

**LAW ENFORCEMENT EMPLOYEE-INVOLVED
CRITICAL INCIDENT REPORT**



FOR PUBLIC RELEASE

Employer Agency: Sonoma State Police Department

Lead Agency: Sonoma County Sheriff's Office

Injured Party: Eduardo Sanchez-Martinez

Date of Incident: May 5, 2017

Report Prepared by:

SONOMA COUNTY DISTRICT ATTORNEY

I. INTRODUCTION

On May 5, 2017, Eduardo Sanchez-Martinez (hereinafter “Sanchez-Martinez”) was shot twice during an incident involving Sonoma State University Police Officer Rafael Cardenas. The incident occurred shortly after 5:00 a.m. on East Cotati Avenue in Cotati, California. Sanchez-Martinez suffered life-threatening injuries, but he was treated at Santa Rosa Memorial Hospital and later discharged.

The Cotati Police Department invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol (“Protocol”), once Sanchez-Martinez was transported to Santa Rosa Memorial Hospital for treatment. 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 this Protocol an outside law enforcement agency is designated to investigate officer-involved critical incidents.

In this case, members of the Sonoma County Sheriff’s Office assumed responsibility for the investigation of the incident with Detective Jayson Fowler, assigned as lead investigator. Members of the Sonoma County District Attorney’s Office participated in the investigation in a supporting role, in accordance with the protocol. Under the protocol the role of the Sonoma County District Attorney’s Office is to review the investigation to determine if there exists any criminal liability on the part of involved parties, including the law enforcement employee(s); 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 committed criminal violations of the law.

Once the investigation is complete the District Attorney is required by the protocol 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 foreperson of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the shooting of Sanchez-Martinez, a statement of the applicable law, legal analysis and conclusions. This report cannot include all of the information contained in the hundreds of pages of reports, video and audio tapes, transcripts, and photographs reviewed in its preparation. However, every effort has been made to include in this report a summary of all of the relevant, material evidence gathered by the Sonoma County Sheriff’s Office over the course of its extensive investigation of this incident.

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 law enforcement employee(s).

The specific question to be resolved in this case is whether Officer Cardenas's use of force was reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose. A summary of the applicable law is included here to assist the reader in understanding this report and its conclusions.

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 is the chief law enforcement official of Sonoma County. The District Attorney is responsible for deciding what cases to prosecute and has the responsibility to review and approve the filing of all criminal cases in the county. The District Attorney's discretion in this regard is well defined. *The California Rules of Professional Conduct, Rule 5-110*, provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause. Additional restraint on the charging authority is found in the *Uniform Crime Charging Standards*, a publication of the California District Attorneys Association. These standards provide the following guidelines:

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.

In criminal cases, the District Attorney has the burden of proving guilt "beyond a reasonable doubt," the highest burden of proof found in the law. A complete definition of "reasonable doubt" can be found in the Judicial Council of California Criminal Jury Instructions Number 103. A jury of twelve must vote unanimously for guilt before a conviction may be entered. When determining whether criminal charges are appropriate the District Attorney must consider all of the evidence, including evidence that supports an affirmative defense, such as a claim of "self-defense" or "defense of others." Criminal charges are warranted only when the District Attorney determines that the evidence of guilt is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense.

IV. SUMMARY OF FACTS

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 volumes of reports, interviews, and other evidence from which it is derived. It is, however, an accurate summary of what the District Attorney believes the material facts in this case to be.

A. BACKGROUND INFORMATION

Sanchez-Martinez was born on August 1, 1994, and was 22 at the time of this shooting. He resided in Santa Rosa with his mother and other family members. He was on parole at the time of this incident, and he was an active member of Angeleno Heights, a documented criminal street gang.

Sanchez-Martinez's extensive criminal history demonstrates a pattern of committing weapons offenses and being an active gang member. In October 2013 he was arrested for unlawful possession of a loaded firearm in public and unlawful participation in a criminal street gang. He was subsequently convicted of a felony violation of Penal Code Section 25850(a) – unlawful possession of a firearm in public – and a misdemeanor violation of Penal Code Section 186.22(a) – participation in a criminal street gang. In April 2014 Sanchez-Martinez was arrested and later convicted of misdemeanor offenses for unlawfully possessing brass knuckles and unlawfully participating in a criminal street gang. In July 2014 he was again arrested for unlawful participation in a criminal street gang. He was convicted of a felony violation of Penal Code Section 186.22(a) in September 2014 and sentenced to prison. Following his release from prison, Sanchez-Martinez violated the terms of parole numerous times, including in November 2016 when he was arrested and subsequently convicted of a misdemeanor for failure to register as a gang member as required by Penal Code Section 186.30. Sanchez-Martinez was still under parole supervision at the time of this incident.

B. EVENTS OF MAY 5, 2017

On May 5, 2017, shortly after 2:00 a.m., Officer Wardle and Sgt. Guydan of the Cotati Police Department were on patrol in downtown Cotati. This time of day is busy in downtown Cotati because the numerous bars located on Old Redwood Highway all close at 2:00 a.m. This stretch of bars is commonly known as the “crawl” and Cotati PD typically receives assistance in patrolling this busy area from the Sonoma State Police Department. Officer Rafael Cardenas of the Sonoma State University Police Department was providing that law enforcement assistance on May 5, 2017. Officer Cardenas had been a sworn peace officer for nearly a year and a half. He had spent the past eleven months with the Sonoma State Police Department and the prior five months as a police officer in Rohnert Park.

At about 2:03 a.m., Officer Wardle and Sgt. Guydan drove to the southeastern corner of Old Redwood Highway and East Cotati Ave. to break up a fight. Officer Cardenas responded to the same incident. While responding to the corner, the three officers all heard several gunshots that sounded like they came from close proximity. Multiple people told the officers that a male had been “beating up” a female, and that the male started shooting when someone tried to defend the female. The male shooter was initially described as wearing a white t-shirt.

The three police officers – Officer Wardle and Sgt. Guydan of Cotati PD and Officer Cardenas of Sonoma State PD – together approached the area where they believed the gunshots were fired. By the time they got there, people had fled and scattered in numerous directions. An unidentified male told the officers that multiple groups of people had been walking eastbound on East Cotati Ave. While receiving this information, the officers also learned that Rohnert Park Public Safety Officers had a possible male suspect at gunpoint near a Starbucks about half a mile east on East Cotati Avenue. The three officers went to this new location where the Rohnert Park officers had detained 1 male adult and 4 female adults. The officers soon learned that the male was not a suspect and that the female subjects had been involved in an altercation with Sanchez-Martinez immediately before he began shooting his gun. Officer Cardenas was present at this scene and engaged in conversation with the victims as Officer Wardle interviewed them. Officer Cardenas heard one of the witnesses describe the shooter as a Hispanic male, 5'5", black hair, white t-shirt with a logo and blue jeans. He also heard the male witness specifically say that the handgun was chrome or silver-colored.

The officers learned that the young women had seen Sanchez-Martinez arguing with an unidentified female. Sanchez-Martinez was wearing a white t-shirt and blue jeans. They saw Sanchez-Martinez strike the female and at that point Jane Doe intervened. Jane Doe struck Sanchez-Martinez in the face and he struck her back in the face. Sanchez-Martinez then pulled out a handgun and shouted that he was going to “cap” some people. The young women, along with the male, began running east on East Cotati Avenue. As they were running away they heard several gunshots fired from behind them.

After learning this information from the male and the group of young women, other Cotati police officers notified the three officers that they had found a .380 caliber shell casing on East Cotati Ave. between Charles St. and La Plaza. This was the same area from where the officers had believed they had heard the gunshots. Officers Wardle and Cardenas, as well as other police officers, canvassed this area of East Cotati Ave. and they found an additional three shell casings. All four of the discovered shell casings were .380 caliber. Officers were unable to locate Sanchez-Martinez or any other witnesses at this time. Following the collection of evidence, Sgt. Guydan held a debriefing meeting at the Cotati Police Department. Officer Cardenas was invited and did attend this briefing because he had assisted in the investigation.

Following the briefing, Officer Cardenas drove his patrol vehicle from the Cotati PD station back to the Sonoma State campus. While driving on East Cotati Avenue, he saw Sanchez-Martinez. Officer Cardenas's attention was drawn to Sanchez-Martinez because he was walking with his hands tucked into his shirt and the collar of his t-shirt was pulled up over his head so that only a small portion of his face was visible. Officer Cardenas parked his marked patrol car in front of Sanchez-Martinez and turned on the spotlight. At this point Officer Cardenas could see that Sanchez-Martinez was a Hispanic male, he was 5'5" with black hair, and he was wearing a white t-shirt with a logo and blue jeans. Officer Cardenas could see that Sanchez-Martinez was covered in mud, which made him believe that he had been in the nearby creek area. He saw tattoos on Sanchez-Martinez's arm that he believed were gang-related. Based upon these similarities between Sanchez-Martinez and the earlier description provided by witnesses, Officer Cardenas believed that Sanchez-Martinez was the shooter. Officer Cardenas advised radio dispatch that he was out with a suspicious person on East Cotati Ave. and requested an additional unit.

Officer Cardenas attempted to detain Sanchez-Martinez. He asked Sanchez-Martinez what he was doing, and Sanchez-Martinez replied that he was looking for his girlfriend. Officer Cardenas

asked Sanchez-Martinez to walk to the front of the patrol car and Sanchez-Martinez complied. Officer Cardenas took Sanchez-Martinez's right arm and began placing it behind his back. As Officer Cardenas did so, he asked Sanchez-Martinez whether he had any weapons on him. At that moment, Sanchez-Martinez put his foot on the front pushbar of the patrol car and kicked back. The force of Sanchez-Martinez's body weight caused Officer Cardenas to stumble and allowed Sanchez-Martinez to create some distance between them. Sanchez-Martinez ran westbound on East Cotati Ave. along the southern sidewalk. Officer Cardenas yelled at Sanchez-Martinez to stop but he ignored him and continued to run. Officer Cardenas pulled out and deployed his Taser, which caused Sanchez-Martinez to fall down. Sanchez-Martinez quickly did what Officer Cardenas described as a "quick pushup" and began running again. Officer Cardenas intended to re-deploy his Taser but he realized that the cables were no longer attached and it was of no use. Officer Cardenas attempted to holster his Taser but it fell to the ground, and he pursued Sanchez-Martinez.

At this point, Sanchez-Martinez was running across East Cotati Avenue toward the northern sidewalk. In the center of the street, Officer Cardenas observed Sanchez-Martinez begin looking back at him and jerking his right hand into his waist. Officer Cardenas saw Sanchez-Martinez's elbow moving as he repeatedly did this jerking and pulling motion toward his waist. While Sanchez-Martinez was doing this, Officer Cardenas saw a silver object in his waistband, and Sanchez-Martinez appeared to be jerking at this silver object. Before reaching the northern sidewalk, Sanchez-Martinez slowed down and came to a stop in the street. Officer Cardenas saw Sanchez-Martinez's elbow swing out as he turned his body toward Officer Cardenas. Officer Cardenas saw Sanchez-Martinez let go of his pants with his left hand and also saw that his right hand was free. At that moment, Officer Cardenas believed that he was fully exposed in the middle of the street and that Sanchez-Martinez had intentionally led him into this vulnerable position. Believing that Sanchez-Martinez was about to shoot and kill him, Officer Cardenas pulled out his service weapon and fired two shots toward Sanchez-Martinez's shoulder area.

After shooting Sanchez-Martinez, Officer Cardenas ran for cover behind the closest light pole. He radioed in that he needed immediate assistance and that shots had been fired. Sgt. Guydan of Cotati PD was one of the first officers to arrive on scene. He saw Officer Cardenas pointing his firearm at Sanchez-Martinez, who was lying in the street. Officer Cardenas spontaneously stated that Sanchez-Martinez "was reaching for his waistband" and "pulled out something silver." Cotati police officers began rendering aid to Sanchez-Martinez, who was transported via ambulance to Santa Rosa Memorial Hospital (SRMH).

Doctors at SRMH treated Sanchez-Martinez for two gunshot wounds to the posterior thorax that entered into the left lung. Sanchez-Martinez's blood was drawn at the hospital at 5:37 a.m. and his blood alcohol concentration (BAC) was measured to be .183.

C. EVIDENCE COLLECTED

Detectives from the Sonoma County Sheriff's Office observed Officer Cardenas's patrol car positioned diagonally across the eastbound bike lane of East Cotati Ave., with its push bumper in the apron of the sidewalk to the driveway just east of 170 East Cotati Ave. Taser dots and a Taser blast door were found near the gutter area fronting 170 East Cotati Ave. Officer Cardenas's Taser with an expended cartridge still attached was found near the driveway between 170 and 150 East Cotati Ave. A Taser wire was in the street a short distance away from the Taser. Across the street

near the westbound bike lane were two .40 caliber shell casings – the same caliber as Officer Cardenas’s service weapon. Additional Taser wire was located in the area where Sanchez-Martinez had fallen to the ground after he was shot.

A forensic download of Officer Cardenas’s Taser was conducted and the firing log showed two trigger pull activations. The first activation was at 5:03 a.m. with a 5 second duration and the second occurred nine seconds later for a two second duration.

Officer Peters from SSU was on duty and heard Officer Cardenas radio in at 5:00 a.m. that he was with a suspicious person. At 5:01 a.m. he heard Officer Cardenas advise over radio that he had deployed his Taser. Officer Peters heard Officer Cardenas state moments later that there were “shots fired.” Officer Peters arrived on scene at 5:03 a.m. immediately after the Cotati officers arrived.

The Sonoma County Sheriffs Office’s Search and Rescue (SAR) team began a search of the area later that afternoon. The SAR team conducted a search for approximately three hours but did not locate anything. The SAR team focused their efforts on the south side of East Cotati Avenue. The SAR team returned to the scene on May 8, 2017, and focused their efforts on the north side of East Cotati Avenue, which was the side of the street where Sanchez-Martinez had been shot. Shortly after initiating their search of this area, the SAR team located a .380 chrome pistol in a planter box in the immediate vicinity of where Sanchez-Martinez had been shot. The California Department of Justice analyzed the handgun to conduct separate DNA, fingerprints and ballistics comparisons. The results of each analysis was inconclusive.

D. CRIMINAL COURT CASE SCR 703454

Sanchez-Martinez was prosecuted by the Sonoma County District Attorney’s Office for a violation of Penal Code Section 246.3, negligent discharge of a firearm. The charges were based upon Sanchez-Martinez’s firing of his handgun around 2:00 a.m. on May 5, 2017. Sanchez-Martinez pled no contest to the felony charge on August 22, 2018, and was found guilty by the Court. On October 17, 2018, Sanchez-Martinez was sentenced to state prison for a term of nine years as part of a negotiated disposition.

Prior to the sentencing hearing, Sanchez-Martinez was interviewed by the Sonoma County Probation Department and provided statements regarding the 2:00 a.m. incident. Sanchez-Martinez acknowledged that he was an active Angelino Heights gang member on May 5, 2017, and acknowledged that several of his visible tattoos were gang-related: the word “Southwest” on his eyebrow, the letters “AH” on his face and the number “13” on the back of his head. Sanchez-Martinez stated that he did not remember details from the evening because he was heavily intoxicated. He believes that he shot his firearm in order to “scare” the group of young women and to “get them away from” him.

V. STATEMENT OF THE LAW

The sole legal issue to be resolved is whether Officer Cardenas’s shooting of Sanchez-Martinez was lawful under the circumstances. The United States Supreme Court has routinely recognized that a peace officer has the legal authority to detain an individual upon a reasonable suspicion that

the person to be detained has engaged in criminal activity. *United States v. Sokolow* (1989) 490 U.S. 1; *Terry v. Ohio* (1968) 392 U.S. 1. California has further authorized a peace officer to detain a person suspected to be in violation of any crime relating to firearms under Penal Code Section 833.5.

A peace officer has the authority to make an arrest of an individual if the facts presented substantiate probable cause to believe that a crime has been committed. An individual has a duty to submit to lawful arrest. This authority for the officer and duty of the arrestee can be found in Penal Code Sections 834 and 834a. Penal Code Section 835a provides that 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. The officer will not 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.

In addition to specific authority provided to law enforcement officers when making an arrest, an officer always has the same protection of the law of self-defense as any other citizen to use reasonable force in self-defense or for the defense-of-others. This defense is available to all people within the United States, including law enforcement officers, regardless of whether they are attempting to make a lawful arrest.

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears necessary to the person claiming the right to self-defense or the defense of others that he actually and reasonably believed he or others were in imminent danger of great bodily injury or death. Any person, including a peace officer, may use all the force that he reasonably believes to be necessary to prevent imminent injury to himself or others. While review of a person's conduct after the fact is made calmly and deliberately in a process of 'careful balancing,' the courts have recognized 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." The law simply does not render criminal the conduct of a person who is under assault because he might have chosen "less lethal" means to ensure his own survival. If deadly force is reasonable and justified in response to an imminent threat of harm, all hypothetical questions about alternative courses of action are irrelevant. *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912.

A person acts in lawful self-defense or in the lawful defense-of-others if all the following exist: the person reasonably believed that person, 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.

When deciding whether Officer Cardenas's own beliefs were reasonable, one must consider all of the circumstances as they were known to and appeared to him at the time, and consider what a reasonable person in a similar situation with similar knowledge would have believed at the time, not with the benefit of 20/20 hindsight. *Terry v Ohio* (1968) 392 U.S. 1, 20-22. If Officer Cardenas's beliefs were reasonable, the danger does not need to have actually existed.

Likewise, when deciding whether Officer Cardenas's conduct (as opposed to his belief) was reasonable it is important to note that a person threatened with an attack that justifies the exercise of the right of self-defense need not retreat. "A person threatened with an attack that justifies the

exercise of the right of self-defense need not retreat. In the exercise of his right of self-defense, a person may stand his ground and defend himself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. This law applies even though the assailed person might more easily have gained safety by flight or by withdrawing from the scene.” *People v Hughes* (1951) 107 Cal. App. 2d 487, 494.

In the leading case of *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-83, the California Supreme Court succinctly and definitively articulated the law of self-defense:

“For a killing to be in 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 the “facts and circumstances . . . in determining whether the defendant acted in a manner in which a reasonable man would act in protecting his own life or bodily safety. (Citations omitted.) As we stated long ago, ‘ . . . a defendant is entitled to have a jury take into consideration all the elements in the case which might be expected to operate on his mind’ (Citations omitted.)”

VI. DISCUSSION

Officer Cardenas had reasonable suspicion to detain Sanchez-Martinez when he encountered him on East Cotati Ave. at 5:00 a.m. Sanchez-Martinez was in the same vicinity as the earlier shooting, his physical characteristics matched the description of the shooter, his clothing matched the description, and he appeared to be concealing his face when Officer Cardenas drove by in the marked patrol vehicle. Sanchez-Martinez physically resisted the lawful detention by kicking back against the vehicle push bar and thrusting his body weight into Officer Cardenas. At that moment of resistance, Officer Cardenas had further cause to detain Sanchez-Martinez and probable cause to arrest him for a violation of Penal Code Section 148(a)(1) – resisting, delaying or obstructing an officer.

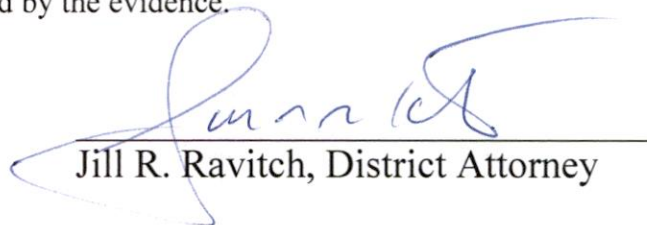
There is compelling evidence that Officer Cardenas believed Sanchez-Martinez was going to kill him when he saw Sanchez-Martinez reaching for a silver object in his waistband and looking in his direction. Officer Cardenas had assisted in the investigation of the 2:00 a.m. shooting and knew

that Sanchez-Martinez appeared to be the suspect. He also knew that Sanchez-Martinez's visible facial tattoos indicated that he was a gang member. He also experienced Sanchez-Martinez using physical force to resist the detention when Officer Cardenas asked him if he had any weapons. When Officer Cardenas followed Sanchez-Martinez into the middle of the street, he believed that he had been intentionally lured into this position and he felt vulnerable. Officer Cardenas's spontaneous statement to the first responding officers that Sanchez-Martinez "was reaching for his waistband" and "pulled out something silver" further support Officer Cardenas's belief.

The physical evidence collected corroborates Officer Cardenas's belief that the silver object he saw Sanchez-Martinez reaching for was a firearm. The .380 handgun recovered by the SAR team was found in close proximity to where Sanchez-Martinez was shot by Officer Cardenas, and it matched the caliber of the four shell casings recovered earlier in the evening. It is also noteworthy that the location of the physical evidence items – the position of his patrol car, the Taser and the Taser wires – all substantiate the details of Officer Cardenas's account. By virtue of his no contest plea in case SCR 703454 and the statements that he made to the probation department, Sanchez-Martinez has admitted that he fired a .380 handgun at 2:00 a.m.

VII. CONCLUSION

Based on the legal principles and facts discussed above, Sonoma State University Police Officer Rafael Cardenas was legally justified in using force in this instance. He acted lawfully and the force used was reasonable under the totality of the circumstances. He reasonably believed that Sanchez-Martinez was prepared to use lethal force against him, and Officer Cardenas lawfully acted in self-defense when he used his firearm. Accordingly, this office finds that criminal charges are neither warranted nor supported by the evidence.



Jill R. Ravitch, District Attorney