



**REPORT ON THE OCTOBER 5, 2020
OFFICER-INVOLVED SHOOTING OF
JUAN ADRIAN GARCIA**

ALLISON HALEY
DISTRICT ATTORNEY

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1127 1st Street, Ste. C, Napa, 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.

This report summarizes the events that took place on October 5, 2020, in the area of Kaiser Road in the County of Napa that resulted in the shooting death of Juan Garcia. It also 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, and 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 Paul Kuhn led the investigation. He presented a comprehensive report to the Napa County District Attorney's Office.

II. 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 has limits.

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

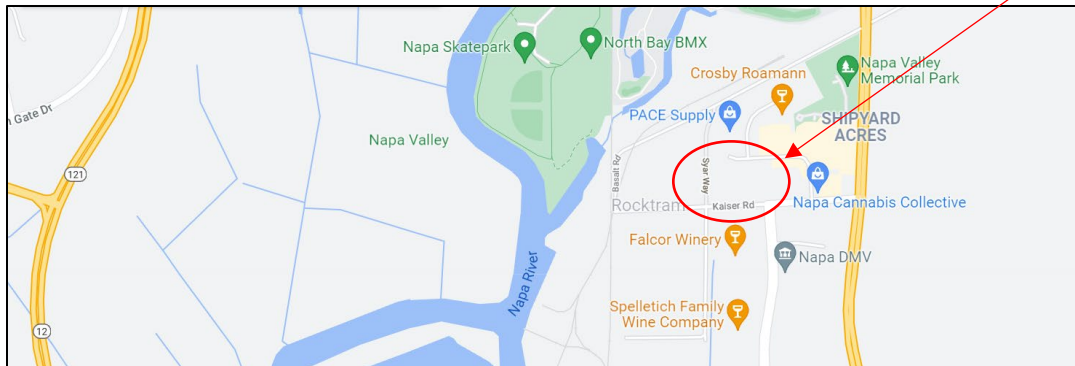
conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

III. SUMMARY OF INCIDENT

A. The Initial Contact

On October 5, 2020, at approximately 10:13 pm on a Monday night, Mr. Garcia was driving a car in an area which borders the southern edge of the City of Napa and the southern portion of unincorporated Napa County. He drove down a dead-end road, Syar Way, in a closed commercial area. Five minutes later, Mr. Garcia drove out Syar Way and eastbound on to Kaiser Road with no headlights.

SYAR WAY AND KAISER ROAD



NSO Sgt. Dave Ackman was on patrol in the area and noticed Mr. Garcia's car turn on to the dead-end road and thought it was suspicious considering no businesses were open at that time of night and the area had been prone to burglaries. He did not want to contact the driver of the car in a remote location so he waited until the car came back towards him. The car returned without headlights in violation of California Vehicle Code Section 24250. When the car turned left on to Kaiser Road, Sgt. Ackman got behind the car and activated his emergency lights. Mr. Garcia immediately and quickly accelerated for a short distance before he pulled the vehicle over.

B. The Dash And Body Worn Camera

Dash and body worn camera videos were booked into evidence by deputies and officers involved in the incident. The dash camera from the patrol car of Sgt. Ackman and his body worn camera are the only devices to visually record events surrounding the shooting. The dash camera did not capture any audio. The body worn camera doesn't record audio until the first 30 seconds of any recording elapses. There is no recording that captures the entirety of the verbal encounter between the men nor a recording that captures the entirety of the physical movements of either man.

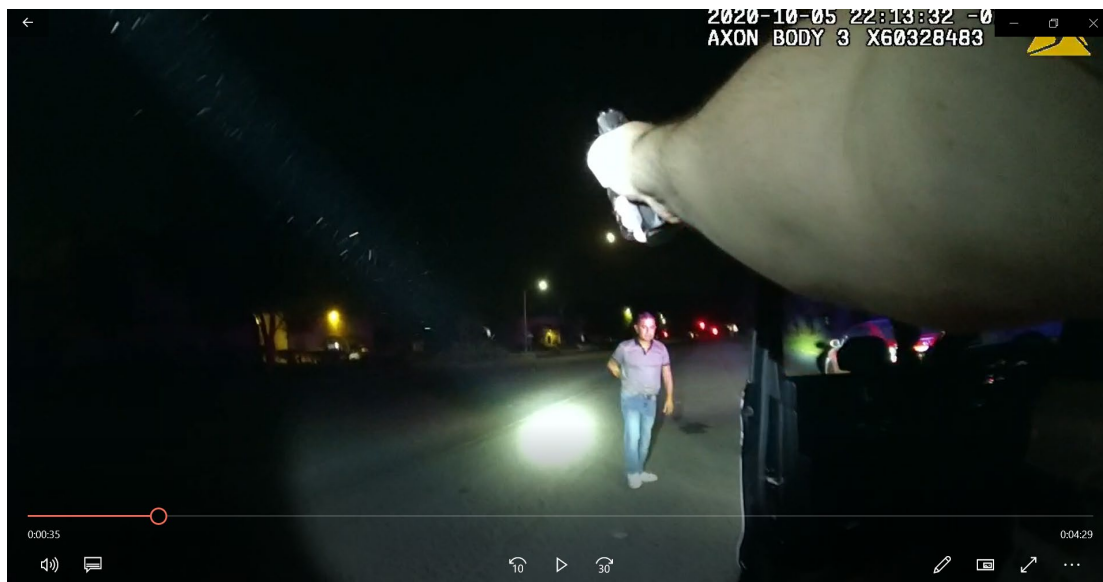
The videos, while limited, however, clearly depict Mr. Garcia exiting his car, hiding his hands, rapidly approaching the sergeant and subsequent movements. The videos do not capture Mr. Garcia during every second of the encounter and are not to be used as a substitute for what the sergeant or Mr. Garcia perceived.

C. Circumstances of the Shooting

Immediately upon stopping his vehicle, Mr. Garcia opened the driver's side door and tossed his cellular phone over the roof of his car. He exited his car quickly and began to walk toward the patrol car; Mr. Garcia did not wait for the sergeant to approach. Sgt. Ackman was initially very alarmed by this behavior and took cover behind his driver's side door with his handgun pointed at Mr. Garcia and yelled something like, "get back in the car, get back in the car, show me your hands!" There is only a small portion of these verbal commands captured by the body worn camera.

The situation momentarily deescalated as Mr. Garcia walked to the rear of his car with his hands by his side and Sgt. Ackman holstered his handgun.

Mr. Garcia then appeared to see Sgt. Ackman and moved towards him with his left hand behind his back and then switched to hiding his right hand. Sgt. Ackman motioned for Mr. Garcia to turn around but he failed to respond. Sgt. Ackman then commanded "turn around!" Mr. Garcia ignored the command and moved towards Sgt. Ackman with his hand still hidden in the small of his back. Sgt. Ackman drew his handgun and attempted to put distance between himself and Mr. Garcia by moving quickly backwards to the left rear of his patrol car. He aimed his handgun at Mr. Garcia. Mr. Garcia next concealed his left hand behind his back and took a couple steps toward his own car. Sgt. Ackman moved behind his vehicle and around to the passenger side. Mr. Garcia, still concealing his right hand moved from the driver's side door of the patrol car, around the front, and towards the armed sergeant.



Sgt. Ackman walked backward and yelled clear and loud commands to “stop”, “stop” and “stop.” Mr. Garcia did not react and continued to walk quickly and directly towards Sgt. Ackman. His gaze was determined and seemingly fixed on the armed sergeant. His right hand was concealed behind his back. As Mr. Garcia closed the distance between them of mere feet, Sgt. Ackman fired his handgun six times for approximately 3 seconds. Mr. Garcia fell to the ground with obvious injury.



Sgt. Ackman immediately radioed dispatch “shots fired, shots fired”. Shortly afterwards, he called for “code 3 medical”. Mr. Garcia remained on the ground injured during this time. Prior to the shooting, Mr. Garcia did not run away, stop, show his hands, get in either car, say “don’t shoot” or verbally communicate in any way to Sgt. Ackman.

D. Post-Incident

As Sgt. Ackman remained focused on Mr. Garcia, a team of NSO deputies and NPD officers arrived on scene. They cleared Mr. Garcia’s car because the windows did not illuminate if others were inside. There were no passengers. Several trained deputies and officers applied life saving techniques to keep Mr. Garcia alive until firefighters and AMR paramedics arrived on scene. When Mr. Garcia was moved, no

weapon was found on his person; he was unarmed. Mr. Garcia was rushed to Queen of the Valley Medical Center where he underwent surgery and was transferred to the Intensive Care Unit. Mr. Garcia succumbed to his injuries and was pronounced dead the next day on October 6, 2020 at 8:35 pm.

E. Autopsy

On October 9, 2020, the Napa County contracted forensic pathologist performed the autopsy on Mr. Garcia. Cause of death was determined to be multiple gunshot wounds. All six bullets struck Mr. Garcia from his thigh to his chest. A sample of Mr. Garcia's blood was analyzed by the Department of Justice and found to be .312% blood alcohol level – almost four times the legal limit to drive in California.

IV. LIKELY DEFENSES

As set forth in the standard of review, the prosecutor is to analyze not only the facts of the incident but the plausible and foreseeable defenses that could be raised in the event charges were to be filed. Here, it is foreseeable that the likely defense would be that it was Mr. Garcia's intention to be perceived as a threat in an effort to initiate a deadly encounter with law enforcement. This is crudely and unfortunately referred to as "suicide by cop." The District Attorney is to review the evidence that would likely be admissible to support this legally cognizable defense, even if unknown to the law enforcement shooter at the time of the incident.

Juan Garcia was a 47 year-old male living in and around the City of Napa, residing in both his car and with family at times. Mr. Garcia was highly trained as a restaurant worker but was recently unemployed when he did not show up for work for about a week. He told his former partner the day prior to the shooting that he was sad and desperate that he was not working and could not find work.

Statements provided to the District Attorney's Office by Mr. Garcia's family demonstrate that he was deeply loved by his family and that he was particularly devoted to his sons. Mr. Garcia took his financial obligations to his family seriously and maintained an excellent rapport with his ex-wife communicating with her on a daily

basis. Their relationship had ended five months prior to his death because of his drinking.

Mr. Garcia had a long-standing problem with alcohol as evidenced by interviews with family and coworkers, as well as his criminal history. According to his children's mother, Mr. Garcia had been trying to quit alcohol for many years. He had at least six prior convictions for Driving Under the Influence of Alcohol. Those convictions occurred in 1993, 1996, 1999 (twice), 2001 and 2007. Mr. Garcia was also convicted of Possession of a Controlled Substance in 1993, 1995, 1996 and 1999. As a result of his convictions, Mr. Garcia was sentenced to state prison in 1999, 2001 and 2007.

At the time of his death, Mr. Garcia was pending a criminal case in Napa County Superior Court. On April 19, 2019, he collided with another car while his 5 year-old son was a passenger in his vehicle. He admitted drinking six beers prior to driving and his blood alcohol content was measured at .15% and .16%. As a result, Mr. Garcia was charged with Child Endangerment, Driving Under the Influence of Alcohol, Driving with a Blood Alcohol Content of .08% or Higher, Driving on a Suspended License and Special Allegations for Passenger Under the Age of 14 and Excessive Blood Alcohol. He posted a bail bond for \$50,000 and signed a promise to the court to not consume or possess alcoholic beverages and not drive a motor vehicle unless properly licensed.

According to all sources who knew Mr. Garcia as well as a review of body worn camera from his most recent encounter in 2019, Mr. Garcia spoke and understood English fluently. Court records also did not indicate the need for an interpreter at the court appearances on his pending criminal case. A thorough review of his prior criminal cases show no similarity to the conduct Mr. Garcia exhibited with Sgt. Ackman in October of 2020. Mr. Garcia had been pulled over by law enforcement many times; he remained in the vehicle upon approach and was largely cooperative with investigative efforts.

In sum, the evidence revealed a man struggling mightily with alcohol addiction who was facing on-going and very significant and painful personal, professional and legal problems as a result of his drinking. He described himself to his loved ones as sad and desperate the day before his encounter with Sgt. Ackman. His behavior on October 5, 2020 was aberrant and wholly different in nature than his prior interactions with law enforcement.

V. STATEMENT OF THE LAW

The sole issue to be resolved in this report is whether the shooting of Juan Garcia was lawful: specifically, was the use of force by Sgt. Ackman reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose.

California Penal Code section 196, as amended effective January 1, 2020 provides that a homicide committed by a peace officer is justified. "When the homicide results from a peace officer's use of force that is in compliance with section 835a."

California Penal Code section 835a(c)(1), also amended effective January 1, 2020, provides that "...a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary...(A) To defend against an imminent threat of death or serious bodily injury to the officer or another person."

California Penal Code section 835a(e) defines a threat as "imminent" when "based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed."

The "totality of the circumstances" refers to "all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force."

In amending section 835a, the Legislature made the following findings and declarations bearing on the use of deadly force:

- (1) That the authority to use physical force, conferred on peace officers by this section is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.
- (2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources

and techniques if reasonable safe and feasible to an objectively reasonable officer.

- (3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.
- (4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.
- (5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

Precedent of the United States Supreme Court defines the use of deadly force by the police. In *Tennessee v. Garner* (1985) 471 U.S. 1,3, the High Court made clear that a police officer is entitled to use deadly force when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”

The Court makes clear that 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.” *Graham v. Connor* (1989) 490 U.S. 386 “With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgements –in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Id.* At 396-7. An objective standard is applied: “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Ibid.*

California law is in accord. As noted above, Penal Code section 835a(a)(1) requires evaluation from the perspective of the reasonable officer in the same

situation with the information known to or perceived by the officer at that time rather than with the benefit of hindsight and with a recognition that officers may be forced to make quick judgments about using force. In protecting himself or another, a person may use all the force that he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. Id.

VI. LEGAL ANALYSIS

The seminal question in this matter: was it reasonable for Sgt. Ackman to believe that that his life was in imminent danger when he encountered Mr. Garcia?

Mr. Garcia drove into a closed and empty industrial area of the County past ten in the evening. When he exited the area a few minutes later, he had turned his headlights off. Upon Sgt. Ackman's attempt to pull him over, Mr. Garcia responded by quickly accelerating his vehicle a short distance before pulling over. Upon coming to a stop, he immediately opened his driver's side door and flung his phone up over his vehicle and got out of the car rapidly approaching Sgt. Ackman concealing one or both of his hands.

Sgt. Ackman says these aggressive actions by a driver on a routine traffic stop were highly unusual and immediately put him in fear for his life. He claimed, "this had never happened. This had never happened before." Sgt. Ackman demonstrated his concern by drawing his weapon while simultaneously issuing lawful commands to the driver to return to his vehicle and to "show me your hands." These commands are tantamount to Sgt. Ackman commanding Mr. Garcia to demonstrate that he was no threat.

Mr. Garcia ignored all directives.

Rather, Mr. Garcia opted not to respond. He rapidly advanced on the sergeant while secreting one or the other arm suggesting he had a weapon in the small of his back all while gazing at the sergeant. Sgt. Ackman was pointing his gun at him, retreating from the threat, circling his own vehicle to get away from Mr. Garcia. Mr. Garcia was not deterred: not by the gun, not by the commands, not by the retreating officer.

It wasn't until Mr. Garcia got within a few feet of Sgt. Ackman that the choice to use deadly force was made. Mr. Garcia refused to stop advancing on the officer while

also refusing to show his hands – faced with this set of circumstances, Sgt. Ackman was reasonable in his belief, later found to be in error, that Mr. Garcia was both armed and was an imminent threat to his life. Because his belief of danger was reasonable, the use of lethal force is justified.

Later evidence revealed that Mr. Garcia was extremely intoxicated at the time of the shooting. This fact has little to do with the perceived threat on the night of the incident. Mr. Garcia exhibited little to no sign of intoxication in his gait, his gaze or his movements. He did not stumble, did not appear to be off balance nor did he appear in distress. Sgt Ackman did not articulate a concern or belief that Mr. Garcia was intoxicated in his interviews. There was no evidence that led Sgt. Ackman to reasonably conclude that Mr. Garcia was intoxicated nor would have such knowledge changed the analysis of the reasonableness of the perceived threat.

VII. 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.

District Attorneys are ethically prohibited from eschewing this legal analysis and simply “giving the matter to the jury to see what they would do.” Our ethical guidelines require charges can only be filed if the experienced and knowledgeable prosecutor believes she can prove the suspect guilty beyond a reasonable doubt to a jury of twelve neutral fact-finders. Prosecutors must consider all evidence including cognizable defenses and weigh the evidence carefully. These decisions have to be made independently notwithstanding any public outcry, the honest heartbreak of those left behind or any political climate, allegiance or agenda.

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, I am now releasing my report and conclusions in their entirety.

Allison Haley, Napa County District Attorney