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September 3, 2009

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

Re: Non-fatal shooting of Mr. Jeff Quijano on June 10, 2009 by San Diego Police Detectives Ramon Valentin and Martha Gasca; San Diego Police Department Case No. 09-031002; DA Special Operations Case No. 09-112PS; Deputy District Attorney Assigned: Laura Gunn

Dear Chief Lansdowne:

We have reviewed the reports and materials compiled by your department concerning the non-fatal shooting of Mr. Jeff Quijano by San Diego Police Detectives Ramon Valentin and Martha Gasca on June 10, 2009. A District Attorney Investigator responded to the scene and was briefed by your investigators. This case was presented to our office on July 30, 2009.

Persons Involved
Mr. Jeff Quijano was 21 years old and lived in San Diego at the time of the incident. During the incident he was armed with a Jennings model J-22 .22 caliber semi-automatic handgun.

San Diego Police Detectives Ramon Valentin was assigned to Southeastern Investigations. Detective Martha Gasca was assigned to the Gang Unit. They were attired in casual clothes and operating an unmarked police vehicle while conducting surveillance on an unrelated case. Detective Valentin was armed with a .45 caliber Springfield semi-automatic handgun. Detective Gasca was armed with a .9mm Sig-Sauer semi-automatic handgun.

Background
On June 10, 2009, at approximately 1942 hours, Detectives Gasca, Valentin and Laura Zizzo (of Southeastern Investigations) were conducting surveillance near the area of 40th and Eta Streets. The detectives were in an unmarked police vehicle. Detective Valentin was driving. Detective Zizzo was seated in the right front passenger seat; Detective Gasca was in the right rear passenger seat. The detectives saw a white van rapidly approaching their location through the south alley of 3800 Gamma Street. They noticed a Hispanic female driving the van, and a Hispanic male in the front passenger seat. The occupants of the van made eye contact with the detectives. The driver of the van stopped abruptly, put the van in reverse and then drove through a vacant dirt lot adjacent to where the detectives were located and left the area. Although suspicious of the van occupants' behavior, the detectives stayed to conclude their surveillance and left the area a short time later.

While driving northbound on 40th Street a few minutes later, the detectives saw the white van again. The driver of the van was running stop signs and passing cars in oncoming traffic lanes. The detectives called for a patrol unit to initiate a traffic stop on the van. Detective Valentin followed the van, which turned right into the south alley of 3900 Oceanview Blvd. Detective Valentin followed the van into the alley. As soon as they turned into the alley the detectives saw that the white van had stopped about fifty feet in front of them. A Hispanic male was already standing outside the passenger door of the van, holding a handgun in a two-handed shooting stance. The male began firing at them. A bullet struck the right front windshield of the detectives' vehicle, shattering the glass. Detective Zizzo screamed and fell onto her left side. Thinking that Zizzo had been hit, Detectives Valentin and Gasca returned fire at the suspect.

The male got back into the van and the van left the area at a high rate of speed. The detectives followed the van and maintained sight of it until patrol vehicles and a police helicopter began pursuing. The van crashed into a cement pillar in the median near the I-805 freeway and Palm Avenue. Five suspects were taken into custody, including Mr. Jeff Quijano. Mr. Quijano had a bullet wound to his lower torso and was hospitalized. Detectives Valentin, Zizzo and Gasca identified Quijano as the male who was shooting at them. Detective Zizzo received a small laceration to her forehead. She was not hospitalized.

Investigation

Investigation revealed that a female had reported an armed robbery at approximately 1942 hours, shortly before the shooting. According to the report, three occupants of a white minivan had approached the victim at 3863 Gamma Street and robbed her at knifepoint. One of the robbery suspects had a gun. Fearing for her life, the victim created a ruse by looking down the street and saying "the cops are coming." The suspects got back into the van and sped away through the alley. The detectives who were conducting their surveillance first saw the van as it came down the alley towards them. The robbery victim later identified property that police found inside the van as hers. She also identified Mr. Quijano and two of the other van occupants as persons involved in the robbery.

Reconstruction of the shooting scene by detectives and criminalists established the distance between the suspect van and the detectives' vehicle at the time of the shooting was approximately fifty feet. A total of eighteen gunshots were fired. Seven gunshots were fired from the .22 caliber semi-automatic handgun; eight gunshots were fired by Detective Valentin, and three gunshots were fired by Detective Gasca. Detective Valentin's gunshots were all fired through the front windshield of the officers' vehicle. Detective Gasca fired three rounds out of the open right front passenger window from her position in the right rear passenger seat. Criminalists determined that a bullet fired by Detective Gasca's gun struck Mr. Quijano in the lower torso. One missile from Detective Valentin's gun was found in the suspect van and was believed to have shattered the van's back window. The van's broken glass was found in the alley. Criminalists were able to approximate where both vehicles were located during the shooting from the broken glass and the relative position of the cartridge casings located in the alley. One of the shots Quijano fired struck the detective's windshield directly in front of Detective Zizzo's head. The bullet did not completely penetrate the windshield, but a small fragment of it entered the passenger compartment together with glass fragments from the windshield. Either the fragment of the missile or the glass fragments struck Detective Zizzo in the forehead causing a small laceration.

The Jennings .22 caliber semi-automatic handgun used by Mr. Quijano (it was a ballistic match with cartridge casings found at the shooting scene) was found without its magazine by a citizen residing on 400 South 36th Street. Another citizen two houses away found a .22 caliber semi-automatic magazine with .22 caliber cartridges in it. Evidently Mr. Quijano or one of the other occupants of the van removed the magazine from the weapon and threw both items out of the van as it fled after the shooting.

Detective Ramon Valentin's Statement

Detective Valentin provided a voluntary and recorded statement that detailed the events described above. He stated Mr. Quijano started firing at them as soon as they turned the corner into the alley. He saw several muzzle flashes. As Valentin applied the brakes he heard the gunfire strike the windshield and saw Detective Zizzo go down. He immediately returned gunfire fearing for his and his partners' safety. Detective Valentin stated, "When I saw the round hit the windshield I pretty much thought I was going to die. So I returned fire."

Detective Martha Gasca's Statement

Detective Gasca provided a voluntary and recorded statement regarding the events leading up to the shooting. Detective Gasca believed the occupants of the van knew they (Valentin, Gasca and Zizzo) were police officers. She observed their facial expressions and reactions when she first saw the van in the alley. Gasca believed she may have told the other two detectives that the occupants of the van "were up to something." Detective Gasca heard gunshots as they turned into the alley. She heard Detective Zizzo scream and saw her go down. Fearing for her safety and that of her partners, Detective Gasca leaned forward from her position in the back seat and placed her left arm on Detective Zizzo to keep her down. Detective Gasca then started firing her weapon out the open passenger window.

Detective Laura Zizzo provided a detailed statement as well. She stated the first gunshot Mr. Quijano fired was the one that hit the windshield in front of her. She bent down to avoid the glass that continued to shatter above her. She unholstered her gun but by the time she was able to sit up, the shooting was over. She saw Mr. Quijano get back into the van. Detective Zizzo also believed the occupants of the van knew they were police officers by the way the driver and passenger (Mr. Quijano) reacted to them in the alley prior to the shooting.

The detectives' belief that Mr. Quijano realized they were police officers was corroborated. Two of the van occupants made recorded statements acknowledging that Mr. Quijano knew the people in the Buick Regal were police officers.

Mr. Quijano is a documented Shelltown gang member and was on parole at the time of the shooting. A blood sample taken from Mr. Quijano shortly after his arrest indicated Mr. Quijano had amphetamine, methamphetamine, opiates and hydrocodone (vicodin) in his blood.

Criminal Filing

On June 11, 2009, the District Attorney's Office charged Mr. Quijano with fifteen felony counts including three counts of Attempted Murder of a Peace Officer, Assault with a Deadly Weapon, Robbery and Evading a Police Officer. His bail was set at one million dollars. His preliminary hearing is currently scheduled for September 9, 2009.

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. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated the circumstances under which deadly force may be used:

> "Police 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.]

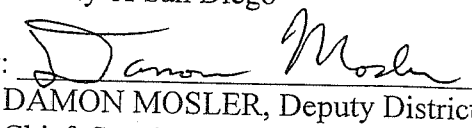
Conclusions

In this case, San Diego Police Detectives Ramon Valentin, Martha Gasca and Laura Zizzo were in an unmarked vehicle. They were following a van they had seen moments earlier in which the occupants were acting suspicious. They saw the driver of the van commit several traffic violations. They asked to have a marked patrol unit stop the van. Before the patrol unit arrived, the van turned into a blind alley. As soon as the detectives entered the alley themselves, Mr. Quijano started shooting at them. Detectives Valentin and Gasca were entitled to use deadly force to protect themselves and their partners from the threat of death or great bodily injury. To have refrained from using deadly force could have resulted in any of the detectives suffering serious bodily injury or death. The use of deadly force was reasonable under these circumstances and Detectives Valentin and Gasca bear no criminal liability for their actions.

A copy of this letter and the materials submitted for our review will be retained in our files.

Sincerely,

BONNIE M. DUMANIS
District Attorney
County of San Diego

By: 
DAMON MOSLER, Deputy District Attorney
Chief, Special Operations Division

DM:vf

cc: Captain Jim Collins