



Sacramento County District Attorney's Office

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MEMORANDUM

DATE: July 23, 2018

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. CH16-06733
Shooting Officers: Kyle Shoberg #304
Daniel Boehle #373
Nicholas Oldwin #365
Person Shot: Michael McClurg (DOB 6/16/1960)

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 Michael McClurg. 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 16-06733 and its related dispatch logs, dispatch recordings, witness interview recordings, and scene photographs; Sacramento Sheriff's Department/Rancho Cordova Police Department report number 16-233912, and its related scene photographs, dispatch logs, dispatch recordings, and aircraft video recording; California Highway Patrol dispatch logs (incident numbers 160808SA02016, 160808SA02017, 160808SA02024, 160808SA02030, 160808SA02101, 160808SA02119), dispatch recordings, aircraft video recording and supplemental report; 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

In August 2016, Michael McClurg lived at 7309 Grenola Way in Citrus Heights. McClurg's ex-wife, Cristi Caspers, spent August 5 through August 7 at McClurg's residence. During that time, they discussed the possibility of reuniting. On August 7, McClurg's girlfriend unexpectedly arrived at his residence, which led to a dispute between McClurg and Caspers. McClurg asked Caspers to stay, but she left.

On the morning of August 8, Caspers discovered profanities carved into her vehicle parked outside her home on El Manto Drive in Rancho Cordova. In text messages to McClurg that morning and early afternoon, Caspers accused McClurg's girlfriend of vandalizing her vehicle. She also expressed her intent to remain divorced from McClurg. McClurg responded with messages indicating generally that he was upset about Caspers' lifestyle.

Later that afternoon, McClurg called his friend, Toby Heim. He told Heim he needed a drink and transportation to a job in South Sacramento. Heim drove to McClurg's residence. When he got there, McClurg looked "freaked out," and told Heim that Caspers stopped communicating with him after his girlfriend showed up at his house. McClurg drank several beers before they left for South Sacramento. On the way back to his house, McClurg was still upset that Caspers stopped communicating with him, and told Heim, "They don't know who they're fucking with." They arrived back at McClurg's residence at approximately 8:15 p.m. Once there, McClurg asked Heim for a pistol. Heim did not provide him with one.

Later that evening, Cristi Caspers was at her home with her adult son, Corey Caspers Jr., and his girlfriend. Their vehicles were parked in the driveway. At approximately 9:30 p.m., Caspers Jr. went outside and saw McClurg walking up the driveway holding a large jug of gasoline. McClurg said he was going to "burn the place down." Caspers Jr. ran inside and came back out with an unloaded handgun, hoping to scare McClurg away. By then, his and his mother's vehicles were on fire and McClurg was back in his truck. McClurg told Caspers Jr. that he was armed, and pointed what appeared to be a semi-automatic handgun at him. Caspers Jr. threw his own gun down and ran inside, telling his girlfriend and mother to call 9-1-1.

A couple who lived next door to Caspers heard yelling outside. One of them heard a male voice refer to a gun. She smelled gasoline and heard a "whoosh" sound, which she described as the sound gasoline makes when it catches on fire. The other witness looked outside and saw flames. He got his gun and went outside. He saw McClurg near Caspers' vehicle, which was on fire. He asked McClurg what was going on. McClurg replied, "Mind your own business, I'm burning this fucking place down." The witness saw McClurg throw more gasoline towards the vehicles before leaving in a truck.

McClurg called Heim and told him he poured gasoline all over the cars in Caspers' driveway and threw a match on it. He said he was confronted by one of the neighbors. McClurg said he did not believe he would make it to work the next day and asked Heim to call Caspers for him. Heim tried to call Caspers, but she did not answer. When Heim informed McClurg that Caspers

did not answer, McClurg told him, “So from here, shit’s going south.” Heim urged McClurg to turn himself in to the police, but McClurg told Heim he could not go to prison.

At approximately 9:43 p.m., Rancho Cordova Police Department officers arrived at Caspers’ residence and observed burn damage to the two vehicles in Caspers’ driveway. The burn patterns indicated the fires originated on the exterior of the driver’s side of each vehicle. A melted one-gallon fuel container was located on the ground adjacent to one of the vehicles. Caspers told an officer that McClurg was depressed and bi-polar, suffered from post-traumatic stress disorder, and self-medicated with alcohol and pain pills. She said she spent time with McClurg at his home in Citrus Heights over the weekend, but she left when McClurg’s girlfriend arrived and began arguing with her. The next morning, she awoke to find her car vandalized. She suspected McClurg or his girlfriend vandalized her car because McClurg had been sending her rude texts after she left his house. The Rancho Cordova Police Department notified the Citrus Heights Police Department to be on the lookout for McClurg. A Sacramento Sheriff’s Department (SSD) aircraft flew toward McClurg’s residence in Citrus Heights to determine whether he had returned home.

McClurg returned home and smelled like smoke. McClurg told his brother Timothy,¹ with whom he resided, to leave the house because he did not want him to die. McClurg stated he set Caspers’ house on fire and had a bomb. Timothy saw what looked like a black semi-automatic handgun tucked into McClurg’s waistband. Timothy left to call 9-1-1 from a neighbor’s house.

McClurg himself called 9-1-1 at 10:10 p.m. His call went to a California Highway Patrol (CHP) dispatcher. McClurg said, “You guys are looking for me. I just set a house on fire over on El Manto in Rancho Cordova. I live in Citrus Heights. And I want to let you guys know that I’m fucking armed, and I’m sitting up here with a fucking bomb ready to go right now.” The dispatcher asked him where he was. McClurg yelled, “I’m at my fucking house! Where the fuck do you think I’m at?” The dispatcher asked him for his address. McClurg said, “Well, if you don’t know yet, I’m not gonna’ tell you.” When asked about the bomb, McClurg became agitated and said, “I just went over and set my fucking ex-wife’s fucking house on fire in Rancho Cordova.” The dispatcher asked again where McClurg was, but he just said, “You’ll find me.” When asked about his gun, McClurg said, “I got a forty-five, and I got a fucking bomb set up right here on the fucking driveway,” and hung up.

At approximately 10:12 p.m., Timothy called 9-1-1 from down the street. His call went to a Citrus Heights Police Department dispatcher. He told the dispatcher McClurg had just arrived home and told him he set his ex-wife’s house on fire. He said McClurg had been drinking heavily and had what he believed to be a semi-automatic pistol in his waistband. Timothy said McClurg also told him that he had “a bomb or something like that.” McClurg warned Timothy to get out of the house because the police were coming and he did not want Timothy to get killed.

¹ Because he shares the same last name as his brother, Timothy McClurg is referred to as “Timothy” throughout this memorandum for clarity; no disrespect is intended.

At 10:13 p.m., McClurg called 9-1-1 a second time. This call was routed to a CHP dispatcher. McClurg said, “I’ll give you 45 seconds to call my ex-wife at [phone number omitted]. I’ve already set her house on fire, and her vehicles. If you don’t, I have a bomb sitting here in my driveway and I’m going to blow it up in the fucking driveway.” The dispatcher asked McClurg for the address. McClurg stated, “The address where I live? 7309 Grenola ... it was on El Manto in Rancho Cordova. You have only thirty seconds left.” The dispatcher asked him about the address on El Manto, but McClurg interrupted and yelled, “You’re running out of time! I’m going to fucking light this thing off! It’s in my fucking driveway! I’m telling you, you have—.” The dispatcher interrupted McClurg to ask about the address. McClurg repeated Caspers’ telephone number and then said, “She’s on El Manto. I’ve already went by and set her fucking house and all of her vehicles on fire. Now you got like twenty seconds! I’m not playing this fucking game!” The dispatcher asked him for the location of the bomb. McClurg spoke over her, and threatened, “I’m going to go across the street. I’m going to go across the street and start grabbing kids if that’s the way you want to play this fucking game!” The dispatcher asked McClurg for his name. McClurg yelled, “You’re running out of time!” He again told the dispatcher Caspers’ phone number and before hanging up, he yelled, “If you don’t call her in eight seconds, I’m going to go across the street—the whole house across the street is full of little kids—I’m going to go over and get ‘em right now!”

Citrus Heights Police officers responded from various locations, intending to converge at a rally point approximately four-tenths of a mile from McClurg’s residence to coordinate a plan to contact him safely. Officers Kyle Shoberg, Daniel Boehle, and Nicholas Oldwin were among the responding officers. They each wore Citrus Heights Police Department uniforms which clearly identified them as law enforcement officers. The officers were aware that McClurg’s brother told a Citrus Heights Police Department dispatcher that McClurg was home, had been drinking heavily, and possessed a gun. The officers also knew McClurg told his brother he set his ex-wife’s house on fire and he knew the police were coming.

At approximately 10:16 p.m., the SSD aircraft voiced on the radio that McClurg was pouring liquid in a trail from a possibly ignitable device towards the garage of his residence. The aircraft advised Citrus Heights Police dispatch, “Step your units up.” Upon receiving this update, the officers were concerned McClurg would detonate an explosive device in a residential neighborhood. Based upon this exigency, they abandoned their initial plan to meet at the rally point and advanced directly to the intersection of Baranga Drive and Grenola Way.² McClurg’s residence was located on the south side of Grenola Way, approximately 400 feet northeast of Baranga Drive.

When the officers arrived, Grenola Way was very dark. They requested the SSD aircraft illuminate McClurg’s residence with its spotlight; however, the spotlight was not operational. Officers Shoberg, Boehle, and Oldwin walked cautiously with their department issued rifles northeast on the southern side of Grenola Way toward McClurg’s residence. Due to the darkness, they could not see McClurg. Officer Shoberg was in the lead. He momentarily saw

² From its intersection with Baranga Drive, Grenola Way is a southwest-northeast street consisting of single-family residences with attached two-car garages. Beyond McClurg’s residence, the direction of the street changes.

what appeared to be the light from a cellular telephone partially illuminating an individual standing in the driveway of what he believed might be McClurg's residence, approximately four houses ahead. However, as the officers continued their approach towards McClurg's residence, they were unable to see McClurg. The officers feared McClurg would shoot them before they could even see him.

Officers Shoberg, Boehle, and Oldwin stopped their approach at the house next-door to McClurg's. They huddled up against its garage, facing northeast towards McClurg's residence. The garage was on Officer Shoberg's immediate right side. Officer Boehle was on Officer Shoberg's immediate left side, and Officer Oldwin was positioned to the left of Officer Boehle. From that position, they were approximately sixty-five feet away from the nearest portion of McClurg's garage, separated only by the front lawns of the two houses and a low hedge row running along the property line between the adjacent front lawns.

Once there, Officer Shoberg could see McClurg in the threshold of his garage. Officers Boehle and Oldwin still could not see McClurg. McClurg's garage door was open, but the garage was not internally illuminated. The officers' collective intent was to illuminate McClurg with the lights mounted on their rifles and to verbally command him to surrender. As soon as they turned on their lights, however, McClurg emerged suddenly from the threshold of his garage, extended his right arm, and pointed a handgun at the officers. They believed McClurg was going to kill them, and each of the officers immediately fired rounds at McClurg, who ducked back into his garage. The officers could not tell whether any of their shots struck McClurg.

Officer Oldwin, who was positioned the furthest from the neighbor's garage door, and therefore had the least cover and concealment, moved to a more favorable position behind a tree to his left. The tree was still on the western side of the neighbor's front lawn, but closer to the sidewalk. Meanwhile, Officers Shoberg and Boehle remained stacked up against the garage. Officer Shoberg saw McClurg extend his arm out of the garage and point his gun in the direction of himself and Officer Boehle. Officer Shoberg became convinced McClurg was trying to kill them because he pointed the gun at them while simultaneously using his garage to cover and conceal himself. Officer Shoberg fired in the direction of McClurg's arm, and continued firing at the garage wall for a moment after McClurg withdrew his arm back behind the wall.

To improve their cover and obtain a better view into McClurg's garage, Officers Shoberg and Boehle moved to a tree on the eastern side of the neighbor's front lawn, forward and to the left of their initial position. Once there, Officer Shoberg observed a canister in McClurg's driveway and smelled a strong gasoline odor. He believed McClurg could ignite the canister and cause an explosion. Officers Shoberg and Boehle then saw McClurg kneeling or crouching on the east side of his garage, near the rear of his truck, still in possession of his gun. Officer Boehle ordered McClurg to drop the gun. McClurg raised his gun up again towards the officers. Officers Shoberg and Boehle fired more rounds at him. McClurg stood up and exited the garage onto the driveway while pointing his gun at them. The officers fired at him again. McClurg fell to the ground and dropped his gun. After he fell, McClurg made motions as if he intended to recover his gun. Based upon their training, as well as McClurg's determined persistence moments before, the officers believed McClurg would continue to try to shoot them or the

canister should he retrieve the gun. Accordingly, Officers Shoberg and Boehle fired at McClurg again. McClurg stopped moving thereafter.

Due to the risks presented by the potential explosive device on the driveway and the strong smell of gasoline, Citrus Heights Police officers requested the SSD Explosive Ordinance Detail (EOD) respond to the scene prior to approaching McClurg. With the assistance of a robot, the EOD confirmed that McClurg was not moving and appeared deceased.

Officers located a book of matches next to McClurg. One of the matches was partially pulled from the book.³ They also located a black pistol near McClurg's left hand on the driveway. It had damage in its upper slide area, potentially having been struck by one of the officers' rounds. Although McClurg told a 9-1-1 operator that he had a .45 caliber handgun, and his brother believed he saw a semi-automatic pistol in McClurg's waistband, further inspection determined McClurg's gun was a black Daisy Powerline 340 .177 caliber BB gun that resembled a semi-automatic pistol. It had no orange tip or other distinguishing markings.

As SSD and CHP aircraft orbited his residence, they recorded the events with infrared thermal cameras. McClurg and the front of his residence were visible when their orbits brought them around the front of his residence. As they orbited back around his residence, the view of McClurg and the front of his garage was obstructed by trees and other portions of his residence. An aircraft video recorded a canister sitting upright in the center of McClurg's driveway. McClurg poured a liquid onto the driveway from the canister and back towards his garage. For the next few minutes, when in view of McClurg, the camera recorded McClurg standing in and near the threshold of his open garage door. He was holding an object to his right ear. It appeared as though he was talking on a cellular telephone. At one point, he gestured towards the canister and liquid on the driveway.

A few minutes later, an aircraft recorded McClurg standing on his driveway, just outside of his open garage door, pointing a handgun with his right arm toward the neighbor's house to the west. Immediately thereafter, the video captured thermal heat signatures that appeared to be rounds fired in McClurg's direction from the west, some of which appeared to strike his garage. McClurg ducked down slightly, then remained standing in the threshold of his open garage door, facing in the direction of the officers. Less than half a minute later, aircraft recordings showed McClurg just inside the threshold of his garage, on its west side. McClurg leaned slightly to his right out of the garage, with the gun in his right hand. He slightly raised the gun toward the west, followed by what appeared to be his gun or his hand being struck by a round fired from the west.

An aircraft video then captured McClurg walking back toward the east side of his garage, the side furthest from the officers. Moments later, he could be seen squatting down on the east side

³ The canister on the driveway was labelled acetylene. According to an SSD Arson Investigator, if the pool of gasoline surrounding the acetylene tank had been ignited, the pressure of the fire would have caused the tank to leak, resulting in a large fireball-type explosion. Alternatively, if the tank had been shot by a firearm, it would have created a shrapnel explosion, the size of which would be dependent upon the air to gas mixture and the amount of acetylene in the tank.

of the entrance of his garage, near the back left side of his truck,⁴ facing in the direction of the officers. McClurg then stood up and walked toward the officers while pointing a gun with his right arm in their direction. Although the officers were not visible on the recording, it appeared from the thermal signatures that they fired rounds at him from the west. McClurg fell to the ground. His arms could be seen moving briefly after he fell to the ground. Thereafter, he remained still.

In addition to the officers' observations and the aircraft recordings, neighbors witnessed portions of the event. One witness heard "popping noises" and looked out of her window. She saw McClurg outside of his house holding a handgun in what she described as a shooting position, facing in the direction of the officers, whom she could not see. Another neighbor went outside and saw McClurg in his garage. Based upon the combination of the sounds of gunfire and what she perceived to be light coming from McClurg's gun, it appeared to the witness that McClurg was shooting. She could not see what McClurg was shooting at. Before returning back inside for safety, she also heard more shots that she attributed to a source other than McClurg due to the lack of a muzzle flash from McClurg's gun at the time of the shots.

Subsequent round counts determined Officer Shoberg fired 16 rounds, Officer Boehle fired 10 rounds, and Officer Oldwin fired twice during the course of the incident.

According to the report of the Sacramento County Coroner, the cause of McClurg's death was multiple gunshot wounds. McClurg suffered two gunshot wounds to his right chest, and gunshot wounds to his left chest, abdomen, right back, and left back. Finally, he suffered a gunshot wound to his right arm which was most consistent with a re-entry wound from the same bullet that struck his left chest.

The Sacramento County District Attorney's Office Laboratory of Forensic Services examined a sample of McClurg's femoral blood. The laboratory determined McClurg had a blood alcohol level of 0.21%.

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.

In this instance, Officers Shoberg, Boehle, and Oldwin had reasonable cause to believe McClurg

⁴ McClurg's truck was parked forward into the garage.

had committed a public offense and was a danger to others. Dispatchers initially advised them to be on the lookout for McClurg because he committed arson in Rancho Cordova. It was also reasonable for Officers Shoberg, Boehle, and Oldwin to suspect McClurg may resist arrest or detention for that offense. They received updated information indicating McClurg had returned to his residence, was under the influence of alcohol, was in possession of what was described as a semi-automatic pistol, and claimed to have a bomb. The officers also knew that McClurg was expecting the officers' arrival. They were cognizant of an increased potential for violent resistance given that McClurg anticipated the possibility of his brother getting killed if he did not leave before the police arrived. Had McClurg contemplated a peaceful encounter with the officers, no such risk to his brother would have existed.

Although the officers initially intended to meet at a rally point to formulate a plan, they were forced to expedite their approach to McClurg's residence when the SSD aircraft voiced on the radio that McClurg was pouring liquid in a trail from a possibly ignitable device toward his garage. The officers were justifiably concerned that McClurg could cause an explosion in a residential neighborhood. Upon their arrival, McClurg was still armed with the BB gun that resembled a semi-automatic firearm, and he made no efforts to peacefully surrender. Instead, as soon as the officers illuminated McClurg, he pointed his gun at them.

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.)

Officers Shoberg, Boehle, and Oldwin did not fire their rifles at McClurg until after McClurg pointed his gun at them. Once he did, the officers thought he was going to kill them, and they fired at him. Based upon McClurg's actions leading up to their arrival combined with him pointing a gun at them, their belief that McClurg was trying to kill them was reasonable. The officers could not know that the gun McClurg pointed at them was a BB gun. It was very dark outside, his gun was black, and it appeared to be a semi-automatic firearm. Indeed, McClurg's brother believed it was a real semi-automatic pistol when he saw it from a much closer distance inside his house, and Caspers Jr. believed it was real when confronted with it outside of his home when McClurg set fire to the vehicles.

After the officers shot at McClurg, he retreated into his garage and the officers stopped firing. Officer Oldwin took cover behind a tree while Officers Shoberg and Boehle remained in position. Officer Shoberg saw McClurg's arm extend out of the garage, holding the gun. Because it appeared McClurg was trying to hide as much of his own body as possible behind the structure of the garage while simultaneously trying to fire at the officers, Officer Shoberg was

convinced McClurg was trying to kill them. Under the circumstances, Officer Shoberg's fear was reasonable. Accordingly, he fired again at McClurg's arm, and then at the wall of the garage after McClurg pulled his arm back behind the garage wall.

Officers Shoberg and Boehle then moved to a position behind a tree that provided better cover. Once there, Officer Shoberg saw the canister in McClurg's driveway and smelled the odor of gasoline. The officers illuminated McClurg again and saw him in a crouched position in the garage with his gun. McClurg stood and advanced towards them with his gun pointed at them. Officers Shoberg and Boehle reasonably believed McClurg was trying to kill them and fired rounds at McClurg, striking him. McClurg fell to the ground and dropped his gun. Almost immediately thereafter, however, his arm moved in a manner that indicated to Officers Shoberg and Boehle that McClurg was attempting to recover the gun in an attempt to shoot them or the canister. Officers Boehle and Shoberg fired their final shots at McClurg and McClurg stopped moving.

CONCLUSION

Officers Shoberg, Boehle, and Oldwin were justified in shooting McClurg 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: Citrus Heights Police Detective Deborah Bayer-Evans #303
Citrus Heights Police Officer Kyle Shoberg #304
Citrus Heights Police Officer Daniel Boehle #373
Citrus Heights Police Officer Nicholas Oldwin #365
Kimberly Gin, Sacramento County Coroner