

**Fatal Officer Involved Shooting of Nicholas Burgos
Los Angeles County Sheriff's Department**

Deputy Dalia Gonzalez, #625090

J.S.I.D. File #20-0395



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

February 20, 2024

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
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: Fatal Officer Involved Shooting of Nicholas Burgos
J.S.I.D. File #20-0395
L.A.S.D. File #020-01613-8545-057

DATE: February 20, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office completed its review of the October 6, 2020, fatal shooting of Nicholas Burgos by Los Angeles County Sheriff's Department (LASD) Deputy Dalia Gonzalez. We have determined that there is insufficient evidence to prove Deputy Gonzalez did not act in lawful self-defense and/or the defense of others when she fired her duty weapon.

The District Attorney's Command Center was notified of this shooting on October 7, 2020, at approximately 12:19 a.m. The District Attorney Response Team (DART) responded to the location, where they received a briefing and walk-through of the scene.

The following analysis is based on police reports, radio transmissions, 9-1-1 calls, recorded interviews, photographs, ballistic evidence, coroner's report, and other evidence submitted to this office by LASD Homicide Bureau Detectives Gail Durham and Roger Parga, on June 15, 2021. The incident was not captured on hospital surveillance cameras, and none of the deputies were wearing body-worn video cameras (BWV) at the time of the incident. Gonzalez's voluntary statement was considered in this analysis.

FACTUAL ANALYSIS

On October 2, 2020, Los Angeles Sheriff's Department Deputy [REDACTED] was a patient at the Los Angeles County Harbor-UCLA Medical Center receiving treatment for a work-related injury. The Los Angeles County Sheriff's Department provided uniformed deputies as security for [REDACTED] while she was recovering.

On October 5, 2020, Los Angeles Police Department dispatch received multiple 9-1-1 calls about a male Hispanic who was bloody, cutting himself with a box cutter, and threatening to commit suicide. One of the callers told the dispatch operator:

“ . . . I was driving by on the corner of Redondo Beach Boulevard and Figueroa and there’s a dude with a box cutter cutting his wrists on the corner and he said he’s going to kill himself . . . it looks like he’s slitting his fucking throat . . . I’m dead serious.”

Los Angeles Fire Department paramedics responded and found a man, later identified as Nicholas Burgos (“Burgos”), bleeding from deep lacerations to his arms and neck (Figures 1, 2, and 3). Burgos was transported to Los Angeles County Harbor-UCLA Medical Center and placed on a “5150” hold for attempted suicide.¹



Figure 1: Los Angeles Police Department officers and Los Angeles Fire Department paramedics arrived to find Nicholas Burgos covered in blood with cuts to his neck, arms, and wrists.

¹ Welfare and Institutions Code section 5150 provides for the involuntary detention and a 72-hour psychiatric hospitalization of an adult who is experiencing a mental health crisis when they pose a danger to themselves or others.



Figure 2: LAFD paramedics treated and dressed Burgo's injuries before transporting him to Los Angeles County Harbor-UCLA Medical Center.



Figure 3: Burgos had long (self-inflicted) incisions on the insides of his forearms and wrists.

Burgos was admitted to the hospital and treated for deep bilateral lacerations to his arms (elbow to wrists), a six-inch laceration to his neck, and a puncture wound to his upper thigh. Burgos was assigned to room 4E-12, on the same floor as Deputy [REDACTED].

Burgos shared a four-bed room with several other patients. Each of the beds was separated by a curtain for privacy. The room had a large exterior window comprising six individual windows covered with blinds, spanning the entire length of the south wall.

On October 6, 2020, Burgos had a “one-on-one-sitter” while he was on the 5150 psychiatric evaluation hold. Nurse [REDACTED] was assigned to care for Burgos during the evening shift (on the day of the incident). At approximately 3:15 p.m., Burgos told Nurse [REDACTED] he wanted to leave the hospital. Burgos asked Nurse [REDACTED] to open the windows. However, when she refused to open the windows, he checked them to see if they were left unlocked.

At approximately 10:00 p.m., Burgos asked Nurse Animat B. if he could go home. She told him it was late and he would need to talk to a doctor before he could be released. When Burgos asked Nurse [REDACTED] to take him onto the rooftop, she told him no, but she was concerned Burgos would try to leave his room. She asked her coworker, Nurse [REDACTED], to sit and block the door to Burgos’ room while she went on break. When Nurse [REDACTED] returned from her break, she heard Nurse [REDACTED] screaming.



Figure 4: Damaged window and computer monitor inside room 4E-12.

Burgos had jumped up from his bed and grabbed a large medical device from the end of one of the beds.² Burgos used the machine to smash the room's exterior glass window, shattering the glass (Figure 4). Nurse ██████ attempted to grab the machine from Burgos, but he swung it around, nearly hitting her with the machine. Burgos smashed a computer monitor in the room while Nurse ██████ and other staff moved Burgo's disabled roommate out of the room for safety.

Deputies Carly Braveman ("Braveman") and Dalia Gonzalez ("Gonzalez") were assigned to ██████ protection detail while ██████ was recovering in room 4E-15. While they were in ██████ room, ██████, Gonzalez, and Braveman heard screaming and loud noises emanating from the hallway. Braveman left the room to assist the nursing staff with the ongoing emergency, while Gonzalez stayed behind to protect ██████

Braveman saw Burgos inside room 4E-12 hitting an exterior window with a machine. Inside the room with Burgos, there were three nurses and three patients. Braveman ordered Burgos to stop. However, he ignored her repeated commands to put the machine down. Braveman directed the nurses to move the patients out of Burgos' room and close the doors to the other patients' rooms. Braveman returned to ██████ room to update Gonzalez and call for backup.

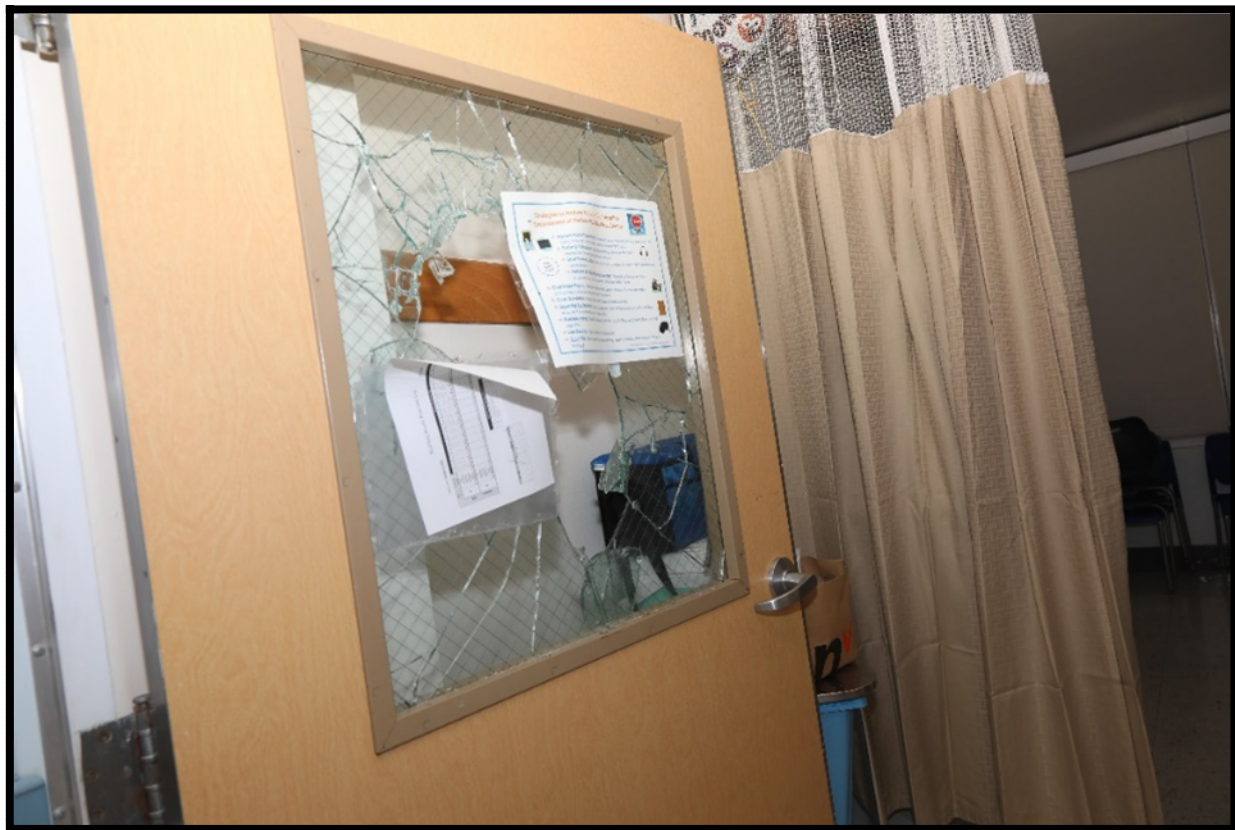


Figure 5: Shattered window of the door to Deputy ██████ room, 4E-15.

² The machine that Burgos used to smash the window was an Alternating Leg Pressure (ALP) machine.

Burgos exited room 4E-12 with the machine and began hitting the doors to other hospital rooms as he moved down the hallway. Burgos stopped and stood in front of room 4E-15, the room belonging to [REDACTED]. The door to [REDACTED]'s room was a wooden door with a large clear glass insert. Burgos used the machine to repeatedly hit the window in the door to [REDACTED]'s room, breaking the glass and pushing the unlocked door open (Figures 5 and 6).

Gonzalez was standing closest to the door when Burgos entered the room. She gave Burgos commands to stop. However, Burgos continued moving towards her while holding the machine. Gonzalez told investigators she fired her duty weapon at Burgos in fear for hers and the others' safety. Burgos underwent surgery for gunshot wounds and was pronounced deceased on November 1, 2020.³



Figure 6: Deputy [REDACTED]'s room (her bed was located behind the curtain).

³ On July 9, 2021, Burgos' estate filed a civil lawsuit arising from this incident. Burgos v. County of Los Angeles, et.al., 2:21-cv-05566 (C.D. Cal.). The case is pending.

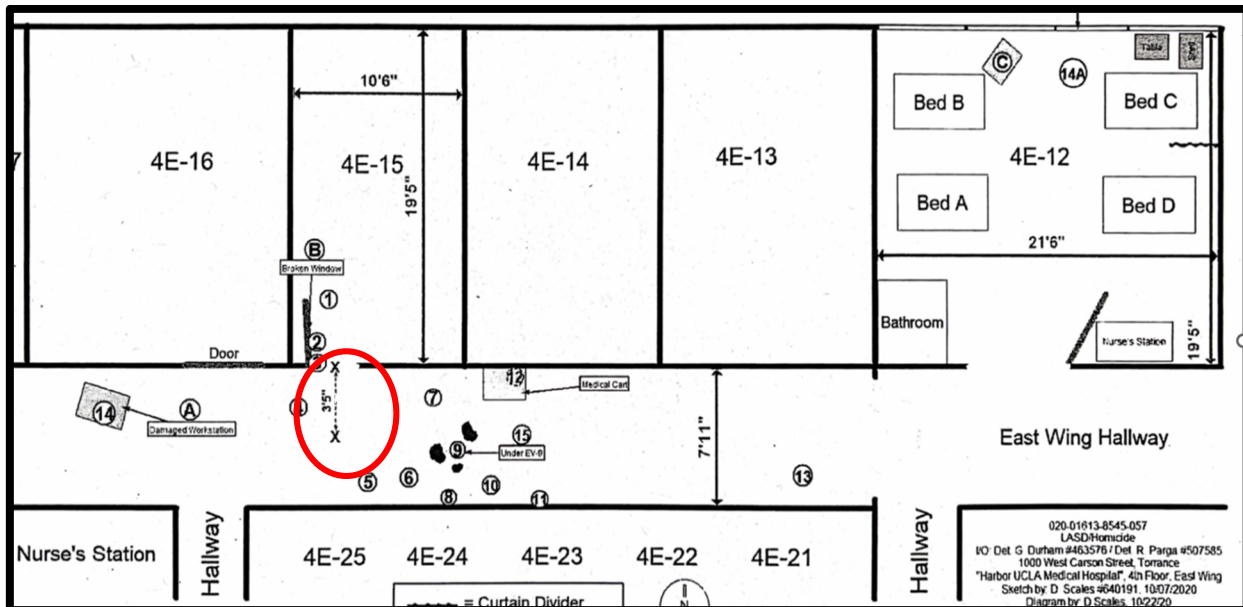


Figure 7: Floor plan and measurements of the fourth floor at Los Angeles County Harbor-UCLA Medical Center. The red circle indicates the distance between the threshold of [REDACTED]'s room to the middle of the seven foot-eleven-inch-wide hallway (7'11"), a distance of three feet-five inches (3'5").

WITNESS STATEMENTS

Nurse [REDACTED]

Nurse [REDACTED] told investigators that on the day of the incident, at 11:00 p.m., she was instructed to assist with a patient in room 4E-12 (Figure 7). When Nurse [REDACTED] entered, Burgos sat on the floor beside his bed. Nurse [REDACTED] told Burgos to get into bed. Burgos initially complied but remained highly agitated and began pacing the room. The nurses told him to relax and get into bed. Burgos was given medication, but it had no effect, and Burgos continued to remain agitated.

Nurse [REDACTED] stated, "5150" patients, like Burgos, are typically housed in a single room with a male sitter. However, due to COVID-19 issues, Burgos was assigned to a four-patient room with a female sitter.

Nurse [REDACTED] told investigators that Burgos suddenly picked up a machine and began hitting the exterior window. Nurse [REDACTED] was afraid Burgos would injure patients and nurses, so she went to the nurses' station to request a "Code Gold," which is the code used for patients who require immediate physical attention, including restraints.⁴

⁴ "Code Gold" is a code used to activate the hospital's Behavioral Response Team (BRT) in an emergency requiring immediate assistance resulting from the imminent threat of physical harm to the patient or to others due to the violent behavior of a patient (Los Angeles County Dept. of Health Services).

Nurse [REDACTED] saw Burgos exit his room with the machine. An “officer” in the hallway told the nurses to run, and Nurse [REDACTED] locked herself in the clerk’s office.⁵ Nurse [REDACTED] saw Burgos break the glass window of room 4E-15 with the machine. Fearing that someone was going to be injured, Nurse [REDACTED] turned away when she heard gunshots. Nurse [REDACTED] told investigators, “I think the officer did really such a good job on intervening because no one can stop the guy. Even our guys cannot stop him.” Nurse [REDACTED] said she never heard the Code Gold announcement requesting additional hospital security.

Nurse [REDACTED].

Nurse [REDACTED] was responsible for the two disabled patients in room 4E-12. Earlier that day, Burgos told Nurse [REDACTED] he wanted to go home and asked her to unlock the window. Later that evening, Burgos became agitated and repeatedly struck a television and the window with a machine. Nurse [REDACTED] told Burgos not to hit the television or the windows. Nurse [REDACTED] was afraid Burgos would hurt the nurses because he was looking at (the nurses) while hitting the window.

When Burgos began smashing the windows and computer monitors with the machine, Nurse [REDACTED], and another nurse carried one patient out of the room. However, a patient was still inside when Burgos closed the door to the room. Burgos exited the room, swinging the machine and “trying to hit everyone.” Fearing for her safety, Nurse [REDACTED] took her patient to another room and closed the door. While hiding inside the room, Nurse [REDACTED] heard screaming and then gunshots. Nurse [REDACTED] told investigators she did not know what would have happened if she and the others had not been able to run away from Burgos.

Nurse [REDACTED]

On the day of the incident, Nurse [REDACTED] was Burgos’ “one-on-one-sitter” during the evening shift from 3:00 p.m. to 11:30 p.m. She told investigators that while she sat with Burgos, he asked her to open the window and take him to the roof earlier that day. Burgos was agitated all afternoon into the evening while Nurse [REDACTED] sat inside his room.

Burgos suddenly stood up and punched the television. Nurse [REDACTED] told him to stop (acting up), or the nurses would call a Code Gold. Burgos locked himself in the bathroom, exited, and started punching the window.

Burgos was highly agitated and was treated with Haldol.⁶ Several hours later, when Nurse [REDACTED] returned to the room, she heard screaming and saw Burgos swinging a medical machine at the windows and computer monitors. Nurse [REDACTED] told Nurse [REDACTED] to protect the other patient in the room, who was disabled. Nurse [REDACTED] tried to grab the machine from Burgos, but he swung it around and almost hit her.

Nurse [REDACTED] and Nurse [REDACTED] removed the disabled patient from the room. Burgos closed the door and continued hitting the window with the machine. Burgos exited the room and ran

⁵ Several nurses described Deputy Braveman and Deputy Gonzalez as “officers.”

⁶ Haldol is the brand name for the generic medication Haloperidol, an antipsychotic used to treat schizophrenia.

into the hallway. While in the hallway, Burgos began swinging the machine, hitting several doors.

Nurse [REDACTED] saw Burgos stop at room 4E-15 ([REDACTED]'s room). She believed she saw him throw the machine at the door while she could hear the deputies inside "screaming, saying like, 'Sir, put your hands up!' Like they kept repeating it." She stated, "Then all of a sudden, the door (to room 4E-15) opened," and she heard the deputy discharge her weapon five to six times before Burgos fell to the ground. Nurse [REDACTED] told investigators that Burgos was not holding the machine when the deputy fired her weapon.

Nurse [REDACTED].

Nurse [REDACTED] heard loud screaming in room 4E-12. Nurse [REDACTED] saw Burgos hitting the window with a machine while another nurse protected a patient with her body. Nurse [REDACTED] told investigators that Burgos became "combative" and was "threatening to hit us with [the machine]." Nurse [REDACTED] said Burgos was "fixated" on breaking the window until a deputy arrived and tried to calm him down.

Nurse [REDACTED] told investigators the deputy who came to Room 12 "[Tried] to contain [Burgos]" and tried to get male staff members to help her. ". . . and then she realized the situation was escalating quick, she told everyone to get out [of Room 12]." Nurse [REDACTED] believed Deputy Braverman's orders to the nursing staff kept them from further harm, "[S]he was directing us. We might have went and tried to stay and he would have hurt all of us, too. When she told us to get out, everyone literally left. Like that gave us clear judgment . . . we should get out."

Nurse [REDACTED] and another nurse moved a patient out of the room. Burgos exited the room swinging the machine, striking the wall and a computer, and following the deputy down the hallway. Nurse [REDACTED] believed that Burgos "Definitely looked like he wanted to follow [the deputy] . . . because he knew what room to turn into." Nurse [REDACTED] described Burgos as "walking forcefully . . . towards the deputy."

After the deputy entered room 4E-15, Burgos repeatedly hit the door's window with the machine and broke the glass. A deputy came out of the room and discharged her handgun at Burgos. Nurse [REDACTED] told investigators that Burgos did not drop the machine until he fell to the ground. Nurse [REDACTED] became emotional, recalling her observations from the incident. She told investigators, "I think if [the deputy] wasn't there, things would have been really bad. [The Code Gold team] took forever to come. And we were screaming for help."

Nurse [REDACTED].

Nurse [REDACTED] told investigators that earlier in the day, Burgos was "fixated on the window (in Burgos' room). He kept checking the locks and asked if the window was open." When Nurse [REDACTED] asked Burgos why he wanted the window open, he replied, "I want to jump."

Later that evening, Nurse [REDACTED] heard screaming from Burgos' room and saw him breaking the window with a machine. The nurses removed one of the other patients from the room before

Burgos closed the door. A “female officer” tried to de-escalate the situation and told the nurses to go to their other patients and close the doors. While Nurse █████ hid inside another room, she heard screaming, banging noises, and gunshots. Nurse █████ assisted a “female officer” with providing medical aid to Burgos as the Code Gold team arrived.

Nurse █████.

Nurse █████ heard screaming in room 4E-12 and went to investigate. Nurse █████ heard Burgos banging the window in his room. Nurse █████ I. told Nurse █████ to call a Code Gold. Nurse █████ went to the nurse’s station and made the request. Nurse █████ went to room 4E-15 to ask the “officers” for help. According to Nurse █████, one of the “officers” went to Burgos’ room in 4E-12 while the other “officer” stayed with [Deputy █████].

Nurse █████ saw Burgos enter the hallway holding a machine, and she asked the “officer” in room 4E-15 for help. The “officer” told Nurse █████ that she (Deputy Braveman) could not leave [Deputy █████], and she told Nurse █████ to run. While hiding inside a room, Nurse █████ heard banging, falling glass, and gunshots. When Nurse █████ came out of the room, she saw an “officer” pointing a handgun at Burgos, telling him, “Don’t move! Don’t Move!” Nurse █████ said she never heard the Code Gold announcement.

Deputy █████

█████ told investigators she was completely disabled and required a wheelchair while recovering from an injury. Braveman and Gonzalez were inside her hospital room when she heard loud noises, like gunshots. █████ saw several nurses run down the hallway and heard loud screaming. She thought someone was dying. Braveman left █████’s room and went down the hallway while Gonzalez remained near █████’s door. █████ feared for her safety and wanted Gonzalez to call Braveman back to her room. A few minutes later, Braveman returned to █████’s room and asked Gonzalez to help [with Burgos], but Gonzalez said she would not leave █████ alone. As █████ heard pounding noises approaching her room, Braveman told Gonzalez, “He’s coming this way! We’ve got to do something!”

█████ told the deputies to close the door to her room. As the deputies were closing the door to █████’s room, █████ suddenly saw Burgos holding a “box . . . [with] hooks” over his head. Burgos swung the box at the door and shattered the window. Glass flew across the room into █████ face. She saw glass fly into the faces of Braveman and Gonzalez. Burgos swung the box again at the window once or twice before the door opened. █████ told investigators that Burgos was at the threshold of her door with the object. Braveman stepped in front of the doorway, blocking █████’s view, when Gonzalez fired her duty weapon at Burgos approximately seven times. After other deputies responded to assist, Gonzalez told █████, “I think [Burgos] was a 38th Street gangster.”

Deputy Carly Braveman

Gonzalez, Braveman, and █████ were sitting inside █████’s private room when Braveman heard loud banging and women screaming. Braveman told Gonzalez to stay with █████ while she went

to see what was happening. Braveman saw several nurses panicking, screaming, and crying in the hallway. Braveman went to room 4E-12, where she saw Burgos breaking the window with a large metal object. Braveman gave Burgos commands to stop and drop the object. Burgos turned around, looked at Braveman, and then continued breaking the window. Braveman described Burgos as being “full of rage.” Braveman told investigators she is 5’0” tall and estimated Burgos was between 5’10” and 5’11” tall and 190 pounds. Braveman was not armed with a Taser and said she did not want to use “OC” spray due to her concern for respiratory issues at the hospital due to COVID-19. Braveman helped the nurses get a patient out of the room, but one patient remained inside when the door closed. Braveman told the nurses to move the patients to safety and call for security.

Braveman returned to [REDACTED]’s room and stood beside [REDACTED] while Gonzalez stood near the door. Braveman was telling Gonzalez what happened and was trying to call security on her cell phone when Burgos suddenly began smashing the window with the machine. Braveman told Gonzalez they could not allow Burgos to enter the room and injure them. Burgos struck the window repeatedly, causing the glass window to break and send glass flying into her face. Braveman and Gonzalez yelled, “Stop!” several times. The door suddenly opened due to the force of the machine.

Fearing Burgos intended to enter the room to attack them, Braveman removed her duty weapon as Gonzalez opened the door wider. Braveman saw Burgos holding the machine above Gonzalez’s head while moving towards her. Braveman told investigators she believed Burgos intended to hit Gonzalez on the head with the machine. Gonzalez took a few steps back before she fired her duty weapon. Braveman estimated Burgos was two to three feet away from Gonzalez when she discharged her weapon. Burgos held onto the machine until he fell to the floor.

Gonzalez ordered Burgos to place his hands behind his back. The deputies handcuffed Burgos, who was uncooperative and kicked Braveman repeatedly. The deputies placed Burgos on his side and asked a nurse to help provide medical care. Braveman called for assistance. A nurse moved the machine Burgos used onto a computer cart to provide room for the gurney.

Deputy Dalia Gonzalez

Gonzalez was in a chair sitting next to [REDACTED]’s bed when she heard approximately 20 loud bangs and multiple people screaming. Braveman told Gonzalez to stay with [REDACTED] while she went to see what was happening. Gonzalez stood near the door and watched Braveman disappear into a room down the hallway. Approximately 15 screaming nurses blocked her view of Braveman as Braveman entered a nearby room. [REDACTED] yelled at Gonzalez, telling her not to leave her alone. Gonzalez could hear Braveman yelling (to the nurses), “Get back!” Several nurses ran down the hallway screaming. Uncertain what was happening, Gonzalez told the nurses to run in the opposite direction.

When Braveman returned to [REDACTED] room, she was shaking and looked panicked. She shut the wooden door behind her as she entered the room. Braveman told Gonzalez, “There’s this big

motherfucker out there with some metal thing, breaking the glass! There's patients in the room that he's with! I tried to get patients out!" Gonzalez continued to hear nurses screaming.

The door to room 4E-15 was closed but did not lock, and Gonzalez could hear banging and screaming from behind the closed door. Gonzalez believed the screams were worsening. As Braveman and Gonzalez were talking, the glass window in the door suddenly shattered next to Gonzalez. Gonzalez tried to move away from the door, but the room was small. Burgos smashed the glass with the heavy machine two to three more times before the door suddenly opened inward, forcing Gonzalez to take a few steps back. Gonzalez heard Braveman and the nurses screaming.

Gonzalez believed she opened the door wider and unholstered her weapon simultaneously. Gonzalez saw Burgos standing approximately six feet before her, holding a metal object level with his head. Gonzalez drew her duty weapon and ordered him to stop multiple times. Burgos took a step or two toward her and leaned towards her while holding the machine before Gonzalez fired her duty weapon six to eight times. Gonzalez told investigators that Burgos was in a "complete rage," and she believed he would attack her with the metal object and kill her. Gonzalez estimated Burgos came within six feet of her before she fired her weapon. Gonzalez stated she was concerned for the safety of [REDACTED], as well as the safety of the other patients and the nurses. Gonzalez was not armed with a Taser during the incident.



Figure 8: Hallway where Burgos fell after being shot; perspective from [REDACTED]'s hospital room doorway.

After Gonzalez fired her weapon, Burgos fell to the ground but he kept trying to get back up. Gonzalez ordered him to stop moving, lay on his stomach, and put his hands behind his back.

Burgos kicked at Braveman as she handcuffed him. Gonzalez and Braveman placed Burgos in a recovery position and asked for medical attention for him. Gonzalez said she had never seen Burgos before the incident. Gonzalez was aware two other deputies had recently been ambushed and that caused her concern for hers and the other's safety. She did not know if Burgos had ambushed them by following Braveman to [REDACTED]'s room.⁷

EVIDENCE

The investigation determined Gonzalez fired nine rounds from her Smith & Wesson M&P 9mm semi-automatic duty weapon. The Alternating Leg Pressure (ALP) machine that Burgos used to smash the windows was recovered from a mobile workstation in the hallway outside room 4E-15. The machine weighs approximately seven pounds, and its dimensions are 12 inches long, 6 inches wide, and 6 inches tall (Figure 9).⁸



Figure 9: Photo of the machine and damaged monitor outside room 4E-15.

Autopsy

Despite multiple surgeries and medical intervention, Burgos was pronounced dead at Harbor General Hospital on November 1, 2020, by Dr. Ramsey Ugarte. Dr. Ugarte opined that Burgos' cause of death was cardiopulmonary arrest secondary to undifferentiated shock.

On November 7, 2020, Los Angeles County Deputy Medical Examiner Juan M. Carrillo performed a postmortem examination. Dr. Carrillo identified five gunshot wounds to Burgos'

⁷ On September 12, 2020, two LASD deputies were shot while sitting inside their patrol vehicle.

⁸ The machine was also described as an "SCD" by other hospital staff members.

abdomen, chest, and buttocks and recovered five rounds. As a result of medical intervention (i.e., multiple surgeries) after the shooting, the remainder of the individual wounds could not be determined. Dr. Carrillo formed the opinion that the cause of death was due to sequelae of multiple gunshot wounds. Dr. Carrillo also noted Burgos was healing from numerous self-inflicted incised wounds to his neck, arms, and left wrist.

Toxicology

On October 5, 2020, the hospital conducted a toxicology panel, which indicated the presence of amphetamines (and/or related compounds) and cocaine (and/or metabolites and related compounds). On the day of the incident, Burgos was treated with Haldol, a medication used to treat schizophrenia

The admitting physician noted in the medical records that Burgos had a “history of alcohol abuse, methamphetamine use, and previous self-injurious behavior.” The physician noted that Burgos had operative repair for prior self-inflicted lacerations and was initially treated with Fentanyl to manage the pain for those injuries.

The coroner submitted blood, liver tissue, and vitreous humor (gel-like substance that fills the inside of the eye) to the laboratory. However, a toxicology screen was not requested due to Burgos’ prolonged hospitalization.

PENDING CIVIL SUIT

On July 9, 2021, the Estate of Nicholas Burgos filed a civil suit against the County of Los Angeles and Deputy Dalia Gonzalez, case number 2:21-cv-05566-FMO-GJSx. The defense filed a motion for summary judgment on December 1, 2022, and the plaintiffs responded on April 13, 2023. The depositions taken in preparation for the trial are subject to a protective order by the court. However, the statements are summarized by both the defense and the plaintiff’s attorneys in their motions.

The Plaintiff’s attorney argues that in her deposition, Gonzalez provided two distinct versions of the incident. One version she gave to the LASD Homicide investigators and the other at her deposition. The plaintiff alleges that Gonzalez told investigators that Burgos was moving towards her with the machine in his hands when he entered ██████’s hospital room and that is when she shot him. She confirmed that Burgos held the machine above his head when she fired shots at his chest. However, according to defense experts, Burgos was shot “in the back (buttocks) or side of the body” in addition to the front plane of his body.

The defense contends that based on witnesses’ statements, their experts, and the physical evidence, Burgos was initially in ██████’s room when Gonzalez began shooting, and as Burgos turned to fall, Gonzalez continued shooting, hitting him in the back and buttocks.

Both the plaintiff and the defense do not dispute that the door to ██████’s room swung open, the glass was shattered, Burgos was holding the machine in his hands, and was standing within four to six feet of Gonzalez when he was shot. The trial is set for February 20, 2024.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 4E-1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505. A prior threat or harm to the person or others can be considered when determining whether a person's conduct and beliefs were reasonable. CALCRIM No. 3470. A person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death or bodily injury has passed. This is so even if safety could have been achieved by retreating. The People have the burden of proving beyond a reasonable doubt that the person did not act in lawful self-defense or the defense of another. *Id.*

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2). When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

There was a conflicting statement regarding whether Burgos was holding the machine in his hands at the time he was shot. Nurse ██████ believed Burgos had already thrown the machine at ██████'s door and was no longer holding the machine in his hands when he was shot. However, Nurse ██████ told investigators that she saw Burgos at the threshold of ██████'s room and did not drop the machine until he fell to the ground. ██████ told investigators that Burgos was at the threshold of her door holding the object when he was shot.

Additionally, Braveman saw Burgos holding the machine above Gonzalez's head while moving towards her. Braveman believed Burgos would have hit Gonzalez on the head with the machine if she had not shot him. Gonzalez told investigators that Burgos was standing six feet in front of her, holding the metal machine level with his head when she shot him.

While providing security for █████, Braveman and Gonzalez heard loud banging noises and screaming down the hallway. When Braveman went to investigate, she observed Burgos swinging a large metal machine, breaking an exterior window. Burgos ignored Braveman's repeated commands to stop. Braveman told the nurses to evacuate the other patients while she returned to █████ room.

Burgos followed behind Braveman as she returned to █████'s, striking walls and doors with the machine. Burgos stopped directly in front of █████'s room and repeatedly struck the door with the machine, breaking the glass window and forcing the unlocked door open. Braveman told investigators she believed Burgos intended to harm them when she drew her duty weapon. Gonzalez told investigators she believed Burgos intended to enter the room and attack her, Braveman, and █████ with the machine. Gonzalez commanded Burgos to stop, but he continued moving towards her, holding the machine. In response, Gonzalez discharged her duty weapon at Burgos.

While Nurse █████ told investigators that Burgos was not holding the machine when he was shot, statements by multiple witnesses corroborate Gonzalez' statement that Burgos was holding the large metal machine in his hands as he smashed through the glass and door to █████'s room.⁹ Despite multiple commands to put his hands up, Burgos advanced towards Gonzalez when she shot him. After Burgos was shot, he dropped the machine.

According to the defense civil motion, Gonzalez stated in her deposition that she had not observed Burgos prior to the incident, did not know that mental health patients were being treated on that floor, and that Burgos had mental health issues prior to her contact with him.

Given the rapidly unfolding events and Burgos' violent and erratic behavior, there is insufficient evidence to show Gonzalez did not reasonably believe, based on the totality of the circumstances, that while Burgos was holding the machine in his hands, he was capable of committing great bodily injury on either her or her colleagues, and deadly force was necessary to defend herself and others against an imminent threat of death or serious bodily injury.

CONCLUSION

We have determined that there is insufficient evidence presented to prove Deputy Gonzalez did not act in lawful self-defense and/or defense of others when she used deadly force.

⁹ The fact that Burgos was holding the machine in his hands at the time he was shot is not a fact in dispute in the civil trial.