

SAN JOAQUIN COUNTY DISTRICT ATTORNEY
MEMORANDUM OF
OFFICER-INVOLVED CRITICAL INCIDENT
OF FEBRUARY 15, 2017
AT STATE ROUTE 99, LATHROP, CA.



TORI VERBER SALAZAR, DISTRICT ATTORNEY
OFFICER INVOLVED CRITICAL INCIDENTS UNIT
[MARCH 25, 2019]



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MEMORANDUM

TO: JODIE ESTARZIAU, CHIEF
MANTECA POLICE DEPARTMENT

FROM: SAN JOAQUIN COUNTY DISTRICT ATTORNEY

DATE: MARCH 25, 2019

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF
JOSE ALBERTO FELICIANO, (MPD DR #17-5001; CHP DR # 17-
00051).

Pursuant to the provisions of the San Joaquin County Officer-Involved Critical Incident Protocol, effective August 1, 1994, the responsibility of the Office of the District Attorney is to review the facts and determine what, if any, criminal charges should be filed whenever there is an officer-involved fatality or life-threatening incident.

This memorandum reviews the officer-involved shooting of Jose Feliciano on February 15, 2017. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Manteca Police Department, the California Highway Patrol, the San Joaquin County Sheriff-Coroner's Office, and the California Department of Justice.

INVESTIGATION SUMMARY

On February 15, 2017, the California Highway Patrol and the Manteca Police Department were dispatched, separately, to a pedestrian, later identified as Jose Feliciano (DOB 2/03/59), walking along State Route 99 (Highway 99), in and out of traffic. California Highway Patrol Officer Christopher Allen arrived on scene and was able to stop traffic while he approached Mr. Feliciano. Mr. Feliciano was armed with a knife and refusing to comply with verbal commands. Subsequently, Manteca Police Department dispatched Officer Mitchell Ellis to provide assistance.

After Officer Ellis arrived, CHP Officer Allen used his TASER in an attempt to incapacitate Mr. Feliciano while MPD Officer Ellis provided lethal cover¹. The TASER was activated twice and was ineffective. After the second time the TASER was discharged, Mr. Feliciano charged at Officer Ellis with his knife. Mr. Feliciano quickly closed the distance between he and Officer Ellis and Officer Ellis fired his service weapon three times, striking Mr. Feliciano.

Life saving measures were began and later taken over by paramedics. Mr. Feliciano was transported to San Joaquin County Hospital. On February 22, 2017, Mr. Feliciano succumbed to complications and died².

The California Highway Patrol and Manteca Police Department invoked the protocol on February 15, 2017, and a multi-agency task force formed to investigate the lethal force by a police officer as provided by the Memorandum of Understanding for the San Joaquin County Officer-Involved Critical Incident Protocol. The task force consisted of the San Joaquin County District Attorney's Office's Bureau of Investigations (hereinafter "BOI"), the California Highway Patrol (hereinafter "CHP"), the Manteca Police Department (hereinafter "MPD"), the San Joaquin County Sheriff-Coroner's Office, and the California Department of Justice (hereinafter "DOJ").

FACTUAL SUMMARY

On February 15, 2017, CHP Officer Christopher Allen responded to Highway 99 just south of Lathrop Road in Manteca after a number of calls reported a man walking along the edge of the Highway 99, running in and out of traffic. CHP Officer Allen stopped the freeway traffic and began de-escalation tactics to calm Mr. Feliciano. CHP Officer Allen saw Mr. Feliciano was armed with a knife and kept a distance of approximately twenty feet. CHP Officer Allen ordered Mr. Feliciano to drop his knife. Over the course of this incident, CHP Officer Allen ordered Mr. Feliciano to drop his knife over two dozen.

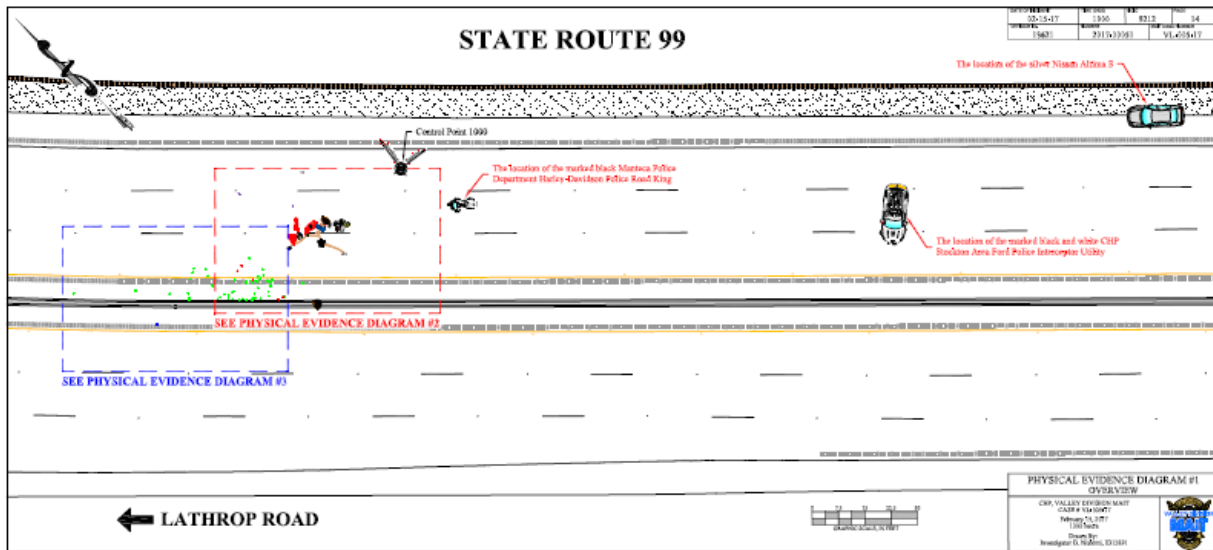
Mr. Feliciano refused to comply with the orders and ended up running from the edge of the freeway to the center divider.

MPD Officer Mitchell Ellis arrived on scene for assistance.³ Also at the scene was Witness #1, Mr. Feliciano's nephew. Witness #1, standing in the number one

¹ *"Lethal cover" refers to a tactic when one officer uses less-than-lethal force, a secondary officer will provide support (cover) with a firearm (lethal.)*

² *See below, "Subsequent Investigation, Pathology."*

lane, was trying to calm the situation and was approximately seven to ten feet from Mr. Feliciano, who standing behind the fog line next to the center divider barrier. CHP Officer Allen decided to use less-than-lethal force by utilizing his TASER to detain Mr. Feliciano and conferred with MPD Officer Ellis. MPD Officer Ellis agreed he would provide lethal cover with his service weapon. MPD Officer Ellis approached Mr. Feliciano and told Witness #1 to step away since Witness #1 was between MPD Officer Ellis and Mr. Feliciano. Witness #1 complied and retreated to the number three lane.



CHP MAIT Diagram

CHP Officer Allen then discharged his TASER twice but it had no effect on Mr. Feliciano. MPD Officer Ellis had now closed the distance between he and Mr. Feliciano to approximately twelve feet. After the second time the TASER was discharged, Mr. Feliciano started to charge at CHP Officer Allen, and then changed directions toward MPD Officer Ellis. Both Officers thought they were about to be stabbed and killed by Mr. Feliciano. MPD Officer Ellis began yelling at Mr. Feliciano, “Don’t! Don’t! Stop!” but Mr. Feliciano continued toward MPD Officer Ellis while swinging the knife at shoulder height. When Mr. Feliciano closed to within approximately six feet of MPD Officer Ellis, Officer Ellis, as he backed away, fired his service weapon three times, stopping as soon as Mr. Feliciano collapsed.

Also present on the scene were CHP Officers Michael Glanville and Adam Madrid, and MPD Officer Bryan Elness. None of these officers were involved in the incident.

³ See below, “*Subsequent Investigation, Video Documentation*”.

Medical personnel arrived shortly and rendered aid. During this time, Mr. Feliciano was combative, kicking at medical personnel. Mr. Feliciano was transported to the San Joaquin General Hospital. A week later, on February 22, Mr. Feliciano died after he went into septic shock and suffered kidney failure.

WITNESS STATEMENTS

Investigators from BOI, CHP, and MPD jointly interviewed the involved officers, medical personnel, and civilian witnesses. Whenever possible, these interviews were recorded. The investigators also conducted a canvass of the area for additional witnesses. Not every witness interviewed is summarized here. The individual witness synopses below are to assist the reader in supplementing the above Factual Summary. Civilian witnesses are identified in this memorandum as “Witness #” to protect their privacy rights. See, “Confidential Page APPENDIX A: Civilian Witness Information.”

Manteca Police Department Officer Mitchell Ellis

Officer Mitchell Ellis was interviewed February 15, 2017, at 5:58 p.m., at the Manteca Police Department and stated the following:

Officer Ellis was a nine-year veteran officer of the Manteca Police Department. On this day, he was working on motorcycle patrol. Officer Ellis was a peace officer for nine years. Besides his patrol duties, he is also a member of the SWAT Team and acts as the MPD Range Officer. He was wearing a standard MPD motorcycle uniform, and driving a MPD marked Harley Davidson motorcycle. He was armed with his duty service weapon; a .40 caliber Sig Sauer model P320 pistol.

Officer Ellis was at the MPD station when dispatch asked for assistance for the CHP regarding an individual walking in and out of traffic on SR 99. Officer Ellis left the station and travelled southbound on Highway 99 until he saw CHP Officer Christopher Allen talking to Mr. Feliciano near the center divider by the concrete center divider. Officer Allen had stopped all of the northbound highway traffic on Highway 99. He and CHP Officer Allen acknowledged each other and Officer Ellis made a U-turn at Yosemite Avenue, and proceeded down the shoulder until he reached their location. Officer Ellis parked his motorcycle, activated his body worn camera, and took his jacket off.

Mr. Feliciano was in a verbal dispute with Witness #1. Officer Ellis spoke to CHP Officer Allen and received some background information regarding Mr. Feliciano being non-compliant to verbal orders, and possibly being mentally ill or

suicidal. Officer Ellis said he could hear Witness #1 attempting to calm Mr. Feliciano down, telling him the police were there to help him, and that they did not want to hurt him. Mr. Feliciano began threatening to kill Witness #1. Officer Ellis said he could see Mr. Feliciano had a blanket over his left shoulder and observed a knife in his right hand held down, below his belt. He described the knife as having a three and one-half to four inch blade.

CHP Officer Allen informed Officer Ellis he would use his TASER in the hopes of incapacitating Mr. Feliciano, and asked Officer Ellis to provide lethal cover. Officer Ellis ordered Witness #1 to stand back away from Mr. Feliciano. Witness #1 took several steps back away from Mr. Feliciano. CHP Officer Allen deployed his TASER but it was ineffective. Mr. Feliciano froze for a second, but the TASER seemed to agitate him further. Mr. Feliciano began moving toward CHP Officer Allen and the TASER was used again. Mr. Feliciano seemed to walk right through it. Mr. Feliciano then turned and began moving toward Officer Ellis.

Officer Ellis was approximately ten to twelve feet away from Mr. Feliciano and CHP Officer Allen. When Mr. Feliciano changed direction, his knife came up to near shoulder height and he began quickly moving toward Officer Ellis. Officer Ellis believed he was about to be stabbed or killed. Officer Ellis took a few steps backward and as Mr. Feliciano began to close the distance, he fired his service weapon three times. Officer Ellis estimated the distance between himself and Mr. Feliciano at the time he fired his service weapon, to be five to seven feet.

Officer Ellis said he stopped firing his service weapon as soon as Mr. Feliciano went down. At the point he fired his service weapon, Officer Ellis felt that there not any other way to stop Mr. Feliciano without becoming seriously injured or killed. Once Mr. Feliciano was down, Officer Ellis continued to provide lethal cover while another officer moved in and kicked the knife away. Other officers immediately began life-saving measures until paramedics arrived and took over. Mr. Feliciano was then transported to San Joaquin County Hospital.

CHP Officer Christopher Allen

Officer Allen was interviewed February 15, 2017, at 6:01 p.m., at the California Highway Patrol station, in San Joaquin County, and stated the following:

Officer Allen was a ten-year veteran officer of the California Highway patrol. On this date, he was working patrol while wearing a standard issued CHP uniform, and driving a standard marked CHP patrol unit.

At approximately 10:00 a.m., he was taking a stolen vehicle report when he received a dispatch of a pedestrian on the freeway. Officer Allen continued to take the report while monitoring the radio traffic when a second call came out stating the pedestrian was now walking near the fog line and may have entered in and out of traffic. Officer Allen asked for dispatch to check with MPD to see if they had someone available. In addition, he received information from the subject's family that the subject was depressed and possibly despondent. Once Officer Allen received this information, he stopped taking the report and responded to the location.

Officer Allen was travelling northbound Highway 99 near Lathrop when he saw Mr. Feliciano walking on the fog line against traffic on the northbound side of the highway. He stopped his patrol vehicle approximately thirty to forty feet behind Mr. Feliciano, and exited the patrol vehicle. Officer Allen began talking to Mr. Feliciano, but Mr. Feliciano seemed to get more agitated. Officer Allen noticed a man and woman in a vehicle parked by his patrol car. Officer Allen approached them and the man, Witness #1, explained he was Mr. Feliciano's nephew. Witness #1 then exited his vehicle and began talking to Mr. Feliciano, attempting to calm him down.

When there was a break in the traffic, Mr. Feliciano ran across all three lanes toward the center divider. Officer Allen moved his patrol vehicle into the lanes to block and stop oncoming traffic. Officer Allen updated dispatch of the situation and requested additional units to respond. He then walked back toward Mr. Feliciano. Mr. Feliciano was ranting, "You guys just fucking shoot everyone. Just fucking shoot me." Officer Allen could see Mr. Feliciano had something in his hand, holding it low. When he looked closer, Officer Allen saw it was a knife with a three to four inch blade.

Officer Allen was calm and attempting to get Mr. Feliciano to engage with him by asking him why he wanted to be shot, and, "let's just figure this out," but Mr. Feliciano would not engage. While he was attempting to talk to Mr. Feliciano, MPD Officer Ellis arrived on his motorcycle. Officer Allen repeatedly told Mr. Feliciano to drop the knife and to talk to him about what was going on. Mr. Feliciano refused to drop the knife and would not engage him in any conversation. Mr. Feliciano just continued to tell Officer Allen to shoot him.

After MPD Officer Ellis had arrived, Mr. Feliciano looked at Witness #1 and said, "I should just fucking kill you." MPD Officer Ellis then asked Witness #1 to back away, which he did. Officer Allen told MPD Officer Ellis that he would use the TASER to attempt to incapacitate Mr. Feliciano and asked MPD Officer Ellis to

provide lethal cover. Officer Allen then warned Mr. Feliciano that he was going to be “tased.” Mr. Feliciano said he did not want to be “tased”; he wanted to be shot with a real gun.

Mr. Feliciano moved a few steps away from Officer Allen, and toward the center divider wall, but was still holding the knife down low. Officer Allen moved a few steps toward Mr. Feliciano to make sure he had a proper distance for the TASER, and discharged it. The TASER seemed to stun Mr. Feliciano for a second but then it appeared it only agitated him. Mr. Feliciano seemed to walk right through it and began moving toward MPD Officer Allen. Mr. Feliciano utilized the TASER a second time, and again there was no perceptible effect on Mr. Feliciano. Mr. Feliciano continued to walk toward him and then looked at MPD Officer Ellis, brought the knife up near shoulder height, and began charging at Officer Ellis with the knife up high. Officer Allen heard three shots fired and Mr. Feliciano went to the ground but still had the knife next to him. Another officer came in and kicked the knife away. Additional officers came in and placed Mr. Feliciano in handcuffs.

Officer Allen said that as soon as Mr. Feliciano was secured, the handcuffs were removed, life-saving measures were begun, and continued until paramedics arrived and took over treatment.

Officer Allen believed that before the shots were fired, he was about to be stabbed with the knife. When Mr. Feliciano turned toward Officer Ellis and closed the distance between the two of them, Mr. Feliciano was within five feet of Officer Ellis when the shots were fired. Officer Allen estimated he told Mr. Feliciano to put the knife down, twenty to thirty times, while he had been talking to him.

Witness # 1

Witness # 1 was interviewed on February 15, 2017, at 2:14 p.m., by investigators, at the Manteca Police Department, and stated the following:

Witness #1 identified himself as Mr. Feliciano’s nephew. For the last week, Mr. Feliciano has been “off the wire,” which family refers to as PCP flashbacks based on Mr. Feliciano prior drug abuse problem. Witness #1 explained that when these episodes occur, one never knows how long they will last, and you just have to ride it out.

This morning; Mr. Feliciano came out of his room and told Witness #1 that he had lost his mind. Mr. Feliciano was yelling out the front door, “You KKK motherfuckers, come and get me!” Mr. Feliciano walled outside with a blanket over

his shoulders. Witness # 1 followed Mr. Feliciano outside and tried to get him to come back inside and to calm down. Mr. Feliciano told him to get away from him, and that he was going home. Witness # 1 took the statement to mean he was going to die, and wanted to go to heaven.

Witness # 1 grabbed onto Mr. Feliciano, who began pushing him away. While he was holding onto Mr. Feliciano, he felt a hard object in Mr. Feliciano's shirt pocket, which he believed to be a knife. Witness # 1 said Mr. Feliciano generally had a knife on him, sometimes a gun although the gun was never loaded. Mr. Feliciano was able to get out of his grasp and began walking toward the freeway. Witness # 1 walked back to the house.

Witness # 1 told his grandmother what had happened and she told him to go after Mr. Feliciano. Witness # 1 and his girlfriend, Witness #2, got into a car and began driving around looking for Mr. Feliciano. While they were driving around, he received a phone call from his mother who told him she had just seen Mr. Feliciano on the freeway, under the overpass. She told him that she had pulled over to see what was going on, and Mr. Feliciano had pointed something at her that she believed could have been a gun, so she drove away.

Witness # 1 and his girlfriend found Mr. Feliciano on the freeway and were following him with the car while driving slowly on the shoulder. Mr. Feliciano started running in and out of traffic and was almost hit by a big rig truck. Shortly after this, the CHP showed up.

Witness # 1 made contact with CHP Officer Allen and told him that Mr. Feliciano was "5150."⁴ Officer Allen then moved his patrol vehicle to block oncoming freeway traffic and was attempting to calm Mr. Feliciano down.

Witness # 1 approached Mr. Feliciano and tried to get him to calm down. Witness # 1 implored Mr. Feliciano to listen to him and the officer saying, "These people do not want to hurt you!" Mr. Feliciano began threatening Witness #1's life and he could see Mr. Feliciano holding a knife. Other officers had arrived and asked him to step back away. Witness # 1 heard the TASER go off two times and it had no effect on Mr. Feliciano. Mr. Feliciano then charged at one of the officers and was only about five feet from MPD Officer Ellis when MPD Officer Ellis shot Mr. Feliciano.

⁴ Presumably, Witness # 1 was referring to Welfare and Institutions Code section 5150 that refers to a person who, as a result of a mental health disorder, is danger to others or self.

Witness # 1 said that when Mr. Feliciano charged at Officer Ellis, he had the knife raised around shoulder height. In his opinion, Mr. Feliciano was trying to kill MPD Officer Ellis. Witness # 1 said he understood why Officer Ellis shot; he just wishes he had shot at his knees or legs.

Witness # 1 also reported that Mr. Feliciano had previously said that he didn't want to die of natural causes and that he wanted to go out like "a bad ass motherfucker."

SUBSEQUENT INVESTIGATION

Video Documentation

MPD Officer Mitchell Ellis's Body Worn Camera (BWC)

A recording of MPD Officer Mitchell Ellis's BWC was obtained and reviewed. The recording shows the following:

Officer Ellis arrives on scene on his motorcycle. Mr. Feliciano is approximately twenty feet from Officer Ellis. Witness # 1 appears to be approximately ten feet from Mr. Feliciano. Mr. Feliciano can be seen with a blanket draped over his left shoulder and appears to be holding a knife in his right hand down low near his right leg. Officer Ellis removes his jacket and gloves. In the background, Witness # 1 is telling Mr. Feliciano that the officers did not want to hurt him. While this is happening, CHP Officer Allen speaks to Officer Ellis and advises him he is going to use his TASER, and confirms that Officer Ellis will provide cover.

Mr. Feliciano removes his blanket and puts it down over the center divider. Officer Ellis tells Witness # 1 to step back and away. Officer Allen tells Mr. Feliciano he is going to be "tased." The TASER is activated two times. After the second TASER deployment, Mr. Feliciano moves quickly toward Officer Ellis while swinging the knife from side to side at shoulder height. Officer Ellis yells, "Don't! Don't! Stop!" Three shots are then fired in quick succession. At the time the rounds are fired, from the camera view, it appears that Mr. Feliciano is within six feet of Officer Ellis.

Firearm Examination

DOJ criminalists arrived at the Manteca Police Department shortly after the incident and collected Officer Ellis's firearm.

Officer Mitchell Ellis's Firearm

Officer Ellis's firearm was a .40 caliber Sig Sauer model P320 pistol. Fifteen cartridges were in the magazine and one cartridge was in the chamber. The three shell cases retrieved from the scene were compared to test fired shell cases and were determined to have been fired from Officer Ellis's firearm.

Officer Christopher Allen's' TASER, Model X2

The TASER log indicated that the Officer Allen's TASER was deployed twice for a duration of two seconds and five seconds, respectively.

Scene Evidence

A six member CHP Multidisciplinary Accident Investigation Team (MAIT) processed and documented the scene. In addition to the three shell cases and the TASER, MAIT located a fixed blade knife with three and one-half inch blade.



[Photo of Knife at Marker #1]

Pathologist's Report

On February 24, 2017, San Joaquin Pathologist Susan J. Parson, conducted the autopsy of Mr. Feliciano. Dr. Parson's autopsy revealed that Mr. Feliciano suffered three gunshot wounds⁵: 1) a penetrating gunshot wound to the medial left chest; 2) a penetrating gunshot wound to the left chest medial to the left nipple; and, 3) a perforating gunshot wound to the left forearm. None of gunshot wounds were immediately fatal.

Toxicology results from Feliciano's blood drawn at the hospital showed the presence of benzodiazepines.

Mr. Feliciano was pronounced dead at the San Joaquin General Hospital a week after the shooting; February 22, 2017. Dr. Parson's determined the cause of death to be "Complications of Gunshot Wound of Torso. Gunshot Wounds to Chest and of Forearm and Hepatic Cirrhosis are contributory factors to his death."

Legal Analysis

Under Penal Code sections 197 and 198, homicide is justifiable and not unlawful when committed by a person who reasonably believed that he, or someone else, is in imminent danger of being killed, suffering great bodily injury, or to prevent a forcible and atrocious crime (*People v. Ceballos* (1974) 12 Cal.3d 470, 478). For a homicide to be in self-defense, the person must actually and reasonably believe in the need to defend with deadly force (*People v. Flannel* (1979) 25 Cal.3d 668, 674). If the belief both subjectively exists and is objectively reasonable, it constitutes "perfect self-defense" and the homicide is considered legally justified. (*In re Christian S.* (1994) 7 Cal.4th 768, 783).

Penal Code Section 197 states:

Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

⁵ The order of the wounds here or in the autopsy report do not reflect the order in which Mr. Feliciano was shot or struck. This normally is not possible to do and it was not done in this case.

2. When committed in defense of habitation, property, or person against one manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in violent, riotous or tumultuous manner. To enter the habitation of another for the purpose of offering violence to any person therein; or

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline in further struggle before the homicide was committed.

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Homicide committed by a law enforcement officer is governed by Penal Code section 196 (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333). Penal Code section 196⁶ states:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either-

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

The test whether a police officer may use deadly force to apprehend a fleeing felon was announced in *Tennessee v. Garner* (1985) 471 U.S. 1, 11-12: “Where the officer has probable cause to believe 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. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime

⁶ See also, jury instruction CalCrim 507.

involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

The test of reasonableness is judged by an objective standard 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. Conner* (1989) 490 U.S. 386, 396-397, see also, *Jeffers v. Gomez* (9th Cir. 2001) F.3d 895, 909, “broad discretion...must be afforded to police officers who face tense situations.”)

Penal Code section 835a also states that, “[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 an officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or prevent escape or to overcome resistance.” As stated above, “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary.” (*Garner, supra*, 471 U.S. at 11-12.)

The test for determining whether a homicide was justifiable under Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or to another.” (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334). Reasonableness must be considered in the context of the “dangerous and complex world” police officers face every day, because “what constitutes ‘reasonable’ action might seem quite different to someone facing a possible assailant than to analyzing the question at leisure.” (*Martinez, supra*, 47 Cal.App.4th at 343, quoting *Smith v. Freeland* (6th Cir. 1992) 954 F.2d 343, 347).

Application of Law

In analyzing the reasonableness of the decision by Officer Ellis to use deadly force, the totality of the circumstances, including the information that the individual officer possessed at the time of his decision, is examined. 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, supra*, 490 U.S. at 396.)

In the instant case, the following set of facts have been sufficiently established:

1) CHP Officer Allen was acting within reason when he deployed of less-than-lethal force (TASER) after he used verbal de-escalation techniques.

2) CHP Officer Allen was acting within reason when he requested MPD Officer Ellis to provided lethal cover during his own use of less-than-lethal force.

3) MPD Officer Ellis was acting within reason when he provided lethal cover for CHP Officer Allen during the deployment of less-than-lethal force.

4) MPD Officer Ellis's use of lethal force was reasonable and necessarily committed to prevent his immediate great bodily injury or death from being stabbed.

CONCLUSION

In applying the prevailing legal standards, the totality of the circumstances, and in light of all of the evidence obtained from the multi-task force investigation, it is the opinion of the District Attorney that the force used by CHP Officer Allen with regard to the TASER, and the lethal use of force by MPD Officer Ellis on February 15, 2017, was justified, and that no criminal charges are warranted.

CONFIDENTIAL APPENDIX SECTION

CONFIDENTIAL PAGE

APPENDIX A

Civilian Witness Information

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