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June 17, 2024

Sheriff Chad Bianco
Riverside County Sheriff's Office
4095 Lemon Street
Riverside, CA 92501

Chief Kedrick Sadler
Oceanside Police Department
3855 Mission Avenue
Oceanside, CA 92058

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

Re: Shooting of Dorian Larkin on June 23rd, 2023, by Oceanside Police Officer Malcolm Cisneros and Riverside County Sheriff's Deputy Richard Schweitzer; San Diego Police Department Case No. 23609775; DA Special Operations Case No. 23-058PS; Deputy District Attorney assigned: Carlos Campbell

Dear Sheriff Bianco, Chief Sadler, and Chief Wahl:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Division concerning the circumstances leading to the shooting of Dorian Larkin by Officer Malcolm Cisneros and Deputy Richard Schweitzer on June 23rd, 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 September 26, 2023. The Medical Examiner's Report was received by the District Attorney's Office on March 26, 2024. Additional laboratory reports were provided by San Diego Police on May 23, 2024.

Summary

On the evening of June 22nd, 2023, the Oceanside Police Department received several calls from people reporting the sound of gunshots coming from a nearby apartment. One of the callers reported a minor came to her apartment and said his mother had been shot. The woman gave her phone to the minor so he could speak to the dispatcher and the minor told the dispatcher his mother's boyfriend, Dorian Larkin, shot his mother.

Officers arrived at the apartment and found 34-year-old Kimberly Foster had been shot several times. Paramedics arrived and attempted life saving measures, but Foster died from her injuries. As the investigation progressed, information was broadcast to neighboring law enforcement

agencies identifying Larkin as a suspect in the shooting. A description of him and the vehicle he was known to drive were also provided. Approximately two hours later in Temecula, Deputy Schweitzer attempted a traffic stop for an infraction on the vehicle Larkin was driving. Larkin failed to pull over and Schweitzer began to pursue him with the lights and siren of his marked patrol vehicle activated. Schweitzer did not immediately realize Larkin was wanted for the homicide but was notified of the fact by the dispatcher during the pursuit. At times during the pursuit, the vehicles exceeded 100 miles per hour.

The pursuit continued to the city of Oceanside, where Officer Cisneros joined in his marked police vehicle. Larkin drove into a shopping center parking lot at 500 Vandegrift Boulevard as Schweitzer and Cisneros followed. Larkin stopped his car, got out, and fired six shots from a handgun at Schweitzer and Cisneros. One of the rounds struck Schweitzer's vehicle and another round struck Cisneros' vehicle. Cisneros and Schweitzer returned fire and Larkin ran north through the parking lot out of sight toward Sol Drive. Other officers were in the area and began looking for Larkin. Larkin was located lying on the ground deceased at the intersection of Gold Drive and Sol Drive. He was holding a handgun in his right hand and had a gunshot wound to his head. The Medical Examiner conducted an autopsy and determined his cause of death was a gunshot wound to the head and the manner of death was suicide. The toxicology report showed Larkin did not have any alcohol or drugs in his system. A Sheriff's Criminalist examined Larkin's firearm and determined it was operable.

Persons Involved

At the time of this incident, Larkin was a 28-year-old resident of the Oceanside. Schweitzer had been employed as a deputy for two years and Cisneros had been a police officer for eight years.

Statement of Civilian Witness One (CW1)

CW1 received a call from her brother, Larkin, at around midnight. Larkin told her he messed up and his life was over. Larkin told CW1 he shot his girlfriend, Kimberly Foster, earlier the same evening. CW1 could hear what sounded like Larkin hitting the steering wheel of a car and he kept repeating that he messed up. Larkin told CW1 that earlier in the evening, he and Foster were celebrating the fact he got his license so he could apply for a better job. Foster got drunk and kept trying to start an argument with Larkin and accused him of cheating on her. Larkin did not want to argue with Foster and pushed her away, but she kept coming at him, and at one point, bit Larkin on his lip. Larkin pushed Foster away and she started hitting him harder. At first Larkin did not mention a gun to CW1 and told her he left during the argument. When CW1 urged Larkin to tell her what else happened, he said he did not know. While they were on the phone, Larkin put CW1 on hold and took a call from the father of one of Foster's children. The man told Larkin that Foster was dead and when Larkin came back on the line with CW1, Larkin was very upset. He told CW1 he was not going to go back to prison. Larkin said he was going to have a shootout with police and he would be killed or he would kill himself.

CW1 tried to convince Larkin to surrender to police or go to a relative's house to facilitate his surrender, but she was unsuccessful. CW1 used a second phone to call the police and let the dispatcher surreptitiously listen while she tried to convince Larkin to surrender. Larkin was

crying and kept stating he was not going to go back to prison and told CW1 he did not mean to kill Foster. CW1 asked again what happened and Larkin told her he “emptied the clip and she’s gone...”, which CW1 took to mean Larkin shot Foster.

The police dispatcher began to talk to Larkin and told him he still had a lot to live for and CW1 felt the dispatcher was trying to give him hope. Larkin hung up the phone and CW1 called him several times before eventually getting through. When CW1 successfully got through to Larkin, she could hear sirens in the background. Larkin said he was being chased by police. Larkin also had one of his friends on the phone, whom CW1 did not know. CW1 found herself on a three-way conference call with Larkin and one of his friends and she had the police dispatcher on another phone. CW1 kept trying to get Larkin to pull over, but he would not respond to her.

Larkin’s friend was still on the phone and told CW1 that Larkin was heading to the location in Oceanside where his older brother died in a shooting. Larkin’s friend told CW1 he was already in the area where Larkin was going. CW1 heard what she believed was Larkin’s car tires being punctured and she assumed it was from spike strips laid by the police. CW1 heard Larkin put his car in park and get out of the car. She called his name several times, but Larkin did not respond. Larkin’s friend dropped his phone for a short period of time and then returned and told CW1 that Larkin was shooting at the police, and the friend stated it doesn’t look good for him. CW1 later learned Larkin was deceased.

Statement of Law Enforcement Officer One (LE1)

LE1 heard a broadcast from the dispatcher that Riverside Sheriff’s deputies were in a vehicle pursuit with Larkin. LE1 believed Larkin might be heading back to Oceanside so he began coordinating officers to deploy spike strips at strategic locations to intercept Larkin. Larkin evaded the locations where the spike strips were placed and LE1 joined the pursuit when it entered Oceanside. The dispatcher was giving updates during the pursuit and said Larkin was threatening to commit suicide or “suicide by cop.” The dispatcher also relayed information that Larkin intended to go to the location where his brother had been killed several years ago. LE1 was familiar with the incident Larkin was referring to as he was the investigating detective on that case. LE1 believed Larkin was still armed at this time. LE1 was the third vehicle in the pursuit and was behind Cisneros and Schweitzer when Larkin turned into a parking lot on Redondo Drive. Larkin slowed his vehicle but did not completely stop. Schweitzer’s vehicle was behind Larkin’s vehicle and Cisneros’ vehicle was to the right of Schweitzer’s. LE1 anticipated that Larkin might get out of his car and flee on foot, so he kept driving slowly in the lot while watching him. Larkin got out of his car with a black semi-automatic handgun in his right hand and LE1 thought Larkin was going to run. Larkin pointed the gun at Schweitzer and Cisneros and shot the first volley of approximately five shots. LE1 could see the muzzle flash from the gun. LE1 broadcast that shots had been fired and then Larkin fired a second volley of shots, this time in LE1’s direction. LE1 notified the dispatcher that Larkin was shooting at the officers. LE1 heard shots coming from Cisneros and Schweitzer’s position and believed they were shooting at Larkin. He did not see the officers firing their weapons. Larkin began running north through the parking lot toward a gap between two buildings and then up a set of stairs. LE1 drove through the parking lot, attempting to intercept Larkin before he was able to exit the parking lot. LE1

intended to use his vehicle as a weapon and run over Larkin because he did not want him to make it into the residential area. LE1 was afraid Larkin may try to get into someone's home and take a hostage. LE1 was unsuccessful and Larkin ran up a stairway onto the street and out of LE1's view. LE1 drove around the block to look for Larkin and found him lying in the roadway. Other sheriff's deputies arrived at LE1's location and they formed a contact team to approach Larkin. Larkin was lying on his back with a significant amount of blood around him. Larkin was holding a gun loosely in his right hand and had an apparent gunshot wound to his head. He was deceased. LE1 did not hear the gunshot.

Statement of Deputy Richard Schweitzer

Schweitzer's was working patrol in Old Town Temecula when he received a call at approximately 2:15 a.m. to check the area of Jefferson and Winchester for a homicide suspect. The information came from another police agency and included a description of the suspect and the suspect's vehicle. No license plate number was provided. Schweitzer was unable to locate the male or the vehicle, so he began driving back to the station to end his shift. Schweitzer saw a vehicle enter the onramp to I-15 South from Winchester. The tail lights of the vehicle were not illuminated. Schweitzer believed the driver might have been driving under the influence of alcohol, so he decided to conduct a traffic stop. Schweitzer got behind the vehicle and attempted to conduct a traffic stop by activating his overhead lights. The driver, later identified as Larkin, did not stop so Schweitzer turned on his siren. Larkin drove southbound on I-15 and Schweitzer continued pursuing Larkin. Schweitzer broadcast the license plate of the vehicle and the dispatcher confirmed it was the vehicle wanted in connection with the murder he had been asked to look for. Schweitzer pursued Larkin until Oceanside, where Larkin ran over a set of spike strips that officers had laid down. Larkin ran over the spike strips and then pulled into the parking lot of a shopping center. Larkin abruptly stopped and quickly got out of his car. By the time Schweitzer stopped and put his vehicle in park, Larkin was pointing a gun at him and began shooting at him. Schweitzer opened his door and fired approximately 10 rounds at Larkin from behind his driver's door. Schweitzer believed other officers were to his right or left when Larkin was firing at him. Schweitzer returned fire to protect his life and the lives of the officers near him. Larkin stopped shooting and began running away through the parking lot toward an alley between two buildings. Schweitzer stopped shooting when Larkin went out of sight. Larkin looked over his shoulder a couple of times before he went out of Schweitzer's view. Schweitzer saw several Oceanside Police vehicles heading toward the location where he last saw Larkin, so Schweitzer checked Larkin's car to determine if there was another suspect or a victim inside. Schweitzer found no other people in Larkin's vehicle and asked another officer to check him to ensure he was not hit by Larkin's gunfire. Schweitzer did not suffer any injuries.

Statement of Officer Malcolm Cisneros

Cisneros is a police canine handler and had his police dog with him during this incident. Cisneros became aware Riverside County Sheriff's deputies were pursuing a vehicle believed to be driven by Larkin, who was the suspect in a homicide investigation. Cisneros listened to the pursuit on his police radio as it continued south toward Oceanside. During the pursuit, the dispatcher provided information obtained from Larkin's sister that Larkin was suicidal. Other Oceanside officers prepared to deploy spike strips at various locations to end the pursuit.

Cisneros was monitoring the pursuit without getting involved. When Larkin passed Cisneros on Vandergrift Boulevard, Larkin drove over spike strips which had been deployed to disable the vehicle. At that point, Schweitzer was alone in the pursuit so Cisneros joined in behind him. Larkin drove into a parking lot and stopped as Cisneros entered the parking lot. Schweitzer stopped behind Larkin and Cisneros stopped to the left of Schweitzer. Larkin got out of his car and looked at Cisneros while he removed something from his waistband and pointed it at Cisneros' direction. Cisneros was beginning to get out of his car when he heard some popping sounds and saw several orange flashes. Cisneros believed Larkin was shooting at him or in Schweitzer's direction. Cisneros heard what he believed were bullets impacting his car or the ground around him. He ducked down because he knew his car door had ballistic panels and could provide protection. As this was happening, Cisneros knew other units who had been in the pursuit were coming into the parking lot behind him and that Schweitzer was near him, but he did not know if any of the officers had been hit. Cisneros got out of his car to determine Larkin's position and saw Larkin had moved. Larkin began to run away but still pointed his gun back in Cisneros' direction and fired another shot. Cisneros fired back approximately 12 rounds at Larkin as Larkin began running away. Cisneros stopped firing his gun when Larkin was out of view. Cisneros got back in his car and began searching the surrounding area for Larkin until he came upon a group of officers who had found Larkin lying in the roadway, deceased.

Cisneros said he did not have the opportunity to deploy his police dog as a less-than-lethal option because he came under immediate gunfire when he stopped his car. To do so would have exposed him to gunfire and he did not feel he could effectively control the dog and defend himself at the same time.

Investigation

The incident took place in the parking lot of a shopping center in Oceanside. All officer and detectives' reports, crime scene investigators' reports, audio-recorded witness interviews, body worn camera footage, private surveillance video footage, and police dispatch recordings were reviewed. These items were found to provide evidence corroborating the officers' statements.

Investigators interviewed seven civilian witnesses. Many of the witnesses heard the shots being fired but none of them witnessed the shooting. Six businesses in the shopping center had surveillance video cameras but none of them captured the shooting between Larkin and law enforcement. One of the business' cameras captured Larkin running by the business after the shooting as Larkin was fleeing. No video was recovered which showed Larkin shooting himself.

During the incident, Larkin was armed with a .40 caliber Glock, model 22, semi-automatic handgun. Five .40 caliber cartridge casings with the headstamp "Federal 40 S&W" and one .40 caliber cartridge casing with the headstamp "Blazer 40 S&W" were found on the ground near where Larkin's had fired his weapon. Larkin's body was recovered 285 feet north of his vehicle in the intersection of Sol Drive and Gold Drive. Larkin was on his back with a .40 caliber Glock model 22 handgun in his right hand resting between his head and right shoulder. Larkin had one gunshot wound to the right side of his head and one .40 caliber shell casing with the headstamp "Federal 40 S&W" was found on the ground near his body. The San Diego Police Department

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Crime Laboratory did a microscopic examination of the seven .40 caliber cartridge casings and determined that all seven were fired by Larkin's Glock pistol. A Sheriff's Criminalist conducted a test fire of Larkin's firearm for operability and determined it to be operable.

Schweitzer was armed with his department-issued Sig Sauer, model 320, 9mm semi-automatic pistol. The pistol was examined and contained a magazine loaded with 11 cartridges and one additional live round in the chamber. Based on the number of unexpended rounds in the magazine and gun, it was determined Schweitzer fired 10 rounds. Cisneros was armed with his department-issued Glock, Model 22, 9mm semi-automatic pistol. The pistol was examined and contained a magazine loaded with six cartridges and one additional live round in the chamber. Based on the number of unexpended rounds in the magazine and gun, it was determined Cisneros fired 12 rounds.

A total of 22 expended shell casings were recovered from where Schweitzer and Cisneros had fired their weapons and all were marked as "Win 9mm Luger." The San Diego Police Department Crime Laboratory did a microscopic examination of the 22 9mm Luger shell casings and determined that 12 of the casings were fired from the same firearm and 10 of the casings were fired from the same firearm, corroborating the number of expended rounds determined by the examination of Schweitzer's and Cisneros' firearms and magazines.

The vehicle Schweitzer was driving was stopped 30 feet behind Larkin's vehicle. An examination of the vehicle revealed it had been struck by one round fired from Larkin's shooting position, traveling from the front toward the rear of the vehicle. The bullet perforated the plastic bottom rocker panel of the vehicle on the driver's side, forward of the left rear wheel. The bullet traveled through the rocker panel, exited the wheel well, and ricocheted off the tire rim. It was not recovered. Three bullet ricochet marks were found on the asphalt near the driver's door of Schweitzer's vehicle. Investigators were unable to determine the directionality due to the type of surface.

After exchanging gunfire with Larkin, Cisneros drove his vehicle from the shooting scene to where Larkin's body was found. Therefore, the exact location of Cisneros' vehicle during the shooting was not determined. Investigators were able to reconstruct the shooting scene using statements from Schweitzer and Cisneros. They were able to estimate the approximate distance between Larkin's vehicle and Cisneros' vehicle was 47 feet. The distance between Schweitzer's shooting position and Larkin was 40 feet. When investigators examined Cisneros' vehicle, the right front tire was deflated. The tire was removed, and investigators found one round had penetrated the tire. Investigators found a partially deformed copper-jacketed bullet inside the tire. A total of eight bullet strike marks and possible strike marks were found on the east-facing exterior wall of a business in Larkin's path of travel when he fled the scene.

Police dispatch recordings from Oceanside Police Department were reviewed. The audio recordings preserved conversations between CW1, Larkin, and the police dispatcher before and during the pursuit. During the pursuit, Larkin told CW1 he was going to the location where his

brother was killed years earlier and was going to shoot it out with the police. Larkin said his life was over because he killed the woman he loved.

Body Worn Camera

Cisneros' body worn camera was activated before he became involved in the pursuit and remained on during the shooting. Because Cisneros was in the driver's seat of his patrol vehicle, the camera initially shows the interior of his police vehicle. Cisneros comes to a stop in the parking lot and the sound of gunfire is heard as he opens his door. It is unknown if the shots are from Schweitzer or Larkin or both. Cisneros draws and fires his pistol 12 times from between the driver's door and the A pillar of the vehicle. The view of where Cisneros is aiming his weapon is blocked by the vehicle door. After the shooting, Cisneros immediately gets back in his patrol car and drives his vehicle away from the shooting scene.

Schweitzer activated his body worn camera when he began the pursuit with Larkin and continued to record until after the shooting took place. At the conclusion of the vehicle pursuit, Schweitzer stops, puts his car in park, and opens his driver's door. Gunshots are heard as Schweitzer opens the door and he draws his gun and returns fire. Schweitzer fires his pistol 10 times from behind the driver's door and the A pillar of the vehicle. The view of where Schweitzer is aiming his weapon is partially blocked by the vehicle door. Larkin is not captured by the footage.

Autopsy

On Saturday, June 24, 2023, an autopsy was performed on Larkin by San Diego County Deputy Medical Examiner Doctor Debra Berry. Dr. Berry identified three gunshot wounds. There was one gunshot wound of the head with an entrance on the right temporal region and an exit on the left temporal region. There was evidence of a contact-type wound at the entrance point and a deformed fragment was recovered from the soft tissues of the left temporal region of the head. There was also a gunshot wound of the right hip and a gunshot wound of the left thigh with no bullet or bullet fragment recovered.

Dr. Berry determined the cause of death as a gunshot wound of the head and the manner of death as suicide. Toxicological testing conducted on Larkin's blood did not reveal the presence of alcohol or narcotics.

Legal Standard

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides that "a peace officer is justified in using deadly force upon another person...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 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(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

Larkin led law enforcement on a lengthy high-speed vehicle pursuit and then exited his vehicle and immediately shot several rounds at Schweitzer and Cisneros, striking both of their vehicles. Cisneros returned fire, fearing he or officers near him would be hit by Larkin’s gunfire. Schweitzer also returned fire, fearing he would be hit by Larkin’s gunfire.

Cisneros and Schweitzer reasonably believed that Larkin had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to them or others in the area. Because of Larkin’s decision to rapidly fire at the officers, neither Schweitzer nor Cisneros had the time or opportunity to use other resources and techniques. Based on the totality of the

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circumstances, it was reasonable for Cisneros and Schweitzer to conclude that the imminent harm Larkin presented had to be instantly confronted and addressed.

Therefore, Deputy Schweitzer and Officer Cisneros bear no state criminal liability for their actions. A copy of this letter, along with materials submitted for our review will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

cc: Assistant Sheriff David Lelevier, Riverside County Sheriff's Office
Captain John McKean, Oceanside Police Department
Captain Richard Freedman, San Diego Police Department