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OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO

**DAVID P. GREENBERG**  
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN  
DISTRICT ATTORNEY

February 9, 2021

Chief of Police Ed Varso  
Escondido Police Department  
1163 Centre City Parkway  
Escondido, CA 92026

**Re: Non-fatal shooting of Mr. Rosendo Sandoval Quezada on June 19, 2020 by Escondido Police Officer Timothy Hamilton; Escondido Police Case # 20006173; DA Special Operations Case No. 20-076PS; Deputy District Attorney Assigned: Stephen Marquardt**

Dear Chief Varso:

We have reviewed the reports and other materials compiled by the Escondido Police Department's Crimes of Violence Unit concerning the circumstances leading to the non-fatal shooting of Mr. Rosendo Quezada. A District Attorney Investigator responded to the scene and was briefed by investigators. This case was presented to the District Attorney's Office for review on September 17, 2020.

***Summary***

On June 19, 2020, Rosendo Quezada violated a temporary restraining order obtained days earlier by his estranged wife by going to her residence. A call was made to 911 to report the violation. The reporting party described Quezada driving away in a white Camry. Officer Hamilton responded to the call and located Quezada's vehicle. Hamilton confirmed the registered owner of the vehicle was the same as the restrained party. He initiated a traffic stop. Quezada abruptly stopped his vehicle in the traffic lane and exited his car. Hamilton exited his police vehicle.

Quezada quickly advanced toward Hamilton brandishing a three-foot-long metal crowbar at chest level, while yelling statements about dying. Hamilton backed away, ordering Quezada to stop, but Quezada ignored all commands and continued to advance. Hamilton drew his firearm and fired one round. Quezada still continued to advance, brandishing the raised crowbar. Hamilton continued retreating and attempted to fire his weapon again, but the firearm malfunctioned. Hamilton was able to make his weapon operational again while continuing to back away from Quezada and ordering him to stop.

Quezada continued to ignore Hamilton's orders. Hamilton fired three more times, striking Quezada. Quezada fell to the ground and dropped the crowbar. Quezada was transported to the hospital for treatment of two gunshot wounds. He survived his injuries. During interviews with detectives, Quezada stated he had been upset over his failed relationship with his wife and wanted Hamilton to kill him. He knew if he had something in his hand, like the crowbar, Hamilton might shoot him. Quezada has been criminally charged in San Diego Superior Court case number CN415071 with assault with a deadly weapon on a peace officer, violation of a domestic violence temporary restraining order, and other crimes as a result of this incident. Toxicology testing performed on Quezada detected the presence of methamphetamine.

***Persons Involved***

At the time of the incident, Quezada was a 44-year-old resident of Escondido. Hamilton had been employed by the Escondido Police Department for two and a half years. Hamilton was in full police uniform and driving a marked police vehicle at the time of the incident.

***Statement of Law Enforcement Witness 1 (LE1)***

LE1 is a Deportation Officer with the Department of Homeland Security, Immigrations and Customs Enforcement (ICE). LE1 was on duty at the time of the incident, dressed in civilian clothing and using an unmarked duty vehicle equipped with a police radio. LE1 was parked in a shopping center parking lot at Broadway and Washington completing paperwork while monitoring the Escondido Police radio frequency. He heard Hamilton and dispatch communicate about a suspect vehicle. Hamilton notified dispatch he was going to conduct a traffic stop on the vehicle at Broadway and Park. LE1 decided to stay in the vicinity to provide Hamilton cover if needed. LE1 saw the red and blue lights of Hamilton's police vehicle reflecting off the buildings and then saw the suspect vehicle and Hamilton's marked patrol vehicle turn west onto Washington.

LE1 drove slowly through the parking lot to better observe Hamilton's traffic stop. He had a view of the passenger side of Quezada and Hamilton's vehicles. Quezada's vehicle suddenly stopped and the driver's door swung open. Quezada jumped out of the vehicle and charged toward Hamilton with a metallic yellow object raised in the air. LE1's view of Hamilton exiting the patrol vehicle was blocked, but he saw Hamilton retreating, creating distance between himself and Quezada. Hamilton gave commands to Quezada, but Quezada continued closing the distance to Hamilton while holding the object up and cocked back. The distance between Hamilton and Quezada appeared to be five to ten feet. LE1 exited his vehicle and moved toward Quezada and Hamilton.

LE1 said Hamilton had either a Taser or his pistol out as he continued to back away from Quezada. LE1 observed Hamilton fire two to three shots from his weapon. Quezada dropped the crowbar and fell to the ground. LE1 ran to assist Hamilton, announced he was a law enforcement officer with ICE, and had his weapon drawn. Hamilton told LE1 to cover him while Hamilton attempted to handcuff Quezada. Quezada was not cooperating. He appeared to be pulling away or trying to get up. Quezada said something to the effect of "Kill me," or "I want to die," while Hamilton was trying to handcuff him. LE1 holstered his firearm and then grabbed Quezada's left hand and brought it behind Quezada's back. Hamilton handcuffed Quezada. Hamilton radioed that shots had been fired and requested paramedics. Other officers began to arrive so LE1 stepped back and allowed them to assist.

***Statement of Officer Hamilton***

Hamilton was on patrol when he heard a radio call of a temporary restraining order violation. Dispatch relayed the male suspect had departed the scene approximately five minutes prior in a white Toyota. Hamilton responded to the area, where he located a matching vehicle. The vehicle was driving slowly. Hamilton got close enough to read the license plate. He provided the plate number to dispatch, who confirmed the registered owner was the restrained party of the temporary restraining order. The vehicle did not stop at a stop sign when it turned from Park onto Broadway. Hamilton followed the vehicle southbound on Broadway toward Washington. As the vehicle approached a red light at the intersection with Washington, its right turn signal activated and the vehicle appeared to accelerate. The suspect vehicle did not stop at the red light as it turned right onto westbound Washington. Hamilton felt the driver was aware a police vehicle was following and he believed the driver might attempt to flee.

Hamilton activated his emergency lights to conduct a traffic stop. Quezada abruptly stopped the Toyota in the traffic lane on Washington. Hamilton did not anticipate Quezada stopping in the lane of traffic so quickly. As a result, Hamilton's patrol vehicle was much closer than it normally would be during a traffic stop. Hamilton's typical traffic stop procedure is to get out of his patrol vehicle, lock and close his door, pull the door handle to confirm it is locked, and then activate his Body Worn Camera (BWC) while approaching the stopped vehicle as the driver was still in the driver's seat. Following this protocol, he would capture the entirety of his contact with a driver. Here, however, Quezada quickly exited his vehicle and began advancing on Hamilton with a deadly weapon. Hamilton's need to respond immediately to the present threat resulted in him not activating his BWC as he normally would. Quezada began walking quickly toward Hamilton while holding an approximately three-foot-long crowbar in his right hand. Quezada gripped the crowbar at hip to shoulder level having about two-thirds of the crowbar above his grip. Quezada was yelling words to the effect that he wanted to die.

Hamilton began yelling at Quezada to stop as Quezada approached at a quick pace. Hamilton had not yet drawn his weapon. Hamilton began to back away, believing if he didn't create distance, Quezada would hit him and would probably kill him. Quezada continued toward Hamilton without changing his behavior despite Hamilton's repeated commands to stop. Hamilton continued backing up.

Quezada got just beyond striking distance of Hamilton, estimated at seven to ten feet. Hamilton drew his gun and fired one shot at Quezada. Quezada seemed to pause momentarily, but then continued to walk toward Hamilton, leading Hamilton to believe Quezada was either unaffected by the shot or the shot had missed. Quezada still had the crowbar in his hand and Hamilton continued to feel threatened. Hamilton attempted to fire another round while still walking backward, but the gun did not fire. To correct the malfunction, Hamilton racked the gun as he had been trained. Hamilton continued backing away, still yelling at Quezada to stop. Quezada continued toward Hamilton with the raised crowbar, still yelling the same type of things as earlier. Quezada was about seven to ten feet away when Hamilton, still fearing Quezada would kill him, fired three more shots. Quezada fell to the ground and began yelling out in pain.

Hamilton activated his BWC and broadcast over the radio that shots had been fired. A person ran toward Hamilton stating he was an off-duty law enforcement officer. Hamilton holstered his gun. With the assistance of the off-duty law enforcement officer he rolled Quezada onto his stomach and handcuffed him. Hamilton immediately radioed for medical assistance. Quezada kept stating he was going to die and he wanted to die. Hamilton rolled Quezada onto each side in order to assess Quezada for injuries. Other officers began to arrive and took control of Quezada, so Hamilton stepped away to provide the on-scene sergeant with a safety briefing.

#### ***Statement of Rosendo Quezada***

Quezada knew there was a restraining order preventing him from going to his wife's home, but he drove there anyway and parked his car in front for about five minutes. Initially, Quezada stated he didn't get out of the car. Later, he stated he did get out. He said he touched the screen on his wife's window to make noise to see if she was there and he cut his hand.

Shortly after he left the residence, Quezada saw a police car behind his vehicle. Quezada drove slowly along Park. Quezada was not sure how many officers were following him, but then realized it was only one. Quezada turned left from Park onto Broadway and then right onto Washington. The police car did the same. Around the area of the turn onto Washington, Quezada saw the emergency lights on the patrol vehicle activate and thought to himself that he did not want to go back to jail. He was tired and he saw a good opportunity to die.

While driving on Washington, Quezada stopped quickly. He opened the door and grabbed a crowbar he always carries in his car. He ran back toward the officer and told the officer to kill him. The officer didn't have time to say anything. Quezada knew if he had the crowbar, the officer would have the right to shoot him, whereas if he did not have anything, the officer might just shock him with an electrical device. He did not want to hurt the officer, but instead wanted the officer to kill him. Quezada got so close to Hamilton he could have hit him with the crowbar, but he did not swing at him because he did not want to hit him. Hamilton drew his gun and tried to fire, but it did not work. Hamilton ran backward to get more room and Quezada followed him until Hamilton fixed his gun. Hamilton continued to move back. Hamilton fired at Quezada and shot him in the stomach. Quezada told Hamilton to leave him and let him die, but Hamilton told him he was not going to die. Quezada did not think the officer wanted to kill him. He felt like he was going to die, but those on scene started saving him. Quezada stated that four hours before he had contact with Hamilton, he had smoked crystal methamphetamine.

### ***Investigation***

The crime scene was secured, photographed, and investigated by detectives from the Escondido Police Department's Crimes of Violence Unit. All detectives' reports, crime-scene investigators' reports, audio-recorded witness interviews, video-recorded suspect interviews, BWC footage, surveillance video from area businesses, blood draw and toxicology reports, home security camera footage, 911 calls, and radio dispatch records were reviewed. These items were found to provide corroborating evidence of the officer's statement.

Portions of the incident were captured by closed circuit video surveillance cameras at two nearby businesses. Exterior cameras from a Walgreens Pharmacy mounted on the east and north walls of the building captured portions of the incident. Both cameras recorded activity in the parking lot as well as part of the traffic lanes of Washington Street. The video from these cameras is of poor quality and recorded in black and white. The vehicles and persons seen in the video are not clearly identifiable but do corroborate statements provided by Hamilton, Quezada, and LE1.

At 3:45 a.m. both cameras capture the vehicle driven by Quezada traveling westbound on Washington from Broadway followed by Hamilton's police vehicle with the emergency lights on. The camera mounted on the north wall of the building captures Hamilton's vehicle as it comes to a stop and Quezada's vehicle passes out of view. The figures of two persons, Quezada and Hamilton, can be seen on the street soon after and moving eastward in the lane of traffic out of view. The video quality is too poor to determine when the shooting occurred.

A second camera, mounted on the east wall of the building, also recorded a portion of the traffic lanes of Washington Street. From this view, Quezada and Hamilton's vehicles can be seen traveling westbound on Washington. The emergency lights on Hamilton's vehicle are activated. Both vehicles go out of camera view and approximately three seconds later, the figures of two people can be seen quickly moving eastbound on Washington with one following the other until both go out of view.

The closed-circuit surveillance cameras of another business located at the north west corner of Broadway and Washington recorded activity on all four sides of the building. Three of the cameras recorded Hamilton following Quezada's vehicle before the traffic stop but none captured the shooting. At 3:46 a.m., the camera affixed to the exterior east side of the building captured Quezada's vehicle traveling southbound on Broadway in the lane closest to the curb with Hamilton following closely behind. Hamilton did not have his emergency lights on. Both vehicles go out of view and are picked up by the camera affixed to the exterior south wall after they made the turn onto Washington as they traveled westbound on Washington in the lane

closest to the curb. The vehicles go out of view and Hamilton's emergency lights can be seen reflecting off the nearby buildings and windows as he conducted the traffic stop. Nothing else related to the shooting is recorded except responding officers arriving to assist.

The camera affixed to the exterior west side of the building showed LE1's vehicle arriving in the parking lot in the vehicle at 3:46 a.m. The vehicle stops for about 30 seconds before slowly driving southbound in the parking lot before going out of view.

Hamilton was equipped with BWC during this incident. He did not activate the BWC until after the shooting took place. He explained to investigators the incident took place so quickly that he did not have time to follow his normal protocol. Hamilton did activate his BWC after he had shot Quezada. Hamilton's BWC shows Hamilton pointing his handgun at Quezada, who was lying on his back on the ground. LE1 can be heard off camera identifying himself telling Hamilton he is coming over. Hamilton holsters his gun and continually orders Quezada to roll onto his stomach while he attempts to gain control of Quezada's hands. Quezada states several times he is going to die and he wants to die. Hamilton rolls Quezada on his stomach and handcuffs him with LE1's aid. Hamilton requests medics. As other officers arrive on scene, Hamilton assesses Quezada's torso for injuries. A bullet wound can be seen on Quezada's abdomen. Hamilton steps away and other officers begin to attend to Quezada.

An examination of the scene revealed that Quezada had been armed with a metal crowbar. Upon examination by laboratory personnel, the crowbar was found to be 36 inches long and weighed 6.5 pounds.

Investigators collected three cartridge casings and one unfired cartridge. All four were stamped 9-millimeter Winchester Luger. This is consistent with the number of rounds fired by Hamilton and the ammunition in his gun. According to measurements taken at the scene, the first expended cartridge casing fired by Hamilton was 27.5 feet from the driver's door of the police vehicle. The unexpended cartridge, ejected by Hamilton when clearing the gun malfunction, was found 60.07 feet from the driver's door of the police vehicle. The final three cartridge casings fired by Hamilton were found 83.80 feet from the driver's door of the police vehicle.

Toxicological studies performed on blood collected from Quezada indicated a content of 57 ng/mL of methamphetamine.

Quezada has been charged with assault with a deadly weapon on a peace officer with personal use of a deadly weapon; resisting an executive officer with personal use of a deadly weapon and other charges. Trial is currently scheduled for February 25, 2021.

#### ***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:

- (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).

"A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not poses an imminent

threat of death or serious bodily injury to the peace officer or to another person.” Penal Code section 835a(c)(2).

The statute provides definitions for “deadly force,” “imminent” and the “totality of circumstances” in Penal Code section 835a(e)(1) – (3).

““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).

“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***

Officer Hamilton responded to a 911 call alleging that Rosendo Quezada had violated a domestic violence temporary restraining order. After identifying Quezada’s vehicle and observing the vehicle run a red light, Hamilton attempted to conduct a traffic stop. Quezada abruptly stopped his vehicle and exited quickly while gripping a long metal crowbar. He advanced on Hamilton rapidly while brandishing the crowbar. Hamilton had little time to react. Hamilton retreated in attempt to create a physical distance between the two and gave Quezada commands to stop. Quezada ignored the commands and continued advancing while yelling statements about dying. Hamilton reasonably believed he faced an imminent threat of death or

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serious bodily injury. Quezada had a deadly weapon at the ready and objectively appeared to be willing and capable of striking Hamilton. Hamilton drew his firearm and fired one round. Even after being shot at Quezada continued toward Hamilton with the raised crowbar. When Hamilton attempted to fire another round while still giving commands to stop, his weapon malfunctioned. Quezada saw this. Still, Quezada advanced, closing the distance between the two. Quezada admitted he purposely threatened the officer in order to make the officer shoot him, hoping he would die. Reasonably fearing he would be seriously injured or killed, Hamilton fired three more times. Quezada dropped the crowbar and fell to the ground. Hamilton had covered over 80 feet while retreating to avoid being struck by Quezada before ultimately shooting him to stop the threat.

Based on these circumstances, Officer Hamilton acted reasonably and bears no state criminal liability for his 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