



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

For More Information Contact:

Date: July 13, 2018

John Goold, Public Information Liaison

Re: Shooting by Officers Found to be Justified 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 death that occurred on October 8, 2016, 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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July 9, 2018

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

Re: Shooting of Kim Marie JACKSON

Dear Chief Carroll:

On October 8, 2016, Kim Marie JACKSON (DOB 10/21/1963) was shot after she confronted officers while armed with knives. As part of the county-wide shooting investigation policy this case has been submitted to the District Attorney's Office for review (under MPD case # 16-101768¹). Based upon a review of the submitted reports, audio and video evidence as well as the witness statements, it is our conclusion that the use of force by Officer Joseph Lamantia, Officer Michael Callahan and Sergeant Alex Bettis was legally justified. To explain this finding, I begin with a summary of the known facts:

FACTS

On October 8, 2016 at about 0148 in the morning, in the 1500 block of Queens Avenue in the City of Modesto, a father called 911 to report his daughter was drunk and vandalizing the home. This information was provided to responding units. The responsible party was identified as Kim Jackson. Jackson was gone from the house by the time the officers arrived.

At about 0304, the reporting party called 911 again and reported that Jackson was back. This time Jackson was armed with knives and was saying "she will make the police shoot her." Officers Joseph Lamantia and Michael Callahan and Sgt. Alex Bettis responded back to the location. They parked some distance from the house and approached on foot. They were made aware that the suspect was drunk/irrational and possibly suicidal (based on dispatch information). The three officers appeared to plan for an attempt to de-escalate the situation by preparing to use less than lethal means (Callahan was prepared with a Taser, Bettis with a bean-bag shotgun and Lamantia with his handgun). The three approached the reporting party's house, dressed in clearly marked police uniforms and wearing body-worn cameras (BWC). The BWCs captured the event as it unfolded.

¹ The completed investigation was received by this office on April 16, 2018.

As the trio approached, Jackson appeared out of a shadowy area near the driveway in the front yard area of the house. She was armed with multiple knives². Officer Callahan, who was one of the officers who had talked to Jackson's father after the first report when he was made aware of Jackson's behavior/mental status, can be heard politely stating, "Kim, why don't you put the knife down." Jackson responded saying something to the effect of you're going to have to shoot me. Off. Callahan told her, "you don't want to get shot". Jackson responded to Off. Callahan's statement saying, "yeah, I do."

Off. Callahan was on one side of the driveway which placed the width of the driveway and two cars between him and Jackson; Jackson moved away from the house around the side of the cars down the yard next to the driveway and into the street. Jackson immediately raised her hands over her head displaying the knives she held in each hand while confronting Off. Lamantia and Sgt. Bettis. Off. Lamantia backed away from Jackson as she approached and told her to "back up, back up." Almost immediately Jackson started running towards Bettis and Lamantia. All three officers discharged the weapons they had. According to the time stamp on the BWC, the time from Jackson's statement and where she then ran at the officers to the last shot is slightly less than three seconds. The three officers immediately obtained and provided medical aid for her.

The scene was secured pursuant to the county-wide officer involved shooting protocol. Physical evidence at the scene was collected, the BWC footage reviewed and a neighborhood canvass was conducted. Jackson did not survive her injuries – she appeared to have been struck by the Taser, the shotgun and a handgun. During the investigation, a neighbor reported that Jackson had come to her door trying to hide from the police after the initial phone call and smelled of alcohol.

Jackson's father, when later interviewed, stated that his daughter would become violent when drinking. He said he only called the police because she was becoming violent that morning. Jackson told him if he called the police on her again he would have to "watch her die." After his daughter left, she came back later and this time he saw she had a knife. He called the police again. After he called the second time, he heard his daughter outside with the officers. He heard them telling her to drop the knives before any shots were fired.

At autopsy, Jackson was found to have a blood alcohol level of .22% (which is almost 3 times the legal driving limit); she also had a significant amount of methamphetamine in her system (and the metabolite of methamphetamine which would indicate it was having some physiological effect on her at the time of her death).

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:

² Jackson carried multiple knives in both hands; these knives were collected in the street near Jackson after the shooting. Each knife was marked with an evidence number and photographed as it was collected. The first knife, marked as item #4 was a Pure Komachi 2, high carbon stainless steel chef's knife approximately 11 ½ inches long; item #5 was a Pure Komachi 2, high carbon stainless steel serrated filet knife approximately 13 inches long; item #6 was a Pure Komachi 2, high carbon stainless steel knife approximately 10 ¾ inches long; item #7 was an unknown brand stainless steel knife approximately 10 inches long; and #8 was a Pure Komachi 2, high carbon stainless steel chef's knife approximately 15 inches long.

"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, available to everyone, and is codified in Penal Code §197, which says:

"Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed."

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.

CONCLUSION

Research and police training have shown police officers that a subject armed with a knife can run over twenty feet and stab the officer in the time it would take for the officer to draw their gun and fire. This is due to the reaction time it takes for the officer to identify the threat and react to it. An average person can cover that distance in around 1.5 seconds. Distance/threat/reaction is something all officers are trained in as part of their mandated “defensive tactics” by POST. This is a factor in determining the reasonableness of the officers’ conduct in this case.

Based on the law, it is clear that Officer Joseph Lamantia, Officer Michael Callahan and Sergeant Alex Bettis were all performing their jobs as police officers when they attempted to contact Jackson. Jackson almost immediately confronted the officers with knives. Officer Callahan told Jackson to drop the knife and that she didn’t want to be shot. Jackson’s almost immediate next action, after stating that she did (want to be shot), was to raise the knives above her head and run at the officers. Her failure to comply with the request to drop the knives and her subsequent actions would clearly raise any reasonable officer’s fear of the situation. Jackson forced the officers to shoot her. Under these circumstances, the shooting of Kim Marie Jackson by Officer Joseph Lamantia, Officer Michael Callahan and Sergeant Alex Bettis is determined to be justified and in self-defense.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Off. Joseph Lamantia
Off. Michael Callahan
Sgt. Alex Bettis