

SUTTER COUNTY DISTRICT ATTORNEY'S OFFICE

Amanda L. Hopper
District Attorney



November 28, 2017

TO: Yuba City Police Chief Rob Landon
Yuba City Police Department
1545 Poole Blvd.
Yuba City, CA 95993

FROM: Amanda L. Hopper
Sutter County District Attorney

SUBJECT: Officer Involved Shooting: Case No. SCDA 17-005
Incident Date: April 22, 2017
Shooting Officer: David Santanna
Person Shot: Joseph Sin (DOB 03/01/1974)

Dear Chief Landon:

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 Joseph Sin. For the reasons set forth, we conclude that the shooting was lawful.

1. Items reviewed

The following items were reviewed by District Attorney Amanda Hopper:

- ! Sutter County District Attorney Investigation Reports SCDA #17-005 (authored by SCDA Chief Investigator Jason Parker, SCDA Senior Criminal Investigators D. Williams, C. Dinwiddie, C. Oakley, B. Oakley, J. Duffy, SCSO Deputy Gill, YCDA Chief Investigator S. Johnson, YCDA Investigator J. Perin, YCSO Sgt. Million, and YCSO Detective J.D. Parker), including but not limited to:
 - Interviews with all YCPD personnel on scene
 - Interviews with witnesses
 - Reports of analysis of the scene
 - Reports of Joseph Sin autopsy

- ! Yuba City Police Department Incident Reports, #17-010501 (authored by Sgt. Morawcznski, Detectives B. Slade, Kodani, B. Thornton, Officers Stout, Jenson, Eberley, C. Ernst, J. Thornton, Willing and CSO D. Shuffield).
- ! CHP aerals of the scene.
- ! California Department of Justice; Bureau of Forensic Services *Physical Evidence Examination Report*, CH-17-000152-0001.
- ! SCSO Coroner's Report #1-17-001266.

2. Facts as determined from the reviewed materials

On April 22, 2017 at approximately 0129 hours, Yuba City Police Officers Charanpreet Singh and Brandon Martin conducted a security check at the Econolodge Inn and Suites in Yuba City. They observed Joseph Sin standing next to a vehicle and leaning inside the passenger window. Mr. Sin was wearing loose and baggy clothing. The officers suspected that Mr. Sin might be burglarizing the vehicle. They contacted Mr. Sin to determine what Mr. Sin was doing there. Officer Singh attempted a pat down search of Mr. Sin's person. Mr. Sin turned and ran from the officers. Officer Martin notified dispatch that the subject was fleeing. Officers Singh and Martin pursued Mr. Sin to the front of the motel where Mr. Sin tripped and fell to the ground. The officers attempted to subdue Mr. Sin but Mr. Sin fought against both officers. They attempted to restrain him and place him in handcuffs but Mr. Sin continued to resist, yelling obscenities and fighting the officers.

Officers David Santanna and Mileena Mulcahy responded to the scene to assist Officers Singh and Martin. When they arrived, they saw Mr. Sin fighting the officers from a position on his stomach. Officer Santanna went to Mr. Sin's head and Officer Mulcahy went to Mr. Sin's feet and both attempted to restrain him. All four officers gave repeated commands to Mr. Sin to stop fighting and show his hands. All four officers used repeated attempts and techniques to control Mr. Sin. Mr. Sin continued to actively resist by kicking and turning his body.

Each of the officers reported hearing a gunshot. Officer Martin felt a burst of air near his waist and left leg while he was on top of Mr. Sin struggling to gain control of his left arm and hand. Officer Martin did not immediately realize it but Mr. Sin had shot him in the leg. Officer Martin looked down and saw that Mr. Sin had a pistol in his right hand. Officer Martin grabbed Mr. Sin's right wrist with both hands and pinned Mr. Sin's right arm to the ground to attempt to prevent Mr. Sin from shooting again. Officer Martin yelled at Mr. Sin to let go of the gun and pull his finger out of the trigger well but Mr. Sin refused to do so. Officer Martin stated that it was a scary situation and he thought that he was going to be shot again or another officer was going to be shot.

Officer Singh heard the gunshot and looked down to see that Mr. Sin was holding a black handgun in his right hand. Officer Singh gave Mr. Sin several verbal commands to take his finger off of the trigger but Mr. Sin did not comply. Officer Singh heard Officer Martin state that he thought he had been shot. Officer Singh stated that he was convinced Mr. Sin was going to shoot him or Officer Santanna next. He explained that Mr. Sin could have flipped his wrist towards either officer and shot one or both of them.

Officer Mulcahy heard the gunshot and then heard Officer Singh say, "I think he's shooting at us." Officer Mulcahy stated that she was afraid one of her fellow officers had been shot. She was afraid for her own life.

Officer Santanna saw Mr. Sin arch his back and saw his arms come out from under his body. Officer Santanna then heard the gunshot. He saw Officer Martin fall back and believed Officer Martin had just been shot. Officer Santanna saw the gun in Mr. Sin's hand with his finger on the trigger. Officer Santanna repeatedly commanded Mr. Sin to drop the gun. Mr. Sin continued to ignore those commands.

Officer Santanna drew his duty weapon, a Glock model 22, .40 caliber, from his holster. He saw that Mr. Sin was pointing his gun towards Officer Martin and in the direction of the hotel. Officer Santanna said that Mr. Sin had shot Officer Martin and Officer Santanna did not know if Officer Martin was going to live. Officer Santanna saw that Mr. Sin still had his finger near the trigger. Officer Santanna believed that if he did not act, Mr. Sin could kill someone in the hotel or one of the officers. Officer Santanna stated that it was an extremely scary situation.

Officer Santanna put his gun to the back of Mr. Sin's neck area and yelled at the other officers to get back. Mr. Sin still had his finger on the trigger. Officer Santanna pulled the trigger of his duty weapon twice. Mr. Sin went limp. Officer Santanna removed the gun from Mr. Sin's hand and directed Officer Mulcahy to render medical aid to Officer Martin. Officer Santanna and Officer Singh rolled Mr. Sin over and handcuffed him.

Officer Santanna then assisted Officer Mulcahy in placing a tourniquet on Officer Martin's leg. Officer Martin was subsequently flown to UC Davis Medical Center via Reach Air Ambulance where his gunshot wound was medically treated. He had been shot in the inner left thigh approximately five inches above the knee.

Mr. Sin was pronounced dead at the scene.

The firearm Mr. Sin was carrying and that he used to shoot Officer Martin was taken into evidence. It was determined to be a Lorcin 380 caliber, Model L-380 semi-automatic pistol. The magazine was loaded with four rounds of ammunition and there was an additional live round in the chamber of the pistol.

Two spent 40 caliber shell casings were later recovered from the scene. These casings were consistent with Yuba City Police Department issued handgun duty rounds.

A spent brass RP 380 caliber shell casing was also located at the scene. This casing was consistent with the ammunition found in the pistol Mr. Sin was carrying and shot Officer Martin with.

3. Autopsy

Mr. Sin was declared deceased at 0147 hours on April 22, 2017 by Yuba City Fire Personnel Chris Johnson. Sutter County Sheriff's Deputy Coroner Harvir Thiara responded to the scene to conduct

the coroner's duties. He located a brown leather holster on Mr. Sin's right hip, partially inserted into

Mr. Sin's right front pants pocket and held to his hip by a black belt. Deputy Coroner Thiara coordinated with Yuba County Sheriff's personnel to provide the death notification to Mr. Sin's next of kin.

Sutter County Sheriff's Detective Sergeant C. Green and Sutter County DA Investigators B. Oakley and C. Dinwiddie attended the autopsy at the Sacramento County Coroner's Office. Forensic Pathologist Katherine Raven conducted the autopsy and found the cause of death to be "multiple gunshot wounds," one to the head and one to the neck.

A sample of Mr. Sin's blood was examined and the toxicology report indicates the presence of methamphetamine and THC.

4. The applicable law

Possible criminal charges against an officer involved in a shooting include murder (Penal Code Section 187), assault with a deadly weapon (Penal Code Section 245), and assault by a police officer (Penal Code Section 149). In order to convict an officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. People v. Banks (1977) 67 Cal.App.3d 379, 383-84. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are charged with a felony and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is charged with a felony and where the officer has "reasonable cause" to believe that the person has committed a felony. People v. Kilvington (1984) 104 Cal. 86, 89. The felony must involve violence or the threat of violence. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333.

California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to affect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or threat of violence. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333. The court in Kortum further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonable create a fear of death or serious bodily harm to the officer or to another." Kortum v. Alkire supra, 69 Cal.App.3d at 333.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a

reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law, therefore permits a person, if confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest fear and conviction that he or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. People v. Jackson (1965) 233 Cal.App.2d 639, 641-42.

In the case of the use of deadly force by a police officer, the test of reasonableness is viewed from the vantage of a reasonable officer on the scene, based on the facts and circumstances confronting him. That test gives deference to the police in cases where potential danger, emergency conditions, or other exigent circumstances are present. *When an officer confronts an armed subject in close proximity whose actions indicate an intent to attack, deadly force may reasonably be used.* Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334 (emphasis added).

Further, the officer's fear must be reasonable and must be of imminent harm; any future harm would not suffice. In People v. Aris (1989) 215 Cal.App.3d 1178, 1187, the court defined "imminent" to mean that "the peril must have existed or appeared to the defendant to have existed at the very time the fatal shot was fired. In other words, the peril must appear to the defendant as immediate and present and not prospective or even in the near future."

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. People v. Martin (1985) 168 Cal.App.3d 1111, 1124. Thus, in Tennessee v. Garner (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others."

This limitation was subsequently clarified by the United States Supreme Court in the seminal case of Graham v. Conner (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force is to be analyzed under the Fourth Amendment's objective reasonableness standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain and evolving." Id. At 397. Thus, the Court cautioned that "[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. At 396.

The United States Supreme Court's analysis and teaching in Graham, supra, are very much applicable to the circumstances surrounding Officer Santanna's actions with Mr. Sin.

5. Conclusion

In order to for Officer Santanna to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that the officer did not act in reasonable, justifiable self-defense or defense of others when he fatally shot Mr. Sin. The prosecution would not be able to carry that burden in this case. Based on a review of the factual investigative information and the applicable statutory and decisional law, the following conclusions are reached:

- A. Officers Singh and Martin had reasonable cause to detain Mr. Sin to investigate the situation.
- B. Mr. Sin fled from Officers Singh and Martin, which led to a foot pursuit.
- C. Mr. Sin actively resisted, even while four Yuba City Police Officers were attempting to control and secure him.
- D. Mr. Sin fought officers to keep his arms underneath his body.
- E. Mr. Sin turned and rolled up on his side, removed a semi-automatic pistol from underneath his body and shot Officer Martin.
- F. Mr. Sin retained his hold on the firearm with his finger on the trigger despite being repeatedly ordered to let go and despite officers struggling with him to control both his arm and the firearm.
- G. In his interview, Officer Martin stated that it was a "scary situation" and that Mr. Sin was not going to release the gun. Officer Martin stated that if Officer Santanna had not shot Mr. Sin, another officer would have had to shoot him.
- H. Officer Singh stated that after he heard the first gunshot and Officer Martin exclaim that he was shot, Officer Singh saw Mr. Sin holding a black handgun with his finger on the trigger. Officer Singh stated that "all Sin had to do was flip his wrist towards him and Officer Santana [sic] and Sin could have shot both he and Officer Santana [sic]." Officer Singh stated that he was "convinced" that Mr. Sin was going to shoot him or Officer Santanna. Officer Singh was reaching for his duty gun when Officer Santanna shot Mr. Sin.
- I. Officer Mulcahy stated she was scared when she heard the gunshot at close range and feared one of her partners had been shot. Officer Mulcahy stated that she believed Mr. Sin "intended to kill one officer or all of the officers on scene." Officer Mulcahy was afraid for her own life and the lives of her fellow officers.
- J. Officer Santanna stated that Mr. Sin "had already shot his partner and he did not know if his partner was going to live." Officer Santanna said it was an "extremely scary situation" and that he felt Mr. Sin could kill someone in the hotel or one of the officers if no action was taken.
- K. The use of deadly force by Yuba City Police Officer Santanna was objectively reasonable and therefore justified. Four officers were attempting to restrain a violently resisting subject, Mr. Sin.

Mr. Sin had a firearm on his person. While struggling with the police officers, Mr. Sin fought for and gained access to that firearm. Mr. Sin shot a police officer. He retained control of the firearm. Mr. Sin refused to remove his finger from the trigger well of that firearm. These circumstances go

beyond the mere appearance of danger. Any reasonable law enforcement officer would have believed that Mr. Sin posed a significant, immediate, and actual danger of death or great bodily injury to all four officers present.

A jury would likely conclude that Officer Santanna reasonably believed that shooting Mr. Sin was necessary in defense of himself and the other officers. Therefore, it is my legal opinion that there is no evidence of criminal culpability on the part of Officer Santanna and there is overwhelming evidence that his actions were reasonable, justified, and necessary under the circumstances when he shot towards Mr. Sin on April 22, 2017.

Accordingly, the Sutter County District Attorney's Office closed its inquiry into this incident.

Amanda L. Hopper
Sutter County District Attorney

cc: YCPD Officer David Santanna
YCPD Officer Brandon Martin
YCPD Officer Charn Singh
YCPD Officer Mileena Mulcahy

