

**Officer Involved Shooting of Christopher Davis
Santa Monica Police Department**

**Officer Michael Chun, #3597
Officer Kevin Bacarella, #3924**

J.S.I.D. File #17-0384



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 30, 2018

MEMORANDUM

TO: CHIEF CYNTHIA RENAUD
Santa Monica Police Department
333 Olympic Drive
Santa Monica, California 90401

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

SUBJECT: Officer Involved Shooting of Christopher Davis
J.S.I.D. File #17-0384
S.M.P.D. File #17-0095733

DATE: October 30, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 4, 2017, non-fatal shooting of Christopher Davis by Santa Monica Police Department (SMPD) Officers Michael Chun and Kevin Bacarella. We have determined that Officers Chun and Bacarella acted in lawful self-defense and the defense of each other when they fired their duty weapons.

The District Attorney Command Center was notified of this shooting on August 4, 2017, at approximately 9:10 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Detective Jose Rodriguez.

The following analysis is based on reports and other materials including audio-recorded interviews of witnesses, 9-1-1 calls, radio transmissions, photographs, Body Worn Camera (BWC) recordings, and patrol vehicle dash camera videos submitted by SMPD. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On August 4, 2017, at approximately 6:28 p.m., Julie K. and Jorge Chan were walking along the 100 block of Strand Street, just west of Main Street in Santa Monica. Julie K. and Chan had been in a dating relationship for several years. Julie K. had dated another man, Christopher Davis, for approximately a month, but ended their relationship a few days prior. Davis approached Julie K. and Chan as they walked along Strand Street, and Davis shot Chan three times with a handgun. Chan collapsed in the street and died. Davis fled the scene on foot. He walked eastbound on Strand Street, southbound on 2nd Street, and northbound on Hollister Avenue toward Hotchkiss Park, which borders the east side of 3rd Street.

Several witnesses called 9-1-1 and reported the shooting. Callers provided a description of the shooter and his last known direction of travel. The first responding officers observed Chan lying

wounded in the street, near spent cartridge casings, and confirmed over the radio that a shooting had occurred.

SMPD officers promptly responded in search of the shooter. At approximately 6:31 p.m., Officer Kevin Bacarella drove from the police station with his partner, Officer Michael Chun, seated in the front passenger seat of a distinctly marked patrol vehicle.¹ At approximately 6:33 p.m., Officer Greg Kapp was driving southbound on 3rd Street in a marked patrol vehicle when he saw Davis on the east sidewalk adjacent to Hotchkiss Park. As Kapp slowed his vehicle, he saw Davis holding a handgun in his hand. Davis raised the handgun and pointed it at Kapp, who ducked and accelerated southbound on 3rd Street.

Bacarella and Chun were also heading southbound on 3rd Street when they observed Kapp's police vehicle stop abruptly on 3rd Street just south of the intersection at Hollister Avenue. Bacarella stopped the patrol vehicle as he approached the south end of the park, just before the intersection at Hollister Avenue, as the police radio broadcast that the shooting suspect was walking northbound at Hotchkiss Park. Bacarella and Chun both saw Davis standing to their left, east of their vehicle, on the sidewalk adjacent to the park.



Still photograph from the dash camera video when Bacarella stopped before the intersection.

Statement of Officer Chun

When Chun saw Davis, he believed him to be the shooting suspect as he matched the description that had been broadcast over the radio. Chun did not see Davis holding a gun, but believed he was armed. Chun was concerned about his safety due to Davis' proximity to the patrol vehicle, and he immediately exited the passenger side. After Chun exited the patrol vehicle, Bacarella drove the vehicle forward, and Chun saw Davis appear by the hood of a white sedan parked along the east curb. Davis pointed his handgun at Chun and fired two rounds before Chun fired one round from his service weapon at Davis, and then ran for cover to the rear of a van parked

¹ Bacarella was dressed in his police uniform. Chun was dressed in plain clothes with his badge worn around his neck and visible over his t-shirt.

behind the white sedan. After Chun took cover behind the van, he heard what he believed to be Davis firing two more shots either at him or Bacarella. Chun then saw Bacarella sprinting along the west side of the street and heard Bacarella yelling commands to Davis, who was laying on the ground. Chun and other SMPD officers approached Davis as he lay face down in the street with his handgun next to his body. Chun moved Davis' handgun away from his reach before officers handcuffed him.

Statement of Officer Bacarella

Bacarella saw Davis on the sidewalk holding a handgun. Bacarella believed Davis made eye contact with him, and saw Davis begin to raise the handgun. Bacarella announced Davis' presence, Chun exited the passenger side door of the patrol vehicle, and Bacarella accelerated several feet in a southwest direction to avoid being shot.

As Bacarella stopped the patrol vehicle and exited, he heard what he believed to be a "gunfight" between Davis and Chun, and he feared for Chun's safety. When Bacarella exited the patrol vehicle, he saw Davis standing on the pavement in front of the white sedan with both hands on a handgun looking in Chun's direction, who was standing behind a van. Bacarella fired his service weapon at Davis and moved for cover toward a car on the west sidewalk. Bacarella saw Davis turn toward him and begin to point his gun at Bacarella. Bacarella fired another round at Davis, who immediately fell to the ground.²



Still photograph from BWC video as officers approached Davis to handcuff him before moving the handgun.

Statements of Civilian Witnesses

A married couple, who were standing inside Hotchkiss Park, saw Davis holding a handgun to his side, and observed several marked police vehicles driving on 3rd Street. As the police vehicles drove by Davis, the married couple, along with various other civilian witnesses, heard Davis yell,

² Bacarella believed he fired a total of three rounds, but the number of casings at the scene indicate he fired two rounds.

“Don’t do it! Don’t do it!” Then, the married couple saw Davis raise his handgun at a police vehicle and fire several rounds, as the couple ran for cover.

Other Evidence

Approximately nine seconds elapsed from the time Davis fired the first round to when Bacarella fired the final round.³ Officers recovered Davis’ 9mm handgun, which was loaded with one round in the chamber and two rounds in the magazine. In his pants pockets, Davis possessed an additional magazine loaded with five rounds, several additional 9mm rounds, and a folding pocketknife.

Davis remained conscious at the scene and spoke to officers and medical personnel. He was transported to the hospital, and survived a non-life-threatening gunshot wound to his right shoulder. In case number SA096198, Davis is charged with the murder of Jorge Chan, and the attempted murders of Officers Chun and Bacarella.

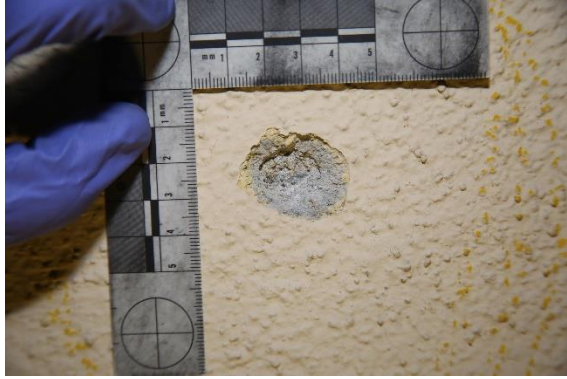
SMPD personnel recovered four cartridge casings from the middle of 3rd Street and the east sidewalk with head stamps matching the ammunition recovered from Davis’ gun and his pockets. The casings are consistent with Davis firing four rounds at this scene. SMPD personnel also recovered three cartridge casings from the scene of Chan’s murder, which also matched the ammunition recovered from Davis’ gun and his pockets at the time of his arrest.

SMPD personnel observed one possible bullet strike on the north wall of the apartment complex located at the southwest corner of 3rd Street and Hollister Avenue, and recovered a fired bullet on the west crosswalk.



Still photograph from dash camera video showing position of patrol vehicle when Bacarella exited. The red circle depicts the area of the possible bullet strike.

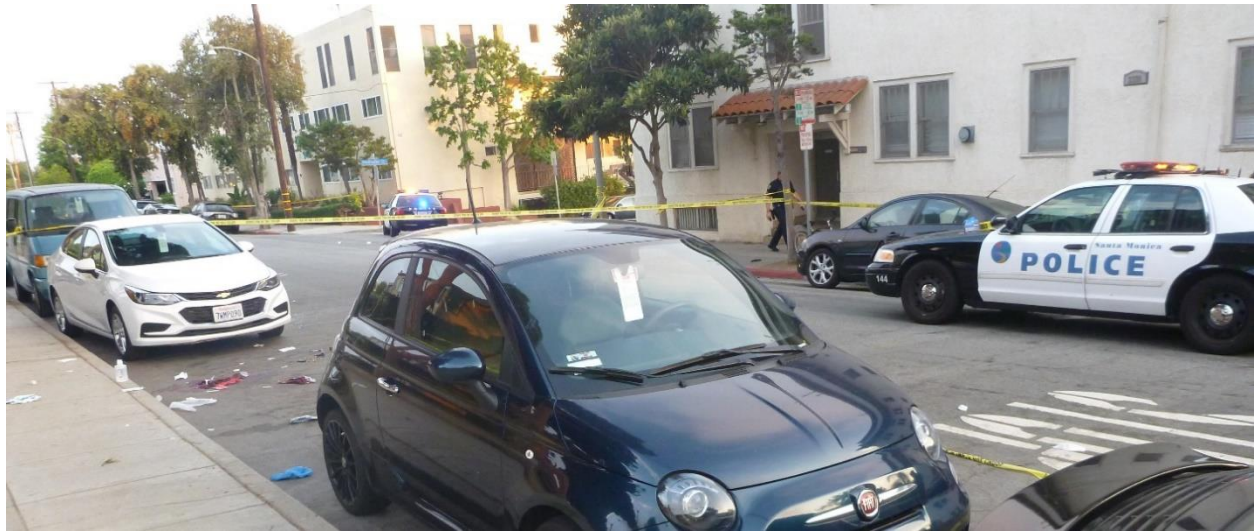
³ A total of seven gunshots are heard from video recordings of Bacarella and Chun’s patrol vehicle.



Possible bullet strike.



Fired bullet on the west crosswalk.



3rd Street depicting the white sedan parked along the east curb, and the building on the southwest corner with a possible bullet strike.



Davis' gun and a loose round at the scene.

LEGAL ANALYSIS

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, which enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "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.

Bacarella and Chun deployed from the station in response to police communications regarding a shooting that had taken place at Main Street and Strand Street. They obtained a description of an armed man leaving the scene on foot, and they were advised that a gunshot victim was confirmed at the shooting scene before they encountered Davis near Hotchkiss Park.

When Chun first saw Davis, he believed Davis was the shooting suspect. Davis fired two rounds at Chun, who had just exited a marked police vehicle and was wearing a police badge around his neck, before Chun fired back and moved for cover. Davis fired an additional two rounds, one of which likely struck the building directly behind where Bacarella parked the police vehicle before exiting. Bacarella fired a total of two rounds at Davis, striking him in the shoulder and stopping the actual, immediate, and deadly threat Davis posed to both Bacarella and Chun.

Chun and Bacarella were in imminent danger of being killed or suffering great bodily injury when they used deadly force.

CONCLUSION

We conclude that Officer Chun and Officer Bacarella's use of deadly force was legally justified in self-defense and the defense of each other. We are closing our file and will take no further action in this matter.