

REPORT ON THE OFFICER-INVOLVED SHOOTING DEATH OF
JAVIER LOPEZ GARCIA ON NOVEMBER 11, 2015



GEORGE GASCÓN, DISTRICT ATTORNEY
INDEPENDENT INVESTIGATIONS BUREAU
CITY AND COUNTY OF SAN FRANCISCO
NOVEMBER 14, 2017

TABLE OF CONTENTS

I. INTRODUCTION.....	2
II. FACTUAL SUMMARY.....	2
III. LEGAL STANDARD.....	15
IV. LEGAL ANALYSIS.....	16
V. CONCLUSION.....	19

I. INTRODUCTION

The San Francisco District Attorney's Office (SFDA) has completed its review of the officer-involved shooting that resulted in the death of Javier Lopez Garcia. The SFDA's review was conducted by the office's Independent Investigations Bureau (IIB) and focused exclusively on determining whether any criminal charges relating to the officers' conduct are warranted. IIB's review did not examine issues such as the officers' compliance with internal police policies and procedures, their training or tactics, or any issues related to civil liability. This report should not be interpreted as expressing any opinions on such non-criminal matters.

In brief, on the afternoon of November 11, 2015, San Francisco Police Department (SFPD) officers were dispatched to a construction site at St. Luke's Hospital in response to a 911 call about a man with two guns. Upon arrival, officers observed a man, later identified as Javier Lopez Garcia, standing atop a construction manlift at the sixth floor of the construction site. Lopez Garcia had a long gun in his hands, and appeared to be scanning around, pointing the barrel of the gun from side-to-side. Several officers commanded Lopez Garcia to drop the weapon. Instead he appeared to point the gun down toward some of the officers. In fear for their lives and the lives of others around the construction site, three officers—Officer Jeffrey Camilosa (Star No. 4244); Officer Andres Garza (Star No. 4253); and Sergeant Jeffrey Aloise (Star No. 1303) fired their weapons at Lopez Garcia, killing him.

SFPD later learned that Lopez Garcia had acquired the long gun he was brandishing by robbing a San Bruno sporting goods store just prior to the incident. During the robbery, he told employees of the store that he was "suicidal" and "not afraid to get shot." SFPD also learned later that Lopez Garcia had told several construction workers he encountered at the site that he was "suicidal" and "ready to die." IIB learned later that Lopez Garcia had recorded videos on his cellphone stating the same. For the reasons detailed below, the District Attorney declines to pursue criminal charges against any of the SFPD officers relating to their conduct in this matter because the officers' actions were legally justified as they reasonably acted in self-defense and in defense of others.

II. FACTUAL SUMMARY

At approximately 4:15 p.m., on Wednesday, November 11, 2015, SFPD dispatch broadcast that a person had called 911 about a man with a gun at St. Luke's Hospital. At 4:16 p.m., dispatch added that the man had two guns, and that he was at the construction site of a new building for St. Luke's Hospital, adjacent to the existing hospital. The construction site consisted of a seven-story steel structure without walls. A total of five officers responded, but in two separate groups: Officer Cameron Stokes (Star No. 4307) and Officer Andre Garza arrived together to the south side of the construction site at 4:18 p.m.; Officer Anthony Suhrke (Star No. 425) arrived with Officer Camilosa and Sgt. Aloise to the north side of the construction, at approximately 4:19 p.m. It was still daylight when the officers arrived.



Figure 1: Site of incident. Green arrow indicates Lopez Garcia’s approximate position atop a manlift at the sixth floor (actual manlift not shown). Yellow oval represents approximately where Officers Stokes and Garza were positioned at the southeast corner of the construction site. Red oval represents where Officers Suhrke and Camilosa, and Sgt. Aloise were positioned at the northeast corner of the construction site. (Source: Google Maps).

Officers Stokes and Garza’s Approach

Officers Stokes and Garza arrived to the scene and parked southwest of the construction site at approximately San Jose and 27th Streets. As they approached the construction site they observed construction workers evacuating. A man who identified himself as the foreman soon appeared and told them he had seen a man, later identified as Lopez Garcia, with both a handgun and a shotgun. Another construction worker described the man as a Latino male wearing all white, with face tattoos and a “kiss mark” tattoo on his neck.¹

At approximately 4:20 p.m., Officers Stokes and Garza heard what they believed could be a gunshot. Officer Garza put out over SFPD radio that shots had been fired, but quickly explained that it “sounded like a gunshot, not confirmed yet.” The officers searched for cover while also asking various workers who were exiting the site how to find Lopez Garcia.

According to Officer Stokes, one worker explained that Lopez Garcia was on an elevator on the north side of the building, so he and Officer Garza moved closer to where they could see the north side of the building. There, they observed Lopez Garcia on top of a manlift, or construction elevator. Officer Stokes estimated they were still about 150-200 yards away from Lopez Garcia. Officer Stokes said Lopez Garcia was wearing white coveralls, as previously described, and also a black hoodie. Officer Stokes “immediately noticed [Lopez Garcia] had a long gun on him,” although he couldn’t tell what kind of gun it was. Officer Stokes then knelt by a fence and observed Lopez Garcia holding the gun. Officer Stokes said he had the gun at about a 45-degree

¹ SFPD could not locate any of these construction workers after the incident to interview them.

angle upwards from his waist and was “holding it ready to shoot.” He said it appeared that Lopez Garcia was in a “ready position to open fire on anyone” including construction workers and people inside the hospital. Because Lopez Garcia was on the sixth floor of the construction site he had an “extreme advantage” over everyone else below, Officer Stokes added.

Officer Garza was standing behind Officer Stokes as Officer Stokes kneeled. He said that Lopez Garcia appeared to be scanning the ground while holding a single long gun. Although at some point 911 dispatch broadcast that the 911 caller had said Lopez Garcia had a shotgun, Officer Garza said that he observed a long gun, which believed could be either a rifle or shotgun. Officer Garza was particularly concerned that the gun was a rifle, because rifles are capable of shooting long distances. Officer Garza said Lopez Garcia was actively scanning with the muzzle of his gun up in the air in a “high-ready” position, but occasionally also angling the muzzle down toward the ground as he scanned. Officer Garza said it appeared that Lopez Garcia, “was about to start selecting his targets” as he was “rotating his head around and looking at everyone.” Officer Garza said that from where Lopez Garcia stood on the manlift six floors up, he was able to see and shoot straight into St. Luke’s Hospital. According to Officer Garza, “Everybody was in danger.”

Neither Officer Garza nor Officer Stokes provided any commands to Lopez Garcia. Officer Garza explained that they did not have effective cover and didn’t want to give their position away. “He was looking for a target, and by me yelling, he would have found his target,” Officer Garza said. Officer Garza rested his duty-issued patrol rifle on a nearby steel crate, and lined up the rifle’s sights to observe Lopez Garcia. Through the gun’s sights, he could see Lopez Garcia continuing to scan the area with a long gun in his hands. In response to the danger he believed Lopez Garcia posed to all the people in the vicinity, at approximately 4:21 p.m., Officer Garza took aim, and fired his duty-issued patrol rifle—a River Rock Arms LAR-15—once at Lopez Garcia. Officer Garza did not recall hearing any other shots fired at that time, other than his own.

Officer Garza said he then saw Lopez Garcia slump into a seated position and believed that he had shot Lopez Garcia. Officer Stokes said that Lopez Garcia’s long gun dropped out of his hands as he slumped down to the ground.



Figure 2: Shows Lopez Garcia on top of manlift with shotgun slung over right shoulder. Photo taken by civilian witness Chris D. from above.



Figure 3: *Depicts approximate vantage point of Officers Garza and Stokes. Tall tower structure in the distance is the manlift shaft. Note, although the manlift shaft is visible in this photo, the actual manlift is not. Red arrow indicates Lopez Garcia's approximate location at the time of the incident, although, again, the actual manlift he stood on top of is not shown (Source: SFPD).*

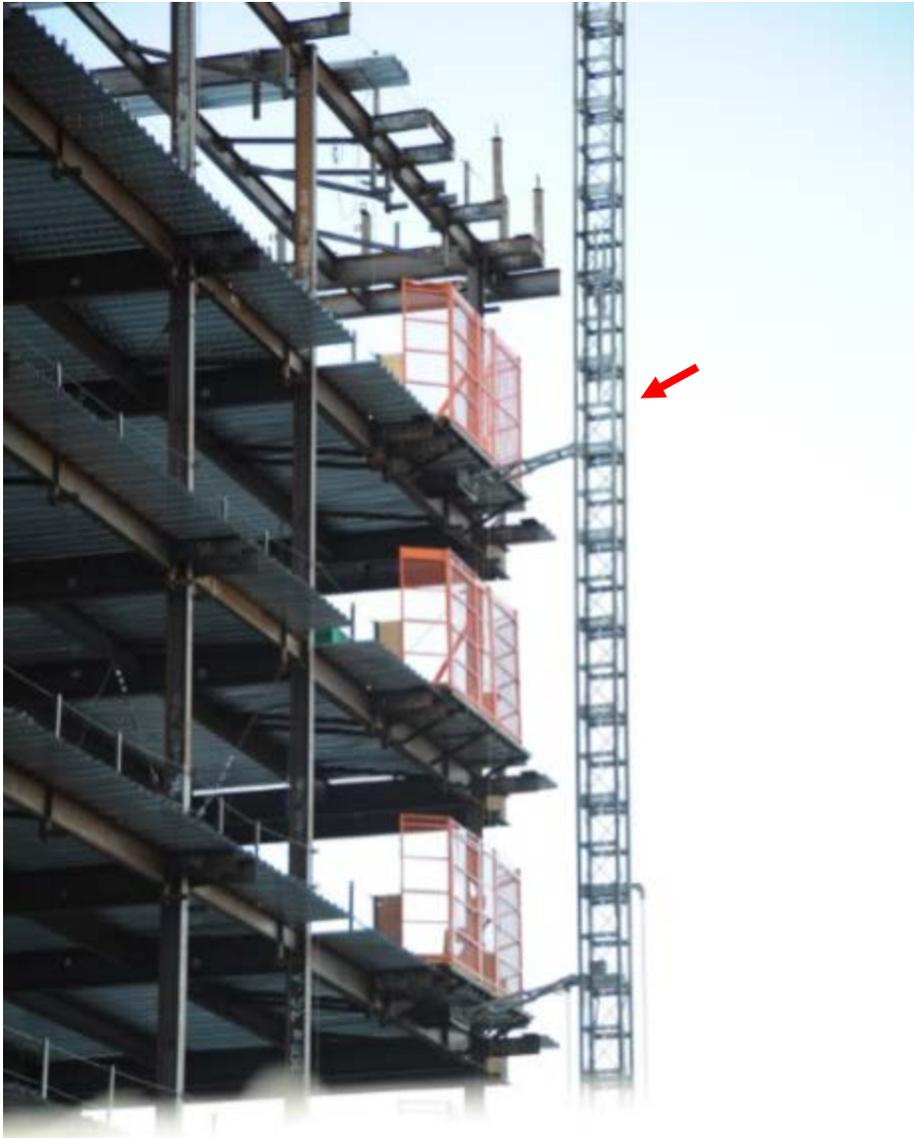


Figure 4: Depicts a magnified version of Officer Garza's view of the sixth floor and the manlift area when he fired his weapon. Note, although the manlift shaft is visible in this photo, the actual manlift is not. Red arrow indicates Lopez Garcia's approximate location at the time of the incident, although, again, the actual manlift he stood on top of is not shown. (Source: SFPD).

Officers Suhrke and Camilosa, and Sgt. Aloise's Approach

Officers Suhrke and Camilosa arrived with Sgt. Aloise and parked on the northwest side of the construction site on Cesar Chavez St., on the opposite end of the site from Officers Stokes and Garza. At the northwest side, Officers Suhrke and Camilosa and Sgt. Aloise saw a construction worker on the top of the construction site motioning them over to the east side of the construction site. Officer Camilosa went to the back of his car to retrieve his patrol rifle, while

Officer Suhrke grabbed a ballistic shield and went ahead with Sgt. Aloise to survey the scene. As they approached the northeast side of the building, they heard another unit (Officers Garza and Stokes) broadcast that the “suspect has overwatch.” Sgt. Aloise explained this meant the suspect is high above everyone else and has his gun pointed downward. Officer Suhrke and Sgt. Aloise said they then heard a bang, which they thought may have been a gunshot, and then heard another officer (Officer Garza) report possible shots fired. Officer Camilosa said that he was loading his rifle at the time and although he heard the report of possible shots fired over the radio, he himself did not hear a bang or any gunshot-like sound.

As they arrived at the northeast side of the site, Officer Suhrke and Sgt. Aloise, who were ahead of Officer Camilosa, said they observed Lopez Garcia on a manlift at the sixth floor holding a long gun that they believed was a silver rifle. Officer Camilosa arrived soon after and they alerted him to Lopez Garcia on top of the manlift. All three officers took cover as best as they could behind and around a construction site generator box, similar to a shipping container.



Figure 5: *Depicts area where Officers Camilosa and Suhrke and Sgt. Aloise attempted to take cover, including the large generator box, which resembles a shipping container. (Source: SFPD).*

Sgt. Aloise described Lopez Garcia as swinging the long gun around and moving side to side. Officer Suhrke described Lopez Garcia as pointing the barrel around at his line of sight from side to side. Both Sgt. Aloise and Officer Suhrke yelled to Lopez Garcia to “drop the weapon” several times. Instead Lopez Garcia continued pointing his weapon, occasionally in the direction of the hospital, and at other times in the direction of Sgt. Aloise, and Officers Suhrke and Camilosa. Sgt. Aloise estimated that they were approximately 30 yards down from Lopez Garcia as he scanned across and down, waving his gun. He “could have taken shots at . . . anybody out there in the open” or at the “hospital across the way.” Sgt. Aloise said. Both Sgt. Aloise and

Officer Suhrke said it appeared as if Lopez Garcia was trying to find where they were hiding based on their yelling to him to drop his weapon.

Officer Suhrke said that Lopez Garcia yelled some words as well, but he could not make out what he said. Officer Suhrke was also concerned about any other potential construction workers on site. Although they had only seen one worker so far, based on Officer Suhrke's prior construction work experience, he believed there were probably other workers on site as construction workers rarely work alone. "Wherever that barrel would have pointed, it probably would have been a target for him," explained Officer Suhrke. Especially, if as suspected, Lopez Garcia was carrying a rifle, Officer Suhrke believed Lopez Garcia would have been capable of shooting up to 500 yards away.

Meanwhile Officer Camilosa, as a trained specialist, set his rifle against the generator box and pointed it up at Lopez Garcia. He utilized the scope feature, which has up to 3x magnification, on his duty-issued patrol rifle, a Colt AR-15 A3. Officer Camilosa saw Lopez Garcia through the scope and confirmed that he matched the description previously put out—white overalls and a black top. Lopez Garcia was carrying a long gun—and although dispatch had broadcast that the 911 caller said that Lopez Garcia had a shotgun—the gun appeared to Officer Camilosa to look like a rifle. He heard Officer Suhrke and Sgt. Aloise yell to Lopez Garcia to drop the weapon and saw that he was not complying. He feared that the situation was about to turn in to a "sniper incident," with all three of them in the potential line of fire, as well as those in the hospital. In an attempt to prevent such a tragedy, at approximately 4:21 p.m., at approximately the same time that Officer Garza fired his shot from the other side of the building, Officer Camilosa steadied his rifle against the generator box, took aim at Lopez Garcia, and fired once. Immediately after Officer Camilosa fired, Sgt. Aloise fired his duty-issued Sig Sauer handgun three times at Lopez Garcia. None of the officers on the northeast side of the site recalled hearing any gunshots coming from the southeast side where Officer Garza was located when he fired his weapon.

At first, Officer Camilosa could not see Lopez Garcia because he had slumped down and was obscured by the manlift's railing. Officer Camilosa moved further south toward Sgt. Aloise and from there both officers said they could see Lopez Garcia slumped down toward the back of the manlift. Officer Camilosa maintained his rifle position trained on Lopez Garcia until additional officers arrived.



Figures 6 and 7: Figure 6 (left) depicts Officer Camilosa’s approximate view of the manlift area when he fired his weapon at Lopez Garcia. Figure 7 (right) shows the area on the other side of the generator box (to the left of the generator box), where Sgt. Aloise was located when he fired. Although the manlift shaft is visible in both photographs, the actual manlift is not at the sixth floor in these photographs, as it was at the time of the incident. Red arrows indicate Lopez Garcia’s approximate location at the time of the incident, although, again, the actual manlift he stood on top of is not shown (Source: SFPD).

After some initial confusion as to how to enter the construction site and access the sixth floor, SFPD tactical teams were able to approach Lopez Garcia, secure the scene, and place Lopez Garcia in handcuffs. They lowered the manlift and requested medical assistance. San Francisco Fire Department attempted to render aid but paramedics determined that Lopez Garcia was beyond resuscitation and he was declared dead on scene.

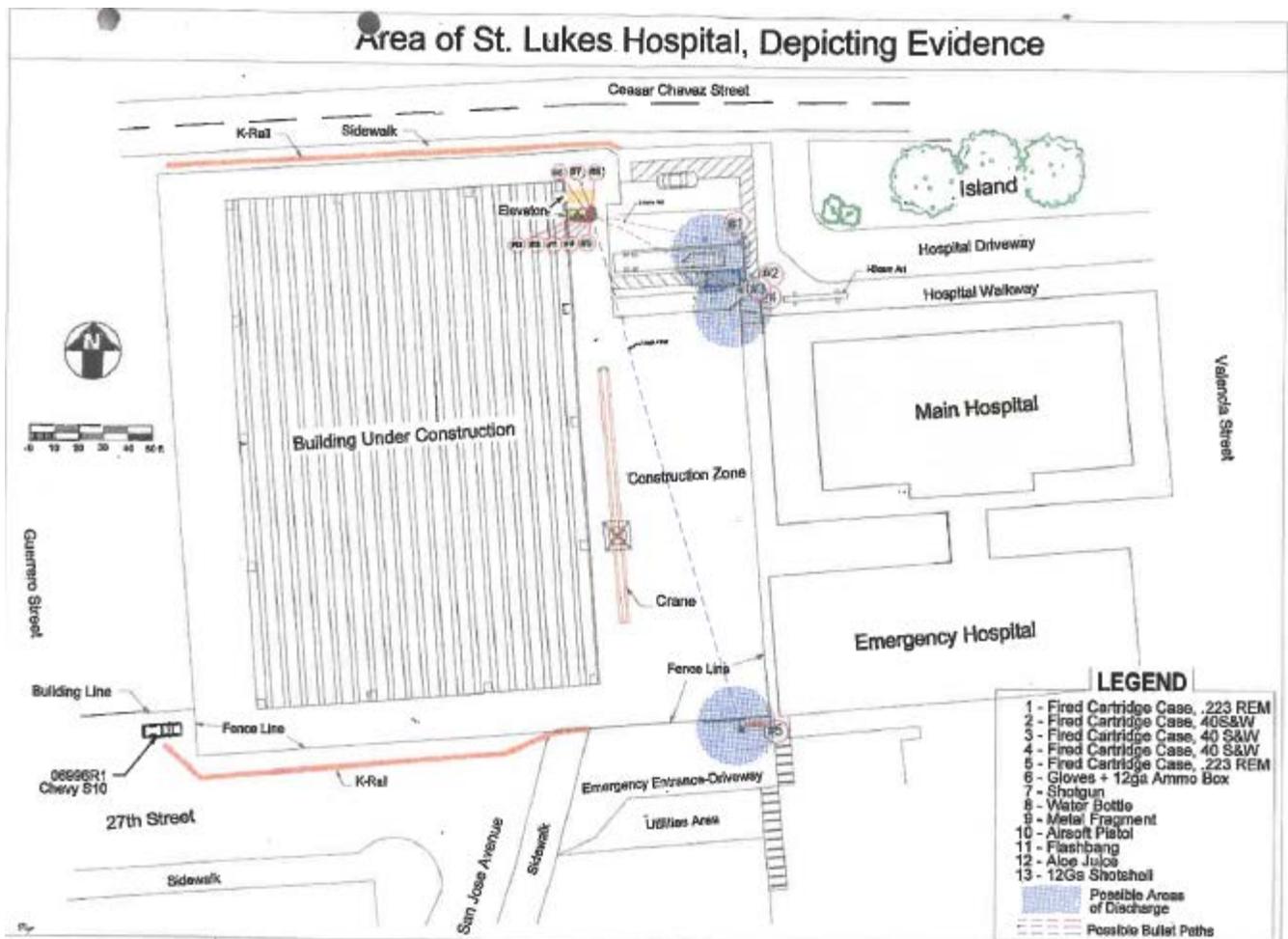


Figure 8: SFPD CSI Diagram depicting scene. Yellow area in top middle depicts the manlift where Lopez Garcia was located. Blue circles in top middle area (northeast corner of site) represent approximate locations of Officer Camilosa and Sgt. Aloise at the time they fired their weapons. Blue circle toward bottom of diagram (southeast corner of site) represents Officer Garza's approximate location at the time he fired his weapon. (Source: SFPD CSI Unit).

SFPD's Crime Scene Investigation

SFPD's Crime Scene Investigations (CSI) Unit responded to the scene. They recovered two guns next to Lopez Garcia on top of the manlift: (1) a 12-gauge Dickinson shotgun containing one Hevi-Metal Turkey cartridge lodged in the lower chamber; and (2) an M&P .177 Airsoft replica handgun without any loaded cartridges. (The firearm uses BB pellets, but is designed to look like an actual handgun.) They recovered one additional Hevi-Metal Turkey cartridge, along with a box containing three Hevi-Metal Turkey cartridges. They also recovered one copper-jacketed bullet fragment on top of the manlift.



Figure 9: Shotgun recovered from manlift shown in photograph. SFPD moved the shotgun away from Lopez Garcia before this photograph was taken. (Source SFPD).



Figure 10: Airsoft pistol recovered from manlift. SFPD moved the pistol away from Lopez Garcia before this photograph was taken (Source: SFPD)

In the area where Officers Camilosa and Sgt. Aloise were located when they fired their weapons, CSI recovered one fired .223 Remington Federal cartridge casing, and three fired .40 caliber Winchester S&W cartridges. In the area where Officer Garza was located when he fired his weapon, CSI recovered one fired .223 Remington Winchester cartridge casing.

SFPD's Criminalistics Laboratory analyzed the available evidence and determined that both the shotgun and the Airsoft pistol found with Lopez Garcia were operational. The lab determined that the bullet fragment recovered from the manlift came from a rifle, but could not say whether it was from Officer Garza's or Officer Camilosa's rifle.

Based on all the ballistics evidence gathered, we can conclude that Officer Camilosa and Officer Garza fired one round each from their rifles. Sgt. Aloise fired three rounds from his handgun.

We cannot, however, reach any conclusion as to whether Lopez Garcia fired any shots from either gun while on scene. Although several officers and civilian witnesses recalled hearing a gunshot, and some believed that the shot came from Lopez Garcia, there were no expended casings recovered from the area around Lopez Garcia, and five intact shotgun cartridges (which are sold five per box) were recovered from the scene. The Medical Examiner did not identify any gunpowder or soot on Lopez Garcia's clothing, however, his hands tested positive for gunshot residue, which suggests that he fired a gun at some point that day, or handled a weapon with residue on it at some point that day. It should be noted that shooting an Airsoft pistol does not result in gunshot residue, and also does not leave behind a casing. The evidence, therefore, does not indicate whether Lopez Garcia fired either of his guns during this incident.

Medical Examiner's Report

The San Francisco Medical Examiner conducted an autopsy on Lopez Garcia and determined that he died as a result of a single gunshot wound to the torso. The wound was perforating, meaning it had both an entrance and exit wound. The shot entered through his left upper back and transected his lungs and spinal cord. The medical examiner did not recover any bullet fragments from Lopez Garcia's body; therefore we cannot reach any conclusion as to whose gun fired the fatal shot. The medical examiner did not note any other gunshot wounds. The medical examiner also noted the presence of methamphetamine, amphetamine, and cocaine in Lopez Garcia's system.

Lopez Garcia Robs a Store in San Bruno, California, Leaves with Shotgun and Ammo

Soon after the incident, SFPD was alerted by the San Bruno Police Department that a person matching Lopez Garcia's description, and later identified as Lopez Garcia, was involved in an armed robbery earlier the same day. San Bruno Police Department's investigation revealed that at approximately 3:45 p.m. that same day, Lopez Garcia robbed a Big 5 sporting goods store in San Bruno, California. During that incident, he produced a cutout of a newspaper advertisement for a shotgun and brandishing a handgun, he demanded that a store clerk give him the advertised shotgun. He also passed a note to the clerk which read:

*Please do not make any sudden
movements or gestures or else I
will be forced to shoot you and
I cant leave any witnesses so
co-workers and customers also at risk
I dont want money and want this crime
scene to turn into a murder scene.
I need 12 gauge marine finish tactical pump
shotgun
dont ask who what when where why
the only difference between me and you
is im not afraid to get shot.*

As the clerk prepared the shotgun to hand over to Lopez Garcia by removing the trigger lock, Lopez Garcia said to him and other nearby employees, “I know you have a loaded shotgun back there. I don’t care if you shoot me. Don’t mess around. You can call the police. They can shoot me. I’m suicidal.” The clerk also said that Lopez Garcia pointed his handgun toward him and said, “I don’t care if I have to shoot up the store.”

After receiving the shotgun, Lopez Garcia threw \$179 in cash behind the counter. He then left the Big 5 store with the stolen shotgun and some shotgun ammunition at approximately 3:50 p.m. He arrived to the St. Luke’s Hospital construction area by 4:15 p.m. with both a handgun and a shotgun identical to the one he stole—a Dickinson 12-gauge shotgun.

Civilian Witnesses Report that Lopez Garcia was Suicidal

Several construction workers who encountered Lopez Garcia at the St. Luke’s construction site were interviewed after the incident about what they had observed. Several of them mentioned that Lopez Garcia indicated that he was suicidal.

Paul R. said he was walking down from the fourth floor of the building to the third when he passed Lopez Garcia walking up the stairs. Paul R. did not believe Lopez Garcia was a fellow construction worker because he wasn’t wearing a hard hat. Paul R. said Lopez Garcia flashed a black handgun in his right hand and told him, “Get out of my way, I’m suicidal . . . call the cops and Channel 10 News.” Paul R. continued down the stairs and also called and notified his boss, Nick S. Paul R. then told as many workers as he could find and along with them, tried to leave the area as soon as possible.

Nick S. said he received a call from Paul R. about a person “on the roof” with a gun. Nick S. was on the roof and didn’t see anyone with a gun so he walked down one floor where he saw Lopez Garcia, who did not appear like he belonged there. Nick S. approached Lopez Garcia and asked him if everything was okay. Lopez Garcia turned around and said to Nick S. “I’m ready to die.” Nick S. then noticed that Lopez Garcia was carrying a shotgun. Nick S. then yelled to the manlift operator who was on the same floor, Elizabeth D., to leave. Elizabeth D. said she saw Lopez Garcia holding both a long gun and a hand gun and that he looked “upset.” Elizabeth D. ran toward Nick S. and together they returned up the stairs to the roof where Nick S. called the project’s superintendent, David D., and told him to call the police. Nick S. and Elizabeth D. described how Lopez Garcia seemed agitated and was walking outside of the safety cable of the building—which was very dangerous for a construction site without actual railings. Nick S. also said he saw Lopez Garcia load shotgun shells into his shotgun.

David D., the project superintendent, said he received a phone call from Nick S. about a suicidal man on the sixth floor with two guns. David D. immediately called 911 and reported that there was a man with two guns at the site. Significantly, however, he did not relay that the man was suicidal when he spoke with the 911 operator. While on the phone with 911, David D. remained in his office from which he was able to view Lopez Garcia atop the manlift from approximately 200 yards away. He said he could see Lopez Garcia waving a gun around, and that he appeared to possibly have some kind of altered mental state; he relayed both those facts to the 911 operator who broadcast it over the radio. David D. said he heard what he believed was a gunshot

and thought that perhaps Lopez Garcia's gun had gone off by accident. He said he saw Lopez Garcia jerking the gun as if he may have been surprised that it fired. He did not report this to the 911 dispatcher though. David D. continued to keep his eyes on Lopez Garcia, and while still on the phone with 911, he saw Lopez Garcia get shot and slump down on the manlift.

Another civilian witness, Chris D., was in a construction crane when the incident occurred. He said he heard over the construction radio: "Clear the deck, there's something going on." Chris D. happened to be facing the manlift at the time and looked down and saw Lopez Garcia waving a "chrome shotgun" from side to side. He saw Lopez Garcia point the gun toward him at one point. Chris D. then got on the construction radio to let everyone know about the man with a gun on the manlift and to reiterate to clear the deck. Chris D. moved the crane around and decided to go on top of the crane, which was surrounded by more protective steel, rather than stay in the glass crane operator's box, which he believed was less safe. From there, he saw SFPD officers arrive (later determined to be the team of Sgt. Aloise and Officers Suhrke and Camilosa). He heard them command Lopez Garcia to "lower [his] weapon," but that Lopez Garcia instead began aiming down toward the officers. Like Officer Suhrke, Chris D. also believed Lopez Garcia may have been yelling something, but he could not make out what he was saying. He then heard three gunshots and saw Lopez Garcia slump down in the manlift.

Lopez Garcia's Cellphone Videos Reflect Suicidal Ideations

SFPD Homicide investigators recovered Lopez Garcia's cellphone from the Medical Examiner who found the phone within his belongings. IIB reviewed the contents of his cellphone, which included two videos recorded just prior to the incident. On November 9, 2015, two days prior to this incident, at approximately 11:08 a.m., Lopez Garcia recorded a short video of the rain that morning and described it as a "sign of the times." He said he was "on [his] last 48," likely a reference to his last 48 hours alive. He said, "I can't live my life looking over my shoulder. . . . I'm 25 years old, but I ain't trying to put up with another 25 years." The video ended with Lopez Garcia stating, "All my people, I'm out."

Later that evening Lopez Garcia recorded an extended video at approximately 11:20 p.m. in which he described himself as high. The video is all black and it does not appear that there is anyone else with him. In it, he says, "I don't want you to feel bad, I should have been passed away four-and-a-half years ago. I've been dwelling on this stuff off and on." He said he had previously thought about jumping off a dam or bridge but never actually did it. He said, "I'm only 25 years old; if this is a preview of what the next 25 years are going to be, I don't want nothing to do with it." Towards the end of the approximately 25-minute video he says, "I can't be in this world too long."

III. LEGAL STANDARD

The question presented is whether Officer Garza, Officer Camilosa, or Sgt. Aloise committed a criminal act in shooting and killing Lopez Garcia. To pursue criminal charges, a prosecutor must be satisfied that the evidence will show beyond a reasonable doubt that no legal justifications existed for the act at issue. Here, the relevant legal inquiry is whether Officers Garza and

Camilosa, and Sgt. Aloise acted in self-defense and/or in defense of others when they used deadly force, thereby legally justifying their conduct.

California law permits any individual to use deadly force “[w]hen resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” Cal. Pen. Code, § 197; *see also Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. Specifically, self-defense or defense of others serves as a complete defense so long as the person (1) subjectively believed in the need to resort to force in order to avert a threat of imminent and great bodily injury, and (2) his perceptions and actions were objectively reasonable under the circumstances. *See People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Viramontes* (2001) 93 Cal. App. 4th 1256, 1262.

The subjective prong of the self-defense and defense of others standard examines the person’s belief in the need to use force. The objective component asks what a reasonable person would have done in their position. *See Humphrey*, 13 Cal.4th at 1082-83. The reasonable person is an abstract individual of ordinary mental and physical capacity who is as prudent and careful as any situation would require him to be. *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519. In making the determination as to whether an officer’s conduct was objectively reasonable, one must consider all the “facts and circumstances . . . in determining whether [they] acted in a manner in which a reasonable man would act in protecting his own life or bodily safety” or that of others. *See Humphrey*, 13 Cal.4th at 1083. Self-defense law “grants a reasonable margin within which one may err on the side of his own safety, and so long as he is found to have done so reasonably, no abuse of the right of self-defense should be found to have occurred.” *People v. Ross* (2007) 155 Cal.App.4th 1033, 1057.

IV. LEGAL ANALYSIS

Beginning with the subjective component, which examines the person’s belief in the need to use force, Officer Garza explained that he shot Lopez Garcia to prevent Lopez Garcia from shooting him, his partners, and anyone else in the vicinity within range of Lopez Garcia’s guns. He explained that traffic on Cesar Chavez St. was stopped, rendering many motorists potential targets. Officer Garza also said that from where Lopez Garcia stood atop a manlift six floors up, he could have shot straight into St. Luke’s Hospital.

Although dispatch said the 911 caller described Lopez Garcia as holding a shotgun, all Officer Garza saw was that Lopez Garcia was holding a long gun, which he believed could have been either a shotgun or a rifle. Officer Garza was particularly concerned that Lopez Garcia may have actually had a rifle, because rifles are capable of shooting long distances, thereby increasing the range of people threatened by Lopez Garcia. Moreover, Officer Garza said Lopez Garcia was “actively scanning” the area with the barrel of his long gun up and ready to fire, and occasionally pointing it down to potentially shoot people below. Officer Garza said it appeared that Lopez Garcia “was about to start selecting his targets” and that “people were about to die.”

Officer Camilosa explained that he believed he needed to use deadly force to stop Lopez Garcia because he was afraid that Lopez Garcia was acting like a sniper and he feared Lopez Garcia was

about to start shooting people. “One thing I wanted to do was prevent any mass shooting,” he said. Officer Camilosa explained further that were that to happen, he, his partners, and people inside St. Luke’s Hospital were all in the line of fire. He said he kept thinking: “I don’t want to get shot in the head.” He added: “I knew I had to end this threat and stop people from dying.”

Sgt. Aloise explained that he believed he needed to use deadly force because if Lopez Garcia had fired his gun, it could have hit him as well as many others. For example, he believed the construction workers were in danger and recalled yelling to them to “get in the building.” He said from where Lopez Garcia was positioned, “Anybody out there in the open, he could have taken shots at them; the hospital across the way, he could have taken shots at them too.”

To evaluate whether it was objectively reasonable for the officers to have believed that they needed to resort to force to avert the threat of harm to themselves, construction workers, and the local public, we consider all the pertinent facts and circumstances presented to them at the time.

All three officers who fired their weapons responded to a call about a man with two guns and when they arrived, they all observed a man atop a manlift holding a large gun. The officers and civilian witnesses all described Lopez Garcia as scanning around as if to select a target or take aim. Some officers believed that the gun was a rifle, capable of shooting long range with accuracy. From the distance the officers were at and their limited view of Lopez Garcia’s long gun, it was reasonable for them to be concerned that he may have a rifle capable of long-range shooting. Even if they had known definitively he had a shotgun—shotguns can also be deadly, particularly if Lopez Garcia were to shoot directly downward from six floors up.

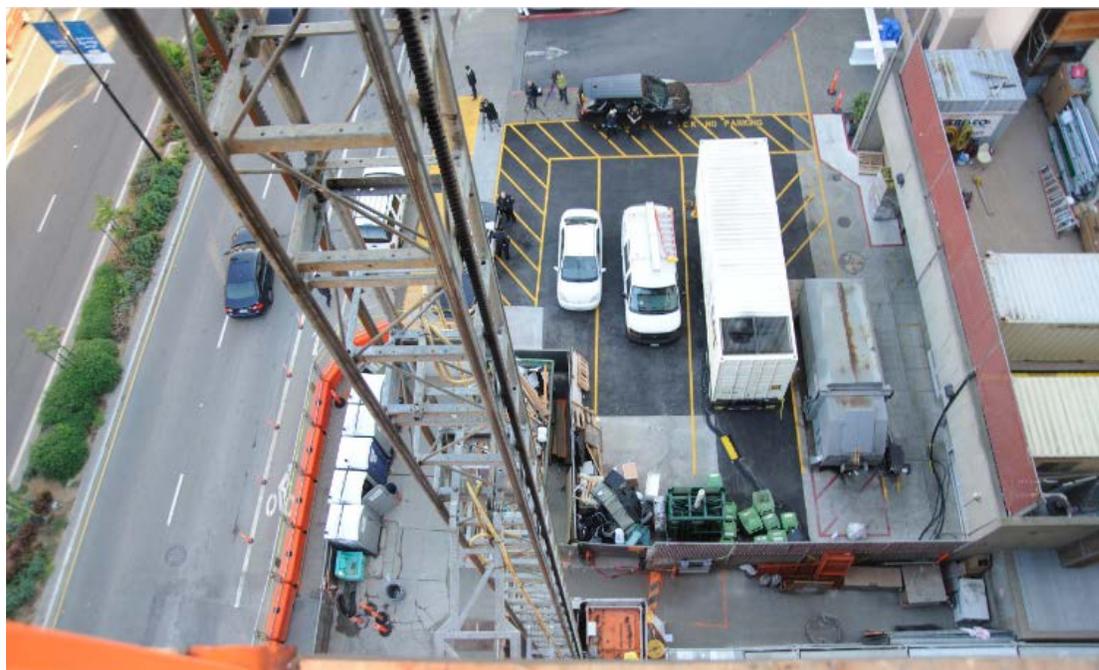


Figure 11: *Depicts Lopez Garcia’s approximate vantage point from the sixth floor manlift area. Shows view below, with Cesar Chavez St. on the left and the generator box where Officers Suhrke and Camilosa and Sgt. Aloise took cover on the right. (Source: SFPD).*

From the moment Officer Suhrke and Sgt. Aloise observed Lopez Garcia, they commanded him to put down his gun. Instead, Lopez Garcia began to search for them and point his gun in their direction—escalating the threat. Chris D., who was on top of the crane at the time, corroborated this account. He said he had a “bird’s eye” view of the incident and said he saw Lopez Garcia point his gun in the direction of Officers Camilosa and Suhrke, and Sgt. Aloise.

In addition to the danger posed to the officers, the officers also believed Lopez Garcia posed a threat to the public, including construction workers on site, people within the hospital, and motorists stopped on the street. With respect to the hospital, from where Lopez Garcia was positioned, he had a direct view toward St. Luke’s Hospital (see Figure 12 below). Additionally, according to Chris D., who was atop the crane, Lopez Garcia pointed the gun toward the St. Luke’s Emergency Room at one point. With respect to the construction workers, David D. can be heard on the 911 call telling other workers to get away from the office and explained later that Lopez Garcia could have hit anyone in the vicinity with his guns, and that there were probably about 20 construction workers on site at the time.



Figure 12: *Depicts Lopez Garcia’s approximate vantage point from the sixth floor manlift area. Shows view ahead to St. Luke’s Hospital, with Valencia St. behind. (Source: SFPD).*

The officers also explained that because Lopez Garcia was six floors up, he had “overwatch” over the officers as well as over nearby pedestrians and motorists. From that vantage point, Lopez Garcia had a wide range of targets he could readily shoot. Civilian witness Alex D., who was stopped in traffic on Valencia St., said he got out of his vehicle and saw Lopez Garcia atop the manlift holding a silver gun. He said he saw him looking down and pointing his gun around. Alex D. believed he was in the line of fire and hid behind his truck to attempt to take cover. Jarrod G. was in the passenger seat of the vehicle with Alex D. and corroborated his account,

including that Lopez Garcia pointed the gun toward him. He also jumped out of the truck and hid behind it to try and take cover. These civilian witness accounts further support that it was reasonable for the officers to consider Lopez Garcia an imminent threat to the immediate public.

Moreover, as the officers arrived, all of them except Officer Camilosa heard what they believed was the sound of a gunshot (several civilian witnesses also reported hearing the same noise and believing it was a gunshot). Although the evidence does not lead to any definitive conclusion that Lopez Garcia fired his weapon, the officers were reasonably operating on information that he might have already fired once, suggesting that he was capable of shooting his guns, and may do so again.

Finally, although none of the officers were aware that Lopez Garcia was suicidal at the time, his later-discovered suicidal ideations suggests that he may have intended to appear as if he was going to shoot his weapon, in order to elicit a response from the officers. Although the officers were not aware of his suicidal tendencies, evidence of such ideations still serve to corroborate the officers' and civilians' accounts of Lopez Garcia's behavior.

Based on the location of the officers and civilians, and the imminent threat Lopez Garcia posed when he pointed his long gun from six floors above and scanned the scene appearing as though he was about to select a target, we conclude that it was objectively reasonable for the officers to believe that Lopez Garcia posed a threat of death or serious bodily injury to them and/or others.

V. CONCLUSION

For the reasons discussed above, we conclude that the officers' conduct in discharging their weapons, which resulted in the death of Javier Lopez Garcia, was legally justified as it was done in self-defense and/or defense of others. Therefore, the District Attorney declines to file any criminal charges in this matter.