

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

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

DAVID P. GREENBERG
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN
DISTRICT ATTORNEY

April 11, 2019

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

Re: Fatal shooting of Mr. Joseph Darwish on June 23, 2018 by San Diego Police Officers Shawn Boggeman and Francisco Roman; San Diego Police Department Case # 18-019499; DA Special Operations Case No. 18-127PS; Deputy District Attorney Assigned: David Grapilon

Dear Chief Nisleit:

We have reviewed the reports and other materials compiled by your agency's Homicide Division concerning the circumstances leading to the fatal shooting of Mr. Joseph Darwish by Officers Shawn Boggeman and Francisco Roman on June 23, 2018. District Attorney Investigators responded to the scene and were briefed by your officers. The completed case investigation was presented to the District Attorney's Office for review on December 27, 2018.

Summary

At approximately 10:16 pm on June 23, 2018, San Diego Police received a call from Darwish's neighbor who reported Darwish was walking back and forth in the condominium hallway, cursing, yelling, and slamming doors as he yelled at a female. Police responded to his condominium unit but received no response. Officers smelled smoke emanating from Darwish's condo and called fire personnel to assess the situation. Police knocked on the door for over 20 minutes. To ensure there was no fire danger, fire personnel forced entry into the home. Darwish immediately opened fire with a large caliber weapon, striking an officer in the back. Boggeman and Roman returned fire while backing away from the residence with the wounded officer. During the ensuing gun battle, Roman was shot by Darwish. Darwish was eventually found deceased from a self-inflicted gunshot wound to his head. He had also been struck in the arm and face from Boggeman's shotgun fire. He was wearing a ballistic vest and armed with a homemade, un-serialized assault weapon and a homemade, un-serialized 9mm semi-automatic pistol. The officers were justified in using deadly force to defend against Darwish's attempts to kill them.

Persons Involved

Darwish was a 28-year-old San Diego resident who lived in the one-bedroom condominium. Boggeman had been employed as a police officer for approximately four years. Roman had been employed as a police officer for three years.

Background

Officers responded to Darwish's unit about a week prior on June 15, 2018, when the reporting party reported Darwish had been yelling and possibly fighting or striking a woman who was screaming inside the unit. Police responded, but no one answered the door to Darwish's unit and officers cleared from the call. This information was cross-referenced with the incident on June 23rd but the details were not broadcast over the air.

Law Enforcement Witnesses

Dozens of law enforcement officers responded to the radio call for assistance broadcast by Boggeman and Roman. The majority of those officers arrived at the shooting scene after Darwish stopped firing. Those officers attended to various tasks, including perimeter security and SWAT deployment. Only three officers were present during the initial shooting: Boggeman, Roman, and Law Enforcement Witness 1 (LE1). Law Enforcement Witness 2 (LE2) arrived after Boggeman and Roman requested help.

Law Enforcement Witness 1 (LE1)

LE1 was dispatched to a radio call of a male screaming. Information from a previous radio call at the same address had been cross-referenced on the officer's data terminal. That information referred to a male and female arguing in the hallway. It appeared officers had responded earlier and had spoken with the male, but no report was taken.

LE1 arrived at the location. Boggeman and Roman had already arrived. LE1 walked into the hallway and smelled a strong odor of smoke emanating from Darwish's unit. Boggeman knocked on the door and announced their police presence. Boggeman walked to the back alley to see if he could detect if the condo's interior lights were on. LE1 continued knocking on the front door and identifying himself as a police officer. He knocked on the door for about 20 minutes.

LE1 summoned the fire department to determine if they needed to force entry. Two probationary firefighters and their trainer arrived. The firefighters told the officers they could force entry to make sure there was no danger of the building catching on fire. The patrol supervisor authorized entry.

The door had two deadbolts and no handle. Two firefighters forced the door open and immediately stepped aside. LE1 saw the unit was filled with smoke. He saw a mattress on the floor but did not see anyone inside. LE1 heard a loud explosion, but didn't think it was a gunshot because it was so loud. LE1 fell on his back and heard gunshots being fired. LE1 could see Boggeman and Roman shooting. LE1 said he never saw Darwish inside the condo. LE1 instantly went rigid and felt as if he had been tasered. He fell onto his back and was unable to move. Boggeman and Roman called out to him, urging him to move away from the doorway. It took several seconds for LE1 to regain feeling back into his toes. He managed to roll onto his stomach but still had no feeling in his arms, and used his toes to slowly push himself forward on the floor. Things started to loosen up and LE1 crawled down the hallway. There was a gun battle taking place as he crawled down the hall. LE1 could not recall if he tried to draw his pistol to return fire. LE1 was still unable to utilize the full strength of his arms and legs.

Boggeman kept telling LE1 to keep his head down and realized Boggeman was firing over his head to return fire on Darwish. Roman was positioned to the left of LE1 and was crouched down, returning fire. Boggeman opened a window and got out. LE1 tried to crawl through the window, but

equipment on his gun belt prevented him from fitting through, causing him to become stuck while facing the window.

Boggeman was outside and yelling at LE1 to keep his head down. Boggeman and Roman were both returning fire. Boggeman handed them a shield. Roman told LE1 he (Roman) was shot. LE1 yelled to Boggeman that a second officer was down. Boggeman broadcast it over the radio. LE1 said he felt horrible because Roman got shot saving LE1's life when Roman could have easily gone out the window.

LE1 tried to break the window with his flashlight but it was too difficult to break. LE1 kicked the frame out with his feet. Two officers on the ground below told him to jump. LE1 went out head-first and the officers cushioned his fall. LE1 heard Roman getting out behind him. The two officers helped LE1 to an awaiting patrol car and drove him to a hospital.

Law Enforcement Witness 2 (LE2)

LE2 responded to the radio call of shots fired. He arrived and found firefighters running west down the alleyway. They pointed to Boggeman, who was standing outside a window. LE2 heard gunshots and ran towards Boggeman, who told LE2 to retrieve a shield from Boggeman's patrol car. LE2 ran to Boggeman's car, grabbed the shield, and ran back to Boggeman. LE2 looked inside the hallway and saw LE1 lying face-down on the floor. Roman was in a kneeling position, providing cover to LE1. LE2 handed the shield to Boggeman, who shoved it through a hole in the window to Roman. Just as Roman propped up the shield, they started receiving gunfire. LE2 estimated between eight and twelve gunshots were going through the hallway window. LE2 kept his gun pointed down the hall towards the suspect and telling LE1 to stay down. LE2 heard Boggeman returning fire with the shotgun.

LE2 said Roman kicked the lower part of the window out. As soon as it came free from the wall, LE2 removed the window and helped guide LE1 out to officers below. This happened while the officers were under fire. LE2 said he helped guide Roman out from the hallway.

Statement of Officer Francisco Roman

Roman had been to the same residence in the past to handle a noise complaint. The previous incident was non-eventful because no one answered the front door. On this call, a male standing outside of the condo building unlocked the door and escorted them to unit #5. The male said officers had been to that unit on multiple occasions for the same resident. The male then left.

Roman smelled smoke when he entered the building. Boggeman said the smoke was coming from unit #5. They knocked on the door for a number of minutes before Boggeman called for the fire department to respond. LE1 arrived and knocked on the front door and announced himself. The fire department arrived ten to fifteen minutes later. Once they received permission to breach the door, LE1 knocked on the door again and gave a final warning to let the resident know they were about to breach the door. Firefighter 1 (FW1) breached the door and stepped off to the side. It was dark inside and it was smoky. Before they could step inside, Darwish started shooting at them. Roman saw Darwish's face and could see he had a beard. The officers retreated. Darwish fired through the wall and struck LE1 in his shoulders. Roman saw a red mark go across the top portion of LE1's neck. Roman previously served in the US Marine Corps and immediately recognized the sound of Darwish's weapon as rifle fire.

LE1 fell straight to the ground and dropped his gun, stating he could not move. Roman and Boggeman returned fire. Roman fired six or seven rounds through the wall where he thought Darwish would be. Darwish continued shooting and appeared to be tracking and firing his rounds closer towards the officers. Darwish fired six or seven rounds at the officers at this time.

Roman tried to drag LE1 down the hallway with his right hand while holding his weapon in his left, pointing it toward Darwish's front door. Roman saw the rounds piercing through the walls above their heads. Darwish stopped firing momentarily but resumed shooting. Roman and Boggeman returned fire. Boggeman kicked out the window and climbed outside. Darwish fired at them again through the walls. A few moments later, Boggeman handed a Roman a shield. As soon as Roman placed the shield in front of him and LE1, Darwish fired rounds at them. Roman was tucked behind the shield. Roman returned fire until his pistol was empty, reloaded, and fired approximately ten more rounds.

Roman saw Darwish poke his head out from his doorway low to the ground, and point his rifle at them. Roman fired at Darwish again. Darwish continued shooting and struck Roman underneath his left clavicle. The round ricocheted off of Roman's chin. Roman told LE1 he was hit and continued to return fire toward Darwish. LE1 then got up and kicked out the window frame. Once the opening was wide enough, LE1 climbed out, head first. Roman climbed out and dropped to awaiting officers. He was evacuated to the hospital emergency room.

Statement of Officer Shawn Boggeman

Boggeman responded to the radio call of a disturbance. The reporting party told the dispatcher a subject seemed violent and was behaving erratically in the hallway of the building. The dispatcher informed the officers of a previous incident, involving the same subject, at the same address. Boggeman did not read the information from the previous incident because he was too busy driving to the call.

Boggeman was the first to arrive. He was greeted by a male who assumed the police were called for the resident in unit #5. The male commented something about the resident from unit #5 being off his medication again. The male then directed Boggeman to the front entrance and let him into the building. Roman showed up shortly thereafter. Boggeman was familiar with the building and propped open the front door with large rocks to allow LE1 access when he arrived. The male led Boggeman and Roman to the front door of unit #5. Boggeman immediately noticed the odor of burned paper coming from inside the unit. The front door had no door knob- just two deadbolt locks.

When LE1 arrived, Boggeman knocked on the front door with his flashlight and announced his presence, but no one responded. The officers alerted the fire department to assess the threat of the smoke coming from the residence. Boggeman walked outside to get a look at the exterior of the building and ascertain if there were flames or other signs of burning inside of unit #5, but didn't see any obvious flames and returned to the hallway. LE1 continued knocking on the door, asking the resident to answer. Boggeman estimated the officers knocked on the door about thirty times.

Boggeman met the firefighters outside to guide them in. Boggeman explained the situation to better prepare the fire personnel of the potential threat. The firefighters equipped themselves with full fire gear, breaching tools, and an instrument to detect heat on the front door of the condo. The firefighters

determined there was no active fire but something inside was producing smoke. Boggeman's supervisor gave permission to force entry in order to check the welfare of the occupants. LE1 gave a few more announcements at the front door.

Boggeman formulated an entry plan. LE1 would be the first to enter, Boggeman second, and Roman would enter last. The firefighters breached the door, but before LE1 could take a full step inside, the officers received gunfire from inside. Boggeman saw flashes and heard pops which he quickly realized was gunfire. Boggeman retreated down the hallway with two of the fire fighters. Boggeman fired his pistol through the wall towards the origin of the gunfire from unit #5. Boggeman saw LE1 go down but did not see what caused him to fall. Roman was crouched down next to LE1. The gunfire was penetrating the wall, landing within a couple of feet of the officers and firefighters. It was slow but continuous fire. Boggeman estimated Darwish fired about twenty to thirty rounds by that point.

Boggeman fired until empty and reloaded while standing in the hallway. Both of the firefighters crawled out the window at the end of the hallway. LE1 managed to crawl toward Boggeman at the end of the hallway. Roman stayed with LE1. The three officers were trapped at the end of the corridor. Boggeman knocked on the door east of Darwish's residence but received no response and couldn't get in. Boggeman squeezed through the window and climbed up to a balcony adjacent to the window. He hung over the edge and provided cover for LE1 and Roman. There was a ten to twenty foot drop alongside the balcony, but he had a clear view of Darwish's front door. Darwish poked his head out the front door and fired down the hallway at them. Boggeman heard other police units approaching behind him and requested a rifle and a shield. The first unit arriving (LE2) provided a shield, which Boggeman pushed through the window opening to Roman. As soon Roman set the shield up, Darwish started firing at them.

Boggeman returned fire to force Darwish to keep his head down and stop firing. Boggeman yelled for a rifle and an officer handed him a shotgun. Boggeman re-holstered his pistol and aimed at Darwish's front door, aiming over LE1 and Roman. Darwish poked his head out again and Boggeman fired the shotgun. Boggeman believed he struck Darwish in the head but was not sure. Boggeman noticed the gunfire from Darwish stopped.

LE1 or Roman was able to kick out the window at the end of the hallway and escape. Officers below caught LE1 and Roman as they jumped from the window. Boggeman assisted the SWAT unit by helping to guide a robot with a camera to Darwish's residence. The robot entered the residence and confirmed Darwish was down and was not moving. Boggeman then reported to the command post.

Statement of Firefighter Witness 1 (FW1)

FW1 and members of his fire station were dispatched to Darwish's condominium building regarding the smell of smoke in the area. Police officers directed them to unit #5, where the smell of smoke was originating. Two police officers stood at the door and attempted to make contact with any occupants. The officers at the scene were waiting for approval from their sergeant to have the fire department personnel force entry into the unit.

FW1 worked on the door with his forcible entry tool. FW3 told FW1 to not stand directly in front of the door to the unit because officers had told him the occupant had a history of mental health issues. FW1 took about ten seconds to open the door. FW1 could see lights coming from the interior of the

unit. As soon as the door opened, FW1 immediately stepped back. Two officers then entered the unit with their handguns drawn. FW1 was standing next to FW2, to the left of the front door. FW3 and FW4 were standing to the right of the door. FW1 heard the first gunshot, but did not immediately recognize it as a gunshot. FW1 and FW2 moved away from the unit, towards the left. FW2 ran down the hallway, away from the shooting in the unit. FW1 saw the rounds fired by the suspect were coming very close to him. FW1 took cover in the alcove to unit #6, which was directly across the hall from unit #24.

FW1 heard the suspect fire eight to nine rounds from what he believed to be a shotgun or similar weapon. The officers returned fire. FW1 began seeing projectiles impacting the walls near him. The suspect and officers exchanged more volleys of gunfire. FW1 saw an officer at the other end of the hallway, lying on his back, with his feet towards FW1. The officer had his firearm pointed towards FW1 because the suspect's unit was between them. The officers signaled to FW1 to take cover. The officers and fire personnel at the other end of the hallway attempted to kick out the second story window to make their escape. FW1 heard one of the officers say he thought he was shot in the back. After another round of gunfire, FW1 heard a second officer say he believed he had also been shot.

FW1 heard the suspect reloading his weapon inside the unit and the sound of rounds falling to the floor. The first officer who had been shot escaped out the window at the other end of the hallway. FW1 did not see exactly how he made it out the window because FW1 was trying to stay behind cover.

FW1 still held the entry tool used to force open the suspect's door and was about to use it to open the door at his alcove. Once FW1 started to do so, there was another volley of gunfire. He stopped and stayed in cover in the alcove. FW1 heard the suspect saying, "I'm going to come out. I'm going to come out." FW1 thought the suspect was going to give up. FW1 heard movement inside the unit, but the suspect never came out. FW1 could not remember if that was before or after the officers and fire personnel escaped out the window.

FW1 pushed his radio's emergency button and requested help. FW1 eventually heard the sound of police officers approaching. FW1 removed his helmet and held it around the corner to show the officers he was there. The officers instructed him to remain where he was as the officers made their way down the hallway and evacuated him. FW1 never saw the suspect or his weapon.

Statement of Firefighter Witness 2 (FW2)

The officers at the scene were knocking on the door of a unit, attempting to speak with the occupants. They didn't receive a response. Officers told them there was a history of mental health related calls at the unit. FW2 smelled smoke in the hallway outside unit #5. The firefighters stood by for ten to fifteen minutes while officers knocked on the front door. One of the officers walked around the building to see if anyone was inside the unit, reported the blinds were closed, but lights were on inside.

One of the officers said he received permission to force entry to address the smoke in the hallway. FW1 worked to open the door to unit #5. The door came most of the way open and FW1 said there were lights on inside. FW1 readjusted the entry tool and, on a second effort, opened the door. FW1 and FW2 both stepped back into the hallway. FW2 said an officer (LE1) was the first to enter. As soon as LE1 crossed the threshold, he was met with gunfire. FW2 never saw anyone inside the unit.

It appeared the unit was under construction. It did not look like a furnished unit. He saw a door leaning up against the wall.

FW2 believed nine to ten gunshots initially rang out. FW2 did not know if those were all from the suspect or if some were fired by officers. FW1 and FW2 ran westward down the hallway while FW3 and FW4 ran eastward down the hallway with the police officers. FW1 took cover in unit #6's alcove, while FW2 took cover in unit #7's alcove. FW2 saw an officer crawling east down the hallway attempting to get out of the line of fire. Multiple projectiles struck the walls near FW1 and FW2.

FW2 knocked on the door to unit #7 and took cover inside. FW2 remained inside unit #7 for what he believed to be approximately ten minutes. He attempted to leave the unit when there was a pause in the gunfire outside. However, as soon as he stepped out into the hallway the gunfire resumed. FW2 and the occupant escaped the unit through the rear second story window where four to five police officers were standing by. FW2 walked back to his fire engine.

Civilian Witnesses

FW3 and FW4 were also present during the incident, though they were not involved in the breaching of the door. Their statements were consistent with the evidence at the scene and statements of other witnesses. Detectives interviewed numerous civilian witnesses/residents during the course of the investigation. Many residents in the complex were familiar with Darwish and knew of his irrational, violent history. Several witnesses heard the officers announce their presence and ask Darwish to open his door so they could speak with him. None of the residents interviewed saw the actual shooting, though several heard the gunfire and the ensuing police response in the aftermath. Several residences sustained bullet damage when rounds penetrated the walls of their unit.

Investigation

San Diego Police reports, homicide investigators reports, audio recorded interviews of witnesses, crime scene photographs, and body worn camera video of the incident were reviewed for this investigation. The evidence was found to be generally consistent with the officers' statements and the statements of the civilian witnesses. The body-worn camera footage confirms Darwish fired at the officers immediately after LE1 entered the unit. LE1, Boggeman, and Roman were located in the east-west hallway when Darwish's front door was breached. Darwish immediately fired two shots through the open door and struck the wall behind the officers. LE1 stepped back into the hallway after the initial gunfire. LE1 received a perforating gunshot wound from his right shoulder to the left shoulder. LE1 then fell down to the floor after being shot. LE1 crawled into the hallway and was covered by the shield handed through the window by Boggeman and held by Roman during the gunfight with Darwish. The shield sustained bullet damage during the incident.

Darwish fired at least twenty-two shots from inside the unit, based on the spent rifle casings, trajectories, and defects originating from within Darwish's residence. Darwish stepped out into the hallway and fired at least another eleven shots in an easterly direction, based on the spent rifle casings found in front of the entry door area and trajectories observed in the hallway.

In reviewing Roman's BWC, LE1 and Roman were located at the east end of the hallway. Roman assisted LE1 down the hallway after LE1 was shot. Boggeman and Roman returned fire in a westerly direction. LE1 and Roman eventually exited the hallway through the broken window. Roman

received gunshot wounds to his chin, neck, and left shoulder. Roman fired his pistol a total of twenty-two times.

Boggeman's BWC stopped recording when he and FW3 and FW4 reached the end of the hallway. Boggeman climbed out the hallway window and remained on a ledge maintaining cover over the firefighters and officers from his position. An officer gave Boggeman a shotgun. Boggeman fired his pistol a total of seventeen times and fired the shotgun twice. He received minor non-gunshot injuries to his lower right leg and left knee.

Autopsy

Deputy Medical Examiner Dr. Robert Stabley conducted the autopsy of Darwish. Darwish sustained a fatal, close-range discharge gunshot wound to his head, a gunshot wound to his chin, and a gunshot wound to his right forearm. Dr. Stabley determined the cause of death was the perforating gunshot wound of the head and the manner of death was suicide. Toxicological testing of Darwish's blood revealed the presence of cannabinoids.

Legal Analysis

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, 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 she reasonably believed that she or someone else was in imminent danger of suffering bodily injury, believed that

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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

The involved officers responded to a male yelling and creating a disturbance. Upon arrival, they smelled smoke coming from Darwish's unit. After extensive knocking and announcing their presence, they forced entry lawfully with the assistance of the fire department to check the welfare of the occupants and to determine whether the smoke was a danger to the residents of the complex. Darwish opened fired upon them immediately, striking LE1. Roman and Boggeman returned fire to protect themselves, LE1, the firefighters and residents from the high-caliber gunfire. Despite being assaulted by Darwish's tactical advantage and superior firepower, Roman and Boggeman maintained concentrated, suppressive fire, keeping Darwish at bay and striking him several times until Darwish killed himself. Based on these circumstances, the officers bear no state criminal liability for their actions.

Sincerely,



SUMMER STEPHAN

District Attorney

SS:ab

cc: Captain Tom Underwood
San Diego Police Department
Homicide Division
1401 Broadway, Mail Station 713
San Diego, CA 92101