

**OFFICER INVOLVED SHOOTING LETTER
BY OFFICER STEVEN GARCIA, LAPD**

J.S.I.D. File #05-0088



**STEVE COOLEY
District Attorney**

JUSTICE SYSTEM INTEGRITY DIVISION

December 5, 2005



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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December 5, 2005

James Voge, Captain
Force Investigation Division
Los Angeles Police Department
201 North Figueroa Street, Suite 505
Los Angeles, California 90012

Re: J.S.I.D. File # 05-0088
L.A.P.D. DR # 05-1207458
L.A.P.D. FID # 012-05

Dear Captain Voge:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 6, 2005, fatal shooting of Devin B. by Officer Steven Garcia of the Los Angeles Police Department (LAPD). We find there is insufficient evidence of criminal wrongdoing by Officer Garcia to justify filing criminal charges.

The District Attorney's Command Center was notified of this incident at 4:10 a.m. Deputy District Attorney Christian Gullon and Senior Investigator Phillip Miyazaki responded to the scene. They were given a verbal briefing and walk-through by LAPD investigators.

The following analysis is based upon the police reports, witnesses' statements, experts' reports and scientific test results relating to this matter submitted to this office on August 5, 2005. Officer Garcia's compelled statements, if any exist, were not considered in our analysis.

FACTUAL SUMMARY

On February 5, 2005, Mr. and Mrs. Daniel Garcia resided in an apartment in the 2100 block of West 54th Street in the City of Los Angeles. They owned a 1990 red Toyota Camry. On that date, shortly before midnight, Kevin Gillett, a neighbor of the Garcias, observed several young males gathered in the parking garage of the apartment complex. Although none of the individuals were residents of the complex, Mr. Gillett recognized them from prior contacts and later identified Devin B. as a member of the group.

At 1:07 a.m. on February 6, 2005, the Garcias reported the Camry had been stolen approximately one hour earlier from the above-described parking garage. LAPD's Communications Division issued a grand theft auto broadcast on the 77th Division radio frequency. 77th Division Patrol Officers Robert Harris and Jason Jacobson responded to the Garcia residence at approximately 3:30 a.m. to take a stolen vehicle report.

On February 6, 2005, LAPD Newton Division Patrol Officers Dana Grant and Steven Garcia (no relation to Daniel Garcia) were on duty, in uniform, in a marked black and white patrol car. At approximately 3:45 a.m., Officers Grant and Garcia observed a Toyota Camry run a red light at the Gage Avenue on-ramp to the Harbor Freeway. Officer Grant was driving the patrol car and followed the Toyota onto the freeway. According to Officer Grant's subsequent statement, both officers observed the Toyota being driven in an erratic manner, fluctuating speeds and straddling lanes. Officer Grant noticed the driver and passenger repeatedly turn around and look at the patrol car. At 3:46 a.m., Officer Garcia ran the Toyota's license plate on the Mobile Digital Terminal (MDT) which did not reveal that the Toyota had been reported stolen earlier that morning. Officers Harris and Jacobson had not yet entered the Toyota into the stolen vehicle system.

Officers Grant and Garcia attempted to conduct a traffic stop of the vehicle to investigate if the driver was under the influence of alcohol or drugs. Officer Grant activated the vehicle's emergency lights and sirens and Officer Garcia used the patrol car's public address system to order the driver to pull over. The driver failed to comply with any of these commands and continued to drive.

Chad R., the Toyota's passenger, later told investigators that when the driver, Devin B., noticed the police attempting to stop him he became nervous and said, "What we gonna do? What are we gonna do, man? This car is stolen." According to Chad R. he did not know the car was stolen until this statement was made. Shortly thereafter, Devin B. exited the freeway at the Century Boulevard off-ramp and continued onto Imperial Highway at a high rate of speed. Chad R. told investigators that he and Devin B. concluded that since they knew the area they would be able to elude the police.

At 3:49:10 a.m., as the officers followed the Toyota north on Western Avenue, Officer Garcia initiated a pursuit broadcast and requested back-up units and air support. 77th Division Officers Harris and Jacobson heard Officer Garcia's radio broadcast and recognized the Toyota's description. Officers Harris and Jacobson confirmed the license plate was the same and sent an MDT message directly to Officers Garcia and Grant advising them the car they were chasing was recently stolen. While MDT records confirm this message was sent, it cannot be determined if Officer Garcia actually read the message. Officer Grant stated that she was not aware of the contents of the message and did not learn the car was stolen until after the pursuit concluded and the subsequent events occurred.

77th Division Patrol Officers Darren Ehrenburg and Jon Winstanley heard Officer Garcia's broadcast and monitored the pursuit. They positioned their police cruiser facing north on Western Avenue near 83rd Street to join the pursuit as it passed. According to Chad R., Devin B.

saw Officers Ehrenburg and Winstanley's parked patrol car and decided to turn eastbound onto 83rd Street to evade these officers. Devin B., traveling between 40-50 miles per hour, failed to negotiate the turn. The Toyota went up onto the northeast sidewalk of the intersection and came to a stop at an iron fence. Once stopped, Chad R. told investigators he said to Devin B., "Come on. Go. Hop out." but Devin B. did not respond. Chad R. jumped out of the vehicle, left the passenger door open, and ran.

Officer Grant stopped the patrol car in the intersection of 83rd Street and Western Avenue approximately 17 feet behind and to the left of the Toyota. At 3:53:30 a.m., Officer Garcia issued a radio broadcast that Chad R. was fleeing eastbound on 83rd Street. Officer Grant heard Officer Garcia say that Chad R. had a gun. Officers Grant and Garcia exited their patrol car and stood behind their open doors with guns drawn in a standard LAPD felony stop position.

After Chad R. fled the Toyota, Devin B. revved the engine loudly, and then shifted into reverse. The car's tires squealed as the car gained traction and Devin B. rapidly drove the Toyota in reverse toward Officers Grant and Garcia and their car.

As the Toyota accelerated toward the officers, the open passenger door struck a traffic signal pole on the sidewalk. The force caused the door to be pushed beyond the normal hinge range, striking the right front tire and leaving a tire imprint on the passenger door. The door sprang back and remained in an open position at a right angle to the car itself. The Toyota continued accelerating in reverse towards Officer Garcia flushing him from his position of cover behind his door. The Toyota then crashed into Officers Grant and Garcia's police cruiser.

The Toyota's left rear bumper struck the police cruiser's right front quarter panel and front passenger door. The Toyota impacted Officer Garcia's open passenger door slamming it closed. The Toyota continued scraping along the length of the patrol car placing Officer Garcia in the path of the oncoming Toyota. Officer Garcia continued moving away from the Toyota and its open door.

Officer Grant told detectives that as the Toyota struck the police car, Officer Garcia was forced from his position of cover and began firing at the Toyota. Officer Grant said the Toyota ended up where Officer Garcia had been standing. To avoid being struck by her open door and in fear for her own safety, Officer Grant jumped to her left and moved towards the rear of the patrol car. Officer Grant further stated that when the Toyota struck the police car and Officer Garcia began firing his weapon, she went to the rear of the patrol car to gain a clear line of fire and eliminate a potentially dangerous cross-fire situation. Despite her evasive action, she was struck by glass fragments from Officer Garcia's door window which was slammed shut from the impact. The glass embedded in her uniform despite her position on the opposite side of the police vehicle.

The Toyota continued moving backwards until its driver's side view mirror was at approximately the right rear quarter panel of the patrol car. It stopped briefly, moved forward slightly and remained lodged with its rear left quarter panel wedged against the patrol car. The Toyota indented and scraped the entire right side of the patrol car.

At 3:53:30 a.m., Officer Winstanley issued a radio call for help indicating shots had been fired.

According to Chad R., after he fled the Toyota he heard, “screech, crash, gunshots” and he got down on the ground. Officer Grant indicated that immediately after the Toyota stopped moving, she went to handcuff Chad R. and asked, “[w]here is the gun?” Chad R. responded that he was carrying a cell phone which he dropped when he exited the Toyota. A silver and black cellular telephone was found on the sidewalk along the path where Chad R. had fled.

Chad R. was 14 years old at the time of the incident. He was 5 feet, 10 inches tall and weighed 155 pounds.

Police Officer Witnesses

Officer Ehrenburg told investigators he observed the Toyota’s driver attempt to turn onto 83rd Street and stop on the sidewalk. Officer Ehrenburg then made a u-turn and parked on Western Avenue, just north of 83rd Street facing Officers Grant and Garcia’s patrol car. Officers Ehrenburg and Winstanley exited their patrol car with drawn weapons in standard LAPD felony stop position. Before they could reach a position of safety behind their car, Officer Winstanley heard the Toyota’s engine revving loudly, tires screeching, a collision, and shots fired. Officer Winstanley related that the shooting stopped before he saw the Toyota come to a stop. Neither Officer Ehrenburg nor Officer Winstanley reported hearing a break or pause in the firing sequence.

Officer Grant said the Toyota ultimately came to rest where Officer Garcia had been standing and believed the collision was so violent that Garcia would have been killed if he had remained behind his door. Officer Ehrenburg stated, “...they (Officers Garcia and Grant) had to have moved, otherwise they would’ve been cut in half.” From his vantage point, Officer Winstanley could not see Officer Garcia until after the collision and the shooting had ceased.

Civilian Witnesses

Miles Carthron was traveling westbound on 83rd Street approaching Western Avenue driving to work when he noticed a Toyota on the sidewalk and a patrol car stopped behind it. Mr. Carthron stopped his car in the middle of 83rd Street approximately three to four car lengths from Officer Grant and Garcia’s patrol vehicle. Mr. Carthron saw the passenger exit the Toyota and run in his direction. He stated that the Toyota’s driver “smashed the gas” and put the car in reverse. Mr. Carthron was asked to describe Officer Garcia’s actions. He stated that Officer Garcia “jumped up and started shooting at it ... to probably try to stop him.” Mr. Carthron said, “[t]he car was moving so fast – the car was moving so fast it had already hit the car, and that’s when he started shooting ... that was a spilt-second decision.” He described Officer Garcia’s position “like he was sandwiched in ...” Mr. Carthron summarized, “[i]f that police (Officer Garcia) hadn’t jumped out, he would’ve been hit.”

There are no additional, credible eyewitnesses.¹ Although a number of individuals in the surrounding area heard gunfire, none of them were percipient to the events preceding the gunshots. The great weight of the evidence from those who heard the shots indicates they were fired in rapid succession with no noticeable break between shots.

FORENSIC EVIDENCE

Acceleration Test

Accident reconstruction experts from Keva Engineering conducted acceleration tests on the Toyota. The tests were conducted on an aged concrete access road to best approximate the surface of the sidewalk at the Western Avenue and 83rd Street intersection. Residual skid marks and eyewitness accounts indicate the Toyota's tires broke traction with the sidewalk. Keva experts were able to re-create the tires breaking traction by accelerating the engine while the car was in neutral and then shifting into gear. In addition, the experts also broke traction by depressing the brake with the gear in reverse, accelerating the engine and then releasing the brake. These tests were conducted with the engine revving at 5000 RPM or at least 50% throttle.

Test runs where the tires broke traction establish a 1.7 to 2.0 second window of time from the point the Toyota's tires broke traction to the collision with the patrol car. The Toyota's open front passenger door would have struck the traffic signal pole approximately one-half second earlier.

Traffic Collision Analysis

An LAPD Specialized Collision Investigation Detail report concluded the Toyota struck the patrol car's front passenger door with such force that the door slammed shut, the window broke, and the door was forced over the frame and rear passenger door causing it to become jammed shut. The door cannot be opened manually.

Firearms Analysis

LAPD Scientific Investigation Division (SID) conducted a bullet path analysis of this incident which included a reconstruction on May 7, 2005. SID concluded that the physical evidence examined was inadequate to definitively identify shot sequences, most of the complete bullet trajectories, or the officer's precise firing positions.

¹ On February 6, 2005, eyewitness Ronald Pennywell gave detectives a statement concerning the incident. In a subsequent interview he confided to detectives that he had initially lied about his location at the time of the events and admitted he was intoxicated on the morning in question. It was determined Mr. Pennywell was 80 yards south of where the shooting occurred and not in a position to clearly view the events. Since all of the physical evidence and other eyewitnesses contradict Mr. Pennywell's version of events, his statement did not contribute to our findings.

It was determined that Officer Garcia fired 10 rounds from his weapon. Six rounds were fired from the right rear of the Toyota, through the rear passenger window, in the direction of the driver. SID was unable to conclusively determine the direction of the remaining shots. Those shots could have come through either the rear window or the open passenger door. Three of the four remaining bullets were never recovered and could not be analyzed. Ultimately, based on a number of factors SID found that four rounds were “most consistent” with the gun being fired through the open passenger door. However, SID was unable to determine Officer Garcia’s proximity to the Camry when he fired the shots other than to conclude that the shots were fired from within 12 feet.

Although the bullet path analysis submitted by LAPD renders useful information about the general placement of Officer Garcia during the incident, it does not provide the exact position of the officer, including how close he may have been to the Camry, the trajectory of most of the rounds and the exact sequence of shots when the shooting took place.

A determination of how close Officer Garcia was to the rearward moving Toyota at the time of the shooting would vary based on Officer Garcia’s shooting stance. Based on the bullet trajectories, if he were trying to shoot at the driver of the Toyota he would likely be crouched and not standing fully erect. Thus, Officer Garcia was likely to be substantially closer than 12 feet.

Coroner’s Results

The autopsy performed on Devin B. by the Los Angeles County Coroner’s Office determined the cause of death to be multiple gunshot wounds. The Deputy Medical Examiner found that Devin B. suffered six gunshot wounds two of which were rapidly fatal.

Devin B. was 5 feet, 5 inches tall and weighed 132 pounds. He was 13 years old. He was wearing a dark hooded sweatshirt and dark baseball cap.

The toxicological report was positive for the presence of marijuana.

APPLICABLE LAW

Homicide

Homicide is defined as the killing of one human being by another. A killing is unlawful if it is neither justifiable nor excusable. California Jury Instructions – Criminal (CALJIC 8.40)

Self-Defense and Defense of Others

Penal Code §§ 692-694 specifically authorize any individual protecting himself or another to use all 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. (See CALJIC 5.30, 5.32)

The use of deadly force in self-defense or in defense of others is considered justifiable if the person claiming the right to use self-defense actually and reasonably believed that he or the person being defended is in imminent danger of death or great bodily injury. People v. Williams (1977) 75 Cal.App.3rd 731; People v. Glover (1903) 141 Cal. 233, 239 and People v. Ortiz (1923) 63 Cal.App. 662, 668

The California Court of Appeal has held that actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into 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

Law Enforcement Officers

In Graham v. Connor (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Id.*, at 396) Further the Court stated, “[t]he “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.” (*Id.*, at 397) Moreover, “[t]he 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.” (*Id.*, at 397-398)

“...Thus, under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” Smith v. Freland (6th Cir. 1992) 954 F.2d 343, 347

Graham’s definition of reasonableness has been described as “comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present” (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police “... a fairly wide zone of protection in close cases ...” Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334

ANALYSIS

The filing guidelines of the Los Angeles County District Attorney's Office are set forth in our Legal Policies Manual. A deputy may file criminal charges only if ". . . [t]he deputy has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder after hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution's evidence." (LPM, Chapter 2, § 2.01.10)

California Jury Instructions – Criminal 5.15 states that in a homicide prosecution the burden is on the People to prove beyond a reasonable doubt that the homicide was unlawful, that is, not justifiable or excusable. The question we must answer is whether there is sufficient evidence to prove that Officer Garcia acted without justification when he shot Devin B.

Officers Grant and Garcia were on duty, in uniform, in a marked police car, patrolling their assigned area. They attempted to make a traffic stop which escalated into a pursuit. At the termination of the pursuit, they parked their car well behind and in the standard police position partially to the left of the suspect's car and assumed a high-risk felony stop position outside their patrol car behind their bullet-proof doors.

The evidence also shows that Devin B. was driving a stolen vehicle and failed to yield to police lights, sirens, and a loudspeaker. After losing control of the vehicle and driving onto a sidewalk, his passenger tried to evade police on foot. Instead of surrendering, Devin B. accelerated and drove his vehicle at Officers Garcia and Grant placing them in significant physical jeopardy. The door behind which Officer Garcia was standing was struck by Devin B.'s vehicle no more than two seconds after Devin B. started his rearward movement.

Officer Garcia was at risk from more than just being struck by his own door. Because the Toyota continued scraping along the length of the patrol car, Officer Garcia was forced to continue moving out of the path of the Toyota and its open door. From Officer Garcia's point of view, the driver of the Toyota forced him from his position of cover, and pursued him as he attempted to escape the oncoming car.

While Officer Garcia's exact location or movements at the time he fired his weapon cannot be precisely determined, it is undisputed he was exposed, with a high degree of risk of being struck by the oncoming vehicle. As a result of Chad R.'s actions, the passenger door was left open and perpendicular to the car which increased the likelihood that Officer Garcia could be struck by the moving vehicle. The car door measured 40.5 inches in length increasing the potential danger zone to Officer Garcia by an additional three feet. According to the evidence, Officer Garcia fired at the point in time the Toyota struck the patrol car. These two events were nearly instantaneous. The eyewitness statements place Officer Garcia in close proximity to the car and its open door when it impacted the police vehicle.

The civilian witness with the best vantage point corroborates the officers' account of the driver's rapid acceleration towards the patrol car, the timing of the shooting and the danger posed to Officer Garcia. Mr. Carthron described Devin B. as "smashing the gas." He said, "[t]he car was moving so fast – the car was moving so fast it had already hit the car, and that's when he started shooting ... that was a split-second decision." Mr. Carthron believed Officer Garcia "... was sandwiched in ..." and "[i]f ... (Officer Garcia) hadn't jumped out, he would've been hit."

Whether Devin B. intended to strike Officers Grant and Garcia or was merely attempting to flee from them will never be known but we cannot, as the United States Supreme Court cautioned, use 20/20 hindsight to second guess Officer Garcia's decision to fire his weapon. The scientific tests conducted were, at best, inconclusive. And it would be improper to speculate as to those facts which could not be conclusively established. We must rely on the evidence before us. We cannot disprove that Officer Garcia was acting under an actual and reasonable belief in the need for self-defense and the defense of others. The prosecution bears the burden of proof to establish that the killing of Devin B. was unlawful and based on the facts, our filing standards and relevant case law, we cannot meet this burden.

CONCLUSION

Under the facts and case law set forth above, we cannot prove that Officer Garcia acted unlawfully. Accordingly, we find there is insufficient evidence to initiate criminal proceedings against Officer Steven Garcia for the death of Devin B. As a result of these findings, we are closing our file and will take no further action in this matter.

We did not consider whether Officer Garcia's tactics were within LAPD policy. These administrative issues are strictly within the purview of the LAPD.

Very truly yours,

STEVE COOLEY
District Attorney

By

CHRISTIAN GULLON
Deputy District Attorney
(213) 974-3888

c: Officer Steven Garcia, #33140

1 – Intersection of 83rd Street and Western Avenue (daylight hours)



2 – Skid marks from Toyota when Devin B. attempted to turn onto 83rd Street



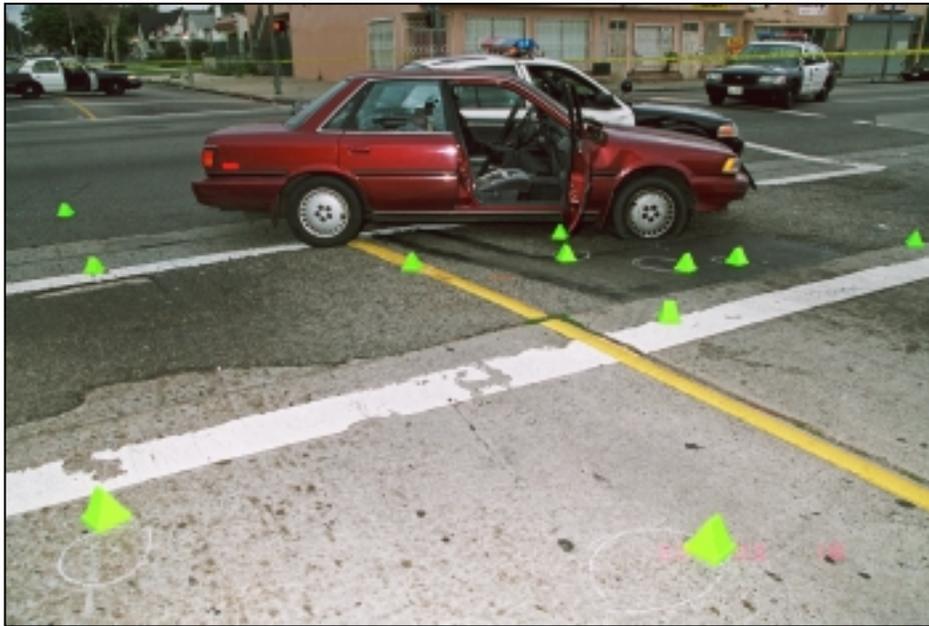
3 – Front left and right tire marks on sidewalk



4 – Damage to Toyota’s front passenger door from impact with traffic signal pole with close up



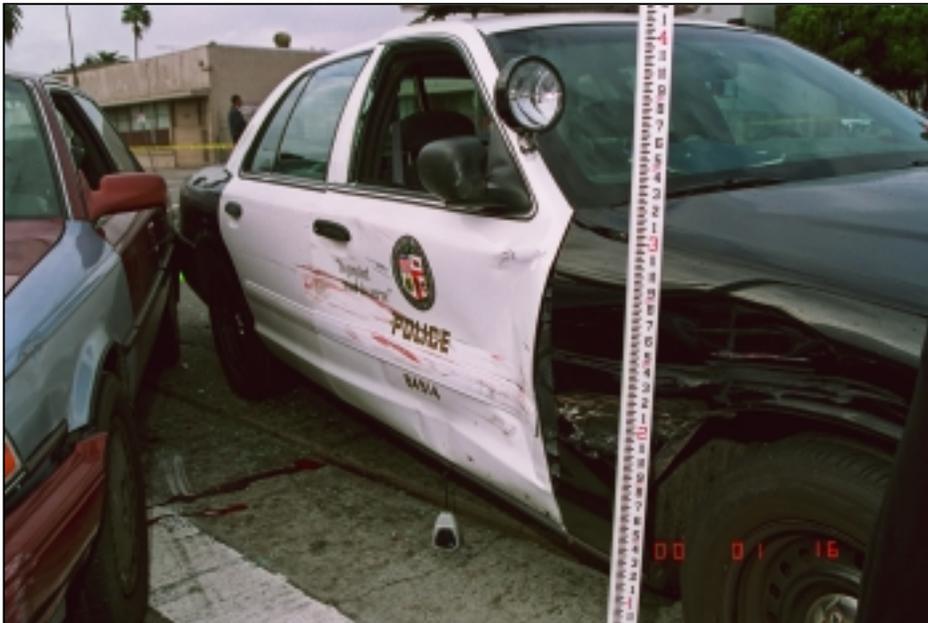
5 – Toyota with open door at right angle to body of car



Toyota's front passenger door containing imprint from right front tire on exterior panel



- 6 – Two views of Officer Grant and Garcia’s patrol car with right side collision damage, front passenger door overlapping frame and rear door with red paint transfer radio microphone used by Officer Garcia immediately prior to impact



7 – Officer Grant and Garcia’s patrol car with shattered glass fragments throughout vehicle



8 – Witness Milos Carthron's approximate point of view from 83rd Street facing west



9 – Overhead view of Northeast corner of intersection with cars following collision



10 – Overhead view of entire intersection



11 – Diagram of intersection with Toyota's rearward movement depicted

