

REPORT ON THE FATAL SHOOTING OF

ANDREA NAHARRO-GIONET

NOVEMBER 16, 2013



JEFFREY F. ROSEN
DISTRICT ATTORNEY

PREAMBLE	1
FACTUAL SUMMARY	1
STATEMENT OF FACTS	1
LAW ENFORCEMENT OFFICER STATEMENTS	2
DEPUTY JOSEPH BROWN	2
DEPUTY FERNANDO ESPINOSA	3
RESERVE DEPUTY ROBERT LUONG	4
DEPUTY JENNIFER GALAN	5
CIVILIAN WITNESSES	8
CHRISTOPHER CONTRERAS	8
JACQUELYNNE ORTEGA	8
EMILY LEDEAU	9
CAMIE GIONET	10
EVIDENCE	11
SERGEANT NOE CORTEZ	11
SERGEANT MARCUS CARRASCO	12
MEDICAL RECORDS	13
RADIO COMMUNICATIONS SUMMARY	13
AUTOPSY OF ANDREA NAHARRO-GIONET	14
DOCTOR JOSEPH O’HARA	14
ANDREA NAHARRO-GIONET’S CRIMINAL RECORD	15
RELEVANT LEGAL PRINCIPLES	16
ANALYSIS	20
CONCLUSION	21

PREAMBLE

The summary of this incident is drawn from reports prepared by the Santa Clara County Sheriff's office and submitted to this office by the case agent, Detective Sergeant Jason Brown. The submission includes various narrative reports, which contain interviews of the involved officers and civilian witnesses, crime scene detail and diagrams, the deceased party's criminal background and medical records, as well as autopsy and criminalistics reports. This review is being conducted pursuant to the Officer-Involved Incident Guidelines adopted by the Santa Clara County Police Chiefs' Association on May 12, 2011.

FACTUAL SUMMARY

After midnight on November 16, 2013, Andrea Naharro-Gionet threatened a Deputy Sheriff with a knife, ignored multiple commands to drop the blade, raised it to attack, and came within 4 to 6 feet of the Deputy who had retreated as far as she could to avoid using force. With no more room to back up, and Naharro-Gionet still advancing, Deputy Jennifer Galan fired her gun three times, killing Naharro-Gionet.

This shooting was the culmination of three days of bizarre behavior by Naharro-Gionet that scared her neighbors and her husband, Camie Gionet. In the past, Naharro-Gionet had been under the care of a psychiatrist. In the three days before the shooting, however, her behavior was different than her husband had ever seen before. She was talking to people who weren't there, and yelling for hours at a time. She was posting nonsensical things on Facebook. On the evening of November 15, 2015, she tried to hold the door closed to prevent her husband from entering their apartment, and stabbed at him with a knife. He described her face as "scary" and nothing like he had ever seen before. Not knowing what to do, Camie Gionet drove their van to his work site to sleep there in the van. As he drove away, Naharro-Gionet came to the van window and yelled that she did not know who he was and not to take the van. She then went to the porch of their apartment and began smashing his guitar.

That same evening, Naharro-Gionet confronted another neighbor, Jacquelynne Ortega, who described Naharro-Gionet as being a different person that night, "crazy, evil, pissed, possessed". Scared about what Naharro-Gionet might do, Ortega had barred her door with a large chair to prevent her from breaking in.

On November 16, 2013 at approximately 12:16 a.m., the Santa Clara County Sheriff's Office received a 911 call through County Communications. The 911 caller, another Naharro-Gionet neighbor, Christopher Contreras, reported he believed there was a burglary in progress at the apartment next to his. Contreras had called because he believed that Naharro-Gionet was breaking into the apartment of one of their neighbor's who had an infant.

Deputies Espinosa, Brown and Galan responded to 95 Cleveland Avenue, San Jose, California from the parking lot at 105 N. Bascom Avenue, San Jose. 95 Cleveland Avenue is a single-story apartment building with three units. The building has an exterior walkway to the three units that runs perpendicular to the street. Unit A is closest to the street and Unit C is the farthest.

Between the sidewalk and the building is a driveway with room for three cars. To enter the apartments, there is a small set of stairs to a wooden walkway that leads from Units A to C.

Deputies Espinosa, Brown and Galan parked their patrol cars on Cleveland and approached the apartment building on foot. Naharro-Gionet was in front of the building near the stairs when they parked. She was screaming. As the Deputies got out of their cars, Naharro-Gionet stood up and almost immediately Deputy Brown realized she had a knife in her hand and a guitar in the other. The knife was later determined to be a kitchen knife with a 5 ¼ inch blade. Deputy Brown ordered her to drop the knife as he drew his handgun. All three Deputies repeatedly told Naharro-Gionet to drop the knife and identified themselves as Sheriff's Deputies, but at no point did Naharro-Gionet acknowledge or comply with those orders. Naharro-Gionet began swinging the knife aggressively and advancing, first towards Deputy Brown who retreated away, and then, towards Deputy Galan who also retreated. Deputy Brown avoided Naharro-Gionet by getting behind a patrol car. Deputy Galan was closer to the residence and a few feet from a fence. Deputy Galan could not reach a place of safety. With Naharro-Gionet still advancing, Deputy Galan retreated, and told Naharro-Gionet to drop the knife. Naharro-Gionet continued forward, and Deputy Galan could feel that she was running out of room to retreat because of tables and chairs in the driveway near the fence and stairs. Naharro-Gionet had the guitar in her left hand and raised the knife with her right hand when she was approximately 4 to 6 feet away from Deputy Galan. Fearing that Naharro-Gionet was about to lunge at her with the knife, Deputy Galan fired her gun three times, killing Naharro-Gionet.

LAW ENFORCEMENT OFFICER STATEMENTS

Deputy Joseph Brown

Deputy Brown began work at the Sheriff's patrol briefing at 10:00 p.m. on Friday, November 15, 2013. During the night he went to a call with Deputies Galan and Espinosa at 105 N. Bascom Avenue. While at 105 N. Bascom Avenue, a radio call came out of a suspicious circumstance at 95 Cleveland Avenue. The call details included that it was possibly a burglary in progress with glass shattering and a woman yelling. Deputies Brown, Espinosa and Galan all responded and since they were right around the corner from the apartment building, they responded within minutes. Deputy Brown had never been to the residence before and followed Deputy Galan there, with Deputy Espinosa behind him.

Deputy Brown parked and got out of his patrol car. He was in full uniform as were the other Deputies. As he walked around the front of his patrol car, he saw a woman, later identified as Andrea Naharro-Gionet sitting on the front porch of 95 Cleveland Avenue. As he got out of his car, he did not hear yelling or glass breaking and saw no other civilians. He observed Naharro-Gionet stand up and then observed a guitar in her hand which he believed she was trying to tear apart. As he approached, he heard Naharro-Gionet say something and then walk towards him. He saw she had the guitar in one hand and a knife in her other hand as she walked towards him. As he saw this he immediately told Naharro-Gionet to drop the knife and drew his handgun. At this point, Naharro-Gionet was quickly approaching him on foot. With the knife in her hand, and after she had ignored his command to drop it, he interpreted her approach as being in an aggressive manner.

Deputy Brown repeatedly ordered her to drop the knife, saying loudly multiple times, “Sheriff’s Office! Drop the knife.” Naharro-Gionet kept coming towards Deputy Brown who retreated to the back side of his patrol car to try and put distance between himself and Naharro-Gionet. Deputy Brown had parked his car in a manner that left it as the first car north of the driveway at the apartment building, facing south along the west curb.

Deputy Brown continued retreating north and then east around the back of his patrol car. At that time he noticed Deputies Galan and Espinosa were near the front of Brown’s patrol car, so he kept going around the back of his patrol car towards his fellow Deputies. Naharro-Gionet was still approaching Brown and was one car length or 20-30 feet from him. Deputy Brown was fearful that either he or one of his fellow Deputies was going to be stabbed. The last time that he saw Naharro-Gionet she was at the rear of the driver’s side of his patrol car. Either Deputy Galan or Deputy Espinosa yelled out “cross-fire” or “run” so Deputy Brown immediately ran across the street in a south and east direction and got into a position of cover behind a civilian’s car. After getting into this position, Deputy Brown yelled to the other Deputies that he was behind the car. After that, Deputy Brown heard someone other than Naharro-Gionet yelling. He then heard three gunshots. Deputy Brown announced on his radio “shots fired” and ran to Deputies Galan and Espinosa.

Deputy Brown then stayed with Naharro-Gionet while Deputies Galan and Espinosa cleared the building. Fire and paramedic personnel arrived and pronounced Naharro-Gionet dead. To the left of the body of Naharro-Gionet, Deputy Brown saw a black handled knife which he recognized as the knife that he had earlier seen Naharro-Gionet holding.

Deputy Fernando Espinosa:

Deputy Espinosa began his shift at the regular patrol briefing at 10:00 p.m. on Friday, November 15, 2013. After getting a late start to his patrol activities due to issues with his patrol car, Deputy Espinosa first handled a call for service on Stevens Creek Boulevard and then initiated a pedestrian stop on two subjects at 105 N. Bascom Avenue. During this pedestrian stop, Deputies Galan and Brown arrived separately as backup or “fill” officers and reserve Deputy Luong was present as well. As this pedestrian stop was ending, a radio call came out for a possible burglary at 95 Cleveland Avenue. Deputies Galan and Brown left 105 N. Bascom Avenue first, and he followed about ten seconds behind. As he left, he saw Reserve Deputy Luong still in the parking lot at 105 N. Bascom Avenue.

Deputy Espinosa was in a Sheriff’s uniform and in a marked patrol car when he parked at the corner of Cleveland Avenue at Olive Avenue behind another patrol car. Both his car and the other patrol car were parked facing south. Another patrol car was in the middle of the Cleveland Avenue roadway facing north. Deputy Espinosa got out of his patrol car and started from the street towards the sidewalk in front of 95 Cleveland Avenue. He saw a woman, later identified as Andrea Naharro-Gionet, on the porch of 95 Cleveland Avenue. Deputy Galan was to the left of Deputy Espinosa and Deputy Brown was to his right. All three were in the street approaching the sidewalk in front of the residence. Naharro-Gionet was on the porch. The sidewalk and a driveway were between Naharro-Gionet and the three Deputies.

As he approached, Deputy Espinosa observed Naharro-Gionet standing on the porch, yelling and screaming with a guitar in one hand. Naharro-Gionet was yelling something similar to “get out of here.” She appeared to be upset and angry. All three Deputies yelled “Sheriff’s Office” to Naharro-Gionet when she was yelling at them from the porch. Deputy Espinosa used his flashlight to further illuminate Naharro-Gionet at which time he heard another Deputy yell “she has a knife!” At this point Naharro-Gionet was on the porch near the front porch steps that lead down to the driveway. Naharro-Gionet was 30 to 35 feet from the three deputies. Deputy Espinosa saw the knife at this point and observed it to be a black handled stainless steel knife with a blade that was approximately 5-6 inches long. She was holding the knife with the blade pointed upward and was moving it aggressively by slashing it side to side towards the Deputies. He yelled at her to drop the knife and heard both Deputy Galan and Deputy Brown make similar orders. At this point, Deputy Espinosa drew his handgun and deliberately keyed his microphone open so that other Deputies who were not at the scene would hear what was going on.

Naharro-Gionet was thirty to thirty five feet away from the Deputies before she walked off the porch towards them while still yelling at them. She had the guitar in one hand and the knife in the other. All three Deputies continued to shout to her to drop the knife. Naharro-Gionet continued to advance and reached the sidewalk. As she reached the sidewalk and got within ten to twenty feet from them, Deputy Espinosa was in the street, Deputy Galan was near the front area of the residence and Deputy Brown was in the area of the sidewalk. Naharro-Gionet was moving north towards Olive Avenue towards the closest patrol car. All three deputies were still yelling at her to drop the knife. Naharro-Gionet then walked between Deputy Espinosa’s patrol car and the patrol car in front of it. This brought Naharro-Gionet closer to the three deputies.

Deputy Espinosa went around the front of the patrol car parked in the middle of the roadway and moved to the right side of it. After this, all three deputies were in the middle of the street behind the patrol car parked there, while Naharro-Gionet advanced, still waving her knife at the Deputies. Naharro-Gionet circled back towards the driveway at 95 Cleveland and Deputy Espinosa followed and was in the area of the rear bumper of a car parked in the driveway at the apartment building. Deputy Galan was to the right and at a diagonal to Deputy Espinosa in the open patio/driveway area very near the fence line of the residence. Naharro-Gionet was still yelling and holding the knife in a threatening manner. She then started advancing on Deputy Galan. Deputy Espinosa felt threatened throughout their encounter, but was especially fearful for his and Deputy Galan’s safety at this moment. Naharro-Gionet got to within 4 to 6 feet of Deputy Galan who then fired her handgun three times at Naharro-Gionet. Deputy Espinosa went to his patrol car to get latex gloves and then he and Deputy Galan went to clear the residence, leaving Deputy Brown behind.

Reserve Deputy Robert Luong:

Reserve Deputy Luong began work at approximately 8 pm on Friday, November 15, 2013. He is normally used to transport suspects and also serves as a backup/fill deputy.

At about 11:30 p.m. he heard that a patrol unit had made a pedestrian stop on two subjects. He drove to that scene at 105 N. Bascom Avenue to serve as backup. While en route he heard from another unit over the radio that it was responding as a back-up and as he arrived, he saw a third

patrol unit at the scene. While at this scene, he saw three deputies who he recognized, but did not know their names. Of the three Deputies two were male and one female.

After being at 105 N. Bascom Avenue for a few minutes, a radio call came out of a suspicious circumstance on Cleveland Avenue involving someone reporting glass being broken in front of their home. He saw the female deputy and then the two male deputies leave the scene of the pedestrian stop and he followed them. He parked his patrol car on Olive Avenue at the southwest corner of the intersection of Olive Avenue and Cleveland Avenue. As he arrived he saw one male deputy get out of his patrol car. Luong stayed with his patrol car. From 60-100 feet away, Luong saw the three deputies approach the residence and then saw them all immediately begin backing away from the area they had just walked into and fanning out. He then saw a female, later identified as Andrea Naharro-Gionet, approach the deputies. She was yelling and screaming and had something in her hands that was the size of a tennis racket. As the three deputies were backing up, Naharro-Gionet was advancing towards them. She appeared extremely upset.

Deputy Luong then got out of his patrol car. He then saw Naharro-Gionet chasing the deputies. One deputy went south and away from her while the two other deputies ran north towards Luong. Naharro-Gionet then ran around two parked patrol cars and was chasing a deputy around the second patrol car and heading back towards the residence. She was still yelling at the Deputies. One of the Deputies ran from her and looked back at her as they ran. The other two Deputies were back where this all started, facing east across Cleveland Avenue with their backs to 95 Cleveland Avenue. Naharro-Gionet continued approaching the two deputies, who were retreating west towards the building at 95 Cleveland. Deputy Luong saw that Naharro-Gionet had gotten extremely close to the two Deputies and felt they were extremely threatened and seemed to have run out of room to run.

Deputy Luong then heard the female deputy loudly yell, "Drop your knife! Drop your knife!" He then heard three gunshots. One of the two deputies came to him and told him to tape off the area with crime scene tape.

Deputy Jennifer Galan:

Deputy Galan began her shift at 10:00 p.m. on November 15, 2013 with the patrol briefing. At the time, she had been a peace officer for three years. She left the Sheriff's Office parking lot at approximately 10:50 p.m. Deputy Galan began patrolling the areas of San Carlos Avenue and Bascom Avenue in Central San Jose. She was in full uniform and driving a marked patrol car. She had no one else in her car.

At about 11:40 p.m. she was in the parking lot at Valley Medical Center writing reports when a call came in of a possible auto burglary at Safelite Auto Glass on Stevens Creek Boulevard. Deputy Galan was one of a group of patrol units to arrive and at the scene she spent time talking

to a woman at the scene. She then left and as she was driving heard that Deputy Espinosa was conducting a pedestrian stop at 105 N. Bascom Avenue and she went there to assist him.

Deputy Galan spent time talking to a verbally uncooperative female subject and the subject eventually calmed down. While at the stop at 105 N. Bascom Avenue, Deputy Galan saw Deputies Brown and Espinosa and a reserve Deputy she did not know. As this stop concluded at approximately 12:15 a.m., dispatch reported a possible burglary in progress at 95 Cleveland Avenue. Deputy Galan and Deputies Brown and Espinosa, in that order, began to drive the less than a mile to 95 Cleveland Avenue. While en route, County Communications updated the Deputies that there was a female subject in front of the residence yelling, but provided no further information.

Deputy Galan turned southbound onto Cleveland Avenue from Olive Avenue and looked at an address and believed she had turned the wrong way. She then turned into the first driveway she saw on the left side and turned around. As she turned her car, Deputy Galan looked to her left and saw a female, later identified as Andrea Naharro-Gionet sitting on a porch with items scattered on the ground around her.

Deputy Galan parked her car in the street facing northbound in front of 95 Cleveland Avenue and saw that Deputies Brown and Espinosa had parked on the west side of Cleveland Avenue facing southbound. As Deputy Galan arrived, she observed Naharro-Gionet sitting on the porch. The front door to the first unit was wide open and the porch was fully illuminated. Naharro-Gionet was crouching down going through things near this open door, facing the wall of the building. Deputy Galan and the other Deputies called out to Naharro-Gionet as they got out of their cars and Naharro-Gionet yelled back at them. Deputy Galan said something like “Hey” or “Ma’am” and she could not recall what Naharro-Gionet yelled at her and her fellow Deputies. Deputy Galan said to Deputy Brown “there she is” and started to walk in the direction of Naharro-Gionet. Deputy Galan then yelled out to Naharro-Gionet and Naharro-Gionet stood up and started to come down off the porch towards the Deputies. Deputy Galan saw that Naharro-Gionet was carrying a guitar in one of her hands. As she got to the bottom of the stairs leading down from the porch, Deputy Brown yelled out “Knife!” At this point Deputy Galan did not see the knife from her location.

Deputy Galan drew her handgun as did the other Deputies and they all began yelling commands to Naharro-Gionet to drop the knife. Either Deputy Brown or Espinosa radioed out that they were “10-96”, which means that they were conducting a high risk pedestrian stop. As she drew her firearm, Deputy Galan also used her flashlight to illuminate Naharro-Gionet and then first saw for herself that Naharro-Gionet had the guitar in one hand and a knife in her other hand. Deputy Galan saw that the knife was a kitchen type knife with a black handle and what she estimated to be a 6-8 inch-long blade. Naharro-Gionet was holding the knife by the handle, with her hand down by her side and the blade pointing up.

Deputy Galan described that Naharro-Gionet was yelling the whole time this incident took place, including “What the fuck are you going to do?” and “Why are you here?”. Deputy Galan said she and her fellow Deputies were shouting frequently too – either “Sheriff’s Office” or “Drop the knife” or “Drop the weapon.”

Naharro-Gionet continued to advance, walking very fast, and seemed to be focusing on Deputy Brown and Deputy Espinosa. Deputy Galan began to back away towards her patrol car. Deputy Brown backed away, initially towards his patrol car, putting him further north than Deputy Galan. Deputy Espinosa moved next to Deputy Galan and they stood near the fence together. Naharro-Gionet walked to a spot between all three Deputies. Deputy Brown continued to back away towards Olive Avenue and then turned quickly and went around a patrol car parked facing southbound on Cleveland Avenue. Naharro-Gionet followed Deputy Brown by heading northbound on the west sidewalk of Cleveland Avenue. After he went around the patrol car, Deputy Brown started to go towards Deputies Espinosa and Galan. Naharro-Gionet then came southbound to another point where she was in between Deputy Galan and Deputy Espinosa on one side and Deputy Brown on the other. Deputy Galan recognized this created a crossfire situation and told Deputy Brown to “get the fuck out of the way.” After Deputy Galan said this, Naharro-Gionet shifted her attention from Deputy Brown to Deputies Espinosa and Galan. Deputy Galan then turned to Deputy Espinosa and said “fuck, we’re gonna have to shoot her.” Espinosa responded, “I don’t want to.” Deputy Galan said she said “we’re gonna have to shoot her” because she felt that she and her fellow deputies were shouting verbal commands, trying to stop the confrontation, and backing up, but she believed that given that these efforts were not succeeding that they were not going to be able to avoid using force. Deputy Galan explained that she knew this was part of the job, but as this was all going on, she came to the realization that no matter what they did, she might have to use force. As she said “we’re gonna have to shoot her,” Deputy Galan continued to back away.

Deputy Brown ran southbound on Cleveland Avenue to leave the area behind Naharro-Gionet. When Deputy Brown was out of any lines of fire and situated behind a car, Deputy Galan saw that Naharro-Gionet still had the guitar in her left hand and the knife in her right hand. Naharro-Gionet continued to advance on Deputies Galan and Espinosa in a confrontational and aggressive manner, and Deputies Galan and Espinosa began to back from the street towards the driveway of the apartment building. Deputy Espinosa veered between two cars parked in the driveway and Deputy Galan continued straight back into the driveway. Naharro-Gionet continued to advance just on Deputy Galan and then raised the knife from her side to a spot in front of her chest with the blade pointing at Deputy Galan. It appeared from the angry look on Naharro-Gionet’s face and the fact she was still yelling at the Deputies that nothing that the Deputies was saying or doing was registering with Naharro-Gionet. At this point, Deputy Galan was backed up against items in the driveway and the stairs. Deputy Galan estimated she was about 6 feet from the stairs and items when she stopped retreating. Deputy Galan could not recall the specific items near the stairs, but photos of the crime scene depict two tables, multiple chairs and a barbecue between the fence and the stairs on the opposite side of the driveway from where cars would park.

When Naharro-Gionet continued to approach with the knife and got to within about 4 feet, and raised the knife from her side to her chest area, Deputy Galan, fearing Naharro-Gionet could lunge at her and hurt her, fired three rounds, aiming for Naharro-Gionet’s chest. At the time of the shots, Naharro-Gionet was continuing to yell, had the knife raised to her chest area and was still advancing on Deputy Galan.

Deputy Galan described being in fear, at first for Deputy Brown when Naharro-Gionet was advancing on him, then for her own and Deputy Espinosa's safety as Naharro-Gionet advanced on them.

After Naharro-Gionet fell to the ground, Deputy Brown handcuffed Naharro-Gionet and then Deputies Espinosa and Galan went to look in the open door to see if anyone needed assistance.

Deputy Galan explained the reason why she and her fellow deputies kept retreating and changing locations was to keep away from Naharro-Gionet and to keep from being in a situation where either they got hurt or they would have to use force to prevent themselves from getting hurt.

Civilian Witnesses

Christopher Contreras

Christopher Contreras is a resident of 95 Cleveland Avenue, Unit C. He is two doors from Naharro-Gionet's apartment. He was home with Jacquelynne Ortega watching television at about midnight on November 16, 2013. He heard loud voices coming from outside and paused his television. One voice he heard was Naharro-Gionet and the other was her husband Camie Gionet. He heard what sounded like Camie knocking on his own door (to Unit A) and telling Naharro-Gionet, "Its Camie, Its Camie." He then heard Naharro-Gionet shout "Boston, Boston." Boston is the name of his and Ortega's dog. He then heard Naharro-Gionet say "I don't know who you are." Approximately 15-30 seconds later he heard a car start and then leave five minutes after that. He believed the car to be Camie's but did not look to see. It was then quiet until he heard banging noises outside and sounds he thought to be breaking glass. The noises sounded close to his unit and made him fear that Naharro-Gionet was trying to break into Unit B where Emily Ledeau lived alone with her infant, so he called 911.

Fearing for his own safety he did not go outside, but stayed on the phone with 911 to relay what he had heard and was hearing which included more banging and glass breaking. At approximately 12:15 or 12:20 a.m., he heard yelling outside and was advised by the 911 dispatcher that officers had arrived. He continued to hear yelling back and forth, but could not understand it. He was advised by the dispatcher that there was a woman outside his building a knife. Less than five seconds later he heard three gunshots.

He had known Naharro-Gionet for about 9 months from living in the same complex. Three or four nights prior to this event he saw Naharro-Gionet, who had previously told him she did not drink alcohol, drinking alcohol. Naharro-Gionet asked him to babysit her so she did not do anything stupid. He took all the keys to her car so she could not drive.

He said Naharro-Gionet had been acting out of character the past few nights, staying up late and acting weird.

Jacquelynne Ortega

Jacquelynne Ortega is a resident of 95 Cleveland Avenue, Unit C. She lives there with Christopher Contreras. On November 15, 2013 between 10:40 p.m. and midnight, she left her

residence to go get dinner. She walked past Naharro-Gionet's door and when she did, Naharro-Gionet opened it and walked on the porch wearing only a robe. Naharro-Gionet then turned to face Units B and C and opened her robe, revealing her naked body, and said "Do you want to see this motherfucker? Do you want to see this?" There was no one else around when this happened and Ortega was about 4 feet behind Naharro-Gionet. Ortega asked if Naharro-Gionet was ok and she responded by closing her robe, turning her head and asking if Ortega was ok. Ortega then asked if she was sure she was ok and Naharro-Gionet asked to see Boston, Ortega's dog. Ortega said Boston was sleeping and Naharro-Gionet said, "Well then I am too" and walked inside her own residence.

Ortega said she then got inside her car as fast as she could because Naharro-Gionet had scared her. Ortega said that Naharro-Gionet looked like a different person that night – "crazy, evil, pissed, possessed" and gave Ortega "chills from head to toe." She believed Naharro-Gionet to not be in her right state of mind.

Ortega got dinner and returned, but saw no one as she went to her apartment. At about 11:40 p.m. she heard Naharro-Gionet and her husband Camie Gionet yelling at each other. She then heard Naharro-Gionet yelling "Boston, Boston" and calling for Contreras. She heard Camie Gionet tell Naharro-Gionet to calm down and get back in the house. Ortega then heard a truck start up and five minutes later drive off. She believed it to be Camie Gionet's truck. At this point Ortega slid a large chair in front of her own door to prevent Naharro-Gionet from breaking in. She heard the sound of wood on the deck breaking and glass breaking. This made her believe that Naharro-Gionet was trying to break into Emily Ledeau's residence. She told Contreras to call 911 and listened as he talked to them. About fifteen minutes into Naharro-Gionet breaking stuff, she heard three gunshots. Ortega was not aware sheriff's deputies were on scene and told Contreras to tell the dispatcher about the gunshots because she feared that Naharro-Gionet had shot Camie Gionet.

Ortega was a Facebook friend of Naharro-Gionet and has recently seen several posts on Facebook that did not make sense and were out of character for her.

Emily Ledeau

Emily Ledeau resided at 95 Cleveland, Unit B with her 8 month-old son. She and her son were laying down at 11:30 p.m. on November 15, 2013 in her bedroom. Her bedroom shares a wall with Unit A. At 11:30 she heard arguing from unit A. It lasted about 15 minutes and stopped. Then she heard Naharro-Gionet yelling either to herself or on the phone as she heard no one responding. She described the tone of the yelling as angry. She was talking about renting to own, not caring about a landlord and someone buying Sudafed in Naharro-Gionet's name. None of it made sense to Ledeau.

Ledeau then heard banging sounds coming from Unit A. It sounded as though Naharro-Gionet was hitting the floor or the walls. She then heard the door to Unit A open. Ledeau then walked to the front of her apartment to try and see outside, but could not see. Ledeau could hear what sounded like Naharro-Gionet banging a guitar outside. This scared Ledeau enough for her own safety that she called 911 and opened her door to look outside. When she looked outside, she

could not see Naharro-Gionet, but could hear her yelling. She also heard male voices yelling, saying "Put the knife down!" She could not see who was yelling that, but it sounded like controlled yelling and she thought it could be law enforcement. After she heard "put the knife down" she heard several gunshots. Ledeau then closed her door and stayed inside.

Ledeau had lived in her apartment for less than a month and had had limited contact with Naharro-Gionet.

Camie Gionet

Camie Gionet had been dating Andrea Naharro-Gionet since 1998, they were married three to four years and lived together before that. Camie Gionet said that Naharro-Gionet had multiple sclerosis and did not get around very well anymore. He said that one of the hobbies they engaged in was playing guitar, after he taught Naharro-Gionet how to play.

In addition to having MS for about 4 years, Camie Gionet said that Naharro-Gionet also had some mental issues. Naharro-Gionet had pain for some years that Kaiser doctors could not find a source for and Gionet said they tried to send Naharro-Gionet to a psychiatrist. Naharro-Gionet began to see the psychiatrist and was eventually involuntarily confined to a mental hospital. After that incident, she changed for the worse. She no longer sought help from mental health professionals and also did not see any doctor regularly for her MS.

Camie Gionet then said that he noticed a further change in Naharro-Gionet the three to four days prior. He asked Naharro-Gionet not to go with him to one of his own doctor appointments because she had become a distraction at them. This angered Naharro-Gionet and she said she would just stay at home and drink. She began drinking as he left and was intoxicated when he came home. Naharro-Gionet then began to verbally abuse Camie Gionet all night. From that point on, Naharro-Gionet would talk to people in the other room who were not there and when asked would say she was talking to God. Mr. Gionet described hearing her screaming and swearing in these conversations with no one. He described this as going on for hours and hours. He said he had never seen her like this, was worried and did not know what to do.

Mr. Gionet described the events of November 15, 2013 as being the first time that Naharro-Gionet had ever threatened to harm him. Mr. Gionet's usual routine was to come home from work and take a shower. On November 15, 2013 he got home at 7:00 p.m. and as soon as he walked in the door, Naharro-Gionet went into their only bathroom. Mr. Gionet then sat down to wait for her to leave the bathroom. She was still in the bathroom four hours later. He heard her "talking and laughing, and talking to God, swearing or whatever." Mr. Gionet knew he needed to work the next morning so he decided to go sleep in his van, since the noise of Naharro-Gionet yelling the bathroom was distracting to him. Mr. Gionet went to his van and fell asleep for a while. He woke up at 3:00 a.m. and decided to go back into the house. He tried to unlock the door, but felt resistance as he turned the key. He realized that Naharro-Gionet was on the other side of the door trying to prevent him from opening it. He asked her to let him in and she said no and told him to get out. He eventually got the door open about eight to ten inches and he could see Naharro-Gionet standing there. She yelled "I don't recognize you! I don't know who you are!" She also repeated the words "pound cake" and called for Boston, the dog next door. As

the door came open that little bit, he could see Naharro-Gionet had a knife in one hand and was holding it near her head and was moving it in downward stabbing motions towards him. He described the look on her face as “scary” and nothing he had ever seen before.

Mr. Gionet was so unnerved by this he backed away and let the door close. Not knowing what else to do, he decided to drive to his work site and sleep in his van there so as not to miss work. As he started the van and began to back up to leave, he looked up and saw Naharro-Gionet come outside and start walking towards him. He rolled his window down and Naharro-Gionet came to the window and yelled at him again, saying “I don’t know who you are. What are you doing with my van? Don’t take my van!” She then turned and went back into the house, only to re-emerge with his guitar and she then smashed it on the handrail of the porch. He was crying at the sight of this and drove away as she continued to smash the guitar. Mr. Gionet drove to his work, slept some and worked until noon on November 16, 2013. He had no further contact with Naharro-Gionet after she began smashing his guitar.

Evidence

Sergeant Noe Cortez

Sgt. Cortez was assigned to the Sexual Assaults Investigations Unit with collateral duties as a field evidence technician with the Crime Scene Investigation Unit. On November 16, 2013 at 2:30 a.m. he and Detective Roy Leonard arrived at 95 Cleveland Avenue in San Jose to investigate an officer involved shooting. A briefing was held and a walk through of the general area was done for the various investigators and then videos, photographs and 3D imaging scans were taken of the scene and markers were placed next to relevant items of evidence.

At approximately 11:45 a.m. he entered Apartment A and performed the service of a search warrant.

He documented the following evidence from 95 Cleveland Avenue, including the common areas, inside Unit A and the driveway:

1. A painting frame with a cutup painting was found in the doorway of Unit A;
2. In the living room of Unit A were numerous Rockstar energy drink cans, a jar with marijuana and a wood box that contained marijuana.
3. A 10.5 inch long knife with a black plastic handle and a 5.25 inch silver metal blade was located in the driveway of 95 Cleveland Avenue between the body of Andrea Naharro-Gionet and a maroon Saturn vehicle parked in the driveway.
4. Two Winchester .40 caliber Smith & Wesson silver bullet casings were located on the driveway.
5. One Winchester .40 caliber Smith & Wesson silver bullet casing was located on the windshield of the maroon Saturn.
6. A broken guitar part and a brown leather strap were located near the front door of Unit A.
7. A red electric guitar was located under the body of Andrea Naharro-Gionet in the driveway.

8. Prescription pill bottles labeled Ibuprofen and Hydrocodone/Acetaminophen were located in a desk drawer inside Unit A.

Sergeant Marcus Carrasco

He was assigned to Sheriff's Investigation Bureau as a Detective Sergeant in the Sexual assaults Division. He served a collateral role in the Homicide Unit as an on-call Detective. He arrived at 95 Cleveland Avenue at 2:15 a.m. on November 16, 2013.

At approximately 5:15 a.m. he began reviewing Andrea Naharro-Gionet's Facebook page, which was listed under the name Andrea Naharro-Gionet. He sent a preservation request for that Facebook page and later executed a search warrant for that Facebook page.

In examining the contents of the Facebook page, he observed the following posts attributed to the account holder, Andrea Naharro-Gionet:

November 14, 2013

¿MARK I¿M GOING TO HAVE A BABY CUZ IU HAVE AN INCH WORM I GREW 2 INCHES¿ . Bible not clue enough x preference space¿Hey M it¿s at my pace this is my HUMANRACE¿ (Andi cuz Y) My dad came back 2 give U the TRUTH and for me to show U without a doubt¿hah. God said he¿d be back sow u should have paid attention¿¿

November 15, 2013

¿its¿ not the boys with the most toys that wins its about sin and the man within¿ ¿

¿Maybe we will give Linda a world filled with only 5th graders sow see can learn. Can¿t conquer herself how can she rule anything else¿Dad loves U BITCH can¿t wait 2¿meet U¿re litter cuz go do U¿re thing on twitter¿private eye is watching U CUZ THE NIGHT HAS A THOUSAND EYES¿Dad hates when U deceive Sow remember when U tell those little white lies that the night has a thousand¿

¿MyBAD: MARK MARK MARK shshhshhhh Mark Mark cover U¿r eyes so I can¿t seeU. ¿

¿Mark please don¿t use Your real name or mine or might get confused. ¿

¿Clue I¿ll give a flying A 2 ANYONE IN MY FAMILY SMARTER THAN A 5TH GRADER Also anyone that can stay a 5th grader for the rest of their life. ¿

¿MARK MARK MARK Don¿t say my name sow they don¿t knowhamhamham DAD wonder Y they ate the car¿PEEK PREVIEWHANHANHAN¿How¿s that for a take over or should we do it different MARK¿

¿MyBad lets ake away their ss.AMHAMHAMHAM¿

Fuck Mark, why, just why, did U make me PUNCH U I LOVE U SOW MUCH

MARK PLEASE WILL U CLOE THE DOOR I HAT ITWHEN ANDI IS COLD. I LOVE U SOW MUCH2 THANK U

No SHITGOBACK UP DID U MAKE A U URN/ SOWWHATS YOUR POINT DO I A NEED A 5TH GRADER? IF U CANT CLEDA R IT U CAN'T GET NEAR IT DAD WILL CURE IT

MARKMMARK MARKGET THE OZ ORDAD FUCK THE WORK NOW PLEASE

CHRISYOUK AUNT ABAYNo need 2 drink or loose weight not FINK SOW LETS PARTY DOWN and think

MARK SET GO U R A BRO DON'T U KNOW CUZ MY DAD IS SOW GLAD CAN'T RENE GOOD MEAT WHEN IT'S SPICY AND SWEET

Saila get my papers when my dad devorceord steve from me have all my children read. SOW MY OLDEST GRANDSON CAN SEE SOW U KNOW I KNOW U KNOW

Medical Records

Santa Clara Sheriff's Office Sergeant Jason Brown executed a search warrant for the medical records of Andrea Naharro-Gionet from Kaiser Permanente. The records were screened by a Special Master and then by Santa Clara County Superior Court Judge Cynthia Sevely prior to release. A review of the medical records for Andrea Naharro-Gionet showed normal neurological findings and no mention of multiple sclerosis. There was evidence of psychotic and delusional episodes in the records released.

Radio Communications Summary

On November 16, 2013 the following activity occurred on and through Dispatch

12:16:19 a.m.	911 call from Christopher Contreras reports a possible residential burglary in progress at 95 Cleveland Avenue, Unit B with glass breaking and pounding.
12:17:35 a.m.	Deputies Galan, Espinosa and Brown attach themselves to the call and begin responding.
12:19:00 a.m.	Deputies arrive at 95 Cleveland Avenue
12:19:24 a.m.	Deputy Espinosa advises of a high risk pedestrian stop and can be heard ordering Naharro-Gionet to drop the knife.
12:19:44 a.m.	Shots Fired Broadcasted

FORENSIC EXAMINATIONS

Autopsy of Andrea Naharro-Gionet:

Dr. Joseph O'Hara of the Santa Clara County Medical Examiner's Office performed the autopsy of Andrea Naharro-Gionet on November 18, 2013. Dr. O'Hara was employed as a forensic pathologist and had performed hundreds of autopsies in his career. Santa Clara County Sheriff's Office Sergeant Jason Brown and Detective Roy Leonard attended the autopsy.

Andrea Naharro-Gionet was identified as a 61 year old female with a date of birth of June 11, 1952. Dr. O'Hara documented Naharro-Gionet's height as 5'0" and her weight as 160 pounds. The body was well developed. Mrs. Naharro-Gionet was received at the coroner's office clothed in a t-shirt, sports bra and cotton/spandex pants. Dr. O'Hara examined the clothing. The defects in the clothing corresponded to the wounds on the body.

Gunshot Wound of the Face and Neck:

Dr. O'Hara documented a gunshot wound consistent with an entrance wound on the right cheek. Soot was not visible on the skin edges or within the hemorrhagic wound tract. No stippling or gunpowder particles were on the skin surrounding the entrance wound. There was no evidence of close range (within two feet) firing. Dr. O'Hara recovered a 160 grain orange jacketed projectile posterior to the mid-left clavicle. The trajectory is from the decedent's right to left, downward and front to back.

Gunshot Wound of the Trunk:

Dr. O'Hara documented a gunshot wound consistent with an entrance wound on the right breast. Soot was not visible on the skin edges or within the hemorrhagic wound tract. No stippling or gunpowder particles were on the skin surrounding the entrance wound. There was no evidence of close range firing. There was a gunshot wound consistent with an exit wound on the lower right breast and a re-entry wound on the right side of the chest. Dr. O'Hara recovered a 148 grain orange jacketed projectile from the soft tissue of the right lower back/upper buttock. The trajectory is downward, from the decedent's front to back and right to left.

Gunshot Wound of the Left Pelvis and Thigh:

Dr. O'Hara documented a gunshot wound consistent with an entrance wound on the lower left abdomen. Soot was not visible on the skin edges or within the hemorrhagic wound tract. No stippling or gunpowder particles were on the skin surrounding the entrance wound. There was no evidence of close range firing. An exit wound is located on the lower left abdomen and a re-entry wound is located above the left pelvis. Dr. O'Hara recovered a 160 grain orange jacketed projectile from the muscles behind the left femur. The trajectory is downward, from the decedent's front to back and right to left.

Blunt Force Trauma Injuries

Dr. O'Hara observed: 1. a laceration above the right eyebrow; 2. a laceration on the right cheek 3. a second abrasion on the right cheek; 4. an abrasion on the right side of the nose; 5. An abrasion at the right corner of the mouth; 6. two abrasions on the left knee and 7. an abrasion of the left foot.

Findings

Dr. O'Hara ordered a toxicological analysis, which revealed the absence of any ethanol or drugs of abuse, but demonstrated the active ingredient and metabolites of marijuana.

The cause of death was gunshot wounds of the face, neck and trunk.

ANDREA NAHARRO-GIONET'S CRIMINAL RECORD

Andrea Naharro-Gionet: DOB: 6/11/1952 Relevant Criminal History:

None.

RELEVANT LEGAL PRINCIPLES

This review was conducted pursuant to the joint protocol between this office and all Santa Clara County law enforcement agencies, which calls upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. This review does not examine issues such as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters. Possible criminal charges against an officer involved in a fatal shooting include murder (Penal Code section 187) and voluntary manslaughter (Penal Code section 192). In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Banks* (1977) 67 Cal.App.3d 379.) Several justifications may apply in any given case and they are set forth in Penal Code sections 196 and 197. The justification pertinent to this case is found in Penal Code section 197: use of force in self-defense/defense of others.

Penal Code Section 197: General Right to Self-Defense

California law permits all persons to use deadly force to protect themselves from the threat of death or great bodily harm. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that great bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in

the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

One may resort to the use of deadly force in self-defense where there is a reasonable need to protect oneself from an apparent, imminent threat of death or great bodily injury. Perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) “Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. The person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

Reasonableness and immediacy of threat are intertwined. Self-defense “is based on the reasonable appearance of imminent peril of death or serious bodily injury to the party assailed . . .” (*People v. Turner* (1948) 86 Cal.App.2d 791, 799.)

In *Aris*, the trial court’s clarifying instruction to the jury on the subject was to the point and later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.)

What constitutes “reasonable” self-defense is controlled by the circumstances. The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the robber. The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (*People v. Reed* (1969) 270 Cal.App.2d 37, 45.)

Penal Code Section 196: Justifiable Homicide by Public Officer

In addition to using deadly force in self-defense or defense of others, police officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Penal Code section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are “charged with a felony” and who are fleeing from justice or resisting such arrest. Section 196 applies where the officer has “reasonable cause” to believe that the person has committed a forcible and atrocious felony and the officer has probable cause to believe that the suspect poses a threat of future or imminent death or great bodily injury, either to the officer or to others. Forcible and atrocious crimes are generally those crimes whose character and manner reasonably create a fear of death or serious bodily harm, such as murder, mayhem, rape and robbery. (*People v. Kilvington* (1894) 104 Cal.86, 89; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.)

When a police 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. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11.) This limitation was subsequently clarified by the United States Supreme Court in *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use deadly force is to be

analyzed under the Fourth Amendment's "objective reasonableness" standard. The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham, supra*, 490 U.S. at 396.) It is also highly deferential to the police officer's need to protect himself and others. 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. (*Id.*) The "reasonableness" inquiry in an excessive force case 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. (*Id.*)

As one court noted, "[U]nder *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. 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." (*Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) 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. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 343-344.)

The test for determining whether a homicide was justifiable under Penal Code section 196 is whether the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. County of Los Angeles* (1996) 47 Cal. App. 4th 334, 349.) Officers may reasonably use deadly force when they confront an armed suspect in close proximity whose actions indicate intent to attack. (*Id.* at 345.) In such circumstances, the courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer. (*Ibid.*) A peace officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action. An officer is entitled to use deadly force when the officer has reason to believe the suspect is armed, even if the officer cannot confirm that the suspect is actually armed. (*Anderson v. Russell* (2001) 247 F.3d 125, 129, 131.)

Penal Code section 199: Justifiable and Excusable Homicide; Discharge of Defendant

If the homicide appears to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Penal Code section 417: Threatening with Weapon

Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry or threatening manner is guilty of a misdemeanor.

Penal Code Section 69: Resisting or Deterring Officer

Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed on such officer by law, or who knowingly resists, by the use-of-force or violence, such officer, in the performance of his duty is punishable [as a felony or misdemeanor].

Penal Code Section 148(a) (1): Resisting or Obstructing a Peace Officer

Every person who willfully resists, delays, or obstructs a...peace officer...in the discharge or attempt to discharge any duty of his or her office...shall be punished [as a misdemeanor].

Penal Code Section 245(c): Assault with a Deadly Weapon Against Officer

Any person who commits an assault with a deadly weapon (bat) upon the person of a peace officer...who knows or reasonably should know that the victim is a peace officer engaged in the performance of his duties, when the peace officer is engaged in the performance of his duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

Penal Code Section 835a: Use of Reasonable Force to Effect Arrest

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 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.

Penal Code Section 836(a): Peace Officer's Authority to Arrest

A peace officer may arrest a person in obedience to a warrant, or...without a warrant, may arrest a person whenever any of the following circumstances occur: (1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. (2) The person arrested has committed a felony, although not in the officer's presence. (3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

Police Power to Detain

An officer has the right to temporarily detain a person when the officer has a reasonable suspicion of that person's involvement in criminal activity. Reasonable suspicion demands some minimum level of objective justification, but considerably less than is required for probable cause to arrest. (*United States v. Sokolow* (1989) 490 U.S. 1, 7; *Terry v. Ohio* (1968) 392 U.S. 1, 22.)

Whether reasonable suspicion exists depends upon a consideration of the totality of circumstances. (*United States v. Sokolow, supra*, 490 U.S. at pp. 8-9; see also, *United States v. Arvizu* (2002) 534 U.S. 266, 277-278.) It is immaterial that there might be a possible innocent explanation for the activity witnessed by the police officer. Even innocent behavior will frequently provide a showing of reasonable cause to detain. (*United States v. Sokolow, supra*, 490 U.S. at pp. 9-10.)

One function of a temporary detention is to resolve any ambiguity in the situation to find out whether the activity was in fact legal or illegal. (*People v. Souza* (1994) 9 Cal.4th 224, 242.) A detention is intended to permit a speedy, focused investigation to confirm or dispel the individualized suspicion of criminal activity justifying it. (*People v. Soun* (1995) 34 Cal.App.4th 1499, 1516.) Indeed, an officer would be derelict in his duty if he did not investigate any suspicious circumstances confronting him. (See *People v. Higgins* (1994) 26 Cal.App.4th 247, 250.)

Officers may properly base a detention on information received from a fellow police officer, dispatcher, or other “official channels,” because the law generally considers such persons or sources to be reliable. (*United States v. Hensely* (1985) 469 U.S. 221.)

Police Use-of-Force to Detain

An officer attempting to enforce a lawful detention or arrest may use an amount of force that is reasonably necessary. (*People v. Brown* (1985) 169 Cal.App.3d 159, 167.) The right to verify or dispel suspicion is meaningless unless officers may, when necessary, forcibly detain a suspect. (*People v. Johnson* (1991) 231 Cal.App.3d 1, 12.) “Levels of force and intrusion in an ‘investigatory stop’ may be legitimately escalated to meet supervening events, such as attempted flight.... A ‘reasonable’ reaction in this context, like ‘probable cause,’ turns on ‘the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’ ” (*Id.* at 13, citing *United States v. White* (D.C. Cir. 1981) 648 F.2d 29, 40.)

Even if a detention is unjustified (thereby unlawful), every person has a duty to submit to the orders of a peace officer and may not resist unless excessive force is used or threatened. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332 [“Our conclusion is dictated by a pragmatic realization that the rule allowing forcible resistance leads to riots and violence by fostering a belief on the part of the detained person that he is the sole judge of whether the detention is or is not proper. (Cf. *People v. Burns, supra*, 198 Cal.App.2d Supp. at p. 841.). ...”].)

Welfare and Institutions Code section 5150

“When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a

facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services.” Cal. Welfare and Institutions Code section 5150 (emphasis added). This statute authorizes police officers to take someone into custody who because of a mental health disorder is a danger to herself, himself or others.

ANALYSIS

Andrea Naharro-Gionet was acting violently and bizarrely on the night of Friday, November 15, 2013, both before and after Sheriff’s Deputies arrived. For three days she had been acting strangely, yelling for hours at a time to no one. Although she had previously been under the care of a psychiatrist, Naharro-Gionet was now acting in a way her husband had never seen before. That night she had scared her husband by barring him from their apartment, stabbing at him with a knife, and breaking his guitar. Not knowing what to do, her husband drove their van to his work, to spend the night in it.

Naharro-Gionet then proceeded to break items in her own home and outside it. A neighbor had already blocked her door to prevent Naharro-Gionet from breaking in to her apartment, scared by Naharro-Gionet’s behavior that she described as “crazy, evil, pissed, possessed”. Another neighbor, Contreras, called 911 at 12:16 a.m. on November 16, 2013, when he heard the sound of things breaking and thought that Naharro-Gionet was breaking into the apartment of a mother and her small child.

When Sheriff’s Deputies arrived, Naharro-Gionet was in front of the apartment building, yelling. She was holding a guitar in one hand and a kitchen knife in the other. The knife, which had a 5 ¼ inch blade, could easily have inflicted deadly or lethal injuries to the officers. The Deputies repeatedly told Naharro-Gionet to drop the knife. Naharro-Gionet ignored these commands and instead quickly approached the deputies holding the knife.

The Deputies responded and attempted to resolve the situation through voice commands and then drawn weapons. Naharro-Gionet did not respond. Instead she advanced on the Deputies, chased them into the street, around patrol cars and back towards her residence, separating the three Deputies and leaving Deputy Galan with nowhere to retreat. Naharro-Gionet was within 4 to 6 feet of Deputy Galan who had run out of room to back away, when Naharro-Gionet raised the knife to chest level. Deputy Galan ordered her to drop the knife one more time and Naharro-Gionet refused and continued her advance. Preventing injuries to herself and her fellow Deputies, Deputy Galan fired her gun three times in self-defense.

CONCLUSION

Under the facts, circumstances, and applicable law in this matter, Deputy Galan's use of deadly force was in response to an apparent and immediate threat of great bodily injury or death to herself and other officers. Her conduct is therefore justifiable in the defense of herself and others, and no criminal liability attaches to her.

Dated: June __, 2015

Respectfully Submitted By,

Kevin Smith
Deputy District Attorney



JEFFREY F. ROSEN
District Attorney