

**Non-Fatal Officer Involved Shooting of Michael Velez**  
**Pomona Police Department**

**Officer Jose Diaz, #42226**

**J.S.I.D. File #22-0035**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**March 29, 2023**

## **MEMORANDUM**

TO: CHIEF MICHAEL ELLIS  
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Michael Velez  
J.S.I.D. File # 22-0035  
P.P.D. File # 22012296  
L.A.S.D. File # 022-00015-3199-055

DATE: March 29, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 3, 2022, non-fatal shooting of Michael Velez by Pomona Police Department (PPD) Officer Jose Diaz. We find that Officer Diaz acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting on February 3, 2022, at approximately 8:55 p.m. The District Attorney Response Team (DART) responded to the location and were given a briefing of the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based upon the recorded interviews of witnesses, surveillance video footage, and reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office by Detective Gordon Lukeheart of LASD Homicide Bureau. Additionally, the voluntary statement by Officer Diaz was also considered. There are no body worn camera recordings of this incident.

### **FACTUAL ANALYSIS**

On February 3, 2022 at approximately 7:17 p.m., Diaz was patrolling solo in an alley north of the 300 block of Orchid Lane. Diaz was wearing an outer black ballistics vest labeled "POLICE" on both the front and back. Diaz was equipped with a police duty belt and was driving an undercover police car (white Infiniti sedan).

Diaz stopped to contact three individuals standing in the alley. One of the three, later identified as Michael Velez, also known as “Drowsy,” produced a handgun. Velez fired several rounds at Diaz, who returned fire at Velez. Diaz suffered a single through and through gunshot wound to his right calf. Velez suffered two gunshot wounds, one to his left arm and one to his left shoulder. The other two individuals fled on foot.



Image showing Diaz’s vest and cloth badge that he was wearing at the time of the OIS.



Image showing the alley and Diaz's Infiniti as it was at the time of the OIS. Diaz was on the driver's side of the Infiniti. Velez and the other two males were near the garage doors depicted on the right side of the image.

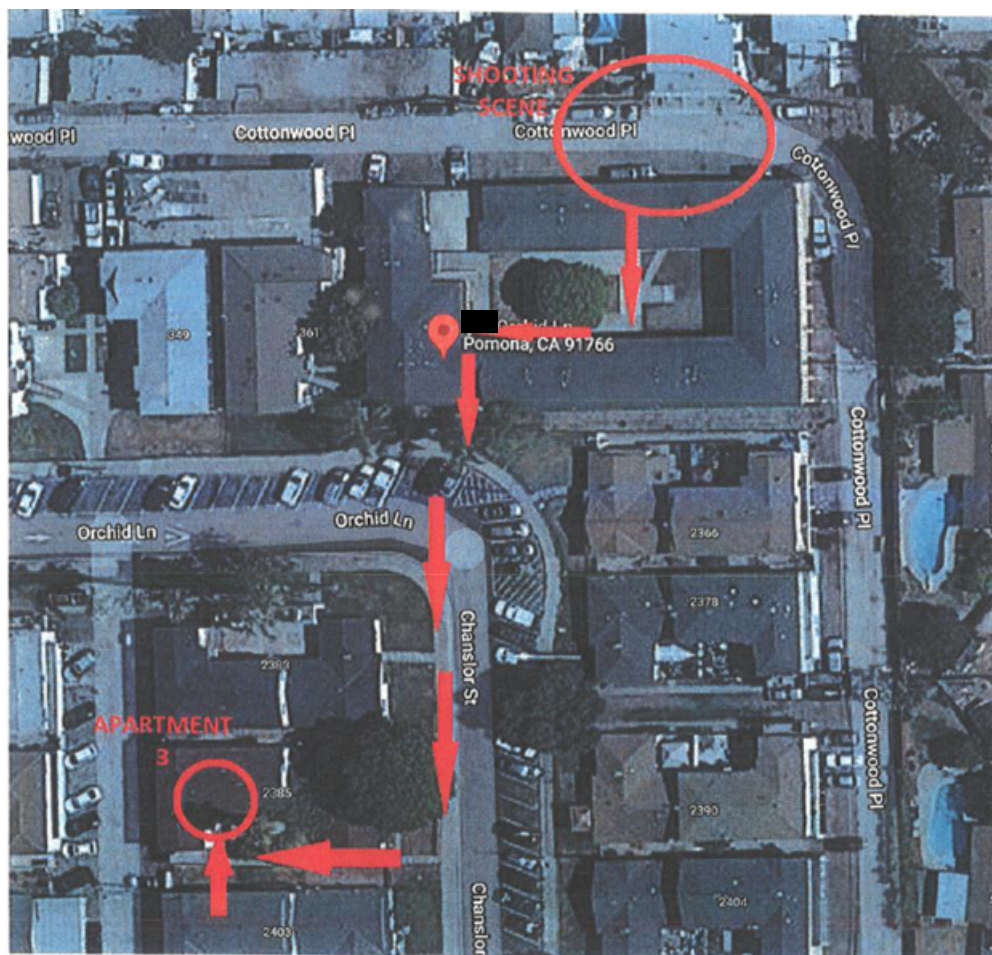
Diaz remained at the location and requested assistance via his police radio. Responding officers initiated a containment of the area and located several shell casings from Velez's firearm. A blood trail went from the alley, through an apartment courtyard on Orchid Lane, down the street and led to an apartment building on Chanslor Street. The blood trail continued up the stairs to the front door of an apartment at that location.

Pomona officers ordered the occupants out of the apartment. Two females and Velez exited. Velez had suffered two gunshot wounds to the shoulder. The two females were later identified as [REDACTED] and [REDACTED]

Officers conducted a protective sweep of the apartment and located a black semi-automatic pistol on the recliner in the front living area of the apartment in plain view. The pistol's slide was locked back indicating that it had been recently fired with all its ammunition expended. The pistol also appeared to have fresh blood on and around its grip.

Diaz and Velez were both transported to Pomona Valley Medical Center. Diaz was treated and released. Velez was cleared and then booked at Los Angeles County Jail, Twin Towers Facility.





Google map image showing the location of the officer involved shooting and diagraming the blood trail leading to Apartment 3, where Velez was located.

### **Statement of** [REDACTED]

On February 4, 2022, at approximately 12:15 a.m., Detectives Recchia and Lukehart interviewed [REDACTED] at the Pomona Police Department. DART personnel were present for the interview, which was audio recorded.

[REDACTED] said that on the evening of February 3, 2022, she went to an apartment that was a “kick it” spot with her boyfriend, who she only knows as “Lazy”<sup>1</sup>. [REDACTED] and “Drowsy,” also known as Velez, were there just hanging out. At approximately 7:00 p.m., Velez<sup>2</sup> left the apartment alone.

[REDACTED] stated that around 8:30 p.m., Velez returned to the apartment and ran straight to the bathroom. [REDACTED] stated that Velez was “all bloody.” Velez dropped to the floor and [REDACTED] and [REDACTED] started to render aid by wrapping his wounds.

<sup>1</sup> “Lazy” was later identified as [REDACTED]

<sup>2</sup> [REDACTED] refers to Velez as “Drowsy” at all points in the interview.

██████████ said that Velez told her he was “hit.” Velez did not tell her anything that happened. Approximately one hour later the police arrived, and ██████████ exited the apartment. ██████████ said she did not witness the shooting.

#### **Statement of ██████████**

On February 4, 2022, at approximately 1:22 a.m., Detectives Recchia and Lukehart interviewed ██████████ at the Pomona Police Department. DART personnel were present for the interview, which was audio recorded.

██████████ stated that she arrived at the apartment at approximately 8 p.m. and was hanging out with ██████████. Approximately an hour and a half later, Velez was dropped off at the apartment. ██████████ said she was inside the bedroom when she heard an unknown male voice yell “Call an ambulance! He needs to go to the hospital! The cops are coming!”

██████████ walked out of the bedroom and saw that Velez was bleeding and suffering from a gunshot wound. The person who dropped Velez off was no longer there. ██████████ did not see the person who dropped him off. Velez told ██████████ he got shot but did not give her any details of the incident.

██████████ used Velez’s phone to call 911. The police arrived a short time later. ██████████ did not witness the shooting.

██████████’s 911 call states that her friend had been shot in the arm. She said that the police and fire department had been outside for ten minutes but wouldn’t come inside. A male voice can be heard in the background providing the apartment address.

#### **Voluntary Statement of Officer Jose Diaz**

On February 7, 2022 at 10:00 a.m., Detectives Lukehart and Recchia conducted an audio recorded interview with Diaz at the Pomona Police Department.

Diaz has been a sworn peace officer since June of 2016 and was assigned to the Major Crime Task Force at the time of this incident. His responsibilities in that position are to conduct gang suppression and street narcotics enforcement. He is familiar with local gang members from making enforcement stops, studying reports of gang activity and looking at photographs of local gang members.

Diaz stated that on the evening of February 3, 2022, his role was to act as an “eye” or a scout for his teammates who were driving “tac” vehicles, which are black unmarked police cars with light and siren packages. Diaz was wearing a black tactical outer vest with a “POLICE” patch and a silver cloth police badge clearly displayed across his upper chest. He was driving an undercover Pomona Police vehicle, which was a white Infiniti G35 sedan. His team uses the undercover vehicle for “eye” because local gang members are familiar with the “tac” cars.

Diaz and his teammates were focused on enforcement efforts in the area of Angela Street and Chanslor Avenue because of a recent increase in violent crime involving Olive Sur gang members who claim that area. He stated that there have been recent murders in that area and that in the past Pomona Police officers have been shot in that area.

Diaz stated in late November or early December of 2021, he had been involved in a vehicle pursuit that initiated in the same area, while in the same undercover Infiniti G35. The pursuit involved an Olive Sur gang member named [REDACTED] who goes by the moniker "Lazy." [REDACTED] was the passenger of the vehicle. Both the driver and [REDACTED] fled in the vehicle and subsequently fled on foot but were captured. A handgun was recovered in that vehicle.

Diaz said he was also familiar with an Olive Sur gang member named Michael Velez, aka "Drowsy." Diaz had attempted to contact Velez in the same alley, approximately one week before, however, Velez had run away and escaped while holding his hands near his waistband.

On the evening of February 3, 2022, Diaz was driving eastbound in the north alley, behind Orchid Lane. He had advised his team, via radio, of his location and was aware that team members were nearby. Diaz saw three individuals on the south side of the alley as he drove past them. Diaz recognized two of the individuals as "Drowsy" (Velez) and "Lazy" ([REDACTED]) Diaz did not recognize the third individual.

Diaz stopped his vehicle and exited, leaving the driver's door open. He walked back toward the trunk and reached approximately the middle of the vehicle behind the rear bumper. He contacted the male who was on a bicycle, furthest east of the three, who had his hands in his pockets. Diaz stated, "Hey, police. Take your hands out of your pockets." The male complied and put his hands on the handlebars of the bicycle. At that same moment, Diaz saw Velez reach with his right hand, into either his right jacket or shorts pocket, and produce a black handgun. Velez raised the handgun toward Diaz.

Diaz stated that, fearing for his life, he drew his duty weapon, a Glock 21, .45 caliber firearm, from its holster and fired four to six rounds at Velez. Velez also fired his weapon at Diaz but Diaz stated he did not know if Velez fired at him first or not. Diaz retreated toward the driver's side door and crouched down behind the doorframe for cover. Diaz stated he was still receiving gunfire as he retreated. Diaz stated he thought he was going to be killed because he was outnumbered, three to one.

When Diaz crouched down, he lost sight of all three individuals. Diaz moved further east and took cover behind other parked cars in the alley. Diaz conducted a tactical reload of his magazine and broadcast via his police radio that he had been involved in a shooting and needed assistance. He then conducted a self-assessment and realized he had been shot in the right leg.

Responding officers came to Diaz's assistance and he was transported to Pomona Valley Hospital and treated for a through and through gunshot wound of his lower right leg.

### **Statement of [REDACTED] aka "Lazy"**

On February 15, 2022, at approximately 2:13 p.m., Detectives Lukehart and Recchia responded to the Pomona Police Department jail to interview [REDACTED]. The interview was audio recorded.

[REDACTED] admitted membership in the Pomona Olive Sur street gang with the moniker of "Lazy." He stated that on the date of the shooting he had been in an apartment on Chanslor with his homeboy known as "Drowsy." A female named [REDACTED] was also there and some other unknown people.

[REDACTED] said he left the location and went to an apartment on Orchard to visit someone he only knows as "Paiza." He left for a short time and saw "Drowsy" in the alley behind Orchard. [REDACTED] said he was in the alley for a short time but left and went back to "Paiza's" apartment.

About twenty seconds after leaving the alley, [REDACTED] said he heard several gunshots. [REDACTED] stayed in the apartment the rest of the time after the shooting. Detectives attempted a ruse by telling [REDACTED] he was depicted on Diaz's body worn video (BWV) as being present at the time of the shooting, but [REDACTED] continued to deny being present at the time the shooting occurred.

### **Michael "Drowsy" Velez**

Detectives attempted to interview Velez on February 6, 2022 at the Los Angeles County Twin Towers Jail facility. Upon arrival, Detectives were notified that Velez was in quarantine because he tested positive for the COVID-19 virus. Velez was subsequently charged in case KA127949 with one count of PC §664/187; one count of PC §245(D)(2) and one count of PC §29800(A)(1). Therefore no statement was obtained from Velez. Velez has been held to answer and the case is pending trial.

### **Physical Evidence**

The undercover white Infiniti was struck multiple times by gunfire. There was a bullet hole in the front passenger side door and another in the rear passenger side quarter panel behind the gas fuel door. A fired bullet was recovered inside the trunk compartment of the Infiniti. A third bullet hole was found in the rear bumper of the Infiniti, to the left of the license plate. And a fourth bullet hole was located in the rear passenger side wheel well of the Infiniti between the wheel and the rear passenger side door. A fired bullet was also recovered from this area believed to correspond with the fourth bullet hole.



Image showing two bullet holes on the passenger side of Diaz's Infiniti.



Image showing a third bullet hole on the rear bumper of Diaz's Infiniti.





Image showing a fourth bullet hole in rear passenger wheel well of the white Infiniti driven by Diaz.

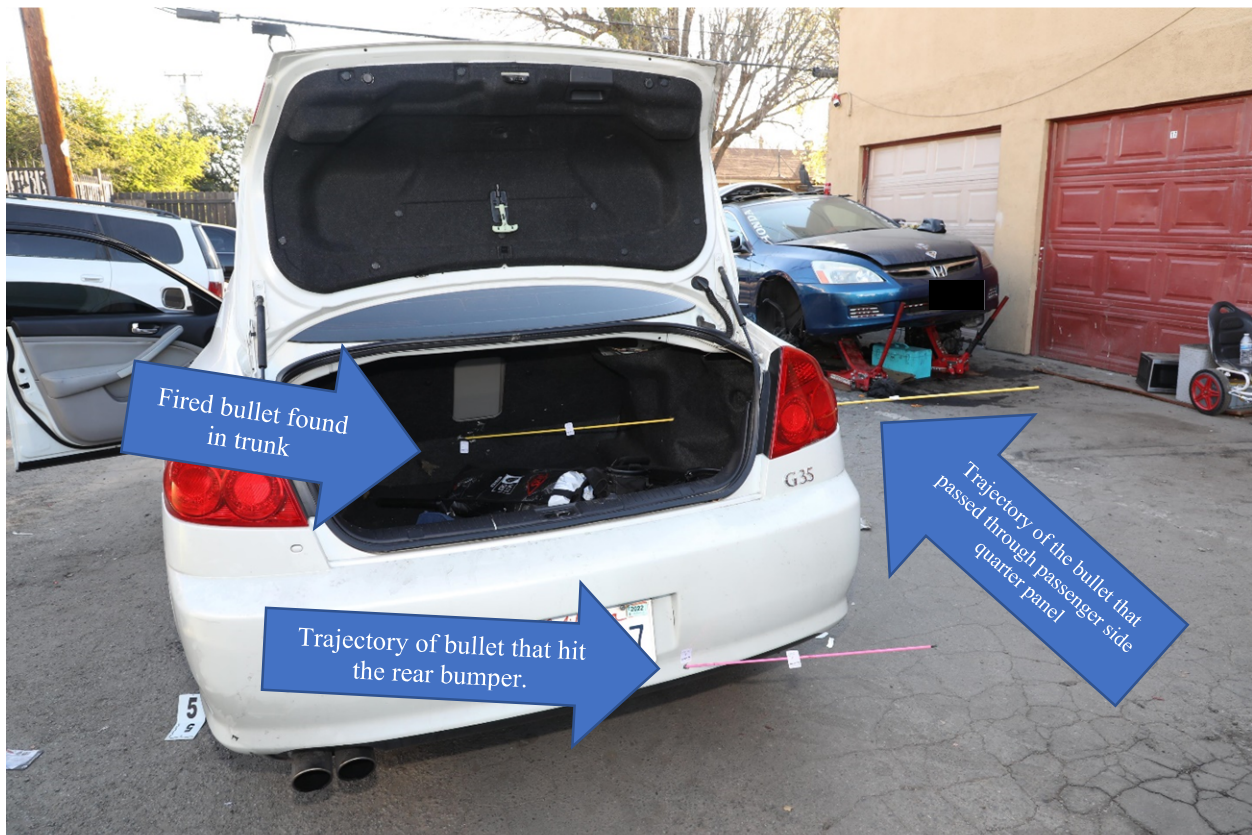


Image showing the bullet trajectory for two of the bullet holes in the white Infiniti.



Image showing the trajectory of the bullets that hit Diaz's car in relation to the six fired cartridge casings that were found to have been fired from the semiautomatic pistol recovered in Apartment 3.

Diaz's duty weapon, a .45 caliber Glock model 21, was loaded with twelve rounds in the magazine and one round in the chamber at the time it was analyzed. The Glock brand pistol magazine that Diaz dropped during his tactical reload was recovered northeast of the white Infiniti sedan. The maximum capacity of this magazine is thirteen rounds. At the time of collection, the magazine contained ten live rounds of 45 caliber ammunition.





Image showing Diaz's duty weapon, magazine and bullets recovered from inside.



Image showing the Glock brand magazine believed to have been dropped by Diaz during the tactical reload.

Los Angeles County Sheriff's Department (LASD) Scientific Services Bureau responded to the scene and collected swabs from the blood trail leading from the location of the OIS to the apartment where Velez was ultimately located. The samples were compared to a buccal swab taken from Velez. The samples from the blood trail were found to contain Velez's DNA. Additionally, the gun recovered on the recliner in the same apartment where Velez was located, was swabbed and tested. The sample showed blood was detected and a DNA comparison showed that the blood was Velez's<sup>3</sup>.



Image showing the portion of the blood trail leading to Apartment 3.

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<sup>3</sup> The conclusion that the blood is Velez's is based on a statistical likelihood, specifically, the DNA profile is approximately  $7 \times 10^{28}$  times more likely if it originated from Michael Velez than if it originated from an unknown individual. This analysis provides very strong support for the proposition that Velez is a contributor to the DNA obtained from these samples.





Image showing the Glock model 22, 40 S&W caliber semiautomatic pistol with the slide locked back that was found on the recliner inside Apartment 3. The handle and grip have blood on them.

Velez's hands were swabbed for gunshot residue (GSR) particles. Upon examination, four particles characteristic of gunshot primer residue were detected in those samples. The presence of those particles is consistent with Velez handling or discharging a firearm, being in close proximity to a discharging firearm, or otherwise having been in contact with an environment of gunshot primer residue.

Velez was shot two times. Velez suffered one gunshot wound to his left shoulder and another to his left upper arm area just above the elbow.





Image showing the gunshot wound to Velez's left arm.



Image showing the gunshot wound to Velez's left shoulder.

## LEGAL ANALYSIS

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.

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) and (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force is taken into consideration. Penal Code section 835a(a)(4) and (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

The jury instructions for self-defense say that a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. CALCRIM No. 505.

The evidence and the circumstances establish that Diaz acted in lawful self-defense when he drew his gun and shot Velez. Officer Diaz stated, and the evidence corroborates, that Velez drew a gun and shot Diaz. Although Diaz did not recall who shot first, he was clear that he saw Velez removing the gun from his pocket prior to drawing his own firearm. At that moment the peril to Diaz was imminent and the necessity for action was immediate. There was no time or opportunity for Diaz to attempt to use less lethal force. The danger had to be instantly confronted and addressed. As evidenced by the gunshot wound Diaz suffered, Velez had the immediate ability and apparent intent to cause great bodily injury and/or death.

The six cartridge casings that were found where Velez was originally standing and that matched the gun that was found with Velez, with Velez's blood on it, corroborates that Velez fired his weapon multiple times. The location of the bullets, the corresponding bullet holes in Diaz's Infinity, and the

gunshot wound to Diaz's leg, corroborates that those shots were fired in Diaz's direction. These facts support a reasonable belief that the use of deadly force to defend against an imminent threat of death or serious bodily injury was necessary.

## **CONCLUSION**

Given the totality of the circumstances, the available evidence supports the conclusion that Officer Diaz acted in lawful self-defense and in the defense of others at the time he fired his weapon.