

**Officer Involved Shooting of Nephie Arreguin
Los Angeles County Sheriff's Department**

Deputy Edward Fitzgerald, #287434

J.S.I.D. File #15-0240



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 6, 2016

MEMORANDUM

TO: CAPTAIN STEVEN KATZ
Homicide Bureau
Los Angeles County Sheriff's Department
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Officer Involved Shooting of Nephie Arreguin
J.S.I.D. File #15-0240
L.A.S.D. File #015-01773-2318-013

DATE: April 6, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 7, 2015, fatal shooting of Nephie Arreguin by Los Angeles County Sheriff Deputy Edward Fitzgerald. It is our conclusion that the deputy acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting on May 7, 2015, at approximately 5:50 p.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 Los Angeles County Sheriff's Department (LASD), submitted to this office by Sergeant Joseph Ramirez and Detective Raymond Lugo, LASD, Homicide Bureau. Deputy Fitzgerald provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

On May 7, 2015, uniformed LASD Deputies Edward Fitzgerald and Robert Long were working a residential burglary suppression detail in separate marked black and white patrol vehicles. The City of Cerritos was experiencing a high rate of residential burglaries and Fitzgerald and Long's team was tasked with the investigation and apprehension of the perpetrators of these crimes.

At approximately 4:30 p.m., Fitzgerald and Long were assigned to a call regarding a suspicious female knocking on a resident's door asking for someone who did not live at the location. The female was last seen leaving in a gray Chevrolet Impala.¹ In the past week, there had been six residential burglaries in the area of the call. The deputies were aware that a common tactic used by burglars to determine whether a home was occupied was to knock on the front door. If someone answered, they would provide an excuse for why they were there and leave. If no one

¹ The caller provided a license plate number which was relayed to the deputies.

answered the door, the individual and accomplices would typically enter the backyard and break into the home and burglarize it. Based on their experience and the nature of the call, Fitzgerald and Long believed that individuals were attempting to locate a residence to burglarize. Fitzgerald and Long responded to the neighborhood and began a search for the female and the vehicle.

Statement of Deputy Edward Fitzgerald

Fitzgerald drove his marked black and white patrol car east onto Palm Place from Pires Avenue. He observed a female, subsequently identified as Rainee Boyd, walking southbound across the street in front of him. Boyd matched the physical and clothing description of the female in the call. Fitzgerald also noticed a silver Impala parked on the north side of Palm Place facing westbound. Fitzgerald stopped his patrol car in the middle of the street, one car's length to the west of the Impala and exited his vehicle. As Fitzgerald approached the front left wheel of the Impala, he looked through the windshield and did not see anyone in the front seat.

Fitzgerald called to Boyd who was still walking across the street. As Boyd turned around, Fitzgerald noticed movement inside the Impala. At that time, Fitzgerald observed a male, later identified as Nephie Arreguin, reclined all the way back in the driver's seat. Fitzgerald pointed his service weapon at Arreguin and ordered him to show his hands. Arreguin did not move. Fitzgerald hit the hood of the Impala and Arreguin sat up and rubbed his eyes as if he had been asleep. Fitzgerald yelled, "Let me see your hands!" Arreguin ignored the order and moved his hands toward his waist. Fitzgerald feared that Arreguin was reaching for a weapon and requested additional units to respond to his location.

Fitzgerald continued to order Arreguin to show his hands without success. A short time later, Long arrived in his patrol car with his lights and sirens activated. As Long exited his patrol car, Arreguin moved his seat to the upright position and turned on the engine. Fitzgerald immediately took one to two steps to his right (south) and away from the driver's wheel giving Arreguin enough room to pass him. Instead, Arreguin turned the Impala to the left and accelerated toward Fitzgerald, striking him on the left side of the body. The impact caused Fitzgerald to lose his footing and lean onto the hood of the Impala. Fitzgerald believed that Arreguin was attempting to crush him between the Impala and his patrol car. In fear for his life, Fitzgerald fired two rounds from his service weapon into the windshield. He pushed himself off the hood of the Impala with his left hand and was thrown to the ground onto his hands and knees. Arreguin continued westbound on Palm Place followed by Long and Deputy Vincent Ortiz.

Statement of Deputy Robert Long

Long responded to Fitzgerald's request for assistance, followed by Ortiz. As Long and Ortiz drove onto Palm Place, Long observed Fitzgerald's patrol car stopped in the street facing the Impala at a slight angle. Fitzgerald's car was near the north curb line, but it was not blocking the Impala's path. Long noted that the license plate number matched the one given in the radio call. Fitzgerald was standing at the front quarter panel on the driver's side pointing his service weapon at Arreguin yelling, "Show me your hands! Show me your hands!"

Long stopped his patrol car to the rear of Fitzgerald's and Ortiz parked his patrol car behind Long. Long exited his vehicle and approached Fitzgerald's right side. Arreguin did not

acknowledge the deputies' presence. It appeared to Long that Arreguin was debating what to do next. At that moment, the Impala suddenly turned to the left toward Fitzgerald and hit him in the legs. Fitzgerald began to fall to the front or side of the Impala. As Fitzgerald was going down and the "car was on him," Fitzgerald fired two rounds into the Impala's windshield. Fitzgerald appeared to be pushed away by the Impala and struck his own patrol car. Arreguin fled westbound.

Long broadcast that shots had been fired and ascertained that Fitzgerald was not seriously injured. He and Ortiz entered their patrol cars and followed Arreguin southbound onto Pires Avenue. Long observed that the Impala had crashed onto the east sidewalk and sheared off a fire hydrant and utility light pole. The water and exposed wires prevented Long from accessing Arreguin who was unresponsive in the Impala.

Statement of Deputy Vincent Ortiz

Ortiz observed the Impala parked along the north curb with Fitzgerald pointing his service weapon toward the driver's side area. Ortiz exited his patrol car and stood next to the driver's door of Fitzgerald's car with his service weapon drawn. Fitzgerald stood one to two feet from the Impala between the front fender and driver's door. Fitzgerald repeatedly yelled, "Let me see your hands!"

Ortiz heard the Impala's engine rev loudly then drive from the curb directly at Fitzgerald who was closest to the car. Ortiz believed the Impala had enough room to "squeeze by" Fitzgerald. Ortiz feared that Arreguin was about to run all three deputies over in his attempt to escape. Ortiz looked back to see where he could take cover and heard two gunshots. Ortiz turned back and saw the Impala passing by him at a high rate of speed. Ortiz entered his patrol car and pursued the Impala onto Pires Avenue where he observed that it had crashed.

Personnel from the County of Los Angeles Fire Department responded to the location and pronounced Arreguin dead at the scene. A subsequent autopsy ascribed his death to a gunshot wound to the chest.

Statement of [REDACTED]

[REDACTED] looked out the window of his residence on the south side of Palm Place after hearing someone yell, "Get out of the car! Get the hell out of the car, right now! Open the door!" [REDACTED] observed Fitzgerald standing at the driver's window of the Impala. Fitzgerald held his arm as if he was pointing his service weapon at Arreguin, however he was unable to see a gun because the deputy's back was to [REDACTED].² Long and Ortiz arrived on the street and the Impala sped away at a high rate of speed. The Impala narrowly missed Fitzgerald, who had to jump out of the way to avoid being hit. [REDACTED] believed that Arreguin was attempting to run over Fitzgerald. Long and Ortiz fired at the Impala two to four times.³

² [REDACTED] residence is two houses west of the incident and on the opposite side of the street.

³ [REDACTED] was formally interviewed on May 21, 2015, however, he was also briefly interviewed on May 7, 2015. During the first interview, [REDACTED] stated that he did not see who fired the shots. Long and Ortiz did not fire their service weapons.

Statement of [REDACTED]

[REDACTED] looked out the window after his brother, [REDACTED] told him that something was happening. [REDACTED] observed two police cars facing east next to the parked Impala. Fitzgerald was at the driver's door of the Impala repeatedly ordering Arreguin to exit the car. It appeared that Fitzgerald was holding a gun toward Arreguin. The Impala drove off quickly causing Fitzgerald to "dodge" the vehicle. [REDACTED] then heard three to four gunshots, but did not see who fired.

Statement of Angela K.

Angela lives on Palm Place and was being dropped off after school by the grandfather of a friend, Min K. Angela was seated in the rear passenger seat. As they turned onto Palm Place, Angela observed the Impala parked along the north curb near her house. A patrol car was stopped on the south side of the street across from the Impala. The grandfather pulled his car over to the south curb, one house west of the [REDACTED] residence.

Fitzgerald was standing at the Impala's driver's door holding his service weapon. Fitzgerald appeared to be talking to the driver. Fitzgerald was an arm's length from the car. Two additional patrol cars arrived at the location. Angela heard the revving of a car's engine and the sound of screeching tires immediately followed by a gunshot. The Impala drove westbound at a high rate of speed. Fitzgerald turned around and fired a second gunshot at the fleeing car. Long and Ortiz pursued the Impala in their patrol cars.⁴

Statement of Min K.

Min was seated in the rear driver's seat of his grandfather's car.⁵ Min observed a patrol car parked on the street facing east and the Impala parked along the north curb facing west. Fitzgerald stood approximately three feet from the driver's door and appeared to be talking to the driver. The Impala drove off westbound at a high rate of speed. Min heard one gunshot, but did not see who fired.

Statement of Rainee Boyd

Boyd stated that she and Arreguin were in the neighborhood attempting to purchase marijuana from an unknown person. They also planned to go to the Cerritos Mall. Boyd denied exiting the Impala and knocking on someone's front door before the shooting. Boyd and Arreguin stopped on Palm Place so Boyd could urinate between two parked cars.

Boyd heard someone yell as she walked to the south side of the street. She turned around and saw Fitzgerald pointing his service weapon at Arreguin seated in the Impala. Fitzgerald stood by

⁴ An examination of Fitzgerald's service weapon determined that he fired two rounds. One expended round was recovered during the autopsy. A second expended round was recovered from the front passenger door panel of the Impala. The second round traveled downward in a left to right and slightly front to rear direction, perforated the front passenger door armrest and impacted the interior side of the door panel.

⁵ The grandfather, Jae Kil Min, was interviewed by investigators and claimed that he saw a police car parked in the street and nothing more. Min's mother, Hee Kim, was seated in the front passenger seat. She heard the Impala accelerate and a gunshot. Kim ducked immediately after the gunshot and made no further observations of the incident.

the driver's door. Fitzgerald ordered Boyd to stop and get on the ground. She complied. Once on the ground, Boyd could no longer see Arreguin and Fitzgerald. Boyd heard Fitzgerald say, "Get out of the car. I'm not playing. I'm not playing with you. Get out of the car." Boyd then heard gunshots. Boyd looked back and saw Fitzgerald getting up from the ground and the Impala speeding away.

Related Criminal Activity

A UCLA class ring recovered from the Impala was subsequently identified by a Lakewood resident as stolen from his home during a burglary on May 7, 2015.

On May 2, 2015, an off-duty sheriff's deputy reported that an unfamiliar male and female were slowly driving through his neighborhood in Monterey Park in a Chevrolet Impala. The deputy searched for the Impala in his personal vehicle and located it parked nearby. The male driver was ducking down in his seat as if attempting to conceal himself. Moments later, the female came running toward the Impala from the rear yard of a residence. The license plate provided by the off-duty deputy matched the Impala driven by Arreguin on May 7, 2015.

On November 18, 2015, Boyd was sentenced to two years state prison for a residential burglary in case LA08199 after her DNA was recovered in a home that had been burglarized on May 6, 2015. Entry was made by breaking a window and opening a door. Blood droops were recovered on the floor near the door.

On March 24, 2015, Boyd was captured on home surveillance video approaching the front door of a residence in Arcadia, looking inside the house then making a call on her cellular phone. Shortly thereafter, a male is observed entering the victim's property. A neighbor personally observed Boyd entering the home. Boyd and the male were arrested by police fleeing through yards in the neighborhood. On October 29, 2015, Boyd was sentenced in case GA095963 to four years state prison for conspiracy to commit residential burglary.⁶

LEGAL ANALYSIS

"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. Conner* (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

⁶ On May 7, 2015, Boyd was out on bail in case GA095963.

than to someone analyzing the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

“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 that 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 test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others”. *Munoz v. City of Union City* (2004) 120 Cal.App. 4th 1077, 1102.

CONCLUSION

The evidence examined shows that Deputy Fitzgerald was attempting to lawfully detain Boyd and Arreguin in order to determine whether they were involved in any criminal activity in the area. Boyd immediately complied with Fitzgerald’s orders to stop. Arreguin ignored Fitzgerald’s multiple orders to show his hands and exit the car. Instead of complying with Fitzgerald, Arreguin turned on the car’s engine and sped away from the curb at a high rate of speed. Arreguin turned the car to the left directly toward Fitzgerald even though he had enough room to pass by him. The car struck Fitzgerald on the left side of his body causing him to lose his footing and begin to fall atop the Impala. In that moment, Fitzgerald believed that Arreguin was attempting to crush him between the Impala and his own patrol car. In fear for his life, Fitzgerald fired two rounds at Arreguin striking him one time in the chest.

Deputies Long and Ortiz also observed Arreguin turn the Impala toward Fitzgerald rather than take the open path in front of the car. In fact, ██████████ believed that Arreguin was purposefully trying to run Fitzgerald over with the car. Long also observed the Impala hit Fitzgerald causing him to lose his balance. Although the other witnesses did not see any contact between Fitzgerald and the Impala, they all stated that Fitzgerald was in close proximity to the Impala when Arreguin accelerated away from the curb in his attempt to escape. ██████████ ██████████ said that Fitzgerald had to “jump out of the way” in order to avoid being run over by Arreguin. Although he did not see any impact, his observations are consistent with the evasive actions Fitzgerald took after being struck by the Impala. Additionally, Boyd saw Fitzgerald getting up from the ground as the Impala sped away which is consistent with Fitzgerald’s statement that he fell to the ground after having to physically push himself away from the Impala.

It was reasonable for Fitzgerald to believe that he had no time to escape the path of danger of the oncoming Impala. Arreguin’s actions placed Fitzgerald in fear of imminent death or great bodily injury and he reasonably responded with deadly force.

We conclude that Deputy Fitzgerald acted in lawful self-defense when he used deadly force against Nephie Arreguin. We are therefore closing our file and will take no further action in this manner.