

**Officer Involved Shooting of Alfredo Santibanez
Los Angeles Police Department**

Officer David Bunch, #38552

J.S.I.D. File #15-0438



JACKIE LACEY

District Attorney

Justice System Integrity Division

November 13, 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 Alfredo Santibanez
J.S.I.D. File #15-0438
L.A.P.D. File #F072-15

DATE: November 13, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 22, 2015, non-fatal shooting of Alfredo Santibanez by Los Angeles Police Department (LAPD) Officer David Bunch. It is our conclusion that Officer Bunch acted in lawful self-defense and in lawful defense of another.

The District Attorney's Command Center was notified of the shooting on August 23, 2015, at approximately 12:40 a.m. The District Attorney Response Team (DART) responded and was given a briefing and a walk-through of the scene.

The following analysis is based on various reports submitted by the LAPD Force Investigation Division (LAPD FID). The compelled statement of Officer Bunch was considered in this analysis.¹

FACTUAL ANALYSIS

On Saturday August 22, 2015, at approximately 11:36 p.m., LAPD Officers Boyan Brkic and David Bunch were engaged in a crime suppression detail in an unmarked Ford Crown Victoria driven by Brkic. Both officers were in full uniform. As Brkic and Bunch drove northbound on Soto Street from Michigan Avenue, Brkic observed Alfredo Santibanez as he descended the steps of a hotel on the west side of the street and quickly walked eastbound onto Soto Street towards the path of their oncoming vehicle.

¹ Unless otherwise redacted, the information contained in this memorandum is derived from the statements provided by non-law enforcement witnesses and the statement provided by Officer Boyan Brkic.

Brkic stopped the Crown Victoria in order to avoid colliding with Santibanez. When Santibanez reached the driver's side of the stationary Crown Victoria, Brkic opened his door, exited and stood behind it as he told Santibanez to "hold on" so he could talk to him.²



Photo of Crown Victoria driven by Brkic

Bunch opened his door and exited the Crown Victoria as well. Santibanez, who seemed startled, slowed his pace momentarily and turned to look at Brkic. As Santibanez quickened his pace and continued walking east in front of the police vehicle, Brkic noticed the butt of a revolver protruding from Santibanez's jacket.³ Brkic immediately yelled "Gun!" several times. Santibanez quickly ran east towards the sidewalk which he then used to run southbound on Soto Street. Bunch followed Santibanez onto the sidewalk and ran behind him. As Bunch followed closely behind Santibanez on the sidewalk, Brkic ran down Soto Street parallel to Santibanez.

Santibanez slowed his pace and began turning his torso and right arm towards the officers while holding a revolver in his right hand. Brkic, who feared that Santibanez was going to shoot him and his partner, commanded Santibanez to stop. Bunch, who was behind Santibanez on the sidewalk, fired his service weapon three times and struck Santibanez in the upper left arm, the left calf and the right hip/flank area.



Photo of revolver carried by Santibanez

² Brkic and Bunch decided to detain and investigate Santibanez for a California Vehicle Code violation, crossing the street in violation of section 21955. Santibanez's violation was caught on video by a surveillance camera from a building at 219 North Soto Street. It should be noted that Brkic took cover behind the driver's side door of the Ford Crown Victoria which is outfitted, along with the passenger side door, with ballistic material designed to stop bullets.

³ Brkic could not remember specifically whether Santibanez wore a jacket or a sweatshirt. Photos of the crime scene, however, indicate that Santibanez was wearing a jacket.

After being hit by gunfire, Santibanez dropped the revolver onto the sidewalk and stumbled towards the courtyard area of an apartment building located at [REDACTED] Soto Street. Santibanez collapsed just inside the gateway of a chain metal fence separating the apartment building courtyard from the sidewalk.

Santibanez continued to move his hands and body as he lay on the ground. Santibanez also yelled profanities at Brkic and Bunch. Brkic handcuffed Santibanez and radioed for back up units and for an ambulance to treat Santibanez's wounds. Santibanez continued shouting profanities at the officers, and complained that he had been shot and was in pain.

Several officers arrived at the location to assist Bunch and Brkic including Officer Tyler Fox who conducted a pat down search of Santibanez. While Fox was conducting the pat down search, Santibanez told Fox to uncuff him as he was no longer armed.⁴ Fox declined the request. After being taken into custody, Santibanez was transported to a local hospital where he was treated for multiple gunshot wounds.

Santibanez's revolver, which was loaded with six cartridges, was recovered from the location by Fadel Biraimah and Alan Perez from the LAPD's Forensic Science Division and was booked into evidence. The revolver was later examined and found to be operable. DNA testing of the revolver was inconclusive; forensic printing of the firearm did not yield any latent prints of value. No witnesses were located who actually witnessed the officer involved shooting.⁵

Officer David Bunch, Compelled Statement

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 David Bunch was interviewed on August 23, 2015, by LAPD FID detectives regarding his actions during this officer involved shooting. 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 Bunch was ordered to do so in the present case.

Bunch, 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 Bunch to

⁴ Later, when Santibanez was treated at the hospital, he stated that he was being chased by police officers, put his hands up and got shot. Santibanez also stated that he was left handed. These statements were made in the presence of LAPD Officer Roberto Morales.

⁵ No pedestrians are visible in the video recording of the initial contact between Santibanez and the officers and the short chase which immediately follows their initial contact. Several inhabitants of the residential buildings adjacent to the location of the officer involved shooting were interviewed and reported either being asleep or only hearing gunshots.

participate in an interview. The effect of this legal compulsion is that Bunch's statement cannot be used against him in a criminal proceeding, nor can any material derived from the compelled statement 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 Bunch'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 statement of Officer David Bunch is summarized as follows.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On August 25, 2015, in case BA439226, Santibanez was charged in the Los Angeles Superior Court with two counts of violating Penal Code section 417(c) [Brandishing a handgun in the presence of an officer] and Penal Code section 29800(a) [Convicted felon in possession of a firearm].

The trial for Santibanez was held from April 25, 2017 to May 9, 2017. Both Officers Bunch and Brkic testified at trial and reiterated their prior statements.

The defense called several witnesses. Erika [REDACTED], Santibanez's sister, testified that she did not see Santibanez in possession of a gun on August 22, 2015, and last saw him that day at approximately 11:10 p.m. or 11:15 p.m. before he was shot by Bunch. She further testified that she did not see a gun on the sidewalk after he was shot.

T [REDACTED] K [REDACTED], the owner of Major Liquor on 1st and Soto Street, was also called to testify. K [REDACTED] testified that she had known Santibanez for almost ten years and knew him well. Santibanez would help her stock merchandise at the store almost daily and did not ask for compensation. He called her "Moms" and her husband, who also worked at the store, "Pops." On the evening that Santibanez was shot, he had stopped by the store and had helped her stock drinks into the refrigerator. She did not see him carrying a gun. According to K [REDACTED], Santibanez left her store at about 9:00 p.m.

Alfredo Santibanez also testified at his trial. Santibanez denied having a gun and stated that he ran from Bunch and Brkic, whom he did not recognize as police officers, towards his friend Estella's house where he had attended a party earlier that evening. Santibanez explained that he could not see Bunch and Brkic very clearly due to their car's headlights and that the officers, both of whom were bald, looked like gang members, due to their shaved heads. Santibanez further testified that he did not turn back to look at the officers as he ran away.

Santibanez recalled falling down at the gate of his friend Estella's house after being shot by Bunch. He claimed that he did not have a gun or any weapon, and did not understand why Bunch had shot him. Santibanez also denied saying that he was no longer armed. He further testified that none of the officers at the scene showed him the gun he had allegedly been carrying and only saw it for the first time at trial.

Santibanez did not explain where the revolver came from that the officers testified was on his person nor did he assert that Officer Bunch or Brkic "planted" evidence on him. Santibanez also did not testify regarding any potential motive that either officer would have to fabricate charges against him. Finally, no physical evidence, such as a video recording, was recovered during the investigation of this case indicating that either Officer Bunch or Brkic "planted" the gun used by Santibanez.

On May 9, 2017, a jury found Santibanez not guilty of the charges against him. On June 5, 2017, Santibanez filed a lawsuit against the LAPD.

LEGAL ANALYSIS

The use of deadly force in self-defense or in the defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

The test for whether an officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. Reasonableness of force used by an officer depends on the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Graham v. Connor* (1989) 490 U.S. 386, 396. "The reasonableness of the particular force used must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* "The calculus of reasonableness must embody allowance for the fact that 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." *Id.* at 396-97.

In California, the evaluation of the reasonableness of a police officer's use of deadly force is determined by applying 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.").

CONCLUSION

In the present case, Santibanez's actions led both Officers Bunch and Brkic to reasonably believe that they were in imminent danger of being killed or suffering great bodily injury. Specifically, when the officers realized that Santibanez was armed and attempted to detain him, Santibanez did not comply with Bunch's command to stop. Instead, Santibanez drew a loaded revolver from his pocket and rotated towards the officers while holding this firearm. To end this imminent and deadly threat, Officer Bunch shot Santibanez three times. The evidence reviewed in this case demonstrates that Officer Bunch acted in lawful self-defense and in the lawful defense of his partner.

This analysis is not affected by Santibanez's acquittal in case BA439226. The standard for determining guilt at trial (i.e. guilt beyond a reasonable doubt) is inapposite to the legal principles used in determining the legality of an officer involved shooting. We are therefore closing our file and will take no further action in this matter.