

**Officer Involved Shooting of Eric Alvarez
California Highway Patrol**

**Officer Juan Aranda, #21757
Officer Clifford Brooks, #21346
Officer Derrick Fonseca, #21179
Officer Freddie Garcia, #21133
Officer Adrian Gutierrez, #16630**

J.S.I.D. File #17-0446



JACKIE LACEY

District Attorney

Justice System Integrity Division

January 13, 2020

MEMORANDUM

TO: CAPTAIN CHARLES SAMPSON
California Highway Patrol
777 West Washington Boulevard
Los Angeles, California 90015

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

SUBJECT: Officer Involved Shooting of Eric Alvarez
J.S.I.D. File #17-0446
C.H.P. File #0987-509-17

DATE: January 13, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 17, 2017, fatal shooting of Eric Alvarez by California Highway Patrol (CHP) Officers Juan Aranda, Clifford Brooks, Derrick Fonseca, Freddie Garcia, and Adrian Gutierrez. It is our conclusion the officers acted in lawful defense of another at the time they fired their weapons.

The District Attorney's Command Center was notified of this shooting on September 17, 2017, at approximately 2:38 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by CHP Lieutenant Al Aleman.

The following analysis is based on reports, recorded interviews, photographs, and videos submitted to this office by the CHP Investigative Services Unit (ISU) Investigator Martin Geller. Geller also submitted a report completed by Multidisciplinary Accident Investigation Team (MAIT) which documented and collected the physical evidence in this case. The voluntary statements of the involved officers were considered as part of this analysis.

FACTUAL ANALYSIS

On September 16, 2017, at approximately 11:50 p.m., CHP dispatch received a call of a "pedestrian on the freeway" located on the southbound Interstate 5 (I-5) freeway, just north of the Interstate 10 (I-10) freeway.¹

Fonseca, Brooks, and Officer Ryan Banovitz were working patrol in a single marked patrol vehicle when they received the call. They responded from Stadium Way and travelled to the scene via the southbound I-5. At about 12:05 a.m., the officers arrived and observed Alvarez walking in the center median on the northbound I-5, just north of Mission Road.²

¹ The pedestrian on the freeway was later identified as Eric Alvarez.

² Alvarez was actually located on the northbound side of I-5 as opposed to the southbound side as initially broadcasted.

As the officers exited their patrol vehicle, Alvarez threw his arms up in the air and began yelling about the Los Angeles County Sheriff's Department (LASD).³ Alvarez walked northbound pacing back and forth from between the median and number one traffic lane.⁴ Brooks asked Alvarez why he was on the freeway and how they could help him. Alvarez ignored Brooks and kept walking north. At one point Alvarez stepped into the number one lane and threw his hands out as if he was trying to get hit by a vehicle. In response, Banovitz and Brooks utilized their flashlights to signal traffic on the northbound portion of the freeway of their presence.

Once the northbound traffic stopped, Fonseca, Banovitz, and Brooks climbed over the center divider wall onto the northbound side of the freeway. When the officers approached Alvarez, they observed Alvarez holding a black bag in his left hand and an unknown object in his right hand. Brooks inquired what the unknown object was and Alvarez told him it was a knife. Alvarez then put the knife to his own neck and continued to walk north away from the officers. Brooks gave Alvarez numerous commands to drop the knife, which Alvarez ignored. Alvarez then cut his own neck causing it to bleed.⁵ Brooks, Banovitz, and Fonseca then brandished their Electronic Control Device (ECD) and again directed Alvarez to drop the knife.⁶ At this time, Officers Casey McCarthy and Laura Jimenez arrived at the scene via southbound I-5 and climbed over the center-divider wall.

Alvarez ignored the officers' commands, prompting Brooks to deploy his ECD twice and Banovitz once. The ECDs had little effect on Alvarez and he was able to pull the probes from his body. Alvarez threw his bag at Brooks, knocking Brook's ECD out of his hand. Alvarez picked up the ECD, pointed it at Fonseca, and pulled the trigger. Brooks heard the ECD cycle and Fonseca saw the laser sights from the ECD go across his eyes. The ECD, however, lacked a cartridge, thus Alvarez was unable to tase Fonseca. Fonseca tased Alvarez with his ECD which caused Alvarez to fall to his knees. McCarthy unsuccessfully attempted to strike the ECD and knife from Alvarez' hand using his collapsible baton. Alvarez, however, did not relinquish the ECD, stood up and approached McCarthy. In response McCarthy retreated and crossed over the center divider. After seeing this, Jimenez drew her service weapon from its holster. Alvarez continued walking north on the I-5 and Fonseca told Alvarez to "drop the knife" and that the police were there to "help you."

Officers DeShawn Cobbs and Adrian Gutierrez arrived on scene. Cobbs observed Alvarez on the northbound side of the I-5 standing between the number two and three traffic lanes facing west and four to five officers talking to him facing east near the center divider. Cobbs noted that there was about 12 to 15 feet between Alvarez and Fonseca and the other officers were approximately five feet behind Fonseca. Cobbs noticed Alvarez holding a bloody knife about two to three inches in length and noted that Alvarez was bleeding from his neck. Cobbs heard Alvarez state that he would not let the officers take him to jail. Gutierrez removed an AR-14 rifle from the patrol vehicle and Cobbs removed his duty weapon from his holster and they approached on foot.

³ Fonseca believed Alvarez was complaining about a bad experience Alvarez had with LASD.

⁴ Freeway lanes are labeled numerically in sequential order. On either side of the freeway, the lane closest to the center divider is called the number one lane.

⁵ Officer Juan Aranda and Officer Noah Williams arrived on scene and observed Alvarez standing in the number two lane holding a knife to his neck. In response, Aranda pointed his service weapon at Alvarez and stood by.

⁶ An ECD, also known as a Taser, is a less lethal application of force.

Alvarez told Fonseca that he would drop the knife if the officers provided him water. Banovitz retrieved a bottle of water from a patrol vehicle and placed it on the center median. Alvarez grabbed the bottle and drank it, but refused to drop the knife. At this point, Officers Freddie Garcia and Montel Hill arrived at scene.

Sergeant Aaron Braaksma then arrived at the scene armed with a less lethal beanbag shotgun. Braaksma warned Alvarez that if he did not drop the knife, that Braaksma would shoot Alvarez. Alvarez did not drop the knife and Braaksma's shot Alvarez four times with the beanbag shotgun.

After getting shot, Alvarez ran towards Braaksma with his hand extended and made striking motions with the knife from approximately 20 feet away and closing. In fear for Braaksma's life, Aranda, Brooks, Fonseca, Garcia, and Gutierrez simultaneously fired their weapons at Alvarez striking him multiple times. Alvarez fell to the ground approximately ten feet away from Braaksma.⁷ Officer Laura Jimenez used her collapsible baton to knock the knife from Alvarez's hand. CHP officers administered CPR on Alvarez until the Los Angeles City Fire Department (LAFD) arrived on scene. LAFD treated Alvarez and subsequently pronounced him dead at the scene.

On September 20, 2017, Associate Deputy Medical Examiner Dr. Wenxue Xing performed an autopsy on Alvarez. Dr. Xing concluded that 16 rounds hit Alvarez and determined that two of the rounds were immediately fatal.⁸ One rifle round to the base of Alvarez's skull, which traveled left to right and front to back, and one pistol round which struck Alvarez's iliac artery located in his right hip area, which traveled left to right and upward were both fatal. Alvarez was struck with several other rounds that would have been life threatening if left untreated. Additionally, per the toxicology report, at the time of Alvarez's death, he had 2.7 nanograms per milliliter of marijuana and 0.51 micrograms per milliliter of methamphetamine in his system.

Numerous officers and other witnesses gave similar statements as to what occurred during the incident.⁹ Additionally, a witness driving by on the northbound side of the interstate freeway captured the shooting on his cell phone camera. This video corroborates the officers' descriptions of events.

⁷ Other officers estimated that Alvarez fell within five feet of Braaksma.

⁸ Between the five officers, a total of 21 rounds were fired at Alvarez.

⁹ Ricardo R., Jamil A., and LAPD tactical helicopter Officer Franklin Geraty also provided statements which corroborated the facts related by the CHP officers.

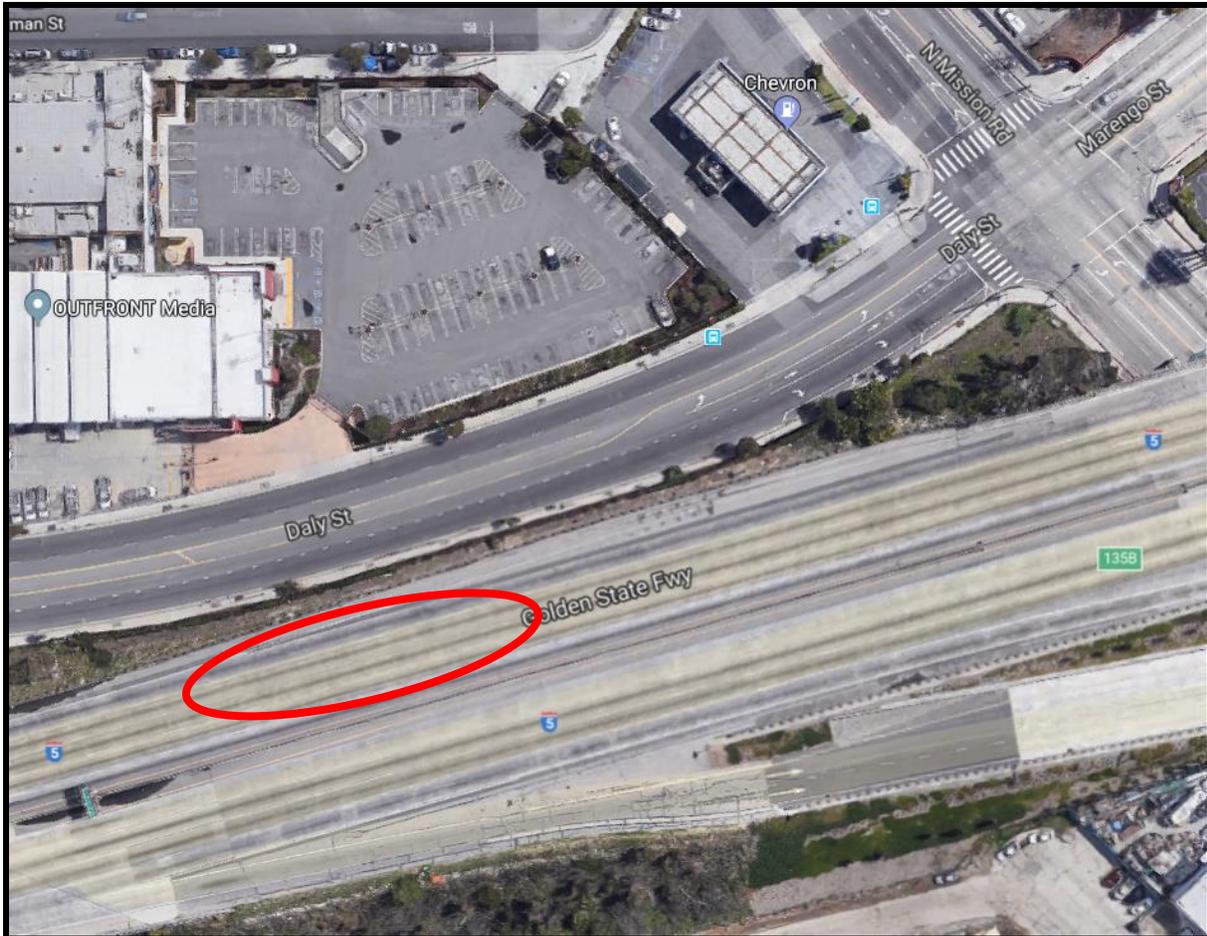


Figure 1 – Location of the incident

Cell Phone Footage

Edward A. and Danielle A. were driving southbound I-5, in the number three lane, past the location when the shooting occurred. Both witnesses related that they saw officers, with their guns drawn, in a verbal altercation with Alvarez. They observed an officer shoot Alvarez with a less lethal shotgun. Afterwards Alvarez yelled, “Fuck you” and threw a water bottle at the officers. According to Edward A. and Danielle A., the officers then shot Alvarez multiple times. Neither witness observed a knife in Alvarez hands and neither saw Alvarez advance towards the officers after he was shot with the beanbag shotgun.

Danielle A. recorded the incident in two separate videos one after the other.¹⁰ The recordings occurred as Alvarez’s vehicle continued southbound past the location of the incident. The videos show Alvarez advance towards Braaksma, swiping his right hand horizontally while holding an object, prior to the other officers firing their service weapons. Their video corroborates the

¹⁰ Danielle A. stated she stopped the recording because she thought it was just a verbal altercation. After Braaksma fired his first less-lethal shot, she stopped the recording because she was already in the process of ending it. A few seconds passed before she was able to start the recording again. As such, Alvarez throwing the water bottle and exclaiming, “Fuck you” are not recorded on either video.

officers statements that after Alvarez was shot with the less lethal shotgun, Alvarez lunged towards Braaksma with his right extended in a swiping motion. See Figures 2, 3, and 4.

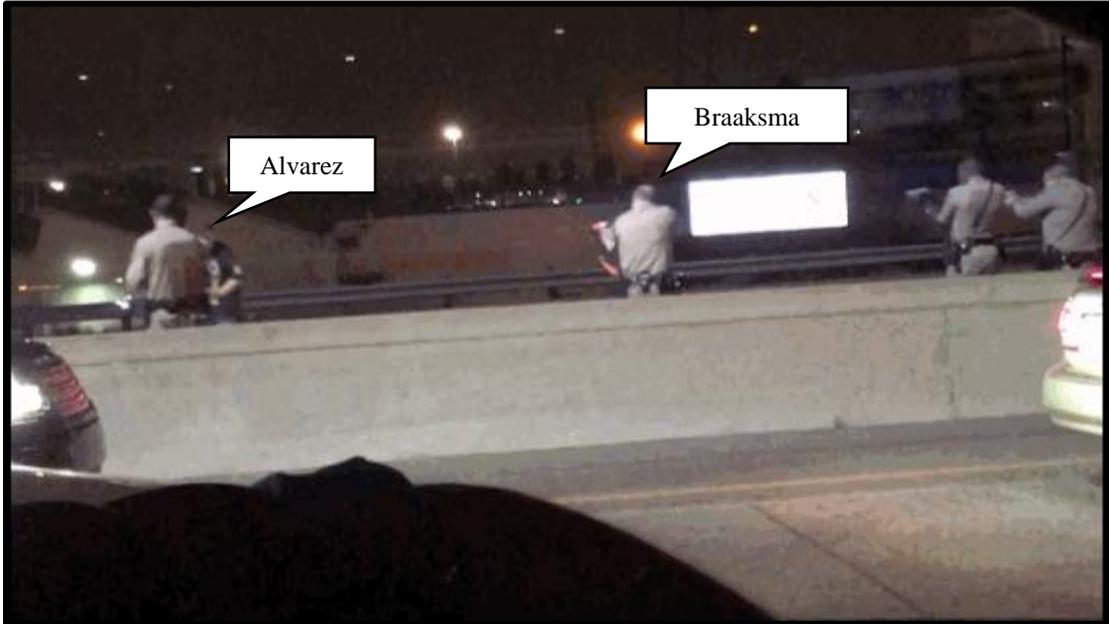


Figure 2 – Braaksma shot Alvarez in the stomach with a non-lethal shotgun round.

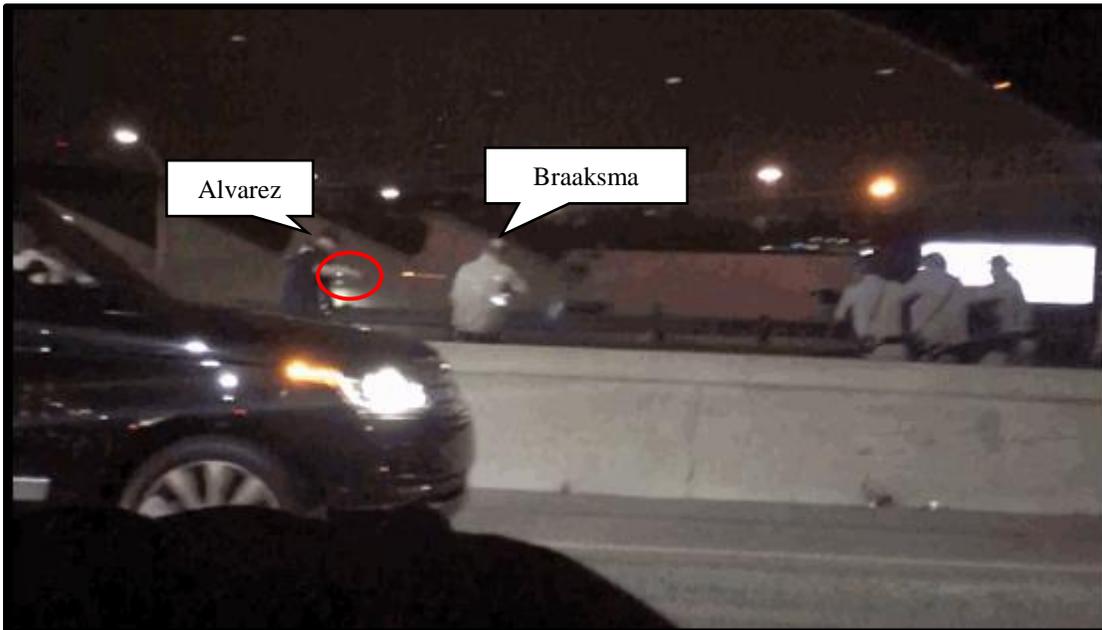


Figure 3 – Alvarez lunged towards Braaksma, swiping his right hand horizontally, while holding a knife.

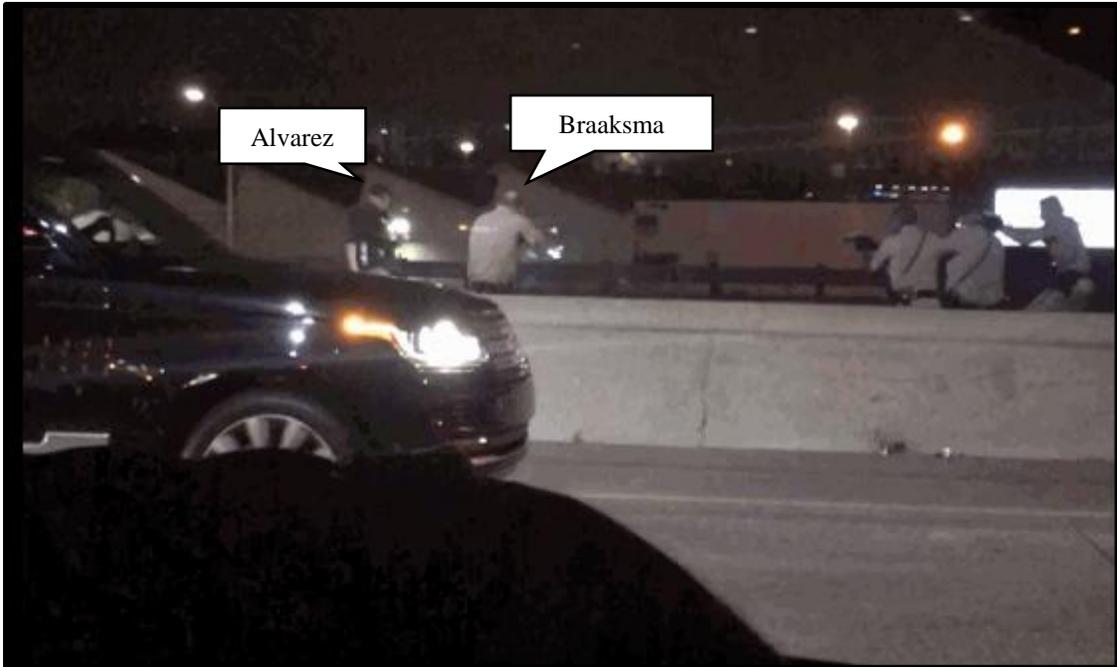


Figure 4 – Continuation of Alvarez lunge towards Braaksma

The video additionally shows that after Alvarez lunged, the officers then fired their weapons at Alvarez to protect Braaksma. See Figure 5.

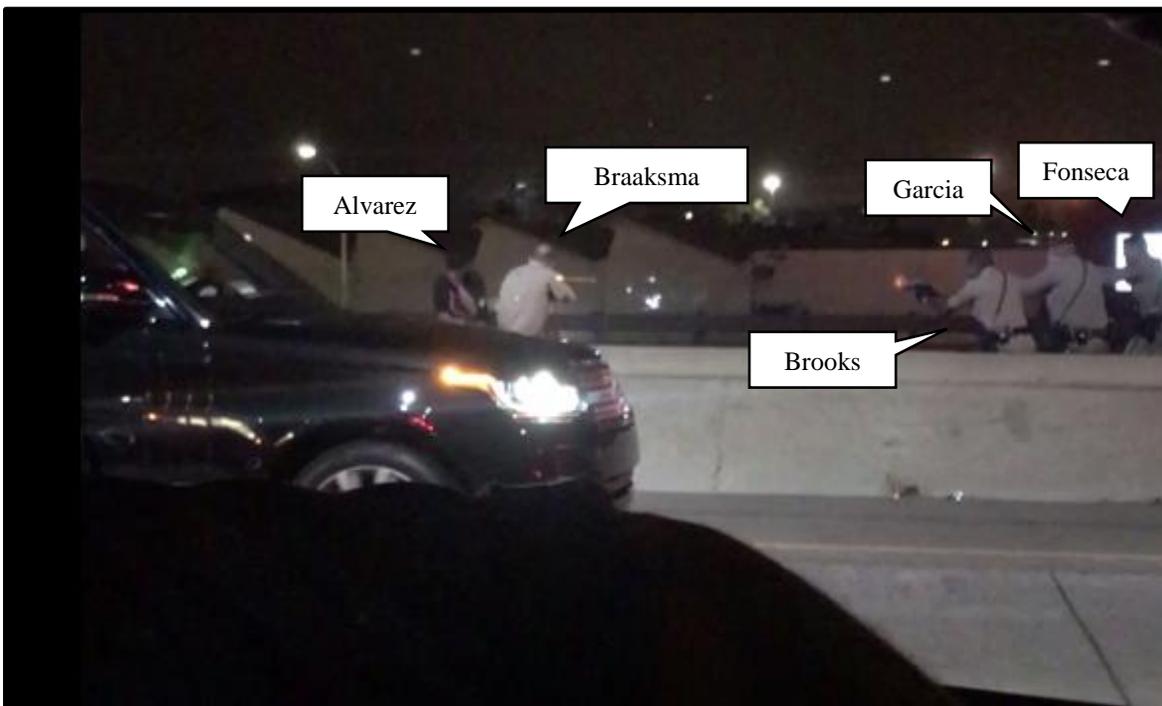


Figure 5 – Officers fire their duty weapons at Alvarez.

Ernie A. statement

Ernie A. was interviewed by officers after the shooting.¹¹ Ernie A. related that Alvarez was homeless and they had not had contact in approximately one week. Ernie A. stated Alvarez was addicted to methamphetamine and was an alcoholic.

Ernie A. stated that two weeks prior to shooting, Alvarez had an incident with LASD where Alvarez tried to commit suicide. Ernie A. related that he had ongoing issues with Alvarez so he had kicked him out of his house and obtained a restraining order against him. Ernie A. informed police that Alvarez had anger issues in conjunction with his drug use.

Police officers informed Ernie A. of the circumstances of the shooting where Alvarez was killed. In response to Alvarez dying in this manner, Ernie A. stated, "I just knew it was going to end this way."

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self defense or in the defense of others if the person claiming the defense actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 1082; see also, CALCRIM No. 505.

In protecting themselves or another, a person may use all the force that they believe reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury that appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. Id.

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to

¹¹ Ernie A. is Alvarez brother.

another.” CALCRIM No. 507. When acting under Penal Code § 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. People v. Mehserle (2012) 206 Cal.App.4th 1125, 1147. He may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” Id. at 1146; quoting People v. Bond (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” People v. Collins (1961) 189 Cal.App.2d 575, 589.

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... 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.

Analysis

There is compelling evidence in this case, including video, that Alvarez was acting violently, and was refusing to comply with officers’ commands. Ultimately, Alvarez armed himself with a knife, and charged at Braaksma.

At the time of the shooting, the officers knew that Alvarez was armed with a knife and had already engaged in extremely dangerous behavior. Alvarez had walked on the I-5 freeway and had jumped out into the number one lane while vehicles were passing placing himself, motorists, and officers in extreme danger. Alvarez cut himself with the knife, advised officers he would not let them take him to jail, and had ignored all of their requests to drop the knife and comply. Alvarez fought through several less lethal ECD deployments and had failed to comply after being struck with the less lethal beanbag shotgun. Alvarez had also attempted to tase Fonseca with Brook’s ECD.

When Alvarez charged at Braaksma and was slashing the knife at him, it was reasonable for Aranda, Brooks, Fonseca, Garcia, and Gutierrez, under these rapidly unfolding circumstances, to believe that Alvarez posed a deadly threat to Braaksma. As such, the officers’ decisions to fire at Alvarez in order to protect the lives of Braaksma and the other officers who were in the surrounding area was reasonable.

CONCLUSION

We find that Officers Aranda, Brooks, Fonseca, Garcia, and Gutierrez, acted lawfully in self-defense and in defense of others when they used deadly force against Alvarez. We are closing our file and will take no further action in this matter.