

**In Custody Death of Alex Aguilar
Los Angeles Police Department**

**Officer Matthew Medina #40331
Officer Sergio Melero #39563**

J.S.I.D. File #17-0232



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 12, 2017

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
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: In Custody Death of Alex Aguilar
J.S.I.D. File #17-0232
F.I.D. File #F034-16

DATE: July 12, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 9, 2016 death of Alex Aguilar while in the custody of Los Angeles Police Department (LAPD) Officers Matthew Medina and Sergio Melero. It is our conclusion that the officers used reasonable force when they attempted to control Aguilar before he choked to death on a bag of narcotics he was attempting to swallow, and are not criminally responsible for his death.

The District Attorney's Command Center was not notified of this in-custody death on the date of the incident and the District Attorney's Response Team did not respond to the scene.

The following analysis is based on reports, recorded interviews, videos and photographs submitted to this office by the LAPD's Force Investigation Division. The departmentally compelled statements of Officers Medina and Melero were not considered in this analysis.

FACTUAL ANALYSIS

On June 9, 2016, at 6:10 p.m., LAPD Officers Enrique Lopez and Jorge Noriega observed Alex Aguilar driving a white Toyota Tacoma in the Wilmington area of Los Angeles. Lopez knew Aguilar from previous contacts and knew that he neither owned a vehicle nor had a driver's license. The officers followed Aguilar for a few moments before he came to a stop voluntarily, and the officers stopped behind him. Lopez and Noriega spoke with Aguilar and the passenger of the truck, P█████ A█████, before requesting assistance from a LAPD Harbor Division Gang Enforcement Detail (GED) unit.

Officers Medina and Melero were assigned to GED and responded to Lopez's request for assistance. When they arrived, Melero immediately recognized Aguilar and A█████ as members of "Westside Wilmas," a criminal street gang which is subject to a civil gang injunction whose

members are enjoined from congregating in specific areas. Melero knew Aguilar had been arrested for violating the gang injunction on May 21, 2016, and determined that he was in violation of the court order for associating with A[REDACTED]. Aguilar was placed under arrest for violating a court order and A[REDACTED] was arrested because he was identified as a suspect in a separate assault with a deadly weapon case. Both men were separately transported to the LAPD Harbor Division for booking; A[REDACTED] was transported by Lopez and Noriega, and Aguilar was transported by Melero and Medina.¹

Aguilar was taken into the station and presented to Sergeant Andrew Hudlett for booking. Hudlett asked Aguilar if he understood why he was there, whether he had any medical conditions, and whether he had any concerns or complaints. During that questioning, Aguilar was talking quickly, joking with Lopez, and was unable to stand still. Hudlett commented to Aguilar that it looked like he was not “feeling any pain” and later explained to investigators that he thought Aguilar was acting as if he were under the influence of methamphetamine. Throughout the preliminary booking process, Aguilar was generally cooperative, although he was moving frenetically.²

Melero and Medina requested, and were given, permission to strip search Aguilar to determine whether he was secreting any narcotics on his person. Hudlett said he gave permission for the more invasive search because of Aguilar’s apparent intoxication. Aguilar was taken to a small room in the jail facility which is enclosed on three sides for the purpose of a strip search. That room, which measures approximately eight feet square, is explicitly designed to provide some privacy within the jail for the person being searched.³

While Aguilar began the process of removing his clothing for the search, Officers Dante Pagulayan and Stephanie Nunez entered the jail facility with another detainee. Pagulayan walked the detainee past the strip search room while Nunez stayed back to give Aguilar privacy. As Pagulayan passed by, he saw Aguilar facing Medina and Melero while he was taking off his pants; the officers were telling Aguilar to “stop moving around” and “put your hands back on the wall.” Just after he passed the strip search room, Pagulayan heard Medina and Melero simultaneously yell, “Spit it out! Spit it out!” so he motioned for Nunez to take custody of his detainee so he could assist the other officers.

When Pagulayan got to the strip room, Aguilar was “on his hands and knees and attempting to...crouch down” with his hands in front of him while Melero was “trying to grab his right arm and Officer Medina [was] trying to get his left arm.” It looked like Aguilar “had a bunch of marshmallows in his mouth...and he was clenching his teeth” while both Medina and Melero

¹ A[REDACTED] and two other detainees were in the jail when this incident occurred. While some of them described what they heard, none of them observed any of the interactions between Aguilar and the officers which is relevant to this analysis.

² There is a camera with a microphone mounted in the watch commander’s office, which is adjacent to the holding cells. This camera did not capture any images of Aguilar during the use of force, but did record some relevant audio.

³ The Harbor Station Jail is equipped with cameras which monitor the common area of the jail; however, those cameras are not equipped with microphones. The room to which Aguilar was taken is purposely outside the view of the cameras.

continued telling him, “Spit it out! Spit it out!”⁴ It was clear that Aguilar was actively resisting and that the officers were trying to restrain him. There was no space in the room for Pagulayan to assist the other officers, so he stood near the entrance to the room and monitored what was happening. While he was watching, Medina drew his Taser from its holster, said, “I’m going to tase you,” and pushed his Taser into Aguilar’s back. In response, Aguilar flung his left arm and knocked the Taser away before it had any effect, and caused Medina to step back. Aguilar was able to stand up, and Medina announced again that he was going to tase him. Pagulayan saw Medina fire his Taser at Aguilar, saw the darts hit him, and saw him rip them out without effecting him.⁵ Medina and Melero were able to grab onto Aguilar’s arms for a moment before Aguilar threw Melero off of him. Melero re-engaged Aguilar by punching him one or two times, although Pagulayan was not able to see whether or where he made contact. Aguilar did not react to being punched.

Hudlett arrived at the door to the strip search room and told his officers to “take down” Aguilar. Medina and Melero were able to get Aguilar face down on the ground and handcuff him. Once Aguilar fell to the ground, Pagulayan believed he was choking. Hudlett told them to “do the Heimlich,” but Aguilar was no longer responsive and they were not able to position him to perform it normally. Instead, Pagulayan straddled Aguilar and started doing chest compressions in an attempt to dislodge whatever Aguilar had swallowed. Hudlett requested an ambulance via his police radio while Pagulayan and Melero took turns performing chest compressions and Lopez, who entered the room after Aguilar was on the ground, supported his head. The officers performed CPR until Los Angeles Fire Department paramedics arrived at the station approximately seven minutes later.

The paramedics immediately assessed Aguilar and found him to be not breathing and without a pulse. Paramedic Joaquin Lapastora used an oropharyngeal airway to move Aguilar’s tongue out of the way and a bag valve mask to get him oxygen and saw his chest rise and fall, which indicated to him that air was getting into Aguilar’s lungs. He did not see anything obstructing Aguilar’s airway, but did not conduct a thorough examination because the bag valve appeared to be working. The paramedics attempted lifesaving measures for approximately 30 minutes and consulted telephonically with a doctor at Harbor UCLA Medical Center before declaring Aguilar deceased at 7:59 p.m.

Taser Report

Medina was equipped with a Taser model X26P. This Taser model can be used in two different ways; as a stun gun (also known as a “drive stun”) where the tip of the weapon is pushed onto a person’s body to deliver an electric shock, or from a distance where two barbed electrodes are fired from the weapon and give an electric shock from a distance of up to fifteen feet.

⁴ Various officers can be heard shouting “Spit it out!” at least 14 times during their struggle with Aguilar. A noise consistent with a Taser activation can be heard after “Spit it out!” is yelled ten times.

⁵ Although this is Pagulayan’s recollection of the event, the Taser darts were still embedded in Aguilar’s skin when the paramedics arrived. Although not documented in any report, photographs of Aguilar taken after he died showed the wires which connect to the Taser darts separate from the darts; so, it is possible that Pagulayan saw the wires separate from the darts. If the wires were separated from the darts, the Taser would have no effect.

Regardless of the manner in which the weapon is used, one pull of the trigger causes a five second pulse of electricity to the electrodes. The weapon is equipped with a data recorder which logs its usage.

Medina's Taser was examined after the altercation with Aguilar. The examination revealed that the Taser had been activated at 7:21 p.m. for five seconds and 14 seconds later for two seconds. It was then rearmed and activated three times in quick succession three seconds later. When asked to explain the two second activation, Sergeant Stephen Dolan, who works in the LAPD Training Unit, explained that a two second activation is common when a Taser is dropped or hit on a hard surface.

Autopsy Report

Aguilar was examined by Dr. Juan Carrillo, Los Angeles County Deputy Medical Examiner, on June 11, 2016. Dr. Carrillo finalized his report on February 8, 2017, and determined that Aguilar died as a result of asphyxia due to airway obstruction by a foreign body. That foreign body was determined to be a plastic bindle measuring 2 ¾ inch by 1 ¼ inch by 1 inch which weighed 26.34 grams and contained heroin. Dr. Carrillo identified Aguilar's intoxication by alcohol, heroin and methamphetamine as a condition which contributed to, but was not related to, the cause of death.

Dr. Carrillo noted several small abrasions and contusions on Aguilar's body as well as the presence of two Taser darts in his skin. Dr. Carrillo determined that those injuries were non-fatal, and deemed the manner of death accidental.

LEGAL ANALYSIS

To prove the crime of involuntary manslaughter in violation of Penal Code section 192(b), the People must prove that: 1) a person committed a crime that posed a high risk of death or great bodily injury because of the way in which it was committed; or performed a lawful act with criminal negligence; and 2) that act caused the death of another.⁶

A police officer may use reasonable force in making an arrest, preventing an escape, or in overcoming resistance.⁷ Therefore, to establish that an officer committed the crime of involuntary manslaughter as a result of his use of force in the course of his employment, the People would need to prove either that the officer committed an assault under the color of authority, or used force that, while lawful, was done in a criminally negligent manner.

To prove an officer committed an assault under color of authority, the People must present evidence to show: 1) the defendant was a peace officer; 2) the defendant assaulted or beat another; 3) the assault took place while the defendant was engaged in the performance of his duties; and 4) the force used was not lawfully necessary.⁸ When assessing whether an officer's use of force was "lawfully necessary," California criminal law employs the reasonable person

⁶ Penal Code section 192(b); CALCRIM No. 581.

⁷ Penal Code section 835a.

⁸ Penal Code section 149.

standard.⁹ We must consider all the circumstances as they were known to and appeared to the officer, and consider what a reasonable person in a similar situation with a similar knowledge would have believed.¹⁰ This enables a jury who is assessing the conduct of a law enforcement officer “to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation – but this is not the same as following a special ‘reasonable police officer’ standard.”¹¹

In the absence of a criminal violation, the People must show that the defendant committed a lawful act in a criminally negligent manner. Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment; a person acts with criminal negligence when: 1) he acts in a reckless way that creates a high risk of death or great bodily injury; and 2) a reasonable person would have known that acting in that way would create such a risk.¹² A person acts with criminal negligence when the way he acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.¹³

In this case, Medina and Melero were tasked with conducting a thorough search of Aguilar in preparation for booking him into custody. While Aguilar was generally compliant, he was in possession of approximately one ounce of heroin which was not discovered when he was arrested. As the officers were conducting their search, Aguilar apparently retrieved the heroin, put it in his mouth, and tried to swallow it. When officers ordered him to spit it out, he responded by clenching his teeth and taking a fighting stance against the officers. Both Medina and Melero reacted by grabbing onto Aguilar’s arms and ordering him to “spit it out” over and over.

When Aguilar resisted the officers’ attempts to restrain him, Medina announced his intention to use his Taser and attempted to drive stun Aguilar in the back, but Aguilar knocked the weapon away before it had an effect. It is reasonable to conclude that the first five second activation and second two second activation noted on the Taser report coincide with this failed use of the Taser. Medina re-deployed the Taser and was able to activate it three times in quick succession, but it did not appear to effect Aguilar, who continued to physically resist the officers. He was able to push Melero away and Melero struck Aguilar several times in response, but Aguilar did not stop resisting until it was apparent that he was choking. As soon as it became apparent that Aguilar was choking, all of the involved officers attempted lifesaving measures and continued those measures until paramedics took over.

As described, the use of force by the officers against Aguilar was objectively reasonable. Aguilar was attempting to prevent the officers from gaining control of the heroin he was

⁹ People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146. “The reasonable person standard for public officers’ conduct involving use of force has been the measuring stick in California.”

¹⁰ See CALCRIM Nos. 505, 3470.

¹¹ Id.

¹² CALCRIM No. 581.

¹³ Id.

concealing, and he was willing to use force to do so.¹⁴ The officers responded with control holds which escalated to the deployment of a Taser and then to physical strikes when the other methods were ineffective. Because the officers used objectively reasonable force to overcome Aguilar's resistance to their lawful duty of retrieving evidence, they did not commit an assault under color of authority.¹⁵

Not only was the force used by the officers objectively reasonable, it was also done without criminal negligence. As noted above, the officers progressed in their use of force in response to Aguilar's resistance. There is no evidence that they acted "in a reckless way that create[d] a high risk of death or great bodily injury."

Finally, the deputy medical examiner determined that Aguilar's death was a consequence of his choking on a large bindle of heroin. Dr. Carrillo noted the presence of injuries consistent with the officer's use of force, but determined that they did not contribute to his death. Because Aguilar's death was not proximately caused by the officers' actions, they have no liability under Penal Code section 192(b).

CONCLUSION

We conclude that Officer Matthew Medina and Officer Sergio Melero used objectively reasonable force to overcome the resistance of Alex Aguilar. Further we find that the officers' actions did not proximately cause the death of Alex Aguilar. Therefore, the officers are not criminally liable for his death. We are closing our file and will take no further action in this matter.

¹⁴ This analysis is predicated on the officer's duty to recover evidence of a crime. In acting to prevent Aguilar from swallowing a large amount of narcotics, the officers were also acting to prevent a fatal overdose which would have occurred if the packaging were to fail after it was swallowed.

¹⁵ This conclusion would be the same if Aguilar had survived his attempt to swallow the narcotics.