

RECORD OF INVESTIGATION

DETAIL / UNIT

INVESTIGATORS NAME / STAR
McWilliams 1227
CASE NO.
230293413

REPORTING OFFICER / STAR / UNIT ID
Avila 820

COURT NO. SUS
MICHAEL EARLWAYNE ANTHONY / 23006303

SUSPECT (LAST, FIRST NAME)	ORIGINAL CHARGES	REBOOK CHARGES / DISPO CODES	ADDITIONAL CHARGES
ANTHONY, MICHAEL	187(a)	187(a) / 27	
SF NO.			
[REDACTED]			
DATE OF ARREST			
04/27/2023			

LAB NO.

INVESTIGATOR AND/OR DISTRICT ATTORNEY COMMENTS:

On 4/27/23 at approximately 6:36pm, SFPD responded to 901 Market St, Walgreens, re a security guard (S) who shot a shoplifter (V). The entire incident is caught on surveillance camera. Video shows V openly stealing throughout the store. S and V do not have any interaction inside the store until the exit/entrance of the store. As V approaches the exit, he is confronted by S. (I am referring to "V" as a "he" b/c per the Inspector, V's mother said V identifies as a male/he.) S appears to reach his hand out, ask if to ask for something. V then initiates the first physical contact by continuing to walk forward and bumping S. They each then appear to push each other and S swings/punches V. S then gets behind V and is holding him in a bear hug position while V appears to be resisting and fight back. This last approximately 15-20sec. After this approximate 15-20, S is lying on V, who is on his back, while on the ground. S is lying and holding the V on the ground for another approximate 15-20. During this time, it appears as though V is continuing to resist. S lets go of V, allowing him to stand up. S can be seen taking out his firearm, but holding it down, almost pointed directly in front of his own feet. V grabs his belongings and walks towards the exit. As V walks towards the exit, he turns back towards S and appears to make a lunging type/fight stance gesture at S. Within approximately 1sec of V turning back and making this lunging motion, S raises his firearm and shoots V one time in the chest. Immediately after

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the incident, S can be seen kneeling next to the V and attempt to render aid and summon help.

W1 had an unobstructed view of the incident from beginning to end. W1 was in line at Walgreen's getting ready to checkout when W1 heard a loud commotion. W1 saw S fighting with V and holding onto V. W1 heard V "cussing out" and stating, "let me go and I'll fight you one on one." W1 heard S say, "I'll let you go if you calm the fuck down." W1 said V appeared to calm down after S made that statement. W1 said that once S let V go, V appeared to get "more agitated." W1 observed V spit on S. V then appeared to take a fighting stance. W1 heard S say, "Don't do it, step back." W1 then heard a gunshot. W1 saw S reholster the gun and stated, "Damnit. Someone call the police, someone call 911." After the gunshot, W heard V say, "Sorry man, that shouldn't have happened. I was stupid."

On scene, S is interviewed and gives a statement identical, but with less detail, than a second interview at Homicide Detail with Homicide Inspectors. Interview with Homicide Details starts at approximately 12:15am. He is very polite and cooperative from the beginning of the interview. The interview is briefly summarized below in S's own words. It is important to note that S was told V was a female so he refers to V as "she/her" S, however, believed V was a male until after the incident. The majority of this summary are direct quotes, but I only included quotes around a few sentences in order to be conservative and accurate.

Interview Summary - I was scheduled to work today at 1:30pm and had a smooth day until around 5pm. I noticed an individual stealing items. I didn't immediately approach her. At first I thought the individual was a male. I noticed she was blatantly stealing. Initially I said to just put the items back and we'll have no issues. I went to reach for the items and that's when there was aggressive energy and she began fighting me to keep the items. I was scared my shoulder would dislocate b/c I had a previous injury. When I went for the items, she attacked and I tried to stop her by holding her, but she kept on resisting. I kept asking her to calm down, but she kept resisting and fighting back. Usually I let them go, but she kept wanting to fight back. My partner wasn't there and he would have assisted me but he was on break. I told the individual, "I'm going to let you go, but I need you to calm down." I repeated this over and over. Once I let her go, I stood back b/c the entire time we were wrestling she said "I'm going to stab you," and that put fear in me. I thought if I let her go she might stab me. I drew my gun when I let her go and had it pointed downward b/c I was scared she might really stab me. She looked like she was going to leave, but then she turned back towards me. I didn't know what her intention was at that time, "but it turns out her intention was to spit on me...by her turning around and advancing that's when I lifted my gun and shot once." These things happen all the time and I don't pursue them like this unless it gets physical on their end. It's not my personal items and as long as you're not harming me or the staff, I just let them go, especially bc I recently had an injury. I kept telling her I'm going to release you, but you need to calm down. She kept telling me she was going to stab me. When I let her go, I got my weapon and pointed it straight towards the ground. I didn't feel like I was in complete danger until she turned back at me. I shot her once time. Soon after I immediately said, "Somebody please call 911." It felt like she wanted to fight. I would have let her have the items if she didn't come aggressively at me. The first thing I really did was get a hold of her and hold her down. I kept telling her to calm down and she kept repeating, "I'm gonna stab you! I'm gonna stab your ass!" She walked towards the door, then turned back around and

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advanced towards me and when she did that, I raised my gun and shot her once. "I did that b/c I felt like I was in danger. I felt like I was going to be stabbed. I didn't know what to expect after the hostility."

Usually there are 3 guards on duty until 4pm. Then we have 2 guards until closing. At the time of this incident, I was by myself b/c my partner was on break. Our policy was hands off policy and then became hands on policy. This is the policy of my employer. Right now the policy is that you can ask for a receipt. While threatening me she would stab me, she sounded clear. While I'm holding her I kept telling her to be calm b/c I don't want to be injured. I'm thinking about my safety the whole time. It has nothing to do with the items, but my safety and my dislocated shoulder popping out again. I held the barrel down and thought she was going to leave, then she turned around and quickly advanced. I'm very stand off-ish against approaching these individuals b/c at the end of the day I just want to go home and be safe. I never saw her with a knife but the words, the threats and the fact of how physically aggressive she was with me was what had me in fear. I have never drew my gun as an armed security guard and only did it here b/c I thought she might actually stab me. I have been threatened many times in the past, spit on, had things thrown at me, etc. It has never been as physical as it was during this incident. I didn't think she was going to spit on me. I thought it was going to be another attack. "I didn't want to end no life. That was not my intention. I just wanted to stop the threat."

ANALYSIS

I do not believe we can negate self-defense beyond a reasonable doubt. I have to affirmatively prove that this was not self-defense, and given the current facts and circumstances, I do not believe we can overcome that burden. By all accounts, S comes across completely honest, credible and believable. Not having seen the video prior to being interviewed, virtually everything S says is consistent with the video.

The law says that the defendant must have believed there was imminent danger of death or great bodily injury to himself. In watching S's interview in person, it appears he shot V out of a genuine fear for his safety. S believably and credibly described the reasons why he was in fear of his safety after being repeatedly told he would be stabbed by an individual who had just fought him. However, the next question is whether the Defendant's belief was reasonable because the laws says it must have been reasonable, and Defendant must have acted only because of that belief. Here, if one only watches the video in a vacuum, you don't have full context of the circumstances and state of mind of S. The laws says, "When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed."

Here, S was just fighting/wrestling with V who continued to resist and fight despite repeated requests to calm down. S was also repeatedly threatened by V who said he would stab S. S only raised his weapon after V turned back and lunged towards S. Per the video, it appears S shot V within approximately 1-1.2sec after V turned back and lunged at S. Moreover, in considering all of the circumstances, this incident occurred on the 800 block of Market St where a reasonable person in a similar situation knows there is not only crime, but

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violent crime, including stabbings. A reasonable person in a similar situation with similar knowledge would easily believe that the person who just fought with them, repeatedly threatened them, told them they were going to stab them and lunged at them, was putting them in imminent danger.

Moreover, under Evidence Code Section 1103, in a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is offered by the Defendant to prove conduct in conformity with the character or trait of character. In a self-defense case, the Defendant would likely be able to use V's past record [REDACTED]

[REDACTED] While the People would be able to counter that evidence with evidence of violence, S does not have a prior criminal history tending to show violence. In addition, W corroborates S's version that he would let V go if V would calm down.

At this time, without knowing more about S's prior work history (ie, does he have many incidents of force, regularly draw his weapon, etc), the People are choosing to 27 the case.

27 List

- Obtain records on S's work history for potential use of forces issues
- Obtain every police report involving V to see how/if 1103 issues could be negated

ASSISTANT DISTRICT ATTORNEY (PRINT)	PHONE	REBOOKING DATE
Omid Talai	(628) 652-4225	05/01/2023

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