



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: March 20, 2017

TO: Chief Ronald A. Lawrence
Citrus Heights Police Department
6315 Fountain Square Drive
Citrus Heights, CA 95621

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting: Case No. CHPD-15-04966
Shooting Officers: Officer Crystal Buechner #353
Officer Kyle Shoberg #84
Officer Nathan Culver #252
Sergeant Jason Baldwin #212
Person Shot: Eduardo Reyes (DOB 7/23/1979)

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 Eduardo Reyes. 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: Citrus Heights Police Department report number 15-04966; 911 recordings; dispatch logs; radio traffic recordings; witness interview recordings; scene videos, diagram, and photographs; Sacramento County District Attorney Criminal Investigative and Laboratory of Forensic Services reports; and the Sacramento County Coroner Final Report of Investigation.

FACTUAL SUMMARY

On June 22, 2015, Eduardo Reyes spent the day with his three children at his in-laws' home. According to family members, throughout the day, Reyes drank approximately nine or ten beers. His wife, Lisa Reyes, spent the day at work.¹ In the afternoon, Lisa spoke with her husband on

¹ Because she shares the same last name as her husband, Lisa Reyes will be referred to as "Lisa" throughout this memorandum for ease of reference; no disrespect is intended.

the telephone. She could tell by the way he slurred his words that Reyes was intoxicated. Lisa asked him not to drive with their three children, a thirteen-year-old girl and nine-year-old twin boys. Despite her request, Reyes drove the children to the family's apartment at 7500 Greenback Lane. When he arrived, Lisa was home from work. Reyes dropped off the children and drove to the store to get more alcohol.

At approximately 6:30 p.m., Reyes returned to the apartment and was angry at Lisa. He was particularly upset that the apartment was hot and Lisa had not turned on the air conditioning. He called her names and used foul language in front of their children. Lisa and the children retreated to their bedrooms to avoid a confrontation with Reyes. Lisa called 911 to report that her husband was very intoxicated and verbally abusive to her and her children. She told the dispatch operator that she was afraid Reyes would break her phone if he learned she had called 911. Lisa ended the call by quietly saying, "Please come."

Reyes came into the bedroom and began pushing and yelling at his wife. He got on top of her and pinned her to the bed. He punched her with a closed fist, which caused severe bleeding. Their children came into the hallway and saw the assault. The daughter called 911 and reported that her father was attacking her mother. She explained that she and her siblings were hiding in their rooms, but she could hear her father assaulting her mother. She moved into the hallway and told the operator that her father was "choking" her mother. Reyes saw her and asked, "Who are you on the phone with?" She replied that she was on the phone with the police. Reyes took his daughter's phone, held it up to his ear, and then threw the phone down the hallway. He choked his daughter and shoved her down to the ground. Reyes told Lisa that her daughter was just like her and to look at what she had done. He then went to retrieve his gun from a lock box in the guest room. Lisa later reported that her husband knew police officers were coming, and "he said something to the effect that they were going to have to go down with a fight." Lisa yelled for her children to run. The children were able to escape the apartment without being harmed.

After fleeing the apartment, the daughter called 911 again. She told the operator that her father previously hung up her phone and started choking her. She also told the operator that her father said he was "going to load his gun." She explained that she and her brothers were out of the apartment, but that her mother was still inside.

After Reyes got his gun, he returned to the bedroom and attacked Lisa again. As Lisa turned her head away from her husband, he struck her two times in the back of the head with the gun. Lisa later stated that she had never felt so much pain in her life. According to Lisa, her husband walked out of the room and fired two gunshots into the parking lot. While he was out of the room, Lisa again called 911. She told the operator that her husband had a gun. Lisa had to hang up on the 911 operator because she was afraid her husband would take her phone if he saw her using it.

Reyes returned to the bedroom. He put his gun to his wife's forehead. He told her to give him a reason why he should not kill her. Lisa was bleeding, crying, and terrified that he would kill her. He told her to get up and that he would force her to walk out of the apartment to the police. She pleaded with him, but Reyes told her it was all her fault. Eventually, Reyes said to his wife, "Never mind, I'll go."

Citrus Heights Police Department Officers Crystal Buechner and Bryan Gore were dispatched to the apartment where Reyes and his family lived regarding the domestic violence incident. While en route, they received additional information that the father was “choking” the mother. The daughter flagged down Officer Buechner in the apartment complex parking lot. She told Officer Buechner that her father threatened to get his gun out. Officer Gore was already running toward the apartment when Officer Buechner learned that Reyes could be armed. Officer Buechner yelled for Officer Gore to stop. While Officer Buechner was speaking with the daughter, she heard the sound of glass breaking. At the time, she was not certain whether it was from a gunshot.

Meanwhile, Officers Kyle Shoberg, Nathan Culver, Elena Calderon, and Sergeant Jason Baldwin arrived to assist and took positions on the southwest corner of the apartment building, approximately fifty yards from the staircase. Officers Shoberg and Culver sought cover behind a large tree, and Sergeant Baldwin and Officer Calderon took cover behind the apartment wall.

Officer Buechner moved from the southeast corner of the apartment building across the parking lot into a carport to have a better view of Reyes’s apartment. She took cover behind a large SUV. From that vantage point, Officer Buechner could see the bottom five or six steps of the stairwell leading to Reyes’s apartment. She could also see the apartment windows. Officer Buechner heard the sound of a single gunshot from inside the apartment. Approximately one minute later, Reyes walked down the apartment stairwell. From her position approximately 30 yards away, Officer Buechner announced her presence by yelling, “Police!” She also ordered Reyes to “get down on the ground.”

Officer Buechner saw Reyes raise a gun in his right hand. At the same time, Sergeant Baldwin peered out from the southwest corner of the apartment building. He observed a portion of Reyes’s torso, and saw Reyes’s hand pointing a gun at the carport, towards where Officer Buechner was positioned. Officer Shoberg was also at the corner of the building and could see Reyes as he was coming down the staircase. He saw Reyes walking down the stairs with the gun in his hand. Reyes was looking around and raising the gun up. Officer Shoberg immediately thought that Reyes was going to shoot one of the officers. Officers Buechner, Shoberg, and Sergeant Baldwin fired their handguns at Reyes.

Reyes retreated up the stairs and out of the officers’ sight. A few moments later, Reyes came back down the stairs and Officer Buechner ordered him to drop his gun. Reyes looked at Officer Buechner and fired in her direction. Officer Buechner then heard Reyes yell, “Bitch! Come and get me!” Officer Buechner returned fire. Officer Shoberg and Sergeant Baldwin also observed Reyes descending the stairs and fired at him believing that Reyes fired shots at Officer Buechner or in their direction.

Reyes went back up the stairs. Sergeant Baldwin heard Reyes reloading his semi-automatic firearm. Based on his experience, Sergeant Baldwin heard the distinct sounds of a magazine drop from a gun and the insertion of another magazine into the magazine well. Officer Culver also heard Reyes reloading his weapon. Sergeant Baldwin believed Reyes was reloading to come out and try to kill him and his fellow officers.

Sergeant Baldwin determined that the officers would have a better angle to observe the stairwell and engage Reyes if they were positioned across the parking lot with rifles. Accordingly, Officer Shoberg retrieved his AR-15 rifle from his patrol car. He and Officer Calderon made their way further southwest toward the concrete dumpster across the parking lot. Officer Culver stayed with Sergeant Baldwin at the corner of the apartment building. As Officers Shoberg and Calderon proceeded toward the dumpster, using parked cars for cover, Officer Buechner broadcasted that Reyes was coming down the stairs again.

As Reyes came into view, Sergeant Baldwin saw Reyes holding a gun in his right hand and it appeared Reyes was focused on Officer Buechner's location. Officer Buechner radioed that Reyes had his gun pointed at her. Officer Shoberg was down in a prone position near a parked car and had a clear line of sight to the stairwell and Reyes. Officer Shoberg began shooting at Reyes. Officer Culver also saw Reyes raise his gun at Buechner and heard a gunshot. Out of fear that Officer Buechner would be killed, Officer Culver fired at Reyes. Reyes then turned, faced Officer Culver, and raised the gun in his direction. Officer Culver feared that Reyes would continue to shoot at him and other officers, so he continued firing his rifle at Reyes. Reyes was hit multiple times and fell to the ground. Reyes went down with the gun in his hand.

Officers approached Reyes and observed a .45 caliber handgun on the ground next to his right hand. An empty magazine lay nearby. Sergeant Baldwin moved the gun away from Reyes's hand.

Officers began life saving measures on Reyes. Sacramento Metro Fire and Medic subsequently arrived and continued medical treatment. Reyes was pronounced deceased at approximately 7:46 p.m.

Lisa Reyes was transported to Mercy San Juan Hospital for treatment. She sustained fractured left and right side nasal passages due to her broken nose. She also suffered a thickness laceration (down to the bone) to the back of her head, which was 12 centimeters long, and required stapling. Lisa spoke to detectives at the hospital about the events leading up to the shooting. She stated that her husband had a problem with alcohol and was angry and violent when he drank. His alcoholism had been a source of conflict in their marriage. Reyes also suffered from depression and had taken a variety of anti-depressants during the year before the shooting.

An apartment complex resident witnessed a portion of the shooting. He was outside when he heard a noise coming from the south side of the apartment complex. He looked into the parking lot and saw Officer Buechner being shot at and ducking down behind a grey SUV. The resident stated he saw Officer Buechner peek out from the side of the SUV and return fire. He stated that each time Officer Buechner showed her face by peeking out, she was shot at. From his vantage point, the resident could hear bullets ricocheting around Officer Buechner and could see sparks and dust clouds from rounds impacting the surface of the parking lot. Officer Buechner saw the resident during the shooting and instructed him to go back inside his apartment.

The Sacramento County District Attorney's Office Laboratory of Forensic Services determined that Reyes had a blood alcohol level of .14. The Sacramento County Coroner's Final Report of

Investigation identified the cause of death as multiple gunshot wounds. Reyes had twenty gunshot wounds to his chest, torso, mid-abdomen, pubis, right shoulder, right arm, left arm, and right leg. He also had several fragment wounds on the right side of his back.

Based on officers' interviews, recovered discharged cartridges, examination of firearm magazines, and crime scene analysis, it was determined that Officer Buechner fired three shots from her handgun, Officer Shoberg fired four rounds from his handgun and seven rounds from his rifle, Officer Culver fired eleven rounds from his rifle, and Sergeant Baldwin fired twelve rounds from his handgun. When examined later, it was determined that the .45 caliber handgun found on the ground next to Reyes's hand contained an empty magazine. An intact .45 cartridge was found underneath Reyes. An additional intact .45 cartridge was found on the second stair from the bottom of the staircase. One discharged .45 casing was found between Reyes's legs, and another was found under the stairs.² Two discharged .45 casings were found inside the apartment. Three fired projectiles were located in the carport area near where Officer Buechner was positioned.³

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 Reyes for multiple serious and violent offenses. Reyes committed domestic violence on his wife while using a firearm and assaulted his daughter. He also made criminal threats and discharged his firearm inside and outside the apartment. When the officers arrived to apprehend him, Reyes 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

² Laboratory testing confirmed that these casings were discharged from the .45 caliber handgun found next to Reyes.

³ Laboratory analysis revealed that these projectiles were not fired from the .45 caliber handgun found next to Reyes. Instead, they were consistent with having been discharged from law enforcement firearms.

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 this case, the officers acted in self-defense and in defense of Officer Buechner when they shot Reyes. Reyes demonstrated that he was a dangerous, violent individual, having just severely beaten his wife and choked his daughter. Reyes knew the police were coming and threatened to his wife that he was going to harm them. When the officers arrived, Reyes repeatedly ignored commands to submit to arrest and drop his weapon. He taunted Officer Buechner to approach him. He repeatedly pointed his gun at Officer Buechner and fired at least two shots while outside the apartment at the bottom of the stairs.⁴ Reyes returned to his apartment, appeared to reload his weapon, and came back down the stairs with his gun pointed at Officer Buechner. The officers were not required by law to retreat from their positions. They believed that Reyes posed a significant and immediate threat of death or serious physical injury to Officer Buechner and the other officers. They feared for their own safety, and the safety of other officers, and lawfully discharged their weapons at Reyes.

CONCLUSION

Officers Buechner, Shoberg, Culver, and Sergeant Baldwin were justified in shooting Reyes to defend themselves and each other. Under the circumstances, their conduct was reasonable. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Officer Crystal Buechner #353
Officer Kyle Shoberg #84
Officer Nathan Culver #252
Sergeant Jason Baldwin #212

⁴ It should be noted that regardless of whether Reyes actually fired at Officer Buechner or when that may have occurred in the exchange of gunfire, he clearly pointed his firearm at her multiple times, causing the officers to actually and reasonably believe that he would shoot her.