



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: December 7, 2017

TO: Chief Brent Newman
California Highway Patrol – Valley Division
2555 1st Avenue
Sacramento, CA 95818

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SSD-16-325128
Shooting Officers: Hector Arroyo #19090
Steven Rice #14845
Person Shot: Jason King (DOB 10/6/78)

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 Jason King. 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 2016-325128 and its related dispatch logs and recordings, scene photographs and video recordings, Mobile Video and Audio Recording System (MVARs), in-car camera video, witness interview recordings, and supplemental reports; surveillance videos; cellular telephone video; Sacramento County District Attorney's Office Laboratory of Forensic Services Blood Alcohol and Toxicology reports; and the Sacramento County Coroner's autopsy report.

FACTUAL SUMMARY

On October 28, 2016, at approximately 2:00 p.m., California Highway Patrol (CHP) Officer Trevor Risbry was working in the area of Date Avenue and Tyler Street. Officer Risbry was driving a marked black and white patrol car, equipped with light bar and sirens, and wearing a CHP uniform with a badge and duty belt. He was stopped in the right lane of Date Avenue at Madison Avenue and initially saw Jason King approximately 60 feet to the northeast. King stomped his feet and walked aggressively in a southwest direction across Date Avenue, outside of the designated crosswalk. He and Officer Risbry made eye contact. Officer Risbry parked his

vehicle near the east curb of Date Avenue and rolled down his window. He instructed King to use the crosswalk. King responded, “You fucking with me?” Officer Risbry estimated King was approximately two and one-half feet from the driver side door during this exchange. King then took an additional step toward Officer Risbry and removed a handgun from his waistband. King displayed the gun, holding it at a 45-degree angle, but not directly pointed at Officer Risbry. Officer Risbry immediately thought King was going to kill him. Officer Risbry exited the vehicle and asked King, “Are you going to shoot me?” King put the gun back in his waistband. Officer Risbry believed he saw a magazine in the gun as King moved it. Officer Risbry thought the magazine looked exactly like the magazine in his own gun. King continued to aggressively walk southbound on Date Avenue. Officer Risbry immediately called dispatch and reported King had just brandished a firearm at him. Despite his observation of the magazine, Officer Risbry could not determine if King’s gun was a real firearm.

Officer Hector Arroyo was traveling westbound on Madison Avenue in a marked patrol car. As he stopped at the intersection of Madison Avenue and Date Avenue, he heard Officer Risbry broadcast an “emergency.” Officer Arroyo then saw Officer Risbry standing in the middle of the street as he turned onto Date Avenue. Officer Risbry informed Officer Arroyo that King had a gun, but he was not sure if it was real. Officer Risbry returned to his parked vehicle near the east curb of Date Avenue, while Officer Arroyo drove toward King, who was still in view.

Officer Arroyo followed King and honked the horn to get his attention. King turned, looked, continued to walk briskly away from the officers, and then started to jog. Officer Arroyo honked the horn again and quickly realized that King was not stopping. Utilizing the patrol car’s public-address system, the officer ordered King to stop and show his hands. By this time, Officer Steven Rice arrived on scene and parked his vehicle near the west curb of Date Avenue. Officer Arroyo ultimately stopped in the center of Date Avenue. King was a few feet north of Freeway Circle on the west sidewalk.

Neither officer had a clear view of King’s hands. As Officer Arroyo stopped his vehicle, he grabbed his rifle. Officer Arroyo took a position outside his vehicle and behind the driver’s side door. Officer Rice was positioned outside his vehicle with his handgun pointed at King. They repeatedly instructed King to show his hands. King was confrontational and did not comply with the officers’ directives. King stepped into the street and started walking towards the officers. Both officers gave numerous verbal commands for King to show his hands.

As he approached the officers, King’s hands came out from under his sweatshirt. Officers Arroyo and Rice saw that he was holding a gun and could not determine if it was an actual firearm. As King quickly approached them, he raised the weapon up and down several times from waist to shoulder level. He appeared to them to be advancing in an aggressive or confrontational manner. Both officers were concerned because they were in a commercial area with many people who could be exposed to gunfire. As King continued to advance on the officers, King pointed the gun directly at Officer Arroyo. Officer Arroyo now clearly observed the gun and immediately believed it was real. He later described that the “bore looked huge.”¹ Officer Rice saw King point the gun at them as well. Both officers were in fear for their safety and the safety of others and began firing their weapons at King, who was struck multiple times and fell to the ground.

¹ “Bore” refers to the inside cylinder of a firearm’s barrel.

Officers approached King and immediately called for medical assistance. The officers provided first aid until Sacramento Metro Fire and Ambulance personnel arrived. King was transported to Mercy San Juan Medical Center where he was pronounced deceased at 2:19 p.m.

The Sacramento County Sheriff's Department investigated this shooting incident. Crime scene investigators recovered nineteen expended .223 caliber casings which were fired from Officer Arroyo's rifle, as well as twelve .40 caliber expended casings fired from Officer Rice's handgun. Investigators also recovered the gun in King's possession and identified it as a Daisy Powerline Model 340 BB pistol. This BB pistol is modeled to look like a Beretta 92FS firearm. A witness's cell phone video clearly showed King holding a gun as he walked southbound on Date Avenue after his interaction with Officer Risbry. Multiple witnesses overheard the officers ordering King to show his hands, get on the ground, and drop the weapon.

King's girlfriend told detectives King had been diagnosed with schizophrenia and bipolar disorder. Earlier in the day, King told her he felt irrelevant and "couldn't do it anymore." They also discussed King recently taking out a life insurance policy. King's estranged wife told detectives he had previously been hospitalized for mental health issues and it was not uncommon for him to walk around the area where the shooting occurred.

A subsequent review of the MVARs in-car camera footage showed that King did not drop the weapon or voluntarily get on the ground when the officers ordered him to do so. In fact, the video depicts King taking approximately 12 steps toward Officers Arroyo and Rice covering a distance of approximately 50 feet while they are giving him commands to drop the gun. King rapidly approached the officers with the gun in his right hand with his arm extended. The MVARs clearly showed that neither officer fired their weapon until King raised the gun and grabbed it with both hands in an isosceles shooting stance² and pointed it at the officers. Officers Rice and Arroyo fired their weapons only after King pointed the gun directly at them. Multiple shots were fired and he fell to the ground. King momentarily got back up to his feet and was subdued by additional gun fire. According to the Sacramento County Coroner's report, King died from multiple gunshot wounds. He had two wounds in his upper left chest, one in his left groin, three in his right leg, and one in his left leg.

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

² An isosceles shooting stance is a two-handed technique in which one hand holds a pistol or revolver while the other hand wraps around the first hand in support. Both arms are held straight, with the elbows locked. Viewed from above, the arms and chest of the shooter appear as an isosceles triangle, thus giving the stance its name.

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 detain King for brandishing a firearm, resisting a peace officer and possession of a concealed weapon. Officer Risbry saw King carrying an object which appeared to have a magazine and looked like a real gun. King was given multiple commands by Officer Arroyo to show his hands and drop the gun, but he walked and then jogged away. King had a duty to submit himself to their custody and 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, the officers were aware that King had an object that looked like a real firearm. Both Officers Arroyo and Rice gave King multiple commands to drop the gun and submit to their custody. King refused each of those commands. King proceeded to escalate the situation by aggressively approaching the officers, covering a distance of approximately 50 feet and ultimately pointing the gun at them. The officers exercised a great deal of restraint and only fired after he pointed his gun directly at them. The officers were not required by law to retreat from their positions. Given these circumstances, it was reasonable to believe that King had a real firearm and was going to use it on them. He posed a significant and immediate threat of death or serious physical injury to Officers Arroyo and Rice. Officers Arroyo and Rice feared for their own safety and the safety of each other when they discharged their weapons at King.

CONCLUSION

Officers Arroyo and Rice were justified in shooting King to defend themselves and each other and to prevent the escape of a suspected felon who posed a significant threat to others. Their conduct under these circumstances was lawful. Accordingly, we will take no further action in this matter.

cc: California Highway Patrol Officer Hector Arroyo
California Highway Patrol Officer Steven Rice
California Highway Patrol Sergeant Mike Beauregard
Sacramento Sheriff Detective Marcos Camacho
Sacramento County Coroner Kimberly Gin