

Officer Involved Shooting of Richard Franco

West Covina Police Department

Corporal Michael Weathermon #338

J.S.I.D. File #17-0559



JACKIE LACEY

District Attorney

Justice System Integrity Division

March 11, 2020

MEMORANDUM

TO: CHIEF RICHARD BELL
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CAPTAIN KENT WEGENER
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Monterey Park, California 91755

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

SUBJECT: Officer Involved Shooting of Richard Franco
J.S.I.D. File #17-0559
L.A.S.D. File #017-00130-3199-055

DATE: March 11, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 15, 2017, non-fatal shooting of Richard Franco by West Covina Police Department (WCPD) Corporal Michael Weathermon. We have concluded that there is insufficient evidence to prove beyond a reasonable doubt that Corporal Weathermon was not acting in lawful self-defense when he used deadly force against Richard Franco.

The District Attorney's Command Center was notified of the shooting at approximately 3:15 p.m., on December 15, 2017. 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 by Los Angeles County Sheriff's Department (LASD) Homicide Bureau Lieutenant Rodney Moore.

The following analysis is based on investigative reports, audio recordings, firearm analysis reports, photographic and video evidence, and witness statements submitted to this office by LASD Homicide Bureau Detectives David Gunner and Alfred Jaime. Weathermon's voluntary recorded statement was considered as part of this analysis.

FACTUAL ANALYSIS

On December 15, 2017, at approximately 1:40 p.m., Weathermon was dressed in WCPD uniform and working alone on patrol in a marked black and white police vehicle. Weathermon was not

wearing a body worn camera, however his police car was equipped with a Digital In-Car Video System (DICVS). He also carried with him a body-mounted microphone.

WCPD patrol officers, including Weathermon, received information from dispatch of a possible burglary in progress on Dalehaven Avenue in West Covina. The caller (Gordon G.) gave information to dispatch which was broadcast to officers. The broadcasted information included the fact that “[T]hree males came up to reporting party’s window with a hammer. He felt like they were about to break-in. He yelled at them and they left in a van towards Francisquito [REDACTED]...and it was possibly a friend of the family.”

Weathermon was assigned to the call, and responded from the WCPD station, approximately two miles from Gordon G.’s residence. Many of the other on-duty WCPD uniformed patrol officers were deployed on another call. Weathermon requested that dispatch contact the Baldwin Park Police Department (BPPD), a neighboring law enforcement agency, to provide a secondary response unit.

Within less than one minute, Weathermon, driving southbound on Sunset Avenue, north of Francisquito Avenue, observed a white Kia minivan negotiate a right turn from the east side of Dalehaven Avenue to northbound Sunset Avenue.¹ Weathermon broadcast, “Twenty-three I got the van [REDACTED] we’re northbound Sunset...it’s got four heads in it.”

Weathermon advised he would wait until a back-up unit arrived before attempting to stop the vehicle. The minivan’s license plate number was [REDACTED], one character different from the license plate number provided by Gordon G. Dispatch reported the lessee information, which included Richard Franco.

Multiple officers from WCPD, the California Highway Patrol (CHP), and Alhambra Police Department (APD), drove toward Weathermon’s location. WCPD Detective Kyle Ferrari drove in a white Dodge minivan with APD Officer Jesus Romero as front passenger. WCPD Sergeants Keith Freeman and Brian Karmann each drove in separate unmarked police vehicles. WCPD Officer Chastin Tedesco, CHP Officer Brian Caporrimo, and WCPD Officer Enrique Macias each drove separately in unmarked police vehicles. WCPD Officers Doug Weischedel and Joshua Canton drove together in a marked black and white police vehicle.

Several of the responding officers arrived at northbound Sunset Avenue just south of Weathermon’s vehicle. Freeman positioned his police car behind Weathermon’s vehicle. Weathermon activated his vehicle’s emergency lights and siren in an effort to stop the minivan on Sunset Avenue just south of Cameron Avenue. Weathermon broadcast, “He’s signaling to turn eastbound Cameron for a yield.”

Franco, the driver of the minivan, maneuvered the minivan to the right curb of Sunset Avenue and stopped just south of Cameron Avenue. Weathermon stopped his vehicle behind the minivan, with his vehicle offset to the left several feet. Weathermon stepped out of his vehicle and stood behind the open driver door, then drew and pointed his service weapon in the direction

¹ The DICVS recorded the incident from the time that Weathermon began following Franco’s vehicle northbound on Sunset Avenue.

of the minivan. Weathermon yelled loudly, “Driver, shut off the car! Put your hands up! All occupants of the car put your hands up now!”

Freeman yelled, “Driver put your hands up!” Weathermon ordered, “Put them all out the window!”

Soon thereafter the minivan’s rear brake lights activated, Franco turned right onto Cameron Avenue and drove eastbound at a very high rate of speed. Detective Kyle Ferrari and Officer Romero activated their lights and siren, drove around Weathermon’s car and pursued the minivan eastbound on Cameron Avenue. Weathermon entered his vehicle, activated the vehicle’s emergency lights and siren, and drove behind Freeman as the secondary pursuit vehicle. Weathermon broadcast, “Speeds about eighty miles an hour going through California. Red light through California.”²

Franco drove at approximately 80 miles per hour along Cameron Avenue until he turned left into a parking lot for a Vons grocery store and a CVS drug store just west of Glendora Avenue. As Franco turned he almost collided with a car exiting the parking lot.



Minivan nearly collides with a silver SUV as it turns left into the Vons and CVS parking lot.

The parking lot was crowded with multiple parked vehicles. Franco immediately turned right and drove eastbound in the parking lot against traffic at a high rate of speed. Franco made a left turn at the east corner of the parking lot, still traveling at a high rate of speed. As Franco made the turn, the passenger-side sliding door of the minivan opened. Mark C. emerged and fell to the ground. Mark C.’s body became caught under the right rear tire and was dragged for several feet as Franco continued northbound in the parking lot along Glendora Avenue. Mark C. stood up and ran

² The posted speed limit sign on Cameron Avenue was 40 miles per hour.

eastbound through the southbound lanes of traffic on Glendora Avenue. Mark C. was taken into custody shortly thereafter.

Franco continued driving at a high rate of speed to the northeast corner of the parking lot where he exited the parking lot and turned right onto southbound Glendora Avenue. Franco sped toward the intersection of Glendora Avenue and Cameron Avenue, where all southbound lanes of travel were blocked by vehicles waiting at the red light. Franco drove to the far-right lane, which was blocked by a vehicle, then veered left into the number two lane nearly colliding with another vehicle.



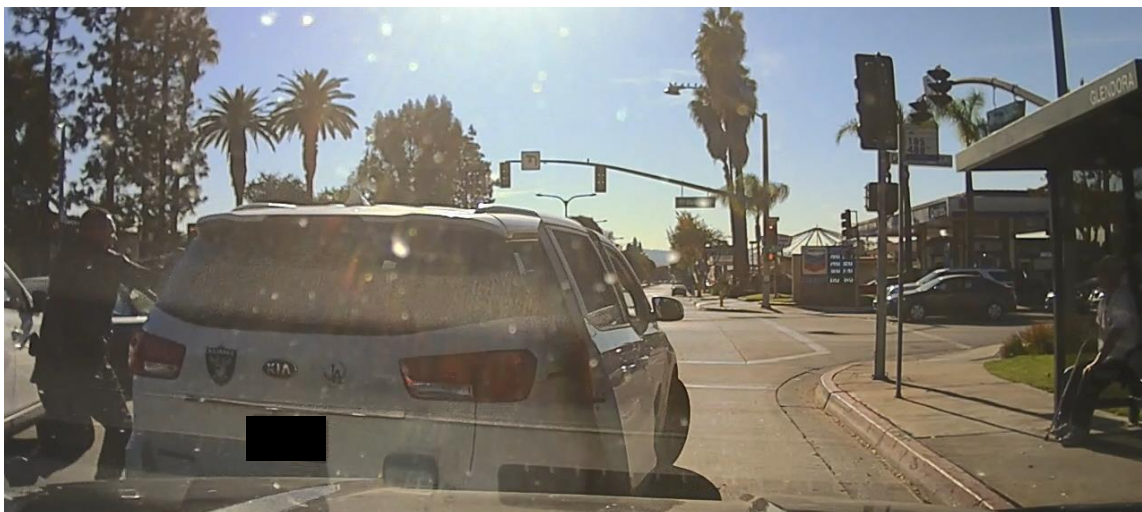
DICVS video showing near collision.

Weathermon drove up behind Franco's vehicle and intentionally struck the rear bumper and rear hatch of the minivan with the front of his vehicle. Demetrius G., a passenger in the minivan, opened the front passenger door of Franco's vehicle and fled on foot.³

The vehicle in the far-right lane on Glendora Avenue turned right onto Cameron Avenue, creating an opening for Franco to flee southbound through the red light. The brake lights of Franco's vehicle activated and the front of Franco's vehicle veered slightly right and forward.

Weathermon exited his vehicle, drew his service weapon and ran toward the open driver side window of the minivan.

³ Demetrius G. was taken into custody without incident shortly thereafter.



Weathermon approaching the minivan.

Weathermon pointed his service weapon at Franco and yelled, “Let me see your hands! Put your fuckin’ hands up now!”

Franco did not comply and accelerated quickly forward. Weathermon fired two rounds at Franco in rapid succession from approximately five to seven feet from the minivan.



Weathermon discharging his service weapon.

Immediately after Weathermon fired his weapon, the minivan entered the intersection southbound Glendora Avenue at approximately 15-20 miles per hour, veered slightly right, entered the west crosswalk and slowed to approximately 5-10 miles per hour. The minivan then sideswiped the front of a vehicle being driven by Martha O., drove up the southwest curb and struck a Chevron gas station sign and came to a stop. Weathermon broadcast, “Shots fired! Shots fired!”

Weathermon ran toward the driver’s door of minivan. Tedesco, wearing plain clothes and a tactical police vest, ran behind Weathermon toward the minivan’s driver’s door with his service weapon drawn. An unmarked black Dodge police van drove southbound on Glendora Avenue and stopped

behind Franco's vehicle. The Dodge blocked Weathermon's DICVS view of the driver side of Franco's vehicle. Weathermon's DICVS audio-recorded Weathermon's voice yelling, "Let me see your hands! Don't fuckin' move! Get 'em up! Get 'em up! Don't fuckin move!"

Franco was taken into custody. He suffered a gunshot wound to the left side of his face. Paramedics were called and arrived at the scene. Franco was transported to Pomona Valley Hospital. Franco suffered one gunshot wound to the left side of his face. Franco was treated at the hospital and survived his injuries.

Charges Filed Against Franco

Franco was charged in case number KA116959 with felony violations of Penal Code sections 459, 664/211 and 2800.2, residential burglary, attempted robbery and evading a peace officer respectively. On October 10, 2018, Franco was convicted of a misdemeanor violation of Penal Code section 2800.1(a), evading a peace officer. All other charges were dismissed because the complaining witness was no longer available as a witness. Franco is currently on summary probation on that case.

Statement of WCPD Officer Michael Weathermon

Investigators Gunner and Jaime interviewed Weathermon on December 20, 2017, at WCPD.

Weathermon was working patrol assigned to a single man unit. Weathermon was at the WCPD station at approximately 1:30 p.m., when he was dispatched to respond to a call of a "burglary-in-progress" on Dalehaven Avenue in West Covina. Dispatch broadcast that the reporting party said that three men had approached his window, and that one of them was armed with some type of object. Weathermon recalled that the object may have been a hammer. Dispatch also broadcast that the reporting party said that the men had attempted to break into his residence, and fled when they saw the reporting party. The reporting party gave dispatch a vehicle description, a white van with a license plate number of [REDACTED].

Weathermon, driving toward Dalehaven Avenue, requested that dispatch contact a neighboring jurisdiction for a secondary response unit.

Weathermon was driving southbound on Sunset Avenue just north of Francisquito Avenue when he looked to his left (eastbound), and observed a white van occupied by three to four men turning onto northbound Sunset Avenue. Weathermon observed that the plate read [REDACTED], with only the middle letter different from the one provided by the reporting party. Weathermon negotiated a U-turn and began following the vehicle northbound on Sunset Avenue. Weathermon notified dispatch, confirmed the license plate provided by the reporting party, and provided the white van's license plate information. Weathermon broadcast that he was following the van, and that he would wait to stop the vehicle until back-up units arrived. Weathermon followed the minivan for several blocks until he reached Vine Avenue, and observed that unmarked police vehicles from a WCPD special enforcement unit had arrived behind him. Weathermon broadcast via police radio that he was going to attempt to stop the vehicle.

Weathermon activated his emergency lights. The driver immediately pulled to the east curb on Sunset Avenue south of Cameron Avenue. Weathermon exited his car and ordered the driver and all occupants to put their hands up and out of the windows. Weathermon noticed that the occupants put their hands up, "...kind of half-way, not all the way up," which he perceived meant that they were not going to surrender. "They were all moving in the car...I couldn't tell whether they were passing a weapon inside the vehicle...particularly, I remember the right front passenger was looking out the car, looking back at us, looking back out the window and then looking inside the car again...I saw the right front passenger was moving around a lot inside of the car...."⁴ Weathermon heard Sergeant Freeman also order the driver to put his hands up. Weathermon saw the brake lights of the minivan activate, then watched as, "The car took off at a very, very high rate of speed," eastbound on Cameron Avenue. One of the undercover officers drove his unmarked van around the stopped traffic and immediately pursued the minivan with low-profile interior emergency lights and siren activated.

Weathermon broadcast that the minivan failed to yield, entered his car, attached and activated his body-mounted microphone, activated his emergency lights and siren, and pursued the minivan as the secondary pursuit vehicle. Weathermon observed the minivan being driven at speeds between 80-90 miles per hour eastbound on Cameron Avenue. Weathermon saw the minivan drive through a solid red light at California Avenue at 70-80 miles per hour as northbound and southbound traffic was "in movement" within the intersection. The driver of the minivan made no attempt to stop. Weathermon was surprised that no one was killed at that intersection.

As the minivan approached Glendora Avenue, which Weathermon identified as a "pretty busy" intersection. The minivan negotiated "a really hard left turn" into the parking lot of Vons. Weathermon saw that the parking lot was full of cars "everywhere." The minivan was driving eastbound through the parking lot at 30-50 miles per hour. The driver made another hard-left turn at the end of the parking lot, "...[A]nd all I see is a body come tumbling either from the car or from near or wherever he was turning from, so at that point I wasn't sure whether he had hit somebody in the parking lot or someone had fallen out of the car." The primary vehicle pulled to the right to address the person on the ground, and Weathermon took primary position in the pursuit.

The minivan traveled northbound in the parking lot, exited the driveway at the northeast end of the parking lot, and turned to southbound Glendora Avenue. Weathermon described the traffic as "mild to heavy," with eight to twelve cars stopped for a red light for southbound traffic at the intersection with Cameron Avenue. Weathermon estimated that he was approximately two car lengths behind the minivan as the minivan made a "very hard jerk to the left." Weathermon did not know if he was trying to squeeze between cars. Weathermon thought at that moment that the driver had struck two cars, because Weathermon saw two cars in the number two lane move very quickly. Weathermon thought the driver "...was trying to plow himself through that intersection."

⁴ Weathermon's DICVS recording corroborated Weathermon's statement. Demetrius G. was the front passenger. Demetrius's right arm was visible through the rear window, elbow bent, hand pointed straight up inside the front passenger area. Demetrius's body was moving constantly. Demetrius's head bent down and to the left, in the direction of the center console. Demetrius's lower left arm, initially visible, disappeared out of view in the direction of the center console area between Franco and Mark C.

Weathermon intentionally bumped the front of his police car against the rear of the minivan in an attempt to block the driver from backing up and fleeing in another direction. Weathermon believed that the vehicle was blocked from forward movement due to the positioning of the other vehicles in the number two lane. Weathermon exited his police car and assessed his background, should the need to shoot arise. Weathermon realized his background “was really bad.” Weathermon watched the minivan violently shaking due to movement from within, and did not know what was transpiring inside. Weathermon feared that the driver might be reaching “for something.” Weathermon then observed, “The right front passenger pops out of the car,” and ran in a westerly direction.

Weathermon started to “pie out,”⁵ as he approached closer to the minivan in order to attain “a better platform”⁶ in the event “something was to happen.” Weathermon saw that the minivan was still shaking violently, as if someone were moving around inside the car. Weathermon reached the driver-side rear pillar and could see partially into the interior of the vehicle. Franco, whose left hand was visible on the steering wheel, was moving forward and appeared to be reaching with his right hand “either under the seat or along the side of the seat” for a possible weapon. Weathermon could not see Franco’s right hand. Weathermon described Franco’s head movements, stating, “[He] was intently looking down and or obviously making a point to look down to reach or see whatever he was going to grab inside the vehicle....” Weathermon did not actually see a weapon. Weathermon yelled, “Put your hands up!” Franco did not do so. Weathermon again yelled, “Put your fuckin’ hands up!” Franco did not do so, and continued “violently moving around.”

Weathermon believed, based on Franco’s movements and the information contained within the radio call, Franco was reaching for a weapon. Weathermon, who estimated he was four to five feet from the vehicle, feared for his life. Weathermon also feared for the lives and safety of the general public if Franco was not prevented from fleeing the scene, stating, “...if he [Franco] would have continued driving the way that he was driving, he would have killed someone. He had no regard for the public or for the safety of anyone.” In fear, Weathermon fired two rounds from his service weapon toward the driver as the minivan began to speed away quickly.⁷

Weathermon notified dispatch that an officer-involved shooting had occurred. With his handgun still drawn, Weathermon chased after the minivan on foot. The minivan coasted southbound and slightly west across the intersection, until it collided with objects at the southwest corner and stopped. Weathermon reached the vehicle and pointed the muzzle of his pistol at Franco. Weathermon yelled at Franco twice, “Put your hands up!” Franco did not move. Additional officers arrived at the vehicle with their guns drawn. Weathermon holstered his firearm, pulled Franco from the vehicle, placed him on the ground and handcuffed him.

⁵ “Pie out” describes a police tactic wherein the officer steps-out at a wider angle in order to afford himself a wider view of an area to visually search an area, or to gain a tactical advantage in a situation.

⁶ “A better platform” refers to tactical redeployment in order to gain tactical advantage, including changing the background should the officer need to discharge a firearm, so as to avoid creating a risk of harm to others.

⁷ Weathermon believed the first round struck the vehicle driver’s headrest. Weathermon fired the second round, and saw the driver immediately slump over to the passenger side of the car as it rolled away.

Statement of WCPD Officer Chastin Tedesco

Investigators Gunner and Jaime interviewed WCPD Officer Chastin Tedesco on December 15, 2017. Tedesco was working a specialized narcotics team and was wearing plain clothes. Tedesco was at the WCPD station with several law enforcement officers from WCPD and other agencies when he heard radio communications from Weathermon that Weathermon was following multiple residential burglary suspects in a vehicle and would await back-up before attempting a vehicle stop. Tedesco got into his unmarked vehicle, as did several other officers. They drove toward Weathermon's location in separate unmarked vehicles. Tedesco's vehicle was equipped with low-profile interior emergency lights and a siren.

Tedesco and his fellow officers arrived behind Weathermon, northbound on Sunset Avenue south of Cameron Avenue. Tedesco stopped his vehicle three to four cars behind Weathermon's and Franco's vehicles. Weathermon was utilizing his vehicle's public-address (PA) system and issuing commands to Franco, Demetrius G. and Mark C. to raise their hands and put them outside the vehicle. Tedesco exited his vehicle. Tedesco could see neither Franco nor the vehicle passengers from his vantage point, and only had a partial view of Franco's vehicle. Another unknown officer yelled that they were "taking off."

Tedesco joined the pursuit of the minivan on Cameron Avenue and then through the parking lot. Tedesco described what occurred after Franco exited the parking lot onto southbound Glendora Avenue, stating, "I see the black and white right behind it...I...go out a couple seconds later behind the black and white...there's a center divider there, the light's red and there's probably four cars across, two or three deep, so there's nowhere for him [Franco] to go, so he ends up stopping on the far right side, the right hand turn lane...As I turn out [of the parking lot] I see Mike [Weathermon] either pin him in or...I'm not sure...what he did but his car's right on top of his [Franco's] car. I see him [Weathermon] jump out of his car. At that time I'm pretty much caught up. I jump out of my car and uh, then he [Weathermon] runs up between the cars where the suspect vehicle is and he starts saying commands to them...I'm not sure exactly what he said I just know he was telling him commands but I don't know exactly what he was saying with all the sirens and everything going on, I couldn't make out what he was saying...as Weathermon was making an approach on the vehicle I'm still kind of a little bit further back so I'm running up. The light turns green,⁸ all the cars start to go except for the one that he's, the suspect vehicle, is right behind...so the vehicle goes right to try to squeeze through some cars, and that's when Mike shoots the rounds into the car. At that point I'm pretty much right about five feet or so behind Weathermon⁹ and then...he shoots, the car starts rolling forward slowly, so I kind of pause 'cause I wasn't sure if he was going to take off again and get in a pursuit so he continues rolling slowly...me and Weathermon follow the car and it goes through the intersection, up the curb and hits the sign. Um, we hold him at gunpoint. I see that he's bleeding from his head, so I tell somebody to get gloves on. Weathermon gets on gloves and unlocks the car door from the

⁸ Tedesco later clarified that he presumed the light turned green for southbound Glendora Avenue traffic because cars started to move. Weathermon's DICVS video shows that the light remained red for southbound traffic until after the officer-involved shooting.

⁹ Tedesco later estimated that he was approximately seven to fifteen feet behind Weathermon when Weathermon fired his service weapon.

inside cause the window was down, the driver door, and we pull him out and put him in handcuffs.”

Tedesco emphasized that the intersection was busy, including one to two cars in front of Franco and multiple cars coming up behind them on Glendora Avenue, as well as pedestrians at the adjacent bus stop. Tedesco believed Franco was trying to squeeze between the stopped vehicles to escape. Tedesco described Franco’s driving behavior as, “He was accelerating hard trying to flee the area.”

Regarding what Tedesco could see at the time that Weathermon discharged his firearm, he stated that he was running up to the rear of the driver’s side of the vehicle as the driver veered left toward where Weathermon was positioned “...From when I first came up on the car I couldn’t see the suspect [Franco] when Weathermon took the initial shots.” Tedesco stated that no other officers were present when Weathermon fired his service weapon. Tedesco said that Weathermon did not make any statements about the shooting to Tedesco.

Additional Officer’s Statements

Other officers present at the scene provided written statements of their activities and observations prior to, during, and at the time of the officer-involved shooting. Each of the officers who provided written statements indicated that he heard but could not actually see Weathermon fire his duty weapon.

Statement of Duc P.

On December 15, 2017 at approximately 3:05 p.m., WCPD Officer Richard Forman interviewed Duc P.¹⁰ Duc stated that he was driving eastbound on Cameron Avenue behind two cars, east of Glendora Avenue, stopped for the red light. He heard the sound of sirens coming from behind him.¹¹ Duc turned around and saw a white van turn left into the south parking lot of Vons. As the van turned into the parking lot, Duc saw a man wearing a light-colored shirt and dark jeans jump out of the front passenger door. The man was dragged under the van for approximately twenty feet before he got up and ran eastbound on Cameron Avenue. Duc saw officers chase the man and take him into custody at the corner of Cameron Avenue and Glendora Avenue.

Duc continued to hear the sirens in the parking lot. Duc then saw the white van traveling southbound on Glendora Avenue, passing traffic on the right side, approaching Cameron Avenue. Duc saw a police officer exit his patrol vehicle, draw his gun and run up towards the white van. The police officer yelled “Stop!” three times, then Duc heard three gunshots. The white van continued southbound through the intersection and a man jumped out of the van. The

¹⁰ Forman did not record this percipient witness interview. The interview was conducted prior to the arrival of LASD Investigators Gunner and Jaime, and prior to notification to the District Attorney’s Office Command Center that an officer-involved shooting had occurred. Investigators Gunner and Jaime attempted to conduct a supplemental interview with Duc P., but he refused to be re-interviewed. Duc stated that he had already provided a statement and did not want to talk to the investigators.

¹¹ The overall evidence suggests Duc was facing eastbound rather than westbound on Cameron Avenue. Given that Duc stated he heard sirens **behind him**, it is most likely that he was facing eastbound, **west** of the intersection at Glendora Avenue, stopped at a red light.

man ran westbound on Cameron Avenue before a police officer with his gun drawn took the man into custody.

Statement of Ruth M.

On December 16, 2017, WCPD Corporal Josh Neiheisel interviewed Ruth M. telephonically. The interview was recorded. Ruth M. stated that on December 15, 2017, she was driving northbound on Glendora Avenue, and was stopped at the limit line in the left-hand turn lane to negotiate a turn onto Cameron Avenue. No vehicles were in front of her. She heard sirens to her left. She looked left and saw a white minivan driving eastbound on Cameron Avenue toward the Vons grocery store. Ruth estimated the minivan to be traveling at approximately 70 miles per hour. Ruth saw the minivan drive into westbound lanes of traffic and make a left turn into the Vons parking lot driveway on Cameron Avenue.

Ruth watched the minivan drive through the parking lot then exit onto southbound Glendora Avenue. The minivan picked-up speed, traveling quickly, as it drove toward Cameron Avenue. As the minivan came close to the intersection, two men jumped out and fled eastbound. Ruth worried one of them might break a leg because the minivan was traveling so fast. She watched as one of them was apprehended on Cameron Avenue east of Glendora Avenue by several police officers.¹² Ruth did not see the other man again.

Ruth turned her attention toward the intersection, where she saw the minivan rolling southbound slowly through the intersection, and believed the minivan may have experienced mechanical failure. Ruth saw the vehicle collide with either the retaining wall or the light poles at the southwest corner of the intersection. Ruth saw police officers approach the car with guns drawn and order the occupant to exit the vehicle. Ruth said the driver did not appear to be coming out of the car. Ruth heard more than one rapid-fire gunshot. Ruth ducked to her right for several seconds until the shooting stopped. Ruth was certain the gunfire came from the police officer outside of the vehicle. Ruth saw officers closely approach the driver's side and contact the occupant. Ruth then saw two police officers bend over and speak with the person in the van. Paramedics arrived shortly thereafter, and police put yellow tape up around the area.

Statement of Martha O.

On December 18, 2017, Investigators Gunner and Jaime went to Martha O.'s residence and interviewed her regarding the officer-involved shooting on December 15, 2017. Martha was stopped at the light, eastbound on Cameron Avenue in the left turn lane, waiting to negotiate a turn to northbound Glendora Avenue. There were no cars in front of her.

Martha saw a man running eastbound on Cameron Avenue. He fell, then got up and continued to run. He fell again, and the police apprehended him. Another man started running westbound on Cameron Avenue. Martha heard two gunshots but did not see the shooting. Martha believed no one was injured. An officer arrested the man running westbound on Cameron Avenue.

¹² Ruth observed the apprehension of Mark C., given the location of apprehension and the number of officers Ruth observed involved.

Suddenly the minivan passed her and she felt a little bump to her car. The minivan collided with a pole at the gas station. Officers told her to move so she left.

Statement of Richard Franco

Richard Franco was interviewed at Pomona Valley Hospital shortly after midnight on December 16, 2017 by Investigators Gunner and Jaime. When asked repeatedly whether he remembered what happened, and what happened to him, he replied, “No sir.”

Statement of Mark C.

Mark C. was interviewed by Investigators Gunner and Jaime on December 15, 2017. He was in custody. Mark C. was asked to explain “what happened.” Mark C. stated, “I don’t even know what I’m here for,” “I don’t got nothin’ to talk about,” and “I seen the cops I got out and ran.” Mark C. denied having any information about a burglary, stating, “I don’t know nothing about no attempted burglary.” Mark C. then stated, “I don’t want to talk no more...I’m not explaining nothing.” Mark C. asked to go to his cell and the interview was terminated.¹³

Statement of Demetrius G.

Demetrius G. was interviewed by Investigators Gunner and Jaime on December 15, 2017. Demetrius G. was in custody. The interview was audio-recorded. Demetrius G. denied knowing the driver of the minivan. Demetrius G. stated that he only knew one person in the car, “Mark,” who he had met through his girlfriend, Kimmy G., who sold marijuana to Mark and his friend (Franco). Demetrius G. stated he got into the car right before the police pulled behind them. As Demetrius G. was speaking to the investigators, Mark C. yelled at Demetrius G. from down the hall where he was seated, “Shut your ass up Demetrius G.!”

Demetrius G. then admitted that they went to a house before the police pulled behind them, but said that he stayed in the vehicle. When asked what he saw, Demetrius G. stated, “I just seen money change hands...” Demetrius G. then changed his statement, saying, “I went to the door, and he came to the window, yeah, that’s about it.” Demetrius G. again changed his statement, saying, “I came to the window, he came out to the window...talked to him. I don’t know...I don’t know what’s goin’ on.” Demetrius G. told investigators that Franco was armed with a hammer when Franco approached the house.

Demetrius G. further stated, “And then what happens when the cops try to stop you? I don’t know what happened with that. Richard, I don’t know...he took off. I tried to, hey, I told him to stop. He stopped, and then he took off again. I don’t know if he had a license or not. I don’t know what’s going on with that...[H]e drive off, the police was chasing us or whatever [unintelligible] I jump out I lay on the ground...I was the first to jump out and lay on the floor...I had on a stocking cap...they came and they say I was resisting...I don’t know about no resisting man, cause out here [unintelligible] guy like me trying to resist man...I don’t fight the cops...I got hurt when the cop smacked the car and I hit my head on the car before I got out and laid on the ground...police

¹³ Mark C. died in 2018. His death was not related to this incident.

rammed his car into the car before I could get out...I didn't want them to shoot me so I laid on the floor." When asked whether there was any doubt that the police were trying to stop the car, Demetrius G. stated, "I put my hands out the car, and then I just know this—we started up again and then I'm like, 'Oh my God!' I was like, you know I was gonna get out right there, and but I didn't want to be just like 'Oh fuck, they got their guns out on me already too...in the Vons...I was telling him already to stop, just stop, but...and then I get out the car...'"

Demetrius G. was not asked about any observations he made, if any, of the officer-involved shooting.

Video Evidence

No officer was equipped with body worn video. No unmarked police vehicle was equipped with a DICVS recorder.

Weathermon's vehicle had a DICVS that recorded video and audio. The recordings are consistent with his statement.

Weischedel's black and white patrol vehicle was equipped with a DICVS that recorded Weathermon's attempted vehicle stop and vehicle pursuit, but did not record the officer-involved shooting.

Cuellar's black and white patrol vehicle was equipped with a DICVS that recorded the time period, but did not record the officer-involved shooting.

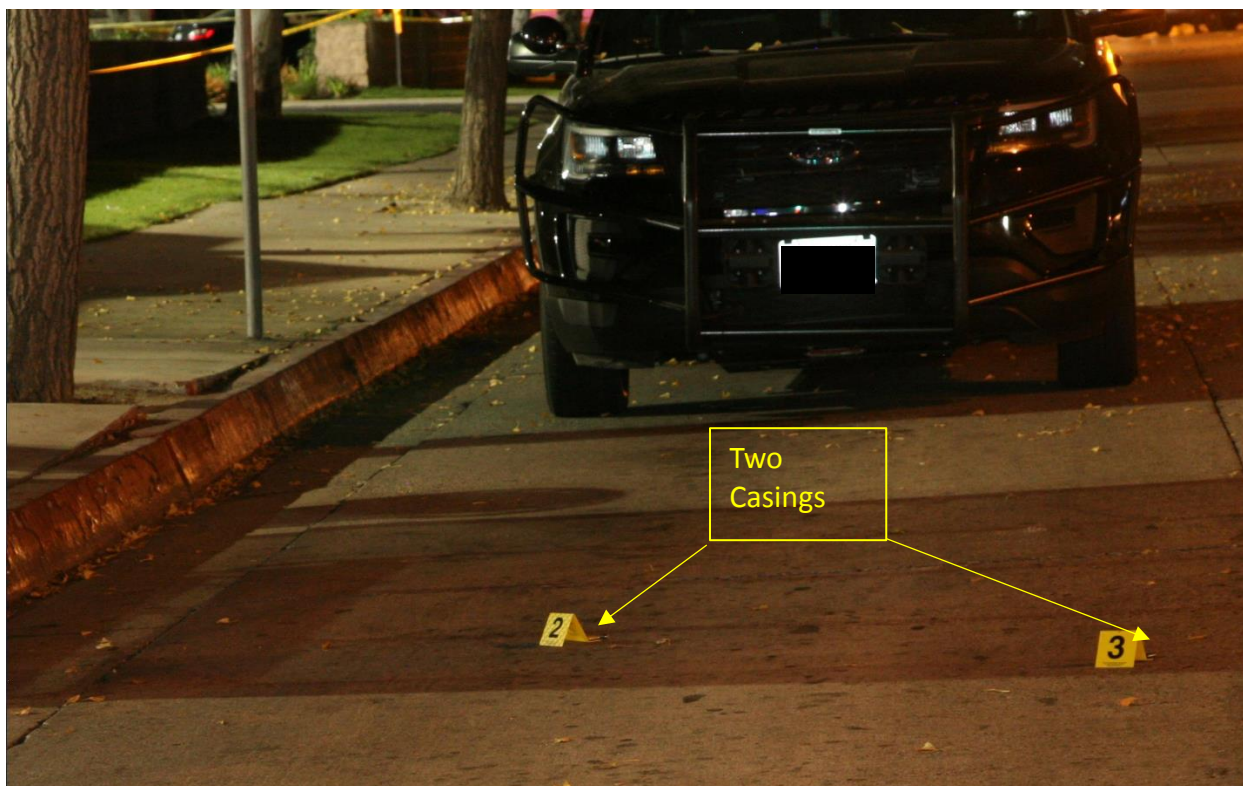
The CVS and Chevron had multiple exterior surveillance cameras that did not capture the officer-involved shooting due to distance and angle.

Physical Evidence

Weathermon was armed with his department-approved Glock, Model 17, 9mm semiautomatic handgun. The maximum capacity for this handgun is 18 cartridges. After the shooting, the handgun and magazine were loaded with 16 cartridges.

Two expended 9mm cartridge casings were recovered from the west side of Glendora Avenue, north of Cameron Avenue, in the street in front of Weathermon's vehicle.

One expended round was located inside of the left-side top of the driver seat of the minivan a few inches from the headrest.



Two expended 9mm cartridges were found in the street on Glendora Avenue in front of Weathermon's vehicle.

A claw hammer and a metal crow bar were found inside a tool bag located behind the driver's seat of the minivan.

LEGAL ANALYSIS

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." 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. "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; People v. Jackson (1965) 233 Cal.App.2d 639; *see also* Reese v. Anderson (5th Cir. 1991) 926 F.2d 494.¹⁴

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; *see also* 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.

According to California law, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger, and 3) he used no more force than was reasonably necessary to defend against that danger. When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed. CALCRIM NO. 3470.

A "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." Plumhoff v. Rickard (2014) 572 U.S. 765, quoting Scott v. Harris (2007) 550 U.S. 372, 385. Where the officer has probable cause believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. Smith v. Freland (6th Cir. 1992) 954 F.2d 343.

CONCLUSION

The evidence examined in this investigation shows that on December 15, 2017, Franco, Mark C. and Demetrius G. were in a vehicle with a similar vehicle license plate description of that used in an attempted residential burglary with a person present while armed with a weapon—possibly a hammer. Weathermon came upon the three in the minivan as he was driving toward the involved residence shortly after being dispatched to respond. Weathermon did not attempt a vehicle stop until additional officers were present.

Weathermon suspected that the occupants of the vehicle had just committed an attempted residential burglary of the reporting party's residence, and Weathermon was lawfully attempting to detain

¹⁴ In *Anderson*, a policeman stopped a car after a high-speed chase. He ordered those inside the car to raise their hands, but one suspect reached below the officer's sight line at least twice. The officer shot and killed the suspect. The Fifth Circuit held that the officer could reasonably have believed that the suspect had retrieved a gun, finding it irrelevant that the suspect was actually unarmed, as the officer did not and could not have known this.

them. Further, Weathermon had reasonable grounds to believe that Franco was armed with a hammer.

Franco engaged in driving behavior that was extremely dangerous to the public by fleeing at a high rate of speed. Franco drove approximately 80 to 90 miles per hour on a street with a speed limit of 40 miles per hour. Franco failed to stop for a red light at California Avenue. Franco drove through the red light, without braking, at approximately 70 miles per hour. In doing so, Franco almost collided with another vehicle.

Franco continued to drive at high speeds as he entered a busy Vons parking lot. Franco narrowly missed colliding with an SUV negotiating a left turn from the same driveway. Franco continued at a high rate of speed through the Vons parking lot filled with vehicular and pedestrian traffic. Weathermon saw a person tumble to the ground from or near the car. Weathermon believed that Franco had already seriously injured that person.

Franco exited onto Glendora Avenue, where he again drove at a high rate of until his minivan was blocked from forward movement by vehicles waiting at a red light. Instead of submitting to Weathermon, who was pursuing close behind him, Franco veered into an occupied lane of traffic. Weathermon believed Franco had collided into the stopped vehicles. Weathermon believed that Franco was attempting to maneuver through traffic to flee from the pursuing police. Weathermon intentionally collided with the rear of Franco's vehicle so as to block Franco's ability to reverse, reposition and flee.

Weathermon exited his police vehicle and ran up to Franco's window with his service weapon pointed at Franco, in an attempt to stop Franco from continuing to drive in a manner that placed other innocent people or other police officers in danger of death or serious bodily injury. Upon reaching Franco's open window, Weathermon yelled, "Put your hands up!" Franco ignored Weathermon's commands. Instead of complying, Franco looked down and to the right, and simultaneously reached under and alongside his seat with his right hand. Weathermon, who saw Franco's movements and the vehicle shaking violently, again yelled, "Get your fuckin' hands up!" Franco refused to comply and continued to reach under and to the side of his seat with his right hand. Franco then began to accelerate quickly and steered the vehicle to the right.

Based on Weathermon's training and experience, he believed that Franco was reaching for a gun or other weapon. Weathermon feared for his life. In response, Weathermon fired his handgun twice in self-defense.

We find that there is insufficient evidence to prove beyond a reasonable doubt that Corporal Michael Weathermon was not acting in lawful self-defense when he used deadly force against Richard Franco. We are closing our file and will take no further action in this matter.