

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

REPORT OF THE SHOOTING OF ARMANDO NAVA
BY OFFICER DEREK STEPHENS
OXNARD POLICE DEPARTMENT
ON AUGUST 21, 2005

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District Attorney
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I.

INTRODUCTION

On August 21, 2005, Officer Derek Stephens and other officers from the Oxnard Police Department were investigating gun fire which was heard in the 5300 block of South “J” Street, Oxnard. While maintaining a perimeter on “J” Street, Officer Stephens heard additional gun fire. Less than a minute later, Armando Nava drove his pickup truck to Officer Stephens’ location. Officer Stephens approached the truck and noticed Armando Nava partially matched a suspect description broadcasted ten minutes earlier. Officer Stephens peered inside the truck and saw a handgun lying across his lap. Officer Stephens instructed him not to move. Armando Nava quickly dropped his hands out of sight towards his lap. Officer Stephens fired one round from his tactical rifle. The bullet struck Armando Nava in the head and he died quickly thereafter.

The District Attorney's Office has a 24-hour on-call officer-involved shooting team available to all Ventura County law enforcement agencies to assist in the investigation of officer-involved shootings. The Oxnard Police Department immediately notified the District Attorney’s Office. Senior Deputy District Attorney John C. West and District Attorney Investigator Dan Thompson responded to the shooting scene and consulted the investigating officers.

In conjunction with the Oxnard Police Department, District Attorney Investigator Dan Thompson investigated the fatal shooting of Armando Nava. Senior Deputy District Attorney John C. West wrote this report after personally viewing the shooting scene on August 21, 2005, reviewing the applicable legal authority, and the following materials:

- All law enforcement reports
- Oxnard police dispatch records
- Port Hueneme police radio station log
- All statements of percipient and related witnesses
- All statements of Armando Nava's family
- Deputy Derek Stephens' public safety interview
- All crime scene photographs and diagrams
- Records of physical evidence noted and diagramed at the crime scene
- Photographs of officers and their weapons
- Photographs of suspect's weapon
- Photographs of the shooting scene reconstruction, position of vehicles and viewing angle measurements into the silver F-150 truck
- Photographs of stippling patterns tests from Officer Stephens' AR-15 rifle
- Medical Examiner's Death Investigation Report
- Autopsy report and accompanying photographs
- Toxicology report
- Ballistics reports
- State firearms records for Armando Nava's Astra .380 semiautomatic pistol
- Report by District Attorney Investigator Dan Thompson
- Report by Sgt. David Villanueva, Rangemaster

The sole purpose of this report is to determine whether Officer Stephens was legally justified in using deadly force against Armando Nava. The evidence suggests that Officer Stephens acted in

lawful self-defense when he discharged his weapon. Officer Stephens' use of deadly force was a direct response to Armando Nava's abrupt hand movements near the handgun resting on his lap.

II.

STATEMENT OF FACTS

Statement of Armando Nava's Family

On August 22, 2005, at approximately 2:50 a.m., police detectives contacted Armanda Nava's brother, Vicente Nava (age 45). Detectives informed Vicente Nava of his brother's death. As part of their investigation, they asked Vicente questions concerning his brother. Vicente Nava stated his brother had a gun and kept it in a top dresser drawer. With permission, the detectives looked inside the drawer and saw in plain sight a single .380 caliber bullet cartridge with a silver casing. Of note, bullet casings found earlier in Armando Nava's truck bed had a similar silver casing. Also in plain sight in the dresser drawer was Armando Nava's social security card.

Laura Gonzalez-Gallegos (age 30) and Ofelia Gallegos (age 70), Armando Nava's sister and mother, spoke to police detectives on August 22, 2005, at 2:45 p.m. Armando Nava's sister told police that Armando began to carry a handgun after being assaulted by his girlfriend's (Evelyn Rayas) former boyfriend. This alleged assault occurred a month prior to August 21, 2005.

Ofelia Gallegos told detectives that her son Armando came to her home on Sunday night, August 21, 2005, at approximately 8:30 p.m. Armando told his mother that Evelyn Rayas would not let him into her apartment. After drinking several beers, Armando got his handgun, and left.

Statement of Evelyn Rayas

On August 22, 2005, at 6:00 p.m., detectives interviewed Evelyn Rayas (age 41). Ms. Rayas' statement to police follows. She had known Armando Nava for approximately three years. They had a dating relationship during the preceding four months. Although they did not cohabit, he occasionally slept at her apartment at 5300 South "J" Street.

Ms. Rayas was attempting to end their dating relationship because she had concerns about Armando Nava and his gun. She had seen him display the gun on at least four occasions.

Ms. Rayas had sent him away from her apartment on three occasions because he had the gun with him. She knew that Armando Nava carried the pistol wrapped in a black bandana so it would not slide down the inside of his pants. On one occasion, Armando Nava was driving his truck and stated to Ms. Rayas that he wanted to fire the gun into the air. She convinced him not to do that in the presence of her daughter. On a different occasion, not August 21, 2005, Armando Nava told her that he had fired his gun in the air while driving his truck. One time, she found bullets in her apartment left behind by him.

Ms. Rayas stated Armando Nava understood both English and Spanish languages very well. She believed he was right handed because he held his fork in his right hand to eat.

Ms. Rayas had been with Armando Nava on August 21, 2005. That Sunday, she went to a church fair with Armando and her daughter. After the fair, they returned to Ms. Rayas' apartment. They had a disagreement and she told Armando Nava to go home. Next, Ms. Rayas and her daughter went out to a McDonalds restaurant to eat dinner. When they returned home,

she found Armando Nava inside her apartment. Armando Nava still possessed a key to her apartment. Again, she told him to leave. Armando Nava tried, unsuccessfully, to convince Ms. Rayas not to end their relationship. He left a second time. At approximately 9:30 p.m., Armando Nava returned to her apartment. He knocked on the door and begged to be allowed inside. Ms. Rayas told him to leave. She did not let him in. Ms. Rayas daughter, Brianna, told her mother that she heard four gun shots after Armando Nava left the apartment. Ms. Rayas did not hear the gun shots.

About a week before August 21, 2005, Ms. Rayas and Armando Nava had an argument about his gun. She heard four gun shots outside her apartment after he left. Ms. Rayas surmised that on August 21, 2005, Armando Nava fired his gun as he left because he knew this upset her.

Ms. Rayas made several untruthful statements to detectives when she was first interviewed on August 22, 2005. She told detectives that she and Armando Nava had spent the day together on August 21, 2005, and that he left her apartment between 8:15 p.m. and 8:20 p.m. She told the detective that he did not return to her apartment. She also stated she knew he had a gun, but had never seen him with the gun. On August 24, 2005, she admitted her untruthfulness to detectives. She said she did so because she did not want Armando to look “bad” and the officer to look “good.”

Sequence of events

The information in this section is a combination of individual police officers’ reports, the dispatch event history, and the dispatch recording. This section is a chronology based on

information from Oxnard police officers and dispatch, but not including statements by Officers Derek Stephens and Michael Velasquez. Bear in mind, the following police activity spans 31 minutes, beginning from the citizen's 911 report of gun fire in the neighborhood to Armando Nava being shot.

On August 21, 2005, at 9:33 p.m., a citizen called 911 from the Dolphin Bay Apartments located at 5300 South "J" Street. The caller reported four to five gun shots in the area. At 9:35 p.m., police officers were dispatched to the area of 5300 South "J" Street, Oxnard. Extensive neighborhood canvassing later that night found numerous civilian witnesses who also heard the same gun fire. For example, Tim Hoskins, a resident in the 5300 South "J" Street apartment complex, told Oxnard Police Officer Michael Johnson that he heard seven shots sometime between 8:38 p.m. and 8:45 p.m..

At approximately 9:45 p.m., Officer Sheylan Flannery (42C) and Officer Edward Kasaba (41C) arrived at 5300 South "J" Street. The officers began to check the area on foot. They walked through the apartment complex attempting to locate the unit of the original 911 caller and ascertain if shots had been fired in the area. While the officers walked past apartment 83, near the front gate of the apartment complex leading out to South "J" Street, Officer Flannery heard five to six gun shots. The sound of the shots came from South "J" Street, in front of the apartment complex. The officers went to South "J" Street and observed a vehicle speeding away northward. The vehicle then turned westbound on to Pleasant Valley Road. The officers did not see the vehicle clearly and were therefore unable to broadcast a vehicle description. At 9:51 p.m., Officer Kasaba notified radio dispatch that five shots occurred.

At approximately 9:52 p.m., other Oxnard Police officers were dispatched to assist. Officer Dale McAlpine (41A) arrived almost immediately. Officer Chris Peters (K3) radioed that he was enroute.

At 9:52 p.m., a Gold Coast ambulance dispatcher called the Oxnard Police dispatcher to report that paramedics located at the Shoreline Care Center, 5225 South “J” Street, had just heard gun shots fired east of the canal across from the care home.

Around 9:53 p.m., Officer Kasaba located witness Shannon Oswald, a resident at the 5200 South “J” Street apartment complex. She told the officer that she heard gun fire and then saw a Hispanic male carrying a gun in his hand run from the east alley through the apartment courtyard towards “J” Street. She described the man as having short brown spiky hair and wearing a white or beige T shirt, blue jeans, and “Lugs” shoes.¹ Officer Kasaba later broadcasted an updated description: male Hispanic 25-30 years of age, brown spiky hair, moustache, wearing a white T-shirt, blue jeans, and brown boots.

Between 9:53 p.m. and 9:55 p.m., other Oxnard Police officers continued to respond. Officer Mike Hoppin (42A) arrived and set a perimeter to the southwest. Sgt. Steve Moore (S13) and Officer Peters arrived. At 9:56 p.m., Officer Derek Stephens arrived. Officer Stephens spoke to Sgt. Moore and asked permission to deploy a tactical rifle because there was an active shooter in

¹ In a subsequent interview with detectives at approximately 11:45 p.m., Sharon Oswald reiterated that she saw a Hispanic male between the ages of 18-25, 5’8” to 6’, approx 175 lbs., run westward towards her as she sat in a courtyard near building 76 and 77. The armed male wore a white T-shirt and black trousers.

the area. Sgt. Moore approved the request. Sgt. Moore then directed Officer Stephens to hold a perimeter position on northbound “J” Street, just west of the apartments at 5300 South “J” Street.

At approximately 9:57 p.m., Officers Peters and Kasaba began staging for a search near apartment 82. They requested additional units to assist.

At 9:59 p.m., Officer Michael Velasquez arrived on the scene and took up a perimeter position at South “J” Street and Clara Street. Velasquez was about 100 feet south of Officer Stephens.

More police units continued to arrive from 10:01 p.m. to 10:03 p.m. Sgt. Dave Klug (S24) arrived on scene. Port Hueneme Police Officer Ryan Bates (K81) arrived and stood by Officer Stephens on South “J” Street. Oxnard Police Officers Todd Johnson and Kevin Gormely (31A, two man unit) arrived to assist the search team.

At approximately 10:03 p.m., Officer Stephens and Port Hueneme Officer Bates heard the sound of six gun shots west of their position. Officer Bates left Officer Stephens in order to patrol an area of the City of Port Hueneme west of South “J” Street. Officer Stephens then radio broadcasted he had heard six more gun shots from the Port Hueneme area.²

² Many citizens also heard this gun fire. Later that night, police canvassed the neighborhood for witnesses. Typically, local residents heard two sets of gunfire, separated by about fifteen to thirty minutes. The aural witnesses estimated each set ranged from three to five shots.

About 10:04 p.m., Officer Velasquez broadcasted there was “one subject at gunpoint” at Clara and “J” Street. About twelve seconds after Officer Velasquez’s broadcast, Officer Stephens (Unit 22c) radioed dispatch and reported “shots fired.”

Officer Flannery was in the courtyard of 5300 South “J” Street, in front of apartment 62. Officer Flannery heard over the radio another officer state he had a subject at gunpoint. Officer Flannery then heard one gunshot and then shortly thereafter heard Officer Stephens broadcast “shots fired.” In response, Officer Flannery ran towards South “J” Street and Clara Street. There, he observed several officers in the vicinity of a silver pickup truck with their attention focused on the one occupant inside. Officer Flannery saw Officer Stephens aiming at the truck. Flannery drew his weapon and assisted Stephens. Stephens then pulled away from the scene and was replaced by Officer Peters. Flannery stood by Officer Stephens and later transported him back to the Oxnard Police Station.

Sgt. Moore was on the phone and had been standing in front of 5200 South “J” Street, approximately 100 yards north of the Clara and “J” Street intersection when he heard a single shot. He ran to the intersection and saw several officers in the front of a patrol unit which was parked diagonally in the intersection. The officers had their weapons trained on the Ford F150. Officer Stephens immediately informed Sgt. Moore that the driver of the truck was armed with a handgun and that he shot the suspect one time with his rifle. Sgt. Moore could see that the driver was slumped to the left with his head resting on the window frame. The driver’s truck window was down.

Sgt. Moore and Officer Gormley approached the truck to assess the situation. They walked up to the driver's door and looked inside. Sgt. Moore determined that Armando Nava was not conscious. Sgt Moore immediately saw the butt of a handgun sticking out from between Armando Nava's closed legs. The truck was running and in drive. Sgt. Moore called for fire and ambulance.

Sgt. Moore directed that photographs of the truck be taken prior to anything being moved. Moore directed an officer to photograph Armando Nava and the weapon between his legs. [Exhibit 1-A, 5]

Sgt. Moore noticed the truck was still in gear and that Armando Nava's foot was resting on the brake pedal. Sgt. Moore used the fire unit's truck chocks and wedged the tires to prevent it moving. He also ordered perimeters be set up.

Gold Coast Ambulance arrived and requested that the driver's door be opened. Concerned that the handgun might fall out of the truck if the driver's door was opened, Sgt. Moore removed the handgun from between Armando Nava's legs. Sgt. Moore used his thumb and index finger to move the gun. Sgt. Moore observed the slide was locked open and the magazine appeared empty. With the slide locked back, the stainless steel barrel was exposed. He put the gun into a paper bag. Next, he secured the gun in the trunk of his patrol unit. [Exhibit 3-B]

Sgt. Moore collected Officer Stephens' tactical rifle directly from Officer Stephens. Officer Stephens stated to Sgt. Moore that the rifle had a cartridge in the chamber. Sgt. Moore took the

rifle and secured it in the trunk of his police vehicle. The rifle was stored in the same condition as it was received from Officer Stephens.

Gold Coast Ambulance personnel pronounced Armando Nava dead at 10:17 p.m.

Statement of Officer Ryan Bates, Port Hueneme Police Department

Officer Bates responded to the area after hearing the broadcast of shots fired and a vehicle proceeding northbound "J" Street may be involved. Officer Bates parked his patrol vehicle by two Oxnard police patrol vehicles on northbound "J" Street, north of the north alley of Clara Street. Officer Bates saw Sgt. Moore and a second Oxnard officer armed with an AR-15 tactical rifle. The second officer was Officer Stephens, who was personally unknown to Officer Bates. Officer Bates remained with Officer Stephens while Sgt. Moore entered the apartment complex in an attempt to contact the primary officer (Flannery) on the call.

Next, Officer Bates observed another Oxnard police vehicle (Velasquez) arrive and park facing eastbound in the northbound "J" Street lane, between the bridge over the drainage ditch and Clara Street. The Oxnard police vehicle used its spotlight to illuminate the apartment complex to the north.

Ten minutes after arriving on the scene, Officer Bates heard six to eight gun shots from within the City of Port Hueneme. The shots came from the area west of the apartment complex.

Officer Bates returned to his patrol car and left to investigate the shots fired in his city. As

Office Bates drove away from the South "J" Street location, he heard the broadcast of a subject

being held at gunpoint. According to Officer Bates, he heard the broadcast “shots fired” seconds later. Officer Bates estimated that it took no longer than one minute to pass from the time he left the scene on “J” Street to when he heard the broadcast of shots fired.

Statement of Daniel Velasquez

Citizen Daniel Velasquez witnessed the shooting from the screen door of his residence at the corner of South “J” Street and Clara Street. Detectives estimated his viewing distance as approximately 25 yards. Mr. Velasquez saw Nava’s Ford F-150 approach the patrol cars positioned in the intersection. He saw two police officers at the truck driver’s door. One officer held a flashlight over his head. The same officer then said, “Put your hands up, motherfucker.” Mr. Velasquez heard the gun shot before the sentence was completed. Mr. Velasquez was unable to determine which of the two officers was talking to the truck driver or fired the weapon. Mr. Velasquez never saw the truck driver’s hands. Notably, Mr. Velasquez admitted to detectives that he had been drinking alcohol throughout the day and was returning home from the store with more beer when the shooting occurred.

Statement of Brenda Velasquez

Mrs. Velasquez witnessed the shooting from the same vantage point as her husband, Daniel. She saw the F-150 truck travel southbound on “J” Street and turn left onto Clara Street. The truck stopped behind the patrol car parked car in the intersection. She saw two officers standing in the intersection. The officers walked quickly towards the pickup truck with their guns drawn. She estimated the officers moved 20 feet towards the truck. She heard an officer yelling, “Get your fucking hands up.” She observed the truck driver raise his hands slightly and then a shot was

fired. The driver then fell to the side. She estimated both officers were two to three feet from the truck driver when the shot occurred. She was unable to see which officer fired the gun.

Statement of Arthur Jurado

Mr. Jurado viewed the shooting from his eastward facing kitchen window. His residence apartment is located in the 5300 block of South “J” Street. The day following the shooting, Mr. Jurado approached detectives to inform them that he had witnessed the shooting. He declined an interview at that time and never called the detectives later as he promised. On August 30, 2005, detectives contacted Mr. Jurado at his home. Mr. Jurado stated he saw the truck behind the police car. He was looking at the officer when the shot was fired. He heard yelling “put your hands up, and get your hands up.” Mr. Jurado heard “get your hands up motherfucker” once, followed by a shot seconds later. Earlier that evening, Mr. Jurado had heard two sets of gun fire, separated by about 15 minutes, from within his neighborhood.

Shooting Scene Description

The shooting took place at the intersection of Clara Street and the northbound lanes of South “J” Street. In this area, South “J” Street is divided by a large drainage canal which runs parallel to “J” Street between the north and southbound lanes. Clara Street runs east off the northbound lanes of “J” Street and crosses “J” Street by means of a small bridge which traverses the drainage canal. The Clara Street bridge crossing is one lane each direction with stop signs on both sides controlling traffic entering onto northbound or southbound “J” Street. There are no stop signs on “J” street in either direction at the Clara Street intersection. Clara Street runs west from “J” Street into the City of Port Hueneme.

The neighborhood surrounding the “J” Street and Clara Street intersection is residential. A large apartment complex is situated on the east side of “J” Street, north of Clara Street. Single-family homes are along the east side of South “J” Street south of Clara Street. Single-family homes and apartment complexes are on both sides of Clara Street, east of South “J” Street.

The intersection at northbound South “J” Street and Clara Street is well lit by municipal street lights. On August 21, 2005, there was an operational street light on the southeast corner of the intersection of “J” Street and Clara Street. A second operational street light was on the west sidewalk of southbound “J” Street, almost centered with the Clara Street bridge. A third operational street light was along the east sidewalk of northbound “J” Street, approximately 50 feet north of the intersection at Clara Street.

Vehicles at the South “J” Street and Clara Street intersection

Immediately after Officer Stephens fired his rifle, Sgt. Moore and other officers began to secure the intersection at South “J” Street and Clara Street. The vehicles were not moved or altered before detectives responded to the shooting. The position of the three vehicles was fully documented. [Exhibit 1-D, 2-A, 3-C, 6]

Officer Michael Velasquez’s fully marked police unit was parked in the intersection of northbound lane of “J” Street at the intersection of Clara Street. His patrol vehicle had been parked in the middle of the street in order to block the intersection and set up a perimeter. His unit was facing primarily northeast. The front of the patrol car pointed towards the south edge of

the 5300 South “J” Street apartment complex. The headlights were illuminated. The patrol car had two positional spotlights located on either side of the front windshield. The spotlights were aimed back towards Armando Nava’s truck.

A silver 2003 Ford F-150 extra cab pickup truck was stopped in the eastern portion of the Clara Street bridge, just west of the northbound lanes of South “J” Street. The front tires of the truck were just past the limit line of Clara Street before crossing onto “J” Street. The truck was approximately three feet from the rear of Officer Velasquez’s unit. The truck faced east and slightly south. The front of the vehicle pointed toward the southeast corner of the intersection.

The silver Ford F-150 pickup truck was registered in California to Armando Nava. The truck had an open bed with a black plastic bed liner. The truck had two full doors and two half rear passenger doors for access to the rear seat. Significantly, the driver’s door window was fully open. The passenger window was fully closed. Both windows were electric and operational. The truck had “pop open” windows in the rear halfdoors. The small rear door windows were both in the open position. The truck had a tinted glass sunroof which was partially open. The sunroof opened from the back, tilting upward. The truck had a fixed rear window at the back of the cab.

The third vehicle in the scene was a fully marked Port Hueneme police canine unit. The vehicle was positioned in the westbound lane of the Clara Street bridge. It faced directly east, in the westbound lane, just east of the southbound lanes of South “J” Street.

August 21, 2005, Shooting Scene Investigation and Evidence Collection

Before Armando Nava's truck was removed from the shooting scene, detectives made several important observations. An open Corona beer was located standing upright on the floorboard just to left of the transmission hump. The bottle appeared to be completely full. Armando Nava was found holding a Corona bottle cap in his right hand. The bottle cap was discovered by a coroner investigator when Armando Nava was removed from the truck. An empty Corona bottle and a black plastic bag containing a Corona six-pack bottle holder were on the front passenger side floorboard. [Exhibit 4-A, 4-B] Detectives found and collected two bullet casings in the bed of the truck. [Exhibit 6 PM 3 and 4; Exhibit 2-B, 2-C, 2-D, 3-A]

Armando Nava's appearance was noted by detectives. Mr. Nava had short black hair, a mustache, a small growth of hair under his lower lip, wore a white T-shirt, black Dickie brand pants, and white tennis shoes. His physical appearance was consistent with his California driver's license description: male, 5'7", 120 lbs, and 39 years of age

A live round with ejection marks was found on the walkway just outside the gate to 5300 South "J" Street. [Exhibit 6 PM 7; Exhibit 3-D] The bullet located outside the walk path south of apartment 144 and north of 146. The walk path went from the interior of the apartment complex through a wrought iron gate to South "J" Street.

Detectives found one expended brass shell casing on the ground in the intersection of South "J" and Clara Streets. The brass casing was lying in the street just north and west of Officer

Velasquez's police vehicle. The casing was .223 caliber and consistent with the type of round fired by an AR-15 tactical rifle. [Exhibit 6 PM 1]

August 25, 2005, Shooting Scene Investigation and Evidence Collection

On August 25, 2005, detectives returned to the 5300 block of South "J" Street. They returned to the area to resume the search for expended bullet casings. The search concentrated in the northbound lane of South "J" Street between Clara Street and Pleasant Valley Road. This section of South "J" Street runs on the west side of Evelyn Rayas' apartment complex. In the daylight, detectives found several bullet casings. An expended casing was found along the east curb of the northbound lanes of "J" Street, north of Clara Street [Exhibit 6 PM8]. Three more expended casings were located on the east and west curb of northbound South "J" Street near the lobby and office area of the apartment complex located at 5200 South "J" Street [Exhibit 6 PM 10, 11, 12]. Lastly, two additional casings were found along the west curb of the northbound lane of "J" Street, slightly further north than the preceding three casings [Exhibit 6 PM 13, 14].

While searching for bullet casings, a Corona bottle cap was found in the street along the east curb of the northbound South "J" Street, just north of the walkway that allows entry to the 5300 block apartment complex [Exhibit 6 PM 9]

August 25, 2005, Re-Creation of Vehicle Positioning

On August 25, 2005, detectives re-created the shooting scene. This was done in order to take clear daytime photographs. Armando Nava's Ford F-150 pickup truck and an Oxnard Police Department patrol vehicle unit were positioned in the intersection. On August 21, 2005, the

position of the vehicles' wheels had been marked on the street with spray paint prior to their removal. Aerial and panoramic photographs were taken. [Exhibit 4-C and 4-D]

August 25, 2005, Search of Armando Nava's Truck

On August 25, 2005, Armando Nava's silver 2003 Ford F-150 extra cab pickup truck was extensively examined by detectives and evidence technicians. The truck had been in police custody since the shooting event. The truck vehicle registration was found in the glove box. Consistent with California Department of Motor Vehicle records, the paperwork reflected registration to Armando Nava. In the cab interior, one piece of copper bullet jacket was found on the right rear seat. Black bandanas were found on the front passenger seat. Detectives noted a defect in the material of the right rear headliner. In the truck bed, three additional silver-colored .380 caliber casings were found under a pink Playboy bunny framed picture.

Statement of Officer Michael Velasquez

Officer Michael Velasquez was interviewed by detectives on August 22, 2005, at 12:52 p.m. He described the following events. He had been on patrol that night. He had just left the station when he heard the radio broadcast of gun shots in the area of South "J" Street. He began to drive to the location. He did not advise dispatch that he was in route because he did not want to add additional radio traffic while (10-33) emergency traffic was in effect. While enroute, Officer Velasquez heard radio traffic that officers heard additional shots. Officer Velasquez also heard the suspect description broadcast.

Officer Velasquez arrived in the area and stationed himself on the perimeter. He parked in the intersection of northbound South “J” Street and Clara Street. As he stood by his unit in the intersection, Officer Stephens approached and asked if he had heard the recent gun fire. Officer Velasquez had not. Officer Stephens informed Velasquez the recent gun shots sounded westward from their position. Officer Velasquez also heard Officer Stephens broadcast the information pertaining to the six additional gun shots from the Port Hueneme area. Officer Velasquez directed his attention to the west as well as the South “J” Street area. He positioned his patrol unit’s two spotlights to illuminate east on Clara Street and north on South “J” Street.

Officer Stephens and Officer Velasquez stood next to each other near the driver’s door of Velasquez’s patrol car. Officer Velasquez observed a silver F-150 pickup truck travel southbound on South “J” Street and then turn eastbound on to Clara Street. The pickup truck crossed the drainage bridge and slowly approached Officer Velasquez. When the truck was six to eight feet away from him, Officer Velasquez shined his flashlight on the approaching driver. The driver, Armando Nava, asked Officer Velasquez, in English, “What was going on?”

Officer Velasquez illuminated Armando Nava’s face. He observed Armando Nava to be wearing a white T-shirt. At first, Officer Velasquez discounted the thought Armando Nava might be the suspect because Nava appeared older than the suspect description.

Armando Nava continued to drive his truck eastbound on Clara Street towards the east side of “J” Street. Referring to the suspect description broadcast, Officer Velasquez asked Officer Stephens, “Was the guy in his twenties?” Next, both Stephens and Velasquez shined their lights into Nava’s face.

Officer Stephens walked straight up to the truck's driver door. He had his rifle slung across his chest. Officer Stephens' light continued to illuminate the interior of the truck cab. Officer Stephens peeked in the cab by looking over the driver's door and into Armando Nava's lap. Next, Officer Stephens' brought his rifle up to Armando Nava's head and told Nava not to move. Officer Velasquez heard Officer Stephens tell Armando Nava, "Don't reach for the gun," or "Don't reach for your lap." During interviews with detectives later that night, Officer Velasquez was unable to recall exactly what Officer Stephens said, but was certain Officer Stephens told Armando Nava not to make any movements. Next, Officer Velasquez heard Officer Stephens state that Armando Nava had a gun. Officer Stephens appeared to maintain visual contact with Armando Nava as he announced the presence of the gun. Officer Velasquez drew his service pistol.

Officer Velasquez stood somewhere between the truck's rear wheel and cab and approximately six to eight feet away from the side of the truck at the moment Officer Stephens drew his rifle. Officer Velasquez moved closer to the truck. He stopped two feet from the driver, behind and to the left relative to Armando Nava's position in the driver's seat. Officer Stephens stood in front of Armando Nava at about a 45 degree angle from the driver's seat. Officer Stephens stood two to three feet away from Officer Velasquez. Both officers had Armando Nava at gun point. Officer Velasquez advised police dispatch that they had "one subject at gunpoint" at Clara Street and "J" Street. Officer Stephens continued to give Armando Nava instructions not to move while the broadcast was made. During a statement made later that night, Officer Velasquez

estimated that five to ten seconds after the broadcast, Officer Stephens fired his rifle at Armando Nava.³

Officer Velasquez's position relative to the driver's seat obscured his view of Armando Nava's body. Nonetheless, he was able to continuously maintain visual contact with Nava's face and head due to street lights and Officer Stephens' flashlight. Officer Velasquez saw Armando Nava begin to motion his face down towards his lap just prior to the rifle discharge. Officer Velasquez could not see Armando Nava's arms, hands or into his lap. Officer Velasquez did not see Armando Nava reach for the gun. Officer Velasquez only saw Armando Nava look down towards his lap just prior to being shot.

After the rifle shot, Armando Nava slumped to the left. Both officers backed up to Officer Velasquez's patrol car. They took cover behind the driver's door and continued to monitor the truck. Officer Velasquez turned his unit's spotlight towards the truck. The two men remained in that position as other police officers began to arrive at the intersection.

Statement of Officer Derek Stephens

On August 21, 2005, 02:10 a.m., Officer Derek Stephens gave a voluntary statement to Oxnard police detectives. His lawyer was present while he answered questions. Also present in the

³ In light of the stress and intensity of the moment, Officer Velasquez's later estimate to detectives was very accurate. The actual dispatcher's radio traffic recording has at least twelve seconds between the beginning of the announcements "one subject at gun point" and "shots fired."

room to observe were lawyers for the police association, the City of Oxnard, and Senior Deputy District Attorney John C. West. Officer Stephens gave the following account of events to questions propounded by the police detectives.

On August 21, 2005, Officer Stephens was on patrol and responded to the 5300 block of South "J" Street. He arrived and parked in the southwest corner of the apartment complex on the northbound side of South "J" Street. There, Officer Stephens joined Sgt. Moore. Sgt. Moore directed him to hold a perimeter position. Officer Stephens asked and received permission from Sgt. Moore to deploy his tactical rifle. Officer Stephens took a position in the street in the 5300 block of South "J" Street, just north of the alleyway accessing the apartment complex carports. Sgt. Moore left Officer Stephens' location to search for the primary officers who were somewhere inside the apartment complex.

One minute after he arrived, Officer Stephens was joined by a Port Hueneme police officer. About this time, Officer Stephens heard a suspect description broadcast: suspect was possibly last seen going towards "J" Street, Hispanic male in his 20s, wearing a white T-shirt and blue jeans. While still in the company of the Port Hueneme police officer, Officer Stephens heard six very close sounding gun shots. The shots came from the west of their location, which is the City of Port Hueneme. Officer Stephens advised dispatch of gun shots. The Port Hueneme police officer left Officer Stephens to investigate the gun fire from within his city.

Before the Port Hueneme police officer left, Officer Stephens decided to maintain the perimeter closer to Oxnard Police Officer Velasquez's location. Officer Velasquez was positioned in the

area of Clara Street and South “J” Street. Officer Velasquez’s patrol car was positioned on the northbound side of South “J” Street, facing northeast, inside the Clara Street intersection. The patrol unit’s spotlight was activated and shining both northbound and eastbound. Officer Stephens estimated that he was near Officer Velasquez’s patrol car for approximately a minute when he then noticed Officer Velasquez was walking toward a pickup truck. Officer Stephens did not see the pickup truck arrive. When he first noticed the truck, it was on eastbound Clara Street, stopped on the paved drainage canal bridge, five feet behind Officer Velasquez’s patrol car. Officer Stephens saw Officer Velasquez by the truck, presumably for the purpose of contacting the driver. Officer Stephens saw Officer Velasquez standing in a standard traffic stop position behind the driver’s left shoulder at the driver’s side door frame. Officer Velasquez verbally called to Officer Stephens and asked for the description of the suspect. Officer Stephens left his position in the roadway, northbound South “J” Street close to the drainage canal side of the road, to walk towards the truck. As he walked, he told Officer Velasquez the suspect description of a Hispanic male with a white T-shirt and blue jeans.

Officer Stephens continued to walk towards the pickup truck’s driver side. He noted the driver wore a white T-shirt. Officer Stephens shined his flashlight into the truck cab. The driver’s window was down. He elevated his height by rising up on his toe. He focused his flashlight on the driver’s pants in an attempt to ascertain the color. While doing so, Officer Stephens observed a silver, nickel-plated hand gun on the driver’s lap. Officer Stephens did not see whether the

hammer was cocked or the slide was in the open position. Officer Stephens estimated he was five feet from the truck when he observed the gun.⁴

Officer Stephens described to detectives what he saw as his flashlight directly illuminated the gun. In his words, “[the gun] was seated on his lap, his legs were together, knees pretty much touching, the weapon was seated on his, basically over his left leg, with the barrel of the weapon pointed towards the door, kind of down towards his knee and also towards the driver’s side door, so that you would say the right side of the weapon was facing up.” The gun’s grip was directed towards the steering wheel. The driver’s hands were near the steering wheel, but were not holding onto the wheel.

Recognizing a gun, Officer Stephens brought his flashlight down with his left hand, while raising his tactical rifle with his right hand. The rifle had been resting across his chest in a sling.

Officer Stephens told Officer Velasquez, “He has a gun in his lap,” as he shouldered the rifle.

Officer Stephens immediately ordered the driver to keep his hand up. He was unable to recall the exact words he used. He repeated the command three times. Officer Velasquez was positioned immediately off Officer Stephen’s right shoulder. He told detectives he was less than ten feet away from the driver of the truck. Relative to the driver of the truck, with 12 o’clock being directly in front of the driver, Officer Stephens described being at the driver’s 10 o’clock position.

⁴ It is doubtful Officer Stephens was as far as five feet from the truck when he observed the gun. Detectives attempted to re-create Officer Stephens’ viewing angle into the driver’s seat. Taking into consideration the height of Armando Nava’s thighs, compression of the seat cushion, and bottom height of the driver’s door window frame, a man of similar stature standing erect could begin to see the top of the driver’s lap from a distance of 16 inches from the truck door. In any event, there is no doubt that Officer Stephens saw the gun inside the truck. He verbally announced that fact, which Officer Velasquez broadcasted to the dispatcher prior to other police officers in the area hearing the rifle report.

As Stephens began to move back from the truck, the suspect brought both of his hands down rapidly. The driver's right hand went directly on top of the weapon. Officer Stephens explained, "[He] grabbed the weapon in a manner that, which I, I felt that he was not grabbing it to push it away or do anything with the weapon other than to pick it up and use the weapon. In other words, he grabbed the weapon by the handle and his finger was near the trigger. That's when he began to bring the weapon up off his lap, and that's when I fired one round from my assault rifle." Officer Stephens stated that he believed, based on the manner in which Armando Nava was moving his hands, the driver was going to try to shoot him or Officer Velasquez.⁵

After firing his rifle one time, Officers Stephens and Velasquez both retreated to the front of Officer Velasquez's patrol car. Officer Stephens broadcasted that shots had been fired. Other officers began to arrive very quickly.

Autopsy

Medical Examiner Dr. Janice Frank performed an autopsy on Armando Nava on August 22, 2005.⁶

⁵ Officer Stephens' estimate that he was less than ten feet from the truck when he viewed Armando Nava drop his hands towards the handgun is inconsequential. Officer Stephen's AR-15 rifle produces a stippling pattern similar to Armando Nava's wounds when the rifle muzzle is discharged four to six inches from the target. Hence, when observing Armando Nava's hand drop on the handgun and the coincident rifle discharge, Officer Stephens could not have been further from Armando Nava than slightly more than the length of his rifle.

⁶ This is Coroner's case number 688-05.

Mr. Armando Nava arrived at the Medical Examiner's Office in a sealed medical examiner's blue bag. He weighed 121 pounds. He measure five feet six inches. He was clothed in a white T-shirt, black Dickie brand trousers, and white Rebok brand shoes. Twelve rounds of live .380 caliber ammunition were found in his right front pants pocket.

Examination of the body found one gunshot wound to the head. The wound entrance was on the left side of the head, at the left lateral orbital ridge. A grey deposit was seen on most of the entrance wound, as well as stippling. The diameter of the stippling measured 2-3 centimeters in length. The bullet passed through the brain. The bullet exited the head at the back, approximately five inches from the top of the head and centered at the posterior midline. The direction of travel was front to back, left to right, with minimal vertical deviation. No bullet or bullet fragments were recovered from the subject's head.

Dr. Frank determined the cause of death to be a single gunshot wound to the head. The manner of death was categorized as a homicide during a law enforcement contact.

Stippling Tests

On September 21, 2005, stippling tests were conducted on Officer Derek Stephen's tactical rifle. The purpose of the tests was to create exemplar stippling patterns for comparison to the stippling on Armando Nava's facial wound. The exemplars were made using Oxnard Police Department issued .223 caliber ammunition, the same ammunition used by Officer Stephens on August 21, 2005. The exemplars were made by firing the rifle into pig flesh from graduating distances, from muzzle contact up to 24 inches away. Forensics firearms technician Leonard Romero concluded

that the exemplar stippling patterns most consistent in diameter to the Armando Nava's wounds occurred where the rifle muzzle discharged four to six inches from the target.

Toxicology

A sample of Armando Nava's blood and urine was collected during the autopsy. The Ventura Sheriff's Department Crime Lab tested the blood and urine for alcohol content. The tests determined his blood to be .32 percent. The tests determined his urine to be .42 percent. The lack of correspondence between his blood and urine alcohol content is not unusual. Higher levels in the urine generally mean the body is in a post absorptive state.

ASTRA .380 Semi-Automatic Firearm History

The semi-automatic handgun found in Armando Nava's lap on August 21, 2005, had been stolen during a 1986 residential burglary. (DR-86-08011) Police reports related to that investigation do not include Armando Nava as a suspect. In short, it does not appear that Armando Nava was the burglar in the taking of the pistol. How Armando Nava came into possession of the handgun is unknown.

Latent Fingerprints

A variety of evidence was processed for the presence of latent fingerprints. However, no latent fingerprints were obtained from any of the items. The following items were processed: Corona bottle cap from the east curb of South "J" Street [Exhibit 6 PM9], bullet casings located in the street near 5300 South "J" Street [Exhibit 6 PM 10, 11, 12, 13, 14], Armando Nava's Astra .380 caliber handgun, bullet casings from Armando Nava's truck bed [Exhibit 6 PM 3, 4], live bullet

cartridge found at the apartment walkway [Exhibit PM 7], bullet cartridges collected from Armando Nava's pants pocket during the autopsy, and two bullet cartridges found in Armando Nava's dresser drawer.

Firearms, Ballistics and Forensic Tool Mark Analysis

Officer Derek Stephens possessed two guns at the time of the contact with Armando Nava. He had a Sig Sauer .45 caliber model P220 semi-automatic handgun. The gun was holstered throughout the contact with Armando Nava, as determined by witness statements and inspection of the weapon, its magazines, and the crime scene. Officer Stephens' handgun was an Oxnard Police Department approved side arm. Officer Stephens' second gun was an Oxnard Police Department issued Colt AR-15 .223 caliber automatic rifle, serial number 1818756. At the time the rifle was seized from Officer Stephens, moments after the shooting, the rifle had one round in the chamber and 25 cartridges in the magazine. It was determined that one round had been fired on August 21, 2005.

Officer Michael Velasquez possessed one gun at the time of the contact with Armando Nava. He had a Beretta 9mm model 92FS semi-automatic handgun. His gun was drawn on suspect Armando Nava but was never fired.

The gun found in Armando Nava's lap was an Astra .380 caliber semi-automatic handgun. The handgun has a blue steel frame and a black plastic hand grip. The handgun has a

stainless steel barrel, which is visible when the slide is locked back. [Exhibit 1-B, 1-C] When found, Armando Nava's handgun was unloaded. Although the magazine was inserted in the handgun frame, no bullets were in either the magazine or barrel.

Tool mark and ballistics expert Leonard Romero of the Oxnard Police Department examined evidence collected at the crime scene, evidence from Armando Nava's bedroom, Officer Stephens' rifle, and Armando Nava's handgun. Officer Stephens' .223 caliber AR-15 rifle and Armando Nava's handgun were examined and determined to operate and function normally. Mr. Romero then compared bullet casings and a cartridge found at the crime scene to Officer Stephen's rifle and Armando Nava's handgun and reported the following conclusions. The discharged bullet casings found in the street along the 5300 block of South "J" Street [Exhibit 6 PM 10, 11, 12, 13, 14] had all been fired from Armando Nava's .380 caliber handgun. The two bullet casings found in the truck bed [Exhibit 6 PM 3, PM 4] had also been fired from Armando Nava's handgun. The copper jacketed bullet found along the east curb of the northbound lanes of South "J" Street, approximately 149 feet 5 inches north of the south curb line of Clara Street [Exhibit 6 PM8], was .380 caliber and had been discharged from Armando Nava's handgun. The intact bullet cartridge [Exhibit 6 PM7] found on the walkway leading from the sidewalk into the Dolphin Bay apartment complex at 5300 South "J" Street was a .380 caliber CCI brand cartridge. The intact bullet cartridge had been cycled through the magazine and ejection port of Armando Nava's handgun. The .223 cartridge case found in the street by Officer Velasquez's patrol car [Exhibit 6 PM1] had been fired and expended from Officer Stephens' rifle. Lastly, the two bullet cartridges found in Armando Nava's bedroom dresser drawer were both .380 caliber and designed to be discharged in a .380 chambered firearm like Armando Nava's .380 caliber handgun.

Oxnard Police Department Patrol Rifle Policy

Oxnard Police Department policy, on August 21, 2005, approved deployment of department-issued Colt AR-15 .223 caliber semi-automatic rifles by qualified police officers. In a report dated May 17, 2006, Sgt. David Villanueva, Rangemaster, compiled the relevant Oxnard Police Department policies and records which documented that Officer Derek Stephens was qualified as a Patrol Rifle Officer on August 21, 2005. First, Officer Stephens met the qualifications to be a Patrol Rifle Officer pursuant to Oxnard Police Department policy Section 313, titled “Policy Guideline for Patrol Rifle Deployment,” and completed both the 24-hour POST-certified course of instruction on May 9, 2004, and re-qualification course on April 16, 2005. Second, the rifle Officer Stephens discharged on August 21, 2005, was the very rifle the Oxnard Police Department issued to him on May 7, 2004 (Colt Model M16A1 serial number 1818756). Third, according to Sgt. David Villanueva, Sgt. Fred Sedillos and Commander Scott Whitney approved Officer Stephens’ training and carrying of the rifle. Fourth, the deployment of the rifle by Officer Stephens was compliant with Department Policy Section 313, wherein he had the express permission of the on-scene patrol sergeant, Sgt. Moore. And fifth, the deployment of the rifle by Officer Stephens was in accordance with Oxnard Police Department Policy Manual Section 300, Standard Use of Force. Oxnard Police Department policy did not prohibit use of a rifle instead of a handgun. Department policy permitted deployment of a firearm applicable to handle the threat faced. Here, Officer Stephens faced an unidentified individual or individuals discharging a firearm within an urban city block after dark.

The stated mission of Oxnard Police Department policy, Section 313, Policy Guideline for Patrol Rifle Deployment, is to “[provide] specific rifle protective capability to on-scene officers, which are assigned to: containment positions;... or , as directed by the needs of the on-scene supervisor.” On August 21, 2005, Officer Stephens was policing an active firearms call. He was both setting up a perimeter at the corner of South “J” Street and following the directions of the on-scene sergeant. In short, it appears Officer Stephens was a trained and approved Patrol Rifle Officer. It appears the deployment of the rifle was in conformity with department policy.

III.

LEGAL PRINCIPLES

1. Applicable Penal Code Violations – CONDUCT OF ARMANDO NAVA

Armando Nava engaged in felony and misdemeanor criminal conduct in the hour preceding his death. Had he survived, he could have been charged with the commission of the following crimes:

Gross negligent discharge of a firearm pursuant to California Penal Code section 246.3, a felony.

Possession of a firearm by a convicted felon pursuant to California Penal Code section 12021, a felony. Armando Nava was convicted of driving under the influence of alcohol causing injury, Vehicle Code section 23153(a) a felony, in 1989. He was sentenced to California state prison.

Driving under the influence of alcohol pursuant to California Vehicle Code section 23152, a misdemeanor.

2. Law of Homicide and Self Defense.

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide, which are lawful.

The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful.

The law of self-defense and the defense of others was codified in 1872 and has remained substantially unchanged since then. It is found in Penal Code sections 197 through 199. It requires that the user of deadly force honestly believe that he or someone else is in imminent and deadly peril, and that a reasonable person in the same circumstances would believe the same and would deem it necessary to use deadly force in order to protect against such peril.

CALJIC 5.12⁷; People v. Humphrey (1996) 13 Cal.4th 1073, 1082-3 (whether a person acted in a manner in which a reasonable man would act in protecting his own life or bodily safety is judged from the point of view of a reasonable person in a similar situation and with similar knowledge). The means of force used, whether lethal or non-lethal, must be reasonable under

⁷ The standard criminal jury instruction on self defense states:

The killing of another person in self-defense is justifiable and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the other person will either kill [him] [or] [her] or cause [him] [or] [her] great bodily injury; and

2. That it is necessary under the circumstances for [him/her] to use in self-defense force or means that might cause the death of the other person for the purpose of avoiding death or great bodily injury to [himself] [or] [herself].

A bare fear of death or great bodily injury is not sufficient to justify a homicide. To justify taking the life of another in self-defense, the circumstances must be such as would excite the fears of a reasonable person placed in a similar position, and the party killing must act under the influence of those fears alone. The danger must be apparent, present, immediate and instantly dealt with, or must so appear at the time to the slayer as a reasonable person, and the killing must be done under a well-founded belief that it is necessary to save one's self from death or great bodily harm. (CALJIC 5.12)

the circumstances. If a firearm is pointed at a person in a threatening manner and under such circumstances as to induce a reasonable belief that it is loaded, and will be discharged, the person threatened may use all necessary force to avert the apparent danger. People v. Anderson (1872) 44 Cal. 65, 68. The use of force under such circumstances is not unlawful even if it is later learned that the firearm was unloaded. Id; People v. Herbert (1882) 61 Cal. 544 [where one without fault is attacked in a manner which furnishes reasonable ground for apprehending a design to take his life or do him great bodily harm and for believing the danger imminent, he may act upon appearances and kill the assailant if necessary]; People v. Collins (1961) 189 Cal.App.2d 575, 588 (Justification does not depend on the existence of actual danger but on appearances.)

Police officers have a duty “to maintain peace and security” and “to protect citizens from harm.” Batts v. Superior Court (1972) 23 Cal.App.3d 435, 438. A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. Graham v. Conner (1989) 490 U.S. 386. Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334, 343, citing Graham, stated:

“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. [Citation]... 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...[T]he ‘reasonableness’ inquiry...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. [Citations]” Graham 490 U.S. at 396-397.

As indicated by the above-language of the United States Supreme Court, when determining whether a person acting in self-defense, or in the defense of others, acted properly upon the appearance of danger, the law recognizes that a person experiencing a stressful event is not able to reflect upon his actions and the perceived threat against him or others, to the same degree as a person who is not being confronted by an emergency situation. When police officers encounter potential threats of deadly attack, the warning is often instantaneous and the danger immediate.

As stated by the court in Martinez, supra, at 345:

‘An officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer. The high numbers of officer mortalities in recent years illustrate the unreasonableness of such a notion.’ [Citations]

Courts have also dealt with and rejected arguments that officers should have to use selected alternative measures before resorting to particular actions involving potentially deadly force. *In Scott v. Hendrick* (9th Cir. 1994) 39 F.3d 912, the court found that:

Requiring officers to find and choose the least intrusive alternative would require them to use superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment. Officers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.

IV.
ANALYSIS

The law provides that actual danger is not necessary to justify the exercise of self-defense. Thus, the right to self-defense is the same whether the danger is real or merely apparent. The honest and reasonable perceptions of the person utilizing the force are paramount - not the facts as later determined by others. Therefore, the question of whether the homicide of Armando Nava was justified must be examined from the perspective of Officer Stephens. First, did he have an honest belief that his and Officer Velasquez's lives were in imminent serious danger? And second, would a reasonable person in the same circumstance deem it necessary to use deadly force to protect against such danger?

Addressing the second question, it would be helpful to list all the facts and circumstances known to Officer Stephens at the moment he shot Armando Nava. Officer Stephens was dispatched to 5300 block of South "J" Street because of a citizen 911 complaint of gunfire in the area. More than ten police officers responded to the area. His sergeant approved carrying a tactical rifle because there was potentially an active shooter in the area. Officers were setting up a perimeter around the apartment complex. Officer Stephens heard the suspect description broadcast: male, Hispanic, 25-30 years of age, brown spiky hair, moustache, white T-shirt, blue jeans, and brown boots. Officer Stephens personally heard gun fire as he manned his position on South "J" Street. The gun fire could be heard emanating west of Officer Stephen's position. About one minute after hearing the gun fire, Armando Nava drove his truck across the Clara Street drainage bridge. Armando Nava approached Officer Stephens from the same general direction as the recent gun fire. Realizing Officer Velasquez had contacted Armando Nava, Officer Stephens walked

towards the truck to assist. He could see that Nava wore a white T-shirt and partially matched the suspect's description. He approached the truck driver's door and peered inside the open window to ascertain the pants color. He saw the gun exposed on Armando Nava's lap. The muzzle of the gun was pointed in his direction and the gun grip positioned to afford quick access. In this set of circumstances, Officer Stephens stood exposed only feet from the driver's door. Not knowing Armando Nava's intentions, Officer Stephens trained his rifle on Armando Nava. He repeatedly ordered Nava not to move. Despite the orders, and within about ten seconds from the first command, Armando Nava dropped his hands towards the handgun on his lap. Officer Stephens responded by firing one shot.

Officer Stephens' actions were objectively reasonable under the circumstances. Officer Stephens was not required to wait longer and see what Armando Nava intended. Confronted with a deadly weapon under these circumstances, it was reasonable to defend with deadly force.

Turning to the first question, the totality of evidence supports the conclusion that Officer Stephens had an honest belief that his and Officer Velasquez's lives were in imminent serious danger. Officer Stephens account is credible and believable because it is corroborated by percipient witnesses and physical evidence. Beginning with witness statements, both civilian and police officers described the same sequence of events. There are some very minor discrepancies in estimates of distance or time but this is to be expected when different people of varying backgrounds recount a stressful and alarming event such as this. Every event and action described by Officer Stephens is corroborated by civilians and other police officers. Most importantly, the position of the gun in Armando Nava's lap was confirmed by other witnesses.

All of the physical evidence is consistent with Officer Stephens' account as well. The position of the vehicles in the intersection, the location of his expended .223 caliber casing on the road surface [Exhibit 6 PM 1], the bullet trajectory through the open driver's door window, and the bullet path and stippling as determined at autopsy are all consistent with the events Officer Stephens attests. Likewise, the physical evidence fully supports a finding that Armando Nava had the gun in his lap and had been discharging the gun on "J" Street beginning 30 minutes prior to his death. In short, the physical evidence does not refute Officer Stephens' statement.

Armando Nava made many bad decisions and set into motion the sequence of events that culminated in his death. To begin, Armando Nava's dangerous and grossly negligent behavior of repeatedly firing his handgun in the city that night created an atmosphere of heightened police precautions, security, and apprehension. Armando Nava chose to drink beer and become highly intoxicated. He chose to drive his truck with a loaded handgun. He chose to fire the gun many times around the area of his girlfriend's apartment complex. He chose to return to that area several times, even after the police began to direct street traffic around the apartment complex. He chose to drive up to the police officers with a handgun on his lap. He chose to engage the police officer by asking what was happening. And ultimately, he chose to ignore the officer's commands to raise his hands. Rather, he moved his hand onto the gun causing Officer Stephens to shoot.

Under the test of "apparent necessity," it is reasonable that Officer Stephens held a belief that he might be shot or killed. When a person possesses a handgun in very close quarters with a peace officer, fails to follow the officer's commands, and quickly moves his hands out of the officer's view towards the handgun, the officer is justified in defending himself with deadly force. Here, Armando Nava's behavior could reasonably be interpreted as hostile. The law does not require

an officer to guess a gunman's state of mind when, by all objective standards, his life is threatened.

V.

CONCLUSION

It is the District Attorney's conclusion that Oxnard Police Officer Derek Stephens acted reasonably and in self-defense under the circumstances he confronted on August 21, 2005. His use of deadly force to protect himself and Officer Velasquez was within the limits of the law. For that reason, the District Attorney concludes the shooting of Armando Nava was a justifiable homicide.