

**Officer Involved Shooting of Dimas Diaz, Jr.
California Highway Patrol
Officer Brian Green, #16383**

**Ventura County Sheriff's Office
Deputy Noel Juarez, #3336**

J.S.I.D. File #19-0016



**JACKIE LACEY
District Attorney
Justice System Integrity Division
October 22, 2019**

MEMORANDUM

TO: DEPUTY COMMISSIONER SCOTT SILSBY
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Dimas Diaz, Jr.
J.S.I.D. File #19-0016
C.H.P. File #C19-501-001
V.C.S.O. File #2019-6219
L.A.S.D. File #019-00195-2241-013

DATE: October 22, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 12, 2019, fatal shooting of Dimas Diaz, Jr. by California Highway Patrol (CHP) Officer Brian Green and Ventura County Sheriff's Office (VCSO) Deputy Noel Juarez. We have concluded that Officer Green and Deputy Juarez acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 2:00 p.m. on January 12, 2019. 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, audio recordings of interviews, firearm analysis reports, crime scene diagrams and sketches, photographs, video evidence, and witness statements submitted to this office by Los Angeles County Sheriff's Department (LASD) Detectives Amber Montenegro and Joe Valencia. The voluntary statements of the involved officers were considered as part of this analysis.

FACTUAL ANALYSIS

The Domestic Violence Incident

On January 12, 2019, at approximately 10:25 a.m., a 9-1-1 caller reported a disturbance in a residential area in the City of Camarillo in Ventura County. The caller reported a man and a woman “throwing punches.”

A uniformed VCSO deputy in a marked patrol vehicle answered the radio call and saw Dimas Diaz, Jr. and a woman sitting in a silver car. As the deputy approached, Diaz pushed the woman out of the car. The woman was crying and had broken teeth and a cut lip.

Diaz closed the driver’s side door, put the car in reverse, backed up, nearly struck the deputy’s patrol vehicle, and fled.

The Pursuit

VCSO deputies, who were later joined by officers from the CHP, pursued Diaz, who ran stoplights and reached speeds of approximately 100 m.p.h. on surface streets. The pursuing officers were advised that Diaz was driving a stolen vehicle, had a “no bail” parole warrant, was considered armed and dangerous, and had mental issues and a history of gang affiliation and violence.

After evading police for approximately 45 minutes and travelling over 20 miles into Los Angeles County, Diaz drove at approximately 85 m.p.h. onto the center divider of the U.S. 101 freeway to pass slower traffic, lost control of his vehicle in the wet conditions, swerved across all southbound lanes of the freeway, and crashed into a guardrail on the right shoulder.

Green, Juarez, and numerous other law enforcement personnel blocked the freeway, held Diaz at gunpoint, and ordered him to surrender.

The Standoff

Diaz refused to comply and engaged the officers in a standoff that lasted approximately one hour as officers continuously ordered Diaz to surrender, called for the LASD Special Enforcement Bureau to respond with an armored vehicle, and deployed an officer with a less-lethal beanbag shotgun.

A photograph of Diaz standing next to his crashed vehicle, and a deputy holding him at gunpoint, is shown below:



Figure 1- Photograph of Diaz Standing Next to His Crashed Vehicle.

The positions of the pursuing patrol vehicles in relation to Diaz’s vehicle at the time of the shooting is shown in the aerial photograph below:

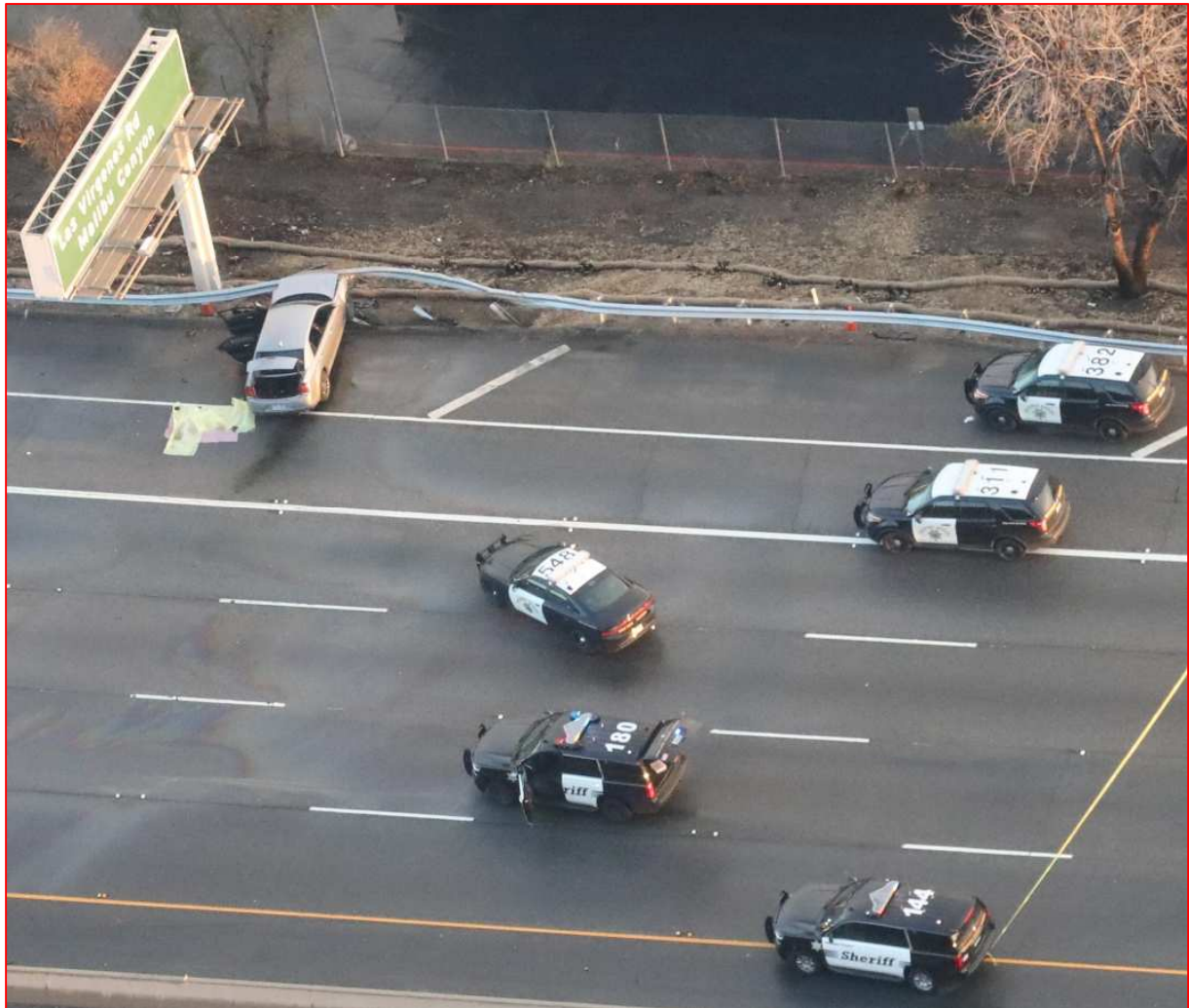


Figure 2- Aerial Photograph of the Scene.

During the standoff, Diaz was agitated and repeatedly exited and entered his vehicle, hid his hands, suddenly popped his head up over the vehicle and ducked down again, appeared to be arming himself with something from inside the vehicle, concealed his right hand in his jacket pocket, and was behaving very erratically. Diaz continuously refused to raise his hands and surrender and yelled at the officers, “I’m not going back!” (apparently referring to his prison and parole status). He also said he was never going to see his kids again and that if he came out from behind the vehicle he would “come out shooting.”

Use of Less Lethal Force

Green was armed with a semiautomatic rifle and Juarez was armed with a shotgun loaded with slug shotshells. CHP Officer Werner Pineda was armed with a shotgun loaded with less-lethal, beanbag shotshells.

As Diaz was standing outside of his vehicle and facing the officers, Pineda announced, “Less-lethal!” and fired a round at Diaz, causing Diaz to fall to the pavement.

The Shooting

The shooting was recorded on video by bystanders.

In a rapidly unfolding sequence of events, officers approached Diaz, who was rolling around violently on the pavement, apparently in pain after being shot with the beanbag. Instead of surrendering, Diaz, while concealing his right hand, used his left hand to pick up a black object from the pavement. The object had the general appearance of a knife. Diaz pointed the object at the officers and charged at them, as shown in the photograph below. Pineda yelled, “Less-lethal!” and then heard Green yell, “Knife! Knife! Knife!” From approximately 30 feet away from Diaz, Pineda fired a second less-lethal round. Juarez believed Diaz was drawing a gun and fired one round from his shotgun as Green fired four rounds from his rifle at Diaz. The fire department was called and Diaz was pronounced dead at the scene.



Figure 3- Photograph of Diaz Charging at the Officers.

The Black Object

After the shooting, a black plastic object, which appears to be part of a console of an automobile, was located next to Diaz's body, as shown in the photograph below:



Figure 4- Photograph of the Object Located Next to Diaz's Body.

The Autopsy

Zuha Ashraf, M.D. and Paul Gliniecki, M.D performed a postmortem examination of Diaz's remains and concluded that the cause of death was multiple gunshot wounds. The autopsy showed a total of eight gunshot wounds of the head, left hand, right hand, right arm, left shoulder, right chest, and right upper back. The gunshot wounds to the head and right chest were from front to back and were rapidly fatal. The gunshot wound to the back was from back to front and was potentially fatal. The gunshot wounds to the left shoulder, right arm, left hand, and right hand were of varying paths and directions and were "less potentially fatal" according to the medical examiners. There were multiple nonspecific contusions to Diaz's chest, arms, legs, and hip that were consistent with being struck by a beanbag, the vehicle collision, and/or other non-specified trauma. Diaz also had a broken left humerus.¹ A toxicology analysis was performed and showed the presence of methamphetamine and marijuana in Diaz's bloodstream at the time of his death.

¹ It cannot be determined if Diaz broke his arm during the automobile crash, when he fell after being shot with the first beanbag round, or when he fell again after being shot by Pineda, Green, and Juarez.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *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; *see also*, CALCRIM No. 505.

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. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 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 a suspect 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 section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

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, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And 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, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"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.

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, 396-397.

Analysis

There is compelling evidence in this case, including video, that Diaz was violent, under the influence of methamphetamine and marijuana, was intent on not going back to prison, made a statement that he would “come out shooting,” and ultimately armed himself with an object and charged at the officers.

The officers knew that Diaz was involved in a domestic violence incident, had engaged in an extremely dangerous pursuit, was on parole and had a warrant for his arrest, appeared to be concealing a weapon in his pocket, refused to comply with orders to show his hands, appeared to be engaging the officers in a tactical manner from a position of cover behind his vehicle, kept going into his vehicle as if arming himself with a weapon, and announced he was going to “come out shooting.” When Diaz charged at Green and Juarez and the other officers while pointing a black object at them, it was reasonable for Green and Juarez, under these rapidly unfolding circumstances, to believe that Diaz was armed with a deadly weapon and to fire at Diaz in order to protect themselves and the lives of other officers and deputies and the motorists and public who were surrounding the area.

CONCLUSION

We find that Officer Green and Deputy Juarez acted lawfully in self-defense and in defense of others when they used deadly force against Dimas Diaz, Jr. We are closing our file and will take no further action in this matter.