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COUNTY OF SAN DIEGO

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October 27, 2023

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

Sheriff Kelly Martinez
San Diego Sheriff's Department
9621 Ridgehaven Ct.
San Diego, CA 92123

Re: Fatal shooting of Derrick Weatherspoon by Officer Freddy Najera-Arredondo and Officer Justin Morrison on October 18, 2022; SDO Case No. 22146761; DA Special Operations Case No. 22-123PS; Deputy District Attorney assigned: Fiona Dunleavy

Dear Chief Nisleit and Sheriff Martinez,

We have reviewed the materials compiled by the San Diego Sheriff Homicide Unit concerning the shooting of Derrick Weatherspoon on October 18, 2022. A District Attorney Investigator responded to the scene and was briefed by detectives. This case was submitted to the District Attorney's Office on January 18, 2023. Additional reports were received on March 15, 2023. The Medical Examiner's autopsy report was received on August 30, 2023, and the toxicology report on September 5, 2023.

Summary

Several citizens called the San Diego Police Department (SDPD) to report a male with a gun in the area of South 43rd Street. At 5:43 p.m., Officers Najera-Arredondo and Morrison were driving on S. 43rd Street towards the Humberto's Taco Shop. Derrick Weatherspoon ran out of the taco shop into the street directly towards the officers' patrol vehicle. Weatherspoon pointed his handgun at the officers and began firing at them. Both officers exited the patrol vehicle and returned fire. Weatherspoon continued firing at the officers as he ran past the patrol vehicle. Weatherspoon was struck multiple times by gunfire and fell to the ground with the gun still in his hand. Weatherspoon was pronounced deceased at the scene. An autopsy was conducted on October 20, 2022. The cause of death was determined as multiple gunshot wounds and the manner of death as homicide. Toxicological testing of the peripheral blood sample taken from Weatherspoon detected alcohol at a level of 0.014%, amphetamine at a level of 0.04 mg/L, methamphetamine at a level of 0.48 mg/L, and the cocaine metabolite benzoylecgonine at a level of 0.05 mg/L.

Persons Involved

Derrick Weatherspoon was a 33-year-old resident of San Diego. At the time of the incident, both Freddy Najera-Arredondo and Justin Morrison had been employed as police officers with SDPD for three years. They were in full uniform and in a marked patrol vehicle.

Statement of Civilian Witness One (CW1)

CW1 is an employee at the Great Wall Express Chinese restaurant located on South 43rd Street. At about 5:00 p.m., a male entered the Great Wall Express Chinese restaurant. The male appeared to be on drugs and was acting strange. While the male was in the restaurant, a car pulled into the parking lot. The male walked up to the car and told them to go away. The male walked back into the restaurant and dropped a gun on the floor. The male picked up the gun and sat in the northeast corner of the restaurant for a few minutes. The male then got up and walked to the front counter. The male kept mouthing "why" to the cashier. The male then asked for a cup of soda and was denied since he did not have the means to pay. After the brief awkward conversation, the male left the restaurant. The male was inside the restaurant for about 30 minutes.

Statement of Civilian Witness Two (CW2)

At about 5:30 p.m., CW2 was at Humberto's Taco Shop with her friend. Weatherspoon walked into the taco shop about 30 seconds after CW2 and her friend entered. Weatherspoon was holding a purple bandana, appeared out of breath, and was talking to himself, using different voice tones. CW2 said Weatherspoon looked "crazy." She believed he was possibly under the influence of drugs or alcohol.

At some point, Weatherspoon left a cup of water on a table near the front counter and sat at a table on the other side of restaurant. Weatherspoon sat at a table with his back against the wall, facing the other customers. Suddenly, Weatherspoon said, "Hey, hey!" CW2 looked at Weatherspoon. Weatherspoon began telling CW2 to get up and grab his cup of water on the table and bring it him. CW2 tried to ignore Weatherspoon because he made her feel nervous and she believed he was on drugs. CW2 looked away from Weatherspoon and he responded by saying, "Oh, so you're not gonna look at me? You're not gonna fucking look at me?" Weatherspoon repeated this for about five minutes. At times he would hit himself.

While CW2 and her friend sat and waited for their food, Weatherspoon got up, walked past their table, and retrieved his cup of water. After grabbing his cup, Weatherspoon sat down at another table, next to the front door of the taco shop. CW2 saw Weatherspoon had a black gun. He began to wave it around while talking to himself as he sat at the table. Weatherspoon kept asking CW2, "You're not gonna look at me?" CW2 was nervous and was not quite sure what to do. CW2 thought about sliding her phone to tell her friend with a message that Weatherspoon had a gun and not to panic. CW2 also thought about telling the taco shop employees at the front counter that Weatherspoon had a gun, but she was too afraid to move.

Weatherspoon became more aggressive and continued to talk to himself and hit himself. Weatherspoon looked over and saw a police car driving down the street. Weatherspoon said something along the lines of, "Oh blood," and ran out of the taco shop. Weatherspoon turned the gun sideways and began shooting at the police car while running toward it. The police car was still moving and the officer was still inside the police car when Weatherspoon began shooting. When the shots went off, everyone in the taco shop ducked down. CW2 ducked down and exited the taco shop through a side door. CW2 heard officers tell Weatherspoon something like, "Get down, drop your weapon." This was followed by a few more gunshots. CW2 remained at the scene for about 10 minutes before leaving. CW2 and her friend contacted police later in the evening to tell them what they had witnessed.

Statement of Civilian Witness Three (CW3)

CW3 walked to Humberto's Taco Shop to order food. CW3 saw Weatherspoon sitting at a table talking to himself. Weatherspoon's eyes were red and he appeared to be disoriented. Weatherspoon was talking to himself. CW3 didn't know if Weatherspoon was under the influence of drugs or if he had a mental illness. CW3 placed his order and sat down at one of the tables. About 10 seconds later, Weatherspoon walked toward CW3 and grabbed a cup that was on the edge of his table. Weatherspoon then sat at another table in the taco shop. About one minute later, Weatherspoon stood up and CW3 saw the handle of a black pistol in his left pocket. CW3 saw Weatherspoon use his left hand to retrieve a black gun. CW3 noticed an SDPD police car with its lights on but no siren driving in the direction of the taco shop. CW3 noticed Weatherspoon focusing his attention on the police car. Weatherspoon immediately exited the taco shop and pointed the gun in the direction of the police car and started firing. CW3 heard three or four "popping" noises. CW3 ducked down under a table because he believed Weatherspoon was shooting at the arriving police officers. CW3 and other customers later stood up and looked outside and saw several patrol vehicles arriving in the area. CW3 saw Weatherspoon lying on the ground.

Statement of Civilian Witness Four (CW4)

CW4 and her boyfriend, CW5, along with their six-year-old daughter arrived at Humberto's Taco Shop in their vehicle. CW5 exited their vehicle and opened the back door to speak with their daughter. CW4 was looking over her left shoulder towards the back seat area when she heard what she believed to be a car backfiring. CW5 yelled for her to get down. CW4 turned to face forward and saw Weatherspoon run past her vehicle, firing a black handgun toward a police car on the street. Officers were in the car. CW4 did not know where Weatherspoon came from. CW4 ducked down in her seat but was still able to see officers react and fire back at Weatherspoon. Weatherspoon then fell to the ground. CW4 heard about 10 gunshots. CW4 did not hear Weatherspoon or the officers say anything during the incident. CW4 stated she believed the officers did not have time to say anything to Weatherspoon because he just started shooting at them. CW4 was scared. Shortly after the shooting, more police arrived and began giving Weatherspoon CPR.

Statement of Civilian Witness Five (CW5)

At about 5:30 p.m., CW5 and his girlfriend, CW4, along with their six-year-old daughter arrived at Humberto's Taco Shop. CW5 exited the vehicle. He was paying attention to his cellphone. He heard what he believed was fireworks and looked up. CW5 saw two officers at a police car. Weatherspoon was running and shooting at the officers. The officers returned fire and Weatherspoon fell to the ground. CW5 did not see where Weatherspoon came from. CW5 heard about 15 gunshots.

Statement of Civilian Witness Six (CW6)

CW6 waited in the car with her sister while their mom went inside to order. CW6 was sitting in the rear passenger side seat. CW6 could see Weatherspoon inside the taco shop near one of the first seats closest to the entrance. Weatherspoon was acting antsy and fidgety and appeared anxious. Weatherspoon then ran out of the taco shop with a silver gun in his right hand. Weatherspoon raised the gun up and pointed it in a slanted position. CW6 heard gun shots and saw Weatherspoon shooting. CW6's view was partially obstructed by a vehicle so she could not tell exactly what he was shooting at. CW6 heard about five to eight shots that sounded like they were going back and forth. Weatherspoon continued to run while shooting before falling to the ground. The windows to the vehicle CW6 was in were closed so CW6 did not hear anything other than the gunshots.

Statement of Civilian Witness Seven (CW7)

CW7 was sitting in his truck in the parking lot of a laundromat waiting for his wife. CW7 was looking at his phone when he heard people screaming and yelling. CW7 looked up and saw Weatherspoon running toward the patrol unit and begin shooting while the officers were still in the patrol unit. CW7 believed the shots shattered the front window of the patrol unit. Weatherspoon fired about six times at the officers. Weatherspoon ran out of bullets and he started running away. The officer who was in the driver's seat quickly got out. CW7 could not see the officer in the passenger seat. The officers yelled at Weatherspoon to stop or they were going to shoot him, but Weatherspoon kept running down the street. The officers returned fire and Weatherspoon fell to the ground. The officers fired over six times. Once Weatherspoon fell to the ground, the officers ran towards Weatherspoon and kicked the gun out of the way. They turned Weatherspoon around and placed handcuffs on him.

Statement of Officer Freddy Najera-Arredondo

Najera-Arredondo had the opportunity to review his body worn camera footage before being interviewed. He was working a two-officer marked patrol unit along with Morrison. They received a radio call regarding a subject who had dropped a handgun in a public area. While they were driving to the area of the call, additional reports came in of someone waving a gun around in the area. Najera-Arredondo was concerned the subject with the gun would shoot at officers or the public. Najera-Arredondo's plan was to meet with the first reporting party to gather more information and establish if a crime had occurred. If Najera-Arredondo and Morrison were to see the subject prior to contacting the reporting party, they would conduct a high-risk pedestrian stop. Najera-Arredondo and Morrison have been patrol partners for over a year so Najera-Arredondo knew what steps they needed to take to handle this type of radio call. They had responded to similar calls and those incidents had resolved successfully using the same tactics.

Najera-Arredondo stopped at a red light on 43rd Street. While they were stopped at the intersection, another radio call was dispatched advising someone was inside Humberto's Taco Shop with a gun. Morrison pointed at Humberto's Taco Shop, which was about a block away in front of them. Najera-Arredondo activated the patrol vehicle's overhead emergency lights and went through the red light toward the taco shop. Najera-Arredondo asked Morrison, "Is it the guy on the corner?" as he couldn't remember the subject's description. While Najera-Arredondo was looking at the subject on the corner, Weatherspoon came out from the taco shop with a gun in his hand and ran directly at Najera-Arredondo and Morrison.

Najera-Arredondo alerted Morrison, saying, "Hey, watch out, he's got a gun, he's got a gun!" Najera-Arredondo opened his driver side door to step out. Weatherspoon approached Najera-Arredondo's patrol vehicle with the gun pointed at them. Najera-Arredondo heard Weatherspoon shoot once. Only seconds had passed since Najera-Arredondo first saw Weatherspoon running out of the taco shop. Najera-Arredondo drew his firearm and returned fire. He did not have time to give verbal warnings because Weatherspoon was shooting at them. Najera-Arredondo fired at Weatherspoon through the driver side window, shattering it. Weatherspoon changed direction and began to run away from Najera-Arredondo and Morrison while still holding the gun in his hand. Najera-Arredondo continued shooting until Weatherspoon fell to the ground next to a white pick-up truck.

Najera-Arredondo ran behind the white pick-up truck while keeping his gun pointed at Weatherspoon because he had observed Weatherspoon still had a gun in his hand. Najera-Arredondo began giving Weatherspoon commands not to move or he would shoot, but Weatherspoon did not respond. Morrison

was standing parallel to Najera-Arredondo but in the middle of the street out in the open. Najera-Arredondo told Morrison to come over to his location to get behind cover.

Najera-Arredondo observed the gun was still in Weatherspoon's right hand and Weatherspoon's back was moving, which made Najera-Arredondo believe Weatherspoon was still breathing. Weatherspoon attempted to get up but laid back down. He still had the gun in his hand pointed down the street. Weatherspoon's back stopped moving. He did not respond to commands given by the officers.

Najera-Arredondo reloaded his firearm with a full magazine from his duty belt. Najera-Arredondo and Morrison kept an eye on Weatherspoon until additional officers arrived on scene. Najera-Arredondo and the other responding officers formulated a plan to take Weatherspoon into custody. Najera-Arredondo moved to the front of the truck along with other officers. Multiple officers advanced toward Weatherspoon and removed the gun from his hand. Najera-Arredondo grabbed Weatherspoon's hands and another officer handcuffed him. Najera-Arredondo was directed to a nearby patrol vehicle and he was removed from the incident.

Najera-Arredondo stated he shot at Weatherspoon to stop him from shooting at Najera-Arredondo and Morrison. He believed Weatherspoon was trying to kill him and his partner and had no time to consider any force option other than lethal force. He believed that if he did not address Weatherspoon with lethal force, Weatherspoon would have kept shooting at them and killed him or someone else. There were people in the area and there was traffic. Weatherspoon had to be stopped before he hurt anybody. Najera-Arredondo stopped shooting once Weatherspoon fell to the ground.

Statement of Officer Justin Morrison

Najera-Arredondo and Morrison responded to a radio call of a male waving a gun around in a parking lot. The male reportedly put the gun away and was last seen walking away from the parking lot. As Morrison and Najera-Arredondo responded to the location, a similar radio call came from a different address of a male with a gun concealed in his sweater. Morrison was concerned for the public's safety and was afraid that someone could be seriously injured or killed if they did not locate the subject.

A third radio call from Humberto's Taco Shop was aired. Morrison could see the taco shop from the patrol vehicle. A different witness called and said the male was still holding the gun. As they approached Humberto's Taco Shop, Morrison saw a shirtless Weatherspoon run into the street from the taco shop and sprint toward their patrol vehicle. Najera-Arredondo shouted that Weatherspoon had a gun. Morrison saw Weatherspoon was holding a gun out in front of him. Morrison quickly exited the patrol vehicle. Morrison saw Weatherspoon raise the gun in their direction and a muzzle flash coming from the gun. Morrison heard a gunshot and the driver side window glass breaking. Morrison did not know if Najera-Arredondo or Weatherspoon had shot first. Morrison was scared he, his partner, or someone else would be shot and killed. In response, Morrison unholstered his handgun and fired about four or five times. He did not recall if he gave verbal warnings prior to shooting.

Weatherspoon ran southbound on S. 43rd while still holding the gun. Morrison could hear more gunshots and was unsure if the shots were coming from Weatherspoon or Najera-Arredondo. Morrison ran to the back of the patrol vehicle and fired again until Weatherspoon fell to the ground.

Morrison and Najera-Arredondo walked toward Weatherspoon, who was face down in the street. Weatherspoon still had the gun in his hand, was breathing, and still moving. Weatherspoon did not

comply with their commands to take his hand off the gun and to put his hands out. Morrison and Najera-Arredondo waited for more patrol units to arrive. Once additional officers arrived, Weatherspoon was handcuffed and taken into custody. Officers then began chest compressions on Weatherspoon. Morrison was removed from the scene and did not observe any other life saving measures provided to Weatherspoon.

Morrison feared if he did not use deadly force, a citizen, Najera-Arredondo, or he would be killed. Weatherspoon did not allow Morrison to use less lethal options because Weatherspoon used lethal force against the officers. The only option Morrison had was to use deadly force.

Investigation

The crime scene was secured, photographed, and investigated by San Diego Sheriff's Homicide detectives. All detectives' reports, audio-recorded interviews of witnesses, and interviews of involved officers, along with the Medical Examiner's autopsy report, surveillance video, and body worn camera footage were reviewed.

Multiple 911 calls were made to the San Diego Police Department. One caller described a man waving a gun and putting it in his pocket while walking through a parking lot. Another caller described a man coming inside the restaurant, dropping a gun, and then picking it up quickly. Another caller described a man who had a gun on a table in the taco shop "acting crazy." That caller was sitting at a table across from the man. The caller left the taco shop and called police. While on the phone, the caller heard shots being fired. Another caller reported a man with a gun sitting in the dining area inside Humberto's Taco Shop. That caller said people left the shop because they were scared. While on the line, the caller reported the man was shooting. Gun shots can be heard in the background of that call.

The officers involved were wearing clearly identifiable San Diego Police Department uniforms with San Diego Police shoulder patches. All officers involved were equipped with body worn cameras.

Investigators interviewed approximately twenty civilian witnesses. Of the twenty, approximately fourteen were either employees or customers of Humberto's Taco Shop. Eight of the witnesses at Humberto's Taco Shop heard gunshots but did not witness the actual shooting incident.

An examination of the scene revealed Weatherspoon was armed with a .22lr caliber Glock 44 handgun. The handgun was recovered unloaded with a magazine seated in the gun and the slide in a forward position.

Najera-Arredondo was equipped with a department-issued 9mm Glock 17 semi-automatic pistol. Morrison was equipped with a 9mm Glock 45 semi-automatic pistol. The firearms, magazines, and cartridges of each shooting officer were collected and examined by SDSO investigators. The examination determined Officer Najera-Arredondo likely fired 12 rounds and Officer Morrison likely fired 10 rounds.

A total of 22 9mm cartridge casings with the headstamp "FC 9MM LUGER" were recovered from the scene. Of the 22 casings, four were on the ground northwest of Najera-Arredondo and Morrison's patrol vehicle while nine were located on the ground near the front driver's door of the patrol vehicle. In addition, two casings were located on the driver side floorboard, one was located on the driver's

seat, and one at the driver's door panel of the patrol vehicle. Five casings were located on the ground southwest of the patrol vehicle.

A total of nine .22lr casings with the headstamp "SUPER X" were located along S. 43rd Street west of the patrol vehicle and along the path of travel taken by Weatherspoon during the shooting incident. The final casing was located next to Weatherspoon's body. All nine .22lr casings were collected. The Glock 44 handgun and .22lr casings recovered from the scene were tested and analyzed by the San Diego Sheriff's Office's Regional Crime Laboratory. The Glock 44 possessed by Weatherspoon was determined to have been operable. The expended .22lr casings collected from the scene were confirmed to have been fired from the Glock 44 handgun.

Investigators found evidence of damage caused by gunfire at distinct locations in the area of the shooting incident. Two defects caused by apparent gunfire were found at the front of a residence in the 1100 block of S. 43rd Street. One of the holes was located in a glass window that faces onto S. 43rd Street and a second hole was located on the wood paneling next to the damaged window. Najera-Arredondo and Morrison's patrol vehicle was stopped west of the residence when the shooting incident occurred. The trajectory of these two bullet holes is consistent with Weatherspoon shooting in the direction of Najera-Arredondo and Morrison. Additional evidence of gunfire was found around the area where the shooting incident took place. Multiple defects caused by apparent gunfire were located in the walls and window frame of Delicia's Taco Shop, a restaurant located southwest of where the patrol vehicle was. One of the tires on a white truck next to where Weatherspoon fell to the ground appeared to have been flattened by a penetrating bullet. A defect caused by apparent gunfire was located in a wall at Humberto's Taco Shop, northeast of the patrol unit.

Najera-Arredondo and Morrison's patrol vehicle was damaged on the driver side, consistent with being shot. The driver side front window was shattered. There was a bullet hole through the lower frame of the driver's door. The entrance hole appeared to be from the interior of the vehicle indicating it likely was caused by gunfire from Najera-Arredondo. Damage was located to the upper frame of the driver's door. Trajectory of the damage was undetermined due to the amount of damage caused to the frame. An apparent gunshot was located on the exterior driver's door handle. The penetration hole was consistent with Weatherspoon shooting in the direction of Najera-Arredondo and Morrison. Investigators located and collected a fired bullet from the ground under Najera-Arredondo and Morrison's patrol vehicle.

Video Evidence

Investigators obtained surveillance video from the interior and exterior of Humberto's Taco Shop. The footage shows Weatherspoon's behavior in the moments prior to the shooting incident. On October 18, 2022, at 5:12 p.m., Weatherspoon is seen entering the taco shop through the south entrance door holding a purple bandana in his left hand. Weatherspoon walks directly to the front counter of the taco shop and appears to briefly speak to an employee. Weatherspoon sits at a booth on the north wall. He appears hyperactive and seems to be behaving erratically. An employee places a white cup on the front counter. Weatherspoon points at the cup and appears to say something to an adult female standing across from him. The female appears to ignore Weatherspoon. A young male customer sitting at the west wall of the taco shop stands up, grabs the water cup from the counter, and places it on the table where Weatherspoon is seen sitting. Weatherspoon is animated and appears to be talking to himself. At 5:15 p.m., Weatherspoon leaves the cup on the table and exits the taco shop.

Exterior surveillance shows Weatherspoon's erratic behavior continue as he briefly walks in and out of the street while either talking to himself or to pedestrians. At 5:16 p.m., he walks away on S. 43rd Street. Surveillance video from a car wash business next to the taco shop shows Weatherspoon walking in the direction of the Great Wall Express Chinese Restaurant. Approximately 20 minutes later, surveillance video from the car wash captures Weatherspoon running back toward the taco shop.

Weatherspoon enters the taco shop through the north entrance at 5:37 p.m. Weatherspoon briefly sits on the table of a booth along the south wall near the south entrance door. Weatherspoon then quickly gets off the table and walks around the taco shop holding the purple bandana. He sits at a booth already occupied by a female. The female appears to be startled by this and immediately stands up from the booth. Weatherspoon then takes off his sweater until he is completely shirtless. Several customers notice Weatherspoon's erratic behavior and begin to get up and leave the shop. Weatherspoon continues talking to himself. At one point, Weatherspoon appears to talk to CW2 and her friend, who are seen sitting on the opposite side of the shop.

At 5:44 p.m., Weatherspoon stands up from the booth and grabs the same white cup from the table. Weatherspoon then walks back to the booth located against the south wall, places the bandana on the table, and sits down facing the south door. Weatherspoon lifts the bandana from the table, exposing the firearm on the table. He grabs the firearm with his right hand and holds it up. Weatherspoon appears to manipulate the firearm and waves it around for several seconds. He briefly sets the gun on the table and appears to be talking to himself while handling the bandana. Weatherspoon appears to look outside toward S. 43rd Street. He grabs the gun from the table and quickly exits the shop at 5:45 p.m.

At 5:45 p.m., surveillance video from the exterior of the taco shop shows Najera-Arredondo and Morrison's patrol vehicle driving north on S. 43rd Street with emergency lights on. As the patrol vehicle approaches the taco shop, Weatherspoon sprints out of the taco shop into the street directly toward the patrol vehicle. The patrol vehicle stops and both driver and front passenger doors open. The officers exit the patrol vehicle and several civilians react to the gunshots by taking cover. The street is busy with vehicle traffic and cars are seen stopping in their lanes. Weatherspoon runs past the patrol vehicle until he collapses in the southbound lanes of S. 43rd Street. Video from the interior of Humberto's Taco Shop shows customers running for cover and getting down on the floor.

All officers involved were equipped with body worn cameras. Body worn camera footage from Morrison and Najera-Arredondo show them stop at a signal light on S. 43rd Street and Alpha Street. Morrison points and says, "It's right there," indicating the taco shop is just ahead. Najera-Arredondo activates the emergency lights and drives through the intersection northbound on S. 43rd Street. At 5:45 p.m., Najera-Arredondo quickly places the patrol vehicle in park while repeatedly saying, "Watch out!" He then alerts, "He's got a gun!" Both Najera-Arredondo and Morrison quickly exit the patrol vehicle while unholstering their handguns. Footage from Najera-Arredondo shows Weatherspoon running southbound alongside the patrol vehicle with both arms extended outward in a shooting position. A small cloud of smoke is seen where Weatherspoon's hands are joined together.

Footage from Morrison's camera shows Morrison exit the patrol vehicle and fire his weapon over the hood toward Weatherspoon. Morrison fires a few more times over the roof of the patrol vehicle as he tracks Weatherspoon running southbound on S. 43rd Street. Najera-Arredondo appears to still be seated in the patrol vehicle with the door open when the gunshots begin. The window of the driver's door shatters as Najera-Arredondo fires several times while standing up and tracking Weatherspoon, who is

running southbound on S. 43rd Steet. Body worn camera footage from Najera-Arredondo captures Weatherspoon continuing to fire at Morrison and Najera-Arredondo as he runs past them.

Weatherspoon falls to the ground in the street near a white truck parked at the west curb. Morrison and Najera-Arredondo approach with guns drawn while giving commands to Weatherspoon to stay on the ground and to keep his hands out. Najera-Arredondo's body worn camera footage captures Weatherspoon lying on his stomach, still holding the gun in his right hand. Najera-Arredondo ejects the magazine from his firearm and inserts another. As other officers arrive on the scene, Morrison also ejects the magazine from his firearm and places another in his firearm. Verbal commands are heard being given to Weatherspoon to drop the gun and get the gun out of his hands. Weatherspoon does not react. Najera-Arredondo is heard telling another officer that Weatherspoon shot at him. Officers move to the front of the white truck and formulate a plan to approach and arrest Weatherspoon, who is still holding the gun in his right hand. Officers ultimately approach Weatherspoon, remove the gun from his hand, and handcuff him. Najera-Arredondo and Morrison are then removed from the scene.

Autopsy

An autopsy was conducted on October 20, 2022. The cause of death was determined as multiple gunshot wounds and the manner of death as homicide. Toxicological testing of the peripheral blood sample taken from Weatherspoon detected alcohol at a level of 0.014%, amphetamine at a level of 0.04 mg/L, methamphetamine at a level of 0.48 mg/L, and the cocaine metabolite benzoylecgonine at a level of 0.05 mg/L.

Legal Standards of Criminal Liability

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. The law provides, in part, 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...[t]o 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).


“[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(4).

“A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section “retreat” does not mean tactical repositioning or other de-escalation tactics.” Penal Code section 835a(d).

Conclusion

Officers Najera-Arredondo and Morrison were suddenly confronted by Weatherspoon sprinting quickly toward them while pointing a gun at them. To avoid being shot in their patrol unit, the officers had to scramble quickly from their seats and address the lethal threat Weatherspoon presented. Weatherspoon fired at least nine shots, evidenced by the nine casings found along his path of travel. One of his rounds hit the driver’s door next to Najera-Arredondo. This happened on a crowded street lined by apartments, shops, and homes while pedestrian and vehicular traffic were present. One of the homes was struck by rounds from Weatherspoon. When the officers shot Weatherspoon, they reasonably believed, based on the totality of circumstances, that such force was necessary to defend against the imminent threat of death or serious bodily injury. Officer Najera-Arredondo and Officer Morrison bear no state criminal liability for their actions in defending themselves and the civilians on South 43rd Street. 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 Richard Freedman
San Diego Police Department
Captain James Emig, Jr.
San Diego Sheriff’s Department