

**Fatal Officer Involved Shooting of Christopher Garcia
Los Angeles Police Department**

**Officer Edgar Simental #43191, Officer Joseph Fluty #38443,
Officer Ruben Ovsepyan #44408**

J.S.I.D. File #21-0268



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

July 12, 2023

MEMORANDUM

TO: CAPTAIN RICH GABALDON
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: Fatal Officer Involved Shooting of Christopher Garcia
J.S.I.D. File #21-0268
F.I.D. File #F034-21

DATE: July 12, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 28, 2021, fatal shooting of Christopher Garcia by Los Angeles Police Department (LAPD) Officers Edgar Simental, Joseph Fluty, and Ruben Ovsepyan. We have concluded the officers acted in lawful self-defense at the time they fired their weapons, reasonably believing, based on a totality of the circumstances, that deadly force was necessary to defend against an imminent deadly threat.

The District Attorney's Command Center was notified of this shooting on June 28, 2021, at approximately 10:55 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through by LAPD personnel.

The following analysis is based on body worn camera video (BWV), dash camera video (DICV), photographs, witness statements, and reports. The involved officers did not provide voluntary statements, and their compelled statements, if any exist, were not considered. These materials were submitted to this office by the LAPD Force Investigation Division.

INTRODUCTION

On June 28, 2021, at 9:52 a.m., Officer Edgar Simental was on patrol driving a marked patrol car with his partner, Officer Ricardo Mota, riding in the passenger seat. Both officers were in uniform. According to DICV footage and Mota's statement, they attempted to stop a speeding Honda sedan, later determined to be driven by Christopher Garcia. After briefly losing sight of the Honda, the officers pursued it onto the Interstate 5 freeway. The Honda exited at Terra Bella Street and spun off the road into a dirt embankment. As Simental and Mota parked their car on the offramp, Garcia emerged from the Honda holding what appeared to be a semiautomatic pistol.

Officers Joseph Fluty and Ruben Ovsepyan, also in uniform and driving a marked patrol car, arrived minutes after and parked next to Simental and Mota's car. For about three minutes, Garcia held the gun and ignored repeated commands to drop it.

Suddenly, according to BWV footage and one civilian's statement, Garcia walked toward Simental and Mota, fully extended his right arm outward, and aimed the pistol at them. In response, Simental fired 12 rounds from his duty 9 mm pistol, Fluty two rounds from his duty 5.56 rifle, and Ovsepyan six rounds from his duty 9 mm pistol.

Garcia suffered eight gunshot wounds, including one fatal shot to his back. He was transported to the hospital by fire department personnel and pronounced dead at the hospital at 10:32 a.m.

Garcia was armed with a black metal BB gun similar in appearance to a semiautomatic pistol. Investigators recovered the weapon from the scene. Garcia is seen in BWV footage walking toward the officers and suddenly pointing the gun as several rapid shots ring out.

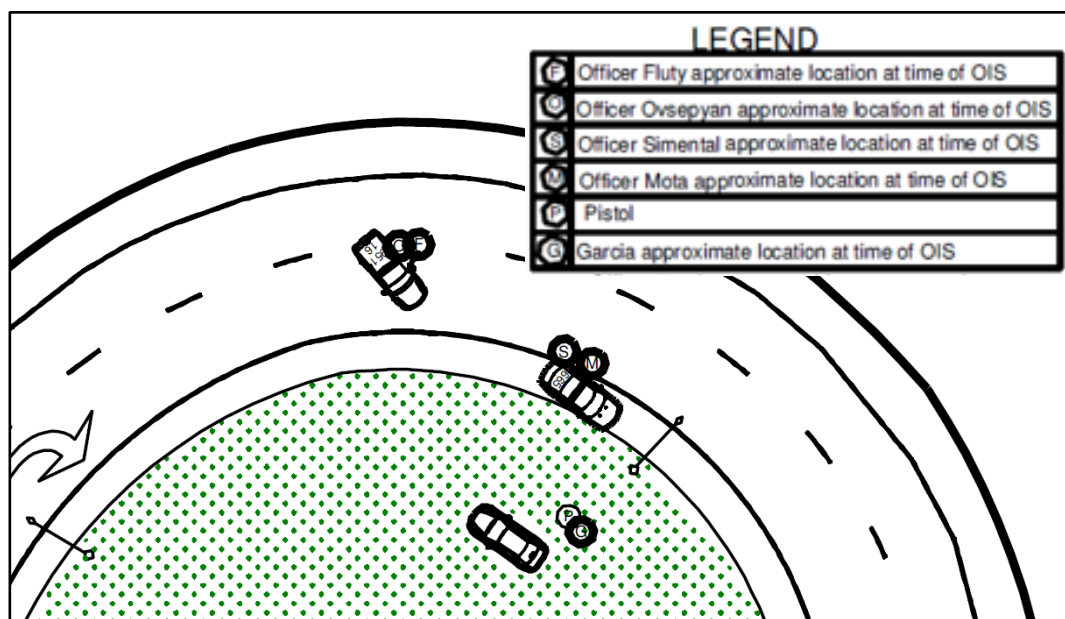


Figure 1: Scene diagram

FACTUAL ANALYSIS

BWV and DICV

At 9:52 a.m., DICV footage captures Garcia evading Simental and Mota on surface streets as they attempt a traffic stop of his vehicle. Garcia's car accelerates away from the patrol car several times, appearing to travel at a high rate of speed. The patrol car chirps its sirens at the Honda, which does not yield. After briefly ceasing the pursuit, the officers, minutes later, happen across Garcia again and pursue him onto the northbound Interstate 5 freeway, activating their lights and sirens. Garcia's car races ahead several hundred feet, weaving through traffic. The officers travel one exit and follow Garcia off the highway at Terra Bella Street, a downward

sloping semi-circular offramp, which arcs around a dirt embankment in the middle. As the patrol car proceeds down the offramp, Garcia's Honda comes into view, stopped in a dirt embankment, off the roadway, facing the opposite direction. His airbags are deployed.

At 9:59 a.m., Simental parks the car on the offramp. BWV footage shows Simental exit the driver seat of the patrol car as Mota exits the passenger seat. The officers draw their service pistols and take cover on the driver side of the car, facing the passenger side of Garcia's car. Simental repeatedly yells, "Drop the gun!" and radios: "Officer needs help! He's got a gun!"

Garcia walks out from behind the driver side of his car appearing to hold a pistol at his side, pointed at the ground. He walks a few steps toward the officers with his arms at his sides and stops, standing still as Simental repeatedly yells, "Drop the gun!" After one to two seconds, Garcia, ignoring Simental, turns his back to the officers and slowly walks back behind the driver side of his car.

Meanwhile, at 10:02 a.m., Ovsepyan and Fluty arrive in a second marked patrol car. Ovsepyan, driving, parks and exits with his service pistol drawn, taking cover behind the open driver door. Fluty arms himself with a rifle from the trunk and positions himself on the driver side of the patrol car next to Ovsepyan. Their footage shows Garcia standing near his car. Less than one minute later, Garcia suddenly walks toward Simental and Mota, fully extends his arm in front of himself, and points the pistol at them as multiple rapid gunshots are heard. The shots commence as Garcia is in the act of raising the gun. Garcia falls to the ground.

Garcia's actions at the time of the shooting cannot be seen in Simental or Mota's BWV footage. The shooting occurred approximately three and one half minutes after Simental and Mota exited their patrol car.



Figure 2: Mota BWV still; Garcia initially approaches officers, holding gun in right hand.



Figure 3: Garcia walks back toward his car, holding gun.



Figure 4: Garcia walks behind car.



Figure 5: Ovsepyan BWV still; Garcia walks from behind his car toward officers.



Figure 6: Garcia points gun at Simental and Mota.

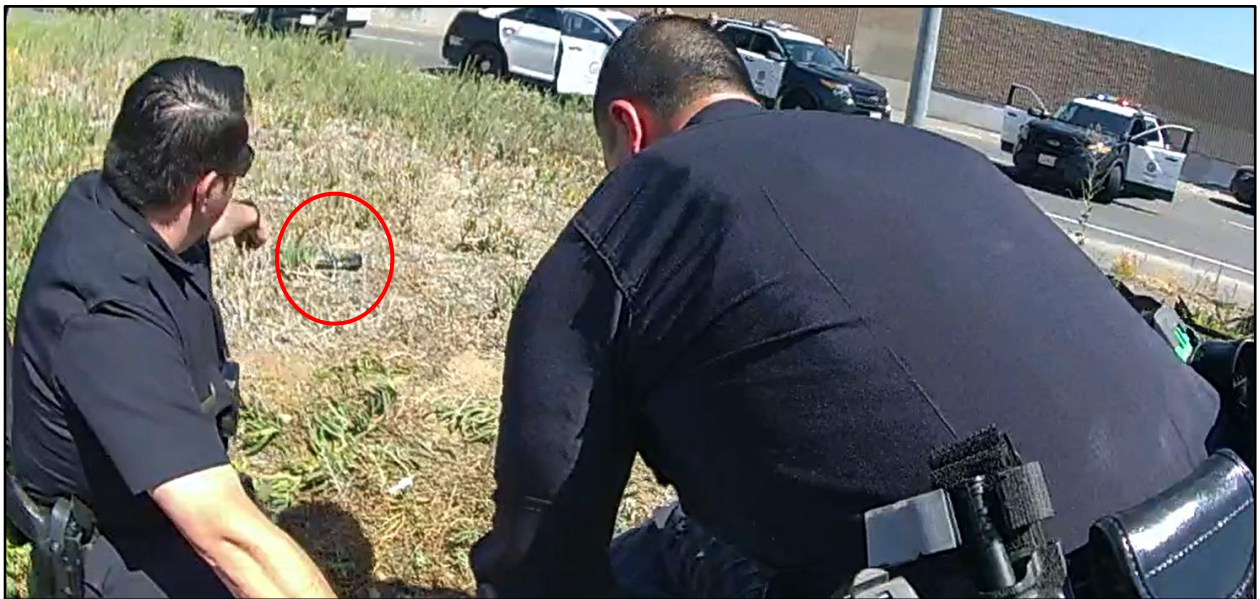


Figure 7: Officer points to Garcia's BB pistol (circled) after shooting as officers contact Garcia, who is out of view at bottom of frame.

Physical Evidence

Near Garcia's location, lay an unloaded CO2-powered Colt .177 caliber steel BB gun Pistol. The hammer was uncocked, and the safety was off. A pressurized CO2 cartridge was loaded in the grip. (The investigation did not determine whether Garcia fired the weapon during the incident.)

Twelve 9 mm casings lay near Simental's patrol car. Six 9 mm casings and two 5.56 casings lay near Ovsepyan's patrol car. Consistent with this evidence and post-incident round counts of each officer's weapon, Simental fired 12 rounds from a 9 mm pistol during the incident; Fluty fired two rounds from a 5.56 rifle; and Ovsepyan fired six rounds from a 9 mm pistol. Garcia's car sustained significant front end damage, and several roadway reflectors along the offramp shoulder were damaged, consistent with an auto collision.

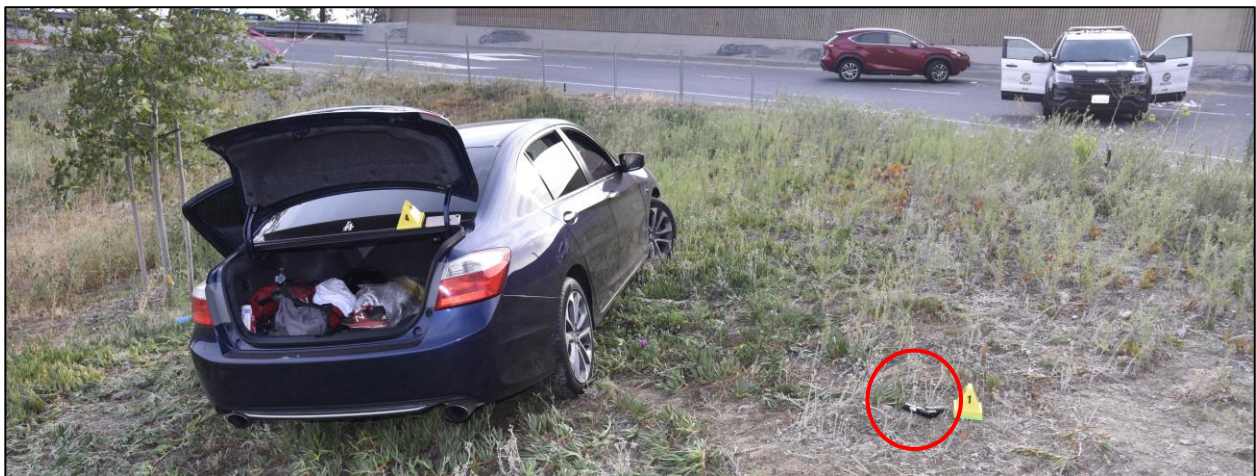


Figure 8: Garcia's BB pistol (circled).



Figure 9: Garcia's BB pistol.

Witness Statements

Officer Mota

Officer Mota told investigators that he and Simental attempted to stop Garcia's car for speeding. When Garcia fled from them at a high rate of speed, they did not initially pursue him but instead broadcast his direction of travel to alert other police units and lost sight of him. Minutes later, they spotted Garcia's car again, speeding.

This time they followed Garcia and pursued him to the Terra Bella exit. After they parked and exited their car with guns drawn, Garcia walked toward them holding what Mota observed to be a gun in his right hand. Garcia "just gives us this look" then walked toward them and raised the gun "toward" them. Mota "kind of ducked" at that point and heard gunshots. When he looked back toward Garcia, he had already fallen to the ground. Mota did not fire because Garcia had already fallen to the ground. Mota ducked as Garcia raised his arm and did not see him point the gun.

Civilians

Investigators interviewed three civilians who were in cars on the offramp and witnessed parts of the incident.

The first witness told investigators: "The suspect started walking up. And he pulled the gun out, you know, pulled it up. And that's when I start trying to duck, but I don't know if he [Garcia] got a shot off. But I heard multiple shots go off."

The two other witnesses did not see anything in Garcia's hands, but both saw Garcia walk toward officers and heard gunshots.

Autopsy

Doctor Scott Luzi of the Los Angeles County Coroner's Office performed an autopsy. According to Dr. Luzi's report, Garcia suffered one fatal gunshot wound and seven nonfatal wounds. The fatal shot entered the back, traveled back to front, right to left, and impacted the right lung, pulmonary artery, and aorta. Additionally, travelling front to back, Garcia suffered one shot to the left hip and three to the right leg. He suffered two shots to the left leg, one back to front, the other right to left. And he suffered one back-to-front shot to the left foot. Toxicology testing revealed the presence of alcohol and cocaine in Garcia's blood.

THE LAW

A peace officer is justified in using deadly force when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death

or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

Deadly force shall be used “only when necessary in defense of human life,” and officers “shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(a)(2).

A threat of death or serious bodily injury is ‘imminent’ when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer’s decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

LEGAL ANALYSIS

Officers Simental and Mota attempted to stop Garcia for speeding. Instead, despite the lights and sirens of their patrol car, Garcia did not yield, according to DICV footage. He sped onto then off of the northbound Interstate 5 Freeway. When the patrol car reached the Terra Bella Street offramp, Garcia’s Honda was stopped in the dirt embankment, off the roadway. Garcia exited his car holding a pistol at his side. Simental and Mota, joined shortly after by Fluty and Ovsepyan, repeatedly commanded Garcia to drop his gun throughout a roughly three minute stand off.

According to BWV footage, as well as one civilian witness, Garcia ignored them and suddenly raised and pointed the pistol at Simental and Mota. Officers opened fire as Garcia was in the act of raising the pistol, according to BWV. Despite the volley of shots, Garcia, according to the footage, was able to raise the pistol to chest level and point it at the officers before he fell to the ground. Investigators later recovered a black steel BB pistol similar in appearance to a semiautomatic firearm.

Considering the totality of the circumstances known to the officers at the time, including those leading up to the incident, it was reasonable for them to believe that deadly force was necessary to defend against an imminent deadly threat when Garcia, holding a gun at his side, ignored commands to drop it, stepped toward Simental and Mota, fully extended his arm in front of himself, and pointed the pistol at them. The officers acted reasonably under the circumstances known at the time, and this conclusion is not altered by the hindsight knowledge that Garcia was armed with a BB gun.

CONCLUSION

For the foregoing reasons, we find that Officers Simental, Fluty, and Ovsepyan acted lawfully in self-defense when they used deadly force against Christopher Garcia.