



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: April 9, 2019

TO: 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. SPD-2017-269334
Shooting Officer: Officer John Harshbarger #484
Person Shot: Kristopher Velez (DOB 4/17/87)

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 Kristopher Velez. 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 2017-269334; 9-1-1 calls and dispatch logs/audio; witness interview recordings; in-car camera videos; body-worn camera videos; crime scene videos and photos; medical records; and Sacramento County District Attorney Laboratory of Forensic Services Toxicology and Blood Alcohol reports.

FACTUAL SUMMARY

On September 18, 2017, Kristopher Velez had two misdemeanor arrest warrants on charges of domestic violence and endangering the health of a child. Velez had previously failed to appear in criminal court, and his bail had been forfeited. The bail bond agency who had posted his bail hired private bail enforcement agents to search for Velez. At approximately 7:00 p.m., two bail enforcement agents located Velez at 7617 Bellini Way in the City of Sacramento. Velez was standing on the street next to a car before he entered the residence. The bail enforcement agents knocked on the front door, identified themselves, and asked Velez to exit the house. He did not respond, so the bail enforcement agents requested assistance. Sacramento Police Department Sergeant Daniel Farnsworth and other officers were dispatched to the scene.

After being informed of the situation, Sergeant Farnsworth and the officers waited outside as the bail enforcement agents entered the residence through a window.¹ The bail enforcement agents opened the front door of the residence several minutes later and Sergeant Farnsworth entered the living room.² The bail enforcement agents informed Sergeant Farnsworth that Velez was in the house alone, had locked himself in the bathroom, and was refusing to leave. The bail enforcement agents attempted to kick in the bathroom door, but instead kicked a hole approximately the size of a basketball in the door about three feet above the floor. They did not get the door opened. However, they told Sergeant Farnsworth that Velez peeked through the hole in the door and was holding a handgun next to his head. The handgun resembled a 9mm Beretta semi-automatic firearm.

Sergeant Farnsworth entered the hallway and communicated with Velez through the closed bathroom door. He attempted to persuade Velez to exit the bathroom, and he requested Velez to submit himself to law enforcement custody on the arrest warrants. Sergeant Farnsworth instructed Velez to come out with his hands up. Officer John Harshbarger had been outside for approximately ten to fifteen minutes, but he entered the residence after he learned that Velez possessed a handgun. He was updated by Sergeant Farnsworth and the bail enforcement agents. Officer Harshbarger positioned himself at the end of the hallway across from the bathroom, approximately nine feet from the closed bathroom door. Sergeant Farnsworth stood approximately three to four feet from the closed door.

A gunshot was fired in the bathroom, and Sergeant Farnsworth moved away from the door to stand next to Officer Harshbarger. Officer Harshbarger had his gun drawn pointed towards the bathroom door. Velez told Sergeant Farnsworth that the gunshot was an accidental discharge. As Sergeant Farnsworth and Officer Harshbarger remained in the hallway, Velez seemed to be speaking to himself at times. Sergeant Farnsworth continued asking Velez if he was ready to exit the bathroom, requesting that he come out showing his hands. Velez told Sergeant Farnsworth he had mental issues and “PTSD” and that people with “PTSD” were more likely to be drug addicts. Velez quickly opened the door, grabbed a shirt on a hanger just outside the bathroom door, and closed the door. Within minutes, Velez again quickly opened the door and threw out a handgun magazine. However, Velez closed the door again and remained inside the bathroom.

Approximately five minutes later, Velez opened the bathroom door but remained inside. Farnsworth continued to speak to Velez and encouraged him to exit the bathroom without the

¹ Bounty hunters, or bail enforcement agents, have long exercised the power to locate, arrest, and return to custody persons released from custody on bail provided by a bail bondsman when the person fails to make a necessary court appearance. (*Taylor v. Taintor* (1872) 83 U.S. 366, 371-372.) Because a bounty hunter's authority comes from the implied terms of a private agreement between the bondsman and the defendant, bounty hunters are not restricted by the usual constitutional constraints that apply to law enforcement. (*Reese v. United States* (1869) 76 U.S. 13, 22; see *People v. Johnson* (1947) 153 Cal.App.2d 870, 873; *United States v. Rhodes* (9th Cir. 1983) 713 F.2d 463, 467.) For example, the *Fourth Amendment's* prohibition against unreasonable searches and seizures does not apply to the actions of a bounty hunter. (*People v. Houle* (1970) 13 Cal.App.3d 892, 895.)

² Police officers may enter a subject's residence to arrest that person on a misdemeanor arrest warrant when they have reason to believe the subject is inside. (*Payton v. New York* (1980) 445 U.S. 573, 603; *United States v. Gooch* (9th Cir. 2007) 506 F.3d 1156, 1159.)

handgun. Officer Harshbarger could see a shadow of Velez's profile, and it appeared that Velez was still holding the handgun. Officer Harshbarger told Sergeant Farnsworth that he could see the hammer of the gun was "cocked back." Officer Harshbarger pointed his handgun at the bathroom door with his finger on the trigger. Sergeant Farnsworth instructed Velez to put his gun down. Approximately thirty-five minutes had passed since Sergeant Farnsworth entered the house.

Velez then slowly exited the bathroom, shirtless, with the pistol in his right hand. Velez was holding it near the end of the grip and did not appear to have a firm hold on the handgun. He was standing just outside the bathroom door, with Sergeant Farnsworth and Officer Harshbarger viewing him in profile. Sometimes he looked at Sergeant Farnsworth and Officer Harshbarger, and other times he did not. Velez grabbed the gun with his left hand by the barrel, and then he switched it back to his right hand. Sergeant Farnsworth told Velez if he continued to hold the weapon, he should step back. Velez did not comply. Velez bent forward at the waist and crouched down, still holding the gun in his right hand. Officer Harshbarger saw Velez's finger placed on the trigger and the barrel begin to turn and face Officer Harshbarger and Sergeant Farnsworth. Believing Velez was going to shoot at them, Officer Harshbarger fired four gunshots at Velez and struck him.

Immediately after the shooting, Sergeant Farnsworth asked Officer Harshbarger, "Why'd you do that?" Officer Harshbarger responded, "He was pointing it at us!" Sergeant Farnsworth later told detectives he did not see Velez's gun muzzle pointed in his direction when Officer Harshbarger fired his gun because Sergeant Farnsworth had shifted his eyes away from Velez's handgun at that moment.

Officers approached Velez, called for medical assistance, and assessed his injuries. Sacramento Fire Department and medics arrived approximately seven minutes later and transported Velez to the UC Davis Medical Center. Velez sustained gunshot injuries to his left arm, left chest area, and right thigh above the kneecap. He underwent surgeries for his injuries and recovered. A blood sample taken from Velez at the medical center was analyzed by the Sacramento County District Attorney's Office Laboratory of Forensic Services and confirmed the presence of methamphetamine and amphetamine.³ Officers retrieved Velez's handgun and, upon examination, noted it had a round in the chamber.

Officer Harshbarger was equipped with a body-worn camera, which was recording during the incident. Officer Harshbarger was positioned in a manner in which the body-worn camera only partially captured video and audio of Velez when he exited the bathroom. Velez can be seen on the lower left portion of the screen. The video depicts Velez slowly moving out of the bathroom into the area directly in front of the bathroom door. Velez is holding the handgun loosely in his right hand. Velez transfers the handgun into his left hand and Sergeant Farnsworth instructs Velez to put the handgun down numerous times. Velez transfers the handgun into his right hand and Sergeant Farnsworth tells Velez if he continues to hold the gun he should return to the bathroom. Sergeant Farnsworth tells Velez to put the handgun down carefully because his handgun's "hammer is back." Velez stays outside the bathroom door and lowers himself into a crouching position. The video shows Velez near the ground, but because of the position of his

³ The concentration of methamphetamine was 2680 ng/mL and amphetamine was 79 ng/mL.

legs and the camera distance and angle, Velez's hands are not visible. Immediately after the shooting, the audio captures Officer Harshbarger saying, "He was pointing it at us!"

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.)

Velez had two outstanding misdemeanor arrest warrants. The bail enforcement agents located him at the residence and Velez did not submit himself to arrest on those warrants. Once the bail enforcement agents informed Sergeant Farnsworth that Velez was uncooperative and possessed a handgun, Sergeant Farnsworth spoke to Velez in order to effect a peaceful arrest. Velez continued to refuse to exit the bathroom and he increased the dangerousness of the situation by accidentally firing a gunshot. Velez had a duty to submit himself to detention and had numerous opportunities to surrender, but 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.)

In these circumstances, it was reasonable for Officer Harshbarger to believe Velez was going to shoot him or Sergeant Farnsworth. A review of all the surrounding circumstances showed Velez's commitment to avoid apprehension. He remained locked in the bathroom while bail enforcement agents searched the house. He repeatedly refused to comply with the bail enforcement agents' and Sergeant Farnsworth's commands to exit the bathroom with his hands up. Instead of complying and conducting himself in a non-threatening manner, Velez fired one shot while inside the bathroom and refused to exit for approximately thirty-five minutes after Sergeant Farnsworth entered the house. Although Velez threw a gun magazine into the hallway,

Velez exited the bathroom with the gun in his hand. It was unknown if the discarded magazine was from Velez's handgun. Additionally, it was possible that even without a magazine in the handgun, it still had a live round in its chamber, which in fact was correct. Officer Harshbarger observed the gun's hammer "cocked back" in a position showing it was ready to fire. The threat Velez posed by continuing to hold a gun had not diminished.

Furthermore, Velez exiting the bathroom while holding the handgun prevented Sergeant Farnsworth and Officer Harshbarger from immediately apprehending him. Despite Sergeant Farnsworth continually directing Velez to put the gun down, he refused. Sergeant Farnsworth went so far as to instruct Velez to return to the bathroom if he was going to continue to hold the gun. Velez refused. Velez transferred the gun into his right hand and continued to hold it. Velez was crouched down, and Officer Harshbarger observed the barrel point at him and Sergeant Farnsworth with Velez's finger on the trigger, so he discharged four gunshots at Velez.

The body-worn camera video and audio either confirmed or were not inconsistent with the statements of Sergeant Farnsworth or Officer Harshbarger. Officer Harshbarger was standing approximately nine feet away from Velez. The video depicted Velez's hands and the handgun, but given this distance and the camera's focus, there was insufficient detail to see Velez's fingers. Furthermore, Velez was crouched at the time Officer Harshbarger observed Velez point the barrel of the gun in his direction. Given Officer Harshbarger's standing angle, Velez's legs and knees in profile, the speed in which the incident unfolded, and Velez's hands being outside the camera frame, the gun barrel was not visible on the video. Sergeant Farnsworth indicated he did not see Velez's handgun barrel move in his direction because his eyes had shifted away from Velez's handgun just prior to the shooting. The audio does not capture Sergeant Farnsworth saying anything immediately after the shooting. Sergeant Farnsworth told interviewers he asked Officer Harshbarger, "Why'd you do that?" The audio does capture Officer Harshbarger telling Sergeant Farnsworth immediately after the shooting, "He was pointing it at us!"

CONCLUSION

Officer Harshbarger shot Velez believing he needed to defend himself and Sergeant Farnsworth. Under the circumstances, his belief appears reasonable. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento Police Detective Susan Curtis #540
Sacramento Police Officer John Harshbarger #484
Francine Tournour, Office of Public Safety Accountability