



Office of the District Attorney Stanislaus County

Birgit Fladager
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Marlisa Ferreira
Stephen R. Robinson

Bureau of Investigation
Lt. David Hutchinson
Lt. Froilan Mariscal

PRESS RELEASE

For Immediate Release

Date: November 7, 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 May 29, 2018, the shooting has been determined to be justified.

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

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November 5, 2018

Sheriff Adam Christianson
Stanislaus County Sheriff's Office
250 E. Hackett Rd.
Modesto, CA 95358

Re: Shooting of Armando Osuna

Dear Sheriff Christianson:

On May 29, 2018, Armando OSUNA (DOB: 10/31/1966) was shot after he struck a deputy sheriff with a metal pipe. The Sheriff's department has submitted the shooting investigation to the District Attorney's Office for review (under SO case # S18-022685 and RPD case #R18-006219¹). Based upon a review of the submitted reports, witness statements, audio and video evidence, it is our conclusion that the use of force by Deputy Brandon Silva was legally justified. To explain this finding, I begin with a summary of the known facts:

FACTS

On May 29, 2018 at approximately 10:51 a.m., deputies were dispatched to an address on Burneyville Road in Riverbank for a report of a dispute between a landlord and an ex-tenant. The ex-tenant was identified as Armando Osuna. The landlord reported that Osuna had been evicted several weeks prior to the call to 911 and Osuna was not supposed to be on the property but had returned. A dispute occurred, and Osuna threw a metal chain and lock at the landlord, missing him.

Deputy Brandon Silva and Deputy Randon Kirkbride responded to the reported assault. They attempted to contact Osuna who was now at the back of the property in a detached garage. Deputy Silva asked Osuna to come out of the garage and speak with him. Osuna came out of the garage holding metal pipes, one in each hand. Deputy Silva and Deputy Kirkbride told Osuna to drop the pipes and to get on the ground. Osuna did not comply and continued to hold the pipes near chest level. Osuna then started to swing the pipes in a stabbing motion.

Deputy Silva deployed his Taser, but it had no effect on Osuna who continued to swing the pipes. (Deputy Kirkbride would later state that he was not sure if the probes from the Taser had made contact based on the lack of response by Osuna.) Deputy Kirkbride in turn deployed his

¹ The reports were received in this office on August 9, 2018.

pepper spray, hitting Osuna in the face. This, too, had little effect on Osuna who continued to hold the pipes in his hands up near chest level. Deputy Kirkbride used the pepper spray again, hitting Osuna a second time with no effect. Deputy Silva pulled his firearm and Osuna retreated into the garage.

Deputy Silva heard a clinking sound but could no longer see Osuna. Deputy Silva peeked inside the garage and could see Osuna throwing water on his face. At this point, Osuna came back out of the garage with both pipes in his hands. Osuna continued to defiantly hold the pipes up near his chest, swinging them in a stabbing motion. Deputy Silva and Deputy Kirkbride repeatedly gave commands to Osuna to put the pipes down, but he refused. Osuna then advanced towards the deputies.

Deputy Kirkbride deployed a third shot of pepper spray to no avail and Osuna then struck Deputy Kirkbride in the right hand with one of the pipes. Deputy Silva then fired two shots, striking Osuna. Osuna turned and fell to the ground where Deputy Kirkbride attempted to gain control of Osuna. Osuna continued to resist and was able to move away until he stumbled into the garage. Deputy Kirkbride and Deputy Silva attempted to handcuff Osuna but were unsuccessful until additional deputies arrived.

Medical and fire personnel arrived on scene and tried to administer medical aid. Osuna continued to fight until he was placed on a gurney and transported back to the ambulance. Deputy Matthew Orr and Deputy Dominic Bertalotto rode in the ambulance with medical personnel due to Osuna's combativeness. At one point, ambulance personnel requested that the deputies unhandcuff Osuna, so they could try to place him in restraints. The Fire Department noted in their medical report that Osuna was violent and dangerous which prevented them from starting an IV. It was further noted that the patient (Osuna) kicked and punched EMS, Fire and SO personnel. Upon arrival at Memorial Medical Center, Osuna struggled with hospital staff until he could be sedated. Osuna did not survive his injuries.

Pursuant to the county-wide shooting protocol an investigation into the shooting was commenced. Hospital records showed that Osuna tested positive for marijuana and methamphetamine and the autopsy showed that he had a potentially toxic level of methamphetamine 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 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.”

The reasonable cause standard for an arrest (or reasonableness) mentioned above is also the standard required to use self-defense or self-defense of others. The right for peace officers’ use of deadly force is also codified in Penal Code §196, which states in part:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance ...

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

In a case with similar circumstances, an intruder contacted by a Sheriff’s deputy (although in the court case the deputy, Hodges, was off-duty) fought with him and ultimately was killed, the court said:

“Hodges acted in response to suspected criminal activity in the garage. He acted as a California peace officer, utilizing his professional training to confront and subdue the intruder. He specifically and repeatedly asserted his authority as a California peace officer while attempting to effectuate an arrest of the suspect. (Pen.Code, § 830.1, subd. (a)(3) [authority of a “peace officer,” including a “deputy sheriff,” extends to any place in state where public offense has been committed in officer's presence, and there is “immediate danger to person or property, or of the escape of the perpetrator”]; id., § 836, subd. (a) [authority of peace officer to effectuate warrantless arrest].) Indeed, Hodges admitted as much when he stated in his declaration, “I used my police officer status as a method of asserting authority which I hoped would cause the suspect to be more compliant.” Hodges also exercised his statutory authority to use force—in this case, deadly force—to arrest the intruder, whom he suspected of committing a burglary, robbery or more serious crime. (Id., § 835a [authority to use reasonable force to effect an arrest, to prevent escape, or to overcome resistance where peace officer has reasonable cause to believe arrestee has committed a public offense]; Long Beach Police Officers Assn. v. City of Long Beach (1976) 61 Cal.App.3d 364, 368–369 [a peace officer has the right to use deadly force when necessary to defend himself or other persons from death or serious injury when attacked]...)”

Hodges v. Yarian, (1997) 53 Cal. App. 4th 973, 980–81

In this case, Osuna attacked Deputy Kirkbride with a metal pipe; it was reasonable for self-defense to be used either by Kirkbride or Deputy Silva. The only question remaining was what

level of force Deputy Silva was allowed to use to stop the attack. In the case of People v. Sohal, (1997) 53 Cal. App. 4th 911, 916 a metal pipe was found to be a deadly weapon when used to strike someone with it. It is undisputed that Osuna was using a metal pipe (a deadly weapon) to attack Kirkbride, and therefore Deputy Silva was also allowed to resort to deadly force under the law.

CONCLUSION

Based on the law, the two Sheriff's deputies were responding to a 911 call and both were performing their jobs as peace officers. When Osuna pulled out the metal pipes and confronted the deputies they were not required to flee from Osuna. The use of force by Deputy Silva was measured and in direct response to the threat he perceived after Osuna had struck Dep. Kirkbride with the metal pipe. In other words - it was reasonable. Under these circumstances, the shooting of Osuna by Deputy Silva is determined to be justified.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Dep. Brandon Silva