

County of Santa Clara

Office of the Sheriff

55 West Younger Avenue
San Jose, California 95110-1721
(408) 808-4900



Laurie Smith
Sheriff

MEMORANDUM

To: Undersheriff Hirokawa

From: Sgt. William Oberst #1622
Internal Affairs Unit

Date: November 14, 2011

Subject: Internal Affairs Case IA 11-028
Administrative Review

Involved Parties:

Involved Employee: Deputy Richard Rodriguez #2026

Complainant: Office of the Sheriff

Basis for Investigation:

This report is an administrative review, conducted by Internal Affairs, of an officer-involved shooting involving Deputy Richard Rodriguez #2026, which occurred on 10/08/11. The case file currently contains 3 CD-ROMS documenting the San Jose Police interviews on the evening of the event, a CD-ROM of the radio dispatch transmissions, 2 CD-ROMS containing crime scene photos, one CD-ROM of the surveillance video. The case file also contains a two-page report Deputy Rodriguez wrote, documenting his statement as given to San Jose Police on the evening of the incident, a Google map photo of the area, CADS printouts, the original BOL printout, and several administrative documents.

The following executive summary is a compilation of interviews conducted by San Jose Police, an administrative interview conducted by Internal Affairs, security footage, and photographs documenting the scene.

Executive Summary:

On 10/08/11, Deputy Richard Rodriguez #2026 was assigned to headquarters patrol, responsible primarily for the central district, and started his shift at 0530 hours. Deputy Rodriguez was in full uniform in a marked Sheriff's Office vehicle.

At about 0930 hours, County Communication Broadcasted a BOL from San Jose Police. The original BOL from San Jose Police read:

“BOL for occupied 10851/459 veh suspects San Jose the Auth.
Susps seen at both (X1) and
(T5)...LS @0810 hrs in T5 area.

Suspect 1: HMA, 20-30s, tall/thin, short dark hair, medium skin scruffy goatee, wearing drk sweater and jeans. Suspect 2: HMA 20-30s, bald, medium skin.

Stolen vehicle: white '02 ford explorer with roof rack grey bumpers. Suspects attempted two veh burglary's. Fled in stolen vehicle. LS in the area of DT/DX near Hillsdale. Both appear to be 113.” *(113 refers to drugs)*

At about 1058 hours, Deputy Rodriguez drove east on Park Avenue, between Sunol Street and McEvoy street, and passed in front of There was a white Ford SUV parked along the south curb line in front of One person in the front passenger seat occupied the vehicle. Deputy Rodriguez recognized that this vehicle matched the description of the stolen vehicle in the BOL. Deputy Rodriguez noted the license plate of the vehicle as he drove by.

Deputy Rodriguez turned right on McEvoy Street and drove around the block (San Carlos to Sunol Street to Park Avenue) to approach from the west. While driving around the block, Deputy Rodriguez ran the vehicle's license plate on his MDT system. As Deputy Rodriguez turned back onto Park Avenue, he noticed the screen to his MDT turned red, indicating that there was a hit, such as a stolen vehicle or stolen plate, associated with the license plate. Deputy Rodriguez did not feel he could safely read the return on the MDT and maintain his officer safety due to his proximity to the white SUV. Deputy Rodriguez advised radio that he was out with a suspicious vehicle, providing the license plate, and his location.

Deputy Rodriguez stopped his vehicle behind the white SUV. Deputy Rodriguez exited his patrol vehicle, drew his sidearm, and walked around the back of the patrol vehicle to the passenger's side. Prior to Deputy Rodriguez reaching the front passengers door of his patrol vehicle, where he was planning to take cover and execute a high-risk vehicle stop, the subject in the white SUV exited the vehicle.

Deputy Rodriguez gave verbal commands to the suspect, which the suspect failed to follow. The suspect made a furtive movement, which Deputy Rodriguez interpreted as the suspect producing

a weapon from his waistband in an attempt to shoot at Deputy Rodriguez. Deputy Rodriguez was about 20 feet from the subject, without cover between them. Deputy Rodriguez fired two rounds from his department issued Glock handgun at the subject to stop the threat. Both rounds struck the front passengers door, which was in the open position. One round struck the upper right window frame, one round struck near the middle of the door, in the armrest area. The suspect was not hit.

County Communications was advising Deputy Rodriguez that the vehicle was reported stolen when Deputy Rodriguez came on his radio to advise there were shots fired at his location. County Communications immediately dispatched fill units.

The suspect fled from the SUV, east on Park Avenue, and then south on McEvoy Street. Deputy Rodriguez gave a short foot pursuit, but lost the subject and returned to his patrol vehicle. Deputy Rodriguez drove his vehicle east on Park Avenue to assist in setting up a perimeter. Additional Sheriff's Office units and San Jose Police responded and located the suspect, about 50 minutes later, hiding in the San Jose Fire training facility located a short distance away. No suspect weapon was located.

San Jose Police took control of the scene and conducted the investigation of the incident.

Review:

Beginning the afternoon of occurrence, and over the next several weeks, the San Jose Police Department conducted an investigation of this shooting. Their Homicide Unit Investigators:

- contained and professionally processed the scene,
- obtained potentially evidentiary video footage from the surveillance camera of a nearby business,
- conducted an extensive canvas of neighboring businesses and located a witness
- interviewed Deputy Rodriguez, the witness, and the suspect

On the afternoon of the event, Internal Affairs monitored the three interviews conducted by Detective Sergeant Dave Gutierrez #3359 and Detective Brian Spears #3413 of the San Jose Police Department. The following is a summary of the interviews.

Statement of Witness

is an employee at took a vehicle for a test drive and saw two white Ford SUVs parked in front of as he left. He did not see anybody around the vehicles. was gone for about five minutes. When he returned, driving west on Park Avenue, there was a Sheriff's vehicle blocking the driveway into was unable to make a left into the driveway because of the Sheriff's vehicle. made a left into the driveway of which is the next driveway to the west.

saw Deputy Rodriguez along the right side of his patrol vehicle. There was a male in the open doorway of the closer SUV. heard Deputy Rodriguez yell, "Put it down" two times. The male at the SUV was ducking and moving to take cover behind the open SUV door, while simultaneously reaching to his right side / back pocket area. believed the subject was reaching for a weapon or "trying to scare" the deputy. saw Deputy Rodriguez fire his weapon twice, the first shot shattering the window of the open door of the SUV. The subject started running east on Park Avenue and Deputy Rodriguez chased him.

Statement of Deputy Rodriguez #2026:

Deputy Rodriguez, represented by his attorney began his statement by explaining that he was on routine patrol and saw a vehicle that matched the vehicle in the San Jose Police BOL. He explained he was aware the vehicle was reported stolen. Deputy Rodriguez described the situation and his decision to use deadly force in the following statement:

"I got out of my patrol vehicle and was going to take cover on the passenger side of my patrol vehicle. As I was standing near the rear of my patrol vehicle on the passenger side, S01 which was sitting in the passenger seat suddenly jumped out of the vehicle. S01 immediately turned away from me and faced east on Park Avenue. I ordered S01 to put his hands in the air. S01 would not put his hands in the air but instead had his hands near the front of his waistband. At no time was I able to see his hands. I was unable to see what S01 had in his hands. I could see his elbows moving indicating to me that he was either putting something in his waistband or pulling something from it. As I was ordering S01 to put his hands up, he turned towards me. As he was turning, he motioned as if he was pulling something out of his waistband. As S01 was turning with the motion of pulling something out of his waistband, I feared that he was pulling a gun out. Based on S01 not engaging with me, not following my orders, and pulling what I feared to be a gun from his waistband, I feared for my life as I thought he was going to shoot me. I fired two rounds at S01 from my department issued firearm, a Glock 22, .40 caliber semi-automatic handgun."

After Deputy Rodriguez read his written statement, Detective Sergeant Gutierrez had him indicate, on a Google map printout, the location of the suspect vehicle and his patrol vehicle at the time of the shooting.

Detective Spears asked Deputy Rodriguez, if the suspect was successful in pulling out a gun as Deputy Rodriguez thought he was attempting to do, what did Deputy Rodriguez think would have happened. Deputy Rodriguez responded, "I feared for my life. I thought he was pulling a gun and he was possibly going to shoot me, and at that point I was basically not behind cover, so I feared for my life based on his motions, turning like this, and I fired two rounds." Deputy Rodriguez stated he shouted twice, "Put your hands up in the air" prior to, what Deputy Rodriguez described as happening within seconds, the suspect turning and Deputy Rodriguez discharging his weapon.

Statement of Suspect Omar Muhdi:

Muhdi stated he was under the influence of methamphetamine at the time of the incident, and he was still under the influence at the time of the interview.

Muhdi stated that on 10/08/11, prior to the incident, a friend named "Seven" picked him up in a white Ford Explorer. Muhdi did not know the vehicle was stolen. They parked on Park Avenue

and "Seven" walked "around the corner." Muhdi was seated in the front passenger seat of the Explorer, looking at several tools that he knew to be stolen property.

Muhdi looked over his left shoulder and saw that a deputy had parked behind the Explorer. The deputy had already exited the patrol car and was walking around the back of the patrol car. The deputy had his gun out. Muhdi thought that there was an outstanding warrant for his arrest, so he became nervous and decided to "bolt" from the deputy.

Muhdi stated he threw the door open, jumped out of the Explorer, and started to flee. Muhdi remembers he saw the deputy with his gun out, but could not recall if he was facing the deputy or if he saw the deputy in the mirror. The deputy was yelling something, possibly "STOP!" but Muhdi could not remember exactly what the deputy was yelling. As Muhdi was going through these motions in his attempt to flee, he heard two gunshots and the passenger's window to the Explorer exploded. Muhdi fled east on Park Avenue.

Detective Spears asked Muhdi to speculate what he thought the deputy was thinking during the incident. Muhdi replied, "I'm sure I scared the shit out of him." Muhdi denied having anything in his hands when he jumped out of the Explorer, and denied possessing a weapon of any kind during the incident.

Investigation:

I reviewed the surveillance video from the neighboring business. It shows Deputy Rodriguez driving by on Park Avenue the first time, and then returning. Deputy Rodriguez parks his vehicle across the driveway of . The only portion of the patrol vehicle that can be seen is from the rear wheels back. Deputy Rodriguez walks around the rear of his patrol vehicle and up the passenger's side. He leaves the view of the camera and no portion of the actual shooting event, or any action of the suspect, can be seen.

The crime lab tested Deputy Rodriguez's firearm and concluded that it was not modified and is functioning properly.

After reviewing the interviews conducted by the San Jose Police Department, there was not enough information to form an opinion concerning the use of force in relation to the policies and procedures of the Office of the Sheriff. On 10/24/11, I delivered a notice of interview to Deputy Rodriguez, with an interview date of 10/31/11.

Internal Affairs Interview with Deputy Richard Rodriguez #2026:

On 10/31/11 at 1000 hours, I interviewed Deputy Richard Rodriguez #2026 in the Interview Room at Internal Affairs. Present also was Sergeant G. Davis of the Internal Affairs Unit, and Deputy Rodriguez's attorney, . The interview was recorded for purposes of accuracy and to free me from having to take hand-written notes, and all present were aware we were being recorded.

I began by reading Deputy Rodriguez his Miranda rights from my department issued Miranda card. When I asked Deputy Rodriguez if he waived his Miranda rights he stated, "No." I then read Deputy Rodriguez the standard admonitions and orders to Deputy Rodriguez, outlining the General Orders, which specified he was required to answer our questions truthfully, and that Sergeant Davis and I were acting as his superior officers by virtue of our Internal Affairs investigation. He acknowledged his understanding of these orders. I also read him the standard admonition, which clarified that this was an administrative investigation only, and that nothing he said could be used against him in any criminal proceeding. Again, he acknowledged his understanding of this point. I then confirmed that he was on-duty, what his regular work hours were, and that there would be no overtime paid as a result of the interview. I made him aware that he could take a break at any time he needed one, and that if a re-interview was necessary in the future, he had the right to a copy of the recording of this interview, or a transcript of it. He acknowledged his understanding of this as well. He then initialed the forms I had completed documenting his understanding of all these points.

I told Deputy Rodriguez that we would be doing a re-creation of the shooting event. The purpose of the re-creation was to allow Deputy Rodriguez to walk through a similar situation and aid him in remembering the details of the event, which by this date had happened three weeks prior. I also believed that by watching Deputy Rodriguez walk through the shooting situation, I would have a better understanding of the event. I attempted to set up the re-creation at the actual scene, but due to parked cars and the high traffic flow in the area, this proved to be impractical. I elected to do the recreation on McKendric Street, which runs on the north side of the Ruff Drive training facility, due to the low vehicle / pedestrian traffic and the similarities to the original site. I turned off the tape at this time and we drove a patrol vehicle, a patrol Ford Expedition, and an unmarked car to McKendric Street. Sergeant Leon and Deputy Noe Cortez met us at the site to video record the re-creation.

We arrived at the site and I restarted the audio tape at 1020 hours. I explained to Deputy Rodriguez that Sergeant Davis would stand in for the suspect, using the patrol SUV to replicate the suspect's vehicle, during the re-creation. Deputy Rodriguez explained to Sergeant Davis when to exit the SUV, and what movements the suspect made. I acknowledged that there was no way to exactly recreate the movements of all involved parties. I turned off the tape recorder at 1026 hours while CSI set up the video recorder.

At 1037 hours I restarted the audio tape. Deputy Rodriguez was in the driver's seat of the patrol vehicle, I was in the passenger's seat, and attorney _____ was in the rear of the vehicle. I asked Deputy Rodriguez to walk me through the events of 10/08/11 as he remembered them.

Deputy Rodriguez stated he was driving east on Park Avenue when he saw a white Explorer or Expedition parked on the side of the road. The vehicle had a roof rack and grey bumpers, which matched a SJPB BOL that was broadcast earlier in his shift. Deputy Rodriguez drove past the vehicle at an estimated 20 MPH. Deputy Rodriguez saw a person sitting in the front passenger's seat of the vehicle, but he did not get a good enough look at the subject to identify him (later identified as Omar Muhdi). Deputy Rodriguez did not see any other people in or around the vehicle. Deputy Rodriguez took his patrol log from the driver's visor and tried to write the plate down as he drove past the vehicle.

Deputy Rodriguez made a right turn on McEvoy Street and he entered the license plate into his MDT system. Deputy Rodriguez drove around the block, eventually making a right turn onto Park Avenue again so he could approach the vehicle from the rear. As he was making the right turn on Park Avenue, the screen on the MDT turned red, indicating the vehicle was reported stolen or the plate came back lost or stolen. Deputy Rodriguez felt the subject could see him at this point and he did not want to risk his officer safety by reading the screen, so he continued to drive towards the vehicle and parked behind it as he advised radio that he was out with an 11-54 (suspicious vehicle) at Park and Sunol. Deputy Rodriguez thought dispatch advised him at this time that the vehicle was reported stolen.

I had Deputy Rodriguez drive around the block and position his vehicle approximately where he positioned his vehicle on 10/08/11, in relation to the SUV. Deputy Rodriguez stopped approximately 20 feet behind the SUV and immediately exited his vehicle. Deputy Rodriguez drew his firearm as he moved around the rear of his patrol vehicle. Deputy Rodriguez was trying to move to the passenger's door of his patrol vehicle to use it for cover, consistent with a traditional high-risk vehicle stop. Prior to Deputy Rodriguez reaching a position of cover, Muhdi jumped out of the vehicle. Deputy Rodriguez gave a loud verbal order, "Put your hands up, let me see your hands, put your hands up."

Muhdi, facing away from Deputy Rodriguez and into the open door of the SUV, did not respond to the verbal commands. Muhdi had his hands concealed near his front waistband area. Deputy Rodriguez could see Muhdi's elbows moving, indicating he was manipulating something in his front waistband area. Muhdi looked over his right shoulder, and then moved his right elbow out away from him body as he started to turn. Deputy Rodriguez stated the movement was not consistent with a suspect complying with the verbal orders that were being given, and with only the upper body being in motion, they were not consistent with a person attempting to flee.

Deputy Rodriguez immediately interpreted this series of motions as Muhdi acquiring a target and moving to bring a firearm to bear. Deputy Rodriguez stated, "At that point, as he's turning, with his arm coming out of his waistband, I feared for my life." I asked Deputy Rodriguez to elaborate on what the movements of Muhdi indicated to him. Deputy Rodriguez stated, "That he was going to pull out a gun and try to kill me." Deputy Rodriguez reacted to the threat and fired two rounds from his department issued firearm to protect himself from what he perceived to be a lethal assault. In the recreation, Deputy Rodriguez was retreating towards the rear of his patrol vehicle to seek cover as he was firing his weapon.

Muhdi immediately fled east on Park Avenue. Recognizing that Muhdi was no longer an immediate threat, Deputy Rodriguez did not fire any more rounds. Deputy Rodriguez started to give chase as he made his radio notifications. Deputy Rodriguez lost sight of Muhdi and returned to his patrol vehicle. A SJPD unit relieved Deputy Rodriguez and he moved his vehicle to McEvoy Avenue and DuPont Street to cover a perimeter position. Muhdi was found hiding in the area about 50 minutes later. Muhdi was arrested and Deputy Rodriguez positively identified him as the suspect from the SUV.

While still at the re-creation scene, _____ asked Deputy Rodriguez what the movements of Muhdi meant to him. Deputy Rodriguez stated that during the academy, and after the academy

in training scenarios, he has seen numerous role players make this identical action when they are producing weapons. I concluded this portion of the interview and turned off the audio recording at 1057 hours. We returned to the Internal Affairs office to conclude the interview.

At 1108 hours, Deputy Rodriguez, Sergeant G. Davis and I were in the Internal Affairs interview room and I started the tape again. I admonished Deputy Rodriguez that the admonishment I gave him at 1000 hours was still in effect. He stated he recalled the admonishment and did not need me to repeat it.

I was unsure how the audio tape from the field would come out, so I had Deputy Rodriguez reiterate what he had told me in the field, just to make sure I captured his statement on tape. Deputy Rodriguez's statement was consistent with what he told me in the field.

I asked Deputy Rodriguez if he could explain why he felt the actions of Muhdi were consistent with someone producing a weapon. Deputy Rodriguez stated that during the academy, he observed numerous scenarios, both with the academy staff and while training with other students, where the role player has produced a weapon after making these same type motions. Deputy Rodriguez also stated he has seen a weapon being produced in this same manner while training at the Ruff Drive training facility.

I asked Deputy Rodriguez why he fired his weapon. Deputy Rodriguez stated, "I felt, in my mind, that he was pulling out a gun to shoot me. At that point, when he made that motion, it scared the crap out of me, and I'm not going to be, I'm man enough to say it, I was scared. I was afraid; I did not want to see what he was going to point at me. I did not want to wait for him to point something at me because then at that point he's got the drop on me." Deputy Rodriguez stated he feared for his life. I concluded the interview at 1120 hours.

Interview with Sergeant David Benner #1861:

On 11/03/11 at 0914 hours, I interviewed Sergeant David Benner #1861 in the Interview Room at Internal Affairs. Present also was Sergeant G. Davis of Internal Affairs. The interview was recorded for purposes of accuracy and to free me from having to take hand-written notes, and Sergeant Benner was aware we were being recorded.

I confirmed that Sergeant Benner, as a prior Academy RTO and current force options and defensive tactics instructor, was familiar with the training being provided to deputies at the academy and during reoccurring training. Sergeant Benner affirmed that he was currently training in these areas. I asked Sergeant Benner to explain the current training being provided.

Sergeant Benner stated that the training involves case laws regarding use of force in general, focusing on reasonable force based on the circumstances known to the deputy at the time, in conjunction with the deputies training and experience. Sergeant Benner quoted the case of Graham vs. Conner as the keystone case law.

Sergeant Benner stated that scenarios are used as a training tool, including video scenarios that involve shoot / don't shoot scenes. After going through a scenario, deputies are asked to explain

what they see and what they were feeling. Sergeant Benner has found that deputies will often see something different from what occurred on the screen due to stress inoculation. Often times a deputy will not be able to identify what triggered the use of force, but upon review of the scene, their actions are justified.

I asked Sergeant Benner if there was a breaking point, or a black and white line, that dictates when a deputy can use force. Sergeant Benner stated there was not, since the proper use of force is based on what the deputy believes at the time, what they are thinking, and what they are feeling. Past experiences and how one's body reacts to stress are all factors in the use of force decision. Sergeant Benner was not familiar with any case law that dictates that a police officer must first see a weapon, and they do not train that a deputy must see a weapon prior to using lethal force, but the deputy must reasonably be in fear for their safety.

I asked Sergeant Benner what factors could justify the use of deadly force if a deputy does not see a weapon. Sergeant Benner stated, "Reaching in an area where a weapon is commonly carried, waistband, sock area, anywhere, and reaching as if they're, in a similar manner as if they're going to grab a weapon. If somebody is grabbing towards their waistband for instance, and they pull a gun out, in order for the officer to actually recognize there is a weapon in their hands, and react to it, they're probably going to get shot at first, before they even have a chance to react. That goes back to my training and experience when we talk about reactionary gap, usually takes an officer about $\frac{3}{4}$ of a second for their brain to realize what they are seeing, and another $\frac{3}{4}$ of a second just to react. For the brain to sit there and say, ok, this is a lethal force, lets react appropriately, which is why we teach if you have, you are going into a situation where you feel a little uneasy you ready a level of force beforehand." Sergeant Benner went on to explain that if a deputy waits to see a gun, he will be shot at prior to him being able to react.

The term "totality of the circumstances" summarized Sergeant Benner's points concerning proper use of force. All things combined: knowledge of the person / circumstances, actions of the suspect, what the deputy observes and perceives, goes into the decision to use force.

I issued Sergeant Benner the standard admonition that this was an official Internal Affairs investigation, and that he was therefore prohibited from discussing the substance of our interview with anyone other than Internal Affairs personnel. He told me he understood, and I concluded the interview at 0924 hours.

Conclusions:

Nothing in any interview conducted, nor any physical evidence found at the scene, in any way contradict or call into question the official statement made by Deputy Rodriguez. Both the suspect and the witness told the San Jose investigators that they heard Deputy Rodriguez shouting commands just prior to hearing the gunshots. Although no weapon was found, it does not mean one was not present at the time of the incident and then disposed of at sometime during the 50-minute manhunt. The fact the Deputy Rodriguez never saw Muhdi's hands, or what he may have had in them, makes this a somewhat moot point.

While reviewing the facts, and applying them to the Office of the Sheriff's policies and procedures, I focused on the following General Orders:

Santa Clara County Sheriff's Office General Order 12.00: Reasonable Force Policy: "Deputies and Sheriff's Correctional Officers shall use only force which is reasonable, given the facts and circumstances known to the officer at the time of the event, to bring an incident under control.

Santa Clara County Sheriff's Office General Order 12.00.A: "REASONABLE FORCE – Deputies and Sheriff's Correctional Officers are authorized to use only that degree of force which is reasonable under the circumstances to protect themselves or others, or to overcome resistance to their lawful authority. Deputies and Sheriff's Correctional Officers may use force in the performance of their duties in the following circumstances: to prevent the commission of a public offense; to prevent a person from injuring himself or others; to make a lawful arrest or detention of persons resisting or attempting to evade that arrest or detention; or in self-defense or the defense of another person."

Santa Clara County Sheriff's Office General Order 12.02: All reasonable means of apprehension and control shall be exhausted prior to the use of deadly force. No deputy/Sheriff's Correctional Officer will be disciplined if a suspect is not apprehended when all methods short of the use of deadly force have been exhausted and the use of deadly force is determined in the discretion of the deputy to be inadvisable. Under circumstances where a deputy/Sheriff's Correctional Officer has no alternative other than the use of deadly force to protect himself or herself, or to protect others from death or serious injury, the deputy/Sheriff's Correctional Officer is authorized to use deadly force.

Santa Clara County Sheriff's Office General Order 12.02.B and 12.02C: Discharging a firearm: A deputy/Sheriff's Correctional Officer may discharge a firearm under any of the following circumstances:

1. In the reasonable defense of the deputy/Sheriff's Correctional Officer or another person when the deputy/Sheriff's Correctional Officer believes that he or she or another person is in imminent danger of death or serious bodily injury.

The Office of the Sheriff's policies and procedures clearly authorize a deputy to use deadly force in the reasonable defense of their lives. The crux of this review balances on whether the actions of Deputy Rodriguez were reasonable. Graham vs. Conner set the reasonableness standard that has been the benchmark of law enforcement since 1989.

Objective Reasonableness:

- Judged through the perspective of a reasonable officer.
- Based on the totality of the facts known to the officer at the time the force was applied.
- Based on the facts known to the officer without regard to the underlying intent or motivation.
- Based on the knowledge the officer acted properly under established law at the time.

Reasonable Officer Standard:

- Would another officer with the same/similar training and experience.
- Facing the same/similar circumstances.
- Act the same way or use similar judgment?

The training and experience is a key component to this evaluation. Deputy Rodriguez's employment history with the Office of the Sheriff includes:

- 05/22/06 to 07/26/06 - Attended academy, failed academy due to firearms range
- 10/13/06 to 04/04/07 - Attended 2nd academy, graduated, assigned to courts.
- 03/10/08 to 06/13/08 – completed FTO, stayed in patrol until 08/11/08
- 08/11/08 to 04/06/09 – Assigned to courts
- 04/06/09 to date of incident – Assigned to Patrol / Parks.

At the time of the incident, Deputy Rodriguez had a total of 30 months of patrol experience outside FTO, 10 months in parks, divided into two assignments, and 20 months in Patrol.

On the day of the incident, Muhdi's actions mimicked numerous training scenarios that Deputy Rodriguez had been exposed to where a weapon was drawn and deadly force was attempted against the deputy. Deputy Rodriguez was in a situation where he had to make a split-second life and death decision, and his decision to use the only available force option, his firearm, was not unreasonable.

After monitoring the interviews conducted the evening of the incident, conducting a re-creation and interview with Deputy Rodriguez, and reviewing the original radio dispatches, it is my finding that:

While performing his lawful assigned duties, Deputy Rodriguez attempted the detention of a person who was reasonably associated with felony property crimes. The suspect resisted Deputy Rodriguez's verbal orders, and made body movements consistent with someone producing a firearm from their waistband area. Deputy Rodriguez, fearing for his safety, lawfully discharged his weapon in his immediate defense.

I find no violation of any departmental policy or procedure by Deputy Rodriguez, up to and including the use of his firearm in this incident.

At the time of this report, the San Jose Police Department report has not been given to the Office of the Sheriff. The San Jose police report has been submitted to the Santa Clara County District Attorney's Office for review; there is no time estimate available as to when that agency will decide if any further action is required by their office.


Sergeant William Oberst #1622

County of Santa Clara

Office of the Sheriff

55 West Younger Avenue
San Jose, California 95110-1721
(408) 808-4900



Laurie Smith
Sheriff

MEMORANDUM

JA-1357

To: Undersheriff Hirokawa
From: Sgt. Gregory Davis #1799
Internal Affairs Unit
Date: April 13, 2012
Subject: Internal Affairs Case IA 11-028
Supplement - Administrative Review

Involved Parties:

Involved Employee: Deputy Richard Rodriguez #2026

Complainant: Office of the Sheriff

Investigation:

On 3/27/12 Sergeant Dave Gutierrez of the San Jose Police Department – Homicide Unit sent me a copy of San Jose Police Department’s Incident Report #11-281-0332 regarding Deputy Rodriguez’s Officer Involved Shooting. The San Jose Police report was a 98-page document which included the following items:

- Original report
- 15 San Jose Police Department supplemental reports to SJPD 11-281-0332
- Santa Clara County Incident Report 11-281-0128B
- 18 SCCSO supplemental reports to SCCSO 11-281-0128B
- Four (4) copies of Field Interview Cards
- Deputy Rodriguez’s written statement
- SJPD Homicide Unit investigative report
- SJPD CSI report
- Sheriff’s Office General Order 12.03

Nothing in the San Jose Police Report in any way contradicted, or called into question, the official statement made by Deputy Rodriguez or the Administrative Review conducted by Sergeant William Oberst.

SJPD Sergeant Gutierrez said the report was sent to the District Attorney. He also said District Attorney Rosen was not going to make a formal finding regarding this officer-involved shooting. CJIC indicates Mr. Muhdi has been charged with PC 3056, VC 10851, PC 487, PC 664/459/460(b), PC 496(A), and PC 484/487(A). Mr. Muhdi's next court appearance is scheduled for April 25, 2012 at 1330 hours in Department 29.

End of report.

A handwritten signature in blue ink, appearing to read "Gregory Davis", with the number "1799" written at the end of the signature.

Sergeant Gregory Davis #1799
Internal Affairs