



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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January 30, 2013

Captain David Smith
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #12-0425
L.A.S.D. File #012-09002-2114-013

Dear Captain Smith:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 21, 2012, fatal shooting of Kenneth Rivera III by Los Angeles County Sheriff's Department (LASD) Deputy Norma Silva. We have concluded that Deputy Silva acted lawfully in self-defense.

The District Attorney Command Center was notified of the shooting at approximately 1:47 p.m., on June 21, 2012. The District Attorney Response Team, comprised of Deputy District Attorneys Jason Lustig and Kevin Stennis and District Attorney Senior Investigators Tanya Newton and Juan Flores, responded to the location. They were given a briefing of the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based upon investigative reports, analyzed evidence reports and witness statements taken during the investigation by the LASD and submitted to this office by Detectives Timothy O'Quinn and Richard Ramirez. Compelled statements were not considered in this analysis.

FACTUAL ANALYSIS

On June 21, 2012, at about 11:48 a.m., Gabriela R. was sitting on a planter with her friend Evenie outside of a business on the west side of Atlantic Avenue in the City of Lynwood. Kenneth Rivera drove up in a car, got out, grabbed Gabriela's throat and pulled her into the front passenger seat. Gabriela begged Rivera to let her go as she kicked him. Evenie tried to free Gabriela by pulling her hair and pushing Rivera's back while yelling repeatedly, "What the fuck!" Rivera looked at Evenie and stated, "No, I can't do this. Why can't I get a lady?" He then abruptly threw Gabriela to the sidewalk. Rivera entered his car yelling, "Fuck, fuck, fuck!"

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As he drove away, Rivera confronted an onlooker by asking, "What the fuck you looking at?" He drove north on Atlantic Avenue to the La Siesta motel located diagonally across the street.¹ Gabriela and Evenie entered a nearby business and a male inside called the police. While the girls were inside the business, they heard Rivera cursing loudly standing in front of the motel.

Deputy Silva was on patrol alone in a marked police car when she heard a radio broadcast that an attempted kidnapping had just occurred at the intersection of Atlantic Avenue and Cortland Street. The suspect was described as a male wearing blue jeans without a shirt. Silva received further information that the suspect was still in the area and was possibly in front of a motel on Atlantic Avenue. Silva responded to the call by driving south on Atlantic Avenue with her emergency lights and siren on. Less than two minutes after the radio broadcast, Silva passed the La Siesta motel and saw Rivera standing in front wearing blue jeans with no shirt.

Silva made a u-turn at Cortland Street, drove north in the southbound lanes of Atlantic Avenue, and pulled to the curb in front of the motel. Rivera was still standing in the driveway entrance to the motel. As Silva was simultaneously placing the vehicle in park, opening the driver's door and placing her left foot on the ground, she saw that Rivera had his right hand in his front pants pocket and a "look of rage" on his face. Without warning, Rivera ran with outstretched arms toward Deputy Silva, screaming "Shoot me, shoot me! What are you going to do? Fuckin' kill me!" Silva yelled, "Stop! Put your hands up!" Rivera dove through the open driver's door at Silva who was still seated in the driver's seat. Silva laid back and pulled her service weapon from the holster on the right side of her belt. Rivera was on top of Silva with his face against the right side of her face. Silva's movement was restricted by Rivera's weight.² She felt his left arm reaching toward the service weapon in her right hand. Rivera continued to yell. Believing that Rivera was trying to take the firearm from her right hand which was close to her chest, Silva fired three times at Rivera's upper torso.³ The patrol car rolled forward causing Rivera to fall out of the car onto the ground. Another responding deputy handcuffed Rivera.

Responding paramedics transported Rivera to the hospital where he was pronounced dead at 12:17 p.m. On June 27, 2012, Deputy Medical Examiner Ajay Panchal performed a postmortem examination of Rivera's remains and determined the cause of death to be multiple (2) gunshot wounds to the back of the left arm and left back. The direction of both wounds was back to front and left to right. His blood showed evidence of methamphetamine and marijuana consumption. Inside Rivera's motel room, investigators recovered .16 gram of methamphetamine, .91 gram of marijuana and drug pipes.

¹ Several witnesses from nearby businesses had seen Rivera exhibiting bizarre behavior while standing in front of the motel earlier in the day. He was seen waving and yelling angrily at passing cars, and talking to himself. The motel owner said Rivera appeared to be paranoid and often talked to himself since he began staying at the motel on June 4, 2012.

² Rivera was 27 years old, 5 feet 11 inches tall and weighed 207 pounds.

³ Deputy Silva was armed with a Beretta model 92F, 9mm semiautomatic handgun.

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*, California Criminal Jury Instructions (CALCRIM) No. 505.

In protecting himself or another, a person may use all 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.*

"When 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.

"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.

CONCLUSION

The evidence examined in this investigation shows that Deputy Norma Silva was responding to a radio call of an attempted kidnapping that had just occurred. When she arrived in the area, Deputy Silva observed Kenneth Rivera who matched the kidnapping suspect's description and was standing in the precise location identified in the broadcast. When she attempted to contact him, Rivera ignored her commands to stop and attacked Deputy Silva before she was able to exit the patrol car. Rivera pinned her against the driver's seat and reached for the service weapon in her right hand. Reasonably believing that Rivera was trying to disarm her and in fear of imminent great bodily injury or death, Deputy Silva fired three rounds from her service weapon, striking Rivera twice and ending the threat.

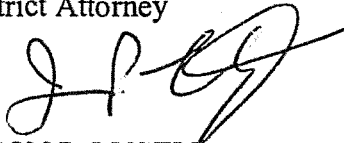
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Given the rapidly evolving, life threatening situation that confronted Deputy Silva, we conclude that she acted lawfully in self-defense. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By



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c: Deputy Norma Silva #502202