

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



PUBLIC VERSION

Employer Agency: Cloverdale Police Department

Lead Agency: Petaluma Police Department

Decedent: Victor Gonzalez-Gonzalez

Date of Incident: October 21, 2017

Report Prepared by:

SONOMA COUNTY DISTRICT ATTORNEY

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I. INTRODUCTION

On October 21, 2017, Victor Gonzalez-Gonzalez died as a result of multiple gunshot wounds by two officers employed by the Cloverdale Police Department. Gonzalez-Gonzalez was 44 years old. The shooting event occurred in the side yard of a Cloverdale residence at approximately 0150 hours. Cloverdale police responded to the location after the neighbor called to report that a prowler was carrying a hammer and had entered his neighbor's side gate. The reporting neighbor stated that he was concerned because the owners of the home in question were elderly and expressed concern for their safety. After speaking with the reporting neighbor, three Cloverdale Police Officers entered the same side gate.

Officers observed Gonzalez-Gonzalez in the backyard with a construction type hammer in his right hand. After being told to drop the hammer, Gonzalez-Gonzalez rapidly moved toward the lead officer while raising the hammer. While retreating, two of the officers fired their weapons toward Gonzalez-Gonzalez, who collapsed shortly thereafter.

Cloverdale Police immediately invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol. The purpose of the Fatal Incident 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 mandated to investigate officer involved fatalities. Accordingly, members of the Petaluma Police Department, with the assistance of Rohnert Park Department of Public Safety personnel, assumed primary responsibility for the investigation. Members of the Sonoma County District Attorney's Office were also assigned to provide investigatory assistance.

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 all involved parties, including the law enforcement employees; to provide assistance to the investigative agency regarding legal issues; to supplement the investigation when necessary; and when appropriate, to prosecute those believed to have violated the criminal statutes.

Once the investigation is completed, the District Attorney is required to conduct 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 Victor Gonzalez-Gonzalez, statement of applicable law, legal analysis and specific conclusions.

II. SCOPE OF REVIEW

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

The specific question to be resolved in this case is whether the officers' use of force was not 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

As chief law enforcement officer for Sonoma County, the District Attorney is responsible for reviewing, approving and filing of all criminal cases. The District Attorney's discretion to charge a person with a crime is limited by well-established legal and ethical standards.

The standard to be applied by the District Attorney in filing criminal charges is expressed in a publication of the California District Attorneys Association entitled, *Uniform Crime Charging standards*. 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 a government office (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. The standard for charging a crime is high because the burden of proof required to convict, i.e. proof beyond a reasonable doubt, is the highest

burden of proof within the American legal system.

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. DECEDENT'S BACKGROUND

Victor Gonzalez-Gonzalez was born in Mexico, but had been in the United States for approximately nine years. He had a wife and three children in Mexico, but apparently had not seen them since coming to the United States nine years earlier. Gonzalez-Gonzalez worked as an agricultural laborer, and sent money to his wife in Mexico. He had been living in a shared residence in Cloverdale for approximately four months with two male cousins and an unrelated male. He had no known criminal history, but his cousin and associates reported that he suffered from anxiety, had hallucinations sometimes, and was a heavy drinker.

Gonzalez-Gonzalez was reportedly distressed due to being injured at work, and having received news that his 18 year old daughter was "misbehaving." One family member also reported that Gonzalez-Gonzalez had learned his wife was seeing another man. It was reported that when stressed, Gonzalez-Gonzalez on occasion had hallucinations that something was trying to kill or harm him. As far as family and friends knew, he had never been treated for mental health issues, and did not take any prescribed medications for mental health. No records were found for him with Sonoma County Behavioral Health, and no other records of treatment were located. His cousin said that when Gonzalez-Gonzalez experienced anxiety, he would call on the phone and converse. Gonzalez-Gonzalez was a frequent customer at Los Pinos market in Cloverdale, where he would regularly buy two tall beers and consume them.

Gonzalez-Gonzalez lived on Tarman Drive, which was a few blocks from Los Pinos market, and several blocks south of the location of the shooting, Garden Circle. He was a Spanish speaker, and apparently only spoke a little broken English.

B. THE REPORT OF PROWLER ARMED WITH A HAMMER

At 1:42 a.m., on October 21, 2017, Cloverdale Police dispatch received a call from John Doe #1, who resides on Garden Circle in Cloverdale. John Doe #1 told the dispatcher that his wife had awakened him due to the sound of someone banging on something outside, so he went to investigate. He saw a subject outside his residence, in front of his neighbor's home, also located on Garden Circle. He described the subject as a Hispanic male between 30-40 years old, wearing a black baseball cap and grey

sweatshirt. He said the man had a carpenter's hammer in his hand. He asked the man what he was doing. The man said he lived over there, and "meet" or "meat" several times. He said "my friend" and then walked back into the side yard of the neighboring address on Garden Circle. John Doe #1 said that his neighbors were elderly, and he was concerned. He had never seen the subject at their residence prior.

Garden Circle is, as its name implies, a circular, or "U" shaped street, with both ends connecting to South Cloverdale Boulevard, Cloverdale's main thoroughfare. The addresses can be confusing, as the houses are odd numbered on the south section, and even numbered on the north section. Initially, dispatch thought John Doe #1 had reported the prowler as being at a different address. Acting Sergeant John Camara was initially dispatched to respond to the call, and given the caller's address. Hearing the call, Cloverdale Officers Jim Strattan, Katie Vanoni, Carlos Nunez, and Kevin Burt responded as well.

Officer Strattan arrived at the location of the call first. As he drove up, the reporting party, John Doe #1, was outside his home and spoke with Strattan. He told Strattan about his contact with Gonzalez-Gonzalez, that he did not recognize Gonzalez-Gonzalez and was "very concerned" for his elderly neighbors. John Doe #1 described the subject as a Hispanic male, wearing a grey sweatshirt and black hat. When asked about the hammer, he said it was a regular construction-type hammer. He described his interaction with Gonzalez-Gonzalez and that he had tried to ask him what he was doing out here with a hammer at nearly 2 a.m. He told the officer that Gonzalez-Gonzalez then walked away from him, into the elderly neighbor's back yard, and was still back there.

Initially Sgt. Camara went to the other side of Garden Circle, to the address that was initially reported. Officer Strattan then put out over the radio the correct address. Sgt. Camara and Office Vanoni then arrived. Officer Burt and Officer Nunez took up positions behind the actual address where the prowler was reported, near the Quick and Easy gas mart on South Cloverdale Boulevard, in the adjacent field. Officer Strattan and Sgt. Camara checked the west side of the yard. There was a fence, but no gate. They then checked the east side, which had a gate leading to the back yard.

The houses there are single-family residences, spaced closely together, and two stories high. Facing the address where the prowler was reported from the street, on the right or east side of the home there is a single-car garage and small driveway between the street and the garage. A concrete pathway connects from the driveway and wraps around the east side of the address at a 90 degree angle at the east edge of the garage, leading to the back yard. At the time of the officers' arrival, a car was parked in the driveway just to the left of the gate. The driveway is small, and accommodates a single vehicle with a few feet on either side to pass on foot. A bushy tree on the east side of the driveway blocked the view toward the back of the property and crowded the pathway leading to the side yard gate. A few feet into the pathway on the side of the

house, it has an approximately six-foot tall wooden privacy fence, and a solid wooden gate, which was the same height as the privacy fence. The gate then leads into the narrow side yard, which has a concrete pathway leading to the backyard. At the time of these events, that pathway was cluttered. On the left side of the path, up against the house was a stack of boards, a cluster of bamboo poles, and a ladder, laying parallel to the home, on the concrete pathway. An upright shovel and leaf rake also leaned against the home. On the right side, some plastic buckets, a plastic gallon-size oil container, and other items partially blocked the gate from opening all the way and further restricted the space through which the officers could pass through.

After checking the west side of the residence and getting direction from John Doe #1 to enter on the east side, the officers moved past the parked car in the driveway and advanced to the gate, with Officer Strattan leading, followed by Sgt. Camara, and then Officer Vanoni. Each officer unholstered their 9 millimeter Glock semi-automatic service weapon. All of the officers had body worn cameras. They did not announce "police," because they were concerned that doing so would possibly give the subject in the backyard the opportunity to launch an attack on them. Officer Strattan later explained that in certain tactical situations it is not appropriate to make loud announcements, as it would provide the armed subject time to formulate a plan to attack the officers, or to flee.

Officer Strattan opened the gate leading to the back yard. The officers had flashlights which illuminated the side yard of the Garden Circle address, and the clutter of the concrete pathway that led to the backyard with boards, poles, a ladder, and a shovel. The officers began to advance through the side yard, single file, guns drawn.

As Officer Strattan turned the corner and swept the backyard with his flashlight, he saw Gonzalez-Gonzalez a short distance away, standing in the backyard, with a claw hammer in his right hand. Gonzalez-Gonzalez turned toward the officer. Officer Strattan yelled "drop it!" Gonzalez-Gonzalez began rapidly advancing toward Officer Strattan, still holding the hammer. Gonzalez-Gonzalez was about ten to twelve feet from Officer Strattan when he was first seen. The body camera video shows Gonzalez-Gonzalez turn toward Strattan, and then immediately advance toward him, hammer in hand. Strattan yells "drop it, drop it" as Gonzalez-Gonzalez advances, closing the distance between them, as Officer Strattan and the other officers began to back up. Strattan then fires one shot, which hit Gonzalez-Gonzalez, and he momentarily slows, as he reached the corner of the house. He then continues toward the retreating officers, with the right hand holding the hammer rising to chest level. Officer Strattan then again fires, this time multiple rounds, and Sgt. Camara moves to Strattan's left side and also fires, and Gonzalez-Gonzalez swings the hammer toward the officers. Gonzalez-Gonzalez then goes down and is heard making noises. He attempts to reach for the hammer which he had dropped. The officers continue to give commands, and Gonzalez-Gonzalez is then unable to get up or reach for the hammer due to his injuries. At this point Gonzalez-Gonzalez had advanced around the corner, into the side yard

several feet, and the officers had retreated approximately to the location of the gate. Gonzalez-Gonzalez was on his knees and partially fell against a ladder and rake that were leaning against the house. Sgt. Camara then advanced and moved the hammer out of the reach of Gonzalez-Gonzalez. The officers then notified dispatch “shots fired” and to summon medical. They also told dispatch to notify the Chief.

Officer Nunez hurried to the area and gave commands in Spanish. The officers began to administer aid, and then decided to move Gonzalez-Gonzalez to the front yard so they would have more room to work on him. Officer Nunez had previously been a medic for approximately 10 years, so he led the lifesaving efforts. Cloverdale Fire Department was across South Cloverdale Boulevard, and personnel responded to give aid. The officers all worked together to attempt to stop the bleeding and bandage wounds. They put a tourniquet on Gonzalez-Gonzalez’s leg due to heavy bleeding.

An ambulance arrived and Gonzalez-Gonzalez was transported to Memorial Hospital. He was declared dead shortly after arrival, at 2:36 a.m.

Cloverdale Police Acting Chief Chris Parker invoked the Employee-Involved Fatal Incident Protocol. Petaluma Police Department acted as the lead agency, with assistance from Rohnert Park Department of Public Safety.

During the subsequent investigation, the homeowner of the address where the incident took place, John Doe #2, was contacted. He had been home during the incident, but did not hear it or wake up. His wife was out of town that night due to a death in the family. After Gonzalez-Gonzalez was identified, John Doe #2 explained that he had known Gonzalez-Gonzalez, and had sometimes given him rides to work, as they both worked in the same vineyard. However, he had never socialized with Gonzalez-Gonzalez, and had last seen him some six months prior. Gonzalez-Gonzalez did not have permission to be in his yard, and John Doe #2 knew of no reason for Gonzalez-Gonzalez to be there. John Doe #2 later looked at the hammer, and was not sure if it had come from his tool shed.

C. THE SHOOTING

Petaluma Police Detective Patrick Gerke was assigned as lead investigator for the employee-involved shooting. He authored a report of the incident that was submitted and is the basis for this review.

The body worn camera footage of the involved officers captured the entirety of the events from the time the officers first arrived on scene, until after Gonzalez-Gonzalez was transported by ambulance away from the scene. Notably, the cameras were set in a high definition (“HD”) mode, which provides for very clear footage of the events leading up to the shooting, and the shooting itself. The footage shows that the officers had very little time to react. The behavior of Gonzalez-Gonzalez is troubling, because

there is no apparent reason for his being at the location, to be holding a hammer, or to rapidly move toward the officers when they illuminated him in the backyard of the address where the incident took place. He was not intoxicated. The subsequent testing of his blood revealed no alcohol or other drugs in his system, except for caffeine.

In Officer Strattan's body worn camera video, the footage shows him advancing into the narrow walkway, toward the back of the house. As he reaches the rear corner, he begins to sweep the rear yard with his flashlight. Suddenly, Gonzalez-Gonzalez is visible standing in the yard on the concrete patio behind the home. Gonzalez-Gonzalez is holding the hammer in his right hand, extended downward on his right side. He is wearing the grey sweatshirt and black hat, as described by John Doe #1. As the light shines on him, Gonzalez-Gonzalez immediately turns toward Officer Strattan, who yells "drop it." Gonzalez-Gonzalez advances toward Officer Strattan, who repeats the order "drop it." According to the time stamps on the video, adjusted to our time zone, the time was 1:50:23 when Gonzalez-Gonzalez is first seen. He immediately moves toward the officer, picking up speed. The first shot occurs only three seconds later, at 1:50:26. He momentarily pauses, and then continues the advance, rounding the corner as the officers retreat back toward the gate in the cluttered pathway. One second later, as Gonzalez-Gonzalez has raised the hammer up to chest level and is swinging it, both Officer Strattan and Sgt. Camara fire their service weapons. It was later determined that Officer Strattan fired eight rounds, and Sgt. Camara fired six rounds, for a total of fourteen rounds. Gonzalez-Gonzalez was hit multiple times. As he went down, he dropped the hammer. It was later determined that he had been shot through the right arm, which shattered the bone. Nevertheless, he is seen apparently attempting to grab the hammer before he goes all the way down to the ground.

Officer Vanoni did not fire her weapon. She explained in the subsequent interview that because she was behind both Sgt. Camara and Officer Strattan, she did not have a clear shot at Gonzalez-Gonzalez. Both Officer Burt and Officer Nunez, who had been on the other side of the rear fence, did not fire their weapons either. Officer Nunez then moved to the side yard with the others and attempted to give Gonzalez-Gonzalez orders in Spanish. Meanwhile, Sgt. Camara moved forward and moved the hammer away from the reach of Gonzalez-Gonzalez, who initially remained on his knees before going down.

The officers searched his pockets, and removed keys and a cell phone. The location where Gonzalez-Gonzalez went down was in the side yard, on top of the ladder and tool clutter. The decision was made to move him out to the street area, where there was more room to render aid. Officer Burt retrieved a medical kit from a patrol car and used a knife to begin cutting clothes off of Gonzalez-Gonzalez to better locate wounds, and apply pressure to try to stop the bleeding. Officer Nunez attempted to apply a tourniquet on Gonzalez-Gonzalez's right leg. He was still breathing but was unresponsive. The officers attempted to keep him awake but Gonzalez-Gonzalez had lost consciousness. Cloverdale Fire personnel arrived to assist. A few minutes later,

the ambulance arrived. Gonzalez-Gonzalez was loaded onto a gurney and transported to Memorial Hospital, where he was pronounced dead at 2:36 a.m.

Once Gonzalez-Gonzalez was transported from the scene by ambulance, Cloverdale Police initiated the Employee Involved Fatal Incident Protocol, and all five involved officers were sequestered at the Cloverdale Police Station. Petaluma Police Detective Patrick Gerke was notified by Petaluma Detective Sergeant Paul Gilman at 2:45 a.m. that the protocol had been invoked and that Det. Gerke was assigned as lead investigator. Det. Gerke and other members of the Petaluma Police Department responded to the Cloverdale Police Department. Investigators from Rohnert Park Department of Public Safety responded and provided assistance in the investigation as well.

D. STATEMENT OF OFFICER JIM STRATTAN

After the incident, Officer Strattan assisted the other Cloverdale officers with the lifesaving efforts on Gonzalez-Gonzalez. After Gonzalez-Gonzalez was transported from the scene, Officer Strattan was cooperative in being sequestered first at Cloverdale Police Department, and later at the Super 8 Motel in Cloverdale.

Officer Strattan was interviewed by Det. Gerke on October 23, 2017, at the Super 8 Motel. Also present was Officer Strattan's legal representative, Rocky Lucia.

Officer Strattan was advised that the interview was voluntary and that he could leave at any time. Officer Strattan agreed to be interviewed regarding the incident.

Officer Strattan explained that on the day prior to the night of the shooting, October 20, he had six and a half to seven hours sleep. He was working swing shift, which is 9 p.m. to 7 a.m. He came in around 6:30 p.m. and had pizza to eat that night. He had not consumed any alcohol in the 24 hours prior to the incident.

Officer Strattan had been with Cloverdale Police for nine years and ten months, and had been in law enforcement a little over thirteen years. He previously was employed by the Lake County Sheriff's Department. Officer Strattan is a Taser instructor, and a Field Training Officer. He had specialized training for both.

On the night of the incident Officer Strattan was in full uniform, and was driving a marked Cloverdale Police Department Chevy Tahoe SUV. In addition to the usual gear, he carried a flashlight and Taser, and had a body worn camera positioned on the right side of his chest. He carried a Glock 17 nine millimeter semi-automatic handgun.

Officer Strattan had been at the station, upstairs at a report writing desk when he heard Acting Sergeant Camara being dispatched to the call about a suspicious male holding a hammer, in the backyard of the reporting party's neighbor, on Garden Circle. He did not recall any backup officers being dispatched so he left the station in route to the scene.

Once in the car, Officer Strattan heard other officers communicating on the radio that they were responding. There was a description of the prowler as wearing a gray sweatshirt and black cap.

As Officer Strattan drove into the area, he saw a man in a red shirt who did not match the description of the prowler standing in the street in front of a Garden Circle address. He stopped and rolled down the window, and the subject, later identified as the reporting party, John Doe #1, said he could help and pointed toward the address where he had seen the prowler and said "he's over there [. . .] towards [address number]." At this point Officer Strattan realized dispatch had given an incorrect address. He got on the radio and said he was with the reporting party and gave the correct address.

Officer Strattan exited his patrol car and activated his camera. John Doe #1 seemed very concerned. He pointed to the west side of the driveway and said something to the effect that a Hispanic male was standing there, holding a hammer, mumbled a few words in broken English, and then went into the backyard of the address. Officer Strattan asked if he knew who lived there and John Doe #1 said it was an elderly couple. Strattan said that learning an elderly couple lived in the house led him to believe no one else should be there, and raised concern about their safety. Officer Strattan had no prior personal knowledge of the house in question. Officer Strattan asked if the hammer in the subject's hand was a regular construction hammer and Dallache said yes, close to that. John Doe #1 said something to the effect that he'd never seen the subject before. About that time, Sgt. Camara and Officer Vanoni arrived on scene, and Officer Strattan advised them of what he'd learned on scene. They checked the west side of the address where the prowler was reported and saw no entrance and a wooden fence all the way around.

Strattan said they went to the east side where the reporting party had last seen the subject, and Officer Strattan said something to the effect that they needed to check the backyard and clear it. Officer Strattan removed his pistol from his holster. He considered the use of his Taser, but based on his training and experience, given a scenario of a possible weapon, as a first responder he felt lethal support might be needed.

Officer Strattan explained that he approached the gate, unlocked it, and pushed it open. Sgt. Camara was behind him, and Officer Vanoni behind Sgt. Camara. As he opened the gate he activated the flashlight attached to his pistol. He then could see that it was a very narrow pathway with the house on one side and fence on the other, with yard items in the pathway. He started walking slowly in. He did not want to announce himself for officer safety reasons. He was moving slowly forward, and saw another fence in the back and saw the yard was not very big. He thought because he had his light on, if the subject was back there, "he knows where I'm at and he knows I'm coming." So he slowed even more. Based on his training, he conducted a "cut-the-pie" of the corner of the residence, slowly cutting the corner so he could hopefully see

someone standing there before he was seen.

As Officer Strattan started moving slowly around the corner, he saw an arm or something that appeared to be a person so he stepped out to see his whole body. He estimated the person was five to seven feet from him at that point. Officer Strattan noticed he had a light gray sweatshirt and a hat. He saw a regular claw hammer in the person's hand. He told him to put it down, twice. Officer Strattan was shocked that he was so close at this point. He had his weapon pointed at the man, who was lit up by the flashlight. The man started a fast walk toward him, raising the hammer. Officer Strattan retreated, thinking if he yelled at the person enough to drop it, he would, because based on his experience that's what happens. The man kept coming faster. Officer Strattan was backing up, and remembered the fence was there, and knew his backup officer was right there, and it was a "bad funnel of nowhere to go and he just kept coming." The gap was too close.

At that point Strattan said he believed that if he didn't fire, the man was going to kill him. Strattan believed the subject was going to hit him in the head and he wasn't going to stop. Officer Strattan fired his weapon. He thought he missed every shot, which was terrifying. He heard gunshots from his side, so he assumed Sgt. Camara fired his weapon. They were next to each other at that point. The man had actually turned the corner and was still coming. They were backing up more and more. The man was stumbling, still holding the hammer. A quarter of the way to the gate the subject fell to his knees. Sgt. Camara was giving commands to drop the hammer. The man was still trying to get up. Officer Strattan said he thought that if the man got back up, he would have to fire another round. Then he could tell the man had been hit, and was no longer was a threat. Sgt. Camara went over the radio, "shots fired." Officer Vanoni was right behind them. Sgt. Camara retrieved the hammer, and requested medical assistance.

At that point, Officer Burt and Officer Nunez arrived on scene. The subject was moved to the front of the residence where first aid was immediately rendered. An ambulance arrived and he was transported to the hospital.

Officer Strattan explained that he believed the call to dispatch was for a prowler, and thought someone may possibly be trying to break into the residence. The basic tactics in such a situation would be to be quiet and not project themselves, to get enough officers there to surround the area, in case the person ran when they entered the yard. He said they wanted to make contact before the person actually broke into the house, and he didn't know if anyone was in the house.

Officer Strattan explained that if they announce "police department," and the guy was waiting to hurt them, then "I just told him when and where we're coming." Officer Strattan further explained the decision not to deploy his Taser. Based on his training, he knew Tasers can fail, they aren't 100 percent. There could be a bad cartridge or the probes could fail to deploy. If the subject is on drugs or intoxicated, that could hinder

the situation also. Officer Strattan explained that he had retreated, because he didn't want to shoot the guy. However, then he felt that "this guy's going to hit me in the head with a hammer and kill me." He retreated in order to give the subject the opportunity to hear his commands and drop the hammer. He explained that the "bad funnel" was because of the narrow space, with two officers behind him, and items on the ground he could trip over. He knew as he was backing up as the subject was coming at him that he had a fence behind him, and they could trip and the subject would be right there on top of them.

E. STATEMENT OF ACTING SERGEANT JOHN CAMARA

Acting Sergeant John Camara was interviewed by Det. Gerke on October 23, 2017, at the Super 8 Motel. Attorney Rocky Lucia was present as well. Sgt. Camara had been in law enforcement for eighteen years, all of it as a Cloverdale Police Officer. He had been acting Sergeant for the previous three months. His duties included training new officers as Field Training Officer. He also was a K-9 handler, and Patrol Rifle Instructor. His K-9 accompanies him to work.

Sgt. Camara explained that on October 20, he had been completing the final day of the Field Training program with Officer Burt. In that phase of field training, the training officer wears plain clothes, and rides with the new officer to make sure they are performing their duties correctly, without the public knowing another officer is observing. Prior to the incident, Officer Burt successfully completed the training program, and Sgt. Camara released him from the program and was assigned to his own vehicle.

At the time of the incident, Officer Camara was wearing a T-Shirt and jeans, with a tactical vest over the T-shirt and a duty belt around his waist. A cloth Cloverdale Police badge was affixed to the vest. Because he had been training earlier in the evening, he had not prepared his K-9 for work, though it was in his vehicle because he could not leave the dog home alone.

Sgt. Camara stated he was in the Cloverdale dispatch center when the call regarding a possible prowler with a hammer came in, around 1:45 a.m. The initial dispatch information was for the wrong Garden Circle address, so they found nothing suspicious there. Officers Vanoni, Nunez, and Burt also responded. A short time later Officer Strattan advised the correct address and Sgt. Camara and Officer Vanoni responded to that scene. Sgt. Camara asked Officers Burt and Nunez to respond to the rear of that address, which they did.

Sgt. Camara said that in a prowler call with a subject going into the backyard of a residence, typically indicated that the subject may be trying to enter the residence. Based on the subject being armed with a hammer, he didn't know if the subject planned to use it to break in, or as a weapon, which caused him to have heightened awareness

as he entered the backyard. He explained that during these types of calls an officer may not always announce “police” so their location is not projected to the subject and give them time to launch an attack.

Sgt. Camara had no prior knowledge of the location. When he arrived he was told by Officer Strattan what John Doe #1 had said. They did not locate an entrance on the west side of the residence, so he went to the east side and located a closed gate. Officer Strattan led, with Sgt. Camara behind him, and Officer Vanoni behind Sgt. Camara. Sgt. Camara said he and Officer Strattan deployed their firearms, but he was unsure if Officer Vanoni did. They went through the gate into the side yard, which was dark, narrow, and cluttered with debris. Officer Strattan and Sgt. Camara used their flashlights to illuminate the path in the side yard. Sgt. Camara was positioned to the left of Officer Strattan so he could see around him. As Officer Strattan reached the corner, he took a wide view searching out possible suspects. When Officer Strattan stopped moving he began giving verbal commands to a person to “drop the hammer.” Officer Strattan immediately began to back up, and Sgt. Camara also backed up.

As he backed up he saw a male, later identified as Gonzalez-Gonzalez, move around the corner of the building, with a hammer in his hand. Sgt. Camara couldn’t believe how close Gonzalez-Gonzalez was when he first popped out. Gonzalez-Gonzalez did not respond to the commands to drop the hammer and kept advancing. The hammer was raised in the air. Sgt. Camara stated that Gonzalez-Gonzalez had a strange look on his face as the officers were backing up toward the gate. Officer Strattan shot, and Gonzalez-Gonzalez kind of puffed up and it seemed as if the shots did not have any effect on him, as he kept advancing toward the officers. Sgt. Camara thought Gonzalez-Gonzalez was going to hit and possible kill Officer Strattan with the hammer. In response, Sgt. Camara started shooting. Gonzalez-Gonzalez dropped to the ground but kept trying to reach for the hammer as they gave him commands not to do so.

Officer Nunez arrived and Sgt. Camara told Officer Nunez to give commands in Spanish. Sgt. Camara advanced and kicked the hammer away from the subject. They began lifesaving efforts and moved Gonzalez-Gonzalez to the front of the residence. Sgt. Camara requested medical aid, and a supervisor.

After the initial interview, Sgt. Camara watched his body worn camera footage. He commented that the incident occurred faster than he remembered and Gonzalez-Gonzalez came at them faster than he had remembered also. He did not realize that he and Officer Strattan had backed up as fast as they did to get away from Gonzalez-Gonzalez. He stated he realized how much more of a threat the situation had actually been.

F. STATEMENT OF OFFICER KATIE VANONI

Officer Katie Vanoni was interviewed at the Motel 8 on October 23, 2017, by Petaluma Corporal Tami Gilman. Officer Vanoni had been a police officer for a year and four months, and had previously been a probation officer in Mendocino County for three years.

Officer Vanoni recounted similar facts as Officer Strattan and Sgt. Camara regarding the initial stages of the call, the information received, and the arrival on scene. She explained that when they approached the gate, she also drew her firearm. Due to her position in the rear, she did not use her flashlight so as not to back light the officers ahead of her. As Officer Strattan reached the rear of the house and rounded the corner, he yelled "drop it, drop it," and began retreating. Officer Vanoni had no line of sight due to the narrow confines of the pathway. She then saw the subject holding a hammer up, head tilted and eyes looking at the officers. "He didn't stop." "He just kept coming." Officer Vanoni heard the sharp shots ringing out. The subject continued to advance. Officer Vanoni was scared for Officer Strattan and Sgt. Camara. She described the subject as very close to Officer Strattan as he came around the corner. She later described: "I was feeling that, you know, this man was, was trying to kill us."

G. STATEMENT OF OFFICER CARLOS NUNEZ

Officer Carlos Nunez was interviewed at the Super 8 Motel by Rohnert Park Department of Public Safety Detective Jon Kempf on October 22, 2017. Officer Nunez had been a police officer for just under four years, all of it with Cloverdale Police Department. He was assigned as a patrol officer. Prior to becoming a police officer, Officer Nunez had worked in emergency medical services for ten years.

On October 21, 2017, Officer Nunez was in the Cloverdale Police Department break room when he heard a call before 2 a.m. regarding a prowler who was in the backyard of a residence with a hammer. When he received the dispatch he and other officers headed out to the call. On his way, he asked the dispatcher what address paralleled the address of the prowler call. Officer Nunez explained he was familiar with Garden Circle, but did not know the exact address of the prowler call. He explained that he knows people can jump fences in the area so he did not go to the address of the call, but to Alter Street, and Officer Burt showed up on the same street. When Officer Strattan put the correct address over the radio, he and Officer Burt repositioned themselves behind that address. He parked by the Fast and Easy gas station, to the east in an open field directly behind the location of the call. He and Officer Burt positioned themselves in the open field behind the "second house" as identified by Officer Strattan over the radio. While in the field he could not see anything in the residential back yards or any lighting as the fence hindered his view. Officer Nunez was lined up with the house in the field, when he heard loud yelling and then he heard pops in rapid succession. He realized the pops were gunshots.

When Officer Nunez heard the shots, he was focused on the fence. He did not know

who was shooting, and knew he had to get over to the scene as quickly as possible. He ran to his car and then drove over to the scene. When he arrived he heard Officer Strattan screaming and he ran to the gate, next to Officer Strattan. He saw a Hispanic male on his knees. Officer Nunez then began screaming at the subject in Spanish to get on the ground. The subject was not responding to any commands, and finally slouched down. They then moved the subject to the street. The subject was never handcuffed. They brought him to the front of the residence so they would have more room to assess his injuries. Officer Nunez used his knife to rip the subject's clothes off so they could put pressure on the wounds. He noticed dark blood on the subject's leg and told someone to cut the subject's pants off so they could apply a tourniquet, which he then did. The Fire Department then showed up, followed by "medical." Officer Nunez assisted getting the subject onto the gurney, and then the subject was transported from the scene.

H. STATEMENT OF OFFICER KEVIN BURT

Officer Burt was interviewed at the Super 8 Motel by Rohnert Park Department of Public Safety Detective Jon Kempf on October 22, 2017.

Officer Burt had just completed his field training program earlier in the evening on the night of the incident, and had been a police officer for about three and a half months.

As with the other officers, Officer Burt responded to the dispatch report of a prowler with a hammer, initially to the wrong Garden Circle address. He went to Alter Street, behind the initially reported address, along with Officer Nunez, in case the suspect jumped the fence. After learning they were on the wrong side of Garden Circle, he and Officer Nunez responded to the gas station on South Cloverdale Boulevard. As the other officers went to the front of the house on Garden Circle, Officer Burt took up a position on the back side of the fence with Officer Nunez. Officer Burt estimated he was 20 feet from the fence, but he could not see anyone in the backyards due to the six foot high fence.

While holding the perimeter position, Officer Burt thought he heard Sgt. Camara say "drop the" and then something inaudible, and then heard shots. He did not know who fired the shots, so he felt he needed to get over there as quickly as possible. He ran back to his patrol vehicle and drove around to the front of Garden Circle. He exited his car and ran to where officers were yelling commands. He remember Officer Nunez yelling commands in Spanish. The officers carried the suspect out to the street and Officer Burt provided lighting. Officer Nunez told Officer Burt to grab a medical kit, which he did from the trunk of his patrol car. When he returned, he assisted in rendering aid. Emergency medical assistance arrived on scene, and then the subject was transported by ambulance from the scene.

I. THE AUTOPSY

On October 23, 2017, a post mortem examination was conducted by Dr. Kimi Verilhac, M.D., a medical doctor board certified in the area of forensic pathology, employed by Regional Pathology and Autopsy Services, under contract with Sonoma County. The cause of death was determined to be the result of multiple gunshot wounds. Dr. Verilhac identified a total of four penetrating and six perforating gunshot wounds to the torso and extremities. Gonzalez-Gonzalez suffered wounds to the right arm, chest, abdomen, pelvis, and left leg.

V. STATEMENT OF THE LAW

The sole issue to be resolved is whether the shooting of Victor Gonzalez-Gonzalez 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 both 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.

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.¹

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.²

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.³

¹ California Penal Code Sections 834 and 834a

² California Penal Code Section 835a

³ *United States v. Sokolow* (1989) 490 U.S. 1; *Terry v. Ohio* (1968) 392 U.S. 1

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.⁴ 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.⁵

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 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.⁶

Both self-defense and defense of others are complete defenses to a homicide and make the homicide justifiable.⁷

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.⁸

In such situations, there is a presumption that the killing was justified. The burden falls to the prosecution to prove beyond a reasonable doubt the killing was not justified.⁹

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

⁴ California Penal Code sections 692-694

⁵ See Calcrim 505

⁶ See Calcrim 505

⁷ California Penal Code section 199; See Calcrim 505

⁸ See Calcrim 507; Penal Code sections 196, 199

⁹ See Calcrim 507; Penal Code sections 189.5, 199

believe in the need to defend. (Citations omitted.) If the belief subjectively exists but is objectively unreasonable there is “imperfect self-defense,” ie., “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,” ie., 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 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

Cloverdale police officers responded to a 1:42 a.m. dispatch call from a concerned neighbor, regarding a prowler carrying a hammer who had gone into his elderly neighbor's backyard. The reporting party, John Doe #1, did not recognize Gonzalez-Gonzalez as someone he'd ever seen going to the house. When the first officer, Strattan, arrived on scene, John Doe #1 was in the street in front of his home. As the body worn camera video of the incident showed, John Doe #1 spoke directly with the officer, stated he was "very concerned," and gave a description of the subject, and his

odd behavior. As it turned out, Gonzalez-Gonzalez did in fact know the resident of the address where the incident took place, but he had no business being there, and did not have permission to enter his yard. John Doe #2, the male resident of the address where the incident took place, had given Gonzalez-Gonzalez rides to work, but had not socialized with him, and had last seen him some six months prior.

As additional officers arrived, they checked for access to the backyard to investigate the subject. For tactical and officer safety reasons, they did not make announcements before entering the yard, so as not to give away their location, as doing so might allow the subject to launch an attack, or flee. However, they were shining flashlights into the side yard as they approached and opened the gate. They had arrived in marked police vehicles. They were wearing dark uniforms with shoulder patches and a badge. Whether or not Gonzalez-Gonzalez was aware they were police officers is unclear. However, the body worn camera footage shows unmistakably that when Officer Strattan rounded the corner, he could clearly see Gonzalez-Gonzalez holding the hammer, and yelled "drop it." Gonzalez-Gonzalez turns toward Officer Strattan, hammer still in his right hand, and rapidly advances the 10-12 feet between them, reaching a jog, as Strattan retreats backwards into the pathway. Having just moved through the dark side yard pathway, Strattan and the other officers knew there was clutter that could cause them to fall as they retreated to the gate. Additionally, outside the gate in the path of their retreat was crowded with a large bushy tree and a vehicle, which made the exit crowded and difficult to maneuver. Gonzalez-Gonzalez covered the ground to the point where Strattan had just been standing, in approximately three seconds, before Strattan fired. Gonzalez-Gonzalez paused momentarily after being hit, and then continued his advance around the corner, swinging the hammer, when both Strattan and then Sgt. Camara fired additional shots.

Given the suddenness of Gonzalez-Gonzalez's action of rapidly advancing to the officers, with the carpenter's hammer clearly visible in his right hand, the officers had very little time to assess the situation, issue any commands or announcements, or use force alternatives. While it is not clear that Gonzalez-Gonzalez knew that Strattan, Camara, and Vanoni were police officers it is irrelevant to the analysis of whether the officers' behavior was reasonable. What is clear is that Gonzalez-Gonzalez advanced rapidly on the individuals with flashlights coming around the corner, as he raised the hammer to strike them. The only conclusion is that he meant harm to whomever was coming around that corner.

Specifically as to Officer Strattan, the facts show that he reacted appropriately under the circumstances. He had been called to the scene to investigate a prowler, armed with a hammer, in the early morning hours, who had entered the yard of the reporting party's elderly neighbors. When he arrived on scene, John Doe #1 was out in front of his house, flagged down the officer, and looked concerned, and verbally expressed concern for the safety of his elderly neighbors. He told the officer he did not recognize the subject. Officer Strattan advised the other officers of the correct location over the radio,

and then began to investigate how to get into the back yard. Sgt. Camara and Officer Vanoni soon arrived. They determined they needed to enter from the east side of the yard, through the gate.

Officer Strattan, who had specialized training in Taser use and tactics as a Taser instructor, considered deploying his Taser. However, based on his training, he determined that as the lead officer it was dangerous not to be prepared with lethal force, because Tasers can fail. He drew his firearm, and the three officers entered the side yard pathway. As he shone his flashlight, he saw the clutter in the pathway. He used appropriate techniques as trained to search the yard. As he did, Gonzalez-Gonzalez appeared, hammer in hand, surprisingly close. The body worn camera, in high definition, and with clear audio, shows Gonzalez-Gonzalez, and captures Officer Strattan giving the command "drop it!" Gonzalez-Gonzalez immediately turns toward Officer Strattan, advancing and raising the hammer as he did so. Officer Strattan yelled "drop it!" a second time, and then as Gonzalez-Gonzalez reached the corner where Officer Strattan had been standing a second earlier, fired a first shot. Gonzalez-Gonzalez stumbled for a split second, then continues to advance, before Officer Strattan fired additional rounds. It should be noted that Gonzalez-Gonzalez had come all the way around the corner, and fell several feet into the side yard. He was swinging the hammer as he began to fall. As Officer Strattan explained, he was retreating into a "bad funnel," with clutter, a gate, and two other officers behind him. He believed that if he fell, Gonzalez-Gonzalez would have been on him, swinging the hammer. Based on these facts, it was reasonable for Officer Strattan to use lethal force to defend himself, and the officers behind him.

As to Sgt. Camara, he was faced with the same situation, but had a different view of what was initially occurring, since Officer Strattan was in front of him and he could not see Gonzalez-Gonzalez around the corner. However, he was aware of the fact that the subject in the backyard was armed with a hammer, and that the residents of the home were elderly. He had a duty to investigate the situation and locate the subject with the hammer. He drew his service weapon when he entered the side yard. He also determined announcing their presence could endanger themselves by giving the suspect the opportunity to launch an attack. As they advanced, he too saw the clutter in the yard. As Officer Strattan rounded the back corner, he heard the commands from Strattan to "drop it," and he reacted as Officer Strattan retreated, by retreating also. When Gonzalez-Gonzalez rounded the corner, he was hit by Strattan's first shot, and then kept advancing. Sgt. Camara then stepped to the left of Officer Strattan and began firing as well. Gonzalez-Gonzalez was very close, swinging the hammer. Given all the facts above, it was reasonable for Sgt. Camara to use lethal force to stop Gonzalez-Gonzalez' advance, in defense of Officer Strattan as well as in his own self-defense.

The law imposed upon the police officers the duty to behave reasonably under the circumstances. Whether Gonzalez-Gonzalez believed he was attacking police officers, or the reporting party, the residents of the home, or the hallucinations he would see

when stressed, the very clear evidence on the body worn camera footage of the officers' cameras shows without a doubt that Gonzalez-Gonzalez intended to use his hammer as a deadly weapon to attack the person coming around the corner to the back yard. Under these circumstances, the behavior of Gonzalez-Gonzalez would suggest to any reasonable person that they were in imminent peril of serious bodily injury or death.

VII. CONCLUSION

Officer Jim Strattan and Acting Sergeant John Camara, and three other Cloverdale Police officers, investigated a report of a prowler armed with a hammer, who had entered the backyard of the elderly neighbors. While in the lawful performance of their duties, they were required to use lethal force to stop the advancing subject, who was armed with a hammer, and who raised the hammer as he advanced. Under these circumstance, the officers acted reasonably in defending themselves.

The use of lethal force was a reasonable response and justified under the circumstances. Therefore, based on the facts, the actions of Officer Jim Strattan and Acting Sergeant John Camara were reasonable under the circumstances with which they were faced, and were legally justified. Based on the review of the facts and the relevant law, no criminal charges should be filed against them at this time.

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District Attorney, County of Sonoma