

CITY OF VENTURA

Date: October 27th, 2014

To: Chief Ken Corney

From: Shooting Investigation Team: Commander Mark Stadler, Commander Rick Murray, Craig Kelly, Officer Misti Henserson

Subject: Officer Involved Shooting on 08/03/2014, RN # 14-09701

Officers Involved: Officer Matthew Baumann, Officer Jason Kohagen

Suspect: Clemente Zamarripa-Mata 12/29/1987

Deadly Force Review Board Final Report

INCIDENT SUMMARY

On 08/03/2014 at approximately 1545 hours, Police Services Officer (PSO) Mendoza was assigned to the Ventura County Fair working a traffic checkpoint on Garden St. Mendoza was dressed in her PSO uniform and wearing an orange traffic vest when she observed a red truck driven by a Hispanic male adult later identified as Zamarripa-Mata.

Zamarripa-Mata asked Mendoza if she spoke Spanish. Mendoza answered stating that she spoke a little. Zamarripa-Mata then asked Mendoza in broken English if he could park down the street. Mendoza told Zamarripa-Mata, "No" and asked him to turn around and drive north on Garden Street toward Thompson Boulevard. Zamarripa-Mata did not comply and instead drove southbound toward the railroad tracks. That was the last time Mendoza saw Zamarripa-Mata or his truck.

was on-duty working security at the Garden Street gate entrance to the fairgrounds when the red truck drove up to him and screeched to a halt. The driver's side window was down, so was able to hear the driver say, "Sorry, sorry, sorry" then sped off toward the Garden Street gate. Gibson said he watched as the truck entered the fairgrounds property through the first set of gates that were open. The truck continued forward and collided within the closed interior gates. said the truck then went "violently" in reverse, then drove eastbound on the frontage road adjacent to the railroad tracks.

was on-duty working security at the Garden Street gate. She was standing near a pillar to the left of the gate when she heard a co-worker yelling for someone to stop the red truck. She saw the red truck speed through the first set of open gates and then strike the interior gate that was closed. As

went to make contact with the driver she noticed that the driver's window was down and she heard what sounded like giggling from the driver and passenger. The passenger then fled into the fairgrounds. said the truck then backed-up at a high rate of speed and fled eastbound on the frontage road adjacent to the train tracks.

a bus driver for was driving bus : following directly behind bus southbound on Garden Street preparing to cross the railroad tracks and turn eastbound onto the frontage road. Suddenly a red truck appeared from an unknown location and began to speed eastbound on the frontage road. The truck had to slow as it approached the rear of bus because the road was too narrow to pass. The red truck then suddenly passed on the left side of bus by jumping the curb and driving on the gravel roadbed that is part of the railroad tracks. The red truck began to lose control and sideswiped bus as it came back down onto the frontage road from the elevated gravel railroad roadbed. The red pickup continued eastbound to the end of the frontage road and onto Harbor Bl. where lost sight of the red truck.

Commander Davis was on-duty and assigned as the Commander in charge of police services at the Ventura County Fair. Commander Davis received a telephone call at the police command post from a female named who works for fair security. stated there was a red truck driving erratically and it was headed toward Ventura Police officers. Commander Davis was able to determine that she was referring to the traffic control point on Harbor at Figueroa. Commander Davis broadcast the information over the police radio regarding the red truck. During the investigation, Corporal Gomez said that he heard on the police radio that a red truck was driving erratically in the direction of the traffic control point. Officer Baumann was conducting traffic control at the intersection of Harbor and Figueroa on the west side of the intersection. Officer Baumann was monitoring vehicle and pedestrian traffic coming into and exiting the Ventura County Fair parking lot. He was standing with Corporal Gomez, Officer Gonzales, Detective Caliento and Police Cadet Lewis.

Officer Baumann described the traffic control point as being set up on Harbor west of Figueroa. The eastbound traffic is split into two lanes, a traffic lane that forces vehicles to turn north onto Figueroa Street, and a traffic lane forcing buses eastbound onto Harbor Bl. Traffic is directed to each of these lanes by an electronic signboard message in English and Spanish. Moving eastbound, placed behind the signboard in the center of the roadway splitting the lane is the Ventura Police traffic trailer. The traffic trailer is used as a command post for the traffic unit at the control point. Continuing eastbound, the police motorcycles are parked directly in front of the open rear ramp door of the trailer. There is also a Ventura Police Department portable canopy that provides shade for the traffic trailer opening that faces eastbound.

Corporal Anselmo was working at the traffic control point on Harbor Boulevard at Figueroa Street when he saw the red truck driven by Zamarripa-Mata moving at approximately 30 mph eastbound on Harbor Blvd towards the police traffic control point. Corporal Anselmo considered this a high rate of speed because it was entering into a cone pattern approaching the Ventura Police Department traffic control point.

a bus driver for had just finished dropping off guests at the Ventura County Fair on Harbor Bl. and was preparing to pull away from the

curb west of Figueroa St. when he witnessed the red truck driving at a high rate of speed as it approached the Ventura Police traffic control point.

Corporal Anselmo gave hand signals and verbal commands for Zamarripa-Mata to stop. Zamarripa-Mata did not stop, forcing Corporal Anselmo to move out of the path of the speeding truck. Zamarripa-Mata drove into the far right lane of the traffic point and came to a stop alongside the Ventura Police Department Traffic trailer. Zamarripa-Mata had to stop because a vehicle that was stopped in front of him.

Officer Kohagen was inside the traffic trailer eating lunch. Officer Kohagen vaguely remembers a radio broadcast about a reckless driver in the area and he heard the truck approaching, so he exited the traffic trailer. Officer Kohagen saw Corporal Anselmo standing at the driver's door of a red Chevrolet S10 pick up truck. He could hear the engine revving and Corporal Anselmo yelling at the driver for his driver's license. Kohagen saw the expression on Corporal Anselmo's face and felt that something wasn't right. Kohagen also saw that the driver was Hispanic and thought maybe there may be a language barrier and Anselmo may be having difficulty communicating with the driver. Kohagen knows some Spanish and went to assist in the matter. As Officer Kohagen approached the driver's side of the truck he asked Zamarripa-Mata for his driver's license in both English and in Spanish. Zamarripa-Mata was wearing sunglasses, but appeared to be looking forward and not making eye contact. Zamarripa-Mata's speech was slurred, mumbled, and incoherent.

Sergeant Brunk was inside the traffic trailer on a break when he heard Officer Kohagen telling Zamarripa-Mata to stop his car. Sergeant Brunk exited the traffic trailer to assess the situation. At Officer Kohagen's request, Sergeant Brunk told the driver of the silver SUV stopped in front of Zamarripa-Mata's truck to remain in place to prevent Zamarripa-Mata from driving eastbound onto Harbor Boulevard.

Zamarripa-Mata began to manipulate the gearshift and was trying to put the manual transmission into gear, however he was struggling to do so. Kohagen saw a beer can in the front console and decided to remove Zamarripa-Mata for further investigation. Kohagen opened the driver's door and asked Zamarripa-Mata to step out of the vehicle. Zamarripa-Mata continued to stare straight ahead and continued to try to get the vehicle into gear. Kohagen attempted a driver removal control hold technique, however Zamarripa-Mata tensed up and placed the vehicle into reverse gear.

Zamarripa-Mata ignored Officer Kohagen and Cpl. Anselmo's commands and began to drive in reverse. Corporal Anselmo knew there was a white pick-up truck with passengers stopped behind Zamarripa-Mata and he feared for their safety. Corporal Anselmo and Officer Kohagen reached into the vehicle to try to stop the truck from moving. Corporal Anselmo held onto Zamarripa-Mata as he accelerated quickly in reverse. Zamarripa-Mata backed into the white truck in the lane behind him. For his own safety Corporal Anselmo let go of Zamarripa-Mata when his truck crashed into the white truck.

was the driver of the white truck and his wife and son were passengers. They finished their day at the Fair and were leaving the property when they stopped behind a red truck at the police traffic control area on Harbor at Figueroa. said two officers were talking to the driver of the red truck. said the red truck then squealed its tires

in reverse and backed into the front of his truck. then saw the red truck accelerate forward toward the traffic trailer and make contact with an officer. said he saw an officer standing behind the red truck fire his weapon and believed he heard 3-5 shots. saw the red truck crash into the police motorcycles and believed if the motorcycles had not been there the red truck could have easily accelerated into people.

Officer Caliento was positioned on the ramp near the corner of the traffic trailer and could see Corporal Anselmo and Officer Kohagen attempting to control Zamarripa-Mata. Officer Caliento was behind Sergeant Brunk on the asphalt moving to assist Officer Kohagen and Corporal Anselmo who were near the driver's side of the truck. As Zamarripa-Mata's truck accelerated toward Sergeant Brunk he began to move backwards. After Sergeant Brunk moved passed Officer Caliento's field of vision, Officer Caliento fired his Taser at Zamarripa-Mata through the open window. Officer Caliento said the darts missed Zamarripa-Mata and had no effect because the probes landed inside the truck. Officer Caliento then transitioned to his handgun because he perceived an immediate threat to the officers and pedestrians in the area. Officer Caliento did not fire his weapon because he was not in a safe position to do so without risking injury to an officer or bystander.

Zamarripa-Mata then drove forward in the lane and veered left directly toward Sergeant Brunk as he was backing toward the trailer's ramp. Sergeant Brunk grabbed the cable attached to the ramp. Sergeant Brunk attempted unsuccessfully to utilize the trailer ramp cable to pull himself out of the way of the truck. Zamarripa-Mata hit Sergeant Brunk causing him to roll onto the hood of the truck and strike the windshield with his arm. Sergeant Brunk was able to maintain his grip on the cable and pull himself off of the truck and into the trailer avoiding further injury.

Officer Kohagen saw Sergeant Brunk get hit by the Zamarripa-Mata's truck; his arms fly into the air, and then lost sight of Sergeant Brunk. Officer Kohagen believed Sergeant Brunk had been run over. Zamarripa-Mata was not stopping and continued onto the ramp of the trailer. Officer Kohagen believed that if Zamarripa-Mata hadn't already killed Sergeant Brunk, he would potentially kill other officers or pedestrians in the crosswalk. Officer Kohagen believed that Zamarripa-Mata did not care what he hit or what he ran over. Zamarripa-Mata was still accelerating so Officer Kohagen fired three shots from his duty weapon through the rear window of Zamarripa-Mata's truck to prevent him from possibly dragging Sergeant Brunk's body or injures anyone else.

Officer Baumann heard the sounds of the revving engine from Zamarripa-Mata's truck. Officer Baumann reached the front passenger side of the truck as he heard an unidentified officer say, "He hit Brunk!" Officer Baumann could not see Sergeant Brunk and feared he was trapped under the truck as saw the truck was still moving up and over the ramp to the traffic trailer. Officer Baumann perceived an additional threat to pedestrians and Police Cadet Lewis nearby because Zamarripa-Mata was accelerating toward the intersection where Officer Baumann had been monitoring. Officer Bauman fired one shot at Mata through the truck's windshield. Officer Baumann said he heard the shots from Officer Kohagen's slightly before he fired his weapon. Zamarripa-Mata's truck came to rest on the police motorcycles.

Sergeant Brunk and Detective Caliento broadcast, "Shots fired!" Zamarripa-Mata was removed from the truck and handcuffed. Zamarripa-Mata had one gunshot wound to the

back of his neck. Officers on scene rendered first aid to Zamarripa-Mata until medical personnel arrived to take over.

The crime scene was secured and witnesses were contacted. Zamarripa-Mata was transported to the Ventura County Medical Center for treatment. Several attempts were made to interview Zamarripa-Mata for the criminal investigation, however he is on a ventilator and could not speak. During subsequent follow-ups with Zamarripa-Mata's sister, investigators learned that Zamarripa-Mata told his sister that he did not want to provide a statement to police.

During the investigation detectives have received several consistent statements that there was heavy pedestrian and vehicle traffic in the area and that the officers' actions likely saved countless lives and prevented further injury to both officers and citizens in the area.

Policy

The purpose of this Deadly Force Review is solely to determine if the conduct, or acts of the officers involved, was consistent with Ventura Police Department policy and/or procedure. The Ventura Police Department (VPD) identified the department philosophy concerning the use of force in the VPD manual section 300.

VPD Manual Section 300 – USE OF FORCE

The Department policy further takes into account the California Penal Code concerning the use of reasonable force to effect and arrest:

Any peace officer may use reasonable force to effect an 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/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835).

The department Use of Force policy outlines several factors that may be used to determine the reasonableness of use of force and states the following concerning deadly force applications:

The Department Use of Force policy further outlines factors officers should consider when shooting at or from moving vehicles.

The Department Taser Guidelines policy outlines factors officers should consider when deploying the Taser device.

VPD Manual Section 309 – TASER® Guidelines

Opinions and Conclusions

The Deadly Force Review Board has reviewed all of the facts and circumstances, as well as all department policies, relating to the use of force regarding this incident. Our final report also encompasses the completed criminal investigation in the incident. The Board has considered the following facts:

- Officers Matthew Baumann, Jason Kohagen, Officer Caliento, Corporal Anselmo, and Sergeant Brunk were on duty in police uniforms and working at a traffic control checkpoint for the Ventura County Fair
- Zamarripa-Mata was driving a red Chevrolet S-10 pick-up truck and had an unidentified passenger when he disregarded instructions from a Police Services Officer and drove his truck into an unauthorized area
- Zamarripa-Mata drove his truck recklessly past Ventura County Fair security officers and onto the fairgrounds property and collided with a gate on the fairgrounds property then failed to stop and report the incident
- Zamarripa-Mata's unidentified passenger exited the truck and ran onto the fairgrounds property without authorization
- Zamarripa-Mata recklessly drove his truck in reverse past security and citizens then onto a frontage road alongside the railroad tracks recklessly sideswiping an occupied bus as he attempted to pass the bus by leaving the roadway
- Zamarripa-Mata continued to speed toward a Ventura Police Department traffic control point
- Corporal Anselmo and Officer Kohagen attempted to gain voluntary compliance from Zamarripa-Mata when he and his truck were stopped in the traffic lane
- As Corporal Anselmo and Officer Kohagen attempted to get identification from Zamarripa-Mata they saw an open container of beer and a pipe used to smoke controlled substances in the passenger compartment of Zamarripa-Mata pick up truck.
- Zamarripa-Mata disregarded the commands from Corporal Anselmo and Officer Kohagen and attempted to drive away by backing into a vehicle
- Officer Caliento perceived the threat presented by Zamarripa-Mata's reckless driving and fired his Taser with no effect because the darts missed and landed in the truck
- Zamarripa-Mata drove forward and steered at Sergeant Brunk striking him and causing bodily injury
- Officers Baumann and Kohagen independently concluded that Zamarripa-Mata had used deadly force against Sergeant Brunk and Sergeant Brunk was possibly pinned under the truck
- Officers Baumann and Kohagen independently determined to use deadly force against Zamarripa-Mata because of his assaultive driving and demonstrated willingness to inflict injury, posed a significant threat to the lives and safety of officers and pedestrians in the immediate area
- Officer Baumann and Officer Kohagen believed there was no other reasonable means available to avert the threat of the vehicle to police personnel or the public

Note – At the time of this report, Zamarripa-Mata's toxicology results were not available.

Furthermore, the board considered both the law and case law relevant to the use of deadly force. The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful. It is found in California Penal Code sections 196 through 199. It requires the user of deadly force to honestly believe that he or someone else is in imminent and deadly peril, and that a reasonable person in the same circumstances would believe the same and would deem it necessary to use deadly force in order to protect against such peril. In this particular case both officers honestly believed they and others were in imminent and deadly peril. The Board found these beliefs to be reasonable.

In determining whether a person acting in self-defense, or in the defense of others, acted properly upon the appearance of danger, the law recognizes that a person experiencing a stressful event is not able to reflect upon his actions and the perceived threat against him or others, to the same degree as a person who is not being confronted by an emergency situation. When police officers encounter potential threats of deadly attack, the warning is often instantaneous and the danger immediate. The law recognizes this situation. With regards to this incident the officers were clearly required to make split second decisions when the possibly intoxicated suspect operating a motor vehicle that had just caused serious bodily injury to an officer continued to present an immediate deadly threat to the officers and the public.

The Deadly Force Review Board has reviewed the departmental use of force policy, the facts and circumstances surrounding the incident and the law surrounding the use of deadly force. The board has unanimously made the final determination the actions of Matthew Baumann and Jason Kohagen were within departmental policy and procedures.