



DATE: October 7, 2018

TO: Chief Vasquez

FROM: Lieutenant Bell

SUBJECT: Internal Administrative Review of San Diego Sheriff's Department Case #17-033392, Officer Involved Shooting (death) on August 24, 2017

Walt Vasquez (10-15-2018)

Introduction:

I was assigned the Internal Administrative review of the officer involved shooting (OIS), which involved La Mesa Police Officers Taylor Persitza and Jonathan Seydel. There were two (2) additional shooters, San Diego Police Officer Jonathan Wiese and San Diego Sheriff's Department Sergeant Kotaro Murashige. The shooting occurred on August 24, 2017, at approximately 0132 hours, and took place at 2100 Rebecca Way in the City of Lemon Grove. The shooting caused the death of Isaias Raziel Ochoa-Bautista (19 years old).

The San Diego Sheriff's Department Homicide Team 3 took the lead on the shooting investigation. The team was led by Lieutenant Richard Williams and Sergeant Todd Norton. The case agent was Deputy Karen Bloch.

I have reviewed the reports, evidence and other materials compiled by the San Diego Sheriff's Department Homicide Team 3. I also attended the homicide briefing for the San Diego District Attorney's Office, presented by San Diego Sheriff's Department Homicide Team 3.

Law Enforcement Personnel Involved:

La Mesa Police Officer Taylor Persitza #1273 (shooter), age 28, had been a La Mesa Police Officer for one (1) year at the time of the incident. He was assigned as a patrol officer working Wednesday through Saturday, from 1800 to 0600 hours. He was assigned to the Beat 1 area and was call sign "221."

La Mesa Police Officer Jonathan Seydel #1268 (shooter), age 31, had been a La Mesa Police Officer for one and a half (1 ½) years at the time of the incident. He was assigned as a patrol officer working Wednesday through Saturday, from 1800 to 0600 hours. He was assigned to the Beat 4 area and was call sign "204."

Both officers were wearing the standard blue Class B uniform (long sleeves), with a metal badge and shoulder patches denoting La Mesa Police Department. Both had been driving marked black and white La Mesa Police Department vehicles. Officer Persitza was driving vehicle #35. Officer Seydel was driving vehicle #20.

San Diego Police Department Officer Jonathan Wiese (assigned as a K-9 officer) and San Diego Sheriff's Department Sergeant Kotaro (assigned as a patrol supervisor) were also shooters in the incident. They both were wearing their department's respective uniforms with badges and patches.

La Mesa Police Officer Carlos Gaytan (non-shooter), age 28, had been a La Mesa Police Officer for five (5) years at the time of the incident. He was assigned as a patrol officer working Wednesday through Saturday, from 1800 to 0600 hours.

La Mesa Police Sergeant Daniel Herrin (non-shooter), age 35, had been a La Mesa Police Officer for ten (10) years at the time of the incident. He was assigned as the Field Supervisor for Patrol Squad 2, working Wednesday through Saturday, from 1800 to 0600 hours.

Background:

Based on witness statements by Ochoa's friends, on the day and night of the incident, August 24, 2017, Ochoa had been using the drugs MDMA (Ecstasy), marijuana and cocaine. Before the incident, Ochoa-Bautista, (19 years old) and (20 years old) had been smoking marijuana together. They were waiting in the Costco parking lot for "girls" when they saw the police officer (Officer Persitza). was the driver, was the front passenger and Ochoa-Bautista was seated in the rear passenger seat, behind

Police Response and Shooting Incident:

On August 24, 2017, at approximately 0122 hours, La Mesa Police Officer Taylor Persitza was on patrol in the area of Costco and McDonald's located at the 8100 block of Fletcher Parkway in the City of La Mesa. Officer Persitza noticed a green 2005 Ford 500, 4 door, Ca. license plate , parked in an odd way in the parking lot. The Ford was not parked in a stall and one of the doors was open. It appeared to Officer Persitza that the occupants of the vehicle noticed him. As Officer Persitza drove towards the vehicle, he heard a loud scream come from the vehicle as the door closed. The vehicle left the parking lot and drove onto Fletcher Parkway.

Officer Persitza, concerned for the safety of the occupants, followed the vehicle and was able to get behind it at the light, in the westbound lanes of Fletcher Parkway at Baltimore Drive. As the light turned green, the vehicle did not move. Officer Persitza turned on his overhead emergency lights, intending to initiate a traffic stop. As he turned on the emergency lights, the front passenger door opened. It was quickly closed and then the vehicle sped away.

The Ford led Officer Persitza on a several mile pursuit (see the attached pursuit report). Officer Seydel, Sergeant Herrin and Sheriff's Sergeant Murashige joined the pursuit. The pursuit terminated at the dead end of a parking lot of a condominium complex, located at 2100 Rebecca Way, in the City of Lemon Grove.

As the Ford came to a stop, all three (3) occupants of the vehicle fled on foot, with the vehicle still in gear. The driver fled to the east and both passengers fled to the west. Officer Persitza lost sight of the driver. Officer Seydel saw one of the males jump a fence, which led to a drainage ditch behind the condominium complex, located at 2100 Rebecca Way. Officer Seydel followed the male to the fence, but did not go over it. He heard what sounded like a gunshot coming from the drainage ditch area. He looked over the fence and saw a male holding a cellphone, which had its light on. Sergeant Herrin and Sergeant Murashige were

also present. The suspect was partially hidden by a wall inside the drainage ditch. At 0132 hours, Sergeant Herrin broadcast there had been "shots fired," relating that the suspect fired his weapon.

Officer Persitza also heard a gunshot and he grabbed the shotgun from his police vehicle and went to the fence. Sergeant Herrin and Sergeant Murashige were also present at the fence. All four (4) officers heard another gunshot coming from the area of the drainage ditch.

At 0138 hours, Officer Carlos Gaytan arrived on scene and took a position of cover near the fence. At 0144 hours, San Diego Police Officer Jonathan Wiese arrived on scene with his K-9 partner (UFO). Officer Wiese activated his body worn camera (BWC).

ASTREA was flying overhead and broadcast that the suspect was holding a cellphone in his right hand and an unknown object in his left. At 0144 hours, due to foul weather, ASTREA had to leave the area and fly back to base.

Officer Persitza looked through the fence and saw a male, later identified as Isaias Raziel Ochoa-Bautista, holding a cellphone and crouched by a cement wall near the drainage ditch. Officer Wiese also looked through the fence and could see Ochoa-Bautista with his cellphone in his right hand, but could not see what was in the left. Ochoa-Bautista was also yelling, but none of the officers could decipher what he was saying.

Officer Weise and Sergeant Herrin formulated a plan to remove the boards from the fence, which was separating them from Ochoa-Bautista. Sergeant Herrin forcefully removed the boards by hand. Sergeant Herrin and Officer Wiese continually gave verbal commands to Ochoa-Bautista to gain compliance. He continued to wave his cellphone in the air with his right hand.

At 0147:14 hours, Officer Persitza broadcast that Ochoa-Bautista may have a firearm in his opposite hand. At 0147:29, Sergeant Herrin broadcast that Ochoa-Bautista did have a "gun" in his hand. At 0147:38, Sergeant Herrin broadcast that UFO (K-9) had been released.

UFO immediately encountered Ochoa-Bautista and bit his right thigh. Ochoa-Bautista began to scream and yell. Officer Wiese shouted commands for Ochoa-Bautista to give up and walk towards Officer Wiese with the dog. At 0147:56, Ochoa-Bautista fired one (1) round into the ground. At 0148:15, he fired one (1) round into the ground again.

Officer Wiese gave commands for the other officers, Sergeant Murashige, Officer Persitza and Officer Seydel, to form a wedge and advance on Ochoa-Bautista. Sergeant Murashige was positioned in the center of the group, with Officer Persitza on his left, Officer Seydel on his right and Officer Wiese behind him. Sergeant Murashige had an AR-15 rifle, Officer Seydel had his duty Glock .40 handgun, Officer Persitza had a duty 12 gauge shotgun (from his patrol vehicle) and Officer Wiese had his duty 9mm handgun. Sergeant Herrin was behind the group and had his duty Glock .40. Officer Carlos Gaytan was also behind the group and had his AR-15.

As the officers advanced on Ochoa-Bautista, Officer Wiese told the officers that his dog (UFO) was only property. Officer Wiese also continued shouting commands towards Ochoa-Bautista to show his hands, to drop the gun and to bring the dog to the officers. Ochoa-Bautista pointed his firearm up towards the sky and fired two (2) rounds.

Based on the statements from all of the officers on scene (shooters), after he fired the last round, he began to point his firearm towards the group. All made statements of being fearful of being shot or their fellow officers being shot. Officer Persitza stated he heard Ochoa-Bautista say, "I have more bullets." Officer Wiese stated to the group that they needed to shoot the suspect (he was still behind Sergeant Murashige with his weapon holstered). Sergeant Murashige fired once (striking Ochoa-Bautista in the center chest), Officer Persitza fired once (striking the lower abdomen and right thigh) and Officer Seydel fired four (4) rounds (possibly striking the jaw area). Ochoa-Bautista fell backwards into the supine position.

Approximately several seconds later, Ochoa-Bautista sat up and pointed his firearm at them again. Officer Seydel fired another four (4) rounds (possibly striking the facial and or jaw area), Officer Wiese fired his weapon once (unknown if the round struck Ochoa-Bautista) and Officer Persitza fired another round from the shotgun (possibly striking the abdomen and right thigh). No other officers fired their weapons.

Ochoa-Bautista fell back into the supine position and did not move. All of the officers advanced towards Ochoa-Bautista, including Sergeant Herrin and Officer Gaytan. At this point, the officers on scene were still fearful of the two (2) outstanding suspects. Officer Seydel used his foot to remove the firearm from Ochoa-Bautista's hand. He then picked up the firearm and tried to render it safe. He noticed all of the rounds were spent. He then placed the firearm in his boot and later gave it to Sergeant Herrin.

Officer Seydel, who has a paramedic background, checked on Ochoa-Bautista's vital signs. He found him not breathing, no pulse and one eye's pupil was dilated and the other pinpointed. He was later pronounced dead on the scene by paramedics.

Legal Analysis

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily injury and to use reasonable force in making an arrest. California penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. This section stated the officer need not retreat or desist in the effort to effect an arrest because of the person's resistance.

Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the public. We must be mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. 9th Circuit Court of Appeals, in the case of Scott v. Henrich (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which the use of deadly force may be used:

"[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that the police officers are often forced to make split-second judgements- in circumstances that are tense, uncertain, and rapidly evolving- about the amount of force that is necessary in a particular situation.'" [Citations omitted.]

Conclusion / Administrative Analysis

Under La Mesa Police Department policy, officers may use deadly force as prescribed in Department Instructions 413 – Use of Force. Section 413. 1V, states:

IV. USE OF DEADLY FORCE

It is the policy of the La Mesa Police Department that officers shall use deadly force when it reasonably appears necessary:

1. To protect themselves from death or serious bodily injury.
2. To protect another officer or any other person from death or serious bodily injury.
3. To prevent the escape of a fleeing subject if there is probable cause to believe:
 - 1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and 2) the subject's escape would pose an imminent danger of death or serious physical injury to the officers or other persons. 3) If feasible, and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.

Officer Persitza initiated a traffic stop on the vehicle where Ochoa-Bautista was a passenger. The driver of the vehicle did not yield for the traffic stop and fled. This initiated a lengthy pursuit on surface streets and freeways. The suspect vehicle eventually came to stop at a condominium complex. The driver and passengers all fled on foot. As officers arrived to search for the suspects, they immediately heard a gunshot coming from a drainage area behind the condominium complex.

The suspect, Isaias Raziel Ochoa-Bautista, was seen crouching near a cement wall with a cellphone in his right hand and a handgun in his left. Multiple officers on scene gave Ochoa-Bautista commands to surrender and drop his firearm. He did not comply. A San Diego Police K-9 officer released his dog to subdue Ochoa-Bautista, which did not facilitate his compliance. Officers then advanced on Ochoa-Bautista in an attempt to take him into custody. As the officers advanced, Ochoa-Bautista fired more rounds and he eventually pointed his firearm at the advancing officers.

Ochoa-Bautista had the tactical advantage by positioning himself on ground above the officers. He was also in darkness crouching, at times, behind a cement wall. He also made a statement that he had more bullets after firing six (6) indiscriminately. Officer Persitza, Officer Seydel, Officer Wiese (SDPD) and Sergeant Murashige (SDSO) all stated they thought they would be shot and or their partners would be shot and they feared for their safety.

Officer Persitza fired two (2) rounds from his duty shotgun. Officer Seydel fired eight (8) rounds from his duty Glock .40. Officer Wiese fired one (1) round from his duty Sig Saur 9mm. Sergeant Murashige fired one (1) round from his Smith and Wesson AR-15 .223. According to the San Diego County Medical Examiner's Office, Ochoa-Bautista was killed by being shot by the officers.

As Officer Persitza and Officer Seydel advanced towards Ochoa-Bautista, he pointed his firearm at them. Ochoa-Bautista stated he had more "bullets." Both officers feared for their

lives and feared for the safety of the other officers on scene. They both fired their weapons to protect themselves and their fellow officers.

Based upon the OIS investigation conducted by the San Diego Sheriff's Department and my review of the investigation, officer statements, witness statements, evidence, and body worn camera footage, I find Officer Taylor Persitza and Officer Jonathan Seydel followed Department policy and were within the guidelines and scope of La Mesa Police Department Instruction 413 – Use of Force.

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April 4, 2018

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Chief of Police Walt Vasquez
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Chief of Police David Nisleit
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**Re: Fatal shooting of Mr. Isais Raziel Ochoa-Bautista on August 24, 2017
by San Diego County Sheriff's Sergeant K. Murashige; La Mesa Police Officers
T. Persitza and J. Seydel; and San Diego Police Officer J. Wiese; San Diego County
Sheriff's Department Case No. 17144086; DA Special Operations Case No.
17-140PS; Deputy District Attorney assigned: Paul Reizen**

Dear Sheriff Gore, Chief Vasquez, and Chief Nisleit:

We have reviewed the reports and other materials compiled by the Sheriff's Homicide Unit concerning the circumstances leading to the fatal shooting of Mr. Isais Raziel Ochoa-Bautista on August 24, 2017 by San Diego County Sheriff's Sergeant K. Murashige, La Mesa Police Officers T. Persitza and J. Seydel, and San Diego Police Officer J. Wiese. A District Attorney Investigator responded to the scene and was briefed by your deputies. This case was presented to the District Attorney's Office for review on December 22, 2017.

Summary

On August 24, 2017, Mr. Ochoa-Bautista, a passenger in a vehicle being pursued by multi-jurisdictional law-enforcement patrol units, fled the moving vehicle as it stopped at a dead-end street in Lemon Grove. Ochoa-Bautista ran up an embankment and positioned himself behind a cinderblock wall located near inhabited residences. Ochoa-Bautista fired rounds from his revolver and refused multiple orders to drop his gun. A police canine was deployed and bit Ochoa-Bautista. An arrest team approached to take Ochoa-Bautista into custody. Ochoa-Bautista fired another round and pointed his pistol toward the officers. The sergeant and officers returned fire. Ochoa-Bautista was struck multiple times. The incident was recorded on a police body-worn camera.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 2 of 12

Persons Involved

Mr. Ochoa-Bautista was 19 years old and armed with a .32 caliber Colt revolver. Sergeant K. Murashige was assigned to patrol duties and had been employed with the Sheriff's Department for 22 years. Officers T. Persitza and J. Seydel were both assigned to patrol and each had been employed by the La Mesa Police Department for one year. Officer J. Wiese was assigned as a canine handler in support of area patrol units and had been employed by the San Diego Police Department for 18 years.

Statement of Officer T. Persitza

At about 1:23 a.m., Officer T. Persitza saw an occupied Ford sedan in a parking lot of a closed commercial business in La Mesa. Persitza pulled behind the vehicle to determine what the driver and occupants were doing there at that late hour. The vehicle travelled away from the parking lot into the street before Persitza could approach and speak to the vehicle's occupants. The vehicle fled onto a freeway while Persitza pursued with lights and sirens. Persitza called for assistance and followed the vehicle from the streets of La Mesa to the freeway, and then to a condominium complex in Lemon Grove.

The vehicle arrived at the dead-end of the street. The driver and passengers fled the vehicle while it was still in gear. Both passengers ran to the west and the driver ran to the east. Officer Persitza lost sight of the driver.

While looking for the driver, Officer Persitza heard what sounded like a small caliber gunshot from the west. Persitza believed the officers were being shot at or an officer had fired their weapon. Officers were still arriving and forming a perimeter.

Officer Seydel yelled out commands to the suspect to surrender. Officer Persitza saw a light and occasionally the suspect's head and shoulders moving around behind a wall. The suspect was probably 30 to 40 yards away from Persitza. Persitza heard another gunshot from the suspect's location. The officers continued giving commands and setting up positions.

Officer Wiese arrived and discussed a tactical plan involving the use of Wiese's police canine. Officer Persitza could see the suspect in a seated or kneeling position. He saw a muzzle flash and it looked like the suspect shot towards the ground. This was the suspect's third shot. The suspect had the gun in his left hand. There was a sense of urgency. The officers were about 25 yards away from the suspect. Wiese released his police canine after the suspect was given multiple warnings to comply. The dog ran towards the suspect. Persitza did not see the police dog make contact with the suspect, but the suspect began screaming and fired another round. Persitza thought the suspect shot the dog.

Officer Wiese told the officers to get through the fence so they could start moving up on the suspect. During this time, Wiese yelled at the suspect repeatedly to come down the hill and bring the dog to him. They were about 20 to 25 yards away from the suspect. They started slowly moving up.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 3 of 12

The police dog was biting the suspect's right leg and the suspect was still screaming. Officer Persitza saw the suspect wave his pistol around. As the officers closed distance, the suspect moved the gun towards them two or three times. He was waving the gun. They were in the path of the firearm and the barrel was facing the entire group as they approached slowly. Persitza was afraid the suspect might shoot a round as he waved the gun past them. Persitza did not want to shoot and hoped the male would drop the gun. The officers continued their advance with the suspect yelling at them. Persitza got to the point where he thought the male was going to shoot them. Persitza began shouting commands because he feared they may be shot.

They were only 10 to 15 yards away, when the suspect shot another round and continued yelling. The police dog was not incapacitating the suspect, who was still waving the gun around. The suspect yelled something and then said, "I still have more bullets." Officer Persitza believed the suspect was going to shoot them if the officers got any closer. Persitza remembered hearing Officer Wiese saying something like, "We gotta do this," or "too close." Persitza could see Wiese drawing his weapon, around the time the suspect said he had more bullets. Persitza's stomach sank and he thought one of them was about to be shot and hurt or killed.

Officer Persitza aimed for the suspect's center mass and fired a round. He quickly assessed to see if the male was down, because he was trained to end the threat. Persitza was not the first person to shoot and he heard other shots being fired as he was shooting. Persitza saw the suspect reel backwards, but he then sat upright again. Persitza thought the shots were ineffective and he fired a second round, as other officers also shot. The suspect fell backwards. After he stopped moving, the officers approached and gained control of the suspect.

Officer Seydel kicked or pulled the gun out of the suspect's hand. The officers then rolled the suspect over and handcuffed him. Seydel began rendering aid but could not feel a pulse. They held their positions and waited for paramedics.

Statement of Sergeant K. Murashige

Sergeant Murashige responded to a radio call requesting assistance. While on scene, Murashige heard a gunshot coming from an uphill open area in the direction the two passengers fled. The gunshot sounded close. Murashige believed one of the suspects that fled from the vehicle was hiding in the field and had shot at the officers. Murashige used his flashlight to illuminate the area and saw someone hiding behind a bush in the area above them.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 4 of 12

Two officers closer to the suspect gave commands to the suspect to show his hands and surrender. The suspect replied, but Sergeant Murashige could not understand what he was saying. The officers said the suspect was refusing to comply, despite multiple officer commands.

The suspect fired another shot. Sergeant Murashige believed the suspect was shooting at the officers and the situation appeared to be at a stalemate. The suspect remained behind the bushes and at points appeared to be holding up a cellphone light. ASTREA, the Sheriff's helicopter, confirmed the suspect had something in his hand, but was unable to determine what the object was. The suspect continued to ignore officer orders.

Officer Wiese arrived with his canine. Wiese gave commands and told the suspect the dog would be released if the suspect did not comply with their instructions. Sergeant Murashige heard another gun shot. The police dog was then released.

The suspect yelled he would give up, but Sergeant Murashige thought the suspect was attempting to get away. Officer Wiese yelled for the suspect to come to their location. The suspect sounded like he had been bitten and was in pain. Murashige then heard another gunshot followed by more struggling and rustling. Murashige believed the suspect was shooting at the police dog or at him and the other officers.

The group made a decision to form a team and confront the suspect. Sergeant Murashige took the front and slowly made the approach towards the suspect's location with the team. Murashige could not see the suspect as they approached, but eventually observed the suspect sitting on the ground. It appeared the police dog had contact with the suspect's leg. The suspect was thrashing around and had a pistol in his left hand. Someone gave a command to the suspect to drop the gun. At this point, Murashige crouched down as he was approximately 20 feet away from the suspect and without cover.

The suspect struggled with the police dog with the gun still in his left hand. The suspect leaned to his left and fired a shot from the handgun. The gunshot appeared to be directed to the suspect's left, which was to the right of Sergeant Murashige and the officers. Murashige recalled hearing Officer Wiese telling him to shoot the suspect. Murashige hesitated because he was waiting to see if the suspect pointed the handgun at them. The suspect waved the handgun around and pointed it downward. The suspect fired another shot.

Sergeant Murashige took aim at the suspect's upper chest area and fired one round from his rifle. The other officers fired at the suspect at the same time. Shots hit the suspect and he fell backwards. The suspect was still holding onto the handgun and started to get back up. The handgun appeared to move forward towards Murashige and the officers. The officers fired several more rounds at the suspect. Murashige did not shoot since the other officers were firing. The suspect dropped to the ground. The handgun was still in the suspect's left hand or was very close to it. Officers confirmed the suspect had a gunshot wound to the head and was deceased.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 5 of 12

Statement of Officer J. Seydel

Officer Seydel responded to a radio call to assist. Seydel used his flashlight to illuminate the hillside area and saw a person's head and torso moving about. It appeared the person was walking back and forth on the hillside.

Officer Seydel went to the wooden fence on the south side of the yard and began to climb over it. Seydel was halfway over the fence when he heard a gunshot. Seydel thought the person on the hillside shot at him. Seydel yelled at the suspect to show his hands and walk toward the sound of Seydel's voice. The suspect did not comply and was making incomprehensible statements. It appeared he was holding an illuminated cell phone. Seydel then heard another gunshot from the suspect.

A canine handler arrived on scene and discussed a plan to deploy the police dog. Seydel warned the suspect at least twice a police canine would be released if he did not comply. The suspect replied incoherently, and then fired another gunshot. Officer Wiese deployed the police dog and the dog ran toward the suspect. Seydel lost sight of the dog but heard the suspect yelling and screaming. Wiese told the suspect to walk the dog back down the hill. Seydel heard additional gunshots from the suspect.

Officer Wiese said they needed to go and asked if they were ready. Officer Seydel followed behind Wiese and the officers began to move up the hill toward the suspect. The suspect continued to scream from the police dog's grasp and then fired off additional gunshots. Seydel got up to a block wall on the hillside and was a few yards from the suspect. He positioned behind the block wall and looked over the wall toward the suspect. The suspect was in a seated position and continually waved his gun around as it was pointed up. The suspect fired additional gunshots and Seydel saw muzzle flashes.

Initially, Officer Seydel did not think the suspect was an immediate threat, because the suspect's gun was pointed upward. However, the suspect began sporadically moving the gun around and the gun was beginning to point more in the direction of Seydel and the other officers. Seydel also realized there were houses in the area. Seydel heard someone say something like, "We need to take him." As that was said, the suspect's gun was pointed in the direction of Seydel and the other officers. Seydel did not remember who fired first, but Seydel fired about four rounds from his handgun at the suspect. The gunshots stopped and the suspect was on the ground with the pistol in his hand pointed in the direction of Seydel. It appeared the suspect was trying to get up. Seydel still perceived a threat and fired another four rounds at the suspect. The pistol dropped from the suspect's hand and landed on the ground.

Officer Seydel and the other officers moved toward the suspect. Seydel stepped on the suspect's pistol and used his foot to move the revolver away from the suspect's hand. Other officers handcuffed the suspect and then conducted a medical assessment.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 6 of 12

Statement of Officer J. Wiese

Officer Wiese volunteered to cover a radio call. While in route, Wiese heard units broadcast "shots fired" over the radio. A few moments later, an officer broadcast one of the occupants who ran from the vehicle was the person who fired the gun. Wiese arrived on scene and heard ASTREA broadcast the suspect was holding a cellphone and something else in his hands. The officers on the ground also broadcast similar information. Wiese activated his body-worn camera and removed his canine partner (UFO) from his vehicle.

Officer Wiese could clearly see the suspect sitting on an embankment. The suspect had a cellphone in his right hand with the flashlight activated and pointed towards the officers. The suspect appeared to be holding something in his left hand, but Wiese could not see what it was. Wiese learned from another officer the gunshot previously heard came from the embankment where the suspect was currently located.

There was a group of officers standing near at the bottom of the embankment. Officer Wiese spoke to the sergeant regarding a plan to contact the suspect. They both believed the suspect was armed with a gun and agreed they should use Wiese's canine to make contact with the suspect.

An officer yelled at the suspect to drop what he had in his hands or they were going to send a police dog. Officer Wiese did not hear the suspect reply. Wiese saw the suspect was still sitting on the embankment with his phone pointed at the officers and his left hand in his lap. Wiese verbally identified himself to the suspect and commanded him to walk towards the officers or show his hands. The suspect stood up. Wiese again identified himself as a San Diego police officer and announced he had a police dog. It seemed the suspect was going to comply and walk towards them, but instead walked backwards behind a cinder block wall. Based on the suspect's actions, it appeared he was trying to escape. Wiese deployed his canine and instructed UFO to search for the suspect, who was now out of view. As UFO approached the wall, Wiese yelled for the suspect not to run. The suspect yelled back, "I'm not running." UFO turned behind the wall in a manner that made Wiese believe he located the suspect. Wiese believed the suspect was lying and actually intended to flee. Wiese then gave the bite command to UFO because he was afraid for the safety of the residents in the area should this armed suspect escape into the community.

Wiese heard UFO growling and the suspect screaming. Officer Wiese knew UFO was biting the suspect. Wiese yelled out for the suspect to bring the canine back to Wiese's location. Wiese told the suspect to do this because it was unsafe to move towards the suspect at this time, since the suspect had the tactical advantage because it was dark, they could not see him, he was believed to be armed with a gun, and he was on higher ground.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 7 of 12

After the third time, Officer Wiese yelled for the suspect to bring the dog to him, Wiese heard two gunshots. There was a second or two between each gunshot. Wiese thought the suspect was shooting UFO or shooting at him and the officers. Wiese did not see any muzzle flashes because they were still behind the wall, but he could hear UFO struggling with the suspect.

Officer Wiese told the other officers to come with him in order to make contact with the suspect. Wiese wanted to move to the suspect while the dog was distracting him. If they did not move to the suspect at this time and the dog was killed, they would then have to deal with an armed suspect who could barricade himself behind the wall, hide in the woods, or flee into the community and pose a serious danger to everyone. As they began moving towards the suspect's location, Wiese began yelling at the suspect, "Don't shoot the dog. Let me see your hands." Wiese could not see the suspect when he made these commands.

Officer Wiese told the other officers his dog was "just property." He made this statement to tell the other officers not to worry about shooting the dog if lethal force was needed to protect them. Additionally, if the suspect was shooting the dog, not to allow their emotions to force them to shoot the suspect just to protect the dog. This was part of Wiese's canine handling protocol.

As they approached the suspect's location, Officer Wiese saw the suspect as he was sliding down in a seated position. UFO was biting the suspect's right leg. The suspect had a cellphone in his right hand and a handgun in his left hand. The handgun was pointed straight up in the air. The suspect looked in the direction of Wiese and the other officers and fired two rounds in the air. All of the officers then began yelling commands at the suspect. Wiese yelled for UFO to continue biting the suspect. He also yelled for the suspect to drop the gun. Wiese estimated they were about 15 yards from the suspect at that time.

A second after the suspect fired two rounds in the air he began lowering the barrel of the handgun towards the officers. The handgun was at about a 45-degree angle and pointed towards them. Officer Wiese yelled to the officers, "You've got to do it. He's pointing it at us." Wiese made this statement because he was positioned behind Sergeant Murashige and did not have his firearm out. Wiese feared the suspect was going to shoot them.

Officer Wiese began to draw his handgun just as the suspect pointed the handgun directly at them. A split second later, Wiese heard multiple gunshots. Wiese did not see who fired because he was behind Sergeant Murashige. Wiese saw the suspect lying on his back with his handgun by his side. Wiese moved out from behind Murashige and began giving the suspect verbal commands. A split second later, the suspect began to sit up with his pistol in his left hand. The suspect brought the handgun up towards them. Wiese thought the suspect was about to shoot. Wiese fired one round at the suspect. Other officers fired their weapons simultaneously at the suspect. The suspect immediately fell backward onto the ground. Wiese then instructed the other officers to handcuff the suspect.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 8 of 12

Law Enforcement Witnesses

There were two La Mesa Police Department officers accompanying Sergeant Murashige, and Officers Persitza, Seydel, and Wiese during this incident. They are identified in this review as Law Enforcement Witness One and Law Enforcement Witness Two.

Law Enforcement Witness One (LE1)

LE1 arrived at the scene and attempted to locate the two fleeing suspects. LE1 heard a "pop" that sounded like gunfire coming from an unknown location. LE1 broadcast this information on the radio. LE1 took cover and tried to figure out where the gunfire came from. Within minutes there was a second "pop." LE1 saw a male suspect on the hillside in the brush holding a cellular phone. The lit screen on the phone illuminated the suspect's face. The suspect moved behind the cover of a cinder block wall. The suspect was non-compliant. The suspect replied to orders to surrender by shouting something in an unknown language.

Officer Wiese made his police-canine announcements to the suspect. LE1 believed the suspect understood the admonition because the suspect began to move away from them. Wiese then released the police dog. LE1 saw a handgun in the suspect's hand and broadcast his observation over the radio. The police dog bit the suspect and "latched on." LE1 and the team of officers advanced up the hill to a position near the suspect. LE1 was at the rear of the team. Wiese was attempting to drag the police dog and the suspect back with the leash. The police dog was on the suspect for 30 to 45 seconds. LE1 lost sight of the gun in the suspect's hand at that time.

LE1 heard two or three "pops" and saw the muzzle flash of two gunshots from the pistol held by the suspect. LE1 estimated they were ten yards or less from the suspect. Immediately after the suspect fired his weapon, the four officers in front of LE1 fired their weapons. LE1 saw the suspect get hit with the gunfire. The officers moved up to the suspect. Officer Seydel stepped on the suspect's left hand as it held the pistol. LE1 rolled the suspect over and handcuffed him.

Statement of Law Enforcement Witness Two (LE2)

On his way to the call, he heard LE1 broadcast "shots fired." Once on scene, LE2 saw the suspect next to some palm trees holding something bright in his left hand that appeared to be a phone. LE2 gave several commands in English to the suspect. The suspect said something back to him, but LE2 could not understand what the suspect said. The suspect did not comply with any of the commands to approach the officers with his hands up. The suspect moved out of sight, behind a tree. LE2 heard a "pop" that sounded like a gunshot from a small caliber handgun. LE2 thought the suspect was shooting at the officers. The suspect came back into view and another officer commanded the suspect to show his hands. LE2 saw a cell phone in the suspect's left hand, but could not see his right hand. The suspect moved out of view again and LE2 heard another gunshot. LE2 estimated he heard three gunshots. Officer Persitza then stated he could see a gun in the suspect's right hand.

Officer Wiese gave the suspect commands to surrender or else the dog would be released. The suspect stood up and Wiese released his dog. The suspect was walking northwest and went

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 9 of 12

partially behind a wall. LE2 heard a scream and saw the suspect's hand go up with a gun in it. LE2 then saw a muzzle flash along with the sound of a gunshot. LE2 believed the dog bit the suspect. LE2 was telling the suspect or dog to "bring him to me." LE2 heard another shot from the area of the suspect.

The other officers formed an arrest team and moved up the hill toward the suspect. LE2 followed them to provide cover with his rifle. LE2 was about five feet behind the group and heard them giving the suspect commands to show his hands and drop the gun. LE2 then heard shots fired, but could not determine how many shots were fired or who fired them. LE2 did not fire because he could not see the suspect.

Statement of Co-Suspects

Co-Suspect One (CS1) admitted he was the driver of the vehicle and explained Co-Suspect Two was in the front passenger seat, while Mr. Ochoa-Bautista was in the back seat. CS1 stated he fled from police because he had a warrant for his arrest, he had been smoking marijuana and did not possess a driver's license. CS1 knew Ochoa-Bautista had a pistol because Ochoa-Bautista told him he had a gun. CS1 ran from the car and escaped apprehension on that night and did not witness the shooting.

Co-Suspect Two (CS2) confessed he ran from the car at the end of the pursuit because he had been smoking marijuana and suspected the car driven by Co-Suspect One was stolen. CS2 also admitted to knowing Mr. Ochoa-Bautista was armed with a pistol. CS2 said he heard, "a little gunshot" as he fled, continued running, and then hid in some bushes for about 15 to 20 minutes before he heard the sound of more gunshots. CS2 was captured about three blocks away from the scene of the shooting.

Statement of Civilian Witnesses

There were over 30 civilian residents in the vicinity of the officer-involved shooting. Only three civilians said they saw and heard the events of the actual shooting.

Civilian Witness One (CW1) was awakened by police activity outside of CW1's residence. CW1 saw officers focus their attention on a male suspect across the street. The officers told the suspect, "Come down. Show your hands." CW1 then heard one to two gunshots. The officers continued to tell the second suspect to show his hands and to come down. The suspect repeated what the officers were saying to him. The suspect did not appear to comply with the orders the officers were giving. CW1 did not see the suspect carrying anything, but heard one or two gunshots and believed the suspect fired at the three officers gathered at the bottom of the hill. CW1 did not think the officers fired at the suspect because there was no muzzle flash from any of the officer's weapons. The officers repeated their demands for the suspect to come down. One officer told the suspect they were going to send the dog. The officers sent the police dog up the hill. The suspect screamed and fired a shot. The officers headed up the hill and CW1 heard a shot or two being fired at the officers. One of the officers flinched. The officers then returned fire firing about five shots. CW1 was able to see the suspect had ducked down.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 10 of 12

Civilian Witness Two (CW2) resided with CW1. CW2 awoke to the sound of sirens. CW2 looked out the window and saw the suspects' sedan had collided with a fence at the dead end of the street. CW2 saw a suspect jump out of the sedan and run west up the hill. An officer was telling the suspect to show his hands. The suspect would not comply. CW2 heard the canine handler arrive with his dog. The officer told the suspect they would send the dog after him. Officers were looking for the suspect with their flashlights and yelling, "Show me your hands. If you don't, we are going to send the dog." The suspect yelled back to the officers, "What? What?" The officers repeated, "Show me your hands." CW2 then heard the suspect screaming after the officer released his dog. The officer told the suspect to bring the dog back down, but the suspect just sat there. CW2 then heard gun shots. CW2 believed at least five shots fired. CW2 took photos through the window of their residence; however they did not capture the shooting incident.

Civilian Witness Three (CW3) was awakened by the sound of sirens nearby their residence. CW3 looked out the window and saw police vehicles and officers near a vehicle collision at the dead end of the street. On the hill behind CW3's backyard, CW observed a male with either a flashlight or a gun in his right hand standing behind a cinder block wall. CW3 heard a popping noise, which sounded quieter than a gunshot. CW3 then saw a police dog deploy and bite the suspect behind the cinder block wall. The suspect tried to get the dog off of his left leg while the police yelled multiple times at the suspect to put his hands up. The suspect yelled and said the dog was hurting him. The suspect pointed his hand out. CW3 saw either a small gun or a flashlight in his right hand. The police continued yelling commands to the suspect to put his hands up and come out. CW3 then heard at least ten gunshots. CW3 has closed circuit cameras monitoring their residence. The cameras did not capture the shooting incident.

Investigation

The crime scene was secured, photographed, and investigated by Sheriff's Department Homicide detectives. All deputies' reports, crime-scene investigators' reports, audio-recorded witness interviews, witness cellphone pictures and videos, closed-circuit security video were reviewed. The cell phone held by Mr. Ochoa-Bautista received damage from gunfire, rendering it inoperable. No data could be retrieved from it. The shooting event was captured on the camera worn by San Diego Police Officer Wiese.

The investigation revealed Mr. Ochoa-Bautista was armed with a .32 caliber Colt revolver. The revolver contained six fired .32 caliber cartridge casings. Sgt. Murashige fired one round from his AR-15 rifle. Officer Persitza fired two rounds from his shotgun. Officer Seydel fired eleven rounds from his .40 caliber Glock semi-automatic pistol. Officer Wiese fired one round from his 9 mm Sig Sauer semi-automatic pistol.

The autopsy of Mr. Ochoa-Bautista documented one shotgun wound to the torso of Ochoa-Bautista and five gunshot wounds to the torso, head and right thigh. Toxicological studies performed on blood collected from Ochoa-Bautista tested positive for cannabinoids.

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 11 of 12

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The purpose of the District Attorney's review is to provide an independent analysis and determine if the shooting was legally justified. This review does not address compliance with the policies and procedures of any law enforcement agency, ways to improve training, or any issues related to civil liability.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person whom she has reasonable cause to believe has committed a public offense.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.'"

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham v. Connor* (1989) 490 U.S. 386, citing *Terry v. Ohio*, 392 U.S., at 20-22.

In addition to any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if she reasonably believed that she or someone else was in imminent danger of suffering bodily injury, believed that the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger.

Conclusion

Mr. Ochoa-Bautista ran from a car involved in a vehicle chase with police officers. He positioned himself on a hillside, next to some residences, and above the location of the officers. Ochoa-Bautista hid behind a cinderblock wall and fired rounds from his revolver. He ignored

Sheriff William Gore
Chief of Police Walt Vasquez
Chief of Police David Nisleit
April 4, 2018
Page 12 of 12

multiple orders by law enforcement to drop his revolver and surrender. A police canine was deployed. Ochoa-Bautista refused to surrender and instead fired more shots in the presence of officers. An arrest team approached to take Ochoa-Bautista into custody. Ochoa-Bautista then pointed his revolver toward the officers. Based on these circumstances, Sergeant K. Murashige, and Officers T. Persitza, J. Seydel, and J. Wiese fired back in their own defense and in the defense of others. Therefore, they bear no criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,



SUMMER STEPHAN
District Attorney
County of San Diego

SS:eg

cc: Captain Mike Hastings
San Diego Police Department

Captain Wes Morris
SDPD Internal Affairs

Captain Mike McClain
San Diego Sheriff's Department

Lt. Christina Bavencoff
SDSO Internal Affairs