



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

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DISTRICT ATTORNEY**

Sharon S. Henry
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January 31, 2020

Shawny Williams
Chief of Police
Vallejo Police Department
111 Amador Street
Vallejo, CA 94590

Re: Officer Involved Fatality involving Ronnell D. Foster
Vallejo Police Department Case No. 18-1786
Date of Incident: February 13, 2018

Dear Chief Williams:

The above referenced incident was investigated pursuant to the Solano County Officer Involved Fatality Incident Protocol. In accordance with the protocol, the incident was jointly investigated by the Vallejo Police Department and Criminal Investigators from the Solano County District Attorney's Office.

The Solano County District Attorney's Office has completed its full review of the officer's involved fatal shooting of Ronnell D. Foster, age 33, of Vallejo. The District Attorney's Office has carefully reviewed the entire investigation relating to Foster's criminal conduct, law enforcement response, and Foster's demise on February 13, 2018, in the immediate presence of members of the Vallejo Police Department.

Scope of Review

The purpose of the District Attorney's investigation and review of any critical incident is to establish the presence or absence of criminal liability on the part of any involved party, including law enforcement employee(s).

The specific question to be resolved in this case is whether the officer's use of force was not reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose. A summary of the applicable law is included here to assist the reader in understanding this report and its conclusion.

The District Attorney does not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

Standard of Review

As the chief law enforcement official of Solano County, the District Attorney is responsible for deciding what cases to prosecute and has the responsibility to review and approve the filing of all criminal cases

in the county. The District Attorney's discretion in this regard is well defined. The *California Rules of Professional Conduct, Rule 5-110*, provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause. Additional restraint on the charging authority is found in the *Uniform Crimes Charging Standards*, a publication of the California District Attorneys Association. These standards provide the following guidelines:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

In every criminal case, the District Attorney has the burden of proving guilt "beyond a reasonable doubt;" the highest burden of proof found in the law. A jury of twelve must vote unanimously for guilt before a conviction may be entered. When determining whether criminal charges are appropriate, the District Attorney must consider all of the evidence, including evidence that supports an affirmative defense, such as a claim of "self-defense" or "defense of others." Criminal charges are warranted only when the District Attorney determines that the evidence of guilt is of such convincing force and it would warrant conviction of the crime charged by a reasonable and objective jury fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense. Pursuant to the law, the People in this case have the burden of proving beyond a reasonable doubt that the use of deadly force was not justified.

Statement of Law

Under the Fourth Amendment of the United States Constitution, persons have the right to be free from the use of excessive force by law enforcement officers. This right attaches even when an officer is engaged in making a lawful arrest. *Graham v. Connor* (1989) 490 U.S. 386. The analysis is whether the force used to effectuate the detention and arrest was reasonable based on an evaluation of the totality of the circumstances. The evaluation of the totality of the circumstances is not based on the facts as they became known over time, but they are analyzed from the standpoint of the officers and what they knew at the time the detention and arrest were made.

1. Right and Duties of Officers During a Detention

A police officer has the right to stop and temporarily detain someone for investigations whenever the officer has "reasonable suspicion" some criminal activity is afoot and that the person was, is, or is about to be, involved in the criminal activity. *Terry v. Ohio* (1968) 392 U.S. 1; *People v. Walker* (2012) 210 Cal.App.4th 1372, 1381. An officer with reasonable suspicion that a motorist has violated the California Vehicle Code may stop the vehicle involved for investigation. (*People v. Corrales* (2013) 213 Cal.App.4th 696, 699-700 [texting while driving]; *People v. Carter* (2010) 182 Cal.App.4th 522, 529 [tinted front and side windows]; *People v. Hoyos* (2007) 41 Cal.4th 872, 892 [rear license plate light burned out]; *People v. Roberts* (2010) 184 Cal.App.4th 1149, 118-1191 [unlawfully tinted windows]; *People v. Logsdon*, supra, 164 Ca.App.4th at p. 744 [unsignaled lane change]; *People v. Duncan* (2008) 160 Cal.App.4th 1014, 1019 [upside down license plate]; *People v. Vibanco* (2007) 151 Cal.App.4th 1, 8 [cracked windshield & missing front license plate]; *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373 [expired registration]. A detention is allowed so a peace officer may have a reasonable amount of

time to investigate a person's possible involvement in an actual or perceived criminal act, allowing the officer to make an informed decision whether to arrest, or to release, the subject. Even though a detention is meant to be a short contact to assist in determining if a crime has occurred, an officer is not deprived of his right to defend himself should it become necessary.

2. Rights and Duties During an Arrest

A peace officer may arrest a person without a warrant whenever the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence or that he has committed a felony. (Penal Code Section 836 (in pertinent part)). When a peace officer has reasonable cause to believe that a person to be arrested has committed a public offense, he or she may use reasonable force and reasonable restraint to effect the arrest, to prevent escape, or to overcome resistance. (Penal Code Section 835, 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. (Penal Code Section 834a.)

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 an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance. (Penal Code Section 835a)

As mandated by the United States Supreme Court, the standard for after-the-fact review of the law enforcement use of deadly force is that of *objective reasonableness*.

Accordingly to the United States Supreme Court, whether *objective reasonableness* existed should be evaluated based upon a reasonable officer's assessment of four factors:

- 1) The nature of the crime at issue;
- 2) Whether the suspect is an immediate threat to the safety of the officers or others;
- 3) Whether the suspect is attempting to evade arrest through resistance or flight, and
- 4) The degree to which the situation is tense, uncertain and rapidly evolving.

The final point of analysis acknowledges law enforcement officers are required to act with little time to analyze and consider circumstances, rather than the luxury of 20-20 hindsight. (*Graham v. Conner*, 490 US 386 (1989); *Tennessee v. Garner*, 471 US 1 (1985).)

Factual Findings

- 1) Ronnell D. Foster (hereinafter "Foster") on February 13, 2018, was riding his bicycle in and out of traffic northbound on Capitol Street. It was approximately 7:40 p.m., it was dark, and Foster had no light on his bicycle.
- 2) Officer McMahon of Vallejo Police Department was on shift in a marked patrol car and was in full uniform. The officer observed Foster and tried to initiate a traffic stop for a vehicle code violation.
- 3) Foster immediately fled northbound on Sonoma Avenue continuing to ride in and out of the traffic lanes. Officer McMahon activated his lights and siren and pointed his spotlight at Foster .

- 4) Foster then stopped his bicycle on the sidewalk on Sonoma Avenue just short of Florida Street where he was contacted by the officer. Foster took a bladed stance on the sidewalk, concealing part of his body behind the parked van.
- 5) Officer McMahon spoke to Foster explaining the reason for the traffic stop. When the officer asked Foster to come to the front of his patrol car, he immediately got back on his bike and fled northbound on Sonoma Blvd.
- 6) Officer McMahon got in his patrol car and pursued Foster, who again was weaving in and out of traffic passing Carolina St. towards Florida. Foster then went through the church parking lot at Florida and Sonoma. Officer McMahon took a route to Marin Street when he caught up with Foster.
- 7) Foster turned westbound on Carolina Street and then fell off his bike. He continued to flee on foot and Officer McMahon got out of his patrol car and pursued him.
- 8) During the foot pursuit, Officer McMahon repeatedly shouted verbal commands for Foster to stop and alternatively he was under arrest. Foster reached for his waistband several times during the pursuit which caused the officer to order him to show his hands or place them on his head.
- 9) Officer McMahon employed his taser from 10-15 feet away hitting Foster, but Foster continued to flee. Ultimately, Foster ran between homes at 415 Carolina Street leading the officer down some stairs into a darkened courtyard.
- 10) Officer McMahon caught up with Foster when he fell and pushed him back down when he got up. Foster continued to violently struggle and resist. During this confrontation, the officer told Foster he was under arrest, to stop resisting, and to show his hands. When Foster did not comply, the officer tased him again to no effect.
- 11) Officer McMahon holstered his taser and used his flashlight to strike Foster in an attempt to subdue him. Foster was on his side attempting to stand up. There were as many as five strikes with the flashlight on Foster that had little effect.
- 12) Foster was able to get off the ground and then took Officer McMahon's flashlight away from him. Foster then lunged toward the officer with the flashlight as if to strike him with it.
- 13) Officer McMahon drew his weapon and fired it seven times. Foster was hit with gunfire and died at the scene.
- 14) An independent witness, who did not know Foster or Officer McMahon, was within several feet of the incident. He heard an officer pursuing a man (Foster) yelling, "Stop, Stop!"
- 15) That civilian witness saw Foster fighting the officer and resisting his attempts to contain him and handcuff him.
- 16) The civilian witness stated that Foster was angry and aggressive towards the officer. Despite numerous commands, Foster lunged at the officer.

- 17) The civilian witness felt that the officer gave Foster every opportunity to comply and that he did everything he could to restrain the man and had no choice then to take the action he took.
- 18) Foster was found to be in possession of suspected methamphetamine and a methamphetamine pipe.
- 19) On February 15, 2018, Pathologist Arnold Josselson performed an autopsy on Foster. He determined that the cause of death was multiple gunshot wounds. Foster sustained fatal gunshot wounds to the left chest, the right chest, the abdomen and the head. Foster sustained other non-fatal wounds to his left arm, left shoulder and right back. Foster was determined to have high levels of methamphetamine, amphetamine and alcohol at the time of his death.

Additional Collateral Information – Prior Law Enforcement Contacts

- 1) Vallejo Police Department took a report from the mother of Foster's child alleging an incident of domestic violence by Foster about ninety minutes before his confrontation with Officer McMahon.
- 2) Foster was convicted of felony car theft and misdemeanor resisting/obstructing a peace officer on January 12, 2018. He was on Post Release Community Supervision (PRCS) at the time of his death.

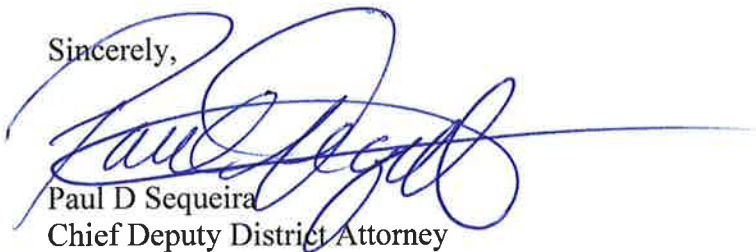
Legal Findings

- 1) Officer McMahon had reasonable suspicion that Foster violated California Vehicle Code Section 21201(d)1, operating a bicycle on a roadway at night without a light. Therefore, the officer had a right to stop the bicycle for investigatory detention.
- 2) Foster had a duty to stop and comply with the officer's directions.
- 3) The nature of the crime at issue, felony assault with a deadly weapon on a peace officer, is a crime of violence. The other crimes committed by Foster were willfully resisting and obstructing a peace officer in the performance of his duties for the initial flight and refusal to comply with the officer's commands. In addition, Foster violently tried to prevent the officer from detaining and arresting him.
- 4) It is and was objectively reasonable for Officer McMahon to defend himself and open fire on Foster. Foster posed an immediate and extreme threat to the personal safety of the police officer seeking his apprehension.
- 5) According to all accounts close in time to the shooting, the degree to which the situation was tense, uncertain and evolving was extremely high. Foster fled first on a bicycle and then on foot in response to a simple traffic stop. The pursuit led to a darkened courtyard where Foster violently fought the officer's attempt to apprehend him. The officer attempted to use lesser means of force by using a taser twice and strikes with a flashlight which seemingly had little or no effect on Foster. Foster took the flashlight away from the officer, lunging to hit him with it, putting the officer at risk of imminent great bodily injury or death.

In reaching this conclusion, the District Attorney gives great weight and consideration to the previously mentioned legal authority and the fact that officers regularly must act with little time to analyze and consider all of the circumstances.

The criminal investigation is closed at this time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul D. Sequeira", with a long horizontal flourish extending to the right.

Paul D Sequeira
Chief Deputy District Attorney

Reviewed and approved by,

A handwritten signature in blue ink, appearing to read "Krishna A. Abrams", with a long horizontal flourish extending to the right.

Krishna A. Abrams
District Attorney