Fatal Officer Involved Shooting of Christopher Diaz

Montebello Police Department

Officer Craig Adams, #1356
Officer Andrew Fivecoat, #1379

Burean of Alcohol, Tobacco, Firearms and Explosives

Special Agent John Ciccone, #3155

J.S.I.D. File #17-0409

GEORGE GASCÓN

District Attorney

Justice System Integrity Division

December 15, 2022

MEMORANDUM

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

SUBJECT: Fatal Officer Involved Shooting of Christopher Diaz
J.S.I.D. File #17-0409
Montebello P.D. File # 2017-00005397
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DATE: December 15, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 18, 2017, fatal shooting of Christopher Diaz by Montebello Police Department (MPD) Detective Craig Adams and Corporal Andrew Fivecoat, and United States Department of Justice Bureau of Alcohol, Tobacco, Firearm and Explosives Special Agent John Ciccone. It is our conclusion that Adams, Fivecoat and Ciccone acted in lawful self-defense, defense of others, and in an attempt to arrest a person they believed to be a dangerous fleeing felon at the time they fired their weapons.

The District Attorney's Command Center was notified of this shooting on August 18, 2017, at approximately 3:02 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to this office by the Los Angeles County Sheriff's Department (LASD) and MPD, and third-party video that captured portions of the incident. The officers' voluntary statements were considered in this analysis.

FACTUAL SUMMARY

On August 6, 2017, Christopher Diaz shot and killed his wife [redacted] in the City of Montebello. According to Diaz's sister [redacted], Diaz shot [redacted] while she was sitting on a couch inside a residential apartment in Montebello, and thereafter Diaz fled the scene armed with the handgun he had used to shoot [redacted].

A felony arrest warrant for Penal Code section 187(a) in the amount of one million dollars was issued for Diaz on August 7, 2017.[1]

Investigation by MPD determined that Diaz was a member of the Winter Gardens criminal street gang,[2] went by the moniker of "Gunner," and had arrests and convictions for violence and firearms related offenses.[3] Investigation further determined that Diaz was friends with another Winter Gardens street gang member [redacted] who was recently charged with the murder of a Whittier police officer, and that Diaz had talked about killing a police officer like his friend [redacted].[4]

As part of their search for Diaz, Sergeant Christopher Cervantes and Officer Ray Camuy from MPD interviewed Diaz's father, [redacted]. [redacted]. told the officers that in his opinion Diaz would force the police to kill him. [redacted]. told the officers that Diaz was "not right in the head" and that any encounter with Diaz would not end peacefully.

On August 18, 2017, police officers with the Special Problems Unit (SPU) of the MPD conducted a briefing regarding the search for Diaz. The above information regarding Diaz's history and the statements of [redacted]. were conveyed.[5] SPU had obtained a phone number they believed was being used by Diaz and had used a Triggerfish device to track the location of the user of that phone number.[6] The Triggerfish device pinpointed the cellphone number user's location to a residential apartment complex on Via Altamira in Montebello.

Between 1:45 p.m. and 2:00 p.m., SPU set up a surveillance operation outside the apartment complex on Via Altamira. After approximately thirty minutes of surveilling the location, a man

[1] California Penal Code section 187(a) is the statute for murder.
[2] California Penal Code section 186.20 *et. seq.* defines the elements of a criminal street gang.
[3] [redacted]
[4] [redacted]
[5] Ciccone did not attend this briefing. In his voluntary statement regarding the incident, Ciccone stated he was aware that a Winter Gardens gang member had recently allegedly murdered a Whittier police officer, that he was familiar with the Winter Gardens criminal street gang, and that he had seen a wanted flyer for Diaz indicating Diaz "would not go down without a fight." He had additionally read a packet compiled by MPD containing Diaz's criminal history, associates, and gang affiliation.
[6] A Triggerfish device, also known as a cell-site simulator or digital analyzer, uses a mobile cellular base station to track the location of a given cellphone number's geographic location.

matching Diaz's description exited an apartment in the complex and walked towards the carport area. He was accompanied by a woman. The man was wearing a grey hooded sweatshirt with the hood pulled low over his head, and was holding a magazine, newspaper or similar item close in front of his face exposing only his eye area.[7] The man and woman entered a silver Toyota Camry and the woman drove the car out of the parking lot.

Fivecoat was driving an unmarked police vehicle equipped with an interior emergency lightbar and siren. He followed the Camry as it traveled southbound on Via Altamira and stopped for a red traffic signal at Via Acosta. Fivecoat was directly behind the Camry. He activated his red lights and siren and radioed that he was conducting a traffic stop on a murder suspect. The Camry failed to yield, continued westbound, turned into the parking lot of a grocery store and drove through the parking lot towards the lot exit at Beverly Boulevard, stopping at the exit. The front passenger of the Camry exited the vehicle, ran across Beverly Boulevard and southbound on Via San Clemente. Fivecoat recognized the man as Diaz and saw that he was holding a semiautomatic firearm in his right hand. Fivecoat exited his vehicle and pursued Diaz on foot.

Adams was following in his vehicle behind Fivecoat and recognized Diaz when he exited the Camry. Adams saw Diaz holding a gun in his right hand. Adams broadcast that a "187 suspect, armed" was running southbound on Beverly Boulevard and provided a description of Diaz. Adams drove through the parking lot and saw Diaz cross the eastbound lanes of Beverly Boulevard and saw Fivecoat running on foot behind Diaz.

Fivecoat radioed that he was in foot pursuit as he ran southbound on Via San Clemente. Diaz turned eastbound on Via Corona and then northbound through the front yard of a residence on Via Corona. Diaz turned and fired one round from his gun at Fivecoat.[8] Fivecoat returned fire. Diaz ran northbound along the east side of a residence towards a fence separating the front and back yards.

Adams drove southbound on Via San Clemente, eastbound on Via Corona parallel to Fivecoat and Diaz, and then drove past them in an attempt to cut off Diaz's escape. Adams parked east of the fence that Diaz was running towards and exited his vehicle. Diaz attempted to climb over the fence but was unable to and instead turned towards Adams still holding a gun. Adams fired approximately four to five shots from his position at the street curb and Diaz fell to the ground.

Fivecoat took a position to the west of the fence on the front porch of a residence approximately ten feet away from Diaz. Diaz was on his side in front of the fence between the two residences on Via Corona, still holding a firearm.[9] Ciccone arrived at the scene and took a position alongside Fivecoat. Adams ran back to his vehicle to turn off the siren and radio dispatch that shots had been fired, and then turned back towards Diaz. Adams moved to take cover behind a cinderblock wall at the residence east of Diaz. The officers gave Diaz commands to show his

[7] Fivecoat stated that he thought it was a book or a newspaper; Adams stated he thought it was a book or a magazine.
[8] In his voluntary statement, Fivecoat stated that he saw Diaz turn counter-clockwise, raise his arm holding a gun, and then heard a gunshot. Neither Adams nor Ciccone mention hearing this first shot in their voluntary statements.
[9] Fivecoat stated that he thought the gun in Diaz's hand was a different gun than Diaz had in his hand a moment earlier. Ciccone stated the gun he saw in Diaz's hand at this time was a revolver with a black barrel and brown grip.

hands and surrender. Instead Diaz turned over and pointed his gun over his left shoulder at Fivecoat and Ciccone. Adams, Fivecoat and Ciccone fired their weapons, striking Diaz.

Cervantes, Camuy, and other officers arrived at the scene and assembled an arrest team. Officers continued to yell commands at Diaz to surrender but Diaz continued to move with his hands concealed under his body. Cervantes directed Camuy to fire a less-lethal 40mm rubberized projectile at Diaz. The projectile stuck Diaz in the back and had no effect. Diaz stopped moving and Cervantes directed an arrest team to approach and handcuff Diaz.

Los Angeles County Fire Department (LAFD) paramedics arrived at the scene and, despite life-saving efforts, pronounced Diaz deceased at 2:47 p.m.

On August 22, 2017, an autopsy was conducted, and the medical examiner determined that Diaz died as a result of multiple gunshot wounds.

Fivecoat was armed with a Smith & Wesson M&P9 Shield 9mm pistol. He discharged nine rounds during the incident.

Adams was armed with a Kimber Warrior II .45 caliber pistol. He discharged nine rounds during the incident.

Ciccone was armed with a Glock 22 .40 caliber pistol. He discharged ten rounds during the incident.

Diaz was armed with two pistols: a fully loaded Taurus model 85 .38 special caliber revolver recovered from just south of Diaz and a JPC Highpoint .40 caliber pistol recovered next to Diaz's feet. Diaz discharged one round from his Highpoint .40 caliber pistol during the incident.

Diaz's Highpoint pistol recovered in the planter next to Diaz's feet.

Diaz's .38 special revolver recovered just south of Diaz in the yard.

Investigators recovered one .40 caliber cartridge case from the front yard where Diaz fired his weapon at Fivecoat. Firearms analysis determined the cartridge was fired from Diaz's JPC Highpoint pistol. Firearms analysis further determined that the bullet recovered in Roxanne A.'s murder investigation was fired from Diaz's .38 special caliber revolver.

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM No. 505. In protecting himself or another, a person may use that amount of 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. *Id*.

Actual danger is not necessary to justify the use of deadly 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 those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577.

California law also 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. 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 p. 479.

"An officer may use reasonable force to make an arrest, prevent escape or overcome resistance." *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516. When protecting the public peace, a police officer "is entitled to even greater use of force than might be in the same circumstances required for self-defense." *Ibid.*

In California, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard, which enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 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. Connor* (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that Fivecoat, Adams and Ciccone were part of a team searching for Diaz who was wanted on a one million dollar warrant for murder. They knew

that Diaz had a criminal history that included violence and gun possession offenses, that he was allegedly a member of the Winter Gardens criminal street gang, and had a moniker of "Gunner." They further knew that Diaz's father had stated that Diaz would force the police to kill him and would not peacefully surrender, and that Diaz was friends with another Winter Gardens gang member, [redacted], who was implicated in the murder of a Whittier police officer, and that Diaz had talked about killing a police officer like [redacted] did.

When Fivecoat activated his lights and siren behind the Camry, Diaz jumped from the car and fled holding a handgun. Instead of surrendering, Diaz fired his weapon at Fivecoat who in self-defense fired his duty weapon back at Diaz. Once Adams and Ciccone arrived at the scene, Diaz pointed his gun at all three officers who, in self-defense, defense of others, and in an attempt to apprehend a dangerous fleeing felon, fired their weapons in response. Finally, while on the ground, Diaz ignored the officers' orders to surrender and instead pointed his gun at Fivecoat and Ciccone. In response, Fivecoat, Adams and Ciccone fired their weapons.

When Fivecoat, Adams and Ciccone fired their weapons, they reasonably believed that Diaz was going to shoot them. Firing their weapons was thus justified in self-defense and defense of each other. Further, Diaz was a fleeing felon wanted for murder and armed with a handgun that he had fired at Fivecoat, and thus the officers' decision to use using deadly force to apprehend him was lawful.

CONCLUSION

Fivecoat, Adams and Ciccone acted lawfully in self-defense, the defense of each other and in apprehending a person they believed to be a fleeing felon.