



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: July 13, 2018

Re: Shooting by Officers 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 the officer-involved shooting death that occurred on June 7, 2016, the shooting has been determined to be justified. The crime partner, Juan S Bulgara, was convicted in federal court on April 9, 2018 and sentencing was originally scheduled for July 2nd, but that has now been continued to September 17th.

A copy of the letter provided to the Modesto Police Department and Turlock Police Department is attached to this press release.

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April 2, 2018

Chief Galen Carroll
Modesto Police Department
600 10th Street
Modesto, CA 95354

Chief Nino Amirfar
Turlock Police Department
244 N. Broadway
Turlock, CA 95380

Re: Omar VILLAGOMEZ shooting

Dear Chiefs:

This office has completed its review of the shooting which occurred on June 7, 2016¹ in the City of Turlock during the attempted arrest of Omar Villagomez and co-responsible Juan Bulgara during a “drug bust.” Based on this review, I must conclude that Officer Joseph Lamantia and Sgt. Alex Bettis acted in self-defense and/or the defense of others, during the events of that day. This conclusion is based upon the submitted reports, interviews, photographs and videos of the incident, and this office’s own independent evaluation of the facts as set out below.

SUMMARY

On June 7, 2016, agents of the Stanislaus County Drug Enforcement Agency (hereafter SDEA) were attempting to bring an undercover drug operation to a close – the plan was to conduct a “buy/bust” arrest on the targets of the investigation. SDEA agents had negotiated the purchase of a large quantity of methamphetamine from the targeted drug traffickers. Omar Villagomez was one of the identified traffickers. The transaction was to be for as much as forty pounds of methamphetamine with a purchase price of up to \$120,000.00.

¹ Pursuant to the county-wide incident protocol this review has been delayed pending the outcome of the federal prosecution of Juan Bulgara. This is required by the Rules of Professional Responsibility to prevent the appearance that we are vouching for witnesses or forcing a witness to adopt any particular set of facts.

The meeting took place in a parking lot in the City of Turlock. SDEA agents and SWAT officers surrounded the location in an undercover capacity. They were in unmarked vehicles but wore police gear that clearly identified their police status. When the targets arrived, Villagomez was driving and Bulgara was in the front passenger seat; the car was a Nissan Altima. An undercover officer and an informant walked up to and met with Villagomez and Bulgara as they sat in the Altima. Once the undercover agents confirmed that the methamphetamine had been delivered they gave the "bust" signal and walked away from the car.

The "bust plan" was for two unmarked police vehicles to box in the suspects' car and the police officers (in police clothing) would then get out and make the arrest. The police cars would not pull directly up in front of the car because the police officer riding on the side nearest the target car would be trapped inside and/or could be hit by the suspects' car if it attempted to drive away (or rammed the police vehicles). The first unmarked police vehicle (a truck) attempted to pull in front of the Altima as planned. Officer Joseph Lamantia, a highly trained SWAT officer from the Modesto Police Department, was a passenger in the unmarked truck and was watching the suspects as they drove up to the Altima.

Officer Lamantia would later describe that as his truck pulled into the area and headed towards the front of the Altima he locked eyes with Villagomez. He was certain that Villagomez realized this was a bust. Overhead, a surveillance platform videotaped the incident as it happened. Lamantia's truck can be seen approaching the area at 01:53 seconds on the counter.

Officer Lamantia described that as he started to exit the truck, wearing clothing that clearly indicated he was a police officer (such as a badge patch and the word POLICE written across the front), Villagomez could clearly see him and his clothing. Officer Lamantia said Villagomez looked mad and had already put the car in reverse driving the Altima backwards away from Lamantia's vehicle. A second police car, as planned, drove behind the Altima and was rammed by Villagomez. This is clearly visible in the video at 01:56 seconds.

The second police vehicle was an SUV and sustained significant damage from being rammed by Villagomez in the Altima. In the video, the front bumper of the SUV can be seen being knocked off from the collision. The Altima was then put in drive and sped forward.

Officer Lamantia is seen discharging his weapon at this point in time. He would explain that he had observed Villagomez involved in felony activity, ram a police SUV and possibly injure the officers in the SUV; Officer Lamantia believed that by Villagomez driving forward he was endangering his partner officer as well. Villagomez drove at high speed and struck a parked car across from the aisle he was in. The speed was substantial enough to cause the Altima's airbags to deploy.

The Altima rolled backwards and a third police vehicle, a second truck, impacted the Altima to stop it from moving. During this impact, the smoke from the air bag discharge can be seen coming out of the Altima giving the appearance of a shot being fired from the car. One of the now growing number of officers at the scene, Sgt. Alex Bettis, fired at the car believing that the officers were in danger.

With the Altima disabled, the officers backed away and took up positions of safety. A plan was developed for them to approach the Altima and gain entry to the two suspects inside. Within a few minutes, the officers approached and removed the two suspects from the car. Inside the car was approximately fifteen (15) pounds of methamphetamine as well as a stolen 9mm Glock handgun.

Pursuant to the county-wide officer involved incident protocol the scene was secured and an investigation was commenced. Villagomez did not survive his injuries. Bulgara was not significantly injured. Bulgara had injuries consistent with being struck by flying debris, which could have been from bullets or glass fragments. Bulgara was indicted by the U.S. Attorney's Office on drug charges.

LAW

A brief review of the law helps frame the issues before us. In California Jury Instructions, CALJUR 507, the law states that an officer making an arrest is not acting unlawfully if he has probable cause to arrest or detain a person who is "... resisting arrest or fleeing from justice, overcoming actual resistance to some legal process, or while performing any legal duty" and "probable cause to believe" that the subject "posed a threat of death or great bodily injury, either to the [officer] or to others." "A person has *probable cause* to believe that someone poses a threat of death or great bodily injury when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another."

In this case, Villagomez posed a threat of death or great bodily injury during his attempt to escape while armed. Villagomez was engaged in a felony offense, was armed with a handgun and rammed a police vehicle. Under these circumstances, any of the officers had probable cause to arrest or detain him, and did not use excessive force in shooting at him.

The United States Supreme Court has also given us guidance in how to review an officer's use of force. In the case of Tennessee v. Garner, (1985) 471 U.S. 1, the court explained that determining the "reasonableness" of the force used to effect an arrest or seizure requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. Factors to consider include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene. Garner said the "reasonableness" test 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. Nevertheless, the reasonableness inquiry is "an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."

In Garner, the court further held that "[t]he use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable." However, the Court held that 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. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape.

The rule of self-defense applies when someone uses deadly force to save oneself or someone else. This concept is memorialized in the Penal Code, and there is a special provision for police officers. Since police officers were involved in the instant case, a review of Penal Code §196 is required. Section 196 states:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either--

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

There is no legal question that Officer Lamantia and Sgt. Bettis were police officers within the meaning of the term "public officer" as used in §196. As such, each one of them was in the lawful performance of their duties, and each had the right to use force, as long as the use was "reasonable." This right comes from 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.

In a civil rights case² the court was faced with very similar facts, stating:

In response to a strong show of force by officers in raid gear who ordered Ojeda to get out of his vehicle, Ojeda instead drove his vehicle up onto the sidewalk adjacent to the strip mall, "gunned" the engine, and drove directly toward Ransweiler and Baldwin. After Ransweiler dove out of the way, he saw Baldwin fall to the ground while still in front of Ojeda's vehicle. Ransweiler's fear that Ojeda would run over Baldwin was reasonable given these circumstances.

² Although the cited case was a civil case it applied the same standards we must use to determine the reasonableness of the officer's conduct. More importantly, the burden of proof used in a civil case is much less than the burden of proof in a criminal case and if the facts do not support a finding of excessive force in a civil case there would be no way to prevail in a criminal case.

Once Ojeda took this extreme action in response to police orders to surrender, Ransweiler acted reasonably in shooting at him, to attempt to stop Ojeda from harming Baldwin or a third party, or escaping. Ransweiler's use of force was not excessive or unreasonably dangerous relative to the danger Ojeda's actions posed.

Brown v. Ransweiler, (2009) 171 Cal. App. 4th 516, 528.

In the instant case, Villagomez was involved in a drug transaction for fifteen pounds of methamphetamine. The likelihood of a drug trafficker with this quantity of drugs being armed is high. Villagomez sped off when he saw the approaching police vehicles and officers in raid gear. He rammed one vehicle and drove towards another. This provided the officers with more than legal justification to arrest Villagomez. The fact that Villagomez resisted the attempt to arrest him did not mean that the officers had to let him go. Villagomez's reckless conduct during his attempt to escape demonstrated that he was a serious threat to the safety of others. The fact he rammed a police car with the Altima was clear evidence that he was a danger to the physical safety of others.

When the officers were placed in danger, and when viewed from the objective officer's point of view, and with the facts known to the officers at that time, it was reasonable for them to use deadly force. The shooting by Off. Lamantia and Sgt. Bettis was in self-defense and/or in the defense of others, and to prevent the escape of a dangerous suspect.

CONCLUSION

The evidence leads me to the conclusion that the above-named officers acted lawfully under the circumstances known to them on June 7, 2016. Villagomez had committed a felony warranting arrest, had rammed a police vehicle and was armed when he attempted to escape. This office now views the matter as closed.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Officer Joseph Lamantia
Sgt. Alex Bettis