

**Non-Fatal Officer Involved Shooting of Victoria Bardales
Los Angeles Police Department**

Sergeant Jesus Garcia, #33022

J.S.I.D. File #21-0423



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

February 16, 2023

MEMORANDUM

TO: CAPTAIN RICH GABALDON
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Non-Fatal Officer Involved Shooting of Victoria Bardales
J.S.I.D. File #21-0423
F.I.D. File #F055-21

DATE: February 16, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 6, 2021, non-fatal shooting of Victoria Bardales by Los Angeles Police Department (LAPD) Sergeant Jesus Garcia. We have concluded that Sergeant Garcia acted lawfully in defense of others.

The District Attorney's Command Center was notified of the shooting on October 7, 2021, at 1:05 a.m. The District Attorney Response Team responded to the location and was given a briefing and walk-through of the scene.

The following analysis is based on investigative reports, firearm analysis reports, deoxyribonucleic acid (DNA) reports, a 9-1-1 recording, transcripts of interviews, crime scene diagrams, body worn video (BWV) evidence, photographic evidence, and witness statements submitted to this office by LAPD Force Investigation Division (FID) Detective Timothy Grabe. Garcia's compelled statement was not considered as part of this analysis.

FACTUAL ANALYSIS

On October 6, 2021, at approximately 10:45 p.m., LAPD officers responded to a 9-1-1 call by [REDACTED], who reported observing a female with a gun in a homeless encampment at the northwest corner of Spring Street and Arcadia Street in downtown Los Angeles. The encampment was located within an undeveloped embankment (embankment) of the 101 Freeway North off-ramp at Spring Street.¹

¹ The embankment contained numerous trees, bushes, tents, tarps, and debris.



Figure 1 – Stock satellite image depicting the intersection of Arcadia Street and Spring Street in Los Angeles. The undeveloped embankment area is highlighted in yellow.

LAPD Officers Daniel Rodriguez and Alexi Aguilar were the first to arrive at the location and contacted ██████. Both officers wore distinct LAPD uniforms and were equipped with BWV. After speaking with ██████, Rodriguez and Aguilar drew their duty weapons and entered the embankment through an opening in the fence along the north sidewalk of Arcadia Street.

According to Aguilar, he observed a female, later identified as Bardales, holding a “light, shiny object” in her hand. Aguilar shined his flashlight toward Bardales and confirmed with ██████ that Bardales was the person she had seen with a gun earlier.² Aguilar then yelled, “Hey, stop! Stop real quick. We just want to talk to you.” According to Aguilar, his vision of Bardales was obscured by tents, trees, and bushes. Within one second of Aguilar finishing his command, a gun was discharged nearby.³ Although Aguilar did not see Bardales shooting a firearm, the noise came from his immediate vicinity, and he believed she had fired at him. Aguilar took cover behind a tree as Rodriguez radioed that shots had been fired and requested backup. The officers exited the embankment and waited for additional units to arrive.

Shortly thereafter, multiple LAPD units, including Sergeant Jesus Garcia and Officer Jimeigh Chapman, arrived at the scene and set up a perimeter to contain Bardales. Garcia and Chapman were armed with department-approved rifles and took cover behind various police vehicles parked on Arcadia Street. At approximately 10:57 p.m., ██████ and ██████ exited from a row of tents located on the west sidewalk of Spring Street, adjacent to the embankment, and were detained by officers. ██████ told officers he heard gunshots coming from a blue-tarped tent

² Aguilar’s BWV depicts him shining his flashlight into the encampment, but Bardales cannot be seen due to the distance and lighting conditions.

³ The sound of a single gunshot can be heard on Aguilar’s BWV.

within the embankment area.⁴ He described the residents of the tent as a male and female, later identified as [REDACTED] and [REDACTED]. Believing [REDACTED] to be a possible suspect, at approximately 11:12 p.m., LAPD officers utilized a police vehicle's public address (PA) system and ordered "[REDACTED]" out of the embankment area. No one responded to the PA announcements.

Over the next thirty minutes, armored vehicles, K-9 units, and SWAT personnel arrived at the scene, resulting in Garcia and Chapman being positioned on Arcadia Street behind an armored Medical Counter Assault Tool (MEDCAT) vehicle. Between 11:34 p.m. and 11:39 p.m., Officer Steven Wills utilized a PA system and ordered [REDACTED] to exit the embankment area. At approximately 11:39 p.m., [REDACTED] exited the embankment and was detained. [REDACTED] informed officers that a female, later identified as Bardales, had been "just shooting" in the embankment area and was now holding his wife, [REDACTED], hostage inside their tent by holding a "gun to her head." [REDACTED] told the officers he did not know Bardales and had never seen her before the incident.

While [REDACTED] was communicating with the officers, Bardales and [REDACTED] exited [REDACTED]'s tent. When they exited, Bardales held [REDACTED] in a chokehold with a gun to her head.⁵ According to Officer Rene Gonzalez, who was in the turret of an armored vehicle located mid-block on Spring Street, he could not see if Bardales had anything in her hand but observed [REDACTED] "struggling" to break free from Bardales' chokehold. Officer Steve Hernandez was seated in the front passenger of the same armored vehicle and radioed, "Hey, she's got the woman by the neck. She might have something in her hand. It's hard to see from this position ... Did you copy that? It could be a possible hostage." Officer Mario Rios, who had been gathering information from [REDACTED], broadcasted, "I'm talking to the male who just came out [of the embankment]. He said there's a female with a gun holding another female hostage with a gun pointed to her head."

Officers positioned south of the location on Arcadia Street had a less obstructed view of the encampment area of the embankment. Garcia and Chapman were located at the rear of the MEDCAT armored vehicle on Arcadia Street. Garcia aimed his rifle toward the encampment as Chapman stood next to him and acted as his "spotter."⁶ According to Chapman, he saw Bardales and [REDACTED] exit one tent, walk a short distance, and sit down in another tent. Chapman suggested Garcia take a few steps west on Arcadia Street to obtain a less obstructed view of Bardales.⁷

⁴ Between 10:48 p.m. and 11:42 p.m., approximately eight gunshots can be heard on various officers' BWV, sporadically coming from the embankment area.

⁵ Although there were numerous officers equipped with BWV in the area, the usefulness of those recordings is limited due to various factors. BWV cameras are generally worn at chest level, and many of the cameras were obstructed by objects providing cover to the officers. Additionally, the distance between the officers and Bardales was considerable, with trees, tents, bushes, and darkness all diminishing the ability of the BWV to capture the events.

⁶ A spotter is someone designated to find, watch, and assign targets to a designated shooter.

⁷ This statement can be heard on Chapman's BWV.

Garcia moved to the left of Chapman, and approximately thirty-eight seconds later, Chapman said, “They’re standing up.”⁸ Chapman’s BWV recorded movement in the encampment area of the embankment.



Figure 2 – Still image from Chapman’s BWV depicting the area where movement could be seen in the encampment (yellow circle). Garcia stood to Chapman’s left.

Simultaneously, Garcia yelled, “Don’t fucking do it!” Seconds later, Chapman said, “She’s got it [handgun] to her head. She’s got it to her head.” Chapman later told investigators that at that time, he saw Bardales with her left arm around [REDACTED] with a gun in her right hand aimed at [REDACTED]’s head. Garcia responded, “I see her. I’m gonna shoot.” Approximately eight seconds later, Garcia discharged one round from his service rifle, striking Bardales in the right flank. Bardales immediately fell to the ground, and [REDACTED] ran from Bardales and exited the embankment through an opening in the fence on Spring Street.

⁸ Unless otherwise noted, the statements attributed to Garcia and Chapman in this paragraph were obtained from their BWV.

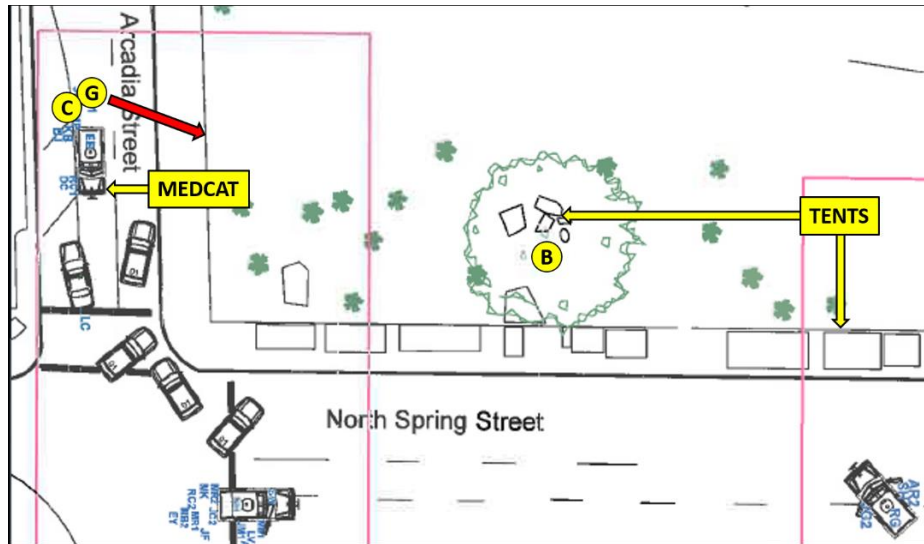


Figure 3 – Diagram depicting the scene of the incident. The approximate locations of Bardales (B), Garcia (G), and Chapman (C) at the time of the officer-involved shooting are labeled as is a representation of Garcia’s rifle discharge (red line).

Approximately four seconds after Garcia discharged his rifle, a gunshot can be heard on multiple officers’ BWV.⁹

Bardales was lying supine with her right arm outstretched and a handgun in her right hand. An armored vehicle entered the embankment to provide cover to the officers as they prepared to approach Bardales and take her into custody. After numerous PA announcements ordering Bardales to throw the firearm away from her, she complied. Officers approached Bardales, retrieved her handgun, and handcuffed her. Officers then carried Bardales out of the embankment, placed her in a MEDCAT vehicle, and drove her to a Los Angeles Fire Department rescue ambulance that was staged outside the containment area. Bardales was transported to Los Angeles County University of Southern California Medical Center (LAC+USCMC), where she received treatment and surgery for a gunshot wound to her right flank.

Ballistics Evidence and DNA Testing

LAPD SWAT Officer Andrew Rea recovered a Polymer80, Model PF940C, 9mm Luger caliber semiautomatic handgun from the ground near Bardales.¹⁰ Subsequent DNA testing revealed the presence of Bardales’ DNA on the recovered handgun. One discharged cartridge casing headstamped “SIG 9mm” that failed to eject from Bardales’ firearm was recovered from its chamber. The Polymer80 also contained a magazine loaded with eight live 9mm rounds of varying brands.

⁹ Evidence suggests Bardales likely fired this round after she fell to the ground. There is no evidence any officers other than Garcia discharged their duty weapons during the incident.

¹⁰ Polymer80 firearms are sold online. The handguns are sold no more than 80% complete, thereby avoiding federal firearms regulations. Consumers can purchase lower receivers and the other materials needed to build and complete the firearm assembly at home. Polymer80 lower receivers and handgun frames lack serial numbers for identification and are often referred to as “ghost guns.”



Figure 4 – Photograph depicting the Polymer80 handgun, magazine, live rounds (removed from the magazine), and discharged casing (removed from the chamber) recovered from the scene.

Investigators recovered eight discharged 9mm cartridge casings of varying brands from the ground of the embankment. Subsequent ballistics testing determined the rounds were fired from Bardales' Polymer80 handgun. Multiple bullet impacts were located on leaves and tree trunks within the embankment. Eight additional live 9mm rounds were recovered, five from the ground of the embankment, and three from the LAC+USCMC emergency room where Bardales was treated.¹¹

Investigators recovered one 5.56 x 45mm caliber cartridge casing headstamped "LC 19" that had been discharged from Garcia's Smith and Wesson, model M&P 15, rifle from the Arcadia Street roadway.

Statements of [REDACTED] and [REDACTED]

Officers detained and spoke with [REDACTED] and [REDACTED] immediately following the incident to ascertain what had happened and their respective roles in the incident.¹² According to [REDACTED], he and [REDACTED] were asleep in their tent when they were woken by the sound of gunshots coming from the embankment area. When they exited the tent, they saw Bardales randomly firing a handgun. Bardales ordered them to "go inside" and followed them back into the tent. Bardales then pointed the firearm at [REDACTED] and [REDACTED] and ordered them to "shut up." Bardales allowed [REDACTED] to leave after LAPD made PA announcements for him to exit the area.

According to [REDACTED], after [REDACTED] left the tent, Bardales ordered her to "get out." When [REDACTED] exited the tent, Bardales followed her, grabbed her by the neck, put the gun to her head, and said, "You like this, right?" and "You provoked all this." As Bardales moved [REDACTED]

¹¹ The rounds recovered from the hospital emergency room were discovered when an LAPD detective was given a bag of clothing by hospital staff. Two rounds were in the bag and one additional round was entangled with clothing within the bag. LAPD investigators were unable to determine who on the hospital staff found the rounds or if they even knew the rounds were in the bag and clothing.

¹² [REDACTED] and [REDACTED] spoke to Officer Dennis Cevallos in Spanish. The conversation was recorded by Cevallos' BWV and was later translated into English. Subsequent efforts by LAPD investigators to conduct follow-up interviews with [REDACTED] and [REDACTED] were unsuccessful.

█ toward another tent, she was shot and fell to the ground. █ then ran out of the embankment area to the LAPD officers.

Statement of Victoria Bardales

On October 15, 2021, LAPD investigators interviewed Bardales at LAC+USCMC.¹³ Bardales stated she obtained the gun from a “youngster” in the area of St. Andrews Place and Olympic Boulevard in Los Angeles. Bardales explained that she pointed the gun at “her” [█] in the embankment area to stop her from “making noise.” When asked if she recalled putting a gun to █’s head, Bardales responded, “Towards the end, right?” and stated she “[couldn’t] really explain” why she did it. Bardales told investigators, “It never crossed my mind to hurt an officer.” The interview was ended so Bardales could receive medical care.

On October 16, 2021, LAPD investigators returned to LAC+USCMC to conduct a second interview with Bardales. Before answering any questions regarding the incident, Bardales requested a lawyer, and the interview was terminated.

Criminal Case

On October 12, 2021, Bardales was charged in case number BA499589 with multiple felony counts, including one count of kidnapping, in violation of Penal Code section 207(a) and two counts of assault with a deadly weapon in violation of Penal Code section 245(b). This matter is currently pending trial.

LEGAL ANALYSIS

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) & (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).

¹³ This interview was recorded. During the interview, Bardales was often incoherent and frequently gave disjointed and nonsensical responses to questions.

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).

In this case, Bardales was recklessly firing a firearm in a homeless encampment when LAPD officers responded to the scene. When confronted by officers, Bardales fired a round from her handgun in an unknown direction and fled into a nearby tent. Once in the tent, Bardales took its occupants, [REDACTED] and [REDACTED], hostage by pointing her firearm at them. Additional LAPD personnel responded to the scene and repeatedly used a PA system in an attempt to deescalate the situation and have Bardales surrender peacefully.

Eventually, Bardales allowed [REDACTED] to exit the tent and subsequently exited with [REDACTED], wrapping her left arm around [REDACTED]'s neck and putting a gun to her head. In response, Garcia discharged one round from his duty rifle, striking Bardales in the right hip area. Bardales' actions jeopardized [REDACTED]'s life and evidenced a willingness to cause death or serious bodily injury to her. Therefore, it was reasonable for Garcia to believe the use of deadly force was necessary to defend against an imminent threat of death or serious bodily injury.

CONCLUSION

We find that Sergeant Jesus Garcia acted lawfully in defense of others when he used deadly force against Victoria Bardales.