



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: March 27, 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-17-367521
Shooting Officer: Louie Avila #885
Person Shot: Wallace Jory (DOB 7/18/61)

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 Wallace Jory. 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 17-367521 and its related dispatch logs, dispatch recordings, witness interview recordings, scene photographs, scene videos, and in-car camera videos; Sacramento Regional Fire/EMS incident logs and dispatch recordings; California Highway Patrol dispatch logs; Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, and Firearm Examination reports; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

Wallace Jory lived with his wife, Ann Jory, and their son in a duplex at 5318 President Avenue in North Highlands.¹ Ronald Sharpe owned the duplex and knew Jory for many years. When Sharpe decided to sell the duplex, he gave Jory sixty days' notice requiring him to move out by

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

October 31, 2017. By November 1, 2017, Jory and his family had found a new apartment and Ann had already moved her property out of the duplex. Jory, whom Sharpe described as a hoarder, had not moved all his property out of the duplex and there was not enough room in the apartment to store it all. Sharpe visited Jory at the duplex that evening. Jory was agitated and fixated on his property that could not be moved to the apartment or to his storage unit, which was full. Jory told Sharpe that he wanted to kill himself by running onto the freeway. Sharpe did not believe Jory really intended to kill himself. Jory was aware Sharpe would return the next morning to help remove the rest of Jory's property from the duplex.

Robert Baker also visited Jory at the duplex on the night of November 1, 2017. He went there to help Jory move some of his plants. He later told investigators Jory was "stressed out beyond belief" that the new apartment did not have enough room for all his property. Baker observed Jory pacing and screaming at the sky. At one point, he heard Jory say, "I will be dead by dawn," and "I have a knife in my pocket and if Ann calls the cops I will do death by cop." Baker spoke to Ann about Jory's statements, but they took no action because Jory commonly made statements of that nature and Baker believed Jory was simply expressing his frustration.

Ann later told investigators Jory was drunk and very angry that night about the prospect of losing some of his property. According to Ann, Jory attempted to cut his forearm with a knife and unsuccessfully tried to run in front of a moving vehicle. She heard Jory say he was going to kill Sharpe when he arrived the next day. She also heard Jory yell, "I want all this fucking shit to end! I'm going to get killed by the cops!" Ann did not call the Sheriff's Department because Jory had been suicidal "off and on" for the past two years and she had become desensitized to such statements.

At approximately 9:30 a.m. the next morning, November 2, 2017, Sharpe arrived at the duplex with a trailer to remove the remainder of Jory's property. When he arrived, he saw Jory walking down the street in front of the house yelling about his personal property. It appeared to Sharpe that Jory was agitated and had "kind of lost it." He saw Jory swinging a knife with a green handle in the air. Jory slashed boxes and a bucket used as a planter in the front yard of the duplex. Sharpe observed Jory pacing up and down the street, saying things like, "Fifty-six years old, my life is over," and "This isn't right."

Mark Taylor met Sharpe at the residence to help Sharpe remove Jory's property. Taylor observed Jory outside with a knife with a curved blade approximately four inches long. Jory appeared irate and was pacing around with clenched fists. He paced in and out of the yard of the duplex and up and down the street. At one point, Taylor saw Jory stab a planter in the front yard multiple times. Taylor believed Jory would have harmed them if they had engaged him. Accordingly, Taylor and Sharpe got into Sharpe's vehicle and Sharpe called 9-1-1 at approximately 9:50 a.m. Sharpe told the dispatcher that Ann told him Jory was "described as manic-depressive." Sharpe indicated he was concerned because Jory had a knife that looked like a box-cutter, had "kind of lost it," and was "kind of suicidal at this point." The Sheriff's Department dispatcher requested deputies to respond for a welfare check.

Sacramento Sheriff's Deputy Robert Tracy responded to the call. He wore a full Sheriff's Department uniform clearly identifying him as a peace officer and drove a fully-marked patrol

vehicle. As he waited for a cover unit, he conducted a records check of Jory's address and determined there had been prior family disturbances at the residence. He noted on one occasion the caller indicated Jory might be confrontational with law enforcement; however, there was no information in the records indicating Jory ever had any mental health holds or confrontations with deputies.

The residence at 5318 President Avenue is the northern half of a duplex located on the east side of a north-south portion of President Avenue where it terminates at a "T" intersection with Senate Avenue to the south. The residence faces west and has an attached garage with a driveway shared with the other half of the duplex.

As Deputy Tracy drove southbound on President Avenue, he observed Jory standing near the intersection of President and Senate Avenues. Jory was waving his arms around. He observed Jory holding in his right hand an object with a silver blade. Deputy Tracy turned on his overhead lights to alert Jory to his presence and to activate his in-car camera. He then observed Jory run briefly northbound towards him and then to Jory's right. Jory ran straight to the duplex garage door, opened it, and grabbed something from inside the garage. When Jory turned around, Deputy Tracy saw Jory armed with a pitchfork. Deputy Tracy parked his vehicle in the middle of the street facing south and got out of his vehicle.

Meanwhile, Deputy Louie Avila was arriving at the duplex from westbound Senate Avenue. He drove a fully-marked patrol vehicle and wore a Sheriff's Department uniform which clearly identified him as a Sheriff's Deputy. He also observed Jory standing in the street, appearing upset or agitated, and waving his arms in the air. Deputy Avila saw Jory start walking toward the duplex. At the time, Deputy Avila believed Jory may have decided to retreat into the duplex to avoid the deputies.

Deputy Avila turned the corner northbound onto President Avenue from Senate Avenue and parked facing north on the east side of President Avenue. He saw Jory go to the garage. Deputy Avila got out of his vehicle. Jory walked quickly down the driveway holding a pitchfork with both hands and into the street, directly towards Deputy Avila. Deputy Avila ordered Jory to drop the pitchfork. Jory ignored the command. Without pause, Jory continued to walk aggressively into the street directly at Deputy Avila. Jory's face appeared angry. Deputy Avila drew his firearm and gave Jory commands to drop the pitchfork. Jory ignored the commands and continued straight at Deputy Avila. Jory was shouting something, but Deputy Avila could not understand what he was saying. Deputy Avila feared for his safety. When Jory got to within approximately 15 feet of Deputy Avila, Deputy Avila fired one round, striking Jory in the chest.

Deputy Tracy also observed Jory approaching Deputy Avila with the pitchfork. As Jory closed in on Deputy Avila, Deputy Tracy intended to shoot Jory to protect Deputy Avila from death or great bodily injury but did not fire because he believed the risk of shooting Deputy Avila was too great.

Jory fell to the ground immediately upon being shot. Deputies Avila and Tracy approached Jory. Deputy Avila began searching Jory for weapons, while Deputy Tracy covered him. Deputy Tracy requested that dispatch call for the Fire Department to respond. Deputy Avila was quickly

relieved by other deputies who arrived and searched Jory. Following the search, deputies rendered medical treatment until an ambulance arrived and a paramedic pronounced Jory dead at the scene.

Multiple witnesses observed all or portions of the incident.

Sharpe and Taylor were in Sharpe's vehicle when Deputy Tracy arrived. Sharpe heard Jory yelling and Taylor heard Jory say, "Let's get ready to party." When Deputy Avila arrived, Sharpe and Taylor saw Jory run to his garage and come out with a pitchfork. Taylor saw Jory "charge" towards Deputy Avila with the pitchfork pointed at him. Believing Deputy Tracy was going to shoot Jory to defend Deputy Avila, Taylor turned his attention to Deputy Tracy. Meanwhile, Sharpe observed Jory run into the street directly toward Deputy Avila while yelling and holding the pitchfork pointed at Deputy Avila. Sharpe heard Deputy Avila give commands to Jory; however, he could not hear specifically what they were. Sharpe saw Deputy Avila fire one shot. During a subsequent interview, Sharpe stated Jory was "asking for it" and Deputy Avila had no choice but to shoot. Sharpe requested the investigator tell Deputy Avila that it was tragic, but it was not his fault. Taylor also opined that Deputy Avila took necessary action.

Another witness was visiting a friend across the street from the duplex. She heard yelling and screaming outside. She looked out of a window and saw Jory aggressively pacing back and forth waving a knife with a green handle in the air. She saw him stab a container in his front yard with the knife. A few minutes later, she looked outside again and saw patrol vehicles, but a bush blocked her view of the deputies. She saw Jory come out of his garage with a pitchfork. He held the pitchfork with both hands with the tines of the pitchfork pointed out in front of him. He began to walk "briskly" towards a patrol vehicle in "attack mode." It appeared he was going to attack the deputy. She heard a deputy yelling what sounded like a command, but she did not know what he said because she does not speak English. She saw Jory pick up his pace, then heard a gunshot and saw Jory fall.

A fourth civilian witness was sitting on the porch of a residence across the street and one residence over from the duplex. He heard Jory yelling and screaming and saw him pacing up and down Senate Avenue near its intersection with President Avenue. Jory appeared intoxicated. When the first deputy arrived, he observed Jory standing in the street. After the second deputy arrived, he observed Jory run to his garage, open the garage door, grab a pitchfork, and start walking down the driveway, screaming, "What are you going to do to me?" Once Jory got to the street, the witness's view of Jory was blocked by a patrol vehicle. He heard one gunshot.

Deputy Tracy's in-car camera recorded a portion of the events from the perspective of his vehicle as it drove southbound on President Avenue and parked in the street. The video recording depicts Jory in the middle of the street at the intersection with Senate Avenue. As Deputy Tracy's vehicle approached, Jory began walking towards his garage. Jory's pace increased as he got to his driveway on his way to the garage. Deputy Tracy's vehicle continued moving forward until stopping in the street. As it did so, Jory was outside of the camera's view, to the left. Meanwhile, the video depicts Deputy Avila's vehicle arriving from westbound Senate Avenue, turning right, and parking facing northbound on President Avenue at the corner of President and Senate Avenues. Deputy Avila got out of his vehicle and stood near his driver's

door with his gun drawn. Immediately thereafter, the video depicts Jory walking quickly and with purpose from his driveway directly at Deputy Avila. From the camera's perspective, Jory first appeared on the left side of the video and walked diagonally left to right and away from the camera, holding the pitchfork with both hands. As Jory closed in on him, Deputy Avila fired one shot and Jory immediately fell forward onto the ground in the direction of his momentum, towards Deputy Avila.

Investigators located on the ground near Jory's body a deformed copper-jacketed projectile with apparent blood on it, a prescription bottle labelled "Medical Cannabis" with apparent marijuana residue, two metal smoking pipes, and an approximately 46-inch long four-pronged pitch fork with four flattened metal tines. A pruning knife with a green plastic handle and a three-inch curved blade was in found in the gutter nearby. A spent 9mm shell casing was located on the ground next to the left rear tire of Deputy Avila's patrol vehicle. Investigators also found a damaged blue bucket that had been used as a planter in Jory's front yard. A subsequent round count confirmed Deputy Avila fired one shot.

Detectives determined that Jory posted a message on his Facebook account at 7:18 p.m. the previous night, stating, "Just a thank you to my friends that helped me in my "move"; its over my stuff is garbage and tonite is my last night on earth. The wife and the son can have the apartment, good bye to one and all!!!"

According to the report of the Sacramento County Coroner, the cause of Jory's death was a gunshot wound to his left chest. The direction of the wound was front to back, slightly left to right and downward. Jory also had an incisional wound to his left anterior forearm.

The Sacramento County District Attorney's Office Laboratory of Forensic Services examined a sample of Jory's femoral blood. The laboratory determined Jory's blood contained methamphetamine, delta-9-THC, and 11-nor-9-carboxy-THC.

LEGAL ANALYSIS

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.)

Here, Deputy Avila responded to the duplex in response to a 9-1-1 call indicating Jory was potentially mentally ill, suicidal, and brandishing a knife. As he drove up to the residence in a fully marked patrol vehicle, he observed Jory waving his arms in the air at the intersection of

President and Senate Avenues. Jory then walked to his garage and retrieved a pitchfork. By the time Deputy Avila parked and got out of his vehicle, Jory quickly and with purpose advanced directly towards him with the pitchfork. Deputy Avila gave Jory commands to drop the pitchfork, but Jory ignored Deputy Avila's commands and continued to close the distance between them without hesitation. Once Jory reached the point at which Deputy Avila believed he was in imminent danger of being seriously injured or killed, he fired one shot, striking Jory in the chest. Given the circumstances, Deputy Avila's belief that he was in imminent danger of death or great bodily injury was reasonable.

CONCLUSION

Deputy Avila was justified in shooting Jory 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's Department Detective Nathan Traxler
Sacramento Sheriff's Department Deputy Louie Avila
Sacramento Sheriff's Department Lieutenant Gail Vasquez
Kimberly Gin, Sacramento County Coroner
Sacramento County Office of Inspector General