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COUNTY OF SANTA BARBARA
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**PUBLIC REPORT OF THE DECEMBER 8, 2011, SHOOTING OF SAMYR CEBALLOS
BY MEMBERS OF THE SANTA MARIA POLICE DEPARTMENT**

The Santa Barbara County Sheriff's Office recently completed its investigation and review of the homicide of Samyr Ceballos, that occurred on December 8, 2011, in Santa Maria, California. Upon completion of the investigation, the Sheriff's Office turned over all relevant reports and made a presentation to the District Attorney and members of her staff.

This investigation as well as the District Attorney's findings do not address whether officers followed appropriate policies and procedures of the Santa Maria Police Department. Those issues and other related issues remain under the sole jurisdiction of the Santa Maria Police Department and the City of Santa Maria. This report does, however, address the issues of whether the officers were justified in using deadly force in response to the actions of the suspect, Samyr Ceballos, and whether the injuries sustained by Officers 1 and 2 were the result of any criminal activity on the part of their fellow officers.

The District Attorney has determined that the officers were justified in using deadly force; hence, this homicide is deemed justifiable. Further, the District Attorney also finds that the injuries sustained by Officers 1 and 2 were not the result of any criminal activity on the part of the shooters.

It has been determined that Ceballos has a strong affiliation with a known criminal street gang. Therefore, the District Attorney carefully balanced the public's right to know the identity of the neighboring witnesses, and the Santa Maria Police Officers involved in this shooting, versus the threat of harm to those witnesses or officers, and has determined that, at this time, it is too dangerous to the safety of those witnesses and officers to release their names. There have been documented threats to retaliate against police officers by gang members on a number of occasions. In this particular instance a threat to harm one of the officers involved in the attempt to serve a search warrant on Samyr Ceballos has already been substantiated. The District Attorney will release the identity of the officers at a later time when it is determined that there is no longer a threat to their safety.

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STATEMENT OF FACTS

Compiled from Sheriff's Office Investigation 11-15677

On December 8, 2011, in the early morning hours before 8:00 a.m., ten officers from Santa Maria Police Department SWAT, and Narcotics and Gang units, met to prepare to execute a narcotics-related search warrant of the following: a residence located at 325 W. Agnes Street in Santa Maria; an associated vehicle; a 2002 black GMC Yukon, California license number 6PFA035, and the person of Samyr Marquez Ceballos.

The (non-shooting) officers: Officer 1, Officer 2, Officer 3, Officer 4, Officer 5, and Officer 6, and (shooting) Officers: Officer 7, Officer 8, Officer 9, and Officer 10, attended a briefing prior to executing the warrant. During the briefing officers were told that Ceballos was regularly armed with a handgun and had been arrested for robbery, assault with a deadly weapon, brandishing, possession, and being under the influence. They were additionally briefed that Ceballos had threatened a shoot-out with the police in order to avoid future arrests and had installed surveillance cameras at his residence.

Police surveillance on the morning of December 8, 2011, established that Ceballos left the residence at 325 W. Agnes with two unidentified males and two children around 7:45 a.m. Although the initial tactical plan called for police to execute the warrant on Ceballos when he left the house, the presence of children caused officers to wait until the children were dropped off.

Although officers hoped to find an advantageous area to stop the Yukon that Ceballos was driving, it appeared Ceballos became aware of, or "burned," the surveillance team. When the officers attempted to box in Ceballos' vehicle, Ceballos drove around the officers' vehicles nearly hitting Officer 9, and drove back to his residence with officers in pursuit. In an attempt to pull to a stop in front of his house at 325 W. Agnes, Ceballos' vehicle appeared to hit a parked car on the street (although there was no damage), at which time Officer 8 deployed a flash bang in order to distract Ceballos and effectuate a non-combative arrest. Officers then pulled in behind Ceballos' Yukon.

At the point when the Yukon appeared to impact the parked car, both passenger doors of the Yukon opened and two (then unidentified) passengers exited the Yukon. Officer 7 saw an individual in a red shirt exit the passenger side of the Yukon (later identified as Moises R.). Moises R. was detained without incident by Officer 8. Officer 5 gave commands to the other passenger (later identified as Salvador C., nephew of the suspect) to get on the ground. Initially, Salvador got on the ground but failed to further comply with Officer 5's instructions. Officer 6 came to Officer 5's assistance and began wrestling with Salvador in order to place Salvador in handcuffs.

Officer 7 approached the passenger side of Ceballos' vehicle and saw Ceballos still in the driver's seat. Officer 7 heard and then saw fellow officers, including Officer 4, near the driver's door, giving commands to Ceballos to "show your hands." Ceballos failed to comply. Officer 7 then saw Ceballos with his left hand up and his right hand concealed next to the driver seat in the center area of the vehicle. Ceballos continued to deliberately refuse to follow commands. Ceballos told the officers, "fuck you," or a similar response. Officer 7 moved towards the right front bumper of the Yukon to avoid a potential crossfire situation. Officer 4 deployed his taser into the suspect. Through the front windshield, Officer 7 saw Ceballos bring a gun up with his right hand and point it in the direction of the officers outside the driver's side door. Officer 7 then fired four rounds at the suspect through the Yukon windshield. None of those bullets hit anyone. Almost simultaneously, Officer 1

moved in and grabbed the actively resisting Ceballos to remove him from the car. During this time Ceballos momentarily dropped his gun and it landed in the driver's door pocket. Ceballos quickly retrieved the gun again as officers were trying to get him out of the car. Officer 7 heard multiple officers yell "gun, gun, he's got a gun." At this point Officer 10, who had been assisting Officers 5 and 6 detain passenger Salvador C., saw Ceballos reaching for his gun from his driver's door pocket (the gun had landed there when he momentarily dropped it) and shot two or three rounds at Ceballos, hitting him at least one time.

As Officer 1 and Officer 2 worked to remove Ceballos from the car and take him to the ground, Officer 8 saw Ceballos pointing his gun at Officer 9. Officer 8 moved closer and began firing multiple rounds at the suspect. He hit Ceballos three times and may have hit Officer 1 in the hand. At the same time, Officer 9 saw the weapon pointed at him and he fired one or two rounds.¹

Simultaneously, Officer 2, who was at the driver's side door assisting Officer 1 remove the suspect from the Yukon, started to reposition as he heard shots being fired. Officer 2 then stepped into the line of fire while Officer 10 was shooting at Ceballos, and Officer 2 was shot once in the leg by Officer 10.

NOTE: All of the above actions took place either simultaneously or in rapid succession.

The result is that Ceballos was shot six times by the combined rounds of Officer 8 (3 hits, 1 miss), Officer 10 (1 or 2 hits, 1 miss), and Officer 9 (1 or 2 hits)¹ and died immediately at the scene. As stated previously, Officer 7's shots injured no one but rather lodged in the dash, radio, and passenger compartment.

Officer 1, however, was shot twice, once in each hand, by either Officer 8, 9, or 10. A total of twelve rounds were fired. The total time that elapsed for the shots being fired was approximately ten seconds. All of the impact rounds were fired within approximately two or three seconds.

Lieutenant Steve Robel of the Santa Barbara Sheriff's Office was the law enforcement officer in-charge of this criminal investigation. All of the Santa Maria Police Department officers involved in the incident were represented by an attorney named Andrew Dawson. On December 8, 2011, Dawson told Lt. Robel that he planned to gather all of the involved officers together and recreate the shooting incident. Lt. Robel protested. He told Dawson the officers should remain separated until interviewed. Dawson told Lt. Robel he was representing all of the officers and was going to proceed despite Lt. Robel's protest.

EVIDENCE AT THE SCENE

An Armi Fratelli Tanfoglio 9mm semi-automatic pistol with one round charged in the chamber and ten rounds in the magazine was collected near the suspect at the scene. This is the weapon the suspect pointed at officers before they initiated firing. It had not been discharged.

There were a total of twelve rounds expended by law enforcement officers. Eight .45 caliber casings and four .223 caliber casings were collected at the scene. Their location was consistent with the locations of the four shooting officers.

¹ There were four .223 casings recovered at the scene. Three casings are marked "Winchester" and Officer 10's magazine is loaded with "Winchester rounds." One casing is marked "WCC" and Officer 9's magazine is loaded with "WCC" rounds. Each officer using a rifle believed they only shot one or two times.

Approximately 4.8 grams of methamphetamine were found on Samyr Ceballos in his left, front jeans pocket. A methamphetamine pipe containing methamphetamine residue was located in the same pocket.

AUTOPSY

The autopsy was conducted on December 12, 2011, at Cottage Hospital Morgue. The pathologist found that the suspect had been shot six times: one round near the left ear and five rounds between the shoulders and hips. The gunshot wound to the head was caused by a .45 round. The gunshot wounds to the body were caused by a combination of two .45 and three .223 rounds.

The head wound was fatal. The combination of wounds to the center mass of the body were fatal, as the right lung, heart, and spinal cord were all damaged. Medical intervention would have been unsuccessful. Cause of death will be classified as multiple gunshot wounds.

Toxicology reports indicate that the suspect had methamphetamine levels in his system that were three to four times what would normally cause an individual to be under the influence (near overdose levels).

RELEVANT CIVILIAN WITNESSES

Moises R. – right front passenger in Yukon.

Moises said he had been sleeping in the garage at 325 W. Agnes for approximately one week after becoming homeless and meeting Samyr Ceballos through mutual friends. He accompanied Ceballos, who was driving the Yukon SUV, and Salvador, as they took the two children to school. He originally was in the back seat, but moved to the front next to Ceballos after the two children were dropped off.

As they were driving back to the house he heard Ceballos comment that he thought they were being followed by two vans. He saw the vans and Ceballos turned multiple times to see if they were being followed. Ceballos then said, in Spanish, “Now we’re fucked, now we’re busted.” Ceballos said it was probably a police officer named “Luis” who was following them.

Moises then said the police tried to block their path, but Ceballos evaded the police vehicles. Moises then heard sirens as they drove back to Agnes Street. Moises told Ceballos to pull over, but he kept going. Moises said Ceballos had a handgun which he pulled from his waistband before they stopped. He tried to hand it to Moises but Moises refused to take it.

Once they stopped in front of the residence, the police were yelling at them in English. Moises said he did not understand them, but he got out and proned himself face down. He then heard numerous gunshots; after which, Moises was ordered, in Spanish, by an officer, to crawl towards a police car where he was taken into custody. Moises admitted to being a user of “crystal” (methamphetamine) and knew Ceballos was using and selling the drug.

Salvador C. – right backseat passenger in Yukon.

Salvador (the suspect's nephew) stated he, Moises, and his uncle Ceballos left the house to drop the children off at school. On the way back a grey van came alongside the Yukon and his uncle "took off." Things happened very quickly and he does not remember his uncle saying anything. When they arrived back at 325 W. Agnes, he heard people telling them to put their hands up. He heard a loud bang that made his ears ring (consistent with the flash bang) and recognized it was police SWAT. Salvador said he was removed from the vehicle and his head was "slammed to the ground." [Salvador had no visible injuries to his head and declined medical treatment. He had other minor injuries consistent with scuffling with officers on the ground.]

Salvador has no memory of hearing shots being fired or hearing anyone yelling about a gun, but said his ears were ringing from the loud bang. While he was lying on the ground he saw his uncle "flinching" and saw shell casings hit the ground.

Salvador admitted his uncle "used to carry" a firearm and "everyone has a gun nowadays." He admitted his uncle sold methamphetamine and was "hustling" everyday to get by.

Elizabeth G. – Samyr Ceballos' girlfriend.

Elizabeth stated she and Ceballos had been dating for approximately two years. They have an eight-month old child together. She has two other children, ages seven and eight (the children Ceballos took to school that morning), and they were all living together at 325 W. Agnes.

Ceballos, his nephew, and a friend, took the children to school that morning. As they returned she heard the sounds of police sirens. She looked out the front door window but it was shaped glass so she could not see much. She then heard gunshots. They have a video surveillance system (non-recording), so she went to her bedroom to see what was on camera. She saw police but was unable to see what happened. She called Ceballos' cell phone but he didn't answer.

Elizabeth denied knowing that Ceballos was currently armed. She said he had a gun before but she told him to "get rid of it" and as far as she knows, he did.

Elizabeth denied knowing Ceballos was dealing methamphetamine but said it was her job to stay home to cook, clean, and take care of the kids and not worry about what he was doing.

NEIGHBORHOOD WITNESSES

Witness #1

Witness #1 lives nearby to 325 W. Agnes. He/She took his/her kids to school and returned home around 8:00 a.m. About two minutes later he/she "heard" police yelling at occupants of a car. Witness #1 does not speak English so he/she is unsure of what they were saying, but he/she believed they were telling the occupants to get out of the car. Witness #1 then heard what sounded like a gunshot. Witness #1 looked out of his/her window

and saw an SUV that appeared to have hit a parked car. Witness #1 saw officers surround the SUV and continue to yell at the driver (presumably to get out of the vehicle). Witness #1 heard the driver yelling back at the police what sounded like profanities. Witness #1 then heard multiple gunshots. Witness #1 hit the floor of his/her bedroom. When the gunshots stopped, he/she looked out the window again. Witness #1 saw the driver on the ground and a gun near the driver. Witness #1 recognized the driver as an occupant of 325 W. Agnes. Witness #1 saw paramedics arrive and tend to the driver. They then left the driver in the road. Witness #1 never saw any passengers in the car.

Witness #2

Witness #2 lives nearby to 325 W. Agnes. Witness #2 was in the bathroom and heard a siren. Witness #2 then heard what sounded like a gunshot. Approximately one minute later he/she heard approximately seven more gunshots. Witness #2 peeked out his/her window and saw several officers trying to get the driver out of an SUV. They were yelling in English but he/she did not understand what was being said. The next time he/she peeked out the window was approximately twenty minutes later and the driver was lying in the roadway. Witness #2 did not see any passengers in the SUV.

Witness #3 *

Witness #3 lives nearby to 325 W. Agnes. At approximately 8:00 a.m., he/she was doing laundry in the garage. Witness #3 heard what sounded like "several gunshots." Witness #3 walked from his/her garage towards the house (approximately 5-6 feet) and "saw officers shooting" towards an SUV." Witness #3 saw three occupants in the SUV and heard them saying in Spanish "not to shoot, they were giving up." Witness #3 said the officers "kept shooting." Witness #3 said he/she did not hear officers giving commands before they shot. Witness #3 did hear officers yelling, but he/she does not speak English, so he/she does not know what the officers said. Witness #3 then said he/she actually never saw any officers shooting, but only "heard" the gunshots.

- * Witness #3 was re-interviewed approximately one week later. Witness #3 continued to contradict himself/herself as to whether he/she actually saw, or only heard, the gunshots. Witness #3's statement is inconsistent with the other witnesses. In addition, the other neighbors all described how the residents at 325 W. Agnes were constantly disturbing the neighborhood all hours of the day and night, and there was constant foot traffic in and out of the residence (consistent with drug dealing). Witness #3 described the neighbors at 325 W. Agnes as quiet.*

PRIOR LAW ENFORCEMENT CONTACT

In 2005 Samyr Marquez Ceballos was a prior deported criminal alien by Homeland Security. His re-entry into the United States was prohibited by Section 212 of the US Immigration Code.

In January 2006 Ceballos was arrested for 11550 HS, being under the influence. He was eventually placed in a treatment program (diversion) after being arrested on a warrant from that same case.

In December 2007, Ceballos was arrested for 211 PC, Robbery; 245 PC, Assault With a Deadly Weapon; 11550 HS, Under the Influence; and 12500 VC, Driving Without a License. That case was filed and then dismissed at the Preliminary Hearing because the witness failed to appear. The case was then re-filed on the same day. Ceballos later pled guilty to 12500 VC in January 2008, after witnesses could, again, not be located.

In November 2010, Ceballos was arrested for 11377 HS, Possession of Methamphetamine, and 12500 VC, Driving Without a License. He was convicted in December 2010 of 12500 VC.

APPLICABLE LAW

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide, which are lawful.

The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful.

Penal Code section 196(2) defines justifiable homicide by public officers: *“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty.”*

Under California law, anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense, need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.

A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Conner* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

In *Graham v. Conner* (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident “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.” (*Id.*, at 396.) Further, the Court stated, “[t]he ‘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.” (*Id.*, at 397.) Moreover, “[t]he 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 397-398.)

Thus, under *Graham*, “we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing

the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347. *Graham*’s definition of reasonableness has been described as “comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present” (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police “...a fairly wide zone of protection in close cases.” *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

ANALYSIS

The evidence indicates on December 8, 2011, officers from Santa Maria Police Department’s SWAT, and Gang and Narcotics Units teamed up to execute a search warrant on Ceballos, his vehicle, and residence. The officers were informed that Ceballos was armed with a gun, had arrests for violent offenses, and had threatened to shoot it out with police if they tried to arrest him.

The original tactical plan, to execute the warrant on Ceballos as he left his residence, had to be modified as Ceballos had two young children with him when he left the house. After the children were dropped off at school, Ceballos noticed he was being surveilled by police. The police then attempted, unsuccessfully, to box in his vehicle or stop him at the roadblock.

Instead, Ceballos fled, driving in the direction of his house, and pulled a handgun he had concealed in his waistband. On arrival back to 325 W. Agnes, he drove into a parked car in front of his house. He refused to follow commands to exit the car and pointed the gun towards officers at the driver’s door. Officer 4 tased the suspect. Officer 7, fearing Ceballos was going to shoot, fired four rounds at Ceballos through the front windshield. Officer 7’s rounds lodged in the car, and the taser had minimal effect. Officer 1 tried to pull the suspect out of the car. Possibly due to being tased, the suspect momentarily dropped his gun and it landed in the driver’s door pocket. However, Ceballos retrieved the gun as he was pulled out of the car by Officer 1. Officer 1 then took Ceballos to the ground. Meanwhile Ceballos raised the weapon in Officer 9’s direction. This caused Officer 8 to fire four times.

Officer 9, also seeing the gun pointed at him, fired one or two shots into Ceballos.

Officer 10, who was helping subdue a passenger, heard the shots. He then repositioned himself and saw Ceballos grab for the gun. Officer 10 then fired two or three times.

In each case, it appears each officer fired at Ceballos after seeing Ceballos either point the loaded 9mm handgun at them or other officers.

Additionally, Ceballos was under the influence of methamphetamine during the confrontation at a level three to four times normal dosing.

ACCIDENTAL INJURIES

Officer 1 and Officer 2 were shot by “friendly fire” during the incident. These injuries were apparently inflicted when fellow officers felt the potential crossfire problems were outweighed by the immediacy of the suspect attempting to fire the 9mm handgun at their fellow officers.

CONCLUSION

Based on the investigation by the Santa Barbara County Sheriff's Department, applying the law as set forth in PC196(2) and the cases cited *supra* in this report, the District Attorney finds the officers were justified in using deadly force and the homicide is therefore deemed justified under the provisions of California law.

* * * *