



Office of the District Attorney Stanislaus County

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Bureau of Investigation
Lt. David Hutchinson
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PRESS RELEASE

For Immediate Release

Date: January 18, 2018
Re: Shooting by Officer Found to be Justified

For More Information Contact:

John Goold, Public Information Liaison
Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, after a thorough review of all the relevant evidence gathered during the investigation of an officer involved shooting death that occurred on January 15th, 2017, the shooting has been determined to be justified. On that date, Newman Police were dispatched to a disturbance involving Mauro Calzada Garnica. When Officer Lopez arrived at the scene, he saw Garnica holding a knife and stabbing at the victim. Garnica ignored the Officer's commands to drop the knife, at which time the officer fired to stop the deadly assault. Garnica did not survive his wounds.

A copy of the letter provided to the Newman Police Department is attached to this press release.

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January 5, 2018

Chief Randy Richardson
Newman Police Department
1200 Main Street
Newman, California 95360

Sheriff Adam Christianson
Stanislaus County Sheriff's Office
250 E. Hackett Rd.
Modesto, CA 95358

Re: Shooting of Mauro GARNICA

Dear Chief Richardson/ Sheriff Christianson:

This office has completed our review of the shooting of Mauro Calzada GARNICA (D.O.B. 6/10/1961) which occurred on February 15, 2017 in the City of Newman in the area of Bobolink Avenue. It is reported that Officer Edgar Lopez shot Garnica in defense of another. It is our determination that the officer was justified in his actions (as will be explained below) and view this matter as closed.

FACTS

On February 15, 2017 at approximately 0840 hours (8:40 a.m.) Officer Edgar Lopez was dispatched to a 415 PC disturbance. The CAD printout sent to the officer stated:

“RP HER NEIGHBORS ACROSSTHE ST ON BOBOLINK ARE IN AN ACTIVE 415 MALE POSS HOLDING A KNIFE. X IN PINK SWEATER/GRY SLACKS – UNK DESC ON THE MALE HALF [MAUUDO CALAZDA] /// INSIDE RESD ACROSS THE STREET FROM THIS ADDRESS, BROWN HOUSE WITH GREEN CAR IN DRIVEWAY.”

Officer Lopez was dispatched and reported enroute within one minute of the call. The house in question had been the location that officers had been called to or visited on numerous prior occasions. The house is where Garnica's girlfriend, Maria Pereira lived. She had a protective order restraining Garnica from coming within 100 yards of her house. The restraining order was issued against Garnica in December, just two months prior to this reported disturbance and was still in effect.

Officer Lopez was the first officer to arrive; almost immediately after Lopez arrived, Lt. Brett Short and Chief Randy Richardson arrived at the house. As the officers arrived, Pereira and Garnica exited the house onto the front porch while physically struggling with each other. They both were described as falling to the ground with Garnica striking Pereira in a downward motion. Chief Richardson would describe Pereira as screaming, a “blood curling” scream. Officer Lopez, who was closest, observed that Garnica had a knife and was actually trying to stab Pereira. Officer Lopez yelled for Garnica to drop the knife. Garnica did not drop the knife but continued stabbing at Pereira several more times. Officer Lopez then fired his weapon at Garnica (approximately two times). Garnica continued to try and stab Pereira and Officer Lopez fired again.

Pereira would later tell the officers that Garnica had forced his way into the house. Pereira had cuts and/or stab wounds that she was advised would need stitches. Garnica would not survive his injuries. Pursuant to the county-wide shooting protocol an investigation into the shooting was commenced. Pursuant to the policy the Sheriff’s Office assumed jurisdiction of the investigation.

The scene was preserved and documented¹. Pereira was later interviewed and explained her relationship with Garnica. She said he had started using drugs the previous year and was “getting crazier and crazier” especially if he was also drinking. Garnica had started threatening to kill her so she had obtained a restraining order against him. Pereira said that morning (the day of the shooting) Garnica had shown up at the house with his brother. She said Garnica was drunk already. [The autopsy reports showed that Garnica had a blood alcohol level of .08% and an extremely high level of methamphetamine in his system.] Garnica rang the bell and when Pereira opened the door Garnica pushed open the door forcing his way inside.

Pereira ran outside to get Garnica’s brother who was waiting in a car. The brother came and tried to get Garnica but he would not leave. Garnica went to the kitchen and grabbed a knife. Pereira would not go back inside so Garnica came and started pushing her inside and his brother out of the way. She struggled with Garnica until they were on the porch and he hit her/pushed her to the ground. She said Garnica was trying to stab her the whole time saying she was “going to die” to her in Spanish. At one point, Garnica tried to stab her but missed, striking the knife on the floor and breaking the handle off. She was stabbed once in the shoulder and had other scratches. When she was on the ground she thought today was going to be her day (to die) until the officer shot Garnica.

Garnica’s brother was interviewed and he confirmed the basics of what Pereira had said. He confirmed that Garnica had a knife and said he thought his brother was “going to finish them off” based on how Garnica was acting. The brother said that had he known his brother “wanted to kill people” he would not have brought him to Pereira’s house.

The knife, and broken off handle were recovered where Garnica dropped them.



¹ The county policy dictates that the District Attorney’s Office monitor the investigation. In this case, both a Deputy District Attorney and District Attorney Investigator were present at the scene and throughout the investigation process.

LAW

Any application of deadly force is unlawful unless it is either justified or excused. The use of force by a peace officer is governed by the Fourth Amendment. As the U.S. Supreme Court has said:

“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.... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ [citation] violates the Fourth Amendment. 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, at p. 396-397.)

Peace officers have additional rights by virtue of their need to enforce the law, and these differ from the ordinary citizen. Some of these rights are codified in Penal Code §835a which states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. ¶ A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

Reasonableness is the standard required for self-defense. There is a second prong of self-defense and this is called the “defense of others” doctrine. The defense of others allows an officer to defend others who might be in harm’s way. It is separate from traditional self-defense because the defense of others does not require the person who uses the force to be in peril. For example, a hostage situation is a typical circumstance where the use of force would be allowed even if the officer was not in any immediate danger, but the hostage was. This law is codified in California and follows federal law:

“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 U.S. 1, 11.

This policy of allowing force to be used to protect others from possible harm has been discussed in California in relation to the national Model Penal Code, a standard for certain legal issues:

“We note that the language used in this part of the regulation comes from section 3.07 of the Model Penal Code, which justifies deadly force to effect an arrest when there is no substantial risk of injury to innocent persons and ‘(iv) the actor believes that: (1) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; Or (2) there is a substantial risk that the person to be arrested will cause death or serious bodily

harm if his apprehension is delayed.’ (ALI, Model Penal Code, s 3.07, Proposed Official Draft, May 4, 1962, p. 57; emphasis added.)”

Long Beach Police Officers Assn. v. City of Long Beach, (1976) 61 Cal. App. 3d 364, 375.

In the instant case, it is clear that Officer Lopez was acting as a police officer. He was called to the scene and provided with information that an assault was occurring by a man armed with a knife. When he arrived, he in fact saw Garnica stab Pereira. Under these circumstances, the above cited laws are applicable to Officer Lopez’s actions. Based on these facts, there is only one legal conclusion.

Conclusion

Officer Lopez was performing his job as a police officer which allowed him to be where he was and to stop the deadly attack by Garnica. The use of force by Officer Lopez was measured and in direct response to the threat he perceived to Pereira. In other words - it was reasonable. He was clearly justified in using deadly force to protect Pereira. Under these circumstances, the shooting of Mauro Calzada Garnica which occurred on February 15, 2017 in the City of Newman by Officer Edgar Lopez is determined to be justified and in the defense of others.

Very truly yours,

BIRGIT FLADAGER
District Attorney


David P. Harris
Assistant District Attorney

cc: Off. Edgar Lopez