



Sacramento County District Attorney's Office

THIEN HO
District Attorney

DATE: July 6, 2023

TO: Chief Katherine Lester
Sacramento Police Department
5770 Freeport Boulevard
Sacramento, CA 95822

FROM: Sacramento County District Attorney's Office

SUBJECT: Officer-Involved Shooting Case No. SPD-21-254750

Shooting Officers: SPD Officer Chase Cunningham #971
SPD Officer Jeffrey Dahl #817
SPD Sergeant Jeremiah Jarvis #3022

Person Shot: Derek Scott Pearson (D.O.B. 3/15/1968)

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 Derek Scott Pearson. 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 Sacramento Police Department Report 21-254750, 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 7:44 p.m. on September 6, 2021, Sacramento Police Department (SPD) Officer Pavel Stefoglo was hailed by a citizen near the intersection of 4th Avenue and Redding Avenue in Sacramento.

The citizen told Officer Stefoglo that he was having issues with a subject named Derek Pearson. Pearson had directed the citizen to bring the citizen's dog to Pearson's house and to call a local radio station. Pearson told him if he did not follow Pearson's directions, Pearson would kill him.

The citizen believed Pearson's threats were serious. He described Pearson as a conspiracy theorist who believed the government was run by demons.

At approximately 8:05 p.m., another citizen called 9-1-1 to ask SPD to perform a welfare check on Pearson at 3751 Redding Avenue.

The caller identified herself as a friend of Pearson. She told the 9-1-1 operator that Pearson had been sending threatening messages to her and other friends and family.

At approximately 8:28 p.m., SPD Officers Douglas Manning and Michael Nelson responded to 3751 Redding Avenue to conduct the welfare check. Prior to their arrival, Officers Manning and Nelson conducted a records check on Pearson. They learned that Pearson had been booked into the Sacramento County jail a week earlier on charges of assault and resisting arrest. They further learned that Pearson had been placed on a 72-hour psychiatric hold pursuant to Welfare & Institutions Code section 5150 upon his release from jail.

Officers Manning and Nelson approached the front screen door of 3751 Redding Avenue. They saw Pearson through the screen door. Pearson was in the back of the house talking to himself in a mirror. Officers Manning and Nelson announced, "Police Department."

Pearson walked towards the front door. As he did so, Pearson told the officers his name was Derek Scott Pearson, and the officers were not welcome at his house. Pearson stated people were trying to kill him. He also stated the last time he was taken into custody by police officers the officers tried to kill him. He told the officers, "Please leave." Pearson then closed the front door.

Officers Manning and Nelson continued to look through the window of the closed front door. They saw Pearson walk towards the kitchen. They saw Pearson pick up a rifle and appear to manipulate the slide to load a round into the chamber. The rifle appeared to be a semi-automatic and was beige in color. Officer Nelson noted that Pearson was looking directly at the officers as he did so.

Officers Manning and Nelson pointed their guns at Pearson and ordered him to drop the rifle. Pearson had the muzzle of the rifle pointed towards the ceiling, then began to slowly lower it towards the officers. The officers retreated from the front door to a position of safety. They used their radio to call for back-up.

Multiple additional units then responded to the scene and formed a perimeter around the house. Officers surrounded the residence from positions of cover. Additional officers drafted a search warrant for the residence and an arrest warrant for Pearson based on Pearson's threats to the initial civilian complainant.

SWAT units and Crisis Negotiation Team (CNT) officers were also summoned to assist. Due to the nature of the situation, officers went from house to house to evacuate residents to places of safety.

Sergeant Jeremiah Jarvis, Officer Chase Cunningham and Officer Jeffrey Dahl were members of the SWAT team. All three were dressed in SWAT uniforms with identifying department

markings and patches. Sergeant Jarvis and Officer Cunningham were armed with 9mm handguns and LWRC 5.56 caliber rifles. Officer Dahl was armed with a 9mm handgun, and an AR-15 rifle. All three were equipped with body-worn cameras.

Sergeant Jarvis was on duty as a patrol sergeant when he was notified of the incident. Officers on scene requested an armored vehicle, known as the "Bearcat," be delivered to the scene. Sergeant Jarvis directed another officer to deliver the Bearcat to Redding Avenue.

Sergeant Jarvis arrived at the scene at approximately 9:00 p.m. He was informed Pearson had brandished a rifle at officers and was also wanted for committing criminal threats.

Sergeant Jarvis was concerned the suspect was armed with a rifle. He knew a rifle round would penetrate the bulletproof vests the officers were wearing. He also knew the patrol vehicles on scene would not stop a rifle round unless the round hit the engine block.

Accordingly, Sergeant Jarvis spoke with each officer on scene to discuss their roles and reposition them as necessary. Sergeant Jarvis also re-positioned the armored Bearcat across the street from 3751 Redding Avenue. Multiple officers were positioned in and around the Bearcat.

Throughout the entirety of the incident, announcements were made over the PA system directing Pearson to surrender. CNT members also contacted Pearson's brother and sister, recorded their messages encouraging Pearson to surrender, and played the messages over the loudspeaker. Additionally, efforts were also made to speak with Pearson over the telephone. However, Pearson was never willing to remain on the phone and engage the CNT members in conversation. Officers also utilized a drone to drop a phone by the garage door entrance to Pearson's house and used the PA system to request Pearson to pick up the phone.

Pearson nevertheless ignored all requests or directions made by the negotiation team. Pearson never left the house during the entirety of the incident. At several points, Pearson was heard yelling towards the officers. Sergeant Jarvis heard Pearson yell, "Bring an arsenal! You're going to have to bring an arsenal!" Officer Dahl could hear Pearson angrily yelling and cursing and calling officers "Nazis."

Officers present at the scene learned that Pearson had recently been arrested twice. In the first incident, Pearson was walking on the campus of nearby Hiram Johnson High School while partially unclothed. When confronted, Pearson fought with officers and had to be tased before being arrested. On the second incident, officers were called to a disturbance between Pearson and a neighbor. Pearson began to assault the neighbor in front of the officers. Officers had to wrestle Pearson to the ground to stop the assault.

Additionally, officers learned of a pending restraining order against Pearson that had yet to be served.

A second armored vehicle, known as the "Grizzly," arrived. The Grizzly is larger than the Bearcat. Officers re-positioned the Bearcat slightly to the north, across the street from Pearson's

open garage door. The Grizzly took the position across the street from the front door of the house.

At approximately 12:30 a.m., Sergeant Jarvis retrieved his 5.56 caliber rifle. He took a position on the north side of the armored Bearcat, facing Pearson's open garage door. Sergeant Jarvis opened the side door of the Bearcat to provide cover, and utilized a shield placed on the ground to protect his legs. Sergeant Jarvis remained in that position until the end of the incident.

Officer Dahl took the "high cover" position in the Bearcat. The Bearcat has a turret atop the vehicle with a porthole to place a rifle through. Officer Dahl placed his body-worn camera on the turret to allow it to view outside the Bearcat.

Officer Cunningham was instructed to retrieve his AR-10 rifle as Pearson was presumed to be armed with a high-powered rifle. The armored vehicles were necessary as a high-powered rifle can penetrate barriers that a handgun could not.

Officer Cunningham took the "high cover" position in the Grizzly. The Grizzly also has a turret. A gun port on the turret can be opened. Cunningham placed his rifle through the opening.

During this period, Sergeant Jarvis saw Pearson enter the garage unarmed. Pearson grabbed what appeared to be a battery and went back into the house.

At approximately 1:53 a.m., Pearson began firing from inside the house. Sergeant Todd Edgerton authorized officers to respond to the gunfire by firing emergency gas cannisters into the house. The emergency gas is a form of tear gas. Officer Michael Mantsch fired 4 gas cannisters from his 40mm less-lethal "multi-launcher" from behind the Grizzly through the front window of the house.

Approximately 6 minutes later, Pearson began shooting again. Officer Mantsch fired one gas cannister. Pearson then fired additional rounds. Officer Mantsch fired three more gas cannisters through the window. The gas appeared to have no effect on Pearson. Pearson did not surrender, and Officer Mantsch could not hear any coughing coming from Pearson.

Officers heard Pearson shooting from inside the house at 2:09 a.m., 2:11 a.m., 3:56 a.m., and 4:50 a.m. Each time Pearson fired, Officer Mantsch responded by deploying the emergency gas. The six combined volleys of gas did not appear to have any effect on Pearson. Pearson continued to ignore directions to surrender.

Officer Cunningham estimated that Pearson fired a total of 70-80 rounds from inside the house. Cunningham noticed bullet holes surrounding the front window frame of the house, indicating Pearson was firing out the front of the house towards the officers. Cunningham also noticed flashes coming up out of the roof, indicating Pearson was firing upwards through his own ceiling.

Officer Cunningham saw Pearson fire two rounds from a black revolver into his own garage from the living room. Officer Cunningham also saw Pearson holding a silver semi-automatic

handgun in the living room. Through the scope of his rifle, Officer Cunningham saw Pearson holding a rifle he identified as an AK. Officer Cunningham relayed this information to the other officers present.

At approximately 4:56 a.m., officers deployed a third armored vehicle, known as the "Rook." The Rook is an armored Bobcat tractor. It moves on tracks rather than on wheels. The Rook approached the house and knocked down a small tree in the front yard that was obscuring the officers' view into the house.

The Rook also tore down an awning covering the front window that was also obscuring the officers' view. The Rook knocked out the front window and tore down the blinds. As it did so, Pearson fired multiple rounds at the Rook from inside the house.

As the Rook retreated from the front yard, Sergeant Jarvis saw Pearson enter the garage. Pearson was armed with a rifle. The barrel of the rifle was pointed in the air. Pearson said something unintelligible and went back inside the house.

Officers did not fire on Pearson, as Pearson's rifle was pointed in the air. Sergeant Jarvis believed the rifle pointed in the air meant the danger presented was not yet imminent or immediate.

The Rook then moved to the garage side of Pearson's home to take down the side fence to the backyard. The purpose of taking down the side fence was to allow officers to see the side door exit from the garage. Additionally, the purpose was to allow access to the backyard so that emergency gas could be introduced into the back of the house. It was believed that the gas introduced through the front window was ineffective as Pearson was taking cover in a room at the back of the house.

At approximately 5:11 a.m., as the Rook was knocking down the fence to the side of the garage, Pearson went through the door from the house into the garage. Officer Cunningham saw Pearson as he walked quickly towards the garage holding a rifle. He announced over the radio that Pearson had a rifle. From his vantage point in the Grizzly, Officer Cunningham lost sight of Pearson.

As Pearson entered the garage, Sergeant Jarvis and Officer Dahl saw Pearson holding a rifle. Pearson held the rifle by his right hip. The rifle appeared to be an AK. Pearson's right hand was by the trigger. His left hand held the barrel. The muzzle appeared to be pointed directly at the Bearcat.

Officer Dahl was in the turret of the Bearcat. His head was exposed in the open porthole. Sergeant Jarvis stood alongside the Bearcat. He was partially exposed next to the open side door of the Bearcat.

Sergeant Jarvis knew the damage that could be inflicted by an AK rifle. He believed he had no choice but to fire to protect his own life and the lives of other officers around him. He fired five

rounds at Pearson with his rifle. He stopped firing when Pearson fell backwards through the door into the house.

Officer Dahl saw that Pearson was looking directly at him, and Pearson pointed his rifle directly at the Bearcat. Officer Dahl knew his head was exposed through the porthole of the turret. He knew any round Pearson fired through the porthole would kill him. Officer Dahl heard a gunshot and believed it was Pearson firing at him. Officer Dahl immediately returned fire. He fired three rounds at Pearson. He stopped firing when Pearson fell back through the door into the house and out of view.

Officer Cunningham had lost sight of Pearson when Pearson went into the garage. Officer Cunningham then believed he heard Pearson shooting and the sound of other officers returning fire at Pearson. Officer Cunningham believed Pearson was in a gunfight with the other officers and was trying to kill them.

After a few seconds, Officer Cunningham saw Pearson backpedaling through the doorway back into the house from the garage. Pearson still held the rifle as he backpedaled. It appeared to still be held level, pointed towards the officers at the Bearcat. Officer Cunningham fired three rounds at Pearson to prevent him from continuing to shoot at the other officers. He stopped firing when he saw that Pearson fell to the ground.

Several officers present on scene described witnessing Pearson firing towards the Bearcat during this final exchange. Officer Brandon Kellerman believed Pearson fired 1-3 rounds from the garage towards the officers. Officer Brian Surjan stated that he saw sparks or a muzzle flash from Pearson's rifle in the garage. Officer Dakota Penny believed he heard the sound of shots fired from the garage. Officer Mario Valenzuela stated that Pearson fired at least once from the garage during the final incident, striking the turret of the Bearcat.¹

Officers deployed a drone to determine if it was safe to enter the house. The drone video showed that Pearson was not moving and had a rifle next to him.

Officers entered the residence, placed Pearson in handcuffs, and began to provide medical care. Medics from the Sacramento Fire Department arrived and attended to Pearson. At approximately 5:31 a.m., Pearson was pronounced deceased.

The elapsed time of the incident was from 8:28 p.m. to 5:11 a.m., a total of 8 hours and 17 minutes.

The scene was processed by SPD crime scene investigators. Outside the home, 11 spent shell casings were located. These represent the rounds fired by the three officers.

Inside the home, 92 spent shell casings were located. Additionally, crime scene investigators located multiple bullet holes or bullet strikes caused by shots fired from inside the house. Approximately 60 bullet holes or bullet strikes were located in the living room. Approximately 8

¹ As described below, the scene, including the house and the garage, was processed by crime scene investigators. No spent shell casings were located in the garage.

bullet holes or bullet strikes were located in the kitchen. Approximately 9 bullet holes or bullet strikes were located in the hallway. Approximately 66 bullet holes or bullet strikes were located in the south bedroom. Approximately 11 bullet holes or bullet strikes were located in the garage.²

A large number of firearms were located inside the house. These included a Norinco AK-47 rifle with apparent blood stains located by Pearson's body, a Ruger .22 caliber pistol, a Bersa .380 caliber pistol, a High-Standard .22 caliber pistol, a Westerfield .22 rifle, a Ruger 9mm pistol, and a .44 caliber black powder revolver. Additional magazines and ammunition were also recovered.

Two fired projectiles were recovered from the grounds of Hiram Johnson High School, located down the street from Pearson's home.

A bullet strike mark was observed to the top frame of the Rook. Bullet damage was observed on the exterior of the roof turret of the Bearcat, and a bullet strike mark was observed to the driver's side headlight.

A blue glass smoking pipe was located in the garage. Two hundred and sixty-four grams of marijuana was also recovered inside the house.

Body-worn camera video was reviewed. The videos depict the events as described above. The body-worn camera of Officer Dahl presents the clearest view of the incident. During the final incident, Pearson is clearly visible walking into the garage from the house with a rifle on his right hip. Pearson's right hand is by the trigger. With his left hand, Pearson is pointing the rifle directly at the camera. Multiple sounds of gunfire are then heard over several seconds. Pearson stumbles backwards through the door and out of view. It is not clear from the video whether Pearson fired during this exchange.

On the body-worn camera of Officer Cunningham, Pearson is visible walking quickly towards the garage with his rifle. Officer Cunningham broadcasts, "He's got a rifle!" The sounds of gunfire are then heard as Pearson is not visible. Pearson then backpedals from the garage into camera view, holding the rifle level in front of him. The sound of three shots being fired by Officer Cunningham are heard as Pearson falls to the ground.

An autopsy of Pearson was performed by Dr. Jason Tovar, a forensic pathologist with the Sacramento County Coroner's Office. Dr. Tovar observed gunshot wounds to Pearson's upper abdomen, left chest, left back, and left wrist. Dr. Tovar determined Pearson's cause of death to be multiple gunshot wounds.

A sample of Pearson's femoral blood was obtained during the autopsy. The sample was tested by the Sacramento County District Attorney Laboratory of Forensic Services. The sample tested positive for THC. The sample also had a blood alcohol content of .018%.

LEGAL ANALYSIS

² It cannot be determined how many of these bullet holes predated this incident.

SPD Officers Manning and Nelson went to the home of Pearson to conduct a welfare check on Pearson. A woman identifying herself as a friend of Pearson called 9-1-1 to request the welfare check as she stated that Pearson was sending threatening messages to her and other friends and family.

In attempting to check on the condition of Pearson at the request of a concerned friend, the officers were not investigating a crime or asserting police authority in a way that implicates the Fourth Amendment. Rather, the officers were engaged in one of “those innumerable miscellaneous tasks which society calls upon police to do which have nothing to do with the detection of crime,” such as giving aid to persons in distress, assisting the elderly or disabled or protecting persons from harm. (See *In Re Tony C.* (1978) 21 Cal.3d 888, 895-896.)

The officers went to the front door and announced their presence. Pearson walked towards them, identified himself, told them they were not welcome, and asked them to leave. The officers then saw Pearson walk towards his kitchen, pick up a rifle, and appear to rack a round into the chamber while looking directly at the officers. As the officers drew their weapons and told Pearson to drop the gun, Pearson began to slowly lower the muzzle of the gun, which had been pointed at the ceiling, towards the officers. Officers Manning and Nelson called for immediate back-up and retreated from the front door to a position of safety.

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).)

Multiple units responded and formed a perimeter around Pearson’s house. It was learned that in addition to brandishing the rifle at Officers Manning and Nelson, Pearson had also threatened to kill a neighbor less than an hour earlier if the neighbor did not take actions requested by Pearson. Accordingly, officers prepared a search warrant for the house and an arrest warrant to take Pearson into custody for threatening the neighbor.

As Pearson was armed with a rifle, officers began evacuating residents from the area. They also deployed armored vehicles that would be able to withstand rifle fire.

The police department sent CNT officers to the scene. CNT members tried throughout the incident to communicate with Pearson to convince him to surrender peacefully. They made announcements over the loudspeaker. They broadcast recorded messages they had obtained from Pearson’s brother and sister directing him to surrender. They attempted to contact him by phone, and they attempted to utilize a drone to deliver Pearson a cellular phone. Pearson refused

or ignored all these efforts by officers to communicate with him.

Pearson barricaded himself inside his home for over 8 hours. Pearson also began to fire gunshots from inside his house. These gunshots were fired primarily through the front of his house towards the officers and through his ceiling. Ninety-two spent shell casings were recovered inside the house by crime scene investigators.

Each time gunfire erupted from inside the house, officers responded by firing emergency gas cannisters inside the house to encourage Pearson to surrender. The gas cannisters appeared to have no effect.

Shortly before 5:00 a.m., the armored “Rook” tractor approached the house to take down a tree and an awning that was obscuring the officers’ view into the house. As the Rook did so, Pearson began firing at the Rook.

At approximately 5:11 a.m., the Rook was on the side of Pearson’s house by the open garage door knocking down the fence to the backyard. Officer Cunningham was in the turret of the Grizzly, across the street from the front door of the house. Officer Dahl was in the turret of the Bearcat, across the street from the open garage door. Sergeant Jarvis was standing behind the open drivers-side door of the Bearcat. All three officers were SWAT team members with their rifles focused on the house.

Officer Cunningham saw Pearson walking quickly through the house towards the garage. He announced over the radio, “He’s got a rifle!”

Pearson stepped into the garage with his AK-47 rifle on his right hip. Pearson pointed the muzzle of the rifle directly at the Bearcat where Officer Dahl and Sergeant Jarvis were located. Officer Dahl’s head was exposed and vulnerable through the open porthole of the turret. Sergeant Jarvis was partially exposed next to the armored door of the Bearcat. Both officers knew the severity of the damage that could be caused if they were struck by a rifle round.

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.)

As Pearson pointed his rifle directly at the Bearcat, Sergeant Jarvis believed he had no choice but

to fire at Pearson to protect his own life and the life of Officer Dahl. He fired five rounds until Pearson fell back through the door into the house.

Officer Dahl saw Pearson pointing his rifle directly at him. Officer Dahl heard a gunshot and believed Pearson was firing at him. He fired three rounds at Pearson until Pearson fell back through the door into the house.

Officer Cunningham could not see what was happening once Pearson went into the garage with the rifle. Officer Cunningham heard the gunshots and believed that Pearson was engaged in a gunfight with his fellow officers. Officer Cunningham then saw Pearson backpedaling into the house from the garage. Pearson still held the rifle level, pointed out the garage towards the other officers. He believed it was necessary to fire at Pearson to prevent him from continuing to fire at Officer Dahl and Sergeant Jarvis. He fired three rounds at Pearson until Pearson fell to the ground.

It should be noted that several officers present on scene, aside from the officers who fired, stated they believed they saw Pearson firing out of the garage towards the officers during the final exchange. It must also be noted that it cannot be conclusively established that Pearson fired in the garage. A muzzle flash is not visible on the video and no spent shell casings were recovered in the garage.

Nevertheless, the lawfulness of each officer's decision to use deadly force under these circumstances is not dependent upon Pearson having fired upon them. All three officers were on scene throughout the incident as Pearson had fired upwards of 92 rounds of gunfire from inside his house. They were well aware of Pearson's willingness to shoot and disregard for the safety of others. They were aware of the damage that could be inflicted by a rifle like the one being used by Pearson. They were aware of their own vulnerability as the armored vehicles still left them partially exposed to gunfire. At the crucial moment, they were also aware that Pearson was pointing a rifle directly at them.

Given those circumstances, each of these officers were justified in their decision to use deadly force to subdue the imminent and immediate threat being presented by Pearson.

CONCLUSION

Derek Pearson barricaded himself in his house for over eight hours after having threatened several people. He repeatedly fired gunshots at officers surrounding his house and refused all efforts by the police to communicate with him or to convince him to surrender peacefully.

Ultimately, Pearson walked into his garage and pointed a loaded semi-automatic rifle directly at police officers. Their decision to respond with deadly force was justified and necessary to protect their own lives and the lives of each other.

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

Cc: Detective Brian Murawski, Sacramento Police Department
Officer Chase Cunningham, Sacramento Police Department
Officer Jeffrey Dahl, Sacramento Police Department
Sergeant Jeremiah Jarvis, Sacramento Police Department
Rosa A. Vega, Sacramento County Coroner's Office
Office of Public Safety Accountability