



MEMORANDUM

SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE

ANNE MARIE SCHUBERT
DISTRICT ATTORNEY

DATE: November 18, 2021

TO: Chief Alex Turcotte
Citrus Heights Police Department
6315 Fountain Square Drive
Citrus Heights, CA 95621

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. CCH-20-08817
Shooting Officer: CHPD Officer Daniel Tsverov #411
Shooting Officer: CHPD Officer Cody Mason #445
Person Shot: Bruce Shumaker (DOB: 7/9/1956)

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer-involved shooting. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shootings of Bruce Shumaker by Citrus Heights Police Department Officers Daniel Tsverov and Cody Mason. For the reasons set forth, we conclude that the shootings were lawful.

The District Attorney's Office received and reviewed written reports and other documentary items. These items include Citrus Heights Police Department Report 20-08817, video and audio recordings, dispatch calls, witness interviews, photographs, diagrams, Sacramento County District Attorney Laboratory of Forensic Services reports, evidence logs, and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

In the week prior to October 26, 2020, the Citrus Heights Police Department received several calls for service related to Bruce Shumaker.

On October 20, 2020, Bruce Shumaker's wife called Citrus Heights Police to report that her husband was "out of control," acting deranged, and had threatened to kill her. She reported that Shumaker was standing in their backyard on Twin Oaks Avenue with a taser in his hand.

When officers responded, Shumaker's wife told them her husband was not taking his medications and was unstable, but she did not believe that her husband would hurt her. Shumaker's wife told officers that her husband had recently been held on a psychiatric "5150"

hold, and that she had hidden his firearms within their residence while he was away. Officers provided Shumaker's wife with assistance that included finding another place to stay.

On October 23, 2020, a neighbor called Citrus Heights Police to report that Shumaker was throwing rocks at the caller's house. The police followed up with the caller and were told that no actual damage occurred. The call for service was cleared without further action.

On October 25, 2020, at approximately 12:41 p.m., another neighbor called Citrus Heights Police to report that Shumaker was throwing rocks at his residence. The caller stated Shumaker had mental health issues resulting in a history of disturbances. As officers were assigned to the call by dispatch, the dispatcher advised them that a minimum of three officers were required to respond as Shumaker had diagnosed mental health disorders and his behavior was escalating. The dispatcher advised the responding officers there were firearms hidden in the home and there were concerns that Shumaker wished to commit "suicide by cop."¹

Officers attempted to get Shumaker to exit the residence, but Shumaker refused. Officers took no further action as there was no damage to the caller's house and due to the possible dangers from Shumaker's behavior.

Later that same day, at approximately 8:17 p.m., the neighbor called Citrus Heights Police again to report that Shumaker was standing on the neighbor's driveway yelling profanities. Responding officers were advised of Shumaker's mental health issues and the presence of firearms in the residence.

Responding officers Spencer Greenlee and Cody Mason entered the backyard of the residence behind Shumaker's home. From that position, they observed Shumaker sitting on a couch in his living room holding a black handgun. Officer Kirk Sisson contacted the caller, who advised that Shumaker had made several threats of physical violence against him. Officer Sisson also contacted Shumaker's wife, who told him there were several firearms in the residence. As there was no active crime being committed, officers chose to take no further action.

On October 26, 2020, at approximately 1:27 p.m., the neighbor called CHPD again to report that Shumaker was throwing bottles into the neighbor's yard. Officers were again advised of Shumaker's diagnosed mental health disorders, escalating behaviors, and the presence of firearms. One of the officers assigned to the call, Officer Daniel Tsverov, called the neighbor and learned there was no danger to the residence. Officer Tsverov told the neighbor to call back if Shumaker's behavior escalated. Officers chose to take no further action due to concerns about Shumaker's behavior.

Less than an hour later, at approximately 2:11 p.m., the neighbor called Officer Tsverov directly to report that Shumaker was in his driveway and was possibly trying to get into the neighbor's house. Officer Tsverov broadcast this information over the radio and told the neighbor to call 9-1-1.

Multiple officers then responded to the scene. The neighbor told officers that Shumaker had stood in the neighbor's driveway and exposed his penis towards the neighbor. Officer Tsverov then contacted Shumaker by telephone. Shumaker was difficult to understand, at one point identified himself using his wife's first name, and told Officer Tsverov he had a gun. Accordingly, CHPD Sgt. William Dunning ordered officers to pull back from Shumaker's

¹ The dispatcher entered this information due to prior calls regarding Shumaker's behavior that had resulted in the residence being "flagged" in the department's database.

residence and regroup a short distance away.

At approximately 2:41 p.m., a woman called 9-1-1 to report that Shumaker was outside his residence waving a gun. Another neighbor contacted Officer Tsverov to advise that Shumaker had exited his residence with a handgun. STAR, a Sacramento Sheriff's Office helicopter, responded to the scene. The helicopter captured video of Shumaker masturbating with his pants down in his backyard.

After determining that the only crimes so far committed were misdemeanors, Sgt. Dunning directed all officers to clear the call. Two officers were to remain in the area in case Shumaker's behavior continued to escalate.

At approximately 3:34 p.m., Officer Tsverov observed Shumaker leaving his residence in a white Toyota Sequoia. Officer Tsverov attempted to follow Shumaker but quickly lost sight of him. Officer Tsverov contacted Shumaker's wife to obtain consent to enter the residence while Shumaker was gone so officers could secure the firearms hidden in the house. Officer Tsverov stated that Shumaker's wife provided consent, but Officer Tsverov wanted to wait to enter the house until Shumaker's wife was present.

At approximately 4:13 p.m., Sgt. Dunning instructed officers not to pursue Shumaker, and directed that the goal was to prevent Shumaker from returning to his residence.

CHPD Officer Zachariah Erickson and Trainee Chase Fathy were in a marked patrol vehicle parked at Moss Oak Way facing Claremont Avenue to look out for Shumaker's return. At approximately 4:14 p.m., Officer Erickson saw Shumaker driving towards him. Officer Erickson saw Shumaker stop his Toyota Sequoia approximately 35 yards in front of the patrol car. The driver's side window of the Sequoia was rolled down. Shumaker held what appeared to be a black semi-automatic handgun with both hands in a shooting grip and pointed the handgun at the two officers.

Officer Fathy yelled, "Gun!" Shumaker lowered the firearm and began to drive away. Officer Erickson announced over the radio that Shumaker had pointed a gun at him and Officer Fathy and was heading towards his residence.

Approximately 30 seconds after hearing Officer Erickson's radio transmission, Officer Tsverov observed Shumaker's Toyota Sequoia driving towards him. Officer Tsverov was parked on the south side of Twin Oaks Avenue, facing east, one residence to the west of Shumaker's home. Officer Tsverov and Sgt. Dunning were standing in the street when they first observed Shumaker. They ran to their patrol vehicles as they knew Shumaker had just pointed a gun at other officers.

Officer Tsverov observed Shumaker stop the Sequoia just east of his driveway. Officer Tsverov could see Shumaker through the windshield. He saw Shumaker pointing a handgun towards the location Officer Tsverov last saw Sgt. Dunning, moving the handgun up and down. Officer Tsverov then saw Shumaker point the handgun directly at him. He saw Shumaker making movements with the gun as though he was pulling the trigger. He saw Shumaker steady the firearm and believed Shumaker was aiming his gun sights at him through the front windshield. Officer Tsverov believed he had no choice other than to defend himself. He fired four rounds towards Shumaker from approximately 25 yards away. Officer Tsverov stopped shooting as Shumaker pulled into his driveway. Officer Tsverov was unsure if any of his rounds struck Shumaker.

Multiple additional units responded to the scene and set up a perimeter around Shumaker's residence. Officers took positions in the backyards of the three houses that backed up to Shumaker's residence. A CHPD SWAT team and a Crisis Negotiation Team also responded to the scene.

At approximately 4:17 p.m., CHPD Officer Joseph Spurlin heard Shumaker in his garage making statements about killing law enforcement officers and announced this over the radio.

Shumaker's wife arrived on scene. She gave her phone to a member of the Crisis Negotiation Team (CNT). At approximately 4:22 p.m., Shumaker called his wife's phone. CNT team member Brittney Soriano answered the phone. Several brief phone calls followed. Officer Soriano stated that Shumaker made nonsensical statements and used profanity.² Shumaker told Officer Soriano that he was not coming out of the house. "I would be a fool to come out. Then you would shoot me again."

The Sheriff's helicopter, STAR, returned to the scene. At approximately 4:36 p.m., STAR began making loudspeaker announcements for Shumaker to come out of his house and surrender.

At approximately 4:52 p.m., personnel in STAR indicated that Shumaker was in his backyard and did not appear injured from the earlier shooting incident. Shumaker then went back inside his residence.

CHPD Officer Cody Mason was positioned in the backyard of the residence directly behind Shumaker's backyard. He was standing on a chair looking over the back fence into Shumaker's yard. Officer Mason was armed with a rifle. Two additional officers were to his left, and additional officers were in the adjoining yards to the east and west. From that position, at approximately 5:03 p.m., Officer Mason could see Shumaker on his couch in the living room.

At approximately 5:08 p.m., Officer Mason stated that Shumaker's rear sliding glass door was open and he could hear Shumaker say, "They shot at me, now I'm going to kill them."

At approximately 5:14 p.m., Officer Mason broadcast that Shumaker had a cigar in his hand and was saying, "Fuck you" while pointing at officers. Officer Mason noticed that Shumaker appeared to be smoking marijuana.

Officer Mason did not believe that Shumaker had seen him by the fence but noticed that Shumaker would come into the backyard and yell and extend his middle finger at the two officers to his left and the officers in the adjoining yards.

Shumaker walked out onto his back patio and sat in a patio chair facing south towards Officer Mason. Officer Mason saw Shumaker reach down under a glass patio table in front of him. As Shumaker sat back up, Officer Mason could see that Shumaker was holding a black handgun. Officer Mason saw Shumaker get up from his chair and start walking towards the southeast corner of his backyard.

Officer Mason saw that Shumaker had the gun in his right hand. He saw Shumaker raise his gun upwards and fire one round to the southeast, where three other officers were positioned in an

² During these calls with the Crisis Negotiation Team, Shumaker claimed that the gun he had in his Toyota Sequoia was a "plastic gun." However, no "plastic gun" was subsequently located by law enforcement in Shumaker's vehicle, house, or backyard. A loaded magazine for a semi-automatic firearm was found in the Sequoia by detectives.

adjacent yard.

Officer Mason feared that one of the officers to the southeast may have been shot by Shumaker. He believed he needed to do something to prevent anyone else from being harmed. Officer Mason fired several rounds at Shumaker. As Officer Mason fired, he saw Shumaker backing up towards his sliding glass door. Officer Mason did not see any blood and did not know if he had actually struck Shumaker with any of his rounds. Officer Mason then saw Shumaker begin to raise the firearm again. Officer Mason believed he needed to fire additional rounds before Shumaker hurt or killed someone. Officer Mason then fired additional rounds at Shumaker with his rifle, aiming for the center of Shumaker's chest. Officer Mason stopped firing when Shumaker fell to the ground. Officer Mason believed he had fired approximately five rounds.

Shumaker was still holding his gun in his hand after he fell. SWAT team members entered the yard and ordered Shumaker to drop the gun. Shumaker did not respond. The SWAT team fired two less-lethal bean bag rounds at Shumaker, as he still did not respond to commands. SWAT personnel then approached Shumaker to detain him, secure his firearm, and clear the residence. Once advised by SWAT that the scene was safe to enter, emergency medical personnel then entered the backyard, attended to Shumaker, and pronounced him deceased at the scene.

Shumaker's body was found near the rear sliding glass door of Shumaker's house. A Glock .45 caliber handgun and one .45 caliber casing were found next to him. The Glock .45 caliber handgun was registered to Shumaker.

Additional firearms and ammunition were found inside Shumaker's residence, including a shotgun, two rifles, and a revolver. A trash can full of ammunition of various calibers was also found.

Four bullet strikes were found in the stucco wall to the left of the rear sliding glass door to the home.

Shumaker's neighbor who initially called the police was interviewed. He stated he observed the first shooting incident through his living room window. He saw two officers standing in the street, then saw that the officers became startled and shouted out Shumaker's name. He stated he heard four gunshots from the officers and they ran for cover behind their vehicles' doors. It appeared to the neighbor that Shumaker had done something that startled the officers which led them to shoot.

The neighbor stated there was a stand-off between Shumaker and the police that lasted approximately one hour. The neighbor heard officers direct Shumaker to "show us your hands," and heard Shumaker using profanity towards the officers. He then heard approximately 8-10 gunshots but did not know who had fired.

A canvass was conducted of the surrounding neighborhood. No additional witnesses were located who had observed any of the events beyond the sound of the gunshots.

The Sheriff's helicopter, STAR, was circling Shumaker's home during this incident. However, the tree cover in Shumaker's backyard prevented STAR from capturing video of this incident. Immediately before the shooting, Shumaker can briefly be seen holding a black object in his hand. The view from the helicopter is then obstructed by the tree cover. It is announced over the radio that shots were fired. When STAR is able to regain a view of Shumaker, he is already on the ground after being shot.

Both officers' firearms were examined. A round count and examination of casings recovered at the scene indicated that Officer Tsverov fired four rounds from his handgun. Officer Mason fired eight rounds from his rifle.

The Sacramento County Coroner determined that Shumaker's cause of death was listed as Multiple Gunshot Wounds. It was established that Shumaker had been struck seven times: One wound to the head; one wound to the torso, two wounds to the left shoulder and three wounds to his back.

Samples of Shumaker's femoral blood were analyzed by the Sacramento County District Attorney's Office Laboratory of Forensic Services and found to contain THC and Topiramate, an anti-seizure medication also used to treat bi-polar disorder and migraines. The laboratory further determined that Shumaker's blood contained a blood alcohol concentration of .03%.

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(b); 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(d).)

Here, Citrus Heights Police Department officers had knowledge of multiple offenses committed by Shumaker that would have lawfully justified Shumaker's detention, including throwing rocks at the neighbor's house and brandishing a handgun on his front driveway. Sgt. Dunning made the decision that officers would not try to detain Shumaker as the offenses committed to that point were misdemeanors, and there were concerns about Shumaker's mental state and access to firearms. Rather than pursuing Shumaker, Sgt. Dunning concluded officers would seek to prevent Shumaker from returning to his house.

However, as Shumaker drove back to his house, he stopped his vehicle and pointed a gun directly at Officers Erickson and Fathy, a felony violation of Penal Code section 245(d)(1). Shumaker then continued to drive towards his home and stopped his vehicle approximately 25 yards away from where Officer Tsverov and Sgt. Dunning were standing in the street near their patrol cars. Officer Tsverov saw Shumaker point the gun in the direction of Sgt. Dunning. Shumaker then pointed the gun at Officer Tsverov and appeared to be aiming his gun sights to fire directly at him.

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; California Penal Code section 835a(c)(1)(A).) 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, Shumaker's decision to point a handgun at multiple police officers, and more specifically to point a gun directly at Officer Tsverov from approximately 25 yards away and appear to be aiming in preparation to fire, constituted an immediate danger of death or serious bodily injury to Officer Tsverov. Officer Tsverov was reasonable in firing four rounds at Shumaker in view of the immediate threat Shumaker presented at that moment.

After pointing the gun at Officer Tsverov and pulling into his driveway, Shumaker refused to come back out of the house. Officers formed a perimeter around the house and took positions in neighboring yards to observe Shumaker and to prevent him from harming others. Multiple commands were given by officers and by the STAR helicopter for Shumaker to come out of the house and surrender. Shumaker refused. Ultimately, Shumaker reached under his patio table, picked up a gun, pointed it towards three officers in the adjacent yard to the southeast, and fired a round. Firing a gun in a residential neighborhood in the direction where three human beings are standing presents an immediate danger of death or serious bodily injury to the people in Shumaker's line of fire. Officer Mason felt he needed to act immediately and fired from his rifle. He then observed Shumaker back up and begin to raise his firearm as if to fire again. Officer Mason again felt it was necessary to fire his rifle to subdue the threat posed by Shumaker before he fired again and potentially killed one or more of those three officers, or anyone else in the immediate vicinity. Given these circumstances, Officer Mason's actions were justified due to the threat presented by Shumaker to other officers and the community.

CONCLUSION

Bruce Shumaker had engaged in a series of escalating events over a period of days, leading him to point a gun at two police officers, and then point his gun at two more, including directly and deliberately at Officer Tsverov. His choice to do so unquestionably constituted an immediate danger of death or serious bodily injury to Officer Tsverov. Therefore, Officer Tsverov acted lawfully in utilizing deadly force to confront the threat posed by Shumaker.

Shortly thereafter, Shumaker picked up a firearm from underneath his patio table, pointed it in the direction of three police officers, and fired. That action was similarly an immediate threat of death or serious bodily injury to those officers and others who may have been in the line of fire. Therefore, Officer Mason acted lawfully in utilizing deadly force to oppose that threat.

Accordingly, we will take no further action in this matter.

Cc: Citrus Heights Police Department Officer Daniel Tsverov
Citrus Heights Police Department Officer Cody Mason
Citrus Heights Police Department Detective Justin Stevenson
Kimberly Gin, Sacramento County Coroner's Office