

## Shooting case fascinating to legal experts | Both sides facing criminal charges

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Author: Matthew Rodriguez; Ray Huard

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If it goes to trial, the People vs. Frank White promises to be a fascinating study in the art of lawyering, because of its complexity, its high profile and the fact that it involves a police officer and a victim who also faces criminal charges, legal experts say.

The defense is certain to try and portray Rachel Silva as unsympathetically as possible and to assign her blame for what happened. Silva, 28, was unarmed when she was shot twice by White in an Oceanside parking lot apparently during a road-rage incident. Yet she was the aggressor, was intoxicated and driving on a suspended license from a previous DUI, Oceanside police said.

"That is not a situation you want to be in as a prosecutor," said Jeff Joseph, associate dean and general counsel for Thomas Jefferson School of Law.

But what more sympathetic victim could there be than an 8-year-old boy, Silva's son, who was shot once in the left leg by White as Silva backed her car past his in a shopping center parking lot?

"That's something that I would expect the prosecutors to stress," former District Attorney Paul Pfingst said. "If it was just Ms. Silva inside the car the case would look radically different."

The fact that White, 28, is a San Diego police officer could make a conviction difficult. Jurors often tend to believe police officers over other witnesses.

But officers also can be held to a higher standard because of their training. Jurors can expect them to remain cool, and not overreact like a civilian might in the same situation.

"Being a police officer is often a double-edged sword," said Shaun Martin, a professor of criminal law at the University of San Diego Law School.

White has been suspended from duty and has pleaded not guilty to grossly negligent discharge of a firearm, a felony, and exhibiting a firearm, a misdemeanor.

The biggest question facing White's defense is why he fired five rounds into Silva's car, said Alec Rose, a Santa Monica defense lawyer who has defended many police officers. Self-defense, Rose said, has its limits. "You cannot use more force than you need to neutralize the threat."

Throw into the mix that White was off duty in his own car with his wife, and that he pulled out his personal, five-shot, .38-caliber revolver -- and not his badge -- when confronted, said defense lawyer George Cretton, a former El Cajon police officer.

"There's a fair difference between acting on duty and off duty," Cretton said. "It just creates additional issues that you wouldn't normally expect to have if you were on duty in a uniform in a police car."

San Diego police and other county law enforcement agencies, in response to the shooting of then-Chargers linebacker Steve Foley by a Coronado police officer, adopted a new policy last year for how off-duty officers should react to potential crimes. But it offers only the most general guidelines. It says off-duty officers, for example, should "consider alternatives," such as calling the appropriate law enforcement agency, before intervening in a situation.

In White's trial, the ultimate question jurors would have to decide, based on their life experiences, is whether he behaved recklessly, Pflugst said.

Should he have withheld fire until he had determined who was inside Silva's car? Would a reasonable person have assumed that the person driving the other car was trying to seriously injure or kill him, and not trying to escape?

"What this case is going to turn on is whether the act was grossly negligent," Pflugst said. "There's no charge that it was malicious."

A jury would probably get this guidance from the state's criminal jury instructions: "A person acts with gross negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of the act."

An Oceanside police investigation concluded that Silva, who was living in Oceanside at the time, pulled out in front of White on Old Grove Road just after 9 p.m. March 15, forcing him to swerve to avoid an accident.

White turned into a nearby Lowe's parking lot, and Silva followed, revving her engine and tailgating. White's wife called 911. In the parking lot, Silva pulled within inches of White's door, and was shouting at him. Court documents say White pointed his gun at her, and then backed up his car.

Silva called 911, saying, "There's a guy who's pulling a gun on me." She then drove in reverse toward White's car. As the two cars passed, their side mirrors hitting, White fired one round through his window and Silva's passenger window, striking her son, and four more through her windshield. The front of Silva's Honda Accord hit the side of White's Mercury Milan as she turned away.

Silva, 28, has pleaded not guilty to one felony count of child endangerment and four DUI-related misdemeanors in the incident. She is being prosecuted by the state Attorney General's Office.

Michael Crowley, president of San Diego Criminal Defense Bar Association, said prosecutors in each case appear to have brought charges in a "very strategic way."

The District Attorney's Office did not charge White with assault with a deadly weapon, a more serious charge. "They've brought the charges that they think they can prove," Crowley said.

Silva was not charged with assault, which would have helped White's defense. Prosecutors said there was not enough evidence.

A key element for both sides will be reviewing White's training, said Mario Conte, a law professor at California Western School of Law. "I'd want to get into the police manuals to see what (they) tell them about situations like this," he said.

White, who lives in Oceanside, was hired by the San Diego department in October 2005, after six months in the police academy. He had worked as a police dispatcher for Carlsbad, a job his wife still holds.

Both sides are likely to call in experts to testify about whether White's conduct was reasonable in light of general police principles, Conte said.

Some suggest that the case could be settled with a plea agreement. A felony conviction would likely end White's law enforcement career, Cretton said, but a deal that would allow him to plead to a misdemeanor could be attractive.

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<b>Abstract</b> (Document Summary)
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