

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

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

**DAVID P. GREENBERG**  
ASSISTANT DISTRICT ATTORNEY

**SUMMER STEPHAN**  
DISTRICT ATTORNEY

May 21, 2019

Sheriff William Gore  
San Diego County Sheriff's Department  
9621 Ridgehaven Court  
San Diego, CA 92123

**Re: Fatal shooting of Mr. Daniel Ayala on November 12, 2018 by San Diego County Sheriff Sergeant Chris Katra, Corporal Sean McGillicuddy, and Deputy Kevin Nulton; SDCSD Case No. 18158692; DA Special Operations Case No. 18-228PS; Deputy District Attorney assigned: Stephen Marquardt**

Dear Sheriff Gore:

We have reviewed the reports and other materials compiled by your agency's Homicide Division concerning the circumstances leading to the fatal shooting of Mr. Daniel Ayala by Sergeant Chris Katra, Corporal Sean McGillicuddy, and Deputy Kevin Nulton on November 12, 2018. The case investigation was submitted to the District Attorney's Office for review on February 5, 2019, and supplemental investigative materials were submitted to the District Attorney's Office on May 2, 2019.

***Summary***

At approximately 2:50 p.m. on November 12, 2018, San Diego Sheriff's communications received a call from an employee at an Alpine apartment complex requesting deputies respond immediately. The caller reported a male in apartment 76 was screaming, talking about killing people, and throwing items. The male appeared to be under the influence of drugs and alcohol and had a five-year-old child with him. Other individuals called the department. One of the callers stated the male was screaming about killing others and himself.

By 2:58 p.m., Katra, McGillicuddy, and Nulton had responded to the scene. A witness directed them to unit 76, a second floor apartment accessible by an exterior staircase. The three deputies stood on the small landing outside of the apartment door. Nulton knocked on the metal exterior door, announced "Sheriff's Department" three times, and requested to speak with the occupant. Ayala opened the interior front door of the apartment and suddenly plunged a large kitchen knife through the closed exterior metal screen door toward Nulton. The deputies backed away from the door as Ayala quickly opened the door. Ayala exited the apartment displaying the large kitchen knife in his hand. Ayala began to advance on the deputies and all three deputies fired their service weapons. Ayala sustained multiple gunshot wounds. Nulton radioed for medical assistance as other deputies conducted a safety sweep of unit 76. Ayala's five-year-old son was alone and unharmed inside of the unit. Deputies rendered medical aid to Ayala until paramedics arrived to the scene. Despite the life-saving efforts of the deputies and paramedics, Ayala succumbed to his injuries and was pronounced deceased at the scene at 3:19 p.m. On November 13, 2019, Deputy Medical Examiner Schaber conducted an autopsy

and determined the cause of death as multiple gunshot wounds and listed the manner of death as homicide. The District Attorney has determined that the three deputies were justified in their use of deadly force in defending against Ayala's life threatening assaultive actions.

***Persons Involved***

Ayala was a 31-year-old resident of Alpine. The deputies involved had between 10 and 18 years of experience.

***Civilian Witness One (CW1)***

Civilian Witness One (CW1) is a resident of the apartment complex and was inside his apartment at about 2:10 p.m., when he heard someone yelling about killing people. CW1 walked outside and saw Ayala cursing and yelling as he was walking about on the balcony outside of apartment 76. A four-year-old child was outside with Ayala. CW1 thought Ayala was on a cell phone having an argument. CW1 returned inside of his apartment and Ayala went back into Ayala's apartment. Approximately 20 minutes later, CW1 heard Ayala shouting again. Ayala was using profanity and saying he was going to kill people and that he kills people for his family. Ayala did not appear to be on the phone. CW1 saw the property manager approach Ayala and ask what was going on and if Ayala lived in the complex. Ayala responded belligerently. His answers were incomprehensible. Ayala told the manager he lived in unit 54 and that he was a visitor. Ayala was holding a 32-ounce can of beer and appeared to be intoxicated and possibly under the influence of drugs. Ayala was growing angrier. He threw the beer can down.

At that point, CW1 escorted the property manager back to her office for her safety. Before CW1 and the manager reached the office, CW1 saw a second male, exit Ayala's apartment, tried to calm Ayala down, and then take Ayala and a child inside of the apartment and close the screen door. CW1 and the property manager locked the office door. The property manager called 911 and reported what was happening. The first deputy (Nulton) arrived three to five minutes later. CW1 escorted Nulton to Ayala's apartment and explained what had transpired. Additional deputies (Katra and McGillicuddy) arrived. CW1 observed as a neighbor below Ayala's apartment told the deputies she could hear things being thrown inside Ayala's apartment.

CW1 watched from 30-40 yards away as the three deputies went up the stairs to apartment 76. CW1 saw one deputy knock on the apartment screen door and window. A deputy stood on either side. There was no answer at the door. The deputy knocked a second time and announced they were from the Sheriff's Department. They were there to see what was going on and were not there to arrest anyone which they requested he please come out. The deputy knocked a third time on the door and window and again announced they were from the Sheriff's Department. CW1 described the door being opened in a threatening manner and heard something very loud hit the metal screen door. CW1 believes he heard a deputy say, "Gun, gun, gun." The screen door opened and Ayala exited. One or two seconds later, the deputies fired their weapons and Ayala fell to the ground. CW1 said he believes he heard a total of eight shots fired. The deputies started doing CPR and administering first aid to Ayala.

The second male CW1 had seen earlier taking Ayala and the child back into the apartment did not later exit the apartment. CW1 believes that had the male left the apartment through the front door, he would have witnessed it.

### ***Civilian Witness Two (CW2)***

Civilian Witness Two (CW2) called Sheriff's Communications to report a male in apartment 76 yelling at neighbors and yelling about killing himself and others. CW2 reported that Ayala sounded intoxicated. Investigators did not personally interview CW2 at the scene on the day of the incident. CW2 emailed a detailed statement to a sheriff's detective the following day, November 13, 2018. CW2 did not want to be interviewed in person.

CW2 was asleep in his apartment when he woke to someone yelling extremely loudly. CW2 heard Ayala screaming at the person in apartment 79. Ayala repeatedly challenged the occupant to come outside and fight, using a racial epithet and threatening language. Ayala came down the stairs and yelled into the kitchen window of unit 79. After this continued for some time, a woman approached Ayala. She identified herself as the apartment manager. She asked Ayala what was going on and whether he was a resident. Ayala told her he was a visitor and began screaming incoherently at the woman. The manager left and Ayala threw what sounded like a drink can. Ayala then shouted at the downstairs neighbor in apartment 79 he was going to kill him and everyone and then kill himself. CW2 called the Sheriff's Department to report the incident.

Within a few minutes, CW2 saw Sheriff's deputies arrive and talk with a man (CW1). Three deputies walked up the stairs to the door of Ayala's apartment. One deputy knocked on the door and announced they were from the Sheriff's Department. A second deputy was to the left of the door and the third deputy was at the top of the stairs. The deputy knocked again and announced they were from the Sheriff's Department, he wasn't in trouble and they just wanted to talk. Within seconds, CW2 heard loud slamming into the screen door. The metal screen door flew open as Ayala loudly grunted. A deputy yelled and then an estimated six to ten gunshots fired in a span of one to two seconds. After the gunshots, a deputy repeatedly yelled to get the knife. Ayala was lying at the top of the stairs. A deputy started yelling, "Hang in there buddy, stay with me buddy." One deputy asked another for a trauma kit and then a deputy went to one of the SUVs and returned with a black bag. They performed CPR on Ayala until the fire truck and ambulance arrived.

### ***Additional Civilian Witness Statements***

The responding deputies and investigators canvassed the apartment complex and spoke to numerous civilian witnesses. The statements obtained were generally consistent with those summarized. Several witnesses heard Ayala shouting threats prior to the deputy's arrival. Many witnesses heard gunfire.

### ***Statement of Sergeant Katra***

Katra received a radio call dispatching two of his deputies to an apartment complex. Katra responded to the location and arrived at the same time as McGillicuddy. Katra activated his Body Worn Camera (BWC) as he exited his vehicle. He and McGillicuddy walked through the complex and located Nulton, who was already on scene speaking with a male, later identified as CW1. While Nulton was speaking to CW1, Katra watched unit 76 and spoke to a female witness. She stated the male (Ayala) had been yelling and had thrown something at one of the neighbors.

Katra and the other deputies decided to make contact with Ayala. Katra noted that the original incident call stated the male had threatened to kill people. The three deputies walked up the stairs to the small landing outside of apartment 76. A black metal screen door was closed and a wooden interior door was also closed. Nulton stood at the door and knocked as Katra and McGillicuddy were

to Nulton's left. Nulton's back was to a window so Katra moved behind Nulton in order to provide cover from that position. As Nulton knocked and announced they were from the Sheriff's Department, Katra told Nulton to let the male know that he wasn't in trouble and that they just wanted to talk to him. Nulton communicated that to the male inside. Katra believed he heard the window rattle. He told Nulton he heard movement. Katra was not watching the front door, but heard it opening and then a male voice saying something angrily. Katra heard pounding on the screen and then a deputy said, "Oh, shit." Katra saw Nulton backing up. Katra realized that due to his position to the right of Nulton, he would be pinned behind the door if it opened so he ran to the other side before it opened.

Katra saw something shiny in Ayala's hand which he believed to be a knife. The screen door opened and Ayala came out holding a large knife while moving toward him and the other deputies. Katra had no time to give any verbal commands. Katra discharged his weapon. He believes he fired at least two to three rounds. He fired because he had no time to get out of the way and believed Ayala could have stabbed him. Katra had been trained that an armed suspect can reach another person from 21 feet and Ayala was much closer than that. He estimated Ayala to be four to five feet away. He felt he or the other deputies were going to be stabbed. After the deputies fired their weapons at Ayala, Ayala fell down and the knife he had been holding fell right next to Ayala. Katra could not recall which deputy moved the knife away from Ayala, but recalled it was moved about four to five feet so that CPR could be provided in a safer manner.

#### ***Statement of Corporal McGillicuddy***

Nulton was dispatched to the apartment regarding a male who was possibly under the influence of alcohol or drugs, screaming and shouting about killing someone and making vague suicidal threats. It was also reported in the call that the male had a five-year-old child with him. Nulton was speaking to a man (CW1), who reported the male in apartment 76 was screaming and shouting and acting crazy and had also thrown a beer can at a person in a downstairs unit. CW1 also stated that the male had a five-year-old child with him. As Nulton and McGillicuddy spoke with CW1, a female from the unit directly below unit 76 came out and said the man upstairs was going crazy right then and smashing things. She also stated the man had a five-year-old boy with him.

McGillicuddy, Katra, and Nulton went upstairs to contact the male. At the top of the stairs and to the right is a window. To the right of that window is the door to the unit. There is an external metal security screen door and an interior door. To the right of the metal screen door, the balcony ends, but there is another window beyond the balcony. That window was for the apartment's kitchen area. McGillicuddy stood at the top of the stairs and to the left side of the door while Nulton knocked on the door. Katra moved behind Nulton in order to watch the kitchen window. Nulton banged on the door or the window and announced they were the Sheriff's Department a few times and then stated no one was in trouble. They just wanted to check on him to see if he was okay and asked that he talk to them.

McGillicuddy heard something banging around inside the apartment but did not hear anyone say anything. Katra motioned or said something to Nulton to indicate someone was moving around inside. McGillicuddy could not see through the heavy metal security door very well, but saw the interior door suddenly fly open. Nulton began to talk to Ayala and within a few seconds a kitchen knife punctured through the security screen door in front of Nulton's face. McGillicuddy estimated

he saw the blade come through the metal screen door about three to five inches. McGillicuddy was surprised and scared because the screen was metal, not cloth. He was in fear for his safety but even more so for his partners since they were closer to the door. Nulton had no way down from where he was standing. Nulton ran down one or two steps down to McGillicuddy's right while Katra ran to McGillicuddy's left. As the two of them ran, the door opened. Ayala came charging out leaning forward with a kitchen knife in his right hand with the knife blade up. McGillicuddy was in fear for his life. He believed Ayala would stab him or his partners. McGillicuddy already had his weapon drawn at this point. He had drawn it when he saw the knife puncture through the screen and upon hearing one of the deputies yell "Knife."

McGillicuddy fired what he estimated to be two to three rounds. There was no time to consider using any other force options because Ayala was in such close proximity to them. Ayala was approximately five to seven feet away. Katra and Nulton fired at approximately the same time and Ayala fell at their feet with the knife landing near his head. McGillicuddy told Nulton to stay with Ayala while he and Katra entered the apartment to see if the child was inside. McGillicuddy believes Nulton moved the knife away from Ayala. McGillicuddy entered the unit and a young boy ran out of one of the back rooms. The boy gave his name and said he was four. McGillicuddy stayed with the boy while Katra and another deputy cleared the apartment. McGillicuddy then went back outside. Deputies were providing medical aid to Ayala. McGillicuddy ran to his patrol car to get a trauma kit. At this point, McGillicuddy realized his BWC was not activated. He turned it on. He brought the trauma kit to Katra and then returned inside the apartment to stay with the boy until he was relieved.

### ***Statement of Deputy Nulton***

Nulton responded to a radio call at an apartment complex where management had reported an altercation with a male who was making incoherent statements. Nulton also heard via the radio transmission that the male had been throwing things, ranting, and was possibly under the influence. Nulton was the first deputy to arrive at the scene. When he arrived, he waited for cover from Katra and McGillicuddy. A man (later identified as CW1) approached Nulton and said that there was a problem involving a male who had thrown a beer can and had been hostile toward management. Katra and McGillicuddy arrived and the three deputies spoke to a woman who lives below the apartment in question. The woman told them the man upstairs (Ayala) had been throwing things and shouting incoherent statements. She believed the man had a four or five-year-old child. The deputies decided to keep the contact low-key as they were unsure what they would encounter. Nulton intended to knock on the door in a low-key fashion, tell the man he was not in trouble, and see whether they could help the man. At this point, Nulton did not believe a crime had been committed.

The unit is on the second floor at the top of stairs. When they got to the unit door, Nulton observed a locked external metal screen door that one could see through, however not clearly. Katra was to Nulton's right as Nulton stood at the unit door. McGillicuddy was to Nulton's left. Nulton knocked on the metal screen door and window a few times and announced they were from the Sheriff's Department. He also said no one was in trouble and they just wanted to talk. Nulton heard a grunt inside and thrashing or stomping inside and saw the interior door open forcefully. Suddenly, a large butcher knife came through the screen door. He saw four to six inches of the blade Nulton began backing up and called out, "Knife, knife, knife." Ayala pulled the knife back through the metal screen door, opened the screen door, and charged out with the knife in his hand.

Nulton backed up toward the stairs while Katra dashed across the top of the stairs as Ayala charged them. Shots were fired. Nulton estimates he fired two or three rounds. The deputies had no choice and nowhere to move on the second level as Ayala charged at them from close proximity. There was no opportunity to yell any commands. He said he made the split second decision to fire his weapon because his life was in jeopardy. Nulton felt that he or one of his partners would have been stabbed had they not fired. Ayala fell down and dropped the knife right by his head. Nulton believes he may have moved the knife from Ayala a few feet to the left. They called for paramedics. Nulton stayed with Ayala while Katra and McGillicuddy went inside the apartment. Katra and McGillicuddy found a boy inside. When they confirmed no one else was inside, they began rendering first aid to Ayala. They called for medics to respond.

### ***Investigation***

The audio recordings from 911 calls and audio recordings of Sheriff Communications, witness interviews, deputy interviews, crime scene reports, crime laboratory reports, Medical Examiner's Reports, photographs, Body Worn Camera (BWC) recordings, and other items were reviewed. All of these items were found to provide corroborating evidence of the deputies' statements.

Katra and Nulton's BWCs were activated when they arrived at the scene. They captured the events leading up to and including the shooting incident. McGillicuddy's BWC was not activated until after the shooting took place when he realized he had not turned on the device. The three deputies involved in the shooting were standing in close proximity to one another prior to, during, and just after the discharge of weapons. Nulton and Katra's BWC recordings documented the events experienced by all three deputies.

Each deputy used a department issued .40 caliber semi-automatic pistol. A post-shooting examination of the weapons showed that a total of 14 rounds were fired. Six were fired by Nulton, four by Katra and four by McGillicuddy. All 14 rounds were accounted for during an examination of the scene and Ayala's autopsy. Of the four bullets recovered at the scene, two were found lodged in the floor and balcony railing in front of apartment 76. A third bullet traveled through the flooring of the second story landing in front of apartment 76 in a downward trajectory and through the window of apartment 75 directly below apartment 76. The bullet came to rest inside apartment 75 on the floor below the window. The fourth bullet was recovered in the parking lot in front of the building.

Following the shooting a large stainless steel kitchen knife was found in Ayala's hand, which he had been holding when he exited the front door and advanced toward the deputies.

### ***Autopsy***

On November 13, 2018, Deputy Medical Examiner Schaber conducted the autopsy of Daniel Ayala. Doctor Schaber recovered ten bullets from Ayala's body. Six of the projectiles were recovered from the torso and four were recovered from the extremities. Toxicology testing of Ayala's blood was conducted and detected a blood alcohol level of 0.13% and a vitreous blood alcohol level of 0.14%. Methamphetamine at a level of 0.18 mg/L, metabolite amphetamine at a level of 0.02 mg/L, cannabinoid metabolite Delta 9-Carboxy THC at a level of 4.7 ng/mL, heroin metabolite free morphine at a level of 1.2 mg/L, heroin metabolite 6-monoacetylmorphine at a level of 0.68 mg/L, and heroin containment free codeine at a level of 0.07 mg/L were also detected in Ayala's blood. Dr. Schaber ruled Ayala's cause of death as multiple gunshot wounds and listed the manner of death as homicide.

The homicide classification by the Medical Examiner is not a legal term, but one used to describe a medical assessment. A classification is necessary for purposes of death certification. The homicide classification by the Medical Examiner does not require intent to cause death, criminal intent, or proof that death at the hands of another was a substantial factor in the death as defined under California criminal law. It simply recognizes that an action was applied against the decedent and that action was considered in analyzing the circumstances that were in effect prior to death.

### ***Legal Standards of Criminal Liability***

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The purpose of the District Attorney's review is to provide an independent analysis and determine if the shooting was legally justified.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person whom he has reasonable cause to believe has committed a public offense. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

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

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham v. Connor* (1989) 490 U.S. 386, citing *Terry v. Ohio*, 392 U.S., at 20-22. The three deputies in the present situation encountered an individual rapidly advancing on them while armed with a deadly weapon. The three deputies rapidly assessed the situation and responded in uniform fashion. Each of the three deputies recognized that significant harm or death was imminent. The split second decision that each made to discharge his firearm was reasonable and necessary to preserve against significant injury or death.

In addition to any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if she reasonably believed that she or someone else was in imminent danger of suffering bodily injury, believed that the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that. With extremely limited time to assess the threat Ayala presented, and with minimal physical space available to escape harm's way, the deputies were compelled by Ayala to use deadly force in order to safeguard their own lives.

Sheriff William Gore  
May 21, 2019  
Page 8 of 8

***Conclusion***

Based upon our review of the facts and circumstances surrounding Ayala's death, the law enforcement personnel involved in this incident acted reasonably under the circumstances and bear no state criminal liability for their actions. They were in a confined space when Ayala advanced on them quickly with a knife in his hand. Ayala had been heard shouting previously that he wanted to kill. The deputies had no other option available to them as they knew Ayala could stab them immediately and seriously injure or kill them. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,

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SUMMER STEPHAN  
District Attorney

SS:gm

cc: Captain Patrick Gardner  
San Diego Sheriff's Department  
Homicide Division