

**Officer Involved Shooting of Jose Cortez
Torrance Police Department**

Officer Jason McDonald, #14629

Officer Stuart Scott, #15555

Officer Robert Schuffman, #17771

J.S.I.D. File #16-0182



JACKIE LACEY

District Attorney

Justice System Integrity Division

November 4, 2016

MEMORANDUM

TO: CHIEF MARK MATSUDA
Torrance Police Department
3300 Civic Center Drive
Torrance, California 90503

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

SUBJECT: Officer Involved Shooting of Jose Cortez
J.S.I.D. File #16-0182
T.P.D. File #160019761

DATE: November 4, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 12, 2016, non-fatal shooting of Jose Cortez by Torrance Police Department (TPD) Officers Jason McDonald, Stuart Scott and Robert Schuffman. We have concluded that Officers McDonald, Scott and Schuffman acted lawfully in self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting at 9:35 a.m., on April 12, 2016. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, firearms analysis reports, photographic evidence, and witness statements submitted to this office by TPD Detective Gregory Gomez. The voluntary statements of Officers McDonald, Scott and Schuffman were considered in this analysis.

FACTUAL ANALYSIS

Jose Cortez is a former employee of Birchfield Enterprises, a tree-trimming company that contracts with Southern California Edison for services. The Edison Substation located at 17680 Yukon Avenue in the City of Torrance is a storage yard where Southern California Edison stores equipment and spare parts. The area is also used by Birchfield Enterprises to store their work trucks and personal vehicles. They also use this area to dump clippings and tree trimmings. It is the location where their employees gather in the mornings. Cortez accepted contract jobs for tree trimming from Birchfield Enterprises.

On April 12, 2016, at approximately 6:30 a.m., Cortez drove his white 1989 Ford utility pickup truck into the Edison Substation. There were numerous Birchfield Enterprises employees gathered at the yard. Upon entering the yard, Cortez began driving at speeds of 25 to 40 miles per hour in a posted 5 mph gravel area. Cortez was driving erratically and doing "doughnuts" that caused his vehicle to skid and slide on the gravel surface of the yard. Cortez drove toward Michael Birchfield and stopped his vehicle and exited. Cortez began arguing with Birchfield and picked up

approximately six rocks from the ground and then threw them at Birchfield. Cortez then threw rocks at Birchfield's truck.¹ Birchfield quickly walked toward the front gate of the yard to get away from Cortez. Birchfield was struck on his right shoulder by a rock thrown by Cortez. Cortez continued to follow Birchfield and then walked off in a different direction.

Birchfield approached security guard Daniel Jimenez at the front gate where Birchfield called 9-1-1. Jimenez walked toward Cortez while Cortez ran to his truck and retrieved a chainsaw. Cortez chased Jimenez with the chainsaw held out in front while Jimenez ran away.² Cortez yelled at Jimenez, "I'm fucking not coming after you, I'm coming after him!" referring to Birchfield. At this point, Cortez, still holding the chainsaw, turned and ran back toward his truck. Jimenez and Birchfield remained at the front gate waiting for police while other employees inside the yard were running away from Cortez. Cortez entered his vehicle and began driving at speeds of 35-40 miles per hour, revving the engine and again sliding his tires in the gravel. Employees were running in different directions to avoid being struck by Cortez' vehicle.³

Motor Officer McDonald was the first officer to arrive at the yard.⁴ He dismounted his motorcycle and armed himself with his M4 duty rifle. McDonald entered the yard and observed Cortez chasing Jimenez while holding a chainsaw. McDonald ran further into the yard to try to stop Cortez. As McDonald approached closer, Cortez stopped chasing Jimenez and turned toward another group of people. Cortez looked at McDonald and stopped. McDonald ordered Cortez to put down the chainsaw and lie on the ground. Cortez ignored McDonald's orders and walked to his truck. He threw the chainsaw to the ground and got into the truck. Cortez began doing "doughnuts" in the yard and driving in circles while McDonald ran after the truck. At this time, Officer Scott arrived and both officers ran after the truck on foot as it drove through the yard.⁵

Officer Schuffman arrived at the location after McDonald and Scott.⁶ Schuffman observed McDonald's and Scott's motorcycles at the entrance of the yard and drove his patrol vehicle around them and into the yard. Schuffman observed Cortez' truck driving around the yard and began following it in his patrol vehicle with lights and siren activated. Cortez' truck did a lap through the lot around a row of utility vehicles while officers and employees were scattering throughout the lot, trying to get out of the way.⁷ As the truck turned northbound through the lot on a second lap, Sergeant Chad Farley was standing near a wooden telephone pole on the lot. Cortez was originally driving straight but suddenly swerved toward Farley and accelerated in Farley's direction. Farley jumped behind the telephone pole and Cortez turned his truck at the last second to avoid hitting the pole. The truck passed within one foot of Farley.⁸ Cortez then backed up the truck in the direction of McDonald and Scott. He then began driving forward again. Schuffman attempted to conduct a

¹ Birchfield's Chevrolet Silverado pickup truck was parked in the yard.

² The entire incident was witnessed by 15-30 employees and portions of the incident, including the chase with the chainsaw, were captured on cell phone video. Several witnesses told investigators that Cortez was trying unsuccessfully to pull start the chainsaw as he was chasing Jimenez.

³ Several employees told investigators that they believed Cortez was chasing them in his vehicle. One employee stated that, no matter which way the employees would run to get away, it appeared that Cortez would maneuver his truck to drive after them.

⁴ McDonald's motorcycle bears decals and markings identifying the Torrance Police Department. McDonald was wearing a clearly identifiable dark blue TPD uniform with a badge on the front.

⁵ Scott is also a motor officer and parked his TPD motorcycle at the entrance to the yard and entered on foot.

⁶ All officers were wearing the same TPD uniforms with badges on the front.

⁷ By this time, several more uniformed TPD officers had arrived on scene.

⁸ McDonald told investigators that the truck would have struck Farley had Farley not jumped out of the way.

PIT maneuver with his patrol vehicle to stop the truck but was unable to catch up with Cortez while driving through the gravel in the yard.⁹

Cortez turned the truck eastbound and continued to drive through the yard. McDonald fired approximately three rounds in the direction of the truck. The truck circled back toward the southeast corner of the yard. It then drove westbound and struck Birchfield's truck. At this time, Scott fired several rounds into the front of the truck. McDonald and Schuffman took positions of cover behind Birchfield's truck and fired several rounds into the passenger side of Cortez' truck. Cortez was ducking down in the driver's seat of his truck and then began throwing items out of the window. While still seated in his truck, Cortez began banging on the inside of his front windshield with a rebar rod, breaking the windshield.¹⁰ Officers then talked Cortez into exiting his car and surrendering. Cortez was taken into custody and transported to Providence Little Company of Mary Medical Center where he was treated for wounds to his right wrist and right ankle, and released to police custody.¹¹ Cortez was charged with attempted murder of a police officer, assault upon a police officer, assault with a deadly weapon, vandalism and evading arrest.¹²

A forensic examination of the officers' weapons revealed that McDonald fired twelve shots from his department issued Colt M4 rifle, Scott fired six shots from his Glock Model 21 firearm and Schuffman fired five shots from his Glock Model 21 firearm.¹³

Statement of Jose Cortez

Cortez was interviewed twice by investigators the day of the incident.¹⁴ He stated that Birchfield owed him money and he had asked Birchfield to pay him on several occasions.¹⁵ A week or two prior to this incident, Cortez asked Birchfield for the money and they got into a verbal argument. Cortez admitted that during the argument, he told Birchfield he wanted to fight him. Cortez stated that on the day of the incident at the yard, he was having a bad morning and he drove to the yard to speak with Birchfield about the money. Cortez admitted that he threw rocks at Birchfield's truck. Cortez said he drove around the lot but only at speeds of five or ten miles per hour. Cortez admitted that he grabbed his chainsaw and chased after the security guard. He pretended to start the chainsaw to make Birchfield and the security guard think he was going to kill them, but he knew the chainsaw was broken and would not start. Cortez admitted he threw rocks at Birchfield and the security guard, but denied that any rocks hit them. When asked if he thought what he did was wrong, Cortez stated that he knew what he was doing was wrong and that he did not stop when he

⁹ A PIT maneuver or "precision immobilization technique" is a pursuit tactic by which a pursuing car can force a fleeing car to abruptly turn sideways, causing the driver to stop.

¹⁰ Cortez' actions are visible on the video which shows him throwing a large red unknown object out of the passenger side window that struck an officer. It is unclear whether the front windshield was broken by Cortez or the officers' gunshots.

¹¹ X-rays revealed the presence of metallic fragments in the soft tissue of the wrist and ankle. No broken bones were detected. It is unknown whether the metal originated from bullet fragments or metal fragments from the vehicle.

¹² Cortez pled guilty to two counts of assault on a police officer, two counts of assault with a deadly weapon and two counts of vandalism. He was sentenced to 9 years and 8 months in state prison.

¹³ All three officers were carrying fully loaded department-authorized Glock Model 21 firearms. McDonald only fired the rifle which had been loaded with 28 rounds. He did not fire any shots from his Glock firearm.

¹⁴ Cortez speaks English but was interviewed in both English and Spanish. The first interview took place in English at the hospital. The second interview was conducted in Spanish at the Torrance Police station after Cortez was released from the hospital. Cortez was Mirandized prior to each interview.

¹⁵ Cortez was angry because he believed Birchfield was underpaying him and his brother on various tree-trimming jobs. The amount in dispute appears to be less than \$200.00.

saw police because he does not trust the police. Cortez stated that the police have not helped him in the past and he wanted to get away when he saw the police with guns. Cortez told investigators that he drove at the officer (Farley) and was trying to hit him with his truck because he was scared.¹⁶ Later in the interview, Cortez stated that he was trying to hit the pole in order to distract the officer. He then stated that he was not trying to hit the post or the officer. Cortez told investigators that he had experimented with “crystal meth” approximately eight days prior but had not taken any drugs since, and that he does not drink alcohol because he is on probation for a DUI.¹⁷

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he 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.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; *see also*, CALCRIM No. 505.

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 the person’s beliefs were reasonable, the danger does not need to have actually existed. *Id.*

“Where 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 ‘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.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. *People v. Toledo* (1948) 85 Cal. App.2d 577.

CONCLUSION

The evidence examined in this case shows that Cortez’ actions of throwing rocks, chasing after Jimenez while wielding a chainsaw and driving his truck at high speeds through the Edison yard threatened first the employees and then the responding officers with death or great bodily injury. Cortez admitted that he intended to strike Sergeant Farley with his truck while driving in his

¹⁶ When he was being taken into custody, Cortez was crying and told McDonald that he was sorry and he did not want to hurt him.

¹⁷ Cortez admitted his driver’s license was currently suspended because of a DUI conviction.

direction and nearly hitting him. Fearing for their lives and the lives of others, McDonald, Scott and Schuffman fired their weapons at Cortez. Cortez then stopped his vehicle and after throwing objects from inside the vehicle at the officers, he eventually surrendered. Had the officers not fired their weapons, Cortez most likely would have continued to drive his vehicle through the yard at high speeds, endangering the lives of the 15 to 30 employees and officers who were in the yard.

We conclude that Officers McDonald, Scott and Schuffman acted lawfully in self-defense and defense of others. We are therefore closing our file and will take no further action in this matter.