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THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
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DISTRICT ATTORNEY

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

November 9, 2021

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

Re: Fatal shooting of Mr. Eric Anderson by San Diego Sheriff's Department Deputies James Clone and Sean Zappia on June 18, 2021; SDSL Case No. 21126130; DA Special Operations Case No. 21-085PS; Deputy District Attorney assigned: Jennifer Reischl

Dear Sheriff Gore:

We have reviewed the reports and other materials compiled by the San Diego Sheriff's Department's Homicide Division concerning the circumstances leading to the fatal shooting of Mr. Eric Anderson. A District Attorney Investigator responded to the scene and was briefed by your detectives. This case was submitted to the District Attorney's Office for review on August 11, 2021.

Summary

On June 18, 2021, San Diego Sheriff's Department Deputies Clone and Zappia were dispatched to a radio call of a person sleeping under a tree on a vacant lot in Encinitas. Both deputies arrived at about 8:07 a.m. and contacted Eric Anderson. Anderson seemed unsettled and started packing his belongings. He told them he was just traveling through the area and had rested there for the night. Anderson claimed he had never been arrested and was not on probation or parole. Zappia conducted a records check and found prior arrest records and photo for Anderson. Anderson denied the arrest record and began to stand up. He was told to sit down. Anderson ignored Zappia's order, and as he stood up, he hid something from the deputies behind his back. Anderson yelled, "Get the fuck back, get back!" He pointed an object wrapped in a green bandana at the deputies and held it as if it was a gun. Zappia realized Anderson was in fact holding a gun. Anderson ran down the hill. The deputies pursued Anderson. Zappia chased Anderson for about 30 or 40 yards and closed the distance between them. When Zappia was seven to ten yards away, Anderson began slowing to a stop. Anderson turned his body to the left towards Zappia and extended out his left arm, holding a black semi-automatic handgun in his hand. Zappia fired five to ten rounds. Clone also fired. Anderson dropped the gun and fell to the ground. The deputies provided medical aid. Anderson was transported to the hospital where he was pronounced deceased.

Persons Involved

Eric Anderson was a 40-year-old resident of San Diego. James Clone has been employed by the San Diego Sheriff's Department for about seven years (approximately four years as a Detentions Deputy). Sean Zappia has been employed by the San Diego Sheriff's Department for about ten years (approximately one year as a Detentions Deputy).

Statement of Civilian Witness One (CW1)

CW1 lives in the area and observed Anderson camping on the property for the past few days. She thought he was homeless. On June 17, 2021, she saw Anderson with what she believed to be a stolen bike. She watched Anderson use a roll of blue tape and wrap the frame of the bike. She believed he was trying to change its appearance. CW1 called the non-emergency law enforcement number. On June 18th, CW1 saw Anderson again with more items and decided to call the Sheriff's again. She saw two deputies make contact with Anderson at his campsite at the west end of the property. She saw the suspect hand what she perceived to be some sort of identification to the deputies. She looked away briefly and then saw Anderson actively struggling with the deputies. Anderson broke free and started to sprint down the hill. The deputies pursued him. All three ran east down the hill and out of CW1's sight. About five to eight seconds later, CW1 heard what was thought to be gunfire. She heard five to seven "boom" sounds evenly spaced out. She saw a deputy run back up the hill wearing blue gloves trying to get something out of his car.

Statement of Civilian Witness Two (CW2)

CW2 is Anderson's mother. CW2 has been estranged from Anderson and did not have contact with him over the last year. CW2 last spoke to Anderson in the summer of 2019 when he was incarcerated. He never called asking for help, only for money. He had an alcohol and drug problem. He used methamphetamine and it turned him psychotic the last couple of years. CW2 didn't know if Anderson had any mental health issues except from the methamphetamines. Anderson believed people were following him around, stalking him. CW2 last saw Anderson in 2004. She never knew Anderson to carry weapons. She was very sad this happened. His rap sheet made him look like he was violent, but CW2 said Anderson was not a violent person.

Statement of Civilian Witness Three (CW3)

CW3 is Anderson's father. He saw Anderson the week prior when Anderson came to pick up his mail. Anderson did not come by regularly. Anderson would get agitated when he could not find his mail and was paranoid CW3 was taking it. CW3 felt Anderson was doing meth and always thought he had mental health problems because of the drugs. CW3 used to see Anderson every Sunday at the truck stop in Pacific Beach and would buy him breakfast and give him \$20-30. CW3 said Anderson always thought someone like the FBI was after him and listening to his phone. CW3 never knew Anderson to carry a firearm or talk about guns and he was never suicidal. Anderson always called him when he was in jail, asking for money. CW3 does not know any of Anderson's friends or why he was hanging out in Encinitas. Anderson is homeless and usually hung out in Pacific Beach.

Statement of Civilian Witness Four (CW4)

CW4 is the landlord for CW3. Anderson used to stay with CW4 too, but when he started to yell and scream at CW4, he was asked to leave. CW4 said Anderson was a talented electrician and did work in her residence. Anderson received his mail at CW3's residence and he would come there to pick it up. CW4 said Anderson did "crazy things." He stapled cardboard over the windows in the room he stayed in, so no one could peek in. CW4 never saw any drug abuse, only mental problems. CW4 said CW3 did his best for Anderson but had to let go because Anderson was spiraling down.

Other Civilian Witnesses

Several other civilian witnesses were contacted by detectives, but no one witnessed the shooting. They heard between three and nine gunshots and saw deputies doing CPR.

Statement of Deputy James Clone

Clone and Zappia received a radio call of a suspicious person sleeping under a tree. They arrived on scene and contacted a male (later identified as Eric Anderson) that was sleeping and matched the description of the subject in the radio call. They agreed, prior to contacting Anderson, Zappia was going to be the contact deputy and Clone would be the cover deputy. Anderson gave them his name and date of birth. He was cooperative but seemed nervous and seemed like he was packing his stuff to leave. Zappia did a records check on his department issued cellphone. Clone was going to conduct a records check with Sheriff's Inquiry. Zappia asked him if he had ever been arrested before and Anderson said, "no." Zappia looked at the subject's arrest record on his cellphone and said something to the effect of, "Oh, you have a bunch of arrests." Clone observed Anderson getting up as if he wanted to run away from them. Zappia told him, "Hold on, come here," and then stated, "Is that a fucking gun?" Clone saw Anderson holding an object with the clear outline of a gun wrapped in a green cloth. Anderson pointed the gun at both deputies. Clone saw Zappia draw his firearm. Anderson took off running down the hill. Clone drew his firearm and pointed it at Anderson as he was running. Zappia was in front of Clone running down the hill.

Clone was trying to put out radio traffic to notify dispatch. Clone knew Anderson had a gun. He clearly saw it when Anderson pointed it at them at the top of the hill. Clone felt Anderson was a threat to them and the people in the neighborhood and the community due to the fact he pointed a gun at them. As they got to the bottom of the hill, Clone heard gunshots. Because of his distance from them, Clone could not see Anderson's hands, but heard gunshots. Clone did not know who was shooting and was fearful Anderson was shooting at Zappia and himself. Clone did not see Anderson drop anything on the run down the hill. Clone returned fire and shot twice. Clone was in fear for his life and his partner's life. Zappia was starting to move into his line of fire and Clone did not feel it was safe to fire more rounds. Clone later heard Zappia state the suspect's gun had jammed and Clone observed the same. Clone and Zappia moved closer to Anderson and saw he had been shot. Clone gave Anderson commands to roll over so they could render first aid. Anderson was unable to do so. They helped him out of the bush he was in to give him aid. Zappia started CPR while Clone went to get his trauma kit out of his police car. Clone applied a chest seal to the gunshot wounds on left side of Anderson's chest. Additional deputies started to arrive on scene and assisted in rendering aid to Anderson.

Statement of Deputy Sean Zappia

Zappia received a radio call of a suspicious male sleeping under a tree. He and Clone had just cleared a nearby call together, so they both responded. They arrived and gained access to the property by following a footpath to an opening through a broken fence. Through the fence, Zappia observed a large dirt lot and the tree the reporting party had referenced. As Zappia approached the tree, he saw a male (later identified as Eric Anderson) sleeping on a mattress in a sleeping bag under the tree. He had a backpack and other items spread out around him. Zappia tried speaking to Anderson and awakening him in a calm manner. As Anderson awoke, he was unsettled and began trying to pack up his belongings. Zappia told Anderson to relax, he was just getting his information to figure out what was going on. Anderson said he was just traveling through the area and rested his head there for the night. Anderson did not have an ID. He identified himself as "Eric." He gave Clone a piece of mail with his name, Eric Anderson, on it. He claimed he had never been arrested before and was not on probation or parole. Zappia used his department-issued cellphone to access a law enforcement database and located an arrest record and photo for Eric Anderson, which confirmed his identity. Zappia learned Anderson had prior arrests for assaulting a peace officer and assault with a deadly weapon. Zappia confronted Anderson about his arrest record, but Anderson told him it was not him and they got it wrong. Zappia believed Anderson was hiding something due to his dishonest and evasive behavior.

Anderson began to stand up and was told to sit down. Anderson ignored Zappia's order and stood up in a defensive posture. As Anderson stood up, he put his backpack over his shoulder and "bladed" himself to the deputy (positioned himself diagonally) trying to conceal something on his back left side. Anderson pulled something out and pointed it towards Zappia and Clone and yelled, "Get the fuck back!" Zappia did not initially recognize the item. It was wrapped in a green bandana. The manner in which Anderson gripped the object made it appear as though he was trying to replicate holding a gun. As Anderson started to run away and point the object towards the deputies, Zappia realized Anderson was in fact holding a gun. Based on Anderson's violent criminal history, Zappia believed he would be willing to fight with law enforcement, or worse, take one of them out in an effort to evade capture. Zappia was concerned, "one of us isn't going home tonight." He was concerned for the public and law enforcement's safety. Anderson needed to be detained to further investigate his intentions and reason for his erratic behavior.

Zappia pursued Anderson down the hill. He chased him for 30 to 40 yards and was only seven to ten yards from him when Anderson began slowing to a stop near the bottom of the hill. Anderson turned his body to the left in a bladed fashion and extended his left arm out. Zappia could clearly see the cloth had been removed and Anderson had a black semi-automatic handgun in his left hand. Anderson pointed the handgun directly at Zappia. Zappia drew his handgun and fired five to ten rounds. Zappia continued to fire until he noticed the gun was going down with Anderson as he fell to the ground. Zappia was certain if he did not shoot Anderson, Anderson would have shot and possibly killed him or Clone. Anderson dropped the gun and fell to the ground. He began rolling around and screaming incoherently. Zappia observed Anderson's gun on the ground and noticed the slide was partially locked open, possibly being jammed. He ordered Anderson to lay on his stomach, but quickly realized his injuries were making him incapable of following instructions. Zappia holstered his firearm and put gloves on so he could assess Anderson for injuries. He pulled Anderson out of the bush he was in and immediately started

doing chest compressions. Zappia asked Clone to get a chest seal and his trauma kit from his vehicle. Zappia did not know Clone had fired his handgun until Clone told him he did. He didn't know where Clone was standing when he shot or how far behind him he was.

Investigation

The scene was secured, photographed, and investigated by San Diego Sheriff's Department homicide detectives. All reports, audio-recorded witness interviews and 911 calls, radio traffic, photographic evidence and body worn video (BWC) were reviewed. These items provided evidence corroborating the witness and officers' statements.

The location of the incident was on a property on the west side of Interstate 5, a freeway with multiple lanes of traffic travelling north and south. The freeway is one of the heaviest travelled roadways in the county, with commuters, truckers and travelers driving in both directions. This incident occurred after 8:00 a.m. on a Friday morning. When Anderson ran down the hill, he ran in the direction of the freeway's southbound lanes.

Clone was armed with his department-issued Glock 17 Gen 5, 9mm caliber semi-automatic pistol. Clone stated he always has 17 rounds in the magazine and one round chambered. Clone's pistol was received with one cartridge in the chamber and 15 in the magazine. The total capacity of the pistol with one in the chamber and a full magazine is 18 cartridges. The evidence indicates a maximum of two cartridges could have been fired by this pistol.

Zappia was armed with his department-issued Glock 17 Gen 5, 9mm caliber semi-automatic pistol. Zappia normally loads his firearm with one cartridge in the chamber and 17 rounds in the magazine. Zappia's pistol was received with one cartridge in the chamber and ten in the magazine. The total capacity of the pistol with one in the chamber and a full magazine is 18 cartridges. The evidence indicates a maximum of seven cartridges could have been fired by this pistol.

Eric Anderson was armed with a P80-brand pistol with markings "PF940V2 POLYMER80, INC. MADE IN USA DAYTON, NV." The barrel had an inscription designating the caliber "9X19-17." The trigger was fully pulled back and locked. The slide of the pistol was partially pulled back and a Magpul-brand magazine was seated and contained 16 cartridges. An inspection of the pistol by the Sheriff's Department showed the firearm had a misfeed. A cartridge was situated partially in the chamber and partially in the magazine, and not fully seated in the firing position. In this configuration, the gun was incapable of firing a round.

An autopsy of Anderson determined he had sustained gunshot wounds to his upper left torso, lower right ribs, and right ankle. He had a grazing wound just below his left ribs. The cause of death was a perforating gunshot wound to the torso and the manner of death was homicide. Toxicological analysis of Anderson's blood revealed the presence of methamphetamine.

A gunshot residue (GSR) collection kit was utilized to collect samples from Anderson's hands. The test results were listed as inconclusive due to the absence of characteristic particles of GSR on either hand.

Body Worn Camera (BWC)

Zappia's BWC video began as he approached Anderson and woke him up. Anderson was asleep on a mattress wrapped in a gray blanket. Anderson told Zappia he was taking a nap, lives north, and was on his way back there. Anderson said he did not have an ID. He said he had never been arrested and is not on probation or parole. Anderson sat up and told them his name is Eric. Clone saw a piece of mail that had Anderson's name on it and asked his date of birth. Anderson provided a birthdate. Zappia used his cell phone and confirmed Anderson's identity using a database. Anderson continued to pack his belongings up. Zappia told Anderson he had been arrested a lot. Anderson said, "No I haven't." Anderson stood up and put his backpack over his right shoulder. Anderson had his left arm down to his side with an object in his left hand wrapped in a green cloth hidden behind his back. Zappia told him to sit down. Anderson replied, "No." Anderson brought the object covered in a green cloth up and transitioned it to his right hand and pointed it at Zappia. He told the deputies, "Get the fuck back, get back," and started to run. Zappia drew his handgun and asked Anderson, "Is that a fucking gun?" Zappia told Clone Anderson had a gun in his hand and ran down the hill after him. Zappia's BWC fell off as he ran down the hill. Zappia's BWC continued to record facing down and the sound of multiple gunshots can be heard a short time later.

Clone's BWC video has no audio for the first 32 seconds. The video started with Anderson seen kneeling on a mattress. He was wearing a hooded shirt with sleeves, long pants, and a baseball cap. He was holding a black backpack and there is a blue bicycle lying on its side under a tree next to him. Clone turned to his right away from Anderson. When Clone turned back to his left, Anderson was standing up and appeared to point something wrapped in a green cloth at Zappia as he moved away from the deputies. Zappia had his handgun drawn and pointed it at Anderson. Clone drew his handgun and also pointed it at Anderson. Anderson fled down the hill with Zappia and Clone in foot pursuit. Zappia holstered his handgun as he pursued Anderson. Clone kept his handgun in the low-ready position as he ran down the hill. As Anderson approached the bottom of the hill he turned towards Zappia, extended out his left arm, and appeared to point the handgun at Zappia. The sound of multiple gunshots was heard. Zappia fired his handgun. Clone is about 25 yards behind Zappia and to his left. Anderson fell to the ground. Clone fired two rounds and continued down the hill to Zappia and Anderson. Both deputies had Anderson at gunpoint as he rolled over on the ground and into a bush. The deputies told Anderson, "On your stomach...Roll on your stomach." Zappia pulled Anderson out of the bush. They assessed his injuries and started medical aid. Clone updated their situation and location on the radio and then ran to his vehicle to retrieve a trauma kit.

Legal Standards of Criminal Liability

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 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

Clone and Zappia contacted Anderson, conducted a records check, and confronted him with prior arrest information which he initially denied. He stood up, despite being ordered not to by the deputies. Anderson yelled at them to get back and pointed a gun at them before fleeing down the hill toward the heavily travelled Interstate 5. Based on Anderson’s criminal history and the fact he had a gun, the deputies were concerned for their safety and the public’s safety. The deputies lawfully pursued Anderson down the hill and closed the distance. When the deputies closed in on him, Anderson turned and pointed a gun at them. Fearing that Anderson was going to shoot them, both deputies fired at him. Anderson dropped the gun and fell to the ground.

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In reviewing the circumstances of this case, the deputies' actions were reasonable based on the circumstances known and perceived by them at the time of the shooting. Anderson created a deadly force situation by pointing a handgun at Zappia. Clone and Zappia reasonably believed that Anderson posed an imminent threat and intended to cause serious bodily harm or death. Anderson's firearm was indeed loaded and capable of shooting, but malfunctioned. The use of a less lethal option in this situation was not reasonably safe and feasible. Therefore, Clone and Zappia 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,

A handwritten signature in black ink that reads "Summer Stephan". The signature is written in a cursive, flowing style.

SUMMER STEPHAN
District Attorney

SS:gm

cc: Captain Kenneth Jones
San Diego Sheriff's Department