

**Non-Fatal Officer Involved Shooting of Michael Tan
Santa Monica Police Department**

Officer Jeffrey Lopez, #3967

J.S.I.D. File #22-0424



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

October 1, 2024

MEMORANDUM

TO: CHIEF RAMON BATISTA
Santa Monica Police Department
333 Olympic Drive
Santa Monica, California 90401

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

SUBJECT: Non-Fatal Officer Involved Shooting of Michael Tan
J.S.I.D. File #22-0424
S.M.P.D. File #22-119278

DATE: October 1, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 29, 2022, non-fatal shooting of Michael Tan by Santa Monica Police Department (SMPD) Officer Jeffrey Lopez. We conclude the officer acted in lawful defense of another at the time he fired his weapon, reasonably believing, based on a totality of the circumstances, that deadly force was necessary to defend against an imminent deadly threat. Further, there is insufficient evidence to prove beyond a reasonable doubt that Lopez used excessive force detaining Tan.

The District Attorney's Command Center was notified of this shooting on November 29, 2022, at approximately 6:00 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by SMPD Robbery-Homicide Detectives George Burciaga and Ismael Tavera.

The following analysis is based on the involved officer's voluntary statement, other officers' statements, witness statements, body worn camera video (BWV), reports, photos, and medical records. These materials were submitted to this office by SMPD on April 12, 2023.

INTRODUCTION

On November 29, 2022, at approximately 12:30 p.m., Lopez was in uniform and driving a marked patrol car. He responded to the area of [REDACTED] Kansas Avenue in the city of Santa Monica after Michael Tan called 9-1-1 from his residence and indicated that he was suicidal. Officers eventually left the scene without contacting Tan at that time.

Later, at approximately 2:30 p.m., Lopez and several other officers returned when Tan's mother called 9-1-1 and reported that Tan was having a mental health "breakdown" and was armed with

a gun. Minutes later, officers learned that Tan had broken into a neighboring apartment unit, on the second story, and was inside armed with a gun.

Lopez positioned himself behind a truck parked in front of the building. BWV shows Tan standing inside a second story window. Tan ignored Lopez's repeated commands and pleas to disarm and surrender. According to Lopez's statement, Tan pointed a pistol at officers standing to the left of the building, prompting Lopez to fire three rifle rounds at Tan. Grainy BWV appears to show Tan holding a shiny object in front of his body at chest level at the moment Lopez fired.

After the shooting, Tan exited the building and tossed his gun into the apartment's front yard. Tan disobeyed commands to surrender and reentered the building. Several minutes later, an empty handed Tan exited again and tried to walk at a quick pace away from Lopez, ignoring his commands to surrender. Lopez charged Tan on foot and struck him once in the cheek with his rifle muzzle. Other officers rushed in and handcuffed Tan without further incident.

From the front yard of the apartment, officers recovered a replica .357 magnum revolver pistol, which turned out to be an unloaded pellet gun.

Tan suffered one gunshot graze wound to his right cheek and, from the muzzle strike, a laceration to his left cheek and a fractured sinus.

FACTUAL ANALYSIS

BWV

According to BWV footage, Lopez and another officer, Coyin Chang, position themselves behind a black Ford truck parked on the curb in front of the two story apartment building. Another group of officers stand to the left (from Lopez's perspective facing the building) of the building, in an adjacent driveway. Before and at the time of the shooting, Lopez and Chang are the only officers with a frontal view into the upstairs window where Tan stands. Chang's camera offers the only footage of Tan's actions in the moments surrounding the shooting.

In a one to two minute period, grainy footage shows Tan repeatedly appear in the window, between closed vertical slat blinds, then disappear behind the blinds. Lopez tells Tan that he is there to help Tan and asks Tan to come downstairs empty handed. Shortly after, Lopez yells out that Tan has a gun. This is not visible in the footage. Tan yells "fuck you!" and "fake ass cops!" He nonsensically asks Lopez, "What's the code?" Lopez several times tells Tan to drop his gun. Tan disappears behind the blinds then suddenly reappears between the slats, and Lopez immediately fires three shots. Though not definitive, grainy BWV appears to show Tan facing toward the officers in the driveway to the left of the building and holding a shiny object in front of himself at chest level when Lopez fires. Tan disappears behind the blinds after the shots ring out. Hearing gunshots, the officers in the driveway—initially standing close to the street with an angled view of the window—fall back away from the street, out of view of the window.



Figure 1: Lopez fires rifle at Tan, who appears to hold shiny object.



Figure 2: Front of apartment complex.

Several minutes later, Lopez yells out that Tan is “up.” Lopez resumes commands and pleas for Tan to disarm and surrender. A sergeant, grouped with the other officers to the left of the building, radios, “For clarification, the shots fired were from the house to us.” Chang, standing near Lopez, says, “He just threw the gun down.” Lopez repeats, “He just threw the gun down.” (Though not captured in the footage, Tan partially descended the stairs and tossed the gun into the apartment’s front yard.) Lopez tells Tan to keep his hands up and slowly walk down the stairs.

Tan descends the stairwell and stands at the bottom step. He raises his empty hands above his head. He yells, “Fucking kill me!” For several minutes, Tan stands still and silent facing officers, ignoring their instructions to surrender. Tan turns around and runs back up the stairs to the apartment’s second floor, out of view. Tan yells unintelligibly from inside the building. Glass is heard breaking. Over the radio an officer reports that Tan is throwing things out of a window and stating that he is “ok to die.”



Figure 3: Tan extends his middle finger at Lopez.

Several minutes later—approximately 15 minutes after the shooting—Tan appears again at the base of the stairs empty handed. Lopez steps out from his cover position, points his rifle at Tan, and repeatedly yells at him to get on the ground. Ignoring the commands, Tan faces Lopez, points his middle finger at him, and walks briskly to the left of the building, away from Lopez. (Tan walks toward the other group of officers, who are now around the corner of the building—he cannot see them and they cannot see him.)

Lopez runs toward Tan at a perpendicular angle. Tan continues walking briskly, swinging his empty hands at his sides. Lopez reaches Tan, says, "Get on the fucking ground right now!" and strikes Tan's left cheek with the muzzle of his rifle. Tan, who stopped walking and turned his head toward Lopez a fraction of a second before the blow, immediately falls to the ground on his back and is taken into custody without further incident.

Witness Statements

Lopez provided a voluntary statement to investigators. Lopez first went to the location of the shooting at 12:30 p.m., in response to a "suicide now" call for service. Officers spoke with neighbors, identified the subject as Michael Tan, and left the scene without contacting Tan, determining there was no imminent danger.

At 2:00 p.m., Lopez heard a call reporting a "suspicious person" near the same location and believed (correctly) the suspect was Tan based on the description provided. En route back to the scene, Lopez learned that Tan's mother called and reported that he was having a "breakdown" and was armed with a gun. Further comments indicated that Tan had broken into a neighbor's apartment. Officers at that time did not know whether Tan was inside the apartment alone.

After taking cover behind the Ford truck, Lopez saw Tan standing in the upstairs window. Moments later, he saw Tan holding a silver colored pistol in his right hand. Tan yelled at officers to shoot him. Lopez believed Tan was trying to commit "suicide by cop." Ignoring Lopez's repeated commands, Tan instead looked toward the group of officers left of the building and pointed the gun in their direction. Fearing for their safety, Lopez fired three rifle rounds at Tan, which appeared to be "effective" because Tan immediately "dropped to the ground." Lopez heard a sergeant broadcast that shots had been fired at officers from inside the building.

Regarding Lopez's muzzle strike to Tan's cheek, Lopez said that he saw Tan "walking at a pace where it seemed like he wasn't going to stop," and Tan ignored his commands to stop. Lopez decided to strike Tan with his rifle because, although he knew Tan had discarded his pistol, he did not know whether Tan possessed other weapons, did not know the exact location in the front yard of the discarded pistol, and still feared that Tan intended to force officers to shoot him. Lopez did not have time to safely discard his rifle and chose instead to end the encounter by striking Tan to take him to the ground. Lopez stated that the muzzle strike was deliberate but that he aimed for Tan's shoulder area not his face.

Investigators did not locate any civilian eye witnesses to the shooting. Two other officers present stated that they saw Tan hold the pistol to his head sometime before they heard gunshots. Chang, the officer closest to Lopez, stated that before the gunshots he saw Tan holding the pistol and heard him yell that he wanted to die.

Investigators interviewed the two residents of the apartment that Tan broke into and learned that Tan had held them captive at gunpoint for close to thirty minutes before they escaped without physical injury.

Physical Evidence



Figure 4: Tan's Replica .357 Magnum pellet gun.

From the front yard of the apartment building, investigators recovered an unloaded pellet gun replica .357 magnum revolver. Based on BWV, an inspection of Lopez's weapon post incident, shell casings and bullets or fragments recovered at the scene, and observed bullet impacts, Lopez fired three rounds during the incident. According to medical records, Tan suffered a gunshot wound to his right cheek (graze wound) and a laceration to his left cheek and a fractured sinus. Investigators observed and photographed a trail of apparent blood from the base of the stairs to the upper story apartment unit. Inside the unit, more apparent blood was observed and photographed at various locations throughout. A hooded sweater Tan wore at the time showed a rip across the back shoulder area, apparent damage from a bullet.

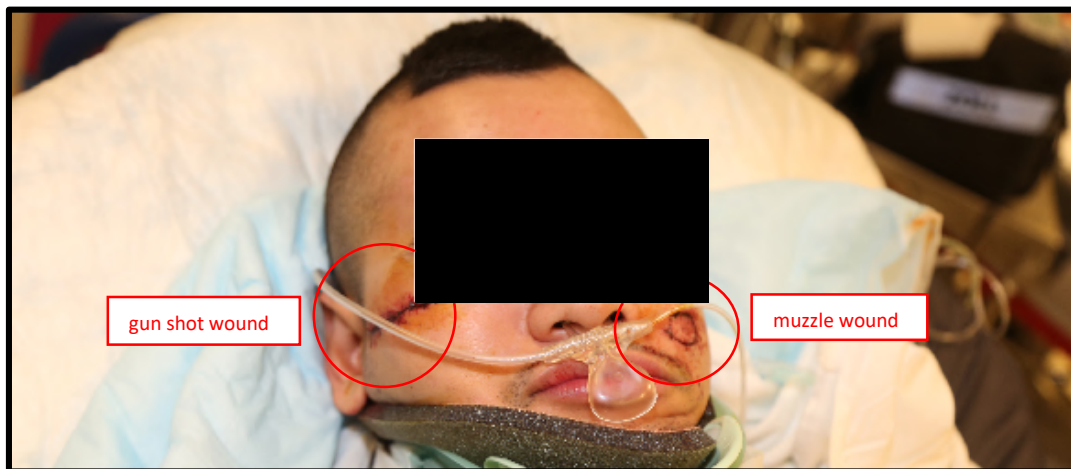


Figure 5: Tan's injuries photographed at hospital.

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).

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

When Lopez responded to the Kansas Avenue apartment building he was informed that Tan was suicidal, armed with a gun, and had broken into a neighbor’s apartment unit. Lopez took cover behind a pickup truck with a direct view into an upper floor window where Tan stood holding an apparent silver pistol. A second group of officers took positions in a driveway left of the building. For several minutes, Lopez pleaded with Tan to disarm and surrender, and told Tan that he wanted to help him. Tan ignored Lopez’s pleas and at various times verbalized his desire to be shot by officers. Lopez stated that he fired at Tan because he saw Tan point a gun toward the group of officers left of the building. BWV, though grainy, appears to corroborate Lopez’s assertion.

Considering the totality of the circumstances known to Lopez at the time, including those leading up to the incident, it was reasonable for him to believe that deadly force was necessary to defend against an imminent deadly threat when Tan, holding what appeared to be a pistol, ignored commands to disarm and surrender and instead pointed it toward officers. Lopez acted reasonably under the circumstances known at the time, and this conclusion is not altered by the hindsight knowledge that Tan was armed with an unloaded pellet gun.

Regarding Lopez's decision to strike Tan in the cheek with his rifle muzzle, although Tan discarded his gun, he refused to surrender and instead attempted to walk at a quick pace away from Lopez. Moreover, Tan walked toward a group of armed officers located around a blind corner who could not see him—officers who believed Tan had fired a gun at them and might be startled by his sudden appearance. (A sergeant radioed that shots were fired “from the house to us.”)

Tan's actions forced a quick decision by Lopez. Given the totality of the circumstances, it was not unreasonable for Lopez to conclude that striking Tan to take him to the ground was safer than allowing Tan to advance toward the other group of officers: Tan's apparent intent was to force a deadly encounter, and Lopez did not know whether Tan was armed with other weapons, or whether he would attempt to retrieve his discarded pistol.

CONCLUSION

Based upon the foregoing, Lopez acted in lawful defense of another at the time he fired his weapon, reasonably believing, based on a totality of the circumstances, that deadly force was necessary to defend against an imminent deadly threat. Further, there is insufficient evidence to prove beyond a reasonable doubt that Lopez used excessive force when he struck Tan with his rifle.