



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Stephen J. Grippi
Chief Deputy

Michael A. Neves
Assistant District Attorney

MEMORANDUM

DATE: September 4, 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. CH 17-07412
Shooting Officer: Kyle Shoberg #304
Person Shot: Steven Roberts (DOB 8/10/1967)

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 Steven Roberts. For the reasons set forth, we conclude that there is no reasonable likelihood a jury would find the shooting by Officer Shoberg was criminal.

The District Attorney's Office received and reviewed written reports and other items, including: Citrus Heights Police Department report numbers 17-07412, 14-09713, and 14-03244; dispatch logs/audio; 9-1-1 audio recordings; witness interview recordings; crime scene video and photos; and Sacramento County District Attorney's Office Laboratory of Forensic Services Blood Alcohol and Toxicology reports.

FACTUAL SUMMARY

On September 14, 2017, at approximately 3:30 p.m., Steven Roberts was driving a Ford Expedition Sport Utility Vehicle (SUV) on Auburn Boulevard near Rollingwood Boulevard in the City of Citrus Heights. As Roberts proceeded west on Rollingwood Boulevard, Citrus Heights Police Officer Kyle Shoberg was driving a marked patrol SUV, eastbound on Rollingwood Boulevard towards Auburn Boulevard. Officer Shoberg was present in the neighborhood as it was a designated area for proactive police enforcement due to its high number of thefts and crimes involving controlled substances. Officer Shoberg recognized Roberts as he drove past the officer due to three previous police encounters with him. In 2012, Officer

Shoberg arrested Roberts for possession of methamphetamine. In 2014, Officer Shoberg witnessed Roberts attempting to burglarize a vehicle, and later that year Roberts fled from Officer Shoberg when he attempted to detain him in the same neighborhood. Given the crimes the neighborhood was experiencing and Roberts' background, Officer Shoberg decided to follow him.

As Roberts drove westbound on Rollingwood Boulevard, he was tailgating another vehicle, following approximately one foot away from its bumper. Roberts approached the intersection of Rollingwood Boulevard and Evening Way, proceeded to cross over to the wrong side of the roadway, and made an abrupt left turn onto Evening Way. Officer Shoberg activated his emergency lights to initiate a traffic stop. When Officer Shoberg completed his turn onto southbound Evening Way, he observed Roberts driving at a high rate of speed for the residential neighborhood, which caused road dust to come up from Roberts' tires. Officer Shoberg activated his siren. Roberts failed to yield and continued driving on Evening Way at a high rate of speed until making a southbound turn on Oak Forest Street. Officer Shoberg followed. Roberts turned onto Summer Avenue driving west. He proceeded down this street until he abruptly turned into the driveway of 7420 Summer Avenue on the south side. Officer Shoberg stopped in the street approximately ten to fifteen yards behind Roberts' vehicle.

Officer Shoberg observed Roberts open his driver's door and exit the vehicle. Officer Shoberg then placed his patrol SUV in park. Roberts ran approximately two steps away from his vehicle, and then returned to the driver's door, which was closed but the window was open. Roberts put both hands in through the open window. Officer Shoberg exited his patrol SUV and removed his gun from his holster. Officer Shoberg stepped away from his driver's door in an attempt to see what Roberts was doing. Officer Shoberg observed Roberts reaching into the vehicle with his head down looking inside. It appeared to Officer Shoberg that Roberts' mental state had shifted from "flight to fight." Fearing that Roberts was retrieving a gun, Officer Shoberg ran back to the open driver's door of his patrol SUV to shield himself and yelled twice for Roberts to stop reaching into his vehicle. Roberts turned his head and upper body in Officer Shoberg's direction while his lower arms were still inside the driver's window. Officer Shoberg believed Roberts was going to discharge a firearm. Officer Shoberg fired his gun twice and he struck Roberts in the right hip.

Roberts fell to the ground. Officer Shoberg could not see Roberts' hands, so he retreated behind the rear bumper of his patrol SUV. Officer Shoberg yelled for Roberts to show his hands. Roberts complied and Officer Shoberg did not see a gun. He moved forward behind the patrol SUV open driver's door next to the body of the vehicle. Officer Shoberg maintained this position until additional officers arrived. After their arrival, the officers approached Roberts and began providing aid until Sacramento Metropolitan Fire Department medics arrived. Roberts was transported to Mercy San Juan Medical Center where he was treated for his non-life threatening injury.

Four witnesses were located approximately two houses down from 7420 Summer Avenue, in front of 7408 Summer Avenue, sitting in parked vehicles on the south side of the street facing east. The witnesses saw Roberts' vehicle driving west on Summer Avenue and enter the driveway of 7420 Summer Avenue. They observed the patrol vehicle also driving west on

Summer Avenue with its red and blue police lights activated. They could not recall if the siren was also activated. The witnesses could not see Roberts from their vantage point. They only saw the passenger side of Roberts' vehicle. The witnesses all described observing Officer Shoberg stop his patrol SUV in the street, exit his vehicle, and fire towards Roberts' vehicle. The witnesses varied on whether Officer Shoberg fired one, two, three, or four shots. One witness heard Officer Shoberg yell commands at Roberts prior to firing his gun, although the witness could not discern Officer Shoberg's words.

Crime scene investigators located a marijuana cigarette on the driver's side running board of Roberts' vehicle and a bag containing approximately 11.2 grams of marijuana on the ground near the driver's side of Roberts' vehicle. They also located 5.5 grams of methamphetamine on the ground near the passenger side of Roberts' vehicle. A gun was not located. The Sacramento County District Attorney's Office Laboratory of Forensic Services tested Roberts' blood sample taken by medical personnel approximately twenty hours after the shooting. The presence of methamphetamine and amphetamine were confirmed.¹

Roberts is currently pending in Sacramento Superior Court case number 17FE023331 a charge of violating Vehicle Code section 2800.2 (evading a pursuing peace officer in willful and wanton disregard for the safety of persons or property) related to this incident. The matter is scheduled for a preliminary hearing on September 11, 2018.

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. (California Penal Code section 835a.)

Officer Shoberg had reasonable cause to initiate a traffic stop for Roberts' unsafe left turn from Rollingwood Boulevard onto Evening Way. Roberts continued driving at high speeds through the residential neighborhood all the while failing to yield to Officer Shoberg's attempt to initiate a traffic stop. Roberts had a duty to stop his vehicle and submit himself to detention for his traffic violations but he chose to continue speeding and evading the officer in a reckless manner. When Roberts did stop his vehicle, he stepped away from it and returned to reach inside his vehicle, thus continuing his failure to submit to Officer Shoberg's attempt to detain him.

¹ The concentration of methamphetamine was 389 ng/mL and amphetamine was 38 ng/mL. According to the criminalist who conducted the testing, despite the passage of time, the quantity of methamphetamine combined with the presence of amphetamine indicate a recent use of the drug.

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.)

The District Attorney's Office does not review these types of shootings to determine whether the officer could have taken some other action, or used some other tactic, in addressing the situation, or whether his action was appropriate under his employing agency's policies. Our review is strictly limited to an analysis of whether that action is a prosecutable crime under the law. A prosecutor should file criminal charges only when there is a reasonable likelihood of conviction by an objective jury hearing all of the admissible evidence and the most plausible defenses. In order for any person to be convicted of a crime the prosecution bears the burden of proving the charges beyond a reasonable doubt. Also, before a jury can rely on circumstantial evidence to find a person guilty, the jury must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the accused person is guilty. "If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence." (CALCRIM 224.)

In this particular case, Officer Shoberg subjectively believed that Roberts was reaching for a weapon. Officer Shoberg's actions demonstrate this subjective belief, as they were consistent with an officer reacting to the threat of an armed suspect. Once Roberts returned to his vehicle and reached inside, Officer Shoberg moved back behind his vehicle door for protection. After he shot Roberts, still uncertain whether Roberts possessed a gun, Officer Shoberg retreated behind his vehicle's rear bumper for additional safety. He did not leave this area until he observed Roberts' hands and saw Roberts did not possess a gun.

A jury would likely find that Officer Shoberg's belief was reasonable. Under California law, a jury could consider Officer Shoberg's prior contacts with Roberts as relevant to the question of whether his belief of imminent danger was reasonable. Roberts had previously fled from Officer Shoberg to avoid detention. Several years ago, Officer Shoberg chased Roberts and Roberts attempted to flee over a fence. Because Roberts refused to release his grip from the fence, three police officers were necessary to physically pull Roberts away in order to handcuff him. In the second incident, Roberts fled from Officer Shoberg and hid behind garbage cans in a nearby resident's backyard. A police helicopter joined the search for Roberts, who continued to hide despite warnings that a police K-9 was searching. He was apprehended when bitten by the dog.

In the current situation, Roberts stepped away from his vehicle as if to flee. But instead of running away, he returned and reached back into his open window, thus concealing his hands.

Officer Shoberg could not see Roberts' hands, what he was doing with his hands, or what was in the area where he was reaching. Due to Roberts' prior history of not submitting to police officers until they applied physical force, as well as Roberts' behavior at that moment, it was reasonable for Officer Shoberg to believe Roberts intended to fight and was reaching in his vehicle to retrieve a weapon. Roberts ignored Officer Shoberg's command to stop reaching into the vehicle as it appeared to Officer Shoberg that Roberts' mental state had shifted from "flight to fight." Roberts moved his upper body to face Officer Shoberg, as if to turn towards the officer and prepare to point a firearm at his target. Officer Shoberg feared for his life and fired. Given these circumstances, it is not reasonably likely a jury of twelve individuals would unanimously agree that Officer Shoberg was unreasonable in his belief that he was in imminent danger of death or great bodily injury at the time of the shooting.

CONCLUSION

Based on the circumstances of this incident, there is no reasonable likelihood that a jury would convict Officer Shoberg of criminal misconduct. Accordingly, we will take no further action in this matter.

cc: Citrus Heights Police Officer Kyle Shoberg
Citrus Heights Police Detective Deborah Bayer-Evans