



**ARTHUR CORNEJO LEVARIO JR.
OFFICER-INVOLVED DEATH
PUBLIC REPORT**

Case Type: OFFICER INVOLVED SHOOTING

RPD Case No. P18-135608

WEDNESDAY, JULY 20, 2018, 1946 Hours

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Date of Incident: July 20, 2018 – Approximately 1946 Hours

Location: Arlington Avenue / Streeter Avenue

Decedent: Arthur Cornejo Levario Jr. M 05/31/1973 (45-years)

Involved Officer(s): Officer Jarrod O'Farrell #1749

I. Preamble:

The finding by the Community Police Review Commission ("Commission") as stated in this report is based solely on the information presented to the Commission by the Riverside Police Department ("RPD") criminal investigation case files, and follow-up investigative report submitted by CPRC Independent Investigator, Mike Bumcrot, of "Mike Bumcrot Consulting," Norco, California.

II. Finding:

On December 09, 2020, by a vote of 7 to 0 (1 vacancy and 1 absence), the Commission found that the officer's actions were consistent with RPD policy (Section 300.4 – Use of Force Policy), and circumstances determined through the Commission's review and investigation.

Smith	Evans	Huerta	DeBrier	Berrellez	Levine	Teichert	Hirales	Vacant
✓	✓	Absent	✓	✓	✓	✓	✓	

III. Standard of Proof for Finding:

In coming to a finding, the Commission applied a standard of proof known as the "Preponderance of Evidence." Preponderance generally means "more likely than not," or may be considered as just the amount necessary to tip the scale. The Commission need not have certainty in their findings, nor do they need to support their finding "beyond a reasonable doubt." The Preponderance of Evidence standard of proof is the same standard applied in most civil court proceedings.

IV. Incident Summary:

This incident began in the City of Hemet involving members of the Hemet Police Department's Crime Suppression Team.

On July 20, 2018, Hemet Police Detective A. Paez and Hemet Police Sergeant M. Muat, went to a residence in the City of Hemet to conduct a follow-up investigation on a felony CPC 246 case (discharging a firearm at an inhabited dwelling) that occurred on July 13, 2018, in Hemet.

Detective Paez and Sergeant Muat saw the suspect vehicle from the 246 CPC incident in front of the residence. They saw the front seat passenger exit the vehicle and walk into the residence. The driver and sole occupant, later identified as Arthur Levario, remained in the vehicle. Paez and Muat walked up to the vehicle to contact Levario when the vehicle suddenly backed up in reverse and sped off.

Detective Paez and Sergeant Muat returned to their police vehicle and immediately gave chase. They pursued Levario in Hemet and when they reached the intersection of Florida Avenue and N. California Avenue, Levario fired 2-3 gunshots from his vehicle at the two officers who were not struck by the gunfire. Paez and Muat informed responding officers via police radio that the suspect fired shots at them during the car chase.

Detective Paez and Sergeant Muat continued to pursue the suspect vehicle onto the 215 freeway. They notified the California Highway Patrol and Riverside County Sheriff's that they were in pursuit in their jurisdiction, and that shots had been fired from the vehicle. Levario exited the 215 Freeway at Van Buren and fired shots at Riverside County Sheriff's Deputy Thomas and Sergeant Morovich who were at that location to assist in the car chase. The two deputies were not hit by the gunfire. Levario proceeded on Van Buren into the City of Riverside where he was intercepted by RPD Canine Officer Feimer.

The suspect proceeded driving at speeds of over 100 mph and at various times drove on the wrong side of the street. Once within the Riverside City Limits, the pursuit continued an additional approximate 18-miles before it eventually terminated on Arlington and Streeter Avenue where Levario collided into occupied vehicles while driving on the wrong side of the street.

Prior to the collision, the suspect vehicle proceeded west on Arlington Avenue from a residential area, and as it approached Streeter Avenue, Levario drove west in the eastbound lanes into oncoming traffic. Officer O'Farrell was driving north on California Avenue and turned into the lane that merges onto eastbound Arlington. O'Farrell stopped his marked police vehicle south of Arlington in stopped traffic. Levario veered his vehicle left as if he intended to drive south on California Avenue toward O'Farrell's vehicle.

Officer O'Farrell felt he was boxed in and had nowhere to go so in defense of his life and that of the many people in their vehicles, he fired his first shot with his patrol rifle through the windshield of his police vehicle at Levario. The suspect ducked down and swerved his vehicle to the right toward eastbound traffic on Arlington. O'Farrell estimated the speed of Levario's vehicle at approximately 30 mph when he (O'Farrell) fired his weapon. O'Farrell did not know whether or not Levario was hit with his first shot.

At this point, the RPD airship officers broadcasted that the suspect was heading into on-coming traffic and would likely collide into stopped vehicles.

As the suspect vehicle continued driving in an easterly direction toward stopped vehicles in the roadway, O'Farrell fired his weapon a second time from his open driver door while still seated in his vehicle. He was unaware if he hit the suspect or vehicle with the second shot. O'Farrell estimated the speed of Levario's vehicle at approximately 20 mph when the second shot was fired. Levario passed the point where O'Farrell was stopped and O'Farrell exited his police vehicle. Levario had collided into stopped occupied vehicles. Once stopped, Levario did not put the vehicle into park nor did he attempt to back-up.

Officer O'Farrell, assisted by Officers Hernandez and Reimer, approached on foot and took cover behind a stopped occupied vehicle. Other assisting officers were removing people from their vehicles and escorting them to safety. The officers gave Levario several commands to show his hands before he finally complied. Levario had his driver door open. O'Farrell was able to see Levario's back. Levario briefly showed his hands but then turned to his right and his hands went down toward the passenger seat. O'Farrell could not see what Levario was doing with hands.

Knowing the suspect had a gun, and that he displayed no regard for public safety or the safety of law enforcement officers during the entire pursuit, O'Farrell fired his weapon a third time, this time striking Levario in the back of his head. As officers converged onto Levario's vehicle, they saw a 40 Caliber semi-automatic handgun on the front passenger seat.

As members of RPD's Metro Team approached Levario, they fired twice at him with the less lethal bean-bag shotgun since they did not know at that point whether he was still a possible threat or not. Levario did not respond when struck with the beanbags. A canine was then deployed and Levario still did not respond. RFD paramedics were then requested by officers to check Levario's vitals. Upon doing so, the paramedics declared him deceased at the scene. The incident was then concluded. No other officers fired their weapons during this incident.

Officer O'Farrell had his handgun with him but he did not fire it. He chose to use his rifle because it had better accuracy. Given the situation and the amount of people around, he knew from his training he would be more accurate with his rifle. He did not know how the situation was going to end and he did not know if he would be in close range of the suspect or if he would need to use it for a longer range. O'Farrell felt that he had a clear background before he fired his weapon. He said because of the angle he had he could see the Sears parking lot behind Levario. There was nothing between Levario and what was beyond him which could potentially be hit.

The rifle used by Officer O'Farrell in this incident was a .223 Caliber Colt M-4 Commando rifle loaded with 28-rounds. The charting of O'Farrell's rifle by investigators revealed that he fired 3-rounds.

V. CPRC Follow-Up:

The Commission requested a cover-to-cover review of the Criminal Casebook by CPRC Independent Homicide Investigator Mike Bumcrot of Bumcrot Consulting, located in Norco, California.

Mr. Bumcrot is a nationally recognized expert in homicide and Officer Involved Death cases. His resume is available for review. The purpose of this review is for Mr. Bumcrot to provide the CPRC with his opinions and conclusions on the entire criminal investigation conducted by members of the Riverside Police Department based upon his experience and expertise. Mr. Bumcrot felt that the investigation conducted by the Riverside Police Department Homicide Bureau was thorough, and that all evidence collected and preserved was completed accordingly and within best practices of homicide investigations.

VI. Evidence and Methodology:

The relevant evidence in this case evaluation consisted of a complete review of the Riverside Police Department Criminal Casebook as well as supplemental reports prepared by members of RPD. The review included statements from witnesses, statements from witness officers and the officer involved in the shooting, California Fire and American Medical Response. In addition, a Deputy Coroner investigation and autopsy report, along with police reports and photographs, forensic examination results and a report by the independent CPRC investigator.

VII. Applicable RPD Policy(s); Penal Codes and Case Law:

RPD – Policy Manual, Policy 300

USE OF FORCE

Policy 300.3, Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time...

Policy 300.3.2, Use of Force Factors

(a) Immediacy and severity of the threat to officers and others; (b) conduct of the individual being confronted; (c) suspect's mental state or capacity; (d) proximity to weapons; (e) potential injury to officers, suspects and others; (f) whether person appears to be resisting, evading, or attacking; (g) risk and reasonable foreseeable consequences of escape; (h) any other exigent circumstances

Policy 300.4 – Use of Deadly Force

300.4 DEADLY FORCE APPLICATIONS

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):
(a) An officer may use deadly force to protect him/herself or others from what he/she

reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person. (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/ herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a). An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle

Other Applicable RPD Policy(s): (Refer to RPD Policy Manual)

307 Investigation of officer Involved Shootings and Incidents Where a Death or Serious likelihood of Death Results

California Penal Code § 835a states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

People v. Turner, 2 Cal.App.3d 632 (1969), the right of police officer to assure his own safety during the course of an investigation is not limited to disarming the person immediately before him. The officer may do anything reasonably necessary to neutralize the threat of physical harm.

Graham v. Connor, 490 U.S. 396 (1989), considered the reasonableness of a police officer's use of force, and instructed that the reasonableness must be judged from the perspective of a reasonable officer on scene.

VIII. Rationale for Finding – Within Policy:

Upon review, analysis and deliberations of this incident, the Commission concluded that the use of deadly force by the officer involved was within the RPD Policy on Use of Force/Deadly Force as well as within the Penal Code laws in the State of California and case law under the *Graham v. Conner* court decision (490 U.S 396 1989).

The Commission found that Mr. Levario created an extremely dangerous situation for himself, the community at large, and all police officers involved through his careless and reckless disregard for human life by his erratic driving and randomly firing a handgun at police from a moving vehicle.

Members of the Hemet Police Department were in the process of investigating Levario's involvement in a felony "*shooting at an occupied dwelling*" case when they located him seated in a vehicle at a residence. When the officers attempted contact with Levario, he immediately fired gunshots at the officers, missing both of them. He sped off in the vehicle and the Hemet officers gave chase in their police vehicle. The pursuit then began in Hemet.

Mr. Levario drove at very high speeds estimated at over 100 mph throughout the pursuit. He put other drivers on the roadway at risk with his erratic and reckless driving that included driving on the wrong side of the roadway. Also, during the pursuit, Levario randomly fired gunshots at two Riverside County Sheriff's deputies who were trying to control traffic so that no innocent drivers could get in the way. He missed the two deputies but the random firing of a handgun from a high-speed moving vehicle could also have struck innocent bystanders. It was miraculous that no one was hit by the random bullets flying through the air.

The pursuit continued into the Riverside City limits where Levario continued driving at high speeds, failing to stop for stoplights, stop signs and at times driving on the wrong side of the roadway. Officers of the Riverside Police Department took over the pursuit once it entered the city limits. Once within the Riverside City limits, Levario drove approximately 18-miles which lasted for nearly 15-minutes. Levario's actions posed a significant threat to the community and the officers who were charged with the responsibility of protecting them and other officers. In addition, Levario showed no regard for his own life. The pursuit took place during daylight hours from approximately 7:00 p.m. to 7:46 p.m. when it terminated.

Prior to the termination of the pursuit, Levario exited a residential neighborhood and drove west on Arlington Avenue. As he approached Streeter Avenue, Levario drove west in the eastbound lanes into oncoming traffic. Officer O'Farrell was driving north on California Avenue and turned into the lane that merges onto eastbound Arlington Avenue. He stopped his vehicle south of Arlington Avenue.

Mr. Levario veered his vehicle to the left as if he intended to drive south on California Avenue toward Officer O'Farrell's police vehicle. Officer O'Farrell was stuck in a position where he could not go anywhere as Levario drove in his direction. Fearing for his life and that of passengers in vehicles around him, O'Farrell took hold of his patrol rifle figuring it would be more accurate than his handgun considering all the people around the area. The situation was unfolding very rapidly, giving O'Farrell very little time to respond. O'Farrell then fired his patrol rifle through the windshield of his police vehicle which struck Levario's vehicle.

When Officer O'Farrell fired his first round, Levario ducked down and swerved his vehicle into oncoming traffic where vehicles were stopped. O'Farrell began to quickly exit his police vehicle and fired a second round from his open door as he saw Levario driving toward occupied stopped vehicles where he (O'Farrell) feared Levario was going to collide head-on into the stopped vehicles. It appeared that this second shot struck the driver's side upper seat cushion, just below the headrest and then struck the interior windshield on the passenger side. Levario then collided head-on into a stopped occupied vehicle. Levario did not put his vehicle into park or turn it off.

Officer O'Farrell and two other officers approached Levario and used a nearby stopped vehicle to gain a position of advantage. Levario was still in the driver side of his vehicle. All three officers repeatedly shouted commands at Levario to show his hands. Levario initially complied. He briefly showed his hands to the officers then quickly turned toward the front passenger seat, concealing both of his hands. It was at this point where O'Farrell, fearing that Levario was accessing a gun, fired a third round, striking him in the neck. Levario succumbed to the neck injury. O'Farrell fired his weapon at Levario after Levario failed to comply to keep his hands up, and quickly reached downward near the passenger side where the officers lost sight of his hands.

The Commission felt that all three shots fired by Officer O'Farrell were within Department Policy and within the law of the State of California concerning the use of deadly force. O'Farrell feared not only for his own life, but that of community members sitting in their vehicles with no where to go. He also was concerned that if Levario escaped from his vehicle, he could take hostages. Up until the time of the shooting, Levario demonstrated no fear in randomly and recklessly firing a handgun at officers from his vehicle, endangering police officers and innocent people who were just going about their business. In addition, the lack of care and concern when driving erratically, carelessly and recklessly putting all people on the roadway in danger.

The Commission discussed the Riverside Police Department policy on shooting at moving vehicles since two of the rounds fired by O'Farrell took place as the vehicle was still in motion. The policy reads as follows:

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES *Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle,*

or if deadly force other than the vehicle is directed at the officer or others. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

The first and second shot taken by Officer O'Farrell were at the time Levario's vehicle was still in motion and driving in a head-on direction toward O'Farrell and several stopped and occupied vehicles. The RPD Policy allows for an officer to **only discharge their firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle or if deadly force other than the vehicle is directed at the officer or others.** The Commission felt that considering the totality of the circumstances leading up to the moment O'Farrell fired the shots, O'Farrell had no reasonable means to avert the threat of Levario's vehicle and/or him being armed after already randomly and erratically firing a handgun out of his vehicle at police officers. Thus, the Commission found the Use of Deadly Force within policy.

IX. Recommendations:

None.

X. Closing:

The Commission offers its empathy to the community members, police officers, and City employees who were impacted by the outcome of this incident, as any loss of life is tragic, regardless of the circumstances.

APPENDIX

Mike Bumcrot Consulting Report of Investigation

Section A

RPD Policy 300 / Policy 300.3, Use of Force; **Policy 300.3.2**, Use of Force Factors; **Policy 300.4** Deadly Force Applications; **Policy 300.4.1** Shooting at or From Moving Vehicles; **Policy 307** Investigation of officer Involved Shootings and Incidents Where a Death or Serious likelihood of Death Results

Section B

