



Office of the District Attorney Stanislaus County

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Assistant District Attorney
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Stephen R. Robinson
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Jeff Mangar

Bureau of Investigation
Chief Terry L. Seese

PRESS RELEASE

For Immediate Release

Date: February 7, 2020
Re: Shooting by Officer Found to be Justified

For More Information Contact:

John Goold, Public Information Liaison
Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, after a thorough review of all the relevant evidence gathered during the investigation of the officer-involved shooting that occurred on June 6, 2019, the shooting has been determined to be justified.

A copy of the letter provided to the Stanislaus County Sheriff's Department and Modesto Police Department is attached to this press release.

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January 31, 2020

Sheriff Jeff Dirkse
Stanislaus County Sheriff's Office
250 E. Hackett Rd.
Modesto, CA 95358

Chief Galen Carroll
Modesto Police Department
600 10th Street
Modesto, CA 95354

Re: Shooting of Jose Jesus Astorga

Dear Sheriff Dirkse and Chief Carroll:

On June 6, 2019, Jose Jesus Astorga (DOB 6/14/1981) was shot during a hostage standoff. The Sheriff's office has submitted the shooting investigation to the District Attorney's Office for review (under SO case #S19026095). Based upon a review of the submitted reports, witness statements, audio and video evidence, it is our conclusion that the use of force by Deputy Fernando Gomez was legally justified. To explain this finding, I begin with a brief summary of the known facts:

FACTS

On June 6, 2019 at approximately 1343 hours (1:43 p.m.), sheriff's deputies were dispatched to a residence on Olivero Road for a report of a man with a gun breaking into a house. As a deputy arrived, minor children ran from the house and an adult male was observed to grab another minor and pull him back into the house. The responding deputies broadcast this information and a perimeter was set up. The Sheriff's and Modesto Police SWAT teams also responded due to the known hostage situation.

One of the escaped children explained that a strange man had broken into the house armed with a shotgun. A 17-year-old female hostage, who was able to break free and escape, told the deputies that the man who broke in appeared to be under the influence of drugs. The

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man, later identified as Astorga, took all of the occupants hostage. Some managed to escape as the police arrived, but he was still holding a 14-year-old boy inside. Astorga could be heard by the SWAT team members stationed near the house making paranoid statements.

The SWAT team moved police vehicles directly to the front of the house and called for Astorga to surrender. The announcements were made in English and Spanish. The SWAT team also threw a "portable" phone into the house to try and make contact with Astorga. Astorga threw the phone back outside. Astorga held the boy inside the house for over an hour with no contact.

During the standoff the 14-year-old boy was able to get to a window and attempt to climb out. The boy's head was covered with some kind of material and a jacket that were placed over his head by Astorga, so he was having a difficult time escaping from the window. Astorga could be seen grabbing the boy and attempting to pull him back into the house. Several members of the SWAT team raced to the window and tried to pull the boy out of Astorga's clutches. The boy would later say, if he "was pulled back in he would not have lived." Based on the need to neutralize the threat and allow the boy to be rescued, a SWAT team member Dep. Gomez then shot Astorga.

Pursuant to the county-wide officer involved shooting protocol, an investigation into the shooting was commenced. The hostage/victims described Astorga's behavior as off or like he was on drugs. Astorga made bizarre statements and made strange demands all while claiming his neighbors were trying to kill him. He made the 14-year-old switch shirts (forcing him to put on Astorga's shirt when Astorga became aware the police were outside) and then covered him in chalk.

Astorga's loaded 12-gauge shotgun was recovered from inside the house.

LAW

Any application of deadly force is unlawful unless it is either justified or excused. The use of force by a peace officer is governed by the Fourth Amendment. As the U.S. Supreme Court has said:

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' [citation] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and

rapidly evolving-about the amount of force that is necessary in a particular situation.”

Graham v. Connor, (1989) 490 U.S. 386, at p. 396-397.

Peace officers have rights by virtue of their need to enforce the laws that differ from the ordinary citizen. Some of these rights are codified in Penal Code §835a which states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. ¶ A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

One court in reviewing a hostage situation stated:

“Where potential danger, emergency conditions, or other exigent circumstances exist, ‘[t]he Supreme Court's definition of reasonableness is ... ‘comparatively generous to the police....’ ” [Citation.] [Citation.] ‘ “In effect, ‘the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases....’ [Citation.]” ’ [Citation.] A police officer's use of deadly force is reasonable if ‘ “ ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’ [Citations.]” [Citation.] [Citation.] ‘ “Thus, ‘an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.’ ” ’ ” (Brown, supra, 171 Cal.App.4th at p. 528, 89 Cal.Rptr.3d 801, citations omitted.)” Lopez v. City of Los Angeles, (2011) 196 Cal. App. 4th 675, 686

The reasonableness standard mentioned in Lopez is the same standard required for self-defense/defense of others, and as said by another court:

“Justification does not depend on the existence of actual danger but on appearances. [Citations.] ... He [defendant] 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, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures.” People v. Jackson, (1965) 233 Cal. App. 2d 639, 642.

CONCLUSION

Based on the law, Deputy Gomez was performing his job as a deputy sheriff which allowed him to be where he was and contact Astorga. Astorga had committed several violent and dangerous felony offenses by the time the 14-year-old tried to escape from him. The SWAT team knew that Astorga had a shotgun and had pointed it at the hostages in the house. It was, therefore, reasonable to believe that Astorga was “armed” even if the gun was not in his hand at the time of the struggle over the 14-year-old at the window. The young boy, who had been held hostage longest and had been subjected to Astorga’s strange demands knew best what would have likely happened to him if Astorga were able to pull him back inside the house – he would die. It is eminently reasonable for a well-trained SWAT officer to believe he had probable cause under these circumstances to stop Astorga. We conclude this shooting was justified.

Very truly yours,

BIRGIT FLADAGER
District Attorney



David P. Harris
Assistant District Attorney

cc: Dep. Gomez