

LAW ENFORCEMENT EMPLOYEE-INVOLVED FATAL INCIDENT REPORT



FOR PUBLIC RELEASE

Employer Agency: Petaluma Police Department

Lead Agency: California Highway Patrol

Decedent: Jose Francisco Martinez

Date of Incident: April 2, 2017

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

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I. INTRODUCTION

On April 2, 2017, Jose Francisco Martinez (hereafter Martinez) died as a result of multiple blunt force injuries sustained during a solo motor vehicle collision. The collision occurred when Martinez lost control of his motorcycle while travelling at a high rate of speed and failed to negotiate a right turn while attempting to evade Officer Jake Gutierrez of the Petaluma Police Department. Martinez was highly intoxicated at the time of the evasion and subsequent collision. Martinez was 32 years old at the time of his death.

The Petaluma Police Department immediately invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol. 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, officers with the California Highway Patrol assumed responsibility for the investigation of this solo motor vehicle collision.

The role of the Sonoma County District Attorney's Office in a law enforcement employee-involved fatal 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 if no criminal liability is found, prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is submitted to the Foreperson 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 Martinez and specific conclusions.

II. SCOPE OF REVIEW

The purpose of the District Attorney's investigation and review of any critical incident is to establish the presence or absence of criminal liability on the part of any involved party, including the involved law enforcement employee(s).

The District Attorney does not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

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 and 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

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

are not supported by probable cause.

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. Proof beyond a reasonable doubt is the highest burden of proof under the law.

IV. SUMMARY OF FACTS

The following is a summary of facts intended to assist the reader in understanding this report and its conclusion. 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.

Events Leading Up to the Pursuit

On April 2, 2017, Jose Francisco Martinez (33) and his brother Josue Gallardo Reynaldo (25) (hereafter Reynaldo) rode their motorcycles from Rancho Cordova, California to Sonoma County in order to attend a flea market in Santa Rosa. Both men resided in Rancho Cordova. Martinez was an experienced motorcycle rider and was riding a 2006 Harley Davidson, Sportster. Reynaldo was an inexperienced motorcycle rider and was riding a 1995 Yamaha, Chappy. Neither were properly licensed to ride a motorcycle on a public roadway.

After a couple of hours at the flea market, the two men started riding back to Rancho Cordova. While riding back home, Martinez and Reynaldo rode their motorcycles into Petaluma and entered a residential neighborhood. Reynaldo was experiencing a minor mechanical issue with his motorcycle and pulled over next to a curb on Princeville Court.

The two had been drinking prior to the incident in question and both men were well above the legal limit of .08% blood alcohol content and should not have been driving. Martinez had a blood alcohol content of .217% and his brother Reynaldo had a blood alcohol content of .15%.

At approximately 5:15 p.m., a resident of Princeville Court in Petaluma called 911 to report two men on motorcycles racing up and down the street (determined to be Martinez and his brother Reynaldo), one of the men reportedly urinated in a bush in front of the resident's house, and the men were reportedly littering.

Pursuit

Petaluma Police Department Officer Jake Gutierrez, was on patrol at the time and in the area of the reported disturbance. In response to the call, he proceeded toward Ely Boulevard and Frates Road, which is near the location of the reported disturbance. As Officer Gutierrez travelled southbound on Ely Boulevard near Adobe Creek and Princeville Court, he observed two motorcycles travelling southbound on Ely Boulevard toward Frates Road. Officer Gutierrez then observed the two motorcycle riders who he believed to be the subjects of the disturbance report (determined to be Martinez and Reynaldo). He based this belief on proximity to the scene, the short amount of time that had elapsed between the 911 call and his response, and the fact the call involved two motorcycles with two male riders.

Officer Gutierrez was in a marked Petaluma Police Utility Vehicle. The vehicle had standard Petaluma Police markings on the doors and rear hatch and was equipped with overhead emergency lighting including a forward facing red lamp. The vehicle was also equipped with an audible siren. Officer Gutierrez was attired in a standard Petaluma Police Department uniform, including a badge, patches and duty belt. It was daylight. The weather was clear and the roadway was dry. There was little to no pedestrian or vehicle traffic in the area.

As Martinez and Reynaldo approached the intersection of Ely Boulevard and Frates Road, the two men slowed to an estimated 15 mph and drove straight through the controlled intersection without stopping at the stop sign as required by law.

Officer Gutierrez observed this violation of the vehicle code and, intending to make a traffic enforcement stop, activated his emergency lighting and chirped his siren to get the riders attention. Both riders looked back at him and in response began accelerating rapidly away from him. Officer Gutierrez turned on his siren and began to give chase. The actions of Officer Gutierrez, at this point, are very typical of how traffic enforcement stops are commonly conducted.

Ely Boulevard past Frates Road is a two lane rural Sonoma County roadway. It is a fairly straight roadway with several ups and downs. The condition of the roadway at the area of the collision is a patchwork of filled potholes. There is a significant amount of gravel at the intersection of Ely and Browns Lane. The posted speed limit is 35 mph.

Officer Gutierrez pursued the motorcycles and reported to dispatch that he was travelling at a speed of 70 mph. During his interview Officer Gutierrez estimated his top speed to have been about 75 mph. The motorcycles continued to pull away from him. Shortly after the pursuit began, Reynaldo abruptly pulled over to the side of the roadway. Officer Gutierrez was able to avoid a collision with Reynaldo and continued on after Martinez.

Solo-Vehicle Collision

As Martinez continued to race southbound down Ely Boulevard toward Browns Lane, he was pulling away from Officer Gutierrez. Officer Gutierrez kept a substantial distance between his vehicle and Martinez. In fact, Officer Gutierrez temporarily lost sight of Martinez as Martinez went up and over a small hill (or rise) in the roadway. Martinez continued to speed down the hill toward Browns Lane where the road levels out and Ely Boulevard ends. Martinez failed to slow down sufficiently in order to make the 90 degree right turn onto Browns Lane (toward Hwy 116). The precise speed Martinez was travelling is not known, but it is safe to say he was travelling well in excess of the posted speed limit. Additionally, the intersection had a significant amount of loose gravel that would make a high speed turning movement particularly perilous.

Martinez lost control of his motorcycle causing him to fall on his right side and impact the roadway. Given his velocity, Martinez continued to travel forward and ultimately his body collided with a concrete filled metal post in the ground. The post located just off the roadway and was next to a sign marking the existence of an underground cable. His motorcycle flew into a field and was determined to have significant front end damage. Martinez was wearing a helmet at the time of the collision.

Officer Gutierrez did not actually witness the crash due to Martinez' distance and the fact the road's topography did not permit line of sight. In essence, Officer Gutierrez was cresting the hill as Martinez was at bottom of hill where it levels off.

According to dispatch records (which provide us the most accurate time estimates for this event) the entire event lasted about 5 minutes. The initial call was received by dispatch at approximately 17:15:53. Officer Gutierrez advised dispatch of the traffic collision at approximately 17:20:42. The relevant time frame for this event

can be further refined: Officer Gutierrez advised dispatch that he was catching up to them at the intersection of Ely Boulevard and Frates Road at 17:19:00, thus making the pursuit time less than 2 minutes in duration.

The total distance of the pursuit, from the intersection of Ely Boulevard at Frates Lane to Ely Boulevard at Browns Lane is about 1.7 miles. Therefore, Martinez travelled just under 2 miles in just under 2 minutes before fatally crashing at the intersection of Ely Boulevard and Browns Lane. Martinez was pronounced dead by medical personnel at 17:30:27, approximately 10 minutes after the original call for service.

As a part of the investigation Martinez' motorcycle was examined by an expert mechanic. It was determined the motorcycle sustained major front end damage as a result of the collision. It was also determined that the motorcycle had no mechanical defects which would have contributed to the collision.

Witnesses

A portion of the incident was observed by a witness, John Doe. John Doe was running northbound along Ely Boulevard at the time. He was positioned so as to be able to observe Martinez' speeding motorcycle and estimated the speed to be very fast, perhaps 65 to 70 mph. He heard sirens and looked up the hill to see Officer Gutierrez' vehicle cresting the hill. John Doe could see Reynaldo's motorcycle following behind Officer Gutierrez' vehicle. John Doe looked back at Martinez' motorcycle and observed it was overturning in the air and then landed in a field. John Doe did not actually witness Martinez go down. Significantly, what is gleaned from the interview of the witness is corroboration there was a very substantial distance between Officer Gutierrez and Martinez at the time of the collision—making it a solo vehicle collision.

At no point during this incident did Officer Gutierrez ever make vehicle to vehicle contact with Martinez.

Reynaldo was contacted and interviewed after the event. Reynaldo said he and his brother, Martinez, had travelled from Rancho Cordova to the Santa Rosa flea market. They were at the flea market for about two hours. After leaving the market, he and Martinez rode their motorcycles into Petaluma and entered a residential neighborhood. Reynaldo started experiencing a mechanical issue with his

motorcycle backfiring and pulled over next to a curb. A female resident (the reporting party) approached them, and asked if they were alright. She then left. The two began riding southbound on Ely Boulevard. Reynaldo stated that his brother “took off.” Reynaldo pulled over to the right shoulder on Ely Boulevard when he saw the emergency lights of Officer Gutierrez’ vehicle. He observed Martinez continue forward. He followed the patrol vehicle over the hill and arrived on scene to find Martinez lying on the ground. He did not witness the actual collision. Reynaldo was the subject of a driving under the influence investigation. As a part of that investigation, a breath test was administered and determined his blood alcohol concentration to be .15%. He was determined to be under the influence of alcohol at the time of the event. Reynaldo acknowledged drinking alcohol with Martinez in Rancho Cordova before driving to Santa Rosa, but does not give a clear account of either his drinking pattern or that of Martinez.

Petaluma Police Officer Riley Howard was the first officer to arrive on scene after Officer Gutierrez. He arrived on scene perhaps 60 to 90 seconds after the collision was broadcast over the radio. He observed Martinez lying on the ground and Reynaldo was in the prone position lying on his stomach. Officer Gutierrez had his weapon drawn. Officer Gutierrez instructed Officer Howard to detain and restrain Reynaldo in handcuffs. This was done for officer safety reasons. Officer Howard then placed Reynaldo in the rear of his patrol vehicle. Officer Gutierrez began providing medical attention to Martinez. Officer Howard retrieved a medical device called an AED (Automated External Defibrillator, a portable medical device that checks the heart rhythm and send an electric shock to the heart in order to restore a normal rhythm) which Officer Gutierrez used to help in the resuscitation efforts.

Post Incident Conduct of Officer Jake Gutierrez

After the collision, Officer Gutierrez came to a stop at the intersection and immediately got out of his vehicle and assessed Martinez’ medical condition. Martinez was wrapped around a concrete filled metal post and did not appear to be breathing. Because Reynaldo came upon the scene shortly after Officer Gutierrez got out of his vehicle to access the scene, Officer Gutierrez detained Reynaldo at gunpoint and had him prone out on the ground. Officer Howard arrived on scene shortly after Reynaldo was ordered to the ground. Officer Howard placed Reynaldo in handcuffs, searched him, and placed him into a patrol vehicle for officer safety reasons. While speaking with Reynaldo, Officer Howard was able to smell the strong odor of alcohol emitting from his person.

When Officer Gutierrez determined Martinez was unresponsive and not breathing he immediately requested medical aid be dispatched. With Reynaldo safely detained, Officer Gutierrez was able to turn his attention fully to life saving measures. He began to administer chest compressions. He continued for several minutes until relieved by another officer who arrived on scene.

In reviewing the Body Worn Camera footage that is available, Officer Gutierrez' demeanor was professional and remarkably calm throughout. He provided a public safety statement to the supervisor on scene and submitted to a voluntary interview after the incident.

Autopsy and Cause of Death

On April 3, 2017, Forensic Pathologist Dr. Kimi Verilhac, M.D., conducted a postmortem examination on Martinez at the Sonoma County Coroner's Office. Dr. Verilhac is a medical doctor and board certified in the field of forensic pathology; she possesses all of the knowledge skills and experience necessary to conduct these types of forensic examinations. At the conclusion of her examination Dr. Verilhac authored a report in which she detailed her findings. Dr. Verilhac rendered the opinion that the cause of death was multiple blunt force injuries.

Blood Draw and Toxicology

A blood draw was conducted on the Martinez, and the sample was sent to NMS Labs for analysis. The completed analysis determined that Martinez had a blood alcohol concentration of .217%. This is a very high blood alcohol content and almost three times the legal limit (.08%). Such high concentrations of alcohol are known to impair judgment, reduce alertness, and impair muscular coordination. Martinez also had metabolites in his blood that indicated that he had ingested an indeterminate quantity of marijuana. It is not clear the degree to which he was impaired by marijuana, if at all.

V. STATEMENT OF THE LAW

The primary issue to be resolved in this inquiry is whether the actions of Officer Gutierrez during the pursuit of Martinez were unlawful because they constituted criminal negligence.

Deciding this issue revolves around 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 discussion of the controlling principles of law to be applied to this case, it is a correct statement of the law that applies in this case.

There are two crimes potentially implicated by the facts of this case and therefore must be considered:

1) Gross Vehicular Manslaughter in violation of Penal Code section 192(c)(1);

AND

2) Vehicular Manslaughter in violation of Penal Code section 192(c)(2).

Gross Vehicular Manslaughter in violation Penal Code section 192(c)(1), requires proof of the following:

- 1) The defendant drove a vehicle;
- 2) While driving the vehicle, the defendant committed a misdemeanor, or infraction, or otherwise lawful act that might cause death;
- 3) The defendant committed the misdemeanor, or infraction, or otherwise lawful act that might cause death with gross negligence; AND
- 4) The defendant's grossly negligent conduct caused the death of another person.

Gross negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when: 1. He acts in a reckless way that creates a high risk of death or great bodily injury; and 2. A reasonable person would have known that acting in that way would create such a risk.

In other words, a person acts with gross negligence when the way he acts is so different from how an ordinarily careful person would act in the same situation that his act amounts to disregard for human life or indifference to the consequences of that act.

Vehicular Manslaughter in violation Penal Code section 192(c)(2), requires proof

of the following:

- 1) While driving a vehicle, the defendant committed a misdemeanor, or an infraction, or a lawful act in an unlawful manner;
- 2) The misdemeanor, or infraction, or otherwise lawful act, was dangerous to human life under the circumstances or its commission;
- 3) The defendant committed the misdemeanor, or infraction, or otherwise lawful act with ordinary negligence; and
- 4) The misdemeanor, or infraction, or otherwise lawful act caused the death of another person.

Ordinary negligence is the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or someone else. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation.

Evaluating the above crimes requires an understanding of several other important principles of law that apply to peace officers who are acting within the course and scope of their employment.

A person who is employed as a police officer with the Petaluma Police Department is a peace officer.

The duties of a peace officer include investigating criminal activity, engaging in consensual encounters, detaining individuals reasonably suspected of criminal activity, and arresting individuals for which there is probable cause to believe they have committed a criminal offense.

A peace officer may legally detain someone if the person consents to the detention or if specific facts known or apparent to the officer lead him or her to suspect that the person to be detained has been, is, or is about to be involved in activity relating to crime; and a reasonable officer who knew the same facts would have the same suspicion. Any other detention is unlawful. In deciding whether the detention was lawful, consider evidence of the officer's training and experience and all the circumstances known by the officer when he detained the person.

Probable cause exists when the facts known to the arresting officer at the time of the arrest would persuade someone of reasonable caution that the person to be arrested

has committed a crime. In deciding whether the arrest was lawful, consider evidence of the officer's training and experience and all the circumstances known by the officer when he or she arrested the person.

Importantly, many of the rules of the road do not always apply to peace officers. California Vehicle Code section 21055 provides an important exemption to peace officers. It provides, in part, that a peace officer in an emergency vehicle during the immediate pursuit of an actual or suspected violator of the law is exempt from much of the vehicle code pertaining to moving violations. This would include times when a peace officer is in pursuit of a suspect violator of the vehicle code. For example, speeding, reckless driving, driving under the influence, evading a peace officer, or evading a peace officer with wanton disregard for the safety persons or property.

Significantly, the law imposes a duty upon an individual to submit to lawful arrest or detention. In fact, it is a crime to evade lawful arrest or detention.

Additionally, while not the focus of this inquiry, it is noted that Petaluma Police Department does have a policy which authorizes its officers to engage in vehicle pursuits. Specifically, the policy allows for the initiation of a pursuit when it is reasonable to believe that a suspect is attempting to evade arrest or detention by fleeing. The policy requires that the officer's conduct during the pursuit be objectively reasonable according to the totality of the circumstances reasonably available at the time of the pursuit.

VI. LEGAL ANALYSIS

Martinez made a serious and unlawful miscalculation when he decided to drink alcohol to excess and then drive his motorcycle on a public roadway. His blood alcohol content was well beyond that which is legal to still be able to operate a motor vehicle. The alcohol he consumed undoubtedly impaired his judgment and motor coordination.

Martinez compounded this mistake with deadly consequence when he chose to evade Officer Gutierrez. Accelerating to speeds in excess of twice the posted speed limit, while travelling on an unfamiliar road, Martinez raced toward the gravel laden intersection at a speed far in excess of what was safe. Martinez was unable to make a safe turning movement, went down with his motorcycle and his body collided with

a post, killing him.

The law imposed a duty on Martinez to yield to Officer Gutierrez who was attempting a lawful traffic enforcement stop.

Officer Gutierrez was in uniform, in a marked patrol vehicle, responding to a disturbance call not of his creation. Officer Gutierrez activated his lights and siren as warranted by the circumstances. Officer Gutierrez' pursuit tactics (albeit a short pursuit) were appropriate and objectively reasonable. None of Officer Gutierrez' driving behaviors adversely affected or caused Martinez to lose control of his motorcycle.

What should have been a routine traffic enforcement stop—to investigate a neighborhood disturbance, public urination and littering—ripened into a fatal incident due to the actions directly attributable to Martinez. At no point in time did Officer Gutierrez attempt to employ a pursuit intervention technique (a type of controlled ramming movement) or any other technique requiring his vehicle to make contact with Martinez' motorcycle. In fact, Officer Gutierrez was unsuccessful in even keeping up with Martinez. Notably, Officer Gutierrez actions were sufficient to get Reynaldo to pull over and stop.

None of the tragic consequences that befell Martinez can reasonably be said to be the fault of Officer Gutierrez. Officer Gutierrez maintained a safe distance from Martinez as is evidenced by his ability to avoid Reynaldo when he pulled over in an abrupt fashion; Officer Gutierrez never made any contact with Martinez; and Officer Gutierrez was at all times able to maintain control of his vehicle and was able to safely come to a stop at Browns lane.

Officer Gutierrez seems to have responded precisely how a reasonably prudent police officer under the same or similar circumstances would have responded. There is simply nothing Officer Gutierrez did in response to this situation that could be characterized as reckless or unreasonable. Conversely, there is nothing Officer Gutierrez failed to do that a reasonably prudent officer would have done under the same or similar circumstances.

VII. CONCLUSION

Martinez' death was the direct, natural and probable consequence of having engaged in behavior which was extremely hazardous to human life: evading a police officer, driving a motorcycle at twice the posted speed limit, on an unfamiliar road, while in a highly intoxicated state.

In contrast, the actions of Officer Gutierrez were undertaken in fulfillment of legitimate law enforcement purposes. His actions were understandable, measured and entirely reasonable under the circumstances. Officer Gutierrez was acting within the bounds of the law and fulfilling common community expectations in attempting to conduct a traffic enforcement stop on Martinez and his brother, Reynaldo.

Based on all of the facts and circumstances, as explained above, the actions of Petaluma Police Officer Jake Gutierrez were wholly reasonable, legally justified, and accordingly no criminal charges are warranted.

JILL R. RAVITCH
District Attorney, County of Sonoma