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September 26, 2008

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

Re: Non-fatal shooting of Isaac Aguilera Edeza on October 29, 2007, by San Diego Police Officer Larry E. Wilson; San Diego Police Department Case No. 07-063996; DA Special Operations Case No. 07-119PS; Deputy District Attorney Assigned: A. Craig Rooten

Dear Chief Lansdowne:

We have reviewed the reports and other materials compiled by your department concerning the non-fatal shooting of Isaac Aguilera Edeza by the above-named officer on October 29, 2007. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators. This case was presented to our office on November 29, 2007.

Persons Involved
Isaac Aguilera Edeza was 28 years old. At the time of this incident he was on parole from the California Department of Corrections and was a parolee-at-large.

San Diego Police Officer Larry E. Wilson was assigned to Southeastern patrol.

Background
On September 13, 2007, Mr. Edeza and a female companion committed an armed robbery and carjacking in National City. On October 24, 2007, the companion stole a 2008 Ford Mustang in Spring Valley.

On October 29, 2007, Officer Gerardo Serrano was on routine patrol when he saw two women, Mr. Edeza's companion and another woman, fighting in front of a liquor store in the 2300 block of Reo Drive. Officer Serrano called for assistance and parked his patrol car behind the previously stolen Mustang. Mr. Edeza was sitting in the front driver's seat of the stolen Mustang as Officer Serrano, who was unaware that the car was stolen, approached the two women as they fought.

Officer Serrano ordered the two women to stop fighting. The women split up and the woman who had been with Mr. Edeza during the October 29 robbery walked toward the liquor store. The other woman walked to the passenger side of the Mustang, opened the door, leaned inside,

and began talking with Mr. Edeza. Officer Serrano saw her hand something to Mr. Edeza. When Officer Serrano told her to sit down, Mr. Edeza got out of the car and ran north through the parking lot. Officer Serrano called for assistance.

Officer Larry Wilson heard Serrano's radio broadcast for assistance and responded. When he arrived a witness told him Mr. Edeza had run into a bakery just north of the liquor store.

Shooting Incident

As Officer Wilson approached the bakery, he saw a man and a woman walking out. Officer Wilson saw the woman point toward the shop. She looked very frightened to Officer Wilson. Officer Wilson then drew his handgun and entered the bakery.

While walking through the bakery, Officer Wilson saw Mr. Edeza in the back of the store in the kitchen area. Officer Wilson gave Mr. Edeza an order to come out and show himself. When Mr. Edeza was about fifteen feet away, Officer Wilson pointed his gun at him and ordered him to the ground, but Mr. Edeza did not comply, staring at the officer and appearing to be confused. Officer Wilson again ordered Mr. Edeza to the ground, but Mr. Edeza continued to advance. Officer Wilson pointed his gun at Mr. Edeza and yelled, "Get on the ground! Don't make me shoot you!"

As Mr. Edza got closer, Officer Wilson kicked at him. Mr. Edeza stepped back and then came back towards Officer Wilson a second time. Officer Wilson kicked Mr. Edeza again, but Mr. Edeza continued to advance toward the officer in the confined area of the kitchen. When Mr. Edeza turned to his right while Officer Wilson was retreating and turning, the officer fired a shot at Mr. Edeza, which struck him in the right side of his back. Mr. Edeza yelled, ran out the front door of the bakery and disappeared into the neighborhood east of the store.

At a preliminary hearing held on December 21, 2007, Officer Wilson testified about his decision to shoot Mr. Edeza: "He started to walk toward me, and I ordered him to stop. I ordered him to get on the ground. I didn't know what he had. I could not see his back. I didn't know what was behind him . . . He was just intense, intently staring at he, taking steps toward me saying 'What? What?' I started to become very concerned. . . . All the alerts going off in my head . . . Why is he walking toward me? Why isn't he paying attention to my weapon, and why isn't he paying attention to me? . . . I believed he wanted to reach me, that he was buying time to get to me. . . . He actually reached near me and I kicked him. . . . He continued toward me again, and I kicked him a second time. After the second time, he was literally on me. . . . His body hit my body. I thought I felt his hand on my gun. I'm not 100 percent sure. I went to my right as he turned—or went to his right, and I fired my gun. I was really worried about my safety, especially after the second kick and he was on me. [I] fired to protect myself."

Mr. Edeza was located hiding inside a nearby residence where he had barricaded himself in the bathroom. Mr. Edeza told the homeowners he didn't want to go to jail. He was eventually arrested and taken to Mercy Hospital for treatment of a through-and-through gunshot wound to the right lower back.

Investigation

Analysis of the physical evidence at the scene revealed that Officer Wilson fired one round at Mr. Edezaa--one expended shell casing and one projectile were recovered. A loaded .22 caliber handgun was found in a powdered milk container located where Mr. Edeza was standing just before he was confronted by Officer Wilson. Bullets from the gun had Mr. Edeza's DNA on them. The keys from the stolen Mustang were retrieved from the top of a bread rack in the bakery kitchen.

A toxicological examination revealed the presence of amphetamines and marijuana in Mr. Edeza's system.

Several witnesses heard or saw portions of the incident. One heard Officer Wilson tell Mr. Edeza to get on the ground at least four times. That witness said the officer had a lot of patience and that it would have been very easy for Mr. Edeza to comply. Another heard Officer Wilson ordering Mr. Edeza not to move.

On November 11, 2007, this office charged Mr. Edeza with various offenses including threatening an executive officer. On May 23, 2008, Mr. Edeza pled guilty to armed robbery, auto theft, and threatening an executive officer. On August 19, 2008, Mr. Edeza was sentenced to twelve years in state prison.

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.

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 state the officer need not retreat or end in his efforts to effect 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 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.

Conclusion

In this case, Officer Wilson was confronted by an individual who was under the influence of methamphetamine and marijuana, was on parole, and who had recently committed serious crimes. When Officer Wilson ordered Mr. Edeza to the ground, Mr. Edeza reacted in an aggressive and threatening manner, advancing on the officer in the confined area of the bakery kitchen. After reviewing the facts and circumstances surrounding this incident, as well as Officer Wilson's statements and sworn testimony detailing his decision to fire, we conclude that his use of deadly force during this incident was reasonable and justified, and, as a result, 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

RM:jh
Cc: Captain Cesar Solis