

Fatal Officer Involved Shooting of Samuel Ponce
Los Angeles Police Department

Officer Patrick Cruz, #43931

J.S.I.D. File #21-0112



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

September 13, 2023

MEMORANDUM

TO: CAPTAIN OMAR BAZULTO
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: Fatal Officer Involved Shooting of Samuel Ponce
J.S.I.D. File #21-0112
F.I.D. File #F016-21

DATE: September 13, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 19, 2021, fatal shooting of Samuel Ponce by Los Angeles Police Department (LAPD) Officer Patrick Cruz. We conclude the officer acted in lawful self-defense at the time he fired his weapon, reasonably believing, based on a totality of the circumstances, that deadly force was necessary to defend against an imminent threat of death or serious bodily injury.

The District Attorney's Command Center was notified of this shooting on March 19, 2021, at approximately 4:50 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through by LAPD personnel.

The following analysis is based on body worn camera video (BWV), digital in car video (DICVS), witness statements, and reports. The involved officer did not provide a voluntary statement, and no compelled statement was considered. These materials were submitted to this office by the LAPD Force Investigation Division on August 25, 2022.

INTRODUCTION

On March 19, 2021, at approximately 3:40 p.m., in the Westlake neighborhood, Samuel Ponce was walking the streets swinging a hammer in the air, frightening other pedestrians. Ponce held the hammer in one hand and a metal axe-shaped object (later determined to be a bicycle kickstand) in the other. Responding uniform officers, including Cruz, variously armed with 40mm less lethal cannons, tasers, and duty pistols, followed Ponce on foot for approximately five minutes. They commanded him to stop and intermittently fired foam projectiles at him. Ponce ignored their commands and maintained possession of the hammer and the kickstand. At least twice, Ponce turned toward officers and swung the hammer in a mock throwing motion, prompting warnings not to throw the hammer. At another point, he loudly struck the sidewalk with the hammer.

As Ponce walked up the sidewalk on Bonnie Brae Avenue toward Sixth Street, a busy thoroughfare, an officer tased Ponce from behind, prompting Ponce to turn and swing the hammer in a mock throwing motion at the officer, who ran for cover. A different officer, standing across the street, fired a 40mm foam projectile. Ponce raised the hammer over his head and charged toward the officer. The officer ran for cover. Ponce turned toward a group of officers, including Cruz, walking in the roadway. From a distance of about one car length, Ponce forcefully threw the hammer at them as two officers standing next to Cruz fired tasers then ran for cover. The hammer narrowly missed them. Ponce stumbled forward and fell to his hands and knees.

Ponce rose, raised the kickstand over his head, and cocked back his arm. Cruz fired one round from his 9mm duty pistol, hitting Ponce in the head. Ponce threw the kickstand at the group of officers, narrowly missing them, then fell to the ground. Ponce was transported to the hospital, where he was pronounced dead.

The incident was captured on BWV and DICVS. Multiple officers and a civilian witnessed Ponce throw the hammer and the kickstand, which officers and the civilian described as looking like an “axe.”

FACTUAL ANALYSIS

Video Footage

According to BWV, Ponce walks north on Bonnie Brae Avenue, followed by a team of six uniformed officers, including Cruz. Seconds later, Ponce abruptly spins around and swings the hammer at the officers in a mock throwing motion. Officer Victor Castillo responds, “Toss it or we’re going to hit you with the bullet, the bullets.”

Ponce reaches Wilshire Boulevard, turns right, and walks east. Several dozen yards behind him, Castillo tells Ponce that he wants to help him and to drop the hammer. Ponce stops, turns toward Castillo, and loudly strikes the sidewalk with the hammer. Castillo says, “If you hit someone, it’s going to go bad for you.” Ponce yells, “Shoot!” Castillo tells him that the officers don’t want to shoot him.

Ponce walks one block and turns left on Burlington Avenue. After being struck with a 40mm foam projectile, Ponce turns toward officers with the hammer and again mimics a throwing motion. Castillo tells him, “Hey stay there, or I’m going to hit you again.” Ponce says, “Help me blessed father!” Ponce walks halfway up the block, turns left, and proceeds through an alley that leads back to Bonnie Brae Avenue. Officers follow behind him, issuing commands, and intermittently firing 40mm foam projectiles.

Ponce exits the alley and walks north on Bonnie Brae Avenue, toward Sixth Street. Cruz, following behind and flanked by other officers, states that Ponce has an “axe.” Moments later, a dispatcher is heard on the radio repeating the description of Ponce as armed with “a hammer and an axe.” An officer walks close behind Ponce pointing a taser and tells Ponce, “Drop it!”

The officer fires the taser and appears to strike Ponce, who turns back at him and again mimics a throwing motion at the officer. He quickly runs for cover. Ponce can be seen with an object in each hand.

Seconds later, an officer standing across the street fires a 40mm foam projectile. Ponce charges toward the officer, into the street, holding the hammer over his head. A line of officers, including Cruz, walk in the roadway, perpendicular to Ponce, adjacent to a parallel-parked white minivan. Ponce runs across the front of the minivan. He reaches the roadway and suddenly turns toward Cruz and the other officers. Ponce forcefully throws the hammer at Cruz and other officers. Simultaneously, two of them fire tasers. Several officers run for cover. Cruz hunches down and points his duty pistol but does not fire. Ponce falls forward onto his hands but quickly rises to his feet. He moves the kickstand to his right hand (throwing hand), raises it, and cocks back his arm. Cruz fires one round at Ponce just as he throws the kickstand toward officers. Several other officers in the area run for cover as the object flies through the air. Ponce falls to the ground—approximately five minutes after officers began their attempts to disarm him.



Figure 1: Seconds before shooting, Ponce turns and makes a throwing motion at an officer (holding object in each hand) after being tased.



Figure 2: Ponce runs around minivan toward officers with hammer raised above head.



Figure 3: Ponce throws hammer as two officers tase him.

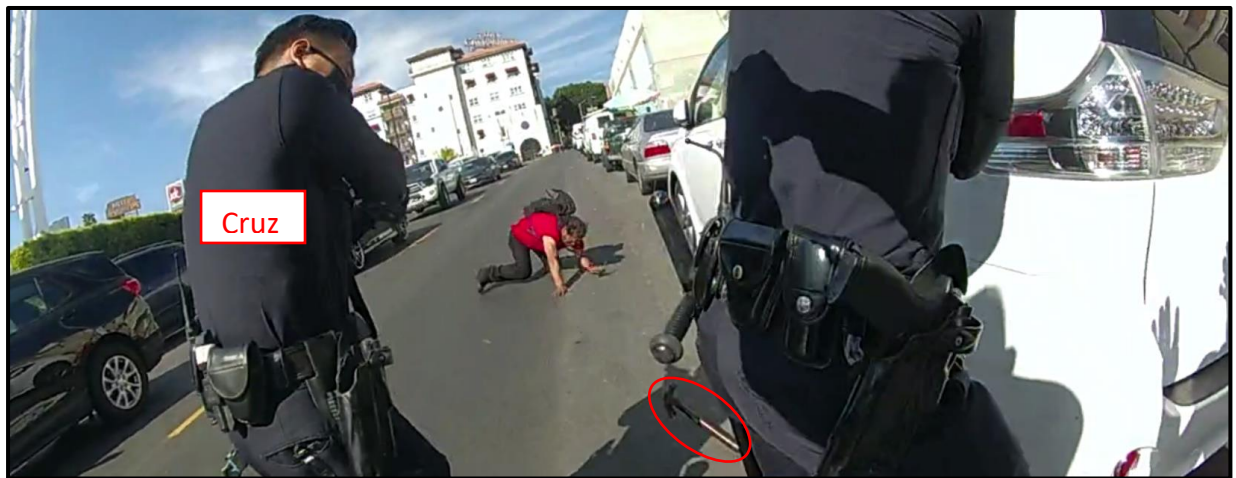


Figure 4: Hammer (circled) narrowly misses officers.



Figure 5: Ponce raises kickstand above his head.



Figure 6: Ponce cocks arm as Cruz fires single round from pistol.



Figure 7: Ponce throws kickstand after being shot.

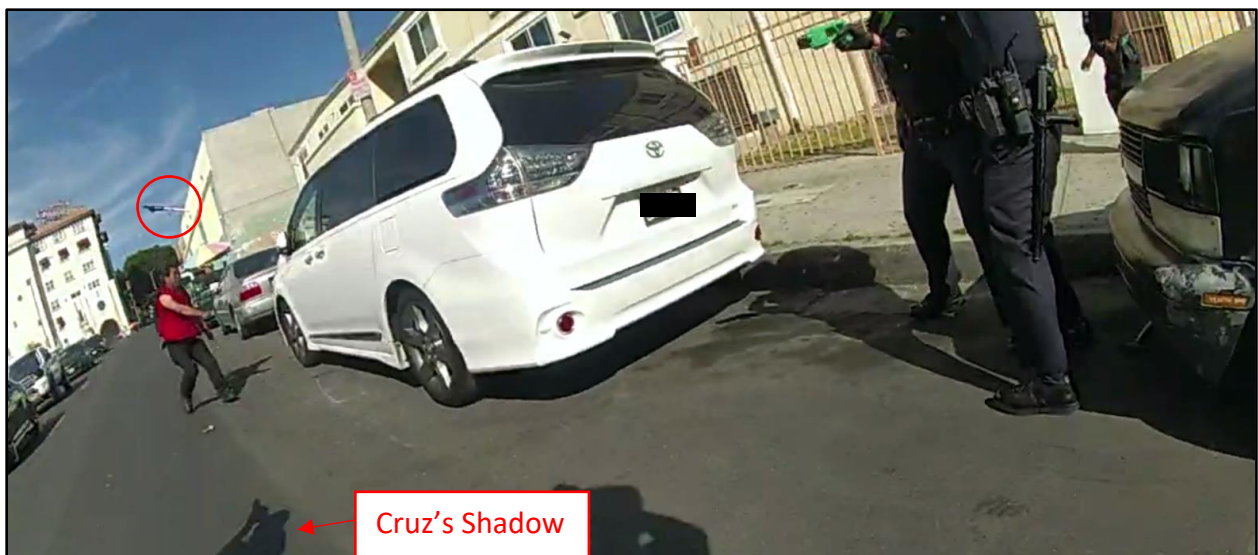


Figure 8: Kickstand flies toward officers.



Figure 9: DICVS still; Officers turn and run for cover after Ponce throws object (circled).

Statements

Three civilian witnesses told investigators that they saw Ponce walking and swinging the hammer before the police arrived. One man saw Ponce after he parked his car. Afraid, he remained in his car for several minutes before exiting.

A resident of Bonnie Brae Avenue told investigators that her attention was drawn to the street by the sound of “shots.” Looking out, she saw Ponce walking with “like a hammer and like an axe,” followed by officers. Ponce looked “crazy or on drugs.” She told investigators that Ponce ignored officer commands and was yelling things such as “his god arrived” and “he was prepared for what was coming.” She told investigators that she saw Ponce throw the hammer and the “axe” at officers. She saw Ponce fall to the ground and officers perform first aid afterward. The resident’s friend, visiting, told investigators that she also saw Ponce throw the hammer but “didn’t become aware of anything else because it was further up.”

Interviewed later by investigators, several officers, including Sergeant Werner Flores, who was present and directed the team of officers, said that they wanted to prevent Ponce from reaching Sixth Street because at that time of day it would be filled with pedestrians and traffic. Several officers told investigators that they saw Ponce throw the hammer and the kickstand.

Physical Evidence

From the scene investigators recovered a metal bicycle kickstand and a metal hammer. Based on BWV, a post-incident inspection of Cruz’s duty 9mm pistol, and one 9mm casing recovered at scene, Cruz fired one round during the incident.

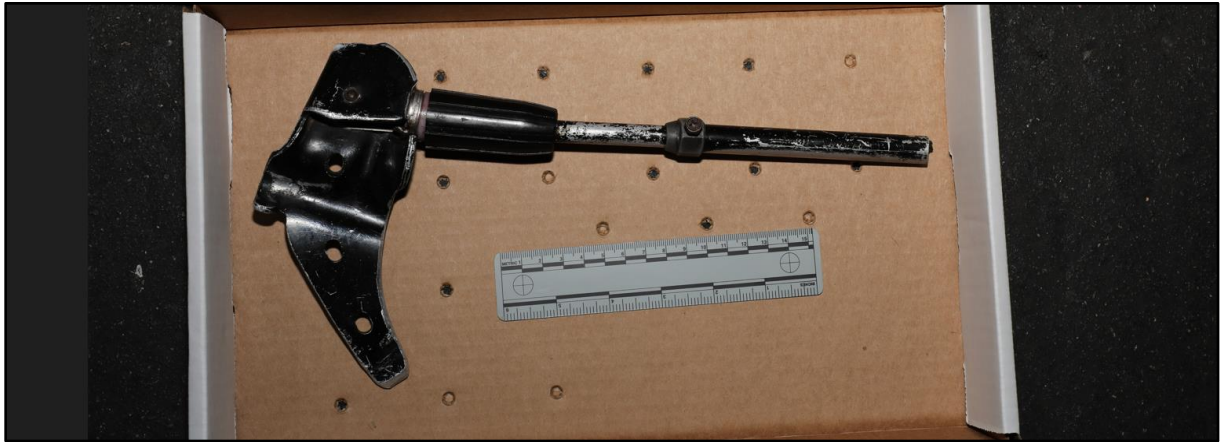


Figure 10: Metal kickstand thrown by Ponce.



Figure 11: Hammer thrown by Ponce.

Autopsy

At 4:26 p.m., Ponce was pronounced dead by hospital personnel. On March 26, 2021, an autopsy was performed by Doctor Paul Gliniecki of the Los Angeles County Coroner's Office. Doctor Gliniecki ascribed the cause of death to one gunshot wound to the head. The shot entered the left lateral mid face area and did not exit. Toxicology testing revealed the presence of methamphetamine in Ponce's blood.

THE LAW

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).

Deadly force shall be used “only when necessary in defense of human life,” and officers “shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(a)(2).

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).

LEGAL ANALYSIS

According to BWV, officers encountered Ponce walking the streets holding a hammer and what appeared to be an axe—as it was described by officers and one civilian witness. Officers were armed with less lethal 40mm cannons and tasers. For five minutes they walked behind Ponce as he wandered the sidewalks of Westlake ignoring their commands to stop and drop the items he held. Several foam projectiles also failed to disarm Ponce. On two occasions, Ponce turned on officers and swung the hammer in a mock throwing motion.

Finally, Ponce, after being struck with a foam round, charged officers with the hammer raised in the air. Despite two officers tasing him, Ponce managed to forcefully throw the hammer, sending it bouncing off the pavement feet from Cruz and other officers. The two officers who fired tasers ran for cover. Cruz hunched but did not retreat. He faced Ponce with his pistol drawn.

Cruz fired only after Ponce raised the metal kickstand over his head and cocked back his arm to throw.

According to BWV, Cruz fired a fraction of a second before Ponce began the forward motion of his throw. Despite the shot, the kickstand flew through the air several car lengths, forcing multiple officers to duck and run for cover, as seen in DICVS footage.

Considering the totality of the circumstances known to Cruz at the time, including those leading up to the incident, it was reasonable for him to believe that deadly force was necessary to defend against an imminent deadly threat after less lethal resources failed to disarm Ponce and, from a distance of one car length, he raised a metal kickstand over his head and cocked back his arm into a throwing motion—seconds after he had thrown a metal hammer at officers.

CONCLUSION

For the foregoing reasons, the evidence demonstrates that Officer Patrick Cruz acted lawfully in self-defense when he used deadly force against Samuel Ponce, because it supports a reasonable belief that, based on a totality of the circumstances, deadly force was necessary to defend against an imminent threat of death or serious bodily injury.