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**OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO**
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DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

April 16, 2021

Chief David Nisleit
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Chief Omar Watson, Commander of Border Division
California Highway Patrol
9330 Farnham Street
San Diego, CA 92123

Re: Fatal shooting of Mr. Christopher Ulmer by California Highway Patrol Officers Lauren Chi, John Holm, Pakko Mendez, and Javier Mendoza and San Diego Police Officers Patrick Harvey and Edward Pidgeon on October 4, 2020; SDSO Case No. 20141954; DA Special Operations Case No. 20-130PS; Deputy District Attorney assigned: Stephen Marquardt

Dear Chiefs,

We have reviewed the materials compiled by the San Diego Sheriff's Department Homicide Unit concerning the shooting of Christopher Ulmer. District Attorney Investigators responded to the scene and were briefed by detectives. This case was submitted to the District Attorney's Office on December 30, 2020.

Summary

On October 3, 2020, officers from the Santa Ana Police Department attempted to initiate a traffic stop after observing multiple Vehicle Code violations and suspecting the driver of being under the influence. The driver, Christopher Ulmer, failed to yield. A vehicle pursuit ensued and Ulmer drove into San Diego County, ultimately stopping on Interstate 805 near Olympic Parkway. Ulmer opened his driver-side door, but remained in the driver seat and did not follow commands. Officers told Ulmer to exit the vehicle with his hands up. After minutes passed Ulmer abruptly stood up outside of the vehicle and pointed a black elongated item toward the officers, while adopting a shooting stance. Multiple officers discharged their firearms at Ulmer. Ulmer fell, then quickly stood up, and again pointed his outstretched right arm toward the officers. Officers fired again and Ulmer fell. While the officers believed he was shooting at them with a gun they found a black elongated toothbrush case under Ulmer's torso. No firearm was located during a search of Ulmer and his vehicle. Four CHP and two SDPD officers discharged their weapons and Ulmer was struck multiple times. Paramedics transported Ulmer to UCSD Hospital, where he was pronounced deceased at 2:09 a.m. An autopsy was conducted on October 5, 2020. Toxicological testing detected methamphetamine and metabolite

amphetamine. The cause of death was determined as multiple gunshot wounds and the manner of death as homicide.

Persons Involved

Christopher Ulmer was a 30-year-old resident of Whittier. At the time of the incident, Lauren Chi had been employed by CHP for three years; John Holm had been employed by CHP for 22 years; Pakko Mendez had been employed by CHP for 12 years; Javier Mendoza had been employed by CHP for eight years; Patrick Harvey had been employed by SDPD for seven years and Edward Pidgeon had been employed by SDPD for 26 years.

Civilian Witness One (CW1)

CW1, Ulmer's mother, told detectives Ulmer had used methamphetamine for over ten years. CW1 last saw Ulmer on October 3, 2020, between 10:00 p.m. and 10:30 p.m., when he stopped by her home. Ulmer was acting normally. He told her he was going to San Diego "on a mission." CW1 felt meant Ulmer was going to sell drugs or do something bad since CW1 believed Ulmer sold methamphetamine. Ulmer left the house after only a few minutes. On October 4, 2020, at 12:04 a.m., CW1 received a text from Ulmer's phone reading, "I love you mom." CW1 texted she loved him and asked if he was okay. CW1 received no response.

Additional Civilian Witnesses

Five freelance photojournalists learned of the vehicle pursuit. Each journalist videotaped portions of the pursuit and subsequently provided their footage to detectives. None of their video footage captured Ulmer's movements immediately preceding the officers discharging their firearms.

Law Enforcement Witnesses

At approximately 11:39 p.m. LE1, a patrol officer with the Santa Ana Police Department, observed a gray Kia Forte straddling the dotted white lines separating traffic lanes. The Kia had tinted windows and an expired registration. LE1 suspected the driver might be impaired. LE1 activated his siren and overhead lights to conduct a traffic stop. The Kia accelerated, rapidly changed lanes, and drove between vehicles. LE1 announced a pursuit over police radio. The Kia passed through a red light and exceeded 80 miles per hour (mph). The Kia drove through another red light and continued at approximately 60 mph. After approximately four miles, it merged onto southbound I-5. As the Kia passed the First Street/Fourth Street off-ramp, LE1 saw what appeared to be several small bindles being tossed out of the vehicle. LE1 suspected they contained narcotics. He requested units respond to locate the items. An officer responded but did not locate any narcotics.

Another Santa Ana officer and a CHP officers joined the pursuit which continued into San Diego County. The Kia drove at speeds between 60 and 90 mph. As the pursuit passed Cannon Road, a CHP officer observed a small clear plastic baggie containing a white substance come out the right front passenger side of the Kia. During a later search, no object was located.

South of Del Mar Heights Road, the Kia's emergency flashing lights came on and the vehicle slowed to a stop in a traffic lane near the State Route 56 interchange. CHP stopped their patrol vehicle approximately 30 feet behind. A CHP officer exited and pointed his department-issued AR-15 at the Kia while his partner pointed a shotgun. CHP used the vehicle's public address speaker to order the

driver to exit. Due to the Kia's dark window tinting, the officer could not decipher anything about the vehicle's occupants. The driver-side door opened a couple of times, but no one exited. The door closed and the vehicle accelerated away.

Ulmer made several lane changes, passed several vehicles, and drove between 70 to 95 mph while weaving across all lanes. Ulmer avoided a spike strip near University Avenue and continued southbound. Just north of Olympic Parkway, Ulmer's vehicle slowed to a stop in the number three lane.

Statements of Officers Chi, Mendoza, Mendez, Holm, Pidgeon

All the shooting officers provided similar descriptions about what they were able to hear, see and perceive.

Three CHP units and one SDPD canine unit formed the front line. They stopped their vehicles within 30 feet of Ulmer's vehicle. Officers pointed firearms at Ulmer's vehicle, while commands were given and ignored by Ulmer. Mendez repeatedly instructed Ulmer to put the vehicle in park, roll down all the windows, and throw the ignition keys out the window. He was also told to exit with his hands up. They heard Ulmer being warned that a canine could be sent to him and would bite him.

Pidgeon had learned Ulmer had been pursued for a traffic violation. Pidgeon recognized this did not meet SDPD's criteria for the release of a dog on a suspect, but also considered a dog could be deployed if the situation escalated and the suspect aggressively moved toward police or rammed vehicles. Pidgeon made clear to the sergeant that, per SDPD protocol, unless the suspect became aggressive or assaultive, the dog was not going to be released. While the situation at that moment did not call for canine deployment, providing canine warnings then would allow for release of the dog later without further warnings if the suspect came out aggressively with a knife. Further, Pidgeon recognized that the threat of a dog bite can motivate a suspect to surrender.

The officers had difficulty seeing into the vehicle because of the tinted windows which were rolled up. Officers could not safely approach the vehicle as they were not able to see inside and did not know who the suspect was. They all waited for Ulmer to comply with the commands. Mendez repeatedly ordered Ulmer to put the vehicle in park and take the keys out of the ignition. Some of the officers estimated commands were given for about 10 minutes. One officer estimated six minutes. Ulmer would not comply. Pidgeon used his patrol vehicle's PA system to make three announcements, including telling Ulmer to come out and he would not be hurt. Ulmer did not respond. A second officer had his dog out at this time and Pidgeon made clear that he was not to release his dog given the current conditions.

Ulmer then opened the driver-side door for a second and closed it. Ulmer's vehicle inched a couple of feet forward and stopped again. Then the vehicle began to drive forward. A CHP unit conducted a PIT maneuver, turning Ulmer's vehicle to face the officers. Holm drove his patrol vehicle toward Ulmer's vehicle until they were nose-to-nose. Mendoza drove forward and positioned his vehicle to the left of Holm's. Now that Ulmer's vehicle was facing them, Mendez was able to see inside.

Ulmer started to exit his vehicle, but then he remained half inside and half outside the vehicle. Officers could not see Ulmer's right hand. Mendez and Holm repeatedly commanded Ulmer to show his other

hand, but he kept his hand out of view. Ulmer remained partially inside the vehicle. He didn't comply with commands and didn't show both hands. As Mendez continued yelling commands, Ulmer looked to his right and left as if "scanning" or evaluating how to flee on foot. It was not safe for officers to approach Ulmer because both his hands were not visible. Mendez continued commanding Ulmer to show his hands. Ulmer responded, "No." Mendoza said Ulmer shook his head left and right, seeming to indicate he was not going to comply.

Suddenly, Ulmer's right arm shot up and out toward officers. Ulmer held a black object in his hand and pointed it in the direction of Holm and other officers. The officers believed the object was a firearm. They described Ulmer assuming a firing stance and pointing the object in the direction of the officers and patrol vehicles directly in front of Ulmer's vehicle.

Two officers believed they saw a flash and heard a gunshot. Chi believed Ulmer had fired. She fired approximately four shots. Fearing Ulmer may shoot him, his partners, and Holm, who was right in front of Ulmer, Mendez fired his AR-15 rifle at Ulmer approximately three to five times. Mendez briefly ducked behind his patrol vehicle's door and came back up.

Mendoza believed Ulmer had a firearm. Ulmer's stance was consistent with a shooting stance and he pointed the object in the direction of the officers and the patrol vehicle directly in front of Ulmer's car. Fearing for the lives of his fellow officers, Mendoza fired his weapon approximately four or five times. Mendoza believed he fired first. Once Mendoza stopped firing he heard a volley of gunfire around him and did not know where it was coming from. He ducked down because he was afraid he was getting return fire. When he stood up Ulmer was lying motionless on the ground.

Holm felt he was going to be shot and feared officers in the vicinity could be shot. Ulmer was in a shooting stance. Holm saw a flash he believed to be muzzle flash from a gun being fired by Ulmer. Immediately after seeing the muzzle flash, Holm felt an impact in his chest. He fired one round at Ulmer and Ulmer went down. Holm said Ulmer scurried away from his car, got up, and moved toward the rear of his vehicle. Holm fired twice more at Ulmer. Ulmer then disappeared behind his vehicle. Holm fired his weapon fearing Ulmer would shoot him or other officers. Holm did not consider any other force option because he perceived he had just been fired upon and no other option would have been appropriate.

Pidgeon described Ulmer leaping up between the driver-side door and windshield and taking a shooting stance, pointing what Pidgeon believed to be a gun at CHP officers. Ulmer's feet were about shoulder-width apart and his shoulders were squared in a "very aggressive shooting stance." Pidgeon believed Ulmer was going to shoot the CHP officers, SDPD officers, and him. Prior to this, Pidgeon had not drawn his firearm. He ducked behind the door of the CHP vehicle, drew his firearm, came up, and pointed his firearm toward Ulmer. Ulmer was retreating to the rear of his vehicle. Ulmer raised his hand again in an aggressive shooting position toward Pidgeon and, in return, Pidgeon fired his weapon approximately four times. Ulmer fell to the ground and Pidgeon yelled, "Cease fire." Holm began to move toward Ulmer's vehicle and Pidgeon instructed him to get back and they'd send the dog.

Harvey described a CHP officer giving commands, "Show me your hands, show me your hands." Ulmer appeared to be sitting on the edge of his seat, halfway in, halfway out of his car, with only his head and part of his upper body visible. Harvey exited his vehicle and began leashing his dog. Ulmer

did not comply with the commands to raise his hands. After about 10 to 15 seconds of commands, Ulmer immediately stood up and took a shooting stance with feet planted while holding an object in his hand that extended past his fingers and pointed out. Ulmer's position essentially mirrored that of the CHP sergeant on the other side of the car. Ulmer was reaching over the windshield with both arms extending toward the CHP sergeant. There was muzzle flash near Ulmer's windshield and Harvey heard one distinct gunshot before hearing return fire from officers. By this point, Harvey had returned his dog inside of his patrol vehicle. Ulmer briefly disappeared from view before reappearing. Harvey had drawn his firearm by this point. Ulmer regained his balance and, with arm outstretched in front of him, pointed the object in his hand at the officers in a shooting stance. Harvey knew he had to return fire to eliminate the threat as Ulmer had already fired at officers, they had returned fire, and Ulmer now had a wider view of the officers. Harvey was "convinced, 100 percent, that he had shot at or also shot at and hit the CHP sergeant." Harvey believed Ulmer was going to continue to shoot at officers.

Harvey fired his weapon six times at Ulmer. Ulmer fell to the ground, but Ulmer's condition was unknown. Another officer walked into the open and Harvey instructed him to go to a position of cover. Harvey moved behind Pidgeon. Pidgeon said, "I can't see the gun." Harvey quickly checked with the other officers to make sure no one had been hit by Ulmer's gunfire.

Ulmer fell to the ground with left arm was underneath his waistband. Harvey was unsure whether Ulmer was in possession of a weapon or trying to bait officers in order to ambush them. Still, the officers had to approach to take him into custody and render medical aid. The officers could not see his firearm. A dog was released to pull Ulmer back toward officers. The dog bit Ulmer and pulled him to the officers who handcuffed him and immediately started lifesaving measures. The officers believed no other force option was feasible because all five of the shooting officers believed Ulmer pointed a gun at them.

Holm immediately began searching himself for a gunshot wound because he was convinced he had been shot. Another officer assisted him in looking for a gunshot wound. Holm determined he did not have a gunshot wound. He told the other officers to check each other to make sure no one had been shot.

Officers immediately began performing life-saving measures on Ulmer. An officer and Holm began administering CPR. Harvey assisted, relieving an officer on chest compressions. Someone asked for a pocket mask for CPR and Holm retrieved his from his trunk and ran to Ulmer. Holm then made sure the other officers were accounted for and uninjured. Paramedics arrived and took over life-saving care.

Investigation

The crime scene was secured, photographed, and investigated by the San Diego Sheriff's Homicide Unit. All police reports, audio-recorded witness interviews, audio-recorded interviews of officers involved, California Highway Patrol dashboard cameras, body worn camera (BWC) footage, video provided by freelance photographers, video from and Orange County Sheriff's Department helicopter, video from San Diego Police ABLE helicopter, medical records, the autopsy report, and other documentation of this incident were reviewed. The evidence reviewed corroborates the statements provided by the officers.

The CHP and San Diego Police Department officers involved in the shooting were all wearing their uniforms. All SDPD officers were equipped with a BWC and had them active at the time of the incident. The digital clock in the upper right corner of the Axon player is displayed in Zulu / UTC (Universal Time Coordinated). A conversion table was used to convert to Pacific Standard Time (local) which is minus 7 hours from UTC time.

A review of the BWC provided the following information. Commands can be heard coming from a PA system telling the driver to put the vehicle in park, lower all the windows, and take the keys out of the ignition. At approximately 1:10:10 a.m., a San Diego officer shouts, "San Diego Police Department, come out with your hands up or we will send in a police dog and you will be bitten." These commands are shouted three times. At approximately 1:11:00 a.m., Pidgeon's BWC shows him use his vehicle's PA system to order, "You in the car, this is the San Diego Police Department. Come out of the car now with your hands up or you will be bitten by a police dog." After a pause, he continues, "This is the San Diego Police Department. Roll down all your windows, step out of the car with your hands up or you will be bitten by a police dog." After another pause, he continues, "You in the car, this is the San Diego Police Department. Roll down all of your windows, step out of the car with your hands up, follow instructions or you will be bitten by a police dog." These commands can be heard clearly on Harvey's BWC footage. At approximately 1:13:30 a.m., Pidgeon again uses his PA system and commands, "You in the car, roll down your windows, follow instructions. You will not be injured. If you fail to comply with our instructions, you may be bitten by a police dog." These commands can be heard in the background of Harvey's footage.

At approximately 1:13:58 a.m., Ulmer begins to drive away and officers on scene move back into their patrol vehicles to continue the pursuit. Pidgeon and Harvey get into their respective patrol vehicles and briefly drive forward before stopping again. Harvey then moves to the rear of his patrol vehicle and opens the back door where his dog is located. Pidgeon stops his patrol vehicle and walks towards the passenger side of Holm's patrol vehicle that is now nose-to-nose with Ulmer's vehicle.

Multiple officers have firearms drawn and are verbally commanding Ulmer to put his hands up. At 1:14:29 a.m., Pidgeon begins opening the front passenger door of Holm's patrol vehicle. Ulmer's car is facing Holm's vehicle and Ulmer's driver-side door is open. As Pidgeon opens the patrol vehicle's passenger-side door, Ulmer appears in the frame standing and pointing an object in the direction of Holm's patrol vehicle. A still frame of Pidgeon's BWC at 1:14:30 a.m. shows Ulmer upright with his right arm extended forward, visibly pointing a black object in the direction of officers. Gunfire is almost instantaneously heard. Pidgeon retreats slightly and unholsters his firearm. At 1:14:34 a.m., Ulmer is briefly and partially visible moving from his earlier position inside of his driver-side door and Pidgeon fires three rounds at Ulmer.

Harvey's BWC captures the sound of gunshots as he is near the rear driver side of his patrol vehicle. Harvey moves to front driver side of the patrol vehicle and takes cover behind his open front driver-side door. Harvey unholsters his handgun and fires his weapon several times. Ulmer's actions are not visible in Harvey's footage.

At 1:14:37 a.m., Pidgeon shouts to "cease fire" and "stay back." He advises he cannot see Ulmer's hands or the gun. Officers shout more commands as an approach team readies. Harvey's footage shows him retrieve a ballistics shield for the approaching team. The leashed dog arrives at Ulmer, who is face down. Multiple officers continue asking about the location of the gun as the dog drags Ulmer back to

the officers. Ulmer is handcuffed, still face-down. At 1:17:07 a.m., Harvey's BWC shows officers roll Ulmer onto his back and a black cylinder-shaped case previously underneath Ulmer's torso is exposed. Officers then begin to administer CPR.

Holm's vehicle was not equipped with a dashboard camera. Other CHP patrol vehicles with activated dashboard cameras did not capture the shooting. CHP officers are not equipped with BWC.

Ulmer's actions just prior to the shooting were best captured by the SDPD ABLE helicopter's camera. At approximately 1:05:15 a.m., ABLE video shows Ulmer's vehicle coming to a complete stop in the number three lane of southbound Interstate 805. In the following minutes, six patrol vehicles with flashing lights activated are seen in a line spanning across the southbound lanes of the freeway behind Ulmer's vehicle. Additional patrol vehicles are behind them. Multiple officers are in felony stop positions, pointing firearms at Ulmer's car. At approximately 1:13:57 a.m., Ulmer begins driving southbound. A patrol vehicle stopped behind Ulmer accelerates and performs a PIT maneuver, causing Ulmer's vehicle to spin until coming to a rest facing northbound. Ulmer's driver-side door quickly opens. Ulmer places his left hand on the frame of the open door and places his left foot on the ground. He remains seated while quickly looking to the south and back toward the officers several times.

At this point, Holm's patrol vehicle has moved forward until the two vehicles' front bumpers are no more than a few feet of each other. Mendoza stops his patrol vehicle to the left and slightly behind Holm's vehicle. Chi's vehicle is seen stopped on the left shoulder. Ulmer remains in a sitting position with his driver-side door open for more than 20 seconds before he quickly stands and fully extends his right arm. He points an object at officers while assuming a one-handed shooting stance. Simultaneously, Ulmer's vehicle rolls forwards and collides with the front bumper of Holm's patrol vehicle. Shots are fired by the officers and Ulmer falls backward onto the ground. He quickly gets up and extends his right arm, points the object at officers while taking several side steps to the south. Officers again fire shots. Ulmer falls onto his stomach with the object and right arm beneath him.

Each officer's firearm, magazines, and cartridges were collected and photographed. Officers Chi, Mendoza, and Holm were each equipped with a department issued .40 caliber Smith & Wesson semi-automatic pistol. Chi possessed five magazines at the time of the incident. One cartridge was in the chamber of the firearm and 11 cartridges were in the seated magazine. The remaining four spare magazines contained 15 cartridges. Mendoza possessed three magazines at the time of the incident. One cartridge was in the chamber of the firearm and eight cartridges were in the seated magazine. One spare magazine contained 14 cartridges and the other spare magazine contained 15 cartridges. Holm possessed three magazines at the time of the incident. One cartridge was in the chamber of the firearm and 12 were in the seated magazine. The two spare magazines each contained 15 cartridges. Mendez was armed with a Sig Sauer AR-15 rifle. 15 cartridges were in the seated magazine of the rifle. It was determined Mendez fired five rounds from the rifle during the incident.

Pidgeon was equipped with a .45 caliber Glock 21 semi-automatic pistol and possessed four magazines at the time of the incident. One cartridge was in the chamber of the firearm and eight cartridges were in the seated magazine. The remaining three magazines each contained 12 cartridges. Officer Harvey was equipped with a 9mm Glock 17 semi-automatic pistol. Harvey possessed three magazines at the time of the incident. One cartridge was in the chamber of the firearm and 11 cartridges were in the seated magazine. The remaining two magazines each contained 17 cartridges.

Three .40 caliber cartridge casing with a head stamp marking "Federal 40 S&W" were located on the ground near the front driver side front quarter panel of CHP patrol vehicle 211, which was stopped on the left shoulder. These cartridges were in the area where Chi stated she was standing when she fired her weapon. Two .40 caliber cartridge cases with a head stamp marking "Federal 40 S&W" were located on the asphalt between CHP vehicle 211 and CHP 827, which was stopped in the number one lane. A .40 caliber cartridge casing with a head stamp marking "Federal 40 S&W" was located on the ground adjacent to the rear driver-side door of CHP vehicle 827 and on the driver side roof of CHP vehicle 827.

Three .40 caliber cartridge casing with a head stamp marking "Federal 40 S&W" were located on the ground and to the rear of CHP vehicle 827. An entry defect on the inside of the front passenger side door of vehicle 827 and an exit defect on the outside of the door was located and photographed. Examination of the scene determined these defects were caused by Mendoza's rifle.

Five 223 rifle cartridges with a head stamp marking "SPEER 223 REM 19" were located on the ground in front of SDPD canine vehicle 7241, which was straddling the numbers one and two lanes. These cartridges were in the area where Mendez stated he was standing when he began firing his rifle.

One .40 caliber cartridge casing with a head stamp marking "Federal 40 S&W" was located on the trunk of CHP vehicle 281, which was in the number three lane and nose-to-nose with Ulmer's vehicle. A total of five .40 caliber cartridge casings were located on the ground adjacent to the rear passenger-side door of CHP vehicle 281. Two of these cartridges had a head stamp of "Federal 40 S&W" and three cartridges had a headstamp of "Federal 45 Auto."

Six 9mm caliber cartridge casings with a head stamp marking "FC 9mm LUGER" were located on the ground adjacent to the front driver side of SDPD MPH vehicle 7463, which was stopped in the number four lane. These were in the area Harvey was standing when he began firing.

A black cylinder-shaped plastic toothbrush case was located on the ground several feet southwest of Ulmer's vehicle. This item was located beneath Ulmer's torso when Ulmer was turned over onto his back by officers. The black cylinder-shaped plastic toothbrush case was near Ulmer's right hand. Earlier, Ulmer had used his right hand to point a black object at officers while in a shooting stance. No actual firearm was located during a search of Ulmer and his vehicle.

Autopsy

On October 5, 2020, an autopsy was conducted. Three penetrating gunshot wounds of the torso and a fourth perforating gunshot wound at the right forearm were found. Multiple skin abrasions, contusions, lacerations of the head, as well as lacerations consistent with canine-related injuries on the upper and lower extremities were noted. Toxicological testing detected methamphetamine (4.2 mg/L) and metabolite amphetamine (0.26 mg/L). The cause of death was determined to be multiple gunshot wounds and the manner of death was listed as homicide.

Legal Standards of Criminal Liability

Penal Code section 835a(b) provides that “any peace officer who has reasonable cause to believe that a person they intend to arrest has committed a public offense, may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.”

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer’s use of deadly force. The law provides that “a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary:

- (A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.” Penal Code section 835a(c)(1)(A).

““Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.” Penal Code section 835a(e)(1).

“A threat of death or serious bodily injury is “imminent” when based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.” Penal Code section 835a(e)(2).

“An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” Penal Code section 835a(e)(2).

““Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” Penal Code section 835a(e)(3).

“In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(2).

“[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(4).

Penal Code section 196 was also amended. The statute provides that homicide is justified when committed by peace officers and those acting by their command in their aid and assistance when the homicide results from a peace officer’s use of force that is in compliance with Section 835a.

Conclusion

Each of the officers’ perceptions and subsequent actions were reasonable, given the circumstances with which the officers were confronted. Ulmer had been pursued across two counties by numerous officers from multiple agencies and he had failed to comply with commands. When he stopped his vehicle a second time, officers assumed felony stop positions and gave several commands to exit his vehicle.

Chiefs Nisleit and Watson

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The officers did not move in on Ulmer. Ulmer attempted to flee, and a PIT maneuver was safely executed to prevent Ulmer's escape and further endangerment to the public. Officers made additional verbal commands without moving in on him. Ulmer made a decision to abruptly spring upward and thrust his right arm toward the armed officers. Ulmer did so while assuming a shooting stance and pointing a linear black object toward the officers. The officers responded by firing their weapons. All the officers reasonably perceived Ulmer as an imminent threat who intended to inflict death or serious bodily injury on them. Less lethal means had been employed earlier. Verbal commands had been given. The threat of a police dog being released had been made. Firearms had been drawn and exhibited. The PIT maneuver had been utilized. The officers did not apply deadly force until Ulmer took deliberate actions to convince the officers he would shoot them. When he did so, less lethal means would not have been sufficient to respond to the reasonably perceived threat. Under the totality of circumstances, Officers Chi, Mendez, Mendoza, Holm, Pidgeon, and Harvey bear no state criminal liability for their actions. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,



SUMMER STEPHAN

District Attorney

cc: Captain Kenneth Jones
San Diego Sheriff's Department
Homicide Division