

# **MIKE BUMCROT CONSULTING**

## **REPORT OF INVESTIGATION**

**DATE:** June 18, 2015

**SUBJECT:** Officer Involved Shooting Death of Hector Jimenez which occurred on September 13, 2013

**CASE:** Riverside Police Department File #P13133894, CPRC #13-034

**LOCATION:** 2395 10<sup>th</sup> Street, Riverside

On June 15, 2015, I was asked by Frank Hauptmann, Manager of the Community Police Review Commission, to review the circumstances surrounding the officer involved shooting death of Hector Jimenez by members of the Riverside Police Department. I was also asked to provide my expert opinion in a written report on the manner in which the case was investigated by the Riverside Police Department. I received several hundred pages of police reports, photographs, audio recordings, and other documents contained in the presentation by Riverside Police Department to the Riverside Community Police Review Commission. I also researched legal issues and the phenomenon known as "Suicide by Cop".

It is my conclusion that the four Riverside Police Officers who fired their weapons in this incident, all acted in lawful self defense and defense of others at the time each fired his weapon. It is also my expert opinion that this was a classic example of "Suicide by Cop". See Conclusion Section.



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The following analysis is based on reports prepared by the Riverside Police Department and all officers who fired their weapons as well as several witness officers and civilians who provided statements to detectives which were considered as part of the analysis.

## **FACTUAL ANALYSIS**

On September 13, 2013, 911 Operators received an emergency call from Thalia Jimenez who stated that her father, Hector Jimenez, was in possession of a knife and was attempting to kill himself. Ms. Jimenez said that her father had some medical issues and had attempted suicide in the past. She also said her father had already cut his face and legs and was bleeding. Hector's wife, Maria, came on the telephone and stated that her husband had swung the knife toward her and told her to get away.

As patrol officers began to arrive at the location, it was determined that Officer William Outlaw would utilize the less lethal beanbag shotgun if needed. Mr. Jimenez was observed holding a knife while sitting on a bench, inside the yard, against the south wall of the residence. Several officers climbed over a short chain link fence and, while being supervised by Sgt. Gary Toussaint, formed a semi circle around Mr. Jimenez about twenty feet away.

See below photograph depicting location of incident.



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As Sgt. Toussaint gave verbal commands to Mr. Jimenez to drop his knife, assisting officers began to evacuate the occupants of the house. Sgt. Toussaint and several officers directed Mr. Jimenez to drop the knife on several occasions. Mr. Jimenez refused, stating that he wanted to die as he ran the knife over his face and arms. Several times he said that he wanted the officers to shoot him. It was determined that if Mr. Jimenez attempted to enter the residence, Officer Outlaw would deploy the less lethal bean bag shotgun followed immediately by take down using a police K-9 that had just arrived.

As Sgt. Toussaint continued negotiating with Mr. Jimenez, the Sgt. asked Officer O'Farrell, who was equipped with a Taser but was still on the street side of the chain link fence, to re-position himself next to Sgt. Toussaint.



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As Officer O'Farrell positioned himself next to Sgt. Toussaint, he withdrew his Taser from its holster on his left (off) hand and began to transfer it to his right (strong) hand. Suddenly, Mr. Jimenez stood up and, while holding the knife in his right hand, lunged towards the officers. Fearing an officer was about to be stabbed, Officer Kevin Kauk fired eight rounds from his sidearm, Officer Trevor Childers fired four rounds from his sidearm, Officer Nick Larkin fired three rounds from his sidearm, and Officer William Outlaw fired four bean bags from his less lethal shotgun. Mr. Jimenez went down and medical aid was brought to the scene.

Officer Kauk would later tell detectives that when Mr. Jimenez suddenly stood up, "He charged in my direction" in an aggressive manner with the knife extended from his hand. For his own safety, he fired his handgun because he felt Mr. Jimenez' intentions were to kill the officers or have the officers kill him.

Officer Trevor Childers would later tell detectives that when Mr. Jimenez suddenly stood up, he moved towards Officers Kauk and Childers while holding a knife in his right hand. Fearing Mr. Jimenez was about to stab him, Officer Childers fired his handgun towards Mr. Jimenez.

Officer Nick Larkin would later tell detectives that when Mr. Jimenez suddenly stood up, he said he was going to "walk this way", pointing in the direction of Officers Kauk and Childers. Fearing Mr. Jimenez was going to harm one of the officers, or perhaps a family member if he made it into the house, he fired his handgun and Mr. Jimenez fell to the ground.

Officer William Outlaw would later tell detectives that he was designated as the less lethal shooter. When Mr. Jimenez suddenly stood and lunged to his right, towards officers, while holding a knife in his right hand, he feared for all officers' safety and fired four less lethal rounds at Mr. Jimenez. Simultaneously, he heard several gunshots and Mr. Jimenez fell to the ground.



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## **EXPERT QUALIFICATIONS**

I was employed as a peace officer for the Los Angeles Sheriff's Department for 34 years. I worked as a jail deputy, 18 months as a patrol officer, and four years assigned to the Special Enforcement Bureau (SWAT team). My last 27 years on the department, I was assigned to the Detective Division, including over 22 years assigned to the Homicide Bureau. I investigated over 450 homicides and suspicious deaths and over 100 Officer Involved Shootings, including the murders of ten police officers.

In 1994, I assisted in writing the LASD Homicide Bureau Investigative Manual. I was also selected to be a member of the Joint LASD/LAPD Crime Lab Development Committee as well as the JET Committee to develop Homicide Bureau job standards and selection criteria. In 1995, I was selected as California's Deputy Sheriff of the Year by the California Organization of Police and Sheriffs (COPS) for the investigation, arrest, and conviction of a suspect in the murders of two local policemen.

For over 15 years, I have taught "High Profile Murder Investigations", "Homicide 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. I am currently on staff with the Police Policy Studies Council where I teach and consult nationally on officer involved shooting, homicide, and suspicious death investigations. I am currently the investigator for the Riverside Police Review Commission. Although I retired from LASD in 2002, I was immediately signed to a contract to train newly assigned homicide detectives. In 2006, I was also assigned to the LASD Cold Case team where I have reviewed over one thousand unsolved murders and specifically work the unsolved DNA and latent print cases.



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## **INVESTIGATION AND REVIEW**

The investigation into the officer involved shooting death of Hector Jimenez was conducted by the Riverside Police Department and the Riverside County District Attorney's Office. I reviewed all the reports submitted to the Community Police Review Commission and researched deadly force legal issues. The District Attorney found there was no criminal liability.

## **LEGAL ANALYSIS**

California law provides that the use of deadly force in self defense and defense of another if it reasonably appears to the person claiming the right to use such force that he actually and reasonably believed that he or another person was in imminent danger of great bodily injury or death. CALCRIM No. 3470.

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. This analysis must also allow for the fact that officers are often forced to make split second judgments about the amount of force that is necessary in circumstances that are tense, uncertain, and rapidly evolving. *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

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 deadly peril. California Penal Code Section 197; *People v. Humphrey* (1996) 13 Cal. 4th 1073, 1082; CALCRIM No. 595

Where 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) 89 Cal. App. 2d 575, 589.



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In Martinez v. Los Angeles County, the Court ruled an officer may reasonably use deadly force when confronting a suspect whose actions indicate intent to attack.

## **CONCLUSION**

The evidence examined in this investigation suggests that Mr. Jimenez was facing multiple crises in his life. Not only was he suffering from a serious health problem, his family was due to be evicted from their residence within days of this incident.

The review of documents in this case reveal that Mr. Jimenez' daughter, Thalia, called 911 after her father became despondent and threatened his family with a knife. Transcripts of the call reveal she said, "My dad is outside with a knife trying to kill himself". "He just got out of the hospital but they said he's going crazy because he has Ammonia (sic) in his brain". "He swung the knife at me so I came inside".

Responding patrol officers located Mr. Jimenez seated on a bench out in the yard. Sgt. Toussaint took immediate charge of the incident and began negotiating with Mr. Jimenez. I listened to a tape recording of these negotiations and made note that Mr. Jimenez was asked over a dozen times to drop his knife. Sgt. Toussaint literally begged Mr. Jimenez to surrender. I heard statements such as "Put the knife down sir"; "This is not the way to do this"; "We're here to help you"; "We're not going to kill you"; "Think about this". In an effort to de-escalate the situation, Sgt. Toussaint did not draw his weapon, relying on his officers to protect him from a deadly encounter. Officer Quinn heard Mr. Jimenez say he had terminal cancer and had nothing to live for. It should be noted that the Coroner's Report revealed that Mr. Jimenez was suffering from an enlarged heart as well as cirrhosis of the liver. An important portion of the Coroner's Report, the toxicology section, was not included. Family members told officers that Mr. Jimenez had been drinking beer while ingesting unknown medication. Mr. Jimenez' voice on the tape-recorded negotiations was extremely slurred and it would be important for an investigator to know his blood alcohol level as well as what type of drugs he was taking.



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Officer Outlaw heard Mr. Jimenez continually say, "I want you guys to kill me". He immediately thought of suicide by cop and thought Mr. Jimenez was building up his courage by reading his body movements.

Officer Larkin heard Mr. Jimenez make several statements that he wanted the officers to kill him. He even pointed in the direction of two officers and made the announcement "I'm going to walk that way", at which time he lunged towards the officers while holding a knife.

Ballistic evidence revealed that most of the bullets that struck Mr. Jimenez, as well as bullet strikes in the wall behind him, were in a downward trajectory. This supports the officers' contention that Mr. Jimenez lunged at them. See scene photographs in Tab 64.

Sgt. Toussaint had complete control of the situation. Not only did he confront an armed suspect without drawing his weapon, he made sure that he had an officer on scene in possession of a less lethal weapon. When it became apparent that the beanbag shotgun might be too close, he re-positioned an officer armed with a Taser. Unfortunately, Mr. Jimenez attacked the officers with a knife before the Taser could be deployed.

It is very apparent that Hector Jimenez, who, according to family members, had attempted suicide in the past, was unable, or unwilling to commit the violent act to end his life, and therefore created a deadly situation, relying on the police.

I have worked on or reviewed over one thousand officer involved shootings and have studied the dilemma known as "Suicide By Cop", or police assisted suicide. A 1998 report by the American College of Emergency Physicians examined all officer involved shootings involving the Los Angeles County Sheriff's Department and found that suicide by cop incidents accounted for 11% of all deputy involved shootings and 13% of all deputy involved justifiable homicides.

Suicide by cop occurs when people want to die but can't kill themselves. So they put themselves in a position where a police officer is forced to shoot them.



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In the above mentioned study of shootings involving the Los Angeles Sheriff's Department, researchers found that in the 11% of suicide by cop officer involved shootings, 98% were male; 39% had a history of domestic violence (Jimenez had previously been arrested for spousal abuse); many individuals had a prior history of suicide attempts (Jimenez reportedly had previous suicide attempts); 17% used a toy or replica gun.

Rebecca Stincelli is a recognized expert in the field of Suicide By Cop. She writes that to qualify as a Suicide By Cop, the following criteria must be met:

- The suicidal subject must demonstrate the intent to die
- The suicidal subject must have a clear understanding of the finality of the act
- The suicidal subject must confront an officer to the degree that it compels the officer to act with deadly force
- The suicidal subject actually dies.

Rick Parent, a Canadian police-shooting expert and on staff with the Police Policy Studies Council, wrote an article for Police Magazine in October 2000, titled "When Police Shoot". He writes of several key factors being present in fatal police shootings. One is titled "mental disorder" and reads "mental disorders, or characteristics consistent with that of a deranged and irrational person, were displayed by roughly half of the individuals who were shot and killed by police. These findings are based upon the actions and behavior of the suspect during his/her encounter with the police. Also noteworthy is that, in roughly one third of these instances, the deceased had a recorded history of mental disorder.

The evidence examined shows, with little doubt, Hector Jimenez armed himself with a knife intent on provoking a police officer to shoot him. Mr. Jimenez ignored multiple commands to drop his weapon and lunged at officers while armed with a knife. His actions placed the officers in fear for their lives, the lives of their fellow officers, and they responded with deadly force. Given the rapidly evolving and life-threatening situation that the officers faced, I conclude that they acted lawfully in self-defense.



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I also find that the investigation into the officer involved shooting death of Hector Jimenez was completed in a fair and impartial manner and met or exceeded POST standards of practice.



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