Officer Involved Shooting of Gerardo Vasquez California Highway Patrol

Officer Alfredo Lopez, #21163 Officer Brandon Rains, #21154 Officer Aaron Lowery, #21200

J.S.I.D. File #17-0066



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District Attorney

Justice System Integrity Division

December 4, 2018

MEMORANDUM

TO: ASSISTANT CHIEF DAN MINOR

California Highway Patrol

Southern Division

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FROM: JUSTICE SYSTEM INTEGRITY DIVISION

Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Gerardo Vasquez

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L.A.S.D. File #017-00018-3199-013

DATE: December 4, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 6, 2017, fatal shooting of Gerardo Vasquez by California Highway Patrol (CHP) Officers Alfredo Lopez, Brandon Rains and Aaron Lowery. It is our conclusion that the officers acted in lawful self-defense and defense of others during the first volley of gunfire. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that the officers did not act in lawful self-defense or defense of others during the second and third volleys of gunfire.

The District Attorney's Command Center was notified of the shooting on February 6, 2017, at approximately 3:15 a.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 Investigators Eddie Brown and Toni Martinez. Officers Lopez, Rains and Lowery provided voluntary statements which were considered as part of this analysis.

FACTUAL ANALYSIS

On February 6, 2017, at approximately 12:20 a.m., uniformed CHP Officers Aaron Lowery (driver) and Cassandra Weitze were dispatched to the I-10 freeway in West Los Angeles in response to

multiple 9-1-1 calls reporting a pedestrian walking on the freeway. Uniformed CHP Officers Bernabe Mejia (driver) and Arvin San Pedro also responded to assist Lowery and Weitze. Mejia conducted a traffic break in the westbound lanes of the freeway. After stopping traffic, Mejia and San Pedro located the pedestrian, identified as Gerardo Vasquez, standing at the center divider on the east side of the freeway. Vasquez produced a knife in his right hand when he was ordered to show his hands over the public-address system. At the same time, Lowery stopped traffic on the east side of the freeway. Lowery and Weitze also observed Vasquez at the center divider holding the knife. Vasquez ignored multiple orders to drop the knife. Vasquez walked in and out of the eastbound lanes of traffic, while yelling and gesturing erratically with the knife. Vasquez then walked to the right shoulder and jumped over the embankment leading to the Centinela Avenue off-ramp.²

Lowery and Weitze trailed Vasquez in their patrol vehicle as Vasquez walked down the off-ramp. Vasquez ignored additional commands to stop and drop the knife. At the end of the off-ramp, Vasquez turned right (west) onto Pico Boulevard. Lowery and Weitze temporarily lost sight of him. The officers relocated Vasquez walking westbound on the north sidewalk of Pico Boulevard, hitting storefront windows. Lowery and Weitze repeatedly ordered Vasquez to drop the knife as they followed him in their vehicle. Vasquez refused to obey their commands.

Mejia and San Pedro exited the westbound freeway after Vasquez jumped over the embankment. They entered the eastbound freeway and exited at Centinela Avenue. They observed Lowery and Weitze following Vasquez on Pico Boulevard. Mejia and San Pedro took the lead when Vasquez turned north onto a side street. Vasquez disappeared behind the businesses on the north side of the street.

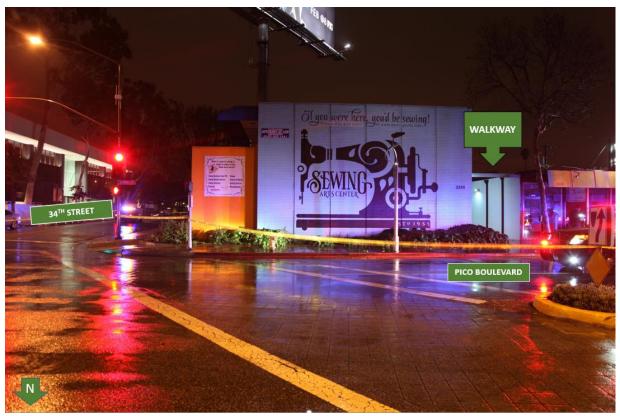
Uniformed CHP Officers Brandon Rains (driver) and Alfredo Lopez heard Mejia and San Pedro broadcast that they lost sight of Vasquez and that he may have jumped a fence and headed toward the Centinela Avenue off-ramp. Rains and Lopez drove to the Centinela Avenue exit and observed Vasquez walking on the off-ramp. They illuminated him with their vehicle's spot light and observed a knife in his hand. Vasquez was ordered to drop the knife. Vasquez ignored the officers and ran southbound across Pico Boulevard. Rains followed Vasquez. Vasquez fled into a walkway that ran between two businesses on the south side of the street. Rains stopped the patrol car on Pico Boulevard, west of the walkway. Lopez exited and ran after Vasquez. Rains armed himself with a shotgun and followed Lopez. Lopez illuminated the walkway with his flashlight and the officers observed Vasquez still armed with the knife.³

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¹ Investigators learned that Vasquez was an attempted murder suspect in Simi Valley. It is alleged that Vasquez stabbed his roommate with two knives during an unprovoked attack on February 3, 2017. Simi Valley detectives had been searching for Vasquez. The officers involved in the shooting were unaware of this information.

² Three minutes and 38 seconds elapsed between the time Mejia and San Pedro first observed Vasquez until he jumped over the embankment. Digital In Car Video (DICV) captured Vasquez' behavior on the freeway. The knife is visible in his right hand. The Centinela Avenue off-ramp terminates at the intersection of 34th Street and Pico Boulevard in the City of Santa Monica.

³ The walkway leads to a parking lot behind the businesses. A surveillance camera positioned to the rear of one of the businesses captured Vasquez running into the parking lot. Moments later, a patrol car enters the rear parking lot and Vasquez runs back into the walkway toward Pico Boulevard and out of view.



Photograph taken from the Centinela Avenue off-ramp





Close up of the walkway

Statement of CHP Officer Alfredo Lopez

Vasquez stood approximately 15 feet from Lopez and Rains in the walkway and began cursing at them. Lopez ordered Vasquez to drop the knife several times. Rains also ordered Vasquez to drop the knife. Vasquez did not comply and sprinted toward Lopez and Rains in an aggressive manner, holding the knife above his head. Fearing for his life and his partner's life, Lopez fired his service weapon at Vasquez. Rains simultaneously fired his shotgun.

Vasquez fell back to a seated position, leaning onto his right side. The knife landed on the ground within Vasquez' reach. Vasquez yelled, "Fuck you! Fuck you!" Vasquez grabbed the knife with his right hand and "chucked" it toward Lopez like a "tomahawk." Lopez fired additional rounds at Vasquez. Vasquez remained on the ground and officers took him into custody and rendered aid until paramedics arrived at the location.

Statement of CHP Officer Brandon Rains

Rains stood to Lopez' right at the entrance of the walkway. Vasquez was approximately 15 yards in front of the officers, leaning against a wall with his back toward them. Vasquez turned around and Rains immediately observed the knife in his right hand. Rains and Lopez continuously ordered Vasquez to drop the knife and lay down. At one point, Vasquez' eyes rolled upward so only the whites of his eyes were visible. His pupils then rapidly came back into view. Rains suspected that Vasquez was under the influence of phencyclidine (PCP) or methamphetamine.

Vasquez yelled, "Fuck you!" and did not listen to the officers' commands. Vasquez raised the knife as if he was about to lunge at them. Vasquez appeared more focused on Lopez. In fear for Lopez' life, and his own, Rains fired one round from his shotgun at Vasquez. Lopez also fired his service weapon. Vasquez fell to the ground ten feet from Rains and Lopez and eventually dropped the knife.

Vasquez was ordered to crawl away from the knife. Vasquez yelled, "Fuck you!" and reached for the knife. Rains told Vasquez, "Don't do it! Don't make us shoot you!" Vasquez picked up the knife from the ground and raised it to his shoulder as if he was going to throw it at the officers. Rains fired his shotgun, while Lopez fired his service weapon. The knife landed in the bushes to the left of Rains, and to the right of Lopez.

Statement of CHP Officer Aaron Lowery

Lowery and Weitze continued to search for Vasquez after Mejia and San Pedro lost sight of him. Lowery heard Rains and Lopez broadcast that they located Vasquez on the off-ramp. Lowery drove east on Pico Boulevard and observed Rains and Lopez exit their patrol car and run toward the walkway. Lowery stopped his vehicle and exited. Rains and Lopez had their weapons drawn. Lowery drew his service weapon and stood behind and to the right of Lopez. Vasquez was in the walkway holding the knife in his right hand. Vasquez was ordered to drop the knife. Vasquez ignored the commands and rapidly approached the officers. Lopez fired his service weapon, however, Vasquez continued to approach them. Lowery fired one round from his service weapon when he heard Lopez run out of ammunition. Vasquez fell to the ground. Vasquez landed on his right side and looked back at the officers. Vasquez' eyes rolled back showing only the whites of his eyes. His pupils came back to center rapidly. Lowery believed Vasquez was under the influence of PCP.

Lowery moved to his right and stepped forward to obtain a better line of sight to Vasquez. The knife was still in Vasquez' right hand. Vasquez was ordered multiple times to drop the knife. Vasquez replied, "Fuck you! Fuck you! Fuck this! Fuck this!" Vasquez began to sit up and grabbed the blade of the knife as if it was a "throwing knife." Vasquez reared his arm back. Lowery believed that if Vasquez threw the knife, it could hurt or kill him, or the officers standing next to him. Lowery fired a second round from his service weapon. Lopez also fired his weapon and another officer fired a shotgun. Vasquez fell back to the ground.

Statement of CHP Officer Cassandra Weitze

Weitze observed Lopez and Rains exit their patrol car. Rains was armed with a shotgun and Lopez was reaching for his service weapon. Lowery parked their patrol vehicle in front of Rains and Lopez' unit. Weitze exited the vehicle and positioned herself to the right of Lopez at the entrance to the walkway. Vasquez was standing approximately 20 feet from Weitze and the other officers, with the knife in his hand. Officers repeatedly ordered Vasquez to drop the knife, put his hands in the air and to get on the ground. Instead of complying, Vasquez turned toward the officers and charged them with the knife pointed in their direction. Lopez fired his service weapon at Vasquez. As Lopez was firing, he moved to the left pushing Weitze to the side.

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⁴ Lopez told investigators that he emptied his service weapon when Vasquez ran toward him with the knife. He conducted a tactical reload before firing the second time.

Vasquez fell to a seated position with the knife still in his hands. Vasquez was ordered to drop the knife and roll onto his stomach. Vasquez momentarily lay down, then sat up again. While officers continued to order Vasquez to drop the knife, Vasquez yelled, "Fuck you!" and raised the knife over his head. Lopez fired his service weapon a second time at Vasquez.

The knife fell to the ground, within Vasquez' reach. Vasquez refused to lay down and reached toward the knife. Less than lethal bean bag rounds were fired at Vasquez. Officers ordered Vasquez to kick the knife away from him. Vasquez did not comply and grabbed the knife and threw it toward the officers. At that time, officers fired a third volley of shots. The knife landed in the bushes. Weitze had her service weapon drawn, but she did not have a clear line of sight to Vasquez and was unable to fire.

Statement of CHP Officer Arvin San Pedro

Mejia and San Pedro headed toward Pico Boulevard when Rains and Lopez located Vasquez. They stopped their patrol vehicle on a side street to obtain a less than lethal shotgun from the rear of their vehicle. San Pedro heard 10 to 12 gunshots while standing outside the vehicle. They responded to Pico Boulevard. San Pedro observed multiple officers with their weapons drawn facing a walkway. Officers were yelling, "Drop the knife!" San Pedro joined the officers armed with the less than lethal shotgun.

San Pedro observed Vasquez lying on the ground with a knife six to eight inches from his hand. Vasquez was ordered to push the knife away, turn on his stomach and crawl away. He did not comply. Vasquez repeatedly reached for the knife and eventually grabbed it. Vasquez threw the knife like a tomahawk at the officers. San Pedro fired one less than lethal round at Vasquez as officers standing near him fired their weapons.

Vasquez fell back to the ground. San Pedro observed an object near Vasquez' foot that he believed might be another knife. San Pedro fired another less than lethal round when Vasquez reached for his leg. Vasquez reached for the object a second time. San Pedro fired another less than lethal round. Vasquez fell back to his right side. No further force was used. San Pedro deployed a total of five rounds. The object on the ground by Vasquez' leg was a red lighter.

Statement of CHP Officer Bernabe Mejia

Mejia was outside his patrol vehicle loading the less than lethal shotgun when he heard four to five gunshots. Mejia reentered the vehicle and drove to Pico Boulevard. Mejia observed Vasquez on his back and he appeared to be injured. A knife was on the ground by his knee. Vasquez repeatedly attempted to get up from the ground. Officers ordered him to roll onto his stomach and not to reach for the knife. San Pedro fired less than lethal rounds at Vasquez as he tried to get up from the ground. San Pedro's shotgun ran out of ammunition and Mejia returned to their patrol vehicle to obtain additional rounds. While at the vehicle, Mejia heard four to five gunshots.

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⁵ The less than lethal shotgun fired bean bag rounds.

⁶ The DICV shows that San Pedro fired the less than lethal rounds between the second and third volley of gunfire.

Statement of CHP Officer Joshua Nichols

Uniformed CHP Officer Joshua Nichols responded to Pico Boulevard and 34th Avenue. Nichols observed a line of officers pointing their service weapons down a walkway. Upon reaching the line of officers, Nichols observed Vasquez lying on the ground and reaching for a knife. Officers ordered Vasquez to stop reaching for the knife. Vasquez continued to reach for the knife. Nichols went to the rear of a patrol vehicle to locate additional less than lethal shotgun rounds. When he returned, officers were still giving Vasquez commands. Vasquez grabbed the knife, swung it back and threw it toward the officers. While throwing the knife, Nichols heard a gunshot from a handgun and a shotgun. Vasquez was approximately 30 to 40 feet from the officers when he threw the knife. Vasquez fell to his back. Nichols provided lethal cover as officers approached to secure Vasquez.

Statement of CHP Officer Brandon Matulich

Uniformed CHP Officer Brandon Matulich responded to Pico Boulevard and observed numerous officers standing on the sidewalk, pointing their weapons toward a breezeway running between two buildings. One officer was armed with a shotgun, a second officer was armed with a less than lethal shotgun and the other officers were armed with their service weapons. Matulich exited his vehicle and approached the officers. Matulich observed Vasquez on the ground in the breezeway, propped onto an elbow while in a seated position. A knife was on the ground near him, just beyond his grasp. Vasquez repeatedly reached for the knife. Officers ordered him to move away from the knife and not to touch it. Vasquez continued to reach for the knife. Four to five less than lethal beanbag rounds were fired at Vasquez as he continued reaching for the knife. Vasquez retrieved the knife from the ground and threw it toward the officers. Matulich heard one round fired from a shotgun as Vasquez threw the knife. Three officers approached and detained Vasquez. The knife landed in the bushes to the left of the officers.

Statement of Santa Monica Police Department (SMPD) Officer Andrew Sanchez⁷

Sanchez responded to Pico Boulevard to assist in the search for Vasquez. "Shots fired" was broadcast over the radio while en route. Upon arrival, Sanchez observed a small group of CHP officers with their weapons drawn, ordering Vasquez to drop the knife and to get away from it. Sanchez had an obstructed view of Vasquez on the ground in the walkway. Officers repeatedly ordered Vasquez to drop the knife. Sanchez heard several gunshots followed by San Pedro saying "less lethal." Vasquez repeatedly attempted to get up from the ground. A knife was within reach, near his right hand. Sanchez heard several more gunshots. An arrest team was formed and officers approached Vasquez and took him into custody.

Statement of SMPD Officer Michael Castruita

Castruita observed CHP officers with their handguns pointed toward the walkway when he arrived at the scene. After exiting his vehicle, Castruita heard an officer yelling, "Drop the knife!" As he approached, several CHP officers fired their weapons. Castruita observed Vasquez attempting to

⁷ Multiple SMPD officers responded to Pico Boulevard after shots had been were fired. Their view of Vasquez was partially obstructed by the CHP officers.

get up from the ground. Officers ordered Vasquez to stop moving. Additional CHP officers arrived to the location, at which time Castruita assisted setting up a perimeter and blocking traffic.

Digital In Car Video

The CHP patrol vehicles were equipped with DICV which captured portions of the shooting. The patrol cars were not in a position to capture Vasquez in the walkway. Mejia and San Pedro's unit captured the sound of gunfire before they arrived on Pico Boulevard. The first volley of gunfire was not captured on camera. Mejia and San Pedro's DICV captured the second and third volley of gunfire on camera after they arrived on Pico Boulevard. The following are still photographs captured from Mejia and San Pedro's DICV showing the officers' positions in front of the walkway:



Position of the officers when Mejia and San Pedro first arrived. Weitze is not visible to the left of Lowery.



Position of the officers during the second volley of gunfire



Position of the officers moments before the third volley of gunfire. San Pedro is to Rains' left.

DICV Audio

The following transcript was compiled from audio taken from DICV in multiple patrol vehicles. The below transcribed audio begins as Lopez and Rains run toward the walkway.

LOPEZ: Drop the Knife! Drop the knife! Drop the knife!

(Weitze and Lowery arrive)

LOPEZ: Get down! Get down on the ground!

VASQUEZ: No.

LOPEZ: Get down on the ground! Drop the knife!

RAINS: Don't make us shoot you, man!

LOPEZ: Drop the knife! RAINS: Drop the knife!

LOPEZ: Drop it!

First volley of gunfire occurs 25 seconds after Rains and Lopez arrive on Pico Boulevard.

(voices overlap)⁸

RAINS: Don't move! Don't move! Roll over on your belly!

MALE OFFICER: Drop the knife!

WEITZE: Drop it!

MALE OFFICER: Drop the knife!

WEITZE: Drop it!

MALE OFFICER: Drop the knife!

WEITZE: Drop it!

MALE OFFICER: Drop the knife! MALE OFFICER: Don't do it!

RAINS: Roll over on your belly! Roll over on your belly! Roll over on your belly!

MALE OFFICER: Don't do it!
MALE OFFICER: Drop the knife!

(groaning)

MALE OFFICER: Roll over on your belly! Drop the knife!

VASQUEZ: Fuck you!

MALE OFFICER: Drop the knife!

VASQUEZ: Fuck you!

RAINS: Roll over on your belly! Roll over on your belly!

MALE OFFICER: Don't advance! Do not advance!

WEITZE: Drop it!

MALE OFFICER: Drop the knife!

⁸ At times, the identity of a particular voice cannot be determined due to the quality of the recording and voices overlapping. For the same reasons, it is not possible to distinguish everything being said.

RAINS: Don't do it, man! Drop the knife! Roll over on your belly! Roll over on

your belly!

MALE OFFICER: Drop the knife!

RAINS: Roll over on your belly!

MALE OFFICER: Drop the knife!

RAINS: Roll over on your belly!

MALE OFFICER: Put it down!

MALE OFFICER: Hey!
MALE OFFICER: Put it –

Second volley of gunfire occurs approximately 39 seconds after the first volley.

MALE OFFICER: He down?

MALE OFFICER: He's down. He's still armed though.

Officers broadcast "shots fired" and other information over the radio. They advise responding units that they are firing their weapons to the south.

RAINS: Roll over on your belly! Roll over!

OFFICER: [Unintelligible]

RAINS: No. We're not going up there yet. He's got the fucking knife, right there,

man. He's still moving.

MALE OFFICER: I got no more rounds, I don't know where --

LENTZ⁹: Where's the knife?

(voices overlap)

MALE OFFICER: It's right there.

WEITZE: It's right there, by him.
RAINS: It's right next to him.
WEITZE: It's within arm's reach.

RAINS: It's right next to him. Stop moving, man! Stop moving!

WEITZE: Stay down!

RAINS: Roll over on your belly! Crawl away from the knife! If you can move, crawl

away from the knife!

(groaning)

RAINS: Roll over on your belly!

(voices overlap)

MALE OFFICER: Get away from the knife!

RAINS: Hit him with the less lethal. Hit him with the less lethal. Less lethal! Less

lethal! Hit him with the less lethal. Get him to lay down.

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⁹ Sergeant Matthew Lentz

First less than lethal round is fired.

RAINS: Roll over on your belly!

SAN PEDRO: Get on the ground! Roll over on your belly!

RAINS: Hit him again with it. SAN PEDRO: Less lethal! Less lethal!

A second less than lethal round is fired.

SAN PEDRO: Get on the ground! Roll on your belly!

RAINS: He's still moving. Let 'em know.

(voices overlap)

MALE OFFICER: Stop moving!

MALE OFFICER: Roll over on your stomach away from the knife!

SAN PEDRO: Less lethal! Less lethal!

Third less than lethal round is fired.

SAN PEDRO: Roll away from the knife!

RAINS: Crawl away from the knife. Roll over on your belly. What are you doing,

man? Roll away from it.

(groaning)

RAINS: I can't help you until you're away from it.

(groaning)

(Discussion regarding an occupied vehicle that has pulled into the parking lot behind the walkway and potentially in the line of fire.)

MALE OFFICER: Get away from the knife!

LENTZ: There's an occupied vehicle back there. RAINS: Less lethal. Less lethal. Get him.

SAN PEDRO: Less lethal! Less lethal!

Fourth less than lethal round is fired.

RAINS: Roll over on your belly!

LENTZ: Crawl on your belly towards us. Away from the knife.

RAINS: Can somebody clear that car back there?

LENTZ: Let us help you. Get away from the knife. We're not going to approach you

with that knife.

(groaning)

LENTZ: Roll over on your stomach.

(louder groaning)

MALE OFFICER: Get away from the knife!

LENTZ: Did you guys see him with any other weapon earlier?

MALE OFFICER: No. Just the knife. LENTZ: Just the knife.

RAINS: Don't pick it up, man!

WEITZE: Drop the knife! Don't touch it! MALE OFFICER: Stay away from the knife!

RAINS: Less lethal. SAN PEDRO: Less lethal!

Third volley of gunfire occurs approximately four minutes and 24 seconds after the second volley.

Knife

The knife was recovered in the bushes near the entrance to the walkway.









Close up of the knife

Autopsy Report

Vasquez was transported to UCLA Medical Center where he was pronounced deceased. Los Angeles County Deputy Medical Examiner Juan Carrillo, M.D., performed a postmortem examination of Vasquez on February 8, 2017. Carrillo ascribed Vasquez' death to multiple gunshot wounds. Methamphetamine was detected in Vasquez' system.

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*.

The People have the burden of proving beyond a reasonable doubt that the use of self-defense was not justified. See, *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 with 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 *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances of each particular case." "Thus we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

"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 that 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 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.

If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. See, *CALCRIM No. 224*

Do not automatically reject testimony just because of inconsistencies or conflicts. Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently. See, *CALCRIM No. 105*

CONCLUSION

The evidence examined shows that Vasquez was armed with a knife when CHP officers contacted him standing in the middle of the freeway. Vasquez ignored multiple commands to drop the knife and fled onto surface streets. Officers confronted Vasquez again after he ran into a walkway between two businesses. Although the officers were unaware, detectives in Simi Valley were looking for Vasquez after he allegedly stabbed his roommate three days earlier. Vasquez was also under the influence of methamphetamine. The subsequent erratic and aggressive behavior described by the officers can be reasonably explained by these factors.

Officers Lopez, Rains, Lowery and Weitze were the only officers present during the entire shooting. Weitze recalled three volleys of gunfire. The first when Vasquez charged the officers with the knife, the second when Vasquez raised the knife over his head while on the ground and the third when Vasquez threw the knife toward the officers. Lopez, Rains and Lowery recalled two volleys of gunfire. The first when Vasquez ran toward them with the knife, and the second when Vasquez threw the knife at the officers. The audio from the DICVs at the scene captured three separate volleys of gunfire, corroborating Weitze. In particular, the DICV in Mejia and San Pedro's unit captured the sound of gunfire when they were around the corner loading the less than

lethal shotgun. After they arrived on Pico Boulevard, their DICV captured the second and third volleys of gunfire on camera.

As CALCRIM No. 105 states, "People sometimes honestly forget things or make mistakes about what they remember." The officers faced an erratic individual armed with a knife. The circumstances were fast moving and tense and occurred in a relatively confined space occupied by multiple officers. There is no evidence to suggest that the officers' recollections were anything other than an honest mistake. The DICV audio assisted in determining an objective chronology of events during the shooting.

Lopez and Rains ordered Vasquez to drop the knife when they first contacted him in the walkway. Vasquez refused to comply. Instead, he charged toward the officers with the knife raised in his hand. In fear for his life, Lopez fired his service weapon to stop Vasquez. Rains also feared for his life, however, he feared more for Lopez as it appeared that Vasquez was focused on his partner. Rains fired one round from his shotgun. Lowery also fired one round from his service weapon when Lopez ran out of ammunition and Vasquez was still advancing toward them. Vasquez fell to the ground.

Weitze and the DICV audio indicate that Vasquez maintained possession of the knife. DICV audio captured officers repeatedly ordering Vasquez to "Drop the knife!" Vasquez replied, "Fuck you!" The second volley of gunfire occurred as officers told Vasquez to "Put it down!" and when Weitze saw him raise the knife over his head.

Vasquez dropped the knife to the ground, within his reach, after the second volley of gunfire. The DICV captured multiple officers state that the knife was within his reach. The officers began ordering Vasquez to crawl away from the knife.

San Pedro fired at least four less than lethal rounds at Vasquez between the second and third volleys of gunfire as Vasquez repeatedly reached for the knife. San Pedro believed that he fired additional less than lethal rounds after all the gunfire ended. The DICV and statements from the other officers at the scene indicate that he was mistaken. The less than lethal rounds were ineffective. Rains and Lowery observed Vasquez grab the knife and raise it as if he was going to throw it at them. Lopez observed Vasquez "chuck" the knife toward him like a "tomahawk." Weitze, San Pedro, Nichols and Matulich also observed Vasquez grab the knife and throw it toward the officers. In fear for their lives, and the lives of their fellow officers, Rains, Lowery and Lopez fired their weapons.

Vasquez placed the officers in imminent and reasonable fear for their lives, and the lives of their fellow officers, when he charged at the officers armed with a knife after refusing multiple orders to drop the weapon. Lopez, Rains and Lowery responded with reasonable deadly force during the first volley of gunfire.

During the second and third volleys of gunfire, Vasquez was on the ground, wounded by gunfire. Given the nature of his injuries, it is questionable whether Vasquez posed a continuing lethal threat to the officers. However, the People have the burden to prove beyond a reasonable doubt that the officers' use of deadly force was not reasonable under the circumstances. The law is "highly deferential to the police officer's need to protect himself and others" and recognizes 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."

Although Vasquez was injured and on the ground, it would be reasonable for a trier of fact to conclude that Vasquez posed a deadly threat to the officers when he raised the knife over his head since Vasquez was able to throw the knife at the officers four minutes later. It would also be reasonable for a trier of fact to conclude that Vasquez posed a deadly threat to the officers when he threw the knife toward them. The knife nearly reached Lopez and Rains and was capable of inflicting seriously bodily injury if it were to have struck them. If there are two or more reasonable conclusions that can be drawn from the evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence

We conclude that Officers Alfredo Lopez, Brandon Rains and Aaron Lowery acted in lawful self-defense and defense of others when they used deadly force against Gerardo Vasquez during the first volley of gunfire. Furthermore, there is insufficient evidence to prove beyond a reasonable doubt that Lopez, Rains and Lowery did not act in lawful self-defense and defense of others when they used deadly force against Vasquez during the second and third volleys of gunfire. We are therefore closing our file and will take no further action in this matter.