

**Officer Involved Shooting of Jeffrey Olden
Los Angeles Police Department**

Officer Luis Aceves, #38381

Officer Edward Hewitt, #39644

J.S.I.D. File #13-0083



JACKIE LACEY

District Attorney

Justice System Integrity Division

June 9, 2016

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 Jeffrey Olden
J.S.I.D. File #13-0083
F.I.D. File #F002-13

DATE: June 9, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 18, 2013, non-fatal shooting of Jeffrey Olden by Los Angeles Police Department (LAPD) Officers Luis Aceves and Edward Hewitt. It is the conclusion of this office that Officers Aceves and Hewitt acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on January 18, 2013, at approximately 10:00 a.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene by Lieutenant Darnell Davenport.

The following analysis is based on reports prepared by the Los Angeles Police Department (LAPD) Force Investigation Division, submitted to this office by Detective Thomas Burke. The reports include photographs, audio-recorded interviews of witnesses, medical reports, radio transmissions, and surveillance videotape. The compelled statements of Officers Aceves and Hewitt were also considered as part of this analysis.

FACTUAL ANALYSIS

On January 18, 2013, at 7:45 a.m., Jeffrey Olden and his six-year-old son entered the Advanced Food Market in Los Angeles.¹ Olden approached the MoneyGram check cashing service inside the market and tapped on the window. He told the cashier he wanted to purchase a money order. The cashier told Olden the office was closed but she would assist Olden nonetheless. Olden walked away without making a transaction.

Olden paced around the store, returned to the cashier, and asked a second time if he could purchase a money order. Olden again left without making a transaction. He paced around the store and drew a knife from his pocket.

¹ Video surveillance captures the incident beginning at this point.

The store manager was alerted to Olden's behavior and asked Olden if he needed help. Olden told the manager he thought someone was following him and he needed the assistance of store security. The manager did not see anyone following Olden.

Olden continued to pace around the store, behaving erratically. At one point he spun around in a circle with the knife in his hand as if he was attempting to defend himself from an imaginary person.

Olden approached a customer in the checkout line and passed behind her. She reported later that as Olden passed by she felt what appeared to be a knife blade rub across her back. Olden pushed another customer by lowering his shoulder into the man and pushing him aside.

Concerned about Olden's aggressive and bizarre behavior and possession of a knife, several witnesses called 9-1-1. LAPD Southwest Patrol Officers Luis Aceves and Edward Hewitt responded.

When Aceves and Hewitt arrived, they entered the store and made contact with Olden near the cash registers. Aceves saw Olden place an object into his jacket pocket. Aceves ordered Olden to take his hands out of his pockets. Olden walked toward the officers but did not take his hands out of his pockets. The officers grabbed Olden's arms to place them behind his back for handcuffing. Olden resisted and pulled his arms forward, pushing the officers away.²

Hewitt ordered Olden to stop resisting or he would tase him. Olden continued to struggle with the officers so Hewitt issued an auditory warning to Olden by activating his Taser.

Aceves, Hewitt, and Olden crashed into a display of wine bottles as the officers struggled to gain control of Olden, who stabilized himself against the display and attempted to kick the officers.

Hewitt tased Olden but it had no effect. Olden continued to fight with the officers.

As the struggle continued onto the floor with the officers wrestling with Olden and attempting to handcuff him, Hewitt tased Olden a second time but it was ineffective. Olden continued to fight with the officers and grabbed the grip of Hewitt's service weapon.³ Hewitt attempted to separate himself from Olden and wrestle Olden's hand away from his holster while yelling, "Partner! He's got my gun!"

Aceves unholstered his service weapon and yelled at Olden, "Don't grab his gun!" Olden held onto the grip of Hewitt's gun, which remained holstered. Hewitt yelled again, "He's got my gun!"

In fear that Olden was gaining control of Hewitt's service weapon, Aceves fired one round at Olden.

Olden, wounded and lying on his back, continued to struggle with the officers and held onto the grip of Hewitt's service weapon. Hewitt yelled again, "He's got my gun!" while Olden

² Olden was 52 years old, stood six feet tall, and weighed 200 pounds.

³ Blood was found on Hewitt's holster and firearm and the DNA from that blood matched Olden's DNA profile.

responded, "I ain't got no gun!" and continued to wrestle with Hewitt. Aceves fired a second round at Olden as Hewitt, who believed Olden was drawing a knife, simultaneously drew his service weapon and fired a round at Olden.

Olden stopped resisting and was handcuffed. A folding pocket-knife was found in his right jacket pocket. Olden was transported to the hospital for treatment of two gunshot wounds to the torso.

He was later convicted in case number BA406995 of two felony counts of resisting an executive officer and sentenced to two years in state prison.

Statement of Dwaine Olden

Dwaine is Olden's six-year-old son. Dwaine was with Olden when they walked into the market. Dwaine said his father needed to get money from the bank. When they arrived at the market, Olden told Dwaine he thought someone was behind him. Dwaine did not see anyone follow them. He said Olden had been drinking beer before they walked to the market. When the officers arrived, Olden struggled with the police. Dwaine heard one of the officers tell Olden to stay down or he would be forced to use his Taser. He saw the officers tase Olden. A woman grabbed Dwaine and took him out of the store.

Statement of Soo Lee

Soo Lee was the MoneyGram cashier. She said Olden and a child approached the service window and Olden asked for a money order on several occasions. Another cashier reported that Olden had a knife so they called 9-1-1. The officers entered the market and confronted Olden. She did not see the altercation but heard three shots fired.

Statement of Brian Lee

Brian Lee was the store manager. A cashier alerted him there was a customer in the store with a knife. Lee located Olden and asked if he could help him. Olden said he was being followed and asked for a security guard. Lee told him the security guard was not present. Olden "banged" on the MoneyGram window. Seeing that Olden had a knife and was accompanied by a child, Lee instructed an employee to call the police. When Olden was resisting the officers, he heard the officers yell that Olden was reaching for one of their guns. When he saw Aceves unholster his weapon, Lee escorted Dwaine out of the store and into a nearby alley. He was in the alley when he heard three gunshots.

Statement of Janeth Sanchez

Janeth Sanchez was a cashier and supervisor at the market. She recognized Olden as a frequent customer. Olden entered the store and requested a money order. When he was told the MoneyGram store was not open he started behaving erratically. Olden paced around the store and asked the cashiers to call someone because he believed he was being followed. Olden had a knife and swung it around as if he was trying to stab someone behind him. He approached customers in the store so Sanchez called 9-1-1. The officers arrived and Olden resisted as they tried to handcuff him. When the struggle reached the floor of the liquor section, Sanchez saw

Olden grab Hewitt's gun. Hewitt pushed away from Olden and called out to Aceves that Olden was grabbing his gun. She then saw Aceves fire a single round at Olden. She hid in the MoneyGram office and heard two more shots seconds later.

Statement of Victoria Santiago

Victoria Santiago was working as a cashier when Olden came in and requested a money order. After two other cashiers told Olden that the MoneyGram office was not open, Santiago saw Olden tell Dwaine to "stand back." Olden drew a knife and turned in 360-degree motion with the knife pointed outward. Santiago and her manager, Sanchez, ran into the MoneyGram office and called 9-1-1. Olden told Dwaine to stand to the side when the officers arrived. She did not see the altercation between Olden and the officers, but she heard two gunshots from inside the office.

Statement of Vicente Martinez

Vincente Martinez was an employee at the market. Olden was in the store with a knife. Olden said someone was following him. The officers tried to handcuff Olden and place him under arrest, but he resisted. A struggle ensued and Martinez watched as Olden and the officers crashed into a wine display. Hewitt tased Olden before the struggle went to the floor. Martinez saw Olden reach for Hewitt's gun and Aceves fire a single round. Olden tried to get up after the first shot, again reaching for Hewitt's firearm. Martinez heard two more shots and saw Olden wounded on the ground.

Statement of Connie Jo

Connie Jo was an employee at the market when she was alerted that a man with a knife was inside the store. Olden tapped on the window of the MoneyGram office. He was looking over his shoulder and saying to himself, "There's someone following me." Jo did not see a knife. She called 9-1-1. After the police arrived she heard a gunshot. Olden fought with the police and she heard the officers tell him to stop resisting. Jo heard two more gunshots and ducked under a cash register.

Statement of Henry Alvarado

Alvarado was working at the market. Olden walked around the store with a knife. Alvarado's supervisor asked Olden if he needed assistance. Olden said, "I don't need nothing. I just...I just stay here because somebody is behind me." When Lee told him nobody was behind him, Olden "shook" his knife at him. The police arrived and attempted to remove the knife from Olden's pocket. The officers used a Taser on Olden when he started to struggle with them. Alvarado, who was trying to turn Dwaine away from the scene, saw Olden reach for Hewitt's firearm before three shots were fired.

Statement of Francisco Roque

Roque was a store employee and entered the store behind the officers. He saw them approach Olden, who was wandering around the checkout stations. The officers attempted to handcuff Olden but he struggled to get away. Hewitt warned Olden to comply and drew his Taser. The

Statement of LAPD Officer Edward Hewitt

Officer Hewitt provided a compelled statement to investigators.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Injuries

Olden was shot twice in the upper abdomen. The gunshot wounds were in close proximity and with a front-to-back trajectory. The two projectiles in Olden’s body were not removed.

The Knife

Olden had a 2 ½ inch folding knife in his pocket. A DNA profile obtained from the knife matched Olden’s DNA profile.

Firearms Evidence

Aceves was armed with a .45 caliber semiautomatic pistol loaded with fourteen rounds in the magazine and one round in the chamber. A post-incident examination of the firearm found eleven rounds in the magazine and one round in the chamber. Two .45 caliber cartridge casings were recovered at the scene consistent with Aceves firing two shots at Olden.

Hewitt was armed with a .40 caliber semiautomatic pistol loaded with fifteen rounds in the magazine and one round in the chamber. A post-incident examination of the firearm found

fourteen rounds in the magazine and one round in the chamber. A .40 caliber cartridge casing was recovered from the scene consistent with Hewitt firing one round at Olden.

A DNA swab from Hewitt's pistol and magazine matched Olden's DNA profile.

LEGAL ANALYSIS

A police officer may use reasonable force in making an arrest, preventing an escape, or in overcoming resistance.⁵ Reasonableness is judged from the perspective of a reasonable person acting as a police officer at the scene and considers the circumstances surrounding the use of force including: (1) whether the suspect poses an immediate threat to the safety of the officers or others, (2) whether the suspect is actively resisting arrest or attempting to evade arrest by flight, and (3) the severity of the crime at issue.⁶

Moreover, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that the police are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly involving - - about the amount of force that is necessary in a particular situation.⁷ The test of whether the officer's actions were objectively reasonable is also "highly deferential to the police officer's need to protect himself and others."⁸

The evidence examined in this investigation shows that Olden had been drinking and was engaging in bizarre behavior. He brandished a knife and acted aggressively toward innocent bystanders. Officers Aceves and Hewitt attempted to handcuff Olden, who resisted violently. They ordered Olden to stop resisting and warned him he would be tased but Olden did not comply. He continued to struggle with the officers and flailed his arms and legs. Hewitt tased Olden in an attempt to use less-lethal force to control him but to no avail. Olden caused himself and the officers to crash into a wine display. Olden and the officers wrestled onto the floor. Hewitt tased Olden again but with no effect. While on the floor, Olden grabbed Hewitt's service weapon. Hewitt yelled, "Partner! He's got my gun!" Aceves ordered Olden to release Hewitt's gun but Olden did not comply. Olden attempted to remove Hewitt's gun from its holster.

Despite being wounded, Olden continued to struggle and held onto Hewitt's service weapon, again causing Hewitt to yell to his partner, "He's got my gun!" Aceves fired a second round at Olden.

⁵ *Penal Code* § 835a.

⁶ *Graham v. Connor* (1989) 490 U.S. 386; *People v. Mehserle* (2012) 206 Cal. App. 4th 1125.

⁷ *Graham* at 396-397.

⁸ *Munoz v. City of Union City* (2004) 120 Cal. App. 4th 1077, 1102.

⁹ It cannot be determined forensically whether the second round that struck Olden was fired by Aceves or Hewitt because the projectiles remain in Olden's body. There was a bullet impact on the floor near Olden and a copper jacket fragment nearby which suggests another round missed Olden, struck the floor, and fragmented.

CONCLUSION

It is the conclusion of this office that Officers Hewitt and Aceves acted in lawful self-defense and defense of others. We are closing our file and will take no further action in this matter.