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May 20, 2008

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

Re: Non-fatal shooting of Ms. Katherine Mackey on August 22, 2007, involving San Diego Police Officer Mario Romano; San Diego Police Case #07-050194; DA Special Operations Case No. 07-098PS; Deputy District Attorney Assigned: Richard Monroy

Dear Chief Lansdowne:

We have reviewed the materials compiled by your department concerning the non-fatal officer-involved shooting of Ms. Katherine Mackey on August 22, 2007. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved
Ms. Katherine Mackey is 50 years old, stands about 5' tall, weighs 115 pounds, and resides in San Diego. On the night of this incident Ms. Mackey was driving her Toyota and armed with a black handled Dacor stainless steel knife.

San Diego Police Officer Mario Romano was assigned to routine patrol duties. He was in full uniform, operating a marked San Diego Police car and armed with a department issued Glock .45 caliber semi-automatic pistol.

Shooting Incident
On August 22, 2007 at 11:04 p.m., San Diego Police Officers Mario Romano and Katarina Ketchum were dispatched to a domestic disturbance call at a residence in the 4700 block of Limerick Avenue. Both officers arrived in separate vehicles, parked, exited their cars and made contact with the parties involved in the disturbance. While the officers were standing outside the home, they saw and heard a car approaching at high speed, driving on the wrong side of the road throwing up sparks as it sped by.

Officers Romano and Ketchum saw a car being driven by a woman, the car's front windshield was smashed and it was being driven on the rim as it had no right front tire. Officer Romano noted that the female driver was screaming as she drove past them. He shined his flashlight at the car as it past by and yelled at the driver to slow down. The car continued a short distance down the street, pulled over and stopped.

Officer Romano asked Officer Ketchum to go see what the problem was with the driver while Romano remained with the parties involved in the original disturbance. Officer Ketchum walked down the street, contacted the driver and asked her what was going on. Ms. Mackey got out of the car on the driver's side and began walking in circles in the middle of the road. Officer Ketchum, who was on the passenger side of the car, could see Ms. Mackey holding a knife in her right hand. Officer Ketchum drew her handgun, shouted out to Officer Romano that the woman had a knife and repeatedly ordered Ms. Mackey to drop the weapon. Officer Ketchum heard Ms. Mackey yelling for the officers to shoot her.

When Officer Romano heard Officer Ketchum yelling the woman had a knife, he ran to assist his partner. As Officer Romano approached the woman in the street, he saw she had a knife in her right hand. Officer Romano drew his handgun and ordered the woman to drop the knife. He saw the woman was agitated, flailing her arms and saying, ***"Kill me."*** Officer Romano ordered the woman repeatedly to drop the knife, but the woman told him he better shoot her in the head and kill her because she didn't want to live. Officer Romano estimated he was about ten to twelve feet away from the woman as she approached him with the knife in her hand. Fearing he would be stabbed, Officer Romano fired three times at the woman.

Ms. Mackey fell to the street. She maintained possession of the knife, holding it in her right hand. Officer Romano approached Ms. Mackey and kicked the knife away from her. Emergency medical personnel were summoned, treated Ms. Mackey and then transported her to Sharp Memorial Hospital where she underwent surgery and was later released.

Investigation

The crime scene was secured and an investigation conducted. At the time of the shooting, Ms. Mackey was armed with a black handled Darco knife, nine inches in overall length with a four and one-quarter inch blade. The knife was recovered at the scene in the street.

The investigation revealed Officer Romano fired a total of three rounds at Ms. Mackey from a position in the roadway. Three expended shell casings were recovered at the scene. One of the three rounds fired struck Ms. Mackey in the right thigh which fractured her femur. The bullet was recovered during surgery and placed in evidence. Two rounds missed. One of these two rounds was located in the street. The third round was unaccounted for.

Homicide detectives interviewed civilian witnesses who saw and/or heard portions of these events as they occurred. Mr. Howard was involved in the original disturbance call. He was speaking to Officers Romano and Ketchum when a small car, ***"flew past."*** Howard heard the car dragging metal on the pavement. Howard saw the car stop about 100 feet away from where the officers were standing and Officer Ketchum walk over to investigate. Howard, whose view was obstructed, saw a person get out of the car and heard Officer Ketchum, who was on the passenger side of the car yelling forcefully, ***"Drop the knife!"*** Howard heard the person who got out of the car blatantly yelling at the officers, ***"Do me! Shoot me! Do me!"*** Howard saw Officer Romano run down the street and heard two shots, a pause, and then a third shot.

Mr. Hamilton, a neighbor who lived on the 4700 block of Limerick, looked out his window and saw two police officers talking to a man. He then saw a car with a loud muffler and a female driver speeding down the street. As the car drove by, Hamilton heard a male officer yelling, ***"Pull over! Pull it over!"*** After the car stopped, Hamilton saw a female officer approach the car, illuminate it with her flashlight, and the female driver get out and say over and over again, ***"I'm not going! I'm not going back! I'm not gonna go! Take me out! Just take me out***!"

Hamilton saw the male officer running over to where the woman was in the street. Hamilton saw something long and skinny in the woman's right hand. He heard both officers yelling, ***"Drop it! Drop the weapon! Drop the weapon now! Put it down!"*** Hamilton saw the woman waving around what she had in her hands and walk towards the male officer. Hamilton heard three gunshots. Hamilton said from his position, he saw the woman had something in her hand when she went towards the officer. Hamilton estimated the woman was ***"close"*** and estimated she was between twelve and fifteen feet away from the male officer when the shots were fired. After the woman fell to the ground, Hamilton saw the male officer approach the woman and kick something away from her.

Mr. Ontiveros, also a resident of the 4700 block of Limerick, heard a car speeding by. He looked out his window and saw a female officer running down the street and a small White female cussing at both officers. He saw the male officer in the middle of the street, the female officer on the curb, and both officers backing up as they command the woman to ***"Stop."*** Ontiveros saw the male officer was closest to the woman and estimated the distance between the woman and the male officer at between 10 and 15 yards. Ontiveros heard two or three shots.

Ms. Mackey was interviewed at the hospital. She admitted driving, but said she stopped because she was ***"flagged over"*** by the police. Ms. Mackey admitted she armed herself with a knife and she wanted the officers to kill her. When asked what she was thinking, Ms. Mackey replied, ***"I don't want to go back to jail... I'm driving a car with no license and I'm not going back to jail... I was trying to do something to get them to take me out...I told them to shoot me."*** Ms. Mackey admitted hearing the officers, a male and a female, telling her to drop the knife and remembered walking toward the officer with the knife in her hand. Ms. Mackey said she ***"did not want to go back to jail"*** and she was ***"trying to get them to shoot me."***

Ms. Mackey admitted drinking one can of beer, but denied using any drugs that night. When asked if she was prepared to hurt the officers, Ms. Mackey replied, ***"No, I really didn't think it would come to that"*** but admitted she wanted to die. Ms. Mackey said she was just released from custody after serving 13 days because she failed to appear in court for a prior driving under the influence case. Ms. Mackey's driver's license was suspended by the California Department of Motor Vehicles on July 22, 2006 for having an excessive blood alcohol level. It was suspended again on August 18, 2006 for a drunk driving conviction. She was on court probation until August 17, 2011. On August 13, 2007, only nine days before this incident occurred, Ms. Mackey was released by the Sheriff's Department after serving 14 days in custody for her DUI conviction.

After the shooting, Ms. Mackey was transported to Sharp Memorial Hospital where she received treatment for a single gunshot wound to the right hip. She was later released. Toxicological tests were conducted by Sharp Memorial Hospital staff. Those tests were positive for the presence of alcohol, amphetamines, opiates and benzodiazepines in Ms. Mackey's system.

On April 2, 2008, Ms. Mackey was convicted by her plea of guilty to a violation of P.C. 417(a)(1), Exhibiting a Deadly Weapon, as a misdemeanor.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego County 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.

In this case, uniformed San Diego Police Officer Mario Romano was attempting to handle a domestic violence call when he was confronted by Ms. Mackey who was completely unrelated to the call he was investigating. When Ms. Mackey stopped her car she armed herself with a knife and began to threaten the officers. Ms. Mackey was extremely emotional, moved toward Officer Romano with a knife and did not respond to repeated orders to drop her weapon. In response, Officer Romano fired at Ms. Mackey in self-defense.

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 had reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to affect 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 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 section 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

When we evaluate the circumstance of this incident in conjunction with the appropriate legal standards we conclude that Officer Romano bears no criminal liability for the actions he took during this incident. 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:rm:jh
Cc: Captain Cesar Solis