

**Fatal Officer Involved Shooting of Richard Lugo
Los Angeles County Sheriff's Department**

**Deputy Michael Alburez #620678
Deputy Vincent Fratianne #644211**

J.S.I.D. File #20-0125



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

November 8, 2021

MEMORANDUM

TO: CAPTAIN JOE MENDOZA
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Richard Lugo
J.S.I.D. File #20-0125
L.A.S.D. File #020-07309-1121-013

DATE: November 8, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 19, 2020, fatal shooting of Richard Lugo by Los Angeles County Sheriff's Department (LASD) Deputies Michael Alburez and Vincent Fratianna. We have concluded that the deputies acted lawfully in self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 6:30 p.m., on April 19, 2020. 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, the autopsy report, photographic and video evidence, and witness statements submitted by LASD Homicide Detectives Marc Boisvert and Scott Matlock. The report furnished to this office did not include any compelled statements. There was no body worn video of the incident.

FACTUAL ANALYSIS

On April 19, 2020 at approximately 4:00 p.m., two city security guards near the intersection of Cedar Avenue and Lancaster Boulevard in the city of Lancaster confronted Lugo after he threw a soda can through a building window. When one of the security guards questioned him about the incident, Lugo placed a hand in his jacket pocket, said that he had a gun, and threatened to shoot. The guard backed away. Lugo turned, hopped a nearby fence, and fled. The security guards pursued him briefly but stopped after discovering that one of them sustained a laceration while climbing over the fence. Los Angeles County Paramedics were called. One of the paramedics relayed a request for a police response.

LASD detectives Gilberto Borrueal and Candice Bivins responded to the "man with a gun" call. The security guards provided detectives with a physical description of a white male wearing a

dark gray or blue jacket and tan pants who fled on foot northbound on 10th West towards Avenue I. The detectives were also informed that Lugo had placed his right hand in his coat pocket and waved it back and forth as if brandishing a concealed firearm.

Borruel and Bivins began to search for Lugo along Avenue I. Borruel spotted Lugo standing in front of the Harvest Market liquor store near the intersection of 10th Street West in Lancaster. The two detectives converged on the location. Borruel parked his patrol car and walked towards Lugo in order to speak with him.



Figure 1: Borruel approached Lugo near the Harvest Market.¹

Borruel stopped and asked Lugo to approach. Lugo dropped something from his hand, said “Fuck you guys,” and ran westbound across 10th Street West.



Figure 2: Lugo ran across 10th Street West after being approached by Borruel.

Upon reaching the other side, Lugo stopped and bladed his body towards Borruel. Lugo then knelt on one knee and adjusted his jacket as though pointing a concealed weapon toward Borruel.

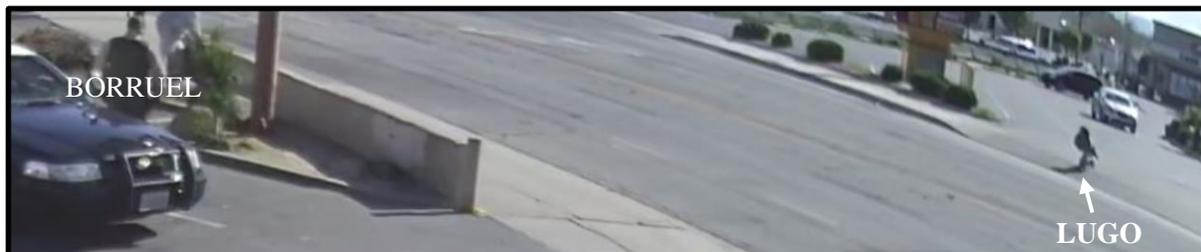


Figure 3: Lugo knelt on one knee on the other side of the street and simulated pointing a firearm under his jacket.

¹ This still image was excerpted from surveillance video footage retrieved from the Harvest Market.

Borruel, fearing for his safety, requested assistance via radio at approximately 4:33 p.m., stating that he was detaining a possible “417 suspect” (suspect armed with a weapon). Borruel subsequently broadcast that Lugo was putting his hands in his pocket, refusing to show his hands, and simulating a weapon.

Lugo moved further into the parking lot of 1101 West Avenue I in front of the Donut House. The detectives drove their patrol cars across the street. Borruel had his service weapon drawn and aimed at Lugo. A woman in a black SUV stopped her vehicle in a position that obstructed Borruel’s line of fire. Borruel yelled at her to move.



Figure 4: Borruel and Bivins repositioned near Lugo with the black SUV in the background to Lugo’s right.

Lugo kept his distance but turned and faced the detectives. He knelt down on one knee and yelled something that sounded like “Mother Russia!”² or “Mother Fucker!” He also yelled, “I’m going to fucking kill you!” and “I’m going to shoot you!” Bivins saw Lugo remove his hands from his pockets, then immediately reinsert them. Both Borruel and Bivins ordered Lugo to show his hands. Rather than comply, Lugo took his left hand, put it over the pocket shrouding his right hand, and made a movement simulating the drawing of a slide on a semiautomatic weapon.

Bivins reported seeing Lugo stand up and point at a lady who was seated inside a parked vehicle. Lugo then knelt on one knee again with his hands in his pockets. Lugo stated that he had a gun and would shoot.



Figure 5: Lugo knelt again and appeared to simulate a firearm after the black SUV pulled away.

² Both detectives reported hearing Lugo make references to “Russia,” or “Mother Russia.”

Lugo stood up and ran northwest through the parking lot towards an alley on the north side of the shopping center. At 4:34 p.m., Bivins broadcast that Lugo was running westbound through the parking lot. Less than a minute later, BorrueI broadcast that Lugo was in the alley.³ The two detectives followed in their patrol cars as other units converged on the scene.

BorrueI drove into the alley. Lugo climbed up onto a loading dock. Arriving on scene, Deputy Vincent Fratianne saw Lugo pacing back and forth, fidgeting with his hand, moving his hands towards his jacket pockets, and turning away from deputies.⁴ Fratianne's partner, Deputy Ryan Ferrone, heard BorrueI order Lugo to remove his hands from his pockets. Per Ferrone, Lugo put his left hand over the opposite pocket and simulated the motion of cocking a gun. Per Bivins, Lugo repeatedly moved his hands in and out of his pockets.

A number of responding units turned from northbound 10th Street West into the alley and moved westbound behind the Dollar Tree. Deputies parked their patrol cars and converged on foot to the loading dock. Deputy Jonathan Lee estimated seeing ten deputies in the area by the time he arrived. From a distance of approximately 200 to 300 feet, Lee saw Lugo reach into his pockets and fail to comply with commands to show his hands. Lee retrieved an AR-15 from the trunk of his patrol car. Lee, along with Deputy Alburez, approached on foot at about the same time.

Deputy Michael Alburez saw Lugo repeatedly move his hands toward his waistband while screaming loudly, "I have a gun! I have a gun! I've got a gun on me! I have a gun!"⁵ Deputies responded by telling Lugo to calm down and show his hands. Lugo's erratic behavior and sudden hand movements led Alburez to conclude that Lugo was under the influence of a controlled substance. Ferrone heard Lugo say, "I'm going to kill you! I'm going to kill you!"

Per Bivins, Lugo jumped off of one loading dock and onto another. Lugo then jumped over the railing of the second loading dock and ran west through the alley around the corner of the building with approximately nine deputies in pursuit.⁶ Alburez noted that when Lugo jumped off the platform, he took a few steps and fell. When he fell, Lugo braced his fall with one hand and kept the other hand in his pocket, leading Alburez to believe that Lugo was maintaining control of a firearm. Lugo got back on his feet and kept running.

Lee said that he and Alburez were in front of the group pursuing Lugo on foot and that they closed distance quickly. Deputy Ty Shelton noted that as Lugo ran, he kept his right hand in his jacket pocket. Shelton heard another deputy yell, "Stop! Stop! Let me see your hand!" Lugo did not comply.

As Lugo rounded the corner of the building, he spun around and faced Lee and Alburez. Lugo bladed his body toward the deputies. Deputies reported seeing Lugo's hand out of his pocket.

³ BorrueI subsequently broadcast a clarification that it was the alley behind the Dollar Tree. The building was variously referenced in reports as the Family Dollar and the Dollar Tree. In point of fact the store front includes signage for both Family Dollar and the Dollar Tree.

⁴ Witnesses noted the presence of a second individual, described as a transient, by the loading docks. Other than happening to be present when Lugo entered the scene, this second person appears to have no connection to Lugo or the incident.

⁵ Deputy Fratianne said that Lugo repeatedly, loudly, and angrily stated that he had a gun.

⁶ A radio broadcast confirmed that the deputies were in a foot pursuit.

Alburez told Lugo to show his hands and not reach for anything. Lugo responded by shoving his right arm into his jacket. Alburez then told Lugo not to reach for anything but to slowly pull his hand out of his pocket. Per Alburez, Lugo reacted by making a quick jerking movement with his elbow as if pulling a weapon.

Deputy Miguel Gonzalez was armed with a stun bag shotgun. Gonzalez saw Lugo pulling his right hand from his jacket. Gonzalez yelled, “Stun bag! Stun bag!” and fired one stun bag round toward Lugo’s waist. Shelton, Ferrone, and Adan Ordaz all described the firing of the stun bag round as contemporaneous with Lugo pulling something from his pocket. Lee – who had attempted to transition from his rifle to a Taser – looked up upon hearing the shotgun and saw Lugo curled over slightly. Lee perceived that Lugo was trying to pull a firearm from his pocket. Lee attempted to transition back to his rifle.

Alburez was out in the open with no cover approximately four to six feet from Lugo. Upon seeing the quick jerking movement of Lugo’s arm, Alburez feared for his life and determined that firing his service weapon was the only option to protect himself and fellow deputies. Alburez estimated that he fired two to three times.

Fratianne also saw Lugo make a quick motion as though pulling a weapon from his pocket. Fratianne was out in the open with no cover approximately four to six feet from Lugo. Stating that he was terrified that he was about to be shot, Fratianne fired his service weapon. Fratianne estimated that he fired two to three rounds.

Gonzalez said that he heard the sound of gunshots fired by other deputies immediately after he fired the stun bag round. Ordaz described hearing three separate sets of gunshots in close succession. Ordaz had his service weapon drawn and his finger on the trigger but elected not to fire because he lacked a clear shot.



Figure 6: Aerial photo above depicts the alley way behind the store. Red arrows to the left depict Lugo’s route when entering the alley. Blue arrows to the right depict his movement just prior to shooting. The blue circle depicts the area where shooting occurred.

After being struck by rounds, Lugo fell backwards to the pavement. At approximately 4:36 p.m., a deputy broadcast “9-9-8” (deputy involved shooting).

When the deputies approached, Lugo moved his right hand towards his waist. Deputies intervened to prevent further movement and conducted a pat down search for weapons but found none. Borrueal, who had heard the gunfire as he exited his vehicle, responded to where Lugo lay and began administering chest compressions. Other deputies assisted in providing emergency first aid pending the arrival of paramedics from the Los Angeles County Fire Station 33, who took over the administration of aid. Lugo was transported to the Antelope Valley Hospital where he was pronounced dead on arrival.

While Lugo was being assessed at the hospital, nursing staff found a baggie inside his right shoe. The contents of the baggie were subsequently tested by the Los Angeles County Sheriff's Department Scientific Services Bureau and found to contain methamphetamine. A glass pipe of the kind typically used for smoking narcotics was also found in a cigarette pack taken from Lugo's clothing.

Alburez's department-issued Smith & Wesson 9mm Luger semiautomatic pistol was inventoried and found to contain one round in the chamber and 11 live rounds in an affixed 17 round magazine. Based on Alburez's statement that he began the shift with a round in the chamber and a fully loaded magazine, it would appear that Alburez fired six rounds. Frattianne's department-issued Smith & Wesson 9mm Luger semiautomatic pistol was inventoried and found to contain one round in the chamber and 14 live rounds in an affixed 17 round magazine. Based on Frattianne's statement that he began the shift with a round in the chamber and a fully loaded magazine, it appears that Frattianne fired three rounds. A total of nine 9mm shell casings were found in the area where the shooting occurred as well as one expended shotgun bean bag and one expended beanbag shot shell casing. The evidence establishes that two deputies fired a total of nine pistol rounds and a third deputy fired one stun bag round during the engagement.

No ballistics reports were furnished in the report provided by LASD investigating officers in conjunction with this shooting.

On April 24, 2020, Deputy Medical Examiner Scott A. Luzi performed an autopsy on Lugo's body. Luzi concluded that death resulted from multiple gunshot wounds. Twelve gunshot wounds were described in the autopsy report. While not specifically denoting the wounds as fatal, Luzi focused his causative conclusions on three of the 12. The first of these resulted from a round that entered the left side of the chest, traveled front to back, through the heart, and left a deformed jacketed bullet in the back. The round causing the second wound entered through the right side of the back, traveled back to front, right to left and downward, passed through the right lung and liver, and left a deformed jacketed bullet in the right side of the chest. The round causing the third wound entered through the left side of the back, penetrated the left lung, traveled back to front, right to left, upward, and left a deformed jacketed bullet in the left side of the chest. Lugo also suffered gunshot wounds to the lower back, right and left upper extremities, left arm, left forearm, left thigh, a superficial perforating gunshot wound of the chest, and a deep graze wound to the left knee.⁷ A toxicology report identified the presence of methamphetamine

⁷ The report also opined that the gunshot wound to the left side of the chest may have been a re-entry wound from a bullet passing through the left forearm and that the entrance wound to the left arm was a re-entry of the bullet that caused a superficial perforating wound to the chest.

and amphetamine in Lugo's blood. A relative who spoke with the coroner's investigator confirmed that Lugo had a history of narcotics use.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

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 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 § 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, is 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).

In evaluating whether a police officer's use of force was reasonable, 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 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.

The evidence in this investigation reveals that Lugo repeatedly behaved in a threatening and erratic manner during the encounters leading up to the use of deadly force. Lugo pretended to have a weapon, claimed to have a weapon, and threatened to shoot and kill peace officers. Lugo resisted all de-escalation efforts. Lugo defied commands to show his hands, alternately displayed them and

concealed them again, and acted as though he possessed and was manipulating a firearm even though he possessed no firearm at the time of the shooting. In the end, Lugo confronted his pursuers at short range by pretending to draw a weapon. Deputies involved in the pursuit reasonably believed that Lugo was armed, intended to cause them harm, and had the present ability and opportunity to kill or seriously injure them. Lugo accordingly constituted a threat of imminent harm in a busy public location during normal business hours. It was a threat that had to be immediately addressed. The deputies opened fire at short range in a tense and rapidly evolving situation that afforded no space for alternative measures. Given the totality of the circumstances, the use of force was reasonable and therefore lawful.

CONCLUSION

We find that Deputies acted in lawful self-defense and defense of others when they used deadly force against Richard Lugo.