



Sacramento County District Attorney's Office

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Sheriff Scott Jones
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

RE: Officer-Involved Shooting: Case No. SSD-15-86347
 Shooting Officer: SSD Steven Murphy
 Person Shot: Sonny Benavides (DOB: 4/4/1987)
 Date of Incident: April 10, 2015

Dear Sheriff Jones,

The District Attorney's Office has completed an independent 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 Sonny Benavides. 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 Sheriff's Department Report 15-86347; video and audio recordings; dispatch calls; witness interviews; photographs; diagrams; Sacramento County District Attorney Laboratory of Forensic Services report; and evidence logs.

FACTUAL SUMMARY

On April 10, 2015, at approximately 12:42 p.m., Kimberly Hines called 911 and reported that she was being harassed by an unknown male at a 7-Eleven store located at 3601 Elkhorn Boulevard. She provided a description of the man and the clothing he was wearing. When asked if he had a weapon, Hines stated that it appeared the suspect was touching something under the pant leg of his shorts.

Sacramento County Sheriff Deputies Michelle Mondo and John Ilaga responded to the call and approached the area between the rear of the 7-Eleven store and the Payless Shoe Store. Immediately upon arrival, they observed a male who matched the description of the suspect. He was later identified as Sonny Benavides. The deputies stopped the patrol car to the right of Benavides and exited as he continued to walk away from the deputies. Deputy Ilaga said loudly, "Hey. Can I talk to you?" Benavides stopped and turned towards Deputy Ilaga with his hands in his pockets. Deputy Ilaga told Benavides to remove his hands from his pockets. Benavides looked at Deputy Ilaga, quickly turned, and ran towards Watt Avenue. Deputy Ilaga chased Benavides across and then south down Watt Avenue. Benavides discarded his backpack and his sweatshirt as he ran. He continued south on Watt Avenue and crossed Elkhorn Boulevard into a strip mall parking lot on the southwest corner of Watt Avenue and Elkhorn Boulevard. Deputy Ilaga continued to chase him, but lost sight of Benavides as he ran around the east side of a Jiffy Lube store. As Deputy Ilaga followed Benavides on foot, Deputy Mondo followed in the patrol car. Deputy Mondo picked up Deputy Ilaga near the Jiffy Lube and they continued south in their pursuit.

Witness Raymond Green was at the intersection of Watt Avenue and Elkhorn Boulevard when he noticed Benavides running across the street towards the strip mall parking lot. Green also observed that Benavides was being pursued on foot by an officer. Green followed Benavides in his car into the Jiffy Lube parking lot. Green parked his car and heard Benavides shout words to the effect of "Get away from me, leave me alone." Benavides then continued to run and Green followed him. Green felt he was in a position to block Benavides' path and came to an abrupt stop near the Jiffy Lube. Benavides again told Green to get away from him. Green exited his car with his cane in his hands to potentially use as a weapon. Benavides reached his right hand into his left waistband, pulled out a gun, pointed it at Green, and fired one shot. Green was not hit.

Immediately after Benavides fired the gun, witness Stephen Rankin-Smitley drove up in a black truck and asked Green if he was alright. Green affirmed that he was uninjured and Rankin-Smitley drove off in pursuit of Benavides. Benavides ran through an unsecure area of a nearby fence. Rankin-Smitley pursued Benavides into a field to "keep him in sight." Green left the scene.

Deputy Steven Murphy was on duty in the area when he heard Deputy Mondo radio that she and her partner were involved in a pursuit and Deputy Ilaga was on foot. Deputy Murphy activated his lights and siren and proceeded to the scene. Deputy Ilaga voiced that Benavides was running southbound past the Jiffy Lube store on Watt Avenue. As Deputy Murphy passed the Jiffy Lube, he observed citizens pointing towards a field. At the same time, Deputy Ilaga announced that Benavides was running in the field. Deputy Murphy approached the field and observed Benavides running in a southwest direction. Deputy Murphy continued through a church parking lot and saw Benavides running south through the field towards him. As Benavides saw Deputy Murphy in his patrol vehicle, Benavides changed direction and started running northwest towards a fence. Deputy Murphy exited his vehicle. Deputy Murphy observed a person in the workshop area of the adjacent church and noticed the garage door was open. He also noticed Rankin-Smitley running southbound through the field. Deputy Murphy believed Rankin-Smitley was trying to help Deputy Ilaga apprehend Benavides. As Rankin-Smitley approached him,

Benavides began to focus on Rankin-Smitley. Deputy Murphy heard Benavides and Rankin-Smitley yelling at each other.

Deputy Murphy could not see Benavides clearly because his back was to Deputy Murphy. Deputy Murphy could see that Benavides's arm was not at his side, but he could not see what was in his hand. Benavides made a movement with his hand that caused Rankin-Smitley to suddenly back away. Rankin-Smitley put his hands up and continued to back away from Benavides. Deputy Murphy assumed Benavides had a weapon, but still could not see it.

Rankin-Smitley estimated Benavides was approximately 25 to 30 feet from him when he turned and pointed the gun at him. Benavides said, "Get back. Get away from me." Rankin-Smitley started to back up when Benavides fired one shot at him. Rankin-Smitley was not hit.

Deputy Murphy heard the gunshot and realized Benavides fired a gun at Rankin-Smitley. Deputy Murphy radioed, "He's got a gun."

After Benavides shot at Rankin-Smitley, he moved toward the fence line that backed up to a storage area and the residential neighborhood on 34th Street. Deputy Murphy was aware that 34th Street is a mixed use area with both commercial and residential structures. He was concerned Benavides would threaten the safety of the neighborhood if he was able to get over the fence and out of the field. Benavides appeared to Deputy Murphy as very desperate to get away after he shot at Rankin-Smitley. Deputy Murphy was concerned that Benavides could break into someone's home or carjack someone in order to get away. Accordingly, when Benavides started to pull away from the fence, Deputy Murphy fired one round and struck Benavides in his left tricep.

Benavides fell from the fence and stumbled a bit before sitting on the ground. He was facing Deputy Murphy, who was shouting for Benavides to put his hands up. Benavides began yelling, "Help me, help me, he shot me." Benavides kept dropping one of his hands and Deputy Murphy could not see where the gun was, so he kept giving commands for Benavides to put his hands up. Benavides finally complied by keeping his hands up and rolling onto the fence.

Deputy Murphy instructed arriving deputies to wait until it was safe to approach Benavides. Deputy Murphy still did not know where Benavides' gun was and did not want any other deputies to be in danger. Deputies Murphy and Mondo held Benavides at gunpoint until another officer approached Benavides and handcuffed him.

Benavides continued to resist the deputies by moving his body as they attempted to hold him down. He was screaming and combative throughout his contact with the deputies. He ignored all directives to stop fighting. There was a fence that separated the suspect and deputies from the paramedics when they arrived. Deputies were able to remove approximately 6 slats from a plastic fence, which allowed the paramedics access to Benavides in the field. Benavides continued to resist and fight with fire personnel even as they tried to secure him to a stretcher. Deputies forcefully held his legs down so he could be safely secured to the stretcher and transported to a hospital. While being escorted to the ambulance, Benavides spontaneously stated, "Okay, okay, I had a gun and I shot at the guy."

Deputies located a black Glock model 17 semi-automatic 9mm pistol approximately 3 feet from the fence line in the field. It was test fired by the Sacramento County District Attorney's Laboratory of Forensic Services and found to function properly. A clear baggie containing a white powdery substance was also found near the gun.

Deputies Corbin Gray and Eugene Hardy rode in the ambulance with Benavides. Benavides was yelling and hostile during the entire trip to Mercy San Juan Hospital. Once inside the hospital emergency room, Benavides continued to be uncooperative with hospital staff who were attempting to provide treatment. The staff sedated Benavides and determined he had a gunshot wound that penetrated and exited the left upper arm. He was treated and admitted into the hospital. He was later discharged from the hospital and booked into the Sacramento County Main Jail.

Deputy Mondo recognized Benavides from a previous call just two days prior to the shooting. During her contact with Benavides's mother, Deputy Mondo learned that Benavides was very paranoid and was using methamphetamine. Benavides's mother also informed Deputy Mondo that her son had a gun, but she was unsure whether it was real.

Deputy Gregory Yue inspected Green's vehicle and observed a bullet hole in the rear side window. According to Green, the bullet penetrated his window, passed through a prosthetic leg that was in the back of the vehicle, and was stopped by a spare tire. The projectile was collected as evidence.

CSI retrieved Benavides' backpack at the intersection of Watt and Elkhorn. Benavides' Oklahoma identification card and a Motorola cell phone were found in the backpack. The backpack also contained one 50-round box of Blazer Brass 9mm ammunition, two 25-round boxes of Hornady ammunition, two yellow/black rubber coated gloves, two black ski masks, a printed map with a list of homes for sale in the Arden Way – Fair Oaks Boulevard area, and other miscellaneous items. The Sacramento County District Attorney's Laboratory of Forensic Services confirmed the presence of methamphetamine and amphetamine in Benavides' blood at the time of the incident and his subsequent hospitalization.

On October 7, 2015, Benavides pled no contest to two counts of assault with a firearm and admitted a firearm enhancement. He was sentenced to seven years in state prison.

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. California Penal Code sections 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 CALCRIM 505.) Additionally, an officer who has reasonable cause to believe a person has committed a public offense or is a danger to themselves or others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. (*Tennessee v. Gardner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; *Kortum v. Alkrie* (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 to 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 objectionable 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 men 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 or someone else 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: Sonny Benavides was paranoid in the days before the shooting and was using methamphetamine. He had been harassing Kimberly Hines at the 7-Eleven store, and fled when he was contacted by deputies. When Benavides was confronted by Raymond Green, he fired a shot at Green and ran away. When Benavides realized he was being pursued by Rankin-Smitley, Benavides shot at him and continued to flee. Deputy Murphy entered the field as Benavides was attempting to escape over a fence and into an adjacent neighborhood. Deputy Murphy knew that Benavides had fired a gun at Rankin-Smitley and was reasonably fearful that Benavides would injure other civilians if he got out of the field and into the neighborhood. Accordingly, in order to protect the public from further harm and detain Benavides, Deputy Murphy fired one shot at Benavides and struck him in the arm.

CONCLUSION

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

cc: Deputy Stephen Murphy
Rick Braziel, Office of the Inspector General