

Officer Involved Shooting of Eric Arroyo

Long Beach Police Department

Officer Efren Cervantes, #6059

Officer Jeff Deneen, # 6187

Officer Joseph Garces, #10656

J.S.I.D. File #15-0299



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 14, 2016

MEMORANDUM

TO: CHIEF ROBERT LUNA
Long Beach Police Department
400 W. Broadway
Long Beach, California 90802

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Office Involved Shooting of Eric Arroyo
J.S.I.D. File #15-0299
L.B.P.D. File #DR 15-36371

DATE: April 14, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 14, 2015, non-fatal shooting of Eric Arroyo by Long Beach Police Department (LBPB) Officers Efren Cervantes, Jeff Deneen and Joseph Garces. It is our conclusion that Officers Cervantes, Deneen and Garces acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on June 14, 2015, at approximately 10:49 p.m. The District Attorney 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 LBPB Homicide Bureau Division Detectives Scott Lasch, Michael Hubbard, Terri Hubert and Sergeant Eric Herzog. The reports include photographs, audio-recorded interviews of witnesses, and radio transmissions.

FACTUAL ANALYSIS

On June 14, 2015, at approximately 9:11 p.m., LBPB Officers Jeff Deneen, Efren Cervantes and Joseph Garces responded separately to a dispatch call regarding a person who was shooting a gun at 3030 East Artesia Boulevard.¹

Deneen was the first to arrive at the scene and made contact with a female, later identified as Vanessa Solano, who had called 9-1-1. Solano appeared to be in fear for her life and attempted to open the back door to Deneen's patrol vehicle to get inside for safety.

¹ 3030 East Artesia Boulevard is a two story multi-unit apartment complex, located on the south side of East Artesia Boulevard bordered by Hammond Avenue. On the north side of the complex is the main metal security door, which offers access to the property. The door opens into a courtyard with apartments around the circumference of the property.

Deneen observed a male with a shaved head, later identified as Eric Arroyo, standing at the open front gate of 3030 East Artesia Boulevard.² Deneen and Arroyo made eye contact and Arroyo darted back into the apartment complex courtyard with the gate door closing behind him. Deneen believed that Arroyo was the same person that had a gun and the person who Solano was running away from as he was the only other person in that location, and fled once he saw Deneen. Deneen advised assisting Officers Cervantes, Garces, and Calderon, over police radio, of Arroyo's physical description and told them Arroyo ran back into the apartment complex.

Calderon stayed at Deneen's vehicle with Solano, while Deneen, Cervantes, and Garces devised a plan to walk through the apartment courtyard to perform a safety check to find out if anyone was walking around with a gun. Due to the nature of the call, Cervantes, Deneen, and Garces unholstered their service weapons and kept them at a low ready position.

Garces walked through the courtyard toward apartment #10 when he saw Arroyo, who matched the description given by Deneen, standing inside the apartment eight to twelve inches from a closed black security door.³ Arroyo was facing Garces and holding a silver object in his right hand. Garces announced who he was and ordered Arroyo to come out of the apartment. Arroyo ignored Garces' commands and slammed the door to close it but it bounced back open. Garces moved in closer to the door and used the light attached to his duty weapon to illuminate Arroyo's hands. Garces saw that Arroyo had a silver revolver in his right hand pointed at the ground. Garces began to walk backward, away from the door, and alerted Cervantes and Deneen that Arroyo had a gun. As Garces continued to walk backward, the front door of the apartment opened and Arroyo exited. Arroyo had his right arm extended with the revolver in his right hand. Arroyo turned toward Garces, who was standing approximately four to five feet away, and fired the revolver at Garces. Garces fired back at Arroyo and continued to retreat, trying to find a place for cover. Arroyo continued to walk toward Garces while firing his handgun. Garces fired multiple rounds at Arroyo but Arroyo continued to walk toward Garces while firing his handgun.

Deneen heard someone yell, "He's got a gun!" Deneen saw Arroyo with his arms extended with a handgun in his hands. Deneen saw Arroyo begin to shoot southbound in the direction where Deneen last saw Garces. Deneen shot his service weapon at Arroyo in an attempt to stop him from shooting Garces.

Cervantes was in the process of clearing the second floor when he heard Garces yell, "The guy's inside! He has a 417!"⁴ Cervantes looked over the railing and saw Garces immediately begin to walk backwards. The apartment door flung open and Arroyo fired multiple times in Garces' direction. Cervantes fired at Arroyo in an attempt to stop him from shooting Garces.

Officer Jose Orantes also responded to the call. Upon arriving at the scene, Orantes immediately heard approximately 15 shots and began to run toward the complex. Orantes saw Garces running

² Eric Arroyo is a 31 year old male Hispanic, 5 feet 11 inches and 200 pounds who resided at 3030 East Artesia Boulevard.

³ Apartment #10 is Arroyo's residence. The front door faces west and has a black metal security outer door. There was also a wooden inner door.

⁴ Penal Code section 417 addresses the brandishing of a firearm.

toward him southbound from Artesia Boulevard, being chased by Arroyo. Garces stopped near Orantes and Orantes tackled Arroyo to the ground while Arroyo grabbed the legs of both Orantes and Garces. Orantes was able to move his leg out from Arroyo's grasp, but Arroyo was still attempting to fight and take down Garces. Orantes removed his Taser and deployed it on Arroyo's back as he continued to resist. Several officers arrived on scene and assisted in gaining control of Arroyo. Arroyo was handcuffed and taken to the hospital. Arroyo sustained two gunshot wounds; one to his right shoulder and one to his right flank area. Garces sustained a gunshot wound to his left clavicle which required surgery to repair. Orantes sustained injuries to his right shoulder and believed the injury occurred during the altercation with Arroyo. Orantes went to the hospital and was treated for pain and swelling.

Arroyo was interviewed on June 14, 2015, after waiving his Miranda rights. Arroyo said he shot his gun inside his apartment bathroom earlier in the night before the police arrived. Arroyo said that the police were aggressive toward him so he was aggressive back. Arroyo did not remember how many times he shot at the officers and said he might have shot twice. Arroyo was armed with a .38 revolver and used the same gun he fired in his bathroom to shoot at the officers. Arroyo said he did not remember getting tased. Arroyo drank four or five 40 ounce beers and smoked marijuana before the incident. When asked how he felt about police officers, Arroyo said he had lost all respect for them and did not like the police. Arroyo also said, "I fucked up. I shot a cop."

Arroyo was charged with two counts for the attempted murder of Garces and Deneen in case number NA102054 and the case is set for a preliminary hearing setting on April 18, 2016.

Vanessa Solano told investigators she met Arroyo at a trade school they were both attending. Solano said Arroyo picked her up earlier in the day at approximately 8:00 a.m.

Solano spent the day with Arroyo and they were at his apartment watching the NBA finals. Solano said she and Arroyo started drinking. Solano drank two margaritas and Arroyo drank approximately two or three 40 ounce beers. Solano stated once the game was over, Arroyo changed and it was like "a switch was turned on."

Arroyo started acting mean toward her and she told Arroyo she was going to go home. Arroyo kept asking her to stay but she grabbed her phone and left. After Solano left, she realized she left her purse in Arroyo's apartment. Solano called Arroyo approximately four times but he did not answer. Solano went to Arroyo's bathroom window and noticed the lights were on. Solano knocked on the window and Arroyo said, "What the fuck do you want?" She could tell that Arroyo was really mad. Solano told Arroyo she left her purse and then noticed the lights turn off in the bathroom. Arroyo eventually opened the window but Solano felt there was something wrong and she began to walk away when she heard three gunshots.

After Solano heard the gunshots, she called the police. When she arrived at Artesia Boulevard, she could see Arroyo coming out of his apartment and walking toward her. She stayed on the phone with the police but told Arroyo she was on the phone with her brother. Arroyo started to walk back toward his apartment complex and that is when she ran into the street toward a police

car to get help. Shortly after, another police car arrived and she ran toward a liquor store west of the location when she heard about seven gunshots.

Weapons

Arroyo was armed with a .38 special stainless steel revolver that was recovered lying on the ground near the southeast pedestrian gate of the apartment complex.

Deneen was armed with a department approved Springfield Armory .45 caliber semiautomatic pistol.

Cervantes was armed with a department approved Heckler & Koch .45 caliber semiautomatic pistol.

Garces was armed with a department approved Springfield Armory .45 caliber semiautomatic pistol.

LEGAL ANALYSIS

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 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. Conner* (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.*

An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. “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.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

In this case, Garces, Deneen, and Cervantes were responding to a “shots fired” call when they were immediately confronted by Arroyo who ignored Garces’ commands to come out of the apartment. Instead, Arroyo opened the apartment door and fired multiple shots at Garces. Garces in fear for his life, fired back at Arroyo and Arroyo continued to fire at Garces. In fear for Garces’ life, both Cervantes and Deneen fired at Arroyo in an attempt to neutralize the threat to Garces, to no avail. Arroyo continued to fire at Garces. Garces, Deneen, and Cervantes were all justified in firing at Arroyo in order to protect themselves and the lives of others.

Based on the foregoing, we are closing our file and will take no further action in this matter.