

In-Custody Death of Carlos Gonzales

Los Angeles Police Department

Sergeant Ruben Lopez, #31576, Officer Raymond Encinas, #39438

Officer Robert Ramirez, #38292, Officer Yuanhang Yue, #41856

J.S.I.D. File #17-0106



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 15, 2019

MEMORANDUM

TO: COMMANDER ROBERT E. MARINO
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: In-Custody Death of Carlos Gonzalez
J.S.I.D. File #17-0106
L.A.P.D. File #F013-17

DATE: May 15, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 16, 2017, in-custody death of Carlos Gonzalez. We have determined that Los Angeles Police Department (LAPD) Sergeant Ruben Lopez and Officers Raymond Encinas, Robert Ramirez, and Yuanhang Yue used legally justified force in subduing Gonzalez. We have further determined it cannot be proven beyond a reasonable doubt that their use of force was a proximate cause of Gonzalez' death. For the reasons set forth below, this office declines to initiate criminal proceedings.

The following analysis is based on reports, audio and video recordings, photographs, medical records and the autopsy report, submitted to this office by the LAPD. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS¹

On Sunday, February 12, 2017, Gabriel F. was working at a 7-Eleven convenience store located at 2005 East Fourth Street, when he observed a man, later identified as Carlos Gonzalez, enter the location. Gonzalez began screaming and yelling incoherently as he entered the store.² Gonzalez then picked up a two-liter bottle of soda and walked out of the store without paying for the item.³ David M. was working in a different part of the store when he heard Gonzalez screaming from the parking lot.

¹ This summary is based upon witness statements, Hollenbeck Patrol Division Officers' Body Worn Video (BWV) and Digital In-Car Video Systems (DICVS).

² Gabriel told investigators Gonzalez appeared to be "on drugs."

³ This incident is captured on surveillance video from the location.

After exiting the store, Gonzalez approached a black Sports Utility Vehicle (SUV), which was parked at the gas pumps located outside the store.⁴ Both Gabriel and David observed Gonzalez walking around the gas pumps screaming at customers for approximately five to ten minutes. While Gonzalez was in the parking lot, an unidentified customer entered the store and told Gabriel and David that Gonzalez had a gun.⁵ David called 9-1-1 and reported the theft. Gabriel and David then observed Gonzalez leaving the location, running north on Cummings Avenue and out of sight. David updated 9-1-1 with Gonzalez' location and direction of travel.

Officers were dispatched to the 7-Eleven and gathered information from percipient witnesses. They learned at that time that Gonzalez was possibly armed with a firearm, and provided that information via radio to Communications Division (CD).

As the officers conducted their investigation, Artemio G. was working at California Installs, located at 314 South Soto Street, (approximately four blocks east of the 7-Eleven) when he observed Gonzalez walking in the parking lot. Gonzalez appeared disoriented and confused. Miguel C. and a co-worker, who were working on a vehicle outside of a service bay at the location, were approached by Gonzalez. Gonzalez asked for a screwdriver. When the co-worker refused, Gonzalez reached into a tool box, took a screwdriver and ran to parked cars located in the parking lot.⁶ Artemio observed Gonzalez attempting to break into the vehicles.⁷

Artemio approached Gonzalez and asked him to return the screwdriver. Gonzalez gave the screwdriver to Artemio, but then took a flashlight before fleeing to the east. He stopped and sat on the ground in front of a residence on East Fourth Street, a short distance away. Gonzalez then returned to California Installs. Another employee, Martin G., approached him. Gonzalez asked Martin for one of the vehicles at the location and began swinging the flashlight at Martin.

Artemio called 9-1-1 and advised CD that Gonzalez was attempting to break into a vehicle, providing a description of Gonzalez and the flashlight he was using as a weapon. At approximately 5:22 p.m., CD broadcast a call of "Assault with a Deadly Weapon" at the location, including the fact that Gonzalez was armed with a flashlight.⁸ Hollenbeck Patrol Division uniformed Officers Robert Ramirez and Raymond Encinas were assigned the call.

⁴ Subsequent investigation determined that the SUV was owned by Gonzalez, but the license plates on the vehicle did not match the vehicle vin number. Two license plates with the correct license plate number for the vehicle were later recovered from the front right passenger floorboard of the vehicle.

⁵ Gabriel had observed a black object in Gonzalez' hand as he screamed in the parking lot, but was unable to identify it.

⁶ A customer at the location, Richard E., saw Gonzalez take the screwdriver and noted that he appeared to be "high."

⁷ Artemio described Gonzalez as appearing "confused," "not normal" and "on something." Artemio told investigators that he has seen people under the influence of drugs, and believed Gonzalez was due to the fact "he was really, really active."

⁸ While Artemio was still speaking to CD, he observed Gonzalez throw the flashlight and attempt to physically assault pedestrians. Artemio advised CD of this and the updated information was broadcast.

Upon arrival, Ramirez and Encinas approached Gonzalez. Richard E. observed their approach from 50 to 60 feet away. Richard saw Gonzalez attempt to flee from the officers, and observed him trying to jump over a fence before falling back to his feet. He observed the officers exiting their vehicle and ordering Gonzalez to stop and go to the ground. Richard was unable to see what happened after that, but did hear officers telling Gonzalez to stay still.

Artemio also observed Ramirez and Encinas arrive in their patrol vehicle and heard them order Gonzalez to the ground multiple times. Artemio saw Gonzalez comply and lie on the ground on his stomach. When an officer approached Gonzalez, however, Artemio saw Gonzalez go “crazy” and fight with the officers. Artemio heard officers commanding Gonzalez to “Go down! Go down! Stay down! Stay down!” Artemio then heard commands to stop resisting and heard officers tell Gonzalez if he did not comply, they would use the TASER on him. Artemio heard this approximately four to five times before hearing the TASER activated two to three times.

Martin saw Gonzalez’ reaction to hearing the sirens as officers arrived as well as his attempt to flee. Martin heard Gonzalez ordered to the ground approximately ten times. Martin also observed Gonzalez resisting officers’ attempts to subdue him.⁹ Martin saw additional officers arrive and four officers struggling to control Gonzalez as he pushed and attempted to kick them. Martin heard officers warning Gonzalez that he would be tased, but Gonzalez continued to resist and fight. Martin noted that Gonzalez “got really crazy and started moving around” when an officer placed a knee on his back.

DICVS from Ramirez and Encinas’ vehicle captured much of the incident. The DICVS depicts Gonzalez attempting to flee by attempting to scale a 12-foot-high wrought iron fence. Ramirez exits his vehicle and unholsters his TASER while ordering Gonzalez to the ground. Gonzalez initially complies and Encinas places his left hand on Gonzalez’ left shoulder and his right hand on Gonzalez’ back. Gonzalez then attempts to stand up, pulling his arms away from the officers. Sergeant Lopez and his partner Officer Martinez then approach to assist. Martinez grabs Gonzalez’ right arm in an attempt to handcuff him as Encinas attempts to control Gonzalez’ left arm.

Lopez reaches toward the ground and picks up a TASER that was placed there by Ramirez during the struggle with Gonzalez. Lopez points the TASER at Gonzalez and states, “Stop moving or I’m going to tase you.” Lopez then discharges the TASER from approximately 18 inches away into Gonzalez’ naval area. Audio from the DICVS captures the TASER being activated for two five-second cycles. Gonzalez continues to move and resist as officers are attempting to handcuff him, kicking at the officers. Lopez then conducts a three-point drive stun technique by placing the TASER on Gonzalez’ right calf and activating it for one five-second cycle.

⁹ Martin told investigators Gonzalez appeared to be on drugs which gave him additional strength such that the officers would not have been able to get Gonzalez to the ground had he not initially complied with their commands. He also noted that the officers were having “a really hard time” trying to hold Gonzalez and keep him on the ground. Martin described Gonzalez as being “aggressive” during the incident.

Hollenbeck Patrol Officers Miguel Tejada and Collin McDonald arrive and begin assisting the other officers in taking Gonzalez into custody. McDonald places his hands on Gonzalez' ankles and uses his body weight to secure Gonzalez' legs. Martinez brings Gonzalez' left arm behind his back. Encinas handcuffs Gonzalez.¹⁰

McDonald's BWV depicts him conducting a pat-down search of Gonzalez and recovering the barrel of a .40 caliber Glock pistol.¹¹ It further shows Ramirez ordering Gonzalez to stop moving or he will be tased. Gonzales does not comply, and Ramirez places the TASER on Gonzalez' right calf and activates the TASER for one five-second cycle.¹² Hollenbeck Patrol Officers Ruben Zaragoza and Yuanhang Yue then apply a Hobble Restraint Device around Gonzalez' ankles. Tejada, Yue and McDonald lift Gonzalez to his feet, but Gonzalez kicks his feet from underneath himself and is placed on the ground.

Gonzalez is placed on his stomach by Tejada and Yue. Yue kneels on Gonzalez' legs with both of his knees. Tejada places his right knee on Gonzalez' back and uses his body weight to hold Gonzalez in place. Tejada remains in this position for approximately two minutes and 40 seconds until the Rescue Ambulance (RA) arrives.

Paramedics can be seen on the BWV arriving at the location. McDonald and Tejada place Gonzalez in a seated position just prior to the paramedics coming into camera view. Paramedics conduct a preliminary assessment and McDonald and Yue place Gonzalez on a gurney which paramedics then place inside the ambulance.

Paramedic Jorge M. hooked Gonzalez up to an Electrocardiogram machine once inside the ambulance and discovered Gonzalez was in full cardiac arrest. He began a full arrest protocol consisting of cardiopulmonary resuscitation, utilizing a bag valve mask to assist Gonzalez with breathing and providing intravenous fluids and medications. Paramedic Henry H. assisted. Henry noted that Gonzalez had an elevated heart-rate, which in his training and experience was consistent with the use of PCP or methamphetamine.

Gonzalez was transported to White Memorial Hospital. Gonzalez was non-responsive to medical staff instructions and unable to breathe independently. On February 16, 2017, Doctor Lawrence Brooks pronounced Gonzalez deceased.

An autopsy was conducted on February 20, 2017 by Los Angeles Department of Coroner Deputy Medical Examiner Doctor Matthew Miller. Doctor Miller ascribed the cause of death to Hypoxic Ischemic Encephalopathy as a result of resuscitated cardiac arrest following law enforcement contact including use of a conducted electrical weapon and

¹⁰ Encinas suffered a ¼ inch abrasion to his lower left chin area during the altercation.

¹¹ Subsequent testing of swabs from the barrel revealed insufficient amounts of DNA for comparison to Gonzalez' DNA profile. Officers searched the areas where Gonzales had been seen, but were unable to locate the rest of the firearm.

¹² Ramirez sustained minor scratches to his left and right knees in the altercation.

acute methamphetamine intoxication.¹³ The manner of death was determined to be homicide, but Dr. Miller noted in the autopsy report “Rendering the manner of death homicide does not imply intent nor does it imply breach of protocol; in this case, the manner is determined to be homicide due to the physical interaction of other individuals with Mr. Gonzalez in close temporal proximity with his death.” Dr. Miller further explained that “While no overtly fatal trauma was identified, a component of contribution to death from the use of a conducted electrical weapon and/or restraint cannot be completely excluded.” Toxicology testing done as part of the autopsy revealed that Gonzalez had methamphetamine, amphetamine and MDMA in his system at the time of his death. Additionally, a urine screen done at the hospital at the time of his admission was positive for phencyclidine.¹⁴

Analysis of the TASER used during the altercation determined that it was activated six times, each for a five-second cycle. The BWV and DICVS only depict a total of four activations. Artemio told investigators he heard officers warning Gonzalez he would get tased, then later heard them warn him he would get tased again. Artemio observed Gonzalez continue to fight the officers and get tased. When Gonzalez still continued to resist, Artemio believed he was tased “like two or three times.” No witnesses observed six activations of the taser.¹⁵

LEGAL ANALYSIS

“An officer may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance.” *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. “Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Id.* (citations and internal quotations omitted).

“The question is whether a peace officer’s actions were objectively reasonable based on the facts and circumstances confronting the peace officer.” *Id.*, at 1102.

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. 505, 3470*.

The use of a TASER constitutes an intermediate, significant level of force that must be justified by the government interest involved. *Bryan v. MacPherson* (2010) 630 F.3d 805. Use of a TASER is subject to the same reasonableness test as the use of force

¹³ Hypoxic Ischemic Encephalopathy is a type of brain damage that occurs when the brain does not receive enough oxygen and blood.

¹⁴ Phencyclidine is commonly referred to as “angel dust” or “PCP.”

¹⁵ Paramedic Jorge M. noted that Gonzalez had one TASER prong in his leg and one in his chest, but observed no other trauma to Gonzalez’ body during his examination.

generally. See, *Hinton v. City of Elwood* (10th Cir. 1993) 997 F.2d 774, 777 (not excessive for officers to use an “electric stun gun” on a man after grabbing him and wrestling him to the ground, because of his active resistance to arrest). The use of a TASER falls within the category of non-lethal force. *Bryan*, supra, 630 F.3d at 825; See also, *Lewis v. Downey* (11th Cir. 2004) 581 F.3d 467, 475.

An act causes death if the death is the direct, natural and probable consequence of the act and the death would not have happened without the act. *CALCRIM No. 582*

In the instant matter, officers were lawfully performing their duties when they attempted to arrest Gonzalez. A report had been made that he stole an item from 7-Eleven, as well as threatening multiple individuals with a tool after attempting to break into various automobiles. DICVS video shows that Gonzalez initially attempted to flee, but got on the ground as directed. Once on the ground, however, both video evidence and the statements of witnesses show that Gonzalez began resisting when officers attempted to handcuff him. The use of force to try and secure his arms was justified to effect an arrest. The further use of body weight to hold him down once he began to push officers off was necessary to effectuate the arrest. As the struggle continued, officers warned Gonzalez that a TASER would be deployed if he did not stop moving and resisting. Gonzalez can be seen acknowledging at least one of these warnings on the DICVS video. When Gonzalez continued to resist arrest, fighting the officers, moving, kicking and otherwise preventing them from performing their duties, the use of non-lethal force was justified.

Although the use of force is mentioned as a potential contributing factor in Gonzalez’ death, there is no evidence that Gonzalez died because the police used physical force and/or the TASER. Dr. Miller states that it cannot be “completely excluded” as a possible contributing factor, but this is insufficient to prove beyond a reasonable doubt that Gonzalez’ death was a natural and probable consequence of the officers’ actions and would not have happened but for those actions.

Multiple witnesses described Gonzalez as clearly under the influence of drugs and in an agitated state. His elevated heart rate when paramedics were treating him is consistent with the drugs found in his system during toxicology screens from the hospital and autopsy. It cannot be proven beyond a reasonable doubt that his drug ingestion, coupled with his physical exertion before the officers arrived would not have resulted in cardiac arrest and his subsequent death absent any use of force by the officers.

CONCLUSION

The evidence examined in this investigation shows that Officers Encinas, Ramirez, Yue and Sergeant Lopez were justified in their use of force in subduing Gonzalez. Further, there is not sufficient evidence to establish that their use of force was a proximate cause of Gonzalez’ death. We are closing our file and will take no further action in this matter.