

**Officer Involved Shooting of Alfredo Marron
Los Angeles Police Department**

Detective Thomas Penson, #30488

J.S.I.D. File #15-0100



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 28, 2016

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
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 Alfredo Marron
J.S.I.D. File #15-0100
L.A.P.D. F.I.D. File #F016-15

DATE: July 28, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 23, 2015, non-fatal shooting of Alfredo Marron by Los Angeles Police Department (LAPD) Detective Thomas Penson. It is our conclusion that Detective Penson acted in lawful self-defense when he fired his weapon.

The District Attorney's Command Center was notified of this shooting on February 23, 2015, at approximately 3:31 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene by Lieutenant Brian Gilman.

The following analysis is based on reports submitted to our office by the Los Angeles Police Department (LAPD) Force Investigation Division (FID). Penson's compelled statements were considered in this analysis.

FACTUAL ANALYSIS

Background:

On January 16, 2015, at approximately 7:20 p.m., Jonathon Solis argued with his ex-girlfriend, Valeria Murguia. Alfredo Marron, Solis' brother, and Raul Pazos, the father of Murguia's child were also present. During the argument, Marron produced a pistol and shot Pazos multiple times.¹ Immediately after the shooting, Marron and Solis fled in Marron's Chevrolet Silverado pickup truck. Pazos was shot in the neck but survived the shooting. LAPD Detective Edgar Ramos was assigned to investigate the case.

On February 3, 2015, Ramos requested the assistance of the LAPD Gang Narcotics Division (GND) Gang Field Unit (GFU) to locate and facilitate the arrests of Marron and Solis for the

¹Alfredo Marron is 23 years old, six feet, one inch tall, and weighs 360 pounds.

attempted murder of Pazos.² Ramos briefed GFU Detectives Kent Oderinlo, Steven Razo, Thomas Penson, and Officer Joel Ruiz. Ramos distributed the incident report of the attempted murder of Pazos, including photographs of Marron, Solis, and Marron's Chevrolet Silverado pickup truck. The officers were told Marron was armed with a firearm. They developed a tactical plan to locate Marron and Solis by conducting surveillance at Marron's residence, which was located at [REDACTED] West 43rd Place in the City of Los Angeles.

February 23, 2015:

On February 23, 2015, Ruiz conducted a "spot check" at Marron's residence.³ Ruiz informed Penson that he saw Marron's Chevrolet Silverado pickup truck the previous week at the residence.⁴ Penson, Ruiz, and Razo were working as a team that day.

At approximately 2:00 p.m., Penson drove to Marron's residence and parked facing eastbound along the south curb in front of [REDACTED] West 43rd Place, six residences west of Marron's residence. He was in plain clothes and driving an unmarked black Nissan Maxima with tinted windows. Penson's badge was hanging around his neck under his shirt.

Penson observed Marron's pickup parked at the residence. Both Ruiz and Razo were in the vicinity but not close enough to be seen by Penson.

Approximately 20 minutes later, Penson advised Ruiz and Razo that he saw Marron's pickup back out of the driveway of the residence and stop.

Penson also saw a green Honda Civic driven by Marlene Marron, Marron's sister, back out of the driveway of the residence. Marlene drove slowly westbound on 43rd Place toward Penson, who was parked on the street. As she approached Penson's vehicle, Penson reclined his seat in order to avoid Marlene seeing him. As Marlene passed Penson's vehicle, she slowed down and looked into Penson's vehicle. Marlene continued driving and when she reached a nearby intersection she conducted a three-point turn and drove back toward Penson. As she passed Penson's vehicle a second time, she slowed and again looked into Penson's vehicle. Marlene drove back to her residence and parked next to Marron's truck. She appeared to speak to Marron, who was still seated in the driver's seat of his truck.

Via his hand-held radio, Penson told Ruiz and Razo that he positively identified Marron as the driver of the truck. Penson asked Ruiz to request an air unit respond to the location.

At approximately 2:30 p.m., Marron drove away from his residence, westbound on West 43rd Place. Marron drove in the eastbound lane and stopped his pickup directly beside Penson's vehicle, with the vehicles facing in opposite directions. The driver's side of Marron's vehicle

² The GFU's primary duties are to assist LAPD detectives in different divisions and specialized units with the location and apprehension of violent criminal suspects.

³ "Spot checks," also known as scouting, are brief and sporadic observations made by members of GFU of a location. They drive past the location to determine if there is suspect activity. Once the suspect is seen at the location, they devise further plans to conduct surveillance in order to apprehend the suspect.

⁴ Penson had been on vacation the previous week and February 23, 2015, was his first day back to work.

was immediately adjacent to the driver's side of Penson's vehicle. Penson was laying down in his driver seat with the seat fully reclined in an attempt to conceal himself. Penson, who had his service weapon drawn as Marron approached, saw Marron stop and point a gun at him. Marron fired multiple shots at Penson. Penson returned fire. Marron sped away. Penson broadcasted, "Officer needs help!" and turned his vehicle around and chased Marron, but he lost sight of the pickup.

Ruiz was in the area in his unmarked vehicle and saw Marron's vehicle drive by. Moments later he heard Penson's help call on the radio. Ruiz told Penson that he saw Marron driving back toward his residence.

LAPD Officers Mark Reed and Keith Sutcliff arrived minutes after Penson's help call and saw Marron pacing back and forth on the sidewalk in front of [REDACTED] West 43rd Place and bleeding from the left armpit. Penson arrived at the location and identified Marron as the suspect who shot at him as well as an attempted murder suspect. The officers arrested Marron and an ambulance transported him to the hospital.⁵ Marron was treated for a single gunshot wound to his left underarm. He was discharged the same day to police custody.

Alfredo Marron's Statement⁶:

Marron said he did not know Penson was a police officer but believed Penson had been following his sister and mother for the past few weeks. Marron said Marlene was very concerned for her safety and notified LAPD's Southwest Division to make a police report.⁷

On February 23, 2015, at approximately 2:00 p.m., Marron went outside to move his truck out of the driveway to let his sister, Marlene, get her car out of the driveway since his truck was blocking her vehicle. Marron noticed that the car that had been following his sister and mother for the past few weeks was parked down the street. Marron described the car as a black Nissan Maxima with black tinted windows (Penson's vehicle). Marron told his sister when she left to be careful and that the car was on the street again. Marlene drove down the street, made a U-turn, and drove back to the house. Marlene told Marron it was the same car but she could not see who was in it because the driver's seat was fully reclined. Marron told her he would go see for himself.

Marron drove westbound on 43rd Place and veered into the eastbound lane toward Penson's parked car. He stopped his truck so that the driver's side door of his truck aligned with the driver's side door of Penson's vehicle, separated by a distance of approximately five feet. Their driver's side windows were parallel to each other but Marron could not actually see Penson because Penson was laying down in the driver's seat. Marron could only see a silhouette of a person. Marron was not holding any weapons as he drove up to Penson's vehicle. Marron said, "All of a sudden, he just pops up and he already had his gun drawn." No words were exchanged.

⁵ Marron is pending trial for the attempted murders of Penson and Pazos in case number BA434023.

⁶ Marron was interviewed on February 23, 2016, after waiving his Miranda rights.

⁷LAPD records indicate an inquiry was made at LAPD Southwest Division from an unknown party regarding a black Nissan Maxima with a license plate number matching Penson's undercover vehicle.

Penson fired at him first and Marron was shot. As Penson continued to fire, Marron ducked and was shot in the back.

In response, Marron drew his .45 caliber semiautomatic handgun from under the center console of his truck and fired back at Penson in self-defense. Marron said he always carries his gun in his truck for protection because he has been shot at in the past.⁸ Marron believed he fired a total of seven to eight rounds at Penson.⁹

After the shooting, Marron drove towards his house but stopped at [REDACTED] West 43rd Place because he saw his neighbor and did not know how serious his injury was. Marron exited his truck and asked his neighbor to call 9-1-1. The police arrived shortly thereafter.

Penson arrived in the black Nissan Maxima and stated, "You motherfucker! Take his ass in!"

Marlene Marron's Statement:

Sometime before February 23, 2015, Marlene called the police on several occasions to report that a black Nissan Maxima had been following her and her mother for the past few weeks. Marlene memorized the license plate number of the vehicle and when she notified LAPD and provided the license plate number, LAPD said there was nothing they could do and advised her to call 9-1-1 if she saw the car again.

On February 23, 2015, at approximately 2:30 p.m. Marlene was leaving her residence. Her vehicle was blocked in the driveway by Marron's truck so she woke him up to move his truck. Marron went outside to move his truck and they noticed the black Nissan Maxima parked down the street. Marlene drove down the street to confirm whether Penson's vehicle was the same vehicle that had been following her.

Marlene drove past Penson's vehicle, made a U-turn, and drove back toward her house. Marlene stated she looked into Penson's vehicle but could not see anyone because the driver's seat was reclined and the windows were tinted. When she arrived back at her house she told Marron it was the same vehicle that had been following her and her mother. Marlene saw Marron drive towards Penson's vehicle when she heard five or more gunshots. Marlene looked up and saw shell casings and smoke.

Marlene called 9-1-1 and reported that someone had shot at her brother. Marlene drove down the block and saw Marron's truck parked in front of a neighbor's house. She pulled into the driveway and stopped to see what happened and saw that Marron was shot.

⁸ Marron's .45 caliber Springfield Armory XD semiautomatic pistol was recovered inside the residence where Marron was arrested. One live .45 caliber round was on a bed next to the pistol. The magazine clip was lying next to the pistol and loaded with one round. The chamber of the pistol was empty. A computer inquiry into the registered owner of the firearm showed "no record on file."

⁹ Marron fired eight rounds at Penson. Six expended cartridge casings were located in his truck and two were located in the street.

The first responding officers (Reed and Sutcliffe) asked Marlene what happened and she told them her brother had been shot. Penson arrived moments later. Marlene was still unaware that Penson was a police officer when she told Reed and Sutcliffe, "That's him, that's him." It appeared that Reed and Sutcliff did not know the identity of Penson either so they drew their service weapons. Instead of detaining Penson, the officers told Marron to get on the ground, which confused her. She saw Penson get out of his vehicle and start running toward her while pointing a gun at her. Marlene ran from the driveway to another house when a uniformed officer who was in front of her told her to get on the ground. Penson approached her and told her "Fuck you."

Wilmer Young's Statement:

On March 19, 2015, Wilmer Young told LAPD Detective David Smith that he was standing outside his residence when he saw Marron shoot first at Penson, and Penson fired back. Young refused to provide further details and refused to be recorded.

On December 1, 2015, Young was called as a prosecution witness at Marron's preliminary hearing for the attempted murder of Penson. Young testified he was standing on West 43rd Place when he heard five or six gunshots. He testified that he did not look up to see where the gunshots came from and did not see anything. Young said he saw Penson's car make a U-turn and turn northbound. Young confirmed that on March 19, 2015, he spoke to Smith regarding the shooting and told him he would not do a formal interview. Young denied telling Smith that he saw Marron fire first at Penson and said he did not see the shooting because his back was toward the shooting.¹⁰

David Tellez's Statement:

David Tellez told detectives he was standing in his driveway at the time of the shooting. He saw a Chevrolet Silverado pickup drive up to a parked black Nissan Maxima with tinted windows and immediately heard approximately six to seven gunshots. Tellez noticed the windows of the truck were down and the windows of the Maxima were up. He observed the pickup truck drive away at a high rate of speed.

Detective Thomas Penson's Statements¹¹:

[REDACTED]

¹⁰ Smith testified after Young at the preliminary hearing. Smith stated that he spoke to Young, who refused a formal interview and refused to be recorded. Smith asked Young if he saw the shooting. Young told Smith he was standing outside his residence when he saw Marron shoot at Penson first and then Penson fired back. Smith testified that Young was uncooperative and refused to discuss anything further when asked to give a formal interview.

¹¹ Penson provided compelled statements to LAPD FID detectives on February 23, 2015, and March 4, 2015. Penson also testified as a prosecution witness at the preliminary hearing against Marron on December 1, 2015. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed 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.

“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.

An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. “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.

The people have the burden of proving beyond a reasonable doubt that the use of deadly force was not justified. *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384. A killing or attempted killing is justified if it is committed in self-defense or the defense of another. CALCRIM No. 505.

[REDACTED]

Wilmer Young told Detective Smith that he saw Marron shoot first at Penson. Even though Young changed his story at the preliminary hearing in December 2015, he was impeached by Smith, who testified to Young’s initial statements.

We conclude that Officer Penson was in reasonable fear of imminent danger of death or great bodily harm and acted lawfully in self-defense when he fired his weapon at Marron. We are therefore closing our file and will take no further action in this matter.