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

**DAVID P. GREENBERG**  
ASSISTANT DISTRICT ATTORNEY

July 17, 2020

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

**Re: Non-fatal shooting of Mr. Carlos Soto by San Diego Police Officers Jeremy Huff and Filip Perry on February 27, 2020; SDPD Case No. 20602859; DA Special Operations Case No. 20-034PS; Deputy District Attorney assigned: Giacomo Bucci**

Dear Chief,

We have reviewed the reports and other materials compiled by the San Diego Police Homicide Unit concerning the shooting of Carlos Soto. A District Attorney Investigator responded to the scene and was briefed by your detectives. This case was submitted to the District Attorney's Office for review on April 9<sup>th</sup>, 2020.

***Summary***

San Diego Police Officers were working a joint operation with the Chula Vista Police Department, San Diego Park Rangers and Environmental Services. On February 27, 2020, officers and Park Rangers went into the encampment. Carlos Soto was the only person in the encampment and was located inside one of the structures. Officer Huff announced himself as a San Diego Police Officer and told Soto to come out of the structure. As Soto was coming out Huff could see the butt of a handgun in Soto's right front jacket pocket. Officer Perry also saw the gun. Huff and Perry gave Soto multiple commands to get on the ground. Soto grabbed the gun from his jacket pocket and both officers fired.

Soto sustained three gunshot wounds, one to his left leg and two to his right forearm. All injuries were described as non-life threatening.

***Persons Involved***

Carlos Soto was 70 years of age and living in San Diego. Officer Huff has been employed by the San Diego Police Department for eight years. Officer Perry has been employed by the San Diego Police Department for one year. Both officers were assigned to the Neighborhood Policing Division at the time of the incident.

***Law Enforcement Witness #1 (LE#1)***

LE#1 walked into the area and saw two tent structures. He could hear someone moving around inside one of the tents. LE#1 could hear an officer contacting an individual. The officer shouted, "San Diego Police, I need you to step out of the tent." LE#1 and his partner began to cut through

the tarp on top of the structure in order to get a better look inside. LE#1 heard someone at the door of the tent yell, "he's got a gun. Gun, gun, gun." LE#1 drew his firearm and maintained a position ten to fifteen feet away. LE#1 never saw Soto inside the tent and never saw him with a gun. LE#1 said he heard a verbal shouting match for about fifteen to twenty seconds of, "Gun, gun, gun, drop the gun." LE#1 never heard Soto say anything back. LE#1 then heard four to five shots fired. LE#1 saw several officers pull Soto out of the tent. Soto was bleeding from his leg. LE#1 holstered his firearm and assisted in rendering aid.

***Law Enforcement Witness #2 (LE#2)***

LE#2, Perry and another officer announced their presence as San Diego Police Officers. They received no response from inside the structure. They began to move the structures to see if anyone was inside. LE#2 was on the far north side of the structure. Perry and another officer checked one of the structures and found no one inside. LE#2 heard someone inside the south structure moving around. He heard other officers giving commands for Soto to come out. LE#2 grabbed a shopping cart to move it out of the trail. He then heard an officer say, "gun!" LE#2 heard the officer say, "don't reach for it!" LE#2 said Soto was still inside the tent. LE#2 drew his gun but held it low and ready because there were officers in front of him. LE#2 could not see into the tent because his view was obstructed. LE#2 then heard four or five gunshots. LE#2 said his focus was to the north in order to be sure no one came from that direction. LE#2 heard officers giving commands, saying, "get on your stomach." LE#2 thinks he heard Soto say "I'm sorry" in English and then crawl out from inside the tent. LE#2 reviewed BWC and said he knew there wasn't a gun on the trail when he walked through before. After Soto was pulled from the tent, LE#2 noticed there was a black firearm on the ground with duct tape on the grip. After reviewing his BWC LE#2 said it looked like the Soto tossed the gun out from inside the tent.

***Law Enforcement Witness #3 (LE#3)***

Once LE#3 arrived at the encampment he held a curtain open at one of the tents while Huff gave commands to someone inside. LE#3 heard Huff repeat his order several times because the individual inside was delaying. LE#3 said he could hear Soto say something to the effect that he was getting dressed. LE#3 said Huff pulled a shopping cart out of the tent. After awhile he heard Huff say Soto had a gun and then saw Huff draw his gun. LE#3 drew his gun as well and stepped back. LE#3 was to the right of the doorway and couldn't see Soto. LE#3 heard Huff and another officer start giving commands and then both fired. LE#3 did not see Soto but saw a gun at the door. LE#3 did not fire his weapon. LE#3 saw Soto crawl out from inside the tent and initially struggle with officers. LE#3 gave commands in Spanish when he heard the Soto speak with an accent. LE#3 told the Soto in Spanish to put his hands behind his back and assisted in handcuffing him by taking his right arm. LE#3 then helped with medical aid to stop the bleeding.

***Law Enforcement Witness #4 (LE#4)***

LE#4 went just north of the main structure to check an area made from shopping carts and wood. As they were looking inside he heard the officer to his right say "Hey, there's somebody in here. Hey, come out to us. We can see you." LE#4 asked an officer "Hey, we're clear here right?" He then turned to look and there was a blanket hung over the door and there were officers inside the tent. LE#4 saw the officers move a shopping cart out as they spoke to someone inside. He then heard an officer yell, "Hey he's got a gun!" LE#4 drew his gun. He saw a gun come out through

the door opening and then there were shots. LE#4 looked inside the tent and saw Soto laying inside. He could see a black gun with grey tape around it. LE#4 put his foot on it and kicked it out of the way. Soto crawled out and LE#4 along with others helped him out. Once Soto was out LE#4 saw two other officers handcuff him.

***Park Ranger Witness #1 (PRW#1)***

PRW #1 stayed some distance away while the officers began to search the structure for occupants. He heard officers tell a subject inside one of the structures to come out. PRW#1 heard the command given multiple times. After approximately two minutes officers began to remove material off the structure in order to get a better look inside. He then heard one of the officer's say 'he's got a gun' or 'drop your gun.' PRW#1 moved away about 50 feet south and heard officers say 'drop your gun' a couple of times. PRW#1 then heard about five gunshots.

***Officer Jeremy Huff's Statement***

Huff said he was assigned to Southern Division's team to assist in removing a homeless encampment in the Otay Valley Riverbed Park. Their mission is to contact individuals that may have been in the encampment and offer them shelter. That morning he arrived in full uniform in his marked patrol truck at about 5:00 a.m.. Huff attended a briefing. At 5:30 a.m. Huff followed a Park Ranger for about a mile down to the encampments in the riverbed. Huff got out of his truck and walked to the encampment that was located in a bamboo grove. The Park Ranger, Officer Perry, LE#3 and LE#4 were with him.

Huff said they arrived at a structure that appeared to have individual rooms. All of them began checking to see if there was anyone inside the structure. The first area Huff checked did not have anyone inside. The second one had a shopping cart in the front with a door panel. Huff pushed it in and announced his presence by shouting, "San Diego Police." Huff said he could not see into the structure. His initial impression was that the structure was empty but after pushing the shopping cart over he could see movement behind the blanket. Huff said that after seeing the blanket moving he believed there was a person in the room. Realizing there was a person in the structure Huff announced, "San Diego Police! Come out!" Soto was behind the blanket when his head came out. Soto went behind the blanket again and Huff yelled, "Come out or I'm going to come in and bring you out."

Following that command Soto began to come out. Huff reached out and grabbed at the cloth that was blocking his line of vision with Soto. Huff asked Soto if there was anyone else inside. Huff did not recall receiving a response, but remembered pulling on the blanket. He could see Soto was kneeling or crouched, with his back turned to him. The sheets were still blocking his vision. It was still dark and Huff was using a handheld flashlight to illuminate the interior of the structure. Huff pulled the sheet down and could see the Soto was dressed. Soto wore a pair of pants and a jacket.

Soto was moving slower than a typical contact as if he were trying to hide something. Soto then turned around. Soto was bent over and Huff could see there was a butt of a gun with what looked like a silver slide inside his right front jacket pocket. Huff told the Soto, "drop the gun." Soto turned around and had his hands in front of him. Huff told Soto, "get on the ground! Get on the

fucking ground or I'm going to shoot you! Get on the ground!" Soto's right hand went into his pocket and he started to pull the gun out. Huff stepped back and to the left and fired one round. He heard another officer firing his gun. Huff stopped firing because he did not have a visual and couldn't see what he was shooting at. As Huff stood there he could see just outside of the doorway of the structure a piece of carpet with a gun laying on it. Huff could hear Soto yelling inside the structure and started yelling for him to "come out, come out!" Soto continued yelling as if in pain.

Huff went back up to the structure and pulled back the curtain covering the entrance. Huff said he had holstered his weapon. He could see Soto was bleeding and another officer was pulling him out. Two officers rendered medical aid. A group of officers picked Soto up and carried him to a police truck. Huff stayed at the scene and relayed information to those waiting on the street.

### ***Officer Filip Perry's Statement***

Perry said that on the morning in question he was told by his partner that he could join him on the assignment at the riverbed. Perry was assigned to a team and was told to follow the Park Ranger down to the encampment. Perry said his assignment was to assist in enforcing loitering laws, open container violations, illegal lodging, and check for outstanding warrants.

Perry said it was dark when they arrived at the encampment which was located near a river mouth. There was a structure made of bamboo, cardboard, blankets, tarps and plywood. The structure appeared to be subdivided into little rooms about ten feet long. Perry was using a flashlight he had pinned to his collar in order to see. Perry and the other officers announced themselves by saying, "San Diego Police Department. Come out. Come outside." Perry cleared one room that was empty. He then exited the first room and saw a partition separating another room. He cleared that room and found no one there. While clearing that second room Perry could hear Huff contacting a person in a third room.

Perry could not see Huff, so Perry took out his knife and cut through a blanket blocking his view. Once Perry cut the blanket he could see Soto rummaging about. Perry said he could see Soto was wearing a jacket that wasn't zipped up. Perry saw what he believed to be the butt of a gun sitting in the jacket pocket. Perry said he heard Huff say words to the effect, 'don't put your hand near that gun.' Perry said this confirmed Soto had a gun and Perry drew his weapon. Perry said he could see Soto moving inside the structure and he walked toward the door. Perry said he could hear Huff telling the subject: "Don't touch that gun. We can come in there and get you if you want to do it that way. Or we can bring you outside." Perry said at this time he was shoulder to shoulder with Huff.

Perry said he had drawn his gun because he believed he saw a gun. Huff had also yelled to the subject, "don't reach for that gun" at the moment Perry saw the gun. Perry fired his gun when he saw Soto reaching into the jacket pocket which held the butt of the gun. Perry said he had no other options available to him other than to fire his weapon. Perry said he fired thirteen to fourteen rounds.

Perry holstered his weapon and dragged Soto out from inside the structure and placed him on the ground outside the entrance. Perry said that he then saw the gun right where he was about to place Soto down on the ground. Perry quickly handcuffed Soto to prevent him from grabbing the gun. Perry immediately began to render medical aid to Soto. He applied two tourniquets, one to the Soto's right arm and one to his left leg. Perry directed officers to cut the Soto's clothes off to determine what wounds he may have. Perry helped officers carry Soto to a police truck and transport Soto to the street and ambulance.

### ***Carlos Soto's Statement***

Soto's statement was given through the aid of a Spanish speaking interpreter. Soto was Mirandized, said he understood his rights and initially stated that he did not understand why this happened. He said the gun he possessed was a toy. He bought the BB gun in order to earn the respect of other transients living in the encampment. The other persons in the encampment had begun to store drugs among his possessions. He bought the gun in order to make them respect him. Before that they had been doing whatever they wanted.

Soto said the police had come into his structure in a very aggressive way. He wanted to put the gun on the floor so that officers could see it was not real. That was the mistake. When he put the gun on the floor he was shot in the arm. Soto said he was shot a second time in the arm and once in the leg after he had dropped the gun. After he was cuffed he was taken to the hospital.

Soto said that he understood very little English. He understood he was being told to drop everything and not grab anything. Soto said he was trying to put his clothes on. Soto said he grabbed the gun, put it inside his jacket, then put it on the floor.

### ***Investigation***

The scene was secured, photographed and investigated by San Diego Police Department Homicide Team III. All detectives' reports, crime scene investigators' reports, and audio recorded witness interviews, body worn camera and audio recordings were reviewed. All of these items were found to provide evidence which corroborates the officers' statements. The events leading up to and the incident itself were captured on several body worn cameras (BWC). Soto's actions which preceded the shooting incident are captured on Huff and Perry's BWC.

BWC video showed it was dark out at the time of the incident. Officers were utilizing their flashlights throughout the incident to improve visibility. Huff's BWC begins as the officers approached the encampment. Huff approached Soto's structure and pushed over a piece of wood to the structure. Huff identified himself as a San Diego Police Officer and asked Soto to come out of the structure. Huff told Soto that he could see him moving inside and again asked him to come out. Approximately 30 seconds elapsed without any response from inside the structure. Huff again told Soto to come out of the tent, or he was going to come in and get him. Soto responded by telling Huff he wanted to put his clothes on. After approximately 15 seconds, Huff stepped in and began pulling on a dark colored sheet that was draped down in the structure. Huff partially tore the drape apart. It was not until then that Soto appeared on the BWC. Soto was kneeling on the ground and had his back to Huff. The drape fell onto Soto and he is again was no longer visible on BWC. Huff removed a shopping cart that was lying on the ground between him

and Soto. Once the cart was removed out of the structure Soto could then be partially seen in the BWC. Soto was still on his knees with his back to Huff. The sheet was lying on top of Soto concealing his upper torso and head.

Soto slowly stood up while still turned away from Huff. Soto stepped backwards towards Huff and appeared to lose his balance. As a result, Soto briefly fell forward which exposed the gun in his right jacket pocket. Huff unholstered his handgun and ordered Soto to drop the gun. Huff then told Soto several times to get on the ground or he was going to shoot him. Perry is seen in the video approaching the doorway entrance next to Huff and also told Soto to get on the ground. Soto did not comply with the officers' commands to get on the ground. Soto reached into his jacket pocket where the gun was located. In response, Huff fired his firearm at Soto. BWC shows Soto remove the gun from his jacket pocket and toss it onto the ground in front of him.

Perry's BWC begins as he is at Soto's structure. Perry began using his knife to cut into the side of the structure. Perry appeared to be shining his flashlight into the structure to get a better look inside. Huff can be seen in the video at the entrance of the structure and to the left of Perry. Huff unholstered his handgun and told Soto to drop the gun. Perry also unholstered his handgun and began moving closer to the entrance of the structure next to Huff. Perry and Huff gave Soto multiple commands to get on the ground. Soto did not comply with the officers' commands. Soto reached into his jacket pocket where the gun was located. In response, Perry fired his firearm at Soto.

After the shooting, officers pulled Soto out of the structure and began immediately administering first aid by placing a tourniquet onto Soto's right arm and left leg.

On the ground near the entrance of the structure was a black firearm with a laser pointer. The laser pointer was attached to the gun using silver tape that was wrapped around the rear slide and upper grip of the gun. The firearm had the markings: POWERLINE By Daisy 426 .177 Cal (4.5mm) BB. Examination by the SDPD Crime Lab showed the handgun to be a "BB" air pistol.

Outside of the structure, near its entrance, investigators collected ten 9mm cartridge casings and one 40 caliber cartridge casing.

The firearm of Officer Huff was examined. It was a Glock, model 22Gen4, semi-automatic pistol. It was received with one seated magazine, two spare magazines, the slide closed, the trigger set, and one cartridge in the chamber. The seated magazine contained thirteen cartridges and the two spare magazines each contained fourteen cartridges. The evidence indicates that one cartridge was fired from the pistol.

The firearm of Officer Perry was examined. It was a Glock, model 17Gen4, semi-automatic pistol, chambered in 9mm Luger caliber, with one seated magazine and three spare magazines. It was received with one seated magazine, three spare magazines, the slide closed, the trigger set, and one cartridge in the chamber. The seated magazine contained eight cartridges and the three spare magazines each contained nineteen cartridges. The capacity of all the magazines is nineteen cartridges. The evidence indicates that eleven cartridges were fired from the pistol.

### ***Legal Analysis***

The analysis of use of force and deadly force by peace officers in California has changed as a result of Legislative amendments to Penal Code section 835a, which became effective on January 1, 2020.

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, for either of the following reasons:

- (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).

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***

When officers realized Soto was in the structure they were unable to see him. They clearly stated their presence and gave commands for him to come out. Officers illuminated the tent with light from their flashlights. When Soto is seen his back is turned to Huff. Huff stated that Soto seemed to be taking longer than he should have. Huff said that it almost seemed as if Soto were delaying. When Soto turned toward both Huff and Perry they almost simultaneously reacted to seeing the butt of a gun inside Soto’s right jacket pocket. Commands were given by both Huff and Perry to Soto to get on the ground. Soto was not fluent in English, however he understood he was being confronted by police officers and he chose to remove the replica firearm from his pocket as they were pointing their firearms at him.

Based on the totality of the circumstances the officers reasonably believed Soto presented an imminent threat of death or serious bodily injury to each of the officers. He removed what appeared to be a firearm from his pocket after they had given him several opportunities to come out of the tent and get down on the ground. The officers use of deadly force was necessary because it appeared Soto had the present ability, opportunity and apparent intent to cause their deaths or cause serious bodily injury to them. For that reason they had to instantly confront and address the threat presented with deadly force and discharge their firearms, shooting Mr. Soto. It was not feasible or safe to use less lethal alternatives when presented with a lethal threat. In light of all these facts Officer Huff and Officer Perry were justified in their actions and bear no state criminal liability for them. 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 Richard Freedman  
San Diego Police Department  
Homicide Division