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# Lawsuit in 2013 police shooting settled

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BY KENT JACKSON / PUBLISHED: FEBRUARY 17, 2019

The city of Hazleton paid \$575,000 to settle one of two lawsuits with the family of a 26-year-old man whom police shot to death during a struggle at his home six years ago.

After Jonathan Garay died on Oct. 5, 2013, authorities and his family provided different accounts of what happened in the incident, which touched off a protest march to City Hall.

An investigation led by Luzerne County District Attorney Stefanie Salavantis found that police were justified in shooting Garay. During a struggle on the porch of his home, Garay grabbed a gun that fell from his waistband and pointed it a police officer, who fired two shots, the second of which was lethal, the DA's report said.

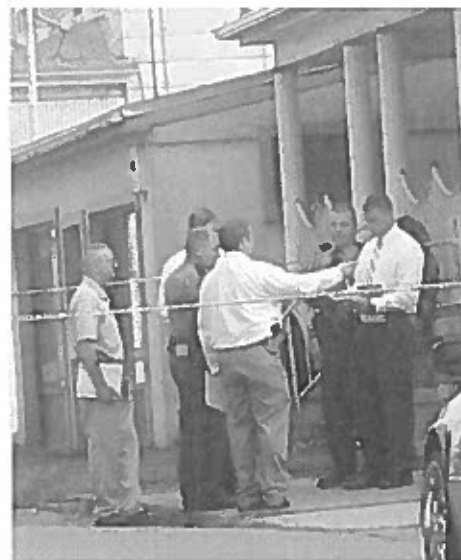
A lawsuit filed by Garay's sister, Veronica, the administrator of his estate, said a police officer removed a gun from Garay's waistband and tossed it aside as he lay dying. Other aspects of the DA's report such as Garay being shot in the back while pointing a gun at police defied science and logic, the lawsuit said.

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**STANDARD-SPEAKER FILE** State police investigate a fatal shooting that happened around 3 a.m. Oct. 5, 2013, near Alter and First streets in Hazleton. Jonathan Garay, 26, was pronounced dead from multiple gunshot wounds.

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No judge or jury ever resolved the conflicting accounts, which drew on evidence such as location of wounds, shell casings and powder burns or stippling.

A settlement was signed on Aug. 3, 2016, although the Standard-Speaker only learned of it last week when reviewing the PACER database for federal cases involving the city.

Both parties agreed to a confidentiality clause that said they would not divulge the terms or amount of the settlement but noted the city might have to release the settlement to comply with the state's Right to Know Act.

The newspaper filed a Right-to-Know request on Tuesday, and the city provided the settlement the next day.

In the settlement, both parties acknowledged a separate case that Garay's brother, Edgar Catala, brought against the city.

Catala claimed police used a stun gun on him several times after rousing him from sleep after his brother had been shot.

The Standard-Speaker also asked to see the settlement of Catala's lawsuit, which federal records indicate ended in April 2017, but the city is still processing that request.

Mayor Jeff Cusat said he believes the city's insurance company paid both settlements.

Cusat was in office when the settlements were signed, but not when Garay was killed.

The lawsuit filed by Veronica Garay named former Mayor Joseph Yannuzzi, former police Chief Frank DeAndrea and police officers Michael Colasardo and Scott Nicholas plus the city as defendants.

Catala's lawsuit names Yannuzzi, DeAndrea, the city and officers Anthony Martine and Aaron Simon as defendants.

Garay died months after the deaths of Eric Garner in New York City and Michael Brown in Ferguson, Missouri, sparked protests and led to calls for re-examining use of deadly force by police, especially against members of minority groups.



STANDARD-SPEAKER FILE A sign bearing signatures from family and friends seeking justice for Jonathan Kane Garay stands in front of his home at 521 Alter St., where he was shot to death after a struggle with Hazleton police on Oct. 5, 2013.



Image Gallery for Shooting suit settled

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# City paid second settlement

BY KENT JACKSON / PUBLISHED: FEBRUARY 21, 2019

A Hazleton man whom police awakened and then struck with a Taser minutes after an officer shot his brother to death six years ago was paid \$135,000 to settle a lawsuit with the city.

The payment to Edgar Catala is separate

from \$575,000 that the city paid to the estate of his brother, Jonathan Garay, who was shot to death after struggling at the family house on Oct. 5, 2013.

Catala signed the settlement of his lawsuit on April 4, 2017, whereas his sister, Veronica Garay, the executor of the estate for Jonathan Garay, settled a suit that she filed on Aug. 3, 2016.

The Standard-Speaker didn't learn that the suits ended until last week when reviewing a federal database of court cases.

Although both settlements contain confidentiality clauses that kept the parties from discussing terms, the state's Right to Know Act requires municipalities to make settlements public.

Mayor Jeff Cusat, elected after the shooting, believes the city's insurer paid both settlements.

When paying a total of \$710,000 to the family, the city didn't admit liability.

"To the contrary," the settlement with Catala said the city "entered into this release for the purpose of resolving the disputed claim and to avoid the cost and uncertainty of ongoing litigation." The settlement in Garay's case has a similar clause.

Because neither case went to trial, the public is left to decide between different accounts of what happened at 521 Alter St. when Jonathan Garay died.

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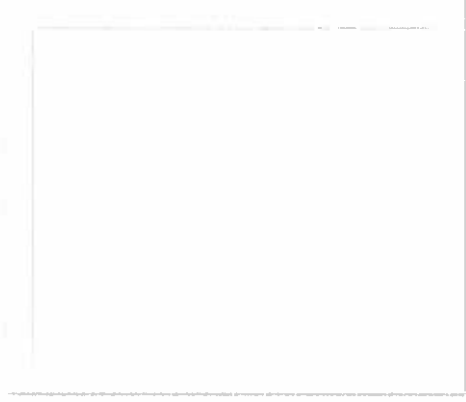
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His death led 120 people to march from near his house to City Hall in protest six days later.

In a report issued 11 days after Garay died, Luzerne County District Attorney Stefanie Salavantis said the shooting was justified.

Her report found that Garay struggled with two police officers on his back porch when a gun slipped from his waistband.

He retrieved the gun from beneath an officer's foot and pointed it at an officer before being shot twice on the porch.

Salavantis said shell casings and a hole in the porch floor left by a bullet that passed through Garay's jaw supported the finding.

She reviewed video from after the incident, investigators' reports and other evidence, but was unable to interview Garay's mother, who suffered health problems afterward.

The family, in contrast, released a statement saying Garay was in his mother's arms inside the house when he was shot the second time.

In the lawsuit that she filed through attorney Joshua Karoly of Allentown, Veronica Garay said her brother never pointed a gun at police, but a family member saw an officer take the gun from Garay's waistband and toss it on the floor as he lay dying.

The suit claimed that the bullet wounds and the trajectory of the bullets don't fit with the district attorney's finding and claimed the police had no right to be on the property, while police said they were responding to a fight in which they believed Garay had taken part in a block away.

The lawsuit said family members were held captive in the family room and insulted by police after the shooting, and also said police had harassed family members prior to the shooting.

"Upon information and belief," the suit said, "numerous officers of the Hazleton City Police Department routinely used excessive force in the performance of their duties" and many of the incidents or complaints involved minorities like Garay.

Catala, in the lawsuit filed by attorney Robert Goldman of Allentown, said police pulled him out of bed and assaulted and tased him several times in the back and head.

His suit also said police corralled in the family room near the body and showed a complete lack of control in using force.

He also asked the court to require the city to enforce policies to prevent police misconduct.

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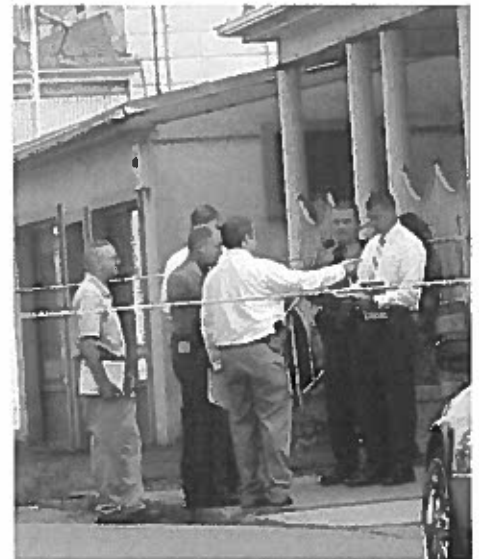
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Image Gallery for Shooting suit settled

In Hazleton, 120 people holding signs and chanting for justice for Garay marched from Alter Street to City Hall six days after he died.

The lawsuit claimed that despite repeated incidents and complaints from members of minority groups that police used excessive force, the police department made no significant efforts to establish standards for use of force.

After Garay's death, his mother was hospitalized and she did not speak to investigators from the DA's office, who sought to interview her.

Family members said she was holding her son when the final shot was fired.

The district attorney's report, however, said Garay fell inside the home after being shot twice, and the DA believes that two officers were the only witnesses.

Police went to the neighborhood because they received a report of a fight at the Capri Lounge, and saw Garay walking toward his back yard with another man. A witness said the two had been in the fight, the DA's report said.

Nicholas told Garay to stop and caught up with Garay on the porch, where they struggled before Garay's gun fell on the floor and Colasardo stepped on the gun.

When Garay retrieved and pointed the gun, Colasardo shot twice. The first shot broke Garay's jaw and went into the porch floorboard. The second shot struck him in the back, right flank and killed him, said the DA's report, which said Garay refused commands to stop, show his hands, get on the ground and stop fighting.

Shell casings and bullet holes found on the porch floor confirm the findings, the report said.

In her lawsuit, however, Veronica Garay said her brother wasn't one of the people in the fight at the Capri, was just trying to open his back door and posed no threat to police, who didn't have authorization to enter the family's property.

No powder marks or stippling surrounded Garay's wounds, meaning he was shot from 2 or 3 feet away, an unlikely occurrence if Gary and two policemen had been struggling on the narrow porch, said the lawsuit, which added that the location and trajectory of the fatal wound doesn't fit with the DA's finding that Garay was shot outside and stumbled backward into the doorway.

"It is illogical to suggest that someone stumbling backwards is consistent with being shot in the back," the suit said.

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