

LAW ENFORCEMENT EMPLOYEE-INVOLVED FATAL INCIDENT REPORT



Employer Agency: Sonoma County Sheriff's Department
Lead Agency: Santa Rosa Police Department
Decedent: Urbano Morales
Date of Incident: June 8, 2013

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

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I. INTRODUCTION

This fatal shooting involved the Windsor Police Department. The city of Windsor contracts with the Sonoma County Sheriff's Office for their police services; all Windsor police officers are Sonoma County Sheriff's Deputies. The involved officers in this incident were Deputies Andrew Cash and Donald Fletcher. The decedent was 48-year-old Urbano Morales of Windsor.

The shooting happened in the Windsor Town Green at around 7:40 a.m. on Saturday, June 8, 2013. The deputies were dispatched to the Starbucks on the Town Green where Morales had reportedly stabbed his estranged wife multiple times and walked away with the knife he had used to assault her. He was initially followed by witnesses who saw him stabbing himself in the stomach with the knife as he made his way around the back of the building. Deputy Cash found Morales as he (Morales) walked back toward the Town Green and the scene of the stabbing.

Morales appeared to be stabbing himself with the knife in the stomach, underneath his shirt, as Deputies Cash and Fletcher approached. He refused to follow any of their verbal commands, at one point yelling, "Just fucking kill me!" or words to that effect. As Morales continued stabbing himself with the knife, Deputy Fletcher deployed his Taser on Morales once, to no avail. It appeared one barb hit Morales in the upper chest but the second did not strike him. Morales then took a lunging step toward Deputy Fletcher, at the same time grabbing for the knife under his shirt. Fearing Morales was about to stab Deputy Fletcher and/or possibly return to the Starbucks, where Jane Doe #1 still lay bleeding on the ground, both deputies fired their handguns. Morales fell to the ground face first, approximately 5-8 feet away from Deputy Fletcher. He died almost immediately.

While Deputies Cash and Fletcher were occupied with Morales, other deputies and emergency medical personnel attended to Jane Doe #1's injuries. Jane Doe #1 was hospitalized with multiple stab wounds, but sustained no life-threatening injuries. She was able to give a statement to the investigating officers later that day, in which she detailed recent incidences of Morales' increasingly violent tendencies. These incidences, as well as the facts leading up to the shooting, are detailed in the investigative reports prepared by the Santa Rosa Police Department. The District

Attorney's report will focus on the facts surrounding the actions of Morales on the morning he was shot and the deputies' responses to his actions.

II. SCOPE OF REVIEW

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

III. STANDARD OF REVIEW

The District Attorney, as the chief law enforcement official of Sonoma County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the exclusive responsibility to review and approve the filing of all criminal cases. While the decision whether or not to file criminal charges against an individual rests with the District Attorney, the authority to do so is not without limit. The standard to be applied by the District Attorney in filing criminal charges is accurately expressed in a publication of the California District Attorneys Association entitled, *Uniform Crime Charging Standards*.¹ It provides:

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

Additional restraint on the charging authority is found in *The California Rules of Professional Conduct, Rule 5-110*, which provides that an attorney in government service (this definition includes prosecutors) shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause. Simply put, the standard for charging an individual with a crime is high because the burden of proof ultimately required at trial is the highest burden of proof under the law - proof beyond a reasonable doubt.

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

IV. SUMMARY OF FACTS AND EVIDENCE

The following is a brief summary of facts intended to assist the reader in understanding and applying the legal standards explained herein. In no way is it intended to replace the exhaustive investigative reports submitted by the Santa Rosa Police Department.

A. Background

At the time of his death, Urbano Morales was estranged from his longtime partner, Jane Doe #1, with whom he had been living for the previous 19 years. They had one child in common, 19-year old John Doe #1. The three lived together in their home in Windsor. There was no history of domestic violence in the home until approximately 4-6 weeks prior to the day of the shooting. Around that time, Jane Doe #1 stated, she told Morales that she wanted to end their relationship, and Morales began to falsely accuse her of having an affair. Morales was apparently distraught over Jane Doe #1's desire to split up, and he started drinking more heavily. Jane Doe #1 said that she eventually asked Morales to move out, which he did on May 4, 2013. John Doe #1 was home when Morales began moving out, and reported that while moving out, Morales began destroying the yard, throwing beer bottles and upturning plants. He also stabbed the refrigerator door in the garage multiple times with a knife.

John Doe #1 stated his father just "went crazy." In fact, at some point, John Doe #1 said he asked his dad how he was feeling and Morales said he was "a little crazy right now" because Jane Doe #1 had broken his heart. When John Doe #1 saw all the destruction that was going on, he was frightened and called his mother who was at work. Jane Doe #1 called the police, but they told her that since Morales had not yet moved out of the house, they could not do anything about him being drunk in his own home. Jane Doe #1 declined to press charges against Morales for vandalizing their property.

That evening, John Doe #1 was performing at a local High School. Morales showed up drunk, cheering and yelling from the audience. Jane Doe #1 called the police because Morales was causing such a disturbance, but by the time officers arrived, Morales had left. Both John Doe #1 and Jane Doe #1 reported that they decided to stay in a local hotel that night because they were afraid of

Morales. Jane Doe #1 received multiple calls from Morales that night, wanting to know where they were; Jane Doe #1 told him that he was scaring them so they were staying away.

Morales left several voice mail messages for Jane Doe #1 after that. In one of them, Morales said “Honey where are you? I love you.” The next message said “Well you did it, you had me arrested out of my own house, the entire neighborhood thinks I’m a criminal. I’m not a criminal but I will be when I kill you, you fucking bitch.”

Over the next several weeks the situation escalated between Morales and Jane Doe #1. Morales became more and more upset, was drinking heavily, and several times showed up to events or to the home he used to share with Jane Doe #1 to cause disturbances. Shortly before midnight on June 7, 2013, the night before the shooting, Morales arrived uninvited at Jane Doe #1’s house. He was under the influence of alcohol and was ultimately arrested by Windsor Police Officer Eric Seibold for being drunk in public. Several hours later Morales was released from jail and found a ride back to the house where he created yet another disturbance; at 4:51 a.m., John Doe #1 called 911 to report that his father had returned. Deputies Haas and Peirsol responded, but by this time, Morales was no longer so intoxicated that he could be arrested. Therefore, a deputy drove him back to the house he was sharing with his brother, John Doe #2, in Santa Rosa. According to the dispatch log, Morales was transported home at 5:26 a.m. and Jane Doe #1 was advised of the process for obtaining a restraining order.

Afraid that Morales would return, Jane Doe #1 and John Doe #1 packed their things and planned to leave town for the weekend. Before Jane Doe #1 got out of her car, she received a call from Morales. During that conversation Morales told Jane Doe #1 that they had to get back together, and again asked why she was doing “this.” He also again asked her whether she was seeing someone else. Jane Doe #1 told him that there was in fact someone else, and when he told her not to have sex with the other man because they could still work it out, she told him she already had. She also told Morales during this conversation that she felt she had to get a restraining order because she could no longer trust him. He became upset and told her that if she got a restraining order, he would come to the house every day and be arrested every day. She believes that she may have told Morales during this conversation that she was at Starbucks.

Jane Doe #1 also told investigators that she had received a call from Morales's brother, John Doe #2, advising her that Morales had grabbed his truck keys and left again. John Doe #2 told Jane Doe #1 he thought Morales might go back to Windsor. John Doe #2 later confirmed that he had overheard Morales's end of the conversation (he did not know who Morales was talking to). He stated Morales sounded angry when he was speaking to the person on the phone. He reported that Morales left his house in his truck right after the call ended. A friend of Jane Doe #1's who arrived at the scene later that morning also told deputies that she had received a text message from Jane Doe #1 at 7:24 a.m., saying she had just told Morales she was seeing someone else.

At approximately 7:25 a.m., on June 8, 2013, Morales showed up at the Starbucks and confronted Jane Doe #1, who had just stepped outside. John Doe #1 was still inside ordering a coffee drink. Jane Doe #1 reported that she took a few steps toward Morales so that John Doe #1 would not see them, and asked Morales not to come into Starbucks. Morales then pulled out a knife from under his shirt and started waving it at her. Jane Doe #1 said she then put her arms up to block him and started screaming. She fell to the ground. Morales began stabbing Jane Doe #1 in the upper arm and face, until John Doe #3, a patron inside the café, ran outside and intervened.

John Doe #3 had been seated just inside the door. He reported that all of a sudden he heard the commotion of patio furniture being shoved and saw Morales and Jane Doe #1 go to the ground. John Doe #3 ran out the door and saw Morales on top of Jane Doe #1. He said Morales made at least two stabbing motions on top of Jane Doe #1 before running off westbound toward Windsor Road. He did not actually see the knife but said it was clear that the male was stabbing her with some object. John Doe #3 got down on the ground, holding Jane Doe #1's head in his lap, and tried to stem the bleeding until medics arrived. He said John Doe #1 came out and saw his mom on the ground, and began to run after Morales, but was stopped by coworkers.

John Doe #3 reported hearing the "Pop, pop" sound of the guns shortly after the stabbing. He tried to keep Jane Doe #1 from talking because every time she did, the wound on her face would start gushing. John Doe #1 started to go after his father as he walked away, but when Morales turned around, John Doe #1 saw that Morales was bleeding from the stomach. John Doe #1 then saw the handle of a knife under Morales' shirt. Morales continued on foot with the knife and was

followed by at least one witness. Instead of leaving the area, though, Morales circled the building, eventually heading back in the direction of the Town Green.

B. The Shooting

Deputies Cash and Fletcher were at the Windsor Police Department on Duvander Lane, when they received the dispatch of the stabbing at Starbucks at @ 7:29 a.m. Starbucks is at the corner of Duvander Lane and McClelland Drive, approximately one-quarter mile away. They responded immediately in their patrol vehicles.² Deputy Fletcher arrived first and contacted the victim and Mr. Hawkins in front of Starbucks. One of the witnesses told him the suspect had gone west so Deputy Fletcher ran that direction. According to Deputy Fletcher, he then yelled at Deputy Cash, who had just pulled in behind him, to “go north, go north.” Deputy Fletcher saw a man signaling to Deputy Cash and pointing toward the Town Green, so he yelled at Deputy Cash to go back that direction. Deputy Fletcher then ran back to the victim to try and see if she could provide any information. He stated that the victim, Jane Doe #1, was bleeding heavily, but was still conscious and able to speak him. She gave him the name of the suspect; he was only able to understand the last name of “Morales.” According to Deputy Fletcher, before he could get any more information, he heard Deputy Cash calling “Donnie I need you over here! Get over here!” A review of the radio traffic indicates that Deputy Cash made this request at 7:32 a.m. Deputy Cash radioed to Deputy Fletcher that he had found the suspect on Duvander and that he was headed back southbound.

Deputy Fletcher drove the short distance north on Duvander to assist Deputy Cash. He stopped his vehicle so it blocked Duvander Lane and got out, drawing his firearm. He saw Deputy Cash walking southbound on Duvander in his direction, paralleling Morales who was also walking southbound in the dirt/landscaping area off of Duvander. Deputy Cash already had drawn his weapon at that time, and was holding it at “low ready.” Deputy Cash was repeatedly yelling at Morales to “drop the knife,” and “show us your hands.” Deputy Fletcher began to approach Morales, but Deputy Cash called out to him, warning that Morales had a knife. Deputy Fletcher

² “A full recording of the radio traffic of the incident is part of the record of the investigation. The first dispatch of the stabbing at Starbucks was broadcast at 7:29 a.m. “Male stabbing himself” was broadcast over the radio at 7:32 a.m. “Shots fired” was broadcast at 7:35:34. “Suspect down” was broadcast at 7:35:37.

later told investigators that “Initially when I was coming up I didn’t know if he (Morales) was gonna run back to the scene. I made a decision he’s not getting past me. There was people back there, um and we had him contained right there where he was. He knew there were houses on the left, condos with a lotta people living in them behind him. We were taught to be aware of your target and what’s going on. There was some information initially that there may have been a second suspect, it was definitely a concern.” (Dispatch had received a report of a possible second suspect; that was clarified soon after the shooting.)

Deputy Cash reported that after Deputy Fletcher had directed him to Windsor Road, he saw a man waving him in the direction of the Town Green, behind the Starbucks building. He drove his patrol car north to Joe Rodota Way, turned back toward the Town Green, then headed south on Duvander again. This is when he first spotted Morales. He said Morales was “peering” around a fence, looking toward him, and then turned away and began walking southbound. Morales had his hands stuffed under his shirt and was moving them around under his shirt. Deputy Cash could not see his hands or what they were doing initially.

He stated he stopped his patrol car in a “bladed” position (i.e. angled in the middle of the street) on Duvander, just south of Joe Rodota Way. He got out, drew his gun, and began “screaming at him let me see your hands, let me see your hands”. Morales briefly turned toward Deputy Cash, but did not appear to respond to the commands. It was at this point that Deputy Cash first saw blood “just pouring out” from Morales’s shirt. In Deputy Cash’s words, Morales’s “hands were still moving under his shirt, jamming the knife as far as he can into his stomach under his shirt,” and that Morales was groaning and “saying something like ‘Just fucking kill me!’”

Deputies Fletcher and Cash wanted to prevent Morales from getting any closer to the nearby businesses, some of which were open at that time. In addition to Starbucks, there was a café open down the street, and immediately to the north of Starbucks another establishment open for breakfast service. There were several patrons already seated on the patio of this business, which opens directly onto the sidewalk of Duvander Lane, as well as employees on the patio. This patio was directly in Morales’ path of travel as he made his way back toward the scene of the stabbing. Deputy Cash recalled that he became concerned that if Morales was allowed to get any closer to

those establishments with the knife, they would not be able to control the situation without placing the civilians who were nearby in harm's way. In his words, Morales "was oblivious to our commands. It wasn't like he would stop and ponder or try to pause and talk to us. He was going back that way and nothing was gonna stop him. He was going back. It appeared to me that he was going back to Starbucks."

Morales was facing southbound toward Starbucks, according to both deputies' statements, as well as the statement of witness John Doe #4 who said Morales was approximately 10-15 feet away from Deputy Fletcher. Cash "triangulated" himself to the east of Morales, at a slight angle, so that if he or Deputy Fletcher had to fire, they would not be in each other's range of fire, nor would they be firing in the direction of any of the nearby civilians. If Morales proceeded any further, however, they feared this would be impossible. Deputy Cash estimated he was about 20 feet away from Morales at this time. Deputy Fletcher ordered Morales to put his hands up and drop the knife, several times. Deputy Cash had been repeatedly yelling similar commands at Morales, but none of their commands appeared to have any effect on him. Multiple witnesses reported hearing repeated commands, loudly and clearly; those who could see Morales all said that Morales appeared not to respond to the commands in any way.

Deputy Fletcher drew his department-issued Taser from his duty belt with his left hand, while holding his firearm in his right hand and deployed the Taser in an attempt to control Morales and safely detain him. However, the Taser went through a complete cycle without having any apparent effect on Morales. Deputy Fletcher said that "I tried to get within 15, 18 feet (of Morales) and popped the Taser at him. I think one struck him up here (indicating his upper right chest) but the other didn't hit him. He kept moving around and I was thinking please move, hit the wires. He was about 15 feet away, moving around in little circles." Witness John Doe #5 also estimated that Morales was about 15 feet away from Fletcher when he deployed the Taser, and that the Taser appeared to have no effect on Morales.

The deputies repeated their commands for several more seconds, until Morales suddenly lunged towards Deputy Fletcher and yelled, "Kill me!" twice. To use Deputy Fletcher's words, Morales "charged" at him, while grabbing at the knife under his shirt; at that moment, both Deputy Cash

and Deputy Fletcher believed Deputy Fletcher was in danger. Deputy Fletcher said he continued to yell at Morales, with gun drawn, to get on the ground. Instead of complying with their commands, Morales yelled, "Kill me, kill me!" and then "he came at me full charge and covered about another 5 feet." Fletcher dropped the Taser and fired his gun with his left hand (he is naturally left-handed, but was also trained to shoot with his right.) Morales fell face down and came to rest about 5 to 8 feet away after being shot and falling to the ground.

Deputy Cash described the events as follows: "I heard the pop of a Taser, I remember seeing, like in slow motion the, uh, topper cord hit him somewhere, it looked like in his abdomen, and I remember thinking, "God, he's not doing anything, it's just, it was - oblivious." And then he just lurched forward towards Donnie and his hand came out and the first, Donnie definitely got the first round off." He estimated that Morales was approximately 15 feet, maybe a little less, from Deputy Fletcher "Donnie" when he "lurched" toward him.

When asked to elaborate on Morales' movements toward Deputy Fletcher, Deputy Cash said, "I knew he was lunging at Donnie when he took an extra foot and half step. . . it was much more exaggerated thrust, lunge at Donnie," versus what he had seen Morales movements/steps had been up until that point. . . very different and drastic than what his normal movement was. It was an overt act to go at Donnie."

Witness John Doe #6 said he could see the deputies, but not the suspect, during the entire event. He described seeing Deputy Fletcher step back once, as if something was coming at him, just prior to him firing his gun. Each deputy fired his gun several times (later there was determined to be a total of 18 shots fired between the two.)

Deputy Fletcher described Morales's movement this way: "It would have been a direct charge southbound towards me and the victim (Jane Doe #1) would have been 75 yards behind me at the Starbucks." Asked to describe what went through his mind at that moment, Deputy Fletcher said, "I saw what he did to her (Jane Doe #1), and I feared that I . . . I feared because of the amount of blood and her injuries that they were life threatening. I saw what he was doing himself. He was actively stabbing himself. He was injured severely, non-responsive. I was scared to death. Um,

when he charged me, I had no choice but to shoot him. I feared for my life. I feared, um, yeah, I mean, he, I tried to Taser him and it didn't work and he charged me and he said kill me, kill me and he said it first and then he, he grabbed the knife and he never got, I don't think he got it out because when he ran at me I just rapid procession so I just start firing and he went straight down in front of me. So I don't know if the knife came out. I never saw the blade but he, he grabbed it with his hand. . . It was a vicious grab to the knife. He grabbed it with his right hand and it was a forward charge."

He further explained, "When he yelled "kill me" and grabbed the knife and then charged, then I went 'here comes the knife' and I was like 'shit'." Just prior to the shooting, Morales was "pacing around in a circle like he didn't know what to do and he was cornered. He had a blank stare – it was a thousand yard stare. I was in fear for my life. I figured the next move was the knife was comin' out. His, his, his words, his grabbing of the knife, I had already seen the blade. I seen him stab himself. What I saw at Starbucks, the injuries to the victim and his aggressive, rapid movement toward me, um, I had no, I had no other tools on my belt. So that was it, I had, I tried the Taser and then shot him cause I feared for my life." "(Initially) I wanted to get him on the ground safely, you know, and handcuff him. So I used the Taser and that was ineffective. Um, I didn't have any other weapons. I had, I didn't have less lethal. I had nothing. All I had was my firearm. When he came at me, um, I feared for my life and I used the last weapon of defense. You know, I wasn't gonna grab onto this guy, uh, and wrestle with him. So I used my firearm to stop the threat."

Morales was struck by several rounds. He fell face first, approximately 5 to 8 feet in front of Deputy Fletcher with his head facing directly at Deputy Fletcher. Deputy Fletcher described it as follows: "The way he fell, both his hands were underneath him, we couldn't see the weapon, he was still moving around, and made some moans and groans." Fletcher then moved to a different position for safety reasons, to reassess the situation. (His position was captured in the photos provided by witness John Doe #4.)

Given that they could not see the knife, nor could they see Morales' hands, Deputy Cash immediately requested all available back up from any law enforcement in the area over the radio,

then broadcast that shots had been fired. Additional medical assistance was requested for Morales. He was bleeding profusely. The Deputies waited for backup officers to arrive before approaching Morales, not knowing if he was still alive and not knowing where the knife was. Morales had fallen onto his stomach, face down, with his hands underneath him. As soon as another deputy, Roddy McMasters, arrived, Deputies Cash and McMasters approached and handcuffed Morales, rolled him over, and checked for signs of life. They found none, and at 7:39 a.m. Deputy McMasters broadcast over the radio that he believed Morales to be dead. This was confirmed by a paramedic who had also arrived on scene. The knife was lodged to the hilt in Morales's abdomen.

By this time, other deputies had arrived at the Starbucks along with medical personnel. They assisted Jane Doe #1 with her injuries prior to her being transported to the hospital, and began securing the scene.

B. Procedures after the Shooting

The Sonoma County Sheriff's Office immediately invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol. This written protocol sets forth the procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of certain incidents, including officer-involved shootings, involving law enforcement employees. Under this protocol, in order to eliminate either the risk or appearance of a conflict of interest, when a law enforcement employee is involved in a fatal incident, a separate law enforcement agency is called in to investigate the incident. In this case, the Santa Rosa Police Department assumed responsibility for the investigation of this shooting incident.

Violent Crimes Detective Andrew Riley was assigned as the lead investigator. Pursuant to the protocol, a senior deputy district attorney and a district attorney investigator were also called to the scene and participated in the investigation. SRPD Officers spoke to witnesses who were at the scene. They also canvassed the area for any additional witnesses, and contacted anyone who had called 911 about the incident. They documented their contact with every individual, and recorded the interviews with any witnesses who had information. Witnesses who heard shots fired confirmed that they heard multiple orders to "drop the knife," "show us your hands," and "stop,"

both in English and in Spanish, prior to the shots being fired. A few of the relevant interviews are summarized here.

John Doe #3 stated he was having coffee with a friend at Starbuck's. He saw Morales stabbing Jane Doe #1, then ran and held her in his lap as she lay bleeding. He was there when the deputies arrived, and although he could not recall specifically what he heard them say or do, he said there was a lot of yelling and he heard them yell "stop" numerous times. His impression was that the deputies were "doing their best to make this not happen."

John Doe #6 stated he and his wife Jane Doe #2 were eating breakfast on the patio of a business shortly after 7:00 am when they heard screaming from Starbucks. They then saw both deputies' cars going to the Starbucks. A few minutes later, they heard the sound of one of the deputies (by the position they described, it would be Deputy Cash) giving verbal commands to someone. Deputy Cash and Morales would have, at this time, been to the north of the patio, on Duvander. They did not actually see the person the deputies were addressing, however, they could see both deputies and their movements.

Jane Doe #2 said it appeared as if they were trying to "contain" the suspect. They said they initially heard the deputy (Cash) order the person, approximately 12 times, to drop the weapon, stop moving, and get on the ground. They then saw the other deputy (Fletcher) arrive and approach the suspect with his Taser drawn, while Deputy Cash continued to give the suspect commands to drop the weapon, etc. They heard the Taser deploy, but believed it had no effect on the suspect because the deputies commanded him at least a dozen more times to drop the weapon. Jane Doe #2 said nothing about the deputies' actions caused her any concern.

John Doe #5 stated he and his girlfriend were arriving in their car at a business for breakfast and as they were about the park on Duvander, they heard the sound of a female screaming. They looked over to Starbucks and saw a woman (Jane Doe #1) fall to the ground and a man (Morales) walk away. John Doe #5 said he also saw the deputies' contact with Morales including when shots were fired. He said that the deputies were both professional and he did not have any concerns about their actions.

John Doe #4 stated that he lives in an apartment on the Town Green. He was awake in his bedroom when he heard the sound of a vehicle driving fast nearby. He heard the sound of the deputies giving someone loud commands such as, “Stop what you’re doing” and, “Put down the knife.” He then heard someone say “Stay back, he’s got a knife!” He went to look out the window and saw 2 deputies. He recognized one of them as Don Fletcher, whom he described as being on the southwest side of what was a triangle formed between the suspect and the 2 deputies. He heard further commands to put down the knife, but said the suspect did not respond to the commands. He only heard groaning from the suspect. He said he went to get his cell phone to take pictures, and this is when he heard six gunshots before he could return to the window. From his window, he took photos of the scene and provided those to SRPD investigators.

Officers contacted John Doe #2 and searched his home. They found a check made out by Morales to John Doe #2 for \$50,000, dated June 8, 2013. Morales had told John Doe #2 he had just received \$50,000 from Jane Doe #1 to buy him out of his half of their home. (Jane Doe #1 confirmed that she had made this arrangement with Morales a few weeks previously.) John Doe #2 had no idea that his brother had written him this check.

C. Investigation of the Involved Deputies

In keeping with the Protocol, both deputies immediately were kept separate from one another, and were assigned a sequestering officer, who remained with them from the time they left the scene, and remained with them at a nearby hotel where they would be interviewed and processed for any physical evidence. Both deputies’ cell phones were taken as soon as they were sequestered and turned over to the Santa Rosa Police department investigators. When Deputy Mittenthal took Deputy Fletcher’s phone, he noticed that he had received some photos and text messages from someone that appeared to be from the shooting scene. (That person was later identified as John Doe #4, mentioned above, who was an acquaintance of Deputy Fletcher.) Deputy Mittenthal told Detective Riley about the messages when he turned the phone over to him.

Both Deputy Fletcher and Deputy Cash were “processed” for physical evidence, meaning that their

uniforms, duty weapons, duty belts and other equipment, and cell phones were taken and examined for evidence. They were fully photographed before removing their uniforms or duty equipment. They were then interviewed by detectives with SRPD.

SRPD Detectives also contacted all businesses in the Town Green regarding surveillance video they might have had of the incident. There was limited footage of the patrol cars driving past the areas, but there was no footage of either the stabbing or of the interaction between the deputies and the suspect. Surveillance footage obtained from inside Starbucks shows a portion of the outdoor patio seating area. It shows what was later determined to be Jane Doe #1's vehicle pulling in at 6:07 a.m. Deputy Fletcher is seen entering at 6:11 a.m., consistent with the time he said he went for coffee that morning. At 7:28:57, the footage shows a person (Jane Doe #1) outside the windows being knocked to the ground and then multiple people, including John Doe #3, coming to her aid.

Detectives conducted a protective sweep of the Jane Doe #1/decedent's home a short time after the stabbing. The only unusual thing they noted was a statue of St. Francis Assisi which had been beheaded, near the front door. Later, detectives searched Jane Doe #1's home and saw approximately 18 apparent stab marks in the door of a refrigerator in the garage, consistent with the damage John Doe #1 had previously described his father committing on May 4, 2103 while he was moving out.

D. Autopsy Findings

An autopsy was performed on Monday, June 10, 2013. Detectives and crime scene investigators from SRPD were present, as were the deputy district attorney and district attorney investigator, for observation.

The pathologist, Dr. Kelly Arthur-Kinney found multiple gunshot wounds, including nine gunshot wounds to the torso and six gunshot wounds to extremities.

Dr. Arthur-Kinney also found multiple sharp force injuries, caused by the self-inflicted knife wounds to Mr. Morales' torso. She also found a knife in his body and part of the handle and blade was protruding from an abdominal stab wound.

She concluded that Mr. Morales died from multiple gunshot wounds (minutes) and also had suffered abdominal stab wounds.

E. Ballistics Analysis

A total of eighteen (18) shell casings were found at the scene, all .40 cal S&W, consistent with the duty-issued firearms for both deputies.

Two (2) bullets were found to have gone through the wall of a shed directly behind where Morales was shot. Officers found the bullets inside the shed. A third bullet was found still lodged in the exterior shed wall. Ten (10) expended bullets were found in Morales' body during the autopsy examination, as well as numerous bullet fragments.

The bullet casings were submitted for comparison to the firearms taken from Deputies Cash and Fletcher. The firearms were test fired and the casings from the test-fire were compared to the casings taken from the scene.

The results of the comparison were that eight (8) rounds were fired from Deputy Fletcher's gun, and the remaining ten (10) were fired from Deputy Cash's gun. This is consistent with the rounds missing from each of their guns.

V. LEGAL ANALYSIS

The sole issue to be resolved in this inquiry is whether the shooting of Urbano Morales was unlawful, or whether it was legally justified and, therefore, lawful. Deciding this issue revolves around several key principles of law.

A brief legal summary of the pertinent case law in this area is included to assist the reader in understanding this report and its conclusions. While it is by no means an exhaustive discussion of the controlling principles of law to be applied to this case, it is a correct statement of the law that applies in this case.

First and foremost, any person, including a peace officer, has a right to use reasonable force in self-defense or in the defense-of-others.³ Both self-defense and defense-of-others are complete defenses to a homicide and make the homicide justifiable.⁴

A person is said to have acted in lawful self-defense or for the defense-of-others if all 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 appeared to the person at the time, and consider what a reasonable person in a similar situation with similar knowledge would have believed. Under this standard, if the person's beliefs were reasonable, the danger does not need to have *actually* existed.⁶

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. (Cites 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. (Cites omitted.) To constitute “perfect self-defense”, i.e., to exonerate the person completely, the belief must also be objectively reasonable. (Cites omitted.) As the legislature has stated, ‘[T]he circumstances must be sufficient to excite the fears of a reasonable person’ (Cites 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

³Penal Code Sections 692 - 694.

⁴See CALCRIM 505; Penal Code Section 199.

⁵See CALCRIM 505.

⁶See CALCRIM 505.

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.’ (Cites 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” (Cites omitted.) It judges reasonableness “from the point of view of a reasonable person in the position of defendant” (Cites 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. (Cites 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’ (Cites omitted.)”

In a leading California Appellate decision, *People v. Aris* (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 a 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 any immediate demonstration of force at the time of the rencounter [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 gasconde, [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 the impending danger’” (Cites omitted.)

A. Use of Deadly Force by Law Enforcement

There are additional rules of law that apply specifically to the use of deadly force by peace officers acting in the course of their official duties. 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 escape, or to overcome resistance.⁷ This is so because a peace officer has the duty to make an arrest of an individual upon probable cause to believe a crime has been committed,⁸ and that individual has a duty to submit to lawful arrest.⁹ Assault with a Deadly Weapon, such as the stabbing in this case, is a felony offense for which an arrest can be made.¹⁰

Use of deadly force while in the line of duty is justified, and therefore not unlawful, provided all 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.¹¹ 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.¹²

Thus, when deciding whether any of the deputies who fired their weapons did so lawfully, one must consider what a reasonable person would have done in a similar situation with similar knowledge and experience, including their professional background. One must decide whether the deputies' beliefs and actions were objectively reasonable under all of the circumstances known to him, as they appeared to him *at the time*. In order for the use of deadly force to be "objectively reasonable," the officer must have probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others.

⁷See Penal Code Section 835a.

⁸Penal Code Section 834.

⁹Penal Code Section 834a.

¹⁰Penal Code Section 245(a)(1).

¹¹See CALCRIM 507; Penal Code Sections 196, 199

¹²See CALCRIM 507; Penal Code Sections 189.5, 199.

The reasonableness of an officer's actions can be fairly measured against other officers if placed in a similar situation. "The objective reasonable test will not be met if, on an objective basis, it is obvious that no reasonably competent officer would have concluded in that moment that his use of deadly force was necessary."¹³

While a review of the person's conduct after the fact is made calmly, rationally, and deliberately, one must take into consideration the fact that the person's decision was most likely *not* made under such circumstances. Indeed, the courts recognize that, to the contrary, "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."¹⁴ Also, the Fourth Amendment requires only that officers act *reasonably*, not that they employ the least intrusive alternative available.

For the same reasons, the law does not render a person's conduct criminal simply because he or she might have chosen "less lethal" means to ensure his own survival. If deadly force is reasonable and justifiable under the circumstances *known to the person at the time*, all hypothetical questions posed later about alternative courses of action are irrelevant.

"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.*"¹⁵

¹³ Scott v. Henrich (9th Cir. 1994) 39 F.3d 912.

¹⁴ Henrich, *supra*; Malley v. Briggs, 475 U.S. 335, 341 (1986)

¹⁵ CALCRIM 5.50 (in pertinent part) (emphasis added)

Ultimately, then, whether the shooting of Urbano Morales was justifiable depends on whether it was objectively reasonable for the deputies to have fired on Morales under the circumstances known to them at the time.

B. Was the use of deadly force justifiable?

The first issue is whether the deputies were performing a legal duty when they encountered Morales. There is no question that they were doing so. The deputies were responding to an emergency situation: a person had been stabbed at Starbucks; the suspect was still free and roaming about; and the suspect was still armed, in the immediate area, and his actions were unpredictable and dangerous. They had a duty to protect the community from further harm by apprehending the suspect, and a duty to arrest the suspect for the stabbing that had already occurred. When they first saw Morales, he was still armed with the knife and appeared to be stabbing himself; the deputies now had an additional obligation to protect Mr. Morales from further harming himself, while trying to apprehend him for the stabbing of Jane Doe #1.

The second question is whether the killing was necessary to accomplish a lawful result, (such as accomplishing an arrest, preventing injury to members of the public, or preventing injury to the officers themselves), and whether they used reasonable force under the circumstances of the incident. The lethal force in this case was reasonable; it was used only in direct response to the lethal force that Morales had already used against Jane Doe #1 and was threatening to use against himself, and ultimately, Deputy Fletcher. Whether the deputies might have employed less lethal means to prevent Morales from doing further harm to himself or others is not the question, although they did attempt to get Morales to comply with verbal commands, multiple times, and attempted to subdue him with a Taser, but it had no effect. Indeed, Deputy Fletcher noted that he shot Morales because Morales came at him after he had shot him with the Taser and “I had no other tools left on my belt.” Regardless, the question is whether their decision to fire on Morales was objectively reasonable under the rapidly-devolving circumstances with which they were faced. In this case, the shooting was necessary to accomplish a lawful result: to stop Mr. Morales from gravely injuring the deputy or a member of the public.

Third, the involved officers had probable cause to believe that Morales posed a threat of serious physical harm, either to their fellow peace officers or to the others at the scene. Both Deputy Cash and Deputy Fletcher fired their handguns at Morales, believing Deputy Fletcher was in immediate danger, as were the patrons at a local eating establishment and Starbuck's. Jane Doe #1 was still on the ground there. If Morales were to be able to get past Deputy Fletcher, there would be nothing standing between him and a number of civilians, including Jane Doe #1 and John Doe #1.

It has been observed that danger invites rescue,¹⁶ and it is a well-established community expectation that peace officers will respond when summoned at a time of crisis and not retreat in the face of adversity.¹⁷

Morales was given multiple opportunities to comply with lawful orders. Instead of submitting to these orders, Morales chose a different course. He refused to comply with, or even acknowledge, their instructions, responding only with "just fucking kill me!" Whether he actually intended to harm the deputies, or whether he was trying to force them to shoot him, is irrelevant. The undisputable facts are that he *did* stab and seriously injury Jane Doe #1 multiple times, he continued to stab himself, and then grabbed aggressively for the knife that was still under his shirt, while lunging toward Deputy Fletcher. He had placed the lives of the deputies and fellow citizens at great risk of injury or death.

The law does not require a progressive escalation in the force which is employed in these types of situations because the exigencies of real world law enforcement do not make such a course of conduct always feasible; that is because such a progression is not reasonable under many real world situations in which an officer is faced with a direct and immediate threat to life and limb.

Regardless, the deputies did try numerous methods short of lethal force to compel Morales to cooperate, to no end. Not the arrival of one deputy after the other, nor the multiple commands they

¹⁶ Justice Benjamin Cardozo in the opinion *Wagner v. International Railway* (1929) 232 N.Y. 176

¹⁷ None of the involved deputies were under any legal duty to retreat from this situation at any point. In fact, their duty was to protect the victim and the public from Morales who was armed and dangerous and still at large.

gave, nor the fact the deputies had their weapons pointed at Morales, compelled Morales to comply with their lawful orders. Not even being shot with the Taser caused him to stop or drop his knife.

VI. CONCLUSION

Morales did not comply with his duty to submit to the deputies' authority; he was behaving wildly, violently, and unpredictably, and in a fashion which would cause any reasonable person to believe that they were in imminent peril of serious bodily harm or death.

While in the lawful performance of their duty to find and arrest the suspect of a serious stabbing incident, Deputies Cash and Fletcher became involved in a highly unpredictable, dangerous, and rapidly-evolving situation. The deputies acted swiftly, purposefully and appropriately in order to stop what to all appearances was a wildly violent man from harming or killing one of them or another member of the community.

The use of lethal force in this case was a reasonable response to the situation, and was justified under all of the circumstances. Under the legal principles guiding this inquiry, each of the shooters' actions, and thus the killing of Mr. Morales, was lawful.



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