

**Officer Involved Shooting of Sergio Navas**

**Los Angeles Police Department**

**Officer Brian Van Gorden, #38119**

**J.S.I.D. File #15-0112**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**February 15, 2017**

## MEMORANDUM

TO:                   COMMANDER ROBERT A. LOPEZ  
Los Angeles Police Department  
Force Investigation Division  
100 West First Street, Suite 431  
Los Angeles, California 90012

FROM:               JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT:           Officer Involved Shooting of Sergio Navas  
J.S.I.D. File #15-0112  
F.I.D. File #F020-15

DATE:               February 15, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 5, 2015, fatal shooting of Sergio Navas by Los Angeles Police Department (LAPD) Officer Brian Van Gorden. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that Officer Van Gorden did not act in lawful self-defense or defense of another at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on March 5, 2015, at approximately 2:00 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant Steve Lurie.

The following analysis is based on reports, recorded interviews, and photographs submitted to this office by the LAPD's Force Investigation Division (FID). The departmentally compelled statement of Officer Van Gorden was considered in this analysis.

### **FACTUAL ANALYSIS**

On March 5, 2015, at approximately 1:30 a.m., LAPD Officers Michael Estrada and Brian Van Gorden were patrolling in a marked black and white Ford Explorer SUV dressed in LAPD uniform. Estrada was the driver and Van Gorden was the right front passenger. The officers were driving westbound on Sarah Street approaching Cahuenga Boulevard in North Hollywood when they noticed a 2003 Mercury Sable with paper license plates traveling north on Cahuenga Boulevard at an estimated speed of 80 miles per hour (m.p.h.) in a 35 m.p.h. zone. Estrada turned onto Cahuenga Boulevard and accelerated north in an attempt to catch up to the Sable.

The Sable turned west onto Otsego Street and the officers followed, activating the forward facing red light on the SUV to conduct a traffic stop. The Sable turned north onto Willowcrest Avenue,

pulled to the east curb, and stopped. Estrada positioned his SUV to conduct the traffic stop and the officers were able to see that the sole occupant inside the Sable was the driver, later identified as Sergio Navas. Both officers exited the SUV. Estrada stood at the driver's side of the SUV, near the door, and Van Gorden walked along the passenger side of the SUV, approaching Navas' vehicle. When Van Gorden reached the front of the SUV, Navas accelerated away from the officers and fled north on Willowcrest Avenue.

Estrada and Van Gorden got back into their SUV and accelerated to catch up to Navas, with their lights and siren activated. The officers broadcast the pursuit, adding that the car was a "Code 37" or stolen vehicle based on the paper plates.<sup>1</sup> Navas evaded the officers, driving approximately 60 m.p.h. in a 25 m.p.h. zone, driving west in the eastbound lane of Magnolia Boulevard, and proceeding through a residential neighborhood before entering the 134 freeway traveling eastbound. The officers followed Navas on the freeway and requested the assistance of an air unit.<sup>2</sup> While on the 134 freeway, Navas traveled in excess of 100 m.p.h. Navas exited the 134 freeway at Bob Hope Drive and drove westbound on Riverside Drive in the City of Burbank. The officers followed.

Navas went south on Valley Street and turned east onto National Avenue. At the time Navas turned east, Estrada estimated the distance between the officers and Navas was approximately one-half block. The officers turned eastbound on National Avenue and began to close the distance between the cars. Navas proceeded past Evergreen Avenue and began to slow down.<sup>3</sup> The officers followed, not realizing that just ahead lay a cul-de-sac. Navas turned his car slightly to the left, facing northeast, and stopped his car.<sup>4</sup> Estrada did not want to hit Navas with his car and did not want to veer to the left and place the officers' backs to Navas. Estrada felt his "only option...to avoid hitting him getting out of that car was just to veer to the left and brake...wherever I stop, I stop." The officers' SUV came to a stop next to Navas, with the officers' SUV facing east. At the time he stopped, Estrada heard the sound of a collision. The hood of the front passenger's side of the officers' SUV rested inches from the hood of the front driver's side of Navas' vehicle. Given the positioning, neither Navas nor Van Gorden could open his respective door fully.

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<sup>1</sup> Estrada explained, "[F]rom our training and experience,...we've gotten a lot of Code 37s that have paper plates on them...so we already know...that time of night and the circumstances that this may be a Code 37 vehicle." Estrada's most recent four stolen vehicle investigations involved stolen vehicles with paper plates.

<sup>2</sup> The air unit did not arrive prior to the termination of the pursuit.

<sup>3</sup> The intersection between Evergreen Street and National Avenue is a T intersection. Evergreen Street proceeds south and terminates at National Avenue. Just past Evergreen Street, National Avenue is bisected by a raised median, making National Avenue a cul-de-sac. The east end of the cul-de-sac is bordered by the median and small shrubbery. National Avenue continues just past the raised median. The area is residential on both the north and south sides of National Avenue, both east and west of the cul-de-sac. This area was not within the officers' normal patrol area [REDACTED]

<sup>4</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

Estrada told investigators, “When [Navas] blocked that path in front of me and he got out of that vehicle, I really thought he was getting out to engage...Because the only – only reasonable [sic] person would jump out in front of a police vehicle like that is if he wanted to engage us...when we got toward the vehicle, his door was open. And as we’re approaching [Navas], [Navas] was ...still facing towards us...So in my mind, I knew he wanted to do something to us...He had his hands in his waistband as he was getting out of the car. I saw him and I already knew that he was...going to do something. He was going to shoot us...”

As the officers’ SUV came to a stop, Navas [REDACTED] [REDACTED] exited his vehicle.<sup>5</sup> [REDACTED] Navas stood just outside his door, “pretty much face to face” with Van Gorden, and stared directly at Van Gorden. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

After Van Gorden fired several rounds, his firearm malfunctioned. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Estrada told investigators, “When [Navas] got out of that car, you could just see he...wanted to kill us...he opened up his door and he looked at us like, fuck, you guys are going to get it...And my thought process is, fuck, he’s coming out to fucking shoot. And I had...nowhere to go... if I was on the passenger side, I would have done the exact same thing [as Van Gorden], because that guy, he, he either had a weapon at some point or he was, he was going to do something to

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<sup>5</sup> [REDACTED]  
[REDACTED]

us, because he didn't, he didn't fucking run. He just stood there like...he was going to do something.”

Once the SUV came to a stop, Estrada, scared, rushed to get out of the car. As he did so, he heard gunshots and Van Gorden say, “Fuck! Fuck! Fuck!” Estrada believed that Navas shot his partner.<sup>6</sup> Estrada ran around the backside of his vehicle and attempted to arrest Navas. Navas was slowly jogging away, but after about 45 feet, he fell to the ground. Estrada was not sure whether he pushed Navas down or Navas fell on his own. Navas landed face down with his hands under his chest. LAPD Officers Robert Garrett and Kenneth Franco arrived and assisted Estrada in pulling Navas' hands from under his body. Navas resisted this effort and Franco used several closed fist strikes to Navas' head to cause Navas to submit. Ultimately, Navas was handcuffed. At this time, Estrada noticed that Navas was gasping for breath, turned him over, and discovered that Navas had been shot.<sup>7</sup>

The officers applied direct pressure to the chest wound until paramedics arrived. Burbank Fire Department responded to the location and unsuccessfully attempted life saving measures on Navas. Navas succumbed to his injuries and was pronounced dead at the scene at 2:15 a.m.

Estrada walked back towards their police vehicle to find his partner. Estrada located Van Gorden and asked him if he was okay. Van Gorden told Estrada that he was physically fine. Van Gorden added, “Man, I thought he had a gun. He had a gun.” Van Gorden did not elaborate on this statement to Estrada and Estrada did not inquire further.

Van Gorden was armed with his department issued .40 caliber Glock Model 22 semiautomatic pistol. Van Gorden kept his duty weapon loaded with 16 total rounds. After the incident, the firearm was loaded with one round that had been misfed into the chamber and 15 rounds in the magazine. Van Gorden had conducted a reload of his pistol during the incident. The magazine from his duty weapon was located outside the police SUV and contained nine rounds.

The physical evidence indicates that Van Gorden discharged his firearm six times while seated in the passenger's side front seat of the police SUV. Three bullet impacts traveling from inside the vehicle to outside were found on the right front passenger door and door frame, and the front passenger's side window was shattered. Bullet impacts from four projectiles were located on Navas' car. Six expended cartridge casings were found at the scene. No weapon belonging to Navas was located. Methamphetamine, marijuana, and 17 tablets of alprazolam were found in Navas' car.<sup>8</sup>

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<sup>6</sup> Estrada was still distraught at the time he spoke to investigators. When he described hearing gunfire and believing his partner was shot, his voice cracked and he broke down and began to cry.

<sup>7</sup> [REDACTED] Estrada did not know where Van Gorden was during this time period.

<sup>8</sup> Alprazolam is a medication used to treat anxiety disorders.

On March 8, 2015, Deputy Medical Examiners Julia Chu, M.D., and Raffi Djabourian, M.D., conducted an autopsy on Navas' body. Navas suffered two gunshot wounds. The first wound was to his torso and was a fatal wound determined to be the cause of death. The second wound was not considered fatal and was to Navas' left upper arm. The direction of travel of the fatal wound was front to back and downward and the trajectory of the wound to the arm was front to back and parallel with the ground.<sup>9</sup> Investigators determined that the trajectory of the wounds was consistent with Navas standing and facing Van Gorden at the time that Van Gorden fired his duty weapon. An analysis of Navas' blood noted the presence of amphetamine, methamphetamine, and marijuana.<sup>10</sup>

At the time of this incident, Navas was 35 years old, stood 6 feet tall, weighed 227 pounds, and was on felony probation. The Mercury Sable that Navas was driving was determined to be a stolen vehicle. Navas' criminal history reflects many felony and misdemeanor convictions, including two prior convictions for felony evading in violation of Vehicle Code section 2800.2. Navas' other criminal convictions include, but are not limited to, possession of controlled substances for sale, in violation of Health and Safety Code sections 11378, 11351, and 11379; receiving stolen property, in violation of Penal Code section 496d(a); theft, in violation of Penal Code sections 484e and 666; vehicle theft, in violation of Vehicle Code section 10851; unlawful carrying a dirk or dagger, in violation of Penal Code section 21310; and possession of a firearm by a felon, in violation of Penal Code section 12021(a).

## CONCLUSION

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight... 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, 396-397.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) he reasonably believed that the immediate use of deadly force

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<sup>9</sup> Navas' body also displayed various abrasions, which likely were sustained during his fall to the ground and handcuffing process, as well as pseudo stippling to the chest, arms, and right leg. Pseudo stippling can be caused by glass or metal fragments.

<sup>10</sup> Gunshot residue was present on Navas' right and left hands, indicating that he “may have discharged a firearm or was otherwise in an environment of gunshot residue.”

was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 505. The People have the burden of proving beyond a reasonable doubt that a person did not act in lawful self-defense or defense of another. If the People fail to meet this burden, a jury must find the defendant not guilty. CALCRIM No. 3470.

Before a jury can rely on circumstantial evidence to find a person guilty, the jury must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the accused person is guilty. "If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence." CALCRIM No. 224.

The evidence examined in this investigation shows that Estrada and Van Gorden were patrolling in the early morning hours when they noticed a Mercury Sable being driven by Navas traveling at excessive speeds. The officers followed Navas and attempted to conduct a traffic stop. Navas fled at a high rate of speed.

The officers followed as Navas led them on a high speed chase, driving dangerously in both a residential setting and on the 134 freeway. The officers noted that the car had paper plates and correctly believed, based upon their past training and experience, that the car was stolen. The officers followed Navas into the City of Burbank, an area which was not familiar to them.

Navas made several turns and ultimately proceeded eastbound on National Avenue, with the officers following him and attempting to close the distance between them. Navas quickly stopped in the street, turned his car to face northeast, and began to open the door. Estrada attempted to stop the police SUV without hitting Navas' car. Navas, after fleeing at speeds in excess of 100 m.p.h from the officers, did not run. The officers' SUV stopped adjacent to Navas' vehicle. Navas quickly opened his door, [REDACTED] and stood face to face with Van Gorden.

[REDACTED] Estrada believed that Navas had set up to ambush them and perceived Navas' actions as life-threatening. [REDACTED]

[REDACTED] The fact that Van Gorden fired his duty weapon from inside the vehicle corroborates that he was honestly in fear. Estrada, who was quickly exiting his car at the time that Van Gorden fired his duty weapon, initially believed that Navas had opened fire on the officers. When questioned after the incident regarding Van Gorden's decision to fire his weapon, Estrada told investigators, "I would have done the exact same thing..."

If Van Gorden acted honestly and reasonably in his decision to use deadly force, his actions are justified and he acted lawfully. We conclude that the evidence presented demonstrates that Van Gorden honestly believed that deadly force was necessary under the circumstances. We further find there is insufficient evidence to prove that Van Gorden's decision to use deadly force was not reasonable.

The officers correctly determined, based upon their prior experience and training, that Navas was driving a stolen vehicle. As Navas fled from the officers, his behavior exhibited a disregard for the safety and lives of others around him. Driving at speeds in excess of 60 m.p.h. in a residential neighborhood, driving westbound in the eastbound lane of traffic, and traveling over 100 m.p.h. on the freeway demonstrates that Navas was a danger and willing to hurt, or possibly kill, someone in an attempt to avoid arrest. After behaving in this manner, Navas suddenly turned his car to the left, stopped in the street, and opened his door, [REDACTED]. Although, in hindsight, it appears that Navas stopped because he could drive no further, there is no evidence to suggest that the officers knew that was why Navas stopped the car. Navas exited, stood “face to face” with Van Gorden, and did not continue to flee. This drastic change in behavior alerted and scared [REDACTED] Estrada, who [REDACTED] quickly concluded based upon these actions that Navas was going to open fire on them. Van Gorden, forced to make a split-second determination as to the amount of force to use, chose to use deadly force in order to protect Estrada and himself from what he perceived to be a deadly situation. Estrada’s statement that if he had been in the passenger’s seat, he would have chosen to use deadly force provides corroboration that Van Gorden’s decision was reasonable under these circumstances.

We conclude that there is insufficient evidence to prove beyond a reasonable doubt that Van Gorden’s decision to use deadly force was unreasonable under these tense, uncertain, and rapidly evolving circumstances. Although there may have been other reasonable options available to Van Gorden at the time, Van Gorden’s determination that Navas posed a deadly and immediate threat based upon the totality of Navas’ actions was also a reasonable interpretation of the circumstantial evidence available to him. We are closing our file and will take no further action in this matter.