



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: January 25, 2017

TO: Interim Chief Brian Louie
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-16-201049
Shooting Officers: John Tennis #733
Randy Lozoya #237
Person Shot: Joseph Mann (DOB 7/23/65, Xref #1623119)

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 Joseph Mann. 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 2016-201049; 911 calls; witness interview recordings; in-car camera, surveillance, and crime scene videos; photographs; County of Sacramento Department of Coroner Autopsy Report 16-03449; and Sacramento County District Attorney Criminal Investigative and Laboratory of Forensic Services reports.

FACTUAL SUMMARY

On July 11, 2016, at approximately 9:20 a.m., Joseph Mann walked through the parking lot of the apartment building located at 1125 Lochbrae Road. A resident observed Mann and became concerned because Mann looked "possessed and mad." Mann stared at the resident and the resident stared back. Mann continued through the parking lot and reached the sidewalk on Lochbrae Road. Several other residents came out to the parking lot and also observed Mann. Mann stared at them with a mean grimace on his face, pulled out a knife, and began throwing it

up in the air and catching it. He performed karate-style kicks. The residents also saw what appeared to be a gun in Mann's hand or waistband. As Mann stood there staring at them, they watched his pants become wet as he apparently urinated on himself. He also pointed at them, like he was counting or marking them. Several of the residents heard him say, "I am the law." One person also heard him say, "Come and get me." To this person, it appeared that Mann was egging them on because he wanted them to call the police.

Two of the residents called 911. The first caller asked to have officers sent to 1125 Lochbrae Road because there was a guy across the street who had a gun and a knife. After providing a physical description, the caller stated the gun looked black and was in his waistband and that he had the knife in his hand and was throwing it up in the air. This caller stated that the subject was just standing there, and was smiling at everyone. This caller also said that one of the neighbors had a child lay down on the ground and numerous individuals had run into the caller's apartment, apparently out of fear of what the subject might do. While on the call with the dispatcher awaiting the arrival of officers, the caller updated that the subject was walking north towards Southgate Road. The caller then said, "He just pulled the gun out, he just pulled the gun out. He said, 'I am the law.'"

The second caller, a female resident, said that there was a mentally ill man outside her apartment at 1125 Lochbrae Road with a gun and a knife and there are children all around. She said that he was playing with the knife. After physically describing him, she added that she was trying to stay away from him because she had her young child with her. She indicated that he was throwing the knife in the air, catching it, and flipping it around. She clarified that she did not personally see the gun, but one of her neighbors told her the guy had a gun and to hurry and get her son out of the way. The caller added that the subject was standing as if he was in combat with body movements like he was a soldier, with his hands down, his arms folded, and then lifting his head.

Parents pulled their children inside their apartments because they were frightened of Mann. Residents were so concerned about Mann's behavior that one told her husband not to call the police, but that he instead should call an exorcist.

Officers were dispatched to respond to a suspicious subject with a weapon standing across the street from 1125 Lochbrae Road. In addition to the physical descriptions provided by the callers, officers were advised that the subject had a gun in his waistband and was holding a knife in his hand. Within moments, an update was broadcast that the subject was throwing the knife up in the air, that he had the gun in his pocket, and that he was moving like he was a soldier and was combat trained. Officers were advised that the subject was walking towards Southgate Road.

Sacramento Police Department Officers Frank Reyes and Bryan Gomez responded together in a patrol vehicle and were the first to arrive. As they turned onto Lochbrae Road, they observed a group of approximately five individuals at the apartment complex excitedly waving. The group pointed down the street towards where Mann was standing on the sidewalk at the corner of Lochbrae Road and Southgate Road. Officer Reyes asked them, "Does he have a gun?" In the initial 911 call, the caller can be heard responding to this question, stating, "That's him right there. He has a knife and a gun. Yeah." The officers radioed to dispatch that they could see the

subject walking and that the witnesses were pointing to him. They added that the witnesses said they think he has a gun and he is reaching in his waistband now. As the officers approached Mann, they observed that he was dressed in dark clothing, had a backpack on, and was holding a large knife in his right hand with a blade that appeared to be approximately four inches long. The officers kept their distance because witnesses stated Mann had a gun.

Officer Gomez announced over their vehicle's public address (PA) loudspeaker system for Mann to get on the ground and drop the knife. Mann refused to comply. Instead, Mann turned towards the officers and began aggressively yelling at them. The officers observed the knife in Mann's right hand and could see that he was holding a large metallic coffee mug in his left hand. Mann started to cross the intersection.

Mann verbally challenged the officers as to why they were trying to stop him. When they mentioned he had a gun, Mann yelled that he did not have one. Based on their observations, the officers were unable to confirm that Mann did not possess a firearm. Over the PA system, Officer Gomez repeatedly ordered Mann to drop the knife. Mann refused and continued walking away from the officers' vehicle.

Mann proceeded west on Southgate Road, towards Del Paso Boulevard. Officer Reyes kept their vehicle approximately 50 feet behind Mann due to his concern that Mann might have a firearm. Mann walked down the street and twice stabbed a telephone pole with the knife. A short distance away was a man walking two dogs. Officer Gomez yelled on the PA system for that man to get out of the area, and the man with the dogs walked away. Mann continued down Southgate Road. The officers radioed that he was heading towards Del Paso Boulevard, the knife was in his right hand, and he was not complying and was very hostile. A request was made for a K-9 officer to respond.

Before reaching Del Paso Boulevard, Mann stopped in the middle of the street. He turned and squared off towards the officers, who were still in their vehicle. Mann set his coffee mug down and, while still yelling at the officers, made a slashing motion with the knife through the air in their direction. He then picked up his mug and continued on towards Del Paso Boulevard, periodically stopping and looking back towards the officers. Mann continued to yell at the officers.

Some of the apartment residents followed Mann and the officers. They heard Mann threatening the officers during this time. According to these witnesses, Mann was yelling at the officers, "You guys get on out, I'll kick both of your asses" and "I'll fuck up both of you guys, come on outta there." In addition, surveillance video from a nearby business included audio. Mann can be heard shouting and screaming. Although most is unintelligible, he can be heard yelling, "C'mon" and "I'm gonna fuck you up." On footage captured by the in-car camera system in Officer Reyes and Gomez's vehicle, although much of what Mann yelled similarly cannot be discerned, he can be heard stating, "I can't wait," "I'm gonna fucking gut you," and "Get over here."

When Mann reached Del Paso Boulevard, Officer Gomez again used the loudspeaker and told Mann to put his hands in the air and drop the knife. Officer Gomez also said, "We don't want to

hurt you.” Mann looked towards Officers Reyes and Gomez. He yelled further threats at them and continued walking northbound on Del Paso Boulevard while crossing the street.¹ Officer Reyes stopped the patrol vehicle about 15-20 yards from Mann.

When Mann reached the median, he stopped and looked back towards the officers. He threw the coffee mug at their vehicle. The coffee mug struck the roadway in front of their car, bounced, and then struck the front of their vehicle. He walked away, then stopped, walked a few steps back towards the officers, crouched forward, and rocked back and forth while waving the knife. Mann yelled obscenities and screamed at the officers. One of the apartment residents who was following them heard Mann yell, “When I catch you two, I’m gonna fuck the shit out of you” and “Bring your monkey asses outside so I can fuck you up.” The officers also observed Mann repeatedly reach toward his waistband area, causing the officers concern that he was reaching for a gun. The officers radioed that he was being extremely hostile, was throwing stuff at them, and he still had the knife in his hand. Mann continued walking northbound on Del Paso Boulevard.

Officers Benjamin Spencer and Michael Mantsch arrived approaching from the south in another patrol vehicle. They proceeded in the southbound lanes heading northbound. Sergeant Michael Poroli also arrived in his own patrol vehicle, coming from the north proceeding southbound on Del Paso Boulevard. He stopped just past the intersection of Dale Avenue. Officers John Tennis and Randy Lozoya also approached in another patrol vehicle southbound on Del Paso Boulevard, just behind Sergeant Poroli’s vehicle. Officer Tennis was driving that vehicle with Officer Lozoya in the front passenger seat.

Mann turned and ran directly towards Sergeant Poroli’s vehicle, with the knife raised in an aggressive manner. One of the apartment residents who was following behind the police later reported that Mann crouched down like a bull and charged at the officer’s car. To the other officers, it appeared that Mann either struck Sergeant Poroli’s vehicle or was trying to open the passenger door. Sergeant Poroli locked his doors, closed his windows, and began to back his vehicle up because he thought Mann was going to harm him. The in-car camera footage from Sergeant Poroli’s vehicle captured Mann looking directly at Sergeant Poroli’s vehicle while waving the knife and holding it up in the air. As Sergeant Poroli began to back up, Mann ran directly and aggressively towards his vehicle. As Mann approached the car, he cocked his right arm back behind him with the knife in a threatening manner.

Officer Tennis saw Mann aggressively approach the side of Sergeant Poroli’s vehicle waving the knife and then continue around the rear of the vehicle. Officer Tennis was not sure where Mann was headed or what he might do, and he saw Mann yelling “Ahhh” like he was fully enraged. Officer Tennis also noticed a pedestrian there at that intersection and recognized that person was not a police officer. Officer Tennis considered striking Mann with his patrol vehicle to stop the threat that Mann posed and to protect Sergeant Poroli and the civilian. Further, given Mann’s proximity to their vehicle, Officer Tennis did not think there was enough time to stop, exit his vehicle, pull his gun out, and give Mann a command. Officer Tennis knew his vehicle was not traveling that fast and he thought he could knock Mann off his feet or knock the knife out of his

¹ In this area, Del Paso Boulevard proceeds geographically in a diagonal northeast/southwest angle. However, for ease of reference, it will be referred to in the northbound and southbound directions, and the sidewalks accordingly noted as on the west and east side.

hand, and thus stop the threat at that moment. Mann saw Officer Tennis' vehicle approaching him and he quickly ran out of the way across Dale Avenue onto the sidewalk on the west side of Del Paso Boulevard.

Officers Tennis and Lozoya now noticed that the nearby civilian was a woman and she had walked onto the center median of Del Paso Boulevard. Mann stopped, turned back towards the officers and momentarily crouched down on the west sidewalk, similar to the aggressive fighting stances he had previously taken. Officer Tennis heard him make a growling noise. Mann then ran back across Del Paso Boulevard towards the east side. Officer Lozoya removed his Taser from his holster and held it in his hand to have it ready as an option. As Mann proceeded eastbound across Del Paso Boulevard, he ran directly at the woman on the median. Officer Lozoya opened his car door and was about to step out. As Mann approached within a few feet of the woman, Officer Tennis feared that Mann would stab her or take her hostage, so he called out to Officer Lozoya not to exit. Officer Tennis drove straight at Mann attempting to hit him with the car a second time. Officer Lozoya also was concerned that Mann was going to stab or take the woman as a hostage, so he let go of his Taser because he wanted both hands securely gripping his handgun in case he needed it. Mann looked at the approaching officers and ran past the woman, coming within approximately one foot of her, close enough to have touched her. He finished crossing to the east sidewalk of Del Paso Boulevard.

Upon reaching the east sidewalk of Del Paso Boulevard, Mann then turned and ran northbound. The officers repeatedly yelled at him to drop the knife, but he refused to follow their commands. Officers Tennis and Lozoya's vehicle was on the west side of the median, so they exited their vehicle and took off after Mann on foot. Sergeant Poroli had turned his vehicle to drive around the median, and the other officers proceeded northbound in their vehicles on the east side of Del Paso Boulevard.

From previous experience patrolling this area, Officer Tennis was aware of businesses on that portion of Del Paso Boulevard and the high frequency of foot traffic. The Probation Department and the Sacramento News and Review are at the intersection of Southgate Road and Del Paso Boulevard. In addition, immediately adjacent to the sidewalk where Mann was running there is a barbershop, a beauty salon, a restaurant, and a tattoo parlor. Officers Tennis and Lozoya were concerned that some of those businesses might be open or in the process of opening at that time of the morning and Mann might enter them. In particular, Officer Tennis was worried about Mann entering the barbershop. Officer Tennis had been to that business before and knew that, once inside, Mann could easily harm anyone located inside the building.

Moreover, based on the calls to 911, Officer Tennis was worried that Mann had a gun in his waistband. The officers had confirmed that Mann was in possession of a knife, but they were unsure whether he was also carrying a firearm. In addition, Officer Tennis could see that Mann was a fast runner. Officer Tennis yelled at Mann, "Come on, come on" in the hopes that Mann would come to his senses and stop. Officers Tennis and Lozoya ran after him when Mann suddenly stopped and turned towards them. Officer Tennis noted that Mann easily could have kept running northbound down the sidewalk where there were no officers blocking his path. Officer Lozoya noticed that Mann had been running with his hands in a more guarded manner around his hips, like he was holding and shielding a weapon. Mann leaned in an offensive

position like he was going to attack, as opposed to how individuals attempting to run away from officers will pump their arms like a track runner to gain speed and further their distance from law enforcement. Mann took an aggressive stance and what appeared to be a fighting position with the knife. Officer Tennis heard Mann make some type of grunting or growling noise. At this point, it appeared to Officer Tennis that Mann was getting ready to lunge forward at him with the knife. Officer Lozoya believed he heard Mann yelling, "Come on. Come on." Officer Lozoya saw gray and black metal in Mann's hand, and could not tell if he was holding the knife or a gun, and he feared that Mann was going to either shoot or come towards Officer Tennis or himself to stab them with the knife.

Fearing for their own safety and the safety of each other's lives, Officers Tennis and Lozoya fired their weapons.² Officer Tennis fired eight times with his .45 caliber duty weapon. Officer Lozoya fired ten times with his .40 caliber duty weapon. Officer Lozoya noted that he continued firing until Mann fell to the ground and was no longer a threat.³

After Mann fell to the ground, the officers approached him. Officer Tennis saw the knife was by Mann's hand, so he kicked it out of the way. Officers handcuffed Mann and requested immediate fire and ambulance response. Officers retrieved a first aid kit from a patrol vehicle and began applying dressings to Mann's wounds. They cut off his clothes to determine where he was wounded and to determine whether he had a firearm. Within moments of the shooting, as they searched Mann and rendered him care, one of the officers can be heard on an in-car camera recording emotionally asking Mann, "Why did you do that? Why did you do that, huh? Why couldn't you have put down the knife?"

When fire personnel arrived minutes later, the officers removed the handcuffs because by that point Mann had been searched and did not have any other weapons on his person. Mann was transported to the U.C. Davis Medical Center, where he was declared deceased at 10:12 a.m.

An autopsy was conducted by a pathologist with the Sacramento County Coroner's Office. The pathologist determined that Mann died from multiple gunshot wounds. The autopsy report noted fourteen gunshot wounds. One bullet struck him in the left side of his chest, and one struck him in the left side of his abdomen. The other bullets struck Mann in the groin, hip, legs and feet. Nine of the wounds have a direction from front to back. The remaining five wounds have a direction from back to front. These five wounds were to his right leg, left leg, left thigh, and left ankle. The Sacramento County District Attorney's Office Laboratory of Forensic Services confirmed the presence of methamphetamine and amphetamine in Mann's blood.

² When asked if he considered using his Taser, Officer Tennis explained that he chose not to use his Taser because the clothing Mann was wearing was baggy and the Taser likely would not have been effective. Also, Mann's aggressive behavior towards officers showed that he was not afraid of the police and that he was prepared to hurt or kill somebody. In addition, because the call included that Mann had a gun and Officer Tennis could not rule out that possibility, this was not the type of situation where a Taser would be utilized. Furthermore, Officer Tennis noted that there was no time to discuss the use of lethal versus non-lethal force with other officers because of the threat that Mann posed to people in the area. He felt they had to take immediate action. Officer Lozoya's Taser was on the ground near their patrol vehicle on the other side of the median, where it had dropped when he exited the vehicle.

³ When interviewed after the shooting, Officer Tennis indicated he thought he had fired seven times, and Officer Lozoya thought he had fired six times.

During the scene investigation, officers located a Smith & Wesson Special Tactical knife on the sidewalk just a few feet from where Mann fell. The knife was eight inches in overall length, with a three-and-a-half-inch blade.⁴ The District Attorney's Office conducted a subsequent review of the crime scene, utilizing video recordings to determine the location of Officers Tennis and Lozoya when they began shooting at Mann. From in-car camera and surveillance videos, it was observed that while crossing the northbound lanes of Del Paso Boulevard, the officers started shooting just as they reached the outside edge of the parking lane, which is demarked with white L-shaped lines. The distance from that location to where Mann stopped on the sidewalk measured approximately 15 and a half feet.

Multiple witnesses were interviewed during the investigation of this incident. Several civilians from the apartment complex where Mann was first observed followed him when he walked away from the officers who initially responded to that location. They saw Mann walk from Southgate Drive to Del Paso Boulevard as the officers trailed behind him in their patrol vehicle. The civilians who had personally observed Mann's behavior indicated to investigators that they understood why the officers shot Mann. Although some wished that the officers could have tased Mann or wondered if so many shots were necessary, several of these witnesses indicated they recognized the need for the officers to shoot Mann. One noted that it did not appear that they were trying to kill Mann, but instead that they just wanted to make him drop the weapon.

A civilian who had been standing on the corner of Del Paso Boulevard and Dale Avenue stated he saw Mann with a knife in his hands acting aggressively towards officers. He observed the officers follow Mann and order him to drop the knife but he refused. The officers exited their vehicles and ordered Mann to drop the knife no less than five times. One officer yelled, "We don't want to hurt you; just drop the knife." Mann refused to drop the knife and instead passed it back and forth from one hand to the other. Mann yelled, "I don't give a fuck what happens to me!" The officers continued to give him commands. Mann made a sudden movement, either lunging at the officers or trying to flee, and the officers shot him. Although this witness indicated he does not like the police, he did not think the officers had any other option but to shoot Mann. He stated that the officers "did what they had to do. It was by the book. The number of shots might have been a little excessive, but the officers did a good job." Furthermore, he indicated he knew what was going to happen because the officers had exhausted all efforts to rationalize with Mann.

A light rail passenger train consisting of two connected cars carrying over forty passengers proceeded down Del Paso Boulevard just as the incident was occurring. When Officers Tennis and Lozoya exited their patrol vehicle and chased Mann on foot, their vehicle was on the light rail tracks blocking the train's route. The train stopped with its first car directly across the street from the area of the sidewalk where Mann was running. The train came to a stop just moments before the shots were fired.

The light rail operator, who was positioned at the front of the train looking directly out onto Del Paso Boulevard as Mann ran across the street, watched as the officers approached Mann. He stated that it appeared that Mann was trying to reach for something that was either in the

⁴ The knife was analyzed for DNA evidence. The genetic profile obtained from a swab of the knife handle was determined to be the same as the reference profile obtained from Joseph Mann.

backpack he was wearing or was in his back pocket when the officers shot him. He noted that if Mann had just stopped, the whole situation could have been avoided.

Sacramento Police Department personnel interviewed the train passengers. Most reported that they were unaware of what was occurring until they heard the shots, at which point they looked over and only saw what happened after the shooting. Others looked out when the train was slowing and saw the officers fire at Mann, but were not able to provide additional details because they did not see what led up to the shooting or they did not have a good vantage point from their position on the train.

Witness accounts from train passengers who reported seeing at least a portion of the shooting varied greatly. Many indicated that Mann had nothing in his hands and had his hands up or went to put his hands up when he was shot, whereas one reported that Mann pointed his fingers at the officers. Another witness reported that Mann was in a sleeping bag in a fetal position on the ground when he was shot, whereas another indicated that Mann was crouched down like he was getting ready to go to the ground and give up when the officers opened fire, while still another stated that Mann slid down on the pavement and propped himself up on one arm and a couple of seconds later the officers fired. Yet another said Mann appeared to be taking off his backpack when the officers shot him. Several witnesses noted that the officers fired while Mann was on the ground or kept shooting even after Mann fell to the ground. Some noted that two officers shot Mann, while others reported it was three officers, four officers, or even five officers who fired. Many of these train passenger witnesses were clearly inconsistent with each other, as well as inconsistent with video recordings of the incident and physical evidence at the scene.

Surveillance video from above one of the businesses on Del Paso Boulevard captured the moment when Mann was shot. The video depicted Mann running northbound on the east sidewalk approaching the business. At this point, Mann was running away from the officers who were south of him still in their vehicles and Officers Tennis and Lozoya approaching him on foot from the west. Mann had an open path if he continued running northbound on the sidewalk. Instead, he looked in the direction of Officers Tennis and Lozoya, apparently seeing that they were now chasing him on foot and were no longer protected by their vehicle. Mann slowed and extended his left arm towards Officers Tennis and Lozoya. He suddenly stopped and turned to directly face them, again jabbing his left arm at the officers in an aggressive manner.

It appears in the grainy surveillance video that he either has something in his hand that he is pointing at the officers or he is pointing his finger at the officers. However, other evidence clearly demonstrates that Mann actually was pointing his knife in the officers' direction as they rapidly approached his position: Mann certainly had a knife in his hand that he had used to threaten civilians and officers up to this point, Officer Tennis can be seen in various videos kicking something out of Mann's hand right after the shooting, and a knife was found on the sidewalk near his body. The surveillance video also shows that as Mann pointed the knife at the officers a third time, they fired their weapons and he immediately fell to the ground.

A surveillance camera from a residence across the street from the apartments at 1125 Lochbrae Road captured footage of Mann before the officers arrived. Mann can be seen as he walked out of the complex on the driveway. He then stopped at the end of the driveway and turned to face

the complex. He appeared to stand at attention, then crossed the street, stopped, and faced the complex again. For a significant period he was blocked from the camera by bushes. He stood in that area for several minutes. At various points he could then be observed again as he stepped out into the street. Mann crouched down, with his arms extended, and performed karate style moves. He exhibited the same behaviors recorded on police in-car cameras after the officers contacted him.

Joseph Mann had a lengthy criminal history, including convictions for domestic violence, driving under the influence, and several theft offenses. At the time of this incident, he was on four separate grants of probation following his convictions for making criminal threats, residential burglary, resisting or obstructing peace officers, and petty theft. Some of Mann's prior contacts with law enforcement involved threatening behavior and being under the influence of narcotics.

Shortly after the present incident, Mann's father and sisters indicated that they did not consider him to have any significant mental illness. They noted that he was extremely intelligent, did not appear to have mental issues, and was quite capable of carrying on an intelligent conversation. Instead, they said that Mann battled substance abuse, most notably alcohol. They believed that he was likely on drugs, otherwise he would not have been acting the way he did on the date in question.

In March of 2015, as part of court proceedings in one of his criminal cases, Mann was interviewed and evaluated by a court-appointed psychiatrist from the U.C. Davis Medical Center. The doctor concluded that Mann was mentally competent to stand trial. The court agreed and found Mann competent.

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.) Additionally, a peace officer may detain a person where reasonable cause exists to believe that the person has a deadly weapon in violation of any provision of law relating to deadly weapons. (California Penal Code section 833.5.)

In this case, the officers clearly had reasonable cause to believe that Joseph Mann had committed a public offense and was a danger to others. Based on the reports made to 911 operators, the officers had reasonable cause to believe that Mann had committed the misdemeanor offense of drawing or exhibiting a knife in a rude, angry, or threatening manner in violation of Penal Code section 417(a)(1). In addition, the 911 callers indicated that Mann possibly had a gun in his waistband or pocket, which witnesses confirmed when the officers pulled up at the apartments. Based on that information, the officers had reasonable cause to detain Mann to determine if he had committed the additional offense of carrying a concealed firearm in violation of Penal Code section 25400.

When the officers observed Mann on the corner of Lochbrae Road and Southgate Road, they attempted to detain him by ordering him to the ground. Such restraint was reasonable to investigate the situation further and to protect the public at large. However, Mann refused. He ignored their commands and continued to walk down the street. He displayed his knife in a menacing manner towards the officers and yelled threats that he would physically harm them. He even threw a metal coffee mug in their direction, which struck the patrol vehicle they occupied. By this point, the officers had the additional reasonable cause to arrest Mann for the felony offense of resisting or deterring an executive officer by threat or violence in violation of Penal Code section 69.

Officers do not need to retreat or desist their efforts if the person they are arresting or detaining resists or threatens resistance; nor shall an 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, 396.)

Here, not only did the officers have the right to use physical force to arrest or at a minimum detain Mann, prevent his escape, and overcome his resistance, but Mann was obligated to allow the officers to take him into custody. A 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.)

In the present case, the officers first attempted to apply force to detain Mann by trying to strike him with their vehicle. Officers may use their vehicle as a tool to effect a detention, so long as its use is considered a reasonable application of force under the circumstances. At that point, Mann had refused repeated commands to drop the knife he was holding and had refused repeated commands to get down on the ground. He had just run directly at Sergeant Poroli's vehicle with his arm raised holding his knife in a menacing manner. Sergeant Poroli was so concerned for his own safety that he barricaded himself inside his vehicle and attempted to move his car away from Mann. Mann immediately ran around the back of Sergeant Poroli's car and it was unknown whether Mann would attempt to enter Sergeant Poroli's car on the driver's side or if he would continue his menacing conduct towards the female civilian who was standing immediately adjacent on the corner.

Officer Tennis was concerned that exiting his vehicle at that point would put himself in a dangerous position. He thought that he could strike Mann with his vehicle and knock him to the ground or cause him to drop the knife, without necessarily killing or seriously injuring Mann given the speed of his vehicle at that time. Although an officer can be heard on an in-car camera recording using an expletive just before this action was attempted, the fact that this inappropriate comment was made does not change our analysis of the facts or the law. The attempted application of force by using a vehicle in this case was lawful given the circumstances. The reasonableness inquiry is an objective test, without regard to the officer's motivations or intentions. (*Graham v. Connor* (1989) 490 U.S. 386, 397; see also *People v. Jenkins* (2000) 22

Cal.4th 900, 1020.)

In addition to the authority to use reasonable force to effect an arrest or detention, 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.)

Both officers believed that Mann posed an imminent danger to themselves and each other as they chased him and when he suddenly stopped and confronted them. They were only approximately 15 feet away from him, well within what law enforcement studies have shown as a zone of danger for dealing with individuals with knives.⁵ The surveillance video from above the sidewalk depicts an image in which it appears that Mann did not lunge or move towards the officers, but instead just pointed the knife in their direction as they approached. However, 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.)

Moreover, the way in which Mann turned instead of continuing to run, the way he held the knife and pointed it in a threatening manner towards the officers, and all of his previous dangerous conduct weighed in the officers' minds in assessing what Mann was about to do. Even a nearby civilian noted that Mann's sudden movement could have been perceived as a lunge at the officers. In addition, just moments earlier Mann had threatened officers that he could not wait for them to get out of their vehicles and approach him so he could "gut" them with his knife. Officers had to physically approach him in order to arrest him. Given his previous actions of waving the knife, his repeated refusal to drop the knife, and the verbal threats he made to officers, he posed an imminent risk of great bodily injury to the officers. Considering all of these circumstances, it was reasonable for the officers to believe they were in imminent danger of death and great bodily injury.

In addition to the above, under California law, deadly force may be used to make an arrest if the crime threatens death or serious bodily harm or there is a substantial risk that the suspect will cause death or serious bodily harm if his apprehension is delayed. (*Tennessee v. Garner* (1985) 471 U.S. 1, 16, footnote 15.) In fact, deadly force may be used to prevent an apparently unarmed suspected felon's escape if the force "is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." (*Tennessee v. Garner* (1985) 471 U.S. 1, 3.) At any point along that sidewalk, Mann could have quickly and easily entered one of several businesses. Mann had

⁵ This is sometimes referred to as the "Tueller Rule" because its origin is based on the research of Sgt. Dennis Tueller of the Salt Lake City Police Department. Various law enforcement research and training resources address the danger of dealing with a suspect armed with an edged weapon at 20 feet or less.

already acted in a dangerous, aggressive, and threatening manner towards civilians at the apartments. Considering how he was running, waving his knife around, and refusing to surrender, there was a substantial risk that he would cause death or serious bodily injury to others if his apprehension was further delayed. As such, the officers were permitted to use deadly force to arrest him.

Regarding the number of shots fired, each officer individually did not fire an excessive number of shots. It is not unusual, when considering the time it takes the brain to perceive, process, and react to stressful situations, that the officers may have briefly continued to fire after Mann fell to the ground. In fact, each officer thought he had fired fewer shots than he actually did. A review of the numerous videos of this incident demonstrates that it occurred in rapid fashion, with the shooting lasting approximately three seconds. The officers perceived an immediate threat, began firing, and continued pulling their triggers until their brains processed the visual cue that Mann was now on the ground in a position where he was no longer a threat. At this point, the officers stopped firing and immediately turned their attention to handcuffing him and rendering the scene safe. Nothing about these circumstances suggests that the officers intentionally or deliberately shot Mann well after he had been disabled. Moreover, in the surveillance video from the nearby business, Mann appears to fall on his left side with his legs twisting further in that same direction, presenting the back of his legs to the officers' position. This twisting motion as he fell explains the bullet paths from back to front the pathologist noted in Mann's legs, thigh, and ankle.

There is no doubt that Officers Tennis and Lozoya were dealing with a very dangerous individual who posed an immediate threat to the officers and the public. Joseph Mann was acting aggressively while under the influence of methamphetamine. He exhibited a deadly weapon in a rude and angry manner at multiple civilians and appeared to them to also be carrying a firearm. He slashed his knife in the direction of officers and threatened to use it to cause them bodily harm. He ran aggressively at an officer holding his knife in a threatening manner. He repeatedly refused commands to stop and disarm himself. While attempting to escape from pursuing officers, he ran directly in front of multiple businesses into which he could have easily entered and harmed others. When he finally stopped, he was holding his knife in a menacing manner and turned directly towards officers who were in close proximity trying to disarm and arrest him. Considering the totality of these circumstances, and the rapid decision the officers were forced to make because of the immediate danger to themselves and the public that Mann presented, Officers Tennis and Lozoya acted lawfully in using deadly force.

CONCLUSION

Officers Tennis and Lozoya were justified in shooting Mann to defend themselves and each other, to protect the public from imminent harm, and to prevent the escape of a suspected felon who posed a significant threat of death or serious bodily injury to others. Their conduct under these circumstances was lawful. Accordingly, we will take no further action in this matter.

cc: Sacramento Police Department Officer John Tennis
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Francine Tournour, Office of Public Safety Accountability