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April 24, 2020

Chief of Police David Nisleit
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: In-custody death of Buddie Nichols detained by San Diego Police Officers T. Davoren, B. Kashouty and S. Springer on June 11, 2019; SDPD Case No. 19-020654; DA Special Operations Case No. 19-114CD; Deputy District Attorney assigned: Giacomo Bucci

Dear Chief Nisleit,

We have reviewed the reports and other materials compiled by your department's Homicide Division concerning the detention of Buddie Nichols and his subsequent death. This case was submitted to the District Attorney's Office for review on September 5, 2019. We received the Medical Examiner's report on March 19, 2020.

Summary

On June 11, 2019, a man called SDPD Communications to report a burglary and asked that officers respond. The caller stated he found a male he did not know inside his home who had apparently broken in. For the purpose of brevity and clarity, this review will refer to the decedent as Nichols throughout the remainder of this letter.

The first responding officer arrived with a civilian PERT Clinician and contacted Nichols. The officer attempted handcuff Nichols and Nichols began to resist the officer's handcuffing efforts. Two more officers arrived and it took all three officers to handcuff Nichols. Nichols resisted enough that the officers used physical force, as well as an impact device, in order to take him into custody. During the time the officers were handcuffing Nichols, he displayed symptoms of being under the influence of a controlled substance and continued to do so after he was handcuffed. Nichols was screaming and thrashing about with his body and the officers held him in place on the ground to limit his movements.

The officers requested paramedics respond to the location and began to develop a plan to place Nichols in a WRAP device. As the paramedics arrived, the officers noticed Nichols appeared to be unconscious. Fearing he may be in medical distress, the officers removed the handcuffs from Nichols. Paramedics could not detect a pulse from Nichols and began CPR. Nichols was transported by ambulance to UCSD hospital but never gained consciousness. At 4:49 p.m., Nichols was pronounced deceased by the treating physician.

The medical examiner determined Nichols' cause of death was resuscitated arrest due to sudden cardiac arrhythmia due to excited delirium while intoxicated on methamphetamine. He also stated the manner of death was accident.

Persons Involved

Nichols was a 40 year-old resident of San Diego. All officers involved in this incident are employed by the San Diego Police Department and were on duty and in full police uniform. At the time of this incident Officer Davoren had been employed for approximately 18 months; Officer Kashouty had been employed for approximately six years; and Officer Springer had been employed for approximately four years. On the night of this incident, Officer Davoren had a civilian PERT Clinician with her.

Civilian Witnesses

Eight civilian witnesses were interviewed by investigators, which included the PERT Clinician who was with Davoren. None of the witnesses knew Nichols personally.

Civilian Witness #1 (CW#1)

CW#1 is a licensed marriage and family therapist and is employed by the Community Outreach Foundation. CW#1 was part of an SDPD program known as the Psychiatric Evaluation Response Team, commonly referred to as PERT. The program pairs a licensed clinician like CW#1 with a specially trained police officer. They respond to calls involving people who are having a mental health crisis and attempt to provide services or resources to those in need. CW#1 was assigned to work with Davoren on the day this incident took place.

CW#1 said she was working with Davoren when they received a radio call of an in-progress burglary, which just occurred at 2952 Hornet Way. When Davoren and CW#1 arrived, they found Nichols in front of the residence. He was on his hands and knees and when CW#1 and Davoren approached him, he looked up at them and appeared to be startled. Davoren told Nichols to put his hands behind his back and began to handcuff him. Kashouty and Springer arrived at this time and began to assist with handcuffing Nichols. Nichols was lying face down on the ground and was uncooperative. CW#1 stated the officers were having difficulty getting Nichols' hands behind his back. Kashouty delivered several blows to Nichols' left shoulder with a flashlight and the officers were finally able to put handcuffs on Nichols.

CW#1 saw Nichols' legs moving and put her foot on top of his leg to prevent him from kicking. Kashouty broadcast a request for a WRAP device and Davoren told her she had one. CW#1 went to Davoren's patrol vehicle to get the WRAP and brought it to the officers leaving it next to them. CW#1 then heard Kashouty say they were going to wait for paramedics to arrive so they could place Nichols in soft restraints. CW#1 heard one of the officers advise over the radio they needed paramedics, but she was unsure which officer made the request.

CW#1 said as the paramedic unit was arriving one of the officers said Nichols was unconscious. The officers removed the handcuffs and paramedics began administering aid to Nichols.

Civilian Witness #2 (CW#2)

CW#2 was in his home along with his girlfriend and their daughter. CW#2 was in an upstairs bedroom and came downstairs. When CW#2 walked into the kitchen, Nichols was there and CW#2 punched him twice in the head without hesitation. Nichols fell to the ground and appeared to go unconscious so CW#2 ran upstairs and told his girlfriend what happened. CW#2 also activated a panic button, which is part of a home alarm system that alerts on-site security of an emergency. CW#2 ran back downstairs and found

Nichols on the floor in the kitchen and he appeared to still be unconscious. CW#2 kicked Nichols twice attempting to awaken him. Nichols got up and asked CW#2 not to hurt him. Nichols ran out the front door and fell to the ground in the grass in front of CW#2's home. CW#2 called 9-1-1 and asked for the police to respond.

A security officer arrived first and watched Nichols who by this time was on the ground. Police officers arrived a few minutes later and CW#2 watched as the officers tried to arrest Nichols. CW#2 said it appeared that Nichols was resisting the officers by wriggling around and saw one officer appear to strike Nichols near his head with some type of object.

CW#2 used his cell phone to take a video of Nichols before the police arrived as he was lying on the ground in front of his home. He also took a video of the police and their interaction with Nichols as well as the paramedics starting CPR on Nichols.

Civilian Witness #3 (CW#3)

CW#3 said she was upstairs taking a nap with her boyfriend, CW#2. Her daughter, CW#4, was asleep on the sofa downstairs. CW#3 awoke and saw CW#2 go downstairs. CW#2 then came running back upstairs and appeared to be panicked. CW#3 asked him what was wrong but CW#2 did not answer her. Instead he turned on the light, hit the panic button and ran back downstairs. CW#3 got up and went to see what was going on and saw her daughter still on the sofa. CW#3 then saw a man, Nichols, lying on the floor and at first thought it may have been a maintenance person. She then heard CW#2 tell Nichols to get up so CW#3 got her daughter and ran upstairs. CW#3 looked out the window later and saw Nichols on the ground and said he appeared to be on drugs. She said he was lying on the curb in front of her house and was trying to put his head under CW#2's car.

A security officer arrived and soon afterward the police showed up. CW#3 said the officers were trying to arrest Nichols but he began to resist. Nichols was yelling and moving around and one of the officers hit him with a flashlight on the upper body. CW#3 could not see where the officer hit Nichols. CW#3 walked away and came back about two minutes later. By then the paramedics arrived and began treating Nichols. CW#3 said she believes the paramedics gave Nichols a shot from an "Epi-pen" and attempted to resuscitate him. At that point, Nichols was just lying there and the paramedics used an AED (Automated External Defibrillator) on him.

Civilian Witness #4 (CW#4)

CW#4 is the 10-year-old daughter of CW#3. CW#4 was asleep on the sofa, which was in the first floor living room of the home. CW#4 was awakened by a loud noise and saw Nichols in the apartment. CW#2 was standing in front of her and began running toward Nichols. CW#4's mother, CW#3, came downstairs and walked her upstairs where they waited. CW#4 saw Nichols run out of the apartment, lay on the ground and put his head under a car parked in front of the apartment. CW#4 saw security officers arrive and watch Nichols before the police arrived. When the police arrived, the officers tried to put Nichols' hands behind his back, but he kept moving and yelling. The officer told Nichols to stop resisting.

Civilian Witness #5 (CW#5)

CW#5 is the maintenance supervisor for the military housing complex where this incident took place. CW#5 received a call from one of his employees regarding a man acting strangely. CW#5 went to the employee's location. When he arrived, CW#5 saw Nichols in the backyard of an adjoining home. There is a fence separating the two homes, so CW#5 got a step ladder to stand on and looked into the back yard. CW#5 saw Nichols hiding behind a bush and he was talking to himself. CW#5 asked Nichols why he was there and told him to leave. Nichols told him he could do anything he wanted and to leave him alone.

CW#5 told Nichols he was going to call security and Nichols picked up a patio chair and threw it in CW#5's direction but it fell short of the fence and did not hit him. CW#5 got off the ladder and called the office so they could call 9-1-1.

CW#5 went back to see what Nichols was doing and saw him hitting the wood fence between 2848 and the adjoining residence with his head at least twice. CW#5 eventually saw that Nichols had broken the fence separating the two properties and went in the backyard of CW#2's home. CW#5 walked around to the front of the property to wait for an officer to arrive. CW#5 saw Nichols exit the front door of CW#2's home and run straight into a tree in front of the house and fall to the ground. Nichols began shouting saying things like, "Don't shoot and I won't shoot you." Nichols got up and ran around a vehicle parked in the street and fell down again. Nichols continued talking to himself and took his shoe off his left foot and began hitting the car with it. The homeowner (CW#2) came out and yelled at Nichols to stay away from his car and CW#5 told him to go inside and let the police handle it.

A security officer arrived and CW#5 directed him to Nichols and the officer told Nichols to stay there. CW#5 described seeing two female police officers arrive (Davoren and CW#1) and contact Nichols. The officer told Nichols she was going to put handcuffs on him. Nichols was on the ground and the officer grabbed one hand and placed a handcuff on. When she grabbed Nichols' other hand, Nichols began to scream and told the officer she was not going to arrest him. Two more officers arrived, and the officers were able to handcuff Nichols. CW#5 saw one of the officer's strike Nichols because he was trying to get his other hand to handcuff him. CW#5 could not see what the officer was using to strike Nichols.

The fire department arrived along with the ambulance and began to treat Nichols.

Civilian Witness #6 (CW#6)

CW#6 arrived home and parked in the rear of the apartment complex and began walking toward the back door of his apartment. CW#6 heard a rustling sound coming from the apartment next door and saw the fence separating the two homes was broken. CW#6 looked over the fence and saw Nichols standing at the back door of his neighbor's apartment. CW#5 saw Nichols open his neighbor's back door and go inside. CW#6 had his children with him so he got them inside and checked to make sure no one was inside his home. CW#6 called 9-1-1 and he looked outside and saw Nichols, now in the street, run around a parked car a couple times and then lay down on the ground. It appeared to CW#6 that Nichols was trying crawl under the parked car. A security officer arrived and tried to talk to Nichols and tell him he was going to get him some help. A few minutes later the police arrived.

There were three officers and at first they told him to put his hands behind his back. Nichols tried to roll to his side when the officers tried to handcuff him. Nichols was face down on the ground and two officers had their knee in his back. One officer was closer to Nichols' feet. The officers told Nichols several times to put his hands behind his back and to stop resisting. As Nichols kept resisting, CW#6 heard sounds like one of the officers was hitting Nichols while telling him to stop resisting. CW#6 could not see if the officer had anything in his hand. The officers were on top of Nichols for about a minute when the fire department showed up. CW#6 heard someone say he was out so they started treating Nichols by doing CPR.

Civilian Witness #7 (CW#7)

CW#7 is a security officer for military housing where this incident took place. He received a call regarding a homeless man who had assaulted a maintenance employee and was possibly fighting with a resident. CW#7 arrived and saw police officers had Nichols in custody already. He did not see them struggling with Nichols. The officers were trying to get Nichols on his side or his back and the paramedics arrived. One of

the EMT'S checked Nichols for a pulse and apparently could not find one because they started giving him CPR. When Nichols was on his back CW#7 could see he had a bruise under his left eye. CW#7 notified his supervisor of the incident.

Civilian Witness #8 (CW#8)

CW#8 is a security officer assigned to military housing where the incident took place. He received a call regarding a homeless man on the property. When CW#8 arrived, he was directed to Nichols' location by other security officers who arrived before him. Nichols was on the ground beside a parked vehicle. He was shaking and talking to himself and CW#8 believed he may have been under the influence of drugs. CW#8 asked Nichols if he needed help but he did not respond to him so CW#8 called 9-1-1. Nichols stood up and tried to walk but could not and fell landing on his back. CW#8 saw that Nichols had some scratches on his face and on his legs.

The police arrived about two minutes later and one officer attempted to put handcuffs on Nichols. CW#8 heard the officer tell Nichols to put his hands behind his back and Nichols appeared to tense up and put his hands in front of him. Nichols also began to yell and at that time two more officers arrived and began assisting the first officer. The officers had Nichols on the ground and were on top of him as they applied the handcuffs which took a few seconds. He believes the officers may have had their knees on his back but he could not see clearly. CW#8 saw one of the officer's strike Nichols in the shoulder area no more than five times. CW#8 said it appeared to him the officers used what he considered normal force to handcuff Nichols. CW#8 turned to talk to his supervisor and saw the paramedics had arrived. When CW#8 looked back at the officers, they had removed the handcuffs from Nichols and the paramedics were doing CPR on him.

Officer Taylor Davoren's Statement

Davoren was partnered with a PERT clinician, CW#1, and they volunteered to assist on a call regarding an in-progress burglary. Kashouty was the primary officer assigned and Davoren volunteered to assist her because she was close to the call. When she arrived Davoren saw a security officer standing near Nichols and appeared to be looking at him. Davoren approached Nichols who was on his hands and knees and told him to put his hands behind his back. Nichols did not immediately respond, so Davoren moved behind him and attempted to take hold of both of his hands. Nichols lay prone on the ground and Davoren was able to get one hand behind his back. Once both hands were behind his back, Nichols pulled away and brought his left hand under him near his waist area.

Davoren could not see what, if anything, Nichols had in his waist area or left hand. Davoren placed her right knee on Nichols' back near his waist and her left knee was on the ground while she kept control of his right hand. Nichols told Davoren he could not free his hand, so she reduced the pressure she was applying to his back with her knee. Davoren still could not free Nichols' left hand and she was afraid he may have a weapon near his waist line since he was so quick to move his hand there.

Springer and Kashouty arrived and Kashouty patted Nichols' left shoulder a few times with his flashlight. After this, they were able to get Nichols' left hand behind his back and handcuff him. Once Nichols was handcuffed Springer or Kashouty broadcast a request on the radio for a WRAP device. CW#1 told Davoren that Nichols was trying to kick back at her with his feet and Davoren realized CW#1 was using her feet to block Nichols from doing so. Davoren told CW#1 to go to their car to retrieve a WRAP device and took control of Nichols' ankles. Davoren could still feel Nichols attempting to push up with his ankles but she was able to control him.

Springer asked if Nichols was still breathing and Davoren was able to see Nichols' chest rise and fall. Before Davoren could respond to Springer, Kashouty answered that Nichols was still breathing. CW#1 arrived with the WRAP from Davoren's vehicle and as they began laying it out, they noticed the paramedics were almost there. Kashouty told them they should hold Nichols in a recovery position on his side until the paramedics arrive so they could place him in soft restraints.

When the paramedics arrived, Kashouty stated that Nichols was unconscious, so they removed the handcuffs and placed Nichols on his back. Paramedics began CPR and Davoren ran to her car to get a Narcan pack. When she arrived back the paramedic told her it was too late for Narcan and continued treating Nichols.

Officer Brian Kashouty's Statement

Kashouty stated that prior to being dispatched to the call that ultimately led him to Nichols, he received another call in the area regarding a burglary case. The caller described the case as a white male in his 40s, who appeared to be on drugs. Kashouty and another officer responded to the call and were unable to locate the suspect, so they cleared the call. About 45 minutes later, Kashouty responded to a hot-prowl burglary. The person reporting the incident provided a description of a similar suspect in the previous burglary case call.

When he arrived at the scene, Kashouty saw Davoren standing over Nichols and Springer was standing nearby putting on latex gloves. Kashouty walked over to assist Davoren with handcuffing Nichols. They intended to detain him pending the investigation of the alleged burglary. Nichols was face down on the ground and Davoren began to handcuff him. Nichols began screaming and thrashing his body back and forth. Davoren looked like she needed help so Kashouty moved in to assist her.

Kashouty saw Nichols make a fist with his left hand and he attempted to get up off the ground. Kashouty interpreted that as assaultive behavior so he used his flashlight as an impact weapon. He struck Nichols three times on his left shoulder in order to gain compliance so they could handcuff him. The first three times were ineffective so Kashouty struck Nichols in the upper left shoulder with his flashlight three more times. After this they were able to handcuff Nichols.

Kashouty asked CW#1 to go get a maximum restraint device since Nichols appeared to be agitated. The officers told Nichols several times to put his hands behind his back and he screamed "No" and would not comply. Kashouty said they essentially had Nichols under control, but he kept trying to lift his body up. Davoren had control of Nichols' feet and Springer controlled his mid-section while Kashouty controlled Nichols' head. He used his hands to keep Nichols' head against the ground and could feel him continue to resist. They tried to position Nichols in the recovery position on his side but because he was moving around so much, they kept him face down to ensure their safety. Kashouty believed that Nichols may be exhibiting signs of excited delirium possibly brought on by methamphetamine use. He was very sweaty, screaming unintelligibly and it took all three officers to control him.

Kashouty believed it may develop into a medical issue, so he asked the dispatcher to have paramedics respond. Kashouty knew from his experience dealing with similar subjects it's best to have the person medically evaluated. Apparently, paramedics were already responding because about one minute later Kashouty heard their sirens and they arrived at his location. During that one-minute Kashouty thought Nichols had calmed down so he looked to make sure he was still breathing. When Kashouty looked down at Nichols, it appeared he was unconscious and had stopped breathing so he and Davoren unhandcuffed him. Paramedics were already there at that time and immediately began CPR.

Officer Scott Springer's Statement

Springer said he responded to a burglary in progress and the homeowner had chased the subject out in the street. When Springer arrived at the scene, Davoren was already there and attempted to contact Nichols. Nichols was lying face down and at first looked as though he was compliant because his hands were behind his back. Davoren was gripping Nichols' hand while she was taking her handcuffs out. Springer began to put gloves on and told Nichols they were there to take care of him and to do as they say. As soon as Davoren contacted Nichols, he pulled his left hand away and put it under his body.

Springer could not tell if Nichols was reaching for an object or if he was pushing himself up off the ground. Springer put his knee on Nichols lower back and used his body weight to keep him on the ground. Springer grabbed Nichols' left arm in order to control it in case he was going to pull something out. Kashouty arrived and restrained Nichols' head and Springer told Nichols several times to put his left hand behind his back, but he kept screaming "No." Kashouty struck Nichols on the left shoulder several times with his flashlight and they were able to use force to guide Nichols' arm around to his back and handcuff him.

Nichols continued to try to push up with his body up so Springer continued to keep his knee on his back to control him. Springer could hear sirens of the paramedics approaching but did not know if they were coming to their location or going somewhere else. Kashouty mentioned Nichols may have excited delirium and they discussed putting him in a WRAP. CW#1 went to get a WRAP, but they decided to put him in soft restraints in an ambulance.

Paramedics arrived quickly and by this time Nichols had calmed down so Springer took his weight off him. Springer asked Kashouty if Nichols was breathing. Kashouty said he was breathing, and Springer saw Nichols' hands move so he believed he was conscious. Springer got up and walked over to the paramedics to let them know they would need soft restraints. As he began walking back toward the officers, Kashouty said Nichols lost consciousness so they took the handcuffs off and rolled him on his back. Paramedics then began CPR.

Investigation

The audio recordings from 911 dispatchers, witness interviews, officer interviews, officers Body Worn Camera (BWC) video, crime scene reports, and cell phone video provided by a witness were reviewed for this investigation. All of these items of evidence were found to provide evidence, which corroborates the officers' statements.

CW#2 provided the investigating detectives video files he recorded using his cell phone. The videos were recorded while CW#2 was standing in his apartment looking through the front screen door. The videos are short and depict Nichols laying on the ground before the officers arrive. After the officers arrive their backs are to CW#2 and they are on their knees surrounding Nichols while they try to handcuff him. In the other short videos, paramedics were performing CPR on Nichols.

All three officers arrived at the scene almost simultaneously and activated their BWC prior to arriving. This allowed the entire contact to be captured from several different angles. The officers arrived at 3:41 p.m. and Davoren was the first officer to contact Nichols. Nichols was on his hands and knees and appeared to look up at Davoren when she addressed him. He was very unkempt with dirty clothing and hair. His eyes were open very wide and they appeared to be darting around as he looked back and forth in a frantic manner. Davoren walked around to approach Nichols from behind and told him to put his hands behind his back. Davoren was able to take hold of Nichols' thumbs with one hand and at first he appeared to be compliant as

he lay face down on the ground. As soon as Davoren began to apply her handcuffs to Nichols' wrists he began to say, "No" over and over. He also pulled his left hand away and put it under his body.

Springer and Kashouty then moved in to assist Davoren with Springer positioning himself at Nichols' lower back. Springer placed his right knee on Nichols' lower back and attempted to gain control of Nichols' left hand, along with Davoren, and bring it behind his back. Kashouty had his left knee placed on Nichols' right shoulder. Kashouty used the bulb end of his flashlight to strike Nichols on the top of his left shoulder. Kashouty delivered a total of six blows in a downward motion impacting the flat lens portion of the flashlight onto the top of the shoulder. As Kashouty did this, the officers can be heard telling Nichols to give them his hand. Davoren and Springer then gained control of Nichols' hands and handcuffed him. It took one minute from the time Davoren took out her handcuffs until they were able to gain control and handcuff Nichols.

At 3:43 p.m., Davoren asked CW#1 to go to their vehicle for a WRAP. All three officers held Nichols face down on the ground as he attempted to turn sideways. At 3:44 p.m. the sirens of the responding paramedics can be heard, and the officers can be heard discussing that it may be better to put Nichols in soft restraints.

At 3:44 p.m., Kashouty asked the dispatcher to have paramedics respond and said they need soft restraints and a gurney. Springer can be seen maintaining a grip on Nichols' right forearm with his left hand. Kashouty still had his left knee on Nichols' right shoulder and his left hand on his back. By this time Nichols appeared to have calmed down and his fingers can be seen moving.

At 3:45 p.m., Springer asked Kashouty if Nichols is breathing. Kashouty said yes and said the paramedics have arrived. At 3:46 p.m. the paramedics arrive next to the officers and Kashouty stated that Nichols went unconscious. Kashouty told Springer they need to take the handcuffs off. Nichols and Davoren began to do so. After Davoren removed the handcuffs, she and Kashouty rolled Nichols on to his back.

At 3:47 p.m., one of the paramedics checked Nichols' carotid pulse and announced he had no pulse. The paramedic immediately began to provide chest compressions and stated they need to start CPR. Paramedics continued providing CPR while Nichols was transported to UCSD Hospital.

At 4:49 p.m., Nichols was pronounced deceased by Dr. Hayden at UCSD Hospital.

Autopsy

On June 12, 2019, Deputy Medical Examiner Robert Stabley performed the autopsy of Mr. Nichols. In his autopsy report, Dr. Stabley noted Nichols had numerous blunt force injuries to his head, face, torso and extremities. Nichols also has fractures to his ribs and sternum. Dr. Stabley stated these injuries did not contribute to Nichols' death. The toxicology results showed Nichols had .13 mg/L of amphetamine and 6.7 mg/L of methamphetamine in his blood.

Dr. Stabley determined cause of death was resuscitated arrest due to sudden cardiac arrhythmia due to excited delirium while intoxicated on methamphetamine. He also stated the manner of death was accident.

Legal Standards of Criminal Liability

In analyzing the potential criminal liability of the officers involved in the contact of Nichols, there must first be a determination of causation. For charges of either murder or manslaughter, there must be an act or acts that cause the death of another. The medical examiner determined Nichol's cause of death was accident.

Chief of Police David Nisleit

April 24, 2020

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Under the circumstances, the officers had an obligation to detain Nichols, who had reportedly committed a burglary while residents were present in the home. He appeared to be under the influence of drugs. The officers were within their rights to use reasonable force to effect the detention, including physical force, when Nichols resisted the officers' initial attempts to restrain him. It was recognized that Nichols was displaying symptoms which indicated he may be suffering from excited delirium. The officers attempted to minimize his agitation by using a lesser form of restraint as they waited for the imminent arrival of paramedics who would provide medical treatment and evaluation. One minute before paramedics arrived, officers verified Nichols was breathing. In the next minute, the officers realized Nichols was unconscious and they began to assist him. In the next minute, paramedics provided medical attention.

Conclusion

Based upon our review of the facts and circumstances surrounding Nichol's death, the law enforcement personnel involved in his restraint acted reasonably under the circumstances and bear no state 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,



SUMMER STEPHAN

District Attorney

SS:gm

cc: Captain Richard Freedman
San Diego Police Department
Homicide Division