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**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO



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May 08, 2023

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

Chief Roxana Kennedy  
Chula Vista Police Department  
315 4<sup>th</sup> Avenue  
Chula Vista, CA 91910

**Re: Non-Fatal shooting of Candace Spears on November 28, 2022, by San Diego Sheriff's Department Sergeant James Balderson and Chula Vista Police Detective Cody O'Riley; SDPD Case No. 22-051513; DA Special Operations Case No. 22-142PS; Deputy District Attorney assigned: Jennifer Reischl**

Dear Sheriff Martinez and Chief Kennedy:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Unit regarding the non-fatal shooting of Candace Spears by San Diego Sheriff's Department Sergeant James Balderson and Chula Vista Police Department Detective Cody O'Riley on November 28, 2022. This case was submitted to the District Attorney's Office for review on February 23, 2023.

***Summary***

On November 28, 2022, the Regional Auto Theft Task Force (RATT) was conducting an operation to recover a vehicle, which had been reported stolen. Sergeant Balderson and Detective O'Riley, who are assigned to the RATT unit, were there to assist with the vehicle recovery. Another detective began knocking on the side of the stolen van and announced the presence of law enforcement to the occupant, Candace Spears, who was sleeping inside. Spears stepped out of the van pointing what appeared to be a handgun at the law enforcement team. It was later found to be a replica handgun. Fearing Spears was about to shoot them, Balderson and O'Riley drew their handguns and fired at Spears hitting her three times. Spears was taken to the hospital and survived her injuries. Spears told investigators she wanted to commit suicide and knew law enforcement officers were outside the van. Spears pointed the replica firearm hoping the officers would shoot her. A toxicology screening of Spears' blood indicated the presence of methamphetamine, cocaine, fentanyl, and THC at the time of the incident.

***Persons Involved***

Candace Spears is a 33-year-old resident of San Diego. James Balderson has been a deputy with the San Diego Sheriff's Department for fourteen years. Cody O'Riley has been an officer with the Chula Vista Police Department for four years.

***Law Enforcement Witness One (LE1)***

LE1 and LE2 are assigned to the RATT team and were tasked with attempting to locate a stolen van. LE1 and LE2 were in the same vehicle. They located the stolen van on Collwood Boulevard and established surveillance on it while alerting the rest of the RATT team. LE1 parked about 15 feet behind the van and watched it while awaiting the arrival of the other team members. LE1 and LE2 got out of their car and were able to see a female sleeping in the back of the van. They returned to their car and informed the other team members the car appeared to be occupied. LE1 and LE2 remained inside their vehicle and continued to conduct physical surveillance.

LE1 watched as approximately four team members arrived and approached the van to contact the occupant. The detectives wore tactical ballistic vests, some of them had markings that said "Sheriff" and others said "Police" or "Investigator". One detective used a flashlight to look in the van and announced loudly they were from the Sheriff's Department. The van had double doors on the passenger side and one of the doors opened. A female stepped out of the van and one detective began running toward the back of the van and another detective ran towards a hill next to the van. The female had a dark object in her hand and was extending her arm and pointing it toward the detectives who were south of her. LE1 heard gunshots but did not know who fired. LE1 ducked below the vehicle dashboard to avoid being hit by gunfire. LE1 believed the female had a gun and later saw what he believed was a gun lying on the ground.

***Law Enforcement Witness Two (LE2)***

LE2 and LE1 received a notification a stolen van was parked near Collwood and another nearby street. LE1 and LE2 found the van parked on Collwood and parked directly behind it. They notified the other team members they found the van. LE1 and LE2 got out and looked inside the van and saw a person with longer hair sleeping in the van. They went back to their car and relayed the information to their team and continued surveillance.

When the team arrived three or four detectives approached the rear of the van, which was in front of the car LE2 was in. LE3 activated the red and blue emergency lights on his vehicle when he arrived and left them on. The detectives were wearing plain clothes and ballistic vests with markings indicating they were either police or sheriff. The detectives knocked on the back of the van four or five times announcing they were the Sheriff's Department and told the occupant to come out. The detectives were also using flashlights to look inside the van.

A door on the passenger side opened and a person stepped out holding a black object in their hand. Almost simultaneously, LE2 heard three gunshots and got down on the floor of the car. LE2 did not see who fired the shots and did not hear anything said before she heard the shots.

When the shooting stopped LE1 and LE2 checked to make sure they were not hit by the gunfire and LE2 noticed the female occupant was now on the ground. LE2 got out of the car and assisted detectives who were administering first aid to Spears.

***Law Enforcement Witness Three (LE3)***

LE3 responded with the rest of the RATT team to assist with the recovery of a stolen vehicle parked on Collwood Boulevard. When he arrived, LE3 activated the red and blue emergency lights on his vehicle and left them on during the incident and Balderson did the same. LE3 and the rest of the detectives assembled at the back of Balderson's vehicle, which was stopped in the traffic lane next to the van. The group approached the van and LE3 hit the side of the van with his hand five or six times while announcing he was with the Sheriff's Department. LE3 saw the curtains inside the van begin to move and he attempted to open the doors to the van, but the doors were locked.

Spears appeared inside and moved to the passenger side doors in the middle of the van. Balderson moved to the opposite side of the van doors and was now facing LE3. Spears opened the door and stepped out of the van. LE3 saw Spears had a gun in her hand and she began to raise it. LE3 felt he could not fire at Spears because Balderson was in his line of fire. LE3 ran to the back of the van to get out of Balderson's line of fire, and he heard three to four-gunshots. LE3 saw Spears on the ground and saw a gun on the ground near her. Someone kicked the gun away from Spears and LE3 began to assist with providing first aid to her.

***Statement of Detective Cody O'Riley***

O'Riley was notified that LE1 and LE2 located a stolen van on Collwood Boulevard and were conducting surveillance of the van. O'Riley responded to their location to assist them. When O'Riley arrived, he parked south of the vehicle while he and the other detectives developed a plan to proceed. It was decided two detective cars would block in the van so it could not drive away and then place a spike strip on the ground in front of the van before contacting the occupant. The detectives put the plan in motion and approached the van. O'Riley activated his red and blue emergency lights and pulled his car in front of the van. O'Riley got out of his car and met with the other detectives at the rear of the van to contact the occupant of the van. O'Riley was wearing his tactical ballistic vest, which had "Police" stenciled on the front and back, and had his badge displayed. LE3 began to announce police were outside the van and O'Riley saw the van begin to shake. O'Riley believed a person was inside the van. He used a flashlight to illuminate the interior of the van through the windshield. O'Riley saw Spears sit up so he announced he was the police and told her to come out of the vehicle. O'Riley estimated he made the announcement four times and LE3 made the same announcement at least five times while banging on the door.

Spears got up and made eye contact with O'Riley and quickly looked away. Spears sat forward and her hands were out of view as she began to move toward the passenger door. Spears was crouched over as she went to the door. Balderson stated Spears was reaching for something. O'Riley could not see what Spears was reaching for and her hands were still out of view. Spears quickly got out of the van and began to run toward the rear of the van where other detectives were standing.

Spears turned back toward O'Riley as she was running away and O'Riley could see a black semi-automatic handgun in her hand. O'Riley heard Balderson yell, "Gun" and then heard two gunshots. O'Riley thought the shots were coming from Spears shooting at Balderson so he began shooting at Spears. O'Riley estimated he was about 25 feet away from Spears when he fired two times. O'Riley saw Spears drop the gun she had in her hand, so he stopped firing and Spears fell to the ground. O'Riley and Balderson ran to where Spears had fallen and Balderson kicked Spears' gun away while other detectives handcuffed her. O'Riley had a trauma pack with him and began applying first aid to Spears.

***Statement of Sergeant James Balderson***

Balderson responded to assist his team with the recovery of a stolen van. Two detectives from Balderson's team located the van first and advised the rest of the team the van was occupied by one person. The team arrived where the van was parked, and they developed a plan to box the van in so it could not leave and contact the occupant.

Balderson stopped in the traffic lane next to the van and turned on his red and blue emergency lights. Balderson and the rest of the detectives walked to the right rear corner of the van and prepared to contact the occupant. LE3 began hitting the side of the van with his hand and loudly announced the Sheriff's Department was outside and told the occupant to come outside. Balderson also hit the side of the van with his hand stating the Sheriff's Department was outside and for the occupant to come out. Balderson walked to the front of the van with a very large, bright flashlight and pointed it through the windshield to illuminate the interior of the van. Balderson saw Spears inside the van who was slowly putting clothes on and appeared to be preparing to come out of the van.

Balderson expected Spears would step out of the van, but she quickly reached down and picked up a black metallic object. Balderson told the rest of the team Spears grabbed something but he could not tell what it was. Balderson was standing at the front passenger side door and Spears opened the middle door on the side of the van. When Spears did this she came between Balderson and the other detectives. Balderson's view of Spears was momentarily blocked by the door, so he stepped to the side to get a view of her. Balderson saw Spears manipulating the object in her hand, which he saw was a gun. Spears began running toward the rear of the van where the rest of the detectives began retreating and moving away from the back of the van. Spears was screaming and Balderson believed Spears may have been shooting at the detectives, so he drew his gun and fired at Spears. The event took place so quickly that Balderson did not have the opportunity to issue any commands to Spears. He also believed Spears was armed with a gun and did not believe the use of a Taser or less lethal option would be effective. Balderson fired his weapon at Spears to protect the lives of the other detectives and himself. Spears turned toward Balderson, and he fired two more times. Spears fell to the ground. Balderson saw Spears' gun about six inches away from her hand, so he kicked it away. Balderson handcuffed Spears and began applying pressure to a gunshot wound on her right arm and one on her right hip.

***Statement of Candace Spears***

Spears told investigators the van belonged to her boyfriend. She had previously attempted to contact her boyfriend and was trying to find out where he was, but he did not answer her.

She commonly drove the vehicle and had driven it on and off for many years. Her boyfriend bought the vehicle mainly for her so that she would not be on the street. She had been sleeping in the van for the last two days and was depressed and recently contemplating suicide. Spears stated, "I wanted to kill myself, but I didn't want to hurt anybody." Spears thought about driving the van off a cliff and wrecking it but did not want to hurt anyone else. She tried to overdose on Fentanyl, but that did not work.

When Spears was awakened by the police, she decided to commit suicide by having the officers shoot her, "to do a police-assisted suicide." Spears had a "fake gun" (a BB gun) and believed all the police lights illuminating the area would allow the officers to see her holding the BB gun. Spears got out of the van with the BB gun in her hands extending her arms out in front of her hoping the officers could see it. She turned toward some of the detectives near the rear of the van, but they began running away. Spears turned to follow the detectives and then recalled getting shot three times by the officers.

### ***Investigation***

The scene was secured, photographed, and investigated by SDPD homicide detectives. All reports, audio-recorded officer and witness interviews, calls, radio traffic, and photographic evidence were reviewed. None of the detectives involved in this incident were equipped with Body Worn Cameras. The only BWC available was that of the officers who arrived at the scene after the shooting.

The van Spears was in is a 1998 Ford Econoline van. The van is equipped with captain's chairs for the driver and front passenger and two additional captain's chairs mid-vehicle behind the driver and front passenger. The rear of the van is equipped with a bench seat, which folds down to a bed. This is where Spears had been sleeping when she was awakened by the detectives. The van is equipped with double doors mid-vehicle on the passenger side, which both open outward. These are the doors Spears exited when holding the BB gun.

Balderson's firearm, a department-issued Glock 17 Gen 5, 9mm semi-automatic pistol was examined. The firearm was loaded with Hornady 9 MM Luger+P18 ammunition. Balderson's pistol was received with one cartridge in the chamber and thirteen in the magazine. The capacity of the magazine is seventeen cartridges. The total capacity of the pistol with one in the chamber and a full magazine is eighteen cartridges. The evidence indicated a maximum of four cartridges could have been fired by this pistol. Four cartridge casings with headstamps "Hornady 9 MM Luger+P18" were recovered near Balderson's shooting position. This is consistent with Balderson firing four times.

O'Riley's firearm, a department-issued Sig-Sauer P320, 9mm semi-automatic pistol was examined. The firearm was loaded with FC 9mm Luger ammunition. O'Riley's pistol was received with one cartridge in the chamber and fifteen in the magazine. The capacity of the magazine is seventeen cartridges. The total capacity of the pistol with one in the chamber and a full magazine is eighteen cartridges. The evidence indicated a maximum of two cartridges could have been fired by this pistol. Two cartridge casings the headstamps "FC 9mm Luger" were recovered near O'Riley's shooting position, which is consistent with him firing two times.

The BB gun Spears used was a black colored Crossman C11 4.5mm BB gun. The gun was not loaded with BBs when it was examined. The gun is the size and appearance of a semi-automatic pistol.

### ***Spears' Injuries***

Spears sustained gunshot wounds to her right arm, right hip, and left thigh. She was transported to the hospital for treatment and was later released. A toxicology screening indicated the presence of methamphetamine, cocaine, fentanyl, and THC in Spears' blood.

### ***Legal Standards of Criminal Liability***

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

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

An imminent threat of death or serious bodily injury is one where "based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

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

The statute further states, "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).

Additionally, "A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense using objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section "retreat" does not mean tactical repositioning or other de-escalation tactics." Penal Code section 835a(d).

***Conclusion***

Balderson and O'Riley were part of a team called to assist in the recovery of a stolen vehicle. At the time of the incident all the detectives at the scene were wearing attire identifying them as law enforcement officers. They used the emergency lights on their vehicles, announced their presence, and identified themselves as law enforcement while hitting the van with their hands.

Spears stated she had been depressed and struggling with thoughts of suicide. When she heard the detectives outside, she knew they were law enforcement officers. Spears formulated a plan to commit suicide by enticing the detectives to fatally shoot her. Spears picked up a BB gun in the van, which resembled a semi-automatic handgun. Spears exited the van and held the gun in her hands extending it in front of her so detectives could see it. When two of the detectives began to retreat, Spears turned to advance toward Balderson and O'Riley and was then shot by Balderson and O'Riley.

Reviewing the evidence and considering the totality of the circumstances, Balderson and O'Riley reasonably believed that Spears, who presented an apparent firearm, posed an imminent threat and intended to cause serious bodily harm or death to them and other detectives. Less lethal alternatives were not feasible or safe against the perceived immediate and lethal threat posed by Spears. Therefore, O'Riley and Balderson bear no state criminal liability for their actions. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,

  
SUMMER STEPHAN  
District Attorney

cc: Captain Richard Freedman