

Use of Force - Non-Fatality

Francisco Rodriguez

Seattle Police Department, #2021FIT-0012



King County Prosecuting Attorney

Public Integrity Team

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DECLINE MEMORANDUM

USE OF FORCE – NON-FATALITY

FRANCISCO RODRIGUEZ

I. INTRODUCTION

a. Purpose of Memorandum

The King County Prosecuting Attorney's Office (KCPAO) is mandated by law to analyze certain incidents regarding police use of force and to determine if the action was justified or if there was a criminal action such that criminal charges should be filed. Because the investigation and analysis are mandatory if specific criteria are met, the KCPAO's review of an incident does not implicitly signal that the use of force was either justified or that criminal charges are appropriate. Instead, the KCPAO is required to assist independent investigations involving police use of deadly force to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.

Pursuant to the Law Enforcement Training and Community Safety Act, an independent investigation must be completed when the use of deadly force by a peace officers results in the death, substantial bodily harm, or great bodily harm. The independent investigation is conducted in the same manner as a criminal investigation.

b. Status of the Independent Investigation

After a thorough review of the independent investigation and applicable laws, the Special Operations Unit Public Integrity Team (the Team) has determined the investigation into this matter is complete.

c. Scope of Memorandum

The KCPAO's determination if the police action was justified or if there was a criminal action such that criminal charges should be filed is based entirely on the investigation materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not

intended to address matters outside the scope of this memorandum including, but not limited to, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

II. SUMMARY

On October 14, 2021, a King County Superior Court judge issued an arrest warrant in the amount of \$200,000 for the subject, Francisco Luis Rodriguez, on a new domestic violence related kidnapping in the 1st degree charge. Mr. Rodriguez is alleged to have forced his intimate partner into a car against her will at gunpoint.

On October 27, 2021, the US Marshal Violent Offender Task Force, tasked with apprehending fugitives, attempted to arrest Mr. Rodriguez in Des Moines, WA on the outstanding warrant. The team that attempted to arrest the subject consisted of US Marshal Officer 1, SPD Involved Officer 1, DOC Involved Officer 2, KCSO Officer 2, SPD Officer 3, Des Moines PD K9 Officer 4 and his K9, Ranger. The action briefing from Officer 1 made the officers aware of numerous possible safety concerns, including that the subject was likely armed and violent and had a prior weapons conviction. The officers were also made aware of the facts of the alleged kidnapping.

Officers tracked the white Toyota Camry the subject was driving to the Shell Gas Station off of Pacific Hwy S. and S. 272nd Street in Des Moines. Officers staged at a nearby parking lot and developed an action plan to arrest the subject. Involved Officer 1 and Officer 2 were going to box the subject's car in at the gas station pumps. Officer 1, Involved Officer 2, Officer 3 and the K9 team would provide support. Although most of the task force dressed in plain clothes, the officers wore vests identifying themselves as police. The officers moved forward with their apprehension plan. Officer 2's unmarked car blocked the Camry's front end and Involved Officer 1's unmarked car blocked the subject's back bumper. Upon exiting their vehicles the officers drew their firearms and ordered the subject to stop. In response, the subject left the car running fleeing on foot through the gas station and into the shopping center parking lot in a northbound direction toward the Safeway grocery store. Officer 1 recalls at this point Mr. Rodriguez was holding a pistol and yelled "Get back!" as he fired a round. Officer 1 did not recall what direction the pistol was pointing when it went off.



Google Maps aerial view (Approximate scene location outlined in red)

Gas station surveillance footage also shows Involved Officer 1 subsequently chasing the subject between the gas station pumps, whereupon the subject draws a firearm and shoots it once into the roof of the gas station. Involved Officer 1 is seen ducking as the subject fires his weapon. Civilian 1, by happenstance a former Marine Corps officer, was standing at one of the pumps filling up two gas cans when he observed the incident. From his perspective it appeared that the subject fired at Involved Officer 1. Involved Officer 1 then shot once at the subject, hitting him in the leg. Two spent casings were recovered between the gas station pumps. The subject then continued running through the adjacent parking lot of the Safeway towards the store's entrance. Involved Officer 1, Involved Officer 2 (who was in an unmarked car nearby), and Officer 1 gave chase on foot. According to Officer 1, he could see the subject still holding a firearm. Officer 2 recalled seeing the subject purposefully weaving in and out of parked cars. He was unsure if the subject was hiding or getting ready to shoot. K9 Officer 4 followed behind the foot pursuit in his squad car, which captured the subsequent shooting on video. The subject briefly hid behind a parked car next to the entrance to the Safeway store and then ran towards the front door of the Safeway. Just before he was able to enter the store, Involved Officer 1 shot at him once, followed by Involved Officer 2 shooting at him three times in rapid succession. The subject then falls to the ground whereupon he is handcuffed and given medical aid.

Officer 1 recalls Rodriguez holding the pistol high in his right hand when Involved Officer 1 and Involved Officer 2 shot the subject. He was later transported to Harborview Medical Center (HMC). His handgun and extended magazine were located apart from one another on the ground near where he fell to the ground. One bullet defect, a ricochet, caused by one of the shots was found in the concrete near the entrance to the Safeway store.

Based on the recovered shell casings, video footage, and round counts performed on each of the three recovered weapons, the evidence shows that Involved Officer 1 fired his service weapon at the subject once at the gas station and once in front of the Safeway. Involved Officer 2 fired his weapon at the subject 3 times, each in front of the Safeway. The subject fired his weapon once, into the gas station's roof. His firearm had a 33 bullet high capacity magazine. However, it was only loaded with 12 bullets. One of those round was chambered. The weapon was not registered to the subject, but to someone else.

Subject Rodriguez's medical records from HMC were extensive. According to the records, Rodriguez was transported to HMC by medics for gunshot wounds (GSW) to his right upper extremity, right lower extremity and buttock. While enroute to HMC he was given two units of whole blood by medics and was intubated to protect his airway. Rodriguez was suffering from hemorrhagic shock (HCC) upon his arrival to HMC.

Subject Rodriguez was admitted to the trauma intensive care unit (TICU) where he remained until December 5th when he was stable enough to move out of the ICU. During his time at HMC he underwent multiple surgeries and suffered from extensive complications with breathing (acute respiratory failure with hypoxia and hypercapnia) and adult respiratory distress syndrome (ARDS). Because of this, the majority of the time that Rodriguez was in the ICU he was intubated, highly sedated and unable to communicate.

The medical records also stated that X-rays revealed ballistic fragments in the pelvis area, initially stating there were no pelvic fractures, but it was later determined by radiology that there was a right sacrum and posterior ilium fracture.

In the OR, Rodriguez was found to have a colonic injury which was "repaired primarily, a liver laceration which was packed and significant bleeding from pelvis". This was the likely source of hemorrhage. He received a "significant [blood] transfusion" to include red blood cells (14 units), frozen plasma (14 units) and platelets (3 units). While in surgery it was also determined that Rodriguez had a GSW to his right chest and suffered from a right scapular fracture.

The GSW to Rodriguez's lower right leg caused a "comminuted fracture of [the] shaft of right tibia." The GSW to his right hand caused a "highly comminuted fracture of the fourth metacarpal base and the fifth metacarpal base." According to his criminal defense attorney, he is paralyzed from the waist down.

The involved officers did not give statements. Additionally, I was unable to review any dispatch

recordings from the incident because the tactical channel used by the officers was not monitored or recorded.

Mr. Rodriguez is currently in federal custody on charges related to his conduct during his apprehension. He is in bench warrant status on his open kidnapping 1st degree – DV case. (King Co., 21-1-06329-5 SEA).

III. LEGAL STANDARD AND ANALYSIS

In order for sufficient evidence to exist to prove criminal charges against a peace officer for assault or attempted murder, the prosecutor must be able to prove 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.

Specifically, RCW 9A.16.040 sections (1)(b) and (3) permit an officer, acting in good faith and without malice, to use deadly force and not be held criminally liable when the force is necessary to overcome actual resistance to the execution of a court order, such as an arrest warrant.

Additionally, 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 situations the peace officer must additionally 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 this 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.* Before using deadly force to prevent escape, if feasible, the officer should provide a warning. *Id.*

Officer 5's investigation established that based on the USMS briefing, Involved Officer 1 and Involved Officer 2 knew that an arrest warrant had been issued for the subject and that he was armed and dangerous having committed a kidnapping using a firearm. When they boxed in the subject's car, they were able to confirm that he was, in fact, armed and also that he was unwilling to be arrested, as he

chose to flee when the officers ordered him to stop. Moreover, when Involved Officer 1 fired at the subject at the gas station he had probable cause to believe that the suspect, if not apprehended, posed a threat of serious physical harm to him and to others in the immediate area. The subject had just fired his gun at the gas station with reckless disregard, which is highly flammable. Based on the rapid speed of this interaction it was reasonable for Involved Officer 1 to believe that the subject was firing at him instead of firing a warning shot, which in hindsight might have been the case.

The subject then fled northbound through the crowded parking lot towards the west entrance of the Safeway. He was still armed with a gun. When Involved Officer 1 and Involved Officer 2 fired at the subject he had almost entered the store, which likely would have caused a more extreme safety concern, such as hostage or a barricaded suspect situation. The subject's behavior was unpredictable to officers and it was unknown what he might do if allowed to enter the store. Surveillance footage shows there were many customers entering and exiting the grocery store just before the shooting. Additionally, Mr. Rodriguez's behavior showed a determination not to give up as he continued to flee towards the Safeway despite being shot in the leg by Involved Officer 1.

ICV footage from Officer 4's squad car shows that both Involved Officer 1 and Involved Officer 2 stopped firing once the subject fell to the ground and the danger no longer existed. Officers immediately gave the subject life- saving medical aid when he was detained.

In this situation, the facts revealed by the police investigation establish that each shooting was justified under both RCW 9A.16.040(1)(b) and RCW 9A.16.040(1)(c)(i). Under subsection (1)(b), the shootings were justified because the involved officers were enforcing a court order and a similarly situated officer would have believed, based on the facts and circumstances, that using deadly force was necessary to prevent death or serious physical harm to themselves and the civilians in the immediate area.

Additionally, there is no evidence that either involved officer acted with malice.

Additionally, each shooting was justified under subsection (1)(c)(i) because probable cause existed to believe Mr. Rodriguez committed a felony and probable cause also existed for the involved officers to believe that Mr. Rodriguez if not apprehended posed a threat of serious physical harm to themselves and the civilians in the Redondo Square Shopping Center parking lot and Safeway grocery store. First, the subject displayed his firearm toward Involved Officer 1 in a manner Involved Officer 1 could reasonably have believed was threatening. Second, the kidnapping first degree charge is a crime involving the threatened infliction of serious physical harm. However, it is unclear whether the officers

warned Mr. Rodriguez before firing. The gas station video of Involved Officer 1's first shot does not have audio and it is unclear from Officer 4's ICV whether the shots fired by officers in front of the Safeway were preceded by a warning. However, providing a warning was likely not feasible since Mr. Rodriguez was running away through the gas station during the first shooting and on the cusp of entering a crowded grocery store during the shooting in front of Safeway. 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.

IV. CONCLUSION

As such, it appears that when Involved Officer 1 and Involved Officer 2 fired upon Mr. Rodriguez, they did so in good faith and without malice as defined in RCW 9A.16.040(3) and in good faith as defined by RCW 9A.16.040(4). It could not be proven otherwise at trial beyond a reasonable doubt.