



**REPORT ON THE APRIL 24, 2020  
OFFICER-INVOLVED SHOOTING OF  
BRANDAN NYLANDER**

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DISTRICT ATTORNEY

**December 31, 2020**

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## **I.      ROLE OF THE DISTRICT ATTORNEY**

The role of the Napa County District Attorney's Office in an officer-involved shooting investigation is to review the circumstances of the incident for the sole purpose of determining if there is criminal liability on behalf of any member of law enforcement.

This report summarizes the events that took place on April 24, 2020, in the area of Airport Blvd in the County of Napa that resulted in the shooting death of Brandan Nylander. It also documents the legal conclusion drawn from the evidence. This summary is not intended to include every aspect of those events. Rather, it is a composite of the material facts that were considered by the District Attorney in coming to her legal conclusion. This report draws from a thorough review of the police investigation, interviews of witnesses, physical evidence, and case law, as well as forensic science and testing.

The Napa County Sheriff's Office (hereinafter "NSO") invoked the Napa County Major Crimes Investigation Team Protocol. This protocol sets forth the procedures and guidelines to be used by Napa County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. NSO Detective Paul Kuhn led the investigation. He presented a comprehensive report to the Napa County District Attorney's Office.

## **II.     STANDARD OF REVIEW**

The District Attorney, as the chief law enforcement official of Napa County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function has limits.

The standard to be applied by the District Attorney in filing criminal charges is expressed in the *Uniform Crime Charging Standards*. It provides:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant

conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

### **III. SUMMARY OF INCIDENT**

#### **A. Brandan Nylander**

Brandan Nylander was a 24 year-old male living in a detached garage near the home of extended family members in the City of Napa. He moved from the Auburn area in January, 2020, and had recently been hired as a wood chipper for the County of Napa. On the day of his death, Mr. Nylander was unable to work based upon a self-inflicted fracture of his hand. He drove a 2014 Mazda sedan with personalized license plate: GOTBEAT.

Mr. Nylander had a very limited criminal record and little indication of violence in his history. Friends and family describe Mr. Nylander as drinking heavily and suffering from acute depression in the weeks and months preceding his death. He experienced flashes of anger, social isolation and recurring bouts of substance abuse. On the day of his death, Mr. Nylander spoke to a social worker and indicated recurrent thoughts of death and suicide. He expressed concern over his living situation, his inability to make money with his hand injury and his difficulty in controlling his anger.

He said he had never in his life been as depressed as he was on that day.

The mental state of Mr. Nylander is relevant as evidence of his intent for actions later in the day. These details are shared as material to the circumstances analyzed for criminal liability. While unknown to the officer at the time of the shooting, these facts would be material in any future court proceeding to provide context and a legal defense to the events of the afternoon. They are specifically relevant to Mr. Nylander's later choice to exit his vehicle while brandishing a loaded shotgun at a sheriff's deputy. As set forth in the standard of review, the prosecutor is to analyze not only the facts of the incident but the plausible and foreseeable defenses that could be raised under the facts.

#### **B. The Robbery**

On April 24, 2020, at approximately 1:53 pm, a home security camera captured Mr. Nylander sitting outside his home. He was wearing a red hat, shorts and shoes and

a black t-shirt with the insignia "DEATH PROOF" Industries emblazoned on the front. Mr. Nylander is seen entering his living space, was heard crying and exited carrying a shotgun case.

At approximately 2:03 pm, Mr. Nylander parked his car at the Walmart parking lot and entered the store. After circling the ammunition area of the sporting goods section, he took a hammer from his shorts, smashed out the glass display case door, grabbed a single box of shotgun shells and threw the hammer at the cashier. The hammer struck the cashier in the right forearm. The cashier described the look on Mr. Nylander's face as: "he wanted to kill the world." Mr. Nylander was described as "drunk" by another eye-witness.



At approximately 2:08 pm, Mr. Nylander fled the store with the stolen ammunition, got into his Mazda sedan and drove away. Several employees chased him through the store, followed him to his car and called 911. The assistant manager told

911 that the suspect smashed a glass display case, took ammunition and threw a hammer at an employee. A suspect and vehicle description was reported, including the distinctive "GOTBEAT" license plate. Dispatch immediately broadcast to any listening law enforcement that a robbery had occurred at the Walmart in City of Napa. Dispatch stated that the suspect was a large, white male who had been armed with a hammer, smashed open a display case, assaulted an employee and stole ammunition.

### C. The Chase

NSO Deputy Gregg Lee was a fully sworn part-time deputy after having retired from the Napa Police Department as an officer. Deputy Lee was specially assigned to provide security for the COVID quarantine facility on the grounds of the Napa Airport. At the time of the incident, Deputy Lee did not have a less lethal weapon (such as a Tazer, bean bag gun, etc.), patrol rifle or shotgun in his patrol car. Deputy Lee had not been issued any type of audio/video recording equipment for his person. Deputy Lee had not been trained on any type of recording equipment in the patrol vehicle and as far as he knew, there hadn't been any. In fact, however, his patrol car was equipped with an operational dash camera that captured the subsequent events, albeit without sound.

A 25 year law enforcement veteran, Deputy Lee heard the broadcast of the robbery in Napa and immediately became concerned for public safety. He was concerned that the subject had committed an armed robbery, had assaulted an employee, had fled the scene and was in possession of ammunition. Deputy Lee correctly concluded that a person who stole ammunition was highly likely to be in possession of a firearm. Deputy Lee positioned his car at the intersection of Highway 29 and Highway 221, adjacent to a California Highway Patrol (CHP) Officer in an effort to apprehend the subject.

At approximately 2:25 pm, Deputy Lee spotted Mr. Nylander's car travelling southbound on Highway 29. Deputy Lee activated his emergency lights and siren to attempt an enforcement stop. Mr. Nylander did not yield, choosing to immediately speed away. He swerved from the #1 lane to the #2 lane, and onto the right-hand shoulder to pass vehicles at a high rate of speed. Deputy Lee estimated the speed to be 75 mph. Mr. Nylander turned right on Airport Blvd. and right on to a paved driveway after crossing railroad tracks. He drove his car into cyclone fences secured with a chain lock. Deputy Lee stopped his vehicle directly behind Mr. Nylander's car. The distance from the front of the patrol car to Mr. Nylander's car was 7.68 feet. This close proximity was unintended. Deputy Lee had believed that Mr. Nylander was going to drive through



the gate onto the tarmac of the Napa airport wherein the pursuit would continue. He was shocked when Mr. Nylander suddenly opened his driver's side door.

#### D. The Dash Camera

Dash and body worn camera videos were booked into evidence by deputies and officers involved in the incident. The dash camera from the patrol car of Deputy Lee is the only device to visually record the events surrounding the shooting uninterrupted. The dash camera did not capture any audio.

The video clearly depicts Mr. Nylander exiting his car with the shotgun in his hands and his subsequent movements.

The video does not depict the sequence of shots, the location of Deputy Lee, the location of other, arriving law enforcement personnel nor does it provide the vantage point of the law enforcement shooter. The video does not readily capture shots taken that missed Mr. Nylander but for puffs of smoke to the extreme left of the view provided. While certainly useful in documenting some of the events of the incident, the dash cam video does not provide the observer with the deputy's view of the events nor was it positioned in the same place as the deputy so as to be used as a substitute for what the deputy perceived.

#### E. Circumstances of the Shooting

Immediately upon stopping his vehicle, Mr. Nylander opened the driver's side door. Alarmed by the action of Mr. Nylander, Deputy Lee opened his patrol vehicle's door in response. Deputy Lee watched Mr. Nylander exit his vehicle and recognized very quickly that he was holding a black "long gun," namely a pump-action shotgun. Deputy Lee has no memory of stopping his patrol car, putting the vehicle in park, releasing his seatbelt or manipulating the mechanism to open his car door. As soon as Deputy Lee recognized Mr. Nylander was holding a long gun, Deputy Lee knew he was grossly outmatched in fire power. Deputy Lee said that the realization that he was outgunned was "terrifying." Deputy Lee was also acutely aware of how close he was to Mr. Nylander – a distance of less than 20 feet. This close proximity compounded his fear.

As Mr. Nylander got out of his vehicle, it was clear that his left hand was on the pump action forestock of the shotgun as he swung the barrel toward Deputy Lee.

Deputy Lee instinctively started shouting at Mr. Nylander to stop but had no clear memory of what he shouted at the time of his interview. No device captured the audible directives given by Deputy Lee.

Photographs are included in this report to demonstrate the difference between the fixed location of the dash camera and the orientation of Mr. Nylander's attention toward Deputy Lee.

Recognizing the barrel of the gun pointing at him and the resulting threat of death, Deputy Lee fired shots at Mr. Nylander and missed. The dash cam captured puffs of smoke at the extreme left corroborating Deputy Lee's statement that multiple shots were fired that missed Mr. Nylander. At least one bullet hit a metal sign attached to the cyclone fence behind him. Deputy Lee saw no reaction from Mr. Nylander and realized the threat had not been stopped. Mr. Nylander's left hand was still on the pump action forestock and he was facing Deputy Lee when Deputy Lee fired additional rounds. As the shots were fired, Mr. Nylander started to turn away from Deputy Lee. Mr. Nylander was hit in the neck and in the buttock. Mr. Nylander spun around, dropped the gun and fell to the ground in front of his vehicle. All witnesses to the event indicate that Mr. Nylander was silent throughout the encounter.





From the time Mr. Nylander opened his car door until he fell to the ground a total of 7 seconds elapsed.

#### F. Law Enforcement Response

As Mr. Nylander exited his car, another NSO deputy and CHP officer arrived at the scene. Because he was focused on Mr. Nylander and his weapon, Deputy Lee had not been aware of the other officers' presence, nor that they were also in danger. A team of NSO deputies and CHP officers arrived immediately after the shooting and they



approached the scene. Deputy Lee believed that he was alone. A team of NSO deputies and CHP officers arrived immediately after the shooting. They called for assistance and the shotgun was secured.

#### G. Post-Incident

Mr. Nylander was found on the ground. Napa County Fire Department personnel heard the sirens, saw the patrol cars and headed to the scene, arriving within a few minutes. They immediately attempted life-saving procedures despite the fact Mr. Nylander did not have a pulse. They then turned the scene over to two AMR paramedics. No further medical treatment was initiated, as Mr. Nylander was clearly deceased. A search of his vehicle revealed the shotgun case and box of ammunition on the passenger seat.

#### H. Recovered Gun and Ammunition

Mr. Nylander was holding a Weatherby PA-459 12 Gauge shotgun. The long gun was registered to a family member. The gun was loaded with two shotgun shells.



One box of Winchester Super-Target 12 Gauge shotgun shells was located inside Mr. Nylander's car with individual shells located haphazardly on the passenger seat. This was the box identified as stolen from the WalMart just a few minutes prior. The box had been torn open and all cartridges were accounted for, including the two which had already been loaded in the shotgun. This means that Mr. Nylander ripped open the box of stolen shells and successfully loaded the shotgun at some point

between fleeing the scene of his armed robbery and coming to a stop after being pursued by police.



Four (4) expended .9 mm cartridge casings were located at the scene. Deputy Lee fired his service weapon, a Glock Gen 5 Model 34, 9 mm handgun.

#### I. Autopsy

On April 28, 2020, the Napa County contracted forensic pathologist performed the autopsy on Mr. Nylander. Cause of death was determined to be penetrating gunshot wounds to the neck and torso. Two bullets, located in the neck and left buttock, struck Mr. Nylander. A sample of Mr. Nylander's blood was analyzed by Ascertain Forensics at Redwood Toxicology Laboratory and found to be .15% blood alcohol level – almost twice the legal limit to drive in California.

#### J. Suicide Note

On May 4, 2020, family members were sorting through the belongings of Mr. Nylander and found a note inscribed on the inside lid of a storage bin container. It was a suicide note written by Mr. Nylander to his family members apologizing for perceived shortcomings and stating that he did not want to wait to die of natural causes. Based on

the content of the note, it is clear that it was written close in time to his death. Because the details of his final words are not germane to the District Attorney's legal analysis, it will not be transcribed in full or in part in this report.

#### IV. STATEMENT OF THE LAW

The sole issue to be resolved in this report is whether the shooting of Brandon Nylander by Deputy Lee was lawful: specifically, was the use of force by Deputy Lee reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose.

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

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

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance by a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life. An officer is justified in taking a life if "the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the defendant had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one, which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

An officer has “probable cause” in this context when he knows facts, which would “persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.” CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” *Id.* At 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

## V. LEGAL ANALYSIS

On April 24, 2020, evidence suggests that Mr. Nylander intended to commit suicide when he left his home. Mr. Nylander suffered from acute depression and was experiencing crises in his personal life. He had reached out to mental health services on the day of his death and expressed profound despair. These facts are relevant to the analysis as they speak to the intent of Mr. Nylander when he exited his car with a shotgun. Further, they are relevant to any claim that Mr. Nylander was attempting to surrender as he turned away from sheriff’s deputies.

Mr. Nylander took his shotgun and went to Walmart in the City of Napa. Mr. Nylander committed robbery to get the ammunition for his shotgun, breaking the display case with a hammer and throwing it at the cashier. He fled the scene in his car. Deputy Lee was on duty, heard the dispatch about the robbery and located the speeding car minutes later. Deputy Lee was concerned about public safety. The report of an armed



robbery for ammunition is both unusual and a legitimate cause for concern about the existence of a potentially loaded firearm.

Deputy Lee chased Mr. Nylander and stopped behind him. Mr. Nylander had loaded the shotgun with the stolen ammunition and emerged from the car with the weapon in his hands, swinging it toward Deputy Lee. Reasonably fearing for his life and correctly assuming the firearm was loaded, Deputy Lee responded by firing his service weapon until the threat was stopped.

The use of deadly force on April 24, 2020 by NSO Deputy Gregg Lee was a reasonable and lawful response under the totality of the circumstances. Therefore, his actions were legally justified and criminal charges against him are neither warranted nor supported by the evidence.

## **VI. CONCLUSION**

Providing a community with an analysis of an officer involved shooting is one of the most important aspects of the job of a District Attorney. It requires unmitigated objectivity coupled with unwavering adherence to the rule of law and a sensitivity to the families of the involved parties. The depth of depression suffered by Mr. Nylander in the weeks and months before his death cannot be ignored nor factored out of the analysis of the facts by the District Attorney.

This review conducted within the scope and jurisdiction of the District Attorney is complete and final. The public deserves full transparency as to how and why our office reaches a decision in an officer-involved shooting and, as a result, I am now releasing my report and conclusions in their entirety.

A handwritten signature in blue ink, appearing to read "Allison Haley", with a horizontal line extending to the right.

Allison Haley, Napa County District Attorney