

**Non-Fatal Officer Involved Shooting of Anthony Rodriguez
Los Angeles County Sheriff's Department**

Deputy Daniel Saldivar, #607683

J.S.I.D. File #20-0327



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

September 7, 2022

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
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Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Non-fatal Officer Involved Shooting of Anthony Rodriguez
J.S.I.D. File #20-0327
L.A.S.D. File #020-11308-0241-055

DATE: September 7, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 22, 2020, non-fatal shooting of Anthony Rodriguez by Los Angeles County Sheriff's Department (LASD) Deputy Daniel Saldivar. There is insufficient evidence to prove beyond a reasonable doubt that Deputy Saldivar did not act in lawful self-defense and the defense of another.

The District Attorney's Command Center was notified of this shooting on August 23, 2020, at approximately 12:15 a.m. The District Attorney Response Team (DART) responded to the location, where they received a briefing and walk-through of the scene.

The following analysis is based on police reports, 9-1-1 calls and radio transmissions, recorded interviews, ballistic and DNA reports, cell phone evidence, and other evidence submitted to this office by LASD Homicide Bureau Detectives Scott Lawler and Eugene Hatch. LASD deputies were not equipped with body worn cameras at the time of the incident. Saldivar's voluntary statement was considered in this analysis.

FACTUAL ANALYSIS

In the evening of August 22, 2020, [REDACTED] parked her white Toyota Corolla on the north side of Triggs Street next to Bristow Park. Sometime after 9:00 p.m., [REDACTED] was sitting inside the park when she heard a loud crash and saw her car had been struck by a white Honda Civic. [REDACTED] observed two men who were "dressed like gangsters" looking at the damage to her car and the white Honda before they entered a dark gray Honda and drove away.¹ [REDACTED] moved her car down the street and called 9-1-1 at approximately 9:42 p.m. The men returned to the location and began fixing the white Honda.

¹ Leaving the scene of an accident without providing information is a misdemeanor violation of Vehicle Code section 20002(a).

At approximately 9:50 p.m., Deputy Daniel Saldivar and Deputy Michael Martinez, who were wearing full uniforms, responded to the location in separate marked, black-and-white vehicles with the overhead rotating lights activated. Saldivar parked south of the white Honda while Martinez parked behind the white Honda. The deputies observed [REDACTED], [REDACTED], Anthony Rodriguez, and [REDACTED] standing near the hood of the white Honda. Saldivar and Martinez exited their patrol vehicles with their handguns drawn and ordered the group to show their hands. [REDACTED], [REDACTED], and Rodriguez complied. Saldivar told investigators he observed [REDACTED] take a step in Saldivar's direction while raising his shirt with his left hand and remove a black, semiautomatic handgun from his waistband with his right hand. Saldivar fired one round from his handgun at [REDACTED] but struck Rodriguez in the right ankle. [REDACTED] ran southbound across Triggs Street and disappeared into Bristow Park. Saldivar told Martinez that [REDACTED] had a handgun and reported the shooting to dispatch. Several witnesses inside the park heard the gunshot and observed a man running through the park holding an object under his shirt near his waistband. Deputies rendered aid to Rodriguez before he was transported to the Los Angeles County Medical Center/USC and treated for a gunshot wound.

Deputies searched the surrounding area for several hours. At approximately 2:00 a.m., deputies found [REDACTED] hiding inside a disabled vehicle in the backyard of a house in the 1500 block of South McBride Avenue, one block west of the southwestern corner of Bristow Park. Saldivar and Martinez identified [REDACTED] as the person who fled. [REDACTED] was placed under arrest for assaulting a peace officer with a deadly weapon in violation of Penal Code section 245(D)(1).² A firearm was not recovered from [REDACTED] nor located in the surrounding area.

WITNESS STATEMENTS

[REDACTED]'s Statement

[REDACTED] was interviewed at the scene by Deputy Mario Salomon.³ [REDACTED] told Salomon that Rodriguez was with him in his father's white Honda when the accident occurred. In a subsequent interview with investigators, [REDACTED] said he was driving the white Honda alone on Triggs Street when he struck a white car.⁴ [REDACTED] made a U-turn and exchanged information with a sixteen-year old male driver. [REDACTED] was fixing the damage to the white Honda when a friend [Rodriguez] and his friend's girlfriend [REDACTED] stopped to help. Ten minutes later, the deputies arrived and parked. [REDACTED] did not hear the deputies say anything before one of the deputies fired his handgun. [REDACTED] saw an unidentified man running across the street towards the park and heard the deputy say, "He took off running!" Rodriguez said, "You shot me!" The deputy responded, "My bad. I'll take care of you." [REDACTED] admitted being a member of Choppers 12 but denied associating with them during Covid.⁵

² LASD presented the case to the District Attorney's Office, who rejected the case for further investigation.

³ This interview was not recorded.

⁴ This interview was recorded.

⁵ [REDACTED] is a documented member of the Choppers 12 street gang with a moniker of "[REDACTED]."

Rodriguez's Statement

Rodriguez told investigators he was at his friend [REDACTED] house fixing his girlfriend [REDACTED]'s blue Honda Civic when he received a call from his friend "[REDACTED]" [REDACTED] saying he was involved in a car accident.⁶ Rodriguez drove the blue Honda to his house located in the [REDACTED] block of McBride Avenue, picked up [REDACTED], and drove to Triggs Street.⁷ A few minutes later, a woman in a gray or silver car dropped off an unidentified man who appeared to be friends with [REDACTED]. Rodriguez, [REDACTED], and [REDACTED] were standing near the front of the white Honda while the unidentified man was behind the trunk. Rodriguez saw the deputies driving towards them and immediately put his hands up and started walking backward. The unidentified man walked approximately ten to fifteen feet in front of Rodriguez and appeared to be getting ready to run when the deputies parked and exited their patrol vehicles with their handguns drawn. The unidentified man ran southbound. The deputy pointed his handgun at the unidentified man, then pointed it at Rodriguez and fired, striking him in the leg. Rodriguez did not hear the deputies give any commands before he was shot. Rodriguez asked the deputy, "Why did you shoot me for? I didn't do nothing." The deputy responded, "I know. I'm sorry... it's 'cause the other guy said [sic] he had a gun." Rodriguez did not see the unidentified man draw a handgun. Rodriguez told investigators he hoped they caught the man who ran, "Because of him, I got shot." Rodriguez denied being a member of Choppers 12.

[REDACTED]'s Statement

When interviewed at the scene by Salomon, [REDACTED] said Rodriguez contacted her and said he had been involved in a traffic collision.⁸ [REDACTED] drove her blue Honda to Triggs Street to bring tools to Rodriguez to fix the car. [REDACTED] told Salomon she did not know the man who ran from the scene after the shooting. When [REDACTED] was later interviewed by investigators, she told them she and Rodriguez were driving in her blue Honda on Triggs Street when they stopped to help an unidentified man pushing a disabled white car.⁹ About 20 to 30 minutes later, [REDACTED], Rodriguez, and the unidentified man were standing near the hood of the disabled car when the deputies arrived, exited their patrol vehicle, pointed their handguns at them and ordered them to put their hands up. [REDACTED], Rodriguez, and the unidentified man complied with the commands before the deputy shot Rodriguez. When [REDACTED] asked the deputy why he fired at them, he responded, "You have a gun!" [REDACTED] told investigators she recorded the incident on her cell phone but declined to provide them with her passcode or the video. [REDACTED] repeatedly denied a third man had been with the group before the shooting.

[REDACTED]'s Statement

[REDACTED] told investigators she was visiting [REDACTED]'s house a few blocks from the park.¹⁰ At some point, [REDACTED] and Rodriguez left together in [REDACTED]'s blue Honda. [REDACTED] stayed

⁶ This interview was recorded.

⁷ Rodriguez and [REDACTED]'s house is approximately [REDACTED] [REDACTED] west of the northwest corner of Bristow Park and [REDACTED] north from where [REDACTED] was located.

⁸ This interview was not recorded.

⁹ This interview was recorded.

¹⁰ This interview was recorded.

at the house talking with ██████'s neighbor. About ten minutes later, ██████ called ██████ and said, "They got shot." ██████ drove her dark gray Kia Optima to the park where she saw ██████. and the others lying on the ground.

██████████'s Statement

██████████ told investigators he was on parole and admitted being associated with Choppers 12 but declined to make any further statements.¹¹

Deputy Martinez's Statement

Martinez told investigators he and Saldivar responded to a hit-and-run call involving two adult males on Triggs Street.¹² When Martinez arrived, he observed three men and a woman standing near the hood of a white Honda Civic with its hazard lights activated. Martinez directed his spotlight to determine whether anyone else was inside the Honda. Martinez was aware there was a Choppers 12-affiliated house in the area, observed the men's clothing and tattoos, and saw tools lying nearby, so he drew his handgun when he exited his patrol vehicle. Both deputies ordered the group to show their hands and not move. The woman and two of the men complied, but the third man kept his hands near his sides and took a step away from the others. Martinez repeated his commands. The third man reached towards his waistband with both hands and bladed his body away from Martinez. Martinez heard a gunshot and immediately looked over to Saldivar, who said the third man had a black "417" (handgun). Martinez did not see whether the man was holding a handgun because the front of the man's body was turned away from him. The third man ran across Triggs Street and disappeared into Bristow Park.

Deputy Saldivar's Statement

Saldivar told investigators when he arrived at the location, he observed four to five "gangster types" standing in front of a white Toyota Corolla with its hazard lights activated.¹³ Saldivar exited his patrol vehicle with his handgun drawn and gave the group commands three to four times to show their hands. One of the men took a step towards Saldivar, lifted his shirt with his left hand and pulled out a black, semiautomatic firearm from his waistband with his right hand. In fear for his and his partner's lives, Saldivar fired one round from his handgun directly at the man, who ran southbound into the park. After reporting the shooting to his partner and to dispatch, Saldivar heard one of the other men say he had been shot. Saldivar placed a tourniquet on the man's leg.

EVIDENCE

Criminalists recovered an expended 9mm casing at the scene. The investigation concluded Saldivar fired one round from his Smith & Wesson MP duty weapon. Firearm detection canines searched Bristow Park but did not locate any additional evidence.

¹¹ This interview was recorded.

¹² This interview was recorded.

¹³ This interview was recorded.

Criminalists recovered a black hat and a cell phone inside the car where [REDACTED] was located. Criminalists recovered a gray, short-sleeved T-shirt, underwear, blue and gray shorts, and a black baseball cap in the driveway of the same location. Particles characteristic of gunshot primer residue were detected on the T-shirt and shorts. The T-shirt, underwear and black baseball cap were tested for DNA and found to contain two contributors; [REDACTED] was excluded as a contributor.

Cell Phone Evidence

Investigators obtained search warrants for the cell phones associated with Rodriguez, [REDACTED], [REDACTED], and [REDACTED]. On [REDACTED]'s phone, investigators identified several text messages and calls with Rodriguez between 1:02 a.m. and 9:27 p.m. on August 22, 2020. Between 12:25 a.m. and 9:10 p.m., several text messages and calls were made between [REDACTED]'s phone and a number listed under "[REDACTED]" The number listed in [REDACTED]'s phone under "[REDACTED]" is the same number as the phone recovered inside the car with [REDACTED]. Investigators located a video of Rodriguez and [REDACTED] displaying Choppers 12 hand gestures, videos of several men displaying Choppers 12 hand gestures and spray-painting Choppers 12 graffiti, and videos taken inside [REDACTED]'s blue Honda. On Rodriguez's phone, investigators located photographs and a video of semiautomatic handguns. Investigators were unable to locate any video of the incident on [REDACTED]'s phone. Investigators noted several calls between Rodriguez and [REDACTED] before the incident and a call from [REDACTED] to [REDACTED] at 9:52 p.m. Investigators were unable to complete an examination of the phone recovered inside the car with [REDACTED]. [REDACTED] provided investigators with a phone number that was different than the phone recovered inside the car.

Other Relevant Evidence

In a criminal action, evidence of the character or a trait of character in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct of the victim of the crime may be admissible to prove conduct of the victim in conformity with the character or trait of character. Evidence Code section 1103. [REDACTED] is a documented member of the Choppers 12 street gang who is known by the moniker "[REDACTED]" and has Choppers 12 tattoos. [REDACTED]

[REDACTED]

14 [REDACTED]

15 [REDACTED]

██████████

LEGAL ANALYSIS

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. “[U]nder the doctrine of transferred intent, self-defense may also apply where the defendant intends to injure or kill the person who poses the threat, but inadvertently [injures or] kills an innocent bystander instead.” *People v. Curtis* (1994) 30 Cal.App.4th 1337, 1357 (citing *People v. Matthews* (1979) 91 Cal.App.3d 1018, 1023-1024).

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 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).

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.

“[A]n officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to 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.” *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 345 (quoting *Reynolds v. County of San Diego* (S.D. Cal. 1994) 858 F.Supp. 1064, 1072).

Saldivar and Martinez responded to a hit-and-run call at night in an area known to be frequented by members of the Choppers 12 street gang. When the deputies arrived at the location, they encountered several people wearing gang attire standing near a damaged Honda matching the description of the hit-and-run vehicle. For their safety, the deputies drew their handguns and ordered the group to show their hands and not move. Saldivar said instead of following the deputies’ commands, ██████████ took a step in his direction, lifted his shirt, and pulled a black, semiautomatic handgun from his waistband. Saldivar stated he fired one round from his duty weapon in fear for his and his partner’s lives in response to ██████████’s actions.

Although a handgun was not recovered, evidence supports Saldivar’s statement that he observed ██████████ draw a handgun from his waistband while moving towards him. Martinez stated he observed ██████████ take a step and turn his body, lift his shirt, and reach towards his waistband, actions consistent with retrieving a handgun. Immediately after discharging his weapon, Saldivar told Martinez that ██████████ had a handgun. Although ██████████, Rodriguez, and ██████████ denied seeing anyone with a handgun, their statements were otherwise inconsistent. Several witnesses saw a man running through the park holding an object near his waistband after the gunshot. ██████████ admitted associating with the Choppers 12 street gang and ██████████.

There is insufficient evidence to prove beyond a reasonable doubt that Saldivar did not actually and reasonably believe he and his partner were in imminent threat of death or serious bodily injury and that deadly force was necessary when he discharged his weapon in response to ██████████ moving towards him while drawing a handgun from his waistband. Under the doctrine of transferred intent, the reasonableness of the force used against ██████████ applies to the round that inadvertently struck Rodriguez.

CONCLUSION

We find there is insufficient evidence to prove beyond a reasonable doubt that Deputy Saldivar did not act in lawful self-defense and the defense of another when he discharged his weapon.