JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

http://www.sandiegoda.com

November 4, 2008

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

Re: Fatal shooting of Gregory Allen Mudd on November 23, 2007, by San Diego Police Sergeant Jeffrey Sterling; San Diego Police Department Case No. 07-068833; DA Special Operations Case No. 07-127PS; 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 Gregory Allen Mudd by the above-named officer on November 23, 2007. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators. Your department presented this case to our office on April 29, 2008.

Persons Involved
Gregory Allen Mudd was 30 years old and lived in San Diego. Sergeant Jeffrey Sterling was assigned to Mid-City Division.

Background
The reports indicate that Mr. Mudd and his girlfriend had had a tumultuous relationship since September 2007. In early November, Mr. Mudd's girlfriend obtained an Emergency Protective Order which restrained Mr. Mudd from contacting her. After Mr. Mudd was served with the protective order, he continued to contact her.

On November 5, 2007, the Sheriff's Department was notified that Mr. Mudd had violated the protective order and he was arrested.

On November 23, 2007, at about 3:00 a.m., Mr. Mudd went to his girlfriend's home in San Marcos, kidnapped her, and during his assault choked her until she passed out. He drove her to several locations where he sexually abused and raped her. Mr. Mudd then drove her to a Chevron Station on University Avenue where he allowed her to use the restroom. She was able to alert the gas station clerk that she needed help. Your department received a 911 call from the clerk, who reported that a man was hitting a woman.

After Mr. Mudd and his girlfriend left the store, the clerk described Mr. Mudd's clothing and car to your dispatcher, adding that, "The lady looks really beat up." Before Mr. Mudd could leave the gas station parking lot, patrol units arrived. The officers ordered Mr. Mudd to stop, but he fled in his Honda, crashed into a parked car, and left his girlfriend behind.

Patrol cars chased Mr. Mudd on surface streets and area freeways at speeds estimated at times to exceed 100 miles per hour. He drove recklessly, hitting at least one other vehicle. During the pursuit, an officer contacted Mr. Mudd's girlfriend at the Chevron station and learned from her that she had been kidnapped. The pursuing officers were informed by radio that the driver of the Honda was wanted for kidnapping and domestic violence.

News Helicopter Video Recording

A news helicopter overhead recorded these events as they unfolded. The news video depicts Mr. Mudd driving very dangerously and at high speed north on Interstates 5 and 15 while being pursued by SDPD patrol cars. Mr. Mudd is seen weaving through traffic, almost sideswiping a car, and nearly losing control of his car as he drifted off the freeway and onto the shoulder. His speed was estimated at over 100 MPH. After exiting the freeway at University Avenue, Mr. Mudd drove the wrong way into oncoming traffic nearly tipping over as he crashed into an uninvolved motorist. He fled south on 41st Street driving off the roadway into a private yard and then ran into a tree.

One police car pulled in and stopped behind Mr. Mudd's car. The officer exited the car and approached Mr. Mudd's driver's door. Mr. Mudd reversed his car and rammed into the front end of the patrol car, physically forcing the patrol car back into the street. Mr. Mudd then drove forward and reversed again, ramming into the patrol car a second time. As Mr. Mudd drove forward again, the officer at the driver's door fell backwards into the street. Sergeant Sterling ran from his patrol car up to the passenger door of Mr. Mudd's car. When Mr. Mudd pulled his car forward again, Sergeant Sterling fired a volley of several shots at Mr. Mudd from the passenger side of the car. The officer who fell backwards got back to his feet, drew his weapon and took a two handed shooting stance at the rear of Mr. Mudd's car.

Two additional officers approached Mr. Mudd's car on the passenger side. With three officers now on foot on the right of the car and one officer on foot on the left side of the car, the car's back up lights came on as Mr. Mudd shifted the car into reverse. Mr. Mudd then backed up across the front yard, the sidewalk and into the street. As the car backed up, Sergeant Sterling fired a second volley of shots at Mr. Mudd from the passenger side of the car. Mr. Mudd then rammed his car again into the front end of the police car parked behind him, then angled his car to the right and rammed into the front end of a second patrol car parked in the street.

A total of seven uniformed officers now had their weapons drawn and pointed at Mr. Mudd who then shifted into drive, angled his car to the right and drove back up onto the sidewalk. Sergeant Sterling fired a final shot as Mr. Mudd accelerated forward back up onto the sidewalk. Mr. Mudd then accelerated along the sidewalk for several hundred feet before crashing into a tree.

Shooting Incident

Officer Colin Forsey pulled in behind Mr. Mudd's car. He got out of his patrol car and approached Mr. Mudd's driver's door. Mr. Mudd backed up and rammed into the front of Officer Forsey's patrol car, pushing it back into the street. As Mr. Mudd drove forward, Officer Forsey fell backwards into the street. Sergeant Sterling, who had approached Mr. Mudd's passenger door, fired several shots at Mr. Mudd. Sergeant Sterling said, "That's when I saw Officer Forsey go down. I didn't know if the suspect had hit him [with the car] or if he [Officer Forsey] was jumping back to get out of the way." Sergeant Sterling said he saw the car back up, ram the patrol car, and drive forward and backward trying to free itself. He said he ordered the driver to show his hands and stop. When Sergeant Sterling saw the driver change directions and angle the car towards where Officer Forsey had fallen to the ground, he said he began firing through the Honda's right rear window from a position a few feet away from the car.

Officer Forsey got to his feet, drew his weapon, and positioned himself at the rear of Mr. Mudd's car. Sergeant Sterling said he fired his second volley of shots after the car came back forwards and then began reversing a second time. Sergeant Sterling said at one point there was a pause and he told the driver to put his hands in the air. When the car stopped, Sergeant Sterling said he saw that the driver was shifting gears trying to get the car into drive. Sergeant Sterling said he ran forward and tried a "head shot" to force the driver to stop. Mr. Mudd then accelerated along the sidewalk for several hundred feet before crashing into a tree.

Sergeant Sterling said he didn't know where Officer Forsey or the other officers were as he fired. He said, "I fired to stop the suspect from running over all three of these officers."

Mr. Mudd received emergency medical treatment at the scene and was transported to Mercy Hospital, where he died shortly after 7:00 a.m. the next morning.

Mr. Mudd's girlfriend's statement

Mr. Mudd's girlfriend said they started dating about four months ago. After two months, she no longer wanted to see Mr. Mudd and tried breaking off the relationship. She said Mr. Mudd told her, ***"Over my dead body. It's over when I say its over."***

At 3:00 a.m. on the morning of this incident, she heard a knock at her door. When she opened the door, Mr. Mudd grabbed her by her hair, pulled her outside and began choking her until she passed out. When she regained consciousness, Mr. Mudd was on top of her. She screamed and Mr. Mudd forced her into his car and drove off. Mr. Mudd drove south on I-15 and exited on University and went to the Chevron Station because she told him she needed to use the restroom. When she entered the Chevron Station she signaled the clerk to call the police and then tried to delay until the police arrived.

Investigation

Examination of the scene and the physical evidence revealed that Sergeant Sterling fired thirteen rounds from his .9 mm semi-automatic pistol during the incident.

Photos taken of Mr. Mudd's girlfriend's injuries revealed she had hemorrhaging in both eyes, and bruising on her neck, both arms, both legs and both breasts.

On November 24, 2007, Deputy Medical Examiner Dr. Jonathan R. Lucas performed an autopsy on Mr. Mudd's body. The autopsy revealed that Mr. Mudd suffered numerous gunshot wounds and died as the result of a gunshot wound to the chest. A toxicological examination revealed a blood alcohol concentration of .14 %.

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 has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end in his effort to effect 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.]

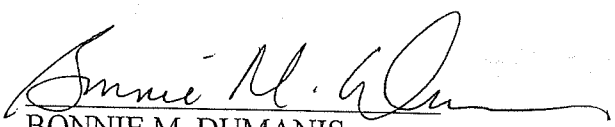
Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the laws pertaining to self-defense and defense of another are available to any person. Homicide is justifiable in accordance with Penal Code section 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Conclusions

In this case, Sergeant Sterling was confronted by a fleeing, violent felon who was attempting to use his car in a dangerous manner as a means of escaping capture by police. Sergeant Sterling reasonably concluded that he and his fellow officers, particularly Officer Forsey, were in danger of being killed or seriously injured as a result of Mr. Mudd's actions. Given the facts and circumstances surrounding this incident, Sergeant Sterling's use of deadly force was reasonable and 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 Jim Collins