



THE CITY OF SAN DIEGO



MEDIA ADVISORY

POLICE DEPARTMENT

SENT: December 5, 2006

- What:** District Attorney's Shooting Review Letter to Chief William Lansdowne
- When:** Non-fatal shooting of Daniel Cardoso on May 21, 2006, by San Diego Police Department Officer Juan Cisneros; SDPD Case #06029871; DA Special Operations Case No. 06-061PS; Deputy District Attorney assigned: A. Craig Rooten

As outlined in Ms. Dumanis' letter to Chief Lansdowne, Officers Cisneros and Bret Edwards responded to a loud noise call at 1501 Masterson Lane in the city of San Diego. This was their second of three total calls to this address. Their last response was for a shots fired call at 1:35 a.m. This letter is a copy of the District Attorney's Shooting Review Letter to Chief William Lansdowne.

Persons Involved

Daniel Cardoso was 22 years old at the time of the incident. He lived in Chula Vista. His early criminal record included multiple vandalism charges, trespassing, obstructing police officers, and presenting false identification to peace officers. His recent arrests, contacts or detentions by law enforcement involved burglary, vandalism, petty theft, robbery, narcotics activity, disturbing the peace, assault, and driving under the influence of alcohol.

Officer Juan Cisneros was assigned to Southern Division.

Background

At about 8:00 p.m. on May 20th, a petty theft occurred at an AM/PM gas station located at Interstate 905 and Heritage Road. Four Hispanic individuals entered the market and took a 20-pack of Budweiser beer without paying for it. One male tried to pay for the beer, but when asked for identification he refused to produce any. When the clerk demanded proof of age the individuals ran out of the store with the beer. The clerk wrote down the license number of the vehicle the individuals left in—5SDY539.

The reports indicate that officers responded to 1501 Masterson Lane in the city of San Diego three times on the evening of May 20th and the early morning hours of May 21st. The first call was at 8:07 p.m. and concerned illegal parking that was blocking the cul-de-sac. The second call concerned loud noise. Officers Cisneros and Bret Edwards responded to that call. Officer Cisneros said they spoke to a woman who rented the house and told her if they had to come back they would issue a written warning.

At 1:29 a.m., an off-duty Sheriff's deputy who lived nearby called your department and reported he had heard at least three gunshots and saw two females and a male arguing in the middle of the cul-de-sac. He said he saw one of those individuals go into the residence at 1501 Masterson Lane. Another neighbor was awakened by the gunshots. That neighbor said it appeared the two females

were fighting over the male.

Officers Cisneros and Edwards again responded and arrived at 1:35 a.m.

Shooting Incident

The officers contacted Mr. Cardoso, who was staggering in the cul-de-sac and holding a glass Budweiser beer bottle. The officers told him to put the bottle down, which he did. Officer Cisneros asked to pat Mr. Cardoso down, which Mr. Cardoso agreed to, but when Officer Cisneros stepped toward him, Mr. Cardoso said he did not want to be patted down and ran into the open garage of the residence at 1501 Masterson Lane. The garage contained a white 2005 Dodge Durango which had been backed in.

As Officer Cisneros chased Mr. Cardoso down the passenger side of the vehicle, Officer Edwards ran down the driver's side to prevent Mr. Cardoso from entering the residence. Mr. Cardoso tripped and fell to the floor next to the right rear tire of the vehicle. Mr. Cardoso reached into his right front pants pocket, but Officer Cisneros controlled his arm and pulled his hand out of the pocket. Mr. Cardoso reached into his left front pants pocket with his left hand. Officer Cisneros grabbed his arm and pinned his bicep with his foot. Mr. Cardoso was still able to pull his hand out. Officer Cisneros noticed that Mr. Cardoso had what appeared to be the backside of a small chrome-colored pistol, possibly a .22 caliber. Officer Cisneros said he saw ridges on the object similar to the ridges on his own weapon. Mr. Cardoso extended his arm behind his back such that Officer Cisneros could not see his hand anymore. Officer Cisneros said he then drew his own weapon. Officer Edwards said he heard Officer Cisneros say Mr. Cardoso was reaching for something silver. Officer Cisneros said he believed Mr. Cardoso had armed himself with a handgun, so he fired two shots at Mr. Cardoso, striking him in the torso, resulting in internal injuries. Officer Cisneros said he fired because he did not know where the chrome-colored object was, and he did not know if it was pointed at himself or Officer Edwards. He further stated, "I felt it was a gun. For my safety and my partner's safety, I had to stop the threat."

Officer Cisneros said he saw Mr. Cardoso throw the object under the rear passenger tire.

Numerous persons came into the garage from the house and forced the officers out of the garage. The officers called for cover, but were separated from Mr. Cardoso and the object he had in his hand until other officers arrived. One of the neighbors who had heard the gunshots associated with the argument heard the two gunshots fired by Officer Cisneros, and also heard people coming out of the house and yelling.

Mr. Cardoso was transported to Mercy Hospital, where he received treatment for the gunshot wound. Mr. Cardoso refused to give a statement on the advice of his family and attorney.

Additional Investigation

Five .22 caliber shell casings were recovered in the cul-de-sac outside the residence. One .22 casing was found inside Mr. Cardoso's parked silver 2006 Toyota Camry. The license number was 5SDY539, the same license number identified at the AM/PM market theft. The car belonged to Mr. Cardoso's mother, who said he had permission to drive it that night.

A silver and blue cell phone was found beneath the right rear tire of the vehicle in the garage. A black cell phone was also found on the garage floor behind the tire. According to Mr. Cardoso's mother, the silver and blue phone was hers and the black phone was his. His mother said she gave him her phone because he had said his was not working.

On June 14, Sergeant David Johnson received an anonymous telephone call notifying him of the possible location of a firearm that was possibly used in this case. Your investigators searched for and found a chrome .22 caliber semiautomatic handgun under the backyard fence located at 1491 Masterson Lane, next door to 1501 where the incident occurred. The gun was dirty and had rust

spots on it. It also had ridges as described by Officer Cisneros. Examination of four of the five casings found on the street in the cul-de-sac on May 21st revealed that they had been fired from this gun. It could not be conclusively determined if the fifth casing had been fired from this gun. The casing retrieved from inside the Toyota Camry was also determined to have been fired from this gun.

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 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 desist his effort to effect 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 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

Conclusions

In this case Officer Cisneros was confronted by an intoxicated individual who chose to resist being patted down because he had a concealed firearm that he knew would cause him to be arrested. Based upon the fact that the casings in the street and in the car had been fired from the gun later found under the fence, we conclude that Mr. Cardoso fired the initial shots, was armed during the struggle, but was able to discard the gun. We note that Officer Cisneros described the ridges on the gun over three weeks before the gun was found, further substantiating that Mr. Cardoso was in fact armed with a firearm during the incident. We further conclude that after the officers retreated from the garage to await cover, some other person at the residence retrieved the gun, which ultimately was found under the fence.

Officer Cisneros was not required to wait and see what Mr. Cardoso would do after his hand went out of sight during the struggle. To do so might have placed Officer Cisneros and Officer Edwards in peril. The circumstances confronting Officer Cisneros during the struggle were sufficient to cause him to reasonably believe he and his partner were in danger of being killed or seriously injured. His use of deadly force under these circumstances was justified, and he bears no criminal liability for his actions.

Copies of the District Attorney's letter to Chief Lansdowne are available at the San Diego Police Department Headquarters front counter on Tuesday, December 5, 2006.

###