

HALL OF JUSTICE
330 WEST BROADWAY
SAN DIEGO, CA 92101
(619) 531-4040
SanDiegoDA.com

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN
DISTRICT ATTORNEY

May 3, 2022

Interim Sheriff Anthony Ray
San Diego County Sheriff's Department
9621 Ridgehaven Court
San Diego, CA 92123

Re: Non-fatal shooting of Mr. Omar Rojas by San Diego County Sheriff's Deputy Justin Williams on September 28, 2021; SDSO Case No. 211421107; DA Special Operations Case No. 21-114PS; Deputy District Attorney assigned: D. Cal Logan.

Dear Interim Sheriff Ray,

We have reviewed the reports and other materials compiled by the San Diego County Sheriff's Homicide Division concerning the circumstances leading to the shooting of Omar Rojas. A District Attorney Investigator responded to the scene and was briefed by detectives. This case was submitted to the District Attorney's Office for review on January 7, 2022.

Summary

On September 28, 2021, San Diego Sheriff's received a 911 call of a male brandishing a knife and acting erratically. The reporting party had locked himself in his vehicle for safety. The male slashed two of his tires. Deputy Justin Williams responded to the area, observed Omar Rojas running away, and chased Rojas into a residential area.

Rojas was found hiding in the backyard of a residence while armed with the knife. Deputies surrounded the residence and gave Rojas verbal commands to exit and surrender. Rojas yelled obscenities at them in response. While in the backyard Rojas located what appeared to be a black rifle. It was later determined to be a BB rifle. Rojas grabbed it and pointed it at a deputy standing in the alley behind the residence. The deputy broadcast over the radio Rojas now had a gun. ASTREA, flying above, also reported Rojas was armed with a rifle.

Williams was behind a vehicle in front of the house when Rojas exited through a gate while holding the rifle. Williams gave Rojas several verbal commands to drop the gun. Rojas pointed the gun in Williams' direction. In fear for his safety and the safety of others, Williams fired his weapon at Rojas. Rojas walked back behind the gate while still holding the rifle. Williams gave additional commands for Rojas to drop the gun but Rojas did not comply. Williams fired at Rojas again. Rojas sustained gunshot wounds to his right hand and his back. Rojas was transported to Palomar Medical Center in Escondido and treated for non-life-threatening injuries.

Rojas was interviewed by detectives. He admitted he was under the influence of methamphetamine during the incident and he intentionally pointed the gun at deputies so they would shoot him. Toxicology testing of Rojas' blood after his arrest revealed the presence of alcohol and amphetamines.

On November 30, 2021, Rojas pled guilty to two felonies: Penal Code section 69, resisting an executive officer with force, and Penal Code section 594(a)(b)(1), vandalism.

Persons Involved

Rojas is a 20-year-old resident of Oceanside, California. Williams has been employed by the San Diego Sheriff's Department for one year. Williams previously worked for UC Davis Police Department for over one and a half years.

Civilian Witness 1 (CW1)

CW1 was in an empty parking lot behind a closed restaurant smoking a cigarette and watching CSPAN on his phone while leaning on the hood of his car. He saw Rojas approaching. CW1 thought Rojas looked paranoid and was either mentally ill or using drugs.

Rojas walked around the car and CW1 asked him if he was alright. Rojas did not respond. Instead, Rojas continued walking around the vehicle and then asked CW1 what he was doing. CW1 responded he was watching YouTube. Rojas was making erratic movements and began to get close to CW1. CW1 offered Rojas a cigarette. Rojas took it, lit it, and then looked at CW1 with "weird, crazy eyes."

CW1 grabbed his keys from the hood of the car. Rojas started coming around the vehicle, mumbling and asking CW1 where he was going. CW1 stepped back and told Rojas to relax. He said he was going home. CW1 could no longer get into the driver's side of his vehicle because Rojas was positioned next to the door. Rojas began bouncing around and asked CW1, "Where are you from?" and "You know what this is, right?" CW1 thought Rojas might carjack him.

Rojas suddenly pulled a knife from his front pocket and punctured the driver's side tire of CW1's vehicle. When Rojas was hunched over, CW1 took the opportunity to get into his vehicle and call 911. While CW1 spoke with 911 dispatch, Rojas punctured the front passenger tire with the knife.

As the patrol unit approached, Rojas ran away. CW1 told the deputy Rojas had gone toward houses. CW1 followed the deputy. People in the area pointed and told them Rojas went between two houses. CW1 went into the alley behind the houses with another deputy and looked through a back fence. He saw Rojas sitting down. He had two knives. Rojas appeared to be cutting himself. CW1 used his cellphone to record Rojas.

More patrol cars arrived and CW1 was asked to move from the scene. CW1 walked to the front of the houses and heard commands coming from deputies like, "drop the knife." He heard one deputy say there was a gun. CW1 was instructed to move further away from the area. CW1 heard a command of, "drop the gun." Shortly after, CW1 heard two groups of shots totaling between 8-12 shots. CW1 did not see who was shooting.

Civilian Witness 2 (CW2)

CW2 stated she was inside her residence when she heard sirens, looked out of her window, and observed multiple deputies in front of her neighbor's home. She came downstairs and peaked over the fence when she heard someone say, "Dude, just drop the knife." When she did this, she observed Rojas holding a pocketknife in one hand and a stick in his other hand. CW2 believed Rojas was bleeding from his wrist and had never seen him at the residence before.

Deputies moved up to the residence and pulled on the left gate, but it was locked. Through her upstairs window, CW2 could see that Rojas went and retrieved a BB gun. CW2 informed the deputy who was in her backyard that Rojas had a BB gun. The gun was all black and looked like it was fake. She thought it looked fake because it appeared to be plastic and different than the deputies' guns. It looked to her like Rojas was trying to shoot deputies through the gate with the gun but was unsure if Rojas ever fired the gun.

Civilian Witness 3 (CW3)

Rojas lives with CW3, his father. Rojas abuses crystal methamphetamine and may have been feeling depressed. The night before this incident, CW3 and his wife talked to Rojas about getting help. Rojas said he did not need help and left their residence. On the morning of the incident at about 10:30 A.M., Rojas called CW3 and asked to pick him up near Vista High School. At about 11:00 A.M., CW3 drove around the high school but was unable to find Rojas. CW3 went back to work. At about 12:15 P.M., Rojas called CW3 asking where he was. CW3 told Rojas he had to go back to work. CW3 stated Rojas sounded okay when he talked to him on the day of the incident.

Law Enforcement Witness 1 (LE1)

LE1 took a position along a back fence and alleyway. He observed a man talking with someone through a tall wooden fence. CW1 informed LE1 he was the reporting party and he was speaking with the suspect through the fence. LE1 directed the reporting party to leave the area due to safety concerns.

LE1 heard a deputy on the radio say there was probable cause to arrest the suspect for felony vandalism. LE1 climbed on top of his patrol vehicle to see into the backyard of the residence. There were trees and an awning in the yard which partially obstructed his view but LE1 could see Rojas pacing back and forth on the south side of the backyard holding a knife in his hand.

Deputies at the front of the house began speaking with Rojas and giving him commands. Rojas was not being compliant and was yelling at the deputies. At some point, Rojas yelled they were going to have to shoot him if they wanted him to do anything.

LE1 was about 25 feet from Rojas and spoke with him for about ten minutes. Rojas was sweating profusely, paranoid, pacing and making quick head movements, which made LE1 believe he was under the influence of a controlled substance. LE1 told Rojas that nobody cared about him slashing someone's tires and that he would only go to jail for a couple of days. LE1 also told Rojas not to make things worse and to drop the knife.

Rojas was whispering and not verbally engaging with LE1. Rojas said, "Fuck you, Fuck the Sheriff's," and other obscenities repeatedly. Rojas never dropped the knife in his hand. Because of the height of the fence, LE1 could only see Rojas from the chest up but sometimes Rojas would bring his hands up to about shoulder height and LE1 could then see the knife. After about ten minutes, Rojas ducked

down for about a minute, out of LE1's view. LE1 continued looking for Rojas who suddenly popped up and pointed a rifle directly at LE1.

LE1 yelled out, "Gun!" and jumped off the roof of his patrol vehicle. He immediately took cover behind his vehicle and believed Rojas was going to shoot him. The man's finger appeared to be on the trigger of the rifle. At the time Rojas pointed the gun at LE1, LE1 had his gun drawn, but down at the low ready. Had LE1 had his handgun pointed at Rojas when he popped up with the rifle, LE1 felt he would have fired his weapon at Rojas because LE1 feared for his life. LE1 described the weapon as looking exactly like a Ruger 10-22.

It was advised on the radio that Rojas had a gun. ASTREA arrived and updated perimeter units that Rojas was still in the backyard by the awning and had a rifle.

LE1 heard was the volley of gunfire and then "shots fired" was announced on the police radio. LE1 had his handgun out and was prepared to use lethal force if Rojas emerged from the yard in the back alley. A few seconds later, a second volley of gun fire occurred. This volley was about twice the number of gunshots as the first volley.

ASTREA gave an update that Rojas was down on the ground in the backyard and appeared to be bleeding. Rojas was moving his arms and legs and was still near the rifle and the knife. ASTREA made announcements for Rojas to crawl away from the weapons but Rojas did not respond to the commands. Deputies formed two contact teams that entered the backyard, placed Rojas in custody and rendered aid.

Law Enforcement Witness 2 (LE2)

LE2 saw CW2 at the second story window of a neighboring residence that overlooked the backyard of the residence. The neighbor relayed her observations to LE2, including that Rojas had a knife and he was bloody. LE2 went into the backyard of the neighboring residence and saw Rojas in the back yard next door. Rojas looked like he was paranoid. He was moving back and forth and sweating. LE2 could only see Rojas from about the nose up.

LE1 talked to Rojas for a few minutes trying to calm him down and to convince him to surrender. Moments later LE2 saw Rojas point a rifle at LE1. LE2 took cover and saw Rojas begin to scan and then point the rifle toward LE2's direction. The female neighbor told LE2 the gun was a BB gun. LE2 couldn't tell if it was a BB gun but thought it might be. LE2 put out the information on the radio that Rojas had a gun, possibly a BB gun. LE2 lost sight of Rojas. LE2 then heard 4 to 5 shots and then a few moments later, heard a second volley of shots.

LE2 approached Rojas in the backyard and saw a firearm that looked like a rifle near Rojas' head within arm's reach of Rojas. LE2 moved the firearm away from Rojas. LE2 also noticed a kitchen knife on the ground next to Rojas. The fire department soon arrived and rendered aid to Rojas.

Law Enforcement Witness 3 (LE3) LE3 took a position on the south fence line of the home and could see Rojas in the backyard through a window. LE3 announced on the police radio that he could see Rojas. He was pacing back and forth. Rojas was agitated, sweating and making a fist with his hands. LE3 announced his presence by stating, "Sheriff's Department." He could not tell if there was an object in Rojas' hands but

told him to come out with his hands up. Rojas turned towards LE3 and said, "Fuck the Sheriff's Department." LE3 announced on the radio the suspect was uncooperative and appeared assaultive.

LE3 could hear LE1 verbally engaging Rojas from the back side of the home trying to calm Rojas by telling him things will be okay. Rojas did not appear to be responsive. A neighbor was able to see Rojas and provided information to LE2. A deputy on scene advised over the radio that Rojas had a gun so LE3 retreated to the back of his patrol vehicle and took cover. LE3 retrieved his patrol rifle and watched the left gate and front door of the house. ASTREA advised over the police radio that it appeared Rojas had a rifle in his hands.

Williams began yelling commands at Rojas. LE3 then heard 3 to 4 shots and saw Williams was in a firing position. LE3 then heard another 7 to 9 rounds and saw muzzle flash from Williams' firearm. ASTREA advised on the radio that Rojas was prone on the ground. LE3 maintained observation on the fence as deputies apprehended Rojas.

Law Enforcement Witness 4 (LE4)

CW1 told LE4 that Rojas had slashed his tires. CW1 then alerted LE4 that he found Rojas in a backyard, holding a knife and cutting himself. LE4 was not able to see Rojas but ran to the front of the house to update Williams. They requested additional units and LE4 and Williams remained at the front of the residence positioned outside the north front gate.

Deputies positioned on the south gate were making announcements to Rojas. Rojas responded by yelling obscenities at the deputies. The fencing was taller than LE4, so she was unable to see Rojas but could see between the wood slats that someone was in the yard on the other side of the fence.

LE4 heard LE2 say that Rojas had a BB gun. LE4 also heard over the police radio that Rojas had a weapon. LE4 told investigators she was unsure which of the two she heard first. LE4 knew Rojas had some sort of firearm, so she and Williams retreated behind an SUV parked in front of the north gate. LE4 transitioned from her handgun and retrieved a shotgun from a patrol vehicle behind her. LE1 advised on the radio there was probable cause to arrest Rojas for assault with a deadly weapon with a gun.

LE4 could not recall in the chaos of the moment if she heard initially that Rojas had a weapon, gun, or a BB gun. LE4 was aware Rojas had a firearm and she along with Williams retreated behind an SUV. LE4 retrieved a shotgun from a patrol vehicle behind her. LE1 stated on a radio transmission there was probable cause to arrest Rojas for assault with a deadly weapon with a firearm.

Williams was at the front of the SUV and LE4 was at the rear of the SUV. LE4 could see the north gate, but could not see over it. At some point Williams said, "He's coming towards us." Williams yelled at Rojas multiple times to drop the gun, then LE4 heard shots being fired. LE4 initially thought someone was shooting at them from the backyard. LE4 looked at Williams and saw he was in a shooting posture with his handgun out and cartridge cases were ejecting from his handgun. LE4 continued to point the shotgun at the gate and fencing but couldn't see Rojas. LE4 remained on the outer perimeter and did not enter the backyard.

Law Enforcement Witness 5 (LE5)

The reporting party showed LE5 a video on his cellular phone of Rojas in the yard holding two knives. LE5 went to the front of the residence where LE3 was located. He heard Rojas say, "Fuck the Sheriff's." LE5 could see Rojas pacing in the back yard through a window of the residence.

At some point, LE5 heard LE1 yell, "Gun!" LE5 retreated behind a patrol vehicle. LE5 secured the less lethal shotgun and retrieved a shield from LE3's vehicle. LE5 saw Rojas come up to the front gate on the south side of the property. LE5 could only briefly see the silhouette of Rojas before he walked to the back yard. Seconds later, Williams yelled, "Drop it! Drop the gun!" LE5 heard one shot being fired. LE5 looked toward Williams and saw Williams fire two more rounds. Multiple deputies yelled, "Shots fired!" LE5 moved to another patrol vehicle directly in front of the driveway. Williams fired multiple rounds again. LE5 assisted on a contact team who approached the backyard from the south side of the residence.

Deputy Justin Williams' Statement

Williams was dispatched to a radio call of a male brandishing a knife at the reporting party. As Williams drove to the call, dispatch provided an update stating the suspect had slashed two of CW1's tires with a knife. Williams then activated the overhead emergency lights and siren of his marked patrol vehicle and continued to the scene. Williams believed he had to respond to the call as quickly as he could because the suspect was violent and had committed a violent crime with a knife.

Williams arrived at the scene and observed Rojas running away. Williams lost sight of Rojas, exited his patrol vehicle and checked for Rojas in the vicinity of an empty building. CW1 pointed Williams in the direction where Rojas had run. Williams spotted Rojas and saw him running towards residences. Williams ran after Rojas but by the time Williams got to the intersection, he could no longer see him.

Williams updated dispatch with where he believed Rojas had run to. A local resident informed Williams that Rojas had run south on Kiva Lane. Williams checked for Rojas at the house but he was not there. LE4 and CW1 arrived as Williams stood in front of the residence located on Kiva Lane. Williams and LE4 spoke with CW1 to determine what crime had been committed in order to update dispatch and additional responding deputies. After speaking with CW1, Williams confirmed Rojas had committed a vandalism. LE4 spoke further with CW1 as Williams requested additional units to assist with setting up a perimeter.

LE4 later approached Williams and told him CW1 had seen Rojas in the backyard of a house on Kiva Lane. Williams updated dispatch and his partners. A perimeter was set up around the house. Williams and LE4 set up on the front northeast side of the house and two deputies set up on the backside of the residence. Two to three additional deputies set up to the south of Williams and LE4.

Williams requested a K-9 unit respond to the scene. LE2 broadcast on the radio that Rojas was in the backyard with a knife in his hand. Williams and LE4 moved up to the north fence leading to the backyard. Williams stepped onto a concrete step to try and get a better position to see into the backyard. Williams was only able to see a portion of the backyard and could not see Rojas. At this point, Williams heard LE1 ask Rojas to drop the knife and to come out with his hands up and with nothing in his hands. Williams also recalled hearing LE1 tell Rojas it was going to be okay.

Williams heard a deputy over the radio say Rojas had a gun. Williams took cover behind a vehicle parked on the street in front of the home. ASTREA broadcast Rojas appeared to have a rifle in his hand. Williams felt the situation was escalating and getting serious. Shortly after, Williams observed what he believed to be a person in the backyard walking towards the fence; the same fence Williams was standing in front of just prior to taking cover. Williams was able to see through the spaces in between the wooden fence.

Rojas opened the gate to the fence, walked out a few feet, and had what appeared to be a rifle in both hands. Williams recalled seeing the full frame of Rojas and the rifle. Williams pointed his gun at Rojas and yelled commands ordering Rojas to drop the gun. Rojas did not comply. Rojas pointed his gun in Williams' direction and also shifted his position. Williams believed he gave Rojas additional commands to drop the gun and felt he could be shot at any moment. Williams recalled he then fired four rounds at Rojas.

Rojas walked back through the gate into the backyard. Williams could still see Rojas holding the rifle. Williams thought Rojas was using the fence as concealment. He was not sure if the gate was completely shut. He remembered thinking Rojas has a long rifle with ammunition which can easily penetrate through the fence. Williams was in fear for his safety as well as his partners' safety. Williams could see Rojas still standing behind the fence with the rifle. Williams then fired what he believed to be seven more rounds at Rojas through the fence.

Williams reevaluated the situation. He could see through the fence that Rojas was no longer standing. ASTREA advised they could see the rifle and knife were still near Rojas. ASTREA gave directions for Rojas to move away from the firearm and the knife. Deputies set up a contact team which Williams was part of. They contacted Rojas who was lying on the ground and appeared to be bleeding from his hand. Rojas was subsequently placed into handcuffs. Williams examined Rojas for injuries and checked for additional weapons.

Williams felt Rojas went from being non-compliant by refusing to drop the knife, to escalating the threat level. He was not complying and deputies continued to plead with him to follow commands. The goal was to take Rojas into custody for the felony vandalism.

When Rojas exited from behind the gate with the firearm Williams was scared. Rojas pointed the rifle in Williams' direction with a "threatening demeanor." When Williams had his firearm pointed at Rojas, he believed Rojas was trying to change his position as if he was trying to gain a more dominant position. Williams was concerned for his partner who was behind the vehicle with him. Williams described the velocity of a rifle round as being very quick and very powerful. The rounds could penetrate through a vehicle and through a fence.

When presented with a lethal option Williams was trained to also present a lethal option, to protect himself as well as his partners. When the rifle was introduced by Rojas, Williams' vehicle was too far away to equip himself with his rifle. Williams felt "out forced" and that Rojas had the advantage.

Had Williams not used the force he did, he believed he would have been shot. Once Rojas presented the rifle and did not comply with the commands given, Williams felt he had no other option but to use lethal force.

Omar Rojas' Statement

Omar Rojas was interviewed by investigators while at Palomar Medical Center on September 30, 2021. Rojas stated he was transient in the Vista area. He had previously moved to Nevada and worked construction for a while but decided to come back to Vista in either August or September of 2021. Rojas got a job at Jack-in-the-Box but then started injecting methamphetamine. Rojas had been using methamphetamine a lot over the three days prior to the incident.

On the date of the shooting, Rojas was high on methamphetamine and paranoid there was a warrant for his arrest. Rojas went to a grocery store and stole two knives about 10 to 20 minutes earlier. He walked northbound and saw a man in a parking lot. The man was watching a movie on his phone. Rojas was high and "dreaming." Initially, Rojas was going to stab the man for no reason but decided to pop the man's tires. After popping the man's tires, Rojas saw a black and white police car with the siren on. Rojas ran away because he was scared of the police. Since Rojas is a slow runner, he hid in a lady's yard and played with a little pug dog.

While Rojas hid in the backyard, the police were talking to him and trying to calm him down, but he did not want to believe them. Deputies said popping tires was not a big deal and he did not need to get in any more trouble. Rojas said, "Fuck that! Fuck you guys!" in response to their efforts.

While in the backyard, Rojas found a BB gun above a refrigerator in the patio. Rojas told investigators, "I saw the BB gun and so I was like fuck it, I'm gonna get myself shot. I don't know how to get off of these drugs and live my life you know." Rojas then started "playing" with the police by pretending he was going to shoot them. Rojas admitted to pointing the BB gun at the police and pulling the trigger.

There were a lot of deputies in uniform around the backyard where Rojas was hiding. He pointed the gun at a deputy in the back who yelled, "He's got a gun!" Rojas went to the gate on the right planning to open it and to act like he was going to shoot deputies so they would shoot him, but that gate would not open. He pointed the gun at the deputy behind the fence and pulled the trigger, but nothing came out. Rojas was able to open the gate on the left and walked out pointing the gun at the deputy. He does not remember that deputy saying anything to him. Deputies saw him point the gun at them and they yelled, "Gun!"

He did not get hit by the first shots, but felt the second group of shots. Rojas was shot first in the hand and then in the back when he turned around, because he was scared he would get shot again. He heard the helicopter telling him to get away from the gun while he was lying there in pain.

Rojas stated he felt dumb for everything that happened while he was high. He just wanted to go to jail. Rojas wanted to tell the deputies that he forgives them because he wanted to get shot and "to not feel bad. I get what I deserve for pointing a gun at them." Rojas felt the deputies believed it was a real gun when they shot him. When asked if he thought the gun looked real, Rojas replied, "hell yeah."

Investigation

The scene was secured, photographed, and investigated by the San Diego County Sheriff's Department Homicide Division. All detectives' reports, crime scene investigators' reports, body worn camera (BWC), surveillance video, cellular phone video, ASTREA video and audio recordings were reviewed. All deputies involved were wearing clearly identifiable San Diego Sheriff's Department uniforms. All

deputies on scene were equipped with BWC and each activated them before arriving at the scene. A review of the footage generally corroborated the statements of the deputies. Neither video from BWC nor ASTREA captured Rojas' interactions with Williams immediately preceding the shooting but there is audio of it on BWC.

Surveillance video from the Stater Bros grocery shows Rojas entering the store at 12:02 p.m. and exiting at 12:05p.m. The video does not show Rojas stealing the knives.

CW1's cell phone video shows Rojas in the backyard holding a knife in each hand and putting one knife to his left wrist.

Williams' BWC video shows his arrival at CW1's location, chasing after Rojas and yelling, "Stop, Sheriff's Department." LE4 and CW1 arrive at Kiva Lane and CW1 states his tires were slashed and he felt threatened. LE4 and Williams discuss what crimes were committed and decide there was a felony vandalism and an under the influence of a controlled substance. A later radio transmission broadcasts Rojas is holding a knife. The video shows Williams standing at the north gate entrance with his gun out of its holster. Announcements are heard that Rojas has a gun and deputies are directed to take cover. Williams quickly runs back to a SUV parked on the street and takes cover. With his handgun out of the holster, Williams and LE4 kneel behind the SUV.

LE1 is soon heard saying, "He pointed his gun right at me." Another deputy radios that Rojas is along the side of the house and pointing his weapon toward the front of the house. Williams responds and tells the others, "Okay, he's got weapons this way."

BWC from LE1 shows he arrives in the West alley of 1500 Kiva Lane at approximately 12:43 p.m. CW1 is also in the alley and talking to Rojas through the backyard fence. CW1 tells Rojas to put the knife down. LE1 directs CW1 to move away from the fence and he does. LE1 stands on the roof of his patrol vehicle and looks into the backyard where Rojas is located. A deputy is heard telling Rojas to come out with his hands up. Rojas responds, "Fuck you homie, you're going to have to shoot me." Rojas is heard baiting deputies to "come inside." After several minutes, LE1 talks to Rojas from the roof of his patrol vehicle, calmly urges Rojas to surrender and repeatedly assures him the crime he committed is, "not a big deal." Only the top of Rojas head is visible on the BWC footage but there are no audible responses from Rojas. LE1 speaks to Rojas for several minutes confirming his statement to investigators. At approximately 12:56 p.m., LE1 abruptly yells, "He's got a gun!" and jumps down onto the ground from his patrol vehicle.

Video taken from ASTREA shows Rojas walking towards the rear of the yard from the south gate. The butt of an apparent rifle can clearly be seen under Rojas' right armpit. Rojas walks under the rear patio and out of view as ASTREA advises over the radio that Rojas has a rifle and is walking to the back of the house.

Williams is heard on his BWC saying someone is walking in his direction. Williams yells, "Hey drop it, drop it. Drop it, drop the gun!" LE4 asks Williams, "Where is he?" While in the process of telling LE4 that the person is behind the fence, Williams quickly fires three rounds from his handgun and falls backward to the ground. Williams gets back up and yells, "Drop it man, drop it." A few seconds later, Williams again tells Rojas to "Drop the gun!" and fires several more rounds at Rojas.

ASTREA video shows deputies contacting Rojas in the backyard to arrest him and one of the deputies moves the rifle and a knife away from Rojas. Williams removes a bag of capped syringes from Rojas' pants pocket.

An examination of the scene revealed Rojas armed himself with a Crosman AirGuns BB gun model 781. The gun was black and silver and did not have any bright markings indicating it was not a firearm. It was loaded with about 100 BBs but was not tested for operability. A silver-colored knife with a black handle with apparent blood was also recovered from the grass in the backyard near the gun. A green kitchen knife was also found on the ground next to Rojas' location.

The firearm used by Williams was a department issued Glock 17 9mm handgun. A criminalist inspected the firearm and determined Williams fired approximately twelve rounds. Twelve 9mm cartridge casings were located on the street near the SUV Williams was behind when he fired his weapon.

Rojas' medical records were reviewed. Rojas had a lung laceration, a collapsed lung, a fracture of spinous process of the thoracic spine and fractures to his 4th and 5th finger. Toxicology testing of Rojas' blood after his arrest revealed the presence of alcohol and amphetamines.

Legal Standards of Criminal Liability

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, to defend against an imminent threat of death or serious bodily injury to the officer or to another person or to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended . . . Penal Code section 835a(c)(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).

“A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section “retreat” does not mean tactical repositioning or other de-escalation tactics.” Penal Code section 835a(d).

Conclusion

Rojas punctured two of the reporting party’s vehicle’s tires with a knife. Rojas fled when Williams arrived on scene and then hid in a backyard. Deputies surrounded the residence and attempted to convince Rojas to safely surrender. Rojas intentionally pointed the rifle style BB gun at LE1 as LE1 was attempting to reason with Rojas to surrender. Afraid for his safety, LE1 jumped to the ground from the roof of his patrol car and announced Rojas was armed with a gun. Hearing that Rojas had a gun, Williams and LE4 retreated to better cover behind a vehicle. ASTREA also advised that Rojas possessed a rifle.

Holding the apparent rifle in his hands, Rojas walked through the gate. Disregarding orders from Williams to drop the gun, Rojas pointed it at Williams, causing Williams to shoot at him. Once back behind the gate, Rojas still refused to comply with Williams’ directives to drop the gun. Fearing for his safety and the safety of his partners, Williams again fired at Rojas. Rojas then fell to the ground and was arrested by Sheriff’s deputies.

Although Rojas’ actions just prior to the shooting are not captured on video, he admitted to investigators he walked out acting like he was going to shoot at the deputies. BWC confirms Williams gave Rojas numerous verbal commands to drop the gun before firing his weapon. The BB gun Rojas armed himself with was loaded and had no visible markings that identified it as a BB gun. It was reasonable for Williams to believe Rojas was armed with a rifle and would shoot at Williams and his partners. This is evident based on Rojas’ admission that he pointed the gun at a deputy and pulled the trigger.

Interim Sheriff Anthony Ray

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The circumstances led Deputy Williams to reasonably conclude Rojas had the ability, opportunity, and intention to shoot him or his partners. Williams had reason to believe there was an imminent threat of death or serious bodily harm to either himself or his partners. Therefore, under the totality of the circumstances, Williams bears no criminal state liability for his actions. A copy of this letter, along with the materials submitted for our review, will be retained for our file.

Sincerely,



SUMMER STEPHAN

District Attorney

cc: Captain Steve Bodine
San Diego County Sheriff's Department
Homicide Detail