

Fatal Officer Involved Shooting of Samuel Herrera
Los Angeles County Sheriff's Department

**Lieutenant Noe Garcia #300274, Deputies Juan Bendezu #627977,
David Pantoja #552461 , Anthony Molina #546540,
Lionel Mejia #614047, Michael Lopez #618165, Daisy Rosales
#552015, and Michael McMorrow #480755**

J.S.I.D. File #20-0346



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 9, 2022

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Samuel Herrera
J.S.I.D. File #20-0346
L.A.S.D. File #020-11174-2846-013

DATE: August 9, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 10, 2020, fatal shooting of Samuel Herrera by Los Angeles County Sheriff's Department (LASD) Deputies Juan Bendezu, David Pantoja, Anthony Molina, Lionel Mejia, Michael Lopez, Daisy Rosales, and Michael McMorrow, and the related non-fatal shooting by LASD Lieutenant Noe Garcia, involving [REDACTED] Herrera and [REDACTED] Herrera. We have concluded that there is insufficient evidence to prove beyond a reasonable doubt that these deputies did not act in lawful self-defense at the time they fired their weapons.

The District Attorney's Command Center was notified of this shooting on September 10, 2020, at approximately 7:45 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by Lieutenant Robert Westphal, LASD Homicide Bureau.

The following analysis is based on reports, recorded interviews, photographs, and medical records. These materials were submitted to this office by the LASD Homicide Bureau. The deputies were not equipped with body worn cameras. Investigators recovered surveillance footage from the Herrera residence, but it does not capture the officer involved shootings.

INTRODUCTION

On September 10, 2020, at 5:30 a.m., LASD Operation Safe Streets (OSS) deputies, assisted by other units (approximately 40 deputies total), responded to the residence of Compton Varrio Tokers gang member Samuel Herrera, on South Bradfield Avenue in the City of Compton, to serve a search warrant for weapons and illegal drugs. As deputies entered the main house and the backyard, Herrera barricaded himself inside the garage.

Deputies heard what they believed were the sounds of Herrera loading firearms inside the garage. Garcia was positioned in an outdoor bathroom, adjacent to the rear of the garage, when

he heard gunshots emanating from inside the garage. Garcia stated he saw a door at the back of the garage open and a gun barrel point out at him. Garcia fired multiple rounds at the gun. Bendezu was near the garage when he heard “racking” noises then gunshots from inside the garage. A second volley of gunshots followed. Bendezu yelled to check on Garcia but received no response. Bendezu heard the main door of the garage begin to open. He stated he fired two rounds through it, believing Herrera was opening the door to shoot him or other deputies.

Deputies observed that a fire had started inside the garage (its cause could not be determined) and heard banging against its south wall. Herrera was trying to break through the wall to escape into the backyard of the neighboring residence to the south (the south residence).

Deputies responded to the south residence. Herrera broke through the garage wall, crawled into the backyard of the south residence, and stood up. Deputies stated variously that they saw him holding a gun magazine or saw a dark object in his waistband. They fired several rounds at Herrera when he suddenly reached to his waistband, ignoring commands to raise his hands. Herrera fell to the ground. Deputies fired a second volley when he continued to reach for his waistband as he lay on the ground.

Investigators found two loaded gun magazines where Herrera had fallen and numerous rifles, a handgun, and ammunition inside the garage.

At 6:29 a.m., Herrera was pronounced dead at the scene by Compton Fire Department.



Figure 1: Aerial view of the Herrera and south residences, viewed from the west



Figure 2: Aerial view of the Herrera and south residences, viewed from the east

FACTUAL ANALYSIS

Lieutenant Noe Garcia

Garcia was armed with a 9mm semiautomatic pistol. The investigators' "round count" determined that he likely fired 12 rounds during the incident. Garcia provided the following voluntary statement.

Garcia was part of a team assembled to serve a search warrant at Herrera's residence, where they expected to find "dope and guns." Herrera, the "primary," a known gang member, was believed to reside at the house with family members, including his mother, brothers, spouses, and children. Garcia's role was to enter and contain the backyard and garage area, while another team of deputies "hit" the house. Garcia's team got "caught up" moving into the backyard because there was so much "debris." As he advanced down the driveway and into the backyard, he observed Herrera run from the house into the garage through a side door along the garage's north wall, ignoring commands to surrender. Shortly after, a man (later identified as one of Herrera's brothers) walked out of the garage and surrendered.



Figure 3: Herrera's driveway, leading to the garage and backyard

Hearing Herrera “barricading” himself inside the garage, Garcia took cover in an outdoor bathroom. Garcia was surprised to find two doors along the garage’s back (east) wall. Garcia thought to himself, “I’m not in a good position here,” and thought about how he could “work his way back out” from the bathroom. The surroundings were dark and foggy.



Figure 4: Fire-damaged wall of Herrera's garage, viewed from the backyard

Garcia heard other deputies yelling at Herrera to surrender and yelling that they could hear Herrera “loading up.” Garcia may have heard Herrera yell that he was going to “shoot it out.”

Garcia heard “rounds going off” and bullet strikes from an unknown location. He “tuck[ed] in” for cover inside the bathroom. He heard deputies yell, “I think he’s shooting at us.” Garcia saw “one of the doors” to the garage bedrooms “crack open” and a gun barrel point out. He did not see which door opened or who was holding the gun. Believing “the suspect was trying to engage” him, Garcia fired “at least six” times toward the gun barrel. The door opened again. Garcia fired a second volley of about the same number of shots. Garcia yelled to Pantoja to “put it out” over the radio that he had just fired his weapon. Seeing both bedroom doors closed, Garcia ran back toward the main house and joined a number of other deputies in the backyard.

A second adult male (later determined to be another Herrera brother) walked out from the rear of the garage and surrendered to deputies.



Figure 5: The backyard bathroom, where Garcia took cover



Figure 6: Casings and bullet strikes in and around the bathroom



Figure 7: Garcia's bullet strikes to the north garage bedroom

A third male (later determined to be Herrera's nephew) appeared from the rear of the garage and surrendered. Garcia saw smoke rising from the garage. As he started to see flames in the garage, a female carrying a baby walked out from the same area, behind the garage, and surrendered. Garcia heard a banging noise coming from the garage. Deputies positioned at the south residence radioed that Herrera was trying to "bust" through the garage wall to escape. Garcia heard "a lot of gunfire," followed by radio broadcasts that a deputy involved shooting had occurred at the south residence. A few minutes later, Garcia was in front of Herrera's residence when he heard a second volley of gunfire from the backyard of the south residence.

Deputy Juan Bendezu

Bendezu was armed with a 9mm semiautomatic pistol. The investigators' round count determined that he likely fired six rounds during the incident. Bendezu provided the following voluntary statement.

Bendezu was part of the team of deputies that entered the backyard of Herrera's residence. After deputies gave "knock-notice" announcements at the front of the house, Bendezu saw Herrera run across the yard, into the garage, and close the door. It was dark and the backyard was littered with tarps, tires, and various debris.

Bendezu heard Herrera yell from inside the garage, “Fuck you. I’m not coming out. I’m going to go all the way.” Bendezu heard a “loud explosion” of unknown cause come from inside the garage, then a “racking” noise. The electricity at the residence appeared to go out.¹ Bendezu’s neck hair “stood up” just as he heard “a bunch of gunshots” inside the garage.

Bendezu believed someone was shooting at him and took cover near the front of the shed, west of the garage. Bendezu heard more gunshots, from an unknown location, followed by a period of quiet. Bendezu yelled out to check on Garcia but received no response and feared Garcia had been shot. Bendezu heard what he believed was the main garage door opening. He fired two rounds into the garage door because he believed Herrera was trying to open the door to shoot him.

Garcia came running toward him from the rear of the garage. Bendezu saw that the garage appeared to be on fire, and he began to hear what sounded like someone “trying to break through a wall” on the south side of the garage. According to one of the men who had surrendered, Herrera was alone in the garage.

Hearing gunfire, Bendezu ran to the backyard of the south residence, where a group of deputies directed his attention to Herrera lying on the ground, in front of a hole in a wall. Bendezu’s view of Herrera was partially blocked by a bush, a hanging towel, and a purple bucket.

The deputies yelled for Herrera to show his hands. Herrera, lying down, said something unintelligible. He reached his hand toward his waistband. Bendezu believed he was reaching for a gun and fired approximately four rounds at him, until he stopped moving. Bendezu and other deputies approached him and moved him to another location, for paramedics to render aid.

Deputy David Pantoja

Pantoja was armed with an AR-15 rifle. Investigators’ round count determined he likely fired three rounds during the incident.² Pantoja provided the following voluntary statement.

Pantoja was in the front yard of Herrera’s residence when he heard gunshots. He ran down the driveway toward the backyard. He heard a person he believed was Herrera yell from inside the garage, “Fuck you. I’m loading up and I’m coming out shooting.” He heard a “speed loader,” as if Herrera were loading a rifle magazine with ammunition. Pantoja yelled to Garcia to see if he was okay. Garcia responded that there had been a “998” (indicating an officer involved shooting) and that, “The suspect is shooting at us.”

¹ The power to the residence was still out on September 24, 2020, when Deputies returned to the location to serve a second warrant.

² Pantoja stated that he fired two rounds during the incident. According to the round count, after the incident, his rifle contained a 30-round-capacity magazine loaded with 25 cartridges head stamped “SPEER 223 REM.” The deputy who loaded the rifle, Scott Carter, stated that it had 28 rounds prior to the incident. Two “SPEER 223 REM” casings were recovered from the south residence. One .223 casing, head stamped “PSD16,” was recovered from Herrera’s backyard, as well as a .223 caliber AR-15 rifle, from inside Herrera’s garage.

Pantoja and other deputies retreated to cover positions in the backyard. Believing a baby and mother could be somewhere in the garage, deputies yelled to Herrera to let them evacuate. Herrera responded, "Fuck you."

Pantoja heard someone "hitting" the south wall of the garage. Pantoja ran toward the south residence. On the way, he heard deputies yell, "Show me your hands," followed by "several" gunshots.

Pantoja ran down the driveway toward the backyard of the south residence and took a position near the garage and an open gate leading to the backyard. In dark and smokey conditions, he saw Herrera lying on the ground, moving around, "rustling in the bushes." Pantoja heard a metallic noise that sounded like Herrera was loading a gun. His view of Herrera was partially obstructed by bushes. Deputies commanded Herrera to show his hands. Herrera faced them, crouching, made an "abrupt movement," "coming up," and "punching outward," with his hands "towards" the deputies. Pantoja saw Herrera holding a rifle magazine. Pantoja fired two rifle rounds at Herrera, in fear that he was armed and trying to shoot them. Other deputies also fired. After the danger had passed, a team approached Herrera with a shield and carried him to the driveway for the fire department to render medical aid.

Deputies Positioned at The South Residence

The following deputies were positioned at the south residence when Herrera broke through the garage wall: Anthony Molina (nine rounds fired), Lionel Mejia (three rounds fired), Michael Lopez (four rounds fired), Anthony Mendoza (did not fire), Daisy Rosales (14 rounds fired), and Michael McMorrow (six rounds fired).

Each deputy provided a voluntary statement and submitted to a round count. They each recounted a common sequence of events: Herrera crawled out from the hole and stood up; He ignored commands to show his hands; Deputies fired when Herrera reached suddenly for his waistband; Herrera fell to the ground but continued reaching for his waistband; Deputies could not see his hands and fired another volley; Two firearm magazines lay on the ground, in the dirt where Herrera had fallen.

Before Herrera broke through the wall, Molina heard over the radio that Herrera was "racking rounds" inside the garage. Pantoja told McMorrow that Herrera had said, "I hope you're ready. I'm loading up for a gunfight."

After Herrera broke through the wall and stood up, Molina could not see anything in Herrera's hands. Lopez and Rosales saw something "dark," or "black," in his waistband. McMorrow saw him holding an AR-style magazine. Lopez heard him say, "Fuck you guys" when commanded to raise his hands. Molina, Mejia, Rosales, and McMorrow fired multiple rounds at Herrera when he made a sudden move toward his waistband.

Herrera fell to the ground face first. The deputies could not see his hands. Molina saw him reach for his waistband, ignoring commands to stop moving and show his hands. Lopez saw him make a quick move toward his waistband "while lifting his shoulders and arms" in a "shrugging"

motion. McMorrow heard a “metal on metal” sound and saw Herrera suddenly roll to his left side. His hands “came up in a pistol grip position.”

Fearing that Herrera was trying to shoot them, Molina, Lopez, Rosales, and McMorrow fired another volley of shots at Herrera until he stopped moving.

The deputies approached Herrera when it was safe and moved him near the garage, where paramedics would have more room to render aid.

South Residence Witnesses

██████████ ██████████ ██████████ ██████████ and ██████████ resided at the South Residence. They provided the following statements to investigators. ██████████ and ██████████ stated that the Herrera’s had lived next door for six years. ██████████ occasionally shared a beer with Samuel Herrera. He and ██████████ suspected that the Herrera’s sold illegal drugs and stolen car parts out of their house.

██████████ and ██████████ saw Herrera climb out of the hole in the garage. They were looking through a bedroom window facing the backyard. They could see the top of Herrera’s head and his shoulders but not his arms or his hands. They heard deputies command Herrera, “Come out with your hands up or we’re going to shoot!” ██████████ stated that Herrera did not raise his hands or respond to commands; ██████████ stated he was moving “side to side.” Both stated that they heard gunshots, followed by commands for Herrera to show his hands, then more gunshots.

██████████ a Spanish speaker, was in a bathroom in the south residence when she heard yelling in English—which she did not understand. She looked out of a window and saw deputies shooting. She did not see what they were firing at.

The other individuals at the south residence did not witness the shooting.

Herrera Residence Witnesses

Investigators interviewed Herrera’s brothers ██████████ ██████████ and ██████████ his mother, ██████████ his girlfriend, ██████████ ██████████ son, ██████████ and ██████████ girlfriend, ██████████ All were at the residence during the incident. ██████████ ██████████ and ██████████ were later charged with multiple felony drug and firearms offenses, in case #TA152896, based on evidence recovered after the incident. ██████████ and ██████████ pleaded no contest to charges of felon in possession of a firearm. ██████████ pleaded no contest to a charge of possession of a controlled substance with a firearm. They received probation.

██████████ stated he was in the south garage bedroom, where he resides, when he heard a “commotion” and “peaked” out of his door. He did not have anything in his hands. A “police officer” near the bathroom shot multiple times at him with no prior warning. A bullet grazed his elbow, causing a minor abrasion (which investigators photographed).

██████████ ██████████ and ██████████ did not witness the shooting because they were detained at the front of the residence when it occurred. ██████████ stated that “Sam” stayed in the garage, where he

kept a gun and marijuana. ██████ denied seeing any guns or drugs at the residence. ██████ and ██████ resided in the north garage bedroom with their baby daughter. ██████ stated she heard a gunshot from the main garage area; ██████ heard a “pop” like a firework. ██████ opened their bedroom door (which leads into the backyard) and was shot at multiple times with no prior warning. Both stated that ██████ was unarmed when he opened the door. ██████ and ██████ stated they have not seen guns or drugs at the Herrera residence.

Investigators interviewed ██████ two weeks after the incident, but they discussed evidence relating to a drug and firearms investigation not the officer involved shooting.

Herrera’s residence

Investigators recovered 12 9mm casings in and around the bathroom (likely fired by Garcia). Near the shed they recovered one .223 caliber AR-15 rifle casing (later determined to be unrelated to the incident) and two 9mm casings (likely fired by Bendezu). North of the garage, in the backyard, they found two .22 caliber rifle casings (later determined to be unrelated to the incident).

Along the north and east walls of the garage bedrooms, and a screen door, investigators observed several bullet strikes, and fired bullets or bullet fragments (likely from Garcia’s gunfire). They also observed a cluster of bullet strikes, exiting out, through the south bathroom wall, near the edge of the doorframe, consistent with Garcia firing from inside the bathroom toward the bedrooms.

In the fire-damaged south garage bedroom (██████ room) was an unloaded .30 caliber lever-action rifle. Inside the main garage area, also fire-damaged, investigators recovered rifles, handguns, and live ammunition: (1) a loaded Ruger .22 caliber rifle; (2) an AK-style 7.62x39mm caliber assault rifle; (3) a Ruger .308 caliber bolt action rifle; (4) a loaded Glock .45 caliber semiautomatic pistol; (5) a loaded WASR 7.62x39mm caliber assault rifle (lying very close to the hole in the wall); and (6) a .223 caliber AR-15 rifle. No casings were found inside the garage.



Figure 8: Item 28, a rifle (circled) lying near the hole in the wall (circled)



Figure 9: Aerial view showing the location of the casings and bullet strikes at the Herrera residence

Inside the main house, investigators recovered evidence of identity theft, possession for sale of illegal drugs, multiple firearms, and ammunition.

Video Footage from Herrera Residence

Herrera's cell phone, recovered by investigators, contained video files from surveillance cameras located inside the garage. The phone contained no footage of the incident, only of times prior, including footage of Herrera and his family members appearing to handle and sell illegal drugs and firearms.³ The cameras and related hardware were destroyed in the fire. Other cameras, in the front yard and backyard, did not capture the incident.

The South Residence

Investigators observed a hole in the south wall of the Herrera's garage, in front of which were one .223 caliber rifle magazine, with one live cartridge, and one .45 caliber pistol magazine, with numerous live cartridges.

Along the south wall, near the hole, were numerous bullet strikes. In the backyard and driveway

³ Investigators recovered footage that appears to depict Deonte Murray interacting with Herrera inside the garage one day before the incident. Murray was later charged in case #TA152697 for the ambush shooting of two deputy sheriffs near a Metro Blue Line station on September 12, 2020—two days after this incident.

of the south residence were 38 9mm casings and two .223 caliber rifle casings, in locations consistent with having been fired by the deputies positioned at the south residence.



Figure 10: Aerial view of the location of the casings and bullet strikes at the south residence



Figure 11: Backyard of the south residence

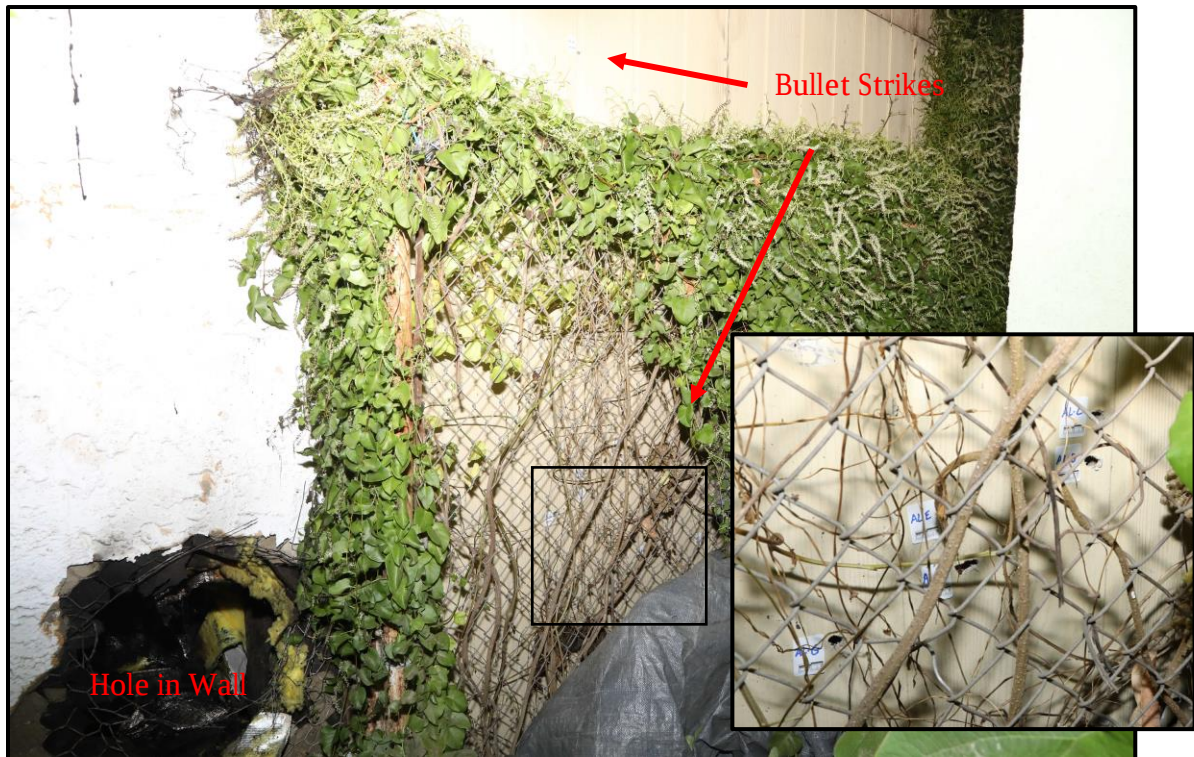


Figure 12: Garage wall that Herrera broke through

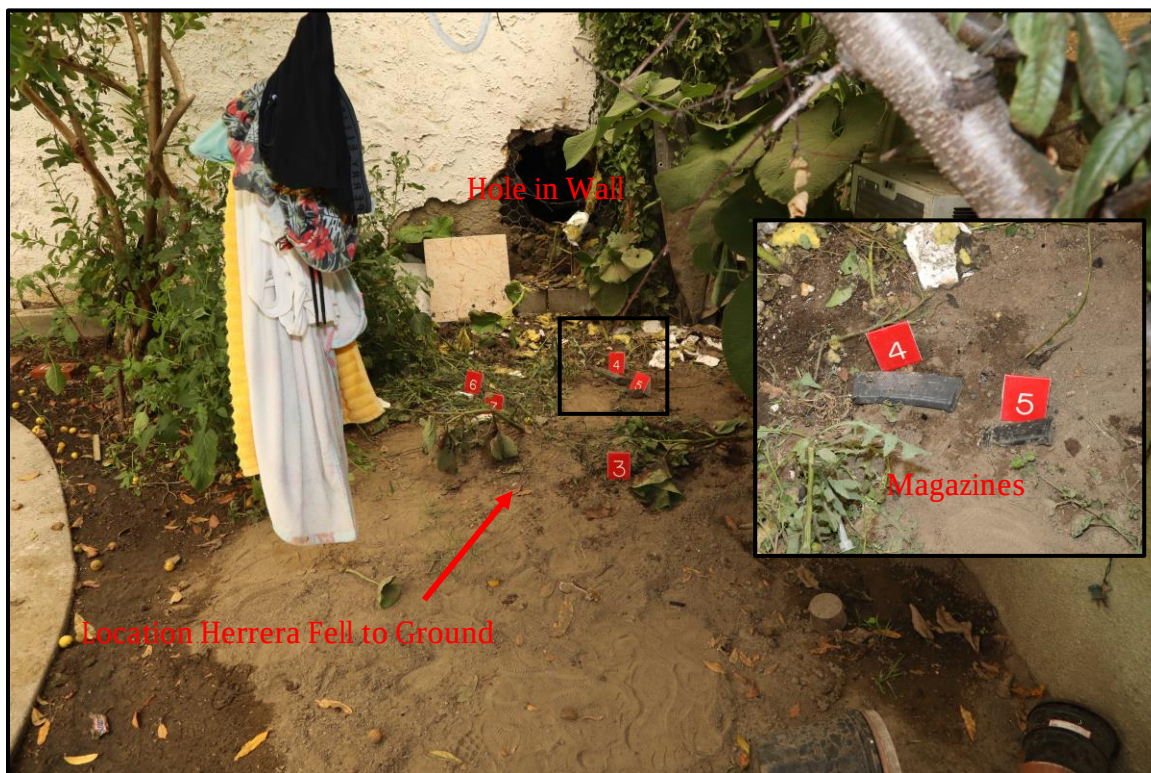


Figure 13: Magazines Herrera apparently possessed when he broke through the wall

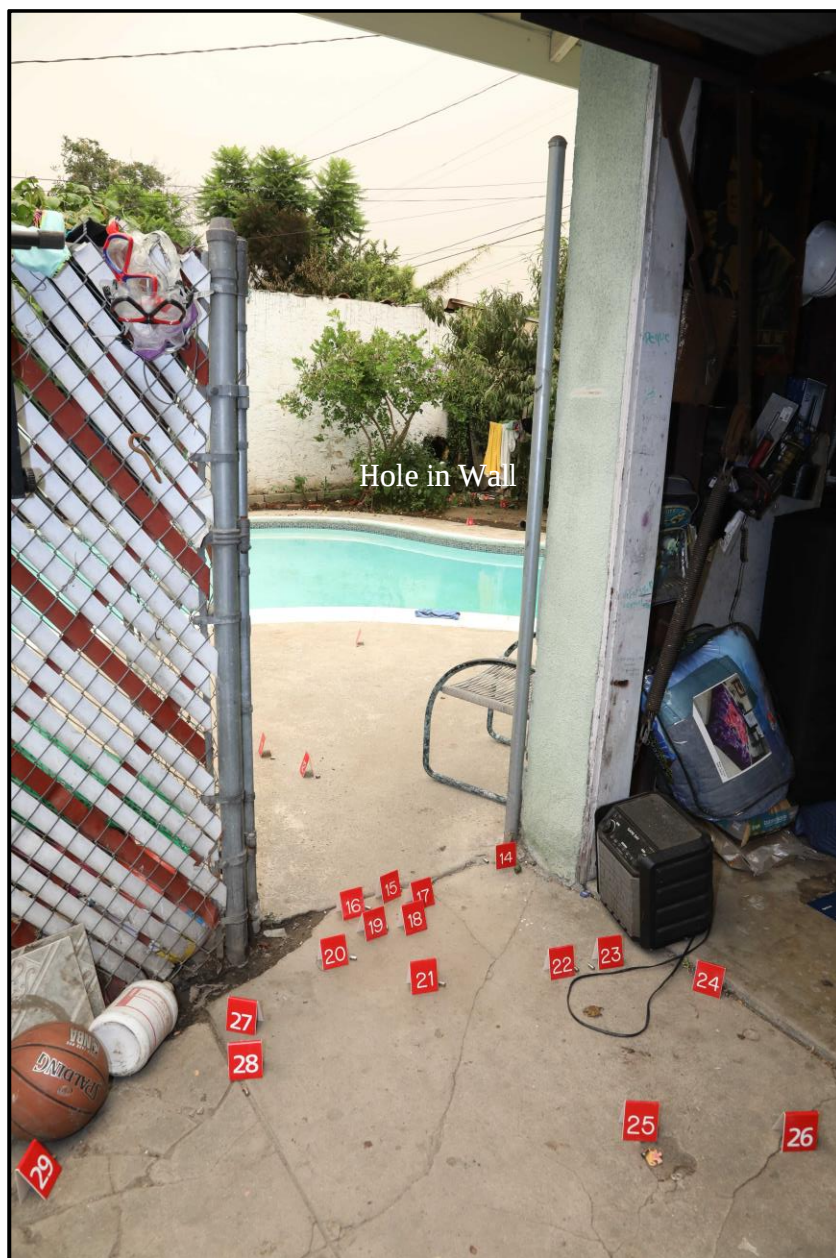


Figure 14: Casings fired by deputies located at the south residence



Figure 15: Casings fired by deputies at the south residence

Autopsy

Herrera suffered ten gunshot wounds, including to his left upper chest, left upper back, right upper back, right lower back, mid back, right rear elbow and hand, right buttock, right front lateral thigh, and right calf.

Fire Report

The Compton Fire Department responded to the scene and extinguished the garage fire. Investigators determined that the fire originated somewhere inside the garage but were unable to determine its cause. The garage and the connected south bedroom suffered extensive fire damage. The north bedroom was undamaged. The garage shares a wall but no indoor access to the two bedrooms. Investigators discovered large holes, three to four feet deep, underneath the garage floor, covered by laminate planks concealing their presence.



Figure 16: Main garage area, extensively fire damaged and littered with debris

THE LAW

California law permits deadly force in self-defense or defense of others if the person claiming the defense 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. If the person's beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 3470.

A peace officer is justified in using deadly force 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 evaluating whether a police officer's deadly 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 with 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.

ANALYSIS

Garcia, Bendezu, and Pantoja were part of the search warrant team. They were briefed that Herrera was a gang member in possession of firearms and illegal drugs. They observed Herrera run and barricade himself in the garage, ignoring commands to surrender. They heard the apparent sounds of Herrera loading firearms inside the garage. Garcia believes Herrera yelled that he was going to "shoot it out." Bendezu stated he heard, "Fuck you. I'm not coming out. I'm going to go all the way." And Pantoja stated he heard, "I'm loading up and I'm coming out shooting."

Garcia

Garcia attempted to take cover inside the bathroom but instead found himself vulnerable to attack from the two bedroom doors he had not known about. Garcia stated he heard gunfire and bullet strikes from an unknown location and heard deputies yell that Herrera was shooting at them. He stated he saw a bedroom door open and a gun barrel point in his direction. Partially corroborating Garcia's statement, [REDACTED] and [REDACTED] stated that they opened their doors after hearing noises from outside. ([REDACTED] heard a "pop," and [REDACTED] heard a "commotion.") Contradicting Garcia's statement, [REDACTED] and [REDACTED] stated they were not holding anything in their hands when they opened their doors. Investigators later recovered a rifle from [REDACTED] room.

As mentioned, Garcia appears to have been unaware of the bedroom doors when he took cover in the bathroom. Similarly, there is no evidence Garcia knew the garage contained two separate

bedrooms with no inside doors leading to the main area, where Herrera was barricading. Garcia was thus reasonable to believe Herrera was the person at whom he fired his weapon. Garcia fired several rounds *through* the edge of the bathroom doorframe, instead of through the open doorway—likely misdirected shots—suggesting he fired in a hurry, defensively.

Given the conflict between Garcia’s statement and [REDACTED] and [REDACTED] statements, and the presence of the rifle in [REDACTED] room, there is insufficient evidence to prove Garcia did not act in lawful self-defense when he fired his weapon.

Bendezu and Pantoja

After Herrera ran into the garage and was heard yelling threats and loading firearms, Bendezu stated he heard gunshots from inside the garage, silence, and another volley of gunshots. He could not see or hear Garcia and feared he was shot. Moments later, standing by the shed, Bendezu heard what sounded like the main garage door opening. If true, Bendezu was reasonable to fear that Herrera was opening the door to shoot him. There is no physical evidence (such as casings) that Herrera discharged a firearm inside the garage. However, much of the structure and its contents were consumed by fire.

Bendezu and Pantoja ran to the sound of gunfire at the south residence. Bendezu stated he found Herrera lying on the ground and deputies pointing their weapons at him. Bendezu fired his weapon at Herrera because he ignored commands to stop moving and reached for his waistband. Pantoja stated he heard a “metallic” noise. He saw Herrera make an abrupt movement, “punching outward” with his hands toward the deputies, and fired at Herrera because he believed he was reaching for a gun. Four other deputies (Molina, Lopez, Rosales, and McMorro) also fired at Herrera at the same time. Given that the totality of the evidence neither corroborates nor contradicts Bendezu and Pantoja’s statements, there is insufficient evidence to prove they did not act in lawful self-defense when they fired their weapons.

Molina, Mejia, Lopez, Rosales, McMorro

Deputies responded to the south residence because they heard Herrera breaking through the garage wall. Some heard Herrera had shot at deputies, others that he was armed and threatening a gunfight. Every deputy—and a civilian, [REDACTED] peeking through his window—stated that when Herrera emerged into the yard of the south residence, he failed to show his hands and surrender. The deputies stated Herrera made a quick motion toward his waistband, where some deputies saw a dark object or a magazine (others thought he was holding a magazine). Molina, Mejia, Rosales, and McMorro stated they fired upon Herrera believing he was attempting to retrieve a firearm and shoot them.

Herrera apparently possessed two gun magazines, which were recovered from the dirt area adjacent to the hole in the wall. A rifle compatible with one of those magazines was later found inside the garage, lying inches from the hole through which Herrera had crawled.

Multiple deputies fired a second volley after Herrera fell to the ground. They stated that they continued to fire because they could not see Herrera's hands, and he continued to reach toward his waistband. Given [REDACTED] statement—that Herrera failed to raise his hands and surrender—and the magazines Herrera appeared to possess, although he was unarmed, there is insufficient evidence to prove that the deputies at the south residence did not act in lawful self-defense when they fired their weapons.

CONCLUSION

We find that there is insufficient evidence to prove beyond a reasonable doubt that Bendezu, Pantoja, Molina, Mejia, Lopez, Rosales, and McMorrow did not act lawfully in self-defense when they used deadly force against Samuel Herrera, and insufficient evidence to prove beyond a reasonable doubt that Garcia did not act lawfully in self-defense when he used deadly force against [REDACTED] Herrera and [REDACTED] Herrera.