



COUNTY OF YOLO
OFFICE OF THE DISTRICT ATTORNEY
JEFF W. REISIG, DISTRICT ATTORNEY

MEMORANDUM

DATE: October 5, 2023

TO: Chief Robert Strange
West Sacramento Police Department
550 Jefferson Blvd.
West Sacramento, CA 95605

FROM: Yolo County District Attorney's Office
Jeff Reisig, District Attorney
Frits van der Hoek, Deputy District Attorney

RE: Officer-Involved Shooting Davis Police Dept. Report No. 23-00736

Shooting Officers: Nathan Ogden

Person shot: Hector Valdez Perez (DOB: 04/29/59)

The District Attorney's Office has completed an independent review of the above officer involved shooting. Issues of civil liability and departmental policies and procedures were not considered. The sole issue at hand is whether there is legally sufficient evidence to support the filing of a criminal action in connection with the shooting of Hector Perez. For the following reasons, we conclude that the evidence does not support criminally charging Officer Nathan Ogden.

The District Attorney's Office received and reviewed written reports, statements, and audio/video recordings including:

- Davis Police Department (DPD) report number 23-00736
- DPD 23-00736 Crime Scene Entry Logs
- DPD 23-00736 Evidence/ Property Reports
- DPD 23-00736 Photo Logs
- DPD 23-00736 Physical Evidence Report
- Yolo County Coroner's Report # 23-00122
- Officer Interview Transcripts
- Officer Interview Recordings
- Photographs and diagrams
- SWAT Operations Plan
- Body Worn Cameras (BWC)
- Arial Drone Cameras
- Woodland Police Department (WPD) report number 22-02436
- Woodland Police Department (WPD) report number 22-02641
- California Highway Patrol (CHP) report number 17-00601
- Law Enforcement Practices & Human Factors Psychology Report by David M. Blake, PhD
- Supplemental Report on Law Enforcement Practices & Human Factors Psychology Report by David M. Blake, PhD

FACTUAL SUMMARY

The following factual summary was derived from a review of police records, camera recordings, and transcribed interviews with the officers involved.

On February 14, 2023, at about 8:00 am, the Yolo County SWAT Team attempted to execute a warrant for the arrest of Hector Perez. Mr. Perez was living in a detached camper trailer to the rear of the property located at 3088 CR 88C in Dunnigan. The team included peace officers from the Woodland Police Department, West Sacramento Police Department, and the Yolo County Sheriff's Office. The Davis Police Department provided support in the form of an EOD robot operator. The Davis Police Department, which is the agency that investigated this shooting, did not have any personnel involved in the shooting.

The arrest warrant had been issued on September 8, 2022, and had been signed by the Honorable Judge Daniel Maguire of the Yolo Superior Court. The warrant was the culmination of the investigation in Woodland Police Department case 22-02426, which investigated allegations that Mr. Perez had committed acts of child molestation. The investigation discovered substantial evidence of those offenses, including but not limited to a video recording Mr. Perez had made of himself committing sexual acts against a four-year-old child. If Mr. Perez was convicted of the offenses listed in the warrant, he faced incarceration for the remainder of his life.

Before the SWAT Team attempted to execute the warrant, they conducted a briefing where they discussed an operations plan, as well as risk assessment of Mr. Perez. In that risk assessment officers discussed Mr. Perez' prior violence against peace officers, specifically an incident on September 3, 2017. In that case Mr. Perez had attacked two CHP Officers during a DUI investigation. Mr. Perez was able to gain control of one of the officer's batons and used that baton against the second officer. Mr. Perez was convicted of a violation of Penal Code section 245, subd. (c), (Assault with a Deadly Weapon Against a Peace Officer) on April 3, 2019, and was sentenced to five years prison. That conviction is considered a prior "strike." Officers also discussed Mr. Perez' two prior convictions for domestic violence.

In May of 2022, while the Woodland Police Department was conducting their investigation in the child molestation allegations against Mr. Perez, Mr. Perez had attempted suicide in his residence, which at that time was an apartment on Matmor Road in the City of Woodland. Mr. Perez used two kitchen knives to cut himself in the bathroom of the residence, injuring himself severely and requiring hospitalization.

On February 14, 2023, about 30 minutes before the SWAT team moved in, surveillance teams were set up to monitor the trailer where Mr. Perez was. When the SWAT team moved in, they established a perimeter and at about 8:15 am were able to visually identify Mr. Perez in his trailer. Mr. Perez would not respond to the officers and barricaded himself inside the trailer.

The officers utilized their Crisis Negotiation Team, who was already on scene. Officers used several different tactics in their attempt to arrest Mr. Perez. For about an hour they made phone calls and sent text messages to Mr. Perez. Officers then used an EOD Robot to breach a window of the trailer. The officers then used a flying drone to enter the trailer, which was unsuccessful. The officers attempted to use the robot to breach the door of the trailer, which was only partially successful because Mr. Perez had barricaded the door with a chair. The officers used a second flying drone to attempt entry through the front door, which was unsuccessful.

About three hours into the standoff officers breached a window of the trailer. Then, fifteen minutes later, Officers approached the trailer and attempted to make contact, through the windows of the trailer, both in person and with a pole camera. Mr. Perez grabbed the pole camera and pulled it into the trailer. Officers were able to see Mr. Perez, but Mr. Perez barricaded himself in a bathroom. While at the trailer officers could smell an odor of gas coming from the trailer and could see that Mr. Perez had used a towel to keep gas in or out of the trailer. The officers did not make entry into the trailer, but instead retreated. Officers then deployed a throw phone to attempt to communicate with Mr. Perez, which was unsuccessful.

About four hours into the standoff, Officers used CS Gas (sometimes referred to as tear gas) into the trailer, using a projectile launcher. About five minutes later officers deployed CS gas again, firing the gas through the bathroom window.

About seventeen seconds later Mr. Perez exited the trailer through the front door. Mr. Perez was holding a twelve-inch knife in his hands. Mr. Perez was bleeding from self-inflicted knife wounds to his wrists and throat. Mr. Perez was wearing a hooded sweater, which had a large

amount of visible blood on the neckline and the cuff of his left arm. Mr. Perez had a large blood stain on the left knee of his pants. As Mr. Perez emerged from the trailer an officer shouted to other officers, “Knife in his hands, knife in his hands.” Officer Ogden commanded “Show me your hands!” three times. Mr. Perez then brandished the knife, raising it so that his arm was in front of his face. An officer used a projectile launcher to shoot a 40 mm less-lethal impact munition at Mr. Perez, which struck him. Mr. Perez ignored the impact and started moving toward the corner of the trailer.

As this was happening, Officer Ogden was positioned in the turret on the top of an armored police vehicle. He was exposed to the outside but was protected by the height of the vehicle and armor plating in the turret.

After Mr. Perez came out of the door, he turned and started walking towards the side of the trailer. As Mr. Perez was walking an officer commanded Mr. Perez “Drop the knife, drop the knife. Drop the knife.” As that officer was yelling at Mr. Perez, Mr. Perez rounded the corner of the trailer walking away from Officer Ogden and towards the three officers who had fired the gas projectile. Immediately after the other officer said “drop the knife” for the third time, Mr. Perez was about 45 feet away from the gas team and was still advancing toward those officers.

Both Mr. Perez and the gas team were ahead of Officer Ogden, with the gas team being to the left and further back with respect to Mr. Perez. If Mr. Perez continued advancing, he would come directly between Officer Ogden and the gas team after about 20 more feet. Officer Ogden fired two rounds from his rifle. One round struck Mr. Perez in the back. Mr. Perez immediately fell to the ground, dropping the knife at his side.

Officer Ogden provided a statement as part of the investigation, in which he described that when he fired the rifle, he believed that Mr. Perez was attempting to assault the officers on the gas team using the knife and that Officer Ogden needed to act immediately because any delay would create a deadly cross-fire situation.

After the shooting other officers quickly advanced on Mr. Perez, secured the knife, and attempted life saving measures, but Mr. Perez passed after only moments.

LEGAL ANALYSIS

Applicable Legal Standards

Pursuant to California Penal Code sections 196 and 835a; a law enforcement officer can use deadly force when “necessary” to defend human life or when “necessary” to apprehend a fleeing violent felon. Penal Code section 196 explains that homicide is justifiable when committed by peace officers when the homicide “results from a peace officer's use of force that is in compliance with Section 835a.”

Penal Code § 835a, subd. (a) states:

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

[...]

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

Penal Code § 835a, subd. (c) states:

(1) ... a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

[...]

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

California Criminal Jury Instructions (CALCRIM) 507 explains that homicide committed by a peace officer is not unlawful if:

(1) The officer was a public officer;
and

- (2) The killing was committed while the officer reasonably believed, based on the totality of circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person.

OR

- (2) The killing was committed while the officer reasonably believed, based on the totality of the circumstances that the person killed:
- a. Was fleeing;
 - b. The force was necessary to arrest or detain the person for a violent felony;
 - c. The commission of that violent felony created a risk of or resulted in death or serious bodily injury to another person;

AND

- d. The person killed would cause death or serious bodily injury to another person unless immediately arrested or detained.

CALCRIM 507 later defines serious bodily injury as “serious impairment of physical condition” further elaborating that serious bodily injury may, but is not limited to “loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.”

The same instruction later goes on to explain that the threat of death or serious bodily injury is imminent when:

“based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”

Child molestation is a violent felony as a matter of law. (Penal Code section 667.5, subd. (c)(6).)

An arrest warrant carries the authority to enter a dwelling where the suspect lives when there is reason to believe the suspect is within. No additional search warrant is required. (*Payton v. New York*, (1979) 445 U.S. 573.)

Analysis

In this case, officers lawfully obtain a warrant to arrest Mr. Perez for violent felonies. An officer familiar with Mr. Perez' appearance identified him as being in the trailer, and therefore officers were authorized to make entry into the trailer that was Mr. Perez' residence for the purpose of arresting Mr. Perez.

Mr. Perez spoke fluent English and would have been able to understand the officers. In a dash-camera video recording from Mr. Perez' most recent domestic violence arrest, he can be heard having a back-and-forth conversation with the arresting officer, in English.

Mr. Perez responded to the officers by barricading himself in his residence. Rather than forcing a confrontation the SWAT team engaged in a standoff with Mr. Perez, which lasted more than four hours. The team attempted multiple options to negotiate with Mr. Perez and reach a peaceful result, including calling, sending text messages, calling out to Mr. Perez, and using a "throw phone" to speak with Mr. Perez.

Facing the rest of his life in prison, Mr. Perez attempted to end his own life to avoid being taken into custody. He used a knife to cut his own wrists and throat. Mr. Perez did not respond to any of the officer's attempts to mediate with him, other than to grab the pole camera and to further barricade himself in the interior of his trailer.

When officers launched tear gas into the bathroom that Mr. Perez was barricaded in, Mr. Perez was forced to leave the trailer. When Mr. Perez did so, he attempted to provoke a lethal response by holding and actively brandishing a twelve-inch knife. Mr. Perez was still given the opportunity to be taken into custody peacefully and officers attempted to use less than lethal tactics to stop the threat posed by Mr. Perez.

As Mr. Perez walked around the trailer and toward the gas team, it was clear that he was not attempting to surrender or otherwise comply with the officers. He was ignoring officer commands and whether he was attempting to attack the officers on the gas team or was attempting to flee, any objective person could reasonably conclude either, or both.

Analyzing the facts with the above cited law, Officer Ogden was a public officer at the time of this incident. As Mr. Perez continued his movement, he placed Officer Ogden in a position where Officer Ogden needed to either act immediately or find himself in a position where he and the other officers were unable to act, because they would be in a crossfire situation.

This risk of crossfire between officers was created by the necessity of having the gas team at the rear of the trailer to launch the gas projectiles into the bathroom, since the bathroom window was on the rear of the trailer. The officers had attempted to minimize this risk by having the gas team off to the side, so they were shooting the gas projectile into the bathroom window at an angle. Mr. Perez' sudden exit from the trailer and his immediate movement towards the gas team brought him directly between two sets of officers.

If, instead of Officer Ogden, any of the other officers on the front side of the trailer were to shoot at Mr. Perez, either in that moment or the moments that would have followed, there would have been a substantial risk of accidentally shooting the officers on the gas team. Of the group of officers in front of the trailer, Officer Ogden was the officer on the far most end of that group. Because of his positioning, at the moment that Officer Ogden fired, he was the only officer at the scene who had an angle where he was able to stop Mr. Perez without a creating a substantial risk of shooting other officers. The other officers in front of the trailer could not shoot without a substantial risk of hitting the gas team. The gas team could not shoot without a substantial risk of hitting the officers in front of the trailer. The officers inside the separate structure on the property could not shoot because Mr. Perez' movement around to the side of the trailer had brought him out of sight.

If Officer Ogden had waited to shoot Mr. Perez and allowed Mr. Perez to continue his advance, Officer Ogden would be unable to stop Mr. Perez due to the risk of accidentally shooting the officers on the gas team positioned beyond Mr. Perez. Mr. Perez was already directly between the gas team and four of the officers on the team at the front of the trailer. If Officer Ogden had waited, he would have been unable to fire and the other officers in front of the trailer would still be unable to shoot without substantial risk of shooting a fellow officer. Similarly, there would be no time where the gas team could stop Mr. Perez without substantial risk to other officers. Even if the gas team waited until Mr. Perez and his knife were only feet away from them, any shooting would have a substantial risk of accidentally shooting a fellow officer, because Mr. Perez' would be directly between the gas team and the group of officers that were stationed inside the separate structure on the property.

There was no indication that Mr. Perez's would stop his advance on the officers. Officer Ogden was aware that Mr. Perez was committed to the assault, given the length of the standoff, the seriousness of the crime of arrest, and Mr. Perez' prior felonious assault on a peace officer. Mr. Perez had been given every opportunity to surrender and to be taken into custody peacefully. Mr. Perez had clearly demonstrated that he was not going to allow that. Mr. Perez had just attempted to kill himself by cutting his own wrists and throat. Having been unsuccessful, despite having been gassed and shot with a less-lethal impact munition, Mr. Perez forced this confrontation by brandishing a knife while advancing on armed officers until he was finally shot. This action can only be described as a successful attempt to commit what is commonly referred to as "suicide by cop."

At the moment that Officer Ogden fired, it was necessary for him to eliminate the threat of serious bodily injury to the officers on the gas team, as waiting any longer created the risk of a deadly crossfire that would make action impossible.

That Mr. Perez had the intention of bringing his life to an end does not change this analysis because "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight" as emphasized in Penal Code § 835(a). Therefore, Mr. Perez' decision to die rather than go back to prison does not

mitigate Officer Ogden's reasonable fear for the lives of the three officers on the gas team and Officer Ogden's perception that lethal force was necessary in that moment.

Based on the circumstances on the case, it is clear that Mr. Perez was attempting to provoke a deadly confrontation. However, even if Mr. Perez had been attempting to flee after cutting his own wrists, throat, and leaving the trailer brandishing a knife, Officer Ogden's actions would still be lawful. Mr. Perez would have been a fleeing, violent felon. Mr. Perez had committed the offense of child molestation, a violent felony that created the risk of death or great bodily injury to another person. If Mr. Perez was not immediately arrested or detained, but was instead allowed to escape, Mr. Perez would cause serious bodily injury or death to another person, given both the crime of arrest and given Mr. Perez's prior felonious assault on a peace officer.

CONCLUSION

The District Attorney's analysis of police conduct is for criminal prosecution only and represents the law as it was written on February 14, 2023. The necessity of Officer Ogden's use of force must be judged from the perspective of a reasonable officer on scene at the time of the event, not with 20/20 hindsight. Officer Ogden was performing his job as a public officer when he arrived at Mr. Perez's residence with a warrant to arrest Mr. Perez for a violent felony. Mr. Perez barricaded himself in his residence and attempted suicide before emerging from the trailer with a large knife and advancing on police officers. Under the reasonable belief that he had to take immediate action because Mr. Perez had the intent to inflict immediate serious bodily injury to other officers, Officer Ogden was left with no viable alternative and made the split-second decision use deadly force. This force was necessary, and his beliefs were reasonable under the totality of the circumstances. Therefore, there is insufficient evidence to support the filing of criminal charges against Officer Ogden for the February 14, 2023, shooting of Hector Perez.