

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>

January 7, 2008

Chief Clifford Diamond
El Cajon Police Department
100 Fletcher Parkway
El Cajon, CA 92020

Re: Non-fatal shooting of Mr. Raul Jimenez-Yepez on June 28, 2007, involving El Cajon Police Officers Mark Bevan and Jarred Slocum. El Cajon Police Case # 07-010072; DA Special Operations Case No. 07-075PS; Deputy District Attorney assigned: Michael Runyon.

Dear Chief Diamond:

We have reviewed the materials compiled by your department concerning the non-fatal officer-involved shooting of Mr. Raul Jimenez-Yepez on June 28, 2007. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved

Mr. Jimenez-Yepez was 31 years-old, stood 5'6 and weighed 154 pounds. He was living with relatives about a mile and a half from where this incident took place. At the time of this incident, Mr. Jimenez-Yepez was armed with a Taurus, .38 caliber, blue steel revolver. The gun was concealed in his waistband. Although this firearm is capable of being loaded with six rounds of ammunition, it contained only one live round at the time of the shooting.

Officers Mark Bevan and Jarred Slocum were assigned to routine patrol duties. Both officers were attired in standard El Cajon Police Department uniforms. Officer Bevan was armed with a department issued .40 caliber Sig-Sauer semi-automatic pistol and Officer Slocum was armed with a department issued .40 caliber Glock semi-automatic pistol. Neither Officer was injured during the incident.

Background

The El Cajon Police Department's investigation revealed that on June 28, 2007 at about 1:28 a.m., uniformed El Cajon Police Officers Mark Bevan, Jarred Slocum and Jim Welty were dispatched to a battery report at the Cedar Glen Apartments at 466 West Washington Street. After the officers arrived, they parked their marked patrol cars in the driveway and entered the complex on foot to handle the call.

While the officers were inside the complex, a 38 year-old female left her nearby home and began walking to the 7-Eleven market at Washington and Magnolia Streets. After leaving the store, the woman saw a dark haired male, who appeared intoxicated, walking towards her. As the two approached each other in front of the apartment complex, the woman realized the man was speaking in Spanish and using profanity. As the woman began walking away from the man, he quickly approached her and offered her money for sex. The woman told the man to leave her alone and that she didn't want any problems with him. She then pointed out to the man two marked police cars that were parked nearby at the Cedar Glen Apartments, and told him, ***"If you want trouble, there's the police."***

The woman said her warnings didn't faze the man and he kept walking towards her. The man disregarded the woman's warnings, the fact that police cars were parked nearby and then sexually assaulted the woman by grabbing and fondling her. When the woman fought back, the man got mad, lifted up his shirt, and displayed a handgun he had concealed in his waistband. The woman, fearing she was going to be shot, began screaming for help. She yelled out, ***"Help me! He's going to shoot me with his gun! Oh my God! Someone help me!"*** The woman grabbed for the gun and the two of them began struggling over the weapon.

Shooting Incident

Officers Bevan, Slocum and Welty, who had completed the call for service inside the apartment complex, were walking to their cars when they heard a woman screaming. Officer Bevan heard the woman screaming, ***"What the fuck are you doing? Get the fuck away from me!"***

As Officer Bevan walked towards the street to get a clear view of what was going on, he saw a man and a woman struggling in the driveway of the complex. Officer Bevan saw the man was holding the woman with his left hand, holding a black handgun in his right hand and pointing the gun at the woman. Officer Bevan drew his sidearm, began advancing on the man and yelled, ***"Police! Drop the gun!"*** Officer Bevan saw the man look at him, let go of the woman and begin running west along the sidewalk.

As Officers Slocum and Welty were walking to their patrol cars, they heard a man and a woman arguing. Officer Slocum heard a female yelling and could see a man grabbing a woman with his left hand, holding a black gun that looked like a revolver in his right hand and pointing the gun at the woman. Officers Slocum and Welty heard Officer Bevan yelling, ***"Drop the gun!"*** Officer Slocum drew his weapon and saw the man look up, let go of the woman and run west on Washington Street. At **1:48:02** a.m., Officer Slocum radioed he and Officer Bevan were in, ***"foot pursuit."***

As Mr. Jimenez-Yepez ran up onto a grassy area in front of the complex, Officer Bevan could see the man carrying the gun in his right hand and swinging it by his side as he ran. While chasing the man, Officer Bevan saw the man look over his shoulder at him and turn his body towards him. Officer Bevan saw the man raise the gun up and fire one shot at the officer. Officer Bevan, who was holding his handgun in his right hand and a flashlight in his left hand, responded by firing a series of two or three rounds at Mr. Jimenez-Yepez. Officer Bevan saw no affect from his initial rounds in that the man was still standing and holding the gun, so Officer Bevan fired a second volley of two or three rounds. Mr. Jimenez-Yepez fell to the ground on the grass in front of the complex while still holding the gun in his right hand.

When Officer Bevan began chasing after Mr. Jimenez-Yepez, Officer Slocum followed running across the grass area in front of the complex. Officer Slocum saw Mr. Jimenez-Yepez facing Officer Bevan, pointing the gun in Officer Bevan's direction and a "*muzzle flash*" from the man's gun. In response, and fearing for Officer Bevan's safety, Officer Slocum fired one round from his handgun at Mr. Jimenez-Yepez who he then saw fall to the ground. At **1:48:06** a.m., only six seconds after the foot chase began, Officer Slocum radioed, "*Shots fired.*"

Officer Bevan approached Mr. Jimenez-Yepez as he laid on the ground, kicked the gun out of his hand and handcuffed him. Emergency medical personnel arrived shortly thereafter, treated Mr. Jimenez-Yepez at the scene and then transported him to Sharp Hospital for additional treatment.

Statements

Officers Bevan and Slocum provided voluntary statements to investigators immediately afterwards regarding the actions they took during this incident. Recorded and written statements were also provided by the female victim.

Mr. Jimenez-Yepez waived his Miranda rights and provided investigators with a recorded statement. Mr. Jimenez-Yepez admitted that he was acting crazy and was drunk the night of the incident. He said he wanted a woman and was going to get one by any means necessary. He said he didn't know the woman he accosted and admitted he sexually assaulted her by grabbing and fondling her. Mr. Jimenez-Yepez admitted he was armed with a black, .38 caliber revolver that was loaded with only one round of ammunition. He said he bought the gun on the street for \$100.00, but refused to say who he purchased it from. He admitted pulling the gun out during the confrontation with the woman and holding it in his right hand.

Mr. Jimenez-Yepez said he didn't remember what happened when the police arrived, but knew the men who were chasing him were police officers because they ran towards him with flashlights. When asked why he fired at the officers, Mr. Jimenez-Yepez stated, "*Los que me estaban tirando a estos les tire*" (I shot at those who were shooting at me). He said he fired only once at the officer because there was only one bullet in the gun.

Investigation

The crime scene was secured and a scene investigation was completed. The handgun recovered at the scene was a Taurus, blue steel, .38 caliber revolver with wood grips. The gun had one expended .38 caliber shell casing in the cylinder. The weapon was previously registered to an individual who is now deceased.

A total of seven expended .40 caliber shell casings were recovered at the scene. Ballistics examinations, interviews and shell placement reveal six of the shell casings were fired from Officer Bevan's handgun and one shell casing was fired from Officer Slocum's handgun.

Mr. Jimenez-Yepez was struck twice, once in the chest and once in the abdomen. The wound to the abdomen passed through Mr. Jimenez-Yepez and the bullet was recovered inside his clothing. The bullet that caused the wound to the chest was recovered during surgery.

Gunshot residue testing was also conducted. Analysis of the GSR swabs obtained from Mr. Jimenez-Yepez right and left hands revealed the presence of gunshot residue particles. The presence of this material indicates Mr. Jimenez-Yepez either discharged a firearm or was in an environment where gunshot residue was present.

Toxicological tests were conducted by Sharp Hospital upon Mr. Jimenez-Yepez admission to that facility for treatment. Those tests were positive for the presence of both amphetamines and alcohol in his system.

Mr. Jimenez-Yepez was subsequently charged by the District Attorney's Office with the felony crimes of Attempted Murder, Assault with Intent to Commit Rape, Assault with a Deadly Weapon, Assault with a Firearm on a Peace Officer and Resisting Arrest. Mr. Jimenez-Yepez pled guilty on December 4, 2007. On December 18, 2007, he was sentenced to 45 years in State Prison.

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

Chief Clifford Diamond

January 7, 2008

Page 6 of 6

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. Under these circumstances, the use of deadly force by Officers Bevan and Slocum was reasonable and they bear no criminal liability for the actions they took during this incident.

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

By:

RICHARD MONROY
Deputy District Attorney
Chief, Special Operations Division

RM;jh

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.

In this case, uniformed El Cajon Police Officers Mark Bevan and Jarred Slocum, were on an unrelated call for service when they came upon an attempted rape in progress. While returning to their cars, they saw a woman struggling for her life in the street with an armed assailant. Both officers, fearing the attacker was going to harm or shoot the woman, immediately drew their side arms, confronted the suspect and ordered him to drop the gun. Mr. Jimenez-Yepez realized police officers were present and had interrupted his crime. He fled on foot while still holding a revolver in his right hand. Both officers gave chase and fired at Mr. Jimenez-Yepez when he turned towards Officer Bevan and fired a single shot from the revolver. Mr. Jimenez was struck in the chest and the abdomen, fell to the ground and was arrested. A review of the timing of the officer's radio transmissions reveal the foot pursuit and shooting portion of these events spanned about six seconds.

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 had reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to affect 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.]