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COUNTY OF SAN DIEGO
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DAVID P. GREENBERG
ASSISTANT DISTRICT ATTORNEY

February 10, 2021

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

Re: Fatal shooting of Mr. Leonardo Ibarra by San Diego Police Officers Jonathan Lucas and Tevar Zaki on June 27, 2020; SDPD Case No. 20032597; DA Special Operations Case No. 20-081PS; Deputy District Attorney assigned: Judy Taschner

Dear Chief Nisleit,

We have reviewed the reports and other materials compiled by the San Diego Police Department Homicide Unit concerning the shooting of Leonardo Ibarra. A District Attorney Investigator responded to the scene and was briefed by your detectives. This case was submitted to the District Attorney's Office for review on October 7, 2020.

Summary

On June 27, 2020, Officers Lucas and Zaki were in full police uniform patrolling in a marked patrol vehicle. They were attempting to locate a wanted subject in a street robbery which occurred on June 21, 2020. One of the wanted subjects in the robbery was identified by the assigned detective as Leonardo Ibarra. Lucas and Zaki viewed a wanted flyer with Ibarra's photograph and details of the robbery prior to their patrol shift. Zaki and Lucas located Ibarra at 1250 Sixth Avenue. Ibarra began walking northbound on the west sidewalk of Sixth Avenue as he exited a building.

Lucas and Zaki exited their patrol vehicle in order to contact and arrest Ibarra. Zaki approached Ibarra southbound on the west sidewalk while Lucas approached Ibarra diagonally southwest across the street. Lucas verbally identified himself as a San Diego Police Officer. Lucas and Zaki told Ibarra to stop several times as they walked towards him.

Ibarra turned around and began walking away from Lucas and Zaki southbound on the sidewalk. While still walking away, Ibarra turned towards Lucas and began reaching into the front portion of his waistband. Ibarra produced a firearm wrapped in a camouflage colored bandana. Ibarra pointed the firearm wrapped in the bandana at Lucas. In response, Zaki and Lucas fired their weapons striking Ibarra multiple times. Lucas began CPR on Ibarra until assisting officers and medics responded to the scene. Medics transported Ibarra to UCSD hospital where he died on June 29, 2020. Both officers had their body worn cameras active. Surveillance cameras from buildings located in the area captured the incident on video. The cause of death was multiple gunshot wounds. A contributing factor was acute methamphetamine toxicity.

Persons Involved

Ibarra was a 25-year-old resident of San Diego. Lucas and Zaki had been employed by the San Diego Police Department for four years.

Civilian Witnesses

The responding officers and investigators canvassed the area and spoke to nine civilians. Six of these witnesses only reported hearing gunshots and did not see the events leading up to or during the shooting. Two security guards were interviewed by investigators. One of the security guards (CW3) was standing outside of the building when the incident occurred. The second security guard (CW4) was in the building monitoring the security cameras and only heard the gunshots.

Civilian Witness 1 (CW1) interview at scene on June 27, 2020

CW1 was in his truck parked on the west curb of 1200 Sixth Avenue, directly in front of the P.A.T.H. (People Assisting The Homeless) building. CW1 provided a statement to investigators at the scene on the day of the incident. CW1 was about to drive away when he saw the officers walk towards his truck. CW1 looked to his right and noticed Ibarra walking past his truck. CW1 described Ibarra as wearing a red shirt and red pants with tattoos on his face. CW1 heard the officers say "Stop." Ibarra looked back. CW1 said he did not see Ibarra holding anything in his hands. CW1 said he had a bad feeling that something bad was going to happen, so he ducked down in his truck. CW1 then heard about eight gunshots. CW1 sat back up and saw Ibarra lying on the ground. After about 10 to 15 seconds, the officers rolled Ibarra over and began giving him CPR.

Angry protestors could be heard yelling and cursing at police throughout the entire audio of this interview. On July 1, 2020, a National City police officer reached out to San Diego Police homicide investigators after CW1 approached the National City police officer and told him he was a witness in this officer involved shooting. CW1 was feeling bad about providing a less than truthful statement to investigators about what he had witnessed. CW1 had become scared while at the scene soon after the shooting incident because he felt threatened by the crowd of protestors at the scene while he was being interviewed. CW1 expressed a desire to be re-interviewed and provide a more complete statement.

Civilian Witness 1 (CW1) telephone interview on July 6, 2020

CW1 started his truck and was preparing to drive away when he saw an officer approaching his truck. CW1 heard the officers say, "Stop, stop. I just want to talk to you." CW1 looked to his right and saw Ibarra looking back at the officers. Ibarra dropped a bag he was holding. Ibarra then began to reach into his waist. CW1 heard one of the officers say, "Let me see your hands," or "He has a gun." Ibarra then pulled something from his waist and reached his hands out. CW1 did not see the weapon, but it was obvious to him it was a gun based on what he was seeing. Ibarra was looking back at the officer that was on the driver side of CW1's truck. CW1 ducked in his car because he felt Ibarra was going to shoot at the officer through the truck. CW1 heard approximately eight to ten gunshots. A couple of seconds after the gunshots, CW1 got up and saw the officers approaching Ibarra, who was on the ground. There was a green, brown and black colored bandana on the ground next to Ibarra. The officers flipped Ibarra over and began giving him CPR. CW1 then began recording the events after the shooting with his cellular phone.

About two minutes after the incident, two males arrived at the scene. CW1 told one of the males that Ibarra had pulled out a gun. The other male told his friend not to listen to CW1 because he was part of the setup. CW1 then decided he had better keep his "mouth shut."

Civilian Witness 2 (CW2)

CW2 was next to the streetlight just before Sixth Avenue when he began to hear yelling. The yelling caused CW2 to look towards the northwest. CW2 saw an officer pointing his gun at a man running away. CW2 heard a "pop" and then saw the guy crawl on the ground. CW2 then took cover behind a newsstand near the streetlight. CW2 stayed behind cover for a moment and then looked back up to see if anyone else could be in danger. CW2 saw an officer giving CPR to the same male. CW2 sat down on the curb for a moment to gather himself. CW2 then walked westbound towards the intersection to get a better look.

CW2 saw a female he believed to be the male's wife run up to the scene and start yelling. One of the officers pushed her away. CW2 heard the female say, "They murdered him. They shot him in the back." CW2 left the area because he felt a group of people were becoming hostile. CW2 later returned and provided his statement to investigators.

Civilian Witness 3 (CW3)

CW3 was at the P.A.T.H. building. CW3 expressed concern that Ibarra and his friends would return to the P.A.T.H. building. According to CW3, Ibarra did not live in the P.A.T.H. building but he saw him almost every weekend visiting.

CW3 said Ibarra walked north when he first exited the building. The officers were at the red light in a Ford Explorer police car. Ibarra turned to walk south. When the light turned green, the officers stopped in the middle of the street, in the second lane of Sixth Avenue. The officers got out and told Ibarra to stop two or three times. Then they all started running. CW3 moved back towards the door and into a corner of the building because he felt something was going to happen. CW3 did not see a gun because he moved back towards the door and covered himself as soon as they all started running. CW3 was in the building when the shots were fired. CW3 later viewed the security camera footage and it appeared to CW3 that Ibarra grabbed an object, pointed it at the officers and was shot. CW3 could not say for certain from the video that the object was a gun. CW3 said it could have been a plastic toy, a real gun, but it was an object.

Civilian Witness 4 (CW4)

CW4 works as a security guard at the P.A.T.H. building. On the day of the incident he was working the security desk and wasn't really paying attention to the cameras until he heard the gunshots. CW4 heard two bangs or loud noises. CW4 has never heard a gunshot before this. CW4 looked at the cameras and saw two police officers doing CPR on the man who was shot. CW4 then reviewed a few minutes of video before the shooting. He released the video later to police.

CW4 saw two police officers. Both were coming from the street. One headed over to the sidewalk. CW4 saw the individual (Ibarra) walking down the sidewalk, turning back and what looked like him grabbing something from his waist. The individual dropped his bag and reached into his waist. The individual was walking away from the officers and looked like he was trying to reach for something on his waist. CW4 was not sure if he pointed it or was trying to cock the weapon back, but

the individual extended his arm out towards the street and it looked like he was pointing something towards the police officer. CW4 personally thought it was some sort of weapon, a light grey or silver firearm. He then saw the officers pointing their weapons at the individual and shoot him and the man dropped to the ground. CW4 saw the officers giving the man CPR.

CW4 recognized the male as someone who frequently hung out at the building and would visit people who lived there, but didn't know his name, nor had he ever talked to him.

Civilian Witness 5 (CW5)

CW5 was standing outside of "The Taco Stand" restaurant with her friends, CW6 and CW7, when she began hearing gunshots. CW5 heard at least ten gunshots. CW5 walked down the sidewalk immediately after the shooting and saw a police officer giving CPR to a male. There was a second officer there as well who was standing over them. CW5 noticed a woman who was running, screaming and "freaking out." The woman suddenly stopped and sat on the sidewalk. CW5 asked the woman if she was okay. The women told CW5 that she could not believe they shot him. CW5 asked the woman if she witnessed the incident and encouraged her to remain at the scene to speak with officers. The woman said she did not want to stay and eventually left the area on a bike with another female.

CW5 spoke to two other women at the scene. One of the women said the male that was shot was her son. The woman told CW5 that the police shot her son multiple times as he was running away. The other woman told CW5 that she was the male's sister. CW5 tried to get the police to talk to the mother and sister but they did not. The mother left soon after the shooting. The sister remained on the corner of Sixth and B Street before CW5 eventually lost sight of her.

CW5 tried speaking to another male at the scene about what had occurred. The male told CW5 he had just witnessed someone get murdered and did not want to talk to her or anybody else. The male remained in the area for about an hour yelling at police. CW5 also spoke to a male wearing an orange vest who appeared to be a city maintenance worker. The male told CW5 he was standing on the corner when the incident occurred and could see bullets ricocheting off metal poles during the shooting. The male left before officers could talk to him.

Civilian Witness 6 (CW6)

CW6 was standing outside of "The Taco Stand" with her friends, CW5 and CW7, when she heard six to seven gunshots. CW6 looked to the west and saw people running away southbound on Sixth Avenue. CW6 saw two females running from the scene. The women then hid behind a blue news stand on the corner of Sixth Avenue and B Street. CW6 and her friends approached the women and asked if they had seen what happened. The females said they witnessed an individual get shot by police. Both women stated they were scared and did not want to be there when police arrived.

CW6 and her friends walked to the intersection of Sixth Avenue and B Street. CW6 saw an officer performing CPR on an individual. Police were also moving two women away from the scene. CW6 and her friends met with the two women on the corner of Sixth Avenue and B Street. The women were crying and appeared to be very emotional. The women identified themselves to CW6 as the mother and sister of the individual who had been shot. The women collectively told CW6 they were walking south on Sixth Avenue with the individual when police approached and shot him in the back as they were walking away. The women also said the individual was unarmed and was walking away from police.

The woman who identified herself as the individual's mother left about ten minutes after the shooting. The woman who identified herself as the sister left about 20 minutes after the mother. CW6 was unsure if the sister provided a statement to police.

Law Enforcement Witness 1 (LE1)

LE1 prepared a written report detailing his involvement in the incident. On the corner of Sixth and B, a female was screaming that her brother had just been shot in the back by police. LE1 approached her and asked if she saw what happened. The female told LE1 that she did not want to talk to police and would not provide her name or identification. LE1 said the female stood in the same spot for several minutes yelling "he was shot in the back," and then she walked away from the scene.

Law Enforcement Witness 2 (LE2)

LE2 prepared a written report detailing his involvement in the incident. He attempted to take witness statements. LE2 said a Black male approached him and told him he saw the entire incident. LE2 tried to get a full statement and his information, but the male refused and did not want to cooperate with the investigation.

Law Enforcement Witness 3 (LE3)

LE3 prepared a written report detailing his involvement in the incident. LE3 saw Zaki and Lucas near a male on the ground. His partner ran up to them first and immediately started CPR on the male. LE3 then ran up and told the other officers to keep a female away who was trying to reach the male on the ground. LE3 said he observed a bandana with an object wrapped inside that was inches away next to the male's body. As LE3 removed the male's handcuffs, Zaki picked up the bandana to move it away and LE3 told him to leave it. Zaki, who was wearing gloves, put the object back down. LE3, who was also wearing gloves, then picked up the object and moved it approximately three feet away from the male. When LE3 moved the bandana, he said that it felt like there was a gun inside of it, and when he placed it down, part of the wooden handle of a gun became exposed. LE3 said he and his partner remained on scene with the gun until it was collected as evidence.

Officer Lucas' Statement

During line-up, Lucas saw a "Be on the lookout" (BOLO) flyer for two suspects wanted in a robbery. One of the suspects had been identified by the assigned robbery detective. The flyer indicated the identified suspect could be arrested in public. The victim in the robbery was hit over the head and a bag containing a laptop was taken. Lucas' partner, Zaki conducted a records check and located three or four previous police contacts for the identified suspect in the area of Sixth and B Street. Lucas and Zaki drove to the area.

Lucas drove their patrol vehicle south on Sixth Avenue at approximately 10 to 15 miles per hour looking for the suspect. Lucas was looking to the east while Zaki was looking west for the suspect. Zaki then said, "Hey that's him!" Lucas put the patrol vehicle in park, stepped out of the vehicle and activated his BWC. Ibarra was to the west, approximately 25 to 30 feet away and standing next to a male near the entrance of a building. Lucas said to Ibarra, "Hey bud, come over here." Ibarra looked at Lucas and began walking away, Ibarra then started to jog. Lucas said, "San Diego Police, stop!" Ibarra began running away southbound on the sidewalk. Lucas ran southbound in the middle of the street about 20 to 25 feet from Ibarra. Ibarra turned his torso to the east and looked at Lucas. Ibarra used his left hand to pull his shirt up and with his right hand retrieved something black from his waistband.

Ibarra raised his right elbow, made a fist with the object in his hand and pointed the black object at Lucas. Lucas believed the object to be a firearm. Lucas yelled, "Gun." Lucas felt he and his partner were going to be shot by Ibarra. In response, Lucas fired his weapon approximately five times.

Lucas stated he carries a firearm off-duty in his "appendix," also referred to as the front waistband. For Lucas to draw his weapon he uses the same motion Ibarra displayed by lifting his shirt with his left hand to clear any obstruction from the waist and uses his right hand to draw his firearm.

Officer Zaki's Statement

Zaki's sergeant went over several BOLO flyers. One of the BOLO's concerned two suspects wanted in a robbery. One of the suspects had been identified as Leonardo Ibarra and could be arrested in public per the assigned robbery detective. The flyer contained a photograph of Ibarra.

Zaki conducted a records check and found the last few of Ibarra's most recent police contacts were in the area of 1200 Sixth, 600 A Street and 1500 Sixth Avenue. Lucas and Zaki drove to the area in their marked patrol vehicle in an attempt to locate and arrest Ibarra. Zaki was seated in the passenger seat of the patrol vehicle. Lucas and Zaki were slowly traveling southbound in the number one lane of 1200 Sixth Avenue when Zaki spotted Ibarra standing on the west sidewalk of 1200 Sixth Avenue. Zaki immediately recognized Ibarra's distinct facial tattoos and hairstyle from the wanted flyer.

Lucas stopped the patrol vehicle and Zaki exited. Zaki began walking across the number one and number two lanes of Sixth Avenue towards Ibarra. Ibarra looked at Zaki, turned around and began quickly walking away southbound on Sixth Avenue. Zaki told Ibarra multiple times to and he needed to talk to him. As Ibarra was walking away, Ibarra lifted his shirt and used both hands to reach into his waistband. Ibarra was facing eastbound towards the street and his head was looking back at Zaki and Lucas. Zaki told Ibarra to show him his hands. Ibarra did not comply and continued reaching into his front waistband. Zaki followed Ibarra while continuing to tell him to stop. While still walking away, Ibarra then used both hands to pull out an object wrapped in a camouflage bandana. Zaki could not see what the object was that was wrapped in the bandana. Ibarra began turning around and fumbling with the object, as if he was trying to unwrap the camouflage bandana from the object. Ibarra then pointed the object at Lucas who was on the street and to the east of Zaki.

Ibarra pointed the object while using his left hand to unwrap the bandana from the object. It appeared to Zaki that Ibarra was about to point the object at him as well. Zaki believed the object was a gun because of how Ibarra retrieved it from his waistband and how Ibarra was holding onto a grip of a gun when he pointed the object at Lucas and himself. Zaki felt he and his partner could be shot and killed. In response, Zaki unholstered his weapon and fired three to four rounds at Ibarra. Zaki stopped firing once Ibarra fell to the ground.

Investigation

The crime scene was secured, photographed and investigated by the San Diego Police Homicide Unit. All detectives' reports, audio-recorded interviews of witnesses, and interviews of officers involved, along with medical reports, BWC footage and surveillance video that captured the moments before and after the shooting incident were reviewed.

Lucas and Zaki were each wearing a clearly identifiable San Diego Police Department approved uniform with navy-blue pants and uniform shirt with the San Diego Police patch on each shoulder. Lucas and Zaki were each equipped with body worn cameras (BWC). The digital clock in the upper right corner of the Axon player is displayed in Zulu / UTC (Universal Time Coordinated). A conversion table was used to convert to Pacific Standard Time (local) which is minus seven hours from UTC time in June. Lucas activated his BWC at approximately 5:47:39PM. Zaki activated his BWC at approximately 5:47:48PM. The BWC footage corroborated the officers' statements.

BWC footage for both Lucas and Zaki begin with them traveling in their patrol vehicle. There is no audio during this portion of the BWC. Audio is not activated until two minutes into the video which is when both officers exit their patrol vehicle to contact Ibarra. BWC from Lucas shows him park the patrol vehicle in the #1 lane of 1200 Sixth Avenue. Lucas exits and steps around the front of the patrol vehicle and activates his BWC. Ibarra is seen walking south on the west curb of 1200 Sixth Avenue next to the front doors of the P.A.T.H. building. Ibarra is wearing red sweatpants, a red sweater and red shoes. Ibarra also appears to be carrying a white plastic grocery bag. Lucas tells Ibarra, "Hey, come here buddy." Zaki is slightly ahead of Lucas in the #2 lane of the street and walking westbound towards Ibarra. Zaki's BWC captures him tell Ibarra, "Hey man, let me talk to you for a second." Ibarra continues walking away and looks back at Zaki with both hands concealed in front of him. Zaki is then heard telling Ibarra, "Stop, stop...Stop!"

Lucas runs towards Ibarra and says, "San Diego Police, Stop!" BWC from Zaki shows Ibarra continuing to walk south while looking to the east towards Lucas. Ibarra still has his hands concealed in front of him near his waistband. Ibarra then drops the plastic grocery bag with his left hand and begins to quickly sidestep southbound while still looking in Lucas' direction. Ibarra raises his right elbow upward in a drawing motion. Zaki unholsters his weapon, points his firearm at Ibarra and says, "Let me see your hands!" Lucas also unholsters his weapon, points it at Ibarra and says, "Hey, let me see your hands!" Ibarra joins his left hand and right hand and extends both hands outward towards Lucas in a pointing motion. BWC from Zaki shows Ibarra turn his back to Zaki while still pointing the object in Lucas' direction. Lucas is then heard on his BWC saying, "Gun, gun!" Both Zaki and Lucas fire their weapons at Ibarra almost simultaneously. Ibarra falls forward onto the sidewalk and appears motionless. Lucas advises via radio, "Shots fired, 530 B Street." Lucas yells at Ibarra, "San Diego Police, let me see your hands!" Ibarra still appears motionless and both Lucas and Zaki approach with their weapons still drawn and pointed at Ibarra.

Lucas holsters his weapon and begins to handcuff Ibarra. BWC from Lucas and Zaki show a portion of the camouflage bandana protruding from under the right abdomen area of Ibarra. Once Ibarra is handcuffed, Lucas advises over the radio that no officers were injured and requests medics to respond to the scene. Lucas rolls Ibarra onto his back which then fully exposes the object wrapped in the camouflage bandana. Lucas begins to administer CPR until other officers arrive to assist.

Surveillance video from a building located at 600 B Street and surveillance video from the P.A.T.H. building captured the incident on video. Neither of the surveillance video footage has audio.

The building video is located on the east side of 1200 Sixth Avenue. The surveillance camera which captured the incident is located on the west side of the building and faces northwest towards the P.A.T.H. building.

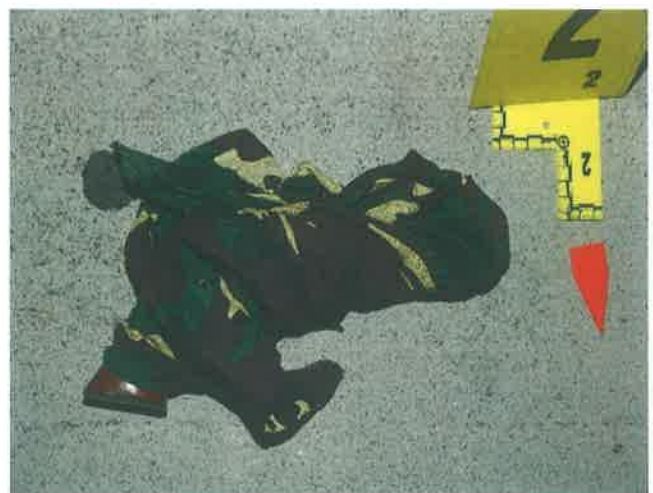
At one minute and 15 seconds into the video, CW1 comes into camera view walking northbound along the west curb of 1200 Sixth Avenue. CW1 gets into the driver seat of his truck which is parked on the west curb directly across from the front doors of the P.A.T.H. building. Two minutes into the video, Lucas and Zaki's patrol vehicle is seen slowly traveling southbound on 1300 Sixth Avenue. Two minutes and 25 seconds into the video, the patrol vehicle begins to cross south over A Street and into 1200 Sixth Avenue. Ibarra is seen exiting the front doors of the P.A.T.H. building. Ibarra briefly begins to walk northbound on the west curb before stopping. The patrol vehicle also stops in the #1 lane of 1200 Sixth Avenue.

Ibarra turns around and begins to walk southbound on 1200 Sixth Avenue as both Lucas and Zaki are exiting their patrol vehicle. Ibarra walks past the P.A.T.H. building front doors and continues walking south. Once Ibarra walks past the front door, he turns back and appears to look in the direction of Lucas while placing his right hand into his waistband. Zaki is walking on the west curb towards Ibarra while Lucas is walking diagonally westbound across the street towards Ibarra.

While appearing to continue to look back in the direction of Lucas, Ibarra drops the plastic bag and quickly begins to side-step away southbound. Ibarra then appears to retrieve a dark object from his waistband. Ibarra extends out both hands and points the object in Lucas' direction. Both officers fire their weapons and Ibarra falls forward onto the sidewalk.

The surveillance camera to the P.A.T.H. building is located just north of the front door entrance to the building. The camera faces southeast and captures the street and the west sidewalk. Surveillance footage captured the events leading up to the shooting incident as described in the building surveillance video.

An examination of the scene revealed Ibarra was armed with an operable .38 caliber Uberti revolver, reproduction of a Colt 1871/72 open top Frontier. The revolver was wrapped in a camouflage bandana. Further examination revealed two of the six chambers in the revolver's cylinder were loaded with two cartridges, each with the head stamp "WINCHESTER 38 SPL".



Lucas and Zaki were each equipped with a department issued 9mm Glock 17 semi-automatic pistol.

The firearm, magazines and cartridges of Lucas and Zaki were collected. Lucas possessed three magazines at the time of the incident. One cartridge was in the chamber of the firearm and seven cartridges were in the seated magazine. One spare magazine contained 22 cartridges and the other spare magazine contained 23 cartridges. Zaki possessed three magazines at the time of the incident. One cartridge was in the chamber of the firearm and nine cartridges were in the seated magazine. One spare magazine contained seventeen cartridges and the other spare magazine contained 16 cartridges.

A total of 17 9mm cartridge casings with a head stamp marking "FC 9mm LUGER" were located and recovered from the scene. These cartridge casing were found in two separate groups. A group of nine 9mm cartridge casings were located on the street near a black Mazda 6 sedan parked on the west curb of 1200 Sixth Avenue, directly in front of CW1's truck. This is also the area where Lucas was standing when he began firing. Another group of eight 9mm cartridge casing were located on the west sidewalk of 1200 Sixth Avenue in the area where Zaki was standing when he began firing.

On June 30, 2020, Deputy Medical Examiner Greg Pizarro conducted the autopsy of Leonardo Ibarra. Dr. Pizarro documented nine penetrating gunshot wounds to Ibarra, including the neck and head. Toxicology testing from Ibarra detected Amphetamine (0.07 mg/L), Methamphetamine (0.94 mg/L), cannabinoids Delta 9-Carboxy THC (15 ng/mL) and Cannabinoids Delta 9- THC (3.7 ng/mL). The cause of death was multiple gunshot wounds with acute methamphetamine toxicity as a contributing factor. The manner of death was homicide.

Legal Standards of Criminal Liability

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).

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

The officers had been provided with information that Mr. Ibarra had committed a robbery. They located Ibarra and attempted to contact and arrest him for the robbery. Lucas and Zaki were in full San Diego Police Department uniforms and had just exited a marked patrol unit when they approached Ibarra. Lucas verbally identified himself to Ibarra as a San Diego Police officer. Both Lucas and Zaki told Ibarra they wanted to talk to him and told him to stop several times. Ibarra ignored their commands and began walking away. Ibarra placed his right hand into the front of his waist band and continued walking away while looking back at Lucas. Ibarra began to quickly side-step away from the officers while retrieving a revolver wrapped in a camouflage bandana from the front of his waistband. BWC from both officers and surveillance video clearly show Ibarra take a shooting posture by raising his revolver, which was covered by a bandana with both hands, extending his arms out and pointing in Lucas’ direction.

Both Lucas and Zaki stated they could not see what was wrapped in the camouflage bandana and only described the object as being black in color. Lucas carries his firearm off-duty in his front waistband similar to where Ibarra had the revolver concealed. Lucas recognized the same motion Ibarra displayed in retrieving the revolver from his waistband, by lifting his shirt with his left hand and using his right

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hand to draw the revolver. Lucas conveyed to his partner Zaki, what he perceived by yelling, "Gun, gun." Zaki told investigators he observed Ibarra use both of his hands to lift his shirt and retrieve an object. Although the revolver was wrapped in a camouflage bandana, Zaki could see that Ibarra was holding the object by the grip, similar to one from a handgun as he pointed it at his partner, Lucas. Believing the object Ibarra had was a firearm, Lucas and Zaki each thought either or both of them would be shot and severely injured or killed by Ibarra. To protect themselves from being shot by Ibarra, Lucas and Zaki each fired their weapon at Ibarra. Lucas and Zaki had reason to believe there was an imminent threat of death or serious bodily harm to either of them which needed to be instantly confronted.

As evidenced by the photographs of the firearm, it was reasonable to believe that the object was in fact a firearm. While this analysis is made based on the perspective of a reasonable officer in the same situation, without the benefit of hindsight, testing of the weapon displayed by Ibarra revealed that the weapon was functioning firearm and loaded with two cartridges. Furthermore, CW1 also perceived the object to be a firearm and told investigators he feared he would be shot by Ibarra as he pointed the object at officers. In an attempt to protect himself from being shot he huddled down in his truck.

Under the totality of circumstances, Officer Lucas and Officer Zaki 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:gm

cc: Captain Richard Freedman
San Diego Police Department
Homicide Division