

Officer Involved Shooting of Agustin Olmedo

Los Angeles Police Department

Sergeant Andre Belotto, #26189

Officer Money Scott, #30568

J.S.I.D. File #11-0211



JACKIE LACEY

District Attorney

Justice System Integrity Division

December 14, 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 Agustin Olmedo
 J.S.I.D. File #11-0211
 L.A.P.D. F.I.D. File #F025-11

DATE: December 14, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 17, 2011, non-fatal shooting of Agustin Olmedo by Los Angeles Police Department (LAPD) Sergeant Andre Belotto and Officer Money Scott. It is our conclusion that Sergeant Belotto and Officer Scott acted in lawful self-defense and defense of others, as well as in an attempt to arrest a dangerous fleeing felon.

The District Attorney's Command Center was notified of this shooting on March 17, 2011, at approximately 10:15 p.m. The District Attorney's Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to our office by LAPD's Force Investigation Unit (FID) Detective Robert Solarza. The reports include photographs, videos, audio-recorded interviews of witnesses, and radio transmissions. The compelled statements of Sergeant Belotto and Officer Scott were also included in this analysis.

FACTUAL ANALYSIS

Background

On March 17, 2011, Nina R [REDACTED] took her two children to visit their father, Agustin Olmedo, in the City of Inglewood.¹ After arriving at Olmedo's residence, they decided to get something to eat and got into R [REDACTED]'s vehicle. While looking for a place to eat, Olmedo produced a handgun and held it on his lap, stating he would shoot R [REDACTED] if she did not drive where he wanted to go. R [REDACTED] insisted that she needed to use the restroom and stopped at a Wendy's

¹ Agustin Olmedo was 38 years old, weighed 200 pounds, and stood five feet 11 inches tall.

R [REDACTED] and Olmedo have been married for seven years, but have been separated for the past two years. They have two daughters together, ages seven and three.

restaurant located on West Venice Boulevard in the City of Los Angeles. R [REDACTED] went into the restroom with one of her daughters, dialed 9-1-1 on her daughter's cell phone, and reported that she and her children were being held hostage by Olmedo, who was armed with a gun.

At 8:40 p.m., an LAPD broadcast issued for any available Pacific unit to respond to a domestic violence call at the Wendy's restaurant located on West Venice and Robertson Boulevards. The broadcast stated the victim was in the restroom and her husband was armed with a gun.

Sergeant Andre Belotto was working that night dressed in full LAPD uniform and driving a marked black and white police vehicle. [REDACTED]
[REDACTED]

Officers Brittany Borja and Money Scott were working that night. They were both dressed in LAPD uniform and patrolling in a marking black and white police vehicle. Scott was the driver and Borja was seated in the right front passenger's seat. Immediately after hearing the call, they began to drive to the location.

R [REDACTED] walked out of Wendy's with Olmedo and their children. They placed the children in R [REDACTED]'s vehicle, which was parked facing north toward Venice Boulevard. R [REDACTED] noticed Belotto's police vehicle stopped in front of Smitty's Famous Fish and Chicken restaurant, located next to Wendy's on Venice Boulevard. Belotto drove toward them and stopped his vehicle near the trunk of R [REDACTED]'s car. In response, Olmedo walked around the front of R [REDACTED]'s vehicle, grabbed R [REDACTED] by her neck and pointed a gun at R [REDACTED]'s chest.²

Olmedo forced R [REDACTED] on her knees and positioned her to his front to use her as a human shield. Olmedo then forced R [REDACTED] to stand back up and pointed the gun at her head. R [REDACTED] attempted to get the gun away from Olmedo. As R [REDACTED] continued to struggle with Olmedo over the gun, the gun discharged one round. The gun fell to the ground and Olmedo ran south.

[REDACTED] Belotto and Scott each discharged one round at Olmedo in an attempt to take him into custody. Olmedo was apprehended after a short foot pursuit. He suffered a minor head injury caused by a gunshot.

Nina R [REDACTED]'s Statement

Olmedo contacted R [REDACTED] and asked her to bring their two daughters to his house to visit. R [REDACTED] brought their daughters to Olmedo's home and immediately noticed that Olmedo was behaving strangely. R [REDACTED] and Olmedo left the house to get something to eat with their daughters. Olmedo told R [REDACTED], "People are following me." R [REDACTED] became frightened and thought Olmedo might be on drugs.³

R [REDACTED] was very concerned for the safety of herself and her children due to Olmedo's behavior. Olmedo told R [REDACTED], "I'm just high. I'm just trying to cool off right now. I'm just tripping.

² At approximately this time, Borja and Scott arrived at the location.

³ According to R [REDACTED], Olmedo had been diagnosed with schizophrenic bipolar disorder and was prescribed medication to treat his condition.

My mind is tripping on me. I'm hearing voices." R [REDACTED] saw a Wendy's and suggested that they stop and get something to eat. Olmedo told R [REDACTED] he did not want to stop at Wendy's but she insisted because she needed to use the restroom. Prior to parking the car, Olmedo told her, "If you don't drive where I'm telling you to drive, then I'll cap your ass." R [REDACTED] pulled into the parking lot and parked her vehicle.

R [REDACTED], Olmedo, and their two daughters went inside Wendy's. Olmedo was holding both daughters by their wrists with an aggressive grip. R [REDACTED], Olmedo, and the children went in the women's restroom together. R [REDACTED] exited the restroom to notify an employee that there were no toilet seat covers. The employee came into the restroom to refill the toilet seat covers and saw Olmedo in the restroom. After refilling the seat covers, the employee left the restroom. Shortly after, Olmedo left the restroom. R [REDACTED] called 9-1-1 while in the restroom stall, using her daughter's cell phone.⁴ R [REDACTED] stated to the operator, "My husband has me hostage, me and my two children. I need help right away." R [REDACTED] provided the location of the Wendy's to the operator and told the operator that she was not able to stay on the phone. The operator told her to stay on the line, so R [REDACTED] put the phone in her bra and left the call on so the operator could still hear. R [REDACTED] and her daughter left the restroom. Olmedo and their other daughter were outside of the restroom waiting and they exited the Wendy's together and walked towards their car in the parking lot.

R [REDACTED] placed the children in the vehicle. As she did so, she saw a patrol car across the street. The patrol car, driven by Belotto, pulled behind their car. Belotto said, "Hey!" and Olmedo walked towards R [REDACTED]. He grabbed her by the neck and pointed the gun at her chest. Belotto told Olmedo, "Hey, man, you don't want to do this. Put the gun down. Come on man, you don't want to do this. Go ahead and put the gun down." Olmedo told Belotto, "Fuck you! Shut up!"

Olmedo forced R [REDACTED] to get down on her knees, using her as a human shield. Olmedo told her to get back up. R [REDACTED] did not want to die, tried to move the gun away, and heard the gun "click." R [REDACTED] heard Belotto tell Olmedo, "Come on man, you don't want to die like this." R [REDACTED] told Olmedo, "Come on, Agustin. We have kids. Not in front of the kids." R [REDACTED] grabbed the gun and the gun discharged.⁵ The gun fell to the ground and Olmedo took off running.

Belotto told Olmedo, "Stop!" Olmedo did not comply with the demands and kept running. R [REDACTED] then heard a shot come from Belotto's location. R [REDACTED] lost sight of Olmedo and heard a second gunshot.

Diana R [REDACTED]'s Statement

R [REDACTED] was an employee at the Wendy's restaurant. R [REDACTED] was working the front counter when she saw Olmedo, R [REDACTED], and their two daughters enter the restaurant and head straight to the restroom. R [REDACTED] came out of the restroom and told R [REDACTED] that she needed toilet seat covers. When R [REDACTED] walked into the restroom, Olmedo was inside the restroom with R [REDACTED] and their

⁴ The 9-1-1 call was recorded.

⁵ R [REDACTED] remembers seeing muzzle flashes at the time the gun went off. She described Olmedo's gun as black or dark gray in color and heavy.

daughters. R [REDACTED] also noticed something shiny inside Olmedo's jacket that looked like it could be a gun or a blade.⁶

R [REDACTED] exited the restroom after refilling the toilet seat covers. R [REDACTED] rushed out of the restroom behind her and said, "Can you please help me?" Olmedo exited the restroom looking for R [REDACTED] and R [REDACTED] went back inside the restroom.

R [REDACTED] asked her manager to call the police. R [REDACTED] saw Olmedo, R [REDACTED] and their two daughters rush out of the restaurant. A couple minutes later, R [REDACTED] saw Olmedo and R [REDACTED] standing outside of a car on the driver's side. R [REDACTED] saw that Olmedo had R [REDACTED] in a choke hold, with his right arm wrapped around R [REDACTED]'s neck, and held a gun to her head with his left hand. R [REDACTED] heard R [REDACTED] screaming, "Leave me alone! Leave me alone! Stop!" R [REDACTED] then saw police officers driving in the parking lot. Olmedo started to run and the officers ran after him. One of the officers was holding a long gun. R [REDACTED] heard one shot but did not see who fired.

Officer Money Scott's Statement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sergeant Andre Belotto's Statement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Agustin Olmedo's Statement

Olmedo was treated for a minor left scalp injury caused by a gunshot. He was cleared for booking and released.

When questioned by investigators as to what occurred at Wendy's, Olmedo said, "We went in there. Went inside to use the bathroom and came out, and came out. We went in, came out, and there was an officer car there. So we proceed to get in the car. I put the kids in the car and Nina didn't, she doesn't want to drive anymore. I told her I'd drive. Come on, let's go, but she didn't listen to me... Then the cop pulls up with his gun out and that's all I want to say for now." Olmedo then indicated that he would not provide a statement without an attorney present.

Olmedo was armed with a Starfire, 9mm Luger, semiautomatic pistol, Model 30MI. Officers recovered the pistol from the Wendy's parking lot. There were 12 RWS 9mm Luger live cartridges found in the magazine and one discharged RWS 9mm Luger cartridge case was found in the firing chamber.¹⁰ Gunshot residue was detected on Olmedo's left hand.¹¹

Based upon his actions in this case, Olmedo was convicted in case SA077069 of one count of Penal Code section 245(b), assault with a semiautomatic firearm, one count of Penal Code section 273a(a), willful harm or injury to a child, one count of Penal Code section 236, false imprisonment, and one count of Penal Code section 245(d)(1), assault with a firearm on a peace officer. Olmedo was sentenced to nine years in state prison.

LEGAL ANALYSIS

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Penal Code section 835a. California law permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470, 477-484. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. *Ceballos*, supra, 12 Cal.3d at 479.

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

⁹ Olmedo's cell phone was found on the south sidewalk of Venice Boulevard. [REDACTED]

¹⁰ Officers located additional 16 RWS 9mm Luger cartridges from Olmedo's right front pants pocket.

¹¹ Gunshot residue can be acquired in three ways: from discharging a firearm, from being in the immediate vicinity of a firearm being discharged, or from coming in contact with a surface contaminated with gunshot residue.

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.

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. CALCRIM No. 3470. If the person’s beliefs were reasonable, the danger does not need to have actually existed. *Id.*

The evidence examined in this investigation shows that Sergeant Belotto and Officer Scott responded to a call of a domestic violence incident where Olmedo was armed with a gun. When Belotto arrived, Olmedo grabbed R [REDACTED] and used her as a human shield. Scott also saw Olmedo using R [REDACTED] as a human shield. During this time, Olmedo pointed the gun at R [REDACTED]’s abdomen and head [REDACTED]. The officers attempted unsuccessfully to persuade Olmedo to drop his weapon. As R [REDACTED] struggled with Olmedo to free herself, Olmedo discharged his gun one time.

Olmedo ran from the officers. [REDACTED]
[REDACTED]
[REDACTED] The officers gave numerous verbal commands to Olmedo to drop his gun and to stop. Olmedo ignored Belotto and Scott’s commands. In fear for their lives and the lives of others, Sergeant Belotto and Officer Scott fired their weapons at Olmedo.

We conclude that Sergeant Belotto and Officer Scott were in reasonable fear of death or great bodily injury and acted lawfully in self-defense and defense of others when they used force. We further find that the force used was reasonable under the circumstances to arrest and prevent the escape of Olmedo, who they reasonably believed committed the crimes of attempted murder and assault with a firearm on another [REDACTED]. We are therefore closing our file and will take no further action in this matter.