

**Officer Involved Shooting of Jamar N [REDACTED]
Los Angeles Police Department**

Officer Miguel Gutierrez, #36634

J.S.I.D. File #16-0253



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District Attorney

Justice System Integrity Division

December 28, 2016

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 Jamar N [REDACTED]
 J.S.I.D. File #16-0253
 F.I.D. File #F012-15

DATE: December 28, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 10, 2015, non-fatal shooting of Jamar N [REDACTED] by Los Angeles Police Department (LAPD) Officer Miguel Gutierrez. It is our conclusion that Officer Gutierrez acted in lawful self-defense and defense of another.

The District Attorney's Command Center was notified of the shooting, but incorrectly informed that no one had been hit. Therefore, the District Attorney Response Team (DART) did not respond.

The following analysis is based upon investigative reports, analyzed evidence reports, photographs, diagrams, and witness statements taken during the investigation by LAPD, submitted to this office by Detective Oscar Lopez. The compelled statement of Officer Gutierrez was considered in this analysis.

FACTUAL ANALYSIS

On February 10, 2015 shortly before 7:45 a.m., Officers Miguel Gutierrez and Everardo Amaral were traveling westbound on Florence Avenue towards Crenshaw Boulevard in the City of Los Angeles. Amaral was driving a black Ford Crown Victoria and Gutierrez was his passenger.¹ Due to heavy traffic on Florence Avenue, Amaral turned southbound onto 10th Avenue with the intention to turn westbound onto 73th Street (parallel to Florence Avenue) in order to reach

¹ Gutierrez, a LAPD officer of approximately 12 years at the time, was dressed in a white dress shirt, tie, black pants, and an equipment belt with his police badge clipped to the right side. He was carrying a Department-authorized Glock Model 35, a .40 caliber semiautomatic handgun, with a maximum capacity of 15 rounds in the magazine and one in the chamber for a total of 16 rounds. The Glock was later recovered with 12 live rounds in the magazine and one in the chamber.

Crenshaw Boulevard.² In between Florence Avenue and 73rd Street ran an east/west alley that was west of 10th Avenue.³ As the officers passed the alley, Gutierrez glanced in a westerly direction into the alley [REDACTED]

[REDACTED]
[REDACTED].⁴ [REDACTED]

Gutierrez yelled, "Gun, gun, gun!" to Amaral. Gutierrez exited the Crown Victoria after Amaral stopped the vehicle in the southbound lane of 10th Avenue approximately 68 feet south of the alley.⁵ [REDACTED]

[REDACTED]
[REDACTED].⁶ [REDACTED]
[REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁷ [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁸

[REDACTED]
[REDACTED].⁹ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. Gutierrez and Amaral then detained all four males at gunpoint until additional units arrived and took them into custody. [REDACTED]
[REDACTED]

² [REDACTED]

³ Along the south side of the alley were garages with doors and along a portion of north side of the alley was a two-foot wall with an approximate six-foot fence behind it.

⁴ [REDACTED]
[REDACTED]

⁵ [REDACTED]
[REDACTED].

⁶ [REDACTED]
[REDACTED]

⁷ [REDACTED]
[REDACTED]

⁸ [REDACTED].

⁹ [REDACTED]
[REDACTED]

And . . . after the gunshots he said, “Put your hands up and get on the ground,” and all type of stuff, and keep our hands out where they could see them, and that was it.

When W [REDACTED] was asked the same question he replied, “Because of the music [from H [REDACTED] phone] I probably didn’t hear but I just heard gunshots.” H [REDACTED] also indicated that he didn’t hear any commands but stated that the shooting occurred right after the music ended. Initially N [REDACTED] described hearing, “Get on the fucking floor,” followed by seven shots, but later in the interview, said that the commands came after the shooting.

Investigators later discovered three discharged cartridge cases in the alley that had been fired from Gutierrez’s handgun. The cases were found on the north side of the alley and to the east of the commercial dumpster. Additionally, multiple colored pellets were located in the alley near the dumpster. A search for any audio or video recording of the actual shooting met with negative results.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or defense of others if the person claiming self-defense or defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle*, 35 Cal.4th 987, 994 (2005) (overruled on another ground in *People v. Chun*, 45 Cal.4th 1172, 1201 (2009)); *People v. Humphrey*, 13 Cal.4th 1073, 1082 (1996); *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. 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*, 85 Cal.App.2d 577 (1948); *see also*, *People v. Minifie*, 13 Cal.4th 1055, 1068 (1996); *People v. Clark*, 130 Cal.App.3d 371, 377 (1982); *People v. Collins*, 189 Cal.App.2d 575, 588 (1961).

If a person acted from reasonable and honest convictions, he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. *People v. Jackson*, 233 Cal.App.2d 639 (1965). “The reasonableness of the particular force used must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). “The calculus of reasonableness must embody allowance for the fact that 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.” *Id.* at 396-97.

Smith v. Freland, 954 F.2d 343, 347 (6th Cir. 1992), followed *Graham* when it stated the following:

[U]nder *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex

world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

In instances where a third party is inadvertently injured by an officer’s use of force, the inquiry is whether the officer’s action “shocks the conscience.” *Rodriguez v. City of Fresno*, 819 F.Supp.2d 937, 948 (2011). The *Rodriguez* Court explained the phrase “shocks the conscience” in the following manner:

[I]n a rapidly evolving, fluid, and dangerous predicament which precludes the luxury of calm and reflective pre-response deliberation . . . [an officer’s] reflexive actions “shock the conscience” only if they involved force employed “maliciously and sadistically for the very purpose of causing harm” rather than “in a good faith effort to maintain or restore discipline[.]”

Id. (citing *Claybrook v. Birchwell*, 199 F.3d 350, 359 (6th Cir. 2000)).

The *Rodriguez* Court further clarified:

[T]he phrase “maliciously and sadistically for the very purpose of causing harm” is often restated as requiring that the plaintiff show that the officer “acted with a purpose to harm [the plaintiff] for reasons unrelated to legitimate law enforcement objectives.”

Id. (citing *Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008)); *see also Hayes v. City of San Diego*, 736 F.3d 1223, 1230 (9th Cir. 2013).

[REDACTED]

[REDACTED]

[REDACTED]. Indeed, S [REDACTED] admitted that seconds before the shooting, he had shot his pistol in a northerly direction at a commercial dumpster. To the north of S [REDACTED] stood H [REDACTED] and N [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As Gutierrez ran into the alley, a startled S [REDACTED] began to turn towards him with the pistol still in hand. Whether S [REDACTED] or had been “playing” and “dancing” with it immediately before Gutierrez entered the alley, [REDACTED]

[REDACTED]. Indeed, [REDACTED] S [REDACTED] admitted that as he caught sight of Gutierrez entering the alley, he began to turn towards Gutierrez with the pistol in his right hand.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION

We find that Officer Gutierrez acted in lawful self-defense and defense of another. We are therefore closing our file and will take no further action in this matter.