



DATE: October 21, 2014

TO: Chief Ed Aceves

FROM: Lieutenant Matt Nicholass

SUBJECT: Internal Administrative Review of San Diego Police Case No. 13-052430
An Officer Involved Shooting (non-fatal) of _____ on
December 30, 2013

Introduction:

I was assigned the Internal Administrative review of the non-fatal shooting of _____ as it relates to Detective Jacob Wisler. Detective Jacob Wisler was the only La Mesa Police Officer involved in this shooting that occurred in the City of San Diego. However, there were four allied agency officers who were involved in this Officer Involved Shooting (hereafter OIS). I reviewed the circumstances leading to this shooting, which occurred on December 30, 2013, at approximately 0830 hours.

I have completed the administrative questioning for Detective Jacob Wisler involving this OIS. I have reviewed the reports, evidence, and other materials compiled by the investigators from the San Diego Police Department Homicide Team. I examined the shooting scene soon after the incident and I have been briefed by the San Diego Police detectives involved in the investigation.

The San Diego Police Department's Homicide Team #2 took the lead on the criminal investigation. Team #2 was led by Lieutenant Mike Hastings and Sergeant Gregory Flood.

Law Enforcement Involved:

La Mesa Police Detective Jacob Wisler
Deputy U.S. Marshal John Klopstein
Deputy U.S. Marshal Thomas Grattan
California Parole Agent Jason Bradshaw
California Parole Agent Benjamin Somera

Persons Involved:

The man who was shot, _____ and chest (non-life threatening),

_____ was shot in the left arm

_____. At the time of the OIS, _____ was a homicide suspect in a shooting that occurred the evening before, _____ was on parole and classified as high-risk. He was also being monitored by a GPS tracker as a condition of his parole.

La Mesa Detective Jacob Wisler, age 28, had been a La Mesa Police Officer for approximately 7 years at the time of the incident. He was assigned as a detective to the East County Gang Task Force (ECGTF) and was working varied hours at the time.

Background:

The San Diego Police Department reports indicate that on December 29, 2013, at approximately 1700 hours, [redacted] was shot in the City of San Diego and died as a result of his injuries. In the early morning hours of December 30, 2013, and prior to this OIS, San Diego Police Detectives had identified [redacted] as the homicide suspect. Through records checks on [redacted], San Diego Police Detectives determined that [redacted] was on parole and required to wear a GPS tracking device. The tracking device showed [redacted] at [redacted] in San Diego and also showed [redacted] had been at the murder scene at the time of the murder. The U.S. Marshal's Fugitive Task Force was notified and they began to assemble officers and agents to set up surveillance on the address.

At approximately 0800 hours, Detective Jacob Wisler and Officer Bucky Wright were requested by the task force to assist with the surveillance. Detective Wisler and Officer Bucky Wright are assigned to task force positions that often assist each other with surveillance operations. At the time of this incident, Detective Wisler was assigned to the East County Gang Task Force and Officer Bucky Wright was assigned to the U.S. Marshal's Fugitive Apprehension Team. This was an incident where the two task forces partnered with each other to aid in resources to locate [redacted].

Detective Wisler had previously been informed by other law enforcement officers that [redacted] was a leader of the San Diego Skinheads, had an extensive violent criminal history, was on parole, was a documented violent criminal. Detective Wisler had police related contacts with some his "crew" in East County in the past.

On December 30, 2013 at approximately 0835 hours, US Marshal's Fugitive Task Force agents saw [redacted] exit the residence and get into a black Ford Mustang that was parked on the street. At this time, Detective Jacob Wisler was just arriving on scene and Officer Bucky Wright was still en route to the location. Agents confronted [redacted] and he refused to comply with their orders and attempted to flee, injuring one of the deputy marshals in the process. Five task force officers were present and all fired weapons at [redacted], striking him once in the arm and once in the chest.

[redacted] was transported to UCSD Medical Center where he was treated for his injuries and later booked into county jail.

At the time of the shooting, Detective Jacob Wisler was current with his quarterly firearms qualifications. The last qualification was on October 22, 2013. Detective Wisler possessed Department approved weapons and ammunition at the time of this OIS. Detective Wisler used his personal Glock 27 which he was authorized to use at the time of this OIS.

Police Response and Shooting Incident

At the request of the US Marshal's Task Force, Officer Bucky Wright and Detective Jacob Wisler responded to assist with locating [redacted] GPS tracker was

showing him at _____, San Diego which is in the Point Loma Community. Detective Wisler had talked to Parole Agent Sean Trophy over the telephone and was advised that they would be using an LE South Tac frequency for the surveillance. Detective Wisler notified Officer Bucky Wright and the two of them responded separately to the area to meet the other members of the surveillance team. Detective Wisler understood he was going to be briefed on the surveillance plan when he got into the Point Loma area. While enroute to the Point Loma area, Detective Wisler attempted to contact Agent Trophy by telephone again but he did not answer. Detective Wisler decided to drive past the residence at _____ to get a view of the residence before he met Agent Trophy. When Detective Wisler was driving on _____, he was unaware if any members of the surveillance team were already set up on the target residence.

When Detective Wisler drove up to _____, he saw unmarked police vehicles and task force members he recognized, surrounding a black Ford Mustang which was parked parallel on the street. Detective Wisler immediately identified the subject in the driver's seat as _____ and recognized the other officers were attempting to control the situation. Detective Wisler parked his unmarked vehicle in the middle of the street to block traffic and began to assist the other officers.

Detective Wisler was in plain clothes when he exited his vehicle and verbally identified himself as "Police" to the other officers. He also pulled out his badge and showed the other officers. Detective Wisler saw that _____ was not complying with the commands of the officers and there was a struggle as the officers were trying to get _____ to comply and get out of the vehicle. Detective Wisler was standing along the driver's side of the Mustang and heard several commands by the other officers. He heard them say, "Police" "Get your hands up" more than once. _____ was reaching underneath the front seat area of the vehicle and was not listening to the commands. His hands were disappearing under the seat. Detective Wisler believed _____ had a gun in the car. He could hear that _____ was attempting to start the car because he could hear the "grinding gears." Detective Wisler believed _____ was going to fight it out with them because he was a violent criminal that was wanted for a recent murder. Detective Wisler feared _____ was reaching for a weapon under his seat and he was going to come up shooting.

Attempts were made by other task force officers to subdue _____ with a taser but they were unsuccessful. Detective Wisler saw that the taser deployments did not have an affect on _____ continually failed to comply with the multiple commands given and kept reaching underneath the front seat area for something. Fearing he and/or his partner was going to get shot, Detective Wisler fired at _____ with his Glock 27 (personal weapon) from approximately 5-7 feet away. He fired from outside the driver's side of the Mustang into the driver's seat area of the vehicle. Other officers fired their weapons at _____ at approximately the same time as Detective Wisler. Detective Wisler fired approximately ten (10) rounds at _____. According to Detective Wisler, he could not recall if he had nine (9) or ten (10) rounds loading in his firearm at the time. However, ten (10) Federal Ammunition casings were found at the scene.

_____ was able to get the vehicle moving and began traveling northbound on _____. The vehicle was swerving across the roadway. Detective Wisler believed that _____ had gotten out of their immediate control, was going to continue to fight other law enforcement and was a threat to the public so he fired at least one more shot

at _____ as the vehicle was traveling northbound. According to the diagrams prepared by SDPD, this shot could have been from as far away as eighty (80) feet. Even though Detective Wisler believes he only fired one shot as the vehicle was traveling northbound, the evidence indicates he fired three (3) rounds at that time. Detective Wisler believed that _____ was fleeing with a weapon and was going to "take out" someone if he got away. In Detective Wisler's mind, _____ was going to kill someone if he got away.

_____ 's vehicle came to rest in the yard of _____. Detective Wisler realized he was out of ammunition and was not wearing his vest. He ran back to his vehicle, donned his vest, and reloaded his weapon. Detective Wisler ran towards the suspect's vehicle, took a position of cover behind another vehicle, and covered the other officers as they extracted and handcuffed _____.

Detective Wisler put out "shots fired" on the LE South Tac 3 frequency but was uncertain of his location. He requested an ambulance for _____ and advised the suspect had been hit.

San Diego Police Department dispatched a shots fired radio transmission and officers requesting immediate assistance at _____ in San Diego. Several San Diego Police officers responded and rendered assistance.

Officer Bucky Wright arrived on scene and advised LMPD that there had been a shooting in Point Loma and Detective Wisler was involved. LMPD Staff Officers were notified and responded to the scene.

_____ was transported to UCSD Medical Center where he was treated for a gunshot wound to his left bicep and chest. He was later released from the hospital and booked into County Jail.

Additional Information

A 9mm Berretta handgun was located just outside of the Mustang. It was determined to have been inside the vehicle at the time of the shooting.

Legal Analysis

Under California Law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist in his effort to affect an arrest because of the person's resistance.

Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We must be mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the

case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which the use of deadly force may be used:

“[P]olice may use only such force as is objectively reasonable under the circumstances. An officer’s use of deadly force is reasonable only if ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’ All determinations of unreasonable force ‘must embody allowance for the fact that the 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.’” [Citations omitted.]

Administrative Analysis

Under La Mesa Police Department policy, officers may use deadly force as prescribed in Department Instruction 413- Use of Force. Section 413.1V., states:

IV. USE OF DEADLY FORCE

It is the policy of the La Mesa Police Department that officers shall use deadly force when it reasonably appears necessary:

- 1. To protect themselves from death or serious bodily injury.*
- 2. To protect another officer or any other person from death or serious bodily injury.*
- 3. To prevent the escape of a fleeing subject if there is probable cause to believe: 1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and 2) the subject’s escape would pose an imminent danger of death or serious physical injury to the officers or other persons. 3) If feasible, and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.*

Detective Wisler confronted _____ in response to a request from the US Marshal’s Task Force to help try to locate a murder suspect _____ based on the current location of his GPS tracking device. _____ was identified by witnesses as the subject who shot and killed _____ in Linda Vista the evening before. _____ was currently on parole and is affiliated with the Skinhead’s gang. He was considered armed and dangerous by Parole.

When Detective Wisler arrived at the location, he was surprised when he saw his partners attempting to stop _____ from driving away in a black Ford Mustang. Detective Wisler assisted his partners by positioning his vehicle in the middle of the road in an attempt to stop traffic. He quickly exited his unmarked vehicle, and assisted in detaining _____. _____ was not complying with the officer’s orders and continued to reach for something underneath the front seats of his vehicle.

Officers on the scene attempted to control _____ by deploying a taser, more than once, as a less lethal option but it appeared to not affect _____. After numerous commands

and the failed taser deployments, Detective Wisler along with four (4) other law enforcement personnel, fired at

was able to get the vehicle started and drove a short distance northbound on . Detective Wisler believed was a fleeing felon and posed an imminent threat to the community so he fired again at as he was driving away.

crashed his vehicle into the yard of where the officers ultimately were able to control him and take him into custody. It was determined was struck by the gunshots and he was provided medical attention, transported to UCSD Medical Center for treatment, and later booked into county jail.

A 9m Berretta handgun was found at the scene near the suspect's vehicle. The firearm was loaded and had one round in the chamber. The 9mm Berretta handgun was reported stolen from a vehicle on November 21, 2013. There was also 9mm bullet casings found inside the suspect's vehicle.

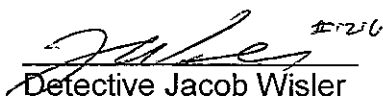
Conclusions

In this case, Detective Wisler was responding to assist other law enforcement officers in locating who was the named shooting suspect in the murder of the prior evening. Detective Wisler along with other task force officers surrounded black Ford Mustang as he was attempting to drive away. failed to comply with numerous verbal commands by law enforcement officers to show his hands and kept reaching underneath the front seats of his vehicle. The officers deployed a taser on at least two times which did not affect

Detective Wisler had prior knowledge of . He knew that was the suspected shooter in the homicide the prior evening, knew that he was currently on parole, considered high risk with a GPS tracker, he was affiliated with the Skinhead's Gang, and he was previously informed that had a violent criminal history.

Fearing that was going to retrieve a loaded firearm from underneath his seat and shot at him or another officer, Detective Wisler fired his Glock 27 approximately ten (10) times at . Additional officers on scene also fired at was able to drive his vehicle northbound on at which time Detective Wisler fired additional shots at was struck twice by the gun fire. Fourteen (14) bullets struck 's Mustang and three (3) additional bullets struck unrelated vehicles. A total of twenty-two (22) bullet casings were located at the scene.

Under these circumstances, Detective Wisler had a reasonable belief that his life and the lives of his fellow partners were in immediate danger. Detective Wisler reacted reasonably and within Department Policy when he fired his weapon in order to protect his own life and the lives of his fellow partners on scene. The perceived threat to their lives was immediate and serious. I find Detective Wisler's use of deadly force was justifiable.


Detective Jacob Wisler

10-22-14
Date

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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BONNIE M. DUMANIS
DISTRICT ATTORNEY

November 25, 2014

Chief Edward Aceves
La Mesa Police Department
8085 University Avenue
La Mesa, CA 91942

Chief Shelley Zimmerman
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Warden Daniel Paramo
Richard J. Donovan Correctional Facility
480 Alta Road
San Diego, CA 92179

**Re: Non-Fatal shooting of _____ on December 30, 2013, by La Mesa Police
Detective Jacob Wisler and California Parole Apprehension Team Agent Jason Bradshaw and
Agent Benjamin Somera; San Diego Police Department Case No. 13-003634; DA Special
Operations Case No. 13-159PS; Deputy District Attorney assigned: Fiona Khalil**

Dear Chief Aceves, Chief Zimmerman and Warden Paramo:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Unit concerning the shooting of _____ by Detective Jacob Wisler of the La Mesa Police Department, Agent Jason Bradshaw and Agent Benjamin Somera of the California Parole Apprehension Team on December 30, 2013. A District Attorney Investigator responded to the scene and was briefed by San Diego Police Department Investigators. This case was presented to the District Attorney's Office for review on June 26, 2014.

Summary

On December 30, 2013, members of the U.S. Marshal's Fugitive Task Force attempted to arrest _____ for a fatal shooting that occurred the previous evening. Agents saw _____ enter a vehicle in a residential neighborhood. _____ ignored commands to show his hands and reached around in the front passenger compartment. A Taser was ineffective and _____ began to drive away causing one agent to fall to the ground. The agents were aware that _____ had a lengthy criminal history, which included violence. Detective Jacob Wisler, Agent Bradshaw and Agent Somera fired at _____. His car came to rest in the front yard of a nearby residence. _____ was again seen reaching around within the front passenger compartment. Additional shots were fired _____ was struck by gunfire and suffered multiple gunshot wounds but survived. A firearm was found outside the front passenger door of _____ vehicle.

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Persons Involved

was years old at the time of this incident and lived in the College Grove neighborhood in the City of San Diego.

Detective Jacob Wisler had been a La Mesa Police Officer for six years when this incident occurred. He was a detective assigned to the East County Regional Gang Task Force. He was dressed in plain clothes and had a La Mesa Police badge hanging from a lanyard around his neck.

Agent Jason Bradshaw is a Parole Agent and had been assigned to the California Parole Apprehension Team (CPAT) for four years. Agent Bradshaw was dressed in plain clothes and had a CPAT badge hanging from around his neck and one on his belt. He was wearing a tactical vest underneath his sweatshirt.

Agent Benjamin Somera is a Parole Agent and had been assigned to the California Parole Apprehension Team for three years. Agent Somera was dressed in plain clothes with a tactical vest that had a "Police" emblem on the front and back and was wearing his CPAT badge.

Background

Early in the morning on December 30, 2013, a homicide occurred in Linda Vista, a community in the City of San Diego. The victim had been fatally shot. was identified as the suspect in that killing. is a registered sex offender and a documented skinhead gang member. He is required to wear a GPS monitoring device and was wearing it at the time of the incident. has a tattoo on his abdomen, which reads "Dead Cops." U.S. Marshall Fugitive Task Force Agents were asked to locate and arrest him for the murder in Linda Vista. The GPS tracking device showed was possibly at a residence on in Point Loma. Agents set up surveillance on the residence hoping to find .

Officer Involved Shooting

Shortly after the surveillance began, agents saw leave the residence and get into a Ford Mustang. One agent positioned his unmarked vehicle in an effort to block from driving away and avoiding a pursuit. The agent got out of his car, identified himself to and ordered him to stop. Other Task Force members approached Mustang on foot and ordered him to show his hands, while identifying themselves as police officers. was seen reaching around the front passenger compartment. started the engine and tried to drive away. An agent deployed his Taser twice but each time it had little to no effect on was able to maneuver his Mustang away causing U.S. Marshall Special Agent J. Klopstein to fall to the ground. Four Task Force Agents, including La Mesa Police Detective Jacob Wisler, Agent Bradshaw and Agent Somera, fired at . While the agents were shooting, drove away on Mustang collided with a truck just down the street and came to rest in the front yard of a residence. Agents fired additional shots as was seen reaching within the passenger compartment. was taken into custody by agents.

suffered a gunshot wound to his left bicep and upper torso. He was transported to the hospital and survived.

Agent Klopstein sustained an injury to his right leg and knee. He was treated at the hospital and released.

Detective Wisler's Statement

Detective Wisler was a task force member assigned to locate and arrest [redacted] for a homicide where a gun was used to shoot the victim. Wisler was familiar with [redacted] reputation as a leader of the San Diego Skinheads who had a violent criminal history. Wisler knew [redacted] was on parole and wearing a GPS monitoring device as a condition of his parole. An agent from California State Parole told Wisler and his teammates that [redacted] monitoring device showed [redacted] was possibly at a residence on [redacted]. Wisler responded to the address to meet with other Task Force agents who had begun to watch the house.

When Detective Wisler arrived, he saw [redacted] sitting in a black Mustang surrounded by U.S. Marshalls attempting to arrest [redacted]. Wisler stopped traffic with his car and went to assist the agents. [redacted] was reaching down towards the floorboard of the Mustang. He heard the agents giving [redacted] commands to get his hands up. Wisler watched as the agents fired a Taser into [redacted] two or three times. The Taser had no effect on [redacted]. Wisler shouted at [redacted], "Police, get your hands up!" Wisler described seeing [redacted] continue to look on the floor of the car. Wisler feared [redacted] was looking for a gun. Wisler believed [redacted] was going to shoot him and the other agents. He feared he would be injured and that members of the public could be hurt if [redacted] were able to leave the scene. Wisler fired at [redacted] and other agents fired simultaneously. After he fired at [redacted] drove away in the car. Wisler said he fired an additional shot because [redacted] was going to continue to be a threat to other law enforcement and the public and Wisler feared someone would be killed by [redacted] if he escaped.

[redacted] crashed just down the street from where the incident began. Wisler saw [redacted] drop a black object from his hand and heard [redacted] shout, "I give up. I'm done", while sticking his hands out the window. Wisler described helping other agents get [redacted] out of the car and seeing a black Beretta handgun on the ground next to [redacted] car.

Parole Agent Bradshaw's Statements

Agent Jason Bradshaw said he was advised that [redacted] was the suspect in a murder that occurred the previous night. He was aware the homicide was a shooting and the gun had not been recovered. Bradshaw was familiar with [redacted] and had arrested him on a prior occasion approximately seven years ago. During that arrest, Bradshaw said [redacted] was driving the same black Mustang he was driving on December 30, 2013, and [redacted] possessed a gun during the previous arrest.

Agent Bradshaw explained he had only been on [redacted] for less than a minute when he saw [redacted] walk out of the residence towards a black Mustang parked on the street. Bradshaw alerted other officers in the area to arrest [redacted]. Bradshaw described the agent's attempts to pin [redacted] vehicle in with their vehicles so he would not be able to flee. Agent Bradshaw began yelling commands at [redacted] to, "Let me see your hands! Police!" Bradshaw described watching [redacted] try to maneuver his car so he could flee. Bradshaw yelled at [redacted] to put his hands up. Bradshaw believed there was a gun in the car. Bradshaw said his knowledge of [redacted] was that he was a "fighter" who is always armed. He

said [redacted] was hit by a Taser but it had little effect on him. Bradshaw told investigators he deployed a second Taser, but [redacted] was able to drive away from the curb. Bradshaw said there were other agents in the street as [redacted] pulled away. Bradshaw believed [redacted] was a danger to the public and an immediate threat to the agents. He fired at [redacted]

Agent Bradshaw saw [redacted] swerve and crash into a truck just down the street from where the shooting occurred. Bradshaw approached [redacted] and saw [redacted] looking around the car. Bradshaw described shuffling around with his hand. Bradshaw believed [redacted] was looking for a gun and shot two more rounds at [redacted] car. Bradshaw described how he and another agent grabbed [redacted] out of the car and handcuffed him.

Parole Agent Somera's Statements

Agent Benjamin Somera is a Parole Agent. He heard on the radio that [redacted] was walking out of the house, towards a black Mustang. Somera was a few blocks away. When he arrived at the residence, he saw one agent on top of [redacted] car and two other agents were trying to pull [redacted] from the car. Somera heard the agents shouting commands to [redacted] in loud voices.

Agent Somera explained he parked his car in the middle of the street and started to get out when [redacted] took off at a high rate of speed. The other agents opened fire on the car. He said [redacted] drove down the street, swerved into a yard and stopped. He described [redacted] as, "fumbling around, looking for something on the passenger's side portion...it looked like he was digging...knowing that he was wanted for murder, of course my attention is now drawn to that." Somera was yelling at [redacted], "Let's see your hands" at least three or four times. Somera said [redacted] sat up and looked in the direction of the agents. Somera fired once at [redacted] car.

Deputy U.S. Marshals' Statements

Both U.S. Marshals, Deputy John Klopstein and Deputy Thomas Grattan, provided statements indicating that [redacted] was not compliant with the agents' directives and that he appeared to be searching for something in the car. Each indicated they were fearful of being shot by [redacted] and fired at [redacted].

Investigation

The scene was secured and an investigation was conducted by the San Diego Police Departments' Homicide unit. There were two separate scenes where the shootings occurred. The first scene was in front of the residence on [redacted] where the Task Force Agents first encountered [redacted] at his car. The second scene was 80 feet away where [redacted] car came to rest after the initial shooting. Twenty-four rounds were fired by five different law enforcement officers. Detective Wisler fired 10 rounds. Bradshaw and Klopstein both fired 5 rounds. Grattan fired 3 rounds and Somera fired 1. Shell casings were recovered in the area at both shooting scenes showing agents fired at [redacted] when he was originally contacted and again after he lost control of his car and came to rest down the street.

All five agents who fired were interviewed separately. Each agent said he believed [redacted] was reaching for a weapon. A Beretta 9mm semiautomatic handgun was found just outside the passenger door of the car driven by [redacted] and two 9mm shell casings were found inside the car. All of the agents

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involved in the shooting were using .40 caliber handguns, therefore these casings could not have come from the agent's handguns. The Beretta was examined by the SDPD Firearms Lab. The lab confirmed the gun found next to Hill's car was the weapon used in the homicide from the previous evening.

suffered a gunshot wound to his left bicep that fractured his humerus bone and a gunshot wound to his left upper torso. He was treated at UCSD Medical Center and survived his injuries.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, Peace Officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force '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.'" [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Conclusions

During this incident, La Mesa Police Detective Jacob Wisler was working as a member of the Fugitive Task Force and Parole Agents Jason Bradshaw and Benjamin Somera were working on the

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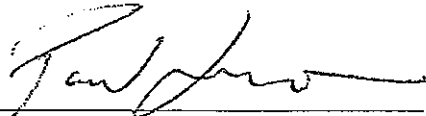
California Parole Apprehension Team. They were attempting to arrest _____, a dangerous fugitive wanted for murder. When Wisler, Bradshaw, Somera, and the other agents tried to take _____ into custody, _____ resisted, ignored commands and tried to flee. All of the law enforcement officers, including Wisler, Bradshaw and Somera believed _____ was reaching for a gun when they fired and officers found a handgun outside of _____ Mustang when he was arrested. _____ actions placed the public in danger as well as the officers. Based on these circumstances, Detective Wisler, Agent Bradshaw and Agent Somera's decision to shoot _____ was reasonable and therefore they bear no criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review will be retained in our file.

Sincerely,

BONNIE M. DUMANIS
District Attorney
County of San Diego

By:



PAUL AZEVEDO
Deputy District Attorney
Chief, Special Operations Division

PSA/FK:eg

cc: Captain Albert Guaderrama
San Diego Police Department
Homicide Division