



Office of the District Attorney Stanislaus County

Birgit Fladager
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Stephen R. Robinson

Bureau of Investigation
Lt. David Hutchinson
Lt. Froilan Mariscal

PRESS RELEASE

For Immediate Release

Date: September 6, 2018

Re: Shooting by Officers 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 death that occurred on October 22, 2017, the shooting has been determined to be justified.

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

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August 21, 2018

Sheriff Adam Christianson
Stanislaus County Sheriff
250 E. Hackett Rd.
Modesto, CA 95358

Chief Brent Smith
Ceres Police Department
2727 Third Street
Ceres, CA 95307

Re: Nicholas Pimentel shooting

Dear Sheriff & Chief:

This office has completed our review of the shooting of Nicholas PIMENTEL (DOB 6/28/1990) which occurred on October 22, 2017 in an unincorporated area of the county following a vehicle pursuit from City of Ceres. Based on this review, I must conclude that Officer Ross Bays and Sgt. Darren Venn acted in self-defense and/or the defense of others, during the events in question. This conclusion is based upon the submitted reports of all involved agencies, interviews, photographs and videos of the incident, as well as this office's own independent evaluation of the facts. The facts supporting this finding are set out below.

SUMMARY

On October 22, 2017 at approximately 0102 hours (1:02 a.m.), Sgt. Darren Venn pulled over a pickup truck for speeding. The driver was later identified as Nicholas Pimentel. Sgt. Venn, prior to approaching the truck, used his loud speaker and ordered Pimentel to turn the engine off. Pimentel, instead, drove off at a high rate of speed. Sgt. Venn pursued in his marked patrol car. Pimentel drove in an extremely dangerous fashion at a high rate of speed (over 100 mph at times), running red lights, turning off his headlights and nearly colliding with other vehicles. He was described as "a missile on wheels that was just waiting to hit something."

The pursuit lasted for over eight minutes and only ended when Sgt. Venn was able to get close enough to Pimentel to "PIT"¹ him which caused the truck to spin-out. Sgt. Venn had been joined by several other officers (and vehicles) during the pursuit. Off. Bays was the closest behind Sgt. Venn. The truck was still operational and Pimentel once again tried to flee.

¹ PIT is used generically for driving techniques that end a pursuit. It stands for pursuit intervention techniques.

As Sgt. Venn started to get out of his patrol car, Pimentel put the truck in reverse and backed the truck directly at Sgt. Venn. Sgt. Venn dove back into his patrol car and braced for impact. Venn would later state he thought he was going to die. He was saved by Off. Bays who pulled his patrol car into Pimentel's path resulting in the truck hitting Bays's patrol car. The two cars collided and came to rest next to/against a parked car.

Pimentel revved the truck engine, spinning the tires and attempting to escape. Pimentel shifted from reverse to drive and back and forth. Sgt. Venn climbed out of his car and was yelling for Pimentel to stop; Pimentel ignored him. Sgt. Venn would later state that if Pimentel were able to get the truck free (the truck moving in either direction) either he (Sgt. Venn) or Off. Bays would be injured or killed.

Off. Bays exited his patrol car and also begin yelling commands to Pimentel to stop and show his hands. At this point, Off. Bays became aware that there was a passenger in the truck. Off. Bays shifted his position to protect the passenger (not aim his weapon at her) and could see Pimentel shifting the truck's gears. Pimentel moved his truck, the parked car and the patrol car inch by inch. Off. Bays noticed Pimentel looked directly at him, turned the truck's tires toward him and accelerated. Both Sgt. Venn and Off. Bays fired their weapons at Pimentel until he stopped accelerating the engine. The passenger was removed from the truck and then Off. Bays's patrol car was moved back from the truck to allow Pimentel to be removed and life-saving measures were started on Pimentel. He did not survive.

Pursuant to the county-wide officer involved shooting incident protocol, the scene was preserved and an investigation was conducted by the Sheriff's Office. Pimentel died from gunshot wounds and was found to have a .28% blood alcohol level (the legal limit to drive is below .08%).

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LAW

A brief review of the law helps frame the issues before us. In California Jury Instructions, CALJUR 507, the law states that an officer making an arrest is not acting unlawfully if he has probable cause to arrest or detain a person who is "... resisting arrest or fleeing from justice, overcoming actual resistance to some legal process, or while performing any legal duty" and "probable cause to believe" that the subject "posed a threat of death or great bodily injury, either to the [officer] or to others." "A person has *probable cause* to believe that someone poses a threat of death or great bodily injury when facts known to the person would persuade someone of reasonable caution that the other person is going to cause serious death or great bodily injury to another."

In this case, Sgt. Venn had stopped Pimentel for speeding and Pimentel fled the scene. Pimentel's reckless driving while trying to get away amounted to a felony violation of Vehicle Code §2800.2, escalating the crime. After he was "PIT'ed" Pimentel tried to ram Sgt. Venn making him an immediate threat to the safety of the officer and others. When Pimentel tried to drive towards Off. Bays there was no doubt that he intended to harm someone thus necessitating the use of force.

The United States Supreme Court established the standard to be applied when reviewing an officer's use of force in the case of Tennessee v. Garner, (1985) 471 U.S. 1. The court explained that determining the "reasonableness" of the force used to effect an arrest or seizure required a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against

the countervailing governmental interests at stake. Factors to consider include “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene. The Garner court said the “reasonableness” test 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. Nevertheless, the reasonableness inquiry is "an objective one: the 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.”

The Garner Court further held that “[t]he use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.” However, the Court held that where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is *not constitutionally unreasonable* to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape.

The rule of self-defense allows someone to use deadly force to save oneself or someone else. This concept is memorialized in the Penal Code and there is a special provision for police officers contained within Penal Code §196. That section states:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

There is no legal question that Sgt. Venn and Off. Bays were police officers within the meaning of the term “public officer” as used in §196. As such, each one of them was in the lawful performance of their duties, and each had the right to use force, as long as the use was “reasonable.” This right is 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.

In a civil rights case² the court was faced with very similar facts, stating:

In response to a strong show of force by officers in raid gear who ordered Ojeda to get out of his vehicle, Ojeda instead drove his vehicle up onto the sidewalk adjacent to the strip mall, “gunned” the engine, and drove directly toward Ransweiler and Baldwin. After Ransweiler dove out of the way, he saw Baldwin fall to the ground while still in front of Ojeda's vehicle. Ransweiler's fear that Ojeda would run over Baldwin was reasonable given these circumstances.

Once Ojeda took this extreme action in response to police orders to surrender, Ransweiler acted reasonably in shooting at him, to attempt to stop Ojeda from harming Baldwin or a third party, or escaping. Ransweiler's use of force was not excessive or unreasonably dangerous relative to the danger Ojeda's actions posed.

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

In the instant case, Pimentel fled after he was pulled over and then attempted to ram a police vehicle (or, more likely, run/down Sgt. Venn) after being PIT'ed. When he continued to resist and used his truck to push other cars out of the way he clearly demonstrated he was a danger to the physical safety of others. He left the officers with no choice.

When viewed from the objective officer's point of view, and with the facts known to the officers at that time, it was imminently reasonable for them to use deadly force. The shooting by Sgt. Venn and Off. Bays was in self-defense and/or in the defense of others and to prevent the escape of a dangerous suspect.

CONCLUSION

The evidence leads me to the conclusion that the above-named officers acted lawfully under the circumstances known to them on October 22, 2017. Pimentel had committed a felony, had attempted (at a minimum) to ram a police vehicle, and to cease using his truck as a weapon while he attempted to escape. This office now views the matter as closed.

Very truly yours,

BIRGIT FLADAGER
District Attorney

/S/David P. Harris
Assistant District Attorney

cc: Off. Ross Bays
Sgt. Darren Venn

² Although the cited case is a civil case, it applied the same standards we must use to determine the reasonableness of the officers' conduct. More importantly, the burden of proof used in a civil case is much less than the burden of proof in a criminal case and if the facts do not support a finding of excessive force in a civil case, there would be no way to prevail in a criminal case.