Non-Fatal Officer Involved Shooting of Antonio Solis

Los Angeles Police Department

Detective Genaro Estupinan, #37627
Detective Francisco Villagrana, #38217

J.S.I.D. File #18-0425

GEORGE GASCÓN

District Attorney

Justice System Integrity Division

March 31, 2021

MEMORANDUM

TO: COMMANDER TIMOTHY NORDQUIST
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 Antonio Solis
J.S.I.D. File #18-0425
L.A.P.D. File #F054-18

DATE: March 31, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 7, 2018, non-fatal shooting of Antonio Solis by Los Angeles Police Department (LAPD) Detectives Genaro Estupinan and Francisco Villagrana. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that Villagrana and Estupinan did not act in lawful self-defense at the time they fired their weapons.

The District Attorney's Command Center was notified of this shooting on October 7, 2018 at approximately 12:00 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant James Antenucci.

The following analysis is based on reports, recorded interviews, photographs, and videos submitted to this office by LAPD Force Investigation Division Detective Joseph Kirby. The compelled statements of Detectives Estupinan and Villagrana were considered as part of this analysis.

FACTUAL ANALYSIS

On October 7, 2018, Estupinan and Villagrana were on duty assigned to the Van Nuys Narcotic Enforcement Detail. Both detectives were working in an undercover capacity. They were dressed in plain clothes and were not wearing body worn video cameras. Estupinan was the driver and sole occupant of an unmarked grey SUV and Villagrana was the driver and sole occupant of an unmarked black sedan. Neither vehicle was equipped with a dash camera.

Estupinan and Villagrana decided to "scout" the parking lot of a Studio 6 Extended Stay Motel on Sherman Way in the City of Van Nuys.[1] The Studio 8 Motel was known to be a high-crime

[1] According to Estupinan, to "scout" means to "monitor the location, sit there, and not take any enforcement action, and gather intelligence from the location." If the officers observed "criminal activity," they would notify their team to do proper surveillance.

area where burglaries, robberies, and drug deals frequently occured. Villagrana stated he had previously been involved in arresting over 50 people at various times at that location for a range of crimes including identity theft, prostitution, receiving stolen property, narcotics, and robbery.

Villagrana arrived at the location first and observed three men in a Nissan Sentra, driving in the back parking lot of the motel. The three men looked around before they parked their vehicle at the west end of the lot. The three men exited the vehicle and entered the motel.

Shortly thereafter, Villagrana parked on the street and asked Estupinan to enter the parking lot to obtain the license plate number of the Sentra. Estupinan entered the parking lot, observed the license plate, relayed it over the radio to Villagrana, and parked his vehicle in a stall a few spots east of the parked Sentra. The Sentra did not come back stolen so Estupinan and Villagrana remained at their respective locations and continued to scout the area.

A few minutes passed and the three individuals appeared in the parking lot. They walked westbound past Estupinan's vehicle towards the Sentra. As the three individuals passed Estupinan, they all started "mad dogging" him. Per Estupinan, "They just keep staring at me up and down, looking who is inside the car. I see one of them point towards my vehicle." Estupinan believed that the three individuals suspected Estupinan was an undercover police officer, so he radioed for Villagrana to enter the parking lot.

Villagrana entered the parking lot and observed the three individuals in and around the Sentra. The three individuals stared at Villagrana and, in response, Villagrana perpendicularly parked his vehicle directly in front of the Sentra, blocking it in. See Figure 1.

Figure 1: Villagrana parked his vehicle directly in front of individuals' vehicle.

Villagrana exited his vehicle, identified himself as a police officer, and told the three individuals to "Freeze!" One of the individuals, later identified as Riggen, unsuccessfully tried to scale the west wall of the parking lot that was lined with barbed wire. Simultaneously, another individual, later identified to be Solis, fled and threw a black handgun over the wall.[2] The third individual, later identified as Shehata, remained inside the vehicle. Riggen then abandoned his attempt to scale the wall and fled eastbound into the parking lot. Villagrana unsuccessfully tried to grab Riggen and Riggen then fled towards Estupinan who was now located at the right rear bumper of the Grand Prix. Estupinan tripped Riggen, who fell to the floor. Riggen got up and fled through the motel and into the surrounding neighborhood. After throwing the firearm, Solis ran towards Villagrana's location—first south, parallel to the west wall, then east towards Villagrana's vehicle. See Figure 2.

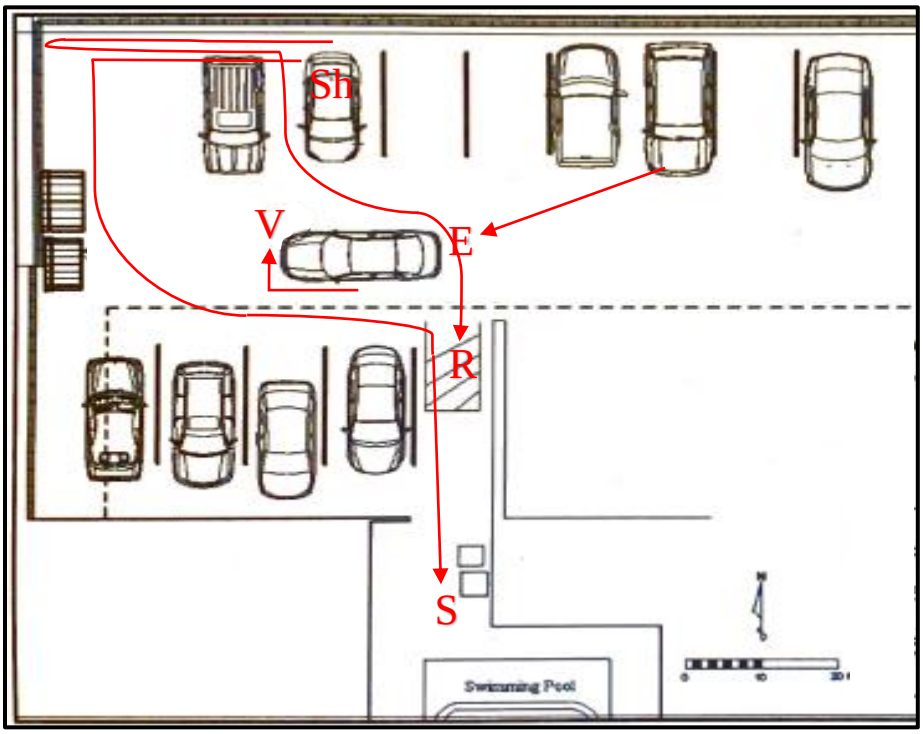

Figure 2: Location of parties and paths that Villagrana (V), Estupinan (E), Riggen (R) and Solis (S) took.

As Solis ran, Villagrana observed Solis grab at Solis' front waistband. Villagrana stated to investigators, "It appeared he was pulling a firearm from here because I saw a clip that looked like a concealed holster clip." See Figure 3. Villagrana added that, "and him tossing the firearm, I believe he had a second firearm on him, and that's why I went ahead and I shot him two times."

[2] Due to the detectives' positions, only Villagrana observed Solis throw the handgun over the wall.

Figure 3: Solis pants with an attached holster in his front waistband.

Villagrana ordered Solis to stop and get down on the ground multiple times. Solis ignored the commands, looked at Villagrana, and kept running and pulling at the holster. When Villagrana was asked by investigators what he thought Solis' intentions were as he was grabbing at the clip, Villagrana responded, "To take the firearm out and if he needed, if he had the opportunity, he was going to shoot me and my partner, fear for my partner's life as well." Thus, out of fear for his "safety and [his] partner's life," Villagrana fired his duty pistol twice at Solis. Neither of the rounds struck Solis.

Villagrana stated he was located at the back left bumper of his vehicle when he fired at Solis. However, subsequent forensic examination of the ballistic evidence at the scene revealed one of Villagrana's bullets impacted a dumpster that paralleled the west wall and traveled in a westerly direction with a slight southerly angle. The trajectory of the bullet, in conjunction with the surveillance footage, suggests Villagrana was at the front right bumper when he fired that round.[3] See Figure 4.

[3] The motel's surveillance video captured Villagrana park and exit his vehicle. The quality of the recording is such that the details cannot be captured with a screenshot. Nevertheless, when magnified, the video shows Villagrana leave his stated position behind the driver's door and move to the front of his vehicle out of view before Riggen is tripped near the rear bumper by Estupinan.

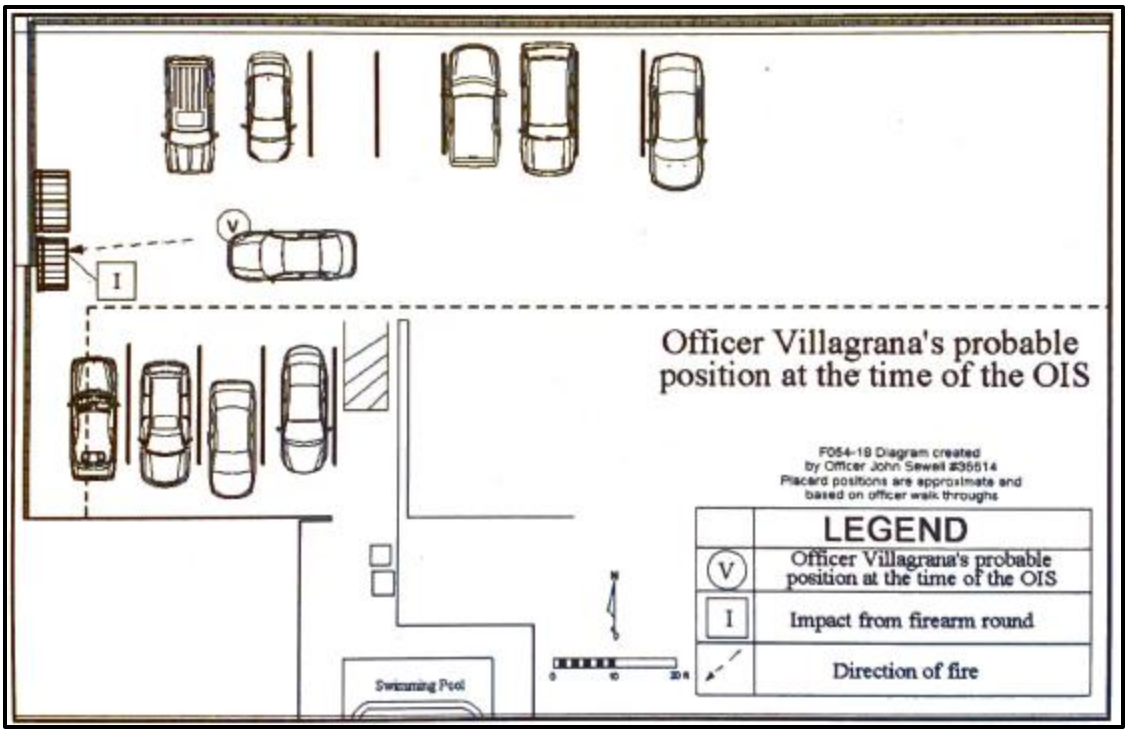

Figure 4: Villagrana's probable position at the time he fired his duty weapon..

After Estupinan tripped Riggen, Estupinan drew his weapon and pointed it at Shehata who was still seated in the Sentra. As Riggen got up and fled the scene, Estupinan ordered Shehata to exit the car. Simultaneously, Estupinan heard Villagrana yell, "Gun! Gun!" Estupinan turned toward his partner's voice, heard two gun shots, and saw a muzzle flash twice. Estupinan could no longer see Villagrana. Estupinan told investigators, "I thought my partner … was hit because I didn't see him anymore."

Solis continued running east past parked cars then headed south down a hallway towards the motel's community swimming pool. Estupinan fired three rounds at Solis as he ran. One of the bullets hit Solis in the front left leg, where the leg joins with the front of the torso, and exited the right thigh. The trajectory of the bullet was front to back and left to right.

According to Estupinan, as Solis was running down the motel hallway, Solis turned towards Estupinan and pointed a firearm at him. Estupinan stated, "I look towards the direction of the suspect, then I seen the suspect turn to me and pointing a gun at me… At that point I, I align my sights, and I, and I press the trigger and I, and I shot one round at him." Still fearful of Shehata sitting in the vehicle, Estupinan stated that he briefly looked back at the vehicle to see if Shehata was still there. After a quick glance confirming Shehata's location, Estupinan turned back towards Solis who was still running away. According to Estupinan, as Solis continued to run away, Solis turned again towards him. Estupinan told investigators, "He's still going forward, but he's turning his body towards my direction towards the right side. I see the gun on his right hand, and I, I shoot another. I press the trigger and I shoot another round, and he's still holding the gun towards my direction, and I shoot another round." After his third round, Solis was struck and fell to the ground.

According to Villagrana, as Solis was fleeing, "[Solis] extended his left arm when he was running south… towards my partner's direction… my partner was on my left-hand side."[4]

Subsequent forensic examination of the ballistic evidence at the scene revealed one of Estupinan's bullets impacted a blue Pontiac that was parked facing southbound. The trajectory of the bullet, in conjunction with the surveillance video, suggests Estupinan was at the back right bumper when he fired his duty weapon.[5] See Figure 5.

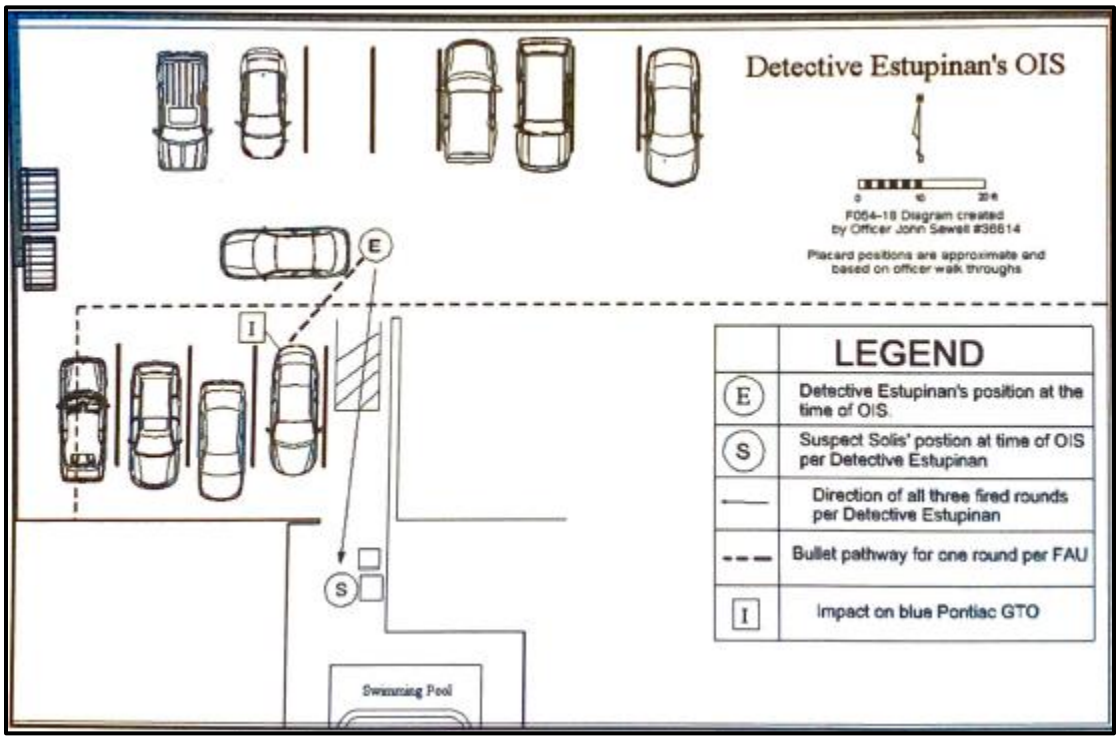

Figure 5: Estupinan's position and trajectory of bullets.

After Solis fell to the ground, Villagrana immediately approached Solis and handcuffed him. It was at this time Estupinan realized that Villagrana had not been shot. Villagrana moved Solis back towards the parking lot and Estupinan went to the Sentra and detained Shehata. Estupinan stated he was still fearful of Riggen, so he radioed for backup. Additional officers responded to the scene and Riggen was later detained by responding officers without incident.

A 9mm semiautomatic firearm was located in the adjacent parking lot where Solis threw it. It was loaded with eight 9mm caliber cartridges in the magazine and one round in the chamber. See Figure 6. No other firearms were located at the scene or on any of the detained individuals.

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[4] Villagrana did not specify, nor was he asked, whether he saw anything in Solis' extended hand.

[5] The motel's surveillance captured Estupinan exit his vehicle at the same time as Villagrana. Estupinan exited the right side of the frame as he approached the location of the Sentra. Estupinan then ran back into the frame towards the right rear bumper of the Grand Prix and tripped Riggen. Riggen fled towards the motel out of view. Estupinan pointed his firearm towards the motel as depicted in Figure 5. Next, Estupinan turned his attention back towards the Sentra and exited the right side of the frame as he walked in the direction of the Sentra pointing his firearm. Although this can all be seen when the surveillance footage is magnified, the distance of the camera to the incident is so great that the details cannot be captured with a screenshot.

Figure 6: Solis' firearm.

After Solis was struck by gunfire, he dropped a black cell phone and keys. See Figure 7.

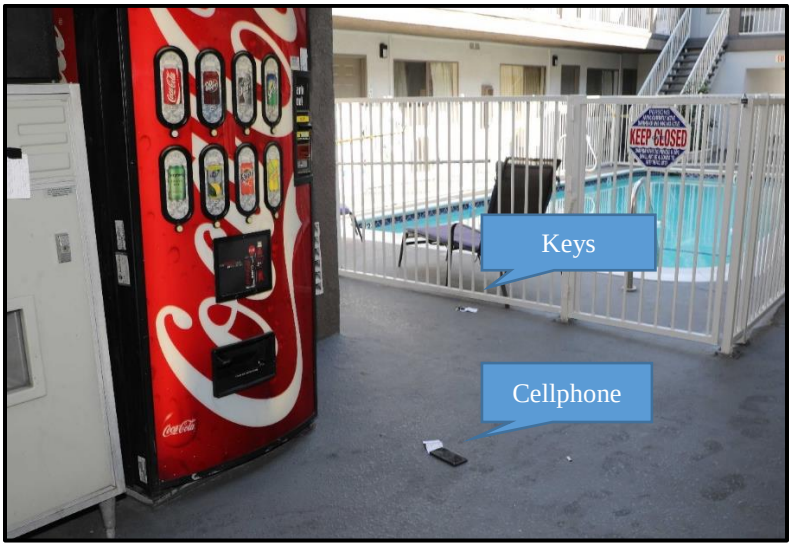

Figure 7: Solis' cellphone and keys.

Solis stated to investigators that he and the others possessed the gun, but he denied that he threw the gun over the wall. Solis stated Villagrana did not identify himself as a police officer.[6] Additionally, Solis stated that as he ran past a row of cars and turned south towards the swimming pool, he slowed his pace and put his arms in the air to surrender. Solis stated that at no time did he turn his torso to look back toward the officers.

[6] Several civilian witnesses were interviewed. Although no witnesses observed the OIS, some witnesses told investigators that they heard the officers yell, "Police!" before they heard any gunfire.

Charges filed on Solis

Following his arrest, Solis was charged in case number LA089295 with one felony count of felon in possession of a firearm, in violation of Penal Code § 29800(a)(1). A special allegation was further alleged that Solis committed this crime for the benefit of, in association with, or at the direction of a criminal street gang, in violation of Penal Code § 186.22(B)(1)(A).[7]

On June 6, 2019, Solis plead no contest to count one and admitted the special allegations. He was sentenced to two years state prison.

LEGAL ANALYSIS

A peace officer may legally detain someone if the officer has reasonable suspicion. Reasonable suspicion exists when (1) specific facts known or apparent to the officer lead him or her to suspect that the person to be detained has been, or is about to be, involved in activity relating to crime and (2) a reasonable officer who knew the same facts would have the same suspicion. CALCRIM No. 2670.

A peace officer may legally arrest someone if the officer has probable cause to arrest. Probable cause exists when the facts known to the arresting officer at the time of the arrest would persuade someone of reasonable caution that the person to be arrested has committed a crime. Id.

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code § 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146.

California law permits any person to use deadly force in self defense or in the defense of others if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *See also* 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.

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "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 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.

[7] Solis and Shehata were both documented and self admitted members of the Columbus Street Gang. Riggen was a documented member of the Roscoe Boulevard Steet Gang that associated with members of the Columbus Street Gang.

Actual danger is not necessary to justify the use of deadly force in self defense. CALCRIM No. 3470. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. Id. The right of self defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

In protecting oneself or another, a person may use all the force that they believe is reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury that appears to be imminent. CALCRIM No. 3470.

Under California's civil negligence law, the reasonableness of a peace officer's conduct is determined in light of the totality of the circumstances, which includes an officer's conduct preceding the use of deadly force. Hayes v. County of Los Angeles (2013) 57 Cal.4th 622. However, "[t]he Fourth Amendment's reasonableness standard is not the same as the standard of reasonable care under tort law, and negligent acts do not incur constitutional liability." *Id*. at 639 (citing Billington v. Smith (2002) 292 F.3d 1177, overruled by County of Los Angeles, California et al. v. Mendez et al. (2017) 137 S. Ct. 1539). Thus, Hayes does not apply in a criminal analysis, and faulty tactics or lack of reasonable suspicion are not properly considered when determining the reasonableness of a belief in the need to use force in self-defense and/or the defense of others by a police officer.

In Mendez, the United States Supreme Court further disavowed the use of any analysis other than the reasonableness analysis proscribed by the Fourth Amendment stating, "The framework for analyzing excessive force claims is set out in Graham. If there is no excessive force claim under Graham, there is no excessive force claim at all. To the extent that a plaintiff has other Fourth Amendment claims, they should be analyzed separately." 137 S.Ct. at 1547. Thus the Fourth Amendment provides no basis for making an officer's otherwise reasonable use of force, as analyzed under the Graham standard, unreasonable if the officer intentionally or recklessly provokes a violent confrontation and the provocation is an independent Fourth Amendment violation.

Before a jury can rely on circumstantial evidence to find a person guilty, the jury must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the accused person is guilty. "If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence." CALCRIM No. 224.

Constitutionality of Detention/Arrest of Solis

The justification Estupinan and Villagrana stated for detaining and arresting the three men was that the men were "mad dogging" Estupinan. However, the fact that the three men were staring menacingly at the undercover officer is not illegal. Furthermore, the Sentra they were driving was not stolen. As such, based upon the information provided to this office in this investigation, it appears as though neither officer had reasonable suspicion or probable cause to reasonably conclude that the three men were engaging in criminal activity.

Nevertheless, regardless of the constitutionality of the detention or arrest, an officer cannot be found to have used unlawful force simply by wrongfully arresting or detaining someone. The proper constitutional analysis must focus on the lawfulness of the force used, not the lawfulness of the arrest or detention.

Villagrana Shooting

Villagrana arrived at the motel with a heightened sense of caution due to his first-hand knowledge that the location was a high-crime area. Villagrana's suspicions were raised after Estupinan advised Villagrana that the three men were mad dogging him. When Villagrana parked his vehicle, he immediately exited and identified himself as the police. In response, two of the three men attempted to flee—Riggen tried to scale the nearby wall, while Solis threw a black firearm over the wall. After Riggen's unsuccessful escape attempt, he ran past Villagrana and towards Estupinan. At this point, Solis began to run towards Villagrana. While running in Villagrana's direction, Solis repeatedly grabbed at his front waistband where he was wearing a holster. Solis made eye contact with Villagrana and failed to comply with any of Villagrana's commands to stop. With Solis running towards Villagrana and grabbing at the concealed holster in his waistband, Villagrana yelled out, "Gun! Gun!" before he fired two rounds at Solis. Villagrana stated he was in fear for his safety and his partner's life when he fired his weapon. Neither round struck Solis.

Although Villagrana observed Solis toss a handgun over the wall, Villagrana believed that Solis was armed with a second one. Based on Solis' failure to comply with commands to stop after throwing the firearm, his continued movement towards Villagrana, and repeated attempts by Solis to grab at the holster in his waistband, it was reasonable for Villagrana to believe that Solis was reaching for a deadly weapon. A such, the evidence is insufficient to prove beyond a reasonable doubt that Villagrana's decision to use deadly force was unreasonable.

Estupinan Shooting

Estupinan entered the parking lot and parked his vehicle a few spots to the east of the Sentra. While he was scouting the location, the three men walked westbound past Estupinan's location and looked at him menacingly. Fearful that the men realized he was an undercover officer, Estupinan radioed for Villagrana to assist him.

Villagrana arrived, exited his vehicle, identified himself as a police officer, pointed a firearm at the men, and ordered them to, "Freeze!" Shortly thereafter, Estupinan exited his vehicle and tripped Riggen as he was trying to flee. Estupinan made his way toward the driver's side rear bumper of Villagrana's vehicle. Estupinan heard Villagrana yell, "Gun! Gun!" Estupinan heard two gunshots and could no longer see his partner. Solis then ran by Estupinan, heading south toward the motel swimming pool. Because Estupinan heard Villagrana yell "Gun," heard two gunshots, saw Solis running away, and could no longer observe his partner, Estupinan believed his partner had been shot by Solis.

As Solis ran, Solis turned towards Estupinan on two separate occasions and pointed at him. Estupinan observed an object that he believed to be a firearm in Solis' hand. In response, Estupinan fired his duty weapon at Solis a total of three times, striking him once.

Estupinan heard Villagrana yell that Solis had a gun. Estupinan then saw two muzzle flashes and heard two gun shots. Estupinan saw Solis running, but could no longer see his partner. These facts put together, provide insufficient evidence to prove Estupinan's belief in the necessity to use deadly force was unreasonable.

Furthermore, according to Estupinan, as Solis ran away, Solis turned back towards Estupinan and pointed a firearm at him twice. While further investigation determined that Solis did not have a weapon at the time of the shootings, Solis was holding a black cell phone in his hand, which could have been mistaken for a firearm under the circumstances. Finally, the bullet struck Solis' front left leg, which is consistent with Solis turning towards Estupinan before being shot and also contradicts Solis' statement that he never turned back towards Estupinan.

As such, the evidence is insufficient to prove beyond a reasonable doubt that Estupinan's decision to use deadly force was unreasonable.

CONCLUSION

We conclude that there is insufficient evidence to prove beyond a reasonable doubt that Villagrana or Estupinan did not act in lawful self-defense at the time they fired their weapons. We are closing our file and will take no further action in this matter.