

**Fatal Officer Involved Shooting of Robert Avita
Los Angeles County Sheriff's Department**

**Deputy David Rodriguez, #470667
Deputy David Duran, #459595
Deputy Albert Arevalo, #459111
Deputy Ernesto Castaneda, #503652**

J.S.I.D. File #20-0178



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

June 24, 2021

MEMORANDUM

TO: CAPTAIN JOE MENDOZA
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Robert Avita
J.S.I.D. File #20-0178
L.A.S.D. File #020-04324-0375-013

DATE: June 24, 2021

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office has completed its review of the May 26, 2020, fatal shooting of Robert Avita by Los Angeles County Sheriff's Department (LASD) Deputies David Rodriguez, David Duran, Albert Arevalo and Ernesto Castaneda. We have concluded the deputies acted lawfully in self-defense and defense of another.

The District Attorney's Command Center was notified of the shooting at approximately 6:54 p.m. on May 26, 2020. 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, firearm analysis reports, coroner's reports, photographs, surveillance video and witness statements submitted to this office by LASD Homicide Bureau Detectives Adan Torres and Scott Giles. The voluntary statements of the involved deputies were considered as part of this analysis.

FACTUAL ANALYSIS

On May 26, 2020, at approximately 5:00 p.m., LASD deputies assigned to the Operation Safe Street Gang Surveillance Unit were tasked with surveilling Robert Avita, a suspect in a homicide from earlier that month. Prior to the commencement of the surveillance, all team members were provided with photographs of Avita and factual information regarding the crime they would be arresting him for.¹ Team members were dressed in civilian clothing, but also wore LASD tactical vests which

¹ Avita and another suspect were captured on video shooting the homicide victim while he was in his vehicle. Avita was identified from the video. Team members were also provided with information regarding his height, weight, age and unique tattoos by which to identify him.

clearly identified them as police officers.² Avita was initially inside a residence on 110th Street. Team members were placed surrounding the residence and Avita was observed looking out the front door at approximately 4:45 p.m.³ A loudspeaker was used to communicate with Avita and order him to exit the residence. Avita did not comply initially, then ran out of the rear entrance of the location towards 109th Place. Team members moved to that location and observed Avita standing on a sidewalk holding a pistol in his right hand. Multiple deputies ordered Avita to drop the gun, but Avita ignored these commands. Avita ran to the corner of Budlong Avenue and 109th Place as deputies continued to order him to drop the gun and put his hands in the air.⁴

As Avita was running toward Budlong Avenue, Deputy Castaneda was driving towards his location. He observed Deputy Arevalo running towards the location and stopped to pick him up. The two deputies drove to the corner of 109th Place and Budlong Avenue, exited their vehicle and took cover behind a vehicle. Arevalo observed Avita holding a gun in his right hand and noted that Castaneda and Duran were to his right utilizing the same vehicle for cover.⁵ Castaneda and Duran also observed the gun in Avita's hand. Arevalo, Castaneda and Duran could see that Avita's finger was on the trigger of the weapon.



Still photograph from nearby surveillance camera depicting Avita with a firearm in his hand.

Avita removed his cellphone from his pants pocket, while still holding the gun, and made a phone call.⁶ When Avita completed the call, he remained standing on the curb with the pistol in his hand. Avita then jerked his right hand up and pointed the firearm at Arevalo, Castaneda, Duran and other nearby deputies.

² Multiple civilian witnesses in the area were able to identify the deputies as police officers based upon their attire.

³ Avita's movements throughout the surveillance were broadcast via radio to all team members.

⁴ Multiple civilian witnesses heard these commands, with some estimating Avita was ordered to drop the weapon as many as twenty times.

⁵ Duran had walked to the location.

⁶ The investigation later determined Avita called his mother.

Arevalo, in fear for his life as well as the lives of the other deputies, fired his service weapon until he observed Avita beginning to fall to the ground.⁷ Castaneda and Duran, also in fear for their lives and the lives of surrounding deputies, fired their service weapons at Avita.⁸

Deputy Rodriguez was taking cover behind a different vehicle when he observed Avita pointing the gun at deputies and heard gunfire. During the pursuit of Avita earlier, Avita had pointed the weapon at Rodriguez.



Still photograph from nearby surveillance camera depicting Avita pointing the firearm at Rodriguez.

Rodriguez saw Avita jerk and fall to his knees. Rodriguez saw that the gun was still in Avita's right hand and Avita began raising his arm as if to fire the weapon. Fearing Avita was about to fire the weapon, Rodriguez fired two rounds from his service weapon in an effort to protect himself and the other nearby deputies.

Team members approached and recovered the firearm from Avita's hand and rendered aid until paramedics arrived at the location.⁹ Avita was pronounced dead at the scene. A subsequent autopsy ascribed the cause of death to multiple gunshot wounds.¹⁰

⁷ Arevalo fired a total of 12 rounds from his service weapon.

⁸ Castaneda fired four rounds. Duran fired three rounds.

⁹ The weapon was determined to be a 9mm semiautomatic Ruger, model Security-9 handgun, containing a live, "WIN 9mm Luger" ammunition round in the chamber as well as an inserted magazine containing 14 additional live ammunition rounds. Swabs taken on the trigger and other areas of the firearm were found to have DNA consistent with Avita having handled the weapon.

¹⁰ A toxicology screen completed as part of the autopsy found marijuana, amphetamines and methamphetamines in Avita's system at the time of his death.



Firearm recovered from Avita after the officer-involved shooting.

A canvass of the neighborhood was conducted and multiple witnesses who heard the gunshots were located. Additionally, several witnesses observed officers chasing Avita and heard them give commands for him to drop the gun and put his hands in the air. Two witnesses observed Avita with the gun in his hand and one of them saw him pointing the gun at deputies immediately prior to hearing gunshots.

LEGAL ANALYSIS

On August 19, 2019, Governor Gavin Newsom signed California Assembly Bill 392. Assembly Bill 392 modified California use of force law, Penal Code sections 196 and 835a, and became operative on January 1, 2020. This case is being analyzed pursuant to the new law.

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 section 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.

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).

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).

Under the new use of force law, the reasonableness of an officer's use of deadly force is analyzed using a reasonable officer standard, not the reasonable person standard that was previously applied and articulated in *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. 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.

The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

In the instant matter, each of the deputies who used deadly force against Avita did so as he was pointing or raising the weapon in a manner which posed an imminent deadly threat. As such, their use of deadly force was reasonable under the totality of the circumstances.

CONCLUSION

We find that Deputies Rodriguez, Duran, Arevalo and Castaneda acted lawfully in self-defense and defense of another when they used deadly force against Robert Avita. We are closing our file and will take no further action in this matter.