

Officer Involved Shooting of Mardell Person

California Highway Patrol

Officer Manuel Bautista, 20344

J.S.I.D. File #16-0445



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 14, 2020

MEMORANDUM

TO: CAPTAIN CHARLES SAMPSON
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Mardell Person
J.S.I.D. File #16-0445
C.H.P. File #160905LA04222
L.A.P.D. File #160122801

DATE: May 14, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 6, 2016, non-fatal shooting of Mardell Person by California Highway Patrol (CHP) Officer Manuel Bautista. We have concluded that Officer Bautista acted in lawful self-defense at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on September 6, 2016, at approximately 6:01 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by Los Angeles Police Department (LAPD) Robbery Homicide Detective Salaam Abdul-Rahman.

The following analysis is based on reports, recorded interviews, photographs, and a recording of the incident made by the Mobile Video Audio Recording System (MVARs) on the dashboard of the CHP patrol unit involved in the event. These materials were submitted to this office by the LAPD Robbery Homicide Bureau. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On September 5, 2016, at approximately 11:57 p.m., CHP Officer Bautista was working with his partner, Officer Ray Gamino. Both officers were in full uniform and assigned to a marked black and white police vehicle in which Bautista was the driver. A radio call went out alerting officers that a pedestrian, who was later identified as Person, was walking on the 110 Freeway at

Olympic Boulevard swinging a pole at passing cars. Bautista activated his emergency lights as he and Gamino responded to the scene, driving northbound on the 110 Freeway. As the officers approached, dispatch informed Bautista and Gamino that Person was sitting on the right shoulder guardrail of the northbound side of the freeway at the Chick Hearn onramp. When Bautista passed the Santa Monica freeway, he activated his overhead lights and zig zagged across the lanes to create a traffic break to protect Person's safety in case he ran across the road. Bautista saw Person sitting on the guardrail, facing away from the road. Bautista drove his patrol vehicle in a circle to indicate to motorists that he was closing all lanes. He stopped the patrol vehicle straddling the number four and five lanes of the five-lane freeway.



Figure 1 Aerial View of the Incident Scene

The patrol car was facing Person with its headlights directed at Person while Person kept his back to the vehicle and sat motionless on the guardrail. Bautista used his public address system to tell Person he could not be on the freeway. Person did not move, so Bautista and Gamino exited the police vehicle. Bautista walked in front of the front bumper of the patrol vehicle, keeping a distance of approximately 30 feet between himself and Person. Gamino stayed on the passenger side of the front bumper, drawing his Taser and keeping it at the low-ready position. Bautista again ordered Person to leave the freeway.

Person stood up and, with his right hand, swung a four-foot-long metal pipe over his shoulder. He stepped over the guardrail, took a couple steps onto the freeway and stood facing Bautista. Person was 37 years-old, six feet three inches tall and weighed 280 pounds. In his left hand, he held a second weapon—a five-foot-long metal rod.

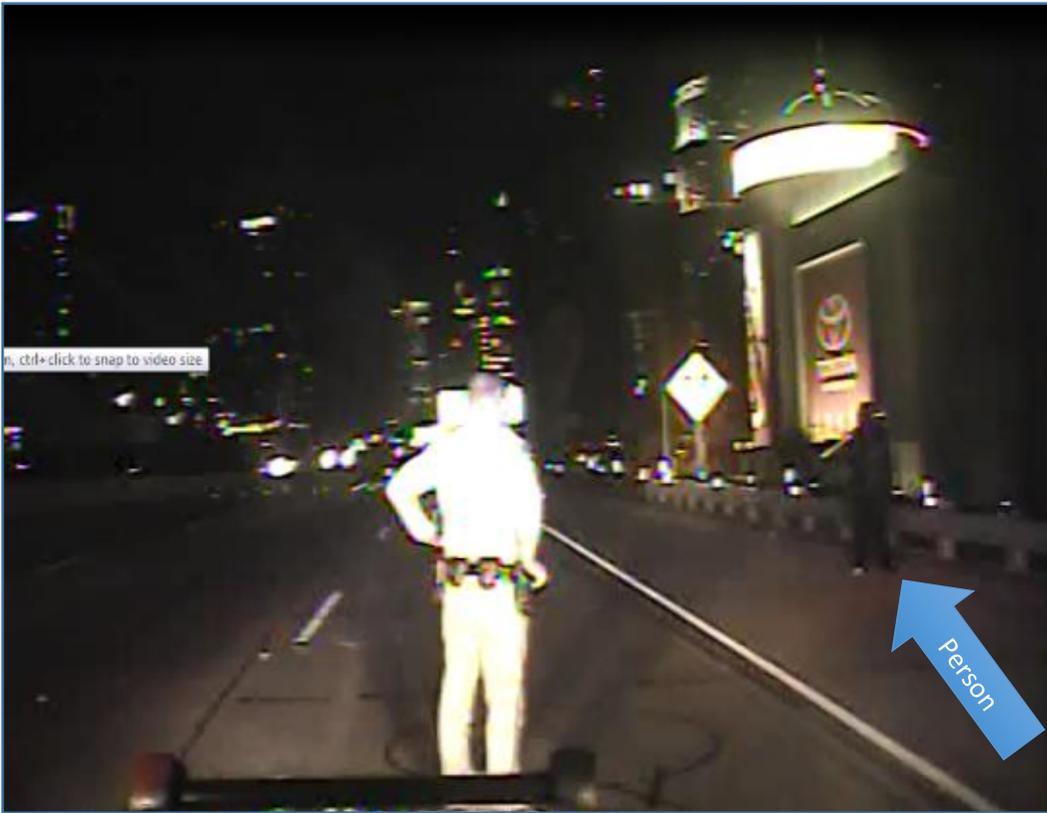


Figure 2 MVARs Still Showing Person Facing Bautista with the Metal Pole Over his Shoulder

Bautista engaged in a conversation with Person and tried to get Person to leave the freeway. Person responded with statements, “Tell those motherfuckers to leave me alone,” and “I’m not going to play by the rules.” Person argued that the officers should leave him alone and Bautista explained he could not leave until Person exited the freeway.

Throughout the exchange, Bautista remained patient, composed and professional. As the argument wore on and Person continued refusing to leave the freeway, Gamino approached with his Taser drawn and held low. Gamino stopped in a position where Person, Bautista and Gamino were in a triangle approximately fifteen feet apart. After a few seconds of staring at the officers, Person slowly backed along the guardrail towards the freeway onramp. Person walked a short distance down the onramp and Bautista crossed to the guardrail to use his flashlight to stop vehicles driving up the onramp to protect Person’s safety. Person stopped walking and turned to renew the argument with Bautista. Bautista continued trying to convince Person to exit the road, but Person insisted that the officers leave him alone. Again, Bautista explained he could not leave until Person was off the freeway and offered to walk along the guardrail with him. Person said, “Fuck it, man. I’m going to be right here, bro. It is what it is. I’m going to be right here.”

Person stood on the onramp yelling at Bautista for two minutes before Bautista said, “Alright, man, I was trying to be nice with you. Go!” and walked along the guardrail towards the onramp.

Person ran up the onramp towards the freeway and shouted, "Let's go!" Bautista drew his Taser. Person got to the top of the onramp and turned to run directly at Bautista, swinging the metal pipe. Bautista pointed his Taser at Person and shouted, "Get back!" Person screamed, "Let's go!" and repeatedly yelled, "I don't give a fuck about that gun!" Person and Bautista each stood their ground for the next 20 seconds, after which Person took a few steps backwards and stopped again, saying, "I bet I make you use that motherfucker."

Fearing that he would be seriously injured if Person struck him with the metal pipe, Bautista holstered his Taser and drew his service weapon. Neither Bautista nor Person moved for the next 50 seconds. Suddenly, Person charged at Bautista, swinging the metal pipe over his head. Person stopped abruptly and took a few steps backwards. A few seconds later he again charged at Bautista, and when he was nearly close enough to hit Bautista with the pole, Bautista fired seven shots at Person.

Person was struck by two bullets—one in the leg and one in the chest. He collapsed to the ground. Gamino did not fire his service weapon because he was concerned about crossfire on the freeway.

After Bautista fired his duty weapon, Gamino immediately called for the Los Angeles Fire Department (LAFD) to send an ambulance for Person. Gamino and Bautista rendered medical aid until LAFD personnel arrived. LAFD personnel transported Person to California Hospital where he immediately went into surgery. Person survived his injuries.

Following the incident, investigators recovered seven .40 caliber spent cartridge casings at the scene. Six of the cases were ejected to the far side of the guardrail onto the embankment between the freeway and the onramp. One of the cases landed on the shoulder of the freeway, near a blood stain that marked where Person fell. The spent cases recovered at the scene are consistent with Bautista firing seven shots from his .40 caliber semiautomatic firearm. Investigators also photographed and recovered the metal pole and the metal rod Person had when he confronted the officers.

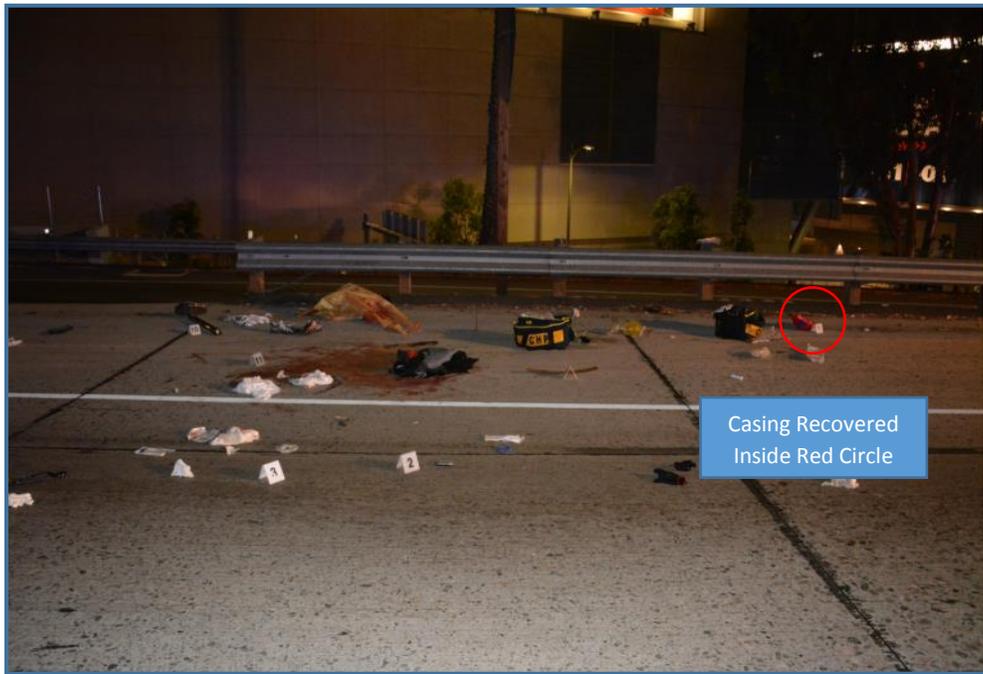


Figure 3 Crime Scene Photograph Showing the Proximity of One of the Casings Bautista Fired and the Blood Spot Indicating the Location Where Person Fell.



Figure 4 Four-Foot-Long Metal Pipe

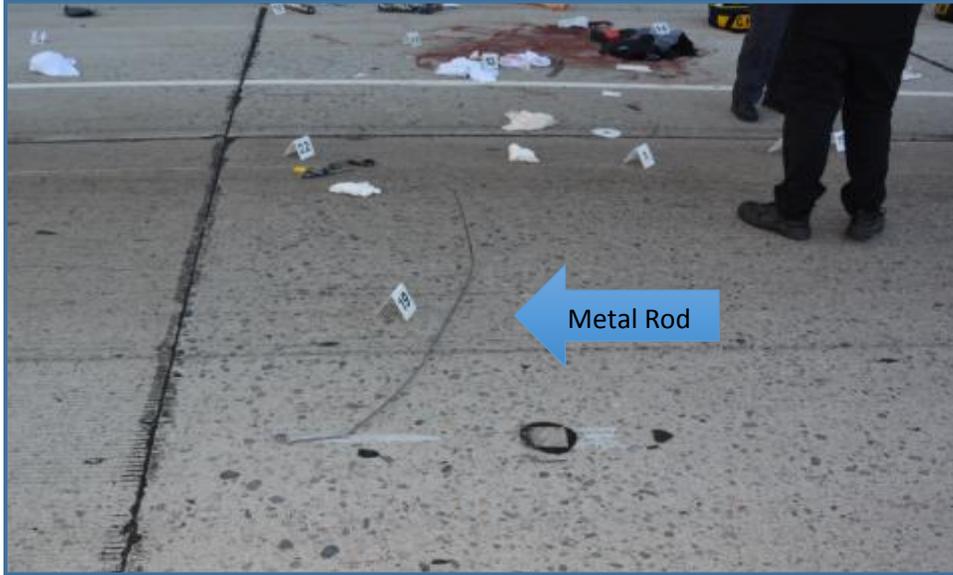


Figure 5 Five-Foot-Long Metal Rod Person Held in his Left Hand

As a result of this incident, Person was charged in case number BA450177 with a violation of Penal Code section 245(c), assault with a deadly weapon upon a peace officer. He pled no contest to the charge on December 12, 2016 and received three years' probation. Sadly, Person committed suicide on October 9, 2018.

THE LAW

In evaluating whether a police officer's use of force was reasonable, 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 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 the person perceived need not have actually existed. *Id.*

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 505. The People have the burden of proving beyond a reasonable doubt that a person did not act in lawful self-defense or defense of

another. If the People fail to meet this burden, a jury must find the defendant not guilty. CALCRIM No. 3470.

A police officer may use reasonable force to effect an arrest, prevent escape, or to 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.

LEGAL ANALYSIS

The evidence examined shows that prior to the shooting, Person was standing on the freeway. He was swinging a metal pole at passing cars, endangering himself and motorists. When Bautista and Gamino arrived, Person refused to leave the freeway despite Bautista’s repeated requests. Bautista remained calm and professional throughout the encounter and provided ample time and opportunity for Person to leave the freeway. Person was confrontational and belligerent and ultimately charged at Bautista three separate times, swinging a five-foot-long metal pole. Bautista held his fire the first two instances Person ran towards him, which provided Person the opportunity to stop and back away. When Person charged the third time, Bautista reasonably believed Person would imminently strike him with the metal pole, inflicting great bodily injury or death. Bautista discharged his firearm only when Person’s actions made it clear that he was intending on striking Bautista and only when Person came within a few feet of him. Bautista’s decision to use deadly force to stop the imminent threat posed by Person’s assault was reasonable under the circumstances.

CONCLUSION

We find that Officer Bautista acted lawfully in self-defense when he used deadly force against Mardell Person. We are closing our file and will take no further action in this matter.