

**Officer Involved Shooting of Nickey Bautista
Monterey Park Police Department**

Officer Steve Giovanazzi, #375

J.S.I.D. File #16-0093



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 30, 2017

MEMORANDUM

TO: CHIEF JIM SMITH
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Nickey Bautista
J.S.I.D. File #16-0093
M.P.P.D. File #16-8072
L.A.S.D. File #016-03140-0285-055

DATE: October 30, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 2, 2016, non-fatal shooting of Nickey Bautista by Monterey Park Police Department (MPPD) Officer Steve Giovanazzi. It is our conclusion that Officer Giovanazzi acted in lawful self-defense, defense of others and in an effort to arrest a dangerous fleeing felon.

The District Attorney's Command Center was notified of the shooting on March 2, 2016, at approximately 10:33 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports submitted to this office by the MPPD and LASD Homicide Bureau Detectives Frederick Reynolds and Eduardo Aguirre. Officer Giovanazzi provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

Nickey Bautista was identified by MPPD detectives as the suspect in an attempted murder that took place in the parking lot of a 7-Eleven on February 28, 2016. Bautista shot an unarmed man in the stomach with a revolver. The crime was captured on surveillance video. On March 1, 2016, the Los Angeles County District Attorney's Office filed a felony case for warrant, charging Bautista with premeditated attempted murder. It was also alleged that Bautista

committed the crime for the benefit of a criminal street gang.¹ Bautista was on active parole at the time.

On the morning of March 2, 2016, GPS coordinates from Bautista's cell phone showed that it was in the vicinity of 383 Vancouver Avenue, in an unincorporated area of Los Angeles County. At approximately 8:15 a.m., MPPD detectives responded to the location in plain clothes and driving unmarked units to conduct surveillance. Detectives Rebecca Minor and Gonzalo Gabriel were parked on Vancouver Avenue north of the residence.²

Approximately an hour after arriving, Minor and Gabriel observed Bautista riding a bicycle on Vancouver Avenue south of their vehicle. The detectives advised the surrounding surveillance units and had them converge on their location. Minor and Gabriel exited the car, pointed their service weapons at Bautista and identified themselves as police officers. Bautista was ordered to get on the ground and show his hands. Bautista ignored the detectives and fled south on Vancouver Avenue on his bicycle. The detectives gave chase on foot with Gabriel on the east side of the street and Minor on the west side. Bautista looked over his shoulder and removed a large revolver from his waistband area and pointed it at Minor. Minor and Gabriel took cover behind parked vehicles as Bautista disappeared eastbound on 4th Street. As Minor and Gabriel ran back to their vehicle, they heard one gunshot coming from 4th Street.

Uniformed MPPD Officer Steve Giovanazzi was on duty in a marked black and white patrol car. Giovanazzi positioned himself on Woods Avenue, several blocks north of the target location, in the event that the surveillance team needed his support. Giovanazzi was monitoring the detectives' radio channel and heard that Bautista had been spotted by Minor and Gabriel. Giovanazzi responded south on Woods Avenue toward 4th Street. Initially, detectives mistakenly broadcast that Bautista had fled west on 4th Street. As Giovanazzi turned west onto 4th Street, he observed Bautista riding his bike toward him with a large handgun in his right hand. Bautista raised the handgun and fired one shot directly at Giovanazzi.³ Giovanazzi leaned over in the front seat to get out of the line of fire. Giovanazzi watched Bautista ride past the driver's side of his patrol car.

Giovanazzi sat back in the driver's seat, observed Bautista turn south onto Woods Avenue and went in pursuit. Bautista was approximately 50 yards ahead of Giovanazzi once he turned south onto Woods Avenue. Bautista still had the gun in his right hand. In that moment, Giovanazzi realized that Bautista was not going to surrender and intended to "see it through" and fight it out with the police. Giovanazzi closed the distance to Bautista and drew his service weapon. Giovanazzi believed that if he did not stop Bautista he would shoot at the next officer that crossed his path and "maybe that cop wouldn't be as lucky as I was." Giovanazzi also feared that Bautista would take another shot at him. Giovanazzi pointed his service weapon at Bautista and fired eleven times, striking him in the back. As Giovanazzi was firing his service weapon,

¹ Case number GA098266.

² Vancouver Avenue is a cul-de-sac situated to the north of 4th Street.

³ Giovanazzi did not know whether the round struck his patrol vehicle.

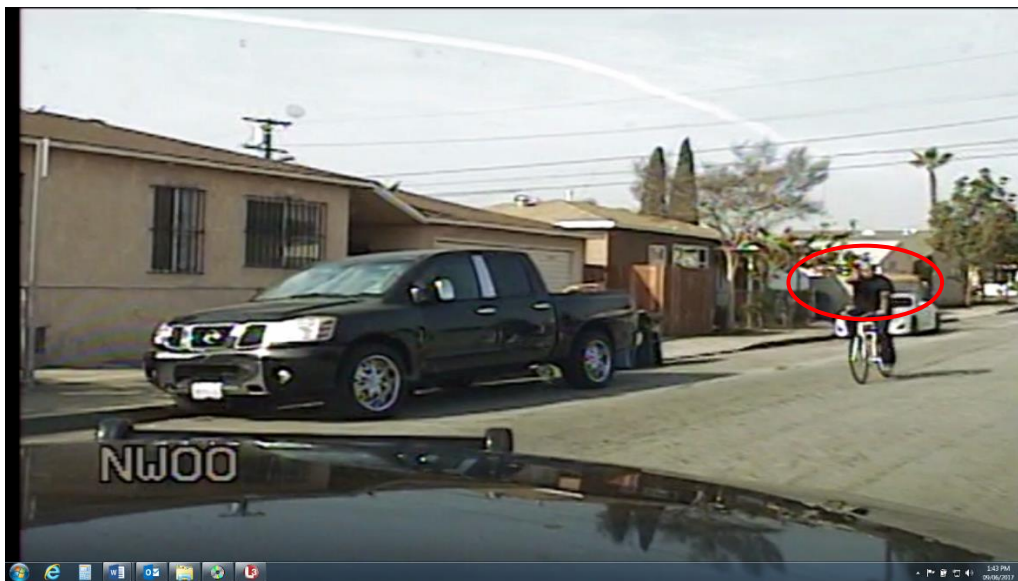
Bautista turned toward the patrol car and fired one round at Giovanazzi. Bautista lost control of the bicycle and fell to the ground in front of the patrol car.

Giovanazzi believed he had struck Bautista with gunfire, but was not certain. He could not clearly see Bautista in front of the patrol car and did not know whether he maintained possession of the gun. Giovanazzi believed that Bautista still posed a threat to his safety. Giovanazzi feared that Bautista would shoot at him over the top of the hood or fire at him from beneath the car if he were to exit the patrol car. Rather than stop the vehicle, Giovanazzi continued forward and drove over Bautista.

Giovanazzi and several of the detectives took Bautista into custody at that time. Personnel from the Los Angeles County Fire Department treated Bautista at the scene and transported him to Los Angeles County USC Medical Center where he was treated for a gunshot wound to the back. Bautista did not sustain any injuries as a result of the patrol car running over him.

Officer Giovanazzi's In-Car Dashcam Video

Giovanazzi's in-car dashcam was activated when he responded to assist the undercover detectives on Vancouver Avenue. At 4th Street, Giovanazzi slows down and makes a right turn. As Giovanazzi is about to complete the turn, Bautista can be seen riding a bicycle eastbound toward the patrol vehicle. Bautista raises his right hand, points his gun at the windshield of the patrol car and fires one round. The gunshot can be heard on the video. Giovanazzi comes to a stop as Bautista rides out of view down the driver's side of the patrol car.



Still shot captured from the dashcam video showing Bautista firing his gun at Giovanazzi on 4th Street.

Giovanazzi reverses the patrol car and turns southbound onto Woods Avenue. Bautista can be seen in the distance riding southbound from the patrol car. Giovanazzi closes the distance to approximately ten to 15 feet and slows down. Multiple gunshots are heard as Giovanazzi fires at Bautista. During the gunfire, Bautista removes his right hand from the handlebar revealing a

large handgun in his hand. Bautista turns toward the patrol car and fires one round at the vehicle. Bautista loses his balance and falls from the bicycle. The handgun can be seen flying from his hand and sliding across the street. Bautista lands in front of the patrol car and attempts to rise to his hands and knees. The patrol car continues forward and drives over Bautista while travelling between nine and 13 miles per hour.⁴ The patrol car comes to a stop and a male voice is heard requesting medics over the police radio.



Still shot showing the gun in Bautista's right hand on Woods Avenue.



Still shot showing Bautista pointing the gun at Giovanazzi on Woods Avenue.

⁴ The patrol car's speed was obtained from the in-car dashcam video.

Recovered Firearm



Bautista's firearm was a Ruger .357 magnum caliber revolver with a six-inch barrel. The cylinder contained two fired cartridge cases and four live cartridges.

Ballistic Evidence



Giovanazzi's patrol vehicle had eleven bullet holes to the driver's side windshield consistent with Giovanazzi firing from inside the car. The lower driver's side windshield had two bullet impacts consistent with being struck by gunfire from outside the patrol car.

There was an additional bullet hole on the rocker panel below the right rear passenger door of the patrol car. The right rear passenger tire was flat and a fired bullet fragment was recovered inside the tire. Due to its condition, the caliber could not be determined from the bullet fragment.

Statement of Nickey Bautista

Nickey Bautista waived his Miranda rights and agreed to speak with investigators. Bautista stated that he saw Minor and Gabriel jump from their vehicle armed with handguns. Bautista did not hear them identify themselves as police officers and believed they were going to rob him.

Bautista admitted being armed with a revolver after initially denying it. Bautista fled onto 4th Street and observed a black and white police vehicle. Bautista shot at the patrol car and believed the round struck the hood. Bautista said he shot at Giovanazzi because he wanted the police to kill him because he was going to spend the rest of his life in prison.⁵ The patrol car followed him onto Woods Avenue and Giovanazzi fired at him. The patrol car ran Bautista over after he fell from the bicycle. Bautista did not recall whether he fired at Giovanazzi on Woods Avenue.

Criminal Charges

On April 4, 2016, an amended felony complaint was filed in case GA098266. The charges of attempted murder of a peace officer (Giovanazzi), assault with a firearm against a peace officer (Minor) and felon in possession of a firearm were added to the complaint. On April 18, 2017, Bautista pled guilty to attempted voluntary manslaughter and felon in possession of a firearm arising from the 7-Eleven shooting, and two charges of assault with a firearm against a peace officer and felon in possession of a firearm arising from the March 2, 2016 shooting. Bautista also admitted several gun use allegations and criminal street gang allegations. On May 24, 2017, Bautista was sentenced to 57 years and four months in state prison.

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 (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.

Penal Code section 835a provides that any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

California law permits the use of deadly force by police officers when necessary to effect the arrest of a person who has committed a forcible and atrocious felony which threatens death or seriously bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470, 477-484; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; *Tennessee v. Garner* (1985) 105 S.Ct. 1694. Examples of forcible and atrocious crimes are murder, mayhem, rape and robbery. *Ceballos*, supra, 12 Cal.3d at 478. In such crimes, “from their atrocity and violence human life [or personal safety from great harm] either is, or is presumed to be, in peril.” *Id.*

CONCLUSION

The evidence examined shows that on March 2, 2016, Bautista had been charged with premeditated attempted murder and was armed with a loaded .357 magnum revolver. When Giovanazzi encountered Bautista on 4th Street, Bautista deliberately fired his weapon at the officer. By Bautista’s own account, he wanted to provoke Giovanazzi into returning fire and

⁵ During the interview, Bautista admitted shooting the victim at the 7-Eleven. Bautista was aware that there were surveillance cameras at the convenience store and knew the police were looking for him.

killing him to avoid a lengthy prison sentence for the 7-Eleven shooting. The gunshot narrowly missed Giovanazzi, striking the driver's side windshield. Instead of surrendering, Bautista maintained possession of the revolver and continued to flee. Giovanazzi believed that Bautista would shoot it out with him and any police officer that crossed his path in his quest to escape. Bautista's actions placed Giovanazzi in reasonable fear for his life and the lives of his fellow officers, and he responded with reasonable deadly force. Giovanazzi's fears were substantiated when Bautista returned fire.

After Bautista fell from his bike, Giovanazzi could not see Bautista clearly and was unaware whether he was still armed. Giovanazzi feared that Bautista would continue shooting at him if he were to stop the patrol car. Bautista was still mobile as shown in the dashcam video. Under the circumstances, it was reasonable for Giovanazzi to believe that Bautista still posed a deadly threat and his decision to run over him with his patrol car was justified. Bautista suffered no injuries from the patrol car running over him.

Finally, MPPD detectives and Giovanazzi were attempting to apprehend an individual charged with the crime of premeditated attempted murder with the use of a firearm. When Bautista fled from detectives and Giovanazzi he was a dangerous fleeing felon. It was reasonable for Giovanazzi to use deadly force in order to affect his arrest of Bautista under the circumstances.

We conclude that Officer Steve Giovanazzi acted in lawful self-defense, defense of others and in lawful pursuit of a dangerous fleeing felon when he used deadly force against Bautista. We are therefore closing our file and will take no further action in this matter.