

Officer Involved Shooting of Oscar Anaya

Los Angeles Police Department

Officer Jean-Paul Charles #39485

Officer Jose Flores #41249

J.S.I.D. File #17-0535



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 1, 2019

MEMORANDUM

TO: COMMANDER ROBERT E. MARINO
Los Angeles Police Department
Force Investigation Division
100 West 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 Oscar Anaya
J.S.I.D. File #17-0535
F.I.D. File # F073-17

DATE: April 1, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 15, 2017, fatal shooting of Oscar Anaya by Los Angeles Police Department (LAPD) Officers Jean-Pierre Charles and Jose Flores. We have concluded that the officers acted lawfully in self-defense and in the lawful pursuit of a fleeing felon.

The District Attorney's Command Center was notified of the shooting at approximately 4:45 p.m., on November 15, 2017. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings and transcripts of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted to this office by LAPD Force Investigation Division (FID) Detective Art Espino. No compelled statements were considered as part of this analysis.

FACTUAL ANALYSIS

On Wednesday, November 15, 2017, at approximately 3:59 p.m., Van Nuys Area Gang Enforcement Division uniformed police Officers Jean-Pierre Charles and Jose Flores were conducting patrol in a marked black and white LAPD vehicle in the area of Bassett Street and Sepulveda Boulevard in the City of Van Nuys. Charles was driving the vehicle with Flores as his front-seat passenger. The vehicle was equipped with a Digital In-Car Video System (DICVS) and ballistic door panels. The DICVS on the vehicle was activated.¹

¹ Several officers who later responded to the scene were equipped with Body Worn Video (BWV). None of these videos captured the events leading up to the officer involved shooting or the shooting itself. Officer Goodyear was in the vicinity on patrol wearing BWV. His BWV does capture the audio of the shooting and the shooting itself from a far distance. The BWV does not provide any information not contained in the DICVS.

As seen on the video, Charles turned north on Sepulveda Boulevard from Bassett Street into the number three lane. In doing so, he pulled into traffic behind a 2003 light blue four-door Honda Civic, bearing California License Plate Number 6GWL371.² The Honda had three occupants, later identified as driver Oscar Anaya, front passenger Emely C. and rear passenger Brittane G. When the police vehicle pulled behind the Honda, Anaya activated his left turn signal and attempted to merge into the number two lane.³ In doing so, Anaya nearly collided with a white, four-door sedan traveling north on Sepulveda Boulevard.



Anaya's vehicle almost colliding with another vehicle, as captured by DICVS video

This unsafe lane change was a violation of Vehicle Code section 21658(A). Flores ran the license plate of the Honda on his Mobile Digital Computer (MDC), which informed him the vehicle had lost or stolen plates. Charles activated the vehicle's forward-facing emergency lights as well as a quick siren burst, also known as a "chirp," to get Anaya's attention.

² Investigation later revealed that the vehicle was registered to Anaya, but the license plates on the vehicle were reported stolen on November 2, 2017, from a residence in Sherman Oaks, California.

³ According to Emely, Anaya's demeanor changed as soon as the police vehicle pulled behind him. Anaya appeared to get very nervous.



Anaya failing to pull over, as captured by DICVS video

Anaya failed to yield, and pulled into a CVS parking lot located on the southeast corner of Sepulveda Boulevard and Sherman Way. The DICVS captured Anaya negotiating his way from east to north in the parking lot while traveling at an unsafe speed.⁴ Anaya then exited on Sherman Way, turning east and accelerating.⁵

The officers followed Anaya's vehicle through the parking lot and activated their vehicle's siren as they exited onto Sherman Way. Flores broadcast that they were following a possibly stolen vehicle, and requested back-up, an airship and a supervisor to respond to their location. Six seconds later, Flores updated the broadcast to include that they were in pursuit.

Anaya continued driving east on Sherman Way at a high rate of speed. Anaya rolled down the driver's side window of the vehicle and fired multiple shots out the window from a handgun.⁶

As captured on the DICVS, Charles yelled, "Oh fuck dude, shots fired! Shots fired!" Flores simultaneously yelled, "Shots fired! Heads up!"

⁴ Both pedestrians and other motorists were present in the parking lot as Anaya sped through it.

⁵ Brittanei told investigators Anaya said, "I'm not pulling over."

⁶ Both Emely and Brittanei observed Anaya firing a handgun out the window, and two casings were later recovered along the pursuit path on Sherman Way.

Flores broadcast, “Shots fired! Shots fired! We are being shot at. The vehicle is going to be a blue Honda Civic. Stand by. Stand by.” As Flores was broadcasting, Anaya’s vehicle collided with a tri-light pole located on the southeast corner of Sherman Way and Kester Avenue.⁷ Charles stopped his vehicle in the crosswalk, at the southwest corner of Sherman Way and Kester Avenue in a diagonal fashion, with the front of the vehicle pointed in an easterly direction facing Anaya’s vehicle.

Charles and Flores were in the process of exiting their vehicle when Anaya opened his driver’s side door. Both officers took cover behind their respective doors and unholstered their service weapons. Anaya turned toward the officers and pointed a pistol in their direction. As captured by DICVS, Anaya held the pistol in a two-hand, high-ready position, and immediately began firing at the officers while still seated in the vehicle.⁸ Charles and Flores then fired their service weapons at Anaya.⁹ The DICVS captured Flores yelling, “Shots fired! Shots fired!” as the officer involved shooting was taking place.

⁷ The pursuit lasted approximately 35 seconds, with a total distance of approximately half a mile.

⁸ Approximately three seconds passed between Anaya’s vehicle colliding with the light pole and his first shot being fired at the officers. Five additional casings consistent with his firearm were located from the intersection of Sherman Way and Kester Avenue, and three casings were recovered from the passenger compartment of Anaya’s vehicle.

⁹ Brittanei told investigators Anaya was shooting at the police, which caused the officers to fire rounds at Anaya. Other civilian witnesses, Jose J., John T., Marcela C., Armin G. and Xavier L., also observed Anaya shooting at the officers before they returned fire.



Anaya opening fire on officers, as captured by DICVS video

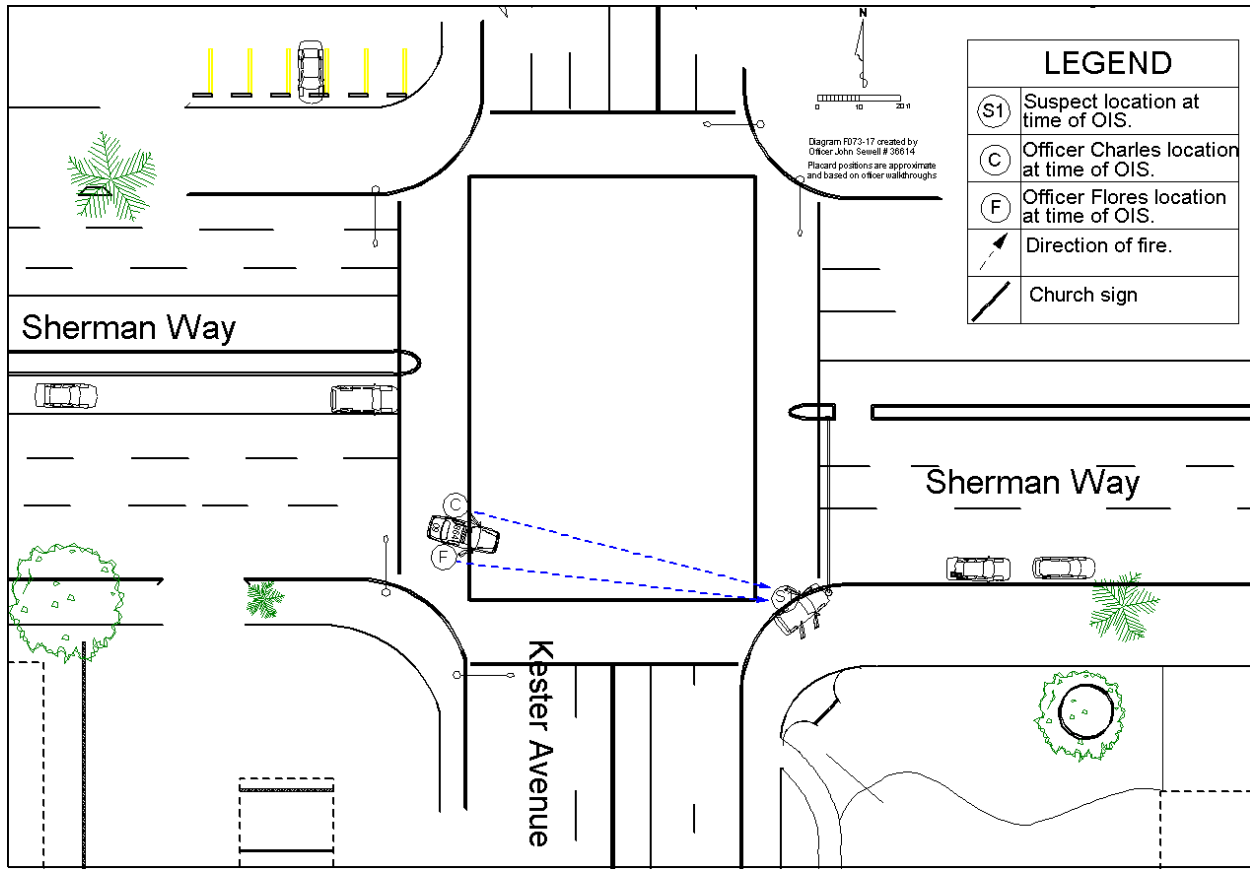


Diagram of the location based upon DICVS video and physical evidence

Charles fired seven rounds from his service weapon at Anaya in an easterly direction from a distance of approximately 81 feet. Flores fired two rounds at Anaya, also in an easterly direction, from a distance of approximately 84 feet. Flores then redeployed to the rear of his vehicle.

As the officers engaged Anaya, he stood up and ran towards the front of his vehicle. In the process, Anaya was struck by gunfire and collapsed on the sidewalk. At the same time, Emely and Brittanej exited the vehicle from the passenger side and moved to the south, taking cover behind signage.

An arrest team was assembled. Upon handcuffing Anaya, a blue steel .22 caliber Long Rifle, Ruger, semiautomatic pistol and two magazines were recovered from the sidewalk underneath him. The chamber and magazine of the weapon were both empty, and the safety was off. The two additional magazines recovered were fully loaded with 10 live .22 caliber cartridges each. The two casings recovered from the pursuit path and the five recovered from outside of Anaya's vehicle where Anaya is depicted on video firing the weapon were tested. Ballistics testing confirmed that each of the casings were fired from Anaya's pistol.



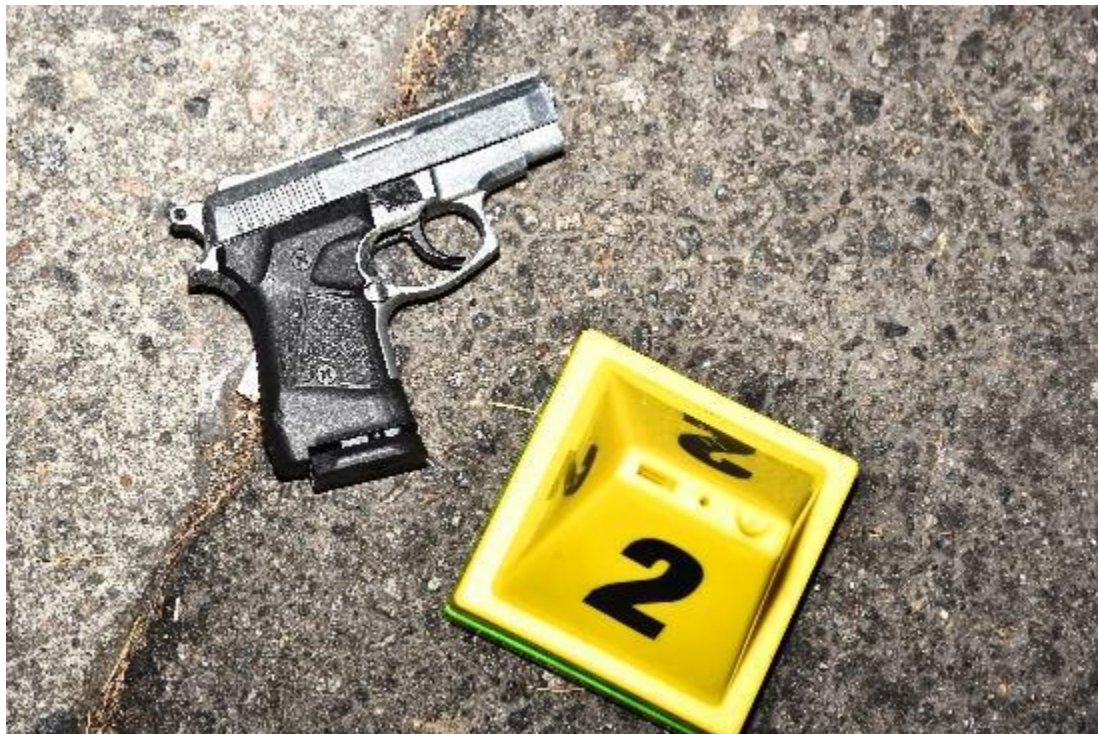
Firearm recovered from the sidewalk underneath Anaya at arrest

A second firearm, a blue steel .38 Special caliber Smith and Wesson revolver, was subsequently recovered from Anaya's front waistband when paramedics arrived and began to provide medical treatment. The revolver was loaded with five rounds of .38 Special caliber ammunition.



Firearm recovered from Anaya's front waistband

A third weapon, a replica firearm, was also recovered from the street adjacent to Anaya's vehicle. The magazine of the weapon was fully inserted and the hammer was at half-cock with the safety off. This weapon was not loaded.



Replica firearm recovered adjacent to Anaya's vehicle

Anaya was transported to Providence Holy Cross Medical Center where he was pronounced dead by Doctor Richard Moore.

Several civilian witnesses were located who had been in the vicinity of the incident. Their observations varied, but were largely consistent with the DICVS video and other surveillance video obtained from businesses in the area.

A search of Anaya's vehicle produced large quantities of .22 caliber ammunition, marijuana and methamphetamine. Also recovered were two 9mm cartridge casings, five .22 caliber cartridge casings from the trunk and three .22 caliber cartridge casings from the passenger area of the vehicle.

Swabs were taken from the firearms recovered, and tested for DNA. The swab from the pistol was found to contain DNA from at least two individuals. The major contributor was consistent with Anaya. A partial DNA profile was obtained from the revolver, but was insufficient to compare to Anaya. A swab from the replica firearm contained DNA from two individuals and was also insufficient for comparison.

Fingerprints were lifted from the pistol and revolver. One fingerprint recovered from the pistol was found to belong to Anaya. Two prints lifted from the revolver were found not to be Anaya's.

An autopsy was conducted on November 17, 2017 by Los Angeles County Department of Medical Examiner-Coroner Deputy Medical Examiner Doctor Scott A. Luzi. Doctor Luzi determined that Anaya suffered two gunshot wounds, one through the back of the head and one to the chest. Doctor Luzi attributed cause of death to multiple gunshot wounds. Toxicology testing done as part of the autopsy revealed that Anaya had amphetamine, methamphetamine and marijuana in his system at the time of his death. Anaya's hands were also tested for gunshot residue, and found to contain particles consistent with him having discharged a firearm.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others 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 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the 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. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3^d 325, 333.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict

great bodily injury on himself or those acting with him.” *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

“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 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 ‘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. Connor* (1989) 490 U.S. 386, 396-397.

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 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.” *Id.*

The U.S. Supreme Court has further clarified that when an escaping felon is using a vehicle to effectuate his escape, the risk to the lives of innocent bystanders may be higher. Even after a vehicular chase ends, officers may reasonably believe a suspect is intent on resuming flight, and if allowed to do so would again pose a deadly threat to others on the road. Under those circumstances, an officer’s use of deadly force is reasonable even after the suspect’s vehicle has stopped moving. *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012.

In the instant matter, DICVS video as well as forensic evidence and evidence recovered at the scene, clearly establish that Anaya had opened fire on officers both during the vehicle pursuit, and after the collision. Under those circumstances, Charles and Flores were justified in using deadly force to protect themselves and to capture Anaya, who had demonstrated he was a fleeing felon after having fired the first round of shots at the officers during the pursuit.

CONCLUSION

We find that Officers Charles and Flores acted lawfully in self-defense and in pursuit of a fleeing felon when they used deadly force against Oscar Anaya. We are closing our file and will take no further action in this matter.