

**Officer Involved Shooting of Victor Aguilar
Fontana Police Department**

Officer Rajaie Sayegh, #742

J.S.I.D. File #15-0288



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 8, 2016

MEMORANDUM

TO: CHIEF ROBERT W. RAMSEY
Fontana Police Department
17005 Upland Avenue
Fontana, California 92335

CAPTAIN WILLIAM P. HAYES
Los Angeles Police Department
Robbery-Homicide Division
100 W. First Street, 5th Floor
Los Angeles, California 90012

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

SUBJECT: Officer Involved Shooting of Victor Aguilar
J.S.I.D. File #15-0288
F.P.D. File #15-10206
L.A.P.D. DR#1510-10309

DATE: July 8, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney’s Office has completed its review of the June 3, 2015, non-fatal shooting of Victor Aguilar by Fontana Police Department (FPD) Officer Rajaie Sayegh. We have concluded that Officer Sayegh acted lawfully in what he reasonably believed was the need for self-defense.

The District Attorney’s Command Center was notified of the shooting at 2:45 p.m. on June 3, 2015. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, firearms analysis reports, photographic evidence and witness statements submitted to this office by Los Angeles Police Department Robbery Homicide Detectives Chuck Knolls and Lisa Sanchez. The voluntary statement of Officer Sayegh was considered in this analysis.

FACTUAL ANALYSIS

The Fontana Police Department Narcotics Unit and the Drug Enforcement Administration (DEA) were conducting a joint investigation into narcotics activity. During the investigation, officers learned that a shipment of narcotics coming from Mexico was going to be delivered to a “stash house” residence at [REDACTED] White Oak Avenue, Los Angeles, during the evening of

June 2, 2015.¹ That location was under surveillance until 10:00 p.m. on June 2, 2015, when officers received information that the shipment would be delivered the following day. During the morning hours on June 3, 2015, officers received updated information that the shipment was not going to be delivered to [REDACTED] White Oak Avenue, but that someone would pick up the shipment at the Comfort Inn, in the City of Bell Gardens. The following FPD officers responded to the location in unmarked undercover vehicles: Officers Rajaie Sayegh, Joshua Rodriguez, Jorge Rodriguez, Adam Sein and Corporal David Janusz.²

As the officers were conducting surveillance of the Comfort Inn, they saw a suspect, later identified as Victor Aguilar, driving a black Chevrolet Impala into the shopping mall parking lot adjacent to the Comfort Inn and park the vehicle.³ Aguilar looked around and began to use his cell phone. As Aguilar was on his cell phone, a male Hispanic, also on his cell phone, carrying a fairly large package exited the Comfort Inn.⁴ Officers believed this individual to be a courier of narcotics. Aguilar and the courier made eye contact with each other and the courier walked to Aguilar's car with the package and entered the passenger side. Aguilar drove the Impala out of the parking lot with the courier in the vehicle. Shortly thereafter, Aguilar drove back into the same parking lot and the courier exited the vehicle without the package. Aguilar then drove away. The courier was observed by officers talking on his cell phone.⁵ Aguilar then drove "aggressively" from the parking lot to another lot nearby where he stopped the vehicle, exited and moved the package from the inside of the car to the trunk.⁶

Officers observed Aguilar enter the northbound 710 freeway. They followed Aguilar into the City of Los Angeles, West Valley area.⁷ As officers followed behind Aguilar in separate vehicles, Sayegh was in the first vehicle behind Aguilar. It became apparent to officers that Aguilar was returning to the "stash house" at [REDACTED] White Oak Avenue.⁸ Aguilar's vehicle approached the alley to the rear of [REDACTED] White Oak Avenue. Sayegh pulled his vehicle to the rear of Aguilar's vehicle and initiated a traffic stop, activating his emergency equipment.⁹ Sayegh observed Aguilar watching him in the rear view mirror of the Impala and saw that the driver's side window was down. Aguilar refused to pull his car over and accelerated northbound through the alley, making a left turn at the alley's T-intersection westbound to Yarmouth Avenue and then a left turn onto Yarmouth Avenue, continuing southbound toward Victory Boulevard. During the pursuit, Aguilar's speed was approximately 100 miles per hour, he failed to stop at the stop sign at the

¹ A search warrant had been issued for the residence and was to have been served once the narcotics arrived.

² At the time of this incident, Sayegh had been a Fontana police officer for over eleven years. He had been assigned to the Narcotics Unit for fourteen months during which time he participated in over 100 narcotics trafficking investigations. Approximately 90% of these investigations were Cartel related and tied to wiretap calls that the DEA was monitoring.

³ Aguilar was the sole occupant of the 2006 black Chevrolet Impala. The vehicle is registered to Adam Dicter, who has not been located.

⁴ This individual has not been identified or located.

⁵ Officer Sayegh told investigators that this practice is common. A courier will typically enter a vehicle with the narcotics and the driver will drive away to avoid any suspicion. The driver will return to the area and drop the courier off and then drive away with the package.

⁶ The package was dark gray, square shaped and approximately 18" x 18".

⁷ The officers comprising the surveillance team were travelling in separate undercover vehicles. They followed Aguilar's vehicle northbound on the 710 freeway, northbound on the 5 freeway, westbound on the 118 freeway, and southbound on the 405 freeway exiting at Victory Boulevard.

⁸ The tactical plan was to stop Aguilar before he had an opportunity to deliver the narcotics and enter the residence.

⁹ Sayegh's undercover vehicle was a 2014 Silver Honda Accord equipped with lights and siren. Corporal Janusz directed Sayegh to initiate the traffic stop.

intersection of Yarmouth Avenue and Kittridge Street, and he drove onto the concrete median on Victory Boulevard, side swiping a concrete light pole on the median. This caused severe damage to Aguilar's vehicle. Aguilar's vehicle came to rest on the wrong side of the street, facing west in the eastbound lanes of Victory Boulevard. Sayegh drove past Aguilar's vehicle and observed Aguilar, still in his vehicle and having problems opening the driver's side door due to the collision with the street lamp.

Sayegh parked his vehicle behind Aguilar's vehicle and they both exited their vehicles at the same time.¹⁰ Sayegh shouted, "Police! Show me your hands!" Sayegh told investigators that Aguilar was reaching into his waistband "holding on to something." They made eye contact with each other and Sayegh drew his firearm. Sayegh stated, "Right away I thought this guy's got a gun." Sayegh had the feeling that Aguilar was conveying from his body language, "I'm the Cartel and I have a gun. If I go to jail I'm screwed."¹¹ Aguilar then turned southbound and ran, still holding something in his waistband. Aguilar ran southbound and jumped over a short residential cinderblock wall into the backyard of 6387 Yarmouth Avenue. Sayegh holstered his weapon and ran after Aguilar using the same path. Sayegh continued to shout "Police!" When Sayegh jumped into the backyard, he was between two sheds with limited visibility and did not see Aguilar. Sayegh drew his weapon fearing that Aguilar was lying in wait and was going to "take [him] (Sayegh) out."

As Sayegh passed between the sheds into the yard, he focused to his right on another building, a garage, which appeared to belong to the adjacent residence, but then heard movement to his left. Sayegh saw Aguilar stopped at the south property wall at the southeast corner of the property. Sayegh shouted, "Police! Show me your hands! Get your hands up!" Aguilar "turned with purpose" to face Sayegh and moved "aggressively" toward him. While moving toward Sayegh, Aguilar was reaching into his waistband and "hunkered down to get me into his sights." Sayegh told investigators that he thought Aguilar was going to "take [him] out" and that he (Sayegh) had no cover.¹² Sayegh told investigators that Aguilar made an aggressive movement toward him and removed from his pants what Sayegh thought was a gun. Aguilar raised his arm out in front of him holding what appeared to be a gun and "advanced on" Sayegh.¹³ Sayegh then fired four rounds in Aguilar's direction.¹⁴ Sayegh stated, "As I fired...happened so quickly...I was scared as hell.... He was able to throw whatever it was that he removed. I remember his hand - it was such a priority to him. He threw a black object that I thought was the weapon. It went up over his shoulder and I don't know where it landed." The investigation revealed that the black object that Aguilar tossed over his shoulder was a black LG brand cellular phone that was recovered over the fence.¹⁵

¹⁰ Sayegh was in plain clothes, but was wearing a tactical vest that had his name and "POLICE" embroidered on the right front, an embroidered badge on the left front and "POLICE" in large print on the back of the vest. He was armed with a department approved .40 caliber Smith and Wesson Glock, Model 22, semi-automatic pistol.

¹¹ Sayegh told investigators that it is not uncommon for suspects that are transporting drugs to carry weapons since they are responsible for the drugs until they are delivered. Based on his experience, Sayegh opined that these suspects are less afraid of police and more afraid of the Mexican drug cartel.

¹² At this point, Sayegh was standing on a lawn with no cover.

¹³ Sayegh was unable to recall whether Aguilar raised his right arm or his left arm with the object in his hand that appeared to be a gun.

¹⁴ Four discharged .40 caliber Winchester cartridge casings were recovered from the rear yard of the residence at 6387 Yarmouth Avenue, consistent with Sayegh's statement that he fired four rounds.

¹⁵ The cell phone was black in color, front and back.

Sayegh broadcast on his radio that he had been in an officer involved shooting and he needed medical services because the suspect had been shot.¹⁶ FPD Officer Joshua Rodriguez was the first to arrive at the location and detained Aguilar. He saw Sayegh in the backyard of 6387 Yarmouth and jumped the fence into the yard. He contacted the homeowner at the location and used the house phone to call 9-1-1. Rodriguez made two attempts to call 9-1-1 and then handed the phone to Sayegh. Corporal Janusz arrived at the location and observed Rodriguez handcuffing Aguilar.

Los Angeles Fire Department Rescue Ambulance No. 83 responded to the scene and provided emergency medical aid to Aguilar for multiple gunshot wounds.¹⁷ Aguilar was transported to Northridge Trauma Center.¹⁸

On June 26, 2015, Aguilar was discharged to California Health and Rehabilitation in Van Nuys. Detectives were advised that he was unable to speak. On July 9, 2015, detectives went back to California Health and Rehabilitation to interview Aguilar. He was sleeping and the charge nurse advised that he was still unable to speak, but now appeared to understand and could nod yes or no. On August 12, 2015, detectives again attempted to interview Aguilar at the same medical center where they found he was awake and alert but still unable to speak. He nodded in the affirmative or negative when asked simple questions. Detectives advised him that they would contact him when he was discharged for an interview and he nodded in the affirmative. Detectives were advised by medical personnel that Aguilar was improving and would be discharged soon, although he appeared to be confused at times. On September 30, 2015, detectives were advised that Aguilar was moved to a different area of the facility and was now able to wheel himself about in a wheelchair. He was still unable to speak clearly. On November 4, 2015, detectives called the facility and were advised that Aguilar left the hospital without permission on October 29, 2015, taking the wheelchair. At the time Aguilar was discovered missing from the facility, he was still suffering from a brain injury, was wearing a helmet, and only had movement on his right side. Medical personnel filed a Missing Persons Report with Los Angeles Police Department (LAPD). To date, Aguilar remains missing. LAPD Missing Persons Unit is continuing to attempt to locate him. A search of the Impala revealed approximately 2.5 kilograms of tar heroin concealed in the side lining of the trunk area.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 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.

¹⁶ Sayegh's broadcast was only received by FPD Narcotics Squad. The other officers were not present in the yard during the shooting and did not see the shooting. A civilian witness across the street saw the pursuit and subsequent crash but did not see the shooting. Another witness heard the crash and shots fired but saw nothing. The owner of the home at 6387 Yarmouth Avenue was in his bathroom at the time he heard a traffic collision. Approximately two minutes later he heard three gunshots in the area of his backyard. He did not see the shooting.

¹⁷ Aguilar sustained one gunshot wound to the right side of his skull traveling front to back, a gunshot wound to his right upper torso, a gunshot wound to his left hip and a gunshot wound to his elbow.

¹⁸ Police were unable to identify Aguilar using all conventional methods including fingerprinting. He has no criminal record, no California Driver's License and no form of identification. Ultimately, Aguilar was identified by two women who have children with him.

The right of self-defense is the same whether the danger is real or apparent. If a person acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. *People v. Jackson* (1965) 233 Cal. App. 2d 639. In protecting himself or another, a person may use all 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 injury which appears to be imminent. See also, CALCRIM No. 3470.

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 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. The reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident. *Graham v. Connor* (1989) 490 U.S. 386, 396-397. “[T]hus, under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F. 2d 343, 347.

CONCLUSION

The evidence examined in this investigation shows that Victor Aguilar engaged in a large scale narcotics transaction and then led police officers to the “stash house,” exactly as predicted by officers upon receiving information provided by an informant. When officers attempted to pull over Aguilar’s vehicle, Aguilar led them on a high speed pursuit, reaching speeds of 100 mph in a residential area. The pursuit culminated with Aguilar crashing his vehicle into a post on the center divider of Victory Boulevard. Aguilar exited his vehicle, made eye contact with Sayegh and fled into the backyard of a residential home. Sayegh drew his firearm after he observed Aguilar’s hand in his waist area and believed he was armed with a gun.

Drawing on his experience and recognizing the danger of violence associated with Cartel drug traffickers, Sayegh chased after Aguilar into the yard. Aguilar reached into his waistband while he turned and moved aggressively toward Sayegh. Aguilar raised his arm out in front of him holding a black object that Sayegh was convinced was a gun. Believing Aguilar was going to shoot him and having no cover for protection, Sayegh fired four rounds in Aguilar’s direction. The black object was later determined to be a cell phone.

Although Sayegh was mistaken in his belief that Aguilar was pointing a gun at him, the belief was reasonable based on all of the factors examined. Aguilar was transporting a large amount of narcotics, and as such, Sayegh believed he was likely armed with a gun; Aguilar led police on a high speed chase that ended in a crash after which Aguilar continued to flee into a residential backyard; and when Sayegh found himself alone in the yard with Aguilar, Aguilar turned and moved aggressively toward Sayegh with his arm raised holding a black object that Sayegh believed was a firearm. Given these circumstances, we conclude that Officer Sayegh acted lawfully in the reasonable belief that self-defense was warranted. We are closing our file and will take no further action in this matter.