



DATE: November 2, 2017

TO: Chief Vasquez

FROM: Lieutenant Bell

SUBJECT: Internal Administrative Review of San Diego Police Case #17-0042912,
Officer Involved Shooting (non-injury) on July 25, 2017

11-21-2017

Walt Vasquez

OFFICE

Introduction:

I was assigned the Internal Administrative review of the non-injury officer involved shooting by Detective Jacob Wisler, which occurred in the City of San Diego. I have reviewed the circumstances that led to the shooting, which occurred on July 25, 2017, at approximately 1907 hours.

San Diego Police Department's Homicide Team 3 took the lead on the shooting investigation. Team 3 was led by Lieutenant Todd Griffin and Acting Sergeant Jana Beard.

I have reviewed the reports, evidence and other materials compiled by the San Diego Police Department's Homicide Team 3. I was present while the homicide detectives interviewed Detective Wisler regarding the shooting.

Law Enforcement Involved:

La Mesa Police Detective Jacob Wisler, age 31, had been a La Mesa Police Officer for 10 years at the time of the incident. He was assigned as a detective to the Narcotics Task Force (NTF) and was working Monday through Thursday, 0700 to 1700 hours. During the time of this incident, he was on overtime. He was wearing a blue San Diego Padres baseball hat, blue short sleeved t-shirt, blue jeans and white tennis shoes. He also had on a black police vest, with large bold white letters, "POLICE," on the front and back. There was a cloth type La Mesa Police Department badge on the left breast area of the vest.

Persons Involved:

The suspect in this case, and who was shot at, by Detective Wisler, was (DOB 06-21-87). is a transient. His California Identification Card is # and CII # During the time of this shooting, was a homicide suspect involved in a shooting, which occurred in the City of La Mesa on July 20, 2017.

Background:

On July 20, 2017, at approximately 1847 hours, was shot and killed during a drug deal in the Burlington Coat Factory parking lot located at 7938 El Cajon Boulevard in the City

of La Mesa. During the subsequent investigation, La Mesa police detectives discovered that a

Detectives learned

and

Detective Wisler, being a former East County Regional Gang Task Force (ECRGTF) detective, was familiar with the gang [redacted] claimed (West Coast Crips) and had previously looked up his criminal history. Detective Wisler discovered [redacted] had served time in prison and had been arrested for attempted murder and possession of a firearm.

On July 25, 2017, at 1907 hours, Detective Wisler, along with members of the ECRGTF and La Mesa Police Department Special Investigations Unit (SIU) were in the area of 4300 Altadena Avenue in the City of San Diego, searching for [redacted]. As Detective Wisler arrived in the area, he got out of his vehicle and confronted a female, who had been seen with [redacted]. He then immediately saw [redacted] walking out of an apartment complex. He gave several commands for [redacted] to get on the ground. [redacted] did not comply and began to walk away. He also began putting his hands in his waistband. [redacted] then began to "blade" his body towards Detective Wisler, as though he may be trying to engage him with a firearm. Detective Wisler fired his weapon at [redacted] three (3) times, but no rounds struck him. [redacted] fled the scene and was found in a backyard several minutes later. He was arrested for 187(a) PC – Murder.

At the time of this shooting, Detective Wisler was current with his quarterly firearms qualifications. His last firearm qualification was on May 23, 2017. Detective Wisler possessed a Department approved weapon and ammunition at the time of this shooting. Detective Wisler used his personal Glock 19, which he was authorized to use at the time of this incident.

Police Response and Shooting Incident

On July 25, 2017, at approximately 1500 hours, [redacted]

[redacted] Detective Wisler contacted ECRGTF for assistance with apprehending [redacted] Sergeant Pierce and SIU Detective Riley went to a liquor store at 50th and El Cajon Boulevard and set up surveillance.

While waiting for detectives from ECRGTF, Detective Wisler wrote up an operational plan to apprehend [redacted]. As the task force members arrived at the La Mesa Police Department, Detective Wisler briefed them about the case and the plan to surveil the neighborhood and

hope to apprehend [redacted]. As they were finishing the briefing, at approximately 1858 hours, Sergeant Pierce and Detective Riley stated they had spotted [redacted]. They were communicating by hand held radio and using channel [redacted]. Detective Wisler and all of the task force officers began to travel to Altadena Avenue.

Detective Wisler and the task force officers arrived approximately nine (9) minutes later in the area where [redacted] had last been seen, on the 4300 block of Altadena Avenue. Detective Wisler was traveling alone in his Department issued vehicle (silver Dodge truck). As he drove southbound, ECRGTF Detective Sanchez stated (over the radio) that the female [redacted] had been with acted like she knew the police were there. Detective Wisler stopped his vehicle in the street at the west curblineline and got out to contact the female, who was later identified as [redacted].

Detective Wisler got out of his vehicle and walked towards [redacted] at an angle. He immediately gave her commands, "Police, get on the ground." As he gave [redacted] commands, he saw a black male, who he instantly recognized as [redacted] coming out of the front yard of an apartment complex. [redacted] started to walk towards [redacted].

Detective Wisler pointed his handgun at [redacted] and stated, "Police, get on the ground!" He gave the commands twice. [redacted] continued to walk toward [redacted] on the sidewalk. Detective Wisler continued to walk in their direction from the street. [redacted] said, "What? What?" As [redacted] said this, he put his hands underneath his shirt and into his waistband and was moving them around. [redacted] continued to walk away diagonally from Detective Wisler. As he walked away, he turned his head and torso, in a "bladed" posture, looking back at Detective Wisler.

[redacted] continued to walk away and into a small walkway. Detective Wisler continued to give him commands to get on the ground. [redacted] continued to dig in his waistband and would not comply with Detective Wisler's commands. Detective Wisler believed [redacted] was luring him into the alley, so he could take cover. Detective Wisler stated he thought [redacted] was going to, "Start shooting at me." Detective Wisler stated he feared for his safety and the safety of his partners. He also stated he thought [redacted] may take a hostage or retreat into a residential area. Detective Wisler stated he believed he fired three (3) rounds at [redacted]. [redacted] was not struck by the shots.

[redacted] then ran away into the apartment complex and hid in a backyard. Several minutes later, he was taken into custody without any further incident.

Legal Analysis

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily injury 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, such as murder. This section stated the officer need not retreat or desist in the effort to effect 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 public. We must

be mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. 9th 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 judgements- 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 Instructions 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 had the confrontation with _____ due to a request from the La Mesa Police Department’s SIU to assist them with locating and apprehending _____, a murder suspect, based on intelligence of his last known whereabouts. _____ was an outstanding murder suspect, who was identified by _____ video surveillance. _____ as the person who shot and killed a victim in La Mesa five (5) days prior. _____ made statements that he would not go back to prison and he would “shoot-it out” with police if confronted.

As soon as Detective Wisler arrived on scene, he got out of his vehicle to confront _____ the female who _____ had been seen with. He then immediately saw _____ and focused on taking him into custody. _____ and _____ were both uncooperative in following Detective Wisler’s verbal commands. _____ walked away from Detective Wisler while reaching underneath his shirt and into his waistband. _____ continued to not follow verbal commands and Detective Wisler fired his duty weapon at him three (3) times.

_____ fled the scene and ran into an apartment complex where he was confronted by Deputy Doug Akers. Deputy Akers saw an object in _____ hand and gave him commands to drop it. _____ did not comply and continued to flee. Deputy Akers found

him again in the backyard of a small house and discovered that [redacted] had a phone in his hand.

San Diego District Attorney Investigator Dan Harward was Deputy Akers' partner during this incident. Investigator Harward stated he heard Deputy Akers' commands and witnessed [redacted] not complying. He also yelled commands at [redacted] to "stop" and to show his hands. [redacted] did not comply. Investigator Harward was present when [redacted] was taken into custody. He held his gun on [redacted] while another officer placed handcuffs on him. As [redacted] was taken into custody, Investigator Harward noticed he had a knife attached to his side. As [redacted] struggled to not be handcuffed (making it difficult to put his hands behind his back), Investigator Harward unhooked the knife from [redacted] pants and placed it at his feet. This knife was photographed and marked as Item #14 and Photograph #552 in SDPD Crime Scene Unit Report 1 (OIS Book tab #4).

During witness checks, SDPD Homicide Detective J. Rzucidlo #6450 spoke with [redacted] and [redacted], who lived at [redacted] 50th Street, the apartment complex Henderson ran through.

When detectives asked [redacted] and [redacted] if they had heard anything, [redacted] stated she saw the police running and "him [referring to [redacted]] run by. [redacted] stated, "He had a gun. The Black guy. I could see it. I was sitting right here. He was running first. He grabbed the lady upstairs, but I guess she got away. The gun was in his waistband." Detectives attempted to contact the witness upstairs, but were not able to locate or interview her.

[redacted] was asked what she saw. [redacted] stated she saw a Black guy running. Detective Rzucidlo asked [redacted] if she saw [redacted] holding anything or was there anything in his waistband. [redacted] stated she did not see anything, but he was holding his waistband.

Conclusion

Detective Wisler was requested by the La Mesa Police Department's SIU to assist them with locating and apprehending [redacted] a murder suspect, based on intelligence of his last known whereabouts. [redacted] was an outstanding murder suspect, who was identified [redacted] video surveillance, as the person who shot and killed a victim in La Mesa five (5) days prior. [redacted] made statements that he would not go back to prison and he would "shoot-it out" with police if confronted.

ECRGTF Detectives, who assisted with the apprehension, stated [redacted] would not obey their verbal commands. Investigator Harward stated he found a knife affixed to [redacted] side while he was being taken into custody.

A witness, who lived in an apartment where [redacted] ran through, stated she saw [redacted] with a gun in his waistband. Another witness stated she saw [redacted] holding his waistband as he ran, although did not see the gun.

As Detective Wisler confronted [redacted] would not comply with his commands and reached under his shirt and into his waistband. As he reached into his waistband, he "bladed" his body in a way that made Detective Wisler believe he had a weapon. Detective Wisler, fearing for his safety, his partners' safety and the safety of the community at large, fired his duty weapon three (3) times at [redacted] an attempt to subdue the threat.

Under the described circumstances, Detective Wisler had a reasonable belief that his life, the lives of his fellow police officers and the community, were in immediate danger. Detective Wisler reacted reasonably and within Department Policy when he fired his duty weapon in order to protect his own life, other police officers and the community. I find Detective Wisler's use of deadly force was justifiable.