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January 24, 2019

Chief David Nisleit
San Diego Police Department
1401 Broadway, Mail Station 700
San Diego, CA 92101

Re: Fatal shooting of Mr. Vaughn Denham on August 8, 2018, by San Diego Police Officer C. Pitts; San Diego Police Department Case# 18-025270; DA Special Operations Case No. 18-157PS; Deputy District Attorney Assigned: Paul Reizen

Dear Chief Nisleit:

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. As part of our analysis, we have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Unit concerning the circumstances leading to the fatal shooting of Mr. Vaughn Denham on August 8, 2018, by San Diego Police Officer C. Pitts. A District Attorney Investigator responded to the scene and was briefed by investigators. This case was presented to the District Attorney's Office for review on December 4, 2018.

Persons Involved

At the time of the incident, Mr. Vaughn Denham was a 48-year old resident of San Diego County. Officer C. Pitts had been a police officer for two years and was assigned to the Southeastern Division.

Summary

On August 8, 2018 at approximately 5:11 p.m., San Diego Police received a 911 call reporting an assault with a machete. Witnesses reported seeing Mr. Denham attack another male in the head and torso with a machete. Officer Pitts responded to the call and advised dispatch he was making contact with a person matching the description of the suspect. As Pitts was getting out of his vehicle, Denham ran up to the car and swung a four-foot long metal chain striking Pitts' police car. Pitts got out of the car and ordered Denham to drop the chain. Denham refused and began walking towards Pitts while swinging the chain. Pitts deployed his Taser, which was ineffective in stopping Denham. Pitts continued to retreat from Denham for a block and a half to keep from being struck with the chain. As Denham continued to close the distance between he and Pitts, Pitts fired two rounds from his duty weapon striking Denham. Denham was transported to a local hospital where he succumbed to his injuries.

WITNESS STATEMENTS

Witness One (W1)

Witness One visited his cousin's house. While inside the house, he heard his cousin screaming and loud banging outside. W1 went outside and saw Mr. Denham breaking a car window with a large chain. W1 tried calming Denham and coaxing him to drop the chain. Denham ignored W1 and instead began to kick down the back fence along the alley. W1 told Denham to leave. Denham refused and began swinging the chain at W1 and attempting to strike him with it. W1 was able to dodge the chain several times. At some point during the altercation, Denham armed himself with a machete and struck W1 in head causing his head to bleed. W1 attempted to get away. Denham discarded the machete, picked up the chain again, and told W1 he was going to kill him. W1's cousin tried to stop Denham from attacking W1 with the chain. Denham was able to strike W1 in the chest and leg with the chain.

W1 heard the police arriving and Mr. Denham stopped attacking him. W1 believes Denham was under the influence of some type of controlled substance. W1 was transported to the hospital where he received fourteen stitches on the top of his head and seven stitches on his left forearm.

Witness Two (W2)

Witness Two resides in the area of the shooting and saw Mr. Denham holding a machete in his right hand. Denham appeared agitated and a female who lives in the area was telling Denham to stop. W2 saw Denham swing the machete at a male standing on the front porch of a home on Boston Avenue. W2 believes Denham struck the male on the left side of the body with the machete. W2 asked a passerby to call the police.

Witness Three (W3)

Witness Three saw Mr. Denham carrying a machete and waving it around. Denham struck W1 several times with the machete causing W1 to bleed from his head and face. W1 ran into the street in an attempt to get away from Denham. A female tried to calm Denham down but he was screaming and asking for his chains. W3 saw Denham return to the street carrying and swinging a chain. The female told Denham to stop and the police were on their way. Denham walked down the street and W3 lost sight of him.

Witness Four (W4)

Witness Four heard a commotion and looked outside and saw Mr. Denham holding a machete to W1 on the ground. Denham's girlfriend was trying to get the machete away from him. W1 got up off the ground and was bleeding pretty bad. W4 called 911 and asked for an ambulance. Denham went into the house and returned with a chain. W4 has seen Denham swing the chain at neighbors in the past. Denham started walking toward 40th Street and then towards National Avenue. W4 lost sight of Denham and a few minutes later heard two gunshots.

Witness Five (W5)

Witness Five was walking on 40th street to Boston Avenue when he saw a police car stop just south of mid-block. W5 saw Mr. Denham running west on Boston Avenue toward the police car.

Denham was in the middle of the street and a female was running after him yelling at him to stop. Denham was holding a chain in his hands.

The officer got out of his car, drew his stun gun, and yelled, "Stop." Mr. Denham did not listen and instead rushed at the officer. The officer stepped back and Denham swung the chain and hit the officer's patrol car twice. The officer Tased Denham, but the Taser did not affect him. Denham continued to come at the officer. The officer dropped the Taser and pulled his gun out. The officer kept yelling at Denham to stop while at the same time walking backwards. W5 stopped following the officer and Denham as they moved north. After a short time, W5 heard two gunshots but did not see what happened.

Witness Six (W6)

Witness Six heard yelling in the street from his doorway. W6 saw Mr. Denham swinging a chain and the officer backing away from the suspect. The officer was saying 'stop' and 'get down' loudly. The suspect swung the chain at the officer and the officer fired two shots.

Witness Seven (W7)

Witness Seven saw Mr. Denham with a chain and he was swinging it from side to side. The officer had his gun pointed at Denham and kept telling Denham to drop the chain. The officer was walking backward the whole time. Denham wouldn't listen or obey the officer. It appeared the officer did not want to shoot Denham. The last thing the officer told Denham before he shot him was to stop. The officer fired two shots. Denham looked really angry. W7 couldn't hear or articulate what Denham was saying.

Witness Eight (W8)

Witness Eight saw Mr. Denham approach the officer. The officer ordered Denham to stop and drop the chain. The officer told Denham he would shoot Denham if he did not comply. Denham ignored the orders to stop and continued to advance on the officer. Denham had a four-foot chain which he was dragging on the ground and swinging it like he was going to hit the officer with it. As Denham continued to walk towards the officer, the officer fired two rounds at Denham and Denham went down.

OFFICER STATEMENTS

Officer One (O1)

Officer One was working patrol with his partner Officer Two when they responded to a radio call of an assault with a machete. The suspect was described as a black male wearing no shirt, black shorts and armed with a machete. Officer Pitts was also dispatched to the call. Pitts arrived at the call before O1. O1 heard Pitts say over the radio the suspect was coming at him and he had deployed his Taser.

As O1 arrived on scene, he saw Officer Pitts in the street with Mr. Denham about two blocks from Pitts' vehicle. Denham was holding something in hands and was whipping it around. As O1 drove closer, he saw Denham was holding a chain. Pitts was walking backwards and Denham was walking towards Pitts swinging the chain. When O1 was about 25 to 50 feet from Pitts, he

heard two gunshots and saw Denham fall to the ground. O1 provided first aid to Denham while they waited for medics to arrive.

Officer Two (O2)

Officer Two and his partner Officer One responded to a call of a man being attacked with a machete. Officer Pitts was closer to the call and also responded. Pitts arrived at the call before O2 and immediately advised over the radio the suspect was approaching him with a chain. O2 sensed Pitts was under stress and O2 could also hear yelling in the background. The next thing O2 heard Pitts say over the radio was "Taser deployment." O2 arrived on scene and saw Pitts' vehicle unoccupied but could not locate Pitts. O2 asked dispatch to confirm Pitts' location.

Officer Pitts got on the air and sounded even more stressed. Pitts yelled his location over the radio. As O2 approached Pitts' location, he could see Pitts was walking backwards and had his gun drawn and pointed at Mr. Denham. Denham appeared very agitated and was walking toward Pitts at a pretty fast rate. Denham was holding a chain which he was swinging and striking the ground with.

As Mr. Denham continued to approach Officer Pitts, O2 saw Pitt's fire two rounds at Denham and Denham fall to the ground. O2 exited his vehicle, drew his weapon and ordered Denham to stay down on the ground and show his hands. Denham did not comply and attempted to stand up. When Denham got up on his hands and knees, O2 and his partner held Denham down. O2 was able to handcuff Denham and began first aid.

Officer Pitts

Officer Pitts responded to a radio call of a man struck in the head with a machete. Pitts was the first officer to arrive on scene and saw Mr. Denham who fit the description of the suspect provided by dispatch. As Pitts was parking his patrol vehicle, Denham ran up to the police car and struck the hood and windshield with a four to five-foot long chain that was pretty thick.

When Officer Pitts saw Mr. Denham running toward his patrol car with the chain, he exited the vehicle and ordered Denham to drop the chain. Denham continued to walk towards Pitts swinging the chain in an aggressive manner. Pitts drew his Taser and ordered Denham to drop the chain. Denham did not comply and continued walking toward Pitts. Pitts attempted to create distance between him and Denham by walking backwards in a northerly direction. Pitts deployed his Taser, but the barbs got tangled in the chain and the Taser was rendered ineffective. Pitts dropped the Taser and drew his duty weapon.

Officer Pitts again ordered Mr. Denham to stop and drop the chain. Denham disregarded the commands and continued advancing on Pitts while swinging the chain. Pitts continued to back up across the intersection of Newton Avenue and South 40th Street and then towards the intersection of National Avenue and South 40th Street. Denham was closing distance on Pitts and swinging his chain even more aggressively. Pitts believed Denham was going to strike him with the chain as Pitts was attempting to negotiate the busy intersection. In response, Pitts fired two rounds at Denham who went down to ground. Pitts knew if Denham hit him with the chain, Pitts would probably be knocked to the ground disabling him from his firearm, which would give

Denham the opportunity to use Pitts' firearm on Pitts. After being struck by gunfire and falling to ground, Denham attempted to get back up until other arriving officers handcuffed him.

Investigation

The crime scene was secured, photographed, and investigated by San Diego Police Department's Homicide detectives. All detectives' reports, crime-scene investigators' reports, and audio-recorded witness interviews were reviewed.

Portions of the shooting event were captured on cell-phone video by several witnesses as well as by body-worn camera by Officer Pitts, O1, and O2. All of the video footage is consistent and corroborates Pitts' account of the incident.

On August 9, 2018, Dr. Schaber performed an autopsy of Mr. Denham. The autopsy documented four gunshot wounds to the left hand, right arm, and torso; two of these wounds may have been reentry wounds.

Toxicological studies performed on blood collected from Mr. Denham indicated the presence of Phencyclidine (PCP), Cannabinoids, and Methamphetamine.

Legal Analysis

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 he 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.'"

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.

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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, Mr. Denham assaulted another male with a machete inflicting severe trauma to the victim's head and torso. A witness to the attack called 911 to summon police and medics. Officer Pitts was the first officer to arrive on scene and encounter Denham. Before Pitts could get out of his patrol vehicle, Denham ran towards him swinging a large chain. Pitts managed to exit his vehicle just as

Denham began to strike the patrol car with the chain. Pitts ordered Denham to stop and drop the chain. When Denham did not comply with his orders, Pitts deployed his Taser, which had no effect on Denham. Pitts drew his duty weapon and again ordered Denham to stop and drop the chain. Throughout the encounter Pitts retreated away from Denham as Denham continued to walk towards Pitts. Pitts retreated one and a half blocks while attempting to get Denham to stop advancing on him and drop the chain.

Based on these circumstances, Pitts fired at Denham in his own defense. He therefore bears no state 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

SS:gm

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