



Sacramento County District Attorney's Office

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Samuel D. Somers, Jr., Chief of Police
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

RE: Officer-Involved Shooting: Case No. SPD-15-141829
 Shooting Officer: SPD Henry McClusky #501
 Person Shot: Paul Cantarutti (DOB: 4/23/1987)

Dear Chief Sommers,

The District Attorney's Office has completed its independent investigation and 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 Paul Cantarutti. 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 included the following: Sacramento Police Department Report 15-141829; video and audio recordings; dispatch calls; witness interviews; photographs; diagrams; Sacramento County District Attorney Laboratory of Forensic Services report; and evidence logs.

FACTUAL SUMMARY

On May 21, 2015, at approximately 6:13 p.m., Sacramento Police and Fire personnel were in the 900 block of I Street investigating an unrelated report of two subjects fighting in Cesar Chavez Park. As officers were preparing to leave the area after completing the investigation, Linda Cantarutti and her adult son Paul Cantarutti were travelling westbound on I Street in traffic. Ms. Cantarutti parked her car on the north side of the street near the park and exited her vehicle. She approached Sergeant Sherry Bell, who was just returning to her patrol car after clearing the previous incident. Ms. Cantarutti expressed that she was afraid of her son and he needed help. She reported that he told her the car was going to blow up. She also believed that her son was under the influence of narcotics.

Sergeant Bell directed Officer Henry McClusky to speak with Ms. Cantarutti about her son's issues. Ms. Cantarutti reiterated that her son was talking about her car blowing up. She identified her son standing across the street on the north side of I Street. Officer McClusky then

motioned Mr. Cantarutti over to the south side of I Street and said, “Hey, come over here.” Paul Cantarutti crossed the street through heavy traffic after a few moments.

Officer McClusky was positioned near the driver-side rear of Sergeant Bell’s patrol car. As Mr. Cantarutti approached the rear passenger side, Officer McClusky observed that Mr. Cantarutti was carrying a folding knife with a three inch blade in his right hand pointed down. Officer McClusky said, “Hey, put the knife down. Can you put the knife down?” Mr. Cantarutti did not respond, but kept walking towards Officer McClusky. Officer McClusky then drew his firearm. He was aware of the heavy traffic on I Street and that Cesar Chavez Park was crowded with people. Accordingly, Officer McClusky began to back up to create more distance between himself and Mr. Cantarutti, and to avoid having citizens in the background of the potential line of fire.

As Officer McClusky backed up onto the sidewalk, Mr. Cantarutti continued to move towards him. Officer McClusky commanded, “Put down the knife. Put down the knife.” Sergeant Bell heard Officer McClusky’s commands and responded by getting out of her patrol car and drawing her firearm. Officer Bryon Stone also responded from his position, which was further west on I Street, but could not immediately see Mr. Cantarutti because a fire truck was partially blocking his view. As Officer Stone approached, he also drew his weapon.

Mr. Cantarutti was approximately six feet away and holding the knife as he approached Officer McClusky. Officer McClusky instructed Officer Stone to use his Taser. Officer Stone transitioned from his duty weapon to his Taser, while Mr. Cantarutti continued to move towards Officer McClusky. While still in close proximity, Mr. Cantarutti then lunged at Officer McClusky with the knife in his right hand and Officer McClusky shot him, firing three times. Mr. Cantarutti fell to the ground and dropped the knife. Officer Stone did not have sufficient time to deploy his Taser before Mr. Cantarutti lunged with the knife and Officer McClusky fired the shots.

Officers immediately approached Mr. Cantarutti, handcuffed him, and provided medical attention. Fire personnel were still at the scene from the earlier incident and provided immediate care. Mr. Cantarutti was transported by ambulance to the UC Davis Medical Center. He was treated for injuries to his chest, left side of his abdomen, upper right arm, and upper right thigh.

Officer McClusky was utilizing a body-worn camera recording device at the time of the shooting. However, the video does not show Mr. Cantarutti prior to or during the shooting because of the camera’s angle. The device was attached to Officer McClusky’s chest, and he had turned his body sideways in a defensive position when addressing the threat Mr. Cantarutti posed with the knife. The video recording was triggered during the initial contact with Mr. Cantarutti, just seconds before the shooting. Audio from the recording documents Officer McClusky ordering Mr. Cantarutti to put the knife down and asking, “Stone, can you taze him?” Sergeant Bell is also heard stating, “Taze him, taze him” immediately before three shots in rapid succession can be heard. Three empty casings were recovered at the scene, and, when examined shortly thereafter, Officer McClusky’s firearm was correspondingly depleted by three rounds.

The incident was witnessed by several individuals, who thereafter provided statements to law enforcement. One witness was driving westbound in the middle lane on I Street when he observed four police officers on the south sidewalk. This witness stated that he saw two officers with guns drawn and two officers with Tasers drawn at Mr. Cantarutti. He further stated Mr. Cantarutti was not doing anything aggressive at the time of the shooting. He said, "The guy did not lunge at them. He didn't move toward them; he wasn't doing anything. He was just standing there." This witness also reported that he did not hear any of the officers give commands or say anything prior to the shooting. He reported that he heard three to four shots. He stated that the officer fired two rapid shots while Mr. Cantarutti was standing and one to two shots after he fell to the ground. He said that there were multiple seconds between the first series of shots and the second series. He stated that the first shot hit Mr. Cantarutti in the chest and that he was incapacitated at that point. He also stated that the officer fired the second shot(s), striking him in the buttocks and/or thigh, when Mr. Cantarutti was on the ground and had turned away from the officers to protect himself. This witness did not see the knife that Mr. Cantarutti was holding until after the shooting when the knife was laying on the sidewalk. This witness made his observations while in the driver's seat of his car. He was extremely upset after observing the incident.

Another witness was in the park at the time of the shooting. He estimated that he was approximately 30-40 feet away from the location of the officers. While talking with a friend, an unidentified noise drew his attention to two officers west of him on the sidewalk. He observed that both officers had their firearms pointed at Mr. Cantarutti. He described Mr. Cantarutti as walking towards the officers at a normal pace. He reported that Mr. Cantarutti did not have anything in his hands, but his hands were up in the air. He did not hear Mr. Cantarutti or the officers say anything during their interaction. He observed Officer McClusky fire 4 shots at Mr. Cantarutti. He indicated that he had no idea why Officer McClusky shot Mr. Cantarutti.

A third witness was sitting on a bench in the northwest portion of the park at the time of the shooting. He was sitting facing south, with his back to I Street. He stated that he heard the first gunshot and turned around. He then observed a female officer, apparently referring to Sergeant Bell based on his description, shoot 3 more times as Mr. Cantarutti was on the ground. He estimated that he was approximately 25 yards away from the scene at the time of the shooting. This witness was several hours off on his time estimate of when the shooting occurred, and admitted having consumed alcohol earlier that day.

A fourth witness was on the south side of the park at the time of the shooting. He witnessed the prior fight, which caused the officers to be in the park. He saw officers confronting Mr. Cantarutti. He stated that he heard four to five gunshots and then saw the guy fall to the ground. He was unsure why the officers fired their guns and did not hear any interaction between Mr. Cantarutti and the officers prior to the shooting. He believed that Mr. Cantarutti was walking towards the officers.

Immediately following the shooting, Ms. Cantarutti was very emotional and distraught. She reported that she observed a folding "pocket knife" in her son's right hand. She said that "he just kept on walking towards them with the knife because he wanted them to shoot him." She further stated that her son was not aggressive and was not charging or coming at the officers. According

to Ms. Cantarutti, her son walked toward Officer McClusky, but kept the knife down. She described her son struggling with mental illness in the days leading up to May 21. On May 20, she called the Sacramento County Sheriff's Department to assist her with Mr. Cantarutti's disturbing behavior. Prior to stopping at the park, he told his mother that they "were both going to die today." He also told his mother that she could not stop the car or it would blow up. Specifically, he told her that he loved her, but would have to "knock her out" if she stopped the car. She reported that he appeared to be under the influence of narcotics, very paranoid and irrational, and likely hallucinating. She was afraid of her son's behavior and felt she needed help.

Firefighter Nick McIsaac was previously at the park providing medical service in the earlier, unrelated incident. His truck was parked on the south side of I Street about 50 feet east of 9th Street. Mr. McIsaac had a clear view of the shooting from his position on the sidewalk. He witnessed Mr. Cantarutti cross the street from the north side and make contact with Officer McClusky. A few seconds later, he saw the officers back up very quickly as if to distance themselves. He reported that one officer unholstered his handgun and another officer unholstered his Taser. Mr. McIsaac saw Mr. Cantarutti retrieve something silver and shiny from his front waist band. At the time, he believed the object was a knife, but could not be sure. Mr. McIsaac saw Mr. Cantarutti raise the object by his head and cock his arm. Mr. Cantarutti then lunged directly at the officers with the object in this position. From his location, Mr. McIsaac was unable to hear any communication between Mr. Cantarutti and the officers. He next observed Officer McClusky fire what he perceived to be three shots at Mr. Cantarutti. Mr. McIsaac explained that the interaction between Mr. Cantarutti and the officers happened very quickly. Immediately after the shooting, Mr. McIsaac observed the officers holster their guns and approach Mr. Cantarutti. Mr. Cantarutti was handcuffed and Mr. McIsaac and other fire personnel provided medical care. Mr. McIsaac transported Mr. Cantarutti to the hospital. During transport, Mr. McIsaac heard Mr. Cantarutti say something about letting him die because he knew he was going to prison.

Fire Captain Alva Edward Smoot was standing next to Mr. McIsaac and the fire truck just west of Sergeant Bell's patrol car. Captain Smoot heard Officer McClusky shouting at Mr. Cantarutti. He could not hear what Officer McClusky was saying, but it was clear he was commanding the subject to stop whatever he was doing. Captain Smoot observed Officer McClusky approximately five feet away from Mr. Cantarutti. Captain Smoot saw that Officer McClusky had his gun drawn on Mr. Cantarutti as he continued to yell commands. Captain Smoot was able to see the pocket knife with the blade open in Mr. Cantarutti's hand. Captain Smoot saw Officer Stone run over to assist Officer McClusky. Officer Stone had his pistol out, but then put it away and took out his Taser. Captain Smoot stated that Mr. Cantarutti then made a forward action with his upper body while he held the knife at his waist. Captain Smoot then saw Officer McClusky fire 3-5 shots. He observed Mr. Cantarutti fall to the ground and then Captain Smoot immediately ran to Mr. Cantarutti to provide medical care.

Firefighter Jeffery Scharmacher was also a witness to the shooting. He observed Mr. Cantarutti as he stepped onto the sidewalk behind the fire truck. He observed a police officer engage in a conversation with Mr. Cantarutti, but could not hear what they were saying. He saw Mr. Cantarutti step toward the officers, but was not able to see if Mr. Cantarutti had anything in his

hands. He then observed the officers reaching for their holsters and drawing their weapons. He thought one of the officers had a Taser out. He saw Mr. Cantarutti take a couple of steps toward the officers. Mr. Scharmacher reported that one of the officers holstered his Taser and drew his gun. He then heard four shots and saw Mr. Cantarutti stagger. At that point, he ran to the fire truck to retrieve his gear so that he could render medical care. When he reached Mr. Cantarutti, he was on the ground. Mr. Scharmacher observed the knife on the sidewalk. Mr. Scharmacher was unsure which officer had fired his gun. The officers had their backs to Mr. Scharmacher at the time of the shooting.

The Sacramento County District Attorney's Laboratory of Forensic Services confirmed the presence of methamphetamine and amphetamine in Mr. Cantarutti's blood.

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. California Penal Code sections 196 and 197 specifically provide that in a situation where it is reasonably necessary for an officer to defend himself or another person against death or serious bodily injury, the use of deadly force is legally justified. (See CALCRIM 505.) Additionally, 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; *Graham v. Connor* (1989) 490 U.S. 386; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; California Penal Code section 835a; CALCRIM 2670.)

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 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.)

Numerous individuals witnessed all or part of the incident, but the witnesses had different vantage points and their statements varied as to what transpired. Although some witnesses stated that Mr. Cantarutti did not have anything in his hands and simply walked towards Officer McClusky as instructed, it is questionable whether these witnesses had a clear and unobstructed view of Mr. Cantarutti during his brief and quick encounter with Officer McClusky. Moreover, other information provided by these witnesses casts doubt on the accuracy of their recollections. Descriptions of delays between the firing of shots and shots being fired at Mr. Cantarutti while he was on the ground directly conflict with more reliable evidence. The audio recording from the body-worn camera clearly captured three shots fired in rapid succession, with no pauses in between. The number of empty casings recovered at the scene and the number of rounds depleted from Officer McClusky's firearm indicates that only Officer McClusky fired, and not

other officers as claimed. Neither Sergeant Bell nor Officer Peterson, who was the only other female officer on the scene, fired their weapons during the incident. In addition, some witnesses had difficulty hearing the dialogue between Mr. Cantarutti and the officers. The audio recording from the body-worn camera, with officers clearly commanding Mr. Cantarutti to put down the knife and discussing the need to possibly deploy Taser devices, demonstrates that Mr. Cantarutti's actions posed an imminent threat to the officers.

Additionally, other witnesses did observe Mr. Cantarutti lunge at Officer McClusky with the knife in his hand. Several witnesses, including Ms. Cantarutti, saw the knife in Mr. Cantarutti's hand as he proceeded towards Officer McClusky. Crime scene photographs depicted a recovered knife at the scene and supported these witnesses' observations. Therefore, the weight of the credible evidence indicates that Mr. Cantarutti lunged forward at Officer McClusky while armed with a knife.

Therefore, the evidence demonstrates the following. Mr. Cantarutti was mentally unstable at the time of this incident and was under the influence of controlled substances. Mr. Cantarutti had made threatening comments to his mother. When Officer McClusky encountered Mr. Cantarutti, he could see Mr. Cantarutti was armed with the knife. Officer McClusky ordered Mr. Cantarutti to drop the knife. Mr. Cantarutti did not comply and continued to walk towards Officer McClusky. Officer Stone responded to assist Officer McClusky. Officer Stone did not have time to deploy a Taser device before Mr. Cantarutti lunged at Officer McClusky. When Mr. Cantarutti made the aggressive movement towards him with the knife, Officer McClusky reasonably believed that his life was in danger and acted in self-defense, discharging his firearm at Mr. Cantarutti. Mr. Cantarutti was struck and survived the injuries.

CONCLUSION

Applying the controlling legal standards with the factual record, we conclude that Officer McClusky was justified in using deadly force in this situation. The objective evidence supports a finding that his conduct was reasonable under the circumstances he encountered. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: SPD Officer Henry McClusky
Francine Tournour, Office of Public Safety Accountability