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Sacramento County District Attorney's Office

THIEN HO  
District Attorney

DATE: April 17, 2023

TO: Chief Alex Turcotte  
Citrus Heights Police Department  
6315 Fountain Square Drive  
Citrus Heights, CA 95621

FROM: Sacramento County District Attorney's Office

SUBJECT: Officer-Involved Shooting Case No. CHPD-22-00262  
Shooting Officer: CHPD Officer Daniel Tsverov #411  
Person Shot: Alexander Joseph Bogusz (D.O.B. 2/15/1991)

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer-involved shooting. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Alexander Joseph Bogusz. 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 include Citrus Heights Police Department report number 22-00262, video and audio recordings, dispatch calls, witness interviews, photographs, diagrams, evidence logs, Sacramento County District Attorney's Office Laboratory of Forensic Services reports, and the Sacramento County Coroner's Final Report of Investigation.

### **FACTUAL SUMMARY**

At approximately 8:48 p.m. on January 13, 2022, an employee of the Carl's Jr. Restaurant located at 6400 Antelope Road in the City of Citrus Heights heard a loud "bang" on the restaurant front window. The employee looked out and saw a man had fallen against the window.

The employee opened the front door to check on the man who had fallen. She saw the man stand up, then fall again. She noticed the man had metal knuckles on his left hand and she saw a silver revolver on the ground. The employee closed the door and decided to call 9-1-1 to report the man with the gun.

The employee continued to watch as the man, later identified as Alexander Joseph Bogusz, stood up, picked up the gun, and began walking towards the restaurant parking lot. She saw Bogusz

unsuccessfully try to open the driver's side door of her locked vehicle, then continue walking towards the restaurant drive-thru lane.

The employee told the 9-1-1 dispatcher that Bogusz appeared to be drunk. She described him as a white male adult wearing a gray hoodie, tan baseball cap, and tan pants.

At approximately 8:55 p.m., Citrus Heights Police Department (CHPD) Officers Edward Aceves and Levi Pond were dispatched to respond to the call. Officer Aceves and Officer Pond were each driving a marked patrol vehicle and dressed in full uniform, with visible badges and department patches on their sleeves.

Additionally, Officer Daniel Tsverov was traveling eastbound on Antelope Road towards the Citrus Heights Police Station to begin his shift. Officer Tsverov was in full uniform and was driving a marked patrol vehicle. Officer Tsverov was armed with a Glock 45 9mm handgun. His K-9 police dog was in the back seat.

The screen of Officer Tsverov's in-car computer displayed the priority call for service coming from the Carl's Jr. Restaurant at Antelope Road and Tupelo Drive. He recognized that address as his current location. Officer Tsverov advised the dispatcher he would respond to the call as he was already on scene. He pulled his patrol vehicle into the parking lot of the business.

The Carl's Jr. employee remained on the phone as she continued to observe Bogusz. She told the 9-1-1 dispatcher that she saw Bogusz point his gun at the driver of one of the cars in the drive-thru lane.

As Officer Aceves was driving westbound on Antelope Road, he also saw Bogusz pointing his firearm at the rear of a car in the drive-thru lane. He noticed that Bogusz appeared to be intoxicated. He saw that Bogusz was swaying and had an unsteady gait.

In the parking lot, Officer Tsverov saw Bogusz wearing khaki pants and a dark sweatshirt. He appeared to be stumbling as he walked. Officer Tsverov confirmed Bogusz' description with dispatch. As Bogusz was walking, Officer Tsverov saw him holding an object in his hands in front of him, standing in a "shooting stance," and pointing it towards an occupied vehicle.

Officer Tsverov believed Bogusz represented an imminent danger to public safety. He believed he needed to immediately contact Bogusz before any motorists or pedestrians in the area were harmed.

Officer Tsverov exited the parking lot, turned right on Tupelo Drive, and made an immediate right on Antelope Road in front of Carl's Jr. He activated his overhead emergency lights. He stopped his patrol vehicle in the #3 lane of eastbound Antelope Road, north of Carl's Jr and just short of the pedestrian walkway leading from the sidewalk to the restaurant entrance.

Officer Aceves pulled his patrol vehicle behind Officer Tsverov's vehicle.

Officer Tsverov saw Bogusz in the pedestrian walkway between the restaurant and the sidewalk. At approximately 8:56 p.m., Officer Tsverov exited his vehicle and stood behind the open driver's side door. He knew the call reported that Bogusz was armed with a gun, so Officer Tsverov drew his firearm and ordered Bogusz to raise his hands. Officer Aceves also drew his firearm.

Bogusz initially complied with the command and raised his hands. Officer Tsverov noticed Bogusz' hands were balled into fists. He also saw that Bogusz had an object in his hand. He ordered Bogusz to "Drop it!"

Bogusz dropped the object from his left hand. Officer Tsverov could not see it hit the ground due to a low retaining wall blocking his view. The wall was approximately two feet high. However, when the object fell, Officer Tsverov thought it sounded like a metal object striking the ground.

Officer Tsverov commanded Bogusz not to reach for the object. "If you reach for it, you will get shot!"

Officer Tsverov activated his radio to tell the dispatcher he was giving commands to Bogusz. As he did so, Bogusz bent over and picked up the object with his left hand.

Officer Tsverov yelled at Bogusz to drop it. Bogusz raised the object and pointed it at Officer Tsverov.

Officer Tsverov feared that Bogusz was going to shoot him. He also feared for the safety of others in the surrounding businesses behind him. He fired three shots at Bogusz.

Bogusz fell to the ground. As Bogusz fell, Officer Tsverov believed Bogusz was trying to get up. He fired one additional round at Bogusz, approximately two seconds after the prior shot. Officer Aceves did not fire his weapon.

Officer Tsverov called for additional officers. CHPD officers and Sacramento Sheriff's Office deputies responded. A contact team was formed to take Bogusz into custody and provide medical assistance.

However, Bogusz was still in possession of the firearm. Bogusz did not respond to directions to drop the firearm. CHPD Sergeant Kane Kissam fired one 40mm foam baton projectile at Bogusz, striking Bogusz in the shin. Bogusz moved his leg but did not otherwise respond. Sergeant Kissam then fired a second 40mm foam projectile, striking Bogusz in the buttocks. Bogusz did not respond. Officers then approached Bogusz, placed him in handcuffs, and began to provide medical care.

An unloaded silver Smith & Wesson .38 Special revolver was located near Bogusz's right hand. A records check revealed that the revolver was registered to Bogusz.

Bogusz was transported by ambulance to Mercy San Juan Medical Center. He was pronounced deceased at approximately 9:33 p.m.

A round count and examination of casings recovered at the scene indicate that Officer Tsverov fired 4 rounds during the incident.

A folding knife with blood on the blade was located on the retaining wall by the pedestrian walkway. The folding knife belonged to Deputy Matthew Lorigan. Deputy Lorigan used his personal knife to cut away Bogusz's clothing so that he could assist in providing medical care. This act was captured on body-worn camera video.

Bogusz' cell phone was found on the pedestrian walkway. Officers determined that Bogusz was on his cell phone throughout this incident. A patrol officer interviewed Bogusz' girlfriend. She indicated she was in a dating relationship with Bogusz, and they shared a child together. She told the patrol officer that she and Bogusz had argued earlier in the day. She stated she called Bogusz in the evening to check on him. She said Bogusz told her he had drinks at Stones Card Room. She believed Bogusz sounded drunk. She asked Bogusz if he was okay. He replied, "No, I'm definitely not."

According to his girlfriend, Bogusz told her he was going to Carl's Jr. to get food. While they were speaking, she heard yelling over the phone. She thought it was the police. She heard someone yell, "Drop the gun!" She indicated she then heard three gunshots.

She also told the patrol officer that Bogusz was taking an anti-depressant.

Bogusz' mother was also interviewed. She told detectives that her son had a drinking problem. She stated her son drank every day, he sold his generator to buy more alcohol, and he was not welcome at his 2-year-old's birthday party that day due to his drinking. She also stated Bogusz regularly carried a silver revolver.

The Carl's Jr. employee who called 9-1-1 was interviewed. She remained on the phone with 9-1-1 throughout the incident. She described the incident as detailed above. She further described to detectives that after she saw the officers arrive, she saw Bogusz drop his gun to the ground. She then saw Bogusz bend down to pick up the gun and point it at an officer. She next heard 3-4 gunshots and saw Bogusz fall.

Another employee at Carl's Jr. captured cell phone video of the incident. The video lasts approximately 8 seconds. In the video, Officer Tsverov is seen pointing his gun at Bogusz. Bogusz bends down to pick up an object off the ground. Bogusz stands back up and points the object at Officer Tsverov. Several shots are fired, and Bogusz falls to the ground.

Officer Tsverov's body-worn camera also captured video of the incident. There is no audio for approximately the first 30 seconds of the video.

In the video, at approximately 8:56:47 p.m., Officer Tsverov is standing behind the "A" pillar of his patrol vehicle. Officer Tsverov is heard yelling, "Drop it!" Bogusz has his hands in the air.

At approximately 8:56:51, Officer Tsverov yells, "If you reach for it, you're gonna get shot!" Bogusz has a black object, resembling a cell phone, in his right hand held up to his right ear.

Bogusz then begins to bend down. Bogusz reaches for something on the ground with his left hand. The cell phone is still held up to his right ear.

The view of Bogusz from the body-worn camera is obscured by the pillar of the patrol vehicle. Officer Tsverov yells, "Do not reach for it! Drop it! Drop it!" At approximately 8:57:03 p.m., Officer Tsverov fires three rounds, followed within approximately 2 seconds by a fourth round. Bogusz falls. Officer Tsverov announces, "Shots fired!"

Deputy Coroner Emily Baker searched Bogusz' pockets prior to the autopsy being performed. She located metal knuckles, a pocketknife and a sock containing 16 rounds of .38 caliber ammunition.

An autopsy was performed by Dr. Irfan Chaudhry, a pathologist with the Sacramento County Coroner's Office. Dr. Chaudhry determined the cause of death to be a single penetrating gunshot wound to the left upper chest. Dr. Chaudhry found that the bullet travelled front to back, left to right, and downwards.

A sample of Bogusz's femoral blood obtained during the autopsy was tested by the Sacramento County District Attorney Laboratory of Forensic Services. The testing indicated that Bogusz's blood alcohol level was 0.35%. The sample was further determined to contain THC and Lorazepam, a prescription medication used to treat anxiety.

## **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(b); 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(d).)

Here, a caller advised 9-1-1 that a subject was outside the Carl's Jr. Restaurant, was drunk, and possessed a firearm. Further, as Bogusz walked away from the front door towards the drive-thru lane, both the 9-1-1 caller and Officer Aceves saw Bogusz pointing his gun at a car in the drive-thru lane.

From his position in the parking lot, Officer Tsverov could see Bogusz. He could see that

Bogusz appeared to be drunk. He confirmed with dispatch that Bogusz matched the description given by the caller of the armed suspect, and he saw Bogusz with both arms extended in a “shooting stance,” pointing an object at an occupied vehicle.

Officer Tsverov believed Bogusz presented an immediate danger to public safety. He believed he had a duty to detain Bogusz before anyone got hurt. Accordingly, he drove his patrol vehicle to the front of Carl’s Jr. on Antelope Road, activated his overhead emergency lights, got out of his patrol vehicle, pointed his firearm at Bogusz, and ordered Bogusz to raise his hands into the air.

He could also see that Bogusz held an object in his left hand. Officer Tsverov ordered Bogusz to drop it.

Bogusz had an obligation to allow himself to be detained. Bogusz initially responded as directed by raising his hands and dropping the object from his left hand to the ground.

Bogusz chose not to follow any further directions from Officer Tsverov. Officer Tsverov told Bogusz not to pick up the object from the ground and warned him he would be shot if he did.

Bogusz ignored this warning. He bent down and picked up the revolver with his left hand. He raised it and pointed it at Officer Tsverov as Officer Tsverov loudly commanded Bogusz not to reach for it and to drop it.

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; California Penal Code section 835a(c)(1)(A).) 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. (California Penal Code section 835a(a)(4); *Graham v. Connor* (1989) 490 U.S. 386.)

Despite being held at gunpoint by Officer Tsverov and being ordered not to reach for the gun, Bogusz chose to ignore these warnings, bent forward to pick up the gun, raised it, and pointed it at Officer Tsverov.

Under these circumstances, it was reasonable for Officer Tsverov to believe his life was in immediate danger. It was similarly reasonable for him to believe that the immediate use of deadly force was necessary to subdue the threat.

Bogusz’ choice to reach for the gun and point it at the officer, despite being held at gunpoint by

that officer, demonstrated an indifference to human life or to the consequences of his actions on the part of Bogusz. That fact increased the reasonableness of Officer Tsverov's belief that Bogusz would use the firearm to shoot him and others if Bogusz was not stopped.

Although the gun was ultimately found to be unloaded, Officer Tsverov could not be aware of that fact.<sup>1</sup> Bogusz was pointing a firearm at him. It would be unreasonable to expect Officer Tsverov to wait until Bogusz fired first before taking defensive action.

It should be noted that Officer Tsverov fired 3 initial shots and a fourth shot approximately 2 seconds later. In fact, Bogusz still held the gun after the first 3 shots and Bogusz appeared to be trying to get back up. Given the totality of these circumstances, the situation had not changed so dramatically or substantially to establish that Bogusz no longer presented a danger to the officer.

For the reasons stated above, Officer Tsverov's use of lethal force in this circumstance was justified.

### **CONCLUSION**

Alexander Bogusz reached for, picked up, and pointed a silver revolver at Officer Tsverov despite being ordered not to do so. His actions caused Officer Tsverov to reasonably believe his life was in immediate danger, necessitating an immediate and lethal response.

Accordingly, we will take no further action in this matter.

cc: Detective Chrystal Battaglia, Citrus Heights Police Department  
Sergeant Eric Dias, Citrus Heights Police Department  
Officer Daniel Tsverov, Citrus Heights Police Department  
Kimberly Gin, Sacramento County Coroner's Office

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<sup>1</sup> It was later determined that Bogusz possessed 16 rounds of .38 caliber ammunition in a sock in his pocket.