

**Fatal Officer Involved Shooting of Kenneth Lewis, Jr.
Los Angeles County Sheriff's Department**

Deputy Ryan Rothrock, #528312

J.S.I.D. File #17-0402



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

February 6, 2023

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Fatal Officer Involved Shooting of Kenneth Lewis, Jr.
J.S.I.D. File # 17-0402
L.A.S.D. File #017-125632131013

DATE: February 6, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 16, 2017, fatal shooting of Kenneth Lewis, Jr. by Los Angeles County Sheriff's Deputy Ryan Rothrock. It is our conclusion that the People cannot prove beyond a reasonable doubt that Deputy Rothrock did not act lawfully in self-defense and defense of others at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on August 16, 2017 at 9:59 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on investigative reports, surveillance video footage, transcripts of interviews, recordings of radio and dispatch calls, firearm and laboratory analysis reports, coroner's reports, photographs, and witness statements submitted to this office by LASD Homicide Bureau Sergeant Marc Boscovich. Deputy Rothrock's voluntary statement was considered as part of this analysis.

FACTUAL ANALYSIS

Imperial Highway is a multilane east-west thoroughfare. Hawkins House of Burgers (Hawkins) sits on the southwest corner of Slater Street and Imperial Highway. Slater Street ends immediately south of Imperial Highway, at the embankment of the 105 Freeway.

This small dead-end sits due south of the intersection of Slater Street and Imperial Highway and is known for narcotics transactions. It is claimed by the Bounty Hunter Bloods gang which is active within Nickerson Gardens Housing Complex (NGHC). A walkway leads from the north sidewalk of Imperial Highway, through a gate and into the complex, past NGHC Building ■■■ to the west, and a swing set and play area to the east.

File: 017-12563-2131-044
Loc: Imperial Hwy/Slater Street, Los Angeles
I/O: Det. S. Blagg/Det. S. Lawler
Date: 08/16/2017
Sketch: Deputy J. Chun

NOT TO SCALE

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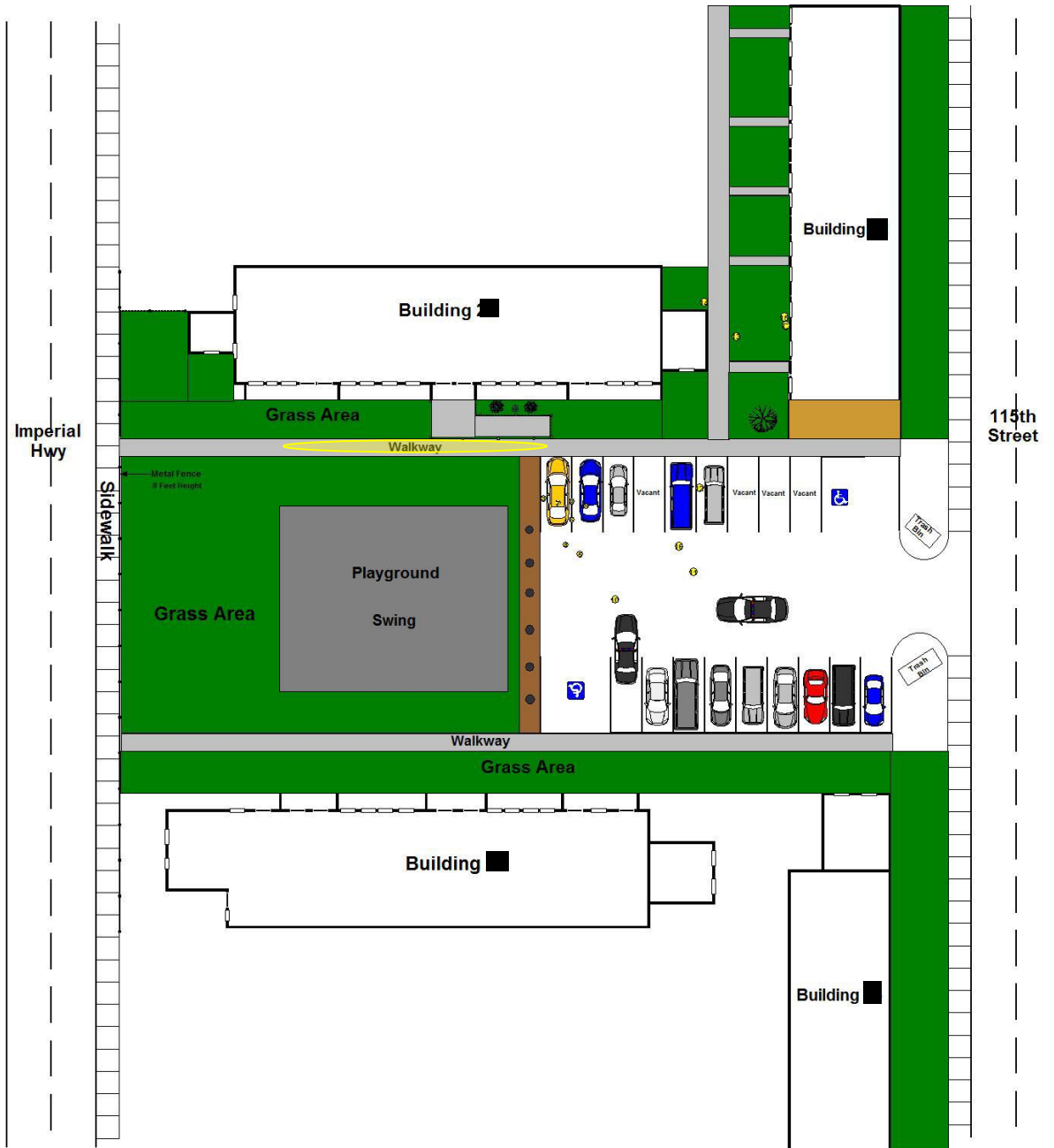


Figure 1: Aerial view of scene with walkway between swing set and Building ■ highlighted.

Witness Statements

Statement from LASD Deputy Ryan Rothrock

On August 16, 2017 at approximately 7:13 p.m., LASD Deputies Ryan Rothrock and Christopher Booth-Mahood were assigned to the Summer Crime Enforcement Team (SCET),¹ working uniformed patrol. Rothrock was driving their marked patrol car westbound on Imperial Highway, when they observed a beige PT Cruiser parked facing the wrong way where Slater Street dead-ends. They saw a man, later identified as Kenneth Lewis, Jr., standing at the open driver's side door of the PT Cruiser.



Figure 2: Aerial view of scene with location of PT Cruiser and location of OIS indicated.

Rothrock made a U-turn, returning to the intersection of Slater Street and Imperial Highway to contact Lewis and ask why the car was parked illegally. He pulled southbound onto Slater Street, stopping directly behind the back bumper of the PT Cruiser. As Rothrock put the patrol car in park, Lewis turned towards them with a surprised look, then leaned his head and hands

¹ Units assigned to the SCET generally do not receive radio calls, but rather are part of a pro-active crime-prevention approach to increase patrol resources and visibility in unincorporated areas.

into the PT Cruiser. Rothrock exited the patrol car and Lewis fled eastbound on a dirt trail. Rothrock yelled to him, "Sheriffs! Stop running! Show me your hands!" Rothrock could see Lewis' left hand move as he ran, but could not see Lewis' right arm which stayed close to his body. Because Lewis left the car door open when he ran away, Rothrock told Mahood the car may be stolen and said, "Let's contain this guy." Mahood stayed with the PT Cruiser. Rothrock ran northeast through the parking lot and then eastbound along the south sidewalk of Imperial Highway.



Figure 3: Still from security camera showing Rothrock (circled) turning northeast and Mahood exiting patrol car just after Lewis ran from PT Cruiser (parked in front of patrol car) and out of view behind the building.

Lewis ran behind the businesses facing Imperial Highway and then northbound up a small path. Rothrock saw Lewis pop out from behind a storage container and again ordered him to stop running and to show his hands. Per Rothrock, Lewis looked angry or determined and did not comply. Lewis ran northwest, across Imperial Highway, dodging cars, towards a gate on the southern edge of NGHC. As Lewis ran, he held a bulge in his right front pants pocket with his right hand. Rothrock was concerned Lewis was concealing a firearm. Rothrock keyed his mic to broadcast that he was in a foot pursuit, but he paused the broadcast in order to follow Lewis safely across Imperial Highway through cross-traffic. Rothrock held his duty weapon in his hand as he ran.

Lewis reached the north curb of Imperial Highway and Rothrock continued to command Lewis to stop running and lie down. Lewis ran to the pedestrian gate and then stumbled and fell to his knees. Rothrock commanded Lewis to stay down and put his hands behind his back. Instead, Lewis pushed back up to his feet and ran northbound, further into NGHC. Rothrock saw that

Lewis had pulled a small black, semiautomatic firearm from his right pocket. The grip of the gun appeared to be wrapped in a rag.

With the gun in his right hand, Lewis ran northbound on the pathway next to Building #■■■. Lewis slowed briefly and “seemed as for a second he was like fiddling with the gun.” Rothrock again ordered him to stop and let him see his hands. Lewis turned to face Rothrock and extended his right arm with the gun, at Rothrock.² Rothrock, in fear for his life, fired several rounds from his duty weapon.³ Lewis turned and ran several more paces. Rothrock initially believed Lewis was not struck by gunfire. Noticing cars parked in the lot next to him, Rothrock took cover just as Lewis “fell on the floor right on the sidewalk” just north of Building #■■■. At this point, Rothrock “registered” that perhaps his first shots did strike Lewis. Rothrock heard Mahood broadcast on the radio that there had been a shooting. From the cover of the cars in the lot, Rothrock commanded Lewis to lie face down and put his hands behind his back. Lewis was still moving and Rothrock had to move behind the cars to keep him in view. When Lewis fell to the ground, his head was west/northwest and his feet were pointing towards Rothrock, but Lewis rolled from his stomach onto his left side. Rothrock did not see the gun in Lewis’ hand at this point but believed Lewis was still armed because he also “didn’t see it on the floor next to [Lewis.]” Lewis looked at Rothrock and began to raise his right arm. Rothrock stated he believed Lewis was going to fire his gun at him, therefore Rothrock fired several more shots. Rothrock reloaded his magazine and again commanded Lewis to lie down. Lewis did not comply and was reaching his right hand toward Rothrock. Still in fear for his life, Rothrock fired another round. Lewis then rolled back over to face down.

Rothrock stepped forward and saw that Lewis’ gun was on the ground to the south of his feet.

² Rothrock could not recall whether Lewis turned to the left or the right. He noticed that he was seeing the front of Lewis’ body and focused on the gun.

³ Rothrock became scared “because [Lewis] had the jump on [him].” He believed he fired five to six shots at this point, at a distance of 25 to 30 feet as they both stood on the same walkway. Rothrock estimated Lewis was “right before the parking lot” and about 15 feet south of the north side of Building #■■■



Figure 4: Still from security camera showing Lewis appearing to drop an item on the ground while Rothrock had turned away from him to take cover between two parked cars.

Now that it was safe to do so, Rothrock radioed his location, that he was detaining Lewis at gunpoint, and requested paramedics. Lewis was breathing and still moving as he lay on the ground. A large crowd of people formed behind Rothrock, yelling at him. Mahood arrived to assist Rothrock, and then another unit arrived, including Deputy Miguel Paz. Rothrock asked Paz to retrieve the gun and rag from the ground because there were adults and children nearby. The crowd was hostile towards the deputies and Rothrock was concerned that someone could pick up the gun.⁴

Rothrock and other deputies handcuffed Lewis, rolled him onto his left side, and assured him that paramedics were on their way. Additional deputies told the crowd to make way so the paramedics could access the parking lot and render aid to Lewis. Prior to Rothrock being transported to the station, he saw that Paz had Lewis' gun wrapped in the rag and tucked into the front of his duty belt. Because the scene was still volatile, Rothrock asked for the gun to ensure it was placed in a secure location. Using the rag to hold the gun, he could see that a magazine was inserted in the well and the slide was forward. Without rendering the gun safe or otherwise manipulating it, he put it into the trunk of the nearest LASD patrol car. Rothrock advised Deputy Carlos Galdamez that the gun was in the trunk of his patrol car.

⁴ Rothrock had responded to an incident at NGHC a week prior when residents threw rocks and bottles at LAPD officers. That incident contributed to his perception of the need to retrieve Lewis' gun immediately while the crowd was still close to the scene.



Figure 5: Lewis' gun.

Statement from LASD Deputy Christopher Booth-Mahood

Mahood exited the patrol car and was about to help Rothrock contact Lewis when he noticed another man, later identified as [REDACTED], was seated inside the PT Cruiser. As Rothrock began chasing Lewis across Imperial Highway, Mahood detained [REDACTED] in their patrol car. Mahood then began to broadcast that they were in a foot pursuit. Mahood heard the first rounds fired just as he entered the first lane of Imperial Highway. He then changed his broadcast and “put out 998.”⁵ Mahood heard multiple rounds. He looked up and saw Rothrock standing in the NGHC parking lot, between two vehicles parked facing west.⁶ Rothrock was looking back at Mahood, with his gun pointing where Mahood believed Lewis had run. Mahood could not see Lewis. Rothrock broadcast that there was a man down and requested assistance. The traffic on Imperial Highway kept Mahood from getting to Rothrock faster. As he arrived, Rothrock told Mahood, “He’s got a gun, but I’ve got him. Focus on the crowd.” A crowd of people was growing. Rothrock continued to tell Lewis to show his hands. Once other deputies arrived, Mahood helped them shift the crowd so that fire department personnel could reach Lewis to render aid. The medics treated Lewis until he was transported from the location by ambulance. Mahood did not witness Lewis’ gun being recovered.

⁵ “998” is radio code for shots fired.

⁶ Mahood believed Rothrock was already standing in the parking lot at the moment Mahood heard the first shots and began to broadcast that shots were fired.

Statement from [REDACTED].

In a recorded interview, [REDACTED] told investigators that on August 16, 2017, shortly after 7:00 p.m., he parked on Slater Avenue in front of Hawkins. He took a phone call and then entered Hawkins to order food. He was still on his phone as he stepped back outside to wait for his order to be prepared. A patrol car pulled in behind a car parked across the street in the dead end. He noticed a man (Lewis), standing by the front driver's side of the car, wearing a white shirt under an open black zip-up sweater. The deputies told Lewis, "Let me see your hands." Lewis "gave a smirk," turned away from them, and immediately started running behind the stores on the other side of Slater Avenue. [REDACTED] saw that Lewis was holding up his baggy black sweatpants as he ran. The deputies had their guns drawn and repeated, "Stop," and "Let me see your hands." Lewis "just didn't let go of his pants" and [REDACTED] did not "know if he was holding something." [REDACTED] clarified that it looked like Lewis' hand was holding a bulge in his shirt or sweatpants. One of the deputies (Rothrock) "veered through the front" of the stores, toward Imperial Highway, while the other (Mahood) "stayed behind by the car." [REDACTED] saw Lewis run from behind a shed and towards Imperial Highway. Rothrock had actually run past that point and had to turn back to follow him across Imperial Highway.

Lewis was nearly struck by cars as he ran across Imperial Highway. He ran into NGHC, with Rothrock running after him. Just as Lewis got ten feet inside the gate, he fell to the ground, landing on his elbows and knees. Rothrock was about fifteen feet away from Lewis, just outside the gate into NGHC. [REDACTED] believed Rothrock had tased Lewis.⁷ Lewis got back to his feet and continued running north on a path with apartments to the west. There were children on the playground in this area. Rothrock continued after him with his gun drawn. [REDACTED] lost sight of both men and heard ten to fifteen gunshots. As the gunshots concluded, he saw Rothrock retreating by circling to his right, towards the other side of the playground.

[REDACTED] noticed that Mahood initially had started to follow Rothrock, but then "stepped back like he didn't want to leave the car by itself." After the gunshots, Mahood did cross Imperial Highway to NGHC. As more deputies arrived, [REDACTED] noticed that another man had been removed from the PT Cruiser and detained in the patrol car. He also noticed "a bunch of people" come out of the apartments to confront the deputies.

Statement from Deputy Miguel Paz

On August 16, 2017, Paz responded to a call of a deputy-involved shooting in NGHC. He saw Rothrock and Mahood taking cover behind vehicles in the parking lot. Twenty to 30 residents were forming a group and yelling at the deputies who were detaining Lewis at gunpoint. Lewis was lying on a cement walkway between Building # [REDACTED] and Building # [REDACTED], to the west of the parking lot. He seemed to be in pain and was rolling around. Lewis was mostly on his stomach with his hands underneath his body.

Paz saw a small black semiautomatic firearm lying on a yellow cloth on the ground about five feet from Lewis. Paz formed a plan with Rothrock and Mahood to approach Lewis and provide medical attention. Paz was to provide security for the other deputies because of the crowd which

⁷ [REDACTED] stated that "he had a gun" and he believed Rothrock had tased Lewis because he saw Lewis fall to the ground but did not hear any gunfire. The interviewers did not clarify whether [REDACTED] ever saw something in Lewis' hands after the point where Lewis was running across Imperial Highway, holding a bulge near his waistband.

had gathered. As Rothrock and Mahood approached Lewis, Paz leaned down and used the yellow cloth the gun was lying on to recover it. Paz felt it was unsafe to leave the gun on the ground due to the size and attitude of the crowd which was forming.

Paz kept the gun in the cloth and tucked it behind his magazine pouch on his belt. Approximately ten minutes later, Paz gave the gun to Rothrock, still wrapped in the cloth. Paz helped create a perimeter to keep the area around Lewis secure and permit others to render medical aid to him.

Statement from Deputy Carlos Galdamez

Galdamez saw Rothrock place the gun wrapped in a yellow microfiber towel in the trunk of his patrol car. Galdamez ensured that the trunk was secure until LASD Homicide Detective Blagg arrived and collected the gun for evidence.

Statements from other witnesses

Deputy Garrett Wert canvassed numerous individuals in the area of Hawkins Burgers and Slater Avenue. Only [REDACTED] stated he saw the shooting.

Surveillance Video Evidence

Security cameras on the exterior of Hawkins recorded Rothrock's initial contact with Lewis. Another video camera placed high on a utility pole due north of Slater Street, within NGHC, recorded a portion of the foot pursuit and shooting which ensued. The video quality for both cameras is poor and the camera angles capture only portions of the entire event.

Hawkins Video Footage

The time stamp for the cameras from Hawkins is approximately 53 minutes behind the actual time.⁸ Around 3:00 p.m. on August 16, 2017, an unknown man, possibly Lewis, drives the PT Cruiser to Slater Avenue and leaves it parked facing south on the east side of the dead-end street. The driver exits the PT Cruiser and walks northeast and out of view. Around 7:00 p.m., [REDACTED] drives a black Jeep into the parking lot on the southeast corner of Slater Avenue and Imperial Highway. Lewis then walks into view. Between 7:00 and 7:15 p.m., Lewis, [REDACTED], and a third, unidentified man can be seen exiting and entering the PT Cruiser, the Jeep, and a truck parked nearby. In the process, Lewis moves a bag from the PT Cruiser to the truck and then returns to the PT Cruiser, with [REDACTED].⁹

Shortly after this exchange, an LASD patrol vehicle drives westbound, then eastbound on Imperial Highway, and through the lot on Slater and parks behind the PT Cruiser. Lewis, who was standing in the open driver's side doorway of the PT Cruiser, runs eastbound behind the buildings across the street from Hawkins just as Rothrock exits and approaches.¹⁰ Rothrock's

⁸ Indicated times for events seen on the Hawkins cameras are adjusted for this discrepancy, but still approximate.

⁹ The PT Cruiser was towed from the scene and searched pursuant to a search warrant. The other vehicles left the scene before investigators reviewed the video.

¹⁰ Lewis' frame, in his dark sweatshirt, is indistinct against the shadowed interior of the PT Cruiser. The first movement that can be distinguished is the striping on his sweatpants as he begins to run away.

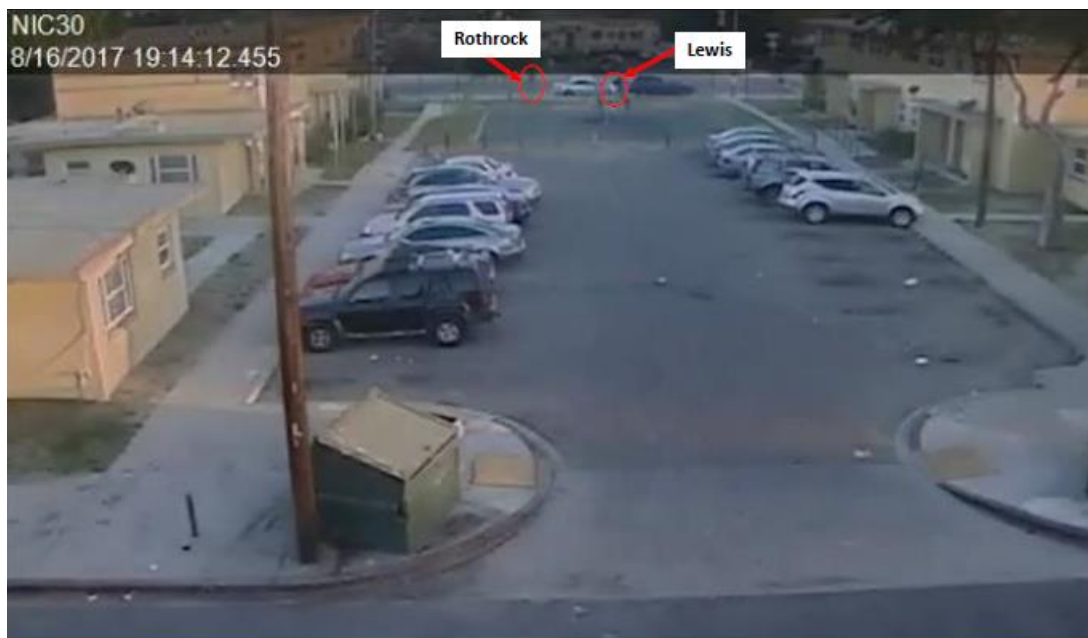
pursuit of Lewis and the interaction between Mahood and [REDACTED], that is visible on the Hawkins' cameras is not inconsistent with Rothrock, Mahood, and [REDACTED]'s statements. [REDACTED] is visible outside the door to Hawkins, talking into a cell phone. [REDACTED] and other individuals standing outside of Hawkins appear to react to something across Imperial Highway, to the north. Additional patrol cars drive past on Imperial Highway one to two minutes later.



Five minutes after Mahood leaves [REDACTED] in the patrol car and crosses Imperial Highway, an unknown man walks from behind the businesses across the street from Hawkins, removes a bag from the PT Cruiser, and walks east on Imperial Highway with it. Approximately five minutes later, another patrol car parks on Slater Avenue and two additional deputies exit and remain at the location.

NGHC Video Footage

The Los Angeles Police Department (LAPD), Southeast Division maintains security cameras within NGHC. One camera placed high on a telephone pole to the north of the parking lot nearest this incident captured a partial view of the incident. LAPD provided footage from the camera, beginning at a time-stamp of 19:13:01 on August 16, 2017. Barely visible in the background between 19:13:16 and 19:14:10 is the patrol car driving westbound and then eastbound on Imperial Highway before parking southbound on Slater Avenue, Rothrock running northeast towards Imperial Highway, and Lewis running northwest across Imperial Highway, followed by Rothrock.

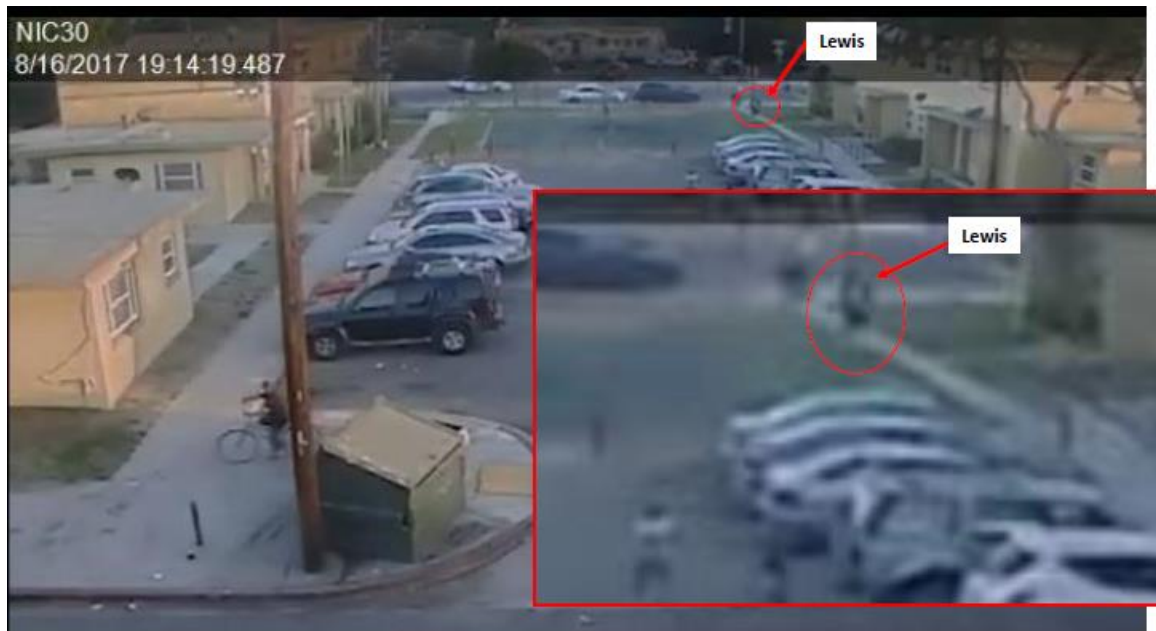


Next, at 19:14:15, a man (Lewis) runs through the gate to NGHC from Imperial Highway and stumbles to his hands and knees as a deputy (Rothrock)¹¹ approaches holding his duty weapon and appearing to speak to Lewis;



¹¹ All identification of individuals visible in the security camera footage are inferred from witness statements and physical evidence. The poor quality of the footage precludes visual identification of anyone.

At 19:14:19, Lewis gets up and runs north on the path with an unidentifiable light-colored item barely visible near his right hand; Lewis slows, twists his upper body to the right, and then continues to move north along the path as Rothrock follows with his right arm extended;



At 19:14:28, Lewis approaches the corner of Building # [REDACTED] twists to the left, then drops to the ground as Rothrock steps between cars in the parking lot to the east of the path;



At 19:14:31, Lewis gets back to his feet and continues northwest, leaving something light-colored behind on the dirt next to the path as Rothrock repositions himself behind other cars;



At 19:14:34, Lewis takes a few more steps, dives westbound, and apparently lands on the ground with only his shoes still visible in the frame;¹²

¹² Additional red circles in these detail photo highlight location of item Lewis leaves behind on the ground.



At 19:14:34, Lewis' legs roll back and forth and slightly out and back into the frame as Rothrock fires at least five shots, as inferred from plumes of dust rising from next to the path;



- 19:14:38 Rothrock repositions himself east of the cars parked closest to the westbound pathway where Lewis dove to the ground; holding him at gunpoint;
- 19:15:45 Residents begin to arrive on the east side of the parking lot;
- 19:15:59 Mahood enters the gate and runs northbound towards Rothrock;
- 19:17:24 Several patrol units begin to arrive on Imperial Highway and four deputies are the first to arrive to assist Rothrock and Mahood;
- 19:18:28 Four deputies begin to approach Lewis; one (Paz) steps to the side and retrieves the light-colored item from the ground and stands back while apparently securing it near his waist;

From 19:19:34 to 19:25:53, additional deputies move the crowd back slightly, put up crime scene tape, and enable the access of Fire Department personnel. Before the Fire Department vehicle enters, another deputy (Puente) collects items from the pavement in the parking lot and appears to place them in a manila envelope. After multiple additional units arrive, and much movement around the scene, a deputy (possibly Rothrock) opens the trunk of a patrol car parked in the lot and then closes it again.¹³

Evidence Collected

Firearm Evidence

LASD Criminalists located, diagramed, collected and/or photographed the following evidence found at the location:

- A Diamondback Firearms 9mm semiautomatic firearm Model #DB9, 9x19 with six live GFL 9mm Luger rounds in the magazine, on a yellow microfiber towel, located in Galdamez' patrol car;
- Six Luger 9mm cartridge cases and one empty PB Cal 9 Para Magazine recovered from Puente;
- Nine fired WIN 9mm Luger cartridge cases and one fired bullet recovered from the parking lot between Building #21 and Building #23.
- Bullet fragment on the ground near Building #22;
- Bullet impact to the exterior south-facing wall of Building #22.

Rothrock was armed with a Beretta 92FS 9mm semiautomatic pistol with a 15 round capacity magazine. Based on an examination of the firearm and the evidence recovered at the location, investigators determined that Rothrock fired 17 rounds during the incident.

¹³ During this portion of the footage, personnel at LAPD Southwest Division start to swivel the camera, tracking the crowd and the arrival of the Fire Department vehicles, making it impossible to view the details of these events.

Other Evidence Collected from the Location

LASD Criminalists also photographed and recovered the following evidence:

- A black baseball hat in the second lane of eastbound traffic of Imperial Highway;
- A bag of marijuana, cellphone, and \$2440.66 in currency from the pockets of Lewis' sweatpants;
- A bag containing other plastic bags recovered near Lewis' clothing.



Forensic Analysis of Collected Evidence

LASD Criminalists obtained a single partial latent print from the magazine of the Diamondback 9mm semiautomatic pistol Lewis left at the scene. Lewis was excluded as the source of that print.

LASD Senior Criminalist Amber Sage obtained DNA samples from Lewis' gun and compared the profiles generated from those samples to Lewis' DNA profile where possible. All of the profiles obtained from the gun were mixtures of partial profiles. The magazine, trigger, and trigger guard contained DNA from at least three individuals and Lewis was excluded as a contributor. The grip and slide contained DNA from at least two individuals, but Sage was not able to draw any conclusions about the identity of the contributors due to the complexity of the mixture. Similarly, the yellow towel contained DNA belonging to an unknown number of contributors and Sage was not able to draw any conclusions about the identity of the contributors due to the complexity of the mixture. Sage tested the six live rounds that were in the magazine of the gun, but no DNA was detected in the samples obtained.



Autopsy Evidence

Lewis was transported to St. Francis Hospital but succumbed to his wounds during surgery and was pronounced deceased at 10:05 p.m.

On August 20, 2017, Senior Deputy Medical Examiner Dr. Raffi Djabourian conducted an autopsy and determined the cause of death was due to multiple gunshot wounds. Four gunshot wounds penetrated the lower abdomen, traveling left to right, slightly upwards and slightly front to back. Dr. Djabourian determined these wounds were fatal. The following wounds were non-fatal or not rapidly fatal: two gunshot wounds grazing the chest, one traveling left to right and “minimally downward,” and another nearly horizontal one of indeterminate direction; a gunshot wound to the left buttock and sacrum, traveling upwards and back to front; and a gunshot wound through the left hand that could have been caused by a projectile that proceeded to cause one of the other wounds to the torso or abdomen. Djabourian recovered five deformed copper bullets while determining the trajectories of injury.

The toxicology for Lewis returned positive for marijuana and opiates. The opiate results could reflect anesthesia administered during surgery.

The paths of travel of the wounds to Lewis’ chest are consistent with shots fired while Lewis twisted his torso towards Rothrock after he pulled out his gun and ran north on the path into NGHC. The path of travel of the wound to Lewis’ buttock is consistent with a shot fired as he got back to his feet near the corner of Building #21 or dove around the corner and to the ground just off the pathway. The paths of travel of the wounds to Lewis’ abdomen are consistent with shots that ricocheted from the ground when Rothrock fired if Lewis was on the ground but turned onto his left side and looked east toward Rothrock.

LEGAL ANALYSIS

Any police officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, prevent escape, or overcome resistance. Penal Code section 835a. An officer “may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him.” People v. Mehserle (2012) 206 Cal.App.4th

1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196.

An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.” CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. People v. Mehserle (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” *Id.* at 1146; *quoting* People v. Bond (1910) 13 Cal.App. 175, 189-190.

The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

California law permits any person, including police officers, to use deadly force in self-defense or in the defense of others, and, if someone dies as a result, this is a “lawful excuse” which precludes a conviction for murder. Penal Code sections 197, 198; CALCRIM No. 505. This defense is available if the killer actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *see also* 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. In protecting himself or another, a person may use all the 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. 505, 3470. Actual danger is not necessary to justify the use of deadly force in self-defense; if the person’s beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 505, 3470. The prosecution has the burden of proving beyond a reasonable doubt that the killer did not act in self-defense. *Id.*

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. “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 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. Connor (1989) 490 U.S. 386, 396-397.

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self-defense is the same whether the danger is real or apparent. People v. Toledo (1948) 85 Cal.App.2d 577, 580.

“An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.” Thompson v. Hubbard (2001) 257 F.3d 896, 899.

If a person acted from reasonable and honest convictions, he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. People v. Jackson (1965) 233 Cal. App. 2d 639. “A defendant may well be mistaken in his assessment of the circumstances; but if reasonably so, he is nevertheless entitled to the defense.” Humphrey, supra.

Before a jury may rely on circumstantial evidence to find a defendant guilty, they must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If two or more reasonable conclusions can be drawn from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, a jury must accept the one that points to innocence. *See* CALCRIM No. 224.

CONCLUSION

The evidence examined shows that Rothrock formed the opinion that the PT Cruiser was stolen because Lewis looked surprised when he noticed the deputies and fled, leaving the driver’s side door open. Thus, Rothrock was acting on reasonable suspicion when he attempted to detain Lewis. Rothrock was also acting within reason when he ordered Lewis to stop running and show his hands for officer safety. An independent witness saw that Lewis did not comply with Rothrock’s commands to show his hands and he believed Lewis was holding an object in his pants.

The surveillance video shows Lewis fleeing from Rothrock, failing to comply with any commands to stop, lie down, or show his hands, and pausing as he ran along the path and twisting his torso as if to look behind him.

These movements are also consistent with Rothrock’s statements that he believed Lewis was armed, that he believed he saw the gun wrapped in a rag in Lewis’ hand, that Lewis turned towards him, and that Lewis did not stay on the ground after dropping down the first time. After Lewis turned and dropped again, he rolled towards Rothrock and Rothrock perceived that Lewis was lifting the hand that he believed held the gun. As was later determined, the gun and the rag were already on the ground to the east and south of Lewis’ feet. Rothrock did not recount the second time Lewis dropped to the ground, when—as visible on the surveillance footage—he left an item behind before jumping and dropping again. Based on the available evidence, it appears that Rothrock had turned to take cover between the cars in the parking lot at that moment.

Lewis was off camera when he received the fatal shots to his abdomen. There is no video evidence to contradict Rothrock’s statements that Lewis rolled onto his side and raised his right hand. The autopsy findings support the inference that Lewis was not lying on his stomach at the time the fatal shots were fired. Rothrock stated that he believed that the gun was in Lewis’ right hand as he rolled over and lifted his hand towards him. The burden would be on the prosecution to prove beyond a reasonable doubt that this belief was not only unreasonable but also not honest.

Under the circumstances, there is insufficient evidence to prove beyond a reasonable doubt that that Rothrock did not reasonably believe that Lewis posed a threat of serious bodily harm or death and found it necessary to respond with deadly force.