

Officer Involved Shooting of Florencio Chaidez
Los Angeles Police Department

Officer Patricia Barajas, #39954
Officer Brady Cuellar, #38790

J.S.I.D. File #15-0487



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 1, 2017

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 Florencio Chaidez
J.S.I.D. File #15-0487
F.I.D. File #F081-15

DATE: May 1, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 15, 2015, fatal shooting of Florencio Chaidez by Los Angeles Police Department (LAPD) Officers Patricia Barajas and Brady Cuellar. It is our conclusion that Officer Barajas acted in lawful self-defense and Officer Cuellar acted in lawful defense of another at the time they fired their duty weapons.

The District Attorney's Command Center was notified of this shooting on September 15, 2015, at approximately 4:00 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant Jeffrey Wenninger.

The following analysis is based on reports, recorded interviews, body camera recordings, and photographs submitted to this office by the LAPD's Force Investigation Division (FID). The departmentally compelled statements of Officers Cuellar and Barajas were considered in this analysis.

FACTUAL ANALYSIS

On September 15, 2015, at approximately 2:40 p.m., Armin R [REDACTED] and Edwin M [REDACTED], employees for a courier service, were picking up a package at an apartment complex located at 8600 Willis Avenue. M [REDACTED] entered the location to retrieve the package while R [REDACTED] waited outside. A man, later identified as Florencio Chaidez, approached R [REDACTED]. Chaidez offered R [REDACTED] five dollars to use R [REDACTED]' cell phone to make a phone call. R [REDACTED] did not want to hand his cell phone to Chaidez because he was concerned that Chaidez would steal his phone, but offered to make the call for Chaidez. R [REDACTED] dialed the number, but there was no answer. As R [REDACTED] and Chaidez spoke, R [REDACTED] noticed a handgun protruding from Chaidez' waistband. M [REDACTED] exited

the apartment complex and approached R [REDACTED] and Chaidez. Chaidez walked north on Willis Avenue towards Parthenia Street in search of a payphone.

R [REDACTED] called 9-1-1 to report a man with a gun. When describing Chaidez' location, R [REDACTED] erroneously reported seeing Chaidez on Roscoe Boulevard heading toward Van Nuys Boulevard.¹

At approximately 2:50 p.m., LAPD communications division broadcast, "Mission units. 415 man with a handgun in his right waistband. Willis and Roscoe. Last seen walking on Roscoe towards Van Nuys Boulevard three minutes ago. Male Hispanic wearing a beige shirt." Several LAPD Mission officers responded to the location and attempted to find Chaidez. However, likely due to the mix up in locations, the officers did not locate him. At 2:57 p.m., the call was completed as "suspect gone on arrival."

Mission area Parole Compliance Unit (PCU) Officers Patricia Barajas and Brady Cuellar were dressed in uniform and working in a marked black and white police vehicle. Barajas was the driver and Cuellar was seated in the right front passenger's seat. [REDACTED]

[REDACTED] At approximately 3:10 p.m., Barajas and Cuellar drove north on Willis Avenue toward Parthenia Street. As they drove, Barajas and Cuellar saw R [REDACTED] and M [REDACTED], who had stopped in the alley on Willis Avenue south of Parthenia Street.² R [REDACTED] was waving his arms to get the officers' attention.

Barajas pulled closest to R [REDACTED] and M [REDACTED] and spoke to them through the driver's side window. R [REDACTED] told Barajas and Cuellar there was a man with a gun just around the corner. R [REDACTED] described the man as wearing beige. R [REDACTED] pointed toward the corner of Parthenia Street and Willis Avenue and repeatedly stated, "He's right there."

Barajas and Cuellar proceeded north on Willis Avenue and turned east onto Parthenia Street. Their supervisor, Sergeant Kenneth Pritchett, followed behind them in a marked police vehicle. Barajas broadcast to Pritchett and PCU Officers Charis Simmons and Ruben Lopez that R [REDACTED] said a man with a gun was on Parthenia Street. [REDACTED]

Chaidez was standing with a group of men.³ As the officers proceeded east on Parthenia Street, Chaidez [REDACTED] began quickly walking eastbound on the south sidewalk. Chaidez walked alongside a graffiti-covered truck, which was parked on the south side of the street. [REDACTED]

[REDACTED] As they watched Chaidez, Chaidez reached toward his rear pocket and, using his left hand, manipulated a large beer can.⁴ Chaidez dropped the beer.

¹ R [REDACTED] had actually seen Chaidez walking on Parthenia Street towards Van Nuys Boulevard.

² After completing the package pick up, R [REDACTED] and M [REDACTED] drove north on Willis Avenue toward Parthenia Street. They saw Chaidez on the south sidewalk of Parthenia Street, east of Willis Avenue. R [REDACTED] and M [REDACTED] turned, drove south on Willis Avenue and pulled into the alley just south of Parthenia.

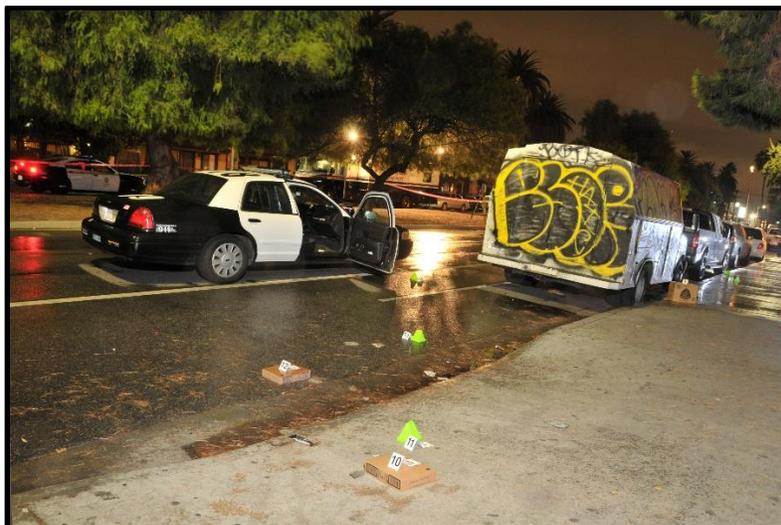
³ These men have not been identified.

⁴ It is unclear if Chaidez was putting the beer in his pocket or removing a beer that was already in his back pocket.

Barajas stopped the police vehicle and both officers exited. Barajas stood in the street, using the front area of the graffiti-covered truck as cover, [REDACTED] Cuellar went to the rear of the truck, using the passenger side rear of the graffiti-covered truck as cover. Chaidez reached into his right front waistband area, removed a handgun, and racked the slide.⁵ Chaidez turned his upper body to face Barajas and pointed the gun at her. In response, Barajas and Cuellar discharged their duty weapons at Chaidez.



Position of Cuellar and Barajas' police vehicle relative to the graffiti-covered truck



Chaidez fell onto the ground on his back. The gun landed on the sidewalk to the right of his right hand. Cuellar approached and kicked the gun a few feet from Chaidez. Once assisting

⁵ It is unclear whether the officers exited their patrol vehicle just before or just after Chaidez drew his weapon.

units arrived, Cuellar picked up the gun and locked the slide in the open position. He then placed the gun back on the ground.⁶



Chaidez' gun recovered at the scene

Paramedics were called and responded to the scene. Chaidez was pronounced dead at the scene at 3:27 p.m.

On September 17, 2015, Los Angeles County Deputy Medical Examiner Ogbonna Chinwah, M.D., performed an autopsy on Chaidez' body. Chaidez sustained a single gunshot wound, which entered through his left axilla (armpit), traveled through his left lung and thoracic aorta, and lodged in his 7th thoracic vertebrae. The path of the wound was left to right, front to back, and downward.⁷ Dr. Chinwah ascribed the cause of death as "gunshot wound of axilla." Chaidez' blood tested positive for benzoylecgonine, THC, and methamphetamine. Chaidez' blood alcohol content as measured from his femoral blood was .156%.

Noe R [REDACTED] was on Parthenia Street drinking a beer. He saw Chaidez and three other men in the same area also drinking beer and talking to each other. Two police cars approached R [REDACTED]' location. Chaidez tried to put his beer in his pocket, "but it was too big and it didn't fit." R [REDACTED] saw Barajas begin to exit the patrol car. Chaidez ran east, but then drew a gun from the right side of his waistband, appeared to chamber a round, pointed the gun in the direction of the patrol car, and "the police fired." R [REDACTED] believed "the female...was the one who killed him." Of Chaidez, R [REDACTED] said, "It was his fault," and "The only problem that he had was when he took out the gun. That's the worst thing he could have done."

Elvia C [REDACTED], Chaidez' wife, told investigators she and Chaidez got into a verbal argument earlier that day. Elvia believed Chaidez had been drinking. Elvia left the house and drove around in her car for ten to fifteen minutes. She saw Chaidez standing on the sidewalk of

⁶ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁷ The location and path of the injury are consistent with Cuellar's position.

Parthenia Street with two or three other men. Elvia drove around the area for two to three more minutes. When she returned to Parthenia Street, the street was blocked off by police cars and her husband was on the ground. Elvia did not hear any gunfire and did not witness the officer involved shooting.

Both Cuellar and Barajas were armed with .40 caliber Glock, Model 22, semiautomatic pistols. This firearm has a maximum capacity of 16 total rounds. After the incident, Cuellar's duty weapon was loaded with 13 rounds and Barajas' duty weapon was loaded with 14 rounds. Five discharged cartridge casings were recovered at the scene. An analysis of the casings determined that three were fired from Cuellar's firearm and two were fired from Barajas' firearm.

Chaidez was armed with a 9mm Smith and Wesson, Model 659, semiautomatic pistol. The firearm was unloaded at the time it was recovered and did not have a magazine. Investigators located a single live 9mm cartridge near Chaidez' body. A partial DNA profile obtained from the pistol was consistent with the DNA profile obtained from Chaidez. Gunshot residue was present on Chaidez' hands, indicating that he may have discharged a firearm, been in the vicinity of a discharged firearm, or touched a surface with gunshot residue on it.⁸

Three beer cans were found near the area where Chaidez was standing with a group of men, and a single beer can was found near the graffiti-covered truck parked on the south side of the street. DNA analysis was conducted on the beer cans. Chaidez' DNA matched the DNA removed from a beer can found where Chaidez was seen standing with the group of men. DNA recovered from the other three beer cans was either inconclusive or was from an unknown male.⁹

The officers' car was not equipped with a digital in-car video system, but both Cuellar and Barajas were wearing body worn video (BWV). Neither officer turned on the BWV prior to the officer involved shooting, but both activated the system shortly after it. Barajas' activation was close in time to the time of the incident and visually captured the period of time encompassing the officer involved shooting. The camera captured Barajas as she exited her vehicle and took cover behind a truck. However, Barajas' BWV camera was positioned on her belt and, consequently, the graffiti-covered truck blocked the view of Chaidez' actions. After the officer involved shooting, the camera captured Barajas as she moved toward Chaidez. Cuellar's activation did not visually capture the incident, but did capture his approach and rendering Chaidez' weapon safe.

Compelled Statements

Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. Officers Barajas and Cuellar were interviewed regarding their actions during this officer involved shooting by detectives from FID. The compelled interviews occurred on September 16,

⁸ Additionally, Roberto R [REDACTED], Chaidez' father-in-law, told investigators Chaidez owned a gun.

⁹ Chaidez purchased three beers from a liquor store at approximately 3:00 p.m.

2015 and September 17, 2015, respectively. 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 ordered Barajas and Cuellar to do so in the present case.

Barajas and Cuellar, like any individual, possesses a 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, supra, at 284-285*. Because the LAPD ordered the officers to answer questions which might expose them to criminal liability, the LAPD compelled them to participate in the interviews. The effect of this legal compulsion is that Barajas' and Cuellar's statements cannot be used against them in a criminal proceeding, nor can any material derived from the compelled interviews be used against them. *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 the compelled statements are part of the officers' police personnel files, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

Officer Barajas' compelled statement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Officer Cuellar's compelled statement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION

“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.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577.

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 505. The People have the burden of proving beyond a reasonable doubt that a person did not act in lawful self-defense or defense of another. If the People fail to meet this burden, a jury must find the defendant not guilty. CALCRIM No. 3470.

The evidence examined in this investigation shows Barajas and Cuellar were told a man with a gun wearing beige was "right around the corner." Barajas and Cuellar drove north and then turned eastbound onto Parthenia Street. [REDACTED]

[REDACTED] As they drove towards him, Chaidez looked at them and proceeded to walk eastbound away from them, hiding behind a graffiti-covered truck.

Barajas and Cuellar exited their vehicle. Barajas took a position between the police vehicle and the graffiti-covered truck, and Cuellar positioned himself using the rear passenger's side of the truck as cover. [REDACTED]

[REDACTED] Barajas fired two rounds from her duty weapon. [REDACTED] Cuellar fired three rounds from his duty weapon.

We conclude that Officer Patricia Barajas was placed in reasonable fear for her life by Florencio Chaidez' actions and acted in lawful self-defense at the time she fired her duty weapon. We further find that Officer Brady Cuellar was placed in reasonable fear for Officer Barajas' life by Florencio Chaidez' actions and acted in lawful defense of another at the time he fired his duty weapon. We are closing our file and will take no further action in this matter.