



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael A. Neves
Assistant District Attorney

August 25, 2015

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

RE: Officer-Involved Shooting: Case No. SPD 14-63267
Shooting Officers: SPD Officer Karl Chan #866
SPD Officer Steve Fontana #231
Person Shot: John Harmon (DOB 4/11/1963) (Arizona DL: D08395564)

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 John Harmon. For the reasons set forth, we conclude that the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other items, including: Sacramento Police Department report number 14-63267; witness interview recordings; photographs; diagrams; a scene video; radio traffic recordings; evidence logs; Regional Transit surveillance videos; Sacramento County District Attorney Laboratory of Forensic Services reports; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

On March 8, 2014, Regional Transit security guards contacted John Harmon on a light rail train in downtown Sacramento. Harmon was shaking, agitated, talking loudly, and acting strange. He told one security guard that he had a knife. Another security guard conducted a welfare check on Harmon and asked him to quiet down. He told Harmon that he would have to get off the train if he did not calm down. Harmon said he would not calm down unless the guard killed him, and that the next guard or cop who tried to get him off the train would have to take him out. He

emphasized, "This is the only way this is going to go down." The guard asked Harmon if he had a weapon. Harmon stated he did have a weapon, but would not disclose its nature.

Sacramento Police Officers Steve Fontana, Karl Chan, and Deanna Viscuso were on duty and assigned to Regional Transit Police Services. They were each dressed in full Sacramento Police Department uniforms. At approximately 9:17 p.m., a Regional Transit security guard radioed the officers and indicated that there was a suicidal and possibly armed subject on a light rail train car.

The officers met the train as it arrived at the 13th Street Light Rail Station. Upon boarding the train, they immediately saw Harmon, who was fidgeting and extremely agitated. His jacket was draped over his right hand. Officer Chan heard Harmon say, "Shoot me, motherfuckers! You're going to have to shoot me." The other officers and passengers aboard the train heard Harmon say things like "Shoot me," "Kill me," and "Tase me." Officers Chan and Viscuso gave Harmon clear commands to show his hands. Harmon did not comply.

The officers repeated their commands for him to show his hands. Harmon again did not comply and reached his left hand behind him towards his back waistband or pocket. The officers heard one of the security guards yell, "Knife!" Harmon moved towards the officers. Officer Viscuso saw Harmon raise a knife, and she fired her taser at Harmon. Harmon held his jacket out in front of him like a shield. The initial taser deployment had little to no effect on Harmon and he did not go down to the floor. Officer Fontana had not yet seen the knife and approached Harmon to place him in handcuffs. However, when he observed that the taser did not disable Harmon and that Harmon had become more agitated, Officer Fontana also fired his taser. This taser deployment also had minimal effect on Harmon, who again did not go down to the floor. From approximately seven feet away, Harmon charged at the officers with the knife raised up. The officers backed up. Believing Harmon would stab them as he closed in on them, Officers Chan and Fontana fired their pistols at Harmon from approximately three to four feet away. All six shots struck Harmon in his torso. He also suffered a graze wound to his left hand. The momentum of Harmon's advance towards the officers caused him to fall forward down into the stairwell of the rail car that was behind the officers.

Paramedics were called and Harmon was transported to the hospital. According to the Coroner's Final Report of Investigation, John Harmon was pronounced deceased at 9:52 p.m. at UC Davis Medical Center. The cause of death was multiple gunshot wounds to his torso. Harmon's toxicology results confirmed the presence of methamphetamine in his blood at a concentration of 7.5 mg/L, an amount significantly greater than that which is generally considered a lethal dose.

Detectives determined that Harmon was wanted on a felony arrest warrant out of Riverside County for robbery.

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; California Penal Code Section 835a; CALCRIM 2670.) A peace officer may detain a person where reasonable cause exists to believe that the person has an unlawful firearm or other unlawful deadly weapon. (California Penal Code Section 833.5.) 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.)

Applying these legal principles to the factual circumstances in this case, Officers Chan, Viscuso and Fontana were called to the light rail train to assist Regional Transit security guards who were confronted with an angry, armed, and suicidal individual who was under the influence of methamphetamine. For their own safety and that of the passengers, Officers Chan and Viscuso repeatedly ordered Harmon to show his hands. Harmon refused to comply with the officers’ commands, repeatedly yelled at the officers to shoot and taser him, and advanced toward them in a threatening manner while armed with a knife. Officers Viscuso and Fontana attempted to immobilize him with taser deployments, but Harmon withstood their effects and charged at the retreating officers from close range with the knife. Officers Chan and Fontana believed Harmon would stab them, which could have caused death or great bodily injury. They fired their weapons at Harmon in self-defense, and in defense of Officer Viscuso.

CONCLUSION

Given the circumstances, Officers Chan and Fontana were justified in using deadly force in self-defense and in defense of Officer Viscuso. The objective evidence supports a finding that the officers' conduct was reasonable under the circumstances. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento Police Officer Karl Chan #866
Sacramento Police Officer Steve Fontana #231