

Officer Involved Shooting of Keith Bursey

Los Angeles Police Department

Officer Charles Kumlander, #39403

J.S.I.D. File #16-0297



JACKIE LACEY

District Attorney

Justice System Integrity Division

February 22, 2018

MEMORANDUM

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

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

SUBJECT: Officer Involved Shooting of Keith Bursey
J.S.I.D. File #16-0297
F.I.D. File #F035-16

DATE: February 22, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 10, 2016, fatal shooting of Keith Bursey by Los Angeles Police Department (LAPD) Officer Charles Kumlander. It is our conclusion that Officer Kumlander acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on June 10, 2016, at approximately 10:02 p.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 detectives with the LAPD Force Investigation Division (FID). Officer Kumlander's compelled statement was considered as part of this analysis.

FACTUAL ANALYSIS

LAPD Officer Charles Kumlander is assigned to the Gang Enforcement Detail and tasked with monitoring the Rollin 60s Neighborhood Crip street gang. The Rollin 60s street gang considers June 10th to be their "Hood Day." On Hood Day, gang members celebrate their gang by congregating in their neighborhood, displaying their gang colors and wearing their gang attire. The Rollin 60s gang members are known for wearing black Seattle Mariners and Chicago White Sox baseball caps with the "S" signifying "60." Gang members from other locations and cities come to the Rollin 60s neighborhood to join in the celebration. A Hood Day generates an increase in gang and criminal activity in the affected area.

On June 10, 2016, Kumlander and Officer Scott Swanson were on uniformed patrol driving a black and white hybrid police vehicle. At approximately 8:25 p.m., Kumlander drove toward the intersection of Brynhurst Avenue and Slauson Avenue in the City of Los Angeles. Rollin 60s gang members are known to congregate at several businesses located on the southwest corner.

Kumlander drove west into the parking lot of the small plaza on the southwest corner. At the same time, a white GMC Envoy was driving slowly toward the driveway the officers had just entered. Chenique P [REDACTED] was in the driver's seat, Keith Bursey was in the front passenger seat and Troy M [REDACTED] was in the rear passenger seat. M [REDACTED] was wearing a black White Sox baseball cap with an "S" on the front.

Compelled Statement of Officer Charles Kumlander

Kumlander, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285.

The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and ordered Kumlander to do so in the present case. Officer Kumlander was interviewed by FID detectives on June 11, 2016, regarding his actions during this officer involved shooting. Because the LAPD compelled Kumlander to participate in this interview, Kumlander's statements cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interview be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because these compelled statements are part of Kumlander's police personnel file, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Statement of Officer Scott Swanson

Swanson exited the patrol car and immediately smelled the odor of marijuana coming from the open windows of the Envoy. Kumlander contacted Phifer, while Swanson went to the open rear passenger window and contacted M[REDACTED]. Swanson told M[REDACTED] to keep his hands in his lap. M[REDACTED] complied.

While speaking with M[REDACTED], Swanson observed a container commonly used to store marijuana, protruding from the pocket attached to the back of the front passenger seat. Swanson asked M[REDACTED] if he had any weapons. M[REDACTED] stated that he was not in possession of any weapons. Kumlander also spoke with M[REDACTED], then moved to the passenger side of the Envoy.

Swanson ordered M[REDACTED] out of the vehicle to investigate the odor of marijuana emitting from the Envoy.⁴ Swanson attempted to open the rear passenger door, but it was locked. Kumlander ordered the doors unlocked and someone complied. Swanson opened the door and M[REDACTED] exited. Swanson observed a folding knife clipped to M[REDACTED] belt. Swanson handcuffed M[REDACTED] then removed the knife. Swanson turned toward Kumlander to let him know M[REDACTED] was secure.

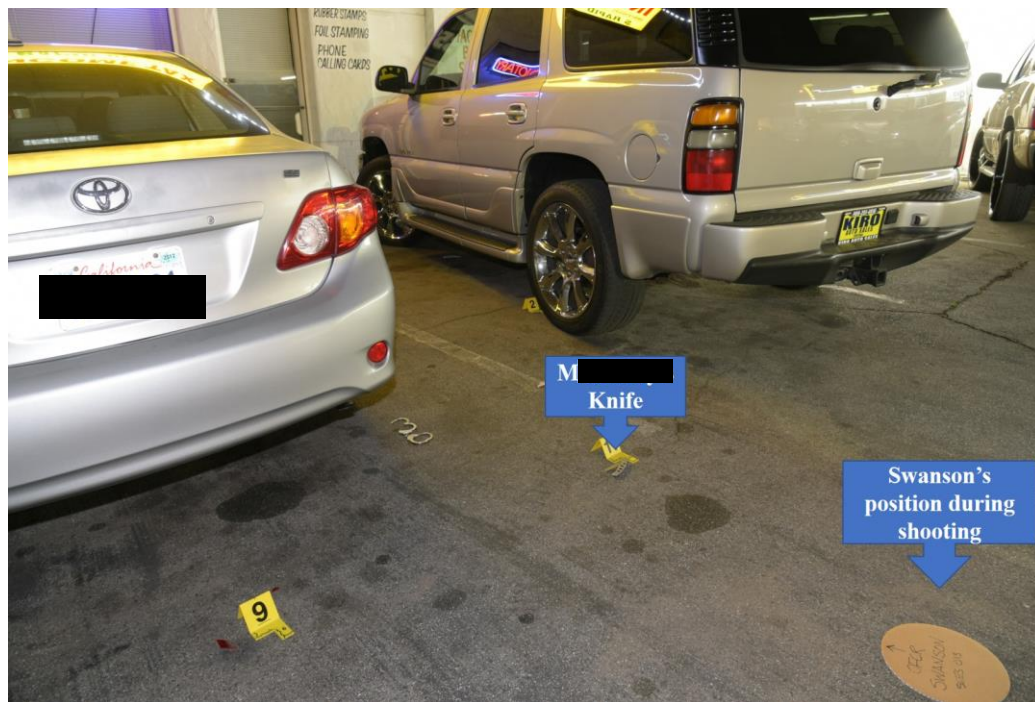
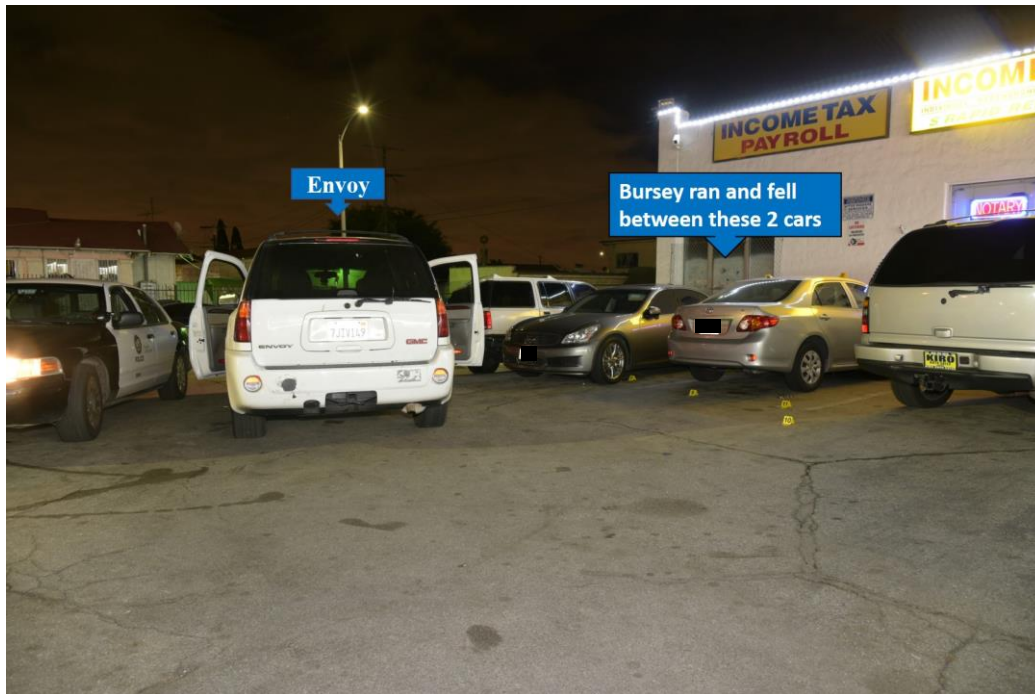
Kumlander had Bursey exit the front passenger door and told him to face away from him. Bursey complied. From his peripheral vision, Swanson saw Bursey turn quickly to his left. Kumlander stumbled as he tried to maintain his hold on Bursey. Bursey ran south from the Envoy and Swanson unsuccessfully tried to grab him. Bursey hunched over and ran in between two parked cars and disappeared from Swanson's view. Swanson then observed Kumlander quickly remove his service weapon from his holster. Swanson observed muzzle flashes coming from Kumlander's weapon and

² Bursey has two prior felony convictions and was wanted for a parole violation for failure to report.

³ An examination of Kumlander's service weapon determined that he fired four rounds.

⁴ The subsequent investigation determined there was no marijuana in the green container. There were three other containers containing marijuana located inside the Envoy. The odor of marijuana was pervasive during the search of the vehicle.

heard three to four gunshots. Swanson could not see Bursey when Kumlander fired his weapon. Swanson dropped M [REDACTED] knife and drew his service weapon immediately after the shooting.



Statement of Chenique P

P and Bursey had been in a relationship for two to three months. P met M for the first time the evening of June 10, 2016. Earlier in the day, she and Bursey attended a funeral for a Rollin 60s gang member. P did not know whether Bursey was in a gang, but, if he was, it would be the Rollin 60s.

P picked up Bursey and M in her Envoy approximately ten minutes before the shooting. P drove into the parking lot from Slauson Avenue intending to buy alcohol at the liquor store. The lot was crowded and she could not find a parking space. When P reached the east driveway at Brynhurst Avenue, she intended to reverse and continue looking for parking. At that time, a police vehicle stopped next her.

Through the open driver's windows of both vehicles, Kumlander asked P, "What's going on?" She told Kumlander they were going to the store and looking for parking. Kumlander and Swanson exited the police vehicle and approached the Envoy. The officers said that they were checking to see if anyone had any weapons. Kumlander asked if they could search her car. She and M told the officers that it was "no problem" to search the car. Kumlander told Phifer to turn off the engine and keep her hands on the steering wheel.

M exited the vehicle first. He was searched and nothing was found. Kumlander then opened the front passenger door and told Bursey to exit. Bursey exited and turned to his right. At that time, P turned and faced forward toward Brynhurst Avenue. P did not see any further interaction between Kumlander and Bursey. Moments later, she heard three to four gunshots. P turned back and saw Bursey lying on the ground between two parked cars. Phifer did not see Bursey in possession of a gun before the shooting.

Statement of Troy M

M has been a Rollin 60s gang member since 1981. Bursey was also a Rollin 60s gang member. M has known Bursey his entire life. M has known P for ten years. On June 10, 2016, M, Bursey and P went together to a fellow gang member's funeral. After the funeral, they celebrated their gang's Hood Day. Shortly before the shooting, they had purchased alcohol at the liquor store and were attempting to leave the parking lot.

A police vehicle stopped next to them and the officers looked into their car. P told the officers that they had just left the liquor store. Kumlander and Swanson exited the patrol car and approached the Envoy. Swanson pulled M from the car and handcuffed him. M saw Bursey exit the vehicle in his peripheral vision. McKneely was facing the Envoy when he heard someone say, "Hey, hey, hey, hey." M turned to his right and saw Bursey running between two cars. Bursey did not have a weapon in his hands. Kumlander drew his service weapon and chased after Bursey. Kumlander then fired three rounds, striking Bursey in the back. Bursey fell to the ground. Bursey never turned toward Kumlander while he was running.

Recovered Firearm

Burse's firearm was a Smith and Wesson .38 caliber revolver loaded with five rounds. The gun was wedged between Bursey's belt and waistband by his right hip. The firearm was reported stolen during a residential burglary on April 13, 2009.

An examination of the firearm was negative for latent prints and DNA.

Autopsy Report

Los Angeles County Deputy Medical Examiner Odey Ukpo, M.D., performed a postmortem examination of Keith Bursey on June 19, 2016. Bursey sustained three gunshot wounds to the right lower chest, right lower back and left buttocks. The trajectory of the gunshot wound to the right chest was from front to back. The trajectory of the gunshot wounds to the back and buttocks were from back to front. The trajectory of all three gunshot wounds were from right to left.

During the autopsy, a blood sample was collected from Bursey for analysis. The toxicology report indicated that Bursey's blood contained low levels of marijuana and methamphetamine.

LEGAL ANALYSIS

CALCRIM No. 505 states:

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.

"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 that 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 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.4th 1077, 1102.

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.

CONCLUSION

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Bursey opted to flee from the police in an attempt to evade arrest. As Bursey ran between parked cars, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Bursey's actions placed Officer Kumlander in reasonable fear for his life, and the life of his partner, and he responded with reasonable deadly force.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The gunshot wound to the lower right chest is inconsistent with McKneely's statement that Bursey never turned around while running from Kumlander.

We conclude that Officer Kumlander acted in lawful self-defense and defense of others when he used deadly force against Keith Bursey. We are therefore closing our file and will take no further action in this manner.