



Sacramento County District Attorney's Office

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July 19, 2016

David Bess, Chief of Enforcement
California Department of Fish and Wildlife
1416 Ninth Street, Room 1326
Sacramento, CA 95814

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

RE: Officer-Involved Shooting: Case No. SSD-15-103208
 Shooting Officer: Brian Boyd
 Person Shot: Luis Chavez-Diaz (DOB 7/20/87)
 Date of Incident: April 29, 2015

Dear Chief Bess and 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 Luis Chavez-Diaz. 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's Department report number 2015-103208 and its related dispatch logs, witness interview recording, radio traffic recordings, scene photographs and videos; Sacramento County District Attorney Laboratory of Forensic Services Firearm Examination, Toxicology, and Blood Alcohol reports; United States Bureau of Land Management Report of Investigation; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

In April 2015, California State Fish and Wildlife State Game Warden Brian Boyd was assigned to the multi-agency Marijuana Enforcement Team. His duties included conducting investigations, reconnaissance, and enforcement of illegal marijuana grow sites. On April 13, 2015, special agents from the United States Bureau of Land Management conducted aerial overflight operations in Sacramento County and located two large illegal marijuana grow sites in and near the Stone Lakes National Wildlife Refuge. A multi-agency operation was planned for April 29, 2015. The mission was to safely access the grow sites, apprehend any suspects who may be present, and eradicate the marijuana. The grow site inside the Stone Lakes Wildlife Refuge was designated the West Grow; the other was designated the East Grow.

Warden Boyd and his K9 partner were part of a team assigned to address the West Grow. At a briefing prior to the operation, he and other officers were given information regarding the nature of the grow site and others like it. They were told that these sites are typically operated by Mexican nationals working for international drug trafficking organizations in Mexico, and that handguns, rifles, booby traps, and strong toxic chemicals that can be used to harm people are often present. They were also informed that on two prior occasions this particular site had been guarded by Mexican nationals armed with firearms.

To prevent any suspects from escaping, the team planned to access the West Grow by landing boats concurrently on its south, southwest, and west sides, while other officers accessed the East Grow on foot. Sacramento County Sheriff's Deputy Mark Kuzmich drove the boat carrying Warden Boyd. Also on board were Sacramento County Sheriff's Deputies Jose Lemus and Jeffrey Massagli, and Bureau of Land Management Special Agent Edward Delmolino. Warden Boyd was wearing camouflage clothing with Fish and Wildlife badges sewn onto both his shirt and tactical vest, and patches on each shoulder identifying him as a Fish and Wildlife warden. At approximately 5:50 a.m., their boat landed at a swampy location south of the marijuana grow site. From there, Deputies Massagli and Lemus, Agent Delmolino, and Warden Boyd travelled north on foot through deep mud, water, logs, and dense foliage towards the grow site. Eventually, Warden Boyd was able to penetrate through the dense foliage and logs and get on to drier land near the edge of a clearing. Behind him were Deputies Lemus and Massagli, as well as Agent Delmolino. Warden Boyd stopped because he did not feel safe entering blindly into the clearing. Their approach had been noisy due to the terrain they had to cross, and having seen hundreds of grow sites in the past, it appeared to Warden Boyd that the clearing was likely an illegal outdoor marijuana grow. He signaled for the officers behind him to stop advancing.

As he waited, Warden Boyd observed through the thick layer of trees, branches, and leaves, that the clearing was populated by marijuana plants. He saw movement to his right within the plants. There, he observed a Hispanic male, later identified as Luis Chavez-Diaz, crouching approximately ten yards away. Chavez-Diaz' legs were bent and his arms were pointed straight out. Chavez-Diaz advanced a couple of yards. As he did so, Warden Boyd's view of him through foliage improved. He saw that Chavez-Diaz was holding a

revolver in his hand in what appeared to be an isosceles shooting stance.¹ Warden Boyd drew his handgun. The officers behind him slowly began to approach. Warden Boyd saw Chavez-Diaz point the revolver in his direction, and then towards the sound of the other approaching officers. Warden Boyd believed that Chavez-Diaz was tracking their movements like a hunter. Although the foliage provided the officers a measure of concealment, they had no cover. Warden Boyd announced, "Police, drop the gun!" Chavez-Diaz did not comply. Deputy Lemus announced, "Policia!" multiple times. Chavez-Diaz maintained his shooting stance and continued tracking Warden Boyd and the other officers' locations in the foliage. Based upon his refusal to follow Warden Boyd's command to drop the gun and the nature of his movements, Warden Boyd was certain Chavez-Diaz was stalking the officers and was about to shoot and kill one or more of them. He fired his handgun three times at Chavez-Diaz.

Warden Boyd's K9 partner advanced on Chavez-Diaz and bit and held his leg. Warden Boyd entered the clearing and saw Chavez-Diaz on the ground. He was no longer holding the gun. Warden Boyd attempted to place Chavez-Diaz in handcuffs. Chavez-Diaz resisted, but Warden Boyd was able to handcuff him. While doing a quick search to confirm that he had no other weapons, Warden Boyd noticed that Chavez-Diaz was very bloody, having difficulty breathing, and appeared to be convulsing. One of his cover officers secured Chavez-Diaz' gun, which was a .22 caliber revolver, fully loaded with six rounds. Warden Boyd then removed the handcuffs from Chavez-Diaz, cut his shirt open, and applied a chest seal to a gunshot wound to his chest. He observed blood on Chavez-Diaz' head and face, but he was unable to determine the source. As Warden Boyd continued to render emergency medical treatment, Deputy Massagli arranged for an immediate medical evacuation. Upon their arrival, however, the Cosumnes Fire Department personnel pronounced Chavez-Diaz dead at the scene.

According to the Coroner's Final Report of Investigation, the cause of death was gunshot wounds. Chavez-Diaz suffered a gunshot wound to his right upper chest and a tangential gunshot wound to his head. During his autopsy, seven more .22 caliber rounds were found in his pants' pockets.

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. 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 a deadly weapon in violation of any provision of law relating to deadly weapons. (California Penal Code Section 833.5.) An officer who attempts to arrest or detain a

¹ The Isosceles Stance is a two-handed technique in which the dominant hand holds the handgun while the support hand wraps around the dominant hand. Both arms are held straight, locking the elbows. Viewed from above, the arms and chest of the shooter describe an isosceles triangle, which gives the stance its name.

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.) Officers 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.)

Warden Boyd actually and reasonably believed that the use of deadly force was necessary to defend himself, Deputy Lemus, Deputy Massagli, and Agent Delmolino. The pre-mission briefing indicated that marijuana grow sites like the one at the Stone Lakes National Wildlife Refuge are generally operated by international drug trafficking organizations and that guns and other dangerous elements are often present. The officers were also informed that this site had been guarded on two prior occasions by Mexican nationals armed with firearms. When Warden Boyd approached the clearing filled with marijuana plants, he came upon Chavez-Diaz, who was armed with a fully-loaded handgun. Chavez-Diaz assumed a shooting stance and pointed his loaded firearm at Warden Boyd and the other officers. Warden Boyd identified himself as a police officer and commanded him to drop the gun. Chavez-Diaz refused to put his gun down. He maintained his shooting stance with his gun pointed at them as he tracked the officers through the foliage. Warden Boyd believed Chavez-Diaz was about to shoot one or more of them. Fearing for his and the other officers’ safety, Warden Boyd fired his weapon at Chavez-Diaz in defense of himself and the other officers.

CONCLUSION

Warden Boyd was justified in shooting Chavez-Diaz in defense of himself, Deputy Massagli, Deputy Lemus, and Agent Delmolino. Under the circumstances, his conduct was reasonable. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento County Sheriff's Detective Jason Lonteen
Sacramento County Sheriff's Sergeant Joe Miller
California Department of Fish and Wildlife Game Warden Brian Boyd