

**Fatal Officer Involved Shooting of Gerber Dieguez
Los Angeles Police Department**

**Officer Aaron Green, #36890
Officer Shannon Bryan, #42744**

J.S.I.D. File #17-0352



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 25, 2021

MEMORANDUM

TO: CAPTAIN RICH GABALDON
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: Fatal Officer Involved Shooting of Gerber Dieguez
J.S.I.D. File #17-0352
F.I.D. File #F054-17

DATE: August 25, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 15, 2017, fatal shooting of Gerber Dieguez by Los Angeles Police Department (LAPD) Officers Aaron Green and Shannon Bryan. We have concluded that Officer Green used lawful and reasonable force in self-defense, and Officer Bryan used lawful and reasonable force in defense of another.

The District Attorney's Command Center was notified of the shooting at approximately 4:00 a.m. on July 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, recorded interviews, firearm analysis reports, autopsy reports, crime scene photos and diagrams, and interviews of witnesses submitted by the LAPD Force Investigation Division. The compelled statements of Officers Green and Bryan were considered in this analysis.

FACTUAL ANALYSIS

On July 15, 2017, LAPD Officers Green and Bryan were on patrol together and responded to a domestic violence call on the 10000 block of O'Melveny Avenue in Pacoima. They drove a marked police vehicle that was not equipped with a digital in-car video system. Neither was equipped with body-worn video, which at the time was not available for the Foothill Patrol Division to which they were assigned.¹

¹ Officers from Mission Patrol Division arrived to assist after the shooting. Sixteen officers wore and activated body-worn video, but they arrived after the shooting.

The officers arrived at the location at approximately 1:34 a.m. and obtained a statement from Genesis D. concerning an argument that she had had with her husband, Dieguez, about his drug use. Genesis informed the officers that Dieguez had left the premises and she did not know where he was. She told them that Dieguez was using drugs and acting paranoid. After speaking with her, Green and Bryan left the scene.

Shortly thereafter, Green and Bryan observed a vehicle driving on O'Melveny Avenue with its headlights off. Green, who was driving the police vehicle, made a U-turn and accelerated to catch up with the car, a white Honda Civic. As he passed the residence where he had spoken with Genesis, Green noticed that a white sedan that previously had been parked in the driveway at that location was now gone.

As he continued to follow the car, Green observed that the driver, later identified as Dieguez, failed to stop at a stop sign and almost collided with a parked vehicle while turning at the intersection of O'Melveny Avenue and Pierce Street. Dieguez made two more turns, and again failed to stop at a stop sign and almost collided with another car while turning at the intersection of Remington Street and Rincon Avenue. Shortly thereafter, Dieguez drove through a third stop sign without stopping. Green then activated the patrol vehicle's solid forward facing red light and siren and attempted to stop the car.

Dieguez did not pull over. At approximately 2:01 a.m., Bryan broadcast over the police radio that the officers were in pursuit of a reckless driver. The officers were soon joined by Tactical Flight Officer Robert Heiserman, who monitored the pursuit overhead via helicopter, and Officers Elder Chinchilla and James Cairns, who joined as secondary officers in pursuit.

Green and Bryan followed the car for 7.9 miles, lasting approximately seven minutes and 30 seconds. The car traveled south on State Route (SR) 170 into North Hollywood, exited at Roscoe Boulevard, then returned via SR-170 north to the area where the pursuit had begun. The car eventually stopped at O'Melveny Avenue, at the driveway of the home Green and Bryan had responded to earlier that night.

Green stated in an interview that after considering Genesis' description of Dieguez's drug-fueled paranoia, coupled with Dieguez's nearly 8-mile evasion from police, he feared that Dieguez would re-enter the residence and harm his wife. Green stopped his vehicle 15 feet behind Dieguez's car and told Bryan that they should stay close to Dieguez to prevent him from entering the home.

As Dieguez exited his car, Green saw Dieguez turn toward him. He immediately spotted a shiny gun in Dieguez's hand, held down near his waistband. Green shouted "He's got a gun!" to alert Bryan. From his vantage point, Bryan could not see Dieguez's hands, but Cairns, who was following behind Green and Bryan, stated he could see that Dieguez was holding his front waistband.

Dieguez ran to the rear yard and exited via an open sliding gate on the south side of the property that led out onto Carl Street. He ran east on Carl Street and north on the 10000 block of Haddon Avenue, before turning west onto a residential property.

The residential property consisted of two structures, with a larger residence at the front and a smaller, detached structure to the rear. A cement driveway along the south side led to a carport situated in front of the rear structure. Dieguez ran down the driveway and through the carport, toward the rear structure.

Green, Bryan, Chinchilla and Cairns pursued Dieguez on foot. Green and Bryan ran north on Haddon Avenue, followed by Chinchilla and Cairns, while the airship's spotlight illuminated Dieguez. Heiserman broadcast that Dieguez was north of the officers and instructed them to maintain their positions and take cover. Green took cover behind the rear of a vehicle parked immediately south of the driveway, while Bryan took cover on the sidewalk on Haddon Avenue behind a six-foot-tall brick fence pillar.

As the officers assumed their positions, Dieguez turned suddenly and ran back toward them. At approximately 2:10 a.m., Heiserman broadcast, "He's coming back out to the street right towards you." At the same time, Chinchilla and Cairns were moving north on the west sidewalk of Haddon Avenue, approximately 25 feet south to southwest of Green.

Dieguez drew a Jennings model J-22, .22 long rifle caliber semiautomatic pistol and pointed it at Green. Dieguez fired twice as he ran toward the officers. Green stated that he saw Dieguez point the weapon at him, heard two gunshots, and saw two muzzle flashes emit from Dieguez's weapon. Bryan, who was seeking cover at the time, first heard a gunshot, then turned and saw Dieguez pointing his weapon at Green. He saw a muzzle flash, then heard a second gunshot. Chinchilla was interviewed and stated that he also heard but did not see the gunshots coming from Dieguez's direction.

Fearing for his life, Green drew his weapon, pointed it at Dieguez, and fired what he believed to be six to seven rounds through a wrought iron fence. Green saw Dieguez slow down, stumble, and veer to his right. Green then saw Dieguez again raise his gun and point it at Green. Continuing to fear for his life, Green fired an additional four to five rounds at Dieguez.² At approximately the same time, Bryan, fearing for his own life as well as Green's, pointed his weapon at Dieguez and fired five rounds.

Dieguez ran back toward the rear of the property. Green broadcast that shots had been fired and Dieguez had a gun. Heiserman broadcast seconds later that he could see what appeared to be a stainless steel handgun in Dieguez's hand, and could see him running to the rear. Chinchilla stated that after the shooting ceased, he could see a metal object that he believed to be a gun in Dieguez's hand.

Dieguez walked east, stumbled and collapsed next to a car parked in the driveway, out of view of the airship's spotlight. He fell to his left side with his right hand extended up above his head and against the passenger side of the car.³

² Investigators took possession of and examined Green's duty weapon, a Glock Model 21, .45 caliber semiautomatic pistol, and determined that he fired eleven rounds. They also took possession of Bryan's duty weapon, a Smith & Wesson Model M&P9, 9mm semiautomatic pistol, and determined that he fired five rounds.

³ Later, when officers approached to take Dieguez into custody, they discovered that his fingers on his right hand had become lodged in a gap between the hood and front windshield of the vehicle. A pry tool was used to open the

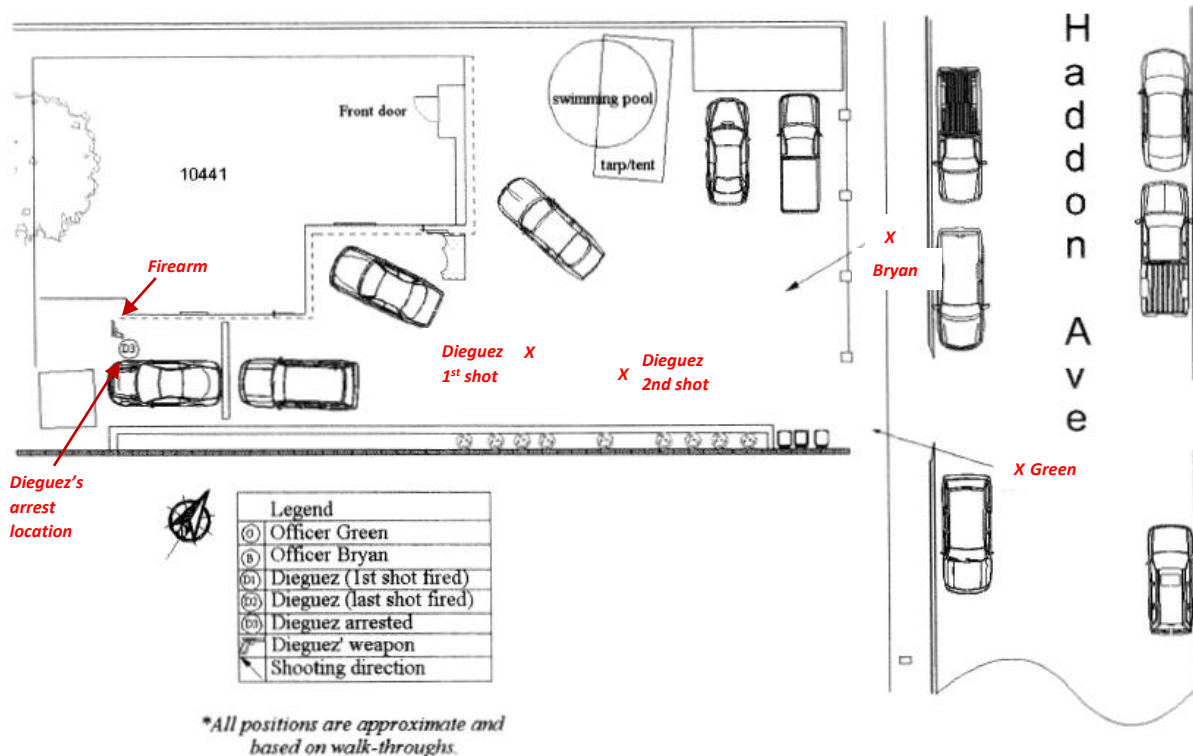


Figure 1: Diagram of Haddon Avenue property, indicating positions of Green, Bryan, and Dieguez at the time of and after the shooting.

Officers attempted to illuminate Dieguez to determine if he was still armed, but the light from their flashlights could not reach him.⁴ Additional officers soon arrived and utilized a ballistic panel door-equipped vehicle to enter the driveway and illuminate the carport with its headlights. Using ballistic shields, assisting officers approached Dieguez to take him into custody and provide medical care. Throughout the team's approach, Dieguez was unresponsive.

As the officers moved closer, several observed a handgun on the ground in the driveway within approximately one foot of Dieguez's left foot.⁵ The pistol was on its left side and contained a fully inserted magazine, containing four live cartridges.⁶ The safety was off and the action was open. Two expended .22 long rifle cartridge cases were later recovered at the scene and determined to have been fired from Dieguez's gun. The gun was not registered to Dieguez.

gap to remove Dieguez's fingers. The tip of Dieguez's right index finger became dismembered in the attempt to remove his hand.

⁴ The closest streetlight was 125 feet to the southeast of Dieguez's location at the time of the shooting and did not provide any notable illumination in his immediate area.

⁵ One discharged .22 long rifle cartridge case was removed from the chamber of the pistol. A second discharged .22 long rifle cartridge case was recovered from Dieguez's pants pocket. It is unknown how the discharged cartridge got into his pants pocket.

⁶ The pistol was later test-fired using laboratory ammunition. It was concluded that the pistol would fire, but could not do so repeatedly due to a burr located in the chamber area, which caused the gun to jam as the firearm cycled to load a new cartridge into the chamber.



Figure 2: Dieguez's gun, as found at the scene.

Officers approached Dieguez and handcuffed him. Within minutes, LAPD Sergeant Aikins advised Los Angeles City Fire Department personnel that it was safe for them to enter. They responded to the location and found Dieguez suffering from a gunshot wound to the upper torso and displaying no signs of life. At 2:47 a.m., paramedics determined that Dieguez was deceased. He was not transported to the hospital.

A resident in the property's back unit, Yadira A., was later interviewed concerning the incident. She stated that she awoke to the sound of gunfire and looked out an open window. She saw a man just outside the window, illuminated by the airship's spotlight, holding a silver handgun in his right hand. She saw the man attempt to scale a nearby wall, but he appeared unable to do so. He then turned and walked away out of view.

An autopsy was performed on July 16, 2017 by Los Angeles County Medical Examiner Martina Kennedy. Dr. Kennedy determined the cause of death to be a single gunshot wound to the chest. There was no anatomic evidence of close range firing on the skin. There were multiple superficial abrasions to the right arm, neck, and face. Toxicology results indicated the presence of marijuana and methamphetamine in Dieguez's blood. Gunshot residue was present on both of Dieguez's hands.

LEGAL ANALYSIS

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 §§ 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.

A 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 § 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 an individual 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 § 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, an officer may use only so much force as a reasonable person would find necessary under the circumstances. *Mehserle*, 206 Cal. App. 4th at 1147. 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, 189–90). The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

In protecting himself or another, a person may use all the force that 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 that appears to be imminent. CALCRIM Nos. 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 Nos. 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, 396–97.

“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 evidence examined in this investigation shows that officers attempted to stop a reckless driver, who then led them on a nearly eight-mile car chase, followed by a brief foot pursuit. As Green and Bryan approached Dieguez to take him into custody, he ran onto a residential property. As Dieguez ran out of sight, Green and Bryan paused their pursuit to take cover. At that moment, Dieguez ran back toward the officers and fired his weapon at Green. Facing a deadly threat and reasonably in fear for their lives, Green and Bryan returned fire. One round hit Dieguez, ultimately causing his death. Green’s and Bryan’s decisions to use deadly force to stop the deadly threat posed by Dieguez were reasonable under the circumstances.

CONCLUSION

We conclude that Officer Aaron Green used lawful and reasonable force in self-defense, and Officer Shannon Bryan used lawful and reasonable force in defense of another.