

**Officer Involved Shooting of Efren Martinez
Los Angeles Police Department**

Officer John Baker, #37158

J.S.I.D. File #15-0221



JACKIE LACEY

District Attorney

Justice System Integrity Division

March 3, 2017

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
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: Officer Involved Shooting of Efren Martinez
J.S.I.D. File #15-0221
L.A.P.D. File #F037-15

DATE: March 3, 2017

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office has completed its review of the May 5, 2015, non-fatal shooting of Efren Martinez by Los Angeles Police Department (LAPD) Officer John Baker. We have determined Officer Baker acted in lawful self-defense.

The following analysis is based upon a series of reports, photographs, recordings and transcribed interviews prepared by LAPD Force Investigation Division (FID). JSID was notified of this shooting at 1:56 a.m. on May 6, 2015. The District Attorney Response Team responded to the location of the shooting where they received a briefing and "walk-through" of the scene. The compelled statement of Officer Baker was considered for purpose of this analysis.

FACTUAL ANALYSIS

At approximately 11:45 p.m., on May 5, 2015 LAPD Officers John Baker and Gabriel Medina were traveling southbound on South Broadway south of Slauson Avenue. Medina was driving and Baker was riding in the front passenger's seat of the police vehicle.¹



LAPD police vehicle driven by Officer Medina

¹ The vehicle was a black Ford Crown Victoria. It was not painted black and white, nor did it have an LAPD insignia on its exterior. Both officers were dressed in full police uniform.

This area of South Broadway consists primarily of apartment buildings and commercial structures. An alley runs parallel to South Broadway behind the structures that line the west side of the street.



West side of South Broadway south of Slauson Avenue



Aerial view of South Broadway and alley to the west

Both officers saw Efred Martinez walking north on the west sidewalk of South Broadway Street. Martinez appeared to notice the police vehicle and abruptly turned away from the officers holding his hand near his waistband. Martinez moved quickly toward a locked gate, appeared to try to open it and then climbed over the gate and ran west, away from Baker and Medina toward the alley.

Baker exited the police car and pursued Martinez over the gate. As he followed Martinez, Baker was verbally communicating to Medina Martinez's direction of travel. Medina radioed for backup and updated dispatch regarding the foot pursuit. Medina drove south on South Broadway attempting to locate Martinez. As he looked down a walkway between two structures located on the west side of South Broadway, he saw the silhouette of a figure that he believed was Martinez, jumping south over a wall.

Medina stopped the police vehicle near a walkway leading from the west sidewalk to a parking area behind the businesses fronting South Broadway. He exited the police car and saw Baker standing on some type of raised platform at the back of the property. Medina heard three gunshots, but was not certain who fired.

After additional police officers arrived and set up a perimeter, Medina jumped over the gate and walked to where Baker was standing on a dumpster. He spoke with Baker who confirmed that he had fired his weapon and was uninjured.

After additional officers arrived, a perimeter was established around the location where Martinez had last been observed and a search commenced. During the search, a handgun was discovered along Martinez's path of flight.²



Chevrolet Suburban (north side)

² The handgun was discovered behind (to the west of) 5869 ½ South Broadway. The handgun was discovered south of a red Chevrolet Suburban parked behind 5869 ½ South Broadway. Because at the time the handgun was discovered Martinez was still outstanding, LAPD made a determination to collect the handgun before it could be photographed. A card was placed at the approximate location that the handgun was discovered. The handgun was identified as a Spreewerk Model P38, 9mm Luger. It was loaded with eight live cartridges and subsequent testing determined that it was functional.



Approximate location of firearm

During the search of the yard behind 5877 South Broadway, an LAPD airship, using an infrared sensor, located a heat signature under a woodpile. This yard was extremely overgrown and filled with debris.



Yard behind 5877 South Broadway

An LAPD K9 entered the yard at which time Martinez stood up and surrendered. Martinez was ordered to walk out of the yard toward South Broadway where he was taken into custody.

Martinez was transported by ambulance to California Hospital Medical Center where he was treated for two gunshot wounds to his back, a gunshot wound to his left arm and a sprained ankle. He survived his injuries.

Martinez was subsequently charged in case number BA436342 with assault with a firearm on a police officer. He plead guilty to that count on May 19, 2016, and was sentenced to 10 years in state prison.

Compelled Statements of Officer John Baker:

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. Officer Baker was interviewed four times regarding his actions during this officer involved shooting by detectives from FID. These interviews occurred on May 6, 2015; November 30, 2015; December 23, 2015 and January 14, 2016. The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and ordered Baker to do so in the present case.

Baker, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York, supra, at 284-285*. Because the LAPD ordered him to answer questions which might expose him to criminal liability, the LAPD compelled Baker to participate in the four interviews. The effect of this legal compulsion is that Baker's statements cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interviews be used against him. *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 Baker's police personnel file, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

May 6, 2015 interview:

[REDACTED]

[REDACTED]

[REDACTED]



Wall topped with razor wire and dumpster [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

November 30, 2015 interview:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

December 23, 2015 interview:

[REDACTED]

January 14, 2016 interview:

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears that the person claiming the right of self-defense actually and reasonably believed that he was in imminent danger of great bodily injury or death. *People v. Randle* (2005) 35 Cal.4th 987, 994; *People v. Mercer* (1962) 210 Cal.App.2d 153, 161.

In protecting himself or another, a person may use that amount of 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 imminent injury. CALCRIM No. 3470.

In California, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard. *People v. Mehserle*, (2012) 206 Cal. App. 4th 1125, 1146 (holding that California law "follows the objective 'reasonable person' standard—the trier of fact is required to evaluate the conduct of a reasonable person in the defendant's position [citations omitted] . . . the jury should consider all relevant circumstances surrounding the defendant's conduct. This enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation—but this is not the same as following a special 'reasonable police officer' standard.")

"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.

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.

CONCLUSION

Officers Baker and Medina saw Martinez walking on South Broadway late at night holding his right hand in an unnatural manner near his waistband. This behavior alerted them to the possibility that Martinez was armed. Before the officers could contact him, Martinez scaled a locked gate and ran. These actions reinforced the officer's suspicions that Martinez was armed.

[REDACTED] further confirming that Martinez was prepared to go to extraordinary lengths to avoid police contact.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Given the rapidly evolving situation, the extraordinary efforts taken by Martinez to avoid police contact, the fact that he was armed with a firearm, [REDACTED]

[REDACTED]
Bakers' decisions to fire at Martinez were objectively reasonable under the circumstances.

For these reasons, we conclude that Officer John Baker's use of deadly force was legally justified in self-defense. We are closing our file and will take no further action in this matter.