

Officer Involved Shooting of Timothy Elam

California Highway Patrol

Officer Adrian Gutierrez #16330

J.S.I.D. File #17-0432



JACKIE LACEY

District Attorney

Justice System Integrity Division

March 6, 2019

MEMORANDUM

TO: ASSISTANT CHIEF DAN MINOR
California Highway Patrol
Southern Division
411 N. Central Avenue, Suite 410
Glendale, California 91203

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Timothy Elam
J.S.I.D. File #17-0432
C.H.P. File #F0963-509-17

DATE: March 6, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 6, 2017, fatal shooting of Timothy Elam by California Highway Patrol (CHP) Officer Adrian Gutierrez. We have concluded Officer Gutierrez acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 7:16 a.m. on September 6, 2017. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted to this office by CHP Investigator Martin Gellar. Gutierrez' voluntary statement was considered as part of this analysis.

FACTUAL ANALYSIS

On Wednesday, September 6, 2017, at approximately 5:54 a.m., Timothy Elam approached the south entrance of the Ronald Reagan State Building, located at 300 South Spring Street in the City of Los Angeles. The building was not yet open for business, and the door was locked.¹ Elam knocked on the center entrance door. Inter-Con Security Guard Sebron J. opened the north entrance

¹ Employees who work in the building have access cards that allow them entry into the building during hours when the building is not open to the public.

door. Elam approached that door and spoke to Sebron through the open doorway. Elam told Sebron he had a gun, while simultaneously pointing to a bulge in his waistband.²



Surveillance video stills of Elam outside the Ronald Reagan State Building

Sebron told Elam he would “get someone to help him,” while closing the door. Via radio, Sebron notified Inter-Con Security Guard Ivan C. of Elam’s presence and his allegation of being armed with a firearm. Ivan conveyed the information to Inter-Con Security Captain Lisa A., who advised him to call 9-1-1. Ivan, who was monitoring the surveillance video feed of the interior and exterior of the lobby, did so.

Lisa then utilized the surveillance cameras to observe the parking structure of the building to ascertain whether any CHP personnel were present in the Ronald Reagan State Building. Lisa observed Officer Adrian Gutierrez’ vehicle in the structure. Gutierrez had arrived at the building approximately 30 minutes prior. Gutierrez was off-duty at the time and was taking a nap prior to his regular shift commencing at 9:00 a.m. Lisa contacted Gutierrez on his cell phone and advised him of Elam’s presence and claim to be armed with a gun.

² Sebron’s contact with Elam, as well as all events which subsequently took place inside the lobby of the building, were captured on surveillance video. Stills from that video will be used throughout this memorandum to show what the video captured at various times.

Gutierrez was inside the CHP patrol substation, located inside the Ronald Reagan State Building, when he received the call. Gutierrez looked out a window and observed Elam pacing outside the building. He also saw that Elam had his hand inside his waistband, and had a bulge in his waistband.

Believing that Elam might be armed with a firearm, Gutierrez elected not to take the time to change into his CHP uniform, but donned an external tactical police vest marked with the word "Police." Gutierrez also retrieved a CHP tactical rifle and loaded a round into the chamber before making his way to the lobby of the building.

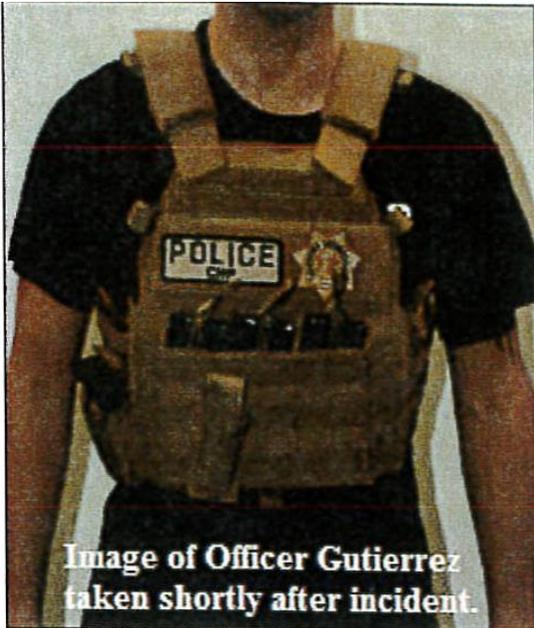


Image of Officer Gutierrez taken shortly after incident.

Gutierrez wearing tactical vest

As Gutierrez was being notified of his presence, Elam remained out in front of the building, pacing back and forth in front of the doors and on the sidewalk. Elam had concealed his right hand under his shirt in his front waistband area near a visible bulge. Several employees entered or exited the building as Elam paced in front.

An employee who worked in the building, Amy S., used her access card to enter the lobby from outside. Amy ran towards the door, having observed Elam approaching her quickly with his hand concealed underneath his shirt. As Amy entered the building, she did not realize Elam was following her in. Sebron observed Amy entering the building, followed by Elam. Sebron told Elam he was not allowed in the building. Elam retrieved a paper bag from his waistband and began brandishing it at Sebron while standing in a shooting stance.



Elam brandishing paper bag while in shooting stance

Elam ordered Sebron and Amy, who had made her way towards the elevators, to get on the ground, saying “I’ll shoot you!” Amy ran to Sebron’s location and both got on the ground, with Sebron placing himself over Amy to shield her. Sebron was not armed with a firearm, but was carrying a radio/walkie talkie. Elam asked him, “You got a gun?” to which Sebron replied, “No.” Elam ordered Sebron to remove his radio from his pocket and place it on the ground, saying “I’ll kill you!”³ When Sebron did so, Elam kicked it away from him. Elam then began backing up towards the entrance door. Sebron assumed another employee had entered the building based upon Elam’s reaction, but could not see anyone due to his position on the ground.

During this time Donovan T., another employee, had entered the building. Elam ordered Donovan to get on the ground. Donovan complied and observed Elam pointing an unknown object at him. Elam walked towards Donovan, asking whether or not he had a gun. Elam stood over Donovan, pointing the paper bag at him as if it was a firearm.⁴ Donovan heard Elam mutter, “It didn’t have to be like this.”

³ Both Sebron and Amy told investigators they believed Elam was armed with a firearm and feared for their lives.

⁴ Donovan believed the item inside the paper bag pointed at him was probably a gun based upon the shape and size of the object, as well as the manner in which Elam was pointing it. Ivan, who was watching the events via surveillance monitor, also believed Elam had a gun.



Surveillance still from immediately before Gutierrez fired his service weapon

As Elam was standing over Donovan pointing what appeared to be a gun inside a paper bag at him, Gutierrez entered the lobby. Elam did not appear to notice Gutierrez' approach until Gutierrez ordered him to "Drop the gun!" twice. Elam did not comply, instead turning to point the object at Gutierrez, in a shooting stance. Gutierrez, fearing for his life and the lives of others in the lobby, fired three rounds from his service weapon, striking Elam twice.



Surveillance still of Gutierrez firing his service weapon as Elam turns towards him

A subsequent search of the paper bag revealed it contained two crushed energy drink cans and no firearm.

Paramedics responded to the location and pronounced Elam dead at the scene. An autopsy was conducted on September 10, 2017, by Deputy Medical Examiner Doctor Matthew Miller. The cause of death was determined to be one gunshot wound to the head with a contributing factor being a gunshot wound to the shoulder. A toxicology screen done at the time of the autopsy indicated Elam had methamphetamine, amphetamine, MDMA and marijuana in his system at the time of his death.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App.175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight.... 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, 396-397.

CONCLUSION

In the instant matter, Gutierrez was aware that Elam had announced that he was armed prior to entering the building, personally observed him pacing outside the building with his hand obscured near his waistband in a manner consistent with carrying a firearm. He saw Donovan cowering on the ground as Elam stood over him pointing his hands in a manner which any reasonable person would believe was consistent with having a gun. Gutierrez entered the lobby to find Elam holding three building employees hostage with what appeared to be a firearm concealed in a paper bag. The entire incident was captured on video, and it is clear from the video, as well as the witness statements, that Sebron, Amy and Donovan also believed Elam had a gun. The size and shape of the bag, the manner in which it was used, Elam's stance and his statements, including telling Sebron, "I'll shoot you," are all consistent with Elam having a firearm. Under these circumstances, Gutierrez' belief that Elam was armed and posed an imminent threat to himself and others in the lobby was reasonable.

We find that Officer Gutierrez acted lawfully in self-defense and in the defense of others when he used deadly force against Timothy Elam. We are closing our file and will take no further action in this matter.