

Officer Involved Shooting of Tyler Brehm

Los Angeles Police Department

Detective Craig Marquez #32104

Officer Kevin Cotter #31890

J.S.I.D. File #11-0785



JACKIE LACEY

District Attorney

Justice System Integrity Division

January 6, 2016

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
Force Investigation Division
Los Angeles Police Department
100 West First Street, Suite 431
Los Angeles, California 90012

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

RE: Officer Involved Shooting of Tyler Brehm
J.S.I.D. File #11-0785
F.I.D. File #110-11

DATE: January 6, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 9, 2011, fatal shooting of Tyler Brehm by Los Angeles Police Department (LAPD) Officer Kevin Cotter and Hollywood Area Detective Craig Marquez. We have concluded that Officer Cotter and Detective Marquez acted lawfully in self-defense and in the defense of others and that they used reasonable force in an attempt to arrest Brehm, a dangerous felon.

The District Attorney Command Center was notified of the shooting at approximately 10:50 a.m. on December 9, 2011. The District Attorney Response Team [REDACTED] responded to the location. They were given a briefing of the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based upon investigative reports, analyzed evidence reports, firearms analysis reports, photographic evidence and witness statements submitted to this office by LAPD's Force Investigation Division. The compelled statements of Officer Cotter and Detective Marquez were considered in this analysis.

FACTUAL ANALYSIS

On December 9, 2011, at approximately 10:17 a.m., Tyler Brehm walked into the middle of Vine Street in Hollywood armed with a .40 caliber semi-automatic pistol in his right hand. Micah Williams and Joshua Brown were standing on the northwest corner of Vine Street and De Longpre Avenue near a McDonald's restaurant.¹ As Brehm began walking north on Vine Street, he fired three rounds in the direction of Williams and Brown. Neither Williams nor Brown were struck by the gunfire. They immediately fled north into the McDonald's parking lot and hid behind parked cars.

¹ McDonald's is located at 1413 Vine Street.

After shooting at Williams and Brown, Brehm continued to walk north on Vine Street. Ramy Casicas was driving northbound on Vine Street from De Longpre Avenue. Brehm fired at Casicas, hitting his Chevrolet Trailblazer. Casicas was not injured and continued driving northbound past Brehm.

Brehm continued walking north and approached a silver Mercedes Benz that was parked along the west curb of Vine Street just south of a driveway leading to the parking structure for Bank of America.² John Atterberry had just exited the bank and was seated in the driver's seat of the Mercedes. Brehm fired three rounds at Atterberry through the front windshield and one round through the driver's side front window. Atterberry was struck in the head and the upper torso by three of the rounds.³ Brehm resumed walking northbound and reloaded his pistol with a second magazine.

As Brehm approached the intersection of Vine Street and Sunset Boulevard, he fired one round at the pavement, and then began to fire at several drivers as they drove their vehicles through the intersection. Donald Riedel and Christopher Godley were traveling southbound on Vine Street approaching Sunset Boulevard. Riedel was in a Honda Civic and Godley was immediately behind Riedel in a Toyota Tacoma. As Riedel approached Sunset Boulevard, Brehm fired at Riedel, shattering his driver's side window. Riedel was not hit by gunfire, but was cut by glass fragments from the shattered window. Brehm next fired at Godley as he drove through the intersection. One bullet penetrated the driver's side door of the vehicle, grazing Godley's right leg.⁴

Marc Smith drove his BMW Hybrid 7 past Brehm southbound on Vine Street. Brehm fired at Smith, striking Smith's vehicle multiple times but not injuring Smith. While Brehm fired at vehicles headed southbound on Vine Street, Courtney Graham was stopped at a red light waiting to proceed westbound on Sunset Boulevard. When the light turned green, she began to drive through the intersection of Sunset Boulevard and Vine Street. Brehm fired at her, striking her vehicle once. Graham was not injured.

Christopher Johns was in his apartment when he heard gunshots.⁵ Johns immediately looked out of his window and saw Brehm walking northbound in the middle of the street armed with a gun in his right hand. Johns began to video record Brehm with his cellphone.

As Brehm stood in the intersection of Sunset Boulevard and Vine Street shooting at passing vehicles, Johns began to yell at Brehm in an effort to distract him. Brehm heard Johns' yelling, turned around, and began to walk south on Vine Street toward Johns' apartment. Brehm placed his gun in a holster, raised his hands in the air, and began to scream back at Johns. Brehm stopped directly below Johns' window as Johns continued to yell. At one point Brehm yelled "give me ammo."

As this was occurring, Micah Williams responded to help Atterberry and began to yell for someone to call for an ambulance. Brehm heard Williams yelling, armed himself with a knife in his left hand, and began to walk toward Atterberry's vehicle.

² Bank of America is located at 6300 West Sunset Boulevard.

³ John Atterberry was later transported to Cedars Sinai Hospital where he succumbed to his injuries.

⁴ Godley survived his injury.

⁵ Christopher Johns' apartment is located on the fourth floor of 1480 Vine Street, directly across from the Bank of America.

When Brehm began his shooting spree, LAPD Officer Kevin Cotter was working an off-duty uniformed movie detail near the intersection of Sunset Boulevard and Ivar Street.⁶ [REDACTED]

[REDACTED] Cotter asked the pedestrians to call 9-1-1 and responded to the southwest corner of Sunset Boulevard and Vine Street. Cotter took up a position at the northeast corner of the Bank of America building.

At approximately the same time, LAPD Hollywood Area Detectives Craig Marquez and Travonne Dixon exited the Coffee Bean located at 6245 Sunset Boulevard.⁷ They were approached by a pedestrian who informed them that there was a man shooting a gun at vehicles near Sunset Boulevard and Vine Street. The detectives heard several gunshots coming from that direction and immediately entered their patrol car to respond to the scene. Within seconds of entering their vehicle, they heard Communications Division broadcasting, "Shooting in progress Sunset and Vine." Dixon activated the police car's lights and siren and drove westbound on Sunset Boulevard toward Vine Street.

As Dixon reached the intersection of Vine Street and Sunset Boulevard, she looked to her left and observed Brehm walking southbound on Vine Street and alerted Marquez. Both detectives exited the police vehicle and unholstered their service weapons.

[REDACTED] Cotter walked southbound on the west sidewalk of Vine Street, while Marquez and Dixon moved to the rear of a car that was parked at the west curb of Vine Street just south of Sunset Boulevard.

As Brehm neared the back of Atterberry's car, Brehm yelled at Williams to get away from the car and to lie down. Williams complied and moved to the sidewalk, just south of the car and lied down.

[REDACTED] Cotter and Marquez yelled at Brehm to stop and put his hands up. Brehm ignored the orders and continued to walk southbound on the sidewalk, while Marquez and Dixon continued southbound in the street, utilizing parked cars for cover.

Brehm walked to the curb line of Vine Street behind Atterberry's car and stopped. Brehm, who was facing westbound, arched his back and raised his arms, palms up, slightly above his shoulders. Cotter positioned himself on the sidewalk near the driveway just northwest of Atterberry's car, while Marquez took cover to the right rear quarter panel of a car parked at the west curb. [REDACTED]

Cotter told Brehm, "Stop! Get down! Get down...Don't go for the gun!" Brehm yelled incoherently, removed the pistol from his waistband, and began to raise it towards Cotter. Cotter ordered Brehm to drop the gun but Brehm continued to raise the weapon. Cotter then fired one round at Brehm, who stood approximately 15 feet from him. Simultaneously, Marquez, who was

⁶ This location is approximately 175 yards west of the intersection of Sunset Boulevard and Vine Street.

⁷ This location is approximately 80 yards east of the intersection of Sunset Boulevard and Vine Street.

40 feet from Brehm, fired five rounds at Brehm. As the officers fired their weapons, Brehm discarded his gun, throwing it onto the west sidewalk of Vine Street. Brehm was struck in his lower back and his right shoulder.

Cotter, with his weapon still drawn, moved to the right rear passenger side of Atterberry's Mercedes. By that time, several uniformed Hollywood Patrol Division officers had arrived on the scene. The officers approached Brehm, who was on his back holding a knife in his left hand. Brehm ignored several officers' orders to drop the knife. The officers grabbed Brehm's left wrist, pulled the knife away from his hand, and threw it to the ground. They rolled Brehm over onto his stomach and handcuffed him.

As the officers dealt with Brehm, Cotter approached the driver's side of the Mercedes and observed Atterberry in the driver's seat bleeding from a head wound. Cotter [REDACTED] asked the uniformed officers to call for an ambulance.

Los Angeles Fire Department (LAFD) personnel responded and were guided by police officers to both Brehm and Atterberry's location. The paramedics assessed Brehm's injuries, which included two gunshot wounds. Paramedics noted no signs of life and determined death at 10:34 a.m.

John Atterberry was transported by LAFD to Cedars Sinai Medical Center where he was admitted and treated for his injuries. On December 12, 2011, Atterberry succumbed to his injuries.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the 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 the injury which appears to be imminent. CALCRIM No. 3470.

“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.

“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. Conner* (1989) 490 U.S. 386, 396-397.

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. Penal Code section 835a. California law permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. People v. Ceballos (1974) 12 Cal.3d 470, 477-484. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. Ceballos, supra, 12 Cal.3d at 479.

CONCLUSION

The evidence examined in this investigation shows that Tyler Brehm went on a four minute shooting spree, indiscriminately shooting at pedestrians and drivers in the Hollywood area. During the incident, Brehm fired at eight individuals, killing John Atterberry.

LAPD Officer Kevin Cotter and Detective Craig Marquez responded to the sound of gunfire and observed Brehm walking southbound on Vine Street. [REDACTED] Cotter ordered Brehm to get down and told him not to reach for his pistol. Brehm drew the pistol from his waistband and raised it toward Cotter. Based upon the information provided to them and Brehm's actions, Cotter and Marquez reasonably feared for their safety and the safety of everyone in the area. Both officers discharged their weapons at Brehm, striking him twice and fatally wounding him.

Given the rapidly evolving, life threatening situation that confronted Officer Cotter and Detective Marquez, we conclude that they acted lawfully in self-defense and in the defense of others, and used reasonable force in attempting to arrest Brehm, a dangerous felon. We are therefore closing our file and will take no further action in this matter.