

Non-Fatal Officer Involved Shooting of Mario Najara
Long Beach Police Department

Officer Edmund Moscoso, #6164

J.S.I.D. File #23-0185



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

October 3, 2023

MEMORANDUM

TO: CHIEF WALLY HEBEISH
Long Beach Police Department
400 West Broadway
Long Beach, CA 90802

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-fatal Officer Involved Shooting of Mario Najara
J.S.I.D. File #23-0185
L.B.P.D. File #23-26278

DATE: October 3, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 30, 2023, non-fatal shooting of Mario Najara (Najara) by Long Beach Police Department (LBPD) Officer Edmund Moscoso. We conclude that the officer acted lawfully to apprehend a fleeing felon to prevent death or serious bodily injury.

The District Attorney's Command Center was notified of the shooting at approximately 2:22 p.m., on May 30, 2023. The District Attorney Response Team (DART) responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, crime scene diagrams and sketches, photographic and video evidence, including body worn camera video, and witness statements submitted by LBPD Detective Oscar Valenzuela on August 23, 2023. A voluntary statement provided by Moscoso was considered as part of this analysis.

FACTUAL ANALYSIS

Assaults by Najara

■■■■ and ■■■■

Just before noon on May 30, 2023, ■■■■ and ■■■■ were walking north on Park Avenue along the sidewalk. They had just gotten coffee and eaten breakfast, and they were on their way home. According to ■■■■ when she and ■■■■ were walking alongside Livingston Park, Najara "just appeared" either from across the street or to her side. He walked up and said, "Who are you," or "Where are you from?" ■■■■ tried to wave Najara off and ignore him. Najara hit ■■■■ knocking him down, and immediately hit ■■■■ in the face. ■■■■ and ■■■■ made their way closer to the entrance of the park at the corner of Park Avenue and

Livingston Drive to get away from Najara. [REDACTED] saw that there were people in the park, including children playing in the playground. When [REDACTED] and [REDACTED] arrived at the corner park entrance, Najara was still pursuing them and trying to fight [REDACTED]. [REDACTED] wanted to get away to safety, so she went into the park to use the wall between the park and the sidewalk as a barrier between her and [REDACTED] and Najara. At this time, [REDACTED] saw Najara pull something silver out of his waist area, which she believed could have been a pocketknife. [REDACTED] was not sure if Najara had that object in his hand the entire time he was fighting with her and [REDACTED].

Once [REDACTED] and [REDACTED] were inside the park, Najara attempted to follow. To dissuade Najara, [REDACTED] threw her coffee cup at him and attempted to shut the park gate, but it did not fully close. [REDACTED] ran across the park with [REDACTED] and lost track of Najara. She did not see what Najara did in the park, as she hopped another fence to get further away. [REDACTED] and [REDACTED] made their way to the Wells Fargo Bank at the corner of Livingston Drive and Second Street. [REDACTED] told people inside the bank to call the police and lock the door. [REDACTED] and [REDACTED] waited in the bank and were ultimately treated by fire department personnel for their injuries. [REDACTED] suffered a laceration to her right neck below her jawline. [REDACTED] suffered a laceration to his face just above his right eye.

[REDACTED] [REDACTED]

[REDACTED] [REDACTED], his daughter [REDACTED] [REDACTED], and grandsons [REDACTED] and [REDACTED] [REDACTED], were playing together at Livingston Park. [REDACTED] was holding two-month-old [REDACTED] and two-year-old [REDACTED] was playing with his grandfather on the slides. [REDACTED] noticed a man and woman, likely [REDACTED] and [REDACTED] running toward the end of the park and hopping over a fence. One of the two had a cut to the neck that was bleeding. [REDACTED] heard a woman say, "We're gonna get out of here." [REDACTED] looked at the entrance of the park and saw a "crazy guy," referring to Najara, approaching her father and [REDACTED]. Najara said to [REDACTED] "Where the fuck you from?" and used a racial slur. [REDACTED] called out to [REDACTED] that they needed to leave. [REDACTED] slowly stood up and picked up [REDACTED] but fell onto his back. [REDACTED] managed to run toward [REDACTED] but while [REDACTED] was on his back, Najara began to repeatedly stab [REDACTED] with a "long and skinny knife." After Najara stabbed [REDACTED] approximately ten times, another lady yelled at Najara to stop, diverting his attention, which provided [REDACTED] the opportunity to get up and flee the park with [REDACTED] and her children.



Figure 1: Livingston Park playground (B); Evidence collected at scene (A and C).

██████ iPhone was taken during the incident. The phone was later recovered from Najara after he was taken into custody. ██████ suffered multiple wounds to his face, legs, and right forearm, but did not require hospitalization. ██████ had a visible contusion to his forehead and a cut to his lip believed to be the result of having been dropped as Najara attacked ██████

911 Caller

At 11:54:51 (11:54 a.m. and 51 seconds), the first of several 9-1-1 calls was made to LBPD. A female caller reported a “guy attacking people at Livingston Park” and provided a narration of Najara’s actions. The caller said Najara had a knife, that people confronted him in the park, and Najara walked away. The caller said Najara threatened more people and had “beat up one guy” and was walking toward Second Street. The caller said she saw Najara follow a couple into the park at first, likely referring to ██████ and ██████. Najara stabbed another man, likely referring to ██████. The caller said Najara was making a right turn onto Second Street going toward the Super Mex restaurant located on the east side of Second Street. The caller exclaimed, “Oh my God! He’s punching random people! ... Where are the cops?” After reporting that Najara was near Roycroft Avenue, right in front of Super Mex, she yelled, “Oh my God, he just stabbed somebody! ... We need an ambulance! Hold this guy’s throat!”

██████ ██████

The person the 9-1-1 caller saw being stabbed was ██████. ██████ was waiting in front of the Super Mex restaurant after requesting a job application from the manager. As ██████ stood near the front of the restaurant on the sidewalk, Najara approached from the south and, without saying a word, swung his right fist, which was holding a screwdriver, into ██████ neck. ██████ turned and looked at Najara, who, after initially walking away, came back toward ██████. Surveillance video shows Najara visibly upset at ██████ and kicking a sign over

before continuing northbound on Second Street toward the Wells Fargo Bank. [REDACTED] suffered a puncture wound to his neck but did not require stitching or surgery.



Figure 2: Surveillance video stills from Super Mex show Najara stabbing [REDACTED] in the neck. In video still (D), Najara attempts to re-engage with [REDACTED] but continues walking north on Second Street shortly thereafter.



Figure 3: Overhead depiction of approximate locations of assaults of [REDACTED] and [REDACTED] (1), [REDACTED] (2), and [REDACTED] (3), and approximate location of officer-involved shooting (4).

LBPB Responds

Timeline of Radio Broadcasts

As the events described above unfolded, 9-1-1 callers were contacting LBPB, and dispatchers were transmitting updates over the radio, which was being broadcast to responding officers, including Officer Edmund Moscoso. Below is a timeline of these radio transmissions from LBPB. From the time of the first 9-1-1 call to the officer-involved shooting, less than eight minutes elapsed.

Time	Event Reported by Dispatcher Over Radio
11:55:46	Calling party (CP) says a subject is attacking people in the park, “5150 violent” ¹
11:56:16	CP describes the subject as a male Hispanic with a knife
11:56:46	CP says subject is stabbing several people at the park
11:57:11	CP says subject leaving park, going westbound on Park toward Second Street
11:57:33	Subject is walking on sidewalk, has hands in his pocket
11:57:54	Another CP reports a 415 fight ² with a subject who is yelling
11:58:05	CP reports subject stabbed three people
11:58:42	CP lost sight of subject
11:58:50	Battery victims report that they came to Wells Fargo and were not stabbed, but the subject had something in his hand
11:59:37	CP says the subject is now on Second Street walking toward Super Mex restaurant
11:59:49	CP says the subject is punching random people now
12:00:18	CP reports saw subject hit male Asian with wife and child, ran to car and left
12:01:26	Dispatch log references victim at Second Street and Roycroft, referring to victim at Super Mex with a stab wound to neck
12:00:27	CP says the subject just stabbed someone else and they need an ambulance
12:02:13	Dispatcher advises there is a stabbing victim at Second Street and Roycroft Avenue
12:02:19	CP advises subject attacked three people, a couple, and an older male with kids
12:03:18	CP advises saw another stabbing at Super Mex
12:03:22	Officer-involved shooting occurs

Officer-Involved Shooting

Officer Ruben Navarro was the first officer to encounter Najara. Najara was walking north on Second Street approaching the Wells Fargo Bank as Navarro exited his patrol vehicle. According to Navarro’s body worn video, at 12:01:00, Navarro radioed that the subject “says he wants to be shot, he won’t put it down,” referring to the screwdriver. Navarro advised dispatch to call Wells Fargo Bank to tell the employees to lock the door to the bank. Najara entered the Wells Fargo courtyard at 12:01:14, and Navarro radioed, “Next unit, can you get a 40?” referring to a less-than-lethal shotgun. Najara threw a trash can lid at Navarro, from behind a gate in the Wells Fargo Bank courtyard. Najara continued to walk away from Navarro, yelling obscenities and encouraging Navarro to “do it,” meaning to shoot him. Najara walked past a man in the Wells Fargo parking lot who told Navarro, “He’s got something in his hand.” Najara repeatedly asked Navarro to shoot him. At 12:01:55, Navarro radioed, “He has that knife in his right hand... [the subject is] headed towards Livingston.”

¹ “5150” refers to Welfare and Institutions Code § 5150 and is sometimes used by law enforcement personnel when speaking to indicate someone may be suffering from a mental health disorder.

² “415” refers to Penal Code § 415, disturbing the peace.

Najara exited the Wells Fargo parking lot and walked westbound toward the corner of Livingston Drive and Quincy Avenue. Navarro continued to give repeated orders to Najara to get on the ground. In the two minutes and 19 seconds from when Navarro first contacted Najara until the officer-involved shooting, Navarro told Najara to get on the ground eight times. At 12:02:23, Navarro radioed to report that Najara was walking northbound on Quincy Avenue.

At 12:02:30, Moscoso arrived in his patrol vehicle and drew his pistol. Najara immediately stopped, turned toward Moscoso, and yelled, "Shoot mother fucker!" Moscoso's body worn video shows Najara held the screwdriver in his right hand shortly after Najara made this statement. Moscoso told Officer Jeffrey Craver, who had arrived at approximately the same time as Moscoso, to prepare the "40 now," three times, referring to a 40 mm less-than-lethal shotgun.



Figure 4: Still frame and close-up from Moscoso's body worn video depicting Najara holding a screwdriver in his right hand.

Moscoso instructed Najara to get on the ground twice, and to drop the weapon in his hand six times, in the span of 33 seconds from the time he exited his patrol vehicle until the officer-involved shooting occurred. Najara refused and, before the less-than-lethal shotgun could be used by Craver, continued walking into the driveway of a residence located on East Livingston Drive. This address is a two-story multi-unit residence with one unit upstairs and one on the ground level. A detached garage associated with the property is just north of the two-story building, and a driveway leads from the garage onto Quincy Avenue (see Figure 7).

Moscoso yelled, "Drop the knife, now!" but Najara walked between cars parked in the residence driveway to a gate at the north side of the garage. Moscoso continued to command Najara to

“drop the knife,” and Najara continued to refuse as he arrived at the gate. Najara reached to the top of the gate with his right hand and opened the gate.³ Moscoso fired two rounds at Najara, striking him one time in the upper left arm.



Figure 5: Still frame from Navarro's body worn video showing Moscoso crouching and preparing to fire at Najara, whose position is indicated by the yellow arrow.

Najara had a single gunshot wound to the upper left arm that also penetrated his torso, [REDACTED]. LBPB officers rendered aid at the scene until the Long Beach Fire Department arrived. Najara was transported to a hospital where he was treated [REDACTED]. [REDACTED]. A cell phone determined to belong to victim [REDACTED] was recovered from Najara's pocket while he was detained. A screwdriver that appeared to have blood on the handle was also located.

³ In his report, discussed later, Moscoso wrote that Najara used his left hand to open the gate. Body worn video appears to show Najara using his right hand to do so.

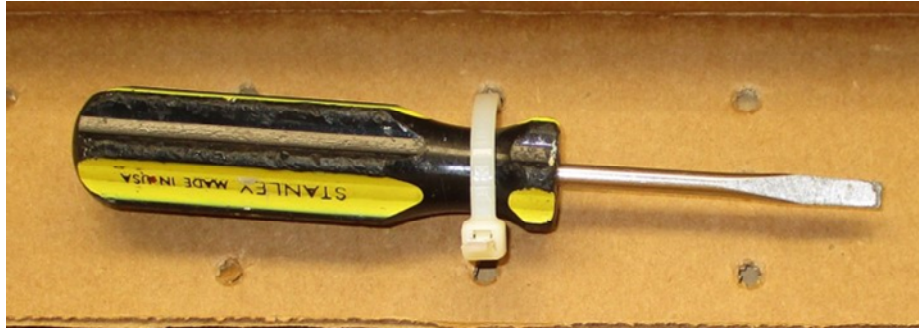


Figure 6: Screwdriver recovered from near Najara's position after officer-involved shooting.

After the officer-involved shooting, a resident at the location, [REDACTED] opened another gate on the south side of the garage so officers could go around the back of the garage and contact Najara from the other side of the gate to the north of the garage. At the time of the officer-involved shooting, as Najara was attempting to gain access to the property, three residents were home in the two units located on East Livingston Drive.

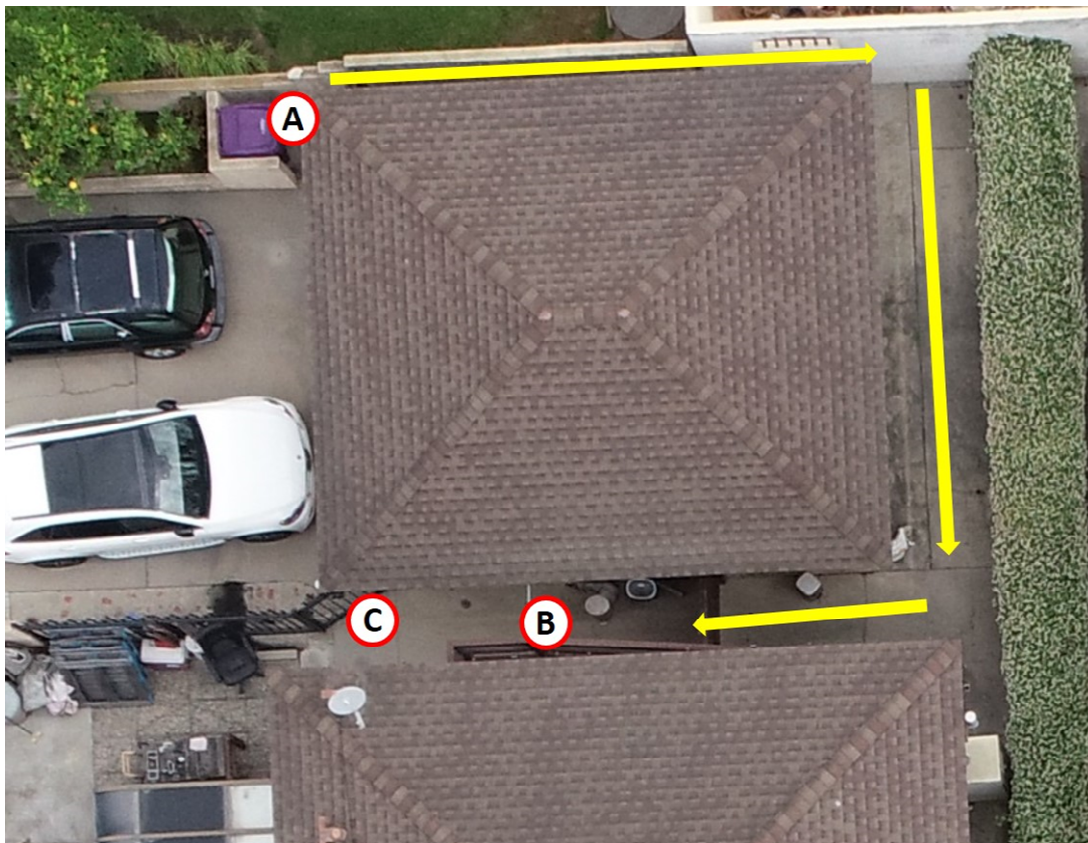


Figure 7: Overhead view of the scene of the officer-involved shooting. From the approximate location of the gate to the north of the garage (A), a path depicted with yellow arrows shows a route to the doors of the two residences (B) and the metal gate to the south of the garage (C).

Interview of Residents [REDACTED] and [REDACTED]

[REDACTED] heard a commotion outside her residence and looked outside her window. She saw Najara “running” northbound on Quincy Avenue to her driveway. She saw police officers following behind who were ordering Najara to stop. As Najara got to the pathway just north of her garage, the officers, who were behind her parked cars in the driveway, ordered Najara to “stop reaching,” and yelled, “Put your hands up!” [REDACTED] said Najara continued to disobey the officers’ commands and reached for his waistband, after which she heard approximately three gunshots and saw Najara fall to the ground.

[REDACTED] was outside the residence in his yard when he saw officers running northbound on Quincy Avenue. He could not see Najara, but heard the officers order Najara to stop, put his hands up, and “drop it,” followed by one officer saying, “Don’t do it!” [REDACTED] [REDACTED] wife, told him that Najara and the officers were in their driveway. As [REDACTED] walked toward the driveway, he heard approximately two gunshots. [REDACTED] saw Najara on the ground.

Statement of Moscoso

In a report summarizing this incident, Moscoso described the events leading up to the officer-involved shooting. Moscoso heard on his police radio that an officer already on scene (Navarro) was with Najara and that Najara “still had the knife, and he was not putting it down and stated he wanted to be shot.” Moscoso wrote that he knew the de-escalation tactics used by Navarro had been ineffective. Moscoso indicated he knew Najara had assaulted several people and that he believed that the victims of these assaults could be gravely injured. Moscoso believed Najara needed to be immediately apprehended to prevent others from being assaulted and possibly killed. Moscoso did not know what residences were occupied as Najara walked northbound on Quincy Avenue. However, he saw that there were two cars parked in the driveway in front of the garage of the East Livingston Drive location. Moscoso was concerned about pedestrians and, specifically, the possibility that a resident was near the garage being approached by Najara. As Najara put his left hand on a locking mechanism on the gate leading to the pathway north of the garage at the residence, Moscoso yelled, “Don’t do it!” Moscoso saw Craver next to him with the less-than-lethal shotgun but did not believe Craver could see or effectively shoot Najara because of an SUV parked between Craver and Najara. According to Moscoso, no other force options were available, so he fired two rounds at Najara.

Filing of Criminal Complaint

On June 1, 2023, a felony complaint in case NA121989 charged Najara with two felony counts of assault by means likely to cause great bodily injury in violation of Penal Code § 245(a)(4) with respect to [REDACTED] and [REDACTED] one count each of assault with a deadly weapon and robbery in violation of §§ 245(a)(1) and 211, respectively, with respect to [REDACTED] and one count each of attempted murder and assault with a deadly weapon in violation of §§ 664/187(a) and 245(a)(1), respectively, with respect to [REDACTED]. A misdemeanor count of resisting, obstructing, or delaying a peace officer in violation of § 148(a)(1) was also filed. The case is currently pending.

LEGAL ANALYSIS

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Penal Code § 835a(b).

A peace officer is justified in using deadly force upon another person 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 § 835a(c)(1)(A) & (B).

When using deadly force to apprehend a fleeing felon, an officer shall, where feasible, and prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. Penal Code § 835a(c)(1)(B)

In assessing 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, is taken into consideration. Penal Code § 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 § 835a(a)(4).

The evidence in this matter shows that prior to the officer-involved shooting, Najara committed numerous violent attacks upon random, unsuspecting citizens. The information regarding these attacks was broadcast to responding officers, who indicated they were aware that Najara had attacked numerous people and that there were multiple stabbing victims. Officers also knew that Najara was still armed with the weapon he used during these stabbings. The officers, upon arrival, saw Najara in possession of the screwdriver. Najara ignored numerous commands to drop the screwdriver. As he approached the driveway on Quincy Avenue for the two-story, two-unit apartment, Najara opened a gate that provided him access to a breezeway that would lead behind the garage and ultimately to the entrances to the two residences on the property. At the time of this incident, three people were home in those residences. There was a reasonable possibility that Najara would encounter more potential victims by accessing this private area. Moscoso indicated he had observed parked cars in the driveway of the residence and was concerned Najara would harm or kill someone based on his personal knowledge, via radio broadcasts, of Najara's random assaults in the minutes prior to his arrival.

Najara demonstrated a willingness to commit random, unprovoked, life-threatening attacks on several people, and showed no intention of abiding by the commands of officers to stop his actions. His response to the presence of the police officers was continued aggressive behavior, throwing a trash can lid at Navarro and imploring multiple officers to shoot him as he proceeded to attempt to enter an occupied residential property. Attempts to use less lethal options were

ineffective. Najara refused to drop the screwdriver – the weapon he had used during his attack of four civilians in the span of less than ten minutes – and did not relinquish it until he was shot by Moscoso.

Based on the totality of the circumstances of Najara's conduct before police arrived and his actions when confronted by the police, Moscoso could reasonably believe that the use of deadly force was necessary to apprehend Najara, who had just committed multiple violent felonies causing injuries to four separate victims, to prevent death or serious bodily injury to others.

CONCLUSION

For the foregoing reasons, we find that Moscoso acted lawfully.