



# OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

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August 5, 2021

The Honorable Ian Parkinson  
Sheriff-Coroner  
County of San Luis Obispo  
1585 Kansas Avenue  
San Luis Obispo, California 93405

Re: Review of Officer Involved Shooting Incidents Involving  
Mason James Lira (DOB 12/23/1993, Age 26)  
San Luis Obispo County Coroner's Case # 18891  
San Luis Obispo County Sheriff's Office Case # 200604328  
District Attorney Case # 079-666231  
Paso Robles Police Department Case # 201295  
Federal Bureau of Investigation Case # LA-3277777  
Bureau of Alcohol, Tobacco, Firearms & Explosives Case # 20070043 & 0044  
California Department of Justice Case # SB-20-0005-4-0001 & 0002  
Date of incidents: June 10 & 11, 2020  
Locations: City of Paso Robles and unincorporated area (4 distinct OIS incidents)

Dear Sheriff Parkinson,

The District Attorney's Office has completed its independent review of the officer involved shooting incidents occurring in and around the City of Paso Robles on June 10 and June 11, 2020, culminating in the shooting death of Mason James Lira at 4:04 p.m. on June 11, 2020. This letter contains our findings.

## OVERVIEW

This report recites the factual findings and legal opinions of the San Luis Obispo County District Attorney's Office related to the series of officer involved shooting incidents occurring in and around the City of Paso Robles on June 10 and June 11, 2020, in response to a 36-hour homicidal crime spree committed by Mason James Lira. The events resulted in four distinct officer involved shooting (OIS) incidents.

The four distinct OIS incidents are, in order of occurrence, the Paso Robles Incident (OIS #1), the Train Track Incident (OIS #2), the CalPortland Incident (OIS #3) and the Vineyard Incident (OIS #4). OIS #3 and OIS #4 occurred concurrently when officers fired at Lira from two separate locations resulting in him being shot and killed. In addition to the

identified OIS events, there were at least two occasions where Lira discharged a firearm directly at or in the direction of law enforcement and officers did not respond with deadly force.

The District Attorney's Office has conducted an independent and thorough evaluation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred when the involved law enforcement officers employed deadly force by discharging their firearms, and if that use of force was in compliance with the law. The District Attorney's Office will not be addressing any issues relating to policy, training, tactics, or civil liability.

The findings and opinions in this letter are based on review of the investigation conducted by the San Luis Obispo County Sheriff's Office and contained within their final investigative report and attached exhibits, as well as the author's site-visit to relevant locations within the City of Paso Robles. The Sheriff's 70-page final investigative report includes a comprehensive reconstruction of the events leading up to and surrounding the four OIS events. The investigation included one hundred thirteen (113) interviews of law enforcement personnel and civilian witnesses, review of sixty-seven (67) body worn camera and patrol in-unit videos, thirty (30) surveillance and aircraft videos, hundreds of photographs, the collection of six hundred thirty-seven (637) items of evidence, location diagramming and forensic evaluation and testing of physical evidence. Exhibits contained within the Sheriff's final investigative report that were reviewed are listed in **Attachment A** to this report.

## **INVESTIGATIVE METHODOLOGY**

The San Luis Obispo County Sheriff's Office was the lead investigating agency and compiled and synthesized evidence related to the events surrounding the OIS incidents. The identification, gathering, and processing of evidence was accomplished in collaboration with several outside agencies, including but not limited to: the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco, Firearms and Explosives; California Department of Justice, California Highway Patrol, and various local law enforcement agencies. A total of one hundred thirteen interviews were conducted. All officers who discharged firearms during any of the four OIS incidents were cooperative and provided voluntary statements.

Once the Sheriff's Office completed their investigation the author was provided an in-person presentation of their findings and final investigative report with associated exhibits, as described above. The author is responsible for the complete and impartial review of the investigation and preparation of this report.

## **SUMMARY OF FINDINGS**

The events of June 10 and June 11, 2020, are reasonably separated into four distinct OIS events. OIS #3 and #4 occurred concurrently and involved two groups of officers shooting at Lira from separate locations. The summary of our findings are as follows:

### **OIS #1 - Paso Robles Incident**

June 10, 2020, at approximately 4:25 a.m.

San Luis Obispo County Sheriff's Deputy Clifford Pacas shooting in the direction of Mason Lira, who had then just shot Deputy Nicholas Dreyfus, was necessary and justified as self-defense and as defense of another. No criminal charges are warranted against Deputy Pacas.

### **OIS #2 - Train Track Incident**

June 11, 2020, at approximately 2:05 p.m.

Shooting in the perceived direction of Mason Lira who had then just shot Arroyo Grande Police Sgt. Michael Smiley was necessary and justified as self-defense or as defense of another. No criminal charges are warranted against the following law enforcement personnel:

- Michael Smiley - Arroyo Grande Police Sgt.
- Stephen Doherty - Arroyo Grande Sr. Police Officer
- Trevor Aguilar - Paso Robles Police Officer
- Erik Jimenez - Pismo Beach Police Officer
- Sean Jessen - San Luis Obispo Police Officer
- Christopher Hendricks - California State Parks Ranger

### **OIS #3 - Cal Portland Incident**

June 11, 2020, at approximately 4:04 p.m.

The shooting of, and in the direction of, Mason Lira, who was then an armed fleeing felon, was necessary and justified. No criminal charges are warranted against the following law enforcement personnel:

- Shawn Bishop - California Polytechnic University Police Sgt.
- Dustin Virgil - Paso Robles Police Officer
- Joseph Gonzales - Paso Robles Police Officer
- Joseph Leonard - Paso Robles Police Sgt.
- Caleb Kemp - San Luis Obispo Police Sgt.
- Marcelo Magana - San Luis Obispo Police Officer
- Blake Etherton - San Luis Obispo Police Officer
- Gregory Benson - San Luis Obispo Police Officer
- Juan Leon - Grover Beach Police Sgt.



- Joshua Bywater - San Luis Obispo Police Officer
- Neil Clayton - Sr. District Attorney Investigator
- Joshua Krieger - San Luis Obispo County Sheriff's Deputy
- Henry "Hank" Hodel - California Dept. of Fish and Wildlife Warden

#### **OIS #4 - The Vineyard Incident**

June 11, 2020, at approximately 4:04 p.m.

Kings County Sheriff's Sgt. Christopher Barsteceanu shooting in the direction of Mason Lira, who was then an armed fleeing felon and whom Sgt. Barsteceanu reasonably believed had shot at him first, was necessary and justified. No criminal charges are warranted against Kings County Sheriff's Sgt. Christopher Barsteceanu.

### **FACTUAL SUMMARY**

The investigation established a comprehensive timeline of events from the time that Mason James Lira was first observed in Paso Robles on Thursday June 4, 2020, to the final OIS incident at Dusi Vineyard on June 11, 2020, at approximately 4:04 p.m. This summary describes the most significant events beginning in downtown Paso Robles shortly after midnight June 10<sup>th</sup>. The two-day series of events resulted in four distinct OIS incidents identified chronologically as the Paso Robles Incident (OIS #1), the Train Track Incident (OIS #2), the CalPortland Incident (OIS #3) and the Vineyard Incident (OIS #4). OIS #3 and #4 occurred concurrently and involved two groups of officers shooting at Lira from separate locations.

#### **OIS #1 - THE PASO ROBLES INCIDENT**

On June 10, 2020, shortly after midnight, civilian ██████ was walking alone on Railroad Street southeast of Park Cinema movie theater in Paso Robles when she observed Lira following her on foot.<sup>1</sup> She modified her walked to what she described as a "zig-zag" and Lira followed. Frightened, Ms. ██████ cut through the alleyway north of Park Cinema towards the downtown park where her vehicle was located. Lira began to run. She did as well. As she crossed Pine Street, Ms. ██████ heard four gunshots she believed were fired in her direction. As she ran, she observed Lira standing in front of Park Cinema. Surveillance video revealed there were five shots fired.<sup>2</sup> At about this time the Paso Robles Police Department began to receive calls of shots fired in the downtown area.

At approximately 3:07 a.m., Paso Robles Police Department Dispatcher McKinley was monitoring security cameras and observed Lira outside the police department holding what appeared to be a handgun while looking into the agency's lobby doors and secured

<sup>1</sup> Ms. ██████ did not know Mason Lira. Lira was not identified as the individual involved in this series of shooting events until later that evening.

<sup>2</sup> Five expended .40-caliber brass bullet casings were located at the front of Park Cinemas and determined to have been fired from the semi-automatic handgun possessed by Lira during OIS # 3 and 4.



parking areas. Three officers were present in the station. Paso Robles Police Department Officer Niles Hemingway was on patrol in a marked patrol vehicle. Paso Robles Police Department dispatch requested aid from partner law enforcement agencies, including the Atascadero Police Department, California Highway Patrol and San Luis Obispo County Sheriff's Office.

Shortly after 3:20 a.m. Atascadero Police Department Officer Craig Martineau, Atascadero Police Department Corporal Renee Vasquez and Paso Robles Police Department Officer Hemingway staged near the intersection of 9<sup>th</sup> and Park Streets, adjacent to the Department of Motor Vehicles located at 841 Park Street. At approximately 3:29 a.m. Paso Robles Police Department Officer Hemingway reported hearing seven gunshots northeast of their location. At approximately 3:30 a.m. California Highway Patrol Officers David Agredano and Joel Newby joined the other officers near 9<sup>th</sup> and Park Streets. At approximately 3:33 a.m. civilian [REDACTED] observed Lira near Park Cinema. At about 3:34 a.m. [REDACTED], then a uniformed security guard for the Paso Robles Inn (1103 Spring St.) observed Lira near Park Cinema and believed that Lira was shooting in [REDACTED] direction towards the Inn. At approximately 3:38 a.m. Atascadero Police Department Officer Zach Yeamen-Sanchez joined the officers near 9<sup>th</sup> and Park Streets and reported hearing additional gunfire northeast of the location.

At approximately 3:44 a.m. Officer Hemingway observed Lira running northbound on the railroad tracks east of 9<sup>th</sup> and Pine Streets. At about this time one additional gunshot was heard.<sup>3</sup> At approximately 3:50 a.m. five more gunshots were heard, and [REDACTED] updated Paso Robles Police Department dispatch that Lira was running west on 10<sup>th</sup> Street towards the police department located at 900 Park Street. At about this time Lira shot several areas of the police department along 10<sup>th</sup> Street, including two gunshots to the secured parking lot access keypad and multiple gunshots to the property room door and window which penetrated the property room itself.

At approximately 3:51 a.m. California Highway Patrol Officers Kenneth Antonetti and Julie Lavender joined the other officers near 9<sup>th</sup> and Park Streets. Law enforcement now present at the location were Atascadero Police Department Corporal Vasquez, Atascadero Police Department Officers Martineau and Yeamen-Sanchez, California Highway Patrol Officers Agredano, Newby, Antonetti and Lavender, and Paso Robles Police Department Officer Hemingway. All officers were in distinctly marked uniforms identifying them as law enforcement and the five vehicles present were clearly marked as law enforcement vehicles. About this time various officers located at 9<sup>th</sup> and Park Streets observed Lira north of their location and near Goodwill located at 1020 Park Street. Paso Robles Police Department Officer Hemingway used the loudspeaker of his patrol vehicle and commanded Lira to drop his gun. Atascadero Police Department Officer Yeamen-Sanchez gave similar verbal commands. In response, Lira fired three shots in the direction of the officers. About five minutes later, Lira fired five more shots in their direction. One shot struck the front driver side door of Paso Robles Police

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<sup>3</sup> These observations place Lira very near to where James Harding Watson was later discovered deceased and is believed to be when Lira shot Mr. Watson. See "Location of James Watson" below.

Department Officer Hemingway's vehicle, and another struck the right rear passenger door of California Highway Patrol Officer Agredano's vehicle. Two bullets struck the north-facing wall of the Department of Motor Vehicles directly behind the officer's location. The officers did not return fire.



**Photograph 1.** Bullet strike to front driver side door of Officer Hemingway's patrol car near 9<sup>th</sup> and Park St., Paso Robles.



**Photograph 2.** Bullet strike to rear passenger side door of CHP Officer Agredano's patrol car near 9<sup>th</sup> and Park St., Paso Robles.



At approximately 4:12 a.m. San Luis Obispo County Sheriff's Deputies Pacas and Dreyfus staged their marked patrol SUV within the intersection of 10<sup>th</sup> Street and Riverside Avenue, facing northwest towards Rental Depot located at 1005 Riverside Avenue. The deputies were aware of the shooting near 9<sup>th</sup> and Park Streets which had occurred about twenty minutes prior. Their overhead emergency lights were activated. They exited their vehicle and observed the area. At approximately 4:19 a.m., from the western fence line of the Rental Depot storage yard, Lira fired a single gunshot, followed fourteen seconds later by three more shots fired in the direction of the deputies. One round struck the center roof of their patrol SUV between the windshield and light bar. At about 4:21 a.m. Lira fired another single gunshot. At about 4:24 a.m., from the concealed northeast corner of Rental Depot, Lira fired a volley of four more gunshots towards the deputies. One round struck Deputy Dreyfus in the right side of his head below his ear resulting in skull, jaw and facial fractures. Dreyfus went down in a location that provided little to no cover from further gunfire. Within seconds after broadcasting that Deputy Dreyfus had been hit, Deputy Pacas fired three shots in rapid succession towards a tree located at the northeast corner of Rental Depot, where he believed the shots to have come from. Shortly after the shooting, off-duty Paso Robles Police Department Sgt. Ricky Lehr arrived at the intersection where he and Deputy Pacas moved Deputy Dreyfus to a place of relative safety until Paso Robles Fire Department personnel responded to render aid and transport.

Deputy Pacas explained that he returned fire because Deputy Dreyfus had been shot and was "laying defenseless" in the intersection without cover. He feared that Dreyfus may die or that the shooter would aggress and continue to shoot at the deputies. He described Dreyfus as his "number one priority," so he engaged the shooter with suppressive fire to keep him "from engaging" them or "getting any closer."



**Photograph 3.** Bullet strike to Deputies Pacas' patrol SUV between windshield and light bar at 10<sup>th</sup> St. and Riverside Ave., Paso Robles.





**Photograph 4.** View from Deputy Pacas' patrol SUV looking north. The ellipse identifies location of Lira and where Deputy Pacas placed his rounds.

Lira was later observed by law enforcement at approximately 4:30 a.m. in the downtown corridor near Red Scooter Deli on Pine Street.

Additional law enforcement resources arrived and performed a focused grid-search for Lira in the downtown corridor, including California Highway Patrol air surveillance, San Luis Obispo Regional SWAT (Special Weapons and Tactics) and San Luis Obispo County Sheriff's Office SED (Special Enforcement Detail). As the search areas were cleared, investigative teams were assigned to identify, gather and process evidence from the various shooting locations.

#### Location of James Harding Watson

At about 7:36 a.m. the deceased body of James Harding Watson (DOB 06/25/61), age 58, was discovered at the north-end of the Paso Robles Amtrak passenger loading platform at 800 Pine St. One expended .40-caliber bullet casing and one projectile were located near Mr. Watson's body. Forensic Pathologist, Dr. Joye Carter later determined the cause of Mr. Watson's death to be a single gunshot wound to the back of the head and the manner of death homicide. After examining the casing located near Mr. Watson's body, the Bureau of Alcohol, Tobacco, Firearms and Explosives determined "with high confidence" that it was fired from the .40-caliber Smith and Wesson M&P Shield semi-



automatic handgun possessed by Lira.<sup>4</sup> Additionally, the expended casing was consistent with ammunition located within a “bunker” occupied by Lira that was later discovered beneath Park Cinema. (See below, “Location of Bunker”).



**Map 1.** Aerial photograph of downtown Paso Robles identifying locations of import in OIS #1. “A” = location of decedent James Watson on the Amtrak passenger platform, believed to have been shot at 3:44 a.m. “B” = location of APD, CHP and PRPD Officers when fired upon by Lira at 3:51 a.m. “C” = location of Deputies Pacas and Dreyfus when fired upon by Lira at 4:19 and 4:24 a.m. and from which Deputy Pacas returned fire at about 4:25 a.m.

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<sup>4</sup> The Smith and Wesson M&P .40-caliber handgun was one of two handguns stolen by Lira during a commercial burglary on June 8<sup>th</sup> in San Luis Obispo. The other stolen firearm was a Smith and Wesson .38 caliber revolver. Lira was in possession of both firearms during the final OIS event on June 11<sup>th</sup> when he was shot and killed.

### Identification of Lira

Efforts to locate Lira throughout the remaining daylight hours of June 10<sup>th</sup> were unsuccessful. To this point law enforcement had been unable to identify the shooter. Still photographs were obtained from surveillance video captured in the downtown corridor. The photographs were provided to news outlets and posted on social media to alert the public and seek assistance in identifying the shooter. Monterey and Santa Cruz County law enforcement provided information leading to the identification of Mason James Lira as the shooter. It was quickly learned that Lira had several law enforcement contacts related to his threats of physical violence towards others. (See below, "Criminal History").



**Photograph 5.** Still frame from downtown Paso Robles surveillance video used to identify Mason James Lira.



### The Grand View Pursuit

At about 9:00 p.m. June 10<sup>th</sup>, the Federal Bureau of Investigation SWAT team joined the cadre searching for Lira. At about 9:59 p.m. Paso Robles Police Department dispatch received two calls of “shots fired” in the area near Oxford Suites located at 800 4<sup>th</sup> Street. A civilian in the area described hearing a gunshot coming from the parking lot area of Oxford Suites, then observed an individual he recognized through a media release as Lira walking across the lot in a southeast direction. Paso Robles Police Department Officers Brenden Neary, Stephen Lugo, Brett Lowe, and Cody Birks responded to an adjacent vacant apartment complex, Grand View, located at 202 Spring Street. At about 10:05 p.m. officers observed Lira within the complex and a foot pursuit ensued. During the pursuit, Officer Neary commanded Lira to stop. He did not. Additional law enforcement responded, including several Sheriff’s Deputies and various Sheriff’s Detectives. The Federal Bureau of Investigation SWAT team cleared the complex but did not locate Lira. It was determined that Lira fled southeast to the adjacent Salinas Riverbed before a perimeter could be established.

### Calle Propano Response

The next morning, June 11<sup>th</sup>, at about 2:13 a.m. an employee of the Chevron Gas Station located at 1849 Ramada (about one and three quarters miles south of Grand View apartments) notified Paso Robles Police Department dispatch that Lira had recently left the gas station. At approximately 2:20 a.m. Paso Robles Police Department Officers Neary, Lugo, Lowe, and Birks responded to the area near Calle Propano when they heard several gunshots coming from the direction of the Salinas Riverbed to the east. They believed that Lira, who was in the Salinas Riverbed, may be shooting in their direction. Additional law enforcement personnel, including air operations, responded and established a perimeter. Officers were unable to locate Lira.

### Location of the “Bunker”

At 8:20 a.m. it was discovered that a storm drain running beneath Park Cinema had been converted to a make-shift bunker. The storm drain ran roughly east-west and was approximately five to six feet in height. On either end of the storm drain were metal grates intended to secure the area. Law enforcement from the Federal Bureau of Investigation, Paso Robles Police Department and San Luis Obispo County Sheriff’s Office photographed and processed the location. A camouflage blanket had been draped over existing piping within the storm drain to conceal a temporary bedding area. Immediately adjacent to the bedding were a backpack, personal items and ammunition taken during a commercial burglary in San Luis Obispo on June 8<sup>th</sup>, three days prior. The recovered items included a Social Security card and Automobile Certificate of Title in the name of the burglary victim as well as Remington .38-caliber, Union Metallic Cartridge Company .357-caliber, Winchester .38-caliber, and Remington .40-caliber firearm ammunition. An empty Dole pineapple juice can was located near the bedding which, when tested, showed a DNA matched for Lira.<sup>5</sup> The entrance to the bunker from the Pine

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<sup>5</sup> As previously mentioned, two firearms were also stolen during a June 8<sup>th</sup> commercial burglary in San Luis Obispo. Both firearms were located on Lira when he was shot and killed during the final OIS on June 11<sup>th</sup>.

Street side is in the immediate area Lira was last observed at 4:30 a.m. on June 10<sup>th</sup> and consistent with him having been repeatedly observed in that area early the previous morning. This transient shelter had been used by Lira since at least the evening of June 9<sup>th</sup>.



**Photograph 6.** Camouflage blanket and temporary bedding within the “bunker” beneath Park Cinema, Paso Robles.

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**Photograph 7.** .38 and .357-caliber bullets contained within the backpack located in the “bunker” beneath Park Cinema, Paso Robles.



**Photograph 8.** Additional ammunition located in the “bunker” beneath Park Cinema and identified as having been stolen in the June 8<sup>th</sup> San Luis Obispo commercial burglary.



### Evidence Collected from OIS #1

Various expended bullet casings and fragments were located throughout the downtown corridor, in addition to suspected bullet strikes. Also, nearly two dozen surveillance videos were reviewed to establish Lira's movements through the events. The most salient physical evidence is as follows: Seventeen expended .40-caliber bullet casings in various locations on Pine St. between Park Cinema (1100 Pine St.) and Western Janitor Supply (1026 Pine St.), five expended .38-caliber bullet casings located in the entrance to the alleyway at the northwest corner of Goodwill (1020 Park St.), four spent .40-caliber bullet casings located just inside of the Paso Robles Police Department access gate at 900 Park St., two bullet holes in the access pad for the secured Paso Robles Police Department parking lot along 10<sup>th</sup> St., bullet strikes on Property Room door and window and freezer and wall within the Property Room, five spent .38-caliber bullet casings in the street and on the sidewalk of 10<sup>th</sup> St. directly across from the Paso Robles Police Department secured parking lot, four expended .40-caliber bullet casings located near the western fence line of Rental Depot (1005 Riverside Ave), four expended .40-caliber bullet casings located near the northeast corner of Rental Depot, three expended .223/5.56-caliber bullet casings located in the intersection of 10<sup>th</sup> St. and Riverside Ave. near the driver side door of Deputy Pacas' patrol vehicle, one expended .40-caliber bullet casing and expended projectile located near the body of James Watson at the north end of the Amtrak passenger platform at 800 Pine Street, ammunition/bedding and documents seized from the "bunker" beneath Park Cinema.

### OIS #2 – THE TRAIN TRACK INCIDENT

After Lira absconded into the Salinas Riverbed at approximately 2:30 a.m. on June 11<sup>th</sup>, law enforcement established a broad perimeter within the riverbed in the area where Lira was believed to have fled. The riverbed is east of Highway 101 and runs roughly north and south parallel to the highway.

At 6:00 a.m. the San Luis Obispo Regional SWAT team was tasked with maintaining security and perimeter positions within the riverbed. The Regional SWAT team was broken into two sub-teams, a "Blue Team" and a "Green Team." All team members were aware that Lira was armed and homicidal, had unprovokedly shot at civilians and several officers the previous night resulting in a civilian death and the shooting of a deputy sheriff, and that he had avoided capture on several occasions.

The Blue Team was led by Arroyo Grande Police Sergeant Michael Smiley and transported by a distinctly marked Sheriff's Office armored Bearcat (hereinafter, Sheriff's Bearcat). Blue Team members included Paso Robles Police Department Officer Trevor Aguilar, Pismo Beach Police Department Officer Erik Jimenez, Arroyo Grande Police Department Sr. Officer Stephen Doherty, California State Parks Ranger Chris Hendricks and San Luis Obispo Police Department Officers Sean Jessen, Timothy Koznek, Jeffrey Koznek, and Luca Benedetti. Ranger Hendricks was in a marked California State Parks patrol SUV traveling behind the Bearcat. All personnel wore black helmets and external vests with the word "POLICE" on the front and back. Some wore additional patches on the shoulders identifying them as law enforcement.

At approximately 1:43 p.m. Blue Team split up with Officers T. Koznek, J. Koznek and Benedetti moving east into the riverbed. The remainder of Blue Team continued to travel south along the railroad track running parallel to the western border of the riverbed. Ranger Hendricks followed in his patrol SUV. As the caravan reached a location east of Dusi Vineyard (2110 Ramada Drive) Sr. Officer Doherty noticed what he believed to be a blue glove in front of a bank of oak trees to the west on the passenger side of the caravan.

The bank of oak trees grew along a dirt berm approximately thirty feet in height running parallel to the railroad tracks. At about 2:05 p.m. Sgt. Smiley walked around the front of the Sheriff's Bearcat to investigate the glove when Lira shot at him from a concealed position believed to be near the center of the trees. Lira quickly fired another shot striking Smiley on the outside of his right calf. The injury was a "through-and-through" with the bullet exiting the inside of his right calf. Sgt. Smiley made his way back around the front of the Bearcat for cover and directed the team to return fire. Sgt. Smiley broadcast over the law enforcement radio channel that he had been shot. As Sgt. Smiley applied a tourniquet, Officer Aguilar exited the Sheriff's Bearcat and fired about twenty rounds of suppressive fire over the hood towards Lira's perceived position in the bank of oak trees backed by the dirt berm. Officer Jimenez provided suppressive fire from the rear passenger side of the Bearcat. When Officer Jimenez's magazine ran empty, Officer Jensen switched positions with him and employed additional suppressive fire. Sr. Officer Doherty, located in the turret of the Bearcat, fired seventeen rounds of suppressive fire towards the bank of trees as well.

Sgt. Smiley directed the team to get into the Bearcat for cover. The entrance was located at the rear of the Bearcat and in the direct line of fire from Lira's perceived location. Ranger Hendricks was concealed on the driver side of his patrol SUV about twenty feet behind the Bearcat and needed to cross directly through Lira's line of fire as well. Suppressing fire was directed at the bank of oak trees as Ranger Hendricks ran to the Bearcat. Successive cover fire was provided as each member of Blue Team made their way into the safety of the Bearcat. Sgt. Smiley fired suppressive rounds into the bank of oak trees as he made his way into the rear of the Bearcat.

All officers present employed suppressive fire. In total, Sgt. Smiley fired nine rounds, Officer Aguilar fired twenty rounds, Officer Jimenez fired fifty-seven rounds, Sr. Officer Doherty fired seventeen rounds, Officer Jensen fired twenty-six rounds, and Ranger Hendricks fired fourteen rounds.

At about 2:37 p.m. the Blue Team in the Sheriff's Bearcat moved to a location to transfer Sgt. Smiley for medical treatment. After transporting Sgt. Smiley, Blue Team was joined by San Luis Obispo Police Department Officers T. Koznek, J. Koznek, and Benedetti, and San Luis Obispo Sheriff's Office Sgt. Chad Nicholson and Det. Rainer Bodine. The team drove back to the initial location they had been fired upon and positioned the Bearcat facing west, directly at the bank of trees.



Evidence Collected from OIS #2

The Federal Bureau of Investigation ERT (Evidence Response Team) processed the scene, including identifying and gathering of evidence, photographing and conducting a 3-D scan of the area. Salient evidence included one pistol magazine, two rifle magazines, fifty-five expended .223-caliber Winchester bullet casings, twenty-five expended .223-caliber Hornady bullet casings, twenty-two expended 9mm Hornady bullet casings, ten expended .40-caliber Federal bullet casings, ten expended .40-caliber Hornady bullet casings, and one live (unexpended) .40-caliber Hornady bullet.



**Photograph 9.** Sheriff's Bearcat operated by Blue Team during OIS #2.

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**Photograph 10.** Bank of trees and dirt berm. Large tree at center concealed Lira during OIS #2.

#### Green Team and Other Officers Post at CalPortland Yard

After Blue Team broadcast that Sgt. Smiley had been shot near the railroad tracks, additional law enforcement personnel quickly moved towards the area of the CalPortland Concrete Yard located at 188 Volpi Ysabel, to the southwest of Blue Team's location. This included San Luis Obispo Regional SWAT "Green Team," led by San Luis Obispo Police Department Sgt. Caleb Kemp. The Green Team consisted of California Polytechnic University Police Department Sgt. Shawn Bishop, Paso Robles Police Department Officers Dustin Virgil and Joseph Gonzales, Paso Robles Police Department Sgt. Joseph Leonard, San Luis Obispo Police Department Officers Marcelo Magana, Blake Etherton, Joshua Bywater, and Greg Benson, Arroyo Grande Police Department Officer Timothy Ramirez, Arroyo Grande Police Department Sr. Officer Reggie Bio, and Grover Beach Police Department Sgt. Juan Leon. Green Team utilized an armored Bearcat distinctly marked with "POLICE" and "SWAT RESCUE" in white lettering (hereinafter, Regional Bearcat). Green Team personnel wore black external vests with the word "POLICE" on the front and back, except for Sgts. Leonard and Bishop, who wore modified uniforms with SWAT patches on the shoulders. At approximately 2:45 p.m. Green Team along with the Regional Bearcat took positions at the northeast portion of the CalPortland yard. This location offered an elevated view of Dusi Vineyard (2110 Ramada Dr.) below to the north and the Salinas Riverbed to the east, including the backside of the dirt berm containing the bank of trees concealing Lira.<sup>6</sup>

<sup>6</sup> Officers were unsure of Lira's exact location at this time, although Lira was later determined to be concealed within the bank of oak trees described.



Other law enforcement personnel began to arrive at the location, including San Luis Obispo County District Attorney Senior Investigator Neil Clayton, San Luis Obispo County Sheriff's Deputies Joshua Krieger and Richard "Ted" Lenhoff, Fish and Wildlife Lieutenant Mat Gil, Fish and Wildlife Warden Henry "Hank" Hodel. These five were joined by Paso Robles Police Department Sgt. Leonard and the team collaborated to evacuate civilians within the various buildings on the CalPortland property. Civilians were instructed to either quickly leave the area or shelter in place. Eventually this team of six officers positioned themselves at the elevated area occupied by Green Team and the Regional Bearcat at the northeast portion of the CalPortland property. Lieutenant Gil, Warden Hodel and Deputy Lenhoff positioned on a large sand pile west of the Regional Bearcat, which enhanced their elevated view of the vineyard below. Sgt. Leonard and San Luis Obispo Police Department Officer Bywater positioned on a pile of concrete to the southwest of the Regional Bearcat which offered a similar elevated vantage point. California Polytechnic University Police Department Sgt. Bishop joined the Green Team and posted in the turret of the Regional Bearcat. The remainder of the Green Team, including District Attorney Senior Investigator Clayton and San Luis Obispo County Sheriff's Deputy Krieger remained in the area near the Regional Bearcat.

During this time additional law enforcement teams arrived and positioned in the area in and around Dusi Vineyard.

The Blue Team in the Sheriff's Bearcat maintained their position at the train tracks facing the bank of trees. At about 4:02 p.m. they observed movement in the tree directly in front of the Bearcat. At 4:03 p.m. Sgt. Nicholson broadcast over the law enforcement radio channel that the "suspect was crawling up the berm." At about 4:04 p.m. Paso Robles Police Department Officer Trevor Aguilar announced two times over the Sheriff's Bearcat loudspeaker, "[t]his is the San Luis Obispo Regional SWAT team, come down to the railroad tracks with your hands up." At the time of the commands, Lira was approximately 15 yards from the bearcat, moving west up the berm and towards Dusi Vineyard above.

### **OIS #3 – THE CALPORTLAND INCIDENT**

Lira crested the berm and continued west across the vineyard access road. At about 4:04:23 p.m. several officers positioned on the CalPortland property about 120 yards from Lira began to shout orders. For example, Lieutenant Gill yelled three or four times "Police. Stop. Show me your hands. Show me your hands," while raising his own right arm to alert Lira of his presence. Lieutenant Gil described yelling so loudly that he nearly lost his voice for two days. Other officers yelled similar commands. Lira did not comply and continued moving west into the vineyard in what officers described as "walking with a purpose," at a "jog" or a "trot." Several officers observed a compact item in Lira's right hand they believed to be a handgun.<sup>7</sup> The various officers shouted verbal commands to Lira for about seven seconds. Lira did not comply. As Lira moved west through the vines, he briefly turned his attention to the north and then rotated his head and body to

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<sup>7</sup> Dept. of Fish and Wildlife Warded Hank Hodel believed the object to be in Lira's left hand.



the south towards the Green Team and other officers in the CalPortland yard. As Lira turned his attention towards the Green Team, he began to raise his right arm which was believed to hold a handgun.

There was a residence within the vineyard approximately 200 yards west of Lira and in his direction of travel. Additionally, civilians and members of the media had gathered along Ramada Drive about 500 yards to the west of Lira and in his direction of travel. Immediately beyond Ramada Drive was heavily trafficked State Highway 101 and beyond that the Target Shopping Center.

Thirteen law enforcement officers shot at Lira, who fell in the vineyard approximately 20 yards west of the crest of the berm. Green Team Leader Sgt. Kemp and other officers yelled cease fire. The area of the CalPortland yard occupied by Green Team and other officers was secured as a potential crime scene. About 4:15 p.m. Lira was contacted in the vineyard and determined to be deceased. The scene was secured, and teams were dispatched to identify, photograph and collect evidence.

Law enforcement officers who discharged their weapons in this event were California Polytechnic University Police Department Sgt. Shawn Bishop, Paso Robles Police Department Officers Dustin Virgil and Joseph Gonzales, Paso Robles Police Department Sgt. Joseph Leonard, San Luis Obispo Police Department Sgt. Caleb Kemp, San Luis Obispo Police Department Officers Marcelo Magana, Blake Etherton, Gregory Benson and Joshua Bywater, Grover Beach Police Department Sgt. Juan Leon, San Luis Obispo County District Attorney Senior Investigator Neil Clayton, San Luis Obispo County Sheriff's Deputy Joshua Krieger, and California Dept. of Fish and Wildlife Warden Hank Hodel.

All of these officers were aware, prior to the incident, that Lira had engaged in a series of shootings over the preceding two days, including the shooting death of a civilian (James Watson), firing multiple rounds at a group of police officers (9<sup>th</sup> and Park St.), firing at and into the Paso Robles Police Department, firing multiple rounds at deputies from positions of concealment striking one in the head (Deputies Dreyfus and Pacas), firing at or near officers located on Calle Propano that morning, and the ambush-style assault of Blue Team and the shooting of Sgt. Smiley just two hours before. All shooting officers were aware that Lira had been armed with at least one firearm.

All involved law enforcement officers provided voluntary statements reciting their observations, perceptions and actions. The following information is provided from each officer who discharged a firearm as illustrating their beliefs that resulted in the use of deadly force.

California Polytechnic University Police Department Sgt. Shawn Bishop had been a peace officer for twenty years, having been previously employed by the Tulare County Sheriff's Office and Fresno City Police Department. At the time of the shooting, he was at an elevated position in the turret of the Regional Bearcat. In his mind, at the time of the

shooting “there was no doubt” that Lira was “going to shoot us” and that if Lira “would have escaped, he was going to kill somebody. If he broke his perimeter, he would have killed somebody.”

Paso Robles Police Department Officer Dustin Virgil had been a peace officer with the Paso Robles Police Department for four years. At the time of the shooting, he was located north of the Regional Bearcat along the ridge overlooking the vineyard. He was one of the officers yelling commands to Lira. He believed Lira made eye contact with him. At the time of the shooting, he was in fear “first and foremost for the innocent community” and “open businesses” he “knew were nearby,” his “partners” and his “own life.” He believed Lira would kill anyone that “came into contact with him”. He believed that if Lira “was not stopped at that moment, other people would lose their lives”, so he shot to “stop that threat”.

Paso Robles Police Department Officer Joseph Gonzales had been a peace officer with the Paso Robles Police Department for approximately three and a half years. At the time of the shooting, he was located behind a concrete barrier north of the Regional Bearcat. He was one of the officers yelling commands to Lira. At the time of the shooting, he believed that Lira “had the intent to specifically kill officers” and that he was “a danger to everyone” nearby, including adjacent businesses and civilians and media gathered on Ramada Drive. He believed that Lira “was gonna try to kill [him] or the officers next to [him].” He shot to “stop [Lira] from being a threat to me, to the officers and civilians” in the immediate area.

Paso Robles Police Department Sgt. Joseph Leonard had been a peace officer with the Paso Robles Police Department for ten years. At the time of the shooting, he was located on a pile of concrete debris to the southwest of the Regional Bearcat which provided an enhanced elevated view of the vineyard. Sgt. Leonard saw what he believed to be a handgun in Lira’s right hand and believed Lira posed an immediate threat of shooting at officers in the area or civilians if he broke the perimeter.

San Luis Obispo Police Department Sgt. Caleb Kemp had been a peace officer with the San Luis Obispo Police Department for eighteen years. At the time of the shooting, he was located near a pile of concrete debris north of the Sheriff’s Bearcat. He saw what he believed to be a gun in Lira’s right hand when Lira quickly turned in his direction and began to raise his right hand. Sgt. Kemp expressed at the time of the shooting he believed that “[his] life was in jeopardy, [his] teammates lives are in jeopardy. Looking at the totality of the circumstances for me at the moment, and leading up to that was if this individual is able to get through this vineyard and back into a populated area, he’s going to kill somebody else, or he’s gonna kill an Operator, or he’s gonna kill a Police Officer, or anybody else who comes along, so, I made the decision at that point that, I would shoot the suspect.”



San Luis Obispo Police Department Officer Marcelo Magana had been a peace officer with the San Luis Obispo Police Department for four years. At the time of the shooting, he was located near a pile of concrete debris north of the Regional Bearcat. As Lira entered the vineyard, Officer Magana observed him turn his body towards their location. Lira began to raise his right hand holding what Officer Magana believed was a handgun. Officer Magana feared that Lira was going to shoot at him, or other officers and was an immediate threat to the public who had gathered along Ramada Drive.

San Luis Obispo Police Department Officer Blake Etherton had been a peace officer for eight years, including two years with the Riverside County Sheriff's Department. He took a position by a cement barricade north of the Regional Bearcat. As Lira entered the vineyard, Officer Etherton observed what he believed was a handgun in Lira's right hand. Lira quickly turned in his direction and began to raise his right hand. Officer Etherton believed Lira was going to shoot at him and other adjacent officers. Officer Etherton perceived Lira as "a direct danger to [him], [his] partners, [he] considered him to be an imminent threat, and if he was not taken into custody or the threat was not stopped that he would continue to kill people." Officer Etherton "was also concerned that if [he] did not, engage our suspect, that he would continue on his rampage and would continue, directly towards the public that was, in what [he] believe[d] at the time was unprotected because there was no perimeter [to the west] to stop him."

San Luis Obispo Police Department Officer Gregory Benson had been a peace officer for thirteen years, including 5 years with the Pismo Beach Police Department. At the time of the shooting, he took a position near a cement barricade north of the Regional Bearcat. Officer Benson saw a dark object in Lira's right hand he believed to be a handgun as Lira continued west into the vineyard. Officer Benson was concerned that Lira would break the perimeter and escape again. He noted "not only is he ambushing a police department, but his problem wasn't only with police it seemed but now he was attacking innocent bystanders and who knew how many more innocent people were in the area." Officer Benson elaborated that "the threat to public safety was so extreme that he was showing a willingness over approximately 48 hours to actively engage, not only law enforcement but innocent people. That area is highly populated by both residents, open businesses, innocent bystanders, police officers, emergency workers, helicopters, and it seemed like he was determined to create as much havoc as he could and him being a fleeing felon, I felt that the threat to public safety was so extreme that he needed to be stopped."

Grover Beach Police Department Sgt. Juan Leon had been a peace officer for ~~thirteen~~ years, ~~including five years with the Pismo~~ Beach Police Department. At the time of the shooting, he was positioned north of the Regional Bearcat on a raised embankment. Sgt. Leon observed Lira turn his body in his direction as he entered the vineyard. Sgt. Leon believed that Lira posed an immediate danger to "the public and responding officers that were deploying to the area." He feared that if Lira were allowed to continue west towards the civilians and businesses at Ramada Drive there would be "more deaths and more shooting."

**\*Sgt. Juan Leon has served for twenty-one years with Grover Beach PD.**

San Luis Obispo Police Department Officer Joshua Bywater had been a peace officer for approximately three and a half years. At the time of the shooting, he was located on a pile of concrete debris to the southwest of the Regional Bearcat which provided an enhanced elevated view of the vineyard. Officer Bywater observed what he feared was a gun in Lira's right hand. As Lira entered the vineyard Officer Bywater saw him turn his body towards his position and raise his right hand. Officer Bywater believed Lira was about to shoot at the officers.

San Luis Obispo District Attorney's Office Senior Investigator Neil Clayton had been a peace officer for eighteen years, including twelve years as a Deputy with the San Luis Obispo County Sheriff's Office. At the time of the shooting, he was located north of the Regional Bearcat on a raised embankment. Sr. Investigator Clayton observed Lira turn his body towards his location. As Lira turned Sr. Investigator Clayton saw a dark object in his right hand and feared Lira was going to shoot at his position. At that point he believed that Lira "presented a direct immediate threat to not only myself, the community, and other law enforcement that I knew were west of our location, but when he turned towards us, and I could see he had something in his hand, I felt I was in immediate danger as was everyone else around me." He further explained that "if we did not utilize deadly force to stop him, he was going to continue westbound through those vines to where I knew there were other citizens and law enforcement present and based on his prior conduct from the previous day and a half, endanger their lives, add to that, once he turned, once he, failed to obey the commands of the Bearcat, in the railroad ravine river area, westbound, over that berm into the vines, turn towards us with that object in, with whatever that dark object was in his hand, which I now feel strongly was a gun, but if I didn't shoot him and use deadly force at that minute, I have no doubt in my mind that he was either going to kill or injure myself or one of the people I was with."

San Luis Obispo Sheriff's Office Deputy Joshua Krieger had been a peace officer for six years. At the time of the shooting, he was positioned behind a metal water spigot to the northwest of the Regional Bearcat. Deputy Krieger observed Lira turn his body towards him and begin to raise his arm, which caused Deputy Krieger to believe that he was "going to start taking gunfire." The deputy "was in fear for [his] life, the lives of any of the officers around [him] and for the whole community because of what [Lira] had done prior." He further stated, "I knew that he'd just been involved in an active gun fight for like, however, third time or whatever it was, so I knew what his intentions were - if he saw law enforcement, he would shoot at them."

California Department of Fish and Wildlife Warden Hank Hodel had been a peace officer for 20 years, including prior employment with the Lake County Sheriff's Office. At the time of the shooting, he was positioned on a large sandpile west of the Regional Bearcat which provided an enhanced elevated view. As Lira made his way into the vineyard, Warden Hodel observed Lira to have a dark object in his left hand, believed to have been a handgun, and turn in the Warden's direction. Warden Hodel believed that Lira was about to engage the officers in gunfire, so he shot.



### Evidence From OIS #3 (CalPortland Incident)

The California Highway Patrol Multi-Disciplinary Accident Investigation Team (MAIT) assisted the San Luis Obispo County Sheriff's Crime Laboratory in processing the scene. MAIT investigators prepared a narrative report and associated scene diagram, took photographs and completed forensic mapping. Ninety-six expended bullet casing of various caliber were located along the northern edge of the CalPortland yard. Thirteen bullet fragments were located in the area near to where Lira came to rest. One .40-caliber Smith and Wesson .40-caliber M&P Shield semi-automatic handgun holding a magazine with five live rounds and one .38-caliber Smith and Wesson revolver with four live rounds in the cylinder were located beneath Lira's body.<sup>8</sup>

### OIS #4 - THE VINEYARD INCIDENT

This OIS event occurred concurrently with OIS #3 (CalPortland Incident), when the two law enforcement teams fired simultaneously at Lira as he fled west into the vineyard.

By 4:00 p.m. another group of officers had posted along the access road running between the railroad tracks and Dusi Vineyard, about 250 yards northeast of the Green Team on the CalPortland yard. This "Vineyard Team" was at a lower elevation than the Green Team and partially within the vineyard. The Vineyard Team included King's County Sheriff's Office SWAT members Sgt. Christopher Barsteceanu, Senior Deputy Dakotah Fausnett, and Kings County Sheriff's Deputies Blake Bursiaga, Kody Holt and Miguel Cortez. They were using an olive-green Bearcat (Kings County Bearcat) and a black and white patrol SUV. Both vehicles were distinctly marked as law enforcement vehicles. Also present at the location were Atascadero Police Department Officer Marc Nobriga, Paso Robles Police Department Officer Joshua Lewis, Federal Bureau of Investigation Special Agents Christopher Denning and Matthew Parker, and California Highway Patrol Officers Isaac Clocherty and Timothy Maxwell. All were wearing tactical or patrol uniforms consistent with their agencies. The Vineyard Team positioned the Kings County Bearcat and patrol SUV to form a "V" with the vertex pointing south, to provide cover for the team.

At about 4:04:23 p.m. the Vineyard Team heard the commands given over the Sheriff's Bearcat loudspeaker directing Lira to come down to the railroad tracks with his hands up. The team took cover behind their vehicles. Shortly after the commands began Lira "quickly" moved westbound into the vineyard. The team was about 150 yards north of Lira's position. The team's line-of-sight was upward to where Lira was observed moving through the vineyard and was slightly obscured by a small rise in the topography and the vines. Lira turned his attention towards their direction, then turned back to the south and towards the verbal commands given by the Green Team. Lira then began to raise his right arm. Almost immediately the Vineyard Team began taking gunfire.

King's County Sheriff's Office Sgt. Christopher Barsteceanu had been a peace officer for twenty years. He was positioned on the driver's side A-pillar of the patrol SUV as a bullet

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<sup>8</sup> Both handguns were later identified as having been stolen during a commercial burglary on June 8<sup>th</sup> in San Luis Obispo (See below, "Commercial Burglary").

struck the lower-center portion of the front windshield spraying him with glass debris. Another round struck the passenger side B-pillar of the patrol SUV. Sgt. Barsteceanu believed the gunfire was coming from within the vineyard and attributed it to Lira. Sgt. Barsteceanu explained, "given the fact that the suspect was actively shooting at us, given the distance and the location where we are at, the only viable tool at my disposal at that time, was lethal force in order to stop the suspect from killing me and my partners." So, he fired two rounds at Lira.

California Highway Patrol Officer Clocherty observed Lira "trot" down the berm towards the vineyard. He saw Lira raise his right hand and heard a "round go off". Officer Clocherty indicated he fired one round at Lira. An inspection of Officer Clocherty's rifle revealed nineteen of twenty rounds remained in the magazine. One live round was located on the ground near his position with a light primer strike. This tends to indicate that his rifle did not fire when he pulled the trigger. Officer Clocherty sustained superficial injuries to his right shin and right jaw area consistent with being struck by shrapnel.

King's County Sheriff's Deputy Bursiaga was transitioning from the turret of the Bearcat when he saw Lira come over the dirt berm and move west into the vineyard. Then he heard gunshots. He observed California Highway Patrol Officer Maxwell, at the rear of the patrol SUV, stumble and state that he had been hit. Deputy Bursiaga believed that Lira was "running toward" them so he aimed his rifle at Lira and squeezed the trigger. However, there is no physical evidence to suggest that the rifle fired. Deputy Bursiaga saw that Officer Maxwell was laying on the ground exposed. When he reached down to lift Officer Maxwell he was struck in his right knee by a bullet. Officer Maxwell had been shot in his stomach<sup>9</sup> and suffered an injury to his upper right thigh by penetrating bullet fragments. Officer Maxwell and Deputy Bursiaga assisted one another into the Kings County Bearcat and were later transported for medical treatment.

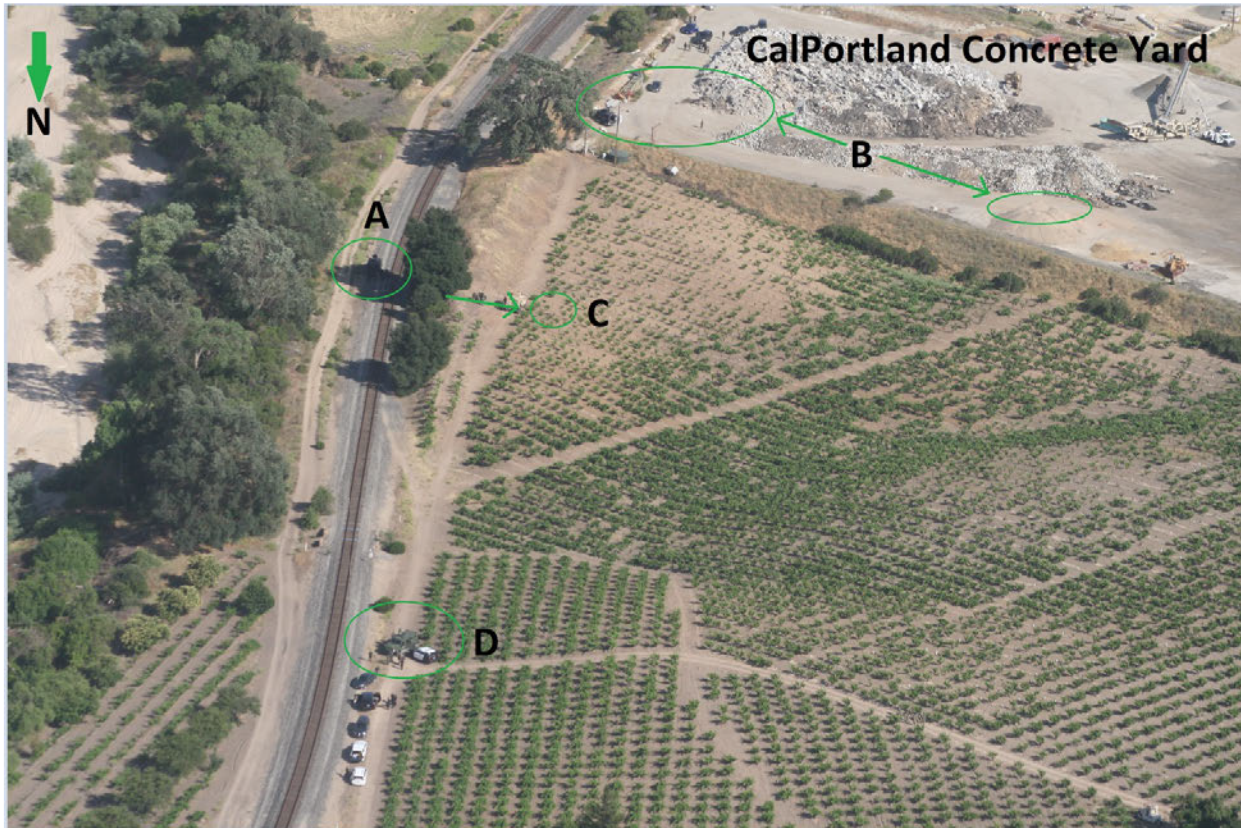
Investigation of the scene later determined that all gunfire received by the Vineyard Team had been fired by officers shooting at Lira from the CalPortland yard to the south (location of OIS #3).

Involved officers were aware, in advance of the incident, that Lira had engaged in a series of shootings over the preceding two days, including: the shooting death of a civilian (James Watson), shooting at a group of police officers (9<sup>th</sup> and Park St.), shooting at and into the Paso Robles Police Department, shooting at deputies from positions of concealment striking one in the head (Deputies Dreyfus and Pacas), shooting at or near officers earlier that morning (Calle Propano), and the ambush-style shooting of Sgt. Smiley from a position of concealment just two hours before.

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<sup>9</sup> Officer Maxwell was wearing a ballistic vest at the time which captured the bullet and significantly reduced injury.





**Map 2.** Aerial photograph depicting relative positions of shooting officers and Lira in OIS #2 (Train Track Incident), OIS #3 (CalPortland Incident) and OIS #4 (Vineyard Incident). "A" = location of Blue Team and Sheriff's Bearcat at time of ambush by Lira and OIS #2. "B" = general location of Green Team and other officers who discharged weapons in OIS #3. "C" = location Lira came to rest after being shot. The arrow is Lira's approximate path of travel as he fled into the vineyard. "D" = location of Vineyard Team during OIS #4. Note, the photograph was taken after the incident when additional vehicles and personnel were on site.

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**Photograph 11.** View from Lira's route in vineyard looking south towards the elevated CalPortland yard and area where Green Team was posted during OIS #3. Ellipse identifies location of Regional Bearcat during the incident. Note, photo taken after incident when additional CHP patrol SUV is onsite.



**Photograph 12.** View from position of Green Team at position "B" in Map 2, looking north into Dusi Vineyard. The arrow is the approximate route taken by Lira. The ellipse is where Lira came to rest.





**Photograph 13.** Aerial photograph of protective “V” vehicle configuration of Vineyard Team as depicted in position “D” of Map 2.

Evidence From OIS #4 (Vinyard Incident)

The Federal Buereau of Investigaition ERT collected evidence from OIS #4, including one fragmented bullet from the driver side floorboard of the Kings County Sheriff’s patrol SUV, eight expended 5.56 bullet casings on the ground at rear driver side of patrol SUV (attributed to Sgt. Barsteceanu), one live Speer .223-caliber round with a “light primer strike” on the ground at the rear of the patrol SUV (attributed to Officer Clocherty). One additional bullet fragment was located within the patrol SUV upon repair.

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**Photograph 14.** The two handguns possessed by Lira during all OIS incidents, in the position they came to rest after his shooting. It is believed that during the final shooting on June 11<sup>th</sup> Lira held the .40-caliber semi-automatic pistol in his right hand and the .38-caliber revolver was carried in a holster attached to his belt and positioned at the front of his body. The .40-caliber semi-automatic pistol was confirmed as being used during the June 10<sup>th</sup> homicide of James Watson and shooting of Deputy Nicholas Dreyfus (See below, "Spent Casing Analysis"). Both firearms were confirmed as stolen during a June 8<sup>th</sup> commercial burglary in San Luis Obispo.

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## **ADDITIONAL EVIDENCE**

### Lira's Autopsy

On June 12, 2020, an autopsy was performed on Lira by Forensic Pathologist Dr. Joye Carter, MD. The cause of death was confirmed as being multiple gunshot wounds. Lira received ten gunshot wounds: six to the body, three to the left arm and one to the left leg. Four projectiles were recovered from Lira's body. Three of the four projectiles were of sufficient detail to determine they had been fired by officers located at the CalPortland yard depicted in **Map 2**. Thirty-five live rounds of .40-caliber full metal jacket bullets were found in Lira's right front pants pocket and a partially loaded ammunition magazine containing three unspent bullets was in his left front pocket.

### June 8, 2020, Commercial Burglary

The two firearms<sup>10</sup> that Lira had on his person at the time of his shooting death were determined to have been stolen on the evening of June 8, 2020, from a business office in the City of San Luis Obispo. In addition to the two firearms, Lira stole several boxes of ammunition for both guns and personal paperwork belonging to the burglary and theft victim. Some of this ammunition and the paperwork were located with the temporary camp or "bunker" occupied by Lira beneath Park Cinema. (See above, "Location of Bunker") Additionally, the ammunition expended by Lira during the June 10, Paso Robles shooting incidents and the ammunition located on his person during his June 11, 2020, autopsy is consistent with the ammunition stolen in the burglary and located within the bunker. (See above, "Lira Autopsy").

## **PHYSICAL EVIDENCE PROCESSING**

### Spent Casings Analysis

The Smith and Wesson M&P Shield .40-caliber semi-automatic handgun and Smith and Wesson .38-caliber revolver recovered from Lira after his shooting death were determined to have been stolen during a commercial burglary that occurred the evening of June 8, 2020, in the City of San Luis Obispo. (See above, "Commercial Burglary"). As a result of OIS#1 – the Paso Robles Incident, a total of thirty-six spent bullet casings attributed to Lira were located in five distinct areas including; five .38 caliber casings on the northern sidewalk of 10<sup>th</sup> Street across from the Paso Robles Police Department, five .38 caliber casings near the northwest corner of Goodwill on Park Street, seventeen .40 caliber casings in the downtown corridor near Park Cinemas at 11<sup>th</sup> and Pine Streets, four .40 caliber casings at the western fence line of Rental Depot equipment yard at 10<sup>th</sup> Street and Riverside Avenue, four .40 caliber casings at the northeastern corner of Rental Depot and one .40 caliber casing from the Amtrak north passenger platform. On July 14, 2020, thirteen of the .40 caliber casings were analyzed by the Bureau of Alcohol, Tobacco, Firearms and Explosives and determined with "high confidence" to have been fired from the stolen Smith and Wesson M&P Shield .40-caliber semi-automatic handgun. The

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<sup>10</sup> These were the Smith and Wesson M&P Shield .40-caliber semiautomatic handgun and the Smith and Wesson .38-caliber revolver.

comparison casings were associated with (1) the shooting death of James Watson on the Amtrak north passenger platform, (2) the shooting of Deputy Nicholas Dreyfus at 10<sup>th</sup> Street and Riverside Avenue, and (3) other shooting events in the Park Cinema corridor of downtown Paso Robles.

#### Projectiles extracted from Lira

During the June 12, 2020 autopsy of Lira, portions of four distinct projectiles were located and collected as evidence. All four projectiles were compared to known samples fired from the various weapons discharged during the CalPortland (OIS #3) and Vineyard (OIS #4) incidents. Three provide sufficient characteristics to confidently identify from which firearm they were expended. Two of the three identified projectiles were fired from the same firearm. The identity of those firearms and associated law enforcement officers are irrelevant to this analysis. All three projectiles were attributed to firearms shot from the CalPortland yard.

### **TOXICOLOGY RESULTS**

A forensic sampling of Lira's blood showed an absence of alcohol and common drugs of abuse in his system at the time of his death.

### **CRIMINAL HISTORY AND LAW ENFORCEMENT CONTACTS**

Lira has a total of fifty-one documented law enforcement contacts in California, Oregon and Washington beginning September 2012. California contacts have occurred in Fresno, Monterey, Santa Cruz and Tulare counties. Prior to the events of June 2020, Lira had no law enforcement contacts in San Luis Obispo County. Investigative reports illustrate a history of homicidal threats towards others often involving the use firearms, suicidal ideation and mental illness. Lira has been described by those who know him as "having a fascination with firearms." Multiple contacts have resulted in the seizure of firearms and firearm ammunition from Lira.

### **STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES**

Possible criminal charges against an officer involved in a fatal shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; negligent discharge of a firearm [Penal Code Section 246.3] and assault by a police officer [Penal Code Section 149]. Possible criminal charges against an officer involved in a non-fatal shooting include assault with a deadly weapon [Penal Code Section 245]; negligent discharge of a firearm [Penal Code Section 246.3]; and assault by a police officer [Penal Code Section 149].

For an officer to be criminally liable of any of these charges it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions.



(*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.). Penal Code Sections 26, 196, 197 and 835a list several justifications for the use of force, including deadly force, that may apply in any given case.

Penal Code section 26 subsection (3) precludes criminal liability for those who act under a mistake of fact that disproves the required criminal intent. This legal principle is recited in the pattern criminal jury instruction authored by the Judicial Council of California, CALCRIM 3406: an accused is not guilty of the crime charged if he or she did not have the intent or mental state required to commit the crime because they were reasonably unaware of a fact or reasonably believed a fact to be true when it was not. Put another way, an individual does not act unlawfully if they commit an act based on a reasonable and honest belief that certain facts and circumstances exist which, if true, would render the act lawful. (*People v. Reed* (1996) 53 Cal.App.4<sup>th</sup> 389, 396.).

Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when done in compliance with Penal Code section 835a. Penal Code Section 197, provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

Penal Code Section 835a allows a police officer to use objectively reasonable force to effect an arrest, prevent escape, or to overcome resistance. The decision to use force and what level of force to use is evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The “totality of the circumstances” shall be considered when officers are forced to make quick judgments about using force and the level of force to employ. (Penal Code Section 835a (a)(4).) The term “totality of the circumstances” includes all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. (Penal Code Section 835a (e)(3).) Although an officer's pre-shooting conduct is to be considered as part of the totality of circumstances surrounding the use of force, the “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.’ [Internal citations omitted]” (*Koussaya v. City of Stockton* (2020) 54 Cal.App.5<sup>th</sup> 909, 935-936.).

Penal Code Section 835a provides that a peace officer is justified in using deadly force in two primary circumstances; (1) when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or 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. In the context of the fleeing felon, where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Penal Code Sections 835a (c)(1)(A) and 835a (c)(1)(B), respectively). In determining whether deadly force is necessary, an

officer shall evaluate the circumstances of each situation independently and use other available resources and techniques if reasonably safe and feasible to do so. (Penal Code Section 835a (a)(2).).

Consistent with existing law, Penal Code Section 835a maintains the principle that a police officer, acting in compliance with this section, who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested, nor shall such officer be deemed an aggressor or lose their right to self-defense by the use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance. (Penal Code Section 835a(d).).

Additionally, Penal Code Section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant criminal jury instruction authored by the Judicial Council of California, CALCRIM 3470, permits a person being assaulted to defend themselves from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary, and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent. Additionally, a person who has been threatened or harmed by another in the past or reasonably believes that the person has harmed others may be justified in acting more quickly or taking greater self-defense measures against that person. Finally, a person is not required to retreat and is entitled to stand their ground and defend himself or herself and, if reasonably necessary, to pursue the assailant until the danger has passed. This is so even if safety could have been achieved by retreating. The law as detailed in CALCRIM 3470 and in well-settled case law permits a person, when confronted by the appearance of danger which creates an honest and reasonable fear that they or another person is about to suffer bodily injury, to act in lawful self-defense or defense of others. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.).

Nevertheless, the above justifications must be interpreted considering United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 10 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., their weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court



further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation" (*Id.* at 396-397.) The United States Supreme Court's analysis and teachings in *Graham* are applicable to the circumstances surrounding the interactions of the various law enforcement personnel involved in each of the four OIS incidents here.

It is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the '...police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.'" (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.). Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." (*Brown, supra*, 171 Cal.App.4th at p. 528.).

"As long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the 'most reasonable' action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect... It would be unreasonable to require police officers in the field to engage in the sort of complex calculus that would be necessary to determine the "best" or most effective and least dangerous method of handling an immediate and dangerous situation, particularly when officers are forced to make split-second decisions under tense and often perilous conditions." (*Brown, supra*, 171 Cal.App.4th at pp. 537-538.).

## LEGAL ANALYSIS

Our review is solely to determine if the involved officer's use of deadly force violated California criminal law subjecting any of them to criminal prosecution. Put differently, whether the evidence establishes criminal liability beyond a reasonable doubt considering all reasonably available legal justifications. This opinion is based on the impartial review of the evidentiary items listed in **Attachment A** of this report with the aid of a comprehensive timeline tracking Lira from when he was first observed in Paso Robles on Thursday June 4, 2020, to the final OIS incident at Dusi Vineyard on Jun 11,

2020, at approximately 4:04 p.m. As previously noted, to support a criminal filing on any of the involved officers that employed deadly force, the evidence must prove beyond a reasonable doubt that no legal justification existed for the officers' conduct. If an officer acted in accordance with Penal Code section 835a, in lawful self-defense or in lawful defense of another, then criminal charges are not legally or ethically supported. Similarly, if an officer mistakenly acted on the reasonable and honest belief that certain facts were true at the time of the shooting which, if true, would render the act lawful then criminal charges are not legally or ethically supported. Each of the four OIS incidents is addressed in turn.

### OIS #1

"The Paso Robles Incident" occurred on June 10<sup>th</sup> at approximately 4:25 a.m., at the intersection of 10<sup>th</sup> Street and Riverside Avenue, when San Luis Obispo County Sheriff's Deputy Clifford Pacas shot in the perceived direction of Lira to protect himself and Deputy Dreyfus from further gunfire.

Prior to this incident Deputies Pacas and Dreyfus were aware that Lira, whose identity was unknown at the time, was armed and had fired several shots in the downtown Paso Robles corridor. Including shooting at officers staged near the intersection of 9<sup>th</sup> and Park Streets just twenty minutes prior. At 4:19 a.m. Lira first assaulted the deputy's position within the intersection by firing a volley of four shots, one striking the center roof line of their patrol SUV between the activated light bar and windshield. Less than four minutes later, Lira fired a second volley of four shots at the deputies from another location. One round struck Deputy Dreyfus in the right side of his head causing him to fall to the ground without cover from additional fire. It was at this point that Deputy Pacas fired a quick burst of shots in the direction of the assailant at the northeast corner of Rental Depot.

It is axiomatic that an individual may use deadly force to defend themselves or another against the unprovoked and imminent threat of death or great bodily injury. The right to self-defense and defense of another is the same whether the danger is real or merely apparent. As stated by the Court in *Brown*, "As long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the 'most reasonable' action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect... It would be unreasonable to require police officers in the field to engage in the sort of complex calculus that would be necessary to determine the "best" or most effective and least dangerous method of handling an immediate and dangerous situation, particularly when officers are forced to make split-second decisions under tense and often perilous conditions." (*Brown v. Ransweiler*, supra, 171 Cal.App.4th at pp. 537-538).

Deputy Pacas' use of deadly force was necessary and justified under the totality of the circumstances, as self-defense and more importantly - in his mind at the time - the defense of Deputy Dreyfus who lay shot and exposed in the intersection. Deputy Pacas described



that, once Deputy Dreyfus was shot, he became his “number one priority.” As a response, Pacas engaged the shooter with suppressive fire to protect Deputy Dreyfus and himself from further assault.

## OIS #2

“The Train Track Incident” occurred on June 11, 2020, at approximately 2:05 p.m. when six members of the San Luis Obispo County Regional SWAT “Blue Team” shot at a bank of trees they believed concealed Lira after Lira had shot Arroyo Grande Police Department Sgt. Michael Smiley.

At the time of this incident members of the Blue Team were traveling southbound in the Sheriff's Bearcat along the railroad tracks adjacent to the Salinas Riverbed, followed closely by a distinctly marked State Parks vehicle. They were looking for Lira. Sgt. Smiley had observed what was believed to be a blue glove near the bank of trees and moved around the front of the Bearcat when Lira shot at him twice from a concealed position believed to be within the trees. Sgt. Smiley suffered a through and through wound to his right calf. Sgt. Smiley directed the officers to fire on the location. Which they did. The officers were compromised, and Sgt. Smiley directed them to get into the Bearcat for cover. To enter the Bearcat, each officer had to quickly move through Lira's suspected line of fire. Each officer, in turn, provided suppression fire so that the others could enter the rear of the Bearcat.

Again, an individual may use deadly force to defend themselves or another against the unprovoked and imminent threat of death or great bodily injury. The right to self-defense and defense of another is the same whether the danger is real or merely apparent. Additionally, a person who has been threatened or harmed by another in the past or reasonably believes that the person has harmed others may be justified in acting more quickly or taking greater self-defense measures against that person. Finally, a person is not required to retreat and is entitled to stand their ground and defend himself or herself and, if reasonably necessary, to pursue the assailant until the danger has passed. “As long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the ‘most reasonable’ action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect... It would be unreasonable to require police officers in the field to engage in the sort of complex calculus that would be necessary to determine the “best” or most effective and least dangerous method of handling an immediate and dangerous situation, particularly when officers are forced to make split-second decisions under tense and often perilous conditions.” (*Brown v. Ransweiler*, supra, 171 Cal.App.4th at pp. 537-538).

The Blue Team's firing into the bank of trees that they believed concealed Lira was necessary and justified under the totality of the circumstances, as self-defense and defense of each other. Lira had just used unprovoked deadly force and based on his conduct the preceding day, was likely to do so again without warning. Involved officers were aware that Lira had engaged in a series of shootings the previous day, including:

the shooting death of a civilian (James Watson), shooting at a group of police officers (9<sup>th</sup> and Park St.), shooting at and into the Paso Robles Police Department, shooting at deputies from positions of concealment striking one (Deputies Dreyfus and Pacas), shooting at or near officers earlier that morning (Calle Propano), culminating with the immediate ambush-style shooting of Sgt. Smiley from a position of concealment. As such, they were entitled to act more quickly and to take greater self-defense measures to neutralize the threat and protect themselves and each other.

The fact that the six officers fired multiple rounds simultaneously does not change the necessity of each officer's decision to fire. In this circumstance, each individual officer made the subjective decision to shoot to neutralize the immediate threat to themselves and their teammates. As stated by our Supreme Court "it stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." (*Plumhoff v. Rickard* (2014) 572 U.S. 765, 777.).

### OIS #3

"The CalPortland Incident" occurred on June 11, 2020, at approximately 4:04 p.m. when twelve law enforcement officers, including members of the San Luis Obispo County Regional SWAT Green Team and others, shot at Lira who was then fleeing into Dusi Vineyard.

The use of deadly force by Green Team and other officers located on the CalPortland yard was justified because Lira was then an armed fleeing felon within the meaning of Penal Code section 835a (c)(1)(B). Under specific circumstances officers are justified in using deadly force to apprehend what has been described in case law as a "fleeing felon." An officer is legally justified in the use of deadly force where: (1) the force is used to apprehend a fleeing suspect for any felony that threatened or resulted in death or serious bodily injury; (2) the officer reasonably believes that the suspect will cause death or serious bodily injury to another unless immediately apprehended; (3) prior to the use of force, where feasible, the officer makes reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the suspect is aware of those facts. (Penal Code section 835a (c)(1)(B).).

As to the first criteria, that the force be "used to apprehend a fleeing suspect for any felony that threatened or resulted in death or serious bodily injury," over the preceding 36-hours Lira had actively engaging civilians and officers in gunfire and expertly avoided capture on four occasions. These include his escape from the downtown corridor the morning of June 10<sup>th</sup>, his escape from officers during a foot pursuit at the Grand View apartment complex the evening of June 10<sup>th</sup>, his evasion officers at the Calle Propano location the morning of June 11<sup>th</sup>, his attempted concealment and evasion from the Blue Team after he ambushed their location on June 11<sup>th</sup>, and finally his flight into the Dusi Vineyard where he was shot and killed. All law enforcement personnel who discharged firearms



during the CalPortland Incident had advance knowledge that Lira was the suspect in the following felonies that threatened or resulted in death or serious bodily injury:

Murder with the use of a Firearm

- For the shooting death of James Watson at the north end of the Amtrak station at approximately 3:44 a.m. June 10, 2020.

Attempted Murder with use of a Firearm and Personal Infliction of Great Bodily Injury

- For his shooting of San Luis Obispo County Sheriff's Deputy Nicholas Dreyfus and shooting at Deputy Pacas in the intersection of 10<sup>th</sup> Street and Riverside Avenue at approximately 4:19 a.m. on June 10, 2020.

Assault with a Firearm or Attempted Murder with the use of a Firearm

- For his shooting of Arroyo Grande Police Sgt. Michel Smiley at approximately 2:05 a.m. on June 11, 2020.
- For his shooting on the position of 9<sup>th</sup> and Park Streets occupied by Atascadero Police Corporal Rene Vasquez, Atascadero Police Officers Craig Martineau and Zach Yeamen-Sanchez; Paso Robles Police Officer Niles Hemingway; and California Highway Patrol Officers David Agredano, Joel Newby, Kenneth Antonetti and Julie Lavender beginning at approximately 3:51 a.m. on June 10, 2020.

Although officers were unaware at the time of OIS #3, it bears noting that Lira had unprovokedly fired five shots at civilian █████ █████ near Pine and 11<sup>th</sup> Streets at approximately 12:09 a.m. on June 10<sup>th</sup>, and multiple shots at █████, a uniformed security guard at the Paso Robles Inn, at about 3:34 a.m. the same morning. These acts constitute felony assault with a firearm.

As to the second criteria, that the "officer reasonably believes that the suspect will cause death or serious bodily injury to another unless immediately apprehended," all information indicated that Lira would continue to threaten the lives of both civilians and law enforcement if not immediately apprehended. All law enforcement personnel who discharged firearms provided voluntary statements in which they expressed fear that Lira would kill or injure another if not immediately apprehended. The subjective viewpoints of the officers, who lived the experience, are consistent with the most reasonable assessment that if not apprehended Lira would kill again. Lira was known to be armed with no apprehension of shooting at civilians and law enforcement in populated areas. During the preceding 36-hours, he had unprovokedly shot at civilian █████ █████ and █████, in the downtown corridor; had shot and killed civilian James Watson near the Amtrak station without apparent cause; and had ambushed and fired upon officers from positions of concealment on three occasions including at the intersection of 9<sup>th</sup> and Pine Streets, 10<sup>th</sup> Street and Riverside Avenue, and along the railroad tracks near Dusi Vineyard; and finally fled into Dusi Vineyard armed with two handguns raising one towards the position of the Green Team immediately before he was shot. Had Lira not been immediately apprehended there is a high likelihood he would have killed again.

As to the third criteria, “prior to the use of force, where feasible, the officers made reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the suspect is aware of those facts”, it is reasonable to believe that Lira understood he was being actively pursued by law enforcement for the preceding 36-hour period. He had fired on two groups of distinctly marked law enforcement personnel and their vehicles at the intersections of 9<sup>th</sup> and Park Streets and 10<sup>th</sup> and Riverside Avenue the morning of June 10<sup>th</sup>. Immediately prior to his assault on the officers staged at 9<sup>th</sup> and Park Streets, Lira was given verbal commands over a loudspeaker to drop his weapon and surrender. Immediately after his assault on the deputies staged at 10<sup>th</sup> Street and Riverside Avenue, Deputy Pacas returned fire in his general direction. The deputies were in clearly marked patrol SUV with the light bar activated and in distinct law enforcement uniform. Lira specifically targeted the Paso Robles Police Department, shooting both the property room and secured parking access pad. That evening, Paso Robles Police Officers in distinctly marked uniforms engaged Lira in a foot pursuit through the abandoned Grand View apartment complex after responding to a call of “shots fired.” During that foot pursuit officers commanded Lira to stop and put his “hands up.” The following afternoon, Lira ambushed Arroyo Grande Police Sgt. Michael Smiley while he walked beside the clearly identified Sheriff’s Bearcat. Blue Team officers responded by firing dozens of rounds of gunfire toward Lira’s concealed location. Later, occupants of the Sheriff’s Bearcat announced twice over a loudspeaker, within yards of Lira’s location, that they were with the San Luis Obispo Regional SWAT Team and that he should come out with his hands up. Finally, when Lira crested the berm onto Dusi Vineyard several officers announced their presence and demanded he surrender. In response Lira looked in their direction and began to turn his body towards them. There can be no question that Lira was aware that he was being pursued by law enforcement and that they were going to use deadly force to apprehend him if needed. Indeed, Lira desired and unprovokedly initiated deadly force confrontation with law enforcement throughout the preceding 36-hour period.

The fact that thirteen officers fired multiple rounds simultaneously does not change the reasonableness of each officer’s decision to fire. In this circumstance, each individual officer made the subjective decision to shoot to neutralize the threat and apprehend Lira who was then an armed fleeing felon. As stated by the United States Supreme Court “it stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.” (*Plumhoff v. Rickard* (2014) 572 U.S. 765 at p. 777.).

Finally, although it is extremely unfortunate that members of the Vineyard Team, specifically Kings County Sheriff’s Deputy Bursiaga and California Highway Patrol Officers Maxwell and Clocherty, were struck and injured by gunfire from officers located on the CalPortland yard, this fact does not divest the officers of their right to use deadly force to apprehend a fleeing felon or subject them to criminal liability. (See OIS #4, below.). Where an officer’s action in shooting a fleeing felon is objectively reasonable



under the Fourth Amendment, liability will generally not be found for the unintended injury to others. (See e.g., *Brown v. Ransweiler* (2009) 171 Cal.App.4<sup>th</sup> 516.).

#### OIS #4

The “Vineyard Incident” occurred simultaneously with the “CalPortland Incident” on June 11, 2020, at approximately 4:04 p.m. when Kings County Sheriff’s Sgt. Christopher Barsteceanu shot at Lira who Sgt. Barsteceanu then reasonably believed was shooting at him and the rest of the Vineyard Team.

Under the law of “mistake of fact,” a person does not act unlawfully if they commit an act based on a reasonable and honest belief that certain facts and circumstances exist which, if true, would render the act lawful. (*People v. Reed* (1996) 53 Cal.App.4<sup>th</sup> 389 at 396.). Additionally, as described above, an individual may use deadly force to defend themselves or another against the unprovoked and imminent threat of death or great bodily injury. Furthermore, the right to self-defense and defense of another is the same whether the danger is real or merely apparent.

Shortly before the Green Team and other officers at the CalPortland yard began firing at Lira, Sgt. Barsteceanu observed Lira to enter the vineyard “quickly.” Lira turned his attention toward Sgt. Barsteceanu then to the others at the CalPortland yard and began to raise his right hand. Sgt. Barsteceanu’s view was slightly uphill, and Lira was partially obscured by the vines and rise in topography. Within seconds the Vineyard Team began taking gunfire from the direction of the vineyard, one round striking the windshield of the patrol SUV adjacent to Sgt. Barsteceanu who was hit with glass debris. Sgt. Barsteceanu believed at that moment the gunfire was coming from Lira as he moved through the vineyard. That belief appears to be honest and reasonable under the totality of the circumstances known to him at that time. Sgt. Barsteceanu described his subjective mindset and justification for shooting as follows, “given the fact that the suspect was actively shooting at us, given the distance and location where we’re at, the only viable tool at my disposal at that time, was lethal force in order to stop the suspect from killing me and my partners.” So, he shot at Lira.

As Sgt. Barsteceanu held the reasonable and honest belief that Lira was shooting towards him and the Vineyard Team, his use of deadly force to protect himself and his teammates from the threat of death or great bodily injury was necessary and justified under the totality of the circumstances.

Additionally, Kings County Sheriff’s Deputy Bursiaga and California Highway Patrol Officers Clocherty believed that they shot at Lira during the incident. Evidence indicates that Officer Clocherty attempted unsuccessfully to fire at Lira, including an ejected live round with a light primer strike located near his position and attributed to his rifle. Deputy Bursiaga recalls aiming his rifle at Lira and pulling the trigger. However, there is no evidence that he fired. If either of these officers had shot at Lira during the incident the analysis would be the same as that of Sgt. Barsteceanu, under the totality of

circumstances as perceived by the officer, the use of deadly force would be necessary and justified.


## CONCLUSION

Based upon a comprehensive review and analysis of the Sheriff's final investigative report and all the evidence and exhibits described in **Attachment A** of this report, and pursuant to the controlling legal principles, it is our legal opinion that there is a lack of evidence to prove beyond a reasonable doubt criminal culpability on the part of the involved officers in any of the four distinct officer involved shooting incidents. There is reliable evidence that each officers' actions were reasonable, necessary and justified under the totality of the circumstances when they shot, or shot at, Mason James Lira on June 10 and June 11, 2020.

Accordingly, the San Luis Obispo County District Attorney's Office has closed its inquiry into these four officer involved shooting incidents.



Eric J. Dobroth, Assistant District Attorney



Read and approved by:

Dan Dow, District Attorney

CC: Terry O'Farrell, Chief Investigator, District Attorney Bureau of Investigations  
All Involved Agencies Chiefs of Police  
Rita Neal, County Counsel



## San Luis Obispo County Sheriff's Office Case # 200604328

## EXHIBITS

1. San Luis Obispo County Sheriff's Deputy Clifford Pacas' in-unit recording.
2. Interview and photos of San Luis Obispo County Sheriff's Deputy Clifford Pacas.
3. Interview and photos of San Luis Obispo County Sheriff's Deputy Nicholas Dreyfus.
4. Photographic lineup shown to witness [REDACTED].
5. Interview of Paso Robles Police Department Sgt. Ricky Lehr.
6. Paso Robles Police Department report #201295, comprised of twenty-six (26) individual reports related to the agency's response to the OIS incidents.
7. Medical records of Deputy Nicholas Dreyfus.
8. Photographic documentation of 10<sup>th</sup> St. and Riverside Ave., Paso Robles.
9. California Highway Patrol MAIT report for June 10, 2020, incidents.
10. Photographic documentation Pine St. and 11<sup>th</sup> St., Paso Robles.
11. Photographic documentation of 841 Park St. (DMV), Paso Robles.
12. Photographic documentation of 900 Park St. (PRPD), Paso Robles.
13. FBI crime scene documentation of 821 10<sup>th</sup> St. (PRPD), Paso Robles.
14. Paso Robles Police Department report #201293, comprised of four (4) individual reports related to the murder of James Harding Watson.
15. Photographic documentation of the Amtrak Station, Paso Robles.
16. Transcription of law enforcement radio traffic on June 10, 2020.
17. Coroner's report #18888 for James Harding Watson.
18. California DOJ report #s SB-20-0005-4-0001 and 0002, ballistics lab report related to the murder of James Harding Watson.
19. Photographic documentation of "bunker" located beneath Park Cinema, Paso Robles.
20. Interview and photos of Paso Robles Police Officer Trevor Aguilar.
21. Interview and photos of Pismo Beach Police Officer Erik Jimenez.
22. Interview and photos of Arroyo Grande Police Sgt. Michael Smiley.
23. Interview and photos of Arroyo Grande Police Officer Stephen Doherty.
24. Interview and photos of California State Parks Ranger Chris Hendricks.
25. Interview and photos of San Luis Obispo Police Officer Sean Jessen.
26. Interview of San Luis Obispo Police Officer Timothy Koznek.
27. Interview of San Luis Obispo Police Officer Jeffrey Koznek.
28. Interview of San Luis Obispo Police Detective Luca Benedetti.
29. FBI crime scene documentation of OIS #2, "Train Track Incident."
30. Transcription of radio traffic from OIS #2, "Train Track Incident".
31. Interview and photos of Paso Robles Police Officer Dustin Virgil.
32. Interview and photos of Paso Robles Police Officer Joseph Gonzales.
33. Interview and photos of Paso Robles Police Sgt. Joseph Leonard.
34. Interview and photos of CalPoly Police Sgt. Shawn Bishop.
35. Interview and photos of San Luis Obispo County Sheriff's Deputy Josh Krieger.
36. Interview and photos of Grover Beach Police Sgt. Juan Leon.
37. Interview and photos of San Luis Obispo Police Officer Joshua Bywater.

38. Interview and photos of San Luis Obispo Police Sgt. Caleb Kemp.
39. Interview and photos of Dept. of Fish and Wildlife Warden Hank "Henry" Hodel.
40. Interview of San Luis Obispo Police Officer Marcelo Magana.
41. Interview and photos of San Luis Obispo County District Attorney's Sr. Investigator Neil Clayton.
42. Interview and photos of San Luis Obispo Police Officer Blake Etherton.
43. Interview and photos of San Luis Obispo Police Detective Greg Benson.
44. Interview of San Luis Obispo County Sheriff's Deputy Richard "Ted" Lenhoff.
45. Interview and photos of California Dpt. Of Fish and Wildlife Lt. Matthew Gil.
46. Interview of Arroyo Grande Police Officer Timothy Ramirez.
47. Interview and photos of Arroyo Grande Police Sr. Officer Reggie Bio.
48. Interview of San Luis Obispo County Sheriff's Sgt. Chad Nicholson.
49. Interview of San Luis Obispo County Sheriff's Detective Rainer Bodine.
50. Interview of San Luis Obispo County Sheriff's Deputy Jacob Gersh.
51. Interview of San Luis Obispo County Sheriff's Detective Ian Doughty.
52. Interview of San Luis Obispo County Sheriff's Deputy Kyle Reinhardt.
53. Interview of San Luis Obispo County Sheriff's Sgt. Trevor McKim.
54. Interview of San Luis Obispo County Sheriff's Res. Deputy Kris Lyon.
55. Interview of San Luis Obispo County Sheriff's Detective Kevin Norris.
56. Interview of San Luis Obispo County Sheriff's Detective Ethan Strobridge.
57. California Highway Patrol MAIT report for June 11, 2020, incidents.
58. Interview of Kings County Sheriff's Sgt. Christopher Barsteceanu.
59. Interview of Kings County Sheriff's Deputy Blake Bursiaga.
60. Interview of California Highway Patrol Officer Isaac Clocherty.
61. Interview of California Highway Patrol Officer Timothy Maxwell.
62. Interviews of Kings County Sheriff's Deputies Kody Holt and Miguel Cortez.
63. Interview of Kings County Sheriff's Sr. Deputy Dakotah Fausnett.
64. Interview of San Luis Obispo County Sheriff's Deputy Arturo Munoz.
65. Interview of Paso Robles Police Officer Joshua Lewis.
66. Interview of Atascadero Police Officer Marc Nobriga.
67. Interview of FBI Special Agent Chris Denning.
68. Interview of FBI Special Agent Matthew Parker.
69. FBI crime scene documentation of OIS #4, "Vineyard Incident."
70. Transcription of radio traffic for OIS #3 & #4, "CalPortland" & "Vineyard" incidents.
71. FBI ballistics report number LA-3277777.
72. Coroner's report #18891 for Mason James Lira.
73. San Luis Obispo Police Department report number 200609048. (Theft of firearms used by Lira in OIS #s 1-4).
74. Bureau of Alcohol, Tabaco, Firearms and Explosives ballistics report numbers 20070043 & 20070044.
75. Comprehensive historical timeline for Mason James Lira.
76. Comprehensive timeline for Mason James Lira while in Paso Robles, June 3, 2020, through June 11, 2020.



77. San Luis Obispo County Sheriff's report number 200604328, consisting of two hundred thirty-one (231) investigative reports related to the Sheriff's Office investigation of OIS #s 1-4.
78. Body Worn Camera (BWC) footage from Atascadero Police Officer Craig Martineau.
79. BWC footage from Atascadero Police Officer Zach Yeamen-Sanchez.
80. VidNet in-unit video from San Luis Obispo County Sheriff's Deputy Clifford Pacas.
81. BWC footage from Pismo Beach Police Sgt. Chris Trimble.
82. Interview of [REDACTED]
83. BWC footage from Paso Robles Police Officer Adam Ketchum of the "bunker."
84. BWC footage from Pismo Beach Police Officer Erik Jimenez.
85. BWC footage from Paso Robles Police Officer Joseph Gonzales.
86. Video from California Highway Patrol Air Operations on June 11, 2020.