

**Officer Involved Shooting of Juan Barillas
Los Angeles Police Department**

Detective Michael Montoya, #25288

Detective Corbin Rheault, #31855

J.S.I.D. File #17-0553



JACKIE LACEY

District Attorney

Justice System Integrity Division

January 8, 2019

MEMORANDUM

TO: COMMANDER ALAN HAMILTON
 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 Juan Barillas
 J.S.I.D. File #17-0553
 F.I.D. File #F076-17

DATE: January 8, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 30, 2017, fatal shooting of Juan Barillas by Los Angeles Police Department (LAPD) Detectives Michael Montoya and Corbin Rheault. We find there is insufficient admissible evidence to prove beyond a reasonable doubt that the detectives did not act in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on November 30, 2017, at 4:27 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant Steven Lurie.

The following analysis is based on reports prepared by the LAPD Force Investigation Division and submitted to this office by Detectives Luis Alarcon and Jerry Sally. The reports include photographs, audio-recorded interviews of witnesses, radio transmissions, surveillance video, and the compelled statements of Detectives Montoya and Rheault.¹

¹ 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 involved officers in this shooting 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, their statements are confidential and may not be disclosed absent an evidentiary showing and court order. *Penal Code* section 832.7.

FACTUAL ANALYSIS

The Robberies



Figure 1 - Surveillance video of Barillas robbing a gas station at gunpoint on November 25, 2017.

On November 25, 2017, Juan Barillas entered a gas station in Canoga Park, drew a gun from his right front pants pocket, pointed the gun at the cashier, and said, “Give me the money.” The cashier gave Barillas approximately \$800 in U.S. currency and Barillas ran away.

The Investigation and Surveillance

On November 30, 2017, detectives linked Barillas and his BMW automobile to the robbery, and to Michael Clouse, who was suspected of committing a series of armed robberies in the San Fernando Valley.² The LAPD Special Investigation Section (SIS), a tactical surveillance team, located Barillas’ BMW, surveilled it, and saw Clouse sleeping in the car. Clouse drove away in the car and Rheault and Montoya followed. Clouse returned and went into a motel. Barillas exited the motel, entered the BMW, and drove away with SIS still surveilling.

² Clouse was ultimately charged in case number GA102423 with committing four similar armed robberies during the same time using a black semiautomatic handgun. That case is scheduled for a pretrial conference on January 28, 2019.

The Vehicle Containment Technique (VCT)

Knowing that Barillas had been involved in an armed robbery, was probably armed and dangerous, and would likely evade the police and endanger the public if pursued, the SIS detectives decided to initiate a Vehicle Containment Technique (VCT) to stop Barillas' vehicle and take him into custody. That technique involves using three police vehicles to "box in" a suspect vehicle, thereby preventing it from evading, and containing the suspect.

When Barillas drove away from the motel, SIS Detective Daniel Nee followed and eventually drove in front of Barillas and blocked his forward progress. Rheault and Montoya used their vehicle to block Barillas' exit from the driver's side of the car. Detectives Carl Worrell and Marcelo Raffi blocked Barillas' vehicle from the rear.

As the VCT was implemented, Barillas accelerated forward and struck Nee's vehicle. He then reversed and struck Worrell and Raffi's vehicle. That created enough space for Barillas to drive over a dirt shoulder and escape.

The Pursuit

Officers Matthew Killman and David Corbet were Special Weapons and Tactics (SWAT) officers in uniform and in an unmarked police vehicle equipped with lights and siren. They were assisting the detectives who conducted the VCT. After the failed VCT, Corbet and Killman initiated the pursuit, activated their lights and siren, communicated that they were pursuing an armed robbery suspect, and called a supervisor and an airship to assist. During the pursuit, Barillas threw a gun from the vehicle, but Killman and Corbet did not see Barillas throw the gun, nor did any of the other following detectives. Barillas was driving at a high rate of speed and conducting a quick series of turns in a highly congested area.

The Gun

After the pursuit, an unidentified witness flagged down LAPD Sergeant Francisco Albarran and informed him that her son saw Barillas throw a gun from his vehicle during the pursuit. Albarran went to the 6800 block of Simpson Avenue, which is along the pursuit route, and located a BB gun in the street. A photograph of that gun is shown below:



Figure 2 - Photograph of BB gun recovered from the roadway along the pursuit route.

The Shooting

As Killman and Corbet pursued Barillas for approximately one mile, Barillas suddenly pulled to the curb in an industrial area, and appeared to be surrendering. Corbet and Killman exited their police vehicle and ordered Barillas to put his hands up. During the radio broadcast of the stop, Corbet can be heard in the background yelling “Put your fucking hands up!” Montoya and Rheault arrived about ten seconds later and also ordered Barillas to put his hands up. Surveillance video shows Barillas with both hands out, appearing to be complying with the officers’ orders. Moments later, Barillas exited the vehicle, turned toward the officers, and dropped his right hand down to his side, as shown in the sequence of photographs below:



Figure 4- Surveillance video of Barillas putting his hands out the window.



Figure 3- Surveillance video of Barillas exiting the car, turning toward the officers, and dropping his right hand.

Barillas grabbed what appeared to be a black, square object. The SIS team was aware, from the surveillance video of Barillas robbing the gas station, that Barillas kept his gun in his right front waistband/pocket area, and that is where he appeared to be reaching. It was later determined that Barillas was unarmed, and the object he grabbed could have been a black cellular telephone. When Barillas reached for his waistband, believing Barillas was drawing a gun, Montoya fired eight rounds and Detective Rheault fired five rounds, killing Barillas.

Compelled Statement of Detective Michael Montoya

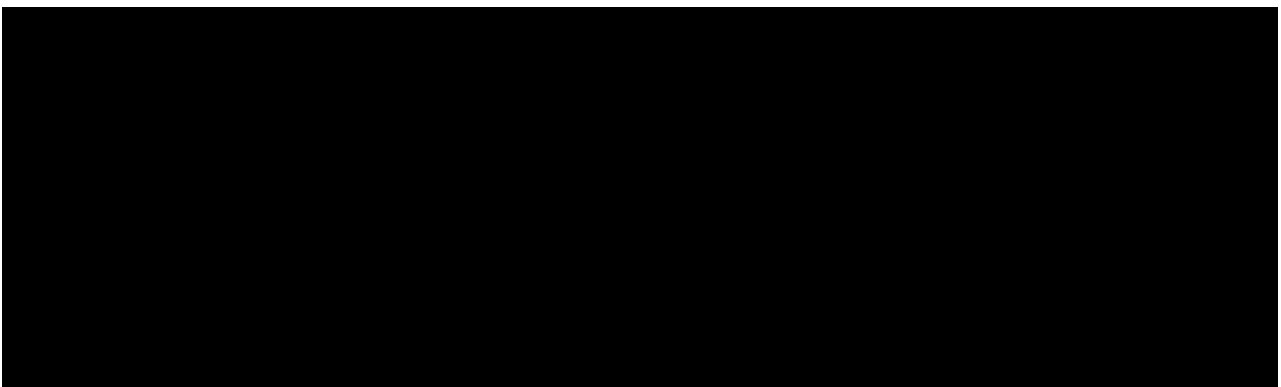
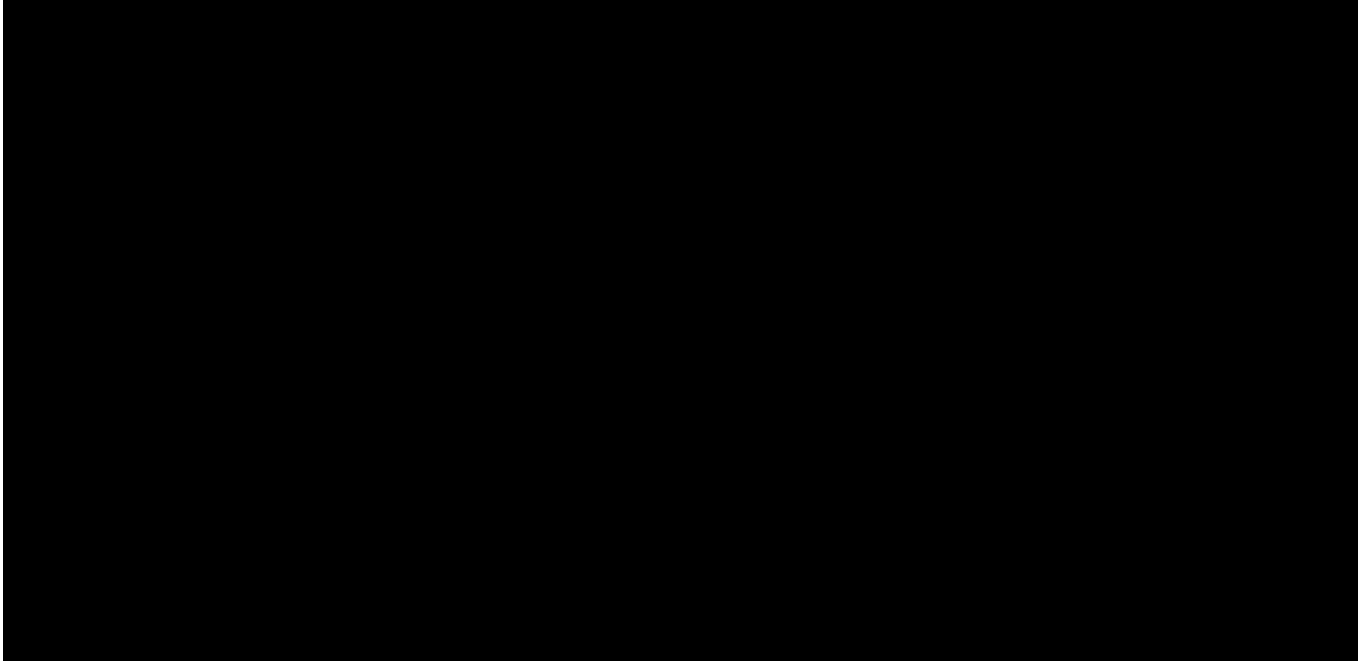
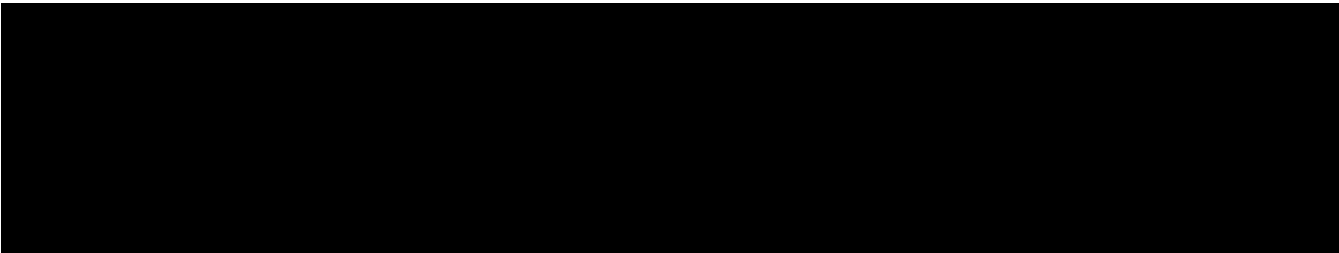




Figure 5 – Surveillance video of Barillas drawing a gun from his right front pocket during the gas station robbery.



Compelled Statement of Detective Corbin Rheault





Statement of Detective David Friedrich

Friedrich was a detective assigned to SIS. After conducting an investigation and confirming that Barillas was the armed robber shown in the gas station video who drew a black handgun from his right front waistband/pocket area, Friedrich briefed the SIS team that Barillas was the armed robber, was armed and dangerous, and distributed the video of Barillas to the other SIS members.

Statement of Detective Daniel Nee

Nee was a detective assigned to SIS and was briefed that Barillas was armed and dangerous. He attempted to use a VCT to stop Barillas, but Barillas rammed his car and escaped.

Statement of Detective Carl Worrell

Worrell was a detective assigned to SIS and was briefed that Barillas was armed and dangerous. He assisted in the VCT. He rammed Barillas' car from behind. Barillas accelerated and escaped.

Statement of Officer Matthew Killman

Killman was a SWAT officer assigned to assist SIS. When the VCT failed, Killman and his partner began the pursuit. They followed Barillas until he stopped. Killman exited his police vehicle and held Barillas at gunpoint. The SIS team arrived and Barillas was complying with the officers' orders. As Barillas put his left foot on the ground to pivot and exit the vehicle, Barillas' right hand went out of view. Corbet yelled, "Don't do that! Don't do that!" Let me see your hands!" Killman believed Barillas reached either under his shirt or toward his waistband. Killman heard several gunshots and saw Barillas go down.

Statement of Officer David Corbet

Corbet was a SWAT officer assigned to assist SIS and was partnered with Killman. Corbet saw Barillas ram Nee's truck enough times so that he was able to get out of the VCT and escape. Corbet and Killman pursued Barillas with their lights and sirens on until Barillas suddenly pulled over. Corbett stepped out of his vehicle and started giving commands to Barillas, who did not immediately respond. Corbet believed that Barillas was armed and was going to shoot at them. Barillas then put his hands out the window as Corbet repeatedly yelled, "Hey! Keep your hands where I can see them! Whatever you do, do not let me lose sight of your hands!" SIS detectives arrived and Barillas followed commands to open his door. Corbet saw Barillas put his hands back down. Corbet commanded, "Let me see your fucking hands! Don't fucking drop your hands!" Barillas followed commands, kicked his door open, and looked directly at the officers. As Barillas exited the car, Corbet repeated his commands for Barillas not to drop his hands. As Barillas came out of his car, he looked directly at the officers and then used his right hand to lift up his shirt and grab what looked like a black square object. As Corbet released the safety on his weapon, Detective Montoya fired.

Statement of Jane Doe

Jane Doe was Barillas' girlfriend. She also knew Clouse, who told her he committed three robberies in Burbank. She said Barillas admitted to her that he committed an armed robbery of a gas station. Barillas also told her, "I'm not going back to jail," and that he would rather die if caught because it would be his "third strike."³ Barillas said, "I will put up a fight to not go back to prison. They would have to shoot me first." She believed he got shot because he must have taken out his fake gun.

Autopsy Report

Scott Luzi, M.D. performed a postmortem examination of Barillas' remains and concluded that the cause of death was multiple gunshot wounds. A toxicology analysis was performed and showed the presence of cocaine in Barillas' bloodstream at the time of his death.

LEGAL ANALYSIS

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. 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

³ At the time of the robbery, Barillas had prior juvenile sustained petitions for robbery and assault with a deadly weapon, and convictions for grand theft and carrying a concealed/loaded firearm.

had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333. 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 also 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. (*italics added*).

Here, although Barillas did not have a weapon at the time of the shooting, and did not actually pose a threat to officers at the time he was shot, no criminal liability attaches to the detectives’ actions unless the prosecution can prove *beyond a reasonable doubt* they were not actually and reasonably in fear for the safety of themselves or others when they fired their weapons. The prosecution cannot meet that burden in this case.

Based on a review of the totality of the evidence, Detectives Rheault and Montoya were reasonable in their belief that Barillas was armed and dangerous based on their viewing of surveillance video showing him robbing a gas station three days prior, at gunpoint, and his association with Clouse, who was suspected of committing a series of armed robberies during the same time frame. The reasonableness of the detectives’ belief was confirmed when Barillas intentionally crashed into the detectives’ vehicles and fled, which not only confirmed Barillas’ consciousness of guilt, but also showed his dangerousness and desperation to escape and potentially harm the officers and public in doing so. The detectives’ belief that Barillas was armed and dangerous was further corroborated by his throwing a gun from the vehicle during the pursuit, albeit the officers did not see Barillas throw the gun, so their belief that Barillas continued to be armed at the termination of the pursuit was also reasonable.

When Rheault and Montoya were holding Barillas at gunpoint, they were aware that he was armed and dangerous and they knew that he kept his gun in his right, front waistband or pocket. When Barillas failed to comply with the officers’ orders to keep his hands up, and very quickly dropped

his right hand toward his waistband, where Barillas was known to keep a gun, it was reasonable for the officers to believe that Barillas was reaching for a gun and presented a deadly threat to the officers.

In retrospect, it appears that Barillas may have been reaching or grabbing for a black cellular telephone. A black cellular telephone was located on the street near where Barillas collapsed.

Notably, however, an officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. It is well-settled that “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. Similarly, when the use of deadly force appears to be reasonable to defend oneself or others, *actual danger does not need to have actually existed*. CALCRIM No. 505, 3470. Therefore, even though Barillas was not actually armed with a gun at the time of the shooting, the detectives were nonetheless reasonable in their belief that Barillas was reaching for a gun, particularly under rapidly unfolding circumstances where Barillas’ black cellular telephone could reasonably be mistaken for a gun.

CONCLUSION

The United States Supreme Court has long held that, “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 the police 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. Based on that law, and a review of all of the evidence in this case, we conclude that it cannot be proven beyond a reasonable doubt that Detectives Montoya and Rheault did not act in lawful self-defense and defense of others, when they used deadly force against Juan Barillas. We are therefore closing our file and will take no further action in this matter.