

DATE: June 12, 2012

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FROM: Ray Pyle
Supervising Deputy District Attorney
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TO: Dennis Christy
Assistant District Attorney

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SUBJECT: Officer Involved Death
INVOLVED OFFICERS: Deputy Sheriffs Russel Goines; Deputy Thomas Jolin
INVOLVED AGENCIES: San Bernardino County Sheriffs Department
DECEASED PARTY: Jose Garcia, DOB 10/17/1973
CITY OF RESIDENCE: Las Vegas, Nevada
DATE OF INCIDENT: June 2, 2010, 7:48PM
INVESTIGATING OFFICER: Detective Neal Rodriguez, Sheriffs Office, Specialized Investigations
SHERIFFS DR #: 601000097
SHERIFFS H #: 54-10
STAR #: 12-27638

INVOLVED PARTIES

Jose Jesus Garcia---dob 10/17/1973---deceased
Deputy Sheriffs---Russel Goines; Thomas Jolin

SUMMARY

On June 2, 2010, Deputy US Marshall Martin Escobar (member of the Southwest Regional Fugitive Task Force) and Sheriffs' Deputy Farris Short were assigned to work a special enforcement detail. Both were riding in a van with operating red lights and siren. They observed a car containing three male adults. They tried to stop the vehicle for vehicle code violations by activating the vans red lights and siren. The vehicle failed

to yield. After a short pursuit, the vehicle eventually stopped. Prior to doing so, both officers noted that the rear passenger was making furtive movements prior to the stop.

As officers approached the car, the doors flew open with all passengers exiting the vehicle. One passenger refused to show his hands, keeping them behind his back. The occupants were ordered to the ground. They failed to comply. The occupants then fled on foot, with Mr. Garcia and another occupant jumping the fence to the Bloomington Middle School.

Deputies Goings and Jolin heard the radio call re subjects fleeing. Both responded to the scene in marked Sheriff's units. Dep. Goines observed Mr. Garcia running through school grounds. Using the Sheriff unit's loudspeaker, he ordered Mr. Garcia to stop. Garcia failed to do so. Goines joined in the foot pursuit with Deputy US Marshall Escobar. In the process of the chase, Mr. Garcia scaled at least 6 fences on school grounds. The height of the fences varied from 6 to 8 feet. The method Garcia used to jump the fences was described by Goines as follows: Garcia held the top bar of the fence, then he jumped into the air and his stomach landed on the top horizontal bar of the fence. Garcia then kicked his legs over the top of the fence landing on the opposite side. During the foot pursuit, the Sheriff's helicopter circled overhead. Goines heard a radio broadcast that the subject was armed. Garcia eventually climbed on the roof of a portable class room. By this time, Dep. Jolin joined the chase. Goines followed Garcia from the ground with Dep. Jolin climbing to the roof to give chase.

The portable classrooms are separated by a gap, approximately shoulder width. Garcia ran across the roofs jumping from classroom to classroom eventually stopping as he was out of breath, saying he needed water and did not feel well. Goines was in the gap between the trailers below. Garcia indicated repeatedly to Goines that he needed water. On several occasions, Goines noted Garcia to be bent over, hands on knees. Goines ordered him off the roof. After a short time, he complied, climbing down from the roof to a wall that ran between the portable classrooms. Dep. Jolin was now on the roof above. Garcia kept his back to Goines resulting in his hands not being visible. Goines became fearful as a result of the broadcast that the subject was armed. Goines fired his Tazer, the Tazer having no effect. Jolin fired his Tazer striking Garcia between the shoulders. Garcia still wasn't coming down from the wall. Goines grabbed Garcia by the arm and leg pulling him off the wall putting Garcia on his back. Garcia refused to give Goines his hands. Due to the narrow space between the portable classrooms, Goines pinned Garcia to the ground until Jolin climbed down from the roof. The suspect kicked at Jolin. Due to the narrow space, there was no room to maneuver. Jolin administered a distraction strike with his foot to Garcia's left rib area. Garcia was handcuffed and removed from the space between the portables. Garcia kept saying he needed water. Garcia was bleeding from scrapes on his head (it should be noted that Garcia either shaved his head or was bald). Goins called for medical aid.

As Goines, Jolin and Garcia began to walk to the area where medical aid would be arriving, Garcia kept dropping to his knees. Each time Garcia started to walk, he would fall to the ground landing on his knees. Deputies carried Garcia to the area where

medical aid had now arrived. By this time Garcia was unconscious. Garcia was transported to Arrowhead Regional where he passed away approximately one hour after the foot pursuit began.

Deputy Short conducted a search of the suspect vehicle. Two firearms were located. One was a Uzi 9mm machine pistol, the other a 9mm pistol, loaded, one round in the chamber with the hammer pulled back.

Mr. Garcia is / was a Compton Locos gang member. He had a large tattoo on his back, COMTOME LOCOS and Locos 3 on his left arm bicep. Garcia's mother states her son was a previous member of the Compton Locos.

CRIMINAL RECORD

1992—PC 12031---convicted---misdemeanor

1994---PC 12031---convicted---misdemeanor

2002---CVC 10851---convicted---felony

FACTUAL BASIS

The following materials have been submitted and form the basis for the factual overview and summary: The San Bernardino County Sheriff's Department investigation and reports, photographs, recorded witness and officer interviews and radio dispatches.

STATEMENT OF FACTS

DEPUTY RUSSEL GOINES

Deputy Goines was interviewed by Det. Niles of Specialized Investigations. The interview was recorded.

Deputy Goines was at the Sheriffs Sub Station when he overheard a radio communication re a vehicle pursuit. From the broadcast, Dep. Goines was able to ascertain the position of the pursuing unit. He and Dep. Jolin left the station at the same time. By monitoring radio broadcasts, both deputies were able to track the pursuit. About two minutes after hearing the initial broadcast, deputies heard another communication indicating pursuing deputies were now in foot pursuit at the Bloomington Middle School. As Goines arrived on scene, he noted a Deputy holding an individual at gunpoint waiving his arm at Goines as an indication to keep on driving to look for additional subjects who had run from the pursuing officers. Deputy Goines drove past the stopped unit along the north side of the school. Deputy Goines recognized a Deputy US Marshall running behind a person wearing a Pittsburg Steelers Jersey. Deputy Goines noted the word "POLICE" on the Marshall's shirt. Both the US Marshall and the subject were running within the perimeter fence of the school. Deputy Goines

activated his units PA system ordering the subject to stop. He failed to do so. Goines drove to the east perimeter fence of school property. When Dep. Goines exited his unit he could see the suspect still being chased by the US Marshall. Goines jumped the fence to assist in the pursuit. He noted the subject had removed his Steelers jersey. Goines was forced to jump a couple more fences as he tried to close in on the subject. He then remembered he had keys to the gates, using the gates to allow him to reach an area parallel to the running subject. It appeared to Goines that the subject was trying to catch his breath, panting. Goines again ordered the subject to stop. Goines climbed another fence, thought the subject was going to give up, however the subject ran to the area of the portable classrooms. The subject jumped a fence surrounding these buildings. Goines followed. Both Goines and the US Marshall entered the area of the portable classrooms.

The method Garcia used to jump the fences was described by Goines as follows: Garcia held the top bar of the fence, then he jumped into the air and his stomach landed on the top horizontal bar of the fence. Garcia then kicked his legs over the top of the fence landing on the opposite side.

The portable classrooms consist of several trailers which are used as classrooms. Each trailer is separated by a narrow gap, about shoulder width. There is a wall extending along the northern end of the classrooms that closes off the north end at each of these gaps.

Goines lost sight of the suspect in this area. He knew the subject ran between one set of the portables, he just wasn't sure which one. Goines and the Marshall walked along the southern end of the portables. As they did so, Goines heard a radio broadcast informing the involved deputies that the subject is "armed". Goines did not know the origin of the broadcast. The helicopter was overhead. He thought the helicopter was in a position to see if the subject was holding a weapon.

Goines then realized the subject was on top of the trailers, almost directly above him. Deputy Goines had the subject at gunpoint and ordered the subject off the roof. He noted the subject was acting strangely. The subject pointed stating he was going to get his water. Deputy Goines did not note a weapon, holstered his firearm and drew his Tazer. Goines walked down the gap closest to the subject ordering him off the roof. After a few minutes, the subject started climbing off the roof.

The subject stepped from the roof to the top of the wall on the north end of the portables. At this point the subject had his back to Goines. Goines could no longer see the subject's hands. Fearing that the subject might turn around and shoot him (Goines was confined to the narrow area between the portables), he fired his Tazer. The subject did not react to the Tazer causing Goines to think the Tazer may not have been working properly. Goines pulled the trigger several times but the subject never reacted. At this point Goines thought one of the darts may have missed.

About this time Goines noted Dep. Jolin on the roof of the trailer, nearing the subject with his Tazer drawn. Goines moved closer to the subject. Goines grabbed the subjects pant leg. At this time Dep. Jolin fired his Tazer impacting the subject at the back of his shoulders. The subject still did not come down. At this time Goines grabbed the subjects arm pulling him down. Goines heard a slight thud as the subject was pulled down leading Goines to feel the subjects head may have impacted a trailer wall. The subject landed on his feet and ultimately onto his back between Goines and the northern wall.

Deputy Goines was telling the subject to give him his hands. The subject refused to comply. Goines was concerned fearing the subject may have a weapon. Because the space was so confined, Goines only option was to pin the subjects hands to the subjects chest with his knee until Dep. Jolin came down from the roof. Seconds later Dep. Jolin made his way down the gap helping Goines to handcuff the subject.

Dep. Goines tried to help the subject up. The subject was covered in sweat and his head was bleeding from a scrape. Due to the narrow space, Goines dragged the subject to the southern end of the portables. Once out in the open, Goines was able to help the subject to his feet. The subject kept telling Goines he wanted water. Goines called for medical aid to respond due to the subjects conduct and the fact of the scrape on the subjects head.

As Dep. Goines was walking the subject to the area where medical aid would be arriving, the subject kept dropping to the ground landing on his knees. The subject kept saying he wanted water with Goines telling him he would get the water when medical services arrived. Every time the subject started to walk, he would take a few steps and fall to his knees. The subject then began to complain about his legs hurting dropping to the ground again. Dep. Goines and the US Marshall helped the subject to his feet carrying the subject to the now waiting ambulance. Upon arrival at the ambulance, the paramedics noted the subject was now unconscious. Paramedics transported the subject to Arrowhead Regional Medical Center where he passed away.

DEPUTY THOMAS JOLIN

Deputy Jolin was interviewed by Det. Landen of Sheriffs Specialized Investigations. The interview was recorded.

As was the case with Dep. Goines, Dep. Jolin heard the radio broadcast concerning a failure to yield and a pursuit. He and Dep. Goines drove to the location being broadcast by the pursuing unit. They arrived at Bloomington Middle School.

Dep. Jolin drove around the school perimeter looking for the subjects and pursuing deputies. He saw Dep. Goines and the US Marshall pursuing a subject. Jolin saw the subject run between the portable classrooms. Jolin jumped the fence and ran toward the portable classrooms. He came upon another fence. He was going to use his keys to unlock the gate as he estimated the fence to be about ten (10) feet high. Jolin then

heard a broadcast that the subject was on top of the portable classrooms. Instead of unlocking the gate, he climbed the fence in an attempt to see what the subject was doing on top of the classrooms. Dep. Jolin then climbed onto the roof of the portable classrooms, drew his gun and yelled at the subject to get on the ground (it should be noted at this point that Dep. Jolin knew Garcia from a previous contact. During the course of that contact he identified Garcia as a Compton Locos Trece gang member). The helicopter was overhead. The subject said something but due to the noise from the helicopter Jolin could not hear what was said. The subject then started to climb down between the portables. Jolin holstered his gun and drew his Tazer. Jolin ran to the location of the subject seeing him on the wall separating the portables. Thinking the subject was going to climb down and run, he fired his Tazer striking the subject between the shoulders. Jolin said the subject tensed up and asked Jolin to turn it off.

About the same time, Dep. Goines grabbed the subject by the leg. Garcia fell to the ground landing on his feet and onto his back. Due to the narrow space, Dep. Goines was forced to come over the subjects head to try to control his hands. Jolin climbed down. He was now at the subject's feet with Goines at the subjects head. At this point Garcia had his arms free trying to push Goines away. Dep. Goines was telling Garcia to stop resisting, get on your stomach and stop resisting. Goines told Jolin he could not grab / control his hands from his vantage point. Jolin could not assist Goines at this point as Garcia was kicking his legs in Jolin's direction. Jolin could not move around Garcia to assist Goines due to the confined space between the portables, as previously mentioned, a space about shoulder width. At this point, Jolin administered a distraction kick to the Garcia's torso to allow him to move closer and grab Garcia's hands. The kick struck Garcia on the left side of the stomach just below the ribs. Jolin said it was strong blow but not with his full weight or strength. Jolin said that was the only strike he or Deputy Goines used on Garcia. The blow caused Garcia to roll slightly allowing deputies to control Garcia's hands, roll him on his stomach and handcuff him. Jolin described the remainder of the events as related by Deputy Goines. Jolin said Garcia never complained of any pain.

DEPUTY US MARSHALL MARTIN ESCOBAR

Deputy US Marshall Escobar is assigned to the Southwest Regional Fugitive Task Force. The driver of the police unit he occupied, Dep. Short, told Escobar he was going to pull a vehicle over due to a noted vehicle code violation. Short activated the vehicle's red light and siren in an attempt to stop the vehicle. The vehicle failed to yield. Escobar could see the rear passenger moving around the vehicle. The vehicle eventually stopped. Escobar approached from the passenger side, Short from the driver's side. As they approached the vehicle, the front and rear passenger side doors flung open. Garcia exited from the front passenger door, another subject from the rear passenger door. Both were ordered to the ground but failed to comply. Garcia partially raised his hands. The rear passenger would not raise his hands and kept his hands behind his back. Escobar again ordered both subjects to the ground. They again failed to comply and ran from the scene.

Deputy Escobar corroborated Deputies Goines and Jolin re the details of the foot pursuit. He indicated that when he saw Jolin on the roof and Goines below the suspect, he began to search the campus for the rear passenger. At one point he looked to the two foot opening between the portable classrooms and saw Dep. Goines struggling with the suspects hands. Due to the narrow space and Goines size he could not see past Goines. He next saw the deputies remove Garcia from between the portable classrooms. He corroborates both deputies as to the events from that point until Garcia was transported to ARMC.

CAUSE OF DEATH

Dr. Fajardo performed the autopsy. He noted that there was some abdominal trauma which caused a small rupture to the superior mesenteric artery causing the subject to bleed internally. Dr. Fajardo opined that the rupture could have been caused by a kick, punch, fall, or striking a fixed object. Consequently, cause of death was listed as blunt force trauma.

On June 27, 2012, I spoke to Dr. Fajardo on the phone re the nature and extent of Mr. Garcia's injuries. Dr. Fajardo related the following: The superior mesenteric artery is a very small artery, about the size of the lead in a pencil. In this case there was a small rupture to this very small artery. The doctor related that it would take some time for a person to bleed out as a result of this injury (the foot pursuit commenced at 8:02PM; Mr. Garcia taken into custody at 8:08PM; deceased at ARMC at 9:04PM). He further related that running, with a corresponding increase in the heart rate, would accelerate the process. Having said that, he noted that there was 750cc of blood in Mr. Garcia's abdomen (about 3/4 of a liter). Normally, it would take a loss of 2 liters before a person could die of blood loss. He felt that Mr. Garcia died of hemorrhagic shock as opposed to blood loss. Dr. Fajardo indicated the injury to the superior mesenteric artery was a rare injury and one that was "eminently survivable".

I then described to Dr. Fajardo the method Mr. Garcia used to jump the fences, as described by Deputy Goins. He indicated that could have caused the injury. I described the distraction kick as related by Deputy Jolin. He indicated that could have caused the injury. I asked his opinion as to which of the two caused the injury or which of the two was more likely to cause the injury. He indicated that, if he were called to testify, he could not say which of the two caused the injury nor could he say which of the two was more likely to cause the injury.

TOXICOLOGY

Blood was obtained from the body of Mr. Garcia at the time of autopsy. An analysis of the blood revealed the presence of Amphetamine (.064 mg/L); Methamphetamine (.424 mg/L); Phencyclidine (.003 mg/L).

APPLICABLE LAW

Cal. Penal Code sections 834a, 835a

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

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 affect 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 the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the 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.

GENERAL STANDARDS FOR DETENTION REQUIRE A REASONABLE SUSPICION THAT CRIMINAL ACTIVITY IS AFOOT.

An officer has the right to detain temporarily a person when the officer has a reasonable suspicion of that person's involvement in criminal activity. Circumstances leading to a reasonable suspicion, but falling short of probable cause to arrest, will justify detaining a person. Those circumstances may simply be unusual conduct, which leads the officer to reasonably conclude that criminal activity may be taking place. The criminal activity may be past, present or future. (*United States v. Sokolow* (1989) 490 U.S. 1, 7-8; *Terry v. Ohio* (1968) 392 U.S. 1, 22; *Ornelas v. United States* (1996) 517 U.S. 690, 693, *People v. Souza* (1994) 9 Cal.4th 224, 230; *People v. Mickelson* (1963) 59 Cal.2d 448.) There need be no recently reported crime. (*People v. Foranyic* (1998) 64 Cal.App.4th 186, 189.)

"A police officer may stop and question persons on public streets, including those in vehicles, when the circumstances indicate to a reasonable man in a like position that such a course of action is called for in the proper discharge of the officer's duties."(*People v. Flores* (1974) 12 Cal.3d 85, 91.)

One function of a temporary detention is to resolve any ambiguity in the situation and to find out whether the activity was in fact legal or illegal. (*People v. Souza, supra*, at 242.) A reasonable 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.)

"Reasonable suspicion" is information which is sufficient to cause a reasonable law enforcement officer, taking into account his or her training and experience, to

reasonably believe that the person to be detained is, was, or is about to be involved in criminal activity. The officer must be able to articulate more than an “inchoate and unparticularized suspicion or ‘hunch’ of criminal activity.” (*Terry v. Ohio, supra*, at 27) Reasonable suspicion is less than probable cause but more than a feeling, which cannot be expressed in words. Reasonable suspicion can be established with information that is different in quantity, content, and reliability from that required for probable cause. (*People v. Souza, supra*, at 230-231.)

“The concept of reasonable cause . . . is not ‘readily, or even usefully, reduced to a neat set of legal rules.’ ” (*United States v. Sokolow, supra*, at 7-8.) Reasonable cause demands some minimum level of objective justification, but considerably less than is required for probable cause to arrest. (*Ibid.*) Reasonable cause to detain must be supported by specific articulable facts, rather than inchoate suspicion or hunch. (*United States v. Sokolow, supra*, at 7-8.) These facts can be drawn from an officer’s personal observations, citizen reports, or reports of other officers. The facts can be evaluated in light of the officer’s training and experience. (*United States v. Mendenhall* (1980) 446 U.S. 544, 563-564 (Powell, J., concurring); *Terry v. Ohio, supra*, at 1.) An experienced officer may draw inferences and make deductions from observed fact that might well elude an untrained person. (*United States v. Cortez* (1981) 449 U.S. 411, 418.)

The totality of the circumstances must be considered when determining the legality of a detention or arrest. (*United States v. Arvizu* (2002) 534 U.S. 266, 273) Whether specific articulable facts amount to reasonable cause depend on the totality of the circumstances. Although each fact alone may be inadequate, together they can constitute reasonable cause. (*United States v. Sokolow, supra*, at 8-9; *People v. Souza, supra*, at 230-231.) Among the relevant circumstances are the nature of the activity observed and the surroundings. Further, a *suspect’s flight from officers* is properly considered – and indeed can be a key factor in establishing reasonable suspicion. (*Illinois v. Wardlow* (2000) 528 U.S. 119; *People v. Souza, supra*, at 235, 239-241; *People v. Foranyic, supra*, at 189-190.)

AN OFFICER MAY USE REASONABLE FORCE TO EFFECTUATE A DETENTION OR ARREST

An officer trying to enforce a lawful detention or arrest may use an amount of force that is reasonably necessary. (*In re Tony C.* (1978) 21 Cal.3d 888, 895; *In re Gregory S.* (1980) 112 Cal.App.3d 764, 778)

In this case the officer had a legal right to arrest Mr. Garcia and to use reasonable force to do so. Under the law, officers need not retreat nor desist in their efforts to make a lawful arrest just because a suspect becomes combative and may clearly act in self-defense. Officers do not lose their rights of self-defense nor do they become the aggressors just because the suspect decides to fight them. Additionally, Garcia was under a specific legal duty not to offer any resistance while being legally detained / arrested by the officers.

Even if the detention is not legal, every person has a duty to submit to the orders of a peace officer, although not submitting under these circumstances would not be a

violation of Penal Code §148(a). (*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.)...”])

In general some of the factors which can be considered when determining the justification for a detention and arrest are the man’s suspicious actions, the man’s nervousness or belligerence, the man’s evasive reply to questions, the man’s actions which are consistent with common patterns for the type of crime suspected.

Garcia’s actions when taken as a whole were much more than simply a refusal to cooperate. The car in which Garcia was a passenger fled when officers attempted to stop the vehicle for vehicle code violations. Upon stopping the car, the doors flew open with all occupants exiting the vehicle. When ordered to the ground, they fled failing to abide by the officers reasonable commands to stop. A foot pursuit ensued with Garcia leading officers on a chase through school grounds. When captured, he fought with both officers. A machine gun and a loaded 9mm pistol were found in the vehicle occupied by Mr. Garcia and others.

INVOLUNTARY MANSLAUGHTER---PC Section 192(b); Cal Crim 580-----defines Involuntary Manslaughter as follows:

The commission of an unlawful act, not amounting to a felony, or in the commission of a lawful act which might produce death in an unlawful manner, or without due caution and circumspection

The defendant committed the crime or act with criminal negligence AND
The defendant’s acts *caused* the death of another person

Criminal negligence involves more than ordinary carelessness, inattention or mistake in judgment. A person acts with criminal negligence when:

He or she acts in a reckless way that creates a high risk of death or great bodily injury AND

A reasonable person would have known that acting in that way would create such a risk.

A person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

ANALYSIS

Because, unfortunately, this incident involved the death of Jose Garcia, the issue of potential criminal responsibility on the part of the officers must be addressed. A criminal homicide requires proof of the elements of the offense of manslaughter as cited above.

The fact that the officers used a degree of force to subdue Mr. Garcia is without question. The law is clear that any peace officer who makes or attempts to make an arrest may use reasonable force to effect the arrest and need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the 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 Sec. 835a).

Under the facts of this case, Mr. Garcia ran from officers for a considerable distance. In the process he traversed numerous six to eight foot fences by grabbing the top of the fence, pulling himself up, throwing himself on the top rail of the fence (his stomach coming to rest on the top rail), kicked his legs over and dropped to the other side.. He was combative with officers at the scene of his arrest. He attempted to kick deputies and refused to comply with the deputies' lawful and reasonable commands attendant to Mr. Garcia's arrest. Deputies had a right to be fearful in light of the broadcast of Garcia being armed as illegal weapons were found in the vehicle occupied by Mr. Garcia, as well as Garcia keeping his back to Dep. Goines while refusing to show his hands. Upon being apprehended, he refused to cooperate and resisted deputies in their attempts to lawfully arrest him. Based on these officers training and experience, the distraction kick was a compliance measure that should not have caused any significant adverse effect to Mr. Garcia. The kick clearly is not an act amounting to criminal negligence—reckless, creating a risk of death or great bodily injury. Nor can the kick be said to have caused the injury to Mr. Garcia as evidenced by the statement of Dr. Fajardo.

Given the totality of the facts and circumstances of this pursuit, the distraction kick as described by Deputy Jolin was a reasonable and necessary use of force to gain control of a combative and potentially armed man in an extremely confined space.

The technique used to scale approximately six fences by Mr. Garcia is described in a preceding paragraph. Garcia's injury could have been caused from the repeated abuse Garcia administered to his stomach scaling the fences. Mr. Garcia administered a fair amount of abuse to his body in the course of evading the police. On apprehension, he was noted to have 'road rash' to his head, abrasions to the back of his feet, abrasions to his chest, abdomen and hands. Based on Dr. Fajardo's statement, the injury to the mesenteric artery could have been caused by Garcia's technique in scaling the fences or the distraction kick. Consequently, the cause of injury and subsequent death cannot be determined.

It does not appear that these officers knowingly committed an act that posed a high risk of death or great bodily injury because of the way the act was committed. Based on the CALCRIM / Penal Code definition, their actions did not rise to the level of criminal negligence nor can it be said that their actions caused the injury in question.

After a thorough review of the facts, circumstances and applicable law pertaining to this matter, it is my opinion that the amount of force used by these officers was reasonable and appropriate. Consequently, there are no legally supportable criminal charges that can be proven against these officers.

Dennis Christy
Assistant District Attorney

Date: _____

John P. Kochis
Chief Deputy District Attorney
Rancho Cucamonga Division

Date: _____

Ray Pyle
Supervising Deputy District Attorney

Date: _____