

# **Fatal Officer Involved Shooting Rodolfo Torres**

## **Los Angeles Police Department**

**Sergeant Christopher Burke #36665, Officers Luis Avalos #42574 Kyle Bender #43595, Chad Fillinger #42270, Israel Florez #43402, Christopher Gonzalez #44010, Chad Heistermann #40775, Jose Rodriguez #44337, James Stea #44030 and Garret VanHooser #41600**

**J.S.I.D. File #22-0219**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**October 12, 2023**

## **MEMORANDUM**

**TO:** CAPTAIN OMAR BAZULTO  
Los Angeles Police Department  
Force Investigation Division  
100 West First Street, Suite 431  
Los Angeles, California 90012

**FROM** JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

**SUBJECT:** Fatal Officer Involved Shooting of Rodolfo Torres  
J.S.I.D. File #22-0219  
L.A.P.D. File #F030-22

**DATE:** October 12, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 2, 2022, fatal shooting of Rodolfo Torres by Los Angeles Police Department (LAPD) Sergeant Christopher Burke and Officers Luis Avalos, Kyle Bender, Chad Fillinger, Israel Florez, Christopher Gonzalez, Chad Heistermann, Jose Rodriguez, James Stea and Garrett VanHooser. We conclude that there is insufficient evidence the officers did not reasonably believe deadly force was necessary to defend against an imminent threat of death or serious bodily injury.

The District Attorney's Command Center was notified of the shooting on July 2, 2022, at 10:55 p.m. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, recorded interviews, photographs, video evidence, the autopsy report and witness statements submitted to this office by LAPD Detectives George Cruz, Francesca Florez and Nik Pikor on August 9, 2023. All of the officers wore body worn video (BWV) cameras, and all videos were considered as a part of this analysis. The departmentally compelled statements of Officers Eric Vargas, Mark Ramos, Oscar Rangel, Luis Valdez and Tactical Flight Officer Robert Heiserman were also considered in this analysis. All of these officers except for Heiserman were present on the ground at the time of the shooting but did not fire their weapons. Heiserman observed the incident from overhead in a helicopter.

### **FACTUAL ANALYSIS**

#### **Introduction**

On July 2, 2022, LAPD Gang Enforcement Detail (GED) Officers Avalos and Vargas were patrolling the area of 36<sup>th</sup> Place and Maple Avenue in the City of Los Angeles.

Avalos and Vargas encountered Torres walking in the street with his hands appearing to hold a heavy object in his waistband while walking away from them.

Avalos immediately recognized Torres as “Marbles” from 36<sup>th</sup> Street gang and commanded him to stop and show his hands. Torres ignored the commands. For more than a half a mile Torres was followed by a group of officers that eventually reached over 13 officers and a Tactical Flight Officer in an overhead helicopter. Torres was struck by a less lethal .40mm projectile, causing Torres to fall to the ground. Torres’s hand came out of his waistband with a firearm visibly in his right hand. For more than 30 seconds, officers commanded Torres to drop the gun and raise his hands. Torres began to grip the gun and point it towards the officers. Ten officers responded by shooting at Torres, striking him 14 times. Torres was later pronounced dead at the hospital.

### **Officer Eric Vargas’s Statement**

Vargas gave a compelled statement to investigators on July 3, 2022 at 9:53 a.m. Vargas had watched his BWV prior to his interview with investigators. Vargas’s partner was Avalos and they were the first officers to encounter Torres.

The combination of Vargas statement and Avalos’s BWV (Avalos turned on his BWV a few seconds before Vargas and captured the initial conversations between the officers and Torres) gives a comprehensive view of the incident from initial encounter until the officer-involved shooting.

Vargas had been a gang officer for approximately three years, the 36<sup>th</sup> Street gang was among the gangs he was assigned to monitor. On the evening of July 2, 2022, at approximately 9:40 p.m., Avalos and Vargas encountered Rodolfo Torres as he walked on 36<sup>th</sup> Place approaching Maple Avenue. Torres wore baggy clothing and carried a backpack which appeared to contain something heavy. Both of Torres’s hands were concealed in his front waistband. Vargas also saw what appeared to be a bulge in Torres’s waistband which resembled a firearm.

Vargas recognized Torres as a 36<sup>th</sup> Street gang member from previous contacts. Based on Vargas’s prior contacts with Torres, and the way Torres held his hands in his front waistband, Vargas opined that Torres was possibly armed with a firearm. Vargas tried to stop Torres to investigate further and ordered Torres to show Vargas his hands. Vargas shone his flashlight on Torres and called him by his nickname “Marbles.”

Torres responded variously by saying that he was just going home, that he was not on probation or parole and that he had nothing on him, but Torres did not stop in response to Vargas’s commands and kept walking away.

The officers called for backup, a perimeter was set up and eventually more than 15 officers joined Avalos and Vargas. Torres kept walking away from Avalos and Vargas westbound on 37<sup>th</sup> Street towards Woodlawn Avenue. The two officers put out a call that Torres was possibly armed with a firearm.

Torres turned southbound on Woodlawn Avenue and Vargas called for a perimeter to be set up, trying to contain Torres between the streets of Woodlawn Avenue, Maple Avenue, 37<sup>th</sup> Street and Martin Luther King Boulevard. At around that time, Vargas saw Torres make a movement with his hand that made Vargas believe that Torres was about to take a firearm out of his waistband. Vargas unholstered his firearm at that point.

Vargas said another unit had arrived and had set up the perimeter containment, which Vargas said caused Torres to turn back in the other direction. Vargas said that Torres approached the intersection of 36<sup>th</sup> Place, 37<sup>th</sup> Street and Maple Avenue. Out of concern that pedestrians were on the street as the situation was unfolding, a plan was formulated to use less lethal ammunition in the form of a .40mm foam projectile.

The 40mm less lethal projectile was utilized and struck Torres in the leg. Vargas saw Torres fall to the ground and saw a firearm in Torres's hand. There was a call for the officers to redeploy at that point. Vargas was redeploying backwards when he heard multiple gunshots being fired at Torres. Vargas was part of the arrest team that handcuffed Torres. An ambulance arrived as Vargas and other officers were assessing Torres's injuries, and paramedics took over for the officers.

#### **Officer Mark Ramos's Statement**

On July 19, 2022, Ramos gave a compelled statement about the incident to investigators. Ramos had watched his BWV prior to giving his statement. Ramos was on patrol in Newton division when he heard the broadcast from Avalos and Vargas about their encounter with Torres. Ramos was a passenger in a patrol vehicle with his partner Rangel, who was driving. Ramos and Rangel were the first backup units to arrive after receiving Vargas's call for assistance.

Ramos's statement largely mirrors Vargas's statement as well as the video from the BWV of the officers responding to the location. Ramos added some details about the shooting not mentioned in Vargas's statement.

Ramos said that when officers began arriving as backup, Burke and Vargas took control supervising the operation and giving out tactical commands to the rest of the officers. Ramos said that when Torres was struck by the less lethal ammunition and was laying on the ground, Ramos was able to see Torres's hands wrapped around the gun and getting a better grip on it as if Torres was getting ready to fire it at officers. Additionally, Ramos said that Torres looked backwards at the officers as if he was trying to figure out whom to target with his firearm. Ramos said this conduct led him to be fearful that Torres was preparing to shoot at officers. Ramos said that he saw Torres begin to point his weapon towards officers when the officer-involved shooting took place. Ramos said that even though Torres's actions put Ramos in fear for his life, Ramos did not personally fire because he did not feel he could do so safely due to his proximity to other officers.

### **Officer Oscar Rangel's Statement**

Rangel gave a compelled statement on July 19, 2022. Rangel watched his BWV prior to giving his statement. Rangel was partners with Ramos and was the driver of the vehicle the two officers responded to the location in. Rangel's statement largely mirrored the statement given by Ramos and what was visible on the BWV. Rangel did not fire his weapon during this incident. Rangel said he did not see the specific movement by Torres that led to the officer-involved shooting.

### **Officer Luis Valdez's Statement**

Valdez gave a compelled statement on July 14, 2022. Valdez had watched his BWV prior to giving his statement. Valdez was assigned to the Newton GED and was Heistermann's partner on the night of the incident. Valdez was at Newton station when he heard the request for backup and he and Heistermann responded to the location. Valdez's statement largely mirrors the other statements given as well as the BWV.

Valdez was the primary officer communicating commands to Torres to stop and show his hands. Later, Valdez warned Torres that less lethal ammunition was going to be used if Torres did not cooperate. As Valdez was primarily concerned with giving commands, his weapon remained holstered until just prior to the shooting. Valdez saw Torres making movements with the firearm that caused him to fear that Torres was planning on shooting at officers. Valdez unholstered his weapon just as the shooting took place but did not fire his weapon because shots had already been fired. Valdez then focused on taking Torres into custody.

### **Tactical Flight Officer Robert Heiserman's Statement**

Heiserman gave a compelled statement to investigators on July 19, 2022. On the night of the incident, Heiserman was overhead in a police helicopter observing what was happening on the street while monitoring radio traffic from the officers on the street below. Heiserman heard radio traffic about Torres being armed with a firearm. Heiserman said that he illuminated the scene with a light from his helicopter, observed the actions taking place on the ground and coordinated to set up a perimeter containment to direct officers to respond to the correct location.

Heiserman did not make any other specific observations about Torres's actions that were not mentioned in the statements of other officers or that were not visible in the BWV from the incident.

### **Body-Worn Video**

All of the responding officers on the street wore BWV cameras which recorded the incident. Due to the nature of BWV and the actions of officers wearing cameras, no single BWV showed the complete incident without obstruction from start to finish. However, when viewed as a whole, the BWV shows a clear view of the incident from various perspectives, from the time Avalos and Vargas first arrive at the location and encounter Torres until Torres is finally taken into custody after the officer-involved shooting.

Because the event unfolded rapidly and none of the shooting officers gave voluntary statements, investigators pieced together the incident by watching and listening to the audio from all the responding officers' BWV.

BWV captured the initial encounter between Vargas, Avalos and Torres at 9:40 p.m. Vargas gets out of his car and calls to Torres by his nickname, saying, "Hey, Marbles! Put your hands up dude!" Avalos tells Vargas, "He has something big in his backpack," while Torres replies, "I'm not on parole, probation!" Vargas shouts, "Let me see your hands!" Torres turns towards the officers and again says, "I'm not on parole, probation." Torres continues walking away from Avalos and Vargas, with the same conversation going on between them: the officers commanding Torres to stop and show his hands, while Torres does not follow the commands and says he's not doing anything wrong, he's just going home, and he's not on probation or parole. At that time, Avalos tells Vargas, "415 man with a gun." Avalos makes a radio broadcast asking for backup units.



A still image from Avalos's BWV showing Avalos first encountering Torres on the street.



A still image from Avalos's BWV showing Torres walking away from Avalos as Avalos gives Torres commands to stop and show his hands.



A still image from Vargas's BWV showing Vargas unholstering his weapon as he follows Torres while giving commands for Torres to stop and show his hands.

Numerous officers, including Burke, Fillinger and VanHooser responded to the radio call saying that they are responding to the location. Avalos and Vargas continue following Torres while giving him commands to drop his weapon, while Torres walks away and continues to say, "I'm just trying to go home!" and, "I ain't fucking with nobody!" At this time, Vargas begins directing units to set up a perimeter containment. The walking chase continues for several



minutes before any backup officers arrive, with Avalos illuminating Torres with a flashlight and saying, “Hey bro, real quick, just put your hands on top of your head!” Torres continues walking away and responds, “Y’all harassing me now.” Avalos says, “Put your hands on top of your head, okay. You can’t be walking in the middle of the street, okay.” Torres turns back and says, “Cause you guys are chasing me.” At 9:44 p.m., both officers continue to update their location for backup, while Avalos calls for an airship to respond.

At around the same time, numerous units begin to arrive at the location. Heiserman responded in the helicopter, while Valdez, Heistermann, Rangel, Ramos, VanHooser and Fillinger all arrive at the location and join Avalos and Vargas in following Torres and commanding Torres to stop and show his hands.

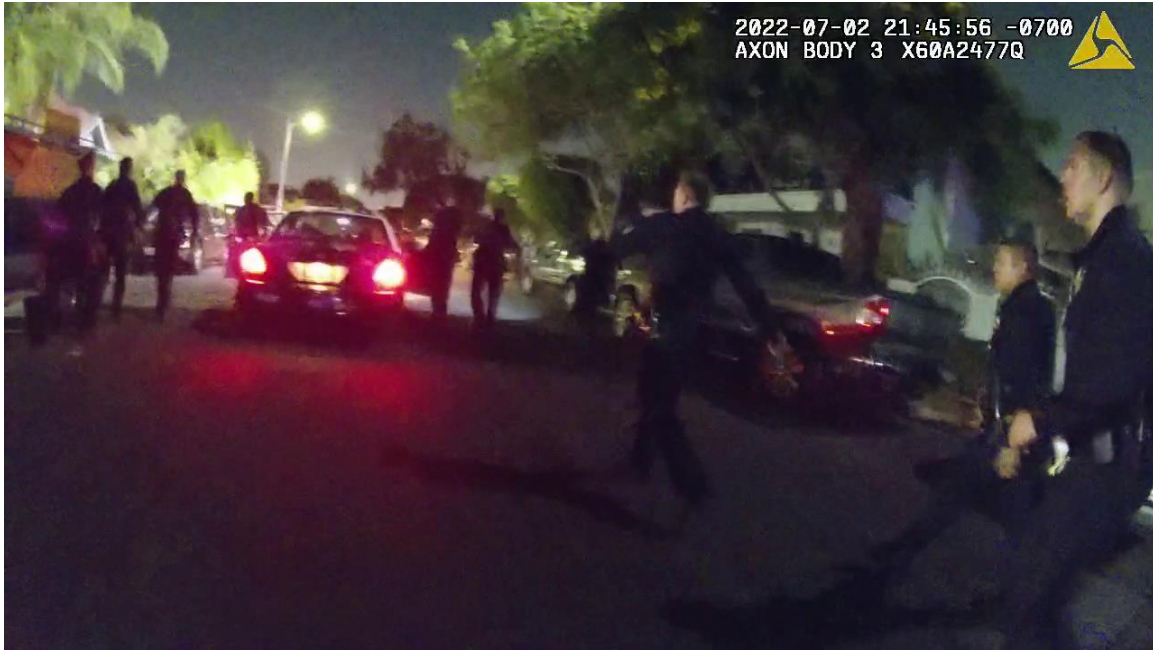


A still image from Fillinger’s BWV showing multiple officers following Torres while giving Torres commands to stop and show his hands.

Within a minute, more officers arrive as backup, including Florez, Alfonso Aguiar, Bender, Rodriguez, Jose Jaime, Ferdy Cordero, Gonzalez, Stea, Daniel Lujan-Ramirez, Gabriel Barrientos, Angel Lagunas, Francisco Lopez and Burke all arriving and joining in the walking pursuit of Torres.

Fillinger and Burke call for less lethal ammunition to be brought in, with Burke making the request several times. Meantime, the officers continue to follow Torres calling for him to stop and raise his hands. Torres continues to refuse to do so. The walk and calling out of commands continue as the group walks on 37<sup>th</sup> Street towards 36<sup>th</sup> Place and Maple Avenue. Avalos gets a 40mm less lethal rifle and warnings are given to Torres that painful less lethal weapons will be used.





A still image from Avalos's BWV depicting numerous LAPD officers following Torres.

As the group reaches the intersection of 37<sup>th</sup> Street, 36<sup>th</sup> Place and Maple Avenue, Torres is warned one last time over the police microphone to, "Stop, put your hands in the air. We do not want to hurt you. We do not want to hurt you." Burke yells out to warn the other officers that less lethal, not firearms, is about to be utilized, "Listen, 40 only! 40 stand-by! Hit him! Everybody, 40 stand-by!"

At 9:48:37 p.m., eight minutes after the initial interaction with Avalos and Vargas, Avalos fires the 40mm less lethal rifle at Torres (subsequent investigation shows that the round struck Torres in the leg) and Torres falls to the ground in the middle of the intersection. Torres reaches down and grabs a firearm that fell underneath him and holds the pistol grip of the firearm next to his body with his right hand.

The officers respond to the Torres's actions by yelling out, "Gun!" numerous times. They also yell other commands such as, "Hey, hey, hey, don't do it! Don't do it! Don't do it!" Other officers yell, "Hold!" and, "Easy, easy!" Avalos reloads his 40mm less lethal shotgun, while Burke asks, "What is that?" Heisterman replies, "It's a gun!" Burke broadcasts on his radio, "He's got a gun right there," while other officers continue to call out to Torres to drop his weapon. At 9:48:54 Burke calls for the assembled officers to redeploy back to cover behind the patrol vehicle that was at the location. The officers begin to deploy backwards while still calling out to Torres to, "Drop the gun!"



A still image from Heisterman's BWV showing Torres on the ground after being hit with 40mm less lethal ammunition and a firearm in his right hand.



A zoomed in still image from Van Hooser's BWV showing Torres on the ground after having been hit by 40mm less lethal ammunition and holding a firearm in his right hand.



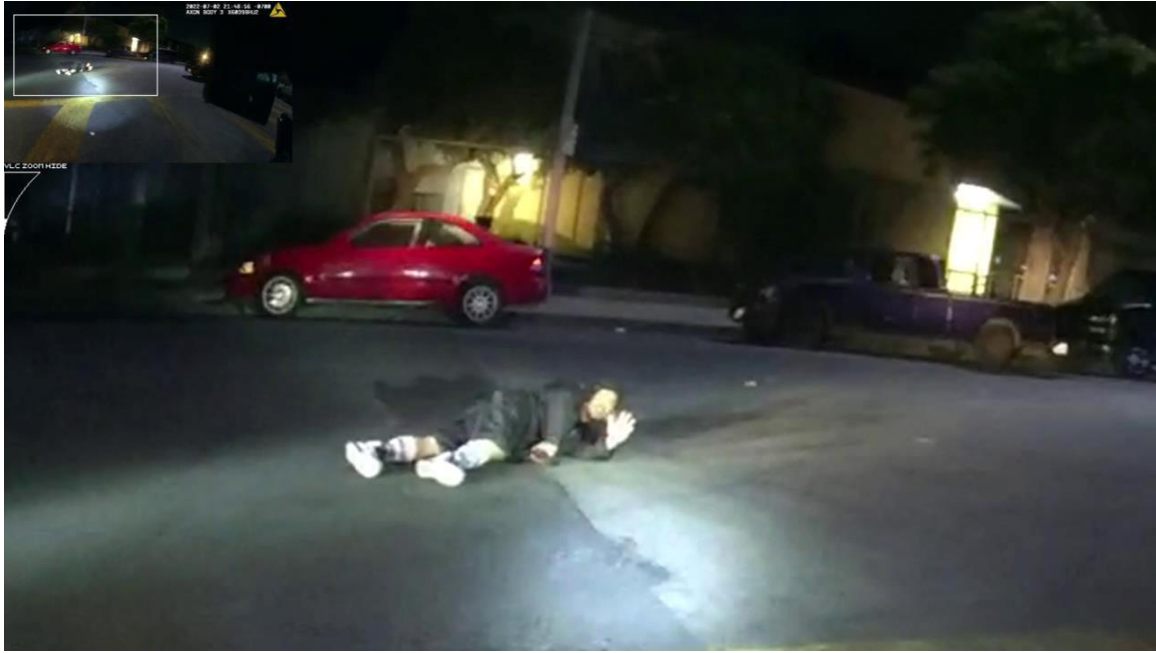
A still image from Officer Alexi Aguiar's BWV showing responding officers on left side of the patrol vehicle prior to shooting of Torres. The officer's names in red fired their duty weapons, the officers in white did not.



A still image from Officer Gabriel Barriento's BWV showing responding officers on the right side of the patrol vehicle prior to the shooting of Torres. The names in red were identified as having fired their weapons at Torres.



At 9:49:05, Torres is looking back towards some of the officers with his left (unarmed) hand up and his right hand with the gun still on the ground. At that time, Torres begins to raise the firearm in his right hand up and towards some of the officers when 10 of the officers immediately respond with gunfire.



A zoomed in still image from Van Hooser's BWV showing Torres looking towards the officers and just before raising the firearm in his right hand (Van Hooser's view of the raising of the gun is blocked by another officer).





Four consecutive frames zoomed in from Stea's BWV showing Torres raising his gun in the moments before the ten officers fired their duty weapons at him.

After the gunshots were fired, the officers redeployed and Burke gave orders on how to approach Torres, disarm him and get him into custody so that they could render aid. At 9:54, officers approached, disarmed and apprehended Torres, handcuffing him and beginning to render aid. Emergency personnel arrived shortly thereafter and began rendering medical assistance to Torres.

### **Medical Treatment**

Torres was transported to Los Angeles County/University of Southern California Medical Center where he was treated for multiple gunshot wounds. Torres was pronounced dead the evening of July 2, 2022 at 10:30 p.m. An autopsy was conducted which showed Torres died after suffering 14 gunshot wounds to various parts of his body.

A toxicology report detected the presence of alcohol, amphetamine and methamphetamine in Torres's blood.

### **Weapons Recovered**

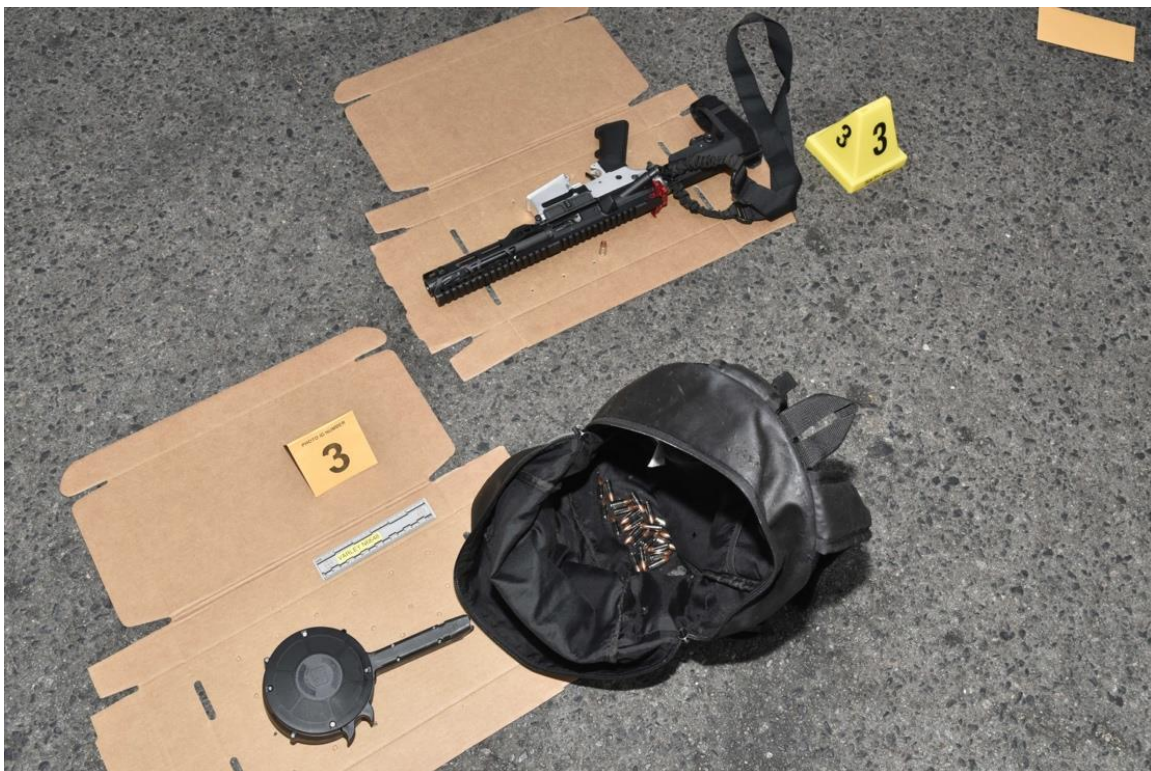
Investigators recovered a 40 caliber handgun with no serial number loaded with 31 live rounds from under Torres's body. A 9mm AR-style semi-automatic pistol with a rifle stock, along with a 50 round capacity drum magazine loaded with 35 live rounds was located inside the black backpack that Torres was wearing at the time of the incident.<sup>1</sup>

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<sup>1</sup> Both firearms had no serial number and were referred to as "ghost guns."

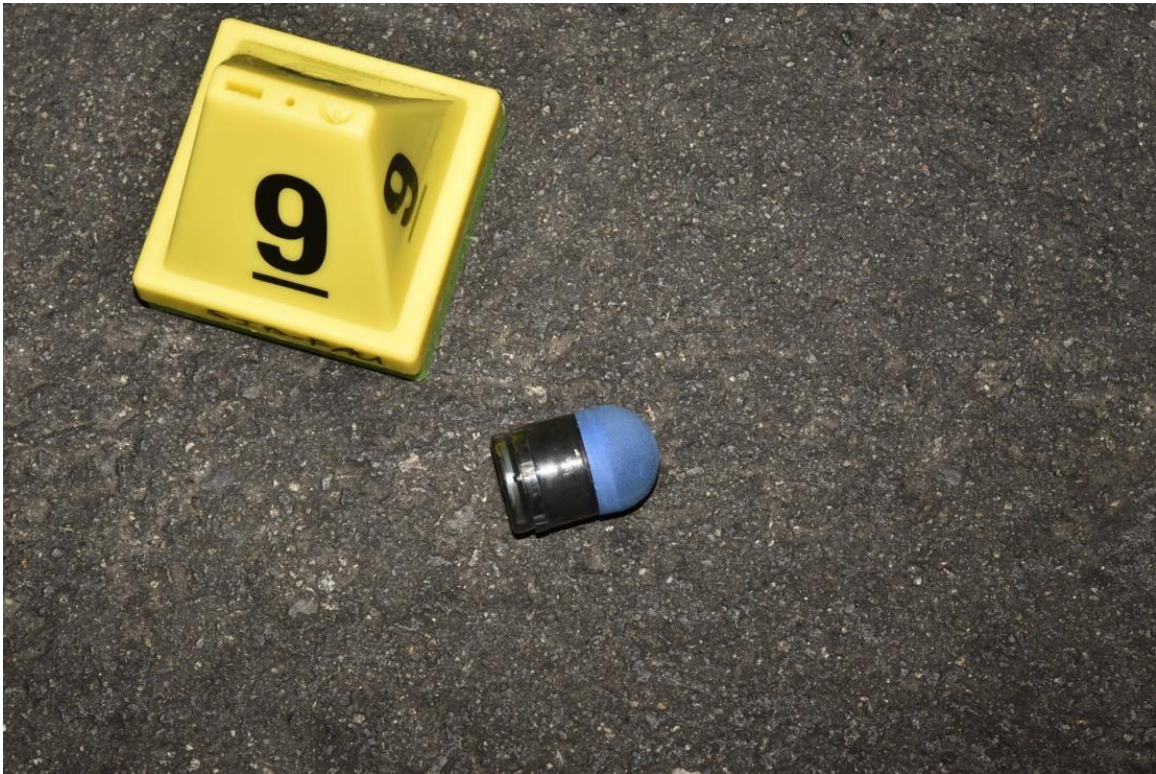


A photograph of the 40 caliber firearm recovered next to Torres's body after the shooting.



A photograph of the black backpack Torres wore along with the 9mm "AR type" firearm, 50 round capacity drum magazine and miscellaneous ammunition found inside.

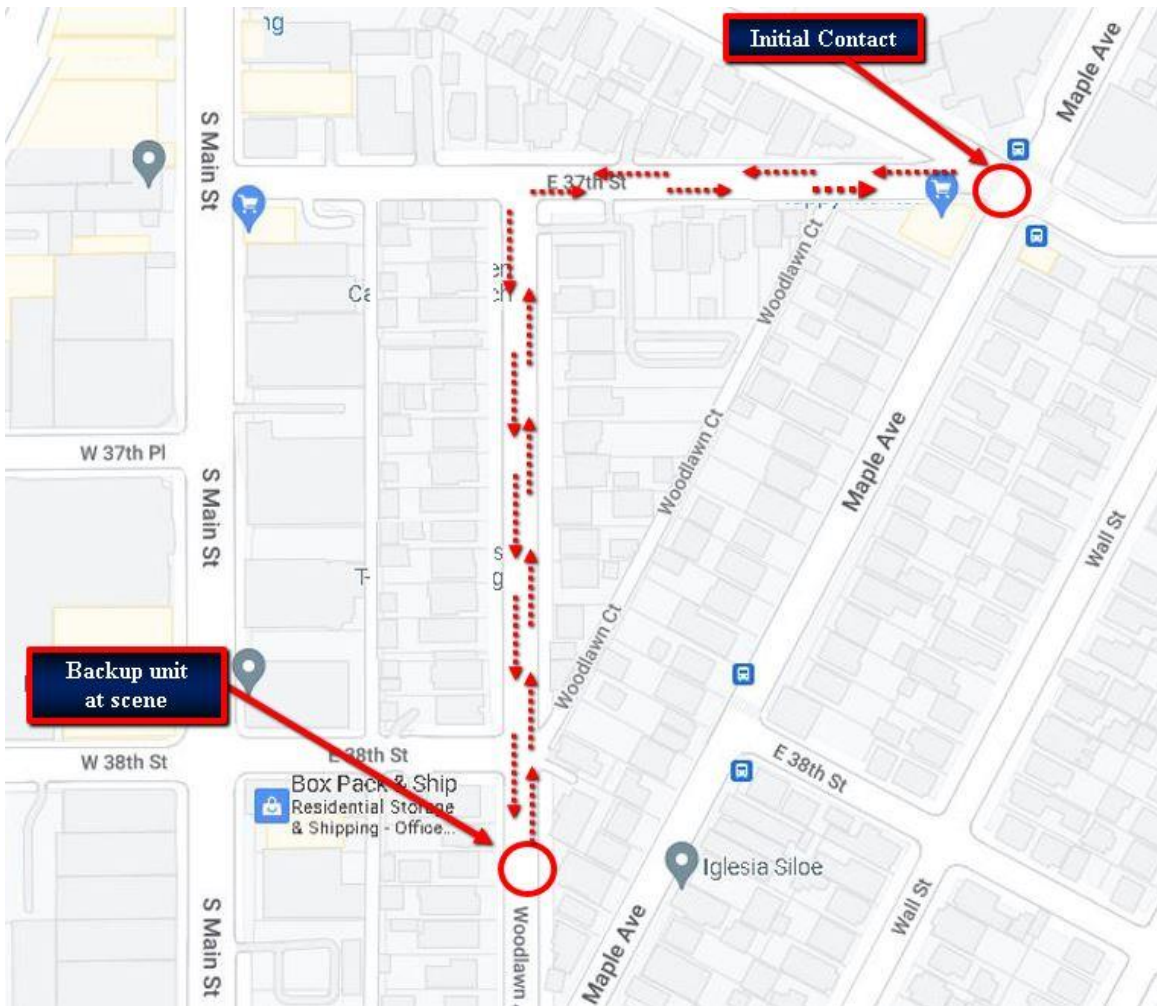




A photograph of the expended 40mm less lethal round fired at Torres.

### **Scene Diagrams**

LAPD investigators prepared diagrams and reconstructions of the scene to show the path of travel of Torres and the officers who followed him, as well as the locations of the officers who fired their duty weapons as well as those who did not fire their weapons.

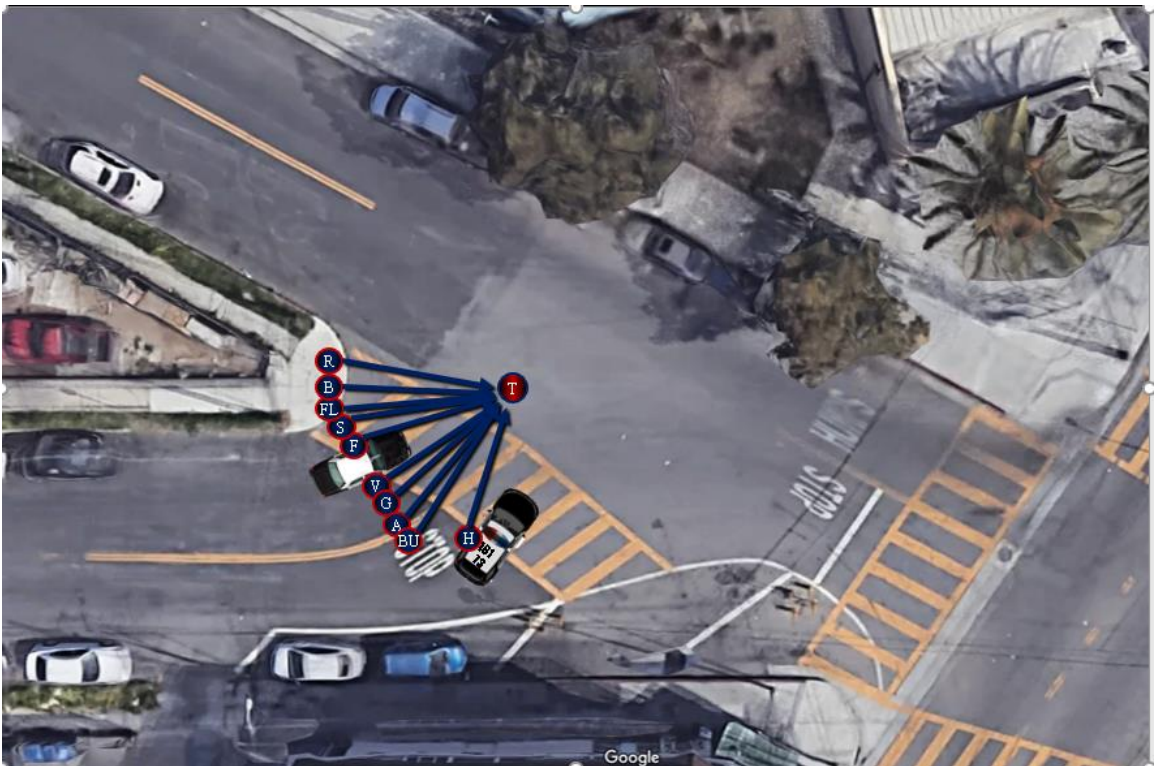


A diagram prepared by LAPD investigators showing the path of travel Torres took from his initial encounter with officers until the shooting took place. Torres reversed course at the location where the backup unit arrived on the scene. The initial contact and shooting both occurred at the same location.





A depiction prepared by LAPD of the location of Avalos and Vargas when first encountering Torres on the street.



A depiction prepared by LAPD of the location of each of the officers who fired their weapons as well as the location of Torres at the time of the shooting.

## LEGAL ANALYSIS

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Penal Code section 835a.

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) and (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 that 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 is taken into consideration. Penal Code section 835a(a)(4) and (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).

The jury instructions for self-defense say that a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. CALCRIM No. 505.

The numerous LAPD officers in this case responded to a call for backup after Avalos and Vargas encountered Torres walking in the street apparently concealing a firearm in his waistband. Torres led the officers on a several block, nearly 8 minute-long slow-speed walking chase in the area of Maple Avenue and 37<sup>th</sup> Street. Despite numerous commands from officers to take his hands out of his waistband and stop walking away, Torres continued to ignore those commands and walk away from officers. Torres's conduct and the officer's history with Torres, as well as their knowledge of the location led the officers to reasonably believe Torres was armed with a firearm. Less lethal ammunition was used, causing Torres to fall to the ground and reveal the firearm he had been holding.

The surrounding officers immediately noticed the firearm in Torres's hand and called out for him to drop the firearm and show his hands. The officers attempted to redeploy and for more than 20

seconds they did not fire any weapons. It was only when Torres was looking backwards towards the officers and began to lift the firearm in the general direction of the officers that the officers opened fire. Even though Torres had not shot or attacked any particular officer at the time of the shooting, and even though he likely would not have been able to harm every single officer at the location, Torres's actions, if allowed to continue, could have endangered at least some of officers and could have caused at least some officers to possibly suffer death or great bodily injury. The officers did not have to wait for the threat to fully manifest in further danger to themselves or others before acting in the face of a suspect who had not followed any commands up until that point and was beginning to point the handgun in their direction.

These facts support a reasonable fear by each of the officers for their own or another officer's life. Based on this evidence, each of the officers' use of deadly force was reasonable and necessary within the meaning of Penal Code Section 835a(c).<sup>2</sup>

## **CONCLUSION**

We conclude that there is insufficient evidence to prove Sergeant Burke, and Officers Luis Avalos, Kyle Bender, Chad Fillinger, Israel Florez, Christopher Gonzalez, Chad Heistermann, Jose Rodriguez, James Stea and Garrett Van Hooser did not reasonably believe deadly force was necessary to defend against an imminent threat of death or serious bodily injury.

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<sup>2</sup> An internal review board found, and the Chief of the LAPD agreed, that four of the officers, Avalos, VanHooser, Gonzalez and Heistermann, all acted within policy in firing their duty weapons at Torres. The report also found that Burke, Rodriguez, Bender, Stea, Florez and Fillinger's actions were "not proportional, objectively reasonable, or necessary." These administrative findings have a burden of proof of preponderance of evidence, whereas a criminal case has the burden of proof of beyond a reasonable doubt. The internal review report opined that Burke, as supervisor, should have been more focused on supervising and not firing his weapon, and that he should have assigned roles to other officers that would not have required firing his weapon. None of the tactical errors raised in the LAPD's evaluation change the conclusions that each of the officers acted objectively reasonably when observing the threat from Torres as he lifted his firearm in a manner that appeared calculated to shoot at officers. Each of the shooting officers had an objectively reasonable basis to believe that Torres constituted a deadly threat when he began to raise his firearm which required the use of deadly force to repel that threat.