

INTEROFFICE MEMORANDUM

DATE: February 23, 2009 **PHONE:** (909) 945-4216

FROM: **John P. Kochis**
Chief Deputy District Attorney
West Valley Division

TO: **Dennis D. Christy**
Assistant District Attorney

James B. Hackleman
Assistant District Attorney

SUBJECT:	Officer Involved Shooting Causing Injury
INVOLVED OFFICERS:	Eugene Carrillo, Daniel Gainey
INVOLVED AGENCY(IES):	California Highway Patrol
INJURED PARTY:	Paul Vincent Prindle D.O.B. 11/26/61 Resident of Pinon Hills, Calif.
DATE AND TIME OF INCIDENT:	October 31, 2008, 2053 hours
INVESTIGATING OFFICER:	SBSO Det. J. Radeleff
SHERIFFS DR #:	600800269
SHERIFFS H#:	H75-08
STAR #:	2008-71346
COURT CASE #	FWV802928
CHARGES PENDING:	PC 245(A), CVC 2800.1, PC 245(D) 2CTS

FACTUAL SUMMARY

OVERVIEW

Deputies from the Victor Valley Sheriff's Department were dispatched to the home of Paul Prindle on October 31, 2008 at approximately 5:07 pm regarding a call that he had assaulted his stepdaughter. When they arrived they learned that Paul Prindle had left the residence. Prindle's wife told the Deputies that Paul had armed himself with a gun and was suicidal.

Deputies located Paul Prindle in his vehicle on Phelan Road at approximately 8:05 pm. A high-risk felony stop was conducted. Prindle exited his car armed with a handgun. He pointed the handgun at his own neck and yelled for the Deputies to shoot him. When

his gun malfunctioned he cleared his gun and fired several rounds into the desert. He got back into his car and drove away. Prindle stopped two more times on Phelan Road, each time he got out of his car and fired shots into the desert.

Prindle drove until he reached I-15, entered the freeway and drove south to Rancho Cucamonga. CHP officers took over the pursuit once he entered the freeway. CHP Officers deployed spike strips that disabled several of his tires.

Prindle traveled southbound on I-15 and then westbound I-10. He exited the freeway at Haven Avenue and pulled into the Mobil Gas Station. Prindle got out of his car and pointed a handgun at CHP Officers who were at the scene. Those Officers fired shots at him out of fear for their safety. Prindle was wounded by some of those shots but survived. Evidence recovered at the scene and medical records indicated that Prindle shot himself once in area of his neck and face during the stand off.

FACTUAL BASIS

The following materials have been submitted and form the basis for the factual basis and summary: the San Bernardino County Sheriff Department investigation and reports, witness and officer interviews, photographs, video recording, diagrams, radio dispatches and medical records.

FACTUAL SUMMARY

On October 31, 2008 at approximately 5:03 p.m. Prindle's stepdaughter called the Victor Valley Sheriff's Substation and reported that he had just assaulted her. She told dispatch that Prindle had hit her in the face causing her injuries. She told dispatch that she ran from the location of the assault.

SBSO Deputy Jones arrived near the location at approximately 5:21 p.m. and found Prindle's stepdaughter hiding in a field. She has numerous contusions and was bleeding from her mouth. She told Deputy Jones that Prindle hit her in the face numerous times grabbed her by the throat and began choking her during an argument at their home. She said she was able to break away from him and fled the house. Prindle then also left the location armed with a handgun.

Deputy Jones contacted Prindle's wife who told him that Prindle has made numerous suicidal comments over the past year and had pointed a gun at her during an argument within the last month. She also said that Prindle had called from his mother's house in Pedley and told her that he would probably be dead before you got home. She said she believed that Prindle was armed with either a .38 or .45 caliber handgun.

Deputy Jones entered Prindle's vehicle description and license plate into NCIC as a felony car. He included the information that Prindle was possibly armed with a handgun.

Deputy Jones left the substation and began driving in the area of Phelan Road. He saw Prindle driving his car and conducted a felony car stop on him. Prindle stopped his car, got out and pointed a handgun under his own chin. Deputy Jones ordered Prindle to drop the gun several times. Prindle responded by saying, " Shoot me." Deputy Jones continued to order Prindle to drop his gun. Prindle yelled back that he had nothing to live for. Deputy Jones pleaded with Prindle several times to put the gun away.

Other Deputies arrived at the scene. Prindle continued to say that he had nothing to live for. Prindle again put his gun under his own chin and pulled the trigger several times. His gun malfunctioned and would not fire. Prindle then fired two rounds into the desert, ejected two other rounds from his gun, got back inside his car and drove off.

Prindle again stopped his car got out and pointed his handgun under his chin. Prindle again threatened to commit suicide. He again said he had nothing to live for. Again Deputy Jones tried to talk with him and de-escalate the situation. Prindle continued to rant that he had nothing to live for. He again pulled the trigger and the gun again malfunctioned and did not fire. He then fired two rounds into the desert, ejected two more rounds, got back inside his car and drove off.

Prindle then stopped his car a third time. He got out of his car with his handgun under his chin and again threatened to commit suicide. He reached into his car retrieved a bottle of liquor, began drinking and continued to yell at the Deputies. He fired two rounds into the desert. He put the gun back under his chin, pulled the trigger but the gun did not fire. He ejected two rounds got back into his car and drove toward Highway 138. SBSO Deputies followed in pursuit.

Prindle continued on Highway 138 until he reached Interstate I-15. He entered I-15 and headed southbound. Officers from the California Highway patrol joined the pursuit. Prindle drove southbound toward Rancho Cucamonga with both officers from SBSO and the CHP in pursuit. Several of the officers activated their overhead lights and sirens. Prindle continued southbound on I-15 and would not pull over.

CHP Officers Gainey and Carrillo were both on duty and monitored the radio dispatch of the SBSO pursuit of Prindle's vehicle that was described as a blue Chevy Avalanche. The dispatch advised that the driver of the suspect vehicle was armed with a weapon and had previous shot at deputies. (It was later determined that Prindle did fire his weapon in the presence of SBSO deputies while in the high desert but did not point his gun at them.)

Both Gainey and Carrillo proceeded southbound on I-15 and parked. Officer Gainey parked on the shoulder of the Sierra onramp to the southbound I-15 and Officer Carrillo parked on the southbound shoulder of the I-15 south of the 210 interchange. Dispatch advised that the CHP would be taking over the primary responsibility for the pursuit of the vehicle. Both officers joined the pursuit when Prindle and the pursuing SBSO deputies passed them.

Deputies from the Rancho Sheriff's Department were able to place spike strips on the I-15 southbound south of Foothill Blvd and again near 4th Street. Prindle ran over those strips and it did damage his tires and slowed him down. He then proceeded to I-10 and drove westbound. Officers from both the CHP and Sheriff's Department remained in pursuit.

Prindle exited the I-10 freeway at Haven Ave. and drove northbound. By this time some of his tires had come apart from driving over the spike strips and he was driving on his front rims. He made a u-turn at Empire Blvd. and drove back southbound on Haven. Prindle then turned into the Mobil gas station on the west side of Haven Ave. He stopped on the north side by the gas pumps.

CHP Officers Gainey and Carrillo entered the parking lot of the Mobil Gas Station and parked approximately 70 ft behind Prindle. Prindle got out of his car armed with his handgun. He pointed his handgun at his own chin and yelled for the officers to get out of the area and leave him alone.

Both Officers Gainey and Carrillo exited their cars. Officer Gainey was armed with a shotgun and Officer Carrillo was armed with a shotgun. A number of other officers arrived at the gas station and exited their patrol cars. Several officers ordered Prindle several times to drop his handgun.

Prindle then returned to his car and got back inside. He remained inside for a matter of seconds. Prindle then opened the door to his car said "all right fuck it" and pointed his handgun in the direction of Officers Gainey and Carrillo. Officer Gainey in fear for his safety and the safety of his fellow officers fired at Prindle. Officer Gainey felt he was under attack and that he was going to be shot by the suspect who was pointing a gun at him. Officer Gainey fired four shots at Prindle.

Prindle then retreated back inside his own car. Officers heard a gunshot from inside the car and saw the glass on the driver's side of Prindle's car shatter. Officer Gainey believed that Prindle was firing at him and he fired another shot toward the driver's window. (Evidence later recovered at the scene and medical records indicated that Prindle shot himself once in his neck/face area while inside his car. That bullet entered the right side of his neck and the wound extended toward the left side of his face.)

Prindle then opened the door to his car, stepped out and pointed his handgun toward Officers Carrillo and Gainey. Officer Carrillo, in fear for his safety and the safety of other Officers, fired a shot at Prindle. Officer Carrillo also feared that Prindle might run inside the gas station and harm the persons inside the store. Prindle fell out of his car and onto the ground bleeding from his neck and head area. Officers yelled at Prindle to remain on the ground and he complied.

Prindle was taken into custody and separated from his handgun. He was taken to the hospital and survived. Evidence recovered at the scene and his medical records indicated that Prindle shot himself in the neck during the standoff. That bullet wound traveled from his neck into his face. It was also determined that he was shot by CHP Officers Gainey and Carrillo in the legs when he pointed his handgun in their direction.

A subsequent search of Prindle's car was conducted. Officers found a loaded .45 caliber semi-automatic handgun in the right front passenger seat. A box containing 85, .45 caliber bullets was also found in the front seat along with expended cartridges.

CASE STATUS OF PENDING CHARGES

Criminal charges have been filed against defendant Paul Prindle in case # FWV802928. Defendant Prindle is charged in that case with one count of P.C. 245(a), one count of CVC 2800.1 and two counts of P.C. 245(d). The case is currently set for a Disposition Reset on March 12, 2009 in Dept. 20 at the Rancho Courthouse.

STATEMENT OF APPLICABLE LAW

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (People v. Collins (1961) 189 CA 2d 575, 1 Cal. Repr. 504).

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the defendant act out of that fear (Penal Code Sec. 19; People v. Clark (1982) 130 CA 3d 371, 277, 181 Cal. Repr. 682

CAL CRIM 507 (2005 NEW) JUSTIFIABLE HOMICIDE: BY PUBLIC OFFICER

A person is not guilty of Attempted Homicide or Homicide if he/she attempted to kill/killed someone while acting as a public officer/or obeying a public officer's command for aid and assistance. Such an attempted killing/killing is justified, and therefore not unlawful, if:

1. A person was a public officer/ or obeying a public officer's command for aid and assistance;

2. The attempted killing/killing was committed while taking back into custody a convicted felon [or felons] who had escaped from prison or confinement, arresting a person or persons charged with a felony who was resisting arrest or fleeing from justice, overcoming actual resistance to some legal process, or while performing any other legal duty.

3. The attempted killing/killing was necessary to accomplish one of those lawful purposes; AND

4. The person had probable cause to believe that another person posed a threat of serious physical harm, either to the person or to another person [or that *the person killed* had committed *a forcible and atrocious crime*. A person has *probable cause* to believe that someone poses a threat of serious physical harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause serious physical harm to another. An officer of a local Police Department is a *public officer*.

CAL CRIM 3470 (REVISED JUNE 2007) RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

Self-defense is a defense to the unlawful killing of a Human Being. A person is not guilty of that/those crimes if he/she used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;
2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The person used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The person must have believed there was imminent

danger of violence to himself/herself or someone else. The person's belief must have been reasonable and he/she must have acted because of that belief. A person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the person used more force than was reasonable, the person did not act in lawful self-defense/ or defense of another.

When deciding whether a person's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

The person's belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

Cal. Penal Code section 835a

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect 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 the 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.

Cal. Penal Code Section 245c (summarized in pertinent part)

Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a police officer or firefighter, and who knows or reasonably should know that the victim is a police officer or firefighter engaged in the performance of his duties..... shall be punished in the state prison for three, four or five years.

USE OF DEADLY FORCE BY A PEACE OFFICER

Authorization of the use of Deadly Force is analyzed under the Fourth Amendment's "*objective reasonableness*" standard. *Brosseau v. Haugen*, 543 U.S. 194, This question "is governed by the principles enunciated in *Tennessee v. Garner*, (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386.

In these decisions, the US Supreme explained "it is unreasonable for an officer to 'seize an unarmed, non-dangerous suspect by shooting him dead.... However, where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force." (*Tennessee V Garner supra*)

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. It is also highly deferential to the police officer's need to protect himself and others. 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. *Graham*, 490 U.S. at 396,. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397.

The US Supreme Court in *Graham* set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (See also *Billington v. Smith*, (2002 9th Cir) 292 F.3d 1177, 1184.) The most important of these factors is the threat posed by the suspect. *Smith v. City of Hemet*, (9th Cir. 2005) 394 F.3d 689.

Thus, under *Graham*, the high court advised 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.

The US Supreme Court's definition of "reasonableness" is therefore comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present. *Roy v. Inhabitants of City of Lewiston* (1st Cir.1994) 42 F.3d 691, 695, In effect, the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a

fairly wide zone of protection in close cases.... (*Ibid.*) Thus, "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer."

Based on the above stated principles, where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. However where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to apprehend the suspect or prevent escape. (Tennessee v Garner; Graham V Conner supra.)

ANALYSIS

Suspect Prindle presented a substantial danger to himself and to others on the date of this incident. He assaulted his stepdaughter. He demonstrated suicidal tendencies by repeatedly pointing a loaded handgun at his own head. He demonstrated his danger to the public by firing his handgun into the desert several times when stopped by officers and leading them on a high-speed chase for miles. He presented a very real danger to the officers when he got out of his car and pointed a loaded handgun in their direction. Finally he presented a clear danger to himself when he turned his gun on himself and fired a shot into his chin.

CONCLUSION

CHP Officers Gainey and Carrillo were justified in using deadly force and shooting at suspect Prindle to protect themselves and fellow officers from the danger he presented he pointed a loaded handgun at them. Their use of deadly force was justified as acts of self defense and defense of others to prevent Prindle from shooting them.

By: _____
John P. Kochis

Dated: _____

Chief Deputy District Attorney

Approved

By: _____

Dennis D. Christy
Assistant District Attorney

Dated: _____