

**Officer Involved Shooting of Barry Prak
Long Beach Police Department**

Officer Patrick Dougherty, #5923

J.S.I.D. File #16-0327



JACKIE LACEY

District Attorney

Justice System Integrity Division

September 20, 2017

MEMORANDUM

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

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

SUBJECT: Officer Involved Shooting of Barry Prak
J.S.I.D. File #16-0327
L.B.P.D. DR #16-41030

DATE: September 20, 2017

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office has completed its review of the June 28, 2016, fatal shooting of Barry Prak by Long Beach Police Officer Patrick Dougherty. We have determined that Officer Dougherty acted in lawful self-defense and the defense of others when he used deadly force against Prak.

The following analysis is based upon a series of reports prepared by the Long Beach Police Department (LBPD). The District Attorney Command Center was notified of this shooting at 12:00 p.m. on June 28, 2016. The District Attorney Response Team (DART) responded to the location of the shooting where they received a briefing and "walk-through" of the scene.

FACTUAL ANALYSIS

On June 28, 2016, at approximately 9:00 a.m., a United States Marshal Fugitive Task Force attempted to arrest Barry Prak on an outstanding arrest warrant for attempted murder in Los Angeles County case number NA103879. Detective Pirooz from the task force identified Prak as he walked alone along a sidewalk in Long Beach. Prak was wearing shorts and a T-shirt. Pirooz and another officer attempted to detain Prak, but Prak fled several blocks on foot to an apartment building located at [REDACTED] East 15th Street. Prak ran up a staircase and, just prior to entering Unit A, Pirooz unsuccessfully attempted to tase Prak.

Pirooz ordered Prak to surrender several times, but Prak barricaded himself inside the apartment. He told Pirooz, "Fuck you guys. I hope you guys all die!" At approximately 9:30 a.m., the LBPD SWAT team responded to the location. Shortly thereafter, Vannak S [REDACTED] and his cousin exited Unit A without incident and were questioned by officers.¹ Prak was the only remaining person inside the residence. Vannak S [REDACTED] told the police Prak ran into the apartment and told him that he was "hot," which Vannak S [REDACTED] understood as meaning Prak was wanted by the police.

¹ Unit A is a two-bedroom apartment located on the second floor, shared by Vannak S [REDACTED] and his sister, Vannary S [REDACTED]. Vannary S [REDACTED] was Prak's friend and had given him permission to stay at her apartment.

Vannak S█ told police that there were no guns inside the apartment, but there were knives located in his bedroom and the kitchen.

SWAT Officer Dougherty arrived at the location and was notified of the circumstances leading up to the barricade. Specifically, Dougherty was told that Prak was an Asian Boys gang member, a fugitive wanted for a shooting,² and possibly armed and dangerous. Dougherty and other SWAT officers, including Officer Vong, took a position near the alleyway to the rear of the apartment complex. From the alleyway, there was a direct view of the front door of Unit A, the only apartment located atop the staircase. Vong was assigned a weapon which fired less lethal rubber rounds. Officer Parcels and his K9 partner, Credo, were another less lethal option. Dougherty was Vong's lethal cover, and was armed with an assault rifle. As Dougherty and Vong took cover along a cinderblock wall, Vong took a kneeling position and Dougherty stood directly behind and slightly on top of him.

During the standoff, Prak engaged in limited dialogue with the police by speaking to them through the open windows of the apartment. After the other two occupants exited, Prak yelled that he would exit in "three hours." Another time he said that he wanted the media present when he surrendered. He also announced that he would exit in "ten minutes" shortly before he exited the apartment. Police officers were able to see Prak through the open windows and, along with Dougherty and Vong, observed that Prak had changed from a T-shirt into a baggy sweatshirt.

At approximately 11:01 a.m., two hours after Pirooz's initial contact with Prak, he exited the apartment wearing shorts and a baggy long-sleeved sweatshirt concealing his forearms. Prak hesitantly followed commands, and only partially raised his hands, such that his elbows were bent at 90 degrees, and his upper arms were almost parallel to the ground.

Prak walked down the stairs. Dougherty began giving Prak commands to walk toward him and to place his hands higher in the air. Prak ignored the commands from Dougherty to place his hands higher in the air. Dougherty was unable to see if Prak was concealing any weapons in his waistband. When Prak was approximately 20-25 feet from SWAT officers, Vong ordered Prak to get on his hands and knees and to crawl toward him. Prak slowly complied with these orders. As he got closer to the SWAT team, he was given several orders to get on his stomach. Prak suddenly took his hands off the ground, stood up, and lunged toward officers as he manipulated an object in the sleeve of his sweatshirt. Parcels deployed Credo, who bit and took hold of Prak's left arm as Prak continued to move toward the officers. Vong fired a total of four less lethal 40mm rubber rounds at Prak as he advanced toward officers and removed a knife from his sleeve. Unfazed by both Credo and the less lethal rounds, Prak continued his forward movement toward the SWAT team. Dougherty saw that Prak was swinging a knife left and right in front of his body as he advanced closer. When Prak was within five feet of Dougherty and Vong, Dougherty believed that they were in imminent danger of suffering serious bodily injury or death. Concerned for their safety, Dougherty fired five rounds at Prak's chest in quick succession. Prak was struck four times and dropped a few feet in front of Dougherty and Vong with his arms underneath his body. Credo was inadvertently struck by one round and died.

² Related to the same outstanding arrest warrant in NA103879.

A neighbor recorded the incident with her cell phone, which corroborates both law enforcement and civilian accounts of what happened. Dougherty and Vong are not visible in the recording. Their position is just outside the frame of the camera lens to the bottom right.



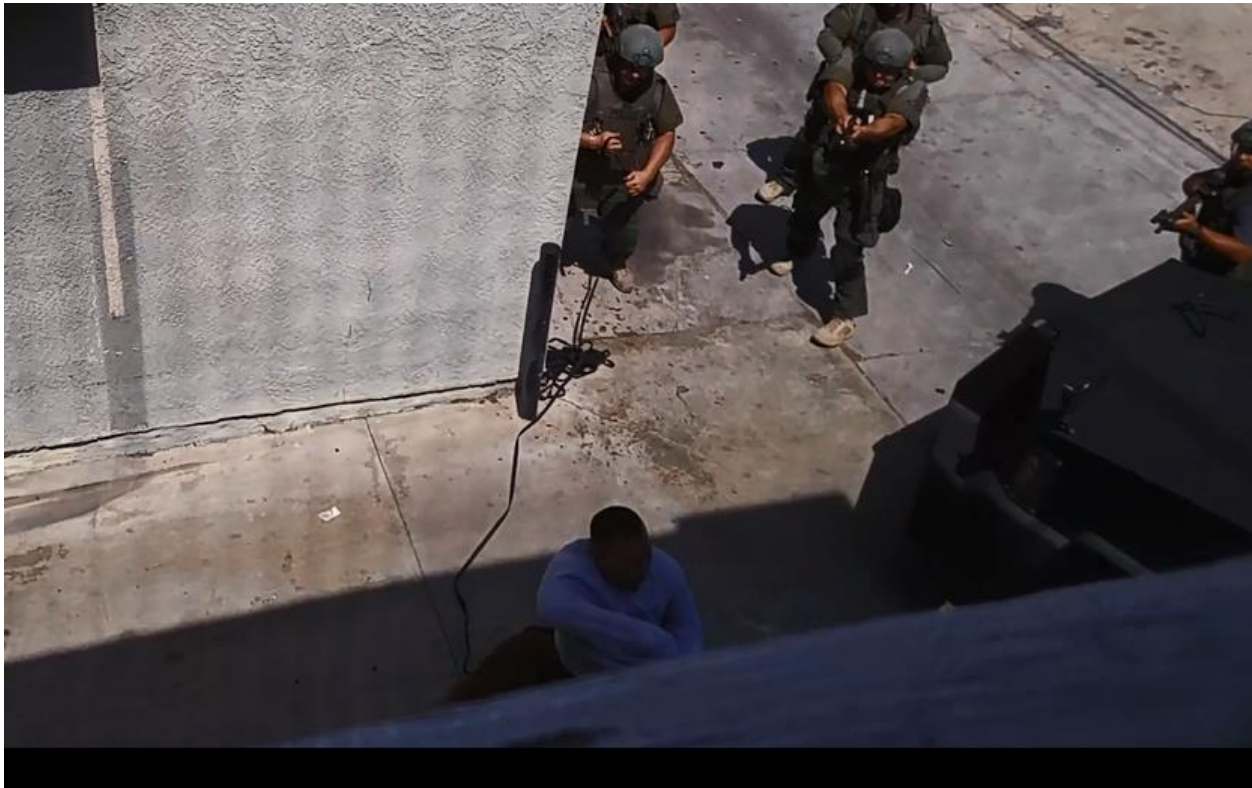
Prak just before he stood up and lunged toward officers. Dougherty and Vong are located in the vicinity where the arrow is pointed.



Prak standing and grabbing at his right sleeve.



Credo's first contact with Prak prior to Vong firing less lethal rounds.



Prak advancing on Dougherty and Vong.



Prak moving toward Vong and Dougherty just prior to shots being fired.

From the moment Prak jumped to his feet, to when Dougherty fired shots, approximately three seconds elapsed.

Other Evidence

After the shooting, officers handcuffed Prak and applied first-aid to reduce his bleeding. One of the certified EMT's of the LBPD SWAT team saw Prak's knife on the ground almost directly under Prak's body. Prak was transported to Saint Mary's Medical Center where he was pronounced dead.



Knife used by Prak.

On July 4, 2016, Deputy Medical Examiner Matthew Miller, M.D., performed an autopsy on Prak, and determined the cause of death to be due to multiple gunshot wounds. Prak suffered three gunshot wounds to his chest and one to his left arm. Toxicology tests did not detect the presence of any controlled substances in his blood.

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. 505.

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 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, 589.

CONCLUSION

The evidence examined in this investigation shows Prak fled from police officers knowing that he was wanted. Prak's communications with the police through the open windows of the apartment were limited and his "surrender" prolonged, as he walked out of the apartment nearly two hours after his initial encounter with Pirooz.

Prak's actions prior to exiting the apartment show that he planned and prepared to use force against the officers under the guise of a surrender. It was a warm summer day in Long Beach

and Prak was wearing shorts and a T-shirt when Pirooz first saw him. During the standoff, Prak changed into a baggy sweatshirt inside the apartment. Prak concealed a steak knife inside the sleeve of his sweatshirt before walking out of the apartment. Despite several police commands to raise his hands higher, Prak continued to keep his upper arms parallel to the ground. This kept the knife along his forearm and close to his hands, so that he could readily remove it to use as a weapon against the officers.

Prak slowly and discriminately followed certain police commands while ignoring others. Prak went down on his knees and crawled toward officers as instructed, but ignored Vong's repeated commands to lay on his stomach. Suddenly, Prak jumped to his feet, and lunged toward Dougherty and Vong as he retrieved the steak knife. Parcels released Credo, who made contact with Prak before he continued to advance to Dougherty and Vong. Vong fired four less lethal rounds at Prak almost simultaneous to when he saw Prak produce a knife. Dougherty fired at Prak only when he saw Prak close to within a few feet swinging the knife.

Prak waited until what appeared to be the most opportune time when he was closest to officers to charge toward them and retrieve the steak knife from his sleeve. Prak continued to advance on the officers, while wielding the knife even after the less lethal force had been deployed. Prak's continued efforts to move toward officers, despite the less lethal force used against him, was evidence of his clear intent to use the knife to cause great bodily injury or death to the police officers. Dougherty's decision to fire at Prak was objectively reasonable under the circumstances, in order to end the deadly threat posed by Prak. Accordingly, Dougherty was justified in using lethal force.

For these reasons, we conclude that Officer Dougherty's use of deadly force was legally justified in self-defense and in defense of Officer Vong. We are closing our file and will take no further action in this matter.