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SACRAMENTO COUNTY

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May 27, 2008

Sheriff John McGinness
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

Chief Rick Braziel
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

Re: Officer-Involved Shooting: SSD Case No. 07-42120
SPD Case No. 07-263350

Shooting Officer: SSD Deputy Jeff Ilaga #1124

Person Shot: Huy Tuong LE (DOB 3/13/1974)
[REDACTED]

Gentleman:

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above referenced officer involved shooting. The review does not address issues of civil liability, tactics, or departmental policies and procedures. We address only whether or not there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Huy Tuong LE on August 2, 2007. For the reasons set forth below, we conclude that the shooting was lawful.

SPECIAL INVESTIGATIONS

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Written reports and other documentary items were reviewed. These consisted of: Sacramento Sheriff's Department and Sacramento Police Department reports, Coroner's Report # 07-04061, computer discs containing statements, radio communications, digital photographs, and crime scene video.

INCIDENT SUMMARY:

On 8/2/07, at approximately 0926 hours, a male Asian later identified as the decedent, Huy LE, entered the Washington Mutual Bank located at 7301 West Stockton Boulevard, Sacramento, California. LE, who was carrying an aluminum baseball bat and pulling a rolling suitcase, was approached by the assistant bank manager, [REDACTED] [REDACTED] recognized LE as the same person who had been in the bank a week before carrying a bat, but left without incident. [REDACTED] approached LE and advised him that the bat was not permitted inside the facility. LE who became agitated and raised the bat in a threatening manner then stated, "Give me all the cash in your bank." [REDACTED] went to a nearby terminal and withdrew one thousand dollars in twenty-dollar bills from a cash drawer that automatically triggered a silent robbery alarm. LE removed the currency from a counter and fled from the bank with the orange aluminum baseball bat and suitcase calmly walking northbound towards the Target shopping center located on the northeast corner of Cosumnes River College Boulevard and Bruceville Road.¹

Sacramento Sheriff's Patrol Deputy Jeff Ilaga #1124, had responded to the area of the West Stockton Boulevard Washington Mutual Bank in a marked police vehicle after monitoring a radio broadcast of the Washington Mutual Bank robbery. The radio broadcast had identified the location of the bank and described the robber as an Asian adult in possession of a baseball bat.

Upon arrival at the intersection of Bruceville Road and Alpine Frost Drive, Deputy Ilaga observed LE walking westbound on Alpine Frost Drive carrying an orange aluminum baseball bat in his right hand and pulling a suitcase with his left hand. Deputy Ilaga initiated contact with LE by using his red lights and siren in front of the residence located at [REDACTED] Alpine Frost Drive. The officer, wearing a full police uniform, exited his patrol vehicle with his duty weapon drawn and ordered LE to stop and drop the baseball bat.² In response LE turned towards the officer, released the suitcase while maintaining possession of the bat. Suddenly LE stepped towards the officer and violently swung the metal bat striking Deputy Ilaga on his left forearm. When LE repositioned the bat to strike the officer again, Deputy Ilaga fired two rounds from his handgun into LE's upper torso. LE fell to the ground mortally wounded. Deputy Ilaga immediately reported the shooting by radio and requested medical assistance. During an interview with investigators after the shooting Deputy Ilaga stated he shot LE to prevent further injury to himself and others.

¹ The bank's surveillance system recorded the robbery footage, which was seized as evidence. Huy LE is the robber on the surveillance film.

² Deputy Ilaga's department issued handgun was a Sig Sauer, P226, .40 caliber with a fully loaded capacity of thirteen rounds including magazine.

Assisting officers arrived within minutes and initiated life saving procedures. LE was transported to University of California Davis, Medical Center where he was pronounced dead at approximately 1004 hours. Deputy Ilaga was transported to Kaiser Hospital/South for treatment of the minor injury to his arm. He was released from care at approximately 1140 hours.

A witness, [REDACTED] who was at the intersection of Bruceville Road and Alpine Frost Drive, corroborated Deputy Ilaga's version of the incident stating she saw the officer exit his patrol car and observed the decedent run at the officer and strike him with a baseball bat before hearing gun shots. However, the witness was too far away to overhear any exchange of words between Deputy Ilaga and the suspect.

At the shooting scene, crime scene investigators recovered the bank's one-thousand dollars (in twenty-dollar bills) from the rolling suitcase, an orange aluminum baseball bat and two spent .40 caliber handgun casing. An examination of Deputy Ilaga's handgun after the shooting revealed the presence of eleven live rounds: ten in the magazine and one in the chamber.

Dr. Stephany Fiore, Forensic Pathologist for the Sacramento County Coroner's Office, performed the autopsy. She reported that LE died as a result of gun shot wounds to the chest and neck. Toxicological analysis of the decedent's blood was negative for drugs and ethanol.

LEGAL ANALYSIS:

The Office of the District Attorney investigates and reviews cases of officer involved shootings for the purpose of evaluating and applying the law relating to police use of force, and to determine if an officer's actions fall within the California laws regarding criminal responsibility. This office has reviewed the facts of this case and applied the controlling legal authority to them. The authority applicable in this case includes California Penal Code §§ 69, 148, 197, 198, 243, 245, 835, 835a; California Jury Instructions; and other applicable state and federal published cases.

A peace officer may use deadly force in cases of self-defense, defense of others, and when flight of an individual poses a risk of serious bodily harm. Tennessee v. Garner (1985) 471 U.S. 1, 11, 16; Kortum v. Alkire (1977) 69 Cal.App.3d 325. California Penal Code §§ 196 and 197 specifically provide that in a situation where it is reasonably necessary for an officer to defend himself or another person against death or serious bodily injury, the use of deadly force is legally justified. See People v. Ceballos (1974) 12 Cal.3d 470, 482-483. The test of self-defense is one of "apparent necessity". The person acting in self-defense must have an honest and reasonable belief in the apparent peril and the need to defend himself. See Penal Code § 197(3); 1 Witkins Cal. Crim. Law Defenses Section 66. When an officer fears imminent danger of serious bodily injury or death to himself or others, and the fear is both genuine and objectively reasonable, a sufficient basis exists for the use of deadly force. In re Christian S. (1994) 7 Cal.4th 768.

The evidence is irrefutable that LE, while armed with a deadly weapon, had committed an armed robbery at the Washington Mutual Bank and assaulted Deputy Ilaga with the deadly weapon

when attempting to flee. Not only did LE injure the officer with the blow, but his threatening behavior placed Deputy Ilaga in grave danger of death or serious bodily injury.

Given the facts, it was objectively reasonable for the officer to use deadly force to prevent further attack. There is little doubt that at the moment of the shooting, the officer actually and honestly believed that deadly force was necessary to prevent death or great bodily injury to himself and/or others.

CONCLUSION:

Applying the controlling legal standards to the factual record in this case, we find that Deputy Jeff Ilaga's actions were reasonable and justified in self-defense and defense of others against a subject who was armed with a lethal weapon and acted in a threatening manner. Finding the shooting lawful we will take no further action in this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY



DONALD R. STEED
Supervising Deputy District Attorney

cc: Lee Dean, Inspector General
Francine Tournour, Director, Office of Public Safety Accountability
Deputy Jeff Ilaga
✓ Sgt. Bob McCloskey

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Report Number: 2007-263350

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Records or information, the disclosure of which would reveal personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information (Cal. Pen. Code § 832.7(b)(7))

Records or information wherein the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure (Cal. Gov. Code § 7922.000)

Records or information that constitute confidential medical, financial, or other information, the disclosure of which is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy (Cal. Pen. Code § 832.7(b)(6)(C)) and

Records or information, the disclosure of which is exempted or prohibited pursuant to federal or state law (Cal. Gov. Code § 7927.705; see also Cal. Const. art. 1 Sec. 1).

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