

Officer Involved Shooting of Omar Magana

Los Angeles Police Department

Officer Mario Morales #41121

J.S.I.D. File #18-0236



JACKIE LACEY

District Attorney

Justice System Integrity Division

November 12, 2019

MEMORANDUM

TO: COMMANDER ROBERT E. MARINO
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Officer Involved Shooting of Omar Magana
J.S.I.D. File #18-0236
F.I.D. File #F036-18

DATE: November 12, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 9, 2018, fatal shooting of Omar Magana by Los Angeles Police Department (LAPD) Officer Mario Morales (Hollenbeck Gang Enforcement Detail). We have concluded that Officer Morales acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 6:28 a.m., on June 9, 2018. The District Attorney Response Team (DART) responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, transcripts of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted by LAPD Force Investigation Division (FID) Lieutenant David Smith. Morales' compelled statement was considered in this analysis.

FACTUAL ANALYSIS

On June 6, 2018, a series of robberies were committed by Omar Magana. In each instance, victims later identified Magana as the perpetrator by picking his image from six pack photo lineups.

On June 8, 2018, at approximately 11:30 p.m., a street vendor was preparing to open his business at Workman Street and North Broadway Avenue. He was approached by Magana who placed a sharp object against the vendor's lower back and demanded money. The vendor directed Magana to a co-worker for the money. The co-worker threw chili powder on Magana. As Magana fled, he stabbed the first vendor in the ear with a sharp object. Magana then got into a dark vehicle and drove away. Police were called and LAPD Officers Mohammad Komeili and Saulivan Escalara responded.

A short time later, Magana called 9-1-1 to report that his black Honda Civic had been carjacked. In actuality, Magana crashed his own vehicle, got out and poured gasoline on the car, deliberately set it afire, and fled on foot before making the 9-1-1 call.

Fortuitously, Komeili and Escalara responded to Magana's carjacking call. Komeili and Escalara noticed that Magana had chili powder on his pants. Magana also had a unique tattoo that matched descriptions given by robbery victims from the June 6th robberies, namely, a pair of lips on his left cheek.

According to Escalara, two of the victims and one of the witnesses from the street vending robbery at Workman Street and North Broadway Avenue were brought to Magana's location. Two of them identified Magana in a field show up. Magana was taken into custody.

LAPD Officers Juan Rubio and Ronald Sweet were assigned to transport Magana to Hollenbeck Station. They handcuffed Magana, placed him in the rear seat, and secured his seatbelt. Magana unbuckled his seatbelt. Rubio refastened the seatbelt. During the ensuing transport, Magana slid out from under the shoulder strap and began twisting his body and raising his buttocks off the seat. Magana eventually slid out from under the lap belt. Magana attempted to slip his hands through the handcuffs. Magana positioned himself with his back to the driver's side rear door in an apparent attempt to open the door from the inside. Magana's movements were captured on the Digital In-Car Video System (DICVS). The officers were aware that Magana was moving around in the backseat. As the door was locked and could not be opened from the inside, the officers elected to drive on to Hollenbeck Station. Magana was observed trying to push the handcuffs off his wrists prior to officers opening the rear passenger door at the station.¹ Rubio walked Magana into the station while Sweet went to sign Magana in on the custody log.

Lieutenant Michael Bautista completed the pre-booking inspection and interview of Magana around 2:30 a.m. Magana made no complaint of injury or illness during this interview. Bautista opined that Magana appeared to be under the influence based on symptoms of bloodshot eyes, a drooping face, and an unnatural manner of speech. While Sweet was meeting with Bautista, Magana pulled away from Rubio and hissed and sneered at Rubio when Rubio grabbed Magana's arm to help him up. Rubio's statement does not indicate exactly when or why it was that he was assisting Magana to his feet, but Rubio responded to Magana by telling him to knock it off and go along with the program. Rubio communicated to Sweet that Magana was developing "a bit of an attitude." Sweet elected to keep Magana handcuffed to the bench in the holding cell to prevent Magana from moving around.² Video footage in cell A3 at 2:31 a.m. captured Magana being secured to the bench. Bautista granted permission for Magana to remain handcuffed in the holding cell.

Video from the holding cell shows Magana continuing to twist and turn, and slide back and forth. At approximately 2:52 a.m.,³ Magana lowered himself to his knees, remained in this position for

¹ Rubio told the FID investigator that he did not assess Magana's actions as an attempt to escape. However, Magana's movements as recorded by the DICVS footage are consistent with such an attempt.

² The bench restraint is a horizontal rail along the bench that allows approximately five to six feet of horizontal movement.

³ This time stamp is based on the chronometer displayed on the station video footage.

At WMMC, attending physician Dr. Christopher W. ordered a Computed Tomography (CT) scan of Magana's head. Hallway surveillance video captured CT Technician Samson F. moving Magana via hospital bed from emergency room seven to the CT scan room to conduct the scan at approximately 4:44 a.m. Morales and Zaragoza followed. See Figure 1 below.



Figure 1 – Magana being taken to CT Scan Room

No video is available from inside the CT scan room. Accordingly, a rendition of what occurred inside the room is based on eyewitness accounts.

Upon entering the CT scan room, Samson F. told the officers to unhandcuff Magana for transfer to the CT bed. Samson F. placed the hospital bed next to the CT bed and directed Magana to slide over onto the CT bed. Magana complied. Samson F. directed the officers to stand in the control room behind a protective wall on the east side of the room, where they were able to monitor Magana through a window while the scan was performed. Samson F. then performed the scan which took about two minutes. After completing the scan, Samson F. placed the hospital bed next to the CT bed. The bedrail next to the CT bed was lowered; the outside rail was raised. Samson F. told Magana to move back to the hospital bed. As directed, Magana slid himself onto the hospital bed. The head of the bed was elevated to approximately 45 degrees, putting Magana close to a sitting position.

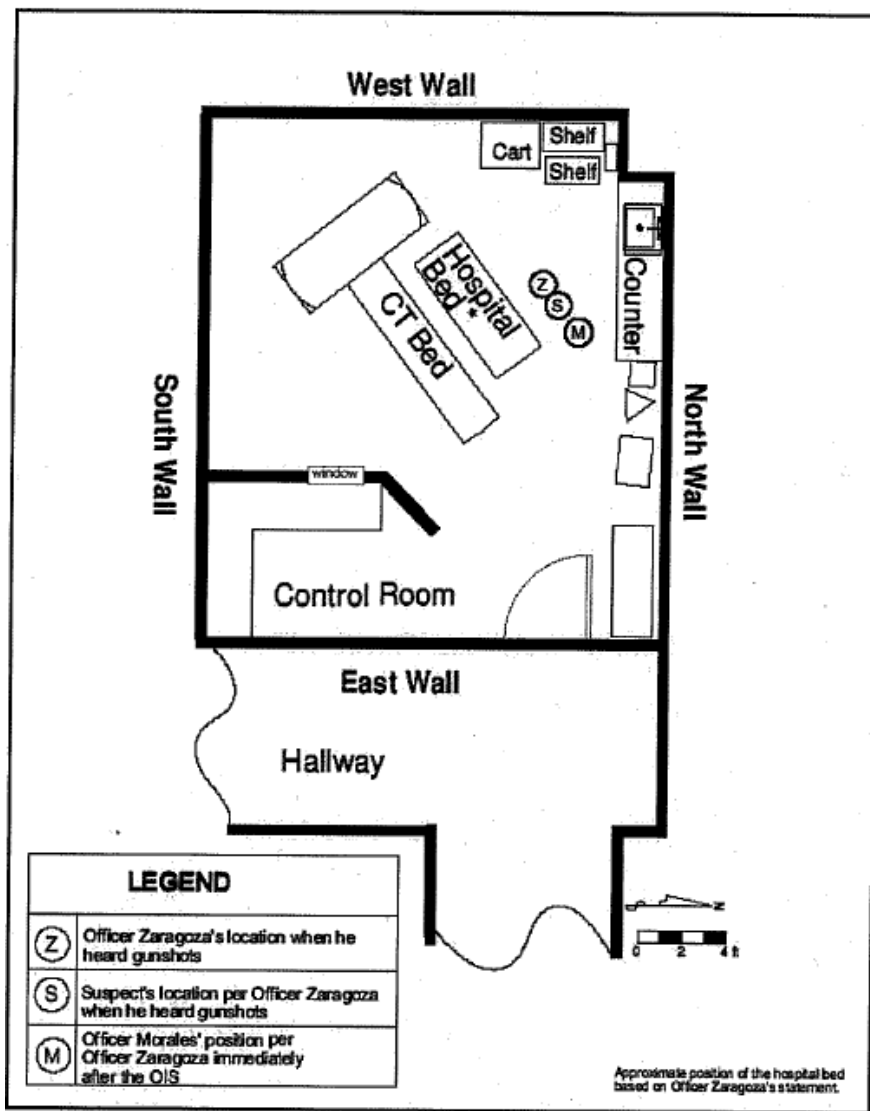
Morales then positioned himself between the CT bed and the hospital bed, while Zaragoza went to the opposite side of the hospital bed. The officers simultaneously attempted to handcuff Magana to the hospital bed. [REDACTED]

[REDACTED] Zaragoza grabbed Magana's right forearm or wrist using a two-hand grip in an effort to control Magana. Morales grabbed hold of Magana's left arm.

Samson F. stated that Magana violently pushed Zaragoza backward into some shelves in the northwest corner of the CT scan room. Samson F. believed that Magana was trying to put

Zaragoza in a bear hug. Zaragoza was able to prevent Magana from doing so by grabbing Magana's forearms waist high. Morales grabbed Magana's left arm. Each officer then attempted to hold Magana by the wrist, but they were unable to control him.

Samson F. stated that Magana ended up with his back against the shelves along the west wall with Zaragoza to Magana's right and Morales to Magana's left. Each officer was trying to grab and control an arm at the elbow and wrist. As the struggle progressed, Samson F. observed Magana bent over. Samson F. perceived that the officers were trying to force Magana to the floor. Despite these efforts, Magana remained on his feet attempting to free himself by moving his arms forward and back and his hands up and down. Samson F. expressed the opinion that Magana appeared very strong and that officers were unable to control him. Positions of the officers relative to Magana are depicted below in Figure 2.



Positions at time of OIS per Officer Zaragoza.

Figure 2 – Showing layout of the CT scan room, and positions of the officers and Magana

Samson F. was surprised by Magana's sudden mobility as Magana only moments earlier had appeared lethargic and sleepy. Samson F. went to look for help in the hallway, but did not see anyone. Samson F. stated that he intended to push the emergency button to summon help, but found himself frozen with fear noting that it was the first time in his professional career he had seen two officers struggling to control a suspect. Samson F. remained in the doorway of the CT scan room throughout the struggle and estimated his distance at approximately 20 feet away.

Zaragoza reported telling Morales that Zaragoza was going to ask for backup. However, because Zaragoza feared losing control of Magana's right arm, Zaragoza did not release his grip to reach for his radio and hence no backup call was generated at that time. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Zaragoza stated that while Magana continued to resist, Magana said, "Okay. Okay. Okay. I'm shitting myself. I'm taking a shit." and momentarily decreased his level of resistance. Believing this to be a ruse, Zaragoza maintained control of Magana's right wrist with Zaragoza's right hand, while Zaragoza simultaneously used his left hand to bend Magana's right hand backwards in what Zaragoza described as a twist lock. Magana then renewed his resistance and continued to struggle.

Zaragoza intended to turn Magana to face the west wall and handcuff him in that position. [REDACTED]

[REDACTED] Realizing that this plan was not going to work, Zaragoza made eye contact with Morales and shook his head to the right to silently communicate the need to move Magana toward the hospital bed. Zaragoza's intent was to use the bed as a tool to control Magana. The officers began to shuffle across the floor towards the bed.

Zaragoza felt violent tugs on his equipment belt. Zaragoza looked down and saw Magana's hand on Zaragoza's pistol. Magana's fingers were wrapped around the grip. To maintain control of his pistol, Zaragoza pushed down on top of Magana's hand or wrist to keep Magana from un-holstering the pistol (a technique known as capping). According to Zaragoza, Magana repeatedly and violently pulled his pistol up and down and side to side in an effort to remove it from the holster.⁶ Zaragoza noted that he did not see his pistol out of the holster, but stated that it felt as if his pistol was lifted and had come out of the holster. Sometime later after the incident, Zaragoza noticed that his utility belt had shifted significantly to the left, which he attributed to Magana's yanking on the pistol.

Zaragoza explained, "Once he got . . . his hand on my gun, it came to mind that he was trying to disarm me to furthermore aid in his, in his escape by either shooting me, shooting my partner" Zaragoza was unable to deploy another force option such as a Taser as releasing Magana's arm

⁶ Zaragoza carried his pistol in a single retention holster, which functions by securing the pistol with a thumb snap; apart from pressing the thumb snap, no other manipulations are required to unlock the pistol from the holster.

carried a heightened risk of Magana gaining control of the firearm. Zaragoza yelled to his partner several times, “He has my gun!” or “He’s grabbing my gun!”

[REDACTED]



Figure 3 – Photo depicting area where shooting occurred.

Zaragoza heard Morales fire two to three rounds. Morales was on the other side of Magana facing the west wall at the time shots were fired. After being shot, Magana released his grip on Zaragoza’s pistol and collapsed under the sink on the north wall. Zaragoza put out a radio call for assistance and indicated in the broadcast that shots were fired. The officers then handcuffed Magana.

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[REDACTED]

Both officers' body worn cameras were found on the floor in the CT scan room close to where Magana collapsed after the shooting and were not activated during the officer involved shooting. As Zaragoza noted, there was no time to activate the camera once Magana leapt off the gurney. Officers normally do not activate body worn cameras in a hospital to protect patient privacy.

Samson F. was not able to see what Magana was doing with his hands immediately prior to the shooting because his view was partially blocked by Morales. Samson F. did recall hearing Zaragoza say something to Morales, but he either did not understand⁸ or did not recall the exact words spoken. Samson F. perceived that Zaragoza gave Morales a short (approximately two word) order to do something. He then saw Morales draw his pistol with his right hand, point it at Magana's left rib cage, and fire two shots in rapid succession. Samson F. stated that when Morales fired, Magana was still bent forward at the waist and struggling with officers. After being shot, Magana collapsed to the floor.

Emergency Room Technician Veronica P. heard what sounded like someone falling off a ladder, followed by "three pops."⁹ Veronica P. went to the CT scan room and looked in. She saw smoke in the air and an officer holstering a pistol while saying, "He was trying to get my gun. He was trying to reach for my gun." Dr. Christopher W. also stated that he remembered hearing someone say, "He was going for my gun," and that he believed it may have been one of the officers who made the statement. Veronica P. saw Magana laying in a puddle of blood with his hands cuffed behind his back. She told officers to remove the handcuffs. Veronica P. and other medical staff lifted Magana onto a gurney and wheeled him to the emergency room for treatment. Other medical personnel at WMMC heard a commotion in the CT scan room and gunshots, but did not witness the shooting.

Dr. Christopher W. began attending to Magana and succeeded in restoring a pulse. Magana was transported to Los Angeles County University of Southern California Medical Center (USCMC) at approximately 5:56 a.m. Magana was pronounced dead at 11:44 a.m. by Dr. Lydia Lam.

A post-mortem medical examination was conducted by Los Angeles County Department of Coroner Deputy Medical Examiner Dr. Matthew Miller on June 14, 2018. Dr. Miller opined that Magana died from gunshot wounds. The first documented gunshot entered near the left eye and traveled left to right, front to back, and downward, exited the body on the back right side of Magana's neck, and was deemed potentially fatal.¹⁰ The second gunshot wound¹¹ entered the left upper back, traveled from left to right and upward, exited at the back of Magana's neck, and was

⁸ Samson F.'s native language is Tagalog. He was interviewed a total of four times, once in English and on three other occasions with the assistance of a Tagalog speaking officer (Sergeant Matt Magsadia) acting as interpreter. In his first interview, which was conducted without an interpreter, Samson F. said the officer said something he "didn't understand." During the third interview, conducted with a Tagalog interpreter, Samson F. described the statement as being a "strong statement," but was not able to recall the statement. During the fourth interview, also conducted with a Tagalog interpreter, Samson F. clarified that the statement was not forceful but calm, and sounded like a direct order to do something.

⁹ Hallway surveillance video shows staff reacting to the sound at approximately 4:53 a.m.

¹⁰ This gunshot caused a basilar skull fracture, adjacent cerebellum contusion, and hemorrhage of the spinal cord, brainstem, cerebellum and occipital lobes.

¹¹ Designation of first, second, or third gunshot wound herein is made simply to distinguish the wounds from one another, not to specify an order of infliction. The medical examiner's report expressed no opinion as to the order of infliction except as relates to the re-entry wound, as to which the report expressed uncertainty about whether the re-entry resulted from gunshot number one or number two.

deemed non-fatal. The third gunshot wound entered the left lower back, had a trajectory from left to right and back to front, exited at the right lateral abdomen, and was deemed potentially fatal.¹² A 1.3-centimeter-deep re-entry wound was also identified near the top front of the right shoulder. Magana had ethanol, marijuana, methamphetamine, and methadone in his system at the time of his death.

Forensic evidence corroborates Zaragoza's report of Magana grabbing his pistol. The pistol grip of Zaragoza's service weapon was subsequently swabbed for DNA. Testing confirmed the presence of DNA consistent with Magana's profile.¹³

Morales was armed with his department issued Glock Model 17, 9mm semiautomatic pistol. After the shooting, the pistol was found to be loaded with 15 rounds, consisting of one round in the chamber and 14 rounds in the magazine. The maximum load for this firearm is 18 rounds.¹⁴

Three spent shell casings and one spent bullet were found in the CT scan room, all within a close distance of where shots were fired.¹⁵ Collectively, the evidence was consistent with Morales having fired three rounds from his service weapon.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right 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 evaluating whether a police officer's use of force is reasonable, 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 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.

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

¹² This gunshot caused damage to the L-1 vertebra, right kidney, and the liver colonic vasculature.

¹³ The DNA profile obtained from Omar Magana and from the firearm occurs in 1 in 1 septillion unrelated individuals.

¹⁴ The maximum load derives from a 17 round magazine at full capacity coupled with a chambered round.

¹⁵ Efforts to locate the other two spent bullets were unsuccessful. No projectiles were recovered during the autopsy.

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.

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

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. The officer 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. As noted by one California appellate opinion, "[w]here 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.

The evidence examined in this investigation shows that Magana was determined to escape. Shortly after being taken into custody and placed in the rear of a patrol car, he positioned himself to be able to open the back door of the car. In the holding cell at the station, Magana rehearsed going to the floor with his hands cuffed before actually rolling onto the floor and staging a seizure. Once in the less restrictive custodial environment of a hospital and momentarily loosed from handcuffs, Magana chose the moment for his escape attempt. When officers moved quickly to subdue him, Magana vigorously resisted. He told them he was defecating, but they maintained their hold. Magana resumed his thrashing about in an effort to pull free. Ultimately, Magana elected on a most dangerous course by attempting to disarm an officer.

Given the life or death struggle thrust upon them, officers were unable to employ other means to subdue Magana. The officers feared that had Magana succeeded in gaining control over Zaragoza's firearm he would have used the weapon against one or both officers. Thereafter, Magana would have posed a threat to any person obstructing his path, including hospital staff or other officers responding to the scene. Magana was shot under circumstances where both officers clearly had probable cause to believe that Magana posed a threat of serious physical harm to them and to others. Magana was also in custody for a forcible and atrocious crime. Officer Morales' use of deadly force was reasonable under the circumstances.

CONCLUSION

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