

Officer Involved Shooting of James Byrd

Los Angeles Police Department

Officer Andrew Hacoupan #39276

Officer Zackary Goldstein #39442

J.S.I.D. File #15-0531



JACKIE LACEY

District Attorney

Justice System Integrity Division

February 8, 2018

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
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: Officer Involved Shooting of James Byrd
J.S.I.D. File #15-0531
F.I.D. File #F084-15

DATE: February 8, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 3, 2015, fatal shooting of James Byrd by Los Angeles Police Department (LAPD) Officers Andrew Hacoupien and Zackary Goldstein. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that Officers Hacoupien and Goldstein did not act in lawful self-defense or defense of another when they discharged their firearms at Byrd.

The District Attorney's Command Center was notified of this shooting on October 4, 2015, at 1:35 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant Damian Gutierrez.

The following analysis is based on reports, recorded interviews, videos and photographs submitted to this office by the LAPD's Force Investigation Division. The departmentally compelled statements of Officers Goldstein and Hacoupien were considered in this analysis.

FACTUAL ANALYSIS

On October 3, 2015, Andrew Hacoupien and Zackary Goldstein were working as LAPD patrol officers assigned to the Van Nuys area of the City of Los Angeles. They started their shift at 7:00 p.m. During the briefing before their shift, the officers were warned about the existence of a video found online which depicts an LAPD officer exiting his car and then pans down to reveal that the person filming is in possession of a handgun. After the briefing, the officers began their shift. Goldstein was driving a Ford Crown Victoria which was fully marked with LAPD logos and an overhead red and blue light bar. Hacoupien was riding in the passenger seat of the car.

At 11:35 p.m., Goldstein stopped the patrol car in the left turn lane of Sepulveda Boulevard at Victory Boulevard for a red signal. As the officers sat in their car waiting for the signal to

change, James Byrd approached them from behind. Byrd walked across three lanes of Sepulveda Boulevard directly toward the police car. When he got to the trunk of the car, Byrd used a glass, 40 ounce, beer bottle to shatter the car's rear windshield. In response, both Goldstein and Hacoupien drew their service weapons and engaged Byrd. Goldstein fired five times from the front seat of the patrol car, and Hacoupien fired 13 times at Byrd while standing in the street on the rear passenger side of the patrol car.

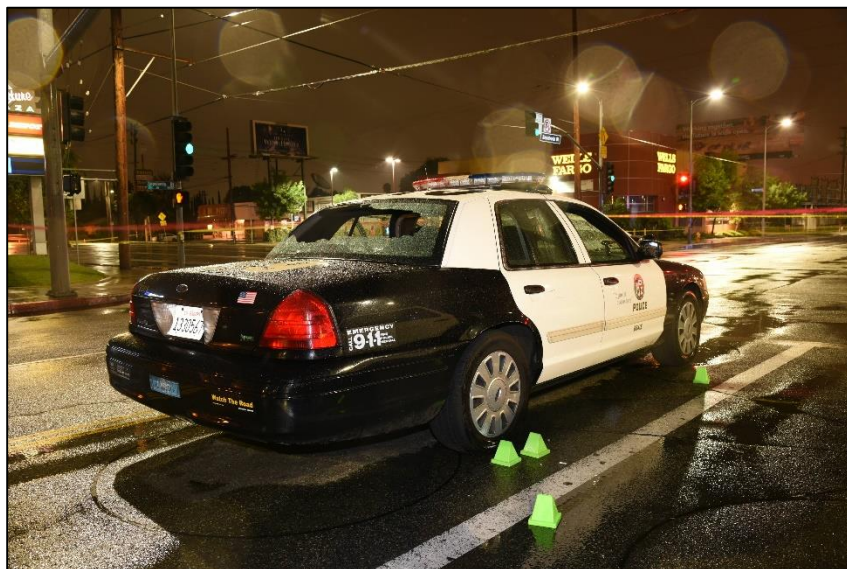


Figure 1: The rear windshield of the patrol car shattered when impacted by the beer bottle.

Byrd was struck by the gunfire and collapsed near the east curb line of Sepulveda Boulevard to the north of the patrol car. Immediately after the shooting, Hacoupien made the following radio broadcast, “I need help. Victory and Sepulveda. Shots fired, one suspect down.” In response, numerous LAPD units converged on the scene. Officers Eduardo Borges and Cody Blackstone were on Sepulveda Boulevard near Vanowen Street, less than one-half of a mile from the shooting, when the call for help was broadcast. They were at the scene within seconds of the broadcast. Borges positioned his patrol car approximately 25 feet behind Goldstein’s patrol car. When Borges exited his car, he saw Goldstein standing by the driver’s side of his car with his service weapon drawn. Goldstein immediately said, “Hey, the suspect’s there. He’s, you know, he’s at, he’s right next to you. He has a gun.”¹ Borges looked over and saw Byrd collapsed in the street. Shortly thereafter, Borges and three other officers approached Byrd, saw that he was non-responsive, and facilitated an assessment by paramedics.²

When Los Angeles City Fire Department paramedics responded to the scene, they pronounced Byrd dead.

¹ Although Blackstone exited the car at the same time as Borges, he did not hear either Goldstein or Hacoupien make any statements.

² Goldstein and Hacoupien did not approach Byrd after the shooting. They were separated and remained with supervisors until they provided separate statements to investigators.

Investigators located spent shell casings on the ground near the patrol car. The car's rear windshield was shattered and the shattered remains of a 40-ounce, brown glass, Budweiser bottle were located on and around the rear seat.



Figure 2: The shattered remains of a beer bottle were recovered from the rear seat and floorboard.

Sergeant Felipe Vasquez responded to the scene and obtained a public safety statement (PSS) from Hacoupan.³ Hacoupan told Vasquez he had shot his weapon thirteen times in the “direction of the suspect” from the rear of his car and that his partner also shot. Hacoupan told Vasquez that he thought the suspect fired one shot which shattered the back window of the police vehicle. He said that Byrd was the only person who was injured and that there were no outstanding suspects.

Sergeant David Houze obtained a PSS from Goldstein. Goldstein told Houze that he fired four to five rounds in a northeast direction while standing at his driver's side door and that Hacoupan had also fired his weapon. When asked, “Is it possible the suspect fired rounds at you?” Goldstein simply replied, “Yes.”

Witness Statements

Sean S█████ was sitting in his vehicle in a parking lot roughly 300 feet from the vehicle driven by Goldstein at the time of the shooting. S█████ did not see any of the interactions between Byrd and the officers. He was talking with his passenger when he “heard the first gunshot and shortly after, a matter of seconds, I heard several other gunshots.” S█████ described the difference in sounds as if they were different caliber guns. S█████ explained that he was familiar with firearms

³ A PSS is taken from every officer involved in a shooting to obtain basic information about what occurred. The questions asked of the officer include whether they were involved in a shooting, how many times and in what direction they fired, whether the suspect shot and in what direction, whether anyone is injured and the location of suspects, witnesses, and evidence. The PSS is a limited inquiry and no follow up inquiries are made at the time unless necessary to handle an exigent situation.

and had been at a gun range earlier that day. S [REDACTED] estimated that there was 1.5 to 2.5 seconds between the first shot and the subsequent shots and that the subsequent shots all occurred in one quick volley which lasted between three and four seconds. He believed there were eight or nine shots fired in the second volley. S [REDACTED] exited his car and took some video of the aftermath of the shooting with his cellular phone. He never saw Byrd move.

Meta M [REDACTED] was standing on the southeast corner of the intersection of Sepulveda Boulevard and Victory Boulevard waiting to cross Sepulveda Boulevard. She noticed an LAPD patrol vehicle stopped on Sepulveda Boulevard waiting at the traffic light. As she was on the corner, she noticed Byrd, who “appeared out of nowhere,” walking toward her on the sidewalk to the east of Sepulveda Boulevard. She immediately saw that Byrd was upset and “cursing.” As she watched, Byrd stepped off the sidewalk and walked straight toward the police car at an angle from behind. Byrd, who was still cursing unintelligibly, walked to the trunk of the police car on the driver’s side and gestured toward the rear windshield of the car. M [REDACTED] said, “and then I hear this loud noise...this really loud noise. And so in my mind I’m thinking he busted the window, the back window,” although, “it didn’t sound like glass breaking; it was a different sound, but I can’t describe it. It was loud.” However, because of her position, she could not see the rear windshield of the car.

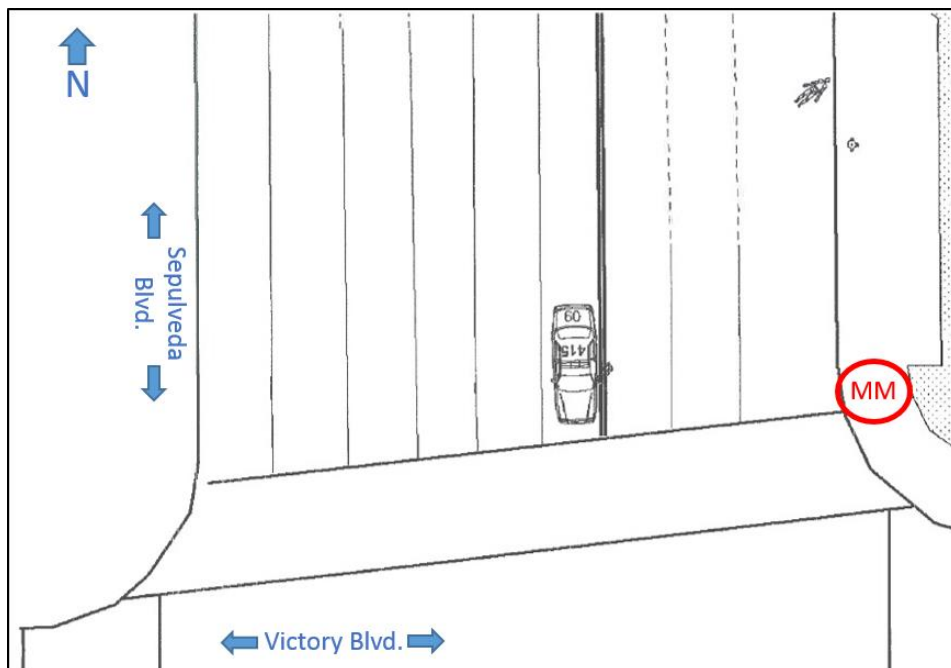


Figure 3: Diagram of scene. Byrd fell to the northeast of the patrol car. Witness Meta M [REDACTED]'s approximate position at the time she made her observations is denoted by the red "MM."

Immediately after she heard the window break, “the driver door of the police car opens. And then right after it opens I see a gun peeking out the door and – it looks silver to me – and then I hear sounds that sounded like pap, pap.”⁴ M [REDACTED] explained that the driver did not get out of the car; instead, he pointed the gun and fired while still sitting in the front seat of the car. The

⁴ Goldstein carried a silver Smith and Wesson handgun as his duty weapon.

shots were fired in quick succession without any pauses between them. At some point, Byrd started walking away from the patrol car in a northeast direction. The entire incident occurred “really fast.”

M█████ panicked upon hearing the gunfire and started to cross Victory Boulevard away from the officers; she explained that she panicked in part because it appeared Byrd started to walk toward her as the shooting started. In response, she turned and crossed about one third of Victory Boulevard before turning back and returning to the corner where she was before the incident. When she turned back, she saw Byrd on the ground in the northbound lanes of Sepulveda Boulevard.⁵

M█████ explained that she never saw anything in Byrd’s hands at any point.

Jessica G█████ was sitting in her car in the parking lot on the northwest corner of Sepulveda Boulevard and Victory Boulevard waiting for her husband to finish work. Her car was parked facing east in the row closest to Sepulveda Boulevard and she was sitting in the driver’s seat. As she was sitting in her car, she heard gunshots: “Out of nowhere I hear one gunshot, and then I hear a second one like a second after, and then I hear eight more in a row fast.” She said the first two gunshots sounded different; as if they had come from different guns.⁶ G█████ looked through her car window in the direction of the shots and saw a man running in the street with his back to her: “I saw him ducking, like putting his...hand on his head, like ducking from shots.” The man disappeared from her view after taking about three steps.

Goldstein’s Statement

Goldstein provided a statement to investigators after the shooting. The statement was compelled.⁷

██
██
██
██

⁵ After her interview, M█████ called investigators and asked to amend her statement. She explained that after the shooting, Byrd walked back to the east sidewalk and looked in her direction. M█████ turned away to cross Victory Boulevard, took a few steps, and then looked back to see Byrd lying in the street.

⁶ It is unclear from her statement whether G█████ is trying to explain that the first two gunshots sounded different than the subsequent eight, or from one another.

⁷ Goldstein and Hacopian were individually interviewed on the morning of October 4, 2015. The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and both Goldstein and Hacopian were ordered to do so in the present case. Police officers, like all individuals, possess the right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against themselves. Uniformed Sanitation v. City of New York (1968) 392 U.S. 280, 284-285. Because the LAPD ordered each officer to answer questions which might expose him to criminal liability, his participation in the interview was compelled. The effect of this legal compulsion is that neither the officer’s statements nor any material derived from them may be used against him in a criminal proceeding. Garrity v. New Jersey (1967) 385 U.S. 493, 496-497; Spielbauer v. County of Santa Clara (2009) 45 Cal.4th 704, 715. Further, because these compelled statements are part of the officer’s police personnel file, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

[REDACTED]

8

[REDACTED]

[REDACTED]

[REDACTED]

9

Hacoupian's Statement

Hacoupian provided a statement to investigators after the shooting. The statement was compelled.

[REDACTED]

[REDACTED]

8 [REDACTED]

9 [REDACTED]

[REDACTED]

[REDACTED]

Autopsy

Deputy Medical Examiner Dr. Ajay Panchal performed an autopsy on Byrd. Dr. Panchal noted six gunshot wounds on Byrd’s body, three of which would have been fatal. Two of the wounds entered Byrd’s back and exited through his chest, one entered the back of his shoulder, and one entered the back of his arm. Two other bullets impacted Byrd’s left side and traveled left to right and back to front. Byrd died rapidly as a result of his injuries.

Byrd’s Background

As part of their investigation, detectives interviewed [REDACTED] S [REDACTED], the director of Sepulveda Residential Care Facility (Facility). The Facility is licensed to provide full-time residential care for mentally ill adults. S [REDACTED] identified Byrd as a Facility resident since August 2014, [REDACTED] [REDACTED]. S [REDACTED] described Byrd as someone who was very paranoid, but who did not act out violently or voice suicidal ideation. [REDACTED] [REDACTED].

On the morning of October 2, 2016, Byrd told S [REDACTED] that he was leaving the Facility and was going to go live on the streets. S [REDACTED] repeatedly tried to convince Byrd to stay or to go to the hospital for help, but Byrd, who was very agitated, refused. S [REDACTED] filed a missing person’s report after Byrd left. The last S [REDACTED] saw or heard from Byrd was approximately 9:30 a.m. on October 2, 2016.

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others, and, if someone dies as a result, this is a “lawful excuse” which precludes a conviction for murder. Penal Code sections 197, 198; CALCRIM No. 505. However, this defense is available only if the killer actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *See also 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. 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; *See Plumhoff v. Rickard* (2014)

134 S.Ct. 2012, 2022 (if a shooting is justified, officers need not stop shooting until the threat has ended). Actual danger is not necessary to justify the use of deadly force in self-defense; if the person's beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 3470.

If a person actually believes that deadly force is necessary for self-defense or in defense of another, but that belief is unreasonable, the killing is partially justified and the killer may not be convicted of murder; however, he may be convicted of voluntary manslaughter. Penal Code section 192(a); CALCRIM No. 571; *See also* People v. Blakeley (2000) 23 Cal.4th 82, 999; In re Christian S. (1994) 7 Cal.4th 768; People v. Flannel (1979) 25 Cal.3d 668; People v. Barton (1995) 12 Cal.4th 186, 199.

Although the above rules apply to all people equally, there are also special rules regarding homicide by public officers. A killing by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333. 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 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.

When assessing the reasonableness of the use of deadly force, California criminal law treats law enforcement officers the same as any other person. People v. Mehserle, *supra*, 206 Cal.App.4th at 1146. A jury must "consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with a similar knowledge would have believed." CALCRIM No. 505. "Although the belief in the need to defend must be objectively reasonable, a jury must consider what would appear to be necessary to a reasonable person in a similar situation and with similar knowledge." People v. Humphrey, *supra*, 13 Cal.4th at 1082-83. This rule allows a defendant to present evidence of his experiences to both: 1) explain how they impacted his actual, subjective, perception of danger, and 2) to help the jury understand the objective reasonableness of that belief from the defendant's perspective. *See* People v. Sotelo-Urena (2016) 4 Cal.App.5th 732 (allowing defense evidence of a homeless person's exposure to, and fear of, violence on the streets in a murder prosecution); People v. Humphrey, *supra*, 13 Cal.4th 1073 (allowing defense evidence of domestic violence and its effects in a murder prosecution); Graham v. Connor (1989) 490 U.S. 386, 396-97 ("The calculus of reasonableness must embody allowance for the fact that police 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."). This enables a jury who is assessing

the conduct of a law enforcement officer “to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation – but this is not the same as following a special ‘reasonable police officer’ standard.” People v. Mehserle, *supra*, 206 Cal.App.4th at 1146.

It is the prosecution which has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507. Thus, to bring a murder charge against a defendant in the face of a claim of self-defense, the prosecution must be able to prove beyond a reasonable doubt that the killer did not actually believe that the decedent posed an imminent threat when the defendant killed him. To bring a charge of voluntary manslaughter, the prosecution must be able to prove beyond a reasonable doubt that the killer’s belief in the need for self-defense, though honest, was not objectively reasonable at the time of the killing. Additionally, to bring charges against a public officer, the prosecution must prove that the killing was not justified under Penal Code section 196.

Hacoupian and Goldstein started their shift with a warning about a video circulating online which depicted an apparent threat against police officers. Four and one half hours later, they were sitting in their patrol car waiting for the stoplight to change when Byrd approached their car from behind and impacted the rear windshield of the car with a 40-ounce beer bottle. The impact caused a “loud” noise that “didn’t sound like glass breaking” and which was interpreted by G [REDACTED], S [REDACTED], and the officers as a gunshot. It also caused the rear windshield to shatter. Within one and one half to two seconds of the window shattering, both Hacoupian and Goldstein discharged their firearms at Byrd. Witnesses describe that shooting as one quick volley which lasted “three to four seconds.”

Goldstein told the first backup officer who responded to the scene that Byrd had a gun. Both officers gave public safety statements after the shooting and said that Byrd had shot at them. The evidence, taken together, shows this to be an actual and honest belief. Because the evidence shows the officers honestly believed that Byrd shot at them from close range while they were sitting in their car at a traffic signal, their use of deadly force against him in response cannot be the basis for a murder charge.

The evidence also shows that it was reasonable for both Goldstein and Hacoupian to believe that Byrd was shooting at them when they opened fire. Witnesses told investigators that they heard a gunshot and the evidence is clear that the officers fired in response to that sound. The sound of a “gunshot,” coupled with the shattering rear windshield, created a reasonable belief in the need for self-defense. The fact that Byrd did not actually present a deadly threat when the officers reacted is immaterial; Goldstein and Hacoupian were entitled to respond to an apparent deadly threat with deadly force and they were entitled to engage Byrd until he no longer presented a threat.¹⁰

¹⁰ Officers are trained to shoot until the target no longer presents a threat. One study which examined shootings by officers showed that they may initiate a trigger pull in as quickly as 0.02 seconds after the last trigger pull. The same study showed that an officer in a real world deadly force encounter would likely take 0.56 seconds to stop shooting once the perceived threat was eliminated. The authors concluded “three to four rounds could be fired by the officer as part of an automatic sequence after the signal to stop had already occurred.” William J. Lewinski et

As explained above, the initial response of Goldstein and Hacoupain to Byrd’s actions was objectively reasonable. However, there is some evidence which suggests that they continued using deadly force when Byrd was running away from their car: G [REDACTED] described Byrd running away from the officers while “ducking from shots” and the wounds sustained by Byrd were all sustained from behind.

Even though Byrd had turned away from the officers when he was shot, the officers’ actions must still be assessed under Penal Code section 196. When Goldstein and Hacoupian were sitting in their car as the back windshield exploded, they reasonably believed that Byrd had just attempted to kill them. The impact on the car sounded like a gunshot and at that moment there was probable cause to believe that, having apparently tried and failed to kill an officer, Byrd was an imminent danger to officers and others in the community. Therefore, the officers had a legal duty to stop Byrd after his apparent attack and, because the attempted murder of a police officer is a “forcible and atrocious crime,” they were entitled to use deadly force to accomplish that duty. Because the officers had probable cause to believe that Byrd presented a deadly threat when he threw the bottle through the window of their car, there is insufficient evidence to prove beyond a reasonable doubt that their subsequent use of force was an unreasonable attempt to stop a dangerous felon who had just attempted to commit murder.

Impact of the Officers’ Statements

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 12 [REDACTED]

[REDACTED]

al., *Police Officer Reaction Time to Start and Stop Shooting: The Influence of Decision-Making and Pattern Recognition*, 14(2) LAW ENFORCEMENT EXECUTIVE F. 1, 12 (2014).

¹¹ Studies of officer involved shooting incidents have shown that as many as 63% of officers involved experienced a slowing of time during the incident. Artwohl & Christensen, *Deadly Force: What Cops Need to Know to Mentally and Physically Prepare for and Survive a Gunfight*, Boulder, CO: Paladin Press (1997); Klinger & Brunson. *Police Officers’ Perpetual Distortions During Lethal Force Situations: Informing the Reasonableness Standard*, 8 CRIMINOLOGY AND PUBLIC POLICY 117-140 (2009).

¹² The officers were immediately separated and monitored by separate supervisors even before an arrest team was assembled to approach Byrd.

CONCLUSION

Based upon all the available evidence and having considered the likely defenses and the presentation of the evidence before a jury, we find that there is insufficient evidence to prove beyond a reasonable doubt that Officers Goldstein or Hacoupiian used unreasonable force when they shot and killed James Byrd. We are closing our file and will take no further action in this matter.

¹³ The Los Angeles Police Commission found that the shooting by both officers was out of policy for the LAPD because “the evidence does not support that [the officers] had an objectively reasonable belief that [Byrd] presented an imminent threat of death or serious bodily injury at any point in time during the [Officer Involved Shooting].”