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on January 1, 2019, a redacted version
of this report is subject to disclosure per the
California Public Records Act.**

IN DEPARTMENTAL CORRESPONDENCE

June 9, 1994
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OUT
OF
STATUTE

10-26-94

TO: Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: OIS# 127-93

Honorable Members:

I have reviewed and adopted the Use of Force Review Board Report for this incident. I hereby submit my findings in accordance with Police Commission policy.

SUMMARY

During the later part of September 1993, a concerned citizen contacted the Los Angeles Police Department and complained of the street sales of narcotics in the [REDACTED] block of west Cambridge Street. The information was forwarded to Narcotics Group, West Bureau Field Enforcement Section and an investigation was commenced by Narcotics Group Detective D. Keller #22714.

Continuing through the middle of October 1993, Detective Keller, accompanied by Narcotics Group Detective P. Moore #20976, conducted six separate surveillances of the Cambridge Street area. During the surveillances, the detectives saw numerous individuals, including many persons who appeared to be street gang members, involved in activity consistent with the street sales of narcotics. During a surveillance of the area the two detectives heard the sound of several gunshots fired near the intersection of Harvard Boulevard and Cambridge Street. Based on the citizen complaint supported by their own observations, the detectives informed their supervisor, Narcotics Group, Detective R. Lutz #13561, that they believed a substantial quantity of drugs were being sold along the roadway of Cambridge Street.

During the third week of October 1993, Detective Lutz monitored the area around the [REDACTED] Block of west Cambridge Street, in an effort to determine the level of activity in preparation to conduct an undercover narcotic operation. During his surveillance, Detective Lutz saw numerous pedestrians and activity consistent with the street sales of narcotics along Cambridge Street, west from Normandie Avenue.

On October 26, 1993, Narcotics Group, West Bureau Field Enforcement Section, Special Response Squad, plainclothes undercover Officer D. Mack #26483, was driving an unmarked white car.

During a previous briefing at Wilshire Area Station, conducted by Detective Lutz, Officer Mack was informed that he along with other assigned personnel from Narcotics Group would conduct a series of narcotic buy operations on targeted locations within the Wilshire Area. Officer Mack's undercover mission was to purchase drugs from suspected street dealers. Once the transactions were completed, designated Wilshire Patrol Division uniformed officers working in conjunction with Narcotics Group officers would respond and arrest the drug dealers. The undercover officers were equipped with a body transmitter monitored by Detective Lutz. In addition, Officer Mack was equipped with a concealable hand held radio operating on a tactical frequency.

After operating several targeted locations, at approximately 2045 hours, Officer Mack was directed to respond to a parking lot at 18th Street and Western Avenue for a tactical briefing in preparation for the Cambridge Street area. Upon arrival at the briefing location, Officer Mack was informed by Detective Lutz that he had scouted the area and due to the conditions of the location, Officer Mack was to team up with Narcotics Group Officer R. Perez #26905. Officer Perez was also equipped with a concealable radio.

At approximately 2115 hours, Officer Mack accompanied by Officer Perez entered their car and drove to the area of Cambridge Street to commence the operations. Officer Mack drove while Officer Perez sat in the front right passenger seat. Officer Mack heard loud music emanating from a red car parked at the curb near an apartment building at [REDACTED] Cambridge Street. Officer Mack directed his attention toward the parked car and saw a male, subsequently identified as J. Vicencio, 29 years old, standing with another unidentified male on the sidewalk in front of the aforementioned apartment building.

In addition, the officer saw a third male seated on the hood of a brown car also parked in front of the apartment building. Officer Mack parked his car in the roadway parallel to Vicencio and made eye contact with him. Vicencio stared intently at both Officers Mack and Perez. Vicencio approached the officers holding a chrome pistol along his right leg. Officer Perez immediately alerted his partner and repeated it in a low voice to ensure Detective Lutz monitored the information. As Vicencio

approached the driver's door of their car Officer Mack attempted to engage him in conversation. Simultaneously, Officer Mack heard his partner advise him that Vicencio had a gun.

NOTE: Officer Mack had encountered armed suspects on numerous occasions during undercover narcotic transactions and was not particularly alarmed at this time, due to Vicencio's non-threatening demeanor.

Vicencio stood adjacent to the driver's door of the car, leaned forward and looked inside the car. Vicencio kept his gun pointed down along his right leg. Officer Mack remained calm and engaged Vicencio in a conversation in an attempt to purchase narcotics. Vicencio replied by asking the officers what kind of drugs they wanted. Officer Perez told Vicencio they wanted twenty dollars worth of rock cocaine. Officer Perez handed Vicencio a twenty dollar bill.

NOTE: The Commanding Officer, Narcotics Group advised the Use of Force Board members that policy has been changed since this incident. Now when undercover officers see a suspect with a weapon all back up units immediately move in and make an arrest.

Officer Mack saw a male, subsequently identified as [REDACTED], [REDACTED] years old, approach their location. [REDACTED] stopped adjacent to the left door post of the officers' car and placed his right hand under the front of his shirt as if he had grasped a weapon.

Vicencio looked at the money in his hand, then threw it onto Officer Mack's lap and said "nah-man, are you Bloods or Crips?" Vicencio appeared increasingly agitated. Realizing Vicencio was becoming confrontational, Officer Mack carefully reached under his shirt and withdrew his weapon from his waistband. Officer Mack kept the weapon concealed under his shirt; however, he pointed his weapon toward the driver's door. Simultaneously, Vicencio raised his right arm, as Officer Perez told Vicencio that they were not gang members. Vicencio raised his gun to approximately waist level, and pointed it alternately between the two officers.

Believing Vicencio was about to shoot him, Officer Mack withdrew his weapon from under his shirt. Fearing for his life and believing he was in immediate danger of being seriously injured or killed, Officer Mack remained seated, raised the barrel of his weapon upward and fired four rounds in rapid succession at

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Vicencio. As he fired Officer Mack turned his head in an attempt to avoid being shot. After the fourth round Officer Mack turned to look at Vicencio and saw he was now standing in the roadway, approximately six to eight feet away, facing the officers. Vicencio maintained his grasp of the weapon in his right hand and again raised it toward the officers. Officer Mack utilized his left hand to open the driver's door of his car and pushed it to a partially opened position. While still seated, Officer Mack placed his left foot on the roadway and extended his right arm through the open driver's window. Believing Vicencio was unaffected by his rounds and was about to shoot him, Officer Mack fired five additional rounds in rapid succession at Vicencio.

Vicencio pivoted to his left and ran; however, as he ran he extended his right arm back and pointed his weapon at Officer Mack. Still fearing for his life and believing that Vicencio posed an immediate threat of serious bodily injury or death to himself, Officer Mack quickly exited his car and fired four rounds at Vicencio.

Officer Mack deployed to the right rear of his car and took a position of cover. Vicencio collapsed to the sidewalk onto his knees then forward onto his hands. Officer Mack alerted Officer Perez to the fact he was out of ammunition. Meanwhile, during the shooting Officer Perez had exited the car, drawn his weapon and moved along the passenger side of their car. Officer Perez heard his partner advise that he was out of ammunition. Officer Perez repeatedly stated that they needed help, shots are being fired, to alert Detective Lutz who was monitoring the body transmitter.

As Vicencio fell to the ground, Officer Perez partially saw an unidentified male, wearing a black shirt, crawling on his hands and knees toward Vicencio. Officer Perez took cover at the left hood portion of a brown car parked at the curb. Officer Perez momentarily lost sight of Vicencio and saw the aforementioned unidentified male reach a position within a foot of Vicencio. Officer Perez ordered the unidentified male not to move. The aforementioned male complied. Officer Perez maintained his position of cover until back up units arrived.

NOTE: Unbeknownst to Officer Perez, Officer Mack while behind cover, had ordered [REDACTED] into a prone position.

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Detective Lutz drew his weapon and assumed Officer Perez' position of cover. Officer Perez redeployed along the side of a red car which was also parked at the curb. Officer Perez saw [REDACTED] and the unidentified male laying prone on the street between a parked car and the sidewalk. Officer Perez ordered the males not to move and they complied. A few seconds later Officer Perez was joined by several officers who took control of the males. Vicencio was taken into custody by responding units.

FINDINGS

After my personal review of the facts of this case and the Use of Force Review Board's report for this incident, my findings are as follows:

Tactics - No action, Officers Mack and Perez.

Drawing/Exhibiting/Holstering Weapon - In policy, no action, both officers.

Use of Force - In policy, training, Officer Mack.

TACTICS

I have reviewed this incident and I am pleased with the officers' tactics. An undercover assignment is dangerous by its very nature. When faced with an armed suspect Officer Mack remained calm and attempted to control the situation. Throughout the incident the officers communicated with each other enabling them to work as a team. I have determined the officers' tactics require no further action.

DRAWING WEAPON

Policy: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified." (1/556.80)

The officers drew their weapons to protect themselves from an armed suspect whom they believed was about to shoot Officer Mack. I have determined the officers had sufficient information to believe the situation had escalated to the point where deadly force was necessary.

I find the drawing by Officers Mack and Perez in policy, no action.

USE OF FORCE

Policy: "An officer is authorized the use of deadly force when it reasonably appears necessary to protect himself or others from an immediate threat of death or serious bodily injury." (1/556.40)

Officer Mack was confronted by an armed suspect who pointed a gun at him. Fearing for his life and believing the suspect was about to shoot him, Officer Mack fired 13 rounds in three sequences at the suspect. I have determined that Officer Mack reasonably believed he was in immediate danger of being seriously injured or killed. However, I am concerned with Officer Mack's fire control. This was a situation where shot assessment and fire control was critical. I have directed the Commanding Officer, Narcotics Group, to express my concerns to the officer and provide the appropriate training.

I find Officer Mack's use of force in policy, training.

ADDITIONAL CONSIDERATIONS

Officers Mack and Perez were not injured in the incident.

A rescue ambulance responded and [REDACTED] Vicencio for [REDACTED]. Vicencio was ultimately transported to California Medical Center. Vicencio was treated at the hospital for the aforementioned wounds by the on-duty emergency room physician. Vicencio failed to respond to treatment and was pronounced dead at 2146 hours.

On October 28, 1993, the Coroner's Office performed a postmortem examination of Vicencio's remains. The cause of death was ascribed to multiple gunshot wounds.

A toxicological analyses of blood samples obtained from Vicencio revealed a blood alcohol level of .08 per cent and .110 micrograms per milliliter of Phencyclidine.

A Gunshot Residue Kit taken from Vicencio's hand revealed several particles of gunshot residue on the right hand. Vicencio was armed with a Jennings brand .22 caliber semiautomatic pistol loaded with six live rounds.

Officer Mack was armed with a Department approved 9mm semiautomatic pistol, fully loaded with authorized ammunition. Officer Mack fired a total of 13 rounds. Officer Mack fired his

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first series of four rounds from a distance of two feet, his second series of five rounds from six to eight feet, his last series of four rounds were fired from a distance of 16 to 30 feet. The shooting background for Officer Mack's rounds consisted of several unoccupied cars and the exterior stucco wall of an apartment building.

Both Officers Perez and Mack were working undercover and not wearing body armor.

RECOMMENDATION

I do not recommend any changes of Department standards as a result of this incident. The findings will be considered final unless notified within 30 days that the Board has requested further review of this matter.

Respectfully,



✓WILLIE L. WILLIAMS
Chief of Police

Date: 8/16/94

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FINDINGS OF THE BOARD OF POLICE COMMISSIONERS

_____ We have reviewed the Chief of Police's recommendations
and concur with the findings.

_____ We have reviewed the Chief of Police's recommendations
and do not concur with the findings. Our findings are
as follows:

President
Board of Police Commissioners

Date _____

OFFICER-INVOLVED SHOOTING
PRELIMINARY PRESS INFORMATION REPORT

October 27, 1993

On October 26, 1993, at approximately 9:25 p.m., plain clothes officers from Narcotics Group went to the [REDACTED] block of Cambridge Street in Wilshire Area to conduct a narcotic investigation.

The officers were met at the location by Jesse Vicencio, 29 years of age, who discussed a narcotic transaction with the officers. Officer David Mack (32 years of age, 4 years with the Department) was seated in his vehicle negotiating the narcotic transaction with Vicencio who was standing next to the driver's door. For an unknown reason, Vicencio produced a handgun and pointed it directly at Officer Mack's head. Officer Mack fired several rounds at Vicencio who subsequently fell to the sidewalk with multiple gunshot wounds.

Vicencio was transported to California Medical Center where he died as a result of his injuries. His .22 caliber pistol was recovered at the scene. There were no other injuries as a result of this incident.

LIEUTENANT W. D. HALL, OFFICER-IN-CHARGE
OFFICER-INVOLVED SHOOTING SECTION
ROBBERY-HOMICIDE DIVISION

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF SPECIAL OPERATIONS • SPECIAL INVESTIGATIONS DIVISION

GIL GARCETTI • District Attorney
SANDRA L. BUTTITA • Chief Deputy District Attorney
R. DAN MURPHY • Assistant District Attorney

ROGER J. GUNSON • Director

October 14, 1994

Board of Police Commissioners
City of Los Angeles
150 North Los Angeles Street
Los Angeles, California 90012

Dear Commissioners:

Re: S.I.D. File #100-7664/93-0422
L.A.P.D. DR #93-0739440

This division has completed its review of the October 26, 1993 fatal shooting of Jessie Vicencio, age 29, by Los Angeles Police Department Wilshire Division Officer David Mack (ID #26483). The District Attorney's Command Center was advised of the shooting in a timely manner. The undersigned and District Attorney Senior Investigator Richard Goldston responded to the scene and were briefed by Lieutenant William Hall. In reaching our conclusions, we read and considered the reports prepared by the Los Angeles Police Department's Robbery-Homicide Division, and our Bureau of Investigation. Based upon our review of the evidence and the law, we have concluded that Officer Mack acted properly, and was justified in utilizing deadly force in self-defense. Therefore, we are closing our file in this matter and will take no further action.

I. FACTUAL ANALYSIS

In the latter part of September, 1993, residents of the [REDACTED] block of West Cambridge Street in the City of Los Angeles, complained to the L.A.P.D. of ongoing narcotics trafficking on that street. In response to the complaints, L.A.P.D.'s Wilshire Division Narcotics Group detectives commenced multiple surveillances of the area. On October 26, 1993, Officers David Mack (ID #26438) and Rafael Perez (ID #26905) conducted an "undercover buy" operation in the [REDACTED] block of West Cambridge Street. This matter arises out of that undercover operation.

OFFICER DAVID MACK was interviewed by L.A.P.D. Robbery-Homicide Detective W.F. Holcomb (ID #20621). This was a tape-recorded, compelled statement, acquired after an administrative admonition. Officer Mack said that on October 26, 1993, he and his partner Officer Perez were assigned to an "undercover buy" operation in the [REDACTED] block of West Cambridge. The officers, in plain clothes, and driving an unmarked Nissan Sentra, were to attempt to purchase drugs from suspected street dealers. At approximately 9:25 p.m., Officer Mack drove to West Cambridge Street, with Officer Perez in the front passenger seat. As Officer Mack turned onto West Cambridge, he noticed the decedent, Jessie Vicencio, standing with another man in front of an apartment building at [REDACTED] West Cambridge.

Officer Mack stopped the Sentra in the street parallel to Vicencio, and made eye contact with him. Vicencio stared intently at the officers. Vicencio approached the Sentra at the driver's side window, and Officer Mack saw that he was holding a chrome-plated semi-automatic pistol in his right hand, with his right hand extended down along his right leg. Officer Mack said to Vicencio, "What's up, homes?" Vicencio approached the driver's window and replied, "What's up, homes?" Officer Mack heard Officer Perez say in a calm tone, "He's got a gun".

Officer Mack remained calm as Vicencio leaned forward and looked into the car, keeping his gun in the same position as before. Officer Mack said, "You got a twenty?"¹ Vicencio replied, "You want sherm, or rock?"² Officer Perez replied that he wanted "rock", and stretched his arm across Officer Mack to hand Vicencio twenty dollars. Officer Mack said that Vicencio took the money with his left hand. At that moment, a [REDACTED], later identified as [REDACTED], approached the Sentra and stood at the left door post. He placed his hand in his shirt as if simulating a weapon.

Vicencio threw the money back in Officer Mack's lap, and asked if they (the officers) were "Bloods or Crips?" Vicencio became increasingly agitated, and fearing that an armed confrontation would occur, Officer Mack pulled his nine-millimeter service pistol from his waistband and concealed it under his shirt. He covertly pointed the gun across his abdomen toward the driver's door. Simultaneously, Officer Mack saw Vicencio raise his right arm, as Officer Perez said, "We don't bang." Vicencio raised his gun to waist level, with his right elbow bent 90 degrees and the gun pointed alternately between the officers as he spoke. Vicencio said, "I'm tired of you Motherfuckers over here!" Then, Vicencio raised his pistol and rotated his right

¹ In this context, the term "twenty" refers to a \$20.00 quantity of rock cocaine.

² The term "sherm" is street slang for the illegal drug phencyclidine, and "rock" is slang for rock cocaine.

wrist, positioning the pistol parallel to the ground with the barrel pointed directly at Officer Mack's head. Vicencio said, "I got my shit, you got yours?" Officer Mack told Detective Holcomb that at that instant, he believed Vicencio was about to shoot him, so he fired four rounds at Vicencio through the driver's door, with his gun still concealed under his shirt. As he fired, he turned his head away to avoid being shot in the face by Vicencio.

After firing four rounds, Officer Mack turned his head to the left and saw that Vicencio had staggered away from the car approximately six to eight feet. Vicencio was still standing, facing the car with his arms at a 45 degree angle from his body, and the gun still in his hand. Vicencio raised his right arm, bringing it forward in Officer Mack's direction. In response, Officer Mack partially pushed open the driver's door with his left hand, placed his left foot on the pavement, and extended his right arm through the open driver's window. Officer Mack told Detective Holcomb that at this moment, he believed Vicencio had not been disabled, and was preparing to shoot him. Officer Mack then fired five additional rounds at Vicencio. Vicencio did not go down -- he pivoted and ran north, while extending his right arm backward and pointing his gun at the officers.

Officer Mack assumed a position of cover behind his door as Vicencio ran, and he observed Vicencio collapse to the sidewalk. Backup units arrived, and Vicencio was transported to California Medical Center by paramedics, where he died of multiple gunshot wounds a short time later. The juvenile, [REDACTED], was arrested at the scene.

OFFICER RAFAEL PEREZ was interviewed by L.A.P.D. Robbery-Homicide Detective J. Gollaz (ID #22443). This was a tape-recorded, compelled statement, acquired after an administrative admonition. The statement was substantially identical to Officer Mack's statement.

MR. VICENCIO'S WEAPON. Sheriff's investigators at the scene recovered Mr. Vicencio's gun, which fell near his body. It was a .22 caliber semi-automatic pistol. The chamber of the pistol contained a single live .22 caliber round, and the magazine contained five live .22 caliber rounds.

CAUSE OF DEATH. Los Angeles County Coroner-Medical Examiner R. Riley, M.D., conducted the autopsy. Dr. Riley opined the cause of death to be trauma from multiple gunshot wounds. There were a total of seven gunshot wounds involving the head, abdomen, upper extremities, and lower extremities. The coroner's toxicology report revealed that Vicencio had both phencyclidine and alcohol in his blood at the time of death.

GUNSHOT RESIDUE EVIDENCE. During the autopsy, Vicencio's hands were examined for the presence of gunshot residue. These tests on his right hand came back positive, indicating that Vicencio had recently fired a gun.

II. LEGAL ANALYSIS

A. THE PROSECUTION MUST WEIGH BOTH SIDES OF THE EVIDENCE

A decision to charge an individual with a crime is made only if strict legal requirements are met. One such requirement is to be found in the Los Angeles County District Attorney's Legal Policies Manual, at Section I.A., Paragraph 1.d:

The prosecutor [should charge only if he or she] has considered the probability of conviction by an objective fact finder hearing the admissible evidence and the admissible evidence is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of the charging and after considering the most plausible, reasonably foreseeable defense inherent in the prosecution evidence.

B. THE BURDEN OF PROOF IS PROOF BEYOND A REASONABLE DOUBT

In any homicide prosecution, the burden is on the prosecution to prove beyond a reasonable doubt that the homicide was unlawful, that is, not excusable or justifiable. If the [jury] has a reasonable doubt that the homicide was unlawful, they must find the defendant not guilty. California Jury Instructions--Criminal (CALJIC) 5.15.

C. A POLICE OFFICER MAY USE DEADLY FORCE IN SELF-DEFENSE

Officer Mack told investigators that he shot Vicencio because Vicencio pointed a gun directly at his head, and appeared ready to fire. Hence, this shooting must be evaluated under the legal guidelines authorizing the use of lethal force in self-defense. California law permits the use of deadly force in one's self-defense if it reasonably appears to the person claiming the right of self-defense that he actually

and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731.

The killing of another person in self-defense is justifiable and not unlawful when the person who does the killing honestly and reasonably believes: (1) That there is imminent danger that the other person will kill him or another or cause them great bodily injury, and (2) That it was necessary under the circumstances to kill the other person to prevent great bodily injury or death to himself or another person. In order to justify killing another person in self-defense or defense of another, actual danger is not necessary. On the other hand, a mere fear of death or great bodily injury is not sufficient. California Jury Instructions -- Criminal (CALJIC) 5.12, 5.13. It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, such person may use all force and means which he believes to be 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. CALJIC 5.30.

A person threatened with attack that justifies the exercise of the right of self-defense need not retreat. In the exercise of his right of self-defense such person may stand his ground and defend himself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. CALJIC 5.50.

The Supreme Court clarified the standard that must be used in evaluating an officer's conduct in Graham v. Connor (1989) 490 U.S. 386, 396-397:

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 The calculus of reasonableness must embody the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.

III. CONCLUSION

After reviewing the evidence, we have concluded that the shooting of Jessie Vicencio falls within the parameters of appropriate self-defense. Vicencio pointed a gun at Officer Mack's head during a narcotics transaction. At the moment Officer Mack fired his gun, Vicencio possessed the present ability to inflict a mortal injury on him. Officer Mack responded as any reasonable person would have under the

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circumstances -- he fired at Vicencio to save his own life. There is no evidence that this shooting did not occur in self-defense. The shooting of Jessie Vicencio was not a criminal act. In light of our review of the evidence surrounding this incident and our legal analysis, we will take no further action, and consider the case closed.

Very truly yours,

GIL GARCETTI
District Attorney

R. DAN MURPHY
Assistant District Attorney

By 

PENNY L. SCHNEIDER
Deputy District Attorney
(213) 974-9905

cc: Detective W. F. Holcomb
Officer David Mack
Los Angeles Police Protective League
American Civil Liberties Union
Black Advisory Council
Hispanic Advisory Council