

Non-fatal Officer Involved Shooting of Anthony Mariscal

Long Beach Police Department

Officer Christopher Brammer, #10014

J.S.I.D. File #18-0098



GEORGE GASCÓN
District Attorney

Justice System Integrity Division

June 7, 2021

MEMORANDUM

TO: CHIEF ROBERT LUNA
Long Beach Police Department
400 West Broadway
Long Beach, California 90802

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Anthony Mariscal
J.S.I.D. File #18-0098
L.B.P.D. File #18-15803

DATE: June 7, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 13, 2018, non-fatal shooting of Anthony Mariscal by Long Beach Police Department (LBPD) Officer Christopher Brammer. We have concluded that Officer Brammer acted in lawful self-defense at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on March 14, 2018, at approximately 1:55 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LBPD Sergeant Robert Woods.

The following analysis is based on reports, recorded interviews, photographs, and body worn videos (BWV). These materials were submitted to this office by the LBPD Homicide Detail Detectives Malcolm Evans and Robert Gonzales. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On March 13, 2018, at approximately 9:40 p.m., LBPD Officer Christopher Brammer was working with his partner, Detective Kevin Skeen. Both detectives were in full police department uniforms. Brammer was the driver and Skeen was the passenger in a beige Ford Crown Victoria that was equipped with forward facing red lights and sirens as well as red and blue emergency lights.

The detectives were assigned to patrol duty because four shootings, including a murder, had occurred in the area on the previous day. While on patrol, the detectives drove by the home of Anthony Mariscal and his brother Cesar, members of the East Side Paramount criminal street gang. Brammer was acquainted with Mariscal and Cesar through prior contacts with them. He previously arrested Mariscal for illegal possession of a firearm, and Brammer was aware that Mariscal had an outstanding warrant for his arrest. As the detectives were patrolling, a confidential informant relayed to Brammer that Mariscal was the passenger in a white Kia sedan.

When the detectives approached the Mariscal's home, they saw a white Kia sedan pulling away from the curb near the residence.

The detectives followed the Kia for a short distance. When the Kia made a right turn from Pacific Coast Highway onto Chestnut Avenue, the driver, later identified as Rion N., failed to activate her turn signal. Brammer initiated a traffic stop by activating the Ford's forward facing red lights and emergency lights. Rion pulled the Kia to the west curb of Chestnut Avenue south of Pacific Coast Highway and came to a stop.

Brammer parked the police vehicle approximately ten feet behind the Kia, exited, and approached the Kia on the driver's side. He used a flashlight to illuminate the rear window to look into the back of the Kia. Skeen approached the Kia on the passenger side. As the detectives approached the Kia, they observed two passengers in the back seat moving so frantically that the Kia was shaking. They each independently concluded that someone in the back of the car was attempting to conceal either narcotics or a firearm. Brammer returned his flashlight to his utility belt and drew his duty weapon. Brammer used a flashlight affixed to his duty weapon to illuminate the back seat of the Kia through the driver's side rear window.

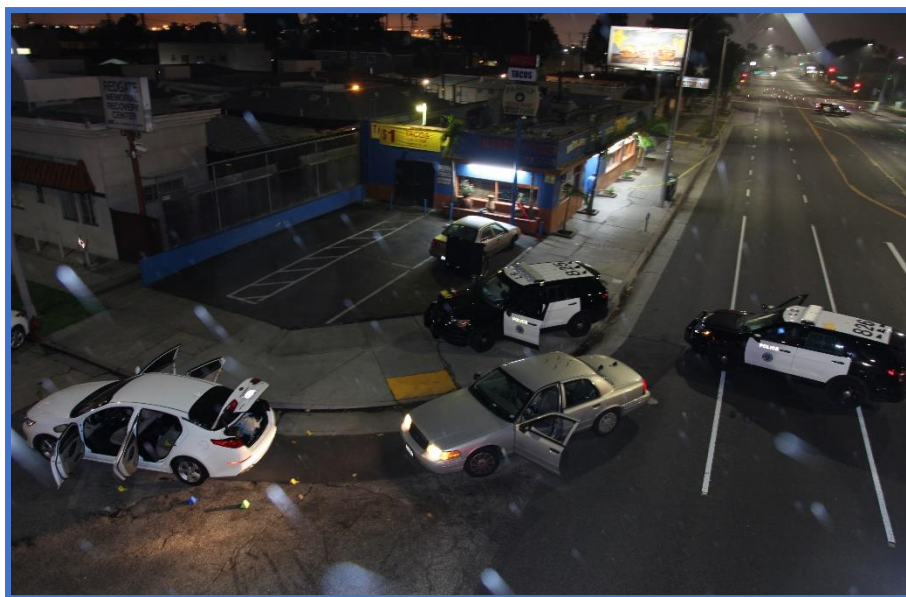


Figure 1 This photograph of the scene shows the location of the Kia and Brammer's patrol vehicle at the time of the incident.

Through the rear window, Brammer saw Mariscal laying on his back facing Brammer. Cesar was in the passenger side back seat. Mariscal reached into the front pocket of his sweatshirt with his left hand and drew a semiautomatic firearm. Mariscal pointed the weapon at Brammer. Fearing for his life, Brammer fired four rounds in Mariscal's direction. Brammer retreated to the patrol vehicle yelling "Gun!" to alert his partner of the danger.

Brammer and Skeen took cover behind the patrol vehicle as Skeen broadcast that shots had been fired. The front passenger door of the Kia opened and a woman, later identified as Mariah L.,

exited. Skeen ordered her to lay on the ground in a prone position, which she did. The front driver's side door of the Kia opened and Rion exited the car. Brammer ordered her to raise her hands and lay on the ground. She complied with Brammer's directions. Mariscal and Cesar remained in the back seat. Brammer broadcast that the two brothers were in the back seat of the car and that Mariscal was armed with a gun. He advised responding officers to block nearby streets to protect the safety of passersby. Believing that he may have struck Mariscal when he fired his weapon, he requested Long Beach Fire Department respond in case Mariscal required medical assistance.

As additional units arrived at the scene, the occupants of the car were arrested without further incident.

Officer Guadalupe Villescas Payan took both Cesar and Mariscal into custody. Payan brought Mariscal to an ambulance and she rode in the ambulance with Mariscal to St. Mary's Medical Center, where he was treated for a gunshot wound to the upper center of his back. While being assessed by the medical staff, Mariscal spontaneously told Payan he "got caught slipping," which is a slang term for being caught off guard. He said he had a "no bail" warrant for his arrest for not checking in with his probation officer. When the police pulled the Kia over, he planned to jump out of the car and run, but he was unable to react quickly enough to get out of the car before the officers approached the Kia. As the officers walked up to the Kia, he grabbed his cell phone from the center console and kept moving it back and forth from his hand to the center console.

Mariscal also told Payan he accidentally shot himself two weeks ago when he was drunk. He went to Long Beach Memorial Hospital to be treated but left before the police arrived because he did not want to be arrested on his outstanding warrant.

Mariscal's statement that he left the hospital prior to the police arriving is false. On February 28, 2018, LBPD Officer Nicholas Dyer interviewed Mariscal in the trauma room of Long Beach Memorial Hospital where Mariscal was being treated for the gunshot wound to his hand. Mariscal told Dyer he was wounded behind a McDonald's restaurant. He and two friends were drinking whiskey when he heard three gunshots and saw that he had been struck in the hand. He offered no further information, except he specifically denied accidentally shooting himself. Mariscal had an outstanding warrant on February 28, 2018 when Dyer interviewed him. Dyer ran Mariscal for warrants on the Justice Data Interface Controller System (JDIC) when he spoke to Mariscal at the hospital, but no warrants appeared.

Physical Evidence

Following the shooting, law enforcement personnel found a .380 caliber semiautomatic pistol under the front passenger seat of the Kia. There were seven cartridges in the magazine. LBPD Criminalist Taylor Tyler processed the .380 caliber pistol, the magazine and the cartridges inside the magazine for fingerprints. No fingerprints were developed.

Investigators also collected four 9mm cartridge cases on the pavement near the rear of the Kia.



Figure 2 This photograph depicts the firearm found under the seat of the Kia.

Ballistics Analysis

LBPD Criminalists from the Firearms Unit of the LBPD Forensic Sciences Services Division Crime Laboratory analyzed the strike marks in the Kia. They found three and possibly a fourth bullet hole in the car. One projectile passed through the driver's side rear window, two projectiles passed through the chrome lining of the rear windshield, and a fourth projectile may have passed through the rear windshield very close to one of the other holes. The criminalist also found a bullet hole in the rear of the passenger side front seat and the back of the center console.



Figure 3 Evidence markers A, B, and C show where bullets penetrated the Kia. There may also be a separate projectile entry indicated by the arrow.

Brammer was armed with a 9mm semiautomatic pistol, and the spread of the cartridge cases is consistent with Brammer firing four rounds near the rear area of the Kia. The bullet holes in the

car are consistent with three to four of Brammer's gunshots passing through the back of the car and traveling diagonally from the driver's side to the passenger side.

Mariscal's Injuries

Mariscal suffered a gunshot wound to his upper back and was transported to Saint Mary Medical Center in Long Beach. Due to the gunshot, he suffered cracked ribs, a collapsed lung, and a hemothorax (blood around the lung). Mariscal survived his injuries.

While medical personnel were treating him, Mariscal said, "Good thing I get high every day. I smoked an hour before I got shot." Dr. Mauricio J. Heilbron, Jr. ordered a toxicology report for Mariscal and the test came back positive for amphetamines.

Mariscal had a small laceration on his right hand. Mariscal told the hospital staff he suffered the laceration when he accidentally shot himself when he was drunk on February 28, 2018.

Mariscal's Miranda Statement

The morning after the incident, LBPB detectives interviewed Mariscal at the hospital. The detectives advised Mariscal of his rights under *Miranda*. Mariscal waived his rights and agreed to speak with them about the incident.

Mariscal said that when the officers pulled over the Kia, he "was trying to put (his) gun into the front." Then he said he was trying to put his gun underneath the seat. Next, Mariscal confirmed that he was trying to get the gun into the front of the car where the women were sitting. He told the detectives that he kept the gun in his right pocket. Although Mariscal said the gun was his, he did not know the caliber. He said the ammunition was small. He told the officers there were four cartridges in the magazine, but there was no round in the chamber.

The detectives asked Mariscal if he intended to shoot a police officer. Mariscal said, "Hell no. All I was going to do was run."

The detectives asked Mariscal if he was manipulating the gun when the officers stopped him. Mariscal said the gun was already under the seat. Mariscal stated he was sitting up when the officer fired at him.

On March 16, 2018, LBPB detectives again interviewed Mariscal in his hospital room. The detectives asked where he got the gun. Mariscal said some guys dropped the gun off with him that night. The people who gave him the gun were in a gang but he did not know what gang. He did not know whether the gun had been used in a murder.¹

¹ As of the date of this memorandum, the firearm has been entered into the National Integrated Ballistic Information Network, but has not been connected to any shooting under investigation by LBPB.

Witness Statements

Cesar's Statement

On the night of the incident, LBPD investigators interviewed Cesar. Cesar told the investigators he and Mariscal were both members of East Side Paramount. Immediately prior to the incident, they were riding in the back of the white Kia that Rion was driving. Another woman named Mariah was in the front passenger seat.

When the police officers activated their lights and sirens, Cesar and Mariscal ducked down in the back seat in an effort to conceal themselves. Mariscal had a gun in his hand and intended to flee. Mariscal was moving around in the car so much that Cesar told him to hold still or the police would shoot him. Mariscal told Rion to drive away from the officers, but she refused to do so because she was afraid.

Cesar told the investigators he saw the car window shatter when the officer fired the shots. Mariscal told Cesar, "They hit me."

Cesar said the gun belonged to Mariscal and described the color as metal.

Rion N.'s Statement

Investigators interviewed Rion at 2:50 a.m. on March 14, 2018.

Rion told investigators she was driving her white Kia Optima with her friends Mariah L., Cesar, and Mariscal. She had just turned onto Magnolia Avenue from Pacific Coast Highway when she noticed police lights behind her and pulled over. When she stopped, Mariscal told her to drive off. She did not know why Mariscal told her to drive off. She did not know whether he was armed at the time, although he had shown her a gun a couple of weeks prior.

When she stopped the car, the brothers seemed to be panicking in the back seat because they were moving around so much. Mariscal tried to shift the car into "drive" and Rion shifted it back into park. She told him she would not drive away. At that point, Rion saw for the first time that Mariscal had a gun in the car. Mariscal tried to throw the gun in front of her but she refused to let him throw the gun into the front seat. He then attempted to slide the gun along the center console into the front seat area. Rion pushed it back towards the back seat. Next, she heard gunshots.

Mariah L.'s Statement

Investigators interviewed Mariah at 3:30 a.m. on March 14, 2018. When the incident occurred, Mariah was riding in the front passenger seat of Rion's white Kia while Mariscal and Cesar were in the back seat. Mariscal was seated behind Rion. When the lights from the police vehicle turned on, Rion pulled the car over. The men in the back seat began moving around frantically. Someone said, "Just go."

Mariah said she never saw a gun in the car and did not realize there was a gun in the car until an officer told her. She said that Mariscal was pushing something towards the front seats along the center console, but she did not know what it was because her attention was diverted.

Mariah saw a flashlight approaching the car from behind and heard a voice say, "Get out of the car. Open the door." Mariscal repeated the words, "Oh, shit," and then pushed the car into drive. Mariah shifted the car back into park. Mariah saw two flashlights directed to the back seat of the car. She could not see what was going on in the back seat, but she could tell there was a great deal of movement there. Suddenly, there was a loud boom and the car window broke.

Mariah opened the car door and exited. She was directed to get on the ground and crawled to the officers who were behind the Kia.

Unidentified Witness

An unknown witness refused to identify himself to officers. He said he was standing in the parking lot of the liquor store when he saw a police car stopped behind a white vehicle. He saw two officers walking towards the white vehicle. The officer on the driver's side of the car was standing next to the rear door when he fired three rounds into the car. The witness did not know why the officer fired. At that point in the interview, the witness became hostile to the interviewing officer, walked away, and refused to provide any further information.

Jose M.

Jose was walking out of the liquor store when he saw the police vehicle parked with its lights flashing. One officer approached the driver's side of the Kia while the other approached the passenger side. The officer on the passenger side of the Kia had his gun drawn and pointed towards the ground. Jose did not hear either officer say anything. When the officer on the driver's side reached the wheel well, he fired four shots into the Kia.

After shooting, the officer yelled, "Hands up! I want to see your hands! Open the door!" Afterwards the officers returned to their vehicle. When more officers arrived, the women in the Kia were arrested. He did not provide any additional details.

Lloyd P.

Officer Ryan Gow responded the scene and contacted Lloyd P., who was standing on the west side of Chestnut Avenue just south of Pacific Coast Highway when the Kia pulled over. Lloyd stated two officers walked up along each side of the Kia. When they reached the trunk area, Lloyd looked away and then heard five gunshots. An officer yelled, "Keep your hands up!" Lloyd did not look to see what happened next, but within minutes, several more police vehicles arrived. He heard someone say, "Get out of the car!" and "Keep your hands up!" several more times, but he did not see anything more.

Jasmine P.

Jasmine P. was parked on the curb on Chestnut Avenue north of Pacific Coast Highway facing south in the direction where the incident occurred. She saw the police turn on the overhead lights and watched as the Kia pulled over. A uniformed officer exited the police vehicle and walked towards the Kia. The Kia's front passenger door opened and someone started to get out of the car. The officer started yelling, but she could not hear what he said. Then the officer fired his gun four to five times at the Kia. The officer returned to the police car and provided directions to the occupants of the Kia.

Canvassing officers spoke to other nearby residents and people working in businesses close by the incident. Although some heard gunshots—witnesses estimated between two to six gunshots—no one else saw the event.

BWV

Brammer's BWV did not record video images, but did record audio. The audio begins with the sound of a car door closing and then Brammer says, "Watch their hands. Watch their hands." A few seconds later, Brammer shouts, "Hey, hey, gun!" Four gunshots follow. Brammer yells, "There's a gun! There's a gun!" Other voices are dimly audible after the gunfire, though the words are not discernable. Next, Brammer can be heard giving directions to the occupants of the Kia as they surrender.

Skeen was not equipped with BWV at the time of the incident.

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 to 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 Brammer was aware that Mariscal was a gang member with an outstanding warrant for his arrest and a history of firearm violations. At the time of the shooting, Mariscal was armed with a loaded semiautomatic firearm. When the officers stopped the Kia in which Mariscal was a passenger, Mariscal removed the firearm from his sweatshirt. The people who were in the car with Mariscal told investigators that Mariscal attempted to dissociate himself from the firearm by attempting to move it into the front seat area of the car as Brammer and Skeen approached. As the officers advanced, they could see the Kia rocking due to Mariscal’s frantic movements. Due to his familiarity with Mariscal’s criminal history as well as the unsettling movements of the Kia, Brammer became concerned Mariscal was armed and presented a deadly threat. Brammer stated Mariscal pulled the gun from his sweatshirt pocket and pointed it at him. In fear for his life, Brammer fired his duty weapon to end the deadly threat.

Regardless of whether Mariscal purposely pointed the gun at Brammer to avoid capture or whether he inadvertently pointed it in Brammer’s direction due to his frantic efforts to hide the weapon, Brammer was reasonably in fear of his life. Mariscal had a motive to shoot Brammer because Mariscal by his own admission sought to avoid capture by law enforcement. Mariscal also had the means to shoot Brammer, because he was illegally holding a loaded firearm in his hand as Brammer approached him. Brammer’s decision to use deadly force to stop the imminent threat Mariscal posed was reasonable under the circumstances.

CONCLUSION

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