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Chief William Lansdowne
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Non-fatal shooting of Curtis Allen Brown on September 4, 2007, by San Diego Police Officer Randy Burgess; San Diego Police Department case numbers 07-52993, 52995 and 52996; DA Special Operations case number 07-103PS; Deputy District Attorney assigned: A. Craig Rooten

Dear Chief Lansdowne:

We have reviewed the reports and other materials submitted by your department concerning the non-fatal shooting of Curtis Allen Brown by Officer Randy Burgess on September 4, 2007. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators. This case was originally presented to our Family Protection Division for prosecution of Mr. Brown on September 7, 2007.

Persons Involved
Curtis Allen Brown, age 44 at the time of this incident, was separated from his wife and living with his brother.

Officer Randy Burgess was assigned to the Canine Unit.

Background
On July 30, 2007, Mrs. Brown filed a domestic violence report against her husband. On August 9, 2007, Mrs. Brown called police and reported that her husband had beaten, choked and threatened to kill her after she told him she wanted a divorce. Mr. Brown was arrested on that occasion for Spousal Abuse. On August 10, 2007, he posted a $75,000 bond and was released from jail. On August 13, 2007, Mrs. Brown obtained a Temporary Restraining Order against Mr. Brown. Mr. Brown was arraigned on the spousal abuse case on August 20, 2007, and a readiness conference was scheduled for October 12, 2007.

Shooting Incident

The reports indicate that on September 4, 2007, shortly before 9:00 p.m., Mr. Brown entered his wife's apartment on Bear River Row by breaking and climbing through a rear window. Once inside, Mr. Brown forced her to leave at gunpoint, holding her in a headlock and dragging her through the apartment complex. Neighbors witnessed these events. They called police and tried to help Mrs. Brown. However, Mr. Brown pointed his handgun at them and told them to mind their own business. He dragged his wife to a secluded area inside the complex where he shot and killed her, and then shot himself in the chest. He then used a cell phone to call his brother and told him, "I just killed Lynn and I shot myself. I'm going to die."

Uniformed officers, including Officers Randy Burgess, Akaan Thomas, and Richard Hinds, responded to the call. Witnesses directed the officers to a pedestrian walkway where they reported they had last seen the armed man firing a gun towards the ground where his wife was laying, and then pointing the gun at his own chest and shooting himself.

As the three officers searched the walkway, they came upon the bodies of a man and a woman on the ground. As the officers approached, with Officer Burgess in front, Mr. Brown rose up to a seated position, pointed his revolver at Officer Burgess and yelled, "Motherfucker!"

Officer Burgess responded by firing his handgun at Mr. Brown, striking him in the left arm, shoulder, and leg. Mr. Brown was arrested and transported to Scripps Mercy Hospital for treatment. Mrs. Brown was dead, having sustained gunshot wounds inflicted by her husband to her head, chest, shoulder and abdomen.

In a later interview, Officer Burgess said that after he arrived at the apartment complex he heard four or five slow, deliberate gunshots. After parking his car, a witness pointed out where the gunshots came from. Another witness told the officers a man and a woman were lying on the sidewalk. Officer Burgess said he observed that both people were bleeding and not moving. He said that when he shined his flashlight on the male, "he sat up and pulled a big handgun out and pointed it at me . . . I fired five or six rounds at him." Officer Burgess further stated, "I believed he was firing at me. He had brought up a large revolver. I believed I was going to be killed. I had no place to go; he surprised me."

Investigation

Physical evidence at the scene revealed that Officer Burgess fired four shots.

Mr. Brown was armed with a Colt Python .357 caliber blue steel revolver. The bullets recovered from Mrs. Brown's body during her autopsy were determined to have been fired by this weapon.

On September 7, 2007, Mr. Brown was charged with Murder, Assault with a Deadly Weapon, Criminal Threats and Possession of a Firearm in violation of a Restraining Order. On March 13, 2008, he pled guilty to first degree murder. On April 11, 2008, he was sentenced to 75 years to life in state prison.

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. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

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 end his effort to make an arrest because of that person's resistance.

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.

Conclusions

In this case, Officer Burgess was confronted by an individual who pointed a firearm at him. He was not required to wait and see if Mr. Brown would actually fire at him before responding with deadly force. Therefore, we conclude that Officer Burgess's use of deadly force was justified under the circumstances confronting him, and he bears no criminal liability for his actions.

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

Sincerely,

BONNIE M. DUMANIS
District Attorney

By: _____
RICHARD MONROY
Deputy District Attorney
Chief, Special Operations

BMD:jh
Cc: Captain Jim Collins