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September 23, 2008

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

Re: Non-fatal shooting of Patrick Loren Gautier on January 22, 2008, by San Diego Police Officer Lawrence Adair; San Diego Police Department Case No. 08-004165; DA Special Operations Case No. 08-011PS; 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 Patrick Loren Gautier by the above-named officer on January 22, 2008. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators. Your department presented this case to us for our review on March 26, 2008.

Persons Involved
Patrick Loren Gautier, age 43, lived at the Travelodge Motel at 5090 El Cajon Boulevard.

Officer Lawrence Adair was assigned to patrol duties and was a canine handler. He was accompanied by "Jake," a two year-old German Shepherd.

Background
The reports indicate that shortly before 9:00 p.m. on January 22, 2008, the manager of the Travelodge called your department to report a man threatening tenants and brandishing a knife. Numerous officers, including Officer Adair and "Jake," responded to the call. As the officers approached the motel, they saw Mr. Gautier standing on the third floor exterior walkway, armed with a knife, jabbing it in the air. Mr. Gautier saw the uniformed officers approaching and yelled an obscenity at them.

Shooting
As Mr. Gautier began walking north along the exterior walkway, some of the officers began walking up the south staircase to the third floor to apprehend him. When Mr. Gautier reached the middle of the third story walkway, an officer standing in the parking lot below fired a less-than-lethal bean bag round at him. This round struck Mr. Gautier in the chest and knocked him

down. Still armed with the knife, he began crawling south along the walkway towards the approaching officers. The officer in the parking lot then fired a second less-than-lethal bean bag round that struck Mr. Gautier in the buttocks.

Officer Adair and "Jake" were in the lead position as they approached Mr. Gautier after the bean bags were fired. Officer Adair could see Mr. Gautier was still armed with the knife and ordered him to drop it and show his hands. When Mr. Gautier stood up, he charged toward Officer Adair, closing from a distance of about 15 feet. Officer Adair released his dog "Jake" and fired one round from his .45 caliber semi-automatic pistol at Mr. Gautier. During a later interview Officer Adair stated: "He was charging me with a knife. A knife that looked to me to be absolutely enormous. That is why I sent my dog and fired at the same time. That guy was scary, I was terrified. The guy was coming hell bent on killing me. I have no doubt in my mind he was coming to kill me."

The police dog "Jake" began biting Mr. Gautier, who stabbed the dog several times. Mr. Gautier fell to the walkway, was arrested, and was transported to Scripps Mercy Hospital for treatment of his injuries. "Jake" was transported to Mission Valley Veterinarian Hospital for treatment of stab wounds.

Additional Investigation

One expended .45 shell casing, two bean bags, two expended less than lethal bean bag shell casings and one .45 caliber bullet casing were recovered at the scene. An expended .45 caliber round was located on the third floor walkway near where Mr. Gautier had been standing. The bullet was tested for Mr. Gautier's DNA, which was found on the projectile, indicating it had struck Mr. Gautier. Initially it had been thought that Officer Adair's shot had missed Mr. Gautier since his treating doctors were unable to identify a gunshot wound on his body. After reviewing Mr. Gautier's injuries, however, it is most likely he was shot in the wrist.

Mr. Gautier's knife was found on the walkway where Mr. Gautier fell. It was described as an Old Timer folding buck knife with a wooden handle and steel blade. When found, the knife was in an open condition. It was 8 ½ inches in length with a 4" blade.

A toxicological examination revealed that at the time Mr. Gautier was admitted to the hospital he had a blood alcohol level of .23 %.

We were able to review a video tape recording of the incident since a police helicopter video taped it as it occurred.

Mr. Gautier gave a statement after he was advised of his rights and waived them. Mr. Gautier said he began drinking the day before the incident because he was depressed over the recent death of his brother. He began drinking "Bloody Marys" at a local bar, was pretty drunk when he left the bar, and drank a 12 pack of beer after he returned home.

On January 24, 2008, this office charged Mr. Gautier with various offenses related to the incident.

On April 28, 2008, he pled guilty to Assault with a Deadly Weapon on a Peace Officer. His sentencing is scheduled for December 15, 2008.

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 states the officer need not retreat or end his effort to affect 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 Adair was trying to take a highly intoxicated, knife-wielding suspect into custody. When Mr. Gautier charged at Officer Adair, threatening him with a knife, Officer Adair was entitled to use deadly force to protect himself from the assault. To have refrained

from shooting at Mr. Gautier might have resulted in serious bodily injury to or the death of Officer Adair. Accordingly, Officer Adair's use of deadly force under these circumstances was justified and he bears no criminal liability for his actions.

We anticipate no further action in this matter other than the continuing prosecution of Mr. Gautier.

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 Division

RM:jh
Cc: Captain Cesar Solis