

**Non-Fatal Officer Involved Shooting of Travis Elster
Los Angeles Police Department**

Officer Carlos Tovar, #43384

J.S.I.D. File #21-0198



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

February 20, 2024

MEMORANDUM

TO: CAPTAIN OMAR BAZULTO
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting Involving Travis Elster
J.S.I.D. File #21-0198
F.I.D. File #F007-21

DATE: February 20, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 9, 2021, non-hit shooting involving Travis Elster by Los Angeles Police Department (LAPD) Officer Carlos Tovar. We conclude there is insufficient evidence to prove beyond a reasonable doubt that Officer Tovar's deadly force was a criminal act.

The following analysis is based on body worn camera video (BWV), surveillance video, dispatch recordings, witness statements, and reports. The involved officer did not provide a voluntary statement, and his compelled statement, if any exists, was not considered. These materials were submitted to this office by the LAPD Force Investigation Division on April 29, 2022.

LAPD did not notify this office of the incident at the time it occurred because no persons were struck by officer gunfire.¹

INTRODUCTION

On February 9, 2021, at about 4:33 p.m., Southeast Station Patrol Officers David Collver, driver, and Carlos Tovar, passenger, were on patrol in uniform driving a marked patrol car eastbound on Manchester Avenue. Collver drove into a strip mall parking lot to contact the driver of a black SUV, which was stopped and blocking a row of parked cars. The driver was later identified as Travis Elster. Collver parked alongside Elster's SUV, exited, and attempted to get Elster to turn off his engine.

¹ The Officer Involved Shooting Protocol obligates a department to notify the District Attorney's Roll-out Team (DART) only where a person is wounded or killed by police gunfire.

Meanwhile, Tovar stood in front of the SUV, on the passenger side, blocking its forward path. After a brief conversation back and forth, Elster disobeyed Collver's instructions and drove forward toward Tovar, who placed his hands on Elster's hood and repeatedly yelled "Yo!"

When Elster continued forward, Tovar simultaneously stepped to the side of the SUV and drew his service pistol. He immediately fired a two-second volley of eight shots into the SUV as Elster drove past him and fled westbound on Manchester, uninjured. An uninvolved blue Toyota traveling westbound on Manchester at the time of the incident was struck twice on the passenger side. The rounds lodged in the front and rear passenger doors, respectively. The occupants, a driver and passenger, were not injured.

With assistance from other LAPD units, Collver and Tovar pursued Elster for several miles. During the pursuit, an airship officer radioed that he believed someone had tossed a firearm out of the SUV's front passenger window.² Officers arriving to the location three to four minutes later located no firearm. According to reports, the location also hosted a sizeable homeless encampment.

Elster eventually abandoned his car in a parking lot and escaped without apprehension. Investigators later recovered footage from a nearby retail business, recorded shortly after Elster abandoned his SUV, in which he is seen entering, removing and abandoning the black sweater he wore, donning in its place a red shirt from a clothing rack, then exiting the store without purchasing the shirt.³

FACTUAL ANALYSIS

Surveillance Video

Nearby surveillance footage with no sound captured the incident. Elster's black SUV is seen stopped in a parking lot, near a driveway leading to Manchester. A police car drives into view, turns into the parking lot, and parks parallel to the SUV. The officers exit their car. As Collver stands at Elster's driver door, Tovar walks to and stands in front of the SUV, on the passenger side, blocking its forward path.

Approximately seven seconds later, the SUV moves forward at moderate speed, turning slightly left (away from Tovar) as it proceeds. Tovar momentarily hunches forward and places his hands on Elster's hood, then draws his service pistol and simultaneously steps to the SUV's passenger side, approximately two seconds after it starts forward. Standing at the side, Tovar appears to immediately fire several shots at the passenger side of the SUV as it straightens out and turns right, into westbound traffic. Tovar follows after the SUV, continuing to fire his weapon.

² [REDACTED]

³ On March 11, 2021, The District Attorney's Office declined to file felony assault on peace officer charges against Elster and referred the allegations to the City Attorney's Office for misdemeanor filing consideration.



Figure 1: Tovar stands in front of Elster's SUV before it drives forward.

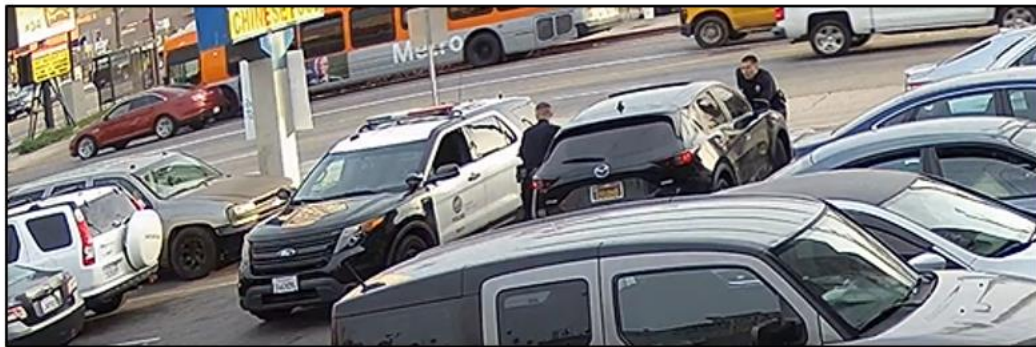


Figure 2: Tovar drawing weapon with right hand as SUV moves forward.



Figure 3: Tovar's first shot as SUV moves forward, slightly left then straight.



Figure 4: Tovar follows SUV and continues to fire as it turns right, onto Manchester Avenue.

BWV

Tovar and Collver activated their BWVs right after exiting their patrol car. Collver's footage shows him approach the driver side of Elster's SUV. Elster is seated in the driver seat, at first hidden by a dark window tint.

Elster rolls down his window and tells Collver that he is waiting for his mother. His right hand is on the steering wheel. His left hand is out of view and appears to be down at his side. Collver tells him "no big deal," informs him he is parked illegally, and asks him to turn off his motor. Elster counters that he will move the SUV. Collver repeats his instruction to turn off the motor. Elster again says he will move. He brings both hands into view, holding the steering wheel with his right and pointing westward with his left.

Elster turns the wheel slightly left and drives forward. His revving engine is audible, but the pace of acceleration is not apparent. Both of Elster's hands appear to remain visible around the steering wheel as he drives forward. Collver and Tovar yell, "Yo!" and, "Hey!" several times. Collver momentarily turns to his driver car door and places his hand on the handle. Several rapid shots ring out. Collver turns back toward Elster's car. It is now visible from the rear, accelerating out of the parking lot as Tovar fires into its passenger side. Elster is no longer visible.



Figure 5: Collver asks Elster to turn off his motor; Elster points and offers to move the SUV instead.

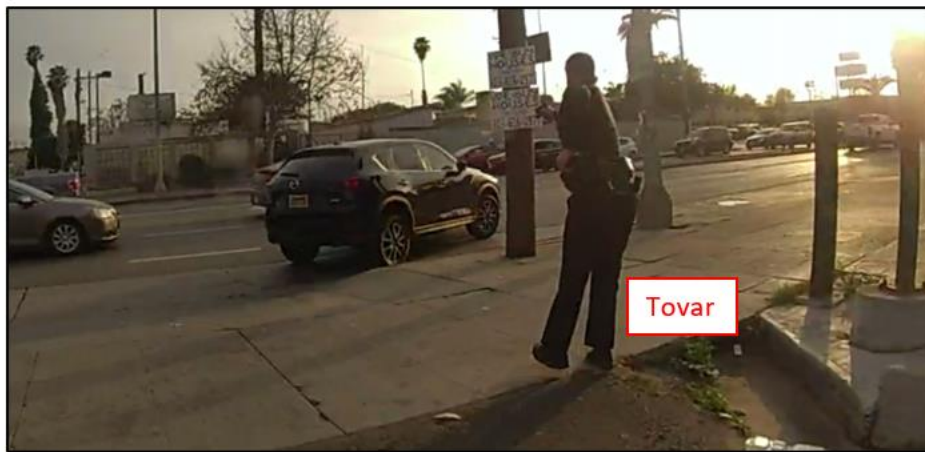


Figure 6: Tovar's final shot.

Tovar's footage shows him walk to and stand in front of the SUV, on the passenger side, as Collver talks to Elster by the driver door. Seconds later, Tovar repeatedly yells "Yo!" and places his hands on Elster's hood. The SUV drives forward. Approximately two seconds later, Tovar simultaneously reaches for his service pistol and steps out of the SUV's path, to the passenger side. Standing at the front passenger tire, Tovar rapidly fires his pistol; Elster's open right hand palm is raised above the steering wheel facing Tovar.

Elster momentarily comes into view through the front passenger window as he passes Tovar, still firing. Although not definitive because of the glare in the window, Elster may be ducking or turning away from Tovar. Elster's right hand appears to be visible on the steering wheel; his left hand cannot be seen. Elster drives straight out of the parking lot and turns right, into the roadway. Tovar follows and continues firing until the SUV reaches the street and drives away. According to the footage, Tovar's volley lasts less than two and one half seconds.



Figure 1: Tovar places hands on hood as Elster drives forward.



Figure 2: Tovar draws pistol and steps to side of SUV.



Figure 3: Tovar's first shot; Elster's open hand visible.



Figure 4: Elster appears to duck or turn away as Tovar fires into passenger window.

Tovar and Collver pursue Elster in their patrol car. About a minute into the chase, Tovar broadcasts, "Suspect almost ran officers over. He was reaching within the vehicle. He's possibly armed with firearm."

A few minutes later, as the officers appear to enter a freeway, Tovar and Collver discuss the incident. Tovar says, "He almost hit me, dude. You saw that?" Collver responds, "Yeah."

Tovar says, “You saw how he was reaching underneath his thing?” Collver does not immediately respond. After a ten second silence, Collver changes topic and mentions something about smelling marijuana in Elster’s SUV. Tovar interrupts and talks over him, repeating “you good” several times, then says, “So we have window tint. Unlawfully parked. Started reaching. Appeared nervous and startled. Started reaching, making furtive movements. Okay? It’s a known gang area. We’re going to get him partner. We’re going to get him.”

Statements and Dispatch Recordings

Collver stated that he was driving eastbound with Tovar when they observed Elster’s SUV parked illegally. The SUV at first appeared unoccupied. Collver parked his car, exited, and walked to the driver door. He saw “a single male occupant in the driver’s seat kind of slouched backwards against his chair. He appeared to be startled as if he was hiding himself.” Collver was “able to see his hands. There was nothing in his hands.” After Elster “puts the car in drive and accelerates and drives forward,” Collver took a few steps back and lost sight of Elster. “And the next thing I know my part – I hear gunshots. And then as the vehicle is pulling forward I can see my partner with his gun drawn out and the vehicle drives off westbound Manchester.” Collver could not see where Tovar was positioned before Elster drove forward. After the incident, Tovar told Collver that Elster had committed “ADW on a peace officer with the vehicle.” Collver assumed Elster tried to run over Tovar but did not see it.

About three minutes after the incident, with units pursuing Elster’s SUV, Tactical Flight Officer Manuel Gomez observed the SUV overhead from an LAPD airship. Gomez radioed that Elster had “possibly tossed a firearm,” that “something came out of the vehicle,” near the 110 Freeway. Interviewed later, Gomez said he saw the SUV make a turn and “as it did so, it threw – or out of the vehicle – out of the passenger side, I saw what believed [sic] to be a firearm, or some kind of object that resembled a firearm, being thrown from the car and hit the northeast corner of 79 and Grand. I directed officers to that area.”

Elster was detained on a warrant and interviewed by investigators on March 9, 2021. Elster claimed to have no knowledge of the incident. He denied having any contacts with LAPD on the date in question. Asked about the SUV, which was registered to a woman named Allison and reported stolen shortly after the incident, he said Allison was a friend but denied he had been driving the SUV on the date of the incident. The interview was terminated when Elster requested an attorney.

Investigators interviewed the SUV’s registered owner and learned that Elster was permitted to use the SUV.

Physical Evidence

Investigators recovered eight 9mm casings from the scene. Elster’s SUV sustained eight bullet strikes, one to the front windshield, traveling slightly front to back, and seven to the passenger side of the car, traveling side to side or back to front. Consistent with the recovered casings, bullet strikes, and post incident examination of Tovar’s service 9mm pistol, he fired eight rounds during the incident.

Abandoned by Elster after evading officers, investigators located the black SUV in a parking lot near where Elster was recorded on surveillance footage changing his clothing. Inside the SUV, investigators recovered papers containing Elster's name. DNA testing revealed the presence of his DNA on the SUV's steering wheel, among other locations.

THE LAW

A peace officer is justified in using deadly force 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) & (B).

Deadly force shall be used only when necessary in defense of human life, and officers shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer. Penal Code section 835a(a)(2).

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, are taken into consideration. Penal Code section 835a(a)(4) & (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).

A person charged with a crime is presumed innocent and entitled to an acquittal unless evidence proves guilt beyond a reasonable doubt. CALCRIM 220. Proof beyond a reasonable doubt is proof that leaves an abiding conviction that the charge is true. *Id.* Where two or more reasonable conclusions can be drawn from circumstantial evidence, one that points to innocence and one that points to guilt, the one that points to innocence must be accepted. CALCRIM 224.

LEGAL ANALYSIS

According to video footage, Elster declined Collver's several requests to turn off his engine. Elster appeared to look in Tovar's direction several times before accelerating his car toward him.

At that moment, Tovar was close enough that he placed his hands on the hood of Elster's SUV as it accelerated toward him. In a span of about two seconds, Tovar backpedaled, stepped out of the SUV's path, drew his pistol, and began firing.

Tovar ceased fire less than two and one half seconds later. Although Elster's hands appear to be visible holding the steering wheel before he drives forward, what Elster does with his hands after is more difficult to determine. About the time of Tovar's first shot, his BWV shows Elster's open right palm facing outward, visible through the front windshield. His left hand is not visible. A moment later, as Tovar fires at the side of the SUV, Elster appears to be visible through the front passenger window ducking or turning away from Tovar. His hands cannot be seen.

Minutes after the shooting, Tovar radioed that Elster had been "reaching within the vehicle" and was possibly armed with a gun. An airship officer later observed a possible gun tossed from the SUV during the pursuit (though none was ever located). After appearing to steal a red shirt to change clothing, Elster escaped immediate apprehension. He later denied—untruthfully, based on the evidence—being present during the shooting.

Although the BWV shows that Tovar moved out of the path of the SUV before he drew his weapon and fired, the footage also shows that Elster nearly ran him over two seconds prior, although Elster did attempt to turn the car away from Tovar. And although Tovar fired eight shots, several after the SUV had passed him, Tovar started and stopped firing in less than two and one half seconds, under dangerous and unpredictable circumstances.

Moreover, Elster's appearing to turn away and duck, and the observation, later, that he tossed a possible firearm from his car, serve to corroborate Tovar's radioed observation that Elster was "reaching within the vehicle" and may be armed.

Separately, Elster's decision to deliberately accelerate his car toward Tovar and drive away from the scene arguably qualified Elster as a *fleeing person for any felony that threatened ... serious bodily injury* and presented an ongoing threat of *serious bodily injury to another unless immediately apprehended*.

Use of Force expert Tim Williams⁴ was retained by our office to review this incident and provide his opinion and analysis. Williams opined that Elster's car was not an imminent threat to Tovar because Elster turned the car away from Tovar as he accelerated forward; Tovar's decision to position himself in front of Elster's car, with its motor running, displayed poor tactical judgment; and Tovar's decision to fire into Elster's car violated LAPD policy, which states, "Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer ... with deadly force by means other than the vehicle. ... An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it...."

⁴ [Use of Force Expert Testimony & Investigations | T. T. Williams, Jr. \(ttwilliams.com\)](http://ttwilliams.com)

The Los Angeles Board of Police Commissioners similarly concluded the use of force was “Out of Policy,” because “an officer with similar training and experience as [Tovar] would not reasonably believe the Subject’s actions presented an imminent threat of death or serious bodily injury and that the use of deadly force would not be proportional, objectively reasonable, or necessary.”⁵

While The Board of Police Commissioners evaluated whether Tovar violated LAPD policy, this review evaluates whether there is sufficient evidence to prove in a court of law that Tovar committed a criminal offense under the California Penal Code. Unlike The Board of Police Commissioners’ findings, however, criminal charges are subject to *proof beyond a reasonable doubt*, the highest standard of proof that exists in California (and the United States). Even proof showing that guilt is highly probable would be insufficient unless the evidence can *disprove* all defenses and eliminate reasonable doubt.

The available evidence does not disclose why Tovar chose to endanger himself by standing in front of Tovar’s SUV. While arguably a poor tactical decision, under the law Tovar does not lose his right to self-defense by placing himself in unreasonable danger. The officer’s *and the subject’s* conduct *leading up to the use of deadly force* are taken into account. Here, the first issue is whether, according to Tovar’s perception at the time, Elster, accelerating the SUV forward, *had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily harm* to Tovar. Second, the video evidence does not disprove Tovar’s claim that he observed Elster reaching for a possible firearm as Elster drove away.

But even if the evidence could disprove self-defense, the prosecution would still be required to disprove that Elster—who appeared to deliberately drive his car at Tovar then toss from his SUV what an airship officer believed was a firearm—was a fleeing person who had committed a felony that threatened serious bodily injury and who posed an ongoing threat.

CONCLUSION

Accordingly, considering the totality of the circumstances known to Tovar at the time, taking into account that he was forced to make quick judgments without the benefit of hindsight, including the fact that Elster nearly ran over Tovar with his SUV, appeared to duck or turn away as he drove past Tovar, later tossed a possible firearm from his SUV as he evaded officers, and falsely denied being present during the incident, there is insufficient evidence to prove beyond a reasonable doubt that Tovar committed a criminal act.

⁵ <https://www.lapdonline.org/police-commission/categorical-use-of-force/categorical-use-of-force-2021-2/>; [LAPD Shooting at Manchester/fig Ruled Out of Policy, but Officer's False Claim About Threatening Finger Guns Allowed to Stand - Streetsblog Los Angeles](#)