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December 22, 2023

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

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

Re: Discharging of Firearm at Brenten Kinzenbaw on March 10, 2023, by Deputy Carlos Ramirez-Ochoa; SDPD Case No. 23-604091; DA Special Operations Case No. 23-031PS; Deputy District Attorney assigned: Frederick Washington

Dear Sheriff Martinez and Chief Nisleit:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Division concerning the circumstances leading to the discharging of a firearm at Brenten Kinzenbaw by San Diego Sheriff's Deputy Carlos Ramirez-Ochoa on March 10, 2023. A District Attorney Investigator responded to the scene and was briefed about the incident. This case was submitted to the District Attorney's Office for review on July 7, 2023.

Summary

On March 9, 2023, at approximately 10:30 p.m., Deputy Ramirez-Ochoa located a stolen Toyota Tacoma truck parked in front of 1127 Oro Street in an unincorporated area of El Cajon. Brenten Kinzenbaw was listed as the known suspect for the stolen vehicle and a related commercial burglary that had occurred earlier the same day. Ramirez-Ochoa began to conduct surveillance of the truck from a distance. Due to the poor lighting in the area, Ramirez-Ochoa believed the truck was unoccupied. At approximately 12:05 a.m., LE1 arrived on scene. Ramirez-Ochoa and LE1 decided to recover and impound the stolen vehicle.

The deputies approached the truck in their patrol vehicles. When they neared the stolen truck, they observed CW1 standing on the passenger side of the truck and Kinzenbaw in the driver's seat. Both deputies exited their patrol vehicles. Ramirez-Ochoa detained CW1 and LE1 attempted to contact Kinzenbaw through the closed driver's side door. LE1 ordered Kinzenbaw

to exit the truck and to not start the engine. Kinzenbaw ignored the commands and started the engine. He put the truck in reverse and struck Ramirez-Ochoa's patrol vehicle. Due to the positioning of both Ramirez-Ochoa's patrol vehicle and a civilian vehicle that was parked directly behind the truck, Kinzenbaw's path to the rear was blocked. Kinzenbaw then drove forward toward Ramirez-Ochoa and CW1. Ramirez-Ochoa fired his firearm at Kinzenbaw while running for safety around the front of LE1's patrol vehicle. The stolen truck Kinzenbaw was driving struck LE1's patrol vehicle as Kinzenbaw fled the scene. Kinzenbaw crashed the truck a short distance away and fled on foot. He was located a short time later hiding in a shed in the backyard of a nearby residence and was taken into custody. A fixed-blade knife was recovered from where Kinzenbaw was hiding.

Kinzenbaw sustained a gunshot wound to the leg in addition to other injuries related to the traffic collision. He was transported to the hospital for treatment. Toxicological testing of Kinzenbaw's blood revealed the presence of methamphetamine (182 ng/mL), amphetamine (34 ng/mL), lorazepam (19 ng/mL), and fentanyl (1.1 ng/mL).

For the offenses committed, Kinzenbaw was criminally charged with multiple felonies and a misdemeanor in San Diego Superior Court case SCE416674. On July 28, 2023, he entered a guilty plea to one count of Penal Code 245(a)(4), felony assault by means likely to produce great bodily injury, and one count of Vehicle Code section 2800.2(a), felony evading an officer with reckless driving. He was subsequently sentenced to a term in state prison.

On the night of the incident, after Kinzenbaw fled in the stolen truck, CW1 also fled the scene. CW1 was later identified and interviewed.

Persons Involved

At the time of this incident, Kinzenbaw was a 25-year-old transient with a prior recorded address in Alpine. Ramirez-Ochoa is a deputy with the San Diego Sheriff's Department and at the time of the incident had been so employed for approximately five years.

Civilian Witness One (CW1)

CW1 was at 1127 Oro Street on the night of the shooting. His friend who lives at the house asked him to go outside and tell the guy in the truck something. CW1 walked out to the truck and delivered the message. CW1 did not know the guy in the truck and had never seen him before that night. As CW1 was talking to the guy in the truck, police contacted them. CW1 did not know why deputies were there, but he thought they were just doing their job. CW1 was down on his knees next to the truck and said it all happened so fast. CW1 wasn't sure what happened next but remembered the truck driving at him and he had to jump out of the way. CW1 did not sustain any injuries and the truck sped away. The deputies pursued the truck and CW1 left the area. CW1 heard that the guy driving the truck was caught down the street.

Civilian Witness Two (CW2)

CW2 was at 1127 Oro Street hanging out with friends. They were drinking beer and smoking weed. CW2 said he was coherent and all the sudden heard gunshots. CW2 looked out the front

door of the residence and saw a cop running around a patrol vehicle firing his weapon. As the officer was shooting, people were pushing each other out of the way. CW2 did not see who the officer was shooting at, but assumed someone was shooting back at the officer. CW2 saw the gunfire as the officer shot everywhere. CW2 believed the officer was defending himself. CW2 was on the front porch of the residence, which he estimated was approximately 25 feet from the incident. CW2 did not hear the officer or anyone else say anything during the shooting. People inside the residence told CW2 the officer was shooting at a little blonde kid who was at the house earlier. CW2 heard between four and five gunshots.

Law Enforcement Officer One (LE1)

LE1 was accompanied by his police dog (K-9) during this incident. LE1 was at the station when he heard Ramirez-Ochoa advise over the radio that he had located a stolen vehicle and was going to conduct surveillance on the vehicle. LE1 drove to Ramirez-Ochoa's area and once there, began researching the stolen vehicle and the details of the original call. LE1 found that Kinzenbaw was the suspect of the original stolen vehicle case. He viewed photographs of Kinzenbaw through law enforcement computer databases. LE1 and Ramirez-Ochoa agreed to watch the vehicle for approximately one-half hour. Ramirez-Ochoa had a view of the vehicle while LE1 sat in his patrol vehicle at an intersection south of the stolen vehicle's location. After watching the vehicle for a period of time, Ramirez-Ochoa contacted LE1 and made the decision to recover the vehicle.

LE1 believed the stolen truck was unoccupied based on the information Ramirez-Ochoa had provided him. LE1 knew 1127 Oro Street to be "a problem house" and was aware of historical information identifying the residence as being involved with narcotics and stolen vehicle activity. LE1 arrived in front of 1127 Oro Street in his patrol vehicle and the stolen vehicle was parked on the east curb line with a large white van parked behind it. As LE1 pulled up to the stolen truck, he noticed CW1 standing near the passenger side of the vehicle. He also observed another male in the driver's seat of the vehicle. LE1 recognized the male in the driver's seat as Kinzenbaw based on having seen photographs of him when researching the stolen vehicle. LE1 stopped his patrol vehicle, partially blocking the front of the stolen vehicle, so he could have a view of the front yard of 1127 Oro Street for officer safety reasons.

LE1 exited his patrol vehicle and removed his firearm. LE1 held CW1 and Kinzenbaw at gunpoint, telling CW1 to place his hands on the hood and telling Kinzenbaw to place his hands on the steering wheel. Ramirez-Ochoa arrived and parked his patrol vehicle next to the white van. LE1 asked Ramirez-Ochoa to take control of CW1. Ramirez-Ochoa walked around the rear of the stolen vehicle and contacted CW1 on the passenger side. LE1 removed his police service dog from his patrol vehicle and began giving Kinzenbaw commands at the driver's door of the vehicle. Kinzenbaw began reaching around the vehicle near the dash area as if he was going to start the vehicle. LE1, with his police dog in one hand, attempted to open the driver's door. Kinzenbaw held it shut while starting the vehicle. Kinzenbaw drove in reverse, striking Ramirez-Ochoa's patrol vehicle. Kinzenbaw then "gunned it and drove straight toward" Ramirez-Ochoa. Ramirez-Ochoa was positioned between the front of LE1's vehicle and a fence along the front of 1127 Oro Street. LE1 heard gunshots and then Kinzenbaw fled in the stolen vehicle, striking

LE1's patrol vehicle. LE1 and Ramirez-Ochoa attempted to pursue Kinzenbaw in their patrol vehicles, but lost sight of the vehicle and then returned to the scene of the shooting.

LE1 believed Ramirez-Ochoa's life was in danger due to Kinzenbaw driving the vehicle at Ramirez-Ochoa.

Statement of Ramirez-Ochoa

While on patrol, Ramirez-Ochoa drove by 1127 Oro Street, an address he has knowledge of and experience with as being associated with incidents of stolen vehicles, drugs, and burglaries. He commonly conducts records checks of vehicles associated with the address. When he drove by the address on this date, he observed a vehicle he believed to be unoccupied. He did not recognize the vehicle as being associated with the address. Upon running a records check of the vehicle, he found it was reported stolen. He decided to watch the vehicle from a distance to see if anyone approached it. He informed his supervisor of his decision. LE1 joined Ramirez-Ochoa in watching the stolen vehicle. After a period of time, LE1 and Ramirez-Ochoa made the decision to recover the vehicle. The vehicle was parked along the fence line in front of 1127 Oro Street. LE1 approached the stolen vehicle first, pulling his patrol vehicle parallel in front of it. Ramirez-Ochoa pulled up to the vehicle and observed LE1 talking to someone on the passenger side of the vehicle but did not know who.

As Ramirez-Ochoa exited his patrol vehicle, he inadvertently turned his body worn camera to standby mode when he had intended to begin recording the recovery of the vehicle. As Ramirez-Ochoa approached, he observed CW1 standing on the passenger side of the vehicle with his hands on the hood. Ramirez-Ochoa removed his firearm and held it at his side while he began dealing with CW1. At that moment, Ramirez-Ochoa noticed Kinzenbaw sitting in the driver's seat of the stolen vehicle. Ramirez-Ochoa illuminated the passenger compartment of the vehicle with his flashlight. Ramirez-Ochoa pointed his firearm at Kinzenbaw as he observed him moving inside the vehicle. He gave Kinzenbaw verbal commands to the effect of "don't do anything or you're going to be shot."

LE1 approached Kinzenbaw at the driver's side door of the vehicle and Ramirez-Ochoa stopped pointing his firearm at Kinzenbaw to avoid crossfire with LE1. Ramirez-Ochoa was trying to pay attention to both CW1 and the interaction between LE1 and Kinzenbaw. Ramirez-Ochoa ordered CW1 to go down to his knees. Ramirez-Ochoa could tell Kinzenbaw was not complying with LE1's orders, based on Kinzenbaw's facial reactions and his movements inside the vehicle. Kinzenbaw made a quick move inside the vehicle and drove the vehicle in reverse. Ramirez-Ochoa could hear the engine rev as the vehicle moved in reverse. It struck the van parked behind it. Ramirez-Ochoa was trying to help CW1 up from the ground while looking directly at Kinzenbaw. Kinzenbaw drove the vehicle forward along the fence line striking LE1's vehicle. Ramirez-Ochoa was now on the driver's side of the stolen vehicle as it drove towards him. He discharged his firearm at Kinzenbaw and the vehicle. Ramirez-Ochoa did not remember how he got from the fence line area and passenger side of the stolen vehicle to the street. Ramirez-Ochoa believed the vehicle was going to strike him or CW1 and felt he needed to "stop the threat." He estimated he fired approximately four times. Based on his positioning, Ramirez-

Ochoa did not feel like he would have been able to jump the fence into the yard of 1127 Oro Street without being struck.

Ramirez-Ochoa and LE1 attempted to pursue Kinzenbaw in their patrol vehicles but lost sight of him and returned to the scene of the shooting.

Toxicology

After Kinzenbaw was transported to the hospital, blood was drawn for toxicological testing. The results of the testing revealed the presence of methamphetamine at a level of 182 ng/ml, amphetamine at a level of 34 ng/ml, lorazepam at a level of 19 ng/ml, and fentanyl at a level of 1.1 ng/ml.

Investigation

The scene was secured by deputies from the San Diego Sheriff's Department (SDSD). San Diego Police Department's (SDPD) Homicide Unit processed the scene and investigated the shooting. All detectives' reports, crime scene investigators' reports, photographs, audio recorded witness interviews, body worn camera, and other audio recordings were reviewed. All these items were found to provide evidence corroborating the officers' and witness' statements. The shooting and the events that led to it were captured on LE1's body worn camera. Ramirez-Ochoa did not record the incident with his body worn camera due to his inadvertent selection of standby mode when approaching the scene. All deputies involved were wearing clearly identifiable police uniforms and were driving clearly marked patrol vehicles.

Additional deputies and officers responded to the incident, participated in the search for Kinzenbaw, and investigated the traffic collision. However, no officers or deputies other than LE1 and Ochoa-Ramirez were present during the shooting.

Ramirez-Ochoa utilized his department-issued Glock Model-17 9mm handgun. The firearm contained an inserted 17-round capacity magazine overloaded with 18 9mm rounds and one 9mm round in the chamber for a total of 19 9mm rounds. Based on the round count described above and 18 rounds being in the 17-round capacity magazine, it is believed the spring of the magazine was worn down enough to fit one extra round. After the shooting, Ramirez-Ochoa's firearm was inspected by a homicide detective and a crime scene specialist. The slide was forward with an inserted magazine. There were nine 9mm rounds in the magazine and one 9mm round in the chamber for a total of ten 9mm rounds. Nine spent 9mm casings were located at the scene. The headstamps on the casings matched the headstamps of the rounds in Ramirez-Ochoa's firearm and magazine. Based on the number of rounds loaded in Ramirez-Ochoa's firearm and the number of spent casings recovered at the scene, Ramirez-Ochoa fired nine rounds from his firearm.

The area of the shooting and state of the scene at 1127 Oro Street was documented by homicide detectives and crime scene specialists. The yard of 1127 Oro Street was bordered by an approximate waist-high chain link fence and sliding gate that was partially open across the driveway. The stolen vehicle had been parked in front of 1127 Oro Street on the unpaved dirt

shoulder of the road. There were several tire tracks in the dirt in the area where Kinzenbaw drove the stolen vehicle. Two of the tracks paralleled each other and were directed toward the fence and then turned toward the street. A wood mailbox post in the dirt along the fence line and near the tire tracks was partially pushed over and the metal mailbox was on the ground.

A glass smoking pipe consistent with the type used to smoke narcotics was located in the dirt along the area where the driver's side of the stolen vehicle was positioned.

Kinzenbaw was ultimately located and arrested in the 1300 block of Arlington Place, El Cajon. A blood trail was found leading from the area where Kinzenbaw crashed the stolen vehicle to the backyard of a residence in the 1300 block of Arlington Place. A knife and pool of blood were located on the floor of the shed on the property where Kinzenbaw was located and taken into custody. Kinzenbaw sustained a gunshot wound to the leg in addition to other injuries related to the traffic collision. He was transported to the hospital for treatment.

Ramirez-Ochoa's patrol vehicle sustained damage to the front passenger side fender and bumper area from Kinzenbaw striking it as he drove the stolen vehicle in reverse. LE1's patrol vehicle had similar damage as a result of Kinzenbaw striking the front passenger side as he drove the stolen vehicle forward between LE1's vehicle and the fence line to flee.

The stolen Toyota Tacoma truck was processed by homicide detectives and crime scene specialists. The vehicle sustained extensive damage in the traffic collision. In addition, nine apparent penetrating bullet holes were located at various points on the vehicle. There was one hole in the right hood area near the windshield, one hole in the front driver's side fender area, and seven holes in the driver's side door. Six penetrating bullet holes were located on the inside of the driver's side door panel. The center console area had red staining consistent with blood.

For the offenses committed in relation to these events, Kinzenbaw was criminally charged with multiple felonies and a misdemeanor in San Diego Superior Court case SCE416674. On July 28, 2023, he entered a guilty plea to one count of Penal Code 245(a)(4), felony assault by means likely to produce great bodily injury, and one count of Vehicle Code section 2800.2(a), felony evading an officer with reckless driving. He was subsequently sentenced to a term in state prison.

Body Worn Camera

Both deputies were equipped with body worn cameras, but Ramirez-Ochoa's was not recording during the shooting. LE1's body worn camera was recording and captured the shooting. The footage shows LE1 driving up to the stolen vehicle. LE1 noticeably turns his steering wheel to the right as his patrol vehicle comes to a stop consistent with positioning his patrol vehicle partially in front of the stolen vehicle while facing 1127 Oro Street. Upon exiting his patrol vehicle, LE1 walks around the front of his vehicle onto the dirt shoulder of the road. LE1 approaches the front of the stolen vehicle and uses his flashlight to illuminate the passenger side of the stolen vehicle and CW1. CW1 is seen accessing the open rear passenger door of the vehicle. LE1 gives verbal commands to CW1 to put his hands on the vehicle. CW1 closes the door and places his hands on the hood of the stolen vehicle. As LE1 approaches CW1,

Kinzenbaw can be seen sitting in the driver's seat of the vehicle moving around. LE1 gives verbal commands to both CW1 and Kinzenbaw, telling them to follow his orders or he would deploy his K-9.

Ramirez-Ochoa approaches from the back of the stolen vehicle and stands next to CW1 at the passenger side door. Ramirez-Ochoa points his firearm at Kinzenbaw and illuminates the passenger compartment of the vehicle with his flashlight. LE1 walks around the front of the vehicle while telling Kinzenbaw to place his hands on the steering wheel. Kinzenbaw responds by placing his hands on the top of the steering wheel. Ramirez-Ochoa gives Kinzenbaw verbal commands not to move or he will be shot. LE1 removes the K-9 from his patrol vehicle and holds it by the collar while he contacts Kinzenbaw at the closed driver's door. LE1 is heard giving numerous commands to not move. The engine of the stolen vehicle can be heard starting.

Kinzenbaw can be seen quickly driving the vehicle in reverse, angling the front of the vehicle at Ramirez-Ochoa as he is standing along the fence line. Kinzenbaw then accelerates the vehicle forward at Ramirez-Ochoa. Ramirez-Ochoa runs toward the front of LE1's patrol vehicle as Kinzenbaw drives the vehicle toward him. Ramirez-Ochoa makes it around the front of the patrol vehicle and is out of sight as nine gunshots are heard while Kinzenbaw accelerates past the front of the patrol vehicle and flees. LE1 broadcasts the shooting over his radio. LE1's body worn camera footage captures LE1 attempting to pursue Kinzenbaw and eventually returning to the scene. As LE1 arrives back at the scene, Ramirez-Ochoa informs him that his body worn camera was not on. LE1 tells Ramirez-Ochoa that his camera was recording.

Legal Analysis

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 to defend against an imminent threat of death or serious bodily injury to the officer or to another person." Penal Code section 835a(c)(1)(A).

The statute defines "deadly force" 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(e)(1).

An imminent threat of death or serious bodily injury is 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." Penal Code section 835a(e)(2).

The statute defines totality of the circumstances as “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).

The statute further states “[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.” Penal Code section 835a(2). “[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(4).

Additionally, 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 using 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:

Ramirez-Ochoa had prior knowledge of 1127 Oro Street as a location associated with criminal activity. When he learned the seemingly unoccupied Toyota Tacoma parked in front of the residence was stolen, Ramirez-Ochoa developed a plan to watch it from a distance in an attempt to identify a suspect and take them into custody. Ramirez-Ochoa notified his supervisor and briefed LE1 on the situation. After watching the vehicle for a period of time and still believing it to be unoccupied, Ramirez-Ochoa and LE1 decided to recover the stolen vehicle. They approached the parked Tacoma in their patrol vehicles and tactically positioned their patrol vehicles. LE1 and Ramirez-Ochoa realized the vehicle was occupied and observed Kinzenbaw in the driver’s seat. LE1 knew Kinzenbaw was the listed suspect of the original stolen vehicle case and recognized him. Kinzenbaw ignored verbal commands to not move and instead started the stolen vehicle, ultimately driving toward Ramirez-Ochoa and CW1 as he attempted to flee. CW1 had to jump out of the way to avoid being struck. Ramirez-Ochoa was in fear for his safety and believed he would be struck by the vehicle. Ramirez-Ochoa fired his firearm at Kinzenbaw to stop the threat as he attempted to move out of the way. Kinzenbaw was struck by rounds and sustained non-life-threatening injuries.

Ramirez-Ochoa was suddenly confronted with the unexpected and imminent threat of being run down by Kinzenbaw as Kinzenbaw drove the stolen truck toward him. Ramirez-Ochoa reasonably believed Kinzenbaw was about to strike him or CW1. Based on the totality of the circumstances, a reasonable officer in Ochoa-Ramirez’s situation would also believe that

Sheriff Kelly Martinez
Chief David Nisleit
Page 9 of 9

Kinzenbaw had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury. Therefore, Ramirez-Ochoa bears no state criminal liability. 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