

Non-Fatal Officer Involved Shooting of Jason Dyer
Los Angeles County Sheriff's Department

Deputy Justin Smith, #514952
Deputy Taylor Wells, #551907

J.S.I.D. File #16-0457



JACKIE LACEY

District Attorney

Justice System Integrity Division

August 24, 2020

MEMORANDUM

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

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

SUBJECT: Non-Fatal Officer Involved Shooting of Jason Dyer
J.S.I.D. File #16-0457
L.A.S.D. File #016-03360-1714-055

DATE: August 24, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 8, 2016, non-fatal shooting of Jason Dyer by Los Angeles County Sheriff's Department (LASD) Deputies Justin Smith and Taylor Wells. It is our conclusion that Deputies Smith and Wells used reasonable force in self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on September 8, 2016, at approximately 7:15 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LASD Lieutenant John Corina.

The following analysis is based on investigative reports, witness statements, videos and photographs submitted to this office by LASD Homicide Detectives Howard Cooper and Gail Durham. No compelled statements were considered in this analysis.¹

FACTUAL ANALYSIS

Deputies Smith and Wells were assigned to the LASD Lomita Sheriff Station Summer Enforcement Team. Shortly before 6:00 p.m. on September 8, 2016, they were on routine patrol in the area of Pennsylvania Avenue and Pacific Coast Highway (PCH).

The deputies were traveling northbound on Pennsylvania Avenue from PCH when they saw a silver Volvo with no front license plate traveling southbound. They made a U-turn in order to contact the driver and warn or cite him for the violation. As they began to follow the Volvo, it turned westbound onto 255th Street and then took another left onto northbound Kelley Avenue. That block is a cul-de-sac. The Volvo swung around at the end of the street and drove straight at the patrol unit, striking it on the driver's side door. Wells estimated the Volvo was traveling at

¹ Smith and Wells provided voluntary statements to investigators contained in Incident Reports documenting their observations and actions relating to this incident. Their statements, detailed below, are derived from these reports.

20-25 miles per hour when it sideswiped their vehicle and was continuing to accelerate. Wells and Smith perceived that this collision was intentional and broadcast that they were in pursuit of an assault with a deadly weapon on a peace officer suspect. The officers briefly lost sight of the Volvo as they turned around in the cul-de-sac. As they approached the intersection of southbound Pennsylvania Avenue and PCH, they saw that the driver had crashed his car into another vehicle parked in the parking lot of the Rolling Hills Plaza.

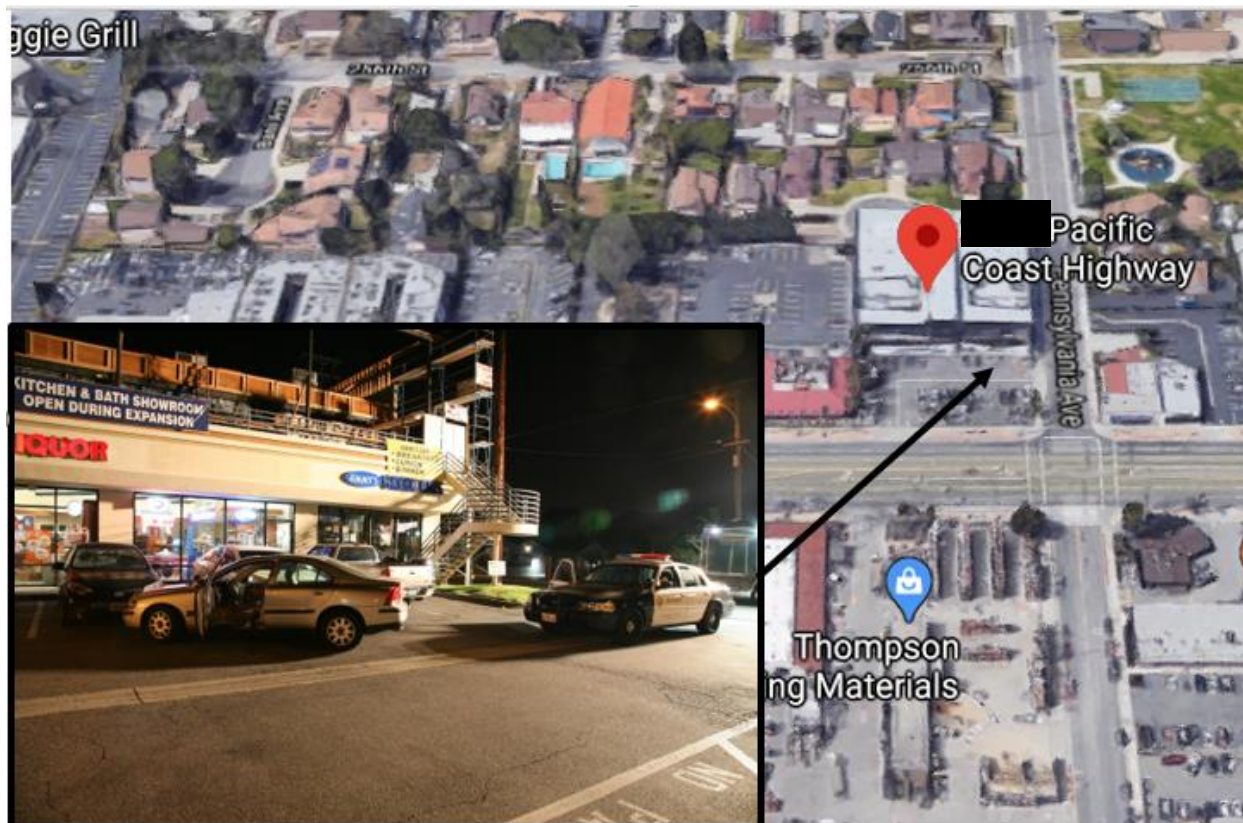


Figure 1: View of scene with Volvo and patrol vehicle in front of liquor store, superimposed on overhead view of Rolling Hills strip mall and parking lot, corner of Pennsylvania Avenue and PCH.

As Smith and Wells got out of their patrol car, they noticed the Volvo was still running but unoccupied. A man, later identified as the store manager, exited the liquor store and told them the suspect was inside. Smith stated they exited their patrol car, and he and his partner immediately took cover behind a large brown truck parked facing the liquor store. Smith saw the Volvo's driver, later identified as Dyer, exit the liquor store. While taking cover behind the truck, Smith could not see Dyer's hands, so he moved to his left. At this point, Smith was twelve to fifteen feet from Dyer and could see Dyer had his left hand raised. Smith saw a flash of light, followed by the sound of multiple gunshots. In the same moment, he saw Wells fall to the ground. Believing Dyer shot his partner, Smith fired a single round from his duty weapon at Dyer. He saw Dyer fall to the concrete in front of the liquor store. While holding Dyer at gunpoint, he saw Wells stand up, radio for backup and medical assistance, and advise dispatch that they had been involved in a shooting. At this point, Smith realized Wells had not been shot

by Dyer. Smith noticed that Dyer had a cast on his right hand and was curled up with his left hand under him. Dyer reached out and dropped a black handgun from his left hand to the concrete walkway.

Wells explained to investigators that he had taken a position of cover next to the truck when he saw Dyer exit the liquor store with a gun in his right hand. Dyer immediately raised his left arm and, while holding his weapon in a two-handed shooting stance, fired a single shot at Wells. Wells dove down to take better cover, and, fearing that Dyer would continue to shoot at him, he fired five to six rounds from his duty weapon. Wells saw Dyer fall to the ground. Despite his orders to drop the gun, Dyer lifted his left hand and held the weapon above him until Wells saw a civilian approach and kick the gun from Dyer's grasp. The gun landed a few feet away. Wells estimated that he was no more than ten feet away from Dyer when he fired.

Smith, Wells, and newly arrived deputies rendered medical aid to Dyer until paramedics arrived. Smith then looked around and noticed that the woman who had been in the front passenger seat of the Volvo, later identified as Brittany M., was no longer at the location.

Drivers and passengers who were in cars southbound on Pennsylvania Avenue and stopped at the stoplight at PCH, or were near the parking lot, all described essentially the following: A grey or silver car sped down Pennsylvania Avenue, cut the curb and turned quickly into the lot, crashing into a parked vehicle. While the car was still moving, a male driver and female passenger dashed out of the car. The driver ran into the liquor store. A patrol car came quickly down Pennsylvania Avenue and the patrol car followed the Volvo into the lot. As the patrol car arrived, a man exited the liquor store and yelled to the deputies, "They're in here! They're in here!" Just then, the driver exited the liquor store, pointing a handgun at the deputies. Two individuals reported the driver fired three shots at the deputies. All of the witnesses agreed that the deputies fired in response to the driver pointing the weapon at the deputies.

The liquor store manager stated he had been working behind the counter at the cash register when he saw a silver Volvo roll awkwardly into the lot. He saw Dyer and Brittany M. exit while the car continued to roll and collide into the manager's parked car. Brittany M. ran westbound through the lot and towards PCH. Dyer ran into the liquor market. The manager knew something was happening because he heard sirens and then saw the patrol car arrive. He ran around the front counter and towards the front door. As he did so, he passed Dyer and yelled, "Hey, get out! I'm calling the police." Dyer said, "Don't do that."

The manager stood against the south wall of the market, outside of and to the east of the front door. He called out to the deputies who were exiting their patrol car and said, "He's in there!" The manager saw Dyer exit the store and point a pistol at the deputies. Dyer fired his weapon in their direction. The manager then turned, ran east, and heard more gunshots behind him. After he returned, he saw Dyer on the concrete walkway just east of his store. He noticed a small, black, semiautomatic handgun nearby.

Several witnesses saw that Dyer kept the gun in his hand even after being shot and falling to the ground. Dyer eventually tossed the gun a short distance away. A patron from the restaurant next to the liquor store kicked the gun further away from Dyer. Several individuals who drove away for their safety saw that Brittany M. left the scene and fled in the direction of a nearby BevMo. Witnesses at the BevMo heard her say, while on her phone, "He shot at the cops!" Witnesses called 9-1-1 to report the shooting and witnesses at the BevMo pointed out Brittany M. to additional LASD personnel who arrived and detained her.

Brittany M. was interviewed by Cooper and Durham. She claimed that she did not know Dyer was armed when she got in his car. She was looking at her phone to try to find a restaurant, when Dyer noticed the police were behind them and had an extreme reaction. As Brittany M. turned around to see what he was reacting to, Dyer yelled at her, "Don't you fucking turn around." She unsuccessfully tried to calm him down. At that time, she saw he had a gun in his hand. She was about to try to get out of the car when Dyer suddenly turned the car around and drove straight at the deputies' patrol car. Dyer did not slow down or stop until he entered the parking lot and their car seemed to stop running properly. At this point Brittany M. jumped out and ran away from Dyer. She did not recall him running into any buildings. She turned around in time to see him exit the liquor store, kneel in a shooting stance, and fire at the deputies. She heard multiple gunshots and ran to the BevMo. Once there, she identified herself to the first deputies she saw.

Investigators were unable to interview Dyer due to the effects of the medical treatment he underwent on the night of the shooting. Investigators later determined that the Volvo Dyer was driving was stolen.

At the time of the incident, Dyer was out-on-bail on three other felonies and the cases were in warrant status. As a result of this incident, Dyer was charged in case number YA094555 with two counts of felony assault with a deadly weapon on a peace officer, vehicle theft, possession of methamphetamine, unlawful possession of a firearm by a felon, and felony evading. He pled guilty to the assault, theft and weapons counts with firearm enhancements and was sentenced to serve 22 years in state prison.

Physical Evidence

Investigators examined Smith's 9mm semiautomatic firearm and determined that he fired two rounds.

Investigators examined Wells' 9mm semiautomatic firearm and determined that he fired seven rounds.

The black, 9mm Diamondback semiautomatic pistol which Dyer tossed to the ground was found to be loaded with six live rounds in the magazine and one live round in the chamber. Both the truck and the liquor store were struck by a round each. Criminalists were not able to determine with certainty a trajectory for the round or rounds that witnesses believed they saw Dyer fire.



Figure 2: Photo of 9mm semiautomatic handgun Dyer tossed onto the concrete walkway outside the liquor store.

Damage and paint transfer on both the patrol vehicle and the Volvo corroborate that Dyer drove at the deputies and struck their car.

Investigators recovered boxes of 9mm ammunition and numerous items of stolen property and evidence related to identity theft and to other stolen vehicles from the stolen Volvo.

LEGAL ANALYSIS

Any police officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, prevent escape, or overcome resistance. 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.

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.

California law permits any person, including police officers, to use deadly force in self-defense or in the defense of others, and, if someone dies as a result, this is a “lawful excuse” which precludes a conviction for murder. Penal Code sections 197, 198; CALCRIM No. 505. This defense is available if the killer actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *see also 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. 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. 505, 3470. Actual danger is not necessary to justify the use of deadly force in self-defense; if the person’s beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 505, 3470. The prosecution has the burden of proving beyond a reasonable doubt that the killer did not act in self-defense. *Id.*

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.

CONCLUSION

The evidence examined in this investigation shows that contact with law enforcement would have resulted in Dyer being taken into custody on his outstanding warrants. Dyer fled from the deputies and rammed their vehicle in the process. After hiding in the liquor store, Dyer exited, pointed a handgun at the deputies, and deputies and onlookers perceived that he fired at Wells. There were numerous individuals in front of the businesses, near the parking lot, and driving past the location at the time of the shooting. In fear for their lives and the lives of others, the deputies returned fire.

We conclude that Deputies Smith and Wells used lawful and reasonable force in self-defense, and the defense of others. We are closing our file and will take no further action in this matter.