

Non-Fatal Officer Involved Shooting of Abraham Esquivel
Los Angeles County Sheriff's Department

Deputy Juan Bendezu, #627977

J.S.I.D. File #21-0065



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

May 18, 2022

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
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Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Non-Fatal Officer Involved Shooting of Abraham Esquivel
J.S.I.D. File #21-0065
L.A.S.D. File #021-01842-0455-055

DATE: May 18, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 12, 2021, non-fatal shooting of Abraham Esquivel by Los Angeles County Sheriff's Department (LASD) Deputy Juan Bendezu. We have concluded that Deputy Bendezu acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting at 7:28 p.m. on February 12, 2021. The District Attorney Response Team 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 of witness interviews, photographs, radio traffic, and surveillance video submitted to this office by LASD Detectives Raymond Lugo and Leopoldo Sanchez. The voluntary statement of Deputy Bendezu was also considered as part of this analysis.

FACTUAL ANALYSIS

Summary

On February 12, 2021, at approximately 6:00 p.m., LASD Deputy Juan Bendezu was in uniform and on patrol in a marked patrol vehicle when he received a radio call that two other uniformed deputies, Jose Pena and Dylan Butler, were in pursuit of a reckless driver who was possibly DUI.

When the reckless driver turned a corner, Pena and Butler saw a black object fly out of the passenger side window. Pena and Butler thought the object could be a gun. A loaded 9mm handgun was later located in that area.

Bendezu joined in the vehicle pursuit. When the driver briefly yielded and started to exit his vehicle, Bendezu, Pena, and Butler recognized the driver as Abraham Esquivel, a known gang member nicknamed "Red" who Bendezu had recently arrested for being in possession of a firearm.

The deputies ordered Esquivel to put up his hands. Esquivel did not comply, re-entered his vehicle, and continued to drive away at high speed while running stop signs and red lights. Esquivel stopped again a short distance away, exited the vehicle, and ran with a black object, later determined to be a cell phone, in his hand. Butler yelled, "He has a gun!" Bendezu, who also believed Esquivel had a gun in his hand, chased Esquivel on foot and repeatedly ordered, "Red! Drop the gun!"

When Esquivel tried to enter the gate of a residence but was unable, he turned toward Bendezu, with the cell phone in his hand. Bendezu believed Esquivel had a gun and was going to shoot and kill him. Bendezu fired three rounds from his service weapon at Esquivel, striking him in the buttocks and thigh. Esquivel survived his injuries. Based on his actions in this matter, Esquivel was convicted of felony evading in case number VA155518 and is currently serving a prison term in Corcoran State Prison.

The Shooting Scene

The shooting scene is shown in the photographs below:



Figure 1- Photo of the shooting scene. The circled area depicts where Esquivel was struck by gunfire.



Figure 2- The shooting scene with Esquivel's cell phone circled in red.

The Gun

Prior to the deputy involved shooting, Esquivel threw a 9mm Glock handgun from his vehicle. It struck the street and went through a wrought iron fence. Those photos below show the firearm and where it was located.



Figure 3- Esquivel's 9mm handgun.

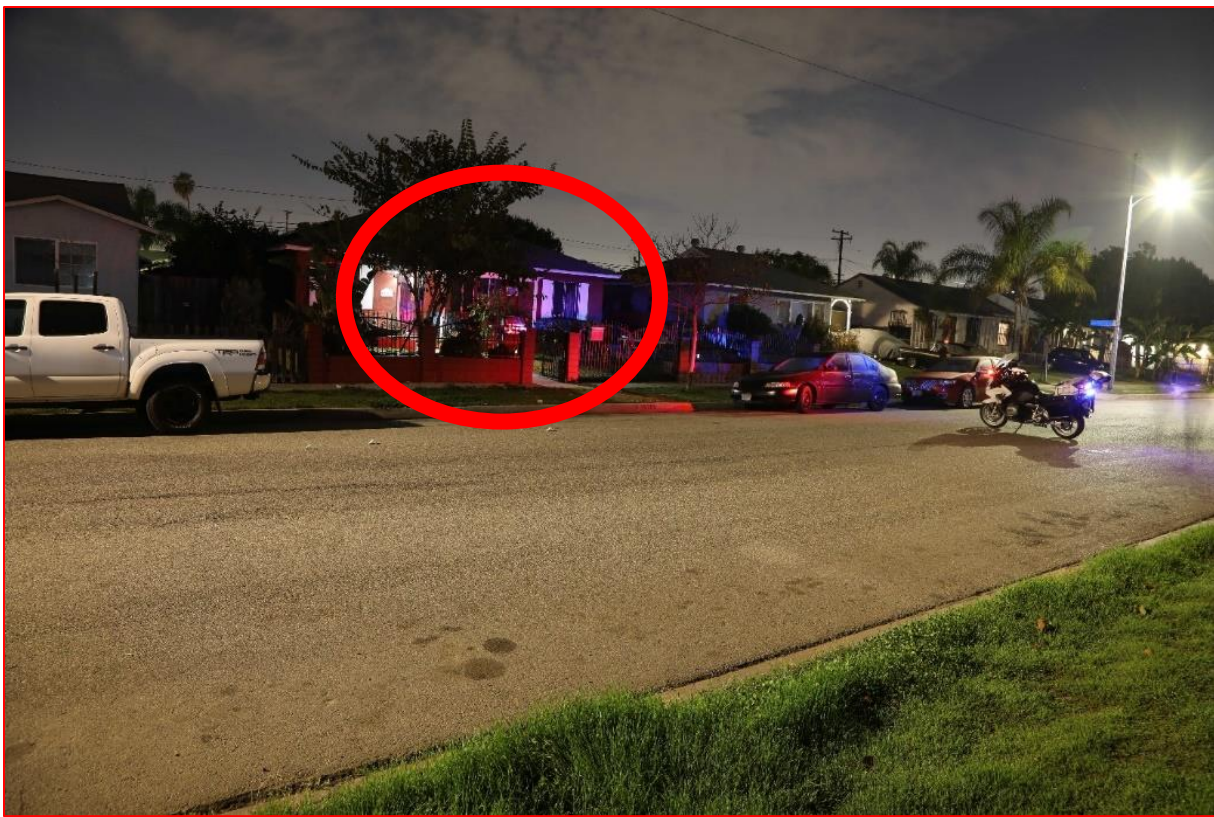


Figure 4- Area where Esquivel's gun was located, with gun parts and bullets in the street.

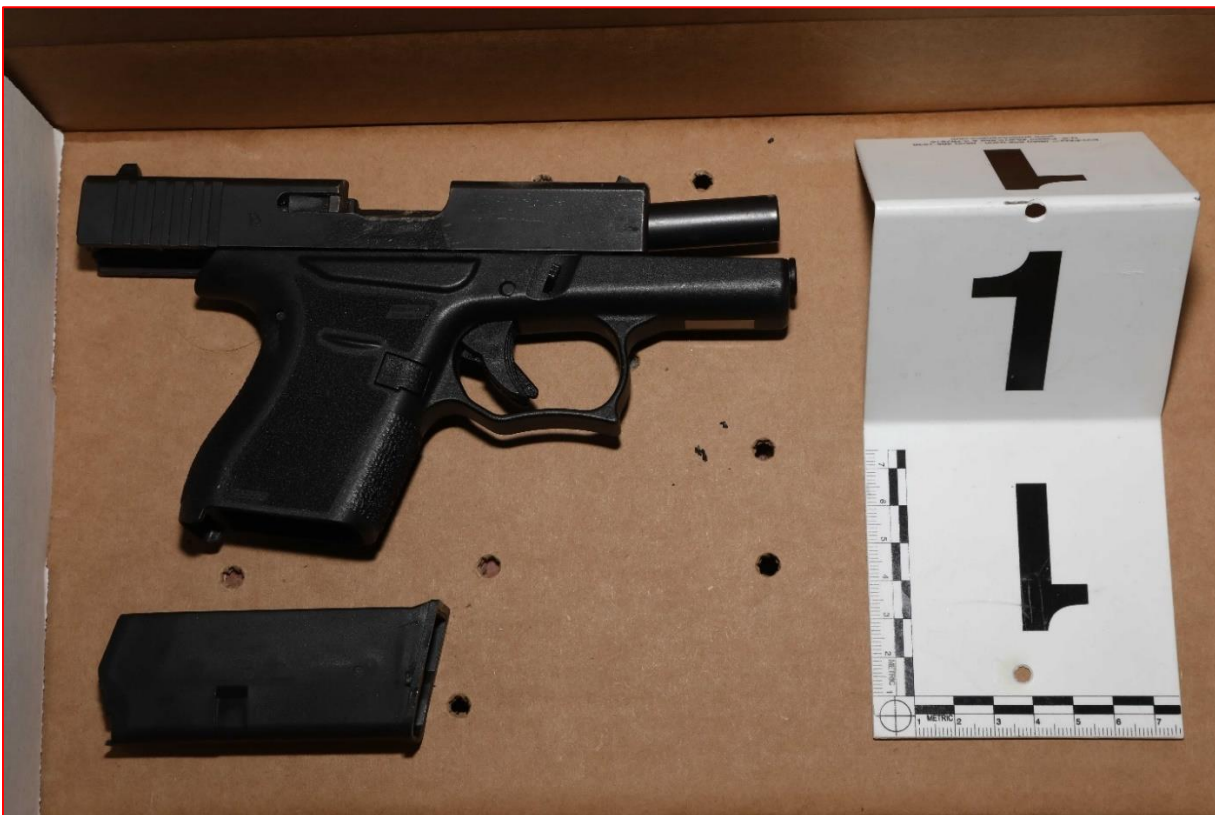


Figure 5- Esquivel's gun.

Radio Traffic

Butler and Pena broadcast that they were in pursuit of a reckless driver who appeared to be driving under the influence. Bendezu radioed he was enroute to assist. Sirens are audible on the recording and orders from the deputies can be heard but are not discernable. Bendezu reported he was in foot pursuit and a short time later he reported that a deputy involved shooting had occurred.

Approximately two minutes elapsed from the time Butler and Pena broadcast being in pursuit and when Bendezu reported the shooting.

There is no information discernible on the recording documenting that the deputies stated they were chasing an armed gang member.

DNA

DNA testing was conducted on the 9mm handgun located in the area where the deputies saw Esquivel throw a black object. The trigger/trigger guard, slide and frame, and grip of the gun were DNA tested and all contained Esquivel's DNA profile.

Fingerprints

The gun, live rounds, and gun parts were fingerprinted. No fingerprints were recovered.

Video Surveillance

Three cameras, without audio, captured Esquivel running from Bendezu. The shooting itself was not captured on video. A video of Bendezu chasing Esquivel is shown below:

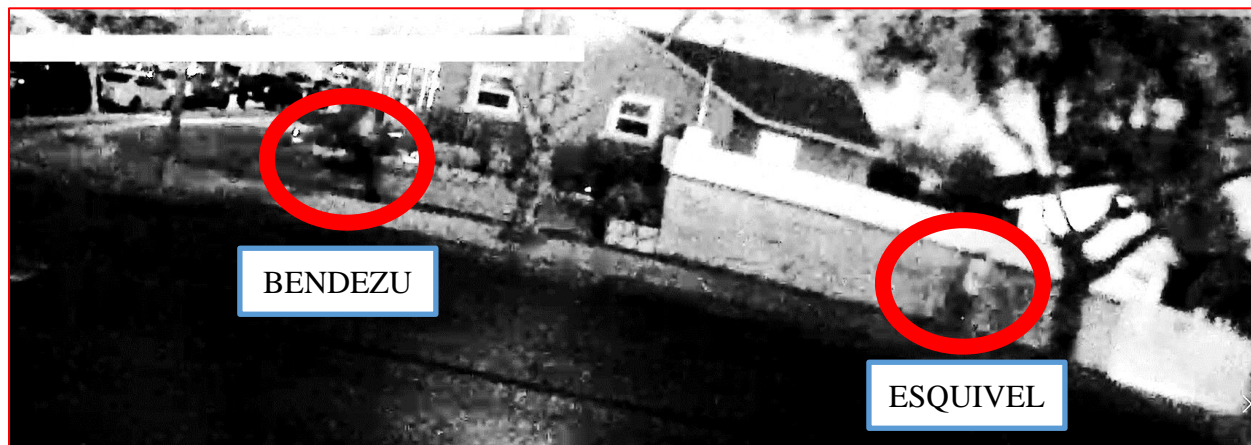


Figure 6- Video of Bendezu chasing Esquivel.

Injuries

Esquivel was shot in the left thigh and left buttock. He underwent surgery, a projectile was removed from his abdomen, and he survived his injuries.

Deputy Pena's Statement

Pena was on patrol, in uniform, and driving a marked black and white patrol car with his partner, Butler, who was also in uniform. Pena saw a speeding car run a stop sign. He followed and determined the driver was driving recklessly. He attempted a traffic stop and the car failed to yield and sped away. The car made a turn and Pena saw a black object come out of the passenger side window. Butler broadcast that they were in pursuit of a reckless DUI. During the pursuit the driver did not stop for any red lights or stop signs. The car suddenly stopped, and the driver emerged. Pena recognized the driver as a gang member named "Red" (Esquivel) who was arrested recently for being in unlawful possession of a firearm. The driver re-entered the car and sped away. A short time later, Esquivel stopped, exited the vehicle, and ran. Bendezu and Pena chased on foot. Butler yelled, "He has a gun!" Pena was approximately 40 to 50 feet behind Bendezu. Pena saw Bendezu on a sidewalk with his gun drawn and was yelling at the man, "Show me see your hands!" Pena could not see the man at that point. He could only see Bendezu holding the man at gunpoint, and he heard three gunshots. At the time of the shooting, Pena was not in a position to see the man. When he got closer he saw Esquivel on the ground.

Deputy Butler's Statement

Butler was on patrol with Pena when they attempted a traffic stop on a car that was speeding and ran a stop sign. The car sped away, turned a corner, and Butler saw an object thrown from the passenger window, followed by a loud noise. Butler could not visually identify the object, but he heard a heavy object impacting the ground or a parked car which led him to believe the object was a gun. The driver eventually stopped and placed a foot outside the car as if to exit. When he did so, Butler recognized the driver as a gang member named "Red" (Esquivel). Butler and Bendezu had recently arrested Esquivel for gun possession. As Esquivel was exiting the vehicle, Butler told Bendezu to use caution because Esquivel may have thrown a gun. Esquivel re-entered the car and drove away and the pursuit continued. Esquivel stopped again, exited the vehicle, and ran. Esquivel was holding a black object, which Butler believed was gun, near his waistband. Butler and Pena cleared Esquivel's vehicle and did not see any passengers. Butler, Pena, and Bendezu chased Esquivel on foot. Bendezu and Butler shouted commands at Esquivel to stop and drop the gun. Butler was 30 to 40 feet away from Bendezu. Esquivel turned into a driveway, out of Butler's view. Butler heard gunshots and was not sure if Bendezu or Esquivel had fired. He heard Bendezu on the radio advising that there had been a shooting. The deputies requested a ballistic shield be delivered to the scene as they did not want to approach Esquivel, who was on the ground, because they believed he was armed. They approached with the shield, handcuffed Esquivel, and Butler saw a black cell phone on the ground next to him. The fire department was summoned, and they provided medical care to Esquivel.

Abraham Esquivel's Statement

Esquivel was interviewed at the hospital. Esquivel said he was a gang member, was under the influence of methamphetamine at the time of the incident and fled from the deputies. He saw lights but did not hear sirens, knew the deputies were chasing him on foot, and had a cell phone in his hand when the shooting occurred. He denied throwing a gun from the vehicle. He fled because there had been a lot of shootings and he thought someone was chasing him. Esquivel said before he was shot the deputies were ordering him to keep his hands up and not move. He may have dropped his cell phone, and he did not remember turning toward Bendezu.

██████'s Statement

██████ told investigators he heard the shooting. He heard sirens and unintelligible screaming and yelling followed by commands for someone to put their hands up. Then he heard three to four gunshots.

██████'s Statement

██████ told investigators he heard the shooting. He heard unintelligible screaming and banging on a gate. ██████ next heard the "cops" yell, "Get your hands up!" Then he heard three gunshots. After the shooting he heard the deputies ask, "Where did you toss it?" He did not hear a response.

Deputy Bendezu's Statement

Bendezu was on patrol and responded with lights and siren to assist Butler and Pena in a pursuit involving a reckless driver who was suspected to be DUI. He joined the pursuit, saw the vehicle stop, and a man started to exit. Butler told Bendezu to be careful because he saw the driver discard a gun. The driver entered his car and the pursuit continued. The driver stopped the car again, exited, and ran. At that time, Bendezu recognized the driver as a gang member with the name "Red" (Esquivel) whom he had arrested four to five months prior for a gun violation.

Bendezu chased Esquivel. Bendezu saw that Esquivel had an object in his right hand, and Bendezu believed it was a gun. Bendezu was approximately 20 feet behind Esquivel and commanded him to stop and drop the gun. Pena and Butler were trailing behind and yelled, "Hey dude! Drop the gun! Drop the gun, Red!" Bendezu also yelled at Esquivel, "Red! Stop! Drop the gun! Drop the gun!" Esquivel continued to run.

Esquivel suddenly turned left into a driveway, holding something in his right hand, and was attempting to enter a gate. Bendezu pointed his service weapon at Esquivel and ordered him again to drop the gun. Bendezu ordered Esquivel, "Red! Red! Drop the gun! Drop the gun, dude! Let me see your hands!" Esquivel was unable to get through the gate and turned toward him with a hand near his waistband. When Esquivel turned, Bendezu thought Esquivel had the "jump" or "drop" on him (meaning Esquivel had a shooting advantage), and he believed Esquivel was going to shoot and kill him. It was a "shitty" feeling that gave him goosebumps. Esquivel made a quick movement from his right hand near his waistband and Bendezu saw a black object. Esquivel thought, "Fuck. He has me. He has the drop and I'm going to get shot." Bendezu yelled, "Oh shit! Gun!" Bendezu fired three rounds at Esquivel, saw him fall, and saw an object fall. When Esquivel was on the ground, Bendezu, Butler, and Pena held Esquivel at gunpoint and ordered him to show his hands. Butler and Pena checked Bendezu to see if he was shot. Esquivel kept reaching for the object he dropped. Bendezu told him, "Hey, Red. We're going to shoot you dude. Don't reach. Don't reach." Esquivel said, "Bro. I'm sorry. I'm sorry. It was just the phone. I fucked up. I'm sorry." Since the deputies believed that Esquivel might still be armed, they requested a ballistic shield and asked the fire department to stage nearby until they confirmed Esquivel was not armed. The deputies approached with a ballistic shield and took Esquivel into custody.

LEGAL ANALYSIS

The Law

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, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

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 to 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) and (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 that 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 on 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 is taken into consideration. Penal Code section 835a(a)(4) and (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).

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 with 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. "What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at p. 343 (quoting *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347).

Analysis

Esquivel was driving recklessly and evading the deputies. They had sufficient probable cause to arrest him for felony evading and reckless driving. The presence of uniformed deputies chasing Esquivel with lights and siren provided notice that Bendezu, Pena, and Butler were deputies who were investigating his activities. Esquivel also admitted he knew deputies were chasing him. Having just evaded the deputies and throwing a gun, and knowing the deputies were there, and then being ordered to stop by all three deputies, Esquivel had a duty to submit himself to their detention. He failed to do so.

In this case, Bendezu believed that his life was in imminent danger. Bendezu described Esquivel as presenting himself in a manner causing him to believe that Esquivel was pointing a handgun at him. Bendezu also knew that Esquivel was a gang member and that gang members often arm themselves. Bendezu actually knew that Esquivel had a gun in the past and may have also thrown a gun from his car during the pursuit. Bendezu saw a black object in Esquivel's right hand that Bendezu believed was a gun. Under the dim lighting conditions and rapidly unfolding circumstances, and based on Bendezu's prior knowledge of Esquivel arming himself, that belief was reasonable.

When Bendezu saw Esquivel make a sharp turn into the darkened corner of a driveway, Bendezu could see that Esquivel still had the object in his hand and then quickly turned toward him in a manner consistent with Esquivel turning and preparing to shoot. Bendezu and his partners had repeatedly ordered Esquivel to stop, show his hands, and drop the gun and he did not comply. The fact that Butler and Pena also believed that Esquivel was still armed corroborates Bendezu's observation and belief that Esquivel was armed.

Bendezu yelled repeatedly, "Red! Drop the gun!" When Esquivel turned toward him, Bendezu spontaneously yelled to his partners, "Oh shit! Gun!" These are the actions of an individual who actually believes he is faced with an imminent threat. The urgency of this exclamation manifests his belief that Esquivel had a gun in his hand. Believing Esquivel got the "drop" on him and was going to shoot and kill him, Bendezu fired three rounds at Esquivel.

Thereafter, Bendezu and the other deputies engaged in further activities consistent with their reasonable belief that Esquivel was armed. Within moments after firing, Butler and Pena checked Bendezu for injuries, thinking that Esquivel might have shot Bendezu. The deputies also deployed a ballistic shield to approach Esquivel, still believing he could be armed.

Finally, Esquivel's state of mind would be evidence available for a jury to consider in evaluating whether he acted in a manner consistent with the officers' descriptions and beliefs. Esquivel admitted he was under the influence of methamphetamine, which would have affected his judgment. He continued to flee from the deputies, despite their repeated commands to stop and comply, and given the circumstances of an active chase of a known and possibly armed gang member, this is reasonably seen by Bendezu as aggressive and threatening.

Under these circumstances, the evidence is sufficient to show Esquivel turned toward Bendezu, with a black object in his hand. The fact that the object was later determined to be a cellphone does not alter the reasonableness of Bendezu's decision.

CONCLUSION

Under these facts, Deputy Bendezu was reasonable in his belief that Esquivel had a gun and was about to shoot him. The law judges the deputy's actions based upon the reasonable perception of the threat. The evidence proves that Bendezu acted lawfully under the circumstances.