

Report on the Officer Involved Shooting of Officer Albert Covarrubias

Summary

The District Attorney's Office has concluded its investigation into the fatal shooting of Santa Maria Police Officer Albert Covarrubias by Santa Maria Police Officer Matthew Kline. Officer Covarrubias was fatally shot by Officer Kline at the conclusion of a DUI checkpoint where they were both working on January 28, 2012. The shooting occurred after Officer Kline saw two uniformed police sergeants struggling with someone armed with a gun and heard the sergeants screaming for help. The person struggling with the sergeants was Officer Covarrubias. Officer Kline fired three rounds from his handgun at Officer Covarrubias. Two of the shots fired were contact wounds and one of the shots fired was not a contact wound. All three rounds struck Officer Covarrubias. Officer Covarrubias was transported to the hospital where he was pronounced dead.

The District Attorney's role in reviewing this homicide is to determine whether the shooting of Officer Covarrubias was lawful and to provide a detailed explanation to the public about the facts and the law in that regard. As stated in *Graham v. Connor* (1989) 490 U.S. 386, this process "requires careful attention to the facts and circumstances." Hence, this analysis will give careful attention to both the facts and the circumstances of the fatal shooting of Officer Covarrubias.

CONTENTS

Part I – STATEMENT OF FACTS

Preliminary Investigation into Allegation	1
Communication among SMPD Staff Early Friday Evening	2
Conduct and Statements Early Evening at the DUI Checkpoint	4
Meeting of Investigators Early Evening	4
Investigators' Contact with Jane Doe's Parents	5
Interview of Jane Doe	5
Late Night Meeting of Investigators	5
The Pretext Call	6
Communication between Investigators during the Pretext Call	7
Directions Given to Arrest Team	9
Conversations between Lt. Ast and Lt. Flores	11
Arrest of Officer Covarrubias	12
Evidence at the Scene.....	14
Autopsy	15
Statement of Officer Matt Kline	15

Part II – LEGAL ANALYSIS AND CONCLUSION

Applicable Law	17
Legal Analysis	18
Conclusion	18

Part I – STATEMENT OF FACTS

Preliminary Investigation into Allegation

On January 26, 2012, a detective told Santa Maria Police Department Sgt. Van Meel that a citizen reported there may be an inappropriate relationship between a seventeen-year-old female police explorer and an officer named Covarrubias. Sgt. Van Meel told Lt. Ast about the allegation the same day. For the purpose of this report, the explorer will be referred to as Jane Doe.

Lt. Ast directed Sgt. Van Meel to lead an investigation into this allegation and authorized Sgt. Van Meel to use other investigators as needed to complete the investigation.

On the evening of January 26, 2012, Sgt. Van Meel, Sgt. Flaa and Corporal Ruiz met at the police station to discuss the investigation.

Sgt. Van Meel told Sgt. Flaa and Corporal Ruiz the following: Sgt. Van Meel had received information from another officer that indicated Officer Covarrubias may be involved in an inappropriate relationship with a police explorer who was under the age of eighteen. The exact nature of the relationship was not known other than it involved text messages of a romantic nature and that Officer Covarrubias may have once tried to kiss the explorer. Commander Ritz and Lt. Ast were also made aware of the matter. Sgt. Flaa indicated that he was told by Sgt. Van Meel that due to the sensitivity of the matter, Officer Covarrubias' chain of command, Lt. Flores and Commander Greene, were not made aware of the investigation.

On Friday, January 27, at about 10:45 a.m., Sgt. Van Meel and Corporal Ruiz interviewed the person who originally reported the matter to the police department. The person will be referred to as Witness #1.

Witness #1 said she was a friend of Jane Doe's family. She reported that Officer Covarrubias gave Jane Doe a bracelet over the Christmas holiday period and that Officer Covarrubias was becoming flirtatious with Jane Doe as they worked DUI checkpoints together. Officer Covarrubias also gave Jane Doe rides home after the checkpoints and texted her frequently. Additionally, Officer Covarrubias told Jane Doe not to tell anyone about what was happening because they would "both get in trouble." Witness #1 told Jane Doe the relationship was inappropriate and told her to end the relationship. Jane Doe told Witness #1 that Officer Covarrubias had tried to kiss her. Jane Doe also told Witness #1 that Officer Covarrubias sent a text message to Jane Doe which caused her eighteen-year-old boyfriend to break up with her when he saw it. Witness #1 believed the police department needed to check into the relationship between Officer Covarrubias and Jane Doe.

Next, Sgt. Van Meel and Corporal Ruiz interviewed Witness #2. Witness#2 was also a friend of Jane Doe's family. Witness #2 corroborated the information provided by Witness #1.

On Friday, January 27, at about 3:10 p.m., at Sgt. Van Meel and Corporal Ruiz' direction, Witness#1 made a pretext call to Jane Doe. During the call, Jane Doe made statements which

corroborated that Officer Covarrubias was involved in an inappropriate relationship with Jane Doe.

Communication Among SMPD Staff Early Friday Evening

On Friday, January 27, 2012, at about 4:30 p.m., Lt. Ast arrived at the police station. He noticed a group of explorers standing in the parking lot. He noticed one of the explorers was a female. Lt. Ast did not know what Jane Doe looked like. He was concerned that the female explorer was Jane Doe and that she would be working at the DUI checkpoint that night with Officer Covarrubias.

Lt. Ast saw the lieutenant in charge of the DUI checkpoint, Lt. Flores, walking toward the office next to the group of explorers. Lt. Ast approached Lt. Flores and told Lt. Flores he needed to know the names, including first names, of the explorers who were going to be working at the DUI checkpoint that night.

Lt. Flores asked Lt. Ast why he wanted the information. Lt. Ast told Lt. Flores he would like to be able to tell Lt. Flores why, but he could not. Lt. Ast told Lt. Flores that as far as Lt. Flores needed to know, it was an issue involving the explorers and if Lt. Ast needed to provide Lt. Flores with additional information, he would do so.

According to Lt. Ast, he also asked that Lt. Flores give him the requested information, with no questions asked, and that nothing else should be said to anyone else about his request. Lt. Flores told Lt. Ast he did not have a roster completed yet, but would get the information to Lt. Ast after the 5:00 p.m. briefing.

At 5:00 p.m., Lt. Flores led a briefing for the DUI checkpoint. Officer Covarrubias and Jane Doe attended the briefing. Before Lt. Flores began his briefing, he asked the explorers to leave the room. After the explorers left the room, Lt. Flores spoke to the officers who were going to be working the checkpoint that night. Lt. Flores said he told the officers that Lt. Ast was making an inquiry about the explorers. Lt. Flores did not know what it was about, but they should be "on (their) toes."

After Lt. Flores talked to his unit privately, he called the explorers back into the room. When the explorers returned to the room, Lt. Flores conducted the briefing for the DUI checkpoint. The briefing ended at about 5:30 p.m.

Shortly after the briefing concluded, Officer Covarrubias texted Jane Doe. In the text, Officer Covarrubias told Jane Doe there was an investigation being conducted involving an explorer. In the text, Officer Covarrubias asked Jane Doe not to tell anyone.

At 5:32 p.m., Officer Covarrubias texted Jane Doe, "Your fine baby. We all make mistakes. What did u hit?"

At 5:34 p.m., Jane Doe texted Officer Covarrubias, "No & so now im nervous now that you told me that. And a car."

At 5:34 p.m., Officer Covarrubias texted Jane Doe, "I'm nervous too baby. Have u said anything?"

At 5:35 p.m., Jane Doe texted Covarrubias, "No nothing. Idk what the fuck it could be. What if they ask for my phone or some thing?"

At 5:37 p.m., Officer Covarrubias texted Jane Doe, "I don't know. If I get caught im done."

At 5:39 p.m., Jane Doe texted Officer Covarrubias, "Yeah & ill fucken hate myself more."

At 5:40 p.m., Officer Covarrubias texted Jane Doe, "Let's not worry."

At 5:42 p.m., Jane Doe texted Officer Covarrubias, "Yeah ill try to not"

After the briefing, Officer Covarrubias drove a marked patrol car to the DUI checkpoint. He left his assigned motorcycle at the police department.

After the briefing, Lt. Flores walked to his office. While in his office, Lt. Flores saw Commander Greene walking across the parking lot. Lt. Flores asked Commander Greene if he knew anything about Lt. Ast's inquiry into the explorers. Commander Greene told Lt. Flores he was unaware of the investigation.

After Lt. Flores spoke to Commander Greene, Lt. Flores took the DUI checkpoint roster to Lt. Ast's office. When Lt. Flores arrived, Commander Greene was in Lt. Ast's office talking with Lt. Ast. Lt. Flores told Lt. Ast, "Here's the list," and handed the roster to Lt. Ast.

Lt. Ast started to write several names on a piece of paper. Lt. Flores offered to make a photocopy of the roster for Lt. Ast. Lt. Ast told Lt. Flores something similar to, "No, that's okay. I just need a few names." Lt. Ast wrote down Jane Doe's name and the names of about three other explorers. He did so in order to prevent Lt. Flores from knowing Jane Doe was the focus of the investigation. Lt. Flores asked Lt. Ast why he wanted the information.

Lt. Ast told Lt. Flores the following: Lt. Ast could not tell Lt. Flores why he wanted the information but his inquiry was not concerning any of Lt. Flores' officers and Lt. Flores should not to talk to anyone about the matter.

Lt. Flores later told Santa Barbara Sheriff's Office investigators that he thought Lt. Ast's direction to not disclose the investigation was too late as Lt. Flores had already done so. However, Lt. Flores did not tell Lt. Ast at that time that he had already told his officers about the investigation.

As they walked away from Lt. Ast's office, Lt. Flores asked Commander Greene something similar to, "Is there anything I need to know or to worry about this evening?" Commander Greene told Lt. Flores there was not.

Conduct and Statements Early Evening at the DUI Checkpoint

At the DUI checkpoint, Lt. Flores talked to each of his officers individually. He did so as the officers were setting-up the traffic cones for the checkpoint.

Lt. Flores told the officers the following: Lt. Flores was not sure what was going on, but encouraged his officers not to worry about it. He did not think the investigation involved their unit. It probably had to do with something an explorer did away from the police department.

After Lt. Flores spoke with each officer at the checkpoint, a couple of officers individually approached Flores, one of which was Officer Covarrubias.

Officer Covarrubias asked Lt. Flores something similar to, "Hey lieutenant, is there anything we have to worry about? Are we too hard on these people?"

Lt. Flores told Officer Covarrubias something similar to, "No, don't worry about it. Commander Greene told me, 'Don't worry about it.' I'm not going to worry about it."

Meeting of Investigators Early Evening

At about 5:30 p.m., Sgt. Van Meel, Lt. Ast, Sgt. Flaa, Corporal Best and Corporal Ruiz met at the Santa Maria Police Department detective bureau. They discussed the information they had at that point in the investigation.

During the meeting, Lt. Ast told Sgt. Flaa and Sgt. Van Meel there was not an internal affairs investigation being conducted, therefore Sgt. Flaa and Sgt. Van Meel should handle the investigation strictly as a criminal investigation.

The investigators evaluated their investigative options. They concluded they wanted Jane Doe out of the presence of Officer Covarrubias so they could interview her and possibly use her to make a pretext phone call to Officer Covarrubias. They discussed ways to contact her in such a manner that Officer Covarrubias would not know about the investigation.

Lt. Ast suggested investigators contact Jane Doe's parents and have them call Jane Doe at the checkpoint to tell her there was a family issue that required her presence at home.

Sgt. Van Meel and Sgt. Flaa concluded they would contact Jane Doe's parents, and then interview Jane Doe. Their plan was to have Jane Doe make a pretext call to Officer Covarrubias if she disclosed in the interview that Officer Covarrubias had committed a crime.

Corporal Ruiz was not needed at that point and so he was sent home.

Investigators' Contact with Jane Doe's Parents

At about 8:10 p.m., Sgt. Flaa, Sgt. Van Meel and Corporal Best arrived at Jane Doe's home. Sgt. Flaa spoke with Jane Doe's parents about the allegations.

Jane Doe's mother told them Officer Covarrubias was supposed give Jane Doe a ride home from the DUI checkpoint that night.

Sgt. Flaa asked Jane Doe's mother to call Jane Doe, tell her there was a family issue which required her immediate attention at home, and then to go pick her up. Jane Doe's mother agreed to do so.

At about 8:50 p.m., Jane Doe's mother left the house to get Jane Doe and returned a short time later with her.

Interview of Jane Doe

When Jane Doe arrived home, she allowed Corporal Best to take her cell phone in order to perform a forensic examination. Once Corporal Best had Jane Doe's cell phone, Sgt. Flaa began to interview her.

She said that prior to the DUI checkpoint that night, there was a briefing with the officers and explorers. Lt. Flores excused the explorers from the briefing and spoke with the officers. Shortly after the briefing, Officer Covarrubias sent Jane Doe a text. In the text, Officer Covarrubias told Jane Doe that Lt. Flores told them that there was an investigation into an explorer and that Officer Covarrubias was concerned the investigation was about him and Jane Doe.

Jane Doe also disclosed during the interview that she and Officer Covarrubias had recent ongoing sexual contact.¹

Late Night Meeting of Investigators

At around midnight, Sgt. Van Meel called Corporal Ruiz and asked him to meet them at the police station right away because there were new developments in the investigation.

Lt. Ast, Sgt. Van Meel, Sgt. Flaa and Corporal Ruiz met at the police station. Sgt. Flaa and Sgt. Van Meel told the other investigators the details of Jane Doe's statement. Those details included the following:

¹ In an effort to protect the victim the specifics of the sexual contact will not be disclosed.

- Jane Doe and Officer Covarrubias engaged in sexual contact on numerous occasions.
- Jane Doe's allegations included the elements of fear and duress.
- Lt. Flores told Officer Covarrubias and the other officers at the checkpoint briefing that there was a possible investigation into an explorer.

Sgt. Van Meel told Lt. Ast that removing Jane Doe from the DUI checkpoint may have further raised Officer Covarrubias' suspicion. Sgt. Van Meel told Lt. Ast this could significantly impact their investigation and how they approached it.

Lt. Ast told Sgt. Flaa and Sgt. Van Meel that Officer Covarrubias would not be permitted to leave work without being either put on administrative leave or placed under arrest.

Lt. Ast and the other investigators discussed the significance of Officer Covarrubias knowing about the investigation. They agreed that it was unlikely they would be able to obtain a confession from Officer Covarrubias as part of a criminal investigation.

Lt. Ast believed the only chance for them to make a successful criminal case against Officer Covarrubias was to obtain incriminating statements from Officer Covarrubias using Jane Doe to make a pretext call. Lt. Ast believed they needed to make the pretext call soon in order for it to be successful.

Sgt. Flaa and Sgt. Van Meel discussed whether to have Jane Doe make a pretext call to Officer Covarrubias at that time or to wait until a later time. They decided in order to preserve the element of surprise they wanted to have Jane Doe make the call right away.

It was further decided that in the event a quick response to contact Officer Covarrubias was necessary, Lt. Ast and Corporal Ruiz would remain at the police station, while Sgt. Flaa and Sgt. Van Meel were at Jane Doe's home conducting the pretext call.

The Pretext Call

At about 12:40 a.m., Sgt. Flaa asked Jane Doe to make the pretext call. Jane Doe agreed to do so.

Sgt. Flaa provided Jane Doe with a ruse to use to encourage a conversation with Officer Covarrubias and to explain why she left the DUI checkpoint early. Sgt. Flaa directed Jane Doe to begin the conversation by telling Officer Covarrubias she was pulled away from the checkpoint by her mother because her mother found a positive pregnancy test Jane Doe had taken earlier in the day. Jane Doe agreed to use this ruse.

During the course of the call Jane Doe told Officer Covarrubias multiple times that she thought she might be pregnant and that he was the only person who could be the father of her child.

Officer Covarrubias responded by saying multiple times that he didn't think she could be pregnant with his child. He also asked her repeatedly to deny that they had had a sexual relationship.

During the course of their prolonged conversation, the following statements were made:

Officer Covarrubias told Jane Doe, "Well you can't tell them about . . . about us." "I'll go to jail."

Officer Covarrubias told Jane Doe, "So just deny anything. We'll take it from there . . . You know I'll be honest with you, I won't go to jail. I'll fucking . . . I'll go out, but I won't go to jail. I'll tell you that."

Jane Doe asked Officer Covarrubias where he would go. Officer Covarrubias told Jane Doe he would kill himself.

Officer Covarrubias also told Jane Doe, "Well, just tell her you don't know. Just tell her You can't say me cause like I said if shit hits the fan, I'll fucking--you know what I mean? I'll do what I have to do, but"

Toward the end of their conversation, Officer Covarrubias told Jane Doe, "Just do me a favor. Just . . . okay, would you? Just say you don't know whose it is. But like I said, if it gets out that it's mine, if you tell anybody, or this is a set up . . ." ". . . I'm done girl. I . . . like I said, I can't . . . I don't think I can do that"

Communication between Investigators during the Pretext Call

During the pretext call Corporal Ruiz was on the phone with Sgt. Van Meel while he and Lt. Ast remained at the Santa Maria Police Department.

The flow of communication was as follows: Sgt. Flaa heard the entire conversation between Jane Doe and Officer Covarrubias. Sgt. Van Meel only heard Jane Doe's side of the conversation, however Sgt. Flaa told Sgt. Van Meel pertinent information about Officer Covarrubias' statements. Sgt. Van Meel relayed to Corporal Ruiz the information he received. Corporal Ruiz relayed to Lt. Ast the information he received from Sgt. Van Meel.

The information Sgt. Van Meel relayed to Corporal Ruiz included the following:

- Officer Covarrubias admitted having sexual contact with Jane Doe.
- Officer Covarrubias admitted to being paranoid.
- Officer Covarrubias was suspicious the call was a pretext call.
- Officer Covarrubias asked Jane Doe multiple times whether someone was with her while she was speaking with him.
- Officer Covarrubias asked Jane Doe whether someone was telling her what to say to him or what to ask him.

Toward the end of the pretext call, Sgt. Flaa told Sgt. Van Meel that Officer Covarrubias said he would kill himself if his relationship with Jane Doe was discovered.

Sgt. Van Meel told Corporal Ruiz that Officer Covarrubias said something similar to, "I'm not going to be taken in. I'm going to kill myself." He then told Corporal Ruiz that the arrest team should go to the checkpoint and arrest Officer Covarrubias.

Sgt. Flaa then told Sgt. Van Meel the arrest team should go to the checkpoint and arrest Officer Covarrubias. Sgt. Van Meel told Sgt. Flaa he had already conveyed that to Corporal Ruiz.

Corporal Ruiz told Lt. Ast that Officer Covarrubias was aware he was the subject of an investigation and was threatening to commit suicide.

Prior to the end of the pretext call, Sgt. Van Meel relayed to Lt. Ast something similar to, "We're going to have to make the arrest. We're going to have to do it tonight based on what's going on."

Lt. Ast called Commander Ritz and "gave him a quick brief." Lt. Ast told Commander Ritz that he needed to come to the station because Covarrubias was going to be arrested.

Commander Ritz came to the station.

Lt. Ast and Commander Ritz then made the decision to assemble a team to go to the DUI checkpoint and arrest Officer Covarrubias.

Shortly after Sgt. Van Meel told Corporal Ruiz that Officer Covarrubias should be taken into custody, Sgt. Flaa told Sgt. Van Meel that Officer Covarrubias had terminated the call.

Sgt. Van Meel relayed this information to Corporal Ruiz.

When Sgt. Van Meel told Corporal Ruiz that Officer Covarrubias said something similar to, "I'm not going to be taken in; I'm going to kill myself," Corporal Ruiz became concerned, because he believed they were going to be trying to arrest an armed officer who knew he was under investigation and who was surrounded by other armed officers who had no idea what was going on.

Corporal Ruiz expressed his concerns to Lt. Ast and Commander Ritz about proceeding with the arrest in the manner they had planned.

After Corporal Ruiz expressed his concern to Commander Ritz and Lt. Ast, they directed him to proceed with the arrest.

Corporal Ruiz then told them he thought it would be unwise for Corporal Ruiz to arrive at the DUI checkpoint in his assigned undercover vehicle. Corporal Ruiz thought this was unwise

because if he did so and Officer Covarrubias saw him arrive in that vehicle, Officer Covarrubias would know immediately Corporal Ruiz was there to arrest him.

After Corporal Ruiz told Lt. Ast and Commander Ritz this, they assigned uniformed sergeants Nartatez and Norling to drive a marked patrol car to the checkpoint to arrest Officer Covarrubias.

Lt. Ast assigned Corporal Ruiz to go with him as a passenger in Lt. Ast's white unmarked patrol vehicle. Corporal Ruiz told Lt. Ast he was concerned about Officer Covarrubias seeing Lt. Ast's vehicle arrive at the checkpoint.

Directions Given to Arrest Team

Lt. Ast and Corporal Ruiz walked to the Watch Commander's office.

Lt. Ast called Sgt. Nartatez into the office.

Lt. Ast told Sgt. Nartatez that he and Sgt. Norling were going to the DUI checkpoint to arrest Officer Covarrubias because Officer Covarrubias was having a sexual relationship with an explorer.

Lt. Ast then told Sgt. Nartatez to get together with Sgt. Norling and arrest Officer Covarrubias.

Sgt. Nartatez asked Lt. Ast, "Why do you have to do that now?"

Lt. Ast told Sgt. Nartatez that Officer Covarrubias may be suicidal and had told someone that he wasn't going to be taken alive. Shortly after Lt. Ast made this statement to Sgt. Nartatez, Commander Ritz entered the room.

Sgt. Nartatez then told Commander Ritz and Lt. Ast, "You know, a lot of people don't know this, but he's my cousin."

Lt. Ast did not realize that Sgt. Nartatez and Officer Covarrubias were cousins. Lt. Ast told Sgt. Nartatez he should not participate in the operation. Sgt. Nartatez told Lt. Ast he thought his presence may have a calming effect on Officer Covarrubias. Lt. Ast then changed his mind and kept Sgt. Nartatez as part of the operation.

Sgt. Nartatez told Lt. Ast and Commander Ruiz something similar to, "Well, I guess we've got to do what we've got to do."

Sgt. Nartatez then formulated a plan in his mind as to how they were going to arrest Officer Covarrubias. Sgt. Nartatez did not want Lt. Ast or Commander Ritz to show up at the checkpoint. He believed if they did so, Officer Covarrubias would know he was in trouble. Instead, Sgt. Nartatez wanted to surprise Officer Covarrubias.

As Sgt. Nartatez was thinking about a plan to arrest Officer Covarrubias, Sgt. Nartatez asked Lt. Ast and Commander Ritz, "Why are we rushing this?"

Lt. Ast replied to Sgt. Nartatez by telling him something similar to, "We need to do it now."

Sgt. Nartatez told Lt. Ast something similar to, "Let's get Mark (Sgt. Norling) and tell him what's going on."

Lt. Ast called Sgt. Norling on the police radio and directed him to return to the station as soon as possible.

At the time Lt. Ast called Sgt. Norling, Sgt. Norling was waiting for several of his officers to make a felony arrest. Sgt. Norling answered Lt. Ast's radio call by telling him he understood Lt. Ast and would return to the station as soon as he heard his officers had the situation under control.

As Sgt. Norling pulled into the parking lot, Lt. Ast, Corporal Ruiz and Sgt. Nartatez walked out of the police station. They walked to Sgt. Norling's patrol car. Sgt. Nartatez opened the door and sat in the front passenger seat.

Commander Ritz came out of the police station and joined the group of officers in the parking lot, where Lt. Ast briefed Sgt. Norling. Lt. Ast told Sgt. Norling the following: Lt. Ast, Sgt. Norling, Corporal Ruiz and Sgt. Nartatez were going to go to the DUI checkpoint to arrest Officer Covarrubias. They did not have a lot of time. According to Sgt. Norling, the DUI checkpoint was shutting down and Lt. Ast was afraid Officer Covarrubias was going to leave the checkpoint.

The plan was for Sgt. Nartatez and Sgt. Norling to drive to the checkpoint in one car, drive through the checkpoint, get out of their vehicle at the checkpoint, and then arrest Officer Covarrubias.

Sgt. Nartatez asked that Lt. Ast "lay back a little bit," when arriving at the DUI checkpoint. Sgt. Nartatez told Lt. Ast he wanted Lt. Ast to do so in order to give Nartatez and Sgt. Norling enough time to approach Officer Covarrubias before Lt. Ast did so.

Sgt. Norling asked Lt. Ast if any of the other officers at the checkpoint knew what was about to happen. Lt. Ast told Sgt. Norling nobody at the checkpoint knew what was about to happen.

Sgt. Norling said he was concerned about arresting an on-duty officer who was obviously armed with a firearm.

Lt. Ast told Sgt. Norling that Officer Covarrubias may be aware officers were coming to arrest him and that Lt. Ast believed Officer Covarrubias was suicidal.

Sgt. Norling again expressed his concern to Lt. Ast. Lt. Ast told Sgt. Norling that Sgt. Flaa and Sgt. Van Meel were telling him, "We've got to go, we've got to go," and that they were going to proceed with the plan as he had directed.

Sgt. Nartatez looked at Sgt. Norling and asked him something similar to, "Is this the game plan? We're just going to go out and do this?"

Sgt. Nartatez then asked Sgt. Norling if there was a better plan. Lt. Ast was present when Sgt. Nartatez did so. Lt. Ast told Sgt. Nartatez and Sgt. Norling, "We need to go now."

As Sgt. Nartatez and Sgt. Norling were driving out of the police department parking lot, they stopped their car just past the gate leading to Cook Street. Lt. Ast's vehicle was directly behind Sgt. Nartatez' and Sgt. Norling's vehicle. Sgt. Norling got out of his car and walked to Lt. Ast's car. Sgt. Norling told Lt. Ast that the combination of Officer Covarrubias being potentially suicidal, and knowing he was the target of a criminal investigation, was not a good combination. Sgt. Norling again expressed his concern to Lt. Ast that none of the other officers at the checkpoint knew what was about to happen.

Lt. Ast responded to Sgt. Norling's concern, about none of the officers knowing what was about to happen, by calling Lt. Flores. Lt. Ast did so just prior to leaving the station with Corporal Ruiz.

Conversations between Lt. Ast and Lt. Flores

Lt. Flores was picking-up traffic cones and shutting-down the checkpoint when Lt. Ast called him. Lt. Ast asked Lt. Flores if the speaker on his mobile phone was off. Lt. Flores told Lt. Ast it was.

Lt. Ast then told Lt. Flores the following: Lt. Ast and other officers were driving to the DUI checkpoint to arrest Officer Covarrubias for committing sex crimes. Investigators had made a cold call to Officer Covarrubias during which Officer Covarrubias threatened suicide.

Lt. Flores was surprised and confused by what Lt. Ast told him. He did not immediately comprehend what Lt. Ast was saying. Lt. Flores asked Lt. Ast if he was joking.

Lt. Ast told Lt. Flores the following: He was serious. Lt. Ast needed Lt. Flores to locate Officer Covarrubias, watch him carefully, and be nearby when the officers arrived to arrest Officer Covarrubias in case they needed assistance.

Lt. Ast asked Lt. Flores where Officer Covarrubias was. Lt. Flores looked around the DUI checkpoint for Officer Covarrubias. He could not see Officer Covarrubias. He told Lt. Ast he could not locate Officer Covarrubias.

The call between Lt. Flores and Lt. Ast ended.

Lt. Flores began to look for Officer Covarrubias. Lt. Flores called-out to an officer who was nearby, "Where's Covarrubias?"

Officer Covarrubias was directly behind Lt. Flores in the DUI trailer when Lt. Flores did so. Officer Covarrubias answered, "Here I am."

Lt. Flores tried to stay calm. He told Officer Covarrubias something similar to, "Oh hey, that's okay. I wanted you to be in the car in front of the tear down of the cones. But that's okay."

Lt. Flores called Lt. Ast. Lt. Flores told Lt. Ast Officer Covarrubias was near the DUI checkpoint trailer. Sgt. Nartatez was still at the station with the other officers during this conversation and heard Lt. Ast on the phone with Lt. Flores. Based on the conversation between Lt. Ast and Lt. Flores, Sgt. Nartatez believed Covarrubias was at the DUI trailer.

After Lt. Flores told Lt. Ast that Officer Covarrubias was at the DUI trailer, Lt. Ast told Sgt. Norling and Sgt. Nartatez they needed to hurry over to the DUI checkpoint. Lt. Ast told Sgt. Norling he was worried Officer Covarrubias would not go directly to the police station from the checkpoint after it was over.

Sgt. Nartatez, Sgt. Norling, Lt. Ast and Corporal Ruiz left the police department and began to drive to the DUI checkpoint at that time.

As Sgt. Nartatez and Sgt. Norling drove to the DUI checkpoint, they were not in communication with Lt. Ast or Lt. Flores.

Arrest of Officer Covarrubias

Lt. Flores and several other officers, including Officer Covarrubias, walked toward the parked police motorcycles. As Lt. Flores and the other officers were walking toward the motorcycles, Lt. Flores stepped away from the group and called Lt. Ast. This occurred at 1:27 a.m. Lt. Flores told Lt. Ast something similar to, "We're almost done. We're getting to the bikes. We're going to be at the bikes before you guys get up here."

Lt. Ast told Lt. Flores something similar to, "We're going to leave here now." During the conversation Lt. Ast told Lt. Flores, "I need you at a place where you can watch him. I need you to be there when this happens."

As Lt. Flores and the other officers reached the motorcycles the officers started to disperse. Officer Covarrubias walked toward a patrol car in which three explorers were seated.

Lt. Flores called out to his officers, "Hey guys, get back over here. I want a team meeting real quick."

Both Lt. Flores and Acting Sgt. Prescott shouted to Officer Covarrubias, "Cova, get over here."

A patrol car drove up, Sgt. Nartatez and Sgt. Norling got out of the patrol car and walked toward the group. As they did so, one of the officers said something similar to, "Oh, they're checking on us."

Officer Kline saw Lt. Ast drive by in his white Crown Victoria. Officer Kline looked at Lt. Flores with what he referred to as a "what's up" look.

Sgt. Nartatez and Sgt. Norling walked directly toward Officer Covarrubias. As they did so, Officer Covarrubias backed away from them. Sgt. Nartatez reached towards Officer Covarrubias. As Sgt. Nartatez grabbed for him, Officer Covarrubias pulled his gun out. Lt. Flores yelled something similar to, "He has his gun out!" Sgt. Norling tripped over the curb, fell down, and quickly rose.

As Sgt. Nartatez tried to control Officer Covarrubias, he heard the distinctive sound of Officer Covarrubias' gun being removed from the holster.² Officer Covarrubias then fired a shot. Sgt. Nartatez saw a muzzle flash to his left. He yelled twice something similar to, "We need help!" Officer Kline heard someone say "gun." He then heard a shot and saw a muzzle flash.

Officer Guerra saw a commotion on the grassy area and heard four gunshots. He drew his firearm and took cover. He did not know what was happening and wondered if someone had walked-up on the officers.

Sgt. Nartatez and Officer Covarrubias fell to the ground together. Sgt. Norling also joined in the struggle to control Officer Covarrubias' gun. Officer Kline ran to the area and pulled his firearm. He saw a struggle in the grass then tripped on a curb and fell down. A magazine from his duty belt fell onto the grass when he tripped. As Officer Kline got up, he heard Sgt. Nartatez scream something similar to, "Hey, help me! He's got his gun! I need some help, you guys! I need some help!"

Officer Covarrubias had a gun in his hand as Sgt. Norling tried to keep Officer Covarrubias from firing the gun. Officer Covarrubias tried to pull the gun toward his own body while Sgt. Norling tried to keep the gun from pointing at anybody. Sgt. Norling tried but could not pull the gun away from Officer Covarrubias. Sgt. Norling tried to pry Officer Covarrubias' fingers off of the gun; however, he could not get Officer Covarrubias to let go of the gun.

Officer Kline recognized "the fight for life." He knew they were struggling over control of the weapon. Officer Kline was concerned that someone was going to get shot if he did not act.

Sgt. Nartatez was on top of Officer Covarrubias and continued to yell for help. It appeared to Officer Kline that Sgt. Norling was in the vicinity of where the firearm was being pointed. Officer Kline moved in and fired three rounds.

Officer Covarrubias went limp. Sgt. Norling was then able to get the gun away from Officer Covarrubias. Sgt. Norling saw Officer Kline holding his handgun. Sgt. Norling heard Kline

² Sgt. Nartatez described this sound as "breaking leather," a term commonly used by officers to describe the sound of a gun being removed from a holster.

make several statements similar to, "What the fuck is going on?" Sgt. Norling maintained possession of Officer Covarrubias' handgun until Santa Barbara Sheriff's Office investigators took it from him.

Sergeants Norling and Nartatez backed away. Sgt. Nartatez called for an ambulance. Officer Kline was emotionally upset. Sgt. Nartatez went to him. Officer Kline asked Sgt. Nartatez twice something similar to, "Was it Cova?" Sgt. Nartatez told Officer Kline it was. This caused Officer Kline to become even more upset.

It appeared to Lt. Flores after the shooting that Officer Kline was very distraught. Officer Kline made repeated statements similar to, "What happened? What is going on?"

Lt. Ast approached and saw Officer Covarrubias down and not moving. Lt. Ast asked the officers nearby who had fired their weapon. He asked this twice. After the second time he asked, Officer Kline answered that he shot Officer Covarrubias.

Lt. Ast moved Officer Covarrubias' jacket aside and saw blood coming from his neck area. Lt. Ast grabbed a yellow patrol blanket and began applying pressure to the area until paramedics arrived.

Initially, there was a lot of confusion and officers were trying to get suspect or vehicle information. Officer Guerra saw Officer Kline off to the side. Officer Kline said, "I fucking shot him. I shot him. I had to shoot him. He pulled a gun out and shot at the sergeants. I had to"

Medics treated Officer Covarrubias and transported him to the hospital. Officer Covarrubias was pronounced dead at Marian Medical Center.

Evidence at the Scene

Officer Kline's duty weapon was a Glock, Model 21, .45 caliber semi-automatic handgun. It was taken as evidence. It had ten rounds still in the magazine and one in the chamber. The maximum capacity of the firearm, including a chambered bullet, is fourteen rounds.

Three expended .45 caliber casings were found on the ground where the incident occurred.

Officer Covarrubias' duty weapon was a Glock, Model 15, 9mm handgun. Investigations collected it as evidence. It had 16 rounds in the magazine and one in the chamber. The maximum capacity of this firearm, including a chambered bullet, is 18 rounds. One expended 9mm casing was found on the ground where the incident occurred.

Investigations found a fully loaded .45 clip on the ground near where the incident occurred. It was later determined this clip was to Officer Kline's gun.

Video from a security camera at a nearby business documented some of the incident.

Autopsy

On January 31, 2012, the autopsy was conducted at the Santa Barbara County Sheriff's Office Coroner's Bureau. The pathologist found evidence Officer Covarrubias was shot three times. One round entered the back of the neck damaging muscles, the left jugular vein, and traveled through to an exit wound at the front of the left chest. The second bullet entered the back of the neck, damaging the vertebrae (C6 & C7), spinal cord, subclavian vein, and left clavicle, where it remained until it was removed during the autopsy.

There was a third wound to the upper back consistent with soft tissue injury where a ballistic vest stopped a bullet.

It is the pathologist's opinion that both gunshot wounds to the neck caused fatal injuries.

The pathologist classified the cause of death as multiple gunshot wounds.

Statement of Officer Matt Kline

Santa Barbara Sheriff's Office investigators interviewed Officer Matt Kline. The following is a summary of his statement:

Officer Kline described himself as a friend and co-worker of Officer Covarrubias. Officer Kline said he had approximately five years' experience with the Santa Maria Police Department. He was assigned to the traffic division as a motor officer. He worked a ten-hour shift on January 27, 2012. He started at 7:00 a.m. and worked until 5:00 p.m. He was assigned to work an overtime shift to help conduct a DUI checkpoint from 5:00 p.m. until approximately 1:00 a.m. to 2:00 a.m.

Officer Kline said after his normal ten-hour shift, he attended a briefing with officers and explorers who were assigned to the DUI checkpoint. Officer Covarrubias was at the briefing. Lt. Flores separated the officers and explorers and asked for a list of the explorers working that night. Lt. Flores told the officers there was something going on which caused people to speculate an explorer may have badged someone or done something to cause an investigation.

After working the checkpoint, Officer Kline assisted in taking it down. Officer Arias picked up the explorers in a patrol car to take them home.

Lt. Flores called for a quick meeting with the officers. They gathered near the motorcycles. Lt. Flores asked where "Cova" was. Officer Covarrubias was with Officer Arias and the explorers. Lt. Flores told Officer Covarrubias to join them for a quick meeting. As Officer Covarrubias walked over to join them, Officer Kline saw Lt. Ast drive by in his white Crown Victoria. Officer Kline looked at Lt. Flores with a "what's up" look. Officer Kline then saw Sergeants Norling and Nartatez walk directly towards Officer Covarrubias. Officer Covarrubias looked at

them and walked between the two motorcycles. Sgt. Nartatez reached for Officer Covarrubias. Officer Covarrubias backed away. Suddenly they began to struggle.

Officer Kline heard someone say "gun." He then heard a shot and saw a muzzle flash. Officer Kline ran toward the area of the muzzle flash and pulled his firearm. He saw a struggle in the grass. He tripped on the curb and fell down. A magazine from his duty belt fell onto the grass when he tripped. As he got up, Sgt. Nartatez screamed, "Hey, help me! He's got his gun! I need some help, you guys! I need some help!"

Officer Kline recognized "the fight for life" and knew they were struggling over control of the weapon. He was concerned that because one round had already been fired and there was a fight for control of the gun, that someone was going to get shot if he didn't act. Sgt. Nartatez continued to yell for help. Sgt. Norling appeared to be in the vicinity of where the firearm was being pointed. Sgt. Nartatez was on top of Officer Covarrubias. Officer Kline moved in and fired two contact rounds into Officer Covarrubias' neck. He believed it was the only way he could prevent someone else from getting shot. After he fired, Officer Covarrubias went limp. It was only then that it registered with him what had happened.

Part II - LEGAL ANALYSIS AND CONCLUSION

Applicable Law

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.

Penal Code section 196(2) defines justifiable homicide by public officers. "*Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty.*"

Under California law, anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense, need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.

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.

In *Graham v. Conner* (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances" of the particular incident "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Id.*, at 396.) Further the Court stated, "[t]he '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." (*Id.*, at 397.) Moreover, "[t]he 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." (*Id.*, at 397-398.)

. . . . Thus, under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes "reasonable" action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347. *Graham's* definition of reasonableness has been described as "comparatively generous to police in cases where potential danger, emergency

conditions or other exigent circumstances are present.” (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police “...a fairly wide zone of protection in close cases *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

Legal Analysis

The evidence indicates that on January 26, 2012, Santa Maria police received information that caused them to open an investigation into a potential inappropriate relationship between a police officer and a police cadet who was under the age of 18. The investigation took off rapidly and some 24 hours later their investigation had developed probable cause to arrest Officer Albert Covarrubias for sex crimes involving a minor.

Knowing that his conduct was illegal, and, if uncovered, would not only destroy his career but result in his incarceration, Officer Covarrubias asked the victim to deny the relationship. He also said he would kill himself before he went to jail.

Based on the information at hand, it was decided it was necessary to act immediately and arrest the officer.

After seeing two sergeants, and possibly a police lieutenant, come to the DUI checkpoint, and seeing the sergeants directly approach him, Officer Covarrubias backed away and drew his weapon. He fired a single shot. He physically resisted the efforts of the sergeants to control his firearm. Officer Kline, a friend of Officer Covarrubias, saw a life threatening situation unfold in front of him. Fearing for the safety of others, and believing he needed to act immediately to preserve the sergeants’ lives, he shot and killed Officer Covarrubias.

Conclusion

Based on the investigation by the Santa Barbara Sheriff’s Office, applying the law as set forth in PC196(2) and the cases cited *supra* in this report, I’ve concluded Officer Kline was justified in using deadly force, and, therefore, this shooting was justified under the provisions of California law.