

**Officer Involved Shooting of Daniel Aguilar  
Pomona Police Department**

**Officer Austin Dossey, #42108**

**J.S.I.D. File #15-0646**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**August 18, 2016**

## MEMORANDUM

TO: CHIEF PAUL CAPRARO  
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CAPTAIN STEVEN KATZ  
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Monterey Park, California 91755

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

SUBJECT: Officer Involved Shooting of Daniel Aguilar  
J.S.I.D. File #15-0646  
P.P.D. File #15-138208  
L.A.S.D. File #015-00084-3199-055

DATE: August 18, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 6, 2015, non-fatal shooting of Daniel Aguilar by Pomona Police Department Officer Austin Dossey. It is our conclusion that Officer Dossey acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting on December 6, 2015, at approximately 2:34 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports prepared by the Pomona Police Department (PPD) and Los Angeles County Sheriff's Department (LASD), submitted to this office by detectives with the LASD Homicide Bureau. Officer Dossey's voluntary statement was considered as part of this analysis.

### **FACTUAL ANALYSIS**

#### Statement of Officer Austin Dossey

On December 6, 2015, shortly before 1:30 a.m., Pomona Police Department Officer Austin Dossey was on uniformed patrol in a marked black and white police car. Dossey was driving southbound on Waters Avenue in the City of Pomona when he noticed a Jeep Cherokee headed

northbound toward him. As the vehicles slowed down to pass each other, Dossey illuminated the passenger compartment of the Jeep and immediately recognized Daniel Aguilar seated in the front passenger seat. Dossey had two prior contacts with Aguilar and knew him to be a member of the Kiwanis Park criminal street gang. Dossey knew from his training and experience that Kiwanis Park gang members regularly carry firearms.

Dossey watched the Jeep in his rear view mirror and noticed that the taillights were not working. The Jeep then sped through a stop sign as it turned west onto Ninth Street. Dossey circled around the block and located the Jeep still traveling west on Ninth Street. Dossey was three to four seconds behind the Jeep and estimated its speed between 50 and 60 miles per hour. Dossey lost sight of the Jeep when it turned north onto Buena Vista Avenue.

Dossey reached Buena Vista Avenue and observed the Jeep stopped in the middle of the road with the front passenger door open. Aguilar had jumped from the vehicle and was tumbling on the street. Aguilar jumped to his feet and ran toward the east sidewalk. Dossey saw Aguilar remove a black and silver handgun from his waistband with his right hand as he ran behind a parked car. Dossey immediately broadcast, "Man, gun, 883 Buena Vista." Aguilar ran north on the sidewalk as Dossey drove around the Jeep. Dossey stopped the patrol car in front of the Jeep and exited the car with his service weapon drawn.

Aguilar changed directions and fled south on the sidewalk. Dossey paralleled him on foot in the street and yelled, "Stop running! Drop the gun!" Aguilar continued to run holding his right hand at his waist and out of Dossey's view. Aguilar then came to an abrupt stop and turned toward Dossey. Dossey believed that Aguilar was still armed with the handgun. Aguilar had not been moving his right hand in a normal running motion and Dossey never heard the sound of the gun hitting the ground indicating that Aguilar had tossed the weapon. Dossey feared that Aguilar was turning toward him in order to shoot him. Dossey fired three rounds from his service weapon striking Aguilar. Aguilar fell to the ground.<sup>1</sup>

Dossey approached and handcuffed Aguilar with assistance from Pomona Police Department Officer Timothy Cooper. Dossey searched Aguilar but did not find the firearm. Dossey retraced Aguilar's path and located the handgun in the gutter on the passenger side of the parked car he passed as he ran north on the sidewalk. The black semiautomatic firearm was loaded with eight rounds.

Aguilar was transported to Los Angeles County USC Medical Center and treated for a gunshot wound to the right flank.

#### Statement of Andrea Fletcher

Andrea Fletcher was seated in the front passenger seat of the patrol car driven by Officer Cooper.<sup>2</sup> They were eastbound on Ninth Street when Fletcher observed Dossey's patrol car accelerate past them with his lights and siren activated. Cooper turned the patrol car around and

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<sup>1</sup> Eleven seconds after Dossey broadcast that he had observed a man with a gun, the radio captured the sound of three gunshots.

<sup>2</sup> Fletcher was participating on a ride along in preparation for a possible career in law enforcement.

followed Dossey north onto Buena Vista Avenue. Fletcher observed Dossey chasing Aguilar on the east sidewalk. Dossey was yelling, “Show me your hands! Show me your hands!” Aguilar had his hands down by his waistline and was not moving them in a running motion. Aguilar stopped and turned 180 degrees toward Dossey with his hands still at his waist. Fletcher then heard two to three gunshots and Aguilar fell to ground.

#### Statement of Abraham Chavez

Chavez was the driver of the Jeep Cherokee. Chavez was taking Aguilar home after a party when they came in contact with Dossey. Chavez thought he was being stopped because one of his taillights did not work. Chavez slowed down and pulled the Jeep to the side of the street. As the vehicle was slowing down, Aguilar opened the door and jumped out of the car. Dossey stopped his patrol car in front of the Jeep and exited with his service weapon drawn. Chavez lost sight of Aguilar behind the parked cars as he ran south on the east sidewalk. Dossey chased Aguilar southbound in the middle of the street. Moments later, Chavez heard three gunshots.

Initially, Chavez denied knowing that Aguilar was armed with a firearm. Later, Chavez admitted that Aguilar had shown him the firearm in the Jeep while they were parked outside Aguilar’s apartment building before the party. Chavez told Aguilar to take the gun inside before they left for the evening. Aguilar went back into his apartment and Chavez believed that Aguilar had left the gun behind.<sup>3</sup> However, when Dossey passed them on Waters Avenue, Aguilar told Chavez to “go” because he still had the gun. Panicked, Chavez accelerated onto Ninth Street. When Dossey activated the patrol car’s lights and siren, Chavez stopped on Buena Vista Avenue and Aguilar jumped from his vehicle with the gun.

#### Statement of Daniel Aguilar

Aguilar waived his Miranda rights and agreed to speak with investigators. Aguilar admitted that he was in possession of a firearm when Dossey attempted to pull over the Jeep. Aguilar had been shot one month earlier and had borrowed the firearm from a friend for protection. Aguilar told Chavez earlier in the night that he was carrying a gun. When the patrol car turned around and followed them, Chavez slowed down and told Aguilar to get out of the Jeep. Aguilar jumped out of the vehicle and “ditched” the gun near some parked cars and fled on foot. Aguilar came to a stop when he heard Dossey yell, “I’m going to shoot you!” After stopping, Dossey fired his service weapon striking Aguilar.

#### Dashcam Video Footage

Dossey’s patrol vehicle was equipped with a dashboard mounted camera. The footage shows the Jeep disappearing from view ahead of Dossey when it turns north onto Buena Vista Avenue. As Dossey turns onto Buena Vista, the patrol car’s headlights illuminate Aguilar rolling on the ground. Aguilar stands up and immediately runs behind a Nissan Altima parked on the east side

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<sup>3</sup> Chavez showed investigators a photograph on his cellular phone that he took of Aguilar holding the gun while seated in the Jeep. Chavez stated that he took the photograph several hours before the shooting. The timestamp on the photograph indicates that it was created on December 6, 2015 at 12:40:57. The same photograph was also recovered from Aguilar’s cellular phone.

of the street and onto the sidewalk. As Aguilar turns to run north on the sidewalk, the footage captures a brief glimpse of a black object in Aguilar's right hand. Aguilar runs north and heads for the sidewalk. At that moment, Aguilar passes directly by the gutter where the firearm was located, however, he is blocked from view by the vehicles parked along the east curb. Dossey drives in front of the Jeep and stops his patrol car. There is no other footage of the incident since Aguilar turned southbound and out of view of the camera.

### Criminal Charges

Aguilar was charged in case KA111508 with exhibiting a firearm in the presence of an officer, exhibiting a firearm to a police officer with the intent to prevent arrest and possession of a firearm in a city. Aguilar was arrested on March 21, 2016, for unlawful driving of a vehicle and possession of burglar tools while he was out of custody. He was charged with the new crimes in case KA112098. On June 15, 2016, Aguilar pled guilty to exhibiting a firearm in the presence of an officer and unlawful driving of a vehicle and was sentenced to 16 months in state prison.

### **LEGAL ANALYSIS**

California law provides that the use of deadly force in self-defense or in defense of others is justifiable if the person claiming the right of self-defense or the defense of others honestly believes that he or others were in imminent danger of great bodily injury or death, and a reasonable person in the same circumstances would also deem it necessary to use deadly force in order to protect themselves or others from the deadly peril. Cal. Penal Code § 197; *People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 1073, 1082; *see also* CALCRIM No. 505.

“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 *Graham*, the United States Supreme Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances of each particular case.” “Thus we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347.

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.

“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. See *Ryder v. City of Topeka* (1987) 814 F.2d 1412, 1419 (concluding that, because a requirement that a suspect actually have a weapon would place police in “a dangerous and unreasonable situation ... whether a particular seizure is reasonable is dependent on the ‘totality of circumstances,’ and not simply on whether the suspect was actually armed.”)

## CONCLUSION

The evidence examined shows that Aguilar was armed with a loaded semiautomatic handgun. Aguilar attempted to flee from Dossey rather than risk being caught with the illegal firearm. It is undisputed that Aguilar had the gun in his hand when he jumped from the Jeep. Dossey observed the firearm in his right hand which was substantiated by the video footage. Additionally, Chavez and Aguilar both acknowledged that Aguilar jumped out of the Jeep with the gun. It appears that Aguilar tossed the gun into the gutter when he fled north from Dossey. However, the evidence shows that the cars parked along the east curb prevented Dossey from observing Aguilar throw the weapon.

Aguilar continued to run from Dossey even after getting rid of the firearm. Aguilar took evasive action by turning south on the sidewalk when he saw Dossey drive ahead of him in the patrol car. Aguilar’s right hand remained out of Dossey’s view at his waist rather than moving in a typical running motion. It was reasonable for Dossey to believe that Aguilar was continuing to flee from him because he was still in possession of the firearm. When Aguilar slowed and turned toward Dossey, it placed him in reasonable fear for his life and he responded with reasonable deadly force.

We conclude that Officer Dossey acted in lawful self-defense when he used deadly force against Daniel Aguilar. We are therefore closing our file and will take no further action in this manner.