

**Officer-Involved Shooting of Arthur Papiyan
Burbank Police Department**

Detective Gevork Mirakyan, #12714

J.S.I.D. File #16-0034



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 6, 2017

MEMORANDUM

TO: CAPTAIN ARMEN DERMENJIAN
Burbank Police Department
200 North Third Street
Burbank, California 91502

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

SUBJECT: Officer Involved Shooting of Arthur Papiyan
J.S.I.D. File #16-0034
B.P.D. File #16-965

DATE: October 6, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 28, 2016, non-fatal shooting of Arthur Papiyan by Burbank Police Department (BPD) Detective Gevork Mirakyan. We have concluded that Detective Mirakyan acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 6:17 a.m., on January 28, 2016. 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, audio recordings of interviews, forensic analysis reports, photographic evidence, and witness statements submitted to this office by BPD Detective Michael Edwards. The compelled statement of Officer Gevork Mirakyan was considered as part of this analysis.¹

FACTUAL ANALYSIS

On January 28, 2016, at approximately 4:11 a.m., BPD Officer Jordan was dispatched to 2407 West Victory Boulevard regarding a kidnapping investigation. BPD dispatch advised Jordan that a woman, later identified as Yvonne N[REDACTED], stated she had been kidnapped and dropped off at the 99 Cent Store. Detective Mirakyan and Officers Virzi, Del Rosario and Chang were also dispatched to respond. Jordan was closest to the location and arrived first. He was flagged down by N[REDACTED] in front of the 99 Cent Store. He noticed that N[REDACTED] appeared to be extremely emotional and excited, and could smell the strong odor of an unknown alcoholic beverage emitting from her breath and person. Jordan had difficulty getting N[REDACTED] to explain what had happened to her, but eventually elicited that N[REDACTED] had been at a party in Inglewood and started walking home. A man in a white pick-up truck offered her a ride, which she accepted. The man drove onto an unknown freeway

¹ Mirakyan's compelled statement will be redacted from the public version of this document.

(possibly the 110 freeway), and missed her exit. N████ notified him he was going the wrong way to her home in Los Angeles. The man told her he was going the right way. The man then told her he needed to urinate. He exited the freeway and pulled over. While the vehicle was stopped, he reached across the front seat of the vehicle and placed a towel or cloth over her face. N████ could not remember anything after that and indicated the next thing she remembered was waking up on a bed of rocks near some railroad tracks in an unknown location. N████ said she started walking and eventually made it to the 99 Cent Store where she asked an employee for assistance. N████ said she was not injured and did not require any medical treatment.²

N████ described the man as white with a thin build, in his mid-40s. She said he had dark hair and thick eyebrows. She indicated the truck was a late model, white, full-size, four door pick-up, possibly a Ford F150. As she was describing the truck to Jordan, he observed a white, full-size, four door pick-up truck driving westbound on Victory Boulevard past their location. The vehicle was driving at a high rate of speed approaching a red light. Jordan observed the vehicle brake very late and slide into the crosswalk. The vehicle came to a complete stop, but Jordan could still hear the engine revving and saw the vehicle lurching forward. The vehicle suddenly accelerated through the intersection, still on the red light, before continuing westbound on Victory Boulevard at a high rate of speed.

Believing the vehicle he had just observed might be involved in N████'s kidnapping, Jordan broadcast the vehicle description given by Nelson, as well his observation of the white pick-up on Victory Boulevard.

Officer Virzi was driving and Mirakyan was the passenger in a marked BPD vehicle en route to the radio call of a kidnapping when Mirakyan advised Virzi that he saw a truck matching the description Jordan had just put out, driving at a high rate of speed and weaving in and out of cars. Virzi activated the vehicle's overhead lights to initiate a traffic stop at Victory Boulevard and Hollywood Way.³ The truck came to a stop in the middle of the intersection. As Virzi and Mirakyan discussed doing a felony stop, the vehicle started moving forward again. The truck pulled to the curb at Victory Boulevard and Maple Street. As the vehicle came to a stop, Virzi was attempting to remove his seatbelt. His jacket was caught in the seatbelt. As Virzi's vehicle came to a stop, Mirakyan exited the vehicle. Virzi noticed the reverse lights of the truck come on. The truck backed up into their patrol car. Virzi felt the force of the impact when the truck struck their vehicle. Virzi did not have time to put his vehicle into reverse. Virzi heard Mirakyan fire two to three rounds from his service weapon at the truck, which was still reversing quickly into the patrol car.⁴ After the shots were fired, the truck stopped moving towards them. Virzi noted that Mirakyan was in the open, and in the direct path of the truck when he fired his weapon. Virzi had drawn his weapon, but did not fire because by the time he exited the vehicle, the vehicle had stopped and the threat was terminated. Virzi believed that the driver, later identified as Papiyan, was attempting to get away from officers. Virzi was afraid for his life and Mirakyan's life when Mirakyan fired his service weapon.

² Subsequent investigation determined that no kidnapping of N████ occurred and she had no contact with Papiyan.

³ Surveillance video from the location confirms Virzi's observations of the vehicle's movements as well as his activating the patrol vehicle's red and blue flashing lights.

⁴ Casings found at the location and an examination of Mirakyan's service weapon indicate three rounds were fired.

Officer Chang arrived at the location shortly after the officer involved shooting. He observed the back end of the truck impacting the front end of the patrol vehicle. Officer Canales arrived and noted that the rear bumper of the truck was on top of the front bumper of the patrol vehicle, and observed two to three holes in the driver's side rear window of the truck. Mirakyan was standing outside of the vehicle inside the open passenger door, and Virzi was standing halfway inside and halfway outside of the vehicle's driver side door. Both had their weapons drawn and pointed at Papiyan who was inside the vehicle and whose hands were partially outside the driver's side window. Officer Chang deployed a shotgun, also pointed at the vehicle. Mirakyan was ordering Papiyan to get out of the vehicle. Canales heard Papiyan say, "I'm sorry, I'm sorry. I didn't mean to run into you. I put it into reverse by mistake."

Papiyan was taken into custody. Paramedics arrived to treat him and [REDACTED].⁵

A canvass of the area was conducted. No civilian witnesses observed the shooting.

Papiyan was interviewed regarding the shooting. He initially indicated he had been drinking at a friend's house, but was unable to provide the friend's last name or what street he lived on. He stated he then slept in his truck. Later in the interview, Papiyan said he was actually drinking shots of whisky at his home and never went to a friend's house.⁶ Papiyan said he slept at home and then got in the truck. He parked on an unknown street and slept in his truck. At some point he realized it was late and he should go home.

Papiyan indicated he was driving westbound on Victory Boulevard and came to a red light at Buena Vista Street. He indicated he moved his vehicle back and forth in the intersection to try to trigger the light to turn green. Papiyan then continued westbound towards Hollywood Way when he noticed a police car approaching behind him. He saw the overhead red and blue lights flashing, so he motioned with his hand out the partially open driver's side window for the officers to pass him. Papiyan soon realized the officers were attempting to pull him over, so he slowed his vehicle in the middle of the road and then pulled to the right. Papiyan said he initially stopped his car in a place he felt was illegal, so he decided to put the car in reverse to back up and reposition it. Papiyan said he struck the police vehicle and then heard gunshots. Papiyan declined to make a statement regarding any criminal investigation in which he was a potential suspect.⁷

⁵ Subsequent examination of the truck by a criminalist revealed bullet holes in the rear driver's side headrest and one bullet hole in the driver's side headrest. There were bullet fragments found on the driver's seat. The bullet entered through the rear window, passed through the left rear headrest, which was in the downward position, then passed through the driver's headrest, leaving bullet fragments on the driver's side seat. Detectives determined that the bullet struck Papiyan, but did not strike with sufficient force to puncture his skin, likely due to having struck two headrests prior to making contact with him.

⁶ Papiyan's blood alcohol level was determined to be .00%.

⁷ Papiyan suffers from bipolar disorder and has a history of threatening to commit suicide, which has resulted in his hospitalization. On January 27, 2016, Papiyan's mother called 9-1-1 to report that her son had stated he wanted to kill himself. Papiyan was charged with two counts of assault on a peace officer pursuant to Penal Code section 245(c) in case GA098010 for his conduct during this incident. That matter is currently set for preliminary hearing in Department North East J on October 19, 2017.

Detective Mirakyan provided a compelled statement to BPD.⁸ [REDACTED]

[REDACTED]

⁸ Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. Mirakyan, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York, supra*, at 284-285. Because BPD ordered him to answer questions which might expose him to criminal liability, BPD compelled Mirakyan to participate in the interview. The effect of this legal compulsion is that Mirakyan's statements cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interviews be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because these compelled statements are part of Mirakyan's police personnel file, the statements are confidential. The District Attorney's Office is granted access to these statements, but may not disclose them absent an evidentiary showing and court order. Penal Code section 832.7. As such, although these statements were considered as part of this analysis, the law requires that they be redacted from the public version of this document.

LEGAL ANALYSIS

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 § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

“Where the peril is swift and imminent and the necessity for action 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, 589. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 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.

In this matter, [REDACTED]

[REDACTED] The vehicle was in an area close to where the alleged kidnapping occurred very shortly after the crime was alleged to have been committed. [REDACTED]

Papiyan's erratic driving, coupled with his failure to pull over, and finally his acceleration of his vehicle towards Mirakyan, Vizri and their vehicle [REDACTED]

[REDACTED] it was reasonable for him to believe in the need for self-defense and the defense of his partner.

CONCLUSION

We find that Detective Mirakyan acted lawfully in self-defense and in defense of others when he fired his service weapon at Arthur Papiyan. We are closing our file and will take no further action in this matter.