

**Fatal Officer Involved Shooting of Javier Ambriz-Vazquez
Whittier Police Department**

Officer Christian Vila, #518

J.S.I.D. File #21-0228



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

October 13, 2022

MEMORANDUM

TO: CHIEF AVIV BAR
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Fatal Officer Involved Shooting of Javier Ambriz-Vazquez
J.S.I.D. File #21-0228
L.A.S.D. File #021-00064-3199-013

DATE: October 13, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 4, 2021, fatal shooting of Javier Ambriz-Vazquez by Whittier Police Department (WPD) Officer Christian Vila. It is our conclusion that Vila acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on June 4, 2021, at 1:19 p.m. The District Attorney Response Team arrived at 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 of witness interviews, photographs, a 9-1-1 call, radio traffic, and surveillance video submitted to this office by Los Angeles County Sheriff's Department (LASD) Detectives Daniel Gore and John O'Brien.

FACTUAL ANALYSIS

Summary

On June 4, 2021, at approximately 12:21 p.m., a 9-1-1 caller reported a man in a park displaying a handgun and behaving oddly. The caller added that the man, later identified as Javier Ambriz-Vazquez, had just left the park and was walking away on the Whittier Greenway Trail near the

park.¹ WPD Officer Christian Vila, who was on patrol in uniform and driving a marked police car, drove to the location, searched the surrounding area, and saw Ambriz-Vazquez walking on the Trail. Vila drew his service weapon and ordered Ambriz-Vazquez to stop, show his hands, and get on the ground. Ambriz-Vazquez did not comply and instead attempted to draw a gun from his waistband. Vila fired three rounds from his service weapon at Ambriz-Vazquez, striking him twice and killing him. Ambriz-Vazquez was armed with an imitation firearm which resembled a real semiautomatic handgun.

The Scene

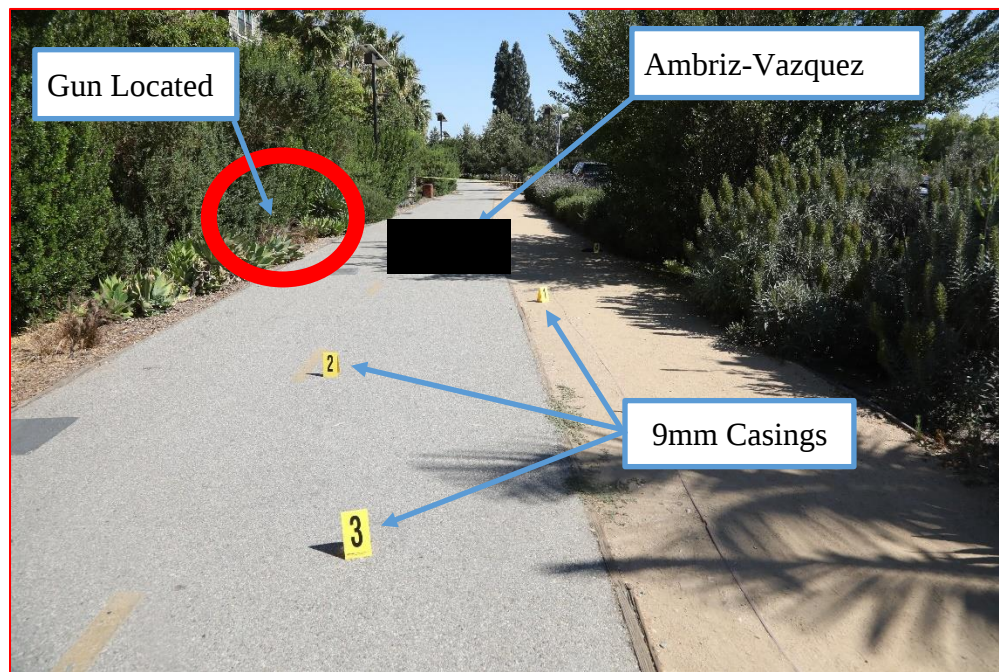


Figure 1 – Photo of the Shooting Scene.

s Statement and the 9-1-1 Call

█ was in the park exercising when he saw Ambriz-Vazquez “standing there staring at the dogs like a pervert at a high school. Just fascinated.” Ambriz-Vazquez had a gun in his waistband and “He wasn’t even trying to hide it.” His shirt was tucked in behind the handle of the gun, which looked like a .45 caliber. █ hid in the bushes, called 9-1-1, and reported his observations.

Radio Traffic

At 12:08 p.m., WPD broadcast that a 9-1-1 caller reported a suspicious man in the park with a handgun in his pocket who was last seen walking on a trail near the park. Vila answered the call at 12:13 p.m. and arrived at the scene at 12:17 p.m. He broadcast that he saw a man who matched the suspect’s description. He radioed that the man had a gun in his pocket and was uncooperative. Vila requested additional officers respond with lights and sirens to his location for backup. At 12:22

¹ The Whittier Greenway Trail is a commuter and recreational bikeway, pedestrian path, and greenbelt that was opened in 2009 and was designed to promote active transportation, outdoor recreation, fitness, and education. Over one half million citizens use the trail annually to walk, run, and ride bikes with their families and pets.

p.m., before assisting officers arrived, Vila reported shots fired. Paramedics were summoned and arrived three minutes after the shooting.

Video Evidence

There is no body camera or dash camera video evidence. Surveillance video in the area does not show the shooting, but shows Ambriz-Vazquez walking from the trail, crossing a street, and continuing to walk down the trail. The video shows Vila arriving moments before the shooting, with Ambriz-Vazquez crossing the street from left-to-right, as shown in the photo below:

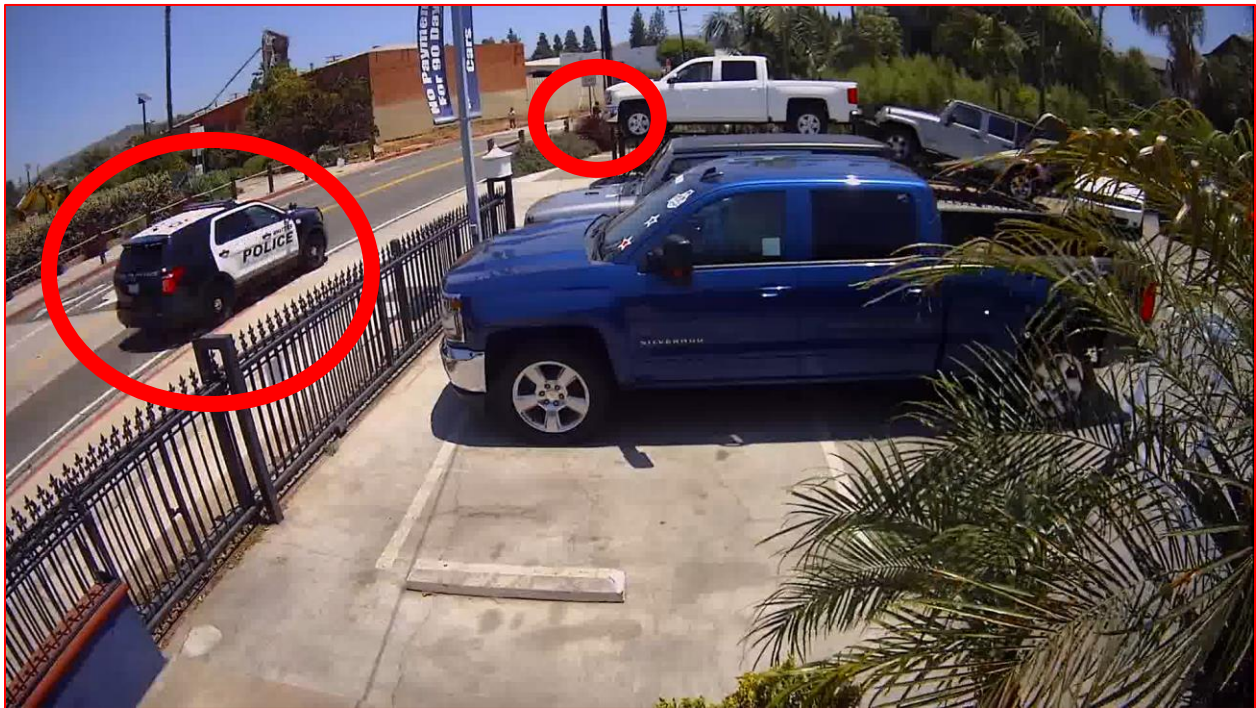


Figure 2- Video of Vila Arriving at the Scene and Ambriz-Vazquez Crossing the Street.

Firearms Evidence

Vila was armed with a 9mm semiautomatic handgun. Three cartridge casings were recovered at the scene and two projectiles were recovered from Ambriz-Vazquez's body, which is consistent with Vila firing three times and striking Ambriz-Vazquez twice.

Ambriz-Vazquez was armed with a black semiautomatic WE Tech "Big Bird" model imitation firearm designed to expel 6mm projectiles. The gun is designed for recreational use and as a training option for military and law enforcement personnel. A photograph of Ambriz-Vazquez's gun is shown below:



Figure 3- Photo of Ambriz-Vazquez's Gun.

The gun is gas powered and defined under California law as a “BB device.”² It is further defined as an “imitation firearm” because it is a BB gun and a device “so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive the device is a firearm.”³

██████████'s Statement

██████████ saw Ambriz-Vazquez walking on the trail before the shooting. He was walking “awkwardly” and did not carry himself like he was “all together.” Vila arrived and ordered Ambriz-Vazquez several times to stop, show his hands, and get on the ground. Ambriz-Vazquez looked over his shoulder at Vila, did not comply, and continued to walk away. Vila came within five to six feet of Ambriz-Vazquez, who put his arms out parallel to the ground and then put them down to his side. ██████████'s view was partially obstructed by the police car and bushes. She saw and heard the shooting happen after Ambriz-Vazquez put his arms down.

██████████'s Statement

██████████ said she frequently walks on the trail with her family. Before the shooting, she was walking on the trail with her husband ██████████, and sister-in-law ██████████, when she saw Ambriz-Vazquez “speed walking” on the trail toward them. Ambriz-Vazquez had an “unsteady” walk, looked “homeless,” and was “messy.” Vila was following Ambriz-Vazquez, who was trying to pull something out of the right side of his waistband with both hands as he turned and looked at Vila. Vila shouted, “Stop!”, ordered Ambriz-Vazquez to put his hands up, and drew his service weapon as Ambriz-Vazquez struggled with the object in his waistband. It appeared to ██████████ that Ambriz-Vazquez was going to draw a gun from his waistband. She was concerned and stopped walking toward Vila and Ambriz-Vazquez. Vila was three to four feet behind Ambriz-Vazquez

² Penal Code section 16520.

³ Penal Code section 16700(a).

when she heard gunshots. [REDACTED] added, “The officer did the right thing because the (suspect) could have hurt us.”

[REDACTED]’s Statement

[REDACTED] said he was walking on the trail with his wife and sister and listening to music on his earphones when his wife suddenly stopped and told him to pay attention. [REDACTED] saw a man “speed walking” on the trail toward them. A uniformed police officer was following the man and pointing a gun at him as the man reached into his waistband. [REDACTED] stated he believed the man was trying to remove a gun from his waistband. Then he heard gunshots.

[REDACTED]’s Statement

[REDACTED] stated she was walking on the trail with her brother and sister-in-law when she saw a uniformed police officer following a “homeless dude” who “was not all there” and was “acting weird.” The man was speed walking away from the officer. The officer said something to the man, but she could not discern the words. The man lifted his shirt several times like he was trying to get something. The officer repeatedly said something to the man, who ignored the officer and kept walking away. [REDACTED] heard gunshots and saw the man fall on his face. She saw the officer remove a black handgun from the man’s waistband and throw it into the bushes.

Officer Christian Vila’s Statement

Vila did not provide a statement regarding the circumstances of the shooting, on the advice of his attorney.

Autopsy

On June 7, 2021, Robyn Parks, M.D. performed a postmortem examination of Ambriz-Vazquez’s remains and formed the opinion that Ambriz-Vazquez died of multiple gunshot wounds to the torso, caused by two projectiles.

The first projectile entered near Ambriz-Vazquez’s left armpit and traveled across his chest from left to right and downward with the projectile recovered in the right chest. The second projectile entered Ambriz-Vazquez’s left back, and traveled left to right and downward with the projectile recovered in the right abdomen.

The trajectory of those bullets is consistent with Vila firing from behind and to the left oblique of Ambriz-Vazquez and is approximated by the red arrows in the diagram below:

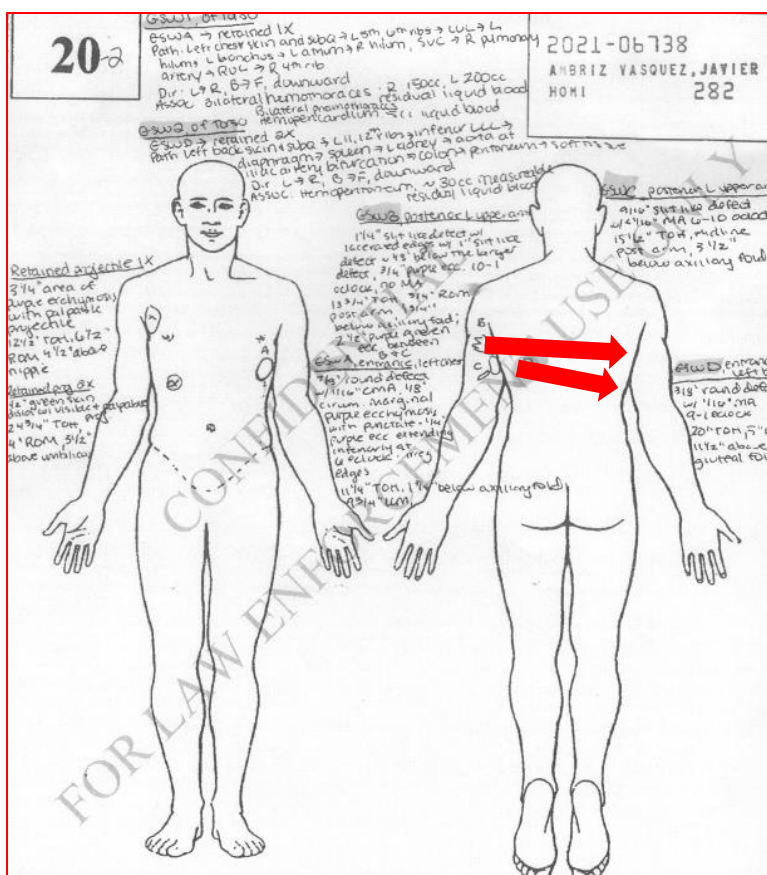


Figure 4- Coroner Diagram.

A toxicology analysis was performed, and it was determined that Ambriz-Vazquez had the presence of THC in his bloodstream at the time of his death.

LEGAL ANALYSIS

The Law

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.

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 section 835a(c)(1)(A) and (B).

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) and (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).

In evaluating whether a police officer's use of deadly 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 '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 judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

Analysis

The evidence presented shows that Ambriz-Vazquez was armed with a BB device that appeared to be an actual firearm. When Ambriz-Vazquez displayed that gun in public, a witness believed the gun was real and called 9-1-1. The perceived deadly threat that Ambriz-Vazquez presented was palpable and caused the caller to hide in the bushes while making the 9-1-1 call.

Vila responded and based on the 9-1-1 call, he could reasonably believe he was encountering an armed suspect, which was confirmed later when Vila recovered a gun from Ambriz-Vazquez's waistband.

There was no way at the time, however, for the 9-1-1 caller or Vila to know that Ambriz-Vazquez's gun was actually a BB device and an imitation firearm, and this led to a deadly result. This is precisely the scenario addressed by the legislature in 1996 when it passed SB-199, a new gun law to address the danger presented to law enforcement by imitation firearms. Penal Code section 16700(a) was amended to expand the definition of imitation firearms and, in passing that new law, the legislature noted the following rationale regarding the control of imitation firearms, including BB guns:

"Imitation guns are deliberately fabricated to be indistinguishable from real firearms. Law enforcement officers have extreme difficulty distinguishing these fake guns from lethal weapons, particularly when officers must react within seconds to emergency situations. One of the primary dangers posed by replicas is that such guns are used by children and young adults who may not comprehend the

seriousness of displaying them around unsuspecting law enforcement officers or around armed individuals. As a result, officers and community residents can find themselves in precarious situations when unable to distinguish replica guns from handguns and assault weapons. On October 22, 2013, a thirteen-year-old boy from Santa Rosa was tragically shot and killed by Sonoma County deputies who mistook the plastic airsoft gun he was carrying for an actual AK-47. This tragedy is neither new nor uncommon. A 1990 study commissioned by the Department of Justice found that there are well over 200 incidents per year in which imitation guns are mistaken for real firearms.”

Here, the evidence shows that Vila approached Ambriz-Vazquez and ordered him to stop, show his hands, and get on the ground. Ambriz-Vazquez, who was behaving oddly and had the presence of THC in his bloodstream, did not comply. Instead, according to the independent witnesses, Ambriz-Vazquez reached into his waistband. Vila, who had reliable information Ambriz-Vazquez was armed with a gun in his waistband, was walking behind and to the left of Ambriz-Vazquez and, from that perspective, likely was able to see Ambriz-Vazquez reaching into his waistband and attempting to draw a gun, as the witnesses perceived. Vila in fact located a realistic appearing replica gun in Ambriz-Vazquez’s waistband after he was shot and on the ground. Under these rapidly unfolding circumstances, it was reasonable for Vila to believe that Ambriz-Vazquez was armed, was attempting to draw a gun, and presented a deadly threat to him and the pedestrian witnesses who were nearby and directly in Ambriz-Vazquez’s path. Moreover, it was reasonable for Vila to believe his use of deadly force was reasonably necessary within the meaning of Penal Code section 835a(e)(1).

The fact that the firearm was later determined to be a replica does not alter the reasonableness of Vila’s actions. The right of self-defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal. App.2d 577.

CONCLUSION

Based on a review of the totality of the circumstances in this case, we find Vila believed it was necessary to fire his service weapon at Ambriz-Vazquez to defend against an imminent threat of death or serious bodily injury to him or others.