

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 9, 2021

Chief Jose Tellez
National City Police Department
1200 National City Boulevard
National City, CA 91950

Re: Non-fatal shooting of Mr. Christopher Marquez by National City Police Officers Ashley Cummins and Michael Sportelli on April 5, 2021; NCPD Case No. 2101911; DA Special Operations Case 21-041PS; Deputy District Attorney assigned: Frederick Washington

Dear Chief Tellez,

We have reviewed the reports and other materials compiled by the National City Police Department concerning the shooting of Christopher Marquez by Officer Cummins and Officer Sportelli. A District Attorney Investigator responded to the scene and was briefed by your officers. This case was submitted to the District Attorney's Office for review on June 30, 2021. Additional materials were received through November 9, 2021.

Summary

On April 4, 2021 at approximately 2300 hours, a National City police officer (LE1) conducted a license plate check of a white Honda Civic that was parked at the Rodeway Inn Motel. The vehicle came back as stolen. LE1 then left the scene to respond to a radio call involving a subject with a weapon. After clearing that call, LE1 returned to the Rodeway Inn, but the vehicle was gone.

On April 5, 2021 at approximately 0230 hours, LE1 saw the vehicle in the drive through lane at the Jack in the Box restaurant on Roosevelt Avenue. The vehicle was occupied by CW1, CW2 and Christopher Marquez. Once cover units arrived, a high-risk vehicle stop was initiated. As officers were ordering occupants out of the car, Marquez jumped out of the rear passenger door and fled. Marquez, ignoring orders to stop, scaled a concrete retaining wall next to the northbound I-5 freeway entrance, landing in a brushy area east of the freeway.

Officers Cummins and Sportelli ran around to the north side of the wall. As Marquez ran westbound towards the freeway, he stopped, turned towards Sportelli, who was out in the open, illuminated Sportelli with a flashlight, and fired two shots towards him. Sportelli dropped down to his knees and fired two shots at Marquez. Marquez fired several more shots at Sportelli and Sportelli took cover in a prone position behind the raised curb of the on-ramp. Sportelli fired approximately five additional shots at Marquez.

Cummins heard gunshots coming from Marquez's location and saw Sportelli fall to the ground. After hearing the additional gunshots, Cummins fired two rounds in the direction of Marquez. Marquez ran westbound into the brushy area and was last seen crossing the freeway. Neither Sportelli nor Cummins sustained any injuries. Marquez was not located at that time and it was unknown if he was struck by gunfire.

Persons Involved

At the time of the incident Christopher Marquez was a 36-year-old resident of Chula Vista. Ashley Cummins had been employed as an officer with the National City Police Department for two years, eight months. Michael Sportelli had been employed as an officer with the National City Police Department for one year, one month.

Statement of Civilian Witness 1 (CW1)

CW1 is a friend of CW2. On April 4, 2021, CW1 called CW2 to pick her up at her boyfriend's residence in National City. CW2 arrived in a white Honda Civic with Marquez seated in the back seat. CW1 requested a ride to Spring Valley. CW1, CW2 and Marquez drove to several locations around San Diego and were stopping at the Jack in the Box prior to heading to the Roadway Inn. CW1 was unaware the vehicle CW2 was driving was stolen because she had seen CW2 driving it many times in the past. CW2 had the keys to the car.

CW2 told CW1 that Marquez had been involved with an incident involving bounty hunters in Chula Vista. CW1 said she did not know Marquez was in possession of a firearm while they were in the car. When the police stopped the car in the drive through of the Jack in the Box, Marquez told CW2 not to open the door, but CW2 opened the door and stepped out of the car and the police took her into custody. CW1 was then ordered out of the car. Before CW1 could open her door, Marquez grabbed a backpack and jumped out of the rear passenger door and started running. CW1 remained in the front seat of the car until ordered out by police officers.

Statement of Civilian Witness 2 (CW2)

CW2 is the girlfriend of Marquez. On April 4, 2021, CW2 and Marquez checked into the Rodeway Inn Motel in National City. Marquez used the name and identification of "Luis Soria" to rent the room. CW2 said she had borrowed the Honda Civic from a subject named "Adrian." CW2 was supposed to borrow the car for only 30 minutes but kept it instead, replacing the license plates with those from a similar vehicle because she thought that "Adrian" may report the car as being stolen.

CW2 and Marquez drove over to CW1's boyfriend's house in National City and picked up CW1, who needed a ride to Spring Valley. CW2 drove CW1 and Marquez to several locations around San Diego and back to the Jack in the Box in National City. CW2 drove through the drive through of the restaurant and was stopped by the police prior to leaving. Marquez told her not to get out of the car. CW2 knew Marquez had previously shot at two bail bond agents and was wanted for that incident. CW2 knew Marquez was carrying a gun and did not want Marquez to shoot at the police in fear that she may be shot. CW2 did not know if Marquez was carrying a rifle, but knew he was carrying a backpack. Marquez was hiding in the back seat of the Honda

behind a bicycle. CW2 stepped out of the vehicle after she was ordered out by LE1. CW2 told police the vehicle she was driving was not stolen. CW2 was taken into custody.

Statement of Law Enforcement Officer 1 (LE1)

LE1 was on duty in full police uniform driving a marked police vehicle. At approximately 11 p.m., LE1 observed a white Honda Civic in the parking lot of the Rodeway Inn Motel and conducted a license plate check. The vehicle came back as lost or stolen. LE1 checked the Vehicle Identification Number and discovered the vehicle had been reported stolen on March 19, 2021, out of San Diego. LE1 went into the Rodeway Inn Motel and spoke to the motel clerk who advised the Honda was associated with the residents of room 240, a room registered by a Luis Soria. LE1 conducted a record check on Soria and determined he was not on probation or parole. LE1 checked the motel's surveillance cameras and observed the occupants of the vehicle, a Hispanic male adult wearing a black hat and a black jacket, and a Hispanic female adult wearing dark clothing. A call for cover required LE1 to leave the area.

A few hours later, LE1 returned to the Rodeway Inn, but the Honda was gone. At approximately 2:30 a.m. LE1 saw a white Honda Civic enter the Jack in the Box parking lot located on Roosevelt Avenue. LE1 drove to the Jack in the Box parking lot and found the plate matched the plate of the vehicle he was investigating. LE1 pulled into the ARCO lot next to the Jack in the Box. LE1 pulled next to a dumpster in the ARCO AM PM market parking lot and observed the white Honda enter the drive through of the Jack in the Box. LE1 requested the assistance of air support and additional units to assist with the call. Cummins responded and LE1 directed her to a perimeter position on the east side of the restaurant. LE3 responded to the call and staged in the 800-900 block of Roosevelt Avenue. LE1 waited until the Honda was the only vehicle in the drive through. LE1 positioned his patrol vehicle near the exit of the drive through to prevent the Honda from exiting. There was a tall concrete retaining wall north of the restaurant which separated the restaurant property from the on-ramp to Interstate 5.

LE1 was joined at his location by LE2, LE4 and Sportelli. As the Honda started to exit the drive through, LE1 initiated a high-risk vehicle stop. LE1 saw an adult Hispanic female (CW2) driving the vehicle and an adult Hispanic female in the passenger seat. LE1 ordered the driver out of the car. The driver was hesitant but eventually exited the vehicle.

Sportelli took the driver and placed her into his patrol vehicle. At the same time, LE1 asked CW2 how many other people were in the car and CW2 yelled, "one." LE4 told LE1 that he thought he detected some movement in the back seat of the car. LE1 ordered the front seat passenger (CW1) to keep her hands outside of the passenger side window. At that point, LE1 saw Marquez exit the white Honda from the rear passenger side door and run eastbound through the drive through towards Cummins. LE2, LE3 and Sportelli ran towards the east side of the restaurant after Marquez.

LE1 saw Marquez run back westbound and hide behind a green electrical box in front of the white Honda. Marquez appeared to be manipulating an object in his hands. Marquez peeked his head from behind the electrical box several times. LE1 told Marquez to stop and show his hands, that he did not want to shoot him, but if he did not stop and show his hands, he may be shot.

LE1 saw Marquez run eastbound towards Cummins, Sportelli, LE2 and LE3. LE1 and LE4 stayed with the Honda because CW1 was still inside of the vehicle. LE1 heard over his police radio that Marquez was jumping the retaining wall which separates the restaurant property from the Interstate 5 freeway on-ramp. LE1 heard two loud bangs that sounded like gunshots and heard Sportelli put out shots fired over the police radio. LE1 ran towards the front of the white Honda and heard several more gunshots in the direction where Marquez had fled. LE1 heard over the radio Marquez had run westbound towards the Interstate 5 freeway. LE1 ran south around the ARCO AM PM, west on 8th Street and back north onto the Interstate 5 onramp where Marquez was last seen running. LE1 was unable to locate Marquez.

Statement of Law Enforcement Officer 2 (LE2)

LE2 responded to assist LE1 with an occupied stolen vehicle at the Jack in the Box. LE2 observed a white Honda in the drive through with two females inside. LE2 heard LE1 give verbal commands to the driver of the white Honda, who initially did not exit the vehicle, but ultimately complied. As LE1 ordered the passenger out of the Honda, Marquez opened the rear passenger door of the Honda and ran eastbound through the drive through.

LE2 heard officers give Marquez verbal commands. LE2 ran to the east side of the restaurant and took a position on the northeast corner of the building. LE2 saw Marquez holding a backpack while standing next to the retaining wall separating the Jack in the Box and the freeway on-ramp. LE2 yelled at Marquez to get on the ground. Marquez jumped the retaining wall to the north side. LE2 ran northbound towards the on-ramp. Cummins and Sportelli were approximately 50 feet in front of LE2. LE2 heard two gunshots coming from where Marquez had run. LE2 did not have a visual on Marquez and took a position of cover behind a concrete wall.

LE2 saw Sportelli return gunfire toward where Marquez had run, and then drop down and take cover behind a raised curb. LE2 heard several additional shots being fired but could not distinguish where they were coming from. LE2 saw Cummins taking cover behind a portion of the retaining wall and saw Sportelli get up and run to Cummins' location. LE2 saw Marquez run up a small embankment and cross the Interstate 5 freeway.

Statement of Law Enforcement Officer 3 (LE3)

LE3 volunteered to assist on an occupied stolen vehicle call at the Jack in the Box. LE3 arrived at the location and used his police vehicle to block the drive through entrance. LE3 walked over to LE1's location and saw LE1 and LE2 conducting a high-risk vehicle stop on the Honda with two females. LE1 was ordering CW2 out of the vehicle and CW2 was not complying. LE1 continued to order CW2 out of the vehicle. CW2 exited the vehicle and walked back to a small concrete wall where officers took CW2 into custody. Sportelli walked CW2 to his police vehicle and LE3 directed his attention back towards the Honda.

LE3 saw the rear passenger door of the Honda open and LE1 advised a male had exited the vehicle and run eastbound through the drive through. LE3 ran to the east side of the restaurant and saw Marquez. LE3 and LE2 ordered Marquez to show his hands several times. Marquez hid behind a Conex box and fidgeted around his waistband. LE3 saw Marquez holding a dark colored object in his left hand. LE3 heard other officers broadcast that Marquez had jumped over

the retaining wall and head towards the freeway. LE3 ran to his vehicle and heard gunshots. LE3 heard over the radio Marquez made it across the freeway.

Statement of Law Enforcement Officer 4 (LE4)

LE4 responded to assist LE1 at the Jack in the Box restaurant. LE4 took a position behind LE3 who was standing behind the open passenger door of LE1's vehicle. LE1 was giving commands to CW2, the driver, from behind the open driver's door of LE1's vehicle. CW2 initially refused to comply, but then exited the driver's door and was taken into custody by LE2, LE3, and Officer Sportelli. LE4 saw another female in the passenger seat of the stolen vehicle. LE4 also saw movement in the rear seat of the stolen vehicle and alerted other officers of his observations. Officers who were detaining CW2, asked her how many others were inside of the vehicle. CW2 replied, "one." LE4 saw a person (Marquez) jump from the rear passenger side door. The subject was a male wearing a dark colored baseball hat with a blue face covering and carrying a backpack which appeared to be full. Marquez ran from east to west in the drive through lane and hid behind a green electrical box near the drive through. Marquez fidgeted with something in his hand. LE4 ordered Marquez to stop and get on the ground, but Marquez ignored the commands. LE4 advised the other officers at the scene that Marquez was holding something in his hand.

Marquez ran eastbound behind the restaurant out of view. LE4 heard gunshots coming from the location where Marquez ran. LE4 ran to the east side of the Jack in the Box and located LE2 at a position of cover near the retaining wall east of the restaurant. Sportelli and Cummins took a position of cover against the west end of the retaining wall on the north side. LE4 also saw a silhouette of an individual on the freeway moving west. LE4 had Sportelli, Cummins and LE2 maintain their perimeter and cover positions. LE4 went back to the stolen vehicle. With the assistance of other officers on scene, CW1 was removed from the vehicle.

Statement of Officer Ashley Cummins

Cummins heard LE1 state he had located a stolen vehicle in the Rodeway Inn parking lot. LE1 had to respond to another call and had to leave the vehicle parked in the Rodeway Inn. Later she heard LE1 broadcast he found the stolen vehicle, which was now occupied, in the drive through of the Jack in the Box. Cummins responded and asked LE1 where he wanted her to set up. LE1 requested Cummins take a perimeter position east of the restaurant. Cummins parked her police vehicle in a position where she could observe the stolen vehicle in the drive through. Cummins saw a female get out of the passenger side door and remove a dark backpack from the trunk of the vehicle and bring it into the vehicle. Cummins relayed that information to LE1 and other officers on the scene.

Cummins advised over the radio the occupants had received their food and were exiting the drive through. The vehicle stopped as it was leaving. LE1 broadcast that he was conducting a high-risk vehicle stop. Cummins pulled her vehicle to the intersection of 7th Street and Roosevelt Avenue, just in case the vehicle reversed and tried to escape. Cummins had a clear view of both sides of the tall concrete retaining wall that separated the Jack in the Box property and the grassy area at the entrance to the northbound freeway.

Cummins saw Marquez get out of the rear passenger side door. Marquez crouched down and then jumped on top of the wall, holding a black bag similar to the bag the female removed from the trunk. Cummins yelled for Marquez to stop and get down off the wall. Marquez looked at her and jumped back down to the south side of the wall on the Jack in the Box side. Cummins went to the south side of the wall to see what Marquez was doing. She saw LE2, LE3 and Sportelli come around to the east side of the restaurant. Cummins, Sportelli, LE2 and LE3 were giving Marquez commands to "stop," "show your hands," and "get down." Marquez jumped back on the wall and jumped down to the north side of the wall.

Cummins and Sportelli ran to the north side of the wall and continued west towards Marquez. Cummins told Sportelli to watch the corner at the end of the brick wall. Cummins heard several muffled shots coming from the area where Marquez had run. Cummins took cover against the retaining wall after she realized Marquez was shooting at them. She saw Sportelli fall to the ground and thought that he had been hit. Cummins saw Marquez's silhouette in the brush and she fired two shots at him. Cummins yelled at Sportelli to lay down because she knew he did not have any cover and she thought he had been hit. She believed the suspect was going to kill Sportelli.

Sportelli said he had not been hit. Cummins pointed her gun in the direction of Marquez. She saw Marquez turn and run westbound. Cummins yelled at Sportelli to come to her location because she had cover. Sportelli ran to Cummins and broadcast Marquez's last seen location.

Statement of Officer Michael Sportelli

Sportelli responded to the Jack in the Box to assist LE1 and LE4 with a high-risk vehicle stop of an occupied stolen vehicle which was located in the drive through of the restaurant. He arrived at the location as CW2 was being ordered from the vehicle by LE1. Sportelli joined LE2 and LE3 who had been designated as the arrest team. Sportelli acted as the less lethal cover unit, utilizing his Taser as his cover weapon. As CW2 walked back to LE2 and LE3's location, Sportelli took custody and handcuffed CW2. He checked CW2 for weapons and walked her to his police vehicle.

LE2 broadcast over the police radio that a subject (Marquez) was "rabbiting" from the vehicle. Sportelli secured CW2 in the back of his vehicle and ran towards the east side of the Jack in the Box in the direction which Marquez ran. Sportelli stopped at the northeast corner of the restaurant and met up with LE2 and LE3. Sportelli saw Marquez attempting to climb the retaining wall from the south side to the north side while ignoring orders to show his hands and to get down.

Sportelli ran northbound to the north side of the retaining wall and crossed the on-ramp to Interstate 5 northbound to get a better view of Marquez as he climbed over the wall. Marquez climbed over the wall, landed in brush, and ran west towards the freeway. Sportelli saw Cummins posted at the east end of the retaining wall. Both officers started running westbound towards Marquez. Marquez stopped and turned towards him. Marquez held a flashlight, cellphone, or weapon with a light, and Sportelli heard the distinct sound of gunshots coming at him. Sportelli dropped to his knees and returned fire towards Marquez. Sportelli attempted to use

the curb as cover and fired more rounds at Marquez. He was concerned Marquez was going to shoot and kill him or one of the other officers.

Marquez fired approximately two rounds initially and then a volley of rounds. Sportelli ran to Cummins' location and changed magazines. He advised over the radio Marquez was last seen crossing the freeway westbound.

Investigation

The scene was secured, photographed and investigated by the National City 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 corroborates the officers' statements. The event leading up to and the incident itself was captured on body worn camera (BWC) as well as stationary cameras mounted around the Jack in the Box.

Body worn camera footage of LE4 shows LE1 initiating a high-risk vehicle stop of the Honda, occupied by two female subjects sitting in the front seats of the vehicle. LE4 requested an additional unit respond to assist with the high-risk stop. Footage shows LE1 ordering CW2 out of the car. CW2 was ordered to walk back to LE2, LE3, and Sportelli's location where Sportelli handcuffed CW2, patted her down for weapons, and walked her to his patrol vehicle. Prior to removing CW1 from the vehicle, LE4 relayed to LE1 that he saw movement in the rear seat. LE1 and LE4 observed Marquez exit the rear passenger side of the Honda and run eastbound along the retaining wall out of their view.

LE4's camera footage shows Marquez running back westbound towards the Honda and duck down out of view. Marquez was holding an object in his hand and LE1 and LE4 ordered Marquez to stop and show his hands.

Cummins who was parked east of the restaurant saw Marquez exit the rear passenger door of the Honda holding a black bag. Marquez jumped on top of the retaining wall and Cummins moved away from her patrol vehicle, pointed her weapon towards Marquez. Cummins ordered him off the wall and told him to stop and get on the ground. Marquez jumped the retaining wall from the south to the north. Cummins ordered Marquez to stop and get on the ground. Sportelli came around to her right side and took a position at the on-ramp for the Interstate 5 northbound freeway. Cummins and Sportelli chased Marquez westbound towards the freeway Cummins warned Sportelli to be careful going around the corner.

One gunshot is heard followed by an additional shot. Sportelli broadcasted "shots fired." Approximately 10 shots are heard in rapid succession. Cummins fired two shots in the direction of Marquez as Sportelli appeared to be laying on the ground. Two additional shots are heard. Cummins asked Sportelli if he was hit and then told him to come to her location where she had cover.

Footage from Sportelli's BWC showed Sportelli securing CW2 in his patrol vehicle. Sportelli ran to the northeast corner of the Jack in the Box. Marquez stood in the drive through next to the

white Honda. LE2 and LE3 pointed their weapons at Marquez and ordered him to show his hands. Cummins is seen standing next to the retaining wall and is also ordering Marquez to show his hands and to get on the ground.

Cummins yelled that Marquez was jumping the wall. Sportelli ran northbound across the on-ramp to Interstate 5 and took a position. Sportelli ordered Marquez to get on the ground. Sportelli advised that Marquez is running towards the freeway Sportelli and Cummins ran in the direction of Marquez.

Cummins warned Sportelli to be careful going around the corner, and Sportelli replies, "Yeah, yeah, I see him" One shot is heard immediately following their exchange, and Sportelli dropped to the ground, broadcasting, "shots fired." One additional shot is heard followed by a rapid number of shots, followed by two more shots. During the gunfire, Sportelli fired approximately six rounds towards Marquez.

Cummins asked Sportelli if he was hit. Sportelli replied that he was good. Sportelli ran to Cummins' location and took cover behind a retaining wall.

Cummins was armed with a Glock model 22 firearm and had three magazines. The firearm contained a magazine with 13 unexpended rounds inside and one unexpended round in the firing chamber. The two additional magazines contained 15 unexpended rounds each. Based on the number of unexpended rounds Cummins retained in her possession, it was determined that Cummins fired two rounds from her firearm.

Sportelli was armed with a Glock model 22 firearm and two additional magazines. Sportelli's firearm contained one unexpended round in the firing chamber and one magazine containing 15 unexpended rounds. Sportelli had one additional magazine with 15 unexpended rounds and one magazine with eight unexpended rounds inside. It was determined Sportelli fired seven rounds from his firearm.

After an extensive search of the area by numerous law-enforcement agencies, MARQUEZ was not located, however, officers searching the area west of the Interstate 5 freeway in the direction of MARQUEZ' travel, located a Glock-style un-serialized ghost 9mm handgun. It had an empty 10-round Magpul magazine, black colored tape around the trigger and a weapon light (or laser) attachment. The gun was found with the slide locked back to the rear position. A properly functioning Glock firearm will automatically lock the slide to the rear once the magazine is empty. DNA analysis of the smooth and textured areas of the firearm, including the magazine, determined there was very strong support to include Marquez' DNA in a mixture of three contributors. One of the contributors to the mixture was preliminarily determined to be CW2, but needs to be confirmed. Fingerprint analysis is pending.

Following this incident, on April 12, 2021, Marquez was located with CW2 inside a vehicle. A pursuit ensued, and Marquez shot at the pursuing officers. It eventually resolved after an 8-hour standoff with police when Marquez was fatally shot by San Diego Police SWAT snipers. That incident is being separately reviewed.

Toxicology Report

There is no toxicology report for this incident as Marquez evaded arrest.

Legal Analysis

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

LE1 located a reported stolen vehicle at the Jack in the Box restaurant occupied by at least two subjects. Officers initiated a high-risk vehicle stop. Marquez jumped out of the rear passenger door of the vehicle carrying an object in his hand and ran from the car. Marquez refused orders by Cummins to stop, show his hands, and get on the ground. Sportelli arrived and also ordered Marquez to show his hands and to stop, but Marquez, ignoring all commands, climbed over the wall to the freeway and dropped down into a dark brushy area.

Cummins and Sportelli ordered Marquez to stop as they both ran after Marquez. Marquez stopped, turned towards Sportelli and fired two rounds at Sportelli. Sportelli dropped to his knees and fired rounds towards Marquez’s location, took cover, and fired more shots in the direction of Marquez. After hearing the shots from Marquez, Cummins observed Sportelli go to the ground. Cummins fired two rounds in the direction of Marquez. Marquez was last seen running westbound across the Interstate 5 freeway. Neither Cummins nor Sportelli were struck by gunfire.

Based on the circumstances of this case, Cummins and Sportelli appropriately pursued Marquez as he fled from the stolen vehicle. Both officers’ decisions to point their weapons at Marquez while ordering him to show his hands were reasonable given the fact that Marquez was seen by LE1 with an object in his hand when he ran from the vehicle and refused to show his hands when ordered. While Cummins and Sportelli pursued Marquez, Marquez stopped, turned toward Sportelli and fired several rounds at him. It was reasonable and justified for Sportelli to fire his weapon at Marquez to stop the threat. It was also reasonable and justified for Cummins to fire her weapon at Marquez to protect her life as well as the life of Sportelli. As a result, they bear no state criminal liability for their 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 Alex Hernandez