



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: July 22, 2019

TO: Police Chief Daniel Hahn
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. 2017-262117
Shooting Officers: Matthew Nichols #636
Person Shot: Fernando Sanchez (DOB 2/9/79)

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 Fernando Sanchez. 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 report number 2017-262117 and its related dispatch logs and audio recordings, witness interview recordings, crime scene photographs and videos, in-car camera videos, and body-worn camera videos; Sacramento County District Attorney's Office Laboratory of Forensic Services Physical Evidence Examination, Forensic Biology, Blood Alcohol, and Toxicology reports; preliminary hearing transcript; medical records; and veterinary records.

FACTUAL SUMMARY

On September 11, 2017, at approximately 9:28 p.m., Sacramento Police Officer Zachary Yasonia was in uniform, driving a fully marked patrol vehicle accompanied by his partner, K9 Reno. Officer Yasonia was driving northbound on Marysville Boulevard when he noticed a two-door white Chevrolet 3500 stake bed truck ahead of him driven by Fernando Sanchez. Sanchez was stopped at a red light. When the light turned green, Sanchez continued northbound, veered into the right lane, and swerved back into the left lane. Sanchez then accelerated and continued to

drive erratically. Sanchez passed the William J. Kinney Police Station on Marysville Boulevard. Aside from the public entrance and parking lot on Marysville Boulevard, there is a secured barrier around the perimeter of this police station. Sanchez then made a sharp right turn onto South Avenue which caused the tires to screech and he swerved into the oncoming lane. Officer Yasonia followed and activated his patrol vehicle's lights and siren. Sanchez made a sudden turn into the secured driveway of the police station on South Avenue. Officer Yasonia observed Sanchez drive directly through the gate, hitting it at approximately 40 miles per hour. Officer Yasonia communicated his observations to dispatchers during this time. Sanchez continued through the parking lot and hit a parked patrol vehicle. Several officers, including Officer Matthew Nichols, observed this incident and ran toward the vehicles as they drove through the parking lot.

Sanchez continued to travel south through the parking lot and appeared to be steering towards another patrol vehicle, as if he was trying to hit the patrol vehicle. The driver of that patrol vehicle moved it and avoided a collision. Sanchez accelerated towards the south gate, crashed into it, and knocked it off the hinges. The truck careened across Rosalind Street and hit the wrought iron security gate of a home located across the street from the police station. Officer Yasonia estimated the truck was traveling between 30-40 miles per hour when it struck the south gate.

Officer Yasonia pursued Sanchez and stopped his vehicle a safe distance behind the truck. Officer Yasonia was exiting his patrol vehicle when Sanchez emerged from the truck. Officer Yasonia observed Sanchez holding an unidentifiable object. Sanchez moved toward the back of the truck, quickly changed directions, and went back around the front past the driver's side. Based on the uncertainty of Sanchez's actions and his concern for the public and other officers, Officer Yasonia deployed K9 Reno to detain Sanchez. K9 Reno pursued Sanchez, who fled out of view around the front of the truck.

Officer Nichols ran towards the truck and positioned himself facing the house at the nearby fence line, which was approximately 10-12 yards away from Sanchez. His service weapon was drawn, and he illuminated Sanchez with a hand-held flashlight and shouted an instruction at Sanchez. K9 Reno already located Sanchez and bit his left forearm. Sanchez looked at Officer Nichols and then reached behind his back with his right hand. Sanchez brought his right arm quickly back around in front of his body and was holding an unidentifiable metal object toward Officer Nichols. Officer Nichols believed the metal object was a gun and fired four shots at Sanchez. Sanchez broke free from K9 Reno and ran southbound along the side of the home and out of view. Officer Yasonia heard the gunshots and called for K9 Reno to return to his location. K9 Reno returned from behind the truck and was bleeding profusely from his right side.

Sanchez fled southeast to Sheldon Street. Daniel Federwitz was in his house watching television when he heard police sirens and gunshots. As he walked to the front door, Federwitz heard a knock on the door. He opened the door and saw Sanchez, whom he did not recognize. Sanchez asked him for a ride. Federwitz heard the sirens and noticed Sanchez was getting more "antsy." Federwitz told Sanchez he would not give him a ride and Sanchez said, "You're gonna give me a ride." Federwitz saw that Sanchez's hand was bloody and he was getting more upset. Sanchez produced a metal pipe approximately 18 inches long and swung it at him. Federwitz pushed

Sanchez back and they struggled on the front porch. Federwitz estimated he was struck with the pipe 3-4 times. As the struggle continued, Federwitz grabbed the pipe and Sanchez jabbed him in the stomach 2-3 times. Federwitz eventually got the pipe away from Sanchez. The struggle moved to the driveway. Sanchez, at this point, was between Federwitz and the open front door. Sanchez went into the house and tried to close the door. Federwitz was able to push the door open and get the pipe inside the door jamb, so the door could not close. They continued to struggle, and Sanchez was ultimately able to close and lock the door.

After a brief moment, Sanchez quickly opened the door and came out holding Federwitz's keys and a cooking pot. Sanchez swung the pot as he tried to get to Federwitz's vehicle. Sanchez almost hit Federwitz, who grabbed the pipe again for protection. Federwitz hit Sanchez in the head with the pipe, which did not appear to have any effect on Sanchez. As they continued to struggle, Sanchez opened the vehicle door and sat in the driver's seat with his leg still outside the vehicle. Sanchez could not determine which key started the vehicle. Federwitz heard sirens and saw police vehicles nearby. He yelled for assistance.

Officers David McDonald and Christopher Jensen saw Federwitz and Sanchez struggling by the vehicle. Both officers exited their vehicle and approached Sanchez on opposite sides of Mr. Federwitz's vehicle. They ordered Sanchez to get on the ground. When he did not comply, Officer McDonald took Sanchez to the ground. Sanchez struggled and would not allow himself to be handcuffed. As Sanchez was on the ground, he appeared to reach for his waistband area, which led the officers to believe he was trying to retrieve a weapon. Officer McDonald utilized his Taser in an effort to get Sanchez to comply with their commands. Additional officers arrived. Together they were able to subdue Sanchez and place handcuffs on him. The officers provided medical assistance until medics arrived and transported Sanchez to the UC Davis Medical Center.

Sanchez was treated for the following injuries: a gunshot entry and exit wound to his right thigh, two scalp lacerations, a forehead laceration, and a dog bite to his left forearm. Four days later, Sanchez was discharged from the hospital and booked into the Sacramento County Main Jail.

Crime scene investigators located a razor blade on the ground near Sanchez's vehicle. The Sacramento County District Attorney's Office Laboratory of Forensic Services analyzed the razor blade and discovered blood that was not of human origin. Hairs recovered from the blade were consistent with dog hair and were similar in physical and microscopical features to hair reference samples taken from K9 Reno. The laboratory also analyzed a sample of blood taken from Sanchez, which revealed the presence of methamphetamine.

K9 Reno was taken to VCA Sacramento Veterinary Referral Center for treatment. He had two superficial lacerations to his right thoracic region. The wounds required over 60 sutures. According to VCA's Medical Director Christopher Wong, DVM, the injuries K9 Reno sustained were slicing wounds consistent with a razor blade or surgical weapon. K9 Reno eventually recovered and returned to duty.

A round count confirmed Officer Nichols fired four gunshots from his department issued .40 caliber Sig Sauer P226.

Officer Yasonia's in-car and body-worn camera videos were reviewed. The videos show Sanchez proceeding northbound on Marysville Boulevard. After passing the police station, Sanchez makes a right turn onto South Avenue at a high rate of speed, forcing him into the opposing lane. Sanchez then abruptly turns into the Kinney station driveway and crashes through the closed gate. Officer Yasonia follows close behind and alerts other officers. Sanchez then accelerates toward and hits the locked gate at the south end of the parking lot. Sanchez continues across the street, hitting the security gate of the home located on the south side of Rosalind Street. Sanchez quickly exits the truck and disappears around the front end, out of view of the camera. Officer Yasonia exits his vehicle and yells at Sanchez to show his hands. Additional officers are heard yelling at Sanchez to show his hands. Officer Yasonia then deploys K9 Reno, who chases after Sanchez and quickly runs out of view. Other officers order Sanchez to stop fighting the dog.

Officer Nichols's body-worn camera video was also reviewed. In the video, Officer Nichols is running southbound through the parking lot. Officer Nichols proceeds past Officer Yasonia's parked patrol vehicle and approaches the wrought iron fence, where he can see K9 Reno and Sanchez are struggling. Other officers are heard giving Sanchez the aforementioned commands. Officer Nichols, with his service weapon drawn, briefly illuminates Sanchez with a flashlight. He yells something unintelligible and then four gunshots are heard. Officer Nichols broadcasts that Sanchez is headed through the back yard of the house. K9 Reno returns to Officer Yasonia. Officer Nichols tells other officers he saw Sanchez reaching for his waistband and "coming out like this." Any gesture Officer Nichols made while making this comment was not picked up on in-car or body-worn camera videos.

The body-worn camera videos of Officers McDonald and Jensen show them contacting Sanchez in Federwitz's front yard. After the officers approach, they take Sanchez to the ground and attempt to subdue him. Because Sanchez continues to struggle, Officer McDonald uses his Taser on him. As other officers respond, they assist in detaining Sanchez. Shortly thereafter, they place him in handcuffs. Officers are heard stating Sanchez was reaching for his waistband.

On November 20, 2018, in Sacramento County Superior Court case number 17FE017119, a jury convicted Sanchez for violating the following felonies related to this incident: Penal Code section 459 (first degree burglary), Penal Code section 664/215 (attempted carjacking), Penal Code section 245(a)(1) (assault with a deadly weapon), Penal Code section 594(a) (vandalism with damage greater than \$400), Vehicle Code Section 2800.2(a) (attempting to evade a peace officer while driving recklessly), and Penal Code section 600(a) (injuring a dog being used by a peace officer). The jury found true allegations under Penal Code section 12022(b)(1) that Sanchez used a deadly or dangerous weapon in the commission of several of those felonies. The jury also found true that Sanchez had previously been convicted of multiple felonies, including three prior strike offenses. Sanchez was sentenced to seventy-five years to life in state prison, with an additional term of twelve years and four months.

LEGAL ANALYSIS

A peace 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 detain or arrest the person, to prevent the person's escape, or to overcome the person's resistance. (California Penal Code section 835a; CALCRIM 2670.) An officer who detains or arrests a person does not need to retreat or stop his or her efforts if the person resists or threatens resistance. Moreover, using reasonable force does not make the officer an aggressor or cause him or her to lose the right to self-defense.

(California Penal Code section 835a.) The person being detained or arrested has a duty to permit himself or herself to be detained, and the person must refrain from using force or any weapon to resist arrest. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; California Penal Code section 834a; CALCRIM 2670, 2671, 2672.)

In the present matter, Officer Yasonia first observed Sanchez's erratic driving on Marysville Boulevard. Officer Yasonia had reasonable cause to detain Sanchez on suspicion of driving under the influence. As a result, he turned his lights and siren on. Sanchez then turned and crashed through the gate of the police station. Officer Yasonia and other officers pursued Sanchez as he was driving recklessly through the parking lot. While in the parking lot of the station, Sanchez hit a parked patrol vehicle and appeared to be steering toward another vehicle that successfully got out of the way. Sanchez then crashed through the south gate and the gate of the home on Rosalind Street. Officer Yasonia had probable cause to arrest Sanchez for felony reckless evasion. When Officer Yasonia attempted to apprehend Sanchez, he fled. Sanchez had a duty to submit to the arrest. He failed to do so and instead continued to escape.

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, Officer Nichols observed Sanchez trying to elude capture and crash through a gate into a police station. As Officer Nichols approached, Sanchez was fighting with Officer Nichols' K9 partner and refusing to show his hands. Officer Nichols saw Sanchez reach for his waistline and bring his hand quickly back towards him holding a metal object. The scene was dark and there was minimal lighting in the area from the officer's flashlight. Officer Nichols believed Sanchez had retrieved a firearm. Sanchez was only 10-12 yards away from Officer Nichols. Under these facts, it cannot be said that Officer Nichols was unreasonable in his belief that he was in imminent danger and feared for his safety when he discharged his duty weapon at Sanchez.

CONCLUSION

Officer Nichols was justified in shooting Sanchez in self-defense. Under these circumstances, his conduct was reasonable. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento Police Department Detective Travis Hunkapiller #710
Sacramento Police Department Officer Matthew Nichols #636
Francine Tournour, Office of Public Safety Accountability