



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael A. Neves
Assistant District Attorney

MEMORANDUM

DATE: July 11, 2019

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-17-421177
Shooting Officer: Craig Evans #1257
Person Shot: Steven Davis (DOB 8/16/95)

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 Steven Davis. 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's Department report number 17-421177 and its related dispatch logs; 9-1-1 and dispatch recordings; witness interview recordings; scene photographs; scene videos; in-car camera videos; cell phone videos and records; Sacramento Metro Fire District report number 17-0197977; medical records; and Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, and Physical Evidence Examination reports.

FACTUAL SUMMARY

On December 19, 2017, at approximately 4:20 p.m., Steven Davis drove a white Ford E350 box truck into the Carl's Jr. drive-thru lane at Micron Avenue and attempted to order food. The restaurant employee could not understand him. Davis drove forward and parked his truck in front of the restaurant. He exited his truck, entered Carl's Jr., and eventually approached the employee at the front counter. Davis ordered a free promotional meal. After receiving the food, Davis continued to ask for another free promotional meal. The employees denied his repeated requests. Davis then showed his cell phone to an employee and stated the restaurant charged his credit card for the free promotional meal. The employee observed the charge displayed on the

phone was an unrelated \$13.00 charge in San Francisco. The employee explained to Davis that he was not being charged for the free promotional meal.

Davis had difficulty standing and was unstable on his feet. He had droopy eyes and spoke with a low tone, so he was difficult to understand. The restaurant manager noticed Davis had a strong odor of an alcoholic beverage on his breath. She went outside, obtained the company's phone number on the truck, and left a message for Davis' employer regarding her concerns. One customer also observed Davis having difficulty placing a lid on his drinking cup and called 9-1-1. Davis was frustrated and walked out of the restaurant and back to his truck.

Sacramento Sheriff Deputy Craig Evans was dispatched to the scene. He was advised by dispatch that a subject who drove to Carl's Jr. in a white Ford cargo box truck was intoxicated, slurring his words, swaying on his feet, and dropping items inside the restaurant. The people in the restaurant were concerned he would drive away.

Deputy Evans drove his fully marked patrol vehicle south on Bradshaw Road. As he turned right onto Micron Avenue, Deputy Evans observed a white and green delivery truck parked directly in front of Carl's Jr. adjacent to the curb near the front door. Davis was sitting in the driver's seat of this truck, facing eastbound. Deputy Evans drove into the lot and parked past the truck. He exited his patrol vehicle and walked towards the truck. The truck had an extended width rear storage compartment, which was approximately 8-12 inches wider than the truck's front doors. As he reached the truck's rear bumper, Deputy Evans heard the engine turn on. He quickly walked to the driver side door and stepped on the curb. The driver side door was closed, and the window was open. Deputy Evans asked Davis, "Hey partner, what's going on?" and "Hey, can you turn the vehicle off?" Davis asked, "Why?" Deputy Evans directed Davis to turn the vehicle off. Davis turned off the engine but left the keys in the ignition.

As they spoke, Deputy Evans believed Davis was intoxicated or had a medical issue. Davis had slurred speech and glassy eyes, and he was nervous. Davis stated he needed to go to work. Deputy Evans looked through the open driver's door window and observed two silver beer cans in the passenger cup holders. During the discussion, Davis looked side to side and moved his hands up towards the ignition key and steering wheel. Deputy Evans asked Davis several times to exit the truck, but he refused. Deputy Evans advised dispatchers Davis was refusing to exit the truck. Deputy Evans opened the driver's door, told Davis that he could not leave, and ordered Davis to exit the truck. At one point, Davis told Deputy Evans a warrant was necessary for him to exit the truck. As they continued this dialogue, Davis reached up, grabbed the keys, and started the truck. He placed his hands back down and Deputy Evans stated, "Don't do it. You're not going to leave. You're not driving away from here. You need to get out of the vehicle."

Deputy Evans reached into the truck with both hands and tried to grab Davis' arm. With his left hand, Davis grabbed Deputy Evans's left wrist area. Deputy Evans turned his body away, reached down to retrieve his gun, and pointed the gun at Davis. Deputy Evans told Davis that he was not driving away and ordered him to immediately exit the vehicle. As Deputy Evans tried to free his left arm, Davis turned his body away and grabbed the gear lever to pull down on it. Davis placed the truck in gear and accelerated. The driver's door began to close and struck

Deputy Evans in the shoulder. Deputy Evans stepped off the curb and side-stepped his feet to keep up with the truck. Deputy Evans feared he was going to be run over by the rear wheel or struck by the truck's extended rear storage compartment. As Davis began to drive away still holding Deputy Evans's wrist, the deputy fired his gun at Davis three times. Deputy Evans stopped firing once his left hand became free. He stumbled, tried to catch his balance, and put his hand on the ground to avoid landing on his face. Davis exited the parking lot and drove the truck onto Micron Avenue.

Deputy Evans could not catch up to Davis, so he ran to his patrol vehicle and advised dispatchers that he fired his gun. Deputy Evans entered the patrol vehicle and activated the lights and siren. He observed the truck stopped in traffic on Micron Avenue. Deputy Evans drove his vehicle up and blocked the truck's path with the front end of the patrol vehicle. Deputy Evans exited his vehicle and, at gunpoint, continuously ordered Davis to turn off the engine and get his hands up.

Deputy Steve LeCouve arrived at the scene and exited his patrol vehicle. He grabbed his service rifle and initially approached the driver side of the truck. Both deputies directed Davis to turn the engine off. Deputy LeCouve requested fire and medical assistance. Davis' head rolled back and his body leaned towards the driver's window. At that point, Deputy Evans did not believe Davis was a threat. Deputy LeCouve eventually climbed into the truck, turned off the ignition, and placed the vehicle in the park position. He exited the truck and came back to the driver's side. The deputies opened up the driver's door, removed Davis from the truck, and placed him on the ground. Davis was bleeding profusely so deputies cut Davis' clothes and applied a tourniquet around his arm. Deputy LeCouve immediately provided cardiopulmonary resuscitation. Davis gained consciousness and the deputies continued medical assistance.

Sacramento Metropolitan Fire District personnel arrived and provided further medical treatment. Davis was transported to UC Davis Medical Center for surgery. Davis suffered gunshot wounds to his right groin/thigh area, right arm, and left elbow.

Detectives interviewed a witness who was walking to Carl's Jr. when she observed Davis sitting in the driver's seat of the big white truck with the driver's door open. The witness stated that a peace officer stood near the driver's door and ordered Davis to get out of the truck one or two times. The witness heard the truck's horn and saw Davis begin to slowly drive away. The officer reached into the truck, grabbed Davis, and ran alongside the moving truck. The truck increased its speed and the officer fired 3-4 gunshots toward Davis. The truck drove off and exited the parking lot. When the shooting occurred, the witness was approximately 5-6 feet away from the deputy and truck.

Another witness spoke to detectives about the incident. The witness came to Carl's Jr. to eat dinner and initially observed Davis attempting to drive the large truck into the drive-thru lane. Because of this, the witness believed Davis was intoxicated. Later, the witness went inside the restaurant and stood behind Davis at the front counter. The witness indicated Davis was vulgar and argued with employees about the free promotional meal. Davis did not understand how to use the promotion coupon. The witness observed Davis try to place numerous lids on his soft drink cup for approximately 8-9 minutes. Davis kept dropping everything he was holding. The witness called 9-1-1 because he believed Davis was dangerous and should not be driving.

Detectives interviewed Davis at the hospital. Davis stated he was a delivery person for Sierra Office Supply. On the date of the shooting, Davis drove a white Ford delivery truck. He decided to stop at Carl's Jr. to get a free lunch before returning to the warehouse. Davis entered through the front door and ordered the meal. After eating the food, Davis went outside towards the truck to smoke a cigarette. He later observed an officer and blood dripping down his arm. Davis remembered having a tourniquet and screaming in pain while in the ambulance. He told detectives that he could not recall any other events or details regarding the incident because he was shot and lost a large amount of blood. Davis also told detectives that he did not remember drinking anything that day. He denied taking any medication, marijuana, or any illicit drugs.

The Carl's Jr. restaurant exterior and interior surveillance cameras recorded a portion of the incident. The video recording depicts Davis' truck entering the drive-thru lane and proceeding to the other side of the restaurant. The truck eventually exits the drive-thru lane by driving over a parking median and continuing to the front of the restaurant. Davis parks the truck next to the curb and near the front doors and enters the restaurant. He walks towards the restroom, exits the restaurant through the front doors, and briefly returns to the truck. Davis re-enters the restaurant through the front doors and approaches the front counter with a cell phone in his hand. A male witness and his family enter the front lobby of the restaurant. After observing Davis, the witness speaks to a restaurant employee. The employee eventually exits the front doors, looks at Davis' truck, and re-enters the restaurant. The witness also went outside the restaurant to make a phone call. During his time in the restaurant, Davis is speaking to employees, showing his cell phone, throwing trash in the garbage can, and walking to the drinks area. At one point, Davis appears to stumble while walking away from the drinks area.

The video then depicts Davis exiting the front doors and returning to the truck. Approximately one minute later, Deputy Evans arrives in front of the restaurant and walks towards the driver's side of the truck. Because of the camera angles and obstructions, the interior and exterior cameras did not capture the details of Deputy Evans's contact with Davis at the driver's front door. Davis eventually begins to drive his truck away from the front of the restaurant. Deputy Evans runs after the truck through the parking lot, and then he runs back to his patrol vehicle. The truck exits the parking lot and travels eastbound on Micron Avenue, while other Sheriff patrol vehicles arrive at the scene.

Investigators searched Davis' truck. They located two expended bullets behind the driver's seat and inside the passenger door and a silver expended 9mm Luger "FC" shell casing behind the driver's seat. Investigators also recovered one spent 9mm shell casing in front of Carl's Jr. near the drive-thru entrance where the shooting took place. A round count of Deputy Evans' duty weapon indicated that he fired three rounds.

Several 16-ounce cans of Hurricane High Gravity Category Five Malt Liquor were found inside the truck. Two open cans were in the center console cup holders on the passenger side, one empty can was on the floorboard between the seats, and one empty can and four unopened cans were in a backpack. Investigators discovered Davis' latent impressions on the exterior of one of the open cans located in a cup holder on the passenger side of the center console.

A sample of Davis' blood was taken at the hospital at approximately 1:47 a.m. The Sacramento County District Attorney's Office Laboratory of Forensic Services examined the sample and determined Davis' blood alcohol level was .06%. The sample was obtained approximately nine hours after the shooting incident.¹

On December 19, 2018, in Sacramento Superior Court case number 17FE023729, Davis pleaded no contest to a felony violation of Penal Code Section 245(c) (assault with a deadly weapon upon a peace officer) and to misdemeanor violations of Vehicle Code Sections 23152(a) (driving under the influence) and 23152(b) (driving with blood-alcohol level of .08% or more) related to this matter. Davis was sentenced to one year in county jail.

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.)

Deputy Evans believed Davis was clearly impaired when he contacted Davis at Carl's Jr. Davis was nervous and had slurred speech and glassy eyes. Davis also looked side to side and initiated his hands towards the ignition key and steering wheel. Deputy Evans observed alcoholic beverages inside the truck. Based on Davis' physical appearance and furtive movements, it appeared Davis had objective signs of intoxication and was going to flee. Although Deputy Evans asked him several times to exit the truck, Davis continuously refused and even claimed a warrant was necessary to require him to exit. Deputy Evans attempted to control Davis by opening the driver's door and ordering him out of the truck. However, Davis created a dangerous situation when he reached up, grabbed the keys, and started the engine. Fearing Davis would drive away while under the influence, Deputy Evans reached into the truck and tried to grab Davis. Davis had a duty to submit himself to detention and but failed to do so.

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense. 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;

¹ Retrograde extrapolation is a scientific method to calculate a driver's blood alcohol level at an earlier time, based on a chemical test taken later. This calculation analyzes the average alcohol absorption and elimination rates. It is used in driving under the influence cases when the chemical test was delayed several hours after the driver was detained. Using this method, it was determined Davis' blood alcohol level was .08% or higher at the time he was driving the truck.

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.)

In these circumstances, it was reasonable for Deputy Evans to believe Davis was committed to avoiding apprehension and was going to drive the truck away while under the influence. Davis disregarded all warnings from Deputy Evans to exit the truck. When Deputy Evans attempted to physically subdue Davis, he grabbed Deputy Evans' wrist area and limited his movement, thus placing Deputy Evans in an extremely vulnerable position. Deputy Evans was concerned Davis would drive away so he pointed his gun at Davis and again directed him to exit the truck. Davis disregarded these orders and pulled the gear lever. Deputy Evans believed he was in jeopardy because the driver's door or extended rear storage compartment could strike him, or he would be dragged and slide under the truck's large rear wheels. As the truck accelerated, Deputy Evans could not escape Davis' grasp and believed he was in imminent danger of being seriously injured or killed. He fired three shots, striking Davis. Given the circumstances, Deputy Evans' belief that he was in imminent danger of death or great bodily injury was reasonable.

CONCLUSION

Deputy Evans was justified in shooting Davis in self-defense. Under the circumstances, his conduct was reasonable. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento Sheriff Detective Adam Persson
Sacramento Sheriff Deputy Craig Evans
Sacramento Sheriff Lieutenant Gail Vasquez
Sacramento Sheriff Sergeant Ken Clark
Sacramento Sheriff Sergeant Tony Turnbull
Sacramento Sheriff Sergeant Steve Girdlestone
Office of the Inspector General