

Non-Fatal Officer Involved Shooting of Adrian Aldaco
Los Angeles Police Department

Detective Rudy Chavez, #31642
Officer Gregory Papik, #40716

J.S.I.D. File #22-0022



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 9, 2023

MEMORANDUM

TO: CAPTAIN OMAR BAZULTO
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 Adrian Aldaco
J.S.I.D. File #22-0022
F.I.D. File #F003-22

DATE: August 9, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 28, 2022, non-fatal shooting of Adrian Aldaco by Los Angeles Police Department (LAPD) Officer Gregory Papik and Detective Rudy Chavez. We conclude there is insufficient evidence to prove the officers did not fire their weapons in lawful self-defense and defense of another.

The District Attorney's Command Center was notified of this shooting on January 28, 2022, at approximately 2:30 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through by LAPD personnel.

The following analysis is based on body worn video camera (BWV) footage, dispatch recordings, court testimony, witness interviews, photographs, and reports. These materials were submitted to this office by the LAPD Force Investigation Division on June 8, 2023. The involved officers were not equipped with BWV. Their car was not equipped with a digital in-car video system (DICVS). The officers' compelled statements, if any exist, were not reviewed or considered.

INTRODUCTION

On January 28, 2022, at 1:16 p.m., LAPD Hollenbeck Division plain clothes Police Officer Gregory Papik, driver, and Detective Rudy Chavez, passenger, were in the area of Evergreen and Wabash Avenues in an unmarked LAPD Toyota pickup truck and wore tactical vests marked with "Police" on the front and back. They radioed for a marked unit to investigate a "four 15 man with a gun," later identified as Adrian Aldaco.

Uniformed officers Antonio Villegas, driver, and Jane Kim, passenger, responded to the call in a marked patrol car and attempted to contact Aldaco on Evergreen Avenue. An airship also responded. Aldaco ran from the uniformed officers, toward Papik and Chavez.

According to Papik and Chavez's testimony at a trial against Aldaco, after they exited their car, Aldaco drew a gun from his waistband and pointed it at Chavez as he ran toward them. Papik fired three rounds and Chavez four. Aldaco suffered two nonfatal gunshot wounds to his torso. Seconds before the shooting, Airship Officer James Schwedler warned over the radio that Aldaco was "reaching" for his waistband.



Chavez and Papik were not equipped with BWV. Villegas and Kim were driving in their car at the time of the shooting. While their BWV does not capture the shooting, it recorded the seconds afterward as Aldaco was detained and a pistol lay on the sidewalk nearby. Investigators recovered the weapon and determined it was an operable 9mm firearm loaded with four rounds in an attached high capacity magazine.

FACTUAL ANALYSIS

BWV

According to their BWV, Villegas drives their marked patrol car eastbound on Wabash Avenue and turns right, southbound on Evergreen Avenue. Seconds later, Villegas abruptly stops in the roadway. Kim exits the car with her weapon drawn. Aldaco runs past her on the sidewalk toward Wabash Avenue and the undercover unit. Aldaco's hands are empty and swinging at his sides. Kim reenters the car. Villegas hastily makes a U-Turn and drives the car back toward Wabash Avenue. Meanwhile, the airship officer is heard over the radio: "Reaching for his waistband. Reaching for his waistband, use caution." And a second later: "Suspect down. Get an RA rolling. Looks like an OIS." The shooting is not seen or heard on the BWV footage.

Villegas exits the car and walks to Aldaco, lying on his back facing towards the undercover officers (south). A gun lies near Aldaco's head. Villegas detains Aldaco at gunpoint. He warns him not to reach for the gun. Aldaco is arrested without further incident.



Figure 1: Kim BWV; Seconds before shooting, Aldaco runs toward undercover vehicle (circled), hands empty.



Figure 2: Kim BWV; Seconds after shooting, Villegas walks toward Aldaco, lying on the sidewalk.



Figure 3: Villegas BWV; Villegas detains Aldaco at gunpoint; Aldaco is facing undercover officers; Aldaco's gun (circled) lies on the sidewalk.

Statements

Chavez and Papik testified in a trial against Aldaco. According to their testimony, they were conducting undercover operations in the area, unrelated to Aldaco, when they observed Aldaco exit a residence and place a gun in his waistband. Aldaco walked northbound on Evergreen Avenue and entered a convenience store at Wabash and Evergreen Avenues. They observed Aldaco exit the store. According to Chavez, Aldaco looked up at the airship and appeared “surprised.” Aldaco walked back southbound on Evergreen Avenue. They maneuvered their car on Evergreen Avenue to maintain sight of Aldaco. Villegas and Kim’s marked car drove past them toward Aldaco.

Aldaco immediately turned and ran back toward Wabash Avenue. Now running toward them, Aldaco drew the gun from his waistband. They exited their car. Chavez testified that Aldaco, still running, pointed the gun at him. Chavez fired a shot.

He fired a second shot as Aldaco was “next to” him, running by, and a final shot after Aldaco was past him. (The investigation determined that Chavez fired four shots not three.) Chavez fired the second and third shots, he testified, because Aldaco continued to hold the gun. Around the time of his first shot, he heard Papik yell, “Police!” “Drop it!”

Papik testified that after Aldaco drew the gun, Papik yelled, “Police! Get your hands up!” He saw Aldaco move the gun “away from his body” and begin to raise the gun toward Chavez. Papik fired a shot as Aldaco pointed his gun at Chavez’s “lower extremities.” Aldaco continued running but flinched and hunched. Aldaco ran past the officers but turned back and raised the gun toward them. Papik fired a second shot. Aldaco stumbled forward a few more steps but repeated the same movement, again pointing the gun back at the officers. Papik fired a final round. Aldaco fell to the ground. The gun “[slid] across the sidewalk.”

Papik initially stood at the driver side of the car but then ran around the front of it toward the passenger side—toward the sidewalk, where Aldaco ran toward Chavez. Papik testified that each shot was aimed at Aldaco’s right side, first as Aldaco pointed his gun at Chavez, and Papik stood behind Aldaco, set off at an angle, then after Aldaco ran past them and twice “blad[ed]” his body and pointed the gun back at them.

Tactical Flight Officer James Schwedler told investigators that he heard the undercover unit broadcast that they saw “a man with a gun” (later identified as Aldaco) walking on Evergreen Avenue toward Wabash Avenue. The undercover unit radioed that the man entered a convenience store, exited, and was walking southbound on Evergreen Avenue. Schwedler spotted Aldaco as Aldaco approached a female, later identified as [REDACTED] [REDACTED]. A marked black and white police car turned on Evergreen Avenue and drove toward Aldaco. He immediately turned and ran “right towards” the undercover unit. As the airship circled in front of Aldaco, Schwedler saw Aldaco “remove” something from his waistband. As the airship circled behind Aldaco, he fell. (Schwedler did not say whether, circling from above, he lost sight of Aldaco in the moments before or after the shooting.)

Schwedler saw what appeared to be a semiautomatic pistol fall to the ground a few feet from Aldaco. He believed Aldaco was shot because he fell and grabbed his midsection as though injured, but did not see the officers fire. Schwedler was unsure but believed both undercover officers were outside their unmarked truck pointing weapons at Aldaco at the time he fell.

Schwedler did not say and was not asked whether Aldaco raised or pointed the item at officers.

[REDACTED]

[REDACTED]



Medical Records

Hospital records indicate Aldaco suffered four gunshot wounds, to his front left shoulder, left scapula, right abdomen, and right lower back or flank area. “Ballistic fragments” were removed from his liver. The records do not distinguish entry and exit wounds. Given that the wound locations correspond between the front and back of Aldaco’s body, it is likely he was struck twice—causing two entry wounds and two exit wounds. Investigators did not photograph Aldaco’s injuries.

Physical Evidence

From the sidewalk near where Aldaco fell, investigators recovered an operable 9mm semiautomatic pistol loaded with four rounds in a high capacity magazine. No round was in the chamber. The trigger was in “rearward” position.



Figure 4: Aldaco's pistol.

At the time of the incident, Chavez was armed with a .40 pistol. According to the four .40 casings recovered at scene—near the rear passenger side of the undercover truck—and a post-incident examination of his weapon, Chavez fired four rounds.

Papik was armed with a .9mm pistol. According to the three 9mm casings recovered—one near the truck's front passenger side, one on the hood, one near the rear driver side—and a post-incident examination of his weapon, Papik fired three rounds.

Investigators identified four bullet impacts in the area of the shooting, labeled A through D for identification, as indicated in the chart below. Impact A, located on a metal gate across from the undercover truck, was consistent with a bullet fired in a westerly direction. Impacts B, C, and D, located along the front windows and doors of two businesses on Wabash Avenue, were consistent with bullets fired in a northerly direction. Impact C was likely caused by a bullet ricochet. Based on the fired bullets recovered at scene suitable for ballistic analysis, Chavez fired the bullets associated with impacts A and C, and a bullet found in Aldaco's clothing; Papik fired the bullet associated with impact B and a second bullet found in Aldaco's clothing. Investigators did not determine who fired the bullet associated with impact D.

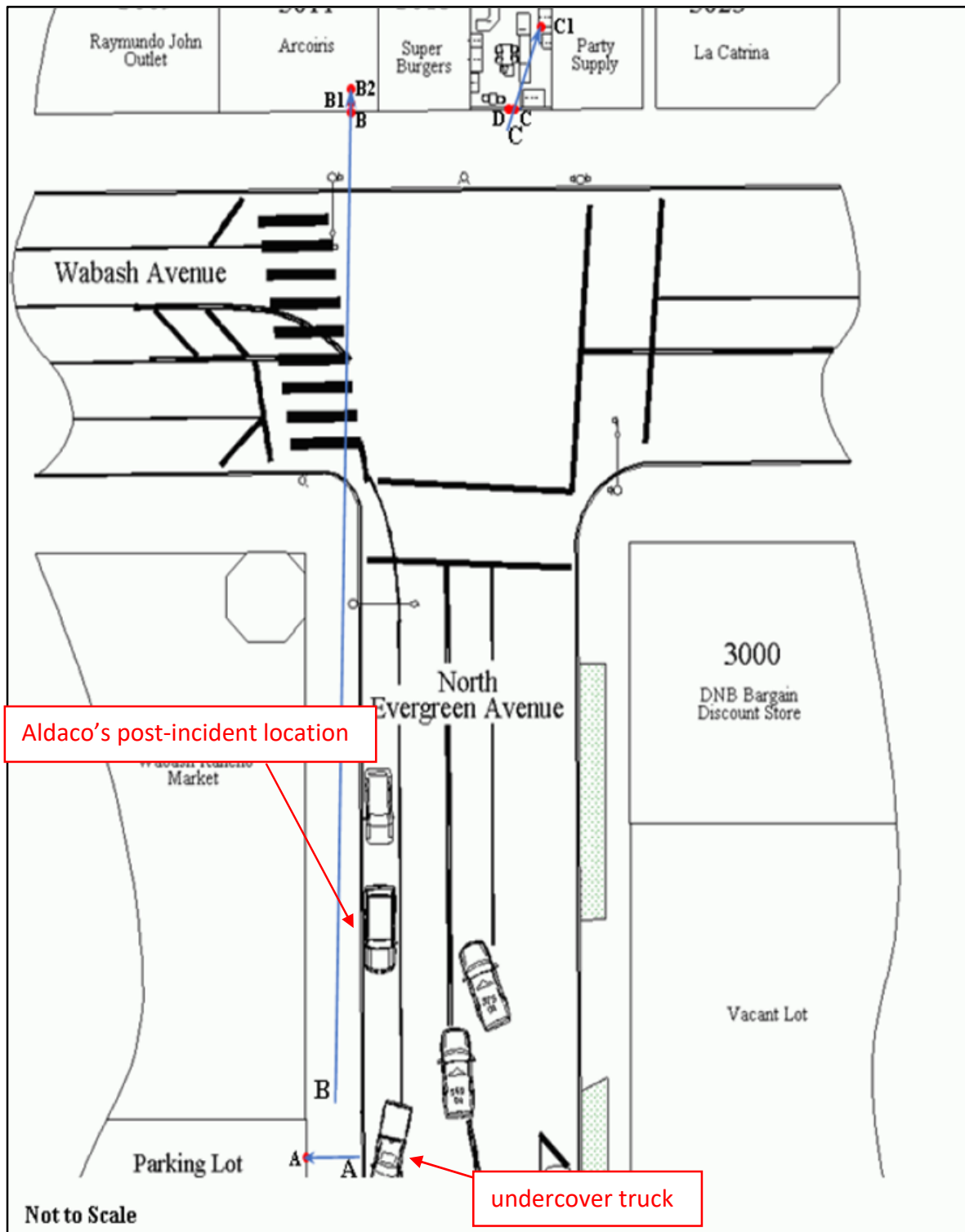


Figure 5: Investigators' diagram of bullet impacts and paths of travel.

Court Case

On June 8, 2022, arising from this incident, Aldaco was charged in case number BA502755 with felony counts of assault with a firearm on a peace officer and being a felon in possession of a firearm. On March 3, 2023, he was acquitted by jury of assault with a firearm on a peace officer and convicted of being a felon in possession of a firearm. He was sentenced to four years in state prison.

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

According to their court testimony, Chavez and Papik were undercover conducting unrelated operations when they observed Aldaco exit a residence and place a pistol in his waistband. An airship and marked patrol unit responded to their call for backup. BWV footage shows Aldaco run on Evergreen Avenue toward Chavez and Papik’s unmarked truck. Seconds later, Airship Officer Schwedler is heard on BWV radioing that Aldaco was reaching in his waistband, then that Aldaco was “down” and an “OIS” had occurred. Schwedler later told investigators that Aldaco “removed” the gun from his waistband before the shooting.

Papik and Chavez testified that Aldaco ran toward them, drew, and pointed a pistol at Chavez, causing them both to fire in response. Based on their testimony, bullet path analysis, and Aldaco's injuries, the officers continued to fire after Aldaco had run past them. Chavez said he continued to fire because Aldaco still held the gun, while Papik said Aldaco ran past them but twice turned in their direction and pointed the gun. In contrast to Chavez and Papik's testimony,

There is no video footage to confirm or contradict the officers' account—that Aldaco drew and pointed the firearm at Chavez—but Schwedler's contemporaneous radio broadcast that Aldaco was "reaching for his waistband" and the BWV footage of the pistol lying close to Aldaco on the sidewalk seconds after the shooting corroborate the officers' account

Additionally, BWV seconds after the shooting shows Aldaco lying on his back but facing *toward* Chavez and Papik (south), supporting Papik's testimony that Aldaco ran past them but twice turned back and pointed the pistol.

Considering the totality of the circumstances known to Papik and Chavez at the time, including those leading up to the incident, there is insufficient evidence to prove beyond a reasonable doubt that they acted unreasonably when they used deadly force, given Aldaco ran toward them while armed; Schwedler radioed that Aldaco reached for his waistband; the officers testified that Aldaco pointed the pistol at Chavez; and BWV footage shows the pistol lying on the sidewalk after the shooting, no longer in Aldaco's waistband.

CONCLUSION

For the foregoing reasons, we find insufficient evidence to prove beyond a reasonable doubt that Papik and Chavez did not act in lawful self-defense and defense of another when they used deadly force against Aldaco.