

Fatal Officer Involved Shooting of David Kahler

Burbank Police Department

Officer Miguel Camarena #15278

J.S.I.D. File #21-0086



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

July 26, 2022

MEMORANDUM

TO: CHIEF MICHAEL ALBANESE
Burbank Police Department
200 North Third Street
Burbank, California 91502-1201

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

SUBJECT: Fatal Officer Involved Shooting of David Kahler
J.S.I.D. File #21-0086
Burbank P.D. File #21-1717

DATE: July 26, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 8, 2021, fatal shooting of David Kahler by Burbank Police Department (BPD) Officer Miguel Camarena. We have concluded that the officer acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 7:20 a.m., on March 8, 2021. The District Attorney Response Team (DART) responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted by BPD Detectives Brent Fekety and John Voorhis. No compelled statements were considered in preparing this report.

FACTUAL ANALYSIS

On March 8, 2021 at approximately 4:00 a.m., Kahler crashed a stolen Chevy Suburban on the I-5 freeway in Burbank.¹ The vehicle was rendered inoperable. Kahler walked off the side of the freeway accompanied by his stepson (a seven year-old minor) and descended a stairway at the Buena Vista overpass. Together they entered the sidewalk area of Buena Vista Street between Winona Avenue and San Fernando Boulevard. They crossed the intersection of North Victory Place and Buena Vista Street in a southwest direction and then walked through a Jack in the Box

¹ The vehicle was reported to law enforcement as stolen in Las Vegas on March 7, 2021. The theft was believed to have occurred on or about March 4, 2021.

parking lot in route to the Quality Inn motel located at 2255 North Buena Vista Street in Burbank.²

Motel surveillance footage captured Kahler attempting to break into a truck in the covered parking area at approximately 4:22 a.m. At 4:23 a.m., surveillance video captured him leaving the motel parking lot alone and walking south on Buena Vista Street.



Figure 1: This still image from the motel's surveillance camera shows Kahler attempting to break into a pickup truck at the motel with the minor waiting nearby.

At 4:29 a.m.,³ Kahler returned to the motel parking lot from the same direction he had left. The motel manager saw Kahler peering into car windows in the motel parking lot using a cell phone flashlight. At approximately 4:32 a.m., the manager confronted Kahler near the motel entrance and told him to leave.⁴ At 4:33 a.m., Kahler departed the motel parking lot a second time, again leaving the child behind. Kahler did not return for at least another 44 minutes. In the interim, the minor sat down on a concrete footing in the covered parking area next to a utility case, a locked box, and a stuffed toy – items that he had and Kahler brought with them to the motel. In the surveillance video footage, the child appears to cry. The motel manager, not yet aware of the child's connection to Kahler, approached the minor and spoke with him. He found the minor to be evasive. Noting that the child was underdressed for the weather, alone, and in distress, the manager called BPD to conduct a welfare check.

At approximately 4:59 a.m., Camarena and his partner, Reserve Officer Soon Hee Rettig, arrived at the Quality Inn. BPD Officers Bronson Perez and Samvel Ekimyan also responded to the motel. Officers found the minor sitting on the concrete footing in the covered parking area. The boy was again reluctant to speak and had to be pressed for information. When asked by one of the officers if he knew the combination to the locked box (which the officer was attempting to open), the boy said no, grabbed the box away from the officer and sat down on it, then became quiet.⁵ Rettig continued to engage him. The minor disclosed that he was traveling with his father and that their car had broken down. When the car broke down, things had flown around

² Street cameras and commercial video footage from nearby businesses captured Kahler and the minor moving from the stairwell off the freeway to the motel.

³ Time stamps referenced in this paragraph were taken directly from the motel surveillance video system.

⁴ The manager's account of the encounter was corroborated by surveillance video footage.

⁵ The box was later opened and found to contain dozens of syringes loaded with narcotics.

inside the vehicle. The minor also stated that he had banged his head when the car broke down; that his father had gone to get another car; and told him to wait there.⁶

While officers were speaking with the minor, Kahler stole a burgundy-colored Honda from a residence a few blocks away.⁷ At approximately 5:17 a.m. (based on the motel surveillance video time stamp⁸), Kahler drove the stolen Honda into the motel parking lot and pulled into a disabled-persons-restricted parking space.



Figure 2: Kahler returned to the motel parking lot with the stolen Honda, turning into the parking lot as seen above.

Motel surveillance footage shows Kahler stop the car, get out briefly, and walk towards the front end before returning to the driver's seat. Rettig heard a male voice (Kahler) say, "We gotta go man."⁹ The minor responded by calling out, "Dad! Daddy!" The minor took the utility box, the locked box, and stuffed toy, and ran towards the Honda. He opened the passenger side door as Camarena and Rettig caught up with him.

⁶ At about the same time, the officers learned about the accident on the I-5 freeway involving the stolen 2005 Chevrolet Suburban.

⁷ A shaved key (attached to a lanyard containing several other shaved keys) was subsequently found in the Honda's ignition. Kahler can be seen carrying the lanyard in the surveillance video as he leaves the motel parking lot.

⁸ The motel surveillance video clock time stamp is approximately two-and-one-half minutes behind the body worn video clocks of the officers.

⁹ In an interview with a detective, the motel manager also reported hearing Kahler call out for the minor.

As the minor opened the front passenger door to climb into the car, Camarena approached the Honda's right front headlight with his service weapon drawn. Rettig moved towards the minor and the open door.



Figure 3: Still frame image from Camarena's body worn camera shows minor opening the Honda passenger door. Rettig can be seen a few feet away to the minor's left.

As seen from Rettig's body worn video, when Camarena got close to the car he saw something inside the passenger compartment that alarmed him. He shouted, "Hey! Hey!" He is then heard to say what sounds like, "Move! Move!" As he made these statements, Camarena darted from the car's front right headlight to the passenger door – which he pulled open slightly with one hand while continuing to point his weapon in Kahler's direction – and then back toward the front right headlight.

Camarena's body worn video shows that at 5:20:49 a.m., while seated behind the steering wheel of the Honda, Kahler raised and pointed a pistol directly at Camarena.



Figure 4: In this still frame image extract from Camarena's body worn video, Kahler can be seen pointing a gun directly at Camarena. The weapon can be seen inside the red circle.

In an interview following the incident, the minor stated that Kahler told an officer to “drop him” (referring to the minor) and that his Dad did so while pointing a gun at the “other” officer. In Rettig’s body worn video, Kahler can be heard to utter something, but his precise words are not discernible.¹⁰



Figure 5: Camarena pointed his weapon at Kahler who was seated behind the steering wheel. This still frame image from Rettig’s body worn video captures the moment a split-second before the shooting.

Seeing Kahler point the firearm directly at him, Camarena opened fire, discharging three rounds.¹¹ Startled by what happened, and clutching one arm with the other (perhaps struck by debris from the bullet strikes), the minor sprang out of the doorway. While maintaining his aim on Kahler, Camarena ordered Kahler to, “Drop the gun!” at least twice. Camarena also gave the order, “Let me see your hands!” Rettig broadcast, “Shots fired!” Other BPD units arrived quickly.

Camarena and Ekimyan moved to a position behind a vehicle parked to the left of the Honda. The two officers maintained their weapons-at-the-ready position with their aim fixed on Kahler, who was still seated behind the steering wheel. Rettig was struggling to control the child who was now screaming. Sergeant Brent Fekety stepped in to assist and moved the minor to safety away from the car.

Ekimyan ordered Kahler to put up his hands. In body worn footage, Kahler can be seen briefly raising one hand. Ekimyan then repeatedly ordered Kahler to put his hands out the window. Kahler lowered his hand but made no apparent effort to comply with the additional instruction. About a half minute later (as seen at approximately 5:22:00 on Camarena’s body worn video), Kahler slumped forward in the driver’s seat.

BPD officers organized a tactical team to approach the vehicle under cover of a ballistics shield at approximately 5:26 a.m. They observed that Kahler was slumped over in the driver’s seat with his hands at his side and that he did not appear to be breathing. At 5:28 a.m., officers removed Kahler from the driver’s seat. As Kahler was being removed from the car, officers observed a pistol

¹⁰ As Camarena had just reactivated his body worn camera, the device was still buffering and not yet capturing sound.

¹¹ Camarena declined to be interviewed for the investigation. However, his body worn video recorded him telling other officers immediately after the shooting that the suspect had pointed a gun at him.

situated by the doorway and the driver's seat. The team dragged Kahler to the rear of the vehicle. They placed Kahler on the parking lot pavement and searched him for weapons and checked his vital signs. Officers confirmed that Kahler was not breathing. About a minute later, paramedics from the Burbank Fire Department began to render medical aid to Kahler.

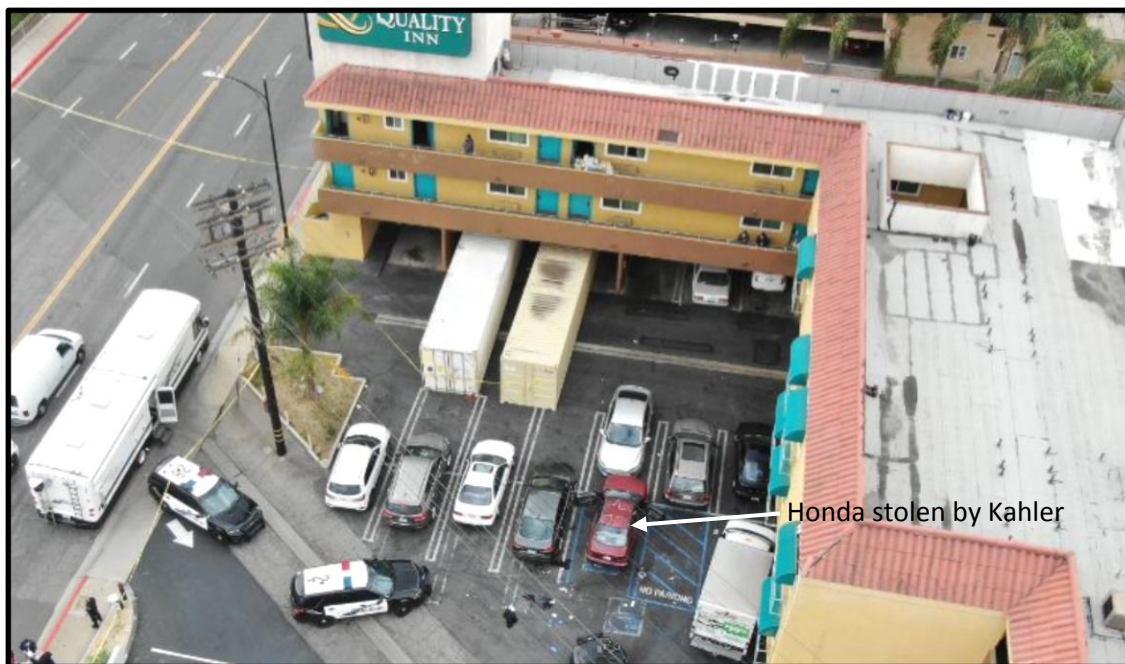


Figure 6: Overhead photograph shows scene of the shooting.

Kahler was transported to Los Angeles County USC Medical Center at approximately 5:42 a.m. However, he arrived without a pulse and was pronounced deceased at approximately 6:01 a.m. by the attending physician, Dr. Rowen Jin.

After Kahler was removed from the vehicle, BPD Officer Anthony Kardosh retrieved a Springfield Armory Hellcat 9mm semiautomatic pistol laying between the driver's seat and the door frame near the joint of the seat back and the seat cushion. Per Kardosh, the grip of the pistol faced up and the muzzle of the weapon pointed toward the rear of the vehicle. Kardosh retrieved the firearm and rendered it safe. In so doing, Kardosh observed that the weapon contained a round in the chamber. The pistol's mounted magazine contained an additional ten live rounds.



Figure 7: Photograph shows pistol used by Kahler.

In a search incident to a search warrant later that afternoon, an empty leather handgun holster was recovered from the front passenger seat of the Honda. A single live 9mm round was also recovered from the driver's side passenger floorboard.

LASD Senior Criminalist Steve Shiraishi identified three bullet impacts to the Honda's windshield.



Figure 8: The image above shows bullet impacts to the Honda's windshield.

A bullet fragment was recovered from the top of the front passenger seat and an expended bullet was recovered from the driver's door.¹² An expended bullet and bullet fragment were also recovered from Kahler's clothing. The pistol used by Kahler was examined by Shiraishi and found to be fully functional.¹³

Camarena's department-issued Glock 35 Gen 4 .40 caliber semiautomatic pistol was inventoried and found to contain one round in the chamber and 12 live rounds in an affixed 15 round magazine. All of the rounds were trademarked Winchester 40 S&W. In a public safety statement given to Sergeant Edward Escobar, Camarena reported firing two rounds. A total of three Winchester .40 caliber S&W shell casings were found in the area where the shooting occurred. One casing was located below the right front bumper of the Honda. A second casing was found approximately five feet south of the right headlight. The third casing was located approximately five feet south of the front license plate of the Honda, underneath a silver Ford Fusion. Rettig's body worn video captured the sound of three rounds being discharged. There was no evidence that either Rettig or Kahler discharged their weapons. The evidence accordingly establishes that Camarena fired a total of three rounds during the engagement.

On March 11, 2021, Deputy Medical Examiner Julie Huss-Bawab performed an autopsy on Kahler's body. Huss-Bawab concluded that death resulted from multiple gunshot wounds. Two gunshot wounds were described in the autopsy report. The first wound described in the report resulted from a round entering the right shoulder, traveling right to left, front to back, and slightly downward before exiting the posterior left shoulder. The second wound described by the

¹² A ballistics report was not furnished with the materials submitted to this office.

¹³ During the ensuing investigation it was also learned that the pistol had been reported stolen in Las Vegas.

report resulted from a round entering the right chest, traveling right to left, front to back, and slightly downward, perforating the right lung, the heart, and the left lung before embedding in the left posterior intercostal space. A toxicology report identified the presence of morphine, methamphetamine, and amphetamine in Kahler's bloodstream.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

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 § 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 § 835a (e)(2).

In assessing 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, is taken into consideration. Penal Code § 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 § 835a (a)(4).

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.

The evidence examined in this matter shows that Camarena and his partner were investigating a possible child endangerment (or neglect) involving a suspect who crashed a vehicle on a nearby freeway and who was thereafter observed attempting to break into cars at the motel. When confronted, Kahler left the motel on foot and left the minor child alone. Kahler returned to the scene in a different automobile. Based on these circumstances, the officers could reasonably believe that Kahler stole this vehicle and was otherwise engaged in criminal activity. Kahler called the child over to the car and displayed behavior indicative of someone preparing to make a get-away. As the minor attempted to enter the possibly stolen vehicle with officers approaching, Kahler pulled a firearm and unexpectedly pointed it at Camarena. Kahler was also in a position where he could quickly turn and fire through the open passenger door at Rettig.

The peril was – as described by the *Collins*’ court – swift and imminent and demanded a “split-second judgment.” Kahler’s action afforded no room for hesitation or reflection. An objectively reasonable officer could properly conclude that Kahler’s pointing the firearm posed an immediate threat of serious physical harm and that shooting Kahler under these circumstances was a reasonable means of self-defense and defense of others.

CONCLUSION

We find that Officer Camarena acted lawfully in self-defense and defense of others when he used deadly force against David Kahler.