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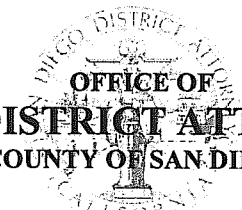

OFFICE OF
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November 19, 2009

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

Re: Fatal shooting of Mr. Lonnie Ray Glasco on March 24, 2009 by San Diego Police Officers Kelly Copeland, Jared Wilson and Kelly Besker. SDPD Case # 09-015767; DA Special Operations Case No. 09-055PS; Deputy District Attorney Assigned: Damon Mosler

Dear Chief Lansdowne:

We've reviewed the reports and other materials compiled by your department's Homicide Division concerning the fatal shooting of Mr. Lonnie Ray Glasco by Officers Copeland, Wilson and Besker on March 24, 2009. A District Attorney Investigator responded to the scene and was briefed by your investigators. This case was presented to the DA's Office for review on October 1, 2009.

Persons Involved
Mr. Glasco was 47 years-old, resided in El Cajon and was armed with a Smith and Wesson Model 19 .357 Magnum revolver.

Officers Copeland, Wilson and Besker were in full uniform and assigned to patrol duties in Central Division. Officer Copeland was armed with a Remington .12 gauge pump shotgun. Officers Wilson and Besker were armed with Colt .223 AR-15 rifles.

Background
Shortly before midnight on March 23, 2009, Mr. Glasco talked with other Metropolitan Transit System employees about his job status and his personal life. Mr. Glasco made several incoherent statements stating he thought he was going to be fired that night by his supervisor and that his girlfriend was involved with another employee. MTS employees said Mr. Glasco appeared to be in a trance that night.

At about 2:15 a.m. on March 24, 2009, Mr. Glasco went into the MTS office, produced a handgun and told those present that no one was leaving. He then shot and wounded MTS employee, 55 year–old Michael Stevenson once in the head. Mr. Glasco then left the office and went to the parking lot where he murdered MTS Foreman, 37 year–old Benjamin Mwangi, shooting him twice, once in the head and once in the pelvis. Other MTS employees saw what was happening, called police and warned other employees to leave.

Police Shooting Incident
Responding to the emergency 911 calls placed that night by the MTS employees were several uniformed San Diego Police Officers including Officers Kelly Copeland, Jared Wilson and Kelly Besker. They arrived within a minute of the call and found 37 year-old MTS Foreman, Mr. Benjamin Mwangi, lying dead in the parking lot from gunshot wounds and MTS mechanic, 55 year-old Michael Stevenson, in the office suffering from a gunshot wound to his head. Mr. Stevenson was transported to UCSD hospital for treatment, but later died that same morning.

About three minutes later, the officers located the suspect, Mr. Glasco, standing near the service bays holding a handgun in one hand and making a cellular telephone call with his other hand. For about four minutes, several officers repeatedly ordered Mr. Glasco to drop the gun. He eventually lowered his cell phone to his side, raised the gun and pointed it towards the officers. In response, Officers Copeland, Wilson and Besker all fired their weapons at Mr. Glasco killing him at the scene.

Officers' Statements
Officers Copeland, Wilson and Besker supplied voluntary and recorded statements. Officer Copeland said he saw Mr. Glasco holding a cell phone in one hand and a gun in the other and, ***"He was talking on his cell phone when I arrived... I would yell, at least three times for the suspect to drop his gun. There were several other officers yelling for him to drop the gun as well... The suspect hung up the cell phone and he kind of put it down at his side... At the moment he started to raise his gun, it got to about mid body, I heard a crack of a gun... I thought that he was shooting... I thought he was firing his gun so I fired two rounds at the suspect."*** Officer Copeland said after the suspect fell to the ground, he ran up to him and kicked the gun away from him with his right foot.

Officer Besker said after he located the suspect, ***"I could see that he had a cell phone in a hand and he had a handgun down at his side. It was a black revolver... Somebody was giving him repeated orders to drop the gun. It was said multiple times, loudly and in a clear voice. He was not complying... It looked like he was assessing where everybody was... He knew where we were... Eventually he turned toward the direction of Officer Wilson and me... The cell phone came down from the side of his head to the side of his body. Then I saw the handgun come up towards my direction and Officer Wilson's direction. It was a sweeping type of motion... The hand came up and I discharged my firearm at him."***

Officer Wilson said after he arrived, ***"I could see the suspect was a white male... In his right hand I could see a blue revolver and he was talking with his left hand on a black cell phone... I heard him*** (Officer Nigro) ***yelling, Police, drop the gun, drop the gun! I probably heard him yell that ten times. The suspect seemed upset, based on his mannerisms... I yelled myself once for him to drop the gun... He was looking at Officer Nigro originally, then he turned towards me. I saw him raise his gun at me and as soon as he had it up I fired... I fired two rounds... He went down immediately."***

Investigation
The crime scene was secured and a scene investigation was conducted. The investigation revealed that Officers Copeland, Wilson and Besker each fired their weapons twice. Two expended .12 gauge shotgun shells and four expended .223 claiber shell casings were recovered at the scene. The expended shells and casings were located in areas consistent with the officers stated firing positions. The weapon Mr. Glasco was armed with and used to murder both Mr. Mwangi and Mr. Stevenson with was found on the ground lying next to his body. It was loaded with three expended shell casings and three live cartridges.

Autopsy:
On March 25, 2009, Dr. Steven C. Campman from the San Diego County Medical Examiner's Office performed an autopsy on Mr. Glasco. Dr. Campman determined Mr. Glasco sustained multiple gunshot and shotgun wounds to his arms, chest, abdomen, right hand and left thigh. No drugs of abuse were found in his system. The manner of death was homicide.

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.

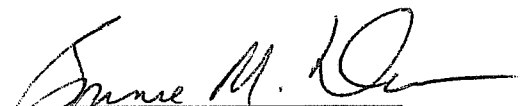
Conclusions

During this incident, Officers Kelly Copeland, Jared Wilson and Kelly Besker all responded to an emergency call of a shooting in progress at the Metropolitan Transit facility located in the 100 block of 16th Street in San Diego. When the officers arrived, they discovered two MTS employees had been shot and mortally wounded by co-worker, Mr. Lonnie Glasco. When the officers confronted Mr. Glasco they ordered him to drop his gun and surrender. When Mr. Glasco refused, raised his gun and pointed it at the officers, they all responded by firing at him.

Based on these circumstances, it's apparent that Officers Copeland, Wilson and Besker all fired in defense of themselves and one another; therefore, they 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
County of San Diego

BMD: vf
cc: Captain Jim Collins