



Sacramento County District Attorney's Office

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District Attorney

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MEMORANDUM

DATE: August 31, 2018

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

Chief James Brown
Fulton-El Camino Park District Police
2201 Cottage Way
Sacramento, CA 95825

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SSD-2017-239317
Shooting Officers: Deputy Joshua Wanner #1087
Officer Taylor Magaziner #135
Person Shot: Nolan Cornett (DOB 7/21/1992)

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 Nolan Cornett. 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 2017-239317 and related dispatch recordings and logs, witness interview recordings, 9-1-1 audio recordings, in-car camera recordings, photographs, diagrams, Sacramento County Coroner's Report, and other videos.

FACTUAL SUMMARY

On July 19, 2017, at approximately 3:48 p.m., Nolan Cornett's mother called 9-1-1 to report Cornett was at her residence on Fair Oaks Boulevard. She was concerned for her safety because he was acting erratically. The dispatcher heard a male subject stating, "[F]ucking kill everyone

in the house!” and “I’m like a fucking Navy Seal. You better figure this shit out. That better have been a prank call!” Cornett exited the residence and proceeded to his vehicle. At this point, his mother told the dispatcher Cornett was suicidal. When his mother saw him returning to the residence, she locked herself in the garage. After Cornett left again, she climbed over a back fence to escape.

Sacramento Sheriff Deputy Joshua Wanner responded to the call. He was wearing a Sheriff’s uniform and driving a marked patrol sport utility vehicle (SUV). While en route, he researched the address on his mobile digital terminal and noticed a previous call involving Cornett’s mother requesting assistance with her mentally ill son.¹ Deputy Wanner located Cornett’s photo and description and attached them to the computer aided dispatch record. Fulton-El Camino Park District Police Officer Taylor Magaziner also responded to the call. He was wearing a uniform and driving a marked patrol passenger vehicle. While Deputy Wanner and Officer Magaziner were driving to the address, Cornett’s mother told the dispatcher Cornett spoke about a gun, but she had not seen one. This information was provided to Deputy Wanner and Officer Magaziner.

At approximately 4:02 p.m., Deputy Wanner arrived at the mother's residence. He stopped in the street facing south. Officer Magaziner also arrived and stopped directly behind Deputy Wanner. Cornett stood on the east side of the street in front of his mother’s residence. He proceeded to cross the street and walk in front of Deputy Wanner’s vehicle. Deputy Wanner recognized Cornett from his photo. Cornett’s hands were in his pockets. Deputy Wanner exited his vehicle and stated, “Hey, stop. Take your hands out of your pockets.” Deputy Wanner pulled out his gun from his holster. He was in front of his vehicle facing Cornett with nothing between them. Deputy Wanner repeated, “Take your hands out of your pockets. Let me see your hands.” Cornett was now on the west side of Fair Oaks Boulevard facing east, near the right front fender of Deputy Wanner’s vehicle. Deputy Wanner re-holstered his gun, and was taking out his taser when Cornett said, “Fuckin shoot me.” Cornett then pulled a small handgun from his pocket and fired once at Deputy Wanner. Deputy Wanner drew his gun and fired six times at Cornett.²

During this time, Officer Magaziner’s vehicle was still behind and west of Deputy Wanner’s vehicle. Officer Magaziner observed Cornett walk in front of Deputy Wanner’s vehicle. Officer Magaziner exited his vehicle and Cornett was now out of Officer Magaziner’s sight due to the height of the SUV. Officer Magaziner began to walk around the front of his patrol vehicle, and then he heard a gunshot. He observed Deputy Wanner crouch, pull out his gun, and fire over the hood of his patrol SUV. As Cornett moved behind the engine block on the passenger side of Deputy Wanner’s vehicle, Officer Magaziner was on the passenger side of his own patrol car. Cornett faced Officer Magaziner, who observed Cornett’s right hand raising with a shiny object. Officer Magaziner believed the shiny object was a gun and Cornett was going to shoot him. Officer Magaziner was approximately six to eight feet north of Cornett. Officer Magaziner fired five rounds at Cornett until he dropped to the ground.

¹ The computer aided dispatch log for this incident shows it occurred on March 10, 2017. Cornett’s mother described this incident as Cornett acting bizarre by camping in the field behind her house and starting a fire. She wanted the Sheriff’s Department to do a 5150 evaluation. He was not present when the Sheriff’s Department arrived, and based on the described behavior he did not meet the criteria.

² A subsequent round count indicates six shots were fired. Five shell casings were recovered. However, in-camera video shows that in the initial minutes after the shooting, cars continued to drive over the area Deputy Wanner had been in when he was shooting.

Deputy Wanner and Officer Magaziner cautiously approached Cornett, who was still alive and laying on his back, and they kicked Cornett's handgun away. Another deputy arrived and placed handcuffs on Cornett. Officer Magaziner and Deputy Wanner began providing medical assistance and chest compressions until medics from Sacramento Metropolitan Fire District arrived.

Cornett sustained gunshot wounds to his left upper chest, right hip area, right buttocks area, and left shoulder. Cornett was pronounced deceased at the scene at approximately 4:15 p.m. The Sacramento County Coroner's report concluded that Cornett died from multiple gunshot wounds to his torso. The Sacramento County District Attorney's Office Laboratory of Forensic Services confirmed the presence of cannabinoids in Cornett's blood. Investigators recovered his .22 caliber, five-shot revolver at the scene. The gun was examined and found to contain four live rounds, and one expended casing.

Deputy Wanner's in-car camera video depicts Cornett standing on the east side of Fair Oaks Boulevard with his hands in his pockets looking north toward Deputy Wanner's approaching vehicle. As his vehicle slows and stops, Cornett walks across Fair Oaks Boulevard passing in front of Deputy Wanner's vehicle. Cornett's hands are still in his pockets. Deputy Wanner states, "Hey! Let me see your hands! Let me see your hands!" The video captures Cornett stopping and standing on the front passenger side of Deputy Wanner's vehicle. Cornett turns to face east and states something inaudible. He removes a handgun from his right pocket, raises his right arm, and fires once towards the east. Multiple gunshots are heard, while Cornett bends at the waist and moves outside the camera view.

A witness was standing on the east side of Fair Oaks Boulevard approximately two car lengths north during the incident. He observed the Sacramento Sheriff's Department SUV and a patrol vehicle marked "Police" drive south on Fair Oaks Boulevard and stop in the street south of his location. The witness observed Cornett walk out into the street in front of the deputy's SUV. He could hear the deputy and Cornett communicating, but he could not hear what was said. He observed the deputy exit his vehicle, draw his gun, then holster his gun as he spoke to Cornett. The witness heard a single gunshot from Cornett. He then observed the deputy draw his gun from his holster and fire at Cornett. The witness observed the officer standing behind the deputy's SUV move to the passenger side of his patrol vehicle and fire gunshots at Cornett.

Cornett's mother indicated her son had a history of mental illness. Cornett suffered from bipolar disorder and was previously suicidal. His behavior had deteriorated in the week prior to the shooting. Cornett behaved aggressively towards his mother's dogs and he threatened her for the first time. She told Cornett he could not reside with her unless he received treatment for his mental illness. He refused, so she insisted he live elsewhere. Cornett returned to her home on July 19 to retrieve his laptop computer, and he was irate because his mother had moved his belongings to his grandmother's home.

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 this situation, Deputy Wanner had reasonable cause to detain Cornett. His mother called 9-1-1 fearing for her safety. Cornett was at her residence acting erratically. He was screaming threats, and she told dispatchers he was suicidal. Cornett told his mother he had a gun. She was afraid and locked herself in the garage. When Deputy Wanner parked and exited his patrol vehicle, Cornett did not comply with Deputy Wanner's request to stop and show his hands. Cornett had a duty to submit to Deputy Wanner's 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.)

Deputy Wanner was confronted by actual danger. He had knowledge Cornett was mentally unstable and threatened to kill everyone in the house. Cornett's mother informed dispatch that he mentioned a gun although she did not see it. She called 9-1-1, locked herself in the garage, and then fled over a fence to distance herself from Cornett. Deputy Wanner was in the open and vulnerable and in close proximity to Cornett. He was fired upon by a suspected suicidal and possibly homicidal individual. Deputy Wanner feared for his life. In these circumstances, it was reasonable for Deputy Wanner to fire at Cornett in self-defense.

After firing at Deputy Wanner, Cornett moved behind the SUV's engine block. He then turned toward Officer Magaziner with his right hand moving up holding a shiny object. Officer Magaziner reasonably believed Cornett intended to fire on him. Cornett had fired his gun at Deputy Wanner. Officer Magaziner heard the gunshot and observed Deputy Wanner's reaction. Like Deputy Wanner, Officer Magaziner recalled the dispatcher's information. He knew Cornett had threatened to kill everyone in the house and his mother believed the threat was credible. Given his knowledge of the situation, his observations of Cornett shooting at Deputy Wanner, and Cornett turning toward Officer Magaziner and raising his gun at him, Officer Magaziner shot Cornett to defend himself and Deputy Wanner.

Deputy Wanner and Officer Magaziner were not required by law to retreat. Given the circumstances, it was reasonable to believe that Cornett would continue to fire his handgun at them. Cornett posed a threat of death or serious physical injury to Deputy Wanner and Officer Magaziner. Fearing for their safety, they discharged their duty weapons at Cornett.

CONCLUSION

Deputy Wanner and Officer Magaziner were justified in shooting Cornett to defend themselves and each other. Their conduct under the circumstances was lawful. Accordingly, we will take no further action in this matter.

cc: Sacramento Sheriff's Deputy Joshua Wanner, #1087
Fulton-El Camino Police Officer Taylor Magaziner, #135
Sacramento Sheriff's Detective Chris Britton, #448
Sacramento Sheriff's Lieutenant Dan Donelli, #86
Rick Braziel, Office of the Inspector General
Kimberly Gin, Sacramento County Coroner's Officer