

Non-Fatal Officer Involved Shooting of Herbert Vasquez

Los Angeles Police Department

Jose Barrera, #42791

J.S.I.D. File #19-0314



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

September 21, 2021

MEMORANDUM

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

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

SUBJECT: Non-Fatal Officer Involved Shooting of Herbert Vasquez
J.S.I.D. File #19-0314
L.A.P.D. File #F033-19

DATE: September 21, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 16, 2019, non-fatal shooting of Herbert Vasquez by Los Angeles Police Department (LAPD) Officer Jose Barrera. It is our conclusion that Barrera acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on July 16, 2019, at 7:49 p.m. The District Attorney Response Team responded and was given a briefing, conducted a walk-through of the scene, reviewed body worn video (BWV) and interviewed several civilian witnesses.

The following analysis is based on police and investigative reports, witness and officer interviews, BWV, dispatch recordings, crime scene photographs, firearm analysis and medical records submitted to this office by the LAPD Force Investigation Division. Barrera provided a compelled statement which was not considered as part of this analysis.

FACTUAL ANALYSIS

On July 16, 2019, at 6:07 p.m., uniformed LAPD Officers Jose Barrera and Ruben Yah responded to a call regarding a "415 man...under the influence and hallucinating" at a duplex located on North Commonwealth Avenue in the City of Los Angeles. Officers spoke with Maria G. who advised that her tenant, Herbert Vasquez, had been using crystal methamphetamine and acting aggressively toward her, her husband, Armando P., and a friend. Vasquez had locked himself inside his bedroom. Maria G. requested officers make contact with Vasquez and talk to

him. Maria G. directed the officers to the second-floor unit and advised that Vasquez did not have any weapons.¹

Officers contacted Armando P. on the front porch of the unit and he directed them to Vasquez' bedroom, which was one of two bedrooms at the end of a short hallway. The bedroom doors were closed. The officers directed Armando P. to wait downstairs.



View of the two bedrooms from the hallway entrance.²

The officers called to Vasquez and Yah knocked on his bedroom door, but they received no response. Barrera identified themselves as police officers and asked to speak with Vasquez. Yah opened the bedroom door and Barrera observed Vasquez holding a long, pipe-like object. Barrera drew his service weapon as Vasquez closed the door, leaving the officers in the hallway. Barrera requested additional units and a supervisor to respond to the scene.

While waiting for a supervisor, Barrera and Yah asked Maria G. and Armando P. whether Vasquez suffered from any mental illnesses. They said he did not. Barrera and Yah returned to the hallway and repeatedly tried to make contact with Vasquez. According to Yah, Vasquez' responses were mostly incoherent. On a few occasions he referenced his daughters and said that he intended to leave the residence at 7:00 p.m.

¹ The synopsis of events included in this memorandum is based upon witness and officer interviews, as well as BWV. All conversations between the officers and civilians were in Spanish.

² The Axon BWV timestamp uses Coordinated Universal Time (UTC), which is the primary time standard by which the world regulates clocks and time. UTC is seven hours ahead of Pacific Daylight Time.

Barrera also attempted to establish a rapport with Vasquez. Barrera asked Vasquez whether he was hearing voices or wanted to hurt himself and tried to encourage him to leave the bedroom and talk to them. Vasquez refused.

At 6:28 p.m., a metallic sound was captured on BWV while Yah was standing near the bedroom door. Yah told Barrera, "It sounded like a sword. You know, when you take a sword out."

At 6:34 p.m., LAPD Sergeant Brian Alfaro arrived to the apartment.³ Barrera and Yah briefed Alfaro on what had occurred prior to his arrival. Alfaro knocked on Vasquez' door, introduced himself and asked to speak with him. Alfaro offered Vasquez food, water and a trip to the beach. Alfaro could not understand Vasquez, who was not making sense. Alfaro believed Vasquez was either suffering from a mental illness or a drug-induced altered state of mind.

Maria G. and Armando P. told the officers they feared for their safety if Vasquez remained due to his behavior. They advised that earlier in the day, Vasquez had approached them while they were sitting outside and cocked his fist back in an aggressive manner, but did not swing. Although they were fearful, they did not want to press charges against Vasquez.

Alfaro decided to place Vasquez on a "5150 hold" due to a possible mental illness and being a danger to others. Alfaro intended to contact the LAPD Mental Evaluation Unit (MEU) after Vasquez was detained.⁴ Due to the fact that Maria G. and Armando P. feared for their safety and lived with Vasquez, Alfaro did not believe it was feasible to leave Vasquez in the residence.

At 6:40 p.m., a plan was formulated for Barrera and Yah to open the bedroom door and attempt to contact Vasquez. Barrera was designated lethal cover and held his service weapon in a "low ready" position, pointed toward the ground. Nelson armed himself with a Taser and Williams and Carlson were the arrest team.

Barrera and Yah approached Vasquez' bedroom. Barrera tried to open the door, but Vasquez was holding it closed. Yah tried to persuade Vasquez to allow them to help him, but he refused. Yah overpowered Vasquez and opened the door. Yah retreated into the second bedroom and drew his service weapon. Vasquez exited the bedroom with a machete in his left hand and a large knife in his right.⁵ Vasquez moved into the hallway erratically waving the machete and knife in Yah's direction. Barrera immediately fired eight rounds at Vasquez while Nelson deployed his Taser.⁶

³ Uniformed LAPD Officers Patrick Nelson, Dean Williams and Brenna Carlson had arrived to the location before Alfaro. Nelson retrieved his 40-millimeter launcher which fires less than lethal, non-penetrating sponge rounds.

⁴ Welfare and Institutions Code section 5150 allows peace officers to take a person into custody and place them in a facility for up to 72 hours for assessment and treatment if there is probable cause to believe that person is a danger to themselves or others due to a mental health disorder. Investigators later learned that Vasquez had a prior contact with the LAPD MEU on May 8, 2019.

⁵ Barrera, Alfaro and Nelson believed Vasquez was holding two machetes.

⁶ Yah stated that he did not see Vasquez emerge from the bedroom with the weapons, however, his BWV captured Vasquez exit swinging the machete. The Taser did not strike Vasquez.



Still image from Barrera's BWV showing Vasquez swinging the machete toward Yah.



Still image from Yah's BWV showing Vasquez in the hallway with the machete.

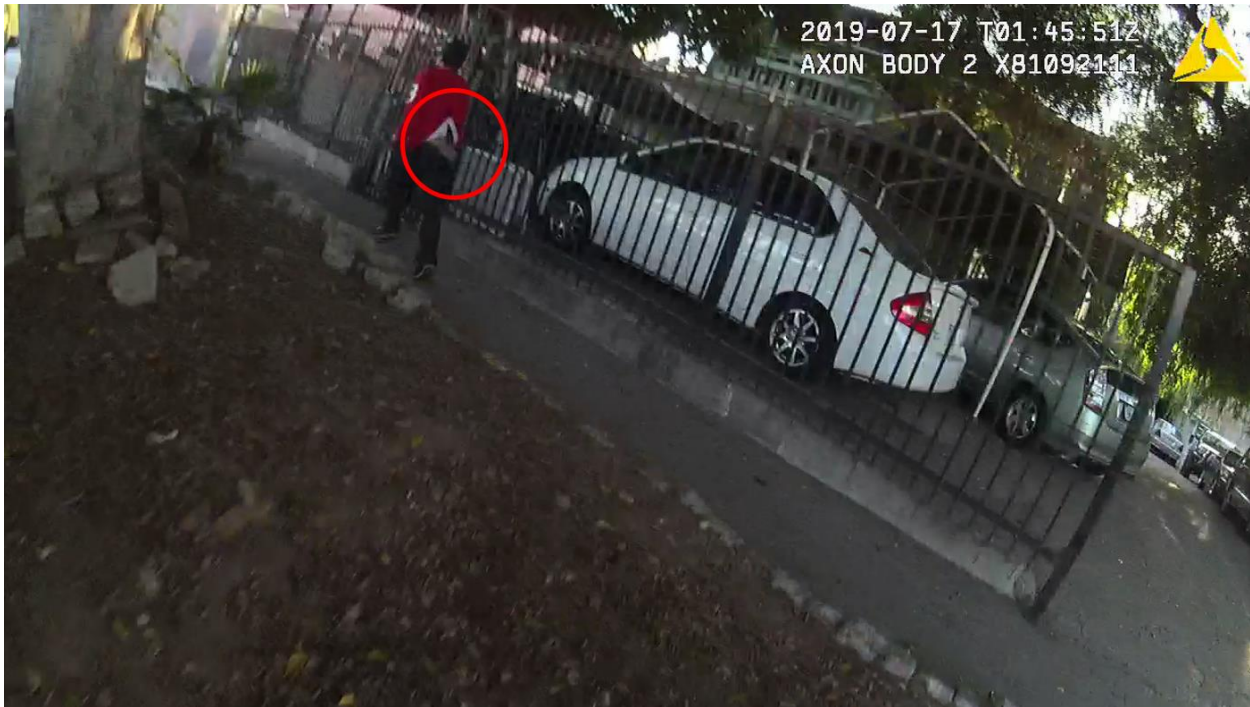
Vasquez dropped the machete and retreated into his bedroom, closing the door. Barrera told Alfaro that he struck Vasquez and he was bleeding. Yah repositioned himself in the living room area and covered the bedroom door with Barrera.



The machete on the floor outside of Vasquez' bedroom where he dropped it.

Williams and Nelson went to the rear of the apartment building to cover Vasquez' bedroom window. Williams observed Vasquez running on the roof. Carlson, who was standing in front of the building, observed Vasquez running toward her on the driveway. Vasquez ignored Carlson's orders to stop and ran to the sidewalk of North Commonwealth Avenue, then turned onto Temple Street. Carlson observed what she believed was a machete in his rear waistband.⁷

⁷ The weapon Carlson observed in Vasquez' waistband was the large kitchen knife he wielded in his right hand in the hallway.



Still image from Carlson's BWV showing the knife protruding from Vasquez' waistband.

Vasquez ran into a 7-Eleven at the corner of Temple Street and Virgil Avenue. Barrera, Yah, Williams, Carlson, Nelson and several other LAPD officers responded to the scene. Vasquez barricaded himself at the rear of the store while officers tried to persuade him to surrender peacefully. Due to the fact that Vasquez was armed with a knife, Yah struck Vasquez twice with a 40-millimeter less than lethal round, to no effect.⁸ At 7:00 p.m., after approximately 14 minutes, Vasquez surrendered without further incident and was taken into custody.

⁸ A review of the store's surveillance cameras showed that, unbeknownst to the officers, Vasquez had discarded the knife prior to being struck with the second 40-millimeter round.



Vasquez' knife recovered from the 7-Eleven.

Injuries

Vasquez was transported to Los Angeles County University of Southern California Medical Center for medical treatment. Vasquez sustained lacerations to his right pinky finger, as well as left index and middle fingers. The tip of his left index finger was a near complete amputation. Medical personnel were unable to determine if Vasquez' injuries were caused by gunfire, the machete, or combination of both. Vasquez underwent surgery to both hands and the top of his left index finger was ultimately amputated.

Criminal Charges

On July 18, 2019, Vasquez was charged in case BA479575 with two violations of Penal Code section 245(c), assault with a deadly weapon on a police officer. On March 9, 2020, Vasquez pled guilty to one count and was placed on 18 months of diversion. The next progress report is set for June 3, 2021.

THE LAW

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury, (2) that the immediate use of force was necessary to defend against that danger, and (3) that he used no more force than was reasonably necessary to defend against that danger. See, CALCRIM No. 505.

When deciding whether the defendant's beliefs were reasonable, consider all the circumstance as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually exist. See, CALCRIM No. 505.

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.

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.

CONCLUSION

The evidence examined in this case shows that officers attempted to place Vasquez on a mental health hold due to his threatening and aggressive behavior toward his roommates, as well as his incoherent behavior in the presence of law enforcement. Vasquez emerged from his bedroom swinging a large machete and knife toward officers. It was reasonable under the circumstance for Barrera to fear for his life, and the life of Yah, and he responded with reasonable deadly force.