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July 26, 2024

Sheriff Kelly Martinez
San Diego Sheriff Department
9621 Ridgeway Court
San Diego, CA 92123

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

Non-fatal shooting of Mr. Jorge Sandoval on April 21, 2023, by San Diego Sheriff's Deputy Corporal Evan McCormick; San Diego Police Department Case No. 23-016781; DA Special Operations Case No. 23-040PS; Deputy District Attorney assigned: D. Cal Logan

Dear Sheriff Martinez and Chief Wahl:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Division and Patrol Division concerning the circumstances leading to the shooting of Jorge Sandoval by San Diego Sheriff's Deputy Corporal Evan McCormick on April 21, 2023. A District Attorney Investigator responded to the scene and was briefed on the incident. The investigative case was submitted to the San Diego District Attorney's Office on July 12, 2023, while toxicology results were pending. Toxicology results were obtained on July 1, 2024.

Summary

On April 21, 2023, at approximately 1:00 a.m., Deputy Corporal McCormick and another deputy sheriff were dispatched to a 911 call at a residence in Fallbrook. The caller told the 911 operator that her husband, Jorge Sandoval, was suicidal, possibly intoxicated, and was lying on the ground in front of the home. She explained that earlier, Sandoval had arrived home with a firearm, but she had hidden it. As the caller was speaking to the dispatcher, Sandoval suddenly confronted her and unsuccessfully tried to take the phone from her. Sandoval pointed a gun at his head and then locked himself inside a room in the house. The couple's two young children were sleeping in the home at the time of this incident.

McCormick and his partner arrived and spoke with the caller outside of the residence. She reported Sandoval was inside their home with access to a pistol and rifle and the children were also inside in a separate bedroom.

While the deputies were speaking with the reporting party, Sandoval appeared from near the rear of the residence and began walking toward them while holding a long rifle. McCormick turned on the light affixed to his duty rifle and pointed it at Sandoval. Both deputies ordered Sandoval to show his hands. Sandoval had the rifle raised and pointed it towards them. Sandoval continued to walk forward and yelled back, "What are you going to do?"

McCormick then fired six rounds, striking Sandoval, causing him to fall to the ground. The deputies ordered Sandoval to roll away from the rifle, but he did not. Because the rifle was near Sandoval, LE1 and McCormick waited behind cover until additional deputies arrived.

Once it was safe to approach, deputies took Sandoval into custody and rendered aide. Sandoval was found to be in possession of three knives and multiple rounds of loose and boxed ammunition. Sandoval was transported to the hospital for treatment for the four gunshot wounds he suffered during the incident.

Toxicological testing was conducted by Bio-Tox Laboratories on a urine sample obtained from Sandoval. Hydromorphone was detected at a level of 461 ng/mL, fentanyl was detected at a level of 313 ng/mL, and norfentanyl was detected at a level of 292 ng/mL. However, these substances could have been administered by hospital staff during treatment. Sandoval's blood was also collected at the hospital, and Bio-Tox Laboratories later conducted testing of the blood for alcohol. Results showed the ethyl alcohol level to be 0.080%.

Sandoval was criminally charged in San Diego Superior Court case CN443077 with two counts of violating Penal Code section 69, Resisting an Executive Officer, two counts of violating Penal Code section 422, Making a Criminal Threat, and one count of violating Penal Code section 21310, Carrying a Concealed Dirk or Dagger. The criminal complaint also alleged Sandoval personally used a firearm in the commission of several of these offenses, in violation of Penal Code section 12022.5(a). On August 25, 2023, Sandoval entered guilty pleas to all five charges and admitted all allegations. He was subsequently sentenced.

Persons Involved

At the time of this incident, Sandoval was a 41-year-old resident of San Diego County. McCormick had been employed as a deputy with the San Diego Sheriff's Department for 15 years.

Statement of Civilian Witness One (CW1)

CW1 and Jorge Sandoval are married and have two children, ages 4 and 9. The family lives in a residence on the Kendall Farms Nursery. Recently, Sandoval has been anxious, desperate, irritable, and paranoid. Most of the couple's recent arguments are about Sandoval's infidelity and his admitted cocaine use. Sandoval is a construction worker but has not gone to work since April 3, 2023. During the time since then, Sandoval was missing for a day, has walked out of counseling, missed church, has been drinking, and has been acting distant and very nervous.

CW1 told her therapist on April 20 that she was fearful for her life because of Sandoval's behavior and his access to weapons. He would react violently when he got angry but had never

struck CW1. The therapist provided CW1 with phone numbers she could call and advised her to call 911 if there was an emergency.

On April 21, at approximately 1:00 a.m., Sandoval arrived home through the back kitchen door and was holding a brown rifle. He set it down and then collapsed. He appeared to be drunk or drugged. Sandoval then stood back up and grabbed CW1 by the biceps, squeezing and yanking her. Sandoval then went outside. CW1 saw the rifle on the floor and hid it in the bathroom. CW1 went outside and saw Sandoval was collapsed on the ground. CW1 heard Sandoval say multiple times he wanted to die and believed Sandoval needed help. She called the psychiatric assistance phone number, but the call taker could not hear her, so CW1 hung up and called 911.

While CW1 was on the phone with the dispatcher, Sandoval dragged himself back into the house. When deputies were at the gate to the residence, Sandoval came out of the bedroom and asked CW1, "What are you doing?" CW1 told Sandoval he needed help. Sandoval tried to grab the cell phone from CW1, but she was able to hold onto it. Sandoval then pointed a small handgun at his head. CW1 yelled, "Alberto, no!" while she covered her eyes. Sandoval ran back into their residence and locked himself in a bedroom.

CW1 walked out of the residence and met with the two deputies. CW1 told LE1 that Sandoval had held a gun to his head and could come out of their residence any minute through a back door. Sandoval then came around the corner of their residence holding a rifle in front of him. As Sandoval approached, Sandoval and the deputies were yelling at each other and CW1 ran into the house. CW1 heard three to four gunshots. The deputies were yelling instructions at Sandoval, but he was not cooperating.

CW1 allowed investigators to view her right arm. There was visible redness to her right bicep area and a scratch on her right forearm.

Statement of Civilian Witness Two (CW2)

CW2 is CW1 and Sandoval's nine-year-old son who was home and inside his bedroom when the shooting occurred. CW2 said his parents have been arguing more and more recently. Some of the arguments have been about getting a divorce and others have been about Sandoval's unsafe driving.

Before the shooting, his parents were screaming at one other. CW1 told CW2 Sandoval had fallen on the floor. CW2 heard Sandoval saying he wanted to die. CW1 called the police and Sandoval went to "get his guns" and went outside. Sandoval's guns include a BB gun, a wooden gun, two sniper guns, a machine gun, a revolver, a pistol, and a rifle. CW2 was falling asleep when CW1 was calling the police. CW2 was awakened by the sound of gunshots and shortly after, he saw red and blue flashing police lights. CW2 hid flat on the floor of his bedroom with his sister. CW2 heard a police officer's voice saying, "He shot."

Statement of Law Enforcement Witness One (LE1)

LE1 and McCormick responded to a "suicidal subject" call at Sandoval's residence. LE1 was notified by dispatch there was possibly an argument ensuing at the scene.

LE1 had been to this same residence about two to three months prior for an argument between Sandoval and CW1. At that previous call, Sandoval and CW1 argued about CW1 leaving the house with their children. When LE1 arrived on that date, CW1 was already outside with the children, and she and the children ended up leaving to another family member's house. During that incident, CW1 told deputies Sandoval had firearms. She said the argument was only verbal. When the deputies attempted to contact Sandoval on that occasion, Sandoval did not answer the door, so they left the property and were not called back.

When McCormick and LE1 arrived on scene for the current incident, they walked toward the house. It was dark outside but LE1 observed CW1 on the phone near the front door. He called her over to speak with him. CW1 told LE1 Sandoval had been drinking and that he came home with a rifle. She did not know if it was real or not. CW1 also stated Sandoval put a firearm to his own head earlier and he still had other firearms in the residence. CW1 sounded very concerned because her children were still inside.

As LE1 was speaking with CW1 and beginning to formulate a plan with McCormick, CW1 saw Sandoval walking from the backside of the property toward them. McCormick pointed his flashlight toward Sandoval and LE1 noticed Sandoval appeared to be holding a rifle. LE1 gave Sandoval commands in English to show his hands. Sandoval did not show any signs of stopping and was lifting the rifle in his hands. LE1 took cover near a vehicle and trailer next to them because Sandoval didn't stop. Sandoval's demeanor showed he was not going to follow commands and LE1 feared for his life. CW1 ran toward the house screaming.

LE1 lost sight of Sandoval. He heard four to five gunshots but didn't know who had fired them. LE1 feared for McCormick's wellbeing because he knew McCormick had been in the open when the shots were fired. Once LE1 was behind cover, he looked and saw Sandoval lying on the ground. LE1 believed the rifle was by Sandoval's side. LE1 gave Sandoval commands in Spanish to turn over onto his stomach so law enforcement could safely approach to detain him and render aide. Sandoval kept responding in English that he wanted help. He appeared to be in pain. McCormick and LE1 waited until additional deputies arrived so they could form a tactical plan to safely approach Sandoval to detain him and render aide.

When they were able to approach, LE1 took possession of Sandoval's rifle, and the other deputies secured the knives and ammunition Sandoval had in his possession. LE1 and the other deputies were then able to move Sandoval to the ambulance.

LE1 said although he was in fear for his own life, he did not fire at Sandoval because of multiple factors: he was unsure of his handgun's accuracy from that distance, the lighting was low, and he was unsure of the backdrop.

Statement of Deputy Corporal Evan McCormick

McCormick responded to a "suicide attempt" radio call at CW1's residence at approximately 1:30 a.m. The information received about the call was not clear at first because of a language

barrier between the caller and the dispatcher. The reporting party was home with her husband, who had intentionally thrown himself down the stairs or may have fallen down the stairs.

McCormick arrived on scene with his partner LE1 in separate marked patrol vehicles. Both were wearing San Diego Sheriff uniforms. Upon arrival, they had to wait for the gate code to be provided by the reporting party via dispatch. They parked near the top of the hill and CW1 came outside to meet them next to her residence.

CW1 was a Spanish speaker so LE1, also a Spanish speaker, spoke with CW1 about the details of the day's events. McCormick also asked a couple questions and LE1 was translating for them. They were trying to determine where Sandoval was and if he currently had firearms. CW1 told them Sandoval was locked inside his bedroom with the guns. The couple's four-year-old and nine-year-old children were sleeping in a different room on the opposite side of the house. CW1 said Sandoval had a small pistol and a rifle but was not sure if they were real. CW1 said Sandoval used the rifle to shoot rabbits. McCormick believed this meant it was a real rifle. CW1 also said Sandoval had held a gun to his head earlier and said he was going to kill himself.

LE1 continued to speak with CW1 as they tried to gather more information and formulate a plan to get the children out of the house without immediately confronting Sandoval. McCormick noticed Sandoval come out from behind the house where CW1 had just explained Sandoval could appear from. It was dark so McCormick activated the flashlight on his rifle and pointed it at Sandoval. McCormick saw the brown stock of a rifle in Sandoval's hands raised and in a "shooting position." McCormick yelled "hands" multiple times at Sandoval. LE1 also yelled out but McCormick could not recall what was said.

McCormick saw LE1 move away to the side and saw CW1 move back towards the house. McCormick took a step back, but Sandoval kept advancing toward McCormick at a diagonal angle. Sandoval brought the rifle up toward his face with the barrel aiming toward the deputies. Sandoval had the weapon shouldered the entire time. Sandoval initially pointed the gun toward LE1 and CW1, but Sandoval then pivoted and passed over LE1 and CW1 and pointed the rifle toward McCormick.

Sandoval was saying something in English similar to, "What are you going to do?" Sandoval's rifle was pointed towards McCormick and Sandoval kept the gun in that position. McCormick fired his rifle four times and then two more times until Sandoval fell to the ground.

Sandoval was lying on his back on the ground, but the rifle was next to him. McCormick was yelling commands at Sandoval to roll over and crawl away from the gun. LE1 was also yelling commands in Spanish to Sandoval. McCormick wanted Sandoval away from the gun so they could detain him safely and render aid. Sandoval was moaning as he rolled on the ground and McCormick noticed an object near his waistband, which he later learned was a hunting knife.

Multiple other deputies and a sergeant arrived on scene, and they gave Sandoval commands in English and Spanish. McCormick said Sandoval complained of pain to his leg, which was probably why he was slow to react to their directions. A sergeant arrived on scene with a ballistic

shield. McCormick advanced to a closer position and maintained his rifle towards Sandoval as the other deputies advanced with the shield towards Sandoval and detained him. The group of five deputies then carried Sandoval to the waiting ambulance.

When asked, McCormick stated he had a taser on his belt, but it was not considered for use during this incident due to Sandoval having a rifle. Additional other non-lethal options like a bean bag or OC spray were not brought to the scene since this was suicide call and McCormick didn't expect any hostilities. He had the rifle with him because he knew this property was very large and didn't know if Sandoval would be running off through the bushes or down a road. He also explained he learned a canine had been enroute but after the shooting had already occurred.

McCormick said he fired his weapon believing Sandoval was holding a real rifle and he feared for CW1's safety, LE1's safety, and his own. McCormick believed Sandoval could have killed one or all of them.

Investigation

The scene was secured, photographed, and investigated by the San Diego Police Department's Homicide Unit. All detectives' reports, crime scene investigators' reports, audio recorded witness interviews, body worn camera footage, home surveillance video, and laboratory reports were reviewed. The items were found to provided evidence corroborating the deputies' statements.

At the time of the incident, McCormick was armed with his loaded 5.56 NATO caliber Smith & Wesson, M&P 15 duty rifle. The rifle was collected by a sergeant on scene and later examined by an SDPD criminalist. The rifle was loaded with the bolt locked forward and the hammer cocked, in the "safe" position. A magazine, containing twenty-three .223 Remington cartridges was removed from the rifle and one additional cartridge was removed from the rifle chamber. The designated capacity for the rifle is thirty rounds.

Sandoval had in his possession an unloaded 30-30 Winchester Marlin 30 AS lever action rifle that was collected by SDPD detectives and examined by an SDPD criminalist. The rifle was deemed capable of discharging appropriately. However, due to a missing screw, it would have required manual loading followed by significant force to the operating lever to move the bolt into proper position.

Sandoval was also in possession of three knives. Two were fixed-blade knives and the third knife had a folding blade. Sandoval had two full fifty-count boxes of .22 caliber ammunition and several loose rounds of .22 caliber ammunition in his possession. The ammunition was not compatible with the rifle Sandoval was pointing at McCormick, but was compatible with another rifle located in Sandoval's bedroom. There was apparent blood staining on two loose .22 caliber rounds of ammunition on the ground where Sandoval had fallen after being shot.

Based on a review of the body worn camera footage, McCormick's statement, and the fact that six spent rifle cartridges were recovered from the ground where McCormick was shooting, it can

be concluded McCormick fired six rounds. McCormick was approximately 46 feet away from Sandoval when he fired his rifle.

Sandoval was taken into custody and transported to the hospital for treatment from four gunshot wounds suffered during the incident.

Pursuant to a search warrant, investigators conducted a search of Sandoval's residence and the surrounding area. In the living room, they located three pellet air rifles, two pellet BB handguns, and a BB rifle in the coat closet. In Sandoval's bedroom, investigators located a black Laser 25tm "CAL .25 Auto" handgun which resembled the firearm seen in Sandoval's hand in the surveillance. Also found was a CBC "22 L.R." rifle with a mounted scope, and multiple boxed and loose rounds of ammunition. In the bathroom, investigators located a Henry Repeating Arms-Bayonne "CAL .22 Magnum," the rifle that had been hidden by CW1.

Video Surveillance

CW1 assisted a deputy on scene retrieve the home's video surveillance footage. Sandoval and CW1 had four functioning cameras at the residence. The cameras covered the kitchen, back patio, living room window, and interior areas behind the front door.

Footage from the night of the incident shows Sandoval enter the residence through a rear door near the kitchen while wearing a backpack and carrying a lever action rifle. Approximately five minutes later, Sandoval exits his residence through the same rear door but without the rifle or backpack. Immediately outside Sandoval falls face first into the dirt, where he remains for 28 minutes. While Sandoval is face down, CW1 is seen outside checking on him and taking photographs of him. She is then observed pacing between the kitchen and living room while on her cell phone.

Sandoval begins to move around and starts crawling toward the kitchen door. He uses the porch rail to help himself up as CW1 meets him at the back door. Sandoval then walks inside. CW1's movements were not captured within the frame for a period. CW1 then appears to stumble backward and Sandoval walks back inside through the rear door holding a black handgun. CW1 also returns to the residence through the same back door and appears upset while still holding her cell phone.

Minutes later, CW1 walks out the front door to meet with deputies. Sandoval then starts to walk through the kitchen toward the back door but turns around and walks out of view. Sandoval then again walked back towards the rear door now wearing a jacket. He again stops, turns around, and walks out of view. He reappears and exits through the backdoor, now holding the rifle in his right hand with the barrel pointed down to the ground and a knife attached to his left hip. A short time later, CW1 runs into the residence through the front door, appearing frightened.

Body Worn Camera

McCormick's body worn camera was activated and recorded the incident in its entirety from his position. The recording shows McCormick arrive on scene. McCormick walks up the driveway

to cover LE1 as LE1 speaks with CW1 about Sandoval and their children inside the home. CW1 tells LE1 that Sandoval is intoxicated, suicidal, and has access to firearms inside the house.

McCormick then turns on the light affixed to his rifle and points it toward Sandoval and yells, "Hands, hands, hands." Sandoval replies, "What are you going to do?" four times rapidly. Sandoval is seen walking toward McCormick, taking at least seven steps forward while pointing the rifle directly toward McCormick. McCormick fires six rounds at Sandoval and Sandoval falls to the ground.

LE1 notifies dispatch over the radio that shots have been fired and they need immediate cover. Both deputies can be heard giving repeated commands to Sandoval to roll away from the nearby gun. Additional deputies begin arriving on scene. While deputies are giving Sandoval commands in Spanish, deputies announce to each other that Sandoval has a knife on his hip. McCormick and other deputies eventually approach. Deputies handcuff Sandoval and then provide medical attention before carrying him to an ambulance on scene.

LE1's body worn camera was activated during the incident and his vantage point is similar to McCormick's. The only variance is that when Sandoval appears with the rifle, LE1 takes cover behind a parked vehicle parallel to McCormick and LE1's camera only captures the beginning of Sandoval walking toward the deputies while holding the rifle. LE1 yells, "Hey, let me see your hands! Let me see your hands! Hey!" Multiple gunshots are then heard. LE1 stands up after the gunshots stop and Sandoval is seen lying on the ground. LE1 can be heard yelling in Spanish multiple times for Sandoval to roll over and to not reach for the rifle. LE1 assists in securing Sandoval's rifle and then assists in carrying Sandoval to the area where the ambulance is parked.

LE1 rode in the ambulance with Sandoval as he was transported to the hospital and LE1's camera continued to record until entering the hospital.

Additional deputies who arrived after the shooting also had their body worn cameras activated. Their footage captured Sandoval lying on the ground next to the rifle. It also captured Sandoval being taken into custody and carried to the ambulance.

Injuries

Sandoval sustained four gunshot wounds: one in the right shoulder, one in the abdomen, one in the right hip, and one in the left thigh that resulted in a fractured femur. Sandoval underwent multiple surgeries for wound management and to repair damage to his abdominal region.

CW1 had visible redness to her right bicep in the area where Sandoval had grabbed her. She also had a scratch on her right forearm from when Sandoval tried to take the cell phone from her.

Sandoval's two children did not sustain any physical injuries.

No deputy on scene sustained any physical injuries as a result of this incident.

Toxicology

Toxicological testing was conducted by Bio-Tox Laboratories on a urine sample obtained from Sandoval. Hydromorphone was detected as a level of 461 ng/mL, fentanyl was detected at a level of 313 ng/mL, and norfentanyl was detected at a level of 292 ng/mL, however these substances could have been administered by hospital staff during treatment. Sandoval's blood was also collected at the hospital. Bio-Tox Laboratories' testing showed the ethyl alcohol level to be 0.080%.

Legal Standard

The analysis of use of force and deadly force by peace officers in California is set forth in Penal Code section 835a. Penal Code section 835a(b) provides, "any peace officer who has reasonable cause to believe that a person they intend to arrest has committed a public offense, may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance."

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides, "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).

The statute provides definitions for "deadly force," "imminent," and the "totality of circumstances" in Penal Code section 835a(e)(1) – (3).

"'Deadly force' means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm." Penal Code section 835a(e)(1).

"A threat of death or serious bodily injury is 'imminent' when based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person." Penal Code section 835a(e)(2).

"An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

"'Totality of the circumstances' means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." Penal Code section 835a(e)(3).

"In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(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, and that the totality

of circumstances shall account for occasions when officers may be forced to make quick judgments about using force." Penal Code section 835a(a)(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

McCormick and LE1 contacted CW1, who told them that her husband, Sandoval, had been drinking, had come home with a rifle, and had put a firearm to his own head. She said Sandoval was in the residence where he had other firearms. CW1 was very concerned because her children were still inside. As the deputies spoke with CW1, Sandoval emerged from the rear of the house holding a long rifle. McCormick and LE1 gave Sandoval repeated commands to show his hands, but he did not comply and instead walked directly toward them while pointing the rifle in their direction. McCormick recognized Sandoval was holding the rifle in a shooting position. He reasonably feared Sandoval would kill one or all of them. McCormick fired six rounds from his duty rifle, striking Sandoval four times. Sandoval fell to the ground and dropped the rifle. Sandoval was then transported to the hospital for treatment and survived the injuries. Sandoval was subsequently prosecuted and convicted of multiple felonies for his actions.

Based upon the totality of the circumstances, it was reasonable for McCormick to believe Sandoval presented an imminent threat of death or serious bodily injury and that the use of deadly force was necessary to defend against that imminent threat. Therefore, Deputy Corporal McCormick bears no state liability for his actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

cc: Captain Richard Freedman, San Diego Police Department
Captain Christopher Lawrence, San Diego Sheriff's Department