



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael A. Neves
Assistant District Attorney

November 3, 2015

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

RE: Officer-Involved Shooting: Case No. SPD 14-171130
 Shooting Officers: SPD Officer Nicholas Tavelli #724
 SPD Officer Edward Macaulay #272
 Person Shot: Jose Cardenas Beltran (DOB: 7/12/91)

Dear Chief Somers:

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 Jose Cardenas.¹ 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 Police Department report number 14-171130; witness interview recordings; photographs; diagrams; a scene video; radio traffic recordings; evidence logs; the decedent's criminal history summary; Sacramento County District Attorney Laboratory of Forensic Services reports; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

On June 21, 2014, at approximately 7:15 p.m., the Sacramento Police Department received two 911 emergency calls reporting that Jose Cardenas was intoxicated, armed with a knife, and chasing his brother outside of a residence located at 4144 Wheatley

¹ Cardenas has also used the name Jose Cardenas Beltran.

Circle. Earlier, Cardenas became angry with his brother for not allowing Cardenas to drive away from the residence intoxicated. Cardenas initiated multiple physical confrontations with his brother in the front yard of the residence. Each time, his brother controlled him by holding him in a bear hug to calm him down. Cardenas fell asleep in the car after two of the altercations, only to wake up and instigate another one. After one of the altercations, Cardenas told his brother he was going to kill him. After another one, he stated, "I'm going to kill myself."

Following the physical confrontations, Cardenas entered the residence and obtained a large chef's knife. Family members tried to get the knife away from Cardenas, but they were unsuccessful. Armed with the knife, Cardenas went back outside and chased his brother around and over multiple parked cars, before chasing him down the street.

Sacramento Police Sergeant Michael Poroli and Officer Nicholas Tavelli responded to the 911 calls. They were wearing full police uniforms and were driving in a marked patrol car. When they arrived at the residence, witnesses told the officers that Cardenas had fled to the other side of North Avenue Park, and that his brother had made it back home. One of the witnesses told Officer Tavelli, "He is crazy. I hope you guys have taser guns because you are going to need them."

Sergeant Poroli and Officer Tavelli immediately began searching for Cardenas and located him in an empty field north of Interstate 80. The field was rutted from having recently been disced. Cardenas ran across the field towards a residential neighborhood on the north side of the field. He was still armed with the large knife. Sergeant Poroli and Officer Tavelli drove ahead of Cardenas and circled back around the field to intercept him. They parked their patrol car at the north end of the field and pursued Cardenas on foot. Cardenas saw the officers, changed course, and began running west through the field. Cardenas ignored the officer's verbal commands and stated, "Leave me alone," "I am going to kill you," and "I am going to stab you."

During the pursuit, Cardenas lost his footing and fell, but held on to the knife. Sergeant Poroli deployed his taser, striking Cardenas in his torso. Cardenas overcame the taser's effects, stood up, and continued west through the field. Sergeant Poroli repeatedly commanded Cardenas to drop the knife. Instead of dropping it, Cardenas repeatedly brandished the knife in various threatening ways. He sometimes held it by the handle over his head as if he was beginning a stabbing motion. Other times, he held it by the blade as if he was beginning an overhand throwing motion.

Cardenas stopped running when his path intersected a barbed-wire fence. By this time, Officer Edward Macaulay had arrived in the field to assist Sergeant Poroli and Officer Tavelli. Officer Macaulay was also wearing a full police uniform. Cardenas turned, faced the officers, and held the knife over his head. The officers stopped advancing, but had their guns drawn. Officers Macaulay and Tavelli were positioned approximately twenty-seven and twenty-eight feet to the east of Cardenas, and Sergeant Poroli was positioned approximately fifteen feet to his southeast. The north side of the field was blocked by a wooden fence separating the neighborhood from the field, and the west

side was blocked by the barbed-wire fence. Sergeant Poroli continued to command Cardenas to drop the knife. Cardenas refused the commands. He threatened to stab or throw the knife at the officers if they did not shoot him and stated, "You are going to have to shoot me! Please don't shoot me in the face. There is no way out of this. If you don't shoot me, I am going to stab you, I am going to throw this knife at you."

Cardenas initially moved slowly towards Sergeant Poroli to the southeast, but quickly spun towards Officers Tavelli and Macaulay and began to charge at them with the knife held up over his head in a throwing position. Officers Tavelli and Macaulay feared for their lives and believed Cardenas was charging at them to kill them with the knife. They also realized that there was no cover or concealment in the open field behind them to support a tactical retreat and that the rutted nature of the terrain made it probable that they would fall in the process. Officers Tavelli and Macaulay both fired their weapons at Cardenas. Officer Tavelli fired six shots and Officer Macaulay fired three shots. Cardenas was struck three times—in the chest, left arm and right ankle. Sergeant Poroli observed Cardenas' assault on the officers and the shooting. He indicated that after turning towards Officers Macaulay and Tavelli, Cardenas held the knife by the blade and lunged towards Officers Tavelli and Macaulay. Cardenas threw the knife at them with an overhand motion. The knife was ultimately recovered in the field adjacent to, and behind, where Officer Tavelli had been standing. The blade was approximately eight inches long. Officers Tavelli and Macaulay did not realize Cardenas had actually thrown the knife until after he had been shot.

After the shooting, Officer Macaulay applied pressure to Cardenas' chest wound until paramedics arrived. Other officers took down a portion of the fence separating the field from the neighborhood to expedite the paramedic's access to the field. Medical interventions on scene and at the hospital were unsuccessful. Cardenas was pronounced dead at the U.C. Davis Medical Center at 8:26 p.m. According to the Coroner's Final Report of Investigation, the cause of death was multiple gunshot wounds. His blood alcohol level was .17%.

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. 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.) An officer who attempts to arrest or detain a person need not retreat or desist from his efforts by reasons of the resistance or threatened resistance of the person; 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.) Police may use some degree of physical coercion or threat thereof to accomplish an arrest. The force used must be objectively reasonable, considering such issues as the severity of the crime, whether the suspect posed an immediate threat to police or others,

and whether the suspect actively resisted arrest or attempted flight. (*Graham v. Connor* (1989) 490 U.S. 386.) The reasonableness inquiry takes into account those facts known to the officer at the moment he or she uses deadly force to apprehend a fleeing suspect. (*Ford v. Childers* (7th Cir. 1988) 855 F.2d. 1271, 1275; *Sherrod v. Berry* (7th Cir. 1988) 856 F.2d 802, 804.)

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.) The rule “requires that the officer’s lawful conduct be established as an objective fact; it does not establish any requirement with respect to the defendant’s mens rea.” (*People v. Jenkins* (2000) 22 Cal.4th 900, 1020.)

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.)

Applying these legal principles to the factual circumstances in this case, Officers Tavelli and Macaulay reasonably believed they were in imminent danger of being killed by Cardenas, and the immediate use of deadly force was necessary to defend themselves. The officers were dispatched to an emergency call relating to an intoxicated individual chasing his brother with a knife. A witness told Officer Tavelli that Cardenas fled, that he was “crazy,” and that the officers would likely need to use force against him. Officer Tavelli and Sergeant Poroli located Cardenas in the field, but he refused to comply with any of their commands and threatened to kill them with the knife. Non-lethal options were ineffective. Cardenas overcame the effects of the taser deployment and repeatedly brandished the knife in a threatening manner. When he reached the barbed-wire fence, Cardenas again refused the officers’ commands to drop the knife. He told the officers that they would have to shoot him or he would assault them with the knife. Cardenas held the knife up over his head and began his assault on Officers Tavelli and Macaulay. For their own safety, Officers Tavelli and Macaulay fired their weapons at Cardenas in self-defense.

CONCLUSION

Given the circumstances, Officers Tavelli and Macaulay were justified in using deadly force in self-defense. The objective evidence supports a finding that the officers' conduct was reasonable under the circumstances. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: SPD Officer Nicholas Tavelli #724
SPD Officer Edward Macaulay #272
SPD Detective Jason Kirtlan #329
Francine Tournour, Office of Public Safety Accountability