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May 11, 2021

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

Re: Non-Fatal shooting of Mr. Richard Young on October 14, 2020 by San Diego Police Officer Timothy Breck; SDPD Case No. 20-051061; DA Special Operations Case No. 20-138PS; Deputy District Attorney assigned: Samira Seidu

Dear Chief Nisleit:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Investigations Division concerning the circumstances leading to the non-fatal shooting of Mr. Richard Young by Officer Timothy Breck on October 14, 2020. District Attorney Investigators responded to the scene and were briefed by your detectives. This case was submitted to the District Attorney's Office for review on January 26, 2021.

Summary

On October 14, 2020 a 911 caller stated her husband had been drinking and refused to leave the master bedroom. While SDPD dispatch was on the phone with the caller, a male, Richard Young, could be heard in the background yelling that he had a gun in the house and would commit "suicide-by-cop." Officers approached the residence and saw Young sitting in a chair in front of the residence. CW1 was standing on the porch next to Young. CW1 sat on Young's lap and requested officers come to them and talk to Young. Officers approached and escorted CW1 away from Young. Other officers grabbed Young and helped him stand up. They attempted to place his hands behind his back to be handcuffed but Young resisted. Young removed a black revolver from the rear of his waistband and brought it around to the front of his body. He fumbled with it and then pointed it at Breck and another officer. Breck yelled, "gun" and fired one round into Young's torso, causing Young to drop the revolver. Young was transported to Scripps Memorial Hospital La Jolla for further medical treatment. Young was charged with violations of California Penal Code section 417(c), San Diego Superior Court case number CD287735.

Persons Involved

Young is a 61-year-old resident of San Diego. Breck has been employed by the San Diego Police Department for over four and a half years.

Summary of Law Enforcement Officers' Statements

Officers were informed the male (Young) wanted to commit "suicide-by-cop" and there was an old rifle in the house. A weapons check revealed no weapons registered to Young. While the officers were waiting for additional resources, a verbal altercation was heard over the open phone line. Young was heard making the comment, "one shot, one kill." Dispatch relayed the information to the officers on scene. The officers feared for CW1's safety and approached the residence. ABLE arrived on scene and was flying overhead. The officers saw Young seated in a chair and CW1 standing a few feet away on the front patio. They asked CW1 to come to them. She refused and sat on Young's lap. The officers gave her several more commands to come to them, but she did not comply.

The officers approached the couple and while an officer pulled CW1 off Young's lap, another officer took control of Young's right arm as officers stood him up. The officer placed Young's right hand behind his back and as he reached for Young's left shoulder, Young moved away and reached for something in the rear of his waistband. An officer was directly behind Young and had control of his right arm behind his back, saw the gun and said, "gun." Officer Breck yelled, "gun," and they heard one round fired. Young dropped a black revolver with a brown handle to the ground. Officers took Young to the ground and handcuffed him. Young was rolled onto his right side and checked for a gunshot wound while Breck retrieved his medical kit. The wound was not actively bleeding. Medics were requested. The officers provided the following additional details in their statements:

Law Enforcement Witness 1 (LE1)

LE1 gained control of Young's right arm as they stood him up. LE1 placed Young's right hand behind his back and as he reached for control of Young's left shoulder, Young moved away and reached for something in his waistband. As the object came out, LE1 was directly behind Young and either said or thought "gun." He heard Breck yell "gun," heard a shot, and then saw Young's gun fall to the ground. LE1 then took Young to the ground.

Law Enforcement Witness 2 (LE2)

LE2 was in between CW1 and Young. Someone yelled "gun." He saw a gun like a revolver tucked behind Young's waistband. LE2 saw Young's left-hand either reach behind or his left hand was put behind him for handcuffs. LE2 then saw Young pull the gun and start to slide it through his waist and that's when he heard the shot. LE2 only heard one shot and Young was taken to the ground and handcuffed. LE2 wasn't sure who shot. After Young was cuffed, LE2 saw Young was bleeding from his abdomen.

Law Enforcement Witness 3 (LE3)

LE3 did not see Young's gun until Breck shot. LE3 then saw the revolver come from Young and do a flip in the air and land at her feet.

Law Enforcement Witness 4 (LE4)

After the shooting, LE4 asked Young what happened. Young told him everything started with an argument. Young said he tried to move into the master bedroom and it turned into something stupid. LE4 asked him what his plan was with the gun. Young told him, "It was just for some

pussy shit.” LE4 asked him what he meant by that. Young told him he wanted to shoot it out or he wanted them to shoot him. LE4 felt based on his demeanor, Young was a bit disappointed and down on how everything turned out.

Law Enforcement Witness 5 (LE5)

LE5 and another officer were the last officers to arrive on scene. LE5 heard the gunshot but did not see the shooting. LE5 rode in the ambulance to Scripps Memorial Hospital La Jolla. During the ride, Young was adamant that he wanted to “suicide-by-cop” and said it several times. He told the medics to slow down and take the scenic route because he wanted to die. Young was insistent he wanted to die and expressed disappointment he was not dead. LE5 heard Young tell a medic, “Yeah, they only shot once,” and then said, “Don’t they usually shoot like six or seven?”

Statement of Civilian Witness One (CW1)

CW1 was reluctant to speak with investigators. She told detectives the argument started over her wanting Young to leave the master bedroom and he refused to do so. CW1 added Young was not going to hurt anyone prior to being shot. CW1 did not feel the shooting was justified.

Statement of Richard Young

Young was interviewed at Scripps Memorial Hospital La Jolla. He was coherent and did not appear to be inebriated or impaired. Young stated it was never his intent to put any of the officers at risk. It was a domestic dispute that got out of hand. He decided to spend the night in the master bedroom because it’s his house. CW1 didn’t like that and told him to leave the master bedroom. He told her it’s his house as well. Young told her to sleep in one of the other bedrooms. CW1 called 911. Young said he told her not to call 911 because she would not like the results, and it escalated from there. When the detective told him he was lucky that the wound wasn’t worse, Young replied, “Well, unfortunately.”

Statement of Officer Breck

Breck was working Northeastern patrol when he heard a radio call of a domestic violence disturbance in the Rancho Penasquitos area. The call turned into a “hot call.” The dispatch call taker heard in the background that a male (Young) had a firearm and that he wanted “suicide-by-cop.” Additional updates came out: Young had been drinking and was drunk, and there was mention of a weapon. Breck believed there was a firearm involved in this domestic violence incident.

As Breck was arriving on scene and getting out of his car, the dispatcher updated that the call taker heard CW1 pleading with Young, “please don’t do it, please don’t do it.” The call taker also heard Young say, “one shot, one kill.” Breck heard this and believed CW1 was going to become a victim and he was in fear for CW1. LE3 made the decision to move toward the house because there was potentially a life-threatening altercation happening. At the end of the cul-de-sac officers formed a contact team and assigned Breck as lethal coverage . Breck did not know if there were any other tools or less lethal roles assigned.

Officers approached the house. Young was sitting in a chair that faced the street on the front porch having an argument with CW1. As they walked up, he saw CW1 sitting in Young's lap facing the officers. They were having a conversation and it appeared Young was telling CW1 to listen to the officers. Breck slowly approached the residence with his firearm out in anticipation Young had a weapon or was armed. Breck gave verbal commands to CW1 for her to come and speak with them away from Young so they could address him. CW1 was uncooperative despite several requests from Breck. Breck yelled even louder so she understood the severity of the situation but CW1 did not comply. Breck was concerned that Young had the firearm in his lap or somewhere around him. Knowing that Young was armed, he didn't want CW1 to be a victim or in a hostage situation.

Breck maintained lethal coverage because of the knowledge of the firearm. He did not know who had less lethal. CW1 pleaded with the officers that they needed to come up to them. At no point did CW1 mention Young had a firearm or warn them about it. CW1 was adamant the officers walk up to them. Breck felt CW1 was given an opportunity to comply with directions given by the officers.

Officers went back and forth verbally with CW1. After CW1 said, "no, you come up here," LE3 made the decision to approach and make the scene safe and the officers walked up as a group. While armed Breck approached Young's left side. One of the officers removed CW1 from Young's lap and moved her to the side. As Young stood up, Breck had his firearm out to ensure Young was not armed. Breck looked to see if Young had a weapon near him, on the ground or around him in the chair. Young came out of the chair and canted his body to the left towards Breck. Breck was searching for the weapon. Breck did not see Young move his left hand behind his back to retrieve the weapon, but saw Young bring his left hand forward from behind his back and present a black object that Young was holding like a firearm. Breck did not immediately recognize the object to be a gun. When Young moved the object upwards into a shooting position, he fumbled with it, before pointing the firearm at Breck and LE3. Breck heard someone yell out "stop" or "gun." Breck also yelled something like, "Stop. Gun."

Breck felt that if he didn't address the threat, Young would have shot him or LE3. Officers were behind Young trying to get his hands behind his back. Breck estimated it took him one to three seconds to confirm that Young had grabbed a firearm from his waistband. LE3 was directly in front of Young. Breck described it as "point blank." LE3 was about a foot or less from Young. Breck did not know if LE3 recognized Young had a firearm in his hand. Young fumbled with the gun. Breck saw the barrel of the gun pointed directly into LE3's chest. Breck fired one round from his firearm. Young's firearm was either taken out of his hands or fell to the ground. Breck heard the firearm hit the ground and saw the other officers gain control of Young, so he did not need to fire additional rounds. Young was taken to the ground and placed in the recovery position. Breck said at some point during the interaction, his BWC was knocked off and stopped recording. He put it back on and resumed recording. Breck saw Young had a gunshot wound, so he ran to his police car and retrieved his first aid kit and tried to administer first aid.

Investigation

The scene was secured, photographed, and investigated by San Diego Police Department homicide detectives. All reports, audio-recorded witness interviews and 911 calls, radio traffic, medical reports, photographic evidence, and Body Worn Camera (BWC) video were reviewed. These items provided evidence corroborating the witness and officers' statements. Breck and the other officers on scene activated their BWC and captured the events leading up to and including the shooting. ABLE also video recorded the incident. Two neighboring homes had Ring/Nest video cameras that also captured a portion of the incident.

Breck was armed with his department-issued Glock Model 34 Gen 4, 9mm Luger caliber semi-automatic pistol. One 9mm Luger caliber cartridge casing was collected at the scene in proximity to where Breck had been standing.

Young was armed with a black Smith and Wesson 357 Magnum revolver, Model "13-3" with brown wood grip panels. There was one bullet in the cylinder. The revolver was examined by a San Diego Police Department criminalist and found to be operable. There is no evidence Young fired his weapon at the officers. A rifle was found in the home.

911 Call

At 7:21 p.m., CW1 called 911 and reported having an inebriated person in her house and she wanted him to leave the room. She clarified the person was her husband (Young). CW1 put the dispatcher on speaker and told Young to leave the room. Young responded "No." As the dispatcher attempted to get additional information from CW1 about the home, Young responded "It's my house." CW1 told him she needed him to leave the room. Young responded "No. You know where this is going. I'm gonna pull out a gun..." CW1 repeated she wanted Young to leave the room. Young stated "That's where it's going. That's where it's going. You want to see where this is going? It's going to be suicide-by-cop." The dispatcher twice asked Young what he said. Young responded, "I said it was going to be suicide-by-cop." The dispatcher asked Young how he intended to do that. Young responded, "I'm gonna come out with a loaded gun." CW1 told the dispatcher that Young did not have a loaded gun, and it was locked away. Young responded "Nope. But the cops won't know, they won't know. It's going to be suicide-by-cop." Young responded the gun was "in my control."

CW1 told the dispatcher the gun was unloaded, old, and Young inherited it in 1995. Young again responded he had control of the gun. CW1 told the dispatcher the gun was an old rifle. The dispatcher supervisor came on the phone line and told CW1 to step outside. Young and CW1 started to argue again. Young repeated, "it's gonna be suicide-by-cop." CW1 stated she did not want the situation to escalate and that Young was drunk and was not going to shoot at anyone. The dispatcher told CW1 officers were en route.

CW1 stayed on the line with the dispatcher and told them Young had no gun or weapon and was sitting in a chair outside and was fine. CW1 confirmed she felt safe. She further confirmed the rifle was in the closet and Young would not do anything. The dispatcher and his supervisor told CW1 to go back inside the home. CW1 said Young would not do anything to her and she did not fear for her life. CW1 said Young did not have anything in his hands. CW1 told Young not to do

anything stupid. Young responded, "it's gonna be suicide-by-cop." CW1 and Young continued to argue and CW1 said, "Stop it. Don't do that." CW1 stopped responding to the dispatchers as she and Young argued. Young stated, "I'm firing one shot." Young said, "I know what I'm doing," and later said, "it's a one shot, kill and I'm done." Dispatchers continued to try to get CW1's attention but she was not responsive. CW1 started talking to officers on scene. The remainder of the call is consistent with what is seen on the officers' BWC videos and the officers' statements.

Body Worn Camera (BWC)

Breck's BWC showed officers approaching the residence. ABLE can be heard flying overhead. Breck can see Young out on the patio and informed the other officers. LE1 can be heard telling the Youngs they are San Diego Police Department. LE1 gave the Youngs instructions. Breck said, "Ma'am, I need you to come out to me." CW1 replied, "no I don't want to." Another officer gave her some instructions. Breck told her to "listen to our instructions," and "get out here." CW1 is sitting on Young's lap in a chair on the front porch of the residence holding his hands. Breck told her to listen to their instructions; they're not going to play games with her; she called the police. CW1 said, "I need one of you to walk up here." LE3 said "I am, let's go, let's go." CW1 said "thank you."

The officers approach the front porch of residence where the Youngs were seated. CW1 stood up from sitting on Young's lap. LE1 grabbed Young's right arm while he is seated. LE3 is on the left side of Young and Breck is behind her. Breck has his firearm pointed towards the ground. Young stands up and immediately starts reaching with his left hand and arm towards his back where a dark object can be seen. LE4 is directly across from Breck and can see Young's back where he has the revolver secreted in his waistband. Young grabbed hold of the revolver with his left hand and brought it out around to his front. LE3 reached for the revolver as he brought it past her and said, "Whoa, whoa." Breck yelled, "Hey," and moved towards Young. LE1 said, "Gun!" LE3 was pushed to the left by Breck and it appears that as he did that it knocked his BWC off his uniform. The camera stopped recording just prior to him firing one shot at Young.

A review of LE1's BWC shows officers arrive and meet with one another. They received an update from dispatch of a verbal altercation now on the open line. CW1 can be heard on the open line pleading with Young not to do something. Dispatch updated they heard someone say, "One shot, one kill," on the open line. LE3 told them to move in and not to stage. The officers are all in full police uniform and have their flashlights out as they walked up to the Young's residence. As they approached the residence, ABLE can be heard flying overhead. LE1 approached from the neighbor's yard to the right and identified them as SDPD and asked Young to walk out to the front. LE1 then walked around to the front of the house. LE1 and other officers give CW1 instructions. CW1 responded, "I would like somebody to come here." CW1 is sitting on Young's lap and she said she has his hands. Breck gave instructions to CW1 but she did not comply.

LE3 said she is going to walk up to where the Youngs are seated. LE3 said, "Let's go, let's go." LE1 and LE3 are the first to make contact and told CW1 to stand up. CW1 stood up and moved to the side. LE1 immediately grabbed Young's right arm and started moving it behind his back. LE3 is on the left side of Young. Young quickly stood up. Young immediately started to resist.

LE1 told him to put his hands behind his back and then said, "He's got a ...gun!" A struggle is seen. LE1 has Young's right arm behind his back. Young turned his body to the left. LE1's BWC gets dark. The sound of a single gunshot is heard. Someone is heard saying "put it down, do not move," as Young is taken to the ground. He is handcuffed by LE2. Several voices are heard asking if anyone is hurt. LE1 thinks Young was hit. Young was rolled onto his right side and LE1 saw he had a gunshot wound to his abdomen. CW1 can be heard yelling in the background. LE3 reported shots fired on the radio and requested medics. Breck went to get his trauma kit from his police car.

LE1 told Young they have medics en route. Young said, "Don't need them. It burns a little bit more than I thought." Young added, "I never wanted to put you guys at risk." LE3 reported that Young is conscious and breathing and they still need to clear the residence. LE1 went through the trauma kit and found gauze, but the gunshot wound was not actively bleeding.

A review of LE3's BWC shows LE1 grabbing Young's right arm and placing it behind his back. LE3 has a large flashlight in her left hand as she attempted to grab Young's left arm. Young resisted and brought his hand out to his front. Young is holding the revolver. LE1 is attempting to pull Young's left arm behind his back. Breck is to the right of LE3 and steps forward with his firearm drawn and pointed at Young. At 19:38:56 hours, (00:17 in the video) Breck fired one shot. At 19:38:59 hours, LE1 is directly behind Young who is standing with his right arm behind his back and his left arm bent at the elbow, extended straight out with the revolver in his left hand pointed downward. Breck is facing Young with his firearm now in the low ready position. Young dropped the revolver as LE1 took him to the ground.

A review of LE5's BWC video shows Young started to stand up and LE1 grabbed his right arm to put it behind his back. Young resisted and his back and rear waistband can clearly be seen. The black revolver with a brown handle is sticking out of the left side of his rear waistband. Young reached for it with his left hand, grabbed it and brought it along his left side. Breck is seen to the left of Young. LE5 said, "Whoa, whoa, whoa," after seeing the firearm and started moving toward Young. Someone yelled "Gun!" Breck had his firearm in his right hand. A shot is fired. LE1 gained control of Young and took him to the ground.

Toxicology

Young's blood was drawn at Scripps Memorial Hospital La Jolla. SDPD detectives collected the blood sample. Toxicological analysis of Young's blood revealed he had a .261% blood alcohol level. No drugs were detected in his system.

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 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).

“A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe that person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.” Penal Code section 835a(c)(2).

“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

While CW1 was on the phone with SDPD call takers, Mr. Young could be heard making several comments about being armed and wanting to commit “suicide-by-cop.” This information was relayed to responding officers including Breck. Additionally, CW1’s pleas of “please don’t do it” to Young were also relayed to responding officers including Breck. It was reasonable for the officers to believe Young was a danger to CW1. Breck was looking for Young’s gun when officers contacted Young on the porch and attempted to detain him. Breck was standing in front of Young and LE3 was on Young’s side. When Young resisted, he pulled a black revolver out of the rear of his waistband and brought it to the front of his body in front of Breck and LE3. He began to raise the gun, but was hampered in this effort as LE1 was pulling his left arm behind his back. Breck saw that Young was able to aim at LE3’s chest. Based on the fear that Young would shoot LE3 or himself Breck responded by firing once at Young.

In reviewing the circumstances, Breck’s actions were reasonable based on the circumstances known and perceived by him at the time of the shooting. He knew Young had made statements that he was armed with a firearm and had stated, “one shot, one kill” and statements about “suicide by cop.” Retrieving a gun and displaying it as he stood mere feet from officers posed an imminent threat of serious bodily harm and death to all in the immediate range of Young’s weapon. Young not only posed a danger to himself, but everyone on the patio. Young was within close proximity to all of the officers and CW1. His weapon was loaded and he had the ability to cause serious bodily injury or death to those around him. Based on the totality of the circumstances, Breck reasonably believed that Young posed an imminent threat and intended to cause serious bodily harm or death by shooting him or the other officers on the front porch. The threat needed to be instantly confronted. His firing of one shot at Young was necessary to stop the threat. Less lethal alternatives were not feasible or safe against the immediate, lethal threat posed by Young. Therefore, Breck bears no state criminal liability for his 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