

# MIKE BUMCROT CONSULTING

## REPORT OF INVESTIGATION

**DATE:** June 15, 2013

**CASE:** Riverside Police Department File #P12030492

**SUBJECT:** Officer Involved Shooting Death of Brandon James Dunbar, which occurred on March 1, 2012

**LOCATION:** 2914 Hyde Park Circle, Riverside

On June 11, 2013 I was asked by Frank Hauptmann, Manager of the Community Police Review Commission, to review the officer involved shooting death of Brandon Dunbar. I was also asked to provide my expert opinion, in a written report, on the manner in which the case was investigated by the Riverside Police Department.

I reviewed hundreds of pages of police reports, photographs, and other documents contained in the presentation by the Riverside Police Department to the Riverside Police Review Commission. I also researched legal issues and drove to the scene to better understand the incident.

### **FACTUAL ANALYSIS**

On March 1, 2012, Riverside police officers Sancho Lopez, an eleven year veteran and Brett Porter, an eight week member of the Department, although he had four years of patrol experience with the Los Angeles Police Department, were on routine patrol in the early morning hours.

Officer Lopez observed a white van pass their marked police vehicle traveling in the opposite direction. He noted that the front license plate was obstructed and thought the driver was "trying to dodge license plate readers". Due to the California vehicle code



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violation, Officer Lopez told his driver partner to make a u-turn and stop the van. As the officers turned around, the white van sped up, causing the officers to drive quickly to catch up. As the police emergency lights were activated, the van stopped immediately in traffic instead of pulling to the curb, yet another vehicle code violation. As the officers approached on foot, Officer Lopez observed the driver, Harold Smith, and the lone passenger, Brandon Dunbar, conversing in both sign language and verbally. He thought this was odd and “became uncomfortable about their behavior”. Officer Porter saw Harold Smith place his head and an arm outside the driver’s side window causing him to be on “heightened alert”.

Officer Porter asked the vehicle occupants if they were on probation or parole and Mr. Smith said “Probation off”, indicating that he could communicate. Officer Lopez observed gang style tattoos on Mr. Dunbar’s hand and noted that the vehicle was coming from a known gang area. He would later say, “The hair kind of stood up on the back of my neck, something’s not right”. Mr. Smith was asked to step out of his vehicle and, as Officer Porter checked him for weapons, Officer Lopez asked Mr. Dunbar if he could assist officers with sign language to help communicate with Mr. Smith. When Mr. Dunbar replied that he knew some sign language, he was asked to exit the vehicle for officer safety and help maintain control of the car stop.

As Mr. Dunbar stepped out of the vehicle, he immediately ran with Officer Lopez in foot pursuit. Dunbar ran about 50 yards, up an embankment towards a block wall surrounding a residential neighborhood. Officer Lopez observed that, although Mr. Dunbar was running so fast that he actually ran out of his shoes, his arms were not pumping and both hands were tucked inside his waistband.

As Mr. Dunbar reached the block wall, Officer Lopez could see that he was holding a chrome handgun in his right hand. As Mr. Dunbar grabbed the top of the wall, Officer Lopez heard the metal of the handgun strike the top of the fence. Mr. Dunbar then disappeared over the wall. It should be noted that during the foot chase, Officer Lopez had dropped both his flashlight and radio.



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Officer Lopez made a tactical decision to not jump the wall in the same place Mr. Dunbar had used. Instead, he moved several feet north of where he had lost sight of Mr. Dunbar and pulled himself atop the wall with his left arm, while holding his duty weapon in his right hand. As Officer Lopez peered over the wall, he clearly saw Mr. Dunbar still holding the chrome handgun, standing, looking at the exact spot where he had jumped over the wall.

Officer Lopez felt that it was Dunbar's intention to shoot him as he climbed the wall, so he fired 2 - 3 gunshots at Mr. Dunbar. He would later tell investigators that "I was more scared" once Mr. Dunbar disappeared over the wall.

Mr. Dunbar fell to the ground shouting "you shot me". Officer Lopez, still hanging from atop the wall by his left arm, told Mr. Dunbar "don't move", Officer Lopez could see that Dunbar had dropped his handgun, which was lying next to his head. Several commands were shouted at Mr. Dunbar to not move but he persisted in reaching for the weapon, causing Officer Lopez to fire again. Officer Lopez remained hanging from atop the wall until joined by Officer Porter and assisting units.

It should be noted, to show how fast this incident occurred, at the time the foot chase began at the car stop, Officer Porter walked Mr. Smith to his patrol car, placed him in the backseat, and as he began to close the back door, he heard a gunshot. Officer Porter, using parked cars for cover, began to move towards the sound of the shot, when he heard more gunshots and saw the muzzle flashes. He saw his partner hanging from a block wall and ran to him. He glanced over the wall and saw Mr. Dunbar lying on the ground and a silver handgun lay next to him.

## **STATEMENT OF HAROLD SMITH**

Harold Smith was interviewed by detectives who noted that, although he is deaf, he is proficient at reading lips. Sign language was also used.



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Mr. Smith said that prior to the incident, he was packing to move from his apartment when he was approached by Mr. Dunbar, an acquaintance, who offered him \$20 to drive him to the area of Food 4 Less at University and Chicago. He didn't know why Dunbar wanted to visit that location, nor did he ask why. He was unaware that Dunbar was armed. At the time of the car stop, he saw the police car make a u-turn and drive up behind him and he stopped immediately when he saw the red lights come on because he's on probation. He was eventually placed in the back seat of the police car but did not witness the shooting.

## **EVIDENCE**

Charting of Officer Lopez' pistol revealed that he fired a total of 5 gunshots. Officer Lopez' recorder was downloaded and is evident that it was turned on after the shooting. All that is heard is a voice saying "I can't breathe" over and over and another voice stating "don't move" and "don't touch that fucking gun". A fully loaded, functioning handgun was recovered from Mr. Dunbar.

## **EXPERT QUALIFICATIONS**

I was employed as a peace officer for the Los Angeles Sheriff's Department for 34 years. I worked as a jail deputy, 18 months as a patrol officer, and four years assigned to the Special Enforcement Bureau (SWAT team). My last 27 years on the department, I was assigned to the Detective Division, including over 22 years assigned to the Homicide Bureau. I investigated over 450 homicides and suspicious deaths and over 100 Officer Involved Shootings, including the murders of ten police officers.

In 1994, I assisted in writing the LASD Homicide Bureau Investigative Manual. I was also selected to be a member of the Joint LASD/LAPD Crime Lab Development Committee as well as the JET Committee to develop Homicide Bureau job standards and selection criteria. In 1995, I was selected as California's Deputy Sheriff of the year by the California Organization of Police and Sheriffs (COPS) for the investigation, arrest, and conviction of a suspect in the murders of two local policemen.



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For over 15 years, I have taught “High Profile Murder Investigations”, “Homicide Scene Management”, and Officer Involved Shooting Investigations” for the Robert Presley Institute of Criminal Investigation, police academies, advanced training classes, supervisor training, college classes, Homicide School, and in-service training. I am currently on staff with the Police Policy Studies Council where I teach and consult nationally on Officer Involved Shooting, homicide, and suspicious death investigations. I am currently the investigator for the Riverside Police Review Commission. Although I retired from LASD in 2002, I was immediately signed to a contract to train newly assigned homicide detectives. In 2006, I was also assigned to the LASD Cold Case team where I have reviewed over one thousand unsolved murders and specifically work the unsolved DNA and latent print cases.

## **INVESTIGATION AND REVIEW**

The investigation into the Officer Involved Shooting death of Brandon Dunbar was conducted by the Riverside Police Department and the Riverside County District Attorney’s Office. I reviewed all the reports submitted to the Community Police Review Commission and researched deadly force legal issues. The District Attorney found there was no criminal liability.

## **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 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; People v. Humphrey (1996) 13 Cal.4th 1073, 1082

In protecting himself or another, a person may use all 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

When 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



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justified in killing because he might have resorted to other means to secure his safety. People v. Collins 1961 189 Cal. App. 396-397

Police may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance, and in virtue of a police officers duty to act affirmatively to protect the public, a police officer is entitled to the even greater use of force that might be, in the same circumstances, required for self defense. Brown v. Ransweiler (2009) 171 Cal. App. 4th 516

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.

A peace officer is entitled to use deadly force to capture a dangerous person who has committed a felony. A dangerous person is defined as one who (a) poses significant threat of death or serious bodily injury to the person attempting the apprehension or others, or (b) has committed a forcible and atrocious felony. A forcible and atrocious felony is one that by its nature and manner of its commission reasonably creates a fear of death or great bodily injury. People v. Ceballos (1974) 12 Cal. 3rd 470-CALCRIM No. 505 (Bench Notes)

## **CONCLUSION**

The evidence examined in this investigation shows that Officers Lopez and Porter conducted a legal traffic stop and while following up on the occupants of the stopped vehicle, Mr. Dunbar chose to run from the officers. During the foot chase, Mr. Dunbar chose to draw a firearm from his waistband. Mr. Dunbar ignored commands to stop running and jumped over a block wall, out of sight of the officers.

Evidence at the scene, as well as actions and observations of Officer Lopez, suggest that the tactical training of Lopez, probably saved his life. Per Officer Lopez' statement, Mr. Dunbar, after jumping the wall, turned, gun in hand, and looked in the direction he



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had vaulted over the fence. One can only conclude that Dunbar was lying in wait for a pursuer to follow him over the wall.

After Officer Lopez gained a tactical advantage by jumping atop the fence several feet from where Mr. Dunbar anticipated, Dunbar was shot, fell to the ground, and dropped his weapon. Once again, Mr. Dunbar chose to escalate the incident, ignoring commands to the contrary, and attempted to reach for his firearm.

Officer Lopez was reasonable in fearing great bodily injury or death at the hands of Mr. Dunbar and discharged his weapon again.

Mr. Dunbar was in complete control of this incident from the time of the car stop until the last shot was fired. He could have stayed with his vehicle and, perhaps, been arrested for a misdemeanor charge of carrying a loaded weapon. Or, he could have obeyed the lawful commands of Officer Lopez to stop running. After jumping the block wall, Mr. Dunbar could have continued running through the neighborhood, or hidden. BUT, he chose to confront a police officer while holding a firearm. And finally, after he had been shot by Officer Lopez, he could have surrendered and received medical attention but his decision was to attempt to arm himself once again.

I noted that a glass pipe, normally used to smoke methamphetamine, was recovered from Mr. Dunbar's sock at the time of his emergency room treatment. This discovery suggests that Mr. Dunbar may have been under the influence of narcotics but I also noted that the Coroners protocol was redacted and I was unable to answer that question.

I find that the actions of Mr. Dunbar, the observations of Officer Lopez and the evidence recovered at the scene, created a fear of imminent death or serious bodily injury. Once Officer Lopez perceived that Mr. Dunbar posed an apparent lethal threat, his response with deadly force was justified.

I also find that the investigation into the officer involved shooting death of Mr. Dunbar was completed in a fair and impartial manner and met POST standards of practice.



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