



Office of the District Attorney Stanislaus County

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Lt. David Hutchinson
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PRESS RELEASE

For Immediate Release

Date: April 6, 2018
Re: In custody death

For More Information Contact:

John Goold, Public Information Liaison
Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, after a thorough review of all the relevant evidence concerning an in custody death that occurred on October 24, 2016, it has been determined that the officers acted lawfully and did not use excessive force.

A copy of the letter provided to the Modesto Police Department and Stanislaus County Sheriff's Office is attached to this press release.

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April 2, 2018

Chief Galen Carroll
Modesto Police Department
600 10th Street
Modesto, CA 95354

Sheriff Adam Christianson
Stanislaus County Sheriff's Office
250 E. Hackett Rd.
Modesto, CA 95358

Re: Garrett Schmidt in-custody death

Dear Chief Carroll/Sheriff Christianson:

This office has completed its review of the incident which occurred on October 24, 2016 in the City of Modesto. This incident resulted in the arrest of Garrett Schmidt who subsequently died. Based on this review, I must conclude that the officers and deputies present during the arrest and who participated in the arrest acted in self-defense and/or the defense of others and did not use excessive force during the events of that night. This conclusion is based upon the submitted reports, interviews, photographs and videos of the incident as set out below.

SUMMARY

On October 24, 2016 at around 2216 hours (10:16 p.m.), the Modesto Police Department (MPD) started receiving 911 calls about a suspect breaking into houses. Callers described the suspect, later identified as Schmidt, as appearing to be under the influence. Schmidt was reported to be forcing his way into homes, sometimes after breaking a window. Some residents reported having to climb out of windows or running to neighbors' houses to escape. Schmidt would then move on. At one point, an off-duty probation officer responded to noise outside his home and was confronted by Schmidt. The probation officer was on the phone with 911 and the dispatcher could hear the officer telling Schmidt to stay back and then the line went dead. The probation officer would later say that Schmidt had charged him without provocation and attacked him. He said Schmidt was covered in feces and blood. Schmidt knocked the officer's glasses off so the officer punched him and Schmidt then fled towards another house.

As MPD officers arrived on Grantland Court, residents directed them to one house and then another. The officers would search/clear each house and move on trying to find Schmidt. Residents were telling the officers Schmidt's path and flight into houses or through backyards. Officer Giest was directed to a particular house by a neighborhood witness at the same time as the resident/occupant of the house was calling 911. The occupant was telling 911 that he and his wife were trapped inside their master bathroom as Schmidt was ransacking the house. Schmidt had broken a window and forced entry into the house.

The officers in the area converged on the house and set up a perimeter. The officers announced their presence and ordered Schmidt to come out with his hands up. Almost all of the law enforcement officers on scene were equipped with body-worn cameras (BWC) which documented the events as they unfolded.

On the video¹, a crowd of officers can be seen guarding the front door making the announcements. Shortly thereafter, Schmidt can be seen running directly into the group. Schmidt was nearly naked at this point. Officer Tyler Caldwell fired a Taser at Schmidt, but it had no effect; it is unclear if the Taser actually hit Schmidt since one of the darts was later found inside of the house and the second was found in Schmidt's shirt.

Schmidt charged into the group and tackled Off. Caldwell, taking him to the ground. The remaining officers grabbed Schmidt and attempted to extricate Off. Caldwell from Schmidt's grasp. During the struggle Schmidt was able to obtain Off. Caldwell's Taser. In the video, officers can be heard telling Schmidt to "drop it." Schmidt continued to violently resist any attempt to restrain him. He was given repeated commands to stop resisting, but he fought on. To gain compliance, Schmidt was shot in the lower body with a bean bag and he was Tasered (in the drive stun mode)². Nothing seemed to stop his resistance which lasted until he was handcuffed. The approximate time of the total struggle was two minutes and twenty-five seconds (2:25).

When the ambulance crew arrived a few minutes later Schmidt did not have any problem breathing. One of the crew, the EMT, noted that Schmidt was "agitated and restless." After Schmidt was placed on a gurney, the EMT noticed Schmidt was unresponsive. A short period of CPR was started and the ambulance crew transported Schmidt to the hospital³. At the hospital, Schmidt suffered a cardiac event and was placed on life-support⁴. He did not survive.

During an autopsy, Schmidt was found to have "track marks" on his arm and left foot. He also was found to have a foil-like item in his stomach⁵ that was burned on one end (speculated it might be drug-use paraphernalia). A toxicology test confirmed that Schmidt was under the influence of

¹ All of the videos were viewed and they establish multiple angles or viewpoints. When all of these different views are taken together an overall picture can be seen. When reference is made here to video in the singular it is referring to a composite of all of the videos. If a particular video is referred to, it will be identified by a specific reference.

² Sgt. Alex Bettis deployed the bean bag rounds and Officer Josh Shakelford used the Taser.

³ A Fire Captain on scene noted that Schmidt was "yelling unintelligibly and thrashing his torso about" when his crew first arrived. Schmidt calmed down and then coded. The Captain said he never saw an officer placing weight on Schmidt's back (compressing the chest) and he had no concerns based on how the officers were restraining Schmidt.

⁴ Schmidt was on life-support for a period of time sufficient to interfere with the University of Miami's diagnosis of excited delirium. The UofM was consulted but was unable to render an opinion.

⁵ Referenced in Det. Gumm's report.

methamphetamine and had marijuana in his system. Dr. Baik, the pathologist, listed the cause of death as Cerebral Hypoxia and Acute Myocardial Infarct⁶. He listed contributing factors as methamphetamine intoxication, cannabinoid abuse, intramural coronary artery disease⁷ and struggling with law enforcement.

LAW

In this case, there is no evidence that anyone, civilian or law enforcement, used deadly force. It is also clear that, factually, Schmidt may have died from a heart attack. For the sake of discussion, if we were to assume that the force used to restrain Schmidt caused his death, then that force would arguably be deadly force (even though we do not assume such a fact).

Any application of deadly force is unlawful, unless it is either justified or excused. A legal justification for using deadly force is the law of self-defense. (Penal Code §196 and §197). In California Jury Instructions (CALJIC 530), the law states:

“It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, that person may use all force and means which he believes to be 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.”

Additionally, police officers have additional rights by virtue of their need to enforce the law. Penal Code §835a states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

⁶ Cerebral hypoxia is a form of hypoxia (reduced supply of oxygen), specifically involving the brain; when the brain is completely deprived of oxygen, it is called cerebral anoxia. Acute myocardial infarction is the medical name for a heart attack.

⁷ A disease in which there is a narrowing or blockage of the coronary arteries (blood vessels that carry blood and oxygen to the heart). Coronary artery disease is usually caused by atherosclerosis (a buildup of fatty material and plaque inside the coronary arteries). The disease may cause chest pain, shortness of breath during exercise, and heart attacks. Intramural is used to refer to "small vessel" arteries.

One court has commented on §835a stating:

“ ‘Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” [Citations omitted.] “[Police officers] are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, “... the defendant police officer is in the exercise of the privilege of protecting the public peace and order [and] he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.”

Brown v. Ransweiler, (2009) 171 Cal. App. 4th 516, 527

We may now apply the principles of self-defense, and the right of officers to use force to the law of homicide. Homicide is defined as the killing of another human being, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicides, which are not.

Penal Code §195, mentioned above, defines when a “homicide” is not punishable by law. It states that a homicide is excusable:

“When committed by accident and misfortune, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.”

The terms used in §195 have been defined by courts as follows - “The unintentional killing of a human being is excusable and not unlawful when (1) committed by accident and misfortune in the performance of a lawful act by lawful means and (2) where the person causing the death acted with that care and caution which would be exercised by an ordinarily careful and prudent individual under like circumstances.” Also, “When a person commits an act or makes an omission through misfortune or by accident under circumstances that show no criminal intent nor criminal negligence, he does not thereby commit a crime.”

Police officers also have another protection listed in Penal Code § 196. This is referred to as justifiable homicide, and states:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either--

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Whether the self-defense test, the accident test or the justifiable homicide test, it is clear that no one can be imputed with criminal conduct if their actions were reasonable. The Ninth Circuit has explained the standard for reasonableness, stating:

“The reasonableness inquiry is objective, without regard to the officer's good or bad motivations or intentions. We judge reasonableness “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight” and allow 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.” [footnote omitted].

Billington v. Smith (2002) 292 F.3d 1177, 1184.

CONCLUSION

The Coroner reported that Schmidt died due to Cerebral Hypoxia and Acute Myocardial Infarct, better known as a heart attack that deprived his brain of oxygen. It is clear from witness statements and a review of the videos that Schmidt had exerted himself during his attempts to break into residences, jumping fences, during his attempt to escape and throughout his struggle with the officers and deputies. This is analogous to a situation where a suspect runs from the police and dies of a heart attack – the police are not at fault for the result.

Even if one were to assume that Schmidt's death was a result of the force used by the officers and the deputies to restrain him, there would still be no criminal liability. The video shows no force that was excessive or contributed to his death. The officers were under a legal obligation to prevent Schmidt's escape. He was clearly a danger to the residents. He was a danger to the police, attacking the probation officer and one of the MPD officers on scene.

The evidence leads me to the conclusion that the officers acted lawfully under the circumstances known to them on October 24, 2016. Schmidt had committed multiple felony offenses, violently resisted arrest and attempted to escape. The officers were justified in the actions they took, both individually and as a group. They did not use excessive force, as noted by third-party witnesses, and would have been remiss in their duties if they had allowed Schmidt to escape to continue his rampage through the neighborhood that night. Mr. Schmidt's death, though unfortunate, was not caused by the officers and they bear no legal liability for it. This office now views the matter as closed.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney