



OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF SHASTA



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May 4, 2021

Sheriff Eric Magrini
Shasta County Sheriff's Office
300 Park Marina Circle
Redding, CA 96001

Re: February 4, 2020 Officer Involved Shooting
Redding Police Department case 20R008216
Shasta County Sheriff case 20S003880
Involved Deputy: Sergeant Jose Gonzalez
Involved Civilian: Thomas Barbosa (DOB 6/6/78)

Sheriff Magrini:

The Shasta County District Attorney's Office has completed an independent review of the above-referenced officer involved shooting incident. For purposes of this review, the District Attorney's responsibility is to review the evidence and make a determination as to whether there is sufficient evidence to support the filing of criminal charges against the involved deputy. For the reasons set forth below, we conclude that there is insufficient evidence to file criminal charges.

Consistent with county-wide officer involved shooting protocol, the lead agency in the criminal investigation was the Redding Police Department, with the assistance of the Shasta County District Attorney's Office Bureau of Investigation and the California Highway Patrol. The Shasta County Sheriff's Office also conducted an independent parallel administrative investigation into the conduct of its employee. In conducting the criminal investigation into the case, investigators interviewed witnesses, collected evidence, and reviewed relevant audio and video recordings. In particular, key evidence of the shooting was obtained from video captured by a California Highway Patrol helicopter flying overhead. Voluntary statements were also obtained from all sheriff's deputies present at the scene of the shooting, including the involved officer, Sergeant Jose Gonzalez.

California law regarding officer-involved shootings changed effective January 1, 2020. Therefore, since this incident took place in February of 2020, it will be evaluated under the new legal standard. That standard will be more fully discussed below.

Background of Involved Parties

At the time of his death, Thomas Barbosa was 41 years old and lived in Cottonwood, California with his wife and three children, ages 17, 11, and 4. Mr. Barbosa was a veteran who had served overseas. As a result of his military service, Mr. Barbosa had reportedly been diagnosed with post-traumatic stress disorder (PTSD) and had previously received mental health treatment through the Veterans Administration. According to family members, Mr. Barbosa was also a frequent user of methamphetamine. The combination of drug use and mental health issues was reported to cause frequent bizarre and irrational behavior. In the time leading up to this incident, Mr. Barbosa was described as "very suicidal."

At the time of this incident, Sergeant Jose Gonzalez was a longstanding deputy with the Shasta County Sheriff's office with over 25 years of experience, having worked for the agency since 1994. Since becoming a sheriff's deputy, Gonzalez had worked in the jail, as a patrol deputy, and in specialized drug enforcement assignments. He was promoted to the supervisory rank of sergeant in 2007. Since this promotion, Sergeant Gonzalez held assignments as an administrative sergeant and as a patrol supervisor.

In addition to his duties described above, Sergeant Gonzalez had held several collateral assignments within the sheriff's office over the course of his career, including service on the sheriff's SWAT team and as a departmental rangemaster. He had also received training on less than lethal tactics for dealing with uncooperative subjects.

On the date of the shooting, Sergeant Gonzalez was working as the patrol supervisor for the south county area. He was responsible for supervising a shift of patrol deputies assigned to the southern portion of Shasta County.

History of Incidents Prior to February 4 Shooting

As part of the investigation of this incident, information was gathered regarding prior incidents of behavior and actions of Mr. Barbosa. While some of these incidents were reported to law enforcement, many were not. The primary source of information regarding Mr. Barbosa was his wife, who was interviewed as part of the investigation. This information was gathered to provide a full picture of Mr. Barbosa and to attempt to explain his behavior on the day of the shooting incident.

Mr. Barbosa was described as having a history of mental health issues, dating back several years. These mental health issues were exacerbated by his abuse of methamphetamine.

When interviewed, Mr. Barbosa's wife detailed numerous instances of aggressive and violent behavior, including an incident in which Barbosa held a knife to his wife's throat and threatened to kill her. This incident occurred in August or September of 2019 but was not reported to law enforcement.

According to Ms. Barbosa, Mr. Barbosa had spent three days in December of 2019 in an inpatient mental health setting at a Veterans Administration hospital in Sacramento to address his mental health issues. While en route to Sacramento with his wife, Mr. Barbosa repeatedly attempted to harm himself by jumping out of the moving vehicle.

In the months leading up to the February 4 shooting, Mr. Barbosa was the subject of several incidents reported to the Shasta County Sheriff. On May 29, 2019, Ms. Barbosa called dispatch and reported that Mr. Barbosa was suicidal and armed with a weapon. Sheriff's deputies were dispatched to the call. Ms. Barbosa reported to deputies that her husband would fight law enforcement or kill himself if they tried to contact him. During this incident, Mr. Barbosa injured himself in the neck and barricaded himself in the attic. When sheriff's deputies arrived for a welfare check, Mr. Barbosa refused to come down from the attic. After this call, the location was flagged so that deputies responding to future calls would be aware of Mr. Barbosa's potential for dangerous and violent behavior.

On June 6, 2019, dispatch received a request for a welfare check of Mr. Barbosa. The caller requested a check on Barbosa due to recent suicide attempts. Based on the prior history with Mr. Barbosa and the lack of a current emergency, Sergeant Gonzalez declined to authorize a welfare check. He did attempt to call the reporting party but was unsuccessful.

On December 8, 2019, Ms. Barbosa again called dispatch and reported that Mr. Barbosa had cut his wrists and was armed with a knife. Deputies responded to the scene. They were able to get Ms. Barbosa and the children out of the residence and attempted to contact Mr. Barbosa. Deputy Van Eyck, who was on this call, noted that Mr. Barbosa barricaded himself in the attic and refused to come out to speak with deputies. Deputies left the location after Mr. Barbosa agreed to show them his wrists and they were able to see that he was not seriously injured.

At the time of February 4, 2020 incident, Sergeant Gonzalez was aware of the history of law enforcement contact with Mr. Barbosa due to his position as patrol supervisor for that portion of the county.

February 4, 2020 Initial Call for Service and Sheriff Response

Mr. Barbosa returned to his home in Cottonwood in the early morning hours of February 4, 2020. His wife and three children were in the home when he returned. Barbosa had been gone much of the previous day. When he returned, he was acting in a paranoid and irrational manner, talking to people who were not there and making nonsensical statements. During this time, Barbosa grabbed a hammer and used it to damage numerous items in the house. He walked throughout the house, using the hammer to hit the walls and various items of furniture. At one point, Barbosa went into his daughter's bedroom, took her cell phone, and smashed it with the hammer. During his time wielding the hammer, Barbosa nearly struck his wife with it as he went throughout the house. At one point, Mr. Barbosa armed himself with a knife, which he placed in his pocket. His wife was able to take the knife away from him, however. Mr. Barbosa asked her to return the knife, telling her he "needed it". She did not return the knife to him. During this time, Barbosa had mentioned to his wife that he believed that unknown people were trying to kill him.

Mr. Barbosa's behavior caused his wife great concern for the safety of herself and her three children. She decided to leave the house with the children. Before she left, Ms. Barbosa called 911. This initial 911 call was made at 12:35 pm and was received by Cal Fire dispatchers in Tehama County. The call was made while Mr. Barbosa was damaging the house with a hammer. Ms. Barbosa requested an ambulance for her husband, stating that he was "having psychosis", was imagining things that were not there, and was fighting with the air. She denied that Mr. Barbosa was a danger to himself or others but did report that he was scaring her and her children.

As a result of the 911 call, personnel from the West Valley Fire Department were dispatched to the Barbosa residence. Fire personnel did not immediately proceed to the home, but instead staged in the area, waiting for law enforcement to arrive so that they could safely assist. While waiting near the home, fire personnel observed Ms. Barbosa and her children leave the home, get into a vehicle, and drive away. Ms. Barbosa stopped to explain to the fire department staff that Mr. Barbosa had torn up the residence.

Around the same time Ms. Barbosa left the house in her vehicle, Mr. Barbosa was observed getting into a Ford F-150 pickup truck and following her. Mr. Barbosa pulled up to briefly speak with fire department personnel. His statements made no sense. Barbosa then returned to his residence for a brief period. During this time, it appeared to fire personnel that Barbosa was destroying items in the garage.

Ms. Barbosa's goal in leaving the house was to get away from Mr. Barbosa and travel to her family's home in Corning. As she drove away from her home, Mr. Barbosa followed her in his Ford F-150 pickup truck. While Ms. Barbosa was driving, she received a phone call from Shasta

County Sheriff's Deputy Garr. Deputy Garr was in training and was working in a patrol unit alongside Deputy Van Eyck. Deputy Garr called at 1:00 pm to follow up on Ms. Barbosa's earlier 911 call and to inquire as to her safety. Ms. Barbosa told the deputy that she was trying to leave her home, however Mr. Barbosa was following her. At the time, Ms. Barbosa was traveling eastbound on Gas Point Road after leaving her home on Denice Way.

Sergeant Gonzalez, as the shift supervisor, was monitoring radio traffic and was aware of the call at the Barbosa residence. He inquired with Deputy Van Eyck as to whether Ms. Barbosa was concerned for her safety or whether she could pull over at the Gas Point Market. Van Eyck replied to Gonzalez and indicated that Ms. Barbosa was concerned. Van Eyck told Ms. Barbosa to continue to drive slowly on Gas Point Road, and he and Garr would head in her direction to meet with her.

At 1:02 pm, Sergeant Gonzalez, who was en route to the area himself, told Deputy Van Eyck via radio to tell Ms. Barbosa to meet with deputies at the auction yard in Cottonwood. This information was relayed to Ms. Barbosa.

Shasta County Sheriff's Detective Seth Edwards happened to be travelling in the area in an unmarked police vehicle. At 1:04 pm, Detective Edwards radioed that he had observed a silver F-150 (the vehicle being driven by Mr. Barbosa) driving eastbound on Gas Point Road. Detective Edwards observed that the truck was following a minivan being driven by a female. The male was flailing his arms and upper body as he drove behind the van. Based on the nature of the call and the erratic behavior he observed, Detective Edwards decided to follow behind the two vehicles. He was aware that a marked sheriff's vehicle was en route, but the marked vehicle had not yet arrived on scene. Detective Edwards followed the two vehicles to the parking lot of the auction yard in Cottonwood. During this time period, Edwards was able to determine the license plate number of the truck driven by Mr. Barbosa. Dispatch confirmed that the vehicle was registered to Mr. Barbosa and the registration was expired.

Shortly thereafter, Deputy Van Eyck and Deputy Garr arrived in the parking lot of the auction yard to meet with Ms. Barbosa. Sergeant Gonzalez, who had been monitoring the situation as it developed over the radio, had suggested the auction yard as a meeting location. During this time period, Ms. Barbosa relayed to Deputy Garr that Mr. Barbosa had made suicidal statements earlier in the week but had made no such statements on that day. This information was relayed by Deputy Van Eyck over the radio. Listening to the radio traffic, Sergeant Gonzalez inquired as to whether any crime had been committed by Mr. Barbosa. Deputy Van Eyck replied that no crime had been committed.

As Deputies Garr and Van Eyck pulled into the parking lot, they saw both Ms. Barbosa's minivan and Mr. Barbosa's truck in the lot. As they drove toward Ms. Barbosa, Mr. Barbosa drove away. The deputies did not follow him. Instead, they contacted Ms. Barbosa.

Initial Pursuit of Barbosa

At this time, Sergeant Gonzalez was also responding toward the scene. In radio traffic between Deputy Van Eyck and Sergeant Gonzalez, Deputy Van Eyck confirmed that a crime had not been committed and the call had come in as a request for medical assistance. Van Eyck also advised Gonzalez that Ms. Barbosa believed that Mr. Barbosa was likely returning to the Denice Way home.

At 1:10 pm, Sergeant Gonzalez advised over the radio that he was following behind Mr. Barbosa. He then confirmed with dispatch that the registration on the pickup truck was expired. He followed behind Barbosa to see if Barbosa was going to return home. The hope was that Barbosa would return home, and, with his family safely out of the home, the situation would be deescalated. As Gonzalez followed Barbosa, he noticed that Barbosa passed the road toward his home, and it appeared that he was moving toward a more populated area, traveling westbound on Gas Point Road. Given Mr. Barbosa's erratic and unpredictable behavior, Sergeant Gonzalez made the decision to conduct a traffic stop for the registration violation before Barbosa could continue into an area where he could potentially pose a risk to more people.

At 1:17 pm, Sergeant Gonzalez attempted to initiate a traffic stop of Mr. Barbosa on Gas Point Road, west of Joanne Lane. Barbosa did not yield to the traffic stop. Instead, he continued driving down Gas Point Road. Sergeant Gonzalez used his lights and sirens to try to get Barbosa to pull over, but Barbosa still refused to yield. In addition to Sergeant Gonzalez, Detective Edwards in his unmarked police vehicle was also following Barbosa. The pursuit continued for some distance, and eventually Shasta County Sheriff's Deputy Fleming arrived to assist. Deputies also requested assistance from the California Highway Patrol helicopter. The helicopter arrived and followed the pursuit from the air. Speeds during the pursuit ranged from 60 to 70 miles per hour. During the pursuit, Sergeant Gonzalez continued to be concerned as to whether Barbosa would travel into busier areas with more people or towards more rural areas where he posed less of a threat to others

As the pursuit continued, Barbosa continued into a very remote area of the county. Sergeant Gonzalez decided to terminate the pursuit. Vehicles on the ground stopped pursuing Barbosa, leaving the CHP helicopter to continue to monitor the situation from the air. Sergeant Gonzalez and Deputies Van Eyck, Garr, and Fleming then pulled over to the side of the road nearby to debrief the situation and discuss the next steps to be taken. It was decided that Garr and Van Eyck would document their initial involvement with the welfare check and Sergeant Gonzalez would write up and submit a misdemeanor criminal case against Barbosa for the failure to yield and evading.

Barbosa's Actions Following End of Pursuit

While the deputies were debriefing, the CHP helicopter continued to follow Barbosa by air. At approximately 1:46 pm, CHP broadcast that Barbosa had driven his truck off the roadway on Platina Road near the intersection of Nono Road. He drove through a fence and stopped on the side of the road. Approximately two minutes after driving off the road, Barbosa drove his vehicle down a steep embankment off the side of Platina Road. After going over the edge of the embankment, the truck rolled several times before becoming lodged against a tree. The vehicle sustained serious damage during this process. Other than the helicopter in the air, there were no other law enforcement personnel on scene. CHP requested that law enforcement and medical units respond to the scene. While CHP Air Operations staff was waiting for other law enforcement to arrive, civilian passersby stopped and attempted to go down to the crash scene, presumably to assist Mr. Barbosa. For the safety of the civilians, a CHP helicopter landed so a crew member could prevent civilians from approaching. A second CHP helicopter then took over providing aerial coverage of the scene.

Arrival of Sheriff's Deputies and Initial Action

Hearing the broadcast of this incident, deputies began to respond to assist. There were no CHP units on the ground available to assist. Sergeant Gonzalez and the other deputies were aware that civilians had been in the area trying to help. Sergeant Gonzalez directed Deputy Fleming (accompanied by a police canine), Deputy Van Eyck, and Deputy Garr to travel to the area where Barbosa had driven off the road. Sergeant Gonzalez also headed to the scene himself. The four deputies arrived at the scene of the crash at approximately 2:08 pm.

The area where the crash occurred is in a remote area of Shasta County. The embankment down which Barbosa drove is steep with heavy brush and trees. This makes the area of the crash very difficult to see from the road. Additionally, the ground was somewhat wet from recent rains, so the terrain was soft and unstable.

When the three deputies and Sergeant Gonzalez arrived, they were unable to see the crashed truck from the roadway. However, they could hear the alarm horn repeatedly sounding. Sergeant Gonzalez made the decision to go with the other deputies down to the scene of the crash to try to contact Barbosa and provide aid to him. At 2:12 pm, Sergeant Gonzalez announced over the radio that deputies were going down the hill to clear Barbosa's vehicle.

Before going down to the truck, Sergeant Gonzalez retrieved his AR-15 patrol rifle from his vehicle. He later told investigators that he decided to take the rifle because he was heading into an open area and it was still unknown if Barbosa was armed. The patrol rifle with its scope is more accurate at longer distances. Gonzalez additionally explained that the round fired by the rifle (.223 caliber) is more powerful than a standard handgun round and is better able to

penetrate barriers. Sergeant Gonzalez also gathered first aid supplies in order to render any needed medical aid to Barbosa.

Initial Approach to Truck by Deputies

Gonzalez, Van Eyck, Garr, and Fleming then went down the hill toward the truck. Gonzalez was the only one armed with a rifle. The others had their standard-issue equipment, which included sidearms, pepper spray and tasers. Deputy Fleming also had his police canine on a leash.

As the deputies approached the crash scene, Sergeant Gonzalez was concerned about the possibility that Barbosa was out of the truck and could ambush the deputies. He sent the other three deputies down together and stayed some distance from them so he could keep watch over the area with his rifle and scope and provide cover to the others. The truck had landed on its left side, with the right side facing upwards. The best vantage point the deputies had into the interior of the truck was through the rear window.

Once the deputies got to the area where the truck was crashed, they attempted to see if anyone was still inside. Deputies Van Eyck and Garr approached the rear window of the truck and looked inside. Deputy Fleming was farther back with his police dog. Sergeant Gonzalez was the farthest away from the truck, providing cover with his rifle. Deputy Van Eyck reported to the others that there was a person in the truck, but he was not moving. Deputy Fleming suggested using OC spray in the truck, but Sergeant Gonzalez decided against this, as he was concerned about the effects the spray could have if Barbosa were seriously injured.

In order to get a better view inside the truck, Deputy Van Eyck used his baton and broke out the back window of the truck. Deputy Garr provided cover with his handgun. After breaking out the window, Deputy Van Eyck could see that Barbosa was alive and moving around in the truck. Van Eyck began speaking to Barbosa, giving him commands to come out of the truck. This continued for nearly five minutes, with Van Eyck and Garr close to the back of the truck monitoring Barbosa and attempting to get him to surrender. Barbosa did not comply with the deputies' commands. Van Eyck reported to Gonzalez that Barbosa was being uncooperative.

During this time, Sergeant Gonzalez formulated a plan to try to safely get Barbosa out of the vehicle so he could be provided medical attention. Gonzalez called over the radio for fire personnel to respond with jaws of life to perform a "tactical extract". The plan was to use equipment to peel the roof off the truck while holding Barbosa at gunpoint so he could be safely taken out of the vehicle.

Escalation of Situation

After several minutes of Van Eyck and Garr close to the back of the truck giving commands to Barbosa, Barbosa began to move as if he was going to crawl out of the truck. Deputy Van Eyck then saw that he had a black-handled knife in his hand. Van Eyck yelled out to the others that Barbosa had a knife, and he and Garr immediately backed away from the truck. As they did this, Deputy Fleming and his dog moved closer to the truck. Sergeant Gonzalez circled around toward the rear window of the truck, continuing to provide long cover with his rifle. These movements were based on a plan formulated by Sergeant Gonzalez and relayed to the other three deputies. Deputy Fleming, with his canine was to be the less lethal option, and Van Eyck and Garr were to be the arrest team, with Gonzalez providing cover.

Barbosa did not exit the truck, and deputies continued to give him commands. Sergeant Gonzalez told Barbosa that if he attempted to exit the truck with the knife, he would be shot. He was told to come out of the truck with nothing in his hands. Deputy Fleming also told him that he was under arrest. During the time Barbosa had the knife in his hand, Fleming also sprayed pepper spray into the vehicle. Barbosa did not comply with the commands. After a brief time, Barbosa appeared to be moving items around in the vehicle as if he were preparing to come out. Believing Barbosa was about to surrender, deputies made a plan to take him into custody. If both Barbosa's hands were visible and he hesitated in leaving the truck, deputies were planning on using the canine to get him into custody. Deputy Fleming still had his canine on leash in one hand and was holding his pepper spray in his other hand.

Shooting by Sergeant Gonzalez

Barbosa had to pull out a headrest from the vehicle seat to clear his path to exit the truck. Once he had done this, he had a clear path to leave the truck. Based on the way the vehicle was positioned, Barbosa was able to stand inside the vehicle in a "hunched" or crouched down posture. He also made what was described as a nonverbal growling noise, which deputies interpreted as aggressive. Barbosa then began to move and turn his body as if he were going to come out of the truck. Sergeant Gonzalez saw that Barbosa had a knife in his hand. Concerned for the immediate safety of Deputy Fleming, who was closest to the truck, Sergeant Gonzalez fired one round from his rifle, striking Barbosa. Gonzalez broadcast over the radio that the suspect was down at 2:23 pm.

Sergeant Gonzalez later explained to investigators his reasoning for firing his rifle at Barbosa. Barbosa was armed with a knife and had been uncooperative. He had refused to put down the knife and had become more physically aggressive toward law enforcement. Deputy Fleming was closest to the truck and would therefore be the first person Barbosa would encounter as he left the vehicle. Gonzalez explained that he believed that Fleming was approximately ten to twelve feet from the exit point of the truck, which, in his training experience would not give

Fleming sufficient time to react to the threat. Fleming's vulnerability to injury was further enhanced by the fact that he had pepper spray in one hand and a dog leash in the other. With his hands full, it would take him additional time to transition to use of his firearm should Barbosa attack him. For these reasons, Gonzalez explained, he felt "that the threat was imminent."

Immediately after Sergeant Gonzalez fired his rifle, Barbosa fell, with the knife still in his hand. Unsure as to whether Barbosa still posed a threat, the canine was sent in to try to drag Barbosa clear of the truck. When the dog was unsuccessful, Deputies Van Eyck and Garr pulled Barbosa free of the truck. The deputies then began attempting to provide him with medical attention. Soon thereafter, medical staff arrived to assist. Their efforts were unsuccessful, and Barbosa was pronounced dead at the scene.

A knife was later recovered by investigators from the inside of the truck. A single .223 caliber shell casing was also located in the area where Sergeant Gonzalez fired his rifle.

A subsequent autopsy by the Shasta County Coroner's Office determined that Barbosa's cause of death was a single gunshot wound to the upper left shoulder/chest area. The path of travel of the bullet was from front to back, left to right, and downward. He had suffered no significant injuries from the vehicle crash.

In order to gather evidence of the circumstances of the shooting with as much accuracy as possible, Redding Police requested the assistance of the Multidisciplinary Accident Investigation Team (MAIT) of the California Highway Patrol. MAIT examined the scene and evidence and was able to recreate the relative positions of the deputies at the time of the shooting. Their analysis determined that, at the time he fired, Sergeant Gonzalez was 27.2 feet from the area where Barbosa would have first emerged from the truck. Deputy Van Eyck was 29.1 feet away, Deputy Garr was 26.0 feet away, and Deputy Fleming was 22.0 feet away from the same location where Barbosa would have first emerged from the truck had he been able to fully exit.

California Legal Standard for Use of Deadly Force

A law enforcement officer is only authorized to use physical force under certain limited legal circumstances. These legal standards are contained in statutes which describe the limits placed on officers in their interactions with the public.

Legislation passed in 2019 changed the law surrounding officer involved shootings in California, effective January 1, 2020. These statutory changes are set forth in amendments to section 835a of the California Penal Code.

The term “deadly force” is used in situations in which the force used involves a high risk of death or serious bodily injury and includes any situation in which an officer discharges a firearm. (Penal Code section 835a(e)(1).) Deadly force can include situations in which a death does not occur.

The use of deadly force by a police officer is lawful under the circumstances set forth in section 835a of the California Penal Code. This section allows for use of deadly force in situations in which an officer reasonably believes that the force is necessary “to defend against an imminent threat of death or serious bodily injury to the officer or another person.” (Penal Code section 835a(c)(1)(A)). Whether or not an officer’s belief is considered legally “reasonable” is based on the totality of the circumstances as known to the officer at the time deadly force is used. So, while the officer is not entitled to the benefit of hindsight, it is appropriate to factor into the totality of the circumstances those situations in which an officer is forced to make a quick decision to use force.

If an officer is attempting to make an arrest, the officer is not required to retreat if the person who he or she is attempting to arrest resists or threatens to resist. (Penal Code section 835a(d).)

As indicated above, the threat of death or serious bodily injury must be “imminent”. This means that the person against whom deadly force is used “has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury” to the officer or another person. (Penal Code section 835a(d)(2).) The law makes it clear that imminent harm is not merely a fear of future harm. Rather, it is a harm that, from appearances, must be instantly confronted and addressed. (Penal Code section 835a(e)(2).)

Legal Analysis

In applying the above legal standard to the facts of this case, it is important to consider a number of factors including the circumstances leading up to the deadly force event, the officer’s training and experience as it related to the threat he was facing, and, perhaps most importantly, the totality of the facts known to the officer at the time the deadly force was used.

In this case, Sergeant Gonzalez was familiar with Mr. Barbosa based on past calls for service. Gonzalez was aware that Barbosa had behaved erratically in past incidents but did not have any information that Gonzalez had physically attacked or harmed anyone in the past. Nevertheless, given Barbosa’s history as known by Sergeant Gonzalez, it would have been logical to expect potential violence from Mr. Barbosa as he had previously armed himself with a weapon and had expressed (according to his wife) a willingness to harm law enforcement officers. This willingness to harm law enforcement had been relayed to deputies in the May 29, 2019

incident. None of the deputies involved in the May 29, 2019 incident was involved in the February 4, 2020 incident.

The information relayed to Sergeant Gonzalez and other deputies during the initial dispatch the date of the shooting would also reasonably have caused concern. Mr. Barbosa was reportedly armed with a knife while destroying property in his home. While it was not reported that he was physically injuring anyone, the behavior certainly merited concern for potential violence. As Sergeant Gonzalez and the other deputies responded to the call, they were receiving updated information from both SHASCOM and directly from Mrs. Barbosa. This "real time" information confirmed that Barbosa had left the house and was following his wife and children.

After Mr. Barbosa drove away from the auction yard, it appeared that the situation was deescalating. He was no longer following his wife. At that point, deputies had determined that no crime had been committed, so they were under no obligation to follow or contact Barbosa further. However, still concerned about Barbosa's previous behavior and unsure as to what he was planning on doing next, Sergeant Gonzalez chose to follow him. Once it appeared that Barbosa was not going back home, Gonzalez attempted to make a traffic stop for the expired registration violation. This would have been a legal traffic stop. When Barbosa refused to pull over, it was similarly legal for Sergeant Gonzalez to pursue. Sergeant Gonzalez also had the discretion to end the pursuit, which he ultimately did do as Barbosa continued out into a more remote area.

Sheriff's deputies next contact with Mr. Barbosa came because of the intentional crash of his truck. Even though they had ended their previous contact with Mr. Barbosa, they had an obligation to respond as the closest law enforcement personnel available to assist. At this point, the concern was for the physical safety of Mr. Barbosa, given the significant nature of the crash and resulting damage to the vehicle.

Once Sergeant Gonzalez and the other deputies arrived at the crash site, it was entirely appropriate for them to go down to the location of the truck and attempt to contact Mr. Barbosa. They had a duty as law enforcement officers to assist Barbosa. Sergeant Gonzalez chose to take his rifle down the hill due to concerns about Barbosa's past behavior.

The deputies soon became aware that Barbosa was alive and able to move around the inside of the vehicle. Over the course of several minutes, they gave him repeated commands, which he did not comply with. Barbosa's failure to comply with their lawful commands constituted the crime of resisting, obstructing, or delaying a police officer. While the officers could have decided to disengage from the situation and wait for Barbosa to leave the truck on his own, they were under no obligation to do so.

The dangerousness of the situation was heightened once it became apparent that Barbosa was armed with a knife. As he continued to ignore commands to put down the knife, he was further warned by deputies that he would be shot if he exited the truck with the knife. Immediately prior to the shooting, Mr. Barbosa, knife in hand, began to move toward exiting the truck. It was at this point, that Sergeant Gonzalez chose to fire the single, fatal shot.

In his later explanation as to why he chose to fire, Sergeant Gonzalez stated that he believed that Deputy Fleming was in imminent danger due to the fact that he was closest to the truck, and would have had delayed access to his own firearm due to the fact that his hands were full with pepper spray in one hand and the canine's leash in the other. He estimated that Barbosa would have been able to get to Fleming within two seconds. Gonzalez further estimated that Fleming was 10 to 12 feet from the truck at the time he took the shot. Further analysis determined that Fleming was actually 22 feet away from the truck. Fleming was the closest deputy to the truck. For these reasons, Sergeant Gonzalez believed that the danger to Deputy Fleming was "imminent".

To prove that a person committed a crime, the prosecution is required to prove each element of that crime beyond a reasonable doubt. This legal standard applies in every situation involving potential criminal behavior, including actions taken by law enforcement officers. In a homicide case, part of this burden is proving that the person who caused another's death (here, Sergeant Gonzalez) did not act in lawful self-defense or in defense of another person.

Since, Sergeant Gonzalez is a peace officer, the legal standard of Penal Code section 835a would apply to his actions. Whether or not Sergeant Gonzalez' use of deadly force is justified will revolve around whether, at the time Gonzalez fired his weapon, Mr. Barbosa posed an "imminent" threat. The determination as to whether the threat was imminent is based on all the circumstances known at the time of the shooting, from the perspective a hypothetical "reasonable officer in the same situation".

The law also provides us with guidance as to the definition of imminent. Applying the definition of imminent to this case, Mr. Barbosa posed an imminent threat if, at the time he was shot by Sergeant Gonzalez, he had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury. Each of these components will be addressed in turn.

A person's ability to cause death or great bodily injury is clearly increased if that person is armed with a weapon. Here, Mr. Barbosa had a knife in his hand. Deputies were aware of the presence of the knife and Mr. Barbosa had repeatedly refused commands to put it down. The knife was later located near Mr. Barbosa's body and was clearly of a nature that could have produced great bodily injury or death. Even if a person is armed with a knife, however, his or her ability to use it to hurt someone is diminished as distance is increased. Mr. Barbosa was not within arm's reach, but he could have closed the distance within a short period of time.

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While it could be argued that the distance between Mr. Barbosa and the nearest deputy minimized Barbosa's ability for harm, a contrary argument would be that the unpredictable actions of Mr. Barbosa and the rapidly changing situation required quick action by Sergeant Gonzalez.

In this analysis, we must also consider whether Mr. Barbosa had the opportunity to cause death or great bodily injury. Once again, he was moving to exit the truck while armed with a knife. He could have very quickly been in a position to harm the deputies, given the proximity of the deputies to the truck. Given the rapidly evolving nature of the situation, Sergeant Gonzalez chose to take action to prevent harm.

The apparent intent of Mr. Barbosa is also a factor to consider. While he never made a statement to the deputies after crashing the truck, his actions showed his unwillingness to comply with their lawful orders. He refused repeated commands, armed himself with a knife, and attempted to exit the truck with a knife even after being warned that he would be shot. While it is impossible to know exactly what Mr. Barbosa was thinking, his behavior that day, especially when combined with the deputies' prior experiences with him, could very reasonably lead Sergeant Gonzalez to believe that Mr. Barbosa meant to cause them harm.

From all the circumstances, it is clear that Sergeant Gonzalez sincerely believed that a deadly threat was imminent and that the circumstances required him to quickly end a potentially deadly situation. Mr. Barbosa, who was clearly suffering from mental illness, tragically died as a result.

Based on a thorough review of the evidence and the law, there is insufficient evidence to prove that the shooting of Mr. Barbosa was unlawful. This office will take no further action on this case.

Sincerely,



STEPHANIE A. BRIDGETT
DISTRICT ATTORNEY