

LAW ENFORCEMENT EMPLOYEE-INVOLVED FATAL INCIDENT REPORT



Employer Agency: Santa Rosa Police Department

Lead Agency: California Highway Patrol

Decedent: Maclovio T. Romero

Date of Incident: September 18, 2016

**Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY**

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APPENDIX A: AUTOPSY REPORT

I. INTRODUCTION

On September 18, 2016, Maclovio T. Romero (hereafter Romero) died as a result of a solo motor vehicle collision. The collision occurred when the vehicle in which Romero was the single rear passenger collided with a cement barrier at a high rate of speed, ejecting Romero and the driver. Immediately prior to the crash, the vehicle was being pursued by an officer from the Santa Rosa Police Department. Romero was 20 years old at the time of his death.

The Santa Rosa Police Department immediately invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol. The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under the protocol, in order to eliminate the risk or appearance of conflicts of interest, an outside law enforcement agency is to investigate law enforcement employee-involved fatalities. Accordingly, detectives with the California Highway Patrol assumed responsibility for the investigation of this solo motor vehicle collision.

The role of the Sonoma County District Attorney's Office in a law enforcement employee-involved fatal incident is to review the investigation to determine if there exists any criminal liability on the part of the law enforcement employee; to provide assistance to the investigating agency regarding legal issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the criminal law.

Once the investigation is complete, the District Attorney is required to complete a thorough review of the investigation and if no criminal liability is found, prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is submitted to the Foreperson of the Sonoma County Grand Jury. The following report has been prepared by the Sonoma County District Attorney. It includes a summary of facts surrounding the death of Romero, specific conclusions, and a report of the autopsy. A copy of the report will be provided to the public.

II. SCOPE OF REVIEW

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

The specific question to be resolved in this case is whether Maclovio T. Romero's death was unlawful because a person acted with criminal negligence: "acting so different from the way an ordinarily careful person would have acted in the same situation that his or her act amounted to disregard for human life or indifference to the consequences of that act. Further, the death was the direct, natural and probable consequence of the act and the death would not have happened without the act." A summary of the applicable law is included here to assist the reader

in understanding this report and its conclusions.

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

III. STANDARD OF REVIEW

The District Attorney, as the chief law enforcement official of Sonoma County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function and to charge a person with a crime is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is accurately expressed in a publication of the California District Attorneys Association entitled, *Uniform Crime Charging Standards*.¹ It provides:

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

Additional restraint on the charging authority is found in *The California Rules of Professional Conduct, Rule 5-110*, which provides that an attorney in government service (this definition includes prosecutors) shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause.

The standard for charging a crime is high because the burden of proof required at trial is quite high, i.e. proof beyond a reasonable doubt. Proof beyond a reasonable doubt is the highest burden of proof under the law.

IV. SUMMARY OF FACTS

The following is a summary of facts intended to assist the reader in understanding this report and its conclusion. It is not a substitute for the reports, interviews, and other evidence from which it is derived. It is, however, an accurate composite of what the District Attorney believes the material facts in this case to be.

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

First Observations

On September 18, 2016, at approximately 0300 hours, Officer Aaron Gonzales-Campos, a one-year three-month veteran of the Santa Rosa Police Department (SRPD), was on patrol in the southeast area of the city of Santa Rosa. He was alone and driving a marked black and white Santa Rosa Police Department Ford Explorer. The vehicle had standard Santa Rosa Police markings on the doors and rear hatch and was equipped with overhead LED lights including a forward facing red light, rear amber lights and wig wag lights in the headlights. The vehicle was also equipped with an audible siren. Officer Gonzales-Campos was attired in a standard SRPD uniform, including a badge, patches and duty belt. The weather was cool and clear, and the roadway was dry. There was little to no pedestrian or vehicle traffic in the area.

Sebastopol Road travels in an East/West direction and Stony Point Road travels in a North/South direction. The area is a predominantly residential neighborhood.

Officer Gonzales-Campos was specifically patrolling the parking lot of the Food Maxx, located at 2055 Sebastopol Road at the intersection of Sebastopol Road and Stony Point Road. Officer Gonzales-Campos was looking for a Dodge Challenger automobile that had been reported stolen from the area earlier that day. After completing his search through the parking lot, he drove to one of the two southern exits of the parking lot, preparing to drive out onto Sebastopol Road.

As Officer Gonzales-Campos drove toward the parking lot exit, his attention was drawn to what he believed was a sedan traveling westbound on Sebastopol Road at a high rate of speed. The posted speed limit for that section of road was 35 mph. Officer Gonzales-Camps visually estimated the car to be travelling at 60 mph.

After seeing the car pass his location, Officer Gonzales-Campos made a right turn and began to head westbound on Sebastopol Road, attempting to catch up to the sedan. Officer Gonzales-Campos accelerated his patrol vehicle to 60 mph, but noticed the sedan was travelling at a speed that continued to increase the distance between the two automobiles. Officer Gonzalez-Campos accelerated his patrol vehicle to a speed of 75-80 mph, at which point he saw he was travelling at approximately the same speed as the sedan, and the distance between the two automobiles, approximately 75 yards, was no longer increasing. At this point, Officer Gonzales-Campos was adjacent to the Lawrence Cook Middle School located at 2480 Sebastopol Road, roughly .2 of a mile from the Food Maxx exit where he had first entered the roadway.

Officer Gonzales-Campos activated his Code 3 emergency lights to effect a traffic stop on the sedan and attempted to radio dispatch to advise of the traffic stop, but was unable to communicate due to ongoing radio traffic covering his transmission. With his emergency lights still activated, Officer Gonzalez-Campos accelerated his patrol vehicle to 100 mph and closed the distance with the sedan to approximately 25 yards. At this point the two vehicles were at the intersection of Sebastopol Road and Corporate Center Parkway, approximately .6 mile from the Food Maxx parking lot.

Officer Gonzales-Campos activated his siren to accompany his emergency lighting, with no apparent effect on the sedan, which was now travelling at 100 mph. Officer Gonzales-Campos radioed dispatch again, getting through this time, and advised he was pursuing a vehicle. He provided a vehicle description and noted the presence of 4 possible occupants. He was unable to relay any license plate information.

The two vehicles continued to travel westbound on Sebastopol Road, approaching the intersection of Wright Road, approximately 1.4 miles from the Food Maxx. The intersection of Wright Road and Sebastopol Road is controlled by a tri-phase traffic signal. As he approached, Officer Gonzales-Campos saw that the signal was solid red for westbound traffic on Sebastopol Road. The sedan continued without any change in speed and drove through the red light at 100 mph. Officer Gonzales-Campos slowed his patrol vehicle to safely clear the intersection, allowing the sedan to pull away. After clearing the intersection, he accelerated to try to catch up to the sedan which continued to drive westbound at 100 mph.

Solo-Vehicle Collision

After the intersection with Wright Road, Sebastopol Road continues west for approximately .2 miles before coming to a functional dead end. The road terminates with a series of concrete rail barriers. A small drive continues past that point, originating from the southwest corner of the roadway. The drive makes an abrupt turn to the South, and allows access to the driveways of several residences.

As he accelerated away from the intersection at Wright Road, Officer Gonzales-Campos observed the sedan kick up rocks and dust as it travelled along the north edge of the roadway toward the concrete barriers. The brake lights on the sedan briefly illuminated, followed by the sound of impact between the sedan and the barrier. He observed the sedan launch into the air and begin to rotate counter clockwise. The vehicle then overturned laterally, causing the rear passenger, later determined to be Romero, and the driver, Vicente Gonzalez (Gonzalez), to be ejected onto the dirt/grass field north of the roadway. The sedan came to rest partially on its left side, being held up by a metal fence post. Gonzalez came to rest south of the sedan. Romero came to rest north east of the sedan. The front seat passenger, Anthony Alfaro (Alfaro), came to rest still secured within the right front passenger seat of the sedan.

After witnessing the collision, Officer Gonzalez-Campos exited his patrol vehicle and approached the sedan, a silver 1999 Toyota Avalon XLS, to check on the occupants. He saw that passenger Alfaro was alone in the front passenger seat, and asked him where the other occupants were. Other officers began to arrive at the scene, and were able to locate the resting place of the two other occupants of the Avalon.

After the collision, the sedan and all its occupants remained at their position of rest. Alfaro sustained major injuries and was ultimately removed from the vehicle and transported to the hospital for treatment. Gonzalez sustained major injuries and was located at his position of

rest before being transported to the hospital for treatment. Romero sustained fatal injuries, and was located at his position of rest. He was pronounced dead by paramedics at 0321 hours and removed by the Sonoma County Coroner's office.

Following the collision, the California Highway Patrol Multidisciplinary Accident Investigation Team (M.A.I.T.) performed a mechanical inspection of the Toyota Avalon. Their investigation revealed there was no evidence of pre-existing mechanical conditions or failures that would have affected its safe operation upon the highway.

The total distance of the pursuit, from the Food Maxx where Officer Gonzales-Campos first observed the speeding Toyota, to the termination point at the collision scene, is approximately 1.6 miles. Officer Gonzales-Campos estimated the pursuit lasted less than one minute.

Autopsy and Cause of Death

On September 20, 2016, Forensic Pathologist Dr. Jay Chapman, M.D. conducted a postmortem examination on Romero at the Sonoma County Coroner's Office. Dr. Chapman is a medical doctor and board certified in the field of forensic pathology. After conducting his examination, Dr. Chapman indicated the cause of death to be blunt force injuries to the head. A blood draw was conducted on the decedent, and the sample was sent to NMS Labs for analysis. The completed analysis states that the decedent was positive for Alprazolam, marijuana, and had a blood alcohol concentration of .12%.

Body Camera and Dispatch Audio

Officer Gonzalez-Campos was wearing a Body Worn Camera (BWC) at the time of the event, and activated the camera upon arriving at the crash scene. The recorded video begins as Officer Gonzalez-Campos approaches the Toyota Avalon just moments after the collision. Officer Gonzalez-Campos contacts Alfaro in the right front passenger seat. Alfaro is the only occupant still inside. He is seat belted in the right front seat and his feet are up on the dashboard. Alfaro appears dazed for several minutes and attempts to reach to unbuckle his seatbelt on several occasions. Officer Gonzales-Campos asks Alfaro several times how many occupants were inside the car and tries to obtain their identity. Other officers arrive shortly after and locate the other occupants who were ejected.

The video accurately depicts the event as Officer Gonzales-Campos described in his statement regarding what happened following the collision.

The dispatch audio recording also accurately depicts the events as described by Officer Gonzales-Campos in his statement. Both the dispatch audio and the BWC video were booked into evidence at the Santa Rosa CHP area office.

Surveillance Video

Investigators from the California Highway Patrol attempted to obtain surveillance video of the pursuit from area businesses, including In and Out, Safeway and Casa Del Sol Apartments. A brief moment of footage was captured on the Casa Del Sol video. In the video, the Toyota Avalon is seen traveling westbound on Sebastopol Road, followed approximately 5 seconds later by Officer Gonzales-Campos's patrol vehicle. From the video it is not possible to accurately determine either vehicle's speed or observe the seating positions of each occupant of the Toyota.

Blood Test

On April 11, 2017, California Highway Patrol investigators authored a court order for the Memorial Hospital laboratory results related to the blood drawn from the Gonzalez, the driver, the night he was admitted. On April 13, 2017, the results were provided. The results showed Gonzalez was positive for methamphetamine, amphetamine, marijuana, and had a .005 blood alcohol level.

Interviews

After being transported to Memorial Hospital, several officers attempted to interview Alfaro about the collision. He stated he had no memory of the collision, his seating position in the vehicle or who was driving. He stated his most recent memory prior to the collision was going to In-N-Out burger in Santa Rosa. He did not know what time, he had been there but said it was a little before they closed. He had no memory of where he had been prior to the In-N-Out. He did recall that after In-N-Out he had stopped at a gas station to get a drink. He did admit to drinking earlier in the evening.

Gonzalez was initially not available for interview due to the extent of his injuries. When later questioned after recovering, he refused to provide a statement about the incident.

V. STATEMENT OF THE LAW

The sole issue to be resolved in this inquiry is whether the brief pursuit of the Avalon was criminally negligent and was the proximate cause of the collision which resulted in the death of Gonzalez and therefore unlawful.

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

California Penal Code §192 states involuntary manslaughter occurs when in the commission of an unlawful act, not amounting to a felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection, a

human being is killed. Criminal negligence involves more than ordinary carelessness, inattention or mistake in judgment. A person acts with criminal negligence when he or she acts in a reckless way that creates a high risk of death or great bodily injury, and a reasonable person would have known that acting in that way would create such a risk.

An act causes death if the death is the direct, natural and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes death.

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

VI. LEGAL ANALYSIS

The cause of Romero's death was a solo vehicle collision caused by Gonzalez driving at a grossly excessive speed while possibly under the influence of marijuana, amphetamine, methamphetamine and alcohol. Further, it is possible he was evading an attempted traffic enforcement stop, though given the short duration of the pursuit, the extreme speed of the vehicle prior to any police intervention, and the intoxication of the driver, it is entirely possible the driver and occupants of the Toyota Avalon never knew there was a police vehicle attempting an enforcement stop. As such, no police conduct and/or negligence was responsible for the collision and Romero's death.

Santa Rose Police Department officers are peace officers (See Penal Code § 830 et al). They are tasked with specific duties regarding the enforcement of laws. When there is reasonable suspicion to believe that a crime has occurred, a Santa Rosa Police Department officer has an affirmative duty to investigate that crime. If, during the course of an investigation, additional violations of law occur in their presence, they have a duty to further investigate and address those additional violations. That duty to investigate is heightened when the observed violations occur in a way that would likely put innocent members of the community at risk of harm.

Officer Gonzales-Campos was on duty and engaged in active patrol when he observed the Toyota Avalon travelling through a residential neighborhood at nearly twice the posted speed limit. Having no information on the vehicle other than what he observed, Officer Gonzales-Campos attempted to initiate an enforcement stop based on his reasonable suspicion the Toyota was in violation of CA Vehicle Code Section 22350 – Basic Speed Law. As Officer Gonzales-Campos accelerated to catch up to the Toyota, and found himself travelling in excess of 100 mph, with the Toyota showing no sign of slowing, he had reason to believe that in addition to speeding the Toyota was driving recklessly in violation of CA Vehicle Code Section 23103(a) – Reckless Driving, being driven while under the influence in violation of CA Vehicle Code Sections 23152(a) and (b) – Driving Under The Influence Of Alcohol And Drugs, and attempting

to evade in violation of CA Vehicle Code Section 2800.1 – Evading A Peace Officer. Officer Gonzales-Campos had an affirmative duty to attempt to stop the Toyota as the driver was now suspected of committing multiple offenses, and was putting any other person in the area at risk of harm or death.

As the vehicles approached the controlled intersection, Officer Gonzales-Campos reduced his speed to make certain there was no oncoming traffic and the intersection could be safely cleared, allowing the Toyota to speed away. He allowed the Toyota to get further away in order to insure the safety of his pursuit.

After the intersection, the collision occurred before Officer Gonzales-Campos was able to effectively re-engage in the pursuit, making him essentially nothing more than a witness to the wreck. Upon his arrival at the scene, Officer Gonzales-Campos made efforts to contact and locate the occupants of the vehicle.

Nothing in the series of events points to the conduct of Officer Gonzales-Campos as being the proximate cause of the accident. Nothing in the pursuit of the speeding Toyota was so different from the way an ordinarily careful person would act in the same situation that his act amounted to disregard for human life or indifference to the consequences of that act. Rather, the excessive speed of the Toyota, while driven by a person under the influence of intoxicating substances, who may or may not have been attempting to evade law enforcement depending on whether he was aware he was being pursued, was the only substantial contributing factor to the collision and ultimate demise of Romero.

VII. CONCLUSION

As noted above, Santa Rosa Police Department officers, as peace officers in the State of California, have specific duties regarding the enforcement of laws. Officer Gonzales-Campos was carrying out those duties when he attempted to contact the occupants of the Toyota Avalon for criminal conduct and for placing the public at risk of harm. Vincente Gonzalez either did not know Officer Gonzales-Campos was attempting to stop him, or he refused to yield to the attempted enforcement stop, and made the decision to instead evade the officer. Gonzalez drove in a wanton and reckless manner, at times reaching speeds of 100 miles per hour and running a red traffic light. The pursuit ended when Gonzalez drove directly into a concrete barrier at nearly 100 mph, causing a solo collision during which he and Romero were ejected from the vehicle resulting in fatal injuries to Romero. There was no use of lethal force by any involved officer, and no basis for criminal charges.

Based on all of the facts and circumstances, as explained above, the actions of Santa Rosa Police Officer Gonzales-Campos were legally justified, and therefore no criminal charges are warranted.



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