

**In-Custody Death of Joseph Wear
Los Angeles Sheriff's Department**

**Deputy Jonathan Pawluk, #610205
Deputy Adrian De Casas, #507866**

Postal Police Department

**Officers Javier Echavarria, P7688
Officer Cesar Guerrero, P2287
Officer Joseph Pavon, P2368**

J.S.I.D. File #18-0501



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

January 25, 2021

MEMORANDUM

TO: CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

CAPTAIN TONY ROBATEAU
Postal Police Office
7001 South Central Avenue, Room 39
Los Angeles, CA 90001

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: In-Custody Death of Joseph Wear
J.S.I.D. File #18-0501
L.A.S.D. File #018-17709-2199-496

DATE: January 25, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 7, 2018, in-custody death of Joseph Wear involving Los Angeles County Sheriff's Department (LASD) Deputies Jonathan Pawluk and Adrian De Casas, and United States Postal Police Officers Joseph Pavon, Cesar Guerrero, and Javier Echevarria. It is our conclusion that the officers used reasonable force under the circumstances and are not criminally responsible for Wear's death.

The District Attorney's Command Center was notified of this in-custody death on December 7, 2018, at approximately 8:18 p.m. The District Attorney Response Team responded to the scene.

The following analysis is based on reports, recorded interviews, surveillance videos, 9-1-1 call recordings and photographs submitted to this office by LASD Detective Timothy Ruggiero. The voluntary statements of the involved deputies and officers were also considered in this analysis.

FACTUAL ANALYSIS

On Friday, December 7, 2018, at approximately 2:00 p.m., Tierra L. was working at the post office on the 7100 block of South Central Avenue. She was in the lobby behind the counter assisting customers. Joseph Wear was waiting in line with other customers and holding a skateboard. When he reached the front of the line, Wear approached Tierra and said, "I need help. Someone is following me and trying to hurt me." Tierra asked him if she should call the

Postal Police to come help, and Wear responded, “No.” Wear said, “I want to turn this in,” and took out a can of OC spray from his left pants pocket and placed it on the counter. He continued, “I live downtown and I got this to protect myself.”

Wear asked, “Is the Postmaster here? Can you call my wife? She’s in Japan.” He then took out a Taser from his right pants pocket and said “I want to turn this in. Can you take it? Maybe they will stop following me and trying to kill me.” He placed the Taser on the counter and proceeded to walk around the lobby.

Wear approached Tierra again and said, “Can you call my wife? I need to speak with the Japanese ambassador. Is the Postmaster here?” Tierra asked Wear for the number that he would like her to call and he ran away from the counter. Tierra then called Postal Police. Wear exited the lobby and went outside to the parking lot.

Postal Police Officers are stationed in the same building as the post office. Unlike 9-1-1 emergency calls, their calls for service are not recorded. At approximately 2:10 p.m., Postal Police Officer (PPO) Joseph Pavon received the call for service. Pavon recalled that the caller reported that a man was “irate and acting crazy in the lobby.” Pavon, who was acting as sergeant at the time of the call, dispatched PPOs Javier Echevarria and Cesar Guerrero to the post office lobby. The caller said post office staff had taken a Taser and pepper spray from him, and said he still had a skateboard.

Upon arrival, Echevarria and Guerrero found Wear walking back and forth outside the lobby in front of the windows. He was swinging his skateboard like a baseball bat. Post office customers nearby moved out of the way. As the PPOs approached, Wear ran over to them yelling that someone was trying to kill him. Echevarria instructed Wear to calm down and put down the skateboard. Wear ran away from the officers. The officers saw that people were still going in and out of the post office lobby door, so they positioned themselves between Wear and the door. Wear ran back to the officers, raised the skateboard over his head multiple times and took a fighting stance, holding his skateboard as if he intended to strike the officers with it. Both Echeverria and Guerrero drew their expandable batons. Guerrero expanded his baton while Echevarria did not. Guerrero instructed Wear to calm down and put down his skateboard.

Wear ran from the officers and dove headfirst over a railing, falling into some bushes and dropping his skateboard. Fearing Wear would retrieve the skateboard and use it as a weapon, Echevarria picked it up.

Wear ran onto South Central Avenue, a busy five lane street. He ran between moving traffic, yelling at pedestrians and hitting passing vehicles with his hands. Wear picked up a metal construction sign and threw it into traffic. He then ran back and forth erratically in the street.

Wear continued south on South Central Avenue. Near the intersection of South Central Avenue and East Florence Avenue, he climbed onto the top of a bus stop awning where he yelled at passers-by below. Wear jumped down from the awning and ran over to a palm tree located near the side of the Post Office. Wear climbed the tree about eight feet up, and as Guerrero and

Echevarria approached, he leapt from the tree and fell headfirst onto the ground. Wear stood up and ran southbound on South Central Avenue.

Mario P. was at a smog check business located at 73rd Street and South Central Avenue, one block south of the Post Office. He saw people running southbound. A woman stopped and told him he needed to run because “a crazy man was coming.” Moments later, he saw Wear dodging vehicles in the intersection of Florence Avenue and South Central Avenue. People tried to help Wear by attempting to guide him out of the intersection, but Wear refused to cooperate and continued running around in the middle of the street. Wear approached Mario and suddenly grabbed a street sign from the sidewalk. Wear struck Mario in the back with the sign and then ran into the street.



Figure 1 This map shows the location of the incident, beginning in the post office lobby and ending at the intersection of South Central Avenue and 74th Street.

Wear continued southbound in the middle of the street, dodging cars and striking them with the sign. At the intersection of South Central Avenue and 74th Street, Wear picked up metal construction signs and orange construction cones and threw them at passing cars. Wear struck a black sedan with a sign. A passenger exited the sedan and punched Wear several times. Wear fell to the ground and the passenger kicked him multiple times before getting into the sedan and driving away.

Wear got up and appeared to be angry. He moved to the east side of South Central Avenue towards an elementary school located at the northeast corner of South Central Avenue and 74th Street. Parents were arriving to pick up their children from school. When they saw Wear approaching, many of them fled. Griselda F. was walking on South Central Avenue on her way

to the school to pick up her son. She was pushing her one-year-old daughter in a stroller. Wear approached Griselda, screaming at her. He grabbed the stroller and tried to yank it away from her. Fearing that Wear intended to throw her daughter into the traffic, Griselda clung to the stroller.

Mario saw the struggle between Griselda and Wear and ran to Griselda's aid. He could see that Wear was trying to throw the stroller into the street. Mario jumped on Wear's back, knocking him to the ground. Wear got up and Mario tried to hold onto him. Wear escaped Mario's grasp and ran back into the street. Another man struck Wear in the back with a metal pole and knocked him to the ground. Eventually a group of men were able to hold Wear down until the police arrived.

As Wear moved southbound on South Central Avenue, Guerrero and Echevarria stood outside the post office and watched Wear as he ran down the street away from the post office and out of the officers' view. The manager of the post office placed the OC spray and Taser that Wear had left on the counter into a box and handed it to Guerrero. Pavon drove a patrol vehicle to join Guerrero and Echevarria outside the post office lobby. Several individuals approached the officers and told them that Wear was attacking people down the street and informed the officers Wear tried to take a baby in the stroller.

Pavon drove Guerrero and himself to the intersection of South Central Avenue and 74th Street, where the officers saw two individuals holding Wear on the ground. Echeverria followed on foot. The individuals did not strike or kick Wear. The two officers assumed the task of subduing Wear from them. The officers repeatedly told Wear to put his arms behind his back. Guerrero and Pavon kept Wear pinned face down. Guerrero handcuffed Wear's right wrist, but he and Pavon could not secure the other wrist due to Wear's resistance. Pavon attempted to overcome Wear's resistance by pressing his parotid lymph node behind Wear's ear at the top of his jaw, but his attempt was unsuccessful. As the struggle to secure Wear's arms continued, Guerrero held down Wear's upper body while Pavon restrained his legs from kicking. Echevarria arrived at the location as Guerrero and Pavon were struggling to secure Wear.

As the incident was unfolding in front of the elementary school, LASD Deputies Pawluk and De Casas responded to an unrelated matter about a block away. Several people flagged down the deputies and alerted them to the incident involving Wear. The deputies responded to the school, where they saw Guerrero and Pavon struggling to restrain Wear, who was still face down on the ground with the officers on top of him. Wear was tense and resisting Guerrero and Pavon, and he was yelling incoherently. Pawluk joined in the task of handcuffing Wear as De Casas managed a crowd that was gathering around the scene. Pawluk placed his right knee on Wear's leg and his left knee on Wear's back and the officers were finally able to handcuff both of Wear's wrists. Pawluk estimated it took approximately a minute to handcuff Wear. After he was handcuffed, Wear continued to kick. Pawluk pressed his right knee against the back of Wear's legs to protect himself from being kicked. The officers then turned Wear onto his side.

When Pawluk rolled Wear to his side, he noticed that Wear was limp. Pawluk checked Wear's pulse on his carotid and radial pulse and did not detect a heartbeat. Pawluk observed Wear's

face and did not see any sign that Wear was breathing. Pawluk removed the handcuffs from Wear and initiated CPR. Medical transport was called at this time. Pawluk and De Casas then instructed Guerrero, Pavon and Echevarria to secure the area, put tape around the perimeter of the scene, and move the bystanders back.

Los Angeles County Fire Department responded and paramedics transported Wear to Harbor General Hospital, where he was pronounced dead by Dr. Alex Doo at approximately 3:22 p.m.

Autopsy Report

Deputy Medical Examiner Dr. Matthew J. Miller conducted an autopsy on Wear. Dr. Miller determined that Wear had several scrapes, abrasions, and bruises, none of which were fatal. There was no evidence of asphyxia or neck pressure. A forensic analysis determined that Wear's blood contained amphetamine, methamphetamine and marijuana. Dr. Miller concluded the cause of death to be methamphetamine toxicity.

Metro Bus Video

Investigators obtained a video recording taken from a camera affixed to a Metro bus that was driving northbound on South Central Avenue as it approached the intersection of 74th Street at the time of the incident.

The video showed a black sedan stop. A male passenger exited the sedan and punched Wear multiple times, knocking him to the ground and then kicking him several times. The passenger got back in the car and the sedan drove away. Wear got up off the ground. He ran to the bus and struck the driver's side of the bus.

LEGAL ANALYSIS

A police officer may use reasonable force in making an arrest, preventing an escape, or in overcoming resistance. Penal Code § 835a. Reasonableness is judged from the perspective of a reasonable officer at the scene considering the circumstances surrounding the use of force including: (1) whether the suspect poses an immediate threat to the safety of the officers or others, (2) whether the suspect is actively resisting arrest or attempting to evade arrest by flight, and (3) the severity of the crime at issue. Graham v. Connor (1989) 490 U.S. 386.

In evaluating whether a police officer's use of force was reasonable, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "[T]he '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." Graham, supra, at 396; see also, Scott v. Harris, (2007) 550 U.S. 372 (reaffirming the Graham reasonableness analysis for "use of force" cases in effectuating an arrest or "seizure" of a person). Finally, "[T]he 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, supra at 396-397.

Courts have also held that placing a person wearing handcuffs in a prone position is reasonable where the person had violently resisted arrest. See, Mayard v. Hopkins (8th Cir. 1977) 105 F.3d 1226; Price v. County of San Diego (S.D. Cal. 1998) 990 F.Supp 1230.

The evidence presented in this investigation shows the officers used reasonable force in detaining Wear. Wear was randomly attacking people and law enforcement reasonably decided to subdue and arrest him. None of the officers used any weapon against Wear, nor did they strike him in any way. They used the minimum amount of force possible to control Wear. The officers wrestled with Wear until they were able to handcuff him. Once he was handcuffed, Wear kicked and resisted the officers' efforts.

The force employed by the officers was objectively reasonable under the circumstances. Wear was acting erratically and violently, and was under the influence of methamphetamine. He attacked pedestrians, struck cars with construction signs, and attempted to take a baby from her mother. The officers clearly identified themselves as peace officers, provided verbal commands and used minimal force when they handcuffed him. As soon as they realized Wear appeared to be in medical distress, they released his handcuffs and initiated life-saving measures.

The autopsy report attributes Wear's death to methamphetamine toxicity. There is no indication that the officers' actions were a cause of Wear's death.

CONCLUSION

The force used by Deputies Pawluk and De Casas as well as Officers Pavon, Guerrero and Echevarria to detain Wear was objectively reasonable and they are not criminally responsible for Wear's death. We are closing our file and will take no further action in this matter.