



**OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF NEVADA**



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DISTRICT ATTORNEY

CHRISTOPHER WALSH
ASSISTANT DISTRICT ATTORNEY

HAP PENALUNA
CHIEF INVESTIGATOR

MEMORANDUM

Date: October 28, 2020
From: Christopher Walsh
Re: *Gabriel Strickland: Officer Involved Shooting Review*

Preamble

The summary of this incident is drawn from the investigation completed by the Nevada County District Attorney's Office. The submission included written reports, audio and video recorded interviews, body camera footage from the Nevada County Sheriff's Office and Grass Valley Police Department, photographs, and crime scene details. The reviewing prosecutor also visited the scene where the shooting took place.

The District Attorney's Office conducted an independent assessment of the circumstances surrounding the use of deadly force in this case. 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.

Factual Summary

In the early afternoon of January 1, 2020, peace officers from the Nevada County Sheriff's Office and Grass Valley Police Department, responded to a 911 call reporting there was a man walking down the road near Adams Avenue and Squirrel Creek Road¹ "holding what appears to be a shotgun."² Based upon the nature of the call multiple law enforcement units from both agencies responded to the residential area.

¹This area is in an unincorporated part of Grass Valley. The specific location where the shooting took place was on Walker Drive near the intersection with Oak Street.

² Quote taken from 911 recording in this case.

Deputies Brandon Tripp and Taylor King, of the Nevada County Sheriff's Office, and Officer Conrad Ball and Detective Brian Hooper, of the Grass Valley Police Department, were some of the first to arrive at the scene. They observed Gabriel Strickland standing near the intersection of Walker Drive and Oak Street holding a black, long gun. All the law enforcement officers immediately exited their patrol vehicles, pointed their service weapons at Gabriel Strickland, and began yelling at him to "drop the gun!"³ In the minutes that followed Gabriel Strickland was told by law enforcement, in different form, to put down the weapon over forty times. At one point Gabriel Strickland stated it wasn't a real gun. Deputy Tripp replied that they didn't know it was a fake gun and implored him to just drop the gun and they would talk with him. Gabriel Strickland stated "you guys don't give a shit about me. Just fucking kill me." Deputy Tripp pleaded with him to put the gun down and said they "didn't want to shoot him."⁴

Deputy Taylor King had arrived at the scene on Oak Street. He exited his patrol vehicle and took up a perimeter position behind, and to the side, of where Gabriel Strickland was standing. He took cover behind a nearby oak tree and pointed his service handgun⁵ towards Gabriel Strickland. Deputy Tripp arrived at the scene from Walker Drive. He exited and took cover behind part of his patrol vehicle. At one point after arriving he retrieved his service rifle⁶ from his patrol vehicle.

Officer Conrad Ball and Detective Brian Hooper, exited their patrol vehicles on Walker Avenue behind Deputy Tripp and took positions behind the driver's side door of Deputy Tripp's patrol vehicle. Officer Ball was armed with his service rifle⁷. Officer Hooper drew his service handgun⁸ but then made the decision to switch to a non-lethal option. Holding a Taser⁹ he retrieved from Officer Ball, Detective Hooper began to slowly approach Gabriel Strickland. Officer Ball advanced alongside, to the left of Detective Hooper, keeping his service rifle pointed at Gabriel Strickland. Deputy Tripp simultaneously left the cover of his patrol vehicle. Deputy Tripp was further to the left and slightly behind the two Grass Valley police officers until Officer Ball crossed in front of him and took the left most position.

Gabriel Strickland did not comply with the repeated commands to drop the gun. Instead, he crouched down into a kneeling position while continuing to grasp the gun with the barrel pointed upwards. Officer Hooper fired his Taser, twice, but it was apparently ineffective as the darts could not penetrate through the jacket that Gabriel Strickland was wearing. The peace officers advanced towards Gabriel Strickland who was now only feet away. Gabriel Strickland suddenly lowered the barrel of the gun he was holding and pointed it directly at Officer Conrad Ball and then Detective Brian Hooper. (See **EXHIBIT A**)

³ This is documented on body camera recordings from several different peace officers from both agencies.

⁴ Shown on body camera recordings and from interview statements.

⁵ Deputy King was issued a .40 caliber Sig Sauer 226 handgun

⁶ Deputy Tripp was issued a .223 AR-15 rifle

⁷ Officer Ball was issued and was carrying a .223 AR-15 rifle

⁸ Detective Hooper was issued a 9mm Sig Sauer P320 handgun

⁹ Taser is an electroshock weapon. It fires two small barbed darts designed to deliver an electrical current that temporarily disrupts voluntary muscle control. It is designed to be less-lethal although the possibility of serious injury or death exists.

Officer Ball was almost to Gabriel Strickland and had his service rifle trained on him. Officer Ball has extensive familiarity with firearms.¹⁰ At the very last moment, when the gun was just inches away and being lowered towards him, Officer Ball noticed a small broken off piece of orange plastic inside the barrel of the gun. Officer Ball observed this when the gun was just a few feet away and pointed at him. From his vantage point Officer Ball realized the gun Gabriel Strickland was holding was fake and instantly switched his service rifle to the side and grabbed his baton to strike the gun away. In that same moment, as Gabriel Strickland lowered his gun and pointed it at them, Deputies Tripp, King, and Detective Hooper all fired their service weapons at him.

Deputy Tripp, Deputy King and Detective Hooper were further away than Officer Ball at the time Gabriel Strickland lowered the barrel of the gun and pointed it at them. They did not see the broken off piece of plastic inside the barrel of the gun. The three law enforcement officers fired a combined total of thirteen gunshots in rapid succession within a matter of seconds.¹¹

Gabriel Strickland was struck by multiple gunshots simultaneously. He instantly fell to the ground and dropped the gun. Officers rushed in and attempted life saving measures. He was transported by ambulance to Sierra Nevada Memorial Hospital but he succumbed to his injuries shortly after arrival. An autopsy was performed that showed the cause of death to be “multiple gunshot wounds.”¹² A significant contributing condition was also listed as “methamphetamine intoxication” based upon toxicology results showing a high level of methamphetamine in Gabriel Strickland’s system at the time of his death.

The black long gun that Gabriel Strickland pointed at law enforcement was examined after the shooting. It turned out to be a black Airsoft BB rifle. It originally would have had an orange tip on the end of the barrel but witnesses confirmed the tip had been broken off before the incident.¹³ (See **EXHIBIT B** and **EXHIBIT C**)

An investigation into Gabriel Strickland’s background, revealed that in the weeks leading up to his death he had been involved in an unsolved shooting where he shot and wounded a man with a .22 caliber weapon.¹⁴ On December 26, 2019, just days before his death, Gabriel Strickland was arrested by Grass Valley Police officers for illegally being in possession of a .22 caliber handgun. The revolver was loaded and Gabriel Strickland had additional ammunition for the gun on him as well.¹⁵ During this encounter he was also arrested for being under the

¹⁰ Prior to becoming a peace officer Conrad Ball worked in a firearm store for years.

¹¹ Based upon an examination of casings found at the scene Deputy Tripp fired eight rounds from his .223 service rifle, Deputy King fired three rounds from his .40 service handgun, and Detective Hooper fired two rounds from his 9mm service handgun.

¹² Dr. Kobylanski identified ten different gunshot injuries during the autopsy but many of these were caused by bullet fragments, and some were through-and-through gunshot wounds. Dr. Kobylanski did not determine how many individual gunshots struck Gabriel Strickland.

¹³ Statement from witness Frank Beyer who had seen Gabriel Strickland with the Airsoft BB rifle prior to the shooting and saw the orange tip removed.

¹⁴ The shooting took place on 12/18/19 in the area of Rex Reservoir and is documented in Nevada County Sheriff’s Office Case No. 11903401. In evidence obtained after his death, Gabriel Strickland had admitted to acquaintances that he shot a man with his .22 caliber revolver. This is corroborated by witness statements and medical records.

¹⁵ Documented in Grass Valley Police Department Case No. G1903976.

influence of methamphetamine. Gabriel Strickland made a statement to law enforcement while being arrested that he was “going to make you kill me”.¹⁶

Relevant Legal Principles

In order to convict an officer of any possible charges arising from a shooting, 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.)

Penal Code Section 196: Use of Deadly Force by Public Officer

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

¹⁶ Documented by then Grass Valley Police Department Sgt. Jason Perry on 12/26/19.

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 Guzman-Lopez 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 Guzman-Lopez is armed, even if the officer cannot confirm that Guzman-Lopez is actually armed. (*Anderson v. Russell* (2001) 247 F.3d 125, 129, 131.)

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.)

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 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 objectively reasonable force to effect the arrest, to prevent escape or to overcome resistance. Peace officers may only use deadly force when it reasonably, and objectively, appears necessary in defense of human life. 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.

Analysis

Determining whether Deputies Tripp, King, and Detective Hooper were legally justified under the principles of self-defense and defense of others in discharging their firearms involves a two-part analysis: (1) was their belief that it was necessary to protect themselves or others from an apparent, imminent threat of death or great bodily injury objectively reasonable and (2) did they individually, subjectively and honestly believe it was necessary to protect themselves or others from an apparent imminent threat of death or great bodily injury.

The facts overwhelmingly support concluding the law enforcement officers' fear of imminent danger was genuine, and from an objective standpoint was reasonably necessary:

Deputies Tripp, King, and Detective Hooper were on duty as sworn peace officers with the Nevada County Sheriff's Department and Grass Valley Police Department respectively. They responded to a report of a man walking down the road holding a gun in a residential neighborhood. All of them were wearing uniforms that clearly identified them as law enforcement officers. It was their job to respond to this perceived threat to the safety of the community.

When Deputies Tripp, King, and Detective Hooper contacted Gabriel Strickland they saw he was holding a black, long gun that appeared real. Despite repeated commands to drop the gun Gabriel Strickland would not comply or put the gun down. Even though law enforcement officers had guns trained on him, and were ordering him to put down the weapon, even pleading with him, he would not follow their directives. This defiance, towards law enforcement officers with guns trained on him, showed the irrationality and unpredictability of

Gabriel Strickland at that moment. He objectively posed an imminent danger to everyone around.

These peace officers had a sworn duty to stop Gabriel Strickland from potentially hurting someone. They gave Gabriel Strickland multiple opportunities to put down the gun. They pleaded with him saying “we don’t want to shoot you.” Detective Hooper from the Grass Valley Police Department attempted to use non-lethal force by firing a Taser at Gabriel Strickland, twice, but that did not work.

Of course the law enforcement officers could not know what Gabriel Strickland intended to do. They did not know if Gabriel Strickland was going to shoot them; such an action would have been consistent with other recent actions by him. Gabriel Strickland had shot a person with a gun just weeks earlier. Deputies Tripp, King, and Detective Hooper did not know if the gun Gabriel Strickland was holding was real or fake. It looked real and just days earlier Gabriel Strickland had been contacted by police with a real gun. What Deputies Tripp, King, and Detective Hooper did know is that Gabriel Strickland was refusing to put down the gun he was holding even though guns were pointed at him. Unbeknownst to them Gabriel Strickland was experiencing acute methamphetamine intoxication at the time.

When Gabriel Strickland lowered his gun and pointed it at them Deputies Tripp, King, and Detective Hooper fired their weapons. In that moment it is clear they did so with the honest intent to protect themselves, and fellow law enforcement officers, from being shot and killed. Gabriel Strickland made the decision to lower his weapon and point it at them. This action was a deliberate choice by Gabriel Strickland to end his life. The danger to others was objectively apparent, imminent and appeared necessary. The actions of the law enforcement officers were clearly reasonable and legally justifiable under the circumstances; no criminal charges will be filed against any of the peace officers as a result.

The loss of any human life is tragic. It is regrettable that Gabriel Strickland died; especially by the hands of law enforcement. Whatever personal conflict or struggles led Gabriel Strickland down a troubled path that ended with the interaction he had with law enforcement on January 1, 2020, we as a community, and in law enforcement, must search to find ways to prevent and reduce these unfortunate occurrences from happening in the future.

CLIFFORD NEWELL,
DISTRICT ATTORNEY



Christopher Walsh
Assistant District Attorney

EXHIBIT A



(Gabriel Strickland pointing gun at Officer Hooper)¹⁷

¹⁷ Still photo created from bodycam video

EXHIBIT B



(Black AirSoft BB gun Gabriel Strickland was holding)

EXHIBIT C



(Close-up of Airsoft BB rifle Gabriel Strickland was holding. Showing small broken off orange pieces of plastic inside barrel)