



**REPORT ON THE FEBRUARY 17, 2019
OFFICER-INVOLVED SHOOTING OF
JAVIER HERNANDEZ MORALES**

ALLISON HALEY
DISTRICT ATTORNEY
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1127 1st Street Napa, Ste. C, CA 94559 Phone: (707) 253-4211 Fax (707) 253-4041

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I. ROLE OF THE DISTRICT ATTORNEY

The role of the Napa County District Attorney's Office in an officer involved shooting investigation is to review the circumstances of the incident for the sole purpose of determining if there is criminal liability on behalf of any member of law enforcement. The District Attorney does not examine concurrent issues of law enforcement policy or procedure, compliance with police training or civil liability. This report should not be interpreted as expressing an opinion on any of those attendant matters.

This report summarizes the events that took place on February 17, 2019 in the area of Henry Road in the County of Napa that resulted in the shooting death of Javier Hernandez Morales and documents the legal conclusion drawn from the evidence. This summary is not intended to include every aspect of those events. Rather, it is a composite of the material facts that were considered by the District Attorney in coming to her legal conclusion. This report draws from a thorough review of the police investigation, interviews of witnesses, physical evidence, case law, as well as forensic science and testing.

The Napa County Sheriff's Office (hereinafter "NSO") invoked the Napa County Major Crimes Investigation Team Protocol. 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. NSO Detective Felipe Hernandez led the investigation. He presented a comprehensive report to the Napa County District Attorney's Office.

II. SUMMARY OF INCIDENT

A. Javier Hernandez Morales

Javier Hernandez Morales was a 43 year-old male who was living in his car, a 2006 Honda Accord. The car was registered to a false name. Mr. Morales used eight aliases with employers and law enforcement officers.

Mr. Morales had an extensive criminal history. He was arrested numerous times in the past 12 years, including possession of controlled substances for sale, transportation of controlled substances, driving under the influence of alcohol (4X), driving on a suspended drivers license (4X), assault with a deadly weapon, vandalism, resisting a peace officer, battery of a peace officer, carrying a concealed weapon, false identification to a peace officer, furnishing alcohol to a minor, and probation violations. He was a suspect in an altercation at his work where he battered another man and

threatened to return with a gun. Mr. Morales had three outstanding arrest warrants from Napa County Superior Court at the time of the incident.

B. Incident

On February 17, 2019, at approximately 10:45 pm, NSO Deputy Riley Jarecki was patrolling the area of Browns Valley in Napa alone in her marked patrol car. She drove to Buhman Road and then on to Henry Road. This is an agricultural area; it is not heavily populated. There are no streetlights, few houses and minimal traffic. While driving on Henry Road, Deputy Jarecki noticed a vehicle parked on the wrong side of the road. She went to investigate for several reasons. First, Deputy Jarecki was aware that Napa had recently experienced an influx of stolen cars and wanted to make sure the parked vehicle was not stolen. Deputy Jarecki was also aware of recent alarm calls at wineries and wanted to confirm there was not a motorist who was involved in criminal activity. Finally, she wanted to ensure there was not a stranded motorist who needed assistance in this rural part of the County.

Deputy Jarecki informed Napa Dispatch via car radio that she was conducting a vehicle check, turned on her patrol vehicle spotlight and illuminated the inside of the parked vehicle. Mr. Morales abruptly sat up and turned on his headlights. She exited her patrol car and approached the passenger side window. Mr. Morales, the sole occupant, rolled down his window halfway and had a brief discussion with Deputy Jarecki in English. The car had a large quantity of bags and other miscellaneous items strewn throughout the interior. Deputy Jarecki asked Mr. Morales for his identification.

Mr. Morales took an extraordinarily long time to provide his identification and he was manipulating his seatbelt for no apparent purpose. Deputy Jarecki was aware that her cover officer was miles away from her location. She asked Napa Dispatch to run his identification, a Mexican identification card with the alias "Enrique Ballesteros-Revuelta", for arrest warrants and to see if he was on probation. Deputy Jarecki asked if she could look in his car and he consented. Despite the fact that they spoke in the English language up to this point, Mr. Morales claimed to only speak Spanish when asked for his date of birth and if he had any drugs or weapons in the car. She walked to the driver's side of the car and asked him to roll down his window.

Mr. Morales rolled down his window and within seconds, aimed a revolver directly at Deputy Jarecki and shot three times. He then started his vehicle. Deputy Jarecki saw the muzzle flash and heard the shot fire, causing ringing in her ears. Deputy Jarecki believed she might have been shot and understood that Mr. Morales was trying to kill her. Deputy Jarecki immediately rotated around the back of the car, radioed in "shots fired, shots fired" and returned fire with her service weapon from the

passenger side. She emptied her weapon rapidly and reloaded. She reassessed and ceased firing based upon his lack of movement.

C. Law Enforcement Response

Deputy Jarecki held Mr. Morales at gunpoint for over five minutes waiting for backup to arrive. During that time, Deputy Jarecki believed that she had been shot in the head and/or face. Her cover officer found Deputy Jarecki positioned near the passenger side door with her firearm drawn. She was asked if she was injured and Deputy Jarecki responded, "I don't know." Later, she asked her backup, "Is my face bloody?" Deputy Jarecki and her backup retreated to his patrol car and waited for other NSO and NPD deputies and officers to arrive.

When NPD officers arrived and spoke to Deputy Jarecki, she reiterated her concern that that she was injured, asking "I need to know if I've been shot; I need you to tell me if I'm bleeding." A responding NPD Officer inspected her with his flashlight and saw no blood.

Deputy Jarecki was uninjured.

D. Post-Incident

Mr. Morales was found in the driver's seat of his Honda Accord. Two AMR paramedics responded to the scene. No medical treatment was initiated, as he was clearly deceased. A search of his vehicle revealed a loaded revolver between the driver's seat and door with the muzzle pointed to the back of the car, a loaded rifle in the back seat, a gas powered pellet rifle in the rear passenger seat, methamphetamine in the glove box, and hundreds of rounds of ammunition.

E. Video

Dash and body worn camera videos were booked in to evidence by deputies and officers involved in the incident. Deputy Jarecki recorded the incident on her body worn camera. It clearly depicts her interaction with Mr. Morales, his shooting at her without provocation and her returning fire in an attempt to save her own life.

F. Recovered Guns and Ammunition

The following firearms were located with Mr. Morales inside his Honda Accord:

1. Ruger model New Bearcat .22LR revolver, found next to the driver's side door, containing three (3) expended cartridge cases and three (3) live cartridges; and
2. Winchester 74 .22 caliber rifle, found on the right of the rear passenger seat, containing eleven (11) cartridges; and
3. Gas powered pellet rifle, found inside the rear passenger side seating area.

Mr. Morales shot three (3) rounds at Deputy Jarecki based upon the expended cartridge cases and body worn video. His weapons were unregistered. The revolver was reported stolen in a residential burglary in the City of Fremont in 2009. Investigators discovered three hundred and thirty-five (335) .22 caliber cartridges throughout the car and in the pants pocket of Mr. Morales.

Fifteen (15) expended .40 caliber cartridge casings were located from the dirt pull out and paved roadway. Deputy Jarecki fired her service weapon, a Sig Sauer model P320 .40 caliber S&W pistol.

G. Autopsy

On February 20, 2019, the Napa County contracted forensic pathologist performed the autopsy on Mr. Morales. Cause of death was determined to be multiple gunshot wounds. A sample of Mr. Morales' blood was analyzed by Alere Forensics at Redwood Toxicology Laboratory and the pathologist determined that Mr. Morales had acute methamphetamine intoxication.

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 is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is expressed in the *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.

IV. STATEMENT OF THE LAW

The sole issue to be resolved in this report is whether the shooting of Javier Hernandez Morales by Deputy Jarecki was lawful: specifically, was the use of force by her reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose.

Several key principles of law apply to the question posed by the facts of February 17, 2019.

It is sometimes necessary to use force to make an arrest. *Graham v. Connor* (1989) 490 US 386, 396 [“[T]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”]; California Pen. Code §835a [the officer “need not retreat or desist from his efforts by reason of the resistance or threatened resistance.”]. How much force is permissible and how much is excessive? The short answer is that force is permissible if it is reasonably necessary. The United States Supreme Court notes that the inquiry into reasonableness is intensely fact specific.

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. *Graham v. Connor* (1989) 490 U.S. 386, 396-97.

The use of deadly force is lawful if it reasonable under the circumstances. As the Court observed in *Tennessee v. Garner*, “Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.” *Tennessee v. Garner* (1985) 471 US 1, 11.

The Court has acknowledged, however, that there is no obvious way to quantify the risks on either side, that there is no magical on/off switch for determining the point at which deadly force is justified and that the test is cast at a high level of generality. Still, it has ruled that the use of deadly force can be justified under the Fourth Amendment only if the following circumstances existed:

- (1) The arrestee must have been fleeing or otherwise actively resisting arrest.
- (2) Officers must have had probable cause to believe that the arrestee posed a significant threat of death or serious physical injury to officers or others.
- (3) Officers must, when feasible, warn the arrestee that they are about to use deadly force.

Likewise, California Penal Code §196 finds homicides justifiable when committed by public officers if there are circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.

V. LEGAL ANALYSIS

On February 17, 2019, all evidence suggests that Mr. Morales had warrants for his arrest, used and possessed methamphetamine and was in possession of illegal firearms. Deputy Jarecki was doing her job, patrolling the agricultural area of Henry Road, looking for stolen cars, winery burglars and motorists that needed assistance. She noticed an oddly parked car and contacted the solo occupant, Mr. Morales. He exhibited suspicious behavior and handed her fake identification. When asked if she could search his car, Mr. Morales agreed. Deputy Jarecki walked to the driver's side of the car when she was ambushed by Mr. Morales. Three times, he fired his revolver directly at her attempting to murder her. Fearing for her life, Deputy Jarecki bravely responded by backing away and returning fire with her service weapon.

VI. CONCLUSION

Providing a community with an analysis of an officer involved shooting is one of the most important aspects of the job of a District Attorney. It requires unmitigated objectivity coupled with unwavering adherence to the rule of law and a sensitivity to the families of the involved parties. Each set of facts demand a thorough review as no two incidents involving the use of lethal force are identical. Indeed, to liken one incident to another discounts the gravity of the events and the uniqueness of human life.

On February 17, 2019, Mr. Morales attempted to murder NSO Deputy Jarecki. He, without provocation, excuse or legal justification, fired multiple shots in the direction of her head and torso. He then started his car in an effort to leave the scene. Mr. Morales' intent, inferred by his actions, was to kill a sheriff's deputy and leave her dead in the road in dark, rural Napa County while he escaped. Mr. Morales had motive to do so; he was the subject of three outstanding arrest warrants, was subject to removal from the United States and was in possession of both a controlled substance and at least one stolen firearm.

Deputy Jarecki understood that Mr. Morales was shooting at her. Bullets flew by her left ear so closely that she could not determine whether she had been shot. More than once in the minutes after the attack, Deputy Jarecki asked for confirmation from responding law enforcement officers that she hadn't been shot in the head or was otherwise bleeding. Deputy Jarecki returned fire to save her own life. As such, her actions were a reasonable and lawful response. Charges against her are neither warranted nor supported by the evidence.

This review conducted within the scope and jurisdiction of the District Attorney is complete and final. The public deserves full transparency as to how and why our office reaches a decision in an officer-involved shooting and, as a result, we are now releasing our report and conclusions in their entirety.

Allison Haley, Napa County District Attorney

Exhibit A: Map of Involved Area, Henry Road, County of Napa

Exhibit B: Still Photo from Body Worn Camera of Mr. Morales Pointing Gun at Deputy Jarecki

Exhibit C: Ruger .22 revolver, found next to driver side door of Honda Accord

EXHIBIT A

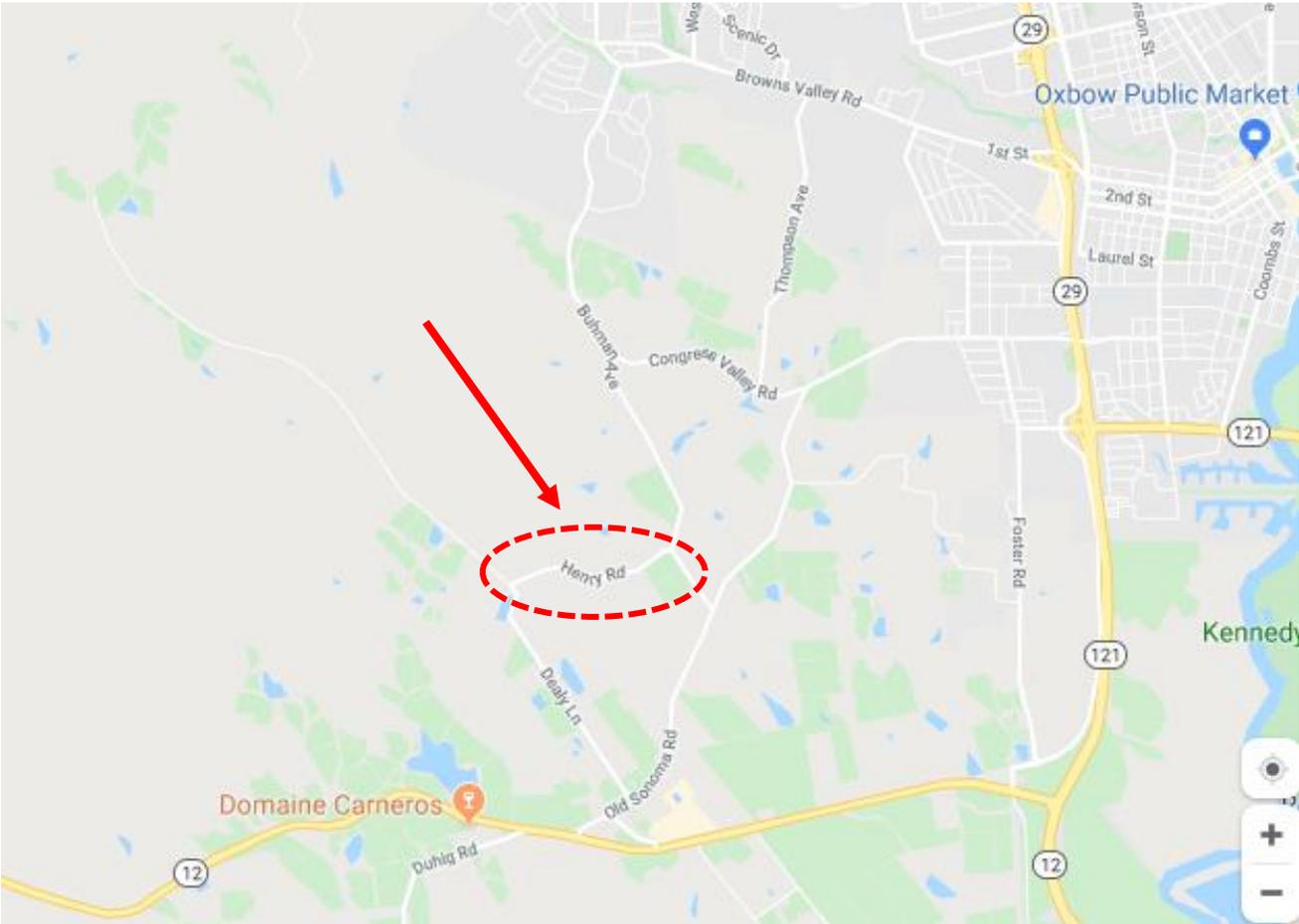


EXHIBIT B



EXHIBIT C

