



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: November 28, 2016

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

Chief Michael Goold
Rancho Cordova Police Department
2897 Kilgore Road
Rancho Cordova, CA 95670

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SSD/RCPD 16-31758
Shooting Officer: SSD Sergeant Patrick Gallagher #35
Person Shot: Justin Prescott (DOB 12/17/85)

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 Justin Prescott. 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 County Sheriff/Rancho Cordova Police Department report number 2016-31758; dispatch logs/audio; witness interview recordings; in-car camera, body camera, surveillance, and crime scene videos, diagram, and photographs; Sacramento County Coroner Final Report of Investigation report; and Sacramento County District Attorney Criminal Investigative and Laboratory of Forensic Services reports.

FACTUAL SUMMARY

On February 2, 2016, a loss prevention agent at Walmart on 10655 Folsom Boulevard observed Justin Prescott in the store concealing merchandise on his person. At approximately 6:45 p.m., Prescott passed all pay points without purchasing the items. The agent contacted Prescott outside the store's exit and told him to return the merchandise. Prescott initially denied stealing

the items, but eventually returned one of them. The agent then tried to escort Prescott into the store, but he backed away. Prescott faced the agent with his arms to his side, reached into his pants pocket, and pulled out a red-handled pocket knife with a blade described as approximately three inches in length. He held the knife to his throat and said, "If you don't let me go, I will cut myself." The agent let him go and Prescott ran westbound towards the back of Safeway, which is adjacent to Walmart. The agent immediately called law enforcement for assistance. Store surveillance videos captured Prescott's actions inside the store and at the exit.

Sacramento County Sheriff Sergeants Patrick Gallagher and Mark Hatzenbuhler were on duty together in a marked patrol vehicle and were dispatched to Walmart regarding a subject stealing merchandise and using a knife to remove tags. As they arrived in the parking lot, Sergeant Gallagher drove to the western edge of the store and then into the Safeway front parking lot. He learned from a loss prevention agent that the subject fled behind Safeway. During this time, there were customers walking through the front parking lot. Sergeant Gallagher drove westbound to the edge of Safeway and turned northbound towards the back side of the store. He observed Prescott trying to flee. As Sergeant Gallagher stopped the vehicle just short of this area, Prescott looked towards the officers and ran southbound past Sergeant Gallagher on the driver's side of the vehicle. Sergeant Hatzenbuhler exited the vehicle and ran after Prescott, who stumbled and then ran off. Sergeant Gallagher then turned the patrol car around. Sergeant Hatzenbuhler continued pacing Prescott on the west side of the parking lot. During this time, Sergeant Hatzenbuhler yelled and ordered Prescott to drop the knife and show his hands several times. Sergeant Hatzenbuhler observed Prescott place an object up to his neck and state, "You guys keep chasing me. Fuck you guys, I'm gonna kill myself." Sergeant Gallagher drove up behind them and exited the vehicle. Sergeant Hatzenbuhler fired his Taser at Prescott, but it had no effect. Prescott ripped the prongs out of his upper body, threw them to the ground, and continued southbound towards the front parking lot. Sergeant Gallagher was concerned that Prescott would contact the customers in the lot, so he tried to contain Prescott along the western fence.

After stopping near the front edge of Safeway, Prescott reversed directions again and fled northbound. As he came back, Sergeant Gallagher observed Prescott holding a blade along his throat. He heard a heavy object hit the ground, but noticed that Prescott still had the knife up to his throat.¹ Sergeant Gallagher directed him to drop the knife several times, but Prescott did not comply. Sergeant Gallagher then discharged his Taser at Prescott, which had minimal effect. Prescott ripped the prongs out of his body and continued northbound to the rear of the store lot with the knife to his throat. Sergeant Hatzenbuhler ran up, stopped within 10 feet of Prescott, and discharged pepper spray in Prescott's face. There was minimal effect, so Sergeant Gallagher drew his gun and pointed it at Prescott. He feared that Prescott might flee because their use of non-lethal force was ineffective. Sergeant Gallagher was also concerned because Prescott began to stab himself in the chest, made a slashing motion across his chest, and yelled that he was going to kill himself and wanted to be left alone.

Recognizing that Prescott still had the knife despite his continued demands for Prescott to drop it, Sergeant Gallagher wanted to maintain a distance of at least twenty feet away from Prescott. Sergeant Gallagher was concerned from previous training that Prescott could quickly approach

¹ It was later determined that Prescott dropped two Wii remotes on the ground, which he had stolen from the store.

and stab him from that distance.² Based on the ineffectiveness of the Tasers and pepper spray, Sergeant Gallagher believed that Prescott was having a mental breakdown or was under the influence of drugs. He did not want Prescott to return to the front parking lot and potentially kill or take someone hostage.

At this point, they followed Prescott eastbound in the rear alley of Safeway. Although the side area where the officers initially encountered Prescott was well lit, the rear alley was extremely dark. One light fixture on the north side of the building only illuminated a small portion of the area. A small flashlight Sergeant Hatzenbuhler held only provided minimal additional lighting. Sergeant Gallagher did not have a flashlight or a light on his firearm.

Sergeant Gallagher reminded Sergeant Hatzenbuhler to maintain a distance of 20 feet from Prescott. However, in his effort to apprehend Prescott, Sergeant Gallagher inadvertently ended up within 10 feet of Prescott with no cover. Sergeant Gallagher could not see anything below Prescott's shoulders including his hands, did not know where Sergeant Hatzenbuhler was positioned, and could not see Sergeant Hatzenbuhler in his peripheral vision. In fact, Sergeant Hatzenbuhler was also close to Prescott. He continued to point his flashlight at Prescott with one hand while trying to reach for another Taser cartridge with his other hand. Sergeant Hatzenbuhler looked down to his right to view his path and find the cartridge, and at that point his attention was not focused on Prescott.

Based on his law enforcement training, Sergeant Gallagher believed that he was dangerously too close and he could not step back to contain Prescott. He was concerned what Prescott would do, as Prescott repeatedly refused to comply with any of their directives. Sergeant Gallagher was afraid that Prescott could charge, kill him, and flee out of the back alley, so he discharged his firearm two times at Prescott striking him in the neck, right forearm and right abdomen. Prescott fell to the ground and dropped the knife. Sergeant Gallagher ran up and handcuffed him, while Sergeant Hatzenbuhler immediately called for assistance.

At approximately 7:00 p.m., Sacramento Metro Fire and Medic arrived at the scene and transported Prescott to U.C. Davis Medical Center for further treatment. He was pronounced deceased at approximately 7:47 p.m.

Civilian witnesses were standing near the southwest corner of Safeway. They observed the sergeants drive northbound through the parking lot and stop to contact Prescott. One witness heard the sergeants say, "Put your hands where I can see them." A second witness heard Prescott say, "Stay away from me. Don't touch me." Both of these witnesses observed Prescott placing his hand near his neck; one of the witnesses saw Prescott holding a knife. They observed the sergeants use their Tasers on Prescott two times with no effect. One of the witnesses also recovered an eyeglass case that was thrown by Prescott, which deputies later determined contained a syringe and spoons with brownish/black residue consistent with drug use. A third witness observed Prescott continuously waving his arms in the air and appearing "jittery." The witnesses lost sight of Prescott and the sergeants as they went behind Safeway and eventually

² This is sometimes referred to as the "Tueller Rule" because its origin is based on the research of Sgt. Dennis Tueller of the Salt Lake City Police Department. Various law enforcement research and training resources address the danger of dealing with a suspect armed with a knife at 20 feet or less.

heard two gunshots. They stated that the sergeants were trying to get Prescott to comply the entire time, but he refused.

Prescott's brother and friend informed deputies that Prescott made suicidal comments in the past. The friend also said that Prescott always carried a knife. The knife last seen with Prescott had a red or orange handle and a "weird curved blade." Prescott's girlfriend also stated that Prescott always carried a knife and had a drug and alcohol addiction. He told her that he never wanted to return to prison.

During the scene investigation, deputies recovered a red-handled knife with a 2.5 inch curved blade on the ground just north of the shooting. This knife was moved away from Prescott immediately after the shooting for safety reasons. It was also determined that there were five light fixtures affixed to the exterior north wall of Safeway. The light emanating from the fixtures shined in a downward position. They illuminated the side of the building and approximately halfway across the driveway to the north, but not the location where the shooting took place. This entire area was much dimmer than the south and west sides of the Safeway building.

According to the Sacramento County Coroner Final Report of Investigation, Prescott died from gunshot wounds. The report noted that he had gunshot wounds of the neck, right forearm, and right abdomen (most consistent with a re-entry wound); self-inflicted superficial incised wounds of the face and chest; and cardiomegaly. The Sacramento County District Attorney's Office Laboratory of Forensic Services confirmed the presence of amphetamine, methamphetamine, and morphine in Prescott's blood. He also had a blood alcohol level of .07%.

LEGAL ANALYSIS

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, 11; *Graham v. Connor* (1989) 490 U.S. 386, 396; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; California Penal Code Section 835a; CALCRIM 2670.) 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.) Officers do not need to retreat or desist their efforts if the person they are arresting or detaining resists or threatens resistance; 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.)

In the present matter, the officers had probable cause to arrest Prescott for the theft from Walmart. Prescott knew that he had committed a crime, and used his knife in a threatening manner to escape from the victim store employee. When the officers arrived to apprehend him, Prescott had a duty to submit himself to their custody. He failed to do so.

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.)

Prescott's threats and actions to harm himself demonstrated a desperation to avoid apprehension by law enforcement. Prescott repeatedly refused to comply with the officer's commands. The officers on multiple occasions attempted to use non-lethal force, to no avail. Prescott placed himself and the officers into a dark, secluded alleyway behind a large store. Sergeant Gallagher could not see Prescott's hands, could not see what Prescott was doing with his hands, and could not see his partner. Sergeant Gallagher believed that he was dangerously close to Prescott and that he could not safely back up. Sergeant Gallagher was not required by law to retreat from his position.

The circumstances here were much more than just an individual apparently threatening to commit suicide. Prescott had just committed a crime and was seeking to avoid apprehension. He used his knife to dissuade a loss prevention agent and two law enforcement officers from detaining him. Prescott's erratic and threatening behavior created a dangerous situation for the officers. Given these circumstances, it was reasonable to think that Prescott's desperation to avoid apprehension would develop into him using his knife against the officers. Prescott had actively resisted arrest and unsuccessfully attempted flight, and posed an immediate threat to the officers in the alley. Out of fear for his own safety, and the safety of his partner, and knowing that multiple attempts at non-lethal force to end the threat that Prescott posed and take him into custody were unsuccessful, Sergeant Gallagher discharged his duty weapon twice at Prescott.

CONCLUSION

Sergeant Gallagher reasonably believed that shooting Prescott was necessary in defense of himself and Sergeant Hatzenbuhler. Under the circumstances, his conduct was justified. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sergeant Patrick Gallagher #35
Detective Marcos Camacho #538
Lieutenant Lisa Gayman #21
Rick Braziel, Office of the Inspector General