

LAW ENFORCEMENT EMPLOYEE-INVOLVED
FATAL INCIDENT REPORT



Employer Agency: Petaluma Police Department

Investigating Agency: Sonoma County Sheriff

Decedent: Luis Alberto Garcia-Vara

Date of Incident: 04/03/2018

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

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EXHIBITS

1. Copy of Autopsy Report

I. INTRODUCTION

On April 3, 2018, Luis Alberto Garcia-Vara ("Garcia-Vara") was killed by officers from the Petaluma Police Department. Garcia-Vara put five (5) Petaluma Police Officers in a position where each officer, individually, concluded it was necessary to discharge their duty weapons to defend their own lives and the lives of their coworkers and surrounding civilians.

Garcia-Vara was 24 years old at the time of his death. Born in Mexico on August 13, 1993, Garcia-Vara lived in San Rafael. He was also a student at the Santa Rosa Junior College, Petaluma campus. Garcia-Vara was despondent due to a recent break up with a young woman ("Victim") and was threatening "suicide by cop."

Pursuant to established Law Enforcement Employee-Involved Fatal Incident protocol, the Sonoma County Sheriff's Office was called to conduct the investigation of this incident. (Before Garcia-Vara's injuries were determined to be fatal, Rohnert Park Department of Public Safety and the Petaluma Police Department began the sequestration practice. Approximately 3.5 hours later, the Sonoma County Sheriff's Office took over the investigation.) The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under the protocol, in order to eliminate the risk or appearance of conflicts of interest, an outside law enforcement agency is to investigate law enforcement employee-involved fatalities. Accordingly, detectives with the Sonoma County Sheriff's Office assumed responsibility for the investigation of this incident.

The role of the Sonoma County District Attorney's Office in a law enforcement employee-involved critical incident is to review the investigation to determine if there exists any criminal liability on the part of the law enforcement employee; to provide assistance to the investigating agency regarding legal issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the criminal law.

Once the investigation is complete, the District Attorney is required to complete a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreman of the Sonoma County Grand Jury. The following report has been prepared by the Sonoma County District Attorney. It includes a summary of facts surrounding the death of Luis Alberto Garcia-Vara, specific conclusions, and a report of autopsy.

II. SCOPE OF REVIEW

The sole purpose of this criminal investigation and review is to establish the presence or absence of any criminal liability on the part of the involved law enforcement employee(s).

III. STANDARD OF REVIEW

The District Attorney, as the chief law enforcement official of Sonoma County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function, i.e. to charge a person with a crime, is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is accurately expressed in a publication of the California District Attorneys Association entitled, *Uniform Crime Charging Standards*.¹ It provides:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

Additional restraint on the charging authority is found in *The California Rules of Professional Conduct, Rule 5-110*, which provides that an attorney in government service (this definition includes prosecutors) shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause.

Simply put, the standard for charging a crime is high because the burden of proof required at trial is quite high, i.e. proof beyond a reasonable doubt: the highest burden of proof under the law.

IV. SUMMARY OFFACTS

The following is a summary of facts intended to assist the reader in understanding this report and its conclusions. It is not a substitute for the reports, interviews, and other evidence from which it is derived. It is, however, an accurate composite of what the District Attorney believes the material facts in this case to be.

Summary of Incident

At noon (12 p.m.) on April 3, 2018, Petaluma Police Department received a dispatch to a suicidal suspect who was potentially armed, later determined to be Garcia-Vara. The reporting

¹ California District Attorneys Association, *Uniform Crime Charging Standards* (1996) p. 12.

party stated her on-again/off-again boyfriend was at her apartment in Petaluma, and was refusing to leave. (Based on their statements to law enforcement, it appears the reporting party was not actually Victim, but her friend. Further, she stated she had seen Garcia-Vara with a firearm in the past. She did not know if he was armed today, but had seen Garcia-Vara with a "large black handgun" "a few nights ago." In addition to the female reporting party's call, California Highway Patrol dispatch received a call from an anonymous male caller with a 415 area code. The caller stated there was a man with a gun in the same location and to send the police. (This phone number was later determined to belong to Garcia-Vara.)

At 12:05 p.m., Officer D. Giomi arrived at the residence (a large apartment complex), established contact with Garcia-Vara and saw what he believed to be the butt of a gun in Garcia-Vara's pants-pocket. Garcia-Vara was clearly intoxicated, slurring his words, and staggering around the parking lot fronting the residence of Victim.

Officer D. Giomi detained Garcia-Vara at gunpoint and began negotiating with him. Garcia-Vara remained in the parking lot area of the residence through the duration of the encounter. There were unoccupied parking stalls in the lot and an unoccupied van to the right of Officer D. Giomi. During the incident Garcia-Vara paced around the relatively open area, at sometimes standing, sometimes sitting. Officer D. Giomi set up in a position of safety behind a civilian's truck engine block. Officer D. Giomi removed his Body Worn Camera ("BWC") and placed it on the hood of this vehicle, next to his right arm. He was armed with an AR-15 rifle. Officer D. Giomi's BWC captured the entire incident, including Garcia-Vara stating "Officer, officer, I'm trying to commit suicide by cop" as soon as Officer D. Giomi made contact with him. Officer D. Giomi was approximately 20 feet from Garcia-Vara.

Shortly after Officer D. Giomi arrived on scene, Sgt. L. Novello, Officer J. Gutierrez, Officer J. Vernon, and Officer R. Suhrke also arrived on scene. All were armed, in full Petaluma Police Department uniform, and wearing department issued BWCs. As the senior officer on scene, and having 14 years' experience on the Hostage Negotiator Team ("HNT"), Sgt. Novello began communicating with Garcia-Vara. All five officers were within 20-40 feet of Garcia-Vara during the incident. Other law enforcement officers arrived on scene, provided back up and established a perimeter. None of these law enforcement officers discharged their weapons.

Throughout the negotiations, Garcia-Vara constantly talked about committing "suicide by cop." During the one hour and fifty minute standoff, Garcia-Vara repeatedly told the officers on scene he was going to make them "murderers," that he wanted to die, and wanted the law enforcement officers on scene to "kill him." During the negotiation, additional officers from Petaluma Police Department and the California Highway Patrol were able to get Victim and her friend out of the apartment. Neither Victim nor her friend witnessed the incident because they had been taken to Petaluma Police Department.

During the negotiations, Sgt. Novello used his HNT training to deescalate the situation and

provided Garcia-Vara with cigarettes and water. During this time, Garcia-Vara appeared already intoxicated, but continued drinking from a flask. He stumbled around a parking lot and was slurring his words.

At 1:28 p.m., Garcia-Vara reached in to his pocket and took out his gun. While D. Giomi and other officers had seen it prior to Garcia-Vara taking it out of his pants, it was at this point Petaluma Police officers confirmed it was a real firearm. Sgt. Novello, Officer D. Giomi, and Officer Gutierrez all directed and pleaded with Garcia-Vara to put the gun down. Garcia-Vara repeated "can't do it... can't do it." Sgt. Novello continued to engage Garcia-Vara, telling him to put the gun down and to "grab a smoke and chill." All the officers on scene were conversing with Garcia-Vara in normal, conversational voices, gave their first names at Garcia-Vara's request, and pleaded with him to not make them shoot him.

During the one hour and fifty minute standoff, Sgt. Novello stood behind a bulletproof shield and talked to Garcia-Vara. At one point, to deescalate the incident, Sgt. Novello left his place of relative safety behind a car, walked to Garcia-Vara's car, retrieved cigarettes, a lighter, and water, and threw them to where Garcia-Vara was standing. Despite Garcia-Vara's stating he was an 18th Street Sureno, taking off his shirt and displaying his tattoos, and being armed, the officers on scene maintained their professionalism and continued deescalation tactics. Sgt. Novello's intention was to "punch" Garcia-Vara with a less-lethal beanbag round, but ultimately was not able to because he could not both negotiate with Garcia-Vara and share his intended tactics with his officers at the same time. Using a less-lethal round without sharing the tactics with other officers on scene would be tactically inappropriate. When Garcia-Vara tells Sgt. Novello he is "done," Sgt. Novello replies "No you're not. I've got all the time in the world for you."

Ultimately, at 1:50 p.m., Garcia-Vara holds the gun up to his temple and squeezes the trigger. The closest officer, D. Giomi, heard the "click" and determined Garcia-Vara had attempted to end his life, but had "dry fired." Garcia-Vara then manipulated the slide, expelled a bullet, and chambered a round. At this point all law enforcement officers knew the gun was real, and Garcia-Vara was adamant on ending his life. Garcia-Vara then states "I'm sorry ... I'm really sorry" and moves the gun from his temple to parallel with the ground, pointing directly at Officer Suhrke's location. Witnesses heard between one and three shots being fired from Garcia-Vara, immediately followed by a volley of shots from the Petaluma Police officers. Each officer shot between 1 and 3 rounds, with the exception of Officer Gutierrez, who experienced a firing failure.

Immediately after the shooting all law enforcement on scene rushed to Garcia-Vara's side, cut off his clothing, and attempted to determine where he had been struck by bullets. Detective Sergeant P. Gilman determined there were two entrance wounds, but no exit wounds. In addition, the ambulance that had been staged for this event arrived within minutes and paramedics began rendering additional aid. Garcia-Vara was transported to Memorial Hospital where he survived on life support for 24 hours. His family was told his wounds were not

survivable and ultimately he was removed from life support, causing him to die on April 4, 2018.

Garcia-Vara's injuries were not immediately assessed as fatal, so the initial sequestering and processing of the officers was conducted by Petaluma Police officers and officers from Rohnert Park Department of Public Safety. Three and a half hours after the incident, the Sonoma County Sheriff's Department was contacted and the formal protocol was invoked. Detective J. Hanshew was assigned the lead Detective and was assisted by other Deputies and Detectives from the Violent Crimes Investigation team and Crime Scene Investigations unit. One California Highway Patrolman, J. Rudder, was present at the scene with his K-9 as well.

A canvas was conducted after the event and evidence was collected. Two civilians had recorded the incident on their cell phones. They were contractors making repairs to the apartment complex when the shooting occurred. The apartment manager who was with the contractors exclaimed, "he shot at them" on video after Garcia-Vara is shot.

Another witness who was working from home recorded the incident, too. She saw Garcia-Vara point the gun at the Petaluma Police officers. Her recollection of the incident is the same as those reported by the Petaluma Police officers. She stated the law enforcement officers remained "super calm" until Garcia-Vara raised his right hand "fully erect." She heard a "pop" and saw smoke coming from Garcia-Vara's gun, followed by multiple gunshots that sounded different than the first shot. She saw Garcia-Vara fall over and stated "he shot first."

After being sequestered, all five officers who shot at Garcia-Vara were interviewed by Sheriff's Detectives and gave similar accounts. Officer Suhrke stated he believed he was going to be killed by Garcia-Vara. All five Petaluma officers believed they, their coworkers, and civilians nearby were in danger.

Summary of Events Prior to the Incident

Garcia-Vara had a significant criminal record for someone of his relatively young age. Garcia-Vara had 17 police reports from Marin County, mostly contacted by San Rafael Police Department. He was also a 18th Street Sureno with prior gun charges. In addition, he was a person of interest in numerous gang related assaults and shootings.

According to witness statements taken from Victim and her parents, the night after Garcia-Vara and Victim broke-up, Garcia-Vara drove from Marin County to Petaluma, intoxicated and with a loaded gun. He texted and asked Victim to come outside. They sat in his car to talk and he told Victim either he was going to die, or she was and brandished his gun at her. After 10 minutes, Victim was able to get out of Garcia-Vara's car and get help from her parents. Her parents confirmed they spoke to the then-despondent Garcia-Vara, and tried to take the gun away from him. Garcia-Vara would not let them take the gun and instead drove off.

These threats of violence were not reported to law enforcement. Garcia-Vara and Victim continued to communicate via text application, but Victim did not attend class at the Santa Rosa Junior College, Petaluma Campus on April 3rd because she was afraid of Garcia-Vara; it was one in which both she and Garcia-Vara were enrolled.

After class on April 3rd, Garcia-Vara presumably got drunk and once again drove to Victim's address and threatened to kill himself. Victim called her sister and stated Garcia-Vara was "aggressive with her" and "had a gun." In turn, her sister called Victim's friend to go to Victim's house to try to get Garcia-Vara to leave. The friend in turn texted Garcia-Vara, stating if he did not leave she was going to call the cops. According to her statement the friend ultimately called Petaluma Police and reported Garcia-Vara. Petaluma Police officers then respond to the scene.

Detectives with the Sheriff's Office completed a forensic download of Garcia-Vara's phone. On Garcia-Vara's phone are notes regarding suicide and being despondent about his life. These passages, archived in the "Notes" section were written almost a year before Garcia-Vara's death, and most recently updated on April 3rd, 2018.

Additionally, Detectives met with the family and friends of Garcia-Vara at Memorial Hospital. Garcia-Vara's mother reported his friend said Garcia-Vara wanted to kill himself. He had received the Nixle from Petaluma Police regarding the shelter in place and assumed it was Garcia-Vara. Garcia-Vara's Mom indicated he was "unhappy," "heartbroken," and disillusioned with life" because "women didn't want him." The friend completed a three-way call with Garcia-Vara and his mother. Garcia-Vara had been speaking with his mother when Petaluma Police arrived, but his phone died a short time later.

Autopsy

The autopsy report indicates Garcia-Vara died of two gunshot wounds to the abdomen. In addition, the toxicology report indicates his blood alcohol was .196%, and also shows the presence of ketamine, which was administered by the Emergency Room team.

V. STATEMENT OF THE LAW

The sole issue to be resolved is whether the shooting of Garcia-Vara was unlawful because the force used by the officers was not reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose; or, stated another way, whether the shooting was lawful because the force used by the officers was reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose. The issue must be resolved as to each of the five

law enforcement officers individually.

Deciding the issue involves analyzing several key principles of law. A brief legal summary is included to assist the reader in understanding this report and its conclusions. While it is by no means an exhaustive explication of the controlling principles of law to be applied to this case, it is a correct statement of the law to be applied. The legal authority for lawful self-defense and defense of others applies to both fatal and non-fatal outcomes, and is set forth below.

A peace officer has the authority to make an arrest of an individual if the facts presented substantiate probable cause to belief that a crime has been committed. An individual has a duty to submit to lawful arrest.²

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 the right to self-defense by the use of reasonable force to effect the arrest, to prevent the escape, or to overcome resistance.³

A peace officer may also detain an individual upon a reasonable suspicion that the person to be detained has engaged in criminal activity. The purpose for the detention is to allow the peace officer an opportunity to confirm or dispel the suspicion of criminal activity. The standard to be applied for a lawful detention is somewhat less than what is required for an arrest.⁴

An individual has a duty to submit to lawful detention.

A peace officer who has probable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effectuate the arrest, to prevent escape, or to overcome resistance.

Any person, including a peace officer has a right to use reasonable force in self-defense or for the defense of others.⁵ A person can be said to have acted in lawful self-defense or for the defense of others if all of the following exist: the person reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; the person reasonably believed that the immediate use of deadly force was necessary to defend against that danger; the person used no more force than was reasonably necessary to defend against that danger.⁶

When deciding whether the person's beliefs were reasonable, one must consider all of the circumstances as they were known and appeared to the person at the time, as well as what a

² California Penal Code Sections 834 and 834a

³ California Penal Code Section 835a

⁴ *United States v. Sokolow* (1989) 490 U.S. 1; *Terry v. Ohio* (1968) 392 U.S. 1

⁵ California Penal Code sections 692-694

⁶ See Calcrim 505

reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.⁷

Both self-defense and defense of others are complete defenses to a homicide and make the homicide justifiable.⁸

There are also some special rules that apply to the use of deadly force by peace officers who are in the lawful performance of their duties. Use of deadly force while in the line of duty is justified, and therefore not unlawful, provided all of the following exist: the person is a peace officer; the killing was committed while performing any legal duty; the killing was necessary to accomplish that lawful purpose; and the peace officer had probable cause to believe that the person killed posed a threat of serious physical harm, either to the peace officer, or to others.⁹

In such situations, there is a presumption that the killing is justified.¹⁰

In the leading case of *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-83, the California Supreme Court succinctly and definitely articulates the law of self-defense (which applies equally to the defense of others):

"For a killing to be self-defense, the defendant must actually and reasonably believe in the need to defend. (Citations omitted.) If the belief subjectively exists but is objectively unreasonable there is "imperfect self-defense," i.e., "the defendant is deemed to have acted without malice and cannot be convicted of murder, but can be convicted of manslaughter." (Citations omitted.) To constitute "perfect self-defense," i.e., to exonerate the person completely, the belief must also be objectively reasonable. (Citations omitted.) As the legislature has stated, '[T]he circumstances must be sufficient to excite the fears of a reasonable person...' (Citations omitted.) Moreover, for either perfect or imperfect self-defense, the fear must be of imminent harm. 'Fear of future harm-no matter how great the fear and no matter how great the likelihood of the harm-will not suffice. The defendant's fear must be of imminent danger to life or great bodily injury.' (Citations omitted.)

Although the belief in the need to defend must be objectively reasonable, a jury must consider what "would appear necessary to a reasonable person in a similar situation and with similar knowledge..." (Citations omitted.) It judges reasonableness "from the point of view of a reasonable person in the position of defendant..." (Citations omitted.) To do this, it must consider all of the "fact and circumstances...in determining whether the defendant acted in a manner in which a reasonable man would act in protecting his

⁷ See Calcrim 505

⁸ California Penal Code section 199; See Calcrim 505

⁹ See Calcrim 507; Penal Code sections 196, 199

¹⁰ See Calcrim 507; Penal Code sections 189.5, 199

own life or bodily safety (Citations omitted.) As we stated long ago, ' ... a defendant is entitled to have a jury take into consideration all of elements in the case which might be expected to operate in his mind... ' (Citations omitted.)

In a leading California Appellate decision, *People v. Arias* (1989) 215 Cal.App.3d 1178, 1188, the court defines what is meant by *imminent harm* as applied to the law of self-defense:

"The definition of imminence in California has long been settled. 'A person whose life has been threatened by another, whom he knows or has reason to believe has armed himself with a deadly weapon for the avowed purpose of taking his life or inflicting great personal injury upon him, may reasonably infer, when a hostile meeting occurs, that his adversary intends to carry his threats into execution. The previous threats alone, however, unless coupled at the time with an apparent design then and there to carry them into effect, will not justify a deadly assault by the other party. There must be such a demonstration of an immediate intention to execute the threat as to induce a reasonable belief that the party threatened will lose his life or suffer serious bodily injury unless he immediately defends himself against the attack of his adversary. The philosophy of the law on this point is sufficiently plain. A previous threat alone, unaccompanied by an immediate demonstration of force at the time of the reencounter [*sic*], will not justify or excuse an assault, because it may be that the party making the threat has relented or abandoned his purpose, or his courage may have failed, or the threat may have been only idle gasconade, [*sic*] made without any purpose to execute it. On the other hand, if there be at the time such a demonstration of force... [indicating] that his adversary was on the eve of executing the threat, and that his only means of escape from death or great bodily injury was immediately to defend himself against impending danger... " (Citations omitted.)

In *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, the Court of Appeal explained the appropriate stand for reviewing an officer's use of deadly force:

"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. ... [T]he 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. [Citations.]" In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required. [Internal citations omitted.]"

(*Brown v. Ransweiler, supra*, 171 Cal.App.4th at 527-528.)

"We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes

"reasonable" action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.[Citations.]" (*Id.* at 528.)

Where potential danger, emergency conditions, or other exigent circumstances exist, "[t]he Supreme Court's definition of reasonableness is ... "comparatively generous to the police""In effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases...." "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."" "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."" [Internal citations omitted].

VI. LEGAL ANALYSIS

Garcia-Vara was determined to end his life on April 3, 2018. When he first put his gun to his head and pulled the trigger, his gun malfunctioned. As seen on Officer D. Giomi's BWC, Garcia-Vara chambers a round and points the gun directly at Officer Suhrke's position and either attempted to or did fire a round towards the officers. In fact, you can observe Garcia-Vara taking in one last deep breath, as if steeling himself against what is about to occur (committing "suicide by cop.") Sgt. Novello, and Officers D. Giomi, Suhrke, Gutierrez, and Vernon all reasonably believed Garcia-Vara was attempting to take their lives and used the amount of force necessary to neutralize the threat posed by Garcia-Vara.

Sgt. Novello did everything his HNT training had taught him to do and used those skills to deescalate the situation. However, due to his despair and suicidal ideation Garcia-Vara would not allow the officers on scene to help him. His stated purpose from the beginning of the 2 hour ordeal was to die that day, and as a last resort and to force the law enforcement officers' hands, leveled a loaded and operable firearm at the position of one of the peace officers, causing all five officers to shoot and ultimately kill Garcia-Vara.

VII. CONCLUSION

As indicated above, the officers as peace officers in the State of California have certain duties in regards to the enforcement of laws. In this case, they were carrying out that duty in their attempt to keep Victim safe as well as stop Garcia-Vara from killing himself or others. Because of attempting to take his own life at any cost, all five Petaluma Police officers acted appropriately when they fired upon Garcia-Vara and there was a justified use of lethal force. None of the involved officers should face criminal charges.



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