

**Non-Fatal Officer Involved Shooting of Drew Smith
California Highway Patrol**

Officer Miguel Luevano, #17491

Officer Michael Malone, #14187

J.S.I.D. File #19-0142



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

February 17, 2021

MEMORANDUM

TO: ASSISTANT CHIEF CHRIS MARGARIS
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Southern Division
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Drew Smith
J.S.I.D. File #19-0142
C.H.P. File #0230-509-19

DATE: February 17, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 29, 2019, non-fatal shooting of Drew Smith by California Highway Patrol (CHP) Officers Miguel Luevano and Michael Malone. It is our conclusion that the officers acted in lawful defense of others.

The District Attorney's Command Center was notified of the shooting on March 29, 2019, at 10:51 p.m. The District Attorney Response Team responded and was given a briefing, walk-through of the scene and interviewed witnesses.

The following analysis is based on police reports, recorded interviews, video footage, patrol vehicle recordings, dispatch recordings and logs, medical records, crime scene photographs and forensic analysis submitted to this office by CHP Investigator Perry Conkle, Southern Division Investigative Services Unit. Officers Luevano and Malone provided voluntary statements which were considered as part of this analysis.

FACTUAL ANALYSIS

On March 29, 2019, at approximately 7:30 p.m., uniformed LAPD officers responded to Big Tujunga Canyon Road and Oro Vista Avenue in the City of Los Angeles, regarding a person who was involved in several traffic collisions, armed with a knife and cutting himself. The call was updated to advise officers the man had threatened another motorist with a knife. Officers located Drew Smith seated behind the wheel of a blue Volkswagen Jetta. Smith's neck and arms were covered in blood and he had lacerations on his forearms. Officers ordered Smith to exit the vehicle. He refused. Instead, Smith brandished a pair of scissors at the officers and then drove from the scene. Smith was followed by an LAPD air unit that had responded to the call.

The air unit observed Smith repeatedly drive into oncoming lanes of traffic and attempt to collide with other vehicles. Due to Smith's reckless driving, LAPD initiated a vehicle pursuit in an attempt to stop him. Smith evaded officers while running multiple red lights, stop signs and jerking his vehicle from side to side.¹ Smith continued to drive into oncoming traffic, causing multiple motorists to swerve out of his path.

Smith repeatedly stopped his vehicle in the middle of the street in front of the pursuing police officers. On 12 occasions, Smith reversed and struck the front end of a police unit while traveling five to ten miles per hour. On another occasion, Smith made a U-turn, drove on the wrong side of the road and purposefully struck the rear driver's side panel of a police vehicle, causing the unit's rear bumper to drag in the street.²

During the pursuit, Smith drove down a narrow residential street and came head to head with a pickup truck. Smith rammed the front end of the truck in an attempt to pass it. Smith then drove onto the sidewalk, striking a parked vehicle, and continued to flee. At one point, Smith stopped his vehicle in the middle of the street and leaned from the opened driver's window holding what appeared to be a knife in his hand. Smith gestured toward the police, yelling incoherently.³



Smith brandishing what appeared to be a knife during the pursuit.

Officers attempted to use a spike strip to stop Smith, but it was ineffective. A beanbag shotgun was also deployed in an attempt to stop Smith. The beanbag round struck the driver's door and was also ineffective.

Approximately 27 minutes into the pursuit, Smith entered the northbound 5 freeway at the Roscoe Boulevard off ramp, traveling the wrong direction. Smith drove across four lanes of traffic and entered the northbound High Occupancy Vehicle (HOV) lane driving southbound against traffic.

¹ Smith occasionally drove in excess of the posted speed limit. However, Smith mostly drove at or below the speed limit, slowing and stopping his car frequently.

² Seven LAPD officers were rammed by Smith. Four officers were medically treated for head, neck, back and hip pain.

³ A news helicopter broadcast the entire pursuit on live television.

Multiple vehicles were forced to take evasive actions as Smith drove toward them. LAPD units entered the southbound 5 freeway and paralleled Smith. The LAPD air unit continued to follow overhead, illuminating the Jetta with its powerful spotlight.



Smith crossing the northbound lanes of traffic after entering the freeway driving southbound.



Smith driving the wrong way in the HOV lane with an LAPD unit trailing in the southbound lanes.



Motorists forced to take evasive action to avoid colliding with Smith.

Smith repeatedly stopped his vehicle in the HOV lane then accelerated, reaching speeds up to 50 miles per hour. Smith swerved his vehicle from side to side in the lane and at times appeared to purposefully aim the Jetta at other vehicles causing them to quickly veer out of the way.

LAPD requested CHP conduct a traffic break in an attempt to stop Smith from further endangering motorists on the freeway.⁴ GPD advised that Smith had committed multiple assaults with a deadly weapon against multiple officers by ramming the officers with his vehicle. They also advised that Smith was driving south in the northbound lanes of traffic and was armed with a knife.

Uniformed CHP Officers Miguel Luevano and Michael Malone heard the GPD broadcast and responded to the 5 freeway in their marked black and white police vehicles. Luevano arrived first and conducted a traffic break, stopping the northbound traffic south of the Buena Vista Street exit. Luevano parked his patrol unit diagonally across the number one and two lanes with its emergency lights activated. Luevano placed traffic cones across the number three and four lanes. Malone arrived several minutes later and parked his patrol unit across the number three and four lanes with its emergency lights activated.

⁴ A Glendale Police Department (GPD) helicopter was also following the pursuit. A tactical flight officer aboard the GPD air unit relayed LAPD's request on CHP's radio frequency.



Position of Luevano and Malone's police units at the traffic break.

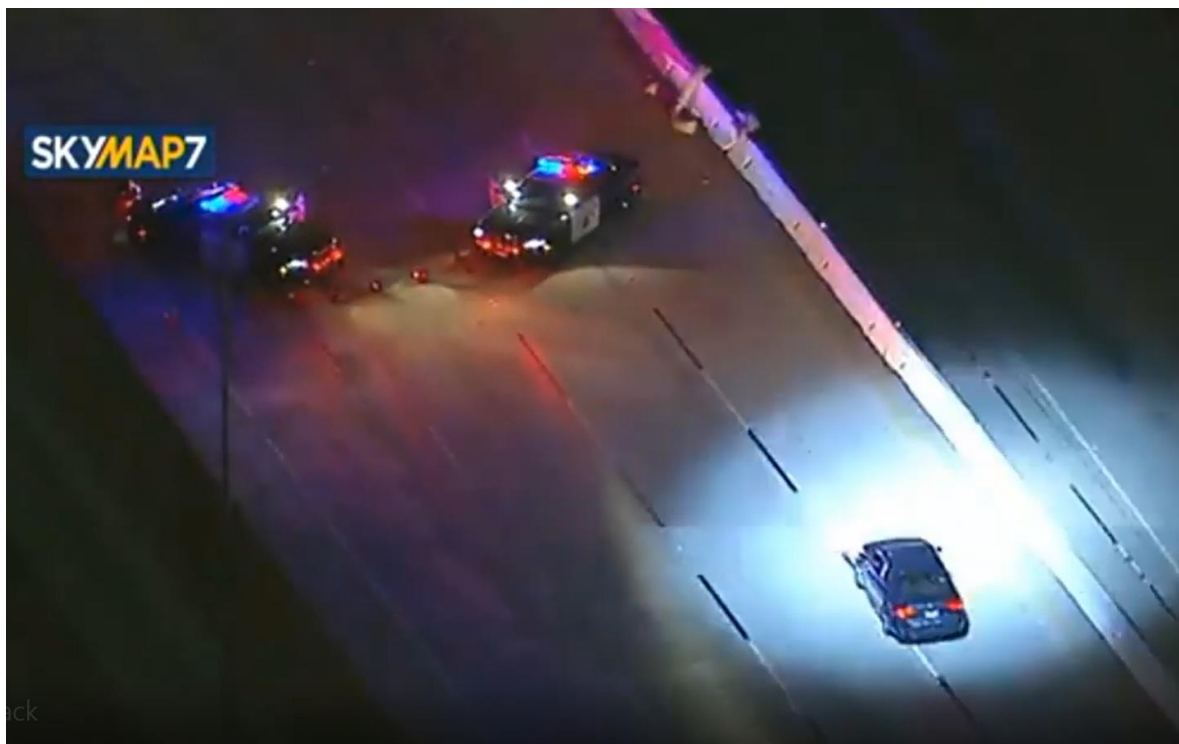
Luevano and Malone were armed with department issued rifles. Malone and Luevano positioned themselves to the rear of their patrol cars. Luevano then jumped to the west side of the concrete center divider for better protection.⁵ Malone and Luevano pointed their weapons in Smith's direction as the Jetta approached their location.

Malone heard the airship and the sound of an engine revving before he saw the Jetta. Malone first observed the Jetta approaching on the right side of the number one lane.

⁵ Luevano attempted to place an erosion barrier he found on the southbound side of the freeway in the gap between his vehicle and the center divider. The erosion barrier was too heavy and cumbersome and Luevano was unable to place it in the gap.



View of the stopped traffic as the Jetta approached the roadblock.



Jetta approaching the roadblock.

Malone yelled, “Stop! Stop!” Smith ignored the officer and continued south. Malone believed that Smith posed a danger to himself, Luevano and other motorists on the freeway. Smith had assaulted officers and rammed several police vehicles. He intentionally drove the wrong way on the freeway without care for the lives of innocent bystanders. Smith refused to stop for a police barricade with officers pointing weapons at him. Malone feared that if Smith reached the large number of vehicles stopped behind the roadblock, Smith was going to kill someone. Malone fired several rounds at Smith in an attempt to stop him.

The Jetta moved to the right toward Luevano’s position. Malone stopped firing because he could not see Luevano and was concerned about crossfire.⁶ Smith began to pass between Luevano’s vehicle and the center divider. At that time, Malone heard Luevano discharge his weapon. Malone tracked the Jetta with his weapon as it passed Luevano’s unit. Malone could still not see Luevano and feared the Jetta had struck him.



Jetta moving toward Luevano.

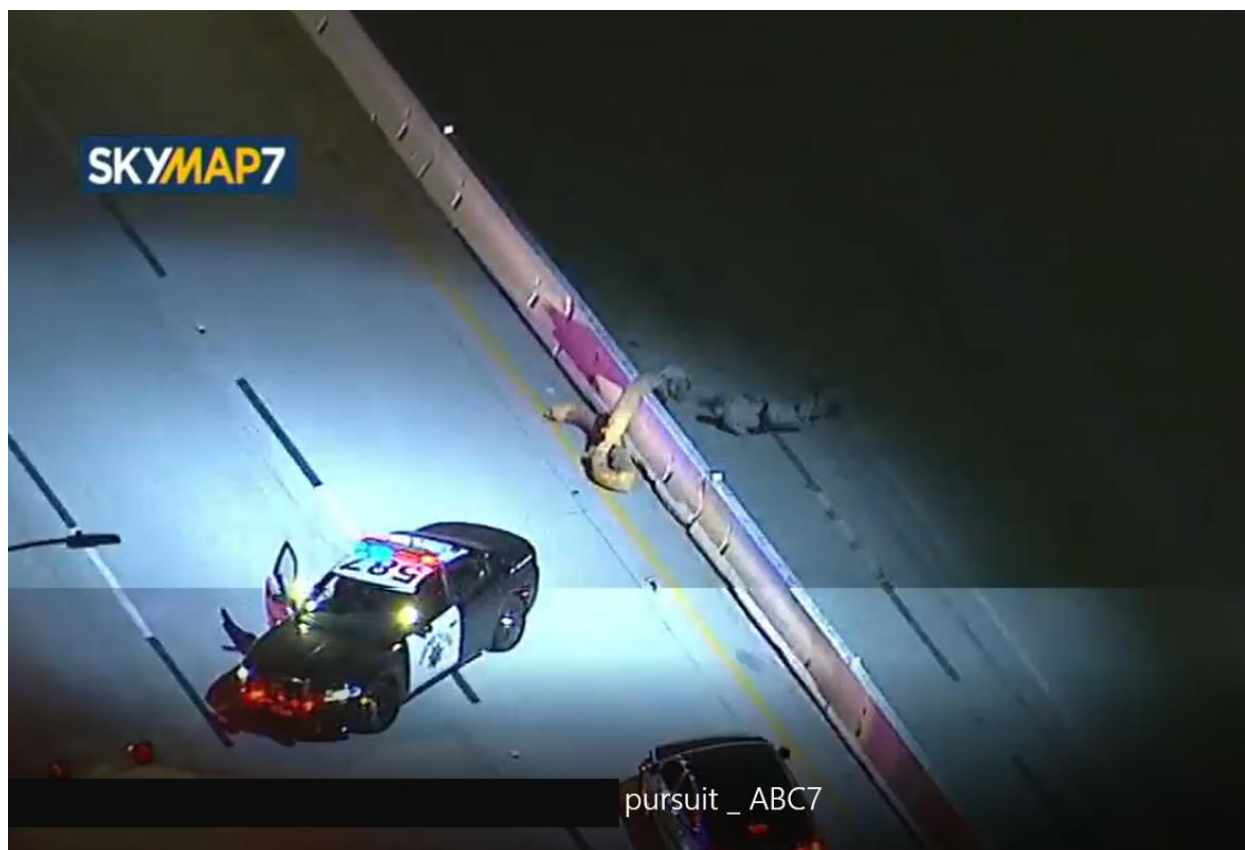
Smith continued south toward the stopped motorists. In addition to his concern that Smith would kill or seriously injure a motorist, Malone also feared that Smith would use his knife to carjack a vehicle. Malone discharged several more rounds at Smith. As Malone was firing, he again heard Luevano fire his weapon.

As Luevano observed the Jetta approaching the roadblock, he noted that Smith was not the “typical” wrong way driver who was impaired and unaware they were traveling the wrong

⁶ Malone was unaware that Luevano had jumped over the center divider.

direction. Smith purposefully drove the wrong way on the freeway. Additionally, Smith had already harmed, or attempted to harm, multiple officers, which caused Luevano concern for his safety. Furthermore, if Smith was not stopped, he would drive directly toward motorists sitting defenseless in their cars. Luevano believed that if Smith was willing to ram multiple police cars, he would not hesitate to collide with the civilian vehicles. Luevano believed he needed to stop Smith before he encountered the stopped traffic and killed someone, took a hostage or carjacked a motorist for their vehicle.

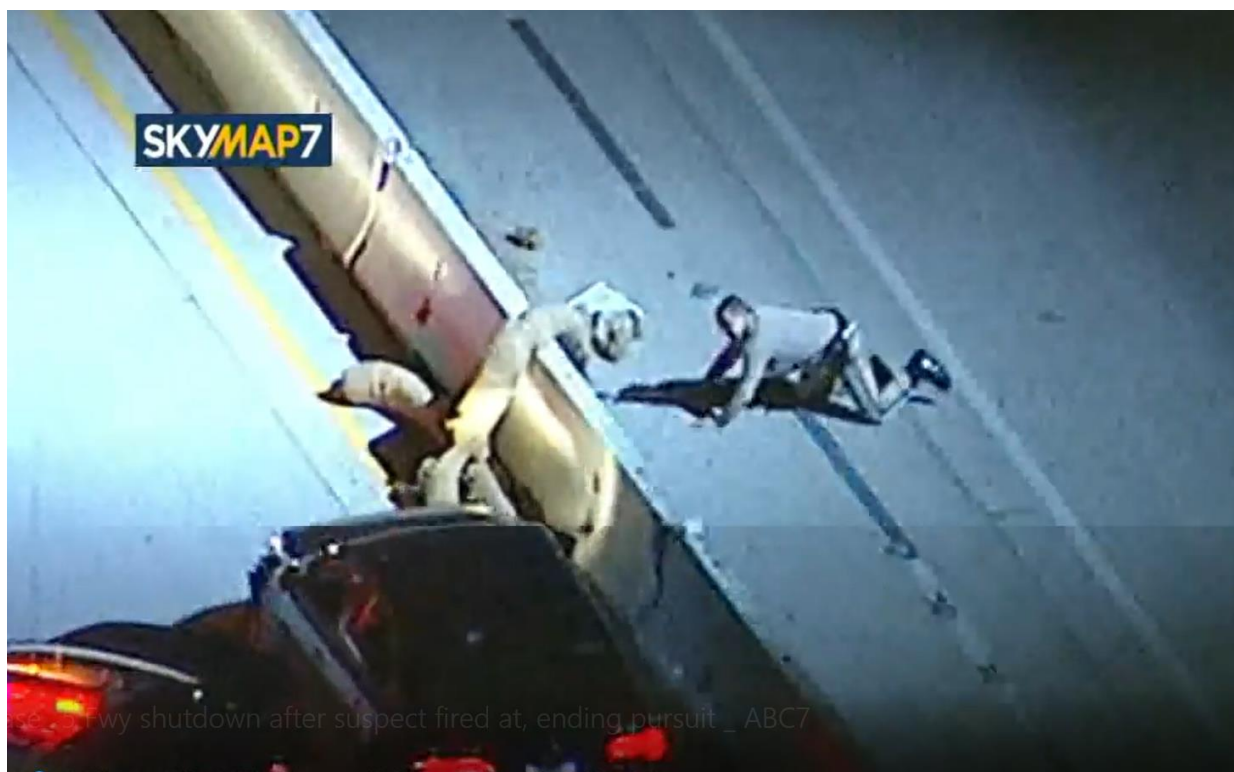
Luevano observed Smith steer the vehicle toward the gap between the center divider and his police vehicle. At that moment, Luevano heard gunshots. Luevano could not see who was firing, but believed Smith was firing at him. Luevano lost his balance and fell to the ground on the west side of the center divider.⁷ Luevano quickly got to his feet and fired one round at the Jetta as it passed in front of him. As the Jetta continued south, Luevano fired additional rounds to stop Smith and end the threat to the waiting motorists.⁸ Malone and Luevano stopped firing at Smith when the vehicles behind them came into their line of fire.



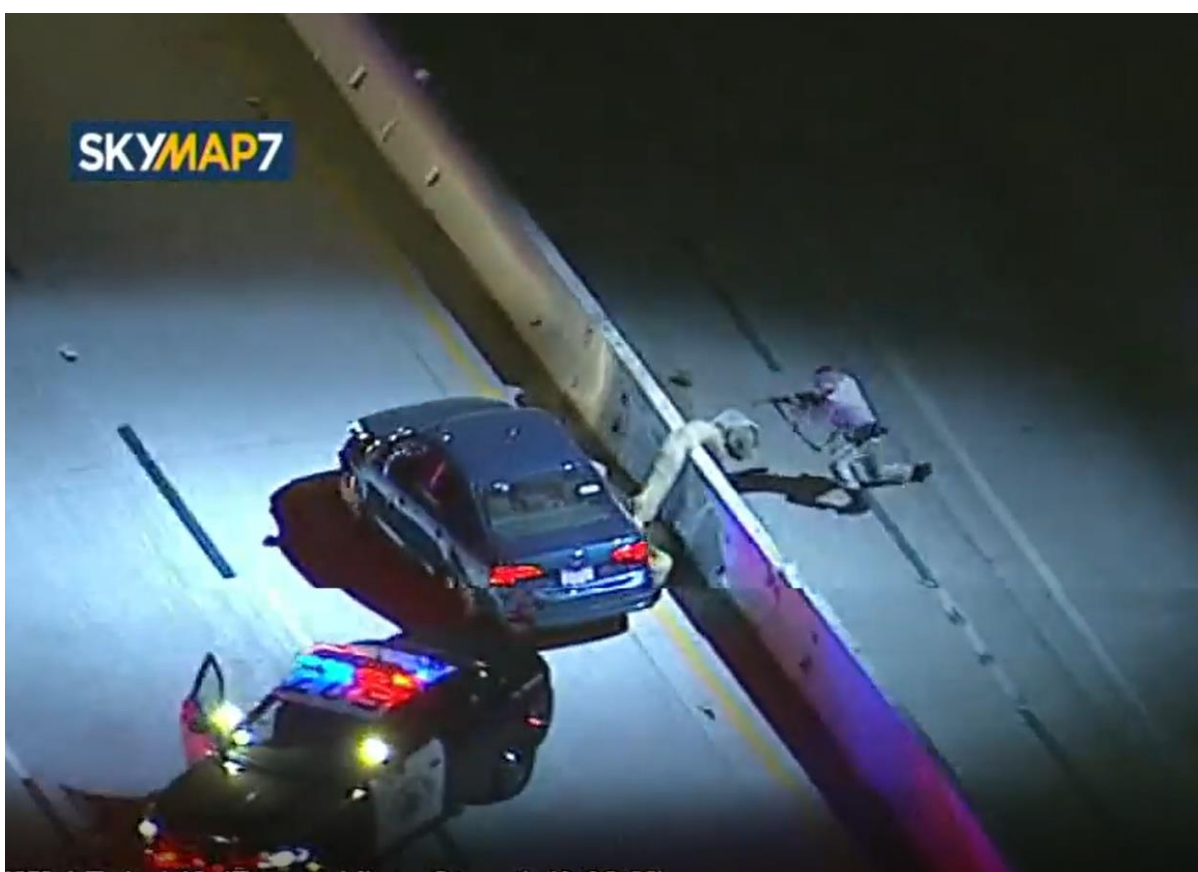
Luevano after he fell onto the center median of the southbound freeway.
Southbound traffic had been stopped by a CHP traffic break north of the location.

⁷ The northbound lanes are slightly elevated from the southbound lanes due to ongoing construction.

⁸ An examination of Malone's weapon determined that he fired nine rounds. An examination of Luevano's weapon determined that he fired four rounds.



Luevano getting to his feet as the Jetta passed his unit.



Luevano firing at Smith.

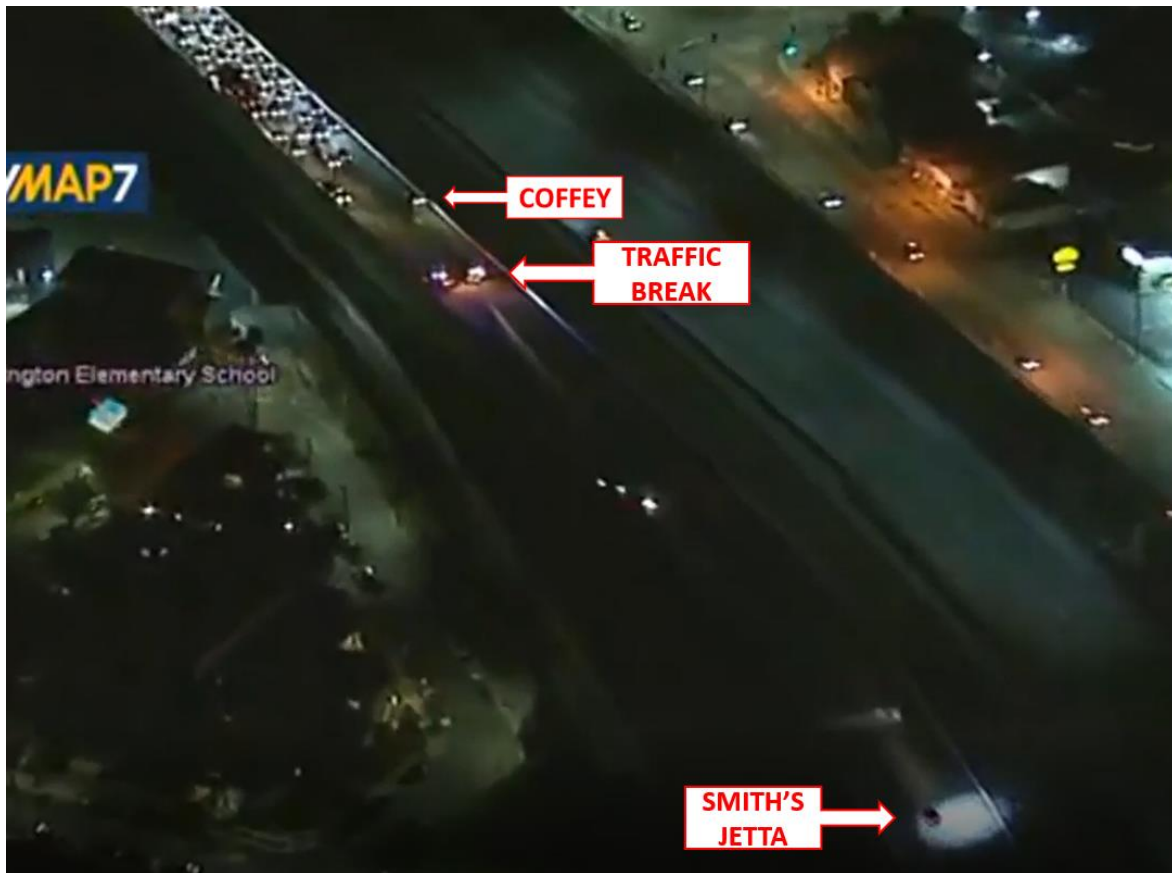


Malone and Luevano firing at Smith.

Statement of LAPD Officer Eric Coffey

Coffey was off duty and driving an unmarked police vehicle. He was one of the first cars stopped behind the traffic break in the number one lane. Luevano and Malone were armed with rifles and Luevano took a position on the opposite side of the center divider and Malone behind his unit. Luevano went back into the number one lane when he attempted to move the erosion barrier.

At that time, the Jetta approached the roadblock and drove toward Luevano, causing Luevano to jump back over the center divider. Luevano fired at least one round at the Jetta. Coffey does not know whether Malone fired his weapon. The Jetta was traveling no more than 35 miles per hour and did not slow down. The Jetta almost hit Coffey's car as it passed him and drove toward the traffic stopped behind him.



Position of Coffey's vehicle.

Standoff and Arrest

Smith approached two vehicles stopped in the number two and three lanes. Smith came to a stop momentarily then accelerated forward between the two vehicles. The Jetta rammed both vehicles, stopping between them. Smith then forced the Jetta through the two vehicles and struck the front end of a third car. Smith came to a stop and barricaded himself inside the Jetta.

Malone, Luevano and several LAPD officers from the south side of the freeway held Smith at gunpoint. LAPD eventually took over the barricaded situation. Officers attempted to convince Smith to surrender. At one point, Smith exited the Jetta holding the knife. LAPD officers tased him and struck him with beanbag rounds and 40mm less than lethal rounds. Smith reentered the Jetta. Smith exited the vehicle a second time and was again tased, struck with beanbag rounds and 40mm less than lethal rounds. Shortly thereafter, LAPD officers took Smith into custody.



Smith forcing the Jetta between two vehicles after ramming them.



Smith colliding with the third vehicle.

Civilian Witnesses

Multiple civilian witnesses seated in the stopped traffic, including the occupants of the three cars struck by Smith, were interviewed by investigators. These witnesses did not see the officers fire their weapons and only heard the gunfire.

Injuries

Smith was transported to Providence Holy Cross Medical Center and treated for a gunshot wound to the right flank and multiple self-inflicted lacerations. Blood removed from Smith at the hospital tested positive for methamphetamine.

Weapon



Smith was armed with a broken pair of scissors.

Statement of Drew Smith

On April 7, 2019, investigators contacted Smith at Providence Holy Cross Medical Center. Smith invoked his Miranda rights and did not provide a statement.

Criminal Case

Smith was charged in case PA092533 with eight counts of assault with a deadly weapon upon a peace officer, three counts of assault with a deadly weapon, and one count each of assault likely to inflict great bodily injury, criminal threats, exhibiting a deadly weapon to resist arrest, felony evading and evading by driving in the opposite direction of traffic. On July 23, 2020, Smith pled no contest to one count of assault with a deadly weapon upon a peace officer and one count of assault with a deadly weapon likely to inflict great bodily injury. Smith was sentenced to six years and eight months in state prison.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or the person he was defending 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 use of deadly force by an officer to end a dangerous high-speed vehicle pursuit that poses a grave public safety risk and threatens the lives of innocent bystanders does not violate the Fourth Amendment right against unreasonable seizures. *Plumhoff v. Rickard* (2014) 134 S.Ct 2012, 2020-2022; *Scott v. Harris* (2009) 550 U.S. 372, 384-386.

It is helpful to look at civil actions alleging Fourth Amendment violations when analyzing the reasonableness of an officer's use of force. In *Graham v. Connor*, the United States Supreme Court held that, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 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.

In *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances of each particular case." "Thus we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

"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 that 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, 589.

The test of whether the 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.

The People have the burden of proving beyond a reasonable doubt that the use of self-defense was not justified. See, *CALCRIM No. 505*.

CONCLUSION

Smith showed a disregard for the safety of multiple police officers by striking their police units repeatedly with his vehicle while the pursuit was on surface streets. Smith showed a disregard for the safety and lives of civilian motorists when he intentionally drove the wrong way onto a busy freeway. Smith drove erratically and intentionally tried to hit multiple vehicles who were forced to take sudden evasive actions to avoid a collision.

A police roadblock was established in an effort to stop Smith from continuing the wrong way on the freeway and further endangering the lives of unsuspecting motorists. Luevano and Malone's marked vehicles were parked across the freeway with the emergency lights activated. Luevano and Malone pointed their department issued rifles in Smith's direction. However, Smith had no intention of stopping when he approached the roadblock.

It was reasonable under the circumstances for Luevano and Malone to fear that the motorists stopped in their vehicles behind the traffic break were in imminent danger of serious bodily injury or death from Smith. Smith had already used his vehicle as a deadly weapon to assault police officers and fellow motorists during the pursuit. The stopped motorists lined the width of the freeway and there was no other avenue of escape for Smith. The motorists were essentially sitting ducks in their vehicles.

Additionally, Smith was armed with a pair of broken scissors which Smith used as a deadly weapon to threaten officers and civilians, as well as to repeatedly cut himself. It was reasonable under the circumstances for Luevano and Malone to fear that Smith would use the weapon to stab a bystander, carjack a motorist or take a hostage in his desperate attempt to escape arrest.

We conclude that Officers Luevano and Malone responded with reasonable deadly force and acted in lawful defense of others when they fired their weapons at Smith to stop him from passing through the police roadblock and reaching the stopped motorists. We are therefore closing our file and will take no further action in this matter.