

**Fatal Officer Involved Shooting of Samantha Aguilar
Montebello Police Department**

Officer Brion Gorrell, #1337

J.S.I.D. File #17-0304



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 5, 2020

MEMORANDUM

TO: CHIEF BRAD KELLER
Montebello Police Department
1600 W. Beverly Boulevard
Montebello, California 90640

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 Samantha Aguilar
J.S.I.D. File #17-0304
M.P.D. File #2017-00004021
L.A.S.D. File #017-00064-3199-013

DATE: October 5, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 17, 2017, fatal shooting of Samantha Aguilar by Montebello Police Department (MPD) Officer Brion Gorrell. It is our conclusion that Officer Gorrell acted in lawful self-defense and defense of others at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on June 17, 2017, at approximately 4:35 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LASD Lieutenant John Corina.

The following analysis is based on reports, recorded interviews, photographs, and videos submitted to this office by LASD Homicide Bureau Detective Jonas Shipe and Sergeant Chaffey Shepherd. The voluntary statement of Officer Gorrell was considered as part of this analysis.

FACTUAL ANALYSIS

Aguilar and Marc S. had been in a dating relationship for approximately one year. They were both homeless.

On June 17, 2017, at approximately 1:00 p.m., Aguilar and Marc S. shared a dime bag of methamphetamine and decided to use the pool at the Quality Inn and Suites located on Telegraph Road, in the City of Montebello. At about 2:00 p.m., they arrived at the hotel in Aguilar's vehicle and they went to the pool.

While at the pool, Aguilar and Marc S. drank approximately four to five Bud Lite beers each. At one point they got into an argument about Aguilar's old boyfriend. During the argument, Erika R. walked by with her nine year old son and greeted Aguilar and Marc S. In response, Aguilar turned to Marc S. and said, "Why the fuck is she saying hi to you? Do you know her? You want to fuck her? Fuck that bitch!" Erika R. left the location to avoid any conflict with Aguilar and went back to her hotel room with her son.

Marc S. left the pool area to get away from Aguilar but she followed him. Aguilar then ran into the hotel lobby and told Jesus C., a hotel employee, to call the police because Marc S. stole her purse. Jesus C. called 9-1-1 and informed them that a man stole a purse from a woman. During the call Jesus C. informed the operator that the man and woman may know each other and the man was shirtless.

A radio call was broadcast and informed officers that a "211" had "just occurred at Quality Inn lobby. A male took a female's purse and they are now fighting."¹ MPD Officers Enrique Rosas, Robert Josett, and Brion Gorrell heard the broadcast and responded to the location.

While officers were enroute, Aguilar and Marc S. continued arguing. At one point, Aguilar hit Marc S. multiple times in the head. Marc S. said he was briefly rendered unconscious. Benjamin G., a hotel guest, said he saw Aguilar yell and strike Marc S. Jesus C. also observed Aguilar strike Marc S. with a beer can which knocked Marc S. to the ground. See Figure 1.



Figure 1: Aguilar striking Marc S. with a beer can in the lobby.

¹ 211 is the penal code section for Robbery.

When Marc S. regained consciousness, Aguilar pulled his leg and told him they had to leave because the police were coming. Marc S. refused to go with her and, in response, she pulled off his shoe and left the lobby with it. Marc S. followed Aguilar to the parking lot in an attempt to regain possession of his shoe. Gorrell arrived on scene and observed Marc S. in the parking lot with his shirt off and Aguilar just outside her vehicle. See Figure 2.



Figure 2: Gorrell exited patrol vehicle and observed Marc S. and Aguilar in the parking lot.

Gorrell exited his patrol vehicle and Aguilar entered her vehicle. Aguilar's car windows were down and Gorrell ordered Aguilar to stop and get out of the car. Aguilar did not comply and began to drive away. See Figure 3.



Figure 3: Aguilar failed to stop and drove away.

As Aguilar drove away, Rosas arrived on scene and Gorrell directed Marc S. to come towards him and sit on a parking stall concrete bunker. Marc S. complied as Rosas started followed Aguilar. Rosas said his patrol window was down as was Aguilar's. Rosas said he made eye contact with Aguilar and commanded her to stop her vehicle. She ignored his command and drove out of the parking lot. See Figure 4.



Figure 4: Rosas followed Aguilar out of the parking lot.

Gorrell believed the other units would pursue Aguilar, so he turned his attention back to Marc S. Aguilar then circled back into the parking lot and drove towards Gorrell and Marc S. See Figure 5.



Figure 5: Aguilar drove towards Gorrell and Marc S.

Aguilar briefly stopped her car when she was approximately 20 feet away from Gorrell and Marc S. See Figure 6.



Figure 6: Aguilar briefly stopped her car approximately 20 feet away from Gorrell and Marc S.

Aguilar accelerated her vehicle and steered it towards Gorrell and Marc S. Gorrell observed Aguilar driving towards them and ordered her multiple times to, “Stop! Stop! Stop!” See Figure 7.



Figure 7: Aguilar accelerated from a stop and drove towards Gorrell and Marc S.

Aguilar did not stop and continued to drive towards Gorrell and Marc S. Gorrell stated he was in fear for Marc S. and his own life as Aguilar continued to drive towards them. When Aguilar was approximately five to seven feet away from them, Gorrell fired his duty weapon at the vehicle nine times, striking Aguilar. Marc S. moved from his place on the curb and Aguilar's vehicle came to a rest where Marc S. was previously seated. See Figure 8. Marc S. said he believed Gorrell had to shoot Aguilar to defend himself. Jesus C. said Aguilar would have struck Gorrell but for him shooting Aguilar.

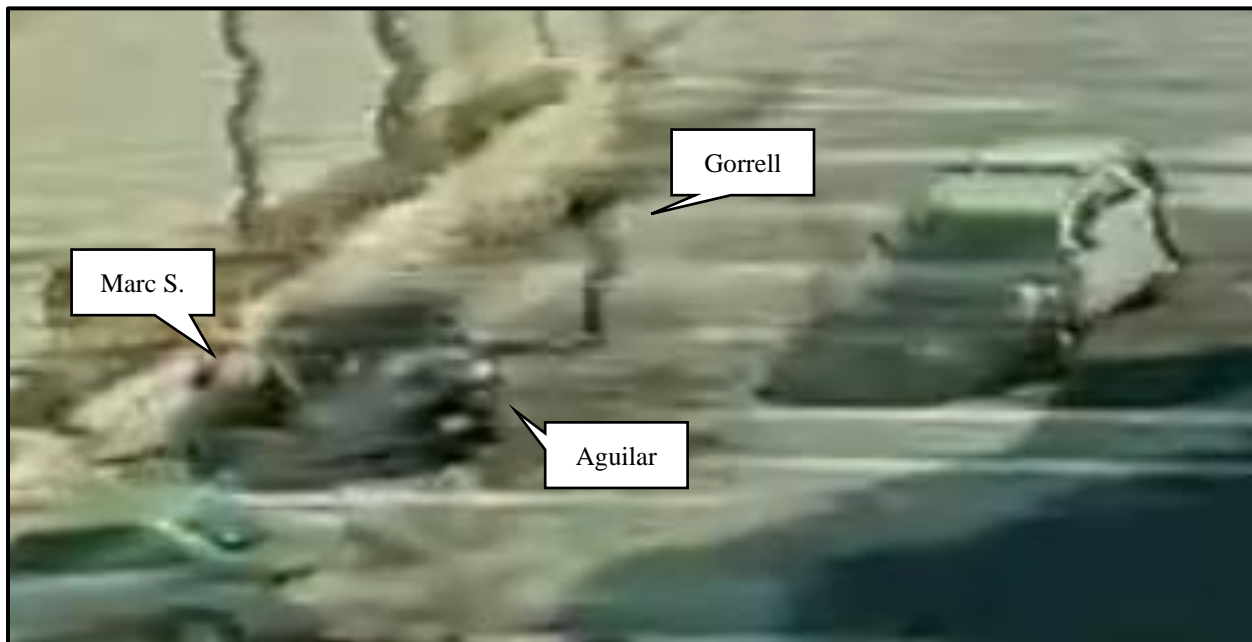


Figure 8: Aguilar's vehicle stops at the curb where Marc S. was previously seated.

Aguilar exited her vehicle and the officers began treating her for her injuries. She was subsequently transported to Saint Francis Medical Center where she succumbed to her injuries.

On June 24, 2017, Deputy Medical Examiner Scott Luzi performed a postmortem examination of Aguilar. An autopsy revealed Aguilar died as a result of multiple gunshot wounds. She sustained gunshot wounds to her left hand, her chest, and three gunshot wounds to her abdomen. Additionally, per the toxicology report, at the time of Aguilar's death, she had .99 micrograms per milliliter of methamphetamine and .025 gram percent of ethanol in her system.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self defense or in the defense of others if the person claiming the defense actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 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.

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

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code § 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code § 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code § 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. People v. Mehserle (2012) 206 Cal.App.4th 1125, 1147. He may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." Id. at 1146; quoting People v. Bond (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collins (1961) 189 Cal.App.2d 575, 589.

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.

Analysis

The evidence examined in this investigation shows Aguilar attacked Marc S. physically. When Gorrell arrived, Aguilar left in her vehicle and Gorrell detained Marc S. During his detention,

Aguilar drove back through the parking lot directly at Gorrell and Marc S. Aguilar briefly stopped her vehicle. She then turned her vehicle and accelerated at Gorrell and Marc S. Gorrell gave Aguilar multiple commands to stop, which Aguilar ignored. When Aguilar got within five to seven feet, Gorrell was reasonably in fear for Marc S. and his own life, and fired his duty weapon.

Under this rapidly unfolding situation, it was reasonable for Gorrell to believe that Aguilar posed a deadly threat to himself and Marc S. As such, Gorrell's decision to use deadly force in order to protect himself and Marc S. was reasonable.

CONCLUSION

We find that Officer Gorrell acted lawfully in self-defense and in defense of others when he used deadly force against Aguilar. We are closing our file and will take no further action in this matter.