



**MARCELINO ARTHUR GARCIA
OFFICER-INVOLVED DEATH
PUBLIC REPORT**

Case Type: OFFICER INVOLVED SHOOTING

RPD Case No. P17-032034

MONDAY, FEBRUARY 20, 2017

Table of Contents

Page

I. Preamble..... 1

II. Finding 1

III. Standard of Proof for Finding 1

IV. Incident Summary 1

V. CPRC Follow-Up 2

VI. Evidence Methodology 3

VII. Applicable RPD Policies..... 3

VIII. Rationale for Finding 4

IX. Recommendations 6

X. Closing..... 6

Appendix 7

Date of Incident: February 20, 2017 – 2253 Hours

Location: 4041 MacArthur Rd., Riverside, CA

Decedent: Marcelino Arthur Garcia M 04/13/1977 (40-years)

Involved Officer(s): Officer Chris Carmona #1781
Officer Ramon Espinoza #1691

I. Preamble:

The finding by the Community Police Review Commission (“Commission”) as stated in this report is based solely on the information presented to the Commission by the Riverside Police Department (“RPD”) criminal investigation case files, and follow-up investigative report submitted by CPRC Independent Investigator, Mike Bumcrot, of “Mike Bumcrot Consulting,” Norco, California.

II. Finding:

On June 24, 2020, by a vote of 7 to 0 (1 vacancy and 1 absence), the Commission found that the officer’s actions were consistent with RPD policy (Section 300 – Use of Force Policy), and circumstances determined through the Commission’s review and investigation.

Smith	Evans	Huerta	DeBrier	Berrellez	Levine	Teichert	Hirales	Vacant
✓	✓	✓	✓	✓	✓	✓	Absent	

III. Standard of Proof for Finding:

In coming to a finding, the Commission applied a standard of proof known as the “Preponderance of Evidence.” Preponderance generally means “more likely than not,” or may be considered as just the amount necessary to tip the scale. The Commission need not have certainty in their findings, nor do they need to support their finding “beyond a reasonable doubt.” The Preponderance of Evidence standard of proof is the same standard applied in most civil court proceedings.

IV. Incident Summary:

Officers Carmona and Espinoza were on routine patrol when they saw a vehicle parked along the curb of MacArthur Rd occupied by two male subjects. Another subject, later identified as Marcelino Garcia, was standing on the driver side, leaning into the vehicle. The officers suspected a possible drug transaction was occurring and stopped to investigate. Officer Carmona was the driver and Espinoza the passenger.

Officer Carmona exited the police unit and saw Garcia step away from the vehicle and begin to walk away from the officers with his hands in his pockets. Carmona called out to Garcia and told him to stop and to keep his hands in his pockets. Garcia immediately drew a black handgun from his pocket and pointed it directly at Carmona, firing approximately (3) rounds at Carmona, missing him. Carmona drew his sidearm and fired appx (8) rounds at Garcia. Espinoza saw Garcia fire a handgun at Carmona and drew his sidearm. Espinoza fired appx (5) rounds at Garcia. Garcia and Carmona were appx 6' away from Garcia when he drew the gun and fired it in the direction of Officer Carmona.

Mr. Garcia ran into an adjoining driveway and collapsed. Carmona and Espinoza took up a position of cover across the street. Garcia suddenly began to stand up and extended his arm toward the officers as though he had a weapon and was going to fire it at them. Both officers each fired an additional 4-5 rounds at Garcia. Garcia then ran down the driveway and out of sight. The officers remained at the scene since they had two other subjects still in the vehicle and it was unknown if they too were armed.

Additional officers arrived to assist and a search for Garcia commenced. A blood trail was followed to a residence. Garcia had gone into this residence and asked if he could use the phone. One of the occupants said it was okay, however Garcia could not connect with anyone. The homeowner stated that Garcia was armed with a handgun when he entered his home. Garcia was bleeding severely from his leg while inside the residence. RPD officers then called for all occupants in the residence to come outside. All occupants complied except for Garcia. Garcia told the occupant that he "wasn't going to go out this way" and to tell his mother and sister that he loved them.

Mr. Garcia barricaded himself inside the residence. The RPD SWAT responded and took over. They made several attempts to call Garcia out of the house but he did not comply. They sent in a surveillance robot to see if they could locate Garcia but were unsuccessful. They also tossed a "throw phone" into the residence and asked Garcia to pick it up so they could communicate but he did not comply. The SWAT commanders then elected to deploy a "Chemical Agent Operation" in order to get Garcia to come out.

A SWAT member delivered a chemical agent into an upstairs bedroom. Then two "Burn Safe" cannisters were deployed. One to the east side of the residence and the other to the west. A fire erupted immediately. RPD and RFD began to fight the fire which suddenly engulfed the home. Garcia never came out of the residence however officers heard gunshots coming from inside the residence. Once the fire was extinguished, a partially burnt body, later identified by the Coroner as Garcia was found lying in the bathtub. A 9mm pistol was found in the tub along with an ejected casing. The coroner determined that the cause of death was a self-inflicted gunshot wound. It appears that Garcia committed suicide by shooting himself while lying in the bathtub. An expended 9mm casing was found in the bathtub.

V. CPRC Follow-Up:

The Commission requested a cover to cover review of the Criminal Casebook by CPRC Independent Investigator Mike Bumcrot of Bumcrot Consulting, located in Norco, California.

Mr. Bumcrot is a nationally recognized expert in homicide and Officer Involved Death cases. His resume is available for review. The purpose of this review is for Mr. Bumcrot to provide the CPRC with his opinions and conclusions on the entire criminal investigation conducted by members of the Riverside Police Department based upon his experience and expertise. Mr. Bumcrot felt that the investigation conducted by the Riverside Police Department was thorough and all evidence collected and preserved was completed accordingly and within best practices of homicide investigations.

VI. Evidence and Methodology:

The relevant evidence in this case evaluation consisted of a complete review of the RPD Criminal Casebook, statements from witnesses, statements from the officers involved in the shooting, RFD personnel and paramedics. In addition, a Deputy Coroner investigation and autopsy report, along with police reports and photographs, forensic examination results and a report by the independent CPRC investigator.

During the deliberation process, the CPRC was provided with training by members of the RPD METRO team on the deployment of “burnsafe” teargas cannisters. The presentation including a showing of the device and how it operates. Although these cannisters are designed not to ignite a fire, it is still possible if an excellelent of some type is inside the location where the cannister hits.

One of the Commissioners expressed concerns in regard to the fact that there were no 9mm Cal shell casings from Mr. Garcia’s gun found in the area where officers said he initially fired 3-rounds at them. The only 9mm shell casing from the suspect’s gun was found in the bathtub with Garcia’s body where he shot himself. There was information that one of the subjects that was with Garcia and the individuals in the parked vehicle prior to the shooting had removed possible evidence from the scene before it was processed. This however could not be confirmed. The CPRC independent investigator, Mike Bumcrot, was asked about these concerns as to why the shell casings were not found. Mr. Bumcrot said he has experienced this type of issue in the past. There have been times where shell casings could not be located for one reason or another.

Mr. Bumcrot said it is possible that the casings flew up in the air when ejected as Garcia was running. The casings could have landed in his clothing and fell out during the route where he ran from the area. It is also possible that the subject who was with Garcia when the shooting occurred picked the casings up as she ran off. The Commission felt that even without the casings, Garcia was armed with a handgun and according to officers, fired it in their direction. Even if Garcia did not fire the weapon, the officers were still within policy in the Use of Deadly force since he pointed the weapon at them. The resident at the home where Garcia forced his way in, stated that he (Garcia) had a gun in his hand the whole time he was in the residence. A gun was found with the Garcia when his body was located in the bathtub. There was no dispute that Garcia was in possession of a loaded handgun.

VII. Applicable RPD Policy(s); Penal Codes and Case Law:

RPD – Policy Manual, Policy 300

USE OF FORCE

Policy 300.3, Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time...

Policy 300.3.2, Use of Force Factors

(a) Immediacy and severity of the threat to officers and others; (b) conduct of the individual being confronted; (c) suspect's mental state or capacity; (d) proximity to weapons; (e) potential injury to officers, suspects and others; (f) whether person appears to be resisting, evading, or attacking; (g) risk and reasonable foreseeable consequences of escape; (h) any other exigent circumstances

Other Applicable RPD Policy(s): (Refer to RPD Policy Manual)

307 Investigation of officer Involved Shootings and Incidents Where a Death or Serious likelihood of Death Results

406 SWAT

410 Hostage & Barricade Incidents

California Penal Code § 835a states:

“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. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

People v. Turner, 2 Cal.App.3d 632 (1969), the right of police officer to assure his own safety during the course of an investigation is not limited to disarming the person immediately before him. The officer may do anything reasonably necessary to neutralize the threat of physical harm.

Graham v. Connor, 490 U.S. 396 (1989), considered the reasonableness of a police officer's use of force, and instructed that the reasonableness must be judged from the perspective of a reasonable officer on scene.

VIII. Rationale for Finding – Within Policy:

Upon review, analysis and deliberations of this incident, the Commission concluded that the use of deadly force by the officers involved was within the RPD Policy on Use of Force/Deadly Force as well as within the Penal Code laws in the State of California and case law under the *Graham v. Conner* court decision (490 U.S. 396 1989).

When the officers approached Mr. Garcia for further investigation of possible drug trafficking, Garcia refused to cooperate with requests made by them to keep his hands in his pockets. In addition, Garcia was attempting to walk away from the officers while at the same time, removed a handgun from his pant pocket, pointed it in the directions of the officers and fired approximately 3-rounds at them.

These actions by Mr. Garcia threatened the lives of both officers who responded in self-defense by firing shots at him (Garcia). Both officers were within their rights and authority to return fire to protect their lives. After the initial exchange of gunfire, the officers took cover across the street while Garcia ran up a driveway and collapsed momentarily. Garcia got up on his feet and at the same time, extended one of his arms out toward the direction of the officers in a manner that gave the appearance that he was going to fire a weapon at them. Once again, in defense and fear of their own lives, both officers fired 4-5 shots at Garcia who ran into the backyard of the residence. It was obvious that Garcia had been hit by gunfire at some point because there was blood in the driveway where he had fallen.

As Mr. Garcia ran out of view of the officers, they remained in a cover position across the street from where the initial shooting took place since there were still two subjects in the vehicle that Garcia interacted with prior to the shooting. The officers also chose to wait for more officers to respond before conducting a search for Garcia. The Commission felt that the officers acted within the Use of Force/Deadly Force policy during the second encounter while Garcia was in the driveway.

RPD officers followed a blood trail from the driveway where Mr. Garcia collapsed to a nearby residence. Garcia had forced his way into this residence and sought assistance from occupants inside. Garcia did not live at this location. The occupants recognized him from the neighborhood but did not know him personally. One of the residents reported that Garcia was armed with a handgun when he entered their home. Garcia allowed the family members to leave the home but remained behind. Garcia told one of the residents that he was "*not going to go out this way.*" The officers attempted communication with Garcia asking him to come outside and surrender which he would not do.

At one point, the RPD Metro SWAT Team deployed tear gas cannisters into the home in an attempt to have Garcia come out. One of the tear gas cannisters, known as a "Burn Safe" device, ignited one of the rooms in the residence. The home subsequently became engulfed in flames. Garcia never responded or complied with the order to surrender. While the home was on fire, members of the Police Department heard gunshots inside the home. Once the fire was extinguished, officers and fire personnel made entry and found Garcia lying deceased in a bathtub. He had a 9mm pistol out and an empty shell casing from his weapon was found in the tub. The Coroner ruled the death from a self-inflicted gunshot wound.

IX. Recommendations:

None.

X. Closing:

The Commission offers its empathy to the community members, police officers, and City employees who were impacted by the outcome of this incident, as any loss of life is tragic, regardless of the circumstances.

APPENDIX

Mike Bumcrot Consulting Report of Investigation

Section A

RPD Policy 300 / Policy 300.3, Use of Force; **Policy 300.3.2**, Use of Force Factors; **Policy 307** Investigation of officer Involved Shootings and Incidents Where a Death or Serious likelihood of Death Results **Policy 406** SWAT **Policy 410** Hostage & Barricade Incidents

Section B

