

# MARSH INVESTIGATIONS AND CONSULTING

## REPORT OF INVESTIGATION

**SUBJECT:** OFFICER INVOLVED SHOOTING INVOLVING OFFICER JUSTIN MANN AND OFFICER JORGE CUEVAS OF THE CITY OF RIVERSIDE POLICE DEPARTMENT RESULTING IN THE DEATH OF FELIX JERRY MARQUEZ.

**CITY OF RIVERSIDE FILE NUMBER:** #P21-000-6980

**COUNTY OF RIVERSIDE, SHERIFF'S DEPARTMENT FILE NUMBER:** #MB 21-128001

**DATE/TIME OF INCIDENT:** SATURDAY, MAY 8, 2021 AT APPROX. 0820 HRS.

**INCIDENT LOCATION:** 3764 ELIZABETH STREET, CITY OF RIVERSIDE

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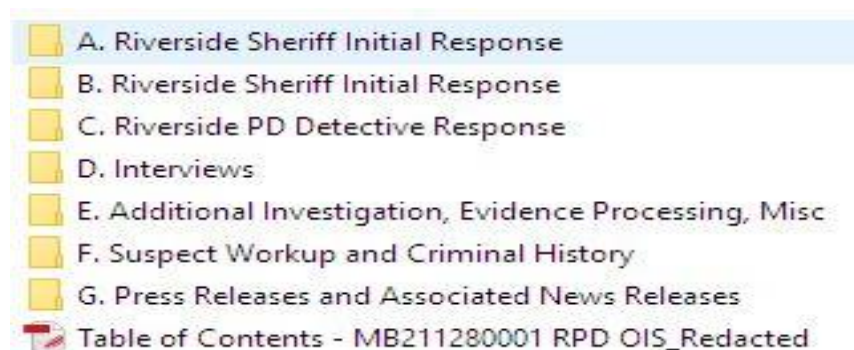
### **INTRODUCTION:**

On March 24 , 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 Felix Jerry Mr. Marquez by Riverside Police Department Officers Justin Mann and Jorge Cuevas.

I was asked to provide my expert opinion in a written report on the manner in which the case was investigated by the Riverside Police Department, the County of Riverside Sheriff's Department and the County of Riverside District Attorney's Office.

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

- A digital folder containing eight (8) audio files.
- A digital folder comprised of PDF formatted documents which contain 391 individual photographs.
- A digital folder which contains thirty-two (32) individual reports, each PDF formatted and totaling 95 pages
- A digital folder containing five (5) individual audio/video files
- A digital folder, entitled "RSO CASEBOOK" containing seven individual folders (shown below)



# MARSH INVESTIGATIONS AND CONSULTING

The analysis is based on a comprehensive review of all received materials, documents, audio recordings, audio/video files and reports prepared by the Riverside Police Department, the County of Riverside Sheriff's Department, coupled with the statements of Officers Mann and Cuevas, and statements provided by civilian witnesses and assisting law enforcement personnel.

**After my review of the entire incident, it is my expert opinion that the investigation conducted by the City of Riverside Police Department and the Riverside County Sheriff's Office, was conducted in a manner consistent with the accepted best practices, customs and law enforcement procedures during the year 2021.**

**In this incident, Officers Mann and Cuevas acted in lawful self-defense, defense of other police officers on scene, and members of the public, when they fired their duty weapons at Suspect Felix Jerry Marquez. (See Conclusion Section).**

## **SYNOPSIS:**

**On Saturday, May 05, 2021 at approximately 0820 hrs.,** City of Riverside Police Officers Mann and Cuevas became involved in an officer involved shooting incident which resulted in the death of Mr. Felix Marquez.

Officers Mann and Cuevas were performing their duties and responsibilities as members of the City of Riverside's Public Safety Engagement Team (PSET). This team is made up of civilian representatives from the City of Riverside's Code Enforcement Division and City Net (a homeless outreach service) and the City of Riverside police officers. The officers are primarily tasked with providing security for the civilian representatives, as well as enforcing laws and ordinances as required and as necessary.

On this date, Officers Mann, Cuevas and the civilian team members met at City Hall at their usual start time (approximately 6 AM). A briefing was held and the tasks for the day's activities were discussed. The first order of business was a response to a location known as the, "Elizabeth Corridor." Officers Mann and Cuevas, in full uniform and driving in a marked "black-and-white" police vehicle, followed the City Net representative's vehicle, and the City of Riverside Code Enforcement representative's white pickup truck to the area of concern.

At approximately 0820 hours, the officers and team members arrived on the 3700 block of Elizabeth Street. The officers became aware that they would be stopping at this location based upon the actions of the Code Enforcement Officer. Specifically, in their common practice and procedure, the Code Enforcement Officer would indicate they were desirous of stopping at a particular location by the activation of their vehicle's flashing amber lights. These lights are affixed to the rear window of the pickup truck. After the Code Enforcement Officer activated the pickup truck's amber lights, the truck veered to the west side of the street and stopped.

Officers Mann and Cuevas saw occupied vehicles parked along the east side of Elizabeth Street. Specifically, their attention was directed to a male who was seated on a small concrete stairway which provided access to a business location. This male, **later identified as Mr. Frank Marquez**, rose from his seated position, apparently after seeing the presence of the marked police vehicle.

# MARSH INVESTIGATIONS AND CONSULTING

Officer Mann was driving the police vehicle and stopped, facing southbound, on the east side of Elizabeth Street, approximately 10 yards north of where Mr. Marquez had been seated.

As Officer Mann was parking the patrol vehicle, Mr. Marquez, had risen from his seated position, and was walking northbound along the east sidewalk toward the police vehicle's position. Mr. Marquez was carrying a white plastic shopping bag in his right hand and an unknown white colored object in his left hand.

Mr. Marquez came abreast of the driver side of the police vehicle, then abruptly turned from walking northbound to walking southbound on the east sidewalk. While turning around, Mr. Marquez also moved the plastic bag from his right hand to his left hand.

Officer Mann, desirous of making contact with Mr. Marquez, exited the police vehicle and began walking after Mr. Marquez, all the while directing Mr. Marquez to, "Stop." Officer Mann gave several verbal orders for Mr. Marquez to stop. Mr. Marquez failed to heed the orders of the officer and began to quicken his pace southbound along the sidewalk.

In a matter of seconds, Officer Mann (who would later recount in his interview with investigators), saw Mr. Marquez reach to the right front area of his waistband and remove what appeared to be a black semi-automatic pistol.

During the above activity, Officer Cuevas had exited the patrol vehicle from the front passenger side, and began moving towards Officer Mann's position. Officer Cuevas (later recounted in his interview with Investigators) was also able to see Mr. Marquez's actions.

Officers Mann and Cuevas saw Mr. Marquez raising the semi-automatic pistol while turning towards their position.

The officers, in fear for their lives, as well as the lives of citizens in the proximity, fired at Mr. Marquez. Mr. Marquez, apparently struck by the gunfire, fell to the sidewalk.

The officers held their position while ordering Mr. Marquez to rid himself of the handgun as he lay on the sidewalk. The officers, per procedure and protocol, held their position and did not advance upon Mr. Marquez, as they saw the handgun under his arm. The officers broadcasted their involvement in a shooting incident and awaited the arrival of assisting personnel prior to making contact with Mr. Marquez.

Ultimately, responding officers and emergency medical assistance arrived on scene. A tactical approach to Mr. Marquez was actuated. Mr. Marquez was ultimately contacted and attended to by paramedics. Mr. Marquez was found to be suffering from gunshot wounds. Mr. Marquez subsequently did not survive his wounds.

A replica semi-automatic pistol was recovered from beneath Mr. Marquez.

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## **FACTUAL ANALYSIS:**

This Investigator's analysis is based on comprehensive reviews of all materials provided by the City of Riverside Police Department. Of significant importance is the accessibility of audio/video recordings (Body Worn Camera) and of the accounting of the audio recorded interviews of involved officers and witnesses involved in this incident.

# MARSH INVESTIGATIONS AND CONSULTING

## **INTERVIEW OF OFFICER JUSTIN MANN ID # 1456**

Date of hire: October, 2005. No prior law enforcement experience.

Military experience: Over 20 years' experience with the United States Marine Corps. Retired with the rank of Gunnery Sgt. He had a combat deployment in 2005 prior to his employment with the City of Riverside Police Department.

Current rank and assignment: Police Officer for the City of Riverside, assigned (for the last two years) to the Public Safety and Engagement Team (PSET)

**On May 11, 2021, at approximately 1227 hrs., an interview was conducted regarding this incident with Officer Justin MANN, of the City of Riverside Police Department.** Attending the interview were Investigator Jarred Bishop of the Riverside County Sheriff's Department, Detective Adcox of the City of Riverside Police Department, Riverside County Deputy District Attorney J. Brandon, and Ms. S. Ether, attorney with the Riverside Police Officers' Association (representing Officer Mann). Leading the interview, as per policy, was Investigator Bishop. The following is a synopsis of the audio recorded interview:

After preliminary introductions by all parties, Officer Mann said he was participating in the interview voluntarily. Officer Mann said he conducted a review of his personal body worn camera (BWC) audio/video file as well as additional captured surveillance video to assist him with his recollection of the events.

Officer Mann provided an overview of his current assignment. He explained how he and other officers, along with a City Riverside Code Enforcement Officer and individuals from the homeless outreach "City Net", all assigned to the PSET unit are tasked with responding to complaints regarding issues of the homeless population in the City of Riverside. His primary responsibility, shared by his fellow officers, is to provide security for the civilians on the team (Code Enforcement Officer and the City Net representatives). Officer Mann said he was in full uniform, complete with all safety gear (vest, utility belt, duty weapon, holster, less than lethal Taser). Gold lettering indicating, "POLICE" is affixed to the vest and is clearly visible. The method of dress distinctly identified him as a law enforcement officer.

A personal body worn camera (BWC) is affixed to the vest (seen below at incident location).

# MARSH INVESTIGATIONS AND CONSULTING



(Officer Mann at scene location)

Officer Mann and his partner were riding in a clearly marked, black-and-white, police vehicle. The vehicle also is equipped with an audio/video, “Dashcam” system, which was activated during this incident.

In the interview, Officer Mann described the type of firearm he carried, the ammunition he possessed, and his belief as to the number of shots he may have discharged during the incident.

## **OFFICER MANN’S OBSERVATIONS AND ACTIONS**

The accounting of Officer Mann’s observations and actions regarding this incident is documented in the audio recorded interview, and subsequent transcription of that interview, with Investigators on May 11, 2021. The following is an accounting of the information Officer Mann provided during that interview:

Officer Mann said on the date of the incident he and his team members met at City Hall. He was provided information by the Code Enforcement Officer regarding specific locations which were identified as locations for investigation. The first location of the day was an area known as the, “Elizabeth Corridor.” This location was known to Officer Mann, and the team members, as a location of prior contact and prior complaints by citizens/business persons, regarding homeless presence. Officer Mann has been in this area on several prior occasions

Officer Mann said he and his partner were traveling eastbound, then southbound, on Elizabeth Street in their marked police vehicle. They were following the Code Enforcement Officer’s truck. Officer Mann saw the truck stopping along the west side of the road. At that time his attention was drawn to an individual sitting on the steps of a stairwell along the east side of the street (Photo 1, below).

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(PHOTO 1 from Dashcam)

Officer Mann also noted two vehicles parked along the east side of the street. Officer Mann positioned the police vehicle along the east curb line, facing south, stopped and exited. During the foregoing, Officer Mann saw the previously observed individual rise from the stairway and begin walking northbound along the sidewalk (Photo 2, below).



(PHOTO 2 from Dashcam)

The individual, (later identified as Felix Marquez) neared the police vehicle, peered at Officer Mann, immediately turned around and began walking south on the sidewalk (Photo 3, below)



# MARSH INVESTIGATIONS AND CONSULTING



(PHOTO 3 from Dashcam)

The actions and behavior of Mr. Marquez caused Officer Mann to focus his attention on Mr. Marquez. Officer Mann wanted to initiate contact with Mr. Marquez, and exited the police vehicle. Officer Mann began walking south on the sidewalk and called out to Mr. Marquez to “Stop.” Officer Mann yelled the command to stop several times (photo 4, below).



(PHOTO 4 from Dashcam)

Mr. Marquez did not stop, looked over his right shoulder at Officer Mann, and quickened his pace (Photo 5, below)

# MARSH INVESTIGATIONS AND CONSULTING



(PHOTO 5 from Dashcam)

Officer Mann continued to follow Mr. Marquez, while at the same time, requesting Mr. Marquez to, “stop.”. Officer Mann observed Mr. Marquez to move his right hand to the front of his waistband area (Photo 6, below)



(PHOTO 6 from Officer Mann BWC )



# MARSH INVESTIGATIONS AND CONSULTING

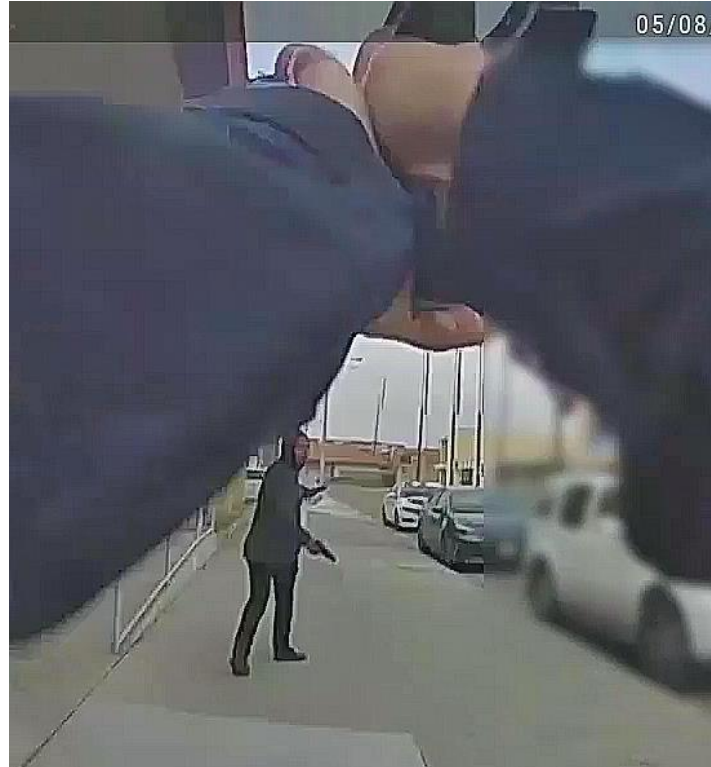
In his interview with Investigators, Officer Mann said, *"I was originally gonna close the distance. I decided not to just because of his mannerisms where he's reaching for his front waistband. As I started to slow down, he can, I remember seeing his right hand go into his waistband fairly aggressive and I remember drawing my handgun at the same time and then he came up out of his waistband, I could see a handgun in his right hand, going up towards his, maybe his head or his shoulder area and I think I was, about the same time, I was almost all the way drawn out with my handgun and then he started to, I saw his shoulder kind of dipped down. His right, his right shoulder dipped down and then he started-his body started to turn towards me with the handgun coming, to point in my-kind of towards my direction not all the way, but he was starting to come towards my direction."* (Photo 7, below)



(PHOTO 7)

Within seconds, Officer Mann saw Mr. Marquez looking over his right shoulder while he began removing a handgun from his front waistband area. Mr. Marquez began turning towards Officer Mann while raising the weapon. Officer Mann drew his duty weapon, and fearing for his life, fired a number of shots at Mr. Marquez. Mr. Marquez, apparently struck by the gunfire, fell to the pavement (Photo 8, below)

# MARSH INVESTIGATIONS AND CONSULTING



(PHOTO 8 Officer Mann BWC)

Officer Mann was asked a number of questions regarding his prior contacts with persons who were armed with weapons, specifically weapon secreted in their waistband areas. Officer Mann said in his law enforcement experience he has seen, and has contacted numbers of individuals who were in possession of deadly weapons which would have been secreted in their waistband area. Officer Mann said he has encountered at least 10 individuals who had secreted a handgun in their waistband. The course of the interview directed the focus on homeless individuals, and those individuals that would be encountered by members of the PSET. Officer Mann provided insight and mentioned he has encountered, *“a whole lot of homeless who are armed at least with knives, minimal.”* Officer Mann stated during these encounters he is not only concerned for his safety and the safety of his partner, but also for the safety of the civilian PSET members and members of the public. Officer Mann stated, *“we are also responsible not only for us, but them as well.”*

Officer Mann was asked if he knew how many, “rounds” he fired in this incident. He responded, *“approximately 4 to 6 rounds.”*

Officer Mann, yet again was asked for his reasoning to fire at Mr. Marquez.

***Officer Mann responded, “Um, for ... I was, I was afraid he was gonna either shoot me or kill me and my partner was directly behind me coming from the passenger side of the vehicle. I didn’t exactly know where he was, but I know he was near me and he was in that line of fire as well and then we have city networkers on the opposite side and I knew the code enforcement officer was in our immediate vicinity as well.”***

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# MARSH INVESTIGATIONS AND CONSULTING

Officer Mann was asked questions relating to his consideration, or lack thereof, in the use of less than lethal options in this incident. Officer Mann said he was in possession of a Taser as the only possible less than lethal option on his person. **In response to the question, “Did you consider using your Taser at all during this incident?” Officer Mann answered, “No. Once I saw a handgun on him it wasn’t even a consideration.”**

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## **REVIEW OF AUDIO/VIDEO FILE FROM OFFICER MANN’S “BODY WORN CAMERA (BWC)”**

**Officer Mann’s Body Worn Camera audio/video file is identified as, BWC2-011946. The audiovisual file begins with a timestamp of 05/08/2021 08:21:42. The audiovisual file has a running time of 21 minutes 42 seconds.**

**At timestamp 08:22:03,** Officer Mann has stopped the police vehicle and is exiting. Within three seconds, Mr. Marquez is seen in the video frame (he was partially obscured by a palm tree which was adjacent to the police vehicle). Mr. Marquez is clad in a black, “hoodie” long-sleeved sweatshirt, black pants and black shoes. Mr. Marquez is walking southbound on the east sidewalk. Officer Mann is walking behind him and apparently attempting to have Mr. Marquez stop. *(Note: the audio is not activated until 30 seconds into the video).*

**At timestamp 08:22:14,** Officer Mann is heard to say, “Come here, Stop.” Mr. Marquez can be seen continuing to walk briskly southbound on the sidewalk. Mr. Marquez can also be seen with his right arm bent at the elbow, with his right hand at his waistband. An unidentified citizen, walking northbound on the sidewalk at the curb line is seen immediately to Mr. Marquez’ right side.

**At timestamp 08:22:15,** Officer Mann is heard saying, “Let me see your hands.” Mr. Marquez is shown to have his right hand out of view, his right arm is bent at the elbow and raised wherein his elbow is pointing directly to the west. **Immediately, Mr. Marquez straightens his right arm out along his right side and a handgun can be viewed in his right hand.** Mr. Marquez is seen turning to his right side, looking toward Officer Mann’s position and begins to raise the weapon. **Also, Officer Mann’s arms can be seen raised, with his weapon in his hands and directed toward Mr. Marquez.**

### **At timestamp 08:22:16, multiple gunshots are heard.**

Officers Mann and Cuevas can be heard using their radios to advise of the officer involved shooting incident. The remainder of the video file documents Officers Mann and Cuevas providing direction to uninvolved citizens, maintaining the scene and continuing their attention to Mr. Marquez.

**At timestamp 08:23:20,** Officer Mann can be heard advising the dispatcher that the, “*suspect is unresponsive and has a gun.*” Officer Mann is heard asking Officer Cuevas if he can see, “*the gun.*” Officer Cuevas responds that he cannot see the gun. Officer Mann advises Officer Cuevas that the gun is, “*under his arm.*”

**At timestamp 08:24:10,** moaning can be heard in the background and Officer Mann states, “*keep breathing man, we got people coming, once they get here we’ll help you out.*” Officer Mann also states, “*do not pick up that gun.*”

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At timestamp 08:24:27, the screeching of tires can be heard as responding officers arrive on scene.

At timestamp 08:26:20, Officer Mann is heard, relaying to an assisting officer, *“the gun is in his right hand.”*

At timestamp 08:26:55, Officer Mann is heard again to tell Mr. Marquez, *“do not touch that gun.”*

At timestamp 08:27:40, Officer Mann is advising assisting officers regarding a tactical approach to Mr. Marquez (i.e. waiting for a protective shield, and additional personnel prior to making an approach to an armed suspect).

At timestamp 08:28:47, assisting officers have arrived on scene and are observed making a tactical approach to Mr. Marquez’s position. It’s at this time that supervising sergeants have arrived on scene. Officer Mann is moved from the immediate shooting scene and directed by a supervisor to stand across the street. The remainder of the video file captures activity of assisting officers in the containment of the crime scene.

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## WEAPON COLLECTED AT THE CRIME SCENE LOCATION



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The above firearm was collected after Mr. Marquez' was removed from the crime scene and transported to the hospital. The weapon was located adjacent to Mr. Marquez' right arm. The weapon is a "Daisy Model 426 Air Pistol. It holds a maximum capacity of 15 .177 BB's.

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## INTERVIEW OF OFFICER JORGE CUEVAS ID # 1819

Date of Hire: May, 2015.

Prior Law Enforcement: County of Riverside Sheriff's Office (14 months).

Current rank and assignment: Police Officer for the City of Riverside, assigned (for the last two years) to the Public Safety and Engagement Team (PSET)

**On May 11, 2021, an audio recorded interview was conducted regarding this incident with Officer Jorge CUEVAS, of the City of Riverside Police Department.** Attending the interview were Investigator Jared Bishop of the Riverside County Sheriff's Department, Detective Adcox of the City of Riverside Police Department, Riverside County Deputy District Attorney John Brandon, and Ms. S. Ether, attorney with the Riverside Police Officers' Association (representing Officer Cuevas). Leading the interview was Detective Adcox. The following is a synopsis of the audio recorded interview:

After preliminary introductions by all parties, Officer Cuevas said he was participating in the interview voluntarily. Officer Cuevas said he conducted a review of his personal body worn camera audio/video file to assist him with his recollection of the events.

Officer Cuevas provided an overview of his current assignment. He explained how he and other officers, along with a City of Riverside Code Enforcement Officer, and individuals from the homeless outreach "City Net", all assigned to the PSET unit are tasked with responding to complaints regarding issues of the homeless population in the City of Riverside. His primary responsibility, shared by his fellow officers, is to provide "scene security" for the civilians on the team (Code Enforcement Officer and the City Net representatives).

Officer Cuevas said he was in full uniform, complete with all safety gear (vest, utility belt, duty weapon, holster, less than lethal Taser). Gold lettering indicating, "POLICE" is affixed to the vest and is clearly visible. Their method of dress distinctly identified him as a law enforcement officer. A personal body worn camera (BWC) is affixed to the vest.



# MARSH INVESTIGATIONS AND CONSULTING



Officer Cuevas at Incident

## **OFFICER CUEVAS' OBSERVATIONS AND ACTIONS**

The accounting of Officer Cuevas' observations and actions regarding this incident is documented in the audio recorded interview, and subsequent transcription of that interview with Investigators on May 11, 2021. The following is an accounting of the information Officer Cuevas provided during that interview:

Officer Cuevas said on the date of the incident (Saturday, May 5, 2021), he and his partner, Officer Mann, met with the other members of the Public Safety and Engagement Team (PSET) at City Hall. The members of the team talked over various cases. They met early in the morning (approximately 6 AM). A list of cases was developed by Code Enforcement. There were a number of cases on the list which were in the area of the Elizabeth Magnolia Corridor. This particular area was known to PSET members for the number of transients and homeless persons who frequent the location.

Officer Cuevas said he and Officer Mann arrived on Elizabeth Street. They were traveling south on Elizabeth Street, to an area where there is a bend in the road.

# MARSH INVESTIGATIONS AND CONSULTING

At that point, he observed the lights (rear window amber lights) on the Code Enforcement truck to be activated. Officer Cuevas, in working with the Code Enforcement representative, was aware that this was a signal indicating that there were individuals at the location who were intended contacts.



Officer Cuevas said his attention was directed to an individual sitting on, “*stairs*” along the east side of the street. Officer Cuevas was also focused on a van which was parked along the side of the street. He was in the process of entering the license plate of the van into the police vehicle’s computer when Officer Mann stopped the police vehicle and began to exit. Officer Cuevas saw that the individual he had previously seen seated on the stairs, was now walking northbound along the east sidewalk toward the police vehicle.

# MARSH INVESTIGATIONS AND CONSULTING



(Officer Cuevas' BWC)

The individual, later identified as Mr. Frank Marquez, neared the driver side of the police vehicle and abruptly turned around and began walking southbound. Officer Mann had exited the police vehicle and began walking southbound, while hailing Mr. Marquez with his (Mann's) hand. Officer Cuevas said he believed his partner intended on making contact with Mr. Marquez. Officer Cuevas exited the police vehicle and focused his attention on Mr. Marquez. He saw Mr. Marquez to, *"kind of keep checking back at us, which is odd to do it multiple times."*

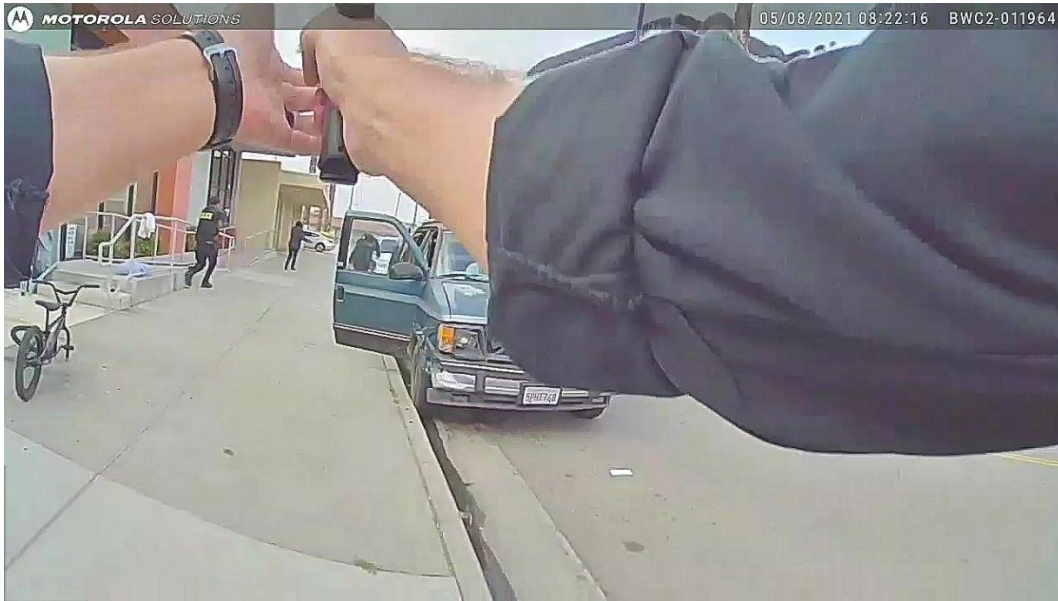


(Officer Cuevas BWC)



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Continuing, Officer Cuevas said, *“and then he (Mr. Marquez) went to the waistband, and that triggered me to kind of draw. And, like, mid draw, I hear two shots, and this guy’s already bladed and I see a black gun in his right hand, so I put down two shots and then he goes down and then we covered down.”*



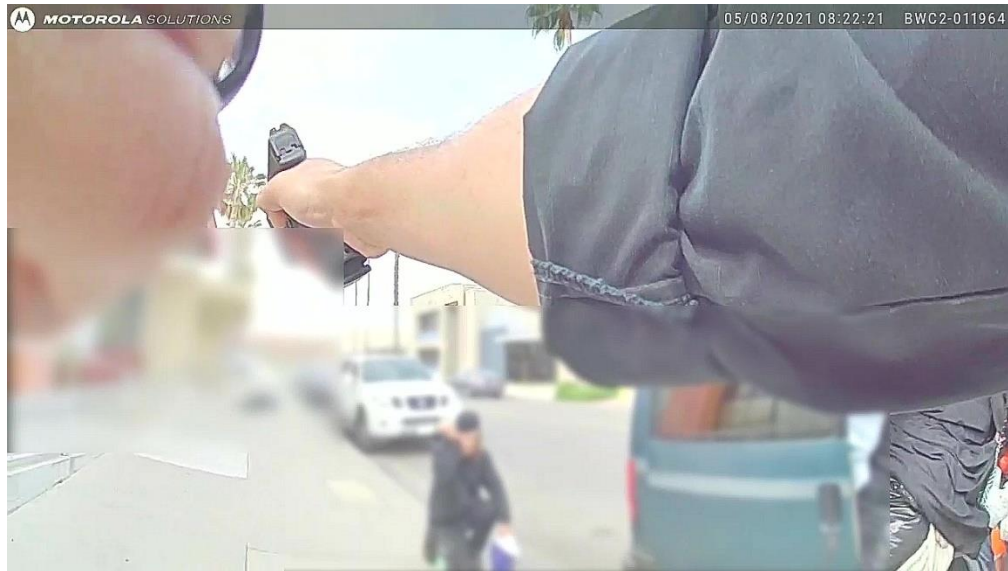
(Officer Cuevas BWC)

Officer Cuevas was asked follow-up questions regarding the actions of Mr. Marquez, specifically his (Officer Cuevas') thoughts when he saw Mr. Marquez remove a handgun from his waistband.

**Officer Cuevas responded,** *“Uh, I was thinking he was going to try and shoot us, so I drew my firearm..... Yeah, I thought he was going to shoot at us, for sure”*

Officer Cuevas said he heard two shots being fired; however, he was not sure if it was Mr. Marquez doing the shooting, or if it was his partner doing the shooting. After the gunfire ceased, Officer Cuevas said he maintained his position, scanned the area and saw an individual squatted down on the sidewalk. He ordered the individual to remain seated.

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(Officer Cuevas BWC)

Officer Cuevas provided updated information to the dispatcher and waited for the response of assisting officers. Assisting officers and emergency medical assistance soon arrived on scene.

Ultimately, patrol supervisory personnel and the assisting officers took charge of the crime scene location. Mr. Marquez was contacted by emergency services medical personnel who provided life saving measures.

Officer Cuevas was removed from the incident location and stood across the street pending further administrative activity.

During the interview, Officer Cuevas was posed questions regarding the use of less than lethal options (tactics, Taser, pepper spray etc.) in this incident.

**Officer Cuevas said there was no time to deploy the Taser and use it. He felt his distance was too great. Officer Cuevas said he was forced, by the circumstances, to use his weapon. He stated, “Yeah I thought he was going to shoot me, so there was no, there was no going to a less lethal option.”**

**Officer Cuevas was asked additional questions about his mindset and of his decision to utilize deadly force. Officer Cuevas was asked, “What you believe could have happened or would’ve happened if you didn’t discharge your firearm at him?”**

**Officer Cuevas responded, “I think he probably would have used the gun on us and, and shot either me, or my partner, or one of those people that were in the immediate area. His actions were more of an intent to engage us than to run away.” Continuing, Officer Cuevas said he fired his weapon, “to end the threat.”**

During the interview officer Cuevas was asked if he could recall how many rounds he fired at Mr. Marquez. Officer Cuevas responded, “Two.”

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# MARSH INVESTIGATIONS AND CONSULTING

## REVIEW OF AUDIO/VIDEO FILE FROM OFFICER CUEVAS' "BODY WORN CAMERA (BWC)"

**Officer Cuevas' Body Worn Camera audio/video file is identified as, BWC2-011964.** This Investigator also conducted a comprehensive review of the audio/video, "Body Worn Camera (BWC)" file uploaded from the camera which had been affixed to Officer Cuevas' person on the date, and at the time, of his involvement in this incident. The file which has been redacted.

**Officer Cuevas' Body Worn Camera audio/video file has a beginning timestamp of 05/08/2021 08:21:42. The audio/video file has a running time of 21 minutes 40 seconds. As is customary, the audio feed does not begin until 30 seconds after the video file has been activated.**

**At timestamp 08:21:55,** in the center of the frame can be seen the California Southern Law School building. This is a landmark which identifies the officers have now entered into the sweeping turn of the 3700 block of Elizabeth Street.

**At timestamp 08:22:00,** the head of an individual, covered by a black hoodie, and later identified as Mr. Marquez, is now seen center frame.

**At timestamp 08:22:07,** Officer Mann can be seen in the left side of the frame and Mr. Marquez has already turned, and walking southbound on the east side of the street. Officer Cuevas has the passenger side door open.

**At timestamp 08:22:11,** Officer Mann is seen on the east sidewalk, walking behind Mr. Marquez. Mr. Marquez has his right arm extended downward and away from his body. Also depicted in the frame, along the west side of the street, is the Code Enforcement Officer, who has just exited his white colored pickup truck. Mr. Marquez continues to walk southbound and is seen turning his body to the right, apparently toward Officer Mann.

**At timestamp 08:22:15,** Officer Mann and Mr. Marquez are seen on the right side and center of the frame. Officer Mann appears to be leaning to his left side and is unholstering his weapon. Within moments, shots can be heard. Mr. Marquez is seen left mid frame with his right arm extended, holding what appears to be a firearm in his right hand. Captured in the next two seconds is the reports of additional gun fire.

**At timestamp 08:22:20,** Officer Cuevas has provided the dispatcher with the information of an officer involved shooting incident. Officer Cuevas is also seen and heard directing a civilian who was seated on the sidewalk, to remain in a position.

Throughout the duration of the audio video file, Officer Cuevas is observed maintaining security over the fallen Mr. Marquez. He and Officer Mann are discussing the possible location of the handgun which had been in the possession of Mr. Marquez. Ultimately, assisting officers arrive and take charge of the scene. Emergency medical personnel arrive on scene. Assisting officers make a tactical approach and contain Mr. Marquez. Mr. Marquez is treated and assessed by the medical personnel. Ultimately, Officer Cuevas is moved to a position across the street, pending transportation for follow-up investigation.

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# MARSH INVESTIGATIONS AND CONSULTING

## CIVILIAN WITNESS INTERVIEWS

During the course of this investigation various witnesses to the incident were contacted by the City of Riverside Police Department investigative personnel. Witness interviews were conducted. Those interviews were documented by audio recording. The recordings are maintained as a permanent part of the case file. Those recordings were also provided to the representatives from the Riverside County Sheriff's Department's Investigators involved in this incident. Per protocol, redactions of all reports are required prior to delivery to this Investigator. The following are the accounts of interviews with civilian witnesses.

### WITNESS NUMBER ONE (NAME WITHHELD), CODE ENFORCEMENT OFFICER

WITNESS NUMBER ONE said he/she has worked for the City of Riverside Code Enforcement Division for approximately three years. She/He has been assigned to the P.S. E.T. for approximately 1 1/2 years. WITNESS NUMBER ONE has worked with Officers Mann and Cuevas since the assignment to the PSET.

WITNESS NUMBER ONE said he/she is responsible for the determination of areas that would be checked on any given day. She/He compiles a list after examining complaints or requests for services which come into the Code Enforcement Division. These complaints can be received via the 311-phone service or by general requests from the community. On the date of the incident, WITNESS NUMBER ONE said that the Elizabeth Corridor would be the first priority for contact. She/He had received several comments and complaints regarding homelessness in this particular area.

On the morning of May 8, 2021, after briefing and consulting with team members, including Officers Mann and Cuevas, the team members set out for the day.

As stated, they arrived on the 3700 block of Elizabeth Street. WITNESS NUMBER ONE said she/he saw a male (later identified as Mr. Marquez) seated on a stairway in front of a commercial business. WITNESS NUMBER ONE parked the truck along the western curb line. He/she saw officers Mann and Cuevas park their vehicle along the east side of the street, facing south.

WITNESS NUMBER ONE saw Mr. Marquez rise from his seated position, apparently in response to the arrival of the police officers. He/she saw Mr. Marquez begin to walk north along the sidewalk towards the position of the parked police vehicle. Mr. Marquez turned and began walking rapidly southbound on the sidewalk. WITNESS NUMBER ONE said he/she began to walk across the street towards Mr. Marquez in an attempt to, "*cut him off for the officers.*"

WITNESS NUMBER ONE heard officers yelling at Mr. Marquez. He/she heard the officers telling Mr. Marquez to, "*stop*" on several occasions. As this was occurring WITNESS NUMBER ONE could see Mr. Marquez looking at the officers.

Mr. Marquez turned his head away from the officers and looked in WITNESS NUMBER ONE's direction. It's at this point he/she saw Mr. Marquez withdraw a handgun from his waistband. WITNESS NUMBER ONE described the handgun as a, "*black pistol.*"

WITNESS NUMBER ONE felt that Mr. Marquez was going to shoot her/him.

Within moments, WITNESS NUMBER ONE heard the sound of gunfire. WITNESS NUMBER ONE moved to the west curb line and maintained a position with the City Net representatives.

# MARSH INVESTIGATIONS AND CONSULTING

She/He remained in that location until the arrival of assisting law enforcement, and was later contacted for interview purposes.

## **WITNESS NUMBER TWO (NAME WITHHELD), CITY NET REPRESENTATIVE.**

WITNESS NUMBER TWO said he/she has been working as part of the PSET for approximately one year. The witness is a representative from City Net, an organization which provides services to homeless individuals. WITNESS NUMBER TWO was with a partner (later referred to as WITNESS NUMBER THREE).

WITNESS NUMBER TWO said, after the preliminary briefing at City Hall she/he entered the City Net vehicle with WITNESS NUMBER THREE and followed WITNESS NUMBER ONE, ultimately arriving at the Elizabeth Corridor. The witness parked behind WITNESS ONE'S pickup truck. The witness remained in the front seat of his/her vehicle. the witness saw a male subject, hereafter referred to as Mr. Marquez, on the east sidewalk, across from their position. The witness's attention was drawn to Mr. Marquez due to his behavior. The witness saw Mr. Marquez rise from his seated position just as the officers arrived on scene. Mr. Marquez then began to "briskly" walk northbound on the sidewalk in an apparent attempt to pass by the officers. Mr. Marquez abruptly turned around and began walking south bound on the sidewalk, away from the officers. WITNESS NUMBER TWO heard Officer Mann giving orders for Mr. Marquez to stop. Mr. Marquez, apparently ignoring the orders, continued south on the sidewalk. WITNESS NUMBER TWO saw Officer Cuevas exit the police vehicle from the passenger side, and then move towards the driver side of the police vehicle. The actions of Mr. Marquez caused the witness to believe Mr. Marquez was going to start running away from the officers.

Within moments, the witness saw Mr. Marquez remove a black, "*pistol*" from his front waistband. The witness saw Mr. Marquez begin turning towards the officers.

The witness heard two separate volleys of gunfire. The witness believed the first volley was three shots, followed by a volley of two shots. The witness saw the officers take cover behind a green colored SUV which was parked along the east curb line. The witness heard the officers continuing to give commands to Mr. Marquez, who had now fallen to the sidewalk.

WITNESS NUMBER TWO was asked by the interviewing detective to describe the weapon possessed by Mr. Marquez. The witness believe the weapon was a, "*Glock handgun.*"

In this interview, the witness told the interviewing detective that Mr. Marquez was, "*too close*" to all of the persons on the street. That included officers and the civilian. PSET members. The witness elaborated by saying he/she felt Mr. Marquez could have shot any of the parties present on the street. The witness also said, "*the officers had to react quickly to protect and save their own lives and the lives of others.*"

## **WITNESS NUMBER THREE (NAME WITHHELD), CITY NET REPRESENTATIVE.**

WITNESS NUMBER THREE is identified as a City Net Representative, who accompanied WITNESS NUMBER TWO in their vehicle to the Elizabeth Corridor on the date and at the time of the incident.

# MARSH INVESTIGATIONS AND CONSULTING

The witness provided background information regarding the duties and responsibilities of the PSET members as well as the duties and responsibilities of the City Net personnel. The witness has been with the PSET team for proximally 1 ½ years. The witness has worked alongside Officers Mann and Cuevas a great number of times.

Based upon the number of complaints, the first-order of business on the date of the incident was to make a response to the Elizabeth Street Corridor.

WITNESS NUMBER THREE said at arrival on Elizabeth Street, the witness' attention was directed to a male individual (later identified as Mr. Marquez). Mr. Marquez was seated, *"in a little nook right between two businesses."* Mr. Marquez was wearing, *"a brown hoodie."* The witness said that individuals are readily occupying the specific, *"nook"* where Mr. Marquez was observed. The witness saw Mr. Marquez rise and begin walking along the sidewalk. During that period of time the police vehicle had come to a stop along the curb line. The witness saw Officer Mann exiting the police vehicle and appeared to attempt to make contact with Mr. Marquez. The witness saw Mr. Marquez abruptly turn around and begin walking away from Officer Mann. The witness heard Officer Mann yelling, *"hey, stop."* Mr. Marquez continued walking. The witness's view of Mr. Marquez became obscured as Marquez passed by a white SUV which was parked along the curb line. The witness saw Officer Cuevas on the sidewalk, however behind Officer Mann's position. The witness said officer Mann continued to give orders for Mr. Marquez to, *"stop."* Shortly after Mr. Marquez went out of view, the witness heard, *"shots."* The witness saw Mr. Marquez, *"collapse onto the floor."* The witness also saw WITNESS NUMBER ONE, who had been in the middle of the street, quickly walk to their (WITNESS NUMBER TWO AND WITNESS NUMBER THREE) vehicle. WITNESS NUMBER ONE was checking on the well-being of the two additional witnesses.

WITNESS NUMBER THREE mentioned that Officers Mann and Cuevas were very valuable to the PSET team and are, *"great police officers, great at de-escalating, they have a lot of experience."*

WITNESS NUMBER THREE was unable to provide any other substantive information and the interview was concluded.

## **WITNESS NUMBER FOUR (NAME WITHHELD), CITIZEN WITNESS.**

WITNESS NUMBER FOUR was identified by Investigators as an individual who was seated in a vehicle at the crime scene location. Following is a synopsis of the information provided to investigators:

The witness was inside of a blue Chevrolet Astro van. The witness had been visiting with a friend who was seated in another vehicle when a police vehicle arrived on scene.

The witness also saw a white city Code Enforcement truck pulling up and parking on the opposite side of the street.

The witness had exited the friends vehicle and began walking on the sidewalk, intending to go to his/her van. While walking, the witness heard, *"hey you come here."* The witness identified the command as coming from a police officer. The witness also noted that the command was not being directed at him. Quickly, the witness saw that the focus of the officer's command and attention was on a male individual who had just, *"shuffled"* past the witness' position.

# MARSH INVESTIGATIONS AND CONSULTING

That individual was Mr. Marquez. The witness said the officer continued to order Mr. Marquez to stop. Mr. Marquez did not follow the command.

WITNESS NUMBER FOUR heard, *“a loud noise and the repercussion of gunfire off the walls of the buildings.”* The witness immediately kneeled to the ground. The witness also recalled seeing, and hearing, *“shells hitting the sidewalk.”*

WITNESS NUMBER FOUR did not see Mr. Marquez with a weapon. The witness did not see the actions of the police officers.

Without additional information, the contact was concluded.

## **WITNESS NUMBER FIVE (NAME WITHHELD), CITIZEN WITNESS.**

The following is a synopsis of information gained pursuant to an interview with the initial handling investigators in this case.

WITNESS NUMBER FIVE was identified by investigators as a friend of WITNESS NUMBER FOUR.

WITNESS NUMBER FIVE was seated in a vehicle with WITNESS NUMBER FOUR. The vehicle was parked along the curb line and adjacent to the location of the shooting incident. The witness was with a friend (WITNESS NUMBER FOUR) in a white Nissan Pathfinder. The two witnesses just finished enjoying a donut when their attention was directed to the arrival of a police car in front of their parked vehicle.

WITNESS NUMBER FIVE was seated in the driver’s seat of the Pathfinder. The witness saw, and recognized Officer Mann as he exited the police vehicle. The witness heard an officer addressing a male (later identified as Mr. Marquez) who was walking on the sidewalk. The officers were telling Mr. Marquez to, *“get back here.”* The officers also told Mr. Marquez that they wanted to talk to him. The witness said Mr. Marquez responded, saying that he did not want to talk, and continued to walk away from the officers, and past the vehicle that the witness was seated in.

WITNESS NUMBER FIVE then heard officer Mann yelled, *“Gun!”* The witness did not see a gun. The witness said that they saw both officers shoot.

Without additional information, the contact was concluded with the investigators.

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## **COMMENTS AND OPINION REGARDING THE INVESTIGATIONS CONDUCTED BY THE CITY OF RIVERSIDE POLICE DEPARTMENT, THE COUNTY OF RIVERSIDE SHERIFF’S DEPARTMENT, AND THE COUNTY OF RIVERSIDE DISTRICT ATTORNEY.**

This Investigator was able to review a large number of reports, authored by members of the City of Riverside Police Department, including investigative personnel. In addition, this Investigator was provided copies of investigative reports submitted by investigative personnel from the County of Riverside Sheriff’s Department. A comprehensive file identified as “RSO Casebook” contained individual folders. The folders contained all documents received from the City of Riverside Police Department’s investigative efforts.



# MARSH INVESTIGATIONS AND CONSULTING

This Investigator was unable to review any investigative documentation conducted by investigative personnel from the County of Riverside District Attorney. Any document(s) authored by the Office of the District Attorney was/were not provided.

The documentation provided by the City of Riverside Police Department demonstrates an overall dedication to the adherence to accepted law enforcement best practices, policies and procedures relating to the investigation of officer involved shooting incidents. Of particular note is the application of these best practices and procedures involving the field patrol officers, supervisors and managers.

This Investigator reviewed 32 individual reports authored by assisting personnel. These reports document follow-up investigative efforts which occurred after the Officer Involved Shooting incident. The reports include documentation related to the attempts at locating additional suspects, attempts to find witnesses, and the documentation of crime scene related activities, including the identification and collection of evidence items

The interaction between investigative personnel from the City of Riverside Police Department, and the additionally involved investigative agencies (Riverside County Sheriff's Office and the Riverside Office of the District Attorney) displayed professional cooperation.

It is apparent to this Investigator that the primary goal was the detailed, comprehensive, complete, impartial and unbiased investigation of this Officer Involved Shooting incident. The goal was accomplished by a thorough investigation.

## **LEGAL ANALYSIS**

### **THE LAW**

Any police officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect an arrest, prevent escape, or overcome resistance. Penal Code section 835a.

An officer "may use all the force that appears necessary to him/her to overcome all resistance, even to the taking of a life." An officer is justified in taking a life if the resistance is such that it appears to the officer likely to inflict great bodily injury upon himself or those acting with him. People v Mehserle (2012) Ca.App.4<sup>th</sup> 1125,1146.

The killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No.507, Penal Code section 196.

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a (c) (1) (A)& (B).

# MARSH INVESTIGATIONS AND CONSULTING

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a (a)(4).

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507.

When acting under Penal Code section 196, the officer may use only as much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147, and he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505,507.

In protecting himself or another, a person may use all the force which he believes reasonably necessary, and which would appear to a reasonable person in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

"Where the peril is swift and imminent, and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed, and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. The 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." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

## CONCLUSION

**Based upon the comprehensive investigation, which includes significant supportive information, it is this Investigator's expert opinion Officer Justin Mann and Officer Jorge Cuevas acted lawfully in self-defense, and in defense of others when they were confronted by Mr. Felix Jerry Marquez, as he posed a real and immediate threat of death or serious injury.**

This Investigator also notes documentation included in the reports reviewed, which is supportive of the expert opinion. In a document authored by the Riverside District Attorney, Mr. Michael Hestrin, dated December 6, 2022, and directed to Chief Larry Gonzalez, City of Riverside Police Department, Mr. Hestrin addressed this Officer Involved Shooting incident. Mr. Hestrin writes, "Please be advised that our office has completed its review of the incident involving the above-mentioned officer (Officer Justin Mann) & (Officer Jorge Cuevas) from your department.

# MARSH INVESTIGATIONS AND CONSULTING

*After careful review, we have concluded that there is no evidence of criminal liability on the officer's part."*

The resultant investigation of this critical incident which resulted in the fatal shooting of Mr. Feliz Jerry Mr. Marquez 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

Marsh Investigations and Consulting