Fatal Officer Involved Shooting of Dijon Kizzee

Los Angeles County Sheriff's Department

Deputy Christian Morales #601880
Deputy Michael Garcia #530662

J.S.I.D. File #20-0335

GEORGE GASCÓN

District Attorney

Justice System Integrity Division

November 10, 2022

MEMORANDUM

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

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

SUBJECT: Fatal Officer Involved Shooting of Dijon Kizzee
J.S.I.D. File #20-0335
L.A.S.D. File #020-07618-0375-013

DATE: November 10, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 31, 2020, fatal shooting of Dijon Kizzee by Los Angeles County Sheriff's Department (LASD) Deputies Christian Morales and Michael Garcia.

We have concluded that Morales and Garcia reasonably believed, based on the totality of the circumstances, that force was necessary to defend against a threat of death when they initially fired their weapons, and there is insufficient evidence to prove beyond a reasonable doubt that Morales's or Garcia's final shots were not fired in lawful self-defense or defense of another.

The District Attorney's Command Center was notified of this shooting on August 31, 2020, at approximately 4:45 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LASD Lieutenant Brandon Dean.

The following analysis is based on surveillance video, reports, recorded interviews, photographs, dispatch recordings, and medical records. These materials were submitted to this office by the LASD Homicide Bureau. The deputies were not equipped with body worn video cameras and no statements were compelled.

INTRODUCTION

On August 31, 2020, at about 3:15 p.m., Morales and Garcia were on patrol in uniform, in a marked patrol vehicle, when both stated they observed Kizzee riding a bicycle on the wrong side of the road, in violation of the vehicle code. The deputies attempted to stop Kizzee, but he discarded his bicycle and fled from them on foot.

The deputies located Kizzee one block north and exited their patrol car. Morales pursued Kizzee on foot, while Garcia remained near the patrol car. Kizzee at first ran away, but then appeared ready to surrender when Morales caught up to him. Kizzee's right hand was wrapped with a

green bath towel, and he held a red jacket in his left hand. Kizzee raised his hands in the air, still holding the garments.

When Morales attempted to grab Kizzee's hands, believing he was going to surrender, Kizzee struck Morales in the face. Garcia ran to assist Morales.

The struggle caused Kizzee to drop a Ruger 9mm pistol on the ground, between him and Morales, as they stood inches apart, face to face. Kizzee bent down and picked up the pistol. Morales stepped back, drew his weapon, and fired multiple shots at Kizzee, who turned away from Morales and fell to the ground, substantially out of view of the surveillance camera. According to both deputies, Kizzee went to the ground but began reaching for the pistol, ignoring their commands to stop. Morales and Garcia fired several more rounds in rapid succession, followed by a slower series. Garcia fired the final shot several seconds after the preceding shot.

Kizzee suffered 16 gunshot wounds and succumbed to his injuries at the scene.

FACTUAL ANALYSIS

Statement of Deputy Morales

Christian Morales provided a voluntary statement on September 7, 2020.

On August 31, 2020, Morales and Garcia were on patrol in uniform, in a marked sheriff's sport utility vehicle patrol car. Garcia drove the patrol car and was Morales's training officer. At the start of their shift, Garcia briefed Morales on a shooting that had occurred a few hours prior, near Budlong Avenue and 104th Street.[1]

About two hours into their shift, as they drove east on 110th Street, Morales saw Kizzee riding a bicycle east, on the wrong side of the road, in violation of the vehicle code, and nearly collide with a car. Kizzee appeared to be holding clothing in both hands as he rode. Garcia told Morales that they were going to conduct a traffic stop of Kizzee. Garcia told Morales to be careful and to watch Kizzee's hands.

Morales exited the patrol car with his weapon drawn because he could not see Kizzee's hands. Morales saw Kizzee "dump" his bicycle and start running north on Budlong Avenue, toward 109th Place.

Garcia told Morales, "Leave it alone. Let's go. It is what it is." The deputies got back in their car and drove in the direction Kizzee had run. After briefly losing sight of him, the deputies spotted Kizzee running on 109th Place. Garcia was driving the patrol car and yelled at Kizzee, "Stop!" Morales saw Kizzee holding his hands up, "skipping" along the north curb of 109th Place. Morales exited the passenger side of the car and went toward Kizzee, who kept "skipping" away from Morales, saying "My hands are up."

[1] The earlier shooting happened approximately one half mile from the deputy involved shooting.

Morales saw that Kizzee—who was "much taller" than him—appeared to be holding an "article" in his hand, hidden by clothing. Kizzee stopped, with his clothing-covered hands above his head, and Morales approached him with his weapon holstered, believing that Kizzee was surrendering. Morales, face-to-face with Kizzee, tried to grab his hands but immediately felt a "hard object" "smash" into his bottom right chin area, knocking him backward and briefly disorienting him. Morales had been punched in the face with a bare fist before, but Kizzee's blow felt "much different."

Immediately after striking Morales, Kizzee dropped a pistol on the ground, bent down, and picked it back up. Morales thought to himself, "I'm going to lose my life here." Morales saw the barrel of Kizzee's gun pointed at him. Morales drew his weapon and fired multiples times at Kizzee.

Kizzee fell to the ground face first. His pistol was lying within arm's reach. Kizzee moved his right hand toward the pistol. Morales could not see Kizzee's left hand because it was tucked under his stomach area. Morales feared Kizzee could have a second gun accessible to that left hand. Garcia, who was standing near Morales, commanded Kizzee to show him his hands and to stop moving. Kizzee ignored Garcia's commands and continued to reach toward the pistol. Morales fired twice more at Kizzee, believing that he was trying to retrieve the pistol and fire at the deputies. Morales reloaded his weapon. Kizzee stopped moving after Morales's final two shots. The deputies handcuffed Kizzee and rendered medical attention until paramedics arrived. Morales estimated that he fired eight to ten rounds.

Statement of Deputy Garcia

On September 15, 2020, Garcia provided a voluntary statement.

When the deputies saw Kizzee running on 109th Place (after Kizzee had abandoned his bicycle) they ordered him to stop, but he ignored their commands. Morales exited the passenger side of the patrol car and ran after Kizzee. Garcia took a position at the rear driver side of the patrol car.

Kizzee, who was a "few inches" taller than Morales, had clothing wrapped around each hand. Morales attempted to grab Kizzee's hands, still wrapped in clothing, and Kizzee punched Morales in the face. Garcia ran to assist Morales after seeing him stumble backward and nearly fall down.

Garcia saw a "black item" fall from Kizzee's hands. Garcia was in fear because Kizzee was much larger than both deputies and had just punched and overpowered Morales.

Garcia saw Kizzee reach down and pick up the "black item," and point it at the deputies. Garcia realized that Kizzee was pointing a "full size" semiautomatic handgun at them. Garcia drew his weapon and fired at Kizzee because he feared that Kizzee would shoot him and Morales. Kizzee fell to the ground and dropped the pistol, which landed within his reach.[2] Garcia conducted a "tactical reload." Kizzee continued to reach for the pistol with his right hand, ignoring Garcia's

[2] Video footage, discussed below, appears to show Garcia's first shot occur a fraction of a second *after* Kizzee fell to the ground, substantially out of view of the camera.

commands to stop. Garcia fired one more round at Kizzee because he was in fear that Kizzee would pick up the pistol and attempt to shoot him or Morales.

Sometime after the incident, Garcia noticed that the pistol had moved a few feet farther from Kizzee's body. He assumed that an assisting deputy kicked the pistol farther away from Kizzee, for safety reasons.

Surveillance Video

Several surveillance cameras capture portions of the incident. The footage of the deputy involved shooting itself, however, is of poor quality and a wall and metal rod fence obstruct much of the view. Cameras at other locations on 109th Place capture only audio.

110th Street near Budlong Avenue

Footage captures the deputies' initial contact with Kizzee, on 110th Street just east of Budlong Avenue. Kizzee is seen illegally riding a bicycle east on 110th Street, on the left (north) side of the road, into oncoming traffic. A sheriff's patrol car follows behind him. Kizzee doubles back and makes a U-turn, riding west on the south sidewalk, falls off his bike, and continues running west toward Budlong Avenue, holding clothing in his hands and looking over his shoulder at the patrol car. The deputies exit and briefly run after Kizzee but then abandon the foot chase, return to their patrol car, and drive out of view west, in the direction Kizzee had run.

Figure 1: Video still showing Kizzee riding east, followed by deputies.

Cell Phone Video – Budlong Avenue and 110th Street

Investigators obtained video footage of Kizzee running north in the intersection of 110th Street and Budlong Avenue. An unidentified person apparently recorded the footage with a cell phone and uploaded it onto social media.

Kizzee is seen running, holding a green towel in his right hand and a red jacket in his left. Deputies turn back at the intersection of 110th Street and Budlong Avenue and walk back toward their patrol car on 110th Street.

Figure 2: Video still showing Kizzee running north on Budlong Avenue.

109th Place near Budlong Avenue

One block north, Kizzee is picked up by surveillance cameras on 109th Place.

Kizzee is seen walking from the direction of Budlong Avenue, west on 109th Place. After Kizzee appears to try to get the attention of a passing motorist, the patrol car pulls alongside Kizzee. The deputies exit as Kizzee turns and runs back toward Budlong Avenue, east.

Kizzee puts his hands above his head, still covered by the green towel and red jacket. He looks back at the deputies as he walks toward Budlong on the sidewalk. Morales runs around a parked car, coming face-to-face with Kizzee, heading him off. Morales appears to reach for Kizzee's hands or arms. Kizzee appears to swing his arms, push Morales, and backpedal away. Morales continues to advance, trying to grab Kizzee with both of his hands. Kizzee, backpedaling, appears to swing his arms and shove or punch Morales. Garcia, who had been standing near the patrol car and watching, runs toward Morales and Kizzee.

Figure 3: Video still image showing Morales approach Kizzee.

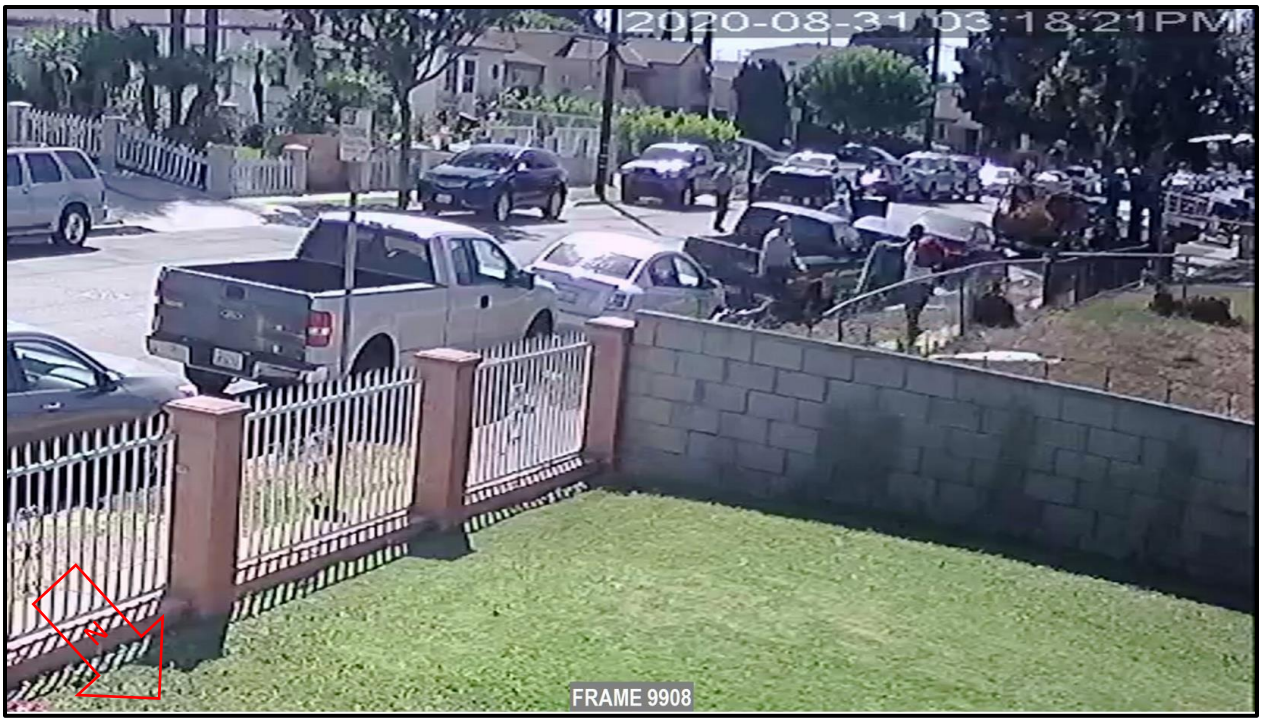

Figure 4: Video still image showing Morales continue to approach.

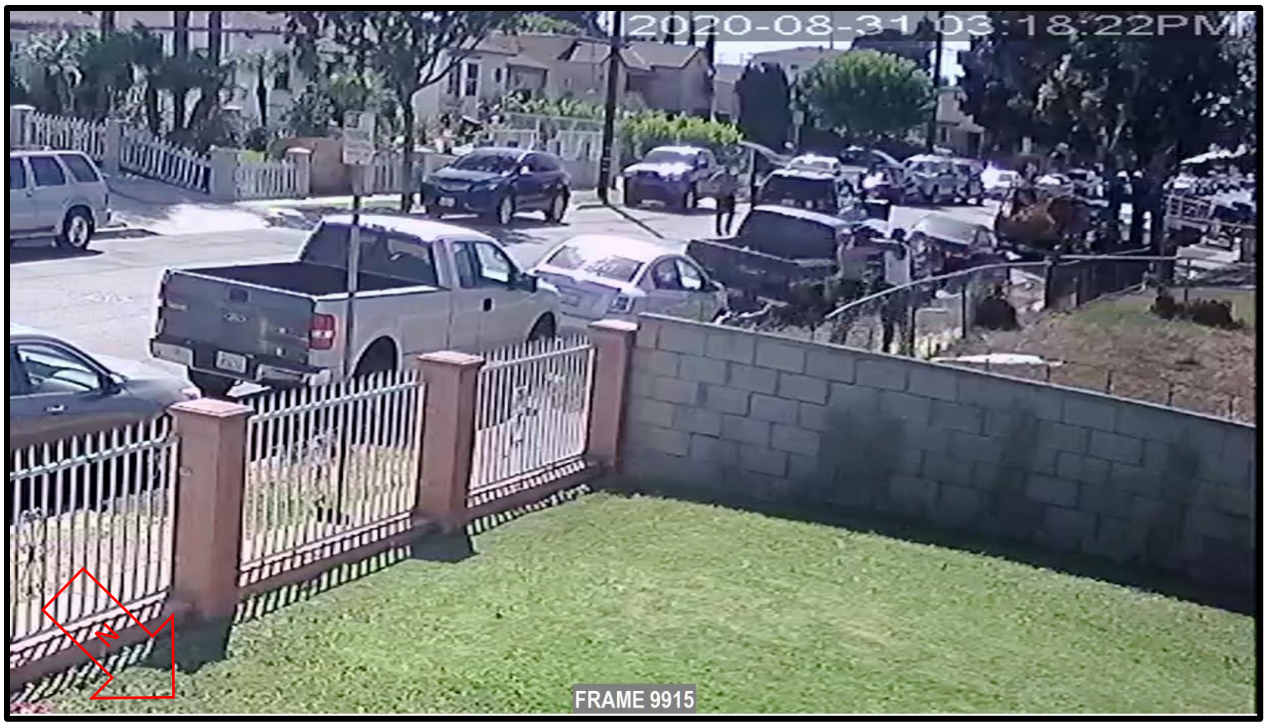

Figure 5: Video still image showing Kizzee swing his arms and pull away from Morales.

Figure 6: Video still showing a green towel whip in the air as Kizzee (seen from behind) appears to swing his right hand at Morales.

After he appears to strike Morales, Kizzee bends over as if to pick up, or try to pick up, something from the ground. Morales steps back, draws his weapon, and appears to fire multiple shots in rapid succession. Kizzee straightens up, turns away from Morales, and falls to the ground, eastward, substantially out of view. Kizzee cannot be seen holding (or pointing) a gun in the footage.

Figure 7: Video still showing Kizzee bend down for something and Morales point his weapon.

Figure 8: Video still showing same moment as Figure 5 from different camera angle.

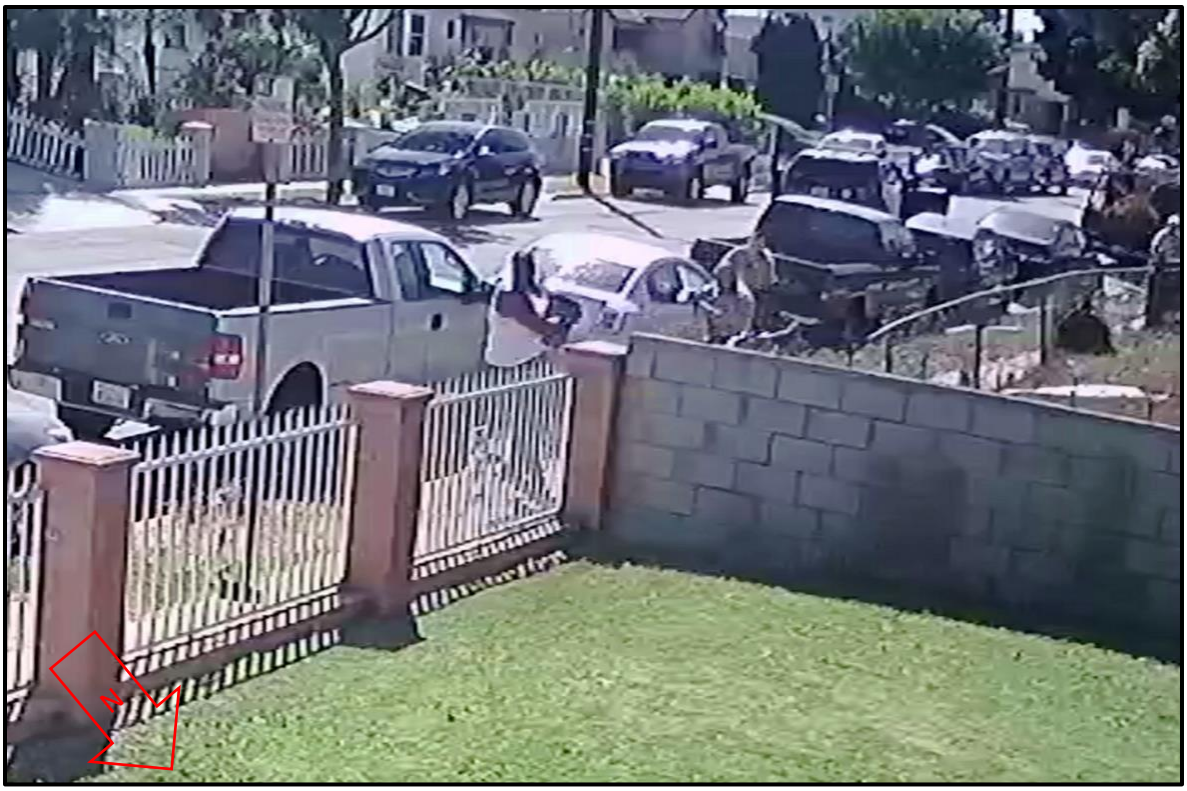

Figure 9: Video still showing Kizzee turning and falling as Morales fires his weapon.

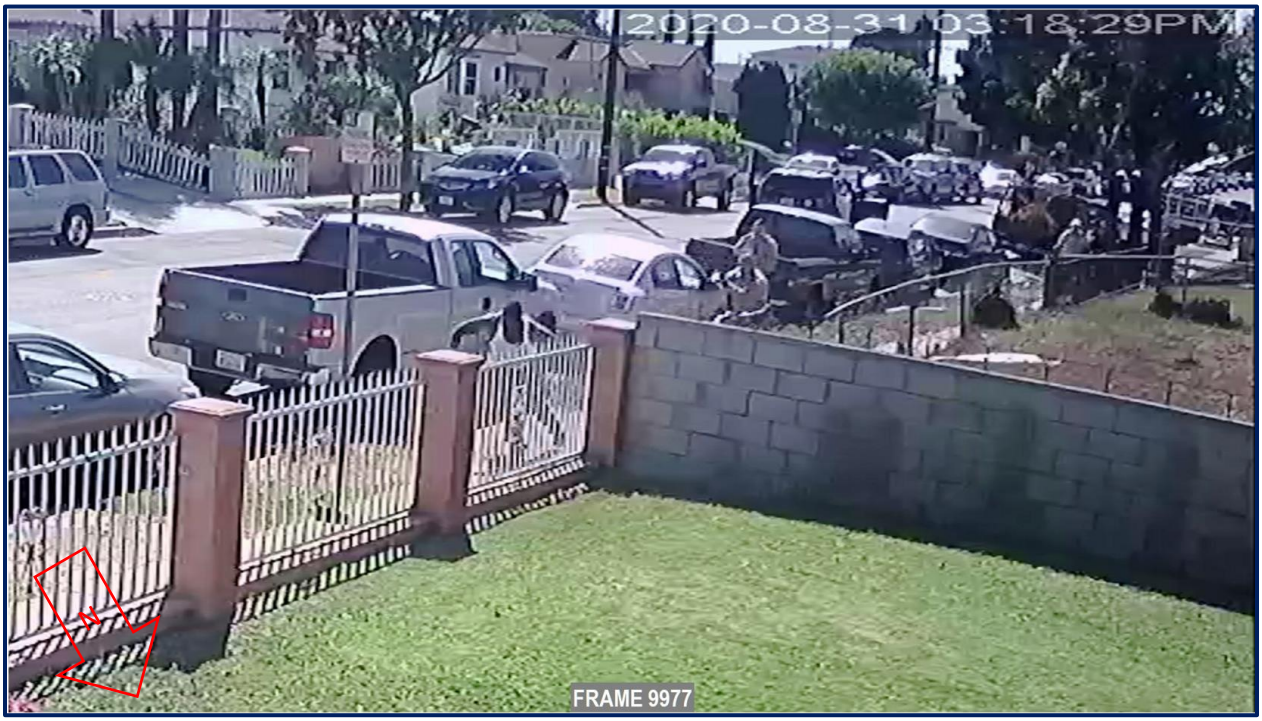

Figure 10: Video still showing Kizzee turning and falling to the ground.

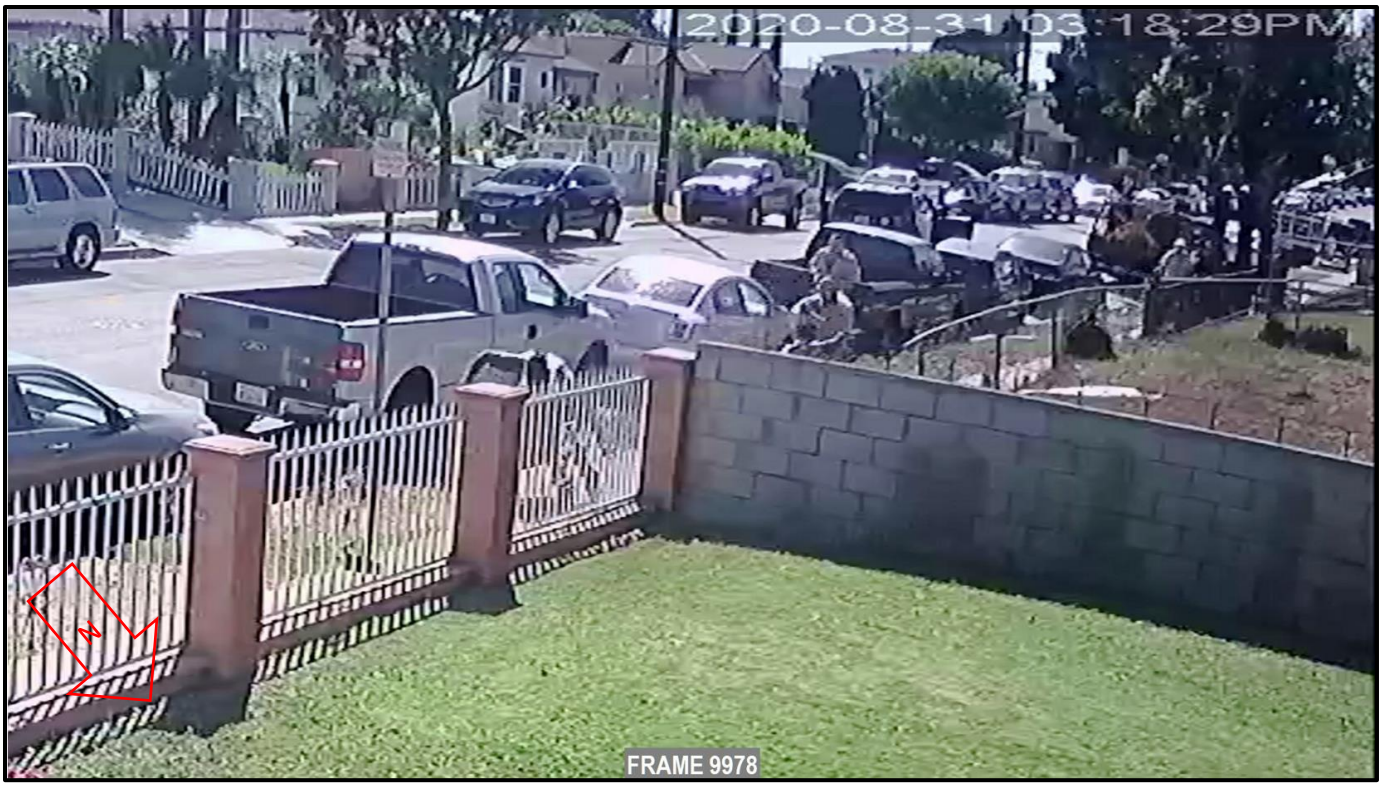

Figure 11: Video still showing Kizzee falling to the ground.

Garcia runs beside Morales and draws his weapon a fraction of a second after Kizzee falls to the ground, substantially out of view of the camera. Approximately one second later, Morales and Garcia, standing shoulder to shoulder, fire several more rounds in rapid succession, then about four more rounds spaced a second or more apart. Morales and Garcia appear to reload their weapons at about the same time. Garcia fires the final shot several seconds after the previous gunshot. (Gun smoke is visible, and the gunfire is audible in other footage.) Morales does not appear to fire his weapon after reloading.

The footage does not capture the area where Kizzee reaches down, and Kizzee cannot be seen clearly after he falls to the ground. The camera's view is substantially blocked by a white rod fence. Only Kizzee's white tank top shirt appears faintly visible in the footage after Kizzee appears to fall to the ground. Wisps of dust, apparently from bullets impacting the dirt parkway around Kizzee, are seen drifting across the camera frame, further obscuring the view. Kizzee's movements, if any, after falling to the ground, cannot be determined from the footage.

The footage of the deputy involved shooting has no audio. However, a camera located west of the incident captures voices and apparent gunshots. Just before the sound of shooting is heard, multiple female voices yell "Don't run!" then "Don't shoot!"

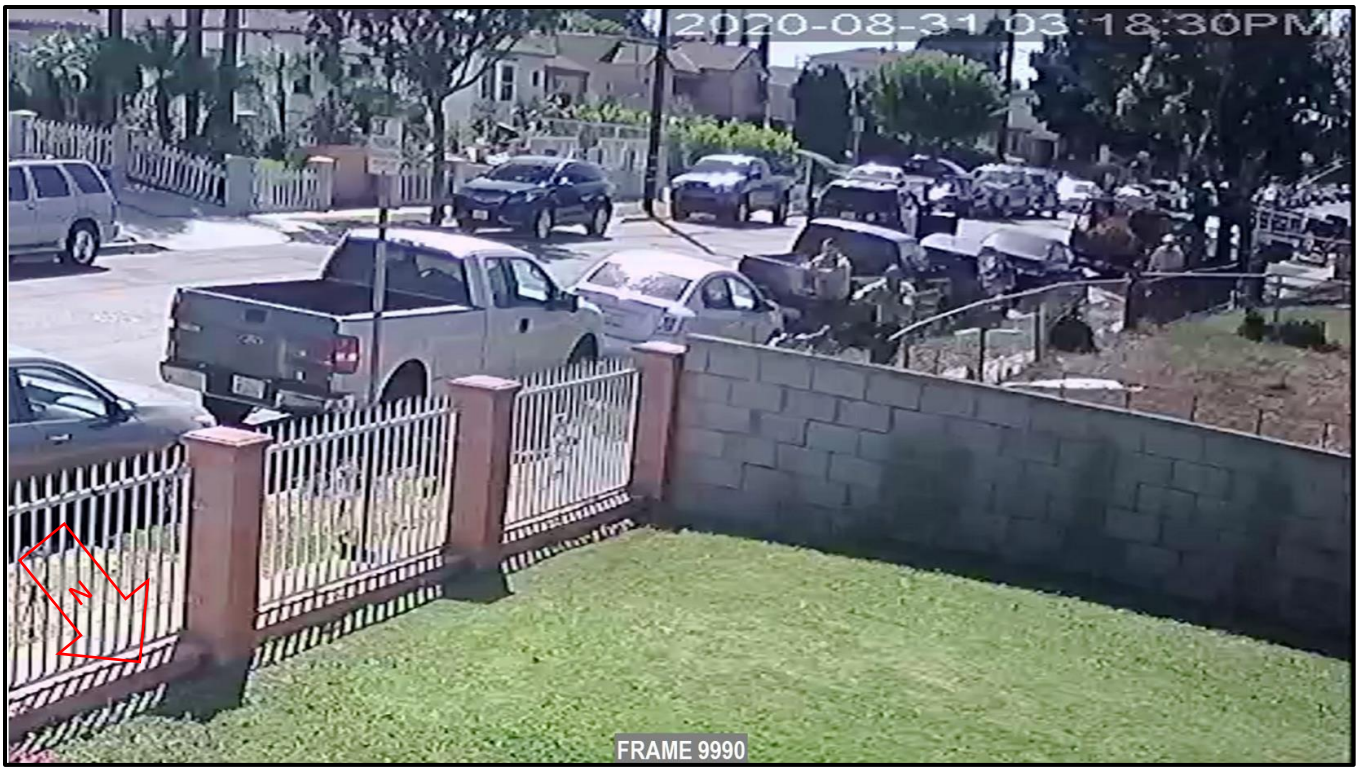

Figure 12: Video still showing deputies firing at Kizzee, on the ground out of view.

Cell Phone Video – 109th Place

Investigators obtained apparent cell phone video footage of the moments after the incident. The video was filmed across the street, on the south side of 109th Place, apparently by the same unidentified person who filmed Kizzee running on Budlong Avenue (Figure 2).

Kizzee is seen lying in the street, adjacent to a driveway apron. His head points west, his feet east. A dark object lies nearby, in the apron, just east of Kizzee's torso.

The dark object lying in the apron, in Figure 13 (below), is not present in that location in Figures 14 or 15, which depict the scene hours later.

Figure 13: Video still showing a dark object near Kizzee seconds after the gunfire stops.

Figure 14: Photograph showing Kizzee's body lying near the driveway apron and the pistol that was recovered, viewed looking east.

Figure 15: Same as Figure 14, viewed looking west.

Kizzee's Cell Phone Video

Investigators conducted a forensic examination of the cell phone Kizzee was carrying at the time of the incident. The phone contained two videos, recorded on August 28, 2020, in which Kizzee appears to film himself in possession of the same Ruger pistol (serial number 337-51414) recovered at the scene.

The two videos appear to be Kizzee filming himself sitting on a porch with the pistol in his pants pocket, including a portion of footage that shows his face. He also appears to be wearing the same shoes as during the incident.

Figure 16: Video still recovered from Kizzee's cell phone showing him in possession of the pistol recovered at the scene of the incident.

Figure 17: Photograph of the pistol recovered at the scene of the incident.

Evidence Collected

Investigators recovered a Ruger 9mm pistol, serial number 337-51414, on the grass parkway, east of Kizzee's body (see Figure 15). The pistol was loaded with 15 rounds. Two magazines were recovered in the location where Morales and Garcia had fired their weapons—a Smith & Wesson labeled "Morales," containing 11 9mm rounds and a Sig Sauer, containing five 9mm rounds. Sixteen 9mm casings were also recovered.

Firearms Evidence

Morales was armed with a 9mm Smith and Wesson semiautomatic pistol, loaded with a 17 round magazine. When he reloaded, he appears to have left a magazine at the scene, containing 11 rounds. After the incident, his weapon contained one round in the chamber plus 17 in a magazine. Based on this and the number of casings recovered at the scene, Morales likely fired six rounds during the incident.[3]

Garcia was armed with a 9mm Sig Sauer semiautomatic pistol, loaded with a 15 round magazine. When he reloaded, he appears to have left a magazine at the scene, containing 5 rounds. After the incident, his weapon contained one round in the chamber plus 14 in a magazine. Based on this and the number of casings recovered at the scene, Garcia likely fired ten rounds during the incident, including one after he reloaded.

[3] Investigators did not ask Morales (or Garcia) whether, prior to the incident, his weapon contained a chambered round plus a full magazine.

DNA Evidence

The LASD Scientific Services Bureau (SSB) analyzed DNA material found on the recovered Ruger pistol and concluded that swabs of the gun's trigger, grip, slide, and magazine all included Kizzee's DNA by "very strong" statistical likelihoods.

Autopsy Report

Kizzee suffered 16 gunshot wounds, including imminently fatal wounds to both lungs, the esophagus, diaphragm, left kidney, and heart.

The wounds were as follows, in no particular order: (1) a downward flesh wound to the rear right side of the head; (2) a flesh wound to the left chin; (3 and 4) entry wounds to the right upper chest near the clavicle; (5 and 7) entry wounds to the left upper chest; (6) an entry wound to the front left shoulder; (8 and 9) entry wounds to the right upper chest; (10 and 11) entry wounds to the left side of the chest; (12) an entry wound to the mid upper back; (13) an entry wound to the back of the left forearm; (14) an entry wound to the back of the right hand; (15) an entry wound to the back of the left thumb; and (16) an entry wound to the back left hip buttock region.

THE LAW

A peace officer is justified in using deadly force 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).

Deadly force shall be used "only when necessary in defense of human life," and officers "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(a)(2).

"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, 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). Moreover, "[a] peace officer who makes or attempts to make an arrest need not retreat, or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested." Penal Code section 835a(d).

ANALYSIS

Morales and Garcia attempted to stop Kizzee because he was riding his bicycle on the wrong side of the road. Kizzee fled and disobeyed the deputies' commands to stop. When Morales contacted Kizzee, on 109th Place, both of Kizzee's hands were covered with garments. Kizzee violently resisted Morales's attempt to take hold of his hands. Kizzee struck Morales in the face then dropped a pistol on the ground. Morales was not required to retreat or desist from his efforts to arrest Kizzee, despite Kizzee's resistance. Morales did not draw his weapon until Kizzee—with whom he was face to face—bent down, picked up the pistol, and, according to Morales, pointed it at him. Garcia said he saw Kizzee drop a black item after the punch but did not immediately recognize it as a gun until he picked it up and pointed it at them.

The deputies' statements that Kizzee bent down and picked up the pistol are corroborated by other evidence. Video footage shows Kizzee bend down moments after appearing to strike Morales. Kizzee is facing west (toward Morales) when he bends down (presumably to pick up the pistol). Kizzee straightens up, turns east, and then falls to the ground, dropping his weapon next to him.[4] Moreover, Figure 13 shows a black item consistent with a gun within inches of his body. The fact that scene photos show the pistol ended up many feet east of where Kizzee bent down further corroborates the deputies' statements that he picked up the pistol before he turned away from them and then dropped it next to his body near the driveway apron.

Given the totality of circumstances known to and perceived by Morales and Garcia, they reasonably believed that deadly force was necessary to defend against the threat of imminent death.

With respect to the second volley of shots, the deputies both stated that after Kizzee fell to the ground, and was lying on his stomach, he disobeyed their commands and reached for the pistol with his right hand, while his left hand was hidden underneath his waist. Because the pistol remained within Kizzee's reach[6] and they did not know whether he had other weapons to access with his left hand, the deputies continued to fire for several seconds. Corroborating the deputies' account, Kizzee apparently was moving after he fell to the ground. Although the video shows Kizzee fall eastward, his head ultimately comes to rest pointing west (back toward Morales and Garcia).

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[4] It is unclear how Kizzee came to rest with his head pointed west. On surveillance footage he appears to fall with his head pointed east, but cell footage (Figure 13) and scene photos taken later show Kizzee's head facing west.

[6] Based on the cell footage in Figure 13 and scene photos taken hours later, the pistol was moved farther east, away from Kizzee's body, sometime after the incident but before the photos were taken.

While the later series of shots may raise the question of whether, when they fired them, Kizzee still posed a threat of death or serious bodily injury, given the deputies' statement that Kizzee continued to reach for the pistol that lay nearby, and the video evidence, which neither proves nor disproves that claim, there is insufficient evidence to prove beyond a reasonable doubt that Morales and Garcia did not fire these final shots—as they did the initial ones— reasonably believing it was necessary because Kizzee continued to pose an imminent threat of death. Moreover, there was insufficient time for the deputies to use non-deadly resources or techniques prior to firing their weapons.

CONCLUSION

For the foregoing reasons, we find that Morales and Garcia acted lawfully in self-defense when they initially used deadly force against Dijon Kizzee. The totality of the evidence shows that Kizzee was holding a pistol in his hand, wrapped in clothing, when he struck Morales in the face, possibly hitting him with it. Kizzee dropped the pistol on the ground, bent down, and picked it back up, precipitating their initial use of deadly force. Although the video evidence does not depict Kizzee point a pistol at the deputies, it otherwise confirms their statements about the incident.

There is insufficient evidence that Morales's or Garcia's later series of shots, after Kizzee fell to the ground, were not fired in lawful self-defense, given the deputies' statements and lack of confirming or contradicting video evidence.