

Fatal Officer Involved Shooting of Emilio Robles
Los Angeles Police Department

**Officer Ben McPheeters #, Officer Derrick Ybarra #36360,
Officer Andre Burton #40021, Officer Richard Garcia #39758,
Officer Kristofer Espinoza #40151, Officer Christian Guereca #41060,
Officer Anthony Hugoboom #41159, Officer Shuehei Fuchigami #43010,
and
Officer David Skotte #43709**

J.S.I.D. File #19-0187



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

April 26, 2023

MEMORANDUM

TO: CAPTAIN RICH GABALDON
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Fatal Officer Involved Shooting of Emilio Robles
J.S.I.D. File # 19-0187
L.A.P.D. File # F018-19

DATE: April 26, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 1, 2019, fatal shooting of Emilio Robles by Los Angeles Police Department (LAPD) Officers Ben McPheeters, Derrick Ybarra, Andre Burton, Richard Garcia, Kristofer Espinoza, Christian Guereca, Anthony Hugoboom, Shuehei Fuchigami, and David Skotte. We find that there is insufficient evidence to prove beyond a reasonable doubt that the involved officers did not act in lawful self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting on May 1, 2019 at approximately 12:30 a.m. The District Attorney Response Team responded to the location. They were given a briefing of the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based upon the recorded interviews of involved parties and witnesses, body worn video (BWV) footage and reports prepared by the Los Angeles Police Department (LAPD), submitted to this office by Lieutenant Damian Gutierrez of the Force Investigation Division. Compelled statements by the shooting officers were not reviewed or considered in this analysis.

FACTUAL ANALYSIS

On April 30, 2019, at approximately 11:05 p.m., Southeast Patrol Division (SPD) officers responded to a radio call of a "415 Man with a Gun" at [REDACTED] East 113th Street. The comments of the call indicated that the suspect was a male Hispanic, under the influence of alcohol and possible narcotics, standing on top of a vehicle, talking to himself and waving a handgun. This individual was later identified as Emilio Robles. As the officers arrived at scene, Robles pointed a handgun at the officers and fired in their direction, resulting in an Officer-Involved Shooting (OIS). Robles proned himself behind the open driver's side door of the vehicle parked in his driveway. Approximately five minutes later, Robles pointed the handgun at the officers again, resulting in a second OIS.

Nine officers fired at Robles: Ben McPheeters, Serial #30482, Derrick Ybarra, Serial # 36360, Andre Burton, Serial # 40021, Richard Garcia, Serial #39758, Kristofer Espinoza, Serial # 40151, Christian Guereca, Serial # 41060, Anthony Hugoboom, Serial # 41159, Shuehei Fuchigami, Serial # 43010, and David Skotte, Serial #43709.

Nine projectiles were recovered from Robles's remains during the autopsy. Four fired bullets recovered exhibited general rifling characteristics consistent with Officer Burton's rifle. One fired bullet recovered from Robles's remains exhibited general rifling characteristics consistent with Officer McPheeters's rifle. One fired bullet fragment exhibited general rifling characteristics consistent with Officer Fuchigami's pistol. One fired bullet fragment recovered lacked sufficient information to determine if it was projectile related and therefore no further analysis was performed.

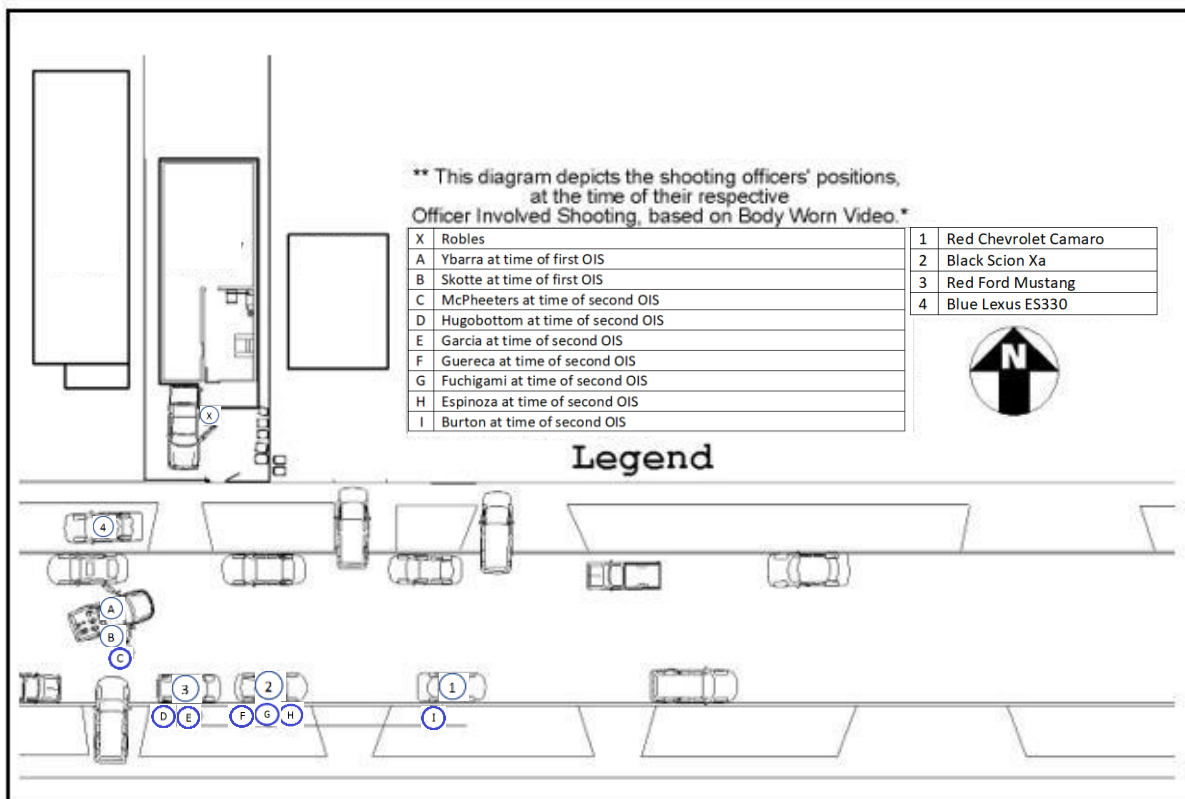


Diagram showing locations of all shooting officers at the time that they fired their weapons.

The OIS incidents occurred in the 1900 block of East 113th Street in South Los Angeles. The first OIS incident occurred at 11:05 p.m. and the second OIS incident occurred approximately five minutes later at 11:10 p.m.

OIS # 1 – Ybarra and Skotte

On April 30, 2019, at approximately 10:50 p.m., [REDACTED] was inside her residence at East 113 Street when she heard a noise outside. Believing that someone was breaking into her father's

truck, she called 9-1-1. She walked outside and saw Emilio Luis Robles standing on top of his own vehicle talking to himself. Robles had a bottle of tequila in his left hand and was waving a gun in his right hand.

Southeast Patrol Division (SPD) uniformed police officers Craig Garcia and Byron Lugo were in a black and white marked police vehicle when they acknowledged the radio call and responded to the location. SPD uniformed officers Derrick Ybarra and David Skotte were also working in a marked black and white police vehicle when they responded to the same radio call. Ybarra and Skotte were designated the backing unit and Garcia and Lugo were the primary unit.

As Ybarra drove toward the location, eastbound on 113th Street from Wilmington Avenue, Sanchez broadcast the following information – “Black and whites looks like he’s getting into his car, driver door is open, a pair of scissors on the front of his hood, and another it looks like glass bottle. Hey guys he just took out something with his right hand. Officer needs help, shots fired, shots fired! He’s firing at the officers.”

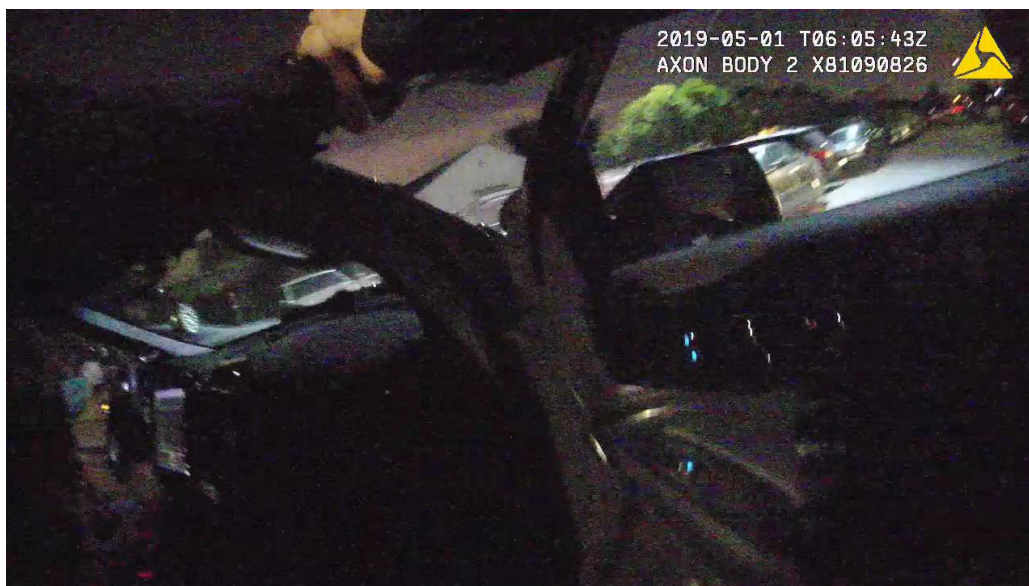
██████████ was standing inside of her front door and estimated she was approximately 80 steps from Robles when she saw Robles waving a handgun in his right hand. The street was well lit by streetlights and residential lights. ██████████ was on the phone with a dispatcher when Robles started shooting. She observed Robles shoot at the police car when the officers were still inside their vehicle. ██████████ said that Robles fired four to five times before she ran inside of her house.

██████████ said, “The first one was from him, because I seen it clearly. Because you know when you fire a weapon, you hear, you see the light? You see it, and I seen it. And that’s when I was like oh my God and I threw myself to the floor, and I started calling to wake up my kids and I dragged them and took them to the room.¹”

According to Officer Sanchez, Robles was standing behind the open driver’s side door of the vehicle that was backed into the driveway. Sanchez saw Robles lift up his t-shirt, remove a handgun from his waistband and fire approximately four rounds in the direction of the officers. Sanchez observed this through use of binoculars.

According to Officer Skotte’s body worn video (BWV), he and Ybarra arrived at 11:05 p.m. Skotte immediately exited the police vehicle and stood in between the door and the vehicle on the passenger side. Skotte unholstered his pistol and fired five rounds towards Robles. Ybarra was seated in the driver’s seat when he fired five rounds in the same direction.

¹ ██████████’s transcript statement, page 20 lines 20-22 and page 21, lines 1-2.



Still photograph from Skotte's BWV showing the first OIS.

Immediately after Ybarra and Skotte stopped firing, Sanchez broadcast, "Hey guys, he's in a prone position underneath the car. He's in a prone position, use caution guys. Driver's side, he's in a prone position. Use caution guys, gun is still in his right hand, in a prone position, back side of the driver's side door guys. Gun still in his right hand guys. Use caution, do not approach."

OIS #2 – McPheeters, Burton, Garcia, Espinoza, Guereca, Hugoboom, Fuchigami

The second OIS occurred at 11:10 p.m. The sequence in which the officers discharged their weapons cannot be determined because the shooting happened simultaneously. The officers at scene had their BWV activated at the time of the OIS. Based on Skotte's BWV, the second OIS was eight seconds in duration. The officers' cameras captured the audio of the event, but based on the angle of their cameras, and the cover utilized, they did not provide a view of Robles' actions immediately prior to or during the second OIS.

A news media helicopter from KABC, Channel 7, Los Angeles captured a portion of the incident including the second OIS. According to the aerial footage, obtained via search warrant, Robles was captured in a prone position next to the rear tire, behind the open driver's side door of the vehicle parked in a driveway on East 113th Street. Based on the statements made by Officer Sanchez, this footage depicted the actions of Robles after the first OIS with Ybarra and Skotte. Robles can be seen holding a handgun in his right hand and a glass bottle in his left hand. Robles' body was facing in a southerly direction with his right arm extended forward along the ground and the barrel of the handgun pointed in a southerly direction. Robles lifted his head up and down several times and on approximately three occasions, used a twisting motion and pointed the handgun from a sideways position to a forward position in the direction of the officers.



Still photograph from the KABC video of Robles in the prone position after the first OIS but before the second OIS.

SPD uniformed Officers Jimmy Gov and Shuhei Fuchigami arrived in a marked black and white police car. According to Fuchigami's BWV they arrived at 11:05 p.m. Fuchigami unholstered his pistol and stood next to Skotte.

According to Skotte's BWV, Skotte remained in the low-ready position until Officer Bryan Lugo took his place in between the open door and front passenger side of the police car. Lugo was armed with a police rifle.

According to Fuchigami's BWV, at 11:10 p.m., Fuchigami stood next to the passenger door of Scion parked on the street when he fired three rounds from his pistol from over the roof of the vehicle towards Robles.

Officer Jimmy Gov also arrived at 11:05 p.m., in a marked police vehicle. Prior to exiting his vehicle, Gov heard three to four shots fired and observed at least one muzzle flash coming from Ybarra's pistol. Gov unholstered his pistol and approached Ybarra and Skotte's police vehicle from behind. Gov said he then went to the south side of the street behind a parked vehicle where he was able to see Robles on the ground in the prone position next to the driver's side door holding a gun in his right hand. Gov did not fire his weapon.

According to Espinoza's BWV, Espinoza moved behind a blue Lexus parked on the grass area adjacent to the north sidewalk, just west of Robles's location. Espinoza then moved just behind Ybarra and Skottes' police vehicle, prior to standing next to the passenger side of the black Scion that was parked along the south curb. Espinoza held his pistol with a two-hand grip, hands above the front windshield area of the vehicle. According to his BWV, at 11:10 p.m., Espinoza fired nine rounds from his pistol in a northerly direction at Robles.

Officer David Sweet, Serial #36654 was driving the police vehicle and Officer Espinoza was the passenger. Sweet stated, "I believe we have an active shooter going on. It's going to escalate to deadly force. It already has. So for my safety and those around us – I unholstered." Sweet stated he considered going back to his police vehicle to retrieve his police rifle because Robles was behind cover and concealed. Sweet observed another officer on scene was already equipped with a rifle.

According to Sweet, he heard one gunshot followed by multiple gunshots during the OIS. Sweet was unable to see Robles during the second OIS and did not fire his pistol during the incident.

SPD uniformed officers Christian Guereca and Richard Garcia arrived in a marked black and white police vehicle and parked facing eastbound on East 113th Street from Wilmington Avenue. Guereca exited his police vehicle at 11:06 p.m., unholstered his pistol and ran east on the north sidewalk. Guereca stopped in front of a blue Lexus that was parked on the north sidewalk facing westbound. The Lexus was parked one house west of Robles's location. Guereca held his pistol in a two-handed ready position.

Guereca then redeployed to the south side of the street and stood next to the rear passenger quarter panel of a black Scion parked on the south side curb. According to Guereca's BWV, at 11:10 p.m. multiple gunshots were heard, however, the camera view was obstructed due to the fact that Guereca was standing against the rear passenger quarter panel of the Scion. The investigation determined that Guereca fired four rounds from his pistol from an approximate distance of 57 feet.

According to Garcia's BWV he exited the vehicle at 11:06 p.m. Garcia retrieved his Benelli shotgun from the trunk of the police vehicle and ran eastbound on East 113th Street. Garcia chambered a round and stood next to the passenger side door of Ybarra and Skotte's police vehicle. Garcia then relocated to the south side of the street and stood next to the passenger door of a parked red Ford Mustang. The investigation determined that Garcia fired one slug round from his Benelli shotgun from an approximate distance of 56 feet. His BWV captured the audio of the slug round being fired.

According to Officer McPheeters's BWV, he arrived on scene and exited his police vehicle at 11:07 p.m.. McPheeters parked on Wilmington Avenue at the intersection of East 113th Street. McPheeters recovered a patrol rifle from the trunk of the police vehicle and loaded a round into the chamber. McPheeters ran up to the passenger side of Ybarra and Skotte's vehicle. At 11:08 p.m., McPheeters stated, "I got a rifle guy!" According to McPheeters's BWV, at 11:10 p.m., he stood behind the front open passenger door and fired four rounds from his patrol rifle in the direction of Robles's vehicle.

According to Officer Burton's BWV he arrived at the scene and exited his police vehicle at 11:09 p.m. Burton recovered his patrol rifle from the trunk of his police vehicle and loaded a round in the chamber. Burton stood on the passenger side rear quarter panel of a parked red Chevrolet Camaro and pointed his patrol rifle towards Robles's vehicle. At 11:10 p.m., Burton stated, "He's under the car." Burton then fired thirteen rounds, paused for two seconds, and fired two additional rounds from his patrol rifle according to his BWV. Burton then yelled out, "He's

down!" At 11:11 p.m., Burton yelled again, "Hey, suspect's down!" Burton fired a total of fifteen rounds from a distance of approximately 71 feet.

According to Officer Hugoboom's BWV, he arrived at scene and exited his police vehicle at 11:06 p.m. Hugoboom retrieved his shotgun and chambered one round. Hugoboom approached the passenger side of Ybarra and Skotte's police vehicle and then went to the south side of the street where he stood on the passenger side door of a parked red Ford Mustang. The investigation determined that Hugoboom fired one buck shot round from his Remington 870 shotgun from an approximate distance of 57 feet. Hugoboom's BWV captured the audio of the buck shot round being fired.

PHYSICAL EVIDENCE

Firearms Analysis

The vehicle parked in the driveway of Robles's residence was a tan, two-door 1979 Buick Regal. The vehicle was registered to Robles. The driver side door was open at the time of both officer involved shootings. The Firearms Analysis Unit's bullet path analysis showed a total of 27 bullet pathways in the vehicle.

Officers Ybarra and Skotte were driving a 2015 Ford Explorer. This vehicle sustained two impacts from Robles' gunfire. Per the Bullet Path Analysis Laboratory Report, the impacts were consistent with a north to south, east to west and downward directionality, labeled as Impact A and Impact C. The vehicle sustained one impact on the driver's side door frame which was consistent with south to north, west to east and upward directionality, and was labeled as Impact B.



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Emilio Luis Robles was armed with this stainless steel, .45 caliber Smith & Wesson, model 645 pistol, serial number TBM1205.

On May 1, 2019, FAU Criminalists Moody and Perez recovered the pistol from the ground on the driveway of [REDACTED] East 113th Street. The pistol was lying on the left side with the muzzle pointing southwest and the magazine fully inserted. The hammer was not cocked, and the safety was off. One discharged cartridge case was removed from the chamber of the pistol. No ammunition was removed from the magazine.

On December 2, 2019, Criminalist Moody, completed a Bullet Path Analysis Report. Three bullet pathways were observed on the police vehicle driven by Ybarra and Skotte located on the street in front of [REDACTED] East 113th Street.

On July 19, 2019, Criminalist Rubin, completed a laboratory report documenting the Bullet/Cartridge Case Comparison and Test Fire Firearm. Criminalist Rubin examined and test fired Robles' pistol using laboratory ammunition. Criminalist Rubin determined that Robles' pistol was functional. Cartridge cases were recovered from the scene were determined to have been fired from Robles' pistol. A metal fragment that was collected from under the police vehicle driven by Ybarra and Skotte, and a fired bullet that was collected from the insulation within the headliner of Ybarra and Skotte's police vehicle were determined to have been fired from Robles' pistol. A metal fragment collected from under Ybarra and Skotte's police vehicle had limited comparative value and no further analysis was performed.

Coroner's Report

On May 2, 2019, the Los Angeles County Coroner's Office Deputy Medical Examiner Doctor Lawrence Nguyen performed a post-mortem examination of Robles's remains. Nguyen concluded Robles's death was caused by multiple gunshot wounds. Nguyen determined that Robles sustained nine gunshot wounds.

Gunshot Residue

On August 2, 2019, LACFSC Senior Criminalist Melvina Gin concluded her analysis on the gunshot residue (GSR) kit. The analysis determined Robles' right hand contained five or more particles (Lead, Antimony, and Barium) characteristic of GSR. In addition, Robles' left hand contained five or more particles (Lead and Antimony) consistent with GSR. Criminalist Gin concluded Robles may have discharged a firearm, been in the vicinity of the discharge of a firearm, or touched a surface with gunshot residue on it.

LEGAL ANALYSIS

The people have the burden of proving beyond a reasonable doubt that a killing was not justified. *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384. A killing is justified if it is committed in self-defense or the defense of another. CALCRIM No. 505.

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

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. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

Once an officer reasonably believes deadly force is necessary, the officer does not have an obligation to stop firing the weapon until the threat has ended. “If lethal force is justified, officers are taught to keep shooting until the threat is over.” *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012.

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. The test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.” *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102.

Robles fired at the officers first based on the witness statements and evidence, therefore the initial OIS was reasonably necessary and in lawful self-defense and defense of others.

Similarly, the evidence supports the conclusion that the second OIS was also in lawful self-defense and defense of others as Robles was pointing the gun in the direction of the officers while lying on the ground behind the cover of a car door. It was reasonable to believe he would shoot again because he had already fired at the officers. BWV, bullet strikes, witness testimony, GSR and recovery of the weapon all show that Robles fired numerous times at officers. These circumstances support the reasonable belief that this OIS was done in lawful self-defense and in defense of others.

CONCLUSION

Given the totality of the circumstances, the available evidence shows that all of the involved officers reasonably acted in lawful self-defense and in the defense of others at the time they fired their weapons.