

Officer Involved Shooting of Juan Gaxiola
United States Immigration and Customs Enforcement

Officer Erveno Myles, #D06716

J.S.I.D. File #16-0605



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District Attorney

Justice System Integrity Division

August 26, 2019

MEMORANDUM

TO: TAE D. JOHNSON
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Juan Gaxiola
J.S.I.D. File #16-0605
L.A.P.D. File #16-0519178

DATE: August 26, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 23, 2016, non-fatal shooting of Juan Gaxiola by United States Immigration and Customs Enforcement (ICE) Officer Erveno Myles. We have determined that Officer Myles acted in lawful self-defense when he fired his weapon.

The District Attorney's Command Center was notified of this shooting on November 23, 2016, at approximately 11:16 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Los Angeles Police Department (LAPD) Captain William Hayes.

The following analysis is based on reports and other materials, including recorded interviews of witnesses, 9-1-1 calls, surveillance videos, and photographs submitted by LAPD Robbery-Homicide Division. The voluntary statement of Officer Myles was considered in this analysis.

FACTUAL ANALYSIS

On November 23, 2016, at approximately 7:40 p.m., Erveno Myles, an off-duty ICE officer, was driving his Infinity G35 southbound on the Harbor freeway, near the Interstate 405 interchange. Myles stated that he noticed a car following directly behind him, and that the car continued to follow him as he made several lane changes. Myles exited the freeway at Harry S. Bridges Boulevard to evade the car, a white Mazda 3, and drove northbound on Figueroa Street. Myles

stopped at a red light in the number one lane at the intersection of Figueroa Street and Anaheim Street. Elizabeth M., the driver of the Mazda 3, followed and stopped next to the driver side of Myles' car in the left turn lane, slightly ahead of Myles' car. Myles stated he was concerned about the Mazda 3 following him, but calmed down when he saw a woman in the driver seat looking straight ahead. Immediately thereafter, and to his surprise, Myles saw the front passenger door of the Mazda 3 open. Fearful that he was about to be assaulted, Myles armed himself with his 9mm semiautomatic handgun. Myles is left handed, and as he was transitioning the gun from his right to left hand, the front passenger of the Mazda 3, Juan Gaxiola, exited the Mazda 3 and began to approach him with a black "weapon" in his hand.

Simultaneously, as Myles began to lower the driver side window of his car, he saw a black gun in Gaxiola's right hand and a "muzzle flash." Gaxiola was approximately six to eight feet away from him. Myles yelled, "Federal agent! Get back!" Fearing for his life, he fired his gun at Gaxiola until the magazine in his gun was empty. Myles did not know if he struck Gaxiola. Gaxiola entered the Mazda 3, and Myles drove eastbound on Anaheim Street to get away from Gaxiola. Myles reloaded his firearm with another magazine. When Myles believed he was no longer being followed, he returned to the intersection, and called 9-1-1, stating he was a victim of an attempted carjacking.

Approximately three minutes later, Elizabeth M. called 9-1-1 and reported that her boyfriend had been shot. The fire department responded to the 1400 block of North Marine Avenue, approximately two miles from Figueroa Street and Anaheim Street, and transported Gaxiola to a local hospital. Gaxiola was treated for multiple gunshot wounds to his right hand, arm, and hip. Gaxiola survived his injuries.

At the intersection of Figueroa Street and Anaheim Street, investigators located five expended 9mm casings. Investigators recovered the following items from Myles' car: a 9mm Glock handgun, with a full magazine inserted and a round in the chamber; an empty ten-round magazine; four expended 9mm casings from the passenger compartment of the car; and one expended 9mm casing located on the exterior of the car between the edge of the trunk lid and rear window. The ten expended 9mm casings recovered were analyzed and determined to have been fired from Myles' firearm. The physical evidence is consistent with Myles firing a total of ten rounds, the capacity of the magazine, at Gaxiola. No physical evidence, such as bullet impacts to Myles' Infinity, was observed or recovered indicating that the "muzzle flash" Myles saw was in fact a gunshot.

Investigators recovered seven black fragments among the shell casings at the intersection of Figueroa Street and Anaheim Street. The fragments were smooth on one side and checkered on the other.¹ Investigators searched the Mazda 3 and recovered three black fragments with and without checkered patterns from the front passenger seat. LAPD's Forensic Science Division examined and conducted an inspection of the fragments recovered at the shooting scene and inside the Mazda 3, and concluded that several of the fragments from the scene and inside the car were once part of the same object. No firearm was recovered from the Mazda 3.

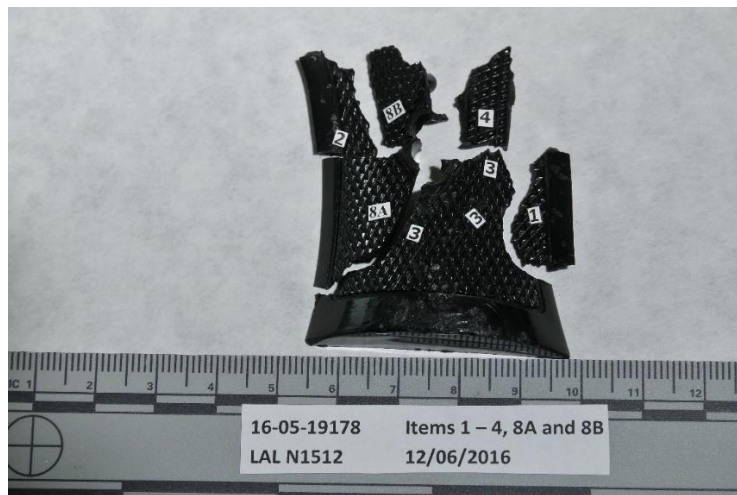
¹ The investigating officer opined that the fragments resemble the grip of a firearm. LAPD's Firearms Analysis Unit is unable to provide an opinion to a scientific degree of certainty that the fragments were once part of a real firearm.



Item 2 was located inside the Mazda 3.



Item 8A and 8B were located in the roadway at the shooting scene.



Items 1 through 4 were located inside the Mazda 3.²

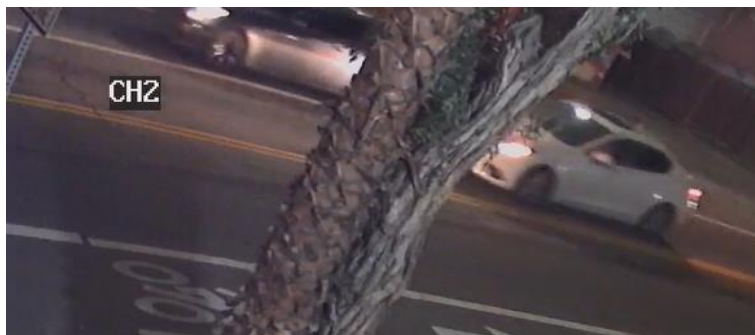
Serology and DNA analysis confirmed the presence of blood from one of the fragments recovered from the front passenger seat of the Mazda 3. The DNA profile obtained from a buccal sample of Gaxiola matched the profile obtained from the swab of the blood on the fragment located inside the Mazda 3, and also from swabs of the fragments recovered from the intersection.

Investigators observed and photographed several bullet holes to the Mazda 3. A physical examination of the Mazda 3, including bullet trajectory analysis, indicates that the front passenger door was open when Myles fired a bullet that travelled a path entering the interior of the driver door without striking the front passenger door.

Surveillance video from a camera facing a southeast direction on Figueroa Street depicts Myles' Infinity and Elizabeth M.'s Mazda 3 approach the intersection, but the shooting is not captured within the frame. The video also depicts a SUV approach behind Myles' car before stopping abruptly, reversing, and returning southbound on Figueroa Street. Myles' car stops outside the

² Items 2, 8A, and 8B depicted in this photograph and the above photographs are the same fragments. Differences in coloration are due to lighting conditions.

frame, and Elizabeth M.'s Mazda 3 is partially within the frame. Approximately 18 seconds elapse from when the Mazda 3 stops to when it leaves the frame. The video does not include any audio.



Video surveillance camera depicts Myles' Infinity and Elizabeth M.'s Mazda 3 as their cars approached the intersection of Figueroa Street and Anaheim Street.

Statement of Monica T.

Investigators interviewed Monica T., who was seated in the passenger seat of a truck headed eastbound on Anaheim Street, west of Figueroa Street, when she heard multiple gunshots. The truck she was inside stopped, and she looked in the direction of the gunshots and saw a white car stopped at the intersection in the left turn lane, northbound on Figueroa Street. She saw a woman with "pale skin" and blonde hair with highlights in the driver seat.³ She believed there were two Hispanic men, one in the front passenger seat and one in the rear passenger seat of the white car. She saw a gun in the hand of the man crouched in the rear passenger seat pointed out of the car, and believed the man was shooting in an unknown direction. Monica T. also saw a big SUV behind the white car, in an adjacent lane, with occupants who appeared shocked. The SUV quickly reversed out of the area. After she made eye contact with the driver, who looked scared, and passengers of the white car, the truck she was inside continued eastbound on Anaheim Street. Monica T. stated both passenger side doors of the white car were open.

Statement of Elizabeth M.

On the evening of the shooting, investigators interviewed Elizabeth M. at LAPD's Harbor Station. She stated that she was driving her car, a Mazda 3, southbound on the Harbor Freeway, and her boyfriend, Gaxiola, was seated in the front passenger seat. She was driving in the number one lane, and the car in front of her was driving slowly. She was unable to pass the slower car due to the presence of other cars in the adjacent lane and she flashed her lights. The slower car "brake checked" her, which caused her to brake abruptly. Due to the other car's driving, she missed her transition to the 405 freeway. When she finally drove around the car, she stated that the car got in front of them again and continued to brake check them, and the driver flipped them off.⁴ Eventually, the slower car exited the freeway, and Gaxiola told her to follow it. When she reached the intersection of Figueroa and Anaheim Streets, she pulled along the left side of the same car, Myles' Infinity G35, because Gaxiola instructed her to do so. Myles' car

³ Elizabeth M. is a white female with blonde hair.

⁴ Myles denied he was involved in any type of "road rage" incident with the occupants of the Mazda 3.

was slightly behind her. Gaxiola exited the passenger side and began to approach the Infinity when the driver of the Infinity fired a gun at Gaxiola. Gaxiola entered the Mazda 3 and told her that he had been shot. She drove eastbound on Anaheim Street and called 9-1-1 for help. Elizabeth M. stated that she intentionally followed the slower car off the freeway because Gaxiola wanted to confront the driver. Elizabeth M. stated that Gaxiola was not armed with any weapons and she speculated that he wanted to yell at the driver, spit at him, or kick his car.

On November 28, 2016, an investigator called Elizabeth M. and informed her of the matching fragments found at the shooting scene and in the passenger compartment of her car. When asked if she would reveal the location of the gun Gaxiola possessed for public safety reasons, she paused and stated that she wanted to consult with an attorney.

Statement of Juan Gaxiola

On November 25, 2016, investigators interviewed Gaxiola at the hospital. Gaxiola stated that he and his girlfriend, Elizabeth M., were having a verbal dispute as she was driving her Mazda 3 southbound on the Harbor Freeway. They were travelling to their home in Long Beach, but missed the transition to the 405 freeway. A car directly in front of them was travelling slow and Elizabeth M. flashed her lights at the car and attempted to change lanes, but the car “boxed them in.” Gaxiola stated that Elizabeth M. was upset at the driver of the car. As she slowed to exit the freeway, the car that had boxed them in exited the same off-ramp. Elizabeth M. continued to follow the car. As they came to a stop, Gaxiola saw a gun protruding from the driver side window of the car they followed, and he heard gunfire. Gaxiola stated that he did not exit the Mazda 3, and he did not have anything in his hands. Gaxiola is right handed. In response to how he sustained a gunshot wound to his right hip, Gaxiola stated that after being shot in the arm, he raised his hips to window level to protect Elizabeth M.

Investigators interviewed Gaxiola again on November 28, 2016. Gaxiola was confronted about the matching fragments from the shooting scene and the Mazda 3. Gaxiola had no further explanation as to the fragments. He denied possessing a firearm, and said Elizabeth M. may have been mistaken that he exited the car due to their “heated argument” before the shooting.

In case number NA105462, Gaxiola was charged with a violation of Penal Code section 245(a)(2), assault with a firearm. On April 29, 2019, Gaxiola pled no contest to the charge.

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM No. 3470. In protecting himself or another, a person may use that amount of force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. *Id.* If the person’s beliefs were reasonable, the danger does not need to have actually existed. *Id.*

In California, the evaluation of the reasonableness of a police officer’s use of deadly force employs a reasonable person acting as a police officer standard, which enables the jury to

evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

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.

Here, Gaxiola and his girlfriend both stated that they intentionally followed Myles off the freeway off-ramp at Harry S. Bridges Boulevard. Their statements conflict with Myles' account as to whether "road rage" precipitated their exit from the freeway. While a car-to-car conflict on the freeway may provide a motive for Gaxiola's following actions, it is immaterial to Myles' response.

Elizabeth M. followed Myles' car after exiting the off-ramp by making a left turn on Figueroa Street, travelling north behind Myles' car as they approached the red light at Anaheim Street. Myles stopped his car in the number one lane and Elizabeth M. stopped her car in the left hand turn lane along the driver side of Myles' car. Myles and Elizabeth M. both stated that Gaxiola exited the passenger side of the Mazda 3, but Gaxiola stated he merely looked out the window before being shot. Myles stated that Gaxiola had a gun in his right hand and that he saw a "muzzle flash" before he fired his gun. Gaxiola and Elizabeth M. both denied that Gaxiola possessed a firearm.

However, the totality of the circumstances supports Myles' account that Gaxiola exited the Mazda 3 with a firearm in his hand. First, black plastic fragments from a single object were located both outside among the expended cartridge casings at the shooting scene and inside the passenger compartment of the Mazda 3 where Gaxiola was seated. The investigator opined that the fragments resemble the grip of a firearm, and DNA analysis confirms that Gaxiola had touched the fragments, including those recovered from the roadway. Second, Monica T. stated that after she heard multiple gunshots, she looked in the direction of the shooting and saw a man crouched in the rear passenger seat of the Mazda 3 pointing a gun out of the car.⁵ Finally, the trajectory of one of Myles' fired bullets confirms that the front passenger door was open at the time the gun was fired.

Myles stated he saw a "muzzle flash" before he fired his gun. No physical evidence was observed or recovered indicating Gaxiola fired a gun. Myles' car did not sustain any gunshot impacts, and no expended casings from a second firearm were recovered from the shooting scene.⁶ If Gaxiola fired a gun at Myles that would be further evidence substantiating Myles'

⁵ Monica T. appears to be mistaken about seeing two men in the Mazda 3. People honestly make mistakes about what they remember, especially in objectively stressful situations such as this one. See CALCRIM No. 226.

⁶ In contrast to a semiautomatic pistol, rounds fired from a revolver do not automatically eject expended cartridge casings. Any expended cartridge casings remain in the chambers of the revolver's cylinder.

actual and reasonable fear of imminent death. However, under the totality of the circumstances, whether Gaxiola fired a gun is not essential to determine whether Myles acted in lawful self-defense.

Elizabeth M. followed Myles off the freeway, and Myles knew he was being followed and was in reasonable fear of an unknown imminent threat at that time. When he stopped at a red light in the number one lane, the Mazda 3 that was following him stopped along Myles' driver side. Gaxiola exited the Mazda 3 holding an object that Myles reasonably believed to be a gun, and approached Myles within six to eight feet. Myles was in actual and reasonable fear of being shot and was forced to make a split-second judgment close in time and distance to an immediate threat of death, whether real or apparent.

The physical evidence indicates that Myles shot Gaxiola and the object Gaxiola held in his right hand, which explains the presence of broken fragments in the roadway among expended cartridge casings. Although the evidence strongly suggests that Gaxiola exited the Mazda 3 holding a gun, investigators did not recover a gun or any other item matching the broken fragments in the roadway and inside the Mazda 3. Nevertheless, it was reasonable for Myles to be in fear of death or great bodily injury when he shot Gaxiola, and Myles' decision to use deadly force was reasonable under the circumstances.

CONCLUSION

We conclude that Officer Erveno Myles' use of deadly force was legally justified in self-defense. We are closing our file and will take no further action in this matter.