

Officer Involved Shooting of Brian Barbosa

South Gate Police Department

Lieutenant Ignacio Patino #10055

Sergeant Chris Dahlia #10076

Officer George Chaves #10123

Officer Robert Pellerin #10052

Officer Derrick Marin #10186

J.S.I.D. File #15-0018



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 23, 2019

MEMORANDUM

TO: CHIEF RANDY DAVIS
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CAPTAIN KENT WEGENER
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Brian Barbosa
J.S.I.D. File #15-0018
L.A.S.D. File #015-00002-3199-013

DATE: April 23, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 11, 2015, fatal shooting of Brian Barbosa by South Gate Police Department Officers George Chaves, Robert Pellerin, Derrick Marin, Sergeant Chris Dahlia and Lieutenant Ignacio Patino. We have concluded these members of SGPD acted lawfully in self-defense and in defense of others and in an effort to stop a fleeing felon.

The District Attorney's Command Center was notified of the shooting at approximately 6:22 a.m., on January 11, 2015. 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, audio recordings of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographs, video evidence, and witness statements submitted to this office by LASD Detectives Eddie Brown and Toni Martinez. The voluntary statements of all involved officers were considered as part of this analysis.

FACTUAL ANALYSIS

On Sunday, January 11, 2015, at approximately 3:45 a.m., a suspect later identified as Brian Barbosa attempted to carjack Lonnie U. in the parking lot of a Jack in the Box on Atlantic Avenue and Firestone Boulevard in the City of South Gate. Barbosa initially asked Lonnie for a ride, but

when Lonnie refused, Barbosa pointed a revolver at the left side of his head and said, "Get the fuck out of the car or I'll blow your fucking head off." Lonnie advised Barbosa that the car would not start and Barbosa fled the location.

South Gate officers responded to the scene. They located an individual matching Barbosa's description and transported Lonnie for a field show-up in their patrol vehicle. Lonnie advised officers the individual was not the person who had attempted to carjack him earlier. As officers were transporting Lonnie back to his vehicle, Barbosa ran by the patrol car. Lonnie advised officers Barbosa was the person who had attempted to steal his car.

Officers attempted to contact Barbosa, but he fled.¹ A foot pursuit began travelling northbound on Annetta Avenue heading towards Firestone Boulevard. Barbosa approached a taxi in the middle of the street. Barbosa attempted to enter the vehicle, but was unsuccessful. Barbosa then ran into the rear yard of a home on Annetta Avenue. Officer Robert Pellerin advised other officers in the area via radio of Barbosa's location.

As officers set up a containment area, Barbosa was then spotted by Pellerin exiting another yard on Kauffman Avenue.² Pellerin watched as Barbosa seemed to notice the police presence on the street and run back between the houses, out of view. Pellerin saw that Barbosa had a chrome revolver in his right hand. Pellerin ordered Barbosa to stop, but Barbosa did not comply. Officer Derrick Marin, who was assisting with the containment, heard Pellerin commanding Barbosa to stop and responded to his location to provide back-up. Pellerin told Marin that Barbosa had a gun. Sergeant Chris Dahlia and Lieutenant Ignacio Patino were also in the area searching for the suspect, and were approximately 40 yards from Barbosa when they heard officers ordering Barbosa to stop and show his hands.

Pellerin and Marin heard a woman yelling for help from one of the houses on Kauffman Avenue and ran southbound to her location.³ Pellerin saw Barbosa run to the front yard of that location with the gun in his right hand. Pellerin was approximately 20-25 yards behind Barbosa. Pellerin heard other officers yelling commands for Barbosa to stop and raise his hands. Marin, having seen Barbosa reaching into his pocket with his right hand, was one of the officers ordering him to show his hands. Barbosa did not comply. Officer Chaves, who had been assisting in the containment, observed Barbosa running in his direction, while fumbling with the waistband of his pants. Marin observed that Barbosa removed a chrome handgun from his front pocket as he was running, holding it in his right hand. Dahlia also observed Barbosa running with his hands near his waistband as if he was holding something, and then observed a shiny object in his right hand. Chaves ordered Barbosa to stop and the two made eye contact. Chaves then observed a silver weapon in Barbosa's right hand. Barbosa continued running toward Chaves, pointing the gun at him. Chaves fired at Barbosa in fear for his life, but Barbosa continued running.⁴ Pellerin observed Barbosa raising the gun

¹ The officers were wearing full police uniforms at the time.

² Pellerin had heard the earlier broadcast regarding an armed carjack attempt and responded to the location to assist. Pellerin was in the process of manning a portion of the containment area when he observed Barbosa exit from between two houses on Kauffman Avenue.

³ Marin told investigators he believed she was yelling, "Get out of here! Get out of here!"

⁴ When interviewed, Chaves advised investigators he believed he had fired more than three rounds in his first volley and two to three rounds in a second volley. Investigators later determined Chaves fired a total of 11 rounds from his service weapon.

toward Chaves, and heard a single gunshot coming from near Barbosa's location. Simultaneously, Marin saw Barbosa pointing the weapon at Chaves, and heard gunfire. Marin believed Barbosa may have fired at Chaves, and fired three to four rounds from his service weapon as Barbosa continued to run. Patino initially could not see Barbosa's hands as he was running, and believed they were in his waistband area. As Barbosa continued running, Patino observed Barbosa turning around looking over his right shoulder. As he did so, Patino could see a shiny object he believed was a firearm. The object was pointed at Patino and other officers. Patino, fearing for his life and the lives of other officers, fired five to six rounds from his service weapon. The rounds did not appear to affect Barbosa, who continued running with the object in his hand. As Barbosa continued running, Patino fired another one or two rounds.⁵

At the same time, Pellerin had moved east to be better able to observe Barbosa. Pellerin saw Barbosa pointing the gun to the south where officers were positioned. Fearing other officers were going to be shot, Pellerin fired six rounds from his service weapon from a position behind Barbosa.

As Pellerin was firing his weapon, he could hear other officers firing as well. Pellerin saw Barbosa fall to the ground and heard officers continuing to give orders as Barbosa was still moving. Marin also heard commands being given to Barbosa to put his arms out and show his hands. Marin Pellerin then saw Barbosa attempting to push himself up from the ground. Believing Barbosa was going to shoot at officers within range, Pellerin fired an additional seven rounds from his service weapon and Marin fired one round from his.⁶ Dahlia, having also observed Barbosa ignoring commands and pushing up, fired four to six rounds from his service revolver in fear that Barbosa was "going to run, fight or shoot it out with the officers."⁷ Barbosa stopped pushing up, but the firearm was still underneath his body.

A K-9 unit was requested. Once they arrived, the K-9 was able to turn Barbosa over so the weapon could be retrieved and Barbosa could be searched.

A short time later, paramedics arrived to treat Barbosa. Barbosa was pronounced deceased at the location.

⁵ Investigators determined Patinobvg fired a total of six rounds from his service weapon.

⁶ Investigators determined that Marin fired a total of five rounds from his service weapon.

⁷ Investigators determined that Dahlia fired a total of five rounds from his service weapon.

A screwdriver and a chrome .38 six-shot revolver were recovered from the ground, to the east of Barbosa's body.⁸ The revolver contained three live rounds, and investigators noted that each of the bullets had multiple strike marks on the primer from the firing pin of the gun.⁹



Firearm recovered near Barbosa's body

A canvass of the area revealed multiple residents who heard the shooting, but only one witness who observed any shots being fired. Gabriela H., exited her residence and observed Barbosa lying on a couch on her driveway.¹⁰ She began screaming for him to "Get out!" Gabriela did not see the entire incident, but did see one officer fire his weapon after hearing the initial shots.

An autopsy was conducted by Los Angeles Department of Medical Examiner-Coroner Deputy Medical Examiner Doctor Ajay Panchal on January 13, 2015. Dr. Panchal noted a total of 16 gunshot wounds, at least 10 of which were fatal. He ascribed cause of death to multiple gunshot wounds. Toxicology testing done at the time of the autopsy revealed that Barbosa had marijuana, methamphetamine, MDMA, and amphetamines in his system at the time of his death.

⁸ [REDACTED]

⁹ Strike marks on the primer of a bullet from the firing pin of a firearm generally indicate that an unsuccessful attempt was made to fire the weapon.

¹⁰ Gabrielle did not see a gun in Barbosa's hand.

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 § 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. A killing of a suspect 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.3^d 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. 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.2^d 575, 589. "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.

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.*

In the instant matter, all of the officers who responded to the pursuit and containment of Barbosa were aware that he was the suspect in an armed attempted carjacking. Each of the officers fired their service weapons initially as they were pursuing Barbosa, who had just attempted to commit a violent crime and was running through a residential area. Additionally, he had a gun in his hand and appeared to be pointing the weapon in the direction of various officers at the time the involved officers fired their service weapons at him. As such, the initial use of deadly force by each officer was justified both in defense of themselves and others, and in apprehending a fleeing felon. Each officer continued firing only until Barbosa finally stopped running and fell to the ground.

One on the ground, Barbosa did not comply with multiple commands to move his arms from under his body (where the gun was located) and to show his hands. Instead, Barbosa began to push himself up from the ground as if to continue his flight or resume his assault on the officers. There is no indication that officers could see whether or not Barbosa had the gun in his hand, but based upon the circumstances, it was not unreasonable for them to believe Barbosa was in a position to pose a deadly threat to them.

CONCLUSION

We find that Officers Chaves, Pellerin and Marin as well as Sergeant Dahlia and Lieutenant Patino acted lawfully in self-defense and in defense of others and in an effort to stop a fleeing felon when they used deadly force against Brian Barbosa. We are closing our file and will take no further action in this matter.