

Use of Force – Non-Fatality

Daniel Gonzalez

Federal Way Police Department, #19-13784



King County Prosecuting Attorney
Public Integrity Team

June 7, 2022



DECLINE MEMORANDUM

Law Enforcement Use of Force – Non-Fatality

Daniel Gonzalez

I. OVERVIEW

During rush hour traffic on a cold and wet morning, Renton Police Department officers were dispatched to Econo Lodge on Lake Washington Blvd. in Renton for a lewd conduct call. The subject was seen walking around the hotel premises nude and holding a gun. Involved Officer 1, Officer 1, Officer 2, and Officer 3 responded. On their way to the location dispatch relayed numerous 911 calls about a naked white male carrying a handgun. The subject, later identified as Daniel Gonzales (DOB: 9/19/78), was first seen walking through the Econo Lodge and then towards Dino's Pub (1800 NE 44th St). Dispatch relayed that Gonzales was then seen breaking out a window at a nearby mini mart. (It was later determined that Gonzales had also assaulted a Subway employee at gunpoint.). Gonzales was then seen running inside Starbucks (1785 NE 44th St.) and pointing a gun at customers before running towards McDonalds (1705 NE 44th St.). Dispatch then relayed that Gonzales was running, gun-in-hand, towards the freeway (I- 405). Involved Officer 1 stated over the radio that he located Gonzales at the intersection of NE 44th St./ I-405. Involved Officer 1 relayed that Gonzales had tried to get into a bystander's vehicle. Involved Officer 1 then relayed that Gonzales had a gun to his own head and was non-compliant with Involved Officer 1's commands. Finally, Involved Officer 1 relayed over the radio that two Taser applications had been ineffective against Gonzales.

Involved Officer 1 radioed the subject was leaning against Involved Officer 1's squad car still pointing the gun to his own head. Officer 1 and Officer 2 then arrived on scene in separate cars. Upon exiting his vehicle, Officer 1 took hold of his ballistic shield joining Involved Officer 1. The officers had their guns drawn. They ordered the subject to put down his gun but he did not. The subject stated, "Do it please!" A state trooper, Officer 4, then arrived on scene at the northbound freeway exit and began directing traffic.



Caption: Google map aerial shot of the location. The Econo Lodge hotel is at the top of the photo. Dino's Pub, 405 Express Mart and Subway are located between the hotel and NE 44th St. Starbucks, McDonalds are south of NE 44th St. The OIS location is circled in red.

Involved Officer 1 did not give a voluntary statement about this incident. However, the witness officers gave written statements. Describing the situation at this point in the incident, Officer 2 stated that information relayed by Involved Officer 1 over the radio caused him to fear for the safety of civilians in the area and for Involved Officer 1's safety. He said that based on his training and experience, he knows it only takes a fraction of a second for a person to switch from holding a gun to their head to pointing it at another person and pulling the trigger. Gonzales was very close to the officers and they had no cover since they were in the middle of the street. There were also cars with innocent bystanders backed up in every direction on the street since it was still morning rush-hour traffic. All of the civilians were well within the range of gunfire. He was concerned Gonzales would try carjacking another vehicle or injure a bystander.

Officer 3 was next to arrive. She drew her less lethal shotgun and fired five bean bag rounds at the subject. The suspect said "Oh, OW!" Officers continued to order him to drop the gun which he did not do. Officer 3 stated that she was in fear for her life and those of the people around here. The beanbag rounds had no effect on Gonzales at all. Gonzales maintained his posture. His reaction caused her to be more afraid for the safety of everyone around her. Gonzales kept repeating himself, saying something to the effect of "Just kill me" and stating that he wanted to die.

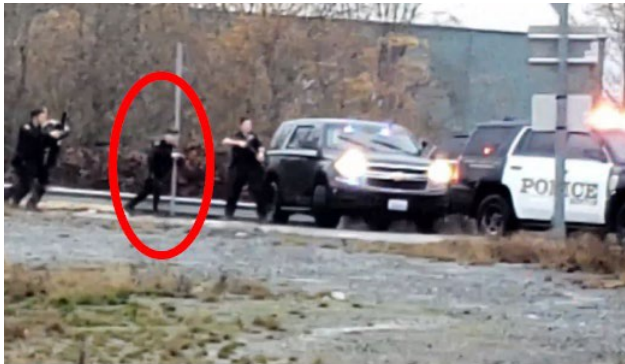
Gonzales then took the gun down from his head, held it down at his right side, and ran towards Involved Officer 1's open driver side door in the direction of the freeway offramp. Officer 1 yelled at the suspect again that he was not free to leave. Officer 1 said that he was afraid that he would hurt or kill a civilian, his fellow officers, or himself if he was able to escape.

Involved Officer 1 pursued Gonzales along the driver side. Officer 1's Coban footage shows the subject turn around to face Involved Officer 1. Officer 2 and Officer 1 ran along the passenger side of Involved Officer 1's vehicle to block Gonzales from entering the off-ramp. The subject's firearm was pointed at Involved Officer 1. Involved Officer 1 fired 7 shots at the subject. One of Involved Officer 1's shots traveled downrange and hit Officer 4's motorcycle and the radiator of a civilian's SUV. No one was injured. Officer 2 and Officer 1 did not see when Involved Officer 1 fire his service weapon.

Gonzales did not appear to flinch or have any indication of pain at being shot. He moved towards the front of Involved Officer 1's patrol vehicle and still had the pistol in his hand. The pistol was no longer up to his head. Gonzales appeared to be checking his body out for any injuries, reaching around his body with his hands and officers could see that he was still holding the pistol. Gonzales said something to the effect of "Did I get shot?"



Caption: Coban footage from Officer 1's squad car. The top left photo depicts Mr. Gonzales sitting behind Involved Officer 1's back bumper after being hit by one of Officer 3's less lethal bean bags. The 2 vehicles struck by Involved Officer 1's gunfire can be seen to the left of the open driver's side door. The top right photograph depicts Mr. Gonzales shortly thereafter as he turns towards Involved Officer 1 (pictured on the left) with a gun in his right hand pointed at Involved Officer 1.



Caption: Still shot from civilian video footage seconds before the OIS. Taken from the opposite angle of the Coban footage; it captures Involved Officer 1 chasing Gonzales around Involved Officer 1's squad car.

The subject ultimately went down to his knees and dropped his pistol next to himself. He eventually lay down on his stomach. Involved Officer 1 kicked Gonzales' gun away and officers rendered medical aid. The subject's firearm was later recovered and found to have no ammunition.¹ Mr. Gonzales sustained gunshot wounds to his right flank and left hand. While officers were treating Gonzales' wounds, Gonzales continued to say things similar to "Just kill me" and made it difficult for officers to render him treatment.



Caption: The circle on the left is Involved Officer 1's squad car. At the front of the car is where the subject was shot by Involved Officer 1. The circle on the right shows the location of WSP Officer 4's motorcycle and the SUV that were hit by Involved Officer 1's gunfire.

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¹ However, the gun had been loaded earlier. A subsequent search of the subject's hotel room at the Econo Lodge hotel revealed numerous spent cartridge casings and bullet defects inside the room.



Caption: Damage sustained by Officer 4's motorcycle from Involved Officer 1's gunfire.



Caption: Left, photo of Involved Officer 1's firearm. Right, photo of the subject's firearm.

Gonzales was transported to Harborview Medical Center. Cocaine was found in his system and a large amount of narcotics was recovered from his hotel room at the Econo Lodge. When initially treated at the emergency room, the subject was placed in four-point restraints and endorsed that the incident was a suicide attempt stating, "Why can't you cops aim?" He was discharged to King County Jail two days later. Two months later, the subject returned to Harborview for surgery. While his left flank injury had healed, his hand injury had not. He lacked full rotation in his finger and ability to form a fist. He underwent a bone graft for the gunshot wound to his left pinky finger.

The subject was charged for the underlying crimes in this incident in cause no. 19-1-05415-4 KNT. He was charged with Unlawful Possession of a Firearm in the 1st degree, Theft of a Firearm, Assault in the 2nd degree (2x), Attempted Burglary in the 1st degree, and Burglary in the 1st degree.

II. FACTUAL & LEGAL ANALYSIS:

In order for sufficient evidence to exist to prove criminal charges against a peace officer for assault or attempted murder, the prosecution must be able to prove a counterfactual beyond a reasonable doubt - that the officer's use of deadly force was not in good faith and was not in self-defense or in defense of others.

RCW 9A.16.040(4) states that a peace officer shall not be held criminally liable when using deadly force in good faith. Good faith is an objective standard. The pertinent question is whether a reasonable officer, similarly situated, considering all the facts and circumstances and the information known to the officer at the time, would believe that using deadly force was necessary to prevent death or serious physical harm to the officer or another individual. RCW 9A.16.040(1)(c)(i) permits an officer, acting in good faith, to use deadly force to arrest or apprehend a person who the officer reasonably believes has committed a felony. However, in these scenarios the peace officer must also have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. RCW 9A.16.040(2). Among the circumstances to consider in that determination is whether the suspect displays a weapon in a manner that could reasonably be construed as threatening, or if there is probable cause to believe the suspect has committed a crime involving the infliction or threat of serious physical harm. *Id.*

In this instance, the facts revealed by the police investigation establish that Involved Officer 1's actions were justified under RCW 9A.16.040(1)(c)(i). Involved Officer 1's use of deadly force is justified under subsection (1)(c)(i) because probable cause existed to believe Mr. Gonzales had assaulted multiple people at gunpoint, a felony, and probable cause also existed for Involved Officer 1 to believe that Mr. Gonzales if not apprehended posed a threat of serious physical harm to himself, other officers, and the many civilians at the intersection commuting to work. The scene was a rapidly evolving situation. Multiple witness officers stated they were in fear for their safety and the safety of the large array of civilians gathered. They had no cover and if they retreated Mr. Gonzales may have carjacked one of the many cars in the area as he tried to earlier at the Starbucks drive-thru. Officer 2 was also concerned that Mr. Gonzales, although apparently suicidal, could have turned the gun on an innocent civilian.

Additionally, both statutorily outline circumstances in determining the existence of a “threat of serious physical harm” were present. First, when Involved Officer 1 fired his gun, the subject had just pointed his firearm at Involved Officer 1 in a manner that could reasonably be seen as threatening. Second, assaulting the numerous store employees with a firearm are crimes involving the threatened infliction of serious physical harm. Considering all of the abovementioned facts and circumstances, a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officers or nearby civilians. As such, it appears that when Involved Officer 1 fired upon Mr. Gonzales, he did so in good faith as defined in RCW 9A.16.040(4). Moreover, when Involved Officer 1 fired his weapon, Mr. Gonzales had just pointed a firearm at him making Involved Officer 1’s decision to fire on done in self-defense and defense of other officers and civilians. In this incident, no criminal charges against Involved Officer 1 are justified.