

06-214775
ORIGINAL



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. BESEMER
CHIEF DEPUTY

March 29, 2007

Albert Najera, Chief of Police
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

Re: Officer-involved shooting – Case No. SPD-06-214775

Shooting officers – Ryan Hergenreder, #678
John Hewitt, #639

Person shot – Christopher Chad Mitchell (DOB: 12/26/1978)

Dear Chief Najera:

The District Attorney's Office, as an independent agency, has concluded its investigation and analysis of the above referenced officer involved shooting. The materials we considered included SPD report 06-214775, the crime scene video, crime scene photos, and Sacramento County District Attorney file 06F05605. Civil liability, tactics, and departmental policies and procedures were not considered. Based upon the facts of this incident, we have concluded that the shooting of Christopher Mitchell was lawful.

FACTS

On June 21, 2006, around 3:04 am, uniformed SPD Officers Ryan Hergenreder and Jason Hewitt were on routine patrol in a marked SPD vehicle when they received a dispatch call concerning a possible suicidal subject, later identified as Christopher Mitchell, who had text messaged his

SPECIAL INVESTIGATIONS

P.O. Box 749 * 901 G Street * Sacramento, California 95814
(916) 874-5897 FAX (916) 874-8238

friend, later identified as [REDACTED] that he wanted to die via "suicide by cop." Further, the officers were told over the police radio that Mitchell had attempted "suicide by police" in the past.

Officers Hergenreder and Hewitt went to Mitchell's home at [REDACTED] and spoke to his grandparents with whom he resided. They said Mitchell had attempted "suicide by cop" a year earlier in New Orleans. Officer and Hergenreder checked the house and determined Mitchell was not there.

They learned that Mitchell was likely driving his green KIA Rio sedan and that he was probably in the area of 12th Avenue, near Franklin Boulevard. As they drove in this area, they saw Mitchell driving his green KIA Rio in a reckless manner as it turned northbound onto Franklin Blvd. Mitchell then made a left turn onto Montgomery Way. As the officers followed Mitchell, he made an abrupt stop and u-turn, thereby facing his vehicle about 2 ½ car lengths away from the officers in their vehicle. Officer Hewitt stopped their vehicle with Officer Hergenreder arming himself with the vehicle's department issued 12 gauge police shotgun.

Then, Officer Hergenreder took up a position behind his open front passenger door while Officer Hewitt positioned himself behind the open driver's door. They yelled at Mitchell to put his hands up and turn off his ignition. Instead he flicked his high beams on and off and repeatedly revved his engine. The patrol vehicle's headlights were on but the emergency lights were not on because they had not intended to stop Mitchell until they had other officers to assist.

Meanwhile, Mitchell quickly accelerated his vehicle, driving it into the front of the patrol vehicle. Just prior to impact, Officer Hergenreder fired his shotgun one time at Mitchell's vehicle. Additionally, Officer Hewitt fired several rounds from his department issued Sig Sauer P226 semi-automatic .40 caliber handgun at Mitchell's vehicle. When Mitchell's vehicle struck the patrol car, the impact knocked Officer Hergenreder backwards and to the ground, causing him to drop his shotgun. Both officers were afraid Mitchell would ram their vehicle again and possibly run over one of them, so they fired several shots at Mitchell's vehicle. The officers eventually fired approximately 12 rounds from their handguns.

Shortly thereafter, Mitchell got out of his vehicle while yelling for the officers to shoot him. Mitchell then turned and began walking away from the officers. They caught up with Mitchell, whereupon, Officer Hewitt "tasered" him with the department issued Taser, causing Mitchell to fall to the ground. Hewitt then handcuffed Mitchell.

Mitchell was bleeding, and was transported to the UCD Medical Center where he was examined and a blood sample was taken. There, it was determined that while none of the bullets actually struck Mitchell, he had received several small cuts to his face and upper chest, apparently from the windshield glass broken and blown back towards him when the officers fired at his vehicle. The toxicology test determined that he did not have any drugs in his system and his blood alcohol level was 0.14%.

ORIGINAL

On June 22, 2006 (the day after the shooting), around 2:50 p.m., SPD Sergeant Michael Poroli #3103 advised Mitchell of his Miranda rights, which Mitchell waived. Mitchell related that on the day of this incident he had become upset over the actions of his Sacramento County Probation Officer Al Thomas. Officer Thomas had searched Mitchell's house on June 20, 2006 (the day before the shooting), and confiscated his old security work uniforms from the Transportation Safety Administration, his Sacramento County Explorer uniforms from Elk Grove High School and his BB pistol. He was also upset because during the search some of his deceased cat's things were disturbed. Additionally, he was still emotional over having recently broken up with his boyfriend.

Being upset and depressed, he said he went to The Depot Bar around 8:30 a.m. and drank two to three vodka drinks, talked about suicide and then went home around 1:30 a.m. Still depressed, he drove around Franklin Blvd in his green Kia Rio, and said he probably text messaged his friend [REDACTED] about wanting to die via "suicide by cop."

When he saw Hergenreder's SPD vehicle following him, he decided he might as well die. To get the police to kill him, he drove his vehicle towards the officers so they would believe their lives were in danger and be forced to shoot him. He said he wished he had been successful in his "suicide by cop" plan.

At the time of this incident, Mitchell was on formal probation in Sacramento County following [REDACTED] aggravated assault with a shotgun on two police officers in New Orleans, Louisiana. The facts underlying these assaults occurred on November 29, 2004, when he fired multiple shotgun blasts at the police vehicle of a New Orleans police officer who had arrived to investigate Mitchell's suicide threats. When other officers arrived to assist, Mitchell also fired at them. The officers fired their guns in return, critically wounding Mitchell. None of the officers were injured.

As a result of his conduct in the City of Sacramento incident, Mitchell is charged in case 06F05605 with two felony violations of Penal Code §245(c) along with a strike prior and a five year prison prior. He faces up to 18 years in state prison. His case is set for preliminary hearing on April 18, 2007.

ANALYSIS

In situations where it is reasonably necessary to defend oneself or others from death or serious bodily injury, the use of deadly force is legally justified. (California Penal Code § 197; *People v. Ceballos* (1974) 12 Cal.3d 470, 482-483; CALCRIM 505, 3470) The law does not require actual danger. The appearance of imminent death or serious bodily injury to oneself or others is sufficient justification, so long as the fear is genuine, objectively reasonable and the basis for the use of deadly force. (California Penal Code § 197(3); *In re Christian S.* (1994) 7 Cal.4th 768; CALCRIM 505, 3470)

Here, Officers Hergenreder and Hewitt fired upon suspect Mitchell because they believed Mitchell was about to inflict great bodily harm or death upon them. Their belief was reasonable

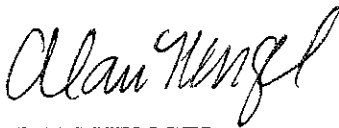
under the circumstances. Mitchell was driving his vehicle at the officers' patrol car in a manner which could have easily caused them great bodily harm or death. Further, Mitchell had said he wanted to die via "suicide by cop" and just one year earlier had attempted to shoot multiple New Orleans police officers after Mitchell threatened to kill himself.

Under these circumstances, Officers Hergenreder and Hewitt were reasonable in believing that they were about to be seriously injured or killed. Thus, they were justified in using their service weapons to defend themselves.

Finding the shooting lawful, we will take no further action in this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY



ALAN HENGEL
Deputy District Attorney

cc: ✓ SPD Sergeant Fern Enriquez
SPD Officer Ryan Hergenreder
SPD Officer Jason Hewitt
Don Casimere

MEMORANDUM**SACRAMENTO POLICE DEPARTMENT**

Professional Standards Unit

**DATE:** August 3, 2006**REF:** PSU 08- 03**TO:** Albert Nájera
Chief of Police**ATTN:** Steve Segura, Deputy Chief
Office of Operations/InvestigationsScott LaCosse, Captain
Internal Affairs**FROM:** Rudy Chan, Sergeant
Professional Standards Unit**RE:** Shooting Review Disposition W06-07

A shooting review was held on Wednesday, August 2, 2006 during the management session of Infocom. All findings were made with the concurrence of the Deputy Chief, Office of Operations/Investigations. Those in attendance were:

Deputy Chief Segura
Capt. McCarthy
Capt. Matthes
Capt. Valenzuela
Lt. Jensen
Lt. Gardner
Lt. Peletta
Lt. Dowden
Lt. Schneider
Sgt. Enriquez
Sgt. Greenlee
John Green

Deputy Chief Braziel
Capt. Somers
Capt. Hahn
Lt. Bernard
Lt. Sweeney
Lt. Campas
Lt. Rehm
Lt. Beerman
A/Lt. Kidd
Sgt. McCloskey
Sgt. Chan
Don Casimere (OPSA)

Capt. J. Schiele
Capt. Louie
Capt. LaCosse
Lt. Quinn
Lt. Reese
Lt. Haynes
Lt. Brown
Lt. Maccoun
A/Lt. Pease
Sgt. Hendrickson
Ofc. Von Schoech

The following is the recommendation for the shooting:

W06-07**JUSTIFIED**

Officers involved
Hergenreder/Hewitt

Presenter
Sgt. Enriquez

Division Commander
Capt. Somers

Summary:

On 6/21/2006, at approximately 0304 hours, SPD dispatch received a call from complainant [REDACTED] stating that his friend Chad Mitchell was drunk and wanted to commit suicide by cop. Complainant [REDACTED] stated that Mitchell had attempted suicide by shooting at New Orleans Police approximately one year earlier and was wounded but not killed. [REDACTED] gave a physical description of Mitchell as well as the vehicle (2002 KIA) that he was driving. Sergeant Pat Kohles and patrol officers gathered information on subject Mitchell and responded to his residence at [REDACTED] in an attempt to contact him. The vehicle was not at the residence and the officers cleared the interior of the house with negative results. The officers gathered further information on Mitchell to include the license plate of the KIA from witness [REDACTED] who also lived at the location. An updated information broadcast was made by dispatch for a welfare check of the vehicle and occupant.

At approximately 0422 hours, FTO Brian Hergenreder and his phase trainee Officer Jason Hewitt spotted the KIA on Franklin Boulevard and followed it westbound on Montgomery Way from Franklin. The KIA stopped at the west end of Montgomery Way near Curtis Park and turned around to face the squadcar. Officer Hergenreder and Hewitt exited their patrol car and took positions in the "V" of their open car doors. The officers shouted commands towards the driver. The driver of the KIA (Mitchell) flashed his headlights and revved his engine. He then accelerated towards the squadcar to ram it. At this point, Officer Hergenreder fired two rounds from his issued Remington 870 shotgun. Both rounds impacted on the vehicle. The first round hit the windshield on the driver's side but did not penetrate the safety glass. The second shotgun round hit the hood of the KIA on the driver's side. Officer Hewitt moved back to the rear of the squadcar for additional cover. The KIA struck the front of the squadcar, knocking Officer Hergenreder to the ground and causing him to lose hold of his shotgun. Officer Hewitt saw Officer Hergenreder fall to the ground.

Officer Hewitt fired a total of 13 rounds from his .40 cal pistol at the suspect, who had backed the KIA away from the squadcar. Officer Hewitt moved to the cover of a parked SUV, while engaging the threat and reloading his pistol. Officer Hergenreder moved away from his squadcar to the cover of an adjacent tree and engaged the threat with his .40 cal pistol. Officer Hergenreder fired a total of 12 rounds. The officers then continued to give verbal commands to the suspect who was still seated in the KIA. Sgt. Kohles and other cover officers arrived onscene as the suspect Mitchell exited his vehicle. The suspect refused orders to get on the ground as officers held him at gunpoint. Sgt. Kohles directed Officer Hewitt to deploy his CED. Officer Hewitt discharged his CED and Mitchell fell to the ground and was taken into custody without further incident. Of the 25 pistol rounds in total fired by both officers during the incident, 14 rounds hit the KIA and another 11 were unaccounted for. No collateral damage was found.

Recommendations:

During discussions, Capt. Somers stated that his only concern was the number of rounds fired during the incident. A/Lt. Kidd asked if the involved officers had been debriefed as to what type of shooting technique they used during targeting of the suspect; and whether they had used natural point or sighted shots depending on the range of the threat which would be in accordance with department training. Lt. Jensen stated that the officers were debriefed on their actions during the mandatory officer involved shooting re-qualification with the Department Rangemaster. Deputy Chief Segura directed that the Training Division contact officers who are or have been recently involved in officer involved shootings and inquire as to what targeting techniques they use or were using (i.e. natural point or sighted shots) to find out what officers are doing.

OFFICE OF THE

DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEYCYNTHIA G. BESEMER
CHIEF DEPUTY

March 29, 2007

Albert Najera, Chief of Police
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

Re: Officer-involved shooting – Case No. SPD-06-214775

Shooting officers – Ryan Hergenreder, #678
John Hewitt, #639

Person shot – Christopher Chad Mitchell (DOB: 12/26/1978)

Dear Chief Najera:

The District Attorney's Office, as an independent agency, has concluded its investigation and analysis of the above referenced officer involved shooting. The materials we considered included SPD report 06-214775, the crime scene video, crime scene photos, and Sacramento County District Attorney file 06F05605. Civil liability, tactics, and departmental policies and procedures were not considered. Based upon the facts of this incident, we have concluded that the shooting of Christopher Mitchell was lawful.

FACTS

On June 21, 2006, around 3:04 am, uniformed SPD Officers Ryan Hergenreder and Jason Hewitt were on routine patrol in a marked SPD vehicle when they received a dispatch call concerning a possible suicidal subject, later identified as Christopher Mitchell, who had text messaged his

SPECIAL INVESTIGATIONS

P.O. Box 749 * 901 G Street * Sacramento, California 95814
(916) 874-5897 FAX (916) 874-8238

friend, later identified as [REDACTED] that he wanted to die via "suicide by cop." Further, the officers were told over the police radio that Mitchell had attempted "suicide by police" in the past.

Officers Hergenreder and Hewitt went to Mitchell's home at [REDACTED] and spoke to his grandparents with whom he resided. They said Mitchell had attempted "suicide by cop" a year earlier in New Orleans. Officer and Hergenreder checked the house and determined Mitchell was not there.

They learned that Mitchell was likely driving his green KIA Rio sedan and that he was probably in the area of 12th Avenue, near Franklin Boulevard. As they drove in this area, they saw Mitchell driving his green KIA Rio in a reckless manner as it turned northbound onto Franklin Blvd. Mitchell then made a left turn onto Montgomery Way. As the officers followed Mitchell, he made an abrupt stop and u-turn, thereby facing his vehicle about 2 ½ car lengths away from the officers in their vehicle. Officer Hewitt stopped their vehicle with Officer Hergenreder arming himself with the vehicle's department issued 12 gauge police shotgun.

Then, Officer Hergenreder took up a position behind his open front passenger door while Officer Hewitt positioned himself behind the open driver's door. They yelled at Mitchell to put his hands up and turn off his ignition. Instead he flicked his high beams on and off and repeatedly revved his engine. The patrol vehicle's headlights were on but the emergency lights were not on because they had not intended to stop Mitchell until they had other officers to assist.

Meanwhile, Mitchell quickly accelerated his vehicle, driving it into the front of the patrol vehicle. Just prior to impact, Officer Hergenreder fired his shotgun one time at Mitchell's vehicle. Additionally, Officer Hewitt fired several rounds from his department issued Sig Sauer P226 semi-automatic .40 caliber handgun at Mitchell's vehicle. When Mitchell's vehicle struck the patrol car, the impact knocked Officer Hergenreder backwards and to the ground, causing him to drop his shotgun. Both officers were afraid Mitchell would ram their vehicle again and possibly run over one of them, so they fired several shots at Mitchell's vehicle. The officers eventually fired approximately 12 rounds from their handguns.

Shortly thereafter, Mitchell got out of his vehicle while yelling for the officers to shoot him. Mitchell then turned and began walking away from the officers. They caught up with Mitchell, whereupon, Officer Hewitt "tasered" him with the department issued Taser, causing Mitchell to fall to the ground. Hewitt then handcuffed Mitchell.

Mitchell was bleeding, and was transported to the UCD Medical Center where he was examined and a blood sample was taken. There, it was determined that while none of the bullets actually struck Mitchell, he had received several small cuts to his face and upper chest, apparently from the windshield glass broken and blown back towards him when the officers fired at his vehicle. The toxicology test determined that he did not have any drugs in his system and his blood alcohol level was 0.14%.

ORIGINAL

On June 22, 2006 (the day after the shooting), around 2:50 p.m., SPD Sergeant Michael Poroli #3103 advised Mitchell of his Miranda rights, which Mitchell waived. Mitchell related that on the day of this incident he had become upset over the actions of his Sacramento County Probation Officer Al Thomas. Officer Thomas had searched Mitchell's house on June 20, 2006 (the day before the shooting), and confiscated his old security work uniforms from the Transportation Safety Administration, his Sacramento County Explorer uniforms from Elk Grove High School and his BB pistol. He was also upset because during the search some of his deceased cat's things were disturbed. Additionally, he was still emotional over having recently broken up with his boyfriend.

Being upset and depressed, he said he went to The Depot Bar around 8:30 a.m. and drank two to three vodka drinks, talked about suicide and then went home around 1:30 a.m. Still depressed, he drove around Franklin Blvd in his green Kia Rio, and said he probably text messaged his friend [REDACTED] about wanting to die via "suicide by cop."

When he saw Hergenreder's SPD vehicle following him, he decided he might as well die. To get the police to kill him, he drove his vehicle towards the officers so they would believe their lives were in danger and be forced to shoot him. He said he wished he had been successful in his "suicide by cop" plan.

At the time of this incident, Mitchell was on formal probation in Sacramento County following [REDACTED] aggravated assault with a shotgun on two police officers in New Orleans, Louisiana. The facts underlying these assaults occurred on November 29, 2004, when he fired multiple shotgun blasts at the police vehicle of a New Orleans police officer who had arrived to investigate Mitchell's suicide threats. When other officers arrived to assist, Mitchell also fired at them. The officers fired their guns in return, critically wounding Mitchell. None of the officers were injured.

As a result of his conduct in the City of Sacramento incident, Mitchell is charged in case 06F05605 with two felony violations of Penal Code §245(c) along with a strike prior and a five year prison prior. He faces up to 18 years in state prison. His case is set for preliminary hearing on April 18, 2007.

ANALYSIS

In situations where it is reasonably necessary to defend oneself or others from death or serious bodily injury, the use of deadly force is legally justified. (California Penal Code § 197; *People v. Ceballos* (1974) 12 Cal.3d 470, 482-483; CALCRIM 505, 3470) The law does not require actual danger. The appearance of imminent death or serious bodily injury to oneself or others is sufficient justification, so long as the fear is genuine, objectively reasonable and the basis for the use of deadly force. (California Penal Code § 197(3); *In re Christian S.* (1994) 7 Cal.4th 768; CALCRIM 505, 3470)

Here, Officers Hergenreder and Hewitt and fired upon suspect Mitchell because they believed Mitchell was about to inflict great bodily harm or death upon them. Their belief was reasonable

under the circumstances. Mitchell was driving his vehicle at the officers' patrol car in a manner which could have easily caused them great bodily harm or death. Further, Mitchell had said he wanted to die via "suicide by cop" and just one year earlier had attempted to shoot multiple New Orleans police officers after Mitchell threatened to kill himself.

Under these circumstances, Officers Hergenreder and Hewitt were reasonable in believing that they were about to be seriously injured or killed. Thus, they were justified in using their service weapons to defend themselves.

Finding the shooting lawful, we will take no further action in this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY



ALAN HENGEL
Deputy District Attorney

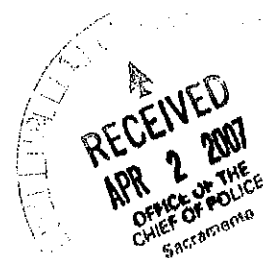
cc: ✓ SPD Sergeant Fern Enriquez
SPD Officer Ryan Hergenreder
SPD Officer Jason Hewitt
Don Casimere



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY



CYNTHIA G. BESEMER
CHIEF DEPUTY

March 29, 2007

Albert Najera, Chief of Police
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

Re: Officer-involved shooting – Case No. SPD-06-214775

Shooting officers – Ryan Hergenreder, #678
John Hewitt, #639

Person shot – Christopher Chad Mitchell (DOB: 12/26/1978)

Dear Chief Najera:

The District Attorney's Office, as an independent agency, has concluded its investigation and analysis of the above referenced officer involved shooting. The materials we considered included SPD report 06-214775, the crime scene video, crime scene photos, and Sacramento County District Attorney file 06F05605. Civil liability, tactics, and departmental policies and procedures were not considered. Based upon the facts of this incident, we have concluded that the shooting of Christopher Mitchell was lawful.

FACTS

On June 21, 2006, around 3:04 am, uniformed SPD Officers Ryan Hergenreder and Jason Hewitt were on routine patrol in a marked SPD vehicle when they received a dispatch call concerning a possible suicidal subject, later identified as Christopher Mitchell, who had text messaged his

SPECIAL INVESTIGATIONS

P.O. Box 749 * 901 G Street * Sacramento, California 95814
(916) 874-5897 FAX (916) 874-8238

friend, later identified as [REDACTED] that he wanted to die via "suicide by cop." Further, the officers were told over the police radio that Mitchell had attempted "suicide by police" in the past.

Officers Hergenreder and Hewitt went to Mitchell's home at [REDACTED] and spoke to his grandparents with whom he resided. They said Mitchell had attempted "suicide by cop" a year earlier in New Orleans. Officer and Hergenreder checked the house and determined Mitchell was not there.

They learned that Mitchell was likely driving his green KIA Rio sedan and that he was probably in the area of 12th Avenue, near Franklin Boulevard. As they drove in this area, they saw Mitchell driving his green KIA Rio in a reckless manner as it turned northbound onto Franklin Blvd. Mitchell then made a left turn onto Montgomery Way. As the officers followed Mitchell, he made an abrupt stop and u-turn, thereby facing his vehicle about 2 ½ car lengths away from the officers in their vehicle. Officer Hewitt stopped their vehicle with Officer Hergenreder arming himself with the vehicle's department issued 12 gauge police shotgun.

Then, Officer Hergenreder took up a position behind his open front passenger door while Officer Hewitt positioned himself behind the open driver's door. They yelled at Mitchell to put his hands up and turn off his ignition. Instead he flicked his high beams on and off and repeatedly revved his engine. The patrol vehicle's headlights were on but the emergency lights were not on because they had not intended to stop Mitchell until they had other officers to assist.

Meanwhile, Mitchell quickly accelerated his vehicle, driving it into the front of the patrol vehicle. Just prior to impact, Officer Hergenreder fired his shotgun one time at Mitchell's vehicle. Additionally, Officer Hewitt fired several rounds from his department issued Sig Sauer P226 semi-automatic .40 caliber handgun at Mitchell's vehicle. When Mitchell's vehicle struck the patrol car, the impact knocked Officer Hergenreder backwards and to the ground, causing him to drop his shotgun. Both officers were afraid Mitchell would ram their vehicle again and possibly run over one of them, so they fired several shots at Mitchell's vehicle. The officers eventually fired approximately 12 rounds from their handguns.

Shortly thereafter, Mitchell got out of his vehicle while yelling for the officers to shoot him. Mitchell then turned and began walking away from the officers. They caught up with Mitchell, whereupon, Officer Hewitt "tasered" him with the department issued Taser, causing Mitchell to fall to the ground. Hewitt then handcuffed Mitchell.

Mitchell was bleeding, and was transported to the UCD Medical Center where he was examined and a blood sample was taken. There, it was determined that while none of the bullets actually struck Mitchell, he had received several small cuts to his face and upper chest, apparently from the windshield glass broken and blown back towards him when the officers fired at his vehicle. The toxicology test determined that he did not have any drugs in his system and his blood alcohol level was 0.14%.

On June 22, 2006 (the day after the shooting), around 2:50 p.m., SPD Sergeant Michael Poroli #3103 advised Mitchell of his Miranda rights, which Mitchell waived. Mitchell related that on the day of this incident he had become upset over the actions of his Sacramento County Probation Officer Al Thomas. Officer Thomas had searched Mitchell's house on June 20, 2006 (the day before the shooting), and confiscated his old security work uniforms from the Transportation Safety Administration, his Sacramento County Explorer uniforms from Elk Grove High School and his BB pistol. He was also upset because during the search some of his deceased cat's things were disturbed. Additionally, he was still emotional over having recently broken up with his boyfriend.

Being upset and depressed, he said he went to The Depot Bar around 8:30 a.m. and drank two to three vodka drinks, talked about suicide and then went home around 1:30 a.m. Still depressed, he drove around Franklin Blvd in his green Kia Rio, and said he probably text messaged his friend [REDACTED] about wanting to die via "suicide by cop."

When he saw Hergenreder's SPD vehicle following him, he decided he might as well die. To get the police to kill him, he drove his vehicle towards the officers so they would believe their lives were in danger and be forced to shoot him. He said he wished he had been successful in his "suicide by cop" plan.

At the time of this incident, Mitchell was on formal probation in Sacramento County following [REDACTED] for aggravated assault with a shotgun on two police officers in New Orleans, Louisiana. The facts underlying these assaults occurred on November 29, 2004, when he fired multiple shotgun blasts at the police vehicle of a New Orleans police officer who had arrived to investigate Mitchell's suicide threats. When other officers arrived to assist, Mitchell also fired at them. The officers fired their guns in return, critically wounding Mitchell. None of the officers were injured.

As a result of his conduct in the City of Sacramento incident, Mitchell is charged in case 06F05605 with two felony violations of Penal Code §245(c) along with a strike prior and a five year prison prior. He faces up to 18 years in state prison. His case is set for preliminary hearing on April 18, 2007.

ANALYSIS

In situations where it is reasonably necessary to defend oneself or others from death or serious bodily injury, the use of deadly force is legally justified. (California Penal Code § 197; *People v. Ceballos* (1974) 12 Cal.3d 470, 482-483; CALCRIM 505, 3470) The law does not require actual danger. The appearance of imminent death or serious bodily injury to oneself or others is sufficient justification, so long as the fear is genuine, objectively reasonable and the basis for the use of deadly force. (California Penal Code § 197(3); *In re Christian S.* (1994) 7 Cal.4th 768; CALCRIM 505, 3470)

Here, Officers Hergenreder and Hewitt and fired upon suspect Mitchell because they believed Mitchell was about to inflict great bodily harm or death upon them. Their belief was reasonable

under the circumstances. Mitchell was driving his vehicle at the officers' patrol car in a manner which could have easily caused them great bodily harm or death. Further, Mitchell had said he wanted to die via "suicide by cop" and just one year earlier had attempted to shoot multiple New Orleans police officers after Mitchell threatened to kill himself.

Under these circumstances, Officers Hergenreder and Hewitt were reasonable in believing that they were about to be seriously injured or killed. Thus, they were justified in using their service weapons to defend themselves.

Finding the shooting lawful, we will take no further action in this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY

A handwritten signature in cursive script that reads "Alan Hengel".

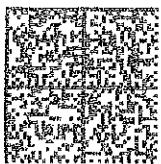
ALAN HENGEL
Deputy District Attorney

cc: SPD Sergeant Fern Enriquez
SPD Officer Ryan Hergenreder
SPD Officer Jason Hewitt
Don Casimere

OFFICE OF
DISTRICT ATTORNEY
P. O. BOX 749
SACRAMENTO, CA 95812-0749

Albert Najera, Chief of Police
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

PRESORTED
FIRST CLASS



UNITED STATES POSTAGE
\$00.32
02 1M
0004219423
MAILED FROM ZIP CODE 95827

0004219423

CGAFTMM

5832

|||||

MEMORANDUM**SACRAMENTO POLICE DEPARTMENT**

Professional Standards Unit



DATE: August 3, 2006
REF: PSU 08- 03

TO: Albert Nájera
 Chief of Police

ATTN: Steve Segura, Deputy Chief
 Office of Operations/Investigations

Scott LaCosse, Captain
 Internal Affairs

FROM: Rudy Chan, Sergeant
 Professional Standards Unit

RE: Shooting Review Disposition W06-07

A shooting review was held on Wednesday, August 2, 2006 during the management session of Infocom. All findings were made with the concurrence of the Deputy Chief, Office of Operations/Investigations. Those in attendance were:

Deputy Chief Segura
 Capt. McCarthy
 Capt. Matthes
 Capt. Valenzuela
 Lt. Jensen
 Lt. Gardner
 Lt. Peletta
 Lt. Dowden
 Lt. Schneider
 Sgt. Enriquez
 Sgt. Greenlee
 John Green

Deputy Chief Braziel
 Capt. Somers
 Capt. Hahn
 Lt. Bernard
 Lt. Sweeney
 Lt. Campas
 Lt. Rehm
 Lt. Beerman
 A/Lt. Kidd
 Sgt. McCloskey
 Sgt. Chan
 Don Casimere (OPSA)

Capt. J. Schiele
 Capt. Louie
 Capt. LaCosse
 Lt. Quinn
 Lt. Reese
 Lt. Haynes
 Lt. Brown
 Lt. Maccoun
 A/Lt. Pease
 Sgt. Hendrickson
 Ofc. Von Schoech

The following is the recommendation for the shooting:

W06-07

JUSTIFIED

Officers involved
 Hergenreder/Hewitt

Presenter
 Sgt. Enriquez

Division Commander
 Capt. Somers

Summary:

On 6/21/2006, at approximately 0304 hours, SPD dispatch received a call from complainant [REDACTED] stating that his friend Chad Mitchell was drunk and wanted to commit suicide by cop. Complainant [REDACTED] stated that Mitchell had attempted suicide by shooting at New Orleans Police approximately one year earlier and was wounded but not killed. [REDACTED] gave a physical description of Mitchell as well as the vehicle (2002 KIA) that he was driving. Sergeant Pat Kohles and patrol officers gathered information on subject Mitchell and responded to his residence at [REDACTED] in an attempt to contact him. The vehicle was not at the residence and the officers cleared the interior of the house with negative results. The officers gathered further information on Mitchell to include the license plate of the KIA from witness [REDACTED] who also lived at the location. An updated information broadcast was made by dispatch for a welfare check of the vehicle and occupant.

At approximately 0422 hours, FTO Brian Hergenreder and his phase trainee Officer Jason Hewitt spotted the KIA on Franklin Boulevard and followed it westbound on Montgomery Way from Franklin. The KIA stopped at the west end of Montgomery Way near Curtis Park and turned around to face the squadcar. Officer Hergenreder and Hewitt exited their patrol car and took positions in the "V" of their open car doors. The officers shouted commands towards the driver. The driver of the KIA (Mitchell) flashed his headlights and revved his engine. He then accelerated towards the squadcar to ram it. At this point, Officer Hergenreder fired two rounds from his issued Remington 870 shotgun. Both rounds impacted on the vehicle. The first round hit the windshield on the driver's side but did not penetrate the safety glass. The second shotgun round hit the hood of the KIA on the driver's side. Officer Hewitt moved back to the rear of the squadcar for additional cover. The KIA struck the front of the squadcar, knocking Officer Hergenreder to the ground and causing him to lose hold of his shotgun. Officer Hewitt saw Officer Hergenreder fall to the ground.

Officer Hewitt fired a total of 13 rounds from his .40 cal pistol at the suspect, who had backed the KIA away from the squadcar. Officer Hewitt moved to the cover of a parked SUV, while engaging the threat and reloading his pistol. Officer Hergenreder moved away from his squadcar to the cover of an adjacent tree and engaged the threat with his .40 cal pistol. Officer Hergenreder fired a total of 12 rounds. The officers then continued to give verbal commands to the suspect who was still seated in the KIA. Sgt. Kohles and other cover officers arrived onscene as the suspect Mitchell exited his vehicle. The suspect refused orders to get on the ground as officers held him at gunpoint. Sgt. Kohles directed Officer Hewitt to deploy his CED. Officer Hewitt discharged his CED and Mitchell fell to the ground and was taken into custody without further incident. Of the 25 pistol rounds in total fired by both officers during the incident, 14 rounds hit the KIA and another 11 were unaccounted for. No collateral damage was found.

Recommendations:

During discussions, Capt. Somers stated that his only concern was the number of rounds fired during the incident. A/Lt. Kidd asked if the involved officers had been debriefed as to what type of shooting technique they used during targeting of the suspect; and whether they had used natural point or sighted shots depending on the range of the threat which would be in accordance with department training. Lt. Jensen stated that the officers were debriefed on their actions during the mandatory officer involved shooting re-qualification with the Department Rangemaster. Deputy Chief Segura directed that the Training Division contact officers who are or have been recently involved in officer involved shootings and inquire as to what targeting techniques they use or were using (i.e. natural point or sighted shots) to find out what officers are doing.

[Handwritten signatures and date]
9.8.06

MEMORANDUM**SACRAMENTO POLICE DEPARTMENT**

Professional Standards Unit



DATE: August 3, 2006
REF: PSU 08-01

TO: Officer Brian Hergenreder, #0678
FROM: Rudy Chan, Sergeant
Professional Standards Unit
RE: Officer Involved Shooting - Review Disposition OIS# W06-07

The department reviewed the shooting incident that occurred on June 21, 2006. It was found that the shooting was justified.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Chan", with a stylized flourish at the end.

Rudy Chan, Sergeant
Professional Standards Unit
Ph: 808-3791

MEMORANDUM

SACRAMENTO POLICE DEPARTMENT
Professional Standards Unit



DATE: August 3, 2006
REF: PSU 08-02

TO: Officer Jason Hewitt, #0639
FROM: Rudy Chan, Sergeant
Professional Standards Unit
RE: Officer Involved Shooting - Review Disposition OIS# W06-07

The department reviewed the shooting incident that occurred on June 21, 2006. It was found that the shooting was justified.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Rudy Chan", followed by a horizontal line.

Rudy Chan, Sergeant
Professional Standards Unit
Ph: 808-3791

City of
SACRAMENTO
Police Department

KATHERINE LESTER
Chief of Police

5770 Freeport Blvd., Suite 100
Sacramento, CA 95822-3516

(916) 808-0800
Fax: (916) 808-0818
www.sacpd.org

Report Number: 2006-214775

Please note that the records provided in this release do not include records or portions of records that are exempt from disclosure pursuant to applicable law. Without limiting other arguments against disclosure that may exist, the following records or portions of records are specifically prohibited or exempted from disclosure:

Records or information, the disclosure of which would compromise the anonymity of whistleblowers, complainants, victims or witnesses (Cal. Pen. Code § 832.7(b)(6)(B));

Records or information, the disclosure of which would reveal personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information (Cal. Pen. Code § 832.7(b)(7));

Records or information wherein the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure (Cal. Gov. Code § 7922.000);

Records or information that constitute confidential medical, financial, or other information, the disclosure of which is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy (Cal. Pen. Code § 832.7(b)(6)(C)); and

Records or information, the disclosure of which is exempted or prohibited pursuant to federal or state law (Cal. Gov. Code § 7927.705; see also Cal. Const. art. 1 Sec. 1; and Cal. Pen. Code §§ 11105 and 13300).

Sacramento Police Department
Professional Standards Unit
916-808-3790
spdpsu@pd.cityofsacramento.org