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SUMMER STEPHAN
DISTRICT ATTORNEY

April 27, 2018

Chief of Police Roxana Kennedy
Chula Vista Police Department
315 Fourth Avenue
Chula Vista, CA 91910

Re: Fatal shooting of Mr. David Joseph Scott on September 19, 2017 by Chula Vista Police Officer D. Sachs; Chula Vista Police Case No. 1713455; DA Special Operations Case No. 17-152PS; Deputy District Attorney assigned: John Rice

Dear Chief Kennedy:

We have reviewed the reports and other materials compiled by the Chula Vista Police Department's Crimes of Violence Unit concerning the circumstances leading to the fatal shooting of Mr. David Joseph Scott on September 19, 2017, by Chula Vista Police Officer D. Sachs. A District Attorney Investigator responded to the scene and was briefed by your detectives. This case was presented to the District Attorney's Office for review on February 7, 2018.

Persons Involved

Mr. David Joseph Scott was twenty seven years old at the time of this incident and lived in the City of Chula Vista. Mr. Scott was armed with a steak knife. Officer D. Sachs was in full police uniform and was assigned to patrol duties in the City of Chula Vista. Sachs had been employed with the Chula Vista Police Department for approximately one and one half years when this incident occurred. Sachs had approximately seven years of previous law enforcement experience with another agency.

Summary

On the evening of September 19, 2017, Chula Vista police officers went to the residence of Mr. David Scott to investigate an allegation of an assault on Scott's neighbor. Uniformed officers were greeted by a resident of Scott's home and were invited inside. Scott immediately attacked Officer Sachs with a steak knife. Sachs was stabbed in the face, head and right arm. Sachs shot Scott during the attack. The incident was recorded on police body worn cameras. Fire department personnel were called to the home and transported Scott to a local trauma center, where he was pronounced dead a short time later.

Background

A neighbor of Mr. Scott's called the Chula Vista Police Department. That neighbor will be identified in this review as Civilian Witness #1 (CW1). Earlier in the evening, CW1 reported hearing a male voice cursing out loud from the area of the Scott residence. CW1 went to their

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backyard to investigate. CW1 approached the fence and asked who was there. Suddenly, a piece of a cinder block was hurled over the fence, directly at CW1's head. He tried to move out of the way but the cinder block struck CW1 on the shoulder. CW1 said the cinder block was about the size of a large grapefruit. The cinder block left a superficial injury. CW1 backed away and saw a stick fly over the same fence. CW1 did not know Mr. Scott and had no idea why Mr. Scott would commit that crime. CW1 called the police department and asked officers to investigate.

Officer Sachs and Police Witness Officer #1 (PW1) answered the call of the disturbance between neighbors. Civilian 'Ride-Along' Witness (CR-A) was with PW1 that evening. After the two officers interviewed CW1, the officers and CR-A went to the Scott residence.

PW1 knocked on the door. One of the residents answered the door and asked what was going on. That resident will be identified in this review as Civilian Witness #2 (CW2). Officer Sachs asked if CW2 was alone. CW2 told the officers Mr. Scott was home and said Scott was schizophrenic. Officer Sachs told CW2 the neighbor called the police because Mr. Scott apparently threw a rock at the neighbor. CW2 apologized and said Scott was paranoid and had earlier alleged the fence had been tampered with. CW2 invited the officers into the house.

Officer-Involved Shooting

Officer Sachs entered the foyer and asked CW2 if Mr. Scott was violent. CW2 said Scott was not usually violent. CW2 then summoned Scott by calling out to him and saying the police wanted to speak with him. Sachs followed CW2 and entered the kitchen area. PW1 remained in the foyer. CR-A stood behind PW1.

Mr. Scott appeared from the interior of the house and immediately attacked Officer Sachs with a steak knife. Scott stabbed Sachs repeatedly in the face, head and right arm. Sachs managed to push Scott away. Scott fell to the kitchen floor. Sachs yelled, "Knife, knife, knife, knife, knife!" Sachs un-holstered his weapon and retreated into the family room area. Scott got back up to his feet and went after Sachs again. Sachs fired his weapon until Scott fell to the floor.

The officers called for medical assistance. Paramedics arrived and transported Scott to Scripps Mercy Medical Center. Despite medical intervention, Scott was pronounced deceased from the gunshot wounds.

Statement of Civilian Witness #1 (CW1)

CW1 heard an unknown male's voice repeatedly yelling, "Hey faggot" in the backyard diagonally adjacent to his backyard. CW1 heard the male continue yelling for approximately ten minutes. CW1 went outside, into his backyard and said, "Who's that?" Without warning, the unknown male reached over the fence and threw a grapefruit size piece of concrete at CW1 from approximately fifteen feet away. CW1 stepped to the side, to avoid getting hit in the face or head. The concrete cinder block glanced off his right shoulder. CW1 immediately retreated back to his residence. While CW1 was returning to his residence, a broom stick handle also was thrown over the fence toward him. CW1 never said anything further to the male.

CW1 called 911 to report the incident. Officers Sachs and PW1 arrived to investigate. CW1 described the male causing the injury. CW1 had never seen the male before and assumed the residential property from where the rock was tossed was vacant. CW1 suffered an abrasion to his right shoulder. The patrol officers left CW1's residence to speak with the male at the neighboring home. After approximately four to five minutes had passed, CW1 heard the sound of four gunshots.

Statement of Civilian Witness #2 (CW2)

CW2 resides with Mr. Scott. CW2 said Scott was diagnosed about ten years ago as a paranoid schizophrenic. Scott complained to CW2 about having a problem with a neighbor on the previous day. CW2 said Scott was being paranoid. Earlier in the evening, Scott prepared dinner for them and was acting normally. CW2 said, "*I had no idea he had devolved. I mean, he gets paranoid sometimes.*" After dinner, CW2 was watching television and heard the doorbell. CW2 assumed Scott was in his bedroom listening to music.

CW2 answered the door and saw uniformed police officers. CW2 greeted the officers and invited them into the home to speak with Mr. Scott. CW2 led them inside and walked back towards Scott's room. CW2 called out to Scott and announced the police were there to speak with him. CW2 saw Scott come out from his room and immediately attack Officer Sachs with a knife. Sachs tried to push Scott away. Scott continued stabbing Sachs. Sachs fired his weapon and shot Scott.

CW2 said Mr. Scott, "*Came barreling out of his room.*" CW2 saw Scott had a steak knife in his hand. CW2 described Scott going right at the officers. CW2 said, "*I hate to say this, but they had no choice, you know.*" "*Like, he just came barreling out of there, and they, and he went at them, and then they knocked him down, and then he got up, and he wouldn't stop.*" "*He was charging down the hallway, and, and charging at them. I mean, I feel really sorry for that poor policeman, you know.*"

Statement of Civilian Ride-Along Witness (CR-A)

CR-A is a law enforcement chaplain. CR-A wore a Chula Vista Police uniform but was not armed with a weapon, and was not equipped with a body worn camera. In his capacity as Department Chaplain, CR-A rides along with Chula Vista Police officers approximately twice a week.

On the evening of this incident, CR-A was riding-along with Chula Vista Police Officer PW1. Officers PW1 and Officer Sachs were dispatched to handle a disturbance between neighbors. CR-A learned CW1 called the police department and reported an unknown male tossed a brick and struck CW1 on the right shoulder. Officers PW1 and Sachs went to the residence from where the brick was tossed. The officers were greeted by a resident, CW2, and learned the suspect was named David. The officers were invited inside.

CW2 told the officers Mr. Scott was schizophrenic. One of the officers asked if Scott was violent. CW2 said Scott was not usually violent. CR-A described the interior of the residence which had a small entrance. The kitchen was off to the right and a family room was further

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inside. Officer Sachs entered first and was followed by Officer PW1. CR-A stood in the doorway.

CR-A saw Mr. Scott come out from the back room. Scott looked like he weighed 280 to 300 pounds. CR-A said Scott was probably less than thirty years of age with dark hair and a moustache. Scott appeared intent on going, "*straight into us.*" CR-A saw Scott had a knife in his right hand. Officer Sachs yelled, "Knife!" multiple times. CR-A saw that Sachs and Scott were struggling. CR-A saw them go to the ground in the kitchen. CR-A thought Scott might scramble toward him. CR-A backed out from the house.

CR-A then realized Officer Sachs was still in the house with Mr. Scott. CR-A started back into the house when he heard the sound of four muffled shots from the area of the kitchen. Sachs came out of the house and appeared to be stabbed in the face. CR-A then helped to treat Sachs for his injuries. CR-A did not re-enter the house. CR-A remained with Sachs throughout the transport to the hospital.

Statement of Police Officer Witness #1 (PW1)

PW1 said he and Officer Sachs went to the residence of the person, later identified as David Scott. CR-A was the ride-along passenger with PW1 that night. The officers were originally dispatched to handle a disturbance between neighbors. Once it had been established that a large rock was used as a weapon against the reporting party (CW1), PW1 became more safety conscious.

Officers Sachs and PW1 went to Mr. Scott's home to investigate the assault with the rock. The officers went to the front door. CR-A stood somewhere behind PW1. A resident answered the door (CW2). The resident was very cordial and asked if everything was okay. Sachs asked if the resident lived there alone. The resident told the officers Scott also lived there. Sachs told the resident that Scott might have been involved in some sort of problem with their neighbor. The resident said Scott was schizophrenic. Sachs entered the house. Sachs asked if Scott was violent. PW1 did not recall the exact words the resident replied.

The resident led Officer Sachs and PW1 into the house. They entered the foyer. Before the officers cleared the next threshold, into the kitchen, the suspect entered from the back of the house. PW1 described Mr. Scott as very tall and very obese. PW1 saw a quick scuffle between Scott and Sachs. PW1 thought the suspect was running past or around them. The suspect pushed or slapped Sachs. Sachs knocked the suspect down to the ground. PW1 thought he and Sachs would now need to subdue the suspect. PW1 then heard, "Knife, knife, knife! He's got a knife!" That was when PW1 got tunnel vision and focused on the suspect's knife. PW1 did not know Sachs had been stabbed.

PW1 decided to "create some distance" between himself and the suspect. PW1 thought Officer Sachs was right behind PW1 as he left the house with CR-A. PW1 then heard the sound of four gunshots. PW1 then broadcast over his radio that shots had been fired. Sachs walked out of the house and PW1 realized Sachs had been stabbed. PW1 ran to his vehicle and retrieved the first aid kit and treated Sachs while waiting for assistance to arrive.

Statement of Officer D. Sachs

Officers Sachs and PW1 received a call of a disturbance between neighbors. PW1 had the Ride-Along, CR-A, with him. The officers spoke with the caller, CW1. CW1 heard a ruckus in the back yard and went out to investigate. He saw a male poking his head over the fence. The male began cursing at CW1. The male then tossed a rock at CW1 and struck CW1 on the shoulder. CW1 showed the officers the superficial abrasion caused by the concrete rock. The size of the concrete piece was described as about the size of a coffee can.

CW1 pointed out Mr. Scott's residence and said the unknown male suspect stood in that back yard. Officers Sachs and PW1 approached the Scott residence with the intention of speaking to the suspect. PW1 knocked on the door. The resident (CW2) opened the door. Sachs asked if anyone else was home. CW2 told the officers another resident, David, was home. CW2 said David was schizophrenic and paranoid. Sachs asked if David was violent. CW2 replied, "*Not usually.*"

*CW2 invited the officers into the house and led them into the foyer and then the kitchen. Officer Sachs then said, "And then I hear something like coming at me, as I come around the corner to my left. And I had paused for a second, as this guy is coming at me. I didn't see a knife. I didn't see anything. He almost had a smile on his face. Like, like someone you know like coming to give you a hug. And for a split second, I flinched. And he just started smashing me in the face, and I dropped back and put my arms up, And I thought he was punching me. And I could feel blood coming down my nose. And I thought I think this guy just broke my nose. And he just kept punching me, rapid. And I'm putting my hands up. And I just said if you don't f***king move. You're dead. And I just threw him as hard as I could. And as he was going down, I was already coming on top of him to grab his arms and flip him over and put him in cuffs. And I reached for him, and he's just slicing at me. And I'm like what, oh my God. And blood shoots out of my arm. And blood starts pouring out of my face, and I'm like, I'm not getting punched. And uh, I push off of him and screamed knife as loud as I could, so my partners wouldn't walk in and try and grab him. And I knew there was a counter there. And I put my hand on the counter and braced myself between him and [CW1]. And I pushed back and just slowed my head. I have to go really slow. I have to get my gun out. I have to draw down on him. He's stabbing me. I have to pull out my gun. And I pulled out my gun. And before I can even get drawn up... He's turning around, comes right at me, and I just started shooting."*

Investigation

The crime scene was secured, photographed, and investigated by the Chula Vista Police Department Crimes of Violence detectives. All officers' reports, crime scene investigators' reports, and audio-recorded witness interviews were reviewed. The shooting event was captured on the cameras worn by Chula Vista Police Officers Sachs and PW1.

The investigation revealed Mr. David Joseph Scott was armed with a silver colored, serrated steak knife. "Oster" and "Stainless China 41" were stamped on the blade. The knife measured approximately nine inches in total length with a four and one half inch serrated blade. The knife had a black and gray colored plastic handle. The knife handle and blade were swabbed for DNA.

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The San Diego County Sheriff's Regional Crime Lab concluded extremely strong support for inclusion: Mr. Scott (90% contribution) and Officer Sachs (10% contribution).

The investigation also revealed Officer Sachs was armed with a 9mm Sig-Sauer semi-automatic pistol. Sachs fired his weapon four times from a position inside the residence, facing the kitchen. Four (4) expended 9mm shell casings were recovered at the scene. The casings were located in an area consistent with Sachs' firing position. Sachs suffered stab wounds to his right arm, right scalp, left part of nose, under the left eye and left cheek. Sachs was treated for his injuries and released from the hospital.

An autopsy of Mr. Scott was performed by Dr. Vivian S. Snyder. The autopsy revealed one penetrating thoracic gunshot wound to the chest cavity of Scott, with an entrance wound in the left upper back and a projectile recovered from the right lung. A second perforating gunshot wound to his right forearm was located, which left projectile fragments in the right wrist. Toxicological studies performed on blood collected from Scott detected 0.02% percentage of Ethanol Alcohol. Cause of death was determined to be the penetrating thoracic gunshot wound.

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 purpose of the District Attorney's review is to provide an independent analysis and determine if the shooting was legally justified. This review does not address compliance with the policies and procedures of any law enforcement agency, ways to improve training, or any issues related to civil liability.

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 whom she has reasonable cause to believe has committed a public offense.

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.'”

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The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham v. Connor* (1989) 490 U.S. 386, citing *Terry v. Ohio*, 392 U.S., at 20-22.

In addition to 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. A person acts in lawful self-defense or defense of another if she reasonably believed that she or someone else was in imminent danger of suffering bodily injury, believed that the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger.

Conclusion

In this case, officers from the Chula Vista Police Department went to the residence of Mr. Scott to investigate an allegation of an assault with a deadly weapon on Scott's neighbor. Scott armed himself with a kitchen knife and attacked Officer Sachs, stabbing him several times in the head, face and right arm. Sachs pushed Scott away and retreated. Scott got back up to his feet and continued his attack. Based on these circumstances, it is apparent Officer Sachs fired in self-defense and 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,



SUMMER STEPHAN
District Attorney
County of San Diego

SS:jh

cc: Captain Fritz Reber
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