



OFFICE OF THE
DISTRICT ATTORNEY

Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354
Mailing address: POB 442, Modesto, CA 95353
Telephone: (209) 525-5550 Fax: (209) 558-4027

Birgit Fladager
District Attorney

Carol Shipley
Assistant District Attorney
Chief Deputy District Attorneys

Jerry Begen
Alan Cassidy
Dave Harris

PRESS RELEASE

For Immediate Release

Date: March 1, 2012
Re: CHP Officer-Involved
Shooting Ruled Justified

For More Information Contact:

Carol Shipley, Assistant District Attorney
Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that, following a thorough review of all the evidence and an analysis of relevant case law, the shooting of Carrick Vigen by three CHP officers has been determined to be justified. Sergeant Ian Troxell, Officer Jonathan Box and Officer Adam Percey were legally justified in their actions.

On June 18, 2011 at approximately 2108 hours, law enforcement was advised of a suicidal man with a gun. The man was identified as Carrick Vigen. Vigen was in phone contact with his family and was saying things that made them think he was going to kill himself. The family communicated that Vigen was bi-polar and possibly off his medication. The information was passed on to law enforcement through the dispatch system.

As Vigen continued to talk to his family, additional information was relayed by dispatchers out to field units. Sheriff's deputies, Modesto police and the California Highway Patrol were monitoring the events as they were reported. Based on the description of where Vigen was, the agencies were not certain of his location. Modesto police went to one gas station but were not able to locate Vigen. Sheriff's deputies went to another possible location (near a "big barn near West Main") while CHP went to another gas station (the Valero at West Main and Crowslanding near Patterson, CA).

CHP Sgt. Troxell drove to the Valero station and confirmed that Vigen's truck was there. Sgt. Troxell reported that Vigen could be seen rocking back and forth in the truck and making furtive movements. The sergeant attempted to communicate with Vigen over his loudspeaker but received no response. Radio dispatchers could be heard advising law enforcement that Vigen was possibly bi-polar and had a gun. (The CAD log shows dispatch saying that Vigen had been "in and out of Sac. County mental health" and was bi-polar and an alcoholic.)

Off. Percey and Off. Box arrived to assist Sgt. Troxell. Sgt. Troxell had been on scene waiting for almost 20 minutes by the time both officers arrived. At one point, a person parked their car next to Vigen's truck and the "dash cam" video recording from Sgt. Troxell's patrol car clearly depicts the officers' frantic attempts to get others away from Vigen. During this time Vigen was on the phone with his family. Vigen told his brother that he had a .45 on his lap and that he (Vigen) was going to die that night. Vigen's brother would later state that it sounded like Vigen was drunk or on methamphetamine.

Officer Box described Vigen as "every once in a while" putting his (Vigen's) "head down, at which time he would rock" and/or "sway from side to side..." Sgt. Troxell used his PA system to tell Vigen to surrender. Sgt Troxell told him to "listen to us so you don't get hurt." Vigen opened the driver's side door but did not immediately get out. All three of the CHP officers were in distinctively marked CHP uniforms and had arrived in marked black and white CHP vehicles.

Sgt. Troxell can be heard on the video telling Vigen to step out after Vigen starts to get out of the truck. When Vigen finally got out of his truck, he immediately turned to where the officers were standing and raised his arms directly in front of him with his hands extended at the officers as in a shooting stance. Vigen held something dark in his hands. Civilian witnesses confirmed to investigators that when Vigen exited his truck he had raised something in his hands and pointed it at the officers. One witness said the item could have been a gun. One of the gas station employees said that the way that Vigen turned his body towards the officers and the way Vigen raised his arm made him think Vigen was pointing a weapon at the officers.

On the tape, Sgt. Troxell can be heard to excitedly exclaim "gun." Sgt. Troxell believed that Vigen was pointing a gun at him. Sgt. Troxell then fired his weapon. Officer Box said he saw something in Vigen's hand and feared that Vigen was going to shoot Sgt. Troxell, since Troxell was the one nearest to Vigen. Off. Box then fired his weapon. Off. Percey saw something in Vigen's hand and thought that Vigen was going to shoot at the officers, so he fired his weapon. The weapons used by the three CHP officers were civilian versions of the military's M-16 rifle. It is sometimes referred to as a tactical rifle. The rifle(s) can only be fired in semi-automatic mode and have a detachable magazine.

The video contains a time stamp from which the length of time involved can be determined. From the moment Vigen pointed the object at the officers and the first shot was fired until the last shot appears to be thirteen (13) seconds. Vigen is facing the officers for the first five (5) seconds until he falls to the ground. After Vigen fell to the ground, he continued to move around with his hands outstretched. A review of the video shows several flashes from the ground near where Vigen was located. These flashes resemble muzzle flashes. While the investigation conclusively established that Vigen never fired a gun, and, in fact, did not have a gun, the legal review and analysis must evaluate this case from what was "known" or believed at the time.

Background investigation determined that Vigen had a long history of mental issues and had previously attempted suicide. When interviewed, his family confirmed that Vigen had mental issues and was suicidal at the time of the incident. Vigen's brother confirmed that Vigen had told him just before the shooting that he (Vigen) had a ".45 on his lap" and he was going to have a "shoot-out with the cops." Vigen's brother told investigators that during the phone conversation he could hear sirens in the background. The autopsy established that Vigen had a

blood alcohol level of .28% (over three times the legal limit for driving) and .31g/ml of citalopram (Celexa, an antidepressant). The Coroner's amended death certificate listed the circumstances of death as "suicide by law enforcement officers."

Vigen was shot multiple times, but not every round that was fired struck him. The autopsy report lists 14 projectile injuries but describes four of them as being secondary or intermediary type of wounds - meaning that these wounds were likely caused by the bullets hitting something else, such as the truck Vigen was standing next to. There were fifty-five (55) shell casings recovered from the scene and all were fired within 13 seconds. All of the involved officers stated that they were in fear for their lives or for the other officers' lives. All of the officers fired until they perceived that there was no longer a threat from Vigen.

If Vigen had a .45 caliber handgun in his hand, as he claimed, there would be no issue in this case, but Vigen intentionally misled the officers and his own family into believing he had a gun. The law mandates that we not second-guess officers using knowledge we have later gained:

"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. [T]he question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." [citations omitted.] In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required.[citations omitted.]

"We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes "reasonable" action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." [citations omitted.] Placing the burden of proof on the plaintiff to establish that an officer's use of force was unreasonable "gives the police appropriate maneuvering room in which to make such judgments free from the need to justify every action in a court of law." [citations omitted.]

Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 527-528

In this case, any reasonable officer would have believed he was being threatened with deadly force. The three officers here were told that Vigen had a gun. Vigen came out of the truck and took a shooting stance facing the officers. The officers saw something in Vigen's hand(s). Any reasonable officer in such a position would have been justified in firing his weapon. Lastly, we know from civilian witnesses that they, too, believed that Vigen had a gun in his hand and was going to shoot at the officers.

Officers are not required to wait until the suspect shoots at them before they can return fire. They need not wait and make an inspection of the item in the suspect's possession before they are allowed to defend themselves. This judgment has been made before; in the case of Foster v. City of Fresno, (2005) 392 F. Supp. 2d 1140, the court was faced with the situation where police officers shot and killed an unarmed man, but objectively believed the man had a gun.

That court said: "Officer Cornelison reasonably believed Foster was armed and that all three officers saw Foster move his arm down. It is these undisputed facts that provided Officer Cornelison with probable cause to use deadly force."

All three CHP officers here believed there was imminent danger to themselves and to the other officers, the only way to defend against that threat was by using deadly force, and they only used as much force as they believed was necessary. Under the law, as would be given in court, all three of the officers acted reasonably.