

**Fatal Officer Involved Shooting of Jerome Barber**

**Azusa Police Department**

**Officer David Aguilar, #1191**

**J.S.I.D. File #21-0267**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**September 20, 2022**

## **MEMORANDUM**

TO: CHIEF MIKE BERTELSEN  
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Fatal Officer Involved Shooting of Jerome Barber  
J.S.I.D. File #21-0267  
A.P.D. File #21-28066  
L.A.S.D. File #021-00074-3199-013

DATE: September 20, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 27, 2021, fatal shooting of Jerome Barber by Azusa Police Department (APD) Officer David Aguilar. We have concluded that Aguilar acted in lawful self-defense when he fired his weapon, reasonably believing, based on a totality of the circumstances, that force was necessary to defend against a threat of death.

The District Attorney's Command Center was notified of this shooting on June 27, 2021, at approximately 2:33 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by Lieutenant Hugo Reynaga, Los Angeles County Sheriff's Department (LASD) Homicide Bureau.

The following analysis is based on cell phone video, 9-1-1 phone call recordings, recorded witness interviews, reports, photographs, and medical records. These materials were submitted to this office by the LASD Homicide Bureau. The officers were not equipped with body worn cameras.

### **INTRODUCTION**

APD Officers David Aguilar, Richard Martinez, Michael De Anda, and Lieutenant Thomas Avila responded to Jerome Barber's residence for a domestic dispute call. Barber charged at the officers while holding a large kitchen knife. After multiple bean bag rounds failed to stop him, Aguilar fired four gunshots at Barber, killing him at the scene.

On June 27, 2021, Barber called 9-1-1 and reported that his wife, [REDACTED], had “maced” him. A few minutes later, [REDACTED] called 9-1-1 and reported that Barber had “tried to attack” her. When officers arrived, a police dispatcher called Barber and asked him to go outside to speak with them regarding his call for service. Barber angrily refused to meet with them. He told the dispatcher that he had a knife and that the officers would have to shoot him before he would leave his apartment.

Barber paced back and forth on his second floor balcony, holding a knife, and yelling at the officers, positioned below, to shoot him. The officers told Barber they were there to help. They asked him to drop his knife and come down to talk. After several minutes, Barber rapidly descended a staircase toward the officers, ignoring their commands to drop the knife. Avila fired three bean bag rounds at Barber as he descended the stairs, hitting him twice. Undeterred and still holding the knife, Barber walked rapidly to within approximately six feet of Aguilar. From that distance, Aguilar fired four rounds at Barber, killing him.

Barber’s neighbor, [REDACTED], recorded video footage of Barber yelling at officers and holding the knife. He did not record the shooting but did witness it and provided a statement to investigators. A knife was recovered at the scene.

## **FACTUAL ANALYSIS**

### Emergency Calls

At 12:50 p.m., Barber calls 9-1-1 and reports that his wife, [REDACTED], “maced” him in the face during an argument over a cell phone bill. Barber tells the dispatcher that [REDACTED] locked herself in their bedroom with their four month old child.

At 12:52 p.m., [REDACTED] calls 9-1-1 and reports that Barber “just tried to attack” her, and she “pepper sprayed” him. She tells the dispatcher that she and Barber are having “marital problems.” Barber is heard yelling in the background that he is not leaving and the police will have to shoot him. [REDACTED] tells the dispatcher that Barber has no guns or other weapons. The dispatcher expresses concern, based on Barber’s comments, that Barber will not cooperate when police arrive and asks [REDACTED] to exit the apartment so officers could safely contact her. [REDACTED] declines to leave her bedroom.

At 1:00 p.m., the dispatcher calls Barber. The dispatcher tells him that officers have arrived to help him and requests that he step outside to meet them. Barber responds, “I’m not going out there. I got a knife in my hand.” Raising his voice, he continues, “I’m not going anywhere. And if they try to remove me, I’m going to attack them, and they’re going to have to shoot me.” Barber says that [REDACTED] was accusing him of something he did not do and says that she pepper sprayed him in his nose and his mouth. Barber reiterates, “They’re going to have to take my life! Do you understand me?”

The call continues as Barber apparently walks away from his phone and is heard yelling: “Pull your gun! Pull your gun! ... You’re going to have to kill me! ... There is no more talking! ... I’m not going anywhere! ... Come kill me! Come kill me!” The recording eventually goes

silent for several minutes before approximately six apparent gunshots are heard, eleven minutes into the recording.

### Civilian Witnesses

■■■■ lived in the same residential complex as Barber. It consisted of multiple detached buildings with dwellings on the second floor and carports underneath. ■■■■s windows and door offered an unobstructed view of Barber's door, balcony, and staircase, which led from Barber's unit to a ground floor patch of grass between two buildings' carports.

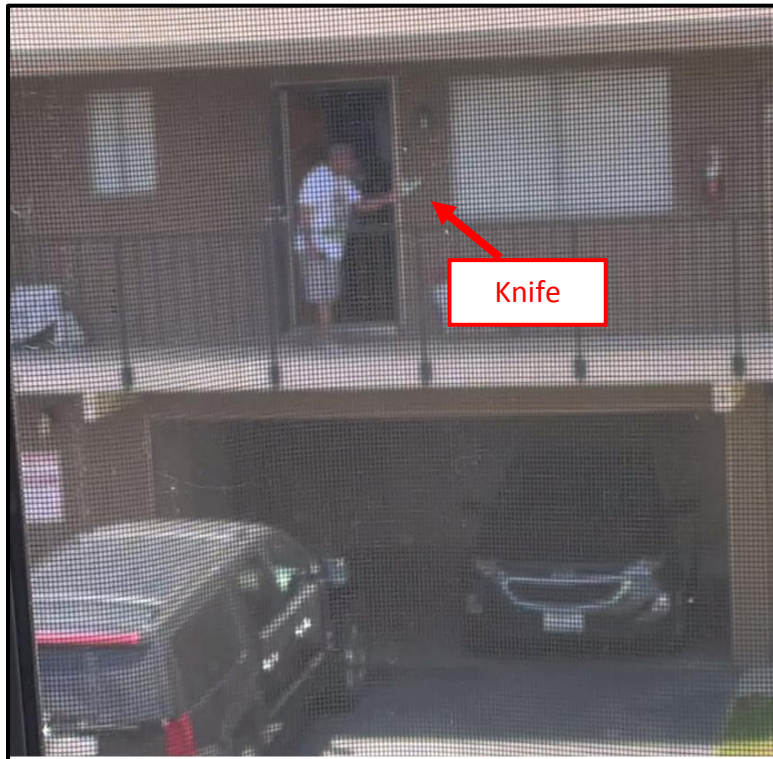
■■■■ told investigators that he heard Barber and ■■■■ fighting over a cell phone bill. They fought often. The police had been called out to their residence before. On this occasion, when police arrived, Barber had a "big old giant knife in his hand" and yelled to officers, "You guys aren't taking me alive. You're going to have to kill me." The officers pleaded with Barber for several minutes to drop the knife and come down the stairs peacefully. Instead, he "came storming down the stairs." An officer fired three rounds from the "orange shotgun" (apparently referring to a less lethal bean bag rifle). Barber, knife in hand, "continued going after" an officer positioned in the doorway to a carport, until that officer fired several gunshots and Barber fell to the ground. ■■■■ estimated Barber got to within six feet of the officer who fired.

### Cell Phone Video

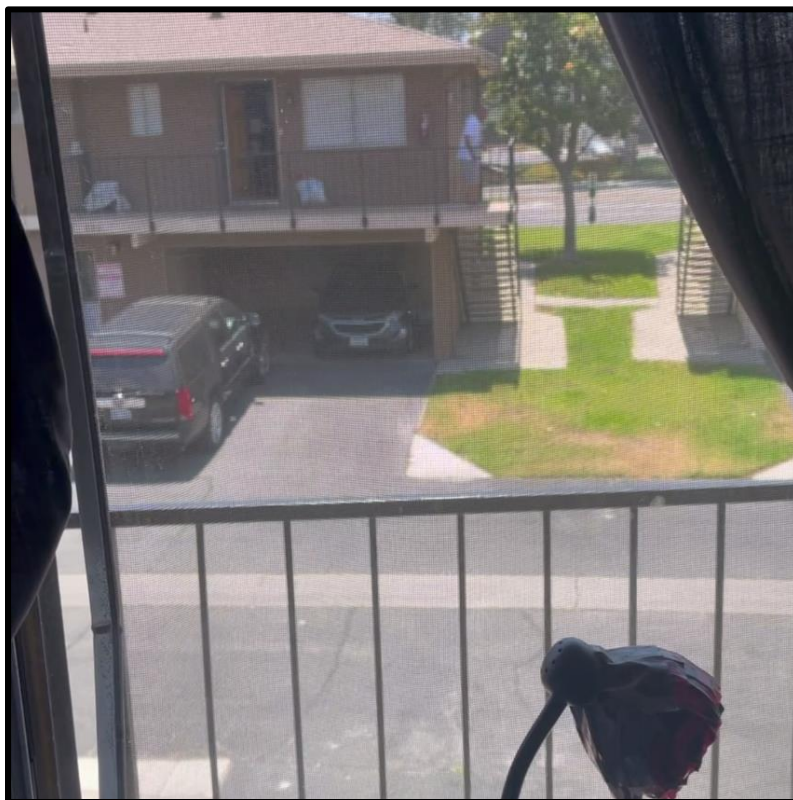
■■■■ recorded multiple video clips of the incident but not the shooting itself. The footage depicts about a minute of Barber walking in and out of his residence, yelling at officers, and waving a knife at them, as they plead with him on a PA system to come down peacefully. Barber repeatedly tells them to kill him, that he is not coming down, and that they will have to shoot him. He tells them that ■■■■ is trying to accuse him of attacking her, but she pepper sprayed him. He appears angry and repeatedly yells profanities at the officers. The final clips show Barber lying on the ground as officers, then paramedics, render aid.



*Figure 1: Cell phone video still image of Barber talking to police, holding a knife in his right hand.*

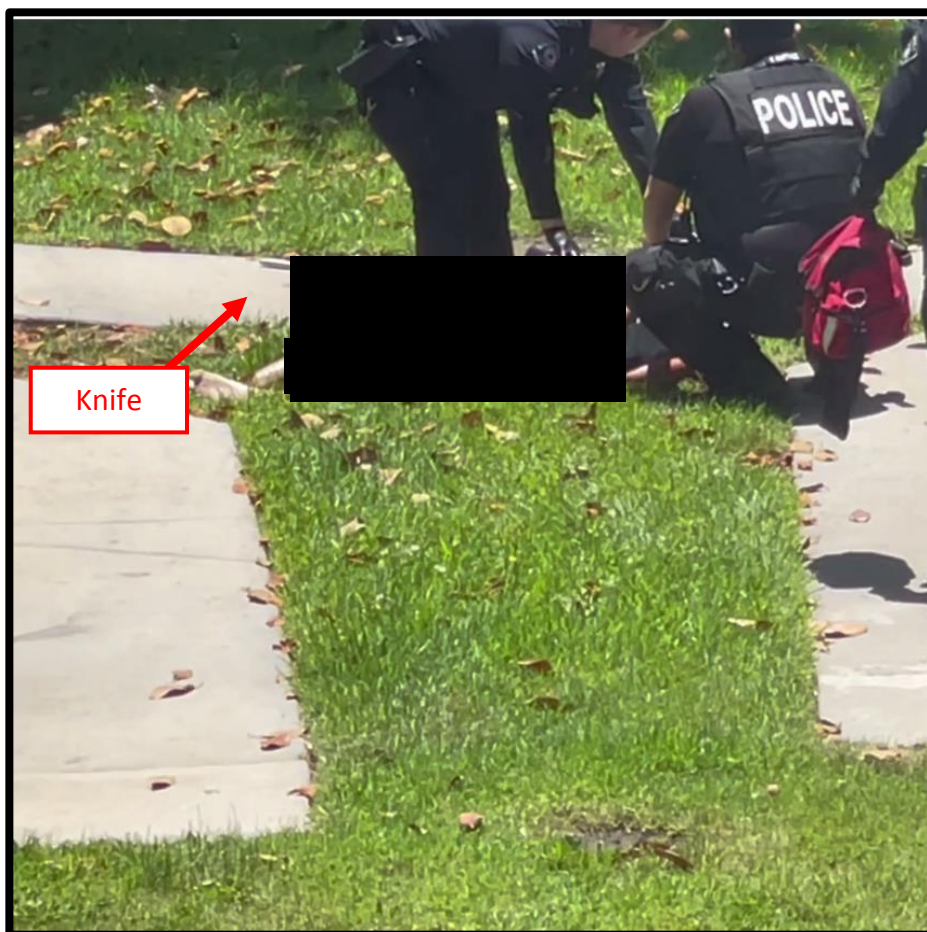


*Figure 2: Cell phone video still image of Barber yelling at officers (out of view) and waving a knife.*



*Figure 3: Cell phone video still image of Barber near the staircase yelling at officers (out of view).*





*Figure 4: Cell phone video still image of Barber after the incident.*

#### Statements of Officers

All four officers provided voluntary statements. Avila saw the shooting; De Anda and Martinez did not because of where they were positioned at the moment it occurred.

Prior to arriving, the officers received similar information from dispatch, based on Barber and [REDACTED]'s calls, the salient points being that Barber was armed with a knife and [REDACTED], with her four month old child, had locked herself inside their apartment. Aguilar and De Anda arrived at the scene first, followed by Martinez and Avila.

After a short standoff, during which Barber, holding a knife, yelled repeatedly at officers to shoot him, Avila stated that Barber, “on a mission,” “quickly” walked down the stairs toward Aguilar and De Anda, who were positioned in a carport door at the base of the staircase. Avila fired three bean bag rounds at Barber, causing him to “flinch” but failing to disarm him or halt his advance.

Aguilar stated that he was concerned for the safety of [REDACTED] and the child as Barber walked in and out of his apartment, waving the knife and yelling at officers. The final time Barber walked inside, Aguilar used the opportunity to move in closer, positioning himself in a carport doorway, near the base of Barber's stairs. Aguilar stated that Barber "rapidly" exited his apartment and descended the stairs holding the knife. At the bottom of the stairs, he and Barber make eye contact. Barber was "locked" on to him. Barber began walking toward him. Aguilar heard less lethal rounds being fired. Barber "react[ed]" but did not "go down." Aguilar ordered Barber to drop the knife. Barber continued to walk toward him with the knife. Aguilar summarized what happened next (on the recording, Aguilar pauses briefly and appears to lose his composure):

He's still walking toward me even though he was hit with the less lethal. So I fire my gun. I just remember after the first time I fired it, he was still walking towards me. And I fired my gun again, and he was still walking towards me. At this point, I just remember thinking how close he is. And I fired my gun until I finally saw him go down to the ground. And the whole time he was still armed with that knife, until he went down to the ground. ... The knife was still sitting in his palm. And so I approached him ... and I kicked the knife out of his hand.

De Anda and Martinez stated that they had had prior contacts with Barber, calls relating to minor neighbor disputes that did not lead to arrests or charges. De Anda was a military veteran and had information that Barber was a veteran as well. During the standoff, he tried to defuse the situation by telling Barber he was a veteran and asking him to come down and "talk it out" with them. However, he was unsuccessful in persuading Barber to do so.

### Physical Evidence

Three bean bag shotgun shells lay in the parking lot northwest of Barber's residence. Four .40 caliber casings lay inside the carport west of Barber's residence. A silver kitchen knife with an eight inch blade lay near Barber's body.



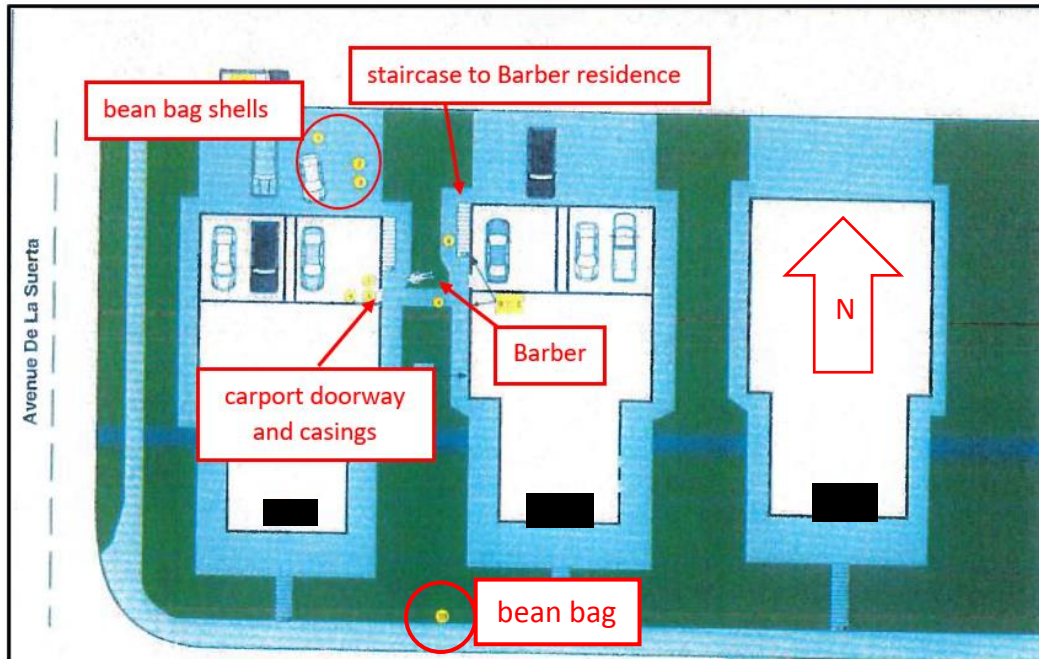


Figure 5: Diagram of the scene showing the carport doorway, Aguilar's location when he fired his weapon.

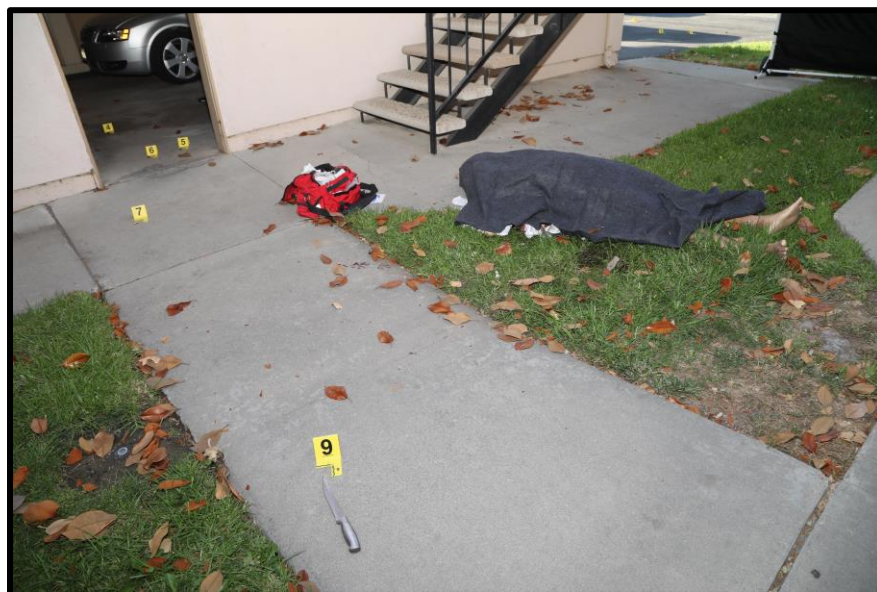


Figure 6: Photo showing the location of Barber (covered), the knife (Item 9), and Aguilar's casings (Items 4-7).

### Autopsy

At 1:53 p.m., Barber was pronounced dead at the scene by fire department personnel. An autopsy was performed by Doctor Brice Hunt of the Los Angeles County Coroner's Office. Doctor Hunt ascribed the cause of death to multiple gunshot wounds. Barber suffered one

gunshot wound to the chest (piercing the heart), two gunshot wounds to the abdomen, and one gunshot wound to the left upper thigh.

## 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). Moreover, “[a] peace officer who makes or attempts to make an arrest need not retreat, or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested.” Penal Code section 835a(d).

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. “An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.” *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. “[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.

## **ANALYSIS**

Aguilar was one of four officers dispatched to Barber's residence after Barber and his wife, [REDACTED], each called 9-1-1 minutes apart. Prior to arriving at the scene, Aguilar was aware from dispatch comments that [REDACTED] was inside the apartment with her four month old child and Barber was armed with a knife. When Aguilar arrived, he stated he saw Barber waving a large kitchen knife. [REDACTED]'s cell phone video, corroborating Aguilar's account, shows Barber holding a kitchen knife, waving and pointing it, and yelling at officers to shoot him and to "pull" their guns, saying that he was not going to jail.

Aguilar and other officers pleaded with Barber to surrender peacefully. The officers explained they were there to help him and that they would not take him to jail. De Anda—a military veteran like Barber—attempted without success to establish a rapport with him.

[REDACTED] stated that Barber held the knife and "stormed" down the stairs toward the officers below, ignoring commands to drop the knife, and continuing despite being struck with bean bag rounds. [REDACTED] stated that Barber got to within six feet of Aguilar before he fired.

Considering the totality of the facts and circumstances known to Officer Aguilar at the time, including those leading up to the incident, when Barber rapidly descended the stairs armed with a knife and continued to within six feet of him, Aguilar reasonably believed that deadly force was necessary to defend against the threat of imminent death. Aguilar was forced to make a quick judgment about using force, moreover, after less-lethal resources and techniques had already failed to end the threat.

## **CONCLUSION**

We find that Officer Aguilar acted lawfully in self-defense when he used deadly force against Jerome Barber.