

REPORT ON THE SHOOTING OF LUIS GUTIERREZ
NAVARRO BY YOLO COUNTY SHERIFF'S
SERGEANT DALE JOHNSON AND DEPUTY HERNAN OVIEDO
ON APRIL 30, 2009

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
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The Yolo County District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer involved shooting. Civil liability, tactics, and departmental policies and procedures were not considered. We address only whether or not there is sufficient evidence to support the filing of criminal charges in connection with the shooting death of Luis Gutierrez Navarro. For the reasons set forth below, we conclude that the use of deadly force in this case was lawful.

INTRODUCTION

During the afternoon of April 30, 2009, Sgt. Dale Johnson, Deputy Hernan Oviedo, and Deputy Hector Bautista of the Yolo County Sheriff's Office were on duty and working as part of the Yolo County Gang Task Force. They contacted Luis Gutierrez Navarro on the East Gum Avenue overpass that spans Highway 113 in Woodland, California. Navarro took off running, and a brief foot pursuit ensued. During the pursuit, Navarro turned and swung a knife at Sgt. Johnson. Both Sgt. Johnson and Deputy Oviedo fired shots at Navarro, resulting in his death.

The Woodland Police Department (WPD) conducted a detailed investigation into the shooting, which included interviewing law enforcement personnel and all identified civilian witnesses, and photographing and diagramming the area of the shooting. An independent investigation and analysis of the incident was conducted by the Yolo County District Attorney's Office. Written reports and other documentary evidence were reviewed. These included: Woodland Police Department's crime reports and supplemental reports, audio and video recordings, crime analysis of the area, printouts of the County's computer aided dispatch systems (CAD), District Attorney investigative reports and supplemental reports, civilian witness interviews, interviews with officers

involved, diagrams, scene photographs, crime scene map plots, reports of the California Attorney General's Bureau of Forensic Science, and the Yolo County Coroner's autopsy report. The District Attorney received the final reports on September 3, 2009, (laboratory report) and September 8, 2009 (Woodland Police Department's supplemental reports).

DETAILED CHRONOLOGY

On Thursday, April 30, 2009, at approximately 2:15 p.m., Sgt. Dale Johnson, Deputy Hernan Oviedo, and Deputy Hector Bautista of the Yolo County Sheriff's Office were on duty and working as part of the Yolo County Gang Task Force. Part of their assignment was to seek out and identify individuals associated with criminal street gangs in Yolo County. All three officers were in plain clothes. They were all wearing Sheriff's badges and guns on their belts, which were covered by their shirts. They were working in an unmarked black Ford Taurus equipped as an undercover emergency police vehicle. Deputy Bautista was driving. Sgt. Johnson was in the front passenger seat, and Deputy Oviedo was in the right rear passenger seat.

Just after completing a consensual encounter on Bourn Drive in the city of Woodland, the officers drove westbound on East Gum Avenue from Bourn Drive, crossing the Highway 113 overpass. While continuing westbound on the downgrade from the overpass, they observed an Hispanic male adult, later identified as Luis Gutierrez Navarro, walking eastbound on the north sidewalk of East Gum Avenue. There were no other persons in the immediate area. Deputy Bautista thought Navarro looked familiar and might be on probation or parole. Deputy Oviedo thought Navarro looked familiar but was not sure of Navarro's identity. Sgt. Johnson did not know Navarro.

Deputy Bautista stopped the Taurus at Navarro's location, near the bottom of the west side of the downgrade of the East Gum Avenue overpass spanning Highway 113. Deputy Bautista did not activate the vehicle's red emergency lights. He pulled up alongside the curb. Sgt. Johnson exited the car from the right front passenger door to contact Navarro. Sgt. Johnson exposed his badge and gun to Navarro by lifting up his shirt. Sgt. Johnson told Navarro that he was with the Sheriff's Department and that he would like to speak with Navarro. Navarro looked at Sgt. Johnson, then looked in the direction of Sgt. Johnson's waistline, where the badge and gun were, put his hand in his right front pants pocket, and took off running eastbound, up the inclined roadway toward the Highway 113 overpass.

Sgt. Johnson withdrew his firearm from its holster and pursued Navarro on foot. He ordered Navarro to stop and identified himself several times as a law enforcement officer. Deputy Oviedo quickly exited the Taurus, withdrew his firearm from its holster, and joined the pursuit of Navarro. Deputy Oviedo also yelled for Navarro to stop. Deputy Bautista remained in the Taurus, activated the emergency lights, and made a U-turn on East Gum Avenue, driving eastbound up the overpass incline in the direction of the foot pursuit.

During this foot pursuit, Navarro's right hand either remained in his right front pants pocket or was in and out of his pants pocket. Navarro looked back several times at Sgt. Johnson and Deputy Oviedo as they pursued him. Sgt. Johnson caught up with Navarro near the top of the western edge of the highway overpass. Navarro had crossed East Gum Avenue from the north side to the south side during the pursuit. Sgt. Johnson and Navarro were now on the south side of East Gum Avenue. As he caught up to

Navarro, Sgt. Johnson holstered his firearm and attempted to grab Navarro in order to restrain him. Navarro stopped and ducked away from Sgt. Johnson, evading his grasp.

Navarro then turned around to face Sgt. Johnson and removed his right hand from his pants pocket. In Navarro's hand was a folding knife with a four inch exposed blade. Navarro made a sweeping motion at Sgt. Johnson in an attempt to either stab him or slash him with the knife. Sgt. Johnson immediately jumped backward to avoid being struck by the knife. At this point, Sgt. Johnson withdrew his firearm and fired at Navarro. Deputy Oviedo fired his gun at Navarro almost simultaneously with Sgt. Johnson. Sgt. Johnson thought that Deputy Oviedo fired first; Deputy Oviedo did not know who fired first. Deputy Bautista was driving the Taurus and did not see the shooting. When Deputy Bautista reached the location of the shooting, Navarro was already on the ground.

After the shots were fired, Navarro threw the knife to the south side of the roadway, where it landed in the dirt next to the roadway barricade. Navarro fell to the ground in the roadway adjacent to the south sidewalk. Navarro was bleeding profusely from the area of his mouth. Emergency rescue personnel were summoned to the scene. Deputy Bautista took off his white undershirt and gave it to Sgt. Johnson. Sgt. Johnson used the undershirt to apply pressure to Navarro's wound while waiting for emergency personnel to arrive.

Navarro was transported by ambulance to the Woodland Healthcare Emergency Department for treatment. Resuscitation attempts were unsuccessful, and Navarro was pronounced dead at 2:41 p.m. by Daniel Bolster, M.D., in conjunction with surgeon Thomas Magrino, M.D.

An autopsy was performed by Gregory Reiber, M.D., at 9:16 a.m., on May 1, 2009. The autopsy report revealed that Navarro suffered a gunshot wound to the neck and lower head. Forensic toxicology analysis on blood taken from Navarro revealed a controlled substance (methamphetamine) in his system at the time of his death.

INCIDENT SCENE

The location of the incident is East Gum Avenue, on the west side of the Highway 113 overpass in the city of Woodland. East Gum Avenue is a two-lane paved asphalt roadway that runs in a general east/west direction. This part of East Gum Avenue has a wide paved shoulder or bike lane portion on each side of the roadway, marked by a white fog line and sufficient to contain an average motor vehicle. Concrete sidewalks border both the north and south sides of the roadway at this location. East Gum Avenue crosses over State Highway 113, which is a four-lane divided highway that runs in a general north/south direction through the east side of Woodland. The overpass has a concrete walkway barrier topped by a chain link fence. The raised portion of East Gum Avenue has a downward gradient to the roadway as it slopes away from the Highway 113 overpass. The west side of Highway 113 has dirt embankments that slope down and away from East Gum Ave. There are single-family residential areas both to the north and south of East Gum Avenue. The weather on the day of the incident was clear and sunny, approximately 72 degrees, with no discernable wind.

SCENE WALKTHROUGH

Shortly after the incident, Sgt. Johnson returned to the scene of the shooting in the course of the Woodland Police Department's investigation. Sgt. Johnson explained the general sequence of events that led to the shooting of Luis Gutierrez Navarro. The Ford

Taurus and the shooting scene evidence were all still in their original location in the eastbound lane of East Gum Avenue, at the west end of the Highway 113 overpass. The purpose of this walkthrough was to obtain a general overview of where the incident started, the general path the involved parties traveled to the incident conclusion, as well as the approximate location where the involved parties were when the shooting occurred.

Sgt. Johnson pointed to a marked law enforcement unit parked on the north side down slope of westbound East Gum Avenue, west of the Highway 113 overpass. This was the approximate location of the initial contact with Navarro. When Navarro fled on foot, he ran in a southeast direction across the East Gum Avenue roadway, in the general direction of where the shooting occurred. When Sgt. Johnson caught up to Navarro and tried to grab him, Navarro was in the roadway. Sgt. Johnson was closer to the south sidewalk and was facing toward Navarro in a general northeast direction.

When Navarro swung at him with the knife, Sgt. Johnson backed up quickly to avoid being stabbed. Sgt. Johnson heard an immediate shot but did not see who fired, assuming it was Deputy Oviedo. Sgt. Johnson withdrew his firearm and also fired at Navarro. After Navarro went down to the ground, a request was made for emergency medical services.

EVIDENCE AT THE SCENE

Among the evidence located at the scene by Woodland Police Department and California Department of Justice crime scene investigators were six expended cartridge casings: two .40 caliber casings and four .45 caliber casings. Deputy Oviedo carried a .40 caliber firearm, and Sgt. Johnson carried a .45 caliber firearm. The knife the deputies described as used by Navarro was also recovered. All these items were sent to the

California Attorney General's Bureau of Forensic Science division (DOJ/BFS) for forensic examination. Department of Motor Vehicles paperwork was found in Navarro's possession that indicated he had been at the Woodland DMV office earlier on April 30, 2009.

Also located northeast of the immediate shooting scene were two apparent bullet strikes on the north concrete wall of the overpass and the remains of a brass jacketed bullet attached to the north chain link fence. An elongated apparent bullet strike was located along the south concrete wall of the overpass. An expended bullet was located on the south sidewalk at the east end of the overpass. An expended bullet was later recovered from a residence in a mobile home park northeast of the scene. The location and trajectory of that bullet were consistent with the shooting scene.

STATEMENT OF DEPUTY HECTOR BAUTISTA

Deputy Bautista provided a statement at the Woodland Police Department on April 30 at 6:17 p.m. Present during the interview were Sgt. Dan Letamendi of the Woodland Police Department, Lieutenant Jim Lucero and Lieutenant Greg Marusin of the Yolo County District Attorney's Office, and attorney Jason Jasmine, representing Deputy Bautista. The statement was voluntary and was video recorded. The following is a summary of the information provided.

Deputy Bautista was working in a three-person team with Deputy Hernan Oviedo and Sgt. Dale Johnson. After conducting a consensual encounter on Bourn Avenue in the city of Woodland, they drove westbound on East Gum Avenue. Deputy Bautista was driving. Sgt. Johnson was in the front passenger seat. Deputy Oviedo was in the rear seat. They were looking to identify gang members by conducting consensual encounters.

They were just west of the Highway 113 overpass on East Gum Avenue. They were dressed in plain clothes. Deputy Bautista wore his duty firearm and badge on his belt.

All three noticed a single Hispanic male individual with a shaved head, wearing a white T-shirt and green pants, walking eastbound on the north sidewalk of East Gum Avenue. Deputy Bautista did not recall any of them recognizing the Hispanic male. Deputy Bautista stopped his vehicle so that they could contact the Hispanic male. Sgt. Johnson contacted the Hispanic male, later identified as Luis Gutierrez Navarro. Sgt. Johnson said, "Can I talk to you?" Navarro then immediately ran from Sgt. Johnson, moving eastbound up the overpass and then into the roadway of East Gum Avenue. Deputy Bautista did not recall hearing Navarro say anything. Sgt. Johnson and Deputy Oviedo immediately pursued Navarro on foot. Sgt. Johnson said, "Yolo County Task Force. Stop." Deputy Bautista did not notice or see Navarro's hands.

Deputy Bautista reentered the vehicle and activated his emergency lights and siren. He made a U-turn and drove eastbound on East Gum Avenue. He saw Sgt. Johnson and Deputy Oviedo chasing Navarro. He did not recall if they had their firearms drawn while they were chasing Navarro. When Deputy Bautista arrived at the location where the pursuit ended, he saw both Sgt. Johnson and Deputy Oviedo had their firearms out.

Navarro was then on the ground. Sgt. Johnson told Deputy Bautista to call for medical aid. Deputy Bautista saw that Navarro was bleeding from the mouth. Deputy Oviedo told Deputy Bautista that Navarro had a knife. Deputy Bautista saw an open blade knife on the gravel about eight feet from Navarro. He did not recall Navarro saying

anything. Deputy Bautista moved his badge from his belt to around his neck on a chain so responding units would identify him as a peace officer.

Deputy Bautista did not fire his weapon. He did not see or hear the shooting. He did not see the knife in Navarro's hand. He estimated the distance of the pursuit at about 100 feet. Deputy Bautista drew a diagram of the scene indicating the location of the original contact, the direction of travel of his vehicle, and the location of the end of the incident.

Deputy Bautista was escorted from the scene to the Sheriff's Office by Yolo Sheriff's Captain Robin Faille. He was administered a gunshot residue test by Woodland Police Department Officer Ron Cordova. At no time did he discuss the incident with either Sgt. Johnson or Deputy Oviedo. Deputy Bautista was later escorted to the Woodland Police Department for this interview.

STATEMENT OF SERGEANT DALE JOHNSON

Sgt. Johnson was interviewed at the Woodland Police Department on April 30, 2009, at 7:07 p.m. Present during the interview were Sergeant Dan Letamendi with the Woodland Police Department, Lieutenant Greg Marusin and Lieutenant Jim Lucero, both investigators with the Yolo County District Attorney's Office, and Lauro Paredes, an attorney representing Sgt. Johnson. The statement was voluntary and was video recorded. The following is a summary of the information provided.

Sgt. Johnson was working in a three-person team with Deputy Hernan Oviedo and Deputy Hector Bautista. After conducting a consensual encounter on Bourn Avenue in the city of Woodland, they drove westbound on East Gum Avenue. All three were dressed in plain clothes and were in an unmarked car. Deputy Johnson wore his gun and

badge on his belt. Deputy Bautista was driving. Sgt. Johnson was in the front passenger seat, and Deputy Oviedo was in the rear seat. They were gathering information and intelligence on potential gang members and their associates.

They had just crossed the Highway 113 overpass, driving westbound, when they noticed an Hispanic male walking eastbound on the sidewalk, on the north side of East Gum Avenue. Initially during the interview, Sgt. Johnson was not sure whether it was Deputy Bautista or Deputy Oviedo who suggested that they contact this person, later identified as Luis Gutierrez Navarro. Later in the interview, Sgt. Johnson said that it was Deputy Bautista's idea to make the contact, and he, Sgt. Johnson, agreed.

Navarro was wearing a white baggy shirt and dark pants or shorts. Sgt. Johnson stated that he is aware that Hispanic gang members will often not openly wear their gang colors. Instead, the gang member will wear generic colors to disguise their particular affiliation. Sgt. Johnson did not know Navarro but thought that either Deputy Bautista or Deputy Oviedo did.

Deputy Bautista stopped the car, and Sgt. Johnson exited the car and exposed his badge and gun to Navarro. Sgt. Johnson wore his gun and badge on the right side of his waist. The gun was in a paddle holster and the badge was attached to his belt. Sgt. Johnson explained that he always lifts up his shirt, which exposes his gun and badge, when making a consensual contact. Sgt. Johnson identified himself to Navarro and asked to speak to him. At this point, Navarro was next to the car. Navarro looked at Sgt. Johnson, looked down toward Sgt. Johnson's badge and gun, and immediately took off running eastbound on East Gum Avenue. Navarro immediately put his right hand in his

right front pants pocket. Sgt. Johnson stated that he thought that Navarro might be reaching for narcotics. As Navarro was running, he kept his hand in his pocket.

As he ran eastbound, Navarro crossed to the south side of East Gum Avenue. Sgt. Johnson had his gun in his hand as he chased after Navarro. Sgt. Johnson identified himself as a law enforcement officer about 15 times. Sgt. Johnson decided to physically grab Navarro, so he re-holstered his gun. When Sgt. Johnson got close enough to grab him, Navarro was able to duck away from Sgt. Johnson's grasp, causing Sgt. Johnson to miss him. Navarro then pulled a knife out of his pocket and made a slashing motion at Sgt. Johnson. Sgt. Johnson evaded the assault by quickly moving back away from Navarro. Sgt. Johnson described his maneuver as "trying to make myself into a C or reverse C type of thing." After he jumped back, he saw the knife, which was a folding type knife, not a buck knife. Sgt. Johnson heard a gunshot, which he assumed was fired by Deputy Oviedo. Sgt. Johnson drew his gun and fired two or three times. Navarro was about seven to ten feet away. Sgt. Johnson believed that Deputy Oviedo fired another shot.

Navarro then threw the knife and fell to the ground. Sgt. Johnson noted a large amount of blood coming from the area of Navarro's mouth; he thought that Navarro had a chest wound or wound to the mouth. Sgt. Johnson directed Deputy Bautista to notify dispatch of the situation. Sgt. Johnson also saw a wound to Navarro's right rear shoulder area. Sgt. Johnson searched Navarro and then used a folded T-shirt to apply direct pressure to the shoulder wound until emergency medical personnel arrived. Sgt. Johnson did not hear Navarro say anything during the incident.

Sgt. Johnson was escorted from the scene to the Sheriff's Office by Yolo Sheriff's Captain Robin Faille. A gunshot residue test was administered by Woodland Police Department Officer Ron Cordova. However, Sgt. Johnson used a disinfectant hand wash prior to the administration of the gunshot residue test, due to a blood transfer that occurred while he was providing first aid to Navarro.

STATEMENT OF DEPUTY HERNAN OVIEDO

On April 30, 2009, at 8:21 p.m., Deputy Oviedo was interviewed at the Woodland Police Department. Present during the interview were Sergeant Dan Letamendi with the Woodland Police Department, Lieutenant Greg Marusin with the Yolo County District Attorney's Office and attorney Jason Jasmine, representing Deputy Oviedo. The statement was voluntary and was video recorded.

Deputy Oviedo was working in a three-person team with Deputy Bautista and Sgt. Johnson. Deputy Oviedo wore his badge on his belt and always tucked his shirt behind his gun to display the badge and gun. He did not recall where Sgt. Johnson or Deputy Bautista wore their badges. After conducting a consensual encounter on Bourn Avenue in the city of Woodland, the deputies drove westbound on East Gum Avenue. They were looking to identify gang members by conducting consensual encounters.

All three noticed an individual walking on the sidewalk. There was nothing unusual about the person that attracted their attention. Deputy Bautista thought the person was on parole. Deputy Oviedo thought the subject looked familiar, conceding that he is bad with names but good with faces. Deputy Bautista did not activate the vehicle's emergency lights or use the public address system prior to the stop. Deputy Bautista stopped the car, and Sgt. Johnson exited, saying something to the subject, who was later

identified as Luis Gutierrez Navarro. Deputy Oviedo did not hear what Sgt. Johnson said, nor did he hear Navarro say anything. Deputy Oviedo was not sure what Deputy Bautista did. Almost immediately after Sgt. Johnson contacted him, Navarro put his hand in his pocket and ran away. Sgt. Johnson began chasing Navarro. Deputy Oviedo exited the car and also ran after Navarro, yelling, "S.O. and/or Sheriff's Department. Stop," five times. Deputy Oviedo did not recall Sgt. Johnson or Navarro saying anything during the pursuit. Deputy Oviedo did not know if Sgt. Johnson identified himself as law enforcement. Navarro was removing and returning his hand to his pocket as he ran. Deputy Oviedo saw Navarro reach into his right pocket and remove a knife. He could see the three-or four-inch blade. Navarro lunged at Sgt. Johnson as if to stab him, but Deputy Oviedo qualified that by saying he could not recall the exact movement. Deputy Oviedo drew his duty weapon. Both Sgt. Johnson and Deputy Oviedo discharged their firearms. Deputy Oviedo fired twice but was not sure if it was he or Sgt. Johnson who fired first. Navarro threw the knife onto the sidewalk, and it slid off into the gravel.

In describing the location of the incident, Deputy Oviedo initially said they did not drive across the Highway 113 overpass. He thought the contact occurred near Bourn Avenue and that Navarro was running westbound onto the Highway 113 overpass. Sgt. Letamendi obtained a city of Woodland diagram to assist Deputy Oviedo in describing the sequence of events. Deputy Oviedo was shown this map of the area. After reviewing the map, Deputy Oviedo placed the shooting at a location more consistent with the scene and other statements.

WITNESS STATEMENTS (CIVILIANS)

a) Vieana Monique Navarro

On April 30, 2009, Vieana Monique Navarro provided a statement at the Woodland Police Department to Detective D. Imus. Ms. Navarro is not related to Luis Gutierrez Navarro. The interview was audio and video recorded. The following is a summary of the information provided.

Ms. Navarro stated that she was driving west on East Gum Avenue. She drove over the "hill." She noticed a car stopped down to her right and people running across the street. She stopped her car while the people were running in traffic. Ms. Navarro saw a badge on one officer and realized they were undercover cops. Two undercover officers were chasing a third person. She noticed the car that had stopped was now coming up the hill. The car had its red and blue lights on, so she knew it was an undercover law enforcement vehicle.

Ms. Navarro had now passed the law enforcement vehicle heading in the opposite direction, so she continued to watch the incident out of her rear view mirror. She saw the guy the officers were chasing stop and turn around. She did not see anything in the person's hands. The officers were about 10 feet away from the person. The person backed away from the officers, and Ms. Navarro heard four shots. Ms. Navarro then decided to leave the area. By this time, she was at the bottom of the hill. She did not see the officers' firearms. She heard the officers yelling but could not tell what was being said. She thought the subject's arms were swinging as he ran. She did not see him pull out a knife.

Detective Imus assisted Ms. Navarro in creating a diagram of the scene that included the actions of the involved parties. She believed she had seen Luis Gutierrez Navarro before but denied knowing him or being connected with him in any way. She also denied having any prior contact with the involved officers but admitted she does not like law enforcement.

b) Wayne Lewis

Woodland Police Department Officer F. DeLeon interviewed Wayne Lewis on April 30, 2009. Lewis said he was on East Gum Avenue, at Capay Valley Road. This location is west of Bourn Drive and east of the Highway 113 overpass. Lewis heard a series of “pops” that initially sounded like firecrackers. The noise came from the west side of the overpass. Lewis also saw a white truck parked on East Gum Avenue west of Capay Valley Drive. After hearing the “pops,” Lewis saw two males, one of whom was Hispanic, running on East Gum Avenue to the truck. The males entered the truck and drove quickly east on East Gum and then south on Capay Valley Road.

c) Cheryl Perry

On April 30, 2009, Woodland Police Department Officer O. Flores contacted Perry at the Department of Motor Vehicles office at East Street and East Gum Avenue. Navarro had been at this office earlier on April 30, 2009. Navarro was at the Department of Motor Vehicles to renew his license. He was polite and spoke broken English. Perry tried to use some Spanish to facilitate their transaction. Navarro completed the written portion of the test, which he passed.

On July 2, 2009, Woodland Police Department Sgt. Letamendi re-contacted Perry. She believed Navarro took the written test in English because she was sure he did not

take the supplemental foreign language signs test. Perry only spoke Spanish as practice. Navarro seemed to understand English.

d) Javier Cabrera

On May 22, 2009 Sgt. Letamendi saw a news report on Channel 3 KCRA News. A private investigator was being interviewed who had been retained by the attorneys representing the family of Luis Gutierrez Navarro. The private investigator said he had contacted three witnesses to the shooting. One, Vieana Navarro, had already been interviewed by the Woodland Police Department. The investigator advised that the family's attorney would provide the names.

On May 27, the attorney for the family disclosed the name Javier Cabrera. On May 28, Mr. Cabrera provided a statement at the Woodland Police Department to Detective M. Jameson through an interpreter, Officer C. Lara. The interview was audio and video recorded. The following is a summary of the information provided.

Cabrera was driving about 30 to 35 miles per hour eastbound over the bridge and saw a kid wearing a white T-shirt walking in the same direction. He saw a car parked diagonally in front of the kid. The kid had surprised look on his face. Cabrera thought the individuals in the car might be gang members because he did not see a police car or any police identification on the car. Cabrera thought they wanted to beat up the kid. Cabrera did not know the kid. The only person he saw was the person walking. He did not see who was in the car.

e) Ronald Vasquez

On June 1, 2009, Woodland Police Department Detective M. Jameson contacted Ronald Vasquez, who was the individual contacted by the Gang Task Force on April 30,

2009, on Bourn Drive just prior to the shooting. When he was contacted, Vasquez did not see any badges on the officers, nor did he recall them identifying themselves as such. Vasquez, however, was aware of who they were and recognized them as police officers from prior contacts.

f) Rudolfo Flores

On June 1, 2009, Yolo Sheriff's Office Deputy J. Lazaro contacted Flores at Woodland Memorial Hospital. At that time, Flores was in the custody of the Yolo County Sheriff. Flores told Lazaro the person who died was known as "Indian Gutierrez" because he was a good knife thrower. According to Flores, the deputy was lucky not to get killed because Gutierrez, who is a Sureño gang member, is a dangerous person and had said he would not let the cops take him.

On June 2, Woodland Police Department Detective Ron Cordova reinterviewed Flores. Flores advised he knew Gutierrez (Navarro) as a Sureño because since he (Flores) associates with Sureños. Gutierrez always carried a knife and was good with it. Gutierrez's nickname was "Indio" because he was good with a knife. Flores knew Gutierrez used controlled substances and was considered dangerous.

GANG TASK FORCE FIELD INVESTIGATION REPORTS

The Woodland Police Department (WPD) was provided with 44 prior Field Interview Reports (FIR) contacts made by the Gang Task Force between March 2009 and the date of this incident. WPD made numerous attempts to contact a majority of the persons identified on the FIR contact cards. The purpose was to investigate whether there was a pattern of past practice on the part of the Gang Unit in identifying themselves as peace officers while conducting consensual encounters. The success rate for these

contacts was low due to a variety of factors, primarily related to the types of individuals being contacted. WPD contacted 17 of the recent consensual contacts conducted by the involved officers. None of the contacted individuals had an adverse reaction to being contacted. Several of the individuals described the identification of the officers as lifting their shirts to display badges and guns. Others were either unfamiliar with the officers, stated that a marked police vehicle with uniformed officers was involved in the stop, or completely denied being contacted by the gang unit.

PATHOLOGY/CAUSE OF DEATH

An autopsy was performed at the Yolo Coroner's morgue by Dr. G. Reiber on May 1, 2009. The single entrance gunshot wound was located at the right rear shoulder with the single exit gunshot wound at the left cheek/jaw of the face. Dr. Reiber described the wound track as back to front, steep from right to left, and upward at approximately 15 degrees. According to Dr. Reiber, the wound track could be consistent with Navarro swinging his right arm in an exaggerated or aggressive right to left motion, thereby exposing the right rear shoulder blade. Although the bullet entrance wound is identified as being at the right rear shoulder, when considered in relation to the wound track, the entrance wound is more to the side. After Navarro made the swinging the motion right to left with his right arm, the physical movement would have turned the right side of his body toward Sgt. Johnson. In this position, Navarro would have been in a perpendicular posture relative to the officers. This position is consistent with the bullet entering the right rear shoulder blade at the steep angle described by Dr. Reiber and exiting at the left jaw. Essentially, the bullet moved through the body sideways.

BACKGROUND OF LUIS GUTIERREZ NAVARRO

a) Work History

A request to the California Employment Development Department (EDD) revealed that Navarro had been employed by the following companies: Spherion Pacific Enterprises, LLC (2008, 2nd quarter and 4th quarter; 2009, 1st quarter); David Hatanaka Farming (2008, 4th quarter); Payne Farms, Inc. (2009, 1st quarter); Ceja-Reyes, Inc. (2008, 3rd quarter); Tem Force LP (2008, 3rd quarter); and Clearpoint Advantage, LLC (2007, 4th quarter).

b) Criminal History

The Yolo County District Attorney's Office had three criminal cases involving Navarro. Each involves a violation of Vehicle Code Section 14601, driving without a valid license (two from 2008 and one from 2009). Navarro used a Spanish interpreter in each case; however, there is a file note from the deputy district attorney handling the case indicating that he felt that Navarro understood English. At the time of his death, Navarro had a single dot tattooed on his right index finger and single dots tattooed on his left middle, ring, and little fingers. Sureno gang members sometimes possess similar markings.

c) Law Enforcement Contacts

Included in the reports is information in response to a request to United States DOJ/FBI asking for an NCIC "Off-Line Search" for Navarro between January, 2004 and April, 2009. Between December, 2006, and April, 2009, there were 15 independently verified contacts between law enforcement and Navarro. Additional potential contacts were identified but not verified. These 15 contacts included traffic stops, pedestrian

contacts, vehicle code citations, and a warrant arrest. In the 15 verified contacts prior to April 30, 2009, there were no indications of any issues, conflicts, or confrontations between Navarro and officers. There is no record or indication of Navarro engaging in any type of resisting or assaultive behavior toward law enforcement or of Navarro being under the influence of a controlled substance.

CRIME LABORATORY INVESTIGATION AND ANALYSES

a) Toxicology

The toxicology analysis (report dated May 6, 2009) by NMS Labs on Navarro's subclavian (heart) blood sample revealed the presence of amphetamine at 48 ng/mL and methamphetamine at 420 ng/mL. The toxicology report indicated that blood levels of 200-660 ng/mL have been reported in methamphetamine abusers who exhibited violent or irrational behavior.

On May 22, 2009, the Coroner's office initiated additional toxicology analysis on Navarro's peripheral blood (femoral). The sample was submitted to Valley Toxicology. The submitted blood screened positive for methamphetamine at 0.13 mg/L. The same sample was also submitted to NMS labs. The NMS analysis revealed the presence of amphetamine at 16 ng/mL and methamphetamine at 160 ng/mL.

California Department of Justice Forensic Toxicologist Dan Coleman reviewed the toxicology analyses and prepared a report dated August 27, 2009. He stated that the concentration of certain drugs, when measured post-mortem, may differ depending on the portion of the body where the sample of blood is taken. The concentration of certain drugs in heart blood (subclavian) is often found to be higher than that in the peripheral blood (e.g., femoral). He stated that a methamphetamine concentration above 100 ng/mL

in blood is consistent with an illicit dose. Methamphetamine is abused due to the intense feelings of euphoria and strength. Symptoms from recent use include dilated pupils, rapid speech, nervousness, tense or rigid muscles, bruxism, increased risk-taking behavior, or aggression. Repeated dosing, constant use, or bingeing may result in a mixture of fatigue and stimulation.

b) Firearms Inspections

On May 30, Detective Deleon conducted the firearm examination with the assistance of CSI Phillips. Sgt. Johnson's firearm is a .45 caliber Glock 36, GKD204, with a seated magazine and two spare magazines. Each spare magazine was fully loaded with seven unexpended cartridges. The magazine loaded into the Glock had three unexpended cartridges. There was one unexpended cartridge in the chamber of the firearm. If the firearm was fully loaded with eight cartridges (7 plus 1), that would account for the four expended .45 caliber cartridge casings found at the scene. This would indicate that Sgt. Johnson's weapon was fired four times.

Deputy Oviedo's firearm is a .40 caliber Glock 23, FAE383, with a seated magazine. The magazine loaded in the Glock, which has a capacity of 13 cartridges, contained eleven unexpended cartridges. There was one unexpended cartridge in the chamber of the firearm. If the firearm was fully loaded with fourteen cartridges (13 plus 1), that would account for the two expended .40 caliber cartridge casings found at the scene. This would indicate that Deputy Oviedo's weapon was fired two times.

Deputy Bautista's firearm is a .40 caliber Glock 22, FBF120, with a seated magazine and one spare magazine. There were 14 unexpended cartridges in the 15

cartridge capacity spare magazine. The seated magazine contained 13 unexpended cartridge casings. There was one unexpended cartridge in the chamber of the firearm.

c) Firearms Examination

The three Glock pistols were submitted to DOJ/BFS Criminalistics Lab for forensic evidence processing. The evidence was analyzed by Senior Criminalist Robert Wilson. He concluded that the four expended .45 auto cartridge cases were fired by Sgt. Johnson's Glock 36 pistol. The two expended .40 S&W cartridge cases were fired from Deputy Oviedo's Glock 23 pistol. The expended .45 bullet and expended .45 bullet jacket could not be eliminated or identified as having been fired from Sgt. Johnson's pistol. They were eliminated as having been fired by Deputy Oviedo or Deputy Bautista's pistols, based on differences in caliber. The expended .40 bullet jacket was too damaged to be analyzed and therefore could not be eliminated or identified as having been fired from Deputy Oviedo or Deputy Bautista's pistols. They were eliminated as having been fired from Sgt. Johnson's pistol, based on differences in caliber.

d) Latent Prints

The DOJ/BFS Latent Print Program examined the submitted knife. No identifiable latent prints were developed.

e) DNA on the Knife

Department of Justice Senior Criminalist Shawn Kacer conducted DNA analysis on a swab taken from the knife. He completed his report on September 3, 2009. He analyzed the DNA on the knife and compared it to a reference sample of DNA from Luis Gutierrez Navarro. He concluded that it is likely Navarro is the source of the DNA detected on the knife.

CRIME ANALYSIS OF AREA SURROUNDING INCIDENT

a) Crime Reports in the Area

The Woodland Police Department included in its investigation an offense detail report for the area adjacent to East Gum Avenue at the Highway 113 overcrossing. This area covers six reporting districts. There are 60 reporting districts of populated areas in Woodland. Each district covers the same geographical distance.

A report covering the period of January 2009 through the date of this incident (April 30, 2009) included 139 Part I crimes for these six reporting districts (the area bordered by Main Street, Gibson Road, East Street, and the area approaching County Road 102). Part I crimes include robbery, burglary, aggravated assault, larceny, and auto theft. This is the area the deputies were driving in to and the area from which Navarro was coming.

During this four-month period prior to April 30, there were approximately 700 Part I crimes reported throughout the whole city of Woodland, of which 139 (approximately 20% of all reported Part I crimes) came from the area in question, which covers 10% of the populated areas of the city of Woodland.

b) Gang Graffiti in the Area

While at the original incident scene, Lt. Lucero observed apparent gang graffiti in several nearby locations. He returned to the area to further document this activity. Lt. Lucero noted and photographed gang graffiti both north and south of East Gum Avenue at the Highway 113 overpass. The graffiti indicated markings by both Norteno and Sureno street gangs. The graffiti is easily noticed from the roadway.

APPLICABLE LAW AND ANALYSIS

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 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. The authority includes California Penal Code Sections 197-199, 816, 835, 840, and published case law.

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.)

The area's reputation, the time of day, and the suspect's efforts to avoid detection are all proper factors to consider and together may provide reasonable suspicion of criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 240-242.)

Factors, such as nighttime and "high crime" or "high narcotics" areas, will not alone suffice, alone, to justify a detention. However, they are important and relevant, and in combination with one or more other suspicious factors, may justify a reasonable suspicion. (*Illinois v. Wardlow, supra*, 528 U.S. at p. 124; *Souza, supra*, 9 Cal.4th at pp. 240-242; *People v. Mims* (1992) 9 Cal.App. 4th 1244, 1248; *United States v. Ortiz-Hernandez* (9th Cir. 2005) 427 F.3d 567, 573-574 [Officers may consider "nature of the area as part of the calculus of suspicion, although it's not enough on its own to justify a stop or search."].)

The California Supreme Court has stated: "An area's reputation for criminal activity is an appropriate consideration in assessing whether an investigative detention is reasonable under the Fourth Amendment," noting that "it would be the height of naivete not to recognize that the frequency and intensity of [criminal activities] are greater in certain quarters than in others." (*People v. Souza, supra*, 9 Cal.4th at p. 241.)

The United States Supreme Court has held that a subject's flight on foot from the police when it occurs in a "high narcotics area" is sufficient in itself to justify a

temporary detention. (*Illinois v. Wardlow*, *supra*, 528 U.S. at pp. 124-126.) When combined with other factors, such as a high crime area and/or time of night, there is often a valid basis to detain. (See *United States v. Fuentes* (9th Cir. 1997) 105 F.3d 487, 489 [Defendant's flight attempt and other articulated reasons to believe defendant was carrying narcotics gave officers probable cause to arrest].)

The United States Supreme Court and the California Supreme Court have held that flight is merely one factor in the totality of the circumstances that a court will look at to determine whether reasonable suspicion exist. However, it is an important factor, because fleeing from police officers, as opposed to simply refusing to cooperate, is inherently suspicious and therefore "can be a key factor in determining whether in a particular case the police have sufficient cause to detain." (*People v. Souza*, *supra*, 9 Cal.4th at p. 235.) "Headlong flight, wherever it occurs, is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." (*United States v. Wardlow*, *supra*, 528 U.S. at p. 124.)

Vehicle Code 21950(b) states in part that, "No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard."

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 Deadly 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.)

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.)

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.)

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.

Homicide is the killing of one human being by another. Homicide can be either lawful or unlawful. When the shooting occurs in self-defense, or in defense of another, it is not an unlawful act. (CALCRIM 500, 505.)

Penal Code Sections 197-199 define the law of self-defense and defense of another. For the killing of another person to be in self-defense and not unlawful, the person who does the killing must actually and reasonably believe:

1. That there is imminent danger that the other person will kill or cause great bodily injury to him or another; and
2. That it is necessary under the circumstances for him to use in defense force or means that might cause death of the other person, for the purpose of avoiding death or great bodily injury to himself, or another. (CALCRIM 505.)

To justify taking the life of another in self-defense or in defense of another, the circumstances must be such as would excite the fears of a reasonable person placed in a similar position. The person killing must act under the influence of those fears alone. (See *People v. Humphrey* (1996) 13 Cal.4th 1073, 1083 [Trier of fact must consider all the facts and circumstances in determining whether the slayer acted as a reasonable person]; see also *People v. Romero* (1999) 69 Cal.App.4th 846, 853.) The danger must be apparent, present, immediate, and instantly dealt with, or must so appear at the time to the slayer, as a reasonable person. (*People v. Romera, Supra*, 109 Cal.App.4th at p. 853.)

The killing must be done under a well-founded belief that it is necessary to save oneself from death or great bodily harm. (*Id.*)

The force used by a person acting in self-defense, whether lethal or non-lethal, must be reasonable under the circumstances. Therefore, the test is that there must be “apparent necessity.” There must be an honest and reasonable belief in the apparent peril and the need to defend oneself. (See Penal Code Section 197(3); 1 Witkin, Cal. Crim. Law 3d (2000) Defenses, Section 66.) If an individual uses deadly force in self-defense after a gun is pointed at him in a threatening manner, deadly force is reasonable even if it is later learned that the gun was not loaded. (1 Witkin, Cal. Crim. Law 3d (2000) Defenses, Section 66; *People v. Herbert* (1882) 61 Cal. 544; also *People v. Collins* (1961) 189 Cal.App.2d 575, 588.)

The law recognizes that a person acting in a stressful situation is not able to reflect upon his actions and the perceived threat against him to the same degree as a person who is not being confronted by an emergency situation. When an attack is sudden and the peril is swift and imminent, immediate action may be necessary. In such cases, the law does not second-guess and say that one might have resorted to other means to secure one’s safety. (*People v. Hecker* (1895) 109 Cal. 451, 467.)

The law recognizes that an officer must make instantaneous decisions based on the appearance of danger. “He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable....” (*People v. Collins* (1961) 189 Cal.App.2d 575, 588.)

B. ANALYSIS

When considering reasonableness, one must take into account the fact that Sgt. Johnson and Deputy Oviedo were forced to make split-second decisions when faced with a situation that was tense, uncertain, and rapidly evolving. One must also consider the subjective belief of Navarro. However, regardless of his state of mind, Navarro was not legally justified in using deadly force against the deputies. When considering all of the facts and circumstances known to them at the time, the deputies' use of deadly force was objectively reasonable and justified and, therefore, does not warrant the filing of criminal charges against Sgt. Johnson, Deputy Oviedo or Deputy Bautista.

The officers initiated a consensual encounter that was legally justified. Sgt. Johnson and Deputy Oviedo were permitted by law to engage Navarro in a consensual encounter. Nothing in the officers' initial contact with Navarro could be construed as escalating the contact into a detention. Deputy Bautista drove the vehicle to Navarro's location, and Sgt. Johnson exited the vehicle on Navarro's side, properly identified himself as a peace officer, and requested to speak with Navarro. Additionally, witness Vieana Navarro, while driving by the foot pursuit of Navarro, observed the three deputies and was able to tell that they were police officers.

Based on the totality of circumstances, the officers had a reasonable suspicion to detain Navarro. These factors included: a very high crime area, recent incidents of violent acts in the area, criminal street gang "tagging" activity, Navarro placing his hand in his pocket upon being contacted, and Navarro immediately fleeing from the officers and running into the roadway among moving vehicles. Based on these factors, as soon as Navarro put his hand in his pocket and fled on foot, there was reasonable suspicion to

detain him. By refusing to stop and comply with a proper lawful directive by law enforcement, Navarro was in violation of Penal Code section 148. Further, when Navarro ran into the lane of traffic, he violated Vehicle Code Section 21950. By doing so, he created an immediate hazard. Navarro's actions - immediately putting his hand into his pocket and quickly fleeing from the officers - in combination with the totality of the circumstances, escalated the consensual contact into reasonable suspicion to detain.

The Fourth Amendment seizure of Navarro did not occur during the foot pursuit, when the officers displayed their weapons, or when they yelled at Navarro to stop. Nor did it occur when Sgt. Johnson attempted to apprehend Navarro by grabbing him, because since Navarro was able to effectively evade Sgt. Johnson's grasp. When Navarro did stop, he did not acquiesce or submit to law enforcement authority; he was preparing for and did engage in an assault on a peace officer with a deadly weapon. The actual seizure of Navarro did not occur until he was actually shot by the officers and was rendered incapable of continuing either his resistance or the assault.

At the point Navarro eventually stopped, he was not submitting to a lawful detention, as was his obligation, but instead was preparing to and did launch an assault on Sgt. Johnson with a deadly weapon. When Navarro displayed the knife he had concealed in his pants pocket and assaulted Johnson, Navarro committed a violation of Penal Code Section 245(c), assault with a deadly weapon upon a peace officer.

In that moment, both Sgt. Johnson and Deputy Oviedo, as deputies of the Yolo County Sheriff's Office, were "public officers." They were performing a legal duty by overcoming Navarro's actual resistance to their legal process of detaining him for a violation of Penal Code Section 148. Both Sgt. Johnson and Deputy Oviedo had

probable cause to believe that Navarro posed a threat of serious physical harm to another and had committed a violation of Penal Code Section 245(c) by attempting to strike Sgt. Johnson with a knife. Sgt. Johnson and Deputy Oviedo were justified in shooting Navarro resulting in Navarro's death, in order to stop the assault. The use of force by Sgt. Johnson and Deputy Oviedo was necessary to accomplish that lawful purpose and to defend the deputies from imminent great bodily injury or death.

Even to the extent that Navarro may not have subjectively known that the three deputies were police officers, the deputies stated that they identified themselves as police officers by showing their badges and guns and verbally identified themselves numerous times during the foot pursuit. Additionally, civilian witness Viana Navarro was able to identify the deputies as police officers as she was driving and watching the events unfold. In fleeing the police (even if he had a right to do so), Navarro could not violate the law and use deadly force to do so (unless he was reasonably in fear of great bodily injury or death based on the actions of the deputies). The methamphetamine in Navarro's system may have played a role in his perception of the unfolding events. When Navarro unreasonably used deadly force, the deputies were placed in a position to defend themselves or allow Sgt. Johnson to fall in the path of further harm.

There is little doubt that as Navarro turned, swinging the knife at Sgt. Johnson, both Sgt. Johnson and Deputy Oviedo actually and honestly believed that deadly force was immediately necessary to prevent death or great bodily injury. According to pathologist Dr. Reiber, the wound track from the bullet was consistent with Navarro having swung his right arm to the left, exposing his right shoulder blade. The bullet entered Navarro's right shoulder blade at a steep upward angle and exited out his left jaw.

CONCLUSION

It is the conclusion of the District Attorney's Office that no criminal charges will be filed against Sgt. Johnson, Deputy Oviedo, or Deputy Bautista. In reaching this decision, we address only whether or not there is sufficient evidence to support the filing of criminal charges in connection with the shooting death of Luis Gutierrez Navarro. We find that the shooting of Luis Gutierrez Navarro was legally justified. Both Sgt. Johnson and Deputy Oviedo honestly and reasonably believed that Navarro posed an imminent deadly threat. Navarro was not legally justified in using deadly force against Sgt. Johnson. The deputies acted in self-defense. Finding the shooting lawful, we will take no further action in the matter.

No charges letter from United States Attorney Eric Holder



U.S. Department of Justice

Civil Rights Division

MJK:tc
DJ 144-11E-1534

Criminal Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Sheriff Ed Prieto
Yolo County Sheriff's Office
2500 East Gibson Road
Woodland, CA 95776

FEB 04 2011

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Yolo County Sheriff's Office

Dear Sheriff Prieto:

The Criminal Section of the Civil Rights Division enforces the federal criminal civil rights laws, such as the willful abuse of authority by public officials that deprives individuals of liberties and rights defined in the United States Constitution or federal law. We evaluate allegations of civil rights violations to determine whether the evidence and circumstances of the case warrant a federal criminal prosecution.

We received a complaint that Deputy Hernan Oviedo and Sergeant Dale Johnson of your agency may have been involved in violating the civil rights of Luis G. Navarro. We recently completed our review of the results of the investigation of that complaint to determine whether a federal criminal prosecution was warranted. After careful consideration, we concluded that the evidence does not establish a prosecutable violation of the federal criminal civil rights statutes. Accordingly, we have closed our investigation. Please be advised that our conclusion in this matter does not preclude other components of the U.S. Department of Justice from taking action, where appropriate, under their separate enforcement authority.

This Division is dedicated to the enforcement of federal criminal civil rights statutes. We appreciate your cooperation in our shared responsibility to ensure the impartial and effective enforcement of our laws.

Sincerely,

Mark J. Kappelhoff
Section Chief
Criminal Section

SW
JPC