

**Non-Fatal Officer Involved Shooting of Frank Summage
Los Angeles County Sheriff's Department**

Deputy Francisco Velazquez, #627604

J.S.I.D. File #20-0019



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Justice System Integrity Division

April 5, 2023

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
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Homicide Bureau
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-fatal Officer Involved Shooting of Frank Summage
J.S.I.D. File #20-0019
L.A.S.D. File #019-03427-2799-399

DATE: April 5, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 31, 2019, non-fatal shooting of Frank Summage by off-duty Los Angeles County Sheriff's Department (LASD) Deputy Francisco Velazquez (Velazquez). We conclude that the evidence is insufficient to prove beyond a reasonable doubt that Velazquez did not act in lawful self-defense.

The District Attorney's Command Center was notified of the shooting at approximately 6:30 a.m., on December 31, 2019. The District Attorney Response Team (DART) responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, medical reports, crime scene diagrams and sketches, photographic and video evidence, witness statements submitted by LASD Homicide Sergeant Marvin Jaramilla and Detective Timothy Ruggiero, and witness statements obtained by District Attorney's Office personnel. There is no body worn video of the incident because Velazquez was off-duty.

FACTUAL ANALYSIS

On December 31, 2019, at approximately 5:08 a.m., [REDACTED] ([REDACTED]) exited her residence to go to work. As she opened the driveway gate, she observed that the window was open on her husband Velazquez' Toyota Celica parked on the north side of the street. [REDACTED] believed that someone had tampered with the car because it was locked with windows rolled up the night before. She reported her observations to Velazquez and waited for him to come downstairs from their apartment.



Figure 1: Velazquez' car depicted at the location of the shooting.

Velazquez, who was off duty and out of uniform, armed himself with a Smith & Wesson 9mm M&P Shield semiautomatic pistol before going outside to investigate. As he approached the car, Velazquez noticed the “for sale” sign had been removed from the front windshield and placed over the open driver’s window. Through the side view mirror, Velazquez could see Summage seated inside the vehicle and said to [REDACTED], “Someone’s in the car.” Velazquez told responding officers that he found Summage asleep in the reclined driver’s seat.

Velazquez opened the driver’s door¹ and told Summage to show his hands. There is no indication that Velazquez identified himself as a peace officer prior to the shooting. Rather than comply, Summage lunged towards Velazquez. [REDACTED] saw Summage’s upper body move towards Velazquez who stood in the car doorway but said Summage’s body did not come out of the car. Fearful of the sudden movement, [REDACTED] turned her back and began to cross the street. Velazquez discharged a single round from his pistol, striking Summage in the upper left shoulder. When asked by a responding LAPD officer whether the gun was inside or outside the car at the time of the shooting, Velazquez said that the gun was outside. Asked if his gun crossed the window during the shooting, Velazquez said he did not know. Velazquez did not see anything in Summage’s hands. [REDACTED]’s back was turned when the shooting occurred. She heard, but did not see the shooting.

Velazquez maintained a web-based cell phone camera system in a room overlooking the street. Velazquez gave consent to investigators to obtain the security system and stored recording files. The video was stored by directly recording to a cloud account managed by a third-party company. A search warrant was obtained and served upon the company, which provided the recorded video files to LASD technicians. The video recording system appeared to be motion-activated and was not set to continuously record. The shooting was not captured, but several clips were extracted that show the moments immediately after the shooting. In the first clip, the

¹ [REDACTED] did not provide this detail during her initial statement at the scene but mentioned it during a recorded interview several days later. Velazquez did not tell [REDACTED] whether he opened the car door.

car door is seen in the open position with Velazquez and [REDACTED] standing nearby. Subsequent clips depict Summage seated on the curb to the rear of the car.



Figure 2: This cell phone security video depicted Velazquez and [REDACTED] standing close to the car in the moments after the shooting. Inset from the other camera shows Summage in the driver's seat with one foot out of the car.

After firing his handgun, Velazquez asked Summage if he was hit. Summage responded that he had been struck in the shoulder. [REDACTED] called 9-1-1 but was too shaken to speak. She placed the phone on speaker so Velazquez could communicate. Velazquez requested paramedics respond to the location. The operator also notified the Los Angeles Police Department (LAPD), who responded. LASD responded after being notified by Velazquez and LAPD of Velazquez' involvement.²

Velazquez pulled Summage from the car, examined him for injuries, and seated Summage on the curb directly behind the car. Velazquez told officers at the scene that Summage admitted breaking into the car, adding that it was his "last car for the night." Velazquez subsequently declined to provide a voluntary statement to investigating officers.

Los Angeles Fire Department paramedics responded to the scene, rendered first aid, and transported Summage to Cedars-Sinai Medical Center (CSMC). Hospital medical reports noted [x-ray results showing] the presence of small metallic fragments in Summage's humeral neck indicative of a gunshot wound. Medical records did not explain how these fragments migrated from the shoulder wound. A photograph of Summage's injury showed a front and back bandage, suggestive of a through-and-through wound. Summage was cleared to book and discharged from CSMC the same day.

Investigators interviewed Summage after the incident. Summage's account was disjointed and incoherent. He said that he was dropped off in the area by someone else and that he went to the location to pick up a car left behind by his brother, who allegedly went to jail. Summage stated that he put his hands up when told to do so and was shot.

A spent shell casing was recovered near the fence at the foot of the embankment on the north side of the street. The shell casing was later determined to have been fired from Velazquez' firearm. Two bullet fragments fell from the driver's seat upholstery to the rear floorboard when a technician manipulated the seat during evidence collection. These fragments were not

² LASD Homicide assumed responsibility for the OIS investigation based on agreement between the two agencies.

sufficient for ballistic analysis. A bullet hole was clearly visible in the upholstery on the upper portion of the driver's car seat.



Figure 3: Bullet hole in the upper part of the driver's seat is bounded in red.

No weapons were found either on Summage or in the car. A pair of pliers was found in the street not far from the driver's side door of the Celica. [REDACTED] indicated that the window levers inside the car were broken and that pliers were used to roll down the windows. She was not sure whether the pliers recovered from the street were the same pair her husband used, or another pair brought to the scene by Summage.

Background of Frank Summage and Subsequent Interview

Summage was arrested for [REDACTED]), but the case was not presented to the District Attorney's Office for filing. Summage has one prior felony conviction for a [REDACTED]. While that case was pending, Summage was found incompetent to stand trial. Upon restoration of his competency, [REDACTED]. Confidential records and reports developed during Summage's competency proceedings indicate Summage [REDACTED] s.

On November 16, 2022, Summage was interviewed by District Attorney's Office [REDACTED]. During this interview, Summage recounted the events of the day he was shot. He said he arrived at the car between 3:00 to 4:00 p.m. (December 30, 2019; the shooting occurred the following morning) after having previously spoken with the owner of the car that he would "check out" the car, which was for sale. He said he sat inside the car for five to eight minutes with the door closed when three or four men – two whites and a Hispanic, who was the one who shot him – approached. Summage said nothing was said before he was shot through the open window of the

closed driver side door. Minutes later during the interview, Summage said the male Hispanic shooter told him he “found Killa,” which Summage believed was a gang-related reference to Summage’s brother. Summage also said the door was opened by the shooter before he was shot.

LEGAL ANALYSIS

Witness Competency and Credibility

In weighing the facts of a case and determining whether guilt has been proven beyond a reasonable doubt, the jury must assess the value and credibility of the testimony of percipient witnesses. CALCRIM 226 instructs as follows:

In evaluating a witness's testimony, you may consider anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are:

- How well could the witness see, hear, or otherwise perceive the things about which the witness testified?
- How well was the witness able to remember and describe what happened?
- What was the witness's behavior while testifying?
- Did the witness understand the questions and answer them directly?
- Did the witness make a statement in the past that is consistent or inconsistent with his or her testimony?
- How reasonable is the testimony when you consider all the other evidence in the case?
- Did other evidence prove or disprove any fact about which the witness testified?
- Has the witness been convicted of a felony?

CALCRIM 226. Summage’s behavior and responses to questions during interviews show significant variations in his recollection of the events in this incident. This is supported by [REDACTED] [REDACTED] competency proceedings in his unrelated felony vandalism case. Testimony he provides about the incident could be viewed skeptically by a jury. When asked to recount the incident during the November 16, 2022, interview, Summage, in the span of minutes, modified an earlier assertion that nothing was said to him before he was shot, to one indicating that the shooter made reference to finding Summage’s brother.

A prosecution for assault against Velazquez would depend heavily on eyewitness accounts of the incident with details of who was present, what was said, and what movements occurred at various points in time. A jury would likely not find Summage’s testimony to be reliable, forcing reliance upon the version of events provided by Velazquez and [REDACTED].

Spousal Testimonial Privilege

█ could not be compelled to testify about the incident because she and Velazquez are married. Evidence Code § 971 provides as follows:

Except as otherwise provided by statute, a married person whose spouse is a party to a proceeding has a privilege not to be called as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege under this section unless the party calling the spouse does so in good faith without knowledge of the marital relationship.

None of the exceptions to this privilege listed in Evidence Code § 972 apply. █'s prior statements during the investigation of this incident are hearsay. Without her live testimony, none of █'s observations would be admissible evidence.

Law of Self-Defense

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal. 4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal. 4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal. 4th 1073, 1082; *see also*, CALCRIM 505.

In protecting oneself or another, a person may use all the force which that person believes reasonably necessary and that 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 3470; *See also* CALCRIM 507. If the person's beliefs were reasonable, the danger need not actually exist. *Id.*

When two or more reasonable conclusions can be drawn from the same circumstantial evidence, one of which points toward innocence and the other towards guilt, the jury must accept the conclusion pointing towards innocence. *See* CALCRIM 224 and 225.

Evidence in this investigation indicates that Summage broke into Velazquez' car and went to sleep in the driver's seat. Summage was not in possession of any weapons, and none were found in the vehicle after the shooting. Velazquez ordered Summage to show his hands, but was startled by a perceived, sudden, and aggressive movement by Summage. Velazquez thereupon shot Summage once in the shoulder. Summage stated that he showed his hands. █ did not see Summage's body leave the car. The evidence is consistent with Summage having been shot while sitting down and raises a legitimate question about whether deadly force was warranted.

Although Velazquez told officers on scene that he could not see anything in Summage's hands, there was evidence that the car had been broken into, giving rise to an inference that Summage possessed some type of tool or weapon. A perception of danger will suffice if the danger is one that

a reasonable person would believe presents a likelihood of death or great bodily injury. *People v. Toledo* (1948) 85 Cal.App.2d 577. These facts furnish evidence from which a reasonable juror could draw an inference that points towards innocence. In addition, after discharging a single round, Velazquez quickly reassessed the situation and transitioned to rendering aid to Summage – facts that bolster an argument that Velazquez used no more force than necessary.

CONCLUSION

Based on the evidence presented, we find the evidence insufficient to prove beyond a reasonable doubt that Deputy Francisco Velazquez used unlawful deadly force against Summage.