

Officer Involved Shooting of Rigobaldo Jimenez

Los Angeles Police Department

Officer Guadalupe Franquez, #41353

J.S.I.D. File #18-0002



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 8, 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: Officer Involved Shooting of Rigobaldo Jimenez
J.S.I.D. File #18-0002
F.I.D. File #F083-17

DATE: April 8, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 31, 2017, non-fatal shooting of Rigobaldo Jimenez by Los Angeles Police Department (LAPD) Officer Guadalupe Franquez. We have determined that Officer Franquez acted in lawful self-defense and the defense of her partner when she fired her duty weapon.

The District Attorney Command Center was notified of this shooting on December 31, 2017, at approximately 1:17 a.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant Jeff Wenninger.

The following analysis is based on reports and other materials, including interviews of witnesses, 9-1-1 calls, radio transmissions, photographs, Body Worn Camera (BWC) recordings, patrol vehicle dash camera videos, and surveillance footage submitted by LAPD. No compelled statement by Officer Franquez, if one exists, was considered in this analysis.

FACTUAL ANALYSIS

On December 31, 2017, at approximately 12:10 a.m., Jose G. was working at a restaurant located in a strip mall on South Western Avenue, south of 9th Street. Jose G. was cleaning inside the restaurant when he saw Jimenez, who he recognized from another incident, walking in front of the restaurant.¹ Jimenez faced the glass window and gestured with his fingers to his own eyes and then pointed toward Jose G. Jimenez then raised the front of his jacket, exposing the handle of what appeared to be a pistol that was in the left side of his waistband. Jimenez continued to walk south in the parking lot past the restaurant. In fear, Jose G. called 9-1-1 to report the

¹ On December 31, 2017, Jimenez was intoxicated and arguing with a patron inside the restaurant. Ultimately, Jimenez became angry at Jose G. and warned him to be careful. Jimenez told Jose G. that he would be watching him as Jimenez pointed two of his fingers to his own eyes and then pointed his index finger toward Jose G.

incident. Jose G. described Jimenez as a male Hispanic, wearing a red cap, black jacket, white shirt, and white pants.

LAPD Communications Division broadcast over the radio that a man was armed with a gun in the parking lot of the restaurant. Several minutes later, Franquez broadcast that she and her partner, Officer Estefanie Jimenez, were responding to the location. Franquez and her partner were wearing their standard LAPD uniforms and travelling in a clearly marked black and white police vehicle. As the passenger of the police vehicle, Franquez read the comments of the call to her partner as they responded, including the description of the armed suspect.

During this time, Jimenez had walked to a neighboring restaurant in the same strip mall, where he ordered food and waited in the parking lot. Jimenez received his food and carried it in a white plastic bag in his left hand as he walked north in the parking lot parallel to Western Avenue. Simultaneously, Franquez and her partner were travelling southbound on Western Avenue approaching the entrance of the strip mall. Franquez directed her partner to turn westbound into the driveway leading into the parking lot. As the officers approached, they saw Jimenez, who matched the description of the man armed with a gun, change his direction of travel and walk west in the parking lot, away from their police vehicle. Franquez and her partner entered the parking lot and approached Jimenez from behind.



Dash camera video shows Jimenez walking west in the parking lot.²

² Franquez and her partner activated their BWCs and vehicle dash camera as they were travelling to the location with lights and siren activated.

As Jimenez continued walking away from the police vehicle, he reached into the left front side of his jacket with his right hand, removed what appeared to be a pistol, and concealed it near his right front waistband area, which was not visible to the officers.

As her partner slowed the police vehicle to a stop, Franquez opened the passenger door, unholstered her firearm, and yelled, “Hey stop!” Jimenez continued walking as he concealed his right hand from the officers. Franquez yelled, “Put your hands up! Stop!” as she pointed her gun at Jimenez. Jimenez stopped, turned his body slightly to his left, and looked back in the officers’ direction. Franquez yelled, “Drop it! Drop it!” Jimenez turned his body further left and he quickly raised what appeared to be a pistol with his right hand. Franquez fired one round at Jimenez, striking him in the groin area. Jimenez dropped the object as he fell to the ground.



Jimenez’s position after Franquez yelled, “Drop it! Drop it!”



Franquez’s BWC view immediately before she fired her service weapon.

Franquez's partner, Officer Jimenez, stated to investigators that prior to the shooting, she exited the driver side of the patrol vehicle and pointed her service weapon at Jimenez. When she saw what appeared to be a pistol in Jimenez's hand, she believed Jimenez was going to shoot her and she placed her finger on the trigger. She intended to shoot, but prior to pulling the trigger, she heard Franquez fire her service weapon and saw Jimenez drop the object and fall to the ground.



Still from video surveillance of a strip mall business.

At the scene, Jimenez told arresting officers, in Spanish, that he was drunk and the object was not a real firearm. The item Jimenez dropped was determined to be an air soft pistol. Its orange tip was partially colored blue, and its removable magazine was loaded with 11 plastic BBs. Jimenez survived his gunshot wound.



Jimenez's air soft pistol at the scene.



Air soft pistol with its magazine removed.

On January 4, 2018, investigators interviewed Jimenez in Spanish. Jimenez stated he drank five beers and was "drunk" when he walked to the strip mall to get food. He forgot to leave his "toy gun" at home and kept it in his waistband area. Jimenez denied having a confrontation with anyone at the strip mall, and assumed a security guard in the parking lot saw his pistol and called the police. When Jimenez saw the police, he "turned another way to get out." The police told

him “not to move and to drop the gun because it was suspicious.” He “dropped the gun, and that’s when they [shot him].” When confronted about inconsistencies between his account and video footage, Jimenez stated that he was “drunk” and “lost control” that evening.

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

Franquez and her partner responded to a call about a man armed with a gun. When they approached the shopping center, they saw Jimenez, who matched the description of the suspect. Jimenez appeared to see their marked patrol vehicle, changed direction, and walked away from the police vehicle. Jimenez removed an air soft pistol from his waistband, and concealed it as he walked with his back to the officers. Jimenez heard police commands “not to move and to drop the gun.” Nevertheless, Jimenez continued to walk when Franquez yelled, “Hey stop!” Jimenez stopped and angled his body toward the officers when Franquez yelled, “Put your hands up! Stop!” Finally, Jimenez quickly raised his pistol toward officers after Franquez yelled, “Drop it! Drop it!”

Franquez reasonably and correctly believed that Jimenez was the armed subject of the radio call because he matched the description contained in the call. Jimenez’s evasive and furtive actions heightened the officers’ perceived threat. Furthermore, Jimenez failed to comply with clear commands. When Jimenez quickly raised his air soft pistol and turned his body toward the officers, Franquez and her partner reasonably believed that they were in imminent danger of being assaulted with a firearm, and Franquez fired one round at Jimenez to end the perceived threat.

The fact that Jimenez did not pose an actual deadly threat to officers because he was armed with an air soft pistol does not change the facts that led officers to actually and reasonably believe that Jimenez posed an immediate threat. In protecting herself or another, a person may use all the force which she 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. This is true even if there is no actual threat. *Id.* Given the low lighting conditions and the brief time that the officers had to view the object Jimenez was holding, it was reasonable for the officers to believe that the object Jimenez was holding was an actual firearm. Jimenez's air soft pistol had been modified to conceal its orange tip, and Jimenez handled it in the same manner as a real firearm. Jimenez's actions forced Franquez to make a split-second decision, and under these circumstances, her use of deadly force was reasonable.

CONCLUSION

We conclude that Officer Guadalupe Franquez's use of deadly force was legally justified in self-defense and the defense of her partner. We are closing our file and will take no further action in this matter.