

Non-Fatal Officer Involved Shooting of

Mario Henry Villegas

Covina Police Department

Officer Dylan Dixon, #2953

Officer Jonathan Ardery, #2226

Officer Seok Lee, #2872

J.S.I.D. File #19-0403



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

September 13, 2022

MEMORANDUM

TO: CHIEF DAVID POVERO
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CAPTAIN ANDREW D. MEYER
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Homicide Bureau
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Mario Henry Villegas
J.S.I.D. File #19-0403
C.P.D. File #19-6947
L.A.S.D. File #019-00083-3199-055

DATE: September 13, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 20, 2019, non-fatal shooting of Mario Henry Villegas by Covina Police Department (CPD) Officers Dylan Dixon, Jonathan Ardery and Seok Lee. We find that there is insufficient evidence to prove beyond a reasonable doubt that Officer Dixon, Officer Ardery and Officer Lee did not act in lawful self-defense and the defense of others.

The District Attorney's Command Center was notified of this shooting on September 20, 2019, at approximately 3:00 a.m. The District Attorney Response Team (DART) responded to the location of the shooting, where they received a briefing and walk-through of the scene.

The following analysis is based on reports, recorded interviews, radio transmissions and records, crime scene photographs and diagrams, video surveillance, ballistic reports, and other evidence submitted to this office by Los Angeles County Sheriff's Department (LASD) Homicide Bureau Detective Timothy Ruggiero. The voluntary statements of Dixon, Ardery and Lee were considered in this analysis.

FACTUAL ANALYSIS

On September 19, 2019, at 9:21 p.m., CPD received several 9-1-1 calls reporting a fire in a vacant lot located at 315 North Vincent Avenue. CPD Officer Oswaldo Preciado responded to the location and observed a large brush fire in the northwest corner of the lot, adjacent to a brick

wall separating the lot from residences on Morada Avenue. Preciado requested additional units to assist evacuating the surrounding residential area. The Los Angeles County Fire Department (LAFD) responded and began trying to extinguish the fire. At approximately 9:29 p.m., CPD Lieutenant Ryan Davis, who was wearing a full police uniform, parked his marked, black-and-white patrol vehicle in a parking lot at the southern corner of the vacant lot. Davis observed a man, later identified as Mario Henry Villegas, running into the vacant lot. Davis followed Villegas, shone a flashlight in his direction and saw Villegas holding a “long gun.” Villegas looked at Davis and continued running westbound through the vacant lot. Davis informed dispatch of his observations and requested additional units. Davis spoke with several witnesses in the parking lot who reported seeing Villegas holding a shotgun before Davis arrived.

Officer Jonathan Ardery and his partner, Officer Dylan Dixon, who were wearing full uniforms, responded to the scene and parked their marked, black-and-white patrol vehicle on Badillo Street south of the vacant lot. Ardery and Dixon observed Villegas inside the vacant lot. Officer Seok Lee, who was wearing a full uniform, also responded to the call. Uniformed officers from CPD, CPD Special Response Team (SRT), and West Covina Police Department (WCPD), and airships from LASD and the Pasadena Police Department (PPD) assisted in setting up a perimeter. CPD officers were positioned along Morada Avenue, and WCPD officers were positioned in a parking lot east of the Morada Avenue residences.

At approximately 9:41 p.m., Villegas climbed over the western wall of the vacant lot into the backyard of a residence on the east side of Morada Avenue while carrying a shotgun. Several residents called 9-1-1 and reported seeing Villegas in their backyard as Villegas moved northbound along Morada Avenue. The airship warned CPD officers that Villegas was pointing a shotgun in their direction and acting erratically. CPD SRT Officer Garrett Hagle, CPD Officer Vanessa Cardoza, Ardery, Dixon and other officers were standing next to an SRT armored vehicle on Morada Avenue when Villegas threw a rock or brick in their direction, nearly striking the officers. Villegas continued throwing bricks and other objects at CPD and WCPD officers. Hagle and Sergeant Keith Southerland were standing behind a Chevrolet truck parked on the east side of Morada Avenue when they heard what they believed were two shots fired in their direction by Villegas.¹ Hagle reported being fired upon over the radio. Officers evacuated residents from the surrounding houses as Villegas continued moving between houses armed with the shotgun. The airship reported seeing Villegas reloading the shotgun and holding it in a “low ready” stance and also carrying a long, metal pole. CPD and WCPD made multiple announcements for Villegas to surrender.

Ardery, Dixon and Lee moved to a backyard on the southern perimeter of Morada Avenue. At approximately 12:30 a.m., the airship reported seeing Villegas repeatedly entering a shed in a backyard north of where Ardery, Dixon and Lee were located.² At approximately 12:40 a.m., the airship reported Villegas was climbing into the next property and told the officers they believed Villegas still had the shotgun with him. Lee and Ardery observed Villegas jump over the wall holding a long, cylindrical object. Ardery and Lee ordered Villegas to show his hands.³ Ardery

¹ It was later determined that the shotgun was not functional in the condition it was received because the elevator assembly/carrier was out of alignment and the action was immobile.

² Unbeknownst to the officers, Villegas placed the shotgun inside the shed.

³ On the radio transmission, one of the CPD officers said they had “one at gunpoint.”

and Lee stated that Villegas looked at them, lifted up his shirt, reached towards his waistband and began pulling out an object. Lee, Ardery and Dixon fired their duty weapons at Villegas. Villegas was struck by gunfire and fell to the ground. The officers repeatedly gave Villegas commands to show his hands. An officer reported the shotgun was lying underneath Villegas; another officer reported seeing the buttstock of the shotgun underneath Villegas' right hip. CPD officers approached Villegas and rendered aid until the paramedics arrived.



Overview of the scene.

Dixon recovered a screwdriver from Villegas' pocket. A rake and a silver, serrated knife were recovered from the grass where Villegas was taken into custody. Villegas was transported to Pomona Valley Hospital, where he was treated for several gunshot wounds.

Criminalists recovered a Mossberg Maverick 12-gauge shotgun loaded with three live shotgun shells inside a shed located two houses north of where the shooting occurred. The safety was off, and the slide was locked in the rear position.⁴ Criminalists located broken floodlights and broken bricks in the backyard and a box cutter and broken bricks in the front yard of the same property. Criminalists located two pieces of rock or brick underneath a Chevrolet parked on Morada Avenue. Criminalists located several broken bricks and other miscellaneous objects in the parking lot behind the east wall. Criminalists recovered a rake, a serrated knife, and a screwdriver in the grass where Villegas was taken into custody. Criminalists recovered twenty-

⁴ Criminalists did not locate any expended shotgun shells at the scene.

four .233 caliber cartridge casings, seventeen .40 caliber cartridge casings, and one empty Glock magazine from the scene. The physical evidence establishes Lee fired at least 24 rounds, Ardery fired two rounds, and Dixon fired 15 rounds.



Photo of the shotgun recovered inside the shed.



Photo of the rake and the knife recovered in the backyard where the shooting occurred.

On September 30, 2019, Villegas was charged in case KA122162 with one count of arson, in violation of Penal Code section 451(c), three counts of assault on a peace officer, in violation of Penal Code section 245(c), possession of a firearm by a felon, in violation of Penal Code section

29800(a)(1), and possession of ammunition by a felon, in violation of Penal Code section 30305(a)(1). On July 23, 2020, Villegas was convicted of one count of assaulting a peace officer and sentenced to ten years in state prison.

WITNESS STATEMENTS

██████████'s Statement

██████████ told investigators she noticed the fire behind her house and saw a man smoking a cigarette and pacing inside the vacant lot. ██████████ saw the man jump over her fence, into her neighbor's yard, and back into her yard. ██████████ said the man was holding a three-foot long object that could have been a rifle. The man called ██████████ a "bitch" when she told him to leave her yard. ██████████ called 9-1-1 and was about to evacuate her home when she heard a loud noise and saw her rear window had been damaged.

██████████'s Statement

██████████ told investigators she heard rustling noises in her backyard and heard a man saying, "Sorry! Sorry! Sorry!" ██████████ looked at surveillance video on her cell phone and saw a man walking northbound through her backyard towards her neighbor's house carrying a shotgun. ██████████ called 9-1-1 and warned her neighbor. ██████████ heard gunfire after she was evacuated from her home.

██████████'s Statement

██████████ told investigators she was inside her home when she saw the sensor light activate and heard noises in her backyard. ██████████ saw a man in her backyard who said, "Sorry!" The man was carrying a "long rifle" in one hand and an object in the other. ██████████ called 9-1-1. The man paced back and forth in her backyard while the police repeatedly gave him commands to surrender. The man responded, "I'm not coming! Fuck you! Come and get me!" and threw bricks at the police. ██████████ heard gunfire after she was evacuated from her home.

Officer Hagle's Statement

Hagle told investigators he responded to the incident with his partner, Cardoza. Hagle was standing behind the SRT armored vehicle when Villegas began throwing objects towards the armored vehicle. Hagle took cover behind a Chevrolet truck parked on the west side of Morada Avenue. Hagle saw Villegas peeking over a fence and provided a description over the radio. Villegas continued throwing objects at the armored vehicle. At one point, Hagle heard a "bang" and saw what appeared to be a bullet travelling in his direction and believed he had been fired upon. Hagle informed dispatch. Hagle heard the airship say, "Affirm, the suspect is firing rounds." Southerland joined Hagle behind the Chevrolet. Hagle heard a louder "bang," saw a bullet travel 15 to 20 feet above his head, and informed dispatch.

Officer Ardery's Statement

Ardery provided a voluntary statement to investigators. Ardery was working patrol with Dixon when they responded to the arson call. Ardery heard Davis report seeing a man possibly armed with a "long rifle" near the fire. After Dixon and Ardery parked, Ardery saw Villegas standing inside the vacant lot smoking a cigarette. Ardery was concerned Villegas was waiting to have a standoff with the officers. Ardery and Dixon put on their armored vests for protection. Ardery and Dixon moved to Morada Avenue behind the "Bear Cat," and Villegas threw a white object towards them. Ardery and Dixon relocated to the backyard of a house on Morada Avenue and eventually moved north due to the heavy smoke. Ardery heard a CPD SRT officer report that he had been fired upon and heard the airship report Villegas was reloading the shotgun.

Lee joined Ardery and Dixon in the backyard on Morada Avenue. The backyard was dimly lit, and the airship created shadows as it circled above them. For about an hour, the officers listened to updates regarding Villegas' movements. After the airship reported Villegas was moving southbound with the shotgun, Ardery saw Villegas jump over the fence into the backyard where he was located. Ardery turned the flashlight on his duty weapon towards Villegas and ordered him to put his hands up. Villegas was holding a long, cylindrical object in his right hand. Villegas looked in the officers' direction, "possibly" threw the cylindrical object down, pulled his shirt up "really high" with his left hand, and reached towards a black handle sticking out of his waistband. Ardery believed Villegas was reaching for the handle of a handgun. After Lee began firing his weapon, Ardery fired two rounds at Villegas. Ardery stated he fired his weapon because he believed Villegas was going to shoot him and his partners.⁵ Villegas fell to the ground but was still moving. The officers could not see Villegas' right hand and continued giving him commands to show his hands. The airship reported Villegas was laying on the shotgun. The officers approached Villegas and rendered aid until the paramedics arrived. Ardery saw a rake on the ground when they detained Villegas.

Officer Dixon's Statement

Dixon provided a voluntary statement to investigators. Dixon and Ardery responded to the arson call and heard Davis' broadcast that he observed a man armed with a gun in the area. After Dixon parked, he saw Villegas walking about 150 yards away. Dixon could not see whether Villegas was holding a weapon. An airship reported Villegas was holding a shotgun and jumping over fences into people's backyards. Dixon was concerned Villegas might take hostages or kill someone. As Villegas moved north, Dixon, Ardery and other officers took cover behind an armored vehicle on Morada Avenue. The airship reported that Villegas was manipulating the shotgun and pointing it in the officers' direction. Villegas threw a brick which struck the armored vehicle.

Dixon, Ardery and Lee eventually moved to the backyard of a house. The airship reported Villegas was two houses north of their location. Dixon heard Hagle inform dispatch Villegas fired at him. Twenty to 30 minutes after Hagle reported being fired upon, the airship said Villegas was moving southbound with a weapon. The lights from a WCPD armored vehicle

⁵ Ardery was armed with a .40 caliber Glock 22 loaded to capacity with 16 rounds. Ardery's weapon contained 14 rounds after the incident.

parked behind the eastern wall where Dixon was located made visibility difficult. As Dixon was repositioning himself under the patio, he heard Ardery and Lee scream, “Drop the weapon!” Dixon heard gunfire and thought the officers were in a firefight with Villegas. Dixon turned to see Villegas standing 15 to 18 yards away holding a cylindrical object Dixon believed was a shotgun. Villegas was standing in a “low ready” shooting position with the object in one hand and the other hand near his waistband. Believing Villegas was armed with a shotgun and had either fired the shotgun or made furtive movements causing Ardery and Lee to fire their weapons, Dixon fired his handgun.⁶ Villegas fell to the ground, and the officers continued to give commands to show his hands. Dixon believed he saw the shotgun underneath Villegas. The officers approached Villegas, and Dixon administered first aid until the paramedics arrived. Dixon removed a screwdriver from Villegas’ pocket and observed a rake lying on the grass.

Officer Lee’s Statement

Lee provided a voluntary statement to investigators. While on patrol, Lee heard Davis report seeing someone holding a “long gun” near the scene of a fire. Lee responded and was assigned to the containment on the west side of Morada Avenue. Lee heard the airship report Villegas was armed with a shotgun, was holding a long, pole-like object, and was climbing over fences on the east side of Morada Avenue. Lee repositioned inside the turret of the SRT armored vehicle on Morada Avenue. Lee heard officers report Villegas was throwing bricks and saw one hit his armored vehicle. Lee heard Hagle report Villegas had fired at him twice.

After assisting with evacuations, Lee joined Ardery and Dixon. Lee heard the airship report Villegas was reloading the shotgun and heard officers giving Villegas commands to surrender. A few minutes later, the airship reported Villegas was holding a shotgun and another object while climbing over the north wall. Lee observed Villegas jump over the north wall holding a long, cylindrical object in his right hand, which Lee believed was a shotgun. Lee’s duty weapon was not equipped with a flashlight, there were no lights in the backyard, and smoke from the fire made visibility difficult. Lee gave Villegas commands to show his hands. Villegas looked at Lee, lifted his shirt with one hand, reached towards a shiny object in his waistband with the other, and began pulling out an object that Lee believed was going to be a handgun or a shotgun. Lee stated he fired his duty weapon at Villegas to protect himself and his partners.⁷

Villegas’ Statements

LASD Homicide Detectives Ruggiero and Richard Tomlin spoke with Villegas at the hospital on September 20, 2019. Villegas denied starting the fire but said he had been smoking a cigarette. Villegas told detectives he bought a loaded shotgun from an acquaintance. When Villegas saw a police officer near the fire, Villegas tried to escape into someone’s backyard. Villegas admitted

⁶ Dixon was armed with a .40 caliber Glock 22 with a capacity of 16 rounds. Dixon was uncertain whether his weapon was loaded to capacity before the incident and did not state how many rounds he fired. Dixon’s weapon contained 15 rounds after the incident. Dixon’s empty magazine was also recovered at the scene.

⁷ Lee was armed with a .223 caliber Colt AR-15 rifle with a capacity of 31 rounds. After the incident, Criminalists recovered four rounds from the weapon and one round from Lee’s pocket. Lee was uncertain whether the weapon was loaded to capacity before the incident and did not state how many rounds he fired.

throwing rocks at the police but denied firing the shotgun at them. Villegas left the shotgun inside a shed and was holding a metal pipe in his hand when he jumped over the fence.

On September 25, 2019, CPD Detective Jason Kerns and Sergeant Antonio Zavala spoke with Villegas at the hospital. Villegas said he was not taking his prescribed medication for a bipolar disorder and was drinking alcohol and taking methamphetamine before the incident. Villegas said he found the shotgun and knew it did not work because he tried to fire it. Villegas admitted being on parole and knew he was not supposed to possess firearms. Villegas acknowledged carrying the rake over the wall and having a knife in his waistband. Later in the interview, Villegas said he was holding the rake in his left hand and had the knife in his right hand. Villegas said the lighting in the backyard was poor, and it would have been wise if he had “dropped everything” and laid flat on his stomach. Villegas did not surrender because he was intoxicated, paranoid, and not thinking clearly.

On September 28, 2019, Ruggiero and Tomlin again spoke with Villegas at the hospital. Villegas admitted starting the fire because he was angry at other people living in the encampment. Villegas tried to escape when he saw the police officer because he was on parole. Villegas said he found the loaded shotgun four to five days before the incident and realized it was jammed when he tried to fire it three days later. Villegas admitted throwing rocks at a woman’s window and at the police officers. Villegas was holding a rake when he jumped over the fence but did not hear the officers say anything before being shot. Villegas told investigators he was under the influence of alcohol and methamphetamine and made “a bad decision.”

Surveillance Video

Investigators obtained surveillance video from two cameras located in the backyard of the residence where the shooting occurred.⁸ At approximately 10:19 p.m., Villegas walks northbound through the backyard holding a shotgun in his left hand and a brick in his right hand. Villegas says something unintelligible to a person inside the house and jumps over the north fence. At 12:11 a.m., three uniformed officers take position under a patio on the southwest corner of the house. At approximately 12:42 a.m., the three uniformed officers fire their weapons in a north-east direction from the patio area.⁹ After the gunfire ends, the officers yell, “Keep your hands up! Let me see your hands! Put your hands out to your side!” several times. A voice can be heard saying, “Oh my God, no.” Additional officers enter the backyard and continue giving Villegas commands. Two officers reposition themselves behind a tree on the east side of the yard. An officer asks, “Do we have obs on that shotgun?” One of the officers responds, “Negative, we cannot see his right hand.” The officers continue giving Villegas commands for several minutes. After the officers approach Villegas, Villegas moans loudly.¹⁰ An officer says, “We need to get the shotgun!” Another officer says, “We need to find the shotgun.” An officer asks, “Where is the shotgun, dude?” A rake is lying in the grass several feet from the north wall as the officers search the area. The paramedics arrive and move Villegas from the backyard shortly after 1:00 a.m.

⁸ The surveillance video is motion-activated.

⁹ Villegas cannot be seen on either video camera when the shooting occurs.

¹⁰ Villegas remains outside of the frame of both cameras until the paramedics move him from the backyard.

News Video

Investigators obtained NBCLA and KABC7 news helicopter footage. During the 11:00 p.m. broadcast, the NBCLA helicopter reporter says that ten minutes before the broadcast, Villegas fired “two additional shots” at officers.¹¹ Recorded and live video shows Villegas breaking a spotlight, carrying a shotgun and a long pole, and throwing objects. At 11:16 p.m., the KABC7 live video shows Villegas standing next to a house smoking a cigarette, holding a shotgun in his right hand and a brick in his left hand. The helicopter reporter says Villegas was seen brandishing a knife and taking pills. The station reporter says, “Shots have been fired by that suspect at least once.”



Video showing Villegas holding a shotgun in his right hand and a brick in his left.

At 11:24 p.m., helicopter video shows Villegas pacing in the backyard holding a long metal pole in his left hand and the shotgun in his right. The helicopter reporter says Villegas was armed with a shotgun, knives and bricks, had fired a shotgun in the officers’ direction, and was acting erratically.

LEGAL ANALYSIS

A police officer may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. Penal Code section 835a. An

¹¹ The reporter said firefighters were fired upon when they responded to the brush fire.

officer “may use all the force ‘that appears to him as a reasonable man to be necessary to overcome all resistance, *even to the taking of life*,’ ... the resistance must be such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him.” *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146 (quoting *People v. Bond* (1910) 13 Cal.App.175, 189-190). The officer may use no more force than would appear necessary to him as a reasonable person. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also* CALCRIM No. 505. In protecting himself or another, a person may use all the 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. CALCRIM No. 3470. If the person’s beliefs were reasonable, the danger the person perceived need not to have actually existed. A prior threat or harm to the person or others can be considered when determining whether a person’s conduct and beliefs were reasonable. A person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death or bodily injury has passed. This is so even if safety could have been achieved by retreating. The People have the burden of proving beyond a reasonable doubt that the person did not act in lawful self-defense. *Id.*

In evaluating whether a police officer’s use of force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. The evaluation of reasonableness should look to “the facts and circumstances of each case, including the severity of the crime, the threat posed by the suspect, and whether the suspect is resisting or attempting to evade arrest.” *Graham v. Connor* (1989) 490 U.S. 386, 396. “The ‘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... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgment—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396-397.

CPD officers and witnesses observed Villegas fleeing the scene of an arson armed with a shotgun. Villegas subsequently entered the backyards of several homes armed with the shotgun and threw bricks and other objects at the officers. Hagle reported Villegas fired at him twice, and the airship reported observing Villegas reloading the shotgun. Throughout the three-hour standoff, the officers repeatedly gave Villegas commands to surrender. Dixon, Ardery and Lee heard the airship warn Villegas was climbing over the wall in their direction while armed. Ardery and Lee observed Villegas climb over the wall holding a cylindrical object. After the officers gave him commands to show his hands, Villegas pulled up his shirt, reached into his waistband, and began pulling out an object. Believing Villegas was retrieving a firearm, Lee and Ardery fired their duty weapons at Villegas. Dixon believed Villegas was holding a shotgun and fired his duty weapon at Villegas. Lee, Ardery and Dixon said they discharged their weapons in fear for their lives and the lives of their partners.

The reasonableness of the officers' decision to use of force is evaluated based on the information the officers had at the time. Villegas acknowledged holding a rake and having a knife in his hand or in his waistband before he was shot. Given the poor lighting conditions in the backyard, the fact that the airship told the officers they believed Villegas had the shotgun, and the fact that Villegas ignored their commands and reached for an object in his waistband, it was not unreasonable for the officers to believe that Villegas was reaching for a firearm when they discharged their weapons. Based on the totality of the circumstances, there is insufficient evidence to prove beyond a reasonable doubt that Dixon, Ardery and Lee did not fire their duty weapons in lawful self-defense and the defense of others.

CONCLUSION

We find there is insufficient evidence to prove beyond a reasonable doubt that Officer Dixon, Officer Ardery and Officer Lee did not act in lawful self-defense and the defense of others when they fired their duty weapons.