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September 18, 2008

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

Re: Fatal shooting of Mr. Dario Amador Martinez III on August 7, 2007, by San Diego Police Detectives William Pettus and David Highsmith; San Diego Police Case No. 07-047001; DA Special Operations Case No. 07-092PS; Deputy District Attorney Assigned: Richard Monroy

Dear Chief Lansdowne:

We have reviewed the reports and other materials compiled by your department's Homicide Division concerning the fatal shooting of Mr. Dario Amador Martinez III, by the above-named officers on August 7, 2007. Your department presented this case to us on December 7, 2007 A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved
Mr. Dario Amador Martinez III was 28 years old at the time of this incident. Mr. Martinez was wanted for the attempted murder of Adrian Ceniceros. There was also a felony no bail warrant outstanding for Mr. Martinez's arrest charging him with Possession of a Controlled Substance and Resisting Arrest.

San Diego Police Officer Matthew Dobbs was in uniform, driving a marked San Diego patrol car. San Diego Police Detectives David Highsmith and William Pettus were teamed together, driving an unmarked detective car and wearing street clothes

Background Information
Mr. Dario Martinez was wanted in connection with the attempted murder of Adrian Ceniceros that had occurred on August 4, 2007.

Detectives learned Mr. Martinez was driving a Toyota Camry and found it parked at an apartment complex at 6675 Linda Vista Road in San Diego. On August 7, 2008, a team of law enforcement personnel set up surveillance on the apartment complex. During the surveillance, Officer Dobbs saw a man matching the description of Mr. Martinez walking back and forth from the complex to the Toyota.

Shooting Incident
At 6:45 p.m., Mr. Martinez exited the complex and walked towards the car. Detective Faubel positively identified Mr. Martinez as the suspect they were looking for and instructed officers to move in and make the arrest. As the officers approached, Mr. Martinez spotted them, turned and ran back towards the front entrance of the complex.

Officer Dobbs drove up to the front of the complex in a marked police car and saw Mr. Martinez running back towards the entryway. As Dobbs was getting out of his car, Dobbs saw Mr. Martinez reach into his waistband, pull out a handgun and turn towards Dobbs with the gun in his hand. Officer Dobbs drew his weapon and fired twice at Mr. Martinez. Those two shots missed.

Radio broadcasts alerted other officers involved in the surveillance that Mr. Martinez had been spotted, that he ran back into the apartment complex and that shots had been fired. Detectives Highsmith and Pettus were in an alley behind the complex and heard the radio broadcasts. They both ran into the courtyard from the alley.

As Detectives Highsmith and Pettus ran into the complex they confronted Mr. Martinez running towards them. Mr. Martinez began firing at the two officers from about fifteen feet away. Detective Pettus fell to the ground suffering from a gunshot wound to his abdomen.

Detective Highsmith slipped as he ran and also fell to the ground. Detectives Highsmith and Pettus both returned fire, shooting multiple rounds as they were falling down and while they were lying on the ground. Mr. Martinez was fatally wounded and died at the scene.

Statement of Officer Matthew Dobbs
Officer Dobbs supplied a voluntary and recorded statement. Dobbs was assigned to assist with the arrest of Mr. Martinez and took up a position around the corner from the complex. When Dobbs left his patrol car, he saw Mr. Martinez run back towards the front of the complex, being chased by a detective. As Mr. Martinez ran, Dobbs saw him pull up the football jersey he was wearing and took out a handgun that was concealed in his waistband.

Dobbs saw Mr. Martinez turn towards him and fearing Mr. Martinez was going to shoot; Dobbs drew his weapon and fired twice at Mr. Martinez. Seconds later Dobbs heard additional gunfire coming from inside the complex.

Statement of Detective David Highsmith
Detective Highsmith also supplied a voluntary and recorded statement. Highsmith said he and Detective Pettus were two of the detectives assigned to assist with the surveillance and arrest of Mr. Martinez. Highsmith said he and Pettus approached the complex from the alley. As they were getting out of their car they heard ***"Shots fired"*** being broadcast over the radio. Highsmith said he and Pettus ran into the courtyard and saw Mr. Martinez running towards them holding a

gun. As soon as Mr. Martinez saw them, Mr. Martinez started shooting. Highsmith said, ***"He just opened up on us. As soon as he saw us, he fired at us."*** Highsmith recalled Mr. Martinez firing at least twice.

Highsmith said he was lying flat on his back on the ground when he saw Mr. Martinez turn his back towards them as if he was going to run out of the complex. Fearing Mr. Martinez would escape and continue his violent behavior; Highsmith continued firing until Mr. Martinez fell to the ground.

Statement of Detective William Pettus
Detective Pettus also supplied a voluntary and recorded statement to investigators. Pettus said he and Detective Highsmith were two of the officers assigned to assist with the surveillance and arrest of Mr. Martinez. As Pettus and Highsmith got out of their car, Pettus heard Detective Faubel radio, ***"Shots fired"*** and that Mr. Martinez was running through the courtyard toward the rear of the complex. Pettus said he and Highsmith ran through the breezeway into the courtyard. Pettus said, ***"As we were going through the tunnel, we saw Dario coming right at us. As soon as we saw him, he started shooting at us!"***

Pettus didn't recall how many shots Mr. Martinez fired, but he could see smoke and hear pops coming from the gun. Pettus said Mr. Martinez was able to fire several times at himself and Detective Highsmith before they were able to return fire. Pettus said he continued firing at Mr. Martinez as both of them fell to the ground. He estimated the distance between them at ten to fifteen feet.

During this exchange of gunfire, Detective Pettus was shot. Pettus said he felt a massive amount of pain in his right side, an incredible amount of pain in his back, that his right leg was useless and that he could hardly move as he lay on the ground. Pettus told Highsmith, ***"Dave. I need you to get me an ambulance. I've been shot!"***

Witness Statements
Detective Faubel was able to positively identify Mr. Martinez when he exited the apartment complex. As Faubel and the other officers were moving in to make the arrest, Faubel saw Mr. Martinez pull a gun out from his waistband with his right hand and turn towards Officer Dobbs.

One apartment resident was inside her apartment when she heard gunshots. She looked out her window and saw a Hispanic male running through the complex pointing a handgun over his shoulder.

Two other witnesses were moving a stove into an apartment when they saw a male with a gun in his hand running into the complex from the Linda Vista entrance. They saw officers chasing the man and heard gunfire. One of the witnesses knew the man as ***"Dario"*** and saw him running through the complex holding a gun up in the air. That witness heard more gunfire and later saw ***"Dario"*** lying on the ground in the complex.

Investigation
The crime scene was secured and a scene investigation was completed. The investigation revealed that Officers Dobbs, and Detectives Pettus and Highsmith fired a total of sixteen (16) shots. Officer Dobbs fired two (2) shots, Detective Highsmith fired eight (8) shots and Detective Pettus fired six (6) shots. The two shots fired by Officer Dobbs missed and struck the front entry doors of the complex. One round was located in the wall and the second round shattered and ricocheted. Two (2) expended Federal .45 caliber shell casings were located on the ground behind Officer Dobb's patrol car. A total of eight (8) expended .40 Smith and Wesson shell casings and six (6) expended .9 mm Luger shell casings were recovered in the area of the courtyard and breezeway where the gun battle between the officers and Mr. Martinez took place.

Mr. Martinez's weapon, a Smith & Wesson .38 caliber revolver, was recovered on the ground next to his body. The cylinder contained two (2) expended .38 shell casings, three (3) live .38 rounds and one empty chamber. Examination of the gun revealed the presence of cylinder halos indicating it had been recently fired. DNA found on the gun matched Mr. Martinez's DNA.

The bullet that struck Detective Pettus in the abdomen exited his back and was found in his clothing. The bullet was consistent with a .38 caliber round as well as having been fired from a Smith and Wesson revolver. The second shot fired at the detectives by Mr. Martinez missed and struck an east exterior wall.

Autopsy
On August 8, 2007, Deputy Medical Examiner Dr. Othon J. Mena performed an autopsy on Mr. Martinez. Dr. Mena determined the cause of death were multiple gunshot wounds of the head, torso, and upper and lower extremities. Mr. Martinez sustained a total of thirteen (13) gunshot wounds. The manner of death was homicide.

Mr. Martinez's body and clothing were also examined at autopsy. Found concealed inside the front of his pants and clipped to his belt was a Bianchi soft leather holster with a belt clip. Found in Mr. Martinez's right front pants pocket was a baggie that contained a quarter gram of methamphetamine.

Toxicological tests of Mr. Martinez's blood was positive for the presence of Methamphetamine and Marijuana. The amounts of the drugs present in Mr. Martinez's system were consistent with the use of those drugs.

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. 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 deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Conclusions

During this incident, both uniformed and plain clothed officers tried to apprehend Mr. Martinez in connection with the attempted murder of Mr. Ceniceros.

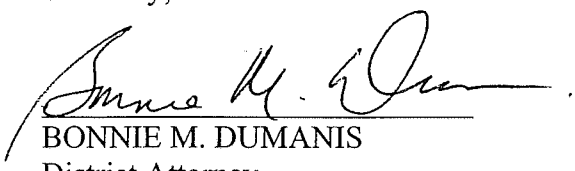
When the officers tried to arrest Mr. Martinez, he drew a handgun from his waistband and pointed it at them. In response, Officer Dobbs drew his weapon and fired twice at Mr. Martinez. Those shots missed and Mr. Martinez ran back into the courtyard of an apartment complex. Detectives Pettus and Highsmith ran to assist and entered the complex through an alley breezeway. The two detectives confronted Mr. Martinez in the breezeway and a gun battle ensued during which Detective Pettus was wounded and Mr. Martinez was killed.

Our review of this case reveals Officers Dobbs, Pettus and Highsmith, all of whom were attempting to arrest Mr. Martinez for a violent crime, fired at Mr. Martinez after he resisted arrest and drew a firearm he had concealed in his waistband.

Based on the totality of the circumstances in this incident, it is clear Officer Dobbs fired in self-defense and Detectives Pettus and Highsmith fired in self-defense and in defense of one another. As a result, San Diego Police Officer Matthew Dobbs and Detectives William Pettus and David Highsmith bear no criminal liability for their 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