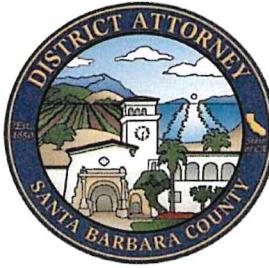


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November 15, 2019

**PUBLIC REPORT ON OFFICER INVOLVED SHOOTING OF ALEJANDRO VALDEZ
BY LAW ENFORCEMENT OFFICERS ON JANUARY 7, 2018**

The Santa Barbara County District Attorney's Office has completed its review of the investigation, conducted by the Santa Barbara County Sheriff's Office, of the homicide of Alejandro Valdez, age 27, occurring on January 7, 2018, in the City of Santa Maria, County of Santa Barbara, California.

The following analysis is based upon investigative reports, coroner's reports, video and audio recordings, photographs, and witness interviews taken during the investigation conducted by the Santa Barbara County Sheriff's Office ("SBSO") and submitted to this office by SBSO Detective Travis Henderson.

The District Attorney finds the shooting was a justifiable homicide under Penal Code section 196(2).

FACTUAL HISTORY

Summary

At 6:16pm on January 7, 2018, Olimpia Leon called 911. But before a translator could come on the phone so the dispatcher could clarify why she was calling, her son, Alejandro ("Alex") Valdez¹, took the phone and began speaking to the dispatcher. Over the next 30 minutes, Valdez told the 911 dispatcher that he had knives in his hands, on his ankle, and on his chest. He stated multiple times that he is going to die tonight. He also stated that he has the knife to one of his brothers' throats. The 911 dispatcher tried continually to talk him down and to get him to surrender to law enforcement. After over 30 minutes, Valdez stopped talking to 911 but the line remained open. Shouting and commotion was heard on the open line. Contemporaneously, Valdez's brother, Jose Sixto was also on the line with 911 stating that Valdez is holding them (his mother, Leon, his younger brother, and himself, Sixto) hostage, threatening to kill them, that Valdez has knives, and that Valdez is becoming more violent. Sixto begged officers to "please hurry", and said the situation was a "big emergency." Sixto was on the line with 911 for over 24 minutes and the call abruptly disconnected right after Sixto said "Oh, shit."

At 6:21pm, Santa Maria Police Department Officers Ponce, Tartarian, Ochoa, Rodriguez, Craven, Spencer, Lopez, Rubio, Hutton, and Sergeant Kline arrived at 414 Mill, Apartment E to respond

¹ The suspect, Alejandro Valdez, will be referred to as "Valdez" in this report. The first reference to any individuals with the same last name will be to their full name; subsequent references will use their first name to avoid confusion.

to the 911 calls. The apartment unit where Valdez, Sixto, Leon, and Valdez's younger brother were located is on the second floor. The front door opens onto a flight of stairs that lead down to the main floor. In the rear of the apartment building, at the bottom floor landing is a cinderblock enclosed courtyard. Officers staged in the back courtyard and in the front of the residence in the street. After over 30 minutes of the 911 dispatcher trying to talk Valdez down, Valdez exited the residence and ran down the stairs. Valdez was armed with two eight inch bladed kitchen knives in each hand. The officers in the front of the apartment shouted at Valdez multiple times to drop the knives. Valdez ignored the commands and rushed into the cinderblock enclosed courtyard with the knives held up toward the officers. Officers in the courtyard began backing up as Valdez ran into the courtyard. The officers gave Valdez multiple commands to drop the knives. When Valdez did not drop the knives, Officer Rodriguez deployed less lethal force, shooting Valdez with a 40-millimeter foam baton launcher, and hit Valdez in his right thigh. The less lethal projectile did not have any effect on Valdez, even though it was a direct hit. Valdez continued to rush the officers wielding the knives. The officers were boxed into the cinderblock courtyard and had no other way to retreat further while Valdez continued to advance on them very rapidly with the knives raised. Valdez ignored numerous commands to stop advancing and to drop the knives. After the less lethal deployment had no effect on him and he continued to rush towards officers with knives drawn, the officers fatally shot him.

Initial Reports

Valdez's mother, Olimpia Leon, called 911 on the evening of January 7, 2018. While the dispatcher called a translator to come online, Valdez took the phone from his mother and refused to give it back to her. The 911 dispatcher then engaged with Valdez for over 30 minutes. Valdez refused to give his name and instead said he is "the son of god" and that the dispatcher can call him brother. Valdez said "I am ready to die tonight", that he "will not be taken prisoner", and "I'm dying tonight" several times. The dispatcher told Valdez that no one needs to die tonight. Valdez responded "No, I need to die tonight". The dispatcher asked Valdez if he has any weapons and Valdez replied that he has "two knives" which he has in his hands with another in his pocket and another by his chest. Valdez then told the dispatcher that the dispatcher does not know "whose throat I have the knife to right now, it might be my little brother, it might be my older brother". Valdez apparently dropped the phone after about 30 minutes and commotion and yelling was heard in the background. A female voice called, "Alejandro" and other voices were yelling. Valdez can be heard yelling "Shut the fuck up", "Fuck you", and "Get the fuck on the bed." Further arguments and conversations in Spanish can be heard intermittently. Valdez can be heard saying, "I know I am going to die tonight". The dispatcher continually tried to get Valdez's attention for the next nine minutes. Valdez then picked up the phone and said he is going outside. The dispatcher asked Valdez twice to put down the knives.

At the same time Valdez is on the phone with 911, Jose Sixto, Valdez's brother, called 911 from his phone from inside 414 Mill, Apartment E. The call started with Sixto stating "I have a big emergency at 414 E Mill #E, can you please come". Sixto further stated "Please hurry, because this guy is threatening to kill us." Sixto stated that Valdez "has knives", and "he's [Valdez] getting more violent". Sixto told the dispatcher that Valdez is holding Sixto, his mother, and little brother hostage. Sixto also told the dispatcher that Valdez has "3, 4" knives in his hands and that he got

the knives from the kitchen. Sixto also informed, the dispatcher that Valdez had been drinking, but that Valdez was not under the influence of drugs and did not have any mental health conditions. As Sixto and the dispatcher are talking, Sixto can be heard stating "Oh shit" and the dispatcher asked what had occurred. Sixto does not respond and the call ends.

Law Enforcement Response

Once officers arrived at 414 Mill, Apartment E, Sergeant Kline determined that the law enforcement response would include officers at the front of the residence to engage Valdez if he emerged from the apartment. The plan was for these officers to try and talk to him and get him to surrender. Officers Ponce, Tartarian, and Ochoa were stationed in the street looking up at the front door of the apartment at 414 Mill, Apartment E. Due to the risk of injury to the three other people inside of the residence, Officer Hutton suggested that a "Crisis Entry Team" be staged in the event law enforcement had to breach the door and enter the residence to prevent loss of life. Sergeant Kline approved the Crisis Entry Team plan. Officers Hutton, Rubio, Lopez, Rodriguez and Craven began to set up a Crisis Entry Team perimeter by gathering in the cinderblock enclosed courtyard on the lower floor behind the apartment. Officer Craven was stationed behind the cinderblock enclosed courtyard to give cover. The Crisis Entry Team plan for the officers was if Valdez came out of the residence on his own accord, the team would back up, move out of the courtyard, and allow the team in the front of the residence to engage. The Crisis Entry Team did not plan to engage unless they had to enter the residence. Officer Rodriguez was given a less lethal 40-millimeter foam baton launcher, and instructed to deploy the less lethal force if the need arose.

Front view of 414 Mill Street, Apartment E, showing front door and staircase and pathway to the back cinderblock courtyard



Officer Involved Shooting

Officers Ponce, Tartarian, and Ochoa were stationed in the front of the residence on the northeast corner of building and could hear yelling and crashing coming from inside the residence. As they watched the apartment, the door to Apartment E swung open and Valdez ran down stairs with an angry face and held up two large knives. Officers observed that the knives pointed upwards, not down by his sides, and that he was holding them "in an aggressive manner." The three officers at the front of the residence yelled at Valdez to drop the knives. Valdez did not drop the knives, instead he turned away from the officers in the front and headed back towards the cinderblock courtyard. The three officers then heard the less lethal 40-millimeter foam baton launcher fire, followed closely by gun fire. None of the officers in the front of the residence saw the shooting.

Officers Hutton, Rubio, Lopez, Spencer, Rodriguez, Craven, and Sergeant Kline were in the back of the apartment building. All the officers except Craven and Sergeant Kline were in the cinderblock courtyard. Officers reported they could hear commotion inside the residence, including banging, yelling, and fighting. They could hear Valdez in the apartment above them stating things such as wanting to die tonight, that someone was going to die tonight, or that someone was already dead in the residence. The officers heard the door open and heard that Valdez was coming out, from the shouts of their fellow officers in the front and over the radio. Following their plan, the officers in the courtyard started to back up and head to the one narrow exit out of the courtyard in a single file line. Officers in the back also heard their fellow officers in the front yelling at Valdez to drop the knives. Before any of the officers could get clear and exit the cinderblock courtyard, Valdez rounded the corner and moved very rapidly toward the officers with two large knives raised. Multiple officers yelled commands to drop the knives. Valdez did not drop the knives and continued to advance towards the officers. Fearing for the safety of fellow officers, Officer Rodriguez shot Valdez with the less lethal 40-millimeter foam baton launcher. The projectile hit Valdez in the upper right thigh but had no effect. None of the officers remember Valdez saying anything as he continued to advance on them. The officers backed up as much as they could in the enclosed space, but Valdez continued to rush at them with the knives raised and came within lunging distance of multiple officers. All five officers were very fearful of their safety and the safety of their fellow officers as the cinderblock courtyard area was extremely small, surrounded by a cinderblock wall and had only one narrow exit. The four officers in the courtyard who were armed with lethal force weapons fired at Valdez because each feared he would seriously injure or kill him or one of his fellow officers.

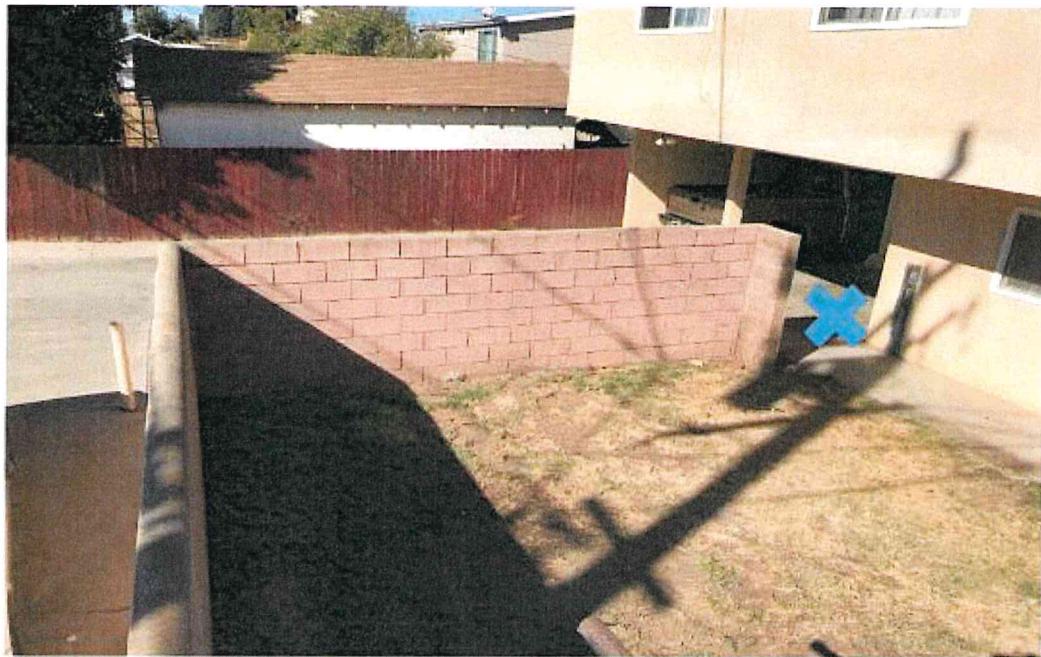
Back overall view of the cinderblock courtyard outside 414 Mill. Red X indicates where Valdez entered, blue X indicates only exit.



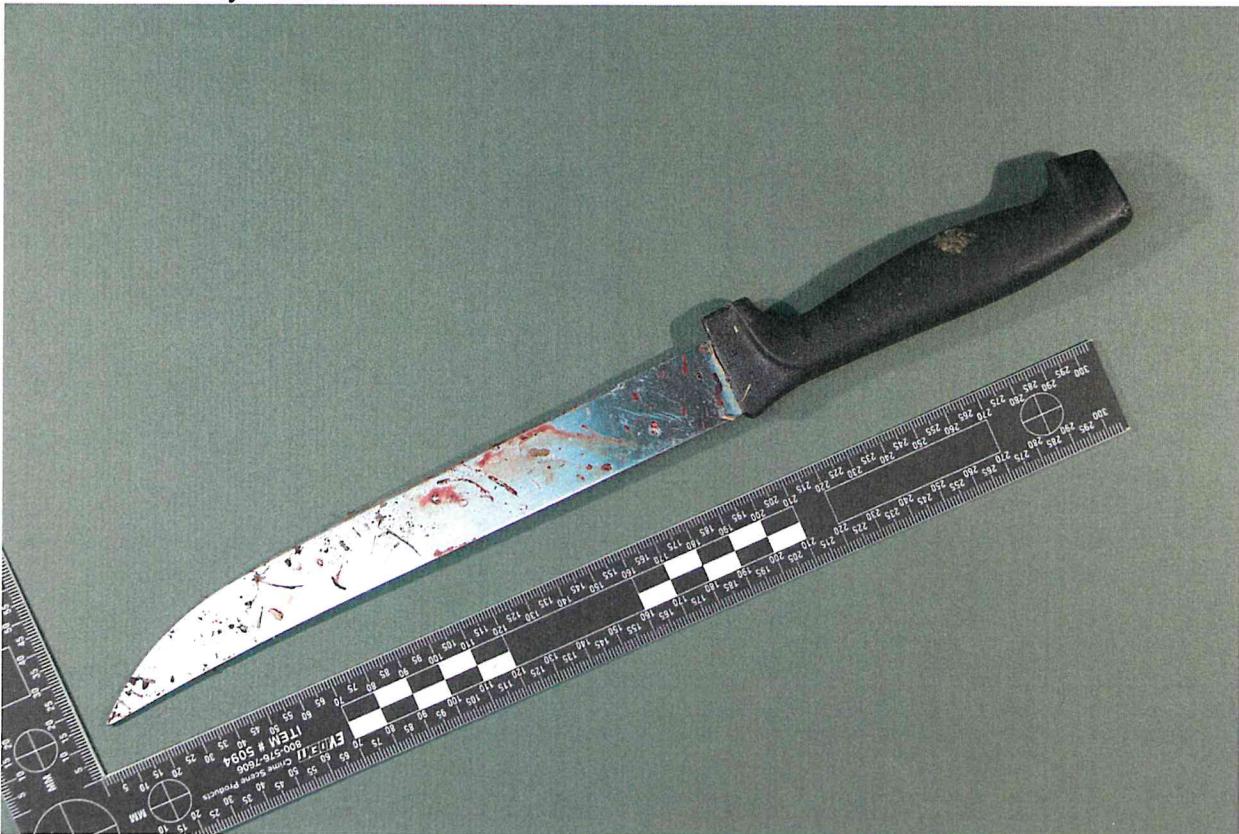
Arial view of the interior of back cinderblock courtyard. Red X indicates where Valdez entered, blue X indicates only exit.



Arial view showing depth of back cinderblock courtyard. Blue X indicates only exit.



Knives wielded by Valdez



Once Valdez fell to the ground, officers handcuffed Valdez, secured the scene, and called for medics. One knife was found next to Valdez. The second knife was found under Valdez's body, when his body was moved by the Coroner's Detectives. Paramedics arrived within a few minutes. Valdez was pronounced dead at the scene.

Autopsy

On January 9, 2018, Dr. Manuel Montez, a forensic pathologist employed by SBSO, performed a post-mortem examination of Valdez and obtained toxicological samples. Dr. Montez opined that the cause of death was multiple gunshot wounds and noted a significant condition of acute alcohol intoxication. Dr. Montez observed a total of 19 gunshot wounds, to Valdez's head, torso, neck, and extremities with perforations of the brain, lungs, diaphragm, liver, intestines, stomach and pancreas. Dr. Montez noted 4 graze wounds located on the jaw, chest, and abdomen. Dr. Montez also observed 1 less lethal impact weapon injury located on Valdez's right upper thigh.

Testing of the toxicological samples indicated Valdez had alcohol in his system at the time of his death and his Blood Alcohol Concentration (BAC) was a 0.149. Detective Henslin from SBSO Coroner's Office certified the manner of Valdez's death was a homicide.

LEGAL ANALYSIS

Applicable Law²

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. Connor* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334. In *Graham v. Connor* (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

² Effective January 1, 2020, Penal Code Section 196 will be amended to further define a peace officer's use of force as set forth in Penal Code Section 835a. Although Penal Code Section 835a was not in effect at the time of this incident on January 7, 2018, even analyzing this incident under the new Section 835a, the Officers' use of deadly force is reasonable and justified.

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). Under *Graham*, we must avoid substitution our personal notions of proper police procedure for the instantaneous decision of an 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.).

Legal Analysis

On the night of the shooting, Officers Ponce, Tartarian, Ochoa, Rodriguez, Craven, Spencer, Lopez, Rubio, Hutton, and Sergeant Kline responded to Valdez's residence after receiving 911 calls that indicated Valdez was drinking, holding people hostage, had knives, and was threatening his family members. The 911 calls also indicated that Valdez was telling 911 operators that "I am ready to die tonight," that he "will not be taken prisoner," and "I'm dying tonight" several times. The dispatcher told Valdez that no one needs to die tonight. Valdez responded "no, I need to die tonight." When the dispatcher asked Valdez if he has any weapons, he stated that he has "two knives" which he has in his hands with another in his pocket and another by his chest. When officers arrived on scene, they could hear Valdez in the apartment above them. They heard yelling and crashing sounds. All of these circumstances would lead a reasonable law enforcement officer to be concerned about their safety and the safety of others in approaching the suspect.

The officers knew that the 911 dispatcher was trying to talk down Valdez and have him come out of the home peacefully for over 30 minutes. When Valdez finally did come out of the home, he ran down the stairs armed with two large knives. Officers at the front of the residence yelled and shouted commands to Valdez to drop the knives. At the bottom of the stairs, Valdez turned away from the officers in the front of the residence and rushed into the back cinderblock courtyard, directly at five other officers. When he appeared in the courtyard, the officers in the back yelled at him to drop the knives. Valdez did not drop the knives and continued to rush at officers who were backing up, but trapped in the courtyard. Officer Rodriguez deployed the less lethal 40-millimeter foam baton launcher, but it had no effect on Valdez, despite hitting him in the right thigh. Valdez ignored numerous commands to drop the knives and get on the ground and the less lethal round did not deter him. Valdez continued to advance on the officers holding the knives up, one in each hand. With five officers, penned in the small cinderblock courtyard, the officers reasonably feared that the suspect would lunge at one or more of them stabbing or slashing them

and causing great bodily injury or death with the large knives. Each of the four officers who used lethal force that night, reasonably discharged their service firearm multiple times in order to stop Valdez from inflicting death or great bodily injury on themselves or their fellow officers.

CONCLUSION

When Alejandro Valdez advanced on officers armed with two large knives, he created a reasonable fear of death or great bodily injury in the minds of Officers Hutton, Rubio, Spencer, and Lopez. Based on the investigation by the Santa Barbara County Sheriff's Office, applying the law as set forth in PC 196(2), and the cases cited, *supra*, in this report, the officers each acted reasonably in their use of deadly force; therefore, the shooting of Alejandro Valdez is a justifiable homicide.