



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael A. Neves
Assistant District Attorney

MEMORANDUM

DATE: February 4, 2020

TO: Sheriff Scott Jones
Sacramento County Sheriff's Office
4500 Auburn Boulevard
Sacramento, CA 95841

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-18-398311
Shooting Officers: Joey Lemus, SSD #1459
Brian Bell, SSD #867
Person Shot: Travis York (DOB 7/29/76)

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 Travis York on December 17, 2018. For the reasons set forth, we conclude that the shootings by Detectives Joey Lemus and Brian Bell were lawful.

The District Attorney's Office received and reviewed written reports and other items, including: Sacramento Police Department report number 18-398311 and related dispatch logs/audio; Sacramento Sheriff's Office report number 18-446660; Elk Grove Police Department report number 18-8395; witness interview recordings; 9-1-1 audio recordings; in-car camera, surveillance, aircraft, and crime scene video recordings; photographs and diagrams; Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, and Firearms Examination reports; and Sacramento County Coroner's Report.

FACTUAL SUMMARY

On Saturday, December 15, 2018, Travis York, Donald Honstein, and Dale Dare stole a television and a soundbar from a Wal-Mart on Elk Grove Boulevard in Elk Grove. Elk Grove Police Department officers located the suspects' vehicle at a gas station shortly thereafter. York, Honstein, and Dare were still in the vehicle along with the stolen merchandise.

Honstein and Dare were in the two front seats. They were quickly detained without incident. Travis York was in the back seat. He refused to follow the officers' directions. York produced a black pistol, held it to his own head, and threatened to shoot himself. Officers retreated for cover as York climbed into the driver's seat. York drove eastbound on Elk Grove Boulevard at a high rate of speed as officers gave chase. Officers lost sight of York's vehicle.

Officers continued to search for the vehicle. They located the vehicle parked at a nearby residence. York and a female were walking out of the residence as officers approached. York dropped a backpack he was carrying, ran into the backyard of the house, and jumped over the fence. York was able to successfully flee the area on foot.

Honstein and Dare identified the outstanding suspect as Travis York. A records check showed that York had an outstanding arrest warrant as a parolee-at-large.

Shortly thereafter, Elk Grove Police received a report of an attempted carjacking. York had attempted to carjack a citizen at gunpoint in a warehouse district a short distance from where York was last seen. The citizen was able to escape. York then successfully carjacked a second victim at gunpoint and fled the area in her Toyota 4Runner. His whereabouts were unknown.

Elk Grove Police Department detectives obtained an arrest warrant and contacted the Sacramento County Sheriff's Office for assistance in locating and apprehending him.

Sheriff's Detectives Joey Lemus and Brian Bell attended a briefing on Sunday, December 16, regarding the search for York. The briefing included the circumstances of the crimes committed, the outstanding firearm, and photographs of York. They were told that York had prior military experience and training.

On Monday, December 17, believing that York was in the area of Richards Boulevard and Bercut Drive, detectives in unmarked vehicles set up surveillance in the parking lots of two nearby motels hoping to spot York. Detective Lemus was parked in the parking lot of the Executive Inn and Suites at 216 Bannon Drive in an unmarked minivan when he saw a white female get into the driver's seat of an Isuzu Rodeo. Detective Lemus saw there was already a white male in the passenger seat. He was unable at that time to positively identify the subject.

The Isuzu left the motel parking lot, and Detective Lemus followed. He broadcast over the radio that he believed there was a high likelihood that York was the male in the Isuzu.

Detective Bell was in a fully marked SSD Ford Explorer. He heard Detective Lemus' broadcast. Detective Lemus requested that Detective Bell follow behind them until a positive identification could be made.

The Isuzu drove Northbound on I-5 onto Eastbound I-80. Detective Lemus observed the white male sitting low in the passenger seat, as if to conceal himself. Detective Lemus further saw the white male reach into the back seat of the Isuzu to grab a bag similar to a small backpack or small suitcase. He believed that the white male may have been doing this to arm himself with a firearm.

The Isuzu exited I-80 at Truxel Road and drove southbound past San Juan Road. The Isuzu made a right turn into the FoodMaxx parking lot and another right turn inside the parking lot. Detective Bell was approximately 10-15 yards from the Isuzu at this point and made eye contact with the white male in the passenger seat. This allowed Detective Bell to positively confirm that the white male in the passenger seat of the Isuzu was the wanted subject, Travis York.

The Isuzu drove northbound through the Foodmaxx parking lot, then made a right turn down a parking aisle in front of the store. Detective Lemus turned right behind the Isuzu in his unmarked minivan, and Detective Bell turned right in the preceding parking aisle in his marked patrol unit.

York got out of the Isuzu passenger seat as the Isuzu was coming to a stop in a parking spot about halfway down the parking aisle. Detective Lemus believed York had a handgun in his hands. York began walking towards Detective Lemus. Detective Lemus got out of his unmarked vehicle with his rifle and began shouting directions at York to show his hands. Detective Lemus was wearing a gun belt and a black vest with a badge and the word "Sheriff" clearly marked on the front and back. York did not obey the commands.

Detective Lemus noticed that York's hands were in the area of his waistband. York turned and headed back to the passenger door of the Isuzu. York opened the passenger side door to climb inside.

Detective Lemus did not know whether the female driver of the Isuzu was with York willingly. He believed that York was not going to surrender voluntarily and was concerned that York was going to shoot at him or his fellow responding officers to avoid being taken into custody.

Meanwhile, Detective Bell exited his marked patrol vehicle. He also wore a gun belt and a black vest with a badge and the word "Sheriff" clearly marked on the front and back. He saw that York was not obeying Detective Lemus' commands. He tried to place himself in a position that none of the shoppers in the parking lot would be at risk. He saw York move his hands from the area of his chest to the area of his waistband, look directly at Detective Bell, and walk briskly back to the Isuzu passenger door. The passenger door opened, and Detective Bell saw York's hands in the area of his waistband. Detective Bell saw a black object that he believed to be a gun. Detective Bell was in fear for the lives of himself, his partner, and the civilian shoppers within close proximity of this incident.

Both Detective Lemus and Detective Bell fired their rifles at York. Detective Lemus fired six shots. Detective Bell fired ten shots. York fell to the ground. Cardiopulmonary resuscitation was performed by responding officers, but York died on scene.

A loaded black semi-automatic pistol was found underneath York's body. A full box of 9mm ammunition and 28 grams of methamphetamine were found in York's jacket pockets.

An autopsy was performed by Dr. Keng-Chih Su of the Sacramento County Coroner's Office. The cause of death was listed as multiple gunshot wounds. Sixteen gunshot wounds were noted, with injuries to his back, right knee, and right arm. A blood sample taken from York during an autopsy confirmed the presence of methamphetamine in York's system.

Witnesses to the incident were interviewed. The driver and owner of the Isuzu stated that she had known Travis York for about a week. During that week she had seen him with a knife and with a gun. She stated that they left the Executive Suites motel at approximately 11:45 a.m. on Monday, December 17. She was driving, and York was in the passenger seat. York believed that a minivan was a police vehicle and was watching them, but she thought that York was being paranoid. York directed her to exit from I-5 onto I-80 and then exit again at Truxel. York noticed that the minivan was following them wherever they went.

She stated that as they pulled down a parking aisle, York jumped out as the car was still moving. She pulled into a parking space. York then ran back to the Isuzu and yelled, "Go! Go! Go! Get out of here!" She believed the officers were law enforcement due to the way they were dressed. She told York that her car was not going anywhere. She stated that she heard officers yelling for York to put his hands up, and then heard "a bunch of gunshots."

There were several additional citizens in the immediate area. Among these was a woman who had parked her car in the FoodMaxx parking lot. She stated that as she started to walk towards the store, she heard an officer yelling at someone to stop. She looked up and saw an officer pointing a rifle in her direction. She did not believe it could have been meant for her, so she looked behind her and saw a tall white man wearing a jacket. She described that the tall white man reached inside his jacket pocket as if he was reaching for a weapon. She looked back at the officer, who had advanced to a position closer to her and was yelling for the subject to stop. She looked again at the subject and saw that he had begun to run back to his car. She attempted to move out of the way and began to run towards the supermarket. As she was running, she heard "a lot of gunshots."

In-car camera footage from Detective Bell's vehicle was reviewed. The video shows him following behind the Isuzu and Detective Lemus' minivan onto Northbound I-5, then to Eastbound I-80, exiting at Truxel Road, and continuing down into the FoodMaxx parking lot. It shows the Isuzu making a right-hand turn to head down one of the parking aisles in front of the supermarket entrance, and Detective Lemus' vehicle turning behind it. Detective Bell's vehicle turns right into the preceding parking aisle in front of the supermarket. There are many cars in the parking lot as the supermarket was open for business at this time of day.

As the in-car camera is forward facing, it does not show the events happening in the parking aisle to the left. It does not capture footage of the shooting incident. As Detective Bell exits his vehicle, a voice can be heard yelling, "Show me your fuckin' hands! Let me see me your hands, now! [Unintelligible] your hands!" Approximately six seconds later there are the sounds of several shots being fired in quick succession, a slight pause, and then a second flurry of several

gunshots. Approximately five seconds later, an announcement of “shots fired” can be heard broadcasted on the radio within Detective Bell’s vehicle at approximately 12:07 p.m.

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, Detective Lemus and Detective Bell had been briefed that York and his two crime partners had stolen a television and a sound bar from Wal-Mart. When officers located and detained their vehicle with the stolen property, York put a gun to his own head, threatened to shoot himself, jumped into the driver’s seat, and drove away at a high rate of speed, successfully eluding the officers. When officers located him a short time later, York again fled, jumping a fence and eluding officers. York then tried to carjack two separate victims at gunpoint and was successful on his second attempt. Detective Lemus and Detective Bell clearly had reasonable cause to detain York for these public offenses. The detectives ordered York to stop and to put his hands in the air, but York refused. York had a duty to submit himself to Detective Bell and Detective Lemus’ custody, just as he had a duty to submit to the custody of Elk Grove Police on the two occasions following the theft from Wal-Mart. He failed to do so. Instead, York ignored the detective’s commands, ran back towards the Isuzu, ordered the driver to drive away, and appeared to be grabbing for his semi-automatic pistol.

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.)¹ 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.)

¹ This incident occurred prior to California Assembly Bill 392’s amendments to Penal Code sections 196 and 835a. Therefore, this incident is analyzed under the law as it existed at the time of the events.

Here, Detective Lemus and Detective Bell were reasonable in their belief that York posed an imminent danger of death or great bodily injury to themselves, each other, and the public in the immediate vicinity of the parking lot. The detectives had been briefed on the circumstances of York's prior actions during the last two days, including the lengths he would go to avoid capture. They knew that York was armed. They were aware that he pulled a firearm and pointed it at his own head and threatened to shoot to escape from the officers following the theft in Elk Grove. They were aware that he had then driven at a high rate of speed to avoid officers, placing others on the roadway at risk of injury. They were further aware that he then attempted a carjacking at gunpoint to obtain a vehicle to avoid capture and that he then committed a second carjacking at gunpoint of a separate victim.

When the detectives were following York in the white Isuzu on December 17, they did not know if the woman driving the Isuzu was with York willingly. They did not know if she was a hostage and was in danger when York ran back to the Isuzu during the encounter with the detectives, or if she was a willing participant who could provide York with his means of escape.

The detectives were further aware of the proximity of numerous civilians in the immediate vicinity coming to or from their cars as they shopped in the supermarket. They were afraid that any of them were potentially in danger from being struck by gunfire if York decided to start firing at the detectives. They were further aware that York might try to take one of the civilians or their vehicles to make his escape.

As the detectives confronted York in the parking lot, they were wearing distinctive vests identifying themselves as law enforcement, Detective Bell was standing outside a marked patrol unit, both officers were carrying rifles, and they were giving commands to York for him to raise his hands and surrender. Not only did York refuse to comply, he attempted to re-enter the Isuzu and, as also observed by a civilian witness, appeared to be reaching in his jacket for a gun. Detective Bell observed a black object that he believed to be a gun. Given all of these circumstances, the detectives' belief that York posed an imminent danger of death or great bodily injury to others was reasonable.

CONCLUSION

Based on the circumstances of this incident, Detectives Lemus and Bell were justified in shooting York to defend themselves and others. York posed a significant threat of death or serious physical harm to the detectives and others. Accordingly, we will take no further action in this matter.

cc: Sacramento County Sheriff's Office Detective Joey Lemus #1459
Sacramento County Sheriff's Office Detective Brian Bell #867
Sacramento Police Department Detective Chad Coughran #635
Office of the Inspector General
Kimberly Gin, Sacramento County Coroner's Office