



Sacramento County District Attorney's Office

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July 19, 2016

Chief Janice Mulanix
California Highway Patrol – Valley Division
2555 1st Avenue
Sacramento, CA 95818

Sheriff Scott Jones
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

RE: Officer-Involved Shooting: Case No. SSD-15-65065
 Shooting Officer: Robert Dimiceli #15152
 Person Shot: Jose Roberto Leon (DOB 11/17/1992)
 Date of Incident: March 17, 2015

Dear Chief Mulanix and Sheriff Jones:

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 Jose Roberto Leon. 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 15-65065 and its related dispatch logs, witness interview recordings, scene video recording, and scene photographs; Sacramento Police Department Dispatch Logs and report number 15-73988; Twin Rivers Police Department report number 15-234; California Highway Patrol (CHP) Multidisciplinary Accident Investigation Team report number VL-011-15; CHP evidentiary photographs, incident detail report, dispatch recordings, radio traffic recordings, video recording, and Supplemental Report to Sacramento County Sheriff report number 15-65065; California Department of Justice Bureau of Forensic Services

Physical Examination Report; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

On the afternoon of March 17, 2015, CHP Officers Robert Dimiceli and Michael Ericson were conducting traffic enforcement operations on Elkhorn Boulevard in Rio Linda. They were dressed in full CHP uniforms and riding marked CHP motorcycles. Officer Ericson stopped a speeding vehicle on the right shoulder of westbound Elkhorn Boulevard. Officer Dimiceli stopped behind Officer Ericson. As Officer Ericson spoke with the driver of the vehicle, Officer Dimiceli heard the loud noise of an accelerating motorcycle coming from behind him. The motorcycle was driven by Jose Roberto Leon. Officer Dimiceli watched Leon approach in his rear-view mirror. As he approached and passed Officer Dimiceli, Leon rapidly slowed to approximately 60-65 miles per hour and continued westbound on Elkhorn Boulevard towards the intersection with Dry Creek Road. Officer Dimiceli immediately pursued Leon to conduct a traffic stop. Officer Ericson remained with the other vehicle.

Officer Dimiceli stopped Leon on the right shoulder of Elkhorn Boulevard, east of the Dry Creek Road intersection, approximately one-quarter to one-half mile west of Officer Ericson's location. Officer Dimiceli parked his motorcycle behind Leon's, and directed Leon to step off of his motorcycle and remove his helmet. Leon did so, but repeatedly walked out into the traffic lane. For Leon's safety, Officer Dimiceli directed him multiple times to remain on the shoulder. Leon had a backpack, which he set on the ground. Officer Dimiceli asked Leon if he had a motorcycle license. Leon said he did not, but claimed that he could drive to and from work. When asked again, Leon acknowledged that he did not have a license to drive a motorcycle. Officer Dimiceli asked Leon for his identification, but Leon claimed not to have it. Officer Dimiceli requested the registration and proof of insurance for the motorcycle. Leon gave Officer Dimiceli an envelope containing the registration and certificate of title. Both documents indicated the owner of the motorcycle was Ray Allen from Stockton. Officer Dimiceli asked Leon whose motorcycle it was. Leon stated, "Well, it's mine." Officer Dimiceli asked Leon his name and Leon said, "Anthony." Officer Dimiceli gave Leon a notepad and told him to write down his name, address, and date of birth as they appeared on his driver's license. Leon wrote down the name "Jose Daniel Vasquez," his own date of birth, and an incomplete address. Officer Dimiceli told Leon, "I thought you said your name was Anthony," and directed Leon to give him the motorcycle keys.

After obtaining the keys, Officer Dimiceli directed Leon to put his hands on his head. Leon did not comply. He picked his backpack up off the ground and told Officer Dimiceli, "I got something in here, and you don't want any part of it." He threw his backpack into the westbound #2 lane of Elkhorn Boulevard. Leon then retrieved the backpack and ran in a southwesterly direction across both westbound lanes, over the

divider, and across both eastbound lanes of Elkhorn Boulevard towards the Dry Creek Road intersection. Officer Dimiceli chased after Leon, repeatedly ordering him to stop. As he was chasing Leon, Officer Dimiceli took his Taser out and told him more than once, “Stop, or I am going to tase you!” Leon kept running. He ran to a Ford Bronco that was stopped at a red light in the left-hand turning lane of northbound Dry Creek Road.¹

The Bronco’s driver and sole occupant was Brian Pedges. Leon threw his backpack into the Bronco through the open passenger side window, opened the passenger door, got into the Bronco, and began yelling, “Go! Go! Go!” Pedges noticed that Leon’s backpack was open. Pedges put his transmission in park and put his foot on the brake. Leon told Pedges to “move over,” but Pedges refused. Leon moved over, sat on the center console, and began shoving Pedges against his driver’s door. Officer Dimiceli ran to the passenger side door and observed Leon striking Pedges with his left elbow. Leon put Pedges’ transmission back into drive and slammed his foot down onto the gas pedal with his left foot, while Pedges kept his foot on the brake pedal, causing the tires to spin and smoke. Pedges and Leon also struggled over the ignition switch. Pedges turned the ignition switch off, but Leon turned it back on again and stepped on the gas. Pedges again held his foot on the brake. As Leon was fighting with Pedges over control of the vehicle, Officer Dimiceli shot Leon with his Taser. The Taser had no effect on Leon. Leon ripped the Taser wires out and told Officer Dimiceli, “I got a gun, you don’t want any part of it, get out of here.” Although Pedges did not hear Leon make this statement, the evidence showed that Pedges was in the middle of a physical struggle with Leon while the vehicle’s engine was revving and the tires were squealing. Leon was also likely facing to his right and away from Pedges when he made the statement to Officer Dimiceli who was standing outside the passenger door.

Officer Dimiceli saw Leon move as if to retrieve something from inside his backpack, and believed Leon was reaching for a gun. He became gravely concerned that Leon would shoot him or Pedges. He was also concerned that Pedges could get pushed out of the vehicle and get run over. Officer Dimiceli dropped his Taser, pulled out his pistol, pointed it into the Bronco, and yelled “Stop! Stop!” Leon continued to struggle with Pedges over control of the vehicle. Leon looked at Officer Dimiceli and continued

¹ A seventeen year-old witness told a detective he was southwest of the intersection when he saw a skinny white man running away from a motor officer. Leon was Hispanic, 5’9” tall and weighed 206 pounds. The juvenile witness stated the man was holding his backpack as if there was a gun inside, and the man asked him and another unidentified juvenile for help because the man had a gun in his backpack. He stated the gun was in the man’s backpack, although he could not see it. He then stated he could see the gun, but did not know its color or whether it was a revolver or semi-automatic. He said the man told him he was going to shoot him and the other kid. He told the detective that, as the officer approached, the man “shot at us, and shot at the ground where me and the other kid was because we started running.” He said the man fired one time toward them as they ran away, and that the man then ran to the Bronco. The juvenile witness’s statement that Leon fired a gun prior to the carjacking was not corroborated by physical evidence or other witnesses. The other juvenile was not identified or interviewed.

“fishing around” in or near the backpack. Officer Dimiceli believed Leon was going to shoot him or Pedges, so he fired one round, striking Leon on his right side. Leon flinched, but “kept digging around.” Officer Dimiceli screamed at Leon, “Knock it off! Knock it off!” and fired again. It appeared to Officer Dimiceli that he struck Leon again, but Leon’s hand remained on or in the backpack. Believing that Leon was going to shoot him or Pedges, he fired again. Pedges heard the shots but noticed that Leon never appeared to move, grunt or make any sounds like he had been shot. Pedges was finally able to reach under Leon, unbuckle his seat belt, and evacuate the Bronco before Leon took control of his vehicle. Leon drove off westbound on Elkhorn at a high rate of speed.²

As Leon drove off, he called his girlfriend, Arielle Berlanga, at approximately 3:37 p.m. He told her that he had been shot and that he “jacked a car.” He told her he was on Elkhorn Boulevard and was on his way to her house in Natomas. When he arrived in Berlanga’s neighborhood, Leon parked the Bronco down the street and around the corner from her house—approximately 500 feet away—and walked the remaining distance. Once inside, Berlanga removed the Taser barbs and placed Leon in the shower. Later, when she noticed Leon’s lips turning blue, she indicated she was going to call the police. Leon directed her not to call the police and told her that he was dying. Berlanga called Leon’s mother, who drove to Berlanga’s residence with Leon’s sister.

Upon her arrival, Leon told his mother not to call an ambulance. Berlanga told Leon’s sister that they needed a “street doctor.” Leon’s sister called a family friend, Andrea Lee, who came over with another friend and began cleaning his wounds. Later, Leon’s father arrived at approximately 4:40 p.m., a little more than an hour after the carjacking and shooting. By then, Leon was struggling to breathe. Leon’s friends and family members did not seek professional medical treatment.

Meanwhile, law enforcement officers were searching unsuccessfully for Leon and the Bronco. Unbeknownst to them, a witness heard a vehicle park outside of her home in Natomas less than ten minutes after the shooting. She looked out her window and saw a man matching Leon’s description get out of a Ford Bronco and walk southbound, consistent with the direction toward Berlanga’s house. She observed that he was bleeding heavily from his right side, but he appeared to be walking “with a purpose.” She went out to the Bronco and saw blood inside. Nevertheless, she did not report the suspicious vehicle until approximately 4:33 p.m.

² The juvenile witness also stated he heard the man fire a shot inside the Bronco prior to the driver getting out. He stated the officer then tased the suspect and then shot, “like twice,” towards the left tire of the Bronco as the suspect drove off. However, neither Officer Dimiceli nor Pedges indicated that Leon fired a shot within the vehicle, and none of the other witnesses observed Officer Dimiceli fire any rounds at the Bronco as it fled the intersection. Although it was not clear how many rounds Officer Dimiceli had earlier loaded in his firearm, based on witness statements and physical evidence recovered at the scene, it appears that he fired three shots, all of which struck Leon, prior to Leon fleeing in the Bronco.

At approximately 4:41 p.m., law enforcement officers located the unoccupied Bronco and began a house-to-house search of the surrounding area.³ Approximately thirty-five minutes into the search, they arrived outside Berlanga's residence. Leon's friends and family still had not sought professional medical treatment for Leon's wounds. Upon their arrival, officers heard female voices screaming from inside the residence. One of these voices yelled, "Help, he's dying in there!" The officers requested paramedics be dispatched and began ordering everyone out of the residence. Most of the occupants exited relatively quickly; however, Leon's father and mother did not come out until approximately 5:23 p.m. and 5:33 p.m., respectively. The officers maintaining the perimeter of the residence determined it was unsafe to enter without SWAT assistance because Leon had fled from a violent altercation, was possibly armed with a firearm, and had a tactical advantage from his position within the house. Dispatch also advised that an AK-47 assault rifle had been removed from Leon's residence in 2012.

SWAT officers arrived and deployed a robot to clear the residence. Leon was located in a bedroom, deceased. According to the Sacramento County Coroner's Final Report of Investigation, Leon died from gunshot wounds to his right torso, right thigh, and right back. His backpack, which contained his driver's license, was located in Berlanga's garage. No gun was located; however, one of the occupants of the house indicated that she believed Jose had a gun with him that day and that he sometimes carries a gun because that is "the lifestyle he lives." She also stated, "He always told me he'd rather die than get caught by the police."

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. 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.) A peace officer may detain a person where reasonable cause exists to believe that the person has a deadly weapon in violation of any provision of law relating to deadly weapons. (California Penal Code Section 833.5.) 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.) Officers 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

³ During a subsequent search of the Bronco, methamphetamine was located on the floorboard. Pedges indicated he did not have any drugs in the vehicle prior to the carjacking. Methamphetamine was not found in Leon's blood.

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.)

Here, Leon attempted to escape a lawful detention by running away from Officer Dimiceli. Leon ignored Officer Dimiceli’s commands to stop running and disregarded his warning that he would deploy his Taser. Leon ran to Pedges’ Bronco and began a violent struggle to forcibly steal his vehicle with the intent to evade Officer Dimiceli. Officer Dimiceli attempted to prevent Leon from carjacking Pedges without the use of lethal force by shooting Leon with his Taser.

Leon removed the Taser wires, told Officer Dimiceli that he had a gun, and began manipulating his backpack despite Officer Dimiceli’s commands to stop. Officer Dimiceli actually and reasonably believed that Leon was reaching for a gun and that he and Pedges were in imminent danger of death or great bodily injury. Accordingly, he fired one round from his handgun, striking Leon on his right side. Following that shot, Leon continued to struggle with Pedges over control of his vehicle and continued to manipulate his backpack. Officer Dimiceli directed Leon to stop, but Leon continued, so Officer Dimiceli fired again. After the second shot, Leon still refused to take his hand away from his backpack. Believing that Leon was determined to shoot him or Pedges, Officer Dimiceli fired a third time. After Pedges was able to get out of the

driver's seat, Leon escaped in Pedges' vehicle and attempted to elude capture by responding officers.⁴

CONCLUSION

Applying the controlling legal standards to the factual record, Officer Dimiceli was justified in using deadly force in this situation. The objective evidence supports a finding that his conduct was reasonable under the circumstances he encountered. Accordingly, we find the shooting to be lawful and will take no further action in this matter.

cc: Sacramento County Sheriff's Sergeant Joe Miller
California Highway Patrol Officer Robert Dimiceli

⁴ Even assuming that Officer Dimiceli fired at Leon in the Bronco as he drove away, Officer Dimiceli would have been justified in doing so. Based on Leon's threats about having a firearm and having just committed a violent carjacking, Officer Dimiceli had probable cause to believe that Leon posed a threat of serious physical harm to others and, having already warned him to "Stop," that deadly force was necessary to prevent Leon's escape. (See *Tennessee v. Garner, supra*, 471 U.S. at pp. 11-12.)