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September 18, 2008

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

Re: Fatal shooting of Alexander James Culley on May 30, 2008, by San Diego Police Officer Javier Carranza; San Diego Police Department Case No. 08-029729; DA Special Operations Case No. 08-051PS; Deputy District Attorney Assigned: A. Craig Rooten

Dear Chief Lansdowne:

We have reviewed the reports and other materials compiled by your department concerning the fatal shooting of Alexander James Culley by the above-named officer on May 30, 2008. Your department presented this case to us on July 15, 2008. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved

Alexander James Culley was 23 years old. He lived on A Street in San Diego with his girlfriend. In later interviews his mother and girlfriend said he had a history of mental illness. The girlfriend said he had been diagnosed as bi-polar, but had refused to take any medication since his 18th birthday. She also said he had previously threatened to commit suicide.

Officers Javier Carranza was assigned to Central Division.

Background

The reports indicate that on May 30, 2008, shortly after 10:00 p.m., Officer Jeff Swett responded to a domestic disturbance call at Mr. Culley's and his girlfriend's apartment located in the 2600 block of A Street. A neighbor had called police when she heard the girlfriend screaming for someone to call 911. By the time Officer Swett arrived Mr. Culley had left the residence.

The girlfriend told Officer Swett that she had broken up with Mr. Culley the night before. She went to bed and when she woke up in the morning he was gone. When he returned to the residence at about 10:00 p.m., she said he had been drinking. She said Mr. Culley became violent, breaking furniture and grabbing her by the throat. Mr. Culley left the residence, and she locked the apartment door. He returned a few minutes later, and when she refused to let him in he kicked the door open. Mr. Culley grabbed her by the throat and threw her down on the floor.

The girlfriend said Mr. Culley got his black metal BB pistol and left. A neighbor later reported seeing Mr. Culley leaving the apartment with a handgun.

While the girlfriend was talking to Officer Swett, Mr. Culley called her on her cell phone. When she told him she was talking to a police officer, Mr. Culley asked to speak to him. During their brief conversation, Officer Swett said Mr. Culley threatened to kill him. Officer Swett encouraged Mr. Culley to return home and turn himself in. Mr. Culley refused and repeated his threat to kill Officer Swett.

After Mr. Culley spoke with Officer Swett Mr. Culley went to the Jaroco Market on 25th Street, arriving at about 10:24 p.m. He pointed his BB gun at the clerk and demanded all the money in the register. The clerk removed the cash drawer from the register, sat it on the counter, and asked Mr. Culley not to shoot him.

Mr. Culley then said, "You know what? I am not here to rob your ass! I just told the pigs I was going to kill their ass and they hung up on me! I don't want your money!" Mr. Culley then walked out the door, holding the gun in his right hand. The clerk activated the silent alarm. This incident was tape recorded by a store camera and was witnessed by several people who called the police.

Shooting Incident

Officer Javier Carranza responded to the radio broadcast of an armed robbery at the Jaroco Market. When he arrived, he saw Mr. Culley, who matched the description of the robbery suspect, walking north on 25th Street. Officer Carranza, who was in uniform, got out of his police car, walked toward Mr. Culley and ordered him to stop. Mr. Culley continued walking eastbound on A Street with Officer Carranza pursuing him. Officer Carranza later told investigators, "We looked at each other so I know he knew I was a police officer."

Officer Carranza ordered Mr. Culley to stop several more times but Mr. Culley continued walking away, increasing his pace. Officer Carranza chased Mr. Culley and closed on him. When Officer Carranza was about ten feet away, Mr. Culley turned towards him. Officer Carranza was then able to see what appeared to be a black gun in Mr. Culley's hand, which Mr. Culley pointed at the officer. Officer Carranza said he feared Mr. Culley was going to shoot him, so he drew his pistol and fired at Mr. Culley, who fell to the ground. Officer Carranza lost his balance and fell to the street, hitting his head on the pavement. Officer Carranza said he got back to his feet and radioed that shots had been fired. Officer Carranza said he then heard Mr. Culley say, "It's not real. It's not real." Officers Frank Caropreso and Kyle Williams arrived at the scene and while giving Mr. Culley first aid heard him say, "I have a death wish."

Mr. Culley sustained one gun shot wound to the lower right abdomen. He was transported to Mercy Hospital where he died shortly after midnight on May 31st.

Additional Investigation
Analysis of the physical evidence at the scene revealed that Officer Carranza fired three rounds at Mr. Culley.

Mr. Culley's Marksman Repeater BB gun was retrieved at the scene. Its appearance resembles a real firearm.

On June 1st an autopsy was performed on Mr. Culley's body by Dr. Craig Nelson, who concluded that Mr. Culley died from a single gunshot wound to the lower right abdominal area. A toxicological examination revealed the presence of a .10 blood alcohol level, marijuana and benzodiazepines (a psychoactive drug) in Mr. Culley's system.

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 actual or apparent 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. 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.]

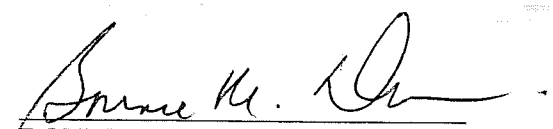
Irrespective of any laws applicable to situations where peace officers use may deadly force in accomplishing their duties, the law of self defense is available to any person who reasonably believes under the circumstances that another person poses a significant threat of great bodily injury or death.

Conclusions

In this case, Officer Carranza was confronted by an individual with a history of psychological problems, who had alcohol, marijuana, and benzodiazepines in his system at the time of the incident. Mr. Culley's actions on the day of the incident, coupled with comments he made to his girlfriend, indicate he may have been intent on having Officer Carranza kill him. His pointing what appeared to be a real firearm at Officer Carranza caused the officer to reasonably fear that he was about to be gravely injured or killed. Officer Carranza was not required to wait and see if Mr. Culley had a real firearm and would attempt to shoot him. If Mr. Culley's weapon was a real firearm, such a delay would have placed the officer in peril. Accordingly, Officer Carranza's use of deadly force under the circumstances confronting him in this instance was justified, 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

BMD:jh
Cc: Captain Cesar Solis