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July 15, 2019

Brian Manley, Chief
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LETTER DECLINING PROSECUTION AFTER INVESTIGATION

RE: *Officer-Involved Shooting on March 7, 2018, by Austin Police Department Officers William Johns (#7217), Timothy Skeen (#8437), Michael Rowland (#8223), Bryan McCulloch (#8124), and Gavin Smart (#8674), causing the death of Victor Sanchez Ancira (DOB 05/15/1971); and Officer-Involved less-lethal use of force by APD Officers Jason Meurer (#8572), Bradley Hoover (#8211), and Cpl. Michael Rauert (#4678).*

Dear Chief Manley:

The Office of the Travis County District Attorney has reviewed the Austin Police Department Special Investigation Unit (APD SIU) investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Austin Police Department Officers William Johns, Timothy Skeen, Michael Rowland, Bryan McCulloch, and Gavin Smart fired shots from their service weapons that resulted in the death of Victor Sanchez Ancira. Additionally, officers Jason Meurer, Bradley Hoover and Cpl. Michael Rauert deployed less-lethal weapons against Mr. Ancira, which did not contribute to his death, but nevertheless warrant review. This letter is to inform you of my decision to decline prosecution of criminal charges against these officers. My decision does not limit or address administrative action by the Austin Police Department, or other civil actions, where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

The District Attorney's Office ("DA") has reviewed the investigation of the Austin Police Department ("APD") into this incident pursuant to the officer-involved shooting a copy of this letter will also be posted on the DA website.¹

¹ <https://www.traviscountytx.gov/district-attorney/office-divisions/civil-rights/cru>

Based upon the evidence available and the applicable Texas law,² I have concluded that a jury following the law would not convict Officers William Johns, Timothy Skeen, Michael Rowland, Bryan McCulloch or Gavin Smart, as the evidence shows the use of force to be justified under Texas law. The following sets forth the facts determined during our review, identifies the applicable legal rules, and presents the analysis underlying my opinion.

I. FACTS AND CIRCUMSTANCES LEADING TO AND SURROUNDING MR. ANCIRA'S DEATH

Determining the facts and circumstances leading to and surrounding a shooting incident is vital in our analysis. Because this case involved APD officers, the Austin Police Department's Special Investigations Unit (SIU) is responsible for conducting the investigation. SIU's primary responsibility is conducting independent investigations of all shooting incidents in which APD officers are involved. Therefore, it is imperative that we review the entire investigative file compiled by SIU in this case to determine the facts and circumstances as established by the physical and all other evidence.

A. INITIAL REQUEST FOR POLICE – 911 CALL AND DISPATCH OF OFFICERS

In the early morning hours of March 7, 2018, three 911 calls were made to the police. The first call was placed by the decedent, Victor Ancira.

1. 911 Call Reporting Murder of Father and Brother and Location of Weapons

At approximately 4:17:39 a.m., Victor Ancira called 911 to report that he had killed his father and brother.

(Call taker): Austin 911, do you need police, fire or EMS?

(Caller): Police

(Call taker): To what address or location?

(Caller): 4800 Tanney Street

(Caller): Okay, and what's happening there, sir?

(Caller): *I just killed my father and brother...a couple hours ago...you'll find the body and murder weapons inside the house.*

The call taker made contemporaneous notes of the information the caller provided³:

Date	Time	User	Type	Conf.	Comments
3/7/2018	04:18:38	AP8335	Response		ADV 'JUST KILLED MY FATHER & BROTHER A MOMENT AGO, & I HAD TIME TO SHOWER, YOU WILL FIND THE BODIES & MURDER WPN INSIDIE THE HOUSE'....CALLER THEN DISC
3/7/2018	04:18:51	AP7520	Response		CCC
3/7/2018	04:18:56	AP8335	Response		MALE VOICE....NOD...NOI

² In arriving at this conclusion, I have relied upon the legal guidelines governing the use of force (to include deadly force) in Texas as set forth in sections 9.32, 9.33 and 9.51 of the Texas Penal Code, the case authority construing that provision, and the United States Supreme Court case authority governing law enforcement use of force. (See applicable laws in Appendix)

³ The information is maintained in a "call text" which officers are able to access in order to learn information concerning the call.

Mr. Ancira disconnected the call before any additional information could be obtained. The call was placed from 4800 Tanney Street, Mr. Ancira's residence. Two additional 911 calls were placed by neighbors who heard shots fired after the incident, but those neighbors did not witness the shooting itself.

Due to the nature of the call and the limited information known to police, multiple officers assigned to different patrol sectors responded to 4800 Tanney Street.⁴ Officers identified as having fired their weapons on scene, referred to as subject officers, were William Johns, Timothy Skeen, Bryan McCulloch, Michael Rowland, and Gavin Smart. Officers identified as having deployed less-lethal weapons, also subject officers, were Jason Meurer, Bradley Hoover and Cpl. Michael Rauert.

Officers William Johns and Steven Cardella (Unit C810) were the first to arrive at 4:23:04. Officer Jason Meurer (Unit C803) followed, arriving at 4:28:06; Cpl. Michael Rauert (Unit C880) arrived at 4:37:02; and Officers Timothy Skeen and Bradley Hoover (Unit C805) arrived at 4:39:14; Michael Rowland (Unit H808) arrived 4:43:24; Bryan McCulloch (Unit H801) arrived 4:45:54; and Gavin Smart (Unit B803) was the last subject officer to arrive at 4:47:21.

Unit	Primary Flag	Assigned	Disposition	Enroute	Staged	Arrived
C803	N	04:19:04		04:19:04		04:28:06
C810	N	04:19:23		04:19:23		04:23:04
C802	N	04:19:25	2 - Supplement Written	04:19:25		04:28:06
C890	N	04:26:42		04:26:42		04:26:44
C880	N	04:35:07		04:35:07		04:37:02
H880	N	04:36:32		04:36:32		04:42:32
B803	N	04:36:48		04:36:48		04:47:21
H808	N	04:37:36		04:37:36		04:43:24
K95	N	04:38:09		04:38:09		04:51:38
H801	N	04:38:19		04:38:19		04:45:54
K96	N	04:38:45		04:38:45		
C805	N	04:39:13	6 - No Report			04:39:14

B. INITIAL CONTACT WITH VICTOR ANCIRA

Officers initially staged at a nearby location prior to responding to the scene itself.⁵ Once they arrived on scene, they parked in and around Tanney Street and exited their vehicles to prepare for their approach on foot. Officers initially observed Victor Ancira sitting on a folding chair in the middle of the street, holding what was believed to be a bat in his hand, a few houses down from 4800 Tanney Street. Mr. Ancira then stood up and began pacing back and forth with what was then confirmed to be a pickaxe in his hand.

1. Involvement of Officer William Johns #7217

Officers William Johns and his partner, Officer Steven Cardella, were the first to arrive at 4800 Tanney in their assigned police unit, a fully marked black and white Ford Explorer SUV.

⁴ The City of Austin is divided into patrol sectors designated by name (Baker, Charlie, *etc.*) and covering specific geographical locations within the city. Officers are assigned to work overlapping shifts in each sector to respond to calls for service. The sector in which this incident occurred is Charlie Sector.

⁵ A safety strategy for officers calls for meeting near the location of the call for service to devise a response due to the nature of the call, limited information known, or other reason for proceeding with caution.

C810 Cardella, Steven (AP6296); Johns, William (AP7217)

Activity Log

Date	Time	Radio	Activity	Location
3/7/2018	04:22:13		Read Comment	
3/7/2018	04:23:04	C810	ONSC	4800 Tanney St
3/7/2018	04:23:35		Read Comment	
3/7/2018	04:23:36		Read Comment	
3/7/2018	04:26:42	C890	DISP	4800 Tanney St

While en route to 4800 Tanney Street, officers read the call text from their patrol unit computer that indicated an individual killed his father and brother and the weapons were located somewhere in the house. The call text further read that the individual was taking a shower and would wait for police.

Through further inquiry, Officer Johns learned that the call had been placed from a landline inside the residence. As noted, prior to officers arriving on scene, a determination was made to stage at a nearby location before responding to the scene itself:⁶

658 A: Um, so we initially stage at, uh, uh, just given the nature of the call,
 659 um, that we had weapons involved and a report of - of people being
 660 murdered, um, we initially staged at Givens Park, um, to draw up a
 661 plan of action to kinda how we were gonna approach this house.

The initial plan was for Officers Johns and Cardella, along with a supervisor, to drive down Tanney Street towards the residence and attempt to make contact from their police unit Public Address (PA) system while other officers approached from different directions for safety.

As Officer Johns pulled up on Tanney Street, he immediately observed Mr. Ancira sitting on a folding chair in the middle of the street, several houses down from where the call originated.

As officers got closer, Officer Johns saw what he initially believed to be a baseball bat in Mr. Ancira's hand.

Officer Johns gave Mr. Ancira commands to put the weapon down, at which point Mr. Ancira got up from the chair with the object still in his hand:

858 A: So as he stood up, he started kinda pacin' around. Um, initially we
 859 couldn't see that it, um, we could still tell it was some type of a - like a
 860 blunt weapon.
 861
 862 Q: Mm-hm.
 863
 864 A: Um, but then after a minute or two, um, I could see - we could see the
 865 outline of - of - of, like, you know, the spiked ends of the pickaxe.

APD officers communicated using the PA system in an attempt to get Mr. Ancira to surrender his weapon. It was at this time that Officer Johns noticed Mr. Ancira was unusually dressed for the weather. These observations, coupled with the information provided, led Officer Johns to believe that

⁶ These statements were obtained during interviews conducted by the Austin Police Department's Special Investigations Unit with individual officers involved in the incident.

Mr. Ancira's demeanor suggested he was planning something against responding officers:

885 So, um, from
 886 that distance, I could tell he had facial hair, was wearin' - it looked like
 887 he was, uh, he - he was wearin' a hoodie. Um, was dressed in really
 888 thick clothing. Um, which is - which I've found was peculiar. Um, even
 889 though it did end up getting cold around that time, but most of the
 890 night, it was - it was relatively warm, especially given the weather that
 891 we had this winter.
 892
 893 Q: Mm-hm.
 894
 895 A: Um, so was - was warm for the win- the type of winter that we've been
 896 having this year. And most of the people that, uh, that night weren't
 897 wearing clothing as thick as he was wearing.

903 A: Um, that - that indicates that, you know, they're concealing something.
 904 So some type...
 905
 906 Q: 'Kay.
 907
 908 A: of weapon, potentially. Um, but usually it's for, uh, weapons
 909 concealment.

914 A: So even from that distance, is - is - we're kind of sitting there, it started
 915 to occur to me that, you know, um, this person was tryin' to potentially
 916 draw us, you know, draw us in closer, um, that they were prepared for,
 917 uh, that he had prepared for whatever our less lethal response would
 918 be. So, um, so I - I had a feelin' that - I - I started developing a feeling
 919 at that time that - that, you know, uh, the situation was gonna get -
 920 gonna get worse. Um, because like I said, he was wearin' really thick
 921 clothing, even at that time before, uh, he had picked up the chair to use
 922 it as sh- as a shield. That it had kind of started to occur to me that -
 923 that person would potentially use that chair as - as a shield for our less
 924 lethal devices.

As officers gathered around the police SUV, designated as the lead vehicle, Officer Johns positioned himself on the passenger side, with supervisors Corporal Michael Rauert and Sgt. Derek Ingram next to him. Officer Cardella was in the driver's seat of the SUV manning the PA system with additional officers around him.

After repeated commands by officers and Mr. Ancira's continued refusal to comply, the decision was made to use less-lethal force in an attempt to disarm Mr. Ancira out of concern for potential victims still inside the home. Other resources were requested to assist in addressing the rapidly evolving scene. Officer Johns believed Mr. Ancira was going to continue being noncompliant based on his actions and refusal to verbally acknowledge their presence:

1059 A: Also because when we were talkin' to this person, it was - it
1060 was becomin' - it became very clear to us this - this person was not
1061 gonna comply with our commands. 'Cause they were flippin', uh, like,
1062 he started flippin' us off, like, multiple times. Um, wasn't saying
1063 anything. And he - he just had this kinda this look on his - on his face
1064 that, um, that I recognize from, you know, one just dealin' with people
1065 on the street, but also, um, my experience in the military that, uh, um,
1066 uh, this person was - was ready to, you know, uh, was prepared to
1067 fight us or at a minimum, you know, fight to the death type deal.
1088 A: A lotta times it's - I - I mean sometimes it's - it's - it's an aggressive
1089 look. But a lotta times it's just this kinda like this 1,000-yard stare.
1090
1091 Q: Okay.
1092
1093 A: Um, it's - it's really just, um, like it's not as - it's not a look that I - I - I
1094 would imagine people would expect typically where they think it's like
1095 this, uh, you know, people are really animated.
1096
1097 Q: Mm-hm.
1098
1099 A: They're just - they just have this - this really intense stare and there's
1100 just not a lot of emotion to it.
1101
1102 Q: Okay. Um, and is this the, uh, kinda the presence that you are getting
1103 from 100 yards away? Or as you...
1104
1105 A: Yeah. E- even from that - even from that far...
1106
1107 Q: Okay.
1108
1109 A: it was - it was apparent.

Officer Johns specifically recalled Mr. Ancira motioning for someone to approach, not knowing whether he was motioning towards a victim or someone else outside with him, which caused him to fear an ambush:

1137 even before
1138 we moved up, he was - he was kind of like displaying some odd
1139 behavior, like, motioning to initially it looked like there might have been
1140 somebody else that was out there that he was motioning to. We didn't
1141 know if it was a victim. We didn't know if it was another suspect. Um,
1142 and again, we still weren't 100% sure whether or not this was also an
1143 ambush that we were walkin' into.

In preparation for engaging with less-lethal force, officers were tasked with impacting Mr. Ancira with beanbag shotguns and conducted electrical weapons, commonly referred to as tasers, while other officers provided lethal cover with their service weapons. Officer Johns provided lethal coverage with his rifle for Officers Hoover and Cpl. Rauert, who were designated less-lethal: Officer Hoover with a beanbag shotgun and Cpl. Rauert with a taser. Officer Johns recalled there were more than 10 officers

present at the time.

As officers approached Mr. Ancira on foot with the lead vehicle providing cover, he picked up the chair and held it in front of his body. Officer Cardella drove the lead vehicle at a slow pace with officers stacked on either side.⁷ Commands continued for Mr. Ancira to put the weapon down, put his chair down and talk to officers. Officer Johns recalled that while he made a few comments, it was primarily Officer Cardella who attempted to communicate with Mr. Ancira through the PA system.

As officers approached Mr. Ancira on foot, he moved up the driveway closer to the house, causing concern that he would go back into the residence:

1246 A: Um, he started moving up towards the house, uh, pretty - pretty
1247 quickly. So movin' up - up the driveway. Um, and my corporal - w- well
1248 it was one of my supervisors. I don't remember. I - I believe it was my
1249 corporal was like, "Hey we need to get him, you know, we need - we
1250 need to keep him from going back inside the residence." Um, so we
1251 started movin' a bit faster. Um, 'c- 'cause initially we - we stopped - we
1252 stopped about 20 or so yards, may- maybe approximately, um, from
1253 him. Uh, just to kinda let the situation breathe a little bit, to give him
1254 just, you know, again, just to give him a little bit of space, but to - but
1255 also, I - I know we were within - in - within the effective range of - of the
1256 less lethal shotguns. Um, so and we remained there for, I don't know,
1257 less than a minute. We're still tryin' to give this guy commands.

1261 A: And then that's when he started movin' up the driveway towards the
1262 house...

1263
1264 Q: Okay.

1265
1266 A: pretty quickly. Um...
1267

1268 Q: Was he running or what do you mean by that?

1269
1270 A: No. He was walking quickly.

It was at this time that Cpl. Rauert called for the deployment of a less-lethal weapon. Officers were told to hold their fire while a less-lethal option was deployed to avoid sympathetic fire⁸ or other confusion on the scene.

Officer Johns noted that Mr. Ancira continued to hold the chair in front of him with one hand, covering part of his face so that only his eyes and most of his upper thighs were visible, while still holding the pickaxe over his shoulder with his other hand.

After the command was given to impact with the less-lethal weapons, Officer Hoover fired beanbag rounds with his shotgun at Mr. Ancira, which seemed to have no effect on him. Officer Johns recalled

⁷ Tactic used by law enforcement in which officers line up in a 'stacked' position with one behind the other, fanning out and providing cover, either with protective gear such as a shield or with weapons, as they approach a threatening subject.

⁸ A sociological phenomenon observed in military and police personnel in which a person firing on a target can induce others to shoot.

feeling that those actions further upset Mr. Ancira:

- 1358 A: So the command was given to go ahead and - and impact
 1359 him. Um, and so then, um, (Hoover) yelled "Impacting." Um, and
 1360 started, uh, started firin', um, uh, bean bag rounds at him. The first
 1361 couple I remember hittin' the chair, uh, and just not doin' anything. Um,
 1362 but even then as these - as these bean bag rounds are hittin' the chair,
 1363 he's like still movin' kinda back, but up towards the front door of the
 1364 house, which is located off the driveway, um, a little bit.
- 1368 A: Um, and since he starts movin' back, kind of out of the line of sight, I
 1369 remember, um, units kinda moving over towards the left where there
 1370 was a lot more, uh, my left, so the left of the vehicle, um, um, where
 1371 there's a lot more cover over there. So we start movin' up, um, kinda
 1372 quickly and - and I remember there, like, there was several other
 1373 people that kind of went in front of me, um, to where they were in my
 1374 line of fire. Um, also where I was initially, is I was still on the right, uh,
 1375 side of the vehicle. Um, where I was initially just given the - the, uh,
 1376 and again, this is all happening, like, I'm seeing these bean bag rounds
 1377 bounce off the chair. Like he's still holdin' the chair. Um, the bean bag
 1378 rounds aren't - aren't being effective. I do remember, uh, it appeared,
 1379 like, a couple of, like, one or two of the rounds, um, hit him. Uh, I know
 1380 at least one hit him in the, well, it appeared that at least one hit him in
 1381 the lower extremities. Um, I don't remember where - where the other
 1382 one hit. Um...
- 1384 Q: How effective was that? At least one round to your knowledge?
 1385
- 1386 A: The one - I don't remember if it was that one. I - but it - it caused him to
 1387 kind of - it caused him to kinda draw back a little bit. I could tell he - it
 1388 looked like he felt it. Um, I don't remember it that was the one that
 1389 caused him to drop the chair or what. Um, but somewhere between the
 1390 last two rounds, i- it - one of those rounds caused him to drop the
 1391 chair.

By that point Mr. Ancira was within feet of the house with officers closing in on him. Officer Johns realized he would not be able to assist officers if necessary from his position due to the location of other officers and objects behind Mr. Ancira, prompting him to move farther away to the right for better lethal coverage.

Although Mr. Ancira dropped the chair when he was impacted by a beanbag round, he still had the pickaxe on his shoulder. Officer Johns described it as having a wooden, standard handle, gray or metallic in color with spikes on both ends at the top of the pickaxe.

After Officer Hoover ran out of beanbag ammunition, a taser was deployed, Officer Johns recalled also with little or no effect on Mr. Ancira:

1538 A: Correct. Uh, so a taser was deployed, um, the first one was
 1539 immediately ineffective. It deployed, ran its cycle, um, didn't do
 1540 anything. I believe a second one was - was deployed.
 1541
 1542 Q: Mm-hm.
 1543
 1544 A: Um, and it looked like some of, like, he - experienced the effects of - of
 1545 some of it, um, but again, it was - it was ineffective. Um, and again, it
 1546 like it just - each time he got - he got hit, it was - it just once it was -
 1547 once he was finished with that initial pain, it just looked like it was just,
 1548 uh, pissed him off even more. Um, so after the - after the second one,
 1549 um, he kinda paused for a second it looked like. Um, and then grabbed
 1550 - and then brought his other hand up and - and grabbed the pickaxe
 1551 with both hands.

Officer Johns estimated that he was approximately ten yards from and Mr. Ancira with other officers closer than that. It was at this moment that Officer Johns decided that he would use deadly force if Mr. Ancira continued moving towards officers.

1559 A: So once he grabbed the pickaxe with both hands, it was like, okay. If,
 1560 you know, i- u- b- i- as all this is unfolding, I'm - I'm sittin', it's like
 1561 imagery lines in the sand. Like, listen if he crosses this line, you know,
 1562 come at my officers, I'm shootin' this guy. Um, and so and again...

Officer Johns believed Mr. Ancira's focus was on the group of officers in front of him:

1585 A: so after he grabbed the pickaxe
 1586 with both hands, like, it kinda looked like he took like a - I don't know,
 1587 like, a deep breath and - and started movin', uh, started movin', uh,
 1588 towards my officers. So initially he - he took like, like, kind of a - a step
 1589 or two and then he started to - started to charge at 'em. Um, and - and
 1590 right before he started to charge, he, uh, like he took a step or two.
 1591 Um, a couple steps and then right as he went to go, uh, charge, like,
 1592 he like raised the pickaxe and kinda like, um, pulled it back, like how,
 1593 uh, like a - like a baseball - like somebody in - in base- like a batter in
 1594 baseball would, you know, prepare to hit a pitch. So...
 1595
 1596 Q: Okay.
 1597
 1598 A: um, and as soon as he did that, um, I shot him.

Officer Johns recalled firing approximately three to five rounds. Officer Johns feared Mr. Ancira would have struck one of the other officers with the pickaxe if he had not used deadly force to stop him:

1684 laughing like it's funny, but it's, uh, we just - we were so close to him,
 1685 like, like, the other officers were, like, just because of, uh, just, you
 1686 know, the less lethal options that we had, like, those automatically put
 1687 us really close to him. Um, given the fact that he was movin' up toward
 1688 the house, 'cause he had moved up towards the house and then his -
 1689 and in course, we - we moved up. And this - where everything ended
 1690 up being, I mean he was, like, from where he started, he was at the top
 1691 end of the - of the driveway. So right before where the carport starts
 1692 and all the other officers are located literally at the bottom of the - of
 1693 the driveway. So I mean you're lookin' at like, you know, however,
 1694 however long that is. I mean that's - yeah. That's under - that's under
 1695 ten yards. You know what I mean? Like we - we just - there was no
 1696 room for error. Like there - there was no room for second guessing.
 1697 There was no room for error. There was - there was no room for
 1698 anything. You know? And like I said, when he - when he picked that -
 1699 that pickaxe up and - and started chargin', like, it's I mean there was
 1700 no more time, like, any time for negotiating, talking, anything. Like
 1701 there was - there was - there was nothin' else that could be done.

After Mr. Ancira's body fell to the ground, Officer Johns didn't see any further movements.



Figure 1 – Crime Scene Photo depicting location where Victor Ancira fell in the driveway of 4800 Tanney Street.

As officers proceeded to check the residence for potential threats and potential victims, Officer Johns recalled seeing a suicide note on the shed/carport door that suggested Mr. Ancira expected to die.

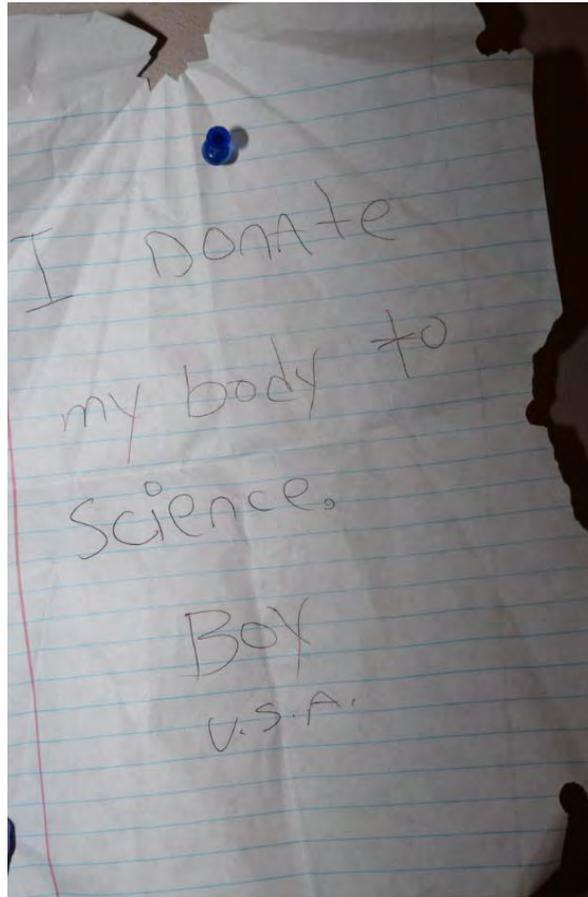


Figure 2 – Crime Scene Photo depicting the note left behind by Victor Ancira.

Once the scene was secured, Officer Johns was separated from other officers and directed not to discuss the incident with anyone else per APD protocol in officer involved shootings. Officer Johns believed he may have fired the first lethal round, although it was difficult to pinpoint who fired the first shot in light of the number of shots fired. When interviewed following the incident, Officer Johns marked the approximate locations of involved officers and Mr. Ancira:



Figure 3 – Aerial map depicting Officer Johns’ location when he fired his rifle in relation to Mr. Ancira’s location in the driveway, as well as the location of the lead vehicle.

2. Involvement of Officer Timothy Skeen

Officer Timothy Skeen was partnered up with Officer Bradley Hoover when he was assigned to assist officers on this call.

C805 Hoover, Bradley (AP8211) - Police Officer; Skeen, Timothy (AP8437) - Police Officer

3/7/2018	04:39:14	C805	ONSC	4800 Tanney St
3/7/2018	04:39:24		Read Comment	
3/7/2018	04:39:24		Read Comment	
3/7/2018	04:39:24		Read Comment	
3/7/2018	04:39:37		Read Comment	

While en route to 4800 Tanney Street, Officers Skeen and Hoover obtained details about the call from their in-car mobile data terminal (MDT). The call text indicated a person murdered his father and brother and reported that there was a weapon inside the house. Based on this information, Officer Skeen believed this to be an urgent call.

As the officers arrived at the location of the incident, they parked behind the lead vehicle, Officers Johns’ and Cardella’s SUV, which was stopped in the middle of Tanney Street. As Officer Skeen walked to the driver’s side, he saw Mr. Ancira with the pickaxe and a folding chair. Officer Skeen recalled Mr. Ancira would sit down on the chair, get up, walk in circles, and swing the pickaxe around his head.

As this occurred, Officer Skeen recalled there was an officer by the driver's side of the lead vehicle giving commands to Mr. Ancira through the PA system. The lead vehicle was positioned with the front end pointing towards Mr. Ancira, who was several houses down from them.

Officer Skeen had a clear view of Mr. Ancira due to the street lights. He observed Mr. Ancira wearing a hoody, a long sleeve or thick-looking shirt, and pants. Officer Skeen could not recall whether a pickaxe was mentioned in the call text, but he saw the pickaxe in Mr. Ancira's hand, which had a long handle and a pointed double end.

As Officers Skeen and Hoover moved next to Officer Cardella on the driver's side of the lead vehicle, Officer Cardella continued giving Mr. Ancira commands to drop his weapon. Several officers who arrived after Officer Skeen, including his supervisor Sgt. Derek Ingram and Cpl. Michael Rauert, were on the passenger side of the lead vehicle, as Cpl. Rauert moved back and forth between both sides. Officer Skeen observed additional officers waiting down a street that intersected with Tanney Street.

Officer Skeen recalled repeated efforts to persuade Mr. Ancira to drop the pickaxe were unsuccessful. Due to Mr. Ancira's noncompliance, a plan was devised to approach Mr. Ancira while using the lead vehicle for cover as officers attempted to impact Mr. Ancira with less-lethal weapons in an effort to disarm him:

775 A: Um, and we to-, you know, the plan was just to - to approach him and
776 impact him right away. Um, and, you know, that's what happened. We
777 got closer. As we got closer, he, you know, uh, you know, like, to back
778 up a little bit before we approached, I mean he was givin' us the finger
779 every time that he was - he was asked to, uh, drop his weapon.

On the driver's side of the lead vehicle, Officer McCulloch was first in line with a police shield, with Officer Hoover behind him, then Officer Rowland, followed by Officer Skeen fourth in that stack with another stack on the passenger side of the lead vehicle.

Officer Skeen was tasked with providing lethal coverage, while Officer Hoover provided less-lethal coverage with a beanbag shotgun. Officer Skeen believed Officers McCulloch and Rowland provided lethal coverage as well, with a gun and shotgun, respectively, in that four-man stack on the driver's side of the lead vehicle.

Officer Skeen estimated that attempts to persuade Mr. Ancira to drop the pickaxe lasted approximately fifteen (15) minutes, with no compliance. Mr. Ancira remained in the middle of the street holding the pickaxe the entire time. At one point, Mr. Ancira picked up a metal folding chair that was in the middle of the street and closed it, while still holding on to the pickaxe.

Officer Skeen recalled Cpl. Rauert communicating the plan between the stacks of officers on both sides of the lead vehicle, and heard the sound of corporal's voice more than anyone else's.

Although Mr. Ancira was being verbally nonresponsive, his physical gestures and demeanor confirmed to Officer Skeen that he would not comply, prompting officers to act:

783 A: I - I could see him holdin' up his middle finger. Yes sir. Even (Hoover)
 784 called it in on the radio, the, you know, to get it in the (Call-Text).
 785
 786 Q: Was - was he verbal?
 787
 788 A: Never said a word that I heard. No sir.
 789
 790 Q: Okay.
 791
 792 A: And, uh, and he's also turning towards the house and like gesturing
 793 like this, like, as if there were other people there, you know, so you
 794 know, 'member, you know, wondering if it, you know, if we were walkin'
 795 into an ambush or somethin' or if the pickaxe was just a decoy, you
 796 know? So anyways, we - we - back to your question, our plan was to,
 797 you know, use the shields, two teams of our, uh, you know, one on
 798 each side of the vehicle, approach the guy and impact him first. You
 799 know, and that's exactly what happened. As we got close, he started
 800 makin' his way into his driveway. (Hoover) starts hitting him with the
 801 impact. It was ineffective. He was usin' the chair to block 'em. Then
 802 (Hoover) tazed him. That was ineffective. Somebody else, uh, I don't
 803 know, but somebody else had another less lethal. They started
 804 impacting him and then those were actually for sure hitting, but it just
 805 was - it was ineffective. And then he got tazed again. That was
 806 ineffective. And then, uh, you know, we're in the driveway. You know,
 807 we have, you know, we have reason to believe that there's people
 808 dead inside the house based off what he called into 911. So we know
 809 we need to get in that house. And, you know, we - we're - commands,
 810 verbal commands were still being given the entire time. And then he,

 811 uh, you know, he raised the axe and he advances on us, you know?
 812 And, um, you know, I feared for everybody's life there. And there were
 813 multiple officers right in front of him. I mean he was within close
 814 proximity to use that deadly weapon and, you know, and we fired until
 815 he was no longer a threat.

Officer Skeen recalled Officer Hoover was the first to use less-lethal force. Officer Hoover announced his intent to fire his beanbag shotgun, and after shooting several rounds, informed officers that he was out of ammunition. At this point, Mr. Ancira was in the driveway, moving closer to the residence at 4800 Tanney Street.

Officer Skeen recalled that officers in his four-man stack broke away and spread out, almost as if lined up together, as Officer Hoover fired the less-lethal rounds. Officer Skeen believed Mr. Ancira used the chair to deflect the beanbag rounds fired at him by Office Hoover, as he observed Mr. Ancira move the chair up and down in front of him, causing most of the rounds to hit the chair. Out of five beanbag rounds fired, Officer Skeen believed one may have struck Mr. Ancira's leg, but most hit the chair.

Officer Skeen was now facing the house, and he observed Mr. Ancira get tazed and impacted a few more times with no effect. He specifically recalled seeing the spark from the taser, but it appeared to

not have penetrated Mr. Ancira's clothes. Officer Skeen recalled Mr. Ancira still had the folding chair in his hands:

998 A: Yeah. I remember seein' it folded up in his hands. He still had the
999 pickaxe in his hand too.
1000
1001 Q: Okay.
1002
1003 A: And he was holdin' the chair. Which I - I guess that was his plan the
1004 whole time was that he used that to block those bean bag rounds, you
1005 know?
1006
1007 Q: So a- h- after he picked the chair up and folded it, what did you do with
1008 it?
1009
1010 A: He just held on to it. He was holding it. I remember - I remember him
1011 holding it in front of him. Could've been his right hand. I'm not sure. It
1012 w- I just remember him holding it up in front of him as we got closer.
1013 And then he was definitely usin' it. Like I saw it goin' up and down like
1014 as - as - as (Hoover) was firin' off the bean bag rounds.
1015
1016 Q: So it was a shield.
1017
1018 A: And then - yeah. And then most of 'em did hit it. Seemed like maybe
1019 one might've hit his leg of those initial first five rounds that were fired at
1020 him. Seems like - seems to me, like, most of 'em hit the chair.

Officer Skeen recalled Mr. Ancira dropped the chair at some point, but was unsure exactly when, although officers were in the driveway by then. Mr. Ancira then raised the axe and took two steps that seemed more like lunges towards the line of officers.

Officer Skeen believed Mr. Ancira, who he estimated to be 8-10 yards away, was close enough to throw the pickaxe and strike someone in the head. This, Officer Skeen reported, made him fear for his life, at which point he made the decision to fire his weapon:

1248 A: I mean it was scary. I mean he raised that - he raised that axe. He - he
1249 charged at us and I mean he was - he was close enough - I mean i- i-
1250 at the very least, he could have threw it, you know, and hit somebody
1251 in the head. Um, you know what I mean? Obviously a pickaxe, you
1252 know, was more than capable of causing, you know, serious body -
1253 bodily injury or death. And he could've threw it and a couple more
1254 steps, that axe would've been goin' in somebody's head. You know, so
1255 we had to - we had to use deadly force to, you know, stop his use of
1256 deadly force.
1257
1258 Q: Did you feel that your life was in danger?
1259
1260 A: Yes sir.

1600 A: Right, uh, when he raised the axe and - and he had - he charged us, I
1601 mean I - I knew there was no other option at that point. If he hit
1602 somebody with that axe, somebody was most likely gonna die from it.
1603 You know I feared for - I feared for our lives, I feared for mine and
1604 everybody's around me. And yes. And I - I opened fire, just outta that
1605 threat. Yes sir.

Officer Skeen aimed at center mass and fired his service weapon, a 9mm, six times, but he believed that all the lethal rounds were fired almost simultaneously.

From Officer Skeen's viewpoint, Mr. Ancira had the carport and room with what he believed to be a suicide note on it behind him (he recalled the driveway was well lit, as it provided more lighting than the street), making this the backdrop officers observed when facing Mr. Ancira.

Officer Skeen believed that Mr. Ancira attempting to back towards the residence is what prompted officers to speed up their approach:

1646 A: Well I know - I mean I know I was, uh, as he made his way towards
1647 that house, I - I remember thinkin', you know, we can't let him go b- go
1648 inside that house. You know...
1649
1650 Q1: O- o...
1651
1652 A: it was - 'cause if the people are not dead in there, you know, and he
1653 gets in there, I mean that's obviously that's bad.
1654
1655 Q1: Okay.
1656
1657 A: Um, and then also, to, you know, we - we need to get in there, you
1658 know, we need to get in there and see, uh, you know, see who needed
1659 medical attention. Um, and I think that would most likely be the reason
1660 why they sped up towards the end.

After the shooting stopped, Officer Skeen recalled someone mention rendering aid to Mr. Ancira, at which point he and other officers attempted to gain entry into the residence to check for possible victims. After attempting entry through several locked doors, officers made entry by kicking a back door and the front door, at which point they cleared the residence and made contact with Mr. Ancira's father and brother, the only other persons inside and who were unharmed. Officer Skeen indicated his approximate location at the time he discharged his weapon:



Figure 4 - Aerial map depicting Officer Skeen's location at the time he fired his service weapon, in relation to Victor Ancira's location and the location of the lead vehicle.

3. Involvement of Officer Michael Rowland

Officer Rowland, an officer assigned to Henry Sector⁹, self-assigned to respond to this call after a request for assistance from Charlie Sector officers.

H808		Rowland, Michael (AP8223)		
3/7/2018	04:42:51		Read Comment	316
3/7/2018	04:43:24	H808	ONSC 4800 Tanney St	
3/7/2018	04:43:31		Read Comment	316
3/7/2018	04:44:12		Read Comment	316
3/7/2018	04:44:12		Read Comment	316

When a request for a shield was made, Officer Rowland's supervisor, Cpl. Marlon Johnson responded. Officer Rowland learned through monitoring radio traffic that someone had a pickaxe, at which point he switched on his MDT to obtain additional details and respond to the call. Officer Rowland believed the person involved had killed someone and was either going to give up or fight the police.

⁹ The address where the call originated, 4800 Tanney Street, is in located in Charlie Sector, so officers assigned to Charlie sector are responsible for patrolling this area and responding to calls for service.

597 A: Yeah. Uh, from what I was readin' and stuff like that, I figured that he's
598 already killed two people. And he's just now callin' - like it was callin'
599 nonchalant. So at that point I was worried about not only just the police
600 officers, but the surrounding neighborhood itself. 'Cause he's already
601 killed two people. And it seemed like no one knows about it.

Officer Rowland continued monitoring radio traffic and learned officers on scene were attempting to communicate with Mr. Ancira. Officer Rowland arrived around the time Officer Bryan McCulloch arrived, and they made their way to the lead vehicle. As they walked in that direction, Officer McCulloch was handed the tactical shield to use as cover and assist in their approach. Officer Rowland then took the shotgun from Officer McCulloch, who maintained possession of the shield.

Of the officers already by the lead vehicle, a corporal on scene was relaying the plan of action, which was to use non-lethal force to gain compliance while other officers provided lethal cover. The planning continued as other officers used the lead vehicle's PA system to talk to Mr. Ancira.

714 A: That was - that was my understandin' as far as - I know that we, like,
715 since I had the lethal shotgun that we were just there for lethal cover.

716
717 Q: Mm-hm.

718
719 A: But, uh, my understanding going into it was that they were gonna try to
720 stop him with the less lethal shotgun. Because they were goin' back
721 and forth between the taser. But he had baggy clothes and usually
722 when you have baggy clothes and you try to taze someone, it - it
723 doesn't work usually. And then, uh, I seen that he had a - had a chair
724 as well. Uh, so they assumed they were tryin' to aim at least for his
725 legs or somethin' like that to get him to - to drop the stuff. And then at
726 that point, they were gonna try the taser. And if not, hopefully he would
727 drop from the less lethal shotgun and people were able - were able to
728 maybe...

729
730 Q: Mm-hm.

731
732 A: swarm at that point.

Lighting conditions included the spotlight from the lead vehicle, lights from other police units and several working street lights that illuminated the area where Mr. Ancira was located, which Officer Rowland estimated to be approximately 15 feet from officers. Officer Rowland recalled Mr. Ancira pacing back and forth while holding a pickaxe and a chair. Officer Rowland further recalled Mr. Ancira being nonresponsive to police:

864 A: At that point I seen - once I s- once I saw him, uh, he was just walkin'
 865 back and pacin' back and forth. I seen, uh, from what I was listenin' to
 866 on the - the guy talkin' on the PA, they're tryin' to communicate from,
 867 uh, with him. So...
 868
 869 Q: Mm-hm.
 870
 871 A: I was observing the - it just - he seemed just like he was in a different
 872 world. Like he didn't - he didn't say anything. He didn't acknowledge us
 873 basically...
 874
 875 Q: Mm-hm.
 876
 877 A: [from what I was seein'. There was no acknowledgement or anything
 878 like that. He just kept - seemed like it was more either - he was angry
 879 or he's just - just pacin' back and forth, side to side.

Officer Rowland noted a priority was to go inside the residence and check on any potential victims, which required Mr. Ancira's compliance. Once a plan was confirmed, the command was given for officers to advance towards Mr. Ancira with the lead vehicle used for cover. As it was slowly driven forward, officers on both sides of the SUV walked and kept pace with it. Officer Rowland approached from the driver's side in a stack of four officers: an officer with a shield in front of him and two officers behind him. Officer Rowland was armed with a lethal shotgun, while another officer carried a less-lethal shotgun.

As officers moved closer to Mr. Ancira, he ignored commands to drop the pickaxe and continued pacing back and forth while holding on to the pickaxe and using the chair as a shield:

1042 A: The chair? So he had a chair. So basically if you think about it, it's just
 1043 like hi- like a Spartan or somethin' like that. He had it as a shield. And
 1044 then he had the pickaxe in - in his hand. So basically - it seemed like
 1045 he was already ready for somethin', but just couldn't - didn't...
 1046
 1047 Q1: Okay.
 1048
 1049 A: I know what was goin' on. 'Cause he wasn't sayin' anything. Just looked
 1050 like he was either tryin' to defend somethin' or guard somethin' or keep
 1051 us away from somethin'. But, uh, he had the shield - or I mean he had
 1052 the - the chair. It - it was a fold-up chair. So he just had it. He just had it
 1053 coverin', uh, basically the upper part of his body, like, half his lower
 1054 body.

As officers continued their approach, they attempted to disarm Mr. Ancira by deploying a less-lethal beanbag shotgun. Officer Rowland recalled hearing someone yell 'impact' prior to shooting and then heard the beanbag rounds hit the chair, at which point Mr. Ancira started walking back and to his right, towards the residence.

Officers chose the less-lethal shotgun due to the distance from Mr. Ancira:

1187 A: Yeah. That was part of the plan, the - to start with impactin' 'cause he
 1188 is too far for the taser. Like for it being effective, they probably - you
 1189 could still reach him, but it wouldn't be effective with the clothes that
 1190 he's wearin'. So the initial plan was to start with the less lethal to get
 1191 him to - to drop all his stuff.

Although a beanbag round struck Mr. Ancira on the left leg, Officer Rowland believed it to be ineffective because of the thick clothing worn by Mr. Ancira. Once struck, Mr. Ancira used the chair to deflect rounds by moving it up and down in front of him.

After the beanbag rounds were fired, Mr. Ancira moved from his position towards his house, which Officer Rowland believed prompted officers to hasten their approach:

1225 A: Which is - the house is on our left. So he starts comin' at the house at
 1226 a diagonal. Like he starts to basically like he's tryin' to - he's tryin' to
 1227 run away from us. But he starts runnin' towards the house and that
 1228 point, that's when we started advancin' faster. At that point we're not -
 1229 we're not walkin', we're kinda joggin' per say. And at that point, that's
 1230 where we got - we're on - at the sidewalk or at the driveway, at the end
 1231 of the driveway up the house. And he's at the - the garage area of the
 1232 house.
 1233
 1234 Q: Okay. Uh, what were your thoughts on that? Di- did you have any
 1235 concerns about that?
 1236
 1237 A: At that - at that point, I - I thought he was tryin' to either flee or he was
 1238 tryin' to run back into the house, which would - it would change the
 1239 whole situation. I didn't know if he was goin' back in the house and try
 1240 to hurt someone, like, at that point, so that - that's - that's when I
 1241 started gettin' really concerned about that. And then, uh...

At this point Mr. Ancira put the pickaxe on his shoulder and ran towards the driveway of his residence. Officer Rowland was still in the stack of officers, but as they advanced he wound up at the end of the driveway by the sidewalk and lost sight of the lead vehicle from his location.

As Mr. Ancira moved to the driveway, officers continued using less-lethal weapons. An officer walked to the front and deployed his taser twice. The taser was ineffective, as it did not make contact with Mr. Ancira's skin and just dangled off his clothes. Officer Rowland recalled hearing the loud crackling noise of the taser cycling through, which indicated to him no contact or connection was made.

Moments after the taser deployment, Officer Rowland recalled that Mr. Ancira remained silent and nonresponsive. As another officer attempted to use less-lethal force, Mr. Ancira raised the pickaxe and moved in towards them in a manner that made Officer Rowland fear for the officers' lives and his own, and fired his shotgun:

1435 A: He - he's not sayin' anything. I think, uh, so I'm lookin' at him after he
 1436 got tazed those two times, or there's the ineffective tazing.
 1437
 1438 Q: Mm-hm.
 1439
 1440 A: He's lookin' up. I - I could see him - like it was basically like a 1,000-

1441 yard stare kinda deal.
 1442
 1443 Q: Mm-hm.

1445 A: Usually, like, from my training and stuff, as far as when I worked in that
 1446 area, that area around somewhere down (Tanner) and like 12th and
 1447 (Webberville), it's - it's usually known for PCP and all that stuff like that.
 1448 And at that point, I was just like, it was just strange to me that, like, all
 1449 the stuff that we're using, it's just no effect. I mean and then when I
 1450 looked down one more - he just - he didn't have any kind of
 1451 expression, just looked up. I seen him look up. And at that point, that's
 1452 when I see him, the - the chair is - he drops the chair. And, uh, I wanna
 1453 say somebody else's continuing to use the less lethal - there was
 1454 more, 'cause there was more than one less lethal.
 1455

1456 Q: Mm-hm.
 1457

1458 A: Continue to use, uh, less lethal. And at that point, that's where I see
 1459 him - h- he - he takes - he starts to raise the pickaxe. And then he
 1460 starts to lunge - he starts to run at that point towards, uh, the officer
 1461 that was shootin' - that proceeded to shootin' the less lethal.
 1462

1463 Q: Mm-hm.
 1464

1465 A: At that point, that's when I, uh, uh, I was scared for my life. I was
 1466 scared for, uh, officer - the other officers and that he - he's already
 1467 becomin' a threat. And then at that point, that's where I had to
 1468 eliminate the threat at that point. 'Cause he's already chargin' at us
 1469 with the pickaxe up at the high ready.

Officer Rowland believed he was no more than six feet from Mr. Ancira when he fired his weapon four to five times:

1518 A: My fear was that, uh, either he's gonna hit me or somebody else with
 1519 the pickaxe. And, uh, with that, I mean it's just deadly force
 1520 (unintelligible) I mean you're not really gonna come back from being hit
 1521 with - with that pickaxe. And at that - at that point, I was - I was real
 1522 scared for my life. I feared - I feared that he was, uh, he was gonna try
 1523 to kill me. It was either him or me.
 1524

1525 Q1: You said when he, uh, raised the pickaxe to the high ready, did the
 1526 charge towards, uh, the officers, where were you in relation to the
 1527 group of officers?
 1528

1529 A: Where he was comin'?

1533 A: Uh, at that point, I was still behind the - the ma- the guy with the shield,
 1534 but I wanna say, like, I guess in the middle, like, facin' - so say the
 1535 garage is right here, I'm facin' the garage, I'm like in the middle almost
 1536 of the - the garage at that point, facin' him. And he's off to my left at
 1537 that point. Then that's when he starts to run.
 1538

1539 Q1: Okay. Is he running in your direction?
 1540

1541 A: Yes.

The decision to fire was made once Mr. Ancira moved in Officer Rowland's direction.

- 1555 A: Um, as far as I know, I don't - I don't know if I shot first or anything like
- 1556 that. But I - I knew at that point that I was in a...
- 1557
- 1558 Q: Mm-hm.
- 1559
- 1560 A: uh, a deadly situation when he started chargin' me. Usually just goin'
- 1561 off of my experience, uh, my training experience, in that a 7-foot, 10-
- 1562 foot rule, once someone starts lungin', you don't - you're, uh, reaction
- 1563 time is - is not as fast. Uh, you're more like, I - which I'm surprised I
- 1564 didn't get hurt, but you're likely to either get stabbed or hit by whatever
- 1565 the person has in their hand if it's, uh, some kind of (unintelligible)
- 1566 weapon at that point.

The rounds fired by Officer Rowland were standard low round buck shots from a police-issued shotgun. From Officer Rowland's position, when Mr. Ancira came towards the officers, Officer Rowland's backdrop was the storage closet in the open garage. After the shots were fired, Officer Rowland assisted another officer who attempted to provide medical attention to Mr. Ancira.



4800 TANNEY ST.

Figure 5 – Aerial map depicting Officer Rowland's position when he fired his service weapon in relation to Victor Ancira's position in the driveway of 4800 Tanney Street.

4. Involvement of Officer Bryan McCulloch

Officer Bryan McCulloch was working the Henry Sector night shift in South Austin when he self-assigned and responded to the call.

H801		McCulloch, Bryan (AP8124) - Police Cadet
3/7/2018	04:45:29	Read Comment
3/7/2018	04:45:54	H801 ONSC 4800 Tanney St
3/7/2018	04:46:08	Read Comment
3/7/2018	04:46:08	Read Comment
3/7/2018	04:46:09	Read Comment

Upon hearing officers call for a shield, he believed it to be a serious situation:

685 A: And then when I - you know, when you look at the call text you can see
 686 how many units are on there. And I remember (unintelligible) just like
 687 two or three units, including the supervisor. I was like, "Man, they
 688 need" - you know, they're gonna need more than that. They're gonna
 689 need a perimeter. They, you know - this - this guy might be a - a
 690 deadly threat. This guy - there's no - there's no telling what's going on
 691 with this situation. It's - it's obviously urgent and they had a - a lot of
 692 the officers on other calls. 'Cause we were - at this - at this point of
 693 night, 4 o'clock in the morning.

Officer McCulloch headed to 4800 Tanney Street along with fellow shift officers Cpl. Marlon Johnson and Officer Michael Rowland. Prior to their arrival, other officers were attempting contact with Mr. Ancira. Officers relayed their attempts to get Mr. Ancira to drop his weapon, with no response from him other than putting his middle finger up to officers, 'flipping them off.'

Once he arrived, Officer McCulloch parked his patrol unit at the intersection of Tanney and Denfield streets, armed with his shotgun for lethal cover. He took the shield from Cpl. Johnson and handed his shotgun off to Officer Rowland who was already on scene. Officer McCulloch then pulled out his handgun.

Officers were gathered around the lead vehicle and had given Mr. Ancira commands for fifteen to twenty minutes by the time Officer McCulloch arrived. Using the lead vehicle for cover, Officer McCulloch positioned himself on the driver's side as the first officer in the stack with the shield and his handgun.

Although he did not recall the setup on the passenger side of the lead vehicle, he recalled Officers Hoover (with a less-lethal shotgun) and Rowland were behind him in the stack.

Officer McCulloch specifically recalled seeing Mr. Ancira in the middle of the street with the pickaxe in his right hand and the steel chair in his left hand, pacing back and forth. Commands were being given to Mr. Ancira over the PA system in the lead vehicle, as well as pleas to drop the weapon and assurances that officers were there to help.

Officer McCulloch recalled the urgency to check on potential victims inside the residence in light of the 911 call:

972 A: "Walk closer, put your hands up." Um, so we're - we're doing that. He's
 973 still - he's still sitting there. Um, like I said, b- based on the call text,
 974 he's standing right in front of the house where he called in and self-
 975 reported that he had just killed his brother and his dad. So we're -
 976 we're kinda in a situation where, um, we - we feel like we really need to
 977 get in that house because if somebody's in there bleeding out, we
 978 need to - we need to help 'em. You know, like, somebody could be
 979 dying. Somebody could already be dead. We do- we don't know but
 980 based off the information we have, that's - that's what's going through
 981 our mind - at least through my mind.
 982
 983 Q: Okay.
 984
 985 A: Um, so that's why - that's the main reason we ha- we started to close
 986 distance is because we had to get - we had to get him detained saf- as
 987 safely as we could and get into that house.

The plan developed as they communicated with Mr. Ancira, but officers worked quickly due to the evolving situation. Officer McCulloch sensed that Mr. Ancira picked up on the change:

1029 A: I think he started to kinda see that we were - he - he can kinda sense
 1030 that we were starting to do something, not just, you know, coming up
 1031 with a plan anymore. And, uh, as we got closer, he, uh - he was kind
 1032 more towards the middle of the street. As we got closer, he starts to
 1033 kinda get closer to his driveway - get closer to the house.

 1037 A: So he starts to kinda inch out and then he's kinda, um - he kinda paced
 1038 back and forth a few times as we're going towards him.

Mr. Ancira was approximately 100 to 150 feet from the officers by the lead vehicle. As officers started moving towards Mr. Ancira, they walked slowly, keeping pace with the lead vehicle. The officers using shields on either side walked alongside by the hood of the vehicle.

Officers were able to see Mr. Ancira's hands and movements from the streetlight in the middle of the street and the spotlight from the lead vehicle.

As officers got closer, Mr. Ancira paced back and forth a few more times, stopped, and appeared to look straight towards the lead vehicle. As the officers got within twenty to twenty-five feet, Mr. Ancira got to the edge of the driveway to the residence, which concerned Officer McCulloch:

1091 A: Well he - he's - you know, this is somebody - in my mind this is
 1092 somebody who just murdered his - his brother and his dad. We don't
 1093 know what's - we don't know what his motives are or what - why he did
 1094 what he did, or said he did what he did. But, uh, we don't want him
 1095 going towards that house. At the same time, we need to get him
 1096 detained.
 1097
 1098 Q: Hm-mm.
 1099
 1100 A: As safe as possible and get past him to get into the house and make
 1101 sure that nobody's - nobody's dead, nobody needs, uh, assistance.
 1102 Um, that's - that's what was going through our - at least, my mind.

Mr. Ancira held the chair up as if to block the middle half of his body as officers moved closer to him. Although Officer McCulloch did not recall what Mr. Ancira was doing with the pickaxe, it was clear to him he was not using it against the officers at that moment.

Despite the initial slow pace, officers sped up their approach due to the changing situation and Mr. Ancira moving closer towards the house:

1327 A: When - when - when the first, uh, less-lethal round, uh, was fired to try
 1328 to subdue him with a less-lethal round from the less-lethal shotgun. He
 1329 moved into the driveway and started moving towards the house. Um,
 1330 at that point, that made it more urgent for us to, um, get him - get him
 1331 detained safely. Um, and then, uh, I be- believe Officer Hoover shot all
 1332 four rounds from his less-lethal and he blocked every single one with
 1333 the steel chair.

Prior to using less-lethal force, Officer Hoover moved away from the stack to Officer McCulloch's left and announced he was impacting Mr. Ancira with the beanbag shotgun. Officer McCulloch recalled the first beanbag round was fired at Mr. Ancira as he moved farther into the driveway and closer to the residence.

The driveway was darker than the street, as there was a tree blocking the street light and the spotlight was no longer on Mr. Ancira, further adding to the need to take control of the situation. Officer McCulloch did not have his flashlight on and did not recall whether other officers used theirs. Because officers need to subdue Mr. Ancira and disarm him, attempts were made with additional less-lethal weapons:

1423 being that he was a murder suspect to us. So we all - at that point, uh,
 1424 we move, uh, kinda on line to where we're not flagging anybody and
 1425 we get on line like towards the end of the driveway. Um, and we're still
 1426 giving him commands. He's still non-compliant. After those first four
 1427 rounds of Officer Hoover's, uh, less-lethal - there's only four rounds in
 1428 it so his less-lethal was out. And at this point, I'm - I'm on line with my
 1429 shield and I'm on line with the officers with my shield. And we're giving
 1430 him commands, he's not - he's not responding. Um, I don't remember if
 1431 there was another less-lethal round shot after those four before, um,
 1432 and officer attempted to use a taser on him. Um, but I saw - I saw an
 1433 officer and I don't remember which officer it was 'cause I just - I just
 1434 saw the taser go off. Um, an officer tried to tase him and it was
 1435 ineffective. But from my - from what I - from what I saw when I heard
 1436 the taser, you know, pop. And I - I - I saw him kinda like tense up a
 1437 little bit. And, uh, I thought, w- maybe it hit him. Uh, well I th- I thought
 1438 it was effective, at first.

It was after this attempted tasing that Mr. Ancira raised the pickaxe over his right shoulder with both hands and ran towards the officers, with the chair no longer in his hand:

1453 A: I don't remember when exactly he dropped the chair. At some - at
 1454 some point during that time, he had dropped the chair. Um, I don't - I
 1455 don't know what happened with the taser, why it was ineffective. It
 1456 could've been 'cause it was baggy clothing. It could've been 'cause
 1457 maybe it didn't connect. I don't know why. Um, but I saw that - I seen
 1458 that, um - I seen him start to charge us. And he got probably within four
 1459 to six feet and, um, at that point, um, I started discharging my weapon,
 1460 in order to stop what I - I saw as a deadly force. A deadly - a deadly
 1461 force, um, attack coming at us.
 1462
 1463 Q: Okay.
 1464
 1465 A: 'Cause a pickaxe to me - to me and - it's definitely a deadly weapon.
 1466 And in the manner of use that he was trying to use it, um, and we - we
 1467 shot until, uh, he f- he went down to the ground. When he went down
 1468 to the ground, uh, we couldn't see his hands. Uh, he was still - he was
 1469 laid down on top of his hands and still moving a little bit. Um, we -
 1470 everybody stops, we move on line to get him in the handcuffs.

Officer McCulloch recalled Mr. Ancira running straight for them, as they were close to each other in a line to avoid friendly fire, with Officer McCulloch closer towards the middle. From his position, Officer McCulloch could see the garage and a tool shed/garage extension behind Mr. Ancira by the carport.



Figure 6 – Officer McCulloch BWC video still depicting Victor Ancira with a pickaxe just before advancing towards officers.

Officer McCulloch positioned the shield in front of him, blocking the left half of his body, with no obstruction between him and Mr. Ancira. He aimed for center mass, as he was trained, until he felt there was no longer a threat. At the time of the incident, he believed that he fired at least three shots, but was unsure as to how many.

Once the shooting stopped, Officer McCulloch set the shield aside and assisted officers in securing Mr. Ancira and attempting to render aid prior to the arrival of EMS. Officer McCulloch then assisted in clearing the residence. Officer McCulloch recalled the incident was one he had never dealt with before:

2004 A: Um, s- l - l - inside of me, just had to be ready for whatever happened.
 2005 And, um, just whatever action he may take. I didn't know - l - l didn't
 2006 know what - what was going on. I mean, he's, um - you know, l - l
 2007 didn't know if this guy was on drugs. I didn't know if he was - if he has
 2008 been drinking. I didn't know - you know, it - and e- even if, you know,
 2009 say he was emotionally disturbed, you know, we - we can do
 2010 something about that. We can help people. But if - if they present a
 2011 deadly force, we have to keep - you know, we have to keep people
 2012 safe and ourselves safe before, you know, we can help somebody's
 2013 mental state.

2015 Q1: Okay. How were you feeling right before you had to fire shots when
 2016 this person was running your direction with an axe? What - what -
 2017 what's going on inside your...
 2018

2019 A: Uh, my - my heart was pumping. Um, it w- it was - l - l I was scared for
 2020 my life. Um, I mean, this guys, you know, got - he's got a pickaxe. He's
 2021 charging us very quickly. I don't know if he's gonna try to kill or - or
 2022 - in my mind, l - there's no other reason somebody to come at me with
 2023 a pickaxe raised, unless he's trying to kill me or kill another officer.



Figure 7 – Aerial map depicting Officer McCulloch's location at the time he fired his service weapon, as well the taser deployment he observed.

5. Involvement of Officer Gavin Smart

Officer Smart was the last subject officer to arrive at 4800 Tanney Street. He worked Baker Sector and responded to the scene after obtaining protective gear (a shield and battering ram) from his supervisor, Cpl. Payne.

B803 Smart, Gavin (AP8674) - Police Officer; Tedford, Ryan (AP8442) - Police Officer

3/7/2018	04:46:36		Read Comment	
3/7/2018	04:47:21	B803	ONSC	4800 Tanney St
3/7/2018	04:47:58		UserAction	
3/7/2018	04:48:28		Read Comment	
3/7/2018	04:48:28		Read Comment	

Officer Smart switched to Charlie sector radio traffic and heard officers relaying information regarding the incident. He was not familiar with the area, but located the street and parked behind several patrol vehicles, including the lead vehicle, on Tanney Street. Officer Smart was able to see a line of approximately 12 to 15 officers when he arrived.

As he retrieved the shield and walked up behind the officers, Officer Smart heard commands being given to Mr. Ancira to drop his weapon. Officer Smart recalled hearing the beanbag shotgun fired four times as he continued walking up to the officers.

Officer Smart then called out and announced his presence to the officers as he approached them from behind with the shield in his hand. As Officer Smart got closer to the officers, he saw Mr. Ancira in the street. Officer Smart recalled seeing Mr. Ancira holding a metal or steel chair on his left arm:

410 A: He was holding it up like a shield. And he had something, uh, uh,
411 draped across his shoulder. Took me a second to realize -- as he
412 turned it my view changed -- that it was a pickax. So he looked like a
413 plan-committed individual. I'm ass- as we, uh, a- approached too, I'm
414 assuming this is the subject obviously that we're here for. 'Cause I
415 hadn't had a chance to meet with them and speak with them before the
416 situation had already - I guess "kicked off" is the term. Uh, and then,
417 uh, let 'em know I had a shield. The officers, uh, continued tryin' to fire
418 less lethal rounds. I saw the less lethal rounds bounce off of his body
419 and off of the shield, it looked like. And he didn't seem to react to them
420 the way that you would expect. They weren't fired at an extremely long
421 distance. They were within the safety protocol. Uh, they weren't too
422 close but they were close enough that the drag from gravity, air, and all
423 that should not have lessened their impact. So he should have, based
424 upon my training and experience, um, felt extreme pain from 'em but
425 he seemed to be shrugging them off. So they, uh, fired the four, uh,
426 less lethal rounds. They called for - based on my training and
427 experience with our less lethal shotguns - I know our less lethal
428 shotguns carry four rounds so I knew those were spent. Uh, they then
429 called for next less lethal up. I saw a guy put the shotgun - reach back
430 and set it down on the, uh, hood of the car, uh, then saw an officer
431 draw his taser. And I believe another officer then retrieved a secondary
432 less lethal shotgun. The subject, uh, moved back slightly into the, uh,
433 house at that point. Um, he's in the front yard/driveway area. He
434 moved back towards the house at that point, kinda drawing the officers
435 in on line. I'm still tryin' to make my way through the officers 'cause
436 there's a group of 'em, um, 'cause I have the shield. So the purpose of
437 the shield would be for me to be up front but again, I'm not tryin' to run
438 past them and all that.

Officer Smart was concerned with running past the officers as they engaged Mr. Ancira with a beanbag shotgun and a taser:

441 on. I didn't wanna run past
442 them 'cause they had their less lethal coverage on him and I didn't
443 wanna create a crossfire situation or get shot in the back, basically.
444 Um, so I was makin' my way through the crowd. As I was approaching
445 the officers, uh, like I said, the gentleman had, uh, fallen back. At that
446 point he had, uh, dropped his shield - makeshift shield - the steel chair
447 but he still had the weapon. He had changed it and swung it around a
448 couple times I believe, grabbing with a two-handed grip. Um, I heard
449 more less lethal rounds, uh, being deployed. Um, from what I recall,
450 those were ineffective as well.

451 dropped the shield, you would expect them to be more effective. I also
 452 recall seeing the red dots of tasers on his person and the sound of a - I
 453 believe a taser cartridge was deployed. I'm not 100% sure. Um, I say
 454 that because I don't remember hearing it but I remember seeing wires
 455 later so...

456

457 Q: Mm-hm.

458

459 A: that's why I believe it was used and also ineffective. Um, so as he - the
 460 officers were sucking up kinda towards him 'cause - my belief is the
 461 reasons why that did that is he was retreating back towards the house
 462 and they didn't want him to go back to the house due to that fact that
 463 he had stated -- presuming this is the subject that we're here to, uh,
 464 address -- that he had murdered people in the house. So potentially
 465 you have potential victim safety issue if he gets in the house plus if he
 466 gets in the house, you have a barricaded subject-type situation. Or -
 467 the backyard isn't fenced so he could escape into, uh, any known
 468 direction and therefore be potentially hazard to the public. Uh, shortly
 469 after that time - after the o- other less lethal rounds were deployed, uh,
 470 the subject started running towards some officers on my right and
 471 some officers in reaction to that started running backwards and all that.

Once he observed Mr. Ancira advance towards officers, Officer Smart made the decision to fire his weapon:

481

482 on. He then got close enough in my
 483 opinion through running at the officers with the weapon raised up in an
 484 aggressive manner that I became uncomfortable to the point that I
 485 feared for their safety. I feared that he meant to harm them, either with
 486 physical bodily injury - serious bodily injury and/or to actually kill one of
 487 them - so death. Um, in doing so, I fired - I - my weapon, which was
 488 already drawn - my duty weapon, which I was holding in my r- uh, right
 489 hand, my shield in my left hand. Uh, I pointed it at the subject and
 490 discharged my firearm four times. I, um, I fired as - and followed him to
 491 the ground as we're trained to do. The purpose of that - of, uh, firing
 492 and continuing to fire until they're down on the ground is, um, to make
 493 sure the threat, being him with the, uh, pickax, is fully neutralized. Um,
 494 there's been many situations in the past where people have survived,
 495 uh, gunshot wounds and they can still continue to thrive - still continue
 to be a threat. He was also shrugging off the, uh, less lethal rounds.

501

502 shrugging off the rounds. And you can kind of conceal it, so I made
 503 sure to, uh, keep shooting approximately four, uh, times and follow the
 504 target to the ground to make sure he was no longer a threat to officers.
 505 After that, uh, myself and other officers - many officers on scene all
 506 yelled, "Cease fire," once he was very clear he was no longer a threat.
 507 He had dropped the weapon. He was laying prone out on the ground in
 front of us, um, in the front yard in kind of the driveway situation.

Officer Smart approached the residence with his shield for cover and another officer to clear for safety and check the welfare of the residents inside.

C. USE OF LESS-LETHAL FORCE

In an effort to gain compliance and disarm Mr. Ancira, officers used less-lethal weapons. Two beanbag shotguns and two tasers were used by Corporal Michael Rauert and Officers Jason Meurer and Bradley Hoover.

1. Involvement of Officer Jason Meurer

Officer Jason Meurer was assigned to Sgt. Derek Ingram's shift and responded with lights and sirens to the scene. He was one of numerous officers who staged at Springdale and Oak Springs across the main street to devise a plan of action. Due to the lack of information, officers put on body armor and additional protective gear to respond to the call.

C803	Meurer, Jason (AP8572); Valentin, Ricky (AP6853)			
3/7/2018	04:26:44	C890	ONSC	4800 Tanney St
3/7/2018	04:28:06	C803	ONSC	4800 Tanney St
3/7/2018	04:28:06	C802	ONSC	4800 Tanney St
3/7/2018	04:28:35		Premise History Access	
3/7/2018	04:28:51		SOP Displayed	

The plan devised included one officer approaching from behind the residence in case anyone ran out from that direction. As they drove down the street, they identified the house by the address on the mailbox, but moved away from the house when they realized they were in the lead vehicle's line of fire. Officer Meurer recalled seeing Mr. Ancira wearing a big heavy coat and holding a pickaxe, standing next to a chair in the middle of the street.

Officer Meurer was tasked with providing less-lethal cover with a beanbag shotgun. Every department-issued less-lethal shotgun available to officers includes four beanbag rounds. Officer Meurer recalled that the rounds are known to be very accurate and meant to be painful – to the point of leaving marks and bruises – to gain compliance by less-lethal means. As Officer Meurer exited the patrol unit he was in, he loaded a beanbag round into the chamber of his shotgun and the spotlight from their unit was switched on and focused on Mr. Ancira.

At this point, Officer Meurer heard commands coming from the lead vehicle for Mr. Ancira to put the pickaxe down. Mr. Ancira wore a big jacket, long pants and most of the time had two hands on the pickaxe. Officer Meurer recalled Mr. Ancira never responded to commands or said anything.

Additional units arrived and approached the scene from the back of the residence. As those officers moved in, Officers Meurer and Valentin moved up to join the officers, at which point Cpl. Rauert advised them to switch their spotlight and headlights off to avoid making officers more visible. Officer Meurer ran back to the car to turn the lights off, and as he headed back towards the officers he heard the first beanbag round fired.

At this point, Mr. Ancira held the chair up as a shield, and Officer Meurer saw the round hit the chair. As Officer Meurer stood by, Officer Valentin called for a second less-lethal shotgun, at which point Officer Meurer moved forward with the officers in line and stood to the left of the officer with the shield as they closed in on Mr. Ancira.

From Officer Meurer's position, he observed Mr. Ancira to be three quarters up the driveway, which prompted officers to move up into the driveway. As soon as Officer Meurer saw Mr. Ancira drop the chair, he announced 'impacting' and fired his first less-lethal round, aiming at the top of Mr. Ancira's thigh area. He re-racked his shotgun and again announced 'impacting' and fired a second time. Mr. Ancira swung at the second round with the pickaxe, and then stepped forward and raised the pickaxe towards the officers, who at that time used lethal force:

459 at the second
 460 round I think he swung at it with the pickax. And, um, and at that point
 461 he actually stepped forward and raised it up toward us, uh, toward the
 462 end of the driveway and I got that third round off right as the - the lethal
 463 rounds started to fire 'cause he was coming at us in an aggressive
 464 manner. And, um, he'd been told many times, um, to - to drop the
 465 pickax or, you know, we'd - the call tech said he'd just killed people,
 466 wasn't responding to commands and so, um, that's what it - that's what
 467 - where my actions ended. Uh, soon as I fired that third round and
 468 those lethal rounds started, I stopped. I didn't fire a fourth round. Um, I

Although Officer Meurer later learned a taser had been deployed, he had no memory of it until he heard another officer confirm he had deployed it. Officer Meurer feared for his and other officers' safety. He wasn't sure the body armor would be enough to stop a pickaxe:

995 A: I was - I was concerned sir. I was - I was really worried that I might get
 996 stuck with a pickax. Um, um, my concern was for my o- my fellow
 997 officers and, you know, myself to go home, our safety. Um, like I said
 998 the call tech said he'd already killed his father and brother. Um, he was
 999 willing to do it so it - it does, it create - creates a - a fear that I might get
 1000 hurt or my officers might get hurt.

Officer Meurer was unsure whether anything prevented Mr. Ancira from following commands, but it didn't appear like he didn't understand them:

1029 A: Honestly sir I don't - I don't know. He th- he completely disregarded
 1030 every command he was given. Uh, he wasn't listening at all. I don't
 1031 know if it wasn't - it was - if it was he didn't understand them, um, but
 1032 he didn't present like he didn't understand 'em. He didn't con- present
 1033 like he was confused. He was, you know, he didn't even con- ven- like
 1034 he was agitated. He was just - he was pacing back and forth. He was,
 1035 you know, he w- j- he'd bring the pickax up. His facial expressions

1036 weren't, like, angry. They were just, like, uh, shifting between, like,
 1037 calm and, um, not agitated. It was just more like he was fully accepting
 1038 of what he was doing. He had - I mean he had no concern of what he
 1039 was doing...
 1040
 1041 Q: Mm-hm.
 1042
 1043 A: js what it looked like.
 1044
 1045 Q: Okay.
 1046
 1047 A: But he didn't appear angry at all. But he didn't con- p- like I said he
 1048 didn't appear confused. He d- didn't - the instructions - most people if
 1049 you give 'em instructions, if they don't understand they're gonna give
 1050 you that look like, "I'm not c- quite sure what's going on." He didn't
 1051 have that look. So...

Officer Meurer did not fire his less-lethal shotgun again. Officer Meurer recalled using a shield for cover between officers and the residence as Officer Cardella approached Mr. Ancira and handcuffed him.

As Officer Meurer stood watch, he observed the light in the garage come on and someone stick their head out from inside the residence. Officers made contact with Mr. Ancira's father and brother and learned that no one had been injured.

Officer Meurer believed deploying a less-lethal weapon was a good decision, and a less-lethal shotgun, specifically, a better option:

1402 A: No 'cause I - I - i- I think deploying less-lethal was a good option to
 1403 begin with 'cause it gave us a chance to try and resolve it before lethal
 1404 force was used.

1421 A: Um, it gi- gave me enough distance to be able to employ it 'cause
 1422 employing a taser is - you've gotta be close enough to use it. Same
 1423 with the spray. Um, and both of those with that big heavy jacket it's - a
 1424 taser's not really a good idea. Um, spray may or may not work. Um,
 1425 but the less-lethal shotgun gives you enough distance to be able to
 1426 employ it and if it doesn't work it gives you enough time to transition to
 1427 lethal if he decides he's gonna close that gap and use his weapon.

2. Involvement of Corporal Michael Rauert

A sixteen year veteran with the Austin Police Department, Cpl. Rauert assisted supervisor Sgt. Derek Ingram with the Charlie officers responding to the scene in the early morning hours of March 7, 2018.

C880 Rauert, Michael (AP4678)

3/7/2018	04:36:53		Read Comment		
3/7/2018	04:37:02	C880	ONSC	4800 Tanney St	Comment for Incident 316
3/7/2018	04:37:07		Read Comment		
3/7/2018	04:37:07		Read Comment		
3/7/2018	04:37:07		Read Comment		

A call came in from the subject who indicated that he had killed his brother and father and would be taking a shower while he waited for police. Officers from Charlie sector were the first to respond, with Henry Sector officers responding after a request for protective gear was made.

Although initially not assigned, Cpl. Rauert believed the call escalated when he learned Mr. Ancira had a weapon and responded to assist. Upon arrival, he observed the lead vehicle parked with officers on both sides of it, at which point he and the officers began devising a plan of approach.

Cpl. Rauert recalled taking a lead in discussing options in order to assist Sgt. Ingram:

335 A: You know, I - I mean it was just kind of everybody kind of throwing a
336 little bit. Then, you know, I kind of stepped in and said, "Hey, we need
337 to do this. You know, call Air 1, you know, negotiator," stuff like that.
338 You know, and I know Sergeant (Ingram)'s a new sergeant and he
339 hadn't been on the street too long. So I kind of wanted to assist him
340 with that, you know, with command. I think anybody's input is
341 valuable...

Cpl. Rauert's concerns based on Mr. Ancira's actions led to officers formulating a plan of approach:

375 A: Just his uh, the suspect's actions and pacing back and forth. You
376 know, that's - that's, you know, that's - in my eyes that's, you know,
377 he's - he's ready to do something.
378
379 Q: Mm-hm. W...
380
381 A: Ma- I don't know what it is but i- it's something. It's not just someone
382 just sitting there. He's - he's moving. You know, he - he - he's got a
383 chair. You know, he - he - he knows that he's doing type thing, you
384 know, what he's, you know, is he planning? You know, is he, you
385 know, building up the confidence to do something? You know, that's -
386 that's kind of what I was thinking.

444 A: Yeah, holding it more like, you know, like an ancient Roman shield
445 type thing. You know...
446
447 Q: Yeah.
448
449 A: ...he's holding it up to I guess, you know, that - and that shows to me
450 that he knows, you know, there's maybe less lethal rounds that he's
451 familiar with. You know?
452
453 Q: Okay. So...
454
455 A: It shows a plan to me.
456
457 Q: Okay.
458
459 A: On his part.

Cpl. Rauert parked his patrol unit two cars down behind the lead vehicle, Officer Johns' SUV. Out of concern for potential victims in the residence due to the nature of the call, Cpl. Rauert felt it was necessary to move forward based on Mr. Ancira's refusal to comply with repeated commands to drop the pickaxe:

562 A: I think I kind of prompted it...
563
564 Q: Okay.
565
566 A: ...to Sergeant (Ingram).
567
568 Q: Yeah.
569
570 A: You know, I was like, "You know, I - I think we needed to move." I don't
571 think it was, you know, there's a public safety issue. There's people in
572 the house issue, you know, this. So I kind of - I think I prompted him...
573
574 Q: Yeah. Okay.
575
576 A: ...to say, "Hey, we kind of have to keep going on this."
577
578 Q: For public safety you felt that you needed to move forward?
579
580 A: One of the reasons, yes.
581
582 Q: Okay. And...
583
584 Q1: So - so there's people in the house issue? What does that mean?

586 A: Uh, that he said he killed, you know, his brother and his father. You
 587 know, they - they could be needing medical attention.
 588
 589 Q1: Okay.
 590
 591 A: So that's what the issue in the house could be. You know...
 592
 593 Q1: Uh-huh.
 594
 595 A: ...we can't stay out there all night if someone's needing medical issue.

The plan was to impact Mr. Ancira with a beanbag round from a safe distance in order to disarm him. Cpl. Rauert communicated this plan to officers around the lead vehicle, indicating a plan to move in on Mr. Ancira should the less-lethal shotgun be effective. As they initially approached Mr. Ancira, they used the lead vehicle as cover.

The circumstances changed once Mr. Ancira started walking towards the residence after the initial less-lethal rounds were deployed. Cpl. Rauert recalled discussing lethal and less-lethal assignments as the plan developed. He informed officers he would use a taser and designated others as lethal cover. Officers then left the lead vehicle previously used for cover and sped up in their approach as Mr. Ancira went into the driveway and closer to the residence.

Once the initial beanbag round was fired, Mr. Ancira used the chair to shield his body and block that and subsequent rounds. Cpl. Rauert then deployed his taser, at which point Mr. Ancira continued using the chair as a shield.

Cpl. Rauert could not recall whether he announced taser before he deployed, but he recalled hearing multiple commands. Cpl. Rauert deployed his taser a second time, at the same time as Mr. Ancira charged at officers, who then responded with lethal force:

864 A: Um, I ran up and - and I believe I was uh, next to Officer (Hoover). Um,
 865 and he at this point retreated into his driveway.
 866
 867 Q: Okay.
 868
 869 A: Uh, uh, you know, like a carport I would say - maybe a carport or
 870 something kind of half like that. Um, he's standing in the driveway
 871 facing us - not the house. Um, I deploy my taser - ineffective. Um, I
 872 take - I, you know, unload that taser round and I install another one -
 873 other - multiple commands are being given. Um, I hear beanbag
 874 rounds going again. You know, so I - I'm assuming it's the Henry unit
 875 that fired. Um, uh, I deploy my taser a second time. And, you know,
 876 that's exactly at the same time when he charges and officers use lethal
 877 rounds.

Although the second time Cpl. Rauert deployed his taser coincided with almost the exact moment Mr. Ancira moved towards the officers, Cpl. Rauert's intention was to disarm Mr. Ancira:

1156 A: I was tasing him just 'cause we needed to get, you know, that weapon
 1157 out of his hand. And I think once that, you know, it just so happened to
 1158 be when I hit that taser he started charging.
 1159
 1160 Q1: I got you.
 1161
 1162 A: You know, I didn't tase him because he was charging. I was tasing him
 1163 just to try to get him to drop the pickax.
 1164
 1165 Q1: Okay.
 1166
 1167 A: So in my mind it was not that lethal part on my mind of tasing him
 1168 because he's charging. I wanted to get that pickax out of his hand.

After the shooting, Mr. Ancira dropped the pickaxe in the driveway close to where he fell. Cpl. Rauert notified dispatch of shots fired and called for Emergency Medical Services (EMS) to respond, as he had previously requested they remain on standby. When Cpl. Rauert requested officers begin life-saving measures, he was informed it was not possible in light of Mr. Ancira's chest wound.

Cpl. Rauert directed officers to check the welfare of the residents at 4800 Tanney Street, as well as any neighbors that may have been impacted by the firing of rounds. Cpl. Rauert made contact with Mr. Ancira's father, who confirmed the only other people in the house were himself and Mr. Ancira's brother.

Cpl. Rauert further assisted with crime scene management and ensuring subject officers were separated and not discussing the incident.



Cpl. Rauert Taser Deployment subject

4800 TANNEY ST.

Figure 8 – Aerial map depicting Cpl. Rauert's location when he deployed his taser in relation to Mr. Ancira's location in the driveway of 4800 Tanney Street.

3. Involvement of Officer Bradley Hoover

Officer Bradley Hoover and partner Officer Skeen responded to this incident as officers on scene relayed their plan over the radio. Once they arrived, they parked behind the lead vehicle and checked in with Cpl. Rauert. Officer Hoover was instructed to take the less-lethal shotgun from Officer Cardella who was giving Mr. Ancira commands via the lead vehicle's PA system. As he took the shotgun from Officer Cardella, he confirmed it was ready to fire and that the safety was off.

Officer Hoover observed Mr. Ancira farther down the street pacing back and forth, dressed in black with only his face exposed as he held a pickaxe in his right hand. There was a steel chair sitting in front of the driveway, making Officer Hoover believe Mr. Ancira sat there waiting for police.

As Officer Hoover positioned himself in front of the driver's side door of the lead vehicle, he estimated they were approximately 100 yards from Mr. Ancira. The area was dark, but there were several street lights as well as the lead vehicle's spotlight pointed down the street which allowed officers to see Mr. Ancira. From that distance, Officer Hoover could clearly see the pickaxe with its two prongs.

Multiple commands were given to Mr. Ancira to get him to drop his weapon. Officer Hoover recalled using a name they learned through checking involvement to try to gain Mr. Ancira's compliance:

764 A: so, over the air, I think dispatch said, you know - or
 765 maybe they put it in the call text. I don't know. I wasn't in front of the
 766 computer. But somehow they got the name (Danny).
 767
 768 Q: Hm-mm.
 769
 770 A: Through involvement. So that's when he switched over to calling him
 771 by his first name. Um, he gave a couple commands, "Hey, Danny," you
 772 know, "Put down the axe. This is the Austin Police, we're here to help
 773 you." Um, you know, "Put down the axe. Put down the pickaxe." You
 774 know, "Come - come towards us," you know, "With your hands up."
 775 And I don't remember how many times he said, (Danny) but then, you
 776 know, the subject flicked us off with his middle finger.
 777
 778 Q: Hm.
 779
 780 A: And I believe I put that over the radio 'cause he did it two or three
 781 times.

As they waited, Officer Hoover checked the less-lethal shotgun provided to him, at which point he realized the safety was still on the weapon, which he then switched off.

Officer Hoover believed attempts at communicating with Mr. Ancira were unsuccessful, as they lasted 20-25 minutes with no change, indicating to him that Mr. Ancira was unwilling to cooperate with police. Once officers formed hasty react teams on either side of the lead vehicle, they slowly approached Mr. Ancira. When officers advanced, Mr. Ancira picked up the steel chair and used it in a folded position as a shield while still holding on to the pickaxe. They momentarily lost sight of Mr. Ancira as he walked behind vehicles lined in the street, prompting the officers to speed up their approach:

934 A: Hm-mm. And as we made our approach up the middle of the street, he
935 kinda got out of our view 'cause there was a big like, CSU looking van
936 parked there on the left.
937
938 Q: Okay.
939
940 A: And he kinda walked behind it and kinda - he got out of our view for a
941 couple seconds. So when he did that, we went a little bit faster up the
942 street.
943
944 Q: What were some of your reasonings or concerns about him going out
945 of view..

947 A: Well, Number 1, we couldn't see him. We didn't...
948
949 Q: Okay.
950
951 A: know if he was going to hurt somebody. If he was going to get a
952 different weapon. I mean, the big thing is, you don't have eyes on him.
953 So it's like, you know, "We gotta get eyes on him to see what he's
954 doing."

As Mr. Ancira moved away from the streetlight and farther into the driveway, the area became darker. Mr. Ancira then came back into the street, and officers continued giving him commands. Officer Hoover yelled commands at Mr. Ancira a few times, as he prepared to impact him with the less-lethal shotgun as previously discussed. Prior to continuing their approach, Officer Hoover distinctly recalled Cpl. Rauert directing officers to look down and ensure their body worn cameras ("BWC") were on.

As officers cleared the van, there was a fence, and then the driveway with Mr. Ancira closer to the garage at that point. Once Mr. Ancira came back into sight, officers continued giving him commands to drop the pickaxe. Officer Hoover recalled yelling commands as the designated less-lethal point person.

Despite multiple attempts at communication, Mr. Ancira remained noncompliant. Once Cpl. Rauert called for impact, Officer Hoover yelled "impacting" and fired his first beanbag round. As the round bounced off the chair, Officer Hoover aimed for Mr. Ancira's left knee and fired another round with no effect.

Officer Hoover recalled being at least twenty feet from Mr. Ancira when he fired the first round. He recalled moving up when he fired the additional three rounds, as his target became smaller - from center mass to left leg - and required more accuracy.



Figure 9 - Officer Hoover BWC video still depicting Officer Hoover's location when he fired the second and subsequent beanbag rounds at Victor Ancira, depicted holding the pickaxe and chair, using the chair to block the rounds.

Although unsure, Officer Hoover believed one round made contact because he observed Mr. Ancira move the chair down in what appeared to be a move to protect his legs. Officer Hoover then aimed at center mass, the middle of the body, at which point Mr. Ancira moved the chair trying to block the beanbag rounds. Officer Hoover specifically avoided firing towards Mr. Ancira's head out of concern for his safety:

1218 A: Well, at that point I was, you know - I had every intention of this thing is
 1219 gonna drop him to the ground. You know, sometimes if you aim at the
 1220 head, it could kill 'em. So, you know, I - I didn't think at that point that it
 1221 was gonna go to a lethal situation. I - from what I've seen and what I've
 1222 been told about the less-lethal, I figured, this is gonna drop him. You
 1223 know? And come to find out, there was another less-lethal officer on-
 1224 line who shot four rounds at him, as well.

After he fired four beanbag rounds, Hoover yelled to officers that he was out of rounds and set his shotgun aside. Once Officer Hoover readied his taser, he moved to a position farthest to the left of the officers and closest to Mr. Ancira and announced his intent to use the taser. Because it was dark and Mr. Ancira wore a black hoodie, Officer Hoover used the laser on his weapon to assist him. Officer Hoover then deployed his taser, which he initially believed had no effect:

1129 A: And said, "I'm gonna use my taser." And everybody - from my
 1130 recollection said, "Taser. Clear." So at that point, um, I deployed my
 1131 taser and it - it seemed to me it didn't do anything. But, you know, after
 1132 watching the video, he kinda did that, with the axe. So I don't know if
 1133 he knocked the probes off or...
 1134
 1135 Q: Hm-mm.
 1136
 1137 A: Um, I didn't know if it was affecting him or not.

Prior to viewing his body worn camera, Officer Hoover had no recollection of Mr. Ancira swinging the pickaxe to deflect the taser prongs. At the time Officer Hoover made the decision to use his taser, he believed there was still time to disarm Mr. Ancira:

- 1311 A: Um, well, I mean, you know, I had every intention of not, you know,
 1312 wanting to shoot the guy. You know? I was like, "Well, if we have the
 1313 time, you know, the - the subject hasn't come at us yet. He's just kinda,
 1314 you know, chilling and, you know, trying to deflect our rounds." And I
 1315 just figured, if the - if the less-lethal didn't work then, "Hey, maybe the
 1316 taser will work."
 1317
 1318 Q: Okay. So, you - you just stayed - you stayed less-lethal.
 1319
 1320 A: Yeah and...
 1321
 1322 Q: (Unintelligible) okay.
 1323
 1324 A: Because I knew that, you know, I was the only one with less-lethal. So
 1325 I knew that the other officers had lethal coverage on him.



Figure 10 - Officer Hoover BWC video still depicting Victor Ancira holding the pickaxe with both hands, moments after swinging the pickaxe to deflect the taser and before advancing towards officers.

Although unsure as to whether the taser made contact with Mr. Ancira, Officer Hoover was sure it did not cause neuromuscular incapacitation (NMI), but realized after viewing his body worn camera that there may have been some effect on Mr. Ancira:

1409 A: You know? So, um - and he was still e- able to use his - use his -
 1410 whatever hand he had the axe in and, you know - you know, after
 1411 watching the video, it seemed to me like, maybe it did get penetration.
 1412 And that's why he was...
 1413
 1414 Q: Hm.
 1415
 1416 A: you know, he was feeling something. And he was trying to cut the lines
 1417 with his axe or knock 'em off with his axe.

Officer Hoover realized less-lethal force was not having its intended effect of disarming Mr. Ancira.

1422 I just know that I was thinking, "Okay, this isn't working."
 1423 So, my thought was, "This isn't working. I'm probably gonna have to
 1424 switch to lethal." But I never even got a chance to because, you
 1425 know...
 1426
 1427 Q: Hm-mm.
 1428
 1429 A: I - uh, looking back on it, I think that, you know, the guy - the guy,
 1430 especially that - the fact that he left the note and everything. I think he
 1431 was like, "All right, these guys are not gonna - they're not gonna shoot
 1432 me with - they're - they're not gonna do it unless it - I make a, um - an
 1433 advancement towards them."

Officer Hoover believed Mr. Ancira was coming towards him as he moved in the officers' direction with the pickaxe raised. During the entire incident, Mr. Ancira never said anything to officers, even as he was impacted with less-lethal weapons. Officer Hoover heard what sounded like fireworks despite being next to the officers who fired their weapons, and observed Mr. Ancira still advancing as the shots were being fired, eventually falling to the ground. As he saw Mr. Ancira advance a few feet, he became fearful he would be injured:

1509 This guy's gonna kill one of us." You know? And I
 1510 remember having the - for some reason, a flash of just a axe going in
 1511 the top of one of my head- one - or one of our heads or my head.

After the shooting, another officer announced the need to ensure Mr. Ancira was secured and the need to render aid, which allowed Officer Hoover to remain focused on the task at hand. Officer Hoover specifically recalled Officer Cardella indicate that chest compressions were not possible due to Mr. Ancira's wound. Because Officer Cardella had prior surgical experience from his time in the military, he took the lead in attempting to render medical aid.

The pickaxe landed approximately three feet in front of where Mr. Ancira fell, between him and the officers. As officers checked the residence for safety, Officer Hoover noticed a white piece of paper on the door to the shed-like room in the carport, but he didn't stop to read it.

Officers then moved around the back and found a third locked door. Once Officer Hoover obtained permission to make entry, he kicked the door in and found a refrigerator blocking it. He created enough space for officers to gain entry and fell back to the end of the stack to allow the officers with the shield

to enter the house. Officer Hoover heard officers announce 'Austin Police' and make contact with Mr. Ancira's father and brother.

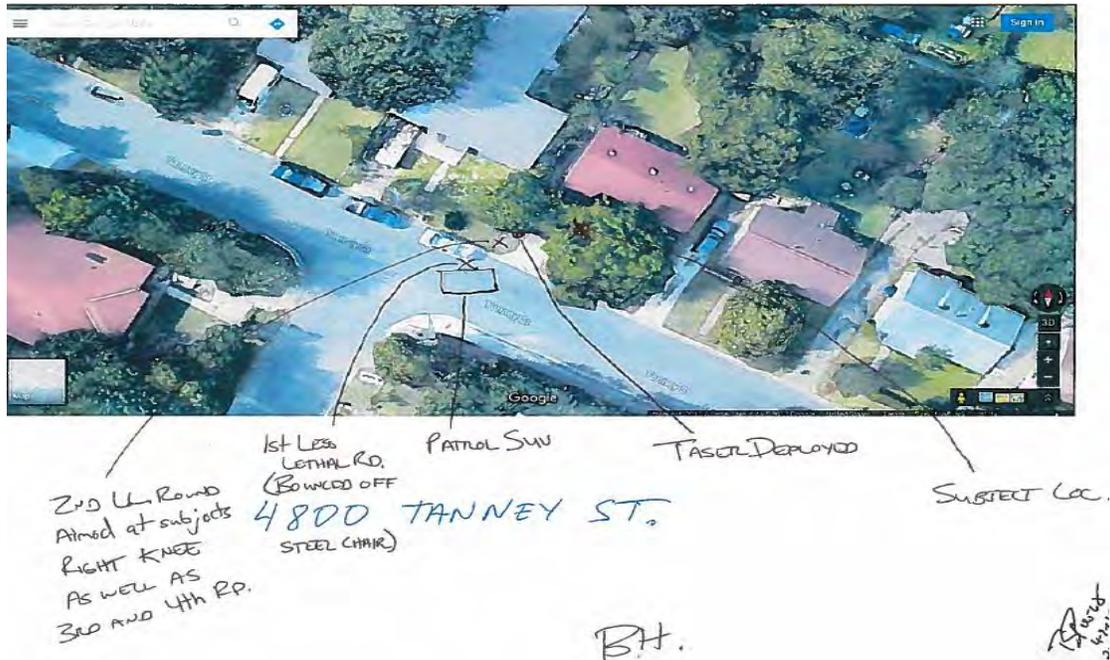


Figure 11 –Aerial Map depicting Officer Hoover's different locations as he deployed the beanbag shotgun rounds. Also depicted is Officer Hoover's location as he deployed his taser in relation to Mr. Ancira's location.

D. Summary of Timeline of Events

TIME (A.M.)	EVENT	SOURCE
4:17:39	911 call made by Victor Ancira to report killing his father and brother	CAD 180660187
4:23:04	Officers Johns and Cardella stage at Givens Park before responding to 4800 Tanney Street	CAD 180660187 and Johns/Cardella DMAV
	Officers Johns and Cardella arrive at 4800 Tanney Street	Johns /Cardella DMAV
4:34:27	Communication via PA system begins – Officer Cardella	Johns/Cardella DMAV
4:48:00	Officer Hoover fires first less-lethal beanbag round – not effective <i>Can hear taser deploy b4 4th round on Officer Ricky Valentin's BWC</i>	Johns/Cardella DMAV and Hoover BWC
4:48:10	Cpl. Rauert deploys his taser – not effective	Cpl. Rauert BWC
4:48:22	Officer Hoover deploys his taser – not effective	Officer Hoover BWC
4:48:30	Officer Meurer fires additional beanbag rounds from second less-lethal shotgun	Officer Meurer BWC
4:48:33	Victor Ancira swings axe at taser prongs moments before raising pickaxe and moving towards officers	Officer Hoover BWC
4:48:35	SHOTS FIRED	Johns/Cardella DMAV and BWCs

E. Officers Who Fired Their Service Weapons (“Subject Officers”)

NAME	WEAPON	NUMBER OF SHOTS FIRED¹⁰
William Johns	Rifle	Approximately 3-5
Timothy Skeen	9 mm pistol	Approximately 6
Michael Rowland	Shotgun	Approximately 4-5
Bryan McCulloch	9 mm pistol	Approximately 4
Gavin Smart	9 mm pistol	Approximately 2

¹⁰ See subject officers' statements. The officers could not recall the exact number of shots fired during the shooting incident, and it is not possible to discern from the BWC video footage.

II. POST-INCIDENT INVESTIGATION

As part of APD's SIU investigation, statements were obtained from multiple eye-witnesses at the scene of the shooting, who observed some or all of the event.

A. Witness Statements

(i) Statement of Arnold Patrick Herrera

Mr. Herrera resided on Tanney Street with his wife Marina and adult daughter Victoria at the time of this incident. At approximately 4:15 in the morning on March 7, 2018, he was awakened by his dogs barking loudly. As documented in his sworn report, he "could hear someone speaking over some type of loud speaker. It was apparent that the sounds were coming from outside." Specifically, Mr. Herrera recalled statements such as "we're here to help you" and "can you put down the pickaxe." Based on what he heard, Mr. Herrera believed police were outside attempting to deal with someone or something.

Mr. Herrera walked through his house and saw the flickering of red and blue lights through the front windows, further confirming the police presence. As he looked out the window on his front door, Mr. Herrera saw police near the front of his residence and in the street asking someone if their name was "Danny." Officers repeated they were there to help and pleaded with someone to put down a pickaxe. Mr. Herrera then heard the officer on the loudspeaker tell "Danny" they could talk about whatever occurred earlier. Initially, Mr. Herrera observed at least four officers in full uniform attempting to communicate with someone, but he could not see the individual or whether officers had their firearms out.

Mr. Herrera then described when he first saw Mr. Ancira "This person looked to be an adult male who turned away from the officers and began walking away from them. I could see something long in the male's hand. I don't recall which hand the item was held in." Additional commands were given to 'please stop, drop the pickaxe', but [the male] continued to walk away, disregarding their instructions. Mr. Herrera lost sight of the officers and [the male] as they moved down the street. He then opened his front door and saw the officers following [the male]. Some officers held a shield and continued ordering [the male] to drop the pickaxe, at which point they were approximately 15-20 feet away from each other. Mr. Herrera did not see officers pointing any firearms at this time.

Mr. Herrera could see officers moving back and forth, ordering [the male] to stop. Officers were in the street, giving commands towards a residence. Mr. Herrera could not identify the address of the residence involved, but officers appeared to be focusing between two houses, directly east of Mr. Herrera's residence. Mr. Herrera stated he heard tasers being deployed "Officer [sic] gave commands for the male to get on the ground and shortly thereafter I heard Taser's [sic] being deployed. I have worked security in the past and I'm familiar with this sound. I believe I heard two Taser's [sic] being used."

Mr. Herrera then heard the sound of bean bag rounds being fired "Based on my past experience, I am also familiar with this sound as this type of deployment is muffled." He recalled hearing the bean bag rounds fired three to four times, and heard the officers' commands. He relayed to his wife that "officers were really trying to get someone down, meaning under control."

Mr. Herrera saw officers moving from side to side, saying “stop, stop...put it down, put it down.” He then heard what he believed to be gunfire. He heard approximately four to five rounds in rapid succession with no delay in between.

(ii) Statement of Marina Herrera

Mrs. Herrera lived on Tanney Street with her husband Patrick and adult daughter on the date of this incident. She provided a written statement to the police, which corroborated her husband’s account of what occurred.

Mrs. Herrera heard an officer giving someone commands to ‘put down the pickaxe’, ‘whatever happened today we can help you, and “things don’t need to get any worse.” The officer identified himself as Steve and asked if the individual’s name was Danny. In her sworn statement, Mrs. Herrera indicated that “It was apparent the officer was attempting to defuse whatever situation was occurred [sic] outside.”

(iii) Statement of Sergeant Derick Ingram

Sgt. Ingram was working patrol in Charlie sector at approximately 4:18 a.m. when APD received a disturbance “hot shot” call from 4800 Tanney Street (referred to as the “suspect house”). He recalled reviewing the call text which indicated an individual had killed his mother and father and had time to take a shower.

Sgt. Ingram recalled three of the Charlie 800 units were assigned to the call and staged near the location in order to devise a plan of action:

I know they staged a block away from Tanney St. I met with those officers there and was speaking with Ofc. Valentin. Ofc. Valentin and the other officers there spoke with me about a plan to approach the house. We decided together that the best approach would be for two officers to approach on Mark St. in their patrol units and would stop there to watch the house. The other two officers would approach in their patrol vehicles on Tanney St. with me. Those two officers were able to approach the rear of the house on foot. I t

Sgt. Ingram then met with Officers Johns and Cardella by the lead vehicle, which was “perpendicular” to the house. Sgt. Ingram requested a dispatcher dial the number back, but they were unable to do so due to the dangerous nature of the call. Officers learned there was ‘Emotionally Disturbed Person’ (EDP) involvement on the address from 2017.

Sgt. Ingram saw Mr. Ancira the moment he drove up to the house.

As soon as we were driving up to the suspect house, I immediately observed the suspect sitting in a folding chair in the street directly in front of the house at Tanney St./Mark St. We stopped our patrol vehicles 40-50 yards away from the suspect who was sitting in the chair in the street.

I'm not sure who said this, but one of the officers said on the radio that he observed a subject standing in the street holding a bat. I saw the suspect wearing blue jeans and a dark colored hoodie with the hood

over his head. I could tell it was a male, and he was holding a stick. As the male passed back and forth, we put our spot lights on him and were able to see that the "stick" the male was holding was actually a pick-axe. I immediately recognized the object being held by the male as a pick-axe. The pick-axe was a large size pick-axe, approximately 3ft long wooden handle, with a metal axe end.

Officer Johns addressed Mr. Ancira prior to Officer Cardella getting on the PA system, and then Sgt. Ingram told him to drop the pickaxe. They told Mr. Ancira they were there to help him, and tried to get him to drop the pickaxe. At this point Officer Cardella started talking to Mr. Ancira through the PA system. Mr. Ancira acknowledged officers by looking at officers several times and 'flipping' officers off. He also looked back towards his house and waved at someone to come towards him. Sgt. Ingram believed Mr. Ancira was waving at the officers who were approaching from the backyard of Mr. Ancira's residence.

Officers continued giving Mr. Ancira commands as additional officers arrived. Sgt. Ingram noted Mr. Ancira never sat back down on the chair and never dropped the pickaxe.

Officers devised a plan to use the shields and patrol vehicle for cover. Sgt. Ingram instructed officers to provide lethal and less-lethal coverage with the shields. The moment Mr. Ancira began walking into the front yard and driveway of the house, Sgt. Ingram became concerned about his getting back inside.

The suspect, while still holding the chair and pick-axe, began walking into the front yard and driveway of the suspect house. Due to the call text, I believed there might still be people who were hurt or possibly dying in the house and I knew that we could not let the suspect back into the house with the pick-axe for their safety.

At that time, we began our approach of the suspect. As we began to drive slowing towards the suspect, we were giving the suspect commands on the P.A. to lay the weapon down and to come towards us. As we got about 20 yards away from the suspect, the suspect crouched down behind the folding chair. I'm not sure what the suspect's intentions were for crouching behind the chair.

We continued to drive towards the suspect and the suspect stood back up. When we got within 10-15 ft. away from the suspect, I ordered the vehicles to stop and all officers on foot to stop. We then gave the suspect more commands to drop the pick-axe. I did this in order to give the suspect another opportunity to put the pick-axe down, to follow our commands and surrender.

Mr. Ancira ignored commands and walked back towards the house, standing in the driveway. While in the driveway, Mr. Ancira looked back at officers with pickaxe and chair still in hand, and continued walking towards the door of the residence, getting within 15-20 feet.

Sgt. Ingram believed it urgent at this point to use less-lethal force.

I then felt there was imminent danger to the persons who were still inside the residence. I felt that if the suspect was able to get back inside the house while holding the pick-axe he could injure or kill whoever was inside. Because of this, I felt that there was no longer an opportunity to slow the call down. I then instructed Ofc. Hoover, who had the less-lethal shotgun, to impact the suspect. I believe the first impact round hit the chair the suspect was holding. The suspect then turned and faced us and began to use the chair as a shield against the impact rounds. The suspect was still holding the pick-axe at this point while using the chair as a shield.

Sgt. Ingram believed the less-lethal shotgun deployment was ineffective, and ordered Mr. Ancira be tased once the officer ran out of beanbag rounds. Sgt. Ingram recalled seeing the red dot from the laser on Mr. Ancira's chest, but once deployed, it too was ineffective. Sgt. Ingram indicated he saw no reaction from Mr. Ancira after the taser was deployed.

It is at this point that Mr. Ancira raised the pickaxe and came towards the officers, prompting the use of deadly force:

After the Taser was ineffective, the suspect then placed both hands on the pick-axe handle and began to approach us. The suspect had a deliberate walking pace as he was walking towards us and I saw the suspect lift the pick-axe up off his shoulder while holding the pick-axe in both hands.

At that time, officers fired their duty weapons at the suspect. As the officers shot their weapons, I observed the suspect's body spin around to where he was now facing the house. The suspect then fell facedown, with his head facing towards his house.

Sgt. Ingram saw the pickaxe fall a few feet from where Mr. Ancira fell, and gave the command for officers to stop firing their weapons.

Once officers made contact with Mr. Ancira and he was rolled over, officers were able to see obvious gunshot injuries to Mr. Ancira's upper chest and left knee area. Sgt. Ingram noted Mr. Ancira was not showing any signs of life at this point.

The house was cleared and officers made contact with the residents inside. Officers did not locate anyone injured or in need of medical attention. In the carport, Sgt. Ingram observed an apparent suicide note written on a piece of notebook paper attached to a storage closet door.

Sgt. Ingram then began notifying supervisors up the chain of command about this officer involved shooting.

(iv) Statement of Officer Steven Cardella

Officer Cardella was the first officer to arrive on scene working a two-man unit with Officer Johns in their assigned black Ford Explorer SUV police unit.

Because other responding officers were meeting at Givens Park, they made contact with them. It was agreed they would approach with protective gear (ballistic vests) in light of the call text. They approached eastbound on Tanney Street from Springdale.

As Officer Cardella drove the first police vehicle with another one behind him, he saw a person, later identified as Mr. Ancira, standing in the street holding a folding chair and what initially appeared to be a baseball bat.

Officer Cardella corroborated all subject officers' statements of Mr. Ancira pacing back and forth holding a chair with a weapon in his hand.

Officer Cardella's focus was to continue communication over the P.A. system and keep the spotlight directed towards Mr. Ancira. When instructed to do so, Officer Cardella drove the lead vehicle eastbound at a walking pace, towards the intersection of Mark Street and Tanney Street. Officers moved up approximately 50 feet, and were not there as long as they had been at the initial staging location.

Mr. Ancira kept moving out of Officer Cardella's field of view. When Mr. Ancira moved towards the residence and out of Officer Cardella's field of view, another order to move forward was given. Officer Cardella again drove the vehicle at a walking pace towards Mr. Ancira, stopping approximately 50 feet from him. As they stopped on the west side of Mark Street, Mr. Ancira was looking towards the residence as if looking at something in particular.

As Officer Cardella continued giving commands over the PA system, Mr. Ancira would move towards officers as if to charge, and then move back towards the house:

He paced towards our position like he was going to charge towards us. He paced towards our position then changed direction like he was going to charge towards the house. The person did not turn around as he had done repeatedly before. I drove the APD Ford Explorer at a walking speed towards the suspect. I moved the APD Ford Explorer at an angle towards the suspect. The APD Ford Explorer was still in the street.

Officer Cardella corroborated subject officers' statements regarding less-lethal shotguns being deployed, as well as tasers, before deadly force was used. He recalled seeing and hearing the less-lethal weapons deployed, as well as the lack of immediate reaction from Mr. Ancira, who continued moving towards the house.

Officer Cardella heard multiple gunshots and saw Mr. Ancira drop the pickaxe to the ground. Mr. Ancira then reached up towards his left shoulder with his right hand, where Officer Cardella saw a handle near his left shoulder. Officer Cardella could not tell whether it was a knife or a gun at that moment, as he was trying to blind Mr. Ancira with the spotlight. Mr. Ancira then fell to the ground, and officers continued yelling commands.

Officer Cardella exited his vehicle with the intention of providing lethal cover:

I exited the APD Ford Explorer. I began to draw my handgun, but I recognized that there were multiple lethal optional already in play. I re holstered and verbalized that I was going to go hands on. I asked an Officer to cover the person while I handcuffed. Officers provided physical cover between the person and the house. Multiple Officers covered the person while I handcuffed the person. The person was face down. The right hand was near the left shoulder and the left hand was underneath the torso near the waistline. The person on the ground was twitching, similar to how I have seen a person react at death.

Officer Cardella frisked Mr. Ancira for weapons and located a knife clipped near his left shoulder, the same side where he earlier saw a handle. Officer Cardella lifted Mr. Ancira's shirt and saw wounds to his torso. Several life saving measures were discussed, but Officer Cardella knew they would be ineffective based on the injuries sustained by Mr. Ancira.

B. Shooting Scene

The 911 call made by Mr. Ancira was placed from a landline at 4800 Tanney Street, where he lived with his father and brother. Contact with Mr. Ancira began in the middle of Tanney Street and ended in the driveway of his residence. The shooting occurred in the driveway, which is at the intersection of Tanney and Mark Streets, located slightly right of where the intersection forms a "T."



Location of incident:
4800 Tanney St.

Figure 12 – Aerial map of residential neighborhood encompassing 4800 Tanney Street.

Location of patrol SUV (lead vehicle).

(i) **Shooting Investigation**

(a) **On-Scene Evidence**

SIU investigators requested crime scene specialists document the scene and collect evidence to aid in its investigation. Photographs were taken prior to collecting evidence in order to properly document the scene as it appeared when the shooting occurred.



Figure 13 – Crime Scene Photo depicting the location of the lead vehicle used for cover when approaching Victor Ancira - at the intersection of Mark and Tanney Streets.

The lead vehicle, identified as Officers Johns' and Cardella's police SUV, remained in the middle of the street during the shooting and its location was documented prior to clearing it from the scene.



Figure 14 – Crime Scene Photo depicting the position of the lead vehicle on Tanney Street.



Figure 15 – Crime Scene Photo depicting driver’s side of lead vehicle and fence partially obstructing officers’ view during their approach from the driver’s side. The photo also documents the relative locations of the lead vehicle and Mr. Ancira (obscured).

Officers on scene reported Mr. Ancira was holding a pickaxe with both hands above his head and advanced toward them, which prompted them to use lethal force. When Mr. Ancira fell, he released the pickaxe, which fell a few feet from where he lay.



Figure 16 – Crime scene photograph depicting the location at which Victor Ancira’s body (obscured) fell in relation to the pickaxe.



Figure 17 – Close up crime scene photograph of pickaxe.

Fig. 18, below, indicates the location at which taser wires landed after taser deployment.



Figure 18 – Crime scene photograph depicting used taser wires in relation to 4800 Tanney Street driveway.



Figure 19 – Crime scene photograph of taser wires.

Spent beanbag rounds and taser cartridges were photographed at the crime scene where they were deployed by several officers.



Figure 20 – Crime scene photograph of spent beanbag round and taser cartridge in driveway in relation to chair and pickaxe location.

A knife was recovered from Mr. Ancira's left shoulder area by Officer Steven Cardella.



Figure 21 – Crime scene photograph depicting knife located strapped to Victor Ancira's shoulder.



Figure 22 – Close up crime scene photograph of the knife located on Victor Ancira.

(b) Firearm and Toolmark Evidence

No firearm or tool-mark comparisons have been conducted in this case.¹² However, when considering the evidence available in this case – including multiple videos capturing the incident itself¹¹ - we were

¹¹ Personnel shortages at the Firearms and Toolmark Section of APD's Forensic Science Bureau have delayed the ballistics testing in this case. Due to these staff shortages, firearm or toolmark comparisons are not currently being conducted unless such testing is directly relevant and necessary to the investigation.

¹² All subject officers, as well as other responding officers, were wearing BWCs and captured the shooting incident to varying degrees (depending on their exact location, and other factors contributing to visibility, etc.). Therefore, this prosecutor viewed footage from BWCs submitted in the case file and made part of this investigation. **However, state law makes confidential "a photograph or video recording, contained in or part of a closed criminal case, that depicts a deceased person in a state of...mutilation" as a "sensitive crime scene image" and prohibits its public dissemination. Tex. Gov't. Code § 552.1085.**

able to complete our legal analysis without compromising the integrity of the outcome. Should a firearm and toolmark report become available, we will review at that time and amend our letter to make the information available in our press packet.

C. Medical Examiner's Findings

On March 7, 2018, the Travis County Medical Examiner (ME) conducted a postmortem examination (autopsy) on Victor Ancira. The examiner ruled homicide as his manner of death and gunshot wounds as his cause of death.¹³ As required by law, the medical examiner issued a death investigation report.¹⁴ The medical examiner identified a total of twenty-one gunshot-related wounds to Mr. Ancira, connected to his having been shot twenty-one times. The medical examiner noted that Mr. Ancira sustained:

- Sixteen perforating or penetrating gunshot wounds.¹⁵
- Five perforating or penetrating shotgun wounds.

The medical examiner noted that Mr. Ancira was shot with 9mm handguns and rifles shooting .223 ammunition, resulting in multiple intersecting wound tracks (the path the projectiles followed). For this reason, only some of the wound tracks could be determined.

The medical examiner noted additional gunshot-related injuries to Mr. Ancira, to include distinct bruises with abrasions of the upper left and right legs, which were determined to be consistent with the injuries that may have been produced by impact of the beanbags.

During the postmortem examination, seven bullets, fragments from two additional bullets, 12 buckshot pellets, and a black shot cup were recovered from Mr. Ancira's body. The medical examiner was not able to attribute each projectile to a specific gunshot wound for the reasons noted above.

The medical examiner could not make a determination of relative range of fire distance from examination of the wounds. For most of the wounds, the medical examiner did not notice soot, stippling, tissue searing, or muzzle imprint, any of which would indicate either a contact wound, close, or intermediate range of fire.

In addition, the medical examiner documented a medical history significant for schizophrenia and bipolar disorder for Mr. Ancira. Toxicology testing on Mr. Ancira's blood postmortem was negative for alcohol and drugs of abuse.

A review of the medical examination conducted during the autopsy corroborates statements of officers on scene, as well as other evidence concerning the circumstances leading to and immediately following Mr. Ancira's shooting.

¹³ "Manner of death" is an opinion as to the cause of death, while "cause of death" refers to the condition that produced the death. "Homicide" is the killing of one person by another. Ruling a death a homicide in and of itself does not mean that the act causing the death is criminal in nature.

¹⁴ Travis County Office of the Medical Examiner, Medical Examiner Report No. 18-01300.

¹⁵ A "penetrating" gunshot wound is one that enters but does not exit the body. A "perforating" gunshot wound is one that enters and exits the body. A single perforating gunshot can have multiple entry and exit points depending upon the trajectory of the bullet and the position of the subject's body when struck.

III. LEGAL ANALYSIS: REASONABLENESS OF OFFICERS’ USE OF DEADLY FORCE

The use of deadly force against another constitutes a crime if there is no legal justification for it. In a case involving an officer’s use of force, a criminal prosecution would be warranted if, after reviewing all available evidence, we concluded that there is no legal justification under the law. Under the facts and circumstances in this case, whether the officers’ use of deadly force is reasonable depends on whether the evidence supports the conclusion that the use of deadly force was justified in self-defense, in defense of a third person or to effectuate a legitimate law enforcement purpose. For the reasons set forth below, we conclude that a reasonable juror following the law would find the use of deadly force to be justified as to all five subject officers.

A. Law Governing Use of Deadly Force

An analysis of the reasonableness of an officer’s use of force is governed by the Fourth Amendment and Texas statutory law. Therefore, that will be the standard applied to our analysis of the reasonableness of the subject officers’ use of force in Mr. Ancira’s death.¹⁶ Under the Fourth Amendment, a law enforcement officer’s use of force against a person constitutes a “seizure” and is subject to the reasonableness requirement.¹⁷ The Supreme Court of the United States has further construed the term as one of objective reasonableness: the question is “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”¹⁸

In conducting our analysis, whether or not the officers’ use of force was reasonable depends on whether the investigative facts known to the officers on scene support the conclusion that their use of such force was justified, viewed from the perspective of the acting officers at the time the force was used.¹⁹ Succinctly put, would a reasonable officer on scene have used force at the time the subject officers did with the same information and knowledge the officers had on scene?

This inquiry must make “allowance for the fact that police officers are often forced to make split-second judgments” and should not be based on the benefit of “the 20/20 vision of hindsight.”²⁰ In the context of the law enforcement use of deadly force, the basic requirement is that the use of deadly force be limited to situations in which it was immediately necessary.²¹

Under Texas law, the Fourth Amendment’s reasonableness standard is incorporated in several statutes applicable to use of force cases for law enforcement. Those statutes allow the use of deadly force in self-defense, in defense of third persons, or in order to effectuate a legitimate law enforcement purpose.²²

¹⁶ Because both deadly and non-deadly (less-lethal) force was used against Mr. Ancira culminating in the shooting resulting in his death, we will analyze the use of both under this standard and address them separately.

¹⁷ See U.S. CONST. AMEND. IV: “The right of the people...against unreasonable searches and seizures, shall not be violated...”

¹⁸ See *Graham v. Connor*, 490 U.S. 386, 396 (1989).

¹⁹ *Id.* at 396-97.

²⁰ See *Graham v. Connor*. Our inquiry must consider whether a reasonable officer in the circumstances that these officers encountered would have reasonably concluded they were in imminent danger from the pickaxe that Mr. Ancira had in his possession.

²¹ *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

²² TEX. PEN. CODE §§ 9.32, 9.33, and 9.51 (c).

B. Texas Law Governing the Use of Deadly Force: Chapter 9 and the Reasonableness Standard

Chapter 9 of the Texas Penal Code sets out three general instances in which a law enforcement officer's use of deadly use of force is justified: in self-defense, in defense of a third person, or to effectuate a legitimate law enforcement purpose such as an arrest or search. We will, therefore, evaluate the reasonableness of each officer's use of deadly force in these instances based on the facts and circumstances in this case.

1. Use of Deadly Force in Defense of [Self] – Texas Penal Code

2. There are no sources in the current document.9.32

Section 9.32 of the Texas Penal Code describes the circumstances under which deadly force may be used in self-defense by any person, including law enforcement:

- (a) A person is justified in using deadly force against another:
 - (1) if the actor would be justified in using force against the other under Section 9.31; and
 - (2) when and to the degree the actor reasonably believes the deadly force is *immediately necessary*²³ :
 - A. To protect the actor against the other's use or attempted use of unlawful deadly force; or
 - B. To prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

However, whether an actor can use deadly force is contingent on their compliance with **Section 9.31**, which governs **the use of non-deadly force**. That section provides:

- (a) ... [A] person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

Therefore, the requirements of Section 9.31 governing the use of force must be met before an actor can be justified in the use of deadly force.

3. Use of Deadly Force in Defense of Third Person – Texas Penal Code §9.33

The use of deadly force in defense of a third person is governed as follows:

A person is justified in using force or deadly force against another to protect a third person if:

- (1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and
- (2) the actor reasonably believes that his intervention is *immediately necessary* to protect the third person.

²³ The Supreme Court provided further guidance in interpreting the Fourth Amendment to allow for the use of deadly force by law enforcement only in situations in which it was immediately necessary. See *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

4. Use of Force [to Effectuate a Legitimate Law Enforcement Purpose]: Texas Penal Code §9.51

The final statute to be applied to the facts and circumstances in our analysis governs the use of force by law enforcement officers in discharge of their duties. It provides:

- (a) A peace officer...is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search,...if:
- (1) the actor reasonably believes the arrest or search is lawful...; and
 - (2) ...he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

C. Analysis: The Facts and Circumstances Surrounding the Officers' of the Use of Deadly Force

The facts and circumstances relevant to this analysis begin the moment Mr. Ancira called 911 to report killing his father and brother, to include the subject officers' arrival to 4800 Tanney Street, Mr. Ancira's possession of a deadly weapon²⁴, officers' attempts to gain compliance from Mr. Ancira, and Mr. Ancira's advancing towards officers with the raised pickaxe, all culminating in the shooting itself.

Because there are five officers that used deadly force, the officers' conduct in discharging their service weapons²⁵ must be deemed reasonable under the above-referenced statutes.²⁶

1. The Officers' Use of Deadly Force in Defense of [Self] Under §9.32

The facts and circumstances known to the five subject officers (William Johns, Timothy Skeen, Michael Rowland, Bryan McCulloch and Gavin Smart) at the time they fired their service weapons were evaluated individually, but will be addressed collectively.

The investigation established that prior to their arrival at 4800 Tanney Street, all five officers were aware that 1) the initial 911 call indicated the caller killed his father and brother, 2) the call indicated weapons were still inside the house, and, 3) due to the nature of the call, a plan was devised to wear protective gear (body armor and shields) in order to form a hasty react team and approach with caution.²⁷ Each officer also observed Mr. Ancira in possession of a pickaxe, and, to varying degrees, observed his repeated refusal to comply with commands and pleas to drop his weapon and engage

²⁴“Deadly weapon” is defined as ‘anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.’ The pickaxe in Mr. Ancira’s possession constitutes a deadly weapon. See *Givens v. State*, 749 S.W.2d 954 (Tex. App. –Ft. Worth 1988, writ ref’d).

²⁵ Whether an officer’s shots struck Mr. Ancira or not, the discharge of the weapon in his direction constitutes a use of deadly force and a criminal offense if not legally justified. See *TEX. PEN. CODE §22.01 Assault occurs whenever a person “intentionally or knowingly threatens another with imminent bodily injury...” TEX. PEN. CODE §22.02 Aggravated Assault occurs when a person uses a deadly weapon during the course of an assault.*

²⁶ The conduct must be legally justified under the facts and circumstances as known to each officer at the time each officer fired used deadly force.

²⁷ Because a violent crime was reported with little or no additional information provided, it is a common tactic for law enforcement to proceed with a tentative plan of action when responding to the scene for the safety of all persons involved, including the officers.

with the police peacefully.

In looking at the objective facts and evidence derived from this investigation, it is clear officers attempted to deescalate their encounter with Mr. Ancira before resorting to deadly force.

The facts are uncontroverted that, upon their arrival, officers attempted to make contact with Mr. Ancira the moment they observed him in the middle of the street with a weapon.²⁸ The investigation revealed that all officers who responded to the scene were aware someone called 911 to report killing two people, but they had no knowledge at the time that it was Mr. Ancira who placed the call.²⁹ For this reason, officers attempted to obtain additional information on the call and devise a plan of approach.

Approximately fifteen (15) minutes elapsed from the moment officers made contact with Mr. Ancira in the middle of the street to the shooting incident.³⁰ For the duration of the incident, Mr. Ancira maintained possession of the pickaxe, and officers tried to persuade him to drop the weapon and engage with them peacefully. Officers observed Mr. Ancira's defiant conduct and his refusal to drop the pickaxe, indicating to them that Mr. Ancira did not want to engage peacefully with officers. Officers' beliefs were confirmed through Mr. Ancira's subsequent actions.

Although Mr. Ancira never verbalized his intentions, his actions and demeanor showed an unwillingness to cooperate with the officers from the moment they arrived. It is difficult to argue that the officers could have misinterpreted his actions, as he 'flipped' officers 'off' numerous times, repeatedly paced back and forth on the street with the pickaxe in hand, and at one point motioned for someone to come towards him. Although it is unclear who he wanted to come towards him, Mr. Ancira's actions support the belief that he wanted to engage the officers in a physical confrontation.³¹

Further proof of his intended purpose is the note left behind by Mr. Ancira, in which he anticipates or expects death.³² The note and the location where it was found provide an explanation as to why Mr. Ancira's conduct escalated when the police failed to engage him with force. He reengaged by getting closer to the residence, prompting officers to move forward with their plan of action.

Approximately fourteen (14) minutes into their encounter, Mr. Ancira moved from the middle of the street towards the driveway at 4800 Tanney Street. This action prompted officers to move in closer to him and impact him with less-lethal force to keep him from getting in to the residence³³ precipitating the shooting itself.

The evidence is uncontroverted that less-lethal weapons were utilized before resorting to deadly force.³⁴ The investigation revealed that four different less-lethal weapons were deployed against Mr. Ancira prior to engaging him with deadly force. However, once less-lethal weapons were deployed, events unfolded so quickly and the less-lethal weapons were used in such rapid succession that there

²⁸ See Officers' Johns' and Cardella's DMAV at 4:33:22 and Officer Johns' BWC video footage at 04:33:22.

²⁹ See subject officers' statements: Officers Johns, Skeen, Rowland, McCulloch, Smart, Cpl. Meurer, Rauert and Hoover.

³⁰ Although Officer Johns addressed Mr. Ancira first (see FN 13) at 04:33:22, communication via the PA system began approximately one minute afterwards. See Officers Johns' and Cardella's DMAV at 04:34:27 and Officer Cardella's BWC video footage at 04:34:27. All subject officers' BWC videos - as well as those of witness officers on scene - capture the time of the shooting incident.

³¹ See witness officer Sgt. Derek Ingram's sworn statement, page 2, and subject Officer William Johns' interview, 1137-1143.

³² See Figure 2 above. The handwriting was confirmed as Mr. Ancira's, as well as the reference to his nickname.

³³ See Officer Johns' interview, 1246-1270, 1358-1364 and 1368-1379.

³⁴ See officer statements, subject officers' BWC video, Officers Johns' and Cardella's DMAV.

was an overlap of the use of less-lethal weapons the last few moments before deadly force was used. Three officers deployed four less-lethal weapons: two beanbag shotguns and two tasers.

Officer Hoover used the first beanbag shotgun, which he fired four times from two different locations.³⁵ The beanbag shotgun was ineffective, as Mr. Ancira deflected rounds with the chair. Immediately after running out of ammunition, Officer Hoover relayed this to officers and transitioned to using his taser.

As Officer Hoover transitioned to taser, Cpl. Rauert deployed his taser.³⁶ That deployment was also ineffective, at which point Officer Hoover reengaged Mr. Ancira with a taser. Officer Hoover deployed his taser approximately 10 seconds after he fired his less-lethal shotgun.³⁷

He announced his intent to use his taser and deployed it from a third location, as he was forced to move up to be within effective range.³⁸

The fourth and final less-lethal weapon fired was a second beanbag shotgun used by Officer Meurer. Immediately after Officer Hoover announced he was out of beanbag ammunition for his shotgun, Officer Ricky Valentin called for a second less-lethal shotgun, at which point Officer Meurer moved into position and fired his beanbag shotgun.³⁹

By the time the fourth less-lethal weapon was used, Mr. Ancira had swung his pickaxe at the second taser and advanced on officers with the pickaxe raised in an aggressive manner. It is at this time that the lethal shots are fired simultaneously, and at which point the use of less-lethal weapons overlaps. In his interview, Cpl. Rauert indicated his taser was deployed a second time almost simultaneous with the shots fired, as his intention was to disarm Mr. Ancira just as Mr. Ancira moved towards the officers in a threatening manner.⁴⁰

The officers' priority in engaging Mr. Ancira was to keep him from using force against anyone, and from gaining entry into the residence in light of the initial 911 call. Officers still had no information on whether there were any potential victims inside the residence or whether anyone needed medical attention, prompting them to devise a plan that addressed those concerns while ensuring the safety of the community, as well as their own.

All subject officers observed Mr. Ancira repeatedly use the chair as a shield to deflect the beanbag rounds and taser prongs and still maintained possession of the pickaxe. Officer Johns believed that a less-lethal round was what caused Mr. Ancira to drop the chair, thereby exposing himself unwillingly.⁴¹

Finally, and crucial to this analysis, all subject officers observed Mr. Ancira raise the pickaxe with both hands and advance towards officers in what can only be construed as a threatening manner. It is at this precise moment - fearing Mr. Ancira would strike them with the pickaxe – that the officers shot

³⁵ See Officer Hoover's BWC at 04:47:59 – 04:48:13.

³⁶ See Cpl. Rauert's BWC at 04:48:10 – 04:48:35.

³⁷ See Officer Hoover's BWC at 04:48:22 – 04:48:35.

³⁸ Less-lethal shotguns have a wider range and can reach targets from farther away, making them a better option when not within a few feet of an intended target.

³⁹ See Officer Meurer's BWC at 04:48:22 – 04:48:35.

⁴⁰ See Cpl. Rauert's interview, 1156-1168.

⁴¹ See Officer Johns interview, 1375-1391.

Mr. Ancira.⁴¹

It was Mr. Ancira's actions in raising the pickaxe and advancing towards officers that precipitated officers using deadly force to protect themselves. In advancing towards officers with a deadly weapon in a threatening manner from that distance, the only reasonable inference that can be made is that Mr. Ancira would have caused serious bodily injury or death to one or more officers if they had not used deadly force *at that precise moment.*⁴²

Before addressing the use of deadly force in self-defense, Section 9.31 governing the use of force must be satisfied. Applying Section 9.31 to the investigative facts and circumstances, the subject officers would be justified in using force against Mr. Ancira when and to the degree the officers reasonably believed the force was immediately necessary to protect themselves against Mr. Ancira's use or attempted use of unlawful force.

Based on the information known to officers upon arrival at 4800 Tanney Street, they believed unlawful [deadly] force may have already been used against at least two people inside the residence. Once on scene, Mr. Ancira's defiant actions, his aggressive demeanor, and his refusal to drop his weapon led officers to believe that Mr. Ancira was a threat to them. This was further evidenced by the fact that Mr. Ancira advanced towards officers with the pickaxe raised once they engaged him in less-lethal force in order to disarm him and prevent him from gaining entry into the residence.⁴³

Taking the investigative facts as a whole, Mr. Ancira's 911 call to police and the note he left behind support the conclusion that his intended purpose was to engage in deadly force with the police. For these reasons, we conclude that Mr. Ancira's actions in raising the pickaxe and advancing towards officers constitutes an attempted use of unlawful deadly force. We further conclude that the subject officers' beliefs that Mr. Ancira intended to unlawfully use deadly force against them was reasonable, and their belief that their use of deadly force was immediately necessary to protect themselves was justified under Texas Penal Code §9.32.⁴⁴

2. Officers' Use of Deadly Force in Defense of Third Person Under §9.33

For the same reasons that the five subject officers were justified in using deadly force in self-defense, we conclude that the officers were justified in using deadly force to protect others. The objective facts and evidence derived from this investigation have been reviewed and applied in the preceding section, but they apply equally to the defense of a third person analysis.

The investigation showed that Mr. Ancira's actions caused all subject officers to fear serious bodily injury or death due to his attempted use of unlawful deadly force.⁴⁵ While some officers articulated a fear of harm to their person and others a fear of harm to their fellow officers,⁴⁶ the investigative facts lead us to conclude that all of the subject officers could have used deadly force in defense of their

⁴¹ See the voluntary, transcribed statements of Officer Johns, Skeen, Rowland, McCulloch and Smart.

⁴² See Texas Penal Code Sections 9.32 and 9.33, and *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁴³ Mr. Ancira could gain access to additional weapons or prevent officers from rendering assistance to injured persons inside the residence.

⁴⁴ Section 9.32 (a) specifically states: 'a person is justified in using deadly force against another if the actor would be justified in using force against the other under Section 9.31; and when and to the degree the actor reasonably believes the deadly force is immediately necessary to protect the actor against the other's use or attempted use of unlawful deadly force.'

⁴⁵ See subject officers' statements.

⁴⁶ Of the five subject officers who used deadly force, two officers specifically articulated fear for their fellow officers: William Johns and Gavin Smart. See Officer Johns interview at 1585-1598 and 1684-1701.

fellow officers against Mr. Ancira's attempted use of unlawful deadly force.⁴⁷

Therefore, we conclude that the officers were justified in using deadly force in defense of fellow officers against Mr. Ancira's attempted use of unlawful deadly force under Texas Penal Code §9.33.⁴⁸ As previously addressed, the circumstances as the officers believed them to be were that Mr. Ancira had already potentially killed two people, he was armed with a deadly weapon, refusing officer commands, deflecting less-lethal rounds with a folding chair, and advancing towards them with the pickaxe raised as if to strike them when they fired their service weapons. Under these circumstances, it is reasonable for the officers to believe they were justified in using deadly force against Mr. Ancira's attempted use of unlawful deadly force to protect their fellow officers.

IV. LEGAL ANALYSIS: REASONABLENESS OF OFFICERS' USE OF [LESS-LETHAL] FORCE

A. Officers' Use of Force to Effectuate a Legitimate Law Enforcement Purpose §9.51

In addition to the use of deadly force, three APD officers used less-lethal force against Mr. Ancira in an attempt to detain him prior to the shooting itself: Cpl. Rauert and Officers Hoover and Meurer deployed beanbag shotguns and tasers in an effort to prevent Mr. Ancira from gaining entry into 4800 Tanney Street armed with the pickaxe.

As the facts established, once officers responded to the call, they remained on scene for approximately 15 minutes attempting to engage Mr. Ancira peacefully and disarm him.⁴⁹ During this entire time, Mr. Ancira never dropped the pickaxe or the chair he used as a make-shift shield until he was forced to do so.

As previously indicated, officers deployed less-lethal weapons to prevent Mr. Ancira from gaining entry into the residence at 4800 Tanney Street *only after* Mr. Ancira evidenced an intend to do so by increasing his pace and walking farther into the driveway.⁵⁰

We conclude that officers' use of force against Mr. Ancira constituted a seizure of his person. Therefore, we look now to whether the seizure or detention effected with the use of less-lethal force was justified.

It is well established that officers received information that two people at 4800 Tanney Street were murdered and the purported killer was still inside with access to weapons. Once officers arrived, they personally observed Mr. Ancira's aggressive demeanor and his actions for approximately 15 minutes before they attempted to detain him.

⁴⁷ Under Section 9.33, a person is justified in using deadly force against another to protect a third person if the actor would be justified under 9.32 in using deadly force to protect himself against the unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect, and the actor reasonably believes his intervention is immediately necessary to protect the third person.

⁴⁸ Section § 9.33 specifically states: a person is justified in using...deadly force against another to protect a third person if (1)...the actor would be justified under ...Section 9.32 in using...deadly force to protect himself against the unlawful...deadly force he reasonably believes to be threatening the third person he seeks to protect; and (2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

⁴⁹ See Officers Johns' and Cardella's DMAV and subject officers' BWC videos.

⁵⁰ See subject officers' written statements.

As officers remained on scene and attempted to engage Mr. Ancira peacefully, they developed sufficient information suggesting to them that Mr. Ancira posed a threat to officers and others based on his actions and demeanor. Officers made reasonable inferences based on their observations and information known to them at the time that Mr. Ancira was involved in the call they were attempting to investigate.

We conclude that Based on the information known to officers at the moment they used less-lethal force against Mr. Ancira, they had specific, articulable facts which warranted Mr. Ancira's detention.⁵¹ We further note that officers could have lawfully detained Mr. Ancira the moment they encountered him on the street armed with a pickaxe and he refused their commands to drop his weapon, but they attempted to deescalate the situation without resorting to using force.

It is uncontroverted that officers needed to check on the welfare of potential victims inside 4800 Tanney Street, and were unable to do so without first addressing Mr. Ancira's unusual conduct. Once on scene, officers faced the unenviable position of having to engage with Mr. Ancira and not prematurely gauge any potential threat, while continuously trying to disarm him to check on the potential victims inside the residence.

Valid concerns for officers included the fear that Mr. Ancira could have access to additional weapons inside the home or he could be working in concert with others, and officers could be further exposed if he shot at them from inside the residence. It is clear that officers would lose their tactical advantage once Mr. Ancira made his way inside and they lost sight of him.

It can reasonably be inferred that, under the circumstances, Mr. Ancira's actions in moving farther up the driveway and towards the house armed with a pickaxe evidenced an intent to gain entry into the house for an unlawful purpose. From the information known to officers at the time, Mr. Ancira's actions, coupled with the 911 call and his refusal to comply, provided sufficient evidence for them to detain Mr. Ancira – with force if necessary – until they investigated further. For reasons previously noted, we conclude that officers were justified in using [less-lethal] force against Mr. Ancira to effect a legitimate law enforcement purpose under §9.51.

CONCLUSION

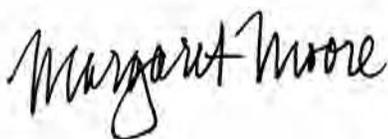
For the reason given above, we find that the filing of criminal charges against Officers Johns, Skeens, Rowland, McCulloch and Smart is not supported under Texas law, as each officer's individual and independent use of deadly force in this incident was legally justified under the circumstances. Therefore, criminal charges will not be filed against any of these officers.

Regarding the less-lethal (non-deadly) force used, we have also concluded that the filing of criminal charges against Cpl. Rauert and Officers Hoover and Meurer is not supported under Texas law, as each officer's individual and independent use of less-lethal force during this incident was legally justified under the circumstances. At this time, we have concluded the review of this incident and will take no further action in this matter.

⁵⁰ It is well established law that a detention is justified if law enforcement officers have reasonable suspicion to believe a crime may be committed. See *Terry v. Ohio*, 392 U.S. 1 (1968).

A press packet (which will be available to the public) that includes videos, witness statements (to include witness officers), subject officer statements, forensic reports, and photos has been released. Items and legal citations listed in the analysis have also been attached. This decision will be posted on our office website and will be accessible under 'Victor Ancira' and the date of the incident, March 7, 2018.

Very truly yours,

A handwritten signature in black ink that reads "Margaret Moore". The signature is written in a cursive, flowing style.

Margaret Moore