MIKE BUMCROT CONSULTING

REPORT OF INVESTIGATION

DATE: November 29, 2019

SUBJECT: Officer Involved Shooting of Marcelino Garcia, which occurred on February 20, 2017 at 2253, and culminated in his suicide

CASE: Riverside Police Department File #P17-032034

LOCATION: 4041 Macarthur Road and 9321 Sage Avenue, Riverside

On November 19, 2019, I was asked by Riverside Assistant City Manager Carlie Meyers to review the circumstances surrounding the Officer Involved Shooting involving Marcelino Garcia, which resulted in him committing suicide. I was also asked to provide my expert opinion in a written report on the manner in which the incident was investigated by the Riverside Police Department. I received police reports, photographs, audiotapes and other documents contained in the presentation by the Riverside Police Department to the Riverside Community Police Review Commission. I also reviewed legal and medical issues. To assist me in understanding all of the documentation, I had previously responded to both locations and referred many times to the excellent crime scene photographs. After my review of this incident, it is my expert opinion that Officer Chris Carmona and Ramon Espinoza acted in lawful self-defense and in defense of each other when they fired their duty weapons at Marcelino Garcia. See Conclusion Section.

The following analysis is based on reports prepared by the Riverside Police Department, statements of Officers Carmona and Espinoza, as well as civilian and police witnesses who provided statements.

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FACTUAL ANALYSIS

On February 20, 2017, around 2253 hours, Riverside Police Officers Chris Carmona and Ramon Espinoza were in police uniforms and driving a marked police car in the vicinity of Macarthur Road and Garfield Street in the City of Riverside. The officers would later tell detectives that they knew they were in a "known high crime area" where narcotic transactions took place as well as gang activity, identity thefts, graffiti, and persons wanted for felony warrants.

The officers observed a brown Kia hatchback parked at the curb near 4041 Macarthur Road with 2 male occupants seated in the front seat. Marcelino Garcia was standing outside of the Kia and reaching through the open drivers side window. Believing that a drug transaction was taking place, Officer Carmona stopped the police car next to the Kia, facing the other direction.

As the officers got out of their police car to investigate, Mr. Garcia began to walk rapidly away from them with his hands in his jacket pockets. Mr. Garcia was ordered to stop and show his hands and the driver of the Kia was told to place his hands on the steering wheel. From about 6 feet away, Mr. Garcia produced a black semi automatic pistol from his jacket pocket, partially turned towards Officer Carmona, and fired approximately 3 shots in the direction of the officer. Both officers would later tell detectives that they not only heard 3 shots but also saw muzzle flashes coming from Mr. Garcia's weapon. Both officers returned a total of approximately 13 shots at Mr. Garcia who ran in to the driveway of a residence (address redacted) and collapsed to the ground.

The officers took up a position of cover behind parked vehicles and saw Mr. Garcia stand up and extend his right arm towards them as though he still had his handgun. Fearing for their lives once again, the officers fired a total of 9 more gunshots at Mr. Garcia who jumped a fence into a back yard. The officers did not give chase due to the subjects seated in the Kia possibly being a threat, and awaited assistance.

When help arrived, a blood trail was located in the driveway where Mr. Garcia collapsed after the exchange of gunfire. The blood trail continued through several backyards and

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sidewalks along Macarthur Road and Hawthorne Avenue and then east on to Sage Avenue. Bloody footprints led to the residence at 9321 Sage Avenue where an occupant (name redacted) said Mr. Garcia came to his house bleeding from his leg and carrying a black semi automatic handgun. Mr. Garcia was refused help but walked in to the house and asked for a telephone. It should be noted that several persons were inside the house and all were uncooperative and told conflicting stories. Detectives would later learn that a female resident had actually washed away the blood trail leading up the driveway to the door of the location although she said Mr. Garcia ordered her to do it. A male resident told detectives that he had washed the driveway prior to the incident.

Mr. Garcia told the occupants (all names redacted) that he "wasn't going to go out this way" and "I'm going for life" and asked the occupants to tell his mother and sister that he loved them. The entire time Mr. Garcia was inside the location he was holding the black handgun and his leg was bleeding profusely so the occupants kept giving him towels to try and stop the blood flow. About 20 minutes later, a female occupant came in to the room and said the police were outside, ordering everyone to come out. The occupants were afraid that Mr. Garcia would use them as human shields so they ran out to the garage where they were led to safety. Initially, Mr. Garcia walked outside with everyone but quickly returned inside the house.

Patrol officers surrounded the residence and SWAT responded. Over the next several hours, many attempts were made to coax Mr. Garcia to come out peacefully. SWAT members used a public address system, in both English and Spanish, asking him to end the stalemate. A tactical robot was deployed inside the house but Mr. Garcia was not located. A second tactical robot was deployed, which located a large pool of blood in the hallway bathroom. The shower curtain was closed on the bathtub and the interior of the tub could not be viewed. A "throw phone" was tossed inside the residence in an attempt to communicate with Mr. Garcia, with negative results.

A search warrant was obtained for the location and a chemical agent plan was prepared. At approximately 0704, a chemical agent was delivered through a window. Simultaneously, 2 Burn Safe canisters containing chemical agents were deployed into the east and west sides of the residence. A Burn Safe is a flame resistant canister that

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contains the chemical agent. Within seconds, the canister inserted into the east side of the location ignited a fire. SWAT members and Riverside Fire Department personnel cautiously tried to extinguish the flames but the house became completely engulfed. While the residence was burning, possible gunshots were heard inside and Mr. Garcia never came out. After the fire was completely extinguished, Mr. Garcia was found dead, inside the hallway bathroom tub. The roof had collapsed and debris was piled throughout the house. A search conducted of the bathtub revealed a 9mm handgun, which was located under the body of Mr. Garcia. A 9mm expended casing was also found in the tub.

At autopsy, Mr. Garcia was positively identified and it was learned that he was burned around the head, face, and upper torso. Both arms were severely burnt. He also suffered what appeared to be a through and through gunshot wound of the left shoulder but it was unknown the direction of the bullet. He also had a perforating gunshot wound to the top of his right foot, which travelled front to back. These wounds were not immediately life threatening. The fatal injury was a penetrating gunshot wound of the anterior torso causing a large defect of the heart. A 9mm expended bullet was recovered in the path of this wound and since Mr. Garcia was in possession of a 9mm, while the officers were firing .40 and .45 caliber handguns, the Mode of Death was listed as Suicide.

Detectives interviewed the occupants of the Kia (names redacted). The passenger eventually admitted that he knew Mr. Garcia as “Mars” which is short for his first name, Marcelino. He said Mars was a member of the Arlanza street gang and was a second striker and doesn’t know why he was carrying a gun. On previous occasions, Mars had made statements that he would not go back to prison. In fact, when the police car stopped next to his vehicle, he heard Mr. Garcia say, “I’m not going back to jail.” When the shooting began, he ducked down in his seat and saw none of it.

The Kia driver stated that he was in his car, talking with Mr. Garcia, when the police car drove up and turned spotlights on them. Mr. Garcia said, “Oh shit, the cops.” The police car driver stepped out and asked the group what was going on? He heard Mr. Garcia respond “nothing much”, followed by the officer saying, “Let me see your hands.” Mr. Garcia began to run away and the officer began to shoot at him. Mr. Garcia fell to

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the ground but quickly got up and ran out of sight. He said he never saw Mr. Garcia with a gun.

Detectives interviewed Mr. Garcia's sister (name redacted) who came to the scene and stated that she had received 3 telephone calls from her brother, stating police had shot him in the foot. At 2307, he told her "the cops shot me, I love you, I'm sorry." He also said, "they just rolled up on us and I'm not going out like that."

Detectives interviewed Officer Ramon Espinoza, the police car passenger, who stated that he heard Officer Carmona tell the Kia driver to place his hands on the steering wheel and then say "Let me see your hands." He saw Mr. Garcia backing away and then partially turn towards Officer Carmona. He then saw Mr. Garcia remove his right hand from his jacket pocket and fully extend his right arm towards Officer Carmona. Although Officer Espinoza did not see a gun in Mr. Garcia's hand, he heard gunshots and saw 2-3 muzzle flashes coming from the end of Mr. Garcia's extended arm. Fearing for his and his partner's lives, Officer Espinoza fired approximately 5 shots at Mr. Garcia who ran down a driveway, out of sight. Officer Espinoza ran across the street, taking cover behind a parked car. He observed Mr. Garcia lying on the driveway and he was ordered to show his hands. Mr. Garcia stood up, turned towards the officer, and raised his right arm up. Fearing for his life, Officer Espinoza fired approximately 5 more shots at Mr. Garcia. He was unsure if Mr. Garcia had fired at him. The suspect ran towards a backyard fence and, once again, turned in Officer Espinoza's direction, bringing his right hand up. Believing Mr. Garcia was still armed and was going to kill him, Officer Espinoza fired 10-15 shots at the fleeing felon. Mr. Garcia jumped over the fence and continued running but the officers didn't give chase because they feared the subjects behind them might be armed. Officer Espinoza added that during the incident, he completed 2 combat re-loads.

Detectives then interviewed Officer Chris Carmona who stated that he was on routine patrol when he saw a Kia parked at the curb with 2 occupants and a male and female standing outside of it. Believing he was witnessing a narcotics transaction, he stopped his police car and got out. He ordered the driver of the Kia to place his hands on the steering wheel and he saw Mr. Garcia turn and walk away with both hands in his jacket

pockets. Officer Carmona stated, “The hairs on my neck stood up because his body was tensed up, like his hands were protecting something.” From about 6 feet away, Mr. Garcia turned so that his right side was facing Officer Carmona. He saw Mr. Garcia’s right shoulder twitch and he observed Mr. Garcia pull his right hand out of his jacket pocket holding a black handgun. Mr. Garcia pointed the weapon at him and, as the officer began to draw his own firearm from its holster, Mr. Garcia fired 3 gunshots at him in rapid succession. Officer Carmona not only heard the gunshots, he also saw the muzzle flashes and he noted that the weapon was in a ‘canted’ position. Officer Carmona fired approximately 8 shots at Mr. Garcia, who ran down a driveway and collapsed. Officer Carmona took cover behind a parked truck and, while he was reloading, he heard more shots but didn’t know if the shots came from Mr. Garcia or Officer Espinoza.

Mr. Garcia got up and began to run away. Officer Carmona saw the suspect look back towards the officers and he feared Mr. Garcia was still a threat. Officer Carmona fired 4 more shots at Mr. Garcia and he was aware Officer Espinoza was also firing his weapon. Mr. Garcia jumped over a fence and ran from sight. The officers did not give chase because there was other subjects detained in the street and may be armed. Officer Carmona remembered that during the incident, his weapon had a double feed malfunction so he dropped a loaded magazine and inserted another.

Detectives presented photographic line-ups to both officers who positively identified the photograph of Mr. Garcia as the person who shot at them. Detectives also determined that the 9mm handgun in Mr. Garcia’s possession was stolen from a residence and reported to San Bernardino Sheriff’s Department.

It should be noted that during the crime scene investigation, a female cousin of Mr. Garcia (name redacted) came out of her residence, which was located within the containment, and removed evidence from the scene and took it inside her house. She was warned and advised regarding tampering with evidence and it was returned to its original position.

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During the crime scene search, 9 expended .45 casings and 22 expended .40 casings were recovered which were fired from the officer's weapons.

In the days following the incident, detectives served search warrants on the Kia that was parked at the curb as well as Mr. Garcia's Saturn that was found parked within the crime scene. A bag containing unknown pills was found in the Kia. Inside Mr. Garcia's Saturn, 9 cell phones were hidden in a backpack, a door panel, and under the dashboard. A pellet gun was located under the center console. Black cotton gloves and a plastic mask were also found. These items are indicative of someone who commits armed robberies. A temporary paper license plate was affixed over the original license plate. This is a method robbers use to avoid their vehicle being identified by victims or witnesses. There was also a sticker on the front windshield reading AX3, which is commonly used to identify a Riverside street gang known as Arlanza 13.

EXPERT QUALIFICATIONS AND CV

Experience 1968-2018 Los Angeles Sheriff Department

Deputy Sheriff/Detective

- 50+ years on Sheriff Department.
- 43+ years as a Detective.
- 38+ years assigned to Homicide Bureau, investigated several thousand murders and suspicious deaths, over 100 Officer Involved Shootings, and 10 murdered Police Officer cases.
- Taught "High Profile Murder Investigations", "Crime Scene Management", and "Officer Involved Shooting Investigations" for the Robert Presley Institute of Criminal Investigation, police academies, advanced training classes, supervisor training, college classes, homicide school, and in service training.
- Selected in 1995 as California Deputy Sheriff of the year by

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the California Organization of Police and Sheriffs (COPS) for the investigation, arrest, and conviction of a suspect for the murders of 2 local policemen.

- In my final Performance Evaluation, prior to my retirement in 2002, Command Staff evaluated my performance as outstanding and I received the following recognition: "… his protégées struggle to keep up with this legend of the Homicide Bureau. He truly is a master of his craft."

  "His stated goal is to be one of the best Homicide Detectives at the Bureau and he has certainly achieved that aspiration. He works tirelessly at his vocation, providing knowledge and insight to all of those who work with or around him. Many inexperienced investigators have approached me and expressed awe of his ability to sort through the myriad of details at a crime scene, isolate the ones worthy of consideration to the case at hand then discard those that obfuscate the issues."

  "In the opening paragraph I made mention that Detective Bumcrot has become a legend of the Homicide Bureau. This is not merely a complementary statement, it is a fact. His name has spread far and wide within the law enforcement and related communities. He is constantly called upon to lecture to a variety of groups about homicide related topics."

  Regarding Officer Involved Shootings, "He handles each case with the political delicacy, yet bulldog tenacity, that is necessary in these types of incidents. The crime scenes at events such as these are always chaotic, yet Detective Bumcrot's controlled approach and authoritative demeanor has a calming effect on those present, allowing him to bring order to bear and providing a sense of security to those involved in the operation."

  "In conclusion, Detective Bumcrot is the epitome of what a

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homicide detective should be. He not only sets high standards for himself, he demands that all of those around him achieve success and carry on a tradition of excellence…"

- After retirement in 2002, I worked with LASD Homicide Bureau on a consulting contract to make recommendations regarding the investigation and prosecution of complex homicide cases; provided active support during large scale, complex, highly publicized cases; provided training in homicide and officer involved shooting investigations; and reviewed unsolved homicide cases. During these cold case reviews, I was responsible for reviewing over 4,000 unsolved homicide cases to determine which investigations had DNA or latent print evidence that, due to recent advanced technology, may assist in solving the case. This resulted in the closure of many cases, some several decades old. In 2014, I was tasked with writing the investigative guidelines for officer involved shootings for the LASD Homicide Bureau. In 2018, I retired completely from LASD Homicide Bureau.

2002-Present

- Currently on staff with the Police Policy Studies Council, which was established, to formulate innovative solutions to the most troubling and controversial problems that have continued to plague the law enforcement community. PPSC offers training and forensic level consultation.
- Currently working with Riverside Police Review Commission to investigate Officer Involved Deaths.
- Consulted with Police Agencies throughout the nation on Officer Involved Shootings investigations as well as

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homicide and suspicious deaths.

- Continuing to teach "Crime Scene Management", "High Profile Murder Investigations", and "Officer Involved Shooting Investigations" at homicide school, police academies and in-service training as a guest speaker.
- Alumni of the New York State Police International Homicide School.
- Active member of the California Homicide Investigators Association.
- Recipient of the LASD Medal of Distinguished Service.

INVESTIGATION AND REVIEW

The investigation into the officer involved shooting of Marcelino Garcia, and his ultimate suicide, was conducted by the Riverside Police Department, the Riverside County District Attorney's Office, Riverside County Medical Examiner's Office and the Riverside Fire Department. I reviewed all of the reports and photographs submitted to the Community Police Review Commission and researched deadly force legal and medical issues. The District Attorney found there was no criminal liability.

LEGAL ANALYSIS

California law provides that the use of deadly force in self-defense or in defense of others is justifiable if the person claiming the right of self-defense or the defense of others honestly believes that he or others were in imminent danger of great bodily injury or death, and a reasonable person in the same circumstances would also deem it necessary to use deadly force in order to protect themselves or others from the deadly peril. Cal. Penal Code 197; People v Humphrey (1996) 13 Cal. 4th 1073, 1082; CALCRIM No. 505

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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

It is undisputed that Mr. Garcia was a felon in possession of a handgun. When he pointed that weapon at Officers Carmona and Espinoza, they reasonably believed that Mr. Garcia was a significant, deadly threat and their use of deadly force was justified.

CONCLUSION

The review of reports and the evidence in this case reveals that Marcelino Garcia, a known gang member and convicted felon, was involved in possible questionable activity, while armed with a stolen handgun, a felony under California state law. When Officers Carmona and Espinoza contacted Mr. Garcia, he chose to produce a firearm, point it at them, and fire it multiple times. Although no 9mm expended casings were recovered at the scene, both officers heard the shots and saw the muzzle flashes coming from Mr. Garcia's outstretched arm. Both officers could have been injured by the actions of Mr. Garcia. Thusly, both officers feared for their safety and acted in reasonable self-defense and defense of others by firing shots at Mr. Garcia.

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After the officer involved shooting, Mr. Garcia fled and entered an occupied residence. He barricaded himself when police arrived and ignored commands to surrender. Consistent with his previous statements that he would not go back to prison, he implied that he would not give up peacefully. The occupants of the residence saw Mr. Garcia with a handgun and after the house caught fire, officers heard a single shot fired from within. Mr. Garcia's firearm, described by Officer Carmona, who was looking down its barrel from 6 feet away, was found under Mr. Garcia's body along with an expended casing.

An interesting side note was the evidence found inside of Mr. Garcia's vehicle that would suggest that he might have been involved in suspicious activity. It is common for robbery suspects to be in possession of the items recovered.

I find that the officer involved shooting of Marcelino Garcia was in lawful self-defense or defense of others and the subsequent investigation in to his death by suicide was excellent, completed in a fair and impartial manner, and exceeded accepted police standards and practices.

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