

Non-Fatal Officer Involved Shooting of Kevin Hernandez
Los Angeles County Sheriff's Department

Detective Albert Arevalo, #459111

J.S.I.D. File #21-0346



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

October 5, 2023

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Non-Fatal Officer Involved Shooting of Kevin Hernandez
J.S.I.D. File #21-0346
L.A.S.D. File #021-11523-0299-145

DATE: October 5, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 26, 2021, non-fatal shooting of Kevin Hernandez by Los Angeles County Sheriff's Department (LASD) Detective Albert Arevalo. We conclude that based on the totality of the evidence, the deputy reasonably believed that the use of deadly force was necessary to defend against an imminent threat of death or serious bodily injury to himself and others.

The District Attorney's Command Center was notified of this shooting on August 26, 2021, at 6:00 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LASD Lieutenant Brandon Dean.

The deputies were not equipped with body worn cameras. The following analysis is based on investigative reports, surveillance video footage, non-compelled statements, witness interviews, photographs, and physical evidence submitted to this office by LASD Detectives Maria Maciel and Louis Aguilera on April 29, 2022 and September 1, 2023.

INTRODUCTION

On August 26, 2021, LASD Operation Safe Streets - Gang Surveillance Unit (GSU) conducted an operation to apprehend and arrest Kevin Hernandez, a murder suspect. Hernandez, a known gang member from "East LA 13," was wanted for a murder that had occurred on August 22, 2021, involving a 9mm firearm. While conducting surveillance, GSU observed Hernandez exit a mobile home located at 1510 Rio Vista Avenue and enter a 2003 Chevrolet Tahoe driven by a female, later identified as [REDACTED], Hernandez's girlfriend.

Deputy Alfredo Garcia, in a black and white, marked patrol vehicle, followed Petra and Hernandez and conducted a traffic stop with the assistance of deputies Marcelo Campos and Theodore Woodard, who were in an unmarked vehicle equipped with lights and sirens. The Tahoe pulled over on Soto Street, north of Washington Boulevard. Deputy Joshua Whiting was

two car lengths behind the deputies' vehicles. Arevalo positioned his vehicle directly behind Garcia's vehicle. The other deputies' exact positions when the traffic stop was conducted is unknown. Campos ordered the driver to throw the keys out the window, but Hernandez exited the vehicle and ran eastbound, crossing Soto Street.

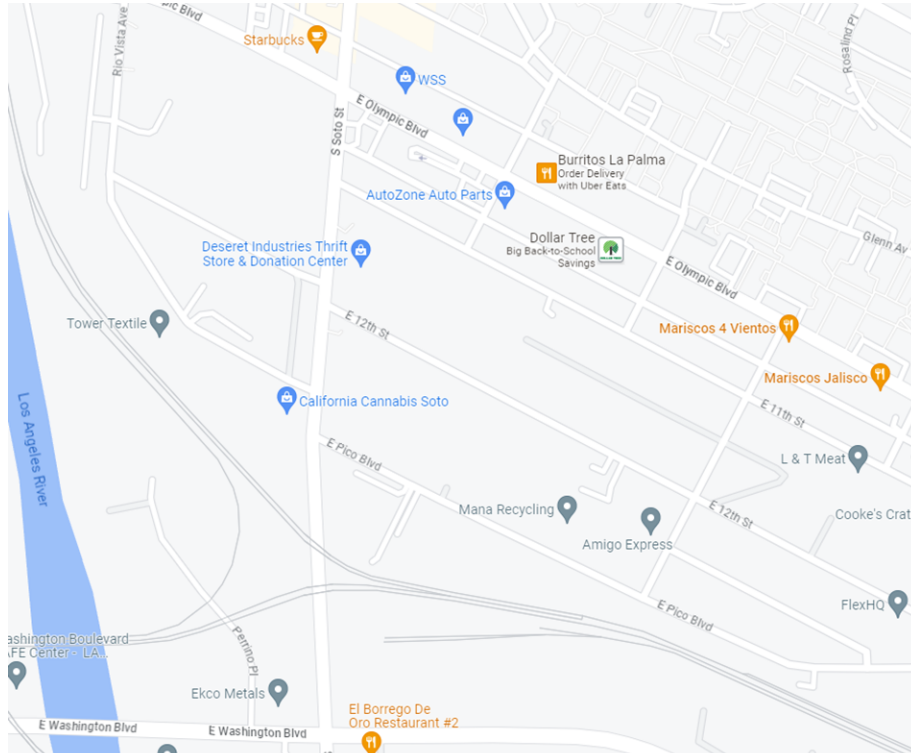


Figure 1: Map of location of incident.

Several deputies, including Detective Arevalo, followed Hernandez on foot. Hernandez ran eastbound through a guard rail, a fence, and a railroad yard, with Arevalo approximately 100 yards behind him.



Figure 2: Aerial image of location of portion of the foot pursuit.

As they were running, Hernandez turned toward Arevalo and pointed an unknown object at him several times. Arevalo believed that Hernandez was pointing a firearm at him. Hernandez then took off his shirt, wrapped it around his hand, turned and pointed his wrapped hand at Arevalo. Hernandez pointed his wrapped hand at Arevalo two more times. On the third time, Arevalo discharged his firearm at Hernandez.

Hernandez was shot twice, in his right thigh and left thigh. While on the ground, deputies searched for but could not find a weapon. Hernandez told deputies that he did not have a weapon; he had pointed at them to make them believe he had a firearm so they would stop chasing him. A semi-automatic firearm was located under the front passenger seat of the Chevrolet Tahoe.

Hernandez was transported to LAC+USC Hospital where he was treated and released to be booked. He has been charged with one count of murder, in violation of Penal Code sec. 187(a), and one count of felon in possession of a firearm, in violation of Penal Code sec. 29800(a)(1), in LASC Case BA498166, for the August 22nd murder.

FACTUAL ANALYSIS

Video of The Incident

A surveillance camera located at a business at 1700 S. Soto Street captured a portion of the foot pursuit near the railyard. Hernandez can be seen running eastbound with several deputies chasing him on foot.



Figure 3: A video still of Hernandez running away from deputies.

During the foot pursuit, he twice turns around and points at the deputies chasing him. The surveillance camera did not capture what, if anything, Hernandez has in his hands. He points at the deputies for one to two seconds before turning back around and continuing to run.



Figure 4: A video still of Hernandez turning around and pointing at the deputies a second time.

At one point, Hernandez takes off his shirt, wraps it around his right hand and points at the deputies. He points at them for one to two seconds before turning around and continuing to run past the surveillance camera's frame.



Figure 5: A video still of Hernandez taking off his shirt mid-pursuit.



Figures 6, 7, 8: Video stills of Hernandez wrapping his hand with his shirt, pointing at the deputies, and continuing to run away from the deputies.

Non-Compelled Statement

Investigators spoke with Arevalo on August 30, 2021. He reported that he was the lead detective for the surveillance and apprehension of a suspect for a murder that occurred on August 22, 2021. Through his investigation, he learned that the murder suspect, later identified as Hernandez, was an East Los Angeles 13 gang member and a bodyguard for someone in the area selling narcotics. Arevalo was given Hernandez's physical description, as well as information that he lived in a motorhome parked at 1510 Rio Vista Avenue and that his girlfriend drove a green Chevrolet Tahoe. Arevalo also learned that Hernandez was frequently armed with an unknown type of firearm.

On August 26, 2021, Arevalo, along with six other undercover LASD deputies, and three uniformed deputies were assigned to conduct surveillance on the motorhome. Deputies observed the Chevy Tahoe parked outside the motorhome. They observed a male matching the physical description of the murder suspect exit the motorhome and enter the Tahoe on the passenger side, and a female, later identified as [REDACTED], enter the driver's side. Hernandez and [REDACTED] began driving down Rio Vista Avenue and turned southbound onto Soto Street.

Uniformed deputies initiated a traffic stop of the Tahoe on Soto Street, north of Washington Boulevard. Arevalo, who was undercover, stopped his vehicle behind the marked patrol vehicle. He exited his vehicle to get a better view of the traffic stop.

As deputies ordered the driver to throw the keys out of the window, Arevalo saw Hernandez exit the Tahoe with his hands up. Hernandez then ran from the Tahoe, crossing Soto Street, toward a parking lot. Arevalo entered his vehicle and followed Hernandez to the parking lot. Arevalo parked his vehicle and ran after Hernandez. Detective David Rodriguez, Detective Joshua Whiting, and Deputy Theodore Woodward also ran after Hernandez, who was running down a dirt lot. Arevalo was closest to Hernandez, approximately 100 yards behind him.

Arevalo reported seeing Hernandez turn to the left and point at Arevalo with an object in his right hand. Arevalo believed Hernandez was pointing a firearm at him. Arevalo slowed down and drew his service weapon, a Smith and Wesson 9mm handgun, and broadcast via radio that Hernandez was armed with a gun. Hernandez continued running away from them and a few seconds later, turned to the right, and pointed the object at Arevalo again. Arevalo slowed down and drew his weapon at Hernandez, who then continued to run away.

Hernandez then took off his black shirt and wrapped it around his right hand. He turned around and pointed both hands at Arevalo, as if he was pointing a firearm at him. Arevalo drew his weapon at Hernandez, and Hernandez continued to run away.

Hernandez turned northbound, behind the wall to a building. When Arevalo cleared the wall, he saw Hernandez approximately 40-50 yards ahead of him, north of the railroad tracks. Hernandez turned around and pointed his right hand, still wrapped in his shirt, at Arevalo. Arevalo drew his weapon, and Hernandez continued running.

Hernandez turned around and pointed at Arevalo again. This time, Arevalo fired approximately three rounds at Hernandez. Hernandez fell to the ground, and he, Whiting, and Rodriguez approached Hernandez. They searched for Hernandez's firearm but only found the black shirt he used to wrap his hand and a black crumpled baseball cap.

Arevalo also reported that when asked where the weapon was, Hernandez told him that he did not have one and that he pointed at them to make them stop chasing him.

Witness Statements

Kevin Hernandez

On August 27, 2021, Hernandez was interviewed by Detectives Mike Davis and Sergeant Joseph Valencia. This interview was audio recorded. Hernandez confirmed his girlfriend, [REDACTED], was with him when he shot the murder victim on August 22, 2021. He also confirmed that on August 26, 2021, he was in the Chevrolet Tahoe with [REDACTED]. Hernandez had the firearm that he used in the August 22, 2021 murder in the front right area of his waistband. As they drove away from his trailer, a deputy tried to conduct a traffic stop. He told [REDACTED], "don't stop" because he had the gun he had used in the shooting with him.

When [REDACTED] stopped the vehicle, Hernandez left the firearm in the Tahoe behind the seat and fled on foot. While running away from the deputies, he pointed at the deputies twice to make them believe he had a gun, even though he did not actually have anything in his hands. He confirmed that he pointed at the deputies, making his hand resemble a gun, with his index finger extended, thumb pointed up, and three lower fingers folded in. Hernandez confirmed that he did this hoping that it would make the pursuing deputies slow down so he could escape.

Detective Joshua Whiting

Investigators spoke with Detective Whiting, who was working in an undercover capacity with GSU for the surveillance of Hernandez. He was assigned to watch the motorhome and a green Chevrolet Tahoe, believed to belong to the suspect.

Whiting observed an individual dressed similarly to the surveillance target standing next to the Tahoe. He was informed by his partners that a female entered the driver's side and the suspect entered the passenger side of the Tahoe. The Tahoe traveled southbound on Soto Street, with Whiting following behind. Whiting observed a marked Sheriff's patrol vehicle initiate a traffic stop. Whiting observed the suspect look at the rearview mirror, yelling and throwing his hands in the air. He then observed the suspect exit the vehicle and run across traffic. Whiting, Arevalo, Woodward, and Rodriguez chased after the suspect on foot. Arevalo was closest to the suspect.

On two occasions Whiting observed the suspect stop running, turn around, and point at them. Whiting believed that the suspect was pointing a gun at them. Whiting then observed the suspect take off his shirt, wrap it around his hand, and point it at them. Each time the suspect turned around and pointed at them, Whiting and the other deputies slowed down to assess the situation.

because there was nowhere to take cover. When the deputies slowed down, the suspect turned back around and continued running.

The suspect turned and ran behind a wall. Whiting reported being 15-20 yard away from Arevalo when he observed Arevalo stop, pull out his firearm, and shoot three times. Deputies approached the suspect, who was laying on his side. They searched for a weapon but did not find one. Detective Whiting said they asked the suspect where the gun was, and he responded that he pointed his hand at the deputies to scare them.

██████████

Investigators spoke with ██████████, who was sitting outside the gate at 1708 South Soto Street when he observed a police officer pull over a vehicle. He observed a male exit the vehicle and heard an officer order the male to put his hands up. Instead, ██████████ saw the male run across the street. He saw the male jump a yellow guard rail and through a fence. ██████████ also saw a deputy wearing a uniform and several undercover deputies chasing him.

When the male was approximately 60-80 yards away from the deputy, ██████████ saw him turn around toward the deputies. With both arms outstretched in front of him, his palms placed together, and his index fingers extended, he pointed toward the deputies. ██████████ reported that he did not know if the male had a gun in his hands or if he used a hat to look like he was holding a gun. After pointing at the deputies for a few seconds, the male turned back around and continued running. He did not see or hear any gunshots.

██████████

Investigators spoke with ██████████ on August 27, 2021. She told investigators that she and Hernandez have two children together. She visited Hernandez at his motor home, and they left to go to a nearby convenience store. ██████████ was driving southbound on Soto Street when she noticed a patrol vehicle behind her. When the patrol vehicle turned on its lights and sirens, Hernandez yelled at her not to stop the vehicle and continue driving. As soon as she pulled the vehicle over, Hernandez ran out of the vehicle with his hat in his hands. ██████████ reported that she had never seen Hernandez with a handgun before and that she did not know if he was a gang member.

Physical Evidence

Hernandez sustained one gunshot wound to his right thigh area and one gunshot laceration to his left thigh area. He was transported to LAC+USC Hospital, where he was treated and released.

A round count of Arevalo's Smith & Wesson MMP 9mm service weapon was conducted and there were 13 rounds in the magazine and one in the chamber, for a total of 14 rounds. Arevalo reported that he usually carries 17 rounds and one in the chamber in his service weapon.

A black, semi-automatic 9mm Hi-Point firearm was located underneath the front passenger seat of the Chevrolet Tahoe. It was loaded with two cartridges and found to be in good working order.

A clear plastic bindle containing a substance resembling methamphetamine was located in the front right coin pocket of Hernandez's shorts. The substance was tested and found to be 10.4 grams of crystalline substance containing methamphetamine.

LEGAL ANALYSIS

A peace officer is justified in using deadly force when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

Deadly force shall be used "only when necessary in defense of human life," and officers "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(a)(2).

"A threat of death or serious bodily injury is 'imminent' when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

The right to self-defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580. "An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun." *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. "[A]n officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer." *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 345.

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4). Moreover, "[a] peace officer who makes or attempts to make an arrest need

not retreat, or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested.” Penal Code section 835a(d).

Arevalo began his surveillance on Hernandez with the knowledge that Hernandez was not only a suspect in a recent shooting murder, but that he was also a gang member known to frequently be armed. Arevalo observed Hernandez exit his residence and enter a vehicle being driven by his girlfriend. When deputies conducted a traffic stop of the vehicle, Hernandez ran from the vehicle, away from deputies.

During the foot pursuit, Hernandez turned and pointed at Arevalo multiple times with his arms, including three times when he had his hand wrapped in a shirt so Arevalo would not be able to clearly see what, if anything, was in his hand. This was captured in part on surveillance video. Each time Hernandez pointed at him, Arevalo said he drew his firearm at Hernandez, believing that Hernandez was pointing a firearm at him. Hernandez, according to his own statements, one of which was recorded, pointed at Arevalo and the deputies specifically to make them believe that he was armed with a firearm so they would stop chasing him. Arevalo’s belief that Hernandez was armed with a firearm is also corroborated by [REDACTED]’s observations of the foot pursuit.

Although Hernandez was not actually armed with a firearm when he pointed at Arevalo, given the above, a reasonable officer in the same situation would believe that Hernandez had the present ability, opportunity, and intent to immediately cause death or serious bodily injury. Based on the totality of the evidence, Detective Arevalo reasonably believed that the use of deadly force was necessary to defend against an imminent threat of death or serious bodily injury to himself and others within the meaning of Penal Code section 835a(c)(1)(A).

CONCLUSION

For the foregoing reasons, we find that the evidence demonstrates that Detective Arevalo acted in lawful self-defense, reasonably believing that he and his partners’ lives were in danger, when he used deadly force against Kevin Hernandez.