

**In-Custody Death of Jose Garcia  
South Gate Police Department**

**Officer Isidro Munoz, #10084**

**J.S.I.D. File #16-0017**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**September 21, 2017**

**MEMORANDUM**

TO: CHIEF RANDY DAVIS  
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CAPTAIN KEVIN GORDON  
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: In-Custody Death of Jose Garcia  
J.S.I.D. File #16-0017  
S.G.P.D. File #15-07728  
C.H.P. File #00978-509-15

DATE: September 21, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 13, 2015, in-custody death of Jose Garcia. It is the conclusion of this office that South Gate Police Department (SGPD) Officer Isidro Munoz acted lawfully when he used deadly force to apprehend Garcia, a dangerous fleeing felon.

This in-custody death incident was presented to this office for review on January 6, 2016. The District Attorney's Response Team did not respond to the scene of this incident due to the fact that, although Garcia was apprehended on August 13, 2015, he was released from the hospital (after receiving medical treatment for injuries resulting from this incident) directly into a rehabilitation center, and remained in a rehabilitation center until his demise on November 26, 2015.

The following analysis is based on investigative reports and witness statements taken during the investigation by the California Highway Patrol (CHP) and submitted to this office by Investigator Ivan Sanchez. The reports also include photographs, diagrams, and radio communication recordings. The voluntary statement of Officer Munoz was considered in this analysis.

**FACTUAL ANALYSIS**

On August 9, 2015, at approximately 7:24 p.m., officers from the Baldwin Park Police Department (BPPD) were dispatched to the Kaiser Permanente Hospital located in the City of Baldwin Park to investigate the circumstances surrounding the stabbing of a female victim, later identified as Agxa R., who was dropped off in the hospital parking lot. BPPD officers responded to the emergency room where they made contact with the victim, Agxa R., who reported that her boyfriend, Jose

Garcia, assaulted her earlier that afternoon in her South Gate apartment. Agxa R. informed the officers that Garcia repeatedly punched her all over her body, and struck her on the head with a cell phone. Eventually, Garcia forced Agxa R., at knifepoint, into the backseat of her own vehicle, a 2007 Chrysler 300.

Garcia drove Agxa R.'s vehicle away, and pulled up to a white pickup truck which was parked nearby. A man, later identified as Max P., exited the truck and Garcia ordered him to sit in the rear seat of Agxa R.'s vehicle. Max P. then got in and sat next to Agxa R. Shortly thereafter, Max P. stated he did not want to hurt Agxa R., and got out of the vehicle. Garcia then drove off with Agxa R. still in the backseat of her vehicle, and began driving around the City of South Gate.

While inside the vehicle, Garcia continued to physically assault Agxa R., and at one point, repeatedly stabbed her on the back of her neck.

Agxa R. sustained five stab wounds to the rear of her neck, and multiple large bruises throughout her body, including her arms, face, and legs. As a result of the deep stab wounds to her neck, Agxa R. sustained severe nerve damage.



Knife Wounds Sustained by Agxa R.

Eventually, Garcia drove Agxa R. to the Kaiser Permanente Hospital, where he dropped her off in the hospital parking lot and drove away. BPPD officers completed a crime report, which was forwarded to the SGPD because the reported crimes had occurred in the SGPD's jurisdiction.

SGPD officers responded to Agxa R.'s residence to investigate the circumstances surrounding the stabbing. SGPD detectives also conducted an interview of Agxa R. later that evening, where she provided a more detailed account of the assault.

On August 11, 2015, SGPD detectives conducted surveillance of the areas Garcia was known to frequent. At approximately 8:00 p.m., SGPD Sergeant Manny Arana observed Garcia driving a maroon Volkswagen Touareg, in the parking lot of the Grand Park Inn Motel located in the City of Baldwin Park. Arana and other detectives from the SGPD attempted to stop the vehicle. SGPD detectives activated their lights and sirens, and surrounded Garcia, boxing his vehicle in. The detectives, wearing clearly marked police vests, exited their vehicles, identified themselves as police officers, and ordered Garcia to put his hands up. Garcia ignored the officers' commands and instead, led officers on a vehicle pursuit. Garcia drove his vehicle over the curb, and onto the sidewalk. Garcia then accelerated his vehicle to over 60 miles per hour as he drove eastbound onto Garvey Avenue. Garcia drove past a posted stop sign and onto the westbound Interstate 10 (I-10) highway, where he accelerated to speeds in excess of 85 miles per hour.

As Garcia approached a group of vehicles that were slowing down in front of him, Garcia turned his head lights off and swerved to the left, nearly colliding with the back of a pickup truck. Garcia then immediately swerved from the number one lane onto the right shoulder. Garcia drove westbound on the shoulder of the I-10 highway, passing vehicles in the far right lane at a speed in excess of 70 miles per hour. Garcia then swerved back into the number three lane, nearly colliding with two other vehicles that slammed on their brakes to avoid colliding with Garcia's vehicle.

Garcia swerved back to the right, entering the transition road for the northbound Interstate 605 (I-605) highway, where he swerved to the left exiting the paved section of the transition road. Garcia drove approximately 100 feet through an unpaved dirt field before re-entering the paved road. Garcia then traveled northbound on the I-605 highway, with no vehicle lights illuminated, and was able to evade capture.

On August 12, 2015, at approximately 2:00 a.m., SGPD Detective Juana Brown was advised by the Upland Police Department that they had located Agxa R.'s stolen vehicle. Upland Police Department had arrested the driver, Max P., and one passenger. Later that morning, Brown interviewed Max P. and obtained additional details surrounding Garcia's assault on Agxa R.

On August 12, 2015, Brown interviewed Maria P., Garcia's wife, while Maria P. was in custody as a suspect in the ongoing investigation into the assault on Agxa R. Maria P. informed Brown that Garcia told her that he would not "rot in jail." Garcia made it clear to Maria P. that he would not be taken alive by police, even if he had to kill himself.

Meanwhile, Christian G., Garcia's son, contacted the San Dimas Sheriff's Department to report that Garcia had showed up to the family residence in Azusa at about 9:30 a.m. Christian G. reported that his brother, Evan G., came home to find Garcia in the backyard. Evan G. saw the tip of a gun protruding from under Garcia's long sleeve. Garcia fled when Evan G. told Garcia he was calling the police. Brown was notified of this information, and in turn, notified all officers surveilling Garcia to take extra precautions, advising that Garcia was armed, dangerous and had indicated he would not be taken alive.

At about 11:30 p.m. later that same day, Christian G., called to advise Brown that he saw Garcia drive past his aunt's residence located in Azusa. Christian G. advised that Garcia was driving his maroon Volkswagen Touareg. SGPD Sergeant Manny Arana also observed Garcia drive by the same residence, and notified the Azusa Police Department (APD) that Garcia was in the area.

At approximately 12:27 a.m., by now August 13, 2015, Officer Louie Hernandez of the APD was in the area of Payson Street and Lark Ellen Avenue, when he observed Garcia's Volkswagen Touareg traveling in the area. Garcia drove through a stop sign before quickly accelerating at the intersection of Lark Avenue and Gladstone Street. Hernandez activated his lights and siren as he went in pursuit of Garcia's vehicle. Garcia continued eastbound on Gladstone Street at a speed of approximately 70 miles per hour. As Garcia reached Azusa Avenue, three additional APD police vehicles joined the pursuit.

Garcia drove through a red light at Azusa Avenue at approximately 70 miles per hour, and continued eastbound on Gladstone Street at a speed of approximately 90 miles per hour. Garcia proceeded southbound on Cerritos Avenue reaching speeds up to 80 miles per hour. Garcia went through another red light at Citrus Avenue. APD Officer Jorge Landeros, the second unit in the pursuit, radioed communications that he believed Garcia may have discarded an unknown object in

the area of Covina Boulevard and Citrus Avenue.<sup>1</sup> Garcia drove through two additional red lights on Citrus Avenue at a speed of approximately 70 miles per hour.

The pursuit entered the City of Covina. Garcia continued driving at a speed of 40-50 miles per hour as he drove through an additional red light, and stop signs in the area. Garcia then began accelerating, as he continued westbound on Badillo Avenue traveling at a speed of approximately 80 miles per hour.

Garcia continued northbound on Lark Ellen Avenue at a speed of approximately 80 miles per hour. When Garcia reached Cypress Avenue, Garcia drove through another red light, nearly colliding with a vehicle that was eastbound on Cypress Avenue.

Garcia drove through another red light at Arrow Highway, and failed to stop at a stop sign as he was traveling 80 miles per hour. As Garcia reached Azusa Avenue, he went through another red light at 80 miles per hour causing his vehicle to become airborne, and landing with the front end striking the pavement of Azusa Avenue. Numerous sparks emitted from the undercarriage of Garcia's vehicle as it slid from side to side. Garcia regained control of the vehicle and continued eastbound on First Street with all of the exterior lights turned off.

Garcia drove through another red light before entering the eastbound Interstate 210 (I-210) highway. On the freeway, Garcia accelerated to 95 miles per hour, but as he reached Grand Avenue, he exited the freeway and slowed down to approximately 20 miles per hour. Garcia then drove over two raised concrete medians, and proceeded the wrong way down the on-ramp on Grand Avenue at approximately 50 miles per hour.

Garcia continued to drive on the wrong side of the roadway at speeds of approximately 75 miles per hour until he reached Arrow Highway, at which time he drove in the correct lane of travel. However, shortly thereafter, Garcia turned northbound on Grand Avenue and, again crossed into the opposing lanes of traffic. Officers from the Glendora Police Department deployed a tire deflation device, which caused the tires on the left side of Garcia's vehicle to become flat. The tires began coming apart causing Garcia to slow down to approximately 30-40 miles per hour.

As Garcia reached the westbound I-210 highway on-ramp, he drove the wrong way onto the freeway. Due to the potential danger to oncoming freeway traffic, the officers' focus shifted from apprehending Garcia, to warning oncoming traffic of the potential danger posed by Garcia's oncoming vehicle.

Still traveling in the wrong direction, Garcia moved over to the carpool lane, and came to a stop in the carpool lane of the westbound I-210 highway facing east. Garcia suddenly exited his vehicle, and ran toward the center divider. As Garcia jumped over the center divider wall, Munoz observed a reflection of a metallic object in Garcia's waistband, which led Munoz to believe that Garcia was armed with a handgun. Garcia crouched down slightly before quickly running in the direction of numerous civilian motorists who were stopped on the right shoulder of the freeway, and in the direction of SGPD Sergeant Mario Saldivar. Saldivar had also been in pursuit of Garcia, and his vehicle was now to the right of Munoz, and slightly in front of him. As Garcia ran, he kept his hands down, making it difficult for officers to see if he had anything in his hands.

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<sup>1</sup> Officers from the APD searched the area shortly thereafter for a possible weapon that may have been discarded, but no weapon was located.

Munoz then accelerated his vehicle, and struck Garcia in an attempt to stop him.<sup>2</sup> Garcia went onto the hood of Munoz's vehicle, breaking the windshield. Garcia was then catapulted approximately ten to twenty feet in the air, before landing on the ground.

Paramedics arrived shortly after the collision, and transported Garcia to the Los Angeles County – University of Southern California Medical Center (LAC - USCMC) where he was treated for his injuries. [REDACTED]

Garcia was subsequently charged in case number VA140232 with numerous felony offenses, including charges of attempted murder, in violation of Penal Code section 664/187; kidnapping, in violation of Penal Code section 207; carjacking, in violation of Penal Code section 215; spousal battery, in violation of Penal Code section 273.5; criminal threats, in violation of Penal Code section 422; and robbery, in violation of Penal Code section 211.<sup>3</sup> Garcia expired before being arraigned on the charges.

On September 17, 2015, Garcia was transferred to the California Healthcare and Rehabilitation Center where he remained until his demise on November 26, 2015. [REDACTED]

[REDACTED] Dr. Suman Patel, who signed Garcia's death certificate, attributed the immediate cause of death to cardiopulmonary arrest and arteriosclerotic heart disease. Other significant conditions contributing to death, but not resulting in the underlying cause, were respiratory failure, encephalopathy, and intracerebral hemorrhage.

### Physical Evidence

The collision occurred on the I-210 highway, west of Lone Hill Avenue, in the City of Glendora. A concrete median barrier separated the eastbound lanes from the westbound lanes of the I-210 highway.

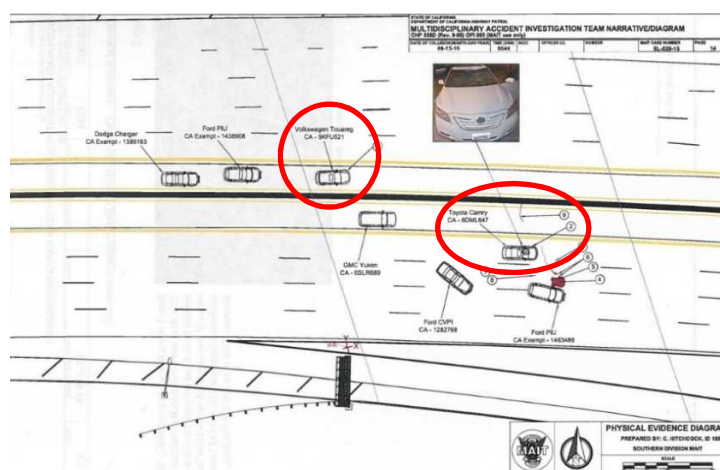


Diagram Depicting Position of the Vehicles at the Termination of the Pursuit

<sup>2</sup> Munoz did not recall his precise speed of travel at the time of the impact. Munoz recalled coming to a complete stop, before speeding up "a little bit." APD Corporal Sandoval estimated Munoz was traveling at approximately 35-40 miles per hour, while APD Officer Hernandez estimated Munoz was traveling at approximately 30-40 miles per hour.

<sup>3</sup> Case VA140232 was filed on October 7, 2015.

Garcia's vehicle, a Volkswagen Touareg, was located in the high-occupancy vehicle (HOV) lane of westbound Interstate 210, facing east.



Garcia's Volkswagen Touareg with Damaged Wheels

The vehicle being driven by Munoz, a Toyota Camry sedan, was located in the number one lane of eastbound I-210, facing east.



Officer Munoz's Undercover Toyota Camry

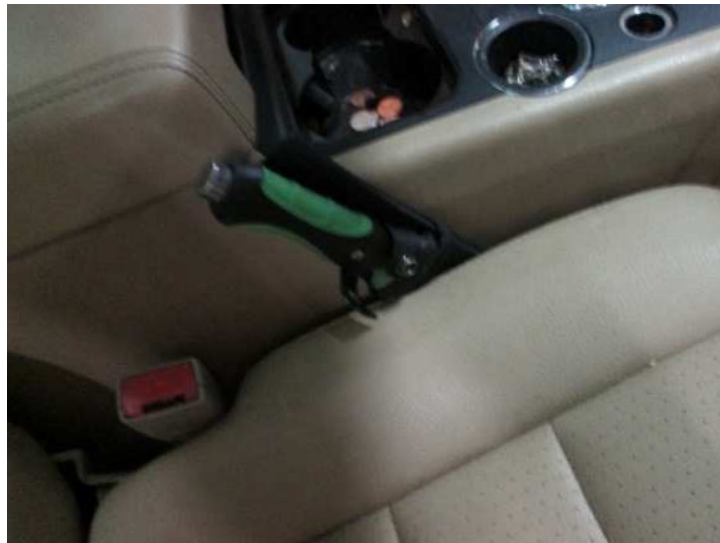
The Camry sustained contact damage to the windshield. The entire windshield was shattered. Contact damage was also observed on the leading edge of the roof line. The entire leading edge of the roofline was buckled rearward and downward.



Shattered Windshield of the Toyota Camry

The California Highway Patrol Multidisciplinary Accident Investigation Team (CHP MAIT) conducted an investigation into the collision. As part of the investigation, CHP investigators conducted an examination of the Camry following the collision, and attempted to retrieve collision data, such as the speed of the vehicle at the time of the collision. However, the MAIT investigators were unable to retrieve the collision data from the vehicle because no data relevant to the collision was captured by the Camry's recording mechanisms.<sup>4</sup>

Investigators located a large hunting knife wedged in between the front passenger seat and the center console of Garcia's vehicle.



Knife Located in Garcia's Vehicle

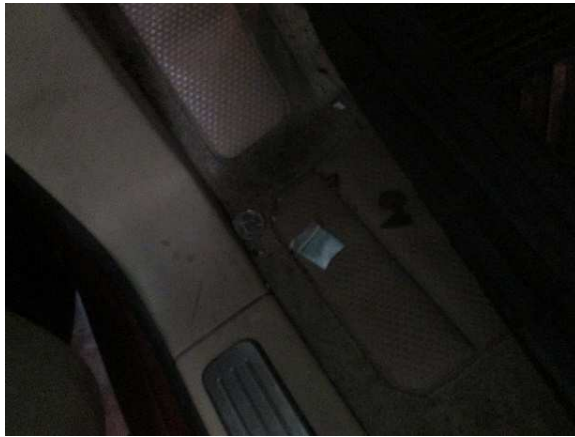
A small plastic baggie containing methamphetamine was recovered from under the floor mat, on the front floorboard of the driver's side.<sup>5</sup>

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<sup>4</sup> Per CHP investigator Jeff Bell, the collision event was not mechanically "significant" and did not trigger the vehicle's data recording mechanisms. For instance, neither the Camry's driver nor passenger airbags were deployed during the collision.

<sup>5</sup> The contents of the baggie were analyzed, and found to contain 0.2320 net weight grams of methamphetamine.





Baggie of Methamphetamine Located in Garcia's Vehicle

### **Statement of Agxa R.**

Agxa R. and Garcia had been involved in a dating relationship since February 2015. About two weeks prior to the incident, Agxa R. discovered Garcia was married, and contacted Garcia's wife, Maria P., by phone. Agxa R. informed Maria P. she was having an affair with Garcia, and Agxa R. and Maria P. spoke several times after that.

On August 9, 2015, at approximately 3 p.m., Garcia entered Agxa R.'s apartment asking, "What did you do?"<sup>6</sup> Garcia pushed Agxa R., cornering her into the bathroom where he punched, kicked, and strangled her. Garcia told Agxa R. she was going to find out why he was called "El Diablo."<sup>7</sup> As Garcia was assaulting Agxa R., Garcia put Maria P. on speakerphone. Agxa R. heard Maria P. urge Garcia to kill her. When Agxa R. asked Garcia why he was doing this to her, Maria P. responded on the speaker phone, "You should have never called me. This is what happens to bitches like you."

After assaulting Agxa R. for more than an hour, Garcia pulled a knife out, and walked Agxa R. at knifepoint to her own vehicle. With Agxa R. in the backseat of her vehicle, Garcia drove Agxa R.'s vehicle a short distance to a white pickup truck, which was parked just down the street from Agxa R.'s home. Garcia instructed an unknown man, later identified as Max P., to exit his truck, and sit with Agxa R. in the rear seat. Max P. stated he did not want to hurt Agxa R., and soon exited the vehicle. Garcia then drove off in Agxa R.'s vehicle, and began driving around the City of South Gate. As he drove, Garcia grabbed Agxa R. by the hair and struck her head against the hard center console of the vehicle.

At one point, Agxa R. felt a hard blow to the back of her neck and back, and felt something warm running down her face. Agxa R. felt severe pain, and realized Garcia had stabbed her. Agxa R. began to feel weak from the blood loss, and felt she was about to lose consciousness. Agxa R. pleaded with Garcia not to let her die. After approximately four hours of holding her hostage in the vehicle, Garcia finally drove Agxa R. to the Kaiser Permanente Hospital where he dumped her in the parking lot, and drove away.

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<sup>6</sup> Garcia had keys to Agxa R.'s apartment because he would occasionally stay the night.

<sup>7</sup> "El Diablo" is Spanish for "The Devil." Agxa R. stated that although Garcia was not a gang member, he associated with the "El Monte Flores" gang.

## **Statement of Max P.**

Max P. was interviewed while in custody on August 11, 2015. Max P. telephonically contacted Garcia, who he knew as "El Diablo," regarding a vehicle Garcia was selling. Max P. subsequently met Garcia in the City of El Monte to purchase the vehicle, a 2007 Chrysler 300 (Agxa R.'s vehicle). Although Max P. had met Garcia approximately one year prior, he did not really keep in touch with him.

On August 9, 2015, Max P. purportedly accompanied Garcia to repossess a vehicle in the City of South Gate.<sup>8</sup> When they arrived at the location, Garcia parked his truck, and directed Max P. to wait inside the truck. Approximately an hour later, Garcia drove next to his truck in a gray vehicle (Agxa R.'s vehicle), stopped next to the truck, and ordered Max P. to get in the back seat of the gray vehicle. Max P. then observed a woman he had never met, Agxa R., sitting in the back seat crying. As Garcia was driving, Garcia was breathing heavily and held Agxa R. by her hair, pinning her down to the back seat. Garcia ordered Max P. to hold onto Agxa R., and not let her go. Max P. gently held Agxa R.'s arm, preventing her from running out of the car. Max P. told Garcia to let Agxa R. go, but Garcia would not listen.

Garcia circled around the block, and told Max P. that he needed to go to an apartment unit in the front (Agxa R.'s landlord's unit), and take the resident's truck and money. Max P. did not want to do what Garcia was asking him to do, but was afraid to tell him no. Max P. believed Garcia was capable of killing him if he did not do as he was told.

Garcia drove Agxa R.'s vehicle to the rear of the residence, and ordered Max P. out of the vehicle. Max P. then walked to the front apartment unit, and told an unknown man (Agxa R.'s landlord) that he was not going to hurt him, but was sent there to take his truck and money.<sup>9</sup>

Max P. walked back to Garcia's truck, and drove away in the truck following Garcia, who was driving Agxa R.'s vehicle. Max P. followed Garcia to a nearby gas station where Garcia gave Max P. twenty dollars for gas, then drove off with Agxa R. still in the back seat of her vehicle. Garcia told Max P. that he was going to drop Agxa R. off at her mother's house, and would meet him back at a motel in the City of Baldwin Park.

Later that same day, Max P. met with Garcia at an In-N-Out Burger located in Baldwin Park. Max P. noted that Garcia had changed clothes. Garcia slammed his drink on the table and told him, "You don't know me. I don't know you. And you did not see anything." Garcia told Max P. that if he found out that Max P. talked to anyone, he would kill him and his family. Max P. continued to communicate with Garcia via cell phone until the evening of August 10, 2015, when they met up for the purchase of a vehicle. Garcia told Max P. he would sell him a 2007 gray Chrysler 300 for \$1,000 dollars.<sup>10</sup> Garcia was going to take payments from Max P., and once Max P. was done paying, Garcia would sign over the pink slip.

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<sup>8</sup> Later in the interview, Max P. stated he went with Garcia to move some furniture.

<sup>9</sup> Apparently, the man closed the door on Max P., and Max P. made no further efforts to follow through with Garcia's orders.

<sup>10</sup> Max P. admitted he recognized the vehicle as the same one Agxa R. had been in earlier, but thought the vehicle belonged to Garcia.

Max P. informed SGPD detectives that Garcia was a bad person, a hit man, and a drug dealer. Max P. stated people pay Garcia to take care of business. Max P. also stated he knew Garcia was looking to obtain several guns.

### **Statement of Maria P.**

Maria P. was interviewed while in custody on August 12, 2015. Maria P. and Garcia have been cohabitating for twenty-four years and have three children in common, Evan G., Christian G. and Leslie G. Garcia had been physically abusive to Maria P. for the past several years. Maria P. exhibited several bruises on her thighs, which she stated were caused by Garcia. Garcia had also recently grabbed her face and poked her right eye with his finger, giving her a black eye.

A few weeks back, Agxa R. contacted Maria P. by cell phone, inquiring who she was and why she was calling Garcia. Maria P. informed Agxa R. she was Garcia's wife. Agxa R. responded that she was not aware Garcia was married, but continued to contact Maria P. via phone regarding Garcia. Maria P. ignored Agxa R. until August 9, 2015, when Agxa R. once again contacted her, and she learned that Agxa R. had also contacted her minor daughter via Instagram. Maria P. then complained to Garcia about Agxa R.'s contact with both her and their daughter. Garcia got upset, and told Maria P. that Agxa R. was a prostitute and she had nothing to worry about. When Maria P. told Garcia that she did not want to continue their relationship, Garcia responded that Agxa R. was out of line, that he had warned her not to mess with his family, and that he was going to "fix this problem." Maria P. noted that Garcia did not appear to be in his right mind when he spoke, because he was talking through his teeth, which made her suspect that he was possibly under the influence of a controlled substance. Maria P. was aware that Garcia had recently been arrested for possession of methamphetamine.<sup>11</sup>

On August 9, 2015, Garcia repeatedly called Maria P. but she did not answer his calls. At about 3:00 p.m., Maria P. finally answered her phone, and heard Garcia yelling at someone. Garcia put Maria P. on speaker phone, and ordered Agxa R. to apologize to Maria P. Maria P. then heard Agxa R. say she was sorry. Garcia told Maria P. that he was going to "fix this problem," and would then go home. Maria P. denied she ever told Garcia to kill Agxa R., or that she knew Garcia was assaulting Agxa R. during their conversation.

Later that evening, Garcia arrived at their residence and told her that he hurt a woman really bad, and might have killed her. Garcia instructed Maria P. to meet him at a nearby store that next morning so that he could give her some money, and left. When Maria P. met with Garcia the next morning, Garcia told Maria P. that he beat Agxa R. like he would beat a man, and stabbed her in the back of the neck. Garcia told Maria P. he needed to leave, but needed to stick around the next three days prior to doing so. Garcia also told Maria P. that he would not rot in jail, that he would not be taken alive by police, even if he had to kill himself.

### **Statement of Mario Saldivar**

Saldivar is a supervisor assigned to the SGPD Crime Impact Team, which assists detectives. On August 12, 2015, Saldivar learned SGPD detectives were looking for Garcia, who had recently beaten and stabbed his girlfriend, and was wanted for attempted murder. Detectives were

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<sup>11</sup> Garcia's rap sheet reflects an arrest on July 29, 2015, for a violation of Health and Safety Code section 11377(a), possession of a controlled substance.

conducting surveillance at different locations, and were actively searching for Garcia. SGPD Sergeant Jonathan Sekiya informed Saldivar that Garcia had been seen the night before, and an attempt had been made to apprehend him, but due to Garcia's erratic and unsafe driving, he escaped capture.

Sekiya also informed Saldivar that Garcia was in possession of a gun. Garcia's son had seen Garcia with a gun, and advised SGPD officers. Further, Saldivar was informed that Garcia told his wife, Maria P., that he was not going back to jail; that he was going to collect some money in a few days, and was then going to leave with his kid. Saldivar was also informed that Garcia had been using methamphetamine. Based on all this information, Saldivar believed Garcia was a very dangerous individual who was willing to do anything to get away from the police.

On August 12, 2015, Saldivar was tasked with getting a team together to relieve the SGPD detectives who were conducting surveillance, and to continue surveillance efforts to locate Garcia. Munoz was one of the officers assigned to the surveillance detail, and was issued an undercover white Toyota Camry sedan. Saldivar briefed APD and SGPD officers on Garcia, and how dangerous he was. Saldivar advised the officers, "You need to be careful. This guy is dangerous because this guy is at a dangerous point now. He has the nickname of 'El Diablo,' which means he could be pretty dangerous. They tried to box him in, and he got away."

At approximately 6:00 p.m., Saldivar and Munoz were surveilling Garcia's sister's house, near Alameda Avenue and Azusa Avenue, when Arana advised via radio that he saw Garcia in a small burgundy SUV with a broken headlight drive past the sister's house, but could not see where the vehicle went.<sup>12</sup>

Shortly thereafter, SGPD officers were advised that APD officers were in pursuit of Garcia. The pursuit was northbound on Sunflower Avenue from Arrow Highway. Saldivar heard SGPD officers advise over the radio that Garcia was driving eastbound in the westbound I-210 highway lanes of traffic. Saldivar decided not to follow the wrong way on the freeway, and entered the eastbound I-210 highway. An APD vehicle and Munoz also entered the eastbound I-210 highway.

Once on the freeway, Munoz's vehicle was in the carpool lane. Saldivar was to the right of Munoz, and slightly in front of him, between the number one and two lanes of traffic. The APD police vehicle was to Saldivar's right. Garcia's vehicle was traveling eastbound in the westbound center median of the I-210 highway at approximately twenty to thirty miles per hour. Saldivar then saw Garcia's vehicle, which was ahead of him, come to a stop.

Garcia exited his vehicle, ran slightly east, jumped over the center divider wall, and began running on the eastbound side of the freeway.

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<sup>12</sup> Garcia's vehicle was, in fact, a maroon Volkswagen Touareg.



Center Divider Wall of Interstate 210 Highway

After a few feet, Garcia began running in a southeasterly direction across the eastbound lanes. Given Garcia's criminal history, Saldivar did not want Garcia to get away. As he was considering hitting Garcia with his vehicle to stop him, Saldivar heard the rev of an engine to his left. Saldivar looked to his left and slightly back, and saw Munoz's Camry strike Garcia. The Camry's windshield broke, and Garcia went onto its hood, before being vaulted approximately 10-20 feet in the air, and landing on the ground in front of Saldivar. Garcia rolled a couple of times. Saldivar veered to the right, and stopped his vehicle next to Garcia. Garcia was handcuffed and checked for weapons, but none were found.

### **Statement of Officer Isidro Munoz**

Munoz first became aware of Garcia through a departmental "major incident" email. The email indicated that Garcia kidnapped, beat, and stabbed Agxa R. multiple times on her neck and back. The following day, Munoz was on duty when he heard a radio broadcast that Garcia was being pursued by SGPD but had evaded arrest.

On August 12, 2015, Saldivar advised Munoz that Munoz would be relieving the narcotics team, which had been surveilling Garcia. Munoz and Officer Ricardo Navarro were assigned to work plain clothes detail.<sup>13</sup> Munoz and other SGPD officers arrived in the City of Azusa, and were briefed by Arana and Brown. During the briefing, Munoz learned that Garcia had criminal street gang connections, that he was known as "El Diablo," and that one of Garcia's sons had seen him in possession of a gun.

Munoz also learned that Garcia had told his wife, Maria P., that he would rather fight the police than "rot in jail." Lastly, Munoz also learned that Garcia had told his family that within the next two days, he would disappear from the area. Based on everything he learned during the briefing, Munoz had a strong belief, that if not apprehended, Garcia would either hurt one of his fellow officers, or an innocent civilian in his quest to avoid capture by police.

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<sup>13</sup> "Plain clothes" detail meant that Munoz would not be in full police uniform, and would be driving a SGPD undercover, unmarked vehicle. Munoz was wearing a police vest, and was driving a white 2008 Toyota Camry sedan, which was equipped with emergency lights and sirens.

At approximately midnight, while conducting surveillance at one of the target homes, Munoz observed Garcia's Volkswagen vehicle. However, detectives decided not to contact Garcia at that time. The plan was to allow Garcia to exit his vehicle in order to avoid another dangerous pursuit. However, Arana and Munoz lost sight of Garcia's vehicle and were never able to relocate it.

Shortly thereafter, Munoz learned that the APD was in pursuit of Garcia's vehicle. Because SGPD units had no communication with APD units, it took several minutes before Munoz was able to locate the pursuit and join in. Munoz observed Garcia enter the westbound I-210 highway traveling in the wrong direction, and decided to enter the eastbound I-210 highway and parallel the pursuit from the eastbound side. Garcia was driving eastbound in the westbound lanes at a high rate of speed, with his headlights off. Saldivar was driving to the right of Munoz, as they continued on the eastbound I-210 highway paralleling the pursuit. Vehicles on the westbound side of the freeway swerved to avoid colliding with Garcia's vehicle. Civilian traffic on the eastbound side of the freeway yielded to the emergency vehicles, and pulled to the right in the number three and four lanes of the freeway.

Garcia's vehicle came to an abrupt stop, and Munoz positioned his vehicle to the right, and slightly to the rear of Garcia's vehicle. Garcia exited his vehicle, and ran around to the front of his vehicle, which caused Munoz to momentarily lose sight of Garcia. Munoz began to drive forward to regain a view of Garcia, when he saw Garcia run southbound, and jump over the center wall. As Garcia jumped, Munoz "saw a reflection of something metallic" in Garcia's waistband which led him to believe that Garcia was armed with a gun.<sup>14</sup>

Munoz observed Saldivar pull forward, ahead of Munoz. Munoz stated, "I believed Garcia was running towards Saldivar, so I was concerned for his safety, but I was also concerned that there were civilians to our right who had pulled over. That's basically when I decided, I need to stop him, so I drove forward, I accelerated, and I hit him." In fear that Garcia would hurt Saldivar, or that he would carjack or hurt a civilian in an attempt to evade capture, Munoz struck Garcia with his vehicle, causing Garcia to go up in the air, and land face down on the ground.

Munoz considered multiple factors prior to striking Garcia with his vehicle. Munoz took into account the serious nature of the crimes Garcia was wanted for, the information that Garcia could be armed, the information that Garcia would engage in violence with the police to prevent apprehension, the fact that Garcia had already escaped once before, and the potential danger to the immediate public.

Once Garcia fell to the ground, Munoz handcuffed Garcia and patted him down for weapons. Munoz did not find any weapons on Garcia, but noted that Garcia was wearing a metallic belt buckle, and figured that was what he must have seen when Garcia jumped over the center divider.

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<sup>14</sup> Munoz had been briefed that Garcia had a gun. Further, based on his training and experience, Munoz had personal knowledge that gang members and gang associates commonly carry guns.



Garcia's Belt Buckle

## LEGAL ANALYSIS

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

California permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. *Ceballos, supra*, 12 Cal.3d at 479. The following crimes have been deemed forcible and atrocious as a matter of law: murder, mayhem, rape, and robbery. *Id.* at 478.

Homicide is justifiable and not unlawful when committed by a public officer while attempting to arrest any person charged with a felony, which threatens death or great bodily injury, and who is fleeing from justice or resisting arrest. Penal Code §196; CALCRIM No. 507.

California law permits the use of deadly force in self-defense or in the defense of others if a person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code §197; *People v. Randle* (2005) 35 Cal.4<sup>th</sup> 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4<sup>th</sup> 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 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 does not need to have actually existed. *Id.*

A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. *Scott v. Harris* (2007) 550 U.S. 372; *Plumhoff v. Rickard* (2014) 134 S.Ct. 2012, 2021.

A reasonable belief that danger exists may be formed by reliance on appearances. *Davis v. Freels* (7<sup>th</sup> Cir. 1978) 583 F.2d 337, 341. No right is guaranteed by federal law that one will be free from

circumstances where he will be endangered by the misinterpretation of his acts. *Sherrod v. Berry* (7<sup>th</sup> Cir. 1988) 856 F.2d 802, 805 (quoting *Young v. City of Killen, Tx.* (5<sup>th</sup> Cir. 1985) 775 F.2d 1349 at 1353).

Where the peril is swift and imminent and the necessity for action is immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. *People v. Collins* (1961) 189 Cal.App.2d 575.

In determining the reasonableness of an officer's actions, allowances must be made 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, 396-398.

The evidence examined in this investigation shows that Garcia violently assaulted Agxa R. before kidnapping, and stabbing her multiple times on the back of her neck, almost killing her. Garcia, himself, believed that he may have killed Agxa R. as evidenced by the statements he made to his wife, Maria P. Hence, Garcia knew that the police were looking to apprehend him on very serious charges, which would likely result in a lengthy prison term. This prompted Garcia to tell Maria P. that he would "not rot in jail." Further, Garcia's son, Evan G., had seen Garcia armed with a gun, and promptly relayed that information to investigators. Max P. also informed investigators that Garcia was looking to obtain several guns, and that he was a dangerous individual. Agxa R. likewise, informed investigators that Garcia was known as "El Diablo," and was associated with the "El Monte Flores" gang.

Garcia was desperate to evade arrest, as evidenced by his statements to his wife, and by his actions when he led SGPD officers on *two* separate dangerous vehicle pursuits, where he placed innocent motorists in danger by driving at high speeds through multiple red lights and stop signs, and driving on the wrong side of the roadway.

The evidence examined shows that Officer Munoz was fully aware of Garcia's criminal history, potential danger, and recent possession of a handgun when he encountered him fleeing and running in Sergeant Saldivar's direction, as Garcia once more attempted to evade capture by police. As Garcia jumped over the freeway center median wall, Munoz observed a metallic object in Garcia's waistband that led Munoz to believe that Garcia was armed with a handgun. Although the metallic object Munoz observed was likely Garcia's belt buckle, Munoz's belief that he saw a gun was reasonable under the circumstances. Munoz knew that Garcia had gang associations and that gang members typically carry weapons in their waistband. Further, when Munoz made his observation, Munoz knew that Garcia's son had seen him earlier in possession of gun, it was late at night, and Munoz had a very quick view of the metallic object he perceived to be a handgun. As such, Munoz' mistaken perception that Garcia's metallic belt buckle was a gun, was reasonable.

Further, Munoz was attempting to arrest Garcia on an attempted murder charge - a forcible and atrocious felony, when he used deadly force against Garcia. In fact, Garcia had committed several crimes whose character and manner reasonably created a fear of death or serious bodily injury. Under these circumstances, Officer Munoz was justified in using deadly force to effect the arrest and prevent the escape of a dangerous fleeing felon. As such, Officer Munoz's decision to use deadly force to apprehend Garcia was reasonable.



## **CONCLUSION**

Based on the foregoing, we conclude that Officer Isidro Munoz acted lawfully under the circumstances. We are therefore closing our file and will take no further action in this matter.