

**Fatal Officer Involved Shooting of Cesar Bautista
Los Angeles County Sheriff's Department**

Deputy Christopher Gonzalez #510421

J.S.I.D. File #18-0066



Justice System Integrity Division

November 16, 2020

MEMORANDUM

TO: CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Cesar Bautista
J.S.I.D. File #18-0066
L.A.S.D. File #018-02026-0282-013

DATE: November 16, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 6, 2018, fatal shooting of Cesar Bautista by Los Angeles County Sheriff's Department (LASD) Deputy Christopher Gonzalez. We have concluded Deputy Gonzalez acted lawfully in self-defense, in defense of others and to stop a fleeing felon when he fired his first volley of gunshots and that it cannot be proven beyond a reasonable doubt that Gonzalez' second volley gunshots constituted an unreasonable application of deadly force.

The District Attorney's Command Center was notified of the shooting at approximately 11:00 p.m., on February 6, 2018. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, recorded interviews, firearm analysis reports, crime scene diagrams, photographs, video evidence, the autopsy report and witness statements submitted to this office by LASD Detectives Adan Torres and Gus Carrillo. Gonzalez' voluntary statement was considered as part of this analysis.

FACTUAL ANALYSIS

On February 6, 2018, at approximately 10:00 p.m., LASD Deputy Christopher Gonzalez and his partner, Deputy Manuel Palacios, received a radio call to respond to a parking garage on East Third Street in the unincorporated county area of East Los Angeles regarding a suspicious person seen on the property. The caller described the person as, "30 to 40 years old with tattoos on his face, inside the apartment complex parking lot." The call further stated that the individual appeared to be breaking into cars. Gonzalez and Palacios were in the process of handling an unrelated call and

departed for the location upon concluding the previous call. It took the deputies approximately ten to 15 minutes from the time they received the call to respond to the location.¹

Upon arriving at the location, Palacios drove their vehicle into the ground level parking lot of the location. They were granted access to the garage by a resident who used their remote to open the gate. The resident advised the deputies that the individual was in the parking garage.² As they entered the parking garage, Gonzalez, who was seated in the front passenger seat, observed a man ducking between vehicles in the east end of the garage. The man, later identified as Cesar Bautista, was approximately 20 to 25 feet away from their patrol vehicle. Gonzalez and Palacios exited their vehicle, leaving the doors open and the engine running. Gonzalez momentarily lost sight of Bautista. As Gonzalez walked along the south wall of the parking lot attempting to locate Bautista, he heard Palacios issuing commands to someone. Palacios was yelling, "Hey, let me see your hands!"

Gonzalez could not see who Palacios was speaking to initially, but quickly observed Bautista who appeared to be 30 to 40 years old and had horn tattoos on his head. Gonzalez also began issuing commands to Bautista. Bautista yelled back at the deputies, and did not comply with their orders to show his hands. Bautista appeared to be under the influence of some controlled substance, acting restless and speaking quickly.

As Gonzalez and Palacios got closer to Bautista, he began to put his hands up. Gonzalez asked him what he was doing in the parking garage. Gonzalez and Palacios approached Bautista intending to handcuff him. Bautista turned his back towards the deputies with his hands up in the air. When Gonzalez and Palacios got within arm's reach of Bautista, Bautista suddenly turned and ran from them, passing them on his way to their patrol vehicle.³ Gonzalez observed Bautista looking back at the deputies once as he reached his right hand into his right pants pocket. Gonzalez was unsure whether or not Bautista had a firearm or other weapon in his pocket, and this action caused him concern.

Gonzalez yelled, "Stop! Don't run!" as Bautista jumped into the driver's seat of the deputies' patrol car. Gonzalez observed Palacios positioned near the driver's side of the vehicle holding a Taser. Palacios then deployed the Taser, which appeared to have no effect on Bautista.

Gonzalez was standing approximately ten to 12 feet in front of the patrol car with his service weapon in his hand. He observed Bautista put the vehicle in drive and heard the engine rev. Bautista then drove the vehicle towards Gonzalez as Palacios jumped to his right to avoid being struck.⁴ Fearing for his life, Gonzalez fired six to eight rounds from his service weapon at the windshield of the patrol vehicle in an attempt to stop the vehicle from striking him.

¹ The deputies were wearing full LASD uniforms and responded in their black and white patrol vehicle.

² The parking garage was located underground.

³ The vehicle had been left with the engine running in park. A loaded AR-15 rifle was secured in the rack between the driver and passenger seat of the patrol vehicle.

⁴ Palacios was approximately one to two feet from the vehicle.



Still photograph from surveillance video of Gonzalez firing first volley from his service weapon

The rounds did not have any effect on Bautista and the vehicle continued advancing towards Gonzalez. Gonzalez moved to his left and observed Palacios falling to the ground. Gonzalez did not know if Palacios had been struck by gunfire or whether he was in the path of the moving vehicle. Gonzalez fired an additional six to eight rounds through the passenger side window of the patrol car.⁵ Bautista slumped over towards his left as if he had been struck by the second volley of rounds. Gonzalez ordered Bautista to put his hands up but Bautista was unresponsive.



Still photograph from surveillance video of Gonzalez firing second volley from his service weapon

⁵ Based upon an ammunition count done of Gonzalez' service weapon and casings recovered from the location, it appears Gonzalez fired a total of 17 rounds between the two volleys.

Additional units and paramedics were summoned to the location. Bautista was pronounced dead at the scene by paramedics.

Witnesses at the location were interviewed and many reported having seen Bautista in the parking garage acting as if he was under the influence of alcohol or drugs and possibly attempting to break into vehicles. Multiple witnesses observed Bautista running, getting into the driver's seat of the patrol vehicle and putting the vehicle in gear. Fearing that they could be struck by the vehicle, they fled, then heard the engine of the vehicle revving, various commands by officers and gunfire. No witnesses observed the officer involved shooting. None of the witnesses recognized Bautista as a resident of the location and a subsequent investigation determined Bautista had no lawful reason to be in the parking garage.⁶

An autopsy was conducted on February 11, 2018. Cause of death was attributed to multiple gunshot wounds to the head and torso. A toxicology screen conducted as part of the post-mortem examination revealed the presence of methamphetamine, amphetamine and MDMA in Bautista's blood at the time of his death.

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 of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 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.

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 does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or 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.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force

⁶ Bautista had been arrested for possession of narcotics paraphernalia earlier that day and was cited and released approximately 45 minutes prior to this incident.

when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

California law also permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. *Ceballos, supra*, 12 Cal.3d at 479. “An officer may use reasonable force to make an arrest, prevent escape or overcome resistance.” *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516. When protecting the public peace, a police officer “is entitled to even greater use of force than might be in the same circumstances required for self-defense.” *Id.*

The U.S. Supreme Court has further clarified that when an escaping felon is using a vehicle to effectuate his escape, the risk to the lives of innocent bystanders may be higher. *Plumhoff v. Rickard* (2014) 134 S. Ct. 2012.

CONCLUSION

In the instant matter, Bautista did not comply with orders from Gonzalez and Palacios when they approached him after having responded to a possible burglary call. Instead, he fled and stole their patrol vehicle, which contained a loaded AR-15 rifle. Efforts to use a Taser to stop Bautista were unsuccessful. When Bautista drove the vehicle at Gonzalez, effectively using it as a deadly weapon, Gonzalez was justified in his use of deadly force. When Gonzalez’ first rounds were ineffective at stopping Bautista, with the vehicle still moving and Palacios’ location unknown to Gonzalez, his second volley of shots cannot be proven beyond a reasonable doubt to be unreasonable to protect Palacios, who he knew had fallen to the ground.

With respect to the first shots fired, we find that Deputy Gonzalez acted lawfully in self-defense, in defense of others and to stop a fleeing felon when he used deadly force against Cesar Bautista. We further find that it cannot be proven beyond a reasonable doubt that Gonzalez’ second volley of gunshots were an unreasonable application of deadly force. We are closing our file and will take no further action in this matter.