



COPY

CH 6057

ADMINISTRATIVE REVIEW

Officer Involved Shooting – March 1, 2021

MARCH 1, 2022
SAN DIEGO HARBOR POLICE

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Reporting Officer: Lt. C. Woodward #4696

Division: Internal Affairs

Approved By: Captain J. Geary #4600

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San Diego Harbor Police Investigator's Report

Date of Incident: March 1, 2021
Time of Incident: 1900 Hours
Location of Incident: 111 West Harbor Drive, San Diego, CA
Subject: Officer Involved Shooting Investigation I.A. #2021-16

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SUBJECT OFFICER: HORN, CODY - Police Officer, ID #6057
Date of Hire: 04-28-16
HPD Patrol Division - 2nd Watch



WEAPON USED: Glock 17, 9mm – SN: [REDACTED]

SUSPECT: Quiroz, Daniel



WEAPON USED: Glock 34, 9mm – SN: [REDACTED]

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SUMMARY:

This incident centered around an exchange of gunfire between a suspect, Daniel Quiroz, and Officer Horn #6057 on March 1, 2021. On that date, around 1900 hours, Harbor Police Officer Horn #6057 conducted a traffic stop on a vehicle in front of the San Diego Convention Center. Officer Horn wanted to perform a field sobriety test on the driver, Daniel Quiroz.

As Quiroz stepped to the rear of his vehicle, Quiroz pulled a firearm from his waistband and pointed it at Horn. Horn pointed his duty weapon at Quiroz and told him to drop the gun. Quiroz refused to drop the gun and Horn fired several rounds at Quiroz while retreating backwards. While Quiroz continued to point the gun in Horn's direction, Horn fired several rounds at Quiroz while continuing to retreat. Quiroz and Horn exchanged gunfire from a variety of positions until Quiroz ultimately tossed his firearm onto Harbor Drive.

Quiroz then walked toward Horn with his hands raised in the air. Quiroz was ultimately taken into custody by several officers from both the San Diego Harbor Police and San Diego Police Departments. Neither Horn nor Quiroz sustained any injuries. One civilian witness was walking westbound on Harbor Drive during the incident and was struck by a bullet. The round hit the civilian's left rear pants pocket, penetrating his eyeglass case in his rear pants pocket. The bullet did not penetrate the witness's skin.

Quiroz' Glock 34 firearm was recovered at the scene.

There is surveillance video, live news video, and Body Worn Camera (BWC) footage of the event.

San Diego Police Department Homicide Team III responded to the scene and conducted the homicide investigation.

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INVESTIGATION:

On March 1, 2021, I responded to an Officer Involved Shooting at 111 West Harbor Drive, San Diego. Members of SDPD Homicide Team III arrived on scene and conducted an investigation. SDPD Central Sergeant McAnnally #4593 noted, in part, the following during the briefing (not verbatim).

Harbor Police Officer Cody Horn #6057 was making a traffic stop while on patrol in the area of Harbor Drive and 1st Avenue. Officer Horn saw the suspect vehicle run a red light at that location as it was turning eastbound onto Harbor Drive. Officer Horn followed the suspect vehicle onto Harbor Drive and initiated a traffic stop for the red-light violation at 5th Avenue and Harbor Drive. The suspect vehicle yielded along the south curb line of Harbor Drive.

Officer Horn immediately noticed the driver smelled of alcohol and believed the driver might be [Driving Under the Influence] (DUI). Officer Horn asked the driver to step out of the vehicle up onto the sidewalk to evaluate him for driving under the influence of alcohol. The driver complied. As the driver stepped out, Officer Horn backed up toward the sidewalk indicating the driver should follow. As the driver came around the back of the suspect's vehicle, Officer Horn saw him reach into his waistband, pull out a handgun, and start firing at Officer Horn.

Officer Horn returned fire and believed he shot [REDACTED] rounds, every round in his magazine including the round he had in the chamber. Officer Horn believes the suspect shot six rounds. Officer Horn continued to back up and retreat to find a place of cover behind some rocks and landscaping. Officer Horn ultimately made his way up onto the driveway of the Convention Center. Neither officer Horn nor the suspect were struck by any rounds.

Officer Horn requested assistance and multiple officers from both the San Diego Harbor Police Department and the San Diego Police Department arrived on scene. The suspect eventually gave up and was taken into custody on the driveway, just south of the location of the traffic stop. During a search of the crime scene, the suspect's handgun was located in the middle of Harbor Drive, in the eastbound lanes.

Officer Horn's BWC had not been viewed at the time of Sergeant McAnnally's briefing.

On March 1, 2021, I was assigned the administrative investigation for this event. This investigation was tolled per Government Code 3304(g) until October 6, 2021.

On approximately August 25, 2021, I received Homicide Team III's investigation.

On October 6, 2021, I received a letter from the District Attorney's Office regarding this event.

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DISTRICT ATTORNEY LETTER:

The District Attorney letter, dated April 16, 2021, included the following analysis and conclusions of the event:

In this case, Horn conducted a traffic stop of Quiroz's vehicle after observing him commit a traffic violation. Horn determined that Quiroz may be driving while intoxicated and asked Quiroz to step out of his vehicle and come back to the sidewalk. Quiroz stepped out of his vehicle, turned toward Horn, and pulled a handgun from his waistband. Fearing Quiroz was going to shoot and kill him, Horn pulled out his service firearm, pointed it at Mr. Quiroz and ordered him to drop his weapon. Horn fired five shots towards Quiroz and an additional three shots at Quiroz after Quiroz refused to drop his weapon. Horn felt unsafe behind his police vehicle and retreated to find a better place of cover. Horn fired an additional nine rounds towards Quiroz while retreating.

The use of deadly force by Horn was reasonable in this situation. Quiroz was within several feet of Horn when he pulled and pointed a handgun at Horn. At the time of this incident, Horn had his Taser, OC and baton on his person, however, the use of a less lethal option in this situation was not reasonably safe and feasible. Quiroz created a deadly force situation by pointing and firing a handgun at Horn.

Horn attempted to de-escalate the situation by advising Quiroz to drop his weapon, which he refused. Horn attempted to distance himself from Quiroz, but Quiroz continued to track Horn's movement with his weapon. Horn reasonably feared for his safety and fired upon Quiroz. As a result, he bears no state criminal liability for his actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

The District Attorney's letter noted that a blood sample taken from Quiroz following the shooting incident showed that Quiroz had a blood alcohol content (BAC) of 0.177%. Additionally, the District Attorney letter also noted the following:

There were no injuries to Horn nor Quiroz as a result of the shooting, however [a witness] who was walking westbound on the pedestrian walkway in front of the Convention Center was struck by a stray bullet. The bullet struck [the witness] in the left rear pocket of his denim jeans. The bullet penetrated the fabric of the pants pocket and lodged in an eyeglass case that [the witness] was carrying in his pocket. The bullet...that lodged in [the witness's] glasses case, came from the direction that Quiroz was firing his weapon and not the direction that Horn was shooting.

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On December 9, 2021, I received Officer Horn's Firearm Proficiency Report (Figure 1). I confirmed Officer Horn was in compliance with the department's qualification and training requirements with the handgun he used in this event.

FIGURE 1

Port of San Diego Harbor Police Range Qualification September 2020.

Thursday, September 10, 2020

Session 1: 0800 to 1100

	Name	ID#	Duty Handgun		Handgun	Pass/Fail/ Marksman	Duty Rifle	Rifle	Patrol	LL	Signature
			Make	Model	Serial#		Rifle Serial#	Pass/Fail	Shotgun Pass/Fail	Shotgun Pass/Fail	
1											
2											
3											
4											
5											
6											
7											
8											
9	HORN	6057	GLOCK	17.5		P/F/M		P/F	P/F	P/F	
10											
11											
12						P/F/M		P/F	P/F	P/F	
13						P/F/M		P/F	P/F	P/F	
14						P/F/M		P/F	P/F	P/F	
15						P/F/M		P/F	P/F	P/F	
16						P/F/M		P/F	P/F	P/F	

WTU Supervisor

Date: 9/10/2020

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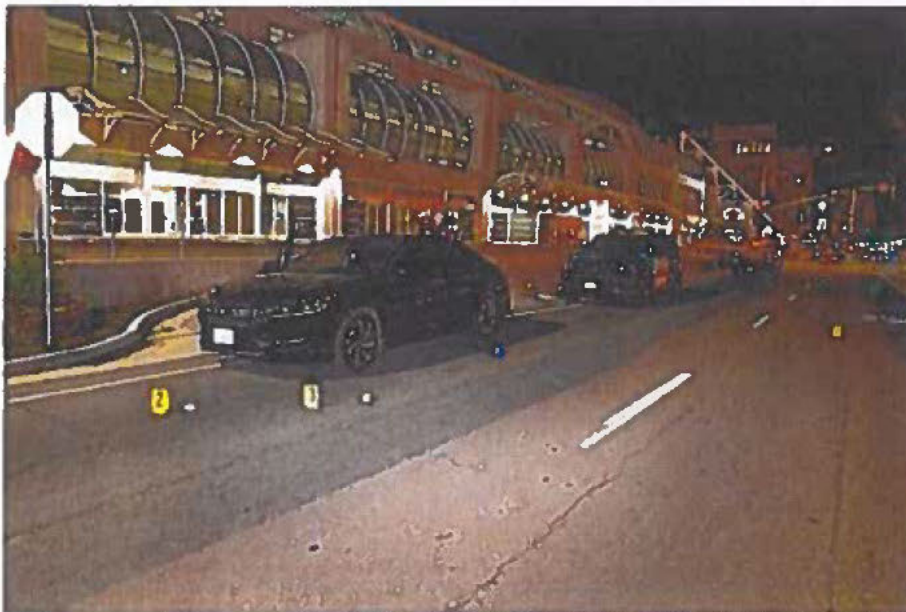
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On January 21, 2022, I reviewed 21 audio files from dispatchers associated with this event. Most of the audio files were recordings of civilians calling the police department to report they heard gun shots or observed parts of the incident. The other files were radio transmissions of officers and dispatchers as they coordinated their actions during the call. The files I reviewed were obtained from the Communication Centers from both the San Diego Police Department and the Port of San Diego Harbor Police Department.

I began reviewing Homicide Unit Case #21-010374 from Homicide Team III. The investigation consisted of San Diego Police Department reports, Port of San Diego Harbor Police reports, interviews of SDPD and HPD personnel, interviews of lay witnesses, scene photographs, lab reports, communications printouts, audio recordings, video recordings made by witnesses, diagrams, and BWC footage.

I reviewed Detective Siemer's #6397 Investigative Follow Up. Detective Siemer responded to the scene along with Homicide Unit Captain Freeman #4910, Lt. A Brown #3950, Sergeant C. Turner #6518, Detectives K. Iwasaki #6790, M. Perez #4881, J. Barrera #6109. Crime Scene Specialist L. Ney #8476 also assisted Detective Siemer in the investigation. In his report, Detective Siemer noted the following:

- A tan hat with a black brim located in the landscaping just south of the suspect vehicle (placard #1)
- Two "Hornaday 9mm Luger" cartridge casings located in the #2 eastbound lane of Harbor Drive near the front of the suspect vehicle (placards #2 & #3)
- A Glock 34 – 9mm handgun serial number [REDACTED] located in the #1 eastbound lane of Harbor Drive between the suspect vehicle and Officer Horn's patrol vehicle (placard #4)



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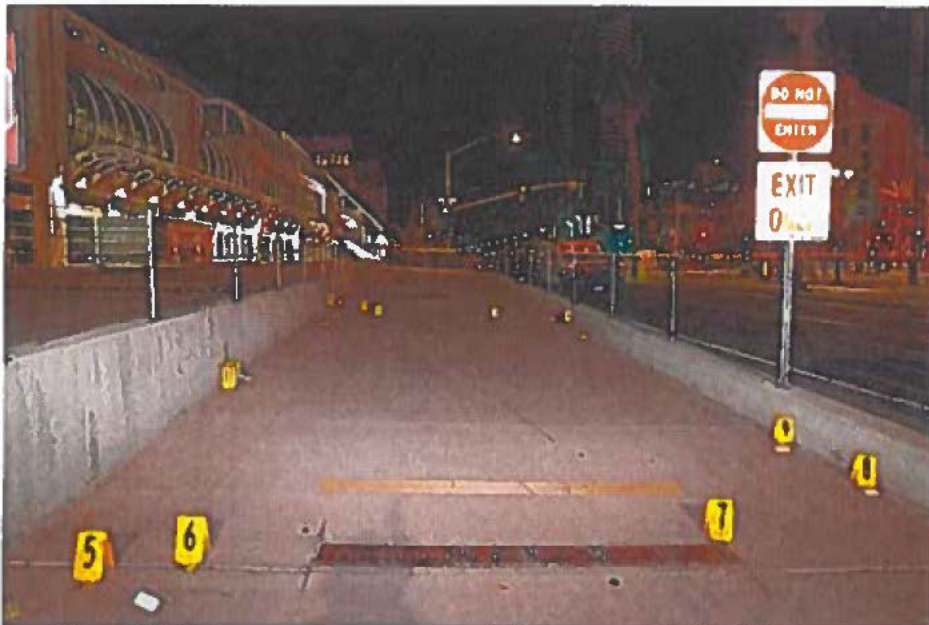
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- Officer Horn's patrol vehicle behind the suspect vehicle at their points of rest during the preceding traffic stop



- Twelve 9mm cartridge casings with the head stamps "FC 9mm Luger" were located on the driveway connecting Harbor Drive to Salida Loop (placards #5 through #16)



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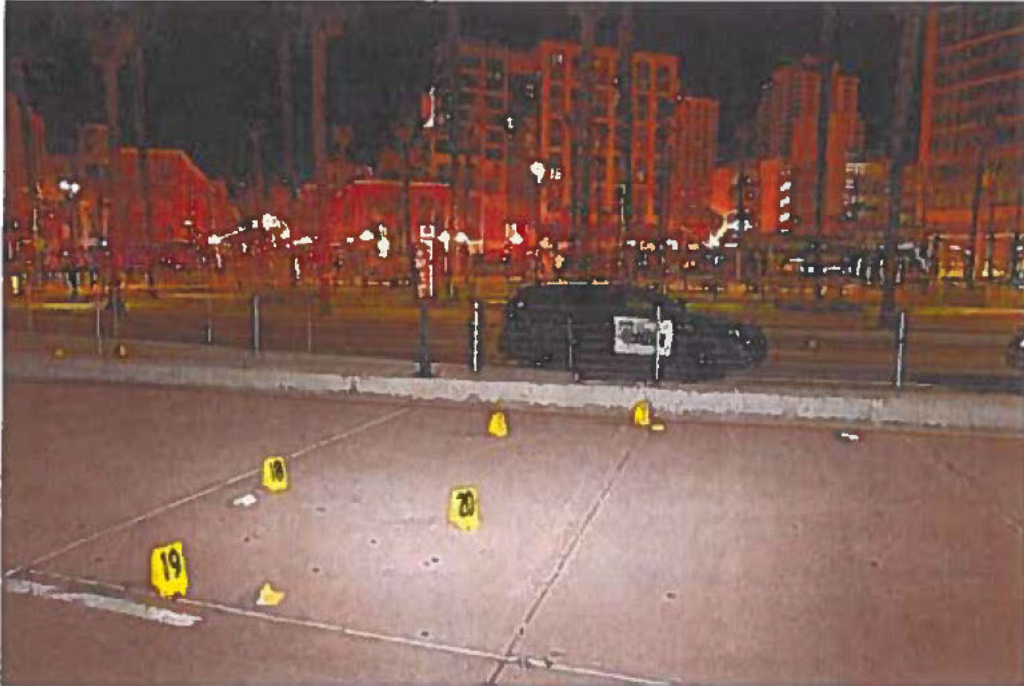
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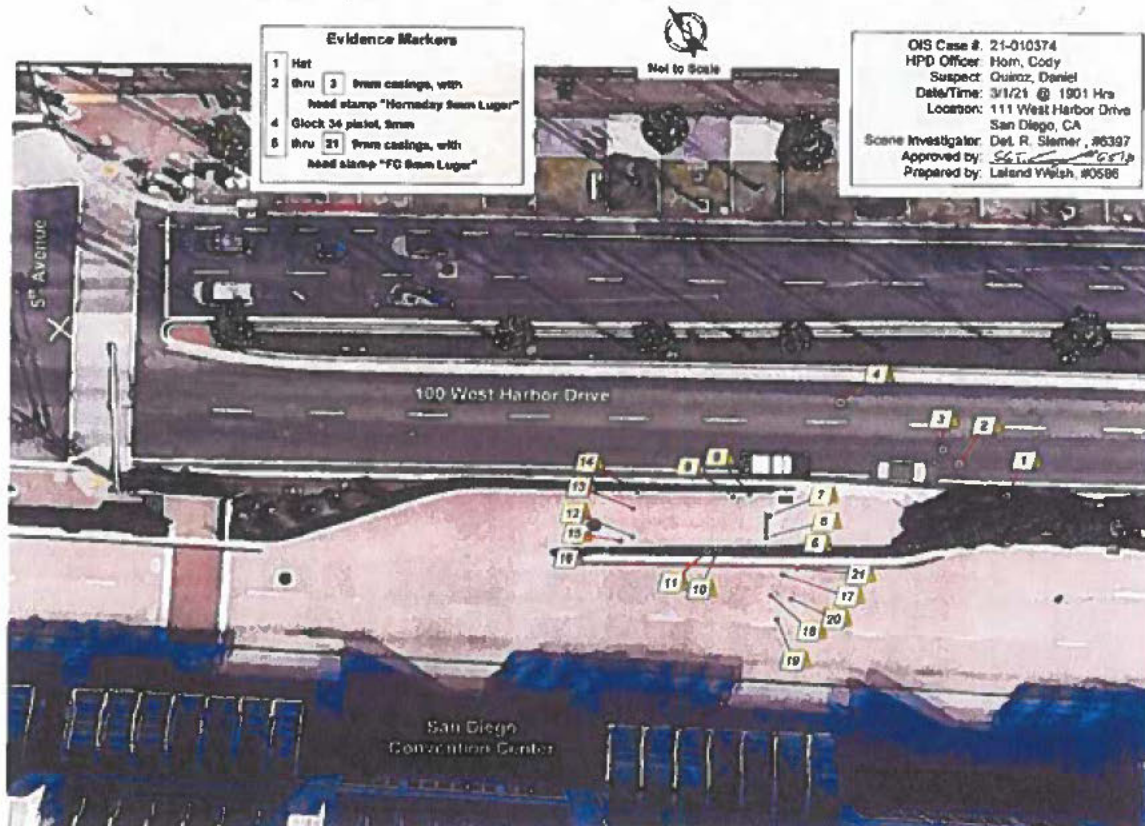
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- An additional five 9mm cartridge casings with the head stamps "FC 9mm Luger" were located on Salida Loop (placards #17 through #21)



- Detective Siemer also provided an overhead diagram of the below noted evidence



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I reviewed CSS Ney's (#8476) Crime Scene Report and confirmed CSS Ney recovered the following:

- 1 Glock 34 - 9mm pistol (actual photo below)
- Firearm registered to the suspect, Daniel Quiroz and purchased from San Diego Guns on Mission Gorge Road



- I reviewed Criminalist Lauren Ney's (#8476) Crime Scene Unit Report for Daniel Quiroz's firearm. I noted the following:
- The firearm was found with an empty Glock "9mm" firearm magazine seated inside of it
- At least two (barcodes 11250607 & 11250613) of the fired Hornady cartridges located in the street near Quiroz's vehicle were fired by the Glock pistol bearing serial number [REDACTED]
- The cartridge found in the civilian's sunglass case had design features consistent with 9mm Luger caliber Hornady ammunition
- The test fired bullets contained in the firearms processing packet (Officer Horn's weapon) and the Hornady style bullet **were not fired** by the same firearm
- The pistol was test fired and found to operate normally

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I reviewed Criminalist Kate Todd's (#8762) Firearms Unit Report for Officer Horn's firearm. I noted the following:

- Examination of Officer Horn's Glock, model 17 Gen5, semi-automatic pistol, chambered in 9mm Luger caliber, serial number: [REDACTED] had one seated magazine (with one cartridge in the chamber) and two spare magazines with it at the time of inspection
- The seated magazine contained [REDACTED] cartridges, one of the spare magazines was empty, and the second spare magazine contained seventeen cartridges
- The designated capacity of all the magazine is seventeen cartridges
- Assuming the pistol was "hot loaded" at the time of the shooting, the evidence indicates that [REDACTED] cartridges were fired from the pistol
- The ammunition was consistent with that issued by the department
- The pistol was test fired and found to operate normally

On February 8, 2022 I reviewed three video clips provided by Fox News who happened to be filming a live news segment across the street from the shooting. In the footage, you can clearly see the suspect crouched down near the front of his vehicle. The suspect is holding what appears to be a firearm and is pointing it in the direction of Officer Horn and his police vehicle. You can hear gunfire in the video clip. A screenshot of the above-described scene is provided below:



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I then reviewed video provided by MTS. The video shows the shooting from the trolley crossing across the street from the Convention Center. The screenshot below (while zoomed in) clearly shows the suspect make his way to the front of his vehicle and point a firearm over the top of his vehicle in the direction of Officer Horn and his police vehicle. In the video, you can clearly see the muzzle flash from the suspect's pistol as he fires toward Officer Horn.



I then began my review of the body worn camera (BWC) footage related to the incident. Although there were many BWC videos 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. The only BWC footage that captured the shooting was Officer Horn's.

Officer Horn's BWC footage is titled "OIS Officer Horn BWC." It is 19 minutes and 28 seconds in length. The first 30 seconds does not include audio as it was captured before Officer Horn activated the recording. The video starts as Officer Horn initiates a traffic stop in front of the Convention Center.

- As the video starts, the emergency lights are visibly activated on Officer Horn's police vehicle
- At approximately 46 seconds, Officer Horn informs the suspect he is stopping him for running a red light
- An open "Pacifico" beer can be seen in the cup holder portion of the center console
- At approximately 2 minutes, Officer Horn asks Quiroz to step out of his vehicle so he can speak with him
- At 2 minutes and 23 seconds, Quiroz is seen stepping out of his vehicle and begins making his way toward the rear of his vehicle
- At 2 minutes and 30 seconds, Quiroz is seen reaching into his waist band to which Officer Horn responds, "Hey, put that gun down"
- Approximately 1 second later, Officer Horn fires ■ shots from his department issued pistol and begins retreating

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- At 2 minutes and 36 seconds, Officer Horn advises "shots fired"
- At 2 minutes and 45 seconds, Officer Horn takes cover behind his patrol vehicle as a volley of gun fire from the suspect can be heard
- At 3 minutes and 45 seconds, Officer Horn begins issuing verbal commands to the suspect which included, "get on the ground" and "put your hands up"
- For the next several minutes, Officer Horn continues to issue verbal commands to the suspect despite the suspect's non-compliance. Officer Horn backs up multiple times as the suspect continues to walk toward him.
- For the next approximately 9 minutes, the suspect is issued a myriad of verbal commands asking him to lay on the ground. The suspect eventually complies and is taken into custody.

I examined the BWC for attempts to de-escalate the situation. Up until the moment the suspect pulled a handgun from his waistband, Officer Horn was polite and professional as he dealt with the suspect. The suspect was within several feet of Officer Horn when he pulled a handgun from his waistband and pointed it toward Officer Horn's position, immediately creating a potential deadly-force situation. Within 15 seconds of Officer Horn perceiving the suspect's handgun, he is involved in a moving gun battle with the suspect. Beyond a quick, verbal attempt to order Quiroz to drop the gun, this series of events provided no opportunity to further de-escalate the situation. At the time of this incident, Officer Horn had his Taser, OC, and baton on his person, however the use of a less lethal option in this situation was not reasonably safe or feasible.

On February 8, 2022, I reviewed the officers' reports associated with this event. The reports are consistent with BWC footage and the CAD information. I also reviewed the Homicide Unit's interviews related to this event. The interviews were conducted the same day of the incident. None of the interviews indicated any violations of Department Policy or Procedures.

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CONCLUSIONS:

Officer Horn's actions were **WITHIN THE GUIDELINES** of San Diego Harbor Police Department Policies.

San Diego Harbor Police Department Policy 300.4 (Deadly Force Applications) states, in part:

- (a) *An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.*

The policy goes on to define imminent threat as:

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

San Diego Harbor Police Department Policy 300.4.3 (Displaying of Firearms) states, in part:

- (b) *If the officer reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such threat until the officer no longer perceives such threat.*

On March 1, 2021, around 1900 hours, Harbor Police Officer Horn #6057 conducted a traffic stop on a vehicle in front of the San Diego Convention Center. Officer Horn asked the suspect to step out of his vehicle so he could further evaluate him for being under the influence.

As the suspect stepped to the rear of his vehicle, he pulled a firearm from his waistband and pointed it at Horn. Horn pointed his duty weapon at the suspect and told him to drop the gun. The suspect refused and Horn fired several rounds at Quiroz while retreating backwards. While the suspect continued to point his gun in Horn's direction, Officer Horn fired several rounds at the suspect while continuing to retreat backwards. Officer Horn and the suspect exchanged gunfire from a variety of positions until the suspect tossed his firearm onto Harbor Drive and was ultimately taken into custody, uninjured.

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It's clear from the statements obtained in this case, and the evidence at the scene, Officer Horn fired his weapons in response to the suspect, Daniel Quiroz, pointing a gun at him. Officer Horn perceived Quiroz to be an imminent threat as Quiroz had the ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to Officer Horn. Officer Horn's actions were legal, justified, and reasonable considering the circumstances. The decision by Officer Horn to shoot at Daniel Quiroz was **WITHIN THE GUIDELINES** of San Diego Harbor Police Department Policy.

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DOCUMENTATION:

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

1. Homicide Unit Investigation.
2. San Diego County District Attorney's Office Finding Letter.
3. Officer Horn's Firearms Qualification records.
4. Harbor Police Department Policy 300 – Use of Force
5. Officer Horn's BWC video.

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