

JESUS RODRIGUEZ  
ASSISTANT DISTRICT ATTORNEY

OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO

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

BONNIE M. DUMANIS  
DISTRICT ATTORNEY

<http://www.sandiegoda.com>

April 4, 2008

Sheriff William Kolender  
San Diego County Sheriff's Department  
9621 Ridgehaven Court  
San Diego, CA 92123

**Re: Fatal shooting of Shane Anthony Hayes on September 17, 2006 by San Diego Sheriff's Department Deputies Michael King and Susan Geer; San Diego Sheriff's Department Case #06-066516H; DA Special Operations Case No. 06-111PS; Deputy District Attorney Assigned: Robert J. Kearney**

Dear Sheriff Kolender:

We have reviewed the reports and other materials compiled by your department concerning the fatal shooting of Shane Anthony Hayes by the above-mentioned deputies on September 17, 2006. A District Attorney Investigator responded to the scene soon after the incident and was briefed by your investigators.

***Persons Involved***

Deputies Michael King and Susan Geer were assigned to the patrol division at the Santee Sheriff's station.

Mr. Shane Anthony Hayes was 40 years old and resided with his girlfriend and her daughter at 8946 Singing Wood Way, in the city of Santee. Mr. Hayes was six feet one inch tall and weighed 191 pounds.

***Background***

Reports indicate that on Sunday, September 17, 2006 at approximately 9:10 p.m., Sheriff's Communications received a 911 emergency call of domestic violence occurring at Mr. Hayes' house. The caller, a neighbor of Mr. Hayes, reported that a female was being "beaten up" by her boyfriend.

Deputies Michael King and Susan Geer responded to the domestic violence call. Deputy King was the primary officer and arrived first in a marked Sheriff's patrol car at about 9:16 p.m. He was in uniform and working alone.

Deputy King reported that he approached the house and knocked on the door. He stated that a young girl answered the door. The girl then went and got her mother, who was Mr. Hayes' girlfriend. The girlfriend did not appear to be injured. Deputy King asked the girlfriend what was going on. She said that they were having an argument and she was yelling at Mr. Hayes to

try and stop him from killing himself. The girlfriend explained that Mr. Hayes had just tried to kill himself by using a hose and a car. Deputy King asked the girlfriend where her boyfriend was and she said he was in a back room.

At this time Deputy Geer arrived. Deputy Geer was also in uniform, driving a marked patrol car. Both deputies were armed with Glock .40 caliber semi-automatic pistols. Deputy King told her this was not a domestic disturbance, but that they needed to go inside the home to check on the man's welfare because he may be suicidal.

As the deputies entered the house, the girlfriend and her daughter remained in the front doorway and again told them the man was in the back. After Deputy King walked around a partition and into the living room, he heard the girlfriend say, "He's in the kitchen." Deputy King was walking in front and had already half way passed the opening from the kitchen to the living room. Deputy King looked over his shoulder into the darkened kitchen and saw Mr. Hayes standing less than six feet away with his right hand concealed behind his back.

### ***Shooting Incident***

Deputy King told Mr. Hayes, "Show me your hands. Let me see your hands." At almost the same time, Mr. Hayes brought a knife out from behind his back, raised it over his head and started to step toward Deputy King. Deputy King saw the silver knife in Mr. Hayes' hand. Mr. Hayes replied something to the effect of, "Just shoot me!" Deputy King drew his gun as he began to back up. The area around Deputy King was cluttered with numerous items and there was not a lot of room to move. Mr. Hayes continued to walk toward Deputy King with the knife raised. Deputy King reported that he then fired one or two times at Mr. Hayes. In a later interview, Deputy King stated, "I thought he was going to stab me."

Deputy King estimated the distance between himself and Mr. Hayes at the time he fired his gun to be between four and six feet. He also estimated the time that elapsed between when he saw the knife and the time he fired at two to three seconds. Deputy King knew Deputy Geer was behind him and that she fired at the man as well. Mr. Hayes was hit three times, collapsed on the floor and dropped the knife. Deputy Geer kicked the knife into the kitchen and away from Mr. Hayes. Deputy Timothy Britcher had just arrived at the scene and assisted Deputy King in handcuffing Mr. Hayes.

Deputy Geer's recollection of the events is largely consistent with Deputy King's and not inconsistent on any material points. Deputy Geer was about three feet behind Deputy King as they entered the home. Deputy Geer reported that since the interior was not well lit, both she and Deputy King were carrying their flashlights. Something caught Deputy King's attention and he immediately turned toward the kitchen. She saw Deputy King use his flashlight to illuminate a man who was standing in the kitchen. The man had a stainless steel butcher knife with an eight inch blade raised up over his shoulder and was walking towards Deputy King. She could hear Deputy King saying something and then Mr. Hayes screamed at Deputy King as he advanced. Deputy Geer could not understand what either was saying.

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Deputy Geer stated that both she and Deputy King began to back up as they drew their guns. Deputy Geer reported that Deputy King was in the living room and she was in the entry room. Deputy Geer could see that Deputy King could not back up any further and was essentially trapped when he fired at Mr. Hayes. Deputy Geer then also recalled firing one or two rounds at Mr. Hayes. When Deputy Geer was interviewed shortly after the shooting, she reported firing because she believed Mr. Hayes was going to stab and seriously injure or kill Deputy King. Deputy Geer estimated that Mr. Hayes was three or four feet away from Deputy King when she fired.

### ***Investigation***

The crime scene was secured and a scene investigation completed. Mr. Hayes was treated at the scene and transported to Sharp Memorial Hospital where he was taken into surgery and later pronounced dead at 10:42 p.m.

Two shell casings were recovered in the living room, consistent with Deputy King's reported position when he fired. The San Diego Sheriff's Regional Crime Laboratory examined the casings and determined they were in fact fired from Deputy King's handgun. Two shell casings were recovered in the front entry room, consistent with Deputy Geer's reported location when she fired. The San Diego Sheriff's Regional Crime Laboratory examined the casings and determined they were in fact fired from Deputy Geer's handgun. A silver stainless steel knife with an eight inch blade was recovered from the kitchen floor.

Three rounds fired struck Mr. Hayes. Two bullets were recovered during autopsy. One bullet was not recovered and is believed to be inside the kitchen wall. One bullet was recovered from the backyard.

Homicide detectives interviewed the girlfriend and her daughter, both of whom were present standing near the front doorway of the residence when the shooting took place.

The girlfriend said she and Mr. Hayes were drinking a lot that night. She said when Mr. Hayes drinks that he is not very nice, so the girlfriend and her daughter went to bed early that night. Mr. Hayes continued drinking. The girlfriend didn't want the situation to escalate so she threw Mr. Hayes' beer out a rear window.

The girlfriend said Mr. Hayes decided he was going to commit suicide. Mr. Hayes went to his car in the driveway and attached a hose to the tailpipe of his car and stuck the other end of the hose through the back window of the car while revving the engine. The girlfriend told Mr. Hayes she would call 911 or his father if he did not stop. Mr. Hayes eventually came back inside and began looking for more beer.

The girlfriend reported she told Mr. Hayes that she was giving him a thirty day notice to leave the house.<sup>1</sup> Mr. Hayes told the girlfriend that she didn't care about him and grabbed a knife and held it up to his throat. Mr. Hayes then said he was going to kill himself. During the argument, Mr. Hayes began shoving the girlfriend in front of her daughter. The girlfriend's daughter began screaming and ran to the next door neighbor's home.

The girlfriend told Mr. Hayes that her daughter told the neighbor what happened and that "911" was coming. Mr. Hayes said he was going to bed, but then went into the backyard. The girlfriend said Mr. Hayes then acted like he was going to kill himself by jumping into the pool before the police arrived. Mr. Hayes then came back into the house and began yelling at the girlfriend's daughter, asking her if she wanted him to go to jail. The girlfriend stated that her daughter began crying.

When deputies arrived, the girlfriend recalled speaking to them at the door and telling them that Mr. Hayes was trying to hurt himself. She told the deputies that they needed to speak to Mr. Hayes and he was in the back room. When the deputies walked into the house, the girlfriend saw Mr. Hayes in the kitchen and told the deputies. The deputies told Mr. Hayes they wanted to talk to him. The girlfriend reported that Mr. Hayes came out of the kitchen with a knife in his right hand. Mr. Hayes raised the knife up as he walked toward the deputies. She described Mr. Hayes holding the knife up, in front of his chest with the blade pointing between the deputies and the floor.

The girlfriend reported that Mr. Hayes said something to the deputies like, "Are you going to take me to jail? Arrest me. Arrest me." She heard the deputies telling Mr. Hayes in an authoritative manner to put the knife down. The girlfriend recalled yelling at Mr. Hayes to put the knife down. She described the look on Mr. Hayes' face as being, "clueless, there was nothing there." The girlfriend said Mr. Hayes started to walk toward the deputies. She estimated Mr. Hayes was between two and three feet from the deputies when they fired five shots at him.

The girlfriend's daughter was 14 years old. However, the girlfriend informed the investigators that her daughter is developmentally disabled and has the mental capacity of a younger child. Investigators spoke to the daughter with the girlfriend's permission.

The daughter said Mr. Hayes had been drinking and her mother warned her not to talk to him or make him mad. She recalled that her mother and Mr. Hayes were yelling at each other. The daughter saw Mr. Hayes push her mother "hard" from the front. She asked Mr. Hayes to "please stop" pushing her mother.

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<sup>1</sup> In May of 2006, Sheriff's deputies responded to an attempted suicide by Mr. Hayes. At that time, the girlfriend told the deputies that Mr. Hayes informed her that if he had to leave, he would rather die.

The girlfriend's daughter was scared. She panicked and went over to her neighbor's house. The daughter reported that she told her neighbor that her mother needed help. When the neighbor asked her if they should call the police, she said, "Sure." The daughter then went back home. When she got back home, Mr. Hayes began yelling at her, "Do you want me to go to jail?" Her mother then told her she did not want the police called. The daughter went back to the neighbor's house to tell them not to call the police. The neighbor said he had to call the police. The daughter said she was outside on the front porch and did not see the deputies shoot Mr. Hayes.

Detectives also interviewed the neighbor who called the police. The neighbor said at approximately 9:10 p.m. that evening, he heard the girlfriend's daughter screaming and banging at his front door. He said that the daughter was so traumatized and frightened that at first he thought someone was attacking her. The daughter was screaming that her mother's boyfriend was beating her mother. The daughter insisted that the neighbor go over to her home and stop Mr. Hayes. The neighbor reported that he suggested calling 911, but she told him not to call the police. She was afraid her mother would be beaten even more if the police were involved. The neighbor called 911 to report the incident. The neighbor said the daughter went home, but returned a short time later while he was speaking to the dispatcher. The daughter asked him again not to call the police. The neighbor believed she returned to her house to tell them he was calling the police.

On September 18, 2006, Deputy San Diego County Medical Examiner Dr. Christopher Swalwell performed an autopsy on Mr. Hayes. Dr. Swalwell found Mr. Hayes sustained a total of three gunshot wounds. One bullet entered the right hip, perforated the pelvic bone and was recovered in the right buttock. A second bullet struck Mr. Hayes in the left hip and exited the left buttock. The third bullet struck Mr. Hayes in the lower left back and damaged the left kidney, pancreas, colon, stomach, diaphragm, left lung and esophagus. The third bullet was recovered during the autopsy. The cause of death is listed as, "Gunshot wounds of torso and hips." A toxicological examination revealed the presence of alcohol, measured at .21%.

Several months prior to this incident, Sheriff's deputies responded to an attempted suicide by Mr. Hayes, who was taken to Grossmont Hospital for a 72-hour psychiatric evaluation. Mr. Hayes' girlfriend stated that she was aware of ten prior occasions when Mr. Hayes had tried to commit suicide. This information is relevant in our analysis to shed light on Mr. Hayes' actions on the date of the incident.

### *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 desist 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 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 section 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

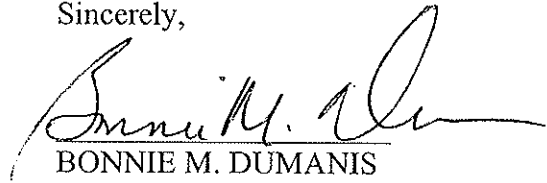
### ***Conclusions***

In this case, San Diego Sheriff's Deputies Michael King and Susan Geer were investigating a domestic violence situation that evolved into a welfare check of a man that could possibly be suicidal. Shortly after entering the house, Mr. Hayes emerged from a darkened kitchen holding a knife with an eight inch blade in a threatening manner while advancing on Deputy King. Deputy King attempted to retreat as he drew his gun, but was limited by the physical items that surrounded him. Both Deputy King and Deputy Geer reasonably believed that Deputy King was in great danger. Faced with a split second decision, both Deputies King and Geer responded by firing at Mr. Hayes in self-defense of Deputy King.

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As a result, Deputies Michael King and Susan Geer 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  
County of San Diego

BMD:jh  
Cc: Captain Octavia Parker