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September 11, 2020

Chief Ed Barberini
San Mateo Police Department
200 Franklin Parkway
San Mateo, CA 94403

Re: Officer Involved Critical Incident
Inspector Bureau Case No. 19-0421-01
Shooting Officer: Juan Ramirez

Dear Chief Barberini,

The San Mateo County District Attorney's Office has concluded our investigation and review of the above referenced officer involved shooting which occurred on September 28, 2019 in San Mateo. District Attorney Inspector Matt Broad, along with other District Attorney Inspectors and officers from the county's Officer Involved Critical Incident review team, conducted a thorough investigation into the events which culminated in the shooting. I have serious concerns about Officer Juan Ramirez' decision to fire his weapon at the fleeing automobile and cause serious injury to two women he suspected of committing theft related crimes. I seriously question whether Officer Ramirez acted properly in this case. However, I have no hesitancy in concluding that for the reasons set forth in extensive detail below, it is not reasonably likely that a jury would find his conduct to be criminal. Thus, in accord with my prosecutorial responsibility, it is my determination that criminal charges will not be filed against Officer Ramirez.

The investigation conducted by the District Attorney's Office included extensive interviews of all relevant witnesses, including Officer Ramirez, the other involved officers, and all known civilian witnesses including the two individuals who were shot, Rickita James and Taleah Johnson. The investigation also included a thorough review of all videos of the incident as it unfolded, captured on body worn cameras and cameras belonging to residents of Hillsdale Court. Finally, we engaged the services of an expert in the area of police use of force and human factors analysis. The investigation determined the following facts:

Factual Summary

On September 28, 2019, while on routine patrol, Officer Juan Ramirez observed a white Chevrolet sedan backed into a handicapped parking stall outside of the Macy's store at the Hillsdale Mall in the City of San Mateo. It was approximately 5:00 p.m. when Officer Ramirez noted that the car was unoccupied, the rear license plate had no registration tabs and there was no front license plate on the car. He further noted that the vehicle identification number was covered and not visible and the car contained numerous items of clothing on hangars without shopping bags. Running a DMV check, he learned that the license plate belonged to a different automobile registered in Anaheim. These observations led him to conclude that the car may have been stolen and the individuals associated with the car were involved in retail theft. Consequently, he requested the assistance of officers from a plain-clothes crime reduction unit to initiate a surveillance.

Before the plain-clothes officers' arrival, Officer Ramirez observed two people enter the car and drive away. These individuals were later identified as Rickita James, the driver, and Taleah Johnson, the front seat passenger. Officer Ramirez followed the car as it exited the mall parking lot and proceeded southbound on El Camino Real. Officer Ramirez activated his emergency lights to initiate a traffic stop but the driver accelerated to approximately 45 miles per hour. Officer Ramirez activated his siren, but the driver failed to yield, instead making a U-turn at 36th Avenue and proceeding northbound on El Camino Real in excess of 55 miles per hour. Officer Ramirez noted what appeared to be cut up credit cards being thrown from the vehicle. The driver maneuvered over the center median to resume travelling southbound on El Camino Real and then turned onto eastbound Hillsdale Boulevard, reaching speeds of over 60 miles per hour. Officer Ramirez continued to pursue and was joined by patrol Officer Joshua Gatti and members of the plain-clothes crime reduction unit (CRU), Sergeant Steve Casazza and Officers Kevin Brazil and Andrew Trujillo. As the car proceeded eastbound, officers noted that the car appeared to have collided with a parked vehicle. The driver proceeded slightly right onto a cul-de-sac, Hillsdale Court.

Officer Ramirez stopped his patrol car at the end of the cul-de-sac to block their exit, just as Ms. James came to a stop at the dead end. Officer Ramirez looked at the driver and made eye contact with her. He characterized her look as one of "determination" and "desperation." She appeared "highly motivated" and "angry" to him. He drew his firearm as he alighted from his car and observed Ms. James begin to back away. He believed that the other officers were nearby, but he could not see them as he focused on the white Chevrolet. Officer Gatti arrived as Ms. James began driving forward. Officer Gatti stopped his patrol car just to the right of Officer Ramirez' car so as to block her vehicle from passing between the two patrol cars.

Ms. James accelerated in the general direction of Officer Ramirez' patrol car and was turning left toward Officer Gatti's car when Officer Ramirez fired nine rounds in quick succession at the car. The first shot was fired approximately one second after Ms. James began driving forward. Officer Ramirez told investigators he believed that Ms. James was about to strike him, and he considered trying to jump onto his patrol vehicle to avoid being struck. While

he believed he was firing into the windshield, the rounds actually entered the passenger side rear door and front passenger window of the Chevrolet as the sedan moved away from him. The first shot struck the front passenger door directly above the door handle. All nine shots occurred within approximately 2.4 seconds and at the time the last shot was fired, Officer Ramirez was facing the right rear quarter panel of the car. Although he was aware of the passenger, Officer Ramirez told investigators he felt confident that he could hit the driver. He was aiming at the driver "to stop the threat" posed by her as he feared she would strike him or one of the other officers.

Ms. James continued the left turning movement past Officer Gatti's patrol car in an apparent attempt to pass along the right side of Officer Gatti's vehicle. However, Ms. James' path was blocked by the arrival of the CRU unmarked police car. Ms. James came to a stop and Officer Ramirez approached the car on foot, moving toward the left rear area of the car. As Officer Ramirez passed the left rear quarter, the reverse lights came on. Officer Ramirez touched the left rear quarter panel of the car as it started to reverse. The car swung slowly outward, nearly contacting Officer Ramirez. Officer Ramirez told investigators that he feared that the tire would run over his foot. He stated he prepared "myself for – to get my legs broken." As the car proceeded in reverse, Officer Ramirez fired a second volley of five rounds at the driver, striking the driver's side window and windshield as the car continued to roll backward until it came to a stop. In that moment he believed Ms. James was backing up to create space so that she could obtain momentum to hit him or the other officers. After a brief pause, as the car came to rest, he fired the remaining three rounds from his firearm, striking the front windshield. As he fired, he continued moving laterally to the right, so as to remain in front of the Chevrolet sedan. The second volley, consisting of five and then three shots, occurred in 3.58 seconds. Ms. James' car remained stationary for a few moments before slowly rolling backward over the sidewalk and onto the landscaped area in front of 532 E. Hillsdale Court, where it came to rest.

Officer Gatti did not observe the shooting. As he was bringing his patrol car to a stop to the right of Officer Ramirez' car, he heard but did not see the initial volley. He took up a cover position behind his vehicle at which point he heard, but did not see, the second volley. Officer Gatti then moved back to the driver's side of his vehicle before moving to assist the other officers in removing the injured women from the car. Due to his movements in exiting his vehicle, Officer Gatti was never in a position to see the threat that Officer Ramirez was perceiving, and at no point did he fire his weapon.

Officers began issuing commands as they approached the car and noted that both Ms. James and Ms. Johnson had been shot. They began efforts to remove them from the car and render first aid until paramedics arrived. Both women were transported to Stanford Hospital where they were treated for their injuries. Ms. James sustained multiple gunshot wounds which resulted in significant injury to her lungs, kidneys, blood vessels, nerves and bones in both arms. It is believed that she was struck between four and six times. She underwent multiple surgeries and was eventually discharged from the hospital. She has lost the full use of her right arm and suffered injury to various parts of her body.

Ms. Johnson sustained between two and four gunshot wounds as well. Further information regarding her medical condition was not made available to investigators.

Subsequent investigation revealed that Ms. James rented the Chevrolet sedan at Los Angeles International Airport on September 26, 2019. The license plate found on the vehicle belonged to a different automobile, a Honda that had been stolen in Anaheim, California. Investigators recovered numerous items of stolen property from within the car. The stolen items were from several stores in various locations, including stores at Hillsdale Mall.

A later inspection conducted by the San Mateo County Sheriff's Office Crime Lab revealed that at least 15 of the 17 rounds that were fired struck the car. The driver's window, as well as the front and back passenger windows were shattered. Bullet holes were located in the front windshield, on the passenger side of the vehicle and in the driver's seat. Bullets were recovered from the front driver's seat, left rear seat and door and center console. Bullet fragments were recovered from the driver's seat and from the rear passenger door frame. Criminalists recovered all 17 bullet cartridges from the street in the area of the shooting and subsequently determined all cartridges came from Ramirez' firearm.

Training

Officer Ramirez worked as a Level 1 Reserve Police Officer in the early 1990s before attending a 791-hour basic police academy in 1994. He was hired in 1995 as a full-time police officer by the Redwood City Police Department but was terminated during his probationary period. After working in private security and corporate loss prevention, Officer Ramirez completed re-certification training in 2012. On April 15, 2013 he was hired as a full-time police officer for the City of San Mateo. He received his Basic and Intermediate Certificates through the California Commission on Peace Officer Standards and Training (POST). He received additional training in the areas of tactical communication, arrest and control techniques, and crisis intervention training. Additionally, Officer Ramirez was assigned as a Field Training Officer and a firearms range master for one and a half years prior to this incident. Officer Ramirez completed and passed his last firearms qualification in September 2019.

Use of Force and Human Factors Analysis

To assist us with the evaluation of the facts of this case, my office retained expert witness David Blake to conduct a thorough review of the case reports. David Blake is a recognized expert on police use of force and human factors analysis relating to high stress confrontations in which force is used. He has over 20 years of experience in both federal and state law enforcement in a variety of capacities, from patrol to training to special weapons and tactics. His law enforcement credentials include firearms instructor, arrest and control instructor, force options simulator instructor and Force Science certification. Additionally, he has received over 2400 hours of law enforcement training and has provided over that number of hours of training on topics including use of firearms and arrest and control techniques. He has published over 30 articles relating to use of force in both academic peer-reviewed journals and professional

periodicals. He is currently a doctoral candidate in the field of performance psychology at Grand Canyon University.

Mr. Blake conducted a review of the evidence obtained in this case, including the witness statements and the video recordings. While not determinative to my conclusion, his opinions were considered in assessing the reasonableness, and therefore the lawfulness, of Officer Ramirez' actions in this incident.

Mr. Blake opined that the information and suspect behaviors known to Officer Ramirez, "if evaluated through the lens of standard peace officer training and experience, would create a perspective that deadly force was reasonably necessary under the totality of the circumstances." He noted the small area in which these events unfolded: "the estimates indicated a 16-foot long, 6-foot wide, 3000-pound vehicle accelerating forward and backward in an area ~28-feet wide (~1000 square feet). This might be visualized as driving the Chevy within the layout of a 2-bedroom apartment." The stop being conducted was high risk, due to the inherent danger in dealing with a possibly stolen car and the dangerous driving by Ms. James in recklessly evading the pursuing officers. "Rickita James' driving behaviors up to this point had been dangerous and placed the public at risk. The action of turning her vehicle in the path of Officer Ramirez' SUV and later Officer Gatti's SUV showed a reckless disregard for her own, her passenger's, and the officer's wellbeing."

Mr. Blake further opined that Officer Ramirez' belief that Ms. James was attempting to use her vehicle as a weapon against him to escape capture was reasonable if evaluated from his perspective at the time, and without hindsight bias, as the car was capable of inflicting serious bodily injury on a person. Mr. Blake noted that police officers are taught that they are not required to wait until the threat of death or serious bodily injury is unavoidable. In his view, the "totality of circumstances should include: How quickly the Chevy could accelerate across the small area identified, the Chevy's striking and crushing potential, the police personnel on scene and arriving, the potential for the Chevy to hit a vehicle used for cover and still cause [serious bodily injury] or death to an officer, as well as the potential for a second dangerous pursuit should be considered a part of the totality of circumstances."

As to Officer Ramirez' second volley, Mr. Blake noted that the officer believed Ms. James was backing up to take another run at him or one of the other officers and reasonably viewed the sedan as an ongoing threat. Mr. Blake opined that given his review of the evidence, "Officer Ramirez was aware of information and suspect behaviors that, if evaluated through the lens of standard peace officer training and experience, would create a perspective that deadly force was reasonably necessary under the totality of the circumstances." Finally, Mr. Blake concluded that Officer Ramirez was likely experiencing physiological arousal consistent with a high-stress incident, which may have influenced both his performance and the performance of the other officers. This may explain in part why Officer Ramirez did not use the generally taught tactic of remaining behind available cover and issuing commands to suspects in high-risk traffic stops like the one under consideration. Mr. Blake's experience in this regard is that "quick judgments during tense, uncertain and rapidly evolving situations do not often rise to the level of

the best decision possible.”

Mr. Blake was asked to explain the discrepancy between Officer Ramirez’ perception of what occurred and the evidence from the video recordings of the incident. Specifically, Officer Ramirez recalled being in front of the sedan when he began shooting, when in fact he was facing the right side of the car. Similarly, Officer Ramirez believed he was about to be pinned against his patrol car when in fact he was not standing in a position where this could have occurred. Mr. Blake cautioned against relying solely on the video evidence in assessing a rapidly unfolding high stress incident, as it “is only with 20/20 hindsight that we know the outcome of the driver’s actions.” While the threat was brief, it “is reasonable to assume the Chevy could cross that distance in a second or less [and] turned right instead of left or struck Ramirez’ police vehicle and continued to accelerate into it.”

Mr. Blake explained in further detail his concern regarding “hindsight bias.” He opined that the totality of circumstances confronting Officer Ramirez must be viewed “through Ramirez’s own eyes to determine if the objective information available to him would be perceived similarly by the reasonable officer.” Based upon his training and experience, Mr. Blake contends that a person mistakenly perceiving their exact location while focusing attention elsewhere is not extraordinary. This is especially true where, as here, the officer in question is focusing on his weapon’s front sight. “While looking at the sights or aligning the weapon on the driver, Ramirez likely did not process the information with the same 20/20 clarity provided by multiple video reviews. He saw forward movement, perceived it as a threat, and fired to save his own life.” In sum, Mr. Blake concluded that “this incident represents the very essence of a split-second decision ...made in a rapidly evolving, ambiguous environment. A decision being judged by multiple video reviews that do not replicate the human experience.”

Law Relating to Use of Force

Well-established California law allows a peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense to use reasonable force to effect the arrest. “A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or overcome resistance.” California Penal Code section 835a.

Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in “overcoming actual resistance to the...discharge of any other legal duty....” Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in the defense of others. California law allows the use of deadly force if an officer actually and reasonably believes he or another person is in imminent danger of death or great bodily injury. If an officer actually believes that it is necessary to use deadly force and that belief is objectively reasonable under the circumstances, the officer’s actions are lawful even it is later determined that the danger did not actually exist. Judicial

Council of California Criminal Jury Instruction (CALCRIM) Numbers 505 and 507.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits *any* person being assaulted to defend him or herself from attack if, as a reasonable person, he or she had grounds for believing and did believe that bodily injury was about to be inflicted upon him or her or upon another person. In doing so, such person may immediately use all force and means which he or she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as stated in CALCRIM 3470 and in well-settled case law therefore permits any person, if confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest fear and conviction that he or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.) Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.)

In *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court made clear that a police officer is entitled to use deadly force when "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." Furthermore, in *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held that the long-recognized "right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id.* at 396. Reviewing courts consider the totality of the circumstances facing the officers, including "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Ibid.*

The Court made clear that 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." *Ibid.* "With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' violates the Fourth Amendment. The calculus of reasonableness 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." *Id.* at 396-7. An objective standard is applied: "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Ibid.*


Conclusion

Based on the observations made at the shopping mall, Officer Ramirez lawfully attempted to detain Ms. James and Ms. Johnson. Ms. James' refusal to comply and subsequent reckless evasion set in motion a dangerous and rapidly evolving situation which culminated in the events which took place at the end of the cul-de-sac. While the video evidence of the shooting is disturbing, it is clear Ms. James refused to submit to lawful arrest and attempted to flee in the automobile. It is clear from Supreme Court precedent that the focus here must be on whether the conduct was consistent with that of a reasonable officer confronting the facts and circumstances as they appeared at the moment. The opinion and conclusion of the prosecution retained expert would constitute significant evidence at a trial in this case and would carry heavy weight for a jury considering the validity of the shooting of the two women. Given Mr. Blake's report and considering all the circumstances in the case, I do not believe that a jury would find beyond a reasonable doubt that Officer Ramirez's conduct constituted a violation of our criminal statutes. Consequently, I have decided that no criminal charges will be filed against Officer Ramirez.

It bears noting that the role of the District Attorney is not to evaluate the efficacy of departmental tactics or training for effecting arrests, or to consider issues of civil liability. Such analyses are conducted by other professional bodies or governmental agencies with the goal of identifying areas for improvement in future similar encounters; they take advantage of the benefit of hindsight or of information not necessarily known to the involved peace officer. The role of the District Attorney in evaluating the use of force by officers is to judge the conduct and actions from the perspective of a reasonable officer on the scene at the time of the incident. Having determined that charges are not appropriate in this case, we have concluded our investigation and deem this case closed.

As is the practice of the District Attorney's Office, our complete investigative report, other than materials which are legally protected and not subject to disclosure, will be made available to the public after you have received this letter. If you have any questions regarding our investigation or our conclusions, please do not hesitate to call us.

Sincerely,


STEPHEN M. WAGSTAFFE
District Attorney