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December 20, 2024

Chief Tommie Cocroft
California Highway Patrol, Border Division
9330 Farnham Street
San Diego, CA 92123

Re: Non-fatal shooting of Jose M. Murillo Jr. on April 24, 2023, by California Highway Patrol Officer Jesse Matias, ID #21735; California Highway Patrol Case No. 202300137-ISU; DA Special Operations Case 23-041PS; Deputy District Attorney assigned: Kristi Gill

Dear Chief Tommie Cocroft,

We have reviewed the materials compiled by the California Highway Patrol's Investigative Services Unit concerning the non-fatal shooting of Jose Murillo on April 24, 2023. A District Attorney Investigator responded to the scene and was briefed by officers and detectives from the California Highway Patrol and the San Diego Police Department. This case was submitted to the District Attorney's Office for review on October 14, 2024. The CHP Firearms Analysis was submitted to District Attorney's Office on November 22, 2024.

Summary

On the morning of Monday, April 24, 2023, California Highway Patrol (CHP) Officer Jesse Matias was working a special enforcement detail targeting unauthorized vehicles driving in the designated "Bus Only" lanes of Interstate 805 freeway. Matias had just completed a stop of a vehicle for a bus lane violation on northbound Interstate 805 south of Imperial Avenue and was walking back toward his patrol vehicle, which was parked on the right-hand shoulder. A silver Toyota Scion pulled behind Matias's patrol vehicle on the shoulder and stopped. Matias approached the passenger side of the Scion, knocked on the front passenger window, and asked the driver what was going on. Matias motioned to the driver, later identified as Jose Murillo, to roll down the front passenger window. Murillo reached over and physically unlocked the door.

Matias opened the front passenger side door and asked Murillo why he had stopped. Murillo mumbled that he thought he needed to be there and made an inaudible statement. Matias could not hear what Murillo was saying and asked him to shut his car off. Murillo complied and Matias asked for the keys to his car. Murillo handed Matias the keys and Matias placed them on the roof of the Scion. Matias asked Murillo where he was heading. Murillo's response was low and unintelligible. Matias asked if Murillo had a license with him and Murillo told Matias he didn't have anything on him. Matias asked Murillo for his name and Murillo provided his name and date of birth. While they were speaking, Matias noticed an item in the center console that he

believed to be paraphernalia used to ingest controlled substances. He further noticed Murillo's eyes were red and watery and his speech was slow and slurred, and that his hands were in his lap. Matias asked Murillo again why he had stopped his car behind Matias's patrol vehicle. Murillo responded, "I thought you were watching me." Matias asked Murillo if he had done any drugs today. Murillo said he had not but admitted having used drugs in the past. Matias asked Murillo to step out of the vehicle to perform a field sobriety test. Murillo said "no" and opened a silver pocketknife that he had in his right hand and brandished it at Matias. Matias immediately backed away and ordered Murillo several times to put the knife down. Murillo did not comply. Matias drew his handgun and aired on his police radio that a subject that pulled behind his police vehicle had brandished a knife and was refusing to drop it.

Matias repeatedly ordered Murillo to drop the knife and throw it out of the vehicle. Matias sought cover behind and to the right of Murillo's vehicle in case Murillo had additional weapons. Murillo pulled the passenger door closed. Matias advised dispatch Murillo had closed the passenger door and was still not complying with commands to drop the knife.

An off-duty San Diego Police Department (SDPD) officer, LE1, was driving northbound on Interstate 805 in his unmarked SDPD SUV when he saw Matias standing behind the Scion with his handgun pointed toward the Scion. LE1 stopped his unmarked SUV behind the Scion and identified himself as a police officer to Matias. Matias told LE1 there was a subject with a knife who was refusing to put the knife down. Matias opened the SUV's passenger door and utilized it as cover while continuing to point his gun toward the Scion. As LE1 exited his vehicle and stepped toward the rear of his police SUV, Murillo opened the driver's door of the Scion and ran toward Matias, pointing the knife toward him. Matias ordered Murillo to drop the knife several times in a loud clear voice. As Murillo got closer, Matias backed away to put distance between them. Murillo continued to advance with the knife raised. As he got within several feet of Matias, Matias fired four shots, striking Murillo. Murillo fell approximately two feet from Matias. Murillo dropped the knife and Matias kicked it away.

Matias immediately broadcast "shots fired" and that the subject was down. He requested paramedics and advised that he would wait for another cover officer before he approached Murillo. Almost immediately, a second CHP officer, LE2, arrived. LE2 quickly exited his patrol vehicle carrying his patrol rifle and a first aid bag. LE1 drew his duty handgun and provided cover for Matias and LE2 as they provided first aid to Murillo until paramedics arrived. Murillo was treated for gunshot injuries to his right hand, right thigh, left thigh and left leg.

As a result of his actions, Murillo was criminally charged in San Diego Superior Court case SCD298763 with multiple offenses, including PC245(c), Assault with a Deadly Weapon on a Peace Officer, PC417.8, Exhibiting a Deadly Weapon to Resist Arrest by a Peace Officer, and PC69, Resisting an Executive Officer. The case was tried before a jury that convicted him of all charges. Murillo was sentenced to two years formal probation and 365 days in local custody.

Persons Involved

At the time of the incident, Jose Murillo was a 28-year-old resident of Chula Vista, California. Officer Jesse Matias had been a police officer for six years and four months.

Witness Statement

There were no independent civilian witnesses to the shooting incident.

Civilian Witness One (CW1)

CW1, Murillo's mother, provided the following information to investigators in the aftermath of the incident.

Murillo lived in a shed at CW1's residence. He had been diagnosed with depression but did not take medication for the depression. Murillo had told CW1 that he was hearing voices. Murillo was employed and usually left the house around 5:00 a.m. and returned around 2:30 or 3:00 p.m. During the two weeks leading up to the incident, CW1 noted Murillo looked "decayed" and "depressed" and was drinking a lot more and smoking marijuana.

The night before the incident, Jose stayed on CW1's living room couch, but she noticed he did not really sleep. Murillo told CW1 he was hearing voices and felt as if something was watching him. CW1 told Murillo he needed help. CW1 saw that Murillo had written down the address for Bayview Behavioral Health Hospital on a piece of paper. In the morning when she returned home from taking one of her children to school, CW1 noticed Murillo was gone but that he had left his wallet and cellphone behind. Earlier that morning, Murillo handed her his wallet and told her to take it in case something happened to him.

Statement of Jose Murillo

Murillo was interviewed by CHP investigators later in the day after the shooting incident. Murillo stated he occasionally hears voices when no one is around. On this day, he heard voices that belonged to his mom and dad. He could not remember what they talked about and he was unable to speak to the voices in his head. Murillo has had thoughts about suicide since he was a young kid, which is when the voices started. He has tried to act on his thoughts of suicide, but he did not have a plan when he left his house on this day.

When asked where he was going, Murillo stated he was going back home. When asked why he stopped on the freeway, he replied with "cop." Murillo said he stopped, and the cop got upset. The police officer was yelling at him, but he did not remember what the officer was saying. Murillo was inside of his vehicle while the officer was yelling at him from the passenger side window of his car. Murillo could not remember what the officer was wearing or why he believed it was an officer who was yelling at him.

When asked what he was thinking, Murillo responded with, "It hurt." Murillo was unable to describe what caused the pain and indicated that he did not feel the pain while he was sitting in his car. Murillo said he did not remember specifically sitting in his car or getting out of his car. He told investigators the pain started when his hand was shot but he did not know who had shot him. Murillo stated he did not plan to hurt anyone when he left the house. He said he did not remember what happened today. Murillo confirmed he told someone that he was having suicidal thoughts but stated he was not trying to scare the officer into "doing something" and he didn't want to end his life or get hurt that day.

Law Enforcement Officer One (LE1)

LE1 is a lieutenant with SDPD. He was off duty driving his unmarked police SUV northbound on I-805 just south of Imperial Avenue when he noticed lights from a police vehicle ahead of him. As LE1 neared, he observed Matias standing on the right shoulder with his gun drawn and pointed downward in a “low-ready position” behind a Toyota Scion which was stopped facing northbound. The Scion was parked behind a marked CHP patrol vehicle. The doors of the Scion were closed, and LE1 could not see anyone besides Matias standing on the shoulder of the roadway.

LE1 pulled next to Matias and rolled his window down to ask Matias if he needed assistance. Matias told LE1 that the individual would not put down a knife. Matias opened LE1’s front passenger door and used the door as cover. LE1 parked his vehicle and began to exit when he heard Matias give several loud clear commands for the individual to drop the knife. He then heard approximately four gunshots being fired, but he did not see the actual shooting.

LE1 first saw the suspect, later identified as Murillo, after the shots were fired when LE1 came around the back of his unmarked SUV. Murillo was lying on the ground. Matias kicked a pocketknife away from Murillo and then start providing first aid as other law enforcement personnel arrived on scene. LE1 said the suspect must have exited the Scion and run quickly at Matias. LE1 described the distance between where Murillo fell to the ground and where Matias was standing prior to the shooting to be approximately two feet. LE1 said Matias had to shoot Murillo because otherwise, Murillo would have stabbed Matias.

Law Enforcement Officer Two (LE2)

LE2, a CHP officer, had finished an enforcement stop north of where the shooting incident took place. He was monitoring the radio call from Matias, wherein Matias advised that a gold-colored Toyota had stopped behind his patrol vehicle on the right shoulder of the freeway. LE2 heard Matias describe the solo male occupant and heard him advise that the male occupant had a knife. LE2 informed CHP dispatch he would respond. While enroute, he heard Matias air that an off-duty SDPD officer was at the scene and that shots had been fired. LE2 arrived at the scene and saw Matias’s patrol vehicle on the right shoulder and a Toyota Scion parked behind it and slightly offset to the left. An unmarked SDPD SUV was stopped in the #5 lane, behind and to the left of the Scion. LE2 parked his patrol vehicle in the #5 lane and activated the emergency lights. LE2 then removed his patrol rifle from his vehicle and took his medical bag out of his trunk.

LE2 saw the suspect, later identified as Murillo, lying on the right shoulder in front of and to the right of the SDPD vehicle. Matias told Murillo to stay on the ground. Blood was coming from Murillo’s right hand. Matias and LE2 approached Murillo, rolled him onto his stomach, searched him for weapons, and placed him in handcuffs. Another CHP officer arrived and assisted Matias with providing medical aid until medical personnel arrived on the scene.

Officer Jesse Matias

Matias was conducting traffic enforcement on I-805 northbound just south of Imperial Avenue. At approximately 7:40 a.m., he had just finished an enforcement stop of another driver when he noticed that a Toyota Scion had pulled behind his patrol vehicle. Matias was concerned because

he did not know why the vehicle pulled behind him, how many occupants were in the vehicle, or what was going on inside the vehicle.

Matias approached the passenger side of the vehicle and saw a subject, later identified as Murillo, sitting in the driver's seat. The passenger side window was rolled up so he knocked on the window and motioned for Murillo to roll the window down. Murillo reached over and physically unlocked the front passenger door. Matias simultaneously opened the door and leaned inside the vehicle. Matias told Murillo to turn off the vehicle off and hand him the keys. Matias placed the keys on the roof of the vehicle. Matias asked Murillo for his identification, but Murillo told him that he did not have his license. Matias asked Murillo for his name and date of birth, which Murillo provided.

While speaking to Murillo, Matias noticed that Murillo seemed disoriented, confused, and was speaking in a low volume. Murillo was not making a lot of sense and seemed confused about why he was there. Murillo had red and watery eyes and his speech was somewhat slurred. Matias saw a pipe that could be used to smoke controlled substances in the console cup holder area. Matias suspected Murillo might have been impaired for purposes of driving and asked him to exit the vehicle so he could investigate. Matias intended to administer field sobriety tests on Murillo to evaluate whether he had been driving under the influence of drugs or alcohol. When Matias asked Murillo to exit the vehicle, Murillo said, "No," and pulled out what appeared to be a silver pocketknife with the blade in the closed position. Murillo opened the knife and pointed the blade towards Matias as he took a "hit" from the pipe that was in the console cup holder.

Matias had been leaning into the vehicle to speak to Murillo because of the loud freeway noise. When Murillo brandished the blade towards Matias, the knife was very close to him. The knife was a silver folding knife with a four-inch blade. Matias gave Murillo verbal commands to drop the knife. Matias stepped away from Murillo's vehicle onto the shoulder of the freeway to create distance between them. Matias drew his department-issued handgun because he was afraid Murillo would use the knife on him. Matias contacted dispatch and advised that a male had pulled up behind him during his traffic stop and had a knife that he was refusing to put down. Matias moved to the rear of Murillo's vehicle to put additional space between them and continued to give Murillo commands to drop the knife. He told Murillo to throw the knife out of the open passenger door. Matias did not know if Murillo had any other weapons in the vehicle so he positioned himself at the right rear of the vehicle and used that location for cover since he had no other cover.

After a while, Murillo reached over and closed the open passenger door. Matias continued to give Murillo commands drop the knife and he continued to provided updates to dispatch. An unmarked SUV-type vehicle with forward facing red and blue emergency lights pulled up and stopped behind him blocking the slow lane of traffic and partially blocking the shoulder. Matias moved towards the SUV to utilize it for cover and confirmed with the driver, LE1, that he was an off-duty SDPD officer. Matias opened the front passenger door of the SUV and took a position of cover behind it. Matias told LE1 that Murillo was seated in the vehicle, he had a knife, and was not obeying his commands to drop the knife.

LE1 exited the SUV and stayed on the driver's side. A short time later, Murillo opened the driver's side door of the Scion and exited. When Murillo exited, Matias could see the knife in his hand. Matias continued giving commands to drop the knife, but Murillo started moving toward him at a very rapid pace with his arm outstretched and the open knife pointed toward Matias. Murillo rapidly continued toward him and refused Matias's repeated commands to drop the knife. Matias was afraid for his life. He retreated as Murillo rapidly advanced on him. He fired his handgun four times to stop the threat. Murillo fell to the ground on his left side. Matias advised dispatch of "shots fired" and that the suspect was on the ground. Matias saw that Murillo's knife had fallen to the ground three to four feet away from him, so Matias kicked it out of Murillo's reach. Matias waited for another CHP officer to arrive to provide medical aid. When LE2 arrived, Matias yelled for him to grab his medical bag. Matias told Murillo to turn onto his stomach and place his hands behind his back. Murillo refused, so LE2 provided lethal cover as Matias handcuffed Murillo and confirmed he had no additional weapons. Matias and other officers who had arrived on scene administered first aid until paramedics arrived.

When Matias fired his weapon, he did not believe there were any other reasonable force options. When Murillo brandished the knife at him, Matias felt that Murillo intended to harm him and had the ability to do so. Matias feared for his life and for the safety of LE1 when Murillo exited his vehicle and then rapidly advanced at him with the knife in his hand. Matias felt they would either be killed or suffer great bodily injury.

Dash Camera Evidence

Both Matias and LE2's patrol vehicles were equipped with a Wireless Mobile Video and Audio Recording System (WMVARS) that was activated and recording during the incident. Matias was also carrying a wireless microphone on his uniform to pick up audio conversations between himself and any person he contacted. The cameras inside Matias's patrol vehicle recorded a view to the front of his patrol vehicle and a view of the rear of his patrol vehicle. LE2's WMVARS captured a view toward the front of his patrol vehicle. Many of the audible interactions were captured by Matias's WMVARS. Portions of the incident were also captured on video. LE2 arrived at the scene after Murillo was on the ground.

The footage from Matias's WMVARS shows a silver-colored Toyota Scion pull behind Matias's patrol vehicle. Matias completes a traffic stop, approaches the Toyota Scion from the passenger side, and speaks to Murillo. Matias opens the passenger door to lean in and speak to Murillo. About one minute after contacting Murillo, Matias asks Murillo to turn off the car and hand him the keys. Matias places the keys on the roof of the car. After about one minute and forty seconds, Matias asks Murillo to step out of the vehicle and Murillo responds, "No." Four seconds later, Matias is seen backing away from the vehicle and is heard telling Murillo to put the knife down. Matias commands Murillo to drop the knife again and advises dispatch of the stop and that the driver has a knife that he is refusing to put down.

Matias draws his handgun and continues to order Murillo to put the knife down or throw it out of the car window. Murillo closes the passenger side door. Approximately two minutes and twenty seconds later, Matias appears to be speaking to another individual and is heard asking if the individual is an off-duty officer. Next, Matias is heard explaining to LE1 what is going on and that he is going to use LE1's vehicle door as cover. Matias advises dispatch that an off-duty

SDPD officer is on scene with him. Fourteen seconds later, the door of the Toyota Scion opens and Matias is heard yelling, “Put it down. Put it down.” Two seconds later, four gunshots are heard and then Matias says, “Shots fired.” Matias continues to order Murillo not to move. Matias advises dispatch that he has kicked away the knife and is waiting on another CHP officer to arrive so he can provide medical aid.

The footage from LE2’s WMVARS shows as he responds to Matias’s location. Matias is standing south of a subject later identified as Murillo, with his handgun pointed towards Murillo. Matias yells to LE2, “Med bag, med bag, med bag.” LE2 approaches Murillo while holding a yellow medical bag and a patrol rifle. LE2 provides cover as Matias checks Murillo for any additional weapons and places him in handcuffs. Matias then requests paramedics and he and another officer provide medical care to Murillo until paramedics arrive.

Investigation

The shooting incident occurred in the designated “Bus Only” lane on northbound Interstate 805 freeway south of the Imperial Avenue off-ramp. Traffic flow at the time of the shooting incident was heavy. The events were investigated by the CHP. All officers’ reports, crime scene investigators’ reports, patrol vehicle camera footage, and audio recordings were reviewed. These items were found to provide evidence that corroborates the officer’s statement. The events leading up to and the incident itself were captured on Matias’s WMVARS.

At the time of the incident, Matias was armed with his department-issued Smith & Wesson M&P .40 caliber handgun. Prior to the shooting incident, the handgun was fully loaded with 16 rounds. Matias carried two additional fully loaded magazines on his duty belt, each containing 15 rounds. CHP Investigative Services Unit officers took possession of Matias’s handgun for processing. The handgun was loaded with 12 rounds of unexpended .40 caliber ammunition. The remaining two magazines from Matias’s duty belt each contained 15 rounds of unexpended ammunition.

Based on the number of rounds in Matias’s handgun after the shooting, it was determined Matias fired four rounds. Consistent with this determination, four .40 caliber shell casings were found at the scene. WMVARS footage also confirms that Matias fired a total of four rounds.

The firearm was sent to the CHP Firearms Academy for testing. A CHP Firearms Criminalist conducted a Post-Shooting Inspection of Matias’s firearm for condition and functionality. It was determined that Matias’s handgun and duty magazine functioned as expected and were determined to be “operable and functional,” per their design.

During the incident, Murillo was armed with a silver-colored Gerber Paraframe I folding knife in Ti-Grey, with a locking 3-inch blade. After the shooting incident, the knife was located against the east curbline of northbound Interstate 805, southeast of the rear of the stopped Toyota Scion and northeast of the front of the stopped unmarked SDPD SUV. The knife was recovered in a half-opened position.

Pursuant to a search warrant, Murillo’s medical records, including three collected blood samples, were obtained from Scripps Mercy Hospital. The blood samples were submitted to the San Diego Sheriff’s Department’s Crime Laboratory for analysis. Although Murillo’s hospital records

indicated the presence of cocaine in his system at the time of treatment, the Crime Laboratory only detected the presence of cannabinoids in his blood. The sample was further tested by Bio-Tox Laboratories and revealed 2. 0 ng/ml of DELTA-9-THC in Murillo's blood sample.

Injuries

Murillo sustained five gunshot wounds. Murillo was transported to Scripps Mercy Hospital, where he was treated for gunshot wounds to his right hand, right thigh, left thigh, and left leg. No officers or other civilians were injured during this incident.

Legal Standard

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).

"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(a)(2).

"The 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).

Conclusion

Murillo pulled his vehicle near to Officer Matias's patrol vehicle on the side of the freeway during morning traffic and Matias contacted Murillo. During that contact, Matias observed Murillo exhibiting objective symptoms consistent with those exhibited by someone under the influence. When Matias asked Murillo to exit the vehicle so he could conduct a DUI evaluation, Murillo armed himself with a black folding knife and brandished it at Matias. Matias immediately backed away, called for backup, and spent several minutes attempting to deescalate the situation by telling Murillo to put the knife down. Matias backed further away and took cover behind the door of an unmarked police SUV that had stopped to assist. Murillo exited his car and quickly charged at Matias with the knife in hand while pointing it at Matias. Matias had no other cover available as the freeway beside him was heavy with traffic.

Matias discharged his handgun under the reasonable belief that the use of deadly force was necessary to defendant against the imminent threat of death or serious bodily injury. A reasonable officer in the same situation would similarly believe Murillo had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily harm. For these reasons, Officer Matias bears no state criminal liability for his actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,



SUMMER STEPHAN
District Attorney

cc: Captain Michael Harris
California Highway Patrol