



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael A. Neves
Assistant District Attorney

December 21, 2015

Chief of Police Christopher W. Boyd
Citrus Heights Police Department
6315 Fountain Square Drive
Citrus Heights, CA 95621

RE: Officer-Involved Shooting: Case No. CH-15-00598
 Shooting Officers: Officer Joseph Davis #236
 Officer Chrystal Buechner #353
 Person Shot: Jeffrey Matthews (DOB 8/16/1962)

Dear Chief Boyd:

The District Attorney's Office has completed its independent investigation and 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 Jeffrey Matthews. 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: Citrus Heights Police Department report number 15-00598 and its related 911 audio recording; radio traffic recordings; an aerial video recording; scene photographs; witness interview recordings; Sacramento County District Attorney Laboratory of Forensic Services reports; Sacramento Metropolitan Fire Service Patient Care Report; and patient treatment records from Mercy San Juan Medical Center.

FACTUAL SUMMARY

On January 22, 2015, at approximately 7:19 p.m., Jeffrey Matthew's wife called 911. She told the operator that Matthews took a large quantity of valium and morphine and was suicidal. She stated that Matthews was at the C-Bar-C Park in Citrus Heights and he had a gun in his waistband that she believed was his .45 caliber pistol. During the call, Matthews briefly took his wife's phone and told the operator, "I want her to walk away and do it now before I hurt somebody else. I don't want to hurt nobody but myself." The operator advised Matthews' wife to walk away and to await the arrival of the police.

Sunrise Recreation and Park District employee Curt Schoonover was unaware of the 911 call. He saw Matthews sitting alone in the middle of the parking lot of the park, dressed in

camouflage. Using the public address system on his truck, Schoonover told Matthews that the park was closed. Matthews stood up, but did not leave. Schoonover drove over to him. Matthews pointed a gun at Schoonover and told him to “keep moving.” Schoonover saw that the tip of Matthews’ gun appeared to have been painted red. Matthews said, “The cops are already coming, just leave.”

Citrus Heights Police Officer Joe Davis responded to the scene, parked his patrol vehicle on the street, and approached the park cautiously with his rifle. He used a fence line for cover. From there, he saw Schoonover approach Matthews in the parking lot. Concerned for Schoonover’s safety, Officer Davis left his position of cover and walked across a grassy area towards Schoonover. Before he reached him, Schoonover drove off.

Citrus Heights Police Sergeant Joseph Aguilar arrived and parked his patrol car in the parking lot approximately 40 yards away from Matthews. He illuminated Matthews with a spotlight, and began calling out to him. He told Matthews that the officers were there to help him. He tried to get Matthews to respond, but he was not successful. Matthews began slowly walking away from Sergeant Aguilar. Shortly thereafter, Officer Salvatore Lombardo arrived and parked his patrol car next to Sergeant Aguilar’s vehicle. Officer Chrystal Buechner arrived with a rifle and took position behind Officer Lombardo’s passenger side door. Officer Davis took cover behind Officer Lombardo’s driver side door and observed Matthews through his magnified gunsight. Matthews stopped walking away from the officers, turned around, and faced them. Sergeant Aguilar called out to him, but Matthews did not respond. Sergeant Aguilar asked another officer to negotiate with Matthews over a public address system to encourage him to surrender.

Officer Lombardo spoke to Matthews with his patrol car’s public address system. He identified himself as a Citrus Heights Police Officer and told Matthews that he wanted their encounter to end peacefully. He told Matthews that he wanted to get him the help he needed, and he directed him to listen carefully to his instructions. He instructed Matthews to put his hands up, turn around, and walk backwards towards the officers with his hands up. He ordered Matthews not to reach for any weapons. Matthews did not follow Officer Lombardo’s instructions. He briefly put his hands up, but almost immediately dropped them back down again. He did not turn around to face away from the officers. Instead, he walked towards the officers, facing them. Officer Lombardo repeatedly commanded Matthews to stop walking forward toward them. Matthews disregarded his commands and continued to walk forward toward the officers. When he was approximately 50 yards away, Matthews pulled his gun from his waistband.

Officers Davis and Buechner knew that Matthew’s wife believed he was armed with his .45 caliber handgun and that Schoonover stated the tip on Matthews’ gun had been painted red. Based on training and experience, they also knew that people have painted the tips of real firearms to appear like replica firearms to deceive police officers. When Matthews drew the gun, neither officer could see a red-painted tip. They believed the gun was real. Officer Davis, who viewed the weapon through the magnified sight on his rifle, believed it looked like a Ruger P85 semi-automatic handgun. As such, Officers Davis and Buechner were immediately fearful for their safety and that of the other officers. They believed Matthews was going to shoot at them, so they fired their rifles at him. Officer Davis fired once, and Officer Buechner fired twice.¹

¹ In interviews with investigators, Officer Davis said he fired once and Officer Buechner said she fired two or three

Matthews was struck once and fell to the ground. Officers carefully approached Matthews, detained him, and applied pressure to a gunshot wound near Matthew's left hip until paramedics arrived.

Officers recovered Matthews' gun and determined that it was an airsoft gun. The tip was painted a dark metallic-red. The Sacramento County District Attorney Laboratory of Forensic Services later identified Matthews' gun as a Crosman Corporation airsoft replica of a Walther P99 semi-automatic handgun. The Forensic Laboratory's comparison photographs demonstrated that an unaltered version of Matthews' airsoft gun has a very prominent orange-colored circular tip that is plainly visible when viewed from either the front or the side. The Laboratory determined that the original orange tip of Matthews' gun appeared to have been initially painted black, and subsequently a dark metallic red. The dark red paint was splotchy, not uniform, and did not appear professionally done. The comparison photographs revealed that the reddish metallic paint on Matthews' gun was less prominent than its original bright orange color, and was significantly less visible when the gun was viewed from the side.

An ambulance transported Matthews from the park to Mercy San Juan Medical Center. In the ambulance, Matthews told Officer Jeffrey Keller that he took 100 valium pills, five morphine pills, and that he "wanted to be on the other side." Matthews said he told his wife that he had a gun, but he did not tell her it was an airsoft gun. He indicated that he told his wife to leave the park because he did not want her to see what was going to happen next. He said he hoped the officers would shoot him. He acknowledged hearing the officers telling him they wanted to help him and to put his hands up. He admitted he did not comply with their orders, and instead pulled the airsoft gun out of his right waistband prior to being shot. He said it was a "real stupid thing to do," and he felt sorry for the officer who had to shoot him.

At the hospital, Matthews was treated for a through-and-through soft-tissue injury gunshot wound to his left flank. He was released from the hospital later that night. In a video recorded statement, Matthews stated that he brought the gun because he had been hassled by some kids the last time he was at the park, and the gun looked just like a real .45 caliber Ruger pistol. He stated, "It's something they shouldn't be selling in the stores ... because they look too much like real guns." Matthews also recalled the officers telling him to put his hands up, but he did not comply. He admitted that he pulled the gun out of his waistband prior to being shot. He again expressed remorse that the officer had to shoot him. When asked what he would have done in the officer's situation, he stated, "I would have shot him."

times. Three empty rifle casings were located in the area where the officers fired. The casings were examined by a criminalist from the Sacramento County Laboratory of Forensic Services. The criminalist determined that two of the casings had been fired from Officer Buechner's rifle, and the other casing had likely been fired from Officer Davis' rifle. A count of the remaining rounds in Officer Davis' rifle versus the number of rounds he had previously loaded confirmed that he fired one round. A count of the remaining rounds in Officer Buechner's rifle versus the number of rounds she thought she had previously loaded suggests that she only fired one round. However, her other magazine for the rifle, which was not utilized in this incident, contained one additional round than what she thought she had previously loaded. This suggests that the magazine in the rifle at the time of the incident also contained one more round than what she thought she previously loaded, thus explaining two empty casings attributable to her firearm. Considering all of the circumstances, the evidence demonstrates that Officer Davis fired once and Officer Buechner fired twice.

The Sacramento County Laboratory of Forensic Services confirmed the presence of morphine and diazepam (valium) in Matthews' blood.

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. Additionally, 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 an unlawful firearm or other unlawful deadly weapon. (California Penal Code Section 833.5.) An officer who attempts to arrest or detain a 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.) Police 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 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.)

Officers Davis and Buechner actually and reasonably believed they and other officers were in imminent danger of death or great bodily injury when Matthews drew his weapon. Upon their arrival at the park, they were confronted with a camouflage-clad suicidal man who was under the influence of drugs and armed with what his wife believed was his .45 caliber semi-automatic handgun. The officers offered to help Matthews and attempted to resolve the matter peacefully,

but Matthews repeatedly ignored their offers of help and failed to follow commands. Officer Lombardo instructed him to turn around and face away from the officers, to walk backwards slowly towards them, and to keep his hands up. Instead, Matthews lowered his hands, advanced towards the officers, and ultimately drew what appeared to be a semi-automatic handgun from his waistband. Believing they needed to protect their own lives, and those of the other officers, the officers both shot at him. Matthews was struck once and suffered a non-life threatening injury.

In making that split-second judgment, it was reasonable for Officers Davis and Buechner to assume that Matthews' gun was real. Although Schoonover indicated that the gun's tip appeared to have been painted red, Matthews' wife told officers that he owned a real .45 caliber pistol. Matthews himself acknowledged that the gun he drew from his waistband looked so real that guns like it should not be sold in stores. Moreover, the original bright orange red tip on Matthews' gun had been modified to something far less distinct. When Matthews drew the gun from his waistband, neither Officer Davis nor Officer Buechner were able to see a metallic red tip on the gun. Even if they had, both officers were aware that real guns can be—and have been—modified to appear fake. The splotchy red paint on the tip of the gun provided no reliable guarantee that their lives, and those of the other officers, were not in imminent and grave danger, especially given the surrounding circumstances.

CONCLUSION

Officers Buechner and Davis were justified in shooting Matthews in self-defense and in defense of the other officers. 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: Officer Joseph Davis #236
 Officer Chrystal Buechner #353
 Detective William Sanderson #199 (Retired)