



Office of the District Attorney Stanislaus County

Birgit Fladager
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Bureau of Investigation
Chief Terry L. Seese

PRESS RELEASE

For Immediate Release

Date: January 27, 2020

Re: Non-lethal 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 the officer-involved shooting that occurred on March 15, 2018, the shooting has been determined to be justified.

A copy of the letter provided to the Stanislaus County Sheriff's Department and California Highway Patrol is attached to this press release.

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January 22, 2020

Sheriff Jeff Dirkse
Stanislaus County Sheriff
250 E. Hackett Rd.
Modesto, CA 95358

Commander Shane Ferriera
California Highway Patrol
4030 Kiernan Ave
Modesto, CA 95356

Re: Shooting of Francisco Hurtado

Dear Captain Ferriera/Sheriff Dirkse:

This office has completed our review of the shooting of Francisco Hurtado which occurred on March 15, 2018. It is reported that Hurtado was shot after a vehicle pursuit when he reached for a gun. Mr. Hurtado survived his injuries and is currently facing criminal charges for his conduct. It is our determination that the officers were justified in their actions (as will be explained below) and we now view the matter related to the shooting as closed.

FACTS

On March 15, 2018 at approximately 2300 hours, California Highway Patrol (CHP) Officer Edgardo Yopez and Officer Michael Randazzo were working in a two-man marked police unit when they attempted a traffic stop on a red 2005 Cadillac Escalade driven by Hurtado. Hurtado was driving southbound on Highway 99 and was speeding.

As the CHP officers tried to pull Hurtado over (activating their patrol car red lights) Hurtado sped off. His initial speed was "paced" at 80 mph and he accelerated away from the patrol car. A short pursuit ensued with Hurtado driving extremely recklessly in and out of traffic. Hurtado outran the patrol car but lost control of his SUV and drove through a guardrail. His car rolled and ended up down an embankment on the vehicle's roof.

Off. Yopez and Off. Randazzo found the location of the crash and approached on foot. Hurtado was trapped inside the car, but not in his seat. As Off. Randazzo approached the car he saw a gun on the floor by Hurtado's feet. Off. Randazzo yelled out a warning "gun" to his partner officer. Off. Yopez was looking through the back and could see Hurtado crouched down in the driver's

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compartment (in effect standing on the SUV's roof which was now functioning as the floor). Off. Yepez saw the gun next to Hurtado and watched as Hurtado reached for the gun. Hurtado was able to grab the gun and Off. Yepez then fired his weapon at him. Hurtado was struck and dropped the gun. Hurtado survived and has been charged with various crimes, including a violation of Penal Code §69. A violation of that section is often called “resisting or deterring an executive officer” in the performance of his duties.

Pursuant to the countywide OIS policy an investigation was commenced with the Sheriff's Department taking the lead. Hurtado's gun was a .380 Walther PPK handgun and was loaded. A blood test showed Hurtado was under the influence of cocaine and marijuana.

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 rights by their need to enforce the laws that differ from the ordinary citizen. Some of these rights are codified in Penal Code §835a which during the time of this incident stated:

“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.”

The crime of “resisting or deterring an executive officer” in the performance of his duties within the meaning of Penal Code §69 requires that the peace officer is lawfully performing his duties. The “performance of his duties” element infers that there was no excessive force involved during the arrest. The law also allows for an officer to act based on probable cause or, as one court has stated:

A police officer's use of deadly force is reasonable if ‘ “ ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’ [Citations.]” [Citation.] [Citation.] ‘

“Thus, ‘an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.’ ” ” ”
Lopez v. City of Los Angeles, (2011) 196 Cal. App. 4th 675, 686

CONCLUSION

Based on the law, Off. Yepez and Off. Randazzo were performing their jobs as police officers which allowed them to stop Hurtado. However, Hurtado refused to stop and instead led the officers on a short-lived high-speed chase. Hurtado’s dangerous driving constituted a felony and converted a simple traffic stop into a dangerous situation for all of those on the road that night. The fact that Hurtado crashed his car is evidence of the reckless nature of his actions. When Off. Yepez and Off. Randazzo approached and attempted to render aid they were greeted by Hurtado laying in wait. Hurtado had no need to reach for the gun and his action of grabbing the gun demonstrated an intent to use it against the officers. The use of force by Off. Yepez to protect himself and his partner was measured and in direct response to the threat he perceived. It was reasonable and justified. Under these circumstances, the shooting of Hurtado is determined to be justified.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Off. E. Yepez