

**Officer Involved Shooting of Andres Ramirez
Los Angeles Police Department**

Officer Hector Cortez, #39540

J.S.I.D. File #16-0542



JACKIE LACEY

District Attorney

Justice System Integrity Division

January 3, 2018

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
 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: Officer Involved Shooting of Andres Ramirez
 J.S.I.D. File #16-0542
 F.I.D. File #F067-16

DATE: January 3, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 23, 2016, non-fatal shooting of Andres Ramirez by Los Angeles Police Department (LAPD) Officer Hector Cortez. We find that Officer Cortez acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on October 23, 2016, at 2:00 a.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by LAPD Lieutenant Jeffrey Wenninger.

The following analysis is based on reports prepared by the LAPD Force Investigation Division and submitted to this office by Detectives Ronald Granados, Kevin Huff, Ronald Lee, and Dante Palacio. The reports include photographs, audio-recorded interviews of witnesses, surveillance videotape, and radio transmissions.

The compelled statement of Officer Cortez was also considered.

FACTUAL ANALYSIS

Introduction

This incident began with a physical altercation in front of a bar, which led to an officer involved shooting and a foot pursuit, and ended with another officer involved shooting. The sequence of events spanned a city block, as detailed in the diagram below:



Figure 1 – Aerial photograph of the 4100 block of Sunset Boulevard.

The Physical Altercation

On October 23, 2016, at approximately 12:33 a.m., Arsharvir Shaldjian, an off-duty LAPD officer, and his friends, Levon A. and Alen S., went to the Short Stop, a bar located at the intersection of Sunset Boulevard and Sutherland Avenue in Los Angeles, across the street from the El Compadre restaurant. They arrived in a vehicle driven by Destany T., who drove into the parking lot behind El Compadre, intending to turn around and drop off Shaldjian and his friends in front of the Short Stop. When she did so, one of the passengers in her car yelled out the window, “This is my hood!” which caught the attention of several men who were standing in the El Compadre parking lot.

The men approached Destany T.’s vehicle. She panicked and drove out of the parking lot. The men briefly pursued her vehicle, but retreated to the parking lot. Destany T. dropped Shaldjian and his friends off in front of the Short Stop and drove away.

At approximately 12:52 a.m., Shaldjian and his friends were on the sidewalk outside the bar and Shaldjian was making a telephone call, while one of his friends urinated on a bush. Two men crossed the street from the El Compadre and approached Shaldjian. One of the men lifted his shirt and displayed a black handgun in his front waistband. The second man said, “[W]hat the fuck are you guys doing here? This is Echo Park.”¹

At around the same time, more men, including Andres Ramirez, crossed the street from the direction of the El Compadre, toward Shaldjian and his friends. One of the men threw a glass bottle at Shaldjian and a physical altercation ensued.

During the brawl, Ramirez struck Shaldjian in the head multiple times with his fist. Shaldjian attempted to kick Ramirez, which caused Ramirez to fall. A revolver, which was in the waistband of Ramirez’s pants, fell to the ground. As the altercation continued, Shaldjian fell to the ground and Ramirez retrieved his gun and aimed it at Shaldjian. A man in Ramirez’s group

¹ The neighborhood located around the Short Stop is claimed by the Echo Park criminal street gang.

yelled, “Shoot them! Shoot them!” Shaldjian got up from the ground and yelled, “Hey, he’s got a gun!”

The First Shooting

LAPD Gang Enforcement Detail (GED) uniformed police officers Daniel Hughes and Victor Cortez were on patrol and driving a marked black and white patrol vehicle when they saw the fight. Hughes drove the patrol car toward the altercation and stopped. Cortez exited the patrol vehicle and saw Ramirez face him, holding a gun in his right hand, as shown below in frames from surveillance videotape of the incident:



Figure 2 – Ramirez holding a gun as Cortez and Hughes arrive at the initial altercation.



Figure 3 – Photograph of Ramirez holding a gun.

The Foot Pursuit

Ramirez and an unidentified man ran southbound on Sutherland Avenue and made a right turn onto Sunset Boulevard. They continued running westbound on Sunset Boulevard for about one block with Cortez and Hughes in close pursuit. Ramirez still had a gun in his hand. Though Cortez remained in close proximity to Ramirez, Hughes was slightly delayed because he dropped his radio while running and attempting to radio for backup. Ramirez and the second man ran into the United Oil gas station. Ramirez tossed the gun he was holding into a planter box at the gas station, as seen in the photograph below:



Figure 4 – Ramirez dropping a .38 caliber revolver into a planter box at the United Oil gas station.

The Second and Third Shootings

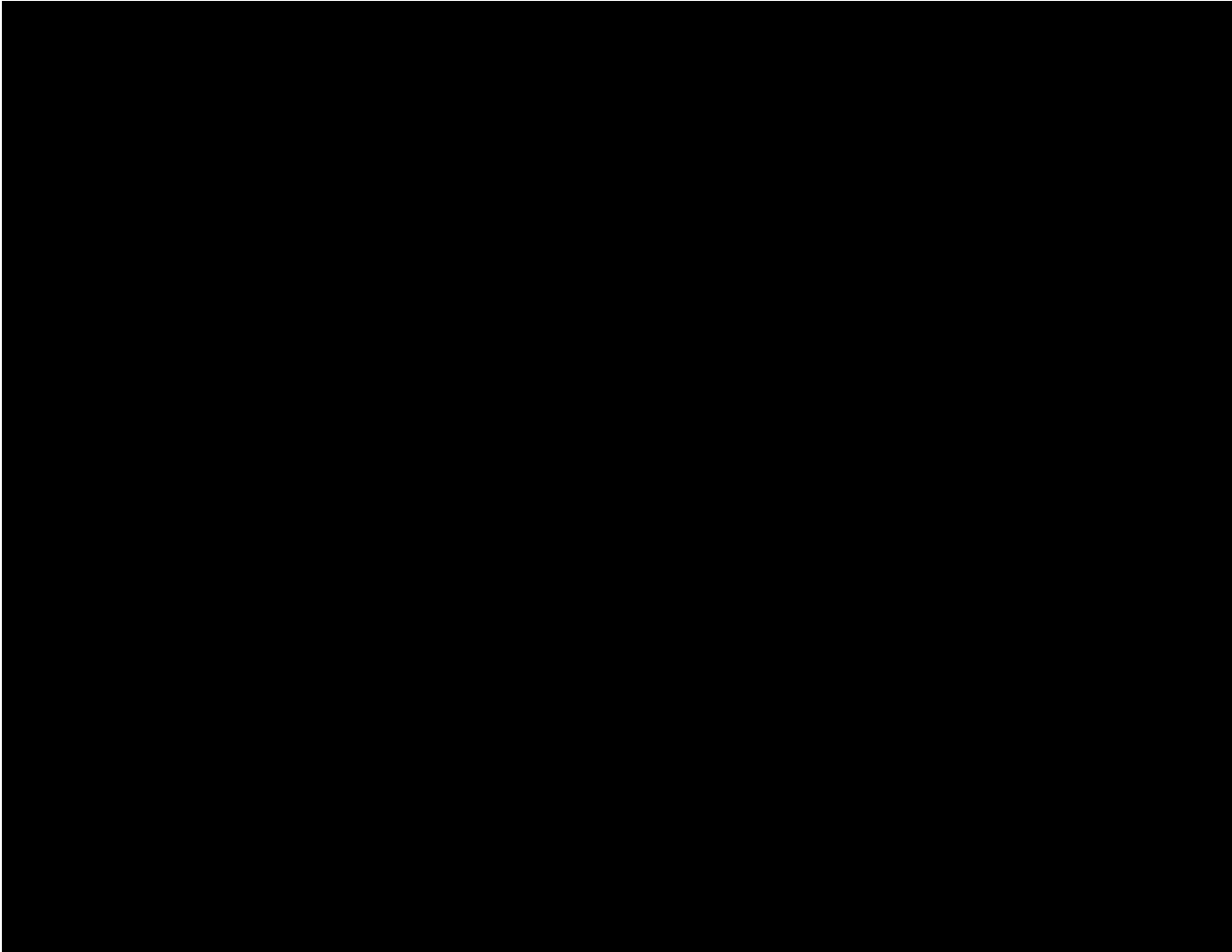
Ramirez ran through the gas station toward the parking lot located at the north end of the station. When he reached the parking lot, he encountered an off-duty security guard, who Ramirez thought was another police officer. Ramirez turned around and came face-to-face with Cortez, who was still chasing and was a few feet behind him. [REDACTED]

[REDACTED] The shot missed and

Ramirez continued to run. Cortez fired at Ramirez a third time and struck Ramirez in the lower back. Ramirez continued to run, but collapsed and was apprehended near the gas pumps.

Statement of Officer Hector Cortez

Cortez provided a compelled statement to investigators.²



² Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. The officers with knowledge of this incident were interviewed and ordered to submit to questioning concerning the performance of their official duties. Like any other individual, Cortez possessed a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York, supra, at 284-285*. Because the LAPD ordered Cortez to answer questions which might expose him to criminal liability, the LAPD compelled him to participate in an interview. The effect of this legal compulsion is that Cortez's statement cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interviews be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because this compelled statement is part of the officer's police personnel file, the statement is confidential and may not be disclosed absent an evidentiary showing and court order. *Penal Code* section 832.7

Statement of Officer Daniel Hughes

Hughes was assigned to the GED and was partnered with Cortez. Hughes was driving westbound on Sunset Boulevard toward Sutherland Avenue. Cortez was in the passenger seat. Hughes and Cortez know the intersection of Sunset Boulevard and Sutherland Avenue is an area claimed by the Echo Park gang.

As Hughes turned the vehicle northbound onto Sutherland Avenue, he noticed what he believed to be a group of ten to fifteen gang members engaged in a brawl. Hughes noticed one of the men had a gun and was pointing it at another man. Hughes parked the car, angling the headlights towards the group to illuminate them, drew his service weapon, and exited the vehicle. Hughes heard a gunshot upon exiting the vehicle and, unsure of where it came from, checked behind himself and Cortez to ensure that they were not being ambushed.

When Hughes turned back around, he saw the armed suspect, Ramirez, run southbound on Sutherland Avenue and make a right turn westbound onto Sunset Boulevard. Hughes saw Cortez run after Ramirez and he followed as well. During the pursuit down Sunset Boulevard, Hughes holstered his service weapon and grabbed his radio, intending to call for help, but dropped it. He retrieved the radio and broadcasted that shots were fired and officers needed help, and he continued westbound on Sunset Boulevard in pursuit of Ramirez.

Half way down the block, Hughes heard another gunshot. Shortly after he reached the United Oil gas station on the corner of Sunset Boulevard and Portia Street, Hughes saw Ramirez bent over at a forty-five-degree angle. Hughes then heard a third shot which he believed came from Cortez, and saw Ramirez stumble westbound through the gas station and then fall over. Hughes approached Ramirez, handcuffed him, and patted him down to search for a weapon but found none.

Statement of Officer Arsharvir Shaldjian

Officer Shaldjian was off-duty and wearing civilian clothing the night of the altercation. That night he had been drinking with two of his civilian friends, Levon A. and Alen S. The three men decided to go to the Short Stop. They took an Uber ride to the bar and, shortly after arriving, one of his friends said he needed to urinate. Shaldjian and his friends walked northbound on Sutherland Avenue so his friend could urinate on a bush that was next to the bar. A group of approximately 20 men, who had previously been standing in the parking lot of the El Compadre,

which is across the street from the Short Stop, approached Shaldjian and his friends shortly after they walked north on Sutherland Avenue. One of the men yelled, "What the fuck are you guys doing here? This is Echo Park!" Shaldjian heard a bottle breaking and the group began to kick and punch Shaldjian and his friends. Immediately thereafter, the other men joined in and began to attack Shaldjian and his friends.

During the fight, Shaldjian heard a man tell Ramirez, "Shoot them! Shoot them!" Shaldjian saw Ramirez draw a revolver from his waistband. In a panic, Shaldjian attempted to push Ramirez down but fell in the process, giving Ramirez the opportunity to aim the gun at him. He then got to his feet and yelled "Hey, he's got a gun!" Shaldjian heard a gunshot immediately thereafter and all of the men ran away. Shaldjian and his friends stayed at the scene and Shaldjian heard another gunshot about thirty seconds later.

Statement of Officer Philip Hazelton

Officer Hazelton and his partner Officer Martin were at the police station when they heard Cortez and Hughes' broadcast for help. They responded and assisted in establishing a perimeter. While canvassing the area, Hazelton recovered a 9mm semiautomatic pistol located in a bush next to the Short Stop bar.

Statement of Officer Anthony Canales

Officer Canales responded to the broadcast for help put out by Cortez and Hughes. He arrived at the United Oil gas station and saw Ramirez handcuffed and in the custody of Cortez and Hughes. Cortez instructed Canales to search near the planter next to the gas pumps because he believed the suspect tossed his gun during the foot pursuit. Canales searched inside a planter next to the gas pumps and discovered a blue steel revolver.³

Statement of Levon A.

Levon A. along with Shaldjian and Alen S. were out drinking when they took an Uber from Torrance to the Short Stop bar. Shortly after arriving, the three men needed to urinate so they walked northbound on Sutherland Avenue. Levon A. began to urinate on a bush near the bar. Three men crossed the street and approached Levon A. They asked, "Where are you from?" One of the men lifted his shirt and displayed a handgun in his waistband. Levon A. attempted to de-escalate the situation by saying that he and his friends were not looking to cause trouble, but the men began to punch and kick them. At some point during the fight, Levon A. heard a gunshot but does not know who fired the shot or from which direction it came. Soon after, he heard another gunshot come from the direction of Sunset Boulevard and Sutherland Avenue.

³ According to the surveillance videotape, Ramirez ran by the planter box twice. When he ran by the planter box the first time, Ramirez quickly put the gun in the planter box, while running full speed, in a manner consistent with him trying to conceal the fact that he was discarding a gun. Cortez was a few seconds behind him and also running full speed. Cortez fired at Ramirez seconds later when he suddenly stopped and reversed direction. There is no evidence that Cortez saw Ramirez drop the gun during the first pass of the planter box. Seconds later, Ramirez ran by the planter box a second time when Cortez fired at him again. It appears that, since Ramirez ran by the planter box twice at around the time of the shootings, and had a gun during the pursuit but was not in possession of a gun at the end of the foot pursuit, it was logical for Cortez to assume that Ramirez had discarded the gun in the planter box area, even though Cortez did not actually see Ramirez place the gun there.

Statement of Alen S.

Alen S. along with Shaldjian and Levon A. were out drinking when they took an Uber to the Short Stop. Shortly after arriving, the three walked northbound on Sutherland Avenue to urinate on a bush. A group of men approached Alen S. and his friends, and asked where they were from. Alen S. and his friends attempted to de-escalate the situation to no avail. Alen S. was punched multiple times and heard a gunshot approximately fifteen seconds after the fight began. He heard another gunshot, but did not know from which direction it came.

Statement of Destany T.

Destany T. was working as an Uber driver on the night of the incident. She picked up Shaldjian, Levon A. and Alen S. in Torrance and drove them to the Short Stop at the intersection of Sunset Boulevard and Sutherland Avenue. Before dropping them off, Destany T. drove into the parking lot behind the El Compadre, intending to make a U-turn. The windows of the car were lowered and one of her passengers yelled, "This is my hood!" which caught the attention of several men who were standing together in the El Compadre parking lot. They began to approach Destany T.'s car so she backed out of the parking lot, and drove away. The men pursued her briefly out of the parking lot but Destany T. was able to drive away. She dropped her passengers off in front of the Short Stop and drove away.

Statement of Francisco Y.

Francisco Y. was working as an Uber driver the night of the incident and had stopped to get gas at the United Oil gas station. While fueling his car, he saw Ramirez being chased by Cortez through the gas station, and heard Cortez saying something unintelligible to Ramirez. He saw Ramirez turn around suddenly and Cortez discharged his service weapon. Francisco Y. remembers hearing two gunshots before seeing Ramirez run toward the intersection of Sunset Boulevard and Portia Street and fall to the ground. Francisco Y. did not see Ramirez with a gun at any point. He later saw Cortez and Hughes take Ramirez into custody and paramedics take Ramirez away in an ambulance.

Statement of Ronald N.

Ronald N. was working as a security guard at the Short Stop the night of the incident. As Ronald N. was closing the back patio of the bar, he witnessed a fight next to the bar on Sutherland Avenue. He heard the screeching of a car tire followed by a single gunshot. He ushered several people into the bar for safety. Ronald N. recognized some of the people involved in the fight as the same men who earlier that day had given the bouncer to the Short Stop some trouble, claiming to be part of the Echo Park gang. During that earlier interaction Ronald N. noticed one member of the group, who matched the description of Ramirez, reaching his hand into his front pocket where there was a bulge in the shape of a revolver.

Statement of Pedro T.

Pedro T. was returning to his apartment when he heard a commotion and what sounded like bottles breaking coming from the direction of the Short Stop. When he approached the window to check what was happening, he saw a man fleeing northbound on Sutherland Avenue away

from the Short Stop. Soon after, he heard two or three gunshots within quick succession of one another.

Statement of Andres Ramirez

Ramirez was *Mirandized* and interviewed by investigators on October 24, 2016, while at the USC Medical Center.

Ramirez had been a member of the Echo Park gang for approximately eight or nine years. Ramirez arrived at the El Compadre at approximately 10:00 p.m., and had approximately three to four drinks with three or four of his friends.

Ramirez and his friends exited El Compadre through the back exit at approximately 1:00 a.m. Ramirez and his friends were crossing the street to go to the Short Stop when he saw three men, whom he did not know, throwing punches at a friend of his. Ramirez stepped in to help his friend, but was punched once in the left cheek and he fell to the ground. During the fall, a revolver that he kept in his waistband fell to the ground. When he got up, he retrieved the gun and noticed that a police vehicle had arrived and an officer exited the driver side door. Ramirez saw the officer draw his gun, point it at Ramirez and say "Freeze!" Ramirez became "paranoid," so he ran southbound down Sutherland Avenue and westbound onto Sunset Boulevard.

Ramirez turned right into the United Oil gas station. He ran toward the gas pumps and tossed his gun, but was unsure of where it landed. Ramirez saw another police vehicle arrive, turned around to run back the way he came, and heard Cortez shoot at him twice. Ramirez was struck in his lower back by the second shot. Ramirez kept running briefly, but soon fell to the ground.

Ramirez has been charged in case number BA451237 with assault with a firearm and being a felon in possession of a firearm. The case is scheduled for a pretrial conference on January 11, 2018.

Firearms Evidence

Officer Cortez was armed with .45 caliber Smith and Wesson semiautomatic pistol loaded with nine rounds. Following the incident, Cortez's service weapon was found to contain six rounds. Three bullet casings were located at the scene and matched to Cortez's service weapon, which is consistent with Cortez firing three rounds during the incident.

Ramirez was armed with a .38 caliber Smith and Wesson revolver. The revolver was found in a planter box at the United Oil gas station. The revolver was operable and fully loaded with six rounds.



Figure 5 – Planter at the United Oil Gas Station where Ramirez disposed of his revolver.



Figure 6 – Ramirez's .38 caliber revolver in the planter box at the United Oil gas station.



Figure 7 – Ramirez's revolver loaded with six rounds.

A 9mm Smith and Wesson semiautomatic pistol was also found in a bush on the west sidewalk of Sutherland Avenue, just north of Sunset Boulevard and Sutherland Avenue, near where the initial altercation occurred. The gun was fully loaded with fifteen rounds. It is shown in the photograph below:



Figure 8 – Photograph of 9mm pistol located near the Short Stop bar.

Injuries

Ramirez was shot one time in the lower back and is recovering from that injury.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 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 505.

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102.

The United States Supreme Court has long held that, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that the police are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

Notably, if the officer's belief was reasonable, *the danger does not need to have actually existed. Id.* (emphasis added). An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899

Analysis

No criminal liability attaches to Cortez's actions unless the prosecution can prove *beyond a reasonable doubt* that he was not actually and reasonably in fear for his safety or the safety of others when he fired his service weapon. The prosecution cannot meet that burden in this case.

The First Shooting

There is videotape evidence showing that Ramirez was armed during the initial altercation and was facing Cortez and displaying a firearm when Cortez fired at him. [REDACTED]

The Second and Third Shootings

Although it appears that Ramirez was unarmed at the conclusion of the foot pursuit, Ramirez was armed both before and during the pursuit, and [REDACTED]

[REDACTED] Moments before the second and third shots, Ramirez was involved in a brawl, was armed with a handgun, was attempting to flee from the police, and made a sudden and complete turn to face Cortez. [REDACTED]

CONCLUSION

There is compelling evidence in this case that Ramirez was armed during the first shooting and during the foot pursuit, but discarded the firearm toward the conclusion of the chase and was unarmed when the second and third shots were fired.

However, there is insufficient evidence to prove *beyond a reasonable doubt* that Cortez knew that Ramirez was unarmed at the time he fired at Ramirez for the second and third times. [REDACTED]

[REDACTED] A person is not guilty of a crime if he commits an act under an honest and reasonable belief in the existence of certain facts and circumstances, which, if true, would make such an act lawful. *CALCRIM* 3406; *People v. Raszler* (1965) 169 Cal.App.3d 1160; citing *People v. Osborne* (1979) 77 Cal.App.3d 479. When a person commits an act based on a reasonable mistake of fact, his guilt or innocence is determined as if the facts were as he perceived them. *Id.* Here, based on Ramirez's behavior, flight from the police and possession of a gun during the initial altercation as well as during the foot pursuit, [REDACTED]

Based on a review of the totality of the circumstances in this case, although Ramirez may have discarded his gun before Cortez fired a second and third shot at him, [REDACTED]

[REDACTED] Therefore, we are closing our file and will take no further action in this matter.