

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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

<http://www.sandiegoda.com>

BONNIE M. DUMANIS
DISTRICT ATTORNEY

November 24, 2014

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

Re: Fatal shooting of Mr. Aaron Lee Devenere on January 26, 2014, by San Diego Police Officer Rick Butera; Escondido Police Department Case No. 14-1049; DA Special Operations Case No. 14-011PS; Deputy District Attorney assigned: Patrick McGrath

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency concerning the fatal shooting of Mr. Aaron Lee Devenere by San Diego Police Officer Richard Butera on January 26, 2014. 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 April 25, 2014.

Summary

On January 26, 2014, Mr. Devenere took his girlfriend hostage and forced her to drive her pickup truck while he rode as passenger. Devenere called 9-1-1 and said he was armed with a handgun and a bomb. Devenere threatened to injure the hostage if officers tried to stop the truck. San Diego police officers pursued the truck into Escondido, where they flattened the truck's tires. Devenere placed his right arm around the hostage's head, preventing her from leaving the truck. Butera fired one shot with a rifle and fatally struck Devenere in the head.

Persons Involved

Mr. Aaron Lee Devenere was 27 years old and lived in San Diego. SDPD Officer Richard Butera had been a police officer for 11 years when this incident occurred. He was assigned to the Western Patrol Division and was in full uniform.

Background

Aaron Devenere and Lauren L. knew each other for five months. Lauren L. said she was aware Devenere was married and believed Devenere's wife was aware of their relationship. Devenere was released from jail on January 23, 2014, and ordered to begin a rehabilitation treatment program on January 25, 2014. Early in the morning January 26, 2014, Devenere arrived at his girlfriend's residence and said he wanted a ride. Devenere's girlfriend consented and drove her Toyota pick-up truck with Devenere as passenger.

At 6:56 a.m., a San Diego police officer stopped the truck for a traffic violation. Mr. Devenere stepped out of the truck with his face covered by an item of clothing and faced the officer. The officer ordered Devenere to return to the truck. Devenere jumped back into the truck as it sped away. The officer pursued the truck and called for help.

Mr. Devenere called the 9-1-1 operator during the pursuit and said he was pointing a gun at his girlfriend. Devenere stated he was armed with a handgun and explosives. Devenere said he kidnapped his girlfriend and threatened to harm her if police stopped the truck. Devenere added he would break his girlfriend's fingers if officers did not comply with his demands. Officers continued the pursuit and used tire deflation devices to stop the truck. At 7:37 a.m., the truck came to a stop on the right shoulder of 2100 Centre City Parkway in Escondido.

Officer Involved Shooting

Officers conducted a felony vehicle stop and ordered Devenere to exit the vehicle with his hands in the air. Devenere failed to comply. Devenere moved to the driver's side of the truck's cab and grabbed his girlfriend. Officers saw Lauren L. struggling to escape from Devenere's grasp. Lieutenant Darryl Hoover directed Officer Butera to arm himself with his long rifle and take a position within range of the truck. Hoover told Butera if he had a shot on the suspect to take it. Butera took a shooting position to the south and west of the truck, using the front of a police car for cover and support. Butera aimed through his scope and fired one shot, striking Devenere in the head and killing him.

Officer Butera's Statement

Officer Butera said he was assigned to patrol and recognized the initial radio call as a rolling hostage situation. Butera volunteered to respond because he had the collateral duty of being a member of the SWAT Primary Response Team and also had past sniper training. When the pursuit came to a stop, Lt. Hoover told him to get into position. Butera could hear Lauren L. screaming and saw her trying to get out of the truck. Devenere had his right arm around Lauren L.'s head. Devenere was placing Lauren L. between him and the police officers. Butera aimed at Devenere through his rifle scope. Devenere was not complying with the primary officer's commands. Butera saw Devenere's arms were down low and his left arm appeared to be crammed into Lauren L.'s ribcage. Lauren L. continued to scream and appeared to be trying to escape from the truck. Butera said, "At this point I believe that he's going to kill this woman right now. His threats he made with explosives, with the gun, with great bodily injury... If I don't act now, he's going to kill her." Butera said he had a clear shot and fired one round.

Lieutenant Hoover's Statement

Hoover heard the broadcast of the pursuit and stop on the radio, including the radio dispatcher's updates regarding Devenere's threats to harm the hostage driver. Hoover directed pursuing officers to deploy tire deflation devices to stop the truck. The truck's tires were flattened and it came to a stop on the right shoulder of the road. Officers gave Devenere commands to surrender. Devenere initially placed both of his hands out the passenger window but then retracted them. Hoover saw Devenere move to the left part of the truck's cab. Hoover said Devenere, "Immediately went at the driver. Jumped on the driver." Hoover said Devenere

looked out the rear window and had a “crazed look” on his face. Hoover could no longer see Lauren L. in the truck.

Hoover instructed Officer Butera to get into a position where Butera could make a rifle shot if the situation arose. Thereafter, Hoover heard one shot and realized Butera shot Devenere. The hostage, Lauren L., opened the driver’s door, maneuvered her way out from under Devenere, and ran back to the awaiting officers while sobbing.

Victim’s Statements

Lauren L. said Mr. Devenere lived a couple of blocks away from her. Devenere arrived at her house early in the morning and needed a ride, “to get away from here.” Lauren L. agreed to give Devenere a ride in her truck and noticed he seemed distraught, nervous and on edge. Devenere was on his cell phone and Lauren L. overheard him speaking with someone about not wanting to go to rehab. She began driving on the I-15 freeway when an officer pulled her over. Lauren L. stopped her vehicle on the shoulder and watched as a police officer approached her car through her rear view mirror.

Devenere suddenly turned towards her with his right hand under his sweatshirt. He pushed whatever was in his right hand into her rib cage and told her she needed to drive so she would not get hurt. Lauren L. said she drove away because she was scared and thought Devenere had a gun. Lauren L. was crying and hysterical as she drove the truck North on I-15. Devenere was speaking with someone on his cell phone and saying he was armed with a gun and had explosives. Lauren L. heard Devenere say she would be shot if the cops did not comply with his demands. Lauren L. asked Devenere what was happening but he would not answer.

At one point during the phone call, Devenere grabbed her hand and said he was going to break her fingers to make a point to the cops. The police continued following her. She drove over a spike strip in Escondido. Lauren L. stopped the truck and tried to stick her hands out the driver window but could not reach out. Devenere had her by the neck and twisted her head. Lauren L. complained about the pain and Devenere let go. Devenere was squeezing her hand. Lauren L. cried as Devenere said he was sorry he put her through this. Lauren L. heard Devenere say he was going to get out of the truck and give up. Lauren L. then heard a gunshot. There was blood everywhere and Devenere collapsed. Lauren L. did not know if Devenere shot himself or if he was shot by the police.

Lauren L. was released from the hospital after the incident and said her right pinky finger was not broken. Lauren L. said the truck involved in this incident belonged to her. She owned no weapons or explosives.

Witness Statements:

Ms. Gomez and her two young brothers witnessed the stop from their residence, west of Centre City Parkway. Gomez recorded the events with her iPhone camera. Gomez saw the truck come

to a stop with approximately 8 police vehicles behind it. Gomez saw a police officer with a rifle and heard a single gunshot. A few seconds later, Gomez saw a female exit the driver side of the truck and run to the awaiting officers. The female was screaming hysterically.

Sixteen law enforcement witnesses consisting of uniformed officers from the San Diego Police Department, Escondido Police Department and Sheriff's ASTREA unit that took part in the pursuit and planned arrest of Devenere witnessed various portions of the events.

Investigation

The crime scene was secured and an investigation was conducted by the Escondido Police Department. The investigation determined Devenere was not armed with a weapon during this incident. Devenere received one gunshot wound to his head. The audio recordings from the SDPD dispatchers, CHP dispatchers as well as the cameras on the ASTREA helicopter and witness Gomez's iPhone were reviewed for this investigation. The Gomez iPhone camera captured the shooting event from across the street as well as the sound of the rifle shot. The ASTREA camera captured portions of the pursuit and stop but the ASTREA camera did not record the shooting itself. The distance of Officer Butera's rifle shot was approximately 51 feet. Butera was armed with a Remington Model 700, Tactical .308 caliber rifle with scope. The bullet casing was recovered from an area consistent with Butera's stated location. Toxicology testing detected amphetamine, methamphetamine and cannabinoids in Mr. Devenere's system.

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 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. Penal Code section 835a 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.

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

Chief Craig Carter
November 24, 2014
Page 5 of 5

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 and the defense of another 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.

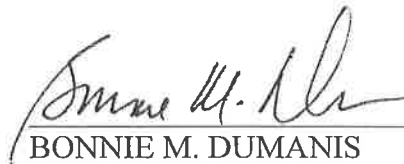
Conclusions

During this incident, Mr. Devenere was the passenger in a truck driven by his girlfriend. Devenere ordered Lauren L. to flee from the police and claimed he was armed with a gun and explosives. Devenere threatened to harm Lauren L. if police stopped him. Officers stopped the truck and could see Lauren L. being restrained by Devenere.

Based on these circumstances, Officer Butera reasonably thought Lauren L. could be seriously injured or killed. Mr. Devenere claimed he was armed with a gun and explosives when he held Lauren L. as a hostage and threatened to cause serious harm to her. Butera fired at Devenere to prevent injury or death to Lauren L. and acted in reasonable defense of another. He therefore bears no criminal liability for his actions.

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/PM:eg

cc: Captain Albert Guaderrama
San Diego Police Department
Homicide Division