

Non-Fatal Officer Involved Shooting of Lucio Valdez

Bell Police Department

**Officer Carlos Cerna, #251
Officer Estrella Lopez, #239
Officer Carlos Marroquin, #248**

J.S.I.D. File #21-0246



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 30, 2023

MEMORANDUM

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

SUBJECT: Non-Fatal Officer Involved Shooting of Lucio Valdez
J.S.I.D. File #21-0246
L.A.S.D. File #021-00070-3199-051

DATE: August 29, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 20, 2021, non-fatal shooting of Lucio Valdez by Bell Police Department (BPD) Officers Estrella Lopez, Carlos Marroquin, and Carlos Cerna. We conclude that based on the totality of the evidence, the officers reasonably believed that the use of deadly force was necessary to defend against an imminent threat of death or serious bodily injury to themselves and each other.

The District Attorney's Command Center was notified of this shooting on June 20, 2021, at approximately 11:36 p.m. The District Attorney Response Team (DART) responded to the location. They were given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department (LASD) personnel.

The following analysis is based on investigative reports, surveillance video footage, witness interviews, photographs, and physical evidence submitted to this office by LASD Detectives Adan Torres and Scott Giles on April 28, 2023. None of the officers were equipped with body worn cameras. Except for Officer Lopez reporting the number of rounds in her service weapon at the beginning of her shift, the shooting officers did not make any voluntary statements.

INTRODUCTION

On June 20, 2021, at around 10:06 p.m., BPD received a call from Lucio Valdez reporting that he was at the bus stop near the intersection of Bell Avenue and Atlantic Avenue, in front of the Bell Resort Motel. He told the dispatcher that he was depressed and had a gun, a Sig Ruger P320. Valdez's speech was slow and slurred.



Figure 1: Map of intersection of Bell Avenue and Atlantic Avenue in the City of Bell.

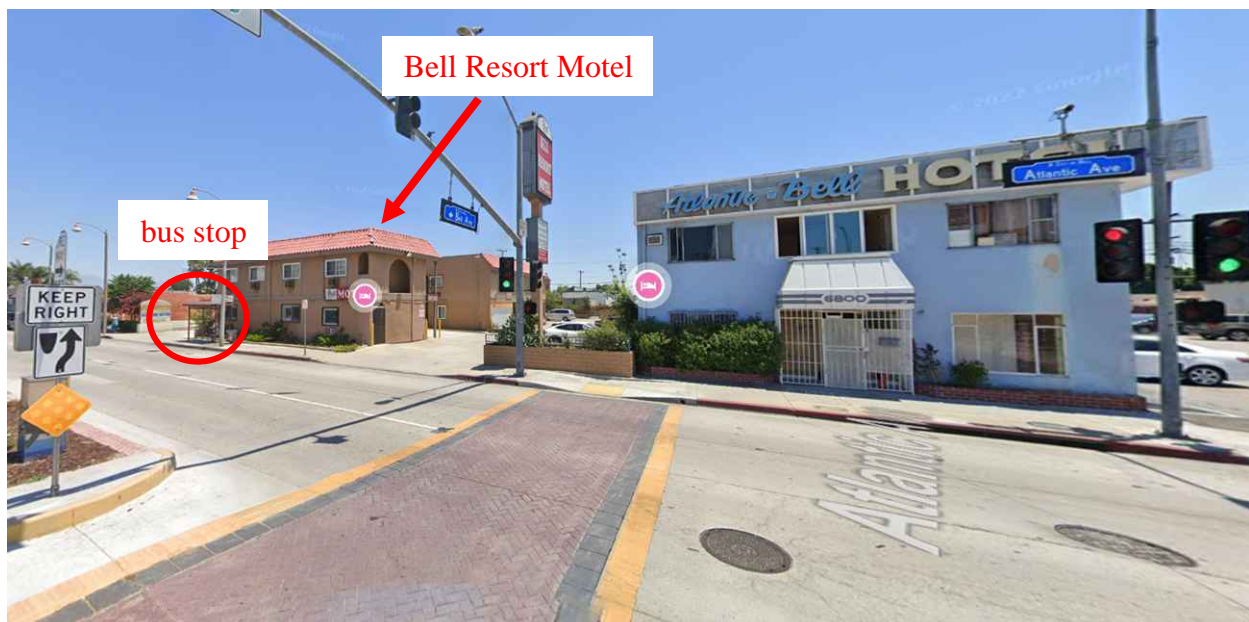


Figure 2: Satellite image of the intersection of Bell Avenue and Atlantic Avenue.

Valdez told the dispatcher that he actually had a BB gun and that he was suicidal. He said he was “literally right now waiting for the police to take me out.”

Valdez called back and told the dispatcher that he now had a real gun and a piece of broken glass that he was holding to his throat. He told the dispatcher that he was “waiting for the police to point a gun at [him] so [he] could start shooting at them.” He told the dispatcher that he was at the bus stop and reiterated that he was suicidal. He told the dispatcher that he was “loading up [his] gun” and “getting it ready to shoot at the police.”

Dispatch informed the responding officers that Valdez initially reported having a pellet gun. Before the officers made any contact with Valdez, dispatch informed them that Valdez stated he now had a real gun and a piece of glass.

Valdez was still on the phone with the dispatcher when BPD Sergeant Carlos Silva and Officers Marroquin, Lopez, and Cerna arrived at the scene. Marroquin and Lopez stood on either side of the first patrol vehicle, and Cerna stood by the second vehicle. Sergeant Silva remained behind them near the intersection. Lopez was armed with a Glock 19 9mm handgun, and Marroquin and Cerna were armed with shotguns.



Figure 3: Photo of location of incident taken after Valdez was taken to the hospital.

Officers ordered Valdez to put the gun down. On the 911 audio recording, officers can be heard yelling, “Please don’t do that!” and within a minute, officers reported an officer-involved shooting. A witness reported that the officers did not fire their weapons at Valdez until he pointed his firearm at the officers.

Valdez was shot in the right arm and in the abdomen. He was taken to the hospital to receive medical attention and eventually had to have his right arm amputated due to his injuries. He told investigators that he had intended to “commit suicide by police” and that he had pointed his pellet gun at the officers when he was shot. A black pellet handgun was recovered at the scene.

FACTUAL ANALYSIS

Witness Statements

None of the shooting officers made voluntary statements.

Sergeant Carlos Silva

Sergeant Silva responded to a call about a suicidal male at the Bell Resort Motel. He arrived behind Lopez, Marroquin, and Cerna. As he arrived at the location, he saw Valdez make a

racking motion with a black semiautomatic handgun. He then held the gun to his neck/chin area. As Sergeant Silva got out of his patrol vehicle, he heard Marroquin giving Valdez verbal commands to drop the gun and that they were there to help him. Marroquin was near the passenger door of the first vehicle and Lopez was near the driver's side door. Valdez began walking toward the officers with the handgun near his neck/chin area. Lopez had her sidearm drawn; Sergeant Silva did not remember what weapon Marroquin had deployed.

Sergeant Silva reported Valdez put the gun on the ground, but he did not see if Valdez dropped it or placed it there. Valdez sat on the ground next to the gun, within arm's reach.

Sergeant Silva turned his back to Valdez and was walking to retrieve a bean bag shotgun from his patrol car when he heard, "No no no" and two or three gunshots. When he turned around, he saw Valdez laying face-down on the sidewalk with both of his hands under his body. When he was rolled over to be provided with first aid, Sergeant Silva saw injuries to Valdez's right arm. As they went to render medical aid, Sergeant Silva saw someone move the black gun on the sidewalk farther way from where Valdez fell, but he did not recall who.

██████████

Investigators spoke with ██████████ who said he was involved with "Cop Watch"¹ and had responded to the scene. He told investigators that when he arrived at the location, he saw a person holding a black object in their hands. He heard the officers say, "put it down." ██████████ saw the person holding the black object in both hands with his arms straight. He described how the person, holding the black object, raised his arms and pointed toward the officers when the officers fired their guns. He heard three shots. ██████████ said the officers did not fire their weapons until the person's arms were parallel to the ground and he was pointing at the officers. After the person fell to the ground, he heard the person say, "kill me, keep shooting."

Lucio Valdez

Valdez was interviewed by investigators twice after the incident. The first interview was conducted on September 28, 2021. He was medicated and falling asleep as he was being interviewed.

The second interview was conducted on December 29, 2021 at a residential nursing facility where Valdez was recovering. He told investigators that he got drunk, had a mental breakdown, and tried to commit "suicide by police" that night.

Valdez said the police told him several times to put his gun down, but he did not. He said he aimed his pellet gun at the police to get them to shoot him, which they did. He further explained that his pellet gun looked like a real handgun because it did not have the orange tip.

¹ Cop Watch is a network of activists that observe and document police activity looking for signs of police misconduct and brutality. See www.copwatch.org and www.wecopwatch.org.

Valdez reported that he had been diagnosed with epilepsy, bipolar disorder, and depression, but prior to the incident, he only took medication for epilepsy. At the time of the interview, he was taking medication and said he was doing better.

Surveillance Video

The only surveillance video of the incident was from a camera located near the rear of the Bell Resort Motel. Its view is down the motel's driveway toward Atlantic Avenue, so only the officers, not Valdez, were captured on video.

Video surveillance shows three patrol vehicles arriving at the location at 10:33 p.m. Marroquin arms himself with a shotgun and stands behind the passenger door of the first patrol car. Lopez arms herself with a handgun and stands behind the driver's side door of the first patrol car. Cerna stands behind the driver's side of the second car, armed with a shotgun. Silva stands behind the three officers, near the intersection.



Figure 4: A video still of the responding officers pointing their service weapons at the area in front of the motel.

After a minute and a half, Officers Cerna and Marroquin move from behind the vehicle doors with their shotguns still pointed to the area in front of the motel. Marroquin briefly lowers his shotgun and Cerna makes arm gestures, as if he is trying to communicate with someone in front of him, before they both raise their shotguns again.



Figure 5: A video still of the officers pointing their service weapons at the area in front of the motel after Marroquin and Cerna stepped away from the vehicles.

Within a minute, Marroquin and Cerna both fire their shotguns once. Based on the angle of the camera and the position of the patrol vehicle, muzzle flashes from Lopez's firearm are not captured in the surveillance footage.

Medical and Physical Evidence

Valdez suffered gunshot wounds to his right arm and abdomen. He was taken to the hospital to receive medical attention. Doctors amputated his right arm at the elbow.

A black pellet gun was located on the sidewalk near Valdez's body. It did not have an orange barrel tip.



Figure 6: An image of the location of Valdez's clothes and pellet gun after he was transported to the hospital for medical treatment.



Figure 7: A close-up image of the pellet gun.

Officer Lopez was armed with a Glock 19 9mm handgun. Investigators conducted a firearm and magazine bullet count with Lopez, but she did not recall how many rounds were loaded in her firearm at the beginning of her shift. The magazine was designed to hold 15 rounds. There were nine rounds in the magazine and one in the chamber after the shooting. Two expended 9mm Luger cartridge casings located at the scene.

Additionally, two red shotgun shells and two shotgun shell wads were located at the scene.

LEGAL ANALYSIS

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).

After initially reporting that he had a BB gun, Valdez told BPD dispatch that he was now armed with a real firearm and planned to shoot at responding officers. Responding officers were informed that Valdez reported being armed with a real firearm prior to making contact with him. When the officers arrived at the scene, they saw Valdez armed with what appeared to be a black semi-automatic firearm. Although the firearm was not real, no markings, such as a bright orange barrel tip, to indicate that it was a replica were visible, especially from the officers’ vantage point. Moreover, Sergeant Silva saw Valdez make a racking motion with the gun, which would suggest that it was a real firearm, not a BB gun.

Although Valdez’s actions were not captured on surveillance video, Valdez said he pointed his BB gun at the officers when they shot him. This was corroborated by an independent witness. From the surveillance video and the recovered casings, Lopez fired her service weapon twice, and Marroquin and Cerna each fired their weapon once.

Based on the totality of the evidence, Officers Marroquin, Lopez, and Cerna reasonably believed that the use of deadly force was necessary to defend against an imminent threat of death or serious bodily injury to themselves within the meaning of Penal Code section 835a(c)(1)(A).

CONCLUSION

For the foregoing reasons, we find that the evidence demonstrates that Officers Marroquin, Lopez, and Cerna acted in lawful self-defense when they used deadly force against Lucio Valdez.