

Non-Fatal Officer Involved Shooting of Brandon Maxwell

Los Angeles Police Department

Officer Andrew Cervantes #42925

Officer Arturo Leon #42943

J.S.I.D. File #22-0057



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 28, 2023

MEMORANDUM

TO: CAPTAIN OMAR BAZULTO
Los Angeles Police Department
Force Investigation Division
100 W. First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Non-fatal Officer Involved Shooting of Brandon Maxwell
J.S.I.D. File #22-0057
L.A.P.D. File #F048-20

DATE: August 28, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 17, 2020, non-fatal shooting of Brandon Maxwell by Los Angeles Police Department (LAPD) Southwest Patrol Officers Andrew Cervantes and Arturo Leon. Based on the totality of the circumstances, we find that Officers Cervantes and Leon reasonably believed deadly force against Brandon Maxwell was necessary to defend against an imminent threat of death or serious bodily injury.

The District Attorney's Command Center was not notified of this shooting because at the time, it had not been determined whether any subject was hit by gunfire. The District Attorney Response Team did not respond to the location.

The following analysis is based on reports, recorded interviews, dispatch recordings, photographs, surveillance video evidence, body worn camera videos (BWV), crime scene diagrams, photographic evidence, and witness statements submitted to this office by LAPD's Force Investigation Division (FID) Detective Mi Yeon Kim, on February 14, 2022. The full body worn videos were received on July 24, 2023. Cervantes' and Leon's compelled statements were not considered in this analysis.

FACTUAL ANALYSIS

Summary

On October 17, 2020 at approximately 11:30 p.m., civilians [REDACTED], [REDACTED], [REDACTED], and three unidentified males, were playing a game of dice on the sidewalk on Budlong Avenue, just

north of Jefferson Boulevard. The surrounding area was primarily residential, although Jefferson Drill Site, an oil refinery, was located just west of where the group congregated.¹ [REDACTED] left the location briefly and drove to a nearby Ralphs grocery store. When he returned, he parked on Budlong Avenue, just north of where his companions were playing dice. As [REDACTED] exited his vehicle, a Chevrolet Malibu pulled up alongside him. Maxwell was the driver and registered owner of the Malibu. When the Malibu came to a stop, Subject 1 exited the front passenger door and Subject 2 exited the back passenger door.² Both held firearms and started shooting at [REDACTED] and the other men playing dice. [REDACTED] fled, running northbound and Subject 2 pursued [REDACTED]. Subject 1 stood just west of the Malibu, pointing his firearm at the remaining individuals on the sidewalk.

Southwest Patrol Officers Cervantes and Leon were driving northbound on Budlong Avenue when they observed the shooting in progress. Subject 1 pointed the firearm in the officers' direction and both Cervantes and Leon fired shots toward Subject 1.³ Subject 1 then got into the front passenger seat of the Malibu and the Malibu drove southbound, passing Cervantes and Leon, who were standing next to their patrol car. As the Malibu drove south, Cervantes fired his duty weapon at the vehicle.⁴ The Malibu continued to drive away, while Cervantes and Leon remained at the scene and called for assistance. Subject 2, still on foot, returned to the area of the shooting and upon seeing the police present, discarded a revolver on the sidewalk and fled.

Shortly after fleeing the scene, the Malibu crashed into a pole located near the intersection of Budlong Avenue and 35th street, approximately 358 feet from the shooting scene. A 911 caller reported the crash but when officers responded to the scene, they discovered that the occupants had vacated the vehicle. A semi-automatic pistol was recovered from the front right floorboard. Officers set up a perimeter. Minutes after the crash, Maxwell walked into a boba tea shop approximately .4 miles from the crash site. Maxwell told some patrons at the boba shop that he was a victim of an attempted robbery and needed a ride. Two patrons agreed to give him a ride. As they drove, their vehicle was intercepted by officers patrolling the perimeter. Officers Greenlea and Ibanez peered into the vehicle and observed Maxwell lying on the backseat floorboard. Maxwell was taken into custody. As he was taken into custody, officers observed small holes and blood spatter on the chest area of Maxwell's shirt, but Maxwell claimed he was uninjured, and he did not appear to be in pain. It was later discovered that Maxwell had an abrasion on his chest, which appeared to be the result of some sort of gunfire-related injury, such as a bullet fragment. The cause was never determined.

¹ Jefferson Drill Site had a security camera that captured the incident.

² To date, Subjects 1 and 2 have not been identified.

³ Cervantes fired six rounds. Leon fired five rounds. It is unknown whether Subject 1 was hit.

⁴ Cervantes fired seven rounds. It is unclear if any individual was hit by those rounds.

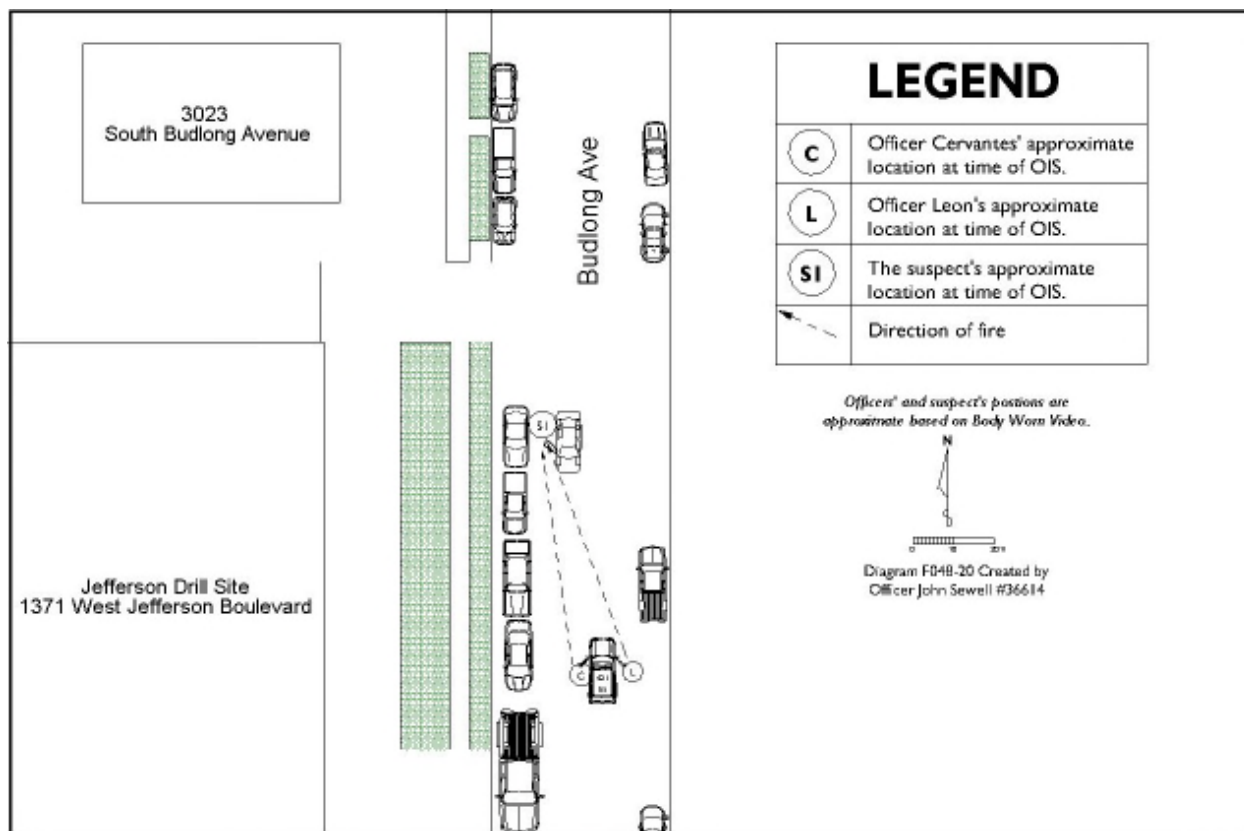


Figure 1: Diagram of the location of the officer involved shooting.

Jefferson Drill Site Video

The nearby business, Jefferson Drill Site, had a security camera that captured the incident, although there was no audio. The video depicted the sidewalk of Budlong Avenue where several individuals, including [REDACTED] and [REDACTED], were playing dice.⁵ A dark colored Chevrolet Camaro pulled up alongside the sidewalk. The driver's side door opened, and [REDACTED] exited.⁶ Seconds later, a dark-colored Chevrolet Malibu pulled up alongside the Camaro. The front passenger door of the Malibu opened, Subject 1 stepped out, and pointed a firearm toward [REDACTED]. The video captured two muzzle flashes. [REDACTED] ducked and ran north on the sidewalk. Subject 1 then turned toward the individuals playing dice on the sidewalk and pointed the firearm in their direction. He placed his left hand near the top of the firearm and made a motion with his hand, as if he were chambering a round. At that moment, a patrol vehicle pulled up and stopped, facing the Chevrolet Malibu. Simultaneously, the rear passenger side door of the Malibu opened and Subject 2 jumped out and ran north, toward [REDACTED]. As Subject 2 ran, a muzzle flash emitted from his upper chest area.

⁵ The video is not time or date stamped.

⁶ The investigation determined that [REDACTED] had driven to the Ralphs grocery store, located at 2600 South Vermont Avenue. As captured on Ralphs' security video, [REDACTED] entered Ralphs at approximately 11:19 p.m. and exited at approximately 11:24 p.m. [REDACTED] was alone in all the Ralphs video clips.

Subject 1 then took several steps toward the sidewalk. As he did so, Subject 1 held a pistol in a two-hand shooting position, with the muzzle pointed toward the officers, who were standing by their patrol vehicle. Subject 1 then turned toward the patrol vehicle, while holding the pistol in a two-hand, low-ready position. Suspect 1 then ducked down and entered the front passenger seat of the Malibu, closing the door behind him. The Malibu left in a southern direction, driving past the patrol vehicle. Due to the camera angle, the video did not capture any actions of Cervantes or Leon. Shortly after the Malibu drove off, Suspect 2 returned to the scene, and seeing officers present, discarded a revolver and ran north on Budlong, out of view.



Figure 2: Image from Jefferson Drill Site video depicting Subject 1 firing his firearm at [REDACTED].



Figure 3- Jefferson Drill Site video depicting Subject 1 pointing firearm toward individuals on sidewalk.



Figure 4- Jefferson Drill Site video depicting Subject 2 running after and shooting at [REDACTED].

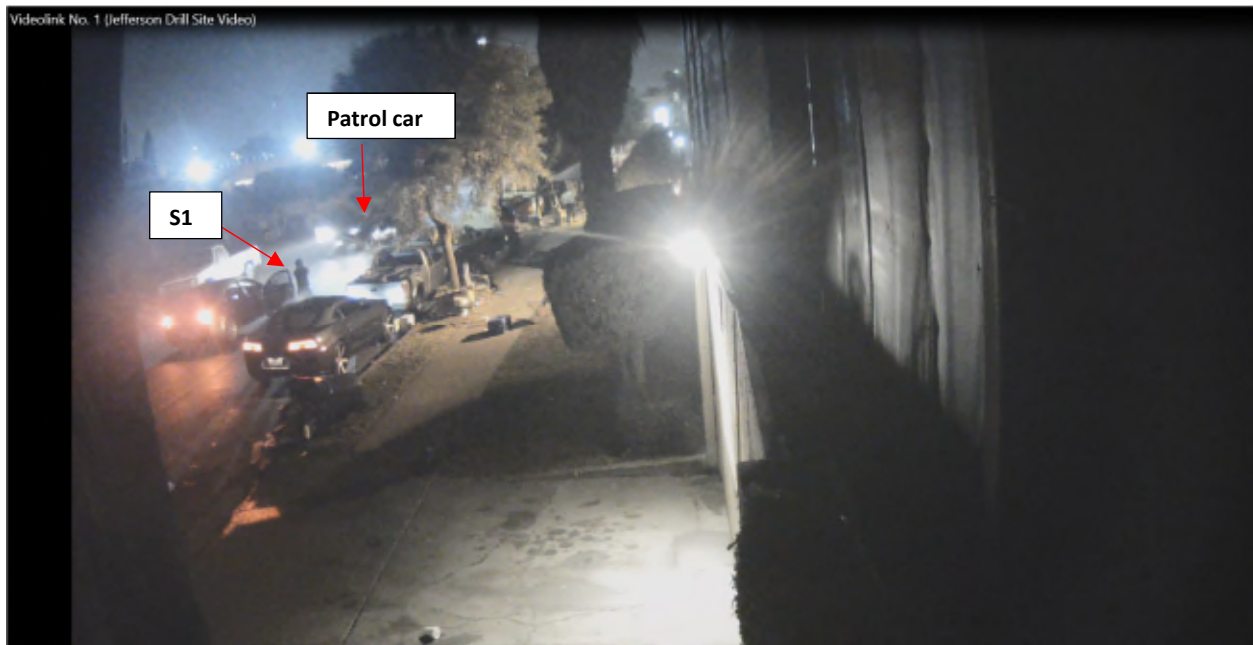


Figure 5- Jefferson Drill Site video depicting Subject 1 aiming his firearm at the patrol vehicle/officers.

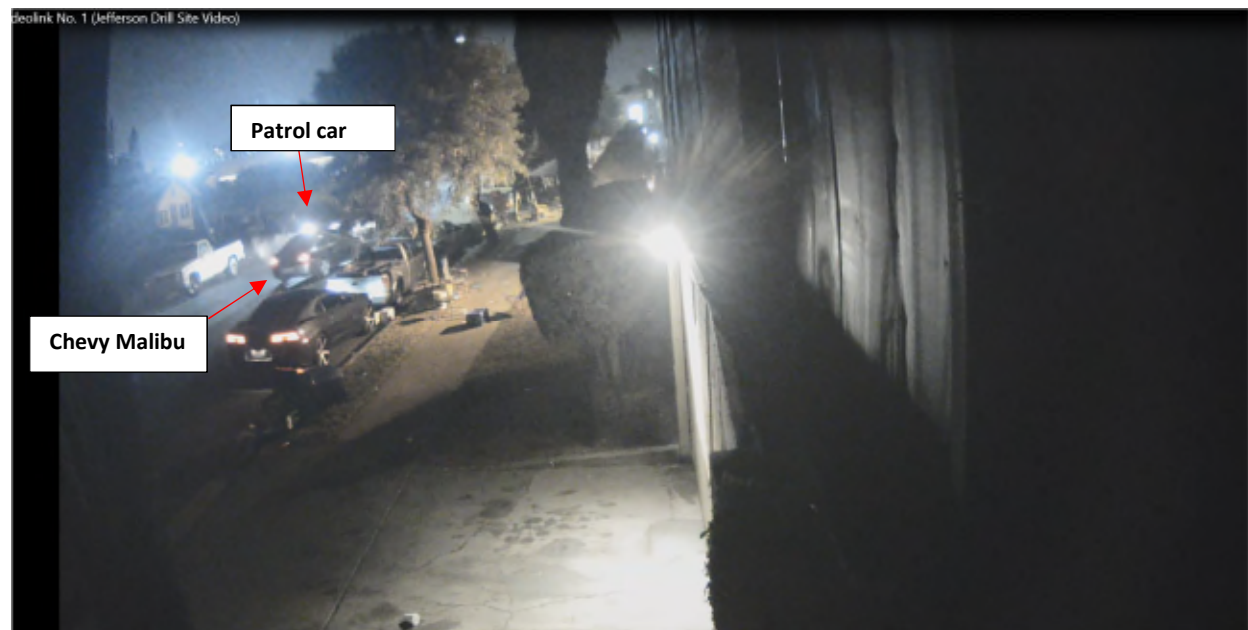


Figure 6- Jefferson Drill Site video depicting the Chevrolet Malibu driving past the patrol vehicle.



Figure 7- Jefferson Drill Site video depicting Subject 2 after he discarded his revolver.

BWV

Cervantes and Leon had active BWV during the incident. However, the officer involved shooting occurred during the two-minute buffering period, when there was no audio.⁷ Due to the officers' positions, their BWVs did not capture Subject 1 and Subject 2's actions at the time of the officer involved shooting.

At approximately 11:30 p.m., the BWV captures Cervantes and Leon driving north on Budlong Avenue, when they stopped the patrol vehicle just north of the Chevrolet Malibu.⁸ Cervantes opened the driver's side door and unholstered his pistol, while still seated in the vehicle.⁹ He stood, partially exited the vehicle, using his door as cover. He transitioned his duty firearm into a two-hand shooting position and pointed the muzzle in a northern direction, toward Subject 1.

Nearly simultaneously, Leon opened the passenger side door, unholstered his duty firearm with his right hand and held it in a one-hand shooting position, with the muzzle pointed in a northern direction, toward Subject 1. As he did so, Leon positioned himself east of the open passenger side door. Almost simultaneously, Cervantes and Leon fired several rounds at Subject 1.¹⁰

⁷ The audio that is described later in this section occurred after the two-minute buffering period.

⁸ The patrol vehicle stopped approximately 41 feet from the Malibu.

⁹ The investigation determined that at the time, the patrol vehicle was not in park; Cervantes' right foot was on the brake and his left foot was on the street.

¹⁰ While the Jefferson Drill Site video does not capture the officers' actions during the officer involved shooting, and the BWVs do not capture Subject 1 or Subject 2's actions just before the shooting, in comparing the videos, it

Subject 1 then entered the front passenger door of the Malibu and the Malibu sped away, driving south toward the officers, and leaving Subject 2 behind. Cervantes fired several rounds toward the Malibu as it drove past the officers.¹¹



Figure 8 - Image from Cervantes' BWV as he fired toward Subject 1.



Figure 9 - Image from Leon's BWV as he fired toward Subject 1.

appears that Cervantes and Leon initially fired their weapons at Subject 1 when Subject 1 pointed his firearm in their direction.

¹¹ Approximately two seconds lapsed between Cervantes' first and second volleys.



Figure 10- Image from Cervantes' BWV as Cervantes fired toward the Malibu.

As Subject 2 reappeared on Budlong Avenue, holding a revolver, Leon raised his pistol with his right hand and pointed it toward Subject 2. Leon jogged across Budlong Avenue, with his radio in his left hand and pistol in his right hand. He ordered Suspect 2, “Stay on the ground, get on the ground, get on the ground, get the fuck on the ground right now.”

Cervantes exited the patrol car and transitioned his radio into his left hand and pistol into his right hand. Cervantes ordered Subject 2, who was still on the street, “Get on the ground, get on the ground.” Cervantes jogged in a northern direction, toward Leon. Subject 2 ran north on Budlong Avenue, disappearing from view.

Cervantes advised radio dispatch that they were at Jefferson Boulevard and Budlong Avenue. Leon broadcasted via the radio that a male Black (Subject 2) wearing a black hoodie and red sweatpants was running north on Jefferson Boulevard.¹²

Following the officer involved shooting, the BWV captured several individuals, including [REDACTED], [REDACTED], and an unidentified male, on Budlong Avenue, near the dice game setup.¹³ Leon and Cervantes ordered the civilians to stand against the wall with their hands up. [REDACTED] and the unidentified male informed Cervantes that they had been shot at, but were not hit. Leon located [REDACTED] on Budlong Avenue and ordered him to come to the location where the officers stood with the other civilians. [REDACTED] appeared to have some difficulty walking. Cervantes assisted [REDACTED] into a seated position on the curb. Cervantes and Leon asked [REDACTED] where he was shot and [REDACTED] replied, “I don’t know, I’m good. I’m good.”

¹² Leon erroneously said Jefferson Boulevard but Subject 2 ran north on Budlong Avenue. Leon later clarified on the radio that his location was Jefferson Boulevard and Budlong Avenue.

¹³ The investigation revealed that two additional unidentified males who had been playing dice fled south on Budlong Avenue after the shooting, and remain unidentified.

██████. did not sustain a gunshot wound. He subsequently informed officers that he injured his hip while fleeing.

Leon illuminated the sidewalk with his flashlight, revealing a revolver lying on the grass. Leon ordered the civilians not to touch the revolver. Leon then broadcasted over the radio that they had recovered a firearm and requested an ambulance for ██████. Leon asked ██████. and ██████., “Who was the guy with the gun?” ██████. informed Leon that they were “shooting dice” when unknown individuals began shooting at them.

The BWV captures Cervantes telling Leon, “There were two guys. One, he pointed at me.” Leon responded, “I saw.” Several minutes later, when additional officers arrived at the scene, Cervantes said to Officer Michael Newsom, “The guy started shooting. I thought he was shooting at me.” Leon also told another responding officer, “I thought they were shooting at us dude.” Leon repeated to that officer, “The Chevy Malibu, literally dude, stopped here, guy jumps out, starts popping rounds, he turns around at Cervantes dude.”

██████.'s 911 Call

At approximately 11:31 p.m., civilian ██████. called 911 to report that a black Chevrolet collided with a pole near the intersection of Budlong Avenue and 35th Street.¹⁴ She advised that she heard the sound of “fireworks” just prior to the collision and observed a bullet hole on the rear portion of the vehicle. Officers approached the vehicle which was unoccupied.

¹⁴ The vehicle was determined to be the Chevrolet Malibu registered to Maxwell.



Figure 11: Photograph of the Chevrolet Malibu when officers located it at the collision site.

██████████'s Statement

On October 18, 2020, FID detectives interviewed ██████████. On the evening of the shooting, ██████████ was playing dice on Budlong Avenue with some older men who regularly gathered there. Just before 11:30 p.m., he left and drove to a Ralphs grocery store. When he returned, he parked on Budlong Avenue. As he exited his vehicle, he noticed a dark vehicle pull up alongside him. The doors opened and he saw a sudden “flash,” accompanied by the sound of gunfire. ██████████ ran north on Budlong Avenue into the first yard he saw. He heard footsteps behind him, and thought he was being chased. He heard an officer yelling. He rang the doorbell of the house whose yard he ran into. No one answered so he walked back into the street. His left leg “gave out” which led him to erroneously believe he had been shot. Neighbors from across the street came outside and assisted him. He then flagged down his friend. His friend and a responding officer approached him, walked him back toward his car, and sat him down on the curb. He was handcuffed.

There were no words exchanged or prior altercations with the shooter or shooters. ██████████ did not know who they were or why they fired at him. When he went to Ralphs, he did not have

any unusual or negative encounters with anyone.¹⁵ [REDACTED] did not see any police officers until he returned to the scene after the shooting.

[REDACTED].’s Statement

On October 18, 2020, FID detectives interviewed [REDACTED]. [REDACTED] had been sitting outside on the sidewalk of Budlong Avenue with friends, when his friend [REDACTED], who he knows as “Dice” left briefly to go to the market. [REDACTED] returned and re-parked his car, another car pulled up and [REDACTED] heard gunfire and saw smoke emanating from the passenger side of that car. [REDACTED] never saw the shooter or shooters. All he saw was “the barrel of the gun, smoke coming out.” Everyone ducked and scattered. After the initial sounds of gunfire, [REDACTED] heard additional gunfire which caused everyone to “hit the ground again.” [REDACTED] hit the ground and then got up and started running south toward Jefferson Boulevard. He heard officers telling people, “Don’t move!” and “Freeze!” When he turned to look back, he saw two officers with their firearms drawn, next to the open doors of a patrol vehicle.

While [REDACTED] did not see the shooters, he knew that the first round of shots emanated from the vehicle that pulled up alongside [REDACTED]. He heard the second round of gunfire but did not see where it came from. [REDACTED] was not injured.

[REDACTED]’s Statement

FID detectives interviewed [REDACTED] on October 18, 2020, and again on December 11, 2020.¹⁶ [REDACTED] was “shooting dice” on Budlong Avenue, with a group of about six individuals, including [REDACTED], who was wearing a red “hoodie.” [REDACTED] left to go to the market and when he returned, he pulled up to the curb and parked his vehicle. [REDACTED]’s back was facing the street. Within seconds, [REDACTED] heard gunfire but initially thought it was fireworks. Once he realized it was gunshots, he went to the ground and sought cover behind nearby vehicles. His back was to the street at the time of the incident, so he did not see the shooters or the vehicle they arrived in. As [REDACTED] started crawling, he heard another round of gunshots, looked up, and saw the blue pants of an officer’s uniform. He then heard the police yelling, “Put your hands up! Put your hands up!” He stood up and put his hands in the air. [REDACTED] thought the officers had fired the shots so he asked, “Why was [sic] you all shooting at us?” The officer responded, “We wasn’t [sic] shooting at you at all. We [sic] shooting at the guy that was shooting at you.”

As [REDACTED] waited at the incident scene while the officers conducted their investigation, [REDACTED] learned more about the shooting from [REDACTED], who was seated on the curb next to him. [REDACTED] told [REDACTED] that there were two shooters and one of them jumped out of the backseat of the car and started shooting at [REDACTED] and chasing him down the street. [REDACTED] told [REDACTED] that the shooters had followed him to Budlong Avenue, but [REDACTED] did not know who they were.

¹⁵ [REDACTED] indicated that he was a former gang member, but it had been years since he had any gang encounters. He speculated that perhaps his red sweater had something to do with the shooting, given the shooting was in a “red area.”

¹⁶ The second interview was conducted to follow up on [REDACTED]’s injury.

██████████. sustained an injury to his left wrist but was not hit by a bullet. He does not know how he got the injury. He described his wrist as “skinned” and “puffy,” but it healed after a couple days. ██████████. mentioned several times, “Thank God the police pulled up.”

██████████.’s Statement

FID investigators interviewed ██████████. on October 19, 2020. At approximately 11:40 p.m., ██████████. was parked in front of the Boba Time business located at 3617 South Vermont Avenue.¹⁷ As he sat in his vehicle, a shirtless male (later identified as Maxwell) approached him and asked him for a ride because “people had beaten him up and he was trying to get out of the area.” ██████████. observed a hole near the center of Maxwell’s chest that was bleeding. Maxwell was carrying a white shirt and using it to clean the blood from his chest and hands. ██████████. refused Maxwell’s request. ██████████. then observed Maxwell ask other individuals in the parking lot for a ride. Maxwell entered Boba Time and spoke with several patrons. ██████████. observed Maxwell exit Boba Time with two individuals, put his shirt back on, and enter the back seat of a car with the individuals. ██████████. heard police activity in the area and guessed that the police were looking for Maxwell, so he called 911.

Boba Time Security Video

The Boba Time business had a security camera that captured Maxwell enter the business at approximately 11:43 p.m. Maxwell walked into the business while donning his shirt, exposing his back and abdomen area. He walked through the front lobby and toward the rear of the store. He returned to the lobby a short time later and appeared to speak with two unidentified patrons, who were seated near the cash register. He then approached two other patrons (identified as ██████████. and ██████████.) and sat beside them on a bench. They appeared to have a brief conversation. ██████████. handed Maxwell his phone. Maxwell appeared to make a phone call. Maxwell left the location before any officers arrived.

██████████.’s Statement

FID investigators interviewed ██████████. on October 18, 2020. At approximately 11:30 p.m., the prior evening, ██████████. and her friend ██████████. drove to Boba Time, entered the business, and placed an order.¹⁸ It was busy, so they sat down to wait. An unfamiliar male (later identified as Maxwell) who had blood and holes on his shirt, approached them and asked if he could borrow ██████████.’s phone.

██████████. gave Maxwell his cellphone and Maxwell placed a call to someone who did not answer. He continued trying to make phone calls. After about five minutes, he was able to get a hold of someone. ██████████. did not pay attention to the phone conversation. Maxwell then asked for a ride to the corner of Western Avenue and Martin Luther King Jr. Boulevard. He said that he had gotten “jumped” because of a watch he was wearing. ██████████. and ██████████. asked Maxwell if he

¹⁷ The distance between the location of the traffic collision and Boba Time is approximately .4 miles.

¹⁸ ██████████. was also interviewed and his statement was consistent with ██████████.’s.

was okay and he said he was fine, but he needed to get to his family. Maxwell sounded genuine and appeared to need their help, so she agreed to give him a ride.

Once they entered [REDACTED]'s car, Maxwell began acting "suspicious." He started telling Alisa G. where to turn, even though she knew the directions. She noticed many officers around the area and started to suspect the officers were looking for Maxwell. [REDACTED] turned right on 36th Place and approached a police vehicle. The officers flashed a light into the vehicle and told her to continue driving so she did. As they were about to approach another officer, Maxwell told her to back up and try to leave. She responded that she could not. She turned around to look toward the backseat and saw Maxwell trying to hide on the floorboard. The officers on the corner of 38th Place and Normandie Avenue started flashing lights in her car and noticed Maxwell in the backseat. They told everyone to put their hands up. They proceeded to arrest Maxwell and detain [REDACTED] and [REDACTED].

Officer Greenlea's Statement

Officer Lorri Greenlea heard the radio broadcast advising officers about a potential suspect at Boba Time. Greenlea responded to the perimeter near the intersection of 36th Place and Normandie Avenue. She and Officer Ibanez were stopping and visually inspecting the interior of vehicles traveling west on 36th Place.

Greenlea approached the driver's side of [REDACTED]'s vehicle and illuminated the interior of the vehicle with her flashlight. As she did so, she made eye contact with Maxwell, who was lying on the rear passenger floorboard. Greenlea noted that his description matched that from the radio broadcast. Aware that Maxwell may be armed, Greenlea drew and exhibited her duty firearm. She saw that Maxwell was not holding a weapon. Ibanez also approached [REDACTED]'s vehicle and unholstered his duty firearm and pointed it toward Maxwell. Ibanez communicated with [REDACTED], [REDACTED], and Maxwell, while Greenlea broadcasted her observations over the radio.

At the time, Greenlea was unsure if [REDACTED] and [REDACTED] were potential hostages or suspects. Greenlea commanded [REDACTED] and [REDACTED] to exit the vehicle first, and they complied. Greenlea commanded Maxwell to keep his hands up, as she opened the rear driver's side door while another officer covered Maxwell, using a shield in one hand and duty firearm in the other. Greenlea ordered Maxwell to slide out, roll onto his stomach, and crawl out of the vehicle. Maxwell complied and was taken into custody.

Maxwell's Injuries

It is unclear whether Maxwell was hit by gunfire. He claimed to be uninjured and officers did not request an ambulance at the time of his arrest. After being taken into custody, Maxwell was transported to the Southwest Community Police Station. Maxwell refused to be photographed and would not allow investigators to visually examine him for injuries. He did not appear to be seriously injured. Maxwell was transported to the 77th Street Jail Facility. According to Maxwell's medical records from 77th Street, he complained of numbness to his right leg, due to a pre-existing injury. He reported that he was uninjured and the blood on his shirt was not his. He claimed he was involved in an altercation the day prior and the blood on his shirt was from his

combatant. A search warrant was procured to examine Maxwell's body. As a result of the examination, investigators observed an abrasion near the center of Maxwell's chest area. The medical records do not indicate the cause of the abrasion.

Clothing Analysis

Forensic Science Division Criminalist Trisha Ariyasu examined Maxwell's shirt for bullet related defects. A total of 20 defects were identified. Six defects were located on the upper front area, labeled Defect A. One defect was located on the front left torso area, labeled Defect B. Thirteen defects were located on the back of his shirt, labeled Defect C. Defect A was consistent with the passage of a bullet. The cause of Defects B and C could not be determined.

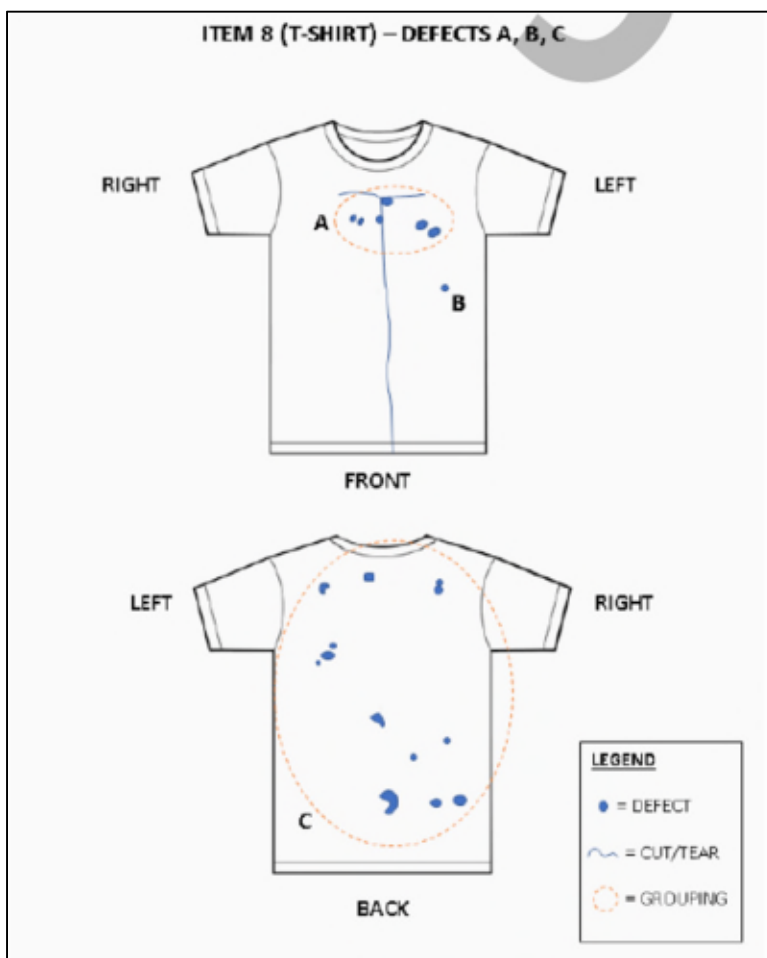


Figure 12- Diagram depicting bullet-related defects on Maxwell's T-shirt.

Examination of the Chevrolet Malibu and other Evidence

An examination of the Malibu vehicle revealed multiple bullet impacts, including perforating impacts. A semi-automatic pistol with a loaded magazine was recovered from the front right

floor board.¹⁹ Additional evidence, including five fired bullets, pieces of a broken gold chain, and two cellular phones were recovered from the Malibu. The fired bullet recovered from the driver's side floorboard had white fibers attached to it and was determined to be fired from Cervantes' duty firearm. The broken gold chain tested positive for gunshot residue.

No latent prints were developed on the pistol, revolver, or cartridges. A search warrant for the recovered cell phones was obtained but the records have not led to the identification of Subjects 1 and 2. A swab taken from the steering wheel of the Malibu matched Maxwell's DNA profile. Additional items were swabbed for DNA, including the revolver recovered by Cervantes and Leon, and the pistol recovered from the Malibu, but the results were unsuitable for interpretation.

Proceedings against Maxwell

Maxwell was charged in Case BA490880 with six counts of attempted murder for the civilian victims, and two counts of assault with a semiautomatic firearm upon a peace officer. On August 8, 2023, Maxwell pled no contest to two counts of assault with a semiautomatic firearm, in violation of Penal Code section 245(b) and was sentenced to twelve years in state prison.

LEGAL ANALYSIS

A peace officer is justified in using deadly force when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defendant against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

Deadly force shall be used "only when necessary in defense of human life," and officers "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(a)(2).

"A threat of death or serious bodily injury is 'imminent' when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3).

¹⁹ The pistol is a 40 S&W caliber, CZ model 999 Compact. It appeared to have sustained a malfunction, with the slide locked to the rear and a live round lodged in the firing chamber. Four cartridges were removed from the magazine. One discharged cartridge case was dislodged from the chamber/ejection port.

The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 845a(a)(4).

The evidence examined in this case indicates that Cervantes and Leon witnessed a shooting in progress. The officers observed two subjects shooting firearms at civilians on the street, just feet away from where Cervantes and Leon stopped their patrol vehicle. The surveillance video, coupled with the BWV evidence, shows that Cervantes and Leon fired their duty firearms toward Subject 1, when Subject 1 pointed his firearm in their direction, after having just fired at the civilians. It was reasonable for Cervantes and Leon to believe that deadly force was necessary to defendant against the imminent threat of being shot by Subject 1.

Cervantes' second use of deadly force occurred approximately two seconds after he first fired his weapon. Although Subject 1 was already inside the Chevrolet Malibu when Cervantes fired his duty firearm again, the totality of the circumstances indicates that the officers were still under an imminent threat of death or serious bodily injury, given at least one of the subjects fleeing in the Malibu was armed with a firearm, that subject had just fired his weapon and then pointed it at the officers, and the Malibu was heading in the officers' direction as it sped off. Only two seconds elapsed between the Cervantes' first and second rounds of gunfire, underscoring how rapidly the circumstances unfolded. Further, at the time Cervantes fired at the Malibu, he had just witnessed a murder or attempted murder. The shooters were still outstanding and one of them was fleeing in the Malibu with a firearm he had just fired. It was reasonable for Cervantes to believe that shooter would fire again. Accordingly, it was lawful for Cervantes to use deadly force to apprehend the fleeing shooter.

CONCLUSION

For the foregoing reasons, we find that Cervantes and Leon acted lawfully at the time they fired their weapons, reasonably believing that deadly force was necessary to defend against an imminent deadly threat, and to apprehend a suspect who had just fired a weapon at civilians.