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February 12, 2026

Chief Scott Wahl
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Use of Force upon Mr. Marcus Evans by San Diego Police Officers Ashley Bennett, Robert Nelson, and Sergeant Alan Dyemartin on October 24, 2024; San Diego Police Department Case No. 24043762; DA Special Operations Case No. 25-113UF

Dear Chief Wahl:

We have reviewed the reports and other materials provided by the San Diego Police Department concerning the use of force upon Marcus Evans in relation to his arrest by San Diego Police officers on October 24, 2024. These materials were submitted to the District Attorney's Office on September 15, 2025.

Summary

On October 24, 2024, a 911 call was placed by a woman stating a man had pulled a gun on her. San Diego Police Department (SDPD) officers responded to the location and made contact with the caller and two other women, who are referred to herein as Civilian Witness One (CW1), Civilian Witness Two (CW2), and Civilian Witness Three (CW3). CW1 told police that earlier while she was on a video call with CW3 she saw Marcus Evans hit CW3 with a metal object. After CW1 saw this, CW1 and CW2 drove to CW3's location to help her. CW1 and CW2 tried to get CW3 to leave and Evans responded by racking and pointing a gun at CW1 and CW2. An altercation between the parties ensued, during which Evans pushed CW3 and pushed CW1 to the ground. The three women left in a vehicle. Responding officers met them and were able to identify Evans as the suspect.

Multiple officers responded to Evans' residence to arrest him. A perimeter was established and a team moved to the front of the residence loudly identifying themselves as police and ordered Evans to come out. Subsequent warnings were given that if Evans resisted, a canine would be used and Evans would be bitten. Three individuals exited before Evans. When Evans exited, he was directed to show his hands and walk to the officers.

Evans followed commands at first but would not comply when ordered to turn away from officers. Additional commands were given but Evans did not comply with officers' instructions

to walk backward toward them. Officers deployed a less-lethal beanbag round at Evans to gain compliance. Evans was struck and fell to the ground. When Evans sat up, he would not comply with further commands to come toward the officers. A second beanbag round was deployed in conjunction with the release of a canine. The second beanbag struck Evans, however the canine did not engage. Evans continued to refuse to surrender and a second canine was brought to the front of the scene.

After Evans refused to comply with additional commands to come to the officers, the second canine was released in a coordinated firing of another beanbag round. The canine bit Evans and officers moved in and took Evans into custody. After Evans' arrest, three more individuals exited the residence. SDPD conducted a cursory visual search of the interior of the residence and garage and did not observe the firearm described by the reporting party. Evans was transported from the scene by police to the hospital for medical treatment.

911 Call

On October 24, 2024, at 11:16 p.m., CW2 called 911 and asked the emergency dispatcher to send police to her location because a male subject "pulled a gun on her" during a domestic violence incident. On the recorded call, CW2 is heard telling the dispatcher she was picking up her friend when the gun was "pulled" by her friend's boyfriend. CW2 states that the male was presently at the rear of her vehicle. An argument can be heard in the background of the recording, wherein CW2 yells out, "Get up off my car" and "Get your hands off my sister and my friend!" At one point, the dispatcher asks CW2 if she saw the actual gun and CW2 answers in the affirmative and elaborates that the male subject "cocked it." CW2 then becomes unresponsive. Voices can be heard shouting and arguing in the background. CW2 does not return to the line, but the call remains open.

A short time later, CW1's voice is heard on the line with the dispatcher. CW1 reports the male subject ran back into his house. CW1 confirms that the male threatened to shoot them with a gun and he "put his hands" on her and her friend. She states they need police to come. CW1 adds that during a video call with her friend, she saw her friend get struck and almost stabbed with a pole by her friend's boyfriend. Toward the end of the call, CW1 and CW2 can be heard yelling at their friend to get in their car. The call ends with dispatchers requesting CW1 and CW2 to drive out to a nearby cross street and away from the male subject's location to meet with responding officers.

Civilian Statements

San Diego Police officers obtained statements from three individuals who reported having been witnesses or victims to recent felony conduct perpetrated by Evans. The statements of these witnesses provided the officers with evidence in support of a probable cause arrest pursuant to Penal Code section 836(a)(3). Per Penal Code section 836(a)(3), an officer may make an arrest without warrant if they have probable cause to believe the person to be arrested has committed a felony, whether or not a felony, in fact has been committed.

Statement of Civilian Witness One (CW1)

CW1 was on Facetime with her friend, CW3, who was having a verbal argument with Evans. During the yelling, CW1 saw Evans hit and try to stab at CW3 with a long metal object. CW2

drove over and picked up CW1 so that they could go over to help CW3. When they drove up to residence on Duluth Avenue, the garage was closed but CW3 opened the garage to come out. While the garage was open, CW1 heard Evans "rack" a gun from inside the garage. CW1 could not actually see a gun because of the distance. CW2, however, did see Evans point the gun at them. CW3 then came out of the garage but Evans held CW3 back by her shirt. Evans eventually let CW3 go and brought stuff out with CW3 to put in the car. Evans started arguing with CW3 and CW1 and they got into a physical altercation with Evans pushing CW3. Evans then came up aggressively and pushed CW1 into CW2's vehicle and onto the ground while they were fighting.

Investigators followed up with CW1 the following day, at which point, CW1 was no longer cooperative and did not wish to participate in the investigation.

Statement of Civilian Witness Two (CW2)

CW2 and CW1 went over together to the Duluth address to help because CW1 had seen CW3 being struck by Evans while on the phone. At the house, Evans wasn't letting CW3 leave and he was saying he was going to "kill himself" or "stab himself." CW2 got out of her car and said, "C'mon friend let's go," to CW3. At that point, Evans pulled out a chrome-colored gun and "cocked" it. Evans pointed the gun at CW2 and CW1 but didn't say anything. CW1, CW2, and CW3 got away from Evans and left in their car. Evans followed them and fought with CW1 and CW3. This spilled out onto CW2's vehicle. CW2 got out of her vehicle and told Evans to "get the fuck off of my sister," and Evans replied, "What're you gonna do," and squared up on CW2. CW2 called the police.

When investigators followed up with CW2 the following day, she was no longer cooperative and did not wish to participate in the investigation.

Statement of Civilian Witness Three (CW3)

CW3 said Evans was her boyfriend and they had gotten into a fight. The fight was not physical, and she blamed herself for it. Evans later got into an altercation with CW1 and CW2, so she tried to push Evans off CW1. CW1 got knocked to the ground. CW3 heard a gun "cock" but denied seeing a gun or Evans pointing a gun during the incident. CW3 did not want to press charges against Evans.

Investigators attempted to follow-up with CW3 the following day but could not reach her by phone. A message was left but CW3 never called back.

Officers' Reports

During the incident, multiple SDPD officers were present. However, three officers were involved in directly applying force against Evans. Bennett fired the beanbag rounds, Nelson deployed the first canine, and Dyemartin deployed the second canine. The reports of these officers are summarized below.

Officer Ashley Bennett

Bennett responded to the call of a suspect wanted for assault with a firearm at a residence on Duluth Avenue. Bennett arrived at the location and was assigned to provide less-lethal coverage with a beanbag shotgun. Bennett positioned herself facing the front door of the residence. The residence has an inclined driveway with a staircase that leads to the front door.

Multiple individuals began to exit in response to officers' commands. These individuals were safely moved away from the residence. Evans then came out. He initially followed officers' commands to place his hands over his head and walk down the stairs. However, Evans failed to keep his hands over his head as ordered; he kept bringing his hands down and making movements toward his waistband. Evans was ordered to face away from officers and walk backwards. Evans refused and sat down on a step on the staircase. He was approximately 25 feet from the officers. Evans continued to be uncooperative by moving about and placing his hands where Bennett could not see them. Evans also refused to show his complete waistband. Because of that, officers could not confirm whether he was armed. Bennett fired her beanbag shotgun as a compliance check after being directed to do so by an on-scene supervisor. The beanbag round hit Evans in the lower right torso, causing him to drop to the ground. Evans continued to resist by cursing at officers while not complying with the officers' commands to crawl to them or walk backward to them.

Bennett fired another beanbag round. The firing of this round was timed with the release of a canine. The round hit Evans' arm as the canine was sent toward him. The canine did not bite Evans and was recalled. Police brought in a second canine. Evans continued to lie on the ground and refused to comply with officer commands, including commands to show his hands. The second canine was deployed in conjunction with Bennett firing a third beanbag round at Evans. The beanbag hit Evans in the shin as the second canine engaged and bit Evans on the arm. Officers then moved in and took Evans into custody. Evans was later placed in the backseat of Bennett's patrol vehicle. He was transported to UCSD for medical treatment.

Officer Robert Nelson

Nelson, with his canine Tito, responded to the call of a suspect threatening a female with a firearm. Officers contacted the reporting parties and learned Evans, identified through prior booking photos, had "racked" and pointed a firearm at two people in a threatening manner. Officers were advised there was probable cause to arrest Evans for the assault with a firearm. During the staging and planning phase, officers were also made aware that Evans had multiple prior arrests, including robbery and assault with a deadly weapon.

An SDPD ABLE (Airborne Law Enforcement) helicopter assisted with surveillance of the residence while a contact team was formed. An officer in the ABLE helicopter observed Evans shirtless and wearing shorts walking multiple times between a detached garage and the main residence. Officers spent nearly an hour planning how to make contact and de-escalate any possible resistance. The plan was to conduct a "contain and call out," meaning Evans and all other residents would be ordered outside. Officers established a full perimeter of the residence. At 12:09 a.m., the contact team moved toward the residence. The officer in the ABLE helicopter communicated that they observed Evans walking from the garage to the front of the main residence. Nelson, who was in the lead vehicle of the contact team nearing the residence, observed Evans walk into the front door and slam the security screen door closed. Nelson noted that the residence was on a hill and had multiple windows facing the street. This could provide the occupants an advantageous position against the officers. Nelson observed movement from the windows, including movement of the curtains and blinds.

Nelson used his vehicle as cover and began calling out to the occupants of the residence. He identified himself as police and gave multiple canine warnings. Nelson gave orders for all residents to exit and also gave warnings directly to Evans. A male, not Evans, exited. He was cooperative and was detained without incident. Two more people, neither of whom were Evans, exited. They, too, were compliant and were detained without incident.

At 12:15 a.m., Evans exited the front door. He was shirtless, barefoot, and wearing black shorts. Nelson directed Evans to show his hands and come down the stairs. Evans initially followed the commands and walked to the bottom of the staircase. Once at the bottom, Evans became uncooperative. Evans was ordered to turn around and face away. This same command had been given to the other emerging occupants and all complied. Evans, however, began yelling that he did not have to listen and that he was at his own residence. Nelson attempted to de-escalate by giving further details as to why the police were there. Nelson told Evans they were detaining him pending the investigation and that they received a call regarding a firearm. Evans was argumentative and uncooperative, continuing to say he had done nothing wrong while refusing to comply with the directions given to him.

Nelson observed that Evans' face appeared glazed and his speech was slurred. Nelson recognized these as indicators that Evans could be under the influence. Nelson was aware alcohol and/or controlled substances can lead to irrational and unpredictable behaviors. Further, Nelson believed Evans to be armed and dangerous as he had yet to be searched for weapons. Evans had been walking to and from the garage and now was standing next to a retaining wall near the bottom of the stairs. The retaining wall and a nearby parked vehicle could conceal weapons from the view of the contact team. Nelson was concerned that if Evans fled out of view or back into the house, Evans could retrieve a firearm to fire upon the officers.

While officers were talking to Evans, an older male began to exit the residence. Evans referred to the male as "Unc." The contact team ordered the older male to remain inside. However, this concerned Nelson as there appeared to be an unknown number of occupants still inside the residence. While officers' attention was focused on Evans, Nelson was concerned that others could shoot at officers or prevent Evans' arrest.

Due to the exigency of the rapidly evolving and dynamic situation and after multiple failed attempts to de-escalate, an officer on the contact team deployed a less-lethal beanbag round to gain Evans' compliance. Evans fell to the ground after being struck. He continued to refuse to comply with commands or surrender. Other officers began giving warnings to Evans while Nelson maintained his position with his canine.

At around 12:28 a.m., Evans sat up and faced officers. His back was toward the retaining wall, and he still refused to walk backward to the officers or comply with any other command. The initial effects of the first beanbag round appeared to wear off; Evans became more agitated and confrontational. Officers established a plan to utilize a second beanbag round in conjunction with a canine to apprehend Evans. Nelson deployed his canine with the bite command for multiple reasons. His concerns included the severity of the reported crime, the immediate potential threat of Evans' being armed, and the risk that Evans might flee or return inside and fire upon officers.

In addition, Nelson determined Evans was actively resisting by refusing to follow commands over the preceding ten minutes.

A second beanbag round was fired at Evans to distract him while Nelson's canine was sent in on his bite command. Evans placed his hands in front of himself and was able to fend off Nelson's canine. The canine failed to engage and was recalled. Evans still refused to surrender, despite having been impacted by a second beanbag round. Nelson felt it would be unsafe to send in the contact team without first having Evans engaged by a canine. A second canine was brought in for re-engagement.

Canine Sergeant Dyemartin prepared his canine and Nelson transitioned to lethal cover for when Dyemartin's canine would be released. Dyemartin's canine was sent in as a third beanbag round was fired. The canine successfully bit Evans, and the contact team moved up to go hands-on with Evans. Nelson used a bite removal device to induce the canine to let go of Evans' arm. Officers handcuffed Evans and patted him down. No weapons were located on his person.

After Evans was secured, Nelson assisted with additional call outs to the remaining occupants. Three more residents exited. All complied with commands and were safely detained without incident. Nelson cleared the rest of the residence and the detached garage.

Sergeant Alan Dyemartin

Dyemartin, along with his canine Seff, responded to a call of a male pointing a firearm at a female. Dyemartin made contact with the 911 caller and two other witnesses on Skyline Drive. Dyemartin spoke to the three women (CW1, CW2, and CW3) and learned Evans had pointed a gun at CW1 and CW2. CW2 said Evans "cocked the hammer" while pointing the gun. Probable cause was established to arrest Evans for two counts of assault with a deadly weapon.

The victims informed officers that Evans lived at a residence on Duluth Avenue in a detached garage but also had access to the main house. They gave the address and CW1 and CW2 provided a description of Evans, whose identification was confirmed through past booking photos. During a records check, Dyemartin learned Evans was a known Skyline Piru gang member with the moniker "Tiny Monster." Dyemartin also became aware that Evans had a criminal history including robbery, assault with a deadly weapon, and domestic violence. The victims also told the officers there were multiple people inside of the house on Duluth Avenue. As a result of his training and experience, Dyemartin knew gang members often conceal weapons on their person and around their property for easy retrieval. He also recognized the dangerousness faced by responding officers when engaging with houses occupied by multiple people if occupants became upset and uncooperative. Dyemartin felt family members and friends could try to interfere with a police investigation or create a distraction to allow the wanted individual to escape.

As part of the operational plan to arrest Evans, Dyemartin and the rest of the main Critical Response Team (CRT) were to approach the residence from the front. Before CRT moved in, ABLE personnel reported that Evans had moved several times between the main house and the detached garage. At one point, Evans exited the garage, walked toward the center of the property, and stopped. The CRT saw their opportunity to apprehend Evans and they moved in.

Apprehending him outside would eliminate the risk of having him inside a building with multiple other people. As Dyemartin approached, Evans, who was wearing basketball shorts and was shirtless, ran frantically from the driveway up the stairs to the front door. Evans entered the house and closed the door behind him. Almost immediately, Dyemartin saw Evans through the residence's windows closing all the blinds in the room at the front of the house.

Dyemartin took a position at the rear of a patrol car. Nelson began calling out and giving canine warnings to the house. Nelson specifically called Evans by name and told him he was under arrest. After 30 seconds of callouts, the front door opened and a male emerged. The male complied with commands and was taken into custody to be patted down and identified. Once the male was cleared and determined not to be Evans, Dyemartin returned to his CRT to assist with another male now exiting the house. The first male who exited said the second male was his brother and was not Evans. Dyemartin took the second male into custody, cleared him, and brought him over to the first male who had exited. Both men confirmed Evans was inside the main house wearing dark shorts and no shirt.

Nelson continued callouts and a female exited next. She was taken into custody without incident. After several more callouts, Evans finally emerged from the front door. Evans was wearing baggy black basketball shorts and was shirtless. Evans initially complied with Nelson's verbal commands and managed to keep his hands up while he walked down the front stairs. Once he reached the bottom of the stairs, Evans stopped complying with commands.

Evans kept his hands up but refused to continue walking toward the contact team. Evans argued with officers and refused to turn around, show the back of his waistband, and comply with commands to continue walking toward the team to be taken into custody. Evans would lean against a wall that was approximately waist-high and appeared from Dyemartin's vantage point to have room on the opposite side for a person to store a weapon. The height of the wall made the other side not immediately visible but was low enough that someone could easily retrieve an object hidden there.

While Evans did turn his body to officers at one point, the entirety of his waistband could not be observed for weapons. Not knowing if Evans had a concealed weapon, Nelson continued giving Evans verbal commands and canine warnings. Evans continued to ignore the commands and refused to comply. It was unsafe for officers to approach while Evans possibly had a concealed weapon or access to nearby weapons. Also, officers did not know how many other people were in the house and it would be unsafe for officers to leave their protected positions to move forward.

As the officers were calling out to Evans, Evans would hold his hands up but then slowly lower his hands toward his waistband or pockets. Each time Evans lowered his hands, officers ordered him to put them back up. Evans declared he was following directions. However, Evans never fully followed the commands and was only stating that he was. Evans would go back and forth, move his body from side to side, but he would never actually leave the area where he first stopped following commands.

After 10 minutes of officers giving verbal commands, canine warnings, and telling Evans he was under arrest, Evans was shot with a beanbag round by Bennett. Evans fell on his right side and started yelling but still refused to comply with commands to walk or crawl towards the CRT. Dyemartin took over giving Evans verbal commands from Nelson. Dyemartin continued to order Evans to crawl or walk toward the officers to surrender. Evans remained lying down for several minutes until he sat up on the bottom step. He held his hands up but ignored all other commands.

Dyemartin continued to give Evans commands and canine warnings. Dyemartin also warned Evans he would be shot again if he did not comply. This continued for several more minutes, and Evans still did not comply. At the point when Evans was no longer verbally responding to officers, it was apparent to Dyemartin that Evans was not going to cooperate. Dyemartin discussed the situation with a lieutenant and sergeant. It was decided that using a canine in conjunction with another beanbag round was the safest way to take Evans into custody. This would give the CRT the safest approach to Evans as it would limit his movements and keep him distracted after the officers left their position of safety to approach.

Nelson gave Evans several more canine warnings before sending his canine in while Bennett fired another beanbag round. Nelson's canine was fended off by Evans, who pulled his arms away and swung his hand at it. The apprehension was unsuccessful, and Nelson's canine was recalled. Evans remained in place, sitting on the steps of the house.

Dyemartin then retrieved his own canine and moved up to Nelson's position on the side of the main patrol car. Dyemartin issued additional canine warnings to Evans for his surrender, letting him know he would be bitten. Evans continued to ignore the commands and canine warnings. Bennett fired another beanbag round and Dyemartin released his canine with the bite command. Dyemartin identified several reasons he believed that using his canine was appropriate under the circumstances. First, there had been a report of Evans having pointed and racked a firearm at the reporting parties. Second, Evans may have had a concealed firearm or immediate access to one. Third, there was a need to quickly apprehend Evans because there were still several occupants inside the house and their level of hostility was unknown. Fourth, Evans' had a background as a known member of a criminal street gang and a history of violent crime. Finally, Evans refused to follow commands and continued refusing despite the application of escalating force against him.

Dyemartin's canine bit and held onto Evans' left forearm. The CRT then approached. Dyemartin gained control over his canine as other officers secured Evans. Dyemartin estimated the total time of the bite to be approximately 38 seconds. Dyemartin returned his canine to his vehicle and assisted as the other occupants exited the house. A total of seven occupants exited the house. All but Evans complied with officers' orders and were removed without the use of force.

When Dyemartin later walked up the front stairs to the house, he saw a crowbar and a large metal tire iron in the front yard. They were in close proximity and accessible to where Evans had been standing and sitting during the stand-off. The objects had not been visible to Dyemartin earlier when he was with the CRT near patrol car cover.

Video Evidence

During the incident, several responding officers were equipped with Body Worn Cameras (BWC) which were activated during the events. While all footage was reviewed, only footage from the officers directly involved in the direct application of force against Evans is described below. The footage from the other officers was either duplicative or did not capture events as clearly as the footage of the officers directly involved.

Body Worn Camera Footage from Officer Bennett

Bennett's BWC footage begins at 12:06 a.m. and shows Bennett arriving at the staging location at Skyline Drive. Dyemartin designates Bennett as the operator of a less-lethal beanbag launcher and Bennett retrieves one from Nelson's vehicle parked in front of the Duluth Avenue residence. At 2:10 a.m., Bennett and other officers are positioned behind a police vehicle for cover in front of the house on Duluth. Nelson begins giving commands to Evans to come out and surrender. He also gives multiple canine warnings. Bennett notes movement at the windows and doors. After three individuals come out of the residence, Evans exits the front door at 12:15 a.m. Bennett repositions herself to the open driver-side door of the patrol vehicle. The view from Bennett's BWC is obstructed by the door, and Evans cannot be seen. Nelson continues giving warnings to Evans and tells him he is under arrest. Nelson asks Evans to turn around and walk backwards to the officers. Evans can be heard arguing back to Nelson.

Nelson instructs Bennett to fire a beanbag round for compliance. Bennett fires a beanbag round at 12:20 a.m. BWC does not capture the shot due to Bennett's positioning. Nelson continues to order Evans to comply and come to the officers. Bennett repositions herself to the passenger door where her BWC remains obstructed due to her position. Bennett discusses with another officer the option of shooting a beanbag round at Evans' leg if another shot is necessary. Bennett, Nelson, and other officers discuss tactical options in response to Evans' lack of compliance. They decide to deploy a canine at the same time that Bennett will fire a beanbag round. Dyemartin can be heard giving Evans warnings while ordering him to come toward the officers. Dyemartin offers to give Evans medical assistance if he complies and comes to the officers. Dyemartin further attempts to reason with Evans, telling him they haven't seen his waistband and are concerned he is armed. Evans does not comply and continues to argue back.

At 12:28 a.m., Bennett fires another beanbag round as a canine is released. Due to Bennett's position behind the patrol vehicle door, Evans cannot be seen on the BWC. After the canine returns to the officers, Nelson advises to swap dogs. Dyemartin moves into position next to Bennett and resumes giving multiple commands to Evans, warning that a dog would be sent if he did not comply. Evans does not comply.

Dyemartin instructs Bennett to fire again just prior to the deployment of the canine. Additional verbal warnings are given to Evans to give up. Bennett fires another beanbag round at 12:29 a.m. as the canine is released. Seconds later, a reaction team of multiple officers moves toward Evans. Again, Evans is not visible on the BWC footage due to Bennett's positioning. Evans becomes visible on Bennett's BWC footage at 12:31 a.m. handcuffed on the ground.

At 12:32 a.m., Bennett assists two officers in lifting Evans into the back of her patrol vehicle. Evans screams for help and curses at officers while in the back seat. Bennett is then directed to transport Evans directly to the hospital. Before departing, Bennett opens the rear door to buckle

Evans in with a seatbelt. Bennett and another officer seat Evans upright and secure him with the seatbelt. Bennett then drives Evans to the hospital. At 1:13 a.m., they arrive. Bennet and another officer then unbuckle and assist Evans in getting out of the vehicle and into a wheelchair to go into the hospital.

Body Worn Camera Footage from Officer Nelson

Nelson's BWC recording begins at 11:25 p.m. as he is arriving at the staging location. Officers are seen speaking with the reporting parties. Nelson, Dyemartin, and other officers determine that during a domestic violence incident, an assault with a deadly weapon occurred at the address on Duluth Avenue. The officers discuss the location and how to tactically set up around it.

Nelson prepares to move to the scene. He places a ballistic shield on the front windshield of his patrol vehicle, then retrieves a ballistic helmet and places it on his front dashboard, and configures a less-lethal shotgun into a patrol-ready status. Nelson spends a total of 42 minutes at the staging area before moving to the scene.

At 12:09 a.m., Nelson drives to the Duluth Avenue residence. When he arrives in front of the residence, he tells an officer there that he saw Evans go inside the residence and slam the door. Officers take note of movement they observe in the front windows of the home. Nelson loudly announces he is with the San Diego Police Department and calls for Evans to exit the residence with his hands up and nothing in them. Nelson further announces that if Evans does not exit or attempts to flee, a canine would be sent and he would be bitten.

A male, not Evans, exits the residence at 12:12 a.m. and obeys Nelson's commands to keep his hands above his head and walk backward to the officers. Nelson continues to give orders for the remaining occupants to exit. Two additional people, a male and a female, exit the residence. Both comply with all instructions to keep their hands above their heads and walk backwards toward the officers.

At 12:15 a.m., Evans exits the front door wearing athletic shorts, no shirt, and no shoes. Nelson instructs Evans to show his hands and walk down the stairs. Evans walks down the stairs with his hands up. Nelson explains that officers are conducting an active investigation related to a firearm. Evans is ordered to turn around and walk backwards. At 12:16 a.m., Evans puts his hands down and sits back against the waist-high retaining wall at the front of the residence and remains there. Nelson advises Evans there was a report of a felony crime involving a firearm and that police have lawful reason to be at the location. Nelson tells Evans he is being detained.

Evans continues to lean against the wall as Nelson gives multiple commands to turn around and walk backwards. Evans repeatedly says "no" and responds that he is not going to comply. When Nelson asks for his name, Evans asks for Nelson's name in return. Nelson identifies himself and tells Evans he knows who Evans is. Evans denies being Evans and claims he has nothing to do with the situation and asks why officers are in front of his residence. Evans proclaims he has done nothing wrong. Nelson advises Evans that if he flees, he would be shot. Nelson continues giving commands and Evans continues to refuse to comply. This back and forth continues until Evans stands up at 12:17 a.m. with his hands up. Evans stays at the bottom of the stairs and continues to refuse to walk toward Nelson.

Nelson continues giving orders and Evans refuses compliance. Nelson consults with other officers about using less-lethal beanbag rounds. Evans is again instructed to turn and face away, but Evans remains facing Nelson. Nelson states he believes Evans is armed and tells him to keep his hands up, noting that he cannot see Evans' waistband. Evans takes a few short steps toward Nelson, then steps back, turns in a full circle, and continues facing Nelson. Evans lowers his hands to his waist before raising them again and says, "I'll sit right here."

At 12:20 a.m., Bennett shoots Evans with a beanbag round and Evans falls to the ground. Nelson then orders Evans to show his hands. Evans asks why he has been shot, and Nelson informs him it was because he did not comply with commands. Evans lies on his side on the driveway, yelling that officers had shot him. Evans is given commands to crawl or walk towards officers and warned that if he did not comply, he would be shot or bitten by the dog. Evans continues to lie on the driveway and refuses to move. Nelson tells other officers he isn't able to see Evans' rear waistband.

Dyemartin advises Evans that medical attention is available if he complies. Evans calls out for his uncle to contact his lawyer while continuing to refuse to comply with the commands. Evans continues to argue that he has done nothing wrong. Evans shouts expletives and repeatedly says, "Y'all are going down." Evans says he is bleeding and demands an ambulance. Dyemartin informs Evans there is an ambulance on scene that can provide aid once Evans complies.

Nelson, Bennett, and Dyemartin discuss utilizing a canine. Nelson again warns Evans to walk toward them with nothing in his hands or a dog would be sent. Evans states he wants nothing to do with them and positions himself to stand up. Bennett announces she is firing a beanbag, then fires another beanbag round at 12:28 a.m. Nelson sends in his canine and Evans repeatedly yells, "Stop!" The canine approaches Evans but does not engage and instead returns to Nelson. Another canine is brought in to replace the first.

Dyemartin gives Evans additional commands. Evans sits on the driveway with his hands up and back against the retaining wall. He continues to refuse to comply. Bennett then fires another beanbag round at 12:29 a.m. and the second canine is deployed. It bites Evans' left forearm and maintains a hold as Evans screams. Nelson and other officers immediately move in. Nelson takes control of Evans' right arm to handcuff it and Dyemartin is able to get his canine to release approximately 40 seconds into the bite. Nelson then handcuffs Evans' left wrist. Evans screams as he is being placed under arrest. Officers lift Evans to a standing position and escort him to a police vehicle.

Nelson then uses his patrol vehicle's PA system to ask if any additional residents are inside. Three additional people then exit the home without incident. Nelson, Dyemartin, and other officers then clear the residence and the detached garage.

Body Worn Camera Footage from Sergeant Dyemartin

Dyemartin's BWC recording initiates at timestamp 11:22 p.m. Dyemartin drives to and arrives at the location where he locates and briefly speaks with the reporting parties. Dyemartin is informed by CW1 and CW2 that Evans pointed a gun at them and that he had "cocked the hammer" while pointing the firearm. Other officers arrive and continue taking statements from

the reporting parties while Dyemartin confirms the location of the residence where Evans is located. Dyemartin spends the next 40 minutes in the staging area conferring with other officers regarding the situation. Dyemartin's BWC recording ends.

Dyemartin restarts his BWC at 12:09 a.m. He and other officers move from the staging area to the front of the house on Duluth Avenue. Dyemartin takes a position behind Nelson's vehicle and begins broadcasting updates. Nelson makes announcements to exit the home. Dyemartin contacts and speaks with the first three residents who exit the residence. All three are compliant and follow instructions.

Evans exits at 12:15 a.m. while Dyemartin is still speaking with the people that exited minutes earlier. Dyemartin moves into position behind Nelson and Bennett on the driver's side of Nelson's patrol vehicle. Dyemartin coordinates contingency plans with the other officers in the event Evans attempts to retreat inside. Dyemartin confirms Evans' identity through a photograph. At 12:18 a.m., another resident starts coming out of the front door, and Dyemartin yells for that person to go back inside. Meanwhile, Evans is at the bottom of the steps leading to the front door. Nelson is heard giving commands to Evans which Evans refuses to follow. Evans is heard arguing with Nelson. Nelson instructs Bennett to fire a beanbag round as a test for compliance. Bennett fires a round at 12:20 a.m. and Evans falls to the driveway after being struck. Dyemartin takes over giving commands to Evans at 12:21 a.m. Evans is lying on the driveway as Dyemartin instructs him to either walk or crawl toward the officers. Dyemartin warns Evans that if he does not comply, he will be shot again with a beanbag round and a canine would be deployed to bite him.

In response to the repeated commands given by Dyemartin, Evans remains in the same physical position and shouts back, refusing to comply. Dyemartin continues ordering Evans to approach with his hands up, advises Evans he is under arrest, and tells Evans he is believed to be armed. Dyemartin tells Evans medical attention is available when he surrenders. Nelson and Dyemartin repeatedly warn Evans that if he does not comply, he would be shot again and bitten by the canine. Evans remains noncompliant.

Dyemartin tells Bennett to be prepared to shoot when the canine is released. Evans then sits up with his hands up. He rocks his body forward multiple times, appearing as though he is going to stand, but he remains seated. Bennett fires the beanbag round as Nelson releases his canine. Nelson's canine returns without engaging and Dyemartin then retrieves his own canine from his vehicle. Dyemartin moves into a position beside Bennett and gives Evans multiple commands, again warning that the dog would be sent in if he did not comply. Dyemartin coordinates with Bennett to fire another beanbag round at the same moment when he will deploy his dog. At 12:29 a.m., Dyemartin releases his canine as Bennett shoots another round. The canine bites and holds onto Evans' left arm. Dyemartin and his team immediately move to engage Evans. As Dyemartin gains control of his canine, the other officers handcuff and secure Evans. The canine holds its bite on Evans' arm for approximately 40 seconds.

Dyemartin returns his canine to his vehicle and then returns to the front of the residence. Two officers sit Evans upright. Dyemartin instructs the officers to place Evans in a patrol vehicle and transport him to the hospital.

Three additional people are seen exiting the residence in compliance with officers' commands. Dyemartin, Nelson, and other officers clear the residence and the detached garage. After clearing the residence, Dyemartin observes a crowbar and a tire iron in the front yard behind the retaining wall near where Evans had been during the incident.

ABLE Helicopter Video Footage

Video of the incident was captured by San Diego Police Department's ABLE helicopter. Although ABLE captured events at the scene from above, the video does not significantly add to video footage already seen on BWC and described above.

Legal Standard of Criminal Liability

Penal Code section 835a sets forth the standard to evaluate a peace officer's use of physical force, specifying when a law enforcement officer may use objectively reasonable force and when a law enforcement officer may use deadly force.

Penal Code section 835a(b) states that "any peace officer who has reasonable cause to believe that the person to be arrested 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(a)(2) states that "[i]n 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."

"Deadly force" is defined in section 835(e)(1) as "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(c) sets forth the standard to evaluate a peace officer's use of deadly force and the circumstances upon which an officer may use such force. Penal Code section 835a(c)(1)(A) justifies the use of deadly force by a peace officer only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary... "[t]o defend against an imminent threat of death or serious bodily injury to the officer or to another person."

Penal Code section 835a(e)(2) elaborates this point by describing the threat of imminent death or serious bodily injury to be one where "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. 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."

Further, Penal Code section 835a(a)(4) states "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." Under Penal Code section 835a(e)(3), the

totality of the circumstances is “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.”

Additionally, Penal Code section 835a(d) states that “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.”

When an officer uses force that exceeds the bounds permitted by law, such actions could become criminal. The excessive use of force by an officer is criminalized pursuant to Penal Code section 149. Penal Code section 149, a “wobbler,” states that “every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable...”

“Without lawful necessity,” for purposes of the statute governing a police officer assaulting or beating a person, means more force than was necessary under the circumstances. *People v. Perry* (2019) 248 Cal.Rptr.3d 522, 537.

Conclusion

The force applied by Officers Bennett and Nelson and Sergeant Dyemartin must be examined within the context of the totality of the circumstances known to or perceived by them at the time of the incident. Here, SDPD received a 911 call from a woman reporting Evans had pointed a gun at her. Officers contacted the reporting party and learned that Evans had pointed a gun at CW1 and CW2 and had engaged in domestic violence against CW3. A records check of Evans revealed possible gang ties and a criminal history of violent offenses. Officers then responded to the residence on Duluth Avenue to make a lawful probable cause arrest of Evans.

The circumstances of the arrest were complicated when Evans refused to exit the residence. As noted by both Nelson and Dyemartin, officers on scene were placed at a tactical disadvantage by having to execute Evans’ arrest at a house that overlooked the officers’ position. Unidentified individuals were seen moving about inside and the officers did not know who they were or how they might engage with police. If the officers moved out of a position of cover to engage Evans, they risked the possibility of a dangerous confrontation with the unknown occupants or Evans himself. The officers determined that the safest option for all was to have Evans come to them.

Law enforcement officers outside of the residence made numerous attempts to gain compliance from Evans through repeated verbal commands and a visual show of force. After their sustained efforts were fruitless, the officers made the decision to use physical force to secure Evans’ arrest. When compliance tactics were unsuccessful, the officers increased the level of force in response to Evans’ continued noncompliance. When analyzing the tactics applied by the officers, the law requires consideration of the totality of circumstances and requires an acknowledgement that officers are often forced to make quick judgments about using force.

Chief Scott Wahl
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Based on a full review of the totality of the circumstances, these officers do not bear state criminal liability for their actions. A copy of this letter, along with all materials submitted for our review, will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

cc: Deputy Chief Shawn Takeuchi, San Diego Police Department