

Officer Involved Shooting of Jose Luis Chavez

West Covina Police Department

Officer Kenny Benitez, #428

J.S.I.D. File #16-0287



JACKIE LACEY

District Attorney

JUSTICE SYSTEM INTEGRITY DIVISION

December 17, 2018

MEMORANDUM

TO: CHIEF MARC TAYLOR
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Jose Luis Chavez
J.S.I.D. File #16-0287
W.C.P.D. File #16-4078
L.A.S.D. File #016-00052-3199-055

DATE: December 17, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 20, 2016, non-fatal shooting of Jose Luis Chavez by West Covina Police Officer Kenny Benitez. We have determined that Officer Benitez acted lawfully in self-defense.

This shooting occurred on May 20, 2016 at 11:14 p.m. The District Attorney Response Team was notified of the shooting at 2:00 p.m., on May 21, 2016, and was briefed on the investigation on May 31, 2016.

The following analysis is based on investigative reports, firearms analysis reports, laboratory analysis reports, photographs, recordings of radio and dispatch calls, and witness statements submitted to this office by LASD Homicide Sergeant Ken Perry. The voluntary statements of Benitez and Chavez were considered as part of this analysis.

FACTUAL ANALYSIS

West Badillo Street is a four-lane east-west boulevard in the City of West Covina. On the south side of Badillo Street, just west of the intersection with Sunset Avenue, lies the campus of West Covina Christian School. Three large pine trees grow in the center median of this block. The north side of Badillo Street has a service road which allows access to the north-south running residential streets. Yaleton Avenue is one such street, and 4002 North Yaleton Avenue, at the

corner of Yaleton Avenue and Badillo Street, has a high wooden fence between the south side of the home and the service road. This part of West Covina does experience narcotics sales activity.



Figure 1: Aerial view of scene, looking east, with Benitez' police unit parked on the corner of Yaleton Avenue and Badillo Street and Chavez' bicycle abandoned on Yaleton Avenue.

Shortly after 11:00 p.m. on May 20, 2016, Benitez was driving westbound in a patrol unit. Benitez was equipped with a department-issued baton and his service weapon, a .45 caliber Glock 21. He carried three additional 12-round magazines. Chavez was walking a bicycle alongside a woman at the intersection of Yaleton Avenue and the service road on the north side of Badillo Street.

At approximately 11:14 p.m., Benitez broadcast that he was in foot pursuit of a suspect. Shortly thereafter, he radioed that he had been "hit." Units responding to these calls found Benitez face down on a dirt patch between the service road curb and the fence to the south side of 4002 N. Yaleton Avenue, with a gunshot wound to his lower back. As personnel removed his clothing to begin rescue services, they found a 9mm projectile between his torso and ballistic vest.

A bicycle lay in the street, just around the corner, in front of 4002 N. Yaleton Avenue. Several ejected .45 caliber cartridge cases were recovered in a zone extending from partway into the westbound lanes of Badillo Street, back toward where Benitez lay. Benitez' Glock 21, loaded with a 12-round magazine and a round in the chamber, an empty Glock 21 magazine, along with

an expended .45 caliber bullet casing, and the rest of his equipment including Benitez' baton loop and night stick, were scattered in the dirt around Benitez.

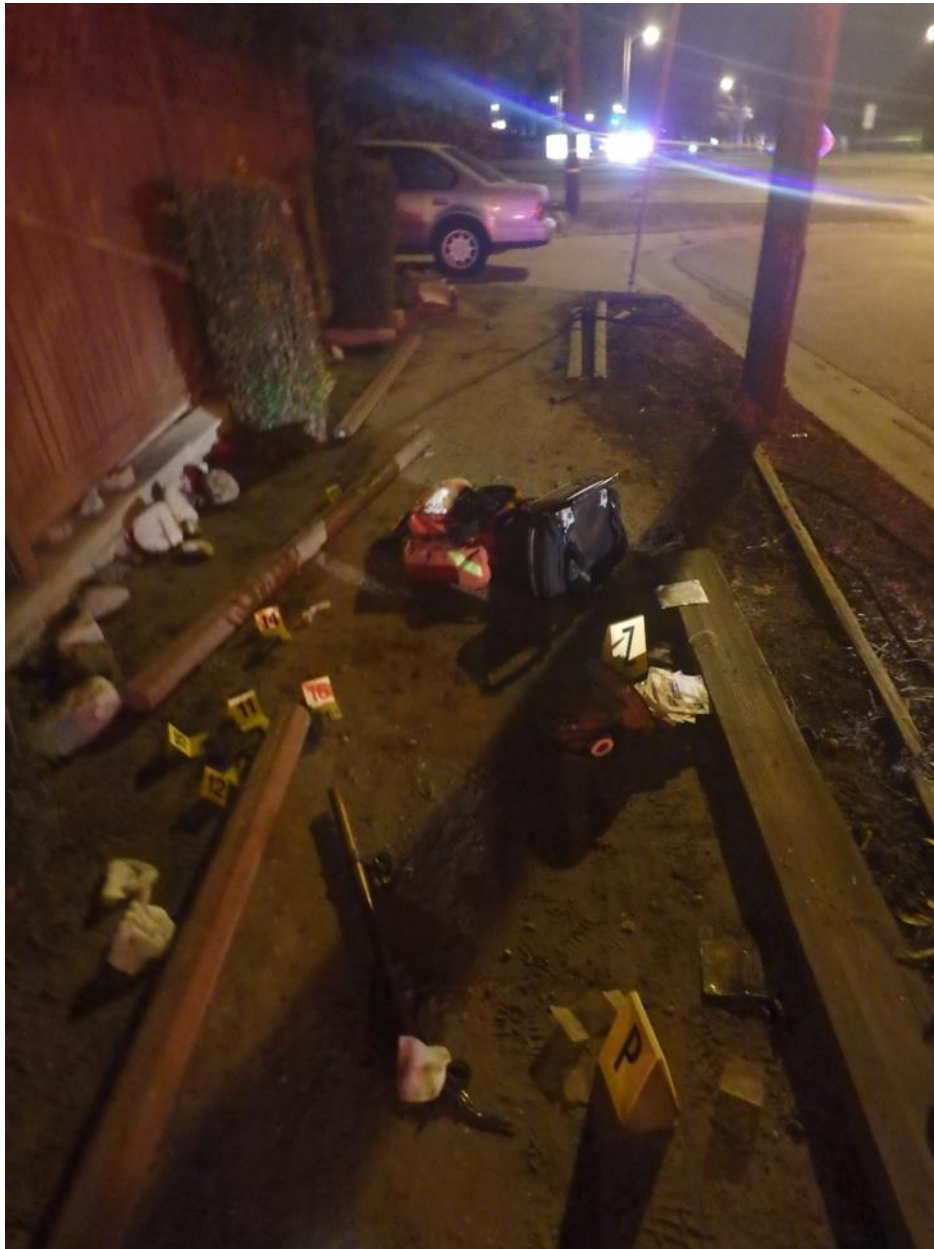


Figure 2: Area where Benitez was found and triaged.

Prior to being medically transported, Benitez told responding officers he had been involved in a shooting with a male Hispanic suspect who had shot him. He said the suspect fled south and disappeared after jumping the fence at the West Covina Christian School. The exchange of gunfire occurred across the westbound lanes, center median, and eastbound lanes of Badillo Street, between Yaleton Avenue and Sunset Avenue. Benitez stated he discharged his Glock 21 thirteen times in a south and easterly direction and believed the suspect was struck because he had fallen during the exchange of gunfire.

Bullet strikes were found in the fence and south-facing wall of 4002 N. Yalton Avenue. Two fired bullets were found on the ground just to the east of that house. Bullet strikes were also found on a large tree in the center median of Badillo Street. Scattered around this tree, were several ejected 9mm cartridge cases. A few additional 9mm cartridge cases were found on the street in the eastbound lanes of Badillo Street, just north of the southern curb.



Figure 3: View of tree in center median of Badillo Street, looking Northwest.

A blood trail led away from the southern curb, over the fence separating the school campus from Badillo Street, across a corner of the athletic field, along some bleachers, and over the fence that separated that field from Yalton Avenue, leading away from Badillo Street. Recovered from along this southbound path of travel were: a 9mm Springfield Armory handgun, various items of bloodied clothing, a cap, a back brace, a baggie containing methamphetamine, and a container of what appeared to be marijuana. These items were examined for latent prints and DNA and eventually linked to Chavez.

Neighbors in the area told investigators that shortly after 11:00 p.m. on May 20, 2016, they heard an exchange of gunfire: first several shots from a “smaller caliber” or “quieter” firearm, then several from a “larger caliber” or “louder” gun, then a few more from the smaller caliber, followed by a couple more from the larger caliber. Within minutes, they heard police and rescue units responding. Witnesses reported a man hopping over the ivy-covered fence from the school

field onto South Yaleton Avenue. They saw him fall to the ground, and then walk away calmly, southbound on Yaleton Avenue.

At the time of this incident, Chavez was an East Side Baldwin Park gang member who went by the moniker “Night Owl” or the nicknames “Lou” or “Louie.” Chavez was out-on-bail in felony case number KA111445, having plead no contest to drug and weapons charges and was supposed to return to court for sentencing. He had prior felony strike convictions and was ineligible to possess a firearm.¹

Chavez was located six days later, hiding at a home in La Puente. It appeared he had been treating two gunshot wounds: One to his right thumb, and another through his left elbow.

Statement of Benitez:

Benitez had over nine years of law enforcement experience at the time of this incident, with four years as an enlisted Marine with active infantry experience prior to attending the police academy.² He was interviewed at 3:08 p.m. on May 24, 2016, regarding this shooting. Members of LASD Homicide Division conducted the interview and his attorney was present.

Benitez stated he saw Chavez walking eastbound on Badillo Street towards Yaleton Avenue with a female companion. He observed what he believed to be a narcotics transaction between them so he stopped his patrol car facing westbound on the service road just east of Yaleton Avenue, and walked back towards them. Benitez asked Chavez to take a seat on the curb so that he could speak to him. Chavez did not comply and instead got on his bicycle and started to ride away, northbound on Yaleton Avenue, while reaching to the right, front side of his body as he looked back at Benitez. Benitez commanded him to stop, but Chavez ignored his order. Benitez believed Chavez may have a weapon and struck him once on the back of his left shoulder with his baton to gain compliance. Chavez jumped off the bike and approached Benitez in a combative manner. Benitez felt Chavez wanted to fight him so he struck him again with the baton to his front torso. Chavez turned and ran southbound towards Badillo Street. As Chavez was reaching again to the front, right side of his body, Benitez chased him and struck him again on the legs.

Chavez increased his distance from Benitez as he ran. Benitez was in the westbound lanes of Badillo Street when Chavez reached the center median. Once Chavez reached a tree there he pulled out a “small pistol” from the right side of his body. Chavez rounded the tree, looked at Benitez, and pointed the gun at him with his right hand. Benitez heard rounds “whiz” by him and felt that he was going to be killed. He returned fire in hopes that this would cause Chavez to hide behind the tree and stop shooting. After this initial exchange of fire, Chavez did move back behind the tree. Benitez turned to get out of the line of fire but was hit by a round from Chavez’s gun. Benitez managed to get back across the service road and fell down. He saw Chavez running around the south side of Badillo Street, with the gun still in his hand. Benitez was only

¹ Chavez is currently awaiting trial for the attempted murder of Benitez in case number KA112538, based on this incident.

² Employment records show that Benitez shot armed suspects in the course of duty on two prior occasions and both shootings were determined to have been justified.

able to get to his knees and fired towards Chavez to keep him away from him. Benitez saw Chavez fall but Chavez fired back so Benitez went back down to the ground for cover. Chavez ran further south and jumped over the fence of the school. Benitez remained collapsed on the ground until help arrived.

Benitez told investigators that when Chavez took cover and started to shoot, he heard rounds go past his head and body and believed Chavez was trying to kill him. When Chavez shot more rounds as Benitez was on the ground, he felt that Chavez was “trying to finish [him] off.”

Statement of Chavez:

LASD investigators advised Chavez of his Miranda rights and interviewed him about this incident on May 30, 2016, at 11:41 a.m. Chavez acknowledged being an influential member of the Rascals clique of the “Eastside Bolen” gang, with a moniker of Night Owl, and that enemies of his clique lived in the area where he was confronted by Benitez. He stated he realized that Benitez was a police officer and because he was out on bail for sales of methamphetamine and possession of a knife, his sentence would increase from two to 11 years in prison if he was caught with the handgun he was carrying that night. Although he had smoked methamphetamine earlier that day and eventually admitted he had been carrying drugs, he denied participating in any hand-to-hand transaction that could have formed a basis for Benitez stopping him.

Chavez refused to comply with Benitez’ commands and attempted to get on his bicycle and ride away when Benitez struck him with his baton. Chavez further explained that this caused him to run away from Benitez, southbound across Badillo Street. He initially stated that he had to hold his gun in his waistband when he was getting on the bike and running away. He also stated that Benitez told him to take his hands out of his pants, then shot at him and hit him in the right thumb as he ran away. Chavez said that when he reached the center median, he shot back. He also stated that he never aimed at Benitez but only wanted to make him stop shooting at him, that he had to rack the gun with difficulty due to the injury to his right thumb, and that he got shot in the left elbow as he jumped the fence on the south side of Badillo Street.

Chavez then modified his statement to say that he did not hold his pants while he was mounting the bike, but did hold his gun “down” in his pants as he ran away and would not have removed the gun from his waistband because he did not have “a death wish.” He could not explain how his thumb got hit before he reached for his own gun and denied having said that he had difficulty racking his gun due to the injury to his thumb. He stated that he shot all his rounds from the center island or maybe over his head once he got across the street. He then said he got shot in the elbow while Benitez was on the ground on the other side of the street and that Benitez fell down after he ran to the curb and kept shooting. He later said he thought he fell on the south side of Badillo Street when Benitez shot him “the second time.”

Chavez acknowledged he got rid of the gun and other items so that he would not be found with them.

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 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.

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM No. 3470; *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. This is true even if there is no actual threat. Id.

“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.” Graham v. Connor (1989) 490 U.S. 386, 396. “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. 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) 16 Cal.Rptr.3d 521, 540.

It was permissible for Benitez to approach Chavez to investigate a crime he believed he witnessed. His perception that Chavez was armed and non-compliant with an investigation that would have discovered that he unlawfully possessed a weapon turned out to be accurate. The physical evidence, statements of ear-witnesses, and portions of Chavez’ own admissions corroborate Benitez’ account that Chavez resisted his commands and that Chavez initiated the use of deadly force, which caused Benitez to return fire in self-defense. Therefore, Benitez’ use of deadly force was lawful.

CONCLUSION

We conclude that Officer Kenny Benitez used lawful force in self-defense when he shot Jose Luis Chavez. We are closing our file and will take no further action in this matter.