

**Officer Involved Shooting of Jonathan Sullivan
La Habra Police Department**

Officer Michael Costanzo, #503

J.S.I.D. File #15-0676



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 28, 2016

MEMORANDUM

TO: CHIEF JEFF A. PIPER
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CAPTAIN GEORGE JOHNSTONE
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Jonathan Sullivan
J.S.I.D. File #15-0676
W.P.D. File #2015-00010521

DATE: July 28, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 27, 2015, non-fatal shooting of Jonathan Sullivan by La Habra Police Department (LHPD) Officer Michael Costanzo. It is our conclusion that Officer Costanzo acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on December 27, 2015, at approximately 9:20 p.m. The District Attorney's Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to our office by Whittier Police Department Detectives Chad Hoepfner and Sergio Lopez. The reports include photographs, videos, audio-recorded interviews of witnesses, and radio transmissions. The voluntary statement of Officer Michael Costanzo was considered in this analysis.

FACTUAL ANALYSIS

Background:

On December 27, 2015, a Los Angeles County Sheriff's deputy was a victim of an auto burglary where he discovered his gun, flat badge and wallet containing credit cards were taken from the center console of his vehicle. He contacted LHPD and reported the crime. The deputy checked his credit card activity on-line and discovered unauthorized activity at a gas station and Walmart.

The deputy and LHPD detectives contacted Walmart security and were able to view surveillance video which depicted a male, later identified as Jonathan Sullivan, and a female, later identified as Nicole Lee, using the deputy's credit card. Sullivan and Lee were also seen on video in a truck.¹ Later the same day, Lee returned to the same Walmart and attempted to use the credit card again. Lee was detained and arrested at the Walmart for using the stolen credit card. Lee advised LHPD detectives that the credit card was given to her by Sullivan, who also sent her a picture via text message of a gun he obtained. Lee gave the detectives additional information which led them to Sullivan's location. LHPD undercover Detectives Hentcy and Irwin, followed Sullivan for hours while he was driving his truck in the hopes of Sullivan leading them to the deputy's stolen items.

At approximately 7:30 p.m., Sullivan entered the driveway of his residence located at 10340 Tigrina Avenue in the City of Whittier. Hentcy and Irwin advised uniformed LHPD Officer Michael Costanzo, who was aware of the operation and driving an LHPD marked police unit, of Sullivan's location and requested a traffic stop be conducted. Costanzo pulled up to the residence while Sullivan was still in his car, and attempted to make contact with him. Sullivan exited his truck, running. Costanzo ordered Sullivan to stop, but he fled on foot eastbound in the driveway. Costanzo engaged in a short foot pursuit of Sullivan who fled to a walkway between the property's garage and a neighboring garage. Sullivan turned toward Costanzo while he was in between the two garages and pointed a handgun at Costanzo. In fear for his life, Costanzo fired his weapon one time at Sullivan, striking him in the left arm.

Officer Michael Costanzo Statement:

Costanzo was informed of an ongoing investigation that was being conducted where a Los Angeles County Sheriff deputy's vehicle had been burglarized. The deputy's firearm, badge, and wallet containing credit cards were stolen. Costanzo was aware that during the course of the investigation, Sullivan and Lee had used the victim's credit card at Walmart. Officers were dispatched to Walmart when Lee attempted to make a second purchase utilizing the stolen credit card and Lee was arrested.

Based on the arrest of Lee, investigators identified Sullivan as a potential person of interest. Costanzo stated there was a photo depicting Sullivan in possession of the outstanding firearm that was provided by Lee. While in the field, Costanzo overheard a broadcast requesting a patrol vehicle to conduct a traffic stop on the vehicle.

Costanzo was directed by Hentcy and Irwin to conduct a traffic stop on Sullivan as they were traveling southbound on Tigrina Avenue. Sullivan made a right turn into the driveway of his residence on Tigrina Avenue. Sullivan accelerated before coming to a stop behind a parked vehicle, leading Costanzo to believe Sullivan was going to run.

As Sullivan exited his vehicle and closed the door, Costanzo could see a black handgun in Sullivan's right hand. Sullivan turned away from Costanzo and ran eastbound toward a detached garage. Costanzo began a foot pursuit of Sullivan and was able to close the distance on him. He

¹ The truck depicted in the Walmart video surveillance was a blue 2006 Chevrolet Silverado registered to Jonathan Paul Sullivan.

saw Sullivan climbing onto a three foot fence that led to the backyard of Sullivan's residence. Costanzo could clearly see the black handgun in Sullivan's right hand.

Costanzo ordered Sullivan to, "Stop, get on the ground! Police! Get on the ground!" Costanzo yelled commands at Sullivan to stop between five and six times. Sullivan slipped as he was attempting to climb the fence and spun around in the direction of Costanzo, pointing the gun at Costanzo. Believing that Sullivan was about to shoot him, Costanzo fired his service weapon at Sullivan. Sullivan threw the gun over the fence and Costanzo approached Sullivan to detain him. Hentcy assisted Costanzo in pulling Sullivan down to the ground where he was handcuffed and taken into custody.²

Costanzo was armed with a department issued Springfield Armory XD .45ACP tactical semiautomatic pistol.

Jonathan Sullivan's Statement:

Sullivan was given his Miranda rights, which he stated he understood and waived. Sullivan stated he was given a firearm and several credit cards he knew were stolen from a police officer's vehicle. Sullivan admitted he sent Lee a text message inviting her to use the stolen credit card and also admitted sending Lee a photo of the gun.

Sullivan admitted he drove Lee to Walmart where she was able to use the credit card to purchase electronic items. Sullivan stated that Lee went back to Walmart to use the credit card a second time. Sullivan got scared when Lee did not show up and he saw a police officer in the parking lot. Sullivan left the parking lot in an attempt to get rid of the firearm that was in his possession. Sullivan saw a patrol car as he was about to turn on Whittier Boulevard from Macy Avenue, behind him. Fearing that he might get stopped, he drove back to his residence.

Sullivan admitted seeing the patrol vehicle behind him with lights on but was afraid to pull over because he had a stolen gun. Sullivan exited his vehicle with the gun in his hand and took off running. Sullivan recalled hearing Costanzo tell him to "Get the fuck down." Sullivan denied trying to jump over a fence but stated he was trying to make his way through the trashcans in an attempt to get away. Sullivan stated he did not point the gun at Costanzo and believed Costanzo shot him while his back was turned toward him. Sullivan stated he felt bad for what he did and stated he not only put himself but also Costanzo in a situation that could have turned out a lot worse. Sullivan stated he wanted to apologize to Costanzo and further stated it was his fault he ran like he did and Costanzo was just doing his job.

² Detectives Hentcy and Irwin stopped their unmarked vehicle at the mouth of Sullivan's driveway, at an angle. Hentcy recalled seeing Costanzo and Sullivan exiting their vehicles at nearly the same time. Hentcy saw Sullivan run eastbound out of his view and heard Costanzo yell to Sullivan to get down on the ground. Hentcy heard a gunshot but was not able to see whether Sullivan had a gun. Hentcy, however, did recover the gun Sullivan threw over the fence. Irwin stated he maneuvered his unmarked vehicle at Sullivan's driveway at an angle. Irwin saw Costanzo exit his vehicle immediately after placing it in park and pursue Sullivan who also immediately exited his vehicle and started running. Irwin heard Costanzo yell to Sullivan repeatedly to get on the ground. Irwin heard one gunshot but was not able to see Sullivan in possession of a firearm from where he was positioned. Irwin heard Sullivan state repeatedly, "I fucked up."

Sullivan sustained a single gunshot wound that entered the front side of his left arm and exited through the back side of his left arm near his elbow.

Sullivan was armed with a fully loaded Smith and Wesson air weight .38 special handgun that was recovered from the scene.

Sullivan was charged in case VA140883 with one count of Penal Code section 245(d) (1), assault with a firearm on a police officer. A preliminary hearing setting is scheduled for September 7, 2016.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he 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.

“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.

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.*

An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. “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 evidence examined in this investigation shows that Officer Costanzo attempted to make a traffic stop on Sullivan who, instead of pulling over, accelerated, came to a stop, and exited his vehicle running with a gun in his right hand. Costanzo exited his vehicle and ran after Sullivan. Sullivan turned toward Costanzo, pointing his gun in his direction. In fear for his life, Costanzo fired one shot at Sullivan, striking him in the left arm.

We conclude that Officer Costanzo was placed in reasonable fear of death or great bodily injury by Sullivan's actions and acted lawfully in self-defense and defense of others when he used force. We are therefore closing our file and will take no further action in this matter.