



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: May 24, 2017

TO: Sheriff Scott Jones
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SSD-2016-285423
Shooting Officers: Andrew Cater #444
Bao Mai #952
Person Shot: Jesse Attaway (DOB 4/3/75)

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 Jesse Attaway. 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 Sheriff Department report number 2016-285423 and related dispatch recordings; witness interview recordings; 9-1-1 audio recordings; in-car camera and surveillance video recordings; photographs, diagrams, and other videos; Rocklin Police Department report number 16-267-1 and other related reports; Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, Controlled Substances, and Firearms Examination reports; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

On September 23, 2016, at approximately 4:59 a.m., Sacramento Sheriff Deputies Andrew Cater and Bao Mai responded together in a patrol vehicle to the call of a burglary in progress. The radio dispatchers advised deputies that the suspect confronted one victim inside a residence, attempted to pull a female resident out of another home through the sliding glass door, and jumped over fences.

Deputies Cater and Mai drove eastbound on Madison Avenue. As they approached Hazel Avenue, Deputy Mai observed Jesse Attaway near the southwest corner of the intersection. The deputies drove by and Attaway looked right at them. A few seconds later, dispatchers described the burglary suspect and Attaway matched the physical and clothing description. Realizing that the burglary suspect just walked by them, Deputy Cater turned the vehicle around and eventually proceeded northbound on Hazel Avenue. After driving a couple blocks and not seeing Attaway, Deputy Cater made a U-turn and drove southbound on Hazel Avenue. As they came to Piedra Way, the deputies illuminated the street with the vehicle's overhead lights. At that point, they observed Attaway walking approximately 50 yards away. They turned right on Piedra Way, followed him, and saw Attaway turn towards Mohawk Way.

Because the lighting was very poor in this area, Deputy Cater turned on the patrol vehicle's take down light as Attaway reached the corner of Piedra Way and Mohawk Way. He could barely see Attaway. Deputy Mai said, "Hey you, come here." Attaway continued to walk away on Mohawk Way and Deputy Mai stated, "You come here, come here." Attaway did not comply. Deputy Cater slowly moved the patrol vehicle forward and then stopped. He proceeded to get out of the vehicle. Deputy Cater observed Attaway's hands down towards his front, so he stated, "Let me see your hands. Let me see your hands." Deputy Cater eventually moved behind a big tree for cover. Attaway's back was towards the deputies and his hands were still down in front of him as he was smirking and looking back at the deputies. As Deputy Mai opened his door, Attaway looked at him and reached into his waistband. He was approximately 50 feet away from the deputies and it appeared to Deputy Mai he was reaching for a gun. Deputy Mai retreated behind the door and said, "Get your hands up. Show me your hands." Attaway looked at the deputies one more time, reached into his waistband, pulled something out, and pointed it at the officers. To Deputy Cater, it appeared that Attaway was taking a shooting stance with a black object at least the size of his hands. He believed that Attaway was going to shoot them. To Deputy Mai, it appeared that Attaway pulled out a gun, punched his arms out consistent with how officers are trained with firearms, and leaned his head down like he was aiming. Fearing for their lives, the deputies fired multiple shots at Attaway. He raised the object at the deputies, who shot him again. Attaway stumbled to the ground and raised his hand. The deputies believed their lives were in imminent danger and fired again. Attaway then fell on his back.

Other deputies arrived at the scene within moments. Medical assistance was requested, and officers began chest compressions. Sacramento Metropolitan Fire Department medics arrived and pronounced Attaway deceased at approximately 5:25 a.m.

Based on officers' interviews, recovered discharged cartridges, and examination of firearm magazines, it was determined that Deputy Mai fired 7 rounds and Deputy Cater fired either 11 or 12 rounds at Attaway. Investigators located a black wallet containing Attaway's identification card on the ground approximately four feet from his right foot. They did not locate a gun.

According to the Sacramento County Coroner Final Report of Investigation, Attaway died from multiple gunshot wounds. The report noted that he had penetrating gunshot wounds to the head, right abdomen, left flank, and left foot. The Sacramento County District Attorney's Office Laboratory of Forensic Services confirmed the presence of amphetamine and methamphetamine

in Attaway's blood. Investigators discovered .16 grams of methamphetamine in a small plastic bag in Attaway's front right coin pants pocket.

Investigators interviewed Attaway's former girlfriend. She stated they had two daughters together. Attaway used methamphetamine and she saw him under the influence approximately three to four weeks earlier. She also stated that Attaway called both of his daughters on September 23, 2016, at approximately 4:00 a.m. and left voicemails stating that the police were going to kill him. The voicemail to his youngest daughter indicated that he was going away because the police were after him. Attaway was later identified as having committed a home invasion robbery and vehicle theft in Rocklin at approximately 3:45 a.m.

Investigators also interviewed residents who lived on Tucson Circle, approximately one-half mile away from Mohawk Way, and learned about the reported burglary just prior to the shooting. A resident stated he heard his dogs barking in the front room while he was lying in bed at approximately 4:56 a.m. The resident got up, walked to the hallway, opened up the door, and observed Attaway, whom he did not know, standing in the front room holding a carton of milk from the refrigerator. Attaway was extremely startled and stated, "I need your car keys. Don't shoot, don't shoot." Attaway then said, "Please, they are after me! Please, they are after me!" The resident continuously told Attaway to exit the house, but he refused. The resident did not want his dogs to attack and hurt Attaway, so he called them back. For approximately eight minutes, he tried to convince Attaway to leave. Attaway appeared incoherent and under the influence of an unknown substance. The resident eventually coerced Attaway out the front door. Attaway then walked to the driveway and turned eastbound towards the next door neighbor's house.

Shortly thereafter, the next door neighbor heard movement coming from her backyard near the side of her house. She looked outside from her living room and saw Attaway walk from the side of the house towards the rear sliding glass door, which was left slightly open for her dog to exit the house. The female resident became scared and ran to the sliding door to prevent Attaway from opening it. Attaway grabbed the door and attempted to pull it open to enter the house. While they struggled with the door, the female resident screamed for her husband. Attaway said, "Don't be scared. Don't be scared." As her husband came into the living room with a baseball bat, Attaway backed away from the door towards the east backyard fence and stated, "Don't hurt me." The husband followed him into the backyard, told him to get down on the ground, and threw the baseball bat at Attaway as he jumped the fence and fled.

Deputy Cater's patrol vehicle was equipped with an in-car camera recording device. Video from this incident depicted Attaway walking away from the deputies as they continuously ordered him to come towards them and raise his hands. As he walked away with his back to the officers and did not comply with their directives, Attaway placed his hands in front of his body so the deputies could not observe them. Attaway eventually turned towards the deputies, placed his hands together, took several steps forward, and pointed a dark object at the deputies multiple times in a manner consistent with holding a firearm. Attaway stood in a shooting stance and repeatedly pointed the object at them. Deputies Cater and Mai eventually fired shots at Attaway, who fell to his knees and attempted to get up again, while raising his hand and holding the object like he had a gun. The deputies then fired more shots at Attaway and he fell to the ground.

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.) 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.)

In the present matter, the officers had reasonable cause to arrest Attaway for serious offenses. Attaway burglarized one residence. As the homeowner confronted Attaway and tried to persuade him to exit the house, Attaway refused to leave. He then proceeded to the neighbor's home and attempted to forcibly enter that residence through the rear sliding door. After the homeowner came towards Attaway with a baseball bat, he jumped over the backyard fence and fled the scene. When Deputies Cater and Mai arrived to apprehend him, Attaway had a duty to submit himself to their custody. He failed to do so.

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.) 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.)

After unlawfully entering one residence and attempting to forcibly enter another residence, Attaway sought to avoid apprehension and did not comply with the responding deputies' commands to raise his hands. He turned his back towards Deputies Cater and Mai, walked away from them, placed his hands in front of him so they could not be seen, and reached into his waistband. Attaway pulled out his wallet, positioned himself in a shooting stance while pointing and punching his wallet at the deputies. Due to the poor lighting in the area, the deputies could not clearly see the wallet. Attaway held the wallet in a manner consistent with pointing a firearm at the officers in a threatening manner. They were also aware that Attaway engaged in provocative and dangerous conduct, having previously confronted a homeowner inside his house and struggled with another homeowner to access her residence. The officers were not required by law to retreat from their positions. Given these circumstances, it was reasonable for the deputies to believe that Attaway was pointing a gun at them and was going to shoot them. He appeared to pose a significant and immediate threat of death or serious physical injury to

Deputies Cater and Mai. The deputies feared for their own safety, and the safety of each other, when they discharged their duty weapons at Attaway.

CONCLUSION

Deputies Cater and Mai were justified in shooting Attaway because, under the circumstances, they reasonably believed they needed to defend themselves and each other. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento Sheriff Detective Adam Persson #742
Sacramento Sheriff Deputy Andrew Cater #444
Sacramento Sheriff Deputy Bao Mai #952
Sacramento Sheriff Lieutenant Lisa Gayman #21
Rick Braziel, Office of the Inspector General
Kimberly Gin, Sacramento County Coroner's Office