



Sacramento County District Attorney's Office

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March 4, 2015

Sheriff Scott Jones
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

Chief of Police Christopher W. Boyd
Citrus Heights Police Department
6315 Fountain Square Drive
Citrus Heights, CA 95621

RE: Officer-Involved Shooting, Case No. SSD 14-45649
 Shooting Officer: CHPD Sergeant Jason Baldwin #14
 Shooting Officer: CHPD Officer Alexi Fanopoulos #241
 Person Shot: Gabriella Nevarez, XRef: 3287631 (DOB: 11/25/91)

Dear Sheriff Jones & Chief Boyd:

The District Attorney's Office has completed an independent review of the above-referenced officer-involved shooting. Issues of civil liability, tactics and departmental policies and procedures were not considered. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Gabriella Nevarez. For the reasons set forth, we conclude that the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other documentary items. These items included the following: Sacramento Sheriff Department report number 14-45649; Citrus Heights Police Department report numbers 14-01855 & 14-01866, as well as other prior police reports related to Ms. Nevarez; video and audio recordings; dispatch calls; witness interviews; photographs; diagrams; Sacramento County District Attorney Laboratory of Forensic Services reports 14-002168-1 through 3; and evidence logs.

FACTUAL SUMMARY

On March 2, 2014, in response to a call regarding a stolen vehicle, Citrus Heights Police Officers Alexi Fanopoulos and Valentin Zazhitskiy contacted the reporting party. This witness stated that her granddaughter, Gabriella Nevarez, was homeless and staying at the witness' residence for the past few nights. Ms. Nevarez went out last night and returned home intoxicated in the early morning hours. Later that morning, she and the witness argued because Ms. Nevarez' four-year old son found her marijuana cigarette inside the residence. Ms. Nevarez briefly struggled with the witness over the car keys and left the residence with her grandmother's vehicle. As the

officers were speaking to the witness at her residence, Ms. Nevarez called the witness, spoke incoherently, admitted that she did not have a driver's license and stated, "You got me all messed up" and "There is going to be a problem." The witness indicated that Ms. Nevarez was bipolar.

Later that day, Officer Fanopoulos learned that Officer Ryan Lemons conducted a vehicle stop on Ms. Nevarez in an apartment complex near Madison Avenue and San Juan Avenue. Believing this to be a felony vehicle theft, Officers Lemons and Jeff Schouten pointed their guns towards Ms. Nevarez' vehicle, which was positioned in front of their patrol vehicles. Officer Fanopoulos and Sergeant Jason Baldwin immediately responded to the apartment complex in their separate marked patrol vehicles. Officer Fanopoulos parked his patrol vehicle near the apartment complex entrance. As he exited his vehicle, he approached Officer Lemons and yelled "blue, blue, blue" to inform him that he was coming from behind him. Ms. Nevarez drove over the parking blocks, made a U-turn and drove directly towards the officers at approximately 20-30 miles per hour. A resident of the apartment complex observed Ms. Nevarez drive her vehicle towards Officer Schouten, who pointed his gun and jumped out of the way to avoid being hit. Officer Fanopoulos ran to his vehicle and drove it a few feet to block the escape. As Ms. Nevarez' vehicle approached, she stared at Officer Fanopoulos. Ms. Nevarez' vehicle collided into the front driver's side of Officer Fanopoulos' vehicle, continued to accelerate, and pushed the patrol vehicle back several feet. Ms. Nevarez drove onto Madison Avenue into oncoming traffic, made a U-turn, and travelled eastbound. Sergeant Baldwin and Officer Fanopoulos pursued Ms. Nevarez.

Ms. Nevarez drove over 70-80 miles per hour, turned right on San Juan Avenue, turned left onto Sunset Avenue, and eventually made a U-turn. Ms. Nevarez drove past Sergeant Baldwin on Sunset Avenue and turned right into an apartment complex. Sergeant Baldwin followed her into the complex and briefly lost track of her. He parked his vehicle, exited and drew his handgun. He located her still in her vehicle. Ms. Nevarez looked at Sergeant Baldwin, placed her car in reverse, and launched backward towards him. Sergeant Baldwin moved out of the way. At this point, Officer Fanopoulos attempted to block the front entrance with his patrol vehicle. Ms. Nevarez made a U-turn, drove around Sergeant Baldwin's vehicle and came towards Officer Fanopoulos' vehicle. Rather than driving around the patrol vehicle and attempting to exit the parking lot, Ms. Nevarez veered directly towards Officer Fanopoulos' vehicle and collided into the front passenger side. She then backed up several feet, drove forward, and collided into the patrol vehicle again. As Officer Fanopoulos exited the vehicle on the driver's side and stood less than five feet away between the patrol car and the retaining wall, Ms. Nevarez continued to push the patrol vehicle toward the wall while keeping her foot on the accelerator with her tires squealing. As a result, Officer Fanopoulos was being pushed into a position in which he could be crushed against the wall.

The patrol vehicle eventually was pinned against the retaining wall and suffered extensive damage to its front bumper, right front tire, and right front quarter panel. Sergeant Baldwin ran up to the vehicles and fired three to six gunshots towards Ms. Nevarez. While escaping the small area between his vehicle and the retaining wall, Officer Fanopoulos fired at least one gunshot towards Ms. Nevarez. He then came around the front of his patrol car and fired multiple shots at her. Although her body went limp, Ms. Nevarez' foot continued to press down on the accelerator, causing her front wheels to spin. Sergeant Baldwin and Officer Fanopoulos pointed

their guns at Ms. Nevarez and repeatedly told her to stop. Because Ms. Nevarez did not move, Sergeant Baldwin reached inside and turned off her vehicle.

Officer Fanopoulos and Sergeant Baldwin removed Ms. Nevarez from her vehicle, placed her on the ground, searched her for weapons and performed CPR for approximately five minutes until the firefighters arrived. She was pronounced deceased at the scene. An autopsy was conducted by the Sacramento County Coroner's Office. It was determined that Nevarez died from multiple gunshot wounds. Nevarez had four gunshot wounds to the right side of her back, center chest, and left thigh. She also had a tangential gunshot wound to the scalp. The Sacramento County District Attorney Crime Lab analyzed a sample of Nevarez' blood and confirmed the presence of delta-9-THC and 11-nor-9-carboxy-THC.

Deputies interviewed Ms. Nevarez' girlfriend, who stayed at the apartment complex where the shooting occurred. Her girlfriend stated that Ms. Nevarez drank alcoholic beverages the prior evening. At 2:00 a.m., Ms. Nevarez spoke to her girlfriend on the phone and admitted that she had been smoking marijuana. The girlfriend also spoke to Ms. Nevarez on the phone during the chase and walked outside of the apartment when she heard the sirens. Approximately one minute later, she observed Ms. Nevarez' vehicle already stopped and two police officers firing approximately 10 to 16 shots into the passenger window of the vehicle. She also observed Ms. Nevarez in the driver's seat with her hands up. The girlfriend did not believe that the officers had a reason to feel threatened by Ms. Nevarez. However, she did not observe Ms. Nevarez' vehicle enter the parking lot, launch back towards Sergeant Baldwin, veer to the right of the exit, collide multiple times with the patrol vehicle, and cause it to be pinned up on the retaining wall and force Officer Fanopoulos to flee the patrol vehicle for his safety. She and other witnesses also stated that Ms. Nevarez had anger issues.

Ms. Nevarez was previously convicted of robbery in 2010 and was on felony probation at the time of this incident.

LEGAL ANALYSIS

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. Additionally, an officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. (*Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; California Penal Code § 835a; CALCRIM 2670.) An officer who attempts to arrest or detain a person need not retreat or desist from his efforts by reasons of the resistance or threatened resistance of the person; nor shall the officer be deemed an aggressor or lose the right to self-defense by use of reasonable force. (California Penal Code § 835a.) Police may use some degree of physical coercion or threat thereof to accomplish an arrest. The force used must be objectively reasonable, considering such issues as the severity of the crime, whether the suspect posed an immediate threat to police or others, and whether the suspect actively resisted arrest or attempted flight. (*Graham v. Connor* (1989) 490 U.S. 386.) The reasonableness inquiry takes into account those facts known to the officer at the moment he or she uses deadly force to apprehend a fleeing suspect. (*Ford v. Childers* (7th Cir. 1988) 855 F.2d. 1271, 1275; *Sherrod v. Berry* (7th Cir. 1988) 856 F.2d 802, 804.)

The person being detained or arrested may be subjected to such restraint as is reasonably necessary for her arrest and detention and has a concomitant duty to permit herself to be detained. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; CALCRIM 2670, 2671, 2672.) The rule “requires that the officer’s lawful conduct be established as an objective fact; it does not establish any requirement with respect to the defendant’s mens rea.” (*People v. Jenkins* (2000) 22 Cal.4th 900, 1020.)

California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury. (CALCRIM 3470.) An officer who uses deadly force must actually believe that force is necessary. The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.) Thus, the officer may employ all force reasonably believed necessary. (CALCRIM 3470.) The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 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.)

Applying these legal principles to the factual circumstances involved in this case, both officers believed that Ms. Nevarez was a danger to herself and others. Officer Fanopoulos had information that Ms. Nevarez was bipolar and he observed her driving recklessly in an apartment parking lot in the direction an officer. Her actions caused the officer to jump out of the way to avoid being hit by her vehicle. Ms. Nevarez then accelerated, struck Officer Fanopoulos’ patrol vehicle, pushed it several feet back, and fled the parking lot. She drove towards oncoming traffic and drove recklessly through the streets while being pursued by officers. Ms. Nevarez eventually drove into another apartment parking lot and accelerated her vehicle towards officers. She collided into Officer Fanopoulos’ patrol vehicle, backed up several feet, and collided into his vehicle again. As Officer Fanopoulos exited his vehicle, Ms. Nevarez continued to push the patrol vehicle back while keeping her foot on the accelerator with her tires squealing. Fearing for the safety of Officer Fanopoulos, Sergeant Baldwin fired gunshots towards Ms. Nevarez. Based on his location and the danger of being crushed between the patrol vehicle and retaining wall, Officer Fanopoulos also fired gunshots at Ms. Nevarez to defend himself against death or serious bodily injury. The officers’ use of deadly force under such circumstances was reasonable and necessary.

CONCLUSION

Applying the controlling legal standards, we conclude that Sergeant Baldwin and Officer Fanopoulos were justified in using deadly force in this situation. The objective evidence supports a finding that the officers’ conduct was reasonable under the circumstances.

cc: CHPD Sergeant Jason Baldwin
 CHPD Officer Alexi Fanopoulos
 SSD Detective Angela Kirby
 SSD Lieutenant Kris Palmer