

Officer Involved Shooting of Pedro Gudino

Los Angeles Police Department

Officer Andres Martinez #41620

Officer James Welch #41822

J.S.I.D. File #18-0072



JACKIE LACEY

District Attorney

Justice System Integrity Division

February 6, 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 Pedro Gudino
J.S.I.D. File #18-0072
L.A.P.D. File #F009-18

DATE: February 6, 2020

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office has completed its review of the February 2, 2018, non-fatal shooting of Pedro Gudino by Los Angeles Police Department (LAPD) Officers Andres Martinez and James Welch. We have determined that Officers Martinez and Welch acted in lawful self-defense and defense of others when they fired their duty weapons at Pedro Gudino.

The District Attorney's Command Center was notified of this shooting on February 2, 2018 at 5:10 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by LAPD detectives.

The following analysis is based on police investigative materials submitted to JSID by the LAPD. The compelled statements of Officers Andres Martinez and James Welch were considered in this analysis.

FACTUAL ANALYSIS

On February 2, 2018 at approximately 3:26 p.m., LAPD Officers Andres Martinez and James Welch were on patrol in a marked LAPD police vehicle. Both officers were in full uniform. Martinez was driving and Welch was the passenger officer. They observed Gudino driving a White Dodge Caravan on Anaheim Street in the Wilmington area of South Los Angeles. Gudino failed to stop for a stop sign at the intersection of Bay View Avenue and Opp Street and the officers began to follow him. Gudino sped through this residential area, failing to stop at the stop sign at the intersection of Opp Street and Neptune Avenue and driving on the wrong side of the road into oncoming traffic.

Martinez and Welch activated their overhead lights in an effort to stop Gudino, but Gudino did not yield. He failed to stop at the stop sign at the intersection of Lagoon Avenue and Opp Street,

and drove through the intersection on the wrong side of the road. Moments later, Gudino crashed into two vehicles at the intersection of Opp Street and Fries Avenue, causing his vehicle to become disabled.



Still Image from DICVS Depicting the Collision

Martinez and Welch stopped the patrol car behind Gudino, exited their vehicle and prepared to conduct a high-risk felony stop. Both Martinez and Welch ordered Gudino to put his hands up. Instead of complying with the officers' directions, Gudino extended a handgun out of the driver's side window of the van and pointed the barrel backwards in the direction of Officer Martinez.



Still Image from DICVS Depicting Gudino Pointing the Gun

In response to Gudino's pointing the gun at him, Martinez said "Gun!" to alert his partner that Gudino was armed. Gudino withdrew the handgun from the van's window, but immediately extended it again and fired one round at Martinez.



Still Image from DICVS Depicting Pointing the Gun

In response to Gudino shooting at him, Martinez discharged his duty weapon at Gudino. It is not clear if any of his rounds struck Gudino. Seconds later, while still holding the handgun, Gudino jumped out of the van's driver's side window. In fear that Gudino would shoot at them again, both Martinez and Welch discharged their duty weapons at Gudino.



Still Image from DCVIS Depicting Gudino Jumping out of the Van

Gudino was struck by gunfire and fell to the ground. When he was taken into custody, a loaded and operable Sig Sauer SP2022 .40 caliber firearm was located under his left leg. The firearm's recovery was depicted on Martinez' body worn video. Sergeant Frank Ciezadlo removed the magazine from the firearm and cleared a discharged cartridge casing from the firing chamber.

Gudino's firearm, the magazine and the discharged cartridge casing were booked into evidence. A forensic examination was conducted of the cartridge casing and it was determined to have been fired from the firearm that Gudino possessed. The firearm Gudino used was reported stolen during a residential burglary that occurred in January 2018.

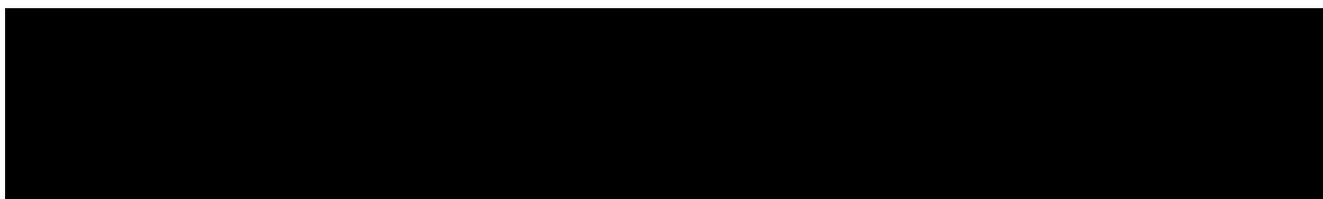


Photo of the Firearm Used by Gudino

Gudino was struck three times by gunfire. He suffered gunshot wounds to his right chest, left shoulder and right lower back. He was transported to Harbor UCLA Medical Center where he underwent surgery. Gudino survived his injuries and was charged in case number NA108425 with the attempted murder of a police officer and other criminal charges relating to his actions during this incident. On February 6, 2019, Gudino pled no contest to two counts of violating Penal Code section 245(d)(2), assault with a semiautomatic firearm on a peace officer. His sentencing is scheduled for March 18, 2020.

This incident unfolded extremely quickly. From the time that Gudino crashed the vehicle until the time he leapt from the van approximately twelve seconds elapsed.

February 3, 2018 Compelled Statement of Officer Andres Martinez



[REDACTED]

February 3, 2018 Compelled Statement of Officer James Welch

[REDACTED]

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.*

In California, the evaluation of the reasonableness of a police officer’s use of deadly force employs a reasonable person acting as a police officer standard, which enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

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.

CONCLUSION

In this case Gudino led the police on a short but extremely dangerous pursuit. He drove at a high rate of speed on the wrong side of residential streets, sped through stop signs and ultimately collided with two vehicles at the intersection of Opp Street and Fries Avenue. Gudino’s vehicular flight placed other motorists and pedestrians at significant risk of harm.

Once the van he was driving became disabled, Gudino ignored Martinez' commands to show his hands and instead compounded the threat by pointing a loaded firearm out of the driver's side window at Martinez and Welch and then firing at the officers. In order to stop the deadly threat posed by Gudino, Martinez discharged his duty weapon at Gudino. Undeterred, Gudino jumped out of the car still holding the firearm. In reasonable fear for their own safety, the safety of each other and the other persons present at the location, both Martinez and Welch discharged their duty weapons at Gudino.

Gudino's dangerous flight from the police provided an objectively reasonable basis for the officers to believe that Gudino posed a significant risk of harm to them, other drivers and pedestrians. This danger came to fruition when Gudino crashed into two vehicles. Gudino exacerbated this danger when instead of surrendering to the police, he pointed a loaded operable firearm at Martinez and then discharged that firearm at the officers. At that point, Gudino posed a real, immediate and imminent threat of death or great bodily injury to Martinez and Welch. Martinez and Welch responded reasonably to end this imminent deadly peril.

Accordingly, we find that Officer Martinez' and Welch's use of deadly force was objectively reasonable and legally justified in self-defense and defense of others. We are closing our file and will take no further action in this matter.