



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: May 26, 2020

TO: Police Chief Timothy Albright
Elk Grove Police Department
8400 Laguna Palms Way
Elk Grove, CA 95758

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. EGPD-2019-002821
Shooting Officers: Musa Abedrabbo #307 EGPD
Jason Miller #157 EGPD
Person Shot: Lester Tucker (DOB 8/17/77)

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 Lester Tucker. For the reasons set forth, we conclude the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other items, including: Elk Grove Police Department report number 2019-002821 and its related dispatch logs and audio recordings, 9-1-1 call recordings, witness interview recordings, crime scene photographs, surveillance videos, in-car camera and body-worn camera videos, Sacramento County District Attorney's Office Laboratory of Forensic Services Physical Evidence Examination Report, and Kaiser Hospital Medical Records for Lester Tucker.

FACTUAL SUMMARY

On April 20, 2019, at approximately 11:11 p.m., an anonymous female complainant dialed 9-1-1 and stated that approximately five minutes earlier she saw a subject attempting to break into a trailer connected to a truck at Tegan Road and Franklin Boulevard in Elk Grove. She described the subject as a black or Hispanic male adult wearing a gray sweater. She told the dispatcher that the subject was with a white female adult who was seated in a gray sedan with no front license plate.

The caller stated that the male subject was manipulating the door handles on the trailer and that she thought the male subject had transferred a black handgun from his pants pocket to his hooded sweatshirt pocket. She said that she saw the handgun for a second, but that the subject had not brandished it. The caller told the dispatcher that she wanted to remain anonymous.

Elk Grove Police Department (EGPD) Officer Musa Abedrabbo and Canine Officer Jason Miller were dispatched to Tegan Road west of Franklin Boulevard to respond to the suspicious person call. Both officers were dressed in full uniform and were driving fully marked EGPD patrol vehicles.

At approximately 11:18 p.m., Officer Abedrabbo arrived at Tegan Road and Franklin Boulevard. As he turned onto Tegan Road, he saw a Toyota Corolla with no front license plate parked along the south curb of Tegan Road. The Corolla looked gray in color to Officer Abedrabbo. Directly behind it was a Chevrolet Suburban SUV connected to a white trailer with a Pennsylvania license plate. Standing on the sidewalk next to the Corolla was a black male adult (later identified as Lester Tucker) wearing a gray hooded sweatshirt and a white female adult with a small dog on a leash.

Officer Abedrabbo parked his patrol vehicle on the south curb of Tegan Road, directly facing the Corolla. He turned on his spotlight and got out of his patrol vehicle. Because the 9-1-1 caller stated that the male subject was armed, Officer Abedrabbo walked on the street side of the Corolla to preserve distance between himself and the two subjects on the sidewalk.

Officer Abedrabbo asked if everything was okay. Tucker responded that they were “just walking the dog.” Officer Abedrabbo stated that there was a call about someone “messing with the trailer.” Tucker replied the trailer belonged to a friend, he was here to check on it, and that it was just parked there for the day.

Officer Abedrabbo asked the two subjects for identification. Tucker did not produce any identification and instead responded that they had not done anything wrong. Officer Abedrabbo asked if either of them was on probation or parole. Tucker responded that they were not. Officer Abedrabbo then asked, “Could you just do me a favor, just don’t put your hands in your pocket anymore? Someone mentioned they saw a gun. We just don’t know yet.” Tucker replied, “Ain’t nobody got no gun out here, man.” Officer Abedrabbo, attempting to use de-escalation tactics as his partner had not yet arrived, responded, “Okay, I’m sure that’s the case.”

The female subject stated that her I.D. was in her car. Officer Abedrabbo told her she could leave it there for now and asked the two subjects to have a seat on the curb. The female subject was holding the leash for the small dog. Tucker held a cell phone and appeared to have an object in the front pocket of his hooded sweatshirt. Officer Abedrabbo noticed the front pocket of Tucker’s sweatshirt was sagging, and he suspected that was where Tucker had the gun that the 9-1-1 caller had reported.

Tucker and his female companion both took seats on the curb. Tucker sat with his knees bent and with his arms hanging over his knees. He looked at Officer Abedrabbo, looked towards

Franklin Boulevard, looked again towards the officer, and looked again towards Franklin Boulevard. Tucker then quickly stood up and bent over the forehead of the female subject seated next to him. Officer Abedrabbo drew his firearm, pointed it at Tucker, and ordered him to take a seat. Tucker declared that he was “just giving her a kiss,” then took off running southbound towards the Walgreen’s located at 9180 Franklin Boulevard.

Officer Abedrabbo holstered his gun and gave chase. He broadcast over the radio that he was chasing after a black male adult in a gray hoodie. He shouted commands to Tucker to stop running and get on the ground. Tucker ignored Officer Abedrabbo’s commands and kept running. Officer Abedrabbo ran after him, but intentionally tried not to close the distance too quickly as his partner had not yet arrived and he did not want Tucker to fire backwards at him.

Officer Miller had turned his patrol vehicle west onto Tegan Road just as Tucker stood up and started to run away from Officer Abedrabbo. Officer Miller put his vehicle in reverse, turned around, headed southbound on Franklin and quickly made the right turn into the shopping center parking lot. He then turned left within the parking lot to catch up to where Officer Abedrabbo was chasing Tucker in the shopping center parking lot between the Walgreen’s building and the Little Caesar’s Pizza building. Officer Abedrabbo heard Officer Miller’s patrol vehicle approaching and moved to the left to allow Officer Miller to accelerate past him.

As Officer Miller saw Tucker running, he saw that Tucker was running with one arm swinging free, and the other arm pinned against his body. He noted that this was consistent with other people he had chased that were carrying firearms. However, Officer Miller noticed that Tucker had run over approximately 100 yards and had not yet thrown away a gun. Officer Miller’s experience had been that fleeing subjects would ordinarily turn a corner and throw away their gun to disassociate themselves from having a firearm. Officer Miller believed that Tucker’s unwillingness to throw the firearm indicated that Tucker was holding on to the firearm because he intended to use it.

Tucker turned west on the sidewalk in front of the Little Caesar’s Pizza restaurant. Officer Miller turned his patrol vehicle west to follow him. Officer Miller knew that there was a wall at the end of the parking lot that was low enough to be scaled by the fleeing suspect, with houses on the other side of the wall. Officer Miller planned to deploy his police dog to apprehend Tucker and intended to turn right into the parking stalls to allow him to safely release the dog from the driver’s side such that the dog would not target the wrong person.

Tucker turned off the sidewalk into the parking area in front of the Little Caesar’s and a neighboring hair salon as Officer Miller sharply turned his patrol vehicle to the right to turn into a parking space. This caused Tucker to run into the passenger side door and windshield of Officer Miller’s vehicle. Tucker fell to the ground.

Officer Miller opened his driver’s side door, exited, and came around the back of the patrol vehicle as Tucker was getting up off the ground. Officer Abedrabbo approached Tucker from behind, with his firearm pointing at Tucker, yelling “Fucking get on the ground now!” Tucker faced Officer Miller. They were approximately ten feet apart. Tucker took a step in Officer Miller’s direction. Tucker held a cell phone in his right hand, and his left hand was in the area of

his waistband. Officer Miller pointed his firearm at Tucker and yelled, "Show me your hands!"

As Tucker moved towards Officer Miller, both officers believed that Tucker posed an immediate danger to Officer Miller and both feared that Tucker would use the gun in his waist area to shoot Officer Miller in order to get away. Both Officer Miller and Officer Abedrabbo then fired several shots at Tucker in rapid succession. Both officers indicated that they attempted to fire in a downwards trajectory due to the danger of crossfire, as Tucker was between them.

Tucker was struck by the gunfire and fell to the ground. Officer Abedrabbo also fell to the ground. Officer Miller announced on the radio that shots were fired, and an officer was hit.

Officer Miller asked Tucker if Tucker had a gun. Tucker replied, "No, sir." Officer Miller instructed Tucker to lie on his stomach and keep his hands out to the side. Tucker replied that he could not because he had been shot.

EGPD Officers Kevin Lubina and Christina Gonzalez arrived on scene. Officer Lubina placed Tucker in handcuffs, and Officer Gonzalez searched Tucker. Officer Gonzalez located a loaded 9-millimeter Taurus semi-automatic firearm in Tucker's waistband area, underneath his gray sweatshirt. The Taurus was later tested at the Sacramento County Laboratory of Forensic Services. The Taurus was determined to be operable and was loaded with eleven rounds.

The officers' efforts to avoid crossfire were unsuccessful. Officer Abedrabbo received a gunshot injury to his right lower leg, and Officer Miller received a gunshot injury to his right calf.

Medical records from Kaiser Hospital for Lester Tucker were reviewed. They state that Tucker was shot at least seven times, receiving injuries to the right lower chest, left hand, right hip area, left hip area, right groin area, left knee and tailbone area. He survived his wounds.

Both officers' firearms were examined. A round count and examination of casings recovered at the scene indicated that Officer Abedrabbo fired seven rounds and Officer Miller fired five.

The white female adult with Tucker during his initial contact with Officer Abedrabbo was interviewed. She stated that she had known Tucker for several days, and he had asked her to drive him from Hayward, California, to Elk Grove to check on the trailer. They drove to Tegan Road in her Toyota Corolla and parked. She stated that she and Tucker were standing on the sidewalk when an officer arrived. The officer asked them to sit on the curb. She stated that she saw Tucker stand up and run from the area. She remained at the scene until officers arrived.

The anonymous 9-1-1 caller was identified and interviewed. The caller indicated that she had known Lester Tucker since they were children. She stated Tucker had arrived at her house earlier that evening and placed a firearm on the table while he used the restroom. Tucker had asked her to show him the location of the trailer. She drove to the area with Tucker. Tucker gave her the keys to the trailer and asked her to move it every few days so that it did not get tagged by code enforcement. She then drove away from the area. Tucker later texted her that he had changed his mind and was going to stay in the trailer. She indicated that was when she called 9-1-1 and reported him with the gun.

Body-worn camera and in-car camera footage was reviewed. The in-car camera video for Officer Abedrabbo captured only the initial contact between Officer Abedrabbo, Tucker, and the white female. The body-worn camera for Officer Abedrabbo captured the initial contact, the chase, the shooting, and the aftermath. The recordings are consistent with the events as described in the reports.

The in-car camera video for Officer Miller showed Tucker running from Officer Abedrabbo and into the shopping center. Tucker can be seen colliding with the right front of Officer Miller's patrol vehicle. However, as the camera is forward-facing, it does not capture the shooting. Officer Miller's in-car camera recording contained no sound, but his body-worn camera recording contained sound. While Officer Miller is in the patrol vehicle, the camera view is of the steering wheel and dashboard. Once Officer Miller opens the driver's side door, the recording shows Officer Miller coming around the back of the patrol vehicle shouting commands and the shooting of Tucker. The recordings are consistent with the events as described in the reports.

The body-worn cameras of Officers Lubina and Gonzalez capture the recovery of Tucker's firearm from his waistband area after the shooting, at approximately 11:24 p.m. The recordings are consistent with the events as described in the reports.

On January 21, 2020, in Sacramento County Superior Court case number 19FE007734, Lester Tucker pled guilty to the crime of being a felon in possession of a firearm in violation of Penal Code section 29800 and admitted having a prior serious felony. On February 14, 2020, he was sentenced to a term of 32 months in state prison.

LEGAL ANALYSIS

A peace officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to detain or arrest the person, to prevent the person's escape, or to overcome the person's resistance. (California Penal Code section 835a; CALCRIM 2670.) An officer who detains or arrests a person does not need to retreat or stop his or her efforts if the person resists or threatens resistance. Moreover, using reasonable force does not make the officer an aggressor or cause him or her to lose the right to self-defense. (California Penal Code section 835a.) The person being detained or arrested has a duty to permit himself or herself to be detained, and the person must refrain from using force or any weapon to resist arrest. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; California Penal Code section 834a; CALCRIM 2670, 2671, 2672.)

In the present matter, Officer Abedrabbo had reasonable cause to detain Tucker based on the anonymous 9-1-1 call that described an armed suspect, matching Tucker's description, trying to enter the trailer. Further, it was reasonable for Officer Abedrabbo to ask the two subjects for identification and to ask initial questions to determine what was occurring. When Officer Abedrabbo attempted to do so, Tucker stood up, leaned over his female companion, kissed her on the head, and took off running. Officer Abedrabbo clearly had reason to detain Tucker to

investigate this matter further. Officer Abedrabbo drew his firearm and ordered Tucker to sit back down. At this point, Tucker had a duty to submit himself to Officer Abedrabbo's custody, but he refused. Instead, Tucker ran southbound into the shopping center parking lot, ignored the officer's commands, and appeared to be holding an object concealed in his waistband.

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.)

Here, Officers Abedrabbo and Miller were reasonable in their belief that Tucker posed an imminent danger of death or great bodily injury to themselves and each other. Tucker knew they were police officers. Both officers were dressed in full uniform and were driving marked patrol vehicles. The officers had received information about the 9-1-1 call that the subject had a firearm concealed in the pocket of his sweatshirt. Officer Abedrabbo saw that there appeared to be an object in Tucker's pocket as he spoke with him by the trailer. Moreover, Tucker refused to remain seated and fled from the officer even though Abedrabbo had drawn his firearm and was pointing it at Tucker.

As Officer Miller was driving through the parking lot after Tucker, he noticed that Tucker had run for some distance with his arm by his waist and had not thrown the firearm away. This indicated to Officer Miller that Tucker was holding on to the firearm because he intended to use it. Officer Miller also knew Tucker was running towards a relatively low wall at the end of the shopping center that led into a residential area.

As Officer Miller pursued Tucker through the parking lot, he made a sharp right turn in front of Tucker as Tucker moved from the sidewalk into the parking area. This caused Tucker to run into the passenger side of the patrol vehicle and fall to the ground. Both officers had their firearms drawn and yelled commands at Tucker to get on the ground and to show his hands. Instead, Tucker moved in the direction of Officer Miller with his left hand still by his waistband and was approximately ten feet away from Officer Miller.

Under these facts, it cannot be said that Officers Abedrabbo and Miller were unreasonable in their beliefs that Tucker was going to shoot Officer Miller. Although Tucker had not yet drawn his firearm, under the law, the officers' actions are judged based on the reasonable perception of the threat. Given all of these circumstances, the officers' belief that Tucker posed an imminent

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.

danger of death or great bodily injury to Officer Miller was reasonable.

CONCLUSION

Based on the circumstances of this incident, Officers Abedrabbo and Miller honestly and reasonably believed that Tucker posed an imminent danger of death or great bodily injury. Therefore, they acted lawfully in shooting Tucker to defend Officer Miller. Accordingly, we will take no further action in this matter.

cc: Elk Grove Police Department Officer Musa Abedrabbo #307
Elk Grove Police Department Officer Jason Miller #157
Elk Grove Police Department Detective Mark Bearor