



**LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION**

STEVE COOLEY • District Attorney
JACQUELYN LACEY • Chief Deputy District Attorney
PATRICK R. DIXON • Assistant District Attorney

JANICE L. MAURIZI • Director

October 23, 2012

Chief Rick Esteves
Downey Police Department
10911 Brookshire Avenue
Downey California 90241

Captain David Smith
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File No. 11-0683
LASD File No. 011-00115-3199-013

Dear Chief Esteves and Captain Smith:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the fatal shooting of Michael Nida by Downey Police Officer Steven Gilley. We have concluded that Officer Gilley acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at 9:43 p.m. on October 22, 2011. The District Attorney Response Team, comprised of Deputy District Attorney Stephanie Sparagna and District Attorney Senior Investigator Jeffery Scott, was given a briefing of the circumstances of the shooting and a "walk-through" of the scene.

The following analysis is based upon reports prepared by the Los Angeles County Sheriff's Department (LASD) and the Downey Police Department (DPD) submitted to this office by LASD Detectives Jeffrey Leslie and Adan Torres, LASD Homicide Division.

Officer Gilley's voluntary statement was used as part of this analysis.

FACTUAL ANALYSIS

On October 22, 2011, at 7:13 p.m., Priscilla Mireles was robbed at the Bank of America ATM machine located at 7878 Imperial Highway [Imperial] in the City of Downey. Mireles left the ATM and called her mother who in turn called 9-1-1 to report the robbery. The operator called Mireles on her cell phone, obtained additional information and instructed Mireles to return to the bank to meet with responding officers.

At 7:18 p.m., DPD dispatcher broadcasted that the suspects were two males armed with handguns and wearing dark clothing running eastbound towards Paramount Boulevard [Paramount]. Information regarding the suspects and their direction and method of travel changed during continuous broadcasts to and from DPD units. Varying descriptions of the suspects initially included two males, two black males and three black males. The clothing descriptions included dark or black clothing, dark hoodies, a dark plaid shirt unknown color, and black sweatshirts. The method of travel used by the suspects included a white truck or car and ultimately running and jumping a wall or fence at a nearby market.

Michael Nida was 31 years old. His ethnicity is Puerto Rican and Caucasian. He and his wife, Naily, were going out to dinner and had stopped at the ARCO gas station located on the corner of Imperial and Paramount, three hundred yards from the ATM. The Nidas were unaware of the robbery and that officers were patrolling the area for suspects. Nida ran across Imperial, outside the crosswalk, to purchase cigarettes for his wife who remained at the ARCO pumping gas.

At 7:41 p.m., DPD Officer Blanca Reyes detained Nida when he exited the tobacco shop for jaywalking. At first Nida was cooperative. Suddenly and inexplicably, as captured on video, Nida ran from Reyes who immediately broadcasted, "I got one running from me across Imperial and to the rear of Walgreens."¹

Responding officers, each in uniform and marked patrol cars, contained the area searching for a person they believed was an armed robbery suspect. Within ten minutes, Officers Steven Gilley and Michael Powell detained Nida after he climbed over a cinder block wall into the alley behind Walgreens. Nida at first refused to obey their commands to show his hands and get on the ground. Eventually, he complied and was face down on the ground when he jumped up and ran from the officers ignoring their commands to stop. The officers did not have a chance to search Nida before he ran. Believing Nida was armed and dangerous, Gilley fired one three round burst from his MP5 killing Nida.²

Statement of Officer Marko Milosovich³

Milosovich was the first officer to respond to the ATM and speak to Mireles who explained that she did not see the faces of the two robbers but thought they were in their twenties based on the sound of their voices.⁴ Originally, she described the suspects as wearing hoodies and armed with handguns. Later, she elaborated that one wore a dark hoodie with skinny jeans and the other wore a plaid shirt with black pants and that only one had a handgun. Mireles saw them

¹ Walgreens is located next to the ARCO.

² The MP5 submachine gun combines the automatic fire of a machine gun with the cartridge of a pistol. The MP5 uses the same 9mm bullets used in a semiautomatic handgun. The MP5 is more controllable and accurate in close quarters than a handgun due to the sight feature and recoil system. The three-round burst selector allows the shooter to pull the trigger once causing three bullets to discharge.

³ Detectives Leslie and Torres interviewed Milosovich on October 23, 2011 at 2:30 a.m.

⁴ Detectives Leslie and Torres interviewed Mireles on October 23, 2011 at 2:10 a.m.

jump a fence and run south. She corrected herself and told Milosovich the suspects ran east. She also added that immediately after she was robbed she saw a white truck traveling east at a very slow speed through the lot. Milosovich later learned the truck belonged to a witness who was in the area with his family purchasing pumpkins in a lot near the ATM. This man saw three male Blacks run through the lot and flee over a fence. Milosovich stayed with Mireles and broadcasted the information he obtained from her and the witness until he heard Reyes broadcast that a suspect was running from her.

Statement of Officer Blanca Reyes⁵

Reyes responded to the BOA and was informed by Milosovich that the victim was unsure if the suspects were Hispanic or Black. Reyes, along with other units, searched for the suspects. She patrolled nearby areas where prior robberies had occurred involving dark skinned Hispanics or male Blacks. She was stopped at a red light at the intersection of Imperial and Paramount monitoring the radio activity. She saw another patrol car at the intersection and a male Hispanic, later identified as Nida, walking on Imperial and looking back at the other patrol car as if he were trying to avoid being seen by the officer. Nida was wearing a black and white stripe shirt and loose jeans, had a shaved head and “looked like a gang member.” The description of the suspects included a plaid shirt. Reyes has experienced witnesses mistaking plaid for stripes.

Nida ran across the highway into the “Imperial Tobacco Shop” located on East Imperial. Reyes drove into the lot, waited for Nida to exit and detained him for jaywalking and questioning.⁶ She was unable to get on the radio due to the heavy traffic. She ordered Nida to sit on the curb and asked to see his identification. He was cooperative, called her “ma’am” and retrieved a sheet protector containing papers from his back pocket. Reyes was about to broadcast her location with her handheld radio when Nida stood and ran through the lot, across the lanes of Imperial and through the parking lot of Walgreens. Reyes broadcasted Nida’s description and direction of travel and her location.⁷ Nida left the corduroy slippers he had been wearing on the pavement.⁸

Reyes drove to Lyndora Street, which runs parallel to Imperial behind Walgreens, and monitored radio broadcasts. Within minutes, she heard gunshots. She ran to the ARCO and saw Nida running on Paramount where he fell to the ground. Reyes ran to him, noticed blood on his chest, radioed “shots fired” and requested paramedics. Nida flailed his arms attempting to get up as Reyes pushed him down and patted him for weapons.

Reyes was approached by Nailly Nida who was upset and wanted to know what happened. Reyes learned Nailly drove a white truck and that she and Nida were at the gas station earlier when he

⁵ Detectives Leslie and Torres interviewed Reyes on October 23, 2011 at 2:55 a.m.

⁶ The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of police investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal. *People v. Teneteria* (1992) 2CA 4th 440, 444

⁷ Reyes broadcasted “male, Hispanic, plaid, long sleeve shirt, black hat, blue jeans, missing a shoe.”

⁸ A pair of corduroy slippers was recovered on the sidewalk where Nida was detained by Reyes.

ran to get cigarettes. Reyes had been given additional information that the armed suspects were seen getting into a white truck and, as instructed by her sergeant, detained Naily along with the truck.

Statement of Officer Michael Powell⁹

Powell received information that a female was robbed of \$40 at the ATM by two male Blacks wearing dark hoodies, armed with guns and fleeing in a white truck or car. An update indicated that the suspects ran through a pumpkin patch and hopped a fence. Powell was traveling on Paramount when he heard Reyes broadcast that a suspect was running from her. He parked between the Kentucky Fried Chicken and the ARCO and saw Gilley, armed with an MP5, outside his car further down the alley. Powell heard over the radio an officer state, "I got someone to the rear" referring to a yard on Lyndora.¹⁰ Powell exited his car and immediately turned on his audio recorder as he stood near the cinder block wall running parallel to the alley. Powell saw the flashlights of the officers searching the backyards on Lyndora. He heard movement and saw Nida lift himself onto the top of the wall and slide down into the alley landing on his feet between Powell and Gilley. Nida was four yards from Powell and thirty yards from Gilley. Nida's shirt caught in the wall and pulled over his head allowing Powell to see Nida did not have a gun in his waistband.

Powell drew his service weapon and commanded Nida to get on the ground and show his hands as he radioed, "I have one at gunpoint." Nida ignored Powell and walked a few paces away as Powell repeatedly ordered him to the ground. Gilley ran towards them ordering Nida to get on the ground and show his hands. Nida finally complied and laid face down on the ground with his arms bent at ninety degrees, his palms out and his fingers pointed towards his head "like the bottom position of a push-up." Both officers ordered Nida to get his hands "out further." Gilley placed his foot on Nida's back, pointed the MP5 downwards at Nida and commanded him to get his arms out. Nida refused and stated, "Just shoot me, kill me" a couple of times.

Powell holstered his gun and reached for his handcuffs. Nida moved his body "like a tripod" lifting his "butt into the air" with his head downward. Gilley pushed Nida down with his foot but was pushed back from the momentum of Nida getting up and running away. The officers chased Nida with Powell running on Nida's left and Gilley on Nida's right. Powell yelled, "Get on the ground," just before Nida turned to the left at his waist for "a split second" facing them when shots were fired. Powell did not discharge his weapon because he could see Nida's arms and hands. However, Powell believed Gilley did not have the same view:

"So for Gilley, they [hands] would have been in front of [Nida's] body where [Gilley] can't see."

⁹ Detectives Leslie and Torres interviewed Powell on October 23, 2011 at 3:30 a.m.

¹⁰ DPD Officer Ricardo Garcia broadcasted losing sight of a male Hispanic wearing dark clothes hiding behind a fence at 8033 Lyndora. Moments later, Nida jumped over the wall near 8027 Lyndora.

After Gilley fired his weapon, Nida turned away from the officers and ran at a "full sprint" towards Paramount. Nida slowed to a fast walk when he entered the street where a car traveling towards him stopped. Nida lunged into the car and fell to the ground. Powell searched Nida but did not find a weapon.

Statement of Officer Steven Gilley¹¹

Gilley responded to the broadcast of a female robbed at the ATM by two male Blacks wearing hoodies, both of whom were armed with black handguns. Gilley assisted other units in searching for the suspects until they broke off the perimeter near the bank. Gilley had just driven past the intersection of Imperial and Paramount when he heard Reyes broadcast that a suspect was running from her. Looking at his rearview mirror, he saw Nida running across Imperial towards the Walgreens and along the side of the building where he lost sight of him. Gilley broadcasted Nida's description as a male Hispanic wearing dark pants and a striped shirt. Gilley made a U-turn, activated his flashing lights and pulled slowly into the lot where customers were entering and exiting the store. Gilley drove around the building and spoke to a witness and his family who reported seeing a man running so fast he lost his shoe. Gilley thought the suspect was getting away.

Gilley parked his car with a view of the alley and the adjoining cinder block wall and fences which separated Walgreens from the residential area. Gilley believed there was nowhere the suspect could have gone except over the wall or fences into the backyards of residences on Lyndora. Gilley exited his car and stood by as units checked the yards. Gilley obtained his MP5 from his patrol car, chambered a round and selected the three-round burst.

Gilley and Powell were watching the wall when Gilley heard over the radio that Officer Garcia saw a male Hispanic wearing dark clothing in one of the backyards hiding behind a fence that ran from him. Gilley remembered his car was running and was concerned that the suspect, who had hopped fences and was again running from officers, would have access to his patrol car. Gilley ran to the car, locked and closed the door when he heard officers say the suspect was jumping over the wall.

Gilley did not witness Nida come over the wall. He saw Nida standing in the alley near Powell and immediately recognized him as the person he had seen running across Imperial. Powell pointed his gun at Nida as both he and Gilley ordered Nida to the ground. Nida did not comply and walked in a "very determined" manner away from them. Nida was "slow and hesitant" and paused before finally getting down on the ground.

Gilley did not know if Nida was armed because he did not have a view of the front of Nida and could not see his hands which were underneath him. Gilley was afraid because Nida was ignoring their commands to show his hands. Gilley stepped on Nida's back pointing the MP5, which he held with both hands, at Nida. Gilley ordered Nida to show his hands and yelled he

¹¹ Detectives Leslie and Torres interviewed Gilley on October 23, 2011 at 4:35 a.m.

would “shoot or kill” him to emphasize the severity of the situation. Gilley reminded Nida that both officers had guns drawn on him and if he tried “something stupid” he would be shot. Nida refused to show his hands and replied, “Go ahead and shoot me, go ahead and kill me.”

Gilley was now on “red alert.” He still could not see Nida’s hands. Suddenly, Nida pushed up with his hands and got to his feet causing Gilley to fall forward over Nida’s shoulders onto one or both knees. Gilley got up and turned to see Nida running towards people near Walgreens. Gilley thought Nida was a “fleeing felon” who had just committed an armed robbery and feared a hostage or carjacking situation or something even more violent: Gilley stated:

“...I’m thinking if he just robbed somebody at gunpoint...He’s like a wild animal, fight or flight...what’s he going to do to get away from us?”

Gilley was twenty feet away when he raised his MP5 and fired at Nida. Gilley could not remember if Nida turned to face him and Powell or made any movements towards them. Gilley took a stationary position when he fired the MP5. Gilley thought he missed as he and Powell chased Nida who ran in “an all-out sprint” as fast as he could to get away from them. Nida ran to Paramount where Nida was struck by a car and fell to the ground.

Other Witnesses

Geraldo Aguilar¹² is employed as a janitor at Walgreens. He was unloading equipment from his truck when he saw the police with guns drawn detaining Nida on the ground. He described Nida as “the gangster” because of the way he was dressed. Officer Gilley straddled Nida as he lay on the ground and Officer Powell stood near Nida’s head. Gilley screamed something Aguilar could not understand while pointing his weapon at Nida’s head. Gilley held the gun in one hand and started patting Nida with the other hand. Nida raised himself, “drag[ed] himself backwards” from Gilley’s position, stood and ran through the parking lot to Imperial. Both officers chased Nida and yelled three times to stop but Nida did not comply. Aguilar heard gunshots. Nida grabbed his torso and ran towards Paramount where Aguilar lost sight of him. Gilley was the one who shot Nida. Aguilar did not see Nida turn towards the officers. Aguilar clarified that he ducked behind his truck just before hearing the gunshots.

Michael Calero¹³ works at “Get Faded Barber Shop” located two businesses down from “Imperial Tobacco Shop.” Calero was standing outside the shop with his coworker, Juan Garcia when he saw Nida walking in the alley. An officer told Nida to stop but Nida ignored him. The officer drew his weapon and ordered Nida to get down but Nida would not comply. Another officer came from the back to help get Nida on the ground where he remained for five to fifteen seconds. The officers were talking to Nida who suddenly got up from a prone position like “Superman” and ran. Nida turned in a westerly direction and one of the officers fired two to

¹² Detectives Leslie and Torres interviewed Aguilar on October 23, 2001 at 12:45 a.m. DDA Sparagna and Senior Investigator Scott were present.

¹³ Detectives Mark Lillienfeld and John O’Brien interviewed Calero on October 24, 2011.

three rounds at him. Nida ran out of Calero's view. Simultaneously, Calero heard something strike an object and saw a projectile on the hood of his car parked in front of him and Garcia.

Naily Nida¹⁴ told the detectives that Nida ran across Imperial to the tobacco shop to get cigarettes for her as she pumped the gas. Nida ran "like really fast just trying not to get hit by cars." A short time later, Nida called on her cell phone and stated, "The cops are chasing me. I don't know why. I didn't do shit. I hate cops. I hate cops." The phone call was disconnected.¹⁵ Naily moved the truck from the pump area to the side lot of the gas station. She saw Nida running towards her from the drive-through of the KFC. He was "power-walking" towards Paramount and did not have anything in his hands. Officers had their guns drawn and surrounded Nida who stopped near a car in the traffic lanes. She heard gunshots and saw Nida collapse. She ran to Nida but the officers would not allow her to approach him.

Naily knew Nida possessed 1/8 of an ounce of marijuana.¹⁶ She was not surprised her husband ran from the police commenting that Nida was a "hot head" and "when you piss him off, you piss him off." Nida did not like the police because "cops were always messing with him for no reason, just because of his appearance." Naily added Nida was not a gang member but "may, probably looked like one." Nida had been arrested once over an argument with his brother.¹⁷ He told Naily he never wanted to go back to jail and that "it scared him to shit." She thought he ran because he didn't want to go back to jail.

Other Evidence

The coroner, Dr. Ajay Panchal, ascribed the cause of death to multiple gunshot wounds. Dr. Panchal found four gunshot wounds. Two bullets entered the left side of the back, exited near the center of the chest and were very closely spaced. The direction of the wounds was left to right, back to front and upward. The third round entered the left tricep and exited the left bicep. The direction was left to right, back to front and downward. There were no projectiles recovered. The additional gunshot wound was noted on the left wrist and most likely attributed to one of the other three gunshots. Projectile fragments were recovered from the left wrist. A toxicology report indicated the presence of marijuana in Nida's blood.

Gilley fired one three-round burst from a "Heckler and Koch", 9mm, MP5 submachine gun with an internal laser-red dot scope. The gun contained one 9mm round in the chamber and a magazine containing 24 9mm rounds. Attached to this magazine was a second 30 round capacity magazine carrying 28 9mm rounds. Three expended shell casings were recovered in the alley near Walgreens. A deformed projectile was recovered at 8023 East Imperial Highway.

¹⁴ Detectives Leslie and Torres interviewed Naily Nida on October 23, 2011 at 1:25 a.m.

¹⁵ The telephone call from Nida to Naily was made at 7:42 p.m. and lasted 18 seconds.

¹⁶ Property recovered from Nida's person included a closed package of cigarettes, two physician's statements indicating use of medical marijuana, one medical marijuana card and a baggy containing four grams of marijuana.

¹⁷ In 2005, Nida pled to criminal threats in violation of Penal Code section 422(a), a misdemeanor, in Case No. VA086639.

LEGAL ANALYSIS

A police officer can use deadly force to prevent the escape of a fleeing felon only where he has probable cause to believe that the suspect poses a threat of death or serious physical harm to the officer or to others. The felony must involve violence or the threat of violence.

Tennessee v. Garner (1985) 471 U.S. 1, 105 S. Ct. 1694; *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325; *Brown v. Ransweiler* (2009) 171 Cal App. 4th 516; *Penal Code sections* 196 and 835a.

Probable cause exists when the facts known to the arresting officer would persuade someone of reasonable caution that the person to be arrested has committed a crime. Probable cause is a fluid concept turning on the assessment of probabilities in particular factual contexts. It is incapable of precise definition. The substance of all the definitions of probable cause is a reasonable ground for the belief of guilt, and must be particularized with respect to the person to be seized. Sufficient probability not certainty is the touchstone under the Fourth Amendment. *Gillan v. City of Marino* (2007) 147 Cal. App. 4th 1033, 1044.

Probable cause can be established by “the collective” knowledge” of other officers. The officer making the stop need not know all the precise information relied upon by other officers. *People v. Ramirez* (1997) 59 Cal. App. 4th 1548.

An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896,899

If a person acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. *People v. Jackson* (1965) 233 Cal. App.2d 639

Where the peril is swift and imminent and the necessity for action is immediate, the law does not weigh into nice scales that conduct of the assailed and say that he shall not be justified in killing because he might have resorted to other means to secure his safety. *People v. Collins* (1961) 189 Cal App.2d 575

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation. *Graham v. Conner* (1989) 490 U.S. 386, 396-397

In *Graham*, 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. “... 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

The test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.”
Munoz v. City of Union City (2004) 120 Cal. App. 4th 1077, 1102

CONCLUSION

DPD officers, including Officer Gilley, responded to the area of Imperial and Paramount attempting to capture dangerous, armed suspects who robbed a young woman during nighttime. Officers obtained and shared information based upon what they were told by witnesses and dispatch as well as what they heard or observed themselves. Mireles could not determine the race of the suspects and gave vague descriptions of the clothing including dark, black or plaid hoodies and dark or skinny jeans. Mireles was unsure if the suspects used a vehicle to flee or ran and whether they ran east or south. Information was updated by dispatch that the suspects ran and fled through a lot and hopped fences. Officer Reyes first saw Nida running 300 yards from the bank and within 20 minutes of the original dispatch. Reyes was told by Milosovich, and verified in a recorded interview of Mireles by the detectives, that Mireles did not know if the suspects were Black or Hispanic.¹⁸

The law does not require certainty or proof beyond a reasonable doubt from an officer in assessing whether to detain someone. Although mistaken, Officer Gilley’s belief that Nida was one of the armed robbers was reasonable under the circumstances. Nida was described by Officer Reyes and Geraldo Aguilar as looking like a gang member. Officer Reyes urgently and excitedly advised, “I got one running from me towards the rear of Walgreens.” Reyes broadcasted the suspect was a male Hispanic wearing a plaid shirt. Gilley saw Nida and told dispatch that from his perspective the suspect appeared to be a male Hispanic with dark pants and a stripe shirt. Based on Reyes’ broadcast and his own observations of Nida running from an armed officer across four lanes of a busy highway, all of which were in close proximity in time and place of the robbery, Gilley reasonably inferred that Nida was one of the armed robbers running from Reyes.

Gilley lost sight of Nida as he ran behind Walgreens. Gilley was aware the robbers were hopping fences near the ATM and correctly presumed Nida jumped over the wall into the backyards on Lyndora. Gilley learned from an observant citizen and Reyes’ broadcast that Nida ran so fast from Reyes he lost a shoe. Within minutes of losing sight of Nida, Gilley heard Officer Garcia broadcast that the suspect was hiding in a backyard where the officers were

¹⁸ The broadcasts contained descriptions ranging from two to three suspects with no racial identification to Black males. Reyes broadcasted that the suspect running from her was a male Hispanic.

Chief Rick Esteves
Captain David Smith
October 23, 2012
Page 10 of 10

searching. Moments later Gilley learned Nida eluded the officers when he came over the wall into the alley. Nida ignored Gilley and Powell who were recorded yelling repeatedly at Nida to get on the ground, show his hands and put his hands out further. Although harshly worded, Gilley warned Nida he would “blow his head off” if he did not show his hands, stressing the gravity of the situation. Rather than comply, Nida responded that he wished Gilley would just shoot him. Seconds later, Nida actively resisted arrest when he jumped up from a prone position on the ground, forcing Gilley to his knees and ran yet a third time from armed officers causing one witness to describe Nida as “Superman.”

Nida had run from Reyes across the highway and from Garcia and other officers over the cinder block wall. Nida disregarded numerous commands by Gilley and Powell, implored Gilley to shoot him and resisted arrest before fleeing into a populated area. Under the totality of the circumstances, it was reasonable for Gilley to fear that Nida was an armed and dangerous robbery suspect with the ability to harm people in the surrounding businesses and residences. It was also reasonable for Gilley to believe Nida would disregard the lives of others in his attempt to flee when Nida had shown so little regard for his own life.

The entire exchange from the time Powell first ordered Nida to the ground and Gilley discharged his weapon lasted thirty two seconds. Gilley was required to make a “split second” decision when he fired his MP5 once at Nida. The events that were unfolding were the very “tense, uncertain, and rapidly evolving” circumstances that the United States Supreme Court had in mind while authoring their decision in *Graham v. Conner*. Gilley based his decision on what was known to him at the time and his fear Nida posed a threat to the public. Given the rapidly evolving, dangerous situation that confronted Officer Gilley, we conclude that Officer Steven Gilley was justified in using deadly force to prevent Nida’s escape. We are closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By



STEPHANIE SPARAGNA
Deputy District Attorney
213-974-3888

c: Officer Steven Gilley #12021