



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: November 28, 2016

TO: Bryan Noblett, Chief of Police
Elk Grove Police Department
8400 Laguna Palms Way
Elk Grove, CA 95758

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting: EGPD Case No. 16-24127
Shooting Officer: Officer Bruce Husung, Badge No. 131
Person Shot: Lance Bernaix (DOB 8/1/1992)

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 Lance Bernaix. 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 Sheriff Department report number 16-024127; Elk Grove Police Department report numbers 16-000627 and 16-000629; 911 recordings; dispatch logs; radio traffic recordings; witness interview recordings; crime scene and surveillance videos, diagram, and photographs.

FACTUAL SUMMARY

On January 26, 2016, at approximately 7:10 a.m., Anil Ujagar walked outside of his home on Farewell Court in Elk Grove and started his car. He went back inside his home to retrieve his backpack and left his car, a silver Toyota Corolla sedan, running on the driveway. At approximately 7:12 a.m., Lance Bernaix got into the driver's seat of Ujagar's vehicle and stole it. The residence was equipped with a surveillance camera and it clearly recorded Bernaix's theft of Ujagar's car.

While he was inside the house, Ujagar heard his car's engine revving loudly. He ran out to the driveway and saw someone drive off in his car. Ujagar ran back into his house to get the keys to his other car and his phone. He got into his blue Toyota Sequoia vehicle, exited his street, and turned left on Shasta Lilly Drive. During this pursuit, Ujagar called 9-1-1 to report the theft and

provide location updates. He then turned right onto Sheldon North Drive where he could see his stolen car in front of him. Bernaix ran at least two stop signs, but Ujagar was able to catch up to Bernaix as he made a right turn on Calvine Road. Ujagar followed Bernaix as he made a U-turn at the intersection of Elk Grove Florin Road and Calvine Road and drove the stolen car north through the Rite Aid parking lot. Bernaix continued north behind the back of the building. After reaching McDonald's, Bernaix turned right out of the parking lot and then left on Elk Grove Florin Road. Ujagar continued to follow Bernaix as he headed into a residential neighborhood by turning right on Boulder Glen Way and left into Sandstone Sea Way, which became a dead end.

The 911 dispatcher instructed Ujagar to stop following Bernaix, so Ujagar did not follow Bernaix to the end of the street. Instead, he made a U-turn and parked at the northeast corner of Sandstone Sea Way and Garnet Peak Way. He positioned himself so that he would be able to see Bernaix if he came out.

Elk Grove Police Officer Bruce Husung was in uniform and on duty providing traffic enforcement on his police motorcycle. He was near the intersection of Waterman and Sheldon Roads when Officer Husung heard the call that Ujagar's car had been stolen from the driveway. Officer Husung received an update from dispatch that Ujagar was following his stolen car and was in the area of Elk Grove Florin and Calvine Roads. Because Officer Husung was nearby, he proceeded to the area. As Officer Husung entered the residential area, he was updated that the stolen car was at Sandstone Sea Way. While preparing to turn left, he saw the blue Toyota Sequoia being driven by the victim. He could also see that Ujagar was on his cell phone and pointing for him to keep going. Officer Husung continued north and turned left on Sandstone Sea Way.

As soon as Officer Husung turned left, he could see that it was a dead end and he observed the stolen silver Toyota parked on the south curb of the street. Bernaix had parked the stolen car going against traffic and facing the wrong direction. Officer Husung got off his motorcycle and put the kickstand down. The motorcycle was positioned behind the stolen car and slightly to the right, with the motorcycle parked in the street.

As soon as Officer Husung got off the left side of his motorcycle, he saw the reverse lights of the stolen car come on and the car quickly accelerated backwards directly towards him. Officer Husung immediately drew his firearm. As he did so, Bernaix backed the stolen car up and hit Officer Husung's left leg and motorcycle. Fearing that Bernaix was going to run him over, Officer Husung immediately discharged his firearm at the car. As he was shooting, he moved to the right to get out of the way of the car. Because this happened so quickly, Officer Husung was not sure of his placement in relation to his motorcycle and was afraid he would trip and get run over. He ran towards the right side of the car and continued to shoot.

Once Officer Husung got around to the right side of the car, the car stopped and then accelerated forward into a fence. Officer Husung fired shots towards the passenger side of the car and the rear window as the car went forward. Officer Husung moved to the left rear side of the car and stopped shooting. Officer Husung fired a total of nine rounds.

Officer Husung kept his gun pointed at the stolen car, but did not fire any more shots. The rear and passenger side windows were shot out of the car, so Officer Husung could see Bernaix, but not his hands. Officer Husung heard other police units responding and moved to the driver's side of the car. Both windows were closed. Officer Husung tried unsuccessfully to open the driver's side door. At this point, Officer Husung was able to broadcast that shots had been fired. He moved back to the passenger side of the car, kept his gun pointed at Bernaix, and waited for additional law enforcement officers to arrive.

Officer Kenneth Vieg was the first to arrive after the shooting. As he approached the scene, he observed Officer Husung's police motorcycle laying down on its right side, in the middle of the street. He also observed the stolen silver Toyota Corolla crashed into the fence with Officer Husung standing near its rear passenger door with his firearm pointed at the car. Officer Husung yelled that he could not see the driver's hands. Officer Vieg parked his motorcycle, drew his firearm, and pointed it at Bernaix. The engine was still running and it appeared Bernaix was the sole occupant. Officer Vieg slowly approached the car and commanded loudly, "Driver – hands up!" He repeated the command twice with no response. Officer Vieg could see through the shattered back window that Bernaix moved his torso a few inches. He again yelled, "Let me see your hands up!"

Officer Vieg could see Bernaix was bleeding from his mouth. Bernaix appeared to be breathing, but it was labored. He was unresponsive, so officers pulled Bernaix from the car and placed him on the ground. They searched Bernaix for weapons and began to administer medical aid. Sacramento Metro Fire and Medic arrived and took over the medical care. Bernaix was transported to Kaiser Hospital South where he was treated.

A residence across the street on Sandstone Sea Way was equipped with surveillance cameras, which recorded the events from the time Bernaix arrived at the scene through the shooting incident. The video depicts Officer Husung pulling up and stopping behind and slightly to the right of the stolen Corolla. Immediately upon Officer Husung getting off his motorcycle, Bernaix backs the Corolla into Officer Husung and the motorcycle. Officer Husung estimated the distance from where he was standing when he exited his motorcycle to the back of the stolen car as 20 feet. A close review of the surveillance footage reveals Officer Husung's estimate is inaccurate. Officer Husung appears much closer to the back of the stolen car, within just a few feet. It is his close proximity to the car when it accelerated towards him that caused Officer Husung to react with such urgency.

Bernaix was shot nine times during the incident. He was shot three times in the back, twice in the left arm, twice in the right arm, once in the chest, and once in the face. Bernaix survived his injuries. During the investigation, Bernaix made a statement to a detective. He admitted stealing Ujagar's car from his driveway. Bernaix denied that he knew Officer Husung was behind him when he put the car in reverse and stated he did not remember hitting the motorcycle. However, he expressed remorse about the incident and stated, "If I was in the officer's shoes, I would have done the same thing. I am very sorry." Bernaix further stated, "I feel really bad about what happened and I don't blame the officer for what he did." He explained that he thought he might have been followed, but that he was paranoid due to being under the influence of methamphetamine.

On March 20, 2016, Bernaix pleaded no contest to stealing Ujagar's vehicle and assaulting Officer Husung with his vehicle as a deadly weapon. He was sentenced to 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 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 505, 507, 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.)

In this case, Officer Husung acted in self-defense when he shot Bernaix. The surveillance video conveys the immediacy of the threat against Officer Husung. The entire incident from the time Officer Husung arrived at the car to the last shot fired was only a matter of seconds. Officer Husung was forced to make a split-second decision under extremely stressful circumstances. As Officer Husung parked and got off his motorcycle, Bernaix immediately reversed the stolen car towards him and struck Officer Husung's left leg and motorcycle. Because of the short distance between the motorcycle and car, Officer Husung actually and reasonably believed that Bernaix was going to run him over and further injure or kill him.

CONCLUSION

Officer Husung was justified in using deadly force to defend himself. The officer's conduct was reasonable under the circumstances. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: EGPD Officer Bruce Husung
EGPD Detective Liz McClung
SSD Sergeant Joe Miller
SSD Detective Jason Lonteen