

# CPRC OID RATIONALE WORKSHEET

## JOSEPH THOMAS TRACY IV

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### OID – Name of Deceased

Joseph Thomas Tracy IV M 20 years

Date of Incident – January 18, 2022

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Date:

Commissioner:

Date and Time of Incident: January 18, 2022 Approximately 2230 Hours

Case Number(s):

Hemet PD = #2022-00362

Riverside Sheriff's #MB22 019 0001

California State Department of Justice – AB 1506 Report

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Location of Incident: Travelodge Motel, 2625 W Florida Ave., Hemet, CA

Involved Officer(s): 1. Detective Richard Kerr, Riverside PD

2. Detective Christopher Porrazzo, Riverside Sheriff

3. Sergeant Arthur Paez, Hemet PD

4. Deputy Joshua Smith, Riverside Sheriff

### TYPE:

☐ In-Custody Death

☐ Traffic Collision

☒ Other: (describe) – Officer Involved Shooting. Four Officers and One Suspect

☒ Weapons involved:

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**By Suspect** = Un-serialized 9mm Semi-Auto Handgun with PMAG 10 GL9 Magazine loaded with six Luger 9mm cartridges and an additional cartridge in the gun chamber. (Ghost Gun). A Taser was found in Tracy's jacket pocket at the coroner's office.

**By Officer(s):**

1. **Detective Kerr** – Type - Glock 17 (5<sup>th</sup> generation) 9 mm semi-auto pistol. Detective Kerr fired one round.
2. **Detective Porrazzo** – Type – Sig Sauer P320 9 mm pistol. Detective Porrazzo fired six rounds. In addition, he fired less lethal sponge rounds from a 40 mm less lethal Sponge Launcher, striking Tracy with no effect.
3. **Sergeant Paez** – Type – Sig Sauer P320 9 mm pistol. Sergeant Paez fired six rounds.
4. **Deputy Smith** – Type – Sig Sauer P320 9 mm pistol. Deputy Smith fired two rounds. In addition, he fired less lethal sponge rounds from a 40 mm Sponge Launcher, striking Tracy with no effect.

All handguns and the 40 mm Sponge Launchers used were inspected and analyzed by the RSO Firearms Armorer. (Refer to the reports for details).

**General Notes: (Refer to the fact sheet to navigate your way through this review process and document comments with points you wish to bring up during the discussion and deliberation process).**

**NOTE: As far as the CPRC findings are concerned regarding this OIS, the CPRC review of the incident is focused only on the actions of RPD Detective Kerr. Under the circumstances as presented in these investigative reports, you need to determine if Detective Kerr's actions were within the policy and procedures of the Riverside Police Department's Use of Force/Deadly Force.**

**Cause of Death:** (If known) Joseph Tracy: Multiple gunshot wounds. Deputy Coroner Dr. Fajardo identified 11 gunshot wounds on Tracy's body. See page 22 of the DOJ report for specific gunshot wounds listed and described. A toxicology report revealed that Tracy tested positive for fentanyl and benzodiazepines in his system.

**Applicable Law(s):835a.** Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

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**Graham v. Connor**, 490 U.S. 396 (1989), considered the reasonableness of a police officer's use of force, and instructed that the reasonableness must be judged from the perspective of a reasonable officer on scene.

**People v. Humphrey** (1996) 13 Cal.4th 1073, 1082-1083 [to determine whether use of force is objectively reasonable for self-defense, trier of fact must consider all the circumstances that were known or appeared to the officer as well as consideration for what a reasonable person in a similar situation with similar knowledge would have believed];

**People v. Bates** (2019) 35 Cal.App.5th 1, 9-10 [knowledge of another person's prior threatening or violent conduct or reputation for dangerousness may provide evidence to support a reasonable belief in imminent harm].) Self-defense also has a subjective component. (Humphrey, supra, 13 Cal.4th at p. 1082.) The subjective element of self-defense requires that a person actually believes in the need to defend against imminent peril or great bodily injury. (People v. Viramontes (2001) 93 Cal.App.4th 1256, 1262.)

**Tennessee v. Garner**, 471 U.S. 1 (1985).

### **Case Summary of Tennessee v. Garner:**

- Police officer shot and killed an unarmed fleeing suspect – Garner.
- Garner's family sued, alleging that Garner's constitutional rights were violated.
- The District Court found no constitutional violation. The Sixth Circuit Court of Appeals reversed.
- The U.S. Supreme Court held that deadly force cannot be used against a fleeing suspect unless the suspect poses a serious threat to the officer or others.

### **Rule of Law or Legal Principle Applied:**

Deadly force may not be used against a fleeing suspect unless such force is necessary to prevent the suspect's escape and there is probable cause to believe that the suspect presents a serious threat to the officer or others.

### **Reasoning:**

- Stopping a suspect with deadly force is a Fourth Amendment "seizure."

### **Applicable RPD Policy:**

300.4 – Deadly Force Applications

### **Other Applicable RPD Policy(s): (Refer to RPD Policy Manual)**

300.1 – Use of Force – Purpose and Scope  
300.1.1 – Definition of force and deadly force  
300.2 – Policy

**Other Code(s): (If applicable) – None**

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### ADDITIONAL INFORMATION

The independent investigation conducted by the California State Department of Justice (DOJ), found no criminal culpability on behalf of Detective Kerr and other officers involved in the OIS. In addition, the DOJ did not find that Detective Kerr or any other officers involved violated any Policies or Procedures, nor did they make any recommendations for any agency to modify their Policies. (See DOJ page 53, Policy and Practice Recommendations). If you choose, you may take this into consideration during your review and deliberations.

**List any issues or concerns of officer(s) actions prior to the actual use of force:**

*(e.g. Other Policy concerns. Prepare to discuss)*

### **Standard of Proof for Finding:**

In coming to a finding, the Commission applies a standard of proof of "Preponderance of Evidence." Preponderance generally means "more likely than not," or may be considered as just the amount necessary to tip a scale.

The "Preponderance of Evidence" standard of proof is the same standard as applied in most civil court proceedings.

### **Finding:**

(Check one of the following)

Within Policy \_\_\_\_\_

Not Within Policy \_\_\_\_\_

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### **List your “Rationale” for your “Finding”:**

*(In this section, the Commissioner writes their reasoning for their finding. It is intended as a section for notes that may be used during deliberations. It is also information used for the public report).*

### **Recommendation(s):** (If any)

*(In this section, the Commissioner may write out recommendations for RPD policy changes, additions or new policy. The Commissioner may also use this section to write recommendations for additional training for RPD officers).*

**UPON COMPLETION OF THE REVIEW OF THIS CASE, PLEASE SUBMIT THIS OID WORK SHEET TO MR. FRANK HAUPTMANN COMPLETION OF THE PUBLIC REPORT AS SOON AS POSSIBLE. Please emphasize any specific points you wish written into the report**

**Work Sheet Template prepared by:**

**Frank Hauptmann  
CPRC Independent Consultant**

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