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Case 2020-0356

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Reporting Officer: Jared Thompson, Detective Sergeant ID: 5771 Division: Internal Affairs

Approved By: Stephen Shebloski, Lieutenant Date of Report: 4/12/2021

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San Diego Police Department Investigator's Report

Date of Incident: May 23, 2020
Time of Incident: 2150 Hours
Location of Incident: 1245 Market Street [REDACTED] San Diego, CA, 92101
Subject: Officer-Involved Shooting Investigation I.A. #2020-0356

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR CITY ATTORNEY.

SUBJECT OFFICERS: **RUIZ, Andres, Police Officer II, ID #6608**
Date of Hire: 07-28-08
S.D.P.D., Operational Support - Canine
(619) 266-9960 (W)
H/M, Age: [REDACTED] Years Old

WEAPON USED: Glock G45, SN# [REDACTED]

WITNESS OFFICER: **MULLINS, Mike D., POII, ID #6758**
Date of Hire: 07-27-09
S.D.P.D., Operational Support - Canine
(619) 531-2000 (W)
W/M, Age: [REDACTED] Years Old

CHARLOT, Joseph R., POI, ID #7552
Date of Hire: 04-28-2016
S.D.P.D., Central Division – 2nd Watch
(619) 531-2000
B/M, Age: [REDACTED] Years Old

LUTH, Christopher D., POII, ID #6048
Date of Hire: 10-22-2004
S.D.P.D., Operational Support - Canine
(619) 531-2000 (W)
W/M, Age: [REDACTED] Years Old

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[REDACTED]

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SUSPECT:

Calva-Garcia, Rosa Elena

1245 Market Street [REDACTED] San Diego, CA, 92101

H/F, DOB: 02-22-1994

5'09"/190lbs.

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SUMMARY:

On May 23, 2020, at approximately 2149 hours, multiple citizens called 9-1-1 to report a female on the 4th floor of an apartment complex located at 1245 Market Street, San Diego, who was breaking glass and throwing objects at pedestrians on the street below her apartment. The female (Rosa Calva-Garcia) used large shards of glass to throw directly at individuals in the area. No citizens were injured.

When San Diego Police Officers responded to the area, Calva barricaded herself in the bathroom in her studio apartment [REDACTED]. Officers on scene called for additional resources and attempted to negotiate with Calva-Garcia to convince her to surrender, but she refused. Because negotiations were not successful, a plan was implemented to arrest Calva.

At 2318 hours, Canine Officer Mike Mullins and Canine Officer Andres Ruiz attempted to arrest Calva-Garcia inside of her bathroom. Calva-Garcia resisted Officer Mullins' attempts to arrest her and brandished a knife within close proximity to Officer Mullins' face. Officer Ruiz responded and shot Calva-Garcia four times with his police service weapon into Calva-Garcia's torso area. No other officers discharged their firearms during this event.

Calva-Garcia was transported to UCSD Hospital with life-threatening injuries. Calva-Garcia survived the encounter and was subsequently booked into Las Colinas Jail on June 4, 2020 for 245(A)(1) PC – Assault With A Deadly Weapon: Not A Firearm, and 245(C) PC – Assault With A Deadly Weapon On A Police Officer: Not A Firearm.

A large steak knife was recovered at the scene.

There is Body Worn Camera (BWC) footage of the event.

Homicide Team II responded to the scene and conducted the homicide investigation.

The administrative investigation was initially tolled per Government Code 3304(g).

The administrative investigation was untolled on January 21, 2021.

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INVESTIGATION:

On May 24, 2020, at approximately 0100 hours, Internal Affairs Detective Sergeant Joel Tien responded to an Officer Involved Shooting at 1245 Market Street [REDACTED] San Diego. Members of Homicide Team II were on scene and conducted an investigation. Sergeant Tien noted the following during the "Callout:"

"On May 23, 2020, at 2151 hours, Central Division officers responded to 500 Park Ave where multiple RPs reported a suspect throwing glass from a 4th floor window of 1245 Market Avenue down onto the trolley platform.

K9 assisted with patrol in the contact plan for the suspect who was unit [REDACTED]. The unit is a studio apartment with a bathroom. Officers were unable to reach the suspect, later identified as Rosa Elena-Calva Garcia (2/22/94), via phone so verbal call-outs were conducted. At 2300 hours, Garcia barricaded herself in her bathroom. At 2313 hours, pepper ball was deployed into the bathroom. At 2317 hours, Garcia exited the bathroom with a knife raised towards the officers. Officer Ruiz fired 3 or 4 gunshots impacting Garcia's torso. Medics transported Garcia to UCSD where she is in stable condition. No officers were injured."

BWC had not been viewed at the time of the Detective Sergeant Tien's callout.

On May 28, 2020, I was directed to conduct the administrative investigation for this event. This investigation was tolled per Government Code 3304(g) until **January 21, 2021.**

On August 4, 2020, I received Homicide Team II's investigation. I confirmed a letter from the District Attorney's office was still pending. Pursuant to Homicide Team II's completed investigation, I noted BWC showed Calva-Garcia raised a knife towards Officer Mullins inside, not outside, of her bathroom, as previously described by Detective Sergeant Tien.

On December 21, 2020, I confirmed the District Attorney's letter was still pending. I conducted a record check and confirmed the individual shot during the event (Rosa Calva-Garcia) was booked into Las Colinas Jail on June 4, 2020 for 245(A)(1) PC – Assault With A Deadly Weapon: Not A Firearm, and 245(C) PC – Assault With A Deadly Weapon On A Police Officer: Not A Firearm. The Superior Court case number is [REDACTED].

The record check confirmed on August 15, 2020, Calva-Garcia was declared not competent to stand trial for the aforementioned offenses. On August 21, 2020, Calva-Garcia was transferred to Patton State Hospital for a period of five years, at which point the trial may proceed.

On December 22, 2020, I received Officer Ruiz's Firearm Proficiency Report (Figure 1). I confirmed Officer Ruiz was in compliance with the Department's qualification and training requirements with the handguns he used in the event.

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The screenshot shows a software interface for the San Diego Police Department's FIREARMS PROFICIENCY report. At the top, it says 'Range' and 'San Diego Police Department'. Below this, the title 'FIREARMS PROFICIENCY' is centered. The interface is divided into sections for employee information and weapon/shoot data.

Employee Information:

- Employee ID: 6608 (ACTIVE)
- Last Name: RUIZ
- First Name: ANDRES
- Initial: [Empty]
- Command: SDPD-OFFICE OF HOMELAND SECURITY
- Assignment: CRITICAL INCIDENT MANAGEMENT U
- Div. Phone: [Empty]

Weapons Section:

Number of Weapons: 23

Make	Model	Type	Barrel	Serial #	Primary Weapon	Weapon Inspection
[Redacted]	[Redacted]	[Redacted]	16.00"	[Redacted]	<input type="checkbox"/>	[Redacted]
GLOCK	G45	SEMI-AUTO	4	[Redacted]	<input checked="" type="checkbox"/>	TP 5
[Redacted]	[Redacted]	[Redacted]	4.5	[Redacted]	<input checked="" type="checkbox"/>	[Redacted]
[Redacted]	[Redacted]	[Redacted]		[Redacted]	<input checked="" type="checkbox"/>	[Redacted]

Shots Section:

Number of Shots: 8

Pass	Expert	Shoot Date	Type Course	Caliber	Rounds	Type of Ammo	Range Notes
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	10/01/2020	QUALIFICATION	9MM	50	DUTY	
<input type="checkbox"/>	<input type="checkbox"/>	06/03/2020	MANDATORY DEPT SHOOT	9MM	50	PRACTICE	
<input type="checkbox"/>	<input type="checkbox"/>	01/29/2020	MANDATORY DEPT SHOOT	9MM	50	PRACTICE	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/21/2019	QUALIFICATION	9MM	50	DUTY	
<input type="checkbox"/>	<input type="checkbox"/>	06/13/2019	MANDATORY DEPT SHOOT	9MM	50	PRACTICE	
<input type="checkbox"/>	<input type="checkbox"/>	02/21/2019	MANDATORY DEPT SHOOT	9MM	50	PRACTICE	

Figure 1 – Officer Ruiz's Firearm Proficiency Report

On December 22, 2020, I reviewed approximately 36 audio files from Dispatchers associated with this event. The audio files mostly regarded civilians who contacted the SDPD via 9-1-1 over Calva-Garcia's behavior prior to the police arriving on scene.

On December 29, 2020, I reviewed the incident brief associated for this event. From the brief, I learned the following:

INCIDENT BRIEF:

On May 24, 2020 at approximately 0128 hours, Central Division's Acting Sergeant Andrew Korenkov #6276 conducted the Major Incident Briefing to SDPD Command Staff, Homicide

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Team II, Internal Affairs, City Attorney Investigators and District Attorney Investigators. Please refer to the Homicide Unit's recording of the briefing for precise details. Essentially, Acting Sergeant Korenkov relayed the following:

At 2149 hours, San Diego Police Department dispatch received at least four calls from people reporting that a female was breaking a glass window and throwing objects out of the window onto 550 Park Bl.

Officers arrived on scene, spoke to at least one reporting party, [REDACTED], who stated the female had thrown shards of glass at him, striking his leg. Officers cleared the trolley platform and area below the female's apartment to prevent others from being injured. A request for additional resources, which included K9 units, was made.

Once K9 units were on scene, officers attempted to contact the female via telephone (2246 hours) and in person (2248 hours). The female did not respond to the officers and was seen moving around her apartment, at times armed with a knife. Officers observed the female throwing items out of the window, waving a knife, and breaking things inside of the apartment.

At approximately 2259 hours, officers lost sight of the female. Officers obtained a key to the apartment and entered the room at approximately 2300 hours. The room was cleared with a police service dog. Officers believed the female was likely inside of the bathroom, the door of which was closed.

A hole was observed in the bathroom door. Officers enlarged the hole with a sledge hammer to allow for the subsequent deployment of pepperballs into the bathroom. Several rounds of pepperballs were fired through the hole, the first volley occurred at approximately 2313 hours.

K9 officers attempted to deploy a PSD through the hole in the bathroom door at approximately 2317 hours. At approximately 2318 hours, Officer Ruiz fired three to four rounds into the female's torso.

First aid was immediately initiated on Rosa Calva-Garcia, who was transported to UCSD Hospital.

The briefing concluded at approximately 0200 hours.

On December 29, 2020, I began reviewing Homicide Unit Case 20-026952 from Homicide Team II. The investigation consisted of San Diego Police Department reports, interviews of SDPD personnel,

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interviews of lay witnesses, scene photographs, lab reports, communications printouts, audio recordings, MTS video surveillance footage and BWC footage.

I reviewed Detective Tom's #6052 Investigative Follow Up. Detective Tom responded to the scene. Crime Scene Specialist Heidi Hebert #8926 assisted Detective Tom in the investigation. In his report, Detective Tom noted the following:

- Calva-Garcia's apartment window (Figure 2);
- A survey of the exterior scene, which included shards of glass and blood (Figure 3);
- Search Warrant [REDACTED] which authorized the forensic processing of Calva-Garcia apartment;
- A processing of the hallway in front of Calva-Garcia's apartment;
- A processing of Calva-Garcia's apartment (located on the fourth floor on the west side);
- A hole in the bottom portion of the bathroom door (Figure 4);
- A police sledge hammer and K-9 leash (Figure 5);
- Various items of medical intervention;
- Documentation of shooting location;
- A large knife inside of the bathroom (Figures 6);
- Evidence diagrams of the interior and exterior scenes (figure 7-8).

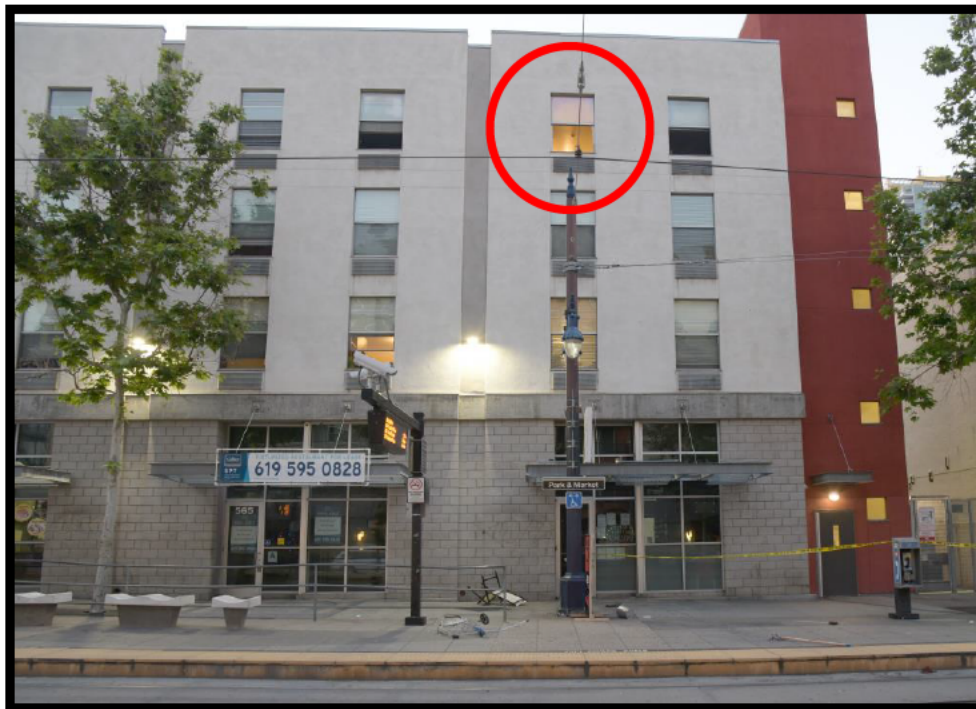


Figure 2 - Calva-Garcia's Apartment Window

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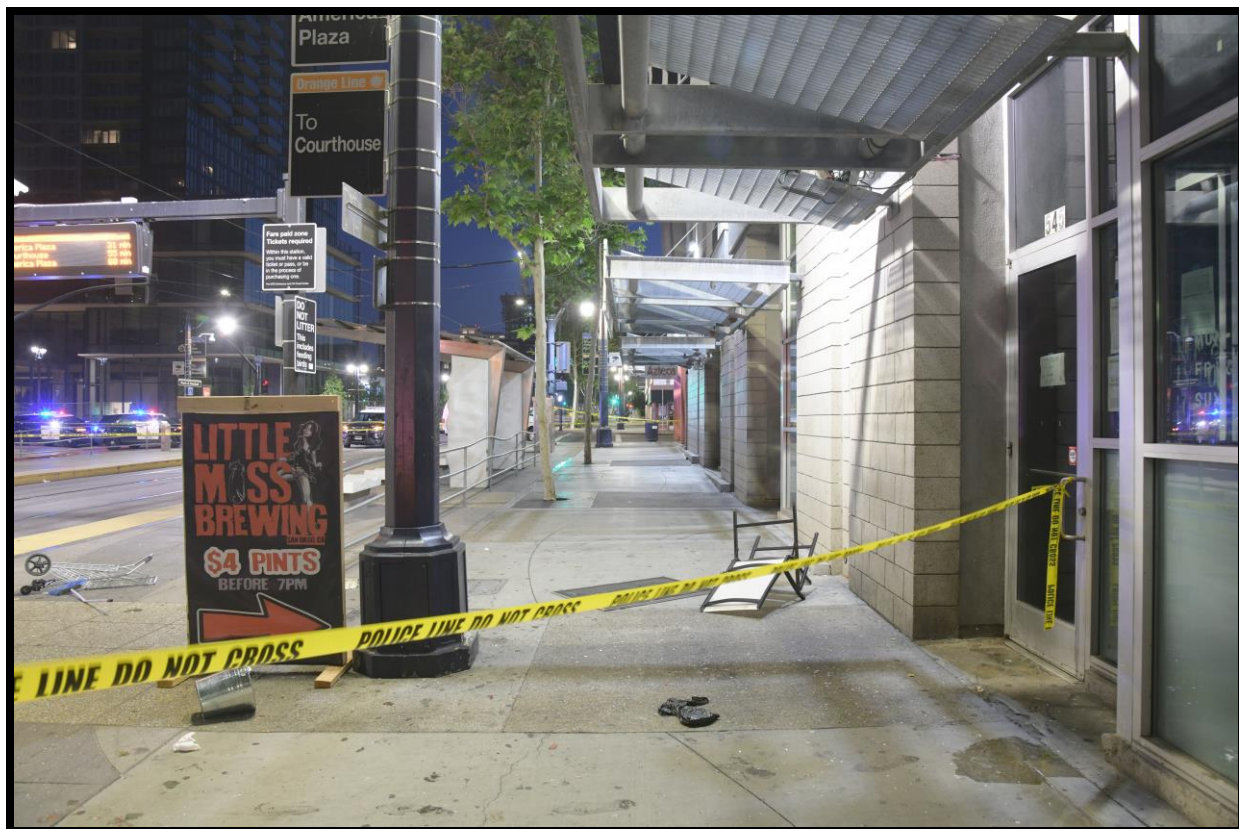


Figure 3 – Exterior scene

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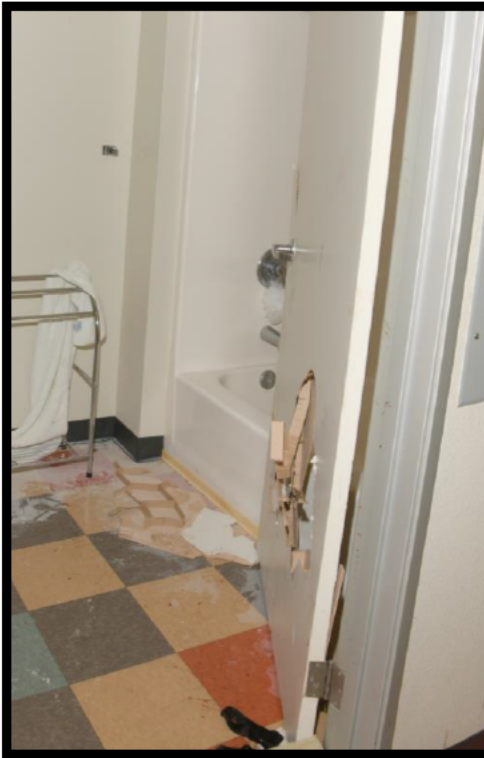


Figure 4 – Hole in bathroom door



Figure 5 – Sledge Hammer, K-9 Leash



Figure 6 – Knife

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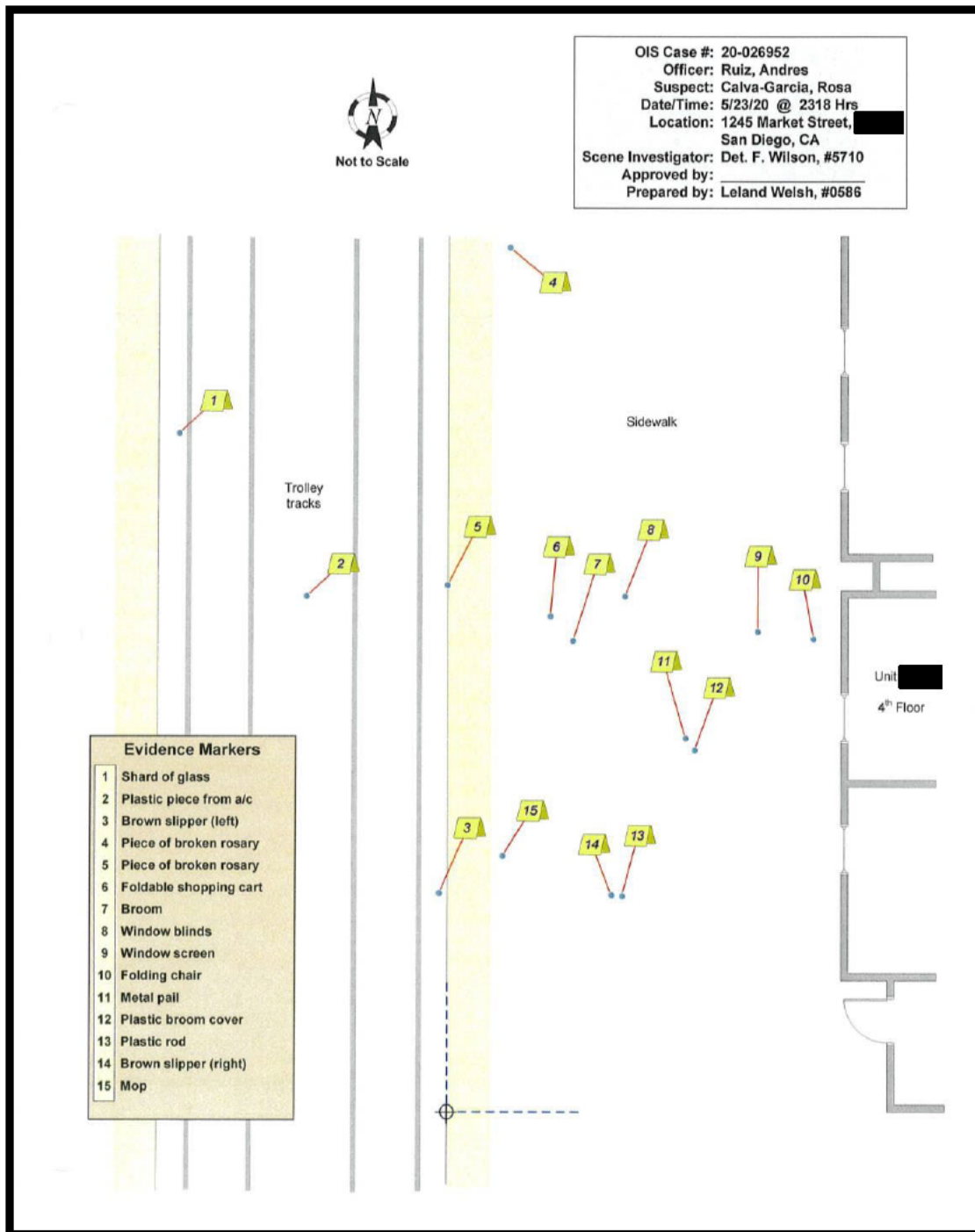
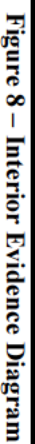


Figure 7 – Exterior Evidence Diagram

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I reviewed CSS Hebert's Crime Scene Report and confirmed she recovered the following:

- Four cartridge casings with the head stamp "FC 9mm Luger;"
- One "Precision Good" cooking knife;
- Numerous bloodied items;
- One copper jacketed bullet with apparent biological material on it recovered from Calva-Garcia at UCSD Hospital.

I reviewed Criminalist Rebick's (#8154) Firearms Unit report for Officer Ruiz's firearm. I noted the following:

- Examination of Officer Ruiz's Glock, model 45, semi-automatic revealed one chambered round and a seated magazine;
- The pistol included an attached light (Surefire X300 Ultra, S/N [REDACTED])
- The total capacity of the pistol, the seated magazine, along with the [REDACTED] additional magazines was [REDACTED] cartridges;
- The ammunition was consistent with that issued by the Department;
- Assuming the magazine was "Hot Loaded," Officer Ruiz discharged a maximum number of five rounds from his pistol;
- The firearm, S/N [REDACTED], was test fired and found to be operable.

On December 29, 2020, I reviewed MTS video surveillance of 500 Park Bl., San Diego. The East trolley platform butts up against the western wall of 1245 Market Street. Calva-Garcia's apartment window overlooks the trolley stop. The video surveillance covered the east and west platform. The surveillance footage is congruent with the information relayed to SDPD Communications by citizens via 9-1-1.

On January 21, 2021, I received a letter from the District Attorney's Officer regarding this event.

DISTRICIT ATTORNEY LETTER:

The District Attorney letter, dated January 21, 2021, included the following analysis and conclusions of the event:

Officers had the right to make a lawful arrest because there was probable cause to believe Calva Garcia committed a felony assault with a deadly weapon and misdemeanor disturbing the peace and vandalism in the officers' presence. Officers announced that Calva Garcia was under arrest and gave multiple commands over a 29-minute period ordering Calva Garcia to surrender. Officers warned her a canine would be utilized if she did not surrender. In addition to warnings, officers utilized non-lethal pepper ball rounds which were fired into the bathroom. Officers attempted to send the police service dog through the door but the dog would not enter after Calva Garcia apparently pushed back and pointed a knife through the hole towards the dog. Seconds after this, a decision was

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made to kick the bathroom door open to allow the police dog to engage Calva Garcia in order to arrest her, as opposed to waiting for the chemical pepper balls to permeate the bathroom and disable her.

The bathroom was dark but illuminated by a light from the hallway. LEI led his dog into the 5' x 5' foot bathroom but the dog did not immediately engage. LEI saw Calva Garcia holding a knife. Ruiz saw LEI try to push Calva Garcia against the wall and he believed that the knife was coming towards LEI. He was incorrect. The blade of the knife was pointed toward the ceiling as LEI held Calva Garcia's arm. Ruiz moved around LEI and fired as he perceived LEI and Calva Garcia appear to struggle over the knife.

In reviewing the totality of the circumstances, the nature of the call, where Calva Garcia was located, her refusal to surrender despite multiple requests, the lighting, her failure to drop the knife, Ruiz's perceptions at the time of the shooting were reasonable based on the circumstances known to him and perceived by Ruiz at that time. These circumstances include Calva Garcia's possession of a knife and refusal to drop the knife even as officers entered the bathroom. Ruiz believed that LEI was in danger of imminent threat of serious bodily injury or death. Penal Code section 835a(4) does provide that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force."

Under the totality of circumstances, Ruiz's actions do not meet the state's standard for criminal liability. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

The District Attorney's letter noted Calva-Garcia sustained gunshot wounds to her chest and abdomen. Toxicological analysis of Calva-Garcia's blood revealed the presence of fentanyl, cannabinoids, citalopram, quetiapine, and a blood alcohol level of 0.16 (twice the legal limit for operating a motor vehicle).

On April 5, 2021, I continued my review of the Homicide Unit's case file, particularly the examination of the BWC associated with the event. Although there were several BWCs associated with this event, most were of officers on perimeter posts or peripheral duties and did not capture the shooting or the circumstances leading up to the shooting.

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BWC REVIEW:

Officer Ruiz's, Officer Mullin's, Officer Luth's and Officer Charlot's BWC footage were the most relevant because they captured parts of the shooting event, and are germane to the scope of the investigation.

OFFICER LUTH:

Officer Luth's BWC footage is titled, "AXON_Body_2_Video_2020-05-23_2228." It is approximately one hour and eleven minutes in duration. The first two minutes of the footage contains video only. The subsequent 29 minutes depict Officer Luth conversing with other officer at the scene prior to walking up to Garcia's apartment door. Officer Luth's footage is similar to other BWCs, with the main difference being the vantage point. Some of the audio is difficult to discern due to the barking of the police service dog.

- At approximately 30 minutes and 45 seconds, Officer Luth accompanies other officers to Garcia's apartment door. Officer Luth assumes a position to the left of the apartment door.
- At approximately 31 minutes, an officer opens Calva-Garcia's apartment door.
- At approximately 31 minutes and five seconds an Officer Mullins loudly calls out to Calva-Garcia, identifying himself as "San Diego Police," and ordering her to come out or else a K-9 would be deployed and bite her. Officer Mullins repeats the command approximately three times.
- At approximately 34 minutes and 45 seconds, Officer Ruiz and Officer Luth enter Calva-Garcia's apartment and confirm there were no other individuals present in its common areas.
- At approximately 44 minutes and 31 seconds, officers begin donning gas masks.
- At approximately 46 minutes and 37 seconds, Officer Ruiz and Officer Luth enter Calva-Garcia's apartment. Officer Luth uses a tool similar to a crow bar to enlarge a hole in Calva-Garcia's closed, bathroom door.
- At approximately 46 minutes and 46 seconds, Officer Irwin fires several pepper ball rounds into Calva-Garcia's bathroom through the newly created hole. Subsequently, an officer continues to give Calva-Garcia commands to come out.
- At approximately 47 minutes and 18 seconds, Officer Irwin fires several more pepper balls into the bathroom.
- At approximately 48 minutes and 14 seconds, Sergeant Stewart directs officers to issue Calva-Garcia more commands to come out and warnings about being bit by a police dog.
- At approximately 48 minutes and 55 seconds, Officer Ruiz and Officer Luth appear to discuss the process of re-entering the apartment.

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- At approximately 49 minutes and 50 seconds, officers can be heard coughing, possibly due to the previously deployed pepper balls.
- At approximately 50 minutes and 8 seconds, Officer Mullins' PSD enters the apartment.
- At approximately 50 minutes and 25 seconds, Officer Mullins, Officer Ruiz and Officer Luth enter the apartment.
- At approximately 50 minutes and 28 seconds, Officer Ruiz kicks Calva-Garcia's bathroom door open.
- At approximately 50 minutes and 30 seconds, Officer Mullins and his PSD enter the bathroom, followed by Officer Ruiz.
- At approximately 50 minutes and 36 seconds, Officer Ruiz appears to draw his firearm with his right hand.
- At approximately 50 minutes and 37 seconds, Officer Ruiz appears to discharge his firearm approximately four times. Officers can be heard coughing. Calva-Garcia says, "Ow, ow." Officers move Calva-Garcia from the bathroom to the apartment common area, secure, and begin aftercare.

OFFICER CHARLOT:

Officer Charlot's BWC video is titled, "Garcia." It is approximately 30 minutes in duration. The first two minutes of the footage contains video only. By the two-minute mark, Officer Charlot is positioned inside the apartment complex hallway holding a Bean Bag shotgun and standing to the right of Calva-Garcia's open apartment door. Officer Charlot's footage is similar to other BWCs, with the main difference being the vantage point.

- At approximately six minutes and 55 seconds, Officer Ruiz and Officer Luth briefly enter Calva-Garcia's apartment. Subsequently, Officer Irwin fires the first of several rounds of pepper balls into Calva-Garcia's apartment.
- At approximately ten minutes and 43 seconds, Officer Ruiz, Officer Mullins, and Officer Luth enter Calva-Garcia's apartment.
- At approximately ten minutes and 46 seconds, Officer Ruiz kick Calva-Garcia's bathroom door open prior to Officer Mullins entering the bathroom with his PSD.
- At approximately ten minutes and 53 seconds, Officer Ruiz enters the bathroom.
- At approximately ten minutes and 54 seconds, Officer Charlot enters the apartment.
- At approximately ten minutes and 55 seconds, Officer Charlot stands in front of the entrance to Calva-Garcia's bathroom when shots are fired. Officer Charlot's BWC does not capture the shooting, only the audio of shots being fired.

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OFFICER MULLINS

Officer Mullins BWC is titled, "1245_Market_St." It is approximately one hour and 16 minutes in duration. The first two minutes of the footage contains video only. Officer Mullins' footage is similar to other BWCs, with the main difference being the vantage point.

- At approximately four minutes and 26 seconds, Officer Mullins arrives at a staging area inside of the apartment complex.
- At approximately 52 minutes and 33 seconds, Officers approach Calva-Garcia's apartment and open the front door. Officer Mullins approaches the open door with his PSD and begins issuing commands.
- At approximately 54 minutes and 54 seconds, Officer Mullins deploys his PSD to clear the open portion of the apartment.
- At approximately one hour, eight minutes and 12 seconds, officers enter the apartment to create the opening the Calva-Garcia's bathroom door for the pepper balls.
- At approximately one hour 11 minutes and 45 seconds, Officer Mullins deploys his PSD to the hole in the bathroom door. The PSD is unable to get through the opening. Calva-Garcia's hand pushes at the PSD (Figure 9).

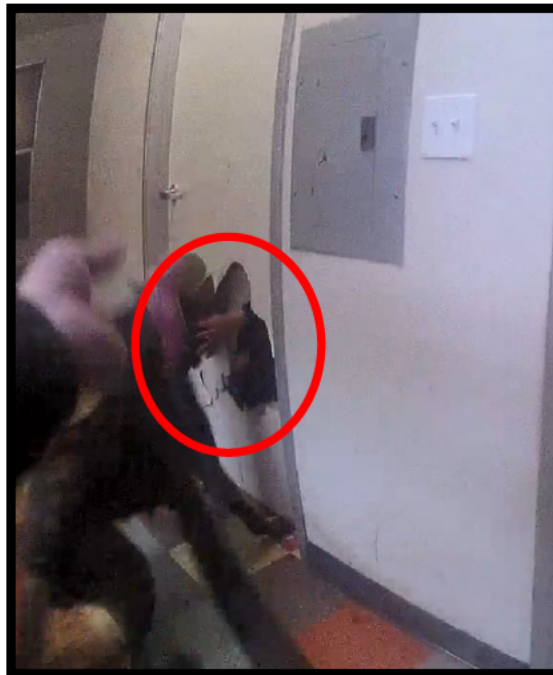


Figure 9 – Calva-Garcia's hand on the PSD

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- At approximately one hour, 11 minutes, and 59 seconds, Officer Mullins enters the apartment.
- At approximately one hour, 12 minutes, and three seconds, Officer Ruiz kicks Calva-Garcia's bathroom door open. Officer Mullins and his enter the bathroom. The PSD appears to bite at Calva-Garcia's right hand area.
- At approximately one hour, 12 minutes and seven seconds, Officer Mullins grabs at Calva-Garcia's left shoulder. Officer Mullins struggles with Calva-Garcia, and attempts to gain control of her as she holds a knife in her right hand (Figure 10).



Figure 10 – Officer Mullins holding Calva-Garcia's right wrist as she holds a knife

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- At approximately one hour, 12 minutes and 12 seconds, Officer Ruiz discharges his firearm. Calva-Garcia drops the knife. Officer Mullins releases Calva-Garcia, who falls to the floor. Officer Mullins PSD bites Calva-Garcia's left arm. Officer Mullins pulls his PSD back to enable officers to secure Calva-Garcia.

OFFICER RUIZ:

Officer Ruiz's BWC footage is titled, "Ruiz." It is approximately 52 minutes and 51 in duration. The first two minutes of the footage contains video only. Officer Ruiz's footage is similar to other BWCs, with the main difference being the vantage point.

- At approximately 30 minutes and 44 seconds, Officers approach and open Calva-Garcia's apartment door.
- At approximately 50 minutes and one second, Officer Mullins deploys his PSD to the opening in Calva-Garcia's bathroom door.
- At approximately 50 minutes and 15 seconds, Officer Ruiz and Officer Mullins enter the apartment.
- At approximately 50 minutes and 18 seconds, Officer Ruiz kicks Calva-Garcia's bathroom door open. Officer Mullins and his PSD enter the bathroom. Officer Ruiz follows immediately behind Officer Mullins.
- At approximately 50 minutes and 23 seconds, Officer Mullins attempts to grab hold of Calva-Garcia. Calva-Garcia's raises her right arm and extends upward, above her head. Calva-Garcia holds a knife in her right hand (Figure 11).



Figure 11 – Officer Mullins with Calva-Garcia. Calva-Garcia's arm extends upward.

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- At approximately 50 minutes and 25 seconds, Officer Ruiz illuminates Calva-Garcia's torso area with a flashlight affixed to his firearm.
- At approximately 50 minutes and 26 seconds, Officer Ruiz, standing approximately two feet from Calva-Garcia, discharges his firearm approximately four times toward Calva-Garcia's torso area.

On April 10, 2021, I reviewed the officers' reports associated with this event. The reports are consistent with BWC footage and the CAD information.

I reviewed the Homicide Unit's interviews of the involved parties. On May 23, 2020, Homicide Detectives interviewed several civilians, including Calva-Garcia's [REDACTED]. None of the civilians witnessed the shooting, only Calva-Garcia's possible criminal behavior and the initial police response to the area.

I confirmed the San Diego District Attorney's office set a preliminary trial date on March 30, 2021, and is proceeding with criminal prosecution of Calva-Garcia for 245(A)(1) PC – Assault With A Deadly Weapon: Not A Firearm, and 245(C) PC – Assault With A Deadly Weapon On A Police Officer: Not A Firearm.

I reviewed the Homicide Unit's interviews with Officer Mullins, Officer Luth, Officer Charlot and Officer Ruiz. Below are abbreviated "in essence" statements from the Homicide Unit's investigation. The abbreviated statements are specific and limited in scope to the circumstances directly leading up to, and including, the Officer Involved Shooting. Refer to the audio recordings for complete details.

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Witness Officer Interviews

On May 24, 2020, at approximately 0320 hours, Homicide Detective Escalante #7026 interviewed Officer Mike Mullins in an office within the Homicide Unit. The interview was recorded. See Officer Mullins' "in essence," abbreviated statement below. See the audio recorded interview for complete details.

Statement of Officer Mullins:

Patrol officers asked for a canine unit regarding a female throwing furniture from her apartment onto the Trolley stop.

When I arrived, Sergeant Stewart told me to bring my police service dog to the fourth floor.

After confirmation of a 245 P.C. – Assault with a Deadly Weapon, we came up with a plan to contact the female.

Officers went up and breached the door. I took a position behind the door. After the door was opened, there were more callouts made into the apartment.

I had my dog on a 15 foot leash. I gave commands into the apartment directing her to come out and surrender or she would be bitten by a police dog. The female never came out.

There was a hold in the bathroom door. There was a plan in place to shoot pepper balls through the hole. Afterwards, she continued to not surrender.

I gave my dog a search command to go through the hole. The dog went in about a quarter of the way and then came out. I saw the female's hand come out of the hole with a knife toward my dog. I pulled the dog back. I later checked the dog for injuries but did not find any.

After that, Officer Ruiz went into the room and kicked the bathroom door open. The dog went into the bathroom. I approached the door and from close proximity, I saw the female raising a knife. I don't remember if the blade was point up or if it was pointed in a stabbing motion to me. I feared that either I or my dog would get stabbed.

I immediately grabbed the knife. As I did, I heard, "bang bang bang, two or three rounds." From there, we went to the ground. I saw my dog had bitten her arm. Officer Luth moved to secure her, so I removed my dog. I exited the room due to the pepper ball CS gas impacting me.

We had a plan just prior to breaching the door. The reason we made entry was because we gave her plenty of warnings, she had been throwing glass at people on the street and we couldn't walk away. It happened really fast.

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On May 24, 2020, at approximately 0357 hours, Homicide Detective Hopper #6485 interviewed Officer Christopher Luth in the Homicide Unit's office. The interview was recorded. See Officer Luth's "in essence," abbreviated statement below. See the audio recorded interview for complete details.

Statement of Officer Luth:

I volunteered to assist Officer Mullins on a call regarding a female in an upstairs apartment who was breaking windows and throwing items out of the window. At one point, the female armed herself with some sort of knife.

I did not have my police service dog with me. When I arrived, I located the team of officers as they were briefing in the stairwell, near Calva-Garcia's apartment. Sergeant Stewart developed a plan for contingencies. Sergeant Stewart relayed the plan to each officer.

Once we had resources in place, they placed calls into Calva-Garcia's apartment. We started to make verbal callouts for several minutes. We could hear her inside of the apartment. While we were doing this, Officers on the perimeter advised they saw Calva-Garcia come to the window, armed with a knife.

Calva-Garcia was going to be arrested for assault with a deadly weapon. Officer Ruiz attempted to de-escalate the situation by asking Calva-Garcia to come outside. Calva Garcia did not respond in any way to us. We developed a plan and approached the front door. We opened the door.

We devised a plan to use a breaching tool to enlarge holes on the exterior of the bathroom door and deploy pepper balls into the bathroom. Officer Ruiz and I entered the apartment. I broke out the hole in the bathroom door that already existed. We retreated and then an officer fired approximately three volleys of pepper balls into the bathroom.

We came up with a plan to send the dog through the hole. It was unsuccessful.

A decision was made to breach the bathroom door. I don't know who the first or second officers in were, but I was third inside of the bathroom. I saw Officer Mullins struggle with Calva-Garcia as his police service dog turned to exit the bathroom and the returned to Officer Mullins. I saw Officer Mullins and Calva-Garcia falling backwards toward me. I heard a couple gun shots fired from my right.

We got Calva-Garcia to the ground. Officer Mullins dog was biting Calva-Garcia. I got a hold of her right arm and brought it behind her back. I got handcuffs from somebody and placed her in handcuffs as Officer Mullins removed his PSD from Calva-Garcia.

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Before breaching the bathroom, we believe Calva-Garcia was armed. I did not see a knife laying around. I did not hear anyone say anything about a knife in the bathroom, but previously it had been said she had a knife and was walking back and forth inside the apartment.

On May 24, 2020, at approximately 0326 hours, Detective Hopper interviewed Officer Joseph Charlot in the Homicide Unit's office. The interview was recorded. See Officer Charlot's "in essence," abbreviated statement below. See the audio recorded interview for complete details.

Statement of Officer Charlot:

We were at the beginning of our shift when the call was broadcasted Market Street. I remember the dispatcher broadcasting that somebody was possible throwing objects from the inside unit,

██████

Officer Scruggs and I responded to the fourth floor hallway. We brought a bean-bag shotgun with us since we were assigned to the react-team. Officer Scruggs was assigned to the bean-bag shotgun and I was assigned to the arrest team. We worked with Sergeant Kelly Stewart and other officers to formulate contingency plans.

From the hallway, we called the phone number we had for Calva-Garcia, but it did not work. The canine officer started issuing verbal commands, but they did not work. We developed a plan to open the front door. We moved down the hallway and opened the door. We continued making callouts. The goal was to arrest Calva-Garcia.

Once the door was open, I looked inside the apartment and saw blood all over the floor and walls. There was no response to the verbal announcements. A pre-existing hole was observed in the bathroom door and officers made that hole larger by using a sledgehammer. I saw Calva-Garcia's feet and legs moving around inside of the bathroom after the hole in the door was made larger.

I illuminated the area around the hole so an officer who would deploy pepper balls could see more clearly. The officer deployed pepper balls until the weapon was empty. Throughout this process, multiple announcements were made directing Calva-Garcia to come out and informing her she was under arrest.

After the pepper balls, were deployed, the canine officer attempted to send the police service dog through the hold in the door. I was unable to see if the police service dog went through the hole.

A canine officer kicked the bathroom door open and two canine officers, with the police service dog, moved into the bathroom. Officer Scruggs and I moved up towards the bathroom as the arrest team. As I rounded the corner, I could see the police dog biting the left hand side of Calva-Garcia.

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I saw a struggle and an object in Calva-Garcia's right hand. I later learned the object was a knife. I heard gunshots fired and then I held my position to stay out of potential crossfire.

One of the canine officers was able to grab hold of Calva-Garcia. The canine officer removed the dog from the bite and we controlled Calva-Garcia's left arm behind her back, taking her into custody. We began to render aid.

At the time officers opened the bathroom door, I was walking through the front door of the apartment. I was about a foot or two behind the canine officers that entered the bathroom. From where I was positioned, I could not tell what the object Calva-Garcia was holding. I did not see if Calva-Garcia used the object against an officer because there was an officer blocking my view.

It was about five seconds from the time officers entered the bathroom until the gunshots were fired. I was able to see the muzzle flash.

It was at least an hour from the time I arrived on-scene until the gunshots were fired.

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Subject Officer Interviews

On May 24, at approximately 0408 hours, Detective Sergeant Leahy #5869, Lieutenant Brown #3950, and Detective Sergeant Tien #6128 interviewed Officer Andres Ruiz in the Homicide Unit's office. Attorney Michael Begovich was present as Officer Ruiz's POA representative. The interview was digitally recorded and subsequently transcribed. See Officer Ruiz's "in essence," abbreviated statement below. See the audio recorded interview for complete details.

Statement of Officer Ruiz:

I became involved when I dispatched myself to a 245 call at 550 Park Bl. I went there initially because it sounded like it was evolving into something that could potentially involve the dog.

Once I got there, they briefed me. They confirmed there was a 245, that she was also breaking things in her apartment and had a knife in her hand. At some point, I believe she was also pulling her hair out, making it that they had established that there was a crime, that she was a danger to others, and potentially to herself.

When I arrived, I met up with Sergeant Stewart, Lieutenant Turner, and K-9 Handler Mike Mullins. I was the secondary K-9 there. Officers on Park had seen her with a knife in her hand. They confirmed she was acting erratic and had already thrown glass at people. Sergeant Stewart said, "Hey, listen, she is wanted for the 245 and we are going to affect an arrest." That's when we started to develop more plans.

We weren't able to establish any actual communication or dialogue with Rosa. When we did our warnings, she never responded to us. We could hear her thumping and things breaking in the apartment. So we knew something was going on inside the apartment.

We were definitely within 21 feet of her door. K-9 Officer Mullins gave the standard K-9 warnings for several minutes. I gave several warnings like, "Hey, listen, you're under arrest. We don't want to hurt you. We want to end this peacefully." We didn't get a response.

Sergeant Stewart did a really good job of making sure those less lethal options were in play. I have received training involved force encounters with an edged weapon within a 21-foot radius of an officer. It could be deadly to the officer.

I had suggested deploying pepper balls into an open window from the outside. Sergeant Stewart, a PRT sergeant, suggested it would be the best option due to the apartment's lay out. We spent time brainstorming the best-case scenarios. Eventually the commanding officers at the scene decided we were going to breach the door and then work from the threshold.

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There was a lot of resources and a lot of coordinating. Our first thing was to de-escalate and just take our time. At the time she was a danger to the public, but we wanted to put everything in play first and give us, obviously, the best possible outcome.

We formed a plan and executed movement to the front door. We went up and it worked perfectly. As soon as the door was open, there was a lot of blood on the floor.

K-9 Sergeant Populin was there. He and Sergeant Stewart developed a plan and we sent a dog to clear the apartment. Officer Mullins has the dog sniff the bottom of the bathroom door and he alerted. Officer Luth and I cleared the apartment except for the bathroom. I didn't see it. It was my belief at that point that she was inside the bathroom with the knife in her hand.

Once we got everything in play, Sergeant Stewart and Sergeant Populin asked Officer Luth and me to go into the apartment and use a Halligan tool to punch out holes in the bottom of the door. The female inside the bathroom became visible to us and she started to kick the Halligan tool. We backed up. An officer deployed pepper balls into the bathroom. I believe we did three or four volleys of pepper balls. It was a de-escalation tactic.

Once the pepper balls were ineffective, I figured it would be better to send in the dog instead of just breaching in case she was standing behind the door with the knife. Sergeant Populin gave the Officer Mullins the order to feed the dog out on a 15-foot lead to the hole in the door. The dog goes to the door and she started to fight the dog. It looked like she was trying to punch him. You could see her hand, she tried to grab his collar.

We had developed another plan in the event the dog was unsuccessful. We were going to move up, breach the door, and send the dog into the bathroom. So when the dog wasn't successful, we executed the movement. I kicked the door. The bathroom lights were off. The dog goes in and a couple seconds later, Officer Mullins is going in. I go in and then I noticed, it kind of took me a second, because it was kind of dark in there, she's coming out with the knife in her hand, to stab him in the face. As the knife is coming to his face, I feared for his life. I thought he was going to get bit or get stabbed in the face. I didn't want him to die, so since he was a little bigger, I needed to look for a position where I could fire. A spot opened up in her torso/stomach area. I drew my pistol, turned the handgun light on so I could see exactly where I was going to fire, and I fired four rounds pretty much contact shots into her stomach.

It was a very fluid situation and I didn't want to shoot Officer Mullins and I wanted to eliminate the threat as quickly as possible so he wouldn't get stabbed in the face or neck area. This is very fast. All of this happened in a second or a second and a half as I'm trying to process all of this. So I feared. I definitely feared for his life and I feared if she stabs him and defeats him, then I'm next.

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So when Officer Mullins goes into the bathroom, you could see her hand is above her head and the knife is coming in a downward motion toward his face.

I didn't really know what the dog was doing. I finished firing the fourth round, the knife falls out of her hand and she comes to the ground. That's when the dog came back into my vision. I think as she's falling, she hits the dog and the dog bites her in the arm.

In her determination, let's say she's under the influence of a narcotic or whatever the case may be, an excited delirium, and she's just fighting through the pain. That was also a part that came to my mind. It was like, "She's that determined already, if she fought through the OC spray, or the pepper ball, she's in it for the long haul.

After the fourth round, the knife came out of her hand. There's always a threat until they're handcuffed. The immediate through of stabbing Officer Mullins face was over. She falls to the ground, we kind of push her out of the bathroom. Once they were able to handcuff her, as they were doing that, I stepped out and removed myself from the scene.

Our intent was never to do any harm to her. Once we did, our intent was to keep her alive. So it was, it pains me to say it, but it was a last resort. We had pretty much checked all the boxes that we possibly could have that were in play for us at the time. This was the only thing that was left.

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CONCLUSIONS:

San Diego Police Department Procedure 1.04, Use of Force, Section III, updated January 23, 2019, states:

The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its personnel in the use of the safest, most humane restraint procedures and force options currently known. The Department seeks to demonstrate integrity, and make decisions that are fair, respectful, lawful, and based on good judgment.

In the performance of their duties, officers may encounter situations where the use of force is reasonable in order to effect a detention or arrest, to overcome resistance, or to protect themselves or others. Force, as authorized by Penal Code section 835a, and as set forth in this policy, may be used in those situations. The decision to use deadly force in response to an imminent threat of death or serious bodily injury to the officer or another person is one of the most critical decisions an officer will ever be called upon to make.

Only force that is reasonable to overcome resistance may be used to effect a detention or an arrest, or take a mentally ill or emotionally disturbed person into protective custody. The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time that force was used. All of the surrounding circumstances will be considered, including whether the subject posed an imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

Penal Code section 835a authorizes an officer to use reasonable force to make a lawful arrest, prevent an escape, or to overcome resistance. Officers are not required to retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested.

The evaluation of an officer's use of force will be undertaken from the perspective of a reasonable officer on the scene, not through the 20/20 vision of hindsight. The central inquiry in every use of force case is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer.

San Diego Police Department Procedure 1.04, Use of Force, Section V, H, updated January 23, 2019, states in part:

H. Use of Firearms

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1. Officers shall not discharge any firearm in the performance of their duties, except as authorized by this Department procedure.
2. No officer shall discharge a firearm in the performance of duty except:
 - a. During authorized training at a target range;
 - b. When the officer has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily injury to the officer or another person;
 - c. When necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect's escape would pose an imminent threat to the officer or others; or,
 - d. As permitted by Department Procedure 6.09, Handling of Injured Animals.
3. A verbal warning to submit to the authority of the officer shall be given prior to the use of a firearm, if feasible, and if doing so would not increase the danger to the officer or other persons.
4. Officers shall exercise the utmost care in their handling and use of firearms while engaged in the performance of their duties and while exercising their option to carry a loaded and concealed weapon while off- duty. Factors that should be considered before an officer discharges a firearm include, but are not limited to, the following:
 - a. Immediacy of the threat;
 - b. Suspect(s) age, size, skill, injury, or disability;
 - c. Environment (field of fire);
 - d. Capabilities of the suspect's weapon;
 - e. Officer's present capability with the weapon; and,
 - f. Type of crime.

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Penal Code Section 245(A) (1) states:

Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Penal Code Section 834(a) states:

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

Penal Code Section 835a(4) states:

That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

Penal Code Section 835a(c) (1) – 835a (c) (1) (A) states:

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

On May 23, 2020, at approximately 2149 hours, multiple citizens called 9-1-1 to report a female inside of the 4th floor apartment complex located at 1245 Market Street, San Diego, who was breaking glass and throwing objects at pedestrians on the street below her apartment. The female (Rosa Calva-Garcia) used large shards of glass to throw directly at individuals in the area.

San Diego Police officers responded to the area. A react team led by Sergeant Stewart met in a stairwell on the fourth floor of the apartment complex and developed a plan to arrest Calva-Garcia while they waited for additional resources to respond to the scene.

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At approximately 2248 hours, Canine officers began making canine announcements and warnings to Calva-Garcia from the 4th floor hallway in an attempt to negotiate her surrender. Calva-Garcia did not respond to the announcements. After approximately nine minutes, officers moved down the hallway to Calva-Garcia's apartment and continued their attempts to contact and negotiate with Calva-Garcia. Calva-Garcia barricaded herself in the bathroom of her studio apartment [REDACTED]

Officers, reasonably believing Calva-Garcia was armed with a knife, utilized multiple de-escalation techniques over a period of at least 28 minutes in an attempt to affect a safe, custodial arrest. These techniques included, but were not limited to: utilizing pre-engagement techniques, assessing the overall scene, attempting to establish lines of communication, attempting to gain voluntary compliance, and utilizing lower levels of force. During the incident, San Diego Police officers utilized numerous and repeated verbal commands to inform Calva-Garcia she was under arrest and persuade her to surrender. San Diego Police officers employed a police service dog and pepper balls in an attempt to motivate Calva-Garcia to surrender.

Calva-Garcia was unresponsive to officers' attempts to speak with her or gain her compliance. Calva-Garcia was apparently unaffected by the pepper balls. After approximately 28 of failed attempts to negotiate with Calva-Garcia and ineffective less-lethal force options, Canine Officer Mullins and Canine Officer Ruiz attempted to arrest Calva-Garcia inside of her bathroom. Officer Ruiz kicked open Calva-Garcia's bathroom door while Officer Mullins deployed a police service dog.

Calva-Garcia resisted Officer Mullins attempts to arrest her. Body worn camera footage and officer statements corroborate Calva-Garcia held a knife in her right hand and extended her arm above her head. Officer Mullins physically struggled to control Calva-Garcia's right hand as she held the knife in close proximity to Officer Mullins' face.

Subsequently, Officer Ruiz, who directly behind Officer Mullins inside of the approximately 5' x 5' bathroom, shot Calva-Garcia four times with his police service weapon. No other officers discharged their firearms during this event. In his subject officer statement to Homicide Team 2, Officer Ruiz essentially stated,

...I wanted to eliminate the threat as quickly as possible so he...[Officer Mullins] ... wouldn't get stabbed in the face or neck area. This is very fast. All of this happened in a second or a second and a half as I'm trying to process all of this. So I feared. I definitely feared for his life and I feared if she stabs him and defeats him, then I'm next.

Based on the totality of the circumstances known to Officer Ruiz at the time, rather than with the benefit of hindsight, it was reasonable for him to believe Calva-Garcia, armed with a weapon likely to inflict serious bodily injury or death to either Officer Mullins or others, presented an immediate threat that warranted Officer Ruiz's use of his firearm. In their statements to Homicide, both Officer Ruiz and Officer Mullins articulated a reasonable belief Calva-Garcia demonstrated life threatening behavior. After

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discharging his firearm towards Calva-Garcia's torso area four times, Calva-Garcia relinquished the knife. Officer Ruiz perceived Calva-Garcia no longer presented an immediate, deadly threat, and ceased firing at her. According to BWC footage the approximate time it took Officer Ruiz to perceive the threat, react, and perceive the threat was over was approximately six seconds.

Subsequently, Calva-Garcia was secured in handcuffs while other officers rendered first aid. Ultimately, Calva-Garcia survived her wounds and was initially sentenced to Patton State Hospital until competent to stand trial. As of March 30, 2021, the District Attorney's office was pursuing the criminal complaint against Calva-Garcia for 245(A)(1) PC – Assault With A Deadly Weapon: Not A Firearm, and 245(C) PC – Assault With A Deadly Weapon On A Police Officer: Not A Firearm. The San Diego District Attorney's office also determined Officer Ruiz's perceptions of the event were reasonable and that his actions, "Do not meet the State's standard for criminal liability.

Based upon statements from Officer Ruiz, Officer Luth, Officer Charlot, and Officer Mullins, as well as the investigation conducted by Homicide Team 2, BWC footage, and in accordance with the San Diego District Attorney's legal analysis, this officer-involved shooting is **WITHIN POLICY**

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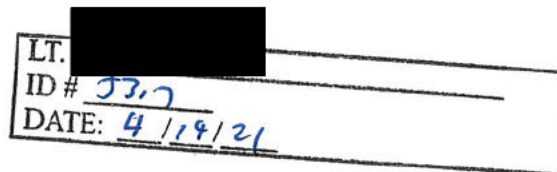
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DOCUMENTATION:

The results of this investigation are based on the following items:

1. Homicide Unit Investigation;
2. BWC footage from Officer Luth, Officer Charlot, Officer Mullins and Officer Ruiz;
3. Officer Ruiz's Firearm Proficiency Reports;
4. District Attorney's Office's independent analysis.

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