



# Office of the District Attorney Stanislaus County

**Birgit Fladager**  
District Attorney

**Assistant District Attorney**  
David P. Harris

**Chief Deputies**  
Marlisa Ferreira  
Jeffrey M. Laugero  
Wendell Emerson  
Michael D. Houston

**Bureau of Investigation**  
Chief Terry L. Seese

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## PRESS RELEASE

### For Immediate Release

Date: May 6, 2021

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 that occurred on May 25, 2020, the shooting has been determined to be justified.

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

# # #

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May 3, 2021

Interim Chief Brandon Gillespie  
Modesto Police Department  
600 10th Street  
Modesto, CA 95354

Re: Shooting of Reymar Gagarin

Dear Chief Gillespie:

On May 25, 2020, Reymar Gagarin (DOB 1/19/85) was shot after pointing a gun at two officers. Based upon a review of the submitted reports, witness statements, and video evidence, it is our conclusion that the use of force by the involved officers was legally justified. To explain this finding, I begin with a brief summary of the known facts.

**FACTS**

On May 25, 2020 at around 9:30 p.m., Officers John Carrico and Ryan Owens were responding to a suspicious person call in Enslin Park. They were both in uniform and in a marked Modesto Police Department patrol car. Officer Owens was a trainee with Field Training Officer (FTO) Carrico and was Owens assigned to drive. The patrol car was driving eastbound W. Orangeburg and as they approached the intersection of Enslin Avenue and W. Orangeburg, Off. Owens had to stop for a red light.

Both of the officers were equipped with body worn cameras (BWC) but the cameras were not active as they stopped at the red light since the call they were responding to was not a Code-3 call (which would have turned on the cameras automatically). However, when a camera is turned on it has a thirty second back-up of video but no audio. The events were described by the officers and captured by FTO Carrico's BWC video.

As Off. Owens stopped at the red light the patrol car was in the #1 lane. [If there is more than one lane of traffic, the lanes are numbered from the center line out to the side of the road. The "fast lane" is always #1, and then #2 and so on.] The light almost immediately turned green. A white car could be seen in the BWC video passing on the right in the #2 lane. At that intersection there would have been a turn lane to the left/driver side of the patrol car.

Off. Owens observed a small car (later identified as a Fiat) drive up alongside the patrol car in the turn lane. Off. Owens noticed the Fiat's interior vehicle light come on and the driver step out of the car moving towards the front of his car. Off. Owens saw that the man had a gun in his hand and raised the gun pointing it at the patrol car.

In the video it appeared that Off. Owens said something to FTO Carrico that caused Carrico to turn his head to the left. Both officers would later state that Off. Owens told FTO Carrico about seeing the man with a gun. Off. Owens drove through the intersection and pulled to the right side of the road. The car was paused briefly on the side/shoulder of the road. Owens would later tell investigators that it was his intent to pull away to gain some distance for safety and then turn back to confront the man. FTO Carrico radioed that they would be out with a man with a gun. The patrol car was stopped east bound on Orangeburg and then as Off. Owens made a U-turn the car was now facing westbound Orangeburg. The suspect vehicle (the Fiat) was still facing eastbound Orangeburg. As the patrol car completed the U-turn you could see the on-coming headlights of the suspect's Fiat.

As the patrol car made the U-turn and started to pull forward, it was apparent the man had returned to his car and drove forward. After the patrol car completed the U-turn, the two vehicles were now facing each other in the street. Off. Owens stopped the patrol car towards the shoulder of the #2 lane facing westbound. The man got out of his vehicle a second time with the gun still in his hand. As Off. Owens stopped the patrol car FTO Carrico exited out of the passenger side.

The man walked towards the front of the patrol car and raised his gun, pointing it at the officers. FTO Carrico fired at the man immediately followed by Off. Owens. The man was struck by both officer's gunfire and he fell to the ground, the gun on the ground by his right hand. The man would later be identified as Reymar Gagarin. The shooting occurred in the roadway of West Orangeburg between Sherwood and Enslin.

In reviewing the video, when the shooting occurred it appeared that the Fiat was between the #1 lane of both the east bound and westbound lanes. Gagarin was standing outside of the car and when he fell, he ended up almost on top of the lane separator between the #1 and #2 lanes of the westbound side of the roadway (confirming he had walked towards the patrol vehicle). The Fiat can be seen rolling down the street and out of view. The Fiat ended up rolling forward striking the driver's side door of the patrol car forcing Off. Owens back into the patrol car. The car rolled past the patrol car and came to rest at a nearby house.

Off. Owens and FTO Carrico gave commands to Gagarin to not move or reach for the gun. They also broadcast the need for assistance. Other officers arrived on scene and the man was taken into custody. Gagarin did not survive his injuries. It was determined that the gun he pointed at the officers was a realistic looking BB gun (photo below).



File	
Name	Evidence (55).JPG
Item type	JPG File
Folder path	D:\20014680\Evidence

Pursuant to the Countywide protocol, an investigation was conducted which included canvassing the neighborhood for witnesses and videos. One neighborhood video showed a small dark colored car that appeared to be the Fiat driven by Gagarin approach the intersection behind the officers at a fast speed. A civilian witness confirmed hearing the officers yelling commands to Gagarin not to move or touch the gun corroborating the officers' statements.

As part of standard follow up procedures' investigators contacted Gagarin's family to determine what his motivation might have been for pointing a gun at the officers. Gagarin's sister provided background information regarding his mental health, stating that he had been self-admitted into the Doctors Behavioral Health Center for psychological issues just the week before the shooting. Gagarin was released on 5/20/20. He was diagnosed with schizophrenia and given prescription medication to take. Gagarin's sister said he stopped taking the medication because the medication was giving him face twitches.

She said Gagarin was hearing voices and was talking about killing himself in different ways. Gagarin's sister said he was going to hang himself or was going to speed and get caught by the police and shot. She said Gagarin had suffered from depression since he had been using drugs. Gagarin had said that people are out to get him. When asked if Gagarin had any weapons, his sister said she knew he had a BB gun, but no other weapons.

When Officer Owens was interviewed after the shooting, he stated that when he saw Gagarin pointing the gun at him, he believed that Gagarin was trying to kill him and his partner. Officer Owens stated it "shook him up" having a gun pointed at him. A toxicology test revealed that Gagarin had methamphetamine in his system but no other drugs including his prescribed medications were found.

## 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 virtue of their need to enforce the laws that differ from the ordinary citizen. Some of these rights are codified in Penal Code, § 835a which states in part:

"(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c)(1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.”

Penal Code, § 835a

One court in reviewing a similar situation 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.’ ” ’ ” (Brown, supra, 171 Cal.App.4th at p. 528, 89 Cal.Rptr.3d 801, citations omitted.)”

Lopez v. City of Los Angeles, (2011) 196 Cal.App. 4th 675, 686

The reasonableness standard mentioned in Lopez is the same standard required for self-defense/defense of others, and as said by another court:

“Justification does not depend on the existence of actual danger but on appearances. [Citations.] ... He [defendant] may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures.”

People v. Jackson, (1965) 233 Cal.App. 2d 639, 642.

Or as another court put it...

“Officers have a duty to act reasonably when using deadly force” and “[t]he reasonableness of an officer’s conduct is determined in light of the totality of circumstances.” (Hayes, supra, 57 Cal.4th at p. 629.)

Koussaya v. City of Stockton, (2020) 54 Cal.App. 5th 909, 939

In the case of Fetters v. County of Los Angeles, (2016) 243 Cal.App. 4th 825, an analogous fact pattern was examined by the court. A juvenile brandished a BB gun at a police officer who then shot him. Although injured, the juvenile did not die. The juvenile pled to a violation of Penal Code § 417.4, and then filed suit against the officer. The court found that the use of force by the officer was reasonable under the circumstances saying:

Put a little differently, Fetter’s admissions in his criminal proceeding established a justification for Sorrow’s split-second use of deadly force—he admitted brandishing an imitation firearm that put Sorrow in reasonable fear of his life. Id. at 840.

Realistic-looking firearms can lead to very serious consequences. One law reviewer has stated:

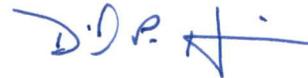
In 2016, the Washington Post did an analysis of police shootings involving “ultra-real-looking pellet guns, toy weapons and non-functioning replicas.” According to the Washington Post's database of fatal police shootings, over the two years prior to the article's publication, police had shot and killed eighty-six people in such encounters. Half of these shootings occurred at night. Police report that in sixty cases the suspect pointed the gun at them, and in virtually all of the cases the suspect failed to comply with their instructions. Significantly, in a large percentage of these cases-- thirty-eight out of eighty-six--the suspect had a history of mental illness.\*\*\*\* Police confirm that it is “virtually impossible” to train officers to distinguish between actual guns and imitations from a distance. [Citations omitted.]  
Barbara E. Armacost, Police Shootings: Is Accountability the Enemy of Prevention?, 80 Ohio St. L.J. 907, 970–71 (2019)

### CONCLUSION

Based on the law in its current form, past form and under the Fourth Amendment standard, all of the legal elements for self-defense are present making this shooting justified. It is therefore our determination that the conduct of Officer John Carrico and Officer Ryan Owens was legally reasonable and necessary, and their actions were justified. This office views the matter as closed and no further action need be taken.

Very truly yours,

BIRGIT FLADAGER  
District Attorney



David P. Harris  
Assistant District Attorney

cc: Off. John Carrico  
Off. Ryan Owens