

**Non-Fatal Officer Involved Shooting of Frank Robles
Los Angeles County Sheriff's Department**

Deputy John Rogart, #545637

J.S.I.D. File #18-0127



Justice System Integrity Division

November 16, 2020

MEMORANDUM

TO: 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: Non-Fatal Officer Involved Shooting of Frank Robles
J.S.I.D. File #18-0127
L.A.S.D. File #018-05107-0287-056

DATE: November 16, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 4, 2018, non-fatal shooting of Frank Robles by Los Angeles County Sheriff's Department (LASD) Deputy John Rogart. It is our conclusion Deputy Rogart acted in lawful self-defense at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on April 4, 2018, at approximately 8:13 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LASD Lieutenant Joe Mendoza.

The following analysis is based on reports, recorded interviews, photographs, and sketches submitted to this office by LASD Homicide Bureau Investigators John Carlin and Ralph Hernandez. The voluntary statement of Deputy Rogart was considered as part of this analysis.

FACTUAL ANALYSIS

On April 4, 2018 at approximately 7:15 p.m., Frank Robles approached two men, Juan G. and Rodrigo P., who were sitting in the back of a pickup truck near the end of the driveway to an apartment complex on Leonard Place. As Robles approached the men, he waved an eight-inch kitchen knife in the air. When he waved the knife, he said something to the men in English, which they could not understand.¹ Based on Robles' actions, Juan G. became fearful for his life.

Abel C. witnessed Robles' actions and called 9-1-1, at approximately 7:19 p.m. to report a man "wielding" a knife in the street. Abel C. told the 9-1-1 operator that the man was acting erratically and possibly under the influence of drugs. The man was later identified as Robles.

¹ Juan G. and Rodrigo P. speak Spanish and did not understand what Robles said to them.

Rogart was driving through the area in a marked patrol vehicle, unaware of the 9-1-1 call, when he was flagged down by Abel C. who was still holding his cell phone. Rogart parked his patrol vehicle in front of the driveway to the complex and exited his car.

Rogart saw Juan G. and Rodrigo P. in the driveway. The men waved him over and Rogart approached to see if the two men were okay. The two men pointed towards the rear of the location and one of the men said, "Cholo, knife." Robles, who was behind the northeast corner of the apartment building next to the rear staircase, stepped out onto the driveway as Rogart approached. Robles walked westward down the driveway, toward Rogart, and held the knife in his left hand behind his back.

Juan G. and Rodrigo P., in fear for their safety, got out of the bed of the pickup truck and walked away from the scene. Robles approached Rogart, took the knife out from behind him, and began to wave the blade in front of him in a slashing motion. Rogart unholstered his duty weapon, a 9mm semiautomatic firearm, and pointed it at Robles. Robles had a "blank stare" as he approached Rogart. Rogart believed Robles may have been under the influence of a narcotic due to Robles' profuse sweating and hyperactive behavior. Rogart feared for his life and the lives of others.

Rogart ordered Robles to drop the knife and Robles did not comply. Robles continued to walk towards Rogart holding the knife and said, "Fuck you! Get out of my way! I'm gonna fuck you up!" Rogart walked backwards away from Robles, retreating towards his vehicle. Rogart directed Robles to drop the knife multiple times. Robles did not drop the knife and continued to advance towards Rogart.

Robles pointed the knife towards Rogart as Robles walked down the driveway towards Rogart. While walking backwards away from Robles, Rogart called into his radio requesting clearance for the use of deadly force. Robles accelerated his approach and closed the distance between them to approximately six feet. In fear for his life, Rogart fired two rounds at Robles.

Robles fell to the ground and dropped the knife. Robles spoke, but it is unclear what was said.² Rogart broadcasted on his radio that he was involved in a shooting and Deputies Saavedra and Munoz arrived shortly thereafter. Saavedra, Munoz, and Rogart rendered medical aid to Robles.

The Los Angeles County Fire Department arrived on scene and treated Robles. Robles was transported to Los Angeles County Medical Center by ambulance where he was treated for gunshot wounds to his abdomen and his left leg. On April 7, 2018, the hospital cleared Robles for booking.

Investigators retrieved the knife that was located on the driveway. See Figure 1.

² Conflicting reports indicate that Robles may have simply groaned in pain, or said something to the effect of, "I like it. It feels good."



Figure 1: Knife Robles brandished.

Based upon his actions in this case, Robles was convicted of a violation of Penal Code § 245(c), assault with a deadly weapon on a peace officer.

Numerous witnesses gave similar statements as to what occurred during the incident.

Abel C.

Abel C. saw Robles holding a large kitchen knife with a black handle while stumbling around the area. Robles was walking back and forth across the street and talking to himself. Abel C. said that Robles appeared to be under the influence of drugs. Abel C. called 9-1-1 and flagged down Rogart as he was driving through the area.

Abel C. watched the scene unfold between Rogart and Robles from inside his residence. Able C. stated Rogart told Robles to, “Drop the knife” approximately five to ten times as Rogart backed up. Abel C. also stated that Rogart was approximately six feet away from Robles when Rogart fired his weapon.

Juan G. and Rodrigo P.³

Juan G. and Rodrigo P. were both sitting in the back of Rodrigo P.'s truck when Robles approached them holding a knife and acting erratically. Robles waved the knife in the air, and at one point came within five to six feet of the truck before turning around and heading in a different direction.

Both witnesses observed Rogart arrive. Juan G. and Rodrigo P. heard Rogart yell to Robles, and saw Robles walk towards Rogart, initially hiding the knife behind his back. At this point, both Juan G. and Rodrigo P. turned away from the scene and walked down the driveway past Rogart. Rodrigo P. did not see anything else because he fled to the stairwell to his apartment which blocked his view of the driveway. Juan G. fled as well, but looked back one time and saw Robles get within approximately six feet of Rogart. Juan G. turned his attention away from the driveway and immediately heard the shot. Neither Juan G. nor Rodrigo P. ever saw Robles point the knife at Robles and wave it.

Juan G. and Rodrigo P. both say they heard two shots fired.

LEGAL ANALYSIS

The Law

California Law permits the use of deadly force in self defense or in the defense of others if the person claiming the defense actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *See also* 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.

In protecting oneself or another, a person may use all the force that he or she believes is reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury that appears to be imminent. CALCRIM No. 3470

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 § 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

³ Although they were each interviewed separately, the statements of Juan G. and Rodrigo P. are presented together because of the similarity of their statements and locational perspective during the event.

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.

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 serious physical harm to another." CALCRIM No. 507. When acting under Penal Code § 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. People v. Mehserle (2012) 206 Cal.App.4th 1125, 1147. An officer may only resort to the use of deadly force when the resistance to compliance or arrest "appears to the officer more likely to inflict great bodily injury on himself or those acting with him." Id. at 1146; quoting People v. Bond (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might resorted to other means to secure his safety." People v. Collins (1961) 189 Cal.App.2d 575, 589.

Analysis

The evidence examined in this investigation shows Robles approached two men and threatened them with a knife. Another man flagged down Rogart to assist with this situation. Robles approached Rogart, pointed his knife at him and advanced toward him. Rogart retreated and repeatedly ordered Robles to drop his weapon. Robles got within six feet, did not drop his weapon, nor comply with Rogart's commands. As such, Rogart reasonably feared for his life and fired his duty weapon.

Under this rapidly unfolding situation, it was reasonable for Rogart to believe that Robles posed a deadly threat to himself. As such, Rogart's decision to use deadly force in order to protect himself was reasonable.

CONCLUSION

We find that Deputy Rogart acted lawfully in self-defense when he fired at Robles. We are closing our file and will take no further action in this matter.