

**Officer Involved Shooting of Jose Mendez
Los Angeles Police Department**

**Officer Josue Merida, #37596
Officer Jeremy Wagner, #38873**

J.S.I.D. File #16-0053



JACKIE LACEY

District Attorney

Justice System Integrity Division

June 12, 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 Jose Mendez
J.S.I.D. File #16-0053
F.I.D. File #F009-16

DATE: June 12, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 6, 2016, fatal shooting of Jose Mendez by Los Angeles Police Department (LAPD) Officers Josue Merida and Jeremy Wagner. It is our conclusion that Officers Merida and Wagner used reasonable force in self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on February 6, 2016, at approximately 11:45 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 Steven Lurie.

The following analysis is based on reports, recorded interviews, videos and photographs submitted to this office by the LAPD's Force Investigation Division. The departmentally compelled statements of Officers Merida and Wagner were not considered in this analysis.

FACTUAL ANALYSIS

On February 6, 2016, at 8:50 p.m., Erick P████ called LAPD and reported that his 1996 Honda Accord had just been stolen while he went into a restaurant to get something to eat. Officers responded to P████'s request for assistance and took a report. Pursuant to the policy of the LAPD Hollenbeck Community Police Station, all patrol units assigned to Hollenbeck Division were advised of the stolen car, including its description, license plate and the location from which it was stolen.

At approximately 10:42 p.m., Officer Merida was driving a fully marked LAPD patrol car southbound on Lorena Street in the City of Los Angeles with his partner Officer Wagner, who was in the passenger seat.¹ As the officers passed Sixth Street, they observed P████'s stolen car

¹ The patrol car driven by the officers was equipped with audio and video recording capabilities. There were no witnesses to the shooting and this analysis is based wholly on the video, the officers' radio traffic, and the physical

being driven north on Lorena Street. Merida made a U-turn and pulled behind the stolen car, which was coming to a stop in the left turn lane at the intersection of Lorena Street and Sixth Street. The driver of the stolen Honda, later identified as Jose Mendez, turned left onto Sixth Street and the officers followed while they used their vehicle's computer to verify that the car they were following was, in fact, stolen. At 10:43 p.m., Wagner used the police radio to announce that they were following a stolen vehicle, and the officers activated their vehicle's spotlights and overhead emergency lights as they followed Mendez. After turning onto Sixth Street, Mendez almost immediately turned right into the driveway of 3339 East Sixth Street.

As soon as he pulled into the driveway and came to a stop, Mendez opened the driver's side door of the Honda. As he opened the door, Mendez turned toward Merida and placed one foot on the ground, but stayed seated in the car as it rolled forward and impacted a truck which was parked in the driveway. Merida positioned the police car behind the Honda and both officers exited the car and approached Mendez; Merida to the driver's side and Wagner to the passenger's side. As Merida approached Mendez, he shouted, "Let me see your hands! Don't fucking move!" followed immediately by, "He's got a gun partner!" before he fired his handgun into the passenger compartment.



Figure 1: Still from in car video depicting Merida immediately prior to shooting

After discharging his weapon multiple times, Merida retreated to the mouth of the driveway and requested emergency backup from the dispatcher. At the same time, Wagner moved from the passenger side of the Honda to the driver's side. As the officers were waiting for backup to arrive, Merida, who was breathing heavily, said, "He came out – he came out with a rifle dude!"

evidence at the scene. The video clearly captured Merida's actions surrounding the shooting, but only captured part of the actions of Mendez during, and immediately prior to, the shooting. Wagner is depicted only after the shooting had occurred.

and Wagner responded, “I saw it. I saw it.” The entire incident unfolded very quickly; forty-two seconds elapsed from the time Merida executed a U-turn until the shots were fired. All of the shots were fired in approximately 3.5 seconds.

A loaded, 20 gauge, single-shot shotgun was recovered from the ground immediately outside the driver’s side door of the Honda. The gun, which had been stolen from Las Vegas, Nevada in 2013 or 2014, had been heavily modified with both the barrel and the stock sawed off to make it more compact.² The shotgun was swabbed for DNA, and was found to have Mendez’s DNA as well as DNA from an unknown minor contributor on it.³



Figure 2: Gun recovered on ground next to Honda's front driver's side door

Thirteen .40 caliber shell casings were also located around the scene of the shooting. Those casings were compared against exemplars taken from the officers’ firearms. Based upon that analysis, Merida fired eleven times and Wagner fired two times. This finding is consistent with the video and the results of the examination of the officers’ weapons after the shooting.

Deputy Medical Examiner Dr. Vadims Poukens conducted an autopsy on Mendez on February 10, 2016. Dr. Poukens noted 19 gunshot wounds on Mendez’s body. Those wounds were distributed across his body with different wound paths. When asked to opine on the disparity between the number of shots fired by the officers and the number of wounds suffered by Mendez, Dr. Poukens opined that, depending on Mendez’s position when he was shot, a single bullet could cause multiple gunshot wounds. Specifically, Dr. Poukens opined that Mendez had his right arm raised when he was shot, and, based on that opinion, four of the wounds noted on Mendez’s chin and arm could have been caused by one projectile. Further, Dr. Poukens explained that at least one of the wounds was likely caused by a bullet which ricocheted into

² Investigators interviewed the lawful owner of the weapon who said the gun was stolen during a burglary but was not certain when the burglary occurred. He said he had reported the theft to the Las Vegas Metropolitan Police Department. The Las Vegas Metropolitan Police Department was unable to find a report documenting the theft.

³ The analyst first ensured that there was no blood on the swab which was ultimately tested.

Mendez after impacting the vehicle. Blood tests done as part of the autopsy showed that Mendez was under the influence of methamphetamine when he died.

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. If a person uses force in lawful self-defense, he need not stop using force until the threat has ended. *See* Plumhoff v. Richard (2014) 134 S.Ct. 2012, 2022.

Officers Merida and Wagner conducted a traffic stop on a car they had confirmed was stolen and which was being driven by Mendez. When Mendez stopped the car, both officers immediately approached him; Merida on the driver’s side of the car, and Wagner on the passenger’s side. The video taken from the patrol car depicts Mendez turn his body toward Merida and put his foot on the ground as Merida approaches. Merida yelled, “He’s got a gun!” and he fired his duty weapon at Mendez eleven times in quick succession. The coroner concluded that Mendez had his right arm raised when he was shot, which is consistent with his pointing the gun in Merida’s direction. Merida confirmed this conclusion when, immediately after the shooting, he said, “He came at me with a rifle!” By pointing a sawed-off shotgun at Merida, Mendez gave Merida no choice but to respond with deadly force in self-defense.

Wagner, who approached Mendez’s car on the passenger’s side, said immediately after the shooting that he also saw Mendez’s gun. As described above, the evidence shows Mendez pointed a sawed-off shotgun at Merida, and Wagner, upon seeing that, fired two times in defense of Merida. Based upon the situation with which they were confronted, both officers responded reasonably to the actual and imminent threat posed by Mendez.

CONCLUSION

We conclude that Officers Josue Merida and Jeremy Wagner used lawful force in self-defense and in the defense of others when they shot and killed Jose Mendez. We are closing our file and will take no further action in this matter.