

Non-Fatal Officer Involved Shooting of Trinidad Velasco
Los Angeles County Sheriff's Department

Deputy Ernest Magana, #533026

J.S.I.D. File #22-0101



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 30, 2023

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 Trinidad Velasco
J.S.I.D. File #22-0101
L.A.S.D. File #022-03580-1477-057

DATE: August 30, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 1, 2022, non-fatal shooting of Trinidad Velasco by Los Angeles County Sheriff's Department (LASD) Deputy Ernest Magana. We have concluded that there is insufficient evidence to prove the deputy did not act lawfully in self-defense or in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 5:50 p.m. on April 1, 2022. 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, crime scene diagrams, photographic and video evidence, including body worn video, and witness statements submitted to this office by LASD Homicide Detectives Jason Marx and Gene Takashima on February 8, 2023. Compelled statements were not considered in this review.

FACTUAL ANALYSIS

On April 1, 2022, Velasco drove his truck to the home of his sister, [REDACTED] brother-in-law [REDACTED] and nephew [REDACTED] located at [REDACTED] in Hacienda Heights. Velasco began demanding money from [REDACTED]. After [REDACTED] refused and went inside her residence, the windows on her car, which was parked on the driveway, were broken. [REDACTED] contacted law enforcement to report the vandalism.

Calls to LASD

██████ made three calls to LASD to report her brother's conduct leading up to the deputy-involved shooting.

First Call

In the first call, at 3:33 p.m., ██████ called the non-emergency line at LASD to report that her car windows had been broken "in the last hour." ██████ reported that she suspected "[her] brother" (Velasco) was responsible. The operator indicated deputies might respond within a couple of hours to take a report.

Second Call

██████ called LASD again at 3:48 p.m. to report that Velasco had returned. The operator indicated that since ██████ had already requested deputies to take a report, the deputies were still on their way, but did not provide an estimated time of arrival or indicate that they would be expedited because of the fact that Velasco had returned to the residence.

Third Call

██████'s last call to LASD was placed at 4:10 p.m. ██████ requested LASD respond immediately. During the call, ██████ can be heard yelling at Velasco, and told the operator Velasco had what she suspected was gasoline – a colored liquid – in a bottle in his truck. ██████ said Velasco told her he was going to burn the house down. ██████ told the operator that Velasco had been held on a mental health hold after a "psychotic episode" approximately a month prior. ██████ said that she felt Velasco's problems were drug-induced and expressed that Velasco seemed like he was "on something."

Approximately five minutes into the call, ██████ reported that Velasco was still sitting in his truck. Velasco can be heard in the recording continuing to yell and cuss at ██████. Six minutes into the call, ██████ says, "He has a golf club," and that Velasco had gotten out of the truck but then reentered it. Eight minutes and thirty seconds into the call, Velasco exited the truck and can be heard talking about throwing flares on ██████'s roof. ██████ repeated this to the operator, and the operator repeated this information to another person at the call center so responding deputies could be notified. Ten minutes and 40 seconds into the call, ██████ reported, and the operator relayed to the rest of the call center, that Velasco was "digging through a bag in the truck."

One minute and ten seconds later, ██████ indicated deputies arrived. Deputies can be heard issuing commands to Velasco to put his hands up. ██████ relayed that Velasco started up his car, and then exclaimed, "He's trying to ram the cars!" Based on surveillance video, this appears to be when Velasco led deputies on a brief vehicle pursuit. Thirty seconds later, sirens can be heard as LASD vehicles return to the house. Deputies can be heard yelling commands to

Velasco, and three gunshots are heard approximately 13 minutes, 33 seconds into the call. ██████ asked for the operator to send an ambulance.

Deputy Response and Video Footage

Deputies Ernest Magana, Brandon Corum, and Danny Lopez were the initial responders who arrived during ██████'s third call to LASD. Magana drove his own marked patrol vehicle, while Corum arrived in a separate marked patrol vehicle along with passenger Lopez. All three deputies were interviewed by detectives after the deputy-involved shooting.

Magana said that he had been assigned to respond to the original vandalism call at ██████'s residence. He was handling another call when the request for service at ██████'s residence became an emergency. While responding, Magana coordinated with Corum and Lopez to discuss less-than-lethal options and requested a helicopter. Magana said that while driving to the residence, the operator said over the radio that Velasco threatened to burn the house down, had a yellow liquid that he believed could be a possible fire accelerant, and was wielding a golf club. When the deputies arrived at the location, Magana saw Velasco standing to the side of his truck and reaching into it while looking directly at Magana. Magana said he feared Velasco might be arming himself. Velasco then got into the truck, started it, and began revving the engine. Velasco backed the truck up. Magana feared Velasco would try to run him over, so he took cover behind a Jaguar parked in the driveway of ██████'s residence.

Corum also heard Velasco rev his engine after starting the truck. Velasco looked directly at him and Lopez before accelerating towards them. Corum and Lopez ran to the rear of their patrol car as Velasco drove towards them and then onto the sidewalk. Corum said if he had not moved, he would have been hit by Velasco's truck.

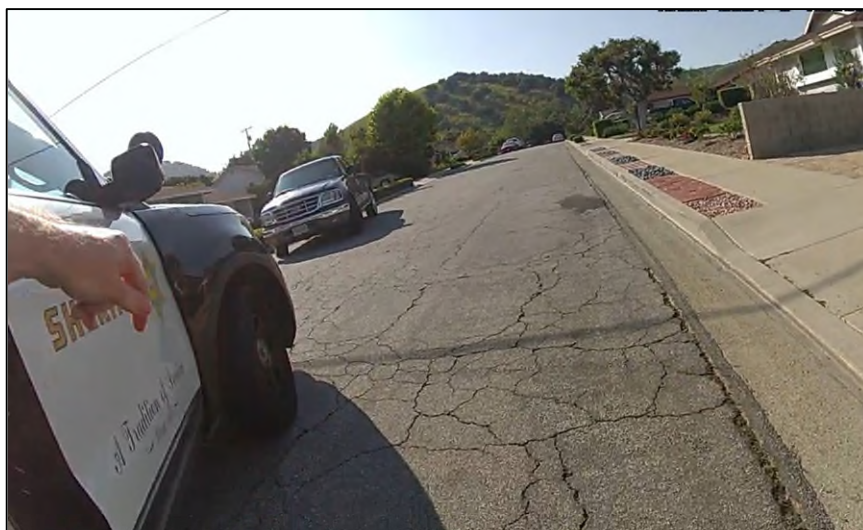


Figure 1: Still frame from Corum's body worn camera as Velasco drove his truck directly toward Corum's position, and eventually on top of the sidewalk to the right of the photograph. Ameluxen Avenue is behind Corum.

Corum drove his patrol car to pursue Velasco, who turned from Crystal Lantern Drive to northbound Ameluxen Avenue. Corum heard Magana report over the radio that Velasco had attempted to hit deputies with his truck. During the brief pursuit, Velasco abruptly turned around on Ameluxen Avenue to head back to the residence and began driving on the wrong side of the street directly toward Corum. Corum made an evasive hard turn – causing him to drive his patrol vehicle up onto the front lawn of a residence – to avoid colliding head-on with Velasco’s truck.

Surveillance video from a camera mounted to the garage of ██████’s residence shows Velasco park his car in front of the driveway and immediately exit, yelling and cursing at the deputies, who exited their patrol vehicles and were yelling at Velasco to show his hands. ██████ walked up to Velasco and, for several seconds, Velasco grabbed ██████. Deputies yelled, “Get away from him!” Deputies continued telling Velasco to show his hands. Velasco responded by displaying his middle finger toward Lopez, who was standing alone at that time and pointing a less-than-lethal shotgun at Velasco. Corum instructed Lopez to shoot Velasco with the less-than-lethal shotgun. Lopez yelled, “40, 40, 40,”¹ and fired one round at Velasco. After the first round was fired at Velasco, Corum joined Lopez. Corum had his duty pistol drawn and pointed toward Velasco. Magana at this time used his radio to report that Velasco had a weapon in his hand, later determined to be a screwdriver. Velasco then took broad steps toward Corum and Lopez’ position, forcing Corum and Lopez to retreat. Lopez fired one additional less-than-lethal shot at Velasco, causing Velasco to stop his advance.



Figure 2: Still frame from Magana's body worn camera just as Velasco, holding the screwdriver, moves towards Corum and Lopez.

¹ Referring to 40 millimeters, the caliber of the less-than-lethal shotgun used by Lopez.

Velasco briefly stopped and bent over but stood back up and looked directly at Magana, who had his duty pistol pointed at Velasco. Velasco took a stance similar to the stance he took when he advanced toward Corum and Lopez, placing his left foot in front of his right and reaching back with his right hand, which was still holding the screwdriver, in a throwing motion. Magana began retreating by rotating counterclockwise around the Jaguar parked in the driveway, the front portion of which was between him and Velasco. According to Magana's body worn video, Velasco appeared to make his way slightly closer to the front of the Jaguar, toward Magana. Magana fired three shots in rapid succession, hitting Velasco.



Figure 3: Still frame and close-up from Magana's body worn camera immediately prior to deputy-involved shooting. Velasco is standing as if preparing to throw an object in the same fashion as when he began stepping toward Lopez and Corum moments earlier. The object held by Velasco, later determined to be a screwdriver, is circled in red.

Velasco dropped the screwdriver and stood leaning on the garage door. He continued to refuse to get on the ground as instructed. Just over one minute after being shot, Velasco fell to the ground. The deputies approached Velasco. Magana kicked the screwdriver away from Velasco, who was then handcuffed. Deputies began providing medical treatment while waiting for an ambulance. Velasco was treated for multiple gunshot wounds at a hospital and released.

The three 9mm expended cartridge cases fired from Magana's pistol were recovered during a search of the scene, along with the screwdriver dropped by Velasco. A knife was also recovered from Velasco's pocket as he was being detained.



Figure 4: Screwdriver held by Velasco during the incident.



Figure 5: Still frame from surveillance camera depicting the moment Velasco appears to prepare to throw screwdriver held in his right hand, just prior to deputy-involved shooting.

Civilian Interviews

Interview of [REDACTED]

[REDACTED] said that Velasco's behavior began changing months prior when Velasco's use of methamphetamine and marijuana increased. Velasco began threatening his mother verbally, and [REDACTED] believed that during an arrest for these threats, Velasco bit one of the police officers. On the day of the incident, [REDACTED] arrived home in his Jaguar at about 2:00 p.m. and parked in the driveway. [REDACTED] asked Velasco, who had parked his truck in the driveway as well, to move his truck out of the driveway. Velasco did so, and then left. Ten minutes later, [REDACTED] told [REDACTED] that her car windows had been broken out and she suspected Velasco was responsible; she also said that Velasco had threatened to burn the house down.

Velasco returned to the residence and was yelling and cussing. He took a golf club out of his truck. He demanded money from [REDACTED]. As [REDACTED] was on the phone with LASD, he paced back and forth on the sidewalk and said he would throw flares onto the roof of the house when deputies arrived.

Deputies arrived in two cars. Velasco was parked in his truck facing the deputies. Velasco displayed his middle fingers toward the deputies, who drew their firearms and ordered Velasco to exit his truck. Velasco then started his truck and drove toward deputies, onto a lawn and down Ameluxen Avenue. Deputies entered their cars and followed. One to one-and-a-half minutes later, Velasco returned, exited his truck, and approached the front of the residence while cursing and yelling. He had a screwdriver in his right hand. Deputies repeatedly ordered Velasco to drop the screwdriver and get on the ground. Velasco refused. [REDACTED] believed Velasco was then hit with what he believed was a taser based on the color of the weapon used being either yellow or orange. Velasco remained standing, still holding the screwdriver, and refusing to obey the deputies' commands to drop it. Deputies then fired two gunshots and Velasco moved toward the garage, still holding the screwdriver, before eventually collapsing.

Interview of [REDACTED]

[REDACTED] is Velasco's nephew. [REDACTED] father is [REDACTED] and his mother is [REDACTED]. According to [REDACTED] on the date of this incident, Velasco was acting irrationally, possibly due to drug use. Velasco was homeless and living out of his car. Velasco came to [REDACTED] residence to demand money from [REDACTED]. [REDACTED] refused to give it to Velasco, according to [REDACTED] because she feared Velasco would waste it. [REDACTED] tried to calm Velasco down. Velasco left the residence.

Later, [REDACTED] noticed the windows to her car were broken. She called LASD to report the incident. Soon after, Velasco returned to the residence. [REDACTED] then saw from the front door of the house that deputies arrived and drew their guns on Velasco, who suddenly drove his truck up on the sidewalk and fled from deputies. Velasco returned in the truck, followed by deputies in their vehicles. Velasco exited the truck and moved between cars parked in the driveway, with deputies moving toward him on foot. [REDACTED] started recording the incident on his cell phone when he saw the deputies pointing their guns at Velasco. [REDACTED] saw a deputy shoot "pepper balls" (believed to refer to the less-than-lethal shotgun rounds fired by Lopez) at Velasco, "but he [Velasco] wasn't going down." Velasco still did not comply with deputies' orders to get on the ground. Velasco "charged" toward the Jaguar (parked between Magana and Velasco according to surveillance and body worn video; see Figure 5), and a deputy fired three times, hitting Velasco "in the belly, leg area." [REDACTED] said he thought Velasco was holding a blue-handled screwdriver. [REDACTED] believed the deputy had a good distance between himself and Velasco, and instead of backing up, he (the deputy) "just popped him."

Interview of [REDACTED]

[REDACTED] said Velasco, her brother, had a mental health episode in January 2022 and was placed on a mental health hold by Monterey Park Police Department. After the hold was lifted,

she allowed Velasco to live in her residence with her and her family for approximately a month. After Velasco moved out, his behavior “went downhill.”

On the date of the incident, Velasco arrived at [REDACTED]’s home about 11:30 a.m. and began yelling and cursing even though no one was near him. When [REDACTED] went outside, he began yelling at her, and threatened to burn her house down. At about 3:30 p.m., [REDACTED] went outside and noticed her rear and side windows to her car were shattered. Velasco was sitting in his truck across the street. [REDACTED] called the LASD non-emergency line to report the vandalism. After that call ended, Velasco moved his truck to the same side of the street as the residence. [REDACTED] went outside. Velasco was holding a golf club in his hand. [REDACTED] yelled at Velasco to leave. Velasco put the golf club in the truck and got inside. [REDACTED] then called 9-1-1 and told the dispatcher that Velasco had a golf club. [REDACTED] noticed Velasco also had a bottle containing liquid, and feared, based on Velasco’s earlier threat to burn her house down, that it was flammable. Velasco exited the truck and manipulated a bag behind the driver’s seat. He told [REDACTED] he had flares and said he would light them when the deputies arrived. [REDACTED] relayed this to the dispatcher and told the dispatcher about the bottle.

When deputies arrived, [REDACTED] saw Velasco start the truck and drive away, nearly colliding with the deputies and their cars. When Velasco returned, he was holding a screwdriver and was not complying with the deputies’ commands. She believed the deputies tased Velasco, but he still held on to the screwdriver and ignored more commands from deputies. [REDACTED] then heard two gunshots.

Interview of [REDACTED]

[REDACTED] said his residence is directly across the street from the location of the incident. He heard a helicopter overhead and walked to his side yard. While standing behind a gate, he had a view of the driveway of [REDACTED] where the incident occurred. [REDACTED] saw three deputies in the driveway. The deputies were ordering Velasco, whom [REDACTED] did not recognize, to the ground. Velasco did not comply and displayed his middle fingers toward deputies. [REDACTED] did not see anything in Velasco’s hands. [REDACTED] heard more than one gunshot, and then saw Velasco bleeding and clutching his abdomen while still standing and being ordered by deputies to get on the ground. Velasco then walked and collapsed in the driveway. Just before the gunshots, [REDACTED] did not notice a change in behavior or movement from Velasco.

Interview of Trinidad Velasco

Velasco was interviewed by detectives after being advised of his *Miranda* rights. He was asked about the incident. He said that he went to his sister’s ([REDACTED] house to ask for money to buy a motorhome. He was angry because [REDACTED] refused. He left but came back and broke the rear window of [REDACTED]’s car. He got back into his vehicle. Deputies arrived, and he drove around them onto the sidewalk, denying that he tried to run them over. He drove back to the residence and parked on the driveway. He tried to give [REDACTED] his wallet but was shot in the hand and the abdomen by a deputy.

Velasco admitted having a screwdriver in his hand. He said he did not intend to use it against the deputies. He saw the deputies reaching for their guns, so he moved forward toward them with the screwdriver to force the deputies to back off. He said the screwdriver was pointed downward. The deputies were ordering him to drop the screwdriver.

Velasco admitted being a methamphetamine and marijuana user but denied using either substance on the date of the incident. He also said he told [REDACTED] that he was going to throw a flare at his truck, causing it to explode and, in turn, causing [REDACTED]'s residence to blow up.

Velasco Charged

Velasco was charged in felony complaint KA129981 with one count of criminal threats in violation of Penal Code § 422(a), three counts of assault with a deadly weapon in violation of § 245(a)(1), three counts of resisting an executive officer in violation of § 69, and one count of vandalism in violation of § 594. On June 1, 2022, Velasco pleaded no contest to an added felony count alleging a violation of § 601(a), trespass by threat, and was sentenced to two years formal probation and 124 days in county jail. The remaining counts were dismissed.

LEGAL ANALYSIS

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 either to: (1) defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) 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 § 835a(c)(1)(A) & (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 one that, from appearances, must be instantly confronted and addressed. Penal Code § 835a(e)(2).

In assessing 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 § 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 § 835a(a)(4).

The evidence in this incident shows that Velasco arrived at his sister's house and threatened her entire household. After [REDACTED] contacted law enforcement three times to alert them of Velasco's behavior, Velasco said he would throw flares on the roof to burn the house down when deputies arrived. Velasco broke the windows of [REDACTED]'s car and at one point wielded a golf

club. He also appeared to [REDACTED] to be looking through a bag in his truck, which she repeated to an LASD operator. When deputies arrived, Velasco disobeyed their commands, started his truck, and drove toward deputies and onto a sidewalk, forcing at least one deputy to quickly move to avoid being run over.

After leading the deputies on a brief pursuit and returning to the residence, Velasco exited his car and took out a screwdriver. He continued to be belligerent towards deputies and unresponsive to their repeated commands that he drop the screwdriver and get on the ground. Velasco took aggressive steps toward Lopez and Corum. Velasco acknowledged in his interview that he did so to force the deputies to “back off” when he saw that they had their guns drawn. Consequently, Lopez fired two shots from a less-than-lethal shotgun, momentarily causing Velasco to retreat, but Velasco again took an aggressive posture toward Magana. Magana began firing at Velasco as Velasco appeared to prepare to throw the screwdriver at Magana. Velasco’s actions leading up to and at the time Magana fired his pistol could be reasonably interpreted by a fact finder as indicating an intent to attack Magana or the other deputies by either throwing the screwdriver or charging toward them.

Under these circumstances, a reasonable fact finder could find that an objectively reasonable peace officer could fairly conclude that Velasco had the present ability, opportunity, and intent to cause immediate death or serious bodily injury to the peace officers at the scene.

Based on the totality of the circumstances, there is insufficient evidence to prove Deputy Magana did not reasonably believe his use of deadly force was necessary to defend himself and his fellow deputies from an imminent threat of death or serious bodily injury.

CONCLUSION

For the foregoing reasons, we have concluded there is insufficient evidence to find Deputy Magana acted unlawfully.