

**Fatal Officer Involved Shooting of Eddie Phillip Herrera
Montebello Police Department**

Officer Oscar Chavez, #1363

Officer Andres Yzaguirre, #1429

J.S.I.D. File #19-0196



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 28, 2023

MEMORANDUM

TO: CHIEF PAUL ESPINOSA
Montebello Police Department
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Montebello, California 90640

CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Eddie Phillip Herrera
J.S.I.D. File #19-0196
Montebello P.D. File #19-2938
L.A.S.D. File #019-00041-3199-013

DATE: AUGUST 28, 2023

The Los Angeles County District Attorney's Office Justice System Integrity Division has completed its review of the May 9, 2019, fatal shooting of Eddie Phillip Herrera by either Montebello Police Department Officer Oscar Chavez or Officer Andres Yzaguirre. We have concluded that the shooting was not unlawful.

The District Attorney's Command Center was notified at 3:51 p.m. on May 9, 2019, of the shooting. The District Attorney's Response Team responded and was briefed at the scene by Los Angeles County Sheriff's Department Lieutenant Brandon Dean.

The following analyses are based upon investigative reports; drawings and maps; recordings of interviews of civilian witnesses; communications by Montebello P.D. dispatchers; recordings of 9-1-1 calls; photographs taken by investigators; and the autopsy report of the Los Angeles County Medical Examiner – Coroner, submitted to the District Attorney's Office on December 4, 2019.

There are no video recordings of the incident. Neither officer wore a body camera.

The interviews of Montebello Police Department officers Chavez and Yzaguirre were conducted by Los Angeles County Sheriff's Department Homicide investigators.

SUMMARY

At midday on Thursday, May 9, 2019, while armed with a double-barrel shotgun, active shooter Eddie Herrera embarked on a violent rampage through the residential neighborhood of West Victoria Avenue in Montebello. Within 18 minutes of the first 9-1-1 call at 1:32 p.m., Mr. Herrera lay mortally wounded on the driveway of [REDACTED] West Victoria Avenue, shot by one of the two Montebello police officers at whom he had fired his shotgun.

FACTUAL ANALYSIS

The residents of West Victoria Avenue were familiar with Eddie Herrera. He was homeless but often showed up to an apartment complex at the southeast corner of North Fourth Street and West Victoria Avenue demanding entrance, although he had no apartment there. The rear apartments of this complex face West Victoria Avenue and are numbered [REDACTED] and [REDACTED] West Victoria Avenue.

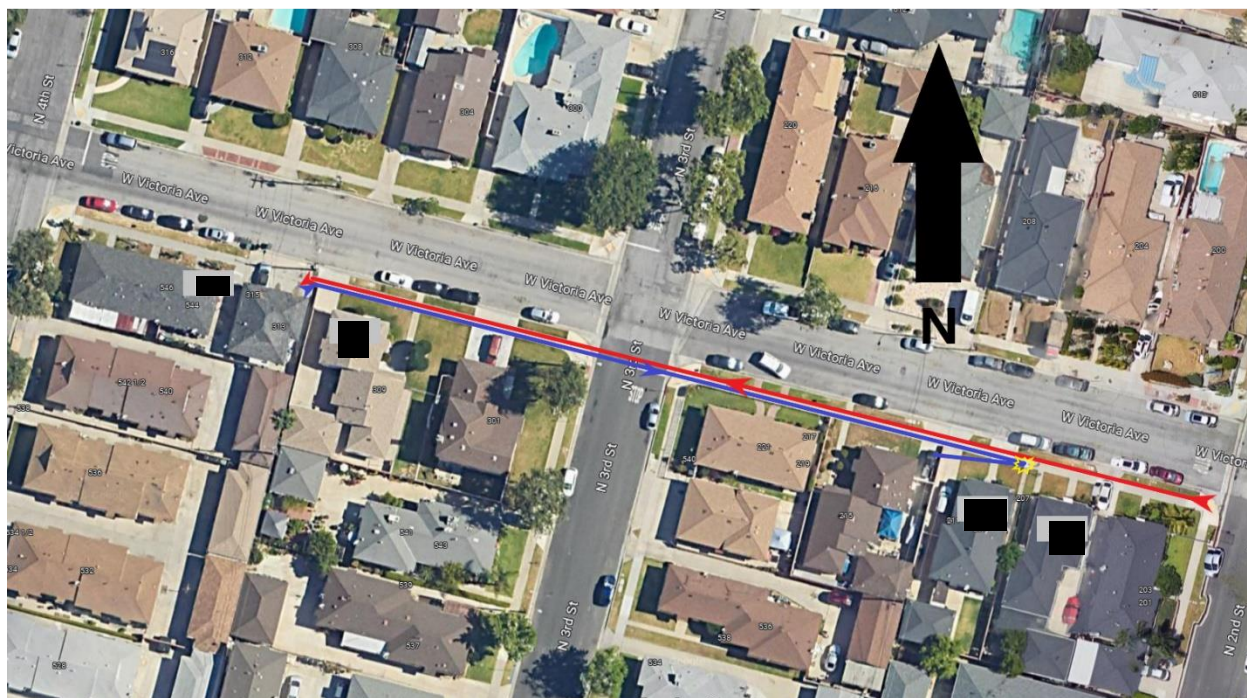


Figure 1 – The 200 and 300 blocks of West Victoria Avenue. Red is westbound route of Mr. Herrera, purple is eastbound route and retreat.

In the past, residents of the apartment complex consistently refused Mr. Herrera entrance to the complex and forced him to leave. Each time he was refused entrance to the complex, he walked up and down West Victoria Avenue shouting obscenities and threatening residents. On several occasions residents of the apartment complex required the assistance of the Montebello Police Department to remove him. The day before he was shot, he had again shown up at the complex and been refused access.

The first reported sighting of Mr. Herrera on West Victoria Avenue on May 9, 2019, was at about 1:30 p.m. He was seen walking on the south sidewalk from North Second Street west toward the apartment complex. When Mr. Herrera reached the apartment complex he walked into the complex behind the cinder-block wall between the complex and [REDACTED] West Victoria Avenue.

As Mr. Herrera walked on West Victoria Avenue a series of 9-1-1 calls were being received by the Montebello Police Department from residents reporting him.

From an unknown residence at the [REDACTED]:

Caller: There's been some crazy, like two guys, one of them with a gun . . . and he started yelling and screaming.

From a pedestrian walking toward North Third Street and West Beverly Boulevard.

Caller: There's a guy out here and now he's got a gun.

From the residence at [REDACTED]:

Caller: There's a guy walking up and down the street where I live and it sounds like there were gun shots.

From [REDACTED]:

Caller: There's a guy outside, I think he's got a gun.

Dispatch: Is he shooting?

Caller: Yeah.

From the residence at [REDACTED]:

Caller: There's a gun shooting outside my house. I can see him shooting (unintelligible) while he's out on the street.

From the residence at [REDACTED] (fourth call by this caller):

Caller: He has a rifle. You need to hurry up. *Danny, get in the back! He's shooting, he's shooting! Oh my god! Get in the room Danny!* [Hysterical sobbing and screaming] *Danny, get in the closet, he's by the bedroom window!* [Screaming].

From the residence at [REDACTED] (fifth call by this caller):

Caller: Did you get the guy? He's still shooting!

The first Montebello Police officer on the scene was Officer Melissa Leal. Officer Leal turned the corner from North Fourth Street and drove east on West Victoria Avenue, but reported she did

not see Mr. Herrera. In the 200 block of West Victoria Avenue residents flagged Officer Leal down and reported that they had last seen him at the apartment complex near North Fourth Street, the direction from which Officer Leal had just come.

Officer Leal told investigators she made a U-turn at North Second Street and drove west on West Victoria Avenue to North Fourth Street but still did not see Mr. Herrera. Officer Leal made another U-turn at North Fourth Street to drive east again on West Victoria Avenue. This time she saw Mr. Herrera walking eastbound on the south sidewalk of West Victoria Avenue. He was swinging what she described as a long rifle by its barrel as he walked.

Officer Leal recognized Mr. Herrera as a person she and officers Oscar Chavez and Andres Yzaguirre had contacted earlier in the day and cited for disturbing the peace. She knew he had a history of violent felonies, including armed robbery, assault with a firearm, residential burglary with a firearm and attempted carjacking, among other crimes, and that he was on parole from a prison sentence imposed for a robbery and attempted carjacking.

As Officer Leal followed Mr. Herrera between North Third Street and North Second Street, he held his rifle at waist level, his right hand on the stock and his left hand holding the barrel. Officer Leal broadcast her observations and requested units to block off West Victoria Avenue at North Second Street. She stopped and backed up her patrol unit to the intersection of North Third Street and West Victoria Avenue.

According to the resident at [REDACTED], when Mr. Herrera reached the property, he raised his rifle, shouted "Fuck you, fuck you!" and fired his rifle toward North Second Street. Meanwhile, officers Chavez and Yzaguirre arrived at the intersection of North Second Street and West Victoria Avenue.

Officers Yzaguirre and Chavez told investigators they recognized Mr. Herrera from their prior contacts. As the officers arrived, they heard Officer Leal broadcast that Mr. Herrera had a rifle. As officers Yzaguirre and Chavez got out of their car they drew their pistols.

Officer Yzaguirre told investigators he stood at the driver's side door of his patrol unit and shouted "Police! Termite! Drop what you have in your hands and let me see your hands!" Mr. Herrera paused and lowered the rifle barrel briefly, but then took a step forward and started to raise the barrel with both hands. Officer Yzaguirre shouted "Don't do it." Mr. Herrera continued to raise the rifle barrel and Officer Yzaguirre fired one shot. Mr. Herrera turned and began to walk westbound on the south sidewalk.

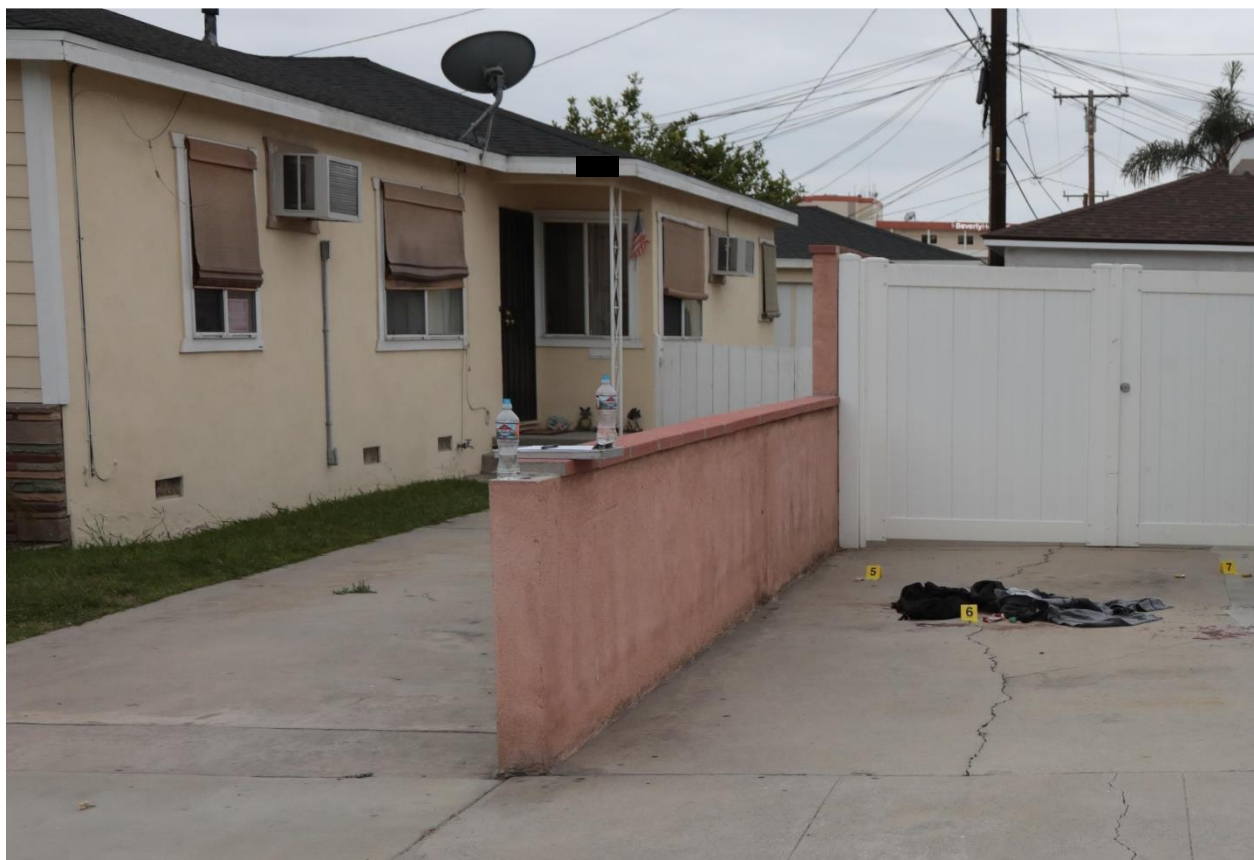
The officers lost sight of Mr. Herrera briefly as they repositioned behind some palm trees. At this time the officers heard the shotgun fire. Both officers stepped out and Officer Yzaguirre yelled "Stop! Just stop!" Mr. Herrera started to turn toward the officers again. Deputy Chavez fired two shots at him. Mr. Herrera flinched but took cover behind a low cinder-block wall which separated the driveway of [REDACTED] West Victoria Avenue from the residence at [REDACTED].

After Mr. Herrera disappeared behind the wall officers Chavez and Yzaguirre commanded that Mr. Herrera show his hands but he did not comply. Additional Montebello Police units arrived

but could not immediately determine whether Mr. Herrera had been injured or was lying in wait behind the wall. Mr. Herrera was shot with a bean-bag round and he did not respond. Officers approached him, handcuffed him, and called paramedics. Mr. Herrera was stabilized and transported to the hospital, but later died at the hospital during surgery.

An autopsy on Mr. Herrera was performed by the Los Angeles County Medical Examiner-Coroner. The conducting Deputy Medical Examiner reported that the cause of Mr. Herrera's death was a single bullet wound. The bullet entered the left side of Mr. Herrera's back and travelled through his lung and heart. The Deputy Medical Examiner was unable to locate an exit wound or a bullet but suggested that the exit wound may have been obscured by the surgical incision made during Mr. Herrera's thoracotomy. The manner of death was determined by the Deputy Medical Examiner to be homicide. Toxicology reports revealed that Mr. Herrera's blood alcohol concentration was .153 and that methamphetamine was present in his blood.

Because no bullet was recovered it cannot be determined whether Officer Chavez or Officer Yzaguirre fired the fatal shot.



Photograph 1 - Low cinder block wall behind which Mr. Herrera took cover (clothes were removed by paramedics).

LEGAL ANALYSIS

The Law

Homicide is the killing of one human by another.¹ Pursuant to California statute, a homicide is not unlawful if the homicide is justifiable.² California statute provides that homicide is justifiable when committed by a public officer who is lawfully attempting to detain a person.³

When the issue of justification is raised by the evidence the People have the burden of proving beyond a reasonable doubt that the homicide was not justifiable.⁴

The issue of justification is raised by the legally relevant evidence in this case. Mr. Herrera was an active shooter in a residential neighborhood who shot at officers responding to the call. He continued shooting after officers Chavez and Yzaguirre arrived.

Penal Code section 196, (as enacted in 1872 and in effect in 2019),⁵ applies to public officers acting lawfully under color of authority. The plain language of this statute reads:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

- 1. In obedience to any judgment of a competent court; or,*
- 2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,*
- 3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.*

On its face Penal Code section 196 authorizes the use of deadly force in apprehending a felony suspect. California courts have subsequently limited the circumstances in which the use of deadly force by public officers is a justification for homicide.⁶ California case law established that the test under the 2019 Penal Code section 196 for determining whether a homicide by a public officer while performing their lawful duty was justifiable was whether the circumstances "reasonably create[d] a fear of death or serious bodily harm to the officer or to another."⁷

California courts have specifically stated that an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to

¹ *People v. Antick* (1975) 15 Cal. 3d 79, 87 (reversed on other grounds).

² California Penal Code section 199.

³ Penal Code sections 196 and 197.

⁴ Penal Code section 189.5; *People v. Moya* (2009) 47 Cal.4th 537; *People v. Banks* (1976) 67 Cal.App.3d 379, 384.

⁵ Penal Code section 196 was amended effective January 1, 2020.

⁶ *People v. Ceballos* (1974) 12 Cal.3d 470.

⁷ *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333; accord, *Reynolds v. County of San Diego* (1994) 858 F.Supp. 1064, 1072.-1075; *People v. Rivera* (1992) 8 Cal. App. 4th 1000, 1007.

attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer.”⁸

Under Penal Code section 196 the use of deadly force by a person is reasonable “when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another.”⁹

Analysis

Officers Chavez and Yzaguirre were employed by the Montebello Police Department as peace officers. It was in their capacity as a peace officers that they responded to West Victoria Avenue and confronted Mr. Herrera.

Mr. Herrera was an active shooter in a residential neighborhood wielding a shotgun. His history of violence was known to the officers through their encounter with him earlier that same day. When the officers arrived at the scene, Mr. Herrera gave no sign that he would surrender or stop his shooting. He ignored the officers’ commands that he drop the shotgun, show his hands, and stop. Instead, he continued to point the shotgun at the officers and shoot.

Under these circumstances, any belief harbored by either Officer Yzaguirre or Officer Chavez that Mr. Herrera posed an imminent threat to their lives or the lives of the residents of the neighborhood was reasonable.

CONCLUSION

The direct and the circumstantial evidence here and the inferences which can be drawn from that evidence establish that the homicide of Mr. Herrera, whether by Officer Yzaguirre or Officer Chavez, was not unlawful.

⁸ *Martinez v. County of L.A.* (1996) 47 Cal.App.4th 334, citing *Reynolds v. County of San Diego*, 858 F. Supp. at 1074-1075.

⁹ 1 CalCrim 507 (2019), Judicial Council of California; see *People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.