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June 26, 2024

Chief Christie Calderwood
Carlsbad Police Department
2560 Orion Way
Carlsbad, CA 92010

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

Re: Non-Fatal Shooting of a Minor on September 9, 2023, by Carlsbad Police Officer Marcos Bocanegra; SDPD Case No. 2305737; DA Special Operations Case No. 23-094PS; Deputy District Attorney assigned: D. Cal Logan

Dear Chief Calderwood 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 non-fatal shooting of a minor by Officer Bocanegra on September 9, 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 April 4, 2024.

Summary

Officer Bocanegra conducted a traffic stop on a four-door Ford F150 pickup truck in a parking lot near Carlsbad State Beach. The driver of the truck was an adult accompanied by four passengers, all of whom were minors. Minor One (M1) was seated in the front passenger seat and the other three minors were seated in the back seat. A Carlsbad Police officer (LE1) arrived to provide support to Bocanegra. The driver of the vehicle gave consent to the officers to search the vehicle.

Bocanegra was positioned on the passenger side while LE1 was positioned on the driver side. LE1 had the driver exit the vehicle and Bocanegra requested the minor in the right rear passenger seat (M2) exit the vehicle. At that point, M1 opened the front passenger door and stepped out of the vehicle. He faced away from Bocanegra while standing in the open front passenger doorway and began reaching under the front passenger seat where he had been sitting. LE1 gave him multiple instructions to stop reaching under the passenger seat, but M1 grabbed a firearm and began pivoting toward Bocanegra. M1 raised a black semi-automatic handgun in his right hand

as he began moving away from the truck. Bocanegra fired a single round, striking M1 in the right arm. M1 fled across the open dirt lot, crossed a roadway, and descended a steep embankment toward the beach. M1 lost his footing and fell down the embankment, dropping the firearm in the process.

Bocanegra and other officers who had responded apprehended M1 and recovered the firearm. M1 was transported to the hospital, where he was treated for a gunshot wound to the right upper arm.

Persons Involved

At the time of this incident, M1 was a 16-year-old resident of San Diego County. Bocanegra had been a police officer with the Carlsbad Police Department since May 2023. Prior to that, he was a police officer with the Los Angeles Police Department since September 2022.

Statement of Civilian Witness One (CW1)

CW1 is the owner of the four-door Ford F150 pickup truck involved in this incident and was driving it on the night the shooting took place. CW1 had been driving M1 and his friends around that evening. They met up with CW1's friends earlier in the evening in the same parking lot where the shooting later took place. CW1 started driving the group home, but had to return to the parking lot because Minor Two (M2) believed he had dropped his phone in the lot. CW1 pulled into the lot and M2 got out. Bocanegra stopped them and contacted them. LE1 arrived and later asked CW1 if they could search his truck. CW1 agreed to let them search the truck. He got out of the truck and stood back. CW1 saw M1 reaching under the passenger seat. The officers were trying to get M1 to calm down and step away from the truck. CW1 also told M1 to "stop being a dumbass." CW1 heard a gunshot and immediately laid on the ground. He saw M1 running away and the officers chasing him. CW1 did not know M1 had a gun with him that evening.

Statement of Law Enforcement Officer One (LE1)

LE1 responded to Bocanegra's location to assist him with contacting five people in a vehicle. LE1 arrived and saw Bocanegra had positioned his police vehicle perpendicular to a white Ford F-150 pickup in the open lot. Bocanegra was at the passenger side of the truck so LE1 positioned his vehicle behind the pickup truck and used his lights to illuminate the truck. LE1 approached the driver side of the truck and saw two males in the front seats and three in the back seat. Some of the males in the truck had tattoos and carried bandanas, which LE1 recognized as possible indicators they may be members of a street gang. LE1 heard Bocanegra questioning some of the males as to their possible involvement in gangs and said he wanted to identify them, and complete field interview slips on them. LE1 began completing field interview slips on two of the occupants in the back seat. LE1 also spoke to CW1.

LE1 saw Modelo beer containers on the ground that appeared to have been recently thrown out because liquid was spilled on the ground, and he saw an opened box of the same brand of beer in the bed of the truck. As LE1 approached the truck, he smelled the odor of beer coming from the interior of the truck. Based on the youthful appearance of the occupants, LE1 believed they were minors consuming alcohol. Bocanegra asked CW1 if he would consent to having the truck searched. M1 began to protest, stating the officers had no probable cause to search it. CW1

appeared nervous and LE1 told him he could smell the odor of alcohol coming from inside the vehicle. LE1 told CW1 this gave him the authority to search the truck, but he wanted to know if CW1 would give consent for him to search it. CW1 told LE1 he would give consent to having the truck searched. LE1 asked him to exit the vehicle and walk to the left rear of the truck to separate him from the rest of the occupants. Bocanegra had been talking to M1, who appeared to be verbally non-compliant. This was the reason LE1 wanted to move CW1 to the rear of the truck. LE1's attention was drawn to Bocanegra telling M1 to face toward the truck.

M1 was facing the truck, which allowed LE1 to have a complete view of M1's body, including his hands. M1 reached under the front passenger seat. LE1 told M1 to stop reaching under the seat, but M1 continued to do so while LE1 repeated the command to stop reaching under the seat. M1 reached under the seat again, removed a black semi-automatic handgun and quickly began turning toward Bocanegra.

LE1 believed M1 was either going to point the gun at Bocanegra or turn and run away. LE1 yelled "gun" several times to alert Bocanegra that M1 had a gun. LE1 heard one gun shot. At first, LE1 did not know who fired the gunshot. Bocanegra began chasing M1 as M1 ran toward the cliff. LE1 followed Bocanegra while alerting other officers of the pursuit using his radio. As they crossed the street heading toward the cliff, LE1 lost sight of the gun which had been in M1's right hand. By the time LE1 got to the top of the cliff, Bocanegra had M1 at gunpoint and M1 no longer had the gun. LE1 and Bocanegra surmised M1 might have thrown the gun down the cliff. Several other officers arrived and assisted with detaining the other four occupants of the truck while LE1 and several other officers made their way down the cliff to M1. A tourniquet was applied to M1's arm for the gunshot wound and he was handcuffed and assisted up the embankment to paramedics.

Statement of Officer Bocanegra

Bocanegra was working an enforcement detail targeting people who were stealing catalytic converters from vehicles. While driving from Palomar Airport Road onto Carlsbad Boulevard, Bocanegra saw a pickup truck "doing donuts" in a dirt parking lot. Bocanegra drove into the parking lot and as he did, the pickup truck stopped and M2 got out of the right rear passenger door. Bocanegra requested another officer respond to his location and told M2 to return to his seat in the truck because he was detaining them for reckless driving. Bocanegra waited for LE1 to arrive. While waiting, he asked the occupants to roll down all the windows so he could see inside because the windows were tinted. Bocanegra could see M2 and M1 were wearing the same type of clothing and believed they may be affiliated with a street gang. The day before, individuals had been contacted in this same lot illegally in possession of a firearm. Bocanegra told CW1 he was going to issue a warning for the reckless driving but wanted to obtain the identity of everyone in the car while he did so.

LE1 arrived and watched the group while Bocanegra ran the identities of the occupants through his dispatcher to see if they had previous contacts for gang activity. Bocanegra began to question two of the occupants about some matching clothing items, which he believed indicated their affiliation with a particular gang. Bocanegra asked CW1 if he would consent to having the truck searched and two of the passengers interjected and told CW1 to not allow the search. LE1 told

CW1 he smelled the odor of alcohol coming from the car and asked again for consent to search the truck. CW1 gave consent for a vehicle search. During the contact, M2 had been reaching his hands down in front of himself. This caused Bocanegra to be concerned for his safety and he told M2 to stop reaching down and M2 said he was reaching for his hat. Bocanegra asked M2 to get out of the truck first and as soon as Bocanegra started getting M2 out, M1 opened his door and also got out. Bocanegra repeatedly told M1 to get back in the truck as he was standing with and about to conduct a weapons pat down of M2.

Bocanegra's attention was drawn to LE1, who was telling M1 to stop reaching under the seat. Bocanegra looked at M1, whose back was to him, and M1 abruptly turned toward him with a black handgun in his hand. Bocanegra feared for his life as the incident happened so quickly. "And boom, the gun was like in my face pretty much." As M1 raised the gun above his waist, Bocanegra fired one shot at him. M1 ran west toward the ocean and Bocanegra chased after him. M1 fell about ten feet down an embankment. Bocanegra could see the gun in M1's hand during the chase, but lost sight of it when M1's arms were flailing as he fell. Bocanegra illuminated the area with his flashlight and saw M1 lying on his back with nothing in his hands. Bocanegra told M1 not to reach for anything and not to move. Bocanegra held M1 at gunpoint and waited for additional resources.

Bocanegra saw M1 was bleeding but was unsure if he had been injured in the fall or had been shot. Bocanegra asked M1 if he was shot and M1 said he was. Once additional officers and a canine officer arrived, officers made their way down to M1 and placed a tourniquet on his arm. Bocanegra was then removed from the scene while other officers took M1 up the embankment so he could be transported to the hospital for medical care.

Bocanegra explained he fired his weapon because he believed he would be shot and had to defend himself, as well as protect M2, who was standing next to Bocanegra.

Minors

Each of the minor passengers declined to give a statement to police. While M1 was still at the scene after falling, he continually denied having a firearm.

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 and body worn camera recordings were reviewed. All these items were found to provide evidence corroborating the statements summarized above. The shooting and the events that led to it were captured by body worn cameras. All officers were wearing clearly identifiable uniforms and all vehicles utilized in the incident were marked patrol vehicles.

Bocanegra utilized his department-issued Glock, Model-17 Gen 5, 9mm handgun. After the shooting, Bocanegra's handgun was inspected by a homicide detective and an evidence technician. The gun contained an inserted seventeen-round capacity magazine loaded with sixteen 9mm caliber rounds and one 9mm round in the chamber for a total of seventeen 9mm rounds. One spent cartridge casing was located on the ground at Bocanegra's shooting position.

The cartridge casing had the same headstamp as the remaining rounds in Bocanegra's handgun. This corroborates Bocanegra's statement of firing one round. Further corroboration was provided by the body worn camera footage from the officers.

M1's gun was found lying atop vegetation further down the cliff face from where M1 was arrested. The firearm was a 9mm handgun with a magazine inserted and loaded with four rounds. The gun did not have a round in the chamber. The gun had no serial numbers, making it what is commonly referred to as a "ghost gun." A ghost gun is an illegal firearm containing no serial numbers or manufacturers markings. The ghost gun M1 had been in possession of was recovered on the same slope where M1 was taken into custody.

M1's handgun was forensically analyzed by the SDPD Crime Lab and DNA swabs were taken from the trigger, trigger guard, and surface of the gun. Four DNA profiles were found on the gun and were compared against a control sample of DNA obtained from M1. One profile showed M1 was the major contributor to DNA on the trigger and trigger guard. Contributors of the three other DNA profiles were unable to be identified.

Body Worn Camera Footage

Bocanegra's body worn camera footage captured the events beginning before he initiated contact with CW1 and the other occupants of the truck. The recording shows Bocanegra obtain consent from CW1 to search the truck. Bocanegra opens the right rear passenger door and asks M2 to step out of the truck. As M2 is getting out of the truck, M1 also gets out of the truck. Bocanegra tells him to get back into the truck and to face away. M1 turns around and goes out of view behind the open rear passenger door. As this happens, LE1 is heard twice telling M1 not to reach under the seat. Bocanegra adds, "Hey dude, I'm not fucking messing around." M1 then quickly turns toward Bocanegra holding a semi-automatic handgun in his right hand and raising it above his waist. M1 pivots around the open door of the truck and away from Bocanegra when Bocanegra fires one shot at him. M1 runs out of view and Bocanegra chases after him. Bocanegra stops at the top of a cliff and illuminates the area below him. M1 is lying on his back at the bottom of the embankment, but M1's gun is not seen. Additional officers arrive and they make their way down the embankment, render aid, and take M1 into custody.

LE1's body worn camera recording captures him arriving at the scene. He approaches the driver side and begins talking to CW1 and the rear passengers through the open windows. CW1 gives consent to LE1 and Bocanegra to search his truck and then gets out of the driver's seat and shuts the door. The driver's window is rolled down and LE1 is standing at the open window. LE1 turns his body toward the vehicle and the camera shows M1 standing at the open front passenger door. M1 leans forward into the vehicle and his hands are out of view. M1's attention appears focused toward the floorboard area of the front passenger seat. LE1 twice instructs M1 to not reach under the seat. M1 appears to make eye contact with LE1. and M1's right shoulder dips down as though he may be reaching for something out of view. LE1 tells him again not to reach under the seat and M1 turns to the left, away from LE1, and runs out of LE1's camera view. As M1 is exiting the camera's frame, LE1 shouts, "Gun, gun, gun," and the sound of Bocanegra firing one shot is heard. LE1 runs to the location at the top of the embankment where Bocanegra is and

begins to coordinate the arrival of additional officers. When other officers arrive, LE1 assists taking M1 into custody and providing first aid for the gunshot wound M1 sustained.

Medical Treatment

M1 was medically treated for a gunshot wound to his upper right arm. The bullet Bocanegra fired passed through M1's bicep above the bend in his arm before exiting. M1 was treated at the hospital and released.

Legal Standard

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force and the circumstances upon which an officer may use such force. The law provides, in part, that "a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary...[t]o defend against an imminent threat of death or serious bodily injury to the officer or to another person." Penal Code section 835a(c)(1)(A).

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

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

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

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

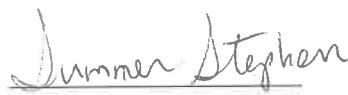
"In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(a)(2).

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

Conclusion

Officer Bocanegra and LE1 were engaged in a lawful interaction with M1 and his companions when the officers obtained consent from CW1 to search the vehicle. M1 exited the truck and began reaching his hand under the front passenger seat where he had been seated. LE1 responded by clearly instructing M1 not to reach under the seat. Both officers made verbal attempts to stop M1 from reaching, but M1 ignored the officers' commands and retrieved a loaded ghost gun from under the seat. M1 then quickly turned toward Bocanegra and raised the handgun above his waist while moving away from the truck. Upon seeing M1 with the handgun, Bocanegra reasonably perceived M1 as posing an imminent threat of death or serious bodily injury. Fearing for his life, Bocanegra fired one round at M1. Due to the nature of the rapidly unfolding incident, Bocanegra was forced to make a quick judgment. Based on the totality of the circumstances, Bocanegra's decision to use deadly force was reasonable, as other options were not safe or feasible. Therefore, Bocanegra bears no state criminal liability for his actions. A copy of this letter and 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 Jeffery Smith, Carlsbad Police Department