

Fatal Officer Involved Shooting of Omar Garcia-Espinoza
Los Angeles County Sheriff's Department

Deputy Dwight Aguayo #610405

J.S.I.D. File #19-0464



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

October 16, 2023

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Omar Garcia-Espinoza
J.S.I.D. File # 19-0464
L.A.S.D. File # 019-15834-0280-013

DATE: October 16, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 13, 2019, fatal shooting of Omar Garcia-Espinoza by East Los Angeles County Sheriff's Department (LASD) Deputy Dwight Aguayo. It is our conclusion that there is insufficient evidence to believe Deputy Aguayo's use of force was unreasonable.

The District Attorney's Command Center was notified of this shooting on November 13, 2019, at 10:12 a.m. The District Attorney Response Team was given a briefing and walk-through of the scene by LASD Lieutenant Brandon Dean at approximately 1:33 p.m.

The following analysis is based on reports, audio recordings, and transcripts submitted to our office by LASD Homicide Bureau on August 25, 2020 and photographs submitted on September 14, 2023. LASD deputies were not yet equipped with body worn recording systems. No departmentally compelled statements were provided; therefore, none were considered in this analysis.

FACTUAL ANALYSIS

On November 13, 2019, at approximately 6:10 a.m., [REDACTED] called to report that her son, Omar Garcia-Espinoza (hereinafter "Garcia-Espinoza") had arrived at her home at [REDACTED] South Miller Avenue in East Los Angeles and was in violation of a restraining order. She reported that he had been yelling at her brother (his uncle), may have been using drugs, and was currently on a hill by her home. When asked if Garcia-Espinoza had any weapons, she informed the dispatcher that he did not have any, but that he possessed "sticks."

Deputy Aguayo responded to the call for service in full uniform. Prior to arriving, the dispatcher informed him that there was a family disturbance and that the subject, Garcia-Espinoza, was at the location screaming and yelling in violation of a restraining order. Deputy Aguayo eventually learned there was another call, possibly from a neighbor, that Garcia-Espinoza was yelling.

Deputy Aguayo arrived on scene around 8:17 a.m. and met [REDACTED] on the curb line in front of the house. She explained that Garcia-Espinoza was at the location earlier in violation of a restraining order and was now at the top of the hill south of her home.



Figure 1: Initial location of the parties.



Figure 2: Vantage point from the street.

Deputy Aguayo looked uphill and saw that Garcia-Espinoza was pacing back and forth. Deputy Aguayo could tell that he was swinging an object that appeared to be a rope. Due to the shrubbery surrounding the location, Deputy Aguayo had limited visibility depending on Garcia-

Espinoza's movements. As Deputy Aguayo kept observing, he noticed that Garcia-Espinoza no longer had the rope-like item and had picked up a bottle.

After verifying that there was a valid restraining order against Garcia-Espinoza, Deputy Aguayo requested that Sergeant Sara Rodriguez respond to the location. Deputy Aguayo obtained further information from [REDACTED] that Garcia-Espinoza had barged into the home in the morning and started fighting with his uncle. It was unclear if Garcia-Espinoza wanted to fight or not, but he was being verbally aggressive towards his uncle. In the past, Garcia-Espinoza had been violent with his father and that led to the restraining order. [REDACTED] further explained that from Garcia-Espinoza's current location, he could climb over the west fence further up the hill or run downhill. Deputy Aguayo requested additional units to set up a containment of the area.



Figure 3: Garcia-Espinoza's general location next to the west-side fence.

Around 8:35 a.m., a neighbor called to report that Garcia-Espinoza might be on drugs, was yelling at his family, had threatened people, and had been violent in the past. She generally described him as a dangerous individual. It is uncertain if this was the second call that Deputy Aguayo referenced.

Additional units were called to position themselves around the neighborhood. When Detective Michael Lugo met Deputy Aguayo at the location, he saw that Garcia-Espinoza was swinging a metal object and hitting the ground. He kept pacing back and forth, swung items, and appeared agitated.

Sergeant Thomas Kim was sent to approach from the higher ground west of Garcia-Espinoza's location. Sergeant Kim saw Garcia-Espinoza from the top of the hill where he found himself on the other side of a black metal fence that separated him and Garcia-Espinoza. He remained in place observing Garcia-Espinoza stab the ground with several items and throw other items around.



Figure 4: Garcia-Espinoza with several items.

Deputy Aguayo, along with Sergeant Rodriguez, Deputy Diego Ramirez, and Detective Lugo, made their way up the hill through a flight of stairs north of Garcia-Espinoza's location. During the climb, Deputy Ramirez said that he had arrested Garcia-Espinoza for a restraining order violation about a week or two ago. He did not detail the nature of the prior contact.

As they started making their way toward Garcia-Espinoza, deputies commanded him to drop the rake he was holding and come over and speak to them. Eventually, Garcia-Espinoza dropped the rake but continued to ignore deputies. It appeared that Garcia-Espinoza had something in one of his ears that might have been ear buds. Once he seemed to finally hear and see the fully-uniformed law enforcement personnel making their way toward him, he took the item out of his ear.

Afterward, deputies gave him several commands such as "Omar. Come over here, Omar... we wanna talk to you... put that down... put it down, dude."¹ Garcia-Espinoza ignored them and started to turn towards downhill. Before he headed downhill, he picked up an item that was later discovered to be a cutlass or saber-type sword with approximately a three-foot-long metal blade and hand guard. Attached to the hilt of the weapon was a leather-looking lanyard. At the time, Deputy Aguayo thought it might have been a rake or broom bottom approximately four feet long. Garcia-Espinoza ran downhill, and law enforcement radioed surrounding units that he was making his way south on Brannick Avenue. Around 9:40 a.m. and shortly after running downhill, Sergeant Kim advised law enforcement to be careful because Garcia-Espinoza was holding a sword.

¹ Sergeant Kim's hand-held video camera captured the hillside encounter.



Figure 5: Garcia-Espinoza headed downhill with the sword.

Deputy Aguayo went to his patrol vehicle and was monitoring radio traffic when he heard that Garcia-Espinoza had entered a nearby church. Detective Lugo radioed to surrounding personnel to have the church evacuated because of Garcia-Espinoza's erratic behavior. Deputy Aguayo drove and parked in front of the church. When he arrived at the front of the church, he saw that there was a hearse with flowers in front of the church and feared there might be an ongoing funeral service. Deputy Aguayo knew that there was a parking lot adjacent to the church structure that doubled as a playground for the Catholic school which was in session.



Figure 6: Church parking lot / playground.

When Deputy Aguayo went into the church, parties inside pointed to the door that led to the parking lot and playground area. He went through the door and saw Garcia-Espinoza standing in the middle of the playground. It was then that Deputy Aguayo could clearly see that Garcia-Espinoza was holding a three to four foot long sword that had a belt attached to the handle. He also saw that the school staff were running and closing doors.

When Sergeant Rodriguez arrived at the church, she saw that Garcia-Espinoza was in the parking lot area dragging the sword. She heard Deputies Aguayo, Deputy Veronica Rivas, and Deputy Ramirez yell at Garcia-Espinoza to stop, but he kept running back and forth (east and west) in the parking lot. By the time Sergeant Rodriguez repositioned herself, she learned that Garcia-Espinoza ran towards Brannick Avenue.



Figure 7: Garcia-Espinoza's path through the church and toward Brannick Avenue.

Detective Lugo drove toward Brannick Avenue and found Garcia-Espinoza. Sergeant Rodriguez also arrived and heard Detective Lugo say to Garcia-Espinoza, "Hey, dude, stop, stop." When Garcia-Espinoza saw Detective Lugo exit his car, Garcia-Espinoza ran westbound toward Esteban Torres High School. He then climbed over the westside school fence that led to the football field. Detective Lugo was positioned in the northwest area of the school and saw that there were students running on the track field. He also saw that Garcia-Espinoza was running across the field. Detective Lugo yelled for the students to leave the area. Detective Lugo then saw Garcia-Espinoza jump the eastside fence that led to the lunch area of the school. Detective Lugo radioed Garcia-Espinoza's location.



Figure 8: Garcia-Espinoza's general path (aerial view).

Simultaneously, Deputy Aguayo was in his patrol car when he heard over the radio that Garcia-Espinoza was climbing the westside fence of Esteban Torres High School. Deputy Aguayo knew that school was in session and radioed to request for the school to be contacted and placed on lockdown. Soon thereafter, Deputy Aguayo heard a broadcast that Garcia-Espinoza was running across the school field.

Deputy Aguayo drove to the stairs that led to the school entrances east of the location where Garcia-Espinoza was last seen. Unbeknownst to Deputy Aguayo, Garcia-Espinoza had run across a student-filled field and all the students had been directed off the field. Several students reported seeing Garcia-Espinoza with the sword and he was yelling things that were largely indiscernible. At one point, Garcia-Espinoza took an item out of his pocket, consumed it, and then continued to run across the field.² After running across the field, he jumped over another fence that led into the lunch area.

² Student [REDACTED] reported that she watched the suspect take what she believed to be drugs out of his pocket and “consume it.” Garcia-Espinoza ran to the fence at the east end of the field, climbed it and jumped down on the other side and out of view. Seconds later, she heard approximately six gunshots. She did not see the shooting occur.



Figure 9: School overview.

Deputy Aguayo climbed the stairs that led to the school entry gate. From the bottom of the stairs, he would see students walking, some in the patio area, and others that appeared to be going from class to class. When he got to the top of the stairs, he was unable to enter the school through the gates. He looked further inside and saw that Garcia-Espinoza was already in the lunch area and making his way towards the gate over the lunch tables.

Deputy Aguayo asked a student to open the gate, but he was told that it was locked. Deputy Aguayo yelled at the students to make their way inside the buildings because he had lost sight of Garcia-Espinoza.



Figure 10: Law enforcement outside of the school gate and students in the patio east of the lunch area.³



Figure 11: Students around the patio area.

Eventually, Deputy Aguayo was able to contact a school officer, Officer Roberto Arteaga, and informed him that law enforcement needed to make entry because there was a man with a sword on campus. Deputy Aguayo could see that several students were still running around and making their way into buildings. He again saw that Garcia-Espinoza was on the lunch benches. Officer Arteaga ran over to open the gate and Deputy Aguayo told him, “Open the gate. Open the gate.” The distance from the gate to the lunch area was 40 yards. Sergeant Rodriguez arrived and continued to instruct the students to go inside. Deputy Aguayo continued to yell at

³ The school was equipped with several surveillance cameras and captured Garcia-Espinoza on campus. When law enforcement viewed the surveillance, they noted that it incorrectly displayed the date of 11/14/2019 instead of 11/13/2019. The time was also ahead by nine minutes and 57 seconds.

the school officer to unlock the gate. Officer Arteaga saw that Garcia-Espinoza had the sword over his shoulder like a baseball bat and it appeared he was about to hit someone. Officer Arteaga said that it looked like he was going to go forward like a samurai and was preparing to lunge.



Figure 12: Garcia-Espinoza entering the lunch area and traveling over the lunch benches.



Figure 13: Garcia-Espinoza with the sword in his outstretched, right hand.

Once Officer Arteaga opened the gate, Deputy Aguayo ran in and saw that students were still making their way into the buildings. Garcia-Espinoza was traveling southbound to the patio pathway towards Deputy Aguayo.



Figure 14: Law enforcement entered, and Garcia-Espinoza moved southbound towards the center of the lunch area.



Figure 15: Garcia-Espinoza holding the sword pointed upward.



Figure 16: Garcia-Espinoza headed towards the center.

As Deputy Aguayo closed the distance between the parties, he noticed that Garcia-Espinoza appeared to have a blank stare. Deputy Aguayo said that “it was going 100 miles per hour. He wasn’t processing anything that we were telling him, to stop, and drop the weapon, drop the sword, drop the sword.” Garcia-Espinoza continued to advance towards Deputy Aguayo and from 19.5 feet away, he once swung the sword over his head in a circular-helicopter motion. Deputy Aguayo could not tell if Garcia-Espinoza swung the sword from the handle or was using the extended leather-looking lanyard. Deputy Aguayo stated that he did not know how long the lanyard part of the sword was, but that “it looked pretty long.”



Figure 17: Garcia-Espinoza swung the sword over his head.



Figure 18: Garcia-Espinoza mid-swing.



Figure 19: Shortest distance between the parties before shots were fired.

Deputy Aguayo said he did not know Garcia-Espinoza's intent and perceived him to be a threat to the present law enforcement, students, and any other personnel on site. Deputy Aguayo said that he was "concerned for our safety, for the students' safety, you know, uhm, I wasn't sure if he was gonna run towards – towards the building. Not sure if they were able to lock it once the kids went inside." Sergeant Rodriguez heard Deputy Aguayo tell Garcia-Espinoza, "Hey, man, put it down, put it down."

After Garcia-Espinoza advanced and swung the sword, Deputy Aguayo fired his department-issued nine millimeter Smith and Wesson M&P firearm. Deputy Aguayo fired five to six rounds. Garcia-Espinoza was still standing and holding the sword until the last round was fired. It was not until Garcia-Espinoza hit the ground that he released his hold of the sword.



Figure 20: Deputy Aguayo stopped firing and Garcia-Espinoza went to the ground next to a trash can.



Figure 21: Garcia-Espinoza on the ground (behind the trash can from this angle).



Figure 22: Garcia-Espinoza's final position on the ground.

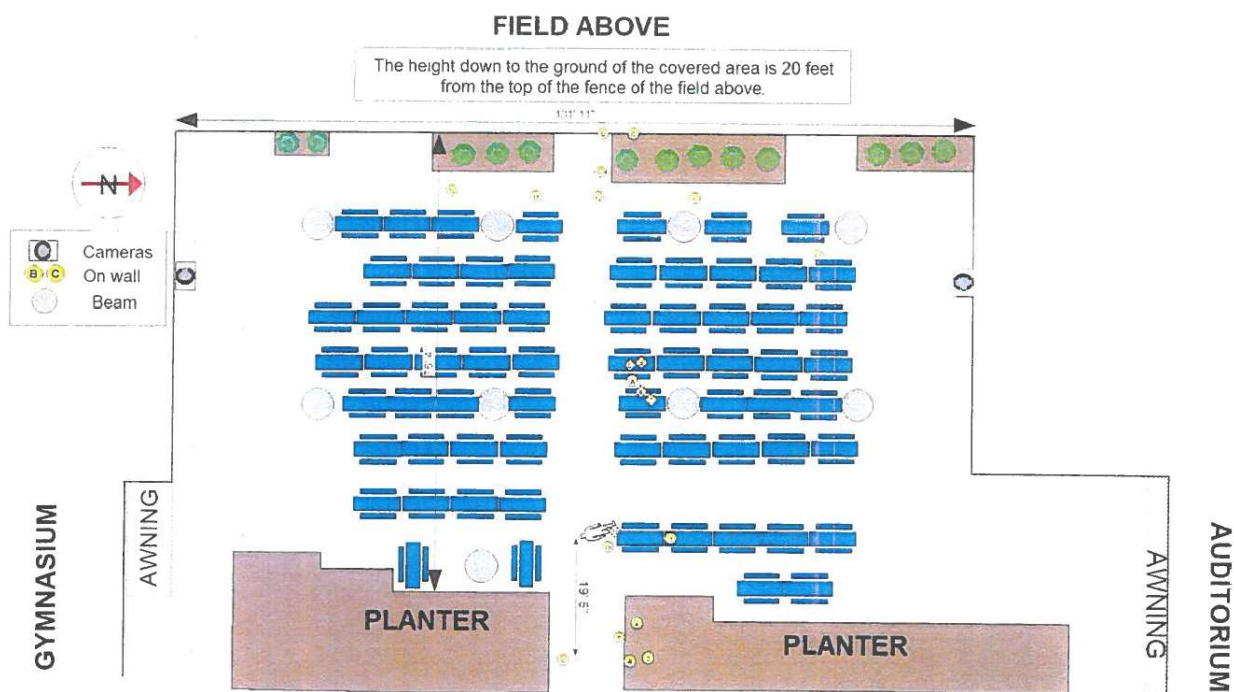


Figure 23: LASD-provided diagram with noted distances.

Deputy Aguayo was instructed to leave the scene soon after the shooting and other personnel attempted to render aid to Garcia-Espinoza. They were unsuccessful and he was pronounced deceased at 9:21 a.m.

When a round count was completed, Deputy Aguayo's firearm had 12 rounds in the magazine and one in the chamber. He normally carried 17. At no point in time did Deputy Aguayo reload.



Figure 24: Deputy Aguayo's firearm and rounds post-incident.

Law enforcement retrieved the sword and would later find the subject restraining order in Garcia-Espinoza's pocket. At the church, law enforcement retrieved a pair of Everlast fighting gloves that Garcia-Espinoza had left behind. The total length of the sword with the extended leather-like lanyard was measured to be approximately 79 inches long. The lanyard was approximately 47 inches long. The metal handle was approximately seven inches long. The metal blade was approximately 30 inches long.

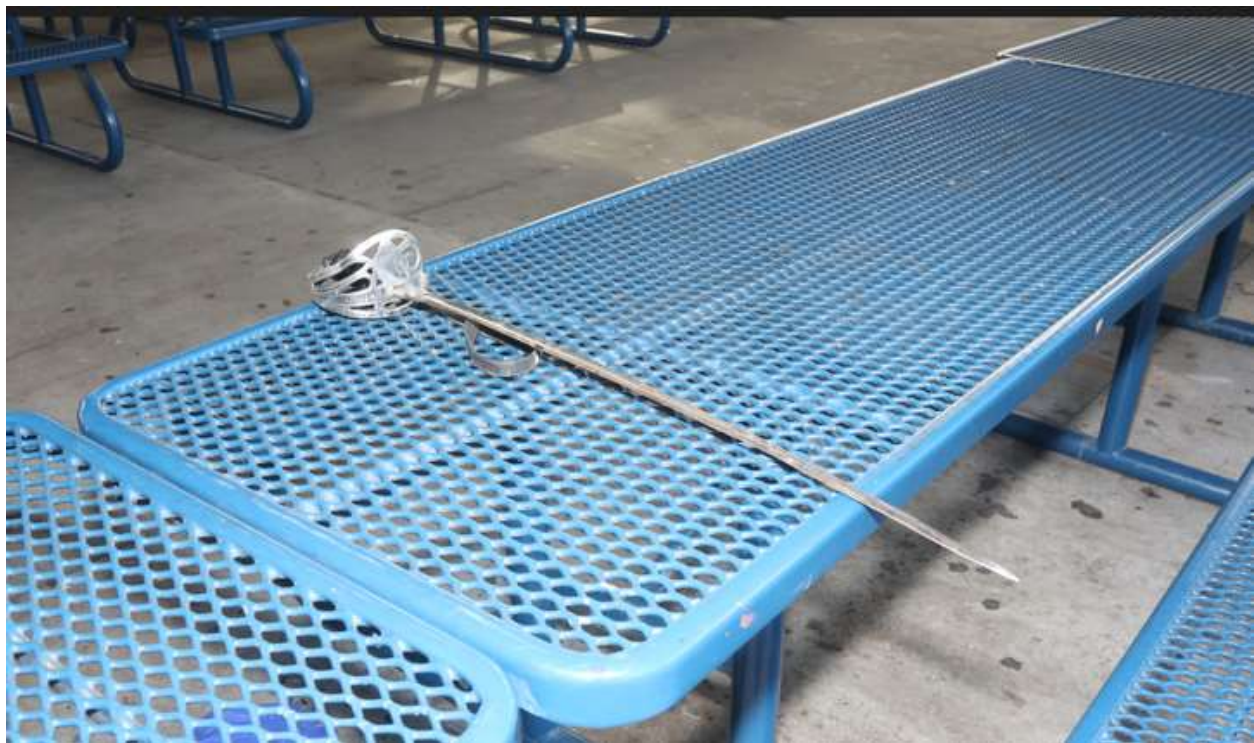


Figure 25: Sword (without depicted lanyard).



Figure 26: Sword with lanyard



Figure 27: Series of photographs of the measurements.

Witness Statements

A student, [REDACTED], reported that she was on the north side of the track when she saw Garcia-Espinoza in the center of the field. He was walking and swinging what appeared to be a long, metal pole with some type of string and ball attached to it. He was walking toward the baseball field and then northbound towards the students. A teacher told the students to run, and they headed westbound. Garcia-Espinoza jumped over the fence leading to the outdoor lunch tables. About 20 seconds later, she heard three to four gunshots.

A teacher, [REDACTED], reported that he was running on the track with his students when he saw Garcia-Espinoza in the field. He had an object that was attached to a rope or chain, like a medieval mace-type weapon. Garcia-Espinoza was swinging and hitting the object onto the ground. [REDACTED] ran around gathering students and getting them to the locker room. He saw law enforcement seeking entry from one of the field gates and he could not help them because he did not have access. Garcia-Espinoza ran across the field and was yelling something that was unintelligible. He believed Garcia-Espinoza was on drugs and not mentally stable. After Garcia-Espinoza jumped over a school fence, [REDACTED] heard gunshots.

A student, [REDACTED], reported that she contacted law enforcement at the entry gate and explained that she could not open the gate. When she turned, she saw Garcia-Espinoza jumping on tables. He was swinging a sword and headed in her direction. There were other students in the area and law enforcement directed her to tell the other students to quickly and quietly get into the building. Shortly thereafter, the school went on lockdown.

Another student, [REDACTED], reported that she was near the planters next to the lunch area when she heard law enforcement tell the students to get inside. When she turned, she saw Garcia-Espinoza on top of a lunch table and holding a metal pole. She thought he appeared to be high on drugs or something.

A student, [REDACTED], reported that she was adjacent to the lunch area when she saw law enforcement personnel at the entry gate. Students were running and she saw Garcia-Espinoza jump down from the approximately 20 to 30 feet wall west of the lunch tables. He landed on some bushes, got up, and climbed onto one of the lunch tables. Garcia-Espinoza was standing on top of the table looking around while holding what appeared to be a long, shiny, metal sword. She saw students running to the staff area of the gym. She ran into the cafeteria as the cafeteria staff closed the doors behind her. She looked through a window and saw Garcia-Espinoza still standing on top of a table before she ran to the back of the cafeteria. Once in the back, she heard what sounded like knocking, but later understood it to be gunshots.

Autopsy Report

On November 14, 2019, Doctor Lawrence Nguyen from the Los Angeles County Coroner's Office performed a medical examination on Garcia-Espinoza. It was reported that Garcia-Espinoza sustained one through-and-through gunshot wound on his right arm and two gunshot wounds to his left torso. Two bullet fragments were removed from Garcia-Espinoza. The cause of death was due to multiple gunshot wounds.

Laboratory analysis of Garcia-Espinoza's blood returned positive for amphetamine and methamphetamine.

LEGAL ANALYSIS

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333.

An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.” CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. People v. Mehserle (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” Id. at 1146; quoting People v. Bond (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

California law permits any person, including police officers, to use deadly force in self-defense or in the defense of others, and, if someone dies as a result, this is a “lawful excuse” which precludes a conviction for murder. Penal Code sections 197, 198; CALCRIM No. 505. This defense is available if the killer actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 197; CALCRIM No. 505; see also People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another grounds in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 1082. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 505, 3470. Actual danger is not necessary to justify the use of deadly force in self-defense; if the person’s beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 505, 3470. The prosecution has the burden of proving beyond a reasonable doubt that the killer did not act in self-defense. Id.

Prior to contacting Garcia-Espinoza, Deputy Aguayo spoke with [REDACTED]. He learned that in the past, Garcia-Espinoza had been violent with his own father and a restraining order was issued. [REDACTED] explained that, earlier in the day, he had been verbally aggressive with his uncle and was in violation of the restraining order by being on the property. When Deputy Aguayo observed Garcia-Espinoza on the hill, he was pacing back and forth, swinging a rope, and then picked up a bottle. Deputies approached Garcia-Espinoza after Deputy Aguayo had verified that there was a valid restraining order prohibiting him from being at [REDACTED]’s residence.

Once the deputies arrived at the top of the hill and contacted Garcia-Espinoza, he failed to adhere to any of their commands, armed himself with a sword, and ran off. This was the third item that Deputy Aguayo saw Garcia-Espinoza pick up.

The situation quickly escalated as Garcia-Espinoza made his way into an occupied church and then into a parking lot that doubled as a playground. When Deputy Aguayo arrived, Garcia-Espinoza was in the parking lot with the sword and civilians were running away to avoid him. Again, Garcia-Espinoza refused to comply with deputies’ orders and ran to a nearby high school.

Deputy Aguayo anticipated the potential danger of a sword-yielding man on a school campus in session and he attempted to have the school placed on lock down. Not only was school in

session, but the students were not in the buildings. There were students in the field, in the lunch area, and traveling throughout the campus. Garcia-Espinoza was not deterred by the presence of students on the campus, jumped the fence, and ran across a field. Several students reported seeing Garcia-Espinoza and the sword.

Deputy Aguayo was at the gate when he saw that Garcia-Espinoza was jumping between lunch tables. He saw students throughout the patio area, near the gates, and several running into buildings. He and other law enforcement personnel had to tell some of the students to make their way to safety.

After Deputy Aguayo was finally able to gain access into the school, he gave Garcia-Espinoza several commands and approached him. At this time, Deputy Aguayo knew that Garcia-Espinoza had a sword with an attached lanyard. Deputy Aguayo did not know how long the lanyard could extend the sword, whether it could be used as a retractable tool, nor whether Garcia-Espinoza would launch the sword at anyone. By this time, Garcia-Espinoza had been ignoring commands and evading law enforcement for over 0.7 miles in the span of about 35 minutes.

Garcia-Espinoza showed no signs of slowing down, listening to deputies' orders, and appeared to have no regard for public safety as he made his way into more crowded areas. When he swung the sword at Deputy Aguayo from 19.5 feet away, it was reasonable for Deputy Aguayo to believe he or others were in imminent danger of great bodily injury or death.

CONCLUSION

We conclude that there is insufficient evidence to believe Deputy Aguayo's use of force was unreasonable. The available evidence supports Deputy Aguayo's stated belief that Garcia-Espinoza threatened his safety and the safety of the students in the area.