

**Fatal Officer Involved Shooting of
Edgar Ortiz
Los Angeles County Sheriff's Department**

**Deputie Gabriel D'Souza, #448504,
Deputy Erin Herring, #629491**

J.S.I.D. File #22-0074



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

February 12, 2024

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Edgar Ortiz
J.S.I.D. File #22-0074
L.A.S.D. File #022-04000-1335-013

DATE: February 12, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 3, 2022, fatal shooting of Edgar Ortiz by Los Angeles County Sheriff's Department (LASD) Deputies Gabriel D'Souza and Erin Herring. We conclude there is insufficient evidence to prove the deputies did not reasonably believe, based on a totality of the circumstances, that deadly force was necessary to defend against a deadly threat when they fired their weapons.

The District Attorney's Command Center was notified of this shooting on March 3, 2022, at approximately 1:30 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LASD Lieutenant Brandon Dean.

The following analysis is based on body worn camera video (BWV) footage, gas station surveillance footage, photos, reports, photographs, and medical records. These materials were submitted to this office by the LASD Homicide Bureau on November 18, 2022. Deputies D'Souza and Herring did not provide voluntary statements.

INTRODUCTION

On March 3, 2022, at 12:10 a.m., uniformed deputy sheriffs responded in marked patrol cars to a call of street racing and a traffic collision in the City of Bellflower. While the deputies, including D'Souza and Herring, were on scene at Downey Avenue and Artesia Boulevard a man named [REDACTED] flagged them down and reported that another man, later identified as Edgar Ortiz, had stabbed him in the shoulder with a metal garden tiller.

Ortiz fled on foot to an adjacent apartment building, followed by several uniformed deputies. According to BWV, Ortiz ran into the roadway holding the garden tiller. Deputy Herring followed him and drew his service pistol. Ortiz turned, ran toward Herring, and raised the tiller above his head in a throwing motion. As Ortiz charged toward Herring, Deputy D'Souza drew his service pistol and ran toward Herring and Ortiz. Herring faced Ortiz.

D'Souza ran toward Ortiz at an approximate 90 degree angle. Ortiz ran to within fifteen feet of Herring. Herring rapidly discharged six rounds at Ortiz. D'Souza discharged nine rounds.

Ortiz fell to the ground. He was transported to the hospital and pronounced dead at 12:38 a.m., after suffering fourteen gunshot wounds, including fatal shots to his spinal cord and heart.

FACTUAL ANALYSIS

BWV

BWV footage shows ██████████ approach a group of deputies, including D'Souza and Herring, and point toward an apartment building. ██████████ tells the deputies that a man he doesn't know "stabbed" him in the back with a "garden tool." ██████████ lifts his sweatshirt and shirt, revealing a puncture wound to his rear left shoulder. Four deputies walk toward the apartment building, adjacent to the scene of the traffic collision. Herring drives a patrol car from the scene of the traffic collision to the front of the building—about fifty yards. Deputies contact several rowdy bystanders standing in front of the building. Ortiz flees into a center courtyard. A deputy approaches him and tells him to put his hands up. Ortiz still holds the garden tiller. He disobeys the deputy's commands and, instead, runs through the courtyard, then doubles back toward the street. Ortiz runs into the street, past Herring, who stands on the sidewalk. Herring appears to see him, turns, and runs after him.

Herring's and D'Souza's footage of the incident is silent because they activated their cameras moments after the shooting.¹ According to Herring's footage, he runs after Ortiz into the roadway and draws his service pistol. Ortiz crosses the street and runs in the roadway, perpendicular to Herring for a second or two, then turns in Herring's direction and runs directly at Herring while holding the garden tiller above his head. Herring backpedals several steps and tries to move laterally out of Ortiz's path. Ortiz continues to run at Herring and tracks his lateral movement. Herring, after backpedaling for approximately two and one half seconds, discharges a rapid volley of gunshots lasting approximately two and one half seconds. Gunsmoke and expelled casings are visible. Ortiz appears hit: he twists away from Herring and falls face first on the ground, motionless.

¹ When a powered on BWV camera is activated by the deputy, the camera automatically includes one minute of footage prior to the moment of activation. This "buffering period" captures only video, not audio. After the buffering period, the camera records video and audio.



Figure 1: Herring's BWV: Ortiz holds a garden tiller and charges at a backpedaling Herring moments before Herring opens fire.

According to D'Souza's footage, he was facing the apartment building before abruptly turning toward the street. D'Souza runs into the street. Herring and Ortiz come into view, roughly in profile. Ortiz is seen running toward Herring then falling in the roadway. Due to the lack of audio and the jostling of D'Souza's camera as he runs, it is unclear when D'Souza opens fire. Herring and D'Souza, based on their footage, continue to fire at Ortiz for about one second after he falls face first on the ground.



Figure 2: D'Souza BWV: Ortiz holds garden tool in throwing motion above his head and charges toward Herring.

No other BWV footage visually captured the shooting, but several deputies' BWV captured the sound of gunshots. Heard in that footage is one rapid, continuous volley lasting approximately two seconds.

Surveillance Video

Surveillance footage without sound shows Ortiz walk up to the gas station. Minutes later, [REDACTED] arrives. They exchange words for a few seconds near the cashier's window. Ortiz raises the garden tiller above his head with both hands. Ortiz steps to the side of and behind [REDACTED] and stabs him from behind as [REDACTED] walks past him. Ortiz walks away from [REDACTED]. Two females escort Ortiz out of the gas station. Investigators found no surveillance footage that captured the shooting incident.

Physical Evidence

Investigators recovered a metal garden tiller from the scene. According to the casings recovered at the scene and post-incident examinations of the deputies' duty pistols, Herring fired six rounds during the incident, and D'Souza fired nine rounds.



Figure 3: Ortiz's garden tiller.

Autopsy

Ortiz was pronounced dead by hospital personnel at 12:38 a.m. An autopsy was performed by Doctor Brice Hunt of the Los Angeles County Medical Examiner's Office. Doctor Hunt ascribed the cause of death to multiple gunshot wounds.

Ortiz suffered fourteen gunshot wounds. Three were back to front. The remainder entered the front or side of Ortiz's body. Ortiz suffered two fatal wounds, first, to the upper left back, which travelled left to right, and front to back, and pierced the spinal cord; second, to the left lateral torso, which travelled left to right, and back to front, and pierced the liver and heart.

Toxicology testing revealed the presence of methamphetamine in Ortiz's blood.

THE LAW

A peace officer is justified in using deadly force 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) & (B).

Deadly force shall be used “only when necessary in defense of human life,” and officers “shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(a)(2).

“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) & (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).

LEGAL ANALYSIS

Herring and D’Souza responded to the apartment building with the knowledge that Ortiz was armed with a garden tiller and had just stabbed [REDACTED] with it. Moments after arriving, Herring and D’Souza appeared to spot Ortiz as he ran into the street holding the garden tiller. Herring pursued Ortiz for several seconds with his pistol drawn. Ortiz turned in Herring’s direction and charged at Herring, holding the garden tiller in a throwing motion over his head. Herring held his fire and backpedaled away from Ortiz for two and one half seconds until Ortiz closed to within fifteen feet of him, causing Herring to rapidly fire several rounds at Ortiz.

Meanwhile, as Ortiz ran toward Herring, D’Souza drew his service pistol, ran toward Ortiz and, according to BWV, rapidly fired several rounds at Ortiz, roughly simultaneous to Herring’s volley.

According to BWV, after Ortiz charged at Herring while holding the garden tiller over his head in a throwing motion, Herring attempted to maintain distance by backpedaling and opened fire only after Ortiz closed to within fifteen feet of him. Considering the totality of the circumstances known to the deputies at the time, including that Ortiz had just stabbed Christopher with the garden tiller, it was reasonable for them to believe that deadly force was necessary to defend against an imminent deadly threat.

CONCLUSION

For the foregoing reasons, we find there is insufficient evidence to prove that Deputy Herring and Deputy D'Souza did not reasonably believe deadly force was necessary to defend against an imminent deadly threat when they fired their weapons.