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December 18, 2025

Sheriff Kelly Martinez
San Diego Sheriff's Office
9621 Ridgehaven Court
San Diego, CA 92123-1636

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

Re: Fatal shooting of Gene Stewart on September 27, 2024, by San Diego Sheriff's Deputy Doug Akers; SDPD case No. 24039704; DA Special Operations Case No. 24-127PS; Deputy District Attorney assigned: Cal Logan

Dear Sheriff Martinez and Chief Wahl:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Division concerning the circumstances leading to the shooting of Gene Stewart by San Diego Sheriff's Deputy Doug Akers on September 27, 2024. A District Attorney Investigator responded to the scene and was briefed about the incident. This case was submitted to the District Attorney's Office for review on February 4, 2025. Additional documents were received on June 30, 2025.

Summary

On September 27, 2024, Deputy Akers was working in an undercover capacity as part of a law enforcement investigation in National City. The investigative team included both uniformed deputies in marked patrol vehicles and undercover detectives in civilian clothing in unmarked law enforcement vehicles. The team was tasked with locating people involved in narcotics trafficking and related criminal activity. Akers observed a vehicle occupied by three adults driving slowly through the parking lot of a shopping center. The vehicle was passing several open parking stalls which led Akers to suspect the trio of potential criminal activity. Akers radioed his observations to the team's nearby uniformed patrol deputy, who then observed the vehicle's windows were tinted in violation of the Vehicle Code. The uniformed deputy initiated a traffic stop. The vehicle stopped and one of the occupants, Gene Stewart, got out and ran. Akers began canvassing the area looking for Stewart. Akers was flagged down by a passerby, who told him Stewart had gotten into an unlocked tow truck parked in a nearby parking lot.

LE2 arrived on scene and Akers requested his assistance in locating Stewart. Akers told LE2 he believed Stewart was hiding in the cab of the tow truck. LE2 approached the driver's door of the truck while Akers approached the passenger door, both with their guns drawn. Akers saw Stewart crouching down on the passenger floor of the truck, so he knocked on the vehicle. Akers stepped back, called out to Stewart, and identified himself as law enforcement. Akers ordered Stewart to show his hands and Stewart, armed with a handgun, suddenly fired one round from inside of the truck through the closed passenger window at Akers. The bullet shattered the window, spraying broken glass into Akers' face. Akers backed away and returned fire into the truck. Stewart quickly opened the door and got out of the truck to face Akers. Akers believed Stewart was going to continue shooting at him. Akers fired on Stewart, striking him. Medical aid was provided, however Stewart succumbed to his injuries. A firearm was recovered on the ground next to him at the scene.

A toxicological examination of Stewart's blood post-mortem revealed the presence of 460 ng/mL of fentanyl, 71 ng/mL of 4-ANPP (a fentanyl metabolite), .28 mg/L of amphetamine, 2.1 mg/L of methamphetamine, and 1.0 mg/L of methadone.

Persons Involved

Stewart was a 46-year-old resident of San Diego County. At the time of this incident, Akers had been employed by the San Diego Sheriff's Office for 35 years.

Statement of Law Enforcement Witness One (LE1)

LE1 and his partner were in uniform and driving a marked patrol vehicle. They were assigned to the same investigative unit as Akers. LE1 saw a vehicle with tinted windows in violation of the Vehicle Code and initiated a traffic stop on the vehicle near the 200 block of Mile of Cars Way. The vehicle did not immediately pull over when LE1 turned on the overhead police lights. The vehicle continued driving for a short time, and when it began to pull over, the vehicle hit the curb before coming to a stop. A male, later identified as Stewart, opened the front passenger door and ran from the vehicle. LE1 broadcast over the radio that a passenger had run from the vehicle. LE1 and his partner maintained their position at the traffic stop and detained the other two occupants of the vehicle. While doing so, LE1 heard five or more gunshots nearby. He did not see who was shooting and did not witness who was involved in the shooting.

Statement of Law Enforcement Witness Two (LE2)

LE2 responded to a radio call to assist deputies during a traffic stop after a male, Stewart, fled from the stopped vehicle. When LE2 arrived close to the location of the traffic stop, he was waved down by Akers, who was in a nearby parking lot. The lot had several vehicles in it, and Akers told LE2 he believed Stewart was inside a parked tow truck next to a fence. Akers asked LE2 to go with him to check inside the truck. They approached the truck from the rear with LE2 taking the driver side and Akers taking the passenger side. While LE2 was attempting to look inside the cab of the truck through the side mirror, Akers was doing the same thing on the passenger side. Akers told LE2 Stewart was inside the truck. LE2 then called out to Stewart to get out of the truck. LE2 then heard one gunshot and saw Akers step backward and take up a shooting stance with his handgun. Akers returned fire into the vehicle. LE2 ran around the back of the truck to the same side Akers was on to gain a better vantage point.

When he did this, LE2 saw Stewart begin to get out of the truck. LE2 believed Stewart might have been shot because he was moving lethargically. Stewart got out and turned to face Akers and LE2 while raising his right hand and extending it toward them. LE2 could not see if Stewart was holding anything in his hand and then he heard four to six more gunshots. LE2 moved around behind Akers and saw Stewart on the ground and a handgun lying less than a foot from his body. Other officers began to arrive and assist Akers, who had been injured, and to provide medical aid to Stewart.

Statement of Deputy Doug Akers

Akers was conducting surveillance as part of a team assigned to investigate drug trafficking. He was driving an unmarked police vehicle and was dressed in civilian attire. While traversing a parking lot at the shopping center, Akers observed a vehicle driving slowly through the area. The windows were partially rolled down, and Akers could see two males inside. The males appeared to be looking for something, and the driver passed by several available parking spaces. This led Akers to suspect potential criminal activity by the occupants. The driver of the car drove a loop around the parking lot, so Akers followed the vehicle as it drove out of the lot onto Highland Avenue. Akers broadcast the vehicle's license plate number on the radio to his team and continued to follow the vehicle. The driver of the vehicle made an abrupt lane change and then a right turn onto a cross street and Akers could not follow the vehicle. Akers interpreted the driver's movement as a tactic to evade detection by him and he communicated his concerns to the rest of his team, which included LE1. Although Akers lost sight of the vehicle in traffic, he heard over the police radio that LE1 initiated a traffic stop on the vehicle he had been following.

Akers drove to the location where LE1 was conducting the traffic stop and observed the deputies with their firearms drawn. LE1 began putting on his tactical vest, intending to assist the deputies. The vest has a badge affixed to the front and features emblems that identify Akers as a deputy sheriff.

A passing motorist informed Akers that a man, later identified as Stewart, had fled from the stopped vehicle. The motorist directed Akers to a nearby parking lot, where Stewart reportedly had entered the cab of a parked tow truck. Akers followed the motorist's directions, drove to the parking lot, and approached the specified tow truck. When Akers arrived, LE2 joined him. Akers informed LE2 he believed Stewart was in the cab of the tow truck. They subsequently devised a plan to contact Stewart. Akers approached the passenger side of the truck. He touched the passenger door and pulled on it to see if it would open. Stewart was crouched down on the floor of the truck facing the seat attempting to hide. Akers tapped on the door and announced he was a deputy sheriff and told Stewart to show his hands. Akers heard a gunshot and the glass on the door shattered toward Akers and he believed Stewart was shooting at him. Akers stepped back and fired one round into the cab of the truck. The passenger door quickly opened in an aggressive manner that made Akers believe Stewart was not opening it to surrender but with the intent to keep shooting at him or other officers. As Stewart began exiting the door of the truck, Akers saw something silver and began firing again at Stewart. Akers stopped shooting when Stewart fell to the ground and stopped moving.

Investigation

The shooting incident took place in the parking lot on the property of a car dealership. The particular lot is used for storing customers' vehicles awaiting service. The lot is adjacent to the location where LE1 conducted the traffic stop on the vehicle Stewart fled from. No members of the public were present during the shooting. All law enforcement reports, audio-recorded witness interviews, body worn camera footage, surveillance video, and police dispatch recordings were reviewed. These items were found to provide evidence that corroborates the statements provided by the officers and deputies.

Investigators interviewed six civilian witnesses. While all heard the shooting, none observed it directly.

At the time of the shooting, Akers was armed with his personally owned semi-automatic 9mm model 19 Glock pistol. The firearm is capable of holding 16 rounds. When it was reviewed after the shooting, the pistol was found to contain a magazine with four cartridges and one live round in the chamber. This indicates Akers likely fired 11 rounds. However, only eight cartridge casings were found near his shooting position. All were marked "HORNADY 9mm LUGER+P" just as the remaining cartridges in the firearm. Three casings were not located by investigators.

During the incident, Stewart was armed with a Baretta model 3032 Tomcat .32 caliber semi-automatic pistol. One expended shell casing was recovered from inside the cab of the truck where Stewart attempted to hide. The shell casing was marked with the headstamp "SPEER 32 AUTO." The gun Stewart used in the incident was recovered by officers from the ground next to him. The firearm had five remaining rounds in the attached magazine and one round in the chamber, each head stamped "SPEER 32 AUTO."

When Stewart fired at Akers through the closed tow truck window, shards of glass projected toward and struck Akers. The glass hit him in the face, arms, and hands and caused injuries. After the incident, Akers was transported to the hospital for treatment.

Body Worn Camera Video

LE2's body worn camera was activated during the incident. The footage starts when he arrives and meets with Akers in the parking lot. Akers, standing behind the tow truck, tells LE2 he will check the passenger side and asks LE2 to watch the driver side. LE2 approaches the driver side with his gun drawn and stops at the left rear corner of the cab. Akers is heard telling Stewart to show his hands. Immediately after Akers gives the command, gunshots are heard. LE2 backs around the rear of the truck and Akers comes into view. Akers can be seen firing his gun toward the cab of the truck and telling Stewart to stay on the ground. LE2 approaches Akers from behind and Stewart comes into view lying face down on the ground. Other officers arrive soon after. They assist in handcuffing Stewart and also provide him with first aid.

Akers' body worn camera was also activated during the incident. The footage begins as he arrives at the parking lot. He walks to the tow truck and broadcasts over his radio a request for assistance from other deputies. When LE2 arrives, Akers tells him he will check the passenger side while LE2 covers the other side. Akers reaches the truck's passenger door, hits it with his

fist, and calls out to Stewart. Akers instructs Stewart to show his hands. Immediately following the command, a gunshot is heard, resulting in the window shattering outward toward Akers. Akers fires two shots toward the cab of the truck and begins to back away from the truck. The truck's passenger door opens, and Stewart exits facing Akers. Akers fires nine more rounds, causing Stewart to fall to the ground. Other officers begin to arrive. They assist in taking Stewart into custody and providing first aid while other officers attend to Akers regarding his injuries.

A surveillance video camera positioned on an elevated surface captured the shooting from the rear driver side of the tow truck. At 1:21 p.m., Stewart comes into view as he enters the north side of the lot. Stewart walks to the flat bed tow truck parked parallel to a fence. When he reaches the passenger side of the truck, he goes out of the frame of the footage. At 1:32 p.m., Akers enters the frame following the same path Stewart took. When LE2 arrives to meet Akers, they make their approach to the truck. The shooting is captured on the video, but not with clarity, due to the distance from the camera to the truck. Akers is seen backing up and firing at the cab of the truck. The footage does not capture Stewart exiting the truck from the passenger door.

Autopsy and Toxicology

On September 28, 2024, an autopsy was performed by the San Diego County Medical Examiner Office. The physician examiner observed multiple gunshot wounds to Stewart's torso and extremities. The Medical Examiner determined Stewart's cause of death to be multiple gunshot wounds and classified the manner of death as homicide. A toxicological examination of Stewart's blood post-mortem revealed the presence of 460 ng/mL of fentanyl, 71 ng/mL of 4-ANPP (a fentanyl metabolite), .28 mg/L of amphetamine, 2.1 mg/L of methamphetamine, and 1.0 mg/L of methadone.

Legal Standard of Criminal Liability

Penal Code section 835a(b) provides that "any peace officer who has reasonable cause to believe that a person they intend to arrest has committed a public offense, may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance."

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides that "a peace officer is justified in using deadly force upon another person...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 provides definitions for "deadly force," "imminent," and the "totality of circumstances" in Penal Code section 835a(e)(1) – (3).

"Deadly force" means 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).

“A threat of death or serious bodily injury is ‘imminent’ when, 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.” Penal Code section 835a(e)(2).

“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).

“‘Totality of the circumstances’ means 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).

“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).

“A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section “retreat” does not mean tactical repositioning or other de-escalation tactics.” Penal Code section 835a(d).

Conclusion

Officer Akers was working as part of an investigative team of law enforcement officers when he observed suspicious behavior by the driver of the vehicle. Two uniformed deputies conducted a traffic stop on the vehicle and Stewart fled from the vehicle into a nearby parking lot. Akers arrived at the traffic stop and was alerted that Stewart was hiding inside a tow truck in an adjacent parking lot. Akers, along with LE2, approached the cab of the tow truck. Akers knocked on the cab of the truck while identifying himself as law enforcement. He demanded Stewart show his hands. In response, Stewart fired a shot from a handgun at Akers through the closed window, showering broken glass onto Akers’ face and hands. In fear of being shot, Akers returned fire into the truck and began backing away. Stewart burst from the vehicle holding a gun in his hand. At that moment, Stewart had the present ability, opportunity, and apparent intent to shoot Akers, Akers recognized the imminency of the threat and fired upon Stewart.

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A reasonable officer similarly situated would have perceived the threat as Akers perceived it. As such, Akers bears no state criminal liability for his actions. A copy of this letter, along with materials submitted for our review, will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

cc: Captain David LaDieu, San Diego Sheriff's Office
Captain Juan Sanchez, San Diego Police Department