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December 30, 2022

Chief of Police David Nisleit
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Fatal shooting of Mr. Isaac Andrade on January 10, 2022, by San Diego Police Department Officers Michael Martinez, Michael Muniz, and Angel Vidrios; SDPD Case No. 22-600458; DA Special Operations Case No. 22-004PS; Deputy District Attorney assigned: Samira Seidu

Dear Chief Nisleit:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Investigations Division concerning the circumstances leading to the fatal shooting of Isaac Andrade by San Diego Police Department Officers Michael Martinez, Michael Muniz, and Angel Vidrios on January 10, 2022. 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 20, 2022. On July 15, 2022, we received additional reports from the San Diego Police Department Crime Laboratory. On December 22, 2022, we received the Medical Examiner's report.

Summary

On January 10, 2022, Isaac Andrade brandished a large, fixed blade knife to a clerk at Mullens Liquor Store and demanded money from the cash register. The clerk handed Andrade approximately \$600 from the register. Andrade left the store and walked down the south alley of 3000 Imperial Avenue. CW1 called 911 and provided a description of Andrade and the direction he went.

Minutes later Officers Martinez and Muniz advised they had a possible suspect in the south alley of 3100 Imperial Avenue. Officer Vidrios and LE1 arrived at the location at about the same time. Martinez was at the rear of his marked vehicle when Andrade produced a gun and pointed it at Martinez who believed Andrade started shooting at him. Martinez, Muniz, and Vidrios fired in at Andrade. Andrade went down in the alley. A black plastic airsoft gun and a twelve-inch fixed blade Bowie type knife, with an approximately eight-inch blade were located next to him. Andrade had \$560 in the inner left pocket of the jacket he was wearing. Andrade had multiple gunshot wounds. Officers provided medical aid until medics arrived. Andrade was pronounced deceased at the scene at 7:53 a.m. The Medical Examiner's Office determined the manner of death was homicide and the cause of death was multiple gunshot wounds. Toxicological analysis

of Andrade's blood revealed the presence of methamphetamines, amphetamines, marijuana, and a blood alcohol level of 0.15%.

Persons Involved

Andrade was a 21-year-old resident of San Diego. Martinez, Muniz, and Vidrios are employed as officers with the San Diego Police Department. At the time of the incident, Martinez had been employed by the Department for over five years, Muniz for over six years, and Vidrios for almost seven years.

Statement of Civilian Witness One (CW1)

CW1 was working at Mullens Liquor Store and helping a customer when a male walked into the store. He had music playing, possibly on his phone. The male waited for the customer to leave and then approached the front counter. The male pulled out a "dagger or mini sword" and put it on the counter with the point of the blade facing CW1. CW1 said the knife was as long as her arm, from her elbow to the tip of her middle finger. The knife had a black handle. The male said, "Give me all your fucking money." CW1 replied, "Are you for real?" or "Are you fucking serious?" and "You're joking right?" The male responded, "No, give me all your fucking money." CW1 opened the cash register and gave him approximately \$600. The male told CW1, "Go ahead and call the fucking cops." The male took the money, put it in his jacket pocket and calmly walked out the store and out the west gate. CW1 watched the male on the store security cameras and saw him go eastbound in the alley behind the store. CW1 described the male as Hispanic, approximately 23-24 years old, approximately 5'04" with a thin build, a moustache, dark brown curly hair, wearing a forest green hooded jacket or parka, dark blue pants, and white tennis shoes.

Other Civilian Witnesses

Officers spoke to several witnesses in the homes and business adjacent to the shooting scene. While witnesses reported hearing gunshots, none of them saw the shooting.

Statement of Officer Martinez

On the day of the incident, he was driving a marked patrol car and was partnered with Muniz. They heard the radio call of an armed robbery not far from where they were. The robbery suspect was described as a slim Hispanic male with a mustache, wearing blue jeans and a green jacket, and had run into the alley eastbound on 31st Street. They drove down Imperial Avenue to about 30th Street and turned down the south alley. Martinez saw a person walking eastbound in the alley. He had his back towards the officers. As they got close to the subject, they saw he possibly fit the description of the robbery suspect. As they drove past him, Martinez looked back and saw the subject was a light-skinned Hispanic male with a mustache. Martinez believed the subject was a possible match for the robbery suspect, except for the green jacket. Martinez and Muniz decided to contact the subject. They continued eastbound and then stopped at the intersection of the alley and 32nd Street. Martinez walked towards the subject who said something like, "What's up officers? Can I help you?" or, "Is everything all right?" Before Martinez could respond, the subject reached into his jacket with his right hand. Martinez thought the subject was the armed robbery suspect and may have been armed with a knife. Martinez was about 15 feet away from the subject and had no cover. Martinez started to reach for his handgun and told the subject not

to reach for anything. Martinez then saw the entire steel blade of the knife. It had a black handle and looked like a "Rambo" knife. Martinez said the subject pulled out a handgun almost at the same time. The subject swung the black handgun out to his right side and began to bring it in a forward motion pointing at Martinez. The subject held it in his right hand in a shooting stance. Martinez started firing his weapon. Martinez felt the subject would not miss if he shot at Martinez because of how close they were to each other. Muniz was to his left and Martinez thought the subject could easily kill them both. Martinez said once he saw the gun, he knew it was a lethal situation. He did not consider other force options and believed his handgun was the only way he could protect himself and his partner.

Martinez heard a pop and saw smoke coming from the left of the subject. He believed the subject started shooting at him. Martinez started to backpedal. He wanted to keep moving so the subject could not shoot and kill him. While Martinez was shooting, he immediately felt his entire upper body get flung straight back. He felt a "thud" and thought he had been shot in the chest. As he fell back, he fired a couple of rounds and tried to roll out of the way. Martinez ended up on his stomach in the prone position and fired a couple more rounds. The subject continued to point the gun at Martinez. He thought he was going to get shot in the head because of how close they were. Martinez shot to kill the subject and to eliminate the threat. Martinez said he knew he was shooting the subject, but the subject was not falling.

Martinez got up and reloaded his weapon. Martinez continued firing when the subject fell because he was still moving with the gun in his hand. Martinez thought the subject was still a threat. He also heard Muniz and Vidrios shooting. The subject finally laid flat. Martinez was in front of the bumper when he ran out of rounds and reloaded with his last magazine. Vidrios and LE1 ran up towards the subject. He was lying on his stomach. Martinez could see the subject's handgun in front of him and saw him moving his right hand reaching for the firearm. Martinez told Vidrios and LE1 to stop and back up. Martinez believes he fired two to four more rounds at the subject because he thought he was going to continue to shoot at them. The subject stopped moving completely.

Martinez believed he had been shot because it felt like something hit his chest when he fell back. He took off his vest and BWC but didn't see anything. Muniz checked him and did not see anything. They moved towards the subject and Vidrios started doing chest compressions. Martinez saw the knife and handgun next to the subject. The knife and handgun were moved out of the way while they provided medical aid to the subject.

Statement of Officer Muniz

Muniz was partnered with Martinez, and they responded to a radio call of an armed robbery with a knife on 31st Street and Imperial Avenue. The suspect was described as a Hispanic male wearing a green jacket, dark pants, a moustache and headed eastbound in an alley. Muniz and Martinez checked the alley. They saw a subject who loosely matched the description of the armed robbery suspect. The subject was walking. He was wearing a black jacket rather than the green jacket described on the radio call. They drove past the subject in the alley. Muniz noticed the subject had a moustache and "kind of" fit the description of the robbery suspect. Muniz and Martinez decided to contact him.

They parked and exited their vehicle and went to contact the subject. Almost immediately, the subject reached into his jacket with his right hand and pulled out a gun. Muniz also saw the handle of the hunting knife. Everything happened fast. Muniz heard Martinez tell the subject, "Don't do that," or "Get down." The subject held the gun to his side for a second, then almost immediately raised the gun, took a shooting stance, and pointed the gun at Martinez. Muniz thought the subject was going to shoot Martinez. Muniz drew his weapon. Muniz heard gunfire and saw Martinez go down onto his back, which led him to believe there was an exchange of gunfire between the subject and Martinez. Muniz thought Martinez had been hit by gunfire from the subject. Muniz fired five or six rounds from his weapon at the subject. Muniz went around to the other side of the patrol car to assist Martinez. Martinez was still on the ground and firing at the subject. The subject was down on one or both knees and still had the gun in his hand. Muniz fired two or three more rounds until Martinez was able to get up and take cover behind the patrol car. Muniz saw an additional officer had arrived and flanked the subject. The officer exchanged gunfire with the subject. Martinez believed he had been shot. Muniz did not find any entry or exit wounds on Martinez. An officer arrived with a rifle, moved toward to the subject, kicked his weapons out of the way, and they rendered aid.

Muniz said the incident escalated quickly and his only option was lethal. Muniz said less lethal force was not an option because he was not going to use less lethal force on someone who presented lethal force on them.

Statement of Officer Vidrios

He is a Field Training Officer and was partnered with his trainee, LE1. He heard the radio call of robbery with a knife at Mullens Liquor Store. He and his trainee headed towards the area and started actively looking for the suspect. They saw a SDPD unit eastbound in the south alley at 3100 Imperial Avenue. The unit radioed that they were with a possible suspect. Vidrios and LE1 made a U-turn and headed back in that direction. When they arrived at 32nd Street, Vidrios saw the two officers start to backpedal. He believed the officers encountered a threat. Vidrios heard shots. He then saw Martinez go down. It appeared Martinez was trying to get behind his patrol car. Vidrios later said he believed Martinez had already been shot when he fell back. Vidrios knew then that Martinez was in danger. Vidrios looked to his right and saw a subject with his arm extended holding a gun that was pointed towards Martinez. Vidrios heard gunshots.

Vidrios jumped out of the car, ran along the sidewalk, drew his weapon, and saw the subject still had his arm extended with the gun in his hand. Vidrios thought Martinez and Muniz were being shot at or about to be shot at. Vidrios believed their lives were in danger. Vidrios stated the subject displayed a deadly threat and there was no other force option at that point. Vidrios fired approximately six rounds at the subject. Vidrios saw the subject go down to his knees. Vidrios ran southbound along the sidewalk. The subject still had the gun in his hand extended towards Martinez. Vidrios shot an additional seven to eight rounds at the subject. The subject went down on his stomach.

Vidrios went up the embankment to close the distance between himself and the subject. He saw the subject was down and the gun was no longer in his hand. The gun was black and appeared to

be a semi-automatic gun. There was also a large knife on the ground. Vidrios moved behind a wall to complete a magazine change. He then pointed his gun at the subject and held it there until additional officers arrived. LE1 retrieved a shield and they moved towards the subject and provided medical aid. Another officer checked the subject for additional weapons and found a wad of cash in one of his pockets. Vidrios knew then this person had committed the robbery at Mullens Liquor Store.

Law Enforcement Witness One (LE1)

LE1 was with his field training officer, Vidrios, when they heard the call of an armed robbery with a knife. While LE1 was driving to the location, he heard on the radio another unit was contacting a possible suspect. LE1 drove southbound on 32nd Street until Vidrios told him to stop. LE1 stopped the vehicle and exited. He saw two other officers to his left. Vidrios was also to his left. LE1 also saw a male, who was wearing a black hooded sweatshirt and black pants. LE1 then heard gunshots and began to draw his weapon. He knew the two officers fired their weapons because he saw the muzzle flashes from their guns. There was a small grassy hill in front of LE1 and a brick building on the other side of it. The male was next to the brick building. He had a black handgun in his left hand and pointed straight forward. LE1 was at a lower angle than the male and did not have a clear shot at the subject so he did not shoot. He heard Vidrios fire his weapon at the male. He saw the male back away and fall behind the brick building. Vidrios told LE1 to get a beanbag shotgun out of the vehicle. LE1 could not find it. He went back to assist Vidrios and saw the male had blood coming from his mouth. Vidrios told LE1 to get a shield out of the vehicle. LE1 got the shield and held it up to provide cover for himself and Vidrios. LE1 saw the subject's head moving. He told Vidrios. They approached the subject to render aid. Other officers moved the gun and a knife away from the subject.

Investigation

The scene was secured, photographed, and investigated by SDPD homicide detectives. All reports, audio-recorded officer and witness interviews, calls, radio traffic, photographic evidence, surveillance, and Body Worn Camera (BWC) video were reviewed. These items provided evidence corroborating the witnesses' and officers' statements.

SDPD investigators also met with representatives from the California Department of Justice (DOJ). After reviewing the BWC video of the shooting, DOJ representatives determined they would not take over the investigation as the shooting was not a qualifying event pursuant to Government Code section 12525.3(b)(1), which states that "a state prosecutor shall investigate incidents of an officer-involved shooting by a peace officer that results in the death of an unarmed civilian."

Martinez was armed with his department-issued Glock 17 Gen4 "9X19" 9mm caliber semi-automatic pistol with a black "TLR-1 HL" Streamlight flashlight attached to it. A forensic examination showed it had one round in the chamber and 11 cartridges left in the attached magazine. The capacity of the magazine is 17 cartridges. The total capacity of the pistol with one in the chamber and a full magazine is 18 cartridges. According to an "Officer-Involved Incident Checklist" Martinez filled out after the shooting, his firearm carried 19 rounds in the magazine and one in the chamber. Martinez carried two additional magazines and reloaded twice during

the shooting. A forensic examination determined that 38 of the cartridge casings recovered at the scene were fired from Martinez's firearm. Martinez did not estimate how many rounds he fired; however, his statement and the evidence indicate Martinez fired approximately 38 to 39 rounds at Andrade.

Muniz was armed with his department-issued Glock 17 Gen 4 "9X19" 9mm caliber semi-automatic pistol with a black "TLR-1 HL" Streamlight flashlight attached to it. A forensic examination showed Muniz's pistol had one round in the chamber and 11 cartridges left in the magazine. The capacity of the magazine is 17 cartridges. The total capacity of the pistol with one in the chamber and a full magazine is 18 cartridges. Muniz did not reload his weapon during the shooting. It is unclear whether Muniz's initial magazine was fully loaded. It is unclear how many rounds Muniz shot. Based on his statement, Muniz fired seven to nine rounds at Andrade. A forensic examination determined that 12 of the cartridge casings recovered at the scene were fired from Muniz's firearm.

Vidrios was armed with his department-issued Glock 17 Gen 4 "9X19" 9mm caliber semi-automatic pistol with a black "TLR-1 HL" Streamlight flashlight attached to it. A forensic examination showed Vidrios's firearm had one round in the chamber and 16 rounds in the attached magazine. The capacity of the magazine is 17 rounds. The total capacity of the pistol with one in the chamber and a full magazine is 18 cartridges. Vidrios reloaded his firearm one time but did not shoot it after reloading. It is unclear whether his initial magazine was fully loaded and if he exhausted that magazine. It is unclear how many rounds Vidrios shot. Based on his statement, he believed he shot approximately 13 to 14 rounds at Andrade. A forensic examination determined that 10 of the cartridge casings recovered at the scene were fired from Vidrios's firearm.

One casing was unaccounted for in the lab reports.

Andrade's airsoft gun was recovered next to him in the alley. It was a black plastic P328 1+1 airsoft gun with an empty removable magazine. The orange tip of the gun barrel had been painted black. There was no evidence indicating any rounds were fired from this device. Andrade was also in possession of a fixed blade Bowie type knife. The knife was approximately 12 inches in length with a black handle. The blade of the knife was silver and approximately eight inches in length.

On January 14, 2022, officers executed a search warrant at Andrade's residence. In the apartment they found a box that appeared to be the original package for the airsoft pistol Andrade had pointed at officers. The box was labeled "Ai Sport Gun" and had a picture of two airsoft pistols, one black and the other gold. In a drawer next to the bed, officers found a gold-colored airsoft pistol. Except for the color, the pistol was identical to the one recovered near Andrade after the shooting. The gold pistol also had an orange tip that had been painted black. In another set of drawers in the apartment, officer found a can of "HD Designs Gloss/Indoor/Outdoor" black spray paint.

On January 15, 2022, a resident of a home adjacent to the alley where the shooting took place flagged officers down and advised that she had found a bullet fragment in her yard. She had been looking around her yard that morning when she noticed the bullet fragment. Officers collected the bullet fragment and noted it appeared to have expanded.

Sixty-one shell casings were collected at the scene. All rounds were fired by the three officers involved in the shooting.

911 Call

CW1 called 911 at 07:28:26 a.m. and reported the robbery. She reported a male came into the store with a big knife and described him as "Mexican" and approximately 24 to 25 years old. CW1 said the male left through the back alley eastbound towards 31st Street. He was wearing a green jacket with a hood, blue jeans, and was alone. The male was medium in height and was thin. He had a moustache. He had the hood to the jacket up over his head and he put the money in his jacket. CW1 did not see any other weapons on him.

Body Worn Camera (BWC)

Martinez's BWC begins with Martinez driving a marked SDPD vehicle and Muniz in the passenger seat. There is no audio for the first two minutes of the video. Martinez stopped the vehicle and exited. He turned and started walking toward an alley. Andrade, dressed in a dark hooded sweatshirt or jacket, dark pants, and white shoes was walking down the alley towards Martinez. Andrade was near a dark colored pickup truck parked alongside a building. Martinez walked towards him as the audio started. Martinez told Andrade not to reach for anything as Andrade reached inside his jacket. Andrade pulled his hand out and appeared to hold it to his side or put it in his front pants pocket. Martinez again told Andrade not to reach for anything. Andrade continued to put his hand in his pocket. Martinez drew his firearm, pointed it at Andrade, and told him to get on the ground just as Andrade produced an object that appeared to be a black handgun from his pants pocket. Martinez told Andrade again to get on the ground. Andrade extended his right arm towards Martinez while holding what appeared to be a firearm. Martinez fired multiple rounds at Andrade. Martinez fell backwards as he moved but continued to fire his weapon. Martinez appeared to attempt to get up but fell again, rolled, and continued to fire his weapon towards Andrade. When Martinez got up off the ground, Muniz could be seen to his left. Muniz had his weapon out firing at Andrade. Vidrios and LE1 were to Martinez's right. A view of Andrade was blocked by the sideview mirror on the SDPD vehicle.

Martinez regained his footing at the front of the SDPD vehicle. He immediately reloaded his weapon and fired approximately 15 rounds towards Andrade, then paused and yelled at Andrade to drop the gun. Martinez stayed at the front of his vehicle as Vidrios advanced to his right towards Andrade with LE1 behind him. Martinez yelled, "Watch out, watch out, he's moving," and fired three more rounds at Andrade as Vidrios moved towards a building to the right. Martinez reloaded his weapon again. Martinez yelled at Vidrios to "Back up, back up, back the fuck up." Vidrios replied, "I've got him."

Muniz asked Martinez if he was good. Martinez replied, "I think I am shot." Martinez radioed "shots fired, OIS." Muniz attempted to check Martinez to see where he had been shot but was

directed back towards Andrade. Martinez broadcast on the radio, "I think I am hit." Sirens are heard in the background. Andrade is seen lying face down in the alley behind the dark colored pickup truck. Vidrios was still to Martinez's right behind the building near Andrade and requested a shield. Additional officers arrived on scene. Martinez and Muniz holstered their weapons and Muniz physically checked Martinez for any gunshot wounds. He did not find any. Martinez and Muniz moved up to Andrade's position with a group of SDPD officers. The black handgun and large fixed blade knife were next to Andrade when they turned him over onto his back and assessed his injuries. They checked him for additional weapons. Medics were requested and chest compressions were started. Martinez identified the other officers who fired their weapons. He found his cellular phone smashed on the ground in the alley where he had fallen to the ground.

Muniz's BWC shows Andrade walking down the middle of the alley with his hands in the pockets of his hoodie/jacket. Muniz walked towards Andrade. Andrade took his right hand out of his pocket and used it to reach inside his jacket. Muniz told him not to reach for anything. Martinez was to his right with his weapon out and pointed at Andrade. Andrade pulled what appeared to be a black handgun out of his jacket with his right hand. He pointed it in the direction of Martinez. Martinez fired several rounds at Andrade while falling backwards to the ground. Andrade turned his body to the left exposing his right side to the officers.

Muniz removed his weapon from its holster, pointed it at Andrade, and fired several rounds. Martinez is seen falling backwards and landing on his back with his handgun still in his right hand. Martinez's cellular phone fell out of a pocket and onto the ground in the alley. Muniz fired and moved backwards towards the front of their vehicle for cover. Martinez was on the ground on his right side and continued to fire his weapon at Andrade. Andrade went down onto his knees into a kneeling position near the rear of the dark colored pickup truck. Muniz moved behind their vehicle and around to the driver's side where Martinez was on the ground. Martinez is seen rolling around on the ground. He turned on his stomach on the ground towards Andrade and continued to fire. Martinez is seen lying on his stomach with his arms extended in front of him. Martinez fired towards Andrade in this position with his head down while looking straight down at the ground.

Vidrios' BWC shows Vidrios' and LE1 exiting their patrol vehicle. There is no audio for the first two minutes of the video. Vidrios ran along the sidewalk, stopped, and fired multiple rounds at Andrade who is out of view. There is a small grassy embankment limiting the view of the BWC. Vidrios moved further along the sidewalk where Muniz and the marked SDPD vehicle can be seen ahead of him. Vidrios walked up the embankment and continued shooting. Andrade appeared to be kneeling with his right arm extended out in front of him. Andrade fell forward. Vidrios walked up the embankment and Andrade is seen lying face down in the alley, not moving. Vidrios continued to walk towards where Andrade was on the ground. Vidrios replaced the magazine in his handgun as he walked towards Andrade.

The audio starts with Vidrios broadcasting there were no officers down. Vidrios told LE1 to get his shield. LE1 brought the shield to Vidrios and took a position to his right. Vidrios broadcast additional information including that Andrade had a knife next to him. Vidrios requested medics.

A group of officers approached Andrade. As they approached, a handgun is visible next to Andrade's right hand and a knife is visible on the ground next to Andrade's right thigh. An officer kicked the gun and knife away from Andrade. Vidrios turned Andrade over. Andrade was bleeding from the mouth and from a gunshot wound on his right upper chest. Vidrios moved Andrade's jacket and shirt and began chest compressions.

LE1's BWC was also reviewed. The audio on LE's BWC began earlier than the audio on Vidrios's BWC. After shots had been fired, Vidrios asked LE1 for "less lethal." LE1 ran back to the patrol car to look for less lethal but did not find a less lethal option. Vidrios requested his shield. LE1 retrieved it from their vehicle and brought it to him. Vidrios can be heard talking on the radio. LE1 and Vidrios approached Andrade. LE1 was still holding the shield, obstructing his BWC. Vidrios checked Andrade's injuries, checked for a pulse, and started chest compressions.

Surveillance Video

The Mullens Liquor Store surveillance system captured Andrade inside and outside of the store. The exterior camera captured Andrade approaching the store on foot. The cameras above the cash register captured Andrade when he approached the counter. The video has no sound. Andrade removed a large, fixed blade knife from the inner left side of his jacket with his right hand. He placed the knife on the counter. Andrade appeared to say something to CW1. CW1 removed all the money except the coins from the cash register and gave it to Andrade. Andrade took the money with his left hand, put it in his left jacket pocket, and exited the store. Andrade walked through the parking lot and turned southbound onto 30th Street. He then turned left, westbound into the south alley of the 3100 block of Imperial Avenue and continued down the alley. Approximately three minutes later, an SDPD patrol vehicle is seen traveling southbound on 30th Street. The patrol car turned westbound and drove down the same alley.

Autopsy and Toxicology

An autopsy completed on January 11, 2022, showed Andrade sustained twelve intermediate gunshot wounds to his neck, chest, shoulders, arms, torso, right hip, and left leg. Six bullets were recovered during the autopsy. The manner of death was determined to be homicide and the cause of death was multiple gunshot wounds.

Andrade's blood was collected during the autopsy and tested. Toxicological testing detected methamphetamines (1.3mg/L), marijuana (4.85 ng/ml delta 9-THC), and alcohol (0.15%) in Andrade's blood.

Legal Standards of Criminal Liability

Penal Code section 835a(c) sets forth the circumstances in which a peace officer may use deadly force and the standard to evaluate the use of such force. The law provides 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 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 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).

Penal Code section 196 was also amended. The statute provides that homicide is justified when committed by peace officers and those acting by their command in their aid and assistance, when the homicide results from a peace officer’s use of force that is in compliance with Section 835a.

Conclusion

Isaac Andrade was located a short distance away from the scene of the robbery and was a possible match to the description of the robbery suspect. When Martinez and Muniz approached him, Andrade made no attempt to run and instead appeared to attempt to initiate a conversation with the officers. Before officers could respond, Andrade reached into his jacket pocket. He ignored commands not to reach for anything and produced what appeared to be a black handgun and a large, fixed blade knife. The officers did not have an opportunity to deescalate the situation as Andrade pointed the handgun directly at Martinez who was a short distance from Andrade. Fearing he would be shot, Martinez fired at Andrade. Muniz feared for Martinez’s life and


opened fire. Vidrios saw that Andrade had what appeared to be a gun pointed at Martinez. Vidrios and Muniz saw Martinez fall back. They believed Martinez had been shot. They feared for Martinez's life and fired at Andrade. They continued firing until Andrade fell to the ground, stopped moving, and was no longer a threat to them.

In viewing the circumstances from the perspective of an objectively reasonable police officer, Andrade's possession of what appeared to be an operable firearm, taking a shooting stance, and pointing the gun directly at Martinez, the officers had reason to believe Andrade posed an imminent threat of serious bodily injury or death to Martinez and the other officers. The officers did not have time to consider less lethal options as Andrade produced what they reasonably believed was a handgun as soon as officers started to approach him. The use of any of less lethal option was not feasible given the immediacy of the threat Andrade posed.

Martinez's conduct of firing over 30 times at Andrade was evaluated to determine if such force was excessive. In viewing the BWC, it became clear the threat had not ended when Martinez emptied his first magazine and reloaded. Andrade can be seen kneeling on the ground with the gun still pointed at the officers. Martinez then fired approximately 15 more rounds at Andrade. It is not clear when Andrade went down during that second volley of gunfire, however, the officers noted it appeared Andrade was still moving even after that round of shots. LE1 noted that he saw Andrade's head move twice. Martinez stated he saw Andrade's hand move towards the firearm he had dropped to the ground. Based on the BWC and the officers' statements, it was reasonable for Martinez to believe the threat had not ended. It was also noted Martinez fired at Andrade while Martinez was on the ground and looking down. Although Martinez diverted his eyes from the threat and continued to shoot, it was after he fell to the ground, believed he had been shot, and was trying to find cover. Martinez was still under the reasonable belief that his life was in danger and deadly force was the only way to confront the threat.

Given the totality of circumstances, Martinez, Muniz, and Vidrios reasonably believed Andrade posed an imminent threat of death or serious bodily injury. They 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

SS:ee

cc: Captain Richard Freedman.