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January 4, 2017

Chief Shelley Zimmerman
San Diego Police Department
1401 Broadway
San Diego, CA 92101

**Re: Fatal shooting of Mr. Juan Carlos Fernandez on November 13, 2016, by
San Diego Police Department Officer R. Bainbridge; Case No. 16-046725; DA
Special Operations Case No. 16-248PS; Deputy District Attorney assigned:
Paul Reizen**

Dear Chief Zimmerman:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Homicide Unit concerning the circumstances leading to the fatal shooting of Mr. Juan Carlos Fernandez by San Diego Police Department Officer R. Bainbridge on November 13, 2016. This case was presented to the District Attorney's Office for review on December 1, 2016.

Summary

Mr. Juan Carlos Fernandez had been issued a court-ordered restraining order forbidding him from contacting his former wife. Fernandez continued to harass and stalk her. On November 13, 2016, Fernandez went to his former wife's family residence. His ex-wife's father went outside to talk to Fernandez. The boyfriend of his ex-wife arrived, confronted Fernandez, and the two began to fight. Fernandez walked back to his car and retrieved a handgun. Fernandez chased the boyfriend and threatened to shoot him. The boyfriend ran from the scene and Fernandez grabbed his ex-wife by the hair. Her father attempted to pull Fernandez off of her. Fernandez shot the father in the head. Fernandez then shot his ex-wife's grandfather and mother, injuring her grandfather and killing her mother. The bullet, which killed her mother, also struck his ex-wife in the chest. Fernandez grabbed his ex-wife by the hair again and dragged her to his vehicle attempting to shove her into his vehicle. Fernandez placed his ex-wife in a headlock, put the gun to her head, and pulled the trigger. The ex-wife heard the gun click, but it did not fire. Officer R. Bainbridge arrived on scene and saw Fernandez standing in the street, holding his ex-wife by the head with Fernandez's handgun pressed up against her temple. Bainbridge ordered Fernandez to drop his weapon and get on the ground multiple times. Fernandez responded by threatening to shoot Bainbridge and Fernandez's ex-wife. Fearing Fernandez was going to shoot the ex-wife, or Bainbridge and his partner, Bainbridge fired one shotgun round to Fernandez's head, killing him instantly.

Legal Analysis

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 for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

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.' [Citations omitted.]

Irrespective of 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. Homicide is justifiable in accordance with Penal Code section 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Persons Involved

Mr. Fernandez was 22-years old at the time of this incident and lived in San Diego. Officer Bainbridge had been with the San Diego Police Department for 12 years and was assigned to the Mid-City Patrol Division.

Background

Mr. Fernandez and his ex-wife, Victim One (V1), dated throughout high school and married in 2014. In 2015, V1 told Fernandez she wanted a divorce and the couple separated in July, 2015. Fernandez began stalking V1. In February 2016, V1 obtained a temporary restraining order against Fernandez. Fernandez often violated the order and attempted to visit V1 at her parents' (Victims Three and Five) home. V1 would tell Fernandez to leave and V1's father (V3) would intervene. Fernandez previously told V1, "This is not going to end good for you."

In February 2016, the couple officially divorced. In March 2016, the day before Victim One was to attend court to obtain a permanent restraining order, Fernandez showed up at the apartment of V1's new boyfriend, Victim Two (V2), and knocked on the door. Fernandez told V2 he wanted to save his marriage with V1 and knew V1 had been coming to V2's apartment. V2 was perplexed as to how Fernandez knew where he lived and believed Fernandez must have previously followed V1 to V2's apartment.

Mr. Fernandez had told friends in the past he wanted to move to Texas with Victim One. When asked why, Fernandez responded that if your wife cheats on you in Texas, you can kill her and not be prosecuted. Fernandez periodically made statements that he wanted to purchase a firearm so if V1 ever cheated on him, he could kill her.

Victim One (Ex-Wife)

On the night of the incident, Victim One was waiting for her boyfriend, Victim Two (V2), outside the apartment complex where her parents lived. She saw Mr. Fernandez drive by and then come back and park across from the apartment complex. V1's father, Victim Three (V3), went across the street to talk to Fernandez. V1 started yelling at Fernandez telling him she was going to call the police as Fernandez was violating the restraining order. Around that same time, V2 arrived. Fernandez and V2 began to fight across the street. V1's parents attempted to break up the fight. Fernandez got into his car and started to drive away, but then parked right next to V2's vehicle. Fernandez pulled a gun out from his car and started chasing V2 while aiming the gun at V2. V1's family members yelled for Fernandez not to shoot V2. V2 ran off.

Mr. Fernandez then grabbed Victim One by the hair. V1's family members pulled Fernandez off of her. V1 heard a gunshot and saw her father (V3) on the ground. V1 heard a second gunshot and then saw her grandfather, Victim Four (V4), bleeding. By this time, V1's mother, Victim Five (V5) had grabbed V1 and was protecting V1 on the ground with her body. Fernandez then shot V5 and the bullet went through V5 into V1. Fernandez grabbed V1 by the hair again and dragged V1 out of V5's arms towards his car. V1's grandmother unsuccessfully tried to free V1 from Fernandez. V1 yelled at Fernandez, "You shot me." Fernandez, responded, "No, baby, I love you," and tried to hug V1.

Victim One heard sirens as Mr. Fernandez continued to pull her by the hair in an attempt to put her in his vehicle. The police arrived and Fernandez now had V1 in a headlock with his gun in his right hand pointed at V1's head. Fernandez pulled the trigger of the gun and V1 heard the gun click, but it did not fire. V1 then heard a shot and Fernandez was on the ground.

Victim Two (Boyfriend of Victim One)

On the night of the incident, Victim One called Victim Two and stated V2 needed to pick up V1 at V1's parents' home. V2 drove over. When V2 arrived, V1 told V2, "Juan's here. You better beat his ass because he's been harassing me—he's been stalking me." V2 saw Mr. Fernandez standing next to his car arguing with V1's father (V3). V2 went up to Fernandez and the two

began to fight. At some point, Fernandez walked away from the fight and stood next to his car. V2 picked up a beer bottle and threw it at Fernandez's car. The bottle broke Fernandez's windshield. V2 went to his vehicle to leave with V1. Fernandez drove his vehicle out of the parking lot and stopped in the middle of the street in front of V1 and V2. Fernandez exited his vehicle with a gun, pointed it at V2, and started chasing V2. V2 ran down the street and darted between some apartments across the street. V2 looked back and saw Fernandez wasn't chasing him anymore. V2 heard two gunshots and then one loud gunshot. V2 walked back to V1 and realized V1, her parents (V3 and V5), and Fernandez had been shot.

Victim Four (Grandfather of Victim One)

On the night of the incident, Victim Four (V4) heard screaming and went outside. He saw his daughter yelling, "Let her go," and saw Mr. Fernandez across the street trying to grab Victim One. Fernandez pulled a gun out of his car and chased V1 at gunpoint into the apartment complex. V4's son (V3) attempted to tackle Fernandez and Fernandez shot him. V4 tried to help V3 after Fernandez shot him and Fernandez pointed the gun at V4 from two feet away. V4 moved his head to the side and Fernandez shot V4. The bullet grazed V4's head and V4 began bleeding profusely.

Victim Four saw his daughter-in-law (V5) hugging Victim One outside the apartment gate. Mr. Fernandez went over to V1 and V5. V4 did not see Fernandez shoot V5, but heard a shot and walked to the gate and saw V5 on the ground. Fernandez then grabbed V1 by the hair and dragged her into the street in an attempt to get her in his car. V4 saw Fernandez attempt to shoot V1 in the head, but the gun did not fire. The police arrived and told Fernandez to drop the gun. Fernandez had V1 by the hair with one hand and his gun in the other hand. Fernandez would not drop the gun and the police shot Fernandez.

Non-Injured Family Members of Victim One

Family members of Victim One lived in the same apartment complex where the incident took place. They were aware V1 had a restraining order against Mr. Fernandez and Fernandez often showed up at the complex despite the order. They had seen Victim Three tell Fernandez on multiple occasions to stay away from V1, but Fernandez always came back.

On the night of the incident, family members heard a commotion outside and someone yelled, "He has a gun—Juan has a gun." One family member heard Victim One talking on the phone repeating her address and stating, "He is trying to kill me and my boyfriend." The family member presumed V1 was talking to a 9-1-1 operator.

Victim One's aunt saw Victim Two and Mr. Fernandez fighting. Her brother (V3) tried to stop the fight. Fernandez went to his car. The aunt heard a racking sound and then saw Fernandez was holding a gun. She screamed at him "not to do it," but saw the look of intense anger on Fernandez's face and knew he was going to shoot someone. Fernandez shouted to V2: "I'm going to kill you. I'm going to shoot you." Fernandez chased V2 around the car. Every time he

passed V1, he slapped her and pulled her hair. V3 tried to hold onto Fernandez. A gunshot was heard but no one was shot. V3 tried to calm Juan by telling him "not to do this." A second shot rang out and the aunt saw V3 fall to the ground. Victim Four tried to get the gun. Fernandez shot V4, but V4 did not appear to have been hit. Fernandez grabbed V1 by the hair. Victim Five tried to stop Fernandez. Another shot was heard. Police arrived. V5 was seen on the ground. Fernandez was walking to a car with V1 and hitting her. He tried to make V1 get into the car. He had the gun in his hand and was holding her by her hair. The police officers yelled at Fernandez and Fernandez yelled back. One shot was heard.

Citizen Witnesses

Witnesses heard a commotion. One observed a man beating a woman with his fist, while holding a gun. It appeared to the observer the woman was a hostage. The man put a gun to her head and the woman yelled for help. The observer said it was lucky the officer had a great aim and shot the man. The man had been threatening to kill the woman. Other witnesses described seeing portions of the incident, seeing people get shot, and Mr. Fernandez dragging Victim One toward the car. Many witnesses took cover inside their homes when they realized Fernandez was shooting. The witnesses were fearful they or their family members would be shot.

Officer R. Bainbridge's Statement

Officer Bainbridge and Law Enforcement Witness One (LE1) were working patrol together and were on the scene of an unrelated call. Bainbridge was LE1's field-training officer, as LE1 was in his second-phase of training as a SDPD officer. Bainbridge heard SDPD dispatch broadcast there was a domestic violence incident on Marlborough where the suspect had a gun. The incident sounded grave. Bainbridge and LE1 immediately responded to the domestic violence scene. While on route, Bainbridge received updates that the suspect shot somebody.

Officer Bainbridge parked at the southeast corner of Whitman and Marlborough. He did not want to approach the scene with lights and sirens because he feared the suspect would shoot at the patrol vehicle. Bainbridge grabbed his shotgun, exited his patrol vehicle, and chambered a round. Law Enforcement Witness One followed him. Bainbridge saw a car parked in the middle of the street and remembered dispatch advised the suspect was seen attempting to put a female into a car in the street. Bainbridge believed the car he was looking at was likely the vehicle in question. As Bainbridge began running towards the vehicle, he heard a male yell to him that the suspect just shot two people.

Officer Bainbridge observed Mr. Fernandez with Victim One in the street who appeared to be trying to get away from Fernandez. Fernandez had a handgun in his right hand pressed against the right temple of V1 and his left arm around V1's head. Fernandez was attempting to push the V1 into the vehicle. Bainbridge yelled for Fernandez to get on the ground several times. Fernandez ignored Bainbridge's commands.

Officer Bainbridge believed Victim One's life was in imminent danger based on what he was observing and the information dispatch and the male provided regarding Mr. Fernandez shooting people. Bainbridge was also concerned Fernandez could shoot him or Law Enforcement Witness One. Bainbridge raised his shotgun up at Fernandez, who was approximately ten feet away. Fernandez still had V1 in a headlock with a gun pointed at her head. At some point, V1 created just enough separation from Fernandez for Bainbridge to get a clear shot on Fernandez. Bainbridge fired one round from his shotgun and Fernandez immediately dropped, pulling the victim down with him. Bainbridge knew the blast killed Fernandez instantly. Law Enforcement Witness One helped the female victim up and Bainbridge stood guard over Fernandez until more officers arrived. Bainbridge saw the handgun two or three feet from Fernandez's hand.

Law Enforcement Witness One (LE1)

At the time of the incident, Law Enforcement Witness One was a second-phase training officer assigned to work with Officer Bainbridge. LE1 heard a radio call regarding a domestic violence incident with a gun occurring approximately five to seven blocks away from where he and Bainbridge were located. Radio dispatches indicated someone may have been shot. Bainbridge and LE1 responded and tactically parked their patrol vehicle a block away from the scene. Bainbridge retrieved his shotgun and LE1 obtained his handgun. The two began running to the scene.

Law Enforcement Witness One saw several people in the street and a car parked in the middle of the roadway. As LE1 got closer, he noticed Mr. Fernandez in the street holding Victim One in a headlock and using V1 as a shield from the officers. Fernandez was dragging V1 away from the officers and towards the car in the street. LE1 heard Fernandez yell something to the effect of, "I'll shoot. I'll shoot." From LE1's vantage point, he was unable to determine whether Fernandez had a gun, but believed Fernandez was telling the officers to back off or Fernandez would shoot V1.

Law Enforcement Witness One and Officer Bainbridge were giving loud verbal commands for Mr. Fernandez to get on the ground and drop the gun, but Fernandez was not following the officers' instructions. Bainbridge was ten to twelve feet away from Fernandez. LE1 saw Bainbridge had an angle to shoot and Bainbridge took the shot. LE1 observed Fernandez and Victim One fall backwards. V1 got up quickly and LE1 grabbed her. Fernandez stayed on the ground. LE1 tended to V1. V1 told LE1 Fernandez was her ex-husband and had shot her and her family.

Investigation

The scene was secured and the investigation into the shooting was conducted by the San Diego Police Department Homicide Unit. Officer body-worn camera and police-helicopter footage, crime-scene photographs, crime reports, computerized crime-data research, witness interviews, radio communications, and medical reports were reviewed to analyze the shooting.

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Body-worn camera footage from Officer Bainbridge and Law Enforcement Witness One shows both officers arriving by patrol vehicle. They ran on foot to the scene where commands were given to Mr. Fernandez to get on the ground. Fernandez responded by shouting "No," several times. He is seen dragging Victim One away while holding her around the neck with his arm and pointing a gun, before he is shot and falls to the ground with V1. V1 got up and ran toward LE1, while shouting that Fernandez had shot her father. ABLE helicopter footage from the air shows the suspect's movements more distinctively.

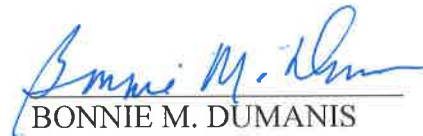
The investigation documented Officer Bainbridge fired one time with a shotgun. An autopsy revealed Mr. Fernandez was shot one time on the left side of his face. A 9mm handgun was found next to Fernandez's body.

Conclusions

Officer Bainbridge's use of deadly force was expected and reasonable under the circumstances. Bainbridge was able to recognize a split-second opportunity to save Victim One from being murdered. Bainbridge fired his shotgun to stop the obvious threat Fernandez posed to V1, Bainbridge, Law Enforcement Witness One, and the community. Bainbridge bears no criminal liability for his actions because they were legally justified under the facts, the evidence, and the law.

A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,



BONNIE M. DUMANIS
District Attorney
County of San Diego

BMD;jh
cc: Captain Brian Ahearn
San Diego Police Department
Homicide Division