Non-Fatal Officer Involved Shooting of Alejandro Salinas Bell Gardens Police Department

Officer Michael Weinrich, #586

J.S.I.D. File #21-0053



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

September 14, 2022

MEMORANDUM

TO: CHIEF SCOTT B. FAIRFIELD

Bell Gardens Police Department

7100 Garfield Avenue

Bell Gardens, California 90201

CAPTAIN ANDREW D. MEYER

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: Non-Fatal Officer Involved Shooting of Alejandro Salinas

J.S.I.D. File #21-0053 B.G.P.D. #21-01783

L.A.S.D. File #021-00016-3199-055

DATE: September 14, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 6, 2021, non-fatal shooting of Alejandro Salinas by Bell Gardens Police Department (BGPD) Officer Michael Weinrich. It is our conclusion that Weinrich is not criminally liable for the accidental shooting of Alejandro Salinas because Salinas' injury occurred during the justifiable use of deadly force in self-defense.

The District Attorney's Command Center was notified of the shooting on February 6, 2021, at 10:17 p.m. The District Attorney Response Team responded and was provided a briefing and given a walk-through of the scene.

The following analysis is based on police reports, body worn camera (BWC) video, in-car digital camera (dashcam) video, surveillance video, recorded interviews, radio traffic, a 9-1-1 call, firearm and DNA analysis, and crime scene photographs submitted to this office by Sergeant Vincent Choi and Detective Steve Blagg, Los Angeles County Sheriff's Department, Homicide Bureau. Officer Weinrich provided a compelled statement which was not considered as part of this analysis.

FACTUAL ANALYSIS

Statement of

Malibu.



The graffiti on the wall in the 7300 block of Emil Avenue.

-

was fifteen years old.

BGPD 9-1-1 Call and Radio Traffic . called 9-1-1 to report the vandalism in progress. gang members were near her residence and getting aggressive with her brothers. stated that the males had spray painted a wall near her house. Approximately 30 seconds into the advised the operator that they were flagging down an officer and that the Malibu left northbound on Emil Avenue. Dispatch broadcast over the radio that there was a vandalism in progress in the 7300 block of Emil Avenue. The call stated that three males in a gray Chevy Malibu had spray painted a wall and were last seen on Emil Avenue. Immediately after the broadcast was completed, uniformed BGPD Officer Michael Weinrich radioed he was approaching Garfield Avenue and that he believed he was behind the Malibu. He described the driver and provided the license plate number. Fourteen seconds later, Weinrich broadcast, "[Unintelligible] holding a gun running northbound!" Six seconds later, Weinrich broadcast, "Shots fired! Shots fired!" Weinrich subsequently provided his location, indicated that he fired his service weapon one time and that Salinas stated he had been shot. Statement of BGPD Officer Justin Henshaw Uniformed BGPD Officer Justin Henshaw was driving a marked black and white patrol vehicle when he was flagged down by, in the 7300 block of Emil Avenue in the City of Bell Gardens. advised that a male inside a Chevrolet Malibu had just spray painted a wall on the east side of Emil Avenue. Henshaw observed the letters "KAM" spray painted in black on the wall. Henshaw recognized "KAM" as an acronym for the criminal street gang "Krazy Ass Mexicans." Before being flagged down, Henshaw observed a dark gray Malibu turn west onto Fry Street from Emil Avenue. Henshaw pursued the Malibu, but lost sight of the vehicle in the area of Fry Street and Perry Road. As soon as Henshaw lost sight of car, Weinrich broadcast that he was behind the Malibu going westbound on Clara Street approaching Garfield Avenue. Henshaw drove south onto Garfield Avenue in the northbound lanes from Florence Avenue. Henshaw observed Weinrich stopped behind the Malibu with his patrol vehicle's overhead lights activated. Weinrich broadcast that someone was running northbound then yelled, "Shots fired!" Henshaw did not hear gunshots. Henshaw observed walking north on the east sidewalk away from the Malibu. Henshaw . complied. Henshaw handcuffed ______, conducted a pat down search and stood him to his feet. At that time, Henshaw observed a Glock handgun with an extended magazine lying on the sidewalk. The firearm had been beneath when he was lying prone on the ground. Henshaw placed ... into the backseat of his patrol vehicle then assisted other officers taking Salinas, who was still seated in the driver's seat of the Malibu, into custody. Salinas stated that

transported to the hospital for treatment of a gunshot wound.

he had been shot in the arm. Salinas was treated by personnel from the Los Angeles County Fire Department and transported to the hospital for further medical treatment.

BGPD Officer Weinrich's Dashcam Video²

The dashcam video was activated when Weinrich was behind the Malibu while southbound on Kress Avenue. The Malibu turns west onto Clara Street then turns north onto Garfield Avenue where Weinrich activates the patrol vehicle's overhead lights and siren. The Malibu drives a short distance on Garfield Avenue before pulling over to the east curb.

Weinrich stops his vehicle behind the Malibu, offset to the driver's side. As the Malibu comes to a stop, the rear driver's side door opens and begins to exit and briefly looks back toward Weinrich. At that time, neither of shands are at his waistband. exits the vehicle and runs along the driver's side to the front of the Malibu. At that time, places his left hand to the front of his waistband and it remains there as he runs around the front of the car. The Malibu blocks the camera's view of sale was as he runs onto the east sidewalk. The back of sale was slightly visible.



. looking back toward Weinrich as he begins to exit the Malibu.

4

² Henshaw and Weinrich did not activate their body worn cameras.



continuing to exit the Malibu with neither hand at his waist.



running toward the front of the Malibu with his left hand at his waist.



continuing toward the front of the Malibu with his left hand still at his waist.



's left hand remains at his waist as he nears the hood of the Malibu.



The back of _____.'s head is visible in front of the Malibu as he reaches the sidewalk.

Weinrich broadcasts, "I've got one running holding a gun, going westbound!" when reaches toward his waist. In several frames of the dashcam video an object can be seen protruding from 's left waist near his left hand, consistent with an extended firearm magazine.



Weinrich yells, "Stop!" when it appears that ______. is on the sidewalk. Simultaneously, there is the sound of a single gunshot. It is immediately followed by a much louder second gunshot, consistent with the shot being fired in closer proximity to the dashcam. Salinas then puts both of his hands out of the driver's window. _______. is no longer visible to the camera when the gunshots are heard.

Weinrich broadcasts that shots were fired. The lights and sirens of Henshaw's vehicle become visible approaching the Malibu from the front. Henshaw stops his vehicle and exits and appears to be pointing his service weapon at someone on the sidewalk. Henshaw moves to the sidewalk and takes into custody, however, the Malibu blocks the camera's view.

Six seconds elapse from the time the Malibu comes to a stop to the sound of the second gunshot.

BGPD Officer Henshaw's Dashcam Video

Garfield Avenue with his hands in the air as Henshaw stops his patrol vehicle. In the distance is Weinrich's patrol vehicle and the Malibu. 's gun is visible on the sidewalk next to his left foot. Henshaw orders to the ground and he immediately complies. Henshaw approaches with his service weapon drawn.

Henshaw approaches ______, kneels down and handcuffs him. Henshaw stands ______ to his feet and pats him down as he walks him to his patrol vehicle and out of view. The gun is again visible on the sidewalk.



The gun is on the sidewalk next to self-sidewalk rest is left foot. The bright light in the distance is the spotlight from Weinrich's patrol vehicle. The Malibu's headlights are visible behind the gray truck.



Ameca Auto Electric Surveillance Video

Surveillance video was obtained from Ameca Auto Electric located just north of Avenue. The video footage captures running onto the east sidewalk with his left hand at his waistband. It then starts hopping back and forth on both feet before bending at the waist toward his lower legs. A few seconds later he stands with his hands in the air. At that time, the reflection of the blue lights on Henshaw's patrol vehicle become visible and goes to the ground.



running north on the east sidewalk of Garfield Avenue.

Position of the Malibu and Weinrich's Patrol Vehicle



Photograph showing the position of Weinrich's unit and Malibu at the time of the shooting. The pickup truck obstructs the view of the location where was taken into custody and the gun was recovered.

Firearm and Ballistic Evidence

possessed a Glock model 19, 9mm caliber semiautomatic pistol. It had one expended cartridge case in the chamber and 29 live cartridges in the 31-round-capacity magazine. The firearm was traced to a retail firearms dealer in Nevada that was no longer in business.



The Glock model 19 with extended magazine possessed by



The expended cartridge case in the chamber.

A .40 caliber expended cartridge case with the headstamp "WIN .40 S&W" was recovered behind the front driver's side tire of Weinrich's patrol vehicle. The cartridge case was consistent with the live rounds recovered from Weinrich's Glock 22, .40 caliber service weapon.

There were bullet strikes to the front and back of the Malibu's driver's seat backrest.

Injuries

Salinas was transported to St. Francis Medical Center and treated for a gunshot wound to his right shoulder and fractured scapula. The bullet fragments were not removed from his shoulder.

was transported to St. Francis Medical Center and treated for a minor abrasion to his right calf.

that due to his age, the law required that he consult with an attorney before he was questioned.³ While the investigators were on hold with the Public Defender's Office, spontaneously stated, "Cause the thing is, though, like, I shot myself." Investigators advised to wait and speak with an attorney before making any additional statements.

Investigators exited the interview room and allowed to speak privately with the attorney.

³ Welfare and Institutions Code section 625.6.

⁴ The statement was recorded.

After _____. completed the telephone call, he invoked his Miranda rights and declined to speak with investigators.

Statement of Alejandro Salinas

DNA Evidence

There were four contributors to the DNA sample taken from the trigger and trigger guard. The DNA profile is approximately 70 octillion times more likely if it originated from three unknown individuals than if it originated from four unknown individuals. The DNA profile is approximately 19 times more likely if it originated from Salinas and three unknown individuals than if it originated from four unknown individuals.

There were four contributors to the DNA sample taken from the magazine. The DNA profile is approximately 70 quadrillion times more likely if it originated from and three unknown individuals than if it originated from four unknown individuals. This DNA profile is approximately three octillion times more likely if it originated from Salinas and three unknown individuals than if it originated from four unknown individuals.

There were four contributors to the DNA sample taken from the remainder of the firearm. The DNA profile is approximately one sextillion times more likely if it originated from three unknown individuals than if it originated from four unknown individuals. The DNA profile is approximately 400 billion times more likely if it originated from Salinas and three unknown individuals than if it originated from four unknown individuals. The DNA profile is approximately 200 undecillion times more likely if it originated from salinas and two unknown individuals than if it originated from four unknown individuals.

The DNA sample taken from the pistol grip had at least five contributors and was too complex to be suitable for interpretation. There was an insufficient amount of DNA detected on the cartridge cases to conduct an analysis.

THE LAW

Self-Defense

A peace officer is justified in using deadly force upon another when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following

⁵ Weinrich's dashcam video shows that Salinas placed his hands out the window after Weinrich fired his service weapon.

reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another; 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) and (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 on that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).

The decision by a peace officer to use force shall be evaluated from the perspective of a reasonable peace officer under the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall account for occasions when an officer may be forced to make quick decisions 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.

In determining whether the use of deadly force is necessary, officers shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer. Penal Code section 835a(a)(2).

Actual Danger is Not Necessary

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580.

"If the defendant acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken." *People v. Jackson* (1965) 233 Cal.App.2d 639, 642.

Transferred Intent

Under the common law doctrine of transferred intent, "a person maliciously intending to kill is guilty of the murder of all persons actually killed. If the intent is premeditated, the murder or murders are first degree." *People v. Bland* (2002) 28 Cal.4th 313, 323-324. The doctrine does not

apply to attempted murder. "To be guilty of attempted murder, the defendant must intend to kill the alleged victim, not someone else." *Id* at p. 328.

CONCLUSION

