



COUNTY OF MADERA

OFFICE OF THE DISTRICT ATTORNEY

February 5, 2021

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RE: Officer Involved Shooting of Artemio Alfaro
Madera Sheriff's Office No.: 20-2697
Madera Police Department No.: 20M-3253
District Attorney No.: 2020-OIS-02
Date of Incident: April 29, 2020
Involved Officer: Deputy Brendan Johnson

Sheriff Pogue:

The Madera County District Attorney's Office has completed its investigation of the shooting of Artemio Alfaro by Madera County Sheriff's Deputy Brendan Johnson.

OTHER INVESTIGATIONS

Our investigation acknowledges the following concurrent, preceding, and postdating investigations into these events which are or may be occurring simultaneously or at the conclusion of our own.

Madera County Sheriff's Office Internal Affairs investigation. The purpose of this investigation is to determine if Madera County Sheriff's Office policies and procedures were violated.

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MADERA COUNTY DISTRICT ATTORNEY'S OFFICE INVESTIGATION

The sole purpose of our investigation is to determine whether any violation of criminal law may have occurred.

To this end, we viewed the Deputy involved as a suspect, and he received the same presumptions and protections provided to any suspect, including but not limited to the presumption of innocence.

Any analysis regarding provability must be made in light of the standard in criminal cases that any charges must be proved unanimously to a jury of twelve (12) citizens beyond a reasonable doubt. Our filing criteria in this, as in all other cases is:

“In making crime charging decisions, prosecutors should be guided by established standards ...

The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective factfinder after hearing all of 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.”
(California District Attorneys' Association Uniform Crime Charging Standards)

This review does not examine issues such as compliance with the policies and procedures of any law enforcement agency; ways to improve training or tactics; or possible civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on those matters.

MATERIALS REVIEWED

Our investigation included review of the following investigative materials:

Documents generated by the Madera County Sheriff's Office, including but not limited to: investigative reports, photographs of relevant real evidence including Mr. Alfaro's truck and the scene, scene diagrams, body camera video, in car camera video, drone video, audio recordings of witness interviews, all relevant incident reports, and recordings of all relevant phone calls and radio traffic, Coroner's report, autopsy reports and photographs, including associated toxicological reports.



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Our investigation also included review of documents generated by the Madera Police Department, including but not limited to: attendance and inspection of the scene on the day of the shooting, photographs and scene diagrams, analysis of post shooting interviews of all Deputies present at the time of the shooting and involved in the apprehension of Mr. Alfaro, interviews of civilian witnesses, interviews with Fresno County Sheriff's Department airplane crew members of "Eagle 3", radio traffic from "Eagle 3", and attendance at the autopsy of Mr. Alfaro.

FACTUAL SUMMARY

On April 29, 2020, at approximately 1:22 p.m., Madera County Sheriff's Deputies responded to the La Vina Market at Avenue 9 and Road 24 in Madera County. The Deputies received information that Artemio Alfaro, was in the area and was wanted for two felony warrants. Mr. Alfaro was on felony probation for two felony convictions he suffered in 2018 for Penal Code section 273.5(a), domestic violence, and Penal Code section 594(a), felony vandalism.

The domestic violence incident was investigated by Madera Sheriff's Office Deputy Brendan Johnson on July 29, 2018. During that incident, Mr. Alfaro inflicted visible injuries on his ex-girlfriend when he struck her several times and choked her. On August 10, 2018, Mr. Alfaro was arrested by Madera Sheriff's Deputies for this domestic violence incident. During that arrest, as Deputies approached his house, Mr. Alfaro was seen in his front yard with a long rifle. Deputies then surrounded the house and only contacted Mr. Alfaro after he retreated into the house and came back outside without the rifle.

The felony arrest warrant that was being served on Mr. Alfaro on April 29, 2020 was based on an incident from April 6, 2020. During this incident, Mr. Alfaro violated an active court ordered domestic violence restraining order that prevented him from contacting the same victim from the 2018 domestic violence incident or going to her home. On this date, Mr. Alfaro came to her home, stole items from her garage, and violently took and stole her cell phone from her when she tried to call 911. A warrant was then issued for Mr. Alfaro's arrest for Penal Code section 211, robbery, Penal Code section 243(e), misdemeanor domestic battery, and Penal Code section 273.6(a), violation of a restraining order. This information was documented and available to Sheriff's Deputies who patrolled the area where Mr. Alfaro was known to frequent. Additionally, all of the Sheriff's Deputies involved in the incident on April 29, 2020 were aware of Mr. Alfaro's warrant and this information. Those Deputies were also aware of the 2018 domestic violence conviction and the circumstances surrounding his arrest for that incident.

Because of Mr. Alfaro's past criminal history and his reputation of being confrontational and running from law enforcement, the Sheriff's Deputies who were to assist in the arrest of Mr.



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Alfaro on April 29, 2020 were concerned for their safety and that of the people who would be in this area. They formulated a plan to contact him with several Sheriff's Deputies in their marked patrol vehicles in such a way that would cause Mr. Alfaro to go into the country and away from innocent people if he ran. Deputies would then try to arrest Mr. Alfaro and use Sheriff's K-9 Nacho if he tried to evade them. Deputy Brendan Johnson, Deputy Andrew Rodriguez and his trainee Deputy Santos Garcia, were close by at Road 24 and Avenue 10 ½. They were to converge on Mr. Alfaro if he ran and would try to force him back toward the other Deputies.

As Sergeant Jeffrey Thomas, Deputy Logan Majeski, and Deputy Jose Iniguez approached the area around La Vina Market, they were spotted by Mr. Alfaro. He ran from the area across Road 24 and got into a gray pick-up truck. Mr. Alfaro then drove the truck north on Road 24 at a high rate of speed until he turned onto a dirt road and drove into an orchard. The Deputies chased and Deputy Johnson activated his emergency lights and siren and became the lead vehicle in the pursuit. Deputy Johnson followed Mr. Alfaro through the orchard until he came out at Avenue 9. Mr. Alfaro then drove west on Avenue 9. He ran through the stop sign without stopping at a high rate of speed at Avenue 9 and Road 24.

After Alfaro ran the stop sign at Road 24, Deputy Johnson fell back to the secondary position in the pursuit and Deputy Majeski took over as the lead unit. From this point on, the pursuit reached speeds of over 100 miles per hour with Mr. Alfaro running through four more stop signs, without stopping, and at a high rate of speed. This road is a highly traveled two lane roadway that is frequented by slow moving agricultural vehicles. Mr. Alfaro turned onto another dirt road and drove through another orchard. Due to the truck's speed and the dust caused by Mr. Alfaro's driving, Deputies lost sight of the truck.

While searching for Alfaro's truck, Deputy Majeski entered a large clearing near a farmhouse just off of Avenue 6 and Road 20, located at 20160 Avenue 6. As Deputy Majeski entered the clearing he spotted Mr. Alfaro on foot approximately 40 yards from his gray pick-up truck. Deputy Majeski yelled at Mr. Alfaro numerous times to stop and get on the ground. Mr. Alfaro did not comply or follow those orders. He ran back to his truck, at which time Deputy Majeski deployed his K-9 Nacho. Mr. Alfaro then jumped head-first inside his truck through the open driver's side window. As he was attempting to position himself inside the truck, K-9 Nacho lunged towards Mr. Alfaro's feet and was able to bite his lower leg and remove his left shoe. Deputy Majeski, who had followed K-9 Nacho to the truck, reached inside the vehicle, and grabbed Mr. Alfaro's shirt to pull him out. Mr. Alfaro was able to break free from his grasp as Deputy Majeski continued to give commands to get out of the truck. Deputy Majeski then opened the driver's side door and gave K-9 Nacho another apprehension command. K-9 Nacho then attempted to bite Mr. Alfaro, but Mr. Alfaro was able to push K-9 Nacho away with his left hand.



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While this was happening, Deputy Iniguez arrived and parked his patrol vehicle in front of Mr. Alfaro's truck. Deputy Iniguez got out of his vehicle and tried to get to Mr. Alfaro through the open passenger's side window. Deputy Iniguez tried to gain control of Mr. Alfaro by grabbing his right arm. He also tried to turn off the truck by grabbing the keys. At the same time, Deputy Majeski was grabbing Mr. Alfaro by the left arm and eventually tried using his taser by directly applying the "touch prongs" to Mr. Alfaro. Mr. Alfaro then pulled away from the taser device and continued to resist.

Deputy Johnson then arrived on scene and parked his patrol vehicle next to Deputy Iniguez's, directly in front of Mr. Alfaro's truck. Mr. Alfaro then revved his motor and pushed forward and rammed his truck into both patrol vehicles. Mr. Alfaro then put the truck in reverse and accelerated backwards. When doing so, Deputy Majeski was struck by the open driver's side door and it pushed him into a storage container that was next to Mr. Alfaro's truck. Deputy Iniguez, at the same time, was still reaching through the passenger side window with his entire upper body inside of the truck as the truck reversed. Deputy Iniguez had to get out of the passenger side window and jump away from the truck. Mr. Alfaro then collided with a parked fuel tank trailer that was parked behind him before coming to a stop. Mr. Alfaro then drove the truck forward towards the storage container. At this time Deputy Johnson was out of his patrol vehicle with his gun drawn. Deputy Johnson yelled at Mr. Alfaro to stop two times. Unsure if Deputy Majeski was still in front of Mr. Alfaro's truck and fearing that Mr. Alfaro was going to run into Deputy Majeski, Deputy Johnson fired 7 times at Mr. Alfaro from his department issued firearm, a 9mm Smith and Wesson semi-automatic handgun. After a brief pause, Deputy Johnson fired 3 more shots as the truck crashed into another fuel tank trailer and the truck's forward momentum stopped. Mr. Alfaro was slumped in the driver's seat with his foot still on the accelerator. This caused the truck's engine to continue revving and made the back wheels spin in place causing white smoke to come out from under the truck.

Deputy Majeski was able to remove the keys from the truck causing the engine to stop. Mr. Alfaro was then removed from the truck, handcuffed, and first aid was rendered, including CPR until medical personnel arrived and took over. Mr. Alfaro was pronounced dead at the scene by medical staff shortly after they arrived.

Deputy Johnson was interviewed about his involvement in this incident. Deputy Johnson said that he was aware of Mr. Alfaro's violent criminal history having investigated Mr. Alfaro's domestic violence incident from 2018. Additionally, Deputy Johnson knew of the violent nature of the crimes for which Mr. Alfaro was to be arrested. Those crimes being robbery and domestic battery.



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Deputy Johnson discussed Mr. Alfaro's driving during the pursuit at over 100 miles per hour, running 5 stop signs while evading Deputies and driving through orchards at a high rate of speed, with little visibility, knowing field workers were nearby. Deputy Johnson specifically mentioned Mr. Alfaro's driving through the stop-sign at Road 24, at a high rate of speed without stopping. He believed that Mr. Alfaro would have "rammed our vehicles for sure" had they been blocking his path. Deputy Johnson indicated that this had an impact on him which caused him to believe that Mr. Alfaro was a danger to the public, his fellow Deputies, and himself.

At the location of the shooting, Deputy Johnson said that he saw Mr. Alfaro continue to disregard the Deputies commands and the attempts to place him under arrest. Specifically, he saw Deputy Majeski and Deputy Iniguez yell at him to stop and quit resisting and that he saw that Mr. Alfaro continued to resist even after K-9 Nacho was used and Deputy Majeski used his taser.

Deputy Johnson saw that after Mr. Alfaro ran his truck in to the patrol vehicles, that he accelerated backwards with Deputy Iniguez still hanging out of the passenger side window and that Deputy Majeski was struck by the open driver's door and knocked into the storage container. Deputy Johnson said that it was at this time that he yelled for Mr. Alfaro to stop and when he did not do so, he felt that the lives of Deputy Iniguez, Deputy Majeski and his own were in danger. At that time he fired his handgun at Mr. Alfaro. He believed that due to Mr. Alfaro's actions leading up to the shooting, that Mr. Alfaro would do whatever it took to avoid arrest. Deputy Johnson believed Mr. Alfaro's only escape routes were through where himself and Deputy Iniguez were standing or through where he believed Deputy Majeski to be.

An Autopsy was performed on Artemio Alfaro on April 30, 2020, by Dr. Mark Super. The cause of death was determined to be from multiple gunshot wounds. Mr. Alfaro was struck with 7 bullets, 5 to the body, 1 to the right arm, and 1 to the forehead.

RELEVANT FACTS NOT KNOWN TO THE DEPUTY

During the investigation of the shooting, Mr. Alfaro's truck was searched and two methamphetamine pipes were found inside. One was found in the center console, and the other was found on the rear passenger side floorboard.

A drug analysis was performed on Mr. Alfaro. It was determined that his level of intoxication was:

0.08 mg/L amphetamine, and
1.11 mg/L methamphetamine.



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Mr. Alfaro's level of methamphetamine was above the potentially toxic range of .2 - .5 mg/L and the amphetamine level was in the effective range of .02 - .15 mg/L.

Artemio Alfaro had the following convictions:

7/09/09	VC 12500(a)	Misdemeanor	Madera County
7/15/13	VC 14601.1(a)	Misdemeanor	Madera County
10/2/15	VC 14601.1(a)	Misdemeanor	Madera County
1/06/17	PC 148(a)(1)	Misdemeanor	Madera County
9/09/19	PC 273.5(a)	Felony	Madera County
9/09/19	PC 594(a)	Felony	Madera County
9/09/19	PC 148(a)(1)	Misdemeanor	Madera County
9/09/19	PC 594(a)	Misdemeanor	Madera County

APPLICABLE LAW

Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

A person acts in lawful self-defense or defense of another if:

1. He reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
2. He reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
3. He used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. He must have believed there was imminent danger of death or great bodily injury to himself or someone else. His belief must have been reasonable and he must have acted only because of that belief. A person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If he used more force than was reasonable, the killing was not justified.



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When deciding whether his beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. If his beliefs were reasonable, the danger does not need to have actually existed.

(CALCRIM 505, 2020-1 Edition)

Penal Code section 196 also provides that killing is justifiable and therefore not unlawful, if:

1. The person was a public officer; and,
 2. The killing was committed while he either:
 - A. Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to him or another person;
 - or
 - B. Reasonably believed, based on the totality of the circumstances, that:
 1. The person killed was fleeing;
 2. The force was necessary to arrest that person for the crimes of robbery, domestic battery, evading a peace officer and assault on a peace officer;
 3. The commission of the crimes of robbery, domestic battery, evading a peace officer and assault on a peace officer created a risk of or resulted in death or serious bodily injury to another person;
- and
4. The person killed would cause death or serious bodily injury to another person unless immediately arrested or detained.

A threat of death or serious bodily injury is 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 to another person. An



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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.

Totality of the circumstances means all facts known to the peace officer at the time, including the conduct of the officer and the person killed leading up to the use of deadly force.

Factors that may be considered when considering the totality of circumstances:

- Prior to the use of force, the peace officer identified himself as a peace officer and warned or attempted to warn that deadly force may be used;
- Prior to the use of force, the peace officer had objectively reasonable grounds to believe the person was aware that he was a peace officer and that deadly force may be used;
- The peace officer was able, under the circumstances, to identify or attempt to identify himself as a peace officer and to warn or attempt to warn that deadly force may be used.

A peace officer who makes or attempts to make an arrest need not retreat or stop because the person being arrested is resisting or threatening to resist. A peace officer does not lose his right to self-defense by using objectively reasonable force to arrest or to prevent escape or to overcome resistance.

(CALCRIM 507, 2020-1 Edition)

The test for determining whether a homicide was justifiable under California Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or to another.” (Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333; accord, Reynolds v. County of San Diego (S.D.Cal. 1994) 858 F. Supp. 1064; 1074 1075; People v. Rivera (1992) 8 Cal. App. 4th 1000, 1007.) Martinez v. County of L.A., 47 Cal. App. 4th 334, 349 (Cal. App. 2d Dist. 1996)

Penal Code section 192 provides that voluntary manslaughter is committed when the killer acted in imperfect self-defense or imperfect defense of another. This is defined as follows:



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The person acted in imperfect self-defense or imperfect defense of another if:

1. He actually believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; and
2. He actually believed that the immediate use of deadly force was necessary to defend against the danger; but
3. At least one of those beliefs was unreasonable.

In evaluating the peace officer's beliefs, consider all the circumstances as they were known and appeared to him.

A danger is imminent if, when the fatal wound occurred, the danger actually existed or he believed it existed. The danger must seem immediate and present, so that it must be instantly dealt with. It may not be merely prospective or in the near future.

Imperfect self-defense does not apply when he, through his own wrongful conduct, has created circumstances that justify his adversary's use of force.

If the decedent threatened or harmed the peace officer or others in the past, that may be considered in evaluating the peace officer's beliefs.

If he knew that the decedent had threatened or harmed others in the past, that may be considered in evaluating the peace officer's beliefs.

If he received a threat from someone else that he associated with the decedent that may be considered in evaluating the peace officer's beliefs.

(CALCRIM 571, 2020-1 Edition)

People v. Flannel (1979) 25 Cal.3d 668, 680–683 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531]; *In re Christian S.* (1994) 7 Cal.4th 768, 773 [30 Cal.Rptr.2d 33, 872 P.2d 574]; see *People v. Uriarte* (1990) 223 Cal.App.3d 192, 197–198 [272 Cal.Rptr. 693]

An officer has probable cause to believe that someone poses a threat of death or great bodily injury when facts known to the officer would persuade someone of reasonable caution that the



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suspect poses a significant threat of death or serious physical injury to the officer or others. (Tennessee v. Garner (1985) 471 U.S. 1, 4.)

In the related context of cases alleging excessive force by police, the test of reasonableness of an officer's use of deadly force is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (Graham v. Conner (1989) 490 U.S. 386, 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody the 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." (Id. at 396-397.)

CONCLUSION

Deputy Johnson reasonably believed that his life, and the lives of his fellow Deputies were in danger; that due to Mr. Alfaro's actions leading up to the shooting and Deputy Johnson's prior knowledge of his aggressive interactions with law enforcement, Mr. Alfaro would do whatever it took to avoid arrest. At the time Mr. Alfaro started to drive his truck forward, towards the Deputies, Deputy Johnson believed that Deputy Majeski was still next to the storage container and did not know if he was incapacitated or injured in some way. Deputy Johnson believed Mr. Alfaro's only escape routes were through himself and Deputy Iniguez or to drive through where he believed Deputy Majeski to be.

There is no evidence which would allow a reasonable trier of fact to find that Deputy Johnson did not actually believe that his life and those of his fellow deputies were in danger, that his response was not immediately necessary, nor that his action was disproportionate to the perceived threat. It cannot be proven beyond a reasonable doubt that Deputy Johnson did not act in lawful self-defense or defense of others. Therefore, it is the opinion of the Madera County District Attorney's Office that the use of force by Deputy Johnson did not involve any criminal conduct.

Respectfully submitted,

Sally O. Moreno
District Attorney