

**Officer Involved Shooting of Marco Cardozo**

**South Pasadena Police Department**

**Burbank Police Department**

**Detective Andrew Dubois #189**

**Detective Michael Palmieri #185**

**J.S.I.D. File #17-0336**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**February 3, 2020**

**MEMORANDUM**

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

SUBJECT: Officer Involved Shooting of Marco Cardoza  
J.S.I.D. File #17-0336  
Burbank P.D. File #17-6705

DATE: February 3, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 29, 2017, fatal shooting of Marco Cardoza by South Pasadena Police Department (SPPD) Detectives Andrew Dubois and Michael Palmieri. We have concluded that both detectives acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting at approximately 10:35 a.m., on June 29, 2017. The District Attorney Response Team (DART) responded to the location, and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, transcripts of interviews, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted by Burbank Police Department (BPD) Detectives Brent Fekety and Timothy Murphy.

**FACTUAL ANALYSIS**

On June 29, 2017, Sergeant James Valencia, Dubois, and Palmieri, all members of the SPPD, went to a residence on Broadway in Burbank at about 8:00 a.m. to effect an arrest of Jhoanna C [REDACTED] for identity theft.<sup>1</sup> The Broadway property consists of a main house and a rear detached

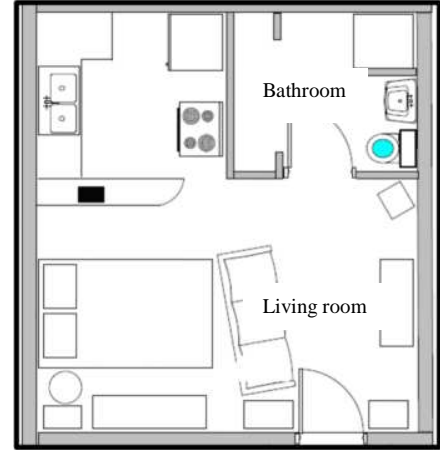
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<sup>1</sup> Prior notification was given to the BPD dispatch for safety purposes and situational awareness. However, BPD officers were not asked to assist in the arrest.

back house located on the east side of the lot. See Figure 1A below. C [REDACTED]' residence is located in the back house consisting of a living area adjacent to a kitchen, and a bathroom behind a wall opposite to the front door. See Figure 1B below.



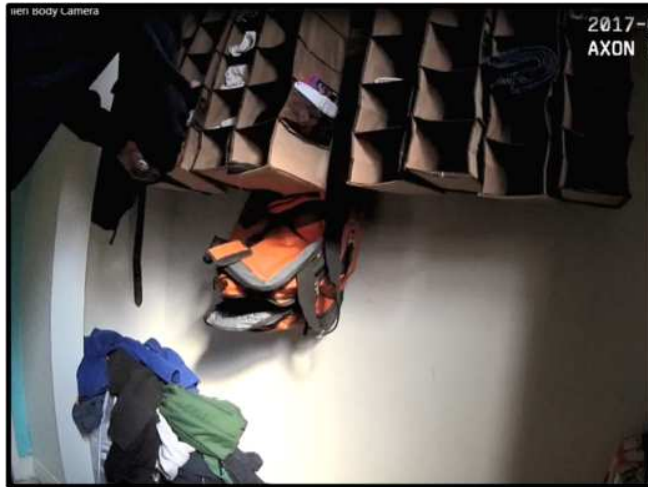
**Figure 1A:** The open door to C [REDACTED]' residence can be seen on the right near the table and parasol.



**Figure 1B:** Apartment floor plan.

The officers were aware that C [REDACTED]' husband, Cardoza, might be present, although C [REDACTED] had an active restraining order against Cardoza. The officers intended to question Cardoza about his possible involvement in the theft. When the officers approached the house, Cardoza attempted to escape by climbing out the bathroom window in back of the residence. However, Valencia saw Cardoza exiting through the window and told him to go back inside and speak with the detectives.

After speaking with Cardoza inside the house for a few minutes, Palmieri told Cardoza he was going to be arrested for violating the restraining order. Cardoza said that he had paper work that relieved him of the restraining order, but was unable to provide proof. Although appearing to be somewhat frustrated, Cardoza did not appear agitated or angry about going to jail. Cardoza asked if he could first change his clothes. Initially Palmieri attempted to locate clothing items for Cardoza, but then allowed Cardoza into the bathroom to locate the clothing in a cubby space behind the door. Not wishing to remain in too close quarters, Palmieri stepped back into the living room and told Cardoza to go ahead and change, but to leave the bathroom door open. Figure 2 below shows the area behind the bathroom door.



**Figure 2:** Soft cubby storage space located behind bathroom door.

As Cardoza changed, Dubois and Palmieri stood in the living room just outside the bathroom. C [REDACTED] sat on a couch in the living room while speaking with Palmieri. Valencia stood just outside the front door to the house. Dubois stood midway between the front door and the bathroom door keeping watch on Cardoza.

Valencia saw Cardoza get up and walk behind the bathroom door, then re-emerge in the doorway with a pistol in his hand. Cardoza racked the slide on the pistol.<sup>2</sup> Palmieri's body worn video (BWV) captured a clicking sound that resembled the sound of a slide being drawn. Palmieri and Dubois saw Cardoza wielding what they perceived to be a firearm. Both Palmieri and Dubois believed that Cardoza was about to shoot them and feared for their lives. Up to this point, the officers' service weapons had been holstered, but they drew their weapons in response to the threat.

As captured by Valencia's BWV, Cardoza aimed the pistol directly at Valencia, who moved to his left to get out of the line of fire. Set forth below in Figures 3A through 3C are still frame images excerpted from Valencia's BWV showing Cardoza as he reached for the weapon, drew the slide, and pointed it at Valencia. Palmieri, C [REDACTED], and Dubois all reported hearing Cardoza say, "This is going to be a stand-off!" or words to that effect.<sup>3</sup>

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<sup>2</sup> After the incident, the pistol was recovered and found to be a replica firearm.

<sup>3</sup> This statement is faintly audible on Palmieri's BWV.



**Figure 3A:** Still frame image from Valencia's BWV shows the view through the front door of C residence. Cardoza (bounded by the red rectangle) can be seen just left of the window reaching up behind the bathroom door.



**Figure 3B:** Still frame image from Valencia's BWV shows Cardoza racking the slide on an apparent firearm.



**Figure 3C:** Still frame image from Valencia's BWV shows Cardoza pointing an apparent firearm towards officers. Cardoza is bounded by red rectangle. Dubois is bounded by white rectangle.

Dubois said that Cardoza pointed the pistol at both Dubois and Palmieri in a sweeping motion. As captured by Palmieri's BWV, Dubois pivoted toward the door, drew his service weapon, and stepped forward and to the left while firing as Palmieri stepped back. See Figures 4A through 4C below.



**Figure 4A:** Dubois reacted to the sound of the slide being racked by reaching for his weapon. The mirror to the left of Dubois reflects Dubois' reverse image, and Palmieri's front reflection on the other side.



**Figure 4B:** Dubois aimed his weapon toward bathroom door just before firing commenced.



**Figure 4C:** Dubois advanced on target and moved to the left while firing.

Just before the firing commenced, the BWV audio captured the sound of someone shouting, “Get down!” In fear for his life, Dubois then discharged multiple rounds at Cardoza who was still in the bathroom. In fear for his life, Palmieri fired several rounds at Cardoza.

After the initial volley of gunfire, Valencia returned to the front doorway. He could see that Cardoza had dropped down to the bathroom floor. Dubois and Palmieri stood to the north of the bathroom door. As Palmieri moved closer to the bathroom door, his own BWV captured Cardoza sitting on the floor, leaning back against a wall while clutching his abdomen.

From where he sat on the bathroom floor, Cardoza abruptly slapped the top of the commode with his right hand. See Figure 5 below. Palmieri reacted by firing a single round towards Cardoza, and then yelled, “Don’t move!” Valencia’s BWV captured Palmieri’s discharge of the single round. Valencia did not discharge his weapon during the incident.



**Figure 5:** Cardoza made a sudden movement with right hand that led to final shot by Palmieri.

Cardoza had dropped the replica handgun near the bathroom door when he collapsed. Believing the replica to be a real firearm, Dubois kicked the replica away to ensure that it was out of Cardoza's reach. Palmieri ordered Cardoza to show his right hand. Cardoza complied. Cardoza did not respond when told to show his left hand. Officers Palmieri and Dubois then advanced into the bathroom, pulled Cardoza into the living room, and immediately began to administer first aid. Valencia notified dispatch of the shooting and requested BPD and Burbank Fire Department to respond. Valencia went to his patrol vehicle to retrieve a first aid kit. Firefighter paramedics arrived a short time later and pronounced Cardoza dead on scene at approximately 8:42 a.m.

Sixteen shell casings were collected from the immediate vicinity of the shooting, which included seven Winchester .40 caliber casings and nine Winchester .45 caliber casings. Dubois was armed with a Glock 21 .45 caliber semiautomatic pistol. Palmieri was armed with a Glock 22 .40 caliber semiautomatic pistol. The gunshot volley can be heard in the space of five seconds on the audio track of Palmieri's BWV. A bullet fragment was retrieved outside the front door. An expended bullet was found outside the area east of the apartment. Four expended bullets were collected from the bathroom door frame. A bullet jacket was found underneath Cardoza's body. An expended bullet was extracted from the north wall of the bathroom closet. Two bullets were found in the east wall of the bathroom, but could not be extracted due to their proximity to plumbing. Four expended bullets were removed from Cardoza's body during the autopsy.

Investigators located Cardoza's replica handgun in the living room. See Figure 6 below showing the replica.



**Figure 6:** Replica handgun used by Cardoza.

A July 4, 2017 autopsy determined that Cardoza died from multiple gunshot wounds. In all, seven gunshot wounds were documented. Two of the seven wounds were deemed to be fatal. The first fatal wound entered the right neck and traveled slightly downwards. The second of these fatal wounds entered the right chest, traveled front to back, slightly downward, and slightly left to right. Lab analysis revealed the presence of tetrahydrocannabinol and methamphetamine in Cardoza's system.

During an interview with Fekety the afternoon following the shooting, C [REDACTED] related that she had been married to Cardoza since August 2013; that they had lived at the Broadway residence since



December 2016; and that Cardoza was involved in criminal activity with several dangerous individuals. C █████ stated that Cardoza forced her to participate in criminal activity by threatening her with physical harm if she did not cooperate. C █████ stated that Cardoza had hit her in the past. The day before the shooting, Cardoza put a fake gun to the side of C █████' head and told her, "This is how you'll die." On another occasion, Cardoza told C █████ that if she called the police to report him, he would hold her hostage and that the police would end up shooting Cardoza. C █████ recounted that just a few days earlier, Cardoza had mentioned that being shot by police in a shoot-out was "an exciting way to go."

## LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4<sup>th</sup> 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4<sup>th</sup> 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 1073, 1082; *see also*, CALCRIM No. 505.

In evaluating whether a police officer's use of force was reasonable, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations: "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 police officers 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.

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 § 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.4<sup>th</sup> 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 § 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3<sup>d</sup> 325, 333.

In protecting oneself or another, a person may use all the force which that person believes reasonably necessary and that 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. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

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 § 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. The officer 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. As noted by one California appellate opinion, “[w]here 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.

The evidence examined in this investigation shows that Cardoza retrieved what appeared to be a real firearm, drew the slide as if to indicate that he had chambered a round, and then raised and pointed it at one or more of the police officers. Like the situation described by the *Graham* court, the officers in this case were forced to make “split-second judgments” under tense, uncertain, and rapidly evolving circumstances. Given the realistic appearance of the replica and Cardoza’s sudden aggressive movement, the officers reasonably believed that Cardoza was armed with a firearm and posed an immediate deadly threat. Believing that they were in immediate danger of being shot, the officers drew their duty weapons and fired at Cardoza. After Cardoza collapsed, he made another aggressive movement that led Palmieri reasonably to believe that the deadly threat had not yet ended and he fired an additional round. The officers’ use of deadly force was reasonable under these circumstances, precipitated as it was by a reasonable belief that deadly force was necessary to protect themselves and fellow officers.

## **CONCLUSION**

We find that Detectives Andrew Dubois and Michael Palmieri acted lawfully in self-defense when they used deadly force against Marco Cardoza. We are closing our file and will take no further action in this matter.