



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: January 11, 2017

TO: Interim Chief Brian Louie
Sacramento Police Department
5770 Freeport Blvd., Suite 100
Sacramento, CA 95822

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SPD-16-99084
Shooting Officers: Jeffrey Carr #205
Dustin Southward #690
Eric Toomey #894
Person Shot: Dazion Jerome Flenaugh (DOB 3/4/76)

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 Dazion Flenaugh. 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 reports number 2016-99459, 2016-99291, 2016-99292, 2016-99084 and related dispatch recordings; witness interview recordings; in-car camera, body camera, and home surveillance video recordings; photographs, diagrams, and other videos; Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, and Firearms Examination reports; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

On April 8, 2016, at approximately 8:30 a.m., Sacramento Police Officer Paul Fong responded to a residence on Prescott Way regarding a call of a suspicious person walking on that street and looking over fences and into windows. Officer Fong contacted the complainant in her front yard. She pointed down the street and gave a description of the person. Officer Fong then drove westbound a few houses, pulled up on the south curb, and exited the patrol car. Officer Fong

contacted Dazion Flenaugh, who was walking eastbound and matched the physical description of the subject. Flenaugh was agitated, moved quickly, and his eyes were getting wide and big. He appeared to be under the influence of a controlled substance. After obtaining his identifying information, Officer Fong asked Flenaugh to sit on the front bumper of the patrol car while he checked Flenaugh's record. During this time, Officer Ron Chesterman arrived at the scene to assist.

As Officer Chesterman spoke to Flenaugh, Officer Fong determined that Flenaugh had a warrant for a minor city code violation. Officer Fong did not feel that the warrant or Flenaugh's possibly intoxicated state necessitated arrest, and did not have reason at that point to believe Flenaugh was involved in other criminal activity. Flenaugh was cooperative. Officer Fong offered him a ride home, which Flenaugh accepted. Flenaugh voluntarily sat down on the back seat of the patrol car and the door was closed. Flenaugh was not handcuffed.

The officers walked a couple houses away and spoke for approximately two minutes with a neighbor regarding his previous observations of Flenaugh. While the officers were away, Officer Fong's in-car camera captured Flenaugh talking to himself, moving around on the back seat of the patrol car, acting erratically, making banging noises, and yelling, "I'm dead. I just want the fucking truth! For the rest of my life, huh?"

The officers returned to the vehicle. Officer Fong observed Flenaugh placing his hands on the plastic divider at the top of the cage which separates the front and rear passenger areas. Flenaugh was pulling on this plastic piece with both hands and the officers were concerned that he was going to break it. Officer Fong opened the rear driver side passenger door approximately 18 inches wide to speak with Flenaugh. As he did so, Flenaugh jumped out of the vehicle and ran eastbound down Prescott Way towards Lerner Way.

The officers got into their vehicles, followed eastbound on Prescott Way, and could not locate Flenaugh. Officer Fong was contacted by the driver of a pickup truck, who pointed towards a residence on the corner of Prescott Way and Lerner Way and stated that a man ran there and jumped over a fence. Officer Fong drove to that area on Lerner Way to see if Flenaugh was there. Officer Fong exited and climbed on the hood of his patrol car to look over the fence. He did not see Flenaugh.

Meanwhile, Flenaugh jumped over several fences, went through neighboring yards, and arrived at another residence on Prescott Way. He entered the backyard and stole a large pick axe. Flenaugh walked westbound to a residence three houses down Prescott Way. Surveillance video from that residence depicts Flenaugh violently attacking the front door with the pick axe. He eventually broke the front door window glass with the pick axe, reached in through the hole he created, and tried unsuccessfully to open the front door. He then can be seen on the video footage running to the side of the house and jumping over the fence. Flenaugh entered the backyard and broke the back door glass.

Officers Chesterman and Fong received information from dispatch regarding a call of a man in possession of a pick axe on Prescott Way. Both officers arrived at the reported location and met a resident, who stated he saw a subject in his backyard holding a metal pick axe. The officers

entered the backyard and garage and did not see Flenaugh. Officer Fong then heard a breaking or crunching sound coming from a neighboring yard. Officer Chesterman stepped on a cinder block wall and looked into the neighboring backyard. This was the address where Flenaugh had used the pick axe to break the front door window and broke the back door glass. Officer Chesterman observed glass on the ground near the back door and surmised that Flenaugh broke into the home. The officers also observed the broken glass window on the front door.

By the time the officers observed the damage at this Prescott Way residence, Flenaugh had already fled that location. He eventually arrived at a residence on Lerner Way, proceeded into the backyard, and ran up to a sliding door leading to a bedroom. The female resident there saw Flenaugh and feared that he was going to break into her home. She immediately tried to close the door. She saw Flenaugh with a pick axe and what she believed was a knife in his hands. The resident tried to hold the sliding door shut. Flenaugh raised up his arms like he was going to hit her and said, "I will do it." The resident let go of the door and ran out of the bedroom. She immediately heard the glass break. She screamed, ran out the front door of the house, and contacted her next door neighbor. Flenaugh left the pick axe on her kitchen counter and came out to the street. The neighbor confronted Flenaugh. At this point, Flenaugh was now holding two knives.¹ While he and the neighbor were approximately three feet apart, Flenaugh extended one of the knives in his left hand, which the neighbor later described looking like a machete, holding it horizontally towards the neighbor. The neighbor told Flenaugh that Flenaugh needed to leave. Flenaugh then fled northbound across Lerner Way.

During this time, Officers Fong and Chesterman heard the female resident's loud scream. As Officer Chesterman drove towards this location, Officer Fong went to the home where they were previously on Prescott Way in anticipation that Flenaugh would jump back into the backyard. Officer Fong climbed up a ladder on the side of the house to get a better view of other yards. He observed Flenaugh going into a backyard south of him on Lerner Way. Flenaugh was facing away from him, so Officer Fong could not see whether Flenaugh had anything in his hands.

A resident and his girlfriend were in the backyard of a different house on Lerner Way when they observed Flenaugh in an adjacent backyard, come to their east fence, and stop. Flenaugh saw the male and female sitting in the backyard and said, "Don't say anything, I won't hurt you. I swear." Flenaugh jumped over the fence and again said, "Don't say anything." They later described that Flenaugh was holding two or three large kitchen knives. They told Flenaugh not to do anything and they quickly proceeded inside the house. Flenaugh was sweating, his eyes were dilated, and he appeared scared and nervous. He jumped over another fence westbound toward Center Parkway. The male resident at the Lerner Way home opened his garage door, observed police officers, and informed them of what happened.

Officers Jeffrey Carr and Eric Toomey responded to this call and parked their patrol car at Lerner Way and Wardell Way. Officer Carr observed people standing on the sidewalk pointing towards the northern area. He previously heard a broadcast that Flenaugh had a knife, so Officers Carr and Toomey pulled out their guns and held them down at their sides. As Officer Carr was speaking to a resident inside his garage, he heard that Flenaugh was running westbound.

¹ Afterwards, the female resident at the Lerner Way home and officers noted two empty slots in her knife block in the kitchen. The female resident was not sure if any of her knives were missing.

Officer Dustin Southward also responded to the call. After exiting his patrol car, Officer Southward walked westbound towards Center Parkway in search of Flenaugh. Based on the radio dispatcher, he was aware that Flenaugh may be armed with a knife and high on methamphetamine. Officer Southward rounded the corner on Lerner Way and observed a dark gray SUV parked in the driveway of a home on Center Parkway. He then saw Flenaugh standing behind the front of the vehicle. Officer Southward broadcasted that he had the suspect and yelled commands, “Come over here, get down on the ground. Come over here, get down.” Officer Southward had his gun out, did not hear any response, and could not see Flenaugh’s hands. Officers Carr and Toomey followed behind and observed Officer Southward pointing his gun forward and continuously yelling, “Drop the knife, get down on the ground.”

As Officer Southward continued to give verbal commands, Flenaugh stared at him and moved down the driveway towards the rear of the SUV. Flenaugh looked over his shoulder, exited from behind the SUV, and sprinted down the sidewalk at full speed directly towards Officer Southward with what Officer Southward thought looked like a large meat cleaver in one hand and a kitchen knife in the other hand. Officer Southward feared that Flenaugh was going to kill him, so he fired at Flenaugh, discharging his weapon eight times.

Meanwhile, Officers Carr and Toomey rounded the corner from Lerner Way and Center Parkway. They observed Flenaugh jump out along the driveway while holding a large knife up with his left hand, and sprint towards Officer Southward. Officers Carr and Toomey believed that Flenaugh was going to kill Officer Southward, so they raised their guns and fired as Flenaugh came within twenty-five feet of Officer Southward. Officer Carr fired twice, while Officer Toomey fired six times. Flenaugh fell in the gutter area between the sidewalk and street.

Officers immediately announced to dispatchers that shots had been fired and requested medical assistance. Sacramento Metro Fire Department and Medics arrived at approximately 9:26 a.m. and pronounced Flenaugh deceased.

The knives held by Flenaugh were recovered at the scene. A twelve-inch butcher type knife was found lying on the front lawn to the east of Flenaugh and a thirteen-inch narrower-bladed kitchen knife was down by his legs.²

A landscape worker who was standing across the street and several houses down from this shooting location was interviewed after the incident. He indicated he heard the police officers screaming, so he looked over. He observed Flenaugh trying to hide behind the rear end of the SUV. After looking around, Flenaugh slowly came out to the street and proceeded towards the officers. The worker heard the officers yelling at Flenaugh and giving him commands to drop whatever he had in his hands and to raise his hands up. The worker believed that Flenaugh had “a small box or bag” or “something brown” in his hands as he approached the officers. Flenaugh took two to three steps towards the officers and they immediately fired multiple gunshots at him.

² Officer John Azevedo arrived in his patrol vehicle seconds after the shots were fired. Officer Azevedo was equipped with a body-worn camera. Footage from that device depicts the locations of the knives as he approached the scene. The longer, narrower-bladed knife was next to Flenaugh’s legs. Officer Azevedo moved that knife approximately two and a half-feet further away from Flenaugh for officer-safety purposes.

Investigators also interviewed the resident at the Center Parkway residence where Flenaugh had been standing behind the gray SUV. She indicated she was outside smoking a cigarette at the time of the shooting, around a corner from the driveway. This residence is adjacent to the duplex in front of which the shooting occurred. She saw police officers on the other side of Center Parkway with their guns drawn. She heard the officers tell someone to get down. However, from her position, she could not see who the officers were yelling at. The resident indicated that the officers began to shoot four to five seconds later. She did not hear Flenaugh say anything.

In addition, investigators also interviewed the neighbor at the Center Parkway residence across the street from the shooting location. She indicated she was on her driveway at the trash can. She heard someone yell, "Come out with your hands up." The neighbor saw five to seven officers across the street with their guns drawn. She also saw Flenaugh hiding behind a truck. She indicated that he ran out towards the officers very quickly and they shot him. The neighbor could not see Flenaugh's hands or whether he was holding anything. She did not hear him say anything when he ran at the officers.

According to the Sacramento County Coroner Final Report of Investigation, Flenaugh died from multiple gunshot wounds. The report noted that he had gunshot wounds on the right shoulder, right hand, right arm, left groin, left thigh, left lower leg, and right side of neck; and cutaneous blunt force injuries. The Sacramento County District Attorney's Office Laboratory of Forensic Services confirmed the presence of amphetamine and methamphetamine in Flenaugh's blood.

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 reasonable cause to arrest Flenaugh for multiple serious and violent offenses. In addition to trespassing through various yards and stealing a pick axe, he vandalized and attempted to burglarize a home on Prescott Way. Flenaugh then threatened the resident at a Lerner Way home with the pick axe and forcibly entered her residence. He also threatened her neighbor, holding a knife in a menacing manner when the neighbor confronted him. Flenaugh knew that he had committed these crimes and attempted to flee the scene. When the officers arrived to apprehend him, Flenaugh 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.)

Here, after bolting from the back seat of a patrol car, Flenaugh committed multiple crimes and was seeking to avoid apprehension. He tried to flee by jumping over fences and escaping through backyards. The officers were aware that he used a pick axe to vandalize and possibly burglarize one home, and then forcibly entered an occupied residence. They also knew that Flenaugh possessed deadly weapons and may have been under the influence of a controlled substance. When the officers contacted him in the driveway on Center Parkway, Flenaugh repeatedly refused to comply with the officer's commands to drop the knives and get on the ground. He compounded the situation by immediately sprinting directly at Officer Southward from a close distance with a knife in each hand. The officers were not required by law to retreat from their positions. Given these circumstances, it was reasonable to believe that Flenaugh was going to use the knives on them. He posed a significant and immediate threat of death or serious physical injury to Officer Southward and the other officers. Officers Southward, Carr, and Toomey feared for their own safety, and the safety of other officers, when they discharged their duty weapons at Flenaugh.

CONCLUSION

Officers Southward, Carr, and Toomey were justified in shooting Flenaugh to defend themselves and each other. Under the circumstances, their conduct was reasonable. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento Police Detective Brian Dedonder #302
Sacramento Police Officer Jeffrey Carr #205
Sacramento Police Officer Dustin Southward #690
Sacramento Police Officer Eric Toomey #894
Francine Tournour, Office of Public Safety Accountability