

SUMMER STEPHAN
DISTRICT ATTORNEY

September 6, 2022

Interim Sheriff Anthony Ray
San Diego County Sheriff's Department
9621 Ridgehaven Court
San Diego, CA 92123

Re: Non-fatal shooting of Erik Talavera by San Diego Sheriff's Deputies David Lovejoy and Jonathan Young on February 16, 2022; El Cajon Police Department Case No. 22005968; DA Special Operations Case 22-030PS; Deputy District Attorney assigned: Frederick Washington.

Dear Sheriff Ray,

We have reviewed the reports and other materials compiled by the El Cajon Police Department and the San Diego County Sheriff's Department concerning the circumstances leading to the shooting of Erik Talavera by Deputies Lovejoy and Young on February 16, 2022. The incident occurred in the city of El Cajon and was investigated by the El Cajon Police Department. A District Attorney Investigator responded to the scene and was briefed by El Cajon Police detectives. This case was submitted to the District Attorney's Office for review on April 19, 2022.

Summary

On February 16, 2022, at approximately 10:18 p.m., Lovejoy and Young responded to a request for assistance from members of the Regional Auto Theft Task Force (RATT). RATT detectives had tracked a stolen "bait trailer" (a trailer equipped with a Global Positioning System) to the area of 1100 Decker Street in El Cajon, where they observed the trailer being towed by a white van driven by Erik Talavera.

When Lovejoy and Young turned onto Decker Street, Talavera immediately exited the white van. The deputies gave Talavera multiple commands to get on the ground. Talavera did not comply, was moving erratically, and yelled, "Just shoot me." Talavera reached into his waistband and produced a black metallic object which Lovejoy and Young believed was a small firearm. Lovejoy fired 10 rounds in two volleys at Talavera and Young fired five rounds at Talavera. Talavera was struck several times, fell to the ground, and dropped the black object.

Deputies ordered Talavera not to reach for the object, but he grabbed the object and pulled it into his chest area. Lovejoy fired two additional rounds toward Talavera.

Talavera rolled onto his right side and tossed the object into the roadway. The object was then identified as a knife. Talavera was taken into custody. Talavera sustained 16 gunshot wounds and was transported to a hospital for treatment. A urine sample and drug screen showed Talavera had amphetamines, benzodiazepines, and fentanyl in his system at the time of the incident.

A detective with RATT, LE1, had been near the north curb of Decker Street when the shooting occurred. LE1 was struck in the leg and later treated at a hospital.

Persons Involved

Talavera was a 31-year-old resident of Lakeside. At the time of this incident Lovejoy had been a deputy for eight years and Young had been a deputy for six years. During the incident, Lovejoy and Young were in full uniform and driving separate marked patrol vehicles.

Statement of Law Enforcement Officer 1 (LE1)

LE1 is a detective assigned to RATT. On February 16, 2022, LE1 and his team were dressed in plain clothes and driving unmarked vehicles while working a special operation targeting stolen vehicles within the County of San Diego. LE1 received notification that a bait trailer belonging to the RATT Team was moving around the city of El Cajon. LE1 monitored the movements of the trailer through an app on his phone. LE1 tracked the trailer to the area of 1100 Decker Street.

LE1 arrived on Decker Street and observed the trailer hooked to a white van attempting to back the trailer into a driveway. LE1 observed a white Dodge truck nearby which appeared to be associated with the van. RATT team members in unmarked vehicles began to arrive in the area. The white van started driving eastbound on Decker Street, when a marked Sheriff's patrol vehicle pulled directly in front of the van and initiated a hot stop. Deputies yelled commands at the driver to get down on the ground and show his hands and the driver yelled back, "No, shoot me, shoot me." LE1 put on his tactical vest and exited his vehicle. He realized he was in a crossfire position so he walked to the front right fender of his vehicle to use it as cover. LE1 heard deputies give the driver commands and then a burst of gunfire. LE1 did not know who was shooting, but thought the van driver was shooting at him.

Immediately after the shooting, LE1 felt a stinging sensation in his left shin area. He looked down and saw blood and a hole in his pants. He knew he had been hit. As he moved out of the line of fire, he heard deputies continue to give the driver commands. LE1 did not see when the driver exited the van and did not see what prompted the deputies to fire.

Statement of Deputy Young

Young responded to a request from RATT for marked patrol units to assist with a bait trailer that had been taken from a location in Lakeside. Another deputy, who was in direct contact with RATT detectives, was relaying information on the location of the bait trailer. Young turned onto Decker Street and saw Lovejoy's patrol vehicle immediately stop in front of a white van pulling a black trailer.

Young stopped directly behind Lovejoy's vehicle, exited, and moved to the passenger side of Lovejoy's vehicle. Young heard Lovejoy yelling commands at a person associated with the white van.

The subject was in the middle of the street jumping up and down as though he were having a temper tantrum. Young thought the male might be under the influence of an intoxicant or might be having a mental health crisis. Based on his training and experience with subjects who steal vehicles Young was concerned the subject might be in possession of a weapon. Lovejoy continued to give the subject commands. The subject raised his arm while holding a black metal object in his hands. Young was afraid and thought the object might be a firearm. Young and Lovejoy yelled to the subject to get on the ground. Young saw several individuals downrange and thought that they might be law enforcement. As Young continued to give commands, the subject quickly and aggressively dropped to the ground into what seemed like a modified shooting platform and then quickly turned around to face them. Young heard a gunshot and believed the subject was shooting at him. Young was very afraid. Young fired three to four shots at the subject. The subject went down and began groaning, leading Young to believe the subject had been shot. Young saw the black metal object in front of the subject. As Young and Lovejoy were giving commands, the subject quickly reached for the metal object and pulled it to his body. Young heard two additional shots ring out from where Lovejoy was standing. While Young did not fire additional shots at the subject, he did see the subject's motions and was concerned the subject was trying to access the weapon. The individual threw the metal object in front of him and Young realized the object was a knife.

Several deputies arrived and formulated a plan to approach the subject and clear the van to avoid an ambush. The subject was placed in handcuffs and Young started removing the subject's clothing to check for and access injuries.

Statement of Deputy Lovejoy

Lovejoy heard over dispatch the vehicle pulling the trailer was a white Econoline Ford van. As soon as Lovejoy turned onto Decker Street, he was faced with the white van. The driver of the van immediately exited the driver's door. Lovejoy exited his vehicle, drew his firearm, and ordered the male to get on the ground. Lovejoy could see in his backdrop that there were two or three plainclothes officers wearing tactical vests with POLICE and SHERIFF across the front. He assumed they were task force detectives following the trailer.

The male was not complying with orders to get on the ground. The male moved away from the van and walked toward the cars parked at the north curb. When the male reached the cars parked against the curb, he threw up his hands, puffed his chest like he wanted to fight, and said, "Just shoot me. Just shoot me." Lovejoy responded, "No, get on the ground. Get on the ground." Lovejoy heard Young commanding the male to get on the ground. The male did not comply.

The male reached in his waistband area and pulled out a black object with a handle. Lovejoy believed it might have been a small firearm. Lovejoy later stated that based on his training and experience persons who commit felonies likely have weapons. Lovejoy fired a short volley of rounds at the male.

The male did not drop what was in his hands. Lovejoy fired “a couple” more times and the male fell to the ground, dropping the item. Lovejoy still could not tell what the object was. The male was face down in the street with the object about one foot in front of him. Lovejoy and Young told the male not to reach for it. Someone told the male to crawl to the sound of their voice. Lovejoy could see the black handle of the object he saw the male pull from his waistband. The male started to crawl toward the item. Lovejoy and Young told the male not to go toward it. The male then reached out and grabbed the item. Lovejoy fired twice at the male. The male rolled to his stomach and tossed the item. It was at that point Lovejoy could tell it was a knife. Lovejoy yelled more commands at the male. It seemed the male had given up. Lovejoy and other officers provided cover for the team who took the male into custody. Lovejoy then cleared the van to make sure nobody was inside. He heard an officer had been hit. He retrieved a trauma kit from his vehicle and assisted the injured detective.

During the incident, Lovejoy was concerned about public safety because his backdrop included apartment buildings and because there were three detectives in the line of fire.

Investigation

The scene was secured, photographed, and investigated by the El Cajon Police Department Homicide Unit. All detectives’ reports, crime scene investigators’ reports, and audio-recorded witness interviews, body worn camera (BWC), and audio recordings were reviewed. All of these items were found to provide evidence corroborating the deputies’ statements. The events leading up to and the incident itself were captured on BWC.

At the time of the incident, both Lovejoy and Young were carrying their department-issued Glock, model 17, 9mm handgun. An El Cajon Police Field Evidence Technician processed Lovejoy and Young after the shooting and determined Lovejoy’s handgun held one round in the chamber and 15 rounds in the seated magazine. Based on the number of rounds remaining in Lovejoy’s handgun and magazines after the incident, it was determined Lovejoy had fired a total of 12 rounds. Young’s handgun was recovered with one round in the chamber and 12 rounds in the seated magazine. Based on the number of rounds remaining in Young’s handgun and magazines after the incident, it was determined Young had fired a total of five rounds.

At the time of the incident, Talavera was in possession of a black Smith and Wesson Border Guard folding knife with a four-inch blade.

Two expended rounds were located under two vehicles parked along the north curb of 1100 Decker Street directly west of where Talavera was lying in the street. One piece of copper jacketing and a piece of silver metal were located in the street in the 100 block of Decker Court, directly northwest of where Lovejoy and Young had been standing. A hole was located in the metal garage door of 198 Decker Court and plastic fragments were located under a Honda Civic vehicle parked inside of the garage.

Body Worn Camera

Lovejoy's BWC recording began while Lovejoy was standing at the driver side door of his patrol vehicle pointing his firearm downrange. Lovejoy yelled, "Do not move," and fired three rounds from his handgun. After a short pause, Lovejoy fired seven additional rounds and then inserted another magazine into his handgun. At 00:15, he yelled, "Do not reach for it. Do not move, do not reach for it." At 00:33, Lovejoy fired two additional rounds downrange. The camera view downrange was obstructed by the patrol vehicle's door pillar and spotlight at this point. Another voice commanded "Let me see your hands, put your hands out to your side." An additional voice in the background replied, "Fuck you." At BWC timestamp 00:51, Lovejoy stated, "I can't see what it is. He has a small black object in his hand." At 00:58, a deputy in the background said, "It's a knife." Other deputies then yelled, "Crawl away from the knife. Crawl to the sound of my voice. Crawl so we can help you." Lovejoy communicated by radio, "50P2, multiple shots fired, subject's down. He does have a knife, it appears now. We were able to locate. Still not complying with commands." In the background, Talavera was moaning and stated, "I can't move."

Young's BWC recording began as he arrived on scene. Young's patrol vehicle stopped behind Lovejoy's vehicle and Young exited the driver side of his patrol vehicle. At BWC timestamp 00:28, Lovejoy yelled, "Get on the fucking ground. Don't move." Young ran up to the passenger side of Lovejoy's patrol vehicle while airing on his radio, "Hot stop in progress." At 00:35 Talavera was in view as Young told Talavera to get on the ground. Lovejoy ordered Talavera not to move. At 00:36, Lovejoy and Young fired their handguns at Talavera. Talavera fell to the ground and dropped a black object in front of him. Young told Talavera not to reach for the object he had dropped. Talavera began inching his way toward the object. Both Lovejoy and Young yelled at Talavera not to reach for the item and to put his hands out. At 01:03, Talavera grabbed the object with his right hand and pulled it to his body. Lovejoy immediately fired two shots. Young commanded, "Stop. Let me see your hands." Talavera responded, "Fuck you." Young told Talavera again, "Let me see your hands." Talavera again responded, "Fuck you." Another deputy asked Young if the item is a gun and Young responded, "I saw a small black object." Young then ordered Talavera to put his arms out and then stated, "It's a knife." Young continued to give Talavera commands not to move and to keep his hands visible. Shortly after, Young and other deputies handcuffed Talavera and addressed his injuries.

Injuries

Talavera was transported to Sharp Memorial Hospital. Paramedics identified one gunshot wound in the lower right chest, five gunshot wounds in the left mid-clavicular, three gunshot wounds in the abdomen, four gunshot wounds in the mid-upper back, two gunshot wounds in the left flank and one gunshot wound in the left thigh. A total of 16 gunshot wounds were identified.

LE1 was struck in the left shin by a bullet fired from an easterly direction. He was transported to Sharp Memorial Hospital where he received medical attention. He sustained multiple bullet fragments embedded within the mid-leg soft tissue. Neither Lovejoy nor Young sustained any injuries as a result of this incident.

Criminal case

Talavera has been charged with three felonies as a result of this incident in case CE411201: one count of Penal Code section 69, Resisting and Executive Officer; one count of Vehicle Code section 10851(a), Unlawfully Taking and Driving a Vehicle; and one count of Penal Code 496d, Receiving a Stolen Vehicle. A preliminary hearing is scheduled for September 13, 2022.

Toxicology Report

A urine sample and a subsequent drug screen showed Talavera had amphetamines, benzodiazepines, and fentanyl in his system at the time of the incident.

Legal Standards of Criminal Liability

Penal Code section 835a(b) provides that “any peace officer who has reasonable cause to believe that a person they intend to arrest has committed a public offense, may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.”

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer’s use of deadly force. The law provides that “a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary, for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.” Penal Code section 835a(c)(1)(A).

“A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.” Penal Code section 835a(c)(2).

The statute provides definitions for “deadly force,” “imminent” and the “totality of circumstances” in Penal Code section 835a(e)(1) – (3).

““Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.” Penal Code section 835a(e)(1).

“A threat of death or serious bodily injury is “imminent” when based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.” Penal Code section 835a(e)(2).

“An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” Penal Code section 835a(e)(2).

“Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” Penal Code section 835a(e)(3).

“In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(2).

“[T]he decision by a peace officer 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 or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(4).

“A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section “retreat” does not mean tactical repositioning or other de-escalation tactics.” Penal Code section 835a(d).

Conclusion

Lovejoy and Young were responding to a suspected crime in progress when they encountered Talavera behind the wheel of a van towing a stolen trailer. Lovejoy drew his firearm and ordered Talavera to get on the ground. Instead of complying, Talavera threw his hands in the air, puffed his chest, and stated, “Just shoot me. Just shoot me.” Lovejoy and Young repeatedly gave Talavera commands. Talavera reached into his waistband and pulled out a black object that both deputies believed could have been a small firearm. Lovejoy and Young were faced with what they reasonably perceived to be an imminent threat of serious bodily injury or death.

After both deputies shot at Talavera he fell and dropped the object, but then Talavera began moving towards the object. Lovejoy and Young ordered him not to reach for it, but Talavera reached out and grabbed the item and tucked it into his body. Fearing Talavera was arming himself again, Lovejoy fired twice more. Talavera rolled over and threw the metal object in front of him. Lovejoy and Young recognized the metal object was a knife.

Talavera conveyed to the deputies that he did not intend to comply with their numerous commands. He told them to shoot him and brandished a weapon. Talavera created a deadly force situation by pulling a metallic black object from his waistband, an item both deputies believed could have been a small firearm. Both deputies attempted to de-escalate the situation by ordering Talavera to get on the ground, drop the black metal object, and not to reach for the object. Due to the distance between Talavera and both Deputies Lovejoy and Young, and due to Talavera presenting a perceived deadly weapon, it would have been unreasonable for either Lovejoy or Young to utilize less-lethal options.

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Under the totality of circumstances, Lovejoy and Young's actions do not meet the standard for state criminal liability. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,


SUMMER STEPHAN
District Attorney

cc: Captain Steve Bodine
San Diego Sheriff's Department