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Sacramento County District Attorney's Office

THIEN HO  
District Attorney

DATE: August 16, 2024

TO: Chief Kathy Lester  
Sacramento Police Department  
5770 Freeport Boulevard  
Sacramento, CA 95822

FROM: Sacramento County District Attorney's Office

SUBJECT: Officer-Involved Shooting Case No. SPD 2021-44157  
Shooting Officers: SPD Officer Eric Toomey #894  
SPD Officer Nicholas Caro #561  
Person Shot: Adan Herrera Martinez (DOB 05/17/1982)

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer-involved shooting. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Adan Herrera Martinez. For the reasons set forth, we conclude that the initial shooting by the officers was lawful. We also conclude that as to Officer Eric Toomey's final gunshot, there is no reasonable likelihood a jury would find that Officer Toomey no longer had a lawful right to self-defense.

The District Attorney's Office received and reviewed written reports and other documentary items. These items include Sacramento Police Department report 2021-44157, body-worn camera footage, in-car camera recordings, dispatch calls, witness interviews, photographs, diagrams, Sacramento Police Department personnel records, evidence logs, medical records, and Sacramento County District Attorney Laboratory of Forensic Services reports.

### **FACTUAL SUMMARY**

On February 15, 2021, at approximately 9:20 p.m., a call was placed to 9-1-1 regarding a blue pickup truck that was on fire in the parking lot of an apartment complex located at 3152 Occidental Drive in Sacramento. The Sacramento Fire Department responded to the scene to extinguish the vehicle fire.

At approximately 9:53 p.m., Sacramento Police Department (SPD) Officer Eric Toomey was dispatched to assist Officers Benjamin Jillson and Trevor Schwertfeger in responding to an

incomplete 9-1-1 call from an apartment on Occidental Drive. Officer Toomey was dressed in full SPD uniform equipped with a body-worn camera (BWC). Officer Toomey was driving a marked patrol vehicle equipped with emergency overhead lights. He was armed with a Sig Sauer model P230 handgun.

As Officer Toomey was driving to the scene, dispatch updated the call to add that the caller's ex-boyfriend had threatened her and burned her truck. Officer Toomey parked in the apartment complex guest area and activated his BWC. He stood by as Officers Jillson and Schwertfeger contacted the complainant.

The complainant told Officer Jillson that her ex-boyfriend, Adan Herrera Martinez, was the father of her two children. She told Officer Jillson that Martinez was in a car accident in 2018 that led to him using crystal methamphetamine. She stated that Martinez had previously pulled a gun on her, which led her to obtain a restraining order against him. She also stated that on February 14<sup>th</sup>, her father was preparing to take her to a medical appointment when her father was approached by Martinez. Martinez told the complainant's father that he was going to burn his own truck, and that he was "going to start with the head." When asked what that meant, Martinez told the complainant's father it was not a threat towards him, but towards his own mother, who Martinez felt did not want him anymore.

The complainant told Officer Jillson that earlier that evening, she heard a loud noise. Her father went out to the parking lot to investigate. He came back inside and told the complainant that the blue pickup truck was on fire. Firefighters arrived and extinguished the fire, but the complainant called 9-1-1 because she thought the fire was meant as a threat. Both the complainant and Martinez were listed as registered owners of the blue pick-up truck.

The complainant and the officers then walked over to view the fire damage to the 1994 blue Ford F-150 pick-up truck. At approximately 10:16 p.m., Officer Toomey went to bring his car closer so they could run various record checks. As he was doing so, a red Toyota Sienna minivan slowly passed by him. The complainant recognized the red Toyota Sienna and told Officer Jillson it was driven by Martinez. Officers Jillson and Schwertfeger directed Officer Toomey to stop the red Toyota. They told Officer Toomey that Martinez was driving, that the complainant had a valid restraining order against Martinez, and that Martinez was known to carry firearms.

Officer Toomey caught up to and got behind the red Toyota Sienna. He confirmed that the license plate was registered to Martinez. Officer Toomey then activated his overhead emergency lights to initiate a traffic stop.

Martinez did not slow, pull over, or yield to the officer's lights. Martinez instead drove through a stop sign at Occidental Drive and Julliard Drive.

Officer Toomey sounded his siren to ensure Martinez was aware of his presence. Martinez then rapidly accelerated. The red Toyota Sienna reached speeds approaching 85 m.p.h. in a residential area and ran through several stop signs without slowing or stopping. Officer Toomey followed as Martinez drove at high speeds onto La Riviera Drive and then southbound on Watt Avenue. Officer Toomey noted that Martinez almost went off the roadway as he entered the

Watt Avenue on-ramp. Martinez then accelerated to speeds between 75 and 90 m.p.h. as he traveled south on Watt Avenue to the south of Highway 50. Officer Toomey continued to pursue Martinez with his overhead emergency lights activated.

Two additional SPD units joined the pursuit. Officer Nicholas Caro was driving a marked patrol vehicle in the area of Belvedere Avenue and Power Inn Road when he heard Officer Toomey announce over the radio that he was in pursuit of an arson suspect. Officer Caro activated his emergency lights and notified dispatch he would respond to assist Code 3.<sup>1</sup>

Officer Caro drove eastbound on Folsom Boulevard towards Watt Avenue. He wanted to get in front of the chase to be able to deploy spike strips. However, Martinez's minivan passed Folsom Boulevard before Officer Caro reached Watt Avenue, so Officer Caro joined in the pursuit instead.

Officer Victor Stevens and his trainee, Officer Zachary King, were the third vehicle in the pursuit, behind Officers Toomey and Caro.

As Martinez continued south of Watt Avenue past Manlove Road, Martinez decelerated to approximately 40 m.p.h. and activated his hazard lights. Officer Toomey thought Martinez was preparing to either bail out of the minivan on foot, take the minivan off-road, or was readying a firearm.

Martinez turned right and headed westbound on Fruitridge Road. Officer Tony Parham and Officer James Summey had parked their patrol vehicle on the north side of the road and were preparing to deploy spike strips. Officer Toomey saw Martinez accelerate directly towards Officers Parham and Summey. He believed Martinez was going to hit them with his minivan.

Martinez then made a sudden left turn into an industrial area at 8550 Fruitridge Road. Martinez continued to drive erratically, accelerating to between 50-60 m.p.h.

At approximately 10:24 p.m., Martinez drove into a dead end in the industrial area, with a low concrete wall in front of him. Martinez slammed on his brakes to avoid hitting the wall. Officer Toomey applied his brakes behind Martinez but bumped into the rear bumper of the minivan before coming to a stop.

Officer Toomey exited his vehicle and drew his firearm. He stood in the opening between his open driver's-side door and the door frame. Officer Caro's vehicle was to his immediate right. Officer Stevens' vehicle was farthest to the right. Officer Caro pulled his patrol vehicle slightly forward, trying to block Martinez in more securely.

Officer Toomey yelled to Martinez, "Put your hands up! Put your hands up!" Martinez did not respond or acknowledge Officer Toomey's commands and remained inside the minivan.

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<sup>1</sup> Code 3 indicates to consider the call an emergency response and proceed immediately, including utilizing emergency lights and sirens as reasonably necessary.

Officer Toomey then announced, “He’s putting it in drive!” Martinez began to drive the minivan quickly forward towards the concrete wall. Martinez then placed the minivan in reverse and began to quickly turn backwards as if to make a K-turn.<sup>2</sup>

Officer Toomey could hear the minivan’s tires squeal. He yelled, “Stop! Stop!” Officer Toomey could see that he was standing approximately 8-9 feet from the concrete wall to his left. He knew that for Martinez to escape, Martinez had to drive the minivan through that 8–9-foot opening. Officer Toomey believed if Martinez tried to do so, Officer Toomey would be run over, resulting in serious injuries.

Officer Toomey knew that Martinez had refused to yield to officers and had driven at excessive speed through residential areas, ignoring stop signs, to avoid arrest. Officer Toomey believed Martinez intended to try to escape, regardless of whether it meant running over Officer Toomey to do so.

After the reverse portion of Martinez’s attempted K-turn, Martinez put the minivan in drive and accelerated towards the narrow opening between where Officer Toomey stood and the concrete wall. Officer Toomey did not believe he had time to safely retreat out of harm’s way or to use less-lethal options, as the minivan was approximately 20 feet away and beginning to advance. He began to fire at the minivan, discharging 13 rounds within 3 seconds to prevent Martinez from running him over.

As Martinez began to accelerate forward, Officer Caro saw that Officer Toomey was unprotected along Martinez’s only avenue of escape. He knew that Martinez had just led officers on a reckless chase, driving up to 85 m.p.h. on La Riviera Drive. Officer Caro believed Martinez intended to avoid capture at all costs, even if it meant hitting Officer Toomey with his minivan. Officer Caro believed he had no time to retrieve his less-lethal weapons and did not believe that they would be effective against a minivan. Officer Caro heard shots being fired by another officer. Officer Caro then fired 4 rounds in rapid succession as the minivan advanced.

The minivan slowed its acceleration as the shots were fired by Officers Toomey and Caro. Approximately 2 seconds after Officer Toomey fired his 13<sup>th</sup> round, the minivan lurched forward again. Officer Toomey fired his 14<sup>th</sup> round towards the minivan. The minivan then came to a halt.

Martinez remained inside the minivan. Officers could not see through the window, but they could hear moaning from inside. As Martinez was known to carry firearms, officers assembled a team with shields to approach the minivan as additional units arrived. Trainee Officer Zachary King fired a round from a bean bag shotgun to try to shatter the window so officers could see inside. However, the window did not shatter.

Officers then gave Martinez commands to surrender. After approximately one minute, Martinez exited through the driver’s side door. Martinez appeared to have been shot in both forearms.

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<sup>2</sup> A K-turn is also known as a three-point turn. It is a standard method of reversing direction where there is insufficient space to make a U-turn.

Officers approached Martinez, placed him into custody, and provided medical assistance until they were relieved by emergency medical technicians.

Martinez was transported by ambulance to Kaiser Permanente South Sacramento Medical Center. Martinez suffered four gunshot wounds to his left arm, one gunshot wound to his right arm, and grazing wounds to his torso. Surgery was performed to repair a fracture to Martinez's wrist and to remove a bullet fragment that had lodged in his wrist.

A blood sample was taken from Martinez by Kaiser personnel. Testing done at Kaiser showed that Martinez's blood was presumptively positive for methamphetamine and amphetamine. The concentration of methamphetamine was not specified, and the sample was not retained by Kaiser. The presumptive testing also showed that Martinez had a blood alcohol content of less than .01%.

Martinez's clothing was searched after his arrest. One live 9mm round and one live .38 caliber round of ammunition were found in Martinez's right pants pocket.

Martinez was advised of his Miranda rights at Kaiser and agreed to speak with detectives. Martinez acknowledged seeing the lights of the cars following him but denied knowing that they were police officers. He denied hearing any of the commands directed at him by officers. He told detectives his intention was to turn around and escape, but denied he was trying to hit anyone with his vehicle.

Martinez acknowledged using crystal methamphetamine but denied using any on the day of the incident. He denied setting his truck on fire. He explained that he drove to the apartment complex to check on the truck because someone had told him that his truck had been burned.

Police department detectives and crime scene investigators responded to preserve and document the scene, including taking photographs and measurements. They noted that the opening between Officer Toomey's patrol vehicle and the concrete wall was approximately 12.6 feet.

The distance from where Officer Toomey was standing to Martinez's minivan at the time of the first gunshot was approximately 13.8 feet. The distance from where Officer Toomey was standing to Martinez's minivan at the time of the final shot was approximately 14.8 feet.

The distance from where Officer Caro was standing to Martinez's minivan at the time Officer Caro's first shot was approximately 12.8 feet.

Martinez's minivan was a 2006 Toyota Sienna. A 2006 Toyota Sienna is approximately 6.5 feet wide.



(Overhead view of the minivan and patrol vehicles after Martinez was taken into custody)

Body-worn camera video and in-car camera (ICC) video from each of the responding officers was reviewed. The videos depict the events as described above. Of note, the ICC video shows that the pursuit of Martinez lasted approximately eight minutes, covering approximately six miles. The video shows that Martinez ran through six stop signs and one red light without stopping. It further shows that Martinez reached speeds of 85 m.p.h. while driving in a residential area.

ICC from Officer Caro's patrol vehicle shows the minivan as it completes the second leg of the K-turn, which is the reverse leg. The minivan then moves forward towards where Officer Toomey was standing. As the minivan moves forward, the video clearly shows the front driver's side wheel spin on the pavement as it loses traction during the initial forward movement towards Officer Toomey's location. As the wheel is spinning, the first shots are heard. After the wheel spins, it regains traction as the minivan rolls to its eventual stop. ICC from Officer Toomey's vehicle shows the same events.

Martinez was arrested and charged with three felonies in Sacramento Superior Court case number 21FE002994. He pled guilty to a felony violation of Penal Code section 236 (False Imprisonment), arising from an earlier related incident involving the same victim, and a misdemeanor violation of Vehicle Code section 2800.2 (Reckless Evasion of a Peace Officer). He was placed on 4 years of formal probation and sentenced to serve 180 days in the county jail.

SPD initiated an administrative review of Officer Toomey's conduct during this incident. Officer Toomey was terminated from SPD effective May 9, 2022, for the following department policy and general order violations:

1. Officer Toomey did not promptly activate his emergency lights and siren. Officer Toomey waited approximately 28 seconds after beginning his pursuit of Martinez to activate the lights and siren.<sup>3</sup>
2. Officer Toomey collided with the rear of Martinez's vehicle at the end of the pursuit. The review determined Officer Toomey was pursuing at an unsafe speed.<sup>4</sup>
3. Officer Toomey did not tactically reposition himself or his vehicle at the end of the pursuit, when he was aware of the dangers presented by his location between his vehicle and the concrete wall.<sup>5</sup>
4. Officer Toomey did not make every reasonable effort to avoid intentionally placing himself in a position where Martinez's vehicle was a threat to him.<sup>6</sup>
5. Officer Toomey did not make every reasonable effort to move out of the path of an approaching vehicle instead of discharging his firearm at the vehicle or its occupants.<sup>7</sup>
6. Officer Toomey's final gunshot was not reasonably necessary because the threat from Martinez's vehicle was no longer imminent. Officer Toomey fired his initial volley of gunshots. Martinez's vehicle rolled backwards, then forward at a slow rate of speed. Officer Toomey then fired one additional gunshot.<sup>8</sup>
7. Officer Toomey did not employ or attempt de-escalation techniques.<sup>9</sup>
8. Officer Toomey de-activated his body-worn camera at the conclusion of the incident before being directed to do so by a superior officer.<sup>10</sup>

## **LEGAL ANALYSIS**

An officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11; *Graham v. Connor* (1989) 490 U.S. 386, 396; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; California Penal Code section 835a(b); CALCRIM 2670.) The person being detained or arrested may be subjected to such restraint as is reasonably necessary for his arrest and detention and has a concomitant duty to permit himself to be detained. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; CALCRIM 2670, 2671, 2672.) Officers do not need to retreat or desist their efforts if the person they are arresting or detaining resists or threatens resistance; nor shall the officer be deemed an aggressor or lose the right to self-defense by use of reasonable force. (California Penal Code section 835a(d).)

Here, Officer Toomey had reasonable cause to detain Martinez for the arson of the blue Ford pick-up truck and for possible violation of the complainant's restraining order. When the complainant recognized Martinez's minivan passing by the scene of the arson that had just

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<sup>3</sup> Sacramento Police Department General Order 521.01 – Pursuit of Vehicles.

<sup>4</sup> Sacramento Police Department General Order 421.01 – Use of Police Vehicles.

<sup>5</sup> Sacramento Police Department General Order 580.2 – Use of Force, and General Order 580.06 – De-escalation and Planned Response.

<sup>6</sup> Sacramento Police Department General Order 580.02 – Use of Force.

<sup>7</sup> Sacramento Police Department General Order 580.02 – Use of Force.

<sup>8</sup> Sacramento Police Department General Order 580.2 – Use of Force, and General Order 210.04 – General and Professional Conduct.

<sup>9</sup> Sacramento Police Department General Order 580.06 – De-escalation and Planned Response.

<sup>10</sup> Sacramento Police Department General Order 525.07 – Body-Worn Camera.

occurred, Officers Jillson and Schwertfeger directed Officer Toomey to stop and detain Martinez.

Officer Toomey caught up to the minivan and confirmed that the license plate was registered to Martinez. Officer Toomey activated his overhead emergency lights to direct Martinez to yield. Martinez chose not to yield and continued driving. Officer Toomey then activated the siren of his patrol vehicle to further direct Martinez to yield.

Martinez had an obligation to allow himself to be detained. Martinez chose not to do so. Instead, Martinez accelerated to unsafe speeds in a residential area and led Officer Toomey on a reckless and extended chase. Martinez drove at speeds up to 85 m.p.h. through residential neighborhoods and drove through six stop signs and a red light without slowing or stopping. His actions represented a serious risk of death or serious bodily injury to members of the community who might be on those streets.

Martinez slowed but still refused to yield as he continued south on Watt Avenue past Manlove Road. As he turned right on Fruitridge Road, Martinez accelerated and drove directly at officers attempting to deploy spike strips to stop him. Martinez abruptly turned left into the industrial area and avoided striking the officers. He continued to drive recklessly through the industrial area before coming to a dead end.

Officer Toomey, Officer Caro, and a third SPD vehicle attempted to box Martinez in so that he could not escape. The officers got out of their patrol vehicles, drew their firearms, and commanded Martinez to surrender.

Rather than comply with the officers' lawful orders to surrender, Martinez drove forward towards the concrete wall, then quickly reversed, and turned while attempting to make a K-turn. He had an opening of roughly 12 feet between the concrete wall and Officer Toomey's patrol vehicle. Officer Toomey was standing outside the driver's side door in the path Martinez would have to travel to be able to get away. Despite the officers' orders to stop, Martinez put the minivan in drive and began quickly to drive forward towards the opening. Martinez drove forward quickly enough to cause the front driver's side wheel to lose traction and spin.

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury. (CALCRIM 505, 507, 3470; California Penal Code section 835a(c)(1)(A).) An officer who uses deadly force must actually believe that force is necessary. The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.) Thus, the officer may employ all force reasonably believed necessary. (CALCRIM 3470.) The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. (California Penal Code section 835a(a)(4); *Graham v. Connor* (1989) 490 U.S. 386.)



Here, Officer Toomey reasonably believed that he was at risk of being immediately run over and seriously injured by Martinez's minivan. He had just witnessed the reckless disregard for the safety of others Martinez had displayed during the pursuit in Martinez's efforts to avoid detention, and he believed that Martinez would do anything he needed to in order to get away, even if that meant hitting Officer Toomey with his car. The minivan was only approximately 15 feet away from Officer Toomey. The minivan was approximately 6.5 feet wide. The opening Martinez needed to drive through was only approximately 12 feet wide, and Officer Toomey was standing outside his driver's side door. Under these circumstances, Officer Toomey was justified in his decision to fire at the minivan to prevent it from running him over.

The minivan slowed as Officer Toomey fired 13 shots in rapid succession. Approximately two seconds after Officer Toomey's 13<sup>th</sup> shot, the minivan briefly lurched forward again. Officer Toomey was still in the minivan's avenue of escape. Accordingly, Officer Toomey believed he was still in danger of being struck by Martinez's truck. Officer Toomey fired one final round towards the minivan. The minivan then came to a halt and Martinez was thereafter taken into custody.

Similarly, Officer Caro was aware of the extent of Martinez's disregard of the safety of others and the danger Martinez created during the chase. Officer Caro knew that Officer Toomey was standing outside his driver's side door along Martinez's only possible avenue of escape. Officer Caro believed that Martinez intended to drive through that opening, even at the risk of striking Officer Toomey. Accordingly, Officer Caro was justified in firing in order to prevent Martinez from running down Officer Toomey.

Finally, it is noted that Officer Toomey was terminated for violations of department policy and general orders detailed above. However, any such violations are not determinative of whether an officer's actions constitute a crime. In Section 1(g) of Senate Bill 230,<sup>11</sup> the Legislature expressly stated, "A law enforcement agency's use of force policies and training may be introduced as evidence in proceedings involving an officer's use of force. The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training."

Here, only one general order violation impacts the question of whether Officer Toomey properly acted in self-defense or the defense of others in firing at Martinez's vehicle. Specifically, the police department review found Officer Toomey's decision to fire his final round at Martinez's vehicle was not justified, as they found the threat presented by Martinez's vehicle was no longer imminent.

However, the standard for an agency's administrative review is preponderance of the evidence, a significantly lesser standard than that required for a criminal case. The standard of proof in a criminal case is proof beyond a reasonable doubt. Prosecutors are ethically prohibited from filing a criminal case if there is no reasonable likelihood that a jury would convict. Under the circumstances of this case, there is no reasonable likelihood a jury would find Officer Toomey

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<sup>11</sup> Senate Bill 230 was signed by the Governor on September 12, 2019.

guilty beyond a reasonable doubt. As detailed above, Officer Toomey stood in extremely close proximity to Martinez's vehicle. He believed Martinez intended to drive through the narrow opening between where Officer Toomey was standing and the concrete wall, potentially endangering Officer Toomey's life. As Martinez's Toyota Sienna moved forward, Officer Toomey fired 13 gunshots and Officer Caro fired 4 gunshots to try and stop Martinez's vehicle.

The police department internal review found these 13 shots fired by Officer Toomey to be justified actions of self-defense. The final gunshot by Officer Toomey was fired only approximately 2 seconds after the 13<sup>th</sup> shot. During this time, Martinez had given no indication, verbally or otherwise, that he was surrendering to the officers and had ceased his resistance. In fact, when the last shot was fired, the Toyota had just proceeded forward again, and Officer Toomey still remained in the vehicle's expected path of travel. It is very unlikely that a criminal jury would find that a significant change in circumstances occurred in those 2 seconds to conclude that Officer Toomey no longer had a lawful right to self-defense. Given the totality of circumstances involved in this incident, a criminal conviction of Officer Toomey based solely on the final gunshot fired 2 seconds after the other lawfully justified gunshots is highly improbable.

## **CONCLUSION**

Based on the circumstances of this incident, Officers Caro and Toomey were justified in using deadly force. As to Officer Toomey's final gunshot, there is no reasonable likelihood that a jury would convict Officer Toomey for firing his last shot at Martinez to prevent him from hitting Officer Toomey with his minivan as Martinez attempted to escape. Accordingly, we will take no further action in this matter.

Cc: Eric Toomey  
Sacramento Police Department Officer Nicholas Caro  
Sacramento Police Department Detective Pamela Masee  
Sacramento Police Department Sergeant Joseph Ellis  
Office of Public Safety Accountability