



Sacramento County District Attorney's Office

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August 24, 2015

Chief of Police Samuel D. Somers, Jr.
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

RE: Officer-Involved Shooting: Case No. SPD-14-168315
 Shooting Officer: SPD Matt Nichols # 636
 Person Shot: Paul Westbrook (DOB: 10/30/1976)

Dear Chief Somers,

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer-involved shooting. Issues of civil liability, tactics, and departmental policies and procedures were not considered. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Paul Westbrook. For the reasons set forth, we conclude that the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other documentary items. These items included the following: Sacramento Police Department Report 14-168315; video and audio recordings; dispatch calls; witness interviews; photographs; diagrams; Sacramento County District Attorney Laboratory of Forensic Services report; evidence logs; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

On June 19, 2014, at approximately 4:00 a.m., Sacramento Police Officers Matt Nichols and Bryan Morrison were on routine patrol in the north area of the City of Sacramento. As they drove through the area of North Avenue and Marysville Boulevard, they noticed a white male adult walking southbound on the east side of Marysville Boulevard. He was walking through the Connie's restaurant parking lot on the northeast corner of the intersection.

The officers drove over and contacted the subject, who identified himself as Paul Westbrook. Westbrook appeared nervous and fidgety during his conversation with the police officers. The officers did not ask for formal identification. Officer Morrison asked Westbrook where he was headed, and Westbrook replied that he was going to his home on Willow Street. Officers Nichols and Morrison told Westbrook to have a good night and ended the contact.

As Officer Nichols drove away through the parking lot, Officer Morrison ran the name "Paul Westbrook" through the Sacramento County Known Person Finder system. Officer Morrison recognized the photo of Paul Westbrook as the same man that he just contacted. He also learned that Westbrook had two misdemeanor no-bail arrest warrants. One warrant was for possession of tear gas by a felon and the other for driving under the influence. At this point, they decided to arrest him.

The officers drove out of the parking lot and observed Westbrook crossing the street to the south side of North Avenue. Officer Nichols drove the patrol car alongside of Westbrook and said, "Hey, Paul. We need to talk, man." Westbrook looked at the officers and said, "See Ya!" He ran eastbound on North Avenue. Officer Nichols pulled the patrol car up to cut him off, but Westbrook changed directions. He ran west and then south down the Marysville Boulevard/Ivy Street alley.

Officer Nichols broadcast over the police radio that he and Officer Morrison were in a foot pursuit southbound in the alley. Both officers got out of the patrol car and chased Westbrook. As they ran, Officer Nichols yelled at Westbrook to "Stop!" Westbrook kept making movements towards his waistband and/or his pocket on his right side. Officer Morrison yelled at Westbrook to keep his hands out of his waistband. Officer Nichols believed that Westbrook was trying to retrieve a weapon or dispose of drugs based on the outstanding warrants and his behavior. As they ran down the alley, Officer Nichols yelled "Taser!" so that Westbrook would cooperate to avoid being struck by the taser. Officer Nichols did not intend to use a taser because Westbrook had on several layers of clothing. It was unlikely that a taser would have had any effect.

As the officers pursued Westbrook down the alley, Officer Nichols began catching up to him. Westbrook continued to dig in his waistband with his right hand. Westbrook then made a movement as if he was retrieving a weapon or object from his waistband area. Westbrook stopped running and suddenly turned right. Officer Nichols saw a knife in Westbrook's right hand as he began to turn towards the officers. Officer Nichols was approximately five yards behind Westbrook, while Officer Morrison was behind Officer Nichols as they pursued Westbrook in the alley. Officer Nichols saw the knife and drew his gun. Officer Morrison did not draw his weapon because he was concerned about Nichols being down range from him and potentially in his line of fire.

Officer Nichols yelled at Westbrook to "Put the knife down!" Westbrook did not put down the knife and turned towards the officers with the knife in his extended right hand. Officer Nichols observed Westbrook make an aggressive movement that could have harmed

himself or Officer Morrison. Officer Nichols fired two shots in order to protect himself and his partner.

Westbrook was hit by both shots and went to the ground face down. He landed with a knife in the web space of his right hand about one inch away from his grasp. Westbrook was yelling, screaming, and kicking his feet. Officer Morrison grabbed Westbrook's right hand and held it down, while Officer Nichols pulled his left hand behind him and handcuffed him. Officer Morrison began administering first aid immediately after Westbrook's arms were secure.

Other officers began to arrive on scene. Officer Nichols heard Westbrook say, "Oh, I just wanted to die today. Thanks for shooting me." Westbrook was conscious and alert. He communicated with Officer Morrison as medical personnel arrived and provided treatment. It was not successful and Westbrook was pronounced deceased at the scene at approximately 4:07 a.m.

Westbrook's mother, Sandra Barber was interviewed and stated that Paul Westbrook had been struggling with drug addiction and depression. He was supposed to be in a rehabilitation facility. Westbrook previously waved a knife at his mother and said he was going to kill her and his brother.

Marlena Givler, Ms. Barber's roommate, also stated Westbrook was having trouble with his girlfriend. Westbrook said he did not have anyone and "he might as well do suicide by cop." Specifically, he said, "I just want to die. I'm just going to go out there and wave a knife at them so they'll shoot me. Kill me." He made these statements two or three days before the shooting incident.

The Sacramento County District Attorney's Laboratory of Forensic Services confirmed the presence of methamphetamine and a small amount of alcohol (.01%) in Westbrook's blood at the time of his death. The Sacramento County Coroner examined Paul Westbrook and found that he had been shot two times. One bullet entered Westbrook's right hip and exited in the left hip area. The direction of this wound was downward. The other bullet entered the left side of Westbrook's lower mid-back and exited his back several inches above and further to the left. The direction of this wound was upward. The gunshot wound in Westbrook's hip was lethal.

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. Additionally, an officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. (*Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; *Kortum v. Alkire* (1977) 69 Cal.App. 3d 325; CALCRIM 2670.) An officer who attempts to arrest or detain a person need not retreat or desist from his efforts by reasons of the resistance or threatened resistance of the person; nor shall the officer be deemed an aggressor or lose the

right to self-defense by use of reasonable force. (California Penal Code section 835a.) Police may use some degree of physical coercion or threat thereof to accomplish an arrest. The force used must be objectively reasonable, considering such issues as the severity of the crime, whether the suspect posed an immediate threat to police or others, and whether the suspect actively resisted arrest or attempted flight. (*Graham v. Connor* (1989) 490 U.S. 386.) The reasonableness inquiry takes into account those facts known to the officer at the moment he or she uses deadly force to apprehend a fleeing suspect. (*Ford v. Childers* (7th Cir. 1988) 855 F.2d. 1271, 1275; *Sherrod v. Berry* (7th Cir. 1988) 856 F.2d 802, 804.)

The person being detained or arrested may be subjected to such restraint as is reasonably necessary for his arrest and detention and has a concomitant duty to permit himself to be detained. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; CALCRIM 2670, 2671, 2672.) The rule “requires that the officer’s lawful conduct be established as an objective fact; it does not establish any requirement with respect to the defendant’s mens rea.” (*People v. Jenkins* (2000) 22 Cal.4th 900, 1020.)

California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury. (CALCRIM 3470.) An officer who uses deadly force must actually believe that force is necessary. The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.) Thus, the officer may employ all force reasonably believed necessary. (CALCRIM 3470.) The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The calculus of reasonableness 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. (*Graham v. Connor* (1989) 490 U.S. 386.)

A review of the statements and physical evidence reveals the following: Paul Westbrook was emotionally unstable in the days before his death and was struggling with addiction. When Officers Nichols and Morrison encountered Westbrook, they believed he could be armed. Officer Nichols and Officer Morrison repeatedly shouted for Westbrook to stop and to take his hands away from his waistband. When Westbrook turned and made an aggressive movement with his knife, Officer Nichols reasonably believed that their lives were in danger and fired shots at Westbrook. Westbrook was struck twice. The wounds to the right hip, which was fatal, and to the lower back are consistent with Officer Nichols’ description of the incident. It appears the first bullet struck Westbrook in the right hip after he stopped and turned in the direction of the officers in an aggressive manner with his knife. It further appears the second bullet then struck Westbrook in the lower back area as he fell face down to the ground as a result of the first wound.

CONCLUSION

Applying the controlling legal standards with the factual record, we conclude that Officer Nichols was justified in using deadly force in this situation. The objective evidence supports a finding that his conduct was reasonable under the circumstances they encountered. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

Cc: Officer Matt Nichols
Detective Kyle Jaspersen