

Officer Involved Shooting of Alfred Gonzalez

El Monte Police Department

Officer Aaron Armstrong, #649

J.S.I.D. File #15-0651



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 30, 2017

MEMORANDUM

TO: CHIEF DAVID REYNOSO
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Alfred Gonzalez
J.S.I.D. File #15-0651
E.M.P.D. File #15-10629
L.A.S.D. File #015-00086-3199-055

DATE: October 30, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 8, 2015, non-fatal shooting of Alfred Gonzalez by El Monte Police Department (EMPD) Officer Aaron Armstrong. It is our conclusion that Officer Armstrong acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting on December 8, 2015, at approximately 6:46 p.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports submitted to this office by Los Angeles County Sheriff's Department Homicide Bureau Detectives Michael Rodriguez and Angus Ferguson. Officer Armstrong provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

In 1997, Alfred Gonzalez was sentenced to 25 years to life under the third strike law for the crime of receiving stolen property. After the passage of Proposition 47, Gonzalez successfully petitioned the court to reduce his charge to a misdemeanor. Gonzalez was released from custody in October 2015, after serving 18 years in state prison. Gonzalez was unable to find a job and

felt worthless, ashamed and a burden to his family.¹ Gonzalez had previously thought about ending his life, but was unable to acquire a gun. On December 8, 2015, Gonzalez made up his mind that he was going to die that day. Gonzalez decided to cause a confrontation with the police and force them to shoot and kill him.

At approximately 5:45 p.m., Gonzalez went to the Plaza Liquor store in the City of El Monte and told the cashier, "Call the cops or else I'm going to start shooting." Gonzalez knocked over a potato chip display and repeated, "Call the cops!" Gonzalez returned to the store five minutes later when the police had not arrived. Gonzalez threw another display to the floor and again stated, "Call the cops, now!" Gonzalez returned outside to wait once he saw the cashier on the telephone with the police. Gonzalez placed a water bottle inside his shirt to make it appear as if he was holding a gun.

Uniformed EMPD Police Corporal Danny Tate arrived in the liquor store parking lot and observed an agitated Gonzalez screaming and yelling. Tate exited his patrol vehicle. Gonzalez had his left hand wrapped inside of his shirt and it appeared as if there was something underneath it beside his hand. Tate ordered Gonzalez to show his hands. Gonzalez replied, "No, I'm not going to let you see my hands. I'm going to smoke this cigarette and then I'm going to come over there and kill you."² Tate broadcast Gonzalez' threat to kill him over the police radio. Tate continued to order Gonzalez to show his hands while awaiting the responding units.

Uniformed EMPD Police Officer Aaron Armstrong was the second unit to arrive on scene. Prior to arriving, Armstrong heard Tate broadcast Gonzalez' threat. Armstrong exited his patrol vehicle and observed a bulge beneath Gonzalez' shirt where his left hand was hidden. Armstrong feared that Gonzalez was concealing a weapon. It could have been a brick, knife or gun. Armstrong removed his service weapon and held it down by his side. As Armstrong ordered Gonzalez to show his hands, Gonzalez suddenly ran toward him at full speed. Because Gonzalez had threatened to run after Tate and kill him, Armstrong believed that Gonzalez was charging toward him to attack him with the object he held beneath his shirt.

Armstrong ordered Gonzalez to stop as he backpedaled several steps. Armstrong waited as long as possible, hoping that Gonzalez would obey his orders. Gonzalez did not stop and did not remove his hand from under his shirt. As Gonzalez closed the distance to Armstrong, Armstrong feared that Gonzalez would kill him if he did not stop him. Armstrong fired three to four rounds from his service weapon, striking Gonzalez.³ Gonzalez fell to the ground several feet in front of the officers.

While awaiting paramedics, Tate asked Gonzalez why he had threatened to kill him. Gonzalez replied, "I don't want to live no more. Nothing personal." Armstrong asked Gonzalez why he

¹ Gonzalez was interviewed by investigators on December 9, 2015.

² Gonzalez quoted himself saying, "I'm gonna do this very slow. After I finish this cigarette, I'm gonna charge towards you and if you don't shoot me, I'm gonna kill you."

³ An examination of Armstrong's service weapon determined that he fired four times.

ran at him with his hand in his waistband. Gonzalez replied, "I ran at you with my hand in my waistband like I had a gun. And I wish you would shoot me in the head. Go ahead. Go ahead."⁴ During the 11 minute recording, Gonzalez repeatedly claimed that he was in possession of a gun and threatened to reach for it. He also repeatedly asked officers to shoot him in the head and stated that he wanted to die and see Jesus.

Marlee M. was a passenger in a vehicle that entered the Plaza Liquor parking lot when she observed Gonzalez and Tate. It appeared that Tate was attempting to give Gonzalez commands, although Marlee M. could not hear what was being said. At that time, Gonzalez was 20 to 25 feet away from Tate. Gonzalez was wearing a baggy shirt and had his left hand wrapped inside the shirt near his waistband. Marlee M. also observed a bulge in Gonzalez' waistband area. Moments later, Armstrong arrived in the parking lot. Within a minute of Armstrong's arrival, Gonzalez ran toward Armstrong in an aggressive manner with his hand still under the shirt. As Gonzalez neared Armstrong, Marlee M. heard four to five gunshots and saw Gonzalez fall to the ground.

Gonzalez was transported to Los Angeles County USC Medical Center where he was treated for gunshot wounds to the abdomen, thigh and hand.

A plastic water bottle was removed from Gonzalez' waistband.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580.

"If the defendant acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken." *People v. Jackson* (1965) 233 Cal.App.2d 639, 642.

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." *Munoz v. City of Union City* (2004) 120 Cal. App.4th 1077, 1102.

⁴ These statements were captured on Tate's department issued audio recorder.

CONCLUSION

The evidence examined shows that on December 8, 2015, Alfred Gonzalez intended to die at the hands of police officers. Gonzalez created a disturbance at Plaza Liquor in order to draw a police response. Gonzalez then placed a water bottle under his shirt to give the appearance that he was armed with a gun. To further escalate the perceived danger, Gonzalez threatened to kill Tate. Gonzalez ignored multiple orders to show his hands. Instead, Gonzalez charged at Armstrong in his desire to commit suicide. The fact that Gonzalez was unarmed does not affect the analysis in this case. The question is whether, under the totality of the circumstances, it was reasonable for Armstrong to fear that he was in imminent danger of being killed or seriously injured. By Gonzalez' own account, every action he undertook that night was for the sole purpose of eliciting a deadly response from the police. As such, Armstrong's response with deadly force was reasonable.

We conclude that Officer Aaron Armstrong acted in lawful self-defense when he used deadly force against Alfred Gonzalez. We are therefore closing our file and will take no further action in this matter.