

MARTINELLI & ASSOCIATES
JUSTICE & FORENSIC CONSULTANTS, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARITZA AMADOR, INDIVIDUALLY	§	
AND AS REPRESENTATIVE OF THE	§	
ESTATE OF GILBERT FLORES AND	§	
AS NEXT FRIEND OF MINOR R.M.F.,	§	
VANESSA FLORES, MARISELA	§	
FLORES, CARMEN FLORES AND	§	
ROGELIO FLORES	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO.5:15-CV-00810RP
V.	§	
	§	
BEXAR COUNTY, GREG VASQUEZ	§	
Individually and in his Official Capacity	§	
and ROBERT SANCHEZ, Individually	§	
and in his Official Capacity	§	
Defendants,	§	

AFFIDAVIT OF RON MARTINELLI, Ph.D., CMI-V

STATE OF TEXAS
COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared RON MARTINELLI, Ph.D, who having first been duly sworn, upon his oath deposed and testified as follows:

My name is Dr. Ron Martinelli. I am over the age of 21, of sound mind, competent to testify and have personal knowledge of the facts contained herein. All of my opinions and observations stated in this Affidavit are within my personal knowledge, and are based on my law enforcement training and experience, and are based on the matters I personally reviewed.

I have spent over twenty-two years as an active police officer and detective. Additionally, I have directed a California Criminal Justice Training Center and Basic Law Enforcement Academy.

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I possess a doctorate degree (Ph.D.) in Criminology with emphasis in forensic psychology and a Master's degree in Public Administration with emphasis in Justice Administration (MPA/JA) and a specialization in municipal government consulting.

I am an adjunct professor of Forensic Science at National University – San Diego where I have instructed in the University's Masters in Forensic Science program. I am a former adjunct professor of Forensic Psychology at Argosy University – San Francisco and a former adjunct professor of Criminology at California Polytechnic State University – San Luis Obispo. Since 1978, I have also been a credentialed instructor or adjunct professor of law enforcement, police practices, forensics and the administration of justice at numerous accredited universities and colleges in California, Nevada and Florida.

I am a member in good standing with the American College of Forensic Examiners Institute (ACFEI), where I have presented nationally as an expert in police practices, forensics, crime scene analysis, force investigations, TASER® electronic control weapons (ECW) and forensic force analysis.

I am certified as a Medical Investigator through the American College of Forensic Examiners, as accredited through the Missouri State Medical Association and the Accreditation Council for Continuing Medical Education. I currently Chair ACFEI's Certified Medical Investigator's program Board where I am involved in the development and instruction of medical and forensic investigations curriculum.

I am Board Certified in Forensic Traumatology by the American Academy of Experts in Traumatic Stress and the National Center for Crisis Management, where I also hold Diplomate Status. This certification indicates specific expertise in the areas of stress-induced incidents, and psychological/emotional trauma. My specific areas of expertise in forensic trauma are mental health disorders, psycho-medical emergencies, human factors, psychophysiology and performance under intense stress; and stress memory recall.

I am certified as a Force Analyst through the Force Science Training Institute®, at Minnesota State University which is an accredited institution of higher learning. The primary field of research and curriculum at the Force Science Institute® is the analysis of crime scenes and forensic evidence relating to officer-involved shootings, in-custody deaths and human factors involved in major uses of force.

I am a Certified Force Investigator, with specialization in officer-involved shootings and in-custody deaths through the Los Angeles Police Department's prestigious Force Investigations Division. The majority of my forensic education through LAPD's Force Investigations Division was crime scene management, evidence identification, recovery and forensic analysis.

I am a Certified Litigation Specialist in police and corrections litigation through Americans for Effective Law Enforcement (AELE) which is the largest law enforcement amicus curie litigation defense organization in the nation. I maintain active participation in this professional organization, attending courses in police practices, investigations, forensics and civil rights laws pertaining to law enforcement encounters with the public.

I am either currently, or have been recently retained as a retained police practices and forensic expert for the United States Department of Justice, the Attorney General's Offices of Alaska, Oregon, Nevada, New Mexico, Nebraska, Illinois, West Virginia, Delaware and Vermont; the Cities of Portland, Sacramento, San Jose, Los Angeles, Long Beach, San Diego, Albuquerque, Denver, Miami Beach, Cleveland, Columbus, Richmond, VA, Schenectady, NY; and numerous municipalities in California and Illinois. I am currently and have been a retained civil rights and forensic police practices expert to a number of nationally recognized law firms specializing in civil rights and police practices litigation representing plaintiffs and defendant agencies.

I was the independent Special Investigator for the City of Riverside (CA) Police Community Review Commission where I reviewed officer-involved shootings and in-custody deaths for this civilian body through the Office of Mayor.

I am a law enforcement/forensics expert for the United States Marine Corps Judge Advocate General's (JAG) Office.

As a law enforcement officer and investigator, I have personally investigated, and/or supervised over three hundred complex crime scenes, recovering and documenting evidence from them. I investigate law enforcement cases in both field and corrections environments.

As a forensic criminologist and a Certified Medical Investigator, I have personally investigated, reviewed, analyzed, documented evidence and consulted on and/or testified in nearly three hundred (300) major uses of force including over one hundred (150) complex officer and citizen involved shootings and in-custody deaths.

I am a former director of a California Commission on Peace Officer Standards & Training (POST) police and corrections academy, where I also served as Division Dean of Criminal Justice. In this position I administrated over, supervised and evaluated a staff of over one hundred tenured and adjunct law enforcement faculty who instructed police/corrections practices. As director, I was also involved in developing training methodologies relating to contemporary police practices and defensive force including firearms and deadly force decision making.

Since 1980, I have been approved as an instructor or training provider by the states of California, Nevada, Arizona's Commission on Peace Officer Standards & Training (P.O.S.T.), and the Texas Commission on Officers Law Enforcement training (TCOLE). In this capacity, I have served as an instructor in the areas of police and corrections practices, jail operations and liability; laws of arrest, search and seizure, Tactical Negotiation, de-escalation, mental health disorders, use of force, officer safety tactics, Arrest & Control Tactics, chemical agents, electronic control weapons (ECW) – TASER®, Unarmed Defensive Tactics, impact weapons and less lethal munitions; firearms instruction, criminal investigations, the investigation of violent crimes including shootings; "Suicide by Cop," psychological profiling, the psychology of criminal behavior, suicidality, the body's psycho-physiological responses to stress-induced circumstances; police responses to psycho-medical emergencies; and the investigation of officer-involved and civilian self-defense shootings.

I hold certifications as a firearms instructor through Gunsite® and the National Rifle Association's Law Enforcement Activities Division (NRA-LEAD). I am a recognized

member of the International Law Enforcement Firearms Instructors Association. I have presented California POST and Board of Corrections approved courses in basic and advanced tactical pistol instruction.

I am a certified deadly force scenario instructor through Simunitions®. I am an approved firearm, deadly force and concealed carry instructor by the Riverside and San Diego County Sheriff Departments where I teach the legal aspects of deadly force; as well as the physical aspects of pistol craft and combatives to civilians, retired peace officers and military personnel who are in application for the California Concealed Carry Permit.

I am an approved firearms instructor through the State of Arizona's Department of Public Safety to instruct basic firearms, the legal and practical aspects of deadly force for the department's Concealed Carry Permit program. This program includes reciprocity training to train and certify civilians and military personnel to carry concealed firearms in thirty-five other states including the State of Texas.

I am an approved firearms, deadly force and self-defense instructor by the California State Bar Association and instruct classes in these areas for attorneys and judges for CLE credit.

I am a member in good standing of the International Law Enforcement Educators and Trainers Association (ILEETA) and have presented to national and international law enforcement audiences on de-escalation, use of force investigations, "Suicide by Cop" incidents and the analysis of forensic evidence.

As a police officer, detective, law enforcement, and municipal government trainer and consultant, I have consulted with over three hundred law enforcement and criminal justice agencies and specialized military units. I have personally trained over 60,000 peace officers and military personnel in my certified areas of instruction.

I have consulted with and/or trained numerous county, state and federal prosecutors; Assistant State Attorney Generals; Superior Court judges; and various professional training organizations including the California District Attorneys Association (CDAA) and the Center for Judicial Research & Education. I remain an active trainer and consultant within my areas of expertise.

As a forensic criminologist, law enforcement, municipal government trainer and consultant, and a Federal/State Courts qualified police/corrections practices expert since 1993, I have been retained by county counsels, city attorneys, plaintiff attorneys, prosecutors, criminal defense attorneys and a state attorney general's office in over three hundred Federal and State Court cases.

I have been deposed and have testified in numerous federal and state civil and criminal actions; and have been designated by Federal and State Superior Court judges as a qualified authority in police and corrections practices, laws of arrest, search and seizure, traffic enforcement, criminal investigations, crime scene investigations, forensics, officer safety tactics, use of force/excessive force at all force levels including TASER® electronic control weapons (ECW); officer-involved shootings; suicidality; alcohol and narcotics influence; human factors and psycho-physiological responses to stress-induced circumstances. I have also been qualified in both Federal and State

Courts to render findings and opinions on the subjects of hiring, supervision, training, police practices negligence, internal affairs investigations and law enforcement liability.

The information and accompanying documents I have provided to the Court are truthful and accurate to the best of my knowledge and I pray that the Court will find that my professional experience, expertise and education are sufficient to be designated as an expert in this matter.



Signed _____

Date: March 3, 2017

Ron Martinelli, Ph.D., CMI-V, BCFT, CFA
Forensic Criminologist/Certified Medical Investigator
Federal/State Courts Qualified Police Practices Expert

Attorney Robert Wilson, Esq., counsel for the plaintiffs, requested that I prepare this declaration outlining my basic opinions in this case. Those findings and opinions to date have been incorporated into this document.

As is usually the case in investigations such as this, I am aware that there may be additional documents or other evidence that might subsequently become available during the discovery process that I might wish to review which may assist me in developing more detailed findings and opinions. Therefore, I reserve the right to amend my findings and opinions at some later date based upon my ability to review any additional records and/or items of evidence I might subsequently receive.

DOCUMENTS REVIEWED FOR THIS ANALYSIS

1. Court Document – Plaintiffs' Complaint for Damages, USDC Case #5:15-cv-00810-RP
2. Court Document – Bexar County's Responses to Plaintiffs' 2nd Request for Production of Documents
3. Court Document – Defendant Bexar County's Second Supplemental Responses to Plaintiff's First Request for Production
4. Court Document – Bexar County's Amended Responses to the Plaintiff's Request for Production 50 and 53
5. Court Document – Respondent Bexar County's Objections and Responses to Plaintiff's First Set of Interrogatories
6. Court Document – Defendant's Responses and Objections to Plaintiffs' First Requests for Production to Defendant Bexar County
7. Court Document – Receipt Acknowledgement signed by Investigator William Hunt, DA's Office
8. Court Document – Receipt Acknowledgement signed by Susan Bowen, DA's Office

9. Court Documents – Receipt Acknowledgement signed by Debbie Guzman
10. Reports – Bexar County Sheriff's Office Investigation- J. Perez (891 Pages)
11. Reports – BCSO Investigation- J. Perez - Supplemental (52 Pages)
12. Reports – BCSO Investigation- J. Perez – Supplemental II (15 Pages)
13. Reports – Administrative Investigation Report (9 Pages)
14. Reports – Bexar County Sheriff's Office Incident Detail Reports (25 Pages)
15. Report – TASER® Computer Download, ECW, #X00-565586
16. Report – TASER® Computer Download, ECW, #X00-559744
17. Reports – Transcript – Cell phone video, Witness Michael Fleming
18. Reports – Use of Force Complaint Spreadsheet
19. Audio – 911 Calls (3 Files)
20. Audio – Dispatch Audio (6 Files)
21. Audio – Radio Trans (5 Files)
22. Photos – Crime Scene Photos (329 Pages)
23. Photos – Fleming Video Screen Shots (20 Pages)
24. Photos – Follow up (15 Pages)
25. Photos – Medical Examiner Photos (148 Pages)
26. Photos – Viewpoint (1 Image)
27. Photos – Amador (2 Files)
28. Photos – Video Screen Shots (14 Images)
29. Video – Stills Video Audio Enhanced SloMo (4 Video Files)
30. Video – Bates Numbers Videos (34 Files)
31. Video – FBI Enhance Bates No (1 File)
32. Video – Fleming Bates No (1 File)
33. Video – Amador (1 File)
34. Video – Gilbert SloMo Cut
35. Video – BC072450 IMG_1039
36. Video – BC072622 IMG_1039
37. Deposition – Deputy Gregory Vasquez, 01-10-17
38. Deposition – Deputy Robert Sanchez, 01-10-17
39. Site Inspection – Personal shooting scene site inspection, Dr. Martinelli, 12-27-16
40. Photos – Site Inspection, Dr. Martinelli, 12-27-16
41. Manual – BCSO Policy Manual, Effective 04-30-14
42. Policy – Bexar County Sheriff's Department Policy "Use of Force/Deadly Force"
43. Policy – BCSO, Policy #, "Officer-Involved Shooting"
44. Policy – BCSO, Policy, Chapter 32, "Emergency/Critical Incident Operations"
45. Policy – BCSO, Policy #5.12, "Duty to Report Information"
46. Policy – BCSO, Policy #5.13, "False Information in Records"
47. Policy – BCSO, Policy #5.26, "Untruthfulness"
48. Policy – BCSO, Policy #8.17, "Firearms Course of Training"
49. Policy – BCSO, Policy #8.01, Appendix B, "Law Enforcement Patrol Rifle"
50. Policy – BCSO, Policy #8.06, "Use of Deadly Force"
51. Policy – BCSO, Policy, Chapter 9, "Use of Force" (Entire Policy)
52. Records – Training Records, Deputy Vasquez
53. Records – Training Records, Deputy Sanchez
54. TASER – Email re: Taser Subject: RE: Reminder
55. TASER – Bexar County S.O. Issued Taser Card – Robert Sanchez
56. TASER – Bexar County S.O. Issued Taser Card – Gregory Vasquez (Old)

57. TASER – Bexar County S.O. Issued Taser Card - Robert Sanchez
58. TASER – Instructor and User: Warnings, Risk, Release & Indemnification Agreement
59. TASER – Volunteer: Warnings, Risk, Release & Indemnification Agreement
60. TASER – Evidence Sync – Gregory Vasquez
61. TASER – Download – Gregory Vasquez
62. TASER – Taser Report – Gregory Vasquez
63. Personnel Files – Certificates/Transcripts - Vasquez
64. Personnel Files – Certificates/Transcripts - Sanchez
65. Personnel Files – Firearms Record 2014-15 - Vasquez
66. Personnel Files – Firearms Record 2014-15 - Sanchez
67. Personnel Files – PSI Employee List & Attendance Sheet 08-28-2015
68. Personnel Files – Sanchez Syllabus w/ In-Service 08/20-22/14 w/ UOF Lesson Plan
69. Personnel Files – Sanchez TCOLE Record
70. Personnel Files – Sanchez, Robert F – PID101059
71. Personnel Files – Sanchez, Robert F – PID#101059 (TCOLE Training)
72. Personnel Files – Sanchez, Robert - Firearms Record
73. Personnel Files – Vasquez, Greg – Firearms Training Records
74. Personnel Files – Vasquez Syllabus w/ In-Service 08/13-15/14 UOF Lesson Plan
75. Personnel Files – Vasquez TCOLE Record
76. Personnel Files – Vasquez, Gregory L – PID295675
77. Personnel Files – Vasquez, Gregory L – PID#295675 (TCOLE Training)
78. Training – TECOLE Course #4001, "Mental Health Officer Curriculum"
79. Training – TECOLE Course #4001, PowerPoint, "Mental Health Peace Officer"
80. Training – TECOLE Course #3843, "Crisis Intervention Refresher Course"
81. Training – TECOLE Lesson Plan, "Statutory Authority for Use of Force" 1.0
82. Training – BCSO Lesson Plan, "Use of Force," 09-11-13
83. Training – BCSO TASER® Lesson Plan, written tests, Deputy Sanchez, 12-12-11; 01-28-11;
84. Training – BCSO TASER® Issue Form, Deputy Vasquez, #X00-560180, 12-11-15
85. Statute – Texas Penal Code (Annotated), Chapter 9
86. Case Law: Title 42 1983 U.S.C.
87. Case Law: Graham v. Connor, 490 U.S. 386, 396-97, 109 S.Ct. 1865, 1872, 104 L.Ed.2d 443 (1989) - UOF
88. Case Law: Saucier v. Katz, 533 U.S. 194, 201 (2001) – UOF
89. Case Law: Luna v. Mullenix, 765 F.3d 531, 537 (5th Cir. 2014) – UOF/Balance
90. Case Law: Forrester v. City of San Diego, 25 F.3d 804 (9th Cir. 1994) - UOF
91. Case Law: Tennessee v. Garner, 471 U.S. 1 (1985) – UOF/Warnings
92. Case Law: Garnett v. Athens-Clarke County, 378 F.3d 1274, 1280, n. 12 (11th Cir. 2004) – UOF
93. Case Law: Forrett v. Richardson, 112 F.3d 416 (9th Cir. 1997) – UOF
94. Case Law: Deering v. Reich, 183 F.3d 645, 652-53 (7th Cir. 1999) – UOF
95. Case Law: Collins v. Nagle, 892 F.2d 489, 493 (6th Cir. 1989) – UOF
96. Case Law: Director General of Railroads v. Kastenbaum, 263 U.S. 25 (1923) – RS/PC
97. Case Law: Sokolaw (1989) 490 U.S. 1, 7-8 – Detentions
98. Case Law: United States v. Cortez, 449 U.S. 411 (1981) – Detentions/RS
99. Case Law: United States v. Jones, 432 F.3d 34 (1st Cir. 2005) – Detentions/RS

100. Case Law: Immigration & Naturalization Service v. Delgado, 466 U.S. 210 (1984) – Detentions/RS
101. Case Law: Tony C. (1978) 21 Cal. 3d 888, 893 - Detentions
102. Case Law: Twilley (9th Cir. 2000) 222 F. 3d 1092, 1095 - Detentions
103. Case Law: Andre P., (1991) 226 Cal. App. 3d 1164, 1169 – Detentions
104. Case Law: Hodari D. (1991) 499 U.S. 621, 627-628 – Detentions
105. Case Law: Wardlow (2000) 528 U.S. 119 – RS/Detentions
106. Case Law: White (1990) 496 U.S. 325, 330 – RS/Detentions
107. Case Law: Mims (1992) 9 Cal.App 4th 1244, 1248 – Special Knowledge/Detain
108. Case Law: Hensley (1985) 469 U.S. 221 – Detention – Knowledge from Others
109. Case Law: Terry v. Ohio, 392 U.S. 1 (1968) – Detain/Search
110. Case Law: Carr v. Tatangelo, 338 F.3d 1259 (11th Cir. 2003) – UOF/Deadly Force
111. Case Law: Fraire v. City of Arlington, 957 F.2d 1268 (5th Cir. 1992) – UOF/DF
112. Case Law: Young v. City of Killen, 775 F.2d 1349 (5th Cir. 1985) – UOF/DF
113. Case Law: Davis v. City of North Richmond Hills, 330 F.3d 681, 689 (5th Cir. 2003) – UOF/DF
114. Case Law: Dickerson v. McClellan, 101 F.3d 1151 (6th 1996) – UOF/Deadly Force
115. Case Law: Mason v. Horan, 2003 WL 22000316 (9th Cir. 2003), Citing Tenn. V. Garner, 471 U.S. 1 (1985)
116. Case Law: Sledd v. Lindsay, et al., USDC, 7th District, Case No. 95-2360, 12-11-96
117. Case Law: City of Canton v. Harris, 489 U.S. 109, C. Ct. 1197 (1989) - Trng
118. Case Law: Bordanaro v. McLeod, 871 F.2d 1151 (1st Cir. 1989) – Trng
119. Case Law: City of Oklahoma City V. Tuttle, 471 U.S. 808 (1985) – Deliberate Indifference
120. Case Law: Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978)
121. Case Law: Polk County v. Dodson, 454 U.S. 312 (1981) – Deliberate Indifference
122. Manual: Concepts of Criminal Law, Laws of Arrest, Search & Seizure, Ron Martinelli, Ph.D., © 2005, 2011, Martinelli & Associates: Justice Consultants, LLC
123. Manual: Tactical Psychology & Physiology, Ron Martinelli, Ph.D., 2007, Martinelli & Associates: Justice & Forensic Consultants, Inc.
124. Manual: Police Responses to "Suicide-by-Cop" Incidents, Martinelli, Ron, Ph.D., © 2009, 2012, Martinelli & Associates, Justice & Forensic Consultants, Inc.
125. Text: Officer-Involved Shootings and Use of Force, Hatch, David E., © 2003, CRC Press, New York, N.Y.
126. Text: Practical Shooting Scene Investigation: The Investigation and Reconstruction of Crimes Scenes Involving Gunfire, Garrison, Dean H., Jr. © 2003, Universal Publishers, USA
127. Text: Shooting Incident Reconstruction, Haag, Lucien, © 2006, Academic Press, San Diego, CA
128. Text: Use of Force Investigations, David, Kevin, R., © 2012, Responder Media, Bloomington, IN
129. Text: Gunshot Wounds, 2nd Edition, DiMaio, Vincent J.M., MD, © 1999, CRC Press, Boca Raton, FL
130. Text: Blink, Gladwell, Malcolm, © Back Bay Books, New York, N.Y.
131. Text: On Killing, The Psychological Cost of Learning to Kill in War and Society, Grossman, Dave, Col., U.S. Army, © 1996, Back Bay Books, New York, N.Y.

132. Text: Processing Under Pressure: Stress, Memory and Decision Making in Law Enforcement, Sharps, Matthew, Ph.D., © 2010, Loose Leaf Publishing, Flushing, N.Y.
133. Text: Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Survive a Gunfight, Artwohl, Alexis, Ph.D., Christensen, Loren W., © 1997, Paladin Press, Boulder, CO
134. Text: In Defense of Self and Others: Issues, Facts & Fallacies – The Realities of Law Enforcement's Use of Deadly Force, Patrick, Urey W., Hall, John C., © 2010, Carolina Academic Press, Durham, NC
135. Text: How We Decide, Lehrer, Jonah, © 2010, First Mariner Books, Boston, MA
136. Article: "The '21-Foot Rule,' Forensic Fact or Fantasy," Martinelli, Ron, Ph.D., The ILEETA Journal, Winter 2015, Vol. 5, Edition 1
137. Article: "To Shoot or Not to Shoot: Response and Interpretation of Response to Armed Assailants," Sharps, Matthew J., Ph.D., Hess, Adam, B., The Forensic Examiner, 12-22-08
138. Seminar Notes – "Quiet Eye Characteristics that Can Save An Officer's Life," Dr. Joan Vickers, Force Science Center, Minnesota State Univ., 2010
139. Seminar Notes – "Some Fundamentals of Human Performance," Dr. Richard A. Schmidt, 2010, Force Science Center, Minnesota State Univ.
140. Seminar Notes - "Biomechanics of Lethal Encounters," Dr. William Lewinski, 2010, Force Science Center, Minnesota State Univ.
141. Article – "Biomechanics of Lethal Force Encounters: Officer Movements," Dr. William Lewinski, The Police Marksman, Nov.-Dec., 2002, pp. 19-23
142. Frye, James, J., "Policing the Mentally Disturbed," Journal of the American Academy of Psychiatry, 28:345 (2000)
143. U.S. Center for Disease Control Statistics, Suicide Statistics – United States, 2004 - 2012
144. Bush, Katie A., M.D., Fawcett, Jan, M.D., Jacobs, Douglas, G., M.D., "Clinical Correlations of Inpatient Suicide," Journal of Clinical Psychiatry, 125: pp. 355-373, 1974
145. Article – "The 21-Foot Rule," Forensic Fact or Fantasy, Martinelli, Ron, Ph.D., International Law Enforcement Educators & Trainers Association (ILEETA) Journal, Winter Edition, 2015, pp. 78-80; The Forensic Examiner, American College of Forensic Examiners Institute magazine, 07-09-15, http://www.theforensicexaminer.com/2015/martinelli_758.php
146. Article - Article – "Suicide Dynamics," Martinelli, Ron, Ph.D., PORAC News 02/2012
147. Article – "Just the Facts – The Need for Independent Review," POLICE Magazine, Co-Author Mark Jarmie; June, 2015, pp. 34 – 39
148. Article - "Pre-contact Threat Assessment and the 'Art of Force,'" "Internet Article, PoliceOne.com News, 01-14-11, www.policeone.com/pc_print.asp?vid=3199272 Peace Officers Research Association of California (PORAC) News, 02-2011
149. Article - "The Investigation of Homicides where Self-Defense is Asserted," Martinelli, Ron, Ph.D., POLICE Magazine, October, 2014, pp. 50-57; Law Enforcement Executive Forum, 2014, 14(4), pp. 31-35
150. Morris, R.W., Methods of Suicide: Assessment and Prediction of Suicide, pp. 362-380, Guilford Press, N.Y., 1992

REVIEW OF INCIDENT
Officer – Involved Shooting

On August 28, 2015, at approximately 11:28 am hours, the Emergency 9-1-1 dispatch center received a call of distress from a reporting person identified as plaintiff Carmen Flores. Mrs. Flores, who was crying, told the complaint taker that she was "bleeding all over" and was at her residence located at 24414 Walnut Pass in San Antonio. This is a residential neighborhood in unincorporated Bexar County, Texas. (Bates 070809:7; CAD, p. 3; Bates 72693))^{1,2}

Plaintiff Flores informed the complaint taker that twenty minutes previously her son (subsequently identified as Gilbert Flores, hereafter identified as "Flores") had beat up his wife and their child and was presently in possession of a knife. In the background, the police complaint taker could hear a male voice (Flores') threatening that he wanted to commit "Suicide by Cop." (Bates 0810:1)

Bexar County Sheriff's Office Deputies Gregory Vasquez and Robert Sanchez were in full uniform and driving separate marked patrol units with emergency equipment and en route to handle a domestic disturbance call when they were diverted to the call for service on Walnut Pass. Both deputies immediately responded to the residence with emergency lights and sirens. (OIS Statements Dep. Vasquez, Bates 0937:2; Dep. Sanchez, Bates 1051:1)³

While en route to the call, the deputies learned from Bexar Co. SO dispatch that there was a male (Flores) in the residence with a knife. Flores was described as wearing a tank top shirt and grey shorts. (OIS statement Dep. Vasquez, Bates 0937:3; CAD, p. 3; Bates 72693)⁴

Deputies Vasquez and Sanchez state that as they arrived on Walnut Pass, they observed fire and Emergency Services staged on the corner (Walnut Pass & Cross Mountain Trail). Witnesses firefighter/paramedics George Carrasco and Adam Hawkins, of the Leon Springs Volunteer Fire Department witnessed portions of this incident. (Report, Det. Barrera, Bates 1253:1; OIS Int. Wit. Hawkins, Det. Mendez, Bates: 1256:1)

Deputy Vasquez states that he arrived at the scene first and parked his patrol unit just north of the 24414 Walnut pass residence. He exited his unit, armed himself with his ballistic shield and handgun and approached the front door with his weapon drawn. He states that he announced "Sheriff's Office!" opened the front door and took a step inside the home. Dep. Vasquez states that once inside, he was immediately engaged by a heavily tattooed Hispanic male (Flores) approximately six feet tall

¹ For brevity, all Bates number references commencing in BC070, have been shortened to the last four digits.

² CAD, acronym for "Computer Aided Dispatch" Incident Summary

³ Note: "OIS statement(s)," refers to the officers' transcribed Officer-Involved Shooting statement

⁴ "OIS," acronym, refers to 'Officer-Involved Shooting'

matching the clothing description of the domestic violence subject. (OIS statement Dep. Vasquez, Bates 0937:3)

Deputy Vasquez recalls that Flores was holding a large bladed knife in one hand and was standing in front of another older Hispanic male (later identified as Flores' father Rogelio "Roy" Flores. Flores exclaimed that he had done ten years in prison and was not going back to jail. Dep. Vasquez states that he was immediately concerned for his safety and backed out of the residence. He states that Flores followed him out of the house and stood on the front porch, while Dep. Vasquez disengaged further away to a point on the sidewalk in front of the residence. The deputy's statements are supported by Witnesses Carrazco and Hawkins. (OIS statement Dep. Vasquez, Bates 0937:3; 0938:1; OIS Int. Wit. Carrazco, Det. Barrera, Bates 1253:1; OIS Int. Wit. Hawkins, Det. Mendez, Bates 1256:1)

Deputy Vasquez states that while he was waiting for back-up deputies to arrive, he observed Flores who remained armed with the knife to be pacing back and forth on the front porch of the residence. Dep. Vasquez recalls that Flores had noted that he had a TASER®⁵ and called out to him that (Flores) knew what the TASER® and ballistic shield were used for and threatened that the deputies would have to kill him. (OIS statement Dep. Vasquez, Bates 0938:1)

Deputy Sanchez states that upon his arrival on scene after Deputy Vasquez, he first observed Dep. Vasquez standing in the middle of the street holding his ballistic shield up with his forearm at face level. He observed a shirtless Hispanic male (Flores) about the same height as Dep. Vasquez standing directly in front of the deputy, armed with a knife in his right hand and slashing at him in an overhand thrust. He observed Flores repeatedly thrusting the knife at Dep. Vasquez, who was blocking the blows with his shield. (OIS statement Dep. Sanchez, Bates 1051:1; OIS Int. Dep. Sanchez, Det. Perez, Bates 0815:4, 0816:1; 0820:1-2)⁶

Deputy Sanchez recalls that he was concerned for Dep. Vasquez's safety and immediately exited his patrol with his gun drawn and ran towards both men. As he ran forward, he observed Flores to turn away from Dep. Vasquez and himself and begin to approach the residence while holding the knife. He then heard Dep. Vasquez yell out, "Stop him! Get him!" Dep. Sanchez states that based upon the call, he was aware that people were inside of the residence; at least one person who was injured. He states that to protect the residents from Flores' armed threat, he fired one round at Flores. This round missed the subject and struck a brick colonnade near the front porch. (OIS statements Dep. Sanchez, Bates 1051:1 - 1052:2; OIS Int. Sanchez, Det. Perez, Bates 0816:2; 0820:3-5)

Firefighter/paramedics Carrazco and Hawkins state that they observed Flores in the street, armed with a knife in his right hand, at times either walking or charging

⁵ TASER® - less lethal electronic control weapon "ECW"

⁶ Note: OIS Int. Det. Perez – Indicates Dep. Sanchez's statements made during the OIS Walkthrough with Det. Perez as memorialized in Det. Perez's supplemental report.

Deputy Vasquez. They recall the deputy holding a shield at the time and backing up away from Flores. (OIS Int. Wit. Carrazco, Det. Barrera, Bates 1253:1; OIS Int. Wit. Hawkins, Det. Mendez, Bates 1256:1)

Deputies Vasquez and Sanchez state that after being fired at, Flores went inside the residence. Dep. Sanchez radioed that Flores had re-entered the residence and Dep. Vasquez radioed that shots had been fired and called for negotiators. Both deputies then sought cover behind nearby vehicles. (OIS statements, Dep. Sanchez, Bates 1052:2; OIS Int. Dep. Sanchez, Det. Perez, 0820:6; OIS statement, Dep. Vasquez, Bates 0938:1)

Deputies Vasquez and Sanchez state that after one minute had passed, Flores reappeared on the front porch carrying a metal folding chair in one hand and holding the knife in his other hand. The deputies state that Flores began approaching Dep. Vasquez, who had holstered his handgun and drawn his TASER®. They heard Flores yell out to Dep. Vasquez that he knew what the TASER® and ballistic shield were used for and exclaimed, "*That TASER® doesn't work. I have been to prison*" and "*Shoot me! I'm not going back to prison!*" as he approached. (OIS statements, Dep. Sanchez, Bates 1052:2; OIS Int. Sanchez, Det. Perez, Bates 0821; OIS statement, Dep. Vasquez, Bates 0938:1)

Witness Michael Fleming, who resides in a second-story apartment across the street from the incident scene states that he observed portions of the incident from his elevated position. He states that he observed a shirtless Hispanic male subject (Flores) confronting a deputy who was holding a shield (Dep. Vasquez) in the street. He states that he observed Flores to be holding a metal folding chair in one hand while armed with a "shiny knife" in the other. He described Flores, as "provoking" Dep. Vasquez by moving towards him while slashing the knife at him several times. (OIS Int. Wit. Fleming, Det. Lazos, Bates 1262:1)

Witnesses Hawkins and Carrazco recall Flores running towards a residence and Dep. Sanchez firing one round at him. He did not know if Flores had been struck, but then observed the subject to re-emerge from the residence, holding two metal folding chairs. (OIS Int. Wit. Hawkins, Det. Mendez, 1258:1; OIS Int. Wit. Carrazco, Det. Barrera, Bates 1253:1)

Witness Carrazco states that Flores threw one of the metal folding chairs onto the lawn and then approached Dep. Vasquez with a knife in his right hand and a folding chair in the other. He describes Flores as "*pointing and waiving the knife*" at the deputy. Wit. Carrazco recalls that Dep. Vasquez fired his already drawn TASER® at Flores, but it apparently missed because Flores was not affected by it. He thought that Flores may have blocked the TASER®'s probes with the chair he was holding. Carrazco states that when Flores continued to advance on Dep. Vasquez, the deputy threw his TASER® at the subject. (OIS Int. Wit. Carrazco, Det. Barrera, Bates 1253:1)

Deputy Vasquez recalls that he had disengaged away from Flores for safety. He states that Flores continued to approach him and when Flores got within ten feet of him; he fired his TASER® at Flores; but the subject managed to effectively block the

TASER®'s probes with the metal chair. Dep. Vasquez states that he continued backing away from Flores and moved around two nearby parked cars to create distance. He then heard Flores exclaim, "*You are going to have to kill me!*" (OIS statement, Dep. Vasquez, Bates 0938:1; OIS Int. Det. Perez, Bates 0817:1)

Deputy Sanchez states that he was not sure in which direction Flores was going to move, so he also continued to move around a vehicle he had taken cover behind to create distance from him. He states Flores was moving around a dark colored vehicle (in the driveway), waving the knife and hands upwards and yelling, "*Shoot me! I'm not going back to prison. Shoot me!*" (OIS statement, Dep. Sanchez, Bates 1052:3)

Deputy Vasquez states that when Flores closed the distance to within three to four feet from him, he struck Flores with his shield to create distance. When Flores reengaged him with his knife, Dep. Vasquez struck the subject with his TASER® that he was holding in his right hand. This caused the TASER® to fall from the deputy's hands. Dep. Vasquez states that Flores reengaged him a third time with his knife and again the deputy struck him with his shield to create distance. Deputy Vasquez states that he was in fear of his life that Flores was going to stab him. (OIS statement, Dep. Vasquez, Bates 0938:1)

Witness Fleming states that at one point in the confrontation, he observed Dep. Vasquez to fire his TASER® at Flores, but it missed. He thought that Flores might have then moved back towards the residence. (OIS Int. Wit. Fleming, Det. Lazos, Bates 1261:1; 1262:1)

Deputies Vasquez and Sanchez state that after Dep. Vasquez had struck Flores the final time with his ballistic shield, Dep. Vasquez again backed away from Flores to create distance. They observed Flores to then pick up the TASER®, activate it and then throw it across the street. Flores then walked back to the front yard or porch area of the residence and stood there. The deputies state that while Flores was yelling and moving his hands up and down while holding the knife, they attempted to talk to him. Dep. Sanchez states that at this point he heard a supervisor (later identified as Lt. Von Muldau) radio to them, "*Don't let him back in the house!*" The lieutenant's instruction to the deputies is confirmed by patrol supervisor Sgt. Pedraza. (OIS statements, Dep. Vasquez, Bates 0938:1; Dep. Sanchez, Bates 1052:3-4; OIS Int. Dep. Sanchez, Det. Perez, Bates 0817:2; 0821:1-4; Supplemental report, Sgt. Pedraza, Bates 0840:3)

Witnesses Carrasco and Hawkins' statements that they observed Flores pick up, discharge and throw Dep. Vasquez's TASER® across the street support the deputies' statements describing Flores' actions at this point. (OIS Int. Wit. Carrasco, Det. Barrera, Bates: 1254:1; OIS Int. Wit. Hawkins, Det. Mendez, Bates 1258:1)

Deputy Sanchez recalls that while they were exchanging words with Flores, the subject exclaimed, "*Shoot me! Shoot me! I'm not going back to jail!*" and then began walking towards Dep. Vasquez's patrol unit which had its engine running at that time. He states that he could see Dep. Vasquez patrol rifle in its stand in the front passenger compartment of the vehicle. Deputy Sanchez states that he radioed that Flores was approaching Dep. Vasquez's patrol unit. The deputies state that Flores got to Dep.

Vasquez's unit and began waving his knife around and then managed to open the right front passenger side door. (OIS statement Dep. Sanchez, Bates 1052:4; OIS Int. Dep. Sanchez, Det. Perez, Bates 0818:1; 0821:2, 4; Dep. Dep. Sanchez, pp. 171:11-17; 174:3-11)

Witness Fleming recalls hearing Flores yelling out at the deputies, "Come on; shoot me! Go ahead and shoot me now! I want my dad to see me die!" and "You're gonna have to kill me to take me! You might as well shoot me! You don't have the balls to shoot me!" (OIS Int. Wit. Fleming, Det. Lazos, Bates 0825:3; 1262:1)

Witness Hawkins states that he observed Flores to approach Dep. Vasquez's patrol unit, open the right front passenger door and lean inside, appearing to be looking for something. He recalls thinking that Flores might be searching for a weapon inside the vehicle. (OIS Int. Wit. Hawkins, Det. Mendez, Bates 1258:1)

Deputy Sanchez states he heard another supervisor (later identified as Sgt. Roger Pedraza) radio to them, "Do whatever you have to do!" He states that he believed the supervisor meant not allowing Flores to get inside Dep. Vasquez's patrol unit where he might have access to a weapon. He began thinking that Dep. Sanchez might have an AR-15 rifle in his patrol unit. The supervisor's instruction is confirmed by Sgt. Pedraza, who states that he advised the deputies over the radio, "Don't let the suspect take off in a patrol unit. Do what you have to do." (OIS statement Dep. Sanchez, Bates 1053:1; OIS Int. Dep. Sanchez, Det. Perez, Bates 0821:5; Supplemental report, Sgt. Pedraza, Bates 0840:3)

Deputy Vasquez states that he assumed a position with his gun drawn on Flores at the rear of the patrol unit. Dep. Sanchez went up to the driver's side door of the unit, opened the driver's side door, turned off the engine and grabbed the keys. He then observed Flores, who had been leaning up against the vehicle, stand up and slam the right front passenger door shut. Dep. Vasquez states that Dep. Sanchez disengaged to the rear of the patrol unit near Dep. Vasquez and handed the keys to the unit to him. Dep. Vasquez' statement that Dep. Sanchez handed him the keys to his patrol unit are not supported by the Fleming cell phone video evidence. The deputy later testifies that he was mistaken earlier when he told detectives that Dep. Sanchez had handed him the keys then. He also now testifies that he told Dep. Sanchez that Flores was getting the patrol rifle in his patrol unit. However, Dep. Sanchez does not mention this in any of his statements or testimony. (OIS statements, Dep. Vasquez, Bates 0938:1; Dep. Dep. Vasquez, pp. 54:7-19; 114:18-21; OIS statement Dep. Sanchez, Bates 1052:3;)

Deputy Vasquez states that he was towards the rear of his patrol unit observing Flores, while keeping his gun drawn on him. Dep. Sanchez states that both deputies were yelling at Flores, "We are giving you a chance to drop the knife!" Dep. Vasquez states that Flores told them, "I told you you'll have to kill me!" while continuing to hold the knife in his hand. (OIS statements Dep. Vasquez, Bates 0938:1; OIS statement Dep. Sanchez, Bates 1052:3; OIS Int. Dep. Sanchez, Det. Perez, Bates 0822:3)

Deputy Vasquez states that Flores, "...started advancing towards Dep. Sanchez and (him)," while holding the knife. He states that he believed that the situation was

escalating and believed that Flores intended to kill him. He recalls that when Flores, "was about six to eight feet away from (them)" he fired one round at him. He states that when Flores was hit, he dropped his knife and fell to the sidewalk pavement. (OIS statements Dep. Vasquez, Bates 0938:1- 0939:1)

Vasquez recalls that Deputy Estrada appeared and he instructed the deputy to handcuff Flores, while Dep. Vasquez kicked the knife away from Flores' body. He states that the knife ended up under a truck which was parked in the driveway. (OIS statements Dep. Vasquez, Bates 0938:1- 0939:1)

Deputy Sanchez's statements regarding the position of subject Flores relative to Dep. Vasquez's patrol unit, himself and Dep. Vasquez conflict with both his OIS walkthrough statement to Det. Perez and Dep. Vasquez's recollection of Flores' position. His statements are further not reconciled by the forensic recorded media evidence from a cell phone video taken by Witness Michael Fleming, who took the video from his nearby second story apartment elevated above the scene of the incident.⁷ (Cell video: Gilbert slo-mo cut mp4)

Deputy Sanchez initially told Det. Perez during his scene walkthrough that Flores had tried to open the right front passenger door to Dep. Vasquez' patrol unit and he was afraid that Flores would get into the unit and obtain a weapon. He indicated during that interview that this was when he and Dep. Vasquez fired upon Flores. In his deposition, Dep. Sanchez testifies that the immediate threat that caused him to shoot Flores was his belief that Flores might get a rifle from Dep. Vasquez' patrol unit. (OIS Int. Dep. Sanchez, Det. Perez, Bates 0818:2; Dep. Dep. Sanchez, p. 185:13-24)

However, in his transcribed OIS statement taken by Det. Perez three hours after the incident, Dep. Sanchez states, "*I noticed the male (Flores) turned and faced both Deputy Vasquez and I, but he was still standing by the front passenger door. I yelled at him, 'We are giving you a chance to drop the knife.' The male refused to drop the knife and I was afraid he was going to get into the vehicle and get a weapon.*" (OIS statement, Dep. Sanchez, Bates 1053:2-3)⁸

Deputy Sanchez now testifies that when he and Dep. Vasquez shot Flores, the subject was not attempting to open any doors to the unit, nor was he physically near the vehicle. He concedes that when they shot Flores, the subject has his hands raised at head level with one hand holding a knife. Dep. Sanchez further testifies that Flores was stationary and not moving towards them when shot. This is forensically supported by Witness Fleming's cell phone video. (Dep. Dep. Sanchez, pp. 197:19-24; 198:1-18; 199:1-19; (Cell video: Gilbert slo-mo cut mp4, time stamps: 07:35 – 07:37)

⁷ Refer media evidence. This video has been slowed down and enhanced by the FBI and several versions of the same video have been submitted as discovery evidence in this case.

⁸ Note: Dep. Sanchez requested that Det. Perez transcribe and type out his OIS statement for Dep. Sanchez's signature. The OIS walkthrough was conducted at 2:00 pm. (Ref. Bates 0819:3)

Deputy Sanchez states, "(when he) noticed that Dep. Vasquez fired his duty weapon towards (Flores), I also fired my duty handgun just after Dep. Vasquez fired his handgun." The deputy recalls seeing Flores fall to the ground and start bleeding from his chest. I noticed that the knife that Flores had been holding had fallen to the cement pavement and was lying next to Flores' hand. He observed Dep. Vasquez to move forward and kick the knife away from Flores' body, towards the driveway. Dep. Sanchez recalls Dep. Estrada to approach and handcuff Flores. (OIS statement, Dep. Sanchez, Bates 1053:2-3; OIS Int. Dep. Sanchez, Det. Perez, Bates 0818:2; 0822:3; (Fleming cell video: time stamps: 07:37 – 08:23)

The forensic recorded media evidence from Witness Fleming's cell phone video; enhanced still photos from that video; and forensic measurements of the incident document that in the moments immediately preceding Deputies Vasquez and Sanchez shooting Gilbert Flores, the subject had moved away from Dep. Vasquez' patrol unit. Flores had briefly gone into the street towards the deputies who had disengaged to a distance away from Flores. (Fleming cell video: time stamps: 07:16 – 07:29)

Flores is observed in the video to stop, turn to his right and access the knife he had previously concealed in the rear waistband of his shorts with his right hand. He had then walked away from the deputies to a position at the edge of his driveway, approximately ten feet from the patrol unit. (Fleming cell video: time stamps: 07:16 – 07:29)

The cell phone video documents that while on the driveway, he exchanged the knife from his right hand to his left and had his hands down at his side. (video time stamps: 07:32 – 07:34). The video records and forensic measurements taken later at the scene⁹ indicate that at this moment, Deputy Vasquez who was holding a ballistic shield, while pointing his handgun directly at Flores, was approximately 12'10" South of the East curbside and approximately 29'2" Southeast of Flores, using a black sedan parked at the Eastside curb as cover and an obstruction. Deputy Sanchez was at the West apex of a "tactical triangle," with his handgun pointed at Flores and positioned approximately 14 feet to the left of Dep. Vasquez; approximately 29 feet West of the East curb line; and approximately 29 feet Southwest of Flores. (See Dr. Martinelli's enhanced photo from Fleming video at video timestamp: 07:35:19 with measurements)

The cell phone video next records that as the deputies had triangulated upon Flores with their guns drawn and pointed directly at him, Flores raised both of his hands above his head. The knife remains "palmed" in his inner left hand facing the officers. There is no evidence that Flores was moving his hands up and down. There is no evidence of Flores moving forward towards either of the deputies as he raised his hands. (Fleming cell video: time stamps: 07:34 – 07:36)

⁹ Officers to Flores measurements forensically approximated by Dr. Martinelli during a scene site inspection on 12-27-16 and reconciled with the Fleming cell video, using landmarks and a Roll-A-Tape measuring device.

The cell phone video documents that one second after Flores had raised his hands, both officers who had not moved from their triangulated positions, fired at Flores. Per the deputies' statements, Deputy Vasquez fired first; immediately followed by Deputy Sanchez firing. The cell phone video records Flores reacting to being struck by doubling up at the waist, and collapsing to the ground as he drops the knife he was holding to the pavement. OIS Int. Dep. Sanchez, Det. Perez, Bates 0822:3; Dep. Dep. Sanchez, p. 192:13-23; Dep. Dep. Vasquez, p. 88:16-22; 89:10-15; Fleming cell video: time stamps: 07:37 – 07:42)

The Fleming cell phone video documents that after Flores was shot and fell to the pavement, Deputy Vasquez approached him holding his ballistic shield and handgun. Dep. Vasquez kicked the knife away from Flores' body. Deputy Estrada is observed to arrive on scene at video time stamp: 07:51, exits his patrol unit, approaches Flores and handcuffs him while Dep. Vasquez provides armed cover. (Fleming cell video time stamps: 07:43 – 08:23)

The deputies' statements indicate that each deputy fired one round at Flores. (OIS statement, Dep. Vasquez, Bates 0939:1; OIS statement, Dep. Sanchez, Bates 1053:3)

Subject Gilbert Flores was mortally wounded and subsequently succumbed to his wounds. The Bexar County Grand Jury later rendered a determination that the shooting/homicide of decedent Gilbert Flores was justified.

The plaintiffs now bring forth a federal civil rights civil complaint under Title 42, 1983 U.S.C., naming the Defendants County of Bexar, the Bexar County Sheriff's Office and defendant Deputies Vasquez and Sanchez of wrongful death, excessive force and deliberate indifference of the civil rights of decedent Gilbert Flores by maintaining inadequate policies; ratifying, acquiescing to and encouraging unlawful behavior; and negligence in direction, supervision, and training.

ANALYSIS OF INCIDENT, POLICE PRACTICES AND LAW ENFORCEMENT ACTIONS TAKEN. EXPERT'S OPINIONS & FINDINGS

Introduction

The plaintiffs' tort involves two separate sets of allegations against the defendants Bexar County and the Bexar County Sheriff's Office.

1. Defendant Deputies Vasquez and Sanchez had reasonable suspicion to detain and probable cause to arrest Gilbert Flores for misdemeanor and felony crimes. The deputy's actions were reasonable and in compliance with their law enforcement training and the codified professional standard of law enforcement care. The circumstances, statements, facts and forensic evidence that support this finding and opinion are as follows:

- (1) Officers receive training in the basic police academy and during periodic training in laws of arrest and search and seizure that they can stop and detain a citizen if they are aware of or observe specific articulable facts or circumstances that connect that citizen with suspicious or criminal activity.
- (2) Officers are taught that they can detain and arrest for any crime that they reasonably believe will occur, is occurring in their presence, or has occurred, depending upon the nature of that crime.
- (3) Officers are taught that they can affect the arrest for any misdemeanor or felony crime occurring in their presence.
- (4) Officers are trained that "reasonable suspicion" and "probable cause" are objective standards of proof.
- (5) Officers are taught that "reasonable suspicion" to detain a person must be based upon "articulable circumstances, information, observations and facts that would lead a reasonable law enforcement officer/deputy to believe that criminal activity is afoot." They are taught that reasonable suspicion to detain is a lesser standard of proof than probable cause.^{10, 11, 12, 13}
- (6) Officers are trained that they can use the information obtained from reporting persons, witnesses, police broadcasts and other officers as a basic in forming reasonable suspicion to detain subjects.
- (7) Officers are taught that "probable cause" to arrest a person must be based upon "articulable circumstances, information, observations and facts that would lead a reasonable law enforcement officer/deputy to believe that a crime has been committed and the person to be arrested is the one who is or has committed that crime.
- (8) Officers are taught that a detention commences the moment an officer indicates by dialogue and/or gestures his intent to stop a person; coupled with that person's reasonable belief that they (1) are no longer free to go about their business; (2) must comply with the officer's directions, instructions, orders or commands; and (3) they submit to detention.

Collective knowledge of Deputies Vasquez and Sanchez establishing reasonable suspicion to detain and probable cause to arrest Gilbert Flores

- (1) Deputy Sheriffs Vasquez and Sanchez were dispatched to 24414 Walnut Pass in regards to a call from a female reporting person that she had been

¹⁰ United States v. Cortez, 449 U.S. 411 (1981)

¹¹ United States v. Jones, 432 F.3d 34 (1st Cir. 2005)

¹² Immigration & Naturalization Service v. Delgado, 466 U.S. 210 (1984)

¹³ Terry v. Ohio, 392 U.S. 1 (1968)

assaulted and was bleeding. They learned from the sheriff dispatcher that a male was at the residence with a knife. (CAD, p. 3; Bates 72693)

- (2) The deputies received a description of the male with the knife from the sheriff dispatcher. The male was described as Hispanic, wearing a tank top and grey shorts. (CAD, p. 2; Bates 72693)
- (3) Deputy Vasquez arrived on-scene within minutes after receiving the call. He exited his vehicle with his ballistic shield and his sidearm drawn. He approached the front door of the residence, announced, "*Sheriff's Office!*" and stepped inside the home. At that time, he was immediately confronted by subject Gilbert Flores, son of the reporting person Carmen Flores. Flores matched the description of the subject reported to be armed with a knife. The deputy observed Flores to be holding a knife. Flores exclaimed that he was not going back to jail and had spent ten years in prison because of law enforcement.
- (4) Based upon Dep. Vasquez's law enforcement education, training and experience, at this point in the confrontation, the deputy had reasonable suspicion to detain Flores for investigation of assault.
- (5) Deputy Vasquez states that in fear of his safety, he disengaged from the residence, quickly followed by the armed Flores. Dep. Vasquez backed up to a position on the sidewalk in front of the residence, while Flores paced back and forth on the front porch. Dep. Vasquez states that Flores told him that the deputy would have to kill him.
- (6) Based upon Dep. Vasquez law enforcement education, training and experience and Flores' actions and statements, the deputy had sufficient reason to believe that Flores was agitated, assaultive, armed and dangerous and was expressing "Suicide by Cop" ideations. He had reason and probable cause to believe that Flores was a danger to himself and others. This was sufficient information to initiate an involuntary commitment of Flores for psychiatric observation.
- (7) Upon the arrival of Dep. Sanchez, the confrontation between the agitated and angry Flores and Dep. Vasquez escalated. Dep. Vasquez states that when Dep. Sanchez ran up to provide armed assistance, he advised Dep. Sanchez that Flores was armed and dangerous. Dep. Sanchez states that he had already observed Flores armed with a knife and aggressively engaging Dep. Vasquez with the knife.
- (8) Based upon the deputies' education and training and collective knowledge of the circumstances of their initial call for service, coupled with their observations; they both had probable cause to arrest Flores for felony armed assault on a peace officer and involuntary commitment for psychiatric observation. The discovery evidence documents that Flores became

increasingly threatening and violent during his confrontation with Dep. Vasquez.

Based upon my collective knowledge of education, training and experience in law enforcement practices, psychology and medicine, I find and opine to a reasonable degree of probability within my areas of expertise that:

1. Deputies Vasquez and Sanchez had both reasonable suspicion to detain and probable cause to arrest Gilbert Flores for (1) suspicion of assault upon Carmen Flores; (2) felony assault upon a peace officer; (3) involuntary commitment for psychiatric observation and (4) resisting detention/arrest.
2. Sufficient reasonable suspicion of exigency to believe that lives were in imminent danger for Dep. Vasquez to enter the Flores residence without consent or a search warrant to determine the status of its occupants.
3. The actions of Deputies Vasquez and Sanchez at this point in the incident were in conformance with their law enforcement education and training and that their actions were consistent with state and nationally recognized and applied professional police practices and standards of care.
2. Gilbert Flores had a duty to submit to custody and had no lawful right to resist arrest. The circumstances, statements, facts and forensic evidence that support this finding and opinion are as follows:
 - (1) Based upon the circumstances of which Flores was aware when he initially encountered Deputy Vasquez and later Dep. Sanchez, it was reasonable for him to have believed that (1) the deputies had lawful authority to stop/detain/arrest him; and (2) He was not free to go about his business until the deputies had completed their investigation.
 - (2) Citizens are taught and should reasonably know that they have a duty to submit to the authority of a peace officer during detention or arrest.
 - (3) A review of the discovery evidence, including the statements of Flores, Deputies Vasquez, Sanchez and witnesses, indicates that Flores refused to be taken into custody by the deputies. In fact, he repeatedly taunted and encouraged them to kill him rather than being jailed or imprisoned.

Based upon my law enforcement education, training and experience and my review of the discovery evidence, I make the following findings and opinions to a reasonable degree of probability within my areas of expertise.

- (1) Subject Flores understood that Deputies Vasquez and Sanchez were peace officers involved in the lawful performance of their duty.

- (2) Flores fully understood that Deputies Vasquez and Sanchez were attempting to detain/arrest him during this armed confrontation; physically resisted detention/arrest and committed felony armed assault upon Deputy Vasquez at several points during this incident.
 - (3) Flores agitation, anger and violent actions exacerbated the dangerous conditions of his encounter with Deputies Vasquez and Sanchez.
3. Defendant Deputies Vasquez and Sanchez had probable cause to believe that decedent Gilbert Flores was depressed, suicidal and was attempting to choreograph a "Suicide-by-Cop" (SBC) scenario involving them. The circumstances, statements, facts and forensic evidence that support this finding and opinion are as follows:
1. Deputies Vasquez and Sanchez were advised by sheriff's dispatch, "subject heard in the background saying that he wants to commit suicide-by-cop." (CAD, time stamp: 11:23:33, p. 3; Bates 72693)¹⁴
 2. Deputies Vasquez and Sanchez were aware from Gilbert Flores' statements and his actions that he was attempting to choreograph a "Suicide-by-Cop" (SBC) incident by repeatedly goading, encouraging them to kill him; physically engaging and using physical threats of armed violence against Dep. Vasquez.
 3. Deputies Vasquez, Sanchez and nearby witnesses state that they heard Flores repeatedly yell out to the deputies that he was not going to jail; not going back to prison; and that they would have to shoot and kill him. (OIS statement Dep. Vasquez, Bates 0937:3; 0938:1; OIS Int. Dep. Vasquez, OIS Int. Wit. Carrasco, Det. Barrera, Bates 1253:1; OIS Int. Wit. Hawkins, Det. Mendez, Bates 1256:1; OIS statements, Dep. Sanchez, Det. Perez, Bates 0817:1; 0818:1; 0821:2; Bates 1052:2-4; OIS Int. Sanchez, Det. Perez, Bates 0821; 0822:3; Dep. Dep. Sanchez, pp. 171:11-17; 174:3-11; OIS Int. Wit. Fleming, Det. Lazos, Bates: 1262:1)

Based upon my law enforcement education, training and experience in law enforcement, psychology, suicidality and medicine; and my review of the discovery evidence, I make the following findings and opinions to a reasonable degree of probability within my areas of expertise:

- (1) The discovery evidence I have reviewed regarding Flores' background and statements made to family members not known to the involved deputies is that Gilbert Flores' statements and behavior was consistent with a depressed person experiencing suicidal ideations.

¹⁴ Note: CAD - Initial call dispatch information to deputies, time stamp: 11:28:12 am hours.

- (2) Based upon Flores' statements and behavior that Deputies Vasquez and Sanchez observed; and based upon the deputies' education and knowledge of the psychological dynamic referred to as "Suicide-by-Cop," it was reasonable for them to have assessed Flores as a SBC-intent and goal-oriented subject who was attempting to force them to shoot him.
4. Defendant Deputies Vasquez's and Sanchez' use of deadly force upon decedent Flores at the moment they fired upon him was unnecessary, inconsistent with their law enforcement training; and not in compliance with the codified professional law enforcement standards of law enforcement care. The circumstances, statements, facts and forensic evidence that support this finding and opinion are as follows:
- (1) Officers are taught in the police academy and in periodic department training that they can use whatever force is objectively reasonable to affect an arrest, prevent escape, and/or overcome a suspect's resistance.¹⁵
 - (2) Officers are taught that they need not necessarily use the least intrusive level of force when attempting to control a resisting subject; or in effecting an arrest. Again, they learn that whatever level(s) of force they use must be objectively reasonable.
 - (3) Officers are taught that when considering non-force or forceful responses to a subject's resistance they must balance the "government need" against the "intrusion upon the individual."¹⁶ (Graham v. Connor)
 - (4) Officers are taught that the "reasonableness" of a particular use of force must be judged from the perspective of an objectively reasonable officer on the scene and his understanding of the "totality of circumstances." An officer's calculus in his decision to use force, including deadly force includes the emergent nature of the circumstances; the need to make a decision about the use of deadly force under rapidly developing events or occurrences; as compared to a review of events in hindsight. (Graham v. Connor)
 - (5) Officers are trained that an officer who makes or attempts to affect a detention or an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. They are taught that an officer shall not be deemed an "aggressor" or lose their right to self-defense by the use of reasonable force to affect a detention or arrest; or to prevent escape; or to overcome resistance. (TX PC Ann. §9.32(2)(c))

¹⁵ Graham v. Connor, 490 U.S. 386, 396-97, 109 S.Ct. 1865, 1872, 104 L.Ed.2d 443 (1989)

¹⁶ Luna v. Mullenix, 765 F.3d 531, 537 (5th Cir. 2014)

- (6) Officers are taught that it would be objectively reasonable to use deadly force if they reasonably believed that they were facing a circumstance where they, another officer, and/or a third person were in imminent danger of serious bodily injury or death.¹⁷, (Graham v. Connor)
- (7) Texas officers (USDC 5th Circuit) are taught that the federal court does not consider "pre-seizure conduct" when analyzing the objective reasonableness of a use of deadly force. They are trained that all uses of deadly force are analyzed by what circumstances and actions transpired in the moments that force was applied.¹⁸, ¹⁹, ²⁰
- (8) Texas officers are taught that a person is justified in using deadly force against another: (1) if the actor would be justified in using force against the other under §9.31; (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary: (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; (b) the actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor: (1) knew or had reason to believe that the person against whom the force (c) was committing or attempting to commit an offense described in Subsection (a)(2)(B).
- (9) Texas officers are taught that a person is justified in using force or deadly force against a person another to protect a third person under the same circumstances articulated in Texas Penal Code Annotated §9.31.
- (10) Bexar County deputy sheriffs are trained from department Policy #9.10, "Use of Deadly Force," that, *"In each instance of the use of force, the officer should exhaust every reasonable means of employing the minimum amount of force to affect an objective before escalating to the next, more forceful method."*
- (11) When analyzing, discussing and rendering opinions in any case involving the application of deadly force, the issue of whether or not the circumstances of the event was rapidly evolving that was tense and uncertain is important. (Graham v. Connor)
- (12) Officers are taught in the academy and during department update Use of Force training that prior to the deployment of force, when they are

¹⁷ Tennessee v. Garner, 471 U.S. 1 (1985)

¹⁸ Fraire v. City of Arlington, 957 F.2d 1268 (5th Cir. 1992)

¹⁹ Young v. City of Killen, 775 F.2d 1349 (5th Cir. 1985)

²⁰ Davis v. City of North Richmond Hills, 330 F.3d 681, 689 (5th Cir. 2003)

considering which force option(s) to select, they must consider the following:

²¹

1. The seriousness of the event.
2. Does the subject pose a physical threat to the officer(s), or a 3rd person(s).
3. What level of resistance is the subject using against the officer(s).
4. Whether the subject is attempting to flee or evade arrest.

Seriousness of the incident

- (1) Subject Flores was a suspect in an alleged case of domestic violence assault upon a woman inside a residence. Information imparted to responding deputies was that Flores was armed with a knife and had threatened to commit "Suicide-by-Cop." It was unknown if Flores was also psychotic and/or under the influence of drugs.
- (2) Deputy Vasquez initially encountered Flores inside his residence and found that he was armed with a knife and threatening. Dep. Vasquez disengaged from the residence for officer safety. Flores followed the deputy outside of the residence and yelled out that he was not going back to jail/prison. Flores also yelled out that deputies would have to kill him.
- (3) Subject Flores, who remained armed with a fixed blade knife physically engaged Dep. Vasquez who was holding a ballistic shield for protection. Flores approached the deputy and repeatedly slashed at him with his knife. Dep. Vasquez was forced to disengage while Flores continued a violent, life-threatening attack upon him. This was a felony assault upon a peace officer.
- (4) Deputy Sanchez arrived and observed Flores slashing at Dep. Vasquez with a knife. As Dep. Sanchez came to Dep. Vasquez's aid, Flores began heading back towards the front porch of the residence. Dep. Sanchez feared that Flores would enter the residence and harm people inside. In defense of those occupants, he fired one round at Flores that missed him.
- (5) At this point in the confrontation, the deputies had probable cause to believe that Flores was an armed violent felony suspect who was suicidal and resisting capture.
- (6) Flores re-emerged from the residence armed with his knife and two metal chairs. He dropped one chair and re-engaged Dep. Vasquez with his knife and one metal chair. Dep. Vasquez, struck Flores with his shield and fired his TASER® at him. Flores blocked the TASER® probes with his chair and continued to engage the deputy. Dep. Vasquez either threw or struck Flores in the head with his TASER® and disengaged for safety.
- (7) Flores walked over and briefly entered Dep. Vasquez's patrol unit. Dep. Sanchez ran up to the vehicle and removed the keys. A police supervisor

²¹ Ibid., Graham v. Connor, 490 U.S. 386, 396-97, 109 S.Ct. 1865, 1872, 104 L.Ed.2d 443 (1989)

radioed the officers to, "Do whatever (they) need to do" to keep Flores from accessing the vehicle.

- (8) Flores soon emerged from the patrol unit and stood at the edge of the driveway of his residence, still in possession of his knife.
- (9) At this point in the confrontation, the deputies had probable cause to believe that Flores was an armed violent felony suspect who was suicidal and resisting capture. Dep. Sanchez had taken one shot at Flores to stop him from entering his residence. Neither deputy had fired at Flores when he was violently attacking Dep. Vasquez with a knife; nor when he was inside of Dep. Vasquez's patrol unit.
- (10) Witness Fleming's cell phone video of this incident documents that in the moments immediately preceding the deputies' fatal shooting of Flores, the following totality of pre-shooting circumstances existed:²²
 - (a) Flores, who remained armed with a knife was standing still at the edge of his driveway and not moving towards either deputy when shot.
 - (b) Flores was approximately 10 feet from Dep. Vasquez's patrol vehicle and was not facing, nor turning towards the vehicle.
 - (c) Flores was approximately 20 yards from the front door of his residence and had not turned towards the residence as if moving in that direction.
 - (d) Flores had raised his hands above his head with the "palmed" knife facing towards the deputies in his left hand. There was no jerking, nor up and down movements with his hands.
 - (e) Deputies Vasquez and Sanchez had triangulated on Flores with their guns drawn and pointed directly at him. Both deputies were in the street approximately 29 feet from Flores. Dep. Vasquez had the benefits of distance and the cover and obstruction of a parked vehicle and his ballistic shield. Dep. Sanchez had the benefit of distance and an unobstructed street where he could have sought the protection of cover and obstructions of vehicles parked on the North side of the street.²³
- (11) Human factors and psychophysiological mechanics of lethal encounters
 - (a) Human factors, biomechanical and psychophysiological research in police and citizen lethal encounters with armed subjects is well documented and applied in law enforcement and forensic investigations and use of force training classes internationally.

²² Fleming cell phone video time stamps: 07:34 - 07:37

²³ Fleming cell phone video frame enhanced, time stamp: 07:35:19

- (b) Research consistently shows that action is faster than reaction. The difference between an armed subject's aggressive action and an officer or civilian's reaction to a threat is referred to as "action-reaction perception lag time." The distance between an officer and a subject presenting them with a life threat is referred to as the "reactionary gap."
- (c) Studies show that it takes an average person .58 seconds to experience (see, hear, feel, perceive) a life threat. Following this period, it takes the average person between .55 - .58 secs. for the threatened person to make one to two of five decisions as to how to respond to that threat. These options are: (1) react defensively (fight); (2) disengage from the threat (flee); (3) scream, point to, appear aggressive (posture); (4) become confused, panic, freeze (hypervigilance); and (5) surrender/submit.
- (d) Therefore, it takes the average person between 1.13 sec. – 1.16 secs. to experience a life threat and decide on how to respond. Research shows that it takes the average officer approximately .5 secs. – 1.25 secs. to raise up and point an unholstered handgun at a threatening armed subject; and .33 secs. to depress the trigger of a firearm. This means that it takes the average officer approximately 1.96 secs. – 2.74 secs. to transition from first experiencing an armed life threat; to firing upon that life threat with a handgun.

However, in the immediate case the Fleming cell video documents that in the moments immediately before they shot Flores, both deputies had their guns drawn and pointed directly at him. This factor narrows the action-reaction perception lag time effect down to only .33 seconds to react with deadly force to any aggressive/threatening movement by Flores. This is consistent with the deputies' shooting response times in the Fleming cell phone video. (Fleming cell phone video, time stamps: 07:34 – 07:37)

- (e) The human factors issue of the alleged "21-Foot Rule" when shooting a subject armed with an edged weapon as testified to by Dep. Sanchez is irrelevant in this case for several reasons: (1) the deputies already had their weapons pointed directly at Flores; (2) Flores was not moving towards them; (3) Dep. Vasquez had the tactical benefit of a ballistic shield, as well as the obstruction and cover of a parked vehicle; and (4) there is in actuality no such thing as a "21-Foot Rule" because there are too many human, environmental, tactical and equipment variables present to support any defense using this concept of defensive force in this case.²⁴
- (f) The Fleming cell phone video show that Deputies Vasquez and Sanchez fired upon Flores within one second of him raising his hands above his

²⁴ "The 21-Foot Rule," *Forensic Fact or Fantasy*, Martinelli, Ron, Ph.D., POLICE Magazine.

head. The deputies' statements indicate that Dep. Vasquez fired first, immediately followed by Dep. Sanchez. (Fleming cell phone video, time stamps: 07:34 – 07:37)

(g) My review of the forensic media evidence and deputies' and witnesses' statements in this incident, reconciles favorably with the biomechanical and psychophysiological research I have studied and conducted regarding officers responding to deadly force threats while under intense with respect in comparison to action-reaction perception lag times.

Based upon my collective knowledge of education, training and experience in the fields of law enforcement practices, use of force/deadly force, psychophysiology and human factors, I make the following findings and opinions within a reasonable degree of probability within my areas of expertise.

1. At the moments immediately preceding and at the time of firing upon decedent Gilbert Flores; Deputies Vasquez and Sanchez lacked sufficient objective probable cause to believe that Flores's actions in standing still and slowly raising his hands above his head while holding a knife, constituted an imminent threat of serious bodily harm or death to themselves or any third persons.
2. While there is no doubt that Flores was certainly a *potential* threat to the safety of the involved deputies and any third persons in the residence or on the street; the threat he posed when shot was not imminent.
3. In the moments immediately preceding the deputies shooting Flores, the subject had stopped his forward movement. While Flores had not obeyed the deputies' orders to drop his knife; he was complying with their directions for him to raise his hands. This level of resistance would be classified as menacing, non-verbal semi-compliance.
4. The deputies' own statements that Flores posed a deadly threat to at least Dep. Vasquez at some points in the confrontation (before he moved to the deputy's patrol unit); when reconciled with their failure to use deadly force during those moments; undercuts their inferred representation that Flores somehow posed as greater threat to them when he was standing still with his hands clearly raised at some distance, when they ultimately shot and killed him.
5. The deputies' actions in shooting Flores violated their department's Policy #9.10 "Deadly Force," that states that,

Policy #9.10 §(e) – *"Generally, an officer may use deadly force only in situations, which indicate that, the officer or another person may be seriously injured or killed if deadly force is not used."*

Policy #9.10 §(g) - "In each instance of the use of force, the officer should exhaust every reasonable means of employing the minimum amount of force to affect an objective before escalating to the next, more forceful method."

Policy #9.10 §(i) - "Once the immediate danger of death or serious injury to an officer or another person has passed, deadly force shall not be used.

Policy #9.10 §(j) - "To the extent an officer has reasonable time for consideration, he shall never use deadly force which creates a greater risk to self and others (such as hostages, bystanders and other deputies) of death or serious bodily injury; than if he did not use deadly force. This decision must reflect the circumstances, for example:

- 2) The age, physical condition, and behavior of the suspect;
 - 4) Physical conditions at the scene;
 - 5) The feasibility of alternative actions;
 - 6) The opportunity and actual ability of the suspect to injure the officers or others
- (a) There is no evidence indicating that Deputies Vasquez and Sanchez had exhausted every reasonable means of employing a less intrusive force option than deadly force while Flores was standing still with his hands raised at the moment they shot him.
 - (b) Once Flores ceased being actively aggressive; stood still and raised his hands; Sheriff's Office policy required the deputies to reconsider at that moment the feasibility of alternative actions; as well as Flores' actual ability to injure them or others.
 - (c) Once Gilbert Flores had stopped moving, had his hands raised, and no longer posed and imminent threat of great bodily injury to the deputies or others; the deputies' department policy required them not to use deadly force at that moment. The deputies were required to consider less intrusive methods of containment and capture unless Flores again became aggressive and an active, imminent threat to their safety.
6. As discussed, Texas state statutes and the deputies' training advised them that, "(an) individual may use deadly force to protect himself or another person only if they reasonably believe that the individual posing a threat will not retreat and that deadly force is the only means (available) to protect himself or another person." (Texas PC §§9.32; 9.33)²⁵

²⁵ TX TECOLE "Intermediate Use of Force," Course #2107, Unit One, PowerPoint, Bexar Co SO

7. The statements of Deputies Vasquez and Sanchez provide no objective, probable cause circumstances, facts, nor evidence that would cause a reasonably trained officer to believe that a subject who was standing still with their hands raised from a distance; albeit armed with a knife; posed sufficient imminent jeopardy to respond with deadly force. Therefore, the deputies' actions in fatally shooting Flores were inconsistent with their department training in the codified state and national law enforcement constitutional guidelines for applying deadly force and standards of care.
8. Deputy Sanchez' initial statements to investigators in describing Gilbert Flores' position and movements immediately before he shot him are not supported by the forensic media evidence.

In his transcribed OIS statement to Det. Perez, Dep. Sanchez states,

"Both Dep. Vasquez and I continued telling the male to stop and drop the knife. I noticed the male (Flores) turned and faced both Dep. Vasquez and I, but he was still standing by the front passenger door. I yelled at him, 'We are going to give you a chance to drop the knife.'" (Flores) refused to drop the knife and I was afraid that (Flores) was going to get into the vehicle and get a weapon. I noticed that Dep. Vasquez fired his duty handgun towards (Flores) and I also fired my duty handgun just after Dep. Vasquez fired his handgun." (OIS statement, Dep. Sanchez, Bates 1053:2-3; OIS Int. Dep. Sanchez, Det. Perez, Bates 0818:2; 0822:2)

9. Deputy's Vasquez and Sanchez should have been aware that Dep. Vasquez's patrol rifle was not in its rifle rack inside the vehicle. The crime scene photos of the patrol vehicle show no rifle in the rifle rack. A rifle case is observed in the rear compartment of the vehicle, but would not have been available to Flores when he opened the passenger side door and peered into the vehicle.
 - (a) Bexar Co. Sheriff's Office Policy #B-8.01, Appendix B "Law Enforcement Patrol Rifle, §C "Patrol Ready" Condition for all patrol unit mounted patrol rifles specifically states,

"Patrol Ready – The is how the LEPR (Law Enforcement Patrol Rifle) shall be configured when in the law enforcement vehicle rifle rack. The bolt is closed forward on an empty chamber. The safety is "ON" (which requires that the hammer be cocked) and the dust cover is closed. A full magazine is inserted (minus 2 rounds) and (the rifle) is locked in place."
 - (b) Having personally driven several patrol vehicles that contained both a shotgun and a similar AR-15 patrol rifle, I am thoroughly familiar with how such weapons are generally secured in patrol vehicles.

- (c) I have reviewed Deputy Vasquez's deposition and his department's policy on the requirements of the "Patrol Ready" condition of their patrol rifles in their vehicles. Based upon these reviews, I find that Dep. Vasquez response to the question as to whether his patrol rifle was locked in its holder may have been misleading.
(Dep. Dep Vasquez, p. 54:13-19)

Question: *"Where was your rifle located in the truck?"*

Dep. Vasquez: *"In the stand, or ... It's not really a lock or a safe. It's a holder."*

Question: *"Locked?"*

Dep. Vasquez: *"No sir. That's what I said. It's a holder. If you press a button it opens up."*

- (d) As discussed, the nationally recognized and expected safety standard for all patrol vehicles containing firearms not worn on an officer's person, is to have those weapons locked in rifle/shotgun stands, or secured within locked gun cases.

The locking mechanisms for mounted long gun stands have an electronically activated button which unlocks and frees the weapon from the stand. In the immediate case, it was found that the rifle could be unlocked from its mount whether or not the vehicle's ignition was on.

Although both Deputies Vasquez and Sanchez testified that Dep. Sanchez removed the keys from the ignition of Dep. Vasquez's patrol unit before Flores was shot; factually, Dep. Sanchez removed the keys from Dep. Vasquez's patrol unit after the shooting.

10. Deputy Vasquez initially told investigators,

"While Dep. Sanchez and I were standing towards the rear of my patrol vehicle, the male (Flores) said, 'I told you you'd have to kill me, while holding the knife in his hand (unknown hand). (Flores) started advancing towards Dep. Sanchez and me. I would say (Flores) was about six to eight feet away from us. Knowing that the situation had kept escalating, I believe that it was (Flores') intent to kill me, I fired one round at (Flores). (Flores dropped the knife and fell to the ground (sidewalk area)."
(OIS transcribed statement Dep. Vasquez, Bates 0938:1 – 0939:1; OIS Int. Dep. Vasquez, Det. Mahon,

11. Deputy Vasquez testified in his recent deposition (01-17-17),
(Dep. Dep. Vasquez, pp. 54:25 – 55:13)

"(Flores) slammed the (patrol unit) door, pulled the knife out of the back of his pants, right hand, left hand; started going up and down with his hands. Dep. Sanchez told him three to four times, 'Drop the knife! Drop the knife! This is the last time I'm going to tell you to drop the knife.'"

"After the third or fourth time, he made a movement. Before I squeezed off my round, he looked at me, he told me, 'I told you; you have to kill me.' Fearing for myself and my partner; you know; of death or, you know; bodily injury; I squeezed my round off and ... when he made that movement and that was it. He dropped over."

12. Witness Fleming's cell phone video forensically documents that Flores was on his driveway and approximately 10 feet away from Dep. Vasquez's patrol unit; with his hands raised over his head and not moving when he was shot by both deputies. (Fleming cell phone video, time stamps: 07:34 – 07:37)
13. As discussed, a forensic reconstruction of the crime scene and approximate distances between the deputies and Flores, do not support Dep. Vasquez' statement that Flores was a mere *"six to eight feet"* in front of him when he fired. The distance was closer to 29 feet. A crime scene diagram prepared by the Bexar Co. Sheriff's Office documents that Flores was at least 20 feet from the deputies when they fired upon him. (Fleming cell phone video, time stamps: 07:34 – 07:37; Enhanced still frame, Fleming cell video, time stamp: 07-35:19; OIS statement Dep. Vasquez, Bates 0938:1 – 0939:1; Dep. Dep. Vasquez, p. 90:2-24; BCSO Crime Scene Diagram)²⁶
14. Witness Fleming's cell phone video does not support what Dep. Vasquez told police investigators and what he has testified to that after slamming to patrol unit door, Flores' hands *"started going up and down."* The video documents that after walking away from the patrol unit, Flores had accessed the knife he had concealed behind his back; moved his hands/arms away from his body; and raised them above his head as directed by the deputies before he was shot. (Fleming cell phone video, time stamps: 07:14 – 07:37; Dep. Dep. Vasquez, p. 55:1-3)
15. It was important in my analysis of this shooting incident to know that neither Deputy Vasquez, nor Deputy Sanchez were aware of the presence of Witnesses Fleming's and Michael Thomas' cell phone videos that captured the actual circumstances of their shooting of Flores before they gave their verbal and transcribed statements to investigators.
16. It is more probable than not that Deputy Sanchez fired upon Gilbert Flores, not because he reasonably believed that Flores posed an imminent

²⁶ Ibid., Dr. Martinelli's site inspection and forensic measurements taken on 12-27-16.

deadly threat; but because of what is referred to as "sympathetic" or "contagious gunfire." Dep. Sanchez told investigators, "(when he) noticed that Dep. Vasquez fired his duty weapon towards (Flores), I also fired my duty handgun just after Dep. Vasquez fired his handgun." (OIS statement, Dep. Sanchez, Bates 1053:2-3; OIS Int. Dep. Sanchez, Det. Perez, Bates 0818:2; 0822:3)

17. If the trier of fact were to determine that Deputies Vasquez and Sanchez were untruthful in their statements to police investigating this incident, I would find and opine that they were in violation of Bexar Co. Sheriff's Office Policy #5.26, "Untruthfulness" that reads, "No employee of the Sheriff's Office shall make or give any false statements to supervisors when being questioned, interviewed or submitting official reports. To do otherwise is to create an undesirable dishonest situation, characterized by lack of trust, honesty, or truthfulness." (BCSO Policy #5.26, Bates 0145)
 18. If the trier of fact were to determine that Deputies Vasquez and Sanchez were untruthful in their statements to police investigating this incident, I would find and opine that their untrue statements were evidence of a "consciousness of guilt" and evidence of deliberate indifference of decedent Gilbert Flores' civil rights.
 19. The fatal shooting of subject Gilbert Flores by Deputies Vasquez and Sanchez was inconsistent with their law enforcement training and state and nationally recognized, accepted and applied codified law enforcement practices and standards of care.
5. Bexar County Sheriff's Office dispatchers failed to provide supervisors and responding deputies critical details on the critical incident involving subject Gilbert Flores. Their lack of training and information provided significantly contributed to an inadequate response to the scene and was a contributing factor in the unnecessary death of Flores. The circumstances, statements, facts and evidence that support this finding and opinion are as follows:
- (1) An administrative investigation of the shooting of subject Gilbert Flores was conducted by the Bexar Co. Sheriff's Office. The lead investigator was Sergeant J. Baeza. The investigation was commenced on 08-31-15.²⁷ The supervisor reviewing and approving the investigation was Lt. R. Pollard. The date of Lt. Pollard's approval was 02-09-16.
 - (2) From reviewing and analyzing the initial Emergency 9-1-1 calls to Bexar SO dispatch, Sgt. Baeza found that the initial reporting person (subsequently identified as Carmen Flores) told the 9-1-1 complaint taker that her son

²⁷ BCSO PSI #2015-0363, Bates 1688 - 1695

(Gilbert Flores) "had gone crazy" and might be on drugs. Ms. Flores told the complaint taker that Flores had beat up his wife and infant son and was in possession of a knife. (CAD Incident Summary, p. 3; Bates 2693; IA Report, Sgt. Baeza, Bates 1691:1)

- (3) In reviewing and analyzing the 9-1-1 calls, Sgt. Baeza reports that he could hear a male subject (subsequently identified as Gilbert Flores) yelling in the background, *"Send SWAT cause I'm gonna kill; you're gonna have to kill me; I promise you that; it's my time to go!" "I got a knife and I'm gonna suicide-by-cop; so you better bring a SWAT team or whoever is gonna get ready to pull the trigger because I'm gonna die today!" "I'm not going back to prison. I'm ready to die today; so you better get someone ready to pull the trigger!"* (IA Report, Sgt. Baeza, Bates 1691:1-2)
- (4) A review of the Emergency 9-1-1 CAD Incident Summary which documents what is dispatched verbally and electronically to supervisors and officers, shows no evidence that dispatchers had ever communicated to patrol supervisors and responding deputies that Flores had screamed out that the department should be a SWAT team to deal with him. (CAD Incident Summary, pp. 3-4; Bates 2693 – 2694.)
- (5) The Sheriff's Office Complaint takers and Dispatchers should have been trained in how to properly handle a critical incident involving an armed "Suicide-by-Cop" intent subject. There is a recommended response protocol to handling such incidents.²⁸ Supervisors and officers have been trained to understand that "Suicide-by-Cop" incidents are a relatively common occurrence in law enforcement today and are high-risk events.
- (6) In the immediate case, Flores was providing the complaint taker with important verbal cues that: (1) he was armed; (2) he was SBC-intent and prepared to die; and (3) the department would need a SWAT team to deal with him.
- (7) Albeit desperate, suicidal subjects do not make determinations as to the level of law enforcement response; the information the complaint taker/dispatcher had received from Carmen Flores and Gilbert Flores was more than sufficient for the Sheriff's Office communication personal to quickly determine that: (1) this was a serious critical incident involving an armed, desperate, suicidal and barricaded subject; (2) innocent persons were inside the residence with an

²⁸ "Police Responses to "Suicide-by-Cop" Incidents," Martinelli, Ron, Ph.D., 2009, pp. 137 - 140

armed subject who had already committed acts of violence upon two of them; (3) the armed subject was acting "crazy" and it was unknown by his mother if he was psychotic and/or under the influence of drugs; and (4) the subject had repeatedly expressed a willingness to die/be killed by deputies.

- (8) Communications personnel should be adequately trained to identify and correctly respond to information and/or indications that a call for service has evolved into a critical incident requiring a rapid response of law enforcement personnel; supervisors; specialized units and Emergency Medical Services.
- (9) A review of Sgt. Baeza's investigation and the evidence reveals that a dispatcher improperly and inadequately briefed patrol supervisor Sgt. Roger Pedraza, Unit 1S-4 on the actual circumstances of this incident. The dispatcher merely informed the sergeant that there was a, *"sick/injured child and adult (in the residence); 'it might be a female that's bleeding and they are not giving us all the information; and there is a male at the location; we need to send two units out there too."* Obviously, this was far from the actual circumstances of this call. (IA Report, Sgt. Baeza, Bates 1692:1)
- (10) A review of Sgt. Pedraza's supplemental report of this incident and the CAD Incident Summary indicate that at best, the patrol supervisor was only aware that: (1) a woman was bleeding inside a residence (CAD time stamp: 11:28:12); (2) Flores had beaten his wife and infant child (CAD time stamp: 11:30:58); (3) Flores was inside the residence with a knife and threatening to commit "Suicide-by-Cop." (CAD time stamp: 11:33:23). (IA Report, Sgt. Baeza, Bates 1692:1; Report, Sgt. Pedraza, Bates 0840:3)
- (11) Supervisors are taught that it's their responsibility to obtain and make informed decisions as to any law enforcement response to any call for service, in-progress crime, and/or critical incident involving risk to citizens and officers.
- (12) In the immediate case, the evidence indicates that a poorly trained, or untrained dispatcher initially suggested to Sgt. Pedraza that they send only "two units" to the call and Sgt. Pedraza approved this level of response. This was a totally inappropriate response by a field supervisor. As stated, it is the responsibility of the field supervisor to: (1) assess the call details for risk and response; (2) develop the appropriate response protocol; and (3) immediately engaged the protocol. (IA Report, Sgt. Baeza, Bates 1692:1)

- (13) In this instance, Sgt. Pedraza should have immediately declared the event a critical incident involving an armed, SBC-intent subject, who was unstable and inside a residence with several persons at risk. He should have immediately cleared the channel for emergency traffic; dispatched multiple units to the scene; dispatched CIT and/or negotiators to the scene; dispatched and staged EMS personnel and equipment to the scene; and put in a call to the on-call SWAT supervisor for a consultation and an immediate incident assessment for a possible response. The evidence I have reviewed finds that Sgt. Pedraza took no such steps.
- (14) It was important in my analysis of this incident to review the department's training lesson plan for "Mental Health Peace Officer, Course #4001" and learn that they provided no information on "Suicide-by-Cop," including a response protocol. SBC has been identified as a serious and deadly problem for law enforcement officers confronting an SBC-intent subject. It would be both reasonable and expected that the Bexar County Sheriff's Office provide their communications personnel, supervisors and patrol deputies with this information, since suicidality is a serious and potentially fatal mental health/disorder problem.²⁹
- (15) The evidence reviewed documents that the Bexar Co. Sheriff's Office had an inadequate response to this incident and that the responding deputies had no plan to isolate, contain, communicate, capture and control Flores. This situation was of course exacerbated by Flores' agitated-chaotic and SBC-intent behavior which initially compressed time.

Based upon my collective knowledge of education, training and experience in the fields of law enforcement practices, I make the following findings and opinions within a reasonable degree of probability within my areas of expertise.

1. There is evidence that the defendants Bexar County and its Sheriff's Office were negligent in the direction, supervision, training and entrustment of Sheriff's Office Emergency 9-1-1 communication staff in failing to provide them with adequate training in critical incidents involving identification and responses to SBC-intent subjects.
2. If the trier of fact determines that the Sheriff's Office had inadequately trained their communications staff, I would find and opine that their lack

²⁹ BCSO TECOLE Course #4001, "Mental Health Peace Officer," 3.0 'Suicide'

of training significantly contributed to an inadequate law enforcement response to the scene and was a contributing factor in the unnecessary death of Flores.

6. Defendants Bexar County and their Sheriff's Office's ratification of a problematic and unnecessary shooting of decedent Flores is evidence of their deliberate indifference of his civil rights. The circumstances, statements, facts and forensic evidence that support this finding and opinion are as follows:

- (1) No violations of department policy - A review of the Sheriff's Office's administrative investigation conducted by Internal Affairs supervisor Sgt. J. Baeza, as supervised and approved by Lt. Pollard found no violations of department policies by Deputies Vasquez and Sanchez.
- (2) As an experienced law enforcement, forensic and independent review investigator, and a federal/state courts qualified law enforcement practices and use of force/deadly force expert, I have thoroughly analyzed the circumstances of this incident and have documented several violations of department policies, Texas state statutes and constitutional guidelines directly pertaining to the use of force/deadly force. (See Opinion #4)
- (3) Deputy statements are not supported by forensic video evidence - After Deputies Vasquez and Sanchez had given their initial statements describing the circumstances of this incident to investigators; the Sheriff's Office learned and recovered two cell phone videos of the shooting of Gilbert Flores from separate independent citizen witnesses. These circumstances of events forensically recorded on these videos did not support the statements of the involved deputies. (See Opinion #4) Yet, the County and its Sheriff's Office took no further investigative and/or administrative actions to attempt to reconcile the forensic evidence with the deputies' statements.
- (4) No evidence of follow-up of problematic fatal shooting by independent agency -
 1. By the time that the County and its Sheriff's Office had obtained the forensic evidence of the Fleming and Thomas cell phone videos of the shooting incident; it would have been both reasonable and expected for them to solicit either any outside law enforcement agency; and/or a private forensic investigations/police practices contractor to conduct an independent review of the shooting.
 2. Sheriff's Office reports document that on 08-31-15, OIS primary investigator Det. Perez was contacted by FBI Special Agent Peter Damos, of the Bureau's Civil Rights/Public Corruption Unit regarding the circumstances of

the shooting of Gilbert Flores. At that time, Agent Damos requested copies of all OIS reports and the recovered cell phone videos of the incident.

3. Det. Perez documents that on the following day 09-01-15, he had a brief appointment with FBI Special Agents Damos, Keith Byers and Sandra Torres at the Sheriff's Office's Criminal Investigations Division to brief the agents on the case. I have seen no reports documenting the FBI's findings and conclusions in this case; nor any evidence that the Sheriff's Office conducted any due diligence in following-up on the FBI's request to review the shooting. (OIS Report, Det. Perez, Bates 0830:5-6)
4. When the video(s) of Flores' shooting were played on local television stations(s), showing that the shooting was controversial and problematic, the defendant County and its Sheriff's Office should have formally requested that the incident be independently investigated by (1) the FBI; (2) an outside law enforcement agency; or (3) a vetted private contractor experienced in forensic death investigations and independent review. This would have provided the defendants with a transparent investigation without any conflicts of interest.
5. Use of force/deadly force policy vague, provides insufficient context and does not teach an objective standard of proof before applying deadly force
1. A review of the Bexar County and its Sheriff's Office's Policy #9.10, et al., covers both Texas Penal Code (annotated) and basic Graham v. Connor language. However, the department's policies and training fail to teach and stress the importance of the legal requirement that officers must base their calculus of force, including deadly force upon objective, rather than subjective standards of proof.
2. Policies and training are more than a simple recitation of the legal language of state statutes and federal case law. Agencies that entrust their officers with deadly force decisions that sometimes must be made in seconds; are expected to develop, author and train their personnel, by teaching key concepts such as how the objective standard of "probable cause" is applied to the
3. The failure of the County and its Sheriff's Office to include and fully explain an objective *probable cause* standard that mandates deputies must have specific, articulable circumstances that would lead them to conclude that a subject poses an imminent threat of great bodily harm or death to themselves or others before using deadly force is critical in any calculus of deadly force.

The Bexar Co. Sheriff's Office's deadly force policy as written and taught, leaves too much open to a deputy's subjective, rather than objective, probable cause determination as to when to use deadly force. The

shooting of subject Flores is an excellent example of the result of having this type of vague policy and training.

4. A review of the use of force/deadly force training that Deputies Vasquez and Sanchez received indicates that each officer received only two hours of static lecture training in Texas state statute(s) and department policy relating to deadly force one year prior to this incident. The deputies were also required to qualify with their services weapons. However, "weapons qualification" is not training.
5. In my review of the Sheriff's Office's deadly force training of Deputies Vasquez and Sanchez, I have no evidence of any reality-based critical decision making "Shoot-don't shoot" or force on force training that tests the deputies for their understanding of law and policy. This type of training is both necessary and expected since deadly force is the highest level of force peace officers are authorized to use.
6. If the defendants have no evidence that Deputies Vasquez, Sanchez and their armed law enforcement personnel do not undergo reality-based, critical decision making deadly force training and the trier of fact determines that the County and its Sheriff's Office did not provide this level of training at the time of this incident; I would find and opine that the County and its Sheriff's Office were negligent in the direction, supervision, training and entrustment of their deputies.

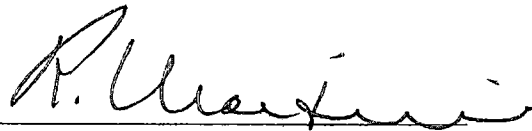
I would also find and opine that the defendants' failure to train Deputies Vasquez and Sanchez for their proper entrustment of deadly force was a significant contributing factor to the unnecessary fatal shooting of Gilbert Flores.

The aforementioned findings and opinions are based upon my initial review of the listed documents as provided to me at this time. I will alter, amend, enhance or


delete my findings and opinions as necessary following my review of any additional discovery in this case.

I would so testify to the aforementioned findings and opinions under penalty of perjury if called upon in any subsequent civil proceedings.

FURTHER AFFIANT SAYETH NOT.


Ron Martinelli, Ph.D

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, a Notary Public, on this 12th day of July, 2017.


Notary Public for the State of Texas

