

Non-Fatal Officer Involved Shooting of Jose Barrera
Los Angeles Police Department

Officer Manuel Rios, #42557

J.S.I.D. File #22-0099



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

June 8, 2023

MEMORANDUM

TO: CAPTAIN RICH GABALDON
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Non-Fatal Officer Involved Shooting of Jose Barrera
J.S.I.D. File #22-0099
F.I.D. File #F007-22

DATE: June 8, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 29, 2022, non-fatal shooting of Jose Barrera by Los Angeles Police Department (LAPD) Officer Manuel Rios. Based on the totality of the circumstances, we find that Officer Rios reasonably believed deadly force against Jose Barrera was necessary to defend against an imminent threat of death or serious bodily injury.

The District Attorney's Command Center was notified of the shooting on March 29, 2022, at 8:30 p.m. The District Attorney Response Team responded to the location and was given a briefing and walk-through of the scene.

The following analysis is based on investigative reports, body worn camera video evidence, dash camera video evidence, surveillance video evidence, crime scene diagrams, photographic evidence, and witness statements submitted to this office by LAPD Force Investigation Division Detective Humphrey Hyong. No compelled statements by Rios were considered in this analysis.

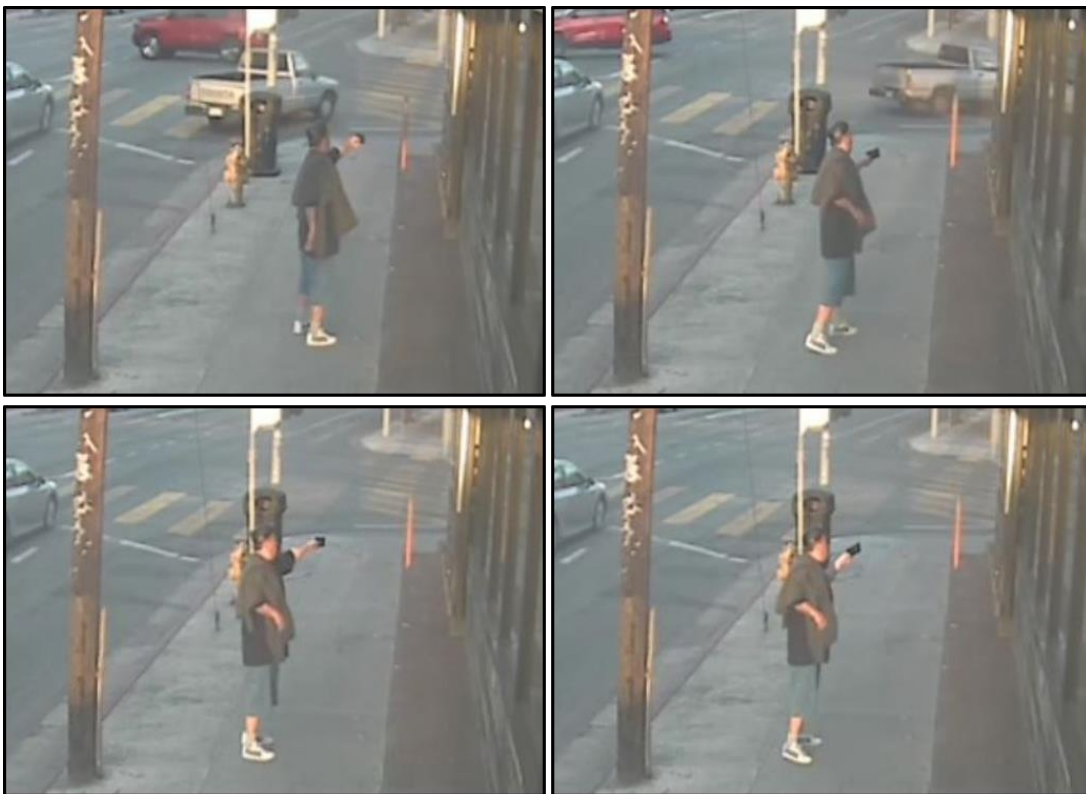
FACTUAL ANALYSIS

On March 29, 2022, at approximately 6:56 p.m., [REDACTED] called 9-1-1 and reported seeing a man, later identified as Jose Barrera, pointing a handgun at "people" in the area of Martin Luther King Jr. (MLK) Boulevard and Avalon Boulevard in the City of Los Angeles. Based on the information provided by [REDACTED], LAPD dispatch radioed officers a description of Barrera, informed them he was seen pointing a handgun at "passerbys," and indicated he was walking westbound on MLK Boulevard. LAPD patrol Officers Tatiana Bohorquez and Manuel Rios were assigned to the "possible ADW suspect there now" call and instructed to respond to the location code-3.¹

¹ ADW is the acronym for assault with a deadly weapon. "Code-3" is the radio code used to describe a mode of response in which an emergency vehicle's lights and siren are activated.

Bohorquez and Rios responded to the call in their marked LAPD patrol vehicle.² Bohorquez drove the police vehicle, and Rios was seated in the front passenger seat.³ The LAPD airship with Pilot Officer Kevin Cook and Tactical Flight Officer Daniel Putnam was nearby and began flying to the area.⁴

As the officers and airship responded, Barrera continued walking west on MLK Boulevard. As he walked, a restaurant's surveillance video recorded him removing a dark object, later identified as a large cell phone, from his pocket or waistband.⁵ Barrera held the object in a pistol-like grip, pointed it down the street, and imitated a shooting motion several times. Barrera did this by holding his cell phone in his chest-high outstretched arm and simulating the recoil action of a fired handgun before stretching his arm out again.



Figures 1, 2, 3 & 4 – Sequential still images taken from a restaurant's surveillance camera depict Barrera simulating a handgun firing. The object was later determined to be a cell phone.

² The patrol vehicle was equipped with a forward-facing dash camera (DCV). The incident was captured on DCV; however, poor video quality, significant sun-glare, and park vehicles obstructing its view prevented clear images of Barrera at the time of the officer-involved shooting.

³ Both officers wore distinctive LAPD uniforms and were equipped with body worn video cameras (BWV). Bohorquez' seated position during the incident prevented her BWV from capturing Barrera's actions. The patrol vehicle obstructed Rio's BWV's field of view and prevented it from recording Barrera's actions prior to and during the officer-involved shooting.

⁴ The airship did not have a video recording device on during the incident. A tactical flight officer is a passenger in the helicopter tasked with, amongst other things, observing the incident from above and radioing pertinent information to officers on the ground.

⁵ During a subsequent interview, Barrera told detectives he carried his cell phone in his waistband.

██████████ was still watching Barrera and informed the 9-1-1 operator that Barrera was now pointing the handgun at people in the restaurant. Dispatch relayed this information to the responding officers.

The LAPD airship arrived at the scene first, and at approximately 7:00 p.m., Putnam radioed that he located Barrera and observed him punch a car window. Putnam provided a physical description of Barrera and stated he was walking westbound on MLK Boulevard approaching Adair Street. Approximately one minute later, Bohorquez and Rios turned left onto MLK Boulevard from San Pedro Street, placing them about one and a half blocks east of Barrera. Simultaneously, Putnam radioed, “It looks like he might have a—he does have a handgun, and he’s firing at a house right now.” Putnam later told investigators that “the way” Barrera drew the gun from his pants or waistband made it “[look] like a gun.”⁶ “It appeared to me that he was holding a—holding a pistol out in a firing position.” To get a better look, Putnam used his binoculars, and the object continued to look like a firearm. Putnam then saw what he thought was Barrera shooting into a residence. Putnam explained, “It appear[ed] to me like he’s getting barrel recoil, like he’s firing a weapon.”

Rios immediately requested backup for a “415 man with a gun,” drew his duty weapon, and opened the front passenger side door.⁷ Putnam broadcasted, “Looks like he fired a couple of rounds at a house on the south side of the street. Guns [*sic*] going to be in his left hand right now.” Approximately eight seconds later, Rios told Bohorquez, “He’s over there! He’s over there! I see him.” As Barrera stood on the south sidewalk of MLK Boulevard next to a parked Honda Pilot, he raised his right arm and pointed his cell phone toward a white SUV that was traveling east on MLK Boulevard.⁸

Bohorquez and Rios were slightly east of the white SUV, traveling west toward Barrera in the eastbound lanes of MLK Boulevard. Bohorquez stated, “You might have to shoot! You might have to shoot!” as she stopped the patrol vehicle in an eastbound lane of MLK Boulevard, approximately seventy feet from Barrera.⁹ According to Bohorquez, her statement suggesting Rios may have to shoot was based on “The comments of the [9-1-1] call, the airship’s observations, and even his [Barrera’s]—like even once I did see him—even kind of his stance ... the positioning of his body and the way his hands were out looked like a—like a shooting stance.”¹⁰ Based on Putnam’s broadcast that shots had been fired, Bohorquez thought this was an “active shooter situation.” She did not believe there was sufficient time to deescalate the situation because Barrera appeared to be “getting ready” to shoot into the vehicle traffic on MLK.

⁶ Investigators interviewed Putnam on March 29, 2022. The interview was recorded.

⁷ The patrol vehicle was still moving at this time.

⁸ Based on the surveillance video and Bohorquez’ statement, it is unclear precisely where Barrera was pointing his cell phone. It appeared to be pointed in the general vicinity of the white SUV and Bohorquez’ patrol vehicle.

⁹ This statement can be heard on Bohorquez’ and Rios’ BWV.

¹⁰ Investigators interviewed Bohorquez on March 30, 2022. The interview was recorded. Bohorquez stated she could not see Barrera’s hand because the patrol vehicle’s A-pillar blocked it. A vehicle’s A-pillar is where the front windshield meets the doorframe.

A residence's surveillance camera recorded an obstructed view of Barrera. Barrera's hand, arm, and cell phone can be seen rising and pointing in the direction of the white SUV and the officers' patrol vehicle.



Figure 2 – Cropped still photograph taken from a residence's surveillance camera depict Barrera's arm and cell phone raising toward a white SUV. Inset is a zoomed-in image of Barrera's arm and hand. Bohorquez and Rios' patrol vehicle (not pictured) was slightly east of the white SUV.

When Bohorquez stopped the patrol vehicle, Putnam radioed, "Hey guys, right in front of you, he's got a handgun in his hand." Simultaneously, Rios exited the passenger's side of the patrol vehicle and immediately discharged four rounds from his duty weapon at Barrera.¹¹

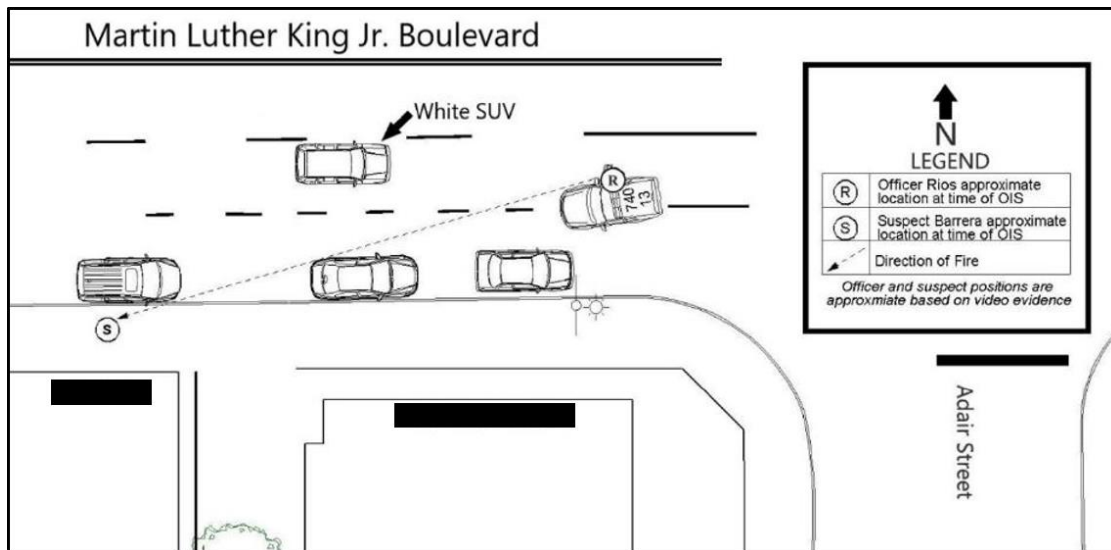


Figure 3 – LAPD diagram depicting the approximate locations of Rios (R) and Barrera (S) at the time of the officer-involved shooting.

¹¹ Approximately four seconds elapsed between Rios saying he saw Barrera and him discharging his duty weapon.



Figures 4 and 5 – Still images taken from the patrol vehicle's DCV and Rios' BWV, respectively, when Rios discharged multiple rounds at Barrera.¹²

One of Rios' rounds struck Barrera in his upper left arm, and he fell to the ground. Rios broadcasted, "Shots fired. Shots fired." on his handheld police radio as Bohorquez drew her duty weapon and exited the patrol vehicle. According to Bohorquez, she saw Barrera on the ground with a black object beside him. She believed the object, which was later determined to be Barrera's cell phone, was a firearm. Bohorquez and Rios waited for additional units to arrive before approaching Barrera. Once it was deemed safe, officers approached Barrera and took him into custody. He was then transported by law enforcement out of the crime scene to Los Angeles Fire Department firefighter-paramedics, who briefly provided medical treatment before transporting him to LAC+USC Medical Center. Once at the hospital, Barrera was treated for a through-and-through gunshot wound to his upper left arm and was released the following day.

Investigators recovered Barrera's T-Mobile model TCL REVVL 4+ 5062Z cellular telephone. The phone was encased in a hard-black protective case with an attached screen cover and belt clip.



Figure 6 – Photograph of Barrera's cell phone.

¹² LAPD enhanced the DCV by brightening the area around Barrera.

Four cartridge casings headstamped “9mm LUGER 19 SPEER” and discharged from Rio’s Glock, Model 17, 9 mm semiautomatic duty weapon were recovered from the MLK Boulevard roadway.

On April 7, 2022, LAPD investigators interviewed Barrera at his residence.¹³ According to Barrera, he was talking to his brother on his cell phone at the time of the incident. He denied doing anything unusual with his cell phone and said his phone was to his ear while speaking with his brother. Detectives showed Barrera the restaurant’s surveillance video. He explained that he heard a “click” sound and believed that “someone” was following him with a real gun. In response, he acted like his cell phone was a gun “to scare them” so they would “leave me alone.” Later, Barrera said it was his brother’s former girlfriend, [REDACTED], who was following him. He knew [REDACTED] to be “a bad person.” He believed [REDACTED] had brought the police with her and was unsure if it was [REDACTED] or a police officer that had shot him.

LEGAL ANALYSIS

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer’s decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

In this case, Rios used deadly force upon Barrera when Barrera appeared to be pointing a handgun in the direction of officers and other pedestrians. In hindsight, Barrera possessed a cell

¹³ This interview was recorded. During the interview, Barrera frequently gave disjointed and nonsensical responses to questions. According to Barrera, he has been diagnosed with schizophrenia since he was a child and had previously been prescribed medication but had not taken it in approximately two years.

phone, not a firearm; however, the reasonableness of Rios's actions is not analyzed with the benefit of hindsight, and the totality of the circumstances must be considered. During the incident, Barrera held his cell phone in an unusual manner, more typical of a handgun grip than the way one would normally hold a cell phone. This caused [REDACTED] to believe Barrera was brandishing a handgun, become fearful, and call 9-1-1. Barrera walked down the street and simulated a firing motion with his cell phone, resulting in Putnam broadcasting that Barrera was firing a handgun into a residence. Bohorquez and Rios arrived seconds after the broadcast, and Bohorquez saw Barrera take a shooting stance while holding and raising the cell phone in a manner consistent with aiming and firing a handgun. Given the circumstances, Bohorquez believed Barrera was an active shooter and told Rios he might have to shoot him. [REDACTED], Putnam, and Bohorquez' conclusions that Barrera possessed a handgun, in addition to the surveillance video depicting Barrera holding and "firing" the cell phone, is strong evidence supporting the reasonableness of the belief that Barrera possessed a handgun. As such, the weight of the evidence suggests a reasonable police officer in the same tense, uncertain, and rapidly evolving circumstances would conclude Barrera possessed and had possibly fired a handgun.

Therefore, when Rios saw Barrera raise and point his cell phone in his direction and toward other passing vehicles, he was confronted with what reasonably appeared to be the threat of imminent deadly force. The exigent nature of the incident did not provide Rios with the time or opportunity to deescalate the situation or employ less lethal alternatives. Based on the totality of the circumstances and all the facts known to or perceived by Rios at the time, it was reasonable for him to believe it was necessary to respond with deadly force.

CONCLUSION

Based on the totality of the circumstances, we find that Officer Manuel Rios reasonably believed deadly force against Jose Barrera was necessary to defend against an imminent threat of death or serious bodily injury.