



Sacramento County District Attorney's Office

THIEN HO
District Attorney

DATE: December 18, 2023

TO: Chief Bobby Davis
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-23-000708
Shooting Officers: EGPD Officer Braden Kelly #232
EGPD Officer Jason Miller #157
EGPD Officer Christopher Rahall #317
Person Shot: Devian Elijah Lewis (D.O.B. 10/7/2000)

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 Devian Elijah Lewis. 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 Elk Grove Police Department report numbers 23-000708 and 23-000819, Fairfield Police Department report number 23-01171, video and audio recordings, dispatch calls, witness interviews, photographs, diagrams, and evidence logs.

FACTUAL SUMMARY

At approximately 1:16 p.m. on February 1, 2023, Rancho Cordova Police Department (RCPD) officers responded to 3073 Ramsgate Way in the City of Rancho Cordova regarding a stabbing incident and an assault with a vehicle. Patrol officers arrived at the location and found a female in the roadway with stab wounds and severe injuries. The injured female was identified as Saraiah Acosta.

According to eyewitnesses, Devian Elijah Lewis stabbed Acosta with a folding knife, causing her to fall. A witness reported Lewis drove a silver 2010 Nissan Altima four-door sedan bearing license plate 6KVH335 and intentionally ran over Acosta as she lay wounded in the roadway.

Acosta died from the injuries inflicted on her by Lewis.

RCPD entered the Nissan into the Stolen Vehicle System as a Felony Wanted Vehicle involved in a murder.

At approximately 1:44 p.m., the Sacramento County Sheriff's Office (SSO) notified the Elk Grove Police Department (EGPD) of this incident resulting in Acosta's death. SSO advised that Devian Lewis was driving a silver 2010 Nissan Altima four-door sedan bearing CA license plate 6KVH335 and was last seen wearing a red tracksuit or red sweatsuit. Lewis also was associated with a residence in Elk Grove.

At approximately 3:21 p.m., a fixed Automated License Plate Reader located the Nissan in the City of Fairfield and alerted the Fairfield Police Department.

A Fairfield Police officer located the Nissan and attempted to make a vehicle stop. Lewis was the sole occupant of the Nissan. Lewis fled from the officer, entered Interstate 80, and drove rapidly east toward Sacramento.

At approximately 3:25 p.m., SSO notified EGPD that they received information from Lewis's family member that Lewis was armed with a handgun.

Fairfield Police Department and California Highway Patrol officers pursued Lewis in marked police vehicles through Solano and Yolo Counties and into Sacramento County. Lewis continued eastbound on Highway 50 and then southbound on Highway 99 toward Elk Grove.

At approximately 4:52 p.m., Lewis exited Highway 99 at the Cosumnes River Boulevard/Calvine Road off-ramp in Elk Grove and turned south on Bruceville Road.

At this time, EGPD Officer Jason Miller was on duty, dressed in a full uniform, with visible department sleeve patches and badge, armed with a Glock 17 9mm handgun, and driving a marked EGPD canine police vehicle.¹ Officer Christopher Rahall was on duty in a marked police vehicle with Officer Jacob Lorigan. Officer Braden Kelly was on duty in a marked canine police vehicle.

At approximately 4:54 p.m., these three police vehicles drove to the intersection of Sheldon Road and Bruceville Road to intercept the Nissan.

EGPD officers were informed that other law enforcement officers were pursuing the Nissan. They were also informed that the driver of the Nissan committed a murder earlier in the day and was armed with a firearm. The suspect, Lewis, was described as a black male adult wearing a red sweatsuit and associated with a residence in Elk Grove.

At approximately 4:54 p.m., Lewis used the right turn lane to pass stopped vehicles and proceeded through the intersection at Bruceville Road and Sheldon Road at a high rate of speed.

¹ Unless otherwise noted, all EGPD officers described in this letter were dressed in full EGPD uniform, with visible department sleeve patches and badge, and armed with Glock 17 9mm handguns.

Officer Miller, followed by Officer Rahall and then Officer Kelly, began a vehicle pursuit of Lewis with active red and blue overhead lights and sirens.

Lewis continued south on Bruceville Road, wove through traffic, sped, and nearly collided with other vehicles. When Lewis came to the intersection of Bruceville Road and Big Horn Boulevard, he attempted to drive between two vehicles that were stopped in adjoining lanes waiting for the traffic light. Lewis's Nissan collided with both vehicles.

Officer Miller used his vehicle to collide with the left rear quarter panel of the Nissan, attempting to pin the Nissan in place.

Officer Rahall stopped his vehicle just east of Officer Miller's vehicle.

Officer Kelly stopped his vehicle behind the Nissan.

Officer Miller

Officer Miller opened his driver's side door. Officer Miller saw the driver's door of the Nissan open. He saw that the driver, Lewis, was a black male adult wearing a red sweatsuit, matching the description of the murder suspect. Officer Miller saw Lewis turn toward him and saw that Lewis held what he believed to be a semi-automatic pistol in his right hand. Officer Miller was afraid Lewis intended to use the firearm to avoid arrest. He believed Lewis represented an immediate and imminent danger to himself and others.

Officer Miller started firing his handgun at Lewis, emptying his magazine. Officer Miller ejected his magazine, inserted a second magazine into his pistol, and loaded a cartridge into the chamber.

Officer Rahall

Officer Rahall opened his driver's side door and moved toward his vehicle's left front quarter panel. He heard gunshots. Officer Rahall saw through the driver's side window a black male adult holding a black handgun in his hand seated in the driver's seat. Officer Rahall believed Lewis may have shot one of his partners and was trying to kill others.

Officer Rahall started firing his handgun at Lewis. When Lewis slumped over in the front passenger seat, Officer Rahall stopped firing.

Officer Kelly

Officer Kelly observed Officer Miller's vehicle collide with the left rear area of the Nissan. Officer Kelly saw the Nissan's rear white reverse lamps illuminate and realized the driver was continuing to attempt to flee.

Officer Kelly observed the Nissan driver's door open and saw a black male adult wearing a red sweatshirt. Officer Kelly opened his driver's side door and partially exited his vehicle. He heard gunfire and believed Lewis was firing a gun at him and Officer Miller.

Officer Kelly started firing his pistol at Lewis. Officer Kelly then ejected his magazine, inserted a second magazine into his pistol, and loaded a cartridge into the chamber. Officer Kelly wanted a fully loaded pistol in the event Lewis continued to fire on officers.

Post-Shooting

Immediately after the shooting, multiple officers repeatedly yelled at Lewis to put his hands up.

Lewis extended both hands from the front passenger door window of the Nissan. While holding his hands extended outside the window, Lewis backed his body out the front passenger door and fell from the vehicle to the pavement.

Several officers approached Lewis and placed him in handcuffs. Officers then administered emergency medical treatment to Lewis.

Cosumnes Fire Department personnel arrived and transported Lewis to the Emergency Treatment Area of Kaiser Permanente South Sacramento Medical Center.

Lewis sustained two non-life-threatening gunshot wounds to the front of his left shoulder and the left side of his torso.

The scene was processed by EGPD Crime Scene Investigators. A round count and examination of casings recovered at the scene established that Officer Miller fired eighteen rounds, Officer Rahall fired nine shots, and Officer Kelly fired eight gunshots.

A black Umarex "Glock 19" CO2 airgun was located on the front passenger seat of the Nissan (see photos below). This airgun appears identical to a Glock 19 semi-automatic firearm. A clear hard-plastic package for a Umarex "Glock 19" CO2 airgun was located on the floorboard of the rear passenger seat of the Nissan.



On February 4, 2023, Lewis gave a voluntary statement to EGPD detectives. Lewis acknowledged possession of the replica firearm and indicated his intention was to have the officers shoot him. Lewis stated that he fled from law enforcement officers in the Nissan so “there would be a lot of them to shoot me and I wanted as many as there could be to shoot me.” When asked why he thought law enforcement would shoot him, Lewis said, “[I]f you take them on a high-speed chase and jump out of the car with what they think is a gun, they gonna shoot you.”

Lewis is charged with one count of murder, in violation of California Penal Code section 187, in Sacramento Superior Court case number 23FE001938. The case is currently scheduled for further proceedings.

LEGAL ANALYSIS

An officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11; *Graham v. Connor* (1989) 490

U.S. 386, 396; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; California Penal Code section 835a(b); CALCRIM 2670.) The person being detained or arrested may be subjected to such restraint as is reasonably necessary for his arrest and detention and has a concomitant duty to permit himself to be detained. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; CALCRIM 2670, 2671, 2672.) Officers do not need to retreat or desist their efforts if the person they are arresting or detaining resists or threatens resistance; nor shall the officer be deemed an aggressor or lose the right to self-defense by use of reasonable force. (California Penal Code section 835a(d).)

Here, SSO informed EGPD that Lewis was wanted for a murder that occurred earlier in the day, driving a silver 2010 Nissan Altima four-door sedan bearing CA license plate 6KVH335, and last seen wearing a red tracksuit or red sweatsuit, associated with a residence in Elk Grove.

EGPD were further informed that Fairfield Police located the Nissan and engaged in a high-speed vehicle pursuit through multiple counties.

This information was relayed to Officers Miller, Rahall, and Kelly. The officers had an obligation to detain Lewis, and Lewis had an obligation to allow himself to be detained. However, Lewis refused to yield to the officers' emergency lights and sirens while being pursued in Elk Grove.

As the officers followed Lewis in the Nissan, the Nissan wove through traffic, sped, and eventually collided with two vehicles as it attempted to drive between them.

After the collision, Officer Miller struck Lewis' Nissan with his patrol vehicle attempting to pin Lewis in place. However, Lewis put his vehicle in reverse and opened his door, indicating that he would continue to flee.

Lewis then turned toward Officer Miller. Lewis held what appeared to be a semi-automatic pistol in his hand.

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

California Penal Code section 835a(c)(1)(B) provides that a peace officer is justified in using deadly force upon a fleeing person if the officer reasonably believes, based on the totality of the circumstances, that such force is necessary “to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another person unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has reasonable grounds to believe the person is aware of those facts.”

Officers Miller, Rahall, and Kelly knew Lewis was suspected of committing a murder earlier in the day. They knew Lewis led officers in a high-speed vehicle pursuit across multiple counties. They knew Lewis was reported to be armed with a firearm. The officers also personally observed Lewis’s wanton disregard for the safety of others by weaving through traffic while speeding and colliding with two vehicles.

Officer Miller then saw Lewis open his car door and turn towards him, holding what appeared to be a semi-automatic pistol in his right hand.

Under these circumstances, it was reasonable for Officer Miller to believe his life and the life of others around him were in immediate danger. It was similarly reasonable for him to believe that the immediate use of deadly force was necessary to subdue the threat.

Although the gun was ultimately found to be a replica firearm, Officer Miller could not be aware of that fact. Lewis held what appeared to be a firearm. Given the totality of circumstances, it would be unreasonable to expect Officer Miller to wait until Lewis fired first before taking defensive action. Officer Miller was justified in believing his life to be in immediate danger.

Officer Rahall heard gunshots and saw Lewis holding a black handgun in his hand. Officer Rahall reasonably believed Lewis shot at one of his partners and was trying to kill others. Under these circumstances, it was reasonable for Officer Rahall to believe the immediate use of deadly force was necessary to subdue the threat.

Similarly, Officer Kelly reasonably believed that Lewis was shooting at him and Officer Miller. Officer Kelly was aware of Lewis’s conduct throughout the day, knew Lewis was armed with a firearm, saw the Nissan front door open, and heard gunshots. It was reasonable for Officer Kelly to believe Lewis was firing at Officer Kelly and the other officers, and to believe the immediate use of deadly force was necessary to subdue the threat.

Lastly, Lewis confessed that he was trying to get police officers to shoot him by leading them on a high-speed pursuit and attempting to jump out of the car while holding what appeared to be a firearm.

For these reasons, the decisions of Officers Miller, Rahall, and Kelly to use lethal force against Lewis in this circumstance were justified.

CONCLUSION

Devian Lewis was wanted for a murder and led law enforcement officers on a high-speed chase across several counties. When officers finally cornered Lewis and pinned him inside his car, Lewis opened his car door and displayed what appeared to be a semi-automatic handgun.

The three officers were reasonable in believing deadly force was necessary to defend against Lewis and prevent the further loss of life. Under these circumstances, their shootings were justified.

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

Cc: Elk Grove Police Department Officer Braden Kelly
Elk Grove Police Department Officer Jason Miller
Elk Grove Police Department Officer Christopher Rahall
Elk Grove Police Department Detective Mark Bearor