



Sacramento County District Attorney's Office

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DATE: April 14, 2022

TO: Chief Kathy Lester
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FROM: Sacramento County District Attorney's Office

SUBJECT: Officer-Involved Shooting Case No. SPD-20-218432
Shooting Officer: SPD Officer Drake Walker #835
Person Shot: Jeremy Southern (DOB 7/24/1997)

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 shooting of Jeremy Southern. For the reasons set forth, we conclude that the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other documentary items. These items include Sacramento Police Department Report 20-218432, video and audio recordings, dispatch calls, witness interviews, photographs, diagrams, evidence logs, Sacramento County District Attorney Laboratory of Forensic Services reports, and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

On July 15, 2020, at approximately 9:00 p.m., two gunshots were fired in the parking lot at The Crossings Student Living (The Crossings), an apartment complex located at 2920 Ramona Avenue in Sacramento. When Sacramento Police Department officers responded to the scene, they located two spent 9mm casings near the pool area.

Witnesses said that a male adult known as "HB" had been in a dispute with a female whose property he had taken. During the dispute, the male fired two shots in the air over the female's head. Further investigation identified "HB" as Jeremy Southern, a parolee-at-large. A recent parole photograph of Southern showed that he had the letters "HB" tattooed on his neck, and further investigation revealed that Southern was living with a resident at The Crossings.

On July 21, 2020, at approximately 2:17 p.m., Sacramento Police Department Officers Eric Nedeljkovic and Derek Calabrese responded to the apartment complex and met with the manager

in an attempt to collect video surveillance from the July 15th shooting incident. Both officers were in plain clothes and arrived in an unmarked vehicle.

While in the camera room attempting to access the video surveillance system, Officer Nedeljkovic looked out the window and saw a grey Mazda in the parking lot. He observed a male and a female going in and out of the car. He believed the male was Jeremy Southern but was not close enough to be certain.

Officer Nedelikovic told Officer Calabrese that he thought he saw Southern, and then Officer Nedelikovic left the camera room and proceeded to the officers' vehicle to retrieve his marked police vest, radio, and body-worn camera.

As Officer Nedelikovic went to the officers' vehicle, Officer Calabrese exited the camera room and saw the male and the female walking across the parking lot. Officer Calabrese began walking and approached within approximately five to ten feet of the male and identified the male as Southern based on his face matching the parole photograph and seeing "HB" tattooed on his neck. Officer Calabrese saw that Southern was holding a bag, and when Officer Calabrese and Southern made eye contact, Southern began to manipulate the bag as if to unzip it. Officer Calabrese feared that Southern may be reaching for a gun and decided to keep his distance.

As Officer Calabrese continued to watch Southern, Officer Nedelikovic retrieved his radio, marked police vest, and body-worn camera from the vehicle. As he was doing so, both officers were communicating via cell phone and Officer Calabrese told Officer Nedelikovic that he positively identified the male as Southern. At approximately 2:56 p.m., Officer Nedelikovic radioed for additional units to respond to their location. Officer Nedelikovic also activated his body-worn camera as he ran to rejoin Officer Calabrese. At this point, Southern and the female walked into a breezeway that led to the glass entrance doors of Building #1. The breezeway was a long, outdoor hallway, approximately 75-80 feet long, that led at the far end to a center courtyard at the entrance to Building #1.

Officers Nedeljkovic and Calabrese approached the south entrance to the breezeway. They saw Southern and the female standing in the courtyard at the end of the breezeway, right in front of the glass entrance doors.

The officers began to walk northbound into the breezeway. Officer Calabrese drew his firearm. Officer Nedeljkovic, now wearing his marked police vest, yelled, "Put them up! Stop! Put them up!"

Officer Nedeljkovic saw that Southern had a gun. He told Officer Calabrese to back up and they retreated back to the entrance of the breezeway to take cover.

At approximately 2:57 p.m., Officer Nedeljkovic broadcast that Southern had a gun and was holding it "halfway up." He announced their location and requested additional units to respond Code 3.¹ Officers Nedeljkovic and Calabrese shouted multiple commands at Southern to drop

¹ Code 3 indicates to consider the call an emergency response and proceed immediately, including utilizing emergency lights and siren as reasonably necessary.

the gun, and Officer Calabrese verbally identified themselves as Sacramento Police Department. Southern did not drop the gun. Officer Nedeljkovic heard Southern say, "I'm not going back." This statement is captured on Officer Nedeljkovic's body-worn camera recording.

Officer Drake Walker and his partner Officer Stephen Colombo were on Power Inn Road when they heard Officer Nedeljkovic's request for additional units to respond Code 3. Officer Walker was dressed in a blue SPD uniform and was armed with a .40 caliber handgun. In his patrol car, he had a 40mm foam baton launcher and a Colt M16 department-issued rifle.

Officer Walker activated the patrol vehicle's overhead lights and turned on the in-car camera and the officers' body-worn cameras. They arrived on scene at The Crossings at approximately 2:58 p.m. and parked near the basketball court on the east side of the complex. Officer Walker retrieved his rifle and ran towards the center of the complex to find the other officers.

Officer Walker joined Officers Nedeljkovic and Calabrese on the south side of Building #1, at the end of the breezeway.

When Officer Walker arrived, Officer Calabrese was on the left side and Officer Nedeljkovic was on the right side at the end of the breezeway, using the end of the building as cover. Both officers had their handguns out pointing down the breezeway.

Officer Nedeljkovic yielded his position to Officer Walker as Officer Walker was armed with a rifle. He advised Officer Walker, "The gun is up. He has the gun up."

Officer Walker looked around the corner of the building into the breezeway. He saw Southern standing at the far end holding a gun pointed right at Officer Walker. He feared Southern was preparing to shoot. Officer Walker was concerned about the danger to himself, to other officers, and to the onlookers behind them who had come out to see what was going on.

Officer Walker heard Officer Calabrese yelling for Southern to put the gun down. Officer Walker saw that Southern was still pointing his gun right at him. Southern was holding a black handgun at his eye level and appeared to be using the sights to aim directly at Officer Walker. Officer Walker believed whoever got the first shot off would live. He fired one round with his rifle at Southern's chest.

Southern fell to the ground on his back and dropped the gun. Southern's body was lying perpendicular to the officers, with his head pointed to the officers' right. Southern rolled over onto his right side, so that his back was facing the officers. Officer Walker could see that Southern's shoulders were still moving. Officer Walker knew that Southern had not yet been searched and he feared Southern might have a second gun or could reach the gun he dropped a few feet away before officers closed the distance between them. Officer Walker advised other officers it was not yet safe to approach until shields were available.

Officers repeatedly gave directions to Southern to stay on the ground and show his hands, but Southern did not comply. Southern began to use his arms to push himself up and began to rotate

his body slowly clockwise so that he was facing directly towards the gun, which had fallen a short distance from his left foot. Southern then began to start crawling towards the gun.

Officer Walker believed that Southern was crawling towards the gun so that he could shoot at the officers. As Southern was moving, Officer Walker announced, "He's going for the gun." Officer Nedeljkovic broadcast at approximately 3:01 p.m. that Southern was going for the gun.

Officer Walker estimated that at this point, Southern was approximately 5-6 feet from the gun. He wanted to prevent Southern from grabbing the gun and shooting someone. Officer Walker fired again from his rifle.

Southern sank back to the ground. Another officer arrived with shields and a contact team was formed to approach Southern. Officers traversed the length of the breezeway and contacted the female who was with Southern. They confirmed she was uninjured, placed her in handcuffs, and removed her from the scene.

Other officers secured Southern's handgun, placed him in handcuffs, and provided medical care until relieved by Fire Department medical personnel. Southern's gun was a Taurus 9mm handgun, loaded with one round in the chamber and eight additional rounds in the magazine.

Southern was transported by ambulance to the UC Davis Medical Center. He was pronounced deceased at approximately 3:45 p.m.

Officer Walker considered using less-lethal alternatives. He believed his taser would be ineffective as the taser had a maximum range of 21 feet and Southern was more than 21 feet away. He further believed the taser would be ineffective as he was not confident the taser probes would penetrate Southern's clothing.

Officer Walker also believed the 40mm foam launcher would be ineffective for two reasons. First, he believed the foam launcher might not affect Southern, who could then respond with gunfire. Second, the foam launcher was still in his patrol vehicle and not immediately available. Given that Southern was confronting officers with lethal force, Officer Walker did not believe the non-lethal responses available to him would be sufficient to subdue the threat presented by Southern.

An eyewitness observed this incident from his apartment above the courtyard where Southern was standing. He recorded the events on his cell phone, with a "bird's-eye view" of Southern's actions in the courtyard.

Prior to the first shot being fired, the cell phone video shows Southern standing in a bladed stance² holding a black handgun in both hands. Southern walks back towards the apartment entrance doors and removes a cell phone from his pocket. Southern appears to talk on the phone while continuing to point the handgun at officers. Eventually, Southern puts the phone back into his pocket and holds the handgun again with both hands, pointed in the direction of the officers.

² A bladed shooting stance is one in which the subject, instead of squarely facing a target, places one foot forward of the other so the subject is angled, or bladed, towards the target.

After approximately one minute and 20 seconds of pointing the gun at officers, Southern is struck with the first gunshot. Southern falls to the ground on his back and drops the gun.

Approximately one minute later, the cell phone video shows Southern rolling from his back onto his right side, facing away from the officers. Officers yell multiple commands at Southern to stay on the ground. Instead, Southern pushes his body off the ground and rotates his body clockwise towards the gun. Southern is then struck by the second gunshot and falls back to the ground.

Multiple additional witnesses were interviewed who observed Southern pointing his gun at officers. One of these witnesses, who observed the incident from his bedroom window, knew Southern as "HB." The witness stated he saw Southern holding a black handgun. He heard police yelling, "Drop the gun!" The witness stated he yelled at Southern through his bedroom window, "Bro, put the gun down!" He then heard Southern say, "I'm not going back to jail," while pointing the gun at officers. The witness saw Southern fall after the first gunshot. He then saw Southern crawl, possibly towards the gun. He then heard the second gunshot.

An additional witness who resided in the complex was interviewed. This witness stated that Southern had been staying with him in his apartment for the last three weeks. The witness did not observe the shooting but did see armed police officers yelling Southern's name. The witness stated that approximately one month prior, Southern told him he would rather die than go back to prison. The witness described Southern as having depression and that he could be suicidal. The witness also informed officers he had previously seen Southern with what he described as a "black Glock."

After the shooting, SPD detectives used still images from the eyewitness cell phone video to reconstruct the scene. After the first shot was fired, Southern fell on his back, with his head facing east. His gun fell to his southwest, near his left foot. At this point, the distance between the gun and Southern's left hand was less than nine feet.

When Southern began to lift his body from the ground, he rotated in a clockwise direction. After approximately 13 seconds, he was facing directly towards the gun as the second gunshot was fired. At this point, the distance between the gun and Southern's right hand was less than seven feet.

At the time of the second gunshot, Officer Walker was approximately 84 feet from Southern, who was on the ground in the courtyard past the breezeway. When the contact team made their approach, it took them approximately 13 seconds to travel the length of the breezeway and into the courtyard to reach Southern.

In total, Southern pointed his gun at officers for approximately one minute and 27 seconds. During that time, Officers Calabrese and Nedeljkovic gave Southern approximately three dozen commands to drop the gun. After the first gunshot, Officer Brandon Kellerman and Officer Dakota Penny gave Southern approximately 10 commands to stop moving and stay on the ground before the second shot was fired.

A round count and examination of casings recovered at the scene confirmed that Officer Walker fired two shots from his rifle.

The Sacramento County Coroner determined that Southern's cause of death was "Multiple Gunshot Wounds of Torso." One gunshot entered in the right chest. The second gunshot entered in the left lower chest.

A sample of Southern's blood was analyzed by the Sacramento County District Attorney Laboratory of Forensic Services. The sample was found to contain a blood alcohol concentration of .012%. No drugs were detected in the sample.

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. (California Penal Code section 835a(b); *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; 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. (California Penal Code section 834a; *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, Officers Calabrese and Nedeljkovic were present at The Crossings to investigate a shooting that had occurred a week earlier. A witness told officers she saw a subject she knew as "HB" fire two gunshots into the air above her head, and two spent casings were found in the parking lot.

When Officers Calabrese and Nedeljkovic responded to The Crossings on July 21st to review the surveillance video, they had developed information that "HB" was Jeremy Southern. Officer Nedeljkovic saw a male subject getting out of a Mazda in the parking lot and notified Officer Calabrese. Officer Calabrese located the subject, saw the "HB" tattoo on his neck, and confirmed that it was Southern.

Accordingly, Officers Calabrese and Nedeljkovic had a responsibility to apprehend Southern for the July 15th shooting. They had a further responsibility to apprehend Southern as they were aware that he was a parolee-at-large. Officers Calabrese and Nedeljkovic followed Southern and his companion into the breezeway at the entrance to Building #1. Officer Nedeljkovic was now wearing a marked police vest. Officer Calabrese drew his firearm and both officers yelled commands to Southern to stop and raise his hands. Officer Calabrese yelled that they were Sacramento Police.

Southern had the responsibility to drop his gun and permit himself to be detained. He chose not to do so. Instead, Southern pointed his gun at the officers.

Officers Calabrese and Nedeljkovic were forced to retreat to the end of the breezeway to use the end of the building as cover. When Officer Walker arrived with a rifle, Southern was still pointing his gun towards the officers. Officer Walker took a position on the right side of the breezeway. When he looked around the corner of the building, he saw that Southern was holding his gun at eye level, staring down the sights of the handgun and aiming directly at Officer Walker.

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. (California Penal Code section 835a(c)(1)(A); CALCRIM 505, 507, 3470.) An officer who uses deadly force must actually believe that force is necessary. The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.) Thus, the officer may employ all force reasonably believed necessary. (CALCRIM 3470.) The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. (California Penal Code section 835a(a)(4); *Graham v. Connor* (1989) 490 U.S. 386.)

Here, Southern's decision to point his loaded firearm at officers from approximately 84 feet away in a public apartment complex constituted an immediate danger of death or serious bodily injury to the officers and to the onlookers behind them who had gathered to see what was going on. More specifically, Southern's decision to aim directly at Officer Walker constituted an immediate threat of death to Officer Walker.

Officers gave multiple commands to Southern to lower his gun. At least one onlooker yelled at Southern to lower his gun. Southern responded to these directions by stating, "I'm not going back." In this context, it was reasonable for Officer Walker to believe Southern intended to engage in gunfire with officers rather than allow himself to be taken into custody. Given these circumstances and given that Southern was pointing his firearm directly at Officer Walker, it was reasonable for Officer Walker to believe Southern intended to shoot him or one of the other officers present. Accordingly, it was reasonable for Officer Walker to believe it was necessary to fire the first shot.

After the first gunshot, Southern fell onto his back, facing east, and dropped his gun near his left foot. Southern was approximately 84 feet from the officers. Shields were not yet available on scene. Officer Walker did not know if Southern had a second firearm or would be able to grab his gun before officers traveled the length of the breezeway to secure it. Officer Walker advised the other officers present it was not yet safe to approach Southern.

Approximately one minute after the first shot, Southern rolled onto his right side, then began to

lift himself off the ground and rotate his body clockwise until he was facing directly towards the gun. This process took approximately 13 seconds. Both Officer Walker and Officer Nedeljkovic believed Southern was going for the gun. Notably, even one of the witnesses observing the incident from his bedroom window told officers Southern was crawling possibly towards the gun. As established by the SPD scene reconstruction, Southern was within less than approximately seven feet of grabbing the gun.

At this point, Officer Walker had only three possible alternatives. First, officers could attempt to race down the hallway to reach the gun before Southern did. However, officers were approximately 80 feet away from the gun, and Southern was only about six feet away. Shields were not yet available, and the breezeway was a long, narrow hallway that provided no cover. Given that it took officers approximately 13 seconds to travel the length of the hallway once shields arrived, it would be an unreasonable risk for officers to race for a gun 13 seconds away as Southern only had to lunge forward less than seven feet to get there first.

The second available option was to do nothing and wait for Southern to reach the gun. This alternative is similarly unreasonable. Despite having already been shot in the chest, Southern appeared determined to use all his remaining energy to reach his gun, indicating he intended to continue fighting. This presented an immediate danger to the officers, the onlookers, and the residents of the apartments surrounding the courtyard who were watching from their windows.

The third option was the one chosen by Officer Walker. Once Southern's actions made it clear that he was fighting to reach the gun and had closed to within just a few feet of reaching it, Officer Walker was reasonable in concluding that Southern intended to immediately use the gun once he reacquired it. As such, Officer Walker was justified in his decision that firing the second shot was necessary to prevent the situation from turning into a gun battle in the apartment complex courtyard.

CONCLUSION

Jeremy Southern pointed a loaded firearm at police officers rather than allowing himself to be detained. This unquestionably constituted an immediate danger of death or serious bodily injury to the officers and civilians present. Further, his struggle to regain control of the firearm after already having been shot once indicated Southern was still fighting and was still a danger. Therefore, Officer Walker acted lawfully when he utilized deadly force to confront the threat posed by Southern. Accordingly, we will take no further action in this matter.

Cc: Sacramento Police Department Officer Drake Walker
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Dwight White, City of Sacramento Inspector General
Kimberly Gin, Sacramento County Coroner's Office