

**Officer Involved Shooting of Jorge Franco
Whittier Police Department**

Officer Edgar Cabral, #851

Officer Tom Nordbak, #856

J.S.I.D. File #16-0595



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 25, 2018

MEMORANDUM

TO: CHIEF JEFF A. PIPER
Whittier Police Department
13200 Penn Street
Whittier, California 90602

CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Officer Involved Shooting of Jorge Franco
J.S.I.D. File #16-0595
W.P.D. File #16-10081
L.A.S.D. File #016-00131-3199-013

DATE: July 25, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 16, 2016, fatal shooting of Jorge Franco by Whittier Police Department (WPD) Officers Tom Nordbak and Edgar Cabral. It is our conclusion that Officers Nordbak and Cabral acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on November 16, 2016, at approximately 6:45 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene and interviewed eyewitnesses to the shooting.

The following analysis is based on reports submitted to this office by the Whittier Police Department and Los Angeles County Sheriff's Department Homicide Bureau Investigators Gary Sloan and Brandt House. Officers Nordbak and Cabral provided voluntary statements which were considered as part of this analysis.

FACTUAL ANALYSIS

On November 16, 2016, at approximately 6:00 a.m., the Whittier Police Department received several calls regarding a suspicious person in the area of Painter Avenue and Penn Street. The calls described a man wearing dark clothing holding something in his hand. The radio call was

updated to describe the unknown object as a possible machete. Uniformed WPD Officers Christopher Simpson, Edgar Cabral and Tom Nordbak responded to the location to investigate the call.

Simpson was the first unit to arrive, traveling eastbound on Penn Street from Painter Avenue. Simpson observed Franco walking east on the north sidewalk holding a machete and a tree branch in his left hand. As Simpson approached Franco in his patrol car, Franco turned toward Simpson and began yelling at him in an aggressive manner. Simpson could not understand what Franco was saying. Simpson stopped his patrol car, exited and drew his service weapon.

Simpson pointed his service weapon at Franco and ordered him to drop the machete multiple times. Franco ignored Simpson and raised the machete in his right hand. Franco pointed the machete toward Simpson as if it was a long rifle and pretended to fire a shot at him, including a recoil gesture. Simpson continued to order Franco to drop the weapon as he heard additional officers arrive behind him. Franco threw the tree branch toward Simpson and Simpson had to sidestep to avoid being struck.

Nordbak arrived on Penn Street and stopped behind Simpson's patrol car. Cabral stopped his patrol vehicle behind Nordbak. Nordbak exited his vehicle and observed what appeared to be a stick fly toward Simpson. At that time, Nordbak could not see Franco on the sidewalk because his view was blocked by parked cars. Nordbak and Cabral moved around the parked cars onto the north sidewalk, west of Franco. At that time, Nordbak observed Franco with a machete in his right hand. Franco was focused on Simpson until Cabral ordered him to drop the weapon. Franco turned toward Nordbak and Cabral and looked directly at them. Franco yelled, "Fuck U.S.A!" and pointed the machete in Cabral's direction. Franco then quickly advanced toward Nordbak and Cabral. It appeared to Nordbak, that Franco was beelining toward Cabral and closed the distance to between ten and 15 feet. Franco was not stopping and Nordbak feared that he was about to slash Cabral with the machete and seriously injure him. Nordbak fired five rounds from his service weapon. He heard Cabral fire his service weapon at the same time.

Cabral observed Franco holding the machete and yelling obscenities at Simpson when he walked onto the north sidewalk. Cabral heard Simpson giving Franco commands, but he does not recall giving any himself. Cabral believed Nordbak was standing somewhere behind him on the sidewalk. At that time, Franco took two steps away from them in an easterly direction. Franco then turned back toward Cabral and Nordbak and began running at them with the machete in his hands. Franco closed the gap quickly to less than ten feet. Cabral feared that Franco was about to kill him and Nordbak with the machete, so he fired his service weapon seven times.¹

Simpson observed Cabral and Nordbak walk to the north sidewalk, west of Franco. One or both officers began giving Franco commands. Franco turned his attention away from Simpson and toward Cabral and Nordbak. Franco began advancing slowly toward Cabral and Nordbak on the sidewalk with the machete in his hands. Franco then picked up his pace as he closed the distance. Simpson lost sight of Franco behind the parked cars. Simpson heard one volley of

¹ Cabral estimated that from the time he exited his patrol car to the time Franco charged toward them was a matter of seconds. Approximately 17 seconds after Simpson broadcast over the radio that he had someone at gunpoint, Nordbak broadcast that shots had been fired.

gunshots in quick succession. Simpson walked to the sidewalk and observed Franco on the ground less than ten feet from Cabral and Nordbak.

Franco was taken into custody and officers performed cardiopulmonary resuscitation on Franco until medical personnel arrived on scene. Franco was transported to Whittier Presbyterian Intercommunity Hospital where he was pronounced deceased at 7:01 a.m.

The machete was recovered on the north sidewalk.



Statement of Jesus L.

Jesus L. arrived home and parked in the driveway of his apartment complex on the north side of Penn Street. Jesus L. remained in his car listening to the news when he heard a noise that sounded like metal scraping against concrete. Jesus L. exited his car and observed Franco on the south side of the street, pacing back and forth on the sidewalk, holding a large machete. Every three to four minutes, Franco walked into the middle of the street and scraped the machete on the pavement. Jesus L. moved to the front landing of his complex and observed Franco pointing the machete at passing cars in a threatening manner. Jesus L. called 9-1-1.

Franco crossed to the north side of Penn Street and walked along the sidewalk directly in front of Jesus L.'s building. At that time, Jesus L. observed several officers arrive eastbound on Penn Street from Painter Avenue. The officers stopped their cars and exited with their guns drawn. One officer ordered Franco to put down the weapon three to four times. Franco stated, "Do you want to fight with me?" in Spanish, raised the machete over his head with his right hand and charged the officers. Franco was within seven to ten feet of the officers when they fired their weapons.

Statement of Ruben H.

Ruben H. had just exited his apartment complex in his van heading for work. Ruben H. was facing west on Penn Street when two police vehicles stopped facing him. The officers exited their patrol cars with their guns drawn. Ruben H. then noticed Franco standing on the north sidewalk holding a metal object in his hand, which he later recognized to be a machete. The officers ordered Franco to drop the machete multiple times. Franco ignored the officers and raised the machete to shoulder level. Franco turned away from the officer standing on the north sidewalk and took approximately five to six steps to the east. Franco then turned back toward the officer on the sidewalk and charged him with the machete still raised in his hand. At that time, Ruben H. heard at least five gunshots and assumed they were fired by the officer Franco charged. Based on his observations, Ruben H. believed the officer had no time to think and no choice but to fire his weapon.

Statement of Joseph C.

Joseph C. was asleep in the living room of his apartment on Penn Street when he was awakened by a loud verbal exchange outside his window. Joseph C. looked through his blinds and observed three police cars and three uniformed officers standing outside their vehicles with their service weapons drawn. The officers were shouting verbal commands to Franco, who was standing in front of the apartment complex. Franco was shouting, "Fuck you!" and other obscenities at the officers. At that time, Joseph C. heard five to six gunshots and saw Franco fall to the ground. The three officers approached Franco as additional officers arrived on scene. Responding officers immediately rendered first aid to Franco.

Autopsy Report

Los Angeles County Deputy Medical Examiner Timothy F. Dutra, M.D., performed a postmortem examination of Franco on November 21, 2016. Franco sustained gunshot wounds to the chest, abdomen, left thigh, left knee, right thigh and right shin. Dutra ascribed Franco's death to a gunshot wound to the torso. Franco had a blood alcohol level of .031% and methamphetamine was in his system.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 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.

CONCLUSION

The evidence examined shows that Franco was armed with a large machete when he was contacted by Simpson, Nordbak and Cabral. Franco was ordered to drop the machete multiple times and he refused to comply. Instead, he charged Nordbak and Cabral with the machete raised in his hand. Franco closed the distance to within ten feet or less of the officers and was not stopping. Nordbak feared Franco was about to slash and seriously injure Cabral with the machete. Cabral feared that he and Nordbak were about to be killed with the machete. Franco's actions placed Nordbak and Cabral in reasonable fear for their lives, and the life of their partner, and they responded with reasonable deadly force.

We conclude that Officers Tom Nordbak and Edgar Cabral acted in lawful self-defense and defense of others when they used deadly force against Jorge Franco. We are therefore closing our file and will take no further action in this matter.