

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

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN
DISTRICT ATTORNEY

November 8, 2021

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

Chief Omar Watson, Commander of Border Division
California Highway Patrol
9330 Farnham Street
San Diego, CA 92123

Re: Non-Fatal shooting of Matthew Cisneros on March 1, 2021 by California Highway Patrol Officers Pedro Gonzalez and Michael May; SDPD Case No. 21-010213; DA Special Operations Case No. 21-027PS; Deputy District Attorney assigned: Judy Taschner

Dear Chiefs:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Unit concerning the circumstances leading to the non-fatal shooting of Matthew Cisneros while in a vehicle driven by George Cisneros by California Highway Patrol Officers Pedro Gonzalez and Michael May on March 1, 2021. District Attorney Investigators were not contacted and therefore did not respond to the scene. This case was submitted to the District Attorney's Office for review on May 18, 2021. Additional materials were received on October 20, 2021.

Summary

On March 1, 2021 at about 12:10 a.m., California Highway Patrol (CHP) Officers Gonzalez and May were traveling southbound on I-805 in a marked CHP vehicle. They observed an Acura MDX SUV speeding and drifting onto the shoulder and then back into the lane. The officers activated their overhead lights and directed the Acura to pull over. The Acura exited at the Murray Ridge Road freeway exit. A license check revealed it had recently been carjacked in Escondido. The vehicle came to a stop. As the officers exited the vehicle, the Acura's right front passenger door opened and then shut. The Acura made a U-turn and fled eastbound on Murray Ridge Road. The officers pursued it onto Encino Avenue, which May, who was driving, knew was a dead-end street. May stopped in the middle of Encino Avenue and waited. The Acura turned around in the cul-de-sac and began driving towards their vehicle. The officers exited their vehicle and opened fire on the Acura. The Acura struck the open front passenger side door of the marked patrol unit, injuring Gonzalez. May continued to fire at the vehicle as it drove past them

and east on Encino Avenue. The officers got back in their vehicle and turned around, but lost sight of the Acura. It was found nearby at Royale Crescent Court. It had collided with items on the property and the occupants had fled. ABLE located a passenger, CW1, hiding on the front porch of a residence. While the command post was being established, a male identified as George Cisneros contacted an officer on scene and claimed he had been drinking at a party, didn't know where he was, and wanted to know where the trolley was. He matched the description of the driver of the stolen Acura. May identified him as the driver of the Acura. Matthew Cisneros, the brother of George Cisneros, who also fled the scene, was not located. George Cisneros was charged with violations of California Penal Code sections 245(c), 211, 459, 245(a)(1), 594(A)(B)(1), 215(A) and Vehicle Code 2800.2(A), in San Diego Superior Court case number CN422110.

On July 16, 2021, Matthew Cisneros was arrested by Escondido Police Department and charged with violations of California Penal Code sections 245(c), 211, 459, 245(a)(1), 594(A)(B)(1), 215(A) and Vehicle Code 2800.2(A), in San Diego Superior Court case number CN422110. He had fled from the scene and remained at large until his arrest. He sustained a gunshot wound to his right elbow from the incident.

Persons Involved

George Cisneros (G. Cisneros) is a 21-year-old resident of Vista. Matthew Cisneros (M. Cisneros) is an 18-year-old resident of Vista. Gonzalez has been employed by the California Highway Patrol for seven years. May has been employed by the California Highway Patrol for 18 years.

Law Enforcement Witness One (LE1)

LE1 was in the parking lot of the City View Church and saw the CHP officers pull over the Acura. He saw the car move up a little bit, make a U-turn and then take off from the CHP officers. LE1 left the church parking lot and tried to find them. He heard several "pops," and saw the Acura come flying across the intersection. He made a right turn and followed it. He was a little bit far behind and by the time he got to where the Acura stopped, he saw the shadow of a person duck towards the front door of the residence. LE1 held the scene until other officers arrived. LE1 did a call out of the person, later identified as CW1, from the front porch area. CW1 was taken into custody and later released to her mother.

Law Enforcement Witness Two (LE2)

LE2 contacted G. Cisneros at a church down the street from where the OIS took place. G. Cisneros asked if he did something wrong as he was being handcuffed. He said he felt like he was being harassed and that cops always want to arrest him for the way that he looks. LE2 told him he matched the description of someone they were looking for. LE2 detained G. Cisneros until they could confirm if he was one of the suspects from the Acura. G. Cisneros claimed he was wasted, woke up out of nowhere, and didn't know where he was. He claimed to be a bum and was trying to get home.

Statement of Civilian Witness One (CW1)

CW1 is a juvenile. CW1 told officers she didn't know where the two Hispanic males in the car with her ran off to. She had just met them today. She said the driver of the car was "Mike." The individual in the back seat was "Andrew." CW1 then said "Andrew" was the driver and "Mike" was in the back. She was in the front passenger seat. "Andrew" was wearing all black with shorts. They picked her up at a hotel in Escondido and were heading to the beach. She did not believe anyone in the car was shot or injured during the shooting and she did not know where the two males went after they fled. Later, CW1 told officers the two males went over the fence to the house on Royale Crescent Court.

Statement of George Cisneros

G. Cisneros initially told detectives he had been drinking with his friend "Luis" that night and was "faded." He didn't know how he got there. He woke up in the bushes. G. Cisneros denied driving or being in the Acura and he wasn't with any of his brothers last night. G. Cisneros said he didn't remember being pulled over by CHP officers, nor ramming a CHP vehicle, nor a shooting. He did remember hearing gunshots. G. Cisneros denied being in the stolen car and didn't know anything about it and said his DNA shouldn't be in the car.

G. Cisneros admitted he had been in the car earlier in the evening with his brother, Matthew, who picked him up to get beer and food and then dropped him off. G. Cisneros said he wasn't driving, but did touch the door handle, steering wheel, and shifter when they got gas. He was going to get out, but his brother took off and did a U-turn. G. Cisneros said Matthew told him he got shot and when they stopped the car and got out, Matthew fell to the ground and then got back up. He claimed he was in the back seat talking with CW1. He was not "faded," and neither was Matthew, but admitted he had been drinking. G. Cisneros continued to deny being the driver and said he almost got shot twice in the face when the CHP officers shot at him. He said they were going about 15 to 20 mph when they did a U-turn and headed back at the CHP vehicle. They tried to go around the CHP vehicle. The officers fired four rounds before they got to it. G. Cisneros stated, "When he started shooting, I went faster." He didn't want a bullet to hit him or anyone in the car. He didn't think they hit the CHP vehicle and thought they dodged it. The officer on the right side of the car got out and started shooting at them.

When they stopped the Acura, they got out and ran. He denied stealing the Acura but eventually admitted being the driver during the incident. He knew he did something wrong and had "fucked up." He said he was going to stop, but when they fired shots at them, he got scared and drove faster. He tried to drive away from the CHP vehicle and did not know he hit the car. G. Cisneros said, "I fucked up 100%." They didn't stop because Matthew has an active warrant. Matthew is about to have a daughter and he wanted him to be out of custody for her birth. G. Cisneros said his brother told him he had been shot.

Statement of Matthew Cisneros

M. Cisneros remembered the night of the incident and being in a car with his brother George and CW1 when CHP tried to pull them over. He claimed he had been partying. He took eight to ten Xanax, drank alcohol, and blacked out that night. M. Cisneros took Xanax constantly for pain.

He claimed he didn't remember who he was with, where he was coming from or what car he was in at the time. He said he also didn't remember being pulled over by the police or even where he was sitting in the car. M. Cisneros said he remembered being in a car, hearing gunshots and "seeing the fire" coming from outside the car. He moved side-to-side in the car when he heard the gunshots. M. Cisneros said he was shot in the right elbow but doesn't remember what happened after it. He does not know who shot him. He said he didn't start remembering things until he was off drugs. M. Cisneros said he has not seen George since the shooting and doesn't know where he is. He claimed not to have spoken to CW1. The detective who interviewed M. Cisneros saw scarring on the right elbow and took pictures of that area.

Statement of Officer Pedro Gonzalez

Gonzalez was partnered with May, who drove. Just after midnight, they were traveling southbound on SR-163 onto the transition ramp to Interstate I-805 when he saw a burgundy-colored SUV (Acura) straddling the center median. The vehicle slowed down and appeared it was going to stop on the transition road. It weaved left and right in a serpentine manner. When it reached the Murray Ridge offramp, they activated the emergency lights on the patrol vehicle and initiated a traffic stop. He and May talked about the vehicle and discussed the abnormal driving.

Gonzalez directed the Acura to exit the freeway over the PA speaker. Gonzalez ran the plate and it returned as stolen in a carjacking. The CHP dispatcher also checked on them and advised the Acura was from a carjacking. Gonzalez told the driver of the Acura to turn off the vehicle and put down the windows as it stopped. Gonzalez saw the driver's side front and passenger rear windows rolled down. He saw the front passenger (CW1) attempt to exit the vehicle. Gonzalez instructed CW1 to get back in the car. Gonzalez was out of the patrol vehicle with the door open. May gave the driver instructions to put his hands out the window. The driver appeared to put both hands out the window and Gonzalez saw a full sleeve of tattoos on the driver's left arm. May told the driver to open the driver's door with his left hand. After a few seconds, the driver's hands went back inside and the vehicle made a U-turn and took off. May pursued the Acura as it went east and crossed over the I-805 overpass and turned left onto Encino Drive, a dead-end.

Gonzalez saw the vehicle make a U-turn. They stopped and exited the vehicle when the car came directly at them. Gonzalez exclaimed the Acura was going to ram and hit them. Gonzalez took out his weapon based on the knowledge it was a carjacking vehicle and he didn't know if they had weapons in the car. Gonzalez heard the loud acceleration of the vehicle and estimated the speed at 25 to 30 mph, but then it went faster. The vehicle made no attempt to veer to avoid ramming their vehicle. Gonzalez stood in between the front door and the A and B pillars of the vehicle with his weapon out. Gonzalez yelled for it to stop, but it did not slow down and continued in his direction. May yelled, "Look out." Gonzalez determined the car wasn't going to veer or stop. He was in fear for his life and thought he was going to get hit or possibly killed. Gonzalez fired in an attempt to stop the threat to himself and his partner. He could not see the driver through the windshield because of the lights aimed in his direction. Gonzalez focused on shooting center mass on the driver's side, near the steering wheel. He remembered continuing to fire rounds and seeing the driver either duck down or go left and the car went towards his car

door. The Acura made contact with his door, which pushed him back into the patrol vehicle and pinned his leg along the bottom frame of the vehicle.

Gonzalez believes he stopped firing his weapon when he was hit. Gonzalez remembered seeing a head go down once the shots were being fired. Gonzalez aimed and fired his weapon toward the driver's compartment because he wanted to stop the threat by disabling the driver. He felt if he didn't shoot, he wouldn't be here. He would have been hit by the car and run over. Gonzalez felt he did not have time to move to another position because it happened so quickly.

Statement of Officer Michael May

May drove and Gonzalez was the passenger. After midnight, they were traveling southbound on SR-163 to I-805 freeway when they observed a red SUV (Acura) in the number one lane. The vehicle slowed down and drifted to the left across the solid yellow line and continued traveling to the left of the solid yellow line for approximately three seconds. When the vehicle slowed down, he did as well so they could get a better look and watch it. Both vehicles transitioned to the southbound I-805 freeway. The Acura signaled and merged into the number four lane. It drifted left again into the number three lane and then moved back into the number four lane. The vehicle made a lane change back in front of their vehicle and increased its speed to approximately 80 mph. May increased their speed to so they could keep up with it. They activated the overhead red lights to conduct an enforcement stop for vehicle code violations.

At a quarter mile north of Murray Ridge Road, Gonzalez used the vehicle's PA system and instructed the driver of the Acura to exit the freeway, which it did. A registration check showed it was a stolen vehicle from a carjacking in Escondido. The vehicle made a right turn at the top of the off-ramp and pulled over along the north curb of Murray Ridge Road. May and Gonzalez set up for a high-risk stop. A female in the front passenger seat opened the car door and attempted to exit. Gonzalez told her to get back in the vehicle, which she did. May instructed the driver to turn off the vehicle, throw the keys out, and place his hands outside where he could see them. The driver only placed his left arm outside the vehicle. May wasn't sure if he had a weapon due to the carjacking or if they were going to try to flee. There were three people in the vehicle: a male driver, someone in the rear seat, and a female in the right front. The vehicle accelerated, made a U-turn and fled. May pursued it. May had trouble putting the vehicle in Code-3. The lights worked, but not the siren. He saw the Acura turn left on Encino Avenue. He told Gonzalez it was a dead-end street. He saw the vehicle go to the end and make a U-turn.

May stopped three quarters of the way down Encino Avenue, put their car in park, and told Gonzalez he believed they were going to ram them. Both officers exited the vehicle and drew their service weapons. May stopped the vehicle next to another SUV so he had cover on his left-hand side. May didn't believe the right side was completely clear, but there wasn't a car right next to them. May heard the engine rev and saw the Acura accelerate towards them. He wasn't sure if the subjects in the vehicle had a gun or if they were planning to ram them and put them in a vulnerable position. As it came closer, May opened fire on it.

May thought the Acura was coming straight at them to ram them. He told his partner to “look out” so he could get out of the way and find cover. May didn’t recall how close the vehicle was to him when he decided to fire at it. May said as the vehicle got closer, he was in fear for his and his partner’s life and he believed it was reasonable to attempt to stop the vehicle by firing at it. May estimated the speed of the vehicle was at least 45 to 50 mph. May does not remember how many times he fired his weapon. May shot to stop the threat and aimed towards the driver’s area of the vehicle. It was dark and he could not see a driver, so he estimated the center mass of the driver and aimed in that direction. As the Acura passed their vehicle, he heard his partner grunt, and believed he was either down or seriously injured. May was able to turn around and fire a few rounds back towards the Acura because he considered it was a fleeing felon and he believed his partner was seriously injured. There were no pedestrians or vehicles in their immediate vicinity other than those parked along the street. There was light traffic on Murray Ridge, which was the main road. After the Acura was a few feet or few yards behind them, May didn’t feel it was safe to continue firing so he stopped. May confirmed his partner was safe and tried to locate the Acura, but May decided, based on Gonzalez’s injury, not pursue it any further.

May felt the Acura was going to ram them because it made a U-turn and just continued coming. May made the decision to stop his vehicle in the street and get out to address the car coming at them. May positioned the car so the Acura could not pass on the driver’s side and had to go past Gonzalez on the passenger side. May was outside the vehicle near the left door and the door was closed. He had cover with the patrol vehicle and a parked vehicle to the left front of their vehicle. Gonzalez had the door to their patrol vehicle. He did not believe Gonzalez had the opportunity to move to a place of safety. May has experience with the type of damage a vehicle can inflict on a person and on a car at the speed it was traveling. May made the decision to fire his weapon at the Acura as it approached their vehicle rapidly and there were no signs of it slowing down or trying to avoid them. He feared for his safety and his partner’s safety. May also fired to stop the vehicle from continuing on and possibly injuring someone else. May said it could have been much worse if the Acura were to collide into somebody else based on the way it was driving.

Investigation

The scene was secured, photographed, and investigated by San Diego Police Department Homicide detectives. All reports, audio-recorded witness interviews and 911 calls, radio traffic, photographic evidence, Mobile Video Audio Recording System (MVARs) and Body Worn Camera (BWC) video were reviewed. MVARs captured the events leading up to and including the shooting. The ABLE video recorded the search for the three suspects who fled from the carjacked vehicle. Two neighboring homes had Ring video cameras that also captured a portion of the incident.

Gonzalez was armed with his department-issued Smith & Wesson Model M&P 40, .40 caliber semi-automatic pistol. Gonzalez’s pistol was received with one cartridge in the chamber and seven in the magazine. The capacity of the magazine is 15 cartridges. The total capacity of the pistol with one in the chamber and a full magazine is 16 cartridges. The evidence indicates eight cartridges were fired by this pistol. Although Gonzalez does not recall firing his weapon after he was hit, the total number of shots fired, along with the audio of the distinct gunshots from the

MVARS likely indicate that some of Gonzalez's rounds were fired after he was pinned by the car door.

May was armed with his department-issued Smith & Wesson Model M&P 40, .40 caliber semi-automatic pistol. May's pistol was received with one cartridge in the chamber and five in the magazine. The capacity of the magazine is 15 cartridges. The total capacity of the pistol with one in the chamber and a full magazine is 16 cartridges. The evidence indicates ten cartridges were fired by this pistol.

The Acura driven by G. Cisneros was a maroon 2001 Acura MDX SUV that was carjacked in Escondido. The weapon used was a bottle. No weapons were found in the vehicle. The vehicle had damage to the front passenger side bumper with white paint transfer. There was little to no dust built up around the damage, indicating it was likely from a recent collision. The vehicle sustained 20 total bullet holes, with eight of them from rounds that continued to travel through the exterior and/or interior of the vehicle, and one bullet impact. An apparent blood stain was located on the arm rest of the center console.

Mobile Video Audio Recording System (MVARS)

The video began with the CHP vehicle driven by May, with Gonzalez in the front passenger seat, entering southbound SR-163 and then taking the southbound I-805 on-ramp. The time associated with the video jumped ahead approximately 91 seconds when the patrol unit merges onto the freeway initially. It does not appear that any of the video footage is missing. When played frame by frame the entire video appears to be complete. As they approached the on-ramp, a vehicle ahead of them signaled and moved into the number one lane of the southbound I-805 on-ramp. May was traveling in the number two lane. The vehicle braked and slowed down significantly on the SR-163 to I-805 transition. The Acura appears to drift along the left edge of the lane as it went around the curve of the on-ramp. May slowed down and stayed to the right rear of the Acura and followed it onto southbound I-805. The Acura signaled and merged into the number four lane. The Acura can be seen drifting along the left edge of the lane and then signaled to the right and moved over in front of the marked CHP vehicle.

The Acura increased its speed and pulled away from May. The sound of the patrol vehicle's engine revving to pick up speed can be heard on the video. When the Acura reached the Murray Ridge off-ramp, the officers activated the emergency lights on the patrol vehicle and initiated a traffic stop. They followed it up the off-ramp and directed it to turn to the right. The Acura pulled over on the right shoulder of westbound Murray Ridge Road. May can be heard directing the driver to "turn off the vehicle." Gonzalez can be heard directing someone to stay in the vehicle. The driver put his left arm out the car window and then suddenly did a U-turn and headed eastbound on Murray Ridge Road. The officers got back in their vehicle, did a U-turn and followed it. The sound of the patrol vehicle's engine revving can be heard as May tries to catch up to it, and other oncoming vehicles can be seen along Murray Ridge. The Acura went through two green traffic lights (crossing over I-805) and then turned left onto Encino Avenue. It traveled to the end of the cul-de-sac and turned around and headed back up Encino Avenue without stopping. May stopped the patrol vehicle about three quarters of the way down Encino Avenue.

The CHP vehicle had its emergency lights on and was positioned slightly south of the center of the road. Two vehicles can be seen parked on both sides of the street a few car lengths in front of the patrol vehicle. There is a car parked just out of view to the left of the driver's door. The Acura continued rapidly approaching the front of the patrol vehicle.

May can be heard saying, "look out..." The sound of approximately six to seven gunshots can be heard when the Acura is within two-three car lengths from the front of the vehicle. A thud can be heard followed by a grunt as the Acura passed on the passenger side. Approximately 10-12 shots can be heard with the Acura no longer in view of the MVARs camera. May asked Gonzalez if he was alright and Gonzalez said he was. May asked Gonzalez, "Did you get hit, by what...car...door?" May asked him if he was alright and Gonzalez replied, "I'm good." May replied, "are you sure?" Gonzalez broadcast the Acura's direction of travel. May turned the patrol vehicle around in the cul-de-sac and stopped in the area near where they had engaged the Acura. It was no longer in sight, but other traffic can be seen along Murray Ridge. Additional patrol units arrived on scene shortly thereafter and began their investigation.

Ring Video #1

The video was taken from a home close to the cul-de-sac. It showed the Acura traveling westbound on the 8600 block of Encino Avenue towards the cul-de-sac, and then out of view. It is then seen traveling eastbound back towards Murray Ridge Road. May travels slowly into and out of view in the marked CHP vehicle as it headed west towards the cul-de-sac. The CHP vehicle is then seen traveling slowly eastbound towards Murray Ridge Road and out of view.

Ring Video #2

This video showed the Acura traveling southbound at a high rate of speed and then the sound of skidding/screeching tires can be heard as the vehicle came to an abrupt stop in the driveway at Royale Crescent Court. Three people exited the vehicle: two from the driver's side doors and one from the passenger side. CW1 exited from the passenger side and hid near the front door of the residence. She was contacted and detained by SDPD officers on scene. The Cisneros brothers ran from the driver's side and can be seen jumping over a fence on the side of the house.

ABLE Video

ABLE arrived on scene after the shooting. They searched the area and assisted in locating CW1.

Body Worn Camera (BWC)

CHP officers do not wear BWC. The responding SDPD officers arrived on scene after the shooting. They had their BWC on when G. Cisneros and CW1 were located and taken into custody.

Injuries

M. Cisneros sustained a gunshot wound to his right elbow. It is unknown whether he received medical treatment. A swab of a substance which appeared to be blood was taken from the center console of the Acura. DNA from the sample was believed to match Matthew Cisneros, but a new reference sample was needed to confirm the findings.

Gonzalez sustained a horizontal laceration approximately an inch or two long just below the calf on the inside of the right leg and a small cut to the top of his left hand. An MRI later revealed Gonzalez sustained a “crush leg injury” resulting in a high ankle sprain, torn tendons and inflammation of ligaments and muscles. He has a permanent soft tissue dent on the inside of his right leg above the ankle from getting pinned in the door frame.

Legal Standards of Criminal Liability

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer’s use of deadly force and the circumstances upon which an officer may use such force. The law provides, in part, that “a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person.” 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 that person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.” Penal Code section 835a(c)(2). “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

Gonzalez and May pursued the Acura which they observed driving erratically, was reported recently carjacked, and fled when they attempted to pull it over. The officers followed it onto a dead-end road. May stopped the patrol vehicle near the center of the roadway as the Acura made a U-turn. As it rapidly approached the stopped patrol vehicle, both officers believed they were going to get rammed and opened fire on the Acura as they both feared for their own and their partner's life. As G. Cisneros drove past them, he struck the edge of the open passenger door of the patrol vehicle, pinning Gonzalez's leg, and caused serious injury. May continued to fire as G. Cisneros continued to drive past them and fled.

In reviewing the circumstances, Gonzalez and May's actions were reasonable based on the totality of the circumstances known to and perceived by them at the time of the shooting. Gonzalez and May reasonably believed that G. Cisneros posed an imminent threat and intended to cause serious bodily harm or death by the erratic manner in which he drove the Acura. The threat needed to be instantly confronted as G. Cisneros rapidly drove towards them with no indication of slowing or stopping. The firing of multiple shots at G. Cisneros was necessary in an attempt to stop the deadly threat the vehicle posed. Less lethal alternatives were not feasible or safe against the immediate, lethal threat posed by G. Cisneros, given how quickly he accelerated towards them. As G. Cisneros continued to drive away after hitting their patrol vehicle and injuring Gonzalez, May and Gonzalez continued to shoot at it to prevent death or serious bodily injury to anyone else. It was reasonable to believe that others in the area, including passing motorists on Murray Ridge and anyone else out on the roadway would be exposed to the driver's reckless and dangerous driving. They had demonstrated the use of potential violence by carjacking, assaulting officers with the vehicle, and the continued reckless flight. The officers' actions in firing at the driver in order to stop the perceived lethal threat posed to both themselves and to the community were reasonable under the circumstances. Therefore, Gonzalez and May bear no state criminal liability for their actions. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,



SUMMER STEPHAN
District Attorney

SS:gm
cc: Captain Richard Freedman