

Fatal Officer Involved Shooting of Lazzeri James Frazier

Los Angeles Police Department

Detective Michael Whitney #37517

J.S.I.D. File #19-0436



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

April 25, 2022

MEMORANDUM

TO: CAPTAIN RICH GABALDON
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Fatal Officer Involved Shooting of Lazzeri James Frazier
J.S.I.D. File #19-0436
L.A.P.D. File #F049-19

DATE: April 25, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 16, 2019, fatal shooting of Lazzeri James Frazier by Los Angeles Police Department (LAPD) Detective Michael Whitney. We have concluded that Whitney's use of deadly force was reasonable in self-defense and in the defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 11:28 a.m. on October 16, 2019. 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.

The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, crime scene diagrams, photographs, video evidence, an autopsy report and witness statements submitted to this office by LAPD Force Investigation Division (FID). Whitney's compelled statement was considered as part of this analysis.

FACTUAL ANALYSIS

On Wednesday, October 16, 2019, at approximately 6:00 a.m., LAPD Gang and Narcotics Division (GND) personnel conducted a surveillance on Lazzeri James Frazier, who was wanted for a murder that took place on October 14, 2019. In addition to the murder, Frazier was also wanted for an armed robbery that took place on October 15, 2019.¹ Prior to conducting the surveillance operations, all members of the surveillance team were provided with a booking photo of Frazier, a still from one of the surveillance videos, a physical description and a summary of Frazier's criminal history. All members of the team were dressed in plain clothes and driving unmarked police

¹ Frazier was captured on video surveillance during both the murder and the robbery. In each, he was carrying a distinctive yellow backpack and armed with a handgun.

vehicles.² A black and white patrol vehicle and uniformed officers were assigned to assist if needed to effectuate Frazier's arrest.³

The initial plan was to set up surveillance around Frazier's apartment building, monitor the area for any sighting of him and arrest him should he exit the building.⁴ Detectives were attempting to avoid a situation where Frazier could potentially barricade himself in the building or take a hostage given the fact they were aware he was in possession of a handgun the previous day. An arrest warrant was being obtained to allow them to enter the building should Frazier be seen in the building but not exit the apartment.

At approximately 9:00 a.m., Detective Antonio Lopez observed the blinds inside Frazier's apartment window move. This information was broadcast to the members of the surveillance team. Approximately 20 minutes later, Lopez saw the blinds and window of the apartment opened from the inside. Using binoculars, Lopez was able to identify Frazier approaching the window four times.⁵ He noted that Frazier was shirtless and had a red scarf around his neck. A few moments later, Frazier exited the front door of the apartment building and began walking north along the west sidewalk of Kester Avenue toward Burbank Boulevard. Lopez broadcast this information to the other members of the surveillance team.

Vela heard that Frazier was approaching Burbank Boulevard and directed Villegas to drive their patrol vehicle toward Frazier and attempt to make contact before Frazier reached a shopping center located on the southwest corner of Burbank Boulevard and Kester Avenue. Vela exited the vehicle and immediately observed Frazier reach into his left front pant pocket and remove a gun. Frazier turned away and began running southbound on Kester Avenue. Frazier moved the gun from his left hand to his right as he ran. Vela and Villegas initiated a foot pursuit of Frazier. Other detectives also observed these actions and broadcast that Frazier was armed with a gun.

Whitney heard the broadcast that Frazier exited the apartment building, donned his LAPD issued tactical vest and armed himself with a M4 Benelli shotgun before driving to Kester Avenue where he pulled his vehicle over to the east side curb north of Clark Street.

As Whitney waited in his vehicle, he observed Vela and Villegas' vehicle traveling south on Kester Avenue from Burbank Boulevard with the overhead lights activated. Whitney simultaneously heard a broadcast that Frazier was running south and had a gun. Whitney drove north on Kester Avenue. When he got approximately 20 to 30 yards from the entrance to Frazier's apartment, Whitney observed Frazier running south at full speed on the west sidewalk with a small black pistol in his hand.

Whitney drove across the southbound lanes of Kester Avenue, stopped and parked his vehicle at a 45-degree angle facing the front entrance of Frazier's apartment building and exited his vehicle. As

² None of these officers had Body Worn Video (BWV) and none of their vehicles were equipped with video cameras.

³ Officers Arturo Vela and Jose Villegas manned the marked vehicle. Both were wearing full LAPD uniforms. Their vehicle was equipped with a video camera. Each officer was equipped with BWV which was activated and captured a portion of the incident.

⁴ The building was located on Kester Avenue in the City of Van Nuys.

⁵ Lopez confirmed it was Frazier based on tattoos and a bleached patch of hair above his left temple.

he stood next to the driver's side door of his vehicle, he observed another man standing in the grass area, just south of the apartment building's main entrance. Whitney became concerned the man could be taken hostage by Frazier, and identified himself to Frazier as police.⁶ Frazier looked at Whitney while holding the gun in his right hand, then raised the gun in Whitney's direction.

Fearing for his safety, Whitney fired one shotgun round at Frazier. After he fired the shot, Whitney observed Frazier stumble forward and fall onto the sidewalk. Frazier was still holding the gun in his right hand. Whitney could see Vela and Villegas running toward Frazier from the north in his peripheral vision. Whitney took two to three steps forward in an effort to get a better look at Frazier's actions. Frazier was still moving with the gun in his hand and seemed to be attempting to sit up. Whitney realized Frazier's gun was pointed in Vela and Villegas' direction. Fearing for their safety, he fired a second round.

The second shot did not appear to have any effect on Frazier, who continued pointing his gun towards the approaching officers. Whitney fired a third round which struck Frazier's back and caused him to collapse onto his left side.⁷

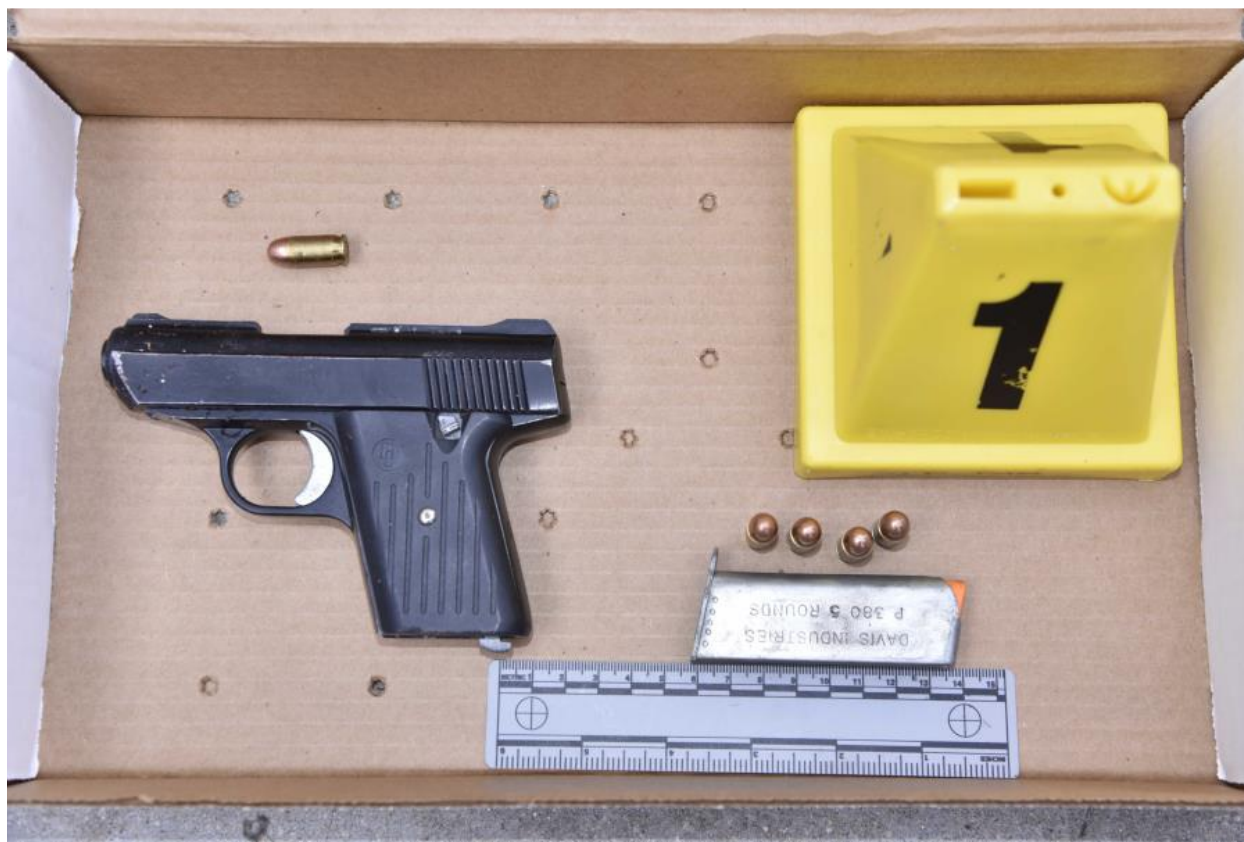


Still shot from video of Whitney and Frazier's positions after the officer-involved shooting.

⁶ This witness was later interviewed by investigators. He heard Whitney issuing commands and gunshots, but did not see the officer-involved shooting. The witness did observe a black item in Frazier's hand, which was later identified as a gun.

⁷ Vela's BWV captures his approach. Vela could see that Frazier still had the gun in his hand even after he collapsed. The recovery of the weapon and Frazier's arrest are also captured on the BWV. KTTV Fox 11 Los Angeles news was in the area and captured a portion of Whitney's second and third shot as well as a shot fired by Frazier. The agency refused to provide the unedited footage, but did provide an edited clip to the investigators.

Whitney could no longer see Frazier's weapon at this point and did not know whether or not Frazier fired his weapon. Investigators subsequently determined Frazier did fire his weapon after Whitney's third shot.⁸ The firearm was recovered from near Frazier's body after officers removed the item from his hand.⁹ The weapon was determined to be a .380 caliber, semiautomatic Davis Industries pistol with one live round in the chamber and four live rounds in the inserted magazine. The cocking indicator was in the cocked position and the safety was off.



Weapon recovered from Frazier after the officer-involved shooting.

An autopsy was conducted on October 22, 2019. The cause of death was ascribed to multiple gunshot wounds to the torso. A toxicology screen done as part of the autopsy found Benzodiazepines, Cocaine and Metabolites, Fentanyl and Marijuana in Frazier's system at the time of his death.

⁸ KTTV Fox 11 Los Angeles news video captured Frazier firing one round from his gun. The gunshot can be heard on Vela's BWV. A spent casing from the weapon was recovered at the scene. Swabs taken also detected particles of gunshot residue on Frazier's hands, consistent with him having handled and fired the weapon.

⁹ This action was observed by two civilian witnesses who were looking down on the location from second floor apartment units. Neither of the witnesses were able to see Frazier's actions prior to the shooting. Other witnesses heard the gunshots but did not observe the officer-involved shooting.

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 § 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 No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

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.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

A person is not guilty of a crime if he commits an act under an honest and reasonable belief in the existence of certain facts and circumstances which, if true, would make such an act lawful. *People v. Raszler* (1985) 169 Cal.App.3d 1160, citing *People v. Osbourne* (1979) 77 Cal.App.3d 479. CALCRIM No. 3406.

"An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a person is charged an innocent act, has always been held to be a good defense." *People v. Lucero* (1988) 203 Cal.App.3d 1101.

In the instant matter, Whitney was aware that Frazier had been captured on video shooting and killing a man two days before this incident and committing an armed robbery the day before. When Whitney saw Frazier armed and running in an area where at least one civilian was present, he attempted to stop him by announcing police presence. Frazier's reaction in raising the gun and pointing it toward Whitney placed him in reasonable fear for his life. As such, his first shotgun round was reasonable in the exercise of self-defense. After the first shot, Whitney re-assessed and saw that Frazier was still moving with the gun in his hand. The gun was now pointed towards Vela and Villegas who were approaching on foot. Reasonably fearing for the lives of Vela and Villegas, Whitney fired another round. Whitney's second shot did not appear to strike or have any impact on Frazier. Whitney then fired a third time to stop the imminent threat. Whitney stopped firing his weapon once Frazier collapsed, although the gun was still in his hand as evidenced by Vela's BWV. Whitney's second and third shots were reasonable in the defense of others, and he ceased using deadly force as soon as the threat posed by Frazier ceased.

CONCLUSION

We find that Detective Whitney acted lawfully in self-defense and in the defense of others when he used deadly force against Lazzeri James Frazier.