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OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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ASSISTANT DISTRICT ATTORNEY

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DISTRICT ATTORNEY

January 5, 2023

Chief Jose Tellez
National City Police Department
1200 National City Boulevard
National City, CA 91950

Re: Fatal shooting of Mr. Brian Umana on October 8, 2021 by National City Police Officer Evan Davis and Officer Michael Sportelli; NCPD Case No. 2105700; DA Special Operations Case 21-118PS; Deputy District Attorney assigned: Gregg McClain

Dear Chief Tellez,

We have reviewed the reports and materials compiled by the National City Police Department concerning the shooting of Brian Umana by Officer Davis and Officer Sportelli on October 8, 2021. A District Attorney Investigator responded to the scene and was briefed by your officers. This case was submitted to the District Attorney's Office for review on January 12, 2022. The Medical Examiner's report was made available to our office on December 19, 2022.

Summary

On October 8, 2021, at approximately 4:21 a.m., the National City Police Department received a 911 call from a citizen reporting a man armed with a sword on the property of a self storage facility. The caller said the man was armed with a sword and tried to break into one of the buildings on the property. The caller provided a description of the man and said he left on foot.

Officer Davis, Sportelli and LE1 saw Umana who matched the description given by the caller. Umana was standing on the sidewalk with a machete at his side. The officers began talking to Umana and ordered him to put down the machete. Davis had his canine with him and LE1 had a taser as less lethal force options.

Umana refused to put down the machete and began walking away from the officers. Davis and LE1 moved to within approximately fifteen feet of Umana so LE1 could be close enough to deploy the Taser. Sportelli armed himself with a rifle and began moving toward Umana, Davis and LE1. LE1 deployed his taser at Umana but it was ineffective.

Umana turned toward Davis and LE1 and took a step toward them while raising the machete as though he was going to strike them. Davis fired 4 rounds from his handgun which struck Umana. Sportelli fired 6 rounds from his rifle and 4 of the rounds struck Umana.

Although the officers and paramedics attempted lifesaving measures, Umana did not survive his wounds and died at the scene. The cause of death was determined to be multiple gunshot wounds and the manner of death to be homicide. A toxicology test determined the presence of methamphetamines (0.48 mg/L) and amphetamines (0.08 mg/L).

Persons Involved

At the time of the incident Umana was a 29-year-old resident of National City. Davis had been employed as an officer for 2 years and is police service dog handler. Sportelli had been employed as an officer for 1 year and 7 months.

Statement of Civilian Witness 1 (CW1)

CW1 heard the businesses burglar alarm activate. CW1 saw Umana climb over the security fence and get on the roof of a dumpster enclosure, which is located on the property. Umana was holding what CW1 described as a sword and was striking the roof of the enclosure with it. While CW1 was watching Umana through the window, Umana looked up at her, pointed the sword at her and asked if she worked at the business. CW1 called 911 to report the incident and waited for the police to arrive. CW1 watched Umana jump down from the roof of the dumpster enclosure and leave the property. CW1 waited for the police and did not witness the shooting.

Statement of Law Enforcement Officer 1 (LE1)

LE1 responded to a radio call regarding a burglar alarm activation at a self storage facility. The caller told dispatch a man broke into the storage facility and was armed with a knife. LE1 arrived at the storage facility along with other officers and they all met with a witness who reported the incident. The witness described the suspect as a Hispanic man wearing a hoodie and said he was striking the roof above the dumpster enclosure with a knife.

While LE1 was at the business office with the witness, he heard Sportelli advise over the radio he had a possible suspect stopped nearby. LE1 responded to Sportelli's location and when he arrived Davis was with Sportelli and they were talking to Umana. Davis had his canine at his side restraining it with one hand and had his handgun in the other hand.

Davis and Sportelli began to conduct a high-risk pedestrian stop on Umana. Davis told Umana to drop the machete several times and Davis told Umana that if he refused, he may be bitten by the police dog. LE1 chose to draw his taser to have a less lethal option available. Davis continued telling Umana to put down the machete and LE1 could see Umana was looking at Davis as he was talking to him.

Umana was holding a machete in one hand and was motioning toward his mouth with the other hand. The machete was approximately one and a half feet long with a yellow handle. LE1 believed he or the other officers could have been seriously injured or killed if they were struck with it. LE1 heard Umana speaking to Davis but could not hear what was said due to noise from a nearby freeway. Umana was wearing a mask which also made it difficult to hear what he was saying.

Umana began to walk toward LE1'S police vehicle. LE1 believed Umana could potentially harm other people by accessing the weapons in the police car or take the vehicle and return to storage facility. LE1 deployed the taser at Umana but it was ineffective. When LE1 deployed the taser Umana did not have the neuromuscular incapacitation commonly seen in successful taser deployments. Umana stopped walking briefly but did not fall to the ground or drop the machete.

Umana turned back toward LE1 and Davis and began advancing toward them. As he moved toward the officers, Umana raised the machete over his head as though he was going to strike LE1, Davis or the police dog. LE1 was fearful and felt that if any of them had been hit with the machete it could have seriously injured or killed them.

Statement of Officer Evan Davis

Davis is a canine handler. Davis was dispatched to a burglar alarm activation at a self storage facility along with Sportelli and LE1. The caller described the suspect as a Hispanic male wearing a white hoodie. The caller reported a man with a knife was on the premises and had threatened her with the knife. When Davis arrived, the suspect was already gone. As other officers began to obtain a description of the suspect from the reporting party, Davis, Sportelli and LE1 began checking the surrounding area for the suspect.

Davis saw Sportelli stop to contact Umana who was carrying a machete, which had a yellow handle and was about two to three feet long. Davis stopped to assist Sportelli. Davis could see Sportelli already had his gun out, so Davis holstered his handgun and got his police dog from his police vehicle.

Umana was pacing back and forth with the machete in his hand and Davis began trying to talk to him while using his vehicle door for cover. Davis estimated he was between 20 to 30 yards from Umana when he was calling out to him. Davis asked Umana what his name was and to put down the machete. Umana told Davis his name but would not put down the machete. Davis told Umana several times in a loud voice to put the machete down or he would be bitten by the police dog. Umana was pacing back and forth raising the machete over his head and did not respond to anything Davis was saying.

Umana began walking away from Davis, Sportelli and LE1 heading back in the direction of the storage facility. Umana was still armed with the machete and Davis was fearful he may return to the business and harm the person who called the police. Davis also knew people sometimes slept in their vehicles in the area and he was afraid Umana could be a danger to those people as well. Davis was holding his dog near him with his left hand and had his pistol in his right hand. LE1 had a taser so Davis asked LE1 to get closer to him so he could provide LE1 with cover. As the officers moved closer to Umana they got within the effective range of the taser, which he estimated was 10 to 15 feet.

Davis had requested a less lethal beanbag shotgun on the radio because he felt this option would allow them to maintain a safe distance from Umana. Before an officer could bring it, Umana began walking away. Davis, Sportelli and LE1 decided to move closer to Umana to either deploy the taser or his police dog. Davis wanted to stop Umana from leaving and take him into custody with the least amount of force needed.

LE1 deployed the taser but it was ineffective. Davis has seen an effective taser deployment before and normally the recipient experiences neuromuscular incapacitation and will fall to the ground. This did not happen when LE1 used the taser on Umana. Instead, Umana turned toward Davis and LE1 and began advancing toward them. Umana had the machete raised as though he was going to swing it at LE1. Davis feared Umana would use the machete to stab or slash at LE1 and seriously injure or kill him.

Davis did not deploy his police dog toward Umana because he believed Umana was too close to him and LE1. Davis believed that even if he deployed the dog Umana could complete his swing of the machete and strike him or LE1. Davis estimated Umana was about two steps away from them. Davis fired his pistol four times and stopped when Umana began falling to the ground. Davis requested paramedics for Umana and returned his police dog to his vehicle. Davis returned to assist Sportelli and LE1 with providing medical aid to Umana until the paramedics arrived.

Statement of Officer Michael Sportelli

Sportelli heard two officers get dispatched to a burglar alarm activation at a business. A second call was received reporting a man was on the property armed with a knife. The caller later told officers the man pointed a knife at her and she felt threatened. Due to the high-risk nature of the call, Sportelli volunteered to assist on the call.

When Sportelli arrived at the business two officers were speaking with the caller and the suspect was gone. The caller was crying and very upset. Sportelli left the business and began looking for the suspect. Sportelli located a possible suspect, Umana, on a nearby bicycle path. Umana was wearing a white sweater, which was the description given by the witness, and he was carrying a machete. Sportelli described the machete as having a blade approximately one and a half to two feet long.

Davis and LE1 were with Sportelli and they began conducting a high-risk pedestrian stop on Umana. Davis had his police dog at his side. Davis took the lead and began giving commands to Umana to drop the machete. Davis told Umana if he did not drop the machete, he would be bitten by the police dog. Umana made some statements when Davis was talking to him, but Sportelli could not hear what he was saying. Since Umana was walking around at 4:00 AM with a machete, Sportelli thought he may have been mentally unstable and a danger to public safety.

Since LE1 had a taser and Davis had his police dog, Sportelli used a department issued rifle to cover them. If LE1 deployed the taser and it was ineffective, Sportelli wanted to be able cover the officers. Umana began walking away from the officers back toward the storage facility so Sportelli, Davis and LE1 began to get closer to Umana.

LE1 deployed his taser at Umana and Sportelli could see the taser had no effect on Umana. Umana did not fall or exhibit the involuntary muscular incapacitation persons usually experience when they are tased.

Umana turned back toward Davis and LE1 and raised the machete and took a step toward them. Sportelli believed Umana was going to strike Davis and LE1 with the machete, so Sportelli fired his rifle at Umana. Sportelli believed he fired 5 times at Umana and stopped because he believed Umana was no longer a threat. Sportelli, Davis and LE1 began providing medical aid to Umana for his injuries.

Investigation

The scene was secured, photographed and investigated by the National City Police Department Homicide Unit. All detectives' reports, crime scene investigators' reports, body worn camera, surveillance camera videos and audio recordings were reviewed. All these items were found to provide evidence which corroborates the officers' statements. The incident and preceding events were captured on body worn camera (BWC) from Officer Sportelli, Officer Davis and LE1.

Surveillance video from the storage facility was reviewed. At 4:17 a.m. the video showed Umana approaching the property on foot carrying a bag over his shoulder. Umana dropped the bag on the ground and scaled the fence surrounding the property. Once inside the property Umana can be seen holding a machete and walking toward an enclosure, which houses a trash dumpster. While holding the machete Umana crawled on top of the enclosure and remained there for several minutes before climbing down from it. Umana exited through a pedestrian gate where he can be seen picking up a duffle bag and walking away still holding the machete.

Investigators collected video from surveillance cameras of nearby businesses and reviewed them. One of the cameras, which included audio, captured the corner of 33rd Street and Hoover Avenue near the shooting scene. At 4:09 a.m. Umana comes into view across the street on a bicycle path. He is seen walking around the area going in and out of camera frame for 24 minutes.

At 4:33 a.m. Umana is seen again walking east on the bicycle path and Sportelli's police vehicle is seen driving west on Hoover past Umana and then north on 33rd Street. Sportelli makes a U-turn and stops with his headlights illuminating Umana who continues to walk east on Hoover out of view. As Umana went out of the camera frame Sportelli activates the vehicle's emergency lights and drives in the direction Umana had been walking.

Sportelli stops his vehicle and by this time Umana is out of view of the camera. Sportelli opens the driver's door and stands behind it. Davis is talking to Umana but the words are not audible. After about two minutes and twenty seconds Sportelli began walking west on Hoover with his rifle pointed forward until he goes out of camera frame. Seconds later gunshots are heard. The camera did not capture the shooting incident. The camera continued to record the responding police and paramedic personnel as they arrived.

Body Worn Camera - LE1

Body worn camera footage from LE1 shows him arriving at the storage facility where Sportelli, Davis and LE2 are talking to CW1. LE1 asked CW1 if Umana was still on the property and she told him he climbed over the fence and left. LE1 returned to his vehicle and drove to where Davis and Sportelli had Umana stopped at 3300 Hoover Avenue.

LE1 has his taser in his right hand pointing at Umana who is standing on the sidewalk. Davis is to LE1's right standing next to the open driver's door of his police vehicle. Davis was restraining his police dog at his side and is heard ordering Umana to drop the machete. Umana was holding the machete in his right hand and was facing Davis.

Davis asked LE1 to move closer to him and LE1 walked over and took a position on Davis' left side with his taser still pointed at Umana. Davis told Umana again to drop the machete and or he would be bitten by the police dog. Davis asked LE1 if a sergeant could bring a "bean bag" (shotgun).

LE1 said they were still trying to determine whether a crime had been committed other than a man holding a machete. Davis told Umana they were the National City Police and ordered him again to drop the machete or he would be bitten by the police dog. Umana's voice could be heard responding to Davis' commands, but the barking police dog made it difficult to hear what Umana is saying.

Umana begins walking east on the sidewalk with the machete still in his hand at his side. LE1 and Davis begin walking toward Umana. Davis has his handgun drawn and pointed at Umana. LE1 states he is going to deploy the taser and the red laser dot is seen on the left side of Umana's body.

LE1 deploys the taser and Umana stops momentarily before turning back to face Davis who was moving closer to him. Umana takes a step toward Davis and begins to raise the machete up to the height of his shoulders. Davis began firing at him. Umana falls to the ground landing on his back and Sportelli comes into view to Davis' right with his rifle pointed at Umana. LE1 kicked the machete away and began directing the other officers to provide medical aid to Umana.

Body Worn Camera (BWC) - Sportelli

Sportelli's BWC shows him arriving at the location where Davis is contacting Umana. Sportelli stands behind his driver's door with his handgun aimed at Umana. Davis' vehicle can be seen to the left and in front of Sportelli. The lights from Davis' and Sportelli's vehicles are illuminating Umana as he stands on the sidewalk. Davis is heard ordering Umana several times to drop the machete he is holding. Umana can be seen with the machete in his right hand and he raises it up on two occasions but continues to stand in the same place.

Sportelli holsters his handgun and retrieves the rifle from the gun mount inside his car. Sportelli resumes his position behind his driver's door pointing the rifle at Umana. While this is taking place, an officer is heard on the radio advising the only crime they have is a trespassing.

The officer on the radio said Umana was on the first floor and looked at the caller as she observed him from a second-floor window. He pointed the machete at her.

Sportelli closes his vehicle door and begins running toward Umana as Umana begins walking east on the sidewalk. LE1's taser deployment is heard and Sportelli advises the dispatcher a taser has been deployed. Sportelli also asks the dispatcher to send paramedics to their location. Umana then comes into view and can be seen turning back toward Davis and his police dog as they follow him.

Umana raises the machete with his right hand and gunshots are heard. As the shooting is occurring, Davis can be seen backing away holding his police dog by the leash with his left hand and his gun in his right hand. Sportelli advises the dispatcher of the shooting and assists with rendering medical aid to Umana.

Body Worn Camera (BWC) - Davis

Davis' BWC shows him arriving at the scene and Umana is standing on the sidewalk. Davis opens his driver's door and tells Umana to drop the stick he is holding, or he would be bitten by a police dog. Davis removes his police dog from his vehicle and is controlling the dog by holding its leash. Davis tells Umana to drop the knife. Davis bends over as he is holding the dog's leash, which causes the BWC to point down at the ground and only the dog is in the camera view.

Davis asks LE1 to move closer to him and LE1 can be heard off camera agreeing to do so. Davis asks LE1 if a sergeant could bring a bean bag (less lethal bean bag shotgun). LE1 responds by saying they are trying to determine if a crime has been committed other than someone holding a machete. Davis continues to try to get Umana to put the machete down.

Davis asks Umana his name and tells him to drop the machete and that he does not want Umana to be bitten by the police dog. At this point Davis has told Umana 12 times to drop the weapon and he has identified himself as the National City Police Department. Umana can be heard responding to Davis, but his words are muffled and unintelligible.

Davis stands more upright, which brings Umana's legs and feet into the camera frame. Umana can be seen walking east on the sidewalk and Davis begins to move closer with his dog. Davis continues to tell Umana to drop the machete.

Umana comes into view as the sound of LE1's taser deploying is heard. Umana stops after the taser fires, and he is seen turning around to face Davis and takes one step towards him. Umana has the machete in his right hand and raises it up. Gunfire is heard as Davis begins to back away and Umana falls to the ground. Davis returned his dog to the police car and began providing medical aid to Umana until paramedics arrive.

Davis was armed with a .40 caliber Glock model 22 firearm. The firearm contained a magazine with 12 unexpended rounds and one unexpended round in the firing chamber.

Based on the number of unexpended rounds, it was determined that Davis fired four rounds from his firearm. Investigators found four expended .40 caliber shell casings at the shooting scene, which is consistent with the number of rounds fired.

Sportelli was armed with a Colt model M4 rifle. Upon examination, the rifle had one unexpended round in the firing chamber. The magazine attached to the rifle is able to accept 30 rounds and had 19 rounds remaining in it, leaving 10 rounds to be accounted for. Investigators found six expended shell casings from the rifle at the shooting scene and Umana was hit by four rifle rounds.

Investigators did not ask Sportelli how many rounds were loaded in the rifle magazine at the beginning of his shift. They also did not address the four unaccounted rounds from the magazine, which is the difference between the number of expended shell casings found at the scene (6) and number missing from the magazine (10), if it had been fully loaded.

Umana was armed with a machete approximately 24 inches long with a metal blade, which was found at the scene.

Autopsy Report

At autopsy it was determined Umana had gunshot wounds to the head, right and left shoulders, left arm, and five entry wounds to the back and exit wounds in the back were also noted. Gunshot wounds were seen in the abdomen, hip, and an entry wound to the chest. Several injuries were noted as being produced by the multiple gunshot wounds. The cause of death was determined to be multiple gunshot wounds and the manner of death was homicide. The Medical Examiner's toxicology report indicated the presence of methamphetamines (0.48 mg/L) and amphetamines (0.08 mg/L) in Umana's blood.

Legal Analysis

Penal Code section 835a(b) provides that "any peace officer who has reasonable cause to believe that a person they intend to arrest has committed a public offense, may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance."

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides 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, for either of the following reasons:

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

The statute provides definitions for "deadly force," "imminent" and the "totality of circumstances" in Penal Code section 835a(e)(1) – (3).

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

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

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

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

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

Umana was holding a machete which was approximately 24 inches long. Davis was the first to speak with Umana and ordered him to put down the machete numerous times. Umana did not comply. Instead, Umana began walking back towards the storage facility. LE1, Davis and Sportelli were concerned that Umana would place others in danger if he was allowed to remain armed with the machete and return to the storage facility.

LE1, Davis and Sportelli followed Umana. LE1 was armed with a Taser and Davis had his police service dog at his side. LE1 deployed his taser at Umana but it had no effect. Umana turned back toward LE1 and Davis and took one step toward Davis. Umana began raising the machete with his right hand in a striking motion as though he was about to hit Davis and LE1. Davis and Sportelli shot Umana.

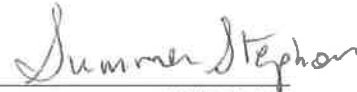
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Based on our review of the facts and circumstances in this matter Davis fired his weapon at Umana to stop the threat of being attacked with the machete by Umana. Sportelli fired his weapon at Umana to protect LE1 and Davis from an imminent threat of serious bodily injury or death. The use of force was a direct reaction to Umana's raising the machete in a manner that was consistent with an attempt to strike one or both of the officers while taking a step forward to the officers' location. As a result, Davis and Sportelli bear no state criminal liability for their actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,

A handwritten signature in cursive script that reads "Summer Stephan".

SUMMER STEPHAN
District Attorney

SS:ee