



Ohio Bureau of Criminal Identification & Investigation
INVESTIGATIVE REPORT



12/05/12

WILFREDO DIAZ INTERVIEW

Summary

On December 5, 2012, Cleveland Police Officer Wilfredo Diaz, who was involved in the shooting on November 29, 2012, was interviewed at the BCI Richfield Offices. Also present with the officer was Atty. Patrick D'Angelo, along with Jeff Follmer and Steve Kinas representing the union. The interview was conducted by East Cleveland Police Sergeant Scott Gardner and BCI SA John Saraya.

Patrolman Wilfredo Diaz was advised of his "Miranda" rights which he waived and consented to speak with investigators.

The interview was video recorded and submitted to the case file as Exhibit #6.

Details

Wilfredo Diaz is a 4-year veteran of the Cleveland Police Department. Prior to coming to the police department, Diaz was a paramedic for Cleveland EMS for 4 years. Diaz said that he is doing okay although things have been stressful and intense since the shooting.

Diaz is assigned to basic patrol in the 2nd District, working 1430-0030 with Monday and Tuesday off. November 29th was Diaz's second day at the 2nd District. His prior assignment was in the Downtown Service Unit. Being new to the district, Diaz believes his supervisor that night was Sgt. Kutina.

On Thursday, November 29, Diaz said that he felt fine. He was not taking any type of medications. He was wearing contacts while on duty. Diaz was dressed in full uniform with an exterior vest. He was carrying a Taser and pepper spray on the vest; on his belt were his pistol, magazines, flashlight, radio, and handcuffs. Diaz had two spare magazines with his pistol totaling 46 rounds. He did not have a back-up gun with him. Diaz did not have any type of personal recording device on him.

File Number: SI-18-12-82-1493	File Title: Timothy R. Russell (S) Malissa A. Williams (S)
Case Agent: Mark Kollar	Authoring Agent: John Saraya <i>JS</i>
Date of Report: 12/05/12	Exhibit #: 6
Investigative Activity: Diaz Interview	Supervisor Approval: Dennis Sweet <i>[Signature]</i> JAN 09 2013

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Diaz was in Car 215, using call sign 2A27. Diaz was partnered with O'Neil. Diaz was driving. There was no camera in the car. All equipment was functional.

Diaz is current in his paramedic certification. He is also certified in Crisis Intervention. He has qualified with his handgun and shotgun in the last year. Diaz also received Use of Force training in the past year. Diaz said his OPOTA certification is up to date.

Diaz said that he has been at other officer-involved shootings, but had never fired his pistol.

Diaz was asked to describe his shift. He reiterated that it was his second day there, and his partner, Ofc. O'Neil was on her second week in the district, having transferred from being a detective in the Domestic Violence Unit. They were both "trying to get a feel for things" in the district. There was nothing that stood out in his mind. Diaz characterized it as, "a normal shift". Diaz said that he is familiar with the district since he lives in it and was working in it prior.

Diaz and his partner were on a traffic stop on 44th and Catherina when they heard "Shots Fired!" and the vehicle description being broadcast. They terminated the traffic stop and started heading downtown. Diaz heads to the freeway and gets on I-90 eastbound. They exit at West 25th Street and try to catch up to the pursuit. Diaz hears radio traffic that the car is occupied by a male; possibly armed. Diaz goes westbound on Detroit and, although not sure which route he takes, around 44th and Bridge Street they catch up to the pursuit. Diaz says that they are about five or six zone cars behind the subject vehicle. Diaz says he sees lights in front of him and is listening to directions.

Diaz remembers going westbound on Lorain, northbound on 85th towards Clark, then eastbound on Clark. Diaz said they went down Clark and near the area of Steelyard Commons they are six to eight cars behind the subject car. Diaz says that at this point, he has not seen the suspect vehicle yet. Diaz hears radio traffic "He just pointed a gun out. Be careful, be careful, he will shoot". Diaz says this was around the round-about. Upon hearing the radio traffic, "my heart's starting to pump, thinking everything, my family." Diaz said that his wife is pregnant and due in March, "I'm starting to get a little nervous".

The pursuit continues down Clark towards I-90 and gets on the freeway near Abbey. On the freeway, Diaz hears "he just pointed a gun out. The passenger is pointing a gun out at us. Be careful." Another officer says to spotlight the back window so the occupants cannot see the cruisers.

Diaz says that he is now getting scared, that "...this is getting real. These guys are really trying to get away." The chase is continuing and near East 72nd, Diaz hears that subject lost a tire. Diaz thinks that the subjects would stop or slow down and take off running.

Diaz says, "Again, I'm hearing they're pointing a gun out, he will shoot, he will shoot." They exit at East 72nd and Diaz says that he can glimpse the car. They head south on 69th he thinks. Diaz hears, "He just rammed a zone car, he just rammed a zone car" on the radio. All Diaz can see is dust and lights because of all the zone cars. They continue to Euclid Avenue. On Euclid

Avenue near 115th -117th the suspects pull into a parking lot, possibly a Happy's Pizza. Diaz sees a few zone cars pull in behind the suspect vehicle. Diaz is still about seven or eight cars behind, but stays on Euclid in case the suspect does not stop and pulls back onto the road. The subject vehicle does pull back out onto Euclid. Diaz says that he is now three to four cars behind the vehicle. The subject turns onto Wymore. Diaz sees the subject car accelerate up the hill, and then an East Cleveland zone car crosses the intersection (Terrace and Wymore) and thinks that the subjects will "T-bone" the patrol car. Diaz said that the cars narrowly miss. This is the first time that Diaz gets a good look at the subject car.

Diaz said that he remembers feeling his "heart drop, I'm like, you know, this is going to get bad really quick."

The lead car (Charger) behind the subject's car veered to the left for an unknown reason. This puts Diaz immediately behind the subject vehicle. Diaz thought it was a side street that they were on; later realizing it was a parking lot. Diaz said it felt like within seconds they were in the parking lot. Diaz said that they were in the parking lot, up by some islands. Diaz thought that it may be around the first one (western most). Diaz thought that the subject would go through the parking lot and take another exit. Instead, the car veers to the right and Diaz thinks that the subjects were going to exit the car. Diaz moves into a position to close the distance. As he closes the distance, the subject makes a sudden left turn in front of Diaz. Diaz said that it felt that the subject was moving fast, even though he realizes that they may not have been. The suspect vehicle's turn in front of Diaz causes both vehicles to contact. Diaz said that the contact was his front bumper to the passenger rear door of the subject vehicle. Diaz said it was a low speed impact, both cars jolted. Diaz sees the subject vehicle continue to turn to the left, facing the way they came. Diaz thought that, being left-handed, he would not be able to draw his weapon effectively, especially if the suspect car would pass on his left side. Whoever is in the suspect car will be able to shoot him before he can draw his weapon. In his mind, he is convinced both subjects have a gun, "...and the passenger, for sure, is the one that has a gun, in my mind." With this thinking, Diaz does not want to be trapped in his zone car when the suspect passes him. I think, "He's going to shoot at my head, and I can't even take out my gun". Diaz exits his car, leaving it still in gear. He was not sure where his car was. As his zone car is still moving, Diaz takes a position "...and feeling my heart drop. I remember hearing my voice say 'Stop', but in a crying way." Diaz said that was scared as he is yelling "Stop!", he is looking at the passenger in the car.

Diaz continued: "At this point, when the car turns around, his, um, the car starts to go up this mound here, and it's kind of at an angle. As I'm yelling 'stop' it's kind of at an angle and I vividly remember the passenger do this. Like look at me, go down, like she's reaching, or he's reaching into something, and come up and, it was like so quick, like I remember him kinda this movement, you know, I remember seeing the back of a black object, what appeared to be a black object to me. It was more like this angle, it wasn't, you know, sideways, it wasn't straight up, it was kind of like sideways, almost like he's gonna shoot." At this point, Diaz is demonstrating the actions he is describing, sitting with his hand closed in the center of his chest.

Diaz said that he had his gun out, and thinking, "...that I wasn't going to be able to shoot fast enough." Diaz began to break down, explaining that his daughter is due to be born in March and that he did not think that he would be there to see it. After composing himself, Diaz said that he fired two rounds at the car as it was on the island, turning. The car comes off the island and curb. Diaz said that he was not directly in front of the car, but towards the driver's side. Diaz said the car came off the curb and Diaz said, "I remember making eye contact with the driver. Over all the noise, I vividly remember the engine rev up. Like, like he accelerated the car, as he's coming towards me. And I fired two rounds at him, or his direction, and, I remember jumping out the way. Thinking, if he continues to pull his car towards me, he's going to pinch me between my zone car and his car. I felt he was going to ram the car at me." The car came off the island and straightened out and Diaz said he was relieved that he did not get run over. His car was a distance away. He ran back to it and turned around to pursue the car back down the driveway.

The subject car was past the islands. Diaz said that he hears gunfire and ducks down behind his dashboard. Diaz grabs his partner and is yelling for her to get down. When he looks up, he sees, "Smoke and lights". Diaz thinks the subjects are out of the car shooting at officers. Diaz said that he is looking off to the sides, figuring that subjects have fled the car and are attempting to run away. Diaz starts to think that the subjects may start running back towards him, shooting. He said that he started to get ready for that circumstance. He keeps glancing over the dash to see what is happening in case the subjects do come towards him. He exited the car a second time, feeling safer taking cover behind the car instead of staying in it. When the gunfire ends, he looks and sees officers outside of their cars.

Diaz said that he runs up to the area of the suspect vehicle. Officers still have their weapons drawn. Diaz said he jumped onto the hood of a zone car, saying that his mentality was that no one had checked the car and that the subjects needed to be checked. Diaz fell back to his paramedic training. "Let's make sure, these guys are either dead, if they're dead, we'll put away, but if they were alive let's get EMS". Diaz indicated that he jumped onto the hood on the passenger side of the subject vehicle. He looked inside the car, at the driver, and was "horrified. This guy just tried to kill me and now I'm asking myself why I'm going up to the car." Diaz said he wanted to make sure everyone was safe and the incident was ended. He reached in to the passenger and pulled up a sleeve and checked for a pulse. He looked at the driver and figured that he was deceased. Diaz said that there was no pulse on the passenger and when he looked around, officers were still pointing their guns at the car. Diaz said that he began telling them, "Put 'em down, put 'em down. I think it's over." Diaz did move the passenger's leg some to see if he could see a gun. Diaz did not go to the driver's side. Officers began to secure their pistols and Diaz got off of the hood.

In clarifying details, Diaz said that he fired a total of 4 rounds; however, he could not say if it was 1 and 3, or 2 and 2. He was unsure of the sequencing. He thought he fired more, saying that it felt that he fired a lot. Saying he was scared, he felt he fired more at the passenger than the driver. Diaz said that he had replayed it in his mind and thought that it was 2 and 2.

Diaz had been provided with a crime scene diagram to help illustrate the events. He had marked the diagram with a marker. The diagram was later initialed and included with the case file as an attachment.

In reviewing the details, Diaz was asked if when the cars made contact, if the subject car kept going or was spun around. Diaz said that the subject car moved; however, there was not enough force to spin it. He felt the subject car kept moving by the driver's volition. When the subject car is on the island, it was tilted with the passenger side higher, giving Diaz a better view of the passenger than the driver. Diaz said the thought when looking into the car was that the passenger was "...this is the guy with the gun, this is the guy with the gun, this is the guy who's going to shoot me." This is when Diaz fires his first shots, aimed at the passenger. He thinks his rounds may have hit the windshield although he did not recall seeing his rounds hit. When Diaz was out of the car, he estimates his distance to the subject car as 5'-6', with Diaz saying that it seemed much closer. The distance was to the left front quarter of the subject car. Diaz said that he was on the driver's side of the vehicle the whole time, moving as the car moved. Diaz also said that he was "maybe within feet" of the front of the car, making eye contact with the driver. This was the point that the car was accelerating at him. Diaz had heard that the car may have had a flat tire, but does not recall seeing it. The car did not respond the way Diaz had anticipated after hearing the car engine race. Diaz said he moved to the right to get out of the way of the subject vehicle.

Diaz said that he believes that earlier in the pursuit, when the lead car was unsure where he was, Diaz broadcast the street "Decker". This was his only transmission and by the time he could get on the air, the pursuit was almost off of the street. Diaz said that he never had the chance to broadcast a "Shots Fired!" call in the parking lot. The only thing that he hears is the car and his gun.

Diaz said that he did not know that it was a female passenger until next day during the news. When at the car, the passenger had a "hoodie" or "scarf" over her head and he thought the passenger was a male.

When asked whether he was familiar with the subjects, Diaz said that the names seemed common. Diaz said that he had worked for the Downtown Service Unit, and based on that Malissa Williams looked familiar to him. Diaz thought that he may have seen her or dealt with her on a call. But he was not sure.

Diaz thought that during the pursuit, it felt like he was going 40-50 MPH. Most of the pursuit he was 7-8 cars behind and that is the way it felt. He thought that maybe as fast as 90 on the freeway. In the parking lot, he was going slower. One of the reasons was in case the subjects got out of the car he did not want to run them over. Diaz characterized the events in the parking lot as feeling like lasting 5-10 seconds entering the driveway, and another 5-10 seconds when he gets out of his patrol car.

Diaz described the lighting as "it was dark I think that's what made it a little bit more scarier". He could see the car because of his lights. The area around the island was "fairly well lit" but not

the whole parking lot. Diaz said that the light was such that he could see into the car and thought that the passenger was wearing something black and red.

Diaz thinks his rounds struck the car. He feels he was close enough to have hit his target.

Based on what happened, Diaz felt that there were no other options that were available to him. He even admits to “getting choked up thinking about his daughter” since he did not think that he was going to get out of there alive. Diaz said that he felt the passenger had the upper hand even though he had his gun out. Diaz even felt that he was not going to get out of the way fast enough when the car came at him. He felt that he was going, “to get hit by a car or hit by a bullet”.

Diaz did not know where his partner was and did not know where any other officer was. Diaz said that it felt “Isolated”. He knew that there were other zone cars coming, but at the time, it was just him and his partner.

Diaz remembers hearing EMS getting called, but he does not know who called.

When things were settling down, Diaz described the area as “generally in shock”. Officers were speechless and pale. He said that there were officers on the scene that Diaz has respect for and he realized that they looked as scared as he did.

Diaz said that he had mentioned the event with his family, but told them that he could not go into detail. He called his wife from the scene to let her know he was okay. He also called his former partner from the Downtown Service Unit, Orlando Velasquez. Diaz said that he told his partner that he and others were okay. Diaz also called Jeff Follmer from the scene. He had talked to other officers from the scene, but indicated it was general, asking locations of where they were and such. He did not ask or discuss details.

Diaz did not get hurt at the scene.

Diaz was of the opinion that his and the other officers’ actions were consistent with their training. Diaz went on that, “Given the circumstances of the guns being pointed out, guns reloading, ramming zone cars in the street. In my mind, to this day, I really think this, these guys, were really out to either hurt us or, you know, do anything they needed to do to get away.”

Diaz did not take any pictures at the scene with either a camera or his cell phone.

Atty. D’Angelo asked Diaz how long the gunfire lasted. After the suspect vehicle drove away until the shooting stopped, Diaz said that it “seemed like forever” but he estimated it at about 20 seconds. Diaz again said that he thought the occupants had exited the car and were running away shooting at officers. D’Angelo asked if Diaz had heard any racial epithets at the scene. Diaz responded, “Not at all.” Diaz said that he had grown up in the projects, attended public schools, and it never crossed his mind. He thought it was “absurd” when he heard the news talking about racial issues. Diaz said that he has worked with these officers and would continue to do so and

“not feel any type of racial discrimination”. Diaz concluded by saying that he was “offended” by the racial accusations because “I don’t feel it’s even close to the truth.”

When asked about his statement of other officers that he respected at the scene, he identified Demchak as being an officer that has been around and, no doubt, involved in stressful situations, and he appeared shook up. Diaz’s partner and Sgt. Coleman were shaking afterward, and Demchak’s partner, O’Donnell appeared shook up also.

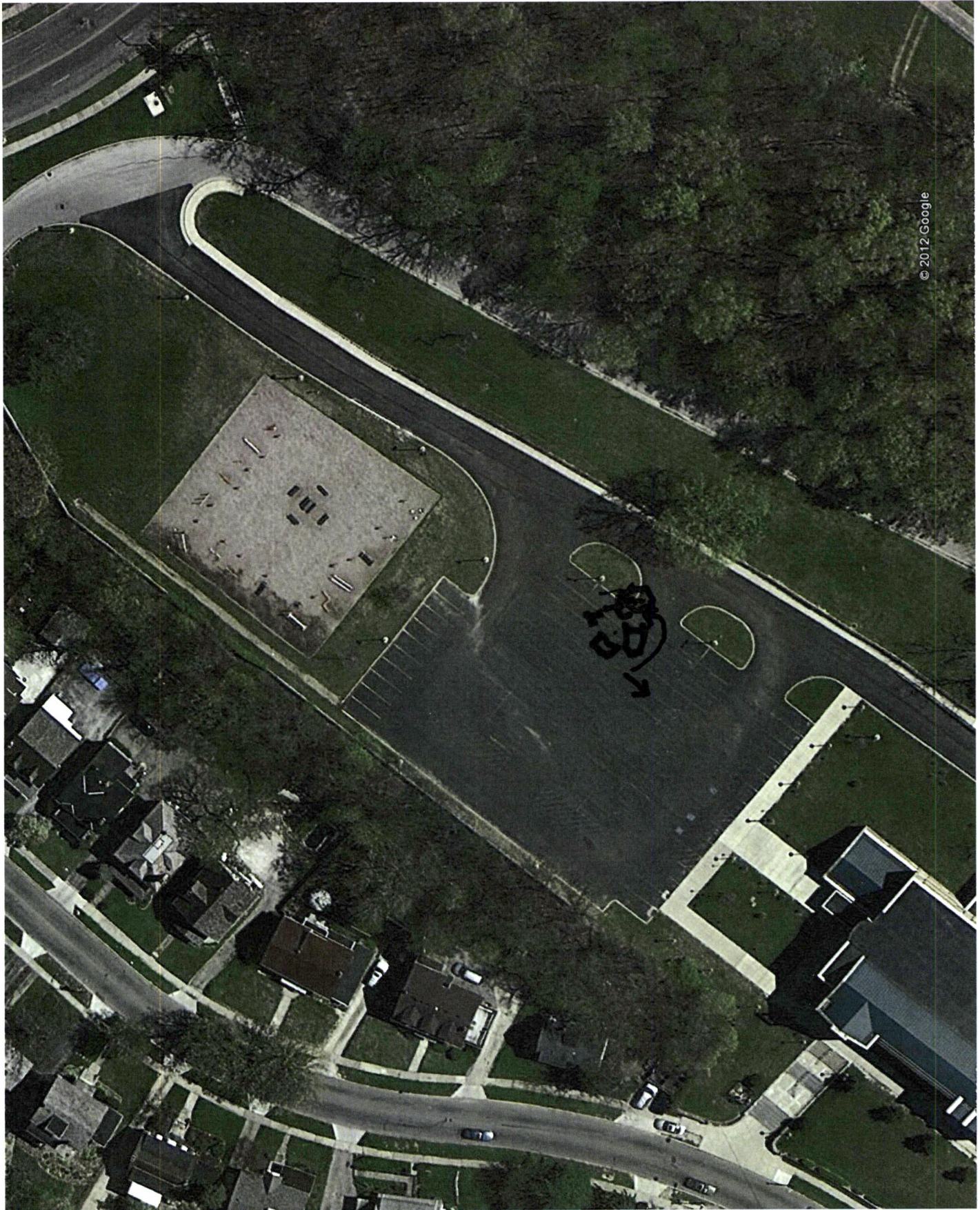
Diaz said that during the pursuit the lights and siren were activated on his cruiser. He was asked if there could have been any doubt that the subjects knew police were behind them. Diaz said that there was no doubt. Diaz went on that he kept wondering why they weren’t stopping. Diaz heard Sgt. Coleman on the air. Coleman was a supervisor on duty. Diaz thought it was her that broadcast a zone car getting rammed.

Diaz said that he had heard a broadcast that the subject car had lost a tire, but he did not know who made the broadcast.

In concluding the interview, Diaz said that, “I can’t emphasize enough, the fact how I felt and, like I said, the look on the other officers that day. It wasn’t a game, it wasn’t, you know, let’s get these guys. I didn’t get that sense at all. This was the real deal, this was happening.”

Subject Information

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Employment: **Cleveland Police Department**
DOB: 09/11/1981
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Sex: M
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Height: 507
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Hair: Blk
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