



Office of the District Attorney Stanislaus County

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Jeffrey M. Laugero
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Bureau of Investigation
Chief Terry L. Seese

PRESS RELEASE

For Immediate Release

Date: December 26, 2019
Re: Shooting by Officer Found to be Justified

For More Information Contact:

John Goold, Public Information Liaison
Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, after a thorough review of all the relevant evidence gathered during the investigation of the officer-involved shooting that occurred on August 18, 2018, the shooting has been determined to be justified.

A copy of the letter provided to the Stanislaus County Sheriff's Department and Ceres Police Department is attached to this press release.

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December 17, 2019

Sheriff Jeff Dirkse
Stanislaus County Sheriff's Office
250 E. Hackett Rd.
Modesto, CA 95358

Chief Rick Collins
Ceres Police Department
2727 Third Street
Ceres, CA 95307

Re: Shooting of Carmen Mendez

Dear Sheriff Dirkse/Chief Collins:

This office has completed our review of the shooting of Carmen Mendez (D.O.B. 4/1/2003) which occurred on August 18, 2018 in the City of Denair near Service Road and Sperry Road, however the background investigation into Mendez's activities (and others') prior to the shooting remain under review. Traditionally, this office defers issuing a public finding until after the completion of any open criminal matters, however, since several of the parties involved are juveniles, any action taken (if any) would be a confidential court matter and not affected by releasing this report. It is reported that Ceres Police Officer Ross Bays shot Mendez after Mendez ran from a vehicle while armed with a handgun. It is our determination that the officer was justified under the totality of the circumstances in his actions (as will be explained below) and we now view this matter as closed.

FACTS

On August 17, 2018 at about 1530 hours (3:30 p.m.), a Riverbank resident returned home from work to discovery his house had been broken into and multiple guns had been stolen. One of the guns stolen was a silver Ruger .357 revolver. A witness reported seeing two males loading long guns taken in the burglary into the trunk of a black car.

On August 18, 2018 at approximately 1604 hours (4:04 p.m.), a male wearing red pants and a white tank top walked into the Liquor King on Mitchell Road. The male selected two bottles of Grey Goose Vodka and ran out of the store to a waiting car, a black Lexus driven by a female. The incident was captured on video¹.

¹ The male who stole the vodka was later identified as Carmen Mendez.

A few minutes later, civilian witnesses reported that they were at Smyrna skate park in Ceres when an incident occurred with occupants of a black Lexus. One of the occupants banged his car door into the witnesses' truck as he got out to take a "selfie." The truck owner, one of the civilians, complained that the male had hit his truck. The male told the female driver of the Lexus to "scoot over" and he got into the car. He then drove the Lexus in front of the truck and pointed a "silver" revolver with a long barrel at the civilian. His passengers (the original female driver and others in the back seat) in the Lexus began shouting "don't do it, don't do it!" The male stopped pointing the gun at the civilian and sped away. The civilians reported the incident to the police. The Lexus was driven to the area of Whitmore and Moffett where it crashed into another car² and fled again.

Dispatch put out the original call that a male in a black Lexus (with a partial license plate number) had just brandished a gun ("417PC") at Smyrna park and had fled in the car. Shortly thereafter, dispatch updated the incident reporting the hit and run and that a witness was chasing the Lexus. The witness was driving a Toyota. Ceres Police Officer Jesus Salinas responded to the broadcasts and found a disabled Ford in the roadway (one of the hit and run victims sustained injuries to her back and leg). CPD Officer Ross Bays had also responded to the area and observed the Lexus and the Toyota. Off. Bays took over the pursuit. His body camera (BWC) was activated throughout. The pursuit of the Lexus reached speeds up to 105 miles per hour with the Lexus running stop signs and failing to yield to the marked police car.

As the Lexus turned onto Sperry, Off. Bays could see it start to slow down. As he made the turn, the Lexus was in the middle of the road. Off. Bays believed he had driven into an ambush – the information he had was that the occupants of the car were "armed and dangerous," had fled from two different criminal incidents, but were now slowing down as he came around the corner. Off. Bays had previously been a Sheriff's deputy and knew the area, was a defensive tactics instructor and had been a member of the SWAT Team. He stated later that he had never seen suspects act like this before. He tried to line his patrol car up at an angle to get cover when Mendez bolted from the car carrying the silver Ruger .357 handgun.

Off. Bays said he had seen many suspects "leg bail" and they all ran at a 90-degree angle away from the car and the officers. His fears were heightened because Off. Bays believed that Mendez started to run towards him³. As Mendez ran/stepped from the car he fell to the ground; it appeared

² The Lexus crashed into the back of a car stopped for traffic in the roadway, pushing that car into a third vehicle. As the Lexus drove off, it left the front license plate at the scene. A witness to the hit and run followed and observed the Lexus stop for a traffic light. A male got out of the driver's seat and walked around to the passenger side. A female then drove the car. The witness said the female "must have slid over to the driver's seat."

³ With the benefit of the BWC footage and the ability to view frame by frame, it is sometimes easier to determine what actions occurred. However, the law as will be discussed below prohibits us from doing so as we must evaluate the behavior of those involved in real time. In watching the video, it does appear that Mendez is moving towards Off. Bays but this may have been an optical illusion cause by the Lexus moving forward at slow speed creating distance from Mendez and the car.

that he dropped the gun. Instead of getting up and fleeing, it appeared that Mendez stopped and picked up the gun while looking at Off. Bays. Off. Bays stated that Mendez carrying the gun was a significant factor in his thought process.

Off. Bays said that subjects flee all the time; it is normal for them to leave contraband items behind such as drugs or guns. Off. Bays saw that Mendez had a gun. Off. Bays exited his patrol car and ran towards the direction of Mendez. Off. Bays stated that Mendez's actions forced him to turn his back on the others in the car and this confirmed what he felt was an ambush. He also believed that Mendez was a serious threat to those in the nearby farms based on all of the circumstances leading up to that point combined with the fact that Mendez had retrieved the handgun, so Bays fired at Mendez. Mendez was hit, dropped the gun and fell to the ground. Off. Bays ceased firing when Mendez dropped the gun and fell to the ground. The four subjects still in the car were detained at gunpoint. A search of the vehicle turned up the stolen firearms and a large amount of ammunition. Pursuant to the county-wide officer involved shooting protocol, an investigation was commenced.

Physical evidence, including cell phones, was seized pursuant to a warrant (or consent) and examined. In March of 2019, the cellphone extraction from the female juvenile's phone was submitted for review as part of the investigation. Uncovered in the phone were photos of her with the silver Ruger handgun. There was also another photo of her with the gun and another occupant of the car holding up a fanned-out bundle of currency. The Ruger handgun carried by Mendez was confirmed by serial number to have been one of the guns stolen from the burglary in Riverbank.

One of the backseat passengers admitted that they had been at the park, someone from the Lexus had brandished the silver gun at a guy (the truck owner) and then committed the hit and run. He stated that right before the shooting the car had died, Mendez said "he wasn't going back to jail" and then ran from the car as it was still slowly moving forward. The passenger admitted that Mendez had a gun when he ran. He said Mendez had the gun in his hand pointing out in front of him, although the passenger stated he thought this was after the cop shot Mendez.

A second passenger admitted that there was "stolen stuff" in the Lexus. He was booked for outstanding warrants. The toxicology report confirmed that Mendez was "intoxicated" at the time of his death and, in addition to the alcohol, had marijuana in his system.

LAW

Any application of deadly force is unlawful unless it is either justified or excused. The use of force by a peace officer is governed by the Fourth Amendment. As the U.S. Supreme Court has said:

"The '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.... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' [citation] violates the

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Fourth Amendment. 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, at p. 396-397.)

Peace officers have rights by virtue of their need to enforce the laws that differ from the ordinary citizen. Some of these rights are codified in Penal Code §835a which states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. ¶ A peace 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.”

Reasonableness is the standard required for self-defense, and as said by another court:

“If someone is confronted by the appearance of danger which causes in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation seeing and knowing the same facts, would be justified in believing himself in danger, and if the person so confronted acts in fear and with an honest conviction, his right of self-defense is the same whether such danger is real or apparent.” People v. Jackson, (1965) 233 Cal.App.2d 639.

The law also allows an officer to defend others who might be in harm’s way; this is referred to as the ‘defense of others.’ A hostage situation is a typical circumstance where the use of force would be allowed even if the officer were not in immediate danger, but the hostage was. This law is codified in California and follows federal law:

“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”

Tennessee v. Garner, (1985) 471 U.S. 1, 11.

This policy of allowing force to be used to protect others from possible harm has been discussed in California case law in relation to the national Model Penal Code, a standard for certain legal issues:

“We note that the language used in this part of the regulation comes from section 3.07 of the Model Penal Code, which justifies deadly force to effect an arrest when there is no substantial risk of injury to innocent persons and ‘(iv) the actor believes that: (1) the crime for which the arrest is made involved conduct including

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the use or threatened use of deadly force; Or (2) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.’ (ALI, Model Penal Code, section 3.07, Proposed Official Draft, May 4, 1962, p. 57; emphasis added.)”

Long Beach Police Officers Assn. v. City of Long Beach, (1976) 61 Cal. App. 3d 364, 375.

In the instant matter, Mendez was directly involved in several different felony offenses⁴, two of which were known to Off. Bays at the time of the confrontation. The two felony offenses that Off. Bays was aware of involved dangerous, life-threatening risks to innocent bystanders. It was reasonable under these circumstances to stop that threat.

Recently, a federal court affirmed one of our state appellate courts in a case involving a suspect with a gun. In that case, two police officers (one LAPD and one an FBI agent) were conducting plainclothes surveillance in a gang neighborhood. They observed a car cruise past them and then U-turn driving slowly towards them. Based on their knowledge of the gang, the neighborhood and the car’s actions, they believed that a drive-by shooting was about to take place. They both readied their duty weapons and waited, noting that if the window rolled down that is where the gun would be. The window came down and a gun battle commenced. The suspect in the car was charged with trying to shoot the two officers. He claimed they shot first. The trial court instructed the jury as follows:

When deciding whether the officer and/or special agent’s beliefs were reasonable, consider all the circumstances as they were known to and appeared to the officer and/or special agent and consider what a reasonable person in a similar situation with similar knowledge would have believed. If their beliefs were reasonable, the danger does not need to have actually existed...” Martin v. Hatton, No. 218CV07173ABGJS, 2019 WL 5580968, at 6 (C.D. Cal. Sept. 12, 2019), report and recommendation adopted, No. 218CV07173ABGJS, 2019 WL 5579531 (C.D. Cal. Oct. 28, 2019)

The law in California does not require proof that Mendez was an actual threat, only that he appeared to be. Off. Bays, much like the two officers in the Martin case, was allowed to factor in all of the facts known to him and his specialized knowledge to make the split-second decision he made. If that decision was reasonable, then Off. Bays’s actions were justified. We must also follow the Graham standard which held that the use of force must be judged from the perspective

⁴ It is unknown if Mendez was involved in the residential burglary which is considered by law to be a “serious” felony offense; the theft of the firearms and/or the possession of the guns may both be felony offenses. The park incident was referred to as a “brandishing,” but what the witnesses described was more likely an “assault with a deadly weapon” which is a “violent” felony. The “hit and run” causing injury was a felony, as well as the evading (pursuit). Mendez was not the driver, but, based on what was known to Off. Bays, it was reasonable for him (Bays) to believe everyone in the car was involved in the various crimes reported by Dispatch.

of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. In evaluating the facts in this case under the Graham standard, it is clear that there are no known facts that establish Off. Bays's action unreasonable.

CONCLUSION

Based on the law, and the totality of the circumstances, I must conclude that Officer Ross Bays acted within his legal authority when he shot Carmen Mendez.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Off. Ross Bays

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