

Officer Involved Shooting of Todd Hurlburt

Los Angeles Police Department

Officer Rogelio Rendon #42667

J.S.I.D. File #17-0385



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 31, 2018

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 Todd Hurlburt
 J.S.I.D. File #17-0385
 F.I.D. File # F059-17

DATE: October 31, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 4, 2017, fatal shooting of Todd Hurlburt by Los Angeles Police Department (LAPD) Officer Rogelio Rendon. We have concluded that Officer Rendon acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 9:39 p.m., on August 4, 2017. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings and transcripts of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted to this office by LAPD Force Investigation Division (FID) Detective Anderson. Rendon's compelled statement was not considered as part of this analysis.

FACTUAL ANALYSIS

On Friday, August 4, 2017, at approximately 8:27 p.m., Victoria S. called 9-1-1. Victoria advised the operator, "I'd like to request an escort to return to my home. I have someone that's been staying with me. There is a no negative contact restraining order. We had been getting along fine until I had gone to see a friend and now he's kind of gone off his rocker and he's breaking things inside the house. I'm very concerned about returning home."

At approximately 8:34 p.m., LAPD Communications Division (CD) broadcast, "Any Pacific Unit, Domestic Violence, [REDACTED] Venice Boulevard. Suspect a male white, 53 years, monitor comments."

Pacific Patrol Division uniformed Police Officers Daniel Hartman and Rogelio Rendon heard the broadcast and responded to the location. Both were wearing full LAPD uniforms and drove to the location in a black and white police vehicle. Hartman drove while Rendon read the comments of the call out loud to him, which included a physical description of the suspect, identified in the comments as Todd Hurlburt. The comments also indicated Hurlburt was Victoria S.'s ex-boyfriend, that there was a history of domestic violence between the two of them and that Hurlburt had been breaking Victoria S.'s property. The comments detailed that there was a "no negative contact" restraining order against both Hurlburt and Victoria S., which allowed the two to reside at the location together, but to have no negative contact between them.¹ The comments also indicated there were no weapons inside of the residence.²

Hartman and Rendon arrived at the location at approximately 8:44 p.m., where they met Victoria S. on the sidewalk outside of the residence. They went over the information she had previously reported to the 9-1-1 operator and Victoria S. indicated she was not aware of any weapons inside the residence.³ Victoria S. also told the officers she wanted them to get Hurlburt to leave the location. Hartman advised her they could not do that since he lived at the residence, but they would escort her inside and attempt to peacefully resolve the situation.

The three proceeded east toward the front pedestrian gate located on the northeast corner of the property. Rendon opened the gate, held it open for Victoria S. and Hartman, then followed them as they walked on the pathway toward the front door. Victoria S. then opened the front door by unlocking the deadbolt with a key.

¹ A copy of the actual restraining order was obtained. It is a criminal domestic violence protective order, with only Hurlburt subject to its terms and Victoria S. listed as the protected party. Per the order (and the conditions of his probation), Hurlburt was not to own, possess, buy or try to buy, receive or try to receive or otherwise obtain a firearm or ammunition. The order was dated January 20, 2017, and was set to expire on January 20, 2020.

² The information contained in the comments was based upon answers provided by Victoria S. to the 9-1-1 operator.

³ In subsequent interviews with FID investigators, Victoria S. indicated she had not disclosed to Hartman or Rendon that Hurlburt had recently purchased rifle parts and that she owned a "firearm jig," a tool used to assemble firearms, which was inside the house. She also omitted that she had gone to the window prior to calling the police and saw Hurlburt sitting in a chair in the dining room and noticed that he had been drinking alcohol recently, which was not typical for him, and had been a factor in the domestic violence incident which resulted in the restraining order being issued.



■ Venice Boulevard

Hartman stepped inside the house as Rendon remained in the doorway area.⁴ Hartman immediately observed Hurlburt sitting in a wooden rocking chair in the dining room with his back to them. Hurlburt had a black assault rifle that he was holding in both of his hands.

Hartman un-holstered his weapon and sought cover using an interior wall. Hartman yelled for Hurlburt to drop the weapon at least twice. Hurlburt did not comply, but instead stood up and began turning around to face the officers with the rifle still in his hands. Hartman continued to yell at him to drop the weapon.⁵ Hurlburt continued his motion and Hartman aimed his service weapon at Hurlburt while moving his right index finger onto the trigger preparing to fire.

⁴ According to Hartman, Victoria S. stepped back after opening the door to allow the officers to enter before her. Victoria S. told investigators she walked in first, with the officers behind her.

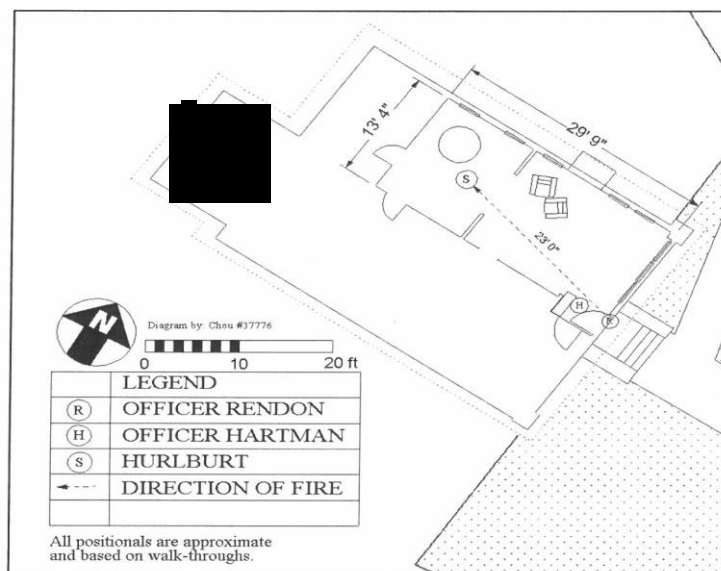
⁵ Victoria S. told investigators she initially took a few steps into the house and observed Hurlburt sitting on a chair in the dining room with his back toward them. She heard an officer repeatedly yelling, "Sir, put the weapon down!" When Hurlburt turned his body in a counter-clockwise direction to face them, she saw he was holding a rifle with both hands. Victoria S. then saw Hurlburt moving the rifle's muzzle in their direction. She heard holster buttons un-snapping and moved toward the door to leave.



Front Doorway

Immediately before Hartman was about to pull the trigger, he heard a single gunshot to his right. Hurlburt was struck and fell to the floor on his back.⁶ The rifle fell from his hands and landed approximately an arm's length from his body. Realizing that his partner must have fired, Hartman quickly glanced back and saw Rendon standing by the right side of the doorway with his pistol drawn.

⁶ Hartman told investigators it was his intention to shoot Hurlburt because he, "thought he was going to shoot us" and, "thought he was going to try to kill us."



Hartman then returned his attention to Hurlburt and observed him moving. Hartman ordered him to stop moving and not to reach for the rifle. Hartman then broadcast that there had been a shooting and requested paramedics. Both Hartman and Rendon kept their pistols aimed at Hurlburt until additional officers arrived. During this period, Victoria S. remained outside the residence.⁷

Additional officers responded to the location. Officer Lew was assisting Hartman in taking Hurlburt into custody when Hartman pushed the rifle with his foot away from Hurlburt. Lew was concerned that the rifle was still too close, and could be retrieved by Hurlburt. He asked the other officers present if any of them knew how to render the weapon safe. Officer Michael Castellanos took possession of the weapon, placed the rifle's switch selector to "safe," removed a loaded magazine, then locked the bolt of the weapon to the rear.⁸ This action caused a live cartridge to be ejected from the chamber. The weapon, magazine and live round were secured in the rear of their police vehicle until custody of the items was transferred to LAPD criminalists.

Paramedics arrived, rendered medical treatment to Hurlburt and transported him to Ronald Reagan UCLA Medical Center. Hurlburt was unsuccessfully treated at the hospital and pronounced dead at 9:33 p.m., after failing to respond.

⁷ According to Victoria S., she was in the process of exiting the residence and had just passed Rendon and exited the front door when she heard one shot fired in close proximity to her. She then heard a second loud noise that was not a gunshot, which she believed was either Hurlburt or the rifle falling to the ground. She exited the residence and remained outside until she was contacted by officers responding to the location. Victoria S. was not aware that Hurlburt was deceased when she was initially interviewed. She told investigators she believed Rendon had done "the right thing." She elaborated that "there was a rifle barrel pointing or starting to come in that direction." Four days after the incident she filed a complaint, claiming she had been in between the officers and Hurlburt at the time of the shooting and was in the line of fire.

⁸ Castellanos had prior military training which included how to render assault rifles safe. When he received the rifle, it was in the firing position with a round in the chamber.

An autopsy was conducted on August 10, 2017. The cause of death was determined to be a gunshot wound through the left arm and into the chest.⁹ Toxicology testing done as part of the autopsy revealed that Hurlburt had marijuana and alcohol in his system at the time of his death.¹⁰

A canvass of the area was conducted, but no eye witnesses were located. Several people heard gunshots, with varying reports as to how many they heard.

Criminalists located one bullet casing near the doorway into the residence, consistent with Rendon's service weapon, a .9mm Smith and Wesson MP semiautomatic pistol. An examination of Rendon's service weapon and magazine revealed the weapon had one round in the chamber and 16 rounds in the magazine. The weapon has a total capacity load of 18 rounds, consistent with Rendon having fired one round.

Three additional live rounds consistent with Hurlburt's rifle were found inside the residence in the dining room where Hurlburt had been seated. The rifle itself was examined and determined to be an unknown make and model with no serial number.



Rifle held by Hurlburt at the time he was shot

⁹ There were a total of three gunshot wounds, an entry wound and exit wound in the left arm and an entry wound to the chest. Based upon bullet trajectory analysis and the recovery of one bullet, it was determined that all three wounds were caused by the same bullet.

¹⁰ Hurlburt had a femoral alcohol level of .247% and a heart blood alcohol level of .303%.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others 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. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

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 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.3^d 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.

"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.2^d 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.

At the time officers encountered Hurlburt, he was armed with a loaded assault rifle. Rather than complying with repeated demands to drop the weapon, Hurlburt moved from a seated position to standing, simultaneously turning and moving the rifle so that it was pointed at Hartman and Rendon. Hartman believed deadly force was necessary and was about to fire his weapon when Rendon fired a shot. Based upon those circumstances, Rendon’s actions were reasonable.

CONCLUSION

We find that Officer Rendon acted lawfully in self-defense and in defense of others when he used deadly force against Todd Hurlburt. We are closing our file and will take no further action in this matter.