

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>

June 13, 2014

Chief Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. William Daniel Mayes on June 5, 2013 by San Diego Police Officers Zachary Pfannenstiel, Arturo Lovio, Nestor Hernandez, Jonathan DeGuzman and Sergeant Marc Pitucci; Escondido Police Department Case No. 13-6916; DA Special Operations Case No. 13-076PS; Deputy District Attorney Assigned: Paul Azevedo

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency's Robbery/Homicide Unit concerning the fatal shooting of Mr. William Daniel Mayes by San Diego Police Officers Zachary Pfannenstiel, Arturo Lovio, Nestor Hernandez, Jonathan DeGuzman and Sergeant Marc Pitucci on June 5, 2013. A District Attorney Investigator responded to the scene and was briefed by Escondido Police Investigators. This case was presented to the District Attorney's Office for review on January 16, 2014.

Summary

On the night of June 5, 2013, San Diego Police officers and detectives attempted to arrest Mr. William Daniel Mayes. Mayes tried to evade arrest by driving away in his Ford Explorer. Officer Pfannenstiel rammed his patrol car into Mayes' vehicle. Mayes pointed a shotgun in the direction of officers who then fired at Mayes. Mayes was struck multiple times and died at the scene. The Metropolitan Arson Strike Team responded. They recovered and detonated numerous improvised explosive devices recovered from Mayes' person and vehicle.

Persons Involved

Mr. William Daniel 'Danny' Mayes was 37 years old at the time of this incident and lived in the City of San Diego with his father.

Officer Zachary Pfannenstiel and Officer Jonathan DeGuzman were in full uniform and assigned to the Gang Suppression Team. Detective Nestor Hernandez, Detective Arturo Lovio, and Sergeant Marc Pitucci were assigned to the Robbery Unit. Each wore a tactical police vest that was clearly marked with the word "POLICE" on the front and back.

Background

William 'Danny' Mayes was suspected of physically and mentally abusing his father. The father reported his son's violent behavior to the San Diego Police Department. The father feared for his own safety and said 'Danny' Mayes used drugs in the past and thought his son might be mentally ill. The father told a detective his son had manufactured a handgun and a bomb. He also said 'Danny' installed a camera outside of the residence to view anyone approaching and threatened to "shoot it out" with police if they ever went to the house. The father said he did not want police to go to his residence because he did not want any innocent police officers to get hurt or killed. A family friend corroborated the father's statements and said he witnessed Mayes in possession of a homemade handgun and several pipe bombs. The friend told police Mayes was usually armed.

Officer Involved Shooting

A plan was devised by police to attempt to safely arrest Mayes. The plan involved having a friend of the Mayes family telephone Mayes and asked for help with a flat tire. The friend instructed Mayes to meet at the Park & Ride lot, located at 3300 Del Lago Boulevard in the City of Escondido. Several marked SDPD vehicles were strategically assembled at a nearby location to take Mayes into custody when he arrived. Plain clothes detectives driving unmarked police cars followed Mayes to the prearranged location.

As Mayes approached the parking lot, marked SDPD vehicles entered the area. When Mayes detected the presence of the police, he drove his vehicle around a transit bus and sped out of the lot by driving over a traffic island and sidewalk. Mayes continued speeding across Del Lago Boulevard over the sidewalk on the opposite side of the street and crashed into a concrete retaining wall. Officer Pfannenstiel rammed his patrol car into Mayes' vehicle, striking the driver's side door, pinning Mayes' vehicle against the wall. Pfannenstiel's police car was positioned perpendicular to Mayes' vehicle. Pfannenstiel, Hernandez, Lovio and Pitucci positioned themselves around Mayes' vehicle and saw Mayes point a weapon at them. They fired their pistols at Mayes. DeGuzman believed Mayes was shooting and also fired at Mayes. Mayes was struck by the gunfire.

Sergeant Grubb controlled the shooting scene and had Officer Pfannenstiel back his car out to allow other officers to render aid to Mayes. An arrest team approached and removed Mayes from his vehicle. They recovered his homemade shotgun. When they noticed an improvised explosive device on the floorboard and a backpack on the back seat of Mayes' vehicle, they retreated to a safe distance and left Mayes on the ground next to his vehicle. Mayes died at the scene.

Officer Pfannenstiel's Statement

Officer Pfannenstiel said before the arrest, he attended a briefing led by Sergeant Marc Pitucci. From the information presented, Pfannenstiel learned Mayes was wanted for elder abuse and had allegedly constructed several pipe bombs and handguns, including a rapid fire Tec 9 handgun. Mayes allegedly vowed not to be taken into custody alive. The officers planned on arresting

Mayes at a safe location away from his house. They reviewed overhead maps of the Park & Ride in Escondido. Pfannenstiel was assigned to block traffic at the intersection of Del Lago Boulevard and Avenida Magoria.

Pfannenstiel saw Mayes driving a Ford Explorer. Mayes was followed by several police vehicles. Pfannenstiel took his position at the intersection and saw Mayes' vehicle turn, then speed away from the other officers. Mayes drove over the lane median, made a wide southbound turn onto Del Lago and crashed into a planter retaining wall. Pfannenstiel thought Mayes was trying to get away and possibly run over the detectives. Pfannenstiel rammed into the driver side of Mayes' SUV. Pfannenstiel pinned Mayes' vehicle against the wall. Pfannenstiel got out from his car and stood at his open police car door. Pfannenstiel yelled, "Show me your hands!" Mayes did not comply but Pfannenstiel could see Mayes made eye contact with him. Mayes reached for his own waistband and it appeared Mayes was trying to get his gun out. Pfannenstiel saw Mayes had a grip on a black gun and Mayes leaned back, over his center console as he continued trying to pull the gun out from his waistband. Mayes' head was by the passenger seat while his legs and feet were fully extended near the driver side emergency brake. Pfannenstiel thought Mayes was pointing at the gun towards him and was going to shoot him through the driver door. Pfannenstiel fired at Mayes until he saw Mayes slump over.

Detective Hernandez's Statement

Detective Hernandez said he learned Mayes was wanted for elder abuse and recalled receiving information that, according to two different sources, Mayes threatened to, "Kill the cops or have the cops kill him." Hernandez was also aware of the information regarding Mayes constructing pipe bombs and being seen with a Tec 9 handgun.

When the phone call was made to Mayes as planned, Hernandez and other detectives followed Mayes from the residence to the Park & Ride on Del Lago Boulevard in Escondido. Hernandez saw Mayes drive into the Park & Ride lot at the same time a transit bus was driving out. Once Mayes made it out of the lot, he lost control and struck a wall across the street. The front end of Mayes' vehicle was off the ground and the back tires were spinning.

Hernandez got out from his vehicle and ran toward Mayes. Hernandez saw Mayes point the barrel of a gun at him. At that point a marked police car rammed Mayes' vehicle. The glass on the driver side window of Mayes' vehicle shattered. Hernandez saw Mayes lying back across his front seat while pointing a weapon at him and the uniformed officer. Hernandez fired his handgun at Mayes until he saw Mayes had stopped moving.

Detective Lovio's Statement

Detective Lovio was also aware of the information relating to Mayes regarding bombs and guns. Lovio was assigned to stop northbound traffic on Del Lago while Mayes was taken into custody. Mayes drove into the lot. Lovio took his position on Del Lago Boulevard and got out of his truck. Lovio looked over his shoulder and saw Mayes' vehicle had turned and jumped the curb into the parking lot. Mayes sped out of the lot and eventually crashed into a wall.

Lovio approached Mayes' vehicle on foot from in front of the vehicle. Lovio saw the tires on Mayes' vehicle were spinning. Lovio expected Mayes to escape by running over Lovio. Lovio saw Mayes raise the barrel of a gun. A marked police car drove into the driver side of Mayes' SUV and jammed it against a wall. Mayes continued to raise the barrel of gun. Lovio fired several rounds at the windshield of Mayes' vehicle.

Officer DeGuzman's Statement

Officer DeGuzman was working with his partner, Officer Cassie Erickson. DeGuzman was the driver of their police car. DeGuzman and his partner were supposed to help take Mayes into custody in the parking lot of the Park & Ride in Escondido. Mayes sped out of the lot and DeGuzman saw another marked police car ram Mayes' vehicle. DeGuzman stopped his car and got out. DeGuzman heard several gunshots. DeGuzman approached and saw Sergeant Pitucci standing near a police car and firing his gun at Mayes' driver side door. DeGuzman thought Mayes was shooting at the driver's side of the police car. DeGuzman stood to the right side of Pitucci and saw Mayes' left arm was raised while Mayes was looking at the officer. DeGuzman fired three shots toward Mayes. DeGuzman stopped firing when he saw Mayes dropped his left arm and stopped moving.

Sergeant Pitucci's Statement

Sergeant Pitucci supervised the surveillance and helped plan the arrest of Mayes. Mayes was wanted for elder abuse and manufacturing weapons and bombs. A plan (previously described above) was devised to arrest Mayes. They discussed the Boston Marathon bombing incident which occurred two months prior including that those suspects threw improvised explosive devices at their pursuing officers. It was agreed that if Mayes posed an immediate threat, officers were authorized to use their police vehicles to ram Mayes' vehicle.

When Mayes saw a marked police car, Mayes drove around the bus and sped out of the lot. After hitting a curb, Maye's vehicle went airborne and lost control. Mayes ran into a wall across the street. Pitucci stopped his own unmarked police vehicle at the entrance to the lot and ran toward Mayes' vehicle. Pitucci saw the tires on Mayes' vehicle were spinning as if Mayes was stepping on the accelerator. A marked police car smashed into Mayes' vehicle, pinning it against the wall.

Pitucci stood at the passenger side of the police car that rammed Mayes. Pitucci saw the long black barrel of Mayes' weapon come up. The barrel was pointed in the direction of Hernandez, Lovio and Pfannenstiel. Pitucci then drew his handgun and shot Mayes. Pitucci fired his weapon until Mayes leaned backwards in a non-threatening position.

Witness Statements

Fifteen civilian witnesses consisting of persons standing and sitting in the Park & Ride lot, as well as persons riding in the North County Transit District bus which was driving out of the

parking lot when Mayes and the officers were entering, saw various portions of the events. Some witnesses saw Mayes' vehicle enter and then speed out of the parking lot. The witnesses all reported seeing Mayes' vehicle being chased by police and then hearing several shots being fired from their positions across the street.

Eleven law enforcement witnesses consisting of uniformed officers and plain clothes detectives that took part in the surveillance and planned arrest of Mayes also witnessed various portions of the events.

Investigation

The crime scene was secured for safety purposes. The Metro Arson Strike Team (MAST) Bomb Squad technicians arrived and detonated seven improvised explosive devices at the scene and collected another seven improvised explosive devices prior to any evidence being collected. The explosions disturbed many items of evidence, including casings. The investigation determined Mayes was armed with a homemade shotgun carried in a sling around his torso. Mayes possessed a total of three homemade handguns, seventeen improvised explosive devices (pipe bombs), multiple rounds of live shotgun and handgun ammunition and two knives.

Mayes received seventeen gunshot wounds. The wounds were to Mayes' head, neck, chest, right forearm, left upper arm and forearm, right leg and left leg. The total number of shots fired by the five officers was forty-six. The video and audio recording from the cameras at the Park & Ride Terminal and on the NCTD bus were reviewed for this investigation. The cameras captured the shooting event from across the street as well as the sounds of the gunshots. A toxicology report on Mayes tested negative for drugs of abuse or alcohol.

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.

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.

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.

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Conclusions

During this incident, several San Diego Police officers and detectives attempted to arrest Mr. William Mayes. They were aware he could be armed with guns and explosives and had expressed he would not peacefully surrender to police. Mayes sped away in his vehicle and crashed into a retaining wall. Mayes pointed a shotgun in the direction of Officers Pfannenstiel, Hernandez and Lovio. Sergeant Pitucci and the officers saw the shotgun and fired at Mayes. DeGuzman saw the shooting and believed Mayes was shooting at the officers. Mayes was struck several times and died at the scene.

Based on these circumstances, it is apparent that Officers Pfannenstiel, Hernandez, Lovio, Deguzman and Sergeant Pitucci fired in self-defense and/or the defense of the others. They therefore 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,

A handwritten signature in dark ink, appearing to read "Bonnie M. Dumanis", written over a horizontal line.

BONNIE M. DUMANIS

District Attorney
County of San Diego

BMD:jh