

Officer Involved Shooting of Michael Cano
Los Angeles Police Department

Officer Jaime Mejia, #33623
Officer Brittany Gutierrez, #41928

J.S.I.D. File #15-0608



JACKIE LACEY

District Attorney

JUSTICE SYSTEM INTEGRITY DIVISION

January 11, 2018

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
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: Officer Involved Shooting of Michael Cano
J.S.I.D. File #15-0608
F.I.D. File #F090-15

DATE: January 11, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 9, 2015, fatal shooting of Michael Cano by Los Angeles Police Department (LAPD) Officers Jaime Mejia and Brittany Gutierrez. It is the conclusion of this office that Officers Mejia and Gutierrez acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on November 9, 2015, at approximately 1:58 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene by Lieutenant Jeffery Wenninger.

The following analysis is based on reports prepared by LAPD's Force Investigation Division submitted to this office by Lieutenant Wenninger, and Detectives Grabiak and Forsman. The reports include photographs, audio recordings and transcripts of witnesses interviews, medical reports and radio transmissions. The compelled statements of Officers Mejia and Gutierrez were also considered as part of this analysis.

FACTUAL ANALYSIS

Introduction

On November 9, 2015, at approximately 1:00 p.m., an anonymous man called 9-1-1 to report there was a man in the middle of the street causing vehicle traffic to swerve to avoid hitting him near Andasol Avenue and Elkwood Street, in the City of Los Angeles. At approximately 1:08 p.m., LAPD's Communications Division broadcast a description of the man, later identified as Michael Cano, and advised the call as a "Code 3."¹ West Valley Patrol Division Officers Mejia and Gutierrez were working patrol in the area in a marked vehicle and responded to the call from

¹ "Code 3" is an emergency call that should be answered immediately in a manner that enables the unit to reach the scene as quickly as possible with safety.

Victory Boulevard and Etiwanda Avenue. Pilot Lieutenant Phillip Smith and Tactical Flight Officer Stuart Lomax of LAPD's Air Support Division also responded to the call in an air unit.

Mejia and Gutierrez arrived at the location and exited their vehicle. Cano was in the middle of the street when Mejia and Gutierrez attempted to make contact, ordering Cano to get on the ground. Cano initially did not comply and began walking towards Mejia and Gutierrez. Cano then laid on the ground on his back. Mejia began to approach Cano, when Cano suddenly jumped to his feet and charged at Mejia and Gutierrez. As Cano charged at the officers, he reached for his waistband, extended both of his arms and pointed his hands, simulating a handgun, at Mejia and Gutierrez. Gutierrez and Mejia continued to command Cano to get on the ground. Mejia, armed with a department issued bean-bag shotgun, fired at Cano, with no effect. Gutierrez then drew her Taser and tased Cano, with no effect. Cano continued to charge at Mejia, knocking him to the ground, causing the bean-bag shotgun to fall from his hands and onto the ground. Cano picked up the bean-bag shotgun and aimed it at Mejia and Gutierrez. In fear for their lives, Mejia and Gutierrez fired their service weapons at Cano.

Events Prior to the Shooting

Statement of Christina L.

Christina L. told investigators that at approximately 12:45 p.m., she left her home located on Willard Street to walk to the store. She was walking on Andasol Avenue approaching Stagg Street when she saw Cano. Christina stated Cano was acting strangely and aggressively. He was on his skateboard, skating in the middle of the street and then briefly laid down in the street. When he got up, he kicked the skateboard. Shortly after, Christina saw Cano yelling and pounding on the front door of a residence. She heard Cano yelling, "Fuck you! Fuck your mother!" Cano turned around and saw Christina. She described the look on his face as "pure anger." He yelled at her saying, "I'm gonna fuck you up! I'm gonna be your pimp! I'm gonna fuck up your pussy!" Christina tried to walk away but Cano followed her and pushed her into a fence, holding her from behind, using "pretty great force."² While Cano was holding Christina from behind against the fence, a woman in a green Mini Cooper was backing out her driveway located to the right of where Christina and Cano were. Christina motioned to the woman and asked her to call 9-1-1. The woman and Christina made eye contact and Christina asked her to "Please stop him." The woman told Cano he needed to stop and to get away. Christina was able to break free and ran down Andasol Avenue until she reached Louise Avenue and felt safe enough to continue walking.³

Christina described Cano's behavior as "very erratic, angry, jumpy, and clearly under the influence." She stated she had never seen him this way before and he was usually a friendly guy.⁴

² Christina stated she was afraid Cano was going to rape her.

³ An Attempt Rape Investigative Report was completed by LAPD which identified Cano as the suspect.

⁴ Christina told investigators that she has known Cano for approximately one month from seeing him in the area.

Statement of Vicky D.

Vicky D. was leaving her home at approximately 12:55 p.m., when she noticed one of her neighbors, Cano, down the street. He appeared to be drunk and was yelling at a residence a couple houses down the street from hers, but she could not understand what Cano was yelling.⁵ She got into her car and saw a woman, later identified as Christina L., walking down the street. Cano started following Christina. Vicky was not sure if they knew each other. Vicky began to back out of her driveway and into the street. She saw Cano and Christina at her next door neighbor's house and saw Cano's arms wrapped around Christina "in a bear hug kind of hug." Cano was stumbling and he and Christina fell into a fence. Christina asked Vicky to help her and to call 9-1-1. Vicky told Cano that he needed to let Christina go. Cano let Christina go and Christina walked a few feet away and looked at Vicky. Vicky told Christina to keep on walking and that she would keep talking to Cano to keep him busy. Christina turned around and ran all the way down to Stagg Street.

Vicky told investigators that Cano then stepped off the curb and walked over to her, babbling. Vicky told Cano he really needed to go home or he would go to jail because he was drunk. Cano stepped away from Vicky, put his hands up, turned around, and walked back to the sidewalk. Vicky looked into her rear view mirror and saw Cano stumbling, heading towards a neighbor's antique ambulance that was parked in the street. Cano acted as if he were going to punch the ambulance, which caused Vicky to slow down to see if he was going to do something. However, Cano did not punch it and "just kind of faked it out and stopped."

Officer Statements

Statement of Officer Jaime Mejia

Officer Jaime Mejia provided a compelled statement to investigators.⁶

[REDACTED]

⁵ Vicky told investigators she has seen Cano in the neighborhood before and seen him "do little rants from time to time." She also stated she knew he had a drinking issue.

⁶ Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. The officers involved in this incident were interviewed and ordered to submit to questioning concerning the performance of their official duties. Like any other individual, the officers possess a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against themselves. *Uniformed Sanitation v. City of New York, supra, at 284-285*. Because the LAPD ordered the officers to answer questions which might expose them to criminal liability, the LAPD compelled the officers to participate in interviews. The effect of this legal compulsion is that the officers' statements cannot be used against them in a criminal proceeding, nor can any material derived from the compelled interviews be used against them. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because these compelled statements are part of the officers' police personnel files, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Statement of Officer Brittany Gutierrez

Officer Brittany Gutierrez provided a compelled statement to investigators.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Statement of Officer Stuart Lomax

On November 9, 2015, Tactical Flight Officer Lomax was assigned to LAPD's Air Support Division with Pilot Lieutenant Phillip Smith. Lomax heard a broadcast, "West Valley, 415 man, Andasol and Elkwood ... in the middle of the street. Subject is a male, bald, wearing a black tank top, vehicles swerving around him. Its Code Three ..." At approximately 1:04 p.m., Lomax responded to the broadcast and at approximately 1:05 p.m., Lomax broadcast he and Smith were Code Six over the location and began to check the area for the subject of the call. At approximately 1:06 p.m., Lomax broadcast that there was no evidence of anyone in the street and requested further information. Communications Division broadcast at approximately 1:07 p.m., that there was no further information available and Lomax departed from the area.

At approximately 1:10 p.m., Communications Division broadcast, "Air 16, 10A38 is requesting you respond west of the location at Andasol and Elkwood. A PR advises (inaudible) inside a house in the backyard and is possibly bleeding." Lomax and Smith returned to the location. Lomax orbited above the location and stated he saw Mejia and Gutierrez exit their vehicle and walk eastbound on Stagg Street toward Cano. Lomax saw Cano running westbound towards Mejia and Gutierrez "acting weird" by placing his hands in the air, running backwards towards Mejia and Gutierrez. Lomax saw Cano flailing his body on the ground in a yard on the north side of the street. Lomax lost sight of Cano as their airship continued to orbit. The next time Lomax saw Cano, he was running towards Mejia and Gutierrez with both hands together simulating holding a weapon. Lomax saw Cano knock Mejia to the ground and Lomax broadcast a request for help for Mejia and Gutierrez stating, "Hey control make this a help call. He [Cano] just knocked a copper down." Lomax saw Gutierrez take cover behind a vehicle parked on the north side of the street and saw Cano down on the south side of the street not moving. Lomax realized a shooting had occurred when he heard Mejia broadcast, "Shots fired. Shots fired. Officer needs help." Lomax saw a Taser and bean-bag shotgun in the street. Lomax looked at Cano and noticed he was not moving.

Witness Statements

Statement of Daniel H.

At approximately 1:10 p.m., Daniel H. was travelling on Andasol Avenue approaching Stagg Street and began to make a right turn on Stagg Street when he stopped and saw Mejia and Gutierrez in the street, with their hands up, and yelling at Cano. Daniel saw Cano armed with a shotgun pointed at Mejia and Gutierrez. Mejia and Gutierrez had weapons in their hands and Cano had Taser darts attached to his torso. Daniel placed his car in reverse to leave the scene, and heard five to ten gunshots fired in quick succession.

Statement of Michelle M.

Michelle M. was travelling on Stagg Street between Encino and Andasol Avenues when she saw Cano walking in the street from Andasol Avenue. Cano was walking erratically and was talking to himself. As Michelle came closer to Cano, he started walking in the middle of the street, towards her car. Cano was talking and waving his arms. Michelle was afraid to pass Cano and slowed down to a stop. Michelle placed her car in reverse and began driving backwards. At the same time, Michelle saw an LAPD patrol vehicle arrive and park on the left side of the street. Michelle saw Mejia and Gutierrez in her rear view mirror. She saw them get out of their vehicle and walk towards Cano. Cano ran to a yard on the north side of the street and threw himself down. Michelle believed Cano was giving himself up as he laid in the grass. Suddenly, Cano flipped over on his back, and jumped to his feet. Cano ran towards Mejia and Gutierrez, grabbed Mejia, and spun him around. Michelle saw Mejia fall to the ground and the green rifle he had in his hands fly across the street into a yard.

Mejia got up and went after Cano and the gun. Gutierrez stayed in place while there was a scuffle between Mejia and Cano.¹³ Michelle's view of Mejia and Cano was blocked by parked cars and she lost sight of them during and after the scuffle. Michelle then heard gunshots and saw flashes coming from Gutierrez' location and the area where Mejia and Cano were located.¹⁴ Michelle thought Mejia was shot. Shortly after, Michelle saw more officers and an ambulance arrive.

Statement of Thomas S.

Thomas S. was in front of a residence located on Stagg Street when he saw Cano running rapidly towards Mejia and Gutierrez, while simulating a weapon held out in front of him in a "shooter's stance." Thomas heard Mejia and Gutierrez yell out, "Stop! Stop! Get on the ground!" A Taser was deployed on Cano, however, it did not stop Cano. Cano knocked Mejia down, causing a shotgun to get "kicked loose at that time." Thomas saw Cano pick up the shotgun and point the shotgun at Mejia and Gutierrez. Gutierrez screamed, "Gun! Gun!" Thomas saw Gutierrez fire her service weapon over the hood of a Jeep Cherokee and heard three to four shots, a short pause, and several more shots.

Decedent Michael Angel Cano

Cano was 34 at the time of his death. He was 5'9" and weighed 168 pounds.

Autopsy

On November 13, 2015, Deputy Medical Examiner Paul V. Gliniecki, M.D., performed a post-mortem examination of Cano's body. Cano's death was caused by multiple gunshot wounds. Cano had seven gunshot wounds.¹⁵ Gunshot wound #1 to the left chest, with a left to right, downwards and front to back direction; gunshot wound #2 to the left, upper abdomen, with a left

¹³ Michelle described Cano as "crazy" and "aggressive."

¹⁴ Michelle thought Gutierrez and Cano were shooting at each other. Michelle did not see a gun in Gutierrez' hands and only saw flashes coming from her direction.

¹⁵ The gunshot wounds are arbitrarily sequenced for identification and do not indicate the sequence in which they were sustained.

to right, downwards, and front to back direction; gunshot wound #3 to the left upper arm, with a left to right, downwards, and front to back direction; gunshot wound #4 to the left upper arm, with a left to right, downwards, and front to back direction; gunshot wound #5 to the left arm, with a left to right, upwards, and front to back direction; gunshot wound #6 to the right thigh, with a right to left, front to back, and downwards direction; gunshot wound #7 to the right thumb, with a right to left and upwards direction.

Coroner Investigator Jorge Pasada collected evidence from the scene and noted the bean-bag shotgun was located approximately one foot from Cano's body. A Taser was located approximately ten feet from Cano's body. One probe, attached to a wire, was approximately five feet from Cano's body. A second probe, also attached to a wire, was lodged in the right pant of Cano, approximately five inches above his knee. The Taser probe was not in contact with Cano's skin.

A toxicology analysis revealed Cano had the presence of alcohol, methamphetamine and MDMA at the time of his death.¹⁶

Firearms Evidence

Officer Mejia was armed with his department-authorized .40 caliber Glock, Model 23, semiautomatic pistol. Six expended cartridge cases were collected at the scene and determined to have been fired from Mejia's pistol. Mejia fired six rounds from his service weapon.

Officer Gutierrez was armed with her department-authorized 9mm, Model M&P9, semiautomatic pistol. Three expended 9mm cartridge cases were collected from the scene and determined to have been fired from Gutierrez' pistol. Gutierrez fired three rounds from her service weapon.

Gutierrez was also equipped with a Taser, Model X26. The Taser log indicated the trigger was activated on the date of the incident at 1:12:08 p.m., for five seconds.¹⁷

Cano was armed with the officers' 12-gauge Remington 870 Police Magnum bean-bag shotgun. An examination after the incident determined that there was a discharged shot shell in the chamber and no rounds in the magazine. The safety was in the off (ready to fire) position. The capacity of the shotgun, when fully loaded, was four rounds in the magazine and one round in the chamber. Four discharged shot shells and four bean bags were collected at the scene and determined to have been fired from the 12-gauge bean-bag shotgun.¹⁸

A Serology/DNA report was completed on the Remington 870 Police Magnum bean-bag shotgun. A swab taken from the right side of the shoulder stock contained Cano's DNA. A

¹⁶ Methamphetamine is a synthetic drug with more rapid and lasting effects than amphetamine, used illegally as a stimulant and as a prescription drug to treat narcolepsy and maintain blood pressure. Methylendioxyamphetamine (MDMA), commonly known as ecstasy, is a psychoactive drug used primarily as a recreational drug.

¹⁷ The Taser's time was seven minutes ahead of the computer's time.

¹⁸ Mejia stated when he retrieved the bean-bag shotgun, it was "patrol ready," with no rounds in the chamber. Mejia believes he shot three rounds from the bean-bag shotgun at Cano, leaving a live round in the shotgun. Mejia further stated the bean-bag shotgun was equipped with a side saddle consisting of six live rounds.

swab collected from the slide handle contained the DNA mixture of at least two individuals with the major contributor being Cano. Swabs collected from the trigger, trigger guard, and left side of the shoulder stock were inconclusive and not suitable for comparison.



Bean-bag shotgun recovered at the location.

Scene Description

The shooting occurred in front of 17410 Stagg Street, on the south side of the street. Stagg Street is an east/west roadway with one lane of traffic in each direction and vehicle parking along the north and south curbs. Stagg Street measures approximately 35 feet in width, with a grass parkway on the south side of the street approximately seven and a half feet in width, and a concrete sidewalk approximately four feet in width. The neighborhood consists of single-family residences.

9-1-1 Call

Investigators made multiple attempts to obtain a statement from the anonymous 9-1-1 caller. However, during each contact attempted, the caller refused to conduct an interview and refused to provide his identity.

November 9, 2015 at 13:00:20

Operator: 9-1-1 emergency. Operator 338.

Male: I need you guys to send somebody on Andasol. Oh wow. Really quick. Andasol and Elkwood. Somebody in the middle of the street. Seems very disturbed. Combative (unintelligible). Cars are going right by him.

Operator: Is it a male or female?

Male: Yeah. Male. Male. Bald. Wearing black - - boots. Black tank top.

Operator: Wearing a black what?

Male: Black tank top.

Operator: Black tank top and what color pants?

Male: Can you send somebody, please?

Operator: What color pants, sir?

Male: It doesn't matter.

Operator: Yes, it does, sir.

Male: Okay. Just don't send anybody. Bye.

Radio Transmission from 9-1-1 Operator:

November 9, 2015 at 13:03:11

Operator: Andasol and Elkwood. Andasol and Elkwood. Middle of the street. Subject is a male, bald, wearing a black tank top. Vehicles swerving around him.

LEGAL ANALYSIS

The Law

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.

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.

“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.

“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.

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. Penal Code § 835a; CALCRIM No. 2670.

The evidence examined in this investigation shows that Officers Mejia and Gutierrez arrived at the location, saw Cano in the middle of the street and attempted to approach him. Cano immediately started walking towards Mejia and Gutierrez while yelling, and waving his clenched fists. Mejia and Gutierrez gave Cano commands to get on the ground multiple times. Cano initially complied, then suddenly jumped to his feet and charged towards Mejia and Gutierrez.

As Cano charged, he reached for his waistband, extended both his arms, and pointed his hands, simulating pointing a gun at Mejia and Gutierrez. Cano failed to comply with the officers’ orders and continued to advance towards Mejia and Gutierrez. Mejia fired the bean-bag shotgun approximately three times at Cano, but it appeared to have no effect. Gutierrez retrieved her Taser and tased Cano as he was moving towards her and Mejia. Cano grabbed the Taser wires and ripped the Taser away from Gutierrez. Cano then lunged towards Mejia. Mejia stepped back and fell to the ground, dropping the bean-bag shotgun. Cano immediately picked up the bean-bag shotgun and appeared to be racking the gun as if he were going to use it against Mejia and Gutierrez.

In response to Cano obtaining possession of the shotgun and manipulating the slide handle, Mejia fired his service weapon at Cano. In fear that Cano was going to shoot her or Mejia, Gutierrez also fired her service weapon at Cano.

The witness accounts of Officer Lomax and Thomas corroborate Mejia and Gutierrez’ statement that Cano reached for his waistband and simulated holding a weapon, pointing it at Mejia and Gutierrez. Lomax and Michelle further corroborate Mejia and Gutierrez as they both witnessed Cano knock Mejia down to the ground. Additionally, the witness accounts of Daniel and Thomas corroborate Mejia and Gutierrez’ statements that Cano pointed the bean-bag shotgun at Mejia and Gutierrez, prior to the officer involved shooting.

Based on the evidence presented, we determine that Cano placed Mejia and Gutierrez in reasonable fear for their lives when he pointed the bean-bag shotgun at them, forcing them to make a split second decision to end the threat by firing their service weapons at him.

CONCLUSION

For the foregoing reasons, we conclude that Officers Jaime Mejia and Brittany Gutierrez acted in lawful self-defense and defense of others when they used deadly force against Michael Cano. We are therefore closing our file and will take no further action in this matter.