

**In-Custody Death of Christopher Davis**

**Los Angeles Police Department**

**Sergeant Joe Ward, #27907, Officer Joseph Marx, #37650,  
Officer Javier Quinones, #38764, Officer Jason Garcia, #37576  
Officer Antonio Hurtado, #37638, Officer James Forsyth, #38893  
Officer Kevin Vy, #38826, Officer Jose Solorzano, #37982**

**J.S.I.D. File #11-0186**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**May 10, 2016**

## MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ  
Force Investigation Division  
Los Angeles Police Department  
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 Christopher Davis  
J.S.I.D. File #11-0186  
L.A.P.D. File #F023-11

DATE: May 10, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 14, 2011, in-custody death of Christopher Davis. It is the conclusion of this office that Los Angeles Police Department (LAPD) Sergeant Joe Ward and Officers Joseph Marx, Javier Quinones, Jason Garcia, Antonio Hurtado, James Forsyth, Kevin Vy, and Jose Solorzano used legally justified force in subduing Davis.

The District Attorney's Command Center was notified of this in-custody death on March 14, 2011 at approximately 8:38 a.m. The District Attorney Response Team responded to the scene and was given a walk-through at the location.

The following analysis is based on investigative reports and witness statements taken during the investigation by the LAPD and submitted to this office by Force Investigation Division (FID) Detective Robert Solorza. The departmentally compelled statement of Officer Jose Solorzano was also considered in this analysis only to the extent that it provided the identity of the officers who applied the Hobble Restraint Device on Davis.

### FACTUAL ANALYSIS

On March 14, 2011, at approximately 6:42 a.m., three 9-1-1 calls were generated regarding a male, later identified as Christopher Davis, walking around in his underwear in the middle of Avalon Boulevard and 55<sup>th</sup> Street in front of oncoming traffic.<sup>1</sup> At approximately 6:44 a.m., LAPD Newton Area uniformed patrol Officers Jason Garcia and Javier Quinones, driving a

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<sup>1</sup> Two of the three callers were identified. Neither of the two callers observed the officers take Davis into custody and were not interviewed. One caller reported a "crazy man screaming" and "running between cars." Another caller reported a "male Black in the middle of the street undressing himself." A third caller reported "a man that's naked near a school." This third caller expressed concern that the man was "right across the street from Academy Middle School" and that the man was "in his underwear but about to take those [the underwear] off."

marked black and white police vehicle, received a radio call of an “irate” male possibly suffering from unknown “mental illness” at 755 East 55<sup>th</sup> Street. The comments of the radio call indicated the male was Black, 6’2 tall, heavy set with no shirt, black jeans and braided hair, and was running into passing vehicles.<sup>2</sup> Upon their arrival at 755 East 55<sup>th</sup> Street, Garcia and Quinones were unable to locate Davis.

At approximately, 6:55 a.m., Communications Division broadcast an additional call requesting any available unit to respond to an indecent exposure of a man “removing his clothing in traffic lanes.” Surveillance video captured Davis in the area of 55<sup>th</sup> Street and Avalon Boulevard prior to police contact. Davis is seen wandering the area with his pants down around his ankles wearing boxer style underwear and no shirt. Davis appears to be disoriented and is staggering from side to side, gesturing with his hands, and pacing back and forth on 55<sup>th</sup> Street east of Avalon Boulevard. The surveillance video has no sound and is approximately 15 minutes long. It also captured Davis walking across Avalon Boulevard and obstructing traffic.

Garcia and Quinones returned to the area of 55<sup>th</sup> Street and Avalon Boulevard and attempted to make contact with Davis, who was walking in and out of oncoming traffic. The officers positioned their vehicle across the north lanes of traffic and exited their vehicle. Davis continued walking in and out of the lanes of traffic. Davis approached the front doors of an MTA bus which came to a stop at the corner of 55<sup>th</sup> Street and Avalon Boulevard. After the bus pulled away, Davis walked across the street towards 54<sup>th</sup> Street and the construction site located at 5413 South Avalon.<sup>3</sup>

Garcia and Quinones requested an additional unit and updated their location to the construction site. Officers Joseph Marx, Antonio Hurtado, James Forsyth, and Kevin Vy, as well as Sergeant Joe Ward responded to the request for an additional unit.

The officers attempted to detain Davis but Davis ran and hid underneath a storage trailer located inside the construction site. Davis subsequently came out from underneath the trailer followed by the officers who were chasing him and ordering him to stop. Davis continued running despite the officers’ repeated commands to stop. Marx subsequently shot Davis with five “Super Sock” rounds from a bean bag shotgun as Davis ran through the construction site.<sup>4</sup> Simultaneously, Quinones deployed a Taser and the probes struck Davis on his left rear arm and right rear shoulder area.<sup>5</sup> The Taser cycled for a full five seconds. Quinones activated the Taser a second time for a full five second cycle and a third time for a two second cycle.<sup>6</sup>

Davis fell onto his stomach near a large ditch and officers quickly approached Davis to keep him from standing up. Garcia, Vy, Forsyth, Marx, and Quinones held Davis down and handcuffed

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<sup>2</sup> Davis was actually 5’10 tall and weighed 209 pounds.

<sup>3</sup> The video surveillance footage captured Garcia and Quinones responding to the area but neither the officers, their vehicle, nor Davis are seen once they enter the construction site area.

<sup>4</sup> Marx was armed with a department issued Remington Model 870 beanbag shotgun.

<sup>5</sup> A “probe” is the portion connected to the Taser wire which makes contact with the subject.

<sup>6</sup> Quinones was armed with a department issued X26 TASER.

him. Ward arrived and ordered the application of a Hobble Restraint Device. Solorzano and Forsyth applied a Hobble Restraint Device on Davis' ankles prior to turning Davis on his side.

Davis was turned onto his side and paramedics were called to the scene. Paramedics determined Davis was not breathing and did not show any signs of life throughout the transport to the hospital. Davis was pronounced dead at California Hospital Medical Center at 7:55 a.m., the immediate cause of death being "cardiac arrest."

### **Statement of Juan Alarcon**

Juan Alarcon was standing in front of his business on Avalon Boulevard, when he observed Davis walking in and out of lanes of traffic. Davis was causing vehicles to go in circles to avoid colliding with him. At one point, Davis got in front of two buses.

Davis was shirtless and had his pants pulled down, exposing his boxers. Davis later took off his pants and remained in his boxers. Davis threw himself down on the street. He also took his penis out of his boxers and put it up against a car door. Davis looked "crazy", as if he was "high on drugs," and had foam on his mouth.

A police car arrived at the location and honked at Davis signaling him to stop what he was doing but Davis did not heed the warning. Davis "wouldn't listen" and walked to a nearby yard. Alarcon last saw Davis crouching with his boxers slightly pulled down exposing his penis.

### **Statement of Martin Aguilar**

Martin Aguilar was working at a construction site located at 5413 Avalon Boulevard with his co-worker Eduardo Lopez. Aguilar saw Davis crossing the street headed towards the construction site. Davis had his pants at his ankles and was pulling his boxer shorts up and down. Davis was "thick" and "buff" in appearance causing Aguilar to become fearful for his safety because Davis was a "big guy" and "was not really all there." Davis got underneath a trailer. The officers went behind the trailer and ordered Davis to get out from underneath the trailer. Davis got out from underneath the trailer and ran towards a dirt lot as the officers ran behind him. Aguilar heard a shot but Davis kept running. Aguilar then heard a second shot and saw Davis stumble, only to get up and keep on running. Aguilar heard a third shot which caused Davis to finally go down at which point the officers got on top of Davis. It was difficult for Aguilar to see what exactly was transpiring at this point, because he did not have a good view once Davis went to the ground. An officer said, "Hey, buddy, get up. Hey, get up." and a couple of seconds later an ambulance arrived.

### **Statement of Eduardo Lopez**

Eduardo Lopez was with Martin Aguilar and saw Davis walk into the gate of the construction site, turn a corner, and head to a trailer where he pulled his pants down to his ankles. Davis appeared "a little fidgety" and was "just a little out there" as if he was on drugs. His head was

swiveling, looking around all the time and his hands were also constantly moving. Davis was acting very erratic; he could not stop or stand still, he was constantly moving.

Davis crawled under the trailer, got up, picked his pants back up and walked behind the trailer. When officers ordered Davis to come out from behind the trailer, Davis began running away from the officers. The officers were approximately 30 feet behind Davis when Lopez heard a shot. Davis kept running, so the officers shot him a second time. Davis fell and tried to get back up but was shot a third time. This time, Davis stayed down and the officers jumped on him attempting to restrain him. For about a minute or two the officers attempted to handcuff or restrain Davis. The officers then stood up and told Davis to get up but there was no movement from Davis.

### **Statement of Sergeant Joe Ward**

Sergeant Ward arrived on scene and approached the officers as Davis laid on his stomach, handcuffed. Ward observed two officers on each side of Davis holding his right and left arms and two additional officers holding his legs.<sup>7</sup> Ward bent down and asked Davis if he was alright. Davis replied with “gibberish” and was unintelligible. Davis appeared agitated, he was shaking his head and moving around.<sup>8</sup> Meanwhile the officers were telling him, “Hey, man. Relax. Calm down. Just relax.” Davis did not relax his body; instead, he tensed up and flailed his body around.

Ward requested that a Hobble Restraint Device be placed on Davis’ legs before Davis was sat up. Ward wanted to prevent Davis from striking or kicking the officers and wanted to gain control over him so that Davis would not injure himself or the officers. The hobble was applied on Davis’ lower ankles.<sup>9</sup> It was approximately 35 to 40 seconds before Davis was moved from his stomach onto his right side. In the meantime, Ward was telling Davis to calm down.

Ward looked down at Davis and stated, “Sir, are you ok?” Davis was taking a breath and appeared to be breathing. When the paramedics arrived a few minutes later, they asked if Davis was breathing and Ward responded that as far as he could see, Davis was still breathing.<sup>10</sup> The paramedics checked Davis and Ward recalled that they stated that Davis was breathing. Ward recalled “The initial – I’m not sure who the RA was. He, well, you know, he goes ‘Yeah, he is breathing.’”<sup>11</sup> The paramedics put Davis on a gurney and by the time Davis was being rolled

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<sup>7</sup> Dispatch records reflect that Officers Garcia and Quinones were the first to arrive on scene followed by Officers Marx and Hurtado. Sgt. Ward arrived on scene simultaneously with Officers Forsyth and Vy. Officers Solorzano, De Leon, Parra and Ruiz were the last officers to arrive on scene.

<sup>8</sup> Sergeant Ward formed the opinion that Davis was under the influence of a narcotic, possibly PCP, based on Davis’ appearance and behavior. Davis had froth on his mouth, his eyes were bloodshot and dilated, and he was in his underwear which were pulled down.

<sup>9</sup> Officer Solorzano, assisted by Officer Forsyth, placed the hobble on Davis.

<sup>10</sup> Communication Division records show that Officer Garcia requested a Rescue Ambulance (RA) to 5413 Avalon Boulevard for a PCP suspect at 7:16 a.m. The paramedics arrived at the scene at 7:24 a.m.

<sup>11</sup> Neither of the two responding paramedics, Orie Hamilton nor Stanley Croom, recall Davis breathing at the scene. Upon initially approaching Davis, Hamilton described Davis as not alert and not breathing. At that point, he and Croom asked officers to remove the handcuffs and restraints on Davis so that they could put Davis on the gurney

over to the gurney, Ward asked “Is he breathing?” and was told by one of the paramedics that it did not appear Davis was breathing. The paramedics attempted to get Davis to breathe and started chest compressions.

### **LAFD Paramedic/Firefighter Orié Hamilton**

Paramedic/Firefighter Orié Hamilton was on duty with his partner, Stanley Croom, when he responded to an overdose rescue call at 5413 South Avalon. When they pulled up to the scene an officer said Davis was breathing but when they assessed Davis, they determined that he was not breathing. Davis was laying on the ground on his side, handcuffed with his hands behind his back, and his legs were restrained around the ankles. Hamilton did not see any use of force applied on Davis. Davis was not moving and the officers were just standing next to Davis. Hamilton approached Davis and noted that Davis was not alert or breathing. Hamilton asked the officers to remove the handcuffs and the restraints so they could put Davis on the gurney and start resuscitation procedures.

Officers informed them that Davis was combative and to be careful. The officers advised that they had to use a Taser and bean bag on Davis. Davis had two Taser darts and two contusions but had no other observable injuries on his person. Davis was never conscious while in the paramedics’ presence.

### **Physical Evidence**

At the scene, investigators collected five expended 12 gauge cartridge cases consistent with LAPD approved ammunition utilized in less lethal shotguns (Super-Sock shot shell) and three expended Super Sock rounds consistent in appearance with the bean bags found in LAPD less lethal shotguns. An expended Taser cartridge and wire were also recovered from the scene.<sup>12</sup> Black “3XL” sweat pants were recovered from Avalon Boulevard near the southeast corner of 55<sup>th</sup> street.

### **Postmortem Examination**

On March 16, 2011, Associate Deputy Medical Examiner Yong-Son Kim and Deputy Medical Examiner Raffi Sarkis Djabourian performed a postmortem examination of Davis’ remains. Davis’ examination showed two Taser punctures. There was a Taser puncture on Davis’ posterior left arm with subcutaneous hemorrhage present, and a dart with an inserted barb on Davis’ right upper back with an attached wire and subcutaneous hemorrhage present. The examination also showed two oval contusions, consistent with bean bag projectiles, on Davis’ lower mid-back and left buttock. Davis had multiple abrasions and contusions on his torso, knees, left buttock, right hip and his left knee pit. Davis also had wrist contusions and abrasions consistent with the reported history of being handcuffed.

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and begin resuscitation efforts. Hamilton stated, “When we initially pulled on scene, an officer did say he was breathing. When we went up to him and assessed him, he was not.”

<sup>12</sup> Two additional Taser darts were collected during the postmortem examination.

The medical examiners attributed the cause of death to methamphetamine and phencyclidine intoxication, and other unestablished factors.<sup>13</sup> Unestablished factors in the cause of death could not be excluded because the death had a temporal relationship with the restraint maneuvers, particularly when Davis was in a prone position for the administration of the handcuffs and the ankle hobble restraint. Given the temporal relationship of the restraints with Davis subsequently becoming pulseless and not breathing, an asphyxia component could not be definitively excluded. Nonetheless, the examiners concluded that the mechanism of the drugs affecting the brain, heart, and metabolic system appeared to be a primary cause of Davis' death.

The toxicological examination showed a significant level of methamphetamine both in the central and peripheral blood specimens. The levels were in the range where toxic effects can be seen. Phencyclidine (PCP) was also present and also in the range where toxic effects can be seen.

Significantly, the autopsy yielded no evidence that undue physical pressure was applied on Davis' body during the attempt to restrain him. There was no autopsy evidence of respiratory compromise, such as injuries to the neck, rib cage, diaphragm, or chest wall, nor skeletal fractures or brain hemorrhage.

The manner of death was classified as undetermined.

## **LEGAL ANALYSIS**

A peace officer may legally arrest someone if he has probable cause to make the arrest. (Penal Code section 836a; CALCRIM No. 2670).

A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense. (Penal Code section 835a; CALCRIM No. 2670).

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect an arrest or to prevent escape or to overcome resistance. (Penal Code section 835a).

When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer... may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. (Welfare and Institutions Code section 5150).

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<sup>13</sup> Contributory conditions included mild coronary atherosclerosis and mild chronic bronchitis. Atherosclerosis is a disease in which plaque builds up inside the arteries which can lead to heart attack, stroke, or death.

In *Graham v. Connor* (1989) 490 U.S. 386, 396-397, the Court held that use of force cases are to be reviewed using an objective standard of the reasonable officer:

“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. [Citation] . . . With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ [Citation] violates the Fourth Amendment. 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.”

The use of a Taser constitutes an intermediate, significant level of force that must be justified by the governmental interest involved. *Bryan v. McPherson* (2010) 630 F.3d. 805, 826.<sup>14</sup> Use of a Taser is subject to the same reasonableness test as the use of force generally. See, *Hinton v. City of Elwood* (1993) 997 F.2d 774, 777 (not excessive for officers to use an “electrical 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 825; See also, *Lewis v. Downey* (2004) 581 F.3d 467, 475.

Placing a person wearing handcuffs and leg restraints in a prone position is reasonable where the person has violently resisted arrest. See *Mayard v. Hopwood* (8<sup>th</sup> Cir. 1997) 105 F.3d 1226; *Price v. County of San Diego* (1998) 990 F. Supp. 1230; *Simpson v. Thompson* (2010) 2010 U.S. Dist. LEXIS 114941.

The evidence examined in this investigation shows that Officers Garcia and Quinones responded to calls of a man screaming, undressing himself near a middle school, and running between cars obstructing traffic. Davis caused oncoming vehicles to go in circles in order to avoid colliding with him. Video footage shows that when the officers responded, Davis was wandering the area in his underwear, gesturing with his hands, and pacing back and forth. Davis had foam on his mouth and appeared to be under the influence of a controlled substance.

Witnesses were consistent in stating that Davis’ behavior was erratic, that he posed a danger to himself or others, and that he repeatedly failed to obey lawful police orders. Alarcon stated that when the police first arrived at the location, they honked at Davis signaling him to stop what he was doing but Davis did not heed the warning and “wouldn’t listen.” Aguilar stated that Davis was “not really all there” causing Aguilar to become fearful for his safety. Aguilar observed officers giving Davis clear orders to stop but Davis instead ran and hid behind and under a trailer. When Davis emerged from under the trailer, Aguilar heard the officers order Davis to stop but Davis ignored their orders and instead ran towards a dirt lot. With Davis not heeding

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<sup>14</sup> In *Bryan*, supra, the officer used a Taser in dart-mode which, when deployed correctly, has a greater impact on the subject than when used in drive stun, or contact, mode. The cases cited by *Bryan* do not distinguish between dart and drive stun modes.



lawful, verbal orders, the officers reasonably resorted to a Taser and a bean bag shotgun in an attempt to gain control of Davis.

Even after apparently being shot with a bean bag round, Davis was undeterred. The second bean bag round caused Davis to stumble, only to get up and keep on running. It was not until the third shot, that Davis went down, at which point four officers were able to get on top of Davis in an apparent attempt to handcuff him. However, Davis was still resisting and struggling against the officers.

The Taser was necessary to detain and subdue Davis. In light of Davis' ongoing physical resistance to the bean bag rounds, it was reasonable that the officers also deployed the Taser three separate times in an attempt to detain Davis and physically take him into custody. The force used by the officers was justified in view of the resistance offered by Davis.

The evidence further shows that once Davis was taken to the ground, the officers employed only the force necessary in order to restrain and subdue Davis. Sergeant Ward observed two officers holding Davis' arms and two officers holding his legs. The officers were ordering Davis to relax and calm down but Davis failed to obey these orders, instead tensing up and flailing his body around. The officers handcuffed Davis as quickly as possible, despite his resistance, and placed him in a Hobble Restraint Device in order to protect themselves from Davis' further physical resistance and possible kicks.

The officers did not tie Davis' ankle restraint to his handcuffs and immediately upon turning Davis on his side, monitored his breathing and summoned the paramedics. The officers did not strike Davis with their hands, feet, or police baton. The post-mortem examination of Davis revealed that there was no force applied beyond the minimum reasonable force that was used to gain control and custody of Davis. To that effect, there was no autopsy evidence of respiratory compromise, skeletal fractures, or brain hemorrhage. Although the manner of death was ultimately classified as undetermined, it cannot be said beyond a reasonable doubt that Davis' death was due to anything other than the drug intoxication. Significantly, the medical examiner concluded that the mechanism of the drugs affecting the brain, heart, and metabolic system appeared to be the *primary* cause of Davis' death.

## **CONCLUSION**

Based upon the evidence in this case, we find that Officer Quinones' use of the Taser, an intermediate level of force, to assist in the detention of Davis was reasonable under these circumstances. We further find that Officer Marx's use of the bean bag shotgun, a less-lethal weapon, to assist in the detention of Davis was also reasonable under these circumstances. We further find that Sergeant Ward, Officers Garcia, Hurtado, Forsyth, Vy, and Solorzano applied reasonable force in overcoming Davis' resistance, and are not criminally responsible for his death.

Davis' attempt to flee in defiance of the officers' lawful orders and active physical resistance justified the officers' decision to use force, including the Taser, the bean bag shotgun, and the Hobble Restraint Device.

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