

**Officer Involved Shooting of Oscar Diaz
Los Angeles Police Department**

Officer James Day, #39691

J.S.I.D. File #15-0580



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 18, 2018

MEMORANDUM

TO: COMMANDER ALAN HAMILTON
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

RE: Officer Involved Shooting of Oscar Diaz
J.S.I.D. File #15-0580
F.I.D. File #F087-15

DATE: May 18, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 27, 2015, non-fatal shooting of Oscar Diaz by Los Angeles Police Department (LAPD) Officer James Day. We have concluded that Officer Day acted lawfully in self-defense and defense of another.

The District Attorney's Command Center was notified of this shooting on October 27, 2015, at approximately 6:20 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 our office by LAPD, Force Investigation Division (FID) Detective Nicholas Pikor. The reports include investigative reports, forensic science firearms analysis reports, photographic evidence and witness statements. The compelled statement of Officer Day was considered in this analysis.

FACTUAL ANALYSIS

On October 27, 2015, at approximately 4:40 p.m., LAPD Officers James Day and Dolores Rodriguez were in full uniform, driving in a marked patrol car. Rodriguez was the driver, and Day was the passenger.¹ The officers were assigned to the University Park Task Force, which provided additional patrol and crime suppression around the University of Southern California campus. The officers were driving in a residential neighborhood, northbound on Magnolia Avenue, when they approached a silver Honda Civic being driven by the sole occupant, Oscar Diaz.² The Honda faced southbound, and was stopped in the street.

¹ Day was five feet, seven inches tall, and weighed 180 pounds. Rodriguez was five feet, two inches tall, and weighed 130 pounds.

² Diaz was five feet, seven inches tall, and weighed 175 pounds.

Day ran the Honda's license plate number in the patrol car's Mobile Digital Computer (MDC) to determine whether it was a stolen vehicle. The Honda returned as a stolen vehicle in the MDC, and Rodriguez turned the patrol car around so that Day could verify that he had entered the correct plate number.³ Rodriguez drove southbound on Magnolia Avenue towards the Honda, which had turned westbound and stopped in the opening of a driveway at [REDACTED].⁴ Rodriguez stopped the patrol car behind the Honda, and Day confirmed that the plate number he had entered was the correct number. Both officers exited the patrol car and drew their service weapons.



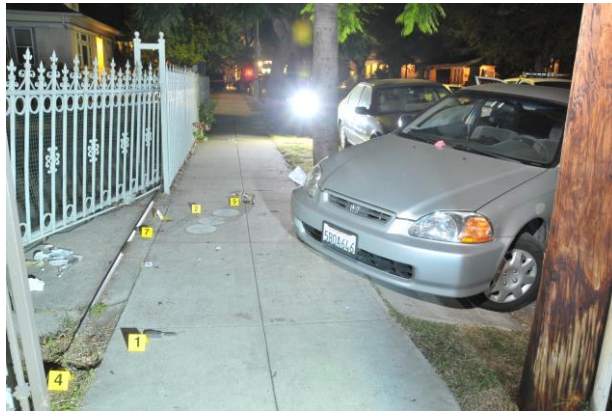
Day and Rodriguez' patrol car behind stolen Honda

Day approached Diaz, who had exited the Honda. Day attempted to detain Diaz, who began backing up towards the sidewalk. Rodriguez holstered her weapon, ran around a car parked at the west curb, and then northbound on the sidewalk towards Day and Diaz. Diaz [REDACTED] lunged towards Day, [REDACTED]. Day yelled, "Knife! Partner, knife!" Day attempted to control Diaz' left arm and right forearm, while Rodriguez grabbed his right arm, which still held the knife. Diaz bear-hugged Day and attempted to stab him in the back of his left shoulder. Diaz made another "jabbing" motion with the knife towards Day as if he was attempting to stab him again.

As Day and Rodriguez pulled Diaz' arms, they all fell to the ground. Diaz landed on top of Day, who fell on his back, and Rodriguez fell on her right side. The officers struggled with Diaz, as they rocked back and forth with him. Day was on his left side, with his service weapon facing up. Day yelled, "He's going for my gun!" Rodriguez could not see Diaz' left hand, and continued trying to push his right arm away. [REDACTED] Day [REDACTED] [REDACTED] fired one round at Diaz.

³ The Honda was reported stolen earlier in the day from the LAPD Northeast area.

⁴ [REDACTED] is a single-family residence in a residential neighborhood with single and multi-family residences. The driveway and front yard is enclosed by a metal gate, and a paved sidewalk borders the residence.



Location of the OIS at [REDACTED]

Diaz immediately let go of the knife, and Rodriguez kicked it away. Diaz initially resisted going down to his stomach to be handcuffed. Day grabbed Rodriguez' Taser [REDACTED]. Diaz [REDACTED] was handcuffed and taken into custody.

A six and one quarter-inch, multi-tool folding knife, with a two and three quarters-inch blade, was recovered from the scene. The blade was extended at the time it was recovered.



Knife used by Diaz during OIS

Los Angeles Fire Department Paramedics arrived, began treating Diaz, and transported him to California Medical Center Hospital. He was treated for a single gunshot wound to his stomach.⁵

Day suffered an injury to the back of his head, an abrasion to his left arm, and lacerations to his forehead and right arm.⁶ Rodriguez suffered lacerations to the palm of her right hand, and abrasions to her right hand and elbow.

⁵ Diaz was charged in Los Angeles Superior Court case number BA441039 with assault on a peace officer in violation of Penal Code section 245(c) and vehicle theft in violation of Vehicle Code section 10851(a). On October 23, 2017, Diaz was convicted of a violation of Penal Code section 245(c), and sentenced to five years in the state prison.

⁶ [REDACTED]

Compelled Statements of Officer James Day⁷

Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. Day was separately interviewed regarding his actions during this officer involved shooting (OIS) by detectives from FID. The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and ordered the officer to do so in the present case.

Day, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York, supra, at 284-285*. Because the LAPD ordered him to answer questions which might expose him to criminal liability, the LAPD compelled him to participate in the interview. The effect of this legal compulsion is that Day's statement cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interview be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because the compelled statement is part of Day's police personnel file, the statement is confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

[REDACTED]

[REDACTED]

[REDACTED]

Diaz began to turn away from Day as if he was going to flee, and Day grabbed his body. Diaz pulled a knife from his pocket with his right hand, and turned to face Day. The blade was extended.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Statements of Officer Dolores Rodriguez¹⁷

On October 27, 2015, at approximately 4:40 p.m., Rodriguez was the driver, and Day was the passenger, of a marked black and white patrol car. The officers were in full uniform, and assigned to the University Park Task Force. The officers were driving northbound on Magnolia Avenue when they passed a silver Honda Civic, which was a commonly stolen vehicle in the area. Day ran the Honda's plate number in the patrol car's MDC, and it returned as a stolen vehicle.

Rodriguez made a U-turn, stopped the patrol car behind the Honda and Day confirmed the plate was stolen. Diaz, the sole occupant of the Honda, exited the car, turned and looked in the officers' direction.¹⁸ The officers exited the patrol car with their service weapons drawn, and Day approached Diaz. Day holstered his service weapon and attempted to detain Diaz, who pulled away, backing up towards the sidewalk.¹⁹ Rodriguez holstered her service weapon, and ran around a car parked at the curb.

As Rodriguez moved northbound, Diaz' back was to her. Diaz, who was facing Day, lunged forward, northbound, and pushed Day. Day yelled, "Knife! Partner, knife!" Rodriguez moved closer, and saw that Diaz held a pocket knife, with the blade facing upward, in his right hand. Day held Diaz' left arm, and attempted to grab his right forearm. Rodriguez ran up to them, grabbing Diaz' right arm with both her hands, as Diaz tried pulling away. Day yelled at Diaz to drop the knife at least two to three times as they struggled. Rodriguez lost her grip with her left hand, and Diaz bear-hugged Day, swinging the knife towards the back of his left shoulder. Rodriguez was not sure if Diaz had struck Day with the knife, so she grabbed Diaz' forearm with her left hand again and tried to pull his arm back. Diaz pulled away from Day, and made a "jabbing" motion as if he was going to stab Day again. As Rodriguez continued pulling on Diaz' arm to wrest the knife away, Day attempted to bring him to the ground.

As Rodriguez pulled Diaz' arm, Day pulled Diaz in the opposite direction, as if they were in a tug-of-war with him. Falling to the ground, Diaz landed on top of Day, who fell on his back, and Rodriguez fell on her right side. Rodriguez was on Diaz' right side, and continued to push Diaz' right arm with both of her hands, as the officers struggled with him. Rodriguez was trying to push the knife Diaz held in his right hand away from Day's face and head. Rodriguez, Day and Diaz rocked back and forth, and Day appeared to be on his left side, with his service weapon facing up.²⁰ Rodriguez could not see Diaz' left hand. Day yelled, "He's going for my gun!" or "He's got my gun!" Rodriguez continued holding onto Diaz' right arm, trying to push it away. While still

¹⁷ Rodriguez was initially interviewed on October 28, 2015. She was re-interviewed on June 6, 2016 to allow the investigators to follow up on aspects of her first statement.

¹⁸ Rodriguez did not activate the patrol car's emergency lights because Diaz pulled the Honda into the driveway as Rodriguez made the U-turn, the officers were in uniform in a marked patrol car, the patrol car blocked the Honda in, and she believed that Diaz knew the officers were going to initiate contact with him. She also did not feel that she had sufficient time to notify LAPD Communications Division because everything happened so quickly.

¹⁹ According to Rodriguez, Day was not physically touching Diaz.

²⁰ Diaz was yelling during the struggle, but Rodriguez did not know what he was saying.

underneath Diaz, Day turned to his left side, as Diaz tried to use his knees as leverage to get up. Rodriguez heard one round fired. Diaz immediately let go of the knife, and Rodriguez pushed it away.

Diaz resisted going down to his stomach, and Rodriguez began yelling at him to get on the ground. Day grabbed Rodriguez' Taser and held it in case Diaz tried to get up or reach the knife. Diaz was handcuffed and taken into custody.

Rodriguez believes the knife caused the cuts to her right palm, but she was not sure when during the struggle she suffered the injury.

Statement of Oscar Diaz

Diaz told investigators that he stopped the Honda in front of the apartment building because he wanted to look for a room to rent. He claimed that he did not know the Honda was stolen. Diaz exited the Honda with the knife in his hand, with the blade extended, and was standing next to the car when the officers rushed up to him. The male officer's gun was pointed at Diaz, and the female officer also had her gun drawn. He never saw the patrol car, and thought the officers might be impersonators because he does not trust law enforcement. The male officer grabbed at his shirt and tried to lean him against the fence. Diaz resisted the officers. The officers took him to the ground, and Diaz was on top of the male officer at some point during the struggle. He was acting in self-defense as he fought with the officers. He was told to drop the knife, but he refused because he was "going through some things." Diaz did not slash at the officers, but the knife "probably got in the way." Diaz was not holding the knife at the time he was shot. He was aware that the female officer was cut during the incident, but does not remember striking her. He was unsure if the male officer was struck with the knife. Once he was shot, he gave up and was arrested.

Video

Digital In-Car Video System

The DICVS shows the patrol car approaching the Honda, which appears to initially be stopped in the street, and then drives forward. The patrol car passes the Honda, and then makes a U-turn. Following the U-turn, the patrol car drives forward, towards the Honda, which is now parked in the opening of a driveway. As the patrol car moves forward, Diaz can be seen standing outside of, and bending into, the driver's side of the Honda. The patrol car comes to a stop in a position where Diaz is no longer captured by the DICVS camera. Seconds later, the left side of Day's body can be seen standing in front of the patrol car, on the passenger's side. The audio begins when Day starts speaking to Diaz. It appears that Day says, "Stand right there," and then he moves out of view. Rodriguez is seen walking towards the front of the patrol car with her service weapon in her right hand. Rodriguez then runs around a car parked at the curb, on the passenger side of the patrol car, and out of view. There is no additional video captured of the incident, however the audio continued recording. The audio is fairly unintelligible, however, the phrases, "fucking shoot you" and "he's got my" as well as a single fired round can be heard.

Surveillance Video

A surveillance camera obtained from [REDACTED], the residence to the immediate south of the OIS, captured the incident, however pillars and a hanging light on the front porch blocked the view of the sidewalk where the OIS occurred. The image is also grainy and unclear.

The video captures Diaz standing between the opened driver's door and the car, while reaching into the driver's side. Approximately 16 seconds later, the patrol car drives southbound and stops behind the Honda. The patrol car is partially obscured by the pillars on the front porch, however the officers can be seen exiting the patrol car. Day immediately approaches Diaz, who is still inside the driver's door area. Diaz closes the car door, and as Day and Diaz face each other, they move westbound towards the sidewalk. They are partially obscured by the pillars and the metal gate bordering the front of the residences, but appear to be standing and moving around. Rodriguez is observed holstering her service weapon and running around a car parked at the west curb. Rodriguez runs northbound on the sidewalk towards Day and Diaz, who move several feet northbound. Additional movement can be seen, but it is obscured by the pillars and the gate.

DNA

Swabs were taken from the knife, Day's holster, and service weapon, and submitted for DNA analysis. Partial DNA profiles were mixtures of individuals or were inconclusive on the holster and service weapon, and were not suitable for comparison. No DNA typing results were obtained from the knife.²¹

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if that person 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.* "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

²¹ A serology analysis did not detect blood on the blade edge or tip of the knife.

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.

CONCLUSION

The evidence examined in this investigation shows that on October 27, 2015, at approximately 4:40 p.m., LAPD Officers James Day and Dolores Rodriguez were in full uniform, driving in a marked patrol car. While driving northbound on Magnolia Avenue, the officers passed a silver Honda Civic in which Oscar Diaz was the sole occupant. Day ran the Honda’s license plate number in the patrol car’s MDC, and the vehicle returned as a stolen vehicle.

Rodriguez made a U-turn and drove back towards the Honda, which had turned westbound and stopped in the opening of a driveway at [REDACTED]. Rodriguez stopped the patrol car, and both officers exited and drew their service weapons. [REDACTED]

[REDACTED] Day approached Diaz, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Day holstered his service weapon and attempted to grab Diaz’ [REDACTED]
[REDACTED] Day [REDACTED] yelled to Rodriguez that Diaz was armed with a knife. Diaz physically fought with Day and Rodriguez, and attempted to stab Day in the back of his left shoulder.

While attempting to disarm and subdue Diaz, the officers and Diaz fell to the ground, where they continued to struggle. [REDACTED]. Day’s service weapon was within Diaz’ reach. Day [REDACTED] yelled, “He’s going for my gun!” [REDACTED]
[REDACTED] Day, in reasonable fear of death or great bodily injury to himself and his partner officer, fired his service weapon at Diaz, ending the threat.

Given the rapidly evolving, life threatening situation that confronted Officer Day, we conclude that he acted lawfully in self-defense and defense of another. We are therefore closing our file and will take no further action in this matter.