



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
SHARON J. MATSUMOTO • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

July 2, 2014

Captain Duane Harris
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #13-0391
L.A.S.D. File #013-00050-3199-013

Dear Captain Harris:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 2, 2013, fatal shooting of Ricardo Diaz-Zeferino¹ and non-fatal shooting of Eutiquio Acevedo by Gardena Police Department (GPD) Sergeant Christopher Cuff and Officers Christopher Mendez, Christopher Sanderson and Matthew Fong Toda.² It is our conclusion that the officers acted in lawful self-defense and defense of others.

The following analysis is based upon reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office by LASD Detective Adan Torres. The District Attorney Response Team, comprised of Deputy District Attorney Rosa Alarcon and Senior Investigator Sean Robinson, responded and was given a briefing and a walk-through of the scene. No compelled statements were considered in this analysis.

INTRODUCTION

On June 2, 2013, at approximately 2:00 a.m., a bicycle belonging to Augustine Reynoso was stolen from outside the CVS Pharmacy located at 15700 S. Western Avenue in the City of Gardena. When Gardena Police Department (GPD) officers received the call to respond regarding the theft, they were advised that the crime involved a robbery of a person. They were also advised that the suspects, two male Hispanics, were last seen on bicycles travelling eastbound on Redondo Beach Boulevard.

Reynoso's friends, Eutiquio Acevedo and Jose Garcia, as well as his brother, Ricardo Diaz, met Reynoso at CVS following the theft. Before the police arrived, Acevedo and Garcia left CVS on bicycles travelling eastbound on Redondo Beach Boulevard. Diaz followed behind on foot. The

¹ Ricardo Diaz-Zeferino will be referred to herein as Ricardo Diaz.

² Officer Matthew Fong Toda will be referred to herein as Officer Matthew Toda.

three men were detained by GPD officers who saw them on Redondo Beach Boulevard and believed they were the robbery suspects.

Diaz failed to comply with repeated orders to keep his hands up. Diaz reached into his pockets and waistband area. He was shot and killed by officers at the scene. Acevedo was also struck by the officers' gunfire but survived.

FACTUAL ANALYSIS

Statement of Daniel Macharigue

Daniel Macharigue works as a security guard for CVS located on South Western Avenue and Redondo Beach Boulevard in Gardena. On June 1, 2013, he began his shift at approximately 10:40 p.m. He took his lunch break at 2:00 a.m. and sat inside his van, which was parked in the CVS parking lot. As he was nearing the end of his break, he saw two Hispanic males approach the CVS entrance. One of the men was on a bicycle. Macharigue exited his van and walked towards the store to resume his shift. The men greeted him and he heard one of them say, in Spanish, "Hurry up, hurry up, let's go, let's go." One of them got on a bicycle that was parked unsecured outside CVS and both men rode away.

Once Macharigue entered the store, he saw a regular customer, Augustine Reynoso, inside the store. Macharigue asked Reynoso where his bicycle was because Macharigue was aware that Reynoso regularly rode a bicycle to the store. Reynoso said the bicycle was outside. Macharigue told Reynoso that he did not see it outside and suspected that it may have been stolen.

Macharigue and Reynoso went outside the store to check on Reynoso's bicycle. Reynoso realized it was missing and called his brother, Ricardo Diaz. Reynoso then went searching for his bicycle in the neighborhood. He returned to CVS after approximately 10 minutes and asked Macharigue to call 9-1-1.

Macharigue called 9-1-1 and said, "This one guy got his bike stolen." He described the suspects as two male Hispanics in their thirties. He said one was wearing a yellow shirt and the other a white shirt. The dispatcher asked if the suspects had weapons and Macharigue replied that he did not think so. Macharigue also stated that the suspects were last seen riding bicycles eastbound on Redondo Beach Boulevard.

After the 9-1-1 call was made, three men arrived (Ricardo Diaz, Eutiquio Acevedo and Jose Garcia) and met with Reynoso. They appeared to be drunk. One of them said, "Let's go look for him," and they all left before the police arrived at CVS. They travelled eastbound on Redondo Beach Boulevard. Two of them were on bicycles, the other was on foot.

After seeing the police drive past the CVS, Macharigue heard several gunshots come from east of his location.

Statement of Augustine Reynoso

Augustine Reynoso works at the Country Kokko Restaurant in Gardena. He ended his shift at 1:10 a.m. and rode his bicycle to Mis Amigos Bar where he met his brother, Ricardo Diaz, and two friends, Eutiquio Acevedo and Jose Garcia. He arrived at the bar at approximately 1:15 a.m.

While at the bar, Reynoso drank three beers. Diaz and his friends were already drunk when Reynoso arrived.

Once the bar closed, Reynoso left on his bicycle to the nearby CVS located on Western Avenue. He left his bicycle unlocked standing on its kick stand by the front entrance. He walked into CVS and did not recall seeing anyone in the parking lot as he entered. He purchased some lottery tickets and was approached by a security guard. The security guard asked him if he was riding his bicycle. He told the security guard that he was.

The security guard told Reynoso, "They're taking your bike." He went outside and did not see his bicycle. He called Diaz and asked him if he or his friends had taken the bicycle. Diaz stated that they had not and they were still at the bar. Diaz, Acevedo and Garcia met Reynoso at CVS. Acevedo and Garcia were on bicycles, Diaz was on foot. Reynoso told them that his bicycle had been stolen. Reynoso asked the security guard to call 9-1-1.

Diaz, Acevedo and Garcia appeared angry and irritated when Reynoso told them his bicycle was stolen. The three men left CVS travelling eastbound on Redondo Beach Boulevard. Reynoso remained at the location. Approximately three to five minutes later, Reynoso heard one to two gunshots coming from the direction where the three men were headed.

Reynoso indicated that Diaz understood English but Acevedo and Garcia understood very little.

Statement of Jose Garcia

Jose Garcia left work at 9:00 p.m. He rode his bicycle to meet with his friends, Ricardo Diaz and Eutiquio Acevedo. Diaz was wearing a yellow hat, black shirt and brown pants. Acevedo was wearing a blue hat, white t-shirt and grey pants. Acevedo was also riding a bicycle. At approximately 10:00 p.m., the three of them went to Mis Amigos Bar. Garcia drank approximately three beers. Diaz and Acevedo drank six to seven beers each.

At approximately 12:30 a.m., Diaz's brother, Augustine Reynoso, arrived at the bar and joined them. Reynoso did not drink while at the bar but did stay with them until the bar closed at 2:00 a.m. Once the bar closed, Reynoso left on his bicycle and went to CVS.

Garcia, Diaz and Acevedo remained outside the bar talking. At approximately 2:15 a.m., Diaz received a call from Reynoso indicating that his bicycle had been stolen. Garcia, Diaz and Acevedo went to CVS and met with Reynoso. Garcia and Acevedo rode their bicycles to the location, Diaz was on foot. When they arrived at CVS, they saw Reynoso speaking with a store employee.

Reynoso told them “they went” east on Redondo Beach Boulevard. Diaz said, “Let’s see if I could catch up with them.”

Garcia and Acevedo left CVS on their bicycles travelling eastbound on Redondo Beach Boulevard. The police stopped them in front of Carrows Restaurant on Redondo Beach Boulevard.³ The police car was clearly marked and had flashing blue and red lights. Garcia saw a police officer exit the car. The officer was wearing a uniform. Other officers arrived as well. The officers yelled at them not to move and told them to put their hands up in Spanish. The orders were clear to Garcia and he understood what the police were saying.

Garcia and Acevedo were both straddling their bicycles. Garcia put his hands up in the air. Acevedo did not appear to want to comply with the officers orders. He put his hands towards his side and moved them up and down. Garcia told Acevedo to put his hands back up but Acevedo would not listen.

While the officers were detaining them, Diaz ran towards them. The police told Diaz to “stop” in English and in Spanish. Diaz continued to run towards them and positioned himself in between Garcia and Acevedo. Diaz did not put his hands up despite being given orders to do so in both languages. He also stepped off the curb where Garcia and Acevedo were being detained, onto the street, moving closer to the officers. The police yelled at him to stop and put his hands up but he failed to comply.

Diaz was trying to tell the police officers that it was his brother who called them. He seemed angry and was yelling at the officers as they simultaneously yelled back orders. Diaz would not listen to the police officers’ orders. Garcia estimated there were five or six orders to put his hands up. Garcia then heard the police officers fire one shot each. There were approximately seven police officers that fired. Acevedo had eventually put his hands up before the shooting occurred but was still moving and would not stay still.

After hearing the gunshots, Garcia was handcuffed by a police officer and placed in a patrol car.

Statement of Sergeant Christopher Cuff

On June 2, 2013, Sergeant Cuff was assigned as the GPD night shift patrol sergeant. He was wearing a GPD uniform with a hard badge and shoulder patches. He was driving a marked Chevy Tahoe sports utility vehicle.

At approximately 2:00 a.m., Cuff received a “three tone” robbery call at the CVS store located near the intersection of Western Avenue and Redondo Beach Boulevard.⁴ The call involved a robbery of a person. The suspects were described as two male Hispanics in their thirties, last seen fleeing

³ Carrows is located at 1638 Redondo Beach Boulevard and is .2 miles east of CVS on the south side of the street.

⁴ A three tone call is high priority call requiring immediate assistance. It is also referred to as a “3 beeper” call.

eastbound on Redondo Beach Boulevard from the CVS store. One suspect was wearing a white t-shirt and the other a yellow t-shirt.⁵

Sergeant Cuff was at Redondo Beach Boulevard and Normandie Avenue, travelling westbound on Redondo Beach Boulevard, when he received the call. CVS was approximately two blocks west of his location. As he travelled towards CVS, he noted there was nobody on the street except for two males in their thirties travelling eastbound on Redondo Beach Boulevard. Cuff asked for an update on the suspect description. He was told that the two males were last seen eastbound on Redondo Beach Boulevard on the victim's bicycle. Cuff noticed that both of the males were on bicycles on the sidewalk riding slowly in his direction. They appeared to have slowed down after he observed them.

Although one of the men was wearing a white t-shirt, which matched the robbery suspect's clothing, the clothing was not an exact match. However, since they otherwise fit the description, were in the direction where the suspects were last seen travelling and were on bicycles, Cuff believed they were the robbery suspects.

Cuff illuminated his spotlight on the two men and stopped his car in the middle of the painted center divider. He armed himself and gave commands in English to "Stop," "Let me see your hands," "Get off the bike." Both men continued moving. Cuff gave them additional commands to "Get on your knees," and "Get your hands up." It appeared as though the men understood the commands as they initially stopped but then continued to move.

Cuff began giving commands to raise their hands in Spanish. Both men then stopped and raised their hands. The suspect wearing the white t-shirt (Acevedo) got off his bicycle and raised and lowered his hands. The other suspect (Garcia) never dismounted his bicycle. Garcia was given specific commands to get on his knees but failed to comply. Cuff requested additional units and advised dispatch that he was detaining two possible robbery suspects at gunpoint.

Assisting units arrived with lights and sirens. As Cuff continued to give commands in English and Spanish, a third suspect (Diaz) appeared on foot from the direction of CVS. Diaz jogged towards the two detainees. He was wearing a yellow cap, a dark colored shirt and was approximately 30 to 40 years old. Cuff believed Diaz was possibly a third suspect involved in the robbery and that Cuff was being "ambushed." All three suspects were clearly speaking to one another and Diaz positioned himself in between the two detainees on bicycles.

Diaz seemed to agitate the two detainees. He was making furtive movements, reaching in and around his pockets and waistband. He was reaching in areas where a weapon could be concealed, which heightened Cuff's level of fear. Cuff told him to "Stop" in both English and Spanish. The other officers were yelling commands in English and Spanish as well. Diaz continued to put his hands up and down, repeatedly.

⁵ The dispatch recordings are consistent with Cuff's statement.

Diaz began to move towards Cuff. Acevedo appeared to mimic his movements, which caused Cuff to believe they were going to attack him or flee. The assisting officers were positioned to his right, at different angles facing east or southeast. As Diaz continued to ignore commands, the officers told him, "Don't put your hands down," and "Stop dropping your hands." They also warned him that they were going to shoot if he continued reaching into his clothing.

Cuff saw Acevedo begin to move toward his right simultaneously with Diaz, both dropping their hands and rotating back as they were dropping their hands, when shots were fired by the other officers. Acevedo and Diaz immediately fell to the ground. Garcia remained on his bicycle and ducked but continued to straddle the bicycle. Garcia then dismounted his bicycle and got on the ground.

Cuff did not shoot since the suspects were down as a result of a "volley" of gunfire before he reached a position to fire effectively. Cuff assumed a supervisory role and radioed that a shooting had occurred and requested that paramedics respond to the location.

Statement of Officer Christopher Mendez

On June 2, 2013, GPD Officer Christopher Mendez was working as a uniformed patrol officer. He was at the GPD station when a robbery call was broadcast via radio. The call was broadcast as a "3 beeper" priority call, meaning someone's safety was concerned.

Sergeant Cuff acknowledged the call and the dispatcher stated, "211 of person occurred at CVS." The dispatcher also indicated that the suspects were last seen on Redondo Beach Boulevard and that the item taken was a bicycle. The suspects were described as males, 30 years of age, one wearing a white t-shirt. Sergeant Cuff broadcast that he was en route to the location of the robbery. Upon hearing this, Mendez left the station to provide assistance.

As Mendez was running to his patrol vehicle, he heard Cuff via radio say, "I'm out with both at 1600 block of Redondo Beach Boulevard." Mendez understood this to mean that Cuff was detaining the robbery suspects. Cuff added that he was detaining the suspects at gunpoint. This caused Mendez to believe that the suspects were not being compliant. Mendez activated his lights and siren, which activated the onboard dash camera in his patrol car.

It took Mendez one to two minutes to arrive at the location where the suspects were being detained. He was the first assisting unit to arrive on scene. Mendez noticed that Cuff was detaining three suspects and not two as he had originally broadcast. Mendez stopped his car adjacent to the south curb of Redondo Beach Boulevard. He could see and hear Cuff yelling commands at the suspects. Cuff seemed "scared," which was unusual for Cuff. Mendez heard Cuff say, "Get your hands up or you're going to get shot." This heightened Mendez's fear and level of anxiety.

Mendez had his weapon drawn as he exited his car and walked around his door. As he was doing so, he saw the suspect standing in the middle (Diaz), move his body away from him, showing his back to Mendez. This caused Mendez to pay particular attention to him. Mendez saw Diaz drop his hands and move them towards his waist. Mendez could see Diaz's right elbow bow out from his

body. Mendez became fearful because these actions looked to him as the movements he personally makes when he draws his weapon. He feared Diaz was going to shoot him or Cuff, who was in a position of disadvantage. Cuff was standing to his left in the center median of Redondo Beach Boulevard.

All three suspects were facing north towards Cuff. Mendez believed Diaz was going to remove a weapon and shoot them. However, at that moment he did not have a clear view or shot of Diaz. Moreover, Diaz had two people on either side of him, preventing him from shooting. Mendez yelled, "Get your hands up," as Officers Toda and Sanderson arrived at the location. Toda yelled, "Manos arriba," which is Spanish for "Put your hands up."

Mendez moved to his right to get a better view of Diaz. Once he did so, he could see Diaz did not have anything in his hands. Mendez positioned himself close to the south curb of Redondo Beach Boulevard to get a better view. Toda and Sanderson stood to the left of Mendez.

Mendez observed Diaz smiling but he did not say anything to them as the officers were giving him commands in English and Spanish. Diaz ignored the commands and appeared to have no regard for police authority. Even though Diaz had police officers pointing guns at him and giving him commands, he was not showing any signs of fear. Mendez believed that he must have been armed.

Mendez saw Diaz drop his hands and reach with his left hand towards his left rear pants pocket. At that point, Mendez lost sight of Diaz's right hand. Mendez thought Diaz was reaching for a gun. Mendez saw the suspect standing to Diaz's right (Garcia), look towards the right side of Diaz's waistband as if something were there. At the same time, he saw Diaz whisper something to Garcia. Mendez again yelled, "Get your hands up!" Toda also yelled, "Manos arriba!"

Diaz put his hands back up in the air. Mendez believed Diaz was trying to get to whatever object he had in his waistband. Diaz began to move forward in Cuff's direction. Mendez believed Diaz was "closing the distance" and was preparing to attack Cuff. Mendez followed Diaz with his gun as Diaz stepped forward. He was focused entirely on Diaz.

Diaz dropped his hands towards his abdomen area, with his right hand slightly over his left hand. The officers gave further commands in English and in Spanish. Diaz placed his hands back up. Mendez believed Diaz was testing their limits, to see if he could get to the object at his right side. Diaz placed his hands on his head. Mendez stated, "If he drops his hands again, I'm going to shoot him." Mendez did not know if the other officers heard this statement. Mendez believed Diaz was going to reach for a gun if he dropped his hands again. Cuff stated to Diaz, "If you do it again, you're going to get shot."

Diaz dropped both hands, holding his hat in his left hand. Mendez lost sight of Diaz's right hand. Mendez feared Diaz was going to pull out a gun so he fired his duty weapon at Diaz.⁶ Mendez saw Diaz and Acevedo fall to the ground.

⁶ Mendez's duty weapon was a Glock model 21, .45 caliber semi-automatic pistol. An examination of the firearm showed that four rounds were fired from his weapon.

Statement of Officer Christopher Sanderson

On June 2, 2013, Officer Christopher Sanderson was assigned as a patrol traffic officer dressed in a GPD police officer's uniform. It was extremely busy that night. A robbery call was broadcast via radio but there was no officer available to handle the high priority call. Sergeant Cuff acknowledged the call and indicated that he was en route.

Officer Toda was in the briefing room with Sanderson when Toda broadcast that he was en route as well. Dispatch began to provide a further description of the suspects when Cuff interrupted indicating he was "with both of them." Sanderson believed Cuff had detained the robbery suspects so he ran out of the station and joined Toda in his car. Prior to leaving the parking lot, Cuff repeated, "Out with two in front of Carrows." It was the first time Sanderson heard Cuff sound stressed over the radio in the six years he had known him.

Upon arrival, Sanderson saw Cuff's vehicle in the middle of the street facing southwest. Cuff was on the driver's side of his vehicle with three suspects being detained at gunpoint. One of the men was straddling a bicycle.

As Sanderson exited the vehicle, he heard Cuff yell, "Get your hands up or you're going to get shot." The suspect on the bicycle (Garcia) had his hands up. The suspect in the white shirt (Acevedo) had his hands up and was looking around. The suspect in the black shirt (Diaz) was gesturing with his hands and was bladed away from Sanderson with his right side facing away and right hand doing something at his waistband. Diaz's right side was not visible to Sanderson and he could not see what Diaz was doing when Toda said, "Get your hands up!" This command caused Diaz to raise his hands immediately just above his shoulders.

Diaz stepped back, lowered both hands and placed his left hand near his left rear pocket. Sanderson stepped to his right to get a better view of Diaz's left hand. He heard Toda yell, "Manos arriba!" Diaz raised his hands and took a few steps forward towards Cuff. Diaz had a "maniacal" grin on his face. Diaz dropped his hands again towards his abdomen going towards his waist but he stopped the movement. Toda continued to yell, "Manos arriba!" Diaz placed his hands on top of his head. Sanderson heard Mendez say, "If he drops his hand again, I'm going to shoot him." Cuff stated, "If you do that again, you're going to get shot."

Diaz made a "big swinging motion" of his hands off his head to his waist. Sanderson lost sight of Diaz's right hand. Sanderson feared that Diaz was reaching for a weapon and would shoot one of them so he fired his duty weapon at Diaz.⁷ At the time he fired, he was unsure if anyone else had fired. He thought he was the only one that fired. Diaz and Acevedo fell to the ground.

⁷ Sanderson's duty weapon was a Glock model 21, .45 caliber semi-automatic pistol. An examination of the firearm showed that five rounds were fired from his weapon.

Statement of Officer Matthew Toda

On June 2, 2013, Officer Matthew Toda was assigned to patrol and was driving a marked Chevy Tahoe. At approximately 2:00 a.m., a robbery of a person, 3 beeper call, was broadcast. He was at the station writing reports when the call came in. Officer Toda broadcast over the radio that he was en route to the call when he heard Cuff broadcast that he was already en route to handle the call. A few seconds later, Cuff broadcast that he was "Out with two." Cuff then broadcast that he was detaining two suspects at gunpoint.

Toda has known Cuff as a police officer and a Sergeant. Cuff is a "calm, cool collected guy." Cuff has been trained as a SWAT operator and has also worked the COPS team. Cuff does not get stressed. On this occasion, Cuff sounded "shakier, and stressed." Toda never heard Cuff sound the way he did in that broadcast.

Toda ran out of the police station to his patrol vehicle. Sanderson "jumped" in the car with him. They responded "Code 3" to the location.⁸ Upon arrival, he positioned his vehicle in the eastbound number two lane of Redondo Beach Boulevard. Officer Mendez was also in that lane but was parked closer to the south curb.

Toda noted there were three people being detained instead of two. Toda thought the situation was odd. One of the suspects (Diaz), was standing with his right arm bowed and his hand at his waist, manipulating something at the right side of his body as if he was drawing a weapon. Toda could not see his right side. Based on his observations, Toda drew his gun while still seated in the patrol car before getting out.

Toda's attention was primarily focused on Diaz. Diaz raised his arm. Toda could see he had nothing in his hands. Toda yelled, "Get your hands up!" Diaz took a step back away from them and reached with his left hand to his rear waistband area and manipulated something. Toda believed Diaz was reaching for a weapon. Toda's level of anxiety was heightened. Toda yelled, "Manos Arriba!"

Diaz put his hands up momentarily and took a few steps forward past the other suspects who were still straddling bicycles. Diaz put his hands back down. His left hand "hovered" over his left rear pants pocket. Toda yelled, "Manos arriba" repeatedly because he was fearful that Diaz was trying to arm himself.

Diaz then put his hands on top of his head. Cuff yelled, "If you do it again you're going to get shot." Mendez stated, "If he does it again, I'm going to shoot him." Diaz swayed his arms in a different manner than his previous movements. His movements were now faster and more deliberate. Toda has ordered hundreds of people not to go back into their pockets. All of those people have complied. When Diaz made his movements, Toda thought Diaz was going to kill

⁸ Code 3 is a response with lights and sirens, which automatically activates the patrol car's in-dash video camera.

them. As a result, Toda fired his weapon at Diaz.⁹ Toda heard gunfire but did not know if it was coming from Diaz or the other officers. Diaz and Acevedo went down to the ground.

Video Recordings

Video 1—“No Name”¹⁰

Video 1 is a dashboard camera recording from a patrol vehicle located on Redondo Beach Boulevard. The camera is facing a southwest direction and shows a view of the street just west of the location of the shooting. The camera view extends approximately one block west. The date and start time of the recording is “2013-06-2 02:31:23:0.”

Ricardo Diaz first appears on the video at 2:32:35 running eastbound on the south sidewalk of Redondo Beach Boulevard. There is no sound. As he crosses a side street he appears to slow his pace to a rapid walk. A light shines in Diaz’s direction and a male voice yells, “Stop,” “No,” “Stop,” and “Sientate,” which is Spanish for sit down. Diaz continues walking at the same speed and in the same direction.

Just before disappearing from the camera’s view, Diaz raises his hands, pounds his chest with both hands and gestures outward with his hands. Diaz appears to say something but it is inaudible. The male voice simultaneously repeatedly says, “Stop” and “Alto.” After Diaz is outside of view of the camera, police sirens are heard approaching from a distance and the male voice screams, “Alto!” four times in succession.

Two patrol cars appear in view of the camera travelling eastbound on Redondo Beach Boulevard with lights and sirens activated. They stop in the street, side by side, facing eastbound. Three officers emerge from the vehicles with guns drawn, pointing eastbound at various angles. A male voice simultaneously says, “Get your hands up, you’re going to get shot.” One officer steps onto the sidewalk and takes several steps eastbound away from the patrol car, which was parked closest to the curb. The other two officers remain near the passenger and driver’s side of the sports utility vehicle, which was closest to the camera. Several male voices repeatedly yell, “Get your hands up,” “Put your hands up,” and “Manos Arriba.” Another male voice says, “You do it again, you’re going to get shot.” Moments later, at 2:33:46, multiple shots are fired.

Video 2—“Matthew Toda”¹¹

Video 2 is a dashboard camera recording from a patrol vehicle located on Redondo Beach Boulevard. The camera is facing a southeast direction and shows a view of the shooting from a 45 to 60 degree angle. The date and start time of the recording is “2013-06-2 02:33:14:0.”

⁹ Toda’s duty weapon was a Kimber .45 caliber semi-automatic pistol. An examination of the firearm showed that four rounds were fired.

¹⁰ “No Name” is the title on the CD for this particular recording. The recording is from the dashboard camera of the patrol vehicle driven by Cuff at the time of the incident.

¹¹ “Matthew Toda” is the title on the CD for this particular recording. The recording is from the dashboard camera of the patrol vehicle driven by Toda at the time of the incident.

The three suspects are facing north, side by side, standing on the street a few feet north of the south curb. Garcia is closest to the camera straddling a bicycle. Diaz is in the center and Acevedo is furthest east. The camera shows a left profile view of the suspects and a partial frontal view. The suspects' right arms are not visible.

Diaz has both arms raised and out to his sides. He drops his hands, turns slightly to the right, bends his right elbow and reaches into his right waistband area. Diaz drops his right hand and takes two steps back towards the curb. Diaz puts both hands up in the air. He does not appear to have anything in his hands. Diaz drops his hands, gestures with his right hand extended in front of him. He turns his face to the right while bending his left elbow and reaching behind him with his left hand. He takes five steps forward with his hands up in the air. He does not appear to have anything in hands. He lowers his hands to his waist level, extends them forward and gestures with his right hand. He raises his hands again above his head and places them on top of his head, over his baseball cap. He removes his baseball cap with his left hand and simultaneously lowers both hands below his waist. As he begins to raise his hands, shots are fired and Diaz falls to the ground.¹²

Video 3—“Ryan Nigg”¹³

Video 3 is a dashboard camera recording from a patrol vehicle located on Redondo Beach Boulevard. The camera is facing eastbound and shows a side view of the shooting. The date and start time of the recording is “2013-06-2 02:33:14:0.”

The three suspects are facing north, side by side, standing on the street a few feet away from the curb. Garcia is closest to the camera straddling a bicycle. Diaz is in the center and Acevedo is not visible. The camera shows a left profile view of the suspects. The suspects' front and right sides are not visible. Only Garcia is visible at the onset of the recording.

Diaz is standing to the right of Garcia. He bends his right elbow, reaches into his right waistband or rear right pocket and makes a tossing motion behind him with his right hand, dropping a light-colored object on the ground. An officer steps south into view of the camera, puts one foot on the curb and points his gun in a northeast direction towards the suspects. Diaz raises his hands and takes three steps back towards the curb. He lowers his arms, bends his left elbow, reaches into his left rear pants pocket and makes a tossing motion behind him with his left hand.

Diaz then takes five steps forward away from Acevedo and Garcia with his hands in the air. He lowers his hands to his waist level, gestures with his right hand and raises his hands above his head. He places his hands on top of his head. Diaz removes his baseball cap with his left hand and lowers both his hands in front of his thighs. Diaz's right hand is not visible. Multiple shots are fired and Diaz falls to the ground.

¹² As Diaz is making the described movements, there are male voices giving him repeated commands in English and in Spanish to raise his hands. Acevedo is rotating his torso side to side while placing his hands in the air and on top of his head. Garcia is standing still with his hands in the air the entire time.

¹³ “Ryan Nigg” is the title on the CD for this particular recording. The recording is from the dashboard camera of the patrol vehicle driven by Mendez at the time of the incident.

Autopsy Report

On June 4, 2013, Deputy Medical Examiner Lawrence Nguyen, M.D. of the Los Angeles County Coroner's Office conducted a post-mortem examination on the body of Ricardo Diaz. Dr. Nguyen ascribed the cause of the death to multiple gunshot wounds involving the torso, bilateral upper extremities and right lower extremity. Toxicology tests indicated that Diaz's blood alcohol level at the time of death was .22%. Diaz also tested positive for methamphetamine.¹⁴

Eutiquio Acevedo's Medical Report

Eutiquio Acevedo was admitted to Harbor UCLA Medical Center on June 2, 2013 at 2:45 a.m. He was treated for a gunshot wound to his left flank and discharged on June 5, 2013.¹⁵

Independent Review of Officer-Involved Shooting by Greg Meyer

An independent review of the shooting was conducted by Greg Meyer, a retired Los Angeles Police Department captain. Meyer was assisted by Richard Marks, a retired LAPD senior detective. Working as a team, they reviewed all of the materials associated with this case, visited the site and rendered an opinion as to whether the officers acted lawfully in using deadly force against Diaz.¹⁶

Their conclusions/opinions were as follows:

- *Having developed only partial information, the GPD Communications Center significantly escalated the seriousness of the crime being reported from the petty theft of unattended property to a violent felony, i.e., robbery. The supervisor and officers in the field were dependent upon the accuracy of the broadcast information until in a position to determine otherwise.*
- *Sergeant Cuff articulated 'reasonable suspicion' (specific facts, relevant context) for his original detention of Acevedo and Amado.*
- *Sergeant Cuff demonstrated appropriate tactics when he confronted the two possible 'robbery' suspects at gunpoint.*

¹⁴ Two folded \$1.00 bills containing methamphetamine were recovered at the scene. It is unknown to whom those \$1.00 bills belonged.

¹⁵ Veronica Lewis-Houston provided post-surgery treatment to Acevedo. She made a statement to GPD Officer Laurent Hentges on June 2, 2013 at 4:10 a.m. She indicated that Acevedo received medication by an anesthesiologist but did not react to the medication. Acevedo became agitated instead of calming down and "ripped" the IVs and cables off of his body. She further stated that a toxicology report was initiated and the medical staff learned that Acevedo was under the influence of methamphetamine. The legible portions of Acevedo's medical records do not reflect any such findings and there is no toxicology report contained therein. It should be noted however, that a clear plastic baggie containing methamphetamine was recovered from the front coin pocket of a pair of grey jeans worn by Acevedo at the time of the shooting and removed at the scene by paramedics.

¹⁶ Meyer has worked as a litigation expert on more than 200 civil and criminal cases, including more than 40 officer-involved shootings (OISs). Marks has extensive experience investigating homicides and OISs. Meyer and Marks are both credentialed as Certified Force Analysts by the Force Science Institute. Meyer is a member of the Force Science Institute's National Advisory Board. Both have worked on OIS cases for and against officers in criminal and civil litigation.

- *Sergeant Cuff had legitimate cause for alarm when a third person (Diaz) ignored instructions to stay back and instead deliberately interfered with detention of two unsearched possible robbery suspects.*
- *The tactical deployment of the first back-up officers acknowledged issuing verbal commands prior to their respective uses of deadly force.*
- *The respective decisions of Officers Mendez, Toda and Sanderson to use deadly force were independent of each other (no contagious fire) and objectively reasonable given the tense, uncertain and rapidly evolving circumstances.*

CONCLUSION

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears that the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. *People v. Randle* (2005) 35 Cal.4th 987, 994; *People v. Mercer* (1962) 210 Cal.App.2d 153. 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 imminent injury. CALCRIM NO. 3470.

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into 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.

In determining the reasonableness of an officer's actions, allowances must be made 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, 396-398. An officer may reasonably use deadly force when he confronts a suspect in close proximity whose actions indicate intent to attack; in those circumstances, the court cannot ask officers to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer. *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

The evidence examined shows that the dispatch call put the officers on high alert as it was broadcast as a high priority robbery of a person. Although Acevedo and Garcia were not in fact involved in the purported robbery, Cuff had reason to believe that they were the robbery suspects when he observed them on the street since they fit the general description of the suspects, it was after 2:00 a.m., they were on bicycles and they were travelling in the direction where the suspects were last seen.

Upon lawfully detaining Acevedo and Garcia, Cuff did not know whether they were armed or the circumstances of the robbery. Neither Acevedo nor Garcia were fully complying with his commands. Meanwhile, Diaz came running towards them, despite numerous commands to stop, and placed himself in between the two detainees. Diaz showed a complete disregard for Cuff's

Captain Duane Harris
July 2, 2014
Page 14 of 14

authority and a lack of fear. Thus, it was reasonable for Cuff to believe that Diaz was involved in the robbery and that he may be attacked. The urgency and stress of the situation was heard in the sound of Cuff's voice on Video 1 when he screamed, "Alto, Alto Alto, Alto!" after Diaz was outside the view of the camera and continuing to advance towards him.

When Mendez, Toda and Sanderson arrived, they encountered an unusual situation. There were three suspects and they were not complying despite Cuff's repeated commands. As the officers exited their vehicles, they saw Diaz reach into his right side waistband but withheld their fire and gave him additional commands. After Diaz reached into his left pocket and continued to advance forward towards Cuff, dropping his hands once again after being told he would be shot if he did so, the officers responded with deadly force in reasonable fear for their lives and Cuff's life.

Videos 2 and 3 corroborate the officers' observations with respect to Diaz reaching into his right waistband and left rear pocket. Moreover, the angle of Video 3 would have been the approximate vantage point of Mendez, Sanderson and Toda. From that angle, when Diaz removed his hat with his left hand and lowered both hands, his right hand was no longer visible. Thus, it is reasonable to believe that the officers lost sight of Diaz's right hand and believed he was going to reach for a weapon. They made a split second decision and they were not required to hold fire in order to ascertain whether Diaz would, in fact, injure or kill them.

Given the information that they had before them, including Diaz's actions, as well as the actions of Acevedo and Garcia, and the rapidly evolving, threatening situation that confronted Sergeant Cuff, and Officers Mendez, Sanderson and Toda, we conclude that the officers acted in lawful self-defense and defense of each other. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By 

ROSA ALARCON
Deputy District Attorney
(213) 974-3888

c: Sergeant Christopher Cuff, Serial #105337
Officer Christopher Mendez, Serial #114009
Officer Christopher Sanderson, Serial #111250
Officer Matthew Fong Toda, Serial #112035