

**REPORT OF WOODLAND POLICE DEPARTMENT
IN CUSTODY DEATH OF MICHAEL BARRERA
ON FEBRUARY 8, 2017**



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
JULY 17, 2017**

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The Yolo County District Attorney's Office, as an independent agency, has concluded the review and investigation of the above referenced matter involving the death of Michael Barrera, while he was being detained by the Woodland Police Department on February 8, 2017. No consideration was given to civil liabilities, tactics, departmental policies or procedures. This review addresses only whether or not there is sufficient evidence to support the filing of any criminal charges in connection with the death of Michael Barrera. For the detailed reasons set forth below, our office concluded that the members of the Woodland Police Department had used reasonable and necessary force during the detention and arrest of Michael Barrera. The cause of death was determined to be sudden death with methamphetamine intoxication during restraint by law enforcement. There is insufficient evidence to conclude that the use of force by the officers was unreasonable or had proximately caused or contributed to the unfortunate death of Michael Barrera. Hence, no criminal charges will be filed in this case.

INTRODUCTION

In the afternoon of February 8, 2017, the Woodland Police Department received three separate dispatch calls to respond to Matmor Road and its surrounding areas regarding a male adult who was armed with weapons and was last seen exposing himself to others. The weapons were reported to be a large kitchen knife, a pair of scissors and a golf club. The suspect was described as a Hispanic male with a towel, bald, wearing a coat, shorts and tennis shoes. The officers located Michael Barrera, who matched the description of the suspect, on

Garfield Place and he was holding a golf club in his hand. Barrera appeared to be very agitated. Officers made attempts to calmly convince Barrera to abandon his golf club but were unsuccessful. At one point, Barrera appeared as if he was going to attack an officer with the golf club, followed by turning around and tackling another officer onto the ground. A struggle ensued while the officers desperately tried to restrain Barrera in handcuffs. Barrera continued to scream and struggle even after he was placed in handcuffs. The struggle ceased all of a sudden when Barrera began to vomit, and he shortly thereafter became non-responsive. Officers immediately summoned medical assistance and rendered CPR while keeping Barrera's airway unobstructed. Barrera was transported to the Woodland Memorial Hospital where he was shortly pronounced dead.

The Yolo County Sheriff's Department (YCSO) conducted the investigation in this case, which included identifying and interviewing law enforcement personnel and civilian witnesses, documenting and photographing relevant evidence, diagramming the location where the incident occurred, and attending the postmortem examination. The Yolo County District Attorney's Office has conducted an independent evaluation and analysis of the incident. Our office has reviewed police reports and other evidence to include, but not limited to, Woodland Police Department crime and supplemental reports, audio and/or video recordings of patrol car cameras, CAD logs, apartment surveillance videos, taser report, autopsy and coroner's report, civilian witnesses and police officer interviews, incident related photographs and diagrams, toxicology report, and Yolo County Sheriff's Department investigation reports.

STATEMENT OF FACTS

On February 8, 2017, between 12:14pm and 12:35pm, three concerned citizens called 911 regarding a male subject, later identified as Michael Barrera, armed with weapons walking around the residential neighborhood near Matmor Road and Coolidge Place in the City of Woodland, Yolo County. Callers described those weapons as a large kitchen knife, a pair of scissors and a golf club. Woodland Police immediately responded but was unable to locate Barrera at the last reported locations. Through the assistance of a resident, the officers made contact with Barrera on Garfield Place in Woodland, California. Garfield Place is situated in a residential neighborhood and minutes away from Woodland Christian School. Officer Lal is familiar with the residents in the neighborhood which include children and elderly citizens. It is not uncommon for residents to leave their doors unlocked. Additionally, during the initial search, Sergeant Davis recalled seeing over 50 kids on the playground at the Woodland Christian School, which was only a few minutes away from Garfield Place.

Woodland Police Department Sergeant Krause, Sergeant Davis and Officer Lal were amongst the first to respond to Garfield Place. Upon Arrival, they observed Barrera standing outside a residence with a golf club. Based on their observations, Sergeant Krause exited his patrol vehicle with his sidearm drawn while giving clear commands to Barrera to drop his golf club. Barrera did not comply and walked away from the officers. Sergeant Davis and Officer Lal followed with their tasers drawn. Officer Lal also asked Barrera to drop his golf club, which Barrera again ignored. Sergeant Davis then took over command and he attempted to calmly convince Barrera to let go of the weapon. Instead

Barrera dropped a towel with weight clamps onto the sidewalk and proceeded to the front yard of 1367 Garfield Place. Sergeant Davis again told Barrera to drop the golf club. Barrera continued to walk away from the officers until he reached 1363 Garfield Place where he removed his jacket and discarded it on the ground. A pair of scissors was later recovered inside the jacket pocket. During the initial encounter, officers gave repeated commands to Barrera to drop the golf club, which Barrera ignored. Instead he was acting agitated and began yelling profanities at the officers. Barrera stated that a golf club was not a deadly weapon and told the officers to put their gun and tasers down.

When Barrera reached 1350 Garfield Place, he walked up onto the driveway and suddenly raised the golf club over his head and charged toward Sergeant Krause. Sergeant Krause pointed his firearm at Barrera but did not discharge it. As Barrera was charging at Krause, it appeared as if Barrera had lost his footing on the slippery and muddy grass. He went down on the ground, dropping the golf club. Following the fall, Barrera immediately bounced back up from the ground and attempted to jump through a fence into the backyard of a residence. The officers were concerned for the safety of the residents nearby because Barrera had not been searched for weapons and he appeared to be extremely agitated. Additionally, during the initial search of the area, Sergeant Davis recalled seeing over 50 kids in the playground at Woodland Christian School, which was only a few minutes away from Garfield Place. At this juncture, Sergeant Davis' primary objective was to get closer to Barrera so they could physically restrain him in order to minimize the risk of Barrera escaping and posing a safety hazard to other citizens.

As Barrera attempted to jump over a fence to a resident's yard, the fence broke. Barrera immediately turned around and charged at Sergeant Davis. The force brought both Barrera and Sergeant Davis onto the ground. Officer Lal deployed his taser with the taser probes making contact with Barrera's lower hip area. However, the taser did not have any effect on Barrera as Barrera continued to fight with the officers. Sergeant Krause attempted to control Barrera's arm. Officer Lal activated his taser a second time through a three-point contact as the other officers struggled to restrain Barrera. The taser deployment again did not have any effect on Barrera. Barrera began to grab and dig his fingers into Sergeant Davis' eyes and face, which resulted in bleeding and a laceration under his eye. At this time, Sergeant Davis was covered in mud so he was unable to have a good grip on Barrera's hands. Sergeant Davis applied a few strikes to Barrera's face in an attempt to gain compliance and control of Barrera's arms. Sergeant Davis continued to order Barrera to stop resisting. This was followed by a third taser deployment and Barrera continued to fight through the tase. Sergeant Davis asked Officer Lal to cease the taser deployment due to the fact that Sergeant Davis could feel the electrical current from the taser and it was causing his arm to shake. Seeing that the taser had no effect on Barrera and the three officers could not maintain enough control over Barrera to handcuff him, Sergeant Krause called for Code 3 cover.

Officer Wright arrived at the location shortly thereafter and assisted in taking control of Barrera's arm. Officer Gray responded as well and she took control of Barrera's legs to prevent him from kicking. When the officers were finally able to secure Barrera in handcuffs, with the exception of Officer Gray, the

remaining officers disengaged from Barrera while Officer Gray continued to attempt to maintain control of Barrera's legs. Barrera continued to kick and tried to lift his legs off the ground. At this time, the side of Barrera's face was on the ground, however, the officers were able to clearly see his nose and mouth to ensure an open airway.

While Barrera was still down on the ground, he continued to resist by screaming, kicking his legs, and attempting to lift his head and shoulder off the ground. Barrera's continued resistance was concerning to the officers due to the fact that a person could overcome a control hold if that person was able to move his head and shoulder. In response, Officer Wright put his knee over Barrera's shoulder with just enough force to overcome the resistance from Barrera. At one point, Barrera said he could not breathe. Officer Gray responded by stating that Barrera was talking and he was fine. A little over a minute after Barrera said he could not breathe, the audio captured Officer Gray stating Barrera was still breathing. During the struggle, Barrera began to grab and scratch Officer Wright's hands and legs, while continuing to lift his legs. Officer Wright ordered Barrera to stop scratching and grabbing onto him. Officer Wright asked Barrera what his first name was to which Barrera said the officer already knew his identity. All of a sudden, Barrera began to vomit and liquid was coming out of Barrera's mouth. Barrera then became unresponsive as he ceased to grab onto Officer Wright's hands. Barrera continued to cough up liquid. The officers immediately turned him over and summoned medical assistance.

One of the officers checked but could not detect a pulse from Barrera. Officer Drobish promptly started CPR and Officer Bell assisted in the

resuscitation efforts. Officer Bell could be heard on the video telling Barrera, "[s]tay with us. We have an ambulance on the way." Liquid and other substance continued to emerge from Barrera's mouth during CPR. Officer Wright performed finger sweeps in Barrera's mouth to ensure Barrera had an unobstructed airway. Officers took turns to continue resuscitation efforts until the paramedics responded shortly thereafter and moved Barrera to a more open area for further medical treatment. Barrera was then transported to the Woodland Memorial Hospital where he was pronounced dead at 1:41p.m.

During this encounter, no other weapons were used on Barrera other than the taser. According to the patrol car camera videos, the time between the officers initial arrival at Garfield Place to the time Barrera was last heard on the recording was approximately 3 minutes and 48 seconds. From the time Barrera was last heard on the video to the time an officer announced "he's out" was approximately 1 minute and 18 seconds. Barrera could be heard on the audio continuously screaming and moaning until he became unconscious. During the brief struggle between Barrera and the officers, Barrera did not at any point act or verbally indicate to the officers that he was going to comply with their orders or was willing to surrender.

During subsequent interviews, all the police officers involved in this incident stated that they did not recall having any prior contacts with Barrera.

WITNESS STATEMENTS

A. John Doe #1

He was drawn outside to the front yard of his residence when his dog was barking followed by some commotions. He observed three Woodland police officers trying to restrain Barrera. He heard the taser deployed three times but was surprised when it did not work effectively on Barrera. Instead, Barrera continued to kick and move his arms and head around, and tried to get away from the officers. John Doe #1 heard the officers telling Barrera to stop resisting multiple times but he was "majorly resisting." The officers were having trouble getting Barrera under control and he became concerned for the officers. While he did hear Barrera say at one point he could not breathe, he believed Barrera was saying that just to get the officers off him since Barrera had been trying to get away from the officers. John Doe #1 described the situation as a "major threat" and, in his opinion, the officers were doing everything "humanly possible" to restrain the suspect.

B. John Doe #2

He answered the door to a male subject who was swinging a golf club. The male said the police and other people were going after him and trying to kill him, then the male departed. John Doe #2 went outside and heard the officers asking the male to put down the golf club. John Doe #2 heard the male stating he was not armed followed by a series of profanities.

C. John Doe #3

He was one of the three 911 callers. John Doe #3 responded to a knock on his residence door, and when he opened the door, he saw Barrera sitting on a bench in his front yard. Barrera was carrying a golf club and he was able to see 2-3 inches of a kitchen butcher knife protruding from Barrera's jacket pocket. John Doe #3 asked Barrera about the golf club and the knife, to which Barrera claimed three people had tried to jump him. John Doe #3 said he would get Barrera a glass of water and he would call the police for him. When John Doe #3 returned, he saw Barrera had left. He located Barrera on Garfield Place so he alerted the officers who were searching in the area. He heard officers repeatedly giving commands to Barrera but Barrera refused to comply. Barrera took off his jacket at one point. Barrera appeared to be highly agitated and he was moving erratically from the sidewalk to the yards. During the encounter with the police, John Doe recalled seeing Barrera armed with a golf club.

PATHOLOGY/ CAUSE OF DEATH

An autopsy was performed at the Yolo County Coroner's morgue by Forensic Pathologist Dr. Brian M. Nagao on February 9, 2016. While there were multiple scattered abrasions and contusions on Barrera's body, there was no obvious significant external trauma or signs of fatal injuries observed during the postmortem examination. Rib fractures and bruises were present near the chest area which were consistent with CPR. The two needle-sized punctures on the left flank and left hip were consistent with taser deployment. Parallel linear

contusions were found on the right and left wrists which were consistent with Barrera being handcuffed.

A rectal temperature of 37.8°C (100.4°F) was obtained four minutes after Barrera was pronounced dead. Dr. Nagao determined the immediate cause of death in this case to be sudden death with methamphetamine intoxication during restraint by law enforcement. According to Dr. Nagao, there is a possibility that the decedent could have died with the quantitated level of methamphetamine in his blood without getting into an altercation with law enforcement. On the contrary, Dr. Nagao stated that he cannot determine if the physical contact pathologically caused or contributed to the death.

CRIME LABORATORY REPORTS AND ANALYSES

A. TOXICOLOGY

A sample of Barrera's femoral blood was sent to NMS Labs for analysis. The toxicology analysis showed the blood sample was positive for Caffeine and it contained 81 ng/ml of Amphetamine and 1,800 ng/ml of Methamphetamine. As noted under the reference comments in the NMS Labs report, "[b]lood levels of 200-600 ng/ml have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions."

B. TASER REPORT

An analysis was performed on the taser used by Officer Lal on the day in question. The report indicated there were five "trigger events" on February 8,

2017. The first one-second trigger activity was detected at 7:42a.m, which appeared to be consistent with a test event. Between 1:31p.m. and 1:32p.m., the taser log recorded four separate trigger activities.

BACKGROUND OF MICHAEL BARRERA

A. CRIMINAL HISTORY

In 2005, Barrera entered a no-contest plea to a misdemeanor violation of Penal Code section 647(f) (Drunk in Public).

In 2007, Barrera was convicted of a felony violation of Penal Code section 245(a)(1) (Assault with a Deadly Weapon) and a misdemeanor violation of driving under the influence. He was sentenced to three years in state prison.

In 2010, Barrera was convicted of a felony violation of Penal Code section 459-2nd (Burglary in the Second Degree), a strike and a prison prior. He was sentenced to serve 44 months in state prison. This conviction was later reduced to a misdemeanor pursuant to Proposition 47 in 2015.

B, MEDICAL HISTORY

On November 25, 2016, Barrera was admitted to Woodland Memorial Hospital for moderate shortness of breath which had lasted for about a week. Barrera said he had been exposed to chemicals at work and claimed his employer was trying to poison him. Chest X-ray came back normal, oxygen saturation was normal and lungs were clear to auscultation. Barrera was shortly thereafter discharged from the hospital.

On December 10, 2016, Barrera was again admitted to the Woodland Memorial Hospital Emergency Room for hallucinogen intoxication. Barrera was screaming about having acid in his blood. He was exhibiting exaggerated movements, paranoia and psychosis. Barrera was screaming and claiming someone had a gun. Barrera later admitted to taking "acid" (lysergic acid diethylamide, a hallucinogenic drug) prior to the hospital admission and said he was melting and burning inside. Barrera was extremely uncooperative during his stay at the hospital. He had an elevated pulse of 166 beats per minute. Barrera's urine sample later tested positive for amphetamines and cocaine. While at the hospital, Barrera was treated with antipsychotic medication and benzodiazepine. He was specifically advised to cease using meth, cocaine and other illicit drugs prior to his discharge on December 11, 2016.

A month later, on January 10, 2017, police and a case worker brought Barrera to the Woodland Memorial Hospital for a psychiatric evaluation after Barrera's mother called to report her son acting bizarre and delusional. Barrera was cleaning the house, claiming the house was possessed and haunted. Barrera reportedly said that the police were going to kill him. At the time of admission, Barrera appeared to be under the influence of methamphetamine. Barrera stated "I died here last time when they gave me something." Barrera denied any drug use but his urine screen was positive for amphetamines. While at the hospital, Barrera was exhibiting psychomotor agitation, impulsive behaviors, severe impairment, paranoid ideations, and poor reality testing. Barrera continued to make threatening statements and was unable to control his mood. He was diagnosed with bipolar disorder and amphetamine use disorder.

Before Barrera could be fully treated at the hospital, he departed the hospital against medical advice on January 17, 2017.

PHYSICAL EVIDENCE COLLECTED AT THE SCENE

A multitude of evidence was collected during this investigation. The following items were collected and specially referenced herein as they directly pertained to the analysis in this report.

- (1) Golf club used by Barrera was located on the driveway of 1350 Garfield Place



- (2) A gray/black colored towel located on the sidewalk in front of 1367 Garfield Place

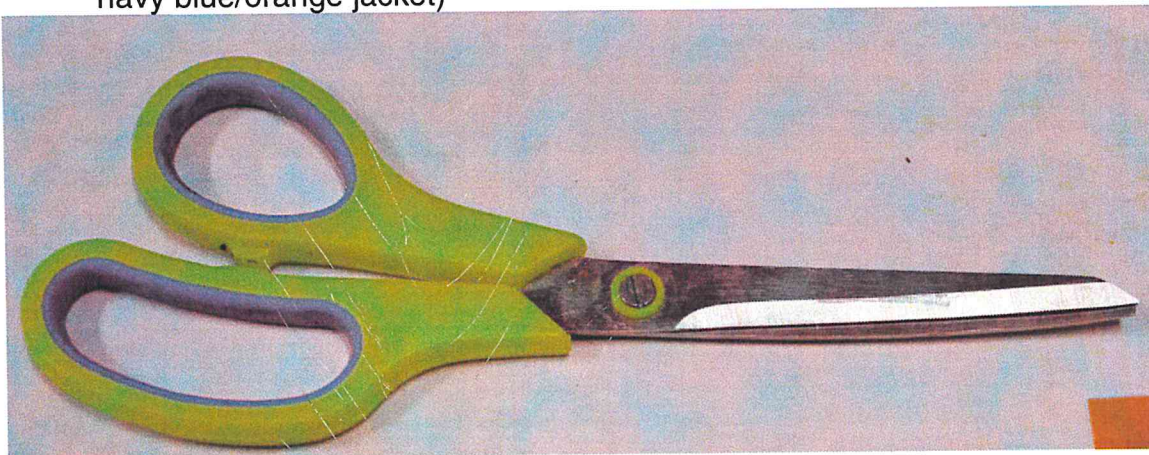
- (3) Two rusted bar clamps located with a gray/black towel in front of 1367 Garfield Place



- (4) A navy blue jacket (with orange lining) located on the sidewalk in front of 1363 Garfield Place



- (5) A pair of scissors with green/blue handle with blood (located inside the navy blue/orange jacket)



- (6) A kitchen knife with a 6-inch blade located near the front door of 1387 Garfield Place



SURVEILLANCE VIDEOS FROM AUTUMN RUN APARTMENTS

On February 8, 2017, a little after noon, Barrera was seen near the laundry room area at the Autumn Run Apartments at 1180 Matmor Road with a towel wrapped around his waist and a golf club in his hand. At approximately 12:37pm, Barrera was seen standing near a pedestrian gate where he removed the towel around his waist and put on a pair of dark colored shorts. Barrera placed the towel over his shoulder and walked out of the gate with a golf club in his hand. A few minutes later, Barrera was captured on video jumping over a brick privacy wall into a backyard located at 1367 Roosevelt Place. The resident later confirmed two weight clamps were missing from the yard, which were consistent with the two weight clamps that were recovered at Garfield Place.

STANDARD OF REVIEW

The Uniform Crime Charging Standards require prosecutors to critically analyze and evaluate all of the available information to ensure a case has been fully investigated and that there is legally sufficient and admissible evidence to establish that a crime has been committed. In addition, prosecutors are required to ensure that there is legally sufficient and admissible evidence of the identity of

the perpetrator. Finally, the prosecutor must be personally satisfied that the accused is guilty of the crime and, considering the most plausible and reasonably foreseeable defense(s), whether there is legally sufficient evidence to convince a jury of the accused's guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves one with an abiding conviction that the charge is true.

Additionally, California Rules of Professional Conduct Rule 5-110 states that a prosecutor should refrain from prosecuting a charge that a prosecutor knows is not supported by probable cause.

APPLICABLE LAW AND ANALYSES

The role of the District Attorney's Office is to investigate officer involved deaths for the purpose of assessing and applying the law relating to the police use of force to the investigation, to determine whether the officer's acts fall within the state laws of criminal responsibility. In making that determination, we are bound by the same burden of proof (beyond a reasonable doubt) and standard of review applicable in any other criminal case. The findings made by our office are authorized by law. (Cal. Const. Article III, Section 3; Government Code Section 26500; *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228.)

The Office of the District Attorney conducted its review by applying the facts of this case to the controlling legal authority, cases and statutes.

A. LEGAL PRINCIPLES

1. Consensual Encounters

Any peace officer may approach and contact any person in public, or anywhere else the officer has a legal right to be, and engage that person in conversation. (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 789.)

The law does not prohibit an officer from approaching any person in a public place and engaging that person in uncoerced conversation. (*People v. Divito* (1984) 152 Cal.App.3d 11, 14.)

Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, or by putting questions to him if the person is willing to listen. (*Florida v. Royer* (1983) 460 U.S. 491, 497.)

Contact does not become a detention merely because an officer approaches an individual on the street and asks a few questions. No objective reason is necessary in justifying this type of contact. (*In re Manual G.* (1997) 16 Cal.4th 805, 821; *People v. Hughes* (2002) 27 Cal.4th 287, 328.)

2. Reasonable Suspicion to Detain

For an investigative detention to be valid, there must be "reasonable suspicion" that criminal activity may be occurring and the person to be detained is connected with that possible criminal activity. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123-124; *United States v. Sokolow* (1989) 490 U.S. 1, 7-8; *People v. Bennett* (1998) 17 Cal.4th 373, 386-387.)

Reasonable suspicion is evaluated based on objective facts. An officer's subjective thinking (e.g., the purpose behind the detention) will have no bearing on a determination of the legality of the action. An officer's subjective intentions are irrelevant in determining whether a detention or an arrest is justified.

(*Arkansas v. Sullivan* (2001) 532 U.S. 769, 771-772; *Whren v. United States* (1996) 517 U.S. 806, 813; *Ohio v. Robinette* (1996) 519 U.S. 33, 38; *Scott v. United States* (1978) 436 U.S. 128, 138; *People v. Hull* (1995) 34 Cal.App.4th 1448, 1454; *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733.)

In deciding whether the suspicion was reasonable, the court will look at all relevant factors, or the "totality of the circumstances." (*United States v. Sokolow, supra*, 490 U.S. at pp. 7-8.) The legality of a detention will be determined by considering the totality of the circumstances. (*United States v. Arvizu* (2002) 534 U.S. 266, 273; *People v. Dolly* (2007) 40 Cal.4th 458, 463.) "All relevant factors must be considered in the reasonable suspicion calculus, even those factors that, in a different context, might be entirely innocuous." (*United States v. Fernandez-Castillo* (9th Cir. 2003) 324 F.3d 1114, 1117.)

3. Fourth Amendment Seizure

While a suspect who is fleeing from officers would not feel free to terminate the encounter, he is not seized until he is apprehended. Although the suspect's flight will not automatically provide officers with grounds to detain or arrest, flight is such a highly suspicious circumstance that not much more is required. (*California v. Hodari D.* (1991) 499 U.S. 621, 626; *People v. Johnson* (1991) 231 Cal.App.3d 1, 11 ["[A] person [who reasonably believes] he is not free

to leave is nevertheless not detained for Fourth Amendment purposes until he either submits to that show of authority or is physically seized by the officer.”]; *People v. Arangure* (1991) 230 Cal.App.3d 1302, 1308 [Officer who followed defendant into a store after observing defendant discard marijuana was in “pursuit” but did not “seize” defendant.]])

The United States Supreme Court has made clear there is no "seizure" until the police have actually physically stopped the person, or the person stops on his own and submits to police authority. (*California v. Hodari D.*, *supra*, 499 U.S. at 626-627.) Even if the police yell "stop" or "freeze," display a weapon, or assert their authority in some other manner, there cannot be a detention until and unless the suspect stops fleeing in response.

The United States Supreme Court has declined to create a "bright line" rule regarding flight. That is, the court has refused to rule either (1) that flight alone will always justify a detention, or (2) that flight alone can never justify a detention.

4. Use of Force

Whether an officer is detaining someone to investigate a reasonable suspicion or issuing a "cite and release" citation, the suspect has an obligation to stop. A suspect has no right to resist a lawful detention. (*People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1429.)

A suspect who does not stop has violated Penal Code Section 148 by obstructing or delaying the officer in the performance of his or her duties. (*In re Andre P.* (1991) 226 Cal.App.3d 1164, 1169.) Flight during a lawful detention constitutes resisting. (*People v. Quiroga* (1993) 16 Cal.App.4th 961, 966.)

A suspect who refused to submit to an illegal, suspicionless detention and physically threatened the officer before fleeing could lawfully be arrested upon making the threat. Therefore, arresting him after a foot pursuit was lawful. (*United States v. Caseres* (9th Cir. 2008) 533 F.3d 1064, 1069.)

B. APPLICABLE STATUTES

Penal Code Section 148(a)(1)

Every person who willfully resists, delays, or obstructs any public officer, [or] peace officer... in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

An officer may use whatever physical force is necessary to make the person stop. (*People v. Johnson* (1991) 231 Cal.App.3d 1, 13; *In re Gregory S.* (1980) 112 Cal.App.3d 764, 778.)

Penal Code Section 243(b)

When a battery is committed against the person of a peace officer ... engaged in the performance of his or her duties, whether on or off duty... and the person committing the offense knows or reasonably should know that the victim is a peace officer..., the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

Penal Code Section 245(c)

Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer . . . and who knows or reasonably should know that the victim is a peace officer . . . engaged in the performance of his or her duties, when the peace officer . . . is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

Attacking a police officer with a deadly weapon justifies the officer's use of deadly force in response. Examples include: A suspect violently resisted arrest, physically attacked the officer, and grabbed the officer's gun (*Billington v. Smith* (9th Cir. 2002) 292 F.3d 1177, 1184); A suspect, who had been behaving erratically, swung a knife at an officer (*Reynolds v. County of San Diego* (9th Cir. 1996) 84 F.3d 1162, 1167-1168); A suspect attacked an officer with a rock and a stick. (*Garcia v. United States* (9th Cir. 1987) 826 F.2d 806, 812.)

In *People v. Lee* (1933) 131 Cal.App. 644, an iron pipe 2 to 2.5 feet long and 1/2 to 3/4 inches in diameter supported the trial court's conclusion that the pipe was a deadly weapon.

Penal Code Section 21310

Except as provided in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who carries concealed upon the person any dirk or dagger is punishable by imprisonment in a county jail not

exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

ANALYSIS

A. The Initial Encounter

The initial encounter between the officers and Barrera was justified because the officers had reason to believe Barrera to be the suspect of an indecent exposure, who was armed and dangerous. Barrera was last seen carrying a large kitchen knife, a pair of scissors and a golf club walking down a public street in a residential neighborhood.

Carrying a large fixed-blade kitchen knife concealed upon a person in a public place is a violation of California Penal Code section 21310. Exposing oneself in a public place to others for purposes of sexual gratification or for purposes of annoying another person is a violation of California Penal Code section 314.1.

Because the officers had reasonable cause to believe Barrera had violated multiple sections of the Penal Code, and Barrera's actions in a public place was causing public safety concerns to other citizens in the community, the officers' initial contact with Barrera was based on reasonable suspicion that criminal activity was afoot, and thus lawful. Even assuming, *in arguendo*, that Barrera did not have a golf club in his hand, the officers could still have detained him on reasonable suspicion that he was the subject who had violated the law by exposing himself to others and who had a knife concealed upon his person.

B. Officers' Verbal Orders

When the officers first arrived at Garfield Place, Barrera appeared to be agitated and he was armed with a golf club in one hand. The officers were attempting to detain Barrera at that time in order to conduct further investigation regarding the alleged violations. For purposes of officer safety, as well as the safety of other residents in the neighborhood, the officers acted lawfully by ordering Barrera to drop the golf club, which could be used as a deadly weapon to assault the officers or other innocent bystanders. Because the officers were acting within the scope of their duties as peace officers, Barrera had no right to resist an otherwise lawful detention. Since Barrera did not comply with the officers' multiple orders to drop the golf club, Barrera was delaying and obstructing the officers in carrying out their duties, which was a violation of Penal Code Section 148(a)(1) PC. Based on Barrera's repeatedly failure to comply with the officers' lawful orders, the officers had probable cause to arrest him for said violation.

C. Use of Weapons

Upon arrival at the scene, officers immediately observed Barrera, who matched the description of the suspect in the dispatch calls, armed with a golf club outside a residence. Because a golf club can readily be used as a deadly weapon to inflict serious bodily injury or death on others, the officers acted lawfully by arming themselves with tasers and a firearm for defensive purposes. Even though Barrera raised the golf club and charged at Sergeant Krause, which constituted an assault with a deadly weapon on a peace officer, Sergeant Krause merely pointed his firearm at Barrera but never discharged it.

According to officers' statements as well as video recordings from the patrol vehicles, Officer Lal deployed his tasers three times, only after the officers had been struggling and having difficulty restraining Barrera due to Barrera exhibiting an unusual amount of strength. The first taser deployment was shortly after Barrera had tackled Sergeant Davis down on the ground, putting Sergeant Davis in a vulnerable and disadvantaged position. Therefore, Officer Lal was acting lawfully when he discharged his taser to defend Sergeant Davis and to effectuate an arrest on Barrera for the battery on Sergeant Davis and assault on Sergeant Krause with a golf club.

The intended effect of a taser is to cause disruption in voluntary muscle movements on a subject. The neuromuscular incapacitation will assist an officer in gaining control over a suspect. In this case, even though the taser was activated three times, it did not appear to have any effect on Barrera as he continued to actively struggle, and lifting his legs, head and shoulder off the ground. The taser did not cause any serious or permanent injury to Barrera. The only injuries resulted from the deployment of the taser were two puncture wounds from the probes and minor burn marks where the taser came into contact with the skin. Based on the totality of the circumstances, the use of the taser in this case was reasonable force utilized by the police to try to subdue a subject who had assaulted two peace officers and who had consistently disobeyed their commands.

D. Officer's Physical Contact with Barrera

Other than the use of a taser, the force used in this case by the officers were all physical contacts in nature via the use of their hands and body weights. At no time was Barrera put into any control holds that would cause his inability to breathe. And even though Barrera's face ended up on the muddy ground, at no time was his mouth or nose obstructed in a way that would deprive him of the ability to breathe (this was evident from a photograph taken of Barrera shortly after the officers commenced CPR on him).

Sergeant Davis struck Barrera in the face only after he was placed in a disadvantaged position on the muddy ground and when Barrera repeatedly tried to dig his fingers into the sergeant's eyes and face. Hence, Sergeant Davis was merely acting in self defense and trying to gain compliance from Barrera. Furthermore, officers immediately disengaged from Barrera as soon as he stopped fighting and resisting, but unfortunately, that was the time when Barrera became unconscious. Because an officer can use reasonable force to effectuate the detention and arrest of a non-compliant person, the level of physical force used by the officers on Barrera was reasonable and necessary to achieve that objective.

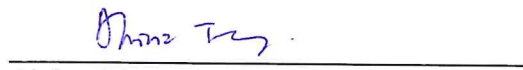
According to the coroner's report, Barrera did not suffer any obvious fatal physical injuries from the struggle with the officers, and Dr. Nagao could not conclude that the physical contact pathologically caused or contributed to the death of Barrera.

CONCLUSION

After a thorough and careful review of the evidence in this case, it is the conclusion of the District Attorney's Office that no criminal charges will be filed against any members of the Woodland Police Department. There is insufficient evidence to show that the force used in this case was excessive or unreasonable, or that such force had proximately caused the unfortunate death of Michael Barrera while he was in the custody of the Woodland Police Department. Our office finds that the officers had only used reasonable and necessary force to detain and effectuate the arrest of Michael Barrera. Based on this finding, no further action will be taken in this matter.



Jeff Reisig
District Attorney



Alvina Tzang
Deputy District Attorney