

HALL OF JUSTICE
330 WEST BROADWAY
SAN DIEGO, CA 92101
(619) 531-4040
SanDiegoDA.com

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN
DISTRICT ATTORNEY

August 9, 2024

Chief Ray Sweeney
La Mesa Police Department
8085 University Avenue
La Mesa, CA 91942

Chief Scott Wahl
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Fatal shooting of Jason Hampton on August 6, 2023, by La Mesa Police Officer Brian Heller; San Diego Police Department Case No. 23-033924; DA Special Operations Case 23-068PS; Deputy District Attorney assigned: Kristi Gill

Dear Chief Sweeney and Chief Wahl,

We have reviewed the materials compiled by the San Diego Police Department's Homicide Unit concerning the shooting of Jason Hampton on August 6, 2023. A District Attorney Investigator responded to the scene and was briefed by detectives. This case was submitted to the District Attorney's Office for review on November 7, 2023. The Medical Examiner's Report was received on May 20, 2024.

Summary

On August 6, 2023, La Mesa Police Department (LMPD) Officer Brian Heller drove to an apartment complex near 8000 University Avenue as part of an effort to locate Jason Hampton, who was known to have a felony no-bail warrant. Heller parked his marked police vehicle in the parking lot and observed a parked blue Chevrolet pickup truck he identified as being associated with Hampton.

Heller requested another officer to assist him in contacting Hampton. Another officer arrived at Heller's location and parked next to Heller's vehicle. As Heller updated the officer on Hampton's warrant, Hampton exited the apartment complex and walked to the passenger side of the blue Chevrolet pickup. Heller alerted the other officer that he was going to contact Hampton. Hampton had opened the front passenger side door of the truck and was standing between the open door and the inside of the truck facing the front of the truck. Heller and the other officer approached the truck, Hampton walking toward the front of the truck while the other officer moved toward the rear of the truck.

As Heller approached, he said, "Hey, Jason." Hampton looked at Heller and responded by voicing, "Huh?" Heller continued toward Hampton and inquired, "You Jason?" Hampton denied

by stating, "No." Heller walked a little closer, stood directly in front of Hampton, and said, "Jason." Hampton raised a handgun with his right hand and pointed it directly at Heller. Heller heard several clicks that were consistent with the sound of a trigger pull of a firearm.

Heller immediately ducked behind a vehicle parked to his left and drew his Glock 45 9mm semiautomatic pistol. Heller saw Hampton move backward and away from the door of the truck while still holding the gun in his hand. Hampton's arm was outstretched and he was pointing the gun toward Heller. Heller fired five shots toward Hampton as Hampton ran behind several parked vehicles in the direction of a heavily traveled roadway. Heller chased after Hampton and saw that while running, Hampton was attempting to manipulate the firearm he was holding. Hampton, with the firearm in hand, turned back toward Heller. Heller fired four additional rounds at Hampton. One round struck Hampton in the back of the neck, fatally wounding him. Hampton fell and the firearm dropped to the ground in front of him.

The investigation into the incident revealed that the gun Hampton had attempted to fire was operable, but it did not discharge because of a temporary malfunction known as a "stovepipe" malfunction. This type of malfunction occurs when a live cartridge is in the chamber, and a second cartridge or cartridge case becomes wedged between the slide and the firearm's ejection port in a perpendicular position out of the side of the firearm.

The Medical Examiner conducted an autopsy and determined Hampton's cause of death was a gunshot wound and the manner of death was homicide. Toxicological testing of Hampton's blood was negative for alcohol or drugs.

Persons Involved

Jason Clark Hampton was a 41-year-old resident of La Mesa, California. At the time of the incident, Brian Heller had been a police officer for six years and three months.

Civilian Witness One (CW1)

CW1 is Hampton's former girlfriend. They had recently ended their relationship. CW1 and Hampton shared a residence in the apartment complex but were in the process of moving out. To CW1's knowledge, Hampton did not have any firearms. CW1 reported that on August 6, 2023, she came home from running errands and Hampton left a short while later. After Hampton left, CW1 heard some noises outside. CW1 described the noises she heard as "pops" but stated that type of noise was not unusual for the area.

Civilian Witness Two (CW2)

CW2 lives in the same apartment complex as Hampton. On August 6, 2023, between 4:00 and 4:30 p.m., CW2 was in his living room with his wife and young son. CW2 heard three shots he recognized as "gunfire." He then heard a second volley of approximately four to five gunshots. After the gunshots, CW2 and his wife looked out of their bedroom window, which faces the entry driveway to the apartment complex. CW2 saw two police officers standing near the top of the driveway. He also saw a person on the ground in front of the two officers whom he recognized as Hampton. He stated Hampton drove a blue Chevrolet pickup truck which was parked in the parking lot. CW2's vehicle was parked to the left of Hampton's truck and sustained damage from gunshots that were fired.

Civilian Witness Three (CW3)

CW3 lives in the same apartment complex as Hampton, and his residence was behind the parking spaces where the shooting incident took place. CW3 reported that on August 6, 2023, at approximately 4:15 p.m., he was in his living room with his wife and baby. CW3's daughter was in her bedroom. As CW3 and his wife watched television, CW3 heard a loud "snap" and a hanging wall calendar fell off the wall. CW3 saw smoke in the air and his lights went out. CW3 checked the area where the calendar had been hanging and noticed a hole in the wall. CW3 looked across the room and saw second hole in the wall directly across from the front door. CW3 checked his daughter's room and noticed two more holes in two walls in the bedroom. When CW3 opened his front door to see what was going on, he noticed a fifth hole in a glass window panel directly across from his front door.

Civilian Witness Four (CW4)

CW4 was driving her vehicle westbound on University Avenue near the apartment complex. She stopped her vehicle near the red signal light just west of the location of the shooting, next to an electrical box. CW4 heard shots. She noticed her vehicle had been struck when a piece of her passenger door frame or mirror flew onto the dashboard. She could smell gunpowder after the impact. She noted that there was some separation of time between gunfire. One of the last "booms" she heard was when her vehicle was struck. CW4 believed the shooting incident occurred behind her. She immediately pulled over and tried to call 911. She then drove her vehicle into a parking lot where she saw police officers with their guns drawn, and it appeared officers were handcuffing someone on the ground.

Law Enforcement Officer One (LE1) Jacoby

LE1 is a patrol officer with LMPD. On the afternoon of the shooting, he received a message from Heller requesting assistance in contacting a subject with a felony warrant. LE1 drove to Heller's location and parked in the lot next to Heller. Heller stood outside of his police vehicle and briefed LE1 on the subject and his felony warrant.

Heller told LE1 that he believed the suspect had just walked out of the apartment complex. Heller started walking toward a blue Chevrolet pickup truck so LE1 got out of his police vehicle and walked approximately ten feet behind Heller in the same direction. LE1 could see a subject, later identified as Hampton, standing inside the open front passenger side door of the blue Chevrolet pickup truck. Heller was walking toward the front of the truck, where Hampton was. LE1 stated that at that time he did not know Hampton's name, but heard Heller ask Hampton if he was "whatever name."

As LE1 walked toward the back of the pickup truck, he heard two to three clicking sounds coming from where Hampton was standing. At that point, LE1 drew his firearm and heard shots fired from where Heller was standing. Hampton disappeared from LE1's view, so LE1 continued around the rear of the blue pickup truck and followed behind Hampton as Hampton ran down a set of stairs away from LE1.

LE1 asked Heller if he was okay, but Heller didn't answer at first. LE1 saw that Hampton was running toward University Avenue and noted there wasn't anyone else in the area behind the truck where Hampton had been standing. LE1 continued to follow Hampton. He did not see Hampton's hands as Hampton was running away. LE1 then heard a couple more shots coming

from Heller's location and saw Hampton collapse near the end of the driveway going toward University Avenue.

LE1 and Heller approached Hampton, who was lying on the ground. LE1 saw a gun on the ground in front of Hampton and noted it appeared to have experienced a "stovepipe" malfunction. Heller did not know if he had been shot or not, so LE1 checked Heller's body and confirmed Heller had not been shot. LE1 then handcuffed Hampton for safety. An LMPD sergeant arrived shortly after the shooting occurred and paramedics responded to the scene and attempted life-saving measures.

Officer Brian Heller

Heller is a patrol officer and has been a member of the SWAT team for three years. On August 4, 2023, Heller was searching for a subject with an active felony no-bail warrant, Jason Hampton. Heller had independently confirmed the existence of the warrant and he had viewed prior booking photos of Hampton to familiarize himself with Hampton's appearance. On August 4, Heller was unable to locate Hampton. On August 6, 2023, Heller learned that Hampton drove a blue Chevrolet pickup truck and Heller viewed two photos of the truck. Heller learned the truck was parked at an apartment complex near 8000 University Avenue.

At approximately 4:00 p.m., Heller drove to the 8000 block of University Avenue, where he saw the blue Chevrolet truck backed into a parking space. Heller first surveilled the apartment complex from a nearby shopping center, then moved to the apartment complex parking lot. He contacted LE1 to request cover so that he could safely contact Hampton. When LE1 arrived at the location, Heller briefed LE1 on the information regarding Hampton and showed LE1 a photo of Hampton. From the corner of his eye, Heller saw a subject who matched Hampton's booking photo approaching the passenger side of the blue Chevrolet pickup truck. Heller informed LE1 that the subject he saw was likely Hampton and they decided to approach the subject. Heller aired on his police radio that he would be contacting Hampton and activated his body worn camera.

As Heller approached the blue pickup truck, he saw that Hampton had opened the front passenger door of the truck and was standing between the open door and the cab of the truck, facing Heller's direction. Heller said to Hampton, "Hey Jason." Hampton responded with, "Huh?" Heller got a little closer to Hampton and said, "You Jason?" Hampton responded, "No." Heller was now standing directly in front of and facing Hampton, who was standing in the doorway of the truck. Heller again said, "Jason." Immediately, Hampton raised a dark-colored handgun and pointed the barrel directly toward Heller's center chest and face. Heller heard one audible "click" from the gun Hampton was holding. Heller knew this was consistent with the trigger being pulled. Heller was terrified seeing the gun pointed at him. He instinctively ducked down to his left to take cover behind the rear of the vehicle parked next to the truck and drew his firearm. As Heller ducked down, he heard approximately three to five more audible clicks. Heller knew, based on his training and experience, the clicking sound indicated a significant weapon misfire.

After Heller drew his own firearm, his view of Hampton was obscured by the open door of the truck. Heller fully stood up and pointed his gun in the direction of where Hampton was last

standing. Heller could see Hampton swiftly walking back behind other vehicles and then moving toward University Avenue. Heller could see Hampton was holding something in front of himself toward the center of his waistband. Heller described Hampton's gait as "awkward" and that it seemed Hampton was more focused on what he was doing with the gun in his hands than on running away.

Heller believed Hampton was attempting to manipulate the firearm so that it would be operable, so he fired at Hampton, using a parked vehicle as partial cover. Heller fired several shots in Hampton's direction. After Heller stopped firing, he realized Hampton had run down a set of stairs and his view of Hampton was blocked by a van. Heller completely lost sight of Hampton as Hampton ran southbound toward University Avenue.

Heller was aware there was a nearby pedestrian crosswalk and just across University Avenue, a shopping center. Knowing this to be a very busy roadway with a high volume of foot and vehicle traffic, Heller was concerned about the danger to the public. Heller took a cover position at the front passenger side corner of a van parked in the lot, so that he would have readily available cover if needed. Hampton reemerged from the stairwell into Heller's view. Heller could see Hampton still had the firearm in his hands in front of his body. Heller was concerned Hampton would try again to shoot him or would shoot another individual in the area and inflict serious bodily injury or death.

As Hampton continued to run southbound through the parking lot, he partially turned toward Heller. Heller could see the dark-colored semiautomatic handgun in Hampton's right hand. Heller was afraid Hampton had cleared the malfunction on the weapon and was turning toward him, prepared to fire again. Heller fired four additional rounds toward Hampton, one of which appeared to have struck Hampton. Hampton fell face forward. Heller estimated that, in total, he fired six to eight shots.

The firearm Hampton was holding fell out in front of him. LE1 emerged from the same staircase that Hampton had gone down. LE1 asked if Heller had been shot and Heller asked LE1 to check him to make sure he was okay. Heller then aired "shots fired" and requested medics. Heller was unsure if Hampton had fired his weapon or if he had been hit. Once a patrol sergeant arrived at the scene, Heller and LE1 approached Hampton and secured him so that medics could respond and provide life-saving measures.

Heller took photographs of the scene, including of Hampton's firearm on the ground as it was when Hampton dropped it. Heller put on a pair of gloves, retrieved the firearm, rendered it safe, and stored it in the patrol sergeant's vehicle for investigators. Heller noticed the magazine was partially ejected out of the firearm and that there was one unexpended round in the chamber. The chamber was stuck in the open position on a second unexpended round that was horizontal to the chamber with the bullet portion of the round facing to the right. Heller described the condition of the gun as having experienced a combination of a double feed and a "stovepipe" malfunction.

Heller believed Hampton had attempted to kill him. Hampton had pointed his firearm directly at Heller and pulled the trigger multiple times. Heller felt he had no option other than to use lethal force because that was the level of force he was confronted with when Hampton pointed the

firearm at him and pulled the trigger. In addition, Heller was concerned about the serious public safety risk that Hampton posed.

Body Worn Camera Evidence

Heller and LE1 were equipped with body worn cameras and both cameras were activated during the incident. Heller's camera best captured the interaction preceding the shooting incident as LE1 was behind Heller during their initial approach toward Hampton. LE1's footage captured his pursuit of Hampton between parked cars and the buildings in the apartment complex while Heller's footage captured his pursuit of Hampton through the parking lot in front of parked cars.

Heller's camera footage shows Heller walk from his police vehicle to approach Hampton. Hampton is seen standing on the passenger side of the pickup truck between the open passenger door and the cab of the truck. Heller is heard saying, "Hey Jason." Hampton is captured looking directly at Heller and responding, "Huh?" Heller continues to approach Hampton and asks, "You Jason?" to which Hampton responds, "No." Heller is positioned in front of the hood of the pickup truck and appears to be approximately ten feet in front of Hampton. Heller says, "Jason," and Hampton immediately raises a black handgun and points it toward Heller. Heller drops down to his left, moves behind a gold-colored vehicle parked next to the blue pickup truck, and draws his firearm. Heller fires five rounds toward Hampton as Hampton runs southbound out of view. Moments later, Hampton can be seen emerging from behind a concrete retaining wall into Heller's view. Hampton is running in the direction of University Avenue but turns toward Heller. Heller fires four rounds at Hampton, and Hampton falls to the ground. LE1 emerges from behind the same concrete retaining wall and asks Heller if he is alright. LE1 checks Heller to determine if he has been stuck by gunfire, and Heller performs a tactical reload of his firearm. Heller camera continues to record as Heller photographs and secures Hampton's firearm while LE1 handcuffs Hampton. The two officers then wait for medics to respond.

LE1's body worn camera shows him walking behind Heller as they approach a blue Chevrolet pickup truck. After Heller's initial interaction with Hampton, Heller is seen ducking down to the ground in front of the blue truck. Several "clicks" can be heard. LE1 draws his firearm and points it in the direction of the rear of the blue truck. At the same time, several shots are heard. Next, Hampton is captured running down a set of concrete stairs, holding a gun in his right hand. LE1 broadcasts "shots fired" over the police radio and then asks Heller if he is alright. Four more shots are heard as LE1 follows Hampton's path down the concrete stairs. When LE1 emerges from the stairwell, Hampton is visible lying on the ground at the end of the driveway. LE1 checks Heller for any injuries and then handcuffs Hampton.

Investigation

The incident took place in the city of La Mesa in a parking lot outside of an apartment complex in the 8000 block of University Avenue. The scene was secured, photographed, and investigated by the San Diego Police Department (SDPD) Homicide Unit. A complete review was conducted of all officers' and detectives' reports, crime scene investigators' reports, audio recorded interviews of civilian and law enforcement witnesses, all body worn camera footage, along with the Medical Examiner's autopsy report and toxicology report. The events leading up to the incident, and the incident itself, were captured on the officers' body worn cameras. All these items were found to provide evidence which corroborates the officers' statements.

At the time of the incident, Heller was armed with a Glock 45, 9mm semiautomatic pistol. Heller reported that prior to the incident, his pistol was loaded with a total of eighteen 9mm caliber cartridges - seventeen rounds in the magazine and one round in the chamber. Heller also carried on his duty belt three additional fully loaded magazines, each containing seventeen rounds. During the incident, Heller performed a tactical reload of his firearm, removing his partially loaded magazine and reloading with one of his fully loaded magazines. Following the shooting incident, an SDPD Crime Scene Specialist collected Heller's firearm for processing. Heller's firearm was received with one live cartridge in the chamber, and a fully loaded seventeen-round magazine seated in the firearm. A partially loaded Glock 9mm magazine was recovered from the scene. This magazine was loaded with eight unexpended cartridges. Heller retained two fully loaded seventeen-round magazines attached to his duty belt. Based on the number of rounds that were loaded into the pistol prior to the shooting incident, and the remaining rounds that were loaded in the partially loaded Glock magazine recovered at the scene, it was determined Heller fired nine cartridges from his firearm. Consistent with this determination, nine 9mm casings that matched the ammunition in Heller's firearm were found at Heller's two shooting positions. BWC footage also confirmed Heller fired a total of nine rounds.

Hampton was in possession of a loaded Springfield Armory Model XDE-9 9mm semiautomatic pistol. Following the shooting incident, the Crime Scene Specialist collected the pistol for processing and documented that the weapon held a partially seated magazine containing six live 9mm cartridges. Photos taken at the scene confirmed there had been one live 9mm cartridge in the chamber, and one live 9mm cartridge wedged in between the slide and the firearm's ejection port in a perpendicular position out of the side of the firearm. This condition is known as a "stovepipe" malfunction, which will render a firearm temporarily inoperable. All of the cartridges had the headstamp "Tulammo 9mm LUGER." Hampton's pistol was determined to be operable once the malfunction was cleared. A record check of the pistol revealed that previously it had been reported stolen.

An SDPD Crime Scene Specialist identified bullet holes within CW3's residence, and in two separate vehicles that belonged to CW2 and CW4. This is consistent with their account of what they observed. Bullet fragments were recovered from the residence and CW2's vehicle. No civilians in the vicinity were physically injured during the incident.

Autopsy

An autopsy was conducted on August 8, 2023. The Deputy Medical Examiner determined that Hampton had suffered a gunshot wound to the back of the neck. The bullet struck the carotid artery and fractured the cervical vertebrae as it passed through Hampton's body before it exited his right cheek. During the internal examination, gray metal projectile fragments were recovered and collected as evidence by a Forensic Evidence Technician, who was present during the autopsy. The cause of death was classified as a gunshot wound and the manner of death was classified as homicide.

Toxicological testing was conducted on a sample of Hampton's blood. The results were negative for the presence of alcohol or drugs.

Legal Standard of Criminal Liability

Penal Code section 835a(c) sets forth the circumstances in which a peace officer may use deadly force and the standard to evaluate the use of such force. The law provides that “a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person.” Penal Code section 835a(c)(1)(A).

The statute defines deadly force as “any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.” Penal Code section 835a(e)(1).

An imminent threat of death or serious bodily injury is one where “based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” Penal Code section 835a(e)(2).

The statute defines totality of the circumstances as “all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” Penal Code section 835a(e)(3).

The statute further states, “In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(2).

“[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(4).

Conclusion

Officer Heller knew Jason Hampton had an outstanding no-bail felony warrant when he located and attempted to contact Hampton in the parking lot of an apartment complex. Heller called out to Hampton, who was standing behind the open front passenger side door. Hampton denied being the subject Heller was looking for. When Heller got to the front of the truck, approximately ten feet from Hampton, Hampton suddenly pulled out a handgun, pointed it directly at Heller’s upper body, and quickly pulled the trigger several times. The loaded gun did not fire due to what was later determined to be a “stovepipe” malfunction of the gun. But for the malfunction, the loaded firearm was otherwise operable. Heller instinctively ducked down, drew his firearm, and returned fire in Hampton’s direction. Hampton fled. While running, Hampton continued to manipulate the firearm he held in his right hand. He was headed toward University Avenue, an area with a high volume of pedestrian and vehicle traffic, when he turned toward Heller. Heller

fired four additional rounds, one of which struck Hampton, causing Hampton to fall and drop the firearm.

Hampton's actions made it clear he intended to evade Officer Heller and that he was willing to shoot Heller in order to achieve that end. When Officer Heller discharged his firearm, he reasonably believed that the use of deadly force was necessary to defend against the imminent threat of death or serious bodily injury that Hampton posed. A reasonable officer in the same situation would believe that Hampton had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. Therefore, Heller 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

cc: Captain Matthew Nicholass, La Mesa Police Department
Captain Richard Freedman, San Diego Police Department