



Office of Inspector General

OFFICER INVOLVED
SHOOTING REVIEW
SERGEY MAKARENKO

June 18, 2016

Rick Braziel
Inspector General

Officer Involved Shooting Review

Sergey Makarenko

Contents

| | |
|---|----|
| INTRODUCTION | 3 |
| EXECUTIVE SUMMARY | 3 |
| METHODOLOGY | 3 |
| Document, Evidence, and Policy Review | 3 |
| Lessons Learned and Recommendations..... | 4 |
| INCIDENT SUMMARY | 4 |
| PHYSICAL EVIDENCE | 6 |
| Weapon Used by Deputy | 6 |
| Coroner’s Report | 7 |
| Toxicology Results | 7 |
| LESSONS LEARNED and RECOMMENDATIONS | 7 |
| Use of Force | 8 |
| Value of Video and Audio | 8 |
| Recommendations..... | 9 |
| The Pursuit | 9 |
| Recommendations..... | 9 |
| General Policy Considerations | 10 |
| Recommendations..... | 10 |
| APPENDIX..... | 11 |
| A. Timeline of Events | 11 |
| B. Map of the Pursuit..... | 13 |
| C. Shooting Scene Image..... | 14 |
| | |
| Figure 1 Glock 17 Gen 4 | 6 |
| Figure 2 Pursuit Route | 13 |
| Figure 3 Shooting Scene..... | 14 |

Officer Involved Shooting Review

Sergey Makarenko

INTRODUCTION

The purpose of the Inspector General's investigation was to review issues of tactics, departmental policies, equipment, and training with the intent to identify lessons learned and develop recommendations. It is important to note that this review was conducted with the benefit of hindsight and the knowledge of all concurrent events. The ability to review reports, photographs, video, and audio multiple times and at slow speeds, allows for the critical review of the incident that is not available to deputies and witnesses.

A separate independent review was conducted by the Sacramento County District Attorney's Office addressing legal issues associated with filing of criminal actions. The District Attorney's review concluded the shooting death of Sergey Makarenko was lawful.¹

EXECUTIVE SUMMARY

On June 18, 2016, at 11:00 PM a Sacramento County Sheriff's Deputy attempted to stop a gray colored Honda driven by Sergey Makarenko. Makarenko failed to stop and led deputies on a high-speed pursuit through residential neighborhoods. Makarenko eventually stopped in the driveway of 3720 Horton Lane with two patrol vehicles behind his vehicle. As a patrol sergeant opened his driver's door Makarenko backed his vehicle toward the open door. A deputy fearing that Makarenko would back into the driver's door and injure the sergeant fired nine rounds, striking Makarenko seven times. Makarenko was pronounced deceased at the scene.

The review of documents, evidence, video, audio, and policies surrounding the death of Sergey Makarenko developed into lessons learned and nine recommendations, which are listed in the body of the report.

METHODOLOGY

The Inspector General, with cooperation from the Sacramento County Sheriff's Department, Sacramento County District Attorney's Crime Lab, and Sacramento County Coroner's Office, gathered, reviewed, and analyzed documentation from many sources to develop an understanding into the death of Sergey Makarenko. Policies, procedures, and training related to the activates leading up to and including the shooting were reviewed and compared to accepted best policing practices.

Document, Evidence, and Policy Review

To assist in the review information was collected from the following:

- Documents related to the shooting including witness statements, crime scene diagrams, Crime Lab reports, and Coroner's report.

¹ <http://www.sacda.org/police-use-force/>

Officer Involved Shooting Review Sergey Makarenko

- Photographs of the scene, video and audio from Sheriff's vehicles, Sacramento Police Department helicopter, and crime scene video.
- Response to the scene on the night of the incident.
- Direct observation of the pursuit route.
- Review of Sacramento County Sheriff's Department policies and applicable International Association of Chiefs of Police model policies.² Sheriff's policies include:
 - General Order 2/01 (Rev 6/13) Authorized Firearms and Ammunition
 - General Order 2/03 (Rev 5/08) Firearms Training and Qualification Special Weapon Training
 - General Order 2/05 (Rev 12/12) Use of Firearms
 - General Order 2/06 (Rev 10/07) Officer-Involved Shooting Incidents
 - General Order 2/11 (Rev 12/13) and (Rev 4/16) Use of Force Policy
 - General Order 2/16 (New 1/06) Weapons Discharge Reporting Incidents
 - General Order 2/17 (Rev 3/13) Use of Force – Tactical Review Board
 - General Order 6/02.2 (Rev 9/07) Operation of Sheriff's Vehicles Code-3 or in Pursuit
 - General Order 10/10 (New 9/07) In-Car Camera Systems

Lessons Learned and Recommendations

The review of documents, evidence, video, and policies surrounding the death of Sergey Makarenko developed into lessons learned and nine recommendations. Some of the recommendations were outside the scope of the shooting review, however they are important to the continued development of widely accepted policing practices within the Sacramento County Sheriff's Department.

INCIDENT SUMMARY

On June 18, 2016, shortly before 11:00 PM Reserve Deputy James Libonati, while driving a marked patrol vehicle, observed a gray colored Honda Civic eastbound on El Camino Avenue near Butano Drive at a high rate of speed. Deputy Libonati caught up with the Honda on El Camino Avenue prior to Walnut Avenue and followed the Honda as it traveled at speeds between 45-74 mph.³ At the intersection with Garfield Avenue Deputy Libonati activated his overhead lights to stop the vehicle. The driver of the vehicle was later determined to be Sergey Makarenko.

Makarenko continued east on El Camino Avenue at speeds up to 77 mph. At the intersection with Fair Oaks Boulevard, El Camino Avenue transitions from a four-lane major roadway to a two-lane residential street and changes names to Van Alstine Avenue. Vehicle speeds on

² <http://www.iacp.org/Model-Policies-for-Policing>

³ The posted speed limit on El Camino Avenue is 40 mph.

Officer Involved Shooting Review Sergey Makarenko

Van Alstine reached 81 mph⁴ before Makarenko turned north onto California Avenue running a stop sign at a three-way controlled intersection.

Makarenko traveled one block before he turned east onto Tarshes Drive and then another block before turning north onto Willow Way. One block later Makarenko tried to turn west onto to Kenneth Avenue but he skidded across Kenneth onto the dirt shoulder on the north curblineline. He came to a brief stop before turning his car westbound and then traveled at less than 10 mph west on Kenneth as if he was having difficulty getting the car in the correct gear. After another block, Makarenko turned back north onto California Avenue.

Once on California Avenue Makarenko reached speeds exceeding 65 mph⁵ running stop signs at Palm Drive, Stanley Avenue, Landis Avenue, and Grant Avenue before turning west onto Sutter Avenue through the stop sign⁶. Just prior to Sutter Avenue a Sacramento Police Department helicopter arrived overhead and followed the pursuit.

Responding to assist in the pursuit, Deputies Andrew Cater and Jeremy Workman, riding in the same vehicle, drove east on Sutter Avenue from Fair Oaks Boulevard and stopped on the south curblineline as Makarenko passed them westbound. Deputies Cater and Workman were driving a marked SUV and had their headlights and driver's side spot light turned on. Deputy Cater, who was driving, stated that he could see into the car and saw a male driver with a "glazed over look" as if the driver was intoxicated. Deputy Cater made a U-turn and joined the pursuit behind Deputy Libonati.

As Makarenko crossed Fair Oaks Boulevard, against a red light at approximately 60 mph, there is a near collision with a vehicle travelling south on Fair Oaks Boulevard. The vehicle travelling southbound entered the intersection just as Makarenko crossed in front of the vehicle. Deputy Cater stated that he observed the near collision and knew then that he had a "good felony want" because of the reckless driving of Makarenko.

Makarenko continued driving west on Sutter Avenue until it dead ends at Horton Lane where he made a left turn. Horton Lane south of Sutter Avenue ends into a shared driveway marked by a private property sign and narrowing roadway surface. At the end of Horton Makarenko drove onto the driveway and turned left in front of the garage at 3720 Horton Lane.

Deputy Libonati who had stopped at the intersection of Sutter Avenue and Horton Lane was directed to where Makarenko had stopped by the SPD helicopter overhead. As Libonati pulled in behind the Honda, Makarenko was still seated in the driver's seat. Deputies Cater and

⁴ The posted speed limit on Van Alstine Avenue is 30 mph.

⁵ The posted speed limit on California Avenue is 30 mph. Additionally, there are several speed humps on California Avenue designed to slow traffic.

⁶ All the intersections mentioned are control by stop signs in all four directions.

Officer Involved Shooting Review

Sergey Makarenko

Workman are then seen approaching Makarenko on foot along the driver's side of Deputy Libonati's vehicle. Deputies reported yelling at Makarenko to "Stop" and "show your hands."

As Deputy Cater is approaching the Honda Sergeant Steed pulled his marked patrol SUV to the right of Deputy Libonati and immediately opened his door. As Sgt. Steed opened his driver's door the reverse lights on the Honda illuminate and Makarenko started backing and turning his car toward Sergeant Steed's open driver's door. Deputy Cater stated that he saw Sergeant Steed's door open and Makarenko backing his car toward the open door. Deputy Cater said that he feared that Makarenko was going to hit Sergeant Steed and he had no choice but to shoot Makarenko to get him to stop. Cater said that he fired and continued firing until Makarenko stopped the car. Cater fired a total of nine rounds through the driver's side of the Honda striking Makarenko seven times. The car stopped 4-5 feet from Sergeant Steeds vehicle.⁷

Shortly after the vehicle came to rest deputies remove Makarenko from the driver's seat and begin first aid. Sacramento Metro Fire responded, assumed responsibility for medical care, and pronounced Makarenko deceased at approximately 11:16 PM.

PHYSICAL EVIDENCE

The following is a list of weapons discovered during the investigation, a summary of the Coroner's report, and toxicology results.

Weapon Used by Deputy

The following weapon was used by Deputy Cater:

Deputy Cater fired 9 rounds.

Glock 17 Gen 4

9 mm pistol



Figure 1 Glock 17 Gen 4 ⁸

⁷ Approximately 38 seconds after the shooting Sgt. Steed backed his vehicle away from Makarenko's car. This gives the impression that the distance between the Honda and the patrol vehicle is much greater than it was at the time of the shooting. Video evidence suggests the Honda stopped approximately 4-5 feet from Sgt Steed's vehicle.

⁸ <http://www.guns.com/reviews/glock-glock-17-gen-4/>

Officer Involved Shooting Review

Sergey Makarenko

Coroner's Report

The Sacramento County Coroner's Office conducted an autopsy of Sergey Makarenko and determined the cause of death to be multiple gunshot wounds. Specifically, the report identified 7 gunshot entry wounds:

1. Entry left side of the back left of the posterior midline with a trajectory back to front, left to right, and downward.
2. Entry left forearm with a trajectory left to right, slightly back to front, and slightly downward.
3. Entry upper left chest with a trajectory of left to right and down.
4. Entry left chest with a trajectory of left to right and slightly downward.
5. Entry left shoulder with a trajectory of left to right and downward.
6. Entry left shoulder with a trajectory of left to right.
7. Entry right chest with a trajectory of left to right and slightly down with an exit wound causing a graze wound on the right arm.

Toxicology Results

In addition to the autopsy report blood alcohol and toxicology tests were conducted by the Sacramento County District Attorney's Office Crime Lab. The blood alcohol report lists a blood alcohol level of .22% detected in Makarenko's system, nearly three times the 0.08% legal limit for operating a motor vehicle as an adult.⁹ Makarenko was under 21 years old and the legal limit is 0.01%

The toxicology report lists three confirmed types of tetrahydrocannabinols (THC) in his system:

| | |
|----------------------|-----------|
| Delta-9-THC | 3.1 ng/mL |
| 11-hydroxy-THC | 1.5 ng/mL |
| 11-nor-9-carboxy-THC | 23 ng/mL |

California has not established driving under the influence of THC levels. In states that do have driving under the influence of THC limits, levels range from 1-5ng.¹⁰

LESSONS LEARNED and RECOMMENDATIONS

The purpose of this review is not to simply focus on adherence to the policies and training related to the use of force, but to review the totality of the situation to identify lessons learned and possible opportunities that may reduce the likelihood of similar events.

Sergey Makarenko was driving at a high rate of speed when a Reserve Deputy working a supplemental employment job attempted to stop him. The initial violation and probable cause for the stop was a traffic violation. Makarenko did not yield to the deputy and fled at high speeds through residential

⁹ It is illegal in California for any person to operate a vehicle with a blood alcohol level of 0.08% or higher, if the person is 21 years old or older, or a blood alcohol level of 0.01% or higher, if the person is under 21 years old.

¹⁰ http://www.ghsa.org/html/stateinfo/laws/dre_perse_laws.html

Officer Involved Shooting Review

Sergey Makarenko

neighborhoods running numerous stop signs. At an intersection with a major street, Makarenko nearly collided with another vehicle. This near collision caused one deputy to state that he knew he had a good felony because the reckless way Makarenko was driving.

When Makarenko became boxed in at the end of Horton Lane, he again attempted to flee by placing his car in reverse and backing up. In doing so he backed toward the open driver's door of a patrol vehicle with a Sheriff's Sergeant inside. In response Deputy Cater fired nine rounds to stop Makarenko.

Use of Force

The 4th and 14th amendments of the U.S. Constitution provide the foundation for deadly use of force policies in the United States. Federal court guidelines stem from the benchmark 1985 decision of the U.S. Supreme Court in *Tennessee v. Garner*. This ruling held that the Tennessee statute that permitted police officers to use deadly force in arresting non-dangerous fleeing felons was unconstitutional. This ruling sanctioned the use of deadly force only to "protect the officer and others from what is reasonably believed to be a threat of death or serious bodily harm," (or) "if it is necessary to prevent the escape of a fleeing violent felon whom the officer has probable cause to believe will pose a significant threat of serious physical injury to the officer or others."¹¹

It is clear by his actions during the pursuit that Sergey Makarenko was a risk to the safety of the community and the deputies attempting to apprehend him. Makarenko's aggressive driving, failing to slow or stop at numerous stop signs, and nearing colliding with another vehicle presented a clear threat to safety of the public.

While his aggressive driving did not reach the threshold for the use of deadly force, the threshold was reached when he backed-up toward the open driver's door of the patrol vehicle that Sergeant Steep was attempting to exit.

Value of Video and Audio

The thoroughness of this review is directly related to the availability of video and audio recordings. The involved Sheriff's vehicles were all equipped with in-car camera video and audio. Additionally, the Sacramento Police Helicopter was equipped with video and audio of their transmissions. The availability of video included the pursuit of Sergey Makarenko, the subsequent shooting, and the attempt by deputies to save Makarenko's life after the shooting. The Sheriff's Department requires that officers shall record, both video and audio, all traffic stops, vehicle pursuits, crimes in progress, or any situation or event that the officer through training and experience believes should be recorded.¹² The video in all vehicles functioned as designed. Audio was available for portions of the incident but not as comprehensive as the video. It appears that audio microphones designed to be worn by deputies were either not worn or if worn not activated.

¹¹ https://cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process_FINAL.pdf

¹² Sheriff's Department, County of Sacramento, General Order, In-Car Camera Systems, 10/10 (NEW 9/07)

Officer Involved Shooting Review

Sergey Makarenko

Recommendations

1. The Sheriff's Department should revise General Order 10/10 to:
 - 1.1. Require officers to wear and activate body worn microphones during all traffic stops, all vehicle pursuits, crimes in progress, and any situation or event that the officer through training and experience believes should be recorded.¹³
 - 1.2. Establish a review of all critical incidents to ensure officers comply with the requirements of General Order 10/10.
 - 1.3. Establish a random audit of in-car camera video to ensure officers are complying with the provisions of General Order 10/10.
2. Continue the evaluation of body worn cameras with the goal of full field implementation.

The Pursuit

Sergey Makarenko led Sheriff's Deputies on a pursuit through residential streets at speeds near 65 mph. Makarenko's driving required pursuing deputies to drive at similar speeds, although driving code 3 with lights and sirens, all vehicles involved presented a risk to the public. Sheriff's Department policies require officers involved in a pursuit to weigh many factors against the risk to the community including the seriousness of the originating crime, safety of the pursuing officer(s), volume and pattern of vehicular and pedestrian traffic, location of pursuit, speeds involved, and time of day.¹⁴ This review noted that a supervisor was monitoring the pursuit and was provided with accurate information regarding speed and traffic conditions.

Makarenko was originally wanted for excessive speed, a traffic infraction. During the pursuit, his driving turned reckless and created a danger to the community and deputies. At the onset of the incident Deputy Libonati advised dispatch of the license plate which would have allowed deputies to follow-up and potentially identify the driver had Makarenko been able to escape or had the Sheriff's Department cancelled the pursuit.

Recommendations

3. The Department should ensure a comprehensive review of all pursuits to evaluate compliance with policies and training.
4. The Department should reinforce through training the dangers pursuits present to deputies and the public.

¹³ When Sheriff's executive staff became aware of the microphone concern a directive was immediately issued reminding deputies of the requirements of General Order 10/10. An inventory was conducted and additional equipment ordered.

¹⁴ Sheriff's Department, County of Sacramento, General Order, Operation of Sheriff's Vehicles Code-3 or in Pursuit 6/02.2 (REV 9/07)

Officer Involved Shooting Review

Sergey Makarenko

General Policy Considerations

The following recommendations are not a reflection of the response to this incident but items discovered when comparing the Sheriff's Department policies to similar policies of other law enforcement agencies.

The IACP model policy for use of force specifies two circumstances in which the use of deadly force may be warranted. The first is "to protect officers or others from what is reasonably believed to be a threat of death or serious bodily harm." Secondly, police officers may use deadly force to prevent the escape of a deadly felon who the officer believes will pose a significant threat of death or serious physical injury to the officer or others.¹⁵

Recommendations

5. The Sheriff's Department should consider revising General Order 2/11 and applicable section in General Order 2/05.
 - 5.1. The term "reasonable" is used throughout the order. A concise definition in a single location would provide clarity and understanding. An example from IACP model policies reads; "In determining the necessity for and appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including but not limited to the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community."
 - 5.2. Section II A 2 c should require the officer to have probable cause that a violent felony was committed **and** that if not immediately apprehended reasonable cause to believe the suspect may cause death or great bodily injury. The current policy allows either circumstance which is not consistent with contemporary practices.
6. Most of the polices reviewed in this report have not been revised in over three years. The Department should establish a policy review cycle that requires all policies to reviewed and reissued or revised on a cycle no longer than three years.

¹⁵ <http://iacppolice.ebiz.uapps.net/PersonifyEbusiness/ModelPolicyList/MPUseofForce.aspx>

Officer Involved Shooting Review Sergey Makarenko

APPENDIX

A. Timeline of Events¹⁶

| TIME | ACTION |
|-------------|---|
| 11:00:35 PM | In-Car camera video in Libonati's vehicle starts at El Camino Ave and Walnut Ave. Speeds reach 74 mph |
| 11:01:09 PM | Libonati activates red lights and siren El Camino Ave and Garfield Ave |
| 11:01:35 PM | Cross Fair Oaks Blvd and El Camino Ave turns into Van Alstine Ave – Speed 63 mph |
| 11:01:50 PM | Speeds hits 81 mph |
| 11:01:55 PM | Turn north onto California Ave |
| 11:02:11 PM | Turn east onto Tarshes Dr. - Sacramento PD helicopter advises responding |
| 11:02:25 PM | Turn north onto Willow Way |
| 11:02:41 PM | Makarenko skids across Kenneth Ave then drives slowly west on Kenneth Ave |
| 11:03:07 PM | Turn north on California Ave. |
| 11:03:37 PM | Runs stop sign at Palm Ave. - Speed more than 60 mph |
| 11:04:03 PM | Runs stop sign at Stanley Ave. – Speed 53 mph |
| 11:04:18 PM | Runs stop sign at Landis Ave. – Speed 60 mph |
| 11:04:33 PM | Runs stop sign at Grant Ave. – Speed 65 mph |
| 11:04:42 PM | SPD helicopter overhead |
| 11:04:51 PM | Turn west onto Sutter Ave. running stop sign |
| 11:05:00 PM | Makarenko passes Deputies Cater and Workman who are stopped along the south curblin. |
| 11:05:14 PM | Makarenko crosses Fair Oaks Blvd more than 60 mph against a red light nearly causing a collision with a southbound vehicle on Fair Oaks Blvd. |
| 11:05:40 PM | Turn south onto Horton Lane |
| 11:05:44 PM | Deputy Libonati pauses at Sutter Ave and Horton Ln |
| 11:05:59 PM | Deputy Libonati stops behind Makarenko in front of 3720 Horton Ln. |
| 11:06:04 PM | Sgt. Steed stops to the right of Deputy Libonati and opens his driver's door |
| 11:06:06 PM | Makarenko starts backing toward Sgt Steed's open driver's door. Sgt Steed's door begins to close. |
| 11:06:07 PM | Deputy Cater shoots and Makarenko's car stops approx. 3-4 feet from Sgt. Steed's patrol vehicle. |
| 11:06:33 PM | Deputy opens Makarenko's driver door |
| 11:06:45 PM | Sgt Steed backs his patrol vehicle up. |
| 11:07:00 PM | Deputy approaches Makarenko |

¹⁶ All times are approximate and based on In-Car camera video displayed times.

Officer Involved Shooting Review Sergey Makarenko

| | |
|-------------|--|
| 11:07:20 PM | Deputies remove Makarenko and begin first aid |
| 11:13:20 PM | Sacramento Metro Fire arrives |
| 11:17:41 PM | Deputies advise Sacramento Metro Fire pronounced Makarenko deceased. |

Table 1 Timeline

Officer Involved Shooting Review Sergey Makarenko

B. Map of the Pursuit¹⁷

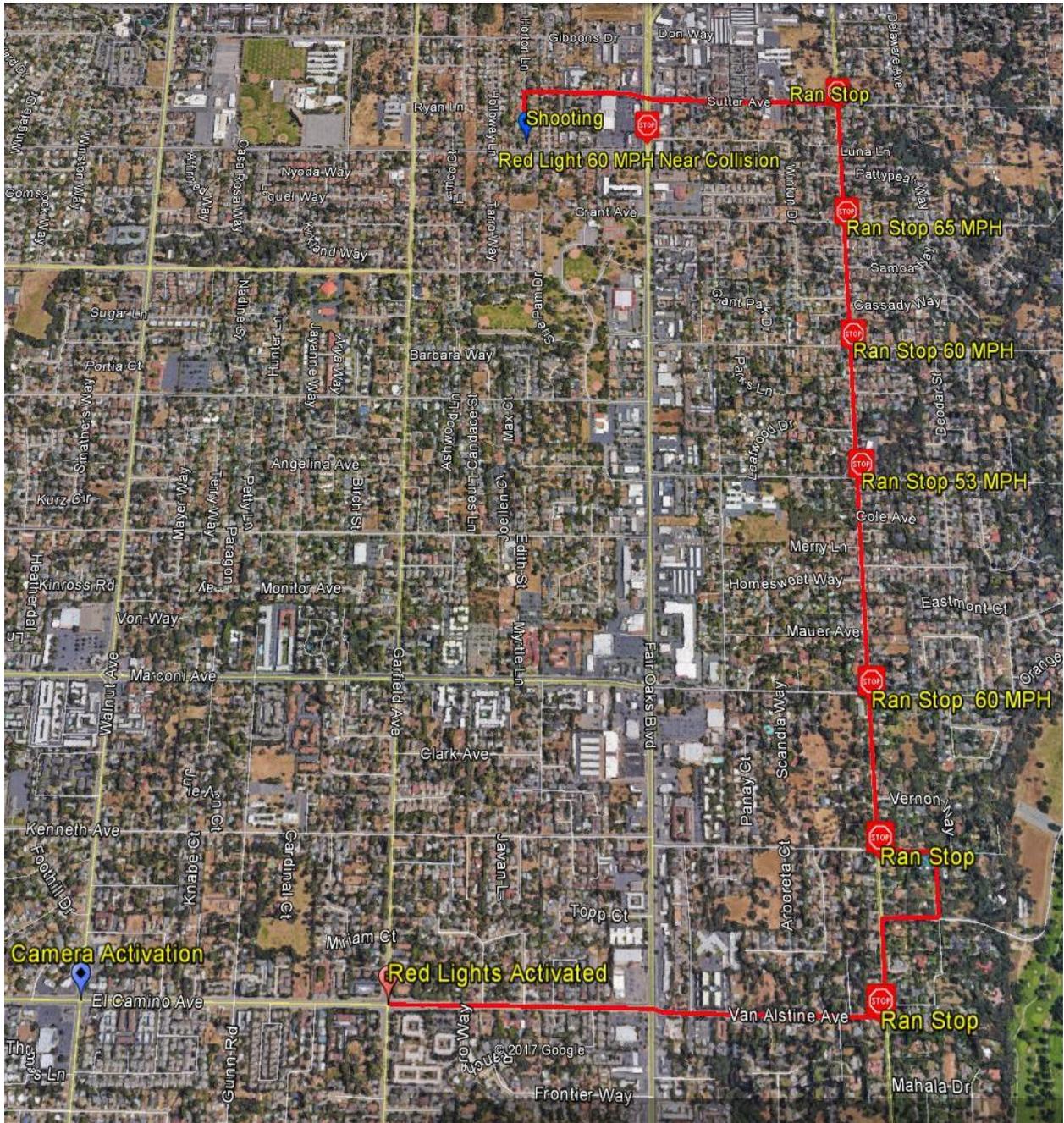


Figure 2 Pursuit Route

¹⁷ The pursuit distance was approximately 3.3 miles and lasted approximately 4 minutes 50 seconds.

Officer Involved Shooting Review Sergey Makarenko

C. Shooting Scene Image¹⁸



Figure 3 Shooting Scene

¹⁸ The scene image was taken from Google Earth and the vehicles photographed in the image were not in those locations at the time of the shooting. The icons used to depict the placement of the involved vehicles are approximate and not to scale.