



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: June 23, 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-16-245488
Shooting Officer: James Spurgeon #1099
Person Shot: Chad Irwin (DOB 10/31/1975)

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 Chad Irwin. 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 County Sheriff's Department report number 2016-245488 and its related dispatch recordings, scene photographs, scene video recordings, in-car camera video recordings, and witness interview video recordings; surveillance videos; cellular telephone records and forensic analysis; Sacramento Metropolitan Fire dispatch recordings; Sacramento County District Attorney's Office Laboratory of Forensic Services Physical Examination, Forensic Biology, Blood Alcohol, and Toxicology reports; and the Sacramento County Coroner's autopsy report.

FACTUAL SUMMARY

Chad and Allison Irwin lived with their children at 6126 Brahms Court in Citrus Heights.¹ On August 18, 2016, Allison and Irwin agreed that Irwin would take their daughter to an activity at 6:00 p.m. and pick her up at 8:00 p.m., and Allison would take their other child to a separate activity at 7:00 p.m. At approximately 6:35 p.m., Allison called Irwin and apparently Irwin

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

unknowingly answered. Irwin did not speak during the call, but Allison listened for approximately 23 minutes and heard sounds that indicated Irwin was drinking at a bar. At 6:59 p.m., she sent Irwin a text message stating, “Don’t worry. The responsible adult will pick [the children] up. Feel free to party it up.” Irwin responded, “Ok if you say so you make it easy.” Allison picked up the children.

Allison did not want the children to be around Irwin if he was going to come home drunk. At 8:15 p.m., she sent Irwin another message: “I’m giving you a choice. Either don’t come home or we will find a place to stay. You have five minutes to reply.” Irwin responded, “Really.” Allison responded, “Yes really. Please respond with a decision.” Irwin returned home upset and they argued about the text messages. Irwin went directly to the master bedroom and towards a closet containing a gun safe. He tried to access the gun safe while stating, “I might as well kill myself.” Irwin was unable to open the gun safe because Allison was the only person who could access its contents.² Irwin walked into the garage, retrieved a knife from his vehicle, and placed it against his stomach. Allison told him to think about their children, but Irwin said, “They would be better off without me.” Allison pleaded for him to stay, but Irwin got into his vehicle and left.

At approximately 8:31 p.m., the Sacramento County Sheriff’s Department received a 9-1-1 hang-up call from the Irwin residence. Sacramento Sheriff’s Deputy David Conger, and his field training officer, Deputy James Spurgeon, were dispatched to investigate. They arrived at approximately 8:40 p.m. in a fully marked Sheriff’s patrol vehicle. Both deputies wore uniforms clearly identifying them as Sheriff’s Deputies.

Deputy Conger approached the residence. He contacted Allison at the front door while Deputy Spurgeon stood nearby. Allison stated she and Irwin had been arguing earlier in the day about him being out drinking before he was supposed to pick up the children. She told Deputy Conger she was a nurse and she was concerned because Irwin had been mixing alcohol with prescription pain medication, and was driving. She also said Irwin had a knife and that he has made suicidal statements in the past. Accordingly, the deputies returned to their vehicle to notify law enforcement to be on the lookout for Irwin in order to conduct a welfare check.

Once there, the deputies realized they did not have Irwin’s cellular telephone number. Deputy Conger walked back to Allison’s residence to get it. While he was there, Irwin called Allison on her phone. Deputy Conger heard Allison tell Irwin that the police were at their house and he needed to stop this, come home, and think about their children. After the call, Allison told Deputy Conger that Irwin was coming back home because he wanted his medication (later described to another deputy as being oxycodone, Lyrica, and Lexapro).³ She said Irwin was unhappy that the Sheriff’s Department had been called and he was probably going to be angry when he got home.

² Allison later told a detective she bought the gun safe a few years earlier after Irwin mixed alcohol with his medications, put a gun to his head, and threatened to kill himself.

³ Oxycodone is an opioid pain medication; Lyrica is a prescription medicine used to treat neuropathic pain, seizures, and anxiety disorders; Lexapro is an antidepressant.

Allison went back inside her residence. Deputies Conger and Spurgeon remained at Brahm Court to wait for Irwin.⁴ The deputies repositioned their patrol vehicle to secure a better view of the entrance of the court. The deputies parked against the flow of traffic on the sidewalk of the northeast side of the court. Deputy Conger was in the driver's seat with the sidewalk and a residential lawn to his left. Deputy Spurgeon was in the passenger seat with the street to his right. As they waited, Deputy Spurgeon observed a truck parked across the street in front of Irwin's residence with a large Brazilian jiu-jitsu sticker. Deputy Spurgeon advised Deputy Conger that the truck may belong to Irwin and he could be involved in martial arts.

A short time later, Irwin drove into the court and parked along the sidewalk on the same side of the street as the deputies, facing them. Irwin's vehicle was approximately 60-70 feet away from the deputies' vehicle. The deputies got out and began walking towards Irwin's vehicle. Deputy Conger was on the sidewalk and Deputy Spurgeon was off to his right. Irwin got out of his vehicle. Once Irwin and the deputies were approximately 15-30 feet apart, Deputy Spurgeon noticed that Irwin was tense, agitated, and breathing heavily.

Deputy Spurgeon asked Irwin, "Hey man, how's it going?" Deputy Conger noticed that Irwin was pacing in an aggressive manner. Deputy Spurgeon told Irwin to calm down. He told Irwin he was not in any trouble and they just wanted to speak with him because his wife called the police. Irwin replied, "I didn't call the police." Deputy Spurgeon reiterated that it was Irwin's wife who called the police. Irwin told the deputies, "No, I'm not having any of that." Deputy Spurgeon again told Irwin to calm down, he was not in any trouble, and that they were just there to speak with him. Irwin said, "This is how it's going to go down." Deputy Spurgeon asked Irwin, "What does that even mean?" Irwin said, "You know. You are going to shoot me." Deputy Spurgeon told Irwin he did not want to shoot him.

Deputy Conger shined his flashlight on Irwin and saw a knife in Irwin's right hand. Irwin was holding the knife by the handle in an inverted fashion with the blade pointing up towards his elbow parallel to his forearm. Deputy Conger called Deputy Spurgeon's attention to the knife and the deputies drew their firearms. Deputy Spurgeon held his firearm in front of his abdomen, with the muzzle facing down to the ground.

Deputy Spurgeon directed Irwin to put the knife down so they could talk. Irwin replied, "No, I'm not having that. You got to do what you got to do." Deputy Spurgeon repeatedly told Irwin to put the knife down, but Irwin refused. Irwin continued to say things like, "It's going down like this. I know what's going to happen." Irwin backed up a little, then advanced towards them. The deputies backed up a little as Irwin closed the distance between them. Deputy Spurgeon reminded Irwin they were not there to hurt him.

The deputies again told Irwin to put the knife down, but Irwin stated, "I know what happens. I know what this is. You guys are going to kill me." Irwin brandished the knife with the blade facing out while moving his arm in a forward motion and rapidly advanced approximately three

⁴ While they waited, Deputy Spurgeon pulled up a photograph of Irwin on the patrol vehicle's computer so they would know what he looked like if he returned home.

steps forward towards the deputies. Deputy Spurgeon knew that a person armed with a knife could close the distance between them extremely quickly.⁵ He also knew Irwin's knife was a deadly weapon. Deputy Spurgeon was immediately fearful that Irwin was going to kill or seriously wound him or his trainee. Deputy Spurgeon fired eleven rounds at Irwin, striking him seven times. As the shots were fired, Irwin turned to his right and stumbled back a few feet before falling onto his stomach.

Deputy Spurgeon notified dispatch that shots had been fired and requested an emergency medical response. Deputy Conger moved the knife away from Irwin, turned him over, and began chest compressions. After Deputy Conger tired, Deputy Spurgeon continued chest compressions until Sacramento Metropolitan Fire arrived. A Sacramento Fire emergency medical technician pronounced Irwin deceased on scene.

Three civilian witnesses observed portions of the events. They were loading a truck in the driveway of a house at the end of the court, more than 50 yards away. From their vantage point, the deputies were facing away from them and Irwin was facing towards them.

The first witness saw Irwin's vehicle drive into the court. He saw Irwin get out and the deputies shine their flashlights on him. He noticed that Irwin appeared to have been drinking. Irwin was walking back and forth and waving his arms around. The witness could tell the deputies were speaking to Irwin, but he could not hear what they were saying. He said the deputies were "calm and collected," but that it appeared Irwin was trying to antagonize the deputies and goad them into a fight. The witness noted that Irwin seemed "disturbed," and he heard Irwin repeatedly saying, "Let's do this. I'm ready to die." The witness concluded that Irwin was not going to give up. The witness was looking in another direction when the shots were fired.

The second witness at the end of the court also saw Irwin arrive and park facing the Sheriff's vehicle. He saw the deputies and Irwin get out of their vehicles. Irwin walked around the front of his vehicle towards the sidewalk. The deputies walked towards Irwin with flashlights. He heard the deputies speak with calm voices that were difficult to hear, but he did hear one of them say, "We need to talk." The witness noted that Irwin's voice was louder. Irwin said, "We don't need to talk. There's nothing to talk about." The witness indicated that once the deputies were approximately five to ten feet away from Irwin, Irwin said that it was "over with" and that he wanted to die. He heard Irwin ask approximately three times if the deputies were going to tase him. He also heard Irwin say, "If I charge you, are you going to shoot me?" The witness still could not hear the deputies, but he heard Irwin say, "It's over. I want to die." He said it appeared Irwin wanted to fight the deputies because he kept moving his arms and was backing up and moving forward a couple of steps at a time. This witness also did not observe what occurred just prior to, or during, the shooting. He was looking in another direction. He then

⁵ Various law enforcement research and training resources address the danger of dealing with a suspect armed with an edged weapon at 20 feet or less. 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.

Eyewitness estimates of the distance between Irwin and Deputy Spurgeon when Deputy Spurgeon fired his handgun ranged from 5-20 feet. These estimates are generally consistent with evidence at the scene.

heard what he believed to be four gunshots. From his distance, he was unable to see either Irwin's knife or the deputy's gun.

The third witness at the end of the court was a twelve-year-old child. She saw the deputies get out of their car with their flashlights. She described Irwin moving his arms and walking around in circles while facing the deputies. She was unable to hear everything that was said, however she did recall hearing Irwin say something to the effect of, "If I come at you, you're going to shoot me, right?" She said Irwin was walking backward and forward prior to the deputy shooting him. The witness could not see Irwin's knife. She acknowledged that she was not good at judging distances. She guessed she was about 30 to 40 feet away from the deputies and Irwin; however, her location was over 50 yards away.

A black and silver Kershaw brand folding knife with an approximate three-and-a-half-inch blade with blood on it was found on the grass adjacent to the sidewalk near Irwin's location. The blade was in the open position. Irwin's right palm had a three-inch laceration. The Sacramento County District Attorney's Laboratory of Forensic Services tested two swabs taken from the knife. The laboratory determined that Irwin's genetic profile was the same as those obtained from each of the samples from the knife.

According to the report of the Sacramento County Coroner, the cause of Irwin's death was multiple gunshot wounds. Irwin suffered a gunshot wound to his abdomen. The direction of the wound was primarily front to back. Irwin also suffered additional gunshot wounds to his left upper back on the nape of his neck (towards right cheek), the back of his right shoulder (through the front of his shoulder), the left side of his mid-back (towards his right chest), and the left side of his back (towards his midline). The direction of these wounds was back to front, left to right, and upward. Irwin also suffered a gunshot wound to the posterior aspect of his left upper arm. The forensic pathologist's opinion was that the bullet likely travelled through the left arm and re-entered Irwin's left torso; however, he could not rule out an independent gunshot wound to the left torso. Finally, Irwin had a gunshot wound to his left buttock that travelled primarily back to front and left to right.⁶

The Sacramento County District Attorney's Office Laboratory of Forensic Services examined a sample of Irwin's femoral blood. The laboratory determined Irwin had a blood alcohol level of .15%. The laboratory also confirmed the presence of the following substances in Irwin's blood: caffeine, diphenhydramine, citalopram, and oxycodone.

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

⁶ The locations and directions of Irwin's gunshot wounds appear consistent with the deputies' observations of Irwin turning to his right and stumbling back a few feet while being shot before falling onto his stomach.

835a; CALCRIM 2670.) 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.) 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.)

Here, Deputies Conger and Spurgeon contacted Irwin to conduct a welfare check and because they had reasonable cause to believe Irwin was driving under the influence. Prior to his arrival, Allison informed the deputies that Irwin was driving after mixing alcohol with prescription pain medication. The deputies themselves observed Irwin drive his vehicle into the court. The deputies also had reasonable cause to believe Irwin was a danger to himself. His wife informed them that Irwin was under the influence, upset, in possession of a knife, and had made suicidal statements in the past. When Irwin got out of his vehicle, he behaved consistently with his wife's description. He was tense, agitated, breathing heavily, and pacing in an aggressive manner. The deputies tried to calm him down and told him they just wanted to speak with him, but Irwin responded, "This is how it's going to go down." When asked what he meant, Irwin stated, "You are going to shoot me." When the deputies saw the knife in Irwin's hand, the deputies repeatedly commanded him to put it down, but Irwin refused. Instead, he brandished his knife with the blade facing out and rapidly advanced toward the 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.)

In this case, Deputy Spurgeon actually and reasonably believed Irwin would imminently kill or seriously injure him or his trainee. Throughout the encounter, Irwin was consistently agitated and aggressive. Deputy Spurgeon was aware Irwin was likely suicidal and under the influence of alcohol and pain medication. Civilian witnesses heard Irwin making comments demonstrating his understanding that if he advanced on the deputies, they would shoot him. Irwin refused multiple commands to disarm himself, even after the deputies drew their weapons. Deputy Spurgeon knew Irwin possessed a deadly weapon and that Irwin could close the distance between them before Deputy Spurgeon could possibly stop him. When Irwin brandished the knife with the blade facing out and advanced towards the deputies from only a short distance away, Deputy Spurgeon made a split-second decision to fire his handgun at Irwin to defend himself and Deputy Conger. In light of the circumstances, Deputy Spurgeon's decision was objectively reasonable.

CONCLUSION

Deputy Spurgeon was justified in shooting Irwin to defend himself and Deputy Conger from imminent danger of death or great bodily injury. 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: Deputy James Spurgeon #1099
Detective Christopher Britton #440
Rick Braziel, Office of the Inspector General
Kimberly Gin, Sacramento County Coroner