



Office of the District Attorney Stanislaus County

Birgit Fladager
District Attorney

Assistant District Attorney
Jeffrey M. Laugero

Chief Deputies
Marlisa Ferreira
Wendell Emerson
Michael D. Houston
Mark Zahner

Bureau of Investigation
Chief Terry L. Seese

PRESS RELEASE

For Immediate Release

Date: December 5, 2022
Re: No Criminal Charges Filed in
Officer-Involved Shooting

For More Information Contact:

John Goold, Public Information Liaison
Phone: (209) 525-6909

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 July 14, 2022, no charges will be filed against the officer.

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

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Office: 832 12th Street, Suite 300 Modesto, CA 95354 Mailing: PO BOX 442 Modesto, CA 95353
Telephone: (209) 525-5550 Fax: (209) 558-4027 www.stanislaus-da.org



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December 2, 2022

Chief Brandon Gillespie
Modesto Police Department
600 10th Street
Modesto, CA 95354

Re: Shooting of Paul Chavez

Dear Chief Gillespie:

On July 14, 2022, Paul Chavez (DOB 11/24/1991) was shot after advancing on an officer while being armed with a trailer hitch¹. Based upon a review of the submitted reports, witness statements and video evidence, it is our conclusion that the use of force by the involved officers was legally justified. To explain this finding, I begin with a summary of the known facts.

FACTS

On July 14, 2022 at approximately 5:41 PM, officers were dispatched to a house on Entrada Way in the City of Modesto. The original call to 911 was from an occupant of the house stating that a drunk man was threatening his life. The caller identified the drunk man as Paul Chavez, his son-in-law. The caller related that the caller's wife had left to pick up pizza and the caller was concerned what would happen when she returned if Chavez were still outside the house. The caller reported that Chavez was trying to tear the screen door off the house to gain entry into the home. The caller warned dispatch that, if Chavez got inside, he (the caller) would get his gun and take care of him. The caller asked dispatch for permission to "shoot him."

A premise history check revealed that Chavez and the caller had prior issues; Chavez exhibited a pattern of getting drunk and causing problems or trying to fight. He had also exhibited recent behavior demonstrating suicidal thoughts and actions.

¹ The trailer hitch was described as a tubular metal shaft with three solid metal balls on one end; it was 11 inches long and weighed 9.8 pounds. The trailer hitch part used by Chavez was the part that would slide into a vehicle's tow hitch and be secured with a pin. The part he had was the part with the round ball on the end that a trailer would be mounted to; it must be strong enough to support the entire tow weight of a towed trailer – usually hundreds of pounds of weight. After the shooting occurred, the Modesto Police Department contacted the California Attorney General's office to see if the tow hitch would fall within the framework of Government Code §12525.3. If the tow hitch were not deemed to be a deadly weapon, the Attorney General would be responsible for the investigation. After the AG's representatives responded to the scene, they declared that the tow hitch was a deadly weapon which is binding on this office as well.

6/17/22 – Chavez’s wife reported to police Chavez was drinking and threatening their children. He threatened officers and had to be placed in a padded cell to prevent injuries;

6/22/22 – MMC asked for a welfare check on Chavez after he walked out of the hospital where he had been brought due to suicidal thoughts. He did not meet 5150 status and was not detained;

6/24/2022 – Chavez’s wife reported to police that Chavez sent her a video of himself drinking and taking pills. Chavez denied the event and claimed he did not want to hurt himself so he was not detained;

6/26/2022 – Chavez’s wife called police saying that Chavez sent her a video of an attempt to hang himself. When officers arrived, Chavez held a hatchet to his own neck telling officers to kill him. He surrendered eventually and was placed under a 5150 hold;

7/13/2022 –Chavez’s wife reported to police that Chavez was yelling at kids and refusing to leave. Chavez was gone and could not be located by police;

7/13/2022 – Chavez’s father-in-law reported to police that Chavez was trying to fight him. Police determined that Chavez had been drinking but was not 647(f) and police gave him a ride to his boss’s house.

The caller expressed concern to the dispatcher on July 14, 2022 that he was going to have to go outside and deal with Chavez when the caller’s wife returned if the police did not get there in time. The caller and the dispatch operator discussed calling his wife/Chavez’s mother-in-law to make sure she didn’t return and park at the house. After the initial call to 911, a second call was made by the original caller reporting that Chavez had walked away from the front of the Entrada house but had armed himself with part of a tow hitch.

Officers were dispatched to the Entrada Way location but did not immediately locate Chavez. The first two officers to arrive were Officers Samuel Muncy and Sergio Valencia. Both officers arrived in marked police vehicles and wore clearly identifiable police uniforms. Officer Muncy reported to dispatch that he was going to contact the caller and try and find out where Chavez had gone. Both officers had their body worn cameras (BWC) activated and the events in question were captured on video.

As Off. Muncy got out of his patrol car, the caller (who was now standing in his driveway) directed the officers to a location just up the street. Off. Muncy can be heard on the video repeating/confirming the information as Off. Valencia walks nearby. Off. Muncy walked in the direction pointed out by the caller and a woman can be seen getting out of her car carrying pizza boxes. Off. Muncy spoke to the woman saying that her husband wanted her to go home and she replied, “Yeah” and that “ I parked...” but, before she was able to complete her statement, she was cut off by Off. Muncy who immediately stated, There he is.” In the video, Chavez can be seen getting up off the ground and it is apparent that Off. Muncy had seen Chavez which is why Off. Muncy disengaged with the caller’s wife.

Both Off. Muncy and Off. Valencia can be heard on the video directing their attention to Chavez. As Chavez stood up, it is plainly visible that he has the ball portion of a trailer hitch in his hand. Chavez started to walk across the neighbor’s yard in the direction of his mother-in-law and the

caller. The officers gave commands for Chavez to stop and/or to drop the weapon. Chavez ignored the officers.

Off. Valencia moved in a direct line to place himself between Chavez and the two civilians and drew his Taser. Off. Valencia would later confirm that he took this action to protect the civilians and prevent Chavez from reaching their location. Chavez continued to advance and was warned that he would be tased. Chavez continued to walk across the yard. Off. Valencia fired his Taser and struck Chavez; it had no effect. Chavez can be seen on the video pulling one of the prongs out of his skin and tossing it to the ground.

Off. Valencia's Taser was a model that contained two cartridges which allowed him to fire a second charge at Chavez. This charge also failed to stop Chavez (it is unclear from the video if a connection was made). Both Off. Valencia and Off. Muncy noticed that Chavez directed himself more towards Off. Valencia after the Taser was deployed.

Off. Muncy was standing by Off. Valencia and had his firearm drawn as a precaution for Off. Valencia [standard practice for two officers in similar circumstances to have one officer use "less lethal" weapons and the other officer to have the lethal option available.] Off. Muncy was aware of Chavez and his behavior when Chavez had been drinking having been one of the officers involved in the June 26th incident when Chavez was placed on a 5150 hold. During that incident, Off. Muncy had to escort the ambulance to the hospital with Chavez in it because Chavez was combative with the EMT.

After the failed Taser deployment, Off. Muncy was concerned that Chavez was now very close to Off. Valencia and Chavez was still armed. Off. Valencia was effectively unarmed because he had the Taser in his hand and would have to drop it before he could draw his own firearm. Off. Muncy determined that if Chavez took any further action towards Off. Valencia he would have no alternative but to fire his weapon. Both officers, when later interviewed (separately), indicated that they perceived Chavez focus on Valencia, lean towards him and start to lift the trailer hitch at the same time. The video confirms their perceptions². Off. Muncy fired twice at Chavez. Chavez looked at the officers, dropped the trailer hitch, took a few steps and collapsed. The officers immediately starting first aid, but Chavez did not survive his wounds.

Pursuant to the County-wide protocol an investigation was conducted which included canvassing the neighborhood for witnesses and videos. A neighbor confirmed that she could hear the officers giving commands to Chavez and that he did not comply with the directions. Chavez's mother-in-law also confirmed that officers gave Chavez commands and at the time of the shooting she was only 15 feet away from him (by her estimate).

An autopsy revealed that Chavez had a blood alcohol level of .26% which is over three times higher than the legal limit to drive. Chavez was found to have a fatal gunshot wound to the chest and a second gunshot wound to his left upper arm. Suspected Taser prong marks were also observed.

² Three screengrabs from Off. Muncy's BWC video are attached at the end of this report. The three images are the equivalent of the three frames taken from the video right before Off. Muncy fired his duty weapon. The officers' descriptions are captured in these three frames; the officers were both interviewed before they watched the BWC videos.

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.

Peace officers have rights by virtue of their need to enforce the laws that differ from the ordinary citizen. As one court has said in reviewing a police shooting:

“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.] [Citation.] ‘ “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.’ ”

Lopez v. City of Los Angeles, (2011) 196 Cal. App. 4th 675, 686

The reasonableness standard mentioned in Lopez is the same standard required for self-defense/defense of others and, as said by another court:

“...officers have a duty to act reasonably when using deadly force” and “[t]he reasonableness of an officer’s conduct is determined in light of the totality of circumstances.” (Hayes, supra, 57 Cal.4th at p. 629.)

Koussaya v. City of Stockton, (2020) 54 Cal. App. 5th 909, 939

The Koussaya case is significant in this review because it is the first court case to address the recent changes to the law of police use of force contained within Penal Code §835a. California Penal Code Section 835a, which went into effect January 1, 2020, addresses the use of deadly force by peace officers. California Penal Code Section 835a allows a police officer to use reasonable force when necessary in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force. California Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person.

Applying Koussaya to our facts exonerates Off. Muncy; however, the facts in that case are very dissimilar and our analysis must continue. California is not alone in redefining what force may be used by officers and the State of Maryland recently enacted similar reforms to our Penal Code

§835a. That State's Attorney General was recently asked to review what was a reasonable use of force and, after citing to California's law, went on to state:

"At the end of the day, the propriety of any particular use of force will depend on the totality of the circumstances, but self-defense cases and various police departments' use of force policies offer insight into what factors might be relevant. In an encounter with a criminal suspect, for example, whether a particular use of force is "necessary and proportional" will likely depend on factors such as the nature and seriousness of the alleged offense; the size, strength, condition, and mental state of the suspect; whether the suspect is actively resisting arrest; the suspect's violent history (if known); whether the suspect appears to have access to a weapon; whether the suspect appears to be under the influence of drugs or alcohol that may impact the suspect's mobility or tolerance for pain; whether there is a hostile crowd present at the scene; and the potential for officers or bystanders to be injured by the suspect's or responding officers' use of force."

33 Md.Op.Atty.Gen. 33, (2022)

In applying the reasoning of the Maryland Attorney General's opinion to the instant facts, it is clear that Off. Muncy was acting in a "necessary and proportional" fashion. Chavez had attempted to break into a house and had threatened the occupant with physical harm; Chavez was neither weak nor frail - a taser failed to stop him; he refused to listen to the officers - amounting to active resistance; Chavez's current threats coupled with his recent behavior made it reasonable to believe he was dangerous; he was armed; he was under the influence and felt no pain when tased; and he was advancing on the location of his threatened victim and/or the officer who stood in his way. Off. Muncy had no alternative - it was his duty to protect others, including the caller, from Chavez (who refused to drop his weapon) and there were no other reasonable or feasible alternatives left to him after the Taser failed and Chavez had moved to within 15 feet of his mother-in-law.

Older California law also supports this determination. In the case of Brown v. Ransweiler, (2009) 171 Cal. App. 4th 516, the 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.

Under old law, a plain reading of Penal Code §835a, or an expansive (although not directly on point) view of the new law, the legal finding remains the same under these circumstances. Off. Muncy’s shooting of Chavez was lawful.

CONCLUSION

Common sense tells us that 15 feet is not a lot of distance between you and someone who means to do you harm. An average person can cover that distance in 1.5 seconds or less. Off. Valencia was even closer to Chavez than the 15-foot distance Chavez’s mother-in-law estimated that she was. Distance/threat/reaction time is something all officers are trained in as part of their mandated “defensive tactics” by POST. This is another factor in determining the reasonableness of the officers’ conduct in this case. Off. Muncy could not wait to see what would happen next. Chavez forced him to make a decision. Based on the law, it is clear that Officer Samuel Muncy and Officer Sergio Valencia were both performing their jobs as police officers when they attempted to contact Chavez. Chavez was armed, intoxicated and had threatened someone with harm – the officers couldn’t leave and come back later. They attempted to speak to Chavez, order Chavez to comply, use less-lethal force (the Taser) and yet he continued on his path. Off. Muncy used the only level of force left available to him at that point and only fired as he believed was needed and then re-assessed.

Based on the law in its current form, past form and under the 4th Amendment standard, all the legal elements for self-defense are present making this shooting justified. It is therefore our determination that Officer Sergio Valencia’s use of a Taser and Officer Samuel Muncy’s use of his firearm were legally reasonable and necessary, therefore their actions were justified. This office views the matter as closed and no further action need be taken.

Very truly yours,
BIRGIT FLADAGER
District Attorney



David P. Harris
Special Assistant District Attorney

cc: Off. Samuel Muncy
Off. Sergio Valencia

The following are three screenshots depicting the equivalent of the three frames immediately before any gunfire:



Photo #1



Photo #2



Photo #3