



# Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT  
District Attorney

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## MEMORANDUM

DATE: May 26, 2020

TO: Police Chief Timothy Albright  
Elk Grove Police Department  
8400 Laguna Palms Way  
Elk Grove, CA 95758

Sheriff Scott Jones  
Sacramento County Sheriff's Office  
4500 Auburn Boulevard  
Sacramento, CA 95841

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SSD 2019-20147  
Shooting Officer: Paul Resch, EGPD #150  
Person Shot: Jason Gonzalez-Warren (5/12/93)

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 Jason Gonzalez-Warren. For the reasons set forth, we conclude the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other items, including: Sacramento Sheriff's Department report number 2019-20147, Elk Grove Police Department report number 2019-000354, related dispatch logs and audio recordings, 911 and fire calls, witness interview recordings, crime scene photographs, surveillance videos, in-car camera footage, body-worn camera videos, and Sacramento County District Attorney's Office Laboratory of Forensic Services Physical Evidence Examination.

## FACTUAL SUMMARY

On January 17, 2019 at approximately 11:09 a.m., Elk Grove Police Department Officers Paul Resch and Kenny Viec were in full uniform and in a marked Ford Explorer. Officer Resch was driving, and Officer Viec was in the front passenger seat. As Officer Resch turned onto Orchard Loop Lane in Elk Grove, he observed an adult male, later identified as Jason Gonzalez-Warren,

on his left walking on the sidewalk approximately 15 feet away. Gonzalez-Warren's back was to the patrol vehicle.

Officer Resch observed what appeared to be the barrel of a revolver in Gonzalez-Warren's right hand. Officer Resch believed Gonzalez-Warren was pointing the gun down toward a rain puddle in front of him. Gonzalez-Warren glanced over his shoulder at the approaching patrol vehicle. It appeared to Officer Resch that Gonzalez-Warren raised what was in his hand up into his cuff or tucked it under his arm. Gonzalez-Warren began jogging away. As Gonzalez-Warren proceeded toward a nearby business, Officer Resch observed Gonzalez-Warren reach into his waistband. Gonzalez-Warren looked like he was manipulating something. These circumstances led Officer Resch to be fearful for the safety of himself, his partner, and the public. Officer Resch described having his attention particularly drawn to Gonzalez-Warren due to the way that Gonzalez-Warren had been "digging into his waist" of his pants, and due to the way that Gonzalez-Warren turned towards Officer Resch, looked in his direction, turned away, and started running. Officer Resch was further concerned that Gonzalez-Warren exhibited this behavior in a highly populated area, with numerous open businesses and parking lots, potentially putting other citizens in danger.

Officer Resch removed his seatbelt while the car was still in drive. He opened his car door with his left hand, kicked it open with his left foot, and braced his foot against the door. He started to apply the vehicle's brake and slowed as he raised his gun up between the driver side pillar and the frame of the door. He positioned his gun where he could defend himself from Gonzalez-Warren if necessary and yelled to Gonzalez-Warren to show his hands. Although Officer Resch yelled this command loudly, Gonzalez-Warren did not immediately comply. Gonzalez-Warren still had his hands in front of him, away from where Officer Resch could see them. Gonzalez-Warren spun quickly counter clockwise towards the officers. As his hands came into view, Officer Resch saw the black object he suspected to be a gun. As Officer Resch fired a single shot, the object fell from Gonzalez-Warren's hands.

Gonzalez-Warren did not appear harmed and remained standing. He told Officer Resch he was not injured. He was handcuffed, and a glass smoking pipe was discovered in the zipper of his pants. The officers located the object that fell to the ground as he spun quickly. It was a Bic "torch-style" lighter. The lighter was an extended barbecue lighter stick with a blue base and a black cylinder-shaped barrel.

Gonzalez-Warren was interviewed shortly after the shooting. As he was giving a statement to law enforcement, he complained of being shot. Officers observed that Gonzalez-Warren had an approximate 1 and 1/2 inch graze wound just below his right nipple across the front of his chest.

Gonzalez-Warren told detectives he was a methamphetamine user who had just been asked to leave a Starbucks because he was causing a disturbance. He decided to run across the street to the Marriott hotel to smoke his methamphetamine. As he was running, he saw Officer Resch's patrol car and believed the people at Starbucks had called the police on him. He had a feeling the patrol car was coming after him, so he told himself to run faster. He had his meth pipe in one hand and a lighter stick in the other. Because he was fearful that the police would find the pipe, he decided to shove it inside the front zipper area of his pants where he frequently hides his pipe

when he knows he is going to be stopped by the police. Gonzalez-Warren then ran to the bend in the road and turned the corner. He stated he heard Officer Resch tell him to stop and drop what he was holding in his hand. He stopped and turned around to face the officer.

Officer Viec shared Officer Resch's concern that Gonzalez-Warren had a gun, and that he presented an immediate danger to both officers and any potential citizens in the area. In particular, Viec characterized the way that Gonzalez-Warren was manipulating his hands as being consistent with operating the slide of a semiautomatic handgun. This made Officer Viec fearful of the danger posed by Gonzalez-Warren, so Officer Viec drew his firearm as the patrol vehicle approached Gonzalez-Warren. As the patrol vehicle slowed down, Officer Viec quickly stepped out of the patrol vehicle and pointed his gun at Gonzalez-Warren. At that point, Gonzalez-Warren made his sudden turn, at which point Officer Resch discharged his firearm.

Citizen witnesses observed different portions of the incident. One witness observed Gonzalez-Warren walking and the patrol car coming up quickly behind him. Gonzalez-Warren looked back and then kept walking. The witness observed the "passenger cop [Officer Viec] get his gun and get out of the patrol car." The witness observed Gonzalez-Warren walking away with his back towards the officers, saw smoke, and heard a "pow." He saw the patrol vehicle continue to move forward slowly. The witness did not know where the gunshot came from. The witness did not see anything in Gonzalez-Warren's hands. He did not hear anything said by the officers.

Another witness observed Gonzalez-Warren running up the street. He saw Officer Resch's gun out of the patrol vehicle's door. He stated Gonzalez-Warren just had his hands up. The witness thought he saw Gonzalez-Warren get shot. He saw the gun out of the patrol car, heard a "pop," and saw Gonzalez-Warren get arrested.

Officer Resch was wearing a body-worn camera and his patrol vehicle was equipped with an in-car camera recording device. Video from this incident depicts Gonzalez-Warren running away from the officers. The video does not include audio. The video shows Gonzalez-Warren walking toward the Firestone business, with his back to the officers and his hands not visible from behind. Gonzalez-Warren then suddenly turns to face the officers while simultaneously discarding an object in his hand. He then immediately reaches for his chest. Officer Resch then exits the patrol car and detains Gonzalez-Warren.

## **LEGAL ANALYSIS**

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, 11; *Graham v. Connor* (1989) 490 U.S. 386, 396; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; California Penal Code Section 835a; CALCRIM 2670.) The person being detained or arrested may be subjected to such restraint as is reasonably necessary for his arrest and detention and has a concomitant duty to permit himself to be detained. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; CALCRIM 2670, 2671, 2672.) Officers do not need to retreat or desist their efforts if the person they are

arresting or detaining resists or threatens resistance; nor shall the officer be deemed an aggressor or lose the right to self-defense by use of reasonable force. (California Penal Code section 835a.)

In the present matter, the officers had reasonable cause to detain Gonzalez-Warren to confirm whether he had a deadly weapon on his person. Officer Resch saw Gonzalez-Warren carrying an object which appeared to be a gun. Upon noticing the officers, Gonzalez-Warren raised the object up into his cuff or tucked it under his arm. Gonzalez-Warren appeared to be attempting to conceal it on his person, furthering suspicion that he was involved in some type of illegal activity. These actions gave Officer Resch sufficient justification to detain Gonzalez-Warren to investigate further whether Gonzalez-Warren was illegally possessing a firearm and what he intended to do with it.

California law permits the use of deadly force if the officer actually and reasonably believed he or someone else was in imminent danger of death or great bodily injury. (CALCRIM 505, 507, 3470.)<sup>1</sup> An officer who uses deadly force must 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.)

Considering the shape, size, and color of the “torch-style” lighter with its black, cylinder-shaped barrel, it was reasonable that Officer Resch believed Gonzalez-Warren was holding a gun. After seeing the patrol car, Gonzalez-Warren began jogging away. With his back towards the officers, he started manipulating something with his hands. This was a rapidly evolving situation, and Gonzalez-Warren’s actions heightened Officer Resch’s sense of urgency and safety concerns. As Gonzalez-Warren was instructed to show his hands, he hesitated and then quickly spun around towards the officers with the apparent gun in his hand. Officer Resch was forced to make a split-second decision. Officer Resch believed that Gonzalez-Warren was holding a gun and was rapidly turning towards him in order to use that gun. Based on the totality of the circumstances, Officer Resch reasonably used his firearm to protect himself, Officer Viec, and people in the nearby businesses from the immediate danger that Gonzalez-Warren appeared to present.

Gonzalez-Warren’s injury to his chest confirms that he was not shot in the back as described by one of the civilian witnesses. Additionally, video footage shows that Gonzalez-Warren did not have his hands up when he was shot, as described by another civilian witness. It is further noted that one of the civilian witnesses thought it was Officer Viec who fired, when clearly it was not.

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<sup>1</sup> This incident occurred prior to California Assembly Bill 392’s amendments to Penal Code sections 196 and 835a. Therefore, this incident is analyzed under the law as it existed at the time of the events.

## **CONCLUSION**

Based on the circumstances of this incident, Officer Resch had an honest and reasonable belief that he, his partner, and the public were in imminent danger of death or great bodily injury. Therefore, he acted lawfully in shooting Gonzalez-Warren to defend himself and others. Accordingly, we will take no further action in this matter.

CC:

Officer Paul Resch

Detective Carlos Cabrera