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February 24, 2020

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

Re: Fatal shooting of Mr. Dennis Carolino by San Diego Police Officer Brad Keyes on August 24, 2019; SDPD Case No. 19-607005; DA Special Operations Case No. 19-134PS; Deputy District Attorney assigned: Gregg McClain

Dear Chief Nisleit,

We have reviewed the reports and other materials compiled by the San Diego Police Homicide Unit concerning the shooting of Dennis Carolino and his subsequent death. A District Attorney Investigator responded to the scene and was briefed by your detectives. This case was submitted to the District Attorney's Office for review on November 8, 2019.

Summary

On August 24, 2019, at 7:47 p.m., San Diego Police Communications received a call from a citizen who stated her nephew, Dennis Carolino, threw a brick at her and almost hit her. The caller stated Carolino suffered from schizophrenia and lives in a shed on her property.

Officers Keyes and his partner responded to the call and met with the reporting party. After determining a crime had occurred, the officers attempted to contact Carolino to evaluate him for a mental health referral. The reporting party led the officers to the backyard area towards the shed Carolino was living in. The door of the shed suddenly opened and Carolino charged at the officers holding a long-handled shovel. The officers told Carolino to drop the shovel, but Carolino continued to quickly advance toward the officers while ignoring their commands. Both officers believed Carolino was about to hit them with the shovel potentially causing them serious injury. Keyes' partner deployed his taser at Carolino as Keyes simultaneously fired his handgun. Carolino sustained five gunshot wounds to his body. Life saving measures were attempted but Carolino was pronounced deceased at the scene.

Persons Involved

Dennis Carolino was 52 years old and a resident of San Diego. Officer Brad Keyes had been employed by the San Diego Police Department for approximately four years at the time of this incident.

Civilian Witnesses

The responding investigators canvassed the neighborhood and spoke to six civilian witnesses. Several of the witnesses heard shouting and the sound of gunshots, but only one witness observed the shooting.

Civilian Witness #1 (CW1)

CW1 said Carolino was her nephew and lives in a shed on her property. She takes care of him because he is diagnosed with schizophrenia and diabetes. He is prescribed medication for both conditions. Carolino had asked CW1 for money earlier in the day but she told him she didn't have any. CW1 made Carolino breakfast and lunch and he seemed fine. Later in the day, Carolino went to visit a friend who lives nearby. Later, Carolino was at home smoking cigarettes and CW1 told him to clean up the cigarette butts and put them in a can. Carolino obeyed. When CW1 asked Carolino if he was still hungry and he said yes. CW1 told him she would make some more food for him. CW1 told Carolino to wash his hands while she prepared the food. Carolino became upset when CW1 told him to wash his hands and accused her of always telling him what to do. Carolino told CW1, "You are too much today!" Carolino then threw a round steppingstone at CW1. The stone partially hit CW1 in the chest and hit a nearby post. Carolino tried to hit CW1 with another stone but she ran away.

Carolino told CW1 he was going to kill her and had another stone in his hand when he said this. CW1 ran back to the house and locked the door. CW1 told Carolino she was going to call the police. CW1 called the police and officers arrived about ten minutes later. CW1 told the Officer Keyes and LE1 that Carolino tried to hurt her. She also told them she did not want Carolino to go to jail but instead wanted him taken to see a doctor. She thought perhaps he was not taking his medication for his schizophrenia.

CW1 and the officers went to contact him inside the shed he stays in. Carolino came out of his shed with a pipe that CW1 described as similar to a baseball bat. CW1 heard Carolino say he was going to kill them all. CW1 said the officers told Carolino to calm down and they also told him they wanted to help him. CW1 said Carolino was coming at the officers and she did not hear them tell Carolino to drop the pipe. CW1 did not see the officer pull his gun, but she heard two gunshots and saw Carolino fall to the ground.

Law Enforcement Witness #1 (LE1)

LE1 indicated that he and Keyes were dispatched to a call regarding a woman who had a brick thrown at her by her nephew. They arrived at the scene and spoke to the reporting party, CW1. She described a small round stone or brick that had been thrown at her by Carolino. CW1 provided some family history about Carolino including the fact he suffered from mental illness and was prescribed medication. CW1 also suspected Carolino had used drugs in the past and was possibly under the influence of drugs that night. CW1 first told LE1 and Officer Keyes the brick Carolino threw hit her in the shoulder, but then said the brick hit the post next to her. CW1, whom LE1 described as being elderly, was uninjured but he believed she had been the victim of an assault with a deadly weapon.

LE1 asked CW1 what she would like them to do and she told him she wanted Carolino to be mentally evaluated. LE1 requested a PERT unit be dispatched to their location so an evaluation could be conducted to determine if Carolino needed to be hospitalized. LE1 believed that because Carolino had been involved in a violent encounter, the officers needed to make sure it was safe for the PERT unit to contact Carolino.

CW1 guided them along the west side of the house down some stairs and LE1 told her to stay behind them because he wanted to make sure it was safe, and he did not want her to be in danger. LE1 said CW1 did not provide any information about potential weapons Carolino might have. LE1 described the area in the back of the house as being dark but lit by a porch light. LE1 was also using a flashlight to illuminate the area. Although they did not announce their presence, LE1 believed it was apparent they were police officers given that they were in full uniform and there was lighting.

There were multiple doors as they moved to the backyard. Keyes asked CW1 which door was Carolino's and CW1 pointed to a door of a shed at the east side of the property. LE1 believed at the time Carolino may have left the property before their arrival. Carolino suddenly exited the shed in an explosive fashion and he was holding a shovel over his right shoulder. LE1 could not tell where Carolino got the shovel. He did not know if he brought it from the shed or if he picked it up outside. LE1 described Carolino as holding the shovel in the manner a baseball player would hold a bat. Carolino was about 15 to 20 feet away and there was a waist-high wall on one side of LE1 and a post on the other. LE1 believed he was in danger of serious injury or death and he also was concerned for the safety of Keyes and CW1.

LE1 said his view of Carolino was obstructed by something hanging down in front of him. He assumed Carolino was still swinging the shovel at them because he did not see it where it had been before. Carolino was moving closer to LE1, Keyes and CW1 and LE1 believed he presented a greater danger. LE1 had difficulty seeing Carolino entirely due to things hanging down in front of him.

LE1 pulled his Taser and did not have time to give any commands before firing because Carolino was running at them very quickly. LE1 said his original plan, since Carolino had a shovel, was to de-escalate the situation by pointing a Taser at him and giving him commands. LE1 pulled the trigger on the Taser in hopes it would stop Carolino, but it did not. LE1 believes one of the Taser barbs may have hit him in the upper torso but he was not sure.

Carolino covered a very short distance very quickly and was still holding the shovel over his right shoulder as he did so. LE1 believed Carolino may have swung the shovel at Keyes. LE1 believed he fired his Taser almost at the same time Keyes fired his gun. After the shots, Carolino fell close to them so Keyes grabbed his left hand and LE1 grabbed his right hand and they handcuffed him. LE1 said he wanted to handcuff Carolino and make an assessment and determine if it was safe to render first aid. Officer Keyes took the handcuffs off Carolino so they could perform CPR. Keyes began chest compressions and LE1 requested a mask because Carolino was expelling blood from his mouth.

LE1 said when they initially arrived and walked down to the bottom of the stairs, he believed he activated his Body Worn Camera (BWC) by pushing the center of it. He later discovered it did not activate and there was no recording of the incident on his camera.

Officer Brad Keyes' Statement

Keyes said he received a radio call regarding an assault with a deadly weapon. An elderly female reported that her nephew, who was in his fifties, threw a brick at her but it missed her. Keyes became aware that the suspect suffered from schizophrenia, but he could not recall if the information was relayed by the dispatcher or if CW1 told him.

Keyes and LE1 arrived and spoke to CW1 to get more details. CW1 said her nephew, Dennis, threw a brick at her. Keyes said it was unclear whether the brick hit CW1 because she had difficulty speaking English. Keyes thought CW1 was trying to tell him the brick grazed her chest but because her English was not very strong, he was not sure if she understood his question. Keyes asked CW1 if she wanted Carolino placed under arrest because he believed an assault with a deadly weapon had occurred. CW1 said she wanted Carolino to get help. LE1 and Keyes explained they could take Carolino to the hospital for a mental health evaluation. Keyes asked CW1 if Carolino had any other weapons that she knew of and she said no. CW1 also told Keyes the police had been called to her house previously when Carolino began acting irrationally. She also believed Carolino used street drugs. Keyes asked CW1 if Carolino knew they were coming and if he would be cooperative and she said yes.

LE1 and Keyes discussed the fact there was enough evidence to take custody of Carolino for a mental health evaluation, so LE1 requested a PERT unit respond to their location. Keyes knew Carolino first needed to be in custody so the PERT unit could safely make their evaluation, so he had CW1 direct them to the shed Carolino was staying in. CW1 guided Keyes and LE1 to the back patio, which involved descending a staircase. When they got to the bottom of the stairs, CW1 pointed to a door at the rear of the patio. Keyes told CW1 not to go any further because he did not want her to encounter a threat. Keyes walked ahead and pointed his flashlight at the door CW1 pointed at. After Keyes pointed his flashlight at the door for about two to three seconds, the door suddenly opened.

The door opened very quickly and slammed against something and Carolino walked out and briefly hid behind a large blue trash can. Keyes could see a portion of a wooden stick Carolino held as he hid behind the trashcan. Keyes was concerned Carolino may be concealing a weapon, so he called out to Carolino and told him twice to show his hands. Carolino stepped away from the trash can in Keyes' direction and Keyes could then see Carolino was holding a shovel. Keyes described the shovel as having a five-foot-long wood handle and the shovel head was six inches by five inches. Keyes said from experience handling them, he estimated its weight to be about ten pounds. Keyes stated he has had training in the police academy addressing the use of non-traditional weapons like a wood two-by-four or a metal pole. He recalled an incident he responded to in which a garden hatchet was used as a weapon.

Keyes estimated he was about 18 feet from Carolino. Keyes felt that Carolino should have been able to see he and LE1 were in full police uniforms when he gave commands to show his hands. Carolino did not comply with those commands and it appeared Carolino may do something contrary to his demands. Keyes described the area he was in as being narrow and offering nothing to use as cover. Keyes estimated that Carolino hid behind the trash can for one to two seconds before he began charging at him. As he was running at Keyes, Carolino held the shovel in a manner he could easily swing it at Keyes. Keyes felt that if he or LE1 were hit with the shovel it could cause serious injury.

Keyes drew his handgun and pointed it at Carolino while telling him to drop the shovel two to three times. Carolino did not drop the shovel and continued to run toward Keyes. Keyes did not recall whether Carolino swung the shovel at him, but Carolino was quickly closing the distance between them. Keyes felt Carolino would be able to hit him with the shovel, so Keyes began firing at him aiming for the center of his body. He did so to stop Carolino from advancing toward him and possibly injuring or killing him or LE1. He believed he fired seven rounds.

Keyes estimated that Carolino was about 18 feet away when he first exited the door of the shed. Carolino advanced toward Keyes and was about 13 to 14 feet away when Keyes decided to fire. Keyes fired the first series of shots and they did not seem to affect Carolino. Keyes was walking backward approximately seven or eight feet during this time while firing the next series of shots. Keyes did not feel he had a choice of any other force options based on the speed at which Carolino was advancing toward him. Since the first series of shots were not effective, any other force option such as a Taser, OC spray or baton would not be effective.

After Keyes fired at Carolino the second time, Carolino dropped the shovel and fell to the ground. Keyes told him to roll over on his stomach so they could handcuff him. Keyes wanted to handcuff Carolino to prevent any other assaultive moves. After handcuffing Carolino, Keyes noticed blood coming from Carolino's mouth and tried to talk to him but there was so much blood he did not feel he could respond. Keyes called for paramedics over the radio and for a trauma kit. Keyes began examining Carolino for bullet holes and found them on his right shoulder and the right side of his chest.

Carolino stopped breathing so they took the handcuffs off and rolled him on to his back. Keyes checked for a pulse and did not feel one, so he began CPR. Other officers began to arrive, and one took over CPR, so Keyes continued to treat Carolino's injuries by applying a tourniquet to his thigh. Some of the officers told Keyes he needed to leave the scene, so he met with an Acting Sergeant.

Investigation

The audio recordings from 911 dispatchers, witness interviews, officer interviews, crime scene reports, and the Medical Examiner's Report were reviewed. All these items were found to provide evidence, which corroborated the officers' statements. Additionally, both officers involved in this incident were equipped with Body Worn Cameras (BWC), however only Keyes' BWC was activated prior to his arrival and captured the entire incident. LE1 did not activate his BWC until after the shooting occurred.

Keyes' BWC captured the conversation he and LE1 had with CW1 in the driveway of the home when they arrived. After CW1 told the officers about the incident, the officers can be heard discussing the need to contact Carolino for a mental health evaluation.

CW1 led the officers to the side of the house to show them where Carolino was staying on the property. The property has a walkway that includes stairs, which descend alongside the house to a lower part of the property where Carolino's shed is located. As CW1 led the officers down the stairs, Keyes told her to wait while he and LE1 walked ahead. From her position at the bottom of the stairs, CW1 can be heard off-camera directing the officers to the correct door.

The door CW1 pointed out to the officers is the entry to a small shed at the back of the property. There were clothes hanging on a clothesline running perpendicular to the house. The clothing partially obscured the sight line of the BWC as Keyes faced the shed. There was also a blue garbage can in front of the shed, which partially obscured the view of the door. Keyes pointed his flashlight at the door of the shed CW1 directed him to and within seconds the door opened quickly. Keyes shouted to Carolino to show his hands. The clothing hanging on the clothesline and the trash can in front of the door prevented the camera from capturing Carolino's movements when Keyes was giving him orders. Carolino can be seen stepping from behind the trash can holding a shovel in both hands. Carolino had a two-hand grip holding it at one end and the metal shovel head is at the other end. Carolino is holding the shovel out to his left side and slightly down like a batter in baseball.

Carolino ran directly at Keyes, who can be heard shouting for Carolino to drop the shovel. Keyes fired a total of seven shots while walking backwards and telling Carolino to drop the shovel. Carolino eventually dropped the shovel and fell face down at Keyes' feet. Keyes and LE1 handcuffed Carolino and begin assessing his injuries while informing the dispatcher of shots being fired.

An investigator from the Medical Examiner's Office examined Carolino's body at the scene. One of the barbs from the conducted energy device LE1 fired was found embedded in the upper left portion of Carolino's back. The other probe was located on the ground approximately 17 feet from Carolino's body.

An audio recording of the interview conducted by detectives following this incident with CW1 was also reviewed. CW1 stated she heard Carolino say he was going to kill the officers when he ran at them with the shovel. After reviewing Keyes' BWC video, Carolino cannot be heard making such a statement.

The weapon used by Keyes was a department-issued 9-millimeter semi-automatic pistol. Investigators recovered seven cartridge casings, which was consistent with the number of rounds fired by Keyes

according to the BWC video. Investigators recovered four bullet projectiles at the scene. One additional projectile penetrated the south facing wall of the residence and was not recovered. During the autopsy, Dr. Campman recovered two bullets from Carolino's body.

Following the shooting, a shovel was found on the ground at Carolino's feet. An examination of the shovel determined it had an overall length of 60 inches with a wood handle and a metal head. The shovel head measured 12 inches long and 11 inches wide.

Autopsy

On August 26, 2019, Deputy Medical Examiner Campman conducted the autopsy of Dennis Carolino. Doctor Campman determined that Carolino sustained five gunshot wounds to his body. Two bullets struck Carolino in the upper torso and were recovered from his body. Two more bullets struck Carolino in the right leg and exited and one struck his left leg and exited. Additionally, Dr. Campman recovered a dart from a conducted energy device from Carolino's back. A toxicology analysis was negative for any prescription medication or street drugs. The manner of death was determined to be homicide and the cause of death was gunshot wounds.

Legal Standards of Criminal Liability

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.

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, as it was in effect in 2019, 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.

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 he reasonably believed that he 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.

Conclusion

In this incident, officers were called to the location by the Carolino's aunt who had just been assaulted by him. Carolino threw a stone at her and threatened to kill her. She informed the officers that Carolino had mental issues and had not been taking his medication. Officer Keyes and LE1 attempted to contact Carolino to assess the danger to CW1 and whether Carolino could be safely evaluated by PERT personnel. As the officers approached the shed that Carolino stayed in, Carolino burst out of it, carrying a shovel in an assaultive manner. Carolino ran at both officers with the shovel in his hand. Initially, Carolino was obscured by a large trash container and clothes hanging on a clothesline. Officer Keyes and LE1 both believed that they and CW1 were in danger of being assaulted by Carolino because he was quickly closing in on them. Officer Keyes told Carolino to show his hands and drop the shovel. Carolino continued toward the officers holding the shovel at shoulder height with a two-handed grip.

LE1 pulled out his Taser and fired, but it was ineffective at stopping Carolino. At the same time, Officer Keyes pulled his firearm and fired at Carolino while moving backwards. Both officers used their weapons in defense of themselves, CW1 and each other. Carolino indicated by his behavior that he was willing and attempting to assault and cause harm to both officers. Based on these circumstances, Officer Keyes acted reasonably and 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 STÉPHAN

District Attorney

SS:gm

cc: Captain Bernie Colon
San Diego Police Department
Homicide Division