

Fatal Officer Involved Shooting of Martin Flores Lopez

Bell Gardens Police Department

Officer Sergio Tiscareno, #498

J.S.I.D. File #18-0491



Justice System Integrity Division

November 16, 2020

MEMORANDUM

TO: CHIEF SCOTT B. FAIRFIELD
Bell Gardens Police Department
7100 Garfield Avenue
Bell Gardens, California 90201

CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Martin Flores Lopez
J.S.I.D. File #18-0491
B.G.P.D. File #2018-00028268
L.A.S.D. File #018-00093-3199-013

DATE: November 16, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 21, 2018, fatal shooting of Martin Flores Lopez by Bell Gardens Police Department (BGPD) Officer Sergio Tiscareno. We have concluded that Tiscareno acted in the lawful defense of another when he fired his duty weapon.

The District Attorney's Command Center was notified of this shooting on November 22, 2018, at approximately 12:30 a.m. The District Attorney Response Team (DART) responded to the location, where they received a briefing and walk-through of the scene.

The following analysis is based on investigative reports, 9-1-1 calls, radio transmissions and records, recorded interviews, crime scene photographs, body worn video, coroner reports, and other evidence submitted to this office by the Los Angeles County Sheriff's Department (LASD) Homicide Bureau. Tiscareno and Howard provided voluntary statements, which were considered for this analysis.

FACTUAL ANALYSIS

On November 21, 2018 at approximately 10:20 p.m., Morena called 9-1-1, told them her son, Martin Flores Lopez, was schizophrenic and on parole and requested the police respond to her location.¹ Before the operator could obtain any further information, the call was disconnected.

¹ [REDACTED] .

The operator called Morena back to obtain her address and asked if Lopez had any weapons; Morena said no. Natalie, Lopez's sister, also called 9-1-1 and said Lopez was threatening to kill his family or "somebody." Natalie said she did not know whether Lopez had a weapon.

A radio call was broadcast to officers, stating the reporting party's twenty-one-year-old son was schizophrenic and was off his medication.² Tiscareno and Howard, who were wearing full BGPD police uniforms, responded to the location. When Morena opened the front door, she frantically waived Tiscareno and Howard into the apartment. Lopez, who was standing behind Morena in the living room, looked at Tiscareno, lifted his shirt and removed a large knife from his pants. Lopez ran down the hallway to the bedroom where Rigoberto E., Morena's husband, was sleeping. Morena chased Lopez down the hallway and into the bedroom, and Tiscareno and Howard followed. When Tiscareno and Howard entered the bedroom, they observed Lopez on the bed on top of Rigoberto, holding the handle of a large knife impaled in the left side of Rigoberto's head. Morena and Natalie were on the bed, screaming and hitting Lopez, trying to stop him from pushing the knife deeper into Rigoberto's head. Howard and Tiscareno drew their handguns but could not safely fire their weapons because the women were in front of them. Tiscareno commanded Lopez to drop the knife, but Lopez would not let go. Howard tried to pull the two women away from Lopez. Tiscareno climbed onto the bed behind Lopez and continued to give Lopez commands to drop the knife. When Lopez did not let go of the knife, Tiscareno fired two contact rounds into Lopez's upper torso to stop Lopez from stabbing Rigoberto and to save Rigoberto's life. Tiscareno and Lopez fell onto the bed towards the headboard while Rigoberto remained lying towards the foot of the bed. Howard stopped Morena from trying to remove the knife from Rigoberto's head. Rigoberto was alert but the knife remained embedded in his skull.

Paramedics were requested and pronounced Lopez deceased at the scene. Paramedics transported Rigoberto to the St. Francis Medical Center, [REDACTED]. Rigoberto suffered a [REDACTED]. Tiscareno sustained a small cut on his left thumb.



Photograph of the knife Lopez used to stab Rigoberto.

² The information provided by Natalie does not appear to have been conveyed to the responding officers.

Statement of Morena

Morena told the investigators that when she arrived home from work earlier that evening, Lopez was watching television in the living room with her younger son, Adrian. Lopez did not live at the location but would stop by to eat and do laundry. Around 8:30 p.m., Morena was talking to her daughter, Hazel, on the telephone. Lopez became upset when he could not speak to Hazel's baby. Lopez began banging on the walls and pacing in the hallway. Morena called the police while Adrian and Natalie went to their bedroom. Morena told Natalie to block her door with a dresser. When Morena opened the door and Lopez saw the police, Lopez called her a "Bitch!" Lopez lifted his shirt showing the officers a knife and ran towards Rigoberto's bedroom. Morena and Natalie followed Lopez into the bedroom, where Morena saw Lopez stab Rigoberto in the head with the knife. Morena tried to stop Lopez from pushing the knife deeper in Rigoberto's head. An officer got onto the bed, and she and the officer were able to push Lopez off Rigoberto. Lopez fell onto Morena. An officer walked up and shot Lopez twice. Morena thought Lopez stabbed Rigoberto because she had called the police. Morena said Lopez was diagnosed with schizophrenia and was not taking his medication.

Statement of Natalie

Natalie told investigators that earlier in the evening, Lopez became angry when he could not talk to her sister's daughter. Lopez said he wanted to talk to her or "else something is going to happen." Lopez started banging on the walls. Natalie and Adrian hid in their room, and Natalie told Morena to go to her bedroom. Earlier, Natalie overheard Adrian tell their mother that Lopez had a knife. When Morena asked Lopez if he had a knife, he denied it. Natalie was afraid Lopez was going to do something, because she had seen him angry before.³ When Morena opened the door for the police, Lopez pulled out a large knife from his pants and ran into Rigoberto's bedroom. Natalie followed Lopez into the bedroom and saw him climb on top of Rigoberto and stab him in the head with the knife using both hands. Lopez continued to push the knife into Rigoberto's head. Natalie punched Lopez in the head to try to make him stop. The officers entered the bedroom and told Morena not to remove the knife. After Lopez let go of the knife, one of the officers shot him. Lopez was on the bed facing away from the police when he was shot.

Statement of Adrian

Adrian told investigators that when he and Lopez were watching television together, Lopez was laughing to himself. Adrian saw Lopez had a large knife under his shirt and told his mother. Lopez denied having a knife. Adrian was in his bedroom when he heard Lopez screaming in the hallway. Adrian heard gunshots but did not see what happened inside the bedroom.

³ Natalie did not explain Lopez's previous behavior and said he had never been violent with the family. However, [REDACTED]

Postmortem Examination

On November 27, 2018, Los Angeles County Deputy Medical Examiner Paul V. Gliniecki performed a postmortem examination on Lopez. Lopez suffered one gunshot wound to the left upper mid chest and one gunshot wound to the left mid upper back. Two bullets were recovered. The cause of death was multiple gunshot wounds.

LEGAL ANALYSIS

A police officer may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime. Penal Code section 835a. An officer ““may use all the force ‘that appears to him as a reasonable man to be necessary to overcome all resistance, *even to the taking of life*,’ … the resistance must be 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 (quoting *People v. Bond* (1910) 13 Cal.App.175, 189-190). The officer may use no more force than would appear necessary to him as a reasonable person. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.

A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of death or great bodily injury to the officer or others, or (b) the decedent had committed a forcible and atrocious crime and that crime threatened the officer or others with death or great bodily injury. CALCRIM No. 507; Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another.” CALCRIM No. 507. The prosecution has the burden of proving beyond a reasonable doubt that the killing was not justified. CALCRIM Nos. 505, 507.

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that she or others were in imminent danger of great bodily injury or death. Penal Code section 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. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470.

In evaluating whether a police officer’s use of 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 evaluation of reasonableness should look to “the facts and circumstances of each case, including the severity of the crime, the threat posed by the suspect, and whether the suspect is resisting or attempting to evade arrest.” *Graham v. Connor* (1989) 490 U.S. 386, 396. “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.

When Tiscareno entered the bedroom, he observed Lopez holding the handle of a large knife that was impaled in Rigoberto’s head. Correctly believing Lopez stabbed Rigoberto in the head and in order to save Rigoberto’s life, Tiscareno fired two rounds at Lopez.

CONCLUSION

We find that Officer Tiscareno acted in the lawful defense of another when he fired his duty weapon. We are closing our file and will take no further action in this matter.