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OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO

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DISTRICT ATTORNEY

September 27, 2019

Chief Walt Vasquez  
La Mesa Police Department  
8085 University Avenue  
La Mesa, CA 92942

**Re: Non-fatal shooting of Mr. Daniel McKibben on May 2, 2019 by La Mesa Police Officer Roberto Nava; LMPD Case No. 19016636; DA Special Operations Case No. 19-081PS; Deputy District Attorney assigned: Stephen Marquardt**

Dear Chief Vasquez:

We have reviewed the reports and other materials compiled by the La Mesa Police Department's Investigations Division concerning the circumstances leading to the non-fatal shooting of Mr. Daniel McKibben by Officer Roberto Nava. 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 June 26, 2019.

***Summary***

On May 2, 2019, at approximately 8:40 a.m., La Mesa Police received a call of a male refusing to leave a residence. Officer Roberto Nava and another La Mesa police officer (LE1) were dispatched to the residence. The caller reported to the officers the male refusing to leave the residence was brought into the house about two days earlier by the reporting party's adult son. The reporting party wanted the individual removed from his home. The reporting party's son was not in the home, but the unknown male was in the living room on the couch.

The officers announced they were from the police department. They observed the male, later identified as Daniel McKibben, on the living room sofa. McKibben sat upright, faced the officers, and immediately stated, "Please stay back. I'm armed." McKibben kept his right hand concealed behind his back. Both officers drew their handguns and repeatedly ordered McKibben to put his hands up. McKibben did not comply. Instead, he maintained his right hand hidden from view and stated, "Shoot me in the heart." McKibben suddenly drew his right hand from behind his back and toward Nava. Nava fired two shots at McKibben. The first shot missed McKibben and struck the wall behind him. Nava's second shot struck McKibben in the right shoulder. McKibben rolled onto his left side and remained on the couch after being shot. Nava saw McKibben was holding a large kitchen knife in his left hand. Nava announced this and both officers ordered him to drop the knife. Again, McKibben did not comply. Instead, he raised the knife with his left hand and stated he was going to throw it. McKibben remained in a side-reclined position on the couch with the large kitchen knife in his left hand. The officers continued to demand McKibben put the knife down. McKibben responded, "No." LE1 attempted to gain compliance by telling McKibben he would be hit with the beanbag and it would

hurt. McKibben responded by telling the officers to just let him die. LE1 drew his Taser and repeatedly told McKibben he would be tased if he did not drop the knife. McKibben displayed the knife by holding it upward. He told the officers to shoot to kill and said he might have a gun between his legs.

Nava believed McKibben was either about to throw the knife or was already throwing it. Nava fired a third shot, striking McKibben's left hand and knocking the knife away from his grip. Additional officers entered the residence. Officers made multiple commands for McKibben show his hands. He eventually complied and was detained. Two more large knives were found hidden under the cushions beneath McKibben.

Paramedics transported him to Sharp Memorial Hospital. Toxicology screenings of McKibben's blood and urine revealed the presence of amphetamines, cocaine, and cannabinoids. While at the hospital, McKibben's identity was confirmed. McKibben's mother had been recently killed in Ocean Beach. McKibben has been charged in San Diego Superior Court case CD281629 with her murder.

### ***Persons Involved***

Daniel McKibben is a 36-year-old resident of San Diego. Officer Roberto Nava has been employed by the La Mesa Police Department for five years and was in full uniform on the date of the incident.

### ***Statement of Civilian Witness One (CW1)***

CW1 lives at the residence. His adult son occasionally stays at the house. The day prior to the shooting, CW1 saw his adult son and an unfamiliar male, McKibben, on the property. On the morning of the shooting, CW1 awoke to find his adult son and McKibben sitting on the couch talking. CW1's son asked CW1 for a ride to Ocean Beach, but CW1 declined. CW1's son called a friend to come pick him and McKibben up. When the son's friend arrived, McKibben refused to get off the couch and leave the residence. CW1's son grew frustrated at McKibben's refusal to leave. CW1's son departed with his friend, leaving McKibben in the house with CW1. CW1's son told CW1 to call 911 to have McKibben removed.

CW1 told McKibben to get out of his house but McKibben refused. CW1 called La Mesa Police to have McKibben removed. While CW1 was on the call, McKibben hobbled into the backyard and sat on a lawn chair. McKibben then returned to the couch.

Two officers arrived. CW1 provided background information and confirmed he wanted McKibben removed. The officers entered the home. While they were inside, CW1 heard a muffled conversation and then heard someone say, "Stand up or we'll shoot you." CW1 then heard two gunshots. About 20 seconds later, CW1 heard another gunshot.

### ***Statement of Law Enforcement Officer One (LE1)***

LE1 was dispatched to a call of a male refusing to leave the residence. The caller reported his adult son had brought the man to the home and the reporting party's son was no longer at the residence. The reporting party believed the male was possibly on heroin.

LE1 and Nava arrived and contacted the reporting party outside of the residence. The reporting party explained that his son had brought the man home from Ocean Beach after the man had approached him

with an injured ankle. The reporting party did not know the man's name and did not want the man in the house. The reporting party said the man was on the couch inside.

LE1 entered the residence and saw McKibben lying on the couch. LE1 identified himself and Nava as being from the police department. McKibben sat up and faced LE1 and Nava. LE1 was to the left of McKibben and Nava was facing McKibben. McKibben told them to stay back and said something more that LE1 could not initially understand. McKibben repeated himself and LE1 understood McKibben say he was armed. LE1 backed up and both officers drew their weapons. McKibben's hands were behind his body and Nava ordered he put his hands up. Nava radioed for backup. The officers made several commands to McKibben to put his hands up. McKibben told them to shoot him in the heart. Nava told McKibben to put his hands up or he would shoot him. McKibben quickly moved his right arm and hand upward toward Nava while directly looking at Nava. Nava fired two rounds.

At the time of the shooting, LE1 did not see what McKibben had done just before Nava fired the shots, but upon reviewing his own BWC footage afterward, he could see McKibben's quick movement toward Nava. LE1 and Nava radioed that shots had been fired. McKibben rolled to his left side and said, "Thank you." McKibben pulled a knife from somewhere on the couch and held it in his left hand toward Nava. LE1 and Nava repeatedly ordered McKibben to drop the knife. McKibben did not comply. LE1 told McKibben he would be shot with a beanbag and McKibben said to just let him die. LE1 ordered McKibben again to drop the knife to which McKibben responded that he would kill him.

LE1 took out his taser and told McKibben he would be tased. LE1 felt they could not approach McKibben because McKibben had the knife upright and pointed toward the officers. LE1 noticed several horizontal, apparent self-inflicted cuts on McKibben's left wrist as McKibben held the knife. Due to McKibben's position on the couch and the furniture between LE1 and McKibben, LE1 was unable to find a position from which he could safely deploy the taser. LE1 considered other less-lethal options, but he did not actually have a beanbag shotgun and he determined pepper spray was not viable as they were all in an enclosed room and would all be affected. McKibben told them he was armed, asked them to shoot him, and said he would kill "you." LE1 did not know if McKibben was talking to him or Nava at that point.

Another officer arrived at the front door and asked if it was safe to enter. Nava radioed that McKibben said he had a gun. LE1 was communicating with the officer and was turned toward the front door when Nava fired the next shot. LE1 heard a gunshot and heard Nava say, "Don't throw the knife." LE1 saw something, possibly the knife, go up in the air. LE1 did not know if McKibben was trying throw the knife or if the knife went up in the air after he was shot. LE1 said these events happened in very quick succession and he was unsure of the sequence.

After Nava fired this round, LE1 no longer saw the knife. Other officers entered. Nava told the officers that McKibben said he had a gun. McKibben's right hand was concealed. One of the officers that entered ordered McKibben to show his hands. McKibben ultimately showed his hand and officers were able to detain him.

#### ***Statement of Officer Nava***

Nava was interviewed by investigators and gave a voluntary statement. Nava said he responded to a radio call regarding a trespasser who was on the caller's property. The caller told the dispatcher his son

brought a man to the house who was refusing to leave. Nava said his intent was to go to the residence and try to get the man to leave. Nava had been to the residence previously and was aware that the reporting party's son has some issues and was also from Ocean Beach, where there had been a homicide the night before. Nava did not know if the homicide suspect had been caught. Nava kept all of this in the back of his mind as he responded.

When Nava arrived at the residence, he spoke outside with the reporting party and his daughter. The reporting party told Nava his son invited a man to the house from Ocean Beach and the man may have a broken ankle. The man had been there for the past two days and the man was now refusing to leave. The reporting party did not know the man.

Nava said he entered the house and found the man, later identified as McKibben, seated on the couch. McKibben appeared to be hiding his right hand behind him. The right hand seemed to be clenched and possibly holding something. Nava could see McKibben's left hand and saw nothing in it. Nava described McKibben as being threatening and aggressive. Up to that point, McKibben did not display any conduct that led Nava to believe he was experiencing a mental health crisis.

As Nava and LE1 approached McKibben, McKibben told them multiple times to stay back and McKibben repeatedly said he was armed. Nava drew his handgun and pointed it at McKibben. Nava told McKibben to put his hands up several times but McKibben did not comply. Nava then told McKibben multiple times to put his hands up or he would shoot. McKibben remained noncompliant. Nava estimated he was about eight to ten feet from McKibben and could not see whether McKibben had something in his right hand. Nava feared for the safety of LE1 and his own safety after McKibben said he was armed.

Nava said he was standing to the west of McKibben (in front of him) and LE1 was standing to the south (McKibben's left side). McKibben moved his right hand as if drawing a gun. Nava fired twice. Nava could see an object in McKibben's right hand he described as being black. He believed it could be the butt of a small hand gun. Nava first saw the black object just before firing. He could not see the object until McKibben brought his hand into view. Nava stated he believed that if he didn't fire, he could be shot. After Nava fired his weapon, McKibben fell to his side on the couch. Nava could not see anything in his hands, so he did not continue to fire. Nava did not see where the black object went.

Nava said he fired the two rounds close in time. LE1 was standing at a perpendicular angle to the south of McKibben approximately eight feet away. McKibben had stated he was armed and made a motion that he was bringing up a handgun. For those reasons, Nava did not consider any other force options or de-escalation techniques to be viable. Nava believed he was faced with a deadly threat and his only option was to use his firearm.

After Nava fired the two rounds, he saw a kitchen knife in McKibben's left hand. Nava did not see how McKibben grabbed the knife, which had a fixed blade and a black handle. Nava realized this was what McKibben had been holding when Nava fired the two rounds. Nava commanded McKibben to drop the knife multiple times. McKibben was agitated, said thank you, and told him to shoot to kill. McKibben threatened to throw the knife at Nava. Nava was afraid McKibben would throw the knife, so he moved to a safer position. McKibben held the knife in his left hand with the blade upright while his right hand was hidden between his legs. Nava believed McKibben could have been hiding a

weapon in the couch. Nava was concerned McKibben could get up and stab him or his partner and feared McKibben could have additional weapons. McKibben threatened to kill Nava and made an additional threat about having a gun.

Earlier when McKibben had threatened to throw the knife, Nava moved slightly to the south for better protection. Now that McKibben had threatened to kill him and mentioned a gun, Nava did not want to turn his back. Nava moved back to his earlier position to be able to see both of McKibben's hands. He determined the safest thing he could do was to keep his gun trained on McKibben in order to address any threat. McKibben pulled back the hand holding the knife as if in a throwing motion. Nava believed the knife had either been thrown or would be thrown at him. He fired another round. Nava estimates he was about eight to ten feet away from McKibben when he fired this round. Nava did not consider any other force options or de-escalation techniques to be viable options when he fired this round. Nava acted to prevent himself from being injured or killed. Nava recalls making an additional command not to throw the knife or not to reach for the knife. Nava saw the knife was no longer in McKibben's hand, so he did not continue to fire.

### ***Investigation***

The scene was secured, photographed, and investigated by La Mesa Police Department detectives. All detectives' reports, crime-scene investigators' reports, audio-recorded witness interviews, medical reports, photographic evidence, and Body Worn Camera video were reviewed. These items were found to provide evidence corroborating the officers' statements. Officer Nava and LE1's Body Worn Cameras were activated and captured the events leading up to and including the shooting.

Officer Nava was armed with his department-issued .40 caliber semi-automatic pistol. A total of three .40 caliber shell casings were found at the scene in proximity to where Nava had been standing. One bullet fired by Nava struck the east wall directly behind the sofa where McKibben was seated. The bullet penetrated the wall and entered an adjoining closet where it impacted a wall and came to rest on the floor. The other two bullets fired by Nava struck McKibben, one in the right shoulder area and one in the left hand.

During a post-shooting examination of Nava's handgun, it was found to have one round in the chamber and the 15 round capacity magazine had 12 rounds remaining. Nava's two additional magazines contained 15 rounds each. This corroborated Nava's statement that Nava fired three rounds during the incident. Two large kitchen knives were found beneath the sofa cushions where McKibben had been during the incident. A third knife was found behind the sofa against the wall. The blade of this knife was approximately six inches and the black handle of the knife was broken in two. Investigators believe that the third round fired by Nava, which struck McKibben in the left hand, also struck the knife as he held it, breaking its handle.

Nava and LE1's BWC captured the incident from two separate angles. Nava's BWC recording shows the officers enter through the front door, with LE1 ahead of Nava. LE1 announces they are from the police department and walks across the living room area toward McKibben, who is sitting on a sofa against the far wall. McKibben asks them to stay back and states he is armed. At this point, LE1 is within a few feet of McKibben while Nava is facing McKibben from the opposite side of the living area, separated from McKibben by multiple pieces of waist-high furniture. McKibben's right hand is

concealed behind his back. LE1 takes several feet back to a location next to a refrigerator at the end of the sofa. Both officers draw their weapons and point them at McKibben.

Nava commands McKibben three times to put his hands up but McKibben does not comply. Nava radios for another unit to respond as he has a subject at gunpoint. At the same time as he is communicating this information, LE1 commands McKibben to put his hands up. Both officers command McKibben to put his hands up. Nava orders McKibben three times to put his hands up or he will shoot him. McKibben tells Nava to shoot him in the heart. McKibben closes his eyes briefly and then quickly draws his right hand forward from the concealed position behind his back as though he is drawing a weapon. Nava fires two shots at McKibben. After the first shot, a hole appears in the wall just behind McKibben's right shoulder. After the second shot, McKibben cries out, leans leftward, and lays his head onto a large cushion on the sofa. LE1 is heard radioing that shots were fired.

Due to McKibben's position change, the area where his right hand been concealed behind his back is revealed and a knife is visible on the cushion. Nava alerts LE1 that McKibben has a knife and then radios the same information. McKibben is momentarily outside of the camera frame and when he is again within the frame, he is seen holding a fixed blade knife in his left hand. McKibben threatens to throw the knife. The officers reposition themselves as Nava communicates updates to dispatch. The officers give multiple commands to put the knife down as they are pointing their firearms at McKibben and McKibben repeatedly refuses. LE1 tells McKibben he will be hit with the beanbag and it will hurt, to which McKibben responds to just let him die. McKibben then says he is going to kill him.

LE1 removes a Taser from his holster and tells McKibben several times he will be tased if he did not drop the knife. Nava says to wait until the others arrive. Police sirens can be heard approaching. McKibben tells LE1 he might have a gun. As LE1 is telling McKibben he will be tased if he doesn't drop the knife, Nava returns to the position he previously held facing McKibben. McKibben is lying on his side on the sofa holding the knife in his left hand, blade pointed upward. McKibben tells the officers to shoot to kill. McKibben then says he is armed and might have a gun between his legs. Other officers are heard arriving off-camera as Nava radios that McKibben says he has a gun. McKibben states, "I'm going to pull it." Nava relates to the arriving officers that McKibben has a knife and says he has a gun, but he has not seen the gun. Only part of McKibben's body can be seen in the camera frame as Nava fires a shot. McKibben's left hand is still upright, and the knife can be seen ejecting from his hand. Nava orders McKibben not to throw the knife. Nava radios that another shot has been fired. Other officers arrive in the room. Nava conveys to them McKibben said he has a gun. McKibben hands are now concealed between his legs. Officers order him to show his hands. After multiple requests, he exposes his empty hands. The officers take McKibben into custody.

A review of LE1's BWC showed the incident from a different angle. The viewpoint corroborates the statements of both officers, Nava and LE1. From this angle, McKibben can be seen sitting up on the sofa and telling officers he is armed and telling them to shoot him. The BWC captures McKibben closing his eyes briefly and then suddenly drawing his right hand upward. The gunshots are heard, as well as McKibben's responses. The view shows McKibben is lying on his side and reaching between his legs with his left hand. McKibben grabs a large knife that is on the couch and brandishes it in Nava's direction, threatening to throw the knife, asking officers to kill him, and telling them he may have a gun. McKibben uses his left hand, still holding the large knife, to reach out and pull a chair closer to the couch. McKibben is then seen raising the knife up. LE1 moves to a position closer to the

front door of the residence, pointing both the firearm and the Taser at McKibben. Other officers are arriving and LE1 tells them to come in. McKibben is holding the knife upward in his left hand and he says, "I'm going to pull it." LE1 is talking with the arriving officers and McKibben is out of camera view when another round is heard. Nava is heard ordering McKibben not to throw the knife. LE1 continues to hold McKibben at gunpoint while the arriving officers enter, give McKibben orders to show his hands, and ultimately take McKibben into custody.

During the post-shooting investigation by detectives, McKibben was identified as the suspect in a homicide which occurred between April 30 and May 1, 2019 in Ocean Beach. His mother was found dead with multiple stab wounds to her body. McKibben was arrested and charged with murder related to that incident. A preliminary hearing is scheduled for November 12, 2019.

McKibben sustained gunshot wounds to his right shoulder area and left hand. McKibben was also treated for a fractured right ankle, which was unrelated to this current incident. Toxicological analysis of McKibben's blood revealed the presence of cocaine, methamphetamine, and marijuana.

### ***Legal Standards of Criminal Liability***

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person whom he has reasonable cause to believe has committed a public offense.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

"[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.'"

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham v. Connor* (1989) 490 U.S. 386, citing *Terry v. Ohio*, 392 U.S., at 20-22.

In addition to any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if they reasonably believed they or someone else was in imminent danger of suffering bodily injury, believed the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger.

***Conclusion***

When officers entered the home and encountered McKibben, he told them he was armed and to stay back. McKibben concealed his right hand behind his back as both officers made repeated commands to show his hands. When McKibben suddenly drew his hand forward from behind his back toward Nava, Nava saw something black in McKibben's hand. Nava fired his weapon. After firing one round into the wall just behind McKibben, Nava fired a second round into McKibben's right shoulder area. Once hit, McKibben moved his body, revealing a knife that had been hidden from Nava's view. McKibben grabbed the knife with his left hand, held it upward, and threatened to throw it. McKibben stated he might have a gun. Both officers repeatedly ordered McKibben to drop the knife as they held him at gunpoint. McKibben said he was going to pull it. Nava perceived McKibben to be throwing or on the verge of throwing the knife. Nava fired a round striking McKibben in the hand that had been holding the knife. Nava was justified in his actions and 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 Matt Nicholass  
La Mesa Police Department  
8085 University Avenue  
La Mesa, CA 92942