

**Officer Involved Shooting of Julian H. and Jose Vargas
Los Angeles Police Department**

Officer Matthew Clymer, #35204

Officer Valerie Vargas, #35833

J.S.I.D. File #18-0473



JACKIE LACEY
District Attorney
Justice System Integrity Division
February 4, 2020

MEMORANDUM

TO: COMMANDER TIMOTHY NORDQUIST
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: Officer Involved Shooting of Jose Vargas and Julian H.
J.S.I.D. File #18-0473
F.I.D. File #F061-18

DATE: February 4, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 11, 2018, non-fatal shooting of Jose Vargas and Julian H. by Los Angeles Police Department (LAPD) Officers Matthew Clymer and Valery Vargas. We find that the officers acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on November 11, 2018, at 11:47 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Detective Luis Alarcon.

The following analysis is based on reports prepared by the LAPD Force Investigation Division and submitted to this office by Detectives Jose Alvarez and Anthony Rheault. The reports include body worn video (BWV), surveillance video, photographs, audio-recorded interviews of witnesses, and radio transmissions. The compelled statements of the involved officers were also considered.

FACTUAL ANALYSIS

The First Shooting

On November 11, 2018, at 10:23 p.m. Jose Vargas and Julian H. were involved in gang related activity, armed themselves with handguns, walked into a park claimed by a rival gang, yelled, "What's up, Homie!" (a gang challenge), and fired their guns at two teenagers who were sitting in bleachers in the park.¹ One of the teenagers was shot in the leg and survived her injury.² J. Vargas and Julian H. ran away.

¹ For purposes of clarity, Jose Vargas will be referred to as J. Vargas throughout the remainder of this memorandum.

² The projectile was not recovered from the victim's leg, for medical reasons.

Officers Matthew Clymer and Valery Vargas were on patrol in the area, in uniform and driving an unmarked police car. They heard the gunfire and drove into a parking lot in the park to investigate.

The Officer Involved Shooting

When Clymer and Vargas drove into the park, J. Vargas and Julian H. ran in their direction and fired their guns at the officers, striking the police car. A photograph of Clymer and Vargas' police vehicle, with bullet damage circled in red, is shown below:



Clymer and Vargas exited their police car and fired their service weapons at J. Vargas and Julian H., striking both of them. J. Vargas fell to the ground and was arrested and transported to a hospital for treatment. A 9mm semiautomatic handgun was located in the area where he fell. Julian H. escaped but was later arrested at a local hospital while receiving treatment for a gunshot wound.

Firearms Evidence

J. Vargas was armed with a 9mm semiautomatic handgun. Two expended cartridge casings were located near the bleachers where one of the teenagers was shot. Those casings matched J. Vargas' gun. Two expended cartridge casings were also found in the parking lot area where J. Vargas fired at Clymer and Vargas. Those casings were determined to have been fired from

J. Vargas' gun. When J. Vargas' gun was inspected, the magazine was empty and there was no round in the chamber. A photograph of J. Vargas' gun is shown below:



Julian H. escaped the scene with his gun but admitted later that he was armed with a revolver and fired at the teenagers in the park and the officers. Julian H. said he disposed of the gun in the ocean.

Clymer was armed with a .45 caliber semiautomatic service weapon. An inspection of Clymer's firearm and magazines and the recovery of expended cartridge casings at the scene is consistent with Clymer firing nine rounds during the incident.

Vargas was armed with a .45 caliber semiautomatic service weapon. An inspection of Vargas' firearm and magazines and the recovery of expended cartridge casings at the scene is consistent with Vargas firing five rounds during the incident.

Officer Clymer's Statement

Clymer provided a compelled statement to investigators.³

³ Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public

Officer Vargas' Statement

Vargas provided a compelled statement to investigators.

Injuries

J. Vargas was treated for gunshot wounds to the hip and chest. He survived his injuries but his leg was amputated due to injuries sustained during the incident. The projectiles were not removed from his body, for medical reasons, so it cannot be determined conclusively who fired the rounds that struck him.

Julian H. was treated for a gunshot wound to the right upper back. He survived his injury. The projectile was not removed from his body, for medical reasons, so it cannot be determined conclusively who fired the round that struck him.

Criminal Prosecution

J. Vargas was charged in case number NA110684 with multiple counts of attempted murder and assault with a firearm. He was convicted and sentenced to life in prison.

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 right of self-defense or the defense of others actually and reasonably believed

service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. The involved officers in this shooting were interviewed and ordered to submit to questioning concerning the performance of their official duties. Like any other individual, the officers possess a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against themselves. *Uniformed Sanitation v. City of New York*, *supra*, at 284-285. Because the LAPD ordered the officers to answer questions which might expose them to criminal liability, the LAPD compelled the officers to participate in interviews. The effect of this legal compulsion is that the officers' statements cannot be used against them in a criminal proceeding, nor can any material derived from the compelled interviews be used against them. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715.

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.

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. If the person's beliefs were reasonable, the danger need not to have actually existed. *Id.*

“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 have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

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.

Analysis

There is compelling evidence in this case, including video evidence, that Julian H. and J. Vargas were engaged in gang related activity, were armed with guns, fired their guns at two teenagers in a park, and fired at Officers Clymer and Vargas when they responded to the park to investigate. When J. Vargas and Julian H. fired their guns at the officers, the officers reasonably believed that they were under a deadly attack. Their decision to use deadly force in order to save their own lives was reasonable and lawful.

CONCLUSION

We find that Officer Clymer and Officer Vargas acted lawfully in self-defense and in defense of others when they used deadly force against Julian H. and J. Vargas. We are closing our file and will take no further action in this matter.