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THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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April 12, 2022

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

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

Re: Fatal shooting of Mr. Christopher Marquez by National City Police Officer Robert Rude, San Diego Police Officer Brandon Gibson, and San Diego Police Officer Brandon Jordan on April 12, 2021; SDPD Case No. 21-017499; SDPD Case No. 21-017693; DA Special Operations Case 21-049PS; Deputy District Attorney assigned: Frederick Washington

Dear Chief Nisleit and Chief Tellez,

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Unit concerning the shooting at Christopher Marquez by National City Police Officer Robert Rude, and the fatal shooting of Marquez by San Diego Police Officers Brandon Jordan and Brandon Gibson. 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 July 13, 2021. The National City Police Department's investigation of an earlier April 5, 2021 shooting at Marquez was received on June 30, 2021. Review of that matter needed to occur before review of this case by the same investigator and deputy district attorney. That review was completed on December 1, 2021.

Summary

Christopher Marquez was wanted for the March 15, 2021 shooting and wounding of a bounty hunter. On April 5, 2021, during an attempt to arrest him, Marquez shot at National City Police officers and escaped.

On April 12, 2021, National City Police detectives obtained credible information on the location of Marquez. National City Police Department (NCPD) officers LE1 and Rude attempted to stop a vehicle Marquez was a passenger in. Marquez' girlfriend, CW1, was driving the vehicle. Marquez and CW1 led officers on a high-speed pursuit, reaching up to 100 miles an hour, during

which Marquez fired multiple rounds on three separate occasions at pursuing officers. Rude fired a single round in response. The pursuit ended at San Diego High School where Marquez and CW1 stayed in a dumpster for approximately 11 hours. The San Diego Police Department's Special Weapons and Tactics Unit (SWAT) and the San Diego Police Emergency Negotiation Team (ENT) were called in to assist.

Believing Marquez was going to shoot CW1 then engage with other officers on scene, Gibson and Jordan simultaneously fired one round each at Marquez, striking him in the head. Marquez was pronounced deceased at the scene. A loaded AR-15 rifle was recovered next to Marquez's body.

Persons Involved

At the time of this incident, Marquez was a 36-year-old resident of Chula Vista. Officer Rude had been employed with the National City Police Department for four years and one month. Officer Gibson had been employed with the San Diego Police Department for nine years and eight months and Officer Jordan had been employed for 13 years and six months.

Civilian Witness 1 (CW1)

CW1 was Marquez's girlfriend. CW1 said she and Marquez drove from Temecula to San Diego to pick up money for the sale of Marquez's vehicle. CW1 knew Marquez was wanted by police. When police tried to pull her over, Marquez told her not to stop and that he would "kick her ass" if she pulled over. CW1 said Marquez had two guns and while she was driving, he leaned out of the passenger window on three different occasions and fired at police.

At the high school, Marquez told CW1 to drive through the gate and onto the football field. CW1 said she wanted to surrender but believed Marquez would shoot her if she did not go with him. CW1 said it was her idea to hide in the dumpster. CW1 said Marquez was smoking cigarettes and "meth" while they were in the dumpster. He was getting more and more paranoid. Marquez would not let CW1 out of the dumpster. Marquez called CW1 a "rat." He said that whatever happened she would be there next to him and she was coming with him. During this time, Marquez refused to stop pointing the gun at CW1 despite CW1 begging Marquez to stop and to let her go.

Weeks after the shooting, CW1, via social media, messaged Marquez's family stating that Marquez never pointed the rifle at her, she was never a hostage, and the officers did not have to kill Marquez.

Statement of Law Enforcement Officer 1 (LE1)

LE1 is employed by the National City Police Department. He knew Marquez was wanted for attempted murder of a bounty hunter and two NCPD officers. On April 12, 2021, he received information on Marquez's possible location. LE1 was partnered with Rude. LE1 was directed by ASTREA to a vehicle which Marquez was believed to be in. LE1 pulled behind the vehicle and activated his emergency lights and siren. Both LE1 and Rude activated their body worn cameras (BWC). The vehicle failed to yield and sped up, reaching speeds of 100 miles per hour.

During the pursuit, LE1 said he heard “pop, pop, pop.” Rude yelled, “He’s shooting at us, he’s shooting at us!” LE1 slammed on the brakes of his police vehicle to gain additional distance between the two vehicles, and then checked to see if he or Rude were hit. While on Russ Boulevard, LE1 heard approximately ten shots fired from an assault rifle at his patrol vehicle coming from the direction of the vehicle they were pursuing.

As LE1 followed the vehicle eastbound on Russ Boulevard, the street went uphill to a crest, and there were no houses or vehicles in front of the vehicle they were pursuing. That gave Rude the best backdrop to be able to return fire at the vehicle to stop further shooting. Rude fired one round from his rifle through the windshield. After the shot, the vehicle sped off and went through the gate and onto a football field. LE1 followed the vehicle up to the gate of the football field but stopped prior to going through to avoid putting himself or other officers in danger.

Statement of Officer Robert Rude

Rude was partnered with LE1. Rude knew Marquez was wanted for the shooting of a bounty hunter in Chula Vista as well as shooting at two National City Police officers.

Rude and LE1 were directed by ASTREA to a vehicle Marquez was believed to be in. They located the vehicle on the 805 freeway at 43rd Street. The vehicle fled, speeding up to approximately 100 miles per hour. On three occasions during the pursuit, Rude heard multiple shots and observed muzzle flashes coming from the suspect’s vehicle. Rude put out over the radio they were taking rounds. LE1 yelled to Rude that, “he’s shooting at us.” Rude believed one of the shots struck their patrol vehicle in the engine block. Rude did not immediately fire back due to a backdrop that included pedestrians, vehicles, and buildings.

When the pursuit turned onto Russ Boulevard and the occupant of the vehicle was still shooting, Rude felt this area was the best location to attempt to stop the threat of being shot at, given the lack of civilians, vehicles, and houses in the immediate area. Rude knew they had been shot at on three separate occasions and felt there was a high likelihood there would be continued attempts to shoot at and attempts to kill him, LE1, or any other innocent individual. Rude noted the shootings were occurring on city streets with no concern for the safety of the public. Rude fired one shot through his patrol vehicle’s windshield towards the suspect vehicle, striking the right rear quarter panel. Rude stated if he had another option he would have taken it, but at that point he was being shot at by what he believed to be a real gun.

The pursuit led to a service road leading to the San Diego High School football field. The vehicle crashed through the locked chain link fence and continued onto the football field out of the sight of Rude and LE1. Rude and LE1 exited their police vehicle at the bottom of the hill prior to entering the football field. The officers checked each other for injuries and took cover behind their police vehicle, not knowing exactly where the occupants of the vehicle were located. Rude heard ASTREA broadcast the occupants had run and hid in some bushes. Rude was unfamiliar with the area, so he remained in a place of cover and waited for additional resources and further direction.

Statement of Officer Brandon Jordan

Jordan is assigned as a SWAT sniper. On April 13, 2021, he was asked to respond to the Tactical Operation Center (TOC) at San Diego High School reference a SWAT callout that occurred the night before. The callout involved the attempted arrest of Marquez, which led to a pursuit and Marquez firing shots at pursuing National City officers. Jordan arrived at the TOC and was briefed on the situation and was assigned to provide relief for fellow snipers LE2 and Gibson. He was aware that Marquez had shot a bounty hunter and shot at National City officers on April 5th.

Jordan set up his rifle in a classroom above the dumpster along with Gibson and LE2. As the morning started, Marquez started getting more agitated and more paranoid. Marquez was darting around inside the dumpster and his eyes were "as big as saucers." Marquez was looking around and cursing at the officers he could see. Marquez said, "Fuck you. I'm not scared. You guys are scared. Look at you bitches. You're behind buildings." Marquez looked up towards Jordan, LE2, and Gibson's location and pointed his two fingers to his eyes and pointed them back to their location, indicating he knew where Gibson, Jordan and LE2 were located.

Jordan could hear the clanging of Marquez's rifle against the dumpster. CW1 appeared scared, covering her face and crying. Every time CW1 would try to move away from Marquez, he would grab her and forcibly pull her back to him. CW1 would look out of the dumpster as if she was looking for a place to go. For approximately 30 to 40 minutes prior to the end of the incident, CW1 was trying to move away from Marquez and Marquez would use more and more force to pull CW1 back to him. CW1 yelled at Marquez, "Let me go! Let me go!" and started crying hysterically as she tried to get out of the dumpster. Jordan, Gibson and LE2 determined that CW1 was now attempting to get away from Marquez and Marquez was holding her against her will.

Jordan felt that based on Marquez's behavior, Marquez was going to shoot Jordan, CW1, or both because he had the gun pointed toward Jordan's position and then at CW1 after he pulled her back towards him. Marquez eventually rose up and Jordan could see the gun that Marquez was holding appeared to be an AR-type pistol. Jordan thought Marquez was going to kill CW1 and start shooting at him, Gibson and LE2. Jordan heard Marquez yell out, "Fuck you guys. I'm not scared. Let's get this party started!" and while he was yelling that, he noticed CW1 trying to get out of the dumpster. Marquez forcibly pulled her back and Marquez put the gun to CW1's ribs.

Jordan realized a head shot would be the most effective way to incapacitate Marquez as he wouldn't be able to pull the trigger on the gun he was holding and possibly shoot CW1 or Jordan. Jordan observed an opportunity to take a clear shot at Marquez. Jordan fired one shot in the direction of Marquez and saw Marquez's body drop. SWAT officers on the perimeter of the dumpster moved in and took CW1 out of the dumpster and into custody.

Statement of Officer Brandon Gibson

Gibson is also assigned as a sniper for SWAT. Gibson arrived at the TOC and was directed by a SWAT sniper sergeant to team up with LE2 and locate a position to observe the dumpster Marquez was hiding in. Gibson was aware of Marquez's prior shootings. LE2 and Gibson

relocated to a classroom which was southeast and above the dumpster. The distance between LE2's location and the dumpster was approximately 25 yards. LE2 acted as the "spotter" and Gibson was armed with a rifle.

LE2 perceived that CW1 was working in concert with Marquez as she would look out of the dumpster and identify positions of law enforcement personnel outside the dumpster and duck back down and tell Marquez. Marquez stated multiple times, "I see your snipers." Marquez became increasingly agitated and was arguing with the negotiators and CW1. Extra snipers were called to the scene to relieve LE2 and Gibson because they had been behind the rifles for an extended period of time. Jordan arrived at the location as a relief for LE2 or Gibson. During a break in negotiations between the negotiation team and Marquez, LE2 and Jordan switched positions and Jordan set up his position.

Marquez became more agitated and LE2 advised the TOC that CW1 was no longer cooperating with Marquez and wanted to get out of the dumpster. LE2 advised this incident had transitioned from a barricaded suspect into a possible hostage situation. As Marquez was getting more agitated, he began to expose more of his body. CW1 tried to get out of the trash can. Marquez rose up to grab her with a rifle. Gibson saw him raise the rifle up towards CW1's back when he was shifting his position around her as if to use her as a shield. It happened quickly and it appeared he was going to shoot CW1 and engage the officers in gunfire. While the rifle was still raised up, Gibson and Jordan both fired at Marquez simultaneously. CW1 was screaming and crying and stayed in the dumpster. The Special Response Team deployed a flash bang and got CW1 out of the dumpster.

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 events leading up to the incident were captured on the officers' body worn camera, as well as video footage taken from the ASTREA and ABLE helicopters.

On April 12, National City plain clothes detectives observed a meeting between Marquez and another individual. At approximately 8:17 p.m. NCPD detectives broadcast that Marquez and CW1 were leaving the area, possibly driving a silver four-door sedan. At 8:18 p.m. ASTREA observed a vehicle matching that description. NCPD requested ASTREA follow the vehicle. At 8:20 p.m., a National City Police lieutenant requested Rude and LE1 attempt to stop the silver sedan. At 8:27 p.m., LE1 and Rude caught up to the vehicle on northbound Interstate 805 and attempted to conduct a traffic stop. The vehicle failed to yield for LE1 and Rude and increased its speed.

On BWC footage from Rude at 00:59 the officers are heard speaking to each other and transmitting updates on the radio. Rude and LE1 were immediately behind the suspect vehicle heading northbound on Interstate 805, approaching Imperial Avenue, with emergency lights and

siren activated and the vehicle failing to yield. At 08:31 Rude said he believed someone inside of the vehicle was shooting at him. At 13:01 LE1 yelled to Rude that they were being shot at. At 13:27 pops are heard in the background and LE1 yelled to Rude that they're being shot at. Rude told LE1 he cannot get a shot off because of his backdrop. At 13:41 Rude discharged his rifle through the windshield of his police vehicle towards the suspect vehicle. At 13:47 Rude told LE1 to stop the vehicle and both officers exited the patrol vehicle and took cover behind the vehicle.

ASTREA continued to follow the pursuit and observed the suspect vehicle crash through the gate leading to the San Diego High School football field. ASTREA briefed the officers on the ground of Marquez's and CW1's movements on campus, culminating in them hiding in a dumpster with Marquez armed with two firearms.

National City Police requested assistance from the San Diego Police Department and a SWAT call-out was initiated including the San Diego Police Department's ENT. SWAT personnel arrived on scene. The intent of the personnel was to contain and establish communication with Marquez and to have him surrender without injury. San Diego and National City SWAT officers established a perimeter around the dumpster utilizing two armored SWAT vehicles containing numerous SWAT officers. ENT arrived and established communication with Marquez. A San Diego Police SWAT Sniper Team was activated and set up in a second-floor classroom approximately 24 yards southeast of the dumpster. The intent of the sniper team was to monitor Marquez and CW1's actions inside the dumpster, gather intelligence and relay it back to the TOC, as well as provide cover for the officers.

A police robot was utilized by SWAT to approach the dumpster and exchange a bottle of water for a handgun, which was tossed out of the dumpster. The robot was also utilized to "look" over the top of the dumpster and see what was going on inside. Marquez communicated with members of ENT and SWAT, but would not come outside of the dumpster. CW1 stood up, looked around, and ducked back down into the dumpster as if she were providing Marquez with information on where officers were posted. ENT personnel negotiated with Marquez and CW1 for approximately 11 hours to surrender the weapon and exit the dumpster. LE2 relayed the information of their observations to the TOC as well as to the ENT negotiators.

On Gibson's BWC at 15:03:54 a conversation occurred where one SWAT sniper officer is relaying situational information to an unknown person via telephone: "Just for clarification, she's been trying to get out and he's been pulling her back in... so, this is like a classic hostage situation from what we're seeing from up here. She's crying.... every time she tries to get up, he's pulling her down and he's not showing his right hand so we're assuming he has another firearm that's probably in his right hand." At 15:04:32 an officer said, "He's getting himself ready for something.... he's getting all pumped up.... Yep, and she knows it." At 15:05:13 CW1 yelled, "Let me go." CW1 then yelled, "Stop," with Marquez responding, "Shut the fuck up." At 15:12:38 Gibson said, "He's holding her...holding her back...oh, I see a gun. I got a gun." At 15:13:38 CW1 yelled, "Don't shoot" and, "Give him water please," before two shots are fired simultaneously. At 15:14:05 Gibson said, "He's down," and Jordan said, "Yep. He had the gun at her and coming up."

Following the shots, SWAT officers moved in closer and deployed nine “flash concussion” devices to distract Marquez from being able to accurately aim and shoot at them in the event that the sniper shots were ineffective. SWAT officers pulled CW1 from the dumpster and moved her to the medical unit for evaluation. CW1 did not sustain any injuries and was detained for questioning. Marquez was located inside of the dumpster deceased, lying face down with significant head trauma.

At the time of the incident, Marquez was carrying a Glock model GLC21 .45 caliber semi-automatic handgun. This firearm was tossed out of the dumpster in exchange for a bottle of water. Marquez was also in possession of an AR-15 5.56 caliber un-serialized rifle, located next to him in the dumpster. The rifle was loaded with one live round in the chamber and a seated magazine containing 29 live rounds. An additional magazine containing 13 .45 caliber rounds was also located in the dumpster. A criminalist from the San Diego Police Department determined that both weapons were operable.

Rude was carrying a Colt model M4 .223 caliber rifle. The rifle contained one live round in the chamber and a seated magazine which contained 24 live rounds. The seated magazine has a 30-round capacity. Rude also carried two additional magazines: one loaded with 24 live rounds and the second loaded with 26 live rounds. Each of those magazines were also 30-round capacity magazines. Based on the maximum capacity of the magazines, including the rifle with one round in the chamber and the number of actual live rounds that were recovered from the rifle and additional magazines, it was determined that Rude could have fired 16 rounds from his rifle. The rifle was determined to be operable.

Jordan was carrying a LMT model LM308MWS .308 caliber rifle. The rifle contained 18 live cartridges in the seated magazine and no round in the chamber. The maximum cartridge capacity of the magazine is 20. Therefore, two rounds could have been fired from this weapon. However, it was determined the weapon was unloaded prior to the criminalist receiving the weapon, and the unloaded round was not included with the rifle. Based on that scenario, it was determined that there was only one round fired from the rifle. The rifle was determined to be operable.

Gibson was carrying an Accuracy International model AX308 .308 caliber bolt-action rifle. The rifle contained 10 live cartridges in the seated magazine and no round in the chamber. The maximum cartridge capacity of the magazine is 11. Therefore, it was determined that one round had been fired from this weapon. The rifle was determined to be operable.

Autopsy and Toxicology Report

On April 14, 2021, an autopsy was performed. The cause of death was perforating gunshot wounds to the head and the manner of death was homicide. Toxicology testing determined that Marquez’s blood contained 0.48 mg/L of Amphetamine and 3.9 mg/L of Methamphetamine.

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

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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

In this case, Marquez was wanted for attempted murder of a bounty hunter and two National City Police officers. Marquez led officers on a dangerous, high speed pursuit with speeds up to 100 miles per hour on the freeway and surface streets.

On three occasions during the pursuit, Marquez leaned out of the passenger window and fired multiple rounds at the officers pursuing him. At different locations, either pedestrians, vehicles, and buildings were in the path of the rounds fired by Marquez. Rude fired at Marquez in self-defense and defense of other law enforcement officers and civilians in the area.

The Emergency Negotiation Team negotiated with Marquez for approximately 11 hours while he remained in the dumpster at San Diego High School. Marquez became more agitated toward officers and CW1. Marquez prevented CW1 from leaving the dumpster, resulting in the sniper team determining that Marquez was holding CW1 against her will. Marquez made statements indicating he knew the positions of the officers and was ready to engage them in a violent manner. At one point he pointed his gun in the direction of Jordan’s position. As Marquez moved, he exposed the rifle he was aiming towards CW1’s back. Both Jordan and Gibson determined Marquez was not going to surrender but was going to shoot CW1 and then shoot at them. Both officers fired one shot simultaneously at Marquez.

All three officers that fired at Marquez during this incident feared for either their own lives or the lives of other officers or civilians. Rude, Jordan or Gibson bear no state 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:ab

cc: Captain Richard Freedman