



OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF SHASTA



Stephanie A. Bridgett
District Attorney

Benjamin L. Hanna
Chief Deputy District Attorney

December 30, 2019

Chief Michael Johnson
Anderson Police Department
2220 North Street
Anderson, CA 96007

Re: June 1, 2019 Officer Involved Shooting
Redding Police case 19R034546
Anderson Police case 19A006928
Involved Officer: APD Officer Gregory Gunderson
Involved Person: Nikolai Landry (DOB 12/6/91)

Chief Johnson:

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 Redding Police Department, with the assistance of the Shasta County Sheriff's Office, the Shasta County District Attorney's Office and the Anderson Police

Department. In conducting the investigation, RPD 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 fatal shooting of Nikolai Landry. 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 4:24 pm on June 1, 2019, SHASCOM received a call reporting a suspicious person walking into the back yard of the residence located at 1412 Lodgepole Avenue in the city of Anderson. The caller, who was a resident of the house across the street, told the operator that the man had his hands handcuffed in front of his body and looked up the street behind himself several times as if he were being followed. He then walked into the back yard of the residence that the caller knew to be a group home.

At the Anderson police station, Officers Daniel Stewart and Gregory Gunderson heard the call regarding the suspicious male, along with Officer Michael Hallagan, who was the Officer in Charge during the shift. All three officers responded to the call and arrived at the location within ten minutes of the original call for service.

Officer Gunderson was the first to make visual contact with the male in the back yard, later identified as Nikolai Landry. Officer Gunderson looked through a gate and into the back yard of the home and saw Landry sitting at a picnic table. Landry's right hand was tucked under his left arm as he sat with his back to the table and his right shoulder closest to the gate. Officer Stewart asked Landry what the object in his hand was. Stewart then told Landry to drop the gun and raise his hands. Landry did not acknowledge Officer Stewart's orders. Officer Stewart alerted the four officers that he had seen the gun in Landry's hand. All three officers sought concealment and cover and removed their service pistols. All three officers gave Landry verbal commands for Landry to drop the pistol.

Officer Hallagan radioed SHASCOM to request the sheriff's office send deputies to assist them with a less lethal beanbag shotgun. Hallagan also asked SHASCOM to request the CHP helicopter assist with overhead visual contact with Landry.

Officer Gunderson retrieved his patrol rifle from his vehicle and sought cover behind the patrol vehicle that had been moved to the residence driveway that led to the back yard. Officer Hallagan used the vehicle's public address system to tell Landry that "it didn't have to be like this. We are here to help you."

Officer Stewart contacted the occupants of the home and instructed them to get out. A woman who identified herself as a first-day employee of the group home told Officer Stewart that the male in the back yard might be a resident of the home named Nikolai Landry. She told Officer Stewart that that Landry had left the location earlier. She also told Officer Stewart that the residents were not allowed to have firearms or replica firearms. She told Officer Stewart that she thought the gun might be a replica, but that Landry could have obtained a real gun when he left the premises earlier.

After Officer Hallagan learned that Landry had mental health issues, he told Landry, “It doesn’t have to happen like this. We’re here to help you. Drop the gun. Come out here and talk to us. We don’t want to have to hurt you. If you point that gun at us, you may be shot, bit by a dog, or you may be tased. It doesn’t have to be like this.”

Officers Hallagan and Stewart went back into the residence to make sure everyone was out. The officers also looked for a safe place from which to deploy a taser. They found no suitable location in the residence that offered cover and a position close enough to deploy a taser effectively (within 21 feet of Landry). The officers also considered the neighboring back yard, but the fence did not offer any cover from the gun Landry had in his hand.

By this point, the CHP helicopter had arrived on scene and videotaped the last 11 minutes of the encounter with Landry. The video shows Landry holding the gun in his right hand, pointed in the direction of the gate and the patrol vehicle the entire time. At one point, it appears Landry’s left hand is used in a “basket grip” to support the gun, with his left elbow still on the picnic table. Landry held this position for several minutes. At the end of the encounter, the video shows Landry appearing to pull back the slide of the gun and release it, as if to place a round of ammunition into the firing chamber. Landry then raises the gun into position to aim and shoot. Officer Gunderson yelled at Landry, “Don’t point the gun at me. Drop the gun.” Officer Gunderson then fired one shot that struck Landry in the head near his right eye. Landry collapsed on the ground next to the picnic table.

Officers approached Landry and removed the gun from his right hand. Officer Hallagan handcuffed Landry and rolled him onto his side to allow blood to drain from his mouth. He radioed for medical to respond to render assistance to Landry. While Landry appeared to be breathing when the officers first made contact to handcuff him, medical personnel pronounced him dead at the scene.

The officers did not see any markings on the gun to indicate that it was a replica, such as an orange painted muzzle. The gun was shining in the sunlight and appeared to be a real gun. The gun was a Daisy brand .177 caliber model Powerline 340 BB pistol. The pistol had a magazine in the magazine well, and contained approximately 150 BBs. The gun is a realistic replica of a Beretta M9A1 9mm pistol.



Figure 1: Photograph of the gun Landry pointed at Officer Gunderson.

Shasta County Coroner personnel conducted an autopsy on Landry. The cause of death was determined to be the trauma caused by a single gunshot to the head. A toxicology report showed Landry had no alcohol or controlled substances in his blood.

During the interviews conducted after the incident, neighbors told investigators that they could hear the officers giving the commands to drop the gun, and to “stop pointing the gun at me.” The audio portion of several cell phone videos taken by neighbors also captured the officers’ giving commands to Landry.

Landry had no criminal record.

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 section 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, and 3470.) A police officer has the same right of self-defense as any other person. A police officer may also use deadly force in situations where other officers or members of the public are at risk of great bodily injury or death.

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* (1948) 490 U.S. 386.)

In this case, officers responded to a call of a suspicious person who had his hands handcuffed in front of his body, who was also looking behind himself, as if he were being followed, possibly by police officers. A neighbor called SHASCOM and reported seeing the suspicious person entering the backyard of a group home.

Once the officers arrived at the location, they saw Landry in the backyard, his right hand holding an object under his left arm. Within minutes, officers determined the object appeared to be a gun. Landry was not responsive to the officers' commands to drop the gun, to stop pointing the gun at Officer Gunderson, and to come out of the backyard with his hands raised. He neither acknowledged them verbally nor by his actions. In fact, for at least the last 10 minutes of the incident, Landry had the gun pointed in the direction of Officer Gunderson and the other officers.

Officer Hallagan had explored less lethal means of ending the situation, calling for Sheriff's deputies to take a bean bag shotgun to the scene, searching for a location from which to safely deploy a Taser, and even considered placing a bullet resistant vest on his canine partner and having him attempt to detain Landry.

After approximately 20 minutes of holding the officers at bay with the gun, Landry pulled back the slide of the pistol, released it, raised the gun up to the level of his eyes, held the gun in a two-hand "shooting position," and extended his arms as if ready to discharge the gun. Officer Gunderson yelled at Landry to stop pointing the gun at him and to drop the gun. Officer Gunderson fired one shot from his rifle and struck Landry in the head, near his right eye.

Tragically, Landry died as a result of the gunshot.

Landry left Officer Gunderson with no option but to shoot him. The home is located on a residential street with neighbors in all four directions. The CHP video shows a house located directly in line with the direction Landry was pointing the gun during the last 10 minutes of the incident. Landry knew there were officers in the area due to the repeated commands and the fact that one of the patrol vehicles had been moved into his line of sight out of the back gate and down the driveway. Finally, it appears from the CHP video and the trajectory of Officer Gunderson's bullet that Landry aimed the gun directly at Officer Gunderson at the point Officer Gunderson shot Landry.

CONCLUSION

Under these circumstances, Officer Gunderson was justified in using deadly force in response to Landry's action. I find the shooting to be lawful and will take no further action in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie A. Bridgett". The signature is fluid and cursive, with a large initial "S" and "B".

STEPHANIE A. BRIDGETT
DISTRICT ATTORNEY

- cc: Chief Bill Schueller, Redding Police Department
- cc: Officer Gregory Gunderson, Anderson Police Department