

**Officer Involved Shooting of Victor Arroyo, Jr.
Los Angeles Police Department**

Officer James Tuck, #37554

J.S.I.D. File #18-0240



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 2, 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 Victor Arroyo, Jr.
 J.S.I.D. File #18-0240
 F.I.D. File #F038-18

DATE: July 2, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 9, 2018, non-fatal shooting of Victor Arroyo, Jr. by Los Angeles Police Department (LAPD) Officer James Tuck. We find that Officer Tuck acted in lawful defense of others.

The District Attorney's Command Center was notified of this shooting on June 10, 2018, at 1:08 a.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 Luis Alarcon and Jess Falk. The reports include photographs, audio-recorded interviews of witnesses, radio transmissions, and body worn video.

FACTUAL ANALYSIS

Introduction

On June 9, 2018, Victor Arroyo, Jr. was attending a party at his residence and was intoxicated. Arroyo had animosity toward his brother-in-law, Genaro R., because he had moved into the residence with his wife and "ruined his senior year of high school." Arroyo drew a knife and stabbed Genaro R. in the neck. Family members rushed Genaro R. to the hospital and called 9-1-1.

At 11:40 p.m., LAPD broadcast an assault with a deadly weapon suspect "there now" and armed with a knife. Several officers, including Officer Tuck, responded and located Arroyo in his living room. Arroyo was armed with a kitchen knife and a screwdriver and was behaving erratically.

Body worn video of Arroyo armed with a knife in his left hand, moments before the shooting, is shown below:



Figure 1 – Body Worn Video of Arroyo Armed with a Knife in his Left Hand

Body worn video of Arroyo armed with a screwdriver in his right hand, during the attack, is shown below:



Figure 2 – Body Worn Video of Arroyo Armed with a Screwdriver in his Right Hand

As Arroyo's father attempted to calm him, officers ordered Arroyo to drop the knife and screwdriver but he did not comply. An officer fired less lethal beanbag rounds at Arroyo, but those were ineffective. Arroyo charged at his father with the knife in one hand and the screwdriver in the other. In response, Tuck fired his service weapon at Arroyo, injuring him. Body worn video of Arroyo's attack on his father with the knife and screwdriver is shown below:



Figure 3- Photo of Arroyo Attacking His Father with a Knife and Screwdriver.

Arroyo survived his injuries. Based upon his actions, this office charged Arroyo in case number BA468758 with the attempted murder of Genaro R. and five counts of assault with a deadly weapon on other family members. That case is pending mental health proceedings pursuant to Penal Code section 1368.

Statement of Victor Arroyo, Jr.

Arroyo believes he consumed about fifteen beers at a graduation party before going to his apartment. Arroyo was mad at Genaro R. for moving in with his sister. He swung a kitchen knife four times at Genaro R. He returned to his residence with two knives in his hands. He was confronted by Salvador S. and then knocked Lilli A. to the ground. Victor A. tried to get the knives from him. Officers arrived and shot him.

Statement of Genaro R.

Genaro R. was at the residence and Arroyo had been drinking heavily. Arroyo intentionally bumped into Genaro R. and immediately “hit” him in the face three times. Genaro R. noticed he was bleeding heavily and learned later Arroyo stabbed him in the neck.

Statement of Lilli A.

Lilli A. is Genaro R.’s wife and Arroyo’s sister. Lilli A.’s sister screamed that Arroyo had just stabbed Genaro R. in the face. As family members rushed Genaro R. to the hospital, Lilli A. called 9-1-1. While on the phone, Arroyo tried to stab his father. Lilli A.’s uncle and father tried to calm Arroyo and asked him to drop the knife, but Arroyo attacked both of them. When Lilli A. told Arroyo to calm down, he attacked her with the knife. Arroyo also punched her in the face and head. She ran to her daughter as Arroyo chased her with the knife. The police arrived and ordered Arroyo to put the knife down. Then she heard gunshots.

Statement of Victor A., Sr.

Arroyo had too much to drink, bumped into Genaro R., and hit him. Victor A. realized later that Arroyo stabbed Genaro R. Arroyo had a knife and Victor A. tried to disarm him. Lilli A. tried to calm Arroyo but Arroyo hit her. Arroyo armed himself with a screwdriver. The police arrived, ordered Arroyo to drop the knife and the screwdriver, and shot Arroyo as Victor A. was attempting to disarm Arroyo.

Statement of Nelly A.

Nelly A. saw Arroyo punch Genaro R. She rushed Genaro R. to the hospital.

Statement of Salvador S.

Salvador S. saw Victor A. trying to get a knife and a screwdriver away from Arroyo. Salvador S. was able to take a big knife away from Arroyo, but he armed himself with another knife and

attacked him. The police arrived and ordered Arroyo to drop the weapons. When Arroyo attacked Victor A., the police shot him.

Statement of Officer Anthony Lanza

Lanza arrived on scene and assisted in entering the Arroyos' residence. Tuck issued commands to Arroyo to drop his weapons. Arroyo had a knife in each hand while his father was attempting to calm him. Officers fired beanbag shots at Arroyo, which knocked him onto the couch. Arroyo got up and charged at the officers. He heard and saw two gunshots.

Statement of Officer Cia-En Chen

Chen arrived at the scene and he, Officer Carlos, and Tuck all ordered Arroyo to drop his knife. Arroyo did not comply. Carlos fired the beanbag shotgun until it was empty, moved out of the way, and Tuck fired his weapon twice.

Statement of Officer Edward Artiaga

Artiaga arrived and heard officers ordering Arroyo to put the knife down and he heard beanbag shots fired and then two gunshots.

Statement of Officer Richard Wilson

Wilson heard the beanbag shotgun being deployed, saw Arroyo walk toward officers while waving his arms in a stabbing motion with the knife, and heard two gunshots.

Statement of Officer Vincent Carlos

Carlos saw Arroyo carrying a knife and fighting with his father. Tuck ordered Arroyo to drop the knives. Carlos fired a beanbag shotgun at Arroyo, but it was ineffective. Arroyo was then shot and apprehended.

Statement of Officer Damian Hernandez.

Hernandez responded and saw Arroyo inside the apartment, carrying a knife and fighting with his father. The officers ordered him to drop the knife but he did not comply. Hernandez and Lanza took cover. Officers told Arroyo to drop the knife again. Arroyo came toward Lanza and Hernandez holding the knife above his shoulder in his right hand. An officer shot him with beanbags, but Arroyo continued toward the officers. Hernandez heard two gunshots and Arroyo dropped the knife.

Statement of Officer Dominic Santiago

Santiago arrived at the apartment complex with his partner, Officer Lopez. Santiago went to the roof to cover from there if needed. Once Arroyo was taken into custody, Santiago informed Lopez to go with the suspect in the ambulance. Santiago followed to USC Medical Center.

Arroyo was unconscious and had an ear laceration, bruises to the abdomen, and a bullet wound to the right shoulder.

LEGAL ANALYSIS

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer “may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him.” People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333. An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.” CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. Mehserle, supra at 1147. And he may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” Id. at 1146; quoting People v. Bond (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

The United States Supreme Court has also long held that, “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 the police 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.

Based on a review of the totality of the evidence, Officer Tuck was reasonable in his belief that Arroyo presented a real and imminent deadly threat to his father. Arroyo failed to comply with the officers’ demands to drop his weapons and surrender, and the use of less lethal means to de-escalate the situation was ineffective. Ultimately, Arroyo charged at his father with a knife in one hand and a screwdriver in the other. Tuck reasonably believed Arroyo’s actions presented a deadly threat to Victor A. and, in response, fired his service weapon at Arroyo.

CONCLUSION

Upon a review of the evidence in this case, we conclude that Officer James Tuck acted in lawful defense of others when he used deadly force against Victor Arroyo. We are therefore closing our file and will take no further action in this matter.