

Officer shooting at moving car criticized - San Francisco Chronicle (CA) - November 9, 2018 - page A1

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When a Danville police officer fatally shot a fleeing driver near that city's downtown last weekend, department officials quickly said the officer opened fire out of fear that the vehicle would run him down.

But experts on police use of force say there's rarely a good reason for an officer to shoot into a moving vehicle - an action that has grown increasingly controversial because it may unnecessarily take a life while turning the vehicle into an uncontrolled missile.

Instead of turning to deadly force, these experts point to another option: moving out of the path of the vehicle.

"It's not brain science," said Geoffrey Alpert, a professor of criminology and criminal justice at the University of South Carolina who has been researching police tactics for decades. "Get out of the way."

The encounter in the affluent East Bay suburb of Danville happened Saturday morning and is under investigation. Officer Andrew Hall, a five-year department veteran, shot **Laudemer Arboleda**, a 33-year-old Newark resident, as the driver fled police through city streets, officials said.

Arboleda, who was pronounced dead at a hospital, had no apparent criminal history. And police have not said he was suspected of a crime at the time officers responded last weekend. There is no indication that Arboleda was armed.

"There were no reports about him committing a crime, and now you have a person who is dead because they want to talk to him," said Adante Pointer, an attorney hired by Arboleda's family. He said Arboleda did accounting and billing work for companies including Amazon, and had recently struggled with mental health issues.

"Bad police work is what it seems like, beginning to end," Pointer said.

But attorney Michael Rains, who is representing other Danville officers in the incident - and has reviewed some video depicting it - said there "was very clearly an attempt to hit the officer at a very significant rate of speed."

The Contra Costa County Sheriff's Office, which contracts with the town of Danville to staff its police force, has not responded this week to questions about the investigation. Ultimately, the county district attorney's office will have to decide if the shooting was justified or merits criminal charges.

The incident began when police got a call about a man acting suspiciously near Cottage Lane and Laurel Drive around 11 a.m., officials said. The reporting party said Arboleda exited his car, walked toward several homes with bags in his hands, returned to his car and circled the neighborhood, said Jimmy Lee, a sheriff's spokesman.

As officers pulled up, Arboleda fled in his silver Honda sedan, prompting a chase. He pulled over twice, Lee said, as if to surrender, but sped off when officers got out of their patrol vehicles. At Front Street and Diablo Road, Arboleda "steered his vehicle toward an officer and accelerated his vehicle," Lee said.

He said Hall "was in immediate fear that he was going to be run over by the suspect's vehicle and fired his weapon at the driver of the vehicle."

The officers involved in the chase and shooting were wearing cameras, and their cars were outfitted with dashboard cameras, said Geoff Gillette, a spokesman for Danville.

Police and prosecutors will review the video as part of their investigation, the results of which will be presented during a coroner's inquest, a public hearing in which a jury determines the manner of death, which has yet to be scheduled.

Rains, the officers' attorney, said Arboleda "probably didn't know where he was, and was clearly disoriented." In their earlier efforts to get him to stop, officers approached the vehicle in a "low-key" manner, approaching the car from the front and waiving their hands, he said.

Finally, Rains said, Hall and another officer tried to box Arboleda in, with their patrol cruisers facing the Honda side by side. But Arboleda accelerated through the gap between the vehicles, the attorney said, and headed toward Hall, who opened fire.

"We know the car didn't strike Hall, but it came close," Rains said. "My suspicion is the direction of the car changed, and Officer Hall took measures to avoid being struck, which all occurred simultaneously. Within seconds this has to happen or Hall would have been struck."

After Arboleda was shot, his vehicle continued on, crashing farther down the road.

The Sheriff's Office does not have a policy explicitly prohibiting deputies from shooting at moving vehicles, Rains said.

However, many law enforcement agencies around the country do have such policies. In San Francisco, officers are barred from shooting at the driver of a moving vehicle unless that driver is a threat due to a gun or a weapon other than the vehicle.

Still, San Francisco's policy includes language allowing for an "exceptional circumstance," and notes that shootings are reviewed "on a case-by-case basis." The exemption theoretically would allow officers to fire in situations such as where a driver is intentionally plowing through a crowd.

San Francisco passed its policy after a recommendation by the Department of Justice following several controversial police killings, which included unarmed drivers being shot while fleeing police.

Similar policies have spread among major departments since the first was adopted in New York in 1972, said Chuck Wexler, executive director of the Police Executive Research Forum, an independent group in Washington, D.C.

"That's become the gold standard over time," he said.

The policy dissuades officers from standing in front of a speeding vehicle and ordering the driver to halt - like in a movie, he said - and reduces the number of police shootings overall.

"It has saved the lives of officers, who don't stand in front of a car, and it's saved the people in the car," Wexler said. "It's been a win-win situation. Why some departments don't recognize that is puzzling."

Kent Scheidegger, legal director of the Criminal Justice Legal Foundation, a tough-on-crime nonprofit group in Sacramento, disagrees. He said policies restricting officers from shooting at vehicles can potentially lead to officers getting injured or worse.

"If a guy's bearing down on you, about to run you down, the officer has no choice," he said. "It illustrates the fact that you can't have simplistic rules that cover every aspect of the situation."

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