

**Officer Involved Shooting of Alejandro Valencia
Los Angeles Police Department
Officer Charles Garcia, #30882**

J.S.I.D. File #17-0130



JACKIE LACEY

District Attorney

Justice System Integrity Division

June 13, 2018

MEMORANDUM

TO: COMMANDER ALAN HAMILTON
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 Alejandro Valencia
J.S.I.D. File #17-0130
F.I.D. File #F015-17

DATE: June 13, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 4, 2017, fatal shooting of Alejandro Valencia by Los Angeles Police Department ("LAPD") Officer Charles Garcia. We find there is insufficient admissible evidence to prove beyond a reasonable doubt that Officer Garcia did not act lawful self-defense and in defense of others.

The District Attorney's Command Center was notified of this shooting on March 4, 2017, at 1:27 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant Damian Gutierrez.

The following analysis is based on reports prepared by the LAPD Force Investigation Division submitted to this office by Detectives Samuel Hancock and James Goosen. The reports include photographs, audio-recorded interviews of witnesses, radio transmissions, dash camera ("DICVS") video, surveillance video, and cellular telephone video recordings.

Officer Garcia's compelled statement was not considered in this analysis.¹

¹ 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 involved officer in this shooting was interviewed and ordered to submit to questioning concerning the performance of his official duties. Like any other individual, the officer possesses 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 the officer to answer questions which might expose him to criminal liability, the LAPD compelled the officer to participate in an interview. The effect of this legal compulsion is that the officer's statement cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interview 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 that compelled statement is part of the officer's police personnel file, his statement is confidential and may not be disclosed absent an evidentiary showing and court order. *Penal Code* section 832.7.

FACTUAL ANALYSIS

Introduction

On March 4, 2017, at approximately 12:30 p.m., LAPD received four 9-1-1 calls reporting a man hitting people with a “stick” and fighting with another man near the intersection of South Broadway and West Olympic Boulevard in downtown Los Angeles.

LAPD Officers Charles Garcia and Ghanshyam Patel responded and saw Valencia behaving erratically, holding a five foot long metal pipe, and threatening bystanders.

Garcia drew his service weapon and Patel armed himself with a Taser. Both officers ordered Valencia multiple times to drop the pipe.² Valencia did not comply and continued to threaten the officers and bystanders.

Valencia yelled various obscenities in Spanish at the officers, including “¡Putos!” (a gay slur) and “¡Chinga tu madre!” (fuck your mother). He also yelled, “¡Mata me aqui!” (kill me here).

Patel fired his Taser at Valencia, but it did not penetrate Valencia’s overcoat and was ineffective.

When Valencia raised the pipe and stepped toward Garcia in a threatening manner, Garcia fired his service weapon at Valencia twice, killing him.

A still photograph taken from a video recording taken by a bystander at the moment of the shooting is shown below:



² Valencia spoke to the officers in Spanish, while the officers were issued commands to Valencia in English. Valencia spoke both languages. In 2013, during an investigation of Valencia for failing to register as a sex offender, Los Angeles County Sheriff’s Department Detective Sabrina Bennett reported, “Valencia spoke to me in English, however he said he read and comprehended better in Spanish.”

The 9-1-1 Calls

LAPD received four 9-1-1 calls regarding Valencia, as follows:

At 12:20 p.m., a Spanish speaking caller reported Valencia acting aggressively and attempting to hit people with a metal pole.

At 12:31 p.m., a caller reported Valencia and another man fighting with sticks in front of a restaurant.

At 12:31 p.m., a caller reported Valencia and another man fighting with sticks on the corner.

At 12:34 p.m., a caller reported Valencia and another man fighting outside a restaurant.

The Radio Call

At 12:22 p.m., LAPD dispatch broadcasted a call of a man, later identified as Valencia, in front of a restaurant “swinging a pipe.” Garcia and Patel answered the call and requested backup.

At 12:36 p.m., the call was updated to report Valencia’s new location and that he was armed with a stick. Moments later, Garcia and Patel reported they had located a “415 man with a stick” and requested backup.³

Statement of Officer Ghanshyam Patel

Patel was an LAPD reserve officer for two years, but was on his first shift as a patrol officer. He was not wearing a body-worn camera.⁴ He was in uniform and on patrol with Garcia in a marked black and white patrol vehicle, when they received a radio call about a person waving a long metal pipe. Patel and Garcia responded.

When Patel and Garcia arrived, they saw Valencia waving a five or six foot metal rod. A crowd had formed and a security officer was also present and using his bicycle as a barrier. Valencia was moving erratically back and forth and making downward striking motions with the pipe.

Patel and Garcia exited their vehicle and Garcia told Patel, “Taser him!” Patel yelled at Valencia, “Drop the stick! Stop! Drop the stick!” Valencia did not comply with the commands and continued to wave the pipe around. Patel stated that he had considered using the beanbag shotgun, but the situation escalated too quickly. He was also afraid that getting close enough to use pepper spray would put him and Garcia in more danger. Patel yelled, “Taser! Taser! Taser!” and fired his Taser at Valencia, who had no reaction. Patel was unsure if the Taser made contact with Valencia and believed it may have bounced off of Valencia’s jacket.

Patel backed away from Valencia and Garcia continued to issue commands. Garcia yelled, “Second cartridge!” Patel attempted to reload the Taser, but realized that he did not have a second cartridge.

³ “415” is police code for a disturbance.

⁴ LAPD policy does not require reserve police officers to wear body-worn cameras.

Believing there was no other means to defend himself, Patel holstered his Taser, drew his service weapon, and aimed it at Valencia.

Patel and Garcia continued to issue commands to Valencia, ordering him to stop moving and to drop the stick. Valencia did not comply and continued to move erratically and wave it around. Valencia also yelled obscenities at the officers, but Patel was not sure what Valencia actually said.

Patel believed that the level of danger that Valencia presented was escalating. When Valencia made an erratic movement to the right, Garcia fired two shots at Valencia. At the time of the shooting, Valencia was approximately eight to ten feet from Patel.

Valencia fell facedown and Patel holstered his weapon. Garcia yelled, “Cuff him! Cuff him! Cuff him!” Patel cuffed Valencia while Garcia called for an ambulance.

Statement of Cesar L.

Cesar L. was sitting at a bus stop bench when he encountered Valencia, who was holding a metal bar. At the time of this interaction, Cesar L. sat on one end of the bench and Valencia sat at the other end of the bench. He heard Valencia uttering obscenities in Spanish and noted the aggressive tone of his voice. Under his breath, Valencia threatened a restaurant employee and another person at the bus stop. A bicyclist rode by the bus stop and Valencia swung the metal bar at him but missed. Valencia continued to act aggressively toward others who walked by the bus stop. Valencia swung the rod at Cesar L. but missed. Cesar L. walked away from the bench and called 9-1-1. Valencia continued to behave erratically and at one point stood in front of a moving bus. Cesar L. got on the bus and left.

Statement of Francisco A.

Valencia approached Francisco A., waved a metal pipe, challenged him to fight, and hit him in the stomach with the pipe. He was not injured. Francisco A. then saw Valencia strike another man on the hand with the pipe and the man started bleeding. That man called 9-1-1. Valencia ran across the street and attempted to fight with other pedestrians. Francisco A. remained across the street and recorded the incident with his phone.⁵ A man attempted to grab Valencia’s pipe, but was unsuccessful. The police arrived and issued commands to Valencia. When Valencia failed to comply, an officer tased Valencia, but it was ineffective. Valencia ran toward the officers and was shot.⁶

Statement of Quinnten P.

While eating lunch in a restaurant, Quinnten P. looked out the window, and saw Valencia holding a metal pole. Valencia fought with another man, who had armed himself with a broom. “Full blows” were exchanged.⁷ A security guard arrived and ordered Valencia to drop the pole, but Valencia did not comply. The police arrived and issued commands to Valencia. A crowd

⁵ Francisco A. was unable to locate the videotape for investigators.

⁶ Video evidence shows that Valencia moved toward Garcia, but did not run at him.

⁷ The pedestrian who fought with Valencia has not been identified.

formed around the scene. The man who was involved in the fight with Valencia yelled to the police, “Shoot him!” One officer drew his Taser and issued more commands to Valencia. When Valencia failed to comply, the officer fired his Taser, which had no effect. The officers issued more commands to Valencia and he failed to respond. With the pole in his hands, Valencia made a movement toward the officers. Quintten P. heard two gunshots and saw Valencia fall to the ground.

Statement of Justin W.

Justin W. was walking when he saw Valencia standing in the street and waving a metal rod. He thought Valencia might be on drugs. Valencia approached Justin W. and jabbed him with the rod on the hand, drawing blood. A photograph of that injury is shown below:



Statement of Michael C.

Michael C. reported that Valencia was “on something,” was speaking gibberish, and swung a metal rod at Justin W.

Statement of Josue E.

Valencia approached and attempted to hit Josue E. with a metal pipe. When the police arrived, Josue E. ran away, bumped into a police officer on a bicycle, and dislocated his right hand. The officer apologized and continued to move toward the scene. As Josue E. left, he heard three gunshots. He turned around and saw Valencia lying on the ground and was told to leave as the police were beginning to close off the street. Afterward, news media interviewed Josue E. and a misunderstanding occurred. The media believed that Josue E. was hit by Valencia. However, Josue E. later told investigators that the media misunderstood his statements and Valencia did not hit him.

Statement of Jermaine S.

Jermaine S. was working as a security guard when he received a radio call requesting backup from another security guard who reported a fight between two people.

When Jermaine S. arrived, he saw Valencia and another man yelling at each other and a crowd gathering. Valencia was wielding a six to seven foot pole. The man who was arguing with Valencia was irate and antagonizing Valencia. The man exclaimed that Valencia had struck him with the pole.

Jermaine S. attempted to speak with Valencia, but he was unable to understand him. Valencia appeared to be either under the influence of drugs, or mentally ill.

Valencia continued to hold the pole and used it to poke a pedestrian who was standing at a traffic light.

Jermaine S. put his bicycle in front of him for protection, armed himself with pepper spray, and warned Valencia to move away from him or he would use the pepper spray on him.

Another security guard arrived, and the police officers arrived shortly thereafter.

Jermaine S. heard officers give verbal commands to Valencia to drop the pole, but Valencia did not comply and remained aggressive. The man who was in the prior fight with Valencia continued to yell and encouraged Valencia to keep holding onto the metal pole so that the officers would shoot him.

Jermaine S. saw one officer draw his firearm and the other officer arm himself with a Taser. The officer with the Taser yelled, "Back up! Back up! Put the pole down!" Then the officer yelled, "Taser!" and discharged the Taser. However, it appeared that the Taser did not hit Valencia.

The man who previously fought with Valencia yelled, "Shoot him! Shoot him! Shoot him!"

Valencia continued to hold the pole and behave erratically. The officer with the Taser drew his service weapon and Valencia started moving toward the officers.

Jermaine S. heard two gun shots and saw Valencia fall to the ground.

Statement of Amber G.

Amber G. was in a restaurant when she heard a commotion outside. She saw Valencia holding a metal pipe and yelling at another man. A crowd formed and she heard people telling the man who was arguing with Valencia to leave him alone.

A security guard arrived and tried unsuccessfully to take the pipe from Valencia. Amber G. believed that Valencia was either mentally unstable or under the influence of drugs.

The police arrived and Amber G. heard the man who was arguing with Valencia yell at the police to shoot Valencia. The officers told Valencia to drop the pipe, but Valencia did not comply. One of the officers attempted to tase Valencia, but it was ineffective. The officers told Valencia

again to put down the pipe. Amber G. saw Valencia take a step toward the officers. She then heard two gunshots, and saw Valencia fall to the ground.

Statement of Jose C.

Jose C. was working as a security guard when he received a call about a fight taking place. The call detailed a man hitting another man in the head with a metal pipe.

When he arrived, another security guard, Jermaine S., was already at the scene. A crowd had formed. Valencia was aggressive, moving back and forth, and attempting to hit people with a metal pipe. Soon after Jose C. arrived, police officers came to the scene. Jose C. heard the man who had been fighting with Valencia yell, "Shoot him! Don't put down the pipe!"

Jose C. saw one officer draw his service weapon and the second officer draw his Taser.

The officers yelled to Valencia, "Drop the pipe! What's wrong? What's wrong? Back up!" Valencia remained unresponsive and continued moving.

An officer tased Valencia, but it was ineffective. He then drew his service weapon.

Valencia continued to pace back and forth and then "lunged" at the officers. One of the officers fired two shots. Jose C. saw Valencia fall face forward to the ground and was handcuffed by police officers.

Statement of Dale C.

Dale C. was on a bus and noticed a commotion on the street. Upon exiting the bus, Dale C. saw Valencia holding a six-foot pipe and chasing people down the street. Valencia attempted to hit two people with the pipe. Valencia then confronted a man who was wearing a white medical uniform. Valencia jabbed the man in the stomach with the pipe. The attack was unprovoked. The man picked up a chair and attempted to hit Valencia with it. A security guard approached and tried to talk to Valencia, but Valencia attempted to hit the security guard with the pipe. Two police officers arrived soon thereafter.

The officers exited their vehicle and told Valencia to drop the pipe. Dale C. estimated the officers were standing about ten feet from Valencia at the time. Valencia refused to drop the pipe and one of the officers tased him. The Taser had no effect. The officer with the Taser then drew his service weapon.

The officers again told Valencia to drop the pipe, but Valencia again refused and advanced toward the officers. When he moved toward the police, Valencia was shot.

Statement of Bradley H.

Bradley H. was working as a cashier. He looked outside his store and saw a crowd forming across the street. Two police officers exited their vehicle and approached Valencia, who had a pipe in his hands. Bradley H. estimated the officers were approximately five to eight feet from Valencia. Valencia had two hands on the pipe and was moving in a "dodging" type of motion.

One officer attempted to tase Valencia but it was ineffective. Valencia continued to step back and forth. Bradley H. heard two gunshots and saw Valencia fall to the ground.

Statement of Eric M.

Eric M. was inside a restaurant. He looked outside and noticed a man being followed by another man who had a large metal pipe. Eric M. stepped outside and saw Valencia fight with a man wearing a white medical uniform. It appeared the man was provoking Valencia and the man armed himself with a broomstick. Valencia was carrying a large metal pole. The two hit each other back and forth with the broomstick and the pole. A security guard arrived and attempted to break up the fight. Valencia poked another pedestrian with the metal pole. The police arrived and stood approximately fifteen feet from Valencia. The police repeatedly told Valencia to drop the pole, but Valencia did not comply. Valencia made a continuous back and forth motion. One officer attempted to tase him. The officers issued more commands to Valencia to drop the pole. Eric M. could not tell if the officers or Valencia made the first move toward each other, but did note that Valencia made a move towards the officers. One of the officers shot Valencia two to three times. After the shooting, Eric M. saw the man in the white medical uniform leave the scene.

Statement of Andrew L.

Andrew L. was in a restaurant when he noticed an altercation outside. He went outside and saw that a crowd had formed. Andrew L. saw Valencia, holding a four to five foot pipe, arguing with a man in white clothing. It appeared that the man in white clothing was antagonizing Valencia by threatening and yelling at him. Andrew L. was familiar with Valencia and had seen him on multiple occasions. Before that day, he had never seen Valencia do anything that could be considered to be aggressive or violent, but believed him to be mentally unstable. A security guard on a bicycle arrived and attempted to break up the fight. The security guard tried to get Valencia to drop the pipe, but Valencia refused to do so and approached the security guard. As Valencia brandished the pole, the security guard put his bicycle in front of him for protection. However, Andrew L. never saw Valencia actually hit anyone with the pipe. Police officers arrived at the scene and maintained a distance of approximately ten feet from Valencia. The officers ordered Valencia to drop the pipe, but he did not comply. An officer fired a Taser at Valencia, but it did not have any effect on Valencia. Valencia then took a step toward the officers and was shot two times. Andrew L. saw the man in white leave the scene soon thereafter.

Statement of Isidro N.

Isidro N. was working as a security guard when he received a call reporting a fight between two men. He responded and saw another security guard talking to a man in a white medical uniform. The man claimed that Valencia had struck him with a metal pipe. Isidro N. saw Valencia nearby, pacing back and forth, and holding a five to six foot metal pipe. Two LAPD officers arrived and approached Valencia, maintaining a distance of approximately 15 feet. The officers ordered Valencia to drop the pipe. At the same time, Isidro N. heard the man in white yell at Valencia to not put down the pipe. The man in white also yelled at the officers to shoot Valencia. One of the officers attempted to tase Valencia. The Taser was ineffective. Isidro N. saw Valencia step back, quickly change direction, and approach the police officers. The officers

ordered Valencia again to drop the pipe. Valencia ignored the officers' commands and was shot twice.

Statement of Ning D.

Ning D. saw two people fighting with objects in their hands. Valencia had a pipe. After a few minutes, Ning D. saw police officers arrive. The police stood approximately sixteen feet from Valencia, and gave him unknown commands.⁸ When Valencia failed to comply, he was shot twice.

Statement of Jesus T.

Jesus T. was in a restaurant when a friend directed his attention to a man outside being chased by another man who was wielding a metal pole. Jesus T. stepped outside and saw a man in a white medical uniform fighting with Valencia. The man in white picked up a chair to defend himself from Valencia. The restaurant owner told the man to put the chair down and he complied. The man then grabbed a stick from a nearby janitor's cart. Valencia and the man hit each other with the sticks. Eventually, the altercation became verbal, with the man in the white uniform continuing to yell at Valencia. After a few minutes, the police arrived. One officer immediately drew his firearm while the other drew his Taser. Valencia was standing about ten to fifteen feet from the officers. The officers issued commands to Valencia, ordering him to drop the pole, but it appeared that Valencia did not understand them because Valencia only spoke Spanish. The officer tried to tase Valencia, but it was ineffective. The officers ordered Valencia to drop the pole, but Valencia refused to do so. He stepped toward the officers and was shot twice by the officers. The man in the white uniform quickly left the scene.

Statement of Clara R.

Clara R. was working at a store across the street from where the incident took place. She noticed Valencia and a man in a white medical uniform walk by the store. Valencia was holding a four to five foot metal pole in his hands. Clara R. recognized Valencia as a homeless man that frequented the area. Clara R. believed Valencia suffered from mental illness. Valencia and the man in the white uniform were arguing. The man in the uniform was antagonizing and intimidating Valencia. Clara R. and her customer stepped outside to observe. The man in white continued to yell that he was going to fight Valencia. Valencia was moving a metal pole in his hands in a defensive motion. Valencia appeared to be drunk or on some sort of substance because he could not get his footing. While the scene continued to develop, Valencia lightly poked another pedestrian with the pole. Security guards arrived and attempted to talk to Valencia. While this was happening, the man in white continued to yell at Valencia. Two police officers arrived and exited their vehicle with their weapons drawn. The officers told Valencia to drop his weapon. An officer fired his Taser, but it appeared that the Taser missed Valencia. The officer fired a second Taser at Valencia and the second attempt also failed. After this second failure, the officers drew their service weapons. Clara R. yelled, "Don't shoot him! You don't have to shoot him! Don't shoot him!" At the same, the man in white yelled, "Shoot him! Shoot him! Shoot him!" While still holding the metal pole, Valencia took a few steps towards the

⁸ Ning D. originally gave the distance in meters. The distance in feet is an approximate conversion of the distance in meters.

officers and was shot. The officers handcuffed Valencia and the man in white quickly left the scene.

Statement of Richard O.

Richard O. was working as a security guard when he noticed Valencia and a man dressed in a white medical uniform engaged in an altercation. Valencia had a three to four foot metal stick in his hands. The man in white was the aggressor in the altercation. Valencia swung the metal pole at anyone who walked near him. He hit one pedestrian on the shoulder. At this time, Richard O. called 9-1-1. Another security guard arrived at the scene and attempted to defuse the situation. Valencia ignored the security guard and continued to swing the metal pipe, attempting to strike a pedestrian waiting to cross the street. Two police officers arrived and moved to a position approximately eight feet away from Valencia. They initially attempted to tase Valencia, but the Taser had no effect. The officers issued warnings to Valencia, but he refused to “stand down.” Valencia then made a sudden move towards the officers and was shot twice.

Statement of Jose G.

Jose G. was in a restaurant when he saw a man in a white medical uniform running on the sidewalk and being followed by Valencia, who was carrying a large metal pole. Jose G. went outside and observed the man in white in an altercation with Valencia. The man in white grabbed a broom from a janitor and swung it at Valencia. Valencia responded by swinging his metal pipe at the man. The physical altercation de-escalated and became solely verbal. A security guard unsuccessfully attempted to diffuse the situation. Two officers arrived and positioned themselves about twenty feet from Valencia. One of the officers armed himself with a firearm while the other had a Taser. The officers repeatedly told Valencia to put down the metal pipe, but Valencia refused to comply. An officer fired his Taser at Valencia, but it was ineffective. The man in white yelled, “Shoot him! Shoot him! The officers issued more commands to Valencia, but Valencia still did not comply. Valencia then made a sudden movement towards the officers, with the pole facing towards them. The officers fired two to three rounds at Valencia.

Statement of Glen O.

Glen O. was working as a janitor on the street at the time of the incident. He noticed an altercation between Valencia and a man in a white uniform. Valencia was armed with a five foot silver pole, while the other man armed himself with a chair for protection. As Glen O. approached, the man in white dropped the chair and grabbed a broom out of the cleaning cart. The man in white and Valencia began hitting each other back and forth. After a few minutes, the altercation de-escalated and the man in white returned the broom to Glen O. Glen O. called for security and was told to leave by the security guards. As he was walking away, he heard gunshots, and saw the man in white running from the scene.

Statement of Bryce M.

Bryce M. was working inside when he heard a commotion. He went outside and saw Valencia, holding a metal pipe, in an altercation with a man wearing all white. Bryce M. had seen Valencia prior to this incident and, while not violent in the past, Bryce M. believed Valencia

suffered from mental illness. Two police officers arrived soon after. The officers told Valencia to drop the pipe, but Valencia refused to cooperate. One officer then tased Valencia, but the Taser had no effect. Valencia took a step back and waved the pipe around. The officers continued to order Valencia to drop the pipe. Valencia continued to ignore their commands. Valencia then took two steps forward and the officers shot him twice.

Statement of Brandon D.

Brandon D. was working when he heard a commotion taking place outside and across the street. He went outside and saw Valencia holding a large metal stick, poking and trying to hit people who were crossing the street. Valencia tried to hit a man who was dressed in white, and an altercation started. The man in white grabbed a chair from the front of a nearby restaurant to defend himself. Valencia and the man in white argued back and forth for some time. Security guards arrived and attempted to calm the situation. One of the security guards drew a pepper spray canister, but did not use it. A patrol car arrived and two police officers exited the vehicle, standing about fifteen feet from Valencia. An officer tased Valencia, but the Taser was ineffective. Valencia continued to make movements, ignoring the officers' commands. The man in white yelled, "Shoot him! Shoot him!" Valencia then made a lunging movement toward the officers and was shot twice.

Dash Camera Video (DICVS)

Garcia and Patel's patrol car was equipped with a Digital In-Car Video System ("DICVS") that captured video and audio of the incident.

The footage shows Garcia and Patel arriving. As they approach, a security officer is seen backing away from Valencia, who is holding a long metal pipe. Another security guard is standing behind his bicycle, which he placed between himself and Valencia. A man in a white medical uniform is pacing back and forth. Valencia is speaking in Spanish and using obscenities. Valencia yelled various obscenities at the officers, including "¡Putos!" (a gay slur), and "¡Chinga tu madre!" (fuck your mother). He also yelled, "¡Mata me aqui!" (kill me here).

As Garcia and Patel exit their patrol vehicle, Garcia yells, "Drop the stick!" Patel also yells, "Drop the stick, sir! Drop the stick!" Valencia responds by raising his right hand, pointing at the officers and yelling in Spanish. Patel yells again, "Drop the stick, sir! Drop the stick!" Garcia has his service weapon in a "low ready" position. Patel is armed with a Taser and has it pointed at Valencia.

When Valencia fails to comply with the officers' orders, Patel yells, "Taser! Taser! Taser!" and fires his Taser at Valencia, but it appears to be ineffective.

Valencia makes a sudden movement toward Patel. In response, Garcia points his service weapon at Valencia, which causes Valencia to flinch and back away. Patel takes a few steps back, holsters his Taser, and draws his service weapon. The man in the white medical uniform in the background yells, "Shoot him!"

Garcia yells, "Get down! Drop that...drop it!" Patel yells, "Drop the stick, sir! Drop it!" Valencia does not comply and continues to move around and gesture toward the officers. The

man in white yells, “No, don’t drop it!” Patel yells again, “Drop it sir! Drop it!” The man in white yells, “Shoot him! Shoot him! Shoot him!”

Valencia walks toward the man in white and Garcia yells, “Hey! Hey! Get over here!” as Patel yells, “Stop! Don’t move, sir! Drop the stick!” Garcia yells, “Hey! Drop it man!” Patel yells again, “Drop it! Don’t...Sir!” Valencia continues to pace back and forth, still armed with the pipe.

Patel and Garcia yell again, “Drop the stick!” Valencia walks toward Garcia, with the pipe raised over his head. Garcia fires two shots and Valencia collapses to the ground.

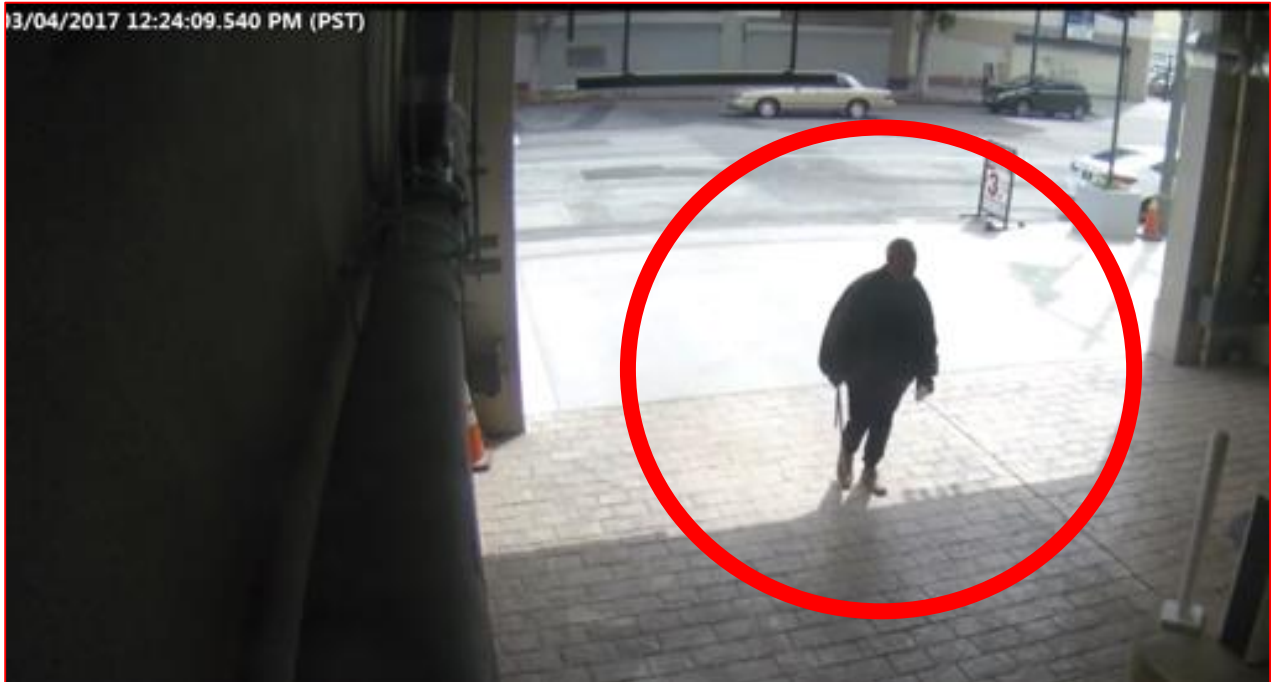
The man in white leaves the scene and continues to yell, as Garcia calls for backup and an ambulance. Patel handcuffs Valencia.

A frame from the DICVS showing the moment of the shooting is shown below:



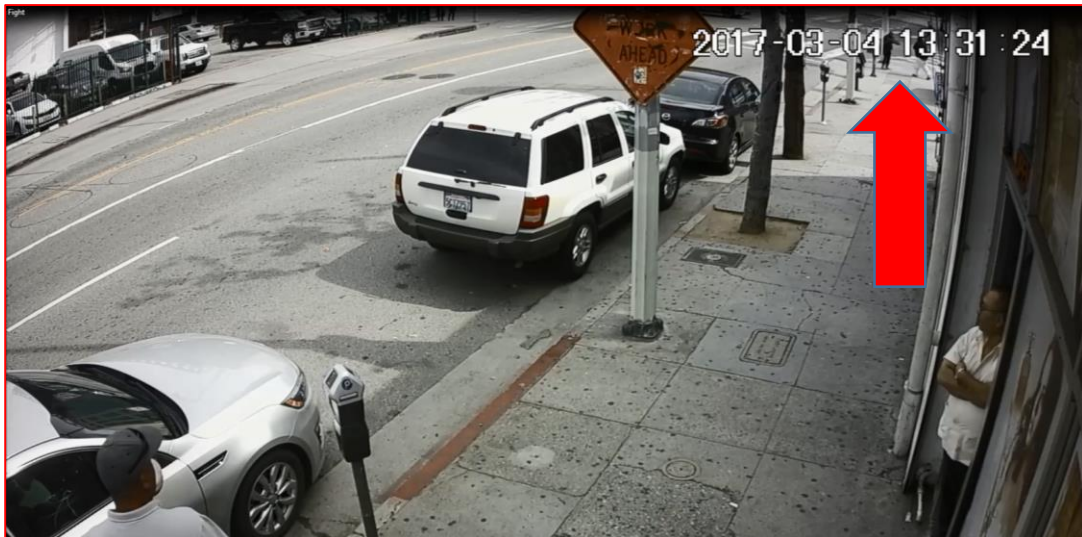
Parking Structure Surveillance Video

At 12:24 p.m., surveillance video from a parking structure shows Valencia carrying two long objects in his hands and threatening a group of people with the objects. A frame from that video is shown below:



Business Surveillance Video

At approximately 12:29 p.m., surveillance video from the outside of a business shows, in the distance and partially obstructed by a time and date stamp, Valencia and the man in a white medical uniform hitting each other with sticks. A frame from that surveillance tape is shown below and Valencia and the second man's positions are indicated by the red arrow:



Bystander Video #1

A bystander recorded video of the incident on a cellular telephone. Valencia is shown pacing back and forth, while holding a long metal rod. The officers arrive and draw their weapons. One

officer fires his Taser but it appears to be ineffective. Valencia yells at the officers and continues to move erratically. Valencia, armed with the pipe, steps toward the officers and shots are fired. A still image from the video at the moment Valencia steps toward the officers, with pipe raised over his head, is shown below:



Bystander Video #2

Another bystander recorded the incident on a cellular telephone. That video shows the officers arriving and Valencia holding a large metal pole, gesturing, and yelling at the officers in Spanish. Out of frame, one officer fires a Taser and the electrical charge can be heard, but Valencia remains standing. A man off screen can be heard shouting obscenities and demanding that the officers “shoot” Valencia. After the Taser fails, Valencia makes sudden movements toward the

officers and Garcia points his service weapon at Valencia, causing him to back away. Valencia continues to hold onto the metal pole and yells at the officers in Spanish. The officers yell, “Drop it!” A man off screen yells, “Don’t drop it!” and “Let his ass get shot! Shoot him! Shoot him!” At the same time, other members of the crowd are yelling, “Don’t shoot!” While the man off-screen continues to yell, one of the officers yells, “Don’t move, sir!” The officers yell at Valencia to drop the pipe, and at the same time, the man off-screen continues to yell, “Shoot him, man!” Valencia ignores the officers’ commands and continues to move back and forth repeatedly. One officer yells, “Drop the stick!” Valencia moves toward Garcia with the metal pole raised over his head. Simultaneously, Garcia shoots Valencia twice. Valencia falls to the ground, and the metal pole rolls towards the officers. The man off-screen yells, “I bet that felt good!” A frame from that video at the moment of the shooting is shown below:



Bystander Video #3

A third bystander recorded the incident on a cellular telephone. That video shows the officers arriving and Valencia approaching the officers with a long metal pole in his hands. One officer draws his service weapon and the second officer draws his Taser. An officer yells, “Taser! Taser! Taser!” One of the officers yells, “Sir! Drop the stick!” A man in a white medical uniform is yelling. Valencia adjusts his grip on the metal pole and steps toward the officers.

One of the officers fires his service weapon at Valencia, who then falls to the ground. A still frame from that video at the moment of the shooting is shown below:



Bystander Video #4

A fourth bystander recorded the incident on a cellular telephone from across the street. That video shows the officers standing, with their weapons drawn and pointed at Valencia, and yelling commands. A man in white medical scrubs can also be heard yelling. Valencia is holding a long metal pipe and walking erratically. Eventually he adjusts his grip on the pipe and takes a few steps towards the officers. Two gunshots are audible and Valencia falls to the ground. A still image taken from the video at the moment of the shooting is shown below:



Autopsy

On March 8, 2017, Dr. Ajay Panchal conducted a postmortem examination of Valencia's remains and determined that Valencia had been shot twice. Valencia had a fatal gunshot wound to the head and a non-fatal gunshot wound to the torso.

A toxicology analysis revealed that Valencia did not have any drugs or alcohol in his bloodstream at the time of his death.

Weapons

Garcia was armed with a .45 caliber Glock, model 21, semiautomatic service weapon. Two discharged cartridge casings were found at the scene. This is consistent with the witness statements and video evidence showing that Garcia fired two rounds at Valencia.

Patel was armed with a Taser and department-issued handgun. He fired no rounds from his handgun. He did not possess any extra Taser cartridges on his person on the day of the incident. One deployed Taser cartridge was found at the scene, which is consistent with the witness statements and video evidence that Patel fired his Taser once.

Garcia and Patel were both carrying canisters of Oleoresin Capsicum (“OC”) spray. Garcia was not armed with a Taser. Both officers had side-handle batons, but only Patel was armed with his baton at the time of the shooting. Garcia’s baton was in the police vehicle. The officers were equipped with a beanbag shotgun that was not deployed and remained in their vehicle at the time of the shooting.

Valencia’s pipe was recovered from the scene. It was five feet, four inches in length and closed on one end. The pipe appeared to be stained with blood.⁹ A photo of the pipe is shown below:



LEGAL ANALYSIS

The Law

No criminal liability attaches to Officer Garcia’s actions unless the prosecution can prove *beyond a reasonable doubt* that he was not actually and reasonably in fear for the safety of himself or others when he fired his weapon. *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384. The prosecution cannot meet that burden in this case.¹⁰

⁹ Valencia immediately dropped the pipe after he was shot. Based on the video evidence, the pipe quickly rolled away from Valencia as it hit the ground, which makes it unlikely that the red stains resulted from the shooting. The stains were not sampled for DNA.

¹⁰ LAPD Chief Charlie Beck’s recommendation to the Board of Police Commissioners was that the use of deadly force by Officer Garcia was outside of LAPD policy. The Board adopted that recommendation. It should be noted that a lower standard of proof, a preponderance of the evidence, is used in LAPD administrative determinations of whether the use of deadly force by an officer is reasonable.

The standard for evaluating the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard, which enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125. 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 injury which appears to be imminent. *CALCRIM No. 3470*.

Moreover, "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. 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.

In this case, an evaluation of all of the evidence shows that Officers Garcia and Patel were approached aggressively by Valencia, who was apparently suffering from mental illness, and armed with a five foot long metal pipe. Valencia had already attacked several people with the pipe and continued to threaten other bystanders with the pipe, while the officers repeatedly ordered Valencia to drop his weapon. Valencia failed to comply and continued to wield the pipe and behave aggressively. Valencia was also verbally aggressive with the officers and yelled in Spanish, "¡Mata me Aqui!" (kill me here), which is indicative of him possibly wanting to engage the officers violently and cause them to shoot him, thereby committing "suicide by cop."

The officers' attempt to de-escalate the situation and use a less-lethal alternative, a Taser, failed, and did not deter Valencia from threatening the officers and bystanders with the pipe. There was also consideration given to using a beanbag shotgun, but the incident escalated too quickly, caused in part by a bystander who provoked Valencia, who was already agitated, and may have made him behave even more aggressively.

When Valencia was within approximately ten feet of Garcia, with the pipe raised over his head in an aggressive and offensive position, and within range to attack, Valencia stepped toward Garcia, forcing him to make a split-second decision. Under the circumstances, it was reasonable for Garcia to believe that Valencia was attacking him, or his partner, with a deadly weapon.

In response, Officer Garcia used deadly force and fired at Valencia twice, killing him.

CONCLUSION

We conclude that there is insufficient evidence to prove beyond a reasonable doubt that Officer Garcia was not placed in reasonable fear of death or great bodily injury by Valencia's actions, and he acted lawfully in self-defense and defense of others when he used deadly force against him. We are therefore closing our file and will take no further action in this matter.