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OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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October 6, 2021

Chief Mark Stainbrook
San Diego Harbor Police Department
3380 N. Harbor Drive
San Diego, CA 92101

Re: Non-fatal shooting of Mr. Daniel Quiroz by San Diego Harbor Police Officer Cody Horn on March 1, 2021; SDHPD Case No. 2100958; DA Special Operations Case 21-024PS; Deputy District Attorney assigned: Jennifer Reischl; District Attorney Investigator assigned: Steve Hutchinson

Dear Chief Stainbrook,

We have reviewed the reports and other materials compiled by the San Diego Harbor Police Department as well as the San Diego Police Department's Homicide Unit concerning the shooting of Daniel Quiroz. The San Diego Police Department conducted the investigation of the incident. A District Attorney Investigator responded to the scene and was briefed by your investigators. This case was submitted to the District Attorney's Office for review on June 1, 2021. Additional lab reports were provided on October 6, 2021.

Summary

On March 1, 2021, San Diego Harbor Police Officer Cody Horn conducted a traffic stop on a vehicle in front of the San Diego Convention Center. Officer Horn wanted to perform a field sobriety test on the driver, Daniel Quiroz. As Quiroz stepped to the rear of his vehicle, Quiroz pulled a firearm from his waistband and pointed it at Horn. Horn pointed his duty weapon at Quiroz and told him to drop the gun. Quiroz refused and Horn fired several rounds at Quiroz while retreating backwards. Quiroz continued to point the gun in his direction. Horn fired several additional rounds at Quiroz. Horn retreated to the back of his patrol vehicle and heard several shots being fired from the area where Quiroz had been standing. Horn fired additional rounds towards Quiroz.

Horn retreated further from the rear of his patrol vehicle to a raised driveway. Quiroz walked toward him with his hands raised in the air. Horn gave Quiroz commands to stop and get on the ground. Several San Diego Harbor Police and San Diego Police officers responded and eventually took Quiroz into custody. Neither Horn nor Quiroz sustained any injuries. Civilian Witness 1 (CW1) was walking westbound on East Harbor during the incident and was struck in the left rear pants pocket by a bullet which penetrated his eyeglass case in his rear pants pocket. The bullet did not penetrate CW1's skin.

Quiroz has been charged with Attempted Murder, Assault on a Peace Officer with a Firearm, and Assault on a Person with a Firearm, case number SCD289289. His trial is scheduled for January 11, 2022.

Persons Involved

At the time of this incident, Daniel Quiroz was a 29 year-old resident of San Diego. Cody Horn had been employed as an officer with the San Diego Harbor Police Department for three years, four months.

Civilian Witness 1 (CW1)

CW1 was walking in front of the Convention Center when he heard multiple gunshots. CW1 felt a sting in the left rear of his pants. He ran to the other side of the Convention Center. When he checked he found a hole in his pant pocket and his glasses case in his pocket had been damaged. CW1 subsequently saw police activity but did not observe anyone shooting. CW1 called his mother and 911. He did not suffer any injury.

Civilian Witness 2 (CW2)

CW2 was with her friend CW3. CW2 was driving her vehicle westbound on East Harbor Drive. CW2 passed the first signal light prior to approaching the Convention Center. CW2 heard some gunshots, but thought they were coming from far away and didn't make much of it. After CW2 passed the intersection, she could see a police vehicle with its red and blue lights flashing and a vehicle had been stopped by the police car. As CW2 drove parallel to the vehicle that had been pulled over, she could see a male subject in front of that vehicle, ducking down and shooting over the top of his car at the police officer. CW2 said the subject was definitely shooting at the officer and "he looked like he knew what he was doing." CW2 said the officer had his driver's door open and was shooting back at the subject from behind the door. CW2 said as the officer was shooting, he was backing up. CW2 said both the officer and the subject were shooting at each other. CW2 drove away and called 911.

Civilian Witness 3 (CW3)

CW3 and CW2 were three lanes away from the officer and the other car. CW3 saw the suspect firing a gun at the officer and the officer firing a gun back at the suspect. CW3 felt the suspect knew what he was doing because he was "very deliberate" in his actions and his body language was calm and confident as he used the gun. CW3 said the suspect was wearing dark clothing and may have fired five or more times. CW3 thought the officer fired the same amount of times, but she believed the officer was trying to protect himself.

Civilian Witness 4 (CW4)

CW4 and CW5 were walking westbound down the driveway near the front of the Convention Center. CW4 and CW5 noticed a police car had pulled someone over. CW4 noticed the subject getting out of the vehicle. When the subject reached the rear of his vehicle, CW4 heard the officer telling the subject to put the gun down. CW4 said the officer was giving the subject clear directions. CW4 said he suddenly heard gunshots and he turned to run and hide.

CW4 did not know if the subject had shot the police officer. CW4 and CW5 hugged the wall of the Convention Center until they got to the end. CW4 said he saw the subject walk from the back of his vehicle to the front of his vehicle and was shaking his head like, "Oh my God. What did I just do?" CW4 said he did not remember who fired first, but he did hear the officer telling the subject, "drop the gun, drop the gun."

Civilian Witness 5 (CW5)

CW5 noticed a police officer on the passenger side of a vehicle that had been pulled over. CW5 saw that the officer was talking to the driver. The interior light of the stopped vehicle was on and CW5 could see the driver in the car. CW5 and CW4 continued walking and CW5 noticed the police officer backing away from the car. CW5 saw the driver of the stopped car get out of the car and it appeared the driver was stumbling. CW5 told CW4 he thought that this was a stop for DUI, and the officer was going to conduct a breathalyzer test on the driver. CW5 then heard gunshots. When they heard the gunshots, CW5 and CW4 took off running, looking for a place to take cover. CW5 heard approximately six to ten gunshots, maybe more. CW5 heard the police officer yell, "Put the gun down, put the gun down." CW5 later looked back and saw that the driver of the car was now on the driveway with his hands up and it appeared as though he was giving up.

Civilian Witness 6 (CW6)

CW6 was sitting at a restaurant across the street from the incident. She saw the police car had stopped a vehicle. It looked to her to be a regular stop. The next thing she heard were gunshots and she saw the suspect in front of his car, shooting at the policeman and the policeman trying to back up to get away to protect himself, "shooting to get away."

CW6 said the suspect went up to the top level and he kept walking towards the policeman. The policeman kept telling him to stop, get on the ground. The man kept walking forward and he would not stop. She said more policemen came and they formed a line and moved a car up. The man eventually went down peacefully, but it took a couple of minutes for that to happen. CW6 did not see when the suspect left the front of his vehicle because she was watching the policeman. CW6 said the suspect was not backing down.

Civilian Witness 7 (CW7)

CW7 is related to Quiroz. CW7 said on March 1, 2021, Quiroz's mother kicked him out of the house around 6 pm because he was drunk and being aggressive. CW7 saw Quiroz with a gun before he left the house. CW7 unsuccessfully tried to take the gun away.

In the past, CW7 and Quiroz's mother called the police twice because Quiroz tried to kill himself. Quiroz possessed several guns at that point, but they were turned over to the police. CW7 mentioned Quiroz had attempted to buy another gun utilizing his mother's credit card, but when his mother found out about the attempted purchase, she contacted the store and cancelled the transaction. CW7 did not know how Quiroz got the gun he used on March 1, 2021. CW7 does not know if Quiroz has any mental illness, but she believes he is bipolar. CW7 and his mother had been having problems with Quiroz over the last year. CW7 said Quiroz drinks and smokes marijuana.

Statement of Law Enforcement Officer 1 (LE1)

LE1 is a San Diego Police officer who located a black Glock Model 34 in the number one lane of southbound East Harbor Drive. The gun was located approximately ten feet north of the suspect's vehicle.

Statement of Officer Cody Horn

While traveling northbound on East Harbor Drive, Horn saw a dark colored Honda enter East Harbor Drive from Front Street and turn southbound against a red traffic signal. Horn made a U-turn in order to conduct a traffic stop of the vehicle.

Horn stopped the vehicle on southbound East Harbor Drive, just south of 5th Avenue. He walked to the vehicle's front passenger door and contacted the driver and sole occupant of the vehicle, later identified as Quiroz. Horn noticed Quiroz's eyes looked watery. Additionally, Horn could smell the odor of an alcoholic beverage coming from the inside of Quiroz's vehicle. Horn also noticed a can of beer sitting in the cup holder in the center console of the vehicle and a case of beer on the passenger floorboard.

Horn told Quiroz to turn his vehicle off and to carefully step out of the vehicle and come back to his location on the sidewalk. Quiroz seemed hesitant, as if he did not understand what the officer was asking him to do. Horn explained to Quiroz three or four times to get out of the vehicle and come talk to him.

Quiroz got out of his vehicle and stood by his driver's door. Quiroz stayed on the driver's side of his vehicle and started pulling his shirt up. Horn saw a black pistol grip extending from the front waistband of Quiroz's pants. Quiroz reached down, pulled the gun out and raised it towards Horn. Horn thought Quiroz was going to pull the trigger and shoot him. Horn pointed his handgun towards Quiroz while he ordered Quiroz to drop the gun. Horn was backing up as he did this. Horn fired approximately five rounds from his gun.

Horn took his eyes off Quiroz for a short time as he was looking for cover. He turned back around to assess where Quiroz was located. Horn reassessed Quiroz's location and saw Quiroz was still pointing the handgun at him. Horn believed Quiroz was going to shoot him. Horn fired approximately three additional rounds at Quiroz and moved from his location to the rear of his police vehicle. Horn heard multiple gunshots coming from the area where Quiroz was last standing and he thought Quiroz was shooting at him. Horn fired approximately five to six more shots towards Quiroz's location.

Horn could not see where Quiroz was from his vantage point. Horn thought Quiroz may cross East Harbor Drive and have a clear shot at him or come around the passenger side of his patrol vehicle and shoot him from that location. Horn started backing away from his patrol vehicle and fired approximately seven shots toward the location he last saw Quiroz. Horn turned and ran approximately 50 yards to a bank of plants which provided some concealment. Horn climbed a railing next to the plant bank which put him on higher ground. Horn reloaded his handgun and looked around for Quiroz. Horn saw Quiroz walk up the same driveway, raise his arms in the air, and walking towards him. Horn yelled for Quiroz to get on the ground. Horn did not know if

Quiroz was still in possession of the firearm. Horn pointed his gun at Quiroz and told him to get on the ground. Quiroz did not comply. A couple of San Diego Police officers arrived and Quiroz eventually gave himself up.

Statement of Daniel Quiroz

Quiroz was interviewed by San Diego Police Homicide detectives. Prior to admonishing Quiroz, he told the interviewing detectives, "This is about your humiliation, and uh, so, there's nothing [unintelligible] to the cause or anything like that. If I wanted to [unintelligible] a cop, I would have done it. It is just society you know?" After Quiroz was admonished, he told the detectives that his initial statement was all he was going to say. Quiroz repeatedly stated, "that's all I have to say." He told the detectives if they were not going to pay attention, that he was not going to explain. Quiroz said he loved police but "it is what it is." He denied being suicidal. He told the detectives that he would have felt bad if he had shot either the officer or a bystander. He said if the officer was standing in the room, he would say that he was sorry, but "it's his job."

Investigation

The scene was secured, photographed and investigated by the San Diego Police Department Homicide Unit. 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 corroborated the officers' statements. The event leading up to and the incident itself were captured on the officer's body worn camera (BWC) as well as stationary cameras mounted around the Convention Center.

On March 1, 2021, the San Diego Convention Center's "Front Drive Point" camera, shows Horn heading northbound on East Harbor Drive approaching 1st Avenue. The video shows a black sedan entering West Harbor Drive from southbound Front Street against a red traffic signal. It shows Horn applying his brakes as the black sedan enters into the path of Horn's police vehicle. Horn's police vehicle is seen traveling southbound on East Harbor Drive, directly behind the small black sedan.

Horn's BWC starts as he is traveling on East Harbor Drive with his police vehicle's red and blue emergency lights activated. Horn exits his police vehicle and walks to the passenger side of Quiroz's vehicle which is stopped in front of Horn's vehicle. Horn asks Quiroz to step out of his vehicle and come talk to him on the sidewalk. Quiroz complies and exits his vehicle from the driver's front door. Quiroz walks towards the rear of his vehicle with his right hand moving the bottom of his shirt. Quiroz pulls a handgun from the waistband area of his pants.

Horn immediately pulls out his handgun, points it at Quiroz and says, "Hey, put that gun down." Horn fires five shots in the direction of Quiroz while Horn steps backwards. As he steps backwards, Horn passes his police vehicle. Horn runs towards the rear of his police vehicle. Horn yells, "Hey," and fires three additional shots towards the direction of Quiroz. Horn climbs over a barrier that separates East Harbor Drive and the pedestrian walkway and takes cover behind his police vehicle. You can hear two distinctive shots different from Horn's shots. Horn fires four additional shots towards Quiroz's location, and then backs away from the

rear of his police vehicle. Horn fires an additional five shots while he backs away from his vehicle.

Horn conceals himself between some tall plants north of his vehicle. Horn repositions himself to the "Salida Loop" driveway in front of the Convention Center and reloads his handgun. Horn sees Quiroz standing with his hands up, in the middle of the "Salida Loop" driveway, parallel to where his police vehicle was stopped. Horn points his handgun at Quiroz and says, "Hey, get on the ground." Horn yells for Quiroz to get on the ground and to get on his knees several times, but Quiroz does not comply. Quiroz starts walking towards Horn while not complying with Horn's orders to get on his knees. Horn starts walking backwards while continually ordering Quiroz to stop.

Horn's BWC shows an additional officer joining him at his location and ordering Quiroz to get on the ground. Horn and the other officer start walking towards Quiroz while continuing to order him get on the ground. Several officers arrive, including a San Diego Harbor Police marked SUV which drives onto the Salida Loop driveway. Officers are heard directing Horn to take cover behind the police vehicle. An officer is heard saying, "hit him with the less lethal," and another officer asks if there was less lethal available. A San Diego Harbor Police sergeant is heard requesting Horn to holster his weapon and he walks Horn out of the immediate scene.

A San Diego Convention Center's surveillance camera "mounted facing East Harbor Drive west of 5th Avenue captured the entire shooting incident. A review of the surveillance camera footage showed:

Horn's police vehicle comes into view following Quiroz's vehicle. Horn's vehicle has its emergency red and blue lights flashing. Quiroz pulls over at the south curb just south of 5th Avenue. Horn approaches Quiroz's vehicle at the front passenger door. Quiroz steps out the driver's side door of his vehicle. Quiroz moves his right hand towards his waistband area, and Horn reacts by rapidly backing up and pulling out his handgun. Two pedestrians, identified as CW4 and CW5, who were walking westbound on the driveway parallel to the traffic stop, immediately turn and run.

Horn is seen backing up and firing his weapon towards Quiroz, and Quiroz is ducking behind the rear quarter panel of his vehicle. Horn runs back to the rear of his patrol vehicle. Quiroz is now at the front driver's side quarter panel of his vehicle, facing the patrol car. Horn is firing rounds at Quiroz as he gets to the rear of his patrol vehicle. Quiroz moves to the front of his vehicle and starts ducking down. Horn is positioned behind his patrol vehicle on the driver's side. Quiroz is in a shooting stance over the roof of his vehicle looking towards Horn. Horn fires multiple rounds towards Quiroz and runs westbound out of camera view. Quiroz is at the front of his vehicle and tosses a gun onto East Harbor Drive. Quiroz walks out from in front of his vehicle and walks onto the Salida Loop driveway. Quiroz walks with his hands up towards the direction of Horn. Quiroz is taken into custody.

At approximately 7:00 pm, San Diego News Channel Fox 5 was filming a live broadcast news story reference San Diego's Comic Convention. A reporter was reporting from the intersection of

5th Avenue and East Harbor Drive when shots could be heard near the area of the Convention Center. The cameraman turned his camera towards the location of the gunshots and captured Quiroz standing in front of a black vehicle, firing a handgun towards a police vehicle that was behind him. The video captures Quiroz raising the gun and firing towards the police vehicle. Quiroz ducks down and seems to be manipulating the firearm as though it had jammed. The camera pans towards the police vehicle and pans back to where Quiroz was standing. Quiroz is seen walking up on the driveway in front of the Convention Center with his hands raised.

A Metropolitan Transit System (MTS) Trolley surveillance camera located on the trolley platform at 5th Avenue and Harbor Drive also captured the incident. The video footage shows the initial traffic stop and Horn contacting the driver. The footage shows Quiroz exiting his vehicle, walking to the rear of his vehicle, and pulling out a handgun. It shows Horn retreating and firing his weapon. The video footage shows Quiroz firing at Horn over the roof of his vehicle. The camera also captures Quiroz tossing his gun in the street and walking with his hands up.

Quiroz was armed with a Glock Model 34, black 9mm handgun. The handgun was recovered from the number one lane of southbound 100 East Harbor Drive. The firearm was located approximately ten feet north of Quiroz's vehicle. The Glock was found with one empty magazine seated in the magazine slot. Two 9mm Luger Hornady cartridge casings fired by Quiroz's Glock Model 34 were located near the front of Quiroz's vehicle. Gunshot residue was found on Quiroz's hands.

The fired bullet located in Palma's eyeglasses case has design features consistent with the 9mm Luger caliber Hornady ammunition fired from Quiroz's Glock Model 34. Although microscopic comparisons between Quiroz's handgun and this Hornady style bullet were inconclusive, all discernible class characteristics were in agreement.

Horn was armed with a department-issued Glock Model 17, Gen 5, 9mm handgun. His firearm contained one fully loaded seventeen round magazine plus one round in the chamber. Horn carried two additional fully loaded seventeen round magazines. Horn's firearm and magazines were collected after the incident. Horn provided one empty magazine and one fully loaded magazine, which suggests he fired a total of seventeen rounds before changing magazines.

Injuries

There were no injuries to Horn nor Quiroz as a result of the shooting, however, CW1 who was walking westbound on the pedestrian walkway in front of the Convention Center was struck by a stray bullet. The bullet struck CW1 in the left rear pocket of his denim jeans. The bullet penetrated the fabric of the pants pocket and lodged in an eyeglass case that CW1 was carrying in his pocket. The bullet penetrated the plastic case and lodged inside of the case, breaking the glasses. CW1 felt a sting in his left buttock area after hearing gunshots. The bullet did not penetrate CW1's skin, however, he experienced some discomfort and sought treatment at Sharp Memorial Hospital. The bullet that lodged in CW1's glasses case, came from the direction that Quiroz was firing his weapon and not the direction that Horn was shooting.

Toxicology Report

A blood sample was taken from Quiroz following the shooting incident. An analysis of the sample was conducted. The results showed that Quiroz had a blood alcohol content (BAC) of 0.177%.

Legal Analysis

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

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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

In this case, Horn conducted a traffic stop of Quiroz's vehicle after observing him commit a traffic violation. Horn determined that Quiroz may be driving while intoxicated and asked Quiroz to step out of his vehicle and come back to the sidewalk. Quiroz stepped out of his vehicle, turned toward Horn and pulled a handgun from his waistband. Fearing Quiroz was going to shoot and kill him, Horn pulled out his service firearm, pointed it at Mr. Quiroz and ordered him to drop his weapon. Horn fired five shots towards Quiroz and an additional three shots at Quiroz after Quiroz refused to drop his weapon. Quiroz fired rounds towards Horn while Horn was taking cover behind his police vehicle. Horn felt unsafe behind his police vehicle and retreated to find a better place of cover. Horn fired an additional nine rounds towards Quiroz while retreating.

The use of deadly force by Horn was reasonable in this situation. Quiroz was within several feet of Horn when he pulled and pointed a handgun at Horn. At the time of this incident, Horn had his Taser, OC and baton on his person, however, the use of a less lethal option in this situation was not reasonably safe and feasible. Quiroz created a deadly force situation by pointing and firing a handgun at Horn.

Horn attempted to de-escalate the situation by advising Quiroz to drop his weapon, which he refused. Horn attempted to distance himself from Quiroz, but Quiroz continued to track Horn's movement with his weapon. Horn reasonably feared for his safety and fired upon Quiroz. As a result, he 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

SS:gm

cc: Captain Richard Freedman
San Diego Police Department