

**Officer Involved Shooting of Fernando Hernandez
Los Angeles County Sheriff's Department**

Deputy Rahn Hunter, #515342

J.S.I.D. File #16-0101



JACKIE LACEY

District Attorney

Justice System Integrity Division

September 8, 2017

MEMORANDUM

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

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

SUBJECT: Officer Involved Shooting of Fernando Hernandez
J.S.I.D. File #16-0101
L.A.S.D. File #016-01965-0399-055

DATE: September 8, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 4, 2016, non-fatal shooting of Fernando Hernandez by Los Angeles County Sheriff's Department (LASD) Deputy Rahn Hunter. It is our conclusion that Deputy Hunter acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on March 4, 2016, at approximately 4:55 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 submitted to this office by LASD Homicide Bureau Detectives Adam Kirste and Robert Gray. Deputy Hunter provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

On March 4, 2016, at approximately 3:20 p.m., Deputies Rahn Hunter and Daniel Gonzalez were working uniformed patrol in a marked black and white police vehicle. The deputies were exiting a motel parking lot after conducting a patrol check when they observed Fernando Hernandez walking westbound on the south sidewalk of Century Boulevard in the City of Inglewood.

Statement of Deputy Rahn Hunter

The area is known to Hunter for having a high volume of drug trafficking, gang activity and violent crimes. Hernandez wore baggy clothing, had a tattoo over his eye and a red bandana

hanging from his right front pants pocket.¹ Hunter also observed a bulge near Hernandez' right front pants pocket. Based on the high crime location, his suspicion that Hernandez belonged to a gang and the bulge beneath his clothing, Hunter believed that Hernandez was in possession of a weapon. Hunter and Gonzalez decided to contact Hernandez to determine whether or not he was armed.

Hunter made a U-turn and stopped the patrol car on the south curb facing eastbound. Gonzalez exited the patrol car and contacted Hernandez, as Hunter placed the vehicle into park and turned on the overhead lights. Hunter exited the patrol car and observed Hernandez fleeing westbound on the south sidewalk, followed by Gonzalez. As Hunter gave chase, he heard Gonzalez yell, "Gun!" Hunter drew his service weapon, passed Gonzalez and took the lead in the pursuit.² At that time, Hernandez placed his hand near the bulge on his right side. Hunter was uncertain whether Hernandez was trying to hold the weapon in place, attempting to discard it or preparing to use the firearm against him and his partner. Hernandez then ran into a commercial plaza at the southeast corner of Century Boulevard and Hawthorne Boulevard.³



Google image of the Century Boulevard entrance into the shopping plaza looking southbound.

¹ Based on Hunter's training and experience, a red bandana is a symbol used by members of the Bloods, a criminal street gang. Though the Bloods are a predominantly black gang, they also have Hispanic gang members. Due to the baggy clothing, tattoo, bandana and location, Hunter suspected that Hernandez was a gang member.

² Surveillance video taken from a car rental agency on Century Boulevard showed that approximately 27 seconds elapsed between the time Hunter made the U-turn and when he passed Gonzalez during the pursuit.

³ The first business along the east side of the plaza is a Burger King, followed by the drive thru lane entrance. On the other side of the drive thru is a beauty supply shop, a Boost Mobile and a fish market. The corner shop is a laundromat. The businesses along the south side of the plaza are a tax preparation business, an insurance office, a Chinese restaurant and a check cashing place.



Google image of the Hawthorne Boulevard exit on the southwest side of the plaza.

Hernandez ran south through the parking lot and removed a revolver from his right waistband area causing the red bandana to fall to the ground.⁴ Instead of tossing the firearm, Hernandez maintained possession of it in his right hand. As Hunter followed Hernandez through the parking lot, Hernandez looked back toward Hunter. Hunter believed that Hernandez was attempting to acquire him as a target and fired his service weapon five to seven times at Hernandez.⁵ In that moment, Hunter feared that Hernandez was going to turn around and shoot at him or fire at him over his shoulder. Hunter feared that Hernandez would make a “lucky shot” and kill him. Hunter also feared for the safety of Gonzalez as well as the citizens who were at the shopping center. After Hunter fired at Hernandez, Hernandez dropped the revolver, came to a stop and surrendered.

Statement of Deputy Daniel Gonzalez

Gonzalez called out to Hernandez after Hunter stopped the patrol car on the south side of Century Boulevard. Initially, Hernandez looked toward their vehicle and appeared startled. Hernandez then pretended that he did not see the deputies. At that time, Gonzalez noticed a bulge near Hernandez’ right front waistband and pocket area. He also noted that Hernandez was wearing baggy clothing and had a tattoo on his face. Due to Hernandez’ appearance, the fact that they were in an area where he had made multiple arrests for weapon charges and because the location experienced a high volume of gang activity, Gonzalez suspected that the bulge was a firearm. Gonzalez decided to conduct a pat down search of Hernandez for weapons.

Gonzalez exited the patrol car and said, “Hey dude. Come on. Let me talk to you for a second.” Hernandez dropped his right hand toward the bulge area and Gonzalez immediately reached for Hernandez’ right hand. Hernandez then turned and fled westbound. Gonzalez followed him yelling “Stop!” multiple times. Hernandez ignored his commands. Hernandez began to manipulate his right waistband area as if he was trying to retrieve something. Gonzalez observed

⁴ The red bandana was recovered in a parking space in front of the Burger King.

⁵ An examination of Hunter’s service weapon determined that he fired seven times.

what appeared to be black metal at his waist area and believed that it was a gun. Gonzalez yelled, "Gun!" to warn Hunter, who was behind him. Several businesses before reaching the corner plaza, Hunter passed Gonzalez.

Hunter chased Hernandez around the corner into the shopping plaza and along the pedestrian walkway in front of the Burger King. Hernandez' right hand was still at his waist. Gonzalez decided to flank Hernandez to the right (west) to cut off his escape route onto Hawthorne Boulevard. Gonzalez lost sight of Hernandez, but could still see the back of Hunter. While running through the parking lot, Gonzalez heard approximately five gunshots. Gonzalez then saw Hunter pointing his service weapon at Hernandez, who was on the ground and out of view. As he approached Hunter, Gonzalez observed Hernandez on his hands and knees on the south side of the parking lot. A firearm was lying on the ground next to Hernandez and he was bleeding from his left side. Gonzalez broadcast a request for additional deputies and a rescue ambulance. Hunter and Gonzalez held Hernandez at gunpoint until responding deputies arrived at the scene and took him into custody.

Civilian Witnesses

There were numerous witnesses at the shopping plaza who heard the gunshots, but did not see the shooting. Several witnesses observed Hunter firing his service weapon, but did not see Hernandez in possession of a firearm. Three witnesses observed Hernandez with a handgun prior to the shooting.

Nasier J. was standing outside the Chinese restaurant on the south side of the plaza. Nasier J. observed Hernandez running southbound through the parking lot from Century Boulevard. Hernandez was gripping a black revolver by the handle with the barrel pointed to the ground.⁶ Hunter and Gonzalez were five to ten feet behind Hernandez, chasing him. Nasier J. heard six gunshots as Hernandez veered right heading toward the Hawthorne Boulevard exit on the south side of the plaza. Nasier J. saw Hunter firing his service weapon. Nasier J. believed that Gonzalez also fired, however, he did not personally see him shoot his weapon. Hernandez ran for a short distance after being shot, dropped his weapon then knelt down on the ground. Initially, Nasier J. stated that Hernandez did not look back toward the deputies until after he was shot. Nasier J. then clarified that Hernandez looked back toward the deputies after they started firing. Hernandez turned back around and kept running until he realized he was shot then dropped the revolver.

Martin L. was walking south across the Burger King drive thru lane when he observed Hernandez running in his direction, holding a gun down by his side. Hunter and Gonzalez were 15 to 20 feet behind Hernandez and had their service weapons drawn. Both deputies fired at Hernandez. Hernandez went to the ground.

Lisa T. was sitting in her car parked in front of Boost Mobile, facing east. Lisa T. was looking to her left when she observed Hernandez running south from the Burger King. She did not see any

⁶ During a brief interview at the scene, Nasier J. stated Hernandez held the gun in his right hand. During the formal interview with investigators at the station, Nasier J. was uncertain in which hand Hernandez held the weapon.

deputies at that time. Hernandez was holding a partially exposed revolver in his pants pocket. It appeared to Lisa T. that Hernandez was holding up his pants while running. Lisa T. heard four gunshots as Hernandez ran behind her car. She did not see who fired. Lisa T. looked to her right and saw Hernandez drop the revolver to the ground. At that time, she observed Hunter and Gonzalez with Hernandez.

Deanna P. was parking her car in front of the check cashing business next to the Chinese restaurant when she observed Hernandez running south through the parking lot. She then heard four to five gunshots. Deanna P. looked to her right and observed Hunter and Gonzalez pointing their service weapons at Hernandez, ordering him to raise his hands. On the ground next to Hernandez was a firearm. Similarly, Dorion W. was inside Boost Mobile and heard four to five gunshots. Dorion W. looked outside and observed Hernandez on the ground and a revolver near one of the deputy's feet.

Hernandez Injury

Hernandez was transported to Harbor-UCLA Medical Center where he was treated for a through and through gunshot wound to his left side just below his ribcage.

Laundromat Surveillance Video

The laundromat has two surveillance cameras that captured portions of the officer involved shooting. One of the cameras faces north and captures the corner of the parking lot in front of the fish market and laundromat. It does not capture any part of the parking lot in front of the Burger King, the beauty supply store or Boost Mobile. The second camera faces west toward the Hawthorne Boulevard parking lot exit.

The north facing camera first shows Hernandez as he runs behind a car parked in front of Boost Mobile. Hunter is approximately six feet behind Hernandez with his service weapon pointed at him. Seconds later they run out of view. Due to the distance from the camera and the quality of the video, it is difficult to determine whether Hernandez turns back toward Hunter during the few seconds captured on the video.

In the video from the west facing camera, a puff of dust can be seen flying up from the ground, consistent with a bullet striking the pavement, before Hernandez and Hunter come into view. Hernandez is then seen running west toward the Hawthorne Boulevard exit. A second gunshot strikes the pavement as Hunter comes into view with his service weapon pointed at Hernandez. At the same time, Hernandez drops a gun which slides out of view near cars parked on the south side of the lot. As the gun falls to the ground and slides out of view, two more gunshots can be seen striking the ground. Hernandez runs for another eight to nine steps then comes to a stop. Hernandez turns toward Hunter and raises his hands above his head. Five seconds elapsed between the time the first puff of dust is seen on the video until Hernandez turns and raises his hands. It does not appear that Hernandez turned back toward Hunter on the video captured by this camera. Hunter holds Hernandez at gunpoint and gestures toward the ground. Hernandez goes to his hands and knees on the ground as Gonzalez comes into view.

Recovered Firearm

A black Ruger .22 caliber revolver loaded with three unfired rounds was recovered behind a car parked in front of the Chinese restaurant.

Recovered Narcotics

On March 4, 2017, hospital personnel at Harbor-UCLA Medical center provided deputies with Hernandez' clothing. Six white bindles containing what deputies believed to be methamphetamine were recovered in the right front pocket of his pants. Three of the bindles were chemically tested by LASD Scientific Services Bureau. It was determined that two bindles contained powder cocaine and the third contained methamphetamine. The other three bindles were not tested.

Statement of Fernando Hernandez

Fernando Hernandez invoked his Miranda rights and declined to provide investigators a statement about the shooting.

Criminal Charges

On March 8, 2016, Hernandez was charged in felony complaint YA093860 with possession of a firearm by a felon, carrying a loaded firearm with a prior felony conviction, possession of a controlled substance and possession of a controlled substance with a firearm. It was also alleged that Hernandez was previously convicted of a second degree robbery, a strike prior, and felony vandalism. On July 25, 2016, Hernandez pled nolo contendere to the charge of possession of a firearm by a felon, admitted his strike prior and was sentenced to 32 months in state prison.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury, (2) that the immediate use of force was necessary to defend against that danger, and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

“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. Connor* (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 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 Hernandez was in possession of narcotics and armed with a loaded firearm when he was contacted by Hunter and Gonzalez. Hernandez fled when Gonzalez attempted to pat him down for weapons. During the foot pursuit, Hunter observed Hernandez remove a firearm from his pants pocket. Hernandez maintained possession of the weapon and made no attempt to discard it. According to Hunter, Hernandez then looked back in Hunter’s direction as he continued to flee with the revolver in his hand. Nasier J. also observed Hernandez turn back toward Hunter during the pursuit, however, he believed that occurred after Hunter began firing his service weapon.

Under the circumstances, it was reasonable for Hunter to believe that when Hernandez looked toward him, Hernandez was attempting to locate his position in order to shoot him. Hernandez was desperate to avoid arrest. He knowingly removed a firearm from his pocket while being pursued by deputies. Instead of tossing the gun, he openly carried it in the deputies’ presence. It was reasonable for Hunter to fear that Hernandez was intending to use the gun against him in an effort to escape. As Hunter stated, it would only take one “lucky shot” for Hernandez to kill him. In reasonable fear for his life, and the lives of Gonzalez and the other civilians at the plaza, Hunter responded with reasonable deadly force and fired his service weapon at Hernandez.

We conclude that Deputy Rahn Hunter acted in lawful self-defense and defense of others when he used deadly force against Hernandez. We are therefore closing our file and will take no further action in this manner.