

**Fatal Officer Involved Shooting of Sergio Acosta
Redondo Beach Police Department**

Sergeant John Anderson #1229

J.S.I.D. File #18-0323



JACKIE LACEY

District Attorney

Justice System Integrity Division

August 24, 2020

MEMORANDUM

TO: CHIEF KEITH KAUFFMAN
Redondo Beach Police Department
410 Diamond Street
Redondo Beach, California 90277

CAPTAIN KENT WEGENER
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 Sergio Acosta
J.S.I.D. File #18-0323
R.B.P.D. File #18-4236
L.A.S.D. File #018-00056-3199-013

DATE: August 24, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 26, 2018, fatal shooting of Sergio Acosta by Redondo Beach Police Department (RBPD) Sergeant John Anderson. We have concluded that Sergeant Anderson acted in lawful self-defense at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on July 26, 2018, at approximately 5:35 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department (LASD) Lieutenant Rodney Moore.

The following analysis is based on reports, recorded interviews, DVD recordings, and photographs submitted to this office by the LASD Homicide Bureau. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On July 26, 2018, at 4:11 p.m., Carmen N. called 9-1-1 to report that a man, later identified as Sergio Acosta, fired a handgun at another individual on a greenbelt near Dale Page Park. Carmen N. told the operator she saw a man waving a gun, and stated the man fired once at someone who was running away from the location. The caller described the shooter as a tall male Latino in his early 20s, wearing a navy-blue shirt and black shorts.

At 4:12 p.m., a call for service was broadcast. The broadcast stated that a man was waving a gun on the greenbelt. A second broadcast, also at 4:12 p.m., added that the man fired a gun at someone who was running. At 4:13 p.m., a description of the shooter was broadcast. Sergeant John Anderson was approximately a mile away from the location of the shooting. He was wearing a uniform with “Police” markings and insignia and he was driving an unmarked black police SUV equipped with lights and siren. Anderson drove to the location and was able to contact Acosta within two minutes of the call for service.

Anderson stated that he initially saw Acosta on the south sidewalk of the 2500 block of Gates Avenue, half a block west of the greenbelt.



Figure 1 Proximity of the Officer Involved Shooting to the Greenbelt

He reviewed his in-car Mobile Digital Computer and confirmed that Acosta fit the description provided by the 9-1-1 caller. When Anderson first saw Acosta, Acosta’s shirt was drenched in sweat and he had “bug eyes.” Based on these observations, Anderson believed Acosta may have been under the influence of methamphetamine. Acosta was turning his right side away from Anderson and Anderson perceived Acosta was behaving furtively.

Anderson stopped his vehicle in the street on Gates Avenue. He reached across his body to shift the vehicle into park with his left hand as he unholstered his service weapon with his right hand. He cracked the door of his vehicle open and yelled, “Police!” Anderson put his foot against the door to keep it from swinging closed, apparently because he was parked facing uphill. Acosta turned towards Anderson and Anderson saw that Acosta’s hands were empty, but his left upper arm was pressed against his body. Anderson saw a semiautomatic handgun concealed in Acosta’s left armpit. Anderson yelled, “Drop the gun!” three times. Acosta responded, “I’m trying to protect my son.” Anderson was confused because he did not see any children or other individuals nearby.

Anderson was still sitting in the driver’s seat of his police vehicle and Acosta was standing approximately seven yards away from him. Acosta moved his right hand across his body as if he were reaching for the grip of the gun under his left arm. Fearing Acosta would shoot him, Anderson fired six rounds at Acosta through the driver’s side window of his police vehicle.¹ The window shattered and Acosta stumbled backwards, struck by multiple gunshots. Acosta fell into a seated position against a cinder block retaining wall. His gun dropped on the sidewalk within arm’s reach on his left side. Acosta sat leaning to his left in the direction of the gun, so Anderson told him to roll away from it. Acosta responded, “I can’t. I’m shot.”

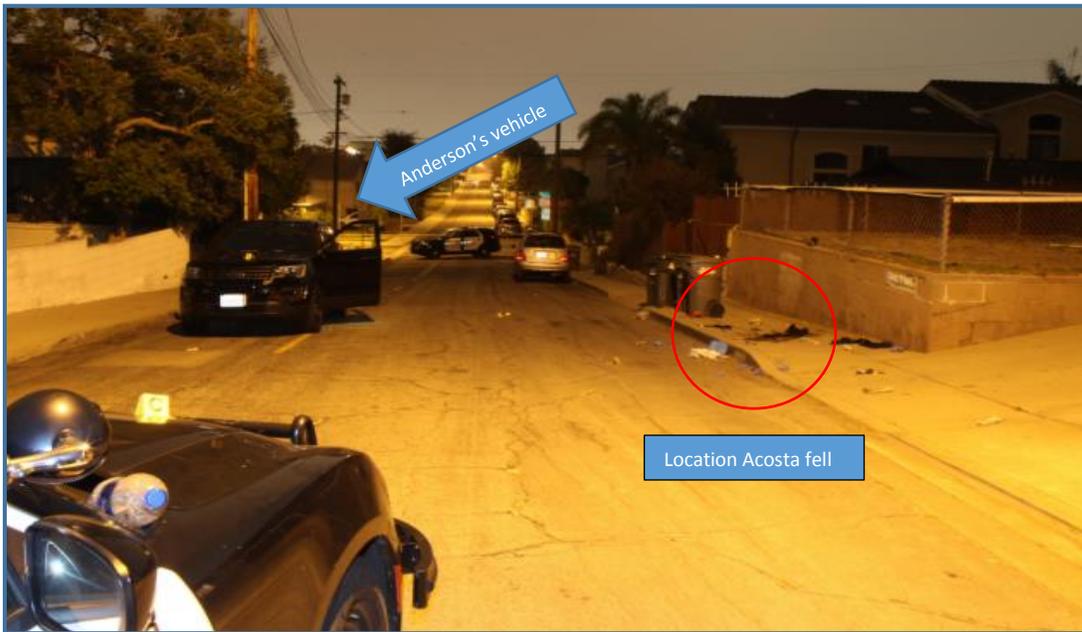


Figure 2 Proximity of Anderson’s vehicle to Location Acosta Fell

¹ The investigative materials did not explain why Anderson fired through the window.



Figure 3 Anderson's vehicle parked facing uphill at the time of the shooting.



Figure 3 Air Pistol Recovered Near Acosta's Body

Additional RBPD units arrived within seconds. Anderson approached Acosta, kicked the gun out of Acosta's reach, and officers began providing medical aid to Acosta. Anderson asked dispatch to send paramedics to the scene and then joined his fellow officers in tending to Acosta's wounds. When Redondo Beach Fire Department paramedics arrived, they treated Acosta briefly and then transported him to Harbor-UCLA Medical Center. Lifesaving efforts were unsuccessful and Acosta was pronounced dead at 5:41 p.m. by Dr. Dennis Kim.

Investigators recovered a replica Colt .177 caliber BB pistol with the grips missing on the sidewalk near the spot where Acosta fell. Grips that fit the pistol were located close by.

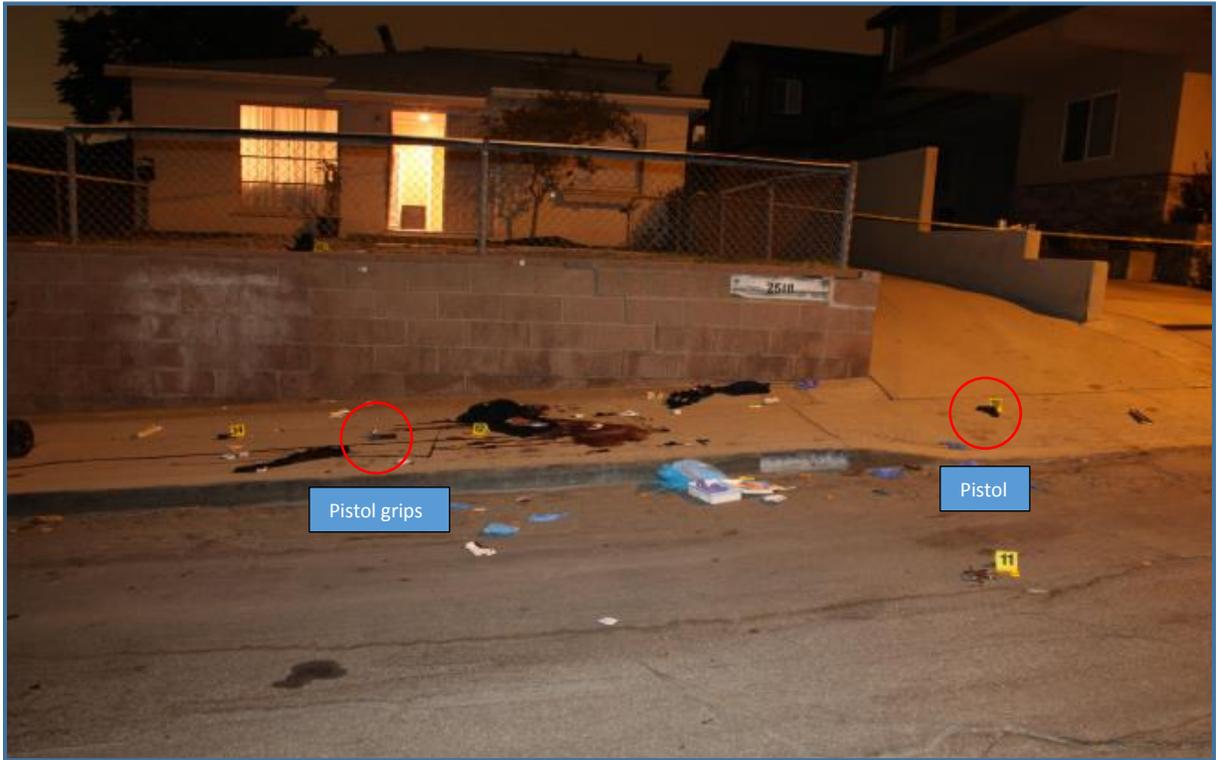


Figure 4 Location Where Acosta Was Treated After he was Shot

Investigators also recovered six spent .45 caliber cartridge cases at the scene, consistent with Anderson firing six rounds.

Anderson was wearing a body-worn video camera (BWV) at the time of the incident. He told investigators that due to the stress of the incident, he did not think to activate his BWV until paramedics were treating Acosta. Therefore, Anderson's BWV did not capture the incident.

Investigators interviewed the following witnesses:

Carmen N.

Carmen N. was the 9-1-1 caller. She told investigators that she heard Acosta arguing near the greenbelt on Gates Avenue. She looked outside of her home and watched Acosta cross from the north to the south side of Gates Avenue holding a gun in his right hand. As Acosta crossed the street, he extended his right hand and fired his gun at a man who was running southbound on the bike path along the middle of the greenbelt. Carmen called 9-1-1 to report what she had seen. While she was on the phone with the 9-1-1 operator she heard four loud gunshots—those fired by Anderson—but she did not see the incident. After hearing the volley of gunshots, she stayed away from her windows out of fear.

Lauren Z.

Lauren Z. was walking her dog on Gates Avenue on the west side of the greenbelt when she crossed paths with Acosta and a woman later identified as Virginia M., an intermittent girlfriend of Acosta. The couple were walking eastbound a few feet in front of her on the south side of Gates Avenue as they reached the greenbelt. At the greenbelt, Lauren suddenly saw another man run along the bike path northbound in the direction she, Acosta and Virginia were walking. She was still only a few feet from Acosta when Acosta drew a handgun from his front pocket and pointed it at the man running past. Lauren heard three pops, which sounded like a cap gun or paintball gun. The man turned and ran southbound and Lauren lost sight of him. She could hear Acosta tell Virginia, "I almost got him." Acosta tucked the gun into his right front pants pocket. Shortly afterwards, she saw Acosta on the south sidewalk of Gates Avenue alone, and she did not see Virginia. Lauren was approximately two houses away from Acosta when her attention was drawn to marked black and white police cars driving west bound in her direction. As the marked cars arrived, she saw Acosta sitting down on the sidewalk. She saw uniformed officers get out of their cars and approach Acosta on foot, and saw Acosta was now laying on the sidewalk. She said all of the police vehicles arrived at the same time.

Lauren did not hear any gunshots other than those Acosta fired at the man running on the greenbelt. She did not hear any words spoken between Anderson and Acosta, nor did it seem she noticed the interaction at all. She said she could not figure out why Acosta was acting as if he was hurt. She saw that the officers' guns were drawn, but she said no shots were fired. She saw the officers and then the paramedics treating Acosta and was close enough to hear some of their conversation.

Virginia M.

Virginia M. had an on-and-off dating relationship with Acosta. She told investigators that he always carried a BB gun that looked like a real firearm and that he was "quick to bring it out." On the day of the incident she met Acosta at approximately 1:00 p.m. They were walking to his residence on Gates Avenue through the greenbelt when they saw Laurencio G. Acosta and Laurencio did not get along. They argued in the greenbelt until Acosta drew his BB gun and Laurencio fled. Acosta chased Laurencio and Virginia saw Acosta fire the BB gun in Laurencio's direction.

Virginia distanced herself from the confrontation by walking eastbound on Gates Avenue. After firing the BB gun, Acosta followed Virginia on Gates Avenue. When he was approximately two houses away from her, an unmarked police vehicle drove towards Acosta. Virginia said Acosta put his hands up, but he was still holding the gun. She heard the police officer fire gunshots. She did not hear Anderson tell Acosta to drop the gun or any other verbal interaction between the officer and Acosta.

Autopsy

On August 6, 2018, Dr. Scott Luzi, a Medical Examiner at the Los Angeles County Coroner's Office performed an autopsy on Acosta's body. Dr. Luzi found that Acosta had four gunshot wounds. Dr. Luzi described the wounds as follows:

1. A gunshot wound of the left chest. The bullet that caused this wound entered the front of Acosta's chest. It traveled front to back, left to right and upward.
2. A gunshot wound of the abdomen. The bullet entered Acosta's lower abdomen from the front. It passed from front to back, from right to left and upward.
3. A superficial perforating gunshot wound to the chest. The bullet that caused this wound entered and exited the left chest. The bullet traveled from left to right.
4. A superficial perforating gunshot wound of the left arm. The bullet that caused this wound passed through Acosta's left arm in a left to right direction.

Dr. Luzi determined Acosta died of multiple gunshot wounds.

A forensic analysis indicated that at the time of his death, Acosta's blood contained amphetamine, methamphetamine and marijuana.

LEGAL ANALYSIS

In evaluating whether a police officer's use of force was reasonable, 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 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.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger the person perceived need not to have actually existed. *Id.*

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 505. The People have the burden of proving beyond a reasonable doubt that a person did not act in lawful self-defense or defense of another. If the People fail to meet this burden, a jury must find the defendant not guilty. CALCRIM No. 3470.

The evidence examined shows that Anderson was informed there was a man firing a gun in broad daylight in a greenbelt that was frequented by children and families. Anderson arrived within moments and immediately confronted Acosta, the man described by the 9-1-1 caller. Anderson was in dangerously close proximity to Acosta when he saw Acosta holding what appeared to be a firearm. Because Anderson was aware that Acosta had fired a gun at someone fewer than two minutes before, and Acosta retained the weapon despite being instructed to drop it, it was reasonable for Anderson to conclude that Acosta intended to use the weapon to avoid capture. Although the weapon was later determined to be an air pistol, Anderson reasonably believed that the weapon was a real firearm and reasonably believed he was in danger of suffering great bodily injury or death. When Acosta reached across his body, Anderson reasonably concluded the immediate use of deadly force was necessary to defend himself against the threat to his life. Therefore, Anderson acted in lawful self-defense when he fired his duty weapon at Acosta.

According to Anderson, Acosta had the gun partially concealed, but readily available, between his arm and body when he arrived. In contrast, Virginia said Acosta held the gun in his hand. Anderson stated he repeatedly told Acosta to drop the gun before firing. Virginia stated Anderson did not tell Acosta to drop the gun, but Acosta began to raise his hands while still holding the gun. Her statement, though contradictory to that of Anderson's, does not persuade us to change our opinion regarding the legality of Anderson's conduct. According to both Virginia and Anderson, Acosta possessed what appeared to be a firearm and did not drop it when Anderson pulled up. In both accounts, instead of dropping the gun, he moved in a manner potentially threatening to Anderson.

Furthermore, the fact that Virginia did not hear Anderson direct Acosta to drop the gun may be explicable by the circumstances of the encounter. When Anderson told Acosta to drop the gun, Anderson was still sitting in his vehicle. Given the distance between Virginia and Anderson, and the fact that he spoke while inside his vehicle, it is possible that Virginia was too far from Anderson to hear his orders. Additionally, at trial, her credibility would be diminished due to convictions of moral turpitude. More germane to the question at hand is that although Virginia stated that she did not hear Anderson tell Acosta to drop the gun, she stated that Acosta held the gun and was lifting his arms when Anderson fired his duty weapon. In any event, Anderson knew Acosta had shot at someone moments before and Acosta kept his weapon immediately ready to use when law enforcement arrived. Carmen, Lauren and Virginia all saw Acosta fire his weapon at someone moments before Anderson's arrival and that fact is not in dispute.

Lauren's statement regarding the shooting are not credible because they are contradicted by material evidentiary facts and she failed to note events that are not in dispute. She said she was two houses away when the shooting occurred, but did not hear any gunshots, although Anderson fired his service weapon six times. This statement calls into question her ability to perceive the events, especially considering she told investigators that moments later she was close enough to hear some of what the paramedics said as they were treating Acosta. There is no reason to believe Lauren was lying when she said she did not hear anything during the shooting, but her recollection is inconsistent with the facts.

Although there is some discrepancy as to what occurred immediately prior to Anderson's use of force, all witnesses agree Acosta was armed with what appeared to be a firearm and used that weapon to fire at another person moments prior to Anderson's arrival. Virginia indicated Acosta was "quick" to draw the weapon, adding credibility to Anderson's description of events. Therefore, there is sufficient evidence that Anderson reasonably believed that his life was in danger and it was necessary to immediately react with deadly force to defend against the threat.

CONCLUSION

We find that Sergeant Anderson acted lawfully in self-defense when he used deadly force against Sergio Acosta. We are closing our file and will take no further action in this matter.