

**Officer Involved Shooting of Victor Sigala
Los Angeles Police Department**

Officer Gerardo Perez, #R6509

J.S.I.D. File #16-0339



JACKIE LACEY

District Attorney

Justice System Integrity Division

November 2, 2017

MEMORANDUM

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

SUBJECT: Officer Involved Shooting of Victor Sigala
J.S.I.D. File #16-0339
C.P.D. File #16-19415
F.I.D. File #F041-16

DATE: November 2, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 6, 2016, fatal shooting of Victor Sigala by Los Angeles Police Department (LAPD) Reserve Officer Gerardo Perez. We have concluded that Officer Perez acted lawfully in self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting at 4:43 p.m. on July 6, 2016. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, firearms analysis reports, photographic evidence and witness statements submitted to this office by Covina Police Department (CPD) Detective Joshua Turner. Officer Perez provided a compelled statement first to LAPD, and then a statement to CPD.¹ Both statements were considered in this analysis.

FACTUAL ANALYSIS

On July 6, 2016, at approximately 3:13 p.m., off-duty LAPD Reserve Officer Gerardo Perez entered the front door of Carl's Jr. located at 573 North Azusa Avenue in the City of Covina.² Perez had

¹ It is unclear whether the second statement was compelled. Both statements will be treated as compelled statements in this analysis.

² Perez had retired from the LAPD in good standing, after serving nine years as a police officer. At the time of the shooting, he was a Level II, volunteer reserve officer, assigned to Southeast Division. Level II reserve officers

been across the street at American Dream Tattoos, having a tattoo applied to his leg.³ Perez placed his order at the front counter and then stepped aside, into the dining room, to wait for his food. There were customers eating at the tables immediately behind him in the dining room. As Perez was waiting for his order, Victor Sigala approached him.⁴ Sigala said to Perez, "Let me borrow your phone."⁵ [REDACTED]

[REDACTED].⁶ Sigala lifted up the front of his shirt, exposing what appeared to be a black handgun in his front waistband, and again asked Perez for his phone.⁷ Sigala was approximately three feet away from Perez. [REDACTED]

[REDACTED] Perez drew his firearm and shot Sigala three times. Sigala fell to the ground. The employees and patrons of Carl's Jr. began running out of the restaurant. Several children hid inside the bathroom that was located at the rear of the Carl's Jr. dining room.

Perez announced that he was a police officer and yelled for someone to call the police and an ambulance. Perez immediately called 9-1-1, identified himself as an off-duty LAPD officer, and requested police and emergency medical aid. Perez reported the incident and provided a description of Sigala.⁸ While speaking to the 9-1-1 operator, Perez continued to point his firearm at Sigala, who was lying on his back with his arms moving around toward his chest and waistband, where the butt of the gun was still visible. Perez was unable to render aid while Sigala continued to move his hands around the area of the gun in his waistband. During this time, an employee asked Perez if she could retrieve the children that were hiding in the bathroom.⁹ Perez continued to maintain his cover of Sigala, while the employee escorted the children out of the restaurant through a door located towards the rear of the dining room.¹⁰

perform the same functions as regular, full-time police officers. They are armed, uniformed peace officers that work in police vehicles along with full-time officers. Perez was armed with a Glock 23, .40 caliber semiautomatic firearm in a holster concealed in the front waistband of his shorts, under his shirt.

³ At the time of the incident, Perez was wearing a tank top, shorts and baseball cap. His right calf was wrapped in clear saran wrap. He was planning to return to the tattoo shop after lunch for the tattoo to be completed.

⁴ Sigala was wearing a blue and white basketball jersey with the name "Wizards" on the front and the number 23 on the front and back side, dark pants and a black baseball cap.

⁵ Sigala had a cell phone in his pocket at the time he asked to borrow Perez' phone.

⁶ Sigala was a self-admitted, documented Sangra gang member who used the moniker "Lil Dopey."

⁷ The subsequent investigation revealed the weapon was an Umarex DX17 BB pistol, with physical characteristics closely similar to a Smith and Wesson M&P 9mm semiautomatic handgun. Surveillance video obtained from Walmart in Covina clearly shows Sigala shoplifting the same type of BB gun at approximately 2:47 p.m. on the same day.

⁸ [REDACTED]

[REDACTED]. In fact, J [REDACTED] was in the dining room at the time of the shooting. J [REDACTED] fled as soon as shots were fired and did not remain at the scene to speak with police. He was later apprehended and interviewed. It is unclear what, if any, involvement J [REDACTED] had in this incident.

⁹ [REDACTED] Perez is heard on the 9-1-1 call telling the employee to get the children out of the restaurant.

¹⁰ Carl's Jr. has three public entrance doors. The front double glass doors are on the north side of the restaurant and lead directly to the front counter. There is a single glass door on the west side toward the front of the dining area. There is a second single glass door on the west side that is farther back in the dining room, near the restrooms.

At approximately 3:15 p.m., CPD officers arrived at the location. Perez identified himself as an off-duty police officer and announced that he had been involved in an officer involved shooting. CPD officers ordered Perez to put his weapon down on the counter and slowly back out of the northern west-facing door. Perez complied and provided the officers with his identification. CPD officers patted down Perez, and asked him to remain outside of the restaurant and away from the ongoing investigation.

Los Angeles County Fire Department rescue personnel were dispatched at 3:16 p.m. and arrived at the location at 3:20 p.m. Upon arrival, they administered advanced life support but observed Sigala had no pulse.¹¹ Sigala was pronounced dead at 3:20 p.m. An autopsy revealed the cause of death to be multiple gunshot wounds.¹² A toxicology analysis of the chest blood revealed the presence of methamphetamine, amphetamine and marijuana.¹³



Front entrance of Carl's Jr. on the north side of the building



Photos of the Umarex DX17 BB pistol, cell phone and eyeglasses case recovered from Sigala

¹¹ While rendering aid, paramedics removed a cell phone from Sigala's pants pocket. The phone was booked into evidence by CPD. On August 29, 2017, a CPD evidence technician confirmed it was operational.

¹² The autopsy revealed one nonfatal gunshot wound of the right chest, one fatal gunshot wound of the left chest, and one fatal gunshot wound of the mid-back. The medical examiner was unable to identify the sequence of the gunshots.

¹³ Because amphetamine is a metabolite of methamphetamine, it is unknown whether amphetamine was ingested separately, in addition to methamphetamine, or if it represents the methamphetamine that had metabolized in the body.

VIDEO SURVEILLANCE

There were two surveillance cameras in the front lobby area that provided views of the front counter and drink station. Perez is seen walking into the restaurant, ordering a meal, walking to the drink station and filling up a cup, and then walking around the corner, into the dining room. Less than one minute later, Sigala is seen walking into the restaurant, approaching the front counter and receiving a cup from an employee. Sigala walks over to the drink station, fills the cup and drinks from it. He is then seen walking around the corner into the dining room. A small opening in the wall between the counter area and the dining room provides a partially obscured view of Sigala's upper body and head. Sigala appears to move forward, then back, and then forward. His right arm is seen from behind, bending at the elbow in a manner consistent with the movement of reaching into his waistband. Immediately, he falls back and out of view. Perez is then seen walking into the camera view in the lobby, pointing a gun in the direction of where Sigala fell. In his left hand, Perez is dialing a cell phone which he places up to his ear.

There were other cameras in the dining area of the restaurant. One camera malfunctioned and did not capture the incident. The other camera captured only the back portion of the dining room in the area of the restrooms. After the shooting, children are seen running from the restroom and out of the restaurant. A male adult, later identified as B [REDACTED] J [REDACTED], is seen running out of the west side door.



Carl's Jr. surveillance video showing Perez at the front counter ordering his food.



Perez walking past the drink station and around the corner to wait for his food.



Sigala receiving a water cup from the cashier



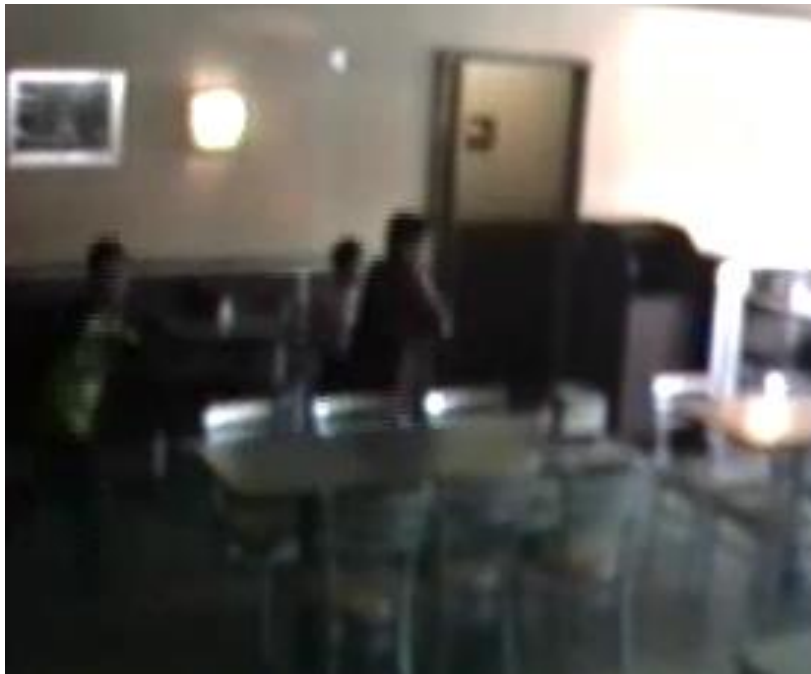
Sigala walking around the corner into the dining area



Opening in wall between lobby and dining area showing Sigala



J [REDACTED], with a backpack, crouching down when shots were fired. He fled to his left.



Children running to restroom area after shots were fired.

WITNESS STATEMENTS¹⁴

Officer Gerardo Perez

Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick*

¹⁴ Unless otherwise stated, all witnesses were interviewed on the date of the incident.

(1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285.

LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and ordered Officer Perez to do so in the present case. Perez was interviewed regarding his actions during this officer involved shooting by detectives from LAPD Force Investigation Division on July 6, 2016.

Perez, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York, supra, at 284-285.* Because the LAPD ordered him to answer questions which might expose him to criminal liability, the LAPD compelled Perez to participate in the interview. The effect of this legal compulsion is that Perez' statements cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interview be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because this compelled statement is part of Perez' police personnel file, the statement is confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

The following is a summary of the audiotaped statements provided by Perez to LAPD and CPD detectives:¹⁵

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁹ Video surveillance shows Sigala entering the restaurant through the front doors on the north side.
²⁰ Video surveillance shows Sigala approaching the counter and obtaining a water cup but not placing a food order.
²¹ [REDACTED]
²² [REDACTED]
²³ [REDACTED]
²⁴ [REDACTED]
²⁵ [REDACTED]
²⁶ [REDACTED]

[REDACTED]

[REDACTED]

A ■ C ■

C ■ was working at Carl’s Jr. on the date of the incident. At the time of the shooting, C ■ was on a break and was seated in a booth at the northwest corner of the restaurant. While eating her meal, she was looking out the windows facing the north parking lot area. C ■ observed Sigala speaking with J ■ on the sidewalk outside of the front of the restaurant. Both men were smoking cigarettes and J ■ was carrying a backpack. ■ recognized J ■ as being a local transient and a regular customer of Carl’s Jr. Sigala and J ■ finished speaking and J ■ walked away eastbound through the parking lot.

Sigala entered the restaurant through the north facing doors and approached the counter where Y ■ L ■ was working. Sigala asked L ■ for a cup of water. L ■ gave Sigala a water cup and he walked over to the drink station. C ■ observed Perez standing next to the ketchup stand, which is adjacent to the counter.³⁰ It appeared to C ■ that Perez was waiting for a food order that he had just purchased. Sigala approached Perez and said, “Hey man, can I borrow your phone? I just need to call someone real quick.” Perez replied, “No, I work at the tattoo shop across the street. I left it over there.” C ■ then observed Sigala pull up the front of his jersey, using his right hand, revealing a black gun tucked into the front of his waistband.³¹ Sigala said to Perez, “You’re gonna give me a tattoo for free.” Perez then pulled out a gun and shot Sigala three times. C ■ observed Sigala fall to his right side and onto his back, on the floor.

C ■ observed another employee, F ■ P ■ seated in the first booth near the main entrance doors. P ■ appeared to be very upset. C ■ stated that Perez pointed his gun at P ■ and

²⁷ [REDACTED]

²⁸ A review of the 9-1-1 call indicates that Perez did not mention a second suspect while reporting the shooting. He did, however, report and describe J ■ as a second suspect to the first responding CPD officers.

²⁹ [REDACTED]

³⁰ The ketchup stand is also next to the drink station.

³¹ C ■ was not sure what type of gun Sigala had, but believed it to be a real gun.

yelled, “Shut up.”³² C■■ and other employees ran out of the restaurant to the nail salon located across the parking lot. She told the patrons at the nail salon what happened at Carl’s Jr. A woman at the nail salon said, “My kids are inside!” C■■ ran back to Carl’s Jr., to the west door. As she approached, Perez opened the door and said, “Call 9-1-1! Call 9-1-1! I am calling 9-1-1 too.” C■■ told Perez that there were kids inside the restaurant and he told her to take them out. C■■ located three boys and one girl, ages 7 -17, inside the women’s restroom and evacuated them through the southwest door where they were reunited with their parents.³³ During a follow-up interview conducted on July 7, 2016, C■■ reiterated her statement and added that she believed Sigala intended to rob Perez.

F■■ P■■³⁴

P■■ was the manager of the Carl’s Jr. restaurant. At the time of the shooting, she was on her lunch break, sitting at the table closest to the north side front doors. P■■ saw Perez enter the store through the front doors. He ordered something at the register and then walked to the right toward the dining room. He was standing in the dining area, waiting for his order. Sigala then entered the restaurant. P■■ saw Sigala serve himself water from the fountain drink machine. Sigala walked over to Perez and they spoke to each other, but P■■ could not hear the conversation. During the conversation, Sigala lifted up his shirt and P■■ saw a gun in his waistband. Perez quickly pulled a gun out from an unknown location and shot Sigala.

Pa■■ screamed after hearing the shots. Perez looked in her direction while still holding the gun. She heard Perez say, “Shut up,” but she was not sure if he was talking to her or someone else. She heard a male voice yelling to call the police, which may have been Perez’ voice. At this time, Perez turned his attention to Sigala, and P■■ ran out of the restaurant through the west door.

Y■■ L■■³⁵

L■■ was a cashier at Carl’s Jr. on the date of the incident. She was in the dining area of the restaurant when Sigala asked her for a cup of water. L■■ went to the register area and gave him a cup. He dispensed his own water at the drink machine. Perez was sitting at a table in the dining area.³⁶ L■■ walked to one of the dining tables where her manager, P■■, was seated. L■■ told P■■ that Sigala’s breath smelled like marijuana.

At this time, Sigala turned toward Perez. Sigala asked Perez, “Can I use your phone?” L■■ heard Perez say he worked across the street at the tattoo shop and he left his phone there. Sigala asked Perez if he could have a free tattoo. When he asked for the free tattoo, Sigala lifted the front of his white jersey, exposing what looked like a gun in the waistband. Perez then shot

³² P■■ told investigators that Perez only pointed his gun at Sigala and did not point his gun at her or any other person.

³³ The 12-year-old boy was interviewed. He said his female friend was using the restroom. He heard gunshots so he and his brothers ran into the women’s restroom to hide until they were evacuated by a Carl’s Jr. employee. The boy did not witness the shooting.

³⁴ P■■ was interviewed in Spanish.

³⁵ L■■ was interviewed in Spanish.

³⁶ This is inconsistent with the video surveillance that shows Perez standing to the right of the counter while he waited for his order.

Sigala three times and Sigala fell to the floor. After the shots were fired, Perez pointed the gun at P [REDACTED] and said, “Shut up.”³⁷ L [REDACTED] ran out of the restaurant with P [REDACTED].

M [REDACTED] M [REDACTED]

On July 6, 2016, at approximately 2:52 p.m., M [REDACTED] was driving southbound in the 1100 block of West Masline Street.³⁸ M [REDACTED] saw a man standing in the middle of the roadway with a dark colored bicycle between his legs. M [REDACTED] described the man as Hispanic, wearing a white jersey with blue numbers, a blue hat and dark colored jeans. The male had a tattoo under his right eye, “about the size of a quarter.”

The man was holding a “black gun” in his right hand and appeared to be hitting it with the palm of his left hand.³⁹ M [REDACTED] drove past the man. Once she reached her residence, she called 9-1-1 and reported her observations. On August 3, 2016, M [REDACTED] identified Sigala from the Carl’s Jr. surveillance photographs shown to her by investigators.

B [REDACTED] J [REDACTED]

On August 3, 2016, J [REDACTED] was arrested by CPD for outstanding warrants and his suspected involvement in this attempted robbery of Officer Perez. J [REDACTED] was Mirandized and questioned about this incident. J [REDACTED] told investigators he had met Sigala in front of Carl’s Jr. prior to the shooting. He said Sigala asked him for a cigarette and they “shot the shit,” but denied having a conversation with Sigala. J [REDACTED] denied seeing Perez walk into Carl’s Jr. J [REDACTED] stated that he was inside of the bathroom during the shooting. He said he did not witness the shooting or the circumstances leading up to the shooting.⁴⁰

J [REDACTED] initially did not respond to questions about Sigala’s pistol. He later stated, “It was like a toy colored gun that he showed me.” J [REDACTED] said that Sigala was carrying the gun in his waistband and showed it to J [REDACTED] as if he were trying to sell it to him. J [REDACTED] said he was not interested in buying the gun. He said he thought it was a pellet gun because it was too big to be a real gun.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he or others were in imminent danger of suffering great bodily injury, death, or a “forcible and atrocious crime,” including robbery.⁴¹ Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994

³⁷ P [REDACTED] denied that Perez pointed a gun at her.

³⁸ This location is approximately one mile from Carl’s Jr.

³⁹ M [REDACTED] described this gun as black in color, approximately five to seven inches, that appeared to be a semiautomatic.

⁴⁰ Video surveillance contradicts this statement. J [REDACTED] is seen on the video outside of the restroom at the time of the shooting.

⁴¹ Case law defines “imminent” as “ready to take place, near at hand, or impending.” *People v. Lopez* (2011) 2011 Cal.App.Lexis 1300. Robbery is a “forcible and atrocious crime” within the meaning of CALCRIM No. 505. *People v. Ceballos* (1974) 12 Cal.3d 470.

(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.

Courts have recognized that the displaying of a handgun may constitute personal use of a firearm in the commission of a robbery. In *Alfaro v. McDonald*, the United States District Court for the Eastern District of California held the showing of a gun inside a pocket, partially covered by a shirt, constituted personal use of a firearm during a robbery. 2012 U.S. Dist. LEXIS 94595. Sigala’s conduct of raising his shirt to display the firearm in his waistband, combined with his repeatedly asking for Perez’ cell phone in a demanding tone, is analogous to the facts in *Alfaro*, where the court found sufficient evidence of robbery with personal use of a handgun, even when the gun is not removed from the pocket, or in this case, the waistband.⁴²

The right of self-defense is the same whether the danger is real or apparent. If a person 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. In protecting himself or another, a person may use all 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 injury which appears to be imminent. *See also*, CALCRIM Nos. 505 and 3470.

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 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.” The reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident. *Graham v. Connor* (1989) 490 U.S. 386, 396-397. “[T]hus, under *Graham*, we must avoid substituting our personal notions of proper police procedure 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* (6th Cir. 1992) 954 F.2d 343, 347.⁴³

CONCLUSION

The evidence examined in this investigation shows that Victor Sigala, a documented gang member, walked into Carl’s Jr., armed with a realistic looking BB gun, that he had stolen less than thirty minutes before. Sigala was not at the restaurant to order food. He drank a cup of water and then singled-out Perez, [REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴² The personal use enhancement would not apply to a BB gun; however, this case is illustrative of the courts’ recognition that a handgun, displayed but not pointed at a victim, is a credible threat.

⁴³ Although Perez was off-duty at the time of the shooting, his actions in assessing the threat and taking action appear to have been guided by the training and experience he received as a police officer.

[REDACTED]
[REDACTED]
Sigala wanted Perez' phone, despite the fact that he had his own phone. [REDACTED]
[REDACTED], Sigala raised his shirt to show he was armed with a pistol, clearly conveying that he was planning to rob Perez, not simply seeking to borrow his phone.

Other witnesses described the incident similarly, and while some described Sigala's words more like a request for the phone rather than a demand, witness C [REDACTED] told investigators that Sigala was trying to "rob" Perez. There appears to be no ambiguity about Sigala's intention. The combination of Sigala's words, tone of voice and the simultaneous and deliberate display of a firearm in his waistband, reasonably caused Perez to believe that Sigala was going to rob or shoot him, possibly hitting other patrons that were in the line of fire. In fear for his life and the lives of the adults and children behind him in the dining room, Perez fired three shots killing Sigala.

The surveillance video supports the circumstances perceived by Perez and the other eyewitnesses that Sigala was attempting to rob Perez. After a thorough analysis, we conclude that Officer Perez acted lawfully in self-defense and the defense of others. We are closing our file and will take no further action in this matter.