

**Non-Fatal Officer Involved Shooting of Hermes Aparicio
Los Angeles County Sheriff's Department**

Deputy Tarsicio De La Torre, #534813

J.S.I.D. File #20-0391



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

March 7, 2023

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-fatal Officer Involved Shooting of Hermes Aparicio
J.S.I.D. File #20-0391
L.A.S.D. File #020-19024-1363-057

DATE: March 7, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 6, 2020, non-fatal shooting of Hermes Aparicio by Los Angeles County Sheriff's Department (LASD) Deputy Tarsicio De La Torre. We have determined that there is insufficient evidence to prove that Deputy De La Torre did not act in lawful self-defense when he fired his duty weapon.

The District Attorney's Command Center was notified of this shooting on October 6, 2020, at approximately 1:59 p.m. The District Attorney Response Team (DART) responded to the location, where they received a briefing and walk-through of the scene.

The following analysis is based on police reports, 9-1-1 calls and radio transmissions, video evidence, recorded interviews, photographs, body-worn video (BWV) recordings¹ and other evidence submitted to this office by LASD Homicide Bureau Detectives Art Spencer and Chaffey Shepherd. De La Torre's voluntary statement was considered in this analysis. De La Torre was not equipped with a body-worn camera at the time of the incident.

FACTUAL ANALYSIS

On October 6, 2020, at approximately 11:23 a.m., Deputy Tarsicio De La Torre, who was driving a marked, black-and-white sports utility vehicle (SUV) and wearing a full uniform, responded to a 9-1-1 call reporting a vandalism near the 710 Freeway and Rosecrans Avenue. De La Torre spoke with [REDACTED], who said he was sitting in the front passenger seat of a news van when a man, later identified as Hermes Aparicio, suddenly struck the passenger side of the front windshield with a metal shovel, shattering the windshield. De La Torre reviewed cell phone video that [REDACTED] recorded after the incident, showing Aparicio wearing baggy clothing walking eastbound towards Rosecrans Avenue while carrying a metal shovel.

¹ Deputies equipped with BWV arrived on the scene after the shooting.

At 12:04 p.m., LASD received a 9-1-1 call reporting a woman and a man, who matched the description of the vandalism suspect, harassing Subway restaurant customers near Rosecrans Avenue and Garfield Avenue. De La Torre responded to the location. At approximately 12:40 p.m., De La Torre was exiting Subway's parking lot when he observed Aparicio, who he recognized from [REDACTED]'s cell phone video, walking along Rosecrans Avenue. De La Torre broadcast he located the vandalism suspect, who was holding an object in his hand. Several deputies broadcast they were responding to assist.

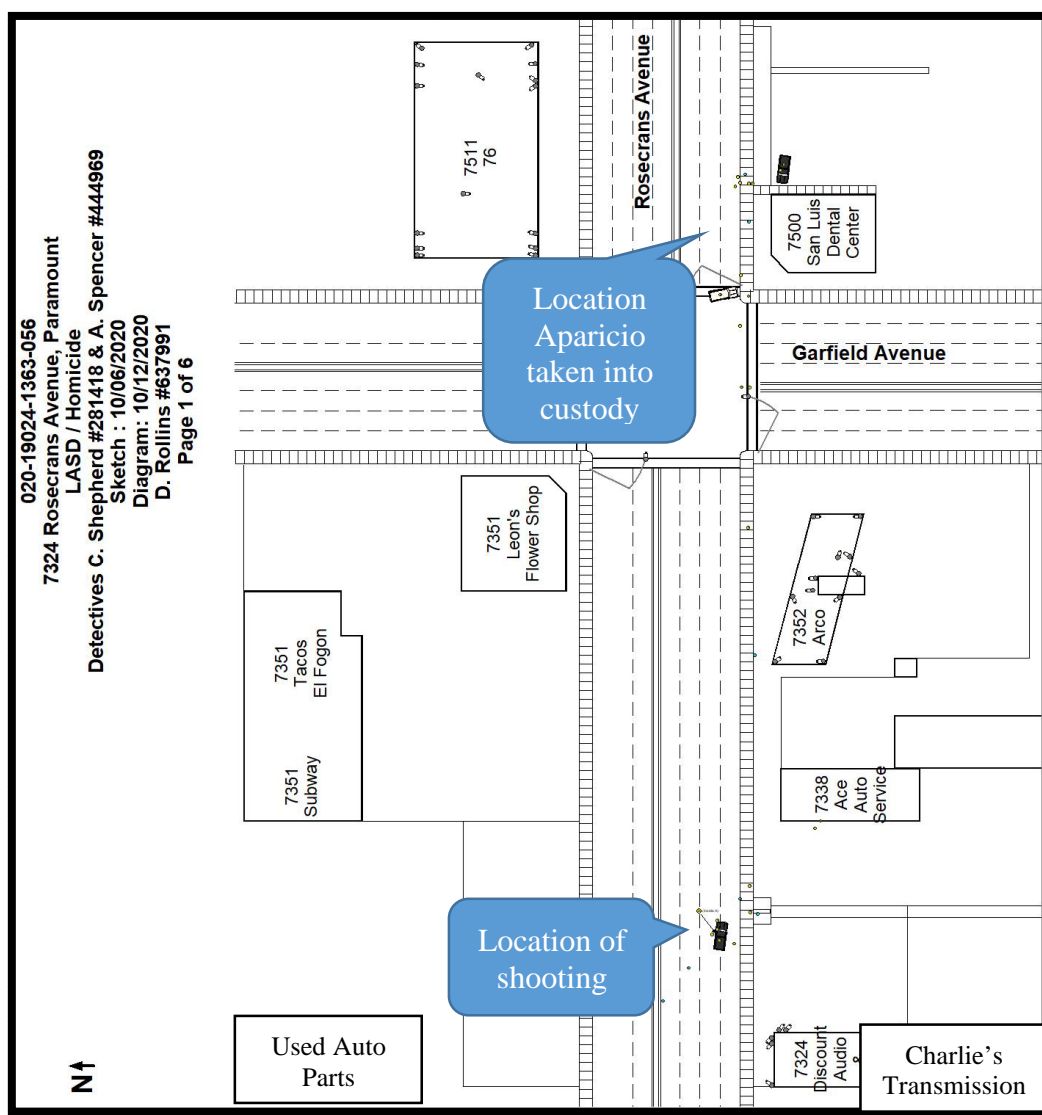


Diagram of the scene.

De La Torre drove eastbound parallel to Aparicio walking on the north sidewalk. De La Torre gave Aparicio commands to stop and drop the object, which De La Torre told investigators he thought was a rock.² Aparicio ignored De La Torre's commands and crossed the westbound lanes directly towards De La Torre's driver's side door. Fearing Aparicio was going to throw the

² The "rock" was actually a five-by-three-inch, two-inch-thick solid iron object weighing 3.29 pounds.

object at him, De La Torre closed his window. Aparicio walked around the front of the SUV and crossed the eastbound lanes towards the south sidewalk. De La Torre drove behind Aparicio, activated his emergency lights, parked and began to exit the SUV. Aparicio suddenly turned and threw the object at De La Torre, which ricocheted off the SUV's hood and landed behind him. De La Torre saw Aparicio holding a metal object in his left hand, which he told investigators he believed was a knife, and remove a glass jar from his clothing. De La Torre told investigators he believed Aparicio intended to hit him in the head with the glass jar and stab him. Aparicio threw the glass jar at De La Torre. De La Torre told investigators he fired four rounds from his handgun in fear for his life. Aparicio continued walking towards the passenger side of the SUV. De La Torre retreated behind the SUV and informed dispatch a shooting occurred, stating Aparicio was armed with a knife and had thrown a rock and a glass bottle at him.

As De La Torre walked around the rear passenger side of the SUV, Aparicio turned and walked eastbound towards Garfield Avenue. De La Torre followed from a distance, giving Aparicio commands to stop and drop the knife. Several deputies arrived and observed Aparicio holding a metal object they told investigators they believed was a knife. Deputy Bradley-Delgado broadcast Aparicio was holding a "417 Adam" (knife). Aparicio ignored the deputies' repeated commands to stop and drop the object and continued walking eastbound across Garfield Avenue. Deputy Jose Martinez fired two 40mm rounds, striking Aparicio's torso with no apparent effect. Aparicio continued walking and ignoring the deputies' commands. Martinez deployed his Taser, striking Aparicio and causing him to fall onto the sidewalk. Deputies approached Aparicio, who was moving his legs and holding his right arm under his body. Deputy Donald Bradley-Delgado deployed his Taser in drive-stun mode, and De La Torre used his baton to remove Aparicio's arm from underneath him. Deputies handcuffed Aparicio and placed a hobble on his legs.³ Deputies recovered several metal objects from Aparicio's pockets. The Los Angeles Fire Department (LAFD) transported Aparicio to St. Francis Medical Center, where he was treated for gunshot wounds to his right wrist and thighs and released.

On October 8, 2020, Aparicio was charged in case TA152836 with two counts of assault on a peace officer with a deadly weapon, in violation of Penal Code section 245(c), and with allegations that he personally used a deadly or dangerous weapon (a metal shard and a glass jar, respectively), in violation of Penal Code section 12022(b)(1).⁴ On June 30, 2022, Aparicio was granted mental health diversion pursuant to Penal Code section 1001.36.

WITNESS STATEMENTS

De La Torre's Statement

De La Torre told investigators he responded to a vandalism call earlier that day and interviewed [REDACTED], who said he was sitting inside his news van when Aparicio hit his window with a metal shovel without provocation.⁵ De La Torre viewed [REDACTED]'s cell phone video, showing Aparicio walking away holding a shovel. Approximately 45 minutes later, De La Torre responded to a

³ A "hobble" is a device used to secure a suspect's legs.

⁴ On July 30, 2021, Aparicio was charged in case 1CS01906 with misdemeanor vandalism, a violation of Penal Code section 594, which was later consolidated with TA152836.

⁵ Unless otherwise stated, all interviews were audio recorded.

call regarding a female and a male harassing restaurant customers near the intersection of Rosecrans Avenue and Garfield Avenue. As De La Torre was exiting the restaurant's parking lot, he saw Aparicio, who he recognized from the cell phone video, walking eastbound on the south sidewalk of Rosecrans Avenue.

De La Torre drove westbound on Rosecrans Avenue. Aparicio noticed De La Torre and started to cross the street through traffic. De La Torre saw Aparicio was carrying what he initially thought was a rock but was actually a large piece of metal. De La Torre ordered Aparicio to stay on the sidewalk and drop the object. Aparicio responded unintelligibly, ignored the commands and walked through traffic to the north sidewalk. De La Torre made a U-turn and drove eastbound on Rosecrans Avenue. Aparicio crossed the westbound lanes of traffic directly towards De La Torre, looking at him aggressively and locking eyes with him. De La Torre rolled up his driver's window because he thought Aparicio was going to throw the object at him. Aparicio veered around the front of the SUV, through the eastbound lanes to the south sidewalk. Through his open passenger window, De La Torre continued giving Aparicio commands to stop, drop the object and get on the ground. De La Torre activated his emergency lights and parked. As De La Torre exited the SUV, Aparicio threw the object at him, which ricocheted off the SUV.

De La Torre told investigators that when he exited the SUV, he removed his Taser but realized Aparicio's bulky clothing could make the Taser ineffective. De La Torre walked around the front fender of his SUV intending to tase Aparicio, who was approximately 15 to 20 feet away. Aparicio suddenly turned around, removed a glass mason jar from his clothing and was clenching a metal object in his left hand, which De La Torre believed was a knife. De La Torre believed Aparicio intended to hit him in the head with the glass jar and attack him with the knife. When Aparicio threw the glass jar at De La Torre, De La Torre fired three to four rounds from his handgun in fear for his life. De La Torre informed dispatch of the shooting. After De La Torre discharged his handgun, Aparicio continued walking towards him. De La Torre thought Aparicio was going to attack him with the knife and moved to the rear of the SUV. Aparicio stopped moving when he noticed De La Torre coming around the back of the SUV. De La Torre ordered Aparicio to stop and drop the knife. Aparicio responded in Spanish, "I have got to go here," and walked eastbound on the sidewalk.

De La Torre was concerned Aparicio was going to injure someone with the knife. Other deputies arrived and gave Aparicio commands, which he continued to ignore. A deputy fired two 40mm less-lethal rounds at Aparicio with no effect. Aparicio continued walking eastbound through traffic holding the metal object. After a deputy deployed a Taser, Aparicio fell to the sidewalk with his right arm under his body. De La Torre used his baton to remove Aparicio's right arm from underneath him so deputies could handcuff him. De La Torre saw injuries to Aparicio's wrist and thigh.

Aparicio's Statement

Investigators interviewed Aparicio at the Lakewood Station jail. After waiving his Miranda rights, Aparicio agreed to speak to investigators but was generally unresponsive. Aparicio said he did not remember the vandalism incident or how he was injured. When investigators asked why he threw an object at the deputy, he responded, "It's not important."

██████████'s Statement

██████████ told investigators she was driving eastbound on Rosecrans Avenue behind a patrol SUV that was following a homeless man (Aparicio). ██████████ saw Aparicio, who was standing on the south sidewalk, throw a “wood chip” or a “small stick” at the SUV. The deputy (De La Torre) exited the SUV and immediately began shooting at Aparicio, who continued walking eastbound on Rosecrans Avenue. ██████████ did not see Aparicio holding a weapon.⁶

██████████'s Statement

██████████ told investigators he was inside Discount Audio & Wheels when he saw a patrol SUV (De La Torre) driving in front of the store. ██████████ saw Aparicio, who he knew from the area, jaywalking across the street. De La Torre appeared to be talking to Aparicio, who continued walking. De La Torre stopped the SUV and activated the emergency lights. ██████████ exited the store. Aparicio suddenly turned around and threw an unknown object at the SUV. ██████████ heard five gunshots immediately after Aparicio threw the object, but his view of Aparicio and De La Torre was obstructed when the shots were fired. ██████████ did not see Aparicio holding anything else in his hands.

██████████'s Statement

██████████ told investigators he was inside Discount Audio & Wheels when he heard tires screeching and someone yelling. ██████████ looked through a window and saw Aparicio throw an object, which ██████████ believed was a glass bottle, before taking a step in the other direction. ██████████ heard four to five gunshots immediately after Aparicio threw the object. ██████████ exited the building as De La Torre walked around the rear of the patrol SUV and followed Aparicio down the street. ██████████ did not see Aparicio holding anything else in his hands.

██████████'s Statement

██████████ was working at the 76 gas station at the northeast corner of Rosecrans Avenue and Garfield Avenue when she heard three to four loud “pops.”⁷ ██████████ walked outside and saw Aparicio walking eastbound on Rosecrans Avenue being followed by several deputies. Aparicio was waving an unknown object in the air, ignored the deputies’ commands and continued walking eastbound across Garfield Avenue. ██████████ heard the sound of a Taser and saw the deputies tackle and handcuff Aparicio.

Deputy Jose Martinez’s Statement

When Martinez arrived, Aparicio was walking eastbound on Rosecrans Avenue being followed by deputies. Aparicio was holding a metal object, which Martinez described as a pipe or

⁶ ██████████ provided investigators with cell phone video she recorded after the shooting occurred. However, the video was not saved on the LASD evidence system and was not provided for review. Investigators’ attempts to contact ██████████ to obtain another copy were unsuccessful.

⁷ ██████████ was interviewed separately by Deputy Matthew Sander and Detective Telly Johnson. The interviews were not recorded.

sharpened metal object. Martinez fired a 40mm less-lethal round at Aparicio, striking his lower back with no effect. Martinez fired a second 40mm less-lethal round, striking his lower rib or upper thigh with no effect. Martinez did not have any additional 40mm ammunition and transitioned to his Taser. Aparicio continued to ignore deputies' commands. Martinez fired his Taser, striking Aparicio and causing him to fall to the ground.⁸ Martinez recovered a sharp metal object from Aparicio's pocket.

Deputy Donald Bradley-Delgado's Statement

Bradley-Delgado responded to the scene and observed Aparicio, who appeared agitated and was clenching a sharp metal object that he believed was a knife. Bradley-Delgado broadcast that Aparicio was armed with a knife and requested less-lethal weapons. Deputies gave Aparicio commands, but he continued walking eastbound. A 40mm weapon and a Taser were deployed. As deputies were taking Aparicio into custody, Aparicio pulled his right arm towards his waistband and resisted when Bradley-Delgado tried to gain control of Aparicio's arm. Bradley-Delgado used his Taser to drive-stun Aparicio, which allowed deputies to gain control of his arm and handcuff him.⁹ Deputies retrieved multiple metal pipes from Aparicio's pockets.

EVIDENCE

Surveillance Video

Investigators obtained surveillance video from businesses located along Rosecrans Avenue. Video from Discount Auto & Wheels, located on the south side of Rosecrans Avenue, shows Aparicio walking eastbound in the far westbound lane while a marked, black-and-white patrol SUV drives slowly in the eastbound lane parallel to him. Aparicio suddenly walks across two westbound lanes of traffic directly towards the driver's side of the SUV. Aparicio looks in De La Torre's direction as he walks around the front of the SUV and across the eastbound lanes while clenching an object in his right hand. Aparicio walks towards the south sidewalk and out of view as De La Torre drives in a southeasterly direction behind him and out of view.

⁸ BWV shows Martinez firing his Taser as Aparicio is walking away from several deputies following him.

⁹ BWV shows several deputies struggling to handcuff Aparicio. It is unclear from the BWV exactly when Bradley-Delgado deployed his Taser before deputies were able to handcuff Aparicio.



Still photo from Discount Auto & Wheels video showing Aparicio clenching an object.

Video from Used Auto Parts, located on the north side of Rosecrans Avenue across the street from Discount Auto & Wheels, shows Aparicio walking on the south sidewalk followed by a marked, black-and-white patrol SUV with its emergency lights activated. The SUV stops near the southern curb as Aparicio continues walking eastbound. De La Torre exits the SUV, closes the door and walks in front of the SUV. Aparicio suddenly stops walking, turns around and walks back in De La Torre's direction. Traffic partially obscures the view as Aparicio walks towards De La Torre. De La Torre retreats towards the driver's side of the SUV as Aparicio makes a throwing motion towards him. De La Torre places his arm in the air and crouches down as an object flies over De La Torre and lands on the pavement. Aparicio disappears behind the passenger side of the SUV as De La Torre begins walking towards the rear of the driver's side. A bus driving westbound temporarily blocks the view. When the bus passes, De La Torre continues walking around the rear of the SUV towards the south sidewalk as Aparicio reappears on the passenger side walking eastbound and out of view. De La Torre follows Aparicio from a distance and out of view.



Used Auto Parts video still photo showing Aparicio making a throwing motion at De La Torre.

Video from Charlie's Transmission, located on the south side of Rosecrans Avenue next door to Discount Auto & Wheels, shows Aparicio walking eastbound on the south sidewalk being followed by a marked, black-and-white patrol SUV. As Aparicio walks out of view behind a white truck, De La Torre parks, exits and walks to the front of the SUV. De La Torre suddenly raises his right arm in front of him and quickly moves backwards behind the driver's side of the SUV. De La Torre leans back, as though he is falling, while raising his right arm over his head. De La Torre disappears momentarily behind the driver's side of the SUV, reappears standing next to the driver's side and makes several forward motions with his right arm. De La Torre walks back behind the driver's side as Aparicio reappears walking towards the passenger side of the SUV. Aparicio stops briefly next to the front passenger door before walking eastbound and out of view. De La Torre reappears on the rear passenger side of the SUV, raises both arms in front of him and walks eastbound on the sidewalk out of view.



Still photo from Charlie's Transmission video showing De La Torre falling backwards while raising his arm.

Other Evidence

Criminalists recovered four expended 9mm cartridge casings and four projectiles from the scene. The investigation determined De La Torre fired four rounds from his 9mm Beretta duty weapon.

Criminalists recovered a rectangular five-by-three-inch, two-inch-thick solid iron object weighing 3.29 pounds from the pavement northwest of De La Torre's SUV and photographed glass shards on the pavement northwest of the SUV. Criminalists recovered several metal objects from the sidewalk where the shooting occurred and also recovered several similar metal objects near the sidewalk where Aparicio was taken into custody.¹⁰



Damage to the hood of De La Torre's SUV.



Rectangular metal object recovered from the pavement on Rosecrans Avenue.

¹⁰ BWV show deputies removing several metal objects and other items from Aparicio's pockets and placing them onto the sidewalk. There does not appear to be any debris in the area before the search.



Metal objects recovered from the scene of the shooting (left) and where Aparicio was taken into custody (right).

LEGAL ANALYSIS

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest. Penal Code Section 834a.

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505. A prior threat or harm to the person or others can be considered when determining whether a person's conduct and beliefs were reasonable. CALCRIM No. 3470. A person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death or bodily injury has passed. This is so even if safety could have been achieved by retreating. The People have the burden of proving beyond a reasonable doubt that the person did not act in lawful self-defense or the defense of another. *Id.*

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably

believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2). When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

When De La Torre attempted to contact Aparicio regarding the vandalism, Aparicio ignored De La Torre's repeated commands to stop and drop the large metal object he was holding. De La Torre activated his emergency lights, parked and exited his SUV. Aparicio threw the large metal object at De La Torre, which dented the SUV's hood and ricocheted past De La Torre. Aparicio removed a glass jar from his clothing and was holding a metal object, which De La Torre said he believed was a knife. De La Torre stated he believed Aparicio intended to hit him in the head with the glass jar and stab him. De La Torre told investigators he fired his handgun in fear for his safety when Aparicio threw the glass jar at him.

The evidence is insufficient to prove beyond a reasonable doubt that De La Torre did not reasonably believe, based on the totality of the circumstances, that his use of deadly force was necessary to defend against an imminent threat of serious bodily injury. De La Torre was aware Aparicio committed an unprovoked attack against [REDACTED] with a shovel. Both the large metal object weighing 3.29 pounds and the glass jar could have caused serious or great bodily injury to De La Torre. De La Torre was forced to react quickly to Aparicio repeatedly throwing dangerous objects at him while holding a metal object De La Torre said he believed was a knife. Surveillance video shows Aparicio making a throwing motion towards De La Torre and continue walking towards him. Other deputies stated they saw Aparicio holding what they believed was a knife, and several metal objects were recovered from the scene. Deputies were finally able to take Aparicio into custody after deploying two 40mm rounds and a Taser. Given the rapidly unfolding events, Aparicio's violent and erratic behavior, and Aparicio's present ability, opportunity, and apparent intent to cause serious bodily injury to De La Torre, the evidence is insufficient to prove that De La Torre's use of deadly force was unjustified.

CONCLUSION

We have determined that there is insufficient evidence to prove that Deputy De La Torre did not act in lawful self-defense when he fired his duty weapon.