

MARSH INVESTIGATIONS AND CONSULTING

REPORT OF INVESTIGATION

SUBJECT: OFFICER INVOLVED SHOOTING INVOLVING AN OFFICER OF THE CITY OF RIVERSIDE POLCE DEPARTMENT, RESULTING IN THE DEATH OF MR. JOSEPH THOMAS TRACY IV.

DATE/TIME OF INCIDENT: TUESDAY, JANUARY 18, 2022 AT APPROXIMATELY 2342 HRS.

INCIDENT LOCATION: dba "TRAVELODGE" 2625 W. FLORIDA AVENUE, HEMET, CA 92545

SOURCE(S) OF INFORMATION:

STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE INVESTIGATION REPORT PURSUANT TO AB 1506 (2021), DATED JUNE 2024

COUNTY OF RIVERSIDE OFFICE OF THE DISTRICT ATTORNEY, HEMET POLICE DEPARTMENT, AND COUNTY OF RIVESIDE SHERIFF'S OFFICE, OFFICER INVOLVED SHOOTING INVESTIGATION, FILE NUMBER: #MB 22-0190001

This shooting incident involved multiple law enforcement officers (LEO's) from various agencies within the County of Riverside. The law enforcement officers were assigned members of the Riverside County District Attorney's Office Gang Investigation Team (GIT).

This report focuses on the City of Riverside Police Department Detective Richard Kerr's involvement in this incident.

INTRODUCTION:

On November 15, 2024, I, Investigator William E. Marsh, was asked by Frank Hauptmann, Consultant to the Community Police Review Commission (CPRC), to review the circumstances surrounding the Officer Involved Shooting Death of **MR. JOSEPH THOMAS TRACY IV**.

The investigation of this officer involved shooting incident is highlighted by the independent investigation and review by the State of California Department of Justice pursuant to the provisions of Assembly Bill 1506, enacted in 2021, as follows:

"Section 12525.3 is added to the Government Code, to read:

(a) For purposes of this subdivision, the following definitions apply:

(1) "Deadly weapon" includes, but is not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.

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(2) "Unarmed civilian" includes anyone who is not in possession of a deadly weapon.

(b) (1) A state prosecutor shall investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. The Attorney General is the state prosecutor unless otherwise specified or named.

(2) The state prosecutor is authorized to do all of the following:

(A) Investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of an unarmed civilian.

(B) For all investigations conducted, prepare and submit a written report. The written report shall include, at a minimum, the following information:

(i) A statement of the facts.

(ii) A detailed analysis and conclusion for each investigatory issue.

(iii) Recommendations to modify the policies and practices of the law enforcement agency, as applicable.

(C) If criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer(s). "

For my review, I was provided, by the City of Riverside, access to the following items (all preserved and digitally formatted):

- A digital folder titled, "2024 06 Mr. Tracy AB 1506 report" which contains a 53 paged PDF formatted document.
- Multiple digital file folders, each containing formatted PDF documents, as follows:

- ExportedFolderContents
- HemetPD Reports DR_2022-00362 - Combined Reports_Redacted
- Joseph Tracy RSO Press Release_Reviewed
- MB-220190001-4550039_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550040_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550041_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550042_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550043_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550044_SuppRPS_INV_Munoz_Redacted
- MB-220190001-4550045_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550046_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550047_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550048_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550049_SuppRPD_INV_Munoz_Redacted
- MB-220190001-4550075_SuppRMS_INV_Munoz_Redacted
- MB-220190001-4550076_SuppRPT_INV_Munoz_Redacted
- MB-220190001-4550077_SuppRPT_INV_Munoz_Redacted
- MB-220190001-34900103_SuppRPT_CPL_Adams_Reviewed
- MB-220190001-34900104_SuppRPT_CPL_Adams_Reviewed

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- MB-220190001-34900105_Supp_CPL_Adams_Reviewed
- MB-220190001-36543301_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543302_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543303_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543315_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543316 **Initial_INV_Moody_Redacted**
- MB-220190001-36543317_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543343_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543344_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543374_SuppRPT_INV_Moody_Reviewed
- MB-220190001-36543406_SuppRPT_INV_Everett_Reviewed
- MB-220190001-36543407_SuppRPT_Tech_Mercado_Reviewed
- MB-220190001-39880053_SuppRPT_DEP_Ditfurth_Reviewed
- MB-220190001-39880054_SuppRPT_DEP_Ditfurth_Reviewed
- MB-220190001-39880055_SuppRPT_DEP_Ditfurth_Reviewed
- MB-220190001-39880056_SuppRPT_DEP_Ditfurth_Reviewed
- MB-220190001-39880058_SuppRPT_DEP_Ditfurth_Reviewed

(**Foregoing documents total 269 pages*)

My analysis is based on a comprehensive review of all received documents and reports prepared by the State of California Department of Justice and the County of Riverside Sheriff and District Attorney's Office(s), coupled with the statements given by the involved law enforcement personnel, witnesses and other pertinent parties.

After my review of the entire incident, it is my expert opinion that the investigations conducted by the County of Riverside District Attorney and Sheriff's Office were conducted in a manner consistent with the accepted best practices, customs and law enforcement procedures during the year 2022 to date.

In this incident, City of Riverside Police Detective Kerr acted in lawful self-defense, defense of other police officers on scene, and members of the public, when he fired his duty weapon at Mr. Tracy.

The GIT is a multi-agency undercover police unit that specializes in apprehending violent and dangerous suspects, particularly when gang activity and firearms could be involved. Members of GIT involved in this incident worked for several agencies in Riverside County. Supervising Investigators Dean Benjamin, Chuck Cervello, and Robert Kwans, and Senior Investigators Gary Cupersmith and Ryan Monis were employed by the Riverside County District Attorney's Office. Detective Daniel Lee was employed by the Beaumont Police Department. Detective Blake Williams was employed by the Murrieta Police Department. Officer Michael Bell was employed by the California Highway Patrol (CHP). Detective Porrazo and Deputy J Smith were employed by the County of Riverside Sheriff's Office. Detective R. Kerr was employed by the City of Riverside

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Police Department.

INCIDENT INFORMATION AND FACTUAL ANALYSIS:

On January 18, 2022, the Gang Impact Team (GIT) of the Riverside County District Attorney's Office conducted surveillance on **Joseph Thomas Tracy IV** at the Travelodge Hotel in the City of Hemet. The team had information that Mr. Tracy was selling large quantities of fentanyl, he was armed with a P80 handgun with a high-capacity magazine, and he was staying at the hotel with an underage female. After attempts to lure Mr. Tracy out of the hotel room, Mr. Tracy saw the officers and fled. During the foot pursuit, Detective Christopher Porrazzo, Deputy Joshua Smith, Detective Richard Kerr, and Sergeant Arthur Paez shot and fatally wounded Mr. Tracy under the belief that he was armed and intended to shoot the officers. Mr. Tracy did possess a handgun, which he dropped during the pursuit and before the officer-involved shooting ("OIS") occurred, and the officers were unaware Mr. Tracy had dropped the gun.

INITIAL INVESTIGATION

In early January 2022, the County of Riverside's multi-agency law enforcement **Gang Impact Team (GIT)**, spearheaded by the Riverside County District Attorney's Office (RCDA) became involved in an investigation which focused on Mr. Tracy.



Joseph Thomas Tracy IV

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The GIT is an undercover police unit that specializes in apprehending violent and dangerous suspects, particularly when gang activity and firearms could be involved. Members of GIT involved in this incident worked for several agencies in Riverside County.

GIT member Detective Blake Williams received information from a confidential informant regarding Mr. Tracy's involvement in the sales of controlled substances (fentanyl). Mr. Tracy was purportedly residing in the Travelodge Hotel (room 221) in the City of Hemet (2625 Florida Ave.).

According to the confidential informant, Mr. Tracy had been staying at the location for the past two months. Additional information received from the confidential informant indicated Mr. Tracy was residing with his underage girlfriend. The informant said Mr. Tracy's vehicle was a silver Cadillac SUV and would be found parked at the hotel. The confidential informant had purchased fentanyl from Mr. Tracy on prior occasions. The confidential informant saw Mr. Tracy in possession of a handgun and said Mr. Tracy was known to be violent and would make attempts to flee from law enforcement.

The confidential informant said further Mr. Tracy was alleged to be involved in the sales of large quantities of fentanyl, was in the possession of a semi-automatic handgun with a large capacity magazine and had ties with gang members.

With the foregoing information, Detective Williams began conducting an investigation. His preliminary investigative efforts provided the following collaborative results:

1. On January 15, 2022, Detective Williams went to the Travelodge and identified a silver Cadillac SUV in the parking lot of the location. The SUV for a license plate which, when checked by law enforcement sources, identified Mr. Tracy as the vehicle's registered owner.
2. Further queries of law enforcement database resources identified that Mr. Tracy was actively on felony probation for possession of a controlled substance while in the possession of a firearm. The terms of his probation provided for search of his, "place and person" at any time, by law enforcement personnel. The appropriation was set to expire in May 2023.
3. A check of Mr. Tracy's criminal history also indicated Mr. Tracy had been previously arrested for burglary, felon in possession of firearm, and felon in possession of ammunition.

Detective Williams delivered the information to Detective Richard Kerr (City of Riverside Police Department, and a member of the GIT). Detective Kerr met with his team members and disseminated all the information.

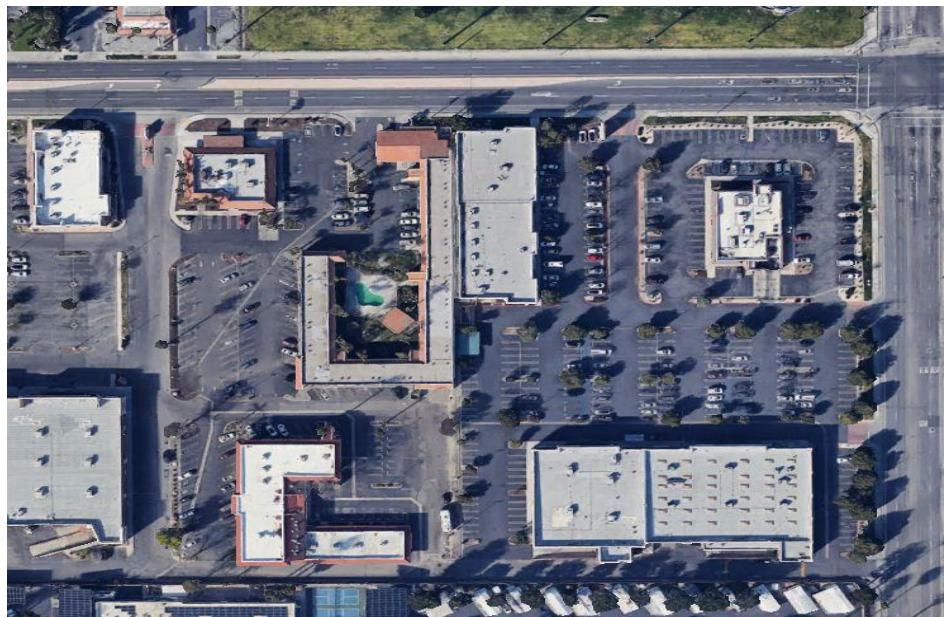
All team members began planning an operation aimed at contacting Mr. Tracy and detaining Mr. Tracy in the safest manner. During the course of their operational planning, special attention was directed at assuring the safety of the underage female. To that end, the planning included the primary focus of luring Mr. Tracy out of the motel room where he could be contacted and detained, thus eliminating the possibility that he would barricade himself inside the motel room.

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With the operational plan in place, GIT personnel contacted Sgt. Arthur Paez of the Hemet Police Department. Sgt. Paez, a member of the Region 3 Riverside County Gang Task Force also provided additional personnel for the operation. The GIT personnel conducted a comprehensive briefing with Sgt. Paez and his personnel. As part of the briefing, all personnel were provided with photographs of Mr. Tracy.

THE INCIDENT

On January 18, 2022 at approximately 2150 hrs., surveillance of the Travelodge location was initiated. GIT members were strategically placed in various locations around the motel.



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Investigators checked the hotel roster for information regarding room 221. Investigators learned that the room was being rented to a young woman (later identified as the 17-year-old girlfriend of Mr. Tracy).

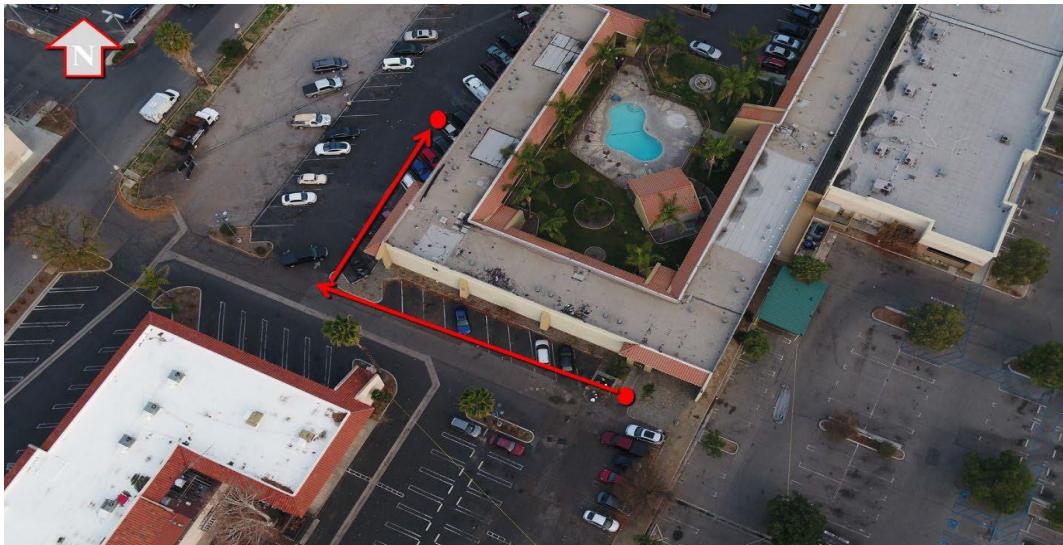
Pursuant to the operational plan, the initial attempt to contact Mr. Tracy was by attempting to lure Mr. Tracy from the room by various ruses.

Team members learned Mr. Tracy's vehicle was parked in the Travelodge lot, beneath the rear window of room number 221. Team members attempted to set off Mr. Tracy's vehicle alarm. Team members removed the car cover from the vehicle. Team members then attempted to rouse Mr. Tracy by setting off an alarm from one of their surveillance vehicles. These foregoing ruse attempts failed to bring Mr. Tracy out of the room.



During the ruse attempts, **Riverside PD Detective Kerr** threw a water bottle at the aforementioned upper rear window of room 221. This activity had an effect as a male and a female were seen looking out of the window. Within moments, a team member provided a positive identification of Mr. Tracy, as Mr. Tracy was seen exiting the door of room 221. All team members were made aware that Mr. Tracy had left the room.

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At approximately 2340 hrs., Mr. Tracy was observed exiting the motel's south facing rear exit door. GIT personnel who were stationed in the area, identified themselves and ordered Mr. Tracy to follow their orders. The commands provided by team members included the shouts of, “hands, hands, let me see your hands” and “get on the ground.”

Mr. Tracy failed to heed any of the commands and began to flee on foot, west bound in the parking lot. As Mr. Tracy was fleeing, he utilized various vehicles as, “cover and concealment” for his actions.

GIT members (Deputy Smith and Detective Porrazzo) armed with 40 mm less than lethal weapons, were strategically placed near the south exit door. As Mr. Tracy was attempting to flee, these members fired four rounds of less than lethal sponge projectiles at Mr. Tracy. The sponges impacted Mr. Tracy and team members saw Mr. Tracy flinching from the impact, however Mr. Tracy continued to flee. Mr. Tracy continued his attempted flight by running from westbound in the south parking lot, to the northwest corner of the motel building, then northbound in the west parking lot of the motel. Mr. Tracy continued to utilize parked vehicles as cover and concealment.

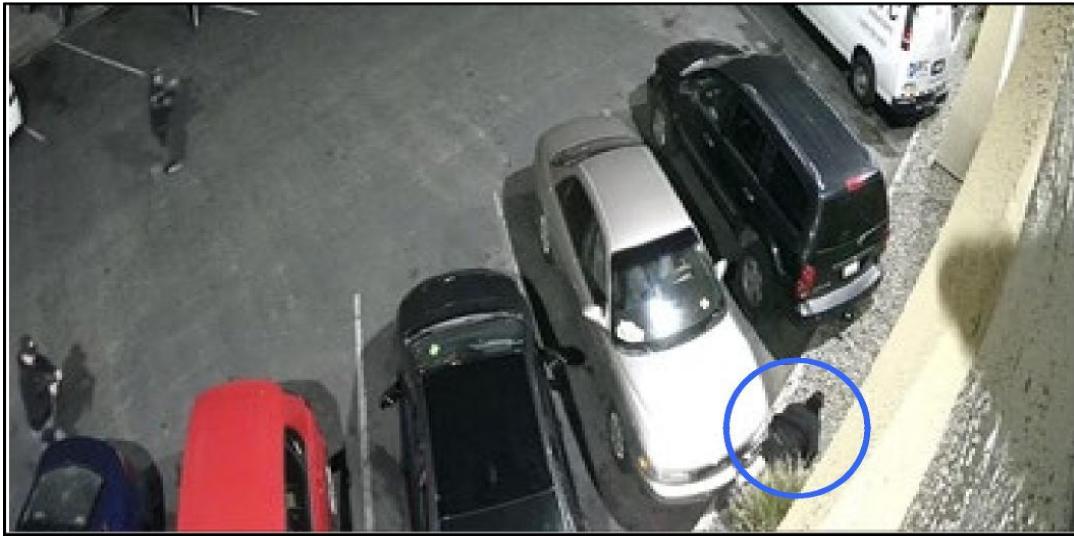
Mr. Tracy was observed by team members to be keeping his right hand close to his right side during his flight. This activity and behavior caused team members to believe that Mr. Tracy was in possession of a handgun. Mr. Tracy continued his movement. He was observed to continually crouch behind vehicles and crouched near the motel's west facing wall.

Team members later recounted in interviews that continual orders were directed at Mr. Tracy in an effort to cause him to stop his flight.

Team members stated they either yelled or heard the commands of, “*hand, hands, let me see your hands*” and “*he’s reaching, he’s reaching,*” and “*I don’t know what he’s reaching for.*”

During the course of his attempted flight along the west facing wall of the motel, Mr. Tracy was seen to trip and fall. Mr. Tracy Rose and continued to move between parked vehicles. Mr. Tracy was crouched during this activity.

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During later interviews, team members who observed the foregoing actions of Mr. Tracy, individually stated they were under the belief that Mr. Tracy was armed with a weapon and intent on finding a location where he would be able to have a position of advantage, all in an attempt to ambush/shoot at officers.



Team members, **including Detective Kerr**, saw Mr. Tracy emerging from behind parked vehicles. Mr. Tracy was coming forward and moving from a crouched position.

Team members saw Mr. Tracy beginning to rise with his hand moving from his waistband in an upward manner

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Team members who were individually interviewed provided varying descriptions of Mr. Tracy's actions as Mr. Tracy was rising from the crouched position. Collectively it is noted that the involved team members were steadfast in their belief that Mr. Tracy was removing/attempting to remove a handgun from his waistband. It was their belief Mr. Tracy was in the process of attempting to fire his weapon at police officers.



At approximately 2341 hrs., the officer involved shooting occurred. During the course of the crime scene investigation and subsequent forensic ballistics investigation, it was determined that 15 rounds were fired by law enforcement officers in this incident. Detective C. Porrazzo (County of Riverside Sheriff's Office) fired six rounds, Deputy J. Smith (County of Riverside Sheriff's Office) fired two rounds, Sergeant A. Paez (Hemet Police Department) fired six rounds and Detective R. Kerr (City of Riverside Police Department) fired one round.

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Mr. Tracy, apparently struck by gunfire, fell to the pavement and lay motionless. Team members approached, assessed and then handcuffed Mr. Tracy. During the assessment, Mr. Tracy did not present signs of life. The response of emergency services was requested.

At 2348 hrs., City of Hemet Fire Department personnel, including paramedics, arrived on scene and made contact with Mr. Tracy. Mr. Tracy was pronounced dead at 2355 hrs.

An un-serialized handgun was located approximately 22 feet from where Mr. Tracy's body ultimately came to rest. The firearm was a tan P80 un-serialized "ghost" gun.



On January 19, 2022, at 11:35 AM, a search warrant was executed in Mr. Tracy's hotel room. HPD officers executed the search warrant and located a black holster, glass vials, \$5,500 in cash, cellular phones, several different unknown substances suspected to be narcotics, and a locking safe.

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A crime scene location was established at the location of the officer involved shooting incident. The location was controlled by assisting law enforcement personnel, pending the arrival of investigators and support personnel.

Ultimately, the GIT personnel involved in the shooting incident were directed to the Hemet Police Department to await contact by investigative personnel.

OFFICER INVOLVED SHOOTING INCIDENT INVESTIGATION BY THE COUNTY OF RIVERSIDE DISTRICT ATTORNEY AND THE RIVERSIDE COUNTY SHERIFF'S DEPARTMENT CENTRAL HOMICIDE UNIT FORCE INVESTIGATION DETAIL

Pursuant to the established policy, the County of Riverside Sheriff's Office and County of Riverside District Attorney's Office had initial/primary investigative responsibilities of this incident.

On January 19, 2022, at approximately 0020 hours, Investigator Munoz (County of Riverside District Attorney's Investigator) was detailed, as the handling investigator, to begin the investigation. Investigator Munoz responded to the crime scene location. Investigator Munoz was assisted in the investigation by additional investigators, crime scene personnel and additional support personnel as required

Consistent with common practices and policies, when an officer involved shooting incident, which included law enforcement personnel from several differing agencies, those agencies may, or may not, conduct their own, independent investigation as it relates to their respective personnel. Again, the primary investigative responsibility rested with the Riverside County Sheriff's Department.

The actions and observations of all personnel involved in the investigation are documented in various reports. Those reports are contained as part of the Riverside County Sheriff's Department Central Homicide Unit case file. Incorporated

Included in the case file are a number of these reports. These reports are from the various GIU team members' parent agencies (i.e. Murietta Police Department, Hemet Police Department, California Highway Patrol, etc.).

During the course of the initial investigation, and consistent with established policy and procedure, the involved officers' weapons were collected pending forensic ballistics investigation.

On January 19, 2022, at approximately 0451 hrs., Riverside Police Department Detective Kerr's weapon was collected by County of Riverside Sheriff's Office Cpl. Adams for examination.

In the supplementary report authored, and submitted by Cpl. Adams (MB-220190001-34900104_SuppRPT_CPL_Adams), Cpl. Adams provided the following information as it related to the City of Riverside Police Department's Detective Kerr:

"Charting Process- Riverside Police Department Detective Kerr #1697 (shooter):

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About 0439 hours I began the charting of Detective Kerr #1697. Detective Kerr was wearing a black hooded sweatshirt, black jeans, black knit cap and a department issued black Riverside Police load bearing vest (LBV). On the front right side of the LBV were name tags that read "1697" and below it, "POLICE."

Detective Kerr had a yellow cloth Riverside Police badge on the left side of his LBV. Detective Kerr was wearing a nylon Sam Brown belt with a thigh holster and a set of keys attached to it. On the back of his LBV was a large "POLICE" patch. All lettering was yellow over a black background. I had him remove the vest and holster lay them on the ground on butcher paper. The following equipment was located on his LBV:

FRONT

Flashlight

2-way radio

Two magazines

Handcuff pouch with handcuffs

Utility pouch with index cards, etc.

Tools behind front pouch

Prybar tool

B A C K

No tools or weapons were located on the back of the LBV.

THIGH HOLSTER and FIREARM

Safariland holster with a 9mm Glock 17, serial number BNYE697 with an attached Streamlight TLR-1 tactical light. Detective Kerr did not carry a backup weapon.

Detective Kerr loaded his magazines to capacity with 9mm WIN Luger ammunition. He carried two magazines on his LBV that each had a capacity of 17 rounds. The magazine in his Glock 17 also had a capacity of 17 rounds. Detective Kerr chambered a round into his firearm then reloaded the magazine so it was back to capacity. Detective Kerr carried a total of 52 rounds. I counted Detective Kerr's rounds during charting and found that he had 51 rounds in his firearm and magazines showing he fired his weapon one time. Detective Kerr did not report any injuries.

The charting of Detective Kerr concluded about 0449 hours. After Detective Kerr was "charted", his firearm, live round from the firearm and magazine was collected and packaged. (JA 03 — JA 03b)"

Additional supplementary reports are contained within the case file which documented the subsequent ballistics examination(s) of Detective Kerr's duty weapon.

During my review of all documents received, I found no reports which provided specific information relating to the actions and observations of Detective Kerr.

A supplementary report authored by Riverside Sheriff's Department Deputy Ditfurth (MB-220190001-39880058_SuppRPT_DEP_Ditfurth) provides information **relating to an**

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examination of the surveillance video footage at the Travelodge. The location had 14 individual surveillance cameras. The report details activity captured by a number of these cameras. There is no documentation that details the independent actions of Detective Kerr.

POST MORTEM EXAMINATION

On January 20, 2022, an autopsy was conducted on the remains of Mr. Tracy. The autopsy was performed by County of Riverside Department of Coroner Chief Forensic Pathologist Doctor Mark Fajardo, M.D. Dr. Fajardo was assisted by Coroner Technician Haylee Solomon.

During the autopsy, Dr. Fajardo located a Taser in Mr. Tracy's left front coat pocket,



Eleven (11) gunshot wounds were identified on Mr. Tracy's remains.

THE INTERVIEWS OF THE LAW ENFORCEMENT PERSONNEL WHO FIRED THEIR WEAPONS IN THIS INCIDENT

Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.) Detective Kerr and Deputy Smith declined to provide voluntary statements.

An employer may compel public employees, including police officers, to answer questions for administrative purposes, but the use of such statements in criminal proceedings is prohibited. (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 827-828, citing *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77-79, *Garrity v. State of New Jersey* (1967) 385 U.S. 493, 500.) Accordingly, no compelled statements were considered as part of this investigation.

In this incident, four officers were identified as firing their weapons at Mr. Tracy. The personnel involved are identified as Detective C. Porrazzo, Sgt. A. Paez, Deputy J. Smith and Detective R. Kerr.

Interview of Detective C. Porrazzo, County of Riverside Sheriff's Office

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The following is a summary of the interview:

On February 4, 2022, Detective Porrazzo voluntarily participated in an interview. The interview was conducted by Special Agent Jon Genens from the Department of Justice, Investigator Felipe Munoz from the Riverside County District Attorney's Office, and Deputy Attorney General Nicholas Schultz from the Department of Justice. Jesse James, attorney for Detective Porrazzo, was also present.

Detective Porrazzo provided information relating to his law enforcement career, his assignments and his prior military career. Detective Porrazzo had been employed with the Riverside County Sheriff's Office since 2001. Detective Porrazzo had several assignments however the bulk of his assignments have been as investigator, specifically conducting investigations regarding gang crimes.

Detective Porrazzo spoke of receiving information regarding the investigation of Mr. Tracy. Detective Porrazzo was fully aware of the initial investigative efforts by Detective Williams. Detective Porrazzo was knowledgeable of the operational plan which was developed to contact and detain Mr. Tracy in a peaceful manner.

Detective Porrazzo was aware of Mr. Tracy's prior law enforcement contacts, his prior arrests, that he was purported to be in possession of a firearm and of Mr. Tracy's current felony probation status. Detective Porrazzo was also aware that an underaged female was alleged to be in the room with Mr. Tracy.

On the date of the incident, Detective Porrazzo responded to the Travelodge location to take part in the planned attempt to take Mr. Tracy into custody. Detective Porrazzo was one of the individuals who carried a 40 mm less than lethal weapon.

Detective Porrazzo took up his surveillance position at the Travelodge. While on-site, Detective Porrazzo heard one of the surveillance detectives broadcasting that Mr. Tracy had been positively identified as being present in room number 221 at the location.

Detective Porrazzo and another surveillance detective (Deputy J. Smith) initially took up a position along the east side of the Travelodge complex. During their time at that position, Detective Porrazzo was aware of the various rooms attempts directed at room number 221. Ultimately, one of the "ruses" succeeded in luring Mr. Tracy from room 221. Detective Porrazzo was aware Mr. Tracy was seen at the Travelodge south exit door.

Detective Porrazzo said that the actions of Mr. Tracy, while at the exit door gave him the belief that Mr. Tracy was attempting to identify and/or target law enforcement personnel at the location.

As the incident unfolded, Detective Porrazzo heard radio transmissions which were describing Mr. Tracy's actions. Detective Porrazzo heard broadcasted statements of, "*He's coming our direction...*" and "*Watch it guys. He's got his hands in the waist [or waistband].*"

From his position, Detective Porrazzo saw Mr. Tracy exit the above-described rear door. Detective Porrazzo said he saw Mr. Tracy place his right hand on his waistband as he

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exited. Detective Porrazzo immediately believed Mr. Tracy was armed with a handgun. During this activity, Detective Porrazzo heard additional team members shouting, “*show us your hands*” repeatedly.

Mr. Tracy came into Detective Porrazzo’s view. In an attempt to stop Mr. Tracy’s movement, and under the belief Mr. Tracy was armed, Detective Porrazzo fired the 40 mm less lethal weapon at Mr. Tracy. Supporting his decision to fire, Detective Porrazzo stated, “*the first thing I saw was his right hand in his waistband, I knew that, at that moment in time, he’s armed with a handgun.*”

Detective Porrazzo said Mr. Tracy was struck by the less lethal projectile. Mr. Tracy, apparently unfazed by the projectile strike, continued to run west along the southern portion of the building, then turned and began fleeing northbound along the west facing wall of the building.

Detective Porrazzo followed Mr. Tracy’s progress. Detective Porrazzo fired additional less lethal projectile rounds at Mr. Tracy. Detective Porrazzo believed Mr. Tracy was struck at least two additional times. As this occurred Detective Porrazzo heard additional team members shouting, “*He’s reaching,*” “*I don’t know that he’s reaching for,*” and “*He’s got a gun.*” Deputy Smith also shouted, “*He’s reaching in the waistband. He’s reaching in the waistband. I don’t know what he’s reaching for.*” Detective Porrazzo said that by then, he was “99.4 percent positive” that Mr. Tracy was armed with a gun.

Detective Porrazzo monitored Mr. Tracy’s movement, ultimately watching as Mr. Tracy crouched and moved from the west wall to a position between two parked vehicles. Detective Porrazzo believed Mr. Tracy was attempting to find a suitable position to ambush one of the team members.

Detective Porrazzo began moving in a direction to better observe Mr. Tracy’s actions. During this time Detective Porrazzo noticed Mr. Tracy. He described Mr. Tracy as being in a squatted position. Mr. Tracy appeared to have his left hand along the left side of his body, while his right hand was still positioned at his waistband. Detective Porrazzo saw Mr. Tracy begin to rise while simultaneously bringing his right hand up from his waistband area. At that moment Detective Porrazzo heard a team member state, “*he’s got a gun/he’s reaching for a gun.*”

Detective Porrazzo heard gunfire. Detective Porrazzo said he was in fear for his safety and that his life was in danger. Detective Porrazzo said Mr. Tracy started to stand up. At that moment Detective Porrazzo believed Mr. Tracy was attempting to fire at him. In fear of his life, Detective Porrazzo fired at Mr. Tracy. Detective Porrazzo believed he fired four rounds at Mr. Tracy. Later charting of his weapon determined that he had fired six rounds.

Detective Porrazzo told the interviewers that he was aware Detective Smith and Detective Kerr were located to the right of his position.

Detective Porrazzo said that the shooting incident ceased as he saw Mr. Tracy fall to the pavement. Ultimately, Detective Porrazzo, Detective Smith, Sgt. Paez, Investigator

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Benjamin and Detective Kerr made an approach to Mr. Tracy. Mr. Tracy was contacted, handcuffed and assessed. Detective Porrazzo said he saw some injuries to Mr. Tracy. Detective Porrazzo said the medical treatment Mr. Tracy needed was beyond the capabilities of the team members.

Interview of Hemet Police Department Sergeant Paez

The following is a summary of the interview:

On January 26, 2022, Sgt. Paez voluntarily participated in an interview regarding this incident. Present during the interview were Sgt. Paez' attorney, DOJ Special Agent Jon Genens, Riverside County DA Investigator Felipe Munoz, and Hemet PD Detective Katie Rabago.

At the time of this interview Sgt. Paez had been employed by the City of Hemet Police Department for approximately 10 ½ years. He was a supervisor, assigned to the Riverside County, Region Three Gang Task Force. His assignment focused on investigations regarding gang members and gang-related crimes. As such, he was fully aware gang members had a propensity for carrying firearms.

Sgt. Paez brought specific knowledge to this incident. Located in the City of Hemet, Sgt. Paez was no stranger to the Travelodge Hotel as it related to criminal and suspected criminal activity at and near the location.

On the date of the incident, Sgt. Paez said he was contacted by a member of the GIT team. He and additional personnel were requested to provide assistance in the investigation of Mr. Tracy. Sgt. Paez and his personnel ultimately met with GIT members. Sgt. Paez and his personnel were provided with an extensive briefing regarding the investigation. Photographs of Mr. Tracy were also provided, and of the information relating to Mr. Tracy's prior criminal history. Of special interest was the information that Mr. Tracy had prior weapons laws violations and was purported to always be in possession of a firearm.

Ultimately, GIT members, Sgt. Paez and his assisting personnel responded to the Travelodge motel. As part of the plan, Sgt. Paez, members of his team and an additional GIT member took up a surveillance position at the northern end of the hotel. Their primary function was to maintain security at that location in case Mr. Tracy made any type of attempt to flee from the location. While at his surveillance location, Sgt. Paez monitored radio transmissions between GIT personnel regarding Mr. Tracy's actions and activities.

When information was transmitted that Mr. Tracy had exited the location via the south entrance, Sgt. Paez and assisting personnel began moving to a position where they would increase their chances of encountering Mr. Tracy and stopping any attempt to flee. While doing so, Sgt. Paez said he heard what he believed to be, small caliber gunfire. He also saw additional team members arriving in a pickup truck from the southwest corner of the location. The truck was flashing its emergency lights and was approaching quickly.

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Sgt. Paez also heard the sound of yelling, specifically hearing an unidentified individual stating, “*gun*” and/or, “*the gun*.” (Note: Sgt. Paez later noted that upon reviewing the video and audio captured by the body worn cameras (BWC) of GIT personnel, as well as his own camera, he noticed the term, “*he’s reaching*” was also shouted.

Sgt. Paez soon came into the parking lot area adjacent to the western wall of the location. Initially he could not identify Mr. Tracy, as Mr. Tracy was crouching between parked vehicles. Ultimately, Sgt. Paez said he and Mr. Tracy, “*saw one another*.” Sgt. Paez said he saw Mr. Tracy coming from behind a parked car, while raising his hands. Sgt. Paez believed Mr. Tracy was armed with a handgun and was intent on firing at him.

Sgt. Paez raised his weapon and heard a gunshot. Sgt. Paez believed he was being fired on and fired multiple rounds at Mr. Tracy. Sgt. Paez believed he fired “*3-4 rounds*” at Mr. Tracy. (Note: later analysis showed that Sgt. Paez fired a total of six rounds). He noticed Mr. Tracy now lying on the pavement. Sgt. Paez said the foregoing activity occurred in a moment of seconds. He felt his life was in immediate danger and was required to protect himself and protect his team members.

Sgt. Paez and other team members approached Mr. Tracy. He, with the assistance of another team member, placed Mr. Tracy in handcuffs. Sgt. Paez said he noticed several gunshot wounds present on Mr. Tracy’s body.

Sgt. Paez remained at the location until the arrival of emergency medical personnel. He also remained at the location pending the required administrative investigation.

Re: Riverside County Sheriff’s Office Deputy J. Smith

During my review of all documentation received for my analysis I did not find a report which detailed an interview with Deputy Smith.

In a five-page supplementary report (labeled MB-22019000-39880054 SuppRPT DEP Ditfurth Reviewed), I was able to gain information as gleaned from a review of the body worn camera (BWC) affixed to Deputy Smith’s loadbearing vest during this incident.

The report cited was authored by Deputy A. Ditfurth of the Riverside County Sheriff’s Office. The report details the review of the captured body worn camera audio/video. The review was conducted by Deputy Ditfurth.

Two audio video files were examined from the camera. The first file was several seconds in length and had no value. The second file contained pertinent information. The following is an un-edited copy of the documentation included in the supplementary report authored by Deputy Ditfurth:

“The second video is 4 minutes and 51 seconds long. The BWC turns on and shows a truck parked in a parking lot. The camera turns and you can see an outside wall possible to the travelodge and a few other vehicles parked in the parking lot. One of the vehicles in the parking lot is a Cadillac SUV which belongs to the SUS-Joseph Tracy.

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Approximately 31 seconds into the video some say something and another person walking near the Cadillac appears. The subject, later identified as SUS- Joseph Tracy, turns and runs in the opposite direction. Deputy Smith yells, "**Hands... let me see your hands,**" and appears fired a 40mm round. Deputy Smith is running after the suspect and reloads his 40mm.

The suspect and Deputy Smith run around the building to the side that the Dennys is on, and Deputy Smith is yelling, "**He's reaching... he's reaching.**" Deputy Smith fires another round from the 40mm. Deputy Smith yells, "**I don't know what he's reaching for.**"

Deputy Smith again reloads the 40mm and appears to fire a third round from the 40mm. Deputy Smith takes cover to his right at the trunk of a blue car. After firing the 40mm round Deputy Smith transitions to his handgun and slings the 40mm down in front of him as he leaves the blue car and moves forward.

Deputy Smith again says, "**I don't know what he's reaching for**", and gun shots can be heard. Deputy Smith's BWC's is partially blocked by the 40 mm. The first shot can be heard at 57 seconds in video.

After the gun shots stop another officer can be heard say, "**Let me see your hands, let me see your hands....Bring your hands out.**" Additional commands are given to Tracy. Another officer can be heard say, "**do you have medical aide rolling.**"

Deputy Smith moves his 40mm while commands are being given. The suspect, Tracy can be seen on the ground in-between two vehicles. Tracy is not responding to commands about putting his hands to the side. Deputy Smith can be heard breathing heavily.

Deputy Smith and additional officers swing to the left to get a better look at Tracy's hand and then officers approach Tracy. Tracy is handcuffed on one wrist, rolled over and handcuffed on his on his other wrist. Tracy is then rolled back over onto his back.

Officers were talking about seeing the gun in his hands as he was by the vehicles. Deputy Smith talks about starting CPR and another officer says, "**We can check him.**" Another officer checks Tracy for a pulse. Deputy Smith tells others he needs to take a little walk. Deputy Smith walks in the direction towards the Dennys and then shuts his camera off.

This supplemental report will be forwarded to Investigator Moody for inclusion into the case file."

Re: City of Riverside Police Department Detective R. Kerr

An examination of all documents received for review by this investigator did not provide any information regarding the City of Riverside Police Department Detective Kerr as participating in an interview regarding this incident.

The California Department of Justice, Attorney General's report regarding this officer involved shooting incident provided the following legal analysis regarding the City of Riverside Police Department's Detective Richard Kerr's actions:

"Detective Richard Kerr, Riverside Police Department

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As noted above, Detective Richard Kerr did not provide an interview. Additionally, Detective Kerr was not wearing a body worn camera. As such, there is limited direct information regarding Detective Kerr's thought process during the OIS. However, the evidence gathered in this investigation, including the voluntary statements from Detective Porrazzo and Sergeant Paez, are instructive in inferring Detective Kerr's understanding and intent.

Detective Kerr likely had similar knowledge of the surveillance operation as Detective Porrazzo and Deputy Smith, particularly as Detective Kerr was responsible for briefing the GIT team about Mr. Tracy's drug sales, possession of a gun, presence of a minor female, and criminal history, as well as the hotel being a high-crime location. **He also likely encountered the same initial circumstances during the incident as Det. Porrazzo and Deputy Smith, since he was stationed with them and was in a similar position in the parking lot as Deputy Smith, when Mr. Tracy first appeared and was told to stop and to show his hands. Detective Kerr would have been in a position to hear Deputy Smith's statement that Mr. Tracy was reaching for an unknown object in his waistband. Further, Detective Kerr fired his weapon about the same time the other officers fired theirs, as Mr. Tracy emerged from the two vehicles, indicating that he believed Mr. Tracy intended to shoot at the officers. Thus, the circumstances indicate that Detective Kerr, like Detective Porrazzo and Deputy Smith, held a subjective belief in the need to use lethal force to protect himself and other officers from death or serious injury.**

Further, moments before the shooting, Detective Porrazzo, Deputy Smith, and Investigator Monis stated that they were certain or nearly certain that Mr. Tracy had a gun, based on the manner he held his hand at his waistband and his movements in the parking lot. Mr. Tracy failed repeatedly to respond to orders to show his hands and was undeterred by 40-millimeter less lethal launcher rounds striking him. According to Detective Porrazzo, Mr. Tracy was trying to find a suitable position to ambush one of the officers. Investigator Monis stated that Mr. Tracy was running in a "zig-zagging" motion, and Sergeant Paez considered Mr. Tracy to be in a "low-ready" crouching position.

When Mr. Tracy began to emerge from between two vehicles, Detective Kerr was in a similar position within the parking lot as Deputy Smith and would have had the same or substantially the same view of Mr. Tracy and his final movements. He would have had the ability to hear Investigator Monis's statement that Mr. Tracy was reaching for his waistband, to hear Deputy Smith's announcement of a "gun," and to see Mr. Tracy rise up with his hands extended. As Mr. Tracy emerged from between the cars, Detective Kerr began to fire around the same time the other officers fired. This suggests that Detective Kerr's assessment of the situation was consistent with the other shooting officers and that, based on the totality of the circumstances, Mr. Tracy could have reasonably posed an imminent deadly threat and that lethal force was necessary to stop the threat. **Thus, Detective Kerr's actions cannot be shown, beyond a reasonable doubt, to be objectively unreasonable.**

The totality of the evidence gathered in DOJ investigation is insufficient to prove beyond a reasonable doubt that Detective Christopher Porrazzo, Sergeant Arthur Paez, Deputy Joshua Smith, and Detective Richard Kerr fired their weapons without the intent to defend themselves and others from what they reasonably believed to be an imminent threat of death or serious bodily injury posed by Mr. Tracy, who they believed was armed and about to shoot at them. **Therefore, there is insufficient evidence to support a criminal prosecution of the officers, and no further action will be taken in this case."**

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CONCLUSION

Based upon the comprehensive investigation, this Investigator joins in the conclusion offered by the California Department of Justice/Attorney General that Detective Richard Kerr acted lawfully in self-defense and in defense of others when he was confronted by Mr. Tracy. The totality of circumstances indicated that Mr. Tracy posed a real and immediate threat of death or serious injury.

The resultant investigation of this critical incident which resulted in the fatal shooting of Mr. Joseph Tracy was thoroughly and impartially conducted by all investigative agencies in a manner which displayed an adherence to accepted law enforcement best policies, practices and procedures regarding the investigation of officer involved shootings.

Submitted,

William E. Marsh

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