

Officer Involved Shooting of Howard Partee

Los Angeles Police Department

**Sergeant Paul Rodriguez, #31016, Officer Kevin Gaines, #40210
Officer Guillermo De La Riva, #38681, Officer Martin Beck, #40199
Officer Alvaro Governale, #40360, Officer Joshua Medina, #38401
Officer Manuel Esqueda, #36209, Officer Victor Cruz, #38623
Officer Jonathon Hanania, #379356**

Los Angeles County Probation Department

**Deputy Probation Officer Albert Nishi, #493303
Deputy Probation Officer Jae Chong, #433516**

J.S.I.D. File #13-0455



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 9, 2018

MEMORANDUM

TO: COMMANDER ALAN HAMILTON
Los Angeles Police Department
Force Investigation Division
100 W. 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 Howard Partee
J.S.I.D. File #13-0455
F.I.D. File #F052-13

DATE: July 9, 2018

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office has completed its review of the June 25, 2013, non-fatal shooting of Howard Partee by Los Angeles Police Department (LAPD) Sergeant Paul Rodriguez, Officers Guillermo De La Riva, Kevin Gaines, Martin Beck, Alvaro Governale, Manuel Esqueda, Joshua Medina, Victor Cruz, Jonathon Hanania and Deputy Probation Officers (DPO) Albert Nishi and Jae Chong. We have determined that the involved officers use of deadly force was objectively reasonable and performed in lawful self-defense and in defense of others. Further, the evidence establishes that Partee took his own life and that none of the force used by the officers involved in this incident caused his death.

The following analysis is based upon reports, photographs, recordings and transcribed interviews prepared by LAPD Force Investigation Division (FID). JSID was notified of this shooting at 8:11 a.m. on June 26, 2013. The District Attorney Response Team responded to the location of the shooting where they received a briefing and "walk-through" of the scene. The compelled statements of all the shooting officers were considered for purpose of this analysis.

FACTUAL ANALYSIS

On June 25, 2013, DPOs Jae Chong and Albert Nishi along with LAPD Sergeant Paul Rodriguez and LAPD Officers Guillermo De La Riva, Kevin Gaines, Martin Beck, Alvaro Governale, Manuel Esqueda, Joshua Medina, Victor Cruz and Jonathon Hanania traveled to [REDACTED] East 117th Street to conduct a probation check on probationer Lanica Mathis.¹ The team arrived at the location at approximately 6:58 p.m.

¹ The location is comprised of two residences, a front house and a rear house. [REDACTED] East 117th is the front house, [REDACTED] East 117th is the rear house.



Photos of [REDACTED] and [REDACTED] East 117th Street.

DPO Chong contacted Ms. Lisa W [REDACTED] at [REDACTED] East 117th Street. White told Chong that she was Mathis' aunt and that Mathis no longer lived at the residence. White admitted officers to search for Mathis. Mathis was not located inside [REDACTED] East 117th Street.

The team then turned their attention to the front house. De La Riva and Hanania knocked on the front door to [REDACTED] East 117th Street and identified themselves as LAPD officers. After nearly two minutes of consistent knocking, Wade Richardson opened the front door. He and occupants Timothy Larkin, Kelian Faulkner and Shelnae Thomas exited the house.

A protective sweep was conducted of the residence. During the course of the protective sweep, the officers repeatedly verbally identified themselves and stated that they were conducting a probation compliance check. They also ordered any hidden occupants to come out of hiding. No additional occupants were initially discovered.

During the initial protective sweep, officers identified a covered opening in the bathroom ceiling that led to the attic. Unbeknownst to the officers, Partee was hiding in the attic. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



Photo of the Ladder Leading to the Attic Access Hole

[REDACTED]



Photo of Partee's Rifle Adjacent to Attic Opening

[REDACTED]
[REDACTED]
[REDACTED] The barrel of the handgun was approximately six inches from De La Riva's face when Partee fired, striking De La Riva in the face just below his left eye.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



[REDACTED]



Continuation of De La Riva's Blood Trail

[REDACTED]. At 7:28:22 Sergeant Rodriguez broadcast over the radio that shots were fired and that an officer needed help. He also inquired if any officers were injured and was told by Gaines that De La Riva had been shot. [REDACTED] He radioed for an ambulance at 7:30:22.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] At approximately 8:00 p.m., members of the Special Weapons and Tactics Team (SWAT) arrived and took control of the scene. Over the course of the next eleven hours, SWAT officers contained the scene and unsuccessfully attempted to make telephone contact with Partee. They also deployed tear gas, but were unable to compel Partee to surrender.

² Cover fire or covering fire is defined as "Fire used to protect troops when they are within range of enemy small arms." Department of Defense Dictionary of Military and Associated Terms, April 2008.

At approximately 7:15 a.m. on June 26, SWAT members entered the house and eventually the attic where they discovered Partee deceased with a self-inflicted gunshot wound.

Autopsy

On June 30, 2013, Deputy Medical Examiner J. Daniel Augustine M.D. conducted an autopsy on Partee's remains. He noted two gunshot wounds to Partee's body. A non-fatal wound to Partee's right forearm³ and a self-inflicted fatal wound to Partee's right temple. Augustine noted soot and abrasion in the fatal wound and ascribed the manner of death as suicide. Toxicology results showed the presence of marijuana, cocaine and methamphetamine in Partee's blood.

Firearms Recovered

Three operable firearms were discovered in the attic in proximity to Partee's body: a Glock, Model 22, .40 caliber, semiautomatic pistol; a Baretta Model 92F, 9mm, semiautomatic pistol; and an Interstate Arms 7.62 x 39mm, semiautomatic rifle. Both pistols were loaded. The rifle was not loaded; however live ammunition was located next to the rifle.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears that the person claiming the right of self-defense actually and reasonably believed that he was in imminent danger of great bodily injury or death. *People v. Randle* (2005) 35 Cal.4th 987, 994; *People v. Mercer* (1962) 210 Cal.App.2d 153, 161.

In protecting himself or another, a person may use that amount of 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 imminent injury. CALCRIM No. 3470.

In California, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard. *People v. Mehserle*, (2012) 206 Cal. App. 4th 1125, 1146 (holding that California law "follows the objective 'reasonable person' standard—the trier of fact is required to evaluate the conduct of a reasonable person in the defendant's position [citations omitted] . . . the jury should consider all relevant circumstances surrounding the defendant's conduct. This enables the jury 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.")

"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

³ This wound was a through-and-through gunshot wound. Because no projectile associated with this wound was recovered during the autopsy, it cannot be determined from what firearm this bullet was fired. It also cannot be determined which officer fired this bullet.

the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

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.

CONCLUSION

When the police arrived to conduct a probation compliance check, the occupants of the front house delayed opening the door for a period of time. This delay may have been designed to allow Partee to secret himself inside the attic to avoid contact with the police. By the time the police were admitted to the front residence, Partee was hiding in the attic with three operable firearms at his disposal. Despite repeated announcements from the police officers, Partee remained hidden in the attic during the protective sweep of the front residence.

When officer De La Riva poked his head into the attic opening, Partee shot him in the face from point blank range. [REDACTED]

One of the bullets fired by the officers, either from the bathroom below the opening to the attic, or from outside the house, appears to have impacted Partee’s right arm. Based on the deadly threat posed by Partee’s action of shooting De La Riva in the face, the responsive use of deadly force was objectively reasonable and thus, lawful.

Finally, none of the officers’ responsive gunshots caused Partee’s death. Partee killed himself by shooting himself in the right temple. Thus, the officers are not legally responsible for Partee’s death.

For these reasons, we conclude that the use of deadly force by LAPD Sergeant Paul Rodriguez, and LAPD Officers Guillermo De La Riva, Kevin Gaines, Martin Beck, Alvaro Governale, Manuel Esqueda, Joshua Medina, Victor Cruz, Jonathon Hanania and Deputy Probation Officers Albert Nishi and Jae Chong was legally justified in self-defense and in the defense of others. We further find that none of these individuals caused Partee’s death. We are closing our file and will take no further action in this matter.