

EMPLOYEE-INVOLVED FATAL INCIDENT REPORT



Employer Agency: Santa Rosa Police Department
Lead Agency: Sonoma County Sheriff's Department
Decedent: Pablo Toribeo Garcia-Garcia
Date of Incident: August 5, 2017

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY
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I. INTRODUCTION

On August 5, 2017, Mr. Pablo Toribeo Garica-Garcia (hereafter referred to as Garcia), died as a result of gunshot wounds received during an officer-involved shooting involving Santa Rosa Police Officers. The death occurred on W. Steele Lane in Santa Rosa, California.

The Santa Rosa Police Department invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol (“protocol”), once resuscitation efforts failed and Garcia was declared dead. 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 fatalities.

In this case, members of the Sonoma County Sheriff’s Department assumed responsibility for the investigation of the incident with Detective Jesse Hanshew (hereafter Hanshew) being the lead investigator. The Sheriff’s department was assisted by members of Rohnert Park Public Safety and the Petaluma Police Department. 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 violated the criminal 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 foreman of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the death of Garcia, 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 death.

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 Officers' 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*¹ 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 doubt²," the highest burden of proof found in the law. 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 the 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 jury fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense.

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

²Judicial Council of California Criminal Jury Instructions (2008) (CALCRIM) No. 103.

IV. SUMMARY OF FACTS

A. DECEDENT'S BACKGROUND

Garcia was born June 7, 1982 and was 35 years old at the time of his death. At the time of his death, he was residing in Santa Rosa. He had rented a room at the residence which he shared with another male. There were multiple residents living at the residence. Garcia was known as "Chapo" to the other tenants at the residence. His parents reside in Mexico and he had a sister who resided in Sonoma County. During his autopsy he was found to have methamphetamine in his blood (280 ng/mL), Amphetamine (39 ng/mL) and tested positive for caffeine.

Garcia had previously been arrested in May 2014 for disorderly conduct for public intoxication. He was also arrested in March 2015 for false imprisonment when he ran into a woman's home alleging that someone was after him and refused to allow the woman and her son to leave the residence. At the time he was contacted by officers in that case, he held two kitchen knives. He released the knives when ordered to do so by officers. He was convicted of one count of Penal Code 236 (false imprisonment) and served approximately 8 months in jail. A criminal protective order was also issued at that time. After his release, he was deported back to Mexico but according to his sister returned shortly thereafter to Sonoma County. At the time of the incident, there was an outstanding arrest warrant issued for his arrest for a probation violation. He was reported to have lost his employment as an agricultural worker shortly before the incident and to have obtained employment with an unknown car wash.

B. EVENTS OF AUGUST 5, 2018³

On August 5, 2018 at approximately 5:58 a.m., the Santa Rosa Police Dispatch received a 911 call from a Spanish speaking male requesting that police respond "rapido" to his residence at on W. Steele Lane (hereinafter the "residence"). With the assistance of a translator, the reporting party indicated that a person who lived in a room at his residence was "acting crazy" and that he was told by another person that the man had a knife. He indicated that he had not personally seen the knife. Officers were dispatched while the 911 operator attempted to obtain additional information from the caller. Another Spanish speaking subject who was crying then got on the call and indicated his roommate had gone crazy and had a knife. Officers arrived at the residence at approximately 6:03 a.m.

Officer Jeff Badger was the first officer to arrive at 0603 hrs. Approximately two minutes later at 0605 hrs. Officer Nick Vlahandres and Officer Anthony Turner arrived at the residence. All officers were equipped with Body Worn Cameras⁴. The door to the residence was open. The officers knocked and an adult male Hispanic came to the door and allowed them to enter the residence. The adult male was a Spanish speaker, later identified as John Doe A (owner of the residence), and the officers were able to obtain very little information. They were led into the kitchen where another Hispanic man, later identified as John Doe B, was located. John Doe B

3. The following information is taken from reports of recorded interviews conducted by the Sonoma County Sheriff's department of Officers Nick Vlahandres, Jeff Badger, and Park McAllister; the 911 dispatch recordings and log and video from the body worn cameras of Officers Badger, Turner and Vlanhandres.

⁴ Officer Vlahandres camera was not activated until approximately 0617 hours.

was upset and crying. John Doe B spoke rapidly in Spanish which the officers were not able to comprehend. Officers observed that John Doe B was bleeding on his leg from a laceration and there was blood on his clothing. He was able to indicate to officers there was a knife and that the incident had happened in the front bedroom and that the suspect was in the bedroom.

Officers attempted to enter the bedroom which was locked. The bedroom is off a narrow hallway that leads to a bathroom directly across from the bedroom where the suspect is located and leads to two additional bedrooms at the back of the house. The owner provided a key to the room to allow officers to enter. The officers opened the door and announced “Santa Rosa Police Department” and shined a light into the darkened room which contained two beds and “stuff everywhere”. Officers did not observe anyone in the bedroom at that time but observed that the window to the bedroom was ajar and the screen was open. Officer Badger believed the suspect may have exited through the window and went to the back yard with Officer Turner to attempt to locate the suspect. Officer Vlahandres remained with the two residents. Officer Badger also determined that there were additional tenants in the house and in buildings outside the primary residence on the property while looking for the suspect. Officer Vlahandres then heard a noise from the front bedroom and advised Officers Badger and Turner to return to the inside of the residence. Turner then escorted John Doe B outside to receive medical treatment and remained outside the residence assisting residents of the house as they were later evacuated. Officer Turner photographed the injuries received by John Doe B.

Officers Badger and Vlanhandres then reentered the front bedroom and identified themselves several times as “Police” both in English and Spanish. Office Vlanhandres began removing mattresses from the bed on the right hand side of the room and located a naked subject, later identified as Garcia, hiding under the mattresses. Initially, the officers were only able to see his legs and could not tell where his hands were. Officers also observed a 12 inch kitchen knife. The officers gave repeated commands in English and in Spanish for the subject to put his hands up and put down the knife⁵. Officer Vlanhandres continued to remove items to visualize the suspect. Garcia continued to move and try to remain hidden and had a pillow over his abdomen. Office Badger saw the knife under the pillow and advised Officer Vlanhandres that the knife is under the pillow. The officers continued to give numerous commands to drop the knife⁶ and show his hands. Garcia could be heard moaning and rambling which was incomprehensible. The officers advised Garcia that they were there to help him. Garcia can be seen in the body camera video of Officer Badger sitting up or kneeling and holding the knife. As Garcia reached for knife, the officers retreated from the room continuing to give commands to drop the knife and Office Vlanhandres deployed his taser. It appeared to have no impact on the subject and a subsequent 5 second taser cycle was deployed. Officer Vlanhandres reported to dispatch at 0615 that taser deployment was “not effective”. During the encounter, Office Badger was also pointing his taser at Garcia.

Officer Badger continued to give commands to put the knife down and can be heard on the video stating that “he’s gonna cut his arm”. Badger continued to tell Garcia to put the knife down. Officer Vlanhandres then deployed pepper spray toward Garcia who continued to disregard

⁵ John Doe A who remained in the living room during the incident confirmed hearing officers give multiple commands to Garcia in English and Spanish.

⁶ “drop the knife”, “manos arriba”, “put the knife down and let me see your hands!”

commands to put the knife down, and reacted to the spray by attempting to wipe his eyes. Vlanhandres again ordered Garcia to put the knife down and Garcia can be heard responding “I can’t...I have a problem”. Officers continued to tell Garcia in English and Spanish to put his hands up and to put the knife down⁷, with no compliance.

At 0616 Garcia could be heard saying “I tell you... I don’t want to talk people...serious”. Officer Vlanhandres told Garcia they are there to help him and Badger continued to tell him to put the knife down. Garcia then said “(inaudible) got problems with me...for real.” Officer Vlanhandres continued to advise Garcia they are there to help him. Garcia can be seen in the body camera video holding the knife in his right hand and waving it as he is talking. He said “You understand what I am sayingplease?” Both officers again advised Garcia they are there to help him, Garcia replies “No....I don’t want help...I wanna...myself.”

Officer Badger continued to tell Garcia they are there to help him. Garcia calmly replies, “I say no”. Officer Vlanhandres asks “what’s going on? Garcia replies, “I say no...that’s it.” Officer Badger repeats “We are here to help you” before ordering Garcia again to “Put the knife down!” Garcia replies, “Uh –uh...no”.

Officer Vlanhandres replies, “We can’t help you if you don’t tell us what’s going on,” Garcia loudly responds, “Please ...turn the light off and go!” After which, Garcia starts to grunt before saying “(inaudible) wanna kill you too.” Office Vlanhandres replies, “You don’t want to do that sir...we’re here to help you.”

At approximately 0617 hrs. Garcia can be heard saying “clean my eyes, clean my eyes”. Officer Badger communicated to dispatch at that time that suspect “still has knife”. Officer Badger’s body camera video shows Garcia climbing over the bedframe and coming towards the officers with a knife in his hand. Officer Badger and Vlanhandres then loudly stated “put it down!” Office Badger then fired his taser which appeared to hit Garcia and he can be seen responding to the taser deployment and leaning against the bed on east side of the room. Officers continued to clearly and loudly advise Garcia to drop the knife. The knife was still in Garcia’s hand. At this point Officer Vlanhandres estimated that Garcia is 5-10 feet from them. Officer Badger indicated that Garcia is approximately 5 feet from him.

Both Officers Badger and Vlanhandres stated that Garcia advanced toward the officers with the knife in his hand. The officers retreated out of the doorway into the hall. The body camera of Officer Vlanhandres captures Garcia advancing through the threshold of the doorway with a large knife in his hand and Officer Vlanhandres is now approximately “a little more than an arm’s length away from the gentlemen.” The officers continued to advise him to drop the knife and although Garcia bent over slightly he continued to charge through the doorway. Fearing for his life and the lives of others in the residence, Officer Vlanhandres unholstered his firearm and fired at the suspect. Officer Badger also stated that he was in fear of his life and believed that he would be stabbed. It has been determined from the video recordings, autopsy and search of the residence that 5 shots were fired by Officer Vlanhandres. It was later determined during the

⁷ Observation of the body camera videos of Office Badger and Vlanhandres reflect that prior to the time that shots are fired, the officers gave over 40 clear and direct commands to Garcia which he failed to comply with.

autopsy that three of the shots actually struck Garcia. Two bullets were later recovered in the subfloor in the hallway.

Garcia after charging into the hallway went into the bathroom across the hallway. The door was closed and the officers could not see Garcia, and did not know if he was wounded and whether he still had the knife. Officer Badger went to the back bedroom and took a female resident out the back window to remove her from the house for her safety. Officers then evacuated the other tenants that were living in a garage and shed behind the main house. In total, seven tenants in addition to John Doe B and John Doe A were removed from the house.

Additional officers arrived on scene. Requests to come out are met with silence. Officers entered the bathroom using a ballistic shield. The knife was still in Garcia's hand. He was handcuffed and Santa Rosa Fire personnel pronounced Garcia dead at 0639.

When John Doe B was subsequently interviewed he stated that prior to police being called that he was in the bedroom with Garcia. He said that Garcia had started acting strangely a few days before the incident. He said that Garcia would be talking to himself and remain in the bed all day long. On the date of the incident, John Doe B awoke at 0400-0500 to Garcia yelling about a rooster and a chicken. Garcia said there was a rooster and a chicken in the room and he was trying to catch them. He had a large kitchen knife in his hand. John Doe B said that Garcia jumped on his bed and then jumped off. John Doe B was concerned about his behavior especially since he was holding a knife. He headed toward the bedroom door to try and leave and Garcia told him "Don't open the door... You'll let them out". John Doe B tried to open the door but Garcia swung the knife at him with a slashing motion. He initially was able to dodge the knife but then Garcia stabbed the knife downward and stabbed him in the foot. He then ran to the window and dove out of it. He ran around to the bedroom of John Doe A, the owner of the house. When John Doe A opened the window he told him to call the police because Garcia was acting crazy. He said the police arrived shortly thereafter and he told them what happened. He was walking towards the ambulance when he heard shots fired. Photographs were taken of his injury and he was taken to Santa Rosa Memorial hospital for treatment.

C. AUTOPSY AND CAUSE OF DEATH

Dr. Kimi Verilhac, M.D., conducted the autopsy of Garcia on August 8, 2017.

Dr. Verilhac conducted an external and internal examination and made findings of three penetrating gunshot wounds—two in the lateral left chest and one in left hip. A grazing gunshot wound of the left arm was also noted. In addition, Dr. Verilhac made a finding of 3 conducted energy device injuries to the torso.

Dr. Verilhac determined the cause of death to be multiple gunshot wounds.

A blood sample was taken from Garcia's femoral artery and tested by NMS labs. The toxicology report reported that Garcia had Amphetamine and Methamphetamine in his blood at the time of his death. *The level of Methamphetamine present was 280 ng/ml*, compared to the Amphetamine at 39 ng/ml. The report goes on to describe all the substances but specifically Methamphetamine as follows:

“d-methamphetamine is a DEA schedule II stimulant drug capable of causing hallucinations, aggressive behavior and irrational reactions. Chemically, there are two forms (isomers) of methamphetamine: l- and d-methamphetamine. The l-isomer is used in non-prescription inhalers as a decongestant and has weak CNS-stimulatory activity. The d-isomer has been used therapeutically as an anorexigenic agent in the treatment of obesity and has potent CNS-, cardiac-, and circulatory-stimulatory activity...d-methamphetamine is an abused substance because of its stimulatory effects and is also addictive.

A peak blood concentration of methamphetamine of 20ng/ml have been reported at 2.5hr after an oral dosage of 12.5mg. **Blood levels of 200-600ng/ml** have been reported in methamphetamine abusers who **exhibited violent and irrational behavior. High doses of methamphetamine can also elicit** restlessness, confusion, hallucinations, **circulatory collapse** and convulsions.” (emphasis added.) “

V. STATEMENT OF THE LAW

A. JUSTIFIABLE HOMICIDE BY A POLICE OFFICER

Under the Fourth Amendment of the United States Constitution, all people within the United States have the right to be free from the use of excessive force by law enforcement officers. This right attaches even when an officer is engaged in making a lawful arrest.

With respect to the use of deadly force, Penal Code 196 provides:

“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent Court; or
2. When necessarily committed in overcoming actual resistance to the execution of some legal process or the discharge of any legal duty;
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, who are fleeing from justice or resisting such arrest.

At the time of the officers’ encounter with Garcia they had probable cause to believe that he had committed assault with a deadly weapon. As discussed below, it is not necessary to determine whether in this case Officer Vlanhandres was “engaged in making a lawful arrest” of Garcia at the time he fired his weapon. It should be noted, as with any citizen, Officer Vlanhandres is also entitled to the right of “self-defense” and the “defense-of-others.” Both self-defense and defense-of-others are complete defenses to a charge of criminal homicide under Penal Code 197.

In a similar case, the court in *Martinez v County of Los Angeles* (1996) 47 Cal. App. 4th 334, found that the officers’ shooting of a suspect was justifiable homicide under Penal Code 196 where the suspect advanced on officers with a knife in his hand and refused to drop the knife

after repeated commands to do so. In *Martinez*, the court stated that the test for determining whether a homicide was justifiable under Penal Code 196 is “whether the circumstances ‘reasonably created[d] a fear of death or serious bodily harm to the officer or to another [citations omitted].’”

B. THE RIGHT OF A PEACE OFFICER TO SELF-DEFENSE AND DEFENSE-OF-OTHERS EVEN WHEN NOT EFFECTING AN ARREST

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.

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. Under Penal Code 197, a homicide is justifiable when it is committed while “resisting any attempt [by any person] to murder any person, or to commit a felony, or to do some great bodily injury upon any person.”

When deciding whether Officer Vlahandres’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 Vlahandres’s beliefs were reasonable, the danger does not need to have actually existed.

Likewise, when deciding whether Officer Vlahandres’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.

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

C. DISCUSSION OF THE LAW AND THE EVIDENCE

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 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.

There is compelling evidence that Garcia refused the officers’ lawful orders to stop and to drop the knife which was a deadly and dangerous weapon. The officers’ statements are corroborated by the body camera video which captures in excess of 40 verbal commands given to Garcia to drop the knife and put his hands up, all of which he failed to comply with. There is also compelling evidence that Garcia approached the officers in an altered state of mind with the intent to cause them harm. The officers had already seen an injury that Garcia had caused to his roommate who was bleeding and in distress when the officers arrived. It is clear that he did advance on the officers within a few feet in a narrow hallway and armed with the knife after having ignored repeated commands of the officers to drop it. Furthermore, both Officers Badger and Vlanhandres initially tried to stop Garcia’s approach and diffuse the situation with the use of less lethal force, namely, their tasers and pepper spray. The three taser deployments and pepper spray did not stop Garcia or cause him to comply with the officer’s commands. Instead, after the taser deployment by Officer Badger, Garcia hesitated for only a moment and then continued his efforts to get at the officers while armed with a knife. Officers were in fear of being attacked or

killed and also concerned with the safety of other residents in the home. At that point Officer Vlahandres's options were extremely limited and the use of deadly force at that point was justified.

There is compelling evidence that Garcia intended an assault on the officers with the knife at the moment shots were fired. Garcia can be seen at various points of the body camera video advancing on the officers despite repeated commands to drop the knife. This is further evidenced by the events leading up to the 911 call including eyewitness accounts of his behavior that morning, his statements to John Doe B and his assault on John Doe B with the knife and his conduct. His demeanor toward the officers is recorded on the body camera videos and shows that he charged at them when he left his room into the narrow hallway armed with a 12 inch kitchen knife. In addition, Garcia can be heard making a statement on the video "wanna kill you".

Based on all of this evidence, both from independent witnesses and the officers themselves, Garcia posed a threat to the safety of the officers, the residents at West Steele Lane and others, when he refused to drop the knife and continued to advance upon the police officers. Clearly, after the use of the tasers had no effect on Garcia and he continued his advance on the officers in a "close quarters" type of situation, Officer Vlahandres reasonably felt that he and his fellow officer's lives were in jeopardy. He also reasonably believed that Garcia posed a significant threat of harm to any other person who may have been inside the house. Thus, when Officer Vlahandres fired his weapon, he reasonably believed Garcia intended to attack the officers with a knife, and that one of them would be seriously injured or possibly killed.

The Ninth Circuit Court of Appeals has also noted: "All determinations of 'unreasonable force must embody allowances 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.'"⁸ Furthermore, the determination of reasonableness must be judged from the perspective of the reasonable officer on scene, rather than through hindsight.⁹

VI. CONCLUSION

Based on the law and all of the circumstances discussed above, Santa Rosa Police Department Officers Nick Vlahandres and Jeff Badger were legally justified in using force in this instance. They acted lawfully and the force used was reasonable under the totality of the circumstances. Accordingly, this office finds no criminal charges are warranted.

Jill R. Ravitch, District Attorney

⁸ Scott v. Henrich (9th Cir. 1994) 39 F.3d 912.

⁹ Graham, 490 U.S., at 396-7