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OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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March 14, 2022

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

Re: Fatal shooting of Mr. Jesus Veleta on July 23, 2021, by San Diego Police Department Officer Greg Bergman & Officer Anthony Guerra; SDPD Case No. 21-034679; DA Special Operations Case No. 21-092PS; Deputy District Attorney assigned: Cal Logan

Dear Chief Nisleit:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Division concerning the fatal shooting of Jesus Veleta by San Diego Police Department Officers Greg Bergman and Anthony Guerra on July 23, 2021. A District Attorney Investigator responded to the scene and was briefed by your investigators. This case was submitted to the District Attorney's Office for review on December 7, 2021.

Summary

On July 23, 2021, San Diego Police received calls of two shootings. The first shooting occurred at Belmont Park. Multiple shots were fired, but no one was injured. The suspects in the Belmont Park shooting were seen fleeing in a blue Honda Civic. The second shooting occurred near a Food4Less on University Avenue. Multiple shots were fired. One victim was shot in the groin and leg. The suspects were seen fleeing in a blue Honda Civic.

ABLE located the vehicle. Uniformed officers in marked police cars stopped the vehicle. The occupants were ordered to stay in the vehicle. Veleta exited the vehicle armed with a handgun in his right hand and fled. Several officers, including Bergman and Guerra, pursued Veleta to the Yoshinoya restaurant. They repeatedly identified themselves as police officers and ordered him to stop and drop his weapon. Veleta disregarded those orders and continued running around the restaurant. As Veleta ran through the occupied drive-thru, he stumbled, fell to the ground, and dropped the gun. Veleta grabbed the gun and continued to flee. In the back of the restaurant, Veleta again stumbled and fell to the ground, but retained possession of the gun. As officers ordered Veleta to drop the gun, he raised it up behind him back towards the officers. Bergman and Guerra discharged their firearms striking Veleta in the back. Veleta threw his handgun in front of him as the officers discharged their weapons. Officers immediately provided medical aid to Veleta until he was transported to a hospital where he was pronounced deceased at 9:35 p.m. Veleta's gun was recovered nearby and found to be a loaded 9mm semi-automatic pistol with a live cartridge in the chamber, however it was not operable. Two more live rounds were found in

a magazine in Veleta's left hand. Veleta's autopsy revealed he sustained two gunshot wounds. The cause of death was gunshot wounds to the torso and the manner of death was homicide. Veleta's toxicology was presumptive positive for benzodiazepines and cannabinoids. His blood alcohol level was .24%.

Persons Involved

Jesus Veleta was a 22-year-old resident of San Diego. Officer Bergman has four years of experience as a peace officer, including one year at SDPD. Officer Guerra has approximately three and a half years of experience as a peace officer, including nearly one year at SDPD.

Civilian Witnesses

Numerous civilian witnesses were interviewed about the shooting at Belmont Park. Witnesses described a group of four or five males walking toward a stopped sedan. Multiple shots were fired at the sedan. The males left Belmont Park in a dark colored Honda Civic. They provided a license plate number.

Numerous civilian witnesses were interviewed about the shooting that occurred near Food4Less. Witnesses described a blue Honda Civic driving into the Food4Less parking lot. An unknown male walked towards the Honda Civic. An argument ensued, followed by multiple gunshots. The victim limped away holding his left leg. He had been shot four times. Two other vehicles were hit by gunfire. The blue Honda Civic fled the area heading west.

Three Yoshinoya employees were interviewed at the scene. They all saw the suspect running around the restaurant but none of them saw the shooting.

Law Enforcement Witness 1 (LE1)

LE1 heard the radio call about the Food4Less shooting and a description of the suspect vehicle. When LE1 saw the suspect vehicle, he got behind the vehicle. The vehicle turned into a parking lot. LE1 turned on his vehicle's lights and siren. As the suspect vehicle came to a stop, the rear driver's side door immediately opened and Veleta exited the vehicle. LE1 ordered all the occupants to remain in the vehicle. When Veleta exited the vehicle, he had a gun in his right hand and immediately fled on foot. LE1 pursued Veleta on foot and broadcast that Veleta had a gun. LE1's partner stayed with the car and the other suspects.

Veleta ignored LE1's commands to drop the gun. There were other people out on the street and driving by at the time. LE1 was worried Veleta would either shoot LE1, another pedestrian, or at a car driving by. Three additional officers joined LE1 in the foot pursuit. Veleta still had the gun in his right hand when he ran into the Yoshinoya parking lot. Veleta ran around the back of Yoshinoya. LE1 stopped pursuing on the east side of Yoshinoya. The other three officers continued pursuit. LE1 took up a position believing Veleta was going to come around the corner toward him. LE1 was not sure if he first saw or heard the gunshots. LE1 heard at least three gunshots and then saw a gun fly into the air and land in a dirt pile. LE1 came back around the corner and Veleta was down on the ground. Officers immediately handcuffed Veleta and started providing medical aid. LE1 directed officers to look for any wounds on Veleta. Veleta was still breathing, but unresponsive. The Fire Department took over medical aid when they arrived.

Law Enforcement Witness 2 (LE2)

LE2 was partnered with Bergman. They responded to a call of a shooting near a Food4Less. They arrived with several other officers and contacted a victim who had been shot in the testicles. ABLER alerted officers about a suspect vehicle in the area. LE2 and Bergman left and attempted to catch up to the suspect vehicle. When they got to 54th Street and El Cajon Blvd, they saw other officers already in the parking lot conducting a hot stop on the suspect vehicle. LE2 saw Veleta fleeing on foot. LE2 followed Veleta in his vehicle.

Veleta ran towards the Yoshinoya restaurant. LE2 and Bergman exited their vehicle and ran after Veleta. LE2 saw Guerra was also chasing Veleta. Veleta had a black firearm in his right hand and a handgun magazine in his left hand. Veleta did a loop around the restaurant while the officers pursued him. The officers yelled commands for Veleta to drop the weapon and told Veleta he would be shot if he didn't drop the weapon. Veleta did not drop the weapon. LE2 did not see Veleta point the weapon at anyone while he was running. When they got to the north side of the restaurant, LE2 believed Veleta was following their commands and had stopped.

Veleta went down onto his knees. LE2 was holding Veleta at gunpoint with Bergman and Guerra. Veleta had both his arms down at his side and was facing away from the officers. Veleta had a firearm in his right hand. After about five to ten seconds on his knees, Veleta began to raise the firearm backwards. When Veleta raised the firearm, LE2 thought Veleta was going to shoot. As LE2 saw Veleta's movement, Bergman and Guerra discharged their firearms. As Veleta fell to the ground, Veleta threw the weapon in front of him. LE2 believed Veleta posed a threat to the officers and civilians in the area. Veleta was reckless and was the suspect in the Food4Less shooting. Once it was safe, officers handcuffed Veleta and the paramedics arrived shortly thereafter and took over.

Statement of Officer Bergman

Bergman was partnered with LE2. A radio call broadcast someone had been shot. Bergman and LE2 responded to where the shooting took place. They contacted the victim, who had been shot multiple times in the leg and groin.

Bergman heard ABLER broadcast a vehicle occupied by three to four individuals that matched the description of the suspect vehicle had been located. Bergman and LE2 responded. Bergman thought this could be a gang shooting. He also thought this could turn into a pursuit and believed the vehicle needed to be stopped "as soon as possible" because it could put others in danger of being seriously injured or killed.

Bergman saw LE1's lights turn on to stop the suspect vehicle. There were other police units in the area. Bergman and LE2 continued towards LE1 and the suspect vehicle. Bergman felt this was a "high risk, very dangerous situation" because the suspect had already shot someone. As they got close to the traffic stop, they heard one of the officers broadcast, "Foot pursuit," and that Veleta had a gun in his hand. LE2 drove onto El Cajon Blvd, where they saw an officer pursuing Veleta on foot. Bergman jumped out of the patrol vehicle and onto El Cajon Blvd. He saw Veleta run towards the Yoshinoya restaurant. Bergman saw a handgun in Veleta's right hand, which he believed was a semi-automatic handgun.

Bergman estimated he was initially 40 yards behind Veleta. He saw another officer also in foot pursuit of Veleta, about 30 yards ahead of Bergman. LE2 pulled the patrol vehicle in front of Bergman and joined in the foot pursuit towards Yoshinoya. Bergman yelled to Veleta, "Police, San Diego Police. Drop the gun. Get on the ground." He heard other officers yelling the same commands several times and advising Veleta that he could be shot. The officers yelled loud enough that Veleta could hear. Bergman pursued Veleta north through Yoshinoya's parking lot. Veleta cut right around the northern edge of the building and continued around the back of the building. Veleta turned right again and headed back towards El Cajon Blvd. Bergman heard one of the officers say, "Slow it down, slow it down" as they rounded the corner. He wanted to make sure Veleta wasn't waiting for them as they came around the corner. Veleta continued running and turned in the front of the Yoshinoya restaurant.

As Bergman pursued Veleta, he feared there was a strong chance Veleta would shoot at the officers to get away since he wasn't complying and refused to drop the gun. Veleta could possibly kill somebody, including Bergman or one of his partners, or miss and hit a civilian at the restaurant. It did not appear Veleta was going to give up.

They chased Veleta along the west side of the building through the drive-thru line where two or three cars were situated. Bergman saw Veleta fall and drop the gun. Bergman thought they would do a hot stop of Veleta so Bergman ran to get in front of the last vehicle. As he rounded the corner, Veleta got up and had the handgun back in his right hand. Bergman noticed the handgun Veleta was holding appeared to have a gun light on it and Veleta was now just feet from him. Bergman thought, "This guy is serious. He's not giving up. This isn't going to go well." Bergman thought about shooting Veleta at that point but didn't because Veleta did not point the handgun at him. Bergman felt he was lucky as Veleta could have easily pointed his handgun at Bergman and shot him. Bergman knew he was in a horrible position at the time.

Veleta continued running north along the wall. Bergman got behind as Veleta then turned around the back of the restaurant again. As Bergman rounded the corner behind Veleta, he saw Veleta's gun come back "toward me, points toward me." Bergman shifted to his right to get out of the line of fire. Bergman observed this gun motion was not consistent with a normal running motion and was afraid Veleta would get off a "lucky shot." Veleta then tripped and fell forward to the ground in some wood chips. Veleta still had the gun in his right hand and was hunched forward with his hands. While Veleta was on his knees, facing away from the officers, Veleta fully extended his right arm out and pointed the gun back towards Bergman. Bergman, in fear for his life and his partners' lives was about to pull the trigger when he heard a gunshot from another officer. Bergman then fired one time, aiming at Veleta's lower or middle back. As Bergman pulled the trigger, Veleta brought his arm forward and threw the gun. It landed near a green power transformer or cable box. The officers secured Veleta as Bergman kept his handgun trained on Veleta in case he had other weapons. Officers then immediately provided medical aid and called an ambulance.

Bergman did not believe Veleta fired the first round. He was focused on Veleta's weapon and did not see a flash come from his handgun. Bergman was in fear for his life when he shot Veleta. He believed he needed to shoot immediately or Veleta was going to fire first and kill him or one

of the other officers. Veleta was given an opportunity to surrender, to not pick the gun back up when he dropped it, or to dispose of the gun, and he did not. He felt Veleta had the ability to understand the commands being given to him and was given the chance to follow them but didn't. Bergman only fired one round because he saw when Veleta brought his arm forward the gun went flying and he was unarmed at that time, so he didn't have a reason to continue shooting him.

Bergman said his encounter with Veleta was a deadly force situation only. Veleta had a firearm in his hand, he had already shot someone, and he wasn't giving up. Less lethal options were not acceptable at that point in time.

Statement of Officer Guerra

Guerra was in the Mid-City Substation when the radio call broadcasted an assault with a deadly weapon. Guerra grabbed his things and ran to his patrol car. Guerra heard ABLE located a sedan in the area traveling at a high rate of speed and broadcasted a description of the vehicle, potential occupants, and a license plate. Guerra went towards where the vehicle was last seen by ABLE. Guerra saw two other patrol units with their lights and sirens on to initiate a traffic stop.

The traffic stop was initiated. An officer broadcasted he was in foot pursuit. The officer broadcasted Veleta's description and that Veleta had a firearm in his right hand. Guerra entered the parking lot where the traffic stop occurred. He saw LE1 pursuing Veleta through the parking lot. From about 50 yards away, Guerra saw Veleta running and holding an L-shaped object in his right hand. Guerra drove to get in front of Veleta. Guerra saw Veleta attempt to climb over a fence but couldn't. Guerra drove past Veleta and briefly lost sight of him. Guerra completed a U-turn and saw Veleta run across the street in front of Guerra's patrol car. Guerra believed the object in Veleta's hand was a firearm. Guerra exited his patrol vehicle, drew his weapon, and pursued Veleta.

Guerra yelled commands to stop and to drop his weapon. Guerra believed Veleta heard the commands but did not comply. Guerra was 20 yards behind Veleta and gaining on him. They entered the Yoshinoya parking lot and Guerra saw LE2 and Bergman on foot. There was one other officer in the parking lot with them. While they chased Veleta, Guerra noticed Veleta looking over his shoulders. This concerned Guerra as he believed Veleta could be planning to stop and point the weapon in his direction. Guerra noticed there were vehicles in the drive-thru. Guerra was afraid Veleta could carjack those vehicles or assault the occupants with the firearm.

The officers continued to pursue Veleta around to the north side of the building. Guerra was now only ten yards behind Veleta. As they approached the northeast side of the building, Guerra noticed it was dark and yelled to the other officers to stop because Veleta could be lying in wait for them to come around the corner. When they got around the corner, Veleta was going around the southeast corner making a circle around the restaurant. Officers were still yelling commands to stop. They started their second lap of the building. Guerra saw Veleta run into a truck in the drive-thru and fall to the ground. Veleta dropped the handgun. With his firearm out and pointed at Veleta, Guerra yelled, "Don't point the gun at me." Veleta picked up the gun and continued to run with it in his hand. Guerra believed Veleta wanted to use the weapon because instead of

fleeing, Veleta took the extra second to pick up the gun. Guerra saw Bergman to his left running parallel with him. Guerra was trying to get to Veleta as quickly as he could. He was concerned Veleta would shoot Bergman. He heard something yelled as they turned right along on the north side of the building.

Guerra contemplated shooting Veleta after he had picked up the handgun and continued running. Guerra knew Bergman would end up in front of Veleta on the left and it would almost be a surprise for Bergman as Veleta would be within feet of Bergman armed with a firearm and could potentially point the handgun at the officer. Guerra thought, "Would this be where I pull this trigger to save my officer?" Guerra was in fear that an officer could get shot. Guerra did not discharge his firearm at that point because of the people in the cars next to him. He did not want to miss and have the people in the cars accidentally hit by gunfire. Bergman ran directly across Guerra's line of sight in pursuit of Veleta and they turned the corner before Guerra did.

When he regained visual of Veleta, Veleta was stopped, slightly hunched over, standing on a berm facing away from the officers with the gun still in his right hand. Bergman was to his right. Veleta did not turn but he pointed his firearm directly to the rear with the "barrel of the weapon pointed directly at Bergman." Guerra believed this was done with the intent to kill Bergman. Guerra fired two rounds and struck Veleta on his lower back on the right side and left side. He shot to save the life of his partner. Guerra also believed he was going to get shot.

Guerra heard Bergman fire his weapon once. Veleta had the firearm in his right hand and tossed it forward after Guerra fired. Guerra immediately radioed, "Shots fired." Veleta fell forward onto the berm with both hands under his body. Concerned he may have a second weapon, Guerra yelled for Veleta to show his hands. LE1 handcuffed Veleta while Guerra maintained cover. Once Veleta was secured, Guerra confirmed the location of the firearm Veleta had tossed and then went to get his first-aid kit.

Guerra was trained to shoot to stop the threat. He believed he stopped the threat and did not fire again. This was a rapidly evolving situation and Guerra tried to deescalate the situation by ordering Veleta to stop and drop the weapon. Guerra did not want to have to shoot Veleta. The objective was to have Veleta put down the gun so they could figure out the whole situation. Veleta continued to run from them. Based on Guerra's training and experience, when someone is armed with a firearm, you don't bring a less lethal device to an incident involving a firearm. Less lethal options are inappropriate to deploy when a suspect has deadly force unless there is time and opportunity to stop and make a plan to do so. Guerra was in full police uniform and Veleta knew he was a police officer. Guerra believed if they had not continued to pursue him, Veleta could have killed someone, committed a carjacking, or hurt someone when he was trying to escape. Veleta never complied with their commands.

Investigation

The scenes were secured, photographed, and investigated by San Diego Police Department homicide detectives and personnel. All reports, audio-recorded officer and witness interviews and 911 calls, radio traffic, photographic evidence, ABLE, body-worn camera (BWC), and

surveillance video were reviewed. These items provided evidence corroborating the officers' statements.

Surveillance footage near Belmont Park showed a group of people involved in a confrontation with the victims before the shooting. The group fled in a dark colored Honda.

On LE1's BWC, LE1 and his partner conducted a traffic stop on the suspect vehicle, a blue Honda Civic. As the officers exited the patrol unit, Veleta exited from the rear driver's side door carrying a handgun in his right hand. The officers immediately yelled to stay in the car and ordered Veleta to drop the gun. Veleta ran away. LE1 chased Veleta on foot yelling out, "Drop the fucking gun," and broadcast on the radio Veleta was running with a gun in his hand. LE1 continued to yell at Veleta to drop the gun or he would be shot. A patrol unit drove past LE1 and an additional patrol unit driven by LE2 pulled up and LE2 and Bergman joined the foot pursuit. Guerra also joined the foot pursuit.

LE1 dropped back behind the other officers as they chased Veleta around the rear of Yoshinoya. The officers turned right and ran towards the front of the restaurant following Veleta. LE1 stopped pursuing and took a position on the east side of the restaurant. LE1 turned to face north and waited there with his gun drawn. Three gunshots and the sound of Veleta's handgun hitting the green electrical box were heard. LE1 walked to the rear of the building and announced his presence around the corner. Bergman was the closest officer to LE1 with Guerra to his left and LE2 is to the far left. Bergman, Guerra, and LE2 were pointing their handguns at Veleta, who was lying on his back with his arms out to his side. The officers gave Veleta commands to roll over onto his stomach so he can be handcuffed. Veleta complied and said, "I'm done, I'm done." LE1 requested medics and then checked Veleta for injuries. Blood was on Veleta's lower back and shirt. The officers provided medical aid while waiting for the medics to arrive.

On LE2's BWC, Bergman exited the patrol unit. LE2 continued driving briefly until he stopped and exited the patrol vehicle. Veleta was running into the parking lot of Yoshinoya. LE2 had his handgun pointed at Veleta and was yelling at him to drop the weapon, stop, and to get on the ground. Bergman and Guerra both had their handguns pointed towards Veleta and were yelling at Veleta to stop as they were running around the restaurant. After circling the restaurant, Guerra followed Veleta through the drive-thru as LE2 stumbled to the ground. LE2 and Bergman moved around the left side of the vehicles in the drive-thru. Bergman was standing at the rear of the second car in the drive-thru as Veleta ran past him. Bergman followed Veleta to the rear of the restaurant. Guerra was behind Bergman and LE2 followed them. Veleta stumbled to the ground, initially on his stomach and facing away from the officers. Officers were yelling, "Drop the gun." Veleta moved up to a kneeling position with his back to the officers and moved his right arm extending it to the rear. The handgun in Veleta's right hand was pointed back towards where Bergman was standing about five feet away. All three officers had their firearm pointed at Veleta. The sound of three shots was heard as Bergman and Guerra discharged their firearms at Veleta. Veleta threw his handgun forward and fell to the ground. Bergman and Guerra broadcasted, "Shots fired," on the radio and commands were given to Veleta in preparation to handcuff him. Veleta rolled himself over onto his back with his hands up. LE1 walked around the east side of the building, officers ordered Veleta onto his stomach, and Veleta complied. LE1

and LE2 placed handcuffs on Veleta. Blood was seen on Veleta's lower back and shirt. LE1 requested medics and the officers identified where Veleta had been shot and provided medical aid until the medics arrived.

On Bergman's BWC, Bergman exited his patrol car after the traffic stop. Bergman pursued Veleta to the Yoshinoya parking lot on foot. LE2 stopped the vehicle near the entrance to the parking lot and exited the vehicle. Bergman was behind LE2 and Guerra was to their left. All three officers had their firearms pointed towards Veleta. The officers gave Veleta commands to get on the ground and to stop or he'd be shot. Veleta continued running with the officers pursuing. During Veleta's second lap around Yoshinoya, Veleta ran through the drive-thru. Guerra yelled commands to get on the ground and not to point the gun at the officer. Bergman moved to the left of the other officers and was only a couple feet away from Veleta. Veleta had a magazine in his left hand and a handgun in his right hand. As Veleta approached Bergman, Bergman told Veleta to drop the gun. Veleta ran past Bergman and said something that sounded like, "I won't. I won't." Bergman followed Veleta to the back of the restaurant. Veleta ran off the sidewalk to an area covered with wood chips. Bergman ordered Veleta to drop the gun or he would shoot. Veleta responded with what sounded like, "I won't shoot." Veleta fell onto his hands and knees. Veleta moved to a kneeling position with his back to the officers and brought his right arm up to the rear, with his index finger on the trigger or guard, and the handgun pointing towards Bergman. Officers discharged their weapons as Veleta threw the handgun forward and collapsed to the ground facedown. Bergman and Guerra broadcast on radio, "Shots fired." Veleta was handcuffed. Two gunshot wounds to Veleta's back and one wound on Veleta's stomach were visible. Bergman and Guerra located the handgun Veleta had tossed. Guerra left to get his first-aid kit from his patrol car. LE1 and LE2 rendered medical aid.

On Guerra's BWC, Guerra stopped his patrol unit and joined other officers in the foot pursuit. Bergman and LE2 had their handguns drawn. Guerra had his handgun drawn and gave verbal commands to Veleta to stop and drop his weapon or he would be shot. Veleta continued to run towards the rear of Yoshinoya. Guerra told the others to slow down as they approached the corner. They continued to pursue Veleta as he ran around the exterior of the restaurant. Guerra was the closest officer to Veleta. Veleta turned and ran through the drive-thru. Veleta fell in front of a white pickup truck in the drive-thru, got up, and continued running away from the officers. Veleta fell again next to the second vehicle in the drive-thru and turned and looked back at Guerra. Guerra told Veleta, "Drop the gun, drop the gun, don't point it at me, drop the gun." Veleta stated something in response as Guerra pointed his handgun at Veleta. Veleta gathered the items he dropped, stood up, and continued running north and around the corner of the building. Guerra moved forward towards Veleta.

Bergman entered the view from the left and walked directly in front of Guerra. Bergman was now closest to Veleta. As Guerra came around the corner of the restaurant, Veleta was flat on the ground but immediately pushed himself up onto his knees with his back to the officers. Veleta extended his right arm back behind him with the handgun in his right hand. The handgun was pointed in the direction of Bergman, who appeared to be less than ten feet away from Veleta. Guerra told Veleta to drop the gun, then shots were heard as Veleta tossed his gun forward. Veleta fell forward to the ground on his stomach. Guerra broadcasted, "Shots fired." The officers

gave Veleta commands as LE1 came around the corner to their right. LE1 and LE2 handcuffed Veleta. Blood was seen on Veleta's lower back area and shirt. Guerra and Bergman located the handgun Veleta tossed. Guerra retrieved a medical kit from his vehicle while the other officers provided medical aid to Veleta.

Bergman's firearm was examined and confirmed to be a department-issued Glock 17 Gen 4, 9mm caliber semi-automatic pistol. Bergman's pistol was received with one cartridge in the chamber and 16 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. The evidence indicates a maximum of one cartridge could have been fired by this pistol.

Guerra's firearm was examined and confirmed to be a department-issued Glock 17 Gen 4, 9mm caliber semi-automatic pistol. Guerra's pistol was received with one cartridge in the chamber and 15 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. The evidence indicates a maximum of two cartridges could have been fired by this pistol.

Jesus Veleta's firearm was recovered from the ground where it had been thrown and then later examined. He was armed with a black Polymer80 brand pistol with markings "PF940C" on the lower receiver and one black, "9X19-10" slide assembly. There was a 9mm cartridge seated in the chamber of the handgun when it was recovered. Additionally, the handgun was equipped with a HiLight, "P10GL" light/laser. A Glock ".40" brand magazine was also recovered but separate from the firearm. Veleta's firearm was not operable. The striker either failed to set when the slide cycled or it failed to release when the trigger was pulled. There were two pin holes in the frame which appeared to be oversized and misshapen, consistent with multiple attempts at drilling. The frame and slide assembly appeared to be grimy and over-oiled. After a detailed disassembly and cleaning it was then reassembled and was found to be operable. The magazine recovered from Veleta's left hand contained two 9mm cartridges. Examination of cartridge casings recovered from the Belmont Park and the Food4Less scenes determined that Veleta did not fire his handgun at either of those shootings.

Two additional 9mm ghost guns were recovered inside the Honda. One of the handguns was unloaded and the other had two rounds in the magazine. Both handguns were confirmed to have been the weapons used during the Belmont Park shooting. The second weapon which contained the two rounds was confirmed as the weapon used in the shooting behind the Food4Less.

Autopsy

Veleta sustained two gunshot wounds. One to his lower left back which lodged in his right lower abdomen; the other entered the right back and exited mid-abdomen. The cause of death was gunshot wounds to the torso and the manner of death was homicide. Toxicological analysis of Veleta's blood revealed the presence of benzodiazepines: alprazolam, diazepam, and a metabolite nordiazepam. Cannabinoids (marijuana) Delta 9-Carboxy THC and Delta 9-THC were also detected. The blood alcohol level was measured at 0.24%.

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, based on the totality of circumstances, that such force is necessary for either of the following reasons:

“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).

“To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another person unless immediately apprehended...” Penal Code section 835a(c)(1)(B).

““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

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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

Jesus Veleta accompanied his companions who were involved in a shooting at Belmont Park. No one was injured and no victims were identified. Approximately four hours later, the companions were involved in another shooting behind Food4Less where a victim was shot four times. Two vehicles parked nearby were also struck by the gunfire. Veleta and his companions fled from each scene before San Diego Police Department arrived.

In reviewing the evidence and considering the circumstances, Bergman's and Guerra's actions were reasonable based on the facts known and perceived by them at the time of the shooting. They were aware of the prior shooting at the Food4Less. They saw Veleta run from the car identified as the suspect vehicle in that shooting. Veleta was armed with a firearm. Veleta was told multiple times to stop and put down his weapon. He refused to do so. When he stumbled, he picked up the firearm before he ran toward the back of the drive-thru. His actions indicated he was not going to surrender. When he stumbled again, he raised the firearm behind him toward Bergman and Guerra. Both Bergman and Guerra reasonably believed Veleta posed an imminent threat to them. The threat needed to be instantly confronted. The officers reasonably believed that at that moment, had they not taken action, Veleta would have shot them.

Bergman and Guerra 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:ab

cc: Captain Richard Freedman