

**Officer Involved Shooting of Brian Miranda and Michael
Weathermon**

West Covina Police Department

Officer Neomi Wiley #384

Officer Sean Carmon #327

J.S.I.D. File #17-0221



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 12, 2020

MEMORANDUM

TO: CHIEF RICHARD BELL
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CAPTAIN KENT WEGENER
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Brian Miranda and Michael Weathermon
J.S.I.D. File #17-0221
W.C.P.D. File #17-3155
L.A.S.D. File #017-00041-3199-058

DATE: May 12, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 25, 2017, non-fatal shooting of Brian Miranda by West Covina Police Department (WCPD) Officer Neomi Wiley and the non-fatal shooting of WCPD Corporal Michael Weathermon by WCPD Officer Sean Carmon. We have determined there is insufficient admissible evidence to prove beyond a reasonable doubt that the officers did not act in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on April 25, 2017, at 10:56 a.m. The District Attorney Response Team (DART) responded to the location and met with investigators from the Los Angeles County Sheriff's Department (LASD). DART was given a briefing regarding the circumstances surrounding the incident but did not interview witnesses and was given limited access to the crime scene.¹

The following analysis is based on investigative reports, audio-recorded interviews of law enforcement witnesses, written summaries of non-officer witness interviews conducted by LASD, audio-recorded interviews conducted by WCPD at the scene, radio transmissions, Dash Camera Video (DCV), surveillance video, crime scene diagrams, forensic reports, and photographs submitted to this office by LASD Homicide Bureau Investigators Dameron Peyton

¹ The investigative materials included summaries of non-officer interviews conducted by LASD, but there were no recorded statements because the recording device used in all of the interviews was corrupted and the recording was lost.

and Margarita Barron. Witness interviews conducted by the Los Angeles County District Attorney's office and the voluntary statements of Officers Wiley and Carmon were also considered in this analysis.

FACTUAL ANALYSIS

On April 25, 2017, at 9:30 a.m., WCPD dispatch received a call from "Debbie" who told the operator that her nephew, Frankie Q., had been pounding on her door with a beer can in his hand. She told WCPD that Frankie Q.'s parole agent was looking for him because he removed his GPS bracelet. Debbie, who was later identified as Barbara Q., told the dispatcher that Frankie Q. had recently left her house and could likely be found behind the Rite Aid on Amar Road, where he frequently gathered with other homeless people. Barbara Q. told the dispatcher she had called Frankie Q.'s parole officer who had instructed her to call the police. Barbara Q. said Frankie Q. was drunk and schizophrenic. Barbara Q. said he was wearing a grey shirt and black pants and had a large tattoo of a marijuana leaf on his cheek.

At 9:37 a.m., in response to Barbara Q.'s call, the WCPD dispatcher assigned WCPD Officers Neomi Wiley and Sean Carmon to investigate a "suspicious person" at the Rite Aid store, located on Amar Road. That store is located within a large strip mall near the intersection of East Amar Road and Azusa Boulevard. The dispatcher broadcast the following request for service:

925 [suspicious person] at Rite Aid...Per the RP [reporting party], the suspect is possibly HBD [has been drinking]; has a beer can in his hand. He's also schizophrenic. Per parole agent, three warrants for the subject, has an ankle monitor that he has possibly removed, need 918 [insane person]. Parole agent is in the process of putting a hold on him. Subject is Code 30 [no warrants] - DL [driver's license] status shows suspended or revoked. And 10-29P [on probation or parole] for a 212.5 CPC [first degree robbery] ... The RP is going to be the aunt that called on him. She's not at Rite Aid, but says she saw him there...When he came to her house...he had a beer can with him. He's wearing a grey shirt, black pants, has a tattoo of "weed" on his cheek.

In response to the dispatch, both officers acknowledged the information, and Carmon broadcast that he was "familiar" with the subject. Wiley, Carmon, and Corporal Michael Weathermon, who added himself to the call for service, drove toward the strip mall.



Figure 1 – Aerial photograph depicting the strip mall, which had a Shakey's Pizza (to the far right of the photo) and a Rite Aid (to the left of the photo).

Wiley was the first officer to arrive at the mall. When she arrived in her marked black and white patrol vehicle, she observed Brian Miranda sitting on a curb in front of Shakey's Pizza. Based on the clothing Miranda was wearing and the tattoo on his cheek, Wiley believed Miranda was Frankie Q.²



Figure 2 – Frankie Q.



Figure 3 – Miranda



Figure 4- Miranda's cheek tattoo

Wiley exited her vehicle and asked Miranda his name. Miranda responded, "Brian." As Wiley was talking to Miranda, Carmon arrived at the mall.



Figure 5: Carmon DCV still. Miranda was sitting on a curb when Wiley approached him.

Carmon drove slowly through the parking lot toward Wiley and Miranda. Miranda was not the person Carmon was familiar with through prior contacts. He then drove his patrol vehicle slightly onto the sidewalk next to Wiley. Wiley did not alert the dispatcher that she had arrived, but at 9:42.53 a.m., Carmon told dispatch that he was out with a subject at Shakey's Restaurant. As Carmon was driving onto the sidewalk, Miranda scratched his head with his right hand,

² Miranda was wearing a black shirt and dark grey/black pants. Miranda had a tattoo, partially covered by a beard, on his right cheek of what appears to be cursive writing with some sort of design below it. He did not have a marijuana leaf tattooed on his cheek.

leaned forward and stood up with his hands in front of him, shook his head, and started walking away from the officers on the sidewalk. After taking several slow steps, Miranda started jogging toward Rite Aid. Miranda's initial actions were captured by Carmon's DCV.³



Figure 6 & 7 – Miranda initially walked, then jogged, away from officers

Weathermon arrived at the mall in his patrol vehicle as Carmon was driving onto the sidewalk. He maneuvered his patrol vehicle toward the Shakey's Restaurant and accelerated through the parking lot. As Weathermon approached, Miranda turned toward Carmon and Wiley and skipped backward while putting his hands behind his back near his waistband. Carmon drew his service weapon and walked down the roadway as Wiley gave chase on the sidewalk. These actions were captured by Weathermon's DCV.⁴



Figure 8 – Still from Weathermon's DCV. Carmon points his service weapon at Miranda as Miranda skips backward with his hands behind his back.

Miranda turned and began running as Weathermon drove behind him for a few seconds and Wiley and Carmon chased on foot. As Miranda began running, Carmon broadcasted, "He's reaching into his waistband. He's eastbound in the parking lot towards Rite Aid."

³ Carmon's DCV does not have audio.

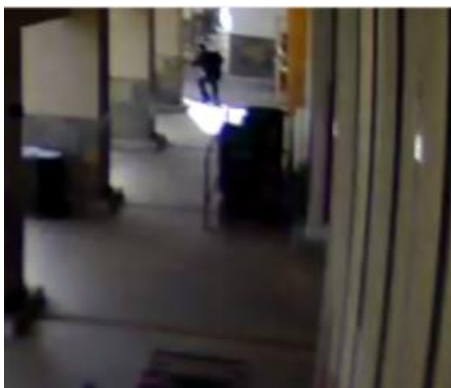
⁴ Weathermon's DCV does not have audio.

Miranda continued running east on the sidewalk, which had large pillars on the north side and store entrances on the south side. As Miranda ran, he moved his left arm back and forth while keeping his right arm and hand near the waistband of his pants.



Figure 9 - Still from Weathermon's DCV. Miranda ran down the sidewalk away from the officers.

As Miranda was approaching the Rite Aid, Weathermon accelerated past him in an effort to cut off his attempted escape. Weathermon angled his patrol vehicle toward the sidewalk, exited his driver's side door, and ran around the back of his patrol vehicle and toward Miranda. Miranda turned and started running in the opposite direction.

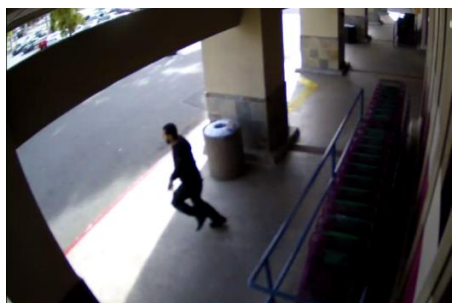


Figures 10 & 11 – Surveillance stills of Miranda turning and running back toward Wiley and Carmon.

Miranda ran on the sidewalk while keeping his right hand near the waistband of his pants. During the foot pursuit, Wiley repositioned herself, moving from the sidewalk to the driveway area in front of the 99 Cents Only store, slightly ahead and to the side of Carmon, who was also in the driveway. Miranda stayed on the sidewalk until he passed the entrance to the 99 Cents Only store. Once he passed the entrance and a large pillar in front of the store, Miranda turned to his right and ran toward the parking lot and in the direction of Wiley. As Miranda approached the driveway, he removed his right hand from his waistband area and raised both arms as he began to jump off the curb.



Figures 12 & 13 – Miranda ran with his right arm in his waistband area while turning toward the parking lot.



Figures 14 & 15 – Miranda continued to run toward the parking lot with his right arm by his side.



Figures 16 & 17 – Miranda raised both arms as he jumped into the parking lot.

Miranda's feet landed in the driveway as Wiley raised her service weapon and fired three rounds in rapid succession. One of the fired bullets struck Miranda in his lower right leg, and another bullet penetrated the front window of the 99 Cents Only store and lodged in a refrigeration unit at the front of the store. It is unclear what or where the third bullet impacted.



Figure 18 - Wiley's bullets struck and penetrated Miranda's lower right leg (A) and a window of the 99 Cents Only store (B). The blue arrow approximates Miranda's direction of travel.⁵

As Miranda began falling to the ground, Carmon fired his duty weapon twice at him; one of the bullets struck Weathermon in his chest, the other bullet likely impacted a tree in the parking lot.⁶ Less than one minute passed from the time Carmon arrived at the mall until the shooting occurred.



Figure 19 - Carmon fired two shots at Miranda when Miranda ran into the parking lot. Those bullets impacted Weathermon's chest and likely a tree.

5 Carmon's WCPD patrol vehicle (pictured) was moved to that location after the shooting. During their interviews, neither Wiley nor Carmon were asked to document the location of the involved parties at the time of the shooting on a map or photograph. The direction of Miranda's travel is approximated based on 99 Cents Only store surveillance video, witness statements, and the location where he came to rest after being struck. Wiley's location is approximated based on witness statements and the location of shell casings.

⁶ Weathermon was wearing a ballistic vest with a trauma plate which stopped the bullet from penetrating his chest. LASD crime scene investigators located an apparent bullet impact on a tree, but were unable to recover a bullet; however, the impact was in Carmon's line of fire.

Weathermon handcuffed and searched Miranda. No weapon was found on or near Miranda. Miranda was transported to the hospital and treated for a gunshot wound to his lower right leg. A bullet fragment was removed from his leg. Weathermon sustained a contusion to his chest as a result of being struck by Carmon's bullet.

LASD was called to conduct the shooting investigation. Wiley, Carmon, and Weathermon provided statements to LASD investigators. Those statements were not compelled.

Officer Neomi Wiley

Wiley told investigators she received the dispatch regarding a suspicious person who was wanted by parole and "off his meds" that he takes for schizophrenia. She was the first officer to arrive at the strip mall. She immediately saw Miranda sitting on a planter in front of Shakey's Pizza and asked him his name, to which he responded, "Brian." Wiley believed Miranda was the wanted parolee based on the similarity of the clothing he was wearing to the description given by dispatch, and the presence of what Wiley believed was a tattoo of "weed" on Miranda's cheek.

Wiley stated that Miranda stood up when Carmon started driving through the parking lot toward her and Miranda. She explained what happened next:

So, he puts his hand behind his back, and at this point I was holding onto my baton, so I pull out my baton. And, he puts his hand behind his back and he starts walking backwards, away from me. So, I still have my baton in my hand and I draw my pistol in my other hand. And I said, "Let me see your hands!" And he's walking backwards away from me, and he's like, "I can't go back. I'm not going back." And, I'm like, "Stop!" – you know – "Let me see your hands! Turn away from me and let me see your hands!" he wouldn't do it. He did like this skipping movement, like sideways, kind of like basketball players do when you move your feet together and skip. And he had his hands still behind his back.

I couldn't see what he was holding onto, but just the mere fact he had told me, "I'm not going back." And he squared up to me. I believed he had some kind of weapon in his waistband – in his back.

Wiley stated that Miranda then started jogging away from her and she began chasing him. A police unit drove by in the parking lot past her. Wiley holstered her service weapon while continuing to hold her baton in her hand. Wiley went out into the parking lot area to attempt to "flank" Miranda. As Wiley was running through the parking lot, she was able to see Miranda running ahead of her with his hand still behind his back. Wiley stated:

So, as I come running up through the parking lot – the unit stopped. I never saw the officer get out of that car. And as I'm running up, all of a sudden, I just see the subject come running out from behind a pillar. And as he's running toward me, he still has his hand behind his back. I'm still holding onto my baton – and from here to the wall – he charged me and started having his hand come out. I believed he had a weapon – I didn't know if it was going to be a knife or a gun. I feared that he was either going to stab me or shoot me. So, I pulled out my pistol and I fired off – I believe – three rounds.

Wiley estimated that Miranda was approximately eight feet away from her when she discharged her duty weapon. Wiley was asked later in the interview about her decision to shoot:

He kept telling me, “I’m not going back. I’m not going back.”...I was thinking – I took it that he did not want to go back to prison, he had a gun or a knife, or something on him and I’m the only thing – I’m the only step between him – between him going back to prison. So, he’s either going to kill me or kill one of my partners not to – so that way he doesn’t have to go back to prison.

Wiley said she knew Carmon was near her after the shooting but did not know where he was during the shooting or whether he fired any shots.

Officer Sean Carmon

Carmon was dispatched to the suspicious person call with Wiley. From the description given in the call, he believed he knew who the caller was referencing. However, when he got to the mall and saw Wiley with Miranda, he realized Miranda was a different person than he expected. As he pulled his patrol vehicle up near Wiley, he could see Miranda mouthing, “Oh Fuck!” as he looked at Carmon. Carmon exited his vehicle as Miranda started to stand up, and Miranda “proceeded to put his hand somewhere to – I don’t know if it was a pocket, or in his waistband – and turn very quickly.” Miranda then began to run away from him and Wiley.⁷ Carmon explained:

I think Wiley started running first, and I put out over the radio that we were in foot pursuit of the suspect. Somewhere during the time that we were running, I put out that he’s reaching into his waistband. “He’s reaching into his waistband!” Wiley was on the walkway running and I was actually to the north of them in the parking lot area...paralleling, but I was further back.

Carmon stated that Weathermon then passed him in his patrol vehicle. Carmon stated that as he was running, he would lose sight of Miranda and Wiley due to the pillars that border the sidewalk. He saw Weathermon’s car turn to the right to attempt to block Miranda from running any further. Miranda then exited the sidewalk and ran into the parking lot. Wiley was 15 to 20 feet ahead of him and off to his left. Carmon explained what happened next:

So, he looks at her, and as he’s running, he kind of stops, he reaches back in, into his pant area. All I can see is his hand this way, his left hand turning like this. And then I just see, he just stopped, he didn’t run away, he stopped, turned, and then he was turning back around. At that point, I heard a gunshot. I wasn’t sure who it was – if it was Wiley shooting him or he shot at Wiley. I was at that point – he’s turning – I think it’s him. He shot at her. I can no longer see her because I’m kind of tunneling onto him and I don’t see him fall, so I figured he shot Wiley at that point.

Carmon stated he then saw Miranda “kind of leaning down towards the ground, towards his right,” and that he still appeared to be “reaching.” Carmon explained that most of Miranda’s back was towards him at this point and that Miranda was facing Wiley. Carmon said that he believed Miranda was not falling but “taking a tactical position” because he never “gave up his right hand” as he went toward the ground. As Miranda went toward the ground, Carmon fired two rounds at him from his service weapon. Carmon stated he shot at Miranda with the belief that Miranda had just fired at Wiley and was now going to attempt to shoot him. Carmon stated he heard one gunshot prior to discharging his firearm. Carmon said he was not sure where

⁷ Carmon did not state, and was not asked, whether he heard Miranda make any statements prior to running away.

Weathermon was when he fired his weapon, but he “figured” he was on the sidewalk to his right.⁸

Later in the interview, Carmon was asked what, if anything, Miranda did to cause him to believe Miranda was armed. Carmon responded:

I don’t know if he was holding something – it appeared like he had something heavy. He was reaching. But, not really pulling up his pants. Usually gangsters, when they’re pulling up their pants, it’s a different thing, and they can still run pretty good. It looked like he was holding, or doing something, heavy. There was a lot of – it was very deliberate what he was doing there. Even though it was quick. It was weird... It was his right hand.

Officer Michael Weathermon

Weathermon was the third officer to arrive at the scene. As he was pulling his car toward the other officers, he saw Miranda start to run and he followed in his patrol vehicle:

Fearing that he had a gun – I mean – I pulled up next to him. The way that he was running, the way that he was reaching, I, I swear he had a gun. I actually drew down through my windshield as I – driving behind him. I was probably about ten feet behind him, just in case he were to turn and fire on me, I had my handgun ready in case I had to return any kind of fire. But my goal was to try to pull in front of him to try to cut him off. When I went to cut – when I got in front of him to cut him off, he saw me obviously – he stopped and he started running back westbound. I exited my patrol car to go after him.

As Miranda ran westbound, Weathermon ran around the front of his vehicle, pointed his gun towards Miranda, and began to chase him.⁹ He saw Miranda run down the sidewalk, turn, and go toward the driveway where the officers were located. Weathermon lost sight of Miranda behind a pillar and then heard four to five shots and felt something hit him in the chest. He then saw Miranda down in the street. Weathermon heard the gunshots but did not see the officers firing their weapons. Weathermon stated he was a few feet north of the sidewalk and a couple hundred feet east of Wiley and Carmon when he was struck by the bullet.

Steven A.

Steven A. had skateboarded to the strip mall on the morning of the shooting with his girlfriend. Steven A. had met Miranda, who he knew as “Wizard,” the day prior and had used drugs with him. Steven A. described Miranda as a quiet person who was having a “rough time” because his wife had ended their relationship when he started using drugs after a period of sobriety.

On the day of the incident, Steven A. saw Miranda sitting in front of Shakey’s Pizza and stopped and talked to him for a few moments as his girlfriend went into the 99 Cents Only store. After speaking with Miranda, Steven A. skateboarded toward the 99 Cents Only Store and noticed police vehicles pulling in front of Miranda. Steven A. stated that Miranda looked scared, and that Miranda had told him the day before that he thought he had a PAL [parolee at large] warrant out for his arrest. Steven A. watched as Miranda started running from the officers and the

⁸ Carmon was never asked about shooting Weathermon during the interview.

⁹ Weathermon’s DCV does not capture him pass the front of the vehicle.

officers gave chase. Steven A. said he was in front of the 99 Cents Only store and focused on Miranda from the time he started running until he was shot.

Steven A. saw a patrol vehicle cut Miranda off, and Miranda started running back toward the 99 Cents Only store. Steven A. stated that he did not hear the officers give Miranda any verbal commands as he ran from them. He described Miranda as, “just trying to get away” and claimed that he never saw Miranda do anything other than run away. Steven A. stated that Miranda, “wasn’t reaching in his pockets,” and “had nothing in his hands” during the incident. Steven A. did not recall seeing Miranda grabbing his pants. Steven A. stated that when Miranda made a 45 degree turn from the sidewalk toward the parking lot, he was shot approximately five times by a female officer standing in the parking lot. Steven A. indicated that Miranda was trying to “dodge” the officers when he was shot. Steven A. initially indicated he could not remember where in the parking lot Wiley was standing when he heard the gunshots because he was focused on Miranda. Steven A. later stated he saw Wiley after Miranda fell to the ground. The investigator had Steven A. label a satellite image of the scene:

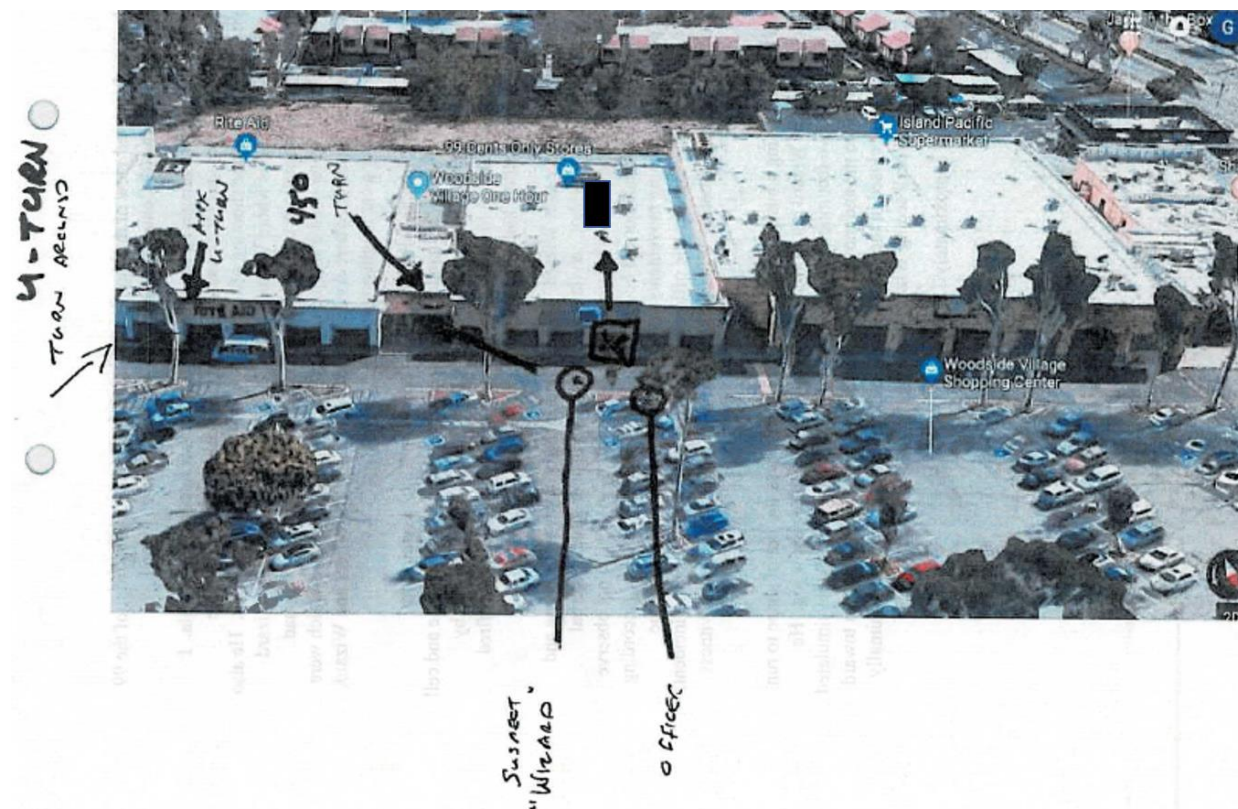


Figure 20 – Steven A. labeled Miranda’s U-turn, 45 degree turn toward the parking lot, path of travel, and location when he was shot (suspect “Wizard”). Steven A. also labeled where he (X) and Wiley (officer) were standing.¹⁰

Esmeralda M.

Esmeralda M. was working as a manager in the 99 Cents Only store at the time of the shooting. Esmeralda M. said her attention was drawn outside when she heard the sound of a car racing

¹⁰ Surveillance video and physical evidence indicate the incident took place slightly to the west (right) of where Steven A. described.

through the parking lot. She stepped out of the front doors of the 99 Cents Only store and saw Miranda running toward her on the sidewalk. She did not see a police vehicle following him. Miranda ran toward the Rite Aid, did a quick U-turn, and ran past her a second time:

He ran, right, and then he tried running towards Rite Aid, and I guess he seen someone – probably the cop – coming. Because we have, like, these blocks that block the view. So, probably he seen the cop – I didn't see the cop – he ran like that then he went back – like the 99 – that's when they shot him right there when he ran towards – like going towards the parking lot. That's when I seen the cop in the side, like, shot him.

Esmeralda M. said she saw only one officer shoot at Miranda, a male officer who fired two rounds. Esmeralda M. did not recall hearing the officers say anything prior to shooting and could not recall where Miranda's hands were when the shots were fired. After hearing gunshots, she ran back into the store and closed and locked the doors.

Esmeralda M. was asked whether there was anything unusual about the way Miranda was running. She said he was running "like a normal person." She described what he was doing with his hands as, "gripping his pants" to prevent them from falling. When confronted with the possibility that Miranda was holding on to something inside his pants, Martinez stated, "I could tell. I could tell. Like, when I seen him, I knew he was holding his pants because it's so obvious he has a grip on them."

Ted M.

Ted M. was standing outside of his store located next to Rite Aid when he saw Miranda running toward him on the sidewalk. Miranda ran past him but stopped and turned around when Weathermon pulled past him in the patrol vehicle. Miranda then ran toward the 99 Cents Only store and into the parking lot. Ted M. believed he heard three gunshots but did not see what happened at the time of the shooting because his view was blocked by the pillars along the sidewalk.

Brian Miranda

Miranda declined to give a statement to investigators who came to the hospital. Based upon his actions, the Los Angeles County District Attorney's Office filed case 7WC04758, charging Miranda with one count of resisting or delaying a peace officer in violation of Penal Code section 148(a)(1). Miranda entered a no-contest plea to that charge and was sentenced to three years probation and 36 days in county jail.

In the years following the incident, District Attorney investigators were unable to locate Miranda to conduct an interview. On February 6, 2020, a District Attorney investigator left her contact information at an address where Miranda was believed to be residing. Later that day, Miranda called the investigator and stated his sister found the contact information and passed it on to him. Miranda refused to give his address and claimed to be living in various hotels. Miranda adamantly expressed that he did not want to pursue any criminal charges and wanted to, "Leave it alone." Further efforts to meet with Miranda or speak to him about the incident were met with negative results.

Ballistic Evidence

Three fired 9mm Luger caliber cartridge cases were recovered from the 99 Cents Only store parking lot and were identified as having been fired from Wiley's Glock 17 (Gen4) 9mm service

weapon. Investigators located a single bullet hole in the 99 Cents Only storefront window, which impacted a freezer unit. Fired bullet jacket fragments found near the freezer unit were compared with inconclusive results, with one fragment exhibiting similar general rifling characteristics (GRC) as Wiley's service weapon. This bullet hole is consistent with Wiley's line of fire.



Figures 21 & 22 – One of Wiley's rounds struck the 99 Cents Only storefront window, shattered the glass, and impacted the rear of a freezer unit located in the front of the store.

The bullet jacket fragment recovered from Miranda's leg was also found to exhibit similar GRC as Wiley's service weapon but lacked sufficient individual characteristics required to make a positive identification.

It is unknown where Wiley's third round impacted. Bullet fragments were recovered near a pillar outside the 99 Cents Only store. However, no point of impact was located, and these fragments were determined to be of no comparison value. One fragment had small black fibers attached, indicating it may have impacted Weathermon's ballistic vest.¹¹

Two fired .45 auto caliber cartridge cases were recovered from the 99 Cents Only store parking lot and were identified as having been fired from Carmon's Glock 21, .45 auto caliber service weapon. One bullet hole in a tree was located in the parking lot in front of Rite Aid. Bullet recovery was attempted, but no bullet was located. This bullet hole is consistent with Carmon's line of fire. One fired bullet was recovered from Weathermon's ballistic vest trauma plate and compared to Carmon's service weapon. The fired bullet exhibited similar GRC as Carmon's service weapon but lacked sufficient individual characteristics required to make a positive identification.

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

¹¹ Surveillance video taken immediately following the incident shows Weathermon manipulating his ballistic vest as he walked by the location where the fragments were recovered.

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.

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. *Mehserle* at 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 People have the burden of proving beyond a reasonable doubt that a defendant did not act in lawful self-defense or defense of another. CALCRIM No. 3470. It is not a defendant’s burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others.

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 she or the person he or she 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 or she used no more force than was reasonably necessary to defend against that danger. The People have the burden of proving beyond a reasonable doubt that the use of self-defense or defense of another was not justified. CALCRIM No. 505.

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. “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. 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.

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self-defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580. “An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against

a fleeing suspect who turns and moves as though to draw a gun.” *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. See *Ryder v. City of Topeka* (1987) 814 F.2d 1412, 1419 (concluding that, because a requirement that a suspect actually have a weapon would place police in “a dangerous and unreasonable situation . . . whether a particular seizure is reasonable is dependent on the ‘totality of circumstances,’ and not simply on whether the suspect was actually armed.”)

A person is not guilty of a crime if he commits an act under an honest and reasonable belief in the existence of certain facts and circumstances which, if true, would make such an act lawful. *People v. Raszler* (1985) 169 Cal.App.3d 1160, citing *People v. Osbourne* (1979) 77 Cal.App.3d 479. CALCRIM No. 3406. “An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a person is charged an innocent act, has always been held to be a good defense.” *People v. Lucero* (1988) 203 Cal.App.3d 1101. When a person commits an act based on a reasonable mistake of fact, his guilt or innocence is determined as if the facts were as he perceives them. *Id.*, see also, *People v. Beardslee* (1991) 53 Cal.3d 68. “Where an officer’s particular use of force is based on a mistake of fact, we ask whether a reasonable officer would have or should have accurately perceived that fact.” *Torres v. City of Madera* (2011) 649 F.3d 1119, citing *Jensen v. City of Oxnard* (1998) 145 F.3d 1078. Courts have warned against second-guessing the split-second judgment of a trained police officer merely because that judgment turns out to be mistaken. *McLenagen v. Kegan et. al.* (1994) 27 F.3d 1002, *Milstead v. Kibler* (2001) 243 F.3d 157.

Before a jury can rely on circumstantial evidence to find a person guilty, the jury must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the accused person is guilty. “If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence.” CALCRIM No. 224.

In this matter, there is insufficient evidence to establish that Wiley was unreasonable in believing that Miranda was the subject of the call she had been dispatched to. His clothing was similar to that described by the caller, and he had a tattoo which was in the same location of that described. Further, his comments that he was “not going back” were consistent with a parolee, as was his flight. Although no one else heard Miranda’s statements, given that Miranda had recently told Steven A. he was a parolee and thought he had a warrant out for his arrest, a jury would likely conclude that the statements were made, and Wiley was not unreasonable in believing Miranda was the subject she had been dispatched to arrest.

Miranda’s movements as he fled from the officers can be corroborated to some extent by available DCV and surveillance video. In the videos, Miranda is seen running down the sidewalk, moving his left arm back and forth in a typical running manner while keeping his right hand near his waistband. Prior to any shots being fired, Carmon broadcasted on his radio, “He’s reaching in his waistband.” Additionally, Weathermon advised investigators he believed Miranda had a gun based upon his movements and went so far as to draw his own service weapon. Although Steven A. stated that Miranda was running normally, the existence of contrary video footage and Esmerelda M.’s description of Miranda gripping his pants make it unlikely that a jury would believe the officers were unreasonable in believing that Miranda’s actions were consistent with potentially having a weapon.

Although the position of expended casings and bullet trajectories place Wiley and Carmon in positions where Miranda could not be running directly at each of them simultaneously, the video evidence supports their allegation that he was running in their general direction and raised his right arm. The only evidence to contradict the officer's perceptions that Miranda was running toward them is Steven A.'s opinion that Miranda was trying to "dodge" the officers. However, Steven A. initially stated he could not remember where Wiley was standing when he first heard gunshots. When depicting Miranda's path of travel on a satellite image, Steven A. drew a line that began on the sidewalk and extended out into the driveway in the direction of where he indicated Wiley was standing after the shooting. As such, there is insufficient evidence to prove that Wiley's belief in the need to defend herself with deadly force was unreasonable. Similarly, there is no evidence to directly refute Carmon's assertion that he believed it was Miranda who had fired his weapon. Although his description of what was likely Miranda falling to the ground as "tactical" appears suspect, there is no witness or physical evidence to contradict him. Miranda himself has refused to speak to investigators, and no other witness saw the events from the same or similar vantage point as Carmon.

In this matter, although Miranda did not have a weapon at the time of the shooting, and did not actually pose a threat to officers at the time he was shot, there is insufficient evidence to establish that the officers were not in actual fear or that their fear was unreasonable under the circumstances. As such, it cannot be proven beyond a reasonable doubt that their actions were unlawful.

CONCLUSION

Based upon a review of all the available evidence, we find that there is insufficient evidence to prove beyond a reasonable doubt that Officer Wiley used unreasonable force when she shot Brian Miranda and that Officer Carmon used unreasonable force when he shot at Brian Miranda and struck Officer Weathermon. We are closing our file and will take no further action in this matter.