

**Officer Involved Shooting of Albert Garcia
San Fernando Police Department**

Sergeant Paul Ventimiglia, #10202

Officer Benny Simonzad, #10337

Officer Jeffrey Pak, #10206

J.S.I.D. File #17-0483



JACKIE LACEY

District Attorney

Justice System Integrity Division

August 3, 2018

MEMORANDUM

TO: CHIEF ANTHONY VAIRO
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CAPTAIN CHRISTOPHER BERGNER
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Albert Garcia
J.S.I.D. File #17-0483
S.F.P.D. File #17-2399
L.A.S.D. File #017-00108-3199-013

DATE: August 3, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 8, 2017, fatal shooting of Albert Garcia by San Fernando Police Department (SFPD) Sergeant Paul Ventimiglia and Officers Benny Simonzad and Jeffrey Pak. It is our conclusion that the officers acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on October 8, 2017, at 1:53 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department (LASD) Lieutenant Joe Mendoza.

The following analysis is based on reports prepared by the LASD Homicide Bureau, submitted to this office by Sergeants Marc Boskovich and Guillermo Morales. The reports include photographs, audio-recorded interviews of witnesses, radio transmissions, and surveillance video.

FACTUAL ANALYSIS

Introduction

On October 8, 2017, SFPD received a 9-1-1 call reporting a woman screaming, and "pounding" coming from inside an apartment belonging to Albert Garcia and his girlfriend, Christina G.

Officers responded, knocked on Garcia's door, and identified themselves. Garcia cursed at the officers through the door and would not let them in. The officers pled with Garcia to open the door, but Garcia would only swear at them, and demanded that the officers shoot him.

The apartment manager gave the officers keys to the apartment so they could make entry. They were unable to do so because every time the officers unlocked the door, it appeared that Garcia locked it again from the inside. It was discovered later that Garcia had a strap rigged to the doorknob and lock, preventing the door from unlocking.

Fearing for the safety of Christina G., who was still inside the apartment, the officers used a ram to break through the door. A photograph of the damaged door and a view of the interior of the apartment, from the hallway, is shown below:



Figure 1- Photograph of Garcia's Front Door, Living Room, and Kitchen.

Ventimiglia and five other officers entered the apartment and saw Garcia holding a butcher knife. The officers ordered Garcia to drop the knife, but he did not comply. Garcia stepped toward the officers with the knife. Ventimiglia, Simonzad, and Pak fired their service weapons a total of six times at Garcia, who was approximately five to twelve feet away. Garcia was struck, dropped the knife, and fell to the floor. A photograph of the knife, where it landed after Garcia was shot, is shown below:



Figure 2- Garcia's Butcher Knife Located on the Bedroom Floor.

Christina G., who was exiting the bathroom at the time of the shooting, was escorted from the apartment by officers.

Garcia died a short time later at the hospital.

The 9-1-1 Call

On October 8, 2017, Chris G., the apartment manager, learned from other tenants that Garcia had been assaulting his girlfriend in their apartment, and she was crying for help. Chris G. went to Garcia's apartment and knocked on the door. Garcia told him through the door, "Get the fuck out of here, you motherfucker!" and banged loudly on the door. Chris G. called 9-1-1, reported the assault, and told the operator that Garcia was a war veteran who suffered from PTSD, was being aggressive, and Christina G. was crying inside the apartment.

Statement of Christina G.

Christina G. was Garcia's girlfriend for approximately 20 years and they had lived together for the last three years in their apartment. Garcia suffered from bipolar disorder and PTSD, and he had stopped taking his medication two days before the shooting. Garcia had been drinking beer with his medication for approximately one month prior and had been behaving erratically. He talked to himself, talked to the walls, stayed up all night, shouted at imaginary people, heard voices, and was behaving aggressively. Garcia was also paranoid and had rigged a strap to the front doorknob to prevent a key from unlocking the front door from the outside.

On October 8, 2017, at approximately 10:00 a.m., Garcia was in the apartment with Christina G. and was talking to himself about how he was going to shoot and stab various people. Garcia said he would kill all of Christina G.'s family and his family, which he had been threatening to do for the last three months. Christina G. tired of Garcia's threats and said, "Why don't you do it?" Garcia became violent, blocked her path to the bathroom, and intentionally bumped her. Garcia told her, "Get the fuck out of here! Get the fuck out of my way, and if you don't, bitch, I'm going to do something to you!"

Christina G. told Garcia she was going to call the police. Garcia got "mad" and "strangled" her by her hair for about two to three minutes. Garcia dragged her by her hair and threw her into the bathroom. Christina G. screamed in pain and yelled, "Somebody help me! Somebody help me! Somebody call 9-1-1!" That made Garcia "more mad." Christina G. was so scared that she urinated on herself. While in the bathroom, Christina G. heard banging, pounding on the walls, and Garcia shouting.

Later, Christina G. heard a "big noise" which caused the walls to rattle (presumably the sound of the officers making entry into the apartment). When she came out of the bathroom, she saw three officers in the living room and saw three gunshot flashes. Garcia then fell to the floor, moaning and groaning. The police escorted her into the hallway.

Christina G. said she did not see Garcia with a knife, but if he did have one, it would be from the kitchen.

While at the police station, officers noticed a red spot on the back of Christina G.'s neck. A photograph of that wound is shown below:



Figure 3- Christina G.'s Neck Injury

Statement of Chris G.

Chris G. managed the apartment building where Garcia resided, and had known Garcia for approximately two years. Chris G. noticed that Garcia was acting differently during his last few weeks at the apartment. He also heard from Christina G. that Garcia acted “weird” and argued with imaginary people. He recalled an incident where Garcia called the police about someone outside his apartment who reportedly wanted to kill him, but the police did not find anyone nor did Chris G. when he reviewed the apartment surveillance video.

On October 8, 2017, at approximately 10:45 a.m., a tenant reported to him that Garcia was beating his wife. Chris G. went to Garcia’s apartment and Garcia told him, “Get the fuck out of here, you motherfucker!” Chris G. called the police. Chris G. told the responding officers that Garcia was a war veteran with PTSD.

Chris G. escorted the officers to Garcia’s apartment and watched as the officers attempted to make contact with Garcia. Garcia told the officers through the door, “Fuck you! Fuck the police! I am not opening the fucking door!” Chris G. gave the officers two master keys, but it appeared that Garcia held onto both the dead bolt and door knob to prevent the door from unlocking.

As Chris G. watched from the hallway and recorded the incident on a cellular telephone, the officers decided to break through the door and hit it with a ram several times. Upon entry, the officers identified themselves and repeatedly told Garcia to lay down. Garcia did not comply and continued to yell very loudly at the officers. Then he heard gunshots.

Chris G. was in the hallway at the time of the shooting and was not in a position to see inside Garcia’s apartment when the officers made entry.

Statement of Robert T.

Robert T. was Garcia’s neighbor. He never noticed any mental issues with Garcia. On October 8, 2017, at approximately 10:45 a.m., he heard loud noises and words from Garcia and the police. Garcia yelled profanities at the officers, who were repeatedly asking Garcia to open the door. The officers entered Robert T.’s apartment to assess whether they could jump from his balcony to Garcia’s balcony to enter Garcia’s apartment. The officers decided against the jump because it was too dangerous. He heard the officers use a ram to enter Garcia’s apartment, and then he heard gunshots.

Statement of George F.

George F. was Garcia’s neighbor. He heard Christina G. in distress as she screamed, “Owww! You’re hurting me!” She also cried, “Help!” This concerned George F. because he had never heard Christina G. and Garcia behave that way. As George F. went to look for the manager of the apartment, Christina G.’s screams continued. He heard Chris G. call the police and tell them that Garcia was sick and has PTSD. The police arrived three to five minutes later. George F. went back and joined Selena C., another tenant, and heard knocking and the officers calling to Garcia to open the door and come out. Later, the officers’ banging got louder because of the

ram. After the banging stopped, George F. said he did not hear any commands from the officers, and did not hear Garcia's voice before he heard three to four gunshots.

Statement of Sergeant Ventimiglia

Ventimiglia was on patrol and responded to a domestic violence radio call to assist the handling officers. When he arrived, he learned from the apartment manager that there was a woman in an apartment who screamed for help. Ventimiglia and Officers Yoo, Simonzad, and Delgado were escorted to the apartment by the manager.

Ventimiglia heard a male voice use profanity and threaten the officers not to come inside. Ventimiglia did not hear a female voice, so he thought she might have been killed, incapacitated, or was being held hostage. He confirmed with the manager that a woman had been heard screaming from inside the apartment before the officers' arrival.

Fearing for Christina G.'s safety, Ventimiglia directed Officer Esquivel to use a ram to enter the apartment, as Ventimiglia prepared to use his taser. However, upon entry, Ventimiglia saw Garcia holding a knife in his right hand. The knife blade looked approximately one foot long. Ventimiglia transitioned from his taser to his firearm and yelled, "Drop the knife!" The other officers also gave Garcia commands to drop the knife, but Garcia did not comply.

Garcia faced the officers and made a motion with the right side of his body making it appear as if he was about to come toward the officers with the knife. Garcia may have taken a step toward the officers. Out of fear for his life and the safety of other officers, and Christina G. in the apartment, Ventimiglia fired three rounds at Garcia from approximately 10 to 12 feet away.

Statement of Officer Simonzad

Simonzad was on patrol when he was assigned a domestic violence "in progress" call. Upon arrival, Simonzad was met by Officers Yoo and Delgado. Simonzad noticed that the manager was distraught and frightened for the safety of the woman in Garcia's apartment.

Simonzad knocked on Garcia's door and announced that they were the police. Simonzad heard a man in the apartment yell, "You're gonna have to fucking kill me! I'm gonna take you down!" Simonzad tried to get the man to open the door and told Garcia through the door, "We're here to help. We're not here to hurt you. Just open the door so we can talk." Garcia refused to open the door and continued to curse at them.

Ventimiglia directed Esquivel to ram the door to gain entry into the apartment, which he did.

Upon entry, Simonzad saw Garcia holding a large knife in his right hand. Simonzad yelled, "Knife! Knife! Knife!" Simonzad and the other officers gave Garcia commands to drop the knife, but he did not comply. Garcia was very angry, distraught, and "really loud" as he disobeyed the orders to drop the knife. Garcia turned his torso toward the officers, causing Simonzad to believe that Garcia was about to attack the officers with the knife. Simonzad, who was approximately five to seven feet away from Garcia, fearing for his safety and the safety of the other officers and Christina G., fired one or two times at Garcia.

Statement of Officer Pak

Pak and Esquivel were on patrol when they responded to a domestic violence call in which the suspect was uncooperative and would not open the door for officers. Pak arrived and heard a man inside the apartment. Yoo tried to open the door with keys and failed. Esquivel broke holes in the door with the battering ram and Yoo sprayed pepper spray into the holes. Ventimiglia kicked in the door and entered the apartment. Pak entered the apartment with Ventimiglia, Simonzad, and Esquivel. Simonzad yelled, "Knife!" Pak saw Garcia holding a "big kitchen knife" in his right hand. Garcia had an aggressive demeanor and stepped toward the officers. Pak fired one round. Garcia fell to the floor. Christina G. exited the bathroom and was escorted out of the apartment.

Statement of Officer Yoo

Yoo was on patrol and responded to a domestic violence "in progress" call and a woman yelling for help. Yoo, Delgado, Esquivel, and Ventimiglia met with the manager, who told the officers there was a domestic violence incident in the apartment building, and Christina G. had yelled for help. The manager said he knocked on the door, but Garcia would not open the door, so the manager called the police. The manager was very concerned for Christina G.'s safety.

The officers went to Garcia's apartment door and asked him to open the door. Garcia refused, saying, "Go fuck off!" The officers continued to knock and identify themselves. Garcia repeated, "Go fuck off! You're not coming inside!" Another officer told Garcia they were going to break down the door. Garcia said, "Do whatever the fuck you want! You are not coming in!"

The manager gave Yoo a key to the apartment. Yoo noticed there was resistance when the key turned, and he was unable to open the door because he thought Garcia was holding the lock. Even with the use of two keys, the officers were not able to unlock the door.

Before deciding to break down the door, Yoo confirmed with the manager that Christina G. was inside and had yelled for help. Due to the exigency of the circumstances, they did not have time to wait for a SWAT team because they needed to enter the unit quickly to check on Christina G.'s welfare.

Esquivel used the ram and the door opened slightly. Garcia continued to yell, and Yoo sprayed a three second burst from his pepper spray through the door opening because he heard Garcia near the door. Garcia screamed and moved away from the door. Ventimiglia kicked the door all the way open and Yoo followed the other officers into the apartment. Ventimiglia yelled, "He has a knife!" and he heard other officers say "Drop the knife!" Yoo heard additional commands to drop the knife, then heard two to three shots from the officers in front of him. Yoo heard Garcia drop to the floor.

Statement of Officer Esquivel

Esquivel and Pak were on patrol and responded to a domestic violence "in progress" call. It was reported that the suspect would not open his door for the officers.

Esquivel went to Garcia's door and he heard Yoo, Simonzad, and Ventimiglia pleading with Garcia to open the door to talk. Garcia said, "Fuck you guys! You can't come in!" Ventimiglia told Esquivel to use the ram to open the door.

Esquivel used the ram after Yoo was unable to unlock the door. Esquivel rammed a hole in the door and Pak sprayed pepper spray into the hole. Esquivel heard Garcia cough. Ventimiglia kicked the door open and the officers went inside.

Esquivel saw Garcia approximately 10 to 12 feet away holding a large metal knife about 14 inches long. Garcia's arm was pulled back as if he was going to throw the knife at them. Esquivel and Ventimiglia yelled at Garcia, "Drop the knife!"

Garcia appeared "mad" and shouted in an irate voice. Esquivel was about to fire at Garcia because he feared Garcia would throw the knife at him or Ventimiglia, but another officer's head blocked Esquivel's line-of-sight. Esquivel then heard gunshots.

Statement of Officer Delgado

Delgado was on patrol and responded to a domestic violence "in progress" call. He met with Yoo, Simonzad, and the apartment manager, who said he heard yelling from the apartment and Garcia was inside. The manager reported that Garcia was a "war veteran" with PTSD.

The officers went to the apartment and ordered Garcia to open the door. Garcia screamed, "Fuck you! If you come in, I'm going to kill you!" Simonzad told Garcia it was the police, and Garcia continued to shout, "Fuck you! If you come in, I'm going to hurt you! I'm going to kill you!" Delgado said he only heard Garcia's voice, which caused him concern because Christina G. was supposed to be inside the unit. Delgado did not know if Christina G. needed medical attention or was dead, so they attempted to enter the unit to check on her welfare.

The manager gave the officers keys to the apartment door, but the officers were not able to open the door. It appeared as if Garcia relocked the door every time the officers turned the key.

The officers continued to order Garcia to open the door, but he continued to refuse. Esquivel rammed the door until the doorknob and deadbolt fell inside the apartment. Yoo sprayed pepper spray through a hole in the door, Ventimiglia kicked open the door, the officers entered, and an officer yelled, "Knife!" He heard the other officers giving Garcia commands, and then gunshots.

Delgado was unable to see Garcia's actions just before the shooting because his view was obstructed by the officers standing in front of him.

Apartment Manager Video

The apartment manager video recorded the officers attempting to communicate with Garcia, and eventually breaking down the door and entering the apartment.

For several minutes, the officers can be heard making repeated requests to Garcia to open the door. Garcia is heard inside the apartment yelling angrily, banging on the door, and using

profanity, including calling the officers “assholes” and telling them to “fuck off.” Garcia also says through the door, “Shoot my ass.”

After several minutes, the officers ram the door, spray pepper spray through the door, and kick the door down. Five seconds later, after the officers enter the apartment and issue commands to Garcia to show his hands, and one of the officers is heard saying, “He has a knife.”¹ A moment later, Garcia is heard saying, “Shoot me!”, and gunshots are heard. Garcia moans in pain as the officers render medical aid and escort Christina G., who is partially dressed and crying, from the bathroom area and out of the apartment.

A frame from that video at the moment before the officers made entry into the apartment is shown below:



Figure 4- Still Frame Photograph from Videotape recorded by Chris G. of the Officers' Entry into Garcia's Apartment.

Surveillance Video

A surveillance camera in the hallway outside of Garcia’s apartment shows the officers breaking down the door and making entry. The video shows the officers entering the front door of the apartment. Garcia is off camera to the left and is not shown in the video. There is no audio.

Autopsy

Deputy Medical Examiner Vadims Poukens, M.D. performed a postmortem examination of Garcia’s remains and determined that Garcia was shot six times. He had two fatal gunshot wounds to his chest and nonfatal gunshot wounds to his left arm, abdomen, right hip, and a graze wound to his right foot. A toxicology analysis was performed and showed that Garcia had the presence of antidepressants, methamphetamine, and marijuana in his bloodstream.

¹ Due to overlapping voices and shouting, all of the commands issued by the officers cannot be discerned.

Firearms Evidence

Ventimiglia, Pak, and Simonzad were all armed with .45 caliber Glock Model 21 semiautomatic service weapons loaded with fourteen rounds. Six .45 caliber cartridge casings were found at the scene. Based on the recovery of expended cartridge casings at the scene and an inspection of the officers' service weapons, the evidence is consistent with Ventimiglia firing three rounds, Pak firing one round, and Simonzad firing two rounds during the incident.

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 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. California law also states that, 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. "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." The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." "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."

Analysis

The evidence in this case shows that the officers reasonably believed that Garcia, who was mentally ill and had the presence of methamphetamine, antidepressants, and marijuana in his bloodstream, presented a deadly threat to them and Christina G., who was either barricaded or being held captive in the bathroom of the residence, or was possibly incapacitated.

The officers knew that Christina G. had screamed for help from inside the apartment, and neighbors believed, and reported to the officers, that Garcia had been attacking her. Her silence in the apartment was alarming, and it was reasonable for the officers to believe that she was in danger or had been harmed and/or silenced by Garcia.

The officers' belief that Garcia presented a deadly threat was actually confirmed when he yelled at them angrily through the door that he would kill them, armed himself with a large butcher knife, failed to comply with the officers' commands, and moved toward them with the knife when they entered the apartment.

Moreover, based on Garcia's demands that the officers shoot him, it cannot be ruled out that Garcia was suicidal and was intent upon committing "suicide by cop" by intentionally threatening the officers with a knife and forcing them to shoot him.

CONCLUSION

Based on a review of all of the evidence in this case, Sergeant Ventimiglia and Officers Simonzad and Pak were reasonable when they used deadly force against Garcia in lawful self-defense of themselves, the other officers, and Christina G. We are closing our file and will take no further action in this matter.