



**REPORT ON THE MARCH 13, 2017  
OFFICER-INVOLVED SHOOTING OF  
NOEL AARON RUSSELL**

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August 31, 2017

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## I. ROLE OF THE DISTRICT ATTORNEY

The role of the Napa County District Attorney's Office in an officer involved shooting is to review the circumstances of the incident for the sole purpose of determining if there is any criminal liability on behalf of any member of law enforcement. The District Attorney does not examine concurrent issues of law enforcement policy or procedure, compliance with police training, or civil liability. This report should not be interpreted as expressing an opinion on any of those attendant matters.

This report summarizes the events that took place on March 13, 2017 in the area of Soscol Avenue and Kansas Avenue (hereinafter "South Napa Marketplace") in the City and County of Napa that resulted in the shooting of Noel Russell and documents the legal conclusion drawn from the evidence. This summary is not intended to include every aspect of those events. Rather, it is a composite of the material facts that were considered by the District Attorney in coming to her legal conclusion. This report draws from a thorough review of the police investigation, interviews of witnesses, physical evidence, case law, forensic science and testing.

The Napa Police Department invoked the Napa County Major Crimes Investigation Team Protocol. This protocol sets forth the procedures and guidelines to be used by Napa County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol, in order to eliminate the risk or appearance of conflicts of interest, an outside law enforcement agency is required to participate in the investigation of law enforcement employee-involved fatalities. Accordingly, members of the Napa County Sheriff's Department assumed responsibility for the investigation of this shooting incident. Napa County Sheriff's Detective Brad Chambers led the investigation. He presented a comprehensive report to the Napa County District Attorney's Office.

## II. SUMMARY OF INCIDENT

### A. Noel Aaron Russell

Noel Aaron Russell was a transient 23 year old male who lived in the City of Napa. Specifically, Mr. Russell lived in a tent adjacent to the Napa River.

Mr. Russell had a recent and escalating criminal history. His Record of Arrest and Prosecutions (RAP) had numerous entries starting in 2016 in Napa County. Mr. Russell was arrested for various crimes, including burglary, resisting arrest, possession of narcotics, battery on a peace officer, public intoxication and vandalism. In the six months prior to March 2017, he was convicted of obstructing an executive officer, battery against a peace officer, felony vandalism, and possession of a controlled substance. He was also found in violation of his probation.

At the time of the incident, Mr. Russell had two outstanding \$10,000 bench warrants for his arrest for failing to appear in Napa County Superior Court. He had pending criminal cases for possession of controlled substance paraphernalia and violation of probation. Mr. Russell was pending sentencing in a separate case for felony vandalism. He was also on probation for obstructing an executive officer and battery against a peace officer.

Mr. Russell had other law enforcement interactions throughout the Bay Area beginning in 2014. He had contacts with San Pablo Police Department and BART Police Department. The contacts escalated in 2016. In March, he was a suspect in a battery by the San Pablo Police Department. In August, he was arrested by Concord Police Department for stealing mail from a USPS truck, possessing methamphetamine, and resisting arrest. In September, he was detained by Emeryville Police Department for a 72 hour psychiatric detention after shoplifting, possessing methamphetamine paraphernalia, and displaying suicidal behavior.

During his time at the Napa County Department of Corrections, Mr. Russell had two incidents where he resisted and failed to comply with the directives of correctional officers. The first occurred in October, 2016 and the second in February, 2017.

#### B. Pre-Incident

An acquaintance stated that he was with Mr. Russell in the area of the South Napa Marketplace on March 13, 2017. Mr. Russell was drinking hard alcohol and appeared depressed. They smoked methamphetamine together and Mr. Russell appeared high and his mood improved. Mr. Russell was next spotted in the parking lot of Black Bear Diner by an employee. He offered to sell the employee a knife and a flashlight. The employee declined.

Mr. Russell approached the entrance of Target and confronted an adult male who was with his wife and small child. He pulled out a black knife and squared off with the man. The man retrieved his own knife and Mr. Russell lunged at him, appearing that he wanted to be stabbed. The man refused to stab him and Mr. Russell moved in to the parking lot.

Several individuals reported seeing Mr. Russell attempt to slash passing cars with a knife. One driver attempted to avoid contact with Mr. Russell, but he fell onto her hood and cut the car body and headlight with a knife. He turned his attention to another car and slashed the right front passenger side car body with a knife three times. Mr. Russell jabbed his knife into the tires of at least two cars and ran his knife along the entire left side of another car. He chased another man while brandishing his knife around several parked vehicles.

Mr. Russell continued through the Home Depot parking lot and across the street to the parking lot where day laborers gather (hereinafter "Labor Lot.") Mr. Russell approached three men. He was agitated, screaming and swinging around a knife. The knife was open and appeared to witnesses to have blood on it. Mr. Russell attempted to stab one of the men and missed.

Another man picked up a golf club to defend himself. Mr. Russell closed the knife, put it in his pocket and walked away.

Napa Dispatch received numerous 911 calls beginning at 6:21:00 pm. Callers made many reports that were documented by dispatchers. Some include "male with knife going after another male", "male walking around attacking people", "still going crazy yelling", "walked over to a group of people", "there are about 10 people", and "still making threats with the knife." Officers were first dispatched at 6:22:27 and the call was deemed high priority. Sergeant Cole was subsequently dispatched at 6:24:59. The first unit arrived at 6:27:20.

### C. Sergeant Ryan Cole

Sergeant Ryan Cole has been a police officer for the past 22 years with the Napa Police Department. He was a member of the SWAT team for approximately 16 years and also served as a Corporal and Field Training Officer. Sergeant Cole currently holds the position of sergeant and supervises the swing patrol shift. On March 13, 2017, Sergeant Cole was handling a call at Queen of the Valley Hospital when he heard an important dispatch for a male subject armed with a knife chasing another subject in front of Home Depot. He responded Code 3 (with lights and sirens) and was continuously updated with a description of Mr. Russell and his behavior, specifically that he was in a rage and had a knife in his left hand and was threatening people in the area. Noticing that Officer Thomson was approaching on Kansas Avenue, Sergeant Cole drove immediately to the rear of the Black Bear Diner where he parked his patrol car.

Sergeant Cole identified Mr. Russell immediately and saw a group of men moving away from him. He believed Mr. Russell posed a significant threat to the public and the area was highly populated. As a result, he moved quickly to create a barrier between himself and the surrounding men to ensure their safety, and drew his handgun. Sergeant Cole gave verbal commands to get on the ground, but Mr. Russell refused to comply. Mr. Russell, who was not holding a knife at that time, showed signs and symptoms of being under the influence of methamphetamine. Based on the lack of compliance, Sergeant Cole became increasingly concerned for his and everyone else's safety. He raised his gun from "low ready" to "center mass."

Mr. Russell yelled "you want some of this?" repeatedly, took a bladed stance and put his hand in to his jacket pocket. Sergeant Cole yelled, "don't do it, show me your hands!" and then "get the fuck on the ground!" Mr. Russell refused to comply, yelling repeatedly "you want some of this?" He then pulled a black knife out of his jacket pocket and unfolded the knife, locking the blade in the open position. Mr. Russell extended his right arm with the knife in his hand and took an aggressive step towards Sergeant Cole. Mr. Russell was within 10-12 feet of Sergeant Cole. Fearing that he was about to be attacked with the knife, Sergeant Cole discharged his

handgun and Mr. Russell fell to the ground. Sergeant Cole believed that Mr. Russell had the intention and present ability to stab him, Officer Thomson or the men directly behind them.

#### D. Officer Jack Thomson

Officer Jack Thomson has been a police officer for over 25 years, including the past 17 years with the Napa Police Department. He currently serves on the Crisis Negotiation Team and is currently assigned to patrol. On March 13, 2017, Officer Thomson was sitting in his patrol car at the Napa Police Department when dispatch announced that a man with a knife was in front of Home Depot. He sped to the location Code 3 (with lights and sirens), receiving updates from dispatch that the man was chasing and threatening people with a knife. Officer Thomson entered the Labor Lot, maneuvered around the middle island and parked.

The area was full of many people and one pointed to Mr. Russell. He drew his handgun to a low ready position and approached Mr. Russell. Officer Thomson saw Sergeant Cole running from the Black Bear Diner, yelling "show me your hands" or something similar. He attempted to triangulate Mr. Russell while fixating on Sergeant Cole who continued to give commands with his handgun drawn. Mr. Russell reached in to his clothing, pulled out a knife, flicked it open and yelled "shoot me" or "come get me."

Officer Thomson estimated that Sergeant Cole was approximately 10 feet or less away from Mr. Russell. Officer Thomson was 6-8 feet behind and to the left of Sergeant Cole. Mr. Russell had his hand in front of him with the knife exposed and pointed at Sergeant Cole. There were several avenues of escape, including to the left, right or directly behind in to the creek. Instead of fleeing, Mr. Russell chose to move toward Sergeant Cole and both officers fired their handguns. Officer Thomson believed that Mr. Russell was going to cut or stab Sergeant Cole with the knife. He discharged his handgun twice and Mr. Russell fell to the ground.

#### E. Post-Incident

Mr. Russell fell on his back and landed on a grass area on the north side of the Labor Lot. Sergeant Cole and Officer Thomson commanded nearby witnesses to sit on the ground. Officer Thomson kicked the knife away from Mr. Russell's left hand and it landed nearby on a dirt path. The officers holstered their weapons, observed Mr. Russell had sustained multiple gunshot wounds, checked for pulse, and requested medical personnel.

Napa Fire Department Engine 4 responded immediately after they heard "shots fired" and estimated they were there within 2-3 minutes. Firefighters cut Mr. Russell's clothes off and began rescue protocol for a person under "traumatic arrest." They exhausted their efforts to revive Mr. Russell and contacted a doctor at Queen of the Valley Hospital. Mr. Russell was pronounced deceased at the scene.

#### F. Witness Interviews

Over 50 witnesses were interviewed by law enforcement. In particular, several key individuals saw the shooting of Mr. Russell. Witnesses corroborated the rapid timing of the event, short distance between the officers and Mr. Russell, repeated verbal commands to “drop the knife” and “get on the ground”, and the lack of compliance. They described Mr. Russell as being “very defiant”, “challenged” the officers, angry, agitated and dared “come here motherfucker” or “come on fight me.” Witnesses also corroborated the fact that Mr. Russell was armed with a knife and aggressively moved towards the officers.

#### G. Rounds Fired and Recovered Guns

It was determined that Sergeant Cole fired four rounds from his department approved Kimber 1911 .45 caliber service pistol. Four .45 caliber shell casings were recovered at the scene and determined to have been fired from Sergeant Cole’s pistol by the Department of Justice. Three bullets consistent with the brand fired by Sergeant Cole were recovered from the body of Mr. Russell. A fourth fragmented round that could not be positively identified was also found in the body of Mr. Russell. Sergeant Cole’s Kimber 1911 was collected during processing. It was determined that the firearm had one magazine inserted. There was one round in the chamber and four rounds in the magazine. In addition to the one round in the chamber, the magazine has a maximum capacity of 8 rounds.

It was determined that Officer Thomson fired two rounds from his department issued Glock 22 .40 caliber service pistol. Two .40 caliber shell casings were recovered at the scene and determined to have been fired from Officer Thomson’s pistol by the Department of Justice. No bullets consistent with the brand fired by Officer Thomson were recovered from the body of Mr. Russell. Officer Thomson’s Glock 22 was collected during processing. It was determined that the firearm had one magazine inserted. There was one round in the chamber and 12 rounds in the magazine. In addition to the one round in the chamber, the magazine has a maximum capacity of 15 rounds.

#### H. Autopsy

The autopsy on Mr. Russell was performed on March 15, 2017 by Napa County Forensic Pathologist Dr. Joseph Cohen. Dr. Cohen observed four distinct gunshot wounds and determined the cause of death to be gunshot wounds to the neck and torso. None of Mr. Russell’s wounds showed signs of stippling or fouling. This suggests that the gun was not at close range when fired and is consistent with the statements of the officers and witnesses.

### I. Physical Evidence

The crime scene was processed by crime scene specialists from several law enforcement agencies. Members of the California Highway Patrol Major Accident Investigation Team assisted at the scene by preparing the crime scene diagram. Evidence was collected, documented and stored. Over 1,000 photographs were taken. Neither the officers nor their patrol cars were equipped with video recording devices. Only one store video showed Mr. Russell for a few seconds prior to his contact with the officers in the Labor Lot.

The knife held by Mr. Russell was recovered by crime scene specialists. It was identified as a DeWalt brand, folding-type knife with a black coated, single edge blade and black handle. The knife was approximately 7.5 inches long, with a 3.25 inch blade and 4.25 inch handle. Based on testing by Bode Cellmark Forensics, blood and DNA was identified on the knife as coming from Mr. Russell.

At the autopsy, a glass smoking pipe typically used for ingesting methamphetamine was found in Mr. Russell's jacket. The pipe was sent to the Department of Justice for testing. A subsequent report indicated that the pipe contained methamphetamine residue.

A blood sample from Mr. Russell was taken at the autopsy and sent to Central Valley Toxicology for testing. A subsequent report indicated Mr. Russell's blood was positive for alcohol and methamphetamine. The methamphetamine in his blood was at a potentially toxic level.

### III. STANDARD OF REVIEW

The District Attorney, as the chief law enforcement official of Napa County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is expressed in the *Uniform Crime Charging Standards*. It provides:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to

the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

#### IV. STATEMENT OF THE LAW

The sole issue to be resolved in this report is whether the shooting of Noel Russell by NPD Sergeant Cole and Officer Thomson was lawful: specifically, was the use of force by Sergeant Cole and Officer Thomson reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose.

Several key principles of law apply to the question posed by the facts of March 13, 2017.

It is sometimes necessary to use force to make an arrest. *Graham v. Connor* (1989) 490 US 386, 396 [“[T]he 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.”]; California Pen. Code §835a [the officer “need not retreat or desist from his efforts by reason of the resistance or threatened resistance.”]. How much force is permissible and how much is excessive? The short answer is that force is permissible if it is reasonably necessary. The United States Supreme Court notes that the inquiry into reasonableness is intensely fact specific.

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 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, 396-97.

The use of deadly force is lawful if it reasonable under the circumstances. As the Court observed in *Tennessee v. Garner*, “Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.” *Tennessee v. Garner* (1985) 471 US 1, 11.

The Court has acknowledged, however, that there is no obvious way to quantify the risks on either side, that there is no magical on/off switch for determining the point at which deadly force is justified and that the test is cast at a high level of generality. Still, it has ruled that the

use of deadly force can be justified under the Fourth Amendment only if the following circumstances existed:

- (1) The arrestee must have been fleeing or otherwise actively resisting arrest.
- (2) Officers must have had probable cause to believe that the arrestee posed a significant threat of death or serious physical injury to officers or others.
- (3) Officers must, when feasible, warn the arrestee that they are about to use deadly force.

Likewise, California Penal Code §196 finds homicides justifiable when committed by public officers if the suspect was actively resisting and there are circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.

## **V. LEGAL ANALYSIS**

On March 13, 2017, all evidence suggests that Mr. Russell was under the influence of methamphetamine. He threatened a wide variety of people in the South Napa Marketplace with a knife. Mr. Russell assaulted several individuals with his knife, vandalized vehicles, and encouraged others to hurt him. Some patrons fled from him, one retrieved a knife in self-defense and one pulled out a golf club in self-defense. Napa Police Department officers responded quickly to many urgent 911 calls for help. Officer Thomson and Sergeant Cole arrived almost simultaneously and quickly attempted to come to the aid of community members.

The South Napa Marketplace was highly populated and Mr. Russell was immediately adjacent to a group of men. The officers drew their weapons, triangulated the suspect and wedged themselves between the men and the suspect. Sergeant Cole ordered Mr. Russell to the ground several times. He refused to comply with the officers or attempt to flee the area. The area where he stood allowed Mr. Russell to easily run to the left, right or directly behind him in to the creek. Instead, Mr. Russell chose to take a bladed stance towards the officers, yelled "you want some of this", retrieved his knife, opened it and moved towards Sergeant Cole. Both officers believed that Mr. Russell intended to use deadly force, feared for their lives, each other and surrounding members of the public. Both officers discharged their weapons, using deadly force on Mr. Russell.

The bloody knife was located near Mr. Russell's hand, consistent with the officers' and witnesses statements. He was found to be under the influence of methamphetamine. Mr. Russell had a demonstrated and escalating history of methamphetamine use, as well as failing to obey lawful orders, threatening, battering and resisting police officers.

## VI. CONCLUSION

Lethal force encounters are often brief, violent and stressful. They demand the utmost from law enforcement officers in response, performance and decision making. The encounters often become wildly unpredictable and rapidly evolving, requiring officers to make split second decisions while in fear for their own lives, the lives of their fellow officers and the citizenry they have sworn to protect.

The use of deadly force on March 13, 2017 by Sergeant Ryan Cole and Officer Jack Thomson was a reasonable and lawful response under the totality of the circumstances. Therefore, the actions were legally justified and criminal charges against them are neither warranted nor supported by the evidence.

This review conducted within the scope and jurisdiction of the District Attorney is complete and final. The public deserves full transparency as to how and why our office reaches a decision in an officer-involved shooting and, as a result, we are now releasing our report and conclusions in their entirety.

Allison Haley, Napa County District Attorney

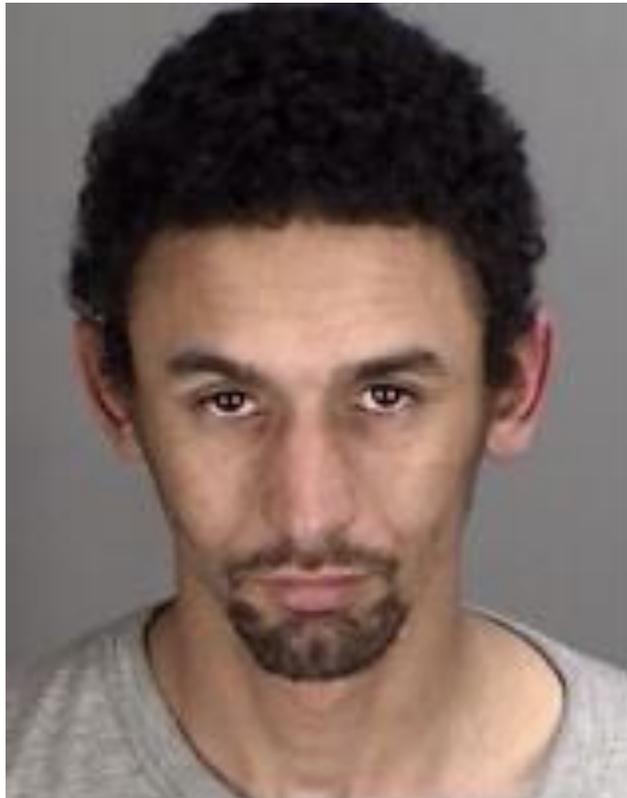
Exhibit A: Photograph of knife

Exhibit B: Photograph of Noel Aaron Russell, DOB 12/25/93

# EXHIBIT A



# EXHIBIT B



Noel Aaron Russell  
DOB 12/25/1993