



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael A. Neves
Assistant District Attorney

MEMORANDUM

DATE: September 13, 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-2016-354725
Shooting Officer: James Schaefer #245
Person Shot: Logan Augustine (DOB 11/25/98)

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 Logan Augustine. 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 2016-354725 and related dispatch logs and recordings; witness interview recordings; 9-1-1 audio recordings; in-car camera, crime scene, and surveillance video recordings; photographs, diagrams, and cell phone records; Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, and Physical Evidence Examination reports; and the Sacramento County Coroner's Report.

FACTUAL SUMMARY

On November 24, 2016, at approximately 1:10 p.m., Logan Augustine and his father were driving to a relative's house for Thanksgiving. Augustine had earlier consumed two or three beers. Augustine was very emotional and his father felt he was acting strange. Augustine wanted to purchase clothing to wear to the house, so they went to a retail store on Broadway Boulevard, but the store was closed. Augustine was upset and then wanted to get holiday cards for his family. He and his father went to a grocery store on Fair Oaks Boulevard and Walnut Avenue. This store was also closed, so they drove away. As they stopped at the intersection of Walnut Avenue and Marconi Avenue, Augustine stated he felt claustrophobic and exited the vehicle. His father followed him in the vehicle across the street. Augustine asked for a cigarette

and his father said “no.” Augustine got mad, stated that he would walk to the relative’s house, and proceeded towards a nearby 7-11 store. His father drove across the street, parked his vehicle, and waited for Augustine to walk out of the store so he could pick him up.

Augustine entered the 7-11, walked to the front counter, and asked for some cigarillos. His hands were shaking, he was sweating, and he appeared to the store employee to be under the influence of a controlled substance. The store employee declined to sell the tobacco product to Augustine because Augustine told the employee he was only 19 years old. Augustine became angry and walked around inside the store talking on his cellular phone. After approximately ten minutes, the store employee approached Augustine to speak to him. Augustine jumped and pulled up the corner of his shirt as if he had a weapon. Witnesses did not see a weapon. Augustine was very agitated and looked angry.

Augustine called 9-1-1 from his cellular phone while inside the store. He hung up on the operator, and then called back again. He made many random comments, including complaining about the election. He wanted officers to come to the store. Dispatchers relayed information from the calls to officers via radio, including that there was a 9-1-1 hang up call, that the caller could not take this new election, that he appeared agitated, and that he said to send a cop “big as fuck,” he had a knife on him, and he was going to blow.

Sacramento Sheriff Sergeant James Schaefer was only a few blocks away and responded. Believing that a Taser would not be effective because it would require getting too close to a subject armed with a knife, Sergeant Schaefer asked for a cover unit with what was referred to as a “less lethal launcher,” a gun that fires a 40 mm rubber bullet. As he parked his vehicle near the 7-11 store, Sergeant Schaefer observed Augustine standing inside talking on his phone. Augustine appeared upset and engaged with the individual on the phone.

Deputy Joseph Campoy and three other deputies arrived in the parking lot and met with Sergeant Schaefer. Augustine’s father approached the deputies and told them his son was bipolar and he just dropped him off at 7-11. Augustine’s father denied that Augustine had a knife. Sergeant Schaefer stated they would take Augustine to the hospital. The deputies then formulated a plan to go talk to Augustine and calm him down.

As the deputies approached the store, Augustine saw them and became very agitated. The deputies opened the door and Augustine stuck his hands in his pockets and yelled, “I got a gun, I got a gun.” Sergeant Schaefer proceeded straight in and ordered all the employees and customers to leave the store. The deputies fanned out to create a buffer between Augustine and those still in the store. Augustine started moving to the front left of the store then down the far left aisle towards the back of the store. As one of the store employees fled the store, he heard Augustine drop an object on the floor. Sergeant Schaefer eventually followed Augustine down this aisle. When he reached the back corner, Augustine pulled out a knife and repeatedly slashed his own neck causing him to bleed profusely in the throat area. Deputy Campoy, who had proceeded straight down the center aisle towards the back, approached Augustine from the right side, while Sergeant Schaefer came from the left side. Augustine was approximately ten feet away from Deputy Campoy. Deputies screamed at Augustine to stop and drop the knife. Augustine initially walked towards Deputy Campoy, who then fired one rubber bullet with his

Defense Technology 40mm Single Launcher. Sergeant Schaefer heard a “pop” and did not know if Augustine was firing a gun or being fired at. After being struck by the rubber bullet, Augustine, still holding the knife, turned towards Sergeant Schaefer, who was approximately five feet away. As Augustine took a half-step forward with his hands down in front of his chest, Sergeant Schaefer believed that Augustine was going to quickly approach and stab him. Based on his previous training on the danger of dealing in close proximity with a subject armed with a knife,¹ Sergeant Schaefer fired one shot at Augustine with his 9mm Glock 17 duty weapon. Augustine fell to the ground, dropped the knife, attempted to stand up again, and fell back down on the ground. The deputies immediately requested medical assistance. Fire personnel and paramedics arrived at the scene and pronounced Augustine deceased.

According to the Sacramento County Coroner, Augustine died from multiple injuries. The report noted that he sustained sharp force injuries to the neck and a gunshot wound of the torso. The gunshot entrance wound was to the right lower back towards his side and continued through to the left rib towards his other side. The direction was right to left, back to front, and upward. The autopsy could not determine which injury was fatal, or if a combination of the injuries were fatal. As such, the stated manner of death was “undetermined.” The pathologist also concluded that Augustine had a contusion of the anterior right thigh. The Sacramento County District Attorney’s Office Laboratory of Forensic Services confirmed the presence of cannabinoids² and methamphetamine in Augustine’s blood, as well as a blood alcohol level of .02%.

Investigators located a dark gray plastic airsoft gun, which resembled a semiautomatic handgun, on the floor of the far left aisle near the front of the store. They also recovered a silver folding knife from Augustine’s front right sweatshirt pocket, a black folding knife from his left front waistband, and a cell phone on the floor underneath his right knee. A black and silver folding knife with blood was found on the center aisle floor near the back of the store.

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.)

¹ This is sometimes referred to as the “Tueller Rule” because its origin is based on the research of Sgt. Dennis Tueller of the Salt Lake City Police Department. Various law enforcement research and training resources address the danger of dealing with a suspect armed with a knife at 20 feet or less. Judicial authority also supports that a subject can have the present ability to commit a violent injury when armed with a knife and is within 10-15 feet of an officer. (*People v. Nguyen* (2017) 12 Cal.App.5th 44, 48-49.)

² Cannabinoids consisted of delta-9-THC, 11-hydroxy-THC, and 11-nor-9-carboxy-THC.

In the present matter, the deputies had reasonable cause to detain Augustine to investigate the situation. Sergeant Schaefer was aware that Augustine was argumentative, confrontational, bipolar, and possibly armed with a knife. He also observed through the 7-11 store window that Augustine was agitated. As Sergeant Schaefer entered the 7-11 store, Augustine repeatedly stated he had a gun and proceeded towards the back of the store. When Sergeant Schaefer and other deputies attempted to detain him, Augustine had a duty to submit himself to detention. He failed to do so and evaded Sergeant Schaefer and the other deputies.

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.)

Augustine's actions to harm himself demonstrated a desperation to avoid apprehension by law enforcement. Augustine fled to the back of the store when he saw Sergeant Schaefer and the deputies. As Augustine began to cut himself, he refused to comply with their orders to stop and drop the knife. Deputy Campoy attempted to use less lethal force, but Augustine did not fall down. Instead, he turned towards Sergeant Schaefer and took a half-step in his direction. Sergeant Schaefer saw that Augustine still had a knife and Augustine stated moments before that he had a gun. Although he did not see a gun, Sergeant Schaefer heard a "pop" and could not determine if Augustine fired a shot. Sergeant Schaefer believed that he was dangerously close to Augustine and that he would get stabbed. Sergeant Schaefer was not required by law to retreat from his position.

The circumstances here were much more than just an individual apparently attempting to commit suicide. Augustine threatened the store employee by lifting his shirt and inferring that he had a gun. He also told the dispatcher that he had a knife and encouraged her to send law enforcement to the store. Finally, he told Sergeant Schaefer and the deputies that he had a gun. Augustine's erratic and threatening behavior created a dangerous situation for everyone. Given these circumstances and the subsequent slashing at his own throat, it was reasonable to think that Augustine would use his knife against Sergeant Schaefer and the other deputies. Augustine had actively resisted detention and unsuccessfully attempted flight, and posed an immediate threat to the deputies in the back corner of the store. Augustine's turning and moving toward Sergeant Schaefer may have been an attempt to attack Schaefer or a physical reaction to having been struck with the rubber bullet. However, a criminal jury evaluating Sergeant Schaefer's decision to shoot Augustine would be instructed by the court, and obligated to follow, that if they can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, they must accept the one that points to innocence. (CALCRIM 224.) Based on the chaotic situation he was faced with, a jury

would likely find that Sergeant Schaefer's shot Augustine because he reasonably believed Augustine was attacking him with the knife.

CONCLUSION

A jury would likely conclude that Sergeant Schaefer's reasonably believed that shooting Augustine was necessary in defense of himself and the other deputies. Under the circumstances, his conduct was justified. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento Sheriff Sergeant Paul Belli #128
Sacramento Sheriff Sergeant James Schaefer's #245
Sacramento Sheriff Lieutenant Dan Donelli #86
Rick Braziel, Office of the Inspector General
Kimberly Gin, Sacramento County Coroner's Office