

**Officer Involved Shooting of Jose Jimenez
San Fernando Police Department**

Officer Benny Simonzad, #10337

J.S.I.D. File #17-0351



JACKIE LACEY

District Attorney

Justice System Integrity Division

November 26, 2018

MEMORANDUM

TO: CHIEF ANTHONY VAIRO
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Jose Jimenez
J.S.I.D. File #17-0351
L.A.S.D. File #017-00080-3199-057

DATE: November 26, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 12, 2017, non-fatal shooting of Jose Jimenez by San Fernando Police Department (SFPD) Officer Benny Simonzad. We have determined that Officer Simonzad acted in lawful defense of another when he fired his service weapon.

The District Attorney Command Center was notified of this shooting on July 12, 2017, at approximately 7:00 p.m. The District Attorney Response Team responded to the location of the shooting and was given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department (LASD) Detective Richard Tomlin.

The following analysis is based on reports and other materials including audio-recorded interviews of witnesses, a 9-1-1 call, radio transmissions, surveillance videos, and photographs submitted by the LASD Homicide Bureau.

FACTUAL ANALYSIS

On July 12, 2017, at approximately 4:00 p.m., two female El Pollo Loco employees were speaking to each other while seated in their respective cars in the parking lot of the restaurant located at 12930 Foothill Boulevard. Suddenly, Jose Jimenez entered the front passenger seat of one of their cars. Both women yelled at him to leave, and he immediately did so, while also demanding that the driver recite her license plate number to make sure the car belonged to her.

When another employee walked over, Jimenez began to walk away, but returned to kick the car before leaving the area.

At approximately 4:30 p.m., Jimenez, without provocation, punched a customer inside the Home Depot located at 12960 Foothill Boulevard. Shortly thereafter, the manager of the Home Depot, Ian, became aware of the battery and viewed surveillance footage depicting the attack.

At approximately 4:45 p.m., William, an employee of the Sam's Club located at 12920 Foothill Boulevard, was helping customers when Jimenez punched him from behind, one time in the upper back. Jimenez then fled the store through the main entrance and ran in the direction of Home Depot. El Pollo Loco, Home Depot, and Sam's Club are located within the same shopping center.

At approximately 5:30 p.m., Jimenez was inside El Pollo Loco throwing water on customers for no apparent reason. Ian was on his work break when he walked inside El Pollo Loco and saw Jimenez walking out. Ian recognized Jimenez as the same person from the Home Depot surveillance footage he had seen. Jimenez looked agitated and kept pacing between El Pollo Loco and the Taco Bell in the shopping center. Jimenez aggressively stared at people, and carried a large wooden stick with a pointed end in his hand as he paced back and forth. Ian called 9-1-1, reported that Jimenez committed a battery on a Home Depot customer and a Sam's Club employee, gave a physical description of Jimenez, and stated that he was holding a sharp wooden stick.

Several SFPD officers, including Officer Simonzad and Sergeant Chiasson, were dispatched to the shopping center and told that a man holding a large sharpened wooden stick had assaulted a person and was last seen walking southbound through the parking lot, east of Sam's Club.

Statement of Sergeant Chiasson

Chiasson, who was driving a marked police vehicle and dressed in police uniform, responded to the battery call. Chiasson saw Jimenez, whose clothing matched the description of the battery suspect, walking with a stick in his hand on Dronfield Avenue east of Arroyo Avenue. Chiasson and Jimenez made eye contact, and Chiasson ordered Jimenez to stop and to drop the stick. Jimenez was yelling profanities and did not comply with Chiasson's commands. Jimenez was walking up to the property line of a Pepsi plant when Chiasson parked his vehicle and exited with his Taser in hand. Simonzad pulled his car up to them, and Jimenez ran and turned northbound into a narrow dirt path separating the Pepsi plant from the backside of a row of residences. Chiasson followed Jimenez and announced to Simonzad that he was armed with a Taser. Chiasson could hear Simonzad behind him as they followed Jimenez. Jimenez kept looking back in Chiasson's direction and then jumped over a cinderblock wall into the backyard of a residence.



Dirt path separating Pepsi plant from residences.



Jimenez entered the backyard of the residence to the right of the utility pole.



Backyard of the residence Jimenez entered.

Chiasson expected Jimenez to continue running after he jumped the wall, and was surprised to see him stand his ground near the corner, somewhat elevated on what was later discovered to be a mound. Jimenez was approximately 10 feet away from Chiasson and had a “crazed look” on his face. Jimenez reached down, grabbed what Chiasson believed to be dirt or a clump of grass, reared back and threw it directly at him like he was “throwing a baseball.” Chiasson turned his head to the left to avoid being blinded by any debris, and as he came back up he saw Jimenez’s hand go up again when he heard a gunshot. Chiasson did not recall actually being struck by anything.

When Chiasson saw Jimenez stand his ground and face him, Chiasson was concerned about his safety. Chiasson believed he was in a position of disadvantage when Jimenez threw something at him because Chiasson was armed with a Taser, which was useless with the wall separating him from Jimenez, and his duty weapon was holstered. Chiasson did not believe that he could retreat safely in the confined dirt pathway because he was “stuck” with Simonzad behind him and the utility pole on his other side. Chiasson did not believe that he would have had time to react to a second object being thrown at him.

After the gunshot, Chiasson and Simonzad checked on the welfare of each other, and Simonzad stated to Chiasson, “I couldn’t let him hit you in the head with that brick or rock.” Chiasson did not remember if Simonzad said brick or rock. Chiasson did not see Jimenez with a brick or rock when he looked back immediately before the gunshot, but afterward he looked in front of him

and saw a pile of rocks and bricks. Chiasson stated, “All of this happened within a span of like a second or two.”

Statement of Officer Simonzad

Simonzad was also driving a marked police vehicle and dressed in his SFPD police uniform, when he responded to a radio call regarding a man who had assaulted a person at Sam’s Club and was described as being armed with a long and sharp stick.

Simonzad parked his vehicle on Dronfield Avenue near Chiasson’s vehicle. Simonzad heard Chiasson’s radio transmissions stating that Jimenez was not responding to commands. Simonzad saw Chiasson armed with a Taser and Jimenez armed with a sharp wooden stick in his hand. Chiasson and Jimenez were approximately five to 10 feet apart from each other. Simonzad saw Jimenez “square up” with Chiasson and then run northbound through a narrow dirt pathway. As Jimenez ran, Simonzad saw Jimenez reach down quickly in the pathway and noted rocks and bricks on the ground. He believed that Jimenez either picked up a rock or put something down as he ran. Simonzad heard Chiasson giving orders to Jimenez, and saw Jimenez jump a concrete wall approximately five feet high. As Chiasson got closer to the wall, Simonzad saw Jimenez stop and could see his head over the wall. Simonzad saw Jimenez reach down toward the ground and throw what he believed was a brick or rock at Chiasson and saw it strike the side of Chiasson’s body or head. He saw Chiasson react by flinching.

Simonzad stated that he was standing several feet to Chiasson’s right, providing lethal cover for Chiasson who was armed with a Taser. Simonzad was concerned that Jimenez could “launch that spear” at him or Chiasson. He saw Jimenez appear to pick up an object, and believed it was a rock, brick, or possibly the sharp wooden stick he saw Jimenez holding moments earlier. When he saw Jimenez’s arm coming up again “with an object,” he believed Jimenez was going to throw something over the wall and hit Chiasson or himself in the head. Simonzad fired one round from his service weapon, and then lost sight of Jimenez. Simonzad was unable to give Jimenez any commands because it happened so quickly, and stated he intended to stop Chiasson from being stuck again by another object.

Other Evidence

Jimenez suffered a gunshot wound to the left shoulder, and survived his injury. In case number 7SV00322, Jimenez was charged with four misdemeanor counts. On August 31, 2017, in a negotiated disposition, Jimenez pled no contest to committing a battery upon Sergeant Chiasson, in violation of Penal Code section 243(b). The remaining counts, including battery charges against the Sam’s Club employee and the Home Depot customer, were dismissed as part of the negotiated disposition.

The wooden stick with a possible blood stain was photographed in the backyard of the residence. Investigators also observed debris in the backyard of the residence, including rocks and bricks.



Wooden stick and debris.

On February 21, 2018, LASD investigators interviewed Jimenez. Jimenez recounted that he was having paranoid hallucinations on the day of the shooting. Jimenez stated he ran from the police, jumped a wall, and threw a “clump of dirt,” “not at them, but towards them.” Then, he “bent down, [he] looked up” and was shot. Jimenez stated that he dropped the wooden stick after he jumped the concrete wall, and he would ordinarily use the stick to sift through trash to recycle cans and bottles. Jimenez stated he had reviewed reports provided by his public defender indicating that an officer had stated Jimenez threw a “clump of dirt.” When asked to rely on his own memory as to what he threw, Jimenez stated he did not have an independent recollection, and also stated, “I’ll plead the Fifth on that one.” The investigator asked, “What were you reaching for the second time [you bent down]?” Jimenez paused and stated, “I don’t have no comment on that.”

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM No. 3470. In protecting himself or another, a person may use that amount of 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 imminent injury. *Id.* If the person’s beliefs were reasonable, the danger does not need to have actually existed. *Id.*

In California, the evaluation of 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, 1146.

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil

actions alleging Fourth Amendment violations. Under this analysis, “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.

A deadly or dangerous weapon is any object, instrument, or weapon that is inherently deadly or dangerous or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury. CALCRIM No. 3145. If the object is not a weapon as a matter of law and is capable of innocent uses, consider all the surrounding circumstances, including when and where the object was possessed, whether the object was changed from its standard form and any other evidence that indicates whether the object would be used for a dangerous, rather than a harmless, purpose. *Id.*

When Chiasson and Simonzad encountered Jimenez, they believed he was the battery suspect they were searching for because he matched the description broadcast through radio communications. Chiasson and Simonzad also saw Jimenez armed with a sharp wooden stick that appeared to be a makeshift weapon. Simonzad saw Jimenez ignore Chiasson’s commands to stop and drop the wooden stick, and Simonzad was tasked with providing lethal cover for Chiasson who announced that he was armed with a Taser as the foot chase began.

Jimenez ran from uniformed police officers through a narrow dirt pathway neighboring residential houses. As soon as Jimenez jumped a concrete wall into the backyard of one residence, he turned around and threw an unknown object(s) at Chiasson. Simonzad saw Jimenez throw something and believed it could be a rock or brick. Immediately after, Simonzad saw Jimenez appear to retrieve another object from the ground, which was littered with debris. As the lethal cover for his partner, Simonzad was concerned about Chiasson’s safety, and he fired his service weapon to prevent Jimenez from throwing another object at Chiasson. Simonzad believed this object could be another brick or rock, or the “spear” Jimenez was holding earlier. Under the totality of the circumstances, Simonzad was reasonably concerned that Jimenez was about to assault Chiasson with a dangerous weapon and he fired his service weapon to stop the threat. A thrown rock, brick, or sharp wooden stick is capable of causing great bodily injury.

Chiasson was surprised when Jimenez turned back toward him after he jumped the concrete wall. Chiasson did not utilize his Taser, and believed he would not have been able to avoid another assault by Jimenez because as soon as he turned back toward Jimenez he saw Jimenez’s arm up and heard a shot. After Jimenez went down, Simonzad stated to Chiasson, “I couldn’t let him hit you in the head with that brick or rock.” Simonzad’s statement near the time of the shooting is additional evidence of his actual belief that Chiasson was in danger of imminent great bodily injury.

Since the backyard where Jimenez was shot and fell was littered with debris, including the sharp wooden stick, rocks, and bricks, it is unknown what object Jimenez actually had in his hand before Simonzad shot him. Jimenez’s evasive responses to investigators did not clarify this

issue. Nevertheless, the totality of the circumstances supports Simonzad's reasonable belief that Chiasson was in imminent danger of assault. Jimenez's aggressive and erratic actions prompted a dynamic situation forcing Simonzad to make a split-second judgment regarding the amount of force necessary to prevent the assault.

CONCLUSION

We conclude that Officer Simonzad's use of deadly force was legally justified in defense of Sergeant Chiasson. We are closing our file and will take no further action in this matter.