



# Office of the District Attorney Stanislaus County

**Birgit Fladager**  
District Attorney

**Assistant District Attorney**  
David P. Harris

**Chief Deputies**  
Marlisa Ferreira  
Jeffrey M. Laugero  
Wendell Emerson  
Michael D. Houston  
Mark Zahner

**Bureau of Investigation**  
Chief Terry L. Seese

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## **PRESS RELEASE**

### **For Immediate Release**

Date: June 22, 2021

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 that occurred on September 27, 2020, the shooting has been determined to be justified.

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

# # #



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June 21, 2021

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

Re: Shooting of Eloy Mares Gonzalez, Jr.

Dear Sheriff Dirkse:

This office has completed our review of the shooting of Eloy Mares Gonzalez, Jr. (D.O.B. 4/2/1979) which occurred on September 27, 2020 within the Sheriff's jurisdiction. It is reported that Mr. Gonzalez was shot after he attempted to attack at least one sheriff's deputy with a hatchet during an attempted arrest. It is our determination that the deputies were justified in their actions.

## FACTS

On September 27, 2020 at approximately 0457 hours, deputies were dispatched to a silent alarm at a storage facility on Business Park Drive. Deputy Michael Sierra (Field Training Officer or FTO for short) and his trainee Deputy Steven Noel were the first to arrive at the business location. The two deputies (as well as all other deputies mentioned in this report) were wearing distinctive Sheriff Department uniforms. FTO Sierra and Dep. Noel began to walk around the building to investigate the alarm call – they had activated their body-worn cameras (BWC) they carried on their person, as did the subsequently arriving deputies.

When FTO Sierra and Dep. Noel turned the corner on the south side of the business they found a subject who would later be identified as Eloy Mares Gonzalez, Jr. Gonzalez standing behind a hedge (low bushes) on a concrete apron next to the building tucked up against the building partially concealed by shadows. Dep. Noel ordered Gonzalez to "show your hands" since they were investigating a silent alarm of a closed, isolated business which could reasonably imply a burglary had or was occurring. Gonzalez was immediately defiant and uncooperative. FTO Sierra radioed that they had an uncooperative individual detained and other units were dispatched.

Office: 832 12th Street, Suite 300 Modesto, CA 95354 Mailing: PO BOX 442 Modesto, CA 95353  
Telephone: (209) 525-5550 Fax: (209) 558-4027 www.stanislaus-da.org



<https://www.facebook.com/StanislausDistrictAttorney/>

For the next several minutes, the two deputies tried to explain that Gonzalez needed to cooperate and to show his hands. Gonzalez refused and even claimed that his dad owned the building. Gonzalez told the deputies to leave and FTO Sierra explained that because of the nature of the call (silent alarm) they could not. FTO Sierra also explained to Gonzalez that he was delaying them from their job of checking out the building and that if Gonzalez continued, he would be arrested. Gonzalez still refused and even sat down on the edge of the concrete apron behind the hedge.

The hedge Gonzalez sat down behind ran parallel to the building, but on one end butted-up against a portion of the building's exterior wall (the wall jutted out at the corner) and a taller hedge. The open end of the gap between the wall and the hedge had been covered with cardboard or similar corrugated paper materials enclosing Gonzalez behind the bush. FTO Sierra pulled some of the material/debris away after telling Gonzalez he was going to be arrested.

FTO Sierra and Dep. Noel waited for additional units to arrive. Dep Craig Valera and his FTO Fernando Gomez, K9 Deputy Brandon Silva, K9 Deputy Chad Lewis, Deputy Roger Coffman, Deputy Joshua Borba and Deputy Bryan Cummings all arrived on scene at approximately the same time. FTO Gomez and Deputy Coffman were equipped with less-than-lethal beanbag shotguns and FTO Sierra had his taser out.

Gonzalez was again advised he was under arrest for impeding the deputies' investigation. K9 Dep. Lewis gave Gonzalez multiple, loud verbal commands to lay down on his stomach or he was going to send the dog. Gonzalez refused to move. The deputies devised a strategy to get Gonzalez out from behind the bushes and to arrest him. An arrest team was formed consisting of Dep. Valera and Dep. Noel, whose job was to go "hands on" with the subject and make the arrest. The other deputies positioned themselves as close to the subject as possible to assist.

While Deputy Lewis was giving verbal commands to Gonzalez, FTO Sierra advised he saw what appeared to be a knife behind Gonzalez under some property on the ground. Deputies attempted to use their flashlights to illuminate the item but were unable to confirm what the metallic object was. FTO Sierra also advised the others he saw a wood handle to the right of where Gonzalez was sitting but was unable to see what it was. K9 Deputy Lewis gave more commands for Gonzalez to lay down on the ground with his hands out. Gonzalez refused to comply with the lawful orders. Gonzalez made some non-sensical statements saying the deputies should be arrested.

FTO Gomez advised he was going to deploy the less-than-lethal beanbag shotgun on the subject. FTO Gomez fired the less-than-lethal shotgun at Gonzalez, striking him in the left side of the torso. The less-than-lethal round appeared to have little to no effect on Gonzalez. Gonzalez leaned over slightly but continued to not obey commands. Deputy Lewis almost immediately deployed his K9 and the "hands-on" deputies moved in to take Gonzalez into custody.

K9 Dep. Lewis and his dog were to the front, slightly angled to the side of Gonzalez and had to go around and partially through the hedge. The dog grabbed onto Gonzalez as Dep. Lewis tried to use the dog to pull Gonzalez out from behind the bushes. Gonzalez immediately grabbed the dog to choke or fight with the dog. Dep. Lewis yelled to Gonzalez to stop fighting his dog. Gonzalez turned to his right and reached for the wooden-handled item and picked it up. It was a small axe or hatchet. The hatchet had a wood handle and metal head. At this time, Gonzalez started swinging the hatchet towards the dog and Dep. Lewis. Deputies yelled "axe" or "hatchet" as a warning.

When later interviewed, Dep. Lewis, Dep. Silva and Dep. Coffman all believed that Gonzalez was trying to kill or seriously injury one of the multiple deputies within reach of the hatchet (as well as the dog). Dep. Lewis said that, as Gonzalez swung the hatchet at him, he fired his gun three times at Gonzalez. Dep. Silva (who was within arm's reach of Gonzalez) said he saw an axe with a wooden handle being swung within a foot of the front of his (Dep. Silva's) face. Dep. Silva said that he was scared and in fear for his life and Dep. Lewis's life at that moment. Dep. Silva fired his gun one time at Gonzalez. Dep. Coffman was on the other side of the hedge and fired several less-than-lethal rounds at Gonzalez to protect the other deputies.

Gonzalez was immediately incapacitated, fell on his back and dropped the hatchet. The deputies (as a coordinated effort) secured the hatchet (Dep. Silva) and started medical aid for Gonzalez. Dep. Lewis stated that he was "hit" and he was also medically examined. Dep. Lewis was found to have a laceration to his shin and had suffered a broken finger (possible ligament damage). Dep. Silva was also found to have a cut on his left leg.

Gonzalez did not survive his injuries. He was determined to have died from four gunshot wounds. Pursuant to the countywide protocol, the scene was preserved and the District Attorney's Office was called out. The involved deputies were either interviewed or wrote reports and the BWC video was reviewed. In the videos, Gonzalez can be seen swinging the hatchet. Screenshot images are included:



## 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 their need to enforce the laws that differ from the ordinary citizen. One codified right is the right of self-defense, as set out in Penal Code §196, which states:

Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

Penal Code § 196

Penal Code §835a was recently amended to extensively regulate the use of deadly force. The Judicial Council which is responsible for crafting jury instructions used in criminal proceedings has enacted CAL CRIM 507. Instruction 507 takes the language of Penal Code §835a and converts it into plain language for juries to follow; it states:

The defendant<sup>1</sup> is not guilty of murder or manslaughter/attempted murder or attempted voluntary manslaughter if he killed/attempted to kill someone while acting as a peace officer. A killing [or attempted killing] is justified, and therefore not unlawful, if:

1. The defendant was a peace officer;

AND

2. The [attempted] killing was committed while the defendant either:

A. Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the defendant or another person;

OR

B. Reasonably believed, based on the totality of the circumstances, that:

B1. <insert name of fleeing felon> was fleeing;

B2. The force was necessary to arrest or detain <insert name of fleeing felon> for the crime of <insert name of felony>;

B3. The commission of the crime of <insert name of felony> created a risk of or resulted in death or serious bodily injury to another person;

AND

B4. <insert name of fleeing felon> would cause death or serious bodily injury to another person unless immediately arrested or detained.

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<sup>1</sup> The term defendant is used in the instruction since the instruction would be given after someone is charged with a crime. In referencing this instruction, the term defendant will be used to remain consistent with the instruction, but the term does not mean that any decision to charge or not charge a peace officer should be inferred.

A serious bodily injury means a serious impairment of physical condition. Such an injury may include, 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/serious disfigurement).

A 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.

Totality of the circumstances means all facts known to the defendant at the time, including the conduct of the defendant and <insert name of decedent> leading up to the use of deadly force.

In considering the totality of circumstances, you may consider whether:

- Prior to the use of force, the defendant identified or attempted to identify himself as a peace officer and warned or attempted to warn that deadly force may be used;
- Prior to the use of force, the defendant had objectively reasonable grounds to believe the person was aware that the defendant was a peace officer and that deadly force may be used;
- The defendant was able, under the circumstances, to identify him or herself as a peace officer and to warn or attempt to warn that deadly force may be used.

A peace officer who makes or attempts to make an arrest need not retreat or stop because the person being arrested is resisting or threatening to resist. A peace officer does not lose his/her right to self-defense by using objectively reasonable force to arrest or to prevent escape or to overcome resistance.

A person who is employed as a police officer by <insert name of agency that employs police officer> is a peace officer.

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, you must find the defendant not guilty of [attempted] murder/ or manslaughter.

#### Judicial Council of California Criminal Jury Instruction 507

The law establishes the framework of our review – if an officer uses force in compliance with Penal Code §835a, then it is legally justified. As the above instruction points out, if the officer reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person, then the use of force complies with Penal Code §835a.

### ANALYSIS

The new law, which may or may not run afoul of Federal Constitutional protections (if challenged in the courts) for creating different legal standards for the use of force based on individual agency polices, has three viewpoints or windows to use when scrutinizing the behavior of law enforcement under these facts. Those three windows are – “reasonably believed,” “totality of the circumstances,” and “imminent threat.”

The first viewpoint is the carry-over from standard self-defense language that the person “reasonably believed” in the need to use self-defense. This is sometime referred to as an objective standard and sometimes subjective, but it is always based on the *Graham v. Conner* standard set out above. This view asks – did the officer/deputy believe they needed to defend themselves or someone else and is that belief reasonable?

In this case, the two deputies using deadly force objectively and subjectively perceived that they or another deputy was under an armed attack by Gonzalez swinging the hatchet. They fired until the threat stopped and that is what the law has traditionally allowed. Under the facts in this case, the two deputies were justified from this point of view.

The next viewpoint is the “totality of the circumstances” window – what was known to everyone involved, from start to finish. The above jury instruction uses three parts to explain what should be known or done beforehand: 1) Prior to the use of force, the officers/deputies identified or attempted to identify themselves as peace officers<sup>2</sup>; 2) Prior to the use of force, the defendant had objectively reasonable grounds to believe the person was aware that the defendant was a peace officer<sup>3</sup>; and 3) the defendant was able, under the circumstances, to identify him or herself as a peace officer and to warn or attempt to warn that deadly force<sup>4</sup> may be used.

In looking through the “totality of the circumstances” window, it is plain that the deputies identified themselves (both verbally and visually) and that Gonzalez knew who they were but chose to ignore them. Gonzalez was given the opportunity to comply for minutes before the attempt to detain him occurred. Gonzalez was advised he would be bitten by the dog once the arrest process started and he still failed to comply. Gonzalez reacted to the arrest by attacking the deputies with a deadly weapon, leaving them no choice but to respond. Under the facts in this case, the two deputies were justified from this point of view.

The third item of scrutiny asks if there was an imminent threat at the time the deadly force was used. The instruction says this –

A 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.

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<sup>2</sup> The second phrase of this sentence in the instruction “and warned or attempted to warn that deadly force may be used” is not in line with the statute itself and seems to be contrary to the purpose of §835a which calls for de-escalation. Telling someone that they will be shot does not lessen the tension. It might be more appropriate for the “fleeing felon” part of the statute as is reminiscent of old TV shows where the police yelled “stop or I’ll shoot.” However, it is irrelevant to the facts of this case.

<sup>3</sup> This phrase also has the same language as mentioned in footnote #2, “and that deadly force may be used” and is likewise out of place here.

<sup>4</sup> The statements in footnotes #2 and #3 are applicable here as well.

In this case, Instruction 507 guides our review without the need for much discussion. Gonzalez was swinging a hatchet at several of the deputies who were attempting to arrest him. Due to the close proximity and cramped quarters, no one had anywhere to go. The fact that two deputies suffered injuries demonstrates that Gonzalez had the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury. Gonzalez left the involved deputies with no choice but to respond to his use of force with their own. Under the facts in this case, the two deputies were justified from this point of view.

### CONCLUSION

Based on the law, K9 Deputy Brandon Silva and K9 Deputy Chad Lewis<sup>5</sup> acted lawfully under either the old or the new standard of reviewing peace officer conduct. The deputies were responding to a silent alarm and found Gonzalez at the point of the alarm. It would have been a dereliction of their sworn duty to have walked away from the call just because Gonzalez refused to cooperate. His refusal amounted to probable cause to arrest him and that was explained to him. Society cannot tolerate an individual's rebuff of its laws. The deputies tried to talk, explain, warn, and threaten Gonzalez into compliance and, when those attempts failed, had to go "hands on." Gonzalez responded by attacking them with a hatchet. The deputies could not run away and used the tools that the law has given them to respond to such a threat. Any death is tragic, but that does not make it unlawful or unreasonable. In this case, the shooting of Eloy Gonzalez was both reasonable and lawful. This office now views the matter as closed.

Very truly yours,

BIRGIT FLADAGER  
District Attorney



David P. Harris  
Assistant District Attorney

cc: K9 Deputy Brandon Silva, K9 Deputy Chad Lewis

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<sup>5</sup> FTO Fernando Gomez, and Deputy Roger Coffman each fired less-than-lethal rounds during the course of this incident. The amendments to Penal Code §196 and §835a do not apply to their circumstances and their use of force to effectuate an arrest was reasonable under the circumstances. Dep. Gomez used the round like a Taser to gain compliance and it had no effect; Dep. Coffman used a less-than-lethal round when others used deadly force which has been determined to have been justified, so his conduct must also be justified (if the greater is lawful, than the lesser is included as lawful).