

Non-Fatal Officer Involved Shooting of Rolando Martinez
Monterey Park Police Department

Officer Stephen Giovanazzi, #375
Officer Delon Lam, #456

J.S.I.D. File #21-0360



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

June 28, 2023

MEMORANDUM

TO: CHIEF SCOTT WIESE
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Rolando Martinez
J.S.I.D. File #21-0360
M.P.P.D. File #21-00030885
L.A.S.D. File #021-00095-3199-055

DATE: June 28, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 3, 2021, non-fatal shooting of Rolando Martinez by Monterey Park Police Department (MPPD) Officers Stephen Giovanazzi and Delon Lam. We have concluded that there is insufficient evidence to prove that Giovanazzi did not fire his weapon in lawful self-defense. We have additionally concluded that Lam fired his weapon justifiably, reasonably believing that deadly force was necessary to defend against a threat of death.

The District Attorney's Command Center was notified of this shooting on September 3, 2021, at approximately 3:00 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department (LASD) Lieutenant Scott Hoglund.

The following analysis is based on video footage, including BWV and various surveillance cameras, witness interviews, preliminary hearing testimony, photographs, and ballistics and DNA evidence.

INTRODUCTION

On September 3, 2021, shortly before 1:00 p.m., Rolando Martinez drove a red SUV to his ex-girlfriend's residence, in violation of a criminal protective order. Martinez, holding a pistol at his side, angrily stood outside her residence and demanded to speak with her. Martinez left the

location after a short time, when she did not come outside. MPPD officers responded, interviewed multiple witnesses, and watched a video that shows Martinez holding a pistol.

Seeking to detain Martinez on suspicion of brandishing and being a felon in possession of a firearm, MPPD Officers Stephen Giovanazzi and Delon Lam, along with Detectives Brian Pflughoft and Guotao Zeng, responded to the area of Rowan Avenue and Cesar Chavez Avenue, in East Los Angeles, where Martinez was known to frequent. At about 1:50 p.m., Giovanazzi and Lam—who were in full uniform and driving separate marked patrol cars—spotted Martinez driving the red SUV and attempted a traffic stop on Rowan Avenue, near a Superior grocery store.

Video footage shows Martinez abruptly turned and parked his car in a driveway apron after the officers began following him. The two patrol cars parked behind Martinez. Martinez exited the SUV holding a pistol at his side. He walked a few steps away from the police cars, looked back, and began running away as Giovanazzi fired three rounds toward Martinez’s back, according to Giovanazzi’s testimony and video footage. Giovanazzi testified that he fired his weapon because he saw Martinez “turning” the gun “toward [his] direction” just before Martinez ran. Martinez was struck once in the left shoulder-tricep area but continued to flee still holding the gun. Officer Lam chased Martinez on foot. After running several dozen yards north, and crossing Rowan Avenue, Martinez turned in stride and fired five rounds at Lam, missing him, as Lam ran for cover next to a parked red Dodge Durango. In response, Lam fired three rounds at Martinez, missing him.

Martinez ran through an alley and onto Townsend Avenue. According to video footage, he appeared to attempt to force his way into a bystander’s Chevy Suburban, which was idling in the middle of the roadway. MPPD Detectives Pflughoft and Zeng arrived on scene and were able to apprehend Martinez after the Suburban sped away and knocked Martinez to the ground.

Investigators recovered video footage from Rowan Avenue and Townsend Avenue. It shows Martinez turn and point his pistol at Lam and, later, toss the gun before trying to enter the Suburban. A 9mm pistol with Martinez’s DNA on it was recovered on Townsend Avenue. Four casings found on Rowan Avenue ballistically matched the pistol. The rear of the Dodge Durango suffered several bullet impacts, and two fired bullets, sharing the rifling characteristics of Martinez’s gun, lay nearby.

Martinez is currently facing two counts of attempted murder, among other charges, in connection with this incident.¹

¹ Martinez has been charged in case number GA101808.



Figure 13: Aerial photo of the scene.

FACTUAL ANALYSIS

Brandishing Report

On September 3, 2021, at approximately 1:00 p.m., MPPD Officers Sandy Castillo Del Muro and Jeremy Orate responded to the residence of Martinez's ex-girlfriend, with whom Martinez was prohibited from having contact due to a criminal protective order. Witnesses on scene reported to the officers that Martinez arrived at the residence in a red SUV, stood outside the residence while holding a pistol at his side, and angrily yelled for his ex-girlfriend to come outside to talk with him. When she did not come outside, Martinez drove away about a minute after he had arrived. Officers recovered a video that shows Martinez holding a gun and yelling angrily. Most of his words are unintelligible. According to witnesses, and the video, he did not point the gun or issue any threats. However, officers were told that Martinez had in the past threatened to "shoot it out" with the police and to shoot his ex-girlfriend.

Video of The Incident

Multiple surveillance cameras, and Lam's BWV, capture portions of the officer involved shootings. Giovanazzi's BWV was not activated during the incident.²

² Footage from Giovanazzi's BWV depicts him driving to the scene of the incident, but before he arrives, he can be seen bringing his hand up to the camera and appearing to turn it off.

One camera at Superior grocery store captures an overhead view of Martinez's red SUV pulling into a driveway apron, which leads to a parking lot. Martinez exits holding a gun, looks back toward Giovanazzi's car, and walks out of view.

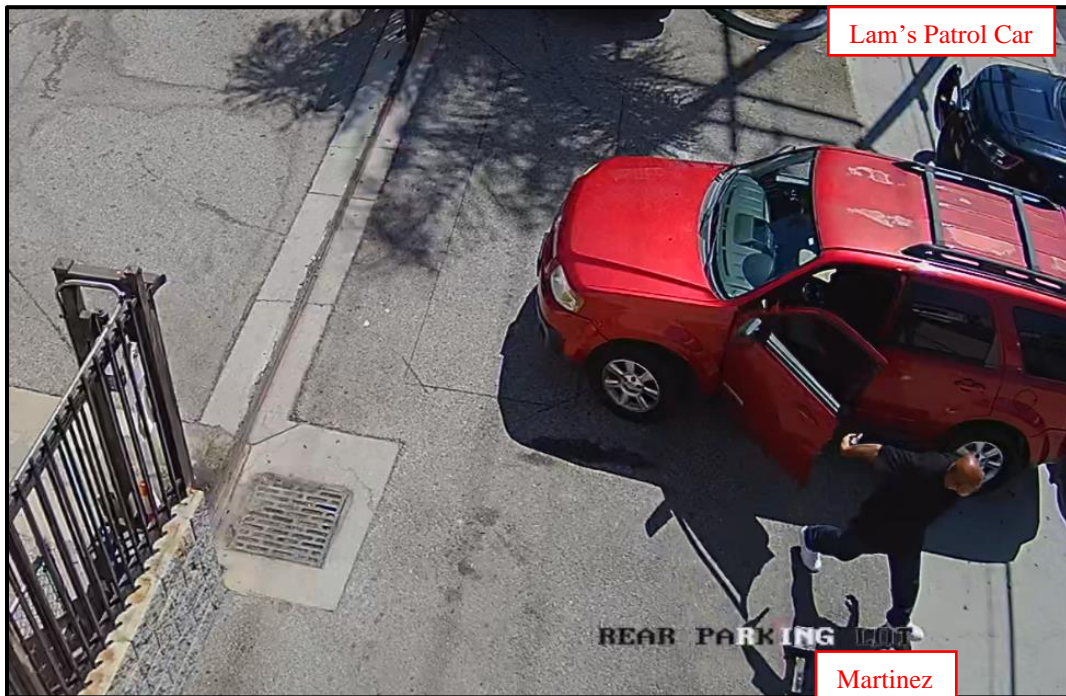


Figure 2: Video still showing Martinez exit the red SUV holding a pistol in his right hand.

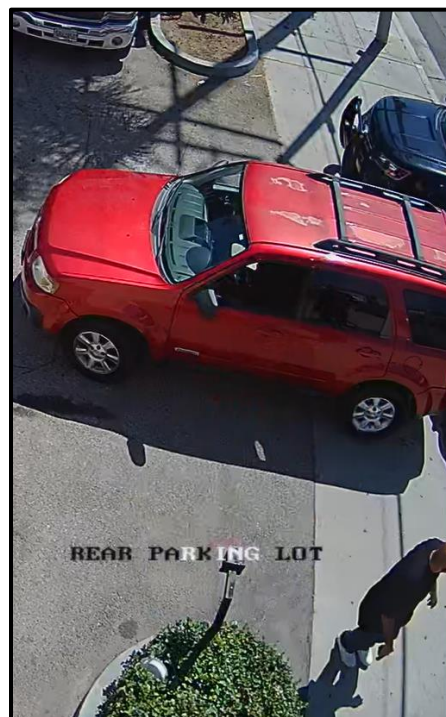


Figure 3: Video still showing Martinez looking back, apparently toward Giovanazzi.

A camera located across the parking lot shows the red SUV pull up, followed by Giovanazzi's and Lam's police cars, which park behind the SUV. Lam's emergency lights are illuminated. Martinez exits. He walks a couple of steps away from the police cars, appears to look back, then runs out of view as three gunshots are heard and someone yells, "Hey!" The video quality is poor and partially obstructed. It does not show who fires.



Figure 4: Video still showing Martinez walk away from the police cars (blocked by tree foliage).



Figure 5: Video still showing Martinez running at the moment of the first shot.

Lam's BWV shows him pull up alongside the red SUV, exit his patrol car, and yell, "Hey!" as three rapid gunshots are heard. Giovanazzi is faintly visible, seated in his patrol car's driver seat and appearing to point his service weapon at a fleeing Martinez's backside. The quality of the footage is poor because Lam is running and jostling the camera.



Figure 6: BWV still showing Giovanazzi appear to fire at Martinez.

Martinez runs diagonally across Rowan Avenue, chased by Lam. Martinez—still running—turns back toward Lam and multiple gunshots are heard. Lam appears to react by running for cover toward a parked red Durango SUV and fires several times in Martinez’s direction. Lam and Giovanazzi eventually walk to Townsend Avenue, where Pflughoft and Zeng are detaining Martinez. Martinez is yelling: “I just got out of the car, and he fucking shot me! ... He shot me! He didn’t say nothing!”

Similarly, cameras across the street from the grocery store³ show Martinez running from Lam, turning, and pointing a gun at him. Lam appears to flinch in response and run for cover by the Durango.



Figure 7: Video still showing Martinez run from Lam.

³ Footage from one of these cameras contained audio, but it was out of sync with the video and hence of limited value. The remaining footage did not contain audio.



Figure 8: Video still showing Martinez run holding a gun.



Figure 9: Video still showing Martinez pointing his gun at Lam, who flinches and runs toward the Durango.



Figure 10: Video still showing Martinez point his gun at Lam.

Other cameras show Martinez run out of an alley, onto Townsend Avenue, and around the front of a Red Chevy Suburban that is stopped in the roadway. An unmarked MPPD car pulls up and runs head-on into the Suburban at slow speed. Martinez walks to the Suburban's passenger side door and appears to try to open it. Detective Pflughoft exits the unmarked car's driver seat. He is wearing a tactical vest, marked front and back with "Police," over plain clothes. Pflughoft points his service weapon at Martinez, who looks his direction and tosses his gun toward the sidewalk. The suburban abruptly reverses, dragging Martinez backward about one car length and knocking him over. Martinez briefly stands but is quickly taken to the ground face first by Pflughoft and Zeng. Martinez appears to physically resist the officers' efforts to handcuff him, but eventually they succeed after Pflughoft appears to strike Martinez on the side of the head several times with his hand or forearm.



Figure 11: Video still showing Martinez attempt to open the Suburban's door as Pflughoft points his weapon at him.



Figure 12: Video still showing Martinez toss his gun (circled) after the Suburban reverses away from Pflughoft's car. (Pflughoft is out of view behind a telephone pole.)

Statements

Various officers' BWV capture Giovanazzi and Lam making statements about the incident shortly afterward. Both also testified at the preliminary hearing in the case against Martinez. The officers declined to be interviewed by investigators however.

On BWV, Giovanazzi tells another MPPD officer that he fired "several" shots at Martinez from his patrol car and thought he "got him." At the preliminary hearing, Giovanazzi testified that Martinez exited his car and began walking away. Giovanazzi fired three times at Martinez because he "saw the gun in [Martinez's] hand turning toward [his] direction." Martinez "start[ed] to run" as he fired. Giovanazzi issued no verbal commands. Lam testified that he could not see the gun in Martinez's hand when Martinez exited the SUV. Lam heard three gunshots but did not know who fired. On BWV, and at the preliminary hearing, Lam said that he fired two to three rounds at Martinez after Martinez fired at him. On BWV, Lam walks by the Durango, points to three casings lying nearby, and says, "Here's my three."

Pflughoft is seen on BWV looking at his gun's magazine. He says that a round is missing and thinks he might have fired one shot because of the "adrenaline."⁴ Investigators interviewed multiple civilian witnesses. A resident on Rowan Avenue saw Martinez fire at Lam and Giovanazzi and, according to him, saw them both return fire. Two bystanders on Townsend Avenue saw Martinez run out of the alley and throw the gun.

Physical Evidence

Lam likely fired three rounds during the incident, based on a round count of his weapon, the casings recovered from the scene, and his statements. Lam's 9mm service pistol was fully loaded with 17 rounds plus one in the chamber before and after the incident. A second magazine contained 14 rounds in a 17 round magazine. Lam stated that he performed a "tactical reload" during the incident. Three casings, ballistically matched to Lam's weapon, were recovered near the Durango, where Lam said he fired at Martinez and is seen firing on BWV.

⁴ Investigators recovered one live 9mm cartridge on Townsend Avenue, apparently from Pflughoft's weapon, which was missing one round after the incident. The cartridge was near the location where Pflughoft detained Martinez.

Giovanazzi likely fired three rounds during the incident, based on a round count, the casings recovered, and his statements. Giovanazzi's 9mm service pistol contained 14 rounds in a 17 round magazine plus one in the chamber. Three casings, ballistically matched to Giovanazzi's pistol, were recovered near his patrol car. He stated that he was seated in his patrol car when he fired "several" rounds at Martinez.

Pflughoft's 9mm service pistol was loaded with 17 rounds plus one in the chamber before the incident and 16 rounds in the magazine plus one in the chamber after. Although Pflughoft said that he might have discharged his firearm, and his weapon was missing one round, investigators did not find any casings on Townsend Avenue but did find one live 9mm cartridge near Pflughoft's patrol car, suggesting he likely did not fire his weapon but instead inadvertently expelled a live cartridge.

Investigators recovered Martinez's 9mm pistol on Townsend Avenue. The weapon contained one expended casing in the chamber (indicating a malfunction) plus 13 rounds in an attached magazine. DNA testing confirmed Martinez handled the weapon. Four casings recovered along Rowan Avenue, in the path Martinez ran, ballistically matched the pistol. Bullets impacted the Durango's rear bumper, hatch, and tires, consistent with having been fired by Martinez, based on his likely location when he fired. Two fired bullets, sharing the general rifling characteristics of the pistol, were found near the rear of the Durango. The four casings on Rowan Avenue plus the expended casing jammed in Martinez's gun suggest he fired five rounds.

THE LAW

A peace officer is justified in using deadly force 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) & (B).

Deadly force shall be used "only when necessary in defense of human life," and officers "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(a)(2).

"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 one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

The right to self-defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580. “An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.” *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. “[A]n officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer.” *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 345.

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer’s decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4). Moreover, “[a] peace officer who makes or attempts to make an arrest need not retreat, or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested.” Penal Code section 835a(d).

ANALYSIS

According to video footage and percipient witnesses, Martinez stood outside his ex-girlfriend’s residence holding a gun and yelled for her to come outside. Later, multiple MPPD units responded to the area of East Los Angeles where Martinez was known to frequent. When Officers Giovanazzi and Lam attempted a traffic stop of the red SUV Martinez was driving, Martinez abruptly pulled into the driveway apron. Video footage shows he exited the SUV holding a pistol. Martinez walked away from Giovanazzi’s and Lam’s patrol cars, looked back, then ran northbound on Rowan Avenue. When Martinez broke into a run, Giovanazzi rapidly discharged three rounds from his service weapon while seated in his patrol car, according to Lam’s BWV footage and Giovanazzi’s testimony. Giovanazzi fired his weapon, he testified, because Martinez was “turning” the gun toward him.

The available evidence—video footage and Lam’s statements—neither confirms nor contradicts Giovanazzi’s stated reason for firing his weapon—that Martinez “turned” the gun toward him just before he ran away. The grocery store video has no sound but shows Martinez exit the SUV holding a gun and appear to look in Giovanazzi’s direction, with the gun still held at his side. The video from across the parking lot, while too distant and obstructed to distinctly capture Martinez’s movements, appears to show Martinez exit his car, walk a few steps, look back, and break into a run just as three gunshots are heard. Lam’s BWV, finally, shows Lam exit his patrol car and run after Martinez as three shots are heard. The footage is poor quality because the camera is being jostled as Lam hastily exits his car and sprints after Martinez. With that caveat, the footage (when observed frame-by-frame) appears to show Giovanazzi firing at Martinez’s backside. However, it does not capture Martinez’s actions before Giovanazzi fired—whether Martinez pointed, raised, or “turned” the gun at the officers. The three videos make apparent

that the entire sequence—from when Martinez exits holding a gun to when Giovanazzi fires—happened in about one to two seconds.

The facts of Lam's shooting, meanwhile, are more clear. Conclusive evidence establishes that as Martinez ran from Lam, he turned and fired five rounds at him. Video footage shows Martinez point a pistol at Lam and, later, toss it as he is about to be apprehended. Four casings lying in the path Martinez ran ballistically matched the pistol, on which Martinez's DNA was found. The pistol contained a fifth casing jammed in its chamber. Finally, several bullet strikes and fired bullets were found on and around the rear of the Durango, where Lam ran for cover and video footage shows Martinez pointed the pistol.

Regarding Officer Giovanazzi, considering the totality of the circumstances known to him, including those leading up to the incident, because Martinez was holding a pistol when he turned in Giovanazzi's direction, and later fired it at Lam, there is insufficient evidence to prove beyond a reasonable doubt that Giovanazzi did not reasonably believe that deadly force was necessary to defend against an imminent deadly threat when he fired his weapon.

Regarding Officer Lam, considering similar circumstances, it was reasonable for him to believe that deadly force was necessary to defend against an imminent deadly threat when Martinez turned and fired four times in his direction.

CONCLUSION

For the foregoing reasons, we find that there is insufficient evidence to prove beyond a reasonable doubt that Giovanazzi did not act in lawful self-defense when he used deadly force against Martinez. Further, we find that Lam's use of deadly force was in lawful self-defense.