



Office of the District Attorney Stanislaus County

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Bureau of Investigation
Lt. David Hutchinson
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PRESS RELEASE

For Immediate Release

Date: December 20, 2018
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 January 30, 2017, the shooting has been determined to be justified.

A copy of the letter provided to the Modesto Police Department is attached to this press release.

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December 18, 2018

Chief Galen Carroll
Modesto Police Department
600 10th Street
Modesto, CA 95354

Re: Shooting of Spencer Herckt

Dear Chief Carroll:

On January 30, 2017, Spencer Herckt (DOB 11/09/1974) was shot after he struck an officer in the head with a glass “bong” pipe during an arrest. As part of the county-wide shooting investigation protocol this case has been submitted to the District Attorney’s Office for review (under MPD case # 17-009747¹). Based upon a review of the submitted reports, audio and video evidence as well as witness statements, it is our conclusion that the use of force by Officer Lewis Sargent and Officer Samuel Muncy was legally justified. To explain this finding, I begin with a summary of the known facts:

FACTS

On January 30, 2017 at about 2053 hours (8:53 p.m.) the victim² called 911 “hysterical” to report that her husband was throwing items at her car. She identified her husband as Spencer Herckt. It is unclear from the 911 call if the victim was in the car at the time Herckt was throwing the items at the car. The victim relayed that Herckt had warrants for his arrest and dispatch advised the assigned officers that he was also the subject of a domestic violence restraining order and was not supposed to be near the victim.

The first two officers to arrive on scene were Officer Lewis Sargent and Officer Samuel Muncy. They both were dressed in clearly marked police uniforms and were wearing body-worn cameras (BWC). The BWCs captured the events as they unfolded. The victim advised the officers that Herckt was not supposed to be in her apartment and was the subject of a restraining order. She talked to them for several minutes and told them about Herckt’s mental health issues and drug use. She then gave them permission to go and contact him.

¹ The completed investigation was received by this office on August 17, 2018. The autopsy report was received November 27, 2018.

² The victim is the wife of Spencer Herckt, but will be referred to by the term victim to assist understanding.

The two officers approached the apartment and Herckt exited through the garage. The two officers talked to him to assess the situation and then Off. Sargent started to pat Herckt down for weapons. During the pat-down search Herckt bolted and ran from the officers into the apartment. Off. Muncy deployed his Taser which caused Herckt to fall to the floor of the kitchen area. The officers could be heard yelling commands telling Herckt to stop resisting and to put his hands behind his back.

As the two officers started to physical restrain Herckt a physical fight ensues. During the fight Herckt struck Off. Sargent in the head with a “bong” smoking pipe³. Both officers respond by firing their handguns until Herckt goes down. A review of the BWC footage appears to depict Off. Sargent on the floor and momentarily not moving⁴ after the assault on Off. Sargent. After Herckt was handcuffed, other officers and medical personnel arrived to assist, but Herckt did not survive his injuries.

Pursuant to the county-wide officer involved shooting protocol, the scene was secured, physical evidence at the scene was collected, and the BWC footage reviewed. Officer Sargent was treated for a head wound to the back of his head and released. The investigation revealed that Herckt had a prior history of resisting arrest and had recently struck another officer (elbow to the face) during a contact in another county. Herckt had been referred to mental health court for that case which was still pending at the time of the shooting.

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 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.

A legal justification for using deadly force is the law of self-defense. The law of self-defense, for peace officers, is codified in Penal Code §196, which states in part:

³ The “bong” appears to be a heavy glass material that is approximately 16 inches in length and 2.5 inches wide. The main body of the “bong” remained intact even after the officer was struck. However, the mouth piece portion of the bong broke off into two additional pieces, indicating that substantial force was used by Herckt when he struck the officer.

⁴ The BWC footage is from Off. Sargent’s point of view, so it does not actually show him. It does show a view of the floor from a horizontal position consistent with someone laying on the floor. Off. Muncy’s BWC footage does not depict Off. Sargent at that moment. During the fight the BWC footage is jumbled and the scene is poorly lit, almost black from the darkness. It does however depict the glass bong in Herckt’s hand while he is on the floor.

“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either--

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.”

In the case Brown v. Ransweiler, (2009) 171 Cal. App. 4th 516, police were attempting to arrest a suspect who drove his car directly at an officer. The police fired and wounded a bystander. The court said:

“Where potential danger, emergency conditions, or other exigent circumstances exist, “ [t]he Supreme Court's definition of reasonableness is ... “comparatively generous to the police....” ’ [Citation.]” (Munoz, supra, 120 Cal.App.4th at p. 1103.) “ ‘In effect, “the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases....” [Citation.]’ ” (Ibid.) A police officer's use of deadly force is reasonable if “ ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” [Citations.]’ [Citation.]” (Ibid.) “ ‘Thus, “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.” ’ [Citation.]” (Ibid.)”

Brown v. Ransweiler, at page 528.

The Brown court further 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. [T]he question is whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”” (Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334, 343 (Martinez), quoting Graham, supra, 490 U.S. at pp. 396-397.) In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required.”

Brown v. Ransweiler, at pages 527-528.

In another more recent case, a federal court evaluated a use of force where an officer shot a man armed with a metal pipe. The court stated that if the facts showed the deceased in that case had “raised the pipe in preparation to strike the Officer—all in a matter of seconds—then Officer Shipman’s use of deadly force would be appropriate.”

Estate of Casillas v. City of Fresno, No. 1:16-CV-1042 AWI-SAB, 2018 WL 5291941, at 7 (E.D. Cal. Oct. 23, 2018).

In this case, Officer Sargent and Officer Muncy were lawfully doing their duty when they contacted Herckt. They had the right to arrest him for the restraining order violation and the victim asked them to make the arrest. When Off. Sargent started to pat Herckt down as part of the arrest

process (and for everyone's safety), Herckt escalated the matter by running away and into the apartment. Herckt's actions objectively gave the officers reason to deploy the Taser to prevent his escape and/or access to weapons – coupled with the victim's report of Herckt's mental status and drug use, the officers were correct to be concerned. After being Tased, Herckt still had the opportunity to surrender but instead violently resisted. He obtained a weapon and struck Officer Sargent in the head rendering him momentarily incapacitated. Under the Casillas case, Herckt's preparation to use the glass pipe would have justified the shooting but he went further and used it. There can be no doubt that Herckt posed a threat to both officers and left them with no choice but to shoot to stop the threat.

CONCLUSION

Based on the law, it is clear that Officer Sargent and Officer Muncy were both performing their jobs as police officers when they attempted to contact Herckt. Herckt's failure to submit to search/arrest or surrender after being Tased would clearly raise any reasonable officer's fear of the situation. Herckt went further and then attacked Off. Sargent forcing the officers to shoot him. Under these circumstances, the shooting of Herckt is determined to be justified and in self-defense.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Officer Lewis Sargent
Officer Samuel Muncy