

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

SUMMER STEPHAN
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sdcda.org>

July 26, 2024

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

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

Re: Fatal Shooting of Mr. Mauricio Sanchez Ramos on June 4, 2023, by San Diego Police Officer Ruben Perez Berton Jr.; San Diego Sheriff's Department Case No. 23123378; DA Special Operations Case No. 23-052PS; Deputy District Attorney assigned: Fredrick Washington

Dear Chief Wahl and Sheriff Martinez:

We have reviewed the reports and other materials compiled by the San Diego Sheriff's Department Homicide Division and San Diego Police Department's Patrol Division concerning the circumstances leading to the shooting of Mauricio Sanchez Ramos by Officer Ruben Berton on June 4, 2023. Two District Attorney Investigators responded to the scene and were briefed on the incident. The investigative case was submitted to the San Diego District Attorney's Office for review on October 19, 2023, and the Medical Examiner's report was submitted to the District Attorney's Office on December 7, 2023.

Summary

On June 4, 2023, at 8:55 p.m. an adult male called the San Diego Police emergency line from the Iris Avenue trolley station to report seeing a man on the trolley who was foaming at the mouth and holding a black gun. The reporting party added that the man was rocking back and forth on the trolley heading toward San Ysidro and provided a physical description of the man to the dispatcher. Officer Berton and his partner were dispatched to the radio call of the moving trolley in south San Diego.

The San Diego Police Department dispatch center received a call from the Metropolitan Transit System (MTS) trolley dispatch center passing on information from their MTS security officers on scene. The MTS officers relayed that the trolley carrying the man, later identified as Mauricio Sanchez Ramos, had come to a stop at the San Ysidro Boulevard trolley station and that the man was sitting in the trolley car with a handgun, waving it around, and displaying gang hand signs. MTS trolley security gave a detailed description of Sanchez Ramos, which was relayed to responding officers.

Berton and his partner arrived at the San Ysidro trolley station on East San Ysidro Boulevard. MTS security officers directed them to the location where Sanchez Ramos was sitting in the middle trolley car. Multiple civilians were present on the platform around the trolley, in the trolley car, and throughout the surrounding area.

Berton located the trolley car where Sanchez Ramos was seated. From directly outside the car, Berton repeatedly yelled to Sanchez Ramos, "San Diego Police. Hands up." Sanchez Ramos was seated facing away from Berton and rocking back and forth. Berton's partner manually pressed a button to open the trolley car doors. Berton began to enter the trolley car, ordering Sanchez Ramos show his hands. As Berton entered the trolley, Sanchez Ramos turned toward Berton, got up from his seat, and moved toward Berton. Berton ordered Sanchez Ramos to "drop," but Sanchez Ramos ignored the command and reached his right hand into his waistband and grabbed what appeared to be a Glock-style handgun, later identified as a .177 caliber Glock BB gun.

Berton stepped back from the threshold of the trolley car door as Sanchez Ramos continued to walk toward him and his fellow officer. While walking toward the officers, Sanchez Ramos pointed the weapon at Berton. Berton then fired ten rifle rounds, striking Sanchez Ramos multiple times. Sanchez Ramos fell to the ground and dropped the weapon. Berton then approached Sanchez Ramos, placed him in handcuffs, and rendered aid by administering CPR. The Glock-style weapon was located next to Sanchez Ramos on the trolley car floor, as was a glass bulbous pipe with brown residue.

The Medical Examiner determined the cause of death was multiple gunshot wounds and classified the manner of death as homicide. A toxicological analysis of Sanchez Ramos's blood revealed the presence of methamphetamine at a level of 640 ng/mL, amphetamine at a level of 13 ng/mL, Delta-9 THC at a level of 3 ng/mL, and Delta-9 Carboxy THC at a level of 18 ng/mL.

Persons Involved

At the time of this incident, Sanchez Ramos was a 19-year-old resident of San Diego County and Berton had been employed as an officer with the San Diego Police Department for six years.

Statement of Civilian Witness One (CW1)

CW1 was the first reporting party to call San Diego Police dispatch. CW1 was sitting on a trolley car heading southbound when he saw a subject, later identified as Sanchez Ramos, acting oddly, moving side to side, and foaming at the mouth. Sanchez Ramos pulled out what appeared to be a

handgun from his backpack and held it to his own head. Sanchez Ramos put it away and then took it out again. CW1 did not see Sanchez Ramos point the handgun directly at anyone else, and he believed Sanchez Ramos was possibly having mental health issues. CW1 was scared and thought that Sanchez Ramos was going to shoot civilians on the trolley. CW1 got off the trolley at the next station, which was the Iris Avenue station, and called the police.

Statement of Civilian Witness Two (CW2)

CW2, an on-duty armed MTS transit security officer, was approached by a civilian and two of his MTS security partners. They told them there was a subject, later identified as Sanchez Ramos, with a gun on a trolley car that was stopped at the San Ysidro trolley station. CW2 saw civilians quickly leaving the area. CW2 looked through the windows of the trolley car and observed Sanchez Ramos standing inside with what he believed to be a Glock-style handgun in his right hand, pointing it towards the surveillance camera on the ceiling of the trolley car. Sanchez Ramos made what appeared to be gang signs at people on the train and at the surveillance camera. Sanchez Ramos was also holding the handgun to his own head like it was a telephone. Sanchez Ramos was rocking back and forth in a frantic state. Sanchez Ramos pointed the handgun at other patrons on the trolley car who then ran away from him. CW2 contacted MTS trolley dispatch and requested San Diego Police officers and MTS officers respond to his location. The two other MTS officers on scene began to clear civilians from the trolley area. Once Berton and LE1 arrived, CW2 directed them to where Sanchez Ramos was located in the trolley car. The officers opened the trolley door and CW2 heard them identifying themselves as San Diego Police and telling Sanchez Ramos to show his hands and to stop reaching. Sanchez Ramos continued to reach into his waistband with his right hand and removed a handgun. Sanchez Ramos pointed the handgun at the officers and then Berton shot Sanchez Ramos. Berton then placed Sanchez Ramos in handcuffs and began to give Sanchez Ramos CPR.

Additional MTS Transit Security Officer Witnesses

Two additional MTS transit security officers were on scene with CW2 and gave statements to San Diego Sheriff detectives consistent with CW2's statement. Both stated they were told by civilians that there was a subject, Sanchez Ramos, on the trolley car with a handgun. Both MTS trolley security officers saw the handgun in Sanchez Ramos's hands, saw officers arrive, heard officers give multiple commands to Sanchez Ramos, and both heard the shots fired by Berton, but neither saw Sanchez Ramos struck.

Other Witnesses

One civilian witness gave a formal interview to police stating that Sanchez Ramos only had a trolley pass in his hand when he was shot by police. This witness said he had the incident recorded on his cellular phone, but refused to show it to officers and said he planned on taking the video to the media. This alleged video has not been located online, in the news, nor provided to law enforcement.

Other lay witnesses standing near the police caution tape alleged that Sanchez Ramos was unarmed when he was shot by police and/or that police placed the handgun next to Sanchez

Ramos after the shooting. These other lay witnesses did not give formal statements to police. Their spontaneous statements were shown to be inaccurate based on the MTS surveillance camera video and police body worn camera video footage.

Statement of Law Enforcement Witness One (LE1)

LE1 and Berton were working as a two-officer police unit on the date of the incident. Dispatch announced that a subject at the Iris trolley station, later identified as Sanchez Ramos, had a gun and was foaming at the mouth. Shortly after, there was an update that Sanchez Ramos had a firearm and was headed towards the Beyer trolley station. LE1 and Berton quickly determined the trolley car was traveling towards the San Ysidro trolley station on East San Ysidro Boulevard. After they received additional updates that Sanchez Ramos was brandishing the gun towards people on the trolley and displaying gang hand signs, they responded with police lights and sirens activated.

LE1 and Berton arrived at the San Ysidro trolley station and approached the trolley cars. Berton brought his patrol rifle with him and LE1 had his handgun drawn. A trolley security officer or Customs and Border Patrol agent pointed to the trolley car where Sanchez Ramos was last seen. LE1 saw Sanchez Ramos seated with his back to him. LE1 said the door was locked initially and then it opened, but he was unsure who opened it. Berton made entry and gave commands to Sanchez Ramos stating, "Let me see your hands," and told Sanchez Ramos to, "Drop it." LE1 remembered himself giving Sanchez Ramos commands also but did not remember specifically what he said.

LE1 did not fire his duty weapon due to Berton being in front of him and the location of civilians in the backdrop. LE1 believed Berton saw Sanchez Ramos's firearm before LE1 did because of the locations where they were standing. LE1 did not have a clear shot even though he saw Sanchez Ramos holding the weapon. LE1 was going to give Sanchez Ramos a second to drop the handgun but by the time he had a clear shot, Sanchez Ramos was already down. When Berton fired three to five rifle rounds. The weapon fell away from Sanchez Ramos onto the ground.

LE1 believed the weapon was a real Glock-style firearm. Sanchez Ramos never made any statements to LE1 or Berton. Additional San Diego Police units arrived as Berton and LE1 were rendering aide to Sanchez Ramos. While they were rendering aide, people were still trying to enter the trolley, so LE1 picked up the gun with his gloved hand in an attempt to safekeep it, but immediately realized it was a crime scene and placed it back down.

Statement of Officer Ruben Berton

Berton was assigned to a two-officer police unit the night of the incident. At approximately 9:00 p.m., he was assisting on another radio call when he and LE1 heard the dispatcher announce there was a subject, later identified as Sanchez Ramos, with a firearm on a trolley car traveling from the Iris trolley station towards the San Ysidro trolley station. Berton and LE1 volunteered to respond to the trolley car radio call. Prior to arrival, they received additional dispatch radio updates that more witnesses had also called police about Sanchez Ramos having a gun and

waiving gang hand signs. Berton and LE1 then activated their lights and siren to expedite their arrival to the scene.

Berton arrived at the San Ysidro trolley station and brought his patrol rifle with him as he approached the trolley cars. An MTS security officer gave him an updated description of Sanchez Ramos and pointed Berton to the trolley car where Sanchez Ramos was last seen. Berton located Sanchez Ramos and saw him rocking back and forth and sitting and standing repeatedly. Berton believed Sanchez Ramos was trying to "hype himself up." Berton believed Sanchez Ramos might run and Berton feared for the safety of himself and the civilians in the area. Berton pointed his rifle at Sanchez Ramos and identified himself verbally as San Diego Police. Berton gave Sanchez Ramos multiple commands to put his hands up. Sanchez Ramos did not obey any of Berton's commands as he continued with the rocking motions. As Berton crossed the threshold of the trolley car door Sanchez Ramos looked at him and got up from the trolley seat. Sanchez Ramos walked towards Berton. Berton walked backwards and continued giving Sanchez Ramos commands to "drop, drop." Sanchez Ramos grabbed a Glock-style handgun from his waistband and pointed the weapon toward Berton. Berton fired his rifle five to eight times, striking Sanchez Ramos, who fell to the floor and dropped the weapon. Berton then handcuffed Sanchez Ramos and began to administer CPR. Berton also updated dispatch and gave additional instructions for responding police units. Paramedics then arrived on scene and told Berton to stop CPR.

Investigation

The scene was secured by the San Diego Police Department and Customs and Border Protection. The entire scene was photographed, processed, and investigated by the San Diego Sheriff's Department Homicide Unit. All detective reports, crime scene investigator reports, patrol reports, physical evidence, audio-recorded witness interviews, body worn camera footage, and surveillance video have been reviewed. These items were found to provide evidence which corroborated the police officers' statements.

At the time of the incident, Berton was armed with a department-approved Colt Defense M4 Carbine 5.56 rifle loaded with a magazine containing eighteen .223 caliber cartridges. Berton reported he typically under-loads the rifle with 28 rounds for magazine longevity. The designated capacity for the rifle magazine is 30 rounds. After the shooting, the rifle was secured on scene with another San Diego Police Officer and then collected by a San Diego Sheriff's Department Forensic Evidence Technician and later examined by a criminalist from the San Diego Sheriff's Department for weapon operability.

At the time of the incident, Sanchez Ramos had in his possession a .177 caliber Glock BB gun capable of shooting metal projectiles. The weapon has a very similar design to a Glock firearm and has the word "Glock" imprinted on the side of the weapon. The BB gun was collected by a San Diego Sheriff's Department Forensic Evidence Technician. There were no BB pellets located inside the Glock-style BB gun nor any recovered from the scene.

There was also a glass bulbous smoking pipe located on the trolley car floor next to Sanchez Ramos. This type of pipe is commonly used to smoke illegal controlled substances such as methamphetamine. Results from the Medical Examiner's toxicology report showed that Sanchez Ramos had methamphetamine and amphetamine in his blood at the time of his death.

It was determined that Berton fired ten rounds from his rifle at close range toward Sanchez Ramos, striking him multiple times. This is based on both officers' body worn camera video footage, the officers' statements, and the ballistic evidence discovered on the trolley car and pedestrian platform. Investigators located two metal fragments and three fired bullets inside the trolley car. Investigators also located three strike mark defects inside the trolley from the rifle projectiles and ten rifle shell casings from rounds fired by Berton. Later, at the autopsy, two additional bullets and multiple metal fragments were recovered from Sanchez Ramos's body.

Pursuant to a search warrant, investigators attempted to review Sanchez Ramos's cellphone, but it was locked and they were unable to review any data from the cellphone.

Video Surveillance

Customs and Border Protection agents submitted video surveillance of the San Ysidro trolley platform area. The MTS transit security officers also submitted multiple video clips of the exterior of the San Ysidro trolley platform and the interior of the trolley car where Sanchez Ramos was riding. MTS also provided video of other trolley platforms where Sanchez Ramos had been seen walking around and speaking with other civilians prior to the shooting incident.

The video of the exterior of the San Ysidro MTS platform area captured Berton and LE1 arriving on scene and entering the trolley. Sanchez Ramos can be seen through the windows of the trolley car.

The footage of the interior of the MTS trolley car video captured Sanchez Ramos prior to the shooting incident walking around erratically inside the trolley car while other civilians were still sitting inside the trolley car. Sanchez Ramos is seen brandishing the weapon and then holding it to his own head. He also directly points the weapon at a video camera on the ceiling of the trolley car. Sanchez Ramos was sitting and rocking back and forth just prior to officers contacting him. A few seconds before the shooting, Berton is seen partially entered the trolley car. Sanchez Ramos then gets up from his seated position and walks towards Berton. Berton quickly steps backward toward the trolley platform. Seconds later, Sanchez Ramos falls to the ground. Berton then re-enters the trolley car with LE1. Berton handcuffs Sanchez Ramos and begins to render medical aid.

Body Worn Camera

Berton's department-issued body worn camera was activated during the entire incident and recorded the events as they occurred. Once on scene at 9:03 p.m., Berton receives directions from an MTS security officer that Sanchez Ramos is seated inside the middle trolley car wearing a pink backpack.

The footage shows Sanchez Ramos sitting in the trolley car as Berton yells from outside the trolley car multiple times, "San Diego Police! Hands up!" Sanchez Ramos is seated in the trolley seat, rocking his upper torso front to back quickly. Berton enters the trolley car and points his rifle at Sanchez Ramos. Sanchez Ramos turns and looks at Berton and Sanchez Ramos's hands are near his waistband. Berton yells twice, "Hey, let me see your fucking hands." Sanchez Ramos stands up and walks toward Berton, ignoring Sanchez Ramos's commands to "drop, drop." Sanchez Ramos reaches into his waistband while still walking toward Berton and draws a Glock-like weapon, pointing the muzzle in Berton's direction. Berton backs away out of the trolley car doorway as Sanchez Ramos continues walking toward Berton with the weapon in his right hand, pointing it in Berton's direction. Berton fires his rifle ten times in approximately three seconds, causing Sanchez Ramos to drop the weapon and fall to the trolley car floor. Berton begins to handcuff Sanchez Ramos and render aid by administering CPR.

LE1's department-issued body worn camera was activated during the incident and recorded the events from his position. The footage from his camera shows Berton and LE1 walk toward the trolley car. MTS security officers and civilians point toward Sanchez Ramos's location in the trolley car. LE1 pushes the trolley car door button to open the side door of the trolley car. Berton gives multiple commands to Sanchez Ramos. LE1 was positioned a few feet to the right of Berton just prior to the shooting and his camera's view of Sanchez Ramos is not as direct as Berton's view when the trolley car door opens. Sanchez Ramos walks toward both officers and extends his arm with the black weapon pointing directly toward them. Berton fires his rifle and Sanchez Ramos falls to the ground. Berton handcuffs Sanchez Ramos and renders aid. Berton administers CPR to Sanchez Ramos for nearly three minutes before paramedics can be heard advising officers that Sanchez Ramos is deceased.

Additional San Diego Police officers and MTS security officers present at the incident also had their body worn cameras activated, capturing portions of the incident from other perspectives. All footage was reviewed and found to be consistent with the footage described above.

Autopsy and Toxicology

The San Diego County Medical Examiner's Office conducted an autopsy of Sanchez Ramos on June 6th, 2023. The physician determined Sanchez Ramos sustained 23 gunshot wounds, some being entry wounds and others exit wounds. Two bullets and multiple metal fragments were recovered from Sanchez Ramos's head, neck, right leg, and chest cavity. The cause of death was determined as multiple gunshot wounds. The manner of death was classified as homicide. Toxicological testing was later conducted on blood taken from Sanchez Ramos's body. The analysis revealed the presence of methamphetamine at a level of 640 ng/mL, amphetamine at a level of 13 ng/mL, Delta-9 THC at a level of 3 ng/mL, and Delta-9 Carboxy THC at a level of 18 ng/mL.

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:

(A) 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 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

Officer Berton and LE1 responded to a radio call of a man acting erratically and brandishing a handgun on a trolley car that was in service and transporting civilians. Berton and his partner arrived at the San Ysidro station and were directed to Sanchez Ramos. Sanchez Ramos was rocking back and forth with his hands in his waist area. Berton identified himself as a police officer and gave Sanchez Ramos multiple commands to show his hands. Sanchez Ramos stood up, walked toward Berton, quickly pulled what appeared to be a Glock-style firearm from his waistband, and pointed it at Berton. The realistic looking weapon was later identified as a Glock .177 caliber BB gun. However, due to the quickly evolving nature of the contact and what objectively and reasonably appeared to be a life-threatening gesture, Berton did not have the opportunity to further attempt to de-escalate the situation. An objectively reasonable officer in the same circumstances would not have believed it safe or feasible to utilize other resources or techniques.

Berton reasonably perceived Sanchez Ramos posed an imminent threat and that the use of deadly force was necessary to defend against that threat. Based on the totality of the circumstances, a reasonable officer in the same situation would believe that Sanchez Ramos had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officers and the civilians in the vicinity. As a result, Berton bears no state criminal liability for his actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

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