



Sacramento County District Attorney's Office

THIEN HO
District Attorney

DATE: January 5, 2024

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-22-199356
Shooting Officer: SPD Officer James Summey #491
Person Shot: [REDACTED] (D.O.B. [REDACTED])¹

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 [REDACTED]. 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 number 22-199356, video and audio recordings, dispatch calls, witness interviews, photographs, diagrams, evidence logs, and the Sacramento County District Attorney's Office Laboratory of Forensic Services reports.

FACTUAL SUMMARY

On July 17, 2022, at approximately 10:36 p.m., Sacramento Police Department (SPD) Officers James Summey and Alex Guevara went to the area of North 16th Street and A Street in Sacramento to serve an arrest warrant on [REDACTED]. [REDACTED] had a felony no-bail warrant for violating Post Release Community Supervision (PRCS).²

Officers Summey and Guevara were driving separate marked patrol vehicles and wore full SPD uniforms, with visible badges and department patches on their sleeves. Both officers were equipped with body-worn cameras. Officer Summey was armed with a department-issued Glock 17 handgun. Officer Guevara also was armed with a Glock 17.

¹ This person's name has been redacted pursuant to Penal Code sections 851.93 and 832.7(b)(7).

² Post Release Community Supervision is a form of supervision provided to an inmate who has been released from a California Department of Corrections and Rehabilitation institution to the jurisdiction of a county agency, pursuant to Penal Code section 3455.

Officer Summey was familiar with ██████ from three prior contacts, including one at this specific location. In each of those contacts, ██████ was cooperative and compliant. During the last incident, Officer Summey contacted ██████ during a vandalism investigation. ██████ asked if the officer wanted him to “cuff up”³ and ██████ did so readily.

Officers Summey and Guevara were aware that ██████ had an extensive criminal history for drugs, theft, and violence. Officer Summey also knew ██████ was on PRCS.

██████ was in an encampment on the east side of the railroad track overpass above 16th Street, between C and A Streets. The officers walked up the embankment on the east side of 16th Street, on the north side of the overpass, to ██████’s encampment. The path was narrow, approximately 5 feet wide with a steep drop-off on both sides. This location was unlit. The officers illuminated the area with their flashlights.

The officers were standing approximately 10 feet away from ██████ when they confirmed his identity. ██████ was standing outside his tent. He had a large blanket draped over his shoulders.

Officer Summey tried to engage ██████ in conversation and asked for his cooperation to “cuff up.” ██████ refused. Officer Summey told ██████ he had a warrant and requested him to place his hands behind his back. ██████ again refused to comply.

A female witness had followed the officers up the embankment. As the officers were engaging with ██████, the female witness began speaking to him as well. She stood to the left side of Officer Guevara. She told ██████ that he needed to listen to the two police officers.

Officer Summey continued giving verbal directions to try and get ██████’s compliance. ██████ did not follow the officer’s commands.

██████ walked back toward his tent area where a large plastic bin was located. Below is a photo of this plastic bin.

³ Officer Summey understood this phrase to mean place handcuffs on ██████.



██████████ walked to the rear of this container, bent down out of view, and stood behind it. Officer Summey asked, “What are you doing?” He also directed ██████████ to “come here.” ██████████ did not respond.

██████████ moved the blanket off his shoulders and reached into the large bin. ██████████ began rummaging in the bin. ██████████’s actions and his hands were concealed by his blanket. Officers could not see ██████████’s hands. Both officers drew their firearms.

When ██████████ came up from the bin, his blanket covered his hands, and he held the blanket as if an object was concealed underneath it.

Both officers believed ██████████ retrieved an object and held it underneath his blanket. ██████████’s actions in holding and pointing the object made it appear he was holding a rifle. Both Officer Guevara and Officer Summey believed ██████████ was now holding a rifle or some other object to hurt the officers. Both officers feared for their lives. They were aware of the female witness’ presence and perceived her to be in danger as well.

Both officers gave ██████████ multiple commands to stop and put his hands up. ██████████ refused to obey the officers’ commands.

█████ advanced towards the officers while appearing to hold this object under his blanket. █████ was pointing the object under the blanket at the officers.

As the officers were backing up, they gave multiple verbal commands telling █████ to stop. █████ ignored their commands and continued advancing toward the officers. █████ stated he was a “federal officer” and told the officers to put down their weapons.

█████ continued to ignore the officers’ commands and move towards them. █████ pointed his blanket and unknown object directly at Officer Summey.

Officer Summey told █████ to “stop.” █████ ignored this order. Officer Summey feared for his life, the safety of his partner, and the female witness. Officer Summey believed █████ had a firearm concealed under his blanket. Officer Summey fired two rounds from his duty gun at █████. █████ turned slightly to his right after Officer Summey’s first shot.

█████ fell to the ground and his blanket came off him. █████ yelled that he did not have a gun. █████ did not have any object underneath his blanket.

Officer Summey saw that █████ was injured and said, “Let me help you.” █████ then got up. He refused the officers’ commands to stop and began running, and then walking away, south on North 16th Street toward C Street. Officers Summey and Guevara followed.

Responding Officers Shaughn Austin, Julian Rios, and Kate Haden arrived and gave █████ commands to stop. █████ remained uncooperative and did not comply. The officers were able to detain █████ and handcuffed him and took him into custody just north of C Street.

█████ was transported to the University of California, Davis Medical Center. █████ had two non-life-threatening bullet wounds to the back of his left shoulder.

A sample of █████’s blood sample was taken at the hospital. The sample was later tested by the Sacramento County District Attorney’s Office Laboratory of Forensic Services. The sample was found to contain methamphetamine and amphetamine.

█████ gave a brief voluntary statement to an SPD detective. █████ asked if the officer who shot him was in any trouble and said, “He’s a good dude.” █████ also stated, “I just did . . . it don’t make sense. Sometimes things don’t make sense.”

The female witness also gave a statement to the detective. She was smoking methamphetamine in the area and did not know why she followed the officers up the embankment. Once there, █████ was not listening to the officers and went to his trash bin. The female witness saw something in █████’s hands. She said the officers told █████ to calm down and put down whatever he had. She described █████ holding an object that looked like a “gun rack.” But she then stated she did not know why she said that. She turned and did not see the gunshots.

Both officers' body worn cameras and in-car cameras were reviewed. All the videos depict the events consistently with the description above.

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, Officers Summey and Guevara went to ██████'s known location to arrest him for his outstanding warrant for a PRCS violation. ██████ had a duty to submit and permit himself to be detained. ██████ was uncooperative with the officers. ██████ walked away from the officers and went to a large bin, bent down in a manner that concealed his actions, and rummaged in the bin. When ██████ stood up, he held a blanket over his hands as if a firearm was concealed beneath it. ██████ did not obey the officers' commands to stop and show his hands.

Both Officer Summey and Officer Guevara believed ██████ had a firearm pointing directly at the officers. Both officers believed their lives were in danger. The officers were also concerned for the safety of the nearby female witness.

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.)

Here, ██████ concealed his hands with a blanket as if he was holding a firearm beneath it. ██████ pointed that directly at the officers while claiming that he was a “federal officer.” ██████ did not obey the officers’ commands to stop or put up his hands.

Officer Summey believed that ██████ intended to inflict death or serious bodily injury on him, his partner, or the female witness and would do so if not stopped immediately. Officer Summey’s belief that ██████ posed an imminent and grave threat to himself, Officer Guevara, and the female witness was reasonable given the circumstances.

CONCLUSION

As Sacramento Police Department officers attempted to take ██████ ██████ into custody on an outstanding arrest warrant, ██████ refused to comply with their directions, concealed his hands beneath a blanket, claimed to be a “federal officer,” and pointed his hands in the officers’ direction as if he was holding a firearm underneath the blanket.

Both officers feared for their lives and the life of the nearby female witness. Officer Summey fired two rounds from his firearm and ceased firing when ██████ dropped the blanket, showing that he did not have an actual firearm. Officer Summey’s actions were legally justified under these circumstances.

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

Cc: Detective Shaun McGovern, Sacramento Police Department
Officer James Summey, Sacramento Police Department
Office of Public Safety Administration