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THE DISTRICT ATTORNEY
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September 16, 2021

Sheriff William Gore
San Diego Sheriff's Department
9221 Ridgehaven Court
San Diego, CA 92123

Re: Non-fatal shooting of Mr. Gianni Oliver by San Diego Sheriff's Deputies Tony Bernal, Nicholas McGregor, Bryson Benavente, Robert Simpson and Michael Cruz on January 31, 2021; SDSO Case No. 21104644; DA Special Operations Case No. 21-011PS; Deputy District Attorney assigned: David Grapilon

Dear Sheriff Gore,

We have reviewed the reports and other materials compiled by the San Diego Sheriff's Homicide Unit concerning the shooting incident involving Gianni Oliver. A District Attorney Investigator responded to the scene and was briefed by detectives. This case was submitted to the District Attorney's Office for review on April 12, 2021.

Summary

On January 31, 2021 at approximately 5:20 p.m., deputies received a call to assist Barona Tribal Enforcement. A woman was possibly being held hostage by her boyfriend, Gianni Oliver, who was armed with a firearm. After conferring with Tribal Enforcement, deputies formed a plan to surround the residence and call the occupants out of the house.

At approximately 8:21 p.m., deputies arrived at the home located on the Barona Reservation and made announcements for the occupants to come out. The woman came to the door and told deputies she was alone in the home, there was no emergency, and she did not want deputies there. She admitted there was an altercation with her boyfriend that took place hours before but insisted it was over. While deputies were speaking to her, other deputies saw someone on the second floor of the home. Given the contradictory information, deputies began checking the first floor of the home. When the female became upset and moved toward the stairway, a deputy grabbed her arm to prevent her from leaving. Oliver emerged on the stairs and began firing a pistol through the doorway into the kitchen where the woman and deputies were standing. One of Oliver's rounds struck the woman on her left side. A deputy returned fire. Oliver retreated to the second floor of the home. When the woman was being brought outside to get medical aid, Oliver emerged from the balcony and fired upon deputies who were in the driveway below. Several deputies returned fire. No one was hit during that exchange. Oliver remained upstairs. Deputies trapped inside the home were extracted by an armored vehicle. Oliver eventually surrendered. He was not injured and is currently being prosecuted for a variety of criminal charges.

Persons Involved

Gianni Oliver is a 23-year-old resident of Ramona. All deputies involved in this incident were employed by the San Diego Sheriff's Department. The deputies' names and length of employment are as follows: Tony Bernal, two years (formerly a probation officer for 13 years); Nicholas McGregor, seven years; Bryson Benavente, eight years; Robert Simpson, 22 years; Michael Cruz, 14 years.

Civilian Witness 1 (CW1)

CW1 is related to CW2 and CW3. CW3 and Oliver have been dating for several years. Oliver began acting erratically and he and CW3 argued constantly. Earlier on the day of the incident, CW1 received a call from CW2 stating he was on the phone with CW3 when he heard screaming and what he thought was a gunshot. CW1 stated there were 14 tribal complaints involving Oliver. On Tuesday, January 26th, 2021, the tribe voted to permanently ban Oliver from the reservation. CW1 called Tribal Enforcement to respond to CW3's residence instead of going there herself.

Civilian Witness 2 (CW2)

CW2 is related to CW3. Earlier on the day of the incident, he called CW1 to tell her CW3 called him on the phone crying. CW2 was on the phone with CW3 when he began to hear arguing and cursing. CW2 heard Oliver say "fuck that TV" followed by the sound of it breaking. CW2 felt CW3 and Oliver were having a bad argument. He called CW1 and asked her if she could pick him up so that they could go to CW3's home to check on her and perhaps bring other family members, as he felt they needed to do something.

Civilian Witness 3 (CW3)

CW3 is Oliver's girlfriend. Oliver had been acting differently over the past three months, and CW3 believed he was paranoid and doing drugs. Oliver is schizophrenic and little things set him off. He was recently arrested and charged with elder abuse for punching his aunt, whom he believed was trying to kill him. After that incident, Oliver told CW3 he was going to kill himself. When Oliver and CW3 argued, Oliver sometimes pushed her and would destroy the house, breaking televisions or kicking down doors, but she did not want him to go to jail. CW3 suffered a miscarriage three days prior, causing Oliver to be upset the entire day of the incident, crying and screaming. Around noon, Oliver started breaking items in the house. When CW3 tried to leave the room, Oliver would stop her and refused to let her leave. The more CW3 tried to leave, the more emotional Oliver became. CW3 offered Oliver some Tylenol for his back and suggested they go eat. CW3 and Oliver drove to a 7-Eleven in CW3's Audi. Oliver argued with an individual outside the store and they started fighting. Oliver eventually got back in the vehicle and began screaming repeatedly as they drove home.

When they arrived home, they parked in the garage and Oliver slept in the car. CW3 went to her room and went to bed. She awoke to her dogs barking, noises, and the sheriff's deputies yelling. CW3 went to the garage and tried to tell Oliver the police were there, but he would not wake up until she slapped him. She told Oliver law enforcement was at the door and asked him what he wanted to do, as neither of them had called them. CW3 had called CW2 earlier and she believed he called CW1, who called law enforcement. Oliver went upstairs to put on pants and get pajamas. The deputies kept knocking on the door. CW3 covered herself with a towel and answered the door. They told her to put her hands up and come outside. CW3 said the deputies were screaming at her and they approached with their guns drawn. One of the deputies was giving her dirty looks and rolling his eyes so she began calling him names and arguing with him. The deputies told her they received a 911 call from CW1. CW3 admitted

she spoke to CW2 earlier in the day and told him Oliver was upset about the miscarriage and they were fighting. CW3 demanded a TO respond.

A TO arrived and explained CW1 had called law enforcement because she was worried for her. CW3 told the deputies she wanted to get dressed and put her dogs away before the deputies entered. One of the deputies pushed past her and walked inside. CW3 heard Oliver upstairs stomping his feet and putting on his shoes. CW3 tried to secure her dogs, but a deputy grabbed her and told her not to run to the stairs. She yelled at the deputy to let her go. The other deputy saw Oliver coming down the stairs, announced it, and shots were fired. One of the deputies pushed her to the ground and she hit her head. CW3 did not think she was shot but felt a burning sensation in her back. A second deputy pulled a curtain down and used it to apply pressure to CW3's stomach. CW3 was not sure what he was doing so she pushed the deputy. CW3 realized she was bleeding and started screaming to Oliver that she was shot. Oliver stopped and asked who shot her. CW3 told Oliver she believed he shot her. Oliver denied he had and ran back upstairs. CW3 heard Oliver tell the deputy "Watch! You're not gonna kill my wife." The deputies and Oliver resumed shooting at each other. CW3 stated a deputy had her curled up as if to shield her after she got shot. CW3 pleaded with the deputies to let her talk to Oliver because she felt she could calm him down. One of the deputies opened the back door to the residence and pulled CW3 out of the house. CW3 was placed in a patrol vehicle and driven down the road to an ambulance.

CW3 initially stated she did not see Oliver with a gun, but later admitted she saw Oliver point a gun through the staircase railing and shoot twice at the deputies. CW3 initially believed Oliver shot her, based on her positioning when the shooting started and having her back to the stairs when Oliver started shooting from there, but later, did not believe Oliver was the person who shot her.

CW3 has two firearms in her residence. Both are rifles. CW3 said Oliver had a .40 caliber ghost gun that she purchased parts for and helped him build. Oliver took an interest in loading ammunition and becoming a hobbyist with firearms. He purchased hollow point ammunition and CW3 believed he may have used that ammunition to shoot at the deputies.

Tribal Officer (TO)

Tribal dispatch received a call from CW1 stating Oliver was at CW3's residence shooting a gun. CW3 had locked herself in a bedroom out of fear. TO was familiar with both Oliver and CW3. A week prior to this incident, Oliver had been permanently banned from the Barona reservation after he brandished a firearm during a dispute on two separate occasions and he had a history of driving around the reservation shooting tribal members with a paintball gun. TO told the dispatcher to notify the Sheriff's Department. TO met with the responding deputies and briefed them. There was a delay because some of the Ramona deputies had to leave to handle a call in Ramona and they were waiting on deputies from Lakeside to arrive and assist.

TO led the patrol cars to the house. Deputies spoke on a PA system and heard CW3 yelling something at the deputies. The deputies moved closer to the front door. Deputies requested his assistance with CW3. He explained to CW3 they wanted to make sure no one was holding her against her will and instructing her to say everything was okay. The deputies eventually began to search the house. TO stayed in the entryway and saw CW3 walking to the right towards the kitchen. A deputy grabbed CW3 to stop her. At the same time, a deputy yelled "gun" and TO heard gunfire. TO took cover just outside

the front door. Once the gunfire stopped, TO heard CW3 say she was bleeding. TO began looking for an escape route since he was unarmed. TO heard someone say Oliver was on the roof and then the balcony. TO saw Oliver on the balcony. Oliver yelled something and began firing a gun towards the patrol cars parked in the driveway. TO stayed behind a pillar. At some point, Oliver came out to the balcony again. The deputies instructed Oliver to keep his hands visible and on the balcony railing. Oliver told deputies to shoot him. TO believed deputies were going to shoot Oliver because he kept putting his hands down near his pockets. An armored vehicle later evacuated TO from the scene.

Law Enforcement Witness 1 (LE1)

LE1 learned the incident may be a hostage situation. LE1 was on the perimeter with two other deputies. LE1 later moved to the front. Deputies at the front were talking to an uncooperative female who did not want them to enter. The Sheriff's helicopter broadcast they had seen someone in the upstairs portion of the house. LE1 also believed he saw someone moving past a window.

The sergeants decided to search the residence. LE2 and Bernal remained in the living room while LE1, Cruz and Benavente began searching the north hallway. LE1 was clearing the first room to the left side of the hallway when he heard gunshots. LE1 returned to the living room and saw the female bleeding from her stomach area. LE1 saw what he believed to be the suspect's feet at the top of the stairs. LE1 rendered first aid to the female and deputies escorted her out while LE1 covered the rear of the house. LE1 remained at the location until he was relieved by other deputies.

Law Enforcement Witness 2 (LE2)

LE2 was made aware of a robbery that occurred in Lakeside just before 7:00 p.m. The suspect fled in a black Audi. Dispatch advised the robbery may be related to a call on the Barona Reservation. LE2 called Sergeant Cruz to discuss both incidents. Cruz said the call was a possible hostage situation so LE2 responded to assist.

Cruz developed a plan to set a perimeter and call out the occupants. When they arrived, LE2 took a position behind the contact team that consisted of Simpson, Benavente, Cruz and LE2. Deputies used the patrol vehicle PA system to ask the occupants in the house to come outside. CW3 eventually came to the door. The deputy tried to get CW3 to walk to them, but CW3 yelled back saying she was worried about the dogs attacking the deputies and was not receptive towards them. LE2 and Cruz moved to the front door of the residence. LE2 attempted to convey to CW3 that the main goal of the deputies was to search the house to ensure there was no one threatening her or hiding out of sight that may be holding her or someone else hostage. CW3's demeanor fluctuated, as she would fixate on certain deputies and start cursing and directing profanity at the deputy, then transition back to speaking to LE2.

ASTREA broadcast they had seen someone look through the balcony window, which was inconsistent with CW3 telling them that no one else was in the house. CW3 asked a Barona Tribal Enforcement officer to speak with her and try to calm her down. Cruz and two other deputies began searching the hallway while LE2 and Bernal stayed with CW3 in the foyer. CW3 became upset, uncooperative, and started walking quickly towards the stairs. When LE2 grabbed CW3 by the arm to stop her, LE2 saw a male walking down the stairs. LE2 heard Bernal shout, "gun" several times, followed by gunfire. LE2 believed the suspect shot first. LE2 heard Bernal fire four shots at the suspect. CW3 fell to the ground behind LE2.

LE2 heard someone on the radio say the suspect was out on the balcony. LE2 heard another exchange of gunfire. Cruz, who was at the front door, fired towards the balcony. LE2 heard what he believed was the suspect reloading his handgun. At some point, LE2 began speaking with the Oliver. LE2 told Oliver to walk out onto the balcony and he complied. LE2 could hear Oliver direct profanity and insults to the deputies. An armored vehicle extracted him from the residence. LE2 believed Oliver's intent was to hurt and kill them. LE2 felt he would have been struck by the bullet had CW3 not been in front of him.

Deputy Tony Bernal's Statement

While speaking with CW3 at the house, Bernal heard a deputy over the radio state someone was looking out of a second story room. Cruz asked CW3 who was upstairs and CW3 denied anyone was upstairs. CW3 continued to yell at them as deputies began to check the downstairs hallway. Bernal had his firearm unholstered and looked along a wall and through a door frame where he could see a stairway. LE2 continued to tell CW3 that the quicker they were able to check the second floor, to ensure her safety, they could leave. LE2 advanced and grabbed CW3's right arm, as they both told her not to move. Bernal observed someone starting to walk down the stairs but could not tell who it was. Bernal saw what he believed to be a black firearm in the person's waist. The male raised the gun and pointed it right at him. Bernal yelled, "Gun! Gun! Gun!" and immediately stepped to his right and behind a pillar. As he moved, Bernal heard gunshots coming from the area where he had seen the male with the gun. Bernal knew the male was shooting at him and feared he was trying to kill him, so Bernal fired his weapon at him. Bernal recalled thinking that the suspect was going to shoot him in the head. Bernal did not consider any other force options due to a firearm involved. Had he not used deadly force to address the male or moved when the suspect began shooting at him, he would be dead. Bernal did not know if any of his partners had been hit by gunfire. After Bernal fired, he could no longer see the male. Bernal yelled at his partners he had lost sight of the male and someone yelled to hold their positions.

CW3 yelled, "Gianni, you shot me!" and the male yelling back, "No, I didn't shoot you," and CW3 responded, "Yes you did, I'm bleeding!" Bernal believed CW3 was led out of the house through the sliding glass door. As Bernal held his position behind the pillar, he heard what he believed to be someone reloading a weapon, specifically, a magazine being inserted into a gun and the racking of the slide to load the round into the chamber. Bernal heard a sergeant say, "he's reloading." Bernal yelled it as well so everyone could hear it. Immediately after the reload, Bernal heard gunshots coming from outside. Bernal was in fear for his life, thinking he did not know who was still inside the house and if there were multiple shooters. Bernal was also concerned about anyone being injured outside. LE2 began communicating with the male that they needed him to stay outside with his hands up and with no weapons. Bernal and other deputies were eventually evacuated by an armored vehicle.

Deputy Nicholas McGregor's Statement

McGregor was briefed on the incident and took a perimeter position at the house. He saw a black BMW parked in the rear of the residence. McGregor recalled information about a black sedan involved in the Lakeside robbery. Deputies called out to the occupants and he heard on the radio the female was hesitant. McGregor directed his attention to the second floor after someone said a person was there, which ASTREA also confirmed. After another five to ten minutes, McGregor heard about five to eight gunshots from inside the house. A female was taken out from the back door and towards the patrol cars in the driveway. The suspect was seen on the balcony overlooking the front of the property. Benavente

and the female were exposed with no cover. McGregor walked to Benavente to provide cover for them. McGregor saw the suspect emerge onto the balcony. McGregor remembered staring at the barrel of a gun. The suspect looked at McGregor and started shooting. McGregor recalled thinking this was for real and he was going to get paralyzed or shot in the spine. He started thinking about his children. McGregor also considered the possibility that the suspect was attempting to kill the female and the deputies happened to be collateral damage. McGregor recalled events moving slower and seeing either wood or bullets traveling towards him.

McGregor pushed the female to get down behind the lead patrol car. In defense of his own life and lives of others, McGregor returned fire towards the suspect. McGregor described this as an exchange of gunfire where the suspect came in and out of concealment to fire at the deputies. After losing sight of the suspect, McGregor saw movement at the curtain of the window closest to the balcony. Believing that the suspect was about to reemerge and continue the assault, McGregor fired two or three rounds into the window. McGregor reloaded his handgun and continued firing towards the suspect's last known position. McGregor believed he fired approximately eight total rounds at the suspect. Once the gunfire ended, McGregor transported the female to the Barona Fire Station where medics were standing by. McGregor returned to the scene and his original cover position until the suspect eventually surrendered.

Deputy Bryson Benavente's Statement

Benavente was assigned to ride with another deputy to the residence and make announcements from a PA system to call CW3 out of the residence. While enroute, Benavente was concerned about the original information stating Oliver was firing guns inside the house. It was unknown if Oliver was still at the residence and no one had knowledge of the layout of the house. Upon arrival, Benavente made announcements and instructed the occupants to exit the residence. CW3 came out the front door wearing a blanket and told them Oliver was not inside. She was uncooperative and refused to speak with them outside but said she would speak with them if they came up to her because she was only wearing a blanket. LE2, Cruz, Bernal and LE1 walked up to CW3. Deputies eventually stepped inside the residence.

Cruz later came outside and requested his and LE1's assistance inside. Cruz went down a hallway to the left of the residence and entered a bedroom to clear it. When Cruz came out of the bedroom gunshots were fired. Benavente saw deputies in the kitchen area pointing their firearms towards a doorway that led to a stairwell. He could not see the subject but heard CW3 screaming that she was shot. Benavente could see she was bleeding from the left side of her stomach. He pulled down a curtain and used it to provide direct pressure to CW3's wound to stop the bleeding. Hearing that CW3 might have recently had a miscarriage or could still be pregnant, Benavente felt it was critical to get CW3 out of the residence immediately. Benavente believes he heard CW3 saying that Oliver was the one that shot her. Benavente and another deputy took CW3 out of the residence through the rear sliding door and walked to several patrol vehicles in the driveway.

Oliver emerged on the balcony with a gun. Benavente saw muzzle flash and recognized Oliver was shooting at them. Fearing for CW3's life and his own life, Benavente pushed CW3 down behind the vehicle and the rest of the deputies got behind the vehicle for cover. Other deputies returned fire. Benavente unholstered his handgun and passed CW3 off to McGregor who was nearby. Benavente kept thinking to himself that Oliver was trying to kill them and believed if he did not stop Oliver, he or

other deputies would be killed. Benavente pointed his firearm at the balcony when Oliver reemerged on the balcony and fired two more shots at them. Fearing Oliver was going to kill him or his partners, Benavente returned fire. Benavente believed he fired approximately five times. Benavente did not feel there were any other force options available to him based on his position of disadvantage and the actions Oliver had already taken. There was nowhere else for deputies to safely retreat. Benavente was not able to give any verbal warnings to Oliver because he did not have enough time. Oliver immediately retreated into the room. Someone announced on the radio they could hear Oliver reloading. Benavente eventually heard on the radio Oliver would be exiting the residence. SED arrived on scene and relieved him and other deputies. Benavente estimated Oliver was on the balcony for about an hour before SED arrived.

Deputy Robert Simpson's Statement

Simpson was a K-9 deputy. Simpson learned a black vehicle located at the target address was possibly related to the Lakeside robbery. The suspect possibly fired a firearm in the air either earlier in the day or another day and the suspect was wanted for being a felon in possession of a firearm.

Benavente gave several verbal commands via PA for the occupants of the house to come out with their hands up. After several announcements, CW3 exited the front door of the house and began yelling at deputies. Simpson could not understand what CW3 was saying because his canine was barking. CW3 was not cooperating after being asked to walk towards deputies. Simpson put his canine away due to there being several dogs in the house and proceeded to drive his patrol vehicle up towards the front of the house. Simpson stood by at the front of the house and watched the window and balcony while deputies spoke with CW3. Simpson had his back to the front door. Simpson remained outside when the deputies entered the house.

After a few minutes, Simpson heard multiple gunshots. Simpson entered and saw approximately four to five deputies inside pointing their firearms down a hallway. Simpson saw what he believed was a firearm on the counter. CW3 was screaming something to the effect of, "I don't want you to die." She appeared to be in pain and clutching her abdominal area. Simpson saw blood near CW3's hands and feared that she could possibly bleed-out. Benavente and Simpson brought CW3 out towards the garage area of the house. Once Simpson got to the passenger side of the patrol vehicle, he heard ASTREA broadcast Oliver was poking his head out the window and for deputies not to pass the area. Simpson observed the suspect on the balcony pointing a firearm at him. Simpson heard a loud "bang" and saw a muzzle flash. Simpson closed the door and ran to the rear of the patrol vehicle. Simpson could hear multiple gunshots being fired. Simpson did not know if Benavente had been shot or if CW3 had been shot again since they were in an open area at the time of the shooting. Simpson fired his weapon at the suspect four to six times. The suspect had been shooting from the south side of the balcony towards the area where they were all standing. Simpson did not know if the suspect had any more firearms in the house and could possibly reload his weapon and engage with them again in gunfire. Simpson believed the suspect would have killed him, his partners, and/or CW3 had he not fired his weapon. Simpson did not believe he had any opportunity to give the suspect any verbal commands prior to the shooting because time did not allow it and he did not want to give up his position to the suspect.

Sergeant Michael Cruz's Statement

Cruz heard the radio call of a possible temporary restraining order violation at a residence located on the Barona reservation. Prior to responding, Cruz learned that the suspect, Gianni Oliver, did not have an active TRO on file. He had recently been banned from the Barona reservation and was not allowed to be in the residence. Deputies were delayed in responding to the call due to high priority calls. Cruz responded to the Barona Speedway and met with Barona Tribal Enforcement officers. A Tribal Officer informed Cruz and the deputies that Oliver was inside the residence and was shooting a gun. CW3 had barricaded herself inside and was afraid to leave the residence. CW3 called CW1, who in turn called Barona Tribal Enforcement. Cruz requested the assistance of a K-9, ASTREA and additional deputies. Cruz received information that a black vehicle which matched the description of a suspect vehicle in a robbery which occurred earlier in Lakeside arrived at the residence. A computer records check revealed Oliver had multiple weapons-related and elder abuse charges. Cruz decided to conduct a call-out by having deputies announce their presence and have the occupants in the residence exit safely without having deputies approach the residence. They caravanned to the residence and blocked off the adjacent street to cross traffic.

Cruz noticed all the lights were off in the residence. Announcements were made and the front door eventually opened. CW3 stood in the doorway with a blanket covering her. She was uncooperative, refused to come further out, and yelled profanities. CW3 yelled for the deputies to come to her. Cruz, LE2, Simpson, Benavente, and Bernal utilized Simpson's vehicle for cover and approached her. Cruz and Bernal had their firearms out which angered CW3. LE2 was speaking with CW3 and established a rapport with her. CW3 would periodically yell she was on tribal land and had her rights. CW3 got emotional when she learned CW1 called and became more upset. Cruz felt obligated to do a safety sweep of the residence and recalled a similar call for service a week prior regarding a TRO violation. The female victim in that call was behaving similarly to how CW3 was behaving and told deputies the suspect was not home. Deputies walked away from that residence and the victim was able to escape and called back, stating the suspect was at the residence and she was afraid. Deputies arrested that suspect. Cruz did not want a repeat of that outcome and wanted to verify CW3 was completely safe. Cruz felt victims will sometimes lie to get rid of law enforcement, for fear of further harm from the suspect.

Feeling unsafe in the doorway, deputies stepped inside the residence. At this same time, ASTREA announced a person was peeking through the blinds from the second story balcony. Cruz believed the unknown subject was most likely Oliver and was hiding from deputies. CW3 told deputies the movement seen was likely her dog. CW3 began demanding that a Barona Tribal Enforcement Officer to be present which Cruz obliged. Cruz went back out to the front of the residence and requested two more deputies come back into the house with him so they can search for anyone that might be hiding in the rooms. LE1 and Benavente came inside the residence and began searching an adjacent hallway which connected to several rooms. Cruz was still aware of the unknown person upstairs and directed Bernal to watch the doorway that led to the stairway, while Cruz, LE1, and Benavente began searching down the hallway.

Cruz went into the first bedroom to the left of the hallway and planned for Benavente to move up and clear the final bedroom with Cruz. While they were about to begin moving forward, Cruz heard gunshots. CW3 began screaming. LE2 was yelling about getting CW3 out of the residence. CW3 yelled, "Babe, you shot me!" Cruz felt Oliver was either trying to kill CW3 or deputies. Cruz was able

to go into the kitchen area where several deputies were. Cruz observed blood and called for a shield. A deputy ran into the residence with the shield and said, "Sarge, it's 11-99" (code for an immediate call for assistance, typically used when a deputy or officer is down). Cruz immediately thought one of the deputies in the residence was shot. Cruz immediately broadcasted "11-99" on the radio. LE2 took cover behind the center island in the kitchen and Bernal took cover behind a pillar.

Cruz could hear more gunfire coming from outside and went out to the doorway to see where everyone was. TO was behind a pillar outside. Bernal yelled that he saw feet on the stairway. Cruz made his way up to Bernal's position when TO said the suspect was heading to the roof. Cruz went back to the doorway and was able to look up towards the second-floor balcony but did not see anyone. Cruz heard more gunfire and was afraid Oliver was shooting at him since there was a clear line of sight from the door to the balcony. Cruz saw Oliver's outline through the curtains of the second-floor balcony window but could not see Oliver's gun. Cruz feared Oliver might kill or injure the deputies outside because of his elevated position of advantage. Cruz fired his weapon at Oliver approximately three to four times. Cruz could still hear shooting and was not sure if he was missing or if his rounds were getting stopped. Cruz remembered hearing the distinct sound of Oliver reloading his firearm while inside the residence. Cruz felt he had no other force options since Oliver was actively shooting at deputies. If Oliver was not stopped, Cruz felt Oliver would eventually kill him or other deputies. Cruz called for a rifle and a deputy responded. The deputy informed Cruz that Oliver was no longer standing on the balcony and the shooting stopped.

Cruz coordinated with SED to respond to the scene. Cruz conducted a roll call over the radio to account for the deputies that were there. Oliver eventually called out and began yelling, "Get the fuck out of my house," along with other expletives. LE2 tried to negotiate for Oliver to surrender. Oliver refused and would yell, "I'm hit." Cruz felt this might have been a tactic from Oliver to lure deputies to come up to him and then ambush them. Oliver ultimately agreed to walk out to the balcony with nothing in his hands. Oliver stood on the balcony until SED arrived to conduct an officer rescue with an armored vehicle. El Cajon Police Department's armored vehicle arrived and SWAT members relieved deputies at the scene.

Investigation

The scene was secured, photographed and investigated by the San Diego Sheriff's Department Homicide Detail. All detectives' reports, crime scene investigators' reports, body worn camera (BWC) and audio recordings were reviewed. A review of the footage generally corroborated the statements of the deputies. Bernal's BWC footage shows the positions of LE2 and CW3 as shots were fired from the doorway to the stairs, but Oliver cannot be seen. CW3 is moved behind the deputies almost immediately as the first shots are heard, removing her from their line of fire, but still downrange from Oliver's shots.

Video taken from ASTREA shows an individual positioned at the second-floor balcony doorway just as deputies are walking CW3 from the house to the patrol vehicles. The observer warns the deputies someone is peeking outside and cautions them not to walk past. ASTREA orbits the home and loses sight of the doorway just as bullet strikes are detected impacting the ground next to the deputies and CW3. A broadcast is made that shots are being fired and a firefight is in progress. ASTREA video shows deputies returning fire toward the balcony area.

Oliver and the deputies were uninjured. CW3 sustained a gunshot wound to abdomen and back and a red mark on left side of her head. She was transported, treated, and released from Sharp Memorial Hospital. CW3's blouse was analyzed by a criminalist and it was determined the round that penetrated the clothing entered from the back and exited the front. Bullets taken from the kitchen and hallway walls were consistent with coming from the ghost gun pistol used by Oliver. This evidence, coupled with CW3's initial position at the time shots were first fired, indicated she was likely shot by Oliver, though the crime lab was unable to identify which bullet struck her. Bullet defects were observed in the kitchen, living room, and stairwell. Bullet defects were found on the balcony area and in the wooden railing. A defect on a Sheriff patrol vehicle was found near one of the fenders, and a projectile was recovered from the adjacent wheel well.

A gold necklace was found inside the black Audi parked in the garage. It was positively identified by the victim as the item taken during the robbery. Oliver was also positively identified by the victim and a witness. Oliver was wearing the clothing that matched the description worn in the robbery at the time of the shooting incident. A defect was found in Oliver's flannel jacket and a projectile was recovered in the layers.

A loaded .40 cal. pistol with an extended magazine was found in a plastic bin in the upstairs bedroom leading to the balcony. Other firearms were found during the search of the house: a loaded AR-style rifle was found in the garage with 23 cartridges inside the magazine, an unloaded pistol with extended magazine was located in a kitchen drawer, a Saiga AK-style rifle was in the downstairs closet with one cartridge in the chamber, and a Weatherby bolt action scoped rifle with bipod was in same closet. Firearm parts, magazines, reloading supplies and ammunition were located throughout the home.

The firearms used by deputies that fired shots were examined after the incident and the number of possible shots fired were determined by a criminalist. Simpson was armed with a Glock 17 9mm pistol and fired approximately four rounds. Bernal was armed with a Glock 22 .40 cal. pistol and fired approximately eleven rounds. Cruz was armed with a Glock 22 .40 cal. pistol and fired approximately six rounds. Benavente was armed with a Glock 22 .40 cal., and fired approximately four rounds. McGregor was armed with a Glock 17 9mm and fired approximately 17 rounds during the Barona incident.

One "BLAZER 40 S&W," one "FEDERAL 40 S&W," and one "WIN NT 40 S&W" casing was collected from the landing of the staircase. This was the position from where Oliver fired his initial rounds.

One unexpended and one expended casing with headstamp "FEDERAL 40 S&W" was collected from the floor in the foyer. Two "FEDERAL 40 S&W" casings were collected from the floor south of the couch in the room south of the foyer and four "FEDERAL 40 S&W" casings were collected from on top of the couch in the room south of the foyer.

Five "FEDERAL 40 S&W" casings were collected from the concrete walkway northwest of the front door of the residence. One "WINCHESTER 40 S&W," one "BLAZER 40 S&W" casing, a metal fragment, and a bullet was collected from the asphalt driveway below the balcony south of Sheriff's vehicle 20657. One "WIN NT 40 S&W" casing was collected from the floor of the balcony. This was the position from where Oliver fired rounds on the balcony.

Five "HORNADY 18 9mm LUGER+P" casings were located on the driveway asphalt south of Sheriff's vehicle 20825. Four "FEDERAL 40 S&W" and three "HORNADY 18 9mm LUGER +P" casings were collected from the dirt south of Sheriff's vehicle 20817. Four "HORNADY 18 9mm LUGER +P" casings were collected from a rock pile southeast of Sheriff's vehicle 20817.

Oliver is being prosecuted for this incident in Court case number CE404677, which includes charges of attempted murder and assault with a semi-automatic firearm on the deputies, possession of firearms by a felon, and the robbery from the Lakeside incident. A preliminary hearing is scheduled for December 20, 2021.

Legal Standards of Criminal Liability

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The District Attorney's Office reviews incidents involving the use of deadly force that creates a substantial risk of causing death or serious bodily injury, including but not limited to, the discharge of a firearm, for potential criminal liability. The law provides that "a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary, to defend against an imminent threat of death or serious bodily injury to the officer or to another person or 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 unless immediately apprehended. Penal Code section 835a(c)(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

Deputies appropriately responded to a radio call of a possible hostage situation involving a known suspect who was possibly armed and involved in an earlier robbery. They attempted to safely contact the victim and call her out of the home to check on her welfare, but she was uncooperative and forced the deputies to enter the home to speak with her and check the home for Oliver. Despite CW3’s claims she was alone and Oliver was not home, ASTREA saw an individual on the second floor. As the deputies began clearing the home, Oliver fired upon the deputies from the stairwell. CW3, who was in close proximity to the deputies, was struck. Deputies returned fire and Oliver retreated upstairs. When deputies brought CW3 outside so she could be taken to a hospital, Oliver fired at deputies outside the house from the balcony. Deputies again returned fire. In both exchanges of gunfire, deputies were clearly justified in defending themselves using deadly force from an active, hostile shooter in an effort to protect themselves, their fellow deputies, CW3 and the TO. As such, the deputies have no state criminally liability for their actions. A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,



SUMMER STEPHAN
District Attorney

SS:gm

cc: Captain Ken Jones
San Diego Sheriff’s Department
Homicide Detail