



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Rod Norgaard
Chief Deputy

Michael M. Blazina
Assistant District Attorney

DATE: April 14, 2022

TO: Chief Kathy Lester
Sacramento Police Department
5770 Freeport Boulevard
Sacramento, CA 95822

Captain Ivan Tien
California Highway Patrol, Woodland Office
13739 Andrew Stevens Drive
Woodland, CA 95776

FROM: Sacramento County District Attorney's Office

SUBJECT: Officer-Involved Shooting Case No. SPD-20-362291
Shooting Officers: SPD Officer Michael Pinola #279
CHP Officer Michael Simpson #17351

Person Shot: Jordan Zenka (DOB 1/18/1994)

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer-involved shootings. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Jordan Zenka. 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 20-362291, 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 December 13, 2020, a subject later identified as Jordan Zenka was driving a red Nissan Sentra in the Natomas area of Sacramento. At approximately 6:30 a.m., Zenka drove the Nissan up over a curb and crashed into a brick wall just outside the northwest entrance doors to the Bel Air Supermarket located at 3250 Arena Boulevard.

Customers and employees of the supermarket heard the loud crash, and several employees went outside to find out what happened. They found Zenka's car crashed up against the brick wall. The car was still running and still in drive but was empty. The employees called 9-1-1 to report the incident and went back inside the store to try and locate the driver.

Several Bel Air employees contacted Zenka inside the store. Zenka was wearing a tank top, holding a cell phone, and was not wearing any shoes. Zenka appeared frantic, animated, and paranoid.

Zenka told the employees that he was being chased by someone that was trying to kill him. Zenka said that he drove up onto the sidewalk to try to get the attention of someone who could help him. The employees attempted to calm Zenka down and offered him some water. Zenka then stated that he needed to make a phone call. The employees returned to their responsibilities as Zenka made his phone call. Zenka was overheard on the call stating, "I'm sorry, Dad."

After finishing his phone call, Zenka walked into the employees' area of the bakery. Customers were not permitted in this area, and Zenka was asked to leave by one of the bakery employees. Instead, Zenka picked up a pair of scissors and started to cut his own neck. Zenka told the bakery employee that someone was trying to kill him, and he needed to kill himself before they could kill him.

The bakery employee attempted to stop Zenka from cutting his neck with the scissors. She grabbed at Zenka's hands and tried to take the scissors away from him.

Zenka then grabbed a large bread knife with a serrated edge from the counter. The blade was approximately twelve inches long. The bakery employee stopped struggling with Zenka, and all the employees present stepped back. They watched as Zenka took the bread knife and started slicing his own neck.

Sacramento Police Department (SPD) Officer Ben Gray was on patrol nearby. He was dispatched to respond to the Bel Air Supermarket for a call of a car that had crashed into a building. Officer Gray was dressed in full SPD uniform. He was armed with a Sig Sauer handgun and a taser.

Officer Gray arrived at the supermarket at approximately 6:44 a.m. and parked near the collision. Officer Gray entered the store to look for the driver. As he did so, Officer Gray saw several employees running towards the back of the store. They told Officer Gray the subject had a knife and was in the bakery area. Officer Gray requested additional units respond to assist over his radio. Dispatch then advised all available units to respond Code 3 to the supermarket.¹

Officer Gray drew his taser and turned towards the bakery. As he reached it, he could see Zenka actively trying to cut his own throat with a knife. Officer Gray advised the store employees that everyone needed to leave the store and wait outside.

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

Officer Gray was approximately 50-75 feet away from Zenka. He could see blood dripping down from Zenka's neck. Officer Gray tried to deescalate the situation by engaging Zenka in conversation and trying to convince Zenka to drop the knife.

When Officer Gray began to speak to Zenka, he turned and briefly charged towards Officer Gray. Zenka had the knife in his right hand. Officer Gray believed he was in danger, but he did not believe it was safe to use his handgun as multiple civilians and customers were still in his line of fire. Officer Gray retreated and took a position behind a self-checkout stand. Zenka then stopped his charge and returned to the produce area.

Officer Gray believed Zenka appeared panicky and erratic. He re-holstered his taser, drew his firearm and held it at his side as he repeatedly directed Zenka to put down the knife. Officer Gray again tried to deescalate by engaging Zenka in conversation.

Zenka told Officer Gray he did not want to go to jail or to the hospital. Officer Gray also heard Zenka say, "Why didn't it work?" Officer Gray understood this to mean that Zenka was confused why he was still alive after cutting his own throat with the knife.

As Officer Gray was speaking with Zenka, additional SPD officers began to arrive with shields and other less-lethal weapons. The officers gathered near Officer Gray by the checkout stands. Zenka remained in the produce section, approximately 50 feet away.

At approximately 7:00 a.m., SPD Officer Ruvim Tsverov arrived. Officer Tsverov was a trained member of the Crisis Negotiation Team. Officer Tsverov began speaking to Zenka to convince Zenka to put down the knife. Officer Tsverov asked Zenka his name. Zenka replied, "Jordan." When Officer Tsverov asked Zenka his last name, Zenka replied, "It doesn't matter."

Officer Tsverov told Zenka repeatedly to put down the knife and not to fight or resist the officers. As they were talking, Officer Tsverov saw that Zenka was slicing at his own arm with the knife.

SPD K-9 Officer Michael Pinola was on patrol near Challenge Way and Exposition Boulevard when he heard Officer Gray announce over the radio that a subject was cutting himself with a knife at the Bel Air Supermarket. Officer Pinola was dressed in full SPD uniform with visible SPD patches on his sleeves. Officer Pinola headed towards the Bel Air when all available units were requested to respond. While driving, Officer Pinola heard Officer Gray state over the radio that the subject had charged him with the knife, then retreated.

Multiple other law enforcement officers were already on scene when Officer Pinola arrived at the Bel Air. He saw employees and customers outside the store. He placed his K-9, Brace, on a short leash and entered through the northwest doors. He saw the officers gathered by the checkout stands, and saw Zenka standing in the produce area, holding the large knife, with blood running down his shirt from his neck.

SPD Officer Joseph Swaleh briefed Officer Pinola on the situation. He told Officer Pinola there was still an employee trapped in the bakery behind Zenka, and that a contact team was being assembled. Officer Pinola saw that another officer was trying to communicate with Zenka.

Officer Pinola saw that Zenka was not responding to the officer's efforts to communicate with him. He thought Zenka appeared to be under the influence or suffering from a mental disorder.

SPD Sergeant Travis Hunkapiller advised over the radio that "overwhelming less-lethal force" would be used if Zenka tried to flee to prevent Zenka from harming anyone in the parking lot.

Sergeant Hunkapiller arrived at the Bel Air at approximately 7:03 a.m. and assumed command of the scene. There were approximately 15 officers present from the Sacramento Police Department, Sacramento Sheriff's Office, and the California Highway Patrol.

Sergeant Hunkapiller formulated a plan to contact, subdue, and disarm Zenka. He assembled a "contact team" of SPD officers armed with shields, tasers, bean bag shotguns, and 40mm foam baton launchers. Sergeant Hunkapiller's plan was to deploy "overwhelming less-lethal force," utilizing all these less-lethal options simultaneously, to get Zenka to drop the knife and take Zenka safely into custody.

Additional officers were directed to the rear of the store to prevent Zenka from escaping and to attempt to rescue the employee still trapped in the bakery.

Sergeant Hunkapiller told Officer Pinola he wanted Officer Pinola to deploy his K-9 once Zenka dropped the knife. Officer Pinola knew that K-9s would not be used to engage a subject armed with a knife.

As Officer Pinola was not part of the contact team, he changed positions to block the northeast exit doors. He was concerned that if Zenka tried to flee with the knife, Zenka would injure someone in the parking lot outside. CHP Officer Michael Simpson had responded to the call, and was to Officer Pinola's left, approximately three feet away. Officer Simpson was dressed in full CHP uniform with CHP patches visible on his sleeves

Officer Pinola called out to Zenka, "Police K-9! Don't run!" He wanted Zenka to be aware of their presence by the exit doors. Brace, the K-9, was also barking loudly and often. Officer Pinola was holding Brace by a short leash in his right hand and was holding his firearm in his left hand.

At approximately 7:07 a.m., Sergeant Hunkapiller ordered the contact team to move forward. The team advanced behind two shields, and began to fire the bean bag shotgun rounds, tasers, and 40mm foam batons. As they did so, Zenka began to run out of the produce area towards the northeast exit doors, directly towards Officers Pinola and Simpson. The less-lethal rounds did not stop Zenka. Zenka continued to run towards the two officers, still holding the knife in his right hand.

Officer Pinola heard the less-lethal rounds being fired. He saw Zenka begin to run from the produce area. Officer Pinola momentarily lost sight of Zenka as a corner wall blocked his view. Officer Pinola then suddenly saw Zenka running towards him and Officer Simpson. He also saw that Zenka had the knife in his right hand in an “icepick grip.”²

As Zenka was running towards Officers Pinola and Simpson, Officer Pinola believed Zenka had the present ability and intent to immediately injure one or both of them. He also believed, in order to protect the safety of the civilians in the parking lot, he could not allow Zenka to get past him to the exit doors.

Zenka closed to within approximately ten feet of Officers Pinola and Simpson. Officer Pinola felt he could not safely retreat while in control of the K-9. He also knew that tasers had already been deployed without success. He believed he had no choice but to fire his handgun to stop Zenka from injuring someone with the knife.³

Both Officers Pinola and Simpson began firing at Zenka with their handguns. Officer Pinola fired four rounds from his Glock 17 9mm handgun. Officer Simpson fired six rounds from his .40 caliber Smith & Wesson handgun.

Both officers stopped firing as Zenka fell to the ground. Zenka was still holding the knife in his right hand and refused to let it go. Officers ordered Zenka to drop the knife. An officer from the contact team fired a 40mm foam baton, but Zenka still held onto the knife. Another officer from the contact team discharged a taser, but Zenka still held onto the knife. A third officer then fired another 40mm foam baton, after which Zenka dropped the knife. Officer Pinola kicked the knife out of Zenka’s reach.

Officers from the contact team then moved in, rolled Zenka over onto his stomach, placed him in handcuffs, and began providing medical care. Emergency medical personnel from the Sacramento Fire Department had been staging in the parking lot during this incident. They immediately entered the store and began to treat Zenka for his injuries. An EMT from the Fire Department pronounced Zenka deceased at approximately 7:13 a.m.

Multiple employees and customers of the Bel Air present for the incident were interviewed. They described the event to detectives as detailed above.

Body-worn camera video for the responding officers and Bel Air surveillance video was reviewed. The videos depict the events as described above.

An autopsy was conducted on December 17, 2020 by Forensic Pathologist Keng-Chi Su of the Sacramento County Coroner’s Office. Dr. Su determined the cause of death to be “Multiple Gunshot Wounds.”

² An “icepick” or “reverse grip” is where an individual holds the handle of a knife such that the blade is pointed in the direction opposite of the thumb.

³ Officer Pinola described to investigators following the shooting what his thought processes were at the time. Officer Simpson declined to be interviewed by investigators so his beliefs could not be included here.

Specifically, Zenka received seven gunshot wounds: to his shoulder, to his chest, three to his back, to his abdomen, and to his left forearm. Additionally, Dr. Su noted sharp force injuries to Zenka's neck. He described the neck injuries as "shallow," with no blood vessels being severed.

A sample of Zenka's femoral blood was tested by the Sacramento County District Attorney's Office Laboratory of Forensic Services. The laboratory determined that Zenka's blood sample contained methamphetamine and amphetamine.

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).)

In the present matter, Officer Gray received a dispatch about a car that had crashed into a building. When he arrived at the scene, he entered the store to locate the driver. He saw Bel Air employees running towards the rear of the store. They told Officer Gray the subject had a knife and was in the bakery. Officer Gray headed towards the bakery, where he saw Zenka holding a knife in his right hand and actively trying to cut his own throat, causing blood to run down his chest.

Officer Gray ordered the employees present to evacuate the store. He tried to engage Zenka in conversation to deescalate the situation. Instead, Zenka began to charge at Officer Gray, holding the knife in his right hand as he did so. Officer Gray retreated and took a position behind a self-checkout stand, and Zenka returned to the produce area, approximately 50 feet away.

Officer Gray holstered his taser and drew his firearm. He called for backup, and all available officers were dispatched to respond to assist him. Officer Gray and the other responding officers had reasonable cause to detain Zenka for his actions in charging Officer Gray with the knife and for the potential danger that he posed to the civilians outside the store. Similarly, Zenka had a responsibility to allow himself to be detained.

A trained officer from the Crisis Negotiation Team arrived and tried to deescalate the situation by speaking with Zenka. However, Zenka refused to put down the knife despite officers' repeated requests for him to do so over a period of approximately 20 minutes.

To subdue the threat being presented by Zenka, Sergeant Hunkapiller assembled a contact team comprised of officers with shields, tasers, bean bag shotguns, and 40mm foam baton rounds.

Sergeant Hunkapiller believed that “overwhelming less-lethal force” directed at Zenka would result in Zenka relinquishing the knife and officers being able to safely take Zenka into custody.

Sergeant Hunkapiller ordered the contact team to move forward at approximately 7:07 a.m. Zenka then began to run towards the exit doors and at Officers Pinola and Simpson. The less-lethal rounds were ineffective and Zenka continued to run at Officers Pinola and Simpson. Zenka still had the knife in his right hand, holding it like an icepick. As he ran, Zenka closed to within approximately ten feet of Officers Pinola and Simpson.

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 believes that the use of deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. (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. (California Penal Code section 835a(a)(4); *Graham v. Connor* (1989) 490 U.S. 386.)

Here, Officer Pinola was confronted with a subject holding a knife in his right hand running directly at him. Officer Pinola reasonably believed that Zenka intended to use that knife to immediately inflict death or serious bodily injury on him, Officer Simpson, or potentially someone in the parking lot behind him. Significantly, Officer Pinola had just seen that Zenka had run through a barrage of less-lethal weapons, consisting of tasers, bean bag rounds, and 40mm foam baton rounds, without being noticeably stopped or slowed, and had closed to within approximately ten feet of Officer Pinola, while holding his knife in an aggressive posture. Given the significance and the rapidly increasing proximity of the threat being presented by Zenka, Officer Pinola was reasonable in believing that lethal force needed to be used immediately to protect his own life and the lives of others around him.

Because Officer Simpson declined to be interviewed for this investigation, we do not know his actual state of mind during the encounter. However, a jury analyzing this situation would likely evaluate Officer Simpson’s actions on what Officer Pinola perceived and believed. Officer Simpson was to the immediate left of Officer Pinola, approximately three feet away and directly in the path of Zenka’s run towards the exit doors when he fired his weapon. Thus, the same analysis would apply for Officer Simpson.

California Penal Code section 835a(2) states that a “peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or another person.”

Here, when Officer Gray first arrived, it appeared that the person most in danger because of Zenka's actions was Zenka himself. Zenka was actively trying to slice his own throat with the bakery bread knife. However, once Officer Gray arrived and began to try to speak to Zenka, Zenka briefly charged at Officer Gray with the knife. A reasonable officer would perceive from that action that Zenka presented a risk of death or serious injury to anyone close by, rather than exclusively being a person intent on suicide.

Further, once the contact team advanced towards Zenka and deployed the less-lethal rounds, Zenka ran through those rounds without stopping and ran directly at Officers Pinola and Simpson while holding the knife in an aggressive posture and closing to within ten feet. Despite Zenka's initial efforts towards self-harm, a reasonable officer would recognize the immediate danger and understand the necessity to use lethal force before Zenka could reach them with the knife.

CONCLUSION

Based on a consideration of all the evidence and circumstances of this encounter, it was reasonable for Officers Pinola and Simpson to believe that Zenka presented an immediate danger of death or serious bodily injury to themselves or to the civilians behind them. Zenka was holding a knife in an icepick grip, was running directly at them, and had closed to within approximately ten feet despite being ordered to drop the knife and despite having just been struck with multiple less-lethal weapons. This clearly demonstrated that Zenka had the present ability to seriously harm someone, and the rapidly closing distance demonstrated the urgent need for Officers Pinola and Simpson to act to stop Zenka before Zenka did so. Considering the totality of circumstances, it was reasonable for Officers Pinola and Simpson to believe that lethal force was necessary. Accordingly, we will take no further action in this matter.

Cc: Sacramento Police Department Sergeant Michael Lange
Sacramento Police Department Officer Michael Pinola
California Highway Patrol Officer Michael Simpson
Kimberly Gin, Sacramento County Coroner's Office
Office of Public Safety Accountability