



OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF SHASTA



Stephanie A. Bridgett
District Attorney

Benjamin L. Hanna
Chief Deputy District Attorney

March 20, 2019

Chief Roger Moore
Redding Police Department
777 Cypress Ave.
Redding, CA 96001

Re: February 7, 2018 Officer Involved Shooting
Redding Police Department case 18-9945
Shasta County Sheriff case 18-4548
Involved Officers: Corporal Will Williams, #324
Officer Nick Weaver, #119
Involved Person: Levi Nicholson (DOB 6/9/79)

Chief Moore:

The Shasta County District Attorney's Office has completed an independent review of the above-referenced officer involved shooting incident. For purposes of this review, the district attorney's responsibility is to review the evidence and make a determination as to whether there is sufficient evidence to support the filing of criminal charges. Issues of policy, training, tactics, or civil liability were not considered. For the reasons set forth below, we conclude that the shooting was lawful.

Consistent with countywide officer involved shooting protocol, the lead agency in this investigation was the Shasta County Sheriff's Office with the assistance of the Shasta County District Attorney's Office, the California Highway Patrol, and the Redding Police Department. In conducting the investigation, sheriff's personnel and officers from allied agencies interviewed witnesses and collected physical evidence in an effort to gain a full and complete picture of the events that resulted in the shooting of Levi Nicholson. The findings of the district attorney are based upon a review of the totality of the materials compiled in the multi-agency investigation.

FACTUAL SUMMARY

At approximately 8:15 am on February 7, 2018, Redding Police received a report that a male had attempted to steal an energy drink from Power Mart, located at the intersection of Lake Boulevard and Oasis Road in Redding. It was further reported that the male was acting strangely. Police responded but were unable to locate this male.

Another report was received at around 11:00 am reporting a male attempting to steal from Lake Liquors, a short distance down Lake Boulevard from the Power Mart. It was further reported that this male was armed with a baseball bat and had used the bat to break the window of a vehicle in the parking lot. The male was then seen running north with the bat towards Hiatt Drive and Buckeye School of the Arts. Once again, police responded, but were unable to locate the subject.

Later investigation revealed that Levi Nicholson was the person involved in both incidents.

At approximately 12:43 pm, staff at the Buckeye School of the arts called 911 to report a suspicious male on campus holding a baseball bat. School staff made the decision to lock down the campus as a safety precaution. Redding police officers were dispatched to the scene at 12:47 pm. Corporal Will Williams arrived in the area one minute later. Corporal Williams was already in the vicinity monitoring the area due to the earlier calls involving Nicholson.

As Corporal Williams arrived in the area of the school on Hiatt Drive, a school employee was in the process of escorting Nicholson off the campus. With the school employee following, Nicholson proceeded northbound on Hiatt Drive down the driveway of the residence located at 3440 Hiatt Drive. Shortly after Corporal Williams arrived, Redding Police Officer Nicholas Weaver and his police canine also arrived on scene. Williams and Weaver went into the back yard at 3440 Hiatt where Nicholson had gone. The Buckeye school employee had also followed Nicholson into the back yard.

While in the backyard of 3440 Hiatt, Nicholson was still armed with a bat. Corporal Williams and Officer Weaver withdrew their service firearms and pointed them at Nicholson, simultaneously giving him commands to stay where he was and put the bat down. Numerous civilian witnesses interviewed after the incident reported hearing the officers give these commands. These civilians further reported that it appeared that the officers did all they could do to avoid having to shoot Nicholson. Nicholson did not comply with the officers' commands.

While the Redding Police officers were holding Nicholson at gunpoint, two Shasta County Sheriff's deputies arrived to assist. These deputies described the Redding officers as giving commands to Nicholson. They further described Nicholson as noncompliant with the commands.

Witnesses further described Nicholson as moving the bat around and making swinging motions. Nicholson then began advancing toward the officers while still holding the bat in a threatening manner. At the point he began advancing, Nicholson was approximately 20 feet away from Corporal Williams. Corporal Williams and Officer Weaver responded by firing their service weapons striking Nicholson.

After being shot, the officers approached him to try to take him into custody. Nicholson was still holding onto the bat and was noncompliant with the officers' and deputies' attempts to take him into custody. At one point, he attempted to bite one of the officers. Officer Weaver deployed his police canine. With the added assistance of the dog, Nicholson was taken into custody. Nicholson was taken to a local hospital where he was provided medical treatment.

Following the shooting, an extensive analysis of the crime scene was conducted. Investigators recovered the weapon possessed by Nicholson lying near where he was shot. This weapon was a black aluminum 24 inch long baseball type bat. This bat was consistent with the description of numerous witnesses that had seen Nicholson with a bat throughout the day.

Crime scene investigators recovered a total of ten shell casings matching RPD-issued ammunition in two groupings. These groupings were consistent with law enforcement officers and witnesses statements as to where the officers were located when they fired their weapons. The location of these casings supports a finding that Nicholson advanced on officers after he fled into the back yard of 3440 Hiatt Drive.

Investigators interviewed numerous civilians in connection with this investigation. All witnesses who observed the incident or came into contact with Nicholson that morning, reported seeing a black bat in Nicholson's hand. Numerous individuals reported hearing yelling and commands to put down the bat prior to hearing any gunshots by the officers.

As part of the investigation, investigators sought out those who had contact with Nicholson prior to his arrival at the Power Mart. Many of these witnesses were friends or family members of Nicholson. These witnesses described Nicholson as acting strange and paranoid. They also confirmed that he was in possession of a black baseball bat.

Investigators also interviewed Nicholson himself. This interview took place while Nicholson was still admitted to the hospital five days after the shooting. When asked why he was in the hospital Nicholson told investigators it was because he had a metal bat which he held up on officers. He stated the officers told him to put the bat down or they were going to shoot him, 'but I kind of wanted to get shot.' He admitted that he held the bat above his head and the officers had pleaded with him to put the bat down and he did not. Nicholson later told investigators that he came at the officers with the bat because "he wanted to die."

As a result of his assault upon the officers with the bat, criminal charges were filed against Nicholson. He pled guilty to assault with a deadly weapon on a police officer and was sentenced to a total of 10 years, 8 months in state prison.

LEGAL ANALYSIS

California law allows a peace officer to use reasonable force in order to detain or arrest a person, prevent the person's escape, or overcome the person's resistance if the force used is reasonable and if the officer has reasonable cause to believe that the person has committed a public offense or is a danger to others. (California Penal Code §835a, CALCRIM 2670.)

Under certain circumstances, reasonable force includes deadly force. Use of deadly force by a police officer is appropriate when the officer *honestly and reasonably* believes he or she is in danger of death or great bodily injury. (CALCRIM 505, 507, 3470.) A police officer has the same right of self-defense as any other person.

Whether force is reasonable is judged from the perspective of a reasonable officer on the scene. The concept of reasonableness should allow for the often split-second decisions that officers are forced to make in rapidly evolving situations. (*Graham v. Connor* (1989) 490 U.S. 386.)

In this case, Corporal Williams and Officer Weaver were confronted by a person armed with a weapon who was behaving unpredictably and erratically. Nicholson refused to comply with their commands and continued to make threatening motions with the bat. Nicholson became an even greater threat to the officers when he chose to advance toward them while armed with a deadly weapon. A bat such as the one wielded by Nicholson has the capacity to seriously injure or kill a human being. Once Nicholson began to advance with the bat, it was entirely reasonable for the officers to believe he posed a significant threat of death or great bodily injury. They were therefore under no obligation to refrain from using deadly force. Their use of deadly force was lawful to protect themselves, each other, and the public.

CONCLUSION

Given the circumstances, the officers were justified in their actions. We find the shooting to be lawful and will take no further action in this matter.

Sincerely,



STEPHANIE A. BRIDGETT
DISTRICT ATTORNEY

cc: Tom Bosenko, Shasta County Sheriff
cc: Corporal Will Williams, Redding Police Department
cc: Officer Nicholas Weaver, Redding Police Department