

Non-Fatal Officer Involved Shooting of Mark Rodriguez

Los Angeles Police Department

Officer Jason Arreola, #42573

Officer Adrian Garcia, #42580

J.S.I.D. File #21-0020



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

December 15, 2022

MEMORANDUM

TO: CAPTAIN RICH GABALDON
Los Angeles Police Department
Force Investigation Division
100 West 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 Mark Rodriguez
J.S.I.D. File #21-0020
F.I.D. File #F002-21

DATE: December 15, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 21, 2021, non-fatal shooting of Mark Rodriguez by Los Angeles Police Department (LAPD) Officer Jason Arreola and Officer Adrian Garcia. We have determined that Officer Arreola and Officer Garcia acted in lawful self-defense when they used deadly force against Rodriguez.

The District Attorney's Command Center was notified of this shooting on January 21, 2021, at approximately 5:44 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant Reynolds.

The following analysis is based on reports and other materials, including surveillance videos, 9-1-1 calls, radio communications, body-worn video (BWV), police dash-camera video, photographs, and interviews of witnesses submitted by the LAPD Force Investigation Division. The compelled statements of Officers Arreola and Garcia were not considered in this analysis.

FACTUAL ANALYSIS

On January 21, 2021, at approximately 4:18 p.m., a security guard was monitoring surveillance cameras at the intersection of Sixth Street and Grand Avenue. The security guard observed a man, later identified as Rodriguez, holding what the security guard believed to be a handgun. The security guard called 9-1-1 and reported his observations of a "homeless that has a handgun. . . He's walking just with the gun in his hand." The security guard notified a second security guard about the man with the handgun. The second security guard exited the building on Grand Avenue, and he saw Rodriguez on the sidewalk retrieve what he believed to be a handgun from his jacket pocket. Surveillance video captured the second security guard exit the building and look at Rodriguez as Rodriguez transitioned the object resembling a handgun from one hand to another.



Surveillance video timestamped at 4:20 p.m. captured the second security guard (outside frame) exit on Grand Avenue and watch Rodriguez holding what appeared to be a handgun (circled).

Rodriguez walked on Grand Avenue toward Sixth Street while holding the object resembling a handgun in his right hand with the muzzle pointing toward the ground. After the officer involved shooting, the second security guard told investigators that Rodriguez appeared to be speaking with himself and possibly suffering from mental illness. He heard Rodriguez repeatedly saying to himself that he was “sorry” and he “didn’t want to do it.” Rodriguez turned the corner on Sixth Street and continued walking toward Olive Street, where surveillance video showed a pedestrian run away from Rodriguez after he appeared to see Rodriguez holding the object resembling a handgun. As Rodriguez continued walking along Sixth Street, surveillance video captured Rodriguez point the muzzle of the object resembling a handgun at a car, who’s driver was parking along the curb – the driver appeared unaware of Rodriguez. The second security guard followed Rodriguez and last observed him walking into an alley off Olive Street. The second security guard also called 9-1-1 and reported a man walking past businesses with a “handgun in his hand.”

At approximately 4:22 p.m., LAPD’s Communications Division broadcasted to officers that a transient man was walking up and down Sixth Street holding a gun. Several patrol cars with uniformed officers responded to the area, including Arreola and Garcia. Shortly thereafter, Arreola and Garcia were flagged down by the security guards on Grand Avenue and Sixth Street. The security guards told the officers that Rodriguez was brandishing a handgun in an aggressive manner and informed the officers of Rodriguez’s last known location in a nearby alley.

At approximately 4:38 p.m., during daylight hours, Garcia stopped the police car in an alley, Mercury Court, which runs between Sixth Street and Seventh Street. The officers’ BWVs captured them exit their police car and observe Rodriguez approximately halfway between them and Seventh Street. Both officers gave Rodriguez several clear and loud commands to, “Put it down!” and warned him he would “get shot.” Approximately 30 seconds elapsed, and Rodriguez did not comply. From approximately 50 feet away, Rodriguez continued to move his right arm up and down while holding the object resembling a handgun in his right hand. Garcia fired two

rounds from his service weapon at Rodriguez, missing both times. Then Arreola yelled, “Put it down!” and fired one round from his service weapon at Rodriguez, striking him in the pelvic area.



Arreola’s BWV captured Rodriguez (circled) waving the object resembling a handgun immediately before Arreola fired his service weapon.

Rodriguez fell to the ground and continued to hold the object resembling a handgun. After more than 15 seconds elapsed and several more commands, Rodriguez threw the object resembling a handgun to the middle of the alleyway, as captured by the dash-camera video of the police car parked at the mouth of the alley on Seventh Street pointing toward Rodriguez. The officers did not discharge any more rounds during the interim.

Rodriguez was taken into custody, transported to the hospital, and treated for his injuries. A plastic bindle containing methamphetamine was retrieved within a dollar bill inside Rodriguez’s wallet. After the officer involved shooting, the object resembling a handgun was examined and determined to be a replica handgun.



Rodriguez's replica handgun was photographed at the scene.

Statement of Rodriguez

On January 25, 2021, an investigator interviewed Rodriguez at the hospital. Rodriguez stated that he was "homeless" and using methamphetamine on a regular basis. He "might have been" high from methamphetamine the day he was shot by the police.

Upon questioning about the replica handgun, Rodriguez asked to stop the recording and inquired whether the officers could "legally" shoot him if he had a replica handgun. He provided conflicting and vague statements relating to his possession and use of the replica handgun. He admitted to possessing a "plastic" and "broken" replica handgun and stated he carried it to deter others from causing him harm. Rodriguez stated that officers ordered him to place his hands up and he complied but was still shot.

When the investigator asked Rodriguez if he possessed the replica handgun when he was shot by the police, he replied, "When they shot me, I didn't have anything on me at all." Rodriguez then told the investigator, "I was kind of messed up in the head, so everything might not be a hundred percent accurate."

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily

injury or death. CALCRIM No. 3470. In protecting himself or another, a person may use that amount of 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 imminent injury. *Id.*

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person.¹ A peace officer who attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force. Cal. Penal Code § 835a(b), (c)(1)(A), and (d).

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. Cal. Penal Code § 835a(e)(2).

“Totality of circumstances” means 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. 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. Cal. Penal Code § 835a(a)(4) and (e)(3).

Here, Rodriguez possessed and brandished a replica handgun, not a real handgun – he did not pose an actual threat. Nevertheless, the security officers and civilians that observed him were concerned for their safety because they believed it to be a real firearm. Their beliefs were reasonable because they saw Rodriguez hold and point it in a threatening manner. In his interview with investigators, Rodriguez admitted that he carried it for protection, which indicates he also intended others to believe it was a real handgun.

Arreola and Garcia responded to radio communications generated from the security guards’ 9-1-1 calls reporting a man walking in downtown Los Angeles, a heavily populated area with considerable pedestrian foot traffic, brandishing a handgun. Arreola and Garcia contacted the security guards directly who confirmed the information from the radio communications. Finally, the officers made their own observations of Rodriguez in the alley holding what appeared to be a handgun. The available evidence indicates that the officers, like the security guards, reasonably believed that Rodriguez possessed a real handgun and they were in imminent danger if Rodriguez fired it at them.

¹ If the police officer’s beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 3470.

The officers gave Rodriguez several clear commands to drop what appeared to be a handgun, but Rodriguez did not comply. The officers allowed Rodriguez a considerable amount of time to comply, but Rodriguez continued waving what appeared to be a handgun. After the shooting, it was determined that the object Rodriguez possessed was a replica handgun. Regardless of his motive or intent, if any, Rodriguez acted in a manner that reasonably caused others, including the officers, to believe he was armed with a real handgun and posed a threat of imminent death or serious bodily injury. In response, the officers fired their duty weapons – a total of three rounds – to stop the threat they perceived. Arreola struck Rodriguez with the final round, causing Rodriguez to fall. Rodriguez maintained control of the replica handgun, but the officers did not fire any additional rounds.

CONCLUSION

We conclude that Officer Arreola and Officer Garcia reasonably believed it was necessary to use deadly force in lawful self-defense.