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# **REPORT ON THE APRIL 2, 2013 SHOOTING OF PABLO RAMIREZ**

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**August 23, 2013**

## I. INTRODUCTION

On April 2, 2013, Napa Police Department Officer Eric Koford was on duty as a member of NSIB (Napa Special Investigations Bureau) when he contacted Pablo Ramirez as part of an arrest team. Ramirez was the object of a criminal investigation and had an outstanding arrest warrant for a violation of probation. Ramirez was transporting drugs to sell in Napa after a prearranged agreement with a Confidential Informant. The agreed meeting place was the Home Depot overflow parking lot. Ramirez arrived at the agreed meeting as the front right passenger in a black, 1991, Honda Civic with a white hood. Also in the car was the driver, Jose Garcia and the right rear passenger, Guadalupe Duran. After the Honda parked, NSIB agents in two trucks entered the lot with emergency lights and sirens on and blocked the Honda's ability to exit. NSIB Investigators Chet Schneider, Alfonso Ortiz, and Eric Koford, exited the truck directly behind the Honda and approached the occupants with guns drawn. Instructions were shouted to the occupants in both English and Spanish. Agent Schneider contacted the driver while Agent Ortiz contacted the right rear passenger and Agent Koford contacted Ramirez. Ramirez had both feet outside of the Honda when he lunged forward and grabbed Koford's hands which were around his gun. Koford feared that Ramirez would wrestle his gun from him, thereby endangering not only his life, but that of the other officers. Koford fired one shot into the upper right chest of Ramirez. Ramirez survived the shooting.

NSIB invoked the Napa County Law Officer-Involved Fatal Incident Protocol. It was unknown whether or not Pablo Ramirez would survive his injuries at that time. This protocol sets forth the procedures and guidelines to be used by Napa County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol, an outside law enforcement agency may be asked to investigate law enforcement employee-involved fatalities. Accordingly, members of the Napa County Sheriff's Department assumed responsibility for the investigation of this shooting incident. Detective Todd Hancock and Detective Rick Greenberg were tasked with leading the investigation. A comprehensive report was presented to the Napa County District Attorney's Office.

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

Once the investigation is complete, the District Attorney completes a thorough review of the investigation and prepares a report summarizing the investigation and documenting the legal conclusions. This review incorporates lengthy testing by the Department of Justice that was necessary prior to reaching any conclusions.

Accordingly, this report includes a summary of facts surrounding the shooting of Pablo Ramirez, statement of the applicable law, legal analysis, specific conclusions, and relevant

exhibits. This report relies heavily on the police investigation, interviews, evidence, case law, forensic science, and forensic testing to support its conclusions.

## 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 employee.

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 Napa 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, i.e. 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*. 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 (the 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 a crime is high because the burden of proof required at trial is quite high, i.e. proof beyond a reasonable doubt, 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 the report and its conclusions. 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.

On April 2, 2013, Napa Police Department Officer Eric Koford reported for duty as an agent with NISB (Napa Special Investigations Bureau). NISB is a plain clothes unit. NISB Agents are tasked primarily with investigations and interventions. They engage in undercover operations in which they contact drug dealers, arrange purchases of drugs, and make subsequent arrests. Alternatively, when an enforcement action is being taken, marked "Police" gear is required to be worn and clearly displayed. NISB Agents vehicles are not marked "Police" vehicles, but are equipped with a Police radio, emergency lights (solid red and flashing blue), and a siren.

On the same date, NSIB Agent Chet Schneider informed other NSIB agents, including Agent Koford, of a planned operation. Agent Schneider reported that a previously used and reliable confidential informant (CI) reported that he knew of a subject by the name of Pablo Ramirez who was selling methamphetamine in Napa. The CI arranged for Ramirez to deliver methamphetamine to a small parking lot just north of the Home Depot store in the City of Napa later that day.

Agent Schneider confirmed that Ramirez had an outstanding arrest warrant out of the Napa County Superior Court for Violation of Probation arising out of a conviction for a felony violation of Penal Code Section 245(a)(1), Assault with Force Likely to Cause Great Bodily Injury in Napa Superior Court (Case No. CR160349). He advised the other NSIB Agents of the warrant's existence. According to the Petition for Violation of Probation filed by the Napa County Probation Department on March 15, 2013, the defendant had violated his probation by failing to report to the probation officer, failing to report his whereabouts and failure to enroll in and/or successfully complete Domestic Violence counseling as required. Other conditions of his probation were that he obey all laws and be subject to search and seizure without a warrant. The "no bail" warrant for Violation of Probation was issued on March 18, 2013 after being signed by Judge Boessenecker on March 15, 2013. That warrant was sent to the Napa County Sheriff's Department on March 20, 2013 and served upon Ramirez on April 2nd after this incident. The original conviction was a result of an incident of domestic violence against his former wife, Rosa Ramirez.

Agent Schneider held an operational briefing on April 2nd. NSIB Agents Bill McGlothorn, Alfonso Ortiz, Eric Koford, and Ricky Cerna (Probation Officer), and Sgt. John Corrigan attended the briefing. Agent Schneider informed the other NSIB Agents of the arranged "buy" described above. Ramirez was most likely going to arrive in a dark colored Honda sedan, with a white

hood. Ramirez was also most likely going to be a passenger in the vehicle. All NSIB Agents viewed a photograph of Pablo Ramirez.

NSIB Agents were assigned the following duties: Agents Corrigan and Cerna were to be on surveillance with the CI. The CI would identify the car Ramirez was supposed to be in once it arrived in the area. They were to be positioned south of the meeting location in Sgt. Corrigan's car. Agents Schneider (rear passenger), Ortiz (driver), and Koford (front passenger) were designated as the arrest team. They were in Agent Ortiz's black Ford truck. Agent McGlothorn was to block the exit of the parking lot with his dark grey Ford truck. Agents Ortiz, McGlothorn, Koford, and Schneider all wore fully marked "Police" raid attire.

At approximately 2000 hours, NSIB Agents saw a Honda matching the description the CI had provided them. Agents saw the Honda pull into the parking lot and park. The CI identified the Honda. The lighting was described to be dusk to dark and the parking lot was lit by street lights and headlights.

Agent Ortiz drove his truck into the parking lot with his emergency lights flashing and siren activated. Agent Ortiz parked his truck directly behind the Honda, preventing it from moving. Agent McGlothorn parked his truck blocking the parking lot exit. Sgt. Corrigan remained on surveillance, with Agent Cerna, and the CI. The front and rear passenger side doors were open on the Honda as Agents Ortiz, Koford and Schneider exited Ortiz's truck and approached the Honda with their guns drawn. Agent McGlothorn also had his gun drawn and remained near his driver side door. There were three Hispanic male adults seated in the Honda: the driver, Jose Garcia, Pablo Ramirez in the right front passenger seat, and Guadalupe Duran, in the right rear passenger seat.

Agents Koford and Ortiz approached the passenger side of the Honda while Agent Schneider approached the driver side. In loud, clear voices, the agents gave verbal commands "Stop Police" and "Show me your hands". Agent Ortiz gave the commands in English and Spanish. Ramirez, who had been born and raised in the United States, spoke and understood English. He knew that they were police.

Agent Schneider contacted the driver of the Honda, Garcia. Agent Ortiz contacted the rear right passenger of the vehicle Duran, and Agent Koford contacted Ramirez. Agent Koford immediately recognized the occupant as Pablo Ramirez. Ramirez had turned in his seat placing both feet on the ground outside the Honda. The two passenger side doors of the Honda remained open the entire time of the contact.

As he approached, Agent Koford could see both of Ramirez's hands in the air, both feet outside the Honda on the ground, and it appeared his buttocks was slightly raised off the seat. Agent Koford could not see anything in Ramirez's hands. He feared that Ramirez would flee on foot. He heard Ramirez saying, "No, no, no." Agent Koford got to the passenger side door and was within arm's reach of Ramirez with his gun drawn and arms fully extended. Agent Koford had both his hands gripping his handgun. He planned on removing Ramirez from the Honda and

placing him in handcuffs. Before he could do this, Ramirez lunged forward towards Agent Koford. He grabbed both of Agent Koford's hands, which were still around the gun, with his right hand. Agent Koford described Ramirez's grip to be very strong. Ramirez weighed over 200 pounds and Agent Koford weighed 150 pounds. Agent Koford felt Ramirez was over-powering him as he manipulated Koford's hands. Agent Koford was fearful Ramirez was going to gain possession of his gun, which could result in great bodily injury or death to Agent Koford and/or the other NSIB Agents. Accordingly, Agent Koford fired one shot into Ramirez's chest. Agent Koford was then able to pull away from Ramirez's grip. Ramirez said, "You shot me!" Agent Koford did not respond to this statement.

Ramirez was detained in handcuffs and transported to the Queen of the Valley Hospital by ambulance. He survived the shooting. Ramirez was wearing a black jacket during the incident, which had been cut off by medical personnel at the scene and left on the ground near the passenger side door. Methamphetamine was subsequently located in that jacket. Hydrocodone was also found inside a black fabric "Black and Decker" bag on the right passenger floorboard where Ramirez had been seated.

Duran and Garcia were detained in handcuffs without resistance; Garcia was later transported to NCDIC for outstanding Napa County arrest warrants. Both were interviewed.

#### **A. Agent Chet Schneider Interview**

Agent Chet Schneider has been employed as a Napa County Deputy Sheriff for eight years. Prior to that, he was employed as a Napa County Probation Officer. During his years in law enforcement he has been assigned to patrol; worked as a range master; worked as a tactical instructor; and been a member of the SWAT team. He has been assigned to NSIB for the past five years.

On April 2<sup>nd</sup> Agent Schneider spoke with the CI who told him that Ramirez was going to be in possession of methamphetamine that night and that he would be bringing "several eight balls" to sell in Napa. Schneider estimated that Ramirez would be selling between three-eighths to one ounce of methamphetamine. CI had previously supplied Agent Schneider with information several times which had led to arrests and the seizure of drugs. The CI also told Agent Schneider that Ramirez would be riding as the right front passenger in a grey Honda with a white hood, but he did not know the names of the others in the car.

Agent Schneider ran a background check on Ramirez and found out that he was on probation in Napa County with a search and seizure term. He also determined that Ramirez had an outstanding warrant out of the Napa County Superior Court for PC 245.

Agent Schneider's plan was to have the CI speak with Ramirez and arrange for the purchase of methamphetamine. The CI believed that Ramirez was going to purchase the methamphetamine in Vallejo and then drive it back to the parking lot north of the Home Depot in Napa where he was supposed to meet him. The CI would identify the Honda for the NSIB

Agents, who would then contact the suspect and arrest him for the outstanding warrant. They would also investigate Ramirez's narcotics violations. Agent Schneider briefed the other agents twice.

Approximately 30 minutes prior to Ramirez's expected arrival, NSIB Agents positioned themselves in three unmarked vehicles. Agent Cerna and the CI were with Sgt. Corrigan in his SUV; Agent McGlothern was in his dark Ford truck alone; and Agents Schneider (right rear passenger) and Koford (front right passenger) were with Ortiz (driver) in his black Ford truck. They were all wearing tactical gear marked "Police."

The Honda drove into the parking lot north of the Home Depot and west of the Black Bear Diner and parked facing south. Ortiz drove his truck into the parking lot with his blue and red emergency lights and siren activated. He parked behind the Honda and the three agents inside exited the truck and approached the Honda. Schneider went to the driver's side. He saw the passenger doors open as he got out of the truck. He didn't notice any other people in the Honda as the windows were tinted and he was focused on the driver. He later learned that there were three people in the car. He did hear orders being given by one of the other agents but could not remember who was doing it or whether they were in English or Spanish. The driver's door was opened but he doesn't recall whether he opened it or the driver. He told the driver to "Get out of the car!" The driver appeared confused and was looking back and forth between Agent Schneider and the right, front passenger.

Agent Schneider then heard a "pop" and asked the others what happened. He heard screaming and knew that it wasn't Agents Koford or Ortiz. He thought that a passenger had been shot. He heard, "You shot me! You shot me!"

Agent Schneider removed the driver from the Honda and handcuffed him. Agent McGlothern then stayed with the driver and Schneider went to the right side of the Honda and handcuffed the right rear passenger. He saw Agent Koford controlling the right front passenger who was face down on the ground and handcuffed.

Agent Schneider recalled Ramirez speaking both English and Spanish, thinking that Spanish was his primary language. He saw that Ramirez had been shot in the upper right side of his chest. Agent Schneider spoke briefly with Agent Koford. Agent Koford told him, "The guy grabbed my gun" or "tried to grab my gun".

## **B. NSIB Agent Eric Koford Interview**

Agent Eric Koford is a 30 year old male and weighs approximately 150 pounds. He has been employed with the Napa Police Department as a police officer for approximately 5 years. Agent Koford was previously employed as a police officer with the City of Vallejo for one year. Agent Koford was a cadet with the Vallejo Police Department for 2 years prior to attending the Police Academy. Agent Koford was assigned to NSIB on 4/2/13; his previous and only other assignment with the Napa Police Department was Patrol Division. However, he had previously



participated in NSIB-related actions prior to being assigned to NSIB and had been to trainings for narcotics-related investigations. Agent Koford had gone over the Policies and Procedures of NSIB and how to complete an Operational Plan with NSIB Sgt. John Corrigan. While conducting NSIB enforcement actions, he is required to wear "Police" gear which is clearly marked and displayed to identify himself as a policeman. His firearm is a Glock 27, 40 caliber semi-automatic handgun (S/N PHY331).

On Tuesday, April 2, 2013, Agent Koford reported to work at the Napa County Sheriff's Department, in the NSIB Division, at approximately 0900 hours. Agent Koford's shift schedule was a "4-10" schedule--four 10 hour shifts, Tuesday-Friday 0900-1900 hours. Later that same day, Agent Schneider advised him of an operation he had planned. A confidential informant (CI) Agent Schneider had previously worked with reported to him that he, CI, knew of a subject by the name of Pablo Ramirez who was selling methamphetamine in Napa. Agent Schneider also told Agent Koford that Ramirez had an outstanding arrest warrant out of the Napa County Superior Court. The CI was going to arrange for Ramirez to meet him and they would arrest Ramirez.

Subsequently, Agent Koford met with other NSIB Agents (Sgt. Corrigan, Agents Ortiz, McGlothorn, Cerna, and Schneider) behind the Home Depot/Target stores where they conducted an operational briefing. It was determined that the meet location would be the small parking lot just north of the Home Depot store. It was also reported that Ramirez was going to be in a dark colored four door Honda sedan with a white hood and would probably be a passenger. The agents were shown a photo of Ramirez.

Sgt. Corrigan, Agent Cerna, and the CI got into Sgt. Corrigan's car for surveillance. Agent McGlothorn was to block the exit of the parking lot with his truck, a dark grey Ford, to prevent the Honda from leaving the parking lot. Agents Schneider (rear passenger), Ortiz (driver), and Koford (front passenger) were designated as the arrest team; they were in Agent Ortiz's black, Ford truck. Agent Ortiz placed the truck in a position to be able to see the meet location.

Thereafter, Agent Koford saw a car matching the description that he had been given driving on Gasser Drive. It was a black Honda with a white hood and it turned into the small parking lot north of the Home Depot store. He could see two males seated in the driver and front passenger positions. It parked in an empty stall, next to a car that had been parked in the lot previously. Agent Ortiz drove into the parking lot and Agent Koford dropped the visor equipped with emergency lights. Agent Ortiz activated the siren and lights as he entered the lot. Agent Ortiz parked his truck directly behind the Honda, blocking it from moving.

Agent Koford exited the truck and drew his firearm, fully extending his arms as he approached the Honda right passenger door, which was completely open. He observed three males seated in the Honda: the driver, the right front passenger, and the right rear passenger. He recognized Pablo Ramirez from the photograph he had previously familiarized himself with. Both males on the right side of the Honda had their feet outside of the car as if to exit the vehicle, so he instructed them, "Stop Police." He noted that Ramirez was turned with both feet



outside on the ground and his rear somewhat raised off the right passenger seat. Ramirez also had his hands up. Ramirez said, "No, no, no." Agent Koford, fearing that Ramirez was going to run continued to issue the command to stop. He arrived within the arc of the open door still with his firearm fully extended and pointed at Ramirez.

Agent Koford moved to a point within arm's reach of Ramirez, as it was his intention to physically remove Ramirez from the Honda and handcuff him. Ramirez, who outweighed Agent Koford by approximately fifty pounds, then lunged forward grabbing Agent Koford's hands clasped around his firearm. Ramirez tried to manipulate Agent Koford's hands from around his gun. Agent Koford feared that Ramirez was overpowering him and that he would obtain Agent Koford's firearm. He felt that he needed to react in order to protect himself as well as the other NSIB agents. Agent Koford fired one shot into Ramirez's chest at the same time that he pulled his firearm away. Ramirez said, "You shot me" and fell against the door jam. Agent Koford removed Ramirez from the Honda and placed him in handcuffs.

### **C. Pablo Ramirez Interview**

Pablo Ramirez was a 37 year old, English-speaking Hispanic male, whose place of residence was not known to law enforcement or any of Ramirez's family members on April 2, 2013. Ramirez weighed approximately 200 pounds. Ramirez has an ex-wife, Rosa Ramirez, who resides in the City of Napa. Pablo and Rosa had been divorced for approximately 2 years. The main cause of the divorce, according to Mrs. Ramirez, was due to Pablo's drug use and domestic violence. At the time of the incident on April 2<sup>nd</sup> Ramirez had an outstanding no bail warrant for Violation of Probation in Napa County Superior Court Case No. CR160349, arising out of a felony conviction for PC 245(a)(1), Assault with Force Likely to Cause Great Bodily Injury.

As a result of the injuries he sustained in the shooting on April 2<sup>nd</sup>, detectives were unable to interview Ramirez until May 14, 2013. Ramirez was told that Napa County Sheriff's Detectives Rick Greenberg and Chris Pacheco wanted to speak to him about the incident which led to his being in the hospital. Ramirez replied that he was in the hospital because, "one of my guys shot him." Ramirez told them that he understood English. Ramirez was read his Miranda Rights, which he said he understood. He told them that he lived in Los Angeles and had returned to Napa to make a court appearance. He had been living in a homeless encampment near the Home Depot.

Ramirez went on to tell the detectives that the car he was in that night belonged to a friend and that it was a two-door vehicle. Further, he indicated that he and the fellow passengers of the vehicle had left the Home Depot and later returned. He insisted that he had been driving the car when the incident occurred. He said he had parked and then he heard police say to put their hands in the air and get out of the car a couple of times. He knew they were police. He could not remember seeing red lights or hearing a siren. He also could not remember what the officers were wearing or what kind of vehicles they had been driving.

Ramirez said that he followed the officers' commands and opened the car door. He then got out of the car and stood behind the door. He remembered an officer pointing a gun at him but then holstering it when he got closer to Ramirez. The officer grabbed both of Ramirez's hands and placed him on the ground. He heard a gunshot and then remembered nothing after that moment. He said that he didn't believe that the officer who grabbed his hands was the same one who shot him. He demonstrated how he had held his hands out after exiting the car: hands together, palms and wrists facing each other and touching. Finally, when confronted with the detectives' belief that he actually had been a passenger in the car, Ramirez still claimed that he had been driving.

#### **D. Guadalupe Duran Interview**

Guadalupe Duran was seated in the Honda in the right rear passenger seat at the time that the Honda was parked. On April 2<sup>nd</sup>, he had gone to the Home Depot area to find work at 6:00 am. He went to work at 8:00 am and returned to the Home Depot area at 11:00 am. When he returned he saw "Pablo", the "guy who got shot." He had known him for about two weeks, having met him at the Home Depot parking lot. They had previously worked together installing flooring. Ramirez went with him to that location so that Duran could get paid what he was owed from that job. Duran got paid \$125.00, \$25.00 less than he was owed.

After returning with Ramirez to the Home Depot, Duran went home and showered. He then returned to Home Depot where he met up with Ramirez again. Ramirez asked him if he could help him get a ride to Vallejo. Duran asked his friend Javier Garcia. Garcia agreed to do so in exchange for gas money. They all got into Garcia's car, the black Honda with the white hood, at approximately 6:00 pm and left. Garcia drove, Ramirez was in the right front passenger seat, and Duran was in the right rear passenger seat. Duran claimed to not know the purpose of the trip but said that, before they left the Home Depot, a white male rode up on a bicycle and gave Ramirez two iPods. Therefore, he thought that they were going to Vallejo to sell iPods. Duran said that they went to a place that looked like a car repair shop and Ramirez got out of the car and walked away. He didn't know where he went. After Ramirez returned to the car they left to return to the Home Depot. When they reached near "Kansas Street", he saw Ramirez using his cell phone. He heard Ramirez say that they were by the lights. He didn't hear anything else of that conversation. Duran denied knowing anything about drugs or hearing anyone talk about drugs although he believed that Ramirez was someone who might sell drugs. He also denied ever going to a Food for Less in Vallejo. He did admit that they had also gone to a gas station.

The plan was to drop off Ramirez and he and Garcia would then go home. After they parked, the police came up. He did not recall lights or siren until after the event. The driver's door was closed and the front passenger's door was open. He heard the police say to stay in the car. Ramirez was stepping out of the car or he had gotten out of the car when the police said to stay in the car. He heard a gunshot but was unable to see if either Ramirez or the officer had touched each other. He did not even see the officer pointing a gun at Ramirez. Duran claimed that he knew that they were police because they were dressed in blue uniforms. He

heard them say to put his hands up so he did. They then took him to the ground. Duran said that Ramirez probably got shot because he was trying to run. He would have tried to run as well if he had known about the drugs.

#### **E. Javier Garcia Interview**

Javier Garcia was the driver and is the owner of the Honda with the white hood involved in the shooting at the Home Depot parking lot on April 2<sup>nd</sup>. He said that he had known Duran for approximately six months as they had worked together in the fields. He didn't know Ramirez but had seen him twice before. Duran called Ramirez "Primo". On that date, Duran asked Garcia if he would give both Duran and Ramirez a ride to the Food for Less in Vallejo. He told Garcia that they would not be long. Garcia agreed to provide the ride in exchange for gas money. He would get about \$10.00 worth of gas at a gas station near Highway 37 in Vallejo. That was about 7:30 to 8:00 pm.

Garcia explained that he took Duran and Ramirez to the Food for Less. He dropped them off at the front of the store and then left for 20 minutes. He went to visit a friend and then he returned to the Food for Less where he picked them up again in front of the store. Garcia explained that he thought that they went there to get food but when they returned to the car without grocery bags he later thought maybe they had been selling drugs and that he would not be giving them a ride again. However, he denied hearing either of them speak about drugs.

On the ride back to the Home Depot there were no conversations in the car. Ramirez was in the front and Duran was in the back. He heard Ramirez tell someone on a cell phone call that they were "near the lights." After they parked, he heard the police coming and saw the red and blue lights on the trucks and cars. Although he couldn't understand precisely what the police were yelling, he believed that they were telling him to get out of the car. The police were dressed like civilians but they had guns and badges. When he saw the red and blue lights he noticed that Ramirez had opened his car door. Garcia turned to his left toward the officer at the driver's door and turned off the car. He was pulled from the car and arrested. He never saw Ramirez grab the officer's gun or other equipment, explaining that it was kind of dark in the car. The windows of the car were down. He heard a gunshot and Ramirez then yelling but did not remember when that happened.

When asked if he had ever gone to buy drugs before, Garcia said, "No" and that he had only ever gone to get marijuana previously. Garcia then changed his description of the trip to Vallejo. He said that they went and got gas, then went to a shop where cars were and then finally, Food for Less. He said that when they went to the shop, Ramirez got out of the car and told them to wait in the car. Ramirez walked off and then returned to the car. Garcia did not know where he went. Ramirez told him that he was going to sell iPods, and that he had been shown the iPods on the way to Vallejo. Ramirez had asked him if he wanted to buy them.

## **F. NSIB Agent Bill McGlothern Interview**

Agent Bill McGlothern has been employed as a Deputy Sheriff for about 30 years and has served as an NSIB agent several times during his career. On April 2<sup>nd</sup>, he was working as an NSIB Agent. He described the “operation” resulting in the shooting. The “operation” was being run by Agent Schneider. A confidential informant (CI) Schneider had previously worked with, reported to him that he knew of a subject by the name of “Pablo”, who was selling methamphetamine in Napa. Schneider also told Agent McGlothern that “Pablo” had an outstanding arrest warrant. The plan was to arrest Ramirez on the warrant but it was anticipated that he would also have methamphetamine with him.

At approximately 7:30 pm, Agent Schneider held an operational meeting near the Home Depot loading dock at the back of the store. NSIB Sgt. John Corrigan, Agents Bill McGlothern, Alfonso Ortiz, Eric Koford, and Ricky Cerna attended the briefing.

NSIB Agents were assigned the following duties: Sgt. Corrigan and Agent Cerna were to be on surveillance with the CI. They would be positioned in the parking lot across the street from the meet location in Sgt. Corrigan’s car. The meet location was the small parking lot to the north of Home Depot. Agents Schneider, Ortiz, and Koford were designated as the arrest team, in Ortiz’s truck. Agent McGlothern was to block the exit of the parking lot with his truck, a dark grey Ford, to prevent the Honda from leaving the parking lot. Agent McGlothern positioned his truck in the Black Bear Diner parking lot. Agents Ortiz, McGlothern, Koford, and Schneider all wore clearly marked "Police" raid attire.

Subsequently, Sgt. Corrigan advised that the subject car had been sighted and was stopped at the signal light at the intersection of Soscol Ave. and Gasser Drive. Agent McGlothern saw it and then observed the Honda enter the small parking lot and park. Agent Ortiz followed directly behind the Honda, activated his emergency lights and siren, and parked directly behind the Honda. Agent Schneider approached the driver’s side while Agents Ortiz and Koford approached the passenger side. Agent McGlothern exited his truck and heard the officers giving orders to the Honda occupants: a driver, front right passenger, and right rear passenger. He could not tell what was being said. Shortly after that he heard a “pop” which was very faint. Agent McGlothern could not see what was taking place on the right side of the Honda. He heard Agent Schneider yell at the driver to “get out of the car”. Agent McGlothern could not see Agents Ortiz or Koford. Agent Schneider asked him if that was a “shot” and Agent McGlothern said he didn’t know. Agent McGlothern helped Agent Schneider with the detention of the driver. He then took the driver to the rear of the Honda where Agent Cerna had arrived. He then took custody of the right rear passenger. After NPD officer Garret Wade arrived at the location, Agent McGlothern had Officer Wade take custody of the driver and rear passenger. Agent McGlothern then assisted Agent Ortiz with first aid for the front passenger. Agent McGlothern realized that this person who had been the right front passenger had been shot and was in handcuffs. He applied direct pressure to the chest wound and could not locate an exit wound. Once medical personnel arrived on scene, they took over his care. None of the agents talked about the incident except to make sure everyone was safe.

## **G. Sgt. John Corrigan Interview**

Sgt. John Corrigan has been employed as a Napa police officer for 23 years. During that time he has been a patrol officer, a supervisor, a field training officer, a detective and also an agent with NSIB. On April 2<sup>nd</sup> he was the sergeant assigned to NSIB. On that day, he was advised by Agent Schneider that a confidential informant (CI) they both had previously worked with, reported to Agent Schneider that he knew of a subject by the name of Pablo Ramirez, who was selling methamphetamine in Napa. Agent Schneider also told him that Ramirez had an outstanding arrest warrant out of the Napa County Superior Court. The CI was going to arrange for Ramirez to meet him and they would arrest Ramirez, who would also be bringing methamphetamine for sale. The operation was to take place that evening at approximately 8:00 pm.

Agent Koford prepared an operation briefing order as instructed by Corrigan. A briefing was held to the rear of the Target Shopping Center parking lot. Agents Corrigan and Cerna remained with the CI in his car; and Agents Schneider, Ortiz, Koford, and McGlothorn were assigned to the arrest team. All agents wore fully marked "Police raid attire."

Sgt Corrigan, Agent Cerna, and the CI remained in Corrigan's car, located in the Home Depot Parking lot across the street from the planned meet location: a small parking lot just north of the Home Depot on Gasser Drive. Sgt. Corrigan had the CI telephone Ramirez. Ramirez called back at approximately 8:15 pm. He told the CI that he was at the stop lights at Soscol Ave. in front of Home Depot. Sgt. Corrigan saw the car Ramirez was in, a small, dark sedan with a white hood, drive westbound on Gasser Drive and subsequently pull into the small parking lot just north of the Home Depot. He radioed the arrest team. The CI had previously told Sgt. Corrigan that Ramirez would probably run and that he would be seated in the passenger seat.

Sgt. Corrigan saw the small, dark car park facing south. He watched Agent Ortiz's truck drive into that same small parking lot with his emergency lights and siren activated. Agents Schneider and Koford were with him. Agent Ortiz parked directly behind the small car. Corrigan saw Agent McGlothorn, who was alone in his truck, follow Ortiz and park directly behind him. He saw agents exit both trucks and approach the car (later to be determined to be a Honda) Ramirez was supposed to be inside. Sgt. Corrigan could not identify which agents went where from his location. Immediately after the agents approached the Honda he heard a single "pop" and saw a "flash" of light on the passenger side. He thought at first that it was a flash bang but then assumed it was a gunshot.

Sgt. Corrigan instructed CI to leave his car and went immediately to the small parking lot. Agent McGlothorn told him that one suspect had been shot and that the agents were ok. He went over to Agents Schneider and Koford and asked them, "Who shot?" One of them told him it was Agent Koford. Agent Koford told him that he shot the passenger in the Honda one

time. Sgt. Corrigan saw Ramirez on the ground with a wound to his upper right chest. Agents Ortiz and McGlothern were rendering medical aid. A short time later medical personnel arrived and took over Ramirez's care.

#### **H. NSIB Agent Alfonso Ortiz Interview**

Agent Alfonso Ortiz has been employed as a Napa Police Department Officer since 2005. He has been assigned to NSIB since July, 2012. On April 2<sup>nd</sup> Agent Schneider told him that an informant (CI) reported to him that a person by the name of Pablo Ramirez was selling methamphetamine in Napa. Agent Schneider also said that Ramirez had an outstanding arrest warrant out of the Napa County Superior Court. He was told to meet behind the Target Store, in the South Marketplace, for a briefing.

NSIB Agents (Sgt. Corrigan, Ortiz, McGlothern, Cerna, and Schneider) met behind the Home Depot/Target stores where they conducted an operational briefing. The CI was also present. Agent Ortiz and the others were told that the meet location would be the small parking lot just north of the Home Depot store. It was also reported that Ramirez was going to be in a dark colored four door Honda sedan with a white hood. Ramirez would probably be a passenger. Agent Schneider told Agent Ortiz that the arrest warrant for Ramirez was for a felony PC 245.

Sgt. Corrigan, Agent Cerna, and the CI were to be in Sgt. Corrigan's car positioned to spot the Honda. Once the Honda was seen, Sgt. Corrigan would radio the other agents. Agents Schneider and Koford were to ride with Agent Ortiz in his black Ford truck, which was outfitted with pull down emergency lights and a siren. They were going to be the arrest team, with Agent McGlothern riding separately.

Subsequently Sgt. Corrigan radioed the team and informed them that the Honda was at the signal light at Soscol Ave. and Gasser Drive. It turned west onto Gasser where it was seen by Agent Ortiz. The Honda pulled into the parking lot, pre-designated as the meet location. It pulled into a parking space facing south.

Agent Ortiz pulled into the parking lot with siren and emergency lights activated, parking directly behind the Honda to block it. Agent Koford was in the front passenger seat and Agent Schneider was in the rear passenger seat. All three exited the truck and approached the Honda. Agent Ortiz saw three males in the car: driver, right front passenger, and right rear passenger. The two doors on the passenger seat were wide open and it appeared that the passengers were trying to get out of the Honda. Agent Ortiz began yelling in both English and Spanish, "Police, show me your hands, put your hands in the air!" with his firearm drawn. He was able to see Agent Schneider making contact with the driver with his peripheral vision. He also could see Agent Koford making contact with the front right passenger loudly giving instructions: "Show me your hands!" He also stated that he saw Ramirez turned toward Agent Koford with his left foot on the ground. Agent Ortiz was unable to see if Ramirez had grabbed

Agent Koford's firearm or if Agent Koford had his firearm pulled when he was contacting Ramirez. He also was unable to say at what point Agents Schneider and Koford had pulled their firearms.

Agent Ortiz reached into the Honda and grabbed the right rear passenger's shirt instructing him to get out of the car in both English and Spanish. While he was pulling the right rear passenger from the car he heard a "pop" that sounded like a "firecracker" and smelled like burned gunpowder. He asked Agent Koford, "Shots fired?" Agent Koford replied, "Yes, shots fired." He could see that Agent Koford appeared uninjured so he assumed that the front passenger, who he recognized as Ramirez, had been shot. Agent Ortiz pulled the right rear passenger out of the car and placed him down on the ground, telling him to stay right there. He could see Agent Koford had the passenger on the ground, handcuffing him. The front passenger said, "Ouch, ouch, you shot me!" Agent Ortiz went back to his truck and radioed, "N95 code 33, shots fired, suspect hit, no officers hurt, Home Depot, start medical." He confirmed his transmission and then said, "One gunshot wound and a HMA."

Agents Ortiz and McGlothorn rendered medical aid to Ramirez, the front passenger, until medical personnel arrived. Agent Ortiz observed Ramirez's wallet and cell phone on the truck hood. He did not talk to anyone about the incident. He pat searched Ramirez lightly but would not have been able to tell if there was contraband. He used his knife to cut open Ramirez's puffy jacket to look for an exit wound.

#### **I. NSIB Agent Ricky Cerna Interview**

Ricky Cerna has been employed as a Napa County Probation Officer for six years. He has been assigned to NSIB since December 2012. The operation was to set up to buy methamphetamine from a suspect who also had an outstanding warrant. The plan was to have him meet in the Home Depot parking lot and arrest him.

There were six agents, including himself, in three different vehicles: the agents in Ortiz's truck were Agents Ortiz, Schneider, and Koford; Agent McGlothorn in his truck; and Agent Cerna, the CI and Sgt. Corrigan in Sgt. Corrigan's vehicle. Agent Cerna was on surveillance with Sgt. Corrigan and the CI. He thought that the suspect car would enter the Home Depot parking lot, but instead it pulled into and parked facing south in the lot across the street. This information was broadcast to the other agents, who then pulled into the parking lot across the street from Home Depot. Agent Ortiz parked behind the suspect car.

Agent Ortiz's truck had its emergency lights on. Agent Cerna saw the agents get out of their truck and approach the suspect car, although he could not say who went where because of lighting conditions and the distance between him and the agents across the street. He then saw a flash and heard a pop. He asked Sgt. Corrigan if that was a shot. Sgt. Corrigan asked him if Agent Schneider had a flash bang. Sgt. Corrigan directed the CI to get out of the vehicle and they drove over to another parking lot.



## **J. Rosa Ramirez Interview**

Rosa Ramirez is the ex-wife of Pablo Ramirez and she was interviewed on April 3<sup>rd</sup>. They had been married fifteen years before they separated. She did not know where he had been staying as she had not spoken with him for 2-3 months. He had been sending her text messages in violation of a restraining order. That contact stopped once she reported it to authorities. To her knowledge he wasn't working or paying child support. She assumed he was selling drugs.

Mrs. Ramirez said that Ramirez was born in the United States and spoke English. She described him as a "lying person" who didn't want to work hard. She was the breadwinner. She described his drug use as the "last straw." He would spend the money he got from work on drugs instead of on family bills.

Mrs. Ramirez said that the only person she saw him get aggressive with was her. She did not see him become aggressive with the police who came to the house several times. However, she believed that it was only a matter of time before he would be in a violent and dangerous situation because of the people he associated with and his failure to secure regular employment.

## **D. PHYSICAL EVIDENCE**

The scene was processed by Napa Sheriff's Department Evidence Specialists Donna Kimmel-Lake and Krisha Lovitto. The three vehicles involved in the incident were located in the parking lot north of Home Depot: the dark Honda with the white hood parked facing south; the black Ford truck driven by Agent Ortiz was parked directly to the rear of the Honda; and the grey Ford truck driven by Agent McGlothorn was parked behind that truck.

On the ground near the Honda, the evidence specialists saw the black puffy jacket that Ramirez had been wearing. It was blood stained. They also documented the presence of a gray, blood stained tee shirt. The garments had been cut off Ramirez by paramedics. A blue-colored towel and a black shirt, marked "Police" were also found near Ramirez's clothing. These reportedly had been used to render medical aid to Ramirez. A large caliber shell casing was found on the ground west of the Honda.

Evidence Specialist Lovitto located two small baggies containing a white crystal substance located in the front left pocket of Ramirez's jacket. Napa County Sheriff's Detective Nathalie Verdeille arrived during the processing of the scene. She received the baggies from Lovitto and searched the Honda. In the Honda, Verdeille found a black, Black and Decker tool bag on the right passenger floor board. Inside the bag she found a baggie containing sixteen pills. She suspected that the crystal material in the baggies and the pills were narcotics. The Department of Justice tested one of the baggies and one of the pills. The crystal material was methamphetamine and the pill was hydrocodone.

Blood samples were taken from Agent Koford and Ramirez. Both tested negative for alcohol. Agent Koford tested negative for drugs. However, Ramirez tested positive for methamphetamine, amphetamine, hydrocodone, and lidocaine.

Agent Koford's Glock pistol was swabbed for potential touch DNA evidence. On May 31, 2013, Cellmark Forensics Analyst Jill Cramer presented her results in a report. The DNA profile was a mixture of at least three people, with at least one being a male. Neither Agent Koford nor Ramirez could be excluded as a contributor.

The Glock pistol was examined for fingerprints by evidence specialist Lovitto. The results were negative: "no sufficient, clear ridge detail was developed or collected for comparison purposes."

## **V. STATEMENT OF THE LAW**

The sole issue to be resolved in this review is whether the shooting was lawful because the force used by Agent Koford was reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose; or, alternatively, whether the shooting of Pablo Ramirez was unlawful because the force used by Agent Koford was not reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose.

Several key principles of the law apply to the question posed by these legal facts.

A peace officer has the authority to make an arrest of an individual upon probable cause to believe a crime has been committed. An individual has a duty to submit to lawful arrest.

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.

A peace officer may 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 legal standard that applies to a lawful detention is somewhat less than what is required for an arrest. An individual has a duty to submit to a lawful detention.

A peace officer may arrest a person in obedience to a warrant. (Penal Code Sections 830, 836)

A peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape, or to overcome resistance.

A peace officer is also justified in using deadly force “[w]hen necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty...” (Penal Code Section 196)

Any person, including a peace officer, has a right to use reasonable force in self-defense. A person can be said to have acted in lawful self-defense if all of the following exist:

- The person reasonably believed that person 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. (Penal Code Section 197)

When deciding whether the person’s beliefs were reasonable, one must consider all the circumstances as they were known to and appeared to the person at the time and consider 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.

## **VI. LEGAL ANALYSIS**

The first issue is whether Agent Koford had reasonable suspicion to detain Ramirez. We conclude that an officer may lawfully detain a suspect when there is a reasonable suspicion that the person to be detained has engaged in criminal activity or that person has an outstanding arrest warrant. In this case, Agent Schneider had confirmed the existence of the outstanding arrest warrant for Ramirez and had conveyed that information to the rest of the agents, including Agent Koford. Additionally, Agent Koford had been briefed that Ramirez was transporting methamphetamine to Napa to sell to a Confidential Informant.

We also examine whether or not Ramirez committed any crimes during the contact with Agent Koford. We conclude that when Ramirez lunged at Agent Koford and grabbed his hands around the firearm, manipulating it, he committed a violation of Penal Code section 69 which reads in part: every person who willfully and unlawfully attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon that officer by law, or who knowingly resists, by the use of force or violence, an executive officer in the performance of his or her duty, is guilty of a violation of Penal Code section 69, a felony. A peace officer is an executive officer by definition. Additionally, as methamphetamine was found in Ramirez’s jacket and hydrocodone was found in a bag near where he had been seated, Ramirez also committed felony violations of Health and Safety Code sections 11350, 11352, 11377(a), 11378 and 11379.

The most important issues are whether Agent Koford acted justifiably per Penal Code Section 196 and/or in lawful self-defense when he shot Ramirez. When Ramirez lunged at

Agent Koford and took hold of the Agent's hands as he grasped his gun, Agent Koford was fearful that Ramirez was trying to take his gun. Ramirez outweighed Agent Koford by approximately fifty pounds. Agent Koford feared that he and his fellow agents could suffer serious bodily injury or death when he felt Ramirez overpowering him and gaining control. Therefore, he shot one time into Ramirez's chest, which caused Ramirez to release his grip.

Agent Koford's factual account is supported by the physical evidence as well as statements by Agent Ortiz and those of Ramirez, Duran (right rear passenger), and Garcia (driver). Agent Ortiz saw three males in the car as he approached with one in the driver's seat, one in the right front passenger seat and one in the rear right passenger seat. He observed both the right front and right passenger doors open. He saw Agent Koford making contact with the right front passenger and heard Koford yelling "Show me your hands." Agent Ortiz also was able to see Ramirez turned towards Agent Koford with his left foot on the ground. Agent Ortiz was not able to see Agent Koford's firearm or whether Ramirez had grabbed Agent Koford's hand or his firearm.

Ramirez admitted that he knew that the agents were police officers. Furthermore, he confirmed that he opened his door. This was despite being ordered to stay in the car as stated by Duran and also to "stop" as reported by Agent Koford. Duran also said that he saw Ramirez open the door at the time they were being ordered to stay in the car. He believed that Ramirez was going to run. Although Garcia also saw Ramirez open his door, he was unsure of what the police were yelling but he thought they were saying to get out of the car.

## **VII. CONCLUSION**

Based upon all of the evidence provided we conclude the following:

1. Agent Koford had the right to detain Pablo Ramirez for both the outstanding arrest warrant and the suspected Health and Safety Code violations.
2. Agent Koford had the right to arrest Pablo Ramirez when he approached the Honda for the outstanding arrest warrant.
3. Pablo Ramirez had no right to resist his detention and/or arrest, including, lunging at Agent Koford and/or grabbing hold of Agent Koford's hands which were around his gun. He also had no right to resist his detention, and/ or arrest by then manipulating the gun once he grabbed Agent Koford's hands.
4. Agent Koford's use of deadly force was a reasonable and lawful response under the totality of the circumstances. When he fired his gun once to stop Pablo Ramirez from gaining complete control of the gun, Agent Koford reasonably believed that he was protecting his life and the lives of his fellow agents. Agent Koford's actions were reasonable under the

circumstances he faced, were legally justified, and criminal charges against him are neither warranted nor supported by the evidence.

The review detailed herein conducted within the scope and jurisdiction of the District Attorney is complete and final. A copy of this report and its conclusions being released today has been provided to Napa Police Chief Richard Melton, Agent Koford's employer; Agent Koford; and Napa County Sheriff John Robertson on behalf of the Sheriff's Department as the lead investigating agency.

Respectfully,  
/s/

Gary Lieberstein, Napa County District Attorney