

**Officer Involved Shooting of Donald Warner
Los Angeles Police Department**

Officer Bruce Oakley #27238

J.S.I.D. File #12-0471



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District Attorney

Justice System Integrity Division

September 21, 2017

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
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: Officer Involved Shooting of Donald Warner
J.S.I.D. File #12-0471
F.I.D. File #F046-12

DATE: September 21, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 19, 2012, non-fatal shooting of Donald Warner by Los Angeles Police Department (LAPD) Officer Bruce Oakley. It is our conclusion that Officer Oakley used reasonable force in self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on July 19, 2012, at approximately 6:00 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Detective Ty Lee.

The following analysis is based on reports, recorded interviews, and photographs submitted to this office by the LAPD's Force Investigation Division and the testimony of Officer Oakley in the criminal case filed against Donald Warner. The departmentally compelled statement of Officer Oakley was not considered in this analysis.

FACTUAL ANALYSIS

Donald Warner and Derek E [REDACTED] each rented a bedroom from Robert R [REDACTED] in a shared home on Welby Way in the City of Los Angeles. On July 19, 2012, at 3:04 a.m., E [REDACTED] called 9-1-1 to report a disturbance by Warner. Officers Bruce Oakley and Jose Organista responded to E [REDACTED]' call for assistance and met him at a 7-11 store near his home. When Organista and Oakley spoke with E [REDACTED], E [REDACTED] told them there was nothing he needed from them other than to document their response. Organista gave E [REDACTED] his business card and the officers left the area.

At approximately 4:15 a.m., E [REDACTED] again called 9-1-1 and told the dispatcher that Warner had pushed him and he wanted to file charges against him. Because they had spoken with E [REDACTED] earlier, Oakley and Organista advised the dispatcher that they would respond to the call for service. Officers Tiffany Houser and Alejandro Martinez also responded to the location.

Martinez was the first officer to speak with E [REDACTED] after E [REDACTED] made the second 9-1-1 call, and he found E [REDACTED] to be intoxicated, agitated, and uncooperative, refusing to stop talking on his phone when the officers arrived. E [REDACTED] told the officers Warner had pushed him and he wanted to make a citizen's arrest. The officers explained the "Private Person's Arrest" form and E [REDACTED] signed it.

After E [REDACTED] signed the Private Person's Arrest form, Oakley and Organista knocked on the door of the residence and R [REDACTED] answered.¹ R [REDACTED] showed the officers to Warner's room and Organista knocked on the bedroom door and asked Warner to come out of his room to talk with them. Warner spoke with the officers through the closed door and explained that he would not exit the room and ordered the officers to leave the house. Warner was upset when talking with the officers, was swearing at them, and told them he would not do anything they wanted him to do. However, he admitted pushing E [REDACTED] that morning during an argument.

After approximately five minutes of speaking through the door, Warner opened the door and spoke to the officers face to face; however, he never left the interior of his bedroom. Warner repeated his statement that he refused to cooperate, and forcefully closed the door toward the officers. Organista, who was standing to the left of the door, used his arm in an unsuccessful attempt to keep the door from closing. As the door closed, Oakley, who was standing in front of the door, kicked it two times to force the door open. As the door swung open, Oakley saw Warner retrieve a handgun from his bed, yelled "Gun!" and fired at Warner one time, striking him in his left arm.² Organista could not see Warner when Oakley opened fire.

Warner was taken into custody and transported to the hospital. A silver revolver which was fully loaded with five .32 caliber cartridges was found on Warner's bed.



Figure 1: Warner's revolver was found on his bed after the shooting.

¹ E [REDACTED] did not reenter the home after the police arrived and did not witness the shooting.

² R [REDACTED] did not observe the shooting, but believes he heard Oakley yell, "Do not grab under the pillow!" immediately before the shot was fired.

Warner's Statement

Warner told detectives that he and E■■■■ did not get along because E■■■■ always drinks and is obnoxious when he drinks. He explained that on the morning of the incident, E■■■■ had kept him up all night by being belligerent and that Warner had shoved E■■■■ onto the couch. Warner said that after he pushed E■■■■, the police arrived.

Warner said that he gave the officers his story through the closed door and then opened the door to talk to them some more. The officers tried to convince him to come out of his room and talk about what happened, but he told them he refused and then closed the door. As soon as he closed the door, the officer kicked it open:

I was startled by the door. I reached under my pillow with my right hand. I was startled by the door being kicked in. And, I think, well, because it's a nickel plated pistol it was easy to see. It shined in light so I think he saw that. And...I was sitting on the edge of my bed like this, facing the doorway to my bedroom, and I reached underneath here to grab this and I was getting ready to stand up and put it back under my mattress. And then the door gets kicked in and I got the gun there and he saw it and he shot me.

Warner explained that his gun was in his right hand when he was shot.

Oakley's Testimony

Oakley testified in a preliminary hearing held after criminal charges were filed against Warner for assault on a peace officer with a firearm.³

Oakley testified that they responded to Warner's home in response to a reported battery. He and Organista talked to Warner through a bedroom door before Warner opened the door: "We kept trying to ask him to step out of the room. He didn't want to step out of the doorway and into the room so we had a little bit of an exchange, telling him we want him to come out and talk to him, get some information and his side of the story as to what happened. That kind of went back and forth a little bit, and then eventually he slammed the door...before the door was slammed he admitted the battery to us. And so as he started to slam the door and the door did slam then I kicked the door open."

When asked to describe what he saw after he kicked the door, Oakley testified:

[T]he door flew open and I...could see that the defendant was, his back was to me and he was going to the bed. There was a bed, like, in the corner...of the room. He was...diving onto the bed. As he was diving onto the bed I could see his right hand go underneath the pillow, one of the pillows that was on the bed. As he began to come out the, I could see that he had like a grip that you would hold a gun with and then I could see something on top that was on top of his hand...He began to turn...to his left in a circular motion coming around in our direction...When I saw the gun come out and start to turn, I fired. At the moment that I

³ Charges of Assault on a Peace Officer with a Firearm and Brandishing a Firearm were filed against Warner in case LA071501. Warner was acquitted by jury of those charges on November 26, 2012. As the trial ended in an acquittal, no transcripts of the trial testimony were made.

fired I got one shot off. And then I came up to...see if I needed to take a second shot. It was at that time that the door that I'd kicked open had hit the back wall and it slammed closed and my shot had actually gone through the door.

Oakely testified that Warner was taken into custody immediately after he was shot.

LEGAL ANALYSIS

California law permits any person 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 section 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. 3470. *See* Graham v. Connor (1989) 490 U.S. 386, 396-97 (“The calculus of reasonableness must embody allowance for the fact that police 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”).

When Oakley responded to a reported battery between roommates, Warner was both identified by E■■■■ as the aggressor and admitted that he pushed E■■■■ during an argument. As Oakley and Organista investigated the circumstances of the assault, Warner slammed the door closed. Having established that Warner had committed a battery, Oakley kicked the door back open. When he did so, Warner reached under his pillow, retrieved a gun, and started turning toward Oakley. In response, Oakley fired one round from his service weapon to stop the imminent threat posed by Warner.

Based upon the situation with which he was confronted, Oakley responded reasonably to the actual and imminent threat posed by Warner. Oakley did not have to wait until Warner was in a position to actually shoot him; Warner’s grabbing for the gun and turning in Oakley’s direction was sufficient to present the imminent threat to which Oakley responded.

CONCLUSION

We conclude that Officer Bruce Oakley used lawful force in self-defense and in the defense of others when he shot and wounded Donald Warner. We are closing our file and will take no further action in this matter.