

DISTRICT ATTORNEY'S REPORT

ON

THE FATAL SHOOTING OF

DERRICK JONES

By: Richard Klemmer
Assistant II District Attorney

Frank Moschetti
Inspector II

Dated: February 8, 2011

INVESTIGATION OF THE SHOOTING DEATH OF DERRICK JONES

INTRODUCTION:

The Alameda County District Attorney's Office has assembled an Officer Involved Shooting (OIS) Team which consists of experienced senior, assistant and/or deputy district attorneys as well as experienced inspectors. Each month, a two person team, consisting of an attorney and inspector, are assigned to respond to, investigate and evaluate cases where a person has died and a peace officer is involved. The OIS Team is authorized by agreement with each local law enforcement agency serving Alameda County, to conduct a separate but parallel investigation into the circumstances leading up to the death with the ultimate question of whether charges should be filed against the officer or anyone involved in the shooting. It remains the legal responsibility of the criminal division of the employing law enforcement agency to conduct the criminal investigation. It is also the legal responsibility of the Internal Affairs Division of the employing agency to conduct an administrative investigation of which the District Attorney's Office is not involved.

INVESTIGATIVE STEPS:

On or about November 8, 2010, at approximately 11:30 p.m., the on-call OIS team was activated by a call from the Oakland Police Department that an officer involved shooting had occurred. The OIS Team consisted of Assistant II District Attorney Richard Klemmer and District Attorney Inspector II Frank Moschetti. The OIS Team initiated an investigation into the shooting death of Derrick Jones.

The OIS Team was informed that an officer involved shooting had occurred at about 9:30 P.M. in the vicinity of Trask Street and Seminary Blvd. Oakland. The OIS Team responded to the scene of the shooting incident at which time, the scene was inspected before the decedent was taken away by the County Coroner. The OIS Team went to the Homicide Division of the Oakland Police Department and reviewed statements that had been taken from civilian witnesses. The OIS Team participated in questioning the involved officers, Omar Daza-Quiroz and Eriberto Perez-Angeles.

In addition to the interviews of witnesses and the two involved officers, the OIS Team has reviewed and analyzed the complete investigation compiled by Sergeant G. Galindo, Oakland Police Department. The OIS Team requested and reviewed additional materials, including, but not limited to, a report from "Shot Spotter" and any video camera footage captured from the area in which

the shooting occurred. Further, the OIS Team has obtained and reviewed the Autopsy Protocol as well as the Coroner's Report.

FACTS

On November 8, 2010 at about 9:15 P.M. Oakland Police Officers Eriberto Perez-Angeles and Omar Daza-Quiroz observed a woman flagging them down in an effort to get them to stop and assist her. The officers did, in fact, make contact with a woman who appeared physically injured, frightened and upset. The woman identified herself as a victim of domestic violence at the hands of her boyfriend, whom she named as Derrick Jones. She described the location of the domestic violence as a barber shop where Derrick Jones worked. The officers noted that the windshield of her car had been smashed and she appeared to have injuries consistent with her report. She repeatedly stated that her boyfriend had tried to kill her. She told the officers that she had been choked by her boyfriend and that he had threatened to kill her. She told the officers that her boyfriend had broken the windshield of her car, and broken her cell phone in order to prevent her from calling the police. Two additional officers arrived on the scene and Officers Perez-Angeles and Daza-Quiroz left the woman with the two officers in order to respond to the location of the domestic violence as described by the woman.

As the officers arrived at the location of the barber shop, they observed a man, later identified as the decedent, Derrick Jones, locking the barbershop door with a key. Mr. Jones was outside the barber shop. Officer Perez-Angeles contacted the man and told him that he was looking for Derrick Jones. The man to whom the officer was speaking matched the description given by the woman. Derrick Jones falsely stated to the officer that Mr. Jones had just left the area. Officer Perez-Angeles asked him if he was Derrick Jones. Officer Daza-Quiroz, who was standing behind Officer Perez-Angeles, told Mr. Jones to get his hands out of his pockets, to turn around and put his hands behind his back. Mr. Jones did not take his hands out of his pockets but rather, he swung around and fled from the barber shop.

Mr. Jones ran through a small parking lot in front of the shop, and then ran eastbound on Avenal Ave. towards Seminary Ave. As he ran, the officers observed that he had both hands in the waistband area of his pants. He kept his hands in front of him at his waistband as he ran which caused both officers to be concerned that Mr. Jones was armed. Both officers knew the area to be a common area for firearm possession. Officer Perez-Angeles fired his taser at Mr. Jones and the probes hit him in the lower back. The officers observed no effect on Mr. Jones from the taser. The pursuing officers were about 15 feet behind Mr. Jones who was running very fast. The officers repeatedly yelled at Mr. Jones to

stop running. However, they continued to pursue him due to the violent nature of the crime that had been reported to them and which they were investigating. They also believed that Mr. Jones might have been armed due to the manner in which he held his hands in front of his body at the waistband area.

Mr. Jones turned southbound on Seminary Ave. and continued his flight toward Trask Street. He was on the sidewalk on the west/right side of the street. The officers pursued, but ran in the street. As Mr. Jones neared Trask Street the officers heard a heavy metal object drop, hit the ground and make a skidding noise from the vicinity where Mr. Jones was running. This heightened both officers' concern that Mr. Jones had a gun. Mr. Jones continued to run, turning westbound on Trask Street. Throughout the chase, the officers continued to yell in a loud, understandable voice, for Mr. Jones to stop running.

As the officers approached Trask Street, they slowed slightly and took out their pistols and flashlights. They rounded the corner and moved cautiously. They did not hear any sounds from Mr. Jones. They believed he was hiding nearby with a gun and that he was in a position to take them by surprise. Officer Perez-Angeles moved along the right/north side of Trask Street checking in and around the parked cars. As he did so, he spotted Mr. Jones lying down behind a parked car between the sidewalk and a fence. Mr. Jones looked Officer Perez-Angeles in the eye with an angry look and gave the officers the belief that he (Mr. Jones) intended to fight with officer Perez-Angeles. The officers' concern that Mr. Jones might have had a gun remained constant based on Mr. Jones behavior, demeanor and the circumstances of the crime.

Officer Perez-Angeles yelled two times at Mr. Jones to get his hands away from his body. Mr. Jones pushed up from the ground and advanced against the officer by moving forward toward the officer before turning and running. Officer Daza-Quiroz heard Officer Perez-Angeles yell and he observed Mr. Jones stand up between the parked cars and advance toward Officer Perez-Angeles before he turned and ran. Officer Daza-Quiroz saw what looked like a metal object in Mr. Jones' hands and thought it was a gun. He stated that it looked like a pistol grip in Mr. Jones' right hand. Officer Daza-Quiroz yelled, "he has a gun," or "he has something in his hand."

Mr. Jones ran in a southwest diagonal across Trask Street to a fence on the left/south side of the street. The officers moved after him and observed Mr. Jones trying to climb the fence. They yelled repeatedly, "get your hands up." Mr. Jones dropped from the fence and landed on the ground angled back toward the fence and facing away from the officers who were about 7 feet back from Mr. Jones. The officers yelled at Mr. Jones to keep his hands away

from his body and repeatedly told him to keep his hands up. Officer Daza-Quiroz stated that Mr. Jones turned towards the officers, squared himself up and reached his left hand into the left pocket of his jeans where officer Daza-Quiroz observed a bulge that looked to him like a gun. Officer Daza-Quiroz fired his gun at Mr. Jones. Officer Perez-Angeles saw Mr. Jones squared up and reach with his left hand into the waistband of his pants in spite of the repeated commands. Officer Perez-Angeles fired his gun at Mr. Jones. Oakland Police Officers performed CPR on Mr. Jones until AMR Ambulance arrived.

Officer Daza-Quiroz thought he had fired 4 shots but an inspection of his pistol and magazines established that he had fired 7 shots. Officer Perez-Angeles thought he had fired twice. This was confirmed by the examination of his pistol and magazines.

WITNESSES' STATEMENT:

A witness was sitting in a vehicle parked on the south side of Trask Street facing east toward Seminary Ave. The witness saw Mr. Jones come around the corner from Seminary Avenue onto Trask Street. The witness stated that Mr. Jones began ducking down as he moved between cars parked on the north side of Trask, across the street and slightly in front of where the witness was parked. The witness stated that it looked as if he (Mr. Jones) might have had a gun. Ultimately, Mr. Jones crouched down between two parked cars. The witness saw the two officers come around the corner with flashlights looking for Mr. Jones. The witness stated that the officers located Mr. Jones and they yelled at him to get down. The witness stated that it looked like one of the officers grabbed Mr. Jones but the witness noted that Mr. Jones ran from the officers in a southwest diagonal direction behind his car to a fence. The witness stated that Mr. Jones attempted to climb the fence. The witness heard the officers yelling at Mr. Jones to get down. The witness stated that the witness thought that an officer grabbed Mr. Jones to keep him from going over the fence. The witness heard the officers yelling, repeatedly telling Mr. Jones 'not to move', 'don't move your hands', and to 'put his hands up'. The witness then heard repeated gunshots. The witness stated that the back window of the vehicle is heavily tinted and that the witness could not see out that window. The area where the shooting occurred is directly behind the vehicle. The witness did not know Derrick Jones.

Another witness looked out onto Trask Street when the witness heard the officers yelling. The witness saw Mr. Jones standing in front of a fence directly across the street. The witness saw Mr. Jones faced off with the two police officers. The witness stated that the officers had their guns pointed at him as the witness heard an officer yelling, "get your hands out of your pockets." The witness

heard the officers yell to Mr. Jones to show his hands. These commands were repeated clearly and loudly. The witness heard the commands given at least 4 to 5 times. The witness could not see Mr. Jones' hands. But, the witness could see Mr. Jones and indicated his hands were not raised nor spread out. The witness believed Mr. Jones' hands were in his pocket or jacket or the area of his waistband as he faced the officers. The witness also stated that the witness never saw Mr. Jones comply with the officers' commands. The witness heard gunshots. The witness ducked down from view. There was a pause in the shots, and then two more gunshots were heard. The witness did not know Derrick Jones. The witness was interviewed more than once during the investigation. The witness' statement was essentially the same to the Oakland Police Department Investigators and the District Attorney Inspector.

Additional officers arrived almost immediately after the shooting. Officers Perez-Angeles and Daza-Quiroz were immediately separated and sequestered as is department policy. Responding officers handcuffed Mr. Jones who was still breathing. An officer began administering CPR and first-aid until an ambulance arrived. Another officer removed a small, silver, metallic box containing a gram scale from Mr. Jones left pocket area. From his left pants pocket, the officer removed a glass jar containing two ping-pong ball sized lumps of marijuana as well as cash and keys. No firearm was located on Mr. Jones or in the immediate area of the shooting. Mr. Jones was pronounced dead at the scene.

The autopsy revealed that Mr. Jones suffered 6 entry wounds: one to the front of his chest, one to the front of his abdomen, one to the right thigh, one to the right knee, one to the right lower leg, and one to the left lower leg. Mr. Jones had a blood alcohol level of 0.13.

OFFICER STATEMENTS

A. Officer Omar Daza-Quiroz:

Officer Daza-Quiroz was read his rights pursuant to *Miranda v. Arizona*. He acknowledged he understood his rights and agreed to waive those rights and give a statement to the police and DA OIS Team. Officer Daza-Quiroz stated:

On Nov. 8, 2010, at approximately 9:15 p.m. Officer Daza-Quiroz and his partner Officer Eriberto Perez-Angeles had just cleared from assisting in an unrelated homicide at 81st Ave. and International Blvd. and had been dispatched to a robbery assignment on Crosby Street. Both officers were in full OPD uniform and were carrying standard duty equipment. Officer Perez-Angeles drove their patrol car while Officer Daza-Quiroz sat in the passenger seat and operated the police radio. At the time, the city's calls for police services were backed up due

to prior events including a homicide and another previous incident on Sycamore Street where officers had been fired upon.

They were driving westbound on Bancroft Avenue in the vicinity of Seminary Avenue when they were flagged down by a woman who was driving her car in the opposite direction. The windshield of her car was shattered. They stopped and talked with the woman who described herself as a victim of domestic violence. She had noticeable injuries to her neck. She appeared frightened, upset, and repeatedly stated that, "He is trying to kill me," "he tried to strangle me," "he broke my window and stole my phone so I can't call the police." The woman told the officers that the suspect worked at a nearby barber shop and the officers proceeded to that location leaving the woman with another officer to gather further details. Officer Daza-Quiroz was familiar with the area and had been shot at during a prior incident in that vicinity.

The officers drove to the barber shop and parked. Officer Perez-Angeles walked to the shop followed by Officer Daza-Quiroz. They were aware of the suspect's name and had a description. They spotted Mr. Jones at the door to the barber shop. He matched the description given by the woman. The officers asked if he was Derrick Jones. Mr. Jones lied to the police and told the officers that Mr. Jones had just left the area. At this point in time, Mr. Jones had his hands in his pockets. Officer Daza-Quiroz told him to get his hands out of his pockets and moved to handcuff him. Mr. Jones did not take his hands out of his pockets, swung around and fled from the shop through a small parking lot in front of the shop and then east bound on Avenal Ave. toward Seminary Ave.

Officer Daza-Quiroz observed that as he ran, Mr. Jones put both hands into the waist area of his pants. Officer Daza-Quiroz initially thought that Mr. Jones had narcotics in his waistband and would throw it as he ran. However, Officer Daza-Quiroz became more concerned that Mr. Jones had a gun when he continued to run without throwing anything. Because of this and the nature of the crime they were investigating, the officer felt that it was extremely important that they take Mr. Jones into custody. Mr. Jones was running very fast, chased by the officers who repeatedly yelled at him to stop. Officer Perez-Angeles fired a taser shot that hit Mr. Jones in the back, but it did not faze him and he did not stop running.

Mr. Jones rounded the corner from Avenal Avenue and continued to run down the sidewalk southbound on Seminary Avenue. The officers followed closely but ran in the street. As Mr. Jones ran, Officer Daza-Quiroz heard a metal object drop, hit, and slide in the area where Mr. Jones was running. He could not see Mr. Jones' hands and parked cars obscured the officer's view of Mr. Jones. Officer Daza-Quiroz believed that Mr. Jones might have thrown a gun away, but

suspected from training and experience that Mr. Jones was still armed with a gun and the officers slowed up a little as Mr. Jones rounded the corner and ran westbound on Trask Street.

Officer Daza-Quiroz pulled out his gun and a flashlight. Both officers proceeded around the corner onto Trask Street and both moved cautiously. They had not heard any sounds from Mr. Jones. They believed that he was hiding nearby with a gun, and that he was in a position to take them by surprise. Both officers moved forward. Officer Perez-Angeles was to the right of Officer Daza-Quiroz and was checking/clearing the parked cars on the north side of Trask Street as they moved forward. Officer Daza-Quiroz heard Officer Perez-Angeles yell twice, "get your hands up." Officer Daza-Quiroz looked in that direction and saw Mr. Jones stand up between two parked cars. Mr. Jones looked at Officer Perez-Angeles and advanced toward him as if to attack the officer before turning and running between the parked cars westbound on Trask Street. As Mr. Jones ran, Officer Daza-Quiroz saw what looked like a metal object in Mr. Jones' hands and thought it was a gun. He stated that it looked like a pistol grip was in Mr. Jones' hand with the barrel pointed down and that it was light in color. Officer Daza-Quiroz yelled, "He has a gun," or "he has something in his hand," the officer could not remember which. Everything happened very fast and they continued to chase Mr. Jones who now ran in a southwest diagonal across the street to a fence on the south side of the street.

Officer Daza-Quiroz heard Mr. Jones as his body hit a fence and saw that he was trying to climb the fence. He saw Mr. Jones' hands as he reached up at the top of the fence. Officer Daza-Quiroz yelled, "get your hands up," repeatedly. Mr. Jones dropped down in front of the officers who were about 7 feet back from Mr. Jones. Mr. Jones had landed in such a fashion that his body angled back toward the fence and he was facing away from the officers. Officer Daza-Quiroz had his gun out and his flashlight was focused on Mr. Jones' hands. Officer Daza-Quiroz yelled, "keep your hands away from your body," and repeatedly told him to keep his hands up. Mr. Jones turned towards the officers, squared himself up and reached his left hand into the left pocket of his jeans where Officer Daza-Quiroz observed a bulge that looked like a gun. The officer stated that he fired his weapon four times. At that moment, Officer Daza-Quiroz feared for his life and thought that he was going to die. He feared that Derrick Jones would pull out a gun. The officer stopped shooting when he saw Mr. Jones pull his hand from the pocket and lean to his left. When Mr. Jones put his hand back into the pocket Officer Perez-Angeles fired his gun. Officer Daza-Quiroz did not fire again.

B. Officer Eriberto Perez-Angeles:

Officer Eriberto Perez-Angeles was read his rights pursuant to Miranda v. Arizona. He acknowledged he understood his rights and agreed to waive those rights. Officer Perez-Angeles stated:

On Nov. 8, 2010, at approximately 9:15 p.m., Officer Perez-Angeles was driving a patrol car west bound on Foothill in the vicinity of Avenal Avenue. Officer Daza-Quiroz was in the passenger seat. They were flagged down by a woman driving a brown Honda. He noticed that the car had a cracked windshield. She advised them that her boyfriend had choked her and tried to kill her and that during the altercation he broke her phone. When other officers arrived, Officer Perez-Angeles and Officer Daza-Quiroz left the woman in their care and drove to the scene of the crime, a barber shop on Bancroft where the suspect, Mr. Jones worked. As Officer Perez-Angeles approached the barber shop on foot, he saw Mr. Jones coming out of the shop and closing the door. The officer asked him if he was Derrick Jones. Mr. Jones lied and stated that Mr. Jones had just left the area. Officer Daza-Quiroz, who was just behind Officer Perez-Angeles, told Mr. Jones to get his hands out of his pockets, to turn around and put his hands behind his back. Mr. Jones ignored the officers' commands. Instead, he turned and ran through the parking lot on to Avenal Avenue. As he ran he had both hands in his pockets. The Officers followed as Mr. Jones ran eastbound on Avenal Avenue toward Seminary Avenue. The officers repeatedly yelled for Mr. Jones to stop and Officer Perez-Angeles fired his taser at Mr. Jones from fifteen to eighteen feet behind him. The probes hit him in the lower back but no effect was observed by Officer Perez-Angeles who wanted to ensure that Mr. Jones was taken into custody because of the seriousness of the crime they were investigating. He also thought that Mr. Jones might be armed because he maintained his hands in front of him at his waistband area the whole time he was running. The officer was also concerned as this is an area of the body where guns are commonly concealed.

Mr. Jones turned the corner and ran southbound on Seminary Avenue. He ran on the sidewalk on the right side of the street toward Trask Street. Both officers pursued Mr. Jones, running in the street about 15 feet behind Mr. Jones. Officer Perez-Angeles heard the sound of a heavy metal object hitting the ground from the area where Mr. Jones was running and thought it sounded like a gun dropping. He could not see what Mr. Jones was doing. Officer Perez-Angeles continued to yell for Mr. Jones to stop, but Mr. Jones continued to run and turned the corner westbound on Trask Street.

As Mr. Jones turned the corner, the officers slowed down a little and Officer Perez-Angeles took out his gun and a flash light. He could not see or hear Mr. Jones and was concerned that they might be ambushed. They proceeded cautiously with Officer Perez-Angeles checking the parked cars on the

north/right hand side of the street. Officer Perez-Angeles spotted Mr. Jones lying down behind a parked car between the sidewalk and a fence. His head was facing up and his hands were under his body. Mr. Jones looked like he was angry and that he intended to fight with Officer Perez-Angeles. The officer was concerned that Mr. Jones had a gun. Officer Perez-Angeles yelled two times at Mr. Jones to get his hands away from his body. Mr. Jones pushed up from the ground and moved forward toward the officer before turning and running. Mr. Jones ran across the street to a fence on the south side of Trask Street. Officer Perez-Angeles heard Officer Daza-Quiroz yell, "he has something in his hand." The officers continued to pursue Mr. Jones and closed on him as he reached the fence and made a motion as if to jump the fence. Mr. Jones came down and squared up. His left hand went to his waistband area. Officer Perez-Angeles thought Mr. Jones was going for his gun and shot him. Officer Perez-Angeles fired twice.

APPLICABLE STATE LAW

- Penal Code Section 187 states that murder, is the unlawful killing of a human being with malice aforethought;
- Penal Code Section 192 states that manslaughter, is the unlawful killing of a human being without malice aforethought;
- Penal Code Section 197 states that homicide is justifiable and not unlawful when committed by any person when resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.

APPLICABLE JURY INSTRUCTIONS

- **Cal Crim 505**
- Homicide is justifiable and not unlawful when committed by a person who
 - Reasonably believed he or someone else was in imminent danger of being killed or suffering great bodily harm;
 - Reasonably believed that the immediate use of deadly force was necessary to defend against the danger; AND
 - Used no more force than was reasonably necessary to defend against the danger.
- **Cal Crim 507**
- Homicide by a peace officer is justifiable and not unlawful when:

- o The officer had probable cause to believe that someone posed a threat of serious harm to himself or others;
- o Probable cause exists when the facts known by the officer would persuade someone of reasonable caution that someone is going to cause serious physical harm to another;
- o The People have the burden of proving beyond a reasonable doubt that the killing is not justified. If the People fail to meet this burden, the jury must find the officer not guilty.

ANALYSIS

California law permits the use of deadly force in one's own self defense if it reasonably appears to the person claiming the right of self defense that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d. 731. In protecting himself, a person may use all force, that 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, that appears to be imminent. This same principle applies when a person reasonably believes that great bodily injury or death is about to be inflicted upon another person to protect that individual from attack.

The killing of a human being at the hands of another is homicide and may be characterized as criminal, excusable or justifiable, depending on the circumstances. A homicide is justifiable if done in self-defense or defense of others, provided the actor actually and reasonably believed they or others were in imminent danger of great bodily injury or death. In protecting their own lives or the lives of others, a person may use all force he believes reasonably necessary to prevent imminent death or great bodily injury.

CONCLUSION

The OIS Team conducted a separate, albeit parallel, investigation and a thorough review of the facts and circumstances leading to the death of Mr. Derrick Jones. Assistant II District Attorney Richard Klemmer conducted a careful analysis of the law as it pertains to the facts of this case.

It is the conclusion of Assistant II DA Klemmer that there is not sufficient evidence to proceed against either of the two officers involved in this case. It is the conclusion of Assistant II DA Klemmer that there was sufficient basis for the officers to contact and pursue Mr. Jones. Given the nature of the reported crime, it was reasonable for the officers to take precautions for officer's safety, including commanding Mr. Jones, repeatedly, to remove his hands from his

pocket and waistband areas. It was also reasonable for the officers to take chase after Mr. Jones once he lied to them about who he was, and then as he ran from the officers. The officers' concerns for officer safety were heightened as Mr. Jones refused to stop running and kept his hands in the area of his waistband and front area, in spite of the commands of the officers to show his hands to them. The officers are familiar with the area and in fact, one of the officers had been shot at in the vicinity of this area. When the officers heard what sounded like metal skidding on the concrete, their belief that Mr. Jones was armed was again heightened. Their belief was actual and reasonable based on the circumstances, including the fact that Mr. Jones continued to conceal his hands and keep them in the area of his waistband and front area.

Witnesses corroborate the officers' recount of events, including that the officers repeatedly and clearly shouted for Mr. Jones to stop running and to show his hands and to remove his hands from his pockets. Officer Daza-Quiroz saw the shiny metal object in Mr. Jones' hands and yelled to Officer Perez-Angeles that he had something in his hand. Mr. Jones did have a shiny, metal object which turned out to be a scale. Mr. Jones, when he came down from the fence, squared off with the officers while maintaining his hands in his pocket. He did not raise his hands as directed nor did he comply with the officers' commands to show his hands to them.

In the present case, both officers fired their weapons in the belief that they or their fellow officer was about to be shot by Mr. Derrick Jones, causing death or serious bodily injury. Given the totality of the circumstances as presented and corroborated by civilian witnesses and the physical evidence recovered, it appears that Officer Daza-Quiroz and Officer Perez-Angeles actually and reasonably believed they were in imminent danger of great bodily injury or death. There is a lack of evidence to support a prosecution against either officer. This office will take no further action.

By: Richard Klemmer
Assistant II District Attorney

Dated: February 8, 2011