

**Officer Involved Shooting of Juan Avila  
Long Beach Police Department**

**Officer Ivan Garcia, #10792  
Officer Benjamin Hearst, #10766  
Officer Nicholas Becerra, #10943  
Officer Elieser Domingo, #10782**

**J.S.I.D. File #17-0217**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**August 16, 2018**

## **MEMORANDUM**

TO: CHIEF ROBERT G. LUNA  
Long Beach Police Department  
400 W. Broadway Avenue  
Long Beach, California 90802

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

SUBJECT: Officer Involved Shooting of Juan Avila  
J.S.I.D. File #17-0217  
L.B.P.D. File #17-24061

DATE: August 16, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 25, 2017, fatal shooting of Juan Avila by Long Beach Police Department (LBPD) Officers Ivan Garcia, Benjamin Hearst, Nicholas Becerra and Elieser Domingo. It is our conclusion that the officers acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on April 25, 2017, at approximately 8:14 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene and interviewed witnesses to the shooting.

The following analysis is based on reports submitted to this office by LBPD Homicide Detectives Shea Robertson and Oscar Valenzuela. The officers provided written reports which were considered as part of this analysis.

### **FACTUAL ANALYSIS**

On April 25, 2017, at approximately 5:53 a.m., Officers Nicholas Becerra and Joshua Castro were working uniformed patrol when they received a Lo-Jack hit for a Honda Accord. The officers tracked the Lo-Jack signal and located the stolen vehicle at a car wash on Paramount Boulevard in the City of Long Beach. The officers observed a male, later identified as Juan Avila, washing the Honda. The officers exited their vehicle, pointed their service weapons at Avila and ordered him to raise his hands and get on the ground. Avila looked at the officers, entered the Honda and fled eastbound on 67th Street. Becerra and Castro pursued Avila in their patrol vehicle with overhead lights and sirens activated. Avila refused to stop and a vehicle pursuit ensued.

The vehicle pursuit lasted approximately 38 minutes. Shortly after the pursuit began, officers observed a front seat passenger, later identified as David L. Avila ran multiple stop lights and stop signs as he traveled on surface streets, passing motorists and pedestrians. Avila drove

recklessly, at times, reaching speeds 25 miles per hour over the speed limit. Avila nearly collided with a motorcyclist and a motorist while driving erratically through the cities of Long Beach, Paramount, Lakewood and Bellflower. Avila also traveled on several freeways, weaving in and out of traffic and swerving across multiple lanes of traffic in an effort to evade the police.

While Avila was fleeing westbound on Alondra Boulevard, LBPD Officers Holden Deaton and Benjamin Hearst observed Avila shifting around in the driver's seat, as if reaching for something on the front passenger side of the vehicle.<sup>1</sup> At 6:29 a.m., Hearst broadcast over the police radio, "The driver keeps reaching for something." After turning north onto Lakewood Boulevard, Hearst observed Avila toss a black object from the front passenger window with his right hand. Deaton also observed a black object thrown from the passenger window then bounce into the parking lot of a car dealership. When the black object landed on the ground, Deaton and Hearst observed sparks fly from it, leading them to believe it was metal and possibly a firearm. At 6:33 a.m., Hearst broadcast, "They just threw something out there on the right," and, "Whatever they threw out, that was metal and it sparked when it hit the ground."

LBPD uniformed Officer Michael Barth heard the broadcast and responded to the car dealership on the southeast corner of Lakewood Boulevard and Gardendale Street.<sup>2</sup> Barth searched along the sidewalk and east curb line of Lakewood Boulevard without any success. Barth then searched the dealership lot. Barth located a .38 revolver lying between two vehicles, facing Lakewood Boulevard. At 6:39 a.m., Barth broadcast, "They threw out a gun."



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<sup>1</sup> Deaton and Hearst became the lead unit when Becerra and Castro were blocked by civilian traffic.

<sup>2</sup> At 6:36 a.m., Hearst broadcast that the object was thrown near a car dealership.



Close up of revolver

The revolver had scuff marks on its wooden handle and front barrel. The cylinder appeared to be partially opened and it was loaded with four cartridges. Two identical cartridges were located on the ground near the revolver. Surveillance video recovered from the car dealership captured the revolver being thrown from the Honda, bouncing on the ground and sliding out of view in the parking lot. Surveillance video also shows Barth locating the weapon.

While Barth was searching for the weapon, the pursuit passed by the dealership again, traveling east on Gardendale Street, crossing Lakewood Boulevard. Gardendale Street changes names to Foster Road in the City of Bellflower and terminates east of Woodruff Boulevard. Avila continued fleeing eastbound toward the dead end. Foster Road comes to an end at a gated storage facility. Avila drove to the dead end and immediately turned the Honda around to face the pursuing patrol cars that had come to a stop.



The storage facility at the end of Foster Road





The position of the patrol cars at the end of the pursuit

#### Statement of Officer Ivan Garcia

Garcia stopped his patrol car to the left of Deaton and Hearst at the end of Foster Road. Garcia exited his car and stood on the driver's side of the car. Garcia walked to the front of his car as Avila turned the Honda around and faced the officers. Garcia and other officers gave Avila multiple orders to stop the vehicle. Avila ignored the orders and drove toward Garcia on the north side of Foster Road. Garcia retreated toward his driver's door. A light pole positioned approximately five feet from the trunk of Garcia's car, prevented Avila from escaping along the driver's side of Garcia's car without striking Garcia or his vehicle.

Avila drove the Honda directly toward Garcia and the front of his patrol car. Avila looked directly at Garcia as Garcia yelled "Stop!" multiple times. Garcia retreated backwards as Avila began to drive around the front of Garcia's patrol car toward Garcia's position. Garcia feared that at any moment, Avila would accelerate toward him at a high rate of speed. After seeing Avila's lack of regard for the safety of others during the pursuit, Garcia believed Avila would use his vehicle to run over him and escape. Garcia believed that if Avila were allowed to continue the pursuit, it would result in someone's death or serious bodily injury. Garcia fired one round at Avila. Avila ducked his head as if he was avoiding the gunfire. Avila continued toward Garcia. In fear for his life, Garcia fired six additional rounds until the Honda came to a complete stop.<sup>3</sup>

#### Statement of Officer Benjamin Hearst

Avila showed no intention of surrendering when he approached the dead end on Foster Road. Deaton stopped their patrol vehicle when Avila reached the end of the street. Hearst exited the car, drew his service weapon and took cover behind the front passenger door. Hearst repeatedly yelled, "Stop the car!" Avila turned the Honda around to face the officers (west). Avila looked

<sup>3</sup> An examination of Garcia's service weapon determined that he fired a total of 11 rounds.

around for several seconds before driving slowly toward the officers and their patrol cars. There was a gap, too narrow for the Honda to pass, between Hearst and the office building to his right. Hearst repositioned himself at the trunk of his vehicle for better cover and to avoid crossfire. Avila appeared determined to get away and Hearst feared Avila would attempt to assault officers with his vehicle in order to escape. Hearst was also concerned that it was a Tuesday morning. As students arrived to school, there would be an increase in pedestrian and vehicle traffic. Hearst feared if the pursuit continued, Avila's reckless driving would cause a collision with a motorist or pedestrian and cause great bodily injury or death.

Hearst and other officers continued to order Avila to stop the car. Instead, Avila drove toward Garcia who was standing by his patrol car on the north side of Foster Road. Avila did not attempt to stop and Hearst believed he was going to run over Garcia and kill him in an attempt to flee. Hearst pointed his service weapon at Avila and observed David L. reclined in the front passenger seat below the window. Avila raised his left arm to shield his face as he drove directly at Garcia, who was standing on the driver's side of his patrol car. In fear for Garcia's life, Hearst fired two rounds from his service weapon. The Honda continued advancing toward Garcia and Hearst fired two more rounds. Avila continued to shield his face and drive toward Garcia. Hearst fired two more rounds. At that time, the Honda hit the north curb and came to a stop.<sup>4</sup>

#### Statement of Officer Nicholas Becerra

Becerra stopped his patrol vehicle behind Deaton and Hearst. Becerra exited his car and walked to the front passenger side door of Deaton's vehicle. Becerra drew his service weapon and pointed it at Avila. Avila turned the Honda around at the dead end and slowly drove toward the stopped police cars. Becerra and other officers repeatedly yelled for Avila to stop his car and exit. Avila looked toward the officers and appeared to make eye contact with Becerra. Avila raised one of his arms in front of his face and continued driving toward the officers. It appeared to Becerra that Avila blocked his face because he knew the officers would fire at him if he continued toward them. Becerra repositioned himself at the trunk of Deaton's car as Avila drove westbound toward the officers and the parked patrol cars.

Becerra observed Garcia standing at his patrol car's driver's door. Garcia was giving Avila commands to stop the Honda. Avila ignored Garcia and drove toward Garcia on the north side of Foster Road. There was not enough room for Avila to drive around Garcia and his vehicle without striking him. As Avila continued toward Garcia, Becerra feared Avila may run him over while attempting to flee. Becerra was also concerned for the lives of pedestrians and other motorists if Avila were to escape and the pursuit continue. Becerra fired his service weapon at Avila four times to end the immediate threat to Garcia's life.<sup>5</sup>

#### Statement of Officer Elieser Domingo

The Honda turned around at the dead end and traveled toward the officers and parked patrol cars. Domingo exited his vehicle and drew his service weapon. Domingo pointed his weapon at the Honda and ordered Avila to stop the vehicle. Avila ignored the orders and slowly drove the Honda forward while looking at the officers. Avila closed the distance to 15 feet from Deaton

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<sup>4</sup> An examination of Hearst's service weapon determined that he fired a total of six rounds.

<sup>5</sup> An examination of Becerra's service weapon determined that he fired a total of four rounds.

and Hearst's patrol car. It did not appear to Domingo that Avila intended to surrender. At that time of the day, if Avila made it back onto the streets and continued to drive at high speeds and in an erratic manner, Domingo believed Avila would pose a substantial risk of death and great bodily injury to pedestrians and other motorists.

Avila then drove the Honda toward Garcia's vehicle on the north side of the street. Avila attempted to drive through a small space between the driver's side of Garcia's car and a light pole. Domingo observed Garcia standing outside his vehicle at the driver's door, south of the light pole. Garcia was pointing his service weapon at Avila and shouting orders.

Garcia began to retreat backwards as Avila slowly continued forward toward him. Avila would have struck Garcia if he were able to continue advancing. At that time, Avila put his right forearm over his forehead, protecting his face, as he prepared to "ram" Garcia out of the way in order to escape and avoid custody. In fear for Garcia's life, Domingo fired five to six rounds until the Honda came to a stop.<sup>6</sup>

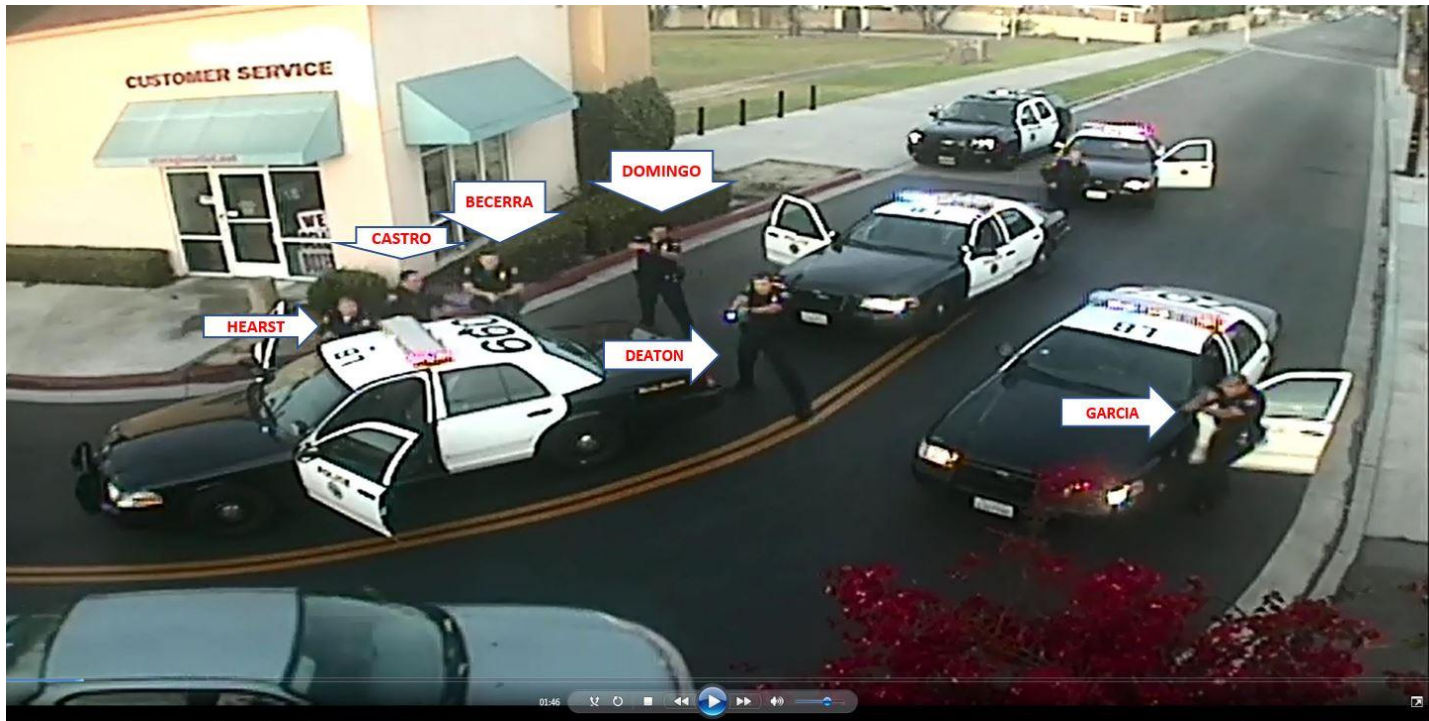
#### Storage Facility Surveillance Camera Footage

The following photographs are still shots captured from an exterior surveillance camera at the storage facility. They show the position of the involved officers as the Honda advances toward them. There is no audio so it was not possible to determine when the shots were fired.

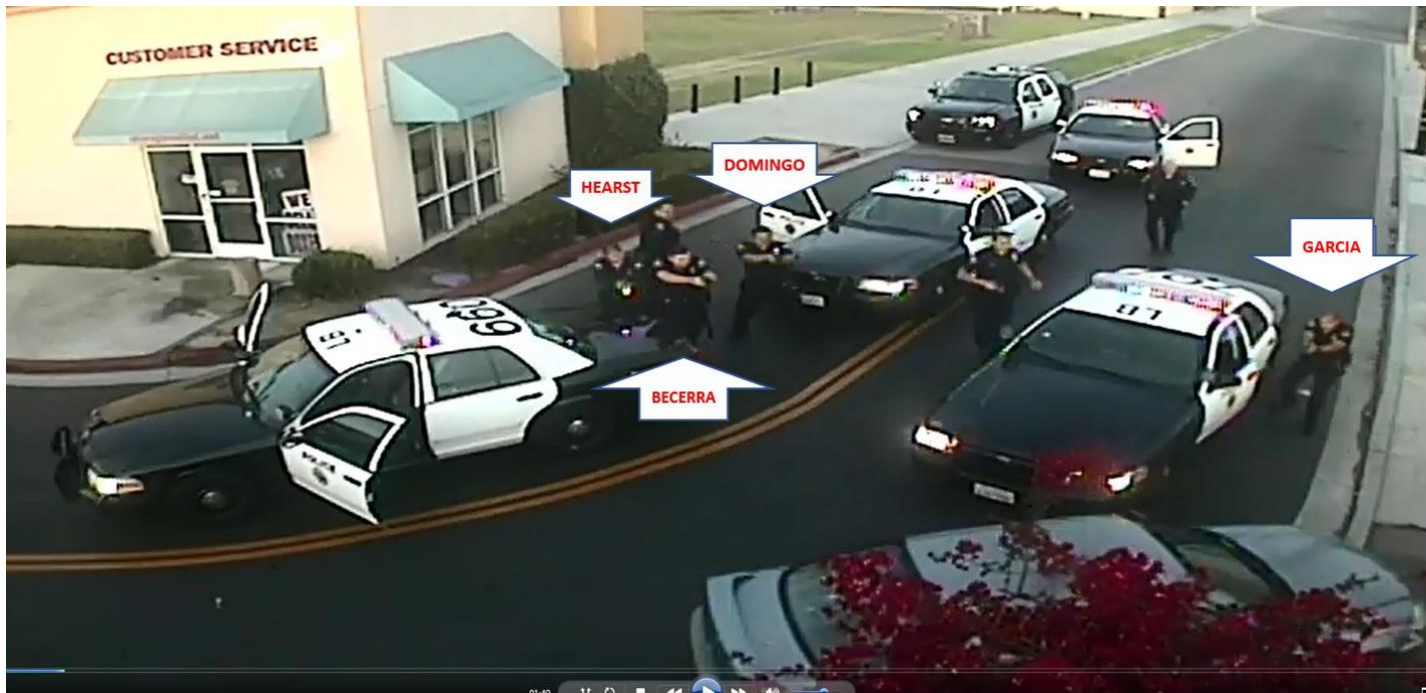


<sup>6</sup> An examination of Domingo's service weapon determined that he fired a total of seven rounds.





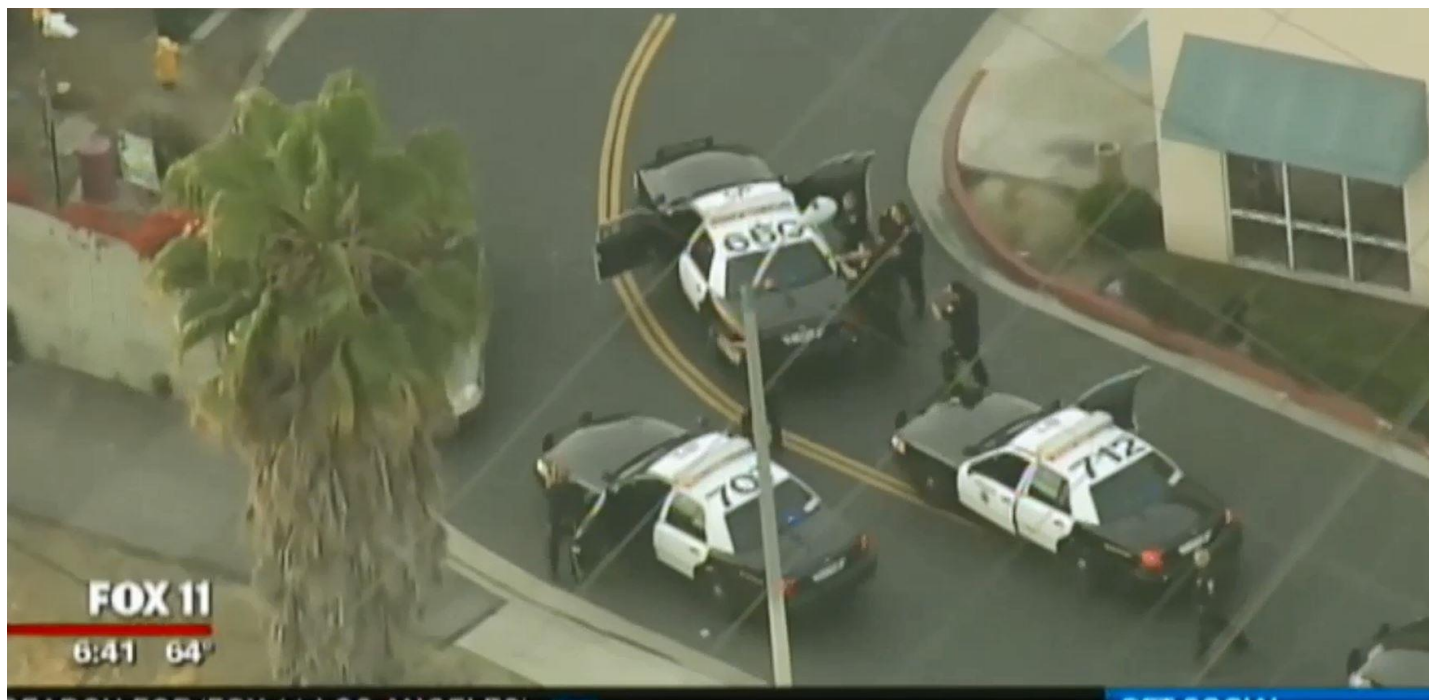
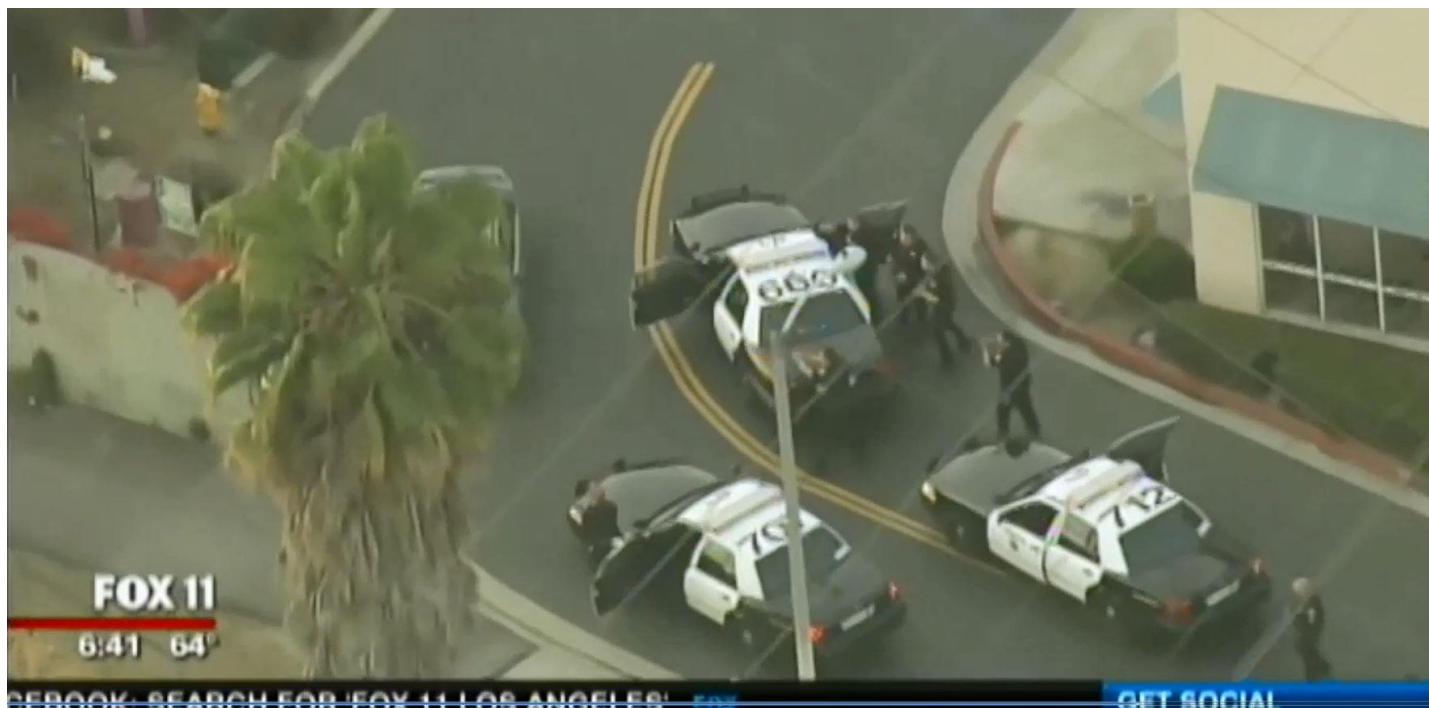




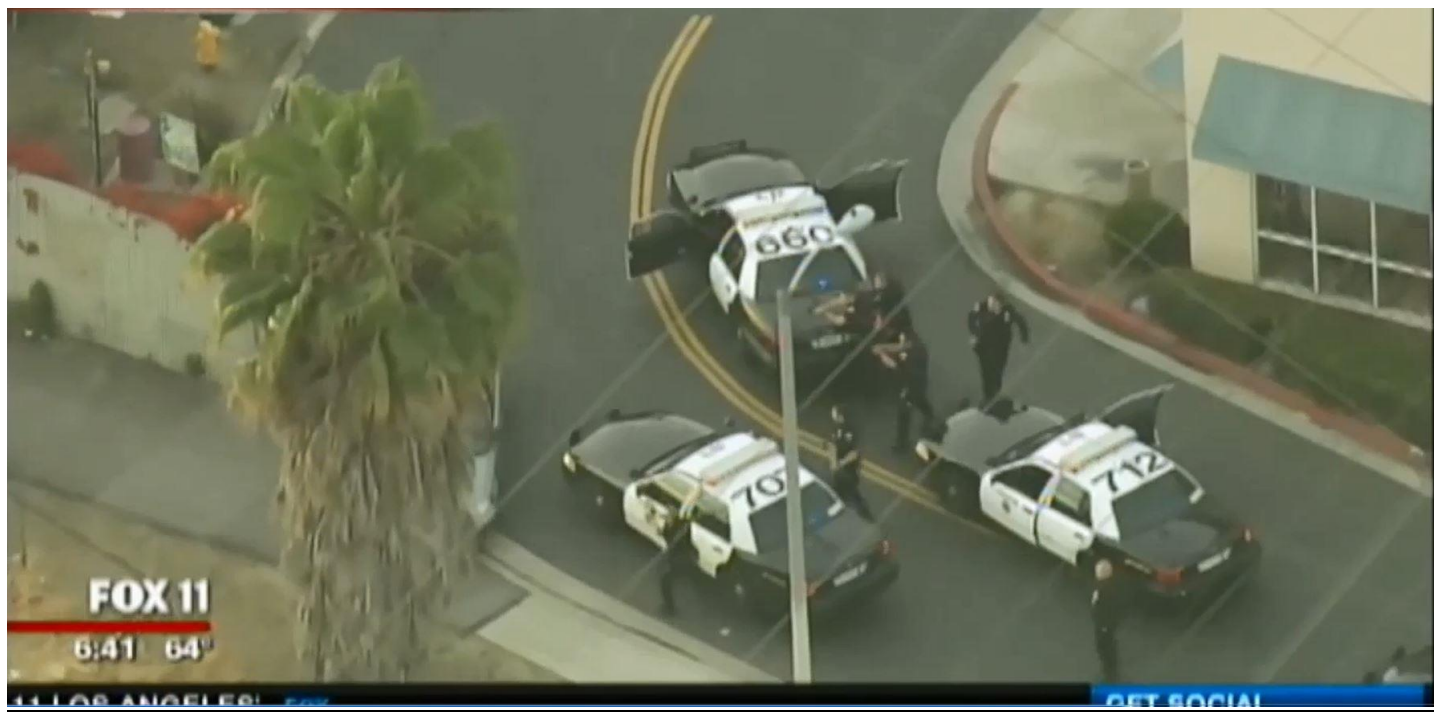
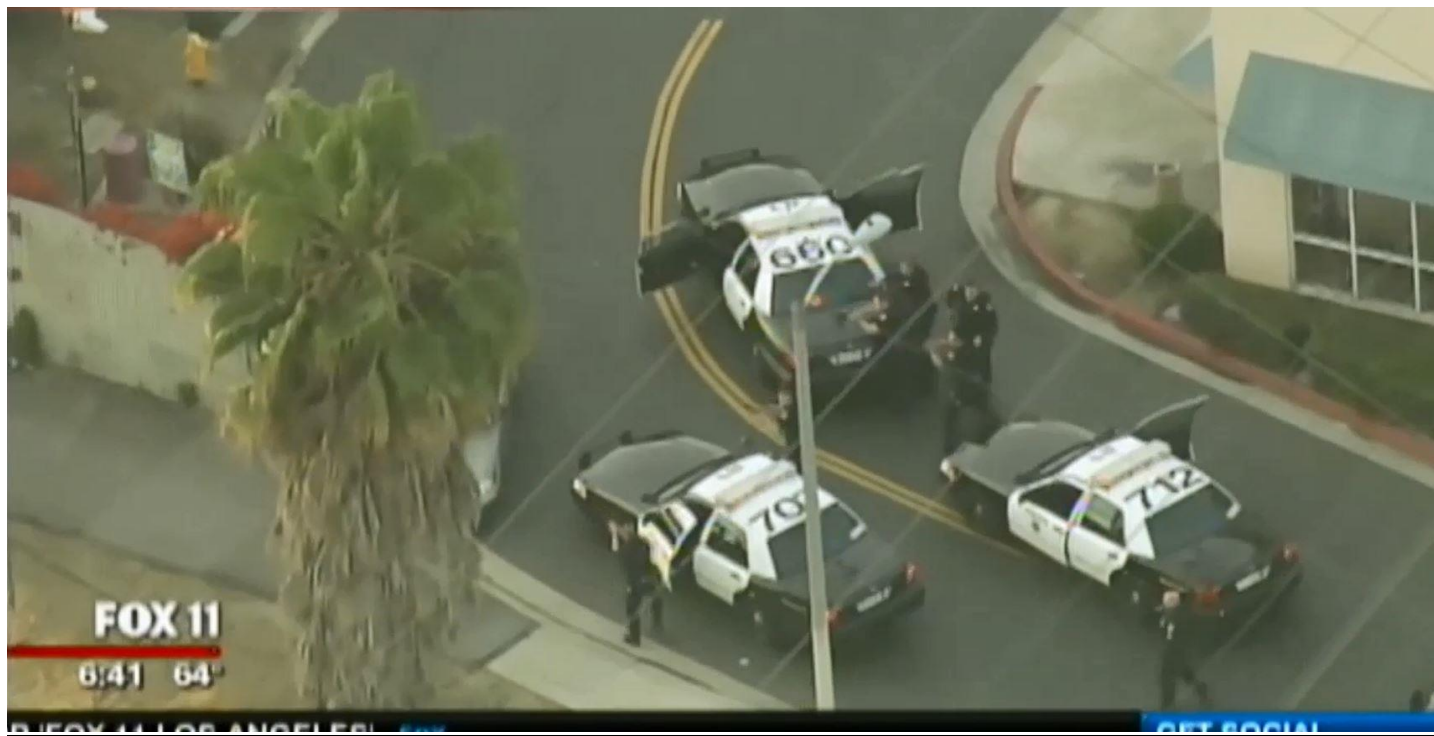
The location where the Honda came to a stop

### Television News Footage

Several local television stations had news helicopters following the police pursuit. The following are still shots captured from footage taken from Fox 11 News showing the Honda advancing toward Garcia. These still shots also show the light pole behind Garcia.











### Statement of David L.

Avila picked up David L. in the Honda on April 24, 2017, at approximately 10:00 p.m.<sup>7</sup> They drove around in the Honda that evening and eventually fell asleep in the car at a park in the City of Paramount. David L. was awakened by the sound of police sirens. Avila was driving the Honda and one or two marked patrol cars were following them with their lights and sirens activated. Avila was driving at “regular” speeds. At one point during the pursuit, Avila threw an unknown object out the passenger window.

Approximately ten minutes after David L. awakened, Avila drove down a dead-end street. During those ten minutes, David L. and Avila never spoke to each other. At the dead end, David L. told Avila to stop the car. Avila reversed and turned the Honda around and slowed down. David L. observed a line of police cars preventing their escape. Uniformed officers stood outside the patrol cars pointing their weapons in their direction.

David L. believed Avila may have told him that he was going to keep driving. David L. told Avila to stop two more times. Instead, Avila continued forward toward the police cars. David L. stated that Avila could not have passed through the police block without hitting a police car or an officer. As Avila continued forward, David L. put both hands in the air to let the officers know he was surrendering. Officers ordered Avila to “stop the car and shut it off,” but Avila ignored them and continued forward. At that time, officers fired approximately fifteen rounds at them. David L. ducked down in his seat and placed his hands over his head until the gunshots stopped. When David L. was asked what he thought was going to happen when Avila continued driving toward the officers, David L. replied that he thought the police would shoot at them.

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<sup>7</sup> The Honda was stolen from Los Angeles on April 25, 2017. The registered owner heard a noise coming from outside her home at 4:30 a.m. She looked out her window and observed her car driving away from her residence. A shaved key was recovered from the ignition of the Honda.

## Autopsy Report

Los Angeles County Deputy Medical Examiner Ogbonna Chinwah, M.D., performed a postmortem examination of Avila on April 27, 2017. Chinwah ascribed Avila's death to multiple gunshot wounds. Toxicology tests revealed the presence of methamphetamine in Avila's blood.<sup>8</sup>

## **LEGAL ANALYSIS**

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 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 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 these circumstances. The right to self defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580.

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal. App.4<sup>th</sup> 1077, 1102.

The use of deadly force by an officer to end a dangerous high-speed vehicle pursuit that poses a grave public safety risk and threatens the lives of innocent bystanders does not violate the Fourth Amendment right against unreasonable seizures. *Plumhoff v. Rickard* (2014) 134 S.Ct 2012, 2020-2022; *Scott v. Harris* (2009) 550 U.S. 372, 384-386.

## **CONCLUSION**

The evidence examined shows that police located Avila with a vehicle that had been stolen two hours earlier. Upon seeing the police at the car wash, Avila entered the stolen Honda and led the police on a high-speed, dangerous pursuit. The pursuit lasted 38 minutes. During that time, Avila ran multiple stop lights and stop signs. He narrowly missed colliding with two innocent motorists. He drove erratically on the freeway, crossing multiple lanes of traffic in an attempt to evade the pursuing patrol cars. It was 6:30 a.m. on a weekday, a time when children are

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<sup>8</sup> A glass pipe used to ingest methamphetamine was recovered between the Honda's right front seat and door jam. A substance suspected to be methamphetamine was recovered from Avila's right front jacket pocket.

walking to school and motorists driving to work. Avila's erratic and perilous driving posed a substantial risk of death or serious injury to the public.

The pursuit came to an end when Avila drove onto a dead-end street. Avila, however, was still unwilling to surrender. Instead of stopping his car as the officers ordered, and David L. requested, Avila turned the Honda around and faced the officers standing outside their parked patrol cars, pointing their service weapons at him. Even then, Avila refused to surrender. He scanned the officers and cars stopped in front of him, then drove the Honda to the north side of the street toward Garcia.

The officers stated that there was not enough room for the Honda to pass down the driver's side of Garcia's patrol car without striking Garcia. David L., who was seated in the front passenger seat of the Honda, and had a direct view of the north side of the street, agreed. As the United States Supreme Court held in *Graham*, the question of whether an officer used reasonable force must be viewed from the perspective of a reasonable officer at the scene, who is forced to make "split second judgments" under "tense, uncertain, and rapidly evolving" events. Based on the observations of the officers and David L., as well as the video obtained from the storage facility and news helicopters, it was reasonable for the officers to conclude that if Avila were allowed to continue driving down the driver's side of Garcia's vehicle, he would strike Garcia, seriously injuring or killing him.

Avila's own behavior shows that he believed that his driving would result in the use of deadly force against him. Hearst, Becerra and Domingo observed Avila raise his arm to shield his face while heading toward Garcia, as if he knew gunfire was imminent due to his actions. David L. also told investigators, that he expected the police to shoot at them when Avila continued driving toward the officers.

Avila's actions demonstrated that he was determined to break through the line of police cars and officers on Foster Road rather than be arrested. Avila attempted to flee down the driver's side of Garcia's patrol car, despite the fact that Garcia was in his path. Avila's actions placed Garcia in reasonable fear for his life, and placed Hearst, Becerra and Domingo in fear for their fellow officer's life, and they responded with reasonable deadly force. In addition, the officers used reasonable deadly force in order to end a vehicle pursuit that posed a substantial risk of death or serious bodily injury to the public.

We conclude that Officers Ivan Garcia, Benjamin Hearst, Nicholas Becerra and Elieser Domingo acted in lawful self-defense and defense of others when they used deadly force against Juan Avila. We are therefore closing our file and will take no further action in this matter.