

In-Custody Death of Jose Chavez
Los Angeles Police Department

**Officer Josue Rivas #42955, Officer Antonio Hurtado #37638,
Officer Charles Dickinson #32535, Officer Jose Vaca #37282,
Officer Luis Sanchez #39517, Officer Damian Cruz #43125,
Officer Danny Anderson #40665, Officer Carl Thompson #40611,
Officer Isaac Gonzalez-Clemente #38092,
Officer Alexander Aleshkevich #42827**

J.S.I.D. File #18-0176



JACKIE LACEY

District Attorney

Justice System Integrity Division

June 18, 2019

MEMORANDUM

TO: COMMANDER ROBERT E. MARINO
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: In-Custody Death of Jose Chavez
J.S.I.D. File #18-0176
F.I.D. File #F031-18

DATE: June 18, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 6, 2018, in-custody death of Jose Chavez. We have determined that Los Angeles Police Department (LAPD) Officers Josue Rivas, Antonio Hurtado, Charles Dickinson, Jose Vaca, Luis Sanchez, Damian Cruz, Danny Anderson, Carl Thompson, Isaac Gonzalez-Clemente, and Alexander Aleshkevich used legally justifiable force in subduing Chavez. For the reasons set forth below, this offices declines to initiate criminal proceedings.

The District Attorney's Command Center was notified of the in-custody death at approximately 6:40 p.m., on May 6, 2018. The District Attorney Response Team (DART) responded to the location. They were given a briefing regarding the circumstances surrounding the in-custody death and observed the location.¹

The following analysis is based on investigative reports, transcripts of interviews, audio and video recordings, Body Worn Video (BWV), photographs, and the autopsy report submitted to this office by LAPD Force Investigation Division Detective Timothy Grabe. Compelled statements were provided but not considered in this analysis.

FACTUAL ANALYSIS

On May 6, 2018, at approximately 11:45 a.m., an unidentified male called 9-1-1 to report a suspicious person in the area of 4431 Towne Avenue in the City of Los Angeles. The caller advised, "He's just walking into people's property with a brick. Just looking around in the area." He described the suspect as a 30 year old Hispanic male wearing a grey shirt and blue cap. LAPD Officers Isaac Gonzalez-Clemente and Jose Vaca responded to the call and observed a man standing on the side of the street, later identified as Jose Chavez, who matched the description given

¹ LAPD had not yet processed the scene at the time DART arrived. To preserve the scene, observations were made from a distance on the sidewalk.

in the 9-1-1 call.² The officers parked their patrol car and approached Chavez on foot. Moments later, Chavez placed an unknown object into his mouth with his right hand. Chavez then manipulated a bulge in his right sweatshirt pocket with his right hand, at which time officers told him not to reach into his pocket. Vaca asked Chavez if he needed any help. Chavez responded, saying “Nothing to talk about.” Vaca instructed Chavez to move off the street and go home, but Chavez ignored the order. Both officers continued their attempts to communicate with Chavez for approximately five minutes before ceasing contact and returning to their patrol car.

As Gonzalez-Clemente and Vaca sat in their patrol car, Chavez moved from the side of the street to the middle of the roadway and began impeding traffic. Both officers again exited their vehicle. Gonzalez-Clemente broadcast a request for an additional unit and a supervisor to respond to their location. Vaca then ordered Chavez to get out of the roadway, but Chavez ignored the command.

Gonzalez-Clemente positioned himself behind the open driver’s side door and drew his TASER. Vaca positioned himself behind the open passenger door. Chavez then walked quickly toward the officers while clenching his fists. Gonzalez-Clemente warned Chavez, “Stop. If you keep approaching us we are going to tase you.” Gonzalez-Clemente again requested backup.

Simultaneously, Vaca drew his pistol. He repeatedly ordered Chavez to relax and “Stay right there.” Chavez quickly walked to within several feet of the patrol car, stating, “Shoot me. Shoot me. Do it. Shoot me. Fuck you bitch.” Vaca continued to use the open door as cover and advised Chavez to stay away. Chavez subsequently ran away from the officers then stopped in the roadway approximately four to five car lengths from their patrol vehicle. At that point, Vaca holstered his pistol.

The following LAPD officers began arriving on scene: Sergeant Juan Powers, Sergeant Rafael Quesada, Officer Antonio Hurtado, Officer Damian Cruz, Officer Charles Dickinson, Officer Alexander Aleshkevich, Officer Carl Thompson, Officer Jack Stannard, Officer Ryan Peake, Officer Terry Ruppel, Officer Craig Rensch, Officer Josue Rivas, Officer Danny Anderson, Officer Luis Sanchez, Officer Quenten Blanton, and Officer Heidi Casaola.

Gonzalez-Clemente advised Powers that, based on the 9-1-1 call and his observation of the bulge in Chavez’s pocket, he believed Chavez was armed with a brick.³ He also told Powers that Chavez had told him and his partner to shoot him. Powers concluded Chavez posed a danger to himself and coordinated with Peake and Hurtado to formulate a plan to approach Chavez. Powers advised officers they were not in a hurry, stating, “If we have to talk to him for 20 minutes, we’ll do so...If we have to, I prefer we use a beanbag and we will go from there.”

Chavez then approached a residence on Towne Avenue and stood on the front lawn. Gonzalez-Clemente used the Public Address (PA) system on his patrol car to repeatedly order Chavez to put his hands up and walk to the street. Chavez ignored those commands and remained on the lawn of

² Unless otherwise indicated, all officers’ observations were gleaned from their respective BWV footage.

³ A brick was never recovered. According to Detective Grabe, there were multiple objects in the general area that could have weighed Chavez’s pockets down, but officers were unable to determine whether there was an item in his pocket.

the residence. Through the PA, Gonzalez-Clemente warned, "If you do not go into the street...you will be tased and/or bean bagged."

Officers formed teams on the northern and southern ends of the residence and began moving forward. As they closed the distance between themselves and Chavez, Quesada gave commands to Chavez in both English and Spanish to cooperate. Chavez ignored those commands and retreated to the bottom of the residence's steps. As officers took positions of cover behind their patrol vehicles parked at the curb, Chavez obtained a large metal dustpan from the area south of the porch steps and began waving it at the officers in a back and forth slashing motion. Hurtado then warned Chavez, "Hey dude, you're going to get bean bagged if you don't drop the weapon...Drop the weapon or you are going to get hurt with the bean bag. Third warning. You are going to get tased or bean bagged if you don't drop the weapon." Quesada then issued warnings to Chavez in Spanish, but Chavez did not drop the dustpan.

Cruz fired one beanbag round toward Chavez.⁴ Thompson immediately fired an additional beanbag round at him.⁵ Both rounds struck Chavez but appeared to have no effect. Hurtado gave Chavez additional commands to drop the dust pan, but Chavez did not comply. Chavez continued to wave the dustpan back and forth. Cruz and Thompson each fired a second beanbag round at Chavez from their same vantage points. Both rounds appeared to have struck Chavez in the torso, but once again had no visible effect on him. Chavez then placed the dustpan under his shirt, between his shirt and chest.

Powers advised Quesada there was a metal pipe on the ground near Chavez, expressing concern that if the arrest team approached, Chavez would pick up the pipe and use it to force officers to shoot him. Powers and Quesada formulated a new plan in light of the beanbags' lack of effectiveness, the fact that Chavez was using the dustpan as a shield, and the proximity of the pipe. Initially, officers would fire beanbags simultaneously at Chavez from the south. When Chavez turned to face the beanbag shooters, officers armed with TASERS would move in and tase him in the back, thereby avoiding the metal dustpan being used as a shield. The arrest team would then take Chavez into custody.

Before officers could effectuate this plan, Chavez picked up a bottle of power steering fluid from the front porch and began rubbing it on his body. This behavior prompted Powers to direct a Rescue Ambulance (RA) to respond and stand by. Powers then advised officers to stand down until the RA arrived. During this time, Chavez placed the dustpan on the ground and began pouring more power steering fluid on the ground in front of him. Chavez then retrieved the 40-inch long metal pipe and began swinging it. Officers advised Chavez to drop the pipe, but he ignored their commands. Thompson, Cruz, and Gonzalez-Clemente fired additional beanbag rounds at Chavez.⁶ Chavez dropped the pipe to the ground, but disregarded officers' requests to surrender. Instead,

⁴ Cruz fired one beanbag round from approximately 44 feet.

⁵ Thompson fired one beanbag round from approximately 45 feet.

⁶ Thompson fired three beanbag rounds from approximately 33 feet. Cruz fired three beanbag rounds from approximately 40 feet. Gonzalez-Clemente fired four beanbag rounds from approximately 35 feet.

Chavez bent down to pick up the metal dust pan. In response, Gonzalez-Clemente and Cruz fired additional beanbag rounds at Chavez.⁷

These rounds caused Chavez to retreat back to the residence's porch, leaving the metal pipe and dustpan behind in the front yard. Officers retrieved the items to prevent Chavez from rearming himself. Chavez remained on the porch, picked up a welcome mat, and held it in front of his body as a shield. He then tore a large mailbox from its post and threw it to the ground. Hurtado pled with Chavez to put his hands up, but Chavez continued to ignore commands.

Cruz moved toward Chavez from his position of cover, while Chavez simultaneously began moving down the porch's steps toward Cruz. Cruz deployed his TASER⁸, which had no effect on Chavez. Gonzalez-Clemente then fired an additional beanbag round at Chavez.⁹ Chavez began running toward the northern railing of the porch. Gonzalez-Clemente fired an additional beanbag round at Chavez and Aleshkevich deployed his TASER for five seconds, striking Chavez with the darts.¹⁰ Chavez nonetheless continued north on the porch, eventually jumping over the railing and onto the ground, where he rolled onto his back.

Officers closed in on Chavez at this time. Rivas was the first to reach Chavez, at which time Chavez attempted to kick Rivas. Chavez then rolled onto his stomach and attempted to get up from the ground. Rivas wrapped his arms around Chavez's legs and used his body weight to prevent Chavez from standing up. Aleshkevich placed the palm of his hand on the back of Chavez's neck as Dickinson took hold of Chavez's left arm. Chavez began pulling his left arm under his body, prompting Dickinson to place Chavez's left arm between his legs in order to immobilize the arm until Chavez could be handcuffed. Simultaneously, Sanchez placed his right knee on Chavez's right shoulder and grasped his right arm with both hands. Anderson took hold of Chavez's right wrist and elbow and gave his handcuffs to Thompson who handcuffed Chavez's right wrist. Thompson then removed his own handcuffs and told Dickinson to release Chavez's left arm so that he could use the second set of handcuffs to cuff Chavez's left wrist. Rivas, Vaca, and Sanchez assisted Thompson by pulling Chavez's left arm behind his back. Anderson then placed his shins across Chavez's calves while Hurtado held Chavez's ankles. Cruz then hobbled Chavez's ankles.

Vaca, Aleshkevich, Rivas, Cruz, and Anderson carried Chavez and placed him on the lawn as the RA approached the scene. Despite officers' attempts to keep Chavez on his side while on the ground, Chavez continued to pull away from officers and attempted to roll onto his chest. Cruz then applied a second hobble to Chavez's legs. Chavez continued to struggle in the same manner. Rivas repeatedly told Chavez, "Stay on your side so you can breathe."

Shortly thereafter, Chavez, who had blood in his mouth, spit into Aleshkevich's eye. Rivas held Chavez's head downward but ensured Chavez remained on his side. Thompson then relieved Rivas. Thompson and Aleshkevich held Chavez on his side, despite Chavez's repeated attempts to

⁷ Cruz fired one beanbag round from approximately 40 feet. Gonzalez-Clemente fired two beanbag rounds from approximately 35 feet.

⁸ Cruz deployed his TASER from an approximate distance of 15 feet.

⁹ Gonzalez-Clemente fired a beanbag round from an approximate distance of 28 feet.

¹⁰ Gonzalez-Clemente fired a beanbag round from an approximate distance of 11 feet. Aleshkevich deployed his TASER from an approximate distance of nine feet. Officers fired a total of 19 beanbag rounds at Chavez.

roll onto his stomach. Chavez continued struggling and attempting to spit on officers. Chavez then rolled completely face down. At this time, Vaca told Chavez to relax and Thompson held his knee on Chavez's lower back. Dickinson then relieved Aleshkevich so Aleshkevich could retrieve a spit mask from his patrol car. Chavez began jerking as Dickinson maintained control over him. Thompson rolled Chavez onto his side and requested assistance from Los Angeles Fire Department (LAFD) who had arrived at the location.¹¹ LAFD Battalion Chief David Reddix approached Chavez, who was now lying on his stomach.

Reddix observed Chavez was breathing at that time, but noted his respirations were few and far between. As a result, LAFD personnel checked Chavez's pulse and found he had none. They performed CPR in an effort to restore Chavez's pulse, but were unsuccessful. Resuscitation efforts continued as Chavez was transported by ambulance to University of Southern California Medical Center, and once he had arrived at the hospital. Chavez was pronounced dead at 2:36 p.m.

Several neighbors witnessed the incident and provided their accounts to investigators. Pablo L. and his children David L. and Jessica L. stated they saw officers placing Chavez in a chokehold while he was on the ground.¹² David and Jessica further stated they saw officers strike Chavez with their hands. The remaining witnesses did not observe officers place Chavez in a chokehold or strike him.¹³ The officers' BWV also fails to depict any such conduct.

Chavez's autopsy was conducted on May 7, 2018, by Doctor Vadims Poukens. Dr. Poukens noted multiple abrasions and bruises on Chavez's body and several puncture marks.¹⁴ He did not observe any internal injuries or fractures. Dr. Poukens also noted a history of asthma and methamphetamine abuse.¹⁵ As to Chavez's cause of death, Dr. Poukens opined as follows:

The defendant died due to cardiopulmonary arrest caused by combined effects of methamphetamine intoxication and restraining maneuvers by law enforcement officers. Manner of death is homicide because restraining maneuvers contributed to the cardiopulmonary arrest. Homicide manner does not imply that law enforcement officers acted inappropriately or outside their scope of duties.

During an LAPD Use of Force Review Board on February 4, 2019, Dr. Poukens stated that positional asphyxia¹⁶ was not a causal factor in Chavez's death. A toxicology report revealed Chavez had .18 ug/mL (micrograms per milliliter) of methamphetamine in his femoral blood and

¹¹ LAFD were standing by as LAPD cleared the scene and deemed it safe for LAFD to enter.

¹² The family has known Chavez since he was a child.

¹³ Maria D. stated officers were on top of Chavez, trying to "pull him." Oscar T. observed officers attempting to perform CPR on Chavez, and did not see officers kick or hit Chavez. Jose G. witnessed Chavez jump over the fence and his subsequent apprehension and made no mention of officers placing Chavez in a chokehold or striking him. Maria H. heard officers telling Chavez to drop his weapon, then later observed their CPR efforts; she made no mention of officers placing Chavez in a chokehold or striking him.

¹⁴ According to the autopsy report, the bruises were consistent with Chavez being struck with beanbag rounds. Dr. Poukens indicated the puncture marks could have been caused by a TASER, Chavez's drug use, or medical intervention (including I.V. lines).

¹⁵ This information was obtained from an investigator's interview with Chavez's sister.

¹⁶ Positional asphyxia occurs when a person's body is positioned in such a way that the individual cannot properly breathe.

.88 ug/mL of methamphetamine in his heart blood at the time of death.¹⁷ The toxic range of methamphetamine in the blood is 0.15 ug/mL up to 1.0 ug/mL.¹⁸

Although she did not conduct the autopsy, Dr. Javed reviewed the underlying reports and provided an additional opinion regarding Chavez's cause of death:

[T]he methamphetamine levels found in the decedent's blood are typically considered "toxic" and may have caused physiological effects in the system leading to his death...Based on the coroner investigator's report, [t]oxicology report and what we learned on November 30, 2018, my opinion is that the methamphetamine intake along with the use of force utilized to restrain the decedent led to his death.

LEGAL ANALYSIS

"An officer may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. "Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id.* (citations and internal quotations omitted). When protecting the public peace, a police officer "is entitled to the even greater use of force than might be in the same circumstances required for self-defense." *Id.*

"The question is whether a peace officer's actions were objectively reasonable based on the facts and circumstances confronting the peace officer." *Id.*, at 1102. "The test is highly deferential to the police officer's need to protect himself and others." *Id.*

The use of a TASER constitutes an intermediate, significant level of force that must be justified by the government interest involved. *Bryan v. MacPherson* (2010) 630 F.3d 805. Use of a TASER is subject to the same reasonableness test as the use of force generally. *See, Hinton v. City of Elwood* (10th Cir. 1993) 997 F.2d 774, 777 (not excessive for officers to use an "electric stun gun" on a man after grabbing him and wrestling him to the ground, because of his active resistance to arrest). The use of a TASER falls within the category of non-lethal force. *Bryan*, *supra*, 630 F.3d at 823; *See also, Lewis v. Downey* (11th Cir. 2004) 581 F.3d 467, 475.

An act causes death if the death is the direct, natural and probable consequence of the act and the death would not have happened without the act. CALCRIM No. 582

In this matter, Officers Rivas, Hurtado, Dickinson, Vaca, Sanchez, Cruz, Anderson, Thompson, Gonzalez-Clemente, and Aleshkevich were lawfully performing their duties when they attempted to arrest Chavez. A report had been made that Chavez was walking onto people's property

¹⁷ According to Dr. Ruby Javed of the Los Angeles County Department of Medical Examiner-Coroner, "femoral blood is considered a more accurate measure of drug concentrations in blood before death because there is less likelihood of postmortem redistribution factors from other organs."

¹⁸ According to Dr. Javed, this toxicity range is typical, but not exact, as it does not take into account whether an individual is a chronic user, and physiological differences that can affect the breakdown of the drug.

armed with a brick. Once officers arrived, Chavez began standing in the roadway, impeding traffic. Chavez repeatedly ignored commands to move out of the roadway and asked officers to shoot him. He then walked onto the lawn of a residence and retreated onto the front porch. Once there, he retrieved a large metal dustpan and began waving it at officers in a slashing motion. Officers warned Chavez multiple times he would be tased and struck with bean bag rounds if he failed to comply with their orders. Chavez refused to drop the dustpan. Officers then deployed their TASER and bean bag gun, striking Chavez multiple times without any visible effect. Before officers were able to effectuate a plan to close in on Chavez, he began dousing himself and the surrounding area with power steering fluid. He then armed himself with a metal pipe and began swinging it. Once Chavez jumped over a porch railing and onto the ground, officers approached him and made repeated attempts to secure his cooperation. Chavez continued to resist, requiring multiple officers to restrain parts of his body in order to handcuff and hobble him. Once Chavez was secured, he continued to roll on the ground and spat on an officer. Given Chavez's continued physical resistance, the officers' use of less lethal force was reasonable and they are not criminally liable for his death.

CONCLUSION

The evidence examined in this investigations shows that Officers Rivas, Hurtado, Dickinson, Vaca, Sanchez, Cruz, Anderson, Thompson, Gonzalez-Clemente, and Aleshkevich were justified in their use of force in subduing Chavez. We are closing our file and will take no further action in this matter.