



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael M. Blazina
Assistant District Attorney

DATE: November 18, 2020

TO: Sheriff Scott Jones
Sacramento County Sheriff's Office
4500 Auburn Boulevard
Sacramento, CA 95841

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SSD-19-357898
Shooting Officer: Deputy David Cuneo, #1418
Person Shot: Maurice Holley (DOB: 4/15/1964)

The District Attorney's Office, as an independent agency, has completed its investigation and 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 Maurice Holley. For the reasons set forth, we conclude that the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other documentary items. These items included the following: Sacramento County Sheriff's Department Report 19-357898, video and audio recordings, dispatch calls, in-car camera recordings, witness interviews, photographs, diagrams, Sacramento County District Attorney Laboratory of Forensic Services reports, evidence logs, and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY

At approximately 1:55 p.m. on October 6, 2019, a husband and wife residing at 13626 Bennett Road in Herald were leaving their home when they saw a subject laying down in a drainage ditch at the end of their driveway. The subject, later identified as Maurice Holley, was known to local residents of the area as "Angel."

The husband and wife asked Holley if he was alright. Holley responded, "I'm just hot, that is all," and laid his head back on the ground. The husband and wife both believed that Holley appeared to be under the influence of drugs.

The husband and wife did not feel safe to continue leaving their property, so they returned to their house. They received a phone call from a neighbor advising them that "Angel" was in the

area and that “Angel” was known to carry a machete or a gun.

The husband and wife called 9-1-1 at approximately 2:10 p.m. They told the 9-1-1 dispatcher that a subject was passed out in front of their house and they were concerned he was on drugs. They further stated that they knew the subject as “Angel,” and that Angel was known to carry machetes or a gun.

Sacramento County Sheriff’s Office Deputy David Cuneo was on patrol in Galt. He was assigned to the Mental Health Mobile Crisis Support team. Deputy Cuneo was wearing a full Sacramento County Sheriff’s Department uniform and was driving a marked patrol vehicle. He was dispatched to respond to the call at Bennett Road at approximately 2:15 p.m.

Deputy Cuneo arrived on scene at 13626 Bennett Road at approximately 2:30 p.m. He saw Holley laying down in the ditch and parked his patrol vehicle facing Holley approximately 15 feet away. Holley appeared to be asleep or unconscious.

Deputy Cuneo exited his patrol vehicle and activated his in-car camera recording system. Deputy Cuneo tapped on his air horn to awaken Holley but Holley did not move. Deputy Cuneo tapped on the air horn a second time. When he did so, Holley began to stir and waved his arm at the deputy. Deputy Cuneo requested Fire Department medical personnel respond to his location at approximately 2:32 p.m.

Deputy Cuneo approached Holley. He asked Holley what he was doing out there, and asked Holley for his name and identifying information.

Holley responded that he was “out here with my rabbit” and provided his name and date of birth. Deputy Cuneo asked Holley if he needed medical assistance. Holley stated that he did not. Deputy Cuneo then cancelled the request for medical personnel to respond.

Holley rolled over onto his knees and started to slowly crawl away from the deputy up the embankment towards the fence. Deputy Cuneo had not yet patted Holley down and did not know if Holley had any weapons as described in the 9-1-1 call. He directed Holley to sit back down. Holley ignored him. Deputy Cuneo again told Holley to sit down, and Holley complied. Holley sat on the embankment with his back to the fence, approximately 10 feet from Deputy Cuneo.

As Holley sat down, Deputy Cuneo saw that Holley had what appeared to be a black semi-automatic handgun in his waistband. The handle was pointing to the left, as if for a left-handed draw.

Deputy Cuneo drew his firearm and aimed it at Holley. Deputy Cuneo announced over his radio, “Give me the air, he’s got a gun in his waistband!”

Deputy Cuneo commanded Holley to get on the ground. Instead, Holley raised both his arms straight out at shoulder level and yelled, “I didn’t do nothing!”

Before Deputy Cuneo could issue further commands or attempt to de-escalate the situation, Holley lowered his left hand to the left side of his waistband.

In an interview with investigators after the incident, Deputy Cuneo stated he believed that Holley drew the firearm. He stated he could see Holley reach down with his left hand, grasp the grip and pull it out of his waistband. Deputy Cuneo further stated he believed his life was in danger as he did not know if Holley intended to shoot him as he reached for the firearm, and he knew that his backup officers were still approximately 15 minutes away from arriving on scene.

Deputy Cuneo then fired 9 shots at Holley from approximately 10 feet away. Deputy Cuneo stopped firing when Holley stopped moving and he could see that there was no gun in Holley's hands.

Deputy Cuneo announced over the radio that shots were fired and requested additional officers and medical personnel to respond. Deputy Cuneo ejected the magazine from his firearm and reloaded with a fresh magazine from his belt.

Deputy Cuneo continued to hold Holley at gunpoint. He intended to do so until backup officers arrived. However, he observed that Holley had stopped breathing. He approached Holley and checked for a pulse in Holley's left arm. Holley did not have a pulse.

Deputy Cuneo placed Holley in handcuffs.¹ Deputy Cuneo then returned to his car and wiped the blood from his hands. He located the object from Holley's waistband, which appeared to be a black BB-gun styled to look like a semi-automatic handgun. The BB-gun looked like a real firearm and did not have an orange tip or other distinctive features that would clearly indicate it was not a real firearm, as seen in this photograph:



Deputy Cuneo held the scene until additional officers arrived. A canvas was conducted of the

¹ In his statement to investigators after the incident, Deputy Cuneo explained that he handcuffed Holley because he had been trained, in the event of a shooting, to place the subject in handcuffs and hold the scene until other officers arrived.

surrounding homes. No witnesses were located who had observed any of the events beyond hearing the sound of the gunshots.

An autopsy was conducted on Maurice Holley on October 8, 2019, by Forensic Pathologist Brian Nagao of the Sacramento County Coroner's Office. Holley's cause of death was listed as "multiple gunshot wounds." Specifically, Holley was struck six times: to the left upper chest, the right hip, the right thigh, the right lower back, the left lower back, and a tangential gunshot wound or laceration to the back.

The Sacramento County District Attorney's Office Laboratory of Forensic Services examined a sample of blood from Holley's chest. The laboratory determined that Holley's blood sample contained a blood alcohol concentration of .09%. The laboratory further determined that Holley's blood sample contained methamphetamine and amphetamine.

In-car camera video from Deputy Cuneo's patrol vehicle was reviewed. The video begins at approximately 2:32 p.m. The audio commences approximately 30 seconds later.

The patrol vehicle is parked facing Holley as the video begins. Holley is laying down on his side approximately 10-15 feet away, apparently asleep.

Holley awakens at approximately 2:33 p.m. and raises his hand. He raises himself to a kneeling position and grabs at some loose papers.

Deputy Cuneo enters the frame. He approaches Holley as the audio begins and asks, "What are you doing passed out right here?" Holley responds with a statement about his rabbit.

Deputy Cuneo asks Holley for identification. He asks Holley if he needs medical assistance. Holley responds that he doesn't need medical assistance and provides Deputy Cuneo with his name and date of birth.

At approximately 2:34 p.m., Holley starts to get up. Deputy Cuneo tells Holley he doesn't need to get up and directs him to sit back down. Holley gathers his papers and begins to crawl slowly up the embankment towards the fence. Deputy Cuneo states, "Maurice, you are not listening very well." He asks Holley if Holley is on probation or parole.

A few seconds later, Holley stops crawling and sits down on the embankment facing the deputy. As Holley does so, Deputy Cuneo appears to notice something and quickly steps back and draws his firearm, aiming it at Holley. He loudly commands, "Get on the fucking ground!"

Holley, still seated, raises both arms so they are facing straight out in front of him. He is holding papers in his left hand. He yells, "I didn't do nothing!"

Deputy Cuneo announces over his radio, "Give me the air, he's got a gun in his waistband!"

At that point, Holley shifts the papers from his left hand to his right and lowers his left hand down to the area of his waistband where the bottom of his shirt is in between his torso and what

appears to be a black pistol tucked in his waistband. Deputy Cuneo yells, “Don’t touch it!” as Holley pulls the bottom of his shirt up and slightly away from his body then down, covering the apparent gun.

As Holley’s left hand is pulling up the shirt, Deputy Cuneo begins firing from approximately 10 feet away at approximately 2:34 p.m. He fires 9 times. Holley appears to be hit first in the left upper chest, causing him to spin and fall onto his left side with his back facing the deputy as Deputy Cuneo is still firing.

Deputy Cuneo announces over the radio, “Shots fired! Code 3 cover, Code 3 fire!” Holley lies motionless. Deputy Cuneo ejects his magazine and replaces it. He holds his position approximately 10 feet away from Holley.

Approximately 40 seconds later, Deputy Cuneo approaches and handcuffs Holley. He advises dispatch that the subject has been placed in handcuffs. He locates the object from Holley’s waistband and is heard stating that it is a BB-gun. Deputy Cuneo secures the scene, sets out crime scene tape and then waits for other units to arrive. Other units begin to arrive at approximately 2:48 p.m.

LEGAL ANALYSIS

A peace 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 detain or arrest the person, to prevent the person’s escape, or to overcome the person’s resistance. (California Penal Code section 835a; CALCRIM 2670.) An officer who detains or arrests a person does not need to retreat or stop his or her efforts if the person resists or threatens resistance. Moreover, using reasonable force does not make the officer an aggressor or cause him or her to lose the right to self-defense. (California Penal Code section 835a.) The person being detained or arrested has a duty to permit himself or herself to be detained, and the person must refrain from using force or any weapon to resist arrest. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; California Penal Code section 834a; CALCRIM 2670, 2671, 2672.)

In the present matter, Deputy Cuneo was dispatched to a call of a subject passed out in front of the complainant’s home. The callers believed the subject was on drugs and stated that the subject was known to carry a machete or a gun. When Deputy Cuneo arrived on scene, he found Holley passed out in a drainage ditch at the edge of the callers’ property. As Deputy Cuneo was speaking with Holley, Holley slowly crawled away from Deputy Cuneo, moving up the embankment and taking a seat by the fence. When Holley did so, Deputy Cuneo observed that Holley appeared to have a semi-automatic firearm in his waistband. Deputy Cuneo clearly had reasonable cause to detain Holley and investigate further under these circumstances, and Holley had a duty to follow the deputy’s commands. Holley failed to do so.

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense. 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.)² 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 Cuneo saw the handle of what appeared to be a semi-automatic firearm in the waistband of Holley's pants, with the handle pointed to the left for a left-handed grip. He ordered Holley to get on the ground. Holley did not comply, instead raising his arms out in front of him. Deputy Cuneo then yelled at Holley, "Don't touch it!" Instead, Holley began to lower his left hand towards the waistband of his pants, where the apparent semi-automatic weapon was located. Deputy Cuneo was alone and his cover officers were still at least 15 minutes away. Further, Deputy Cuneo was exposed, as he was standing approximately 10-15 feet away from Holley with nothing in between them.

Although Holley had not yet fully drawn his weapon or pointed it at Deputy Cuneo, the deputy's actions are judged based on the reasonable perception of the threat. He was faced with a situation where although he had Holley at gunpoint, and had commanded Holley not to touch the weapon, Holley nevertheless lowered his hand in what looked like an attempt to grab the firearm. Given all of these circumstances, Deputy Cuneo's belief that Holley posed an imminent danger of death or great bodily injury to him was reasonable.

CONCLUSION

Based on the circumstances of this incident, Deputy Cuneo reasonably believed he needed to shoot Holley in self-defense and, therefore, the shooting was justified. Accordingly, we will take no further action in this matter.

cc: Deputy David Cuneo, Sacramento County Sheriff's Office
Detective Richard Maxwell, Sacramento County Sheriff's Office
Kimberly Gin, Sacramento County Coroner's Office

² This incident occurred prior to California Assembly Bill 392's amendments to Penal Code sections 196 and 835a. Therefore, this incident is analyzed under the law as it existed at the time of the events.