block of East Main Street and the 200 block of North Elizabeth Street. As Officer 5 approached the intersection of College Drive and Main Street, he saw units pursuing the suspect vehicle. The pursuit was traveling eastbound on Main Street, and Officer 5 began following the pursuing units.

The pursuit entered the 101 freeway and Officer 5 saw Officer 1 was the lead unit, Officer 3 (driving an unmarked white police vehicle) was second, Officer 2 (driving a gray Crown Victoria) was third, and Officer 8 was fourth. As the pursuit continued northbound on the 101 freeway, Officer 3 broadcast that he wanted five units in the pursuit, and Officer 5 became the fifth unit.

The suspect exited on Tefft Street in Nipomo. It appeared he was going to turn east on Tefft Street, but instead, at the red light, the suspect cut off traffic and turned westbound. The suspect then turned southbound onto the frontage road. At an unknown street the suspect turned westbound on Division Street then made a hard right turn at the dead end of Division Street. At this point Officer 5 saw two additional black and white police units behind him. As the pursuit continued towards Guadalupe, the suspect swerved, slowed down and then sped up again. At this point Officer 5 was close enough to the suspect's vehicle that he saw the "In memory of" sticker on the back window. Officer 5 sent dispatch a message on his MDC terminal indicating this vehicle was possibly the same one as the earlier call. He was not able to broadcast this information over the radio because of the busy radio transmission.

As the pursuit approached Highway 1, they turned southbound onto Highway 1 towards Guadalupe. Officer 5 heard a radio transmission asking CHP to set up spike strips. At or near Main Street and Highway 166, Officer 5 noticed a K-9 unit (later identified as Officer 6). The K-9 unit moved up to the number three position in the pursuit.

At one point, Officer 1 broadcast that he saw the suspect throw something out of the window, possibly a cell phone. Someone requested that the last unit stop and pick up the item. Officer 5 was the last unit, so

he stopped and picked up a white cell phone case on the east side of the road. Officer 5 did not locate a cell phone. Also during the pursuit, dispatch broadcast that they were on the phone with a male witness, "Witness 2." Witness 2 told the dispatcher that the suspect being pursued was his family member. Officer 5 is familiar with Witness 2 from prior contacts. Officer 5 knew there was recently an officer safety bulletin on Witness 2 because there was information that Witness 2 was carrying a firearm and has an extensive criminal history.

While driving on Highway 1, the suspect drove in the wrong lane directly towards a stopped semi-truck that was pulled over on the east shoulder. At the last minute, the suspect swerved back to the southbound lane and continued driving. After seeing this, Officer 5 thought the suspect was suicidal or possibly intoxicated. The suspect swerved and missed a spike strip that was set up in the roadway. At Highway 1 and Black Road there was another spike strip set up. The suspect drove over this spike strip and it flattened his tires. The suspect's vehicle came to rest in the shoulder of the northbound lane, facing southbound. Officer 1 broadcast that he also drove over the spike strip. All pursuing units stopped and spread out on the roadway.

Officer 5 deployed his AR-15 rifle and exited his vehicle. As soon as he got out of his vehicle he heard rapid gunfire. He was unsure how many shots he heard, but recognized the gunfire as rifle shots. He ran towards the front units and took a position at the right side (front wheel well) of a nearby unit. While at this position, Officer 5 could see that Officer 2 had a rifle and Officer 1 had his handgun. Both had their weapons pointed at the suspect.

The suspect's driver's side door was open. Officer 5 saw what he thought was a shoe in the bushes, east of the driver's door. He could not see beyond the shoe due to the heavy brush. Officer 5 held his position with his rifle covering the suspect. A CHP helicopter on scene confirmed the suspect was not moving. Officer 5 held his position until he was relieved by a SWAT officer approximately 30-45 minutes later. At this time, a SWAT officer asked Officer 5 to drive the SWAT "Peace Keeper" vehicle. The team included two other SWAT officers and Officer 2. They cleared the suspect's vehicle. Officer 4 then checked the suspect and advised he was deceased. Officer 4 also broadcast that the suspect had a handgun in his hand.

Officer 5 did not fire his weapon and he did not see any officers fire their weapons. He only found out who fired their weapons when Officer 3 asked the officers who fired. He then learned that Officers 1 and 2 fired their weapons. He did not know how many shots they fired. Officer 5 remained in the "Peace Keeper" until a commanding officer directed him to be transported for an interview as a witness officer.

Officer 6

Officer 6 is a police canine handler. He was in the parking lot of his agency's station when dispatch informed him that other law enforcement agencies were in pursuit of a vehicle northbound on the 101 freeway and officers were requesting K-9 assistance. The vehicle was described as a gold colored GMC Yukon or Chevrolet Tahoe. Officer 6 got into his patrol vehicle and responded Code 3 towards the location. According to Officer 6, as he was driving north on the 101 freeway, he heard on the radio that the pursuit entered San Luis Obispo county in the Nipomo area. As Officer 6 approached the north end of Santa Maria on the 101 freeway, dispatch informed him the pursuit was now heading west on Division

Road through Nipomo. Officer 6 exited the freeway at Highway 166, re-entered the 101 freeway southbound, then exited on Broadway. He continued driving on Broadway until he reached Donovan Road where he turned west towards Blosser Road. At Blosser Road, Officer 6 drove south towards Main Street and then west towards Highway 1.

As the pursuit approached Righetti Ranch between Brown Road and Black Road on Highway 1, Officer 6 saw the suspect's vehicle (driving southbound) swerve towards a semi-truck in the northbound lane as if the suspect was "playing chicken" with it. The suspect's vehicle moved back into the southbound lane before almost colliding with the truck. As the pursuit passed Righetti Ranch, Officer 6 heard on the radio that the suspect was throwing items out of the vehicle. Officer 6 observed the suspect throw a blue and gold colored can out of the vehicle.

Officer 6 saw CHP attempt to set up a spike strip at Highway 1 north of Highway 166, but the suspect swerved and the spike strip was unsuccessful. Officer 6 then saw the suspect vehicle proceed south on Highway 1 towards Brown Road. Shortly after this, he heard an officer request that Officer 6 take the number three position in the pursuit. Officer 6 passed five to seven patrol vehicles and assumed the number three position. Officer 6 reported the first vehicle in the pursuit was a black and white patrol vehicle driven by Officer 1; the second vehicle was a grey unmarked Crown Victoria driven by Officer 2; Officer 6 was in the third position; and the fourth vehicle was a white unmarked Crown Victoria driven by Officer 3.

As they approached Black Road on Highway 1, Officer 6 saw CHP deploy two sets of spike strips towards the north and south ends of the intersection at Black Road and Highway 1. Officer 6 thought both spike strips were successful as the suspect's vehicle came to a stop shortly after and was facing south in the northbound shoulder lane. After the suspect's vehicle stopped, Officer 6 and the three pursuing SMPD units assumed a felony stop position. Officer 1 positioned his vehicle behind and towards the right of the suspect's vehicle. Officer 6 parked his vehicle at a slight slant behind Officer 1's vehicle, and Officer 3 positioned his vehicle to the left of Officer 6's vehicle.

Officer 6 exited his patrol vehicle and attempted to retrieve his K-9 when he heard shots fired. Officer 6 was facing his vehicle and not the suspect when he heard the shots fired. After the shots were fired he could see from the corner of his left eye the suspect standing at the driver's side door of the suspect's vehicle. He then saw the suspect fall to the right and into the brush out of view. Officer 6 could not recall how many shots he heard or who fired the shots.

Officer 6 did not fire his weapon nor did he deploy his K-9. Officer 3 instructed everyone not to advance on the suspect and to hold their positions until the "Peace Keeper" vehicle arrived on scene. Once the "Peace Keeper" arrived on scene, Officer 6 saw officers clear the vehicle and then approach where the suspect had fallen. He could not see what the officers did at this point but he eventually heard officers report the suspect was deceased.

After he was released from the scene, Officer 6 and an SBSO detective found the blue and gold colored can he saw the suspect throw from his vehicle on the shoulder of the roadway and marked its location using orange traffic paint.

Officer 7

Officer 7 was working a patrol shift on August 2, 2012. At approximately 1700 hours she was dispatched to a call of a male subject pointing a gun in front of a restaurant. By the time she arrived to the restaurant, the involved parties had left the scene. Later during her shift, at approximately 1814 hours, Officer 7 was dispatched to a call of a suspect in a gold colored GMC Yukon brandishing a weapon. She responded from Cook Street and Western Avenue to the area of Mill Street at School Street, and at about the same time, Officer 1 reported over the radio that he was already behind the suspect vehicle. Shortly thereafter, and while Officer 7 was still en route to the call, Officer 1 advised that he was in pursuit of the suspect's vehicle.

Officer 7 responded Code 3 to the area where she believed Officer 1 was pursuing the suspect. As she was traveling eastbound on Main Street, she noticed a white Crown Victoria in front of her driven by Officer 3. Officer 3 advised that he was behind the first unit in the pursuit in the area of Main Street near School Street. Officer 7 fell into the pursuit behind Officer 3's vehicle. The pursuit traveled through neighborhoods for a short time and then headed eastbound on Main Street towards the 101 freeway. The suspect entered the 101 freeway northbound, and at this point Officer 7 believed that two additional units were behind her. Officer 2 was directly behind her in a grey/blue unmarked Crown Victoria.

The suspect drove at varying speeds and swerved all over the freeway. The suspect continued northbound on the 101 freeway in the number one lane even through a construction zone. At some point while still on the 101 freeway, Officer 2 took over the number two position of the pursuit. Eventually, the suspect exited the freeway at Tefft Street in Nipomo. The suspect headed west on Tefft Street and turned south onto the frontage road. The pursuit continued on the frontage road until the suspect turned west onto Division Road. The suspect would slow down to the point where the officers began to deploy into a felony stop but then the suspect would continue driving. While driving on Division Road, Officer 7 fell into the number four position in the pursuit. The suspect remained on Division Road through Nipomo until they reached Highway 1.

As the pursuit approached Highway 1, Officer 7 saw a K-9 unit blocking southbound Highway 1 traffic so the pursuit could safely travel through the intersection. Then the pursuit turned south onto Highway 1. While on Highway 1 the suspect swerved and drove on the wrong side of the road. At one point the suspect nearly collided head-on with a semi-truck. The suspect continued to drive erratically by slowing down and then quickly accelerating. The suspect threw items out of the vehicle. Although she did not see the first item, Officer 7 heard Officer 2 report the first item as possibly a cell phone. Then Officer 7 saw the suspect throw what appeared to be a blue beer can out of his vehicle.

As the pursuit crossed the intersection at Black Road they began to slow down, and Officer 7 heard someone advise that the suspect hit a spike strip. As the vehicles stopped, Officer 1 stopped to the far right lane; Officer 2's vehicle stopped near Officer 1's driver's side door; and Officer 3's vehicle stopped directly in front of her vehicle. Officer 7 already had her shotgun unlocked and lying across her front seat. Officer 7 could not see the suspect at this time. When she opened her door and stepped out of her vehicle with her shotgun, Officer 7 saw shell casings coming across Officer 3's vehicle. Officer 7 saw two streams of shell casings, but she could not determine if they were coming from Officer 1 or 2.

As Officer 7 approached the other officers she could hear them reporting that the suspect was down and in the bushes. She moved towards Officer 3's vehicle, and then she and Officer 3 both moved to Officer 2's vehicle for cover. Additional officers then arrived to watch the vehicle and the bushes where the suspect was last seen. Eventually, SWAT members arrived with the "Peace Keeper" armored vehicle, approached the suspect's vehicle and cleared it, and then secured the suspect who had been determined to be deceased. Officer 7 was told by someone that the suspect still had the gun in his hand.

Officer 8

Officer 8 was working a patrol shift on August 2, 2012. At about 1700-1715 hours, he heard a report of a man driving a tan/gold colored SUV brandishing a gun. Officer 8 also heard that the officers who responded to that call were unable to locate the suspect. At approximately 1800 hours Officer 8 heard a call of a Hispanic male driving a tan colored SUV who brandished a weapon as he drove. Officer 8 responded to assist when he heard Officer 1 advise over the radio that he was behind the suspect vehicle, the vehicle was not yielding, and therefore a pursuit was initiated. Officer 8 joined the pursuit in the area of Main Street and Miller Street.

Officer 8 was the fourth unit in the pursuit as they drove on the city streets. When they entered the 101 freeway northbound, Officer 2 joined the pursuit, passed Officer 8, and took the number two position. The suspect was driving erratically but not at an excessive speed. The suspect exited the freeway at Tefft Street in Nipomo and the pursuing units followed. Officer 8 was unsure how many units were involved at this point. As they traveled onto Highway 1 and towards the City of Guadalupe, a K-9 unit joined the pursuit and took the number three position. The suspect continued to drive erratically by crossing over all lanes of the roadway, driving on the shoulder, and running through red lights and stop signs. At Highway 1 and Main Street, Officer 8 saw a CHP officer deploy a spike strip and the suspect swerve to avoid the spike strip. Officer 8 then saw a second CHP officer near Highway 1 and Black Road deploy a spike strip. The suspect ran over the spike strip, continued driving approximately $\frac{1}{2}$ to $\frac{3}{4}$ of a mile before coming to a stop with all four tires flattened. The suspect's vehicle now faced south in the northbound lane of Highway 1.

Officer 1 stopped his vehicle approximately four car lengths behind and to the right of the suspect's vehicle. Officer 2 stopped to the left of Officer 2; the K-9 unit stopped behind Officer 1; Officer 3 stopped behind Officer 2; Officer 7 stopped behind the K-9 unit; and Officer 8 stopped behind Officer 3. As Officer 8 stopped, he exited his vehicle and ran to position himself just to the left of Officer 1 who was standing just outside of his opened driver's door. While running, Officer 8 saw Officer 2 fire his patrol rifle toward the suspect's vehicle. Officer 8 saw shell casings flying through the air as Officer 2 was firing. Officer 8 never saw the suspect standing or his body as it lay on the ground. After the shooting, Officer 8 and other officers covered the suspect's vehicle and the suspect as they waited for additional personnel to arrive. After about 45 minutes, SWAT officers arrived with the "Peace Keeper" vehicle. The SWAT officers checked and cleared the suspect's vehicle and declared the suspect deceased.

Statements of Civilian Witnesses

Confidential Witness (“Witness 1”)

Witness 1 is a friend of Robert Reyes’ who she met through Witness 2. Witness 1 met Reyes a couple of months after his wife passed away. Reyes told Witness 1 that his wife had been pregnant with someone else’s baby when she died.

On August 2, 2012, at around 1600 hours, Reyes came to Witness 1’s residence and he appeared to have been crying. Witness 1 got into Reyes’ vehicle and noticed there was a bottle of alcohol in the vehicle and a black handgun in Reyes’ lap. Reyes was upset and he drove to other residences where he talked with his cousins. Witness 1 did not know the names of the people with whom Reyes spoke. According to Witness 1, Reyes seemed to have “kind of lost it.” Witness 1 told Reyes to put the gun down because she was scared. Reyes talked about the FBI following him, and he said he was “leaving” and was “tired.” Reyes made statements about “going to heaven.” He was crying about his wife and said, “I’m tired, I don’t want to be here no more.” Witness 1 thought Reyes sounded suicidal. She was with him for between one and one and half hours total. During this time, Witness 1 feared for her own safety but was also concerned for Reyes. Reyes drove recklessly and consumed alcohol while driving. At one point while they were stopped at a stop sign, someone behind them honked at their vehicle. Reyes got out of the vehicle with the gun in his hand. Witness 1 thought the gun was real and it was only later when she saw the news she learned that the gun was not real. Eventually, Reyes stopped at his residence and Witness 1 went inside to use the restroom. While she was inside, Reyes drove away. When Witness 1 went outside she saw a police vehicle pursuing Reyes.

Confidential Witness (“Witness 2”)

Witness 2 is a relative of Robert Reyes. On August 2, 2012 at 1835 hours Witness 2 called 911 and identified himself to a dispatch operator as a relative of “Robert” who was the driver of the SUV being pursued by the police. Witness 2 told the dispatcher he was just on the phone with Robert. Witness 2 did not want to provide Robert’s last name. Witness 2 said he did not want the police to shoot Robert. He thought Robert was going to his sister’s house. Witness 2 tried to calm Robert down but Robert did not want to pull over because he was going to get shot. Robert told Witness 2 that law enforcement officers shot at him twice already. The dispatcher asked Witness 2 if Robert had a gun in the car. Witness 2 told the dispatcher that Robert did not have a gun in the car. Witness 2 said he did not know why Robert was doing this but said he was going through a lot since his wife committed suicide a month or two ago. In response to the Dispatcher’s question about why Robert was “out of control” and pointed a gun at an officer, Witness 2 said he did not know Robert had done that, but reiterated that Robert told him the cops shot at him twice.

On November 15, 2012 investigators interviewed Witness 2. Witness 2 recalled that Robert called him on August 2, 2012, sometime in the afternoon between 1430-1700 hours. Robert told Witness 2 he had been shot by law enforcement and was being chased by police. Witness 2 did not believe Robert had been shot when they spoke on the phone, but he believed that Robert had a premonition that he was going to be shot by law enforcement because they knew other people who had been shot by law enforcement officers. He could tell Robert was intoxicated when he called him based on the way he was talking. Witness 2 told

Robert to come to his sister's house and that he would stand in front of him so the cops would not shoot him.

Witness 2 said Robert had been going through a lot after the death of his wife. Witness 2 knew Robert drank alcohol and said he would possibly use methamphetamine once in a while. Witness 2 thought Robert found out about his wife's pregnancy the day he died. He believed Robert was "out of his mind" on August 2 because he was laughing and crying during the phone call. Witness 2 described a conversation he and Robert had about two weeks prior to August 2 where they discussed an officer-involved shooting and Witness 2 recalled Robert saying something like, "Fuck, watch, I think they are going to kill me or something like that." Witness 2 explained there had been a lot of officer-involved shootings which is why they were talking about this. He thought Robert knew how he was going to die.

Confidential Witness ("Witness 3")

Witness 3 is the mother of Witness 1. Witness 3 met Reyes for the first time on August 2, 2012, when Reyes came to pick up Witness 1. Witness 3 spoke to Reyes while he was in his vehicle – a brown truck. After saying hello, Reyes said, "Today I'm gonna die." This made Witness 3 nervous and she told him not to "talk crazy." Witness 3 was aware Reyes had family problems related to his children and wife. Witness 3 thought Reyes had been drinking.

Xochit Farias

Xochit Farias is the sister-in-law of Robert Reyes. On August 2, 2012 Ms. Farias received a phone call from a friend who told her that they saw on the news that Reyes was involved in a police pursuit. Ms. Farias drove to the command post location near the area of Highway 1 and Black Road but did not know if Reyes was the suspect involved. After speaking with Sheriff's investigators, Ms. Farias confirmed that Reyes' vehicle was the one driven by the suspect based on the "In memory of" sticker in the back window.

Ms. Farias stated that Reyes' wife, Gina Reyes, died of an aneurism in April 2012. Ms. Farias explained that Mr. Reyes has four sons he has been taking care of on his own since his wife's death, and he had been "really restless and kinda lost, trying to sort everything out." Ms. Farias did not know what happened on August 2, 2012 but had spoken to Reyes in the days prior and he had been "really emotional and just, kinda feeling lost and not being able to pick up the pieces." Ms. Farias explained she knew Reyes was distraught because of text messages he sent her and the last time he spoke to her when he told her, "He couldn't take it anymore."

Nicolas and Ofelia Reyes

Nicolas Reyes is the father of Robert Reyes, and Ofelia Reyes is the mother of Robert Reyes. On August 2, 2012, between 1820 and 1830 hours, Reyes called his mother and said he was being chased by law enforcement. He told Mrs. Reyes he made a mistake and felt bad. Mrs. Reyes said she overheard Robert yelling, "God forgive me" and others, who she thought were officers, yelling. After this the phone line was disconnected.

Ofelia had not spoken to Robert in approximately two weeks. Neither Nicolas nor Ofelia ever heard Reyes discuss wanting to hurt himself or not wanting to be around because of what he was going through after the death of his wife. Nicolas told investigators that he did not know Reyes to own or carry a weapon.

Betty Reyes

Betty Reyes is the sister of Robert Reyes. Betty and her parents, Ofelia and Nicolas Reyes, arrived at the roadblock on Highway 1 near the scene of the officer-involved shooting after they learned that Robert Reyes was the suspect. Betty and Robert stopped talking approximately three years ago. After Robert's wife died in April, Betty and Robert reconnected and they had been close since then. Robert had been depressed since his wife's death, and Betty said that some days were good for him and others were not. Robert discovered after his wife died that she was involved in embezzlement or fraud at the post office and she was going to be prosecuted. Robert also recently discovered that his wife was pregnant with someone else's child at the time she died. Robert's wife was addicted to pills and Betty and Robert believed the cause of her death was an overdose of pills. Robert and Betty spoke nearly every day, and if a couple of days passed when Robert did not return Betty's calls or text messages she would go to his house to check on him.

On the morning of August 2, 2012, Robert called Betty but did not reach her. They tried to connect by phone that morning but were unable to, so Betty texted him to see if he was okay. They finally spoke at 2:30 p.m. Robert was crying and said he found out more information about his wife. Robert said he was "tired" and he "wanted peace." Robert kept saying he was sorry and that he loved Betty. Betty thought Robert was saying he was sorry because he felt like he was failing. Robert told her that he "couldn't take it anymore," and "he was tired of finding out one thing after another." Betty told Robert she would come to his house after work. Robert said he may not be there but if he was not home he would leave her a note. Betty went to Robert's house after work, between 5:15-5:20 p.m., but he was not there. She spoke to a woman who she did not know. The woman told Betty that Robert did not look good and was "really depressed." Betty later learned from a friend that her brother led police on a pursuit. Betty knew if Robert faced anything with the law that he would go to prison for the rest of his life because he was a "third striker." In spite of this, Betty did not know why Robert did not pull over for the police on this day.

Forensic Documentation of Shooting Scene

Highway 1 at the location of the shooting is a two lane road that is surrounded by farm land. Reyes' SUV stopped in the westbound lane after the tires were punctured by spike strips. All four tires on the SUV were flat. Five cans of Miller Lite beer were inside the vehicle. The driver's door was open and Reyes was lying on his back just off the road in a dirt area overgrown with weeds. He had gripped in his right hand what appeared to be a semi-automatic handgun and there was a beer can between his legs. Several SMPD vehicles were also stopped in the roadway, along with a SWAT vehicle, called the "Peace Keeper."

A total of 10 expended .223 casings, 3 expended 9 mm casings, and 5 expended .45 casings were located at the scene. During the preliminary walk-through of the scene, investigators determined the gun in Reyes' hand was a realistic looking replica of a semi-automatic handgun. A .223 caliber bullet fragment was located lying on the left sleeve of Reyes' shirt. Located in Reyes' right front shirt pocket was an orange pill container with the label removed. Inside the container was a tin foil package which held 39 round blue pills which were later determined to be 30 mg doses of Oxycodone Hydrochloride.

Review of Video

In-car video: Officer 1

Officer 1's in-car video captured the pursuit from its start on Mill Street. There is no audio on the video. Officer 1's in-car video shows Officer 1 approach Reyes' stopped vehicle, Officer 1 began to exit his vehicle, and Reyes drove away. Officer 1 began pursuing Reyes' vehicle. Reyes ran several red lights and drove through some stop signs while stopping at others. While on city streets he would intermittently stop his vehicle then accelerate and continue driving. As Reyes approached the 101 freeway on Main Street he drove increasingly erratic by weaving in and out of traffic, running red lights and speeding for the traffic conditions present. While on the 101 freeway Reyes continued weaving in and out of lanes but did not appear to drive at an excessive speed. At one point he waved his hand or arm out of the driver's side window. When exiting at Tefft Street, Reyes made several dangerous driving movements when he cut off traffic to turn left off of the exit ramp from the far right lane and drove on the wrong side of the road to turn onto the frontage road. As he drove toward the City of Guadalupe he ran red lights, drove on the wrong side of the road, stopped then accelerated, and weaved all over the roadway. As Reyes drove on Highway 1 he continued driving in the same manner. At one point, a CHP Officer stood on the right shoulder after setting up a spike strip in the roadway. As Reyes swerved to avoid the spike strip, the officer fell to the right in what appeared to be an attempt to avoid being hit by Reyes' SUV. After Reyes swerved around the spike strip, he accelerated and continued driving faster. Further on Highway 1, CHP officers set up a second set of spike strips and it was successful as Reyes hit the strips and he eventually came to a stop on the wrong side of the road.

Once at a stop, Reyes opened his car door and he appeared to manipulate something with his hand near the door. As he got out of the car, he turned towards the officers and pointed his right hand toward the officers. There was what appeared to be a black handgun in his right hand. Reyes immediately fell to his right and into the overgrown weeds on the shoulder of the roadway. He was no longer visible from the vantage point of the video.

In-car video: Officer 2

Officer 2's in-car video captured the pursuit beginning around Mill Street. There is no audio in the video recording. Officer 2's in-car video shows Officer 2 joining the pursuit as the fifth vehicle. While on the 101 freeway, Officer 2 moved into the third position in the pursuit behind Officer 3 and stayed in the third position until in the City of Guadalupe where he eventually passed Officer 3 and assumed the second position. Reyes' vehicle can only be seen intermittently in the video from Officer 2's in-car video as he is behind other officers for the majority of the pursuit.

As Reyes' vehicle came to a stop, Officer 2 stopped to the left of Officer 1. From Officer 2's video, Officer 1 is clearly seen opening his car door and while still seated he pointed his firearm at the suspect through the A-frame area of his vehicle. Reyes exited his vehicle and pointed his right hand toward the officers. In his right hand he held what appears to be a gun. Officer 1 fired approximately two or three shots at Reyes, and two shell casings (presumably from Officer 2's rifle) skid across the hood of Officer 2's vehicle. Reyes immediately fell to his right and into the overgrown weeds on the shoulder of the roadway. Shortly after, Officer 2 moved towards Officer 1 and Officer 1 stepped out of his vehicle.

Replica Handgun

The suspect's gun was a realistic-appearing replica of a 9 mm pistol. Below are photographs of the suspect's replica gun (left) and an actual Walther P99 handgun (right). Typically, replica firearms have a red or orange colored tip on the barrel end to indicate it is not a real firearm. Reyes' gun did not have a colored tip on the barrel end, making it appear even more realistic.



Autopsy

On August 7, 2012, Dr. Robert Anthony performed an autopsy on Robert Reyes. Dr. Anthony discovered five wound paths and what appeared to be three bullets still in the body (left shoulder, left hip, and near bottom of left ribcage). The wounds appeared to have been caused by rounds similar to 9 mm and .223 caliber bullets. One of the bullets entered at the jaw and traveled in a downward direction where it lodged in his left shoulder. This bullet perforated the esophagus and caused significant damage to the spine. Another bullet entered the chest just left of the right nipple and exited just below the right armpit before striking the inside of the left bicep. This bullet struck the lower portion of the heart and grazed the left lung. Another bullet entered at the right hip and lodged on the left side of the inner pelvic area. Another bullet entered near the upper right rear flank and lodged near the bottom of the left ribcage. This bullet struck the right kidney, liver and left kidney. The last gunshot wound noted appeared to be a grazing wound near the spine in the center of the back.

Visible during the autopsy were numerous tattoos on his body which included the following gang-related tattoos: "Nipas", "805", "Wicked", "Brown Pride", and "Sureno Pride, and "Sur 13." These are just a few of the notable tattoos, as a large portion of Reyes' body was covered with tattoos. Toxicology results

showed that Reyes had a blood alcohol level of 0.251 and methamphetamine (170 ng/mL) in his system. Dr. Anthony determined that the cause of Reyes' death was due to multiple gunshot wounds.

Suspect History

Robert Reyes was a 37 year old Hispanic male. He had been unemployed since the death of his wife, Gina Saenz Reyes, on April 23, 2012.

Reyes had a substantial criminal history which included arrests and/or convictions for attempted murder, lewd acts with a child, assault with a deadly weapon, shooting at an inhabited dwelling, vandalism, causing injury while driving intoxicated, felony resisting arrest, domestic violence, and driving while intoxicated. One of his convictions included an enhancement as a "street gang act" and he was sentenced to prison on two separate occasions. These crimes ranged over a 20 year span (1992 until 2012).

Reyes' wife, Gina Reyes died in April 2012. It was reported by the witnesses who knew Reyes that he was having a difficult time dealing with the death of his wife and raising their children, and he had recently learned that at the time of her death his wife was pregnant with another man's child. Friends and family of Reyes described him as depressed and emotional in the days and weeks leading up to the day of the shooting. A couple of weeks prior to August 2, Reyes and a friend talked about other law enforcement shootings involving gang members. During this conversation, Reyes made statements about being shot by police officers, possibly suggesting he was considering committing suicide by cop. On August 2, Reyes made several statements to his relatives and a friend that indicate he was planning to commit suicide.

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.

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 v. Conner* (1989) 490 U.S. 386, 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 stated, “[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 split-second judgments-in circumstances that are tense, uncertain and rapidly evolving-about the amount of force that is necessary in a particular situation.” (*Id.*, at 397-398). Under *Graham*, we must avoid substitution 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

Robert Reyes was in a suicidal state on August 2, 2012. Four months prior, Reyes’ wife died, and while there are conflicting reports about her cause of death, it appears that Reyes may have believed she died of an overdose of pills and that she was pregnant with another man’s child. Reyes’ friends and relatives described him as being depressed and having a hard time dealing with the loss of his wife, taking care of his young children, and the information he had learned about his wife since her death. On August 2 Reyes told his sister, Betty Reyes, that he was “tired,” “wanted peace,” and “couldn’t take it anymore.” Later that day, there were four calls to 911 reporting a man (later determined to be Robert Reyes) who was brandishing a black handgun at various locations in the City of Santa Maria. Reyes drove around Santa Maria with a female friend, drinking, holding what appeared to be a black handgun, and making suicidal statements such as, “going to heaven” and “I don’t want to be here no more.” His friend thought he was suicidal and feared for her own safety as she described Reyes as having “lost it.”

Later that day, 911 dispatch received the fourth call about the same man in a gold or tan colored SUV brandishing a weapon. A police officer responded to the call, and when he approached Reyes’ vehicle, Reyes drove away and led officers on a vehicle pursuit through the cities of Santa Maria, Nipomo and Guadalupe. Throughout this pursuit Reyes drove erratically, weaving all over the roadway, speeding at times, driving on the wrong side of the road, and stopping then accelerating again. On at least one occasion, officers saw Reyes waving a gun out of the driver’s side window.

Reyes eventually ran over a spike strip which flattened his tires and he stopped his vehicle on Highway 1. Reyes immediately opened the driver’s side door and began to step out of the vehicle. Officers stopped 20-25 yards behind him and began shouting commands to Reyes to put up his hands and turn around. Reyes turned to face the officers and raised his right hand towards them. Reyes held what appeared to be a gun in his right hand. Fearing for their lives and the lives of the other officers, three police officers fired at Reyes, striking and killing him. It was later discovered that Reyes’ gun was a replica 9 mm handgun. It was a realistic looking 9 mm handgun and was reasonably believed by the officers and all of the

witnesses throughout the day to be an actual gun. All of the officer's actions were reasonable under the standard set forth in *Graham* based on the totality of the circumstances in this case.

CONCLUSION

Based on the investigation by the Santa Barbara County Sheriff's Department, applying the law as set forth in PC 196(2) and the cases cited *supra* in this report, all the officers/deputies acted reasonably in their use of deadly force; therefore, the shooting of Robert Reyes is a justifiable homicide.