

Officer Involved Shooting of Ruben Ordaz-Herrera

Los Angeles Police Department

Officer Alejandro Downey, #37822

J.S.I.D. File #15-0667



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 10, 2017

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 Ruben Ordaz-Herrera
J.S.I.D. File #15-0667
F.I.D. File #F098-15

DATE: May 10, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 19, 2015, fatal shooting of Ruben Jose Ordaz-Herrera by Los Angeles Police Department (LAPD) Officer Alejandro Downey. It is our conclusion that Officer Downey used reasonable force in self-defense and in defense of others.

The District Attorney's Command Center was notified of this shooting on December 19, 2015, at approximately 3:23 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant Steve Lurie.

The following analysis is based on reports, recorded interviews, and photographs submitted to this office by the LAPD's Force Investigation Division. The departmentally compelled statement of Officer Downey was not considered in this analysis.

FACTUAL ANALYSIS

On Saturday, December 19, 2015, at approximately 8:00 a.m., LAPD officers responded to a call for service regarding a man, later identified as Ordaz-Herrera, who was throwing beer bottles. When officers arrived, Ordaz-Herrera physically assaulted them, resulting in a fight which caused injuries to two officers and Ordaz-Herrera.¹ Officer Downey and his partner, Officer Joseph Adranga, responded to the scene in response to an emergency backup request. Upon their arrival, Adranga and Downey found Ordaz-Herrera handcuffed and seated on the ground. Ordaz-Herrera was transported to Harbor-University of California Los Angeles (UCLA) Medical

¹ When Ordaz-Herrera attacked the two police officers who responded to the initial call, one of the officers was forced to use a Carotid Restraint Control Hold (CRCH) in response. LAPD policy treats a CRCH as a significant use of force and requires that a subject against whom a CRCH is used be medically evaluated after its use. Ordaz-Herrera otherwise suffered only scrapes and minor bruising.

Center to be evaluated, and Downey and Adranga were assigned to accompany him. Downey rode in the ambulance with Ordaz-Herrera and Adranga followed in a police vehicle.

Ordaz-Herrera arrived at the hospital at approximately 8:56 a.m., and was treated in the emergency department. The treatments included a CAT scan, the placement of an intravenous drip, and blood tests. Throughout his stay at the hospital, Ordaz-Herrera was cooperative with the medical staff and the officers guarding him. While he was handcuffed to his bed for most of the time he was being treated, the handcuffs were removed to facilitate the CAT scan and Ordaz-Herrera remained calm and cooperative. During his stay at the hospital, Ordaz-Herrera admitted that he had been up all night smoking methamphetamine and marijuana. The treating physician cleared Ordaz-Herrera to be booked into LAPD custody at approximately 2:15 p.m.

At about 2:30 p.m., after being informed that Ordaz-Herrera was medically cleared, Adranga told Ordaz-Herrera, who was handcuffed to the bed, that he was being released from the hospital and would be transferred to jail. Adranga released the handcuff from Ordaz-Herrera's left hand and then his right hand. As soon as Adranga released the second hand, Ordaz-Herrera jumped out of the bed "like a madman," picked up a metal stool which was in the room, and charged Downey and Adranga while holding the stool. He threw the stool at the officers, hitting Downey in the arm, and both officers fired their Tasers at Ordaz-Herrera.

Adranga said Ordaz-Herrera "instantly engaged in a fight with us...[he] wasn't trying to run or get away." Ordaz-Herrera took Adranga to the ground and reached for his duty belt as they fought on the ground. Adranga was able to get up off the floor, but Ordaz-Herrera kicked him in the chest with both feet, fracturing Adranga's ribs, knocking the wind out of him, and causing him to fall to the ground again. As Adranga and Ordaz-Herrera continued struggling on the ground, Downey was trying to subdue Ordaz-Herrera with a Taser and by kicking Ordaz-Herrera. Adranga felt Ordaz-Herrera again reaching toward his gun, so he shifted onto his right side so that his gun would be inaccessible: "All I could do was protect my gun at that point and I – and I believe that this suspect was wanting to kill either me or my partner. He was trying to get our guns." Adranga said that he saw Ordaz-Herrera reach toward Downey's gun belt when he heard one "pop" and looked up to see Downey, standing and holding his firearm. Ordaz-Herrera fought for another moment before his breathing slowed and ultimately stopped.

There were a number of hospital staff members who witnessed the fight and shooting. Each of them described Ordaz-Herrera fighting the officers, throwing a stool, and not responding to either the officers' commands or their use of Tasers.² D [REDACTED] B [REDACTED] saw Ordaz-Herrera immediately recover from the officers' use of Tasers as he aggressively fought the officers. He watched as Ordaz-Herrera knocked one officer to the ground as the other officer was on top of Ordaz-Herrera. Both officers repeatedly deployed their Tasers, but Ordaz-Herrera did not respond to their use. It was only after Ordaz-Herrera started to get up and grab for Downey that Downey fired one shot.

² Many witnesses observed only part of the altercation. For the sake of brevity, their statements are not all detailed here. While some witnesses had differing recollections, none of their statements are materially different from those which are detailed.

G■■■■ P■■■■ had just left Ordaz-Herrera's room when she heard shouting and saw Ordaz-Herrera throw a metal stool which struck Downey. She watched as Ordaz-Herrera charged the officers and tackled one of them to the ground. She said that the officers both used their Tasers in an attempt to subdue him, but they had no effect. The officers were grappling with Ordaz-Herrera on the ground, but they were unable to control him, and he kept reaching for the officers' legs. It appeared to her "that the patient was trying to reach for a gun the whole time."³ During the fight, she heard Downey say, "Stop fighting or I'm going to shoot you!" and Ordaz-Herrera reached and grabbed for something on the officer's waist. In response, Downey fired one shot from his handgun, striking Ordaz-Herrera. When asked whether there was anything she wanted to add to her statement, P■■■■ stated, "If it wasn't for the officers, we could have all died today because it really seemed like the patient wanted that gun and really wanted to hurt somebody."

N■■■■ P■■■■ agreed with P■■■■. She said that she watched as Ordaz-Herrera took the officers to the ground and was reaching for an officer's gun while the officer tried to keep it in his holster. She stated that the "officers were struggling and were in danger. Two police could not control this patient." P■■■■ said, "It just seemed like he was really aiming to get their weapons." S■■ A■■■■ described Ordaz-Herrera as "extremely strong" and "overpowering the officers" as he was fighting. A■■■■ saw Ordaz-Herrera lunging for the officer's waist immediately before the officer fired his handgun and was scared at that moment about what Ordaz-Herrera was going to do next.

X■ X■■ agreed that Ordaz-Herrera was reaching for an officer's gun immediately before he was shot. X■■ said, "I was just amazed at how strong and how...difficult to subdue the patient was...I've never seen anything like that. It's...almost like out of a movie." When asked if he had anything to add to his statement, X■■ said, "I was very fearful of my own life and I was fearful of the life of everybody around me...the officers did all they can (sic) to subdue him without causing harm and, and it wasn't working. I can tell that the Taser gun that was activated was not working on the patient. He was resisting...and then one shot was fired. I thought it was the only way to restrain the patient at that time."

Numerous law enforcement officers from different agencies converged on the hospital in response to the officers' call for help.⁴ One of those officers, Hugo Enriquez of the LAPD, came upon Downey and Ordaz-Herrera moments after the shot was fired.⁵ Downey spontaneously told Enriquez that he shot Ordaz-Herrera when Ordaz-Herrera went for his gun.

After being shot, Ordaz-Herrera was handcuffed and then immediately transferred to the trauma room in the emergency department. He was taken to the operating room for emergency surgery and pronounced dead when the surgeon discovered that the bullet had severed Ordaz-Herrera's aorta, and determined that he could not be revived.

³ None of the civilian witnesses were able to identify Downey or Adranga by name, and it was often unclear from their statements to which officer the witness was referring. All of the civilians referred to Ordaz-Herrera as the "patient."

⁴ After Downey shot Ordaz-Herrera, Adranga ran outside the emergency department to radio for help because LAPD radios have no reception inside the building.

⁵ Enriquez was in the hospital parking lot, having responded to the facility for an unrelated incident.

As a result of their involvement in the fight, both Downey and Adranga were transported to hospitals. Downey suffered injuries to his wrist, which was swollen by the time the first supervisor arrived to the scene, and Adranga was treated for fractured ribs.

LEGAL ANALYSIS

California law permits any person 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 ground 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. 3470.

In this case, Downey and Adranga were attacked without provocation by a man whom they had been guarding for hours and who had been cooperative during his entire stay at the hospital. By all accounts, Ordaz-Herrera’s attack was aggressively aimed toward injuring the officers, not as an attempt to flee. The officers responded with significant non-lethal force which all witnesses agreed was warranted but ineffective. At the time Downey fired one shot from his firearm, Adranga was virtually removed from the fight, as he fought to simply retain control of his firearm, and Ordaz-Herrera was actively attempting to wrestle Downey’s firearm away from his control. Having exhausted his other readily available options, Downey’s use of lethal force was a reasonable reaction to Ordaz-Herrera’s continued attack and attempt to take his and his partner’s handguns. The reasonableness of Downey’s decision is emphatically illustrated by the statement of P [REDACTED], who said, “if it wasn’t for the officers, we all could have died today.”

When Ordaz-Herrera violently attacked two police officers and attempted to take their firearms, he presented an imminent threat of death or great bodily injury to the officers and those around them. Because Ordaz-Herrera’s attack was not slowed by the use of Tasers or other physical force and he was actively attempting to arm himself with a deadly weapon, Downey’s use of his firearm to subdue Ordaz-Herrera under these circumstances was both necessary and reasonable to protect himself and the public.

CONCLUSION

We conclude that Officer Alejandro Downey used lawful force in self-defense and in the defense of others when he shot and killed Ruben Ordaz-Herrera. We are closing our file and will take no further action in this matter.