

**Officer Involved Shooting of Tien Hua
Los Angeles Police Department**

Officer Richard Alba #25935

J.S.I.D. File #15-0682



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 18, 2017

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 Tien Hua
J.S.I.D. File #15-0682
F.I.D. File #F101-15

DATE: April 18, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 29, 2015, fatal shooting of Tien Hua by Los Angeles Police Department (LAPD) Officer Richard Alba. It is our conclusion that Officer Alba used reasonable force in self-defense, defense of others, and to apprehend a dangerous fleeing felon.

The District Attorney's Command Center was notified of this shooting on December 29, 2015, at approximately 11:26 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant Jeffery Wenninger.

The following analysis is based on reports, recorded interviews, and photographs submitted to this office by the LAPD's Force Investigation Division. The departmentally compelled statement of Officer Alba was considered in this analysis.

FACTUAL ANALYSIS

On December 27, 2015, Tien Hua sent a Facebook message to his ex-girlfriend, Heather S█, under an alias. He asked S█ and her current boyfriend, Henry Estrada, to meet him at an address in Hollywood. When S█ and Estrada arrived, Hua exited his car and brandished a .40 caliber Glock pistol. S█ and Estrada tried to run away, and Hua responded by shooting and killing Estrada and then attempting to kidnap S█, who managed to escape.

Once detectives identified Hua as the suspect in the murder of Estrada, a taskforce which included members of the LAPD and FBI started tracking him through his cellular phone. Members of the taskforce traced Hua to his parent's home at 3531 Strang Avenue in the City of Rosemead. On December 29, 2015, at 10:15 a.m., LAPD officers established surveillance of Hua's parents' home while search and arrest warrants were sought. At 2:25 p.m., LAPD officers, having obtained a *Ramey* warrant for Hua's arrest, attempted to serve that warrant by

calling for Hua to come out of his home using loudspeakers from police vehicles and a Los Angeles County Sheriff's Department helicopter. Although officers observed Hua looking out of the house through its windows, he did not respond to the orders to come outside.

At 3:00 p.m., an LAPD Special Weapons and Tactics (SWAT) unit was requested and dispatched to Hua's address. Several dozen officers responded to the call, including crisis negotiators and specially trained paramedics, as well as four armored vehicles. While the SWAT officers were responding, they were told of Hua's background via police radio and email messages. Specifically, all of the responding officers were told Hua was wanted for murder and kidnapping, the gun he used to commit those crimes had not been found, he had previously been arrested while armed, and he had previously been found in possession of an extended magazine which fit an AK-47 as well as shotgun rounds. Additionally, the officers were told that Hua was a "Black Dragons" gang member who was likely currently under the influence of methamphetamine.

The SWAT officers methodically relieved the LAPD detectives who had initially tried to serve the warrant and set up a perimeter around Hua's home. That home was situated on a narrow lot and surrounded on three sides by a six-foot-high wooden fence, forcing the officers to establish positions in the yards and driveways of adjacent homes. The officers were also confronted with blinds which covered all of the home's windows and a backyard which was filled with debris and three large sheds.

Once a perimeter was established, officers attempted to have Hua exit his home of his own volition. The officers used bullhorns to announce their presence and attempted to contact him on his cellular phone. Hua answered his phone one time, but hung up when the officer identified himself. He later responded via text message saying, "what do you want, why are you here?" An officer responded that the police were outside and he needed to come outside. There was no further communication with Hua.

Once the on scene commander determined that more attempts at communication were fruitless, officers began implementing a tactical plan to force Hua from his home. Over the next two hours, officers inserted different types of tear gas into the home, and searched the exterior of the home using trained canine units and a helicopter which was equipped with infrared sensors. The officers on the sides of the home also removed several sections of the wooded fence which surrounded the home in order to gain a better view onto the property.

Officers Enrique Anzaldo, Joseph Goosby, and Isaac Moreno were assigned to cover the south side of Hua's home. At 8:53 p.m., those officers saw Hua through one of these gaps in the fence. Moreno, who was closest to the fence, illuminated Hua with the flashlight which was mounted on his rifle and shouted, "Police – Put your hands up!" Hua, apparently startled by the new opening in the fence, momentarily paused before running westward, toward the rear of the home. All three officers believed that Hua was armed. Moreno described Hua "holding a black pointy object in his right hand [which] appeared to me to be a handgun" and said that he told officers Anzaldo and Goosby that Hua had a gun.¹ Goosby and Anzaldo also described seeing a small, short barreled gun in Hua's right hand in the moment they saw him. Hua was visible to these officers for "less than a second" before his movements were obscured by the fence and the

¹ SWAT officers have explicitly defined roles when at a scene. Moreno was not authorized or expected to broadcast his observations over the radio to other officers; Anzaldo was assigned to handle that task.

officers did not follow Hua or observe where he went next. Anzaldo broadcast “we have contact” over the police radio.



Figure 1- View from rear yard of the property south of Hua's home

Officers Richard Alba and Gabriel Gaxiola were positioned to the rear of Hua’s home in the backyard of the adjoining residence. At the outset of the tactical operation, the officers were standing on a ladder immediately adjacent to a six-foot-high fence which separates the properties; however, they had a very limited view of the target home from that position because of the large sheds in Hua’s rear yard. Due to that limited view and the concern about their ability to react to a threat in Hua’s backyard from the ladder, they moved about 20 yards back from the fence to give themselves a broader view of their area of responsibility and more time to react if necessary.

Several minutes after Alba and Gaxiola moved away from the fence line, Gaxiola heard someone moving around in the yard they were watching. A moment later, Anzaldo announced over the radio that he had “contact” with Hua. Approximately 10 seconds after that radio traffic, Gaxiola heard noise between two of the sheds in Hua’s backyard and then saw Hua’s head “pop up” over the top of the fence, next to the shed closest to him.² Gaxiola activated the light which was affixed to his rifle and saw Hua propel himself onto the roof of the shed. Gaxiola immediately ordered Hua to show his hands while moving to his right so that he could maintain his view of Hua. Alba also activated his light. As Hua was illuminated and standing on the shed, Gaxiola saw him holding a black object in his right hand which Gaxiola believed was a handgun. He was about to engage Hua when he heard Alba fire three gunshots in quick succession and saw Hua immediately fall to the ground.³

² Gaxiola told investigators that he believed that Hua jumped on top of the shed which was positioned to the far north corner of the property. The location of Hua’s body and the observations of other officers indicate that Hua jumped onto the roof of the middle shed.

³ An unknown “pinging” sound can be heard on the recording of the radio traffic eight seconds after Anzaldo announces that they have contact with Hua. LAPD reports identify this noise as gunshots, although it is not obvious from the recording itself that they are, in fact, the reports of Alba’s shots.

Officers Jennifer Grasso, James Brown, and Bruce Adam all saw Hua jump on the roof of the shed as well. Adam believed that Hua was armed with a handgun and was shouldering his rifle to engage Hua when Hua was shot; Brown saw Hua move as if he had something in his hand but was not in a position to engage him; and Grasso was unable to see Hua's hands when he jumped onto the shed.

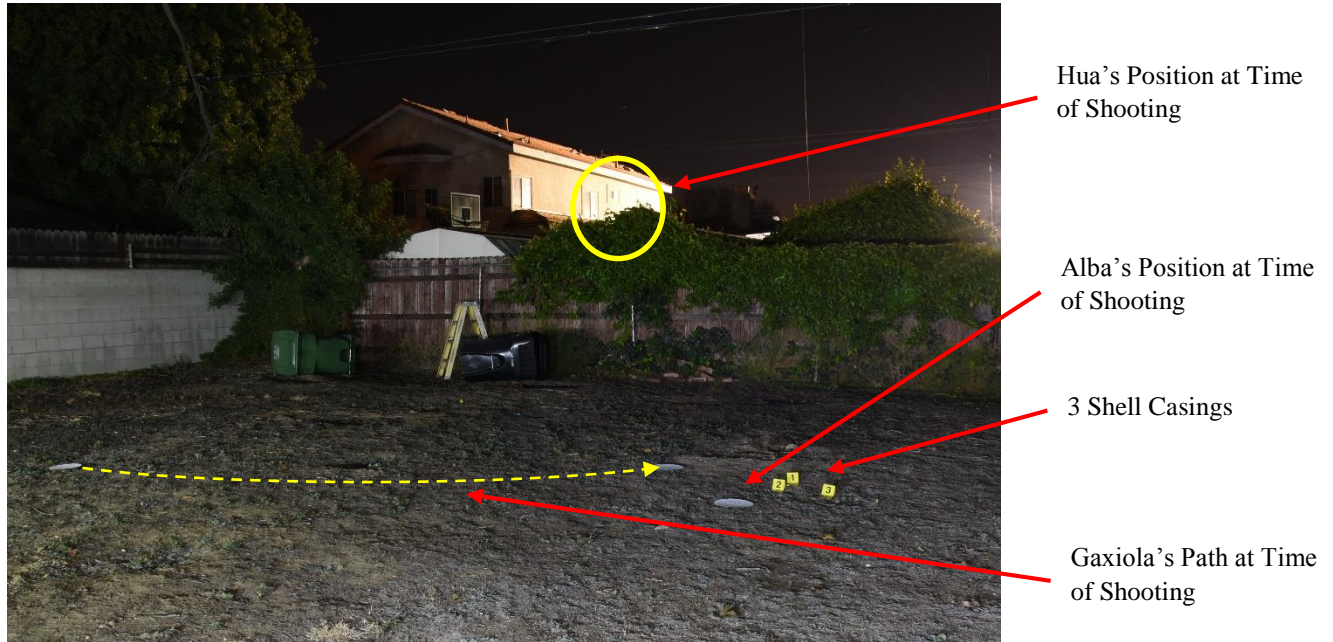


Figure 2 - View from rear yard of property west of Hua's home

Immediately after the shooting, Alba moved back to the ladder which was still positioned by the fence to the rear of Hua's home, climbed it, and alerted the officers over the radio that Hua was down and that he could see Hua's hands.



Figure 3 - Butane lighter located next to Hua after shooting

Moreno and two other officers entered the rear yard of Hua's home and found him mortally wounded on the ground between two sheds. Moreno and Officer David Kortege were unable to get to Hua because of the narrow opening between the two sheds, so they started pulling debris

out of their way to gain access. When they pulled on a piece of metal debris, Hua's body and a black butane lighter came along with it. Moreno believed the lighter was a small handgun until he grabbed it to move it away from Hua.

Hua's death was pronounced at the scene. Dr. Pedro Ortiz-Colon conducted an autopsy and determined that Hua was struck one time by a bullet which passed through the left side of his neck, traveled left to right, back to front, and upwards, and was rapidly fatal. Hua's blood was tested as part of the autopsy, and he was found to have high levels of methamphetamine in his system when he was killed.

Alba's Statement

Alba provided a statement to investigators after the shooting. The statement was compelled.⁴

[REDACTED]

LEGAL ANALYSIS

California law permits any person 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. 3470. Actual danger is not necessary to justify

⁴ Alba was interviewed on the morning of December 30, 2015. 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 Alba to do so in the present case. Alba, 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 (1968) 392 U.S. 280, 284-285. Because the LAPD ordered him to answer questions which might expose him to criminal liability, Alba's participation in the interview was compelled. The effect of this legal compulsion is that neither Alba's statements nor any material derived from them may be used against him in a criminal proceeding. 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 Alba'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.

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. 3470.

A killing 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 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.

In this instance, Alba was tasked with assisting in the execution of an arrest warrant for a man who was wanted for murder and attempted kidnapping, believed to be armed, under the influence of methamphetamine, and who had been previously arrested with various weapons. During the attempted execution of that warrant, Hua defied officers and was unresponsive to hours of attempts to coax him to leave his home. Instead of making any attempts to cooperate with the lawful orders of the officers arrayed around his home, Hua equipped himself with an object which was easily mistaken for a handgun, and climbed onto the roof of a shed in the face of a SWAT team which he had been repeatedly warned was surrounding his house.

When Hua jumped onto the top of the shed with an object in his hand, the only reasonable inference from his actions is that he was trying to escape and that he was willing to use force in that attempt. [REDACTED], Alba reasonably believed that Hua was armed with a gun and was justified in using deadly force to stop the apparent threat in self-defense.

Even if Hua had not progressed to the point where he presented an imminent threat to anyone's life at the moment he was shot, Alba did not need to wait until another person was actively in harm's way. Hua's passive and active resistance in the face of a lawful order, coupled with his extremely violent and unpredictable behavior, is precisely the situation for which Penal Code section 196 was drafted. Specifically, Hua was wanted for murder and attempted kidnapping which are "atrocious" crimes. All of the information the officers had, including that he was armed and his refusal to cooperate with the officers, made it clear that Hua was an imminent threat to the community. Finally, when he ultimately presented himself to the officers, he was attempting to escape while holding an object that was reasonably identified as a weapon under the circumstances. Based on the entire situation, a reasonable person in the officer's position would believe it was necessary to use deadly force to apprehend Hua.

CONCLUSION

We conclude that Officer Richard Alba used reasonable force in self-defense, defense of others, and in the apprehension of Hua, who had committed a murder, and was actively resisting arrest by fleeing from the officers while armed with what a reasonable person would believe was a handgun. We are closing our file and will take no further action in this matter.