

**In-Custody Death of Jose Cruz
Los Angeles Police Department**

Officer Evan Urias, #38412

Officer Erika Avila, #41317

J.S.I.D. File #14-0408



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 17, 2017

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
Los Angeles Police Department
Force Investigation Division
100 W. 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 Cruz
J.S.I.D. File #14-0408
F.I.D. File #F030-14

DATE: October 17, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 15, 2014, in-custody death of Jose Cruz by Los Angeles Police Department Officers (LAPD) Evan Urias and Erika Avila. It is our conclusion that Urias and Avila applied lawful force in detaining Cruz and are not criminally liable for his death.

The District Attorney's Command Center was notified of the death on June 16, 2014, at approximately 11:15 a.m.

The following analysis is based on reports prepared by the Los Angeles Police Department submitted to this office by detectives with the LAPD Force Investigation Division. Officers Urias and Avila's compelled statements were not considered as part of this analysis.

FACTUAL ANALYSIS

On the afternoon of June 15, 2014, Robin L. heard screaming coming from the rear yard of [REDACTED] Luddington Street in the Sunland area of the City of Los Angeles. An unsupervised sober living facility is located at the address. Robin L. ran next door and observed Jose Cruz, a resident at the sober living facility, being held by another resident, Francisco H. Cruz was yelling and hitting himself in the head and face with his hands. It appeared to Robin L. that Cruz was under the influence of an unknown substance.¹

Fellow resident Tommy M. observed Cruz running around the backyard, flailing his arms and screaming as if he were in pain. Cruz was also rubbing and patting his head with the palms of

¹ During his interview with FID Detectives, Francisco H. stated that it appeared to him that Cruz was having a panic attack. Cruz was screaming loudly and hyperventilating. Francisco H. repeatedly put him in a bear hug in an attempt to calm him down.

his hands. Earlier in the afternoon, Cruz told Tommy M. that he had been awake for five days straight, high on methamphetamine. Robin L. called 9-1-1 as Francisco H. attempted to restrain Cruz.

LAPD uniformed Officers Evan Urias and Erika Avila responded to the call of a screaming man. While in route, the officers were advised that the person screaming may be under the influence of an unknown substance and was being held by a resident. The officers arrived at the residence at 3:05 p.m.

Statement of Robin L.

Urias and Avila contacted Robin L. in the front yard of the location. She advised the officers that Cruz was in the backyard. Robin L. could hear Cruz screaming while speaking with the officers. Urias, Avila and Robin L. walked down the driveway and into the backyard. As soon as Cruz observed the uniformed officers, he broke free from Francisco H. and ran into the house. The officers ran to the open rear door and ordered Cruz to get down on the ground approximately five times. Francisco H. attempted to calm Cruz by stating, "Jose, calm down. Calm down. Just listen to what they're saying." Cruz did not comply with the officers' orders and continued to scream.

Urias and Avila followed Cruz into the house. Cruz was in the kitchen, while the officers stopped in an attached laundry room. Urias told Cruz that he would be tased if he did not get on the ground. Robin L. heard the sound of a Taser being used followed by Cruz falling to the ground. Cruz tried to stand up and the officers jumped on him in an attempt to control him. A struggle ensued in the kitchen between Cruz and the officers. Cruz continued to scream. At the same time, Robin L. heard the sound of unknown objects breaking in the kitchen. One of the officers requested backup over the radio.² Avila then asked Robin L. to go to the front of the house and direct the responding officers to their location. While waiting in the front yard, Robin L. could still hear Cruz screaming.

Statement of Tommy M.

Prior to the police arriving in the backyard, Cruz evaded Francisco H.'s grasp and walked into the kitchen screaming and thrashing his arms. Once Urias and Avila arrived in the rear yard, Tommy M. directed them into the kitchen. The officers said, "Jose, Jose. Calm down. Lay on the ground." It appeared to Tommy M. that Cruz was unaware of his surroundings. Cruz continued to scream and throw his hands around him. Tommy M. does not know if Cruz made contact with either officer.

Avila told Cruz that he would be tased if he did not lay on the ground. Cruz began running back and forth from one side of the kitchen to the other as the officers grabbed his arms and attempted to take him to the ground. For the next three to five minutes, Cruz resisted the officers by running around the kitchen and thrashing his arms. Tommy M. heard a Taser being deployed during this time, however, it had no effect. Items in the kitchen were breaking as Cruz wrestled with the officers.

² At 3:08:25 p.m., Urias requested backup via his handheld radio.

Cruz eventually went to the ground on his stomach. The officers had his right arm handcuffed above his head. Cruz held his left arm beneath his chest while kicking and screaming on the floor. Urias radioed for additional units. Avila told Cruz, "Release your arm, Jose, before I tase you again." Avila tased Cruz and ten seconds later Cruz went limp.

Urias and Avila handcuffed Cruz' hands in front of his body and leaned him against the refrigerator. Cruz had his eyes open. Urias took Cruz' pulse and tapped him on the face while saying, "Jose, Jose. Okay? Are you there, Jose? Are you there, Jose?" After approximately one minute, Urias called for the paramedics.³

Statement of Sergeant Michael Smith

Smith arrived at the residence at 3:14 p.m. and observed Cruz leaning against the refrigerator with his hands double handcuffed behind his back. Urias told Smith that he believed Cruz was "DOA." Smith checked Cruz' carotid artery and thought he detected a pulse. LAFD arrived and began cardiopulmonary resuscitation. Cruz regained a heartbeat and was transported to Holy Cross Medical Center.

Urias advised Smith that as he and Avila approached the backyard, they could hear Cruz screaming. As the officers entered the yard, Cruz ran into the house. The officers approached the rear door and observed Cruz in the kitchen. Cruz advanced on the officers with a black object in his hand, later identified as a cellphone. Urias and Avila gave Cruz multiple commands that he ignored. Urias believed that Cruz was under the influence of drugs and was concerned for the safety of the other occupants in the house.⁴

Urias and Avila attempted to grab Cruz with their hands, however, Cruz resisted the officers and they were unable to place handcuffs on him. Cruz became more belligerent when the officers physically pinned him against the refrigerator. Due to Cruz' large stature, the officers backed away from Cruz and decided to use a Taser.⁵ Urias tased Cruz and he fell to the ground. Cruz continued to struggle with the officers while on the floor. Urias removed the Taser darts from Cruz and contact tased him two times.⁶ Urias and Avila were then able to handcuff Cruz.⁷

Treatment at Holy Cross Medical Center

Cruz was admitted in critical condition at Holy Cross Medical Center. He failed to respond to any medical treatment and died on June 16, 2014, at 9:54 a.m.

³ At 3:09:47 p.m., Urias broadcast that the suspect was in custody and requested that a supervisor and an additional unit respond to the scene. At 3:10:36 p.m., Avila requested that a LAFD rescue ambulance respond to their location for an unconscious male that was not breathing.

⁴ There were at least seven other residents in the home at the time of the incident.

⁵ Cruz was 5'6" and weighed 230 pounds.

⁶ Tasers generally have two modes. In "dart" mode, the Taser shoots probes into a subject and affects the central nervous system causing incapacitation. In "drive stun" mode, the Taser is applied directly to the skin causing pain, rather than incapacitation. It is typically employed as a pain compliance tool.

⁷ The activation history indicated that the Taser was activated nine times on June 15, 2014, over an approximate duration of two minutes. The activation durations ranged from one second to seven seconds.

Autopsy Report

Juan M. Carrillo, M.D., Deputy Medical Examiner, performed an autopsy on June 20, 2014. Carrillo ascribed Cruz' death to the effects of cocaine and methamphetamine. Carrillo found that the physical and emotional distress suffered by Cruz while being taken into custody was a condition "contributing but not related to the immediate cause of death."

Toxicology results performed on blood samples taken at the autopsy show the presence of cocaine and toxic levels of methamphetamine.

LEGAL ANALYSIS

A police officer may use reasonable force in making an arrest or in overcoming resistance to arrest. Penal Code §835a.

In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances" of the particular incident "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.*, at 396. Further the Court stated, "[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." *Id.*, at 397. Moreover, "[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." *Id.*, at 397-398.

"[T]asers and stun guns fall into the category of non-lethal force... Non-lethal however, is not synonymous with non-excessive force; all force--lethal and non-lethal--must be justified by the need for the specific level of force employed." *Bryan v. Mcpherson* (2009) 630 F.3d 805, 825.

CONCLUSION

The evidence examined in this investigation shows that the police were called to investigate a screaming man who may be under the influence of an unknown substance. As Officers Urias and Avila contacted Robin L. in front of the residence, Cruz could be heard screaming loudly in the backyard. Cruz fled into the house immediately after seeing the two uniformed officers. Cruz was still yelling loudly and flailing his arms once inside the kitchen. Urias and Avila attempted to engage Cruz verbally. They made repeated commands for Cruz to get on the ground. Cruz ignored the orders and continued to scream, throw his hands around and at one point advanced toward the officers. Urias believed that Cruz was under the influence of drugs and posed a safety concern for the other residents at the sober living facility.

Urias and Avila grabbed Cruz in an attempt to detain him. Cruz physically resisted the officers and they were unable to handcuff him or bring him to the ground. When the officers pinned Cruz against the refrigerator, he became more belligerent. At that time, due to Cruz' size and escalating behavior, the officers backed away from Cruz and employed a Taser. Cruz fell to the

ground, but continued to resist. He had his left arm beneath his body while screaming and kicking on the floor. Urias used the Taser again, applying it directly to Cruz. At that time, the officers were able to take him into custody.

Urias correctly suspected that Cruz was under the influence of drugs due to the behavior he exhibited when the officers first came into contact with him. Although a crime, being under the influence of a narcotic is a non-violent misdemeanor that typically results in rehabilitation rather than jail time for the offender. In light of the minor crime at issue, the officers first attempted to communicate with Cruz before using any level of force. When Cruz ignored their commands, the officers attempted to physically detain him. It was at that time that Cruz began to actively resist the officers' attempts to handcuff him. Cruz' escalating violent struggle in close proximity with the officers combined with his large stature posed an immediate threat to the officer's safety as well as the other residents of the sober living facility. Under the circumstances, the decision to deploy the Taser was reasonable.

We are closing our file and will take no further action in this matter.