

**Fatal Officer Involved Shooting of Raymond Hernandez
Los Angeles Police Department**

**Officer Diego Millan, #42169, Officer Sterling Byrd, #41343, and
Officer Matthew Vocke, #37062**

J.S.I.D. File #19-0409



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

March 8, 2023

MEMORANDUM

TO: CAPTAIN RICH GABALDON
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: Fatal Officer Involved Shooting of Raymond Hernandez
J.S.I.D. File #19-0409
F.I.D. File #F045-19

DATE: March 8, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 23, 2019, fatal shooting of Raymond Hernandez by Los Angeles Police Department (LAPD) Officers Diego Millan, Sterling Byrd, and Matthew Vocke. We have concluded the officers acted in lawful self-defense at the time they fired their weapons, reasonably believing, based on a totality of the circumstances, that deadly force was necessary to defend against a deadly threat.

The District Attorney's Command Center was notified of this shooting on September 23, 2019, at approximately 7:48 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through by LAPD personnel.

The following analysis is based on body worn camera video (BWV), dash camera video, recorded witness statements, and reports. The involved officers did not provide voluntary statements, and their compelled statements, if any exist, were not considered. These materials were submitted to this office by the LAPD Force Investigation Division.

INTRODUCTION

On September 23, 2019, at approximately 6:15 p.m., Officers assigned to Harbor Patrol Division responded to a shots fired radio call at a mobile home community in Wilmington. Eight uniformed officers, in four marked patrol cars, arrived at the scene, where they encountered a naked man, [REDACTED], acting erratically. [REDACTED] initially complied with the officers' commands and laid face down on the ground. Soon after, his father, Raymond Hernandez, walked out from his residence with one hand hidden behind his back. Hernandez made a hand motion to [REDACTED] then walked toward him. [REDACTED] stood up with his hands raised in the air. Hernandez stood behind [REDACTED], as though shielding himself, and continued hiding his hand behind his back. Both were facing the officers. Hernandez ignored repeated commands to show his hands and lay on the ground.

Standing partially behind [REDACTED], Hernandez reached around him and pointed a pistol at the officers with the hand that had been behind his back. Officers Millan, Byrd, and Vocke immediately fired several shots in response. Hernandez fell to the ground and was later pronounced dead at the scene by fire personnel. [REDACTED] admitted to ingesting PCP before the incident. There is no evidence that Hernandez was under the influence.

The incident was captured on BWV and a digital in car video system. Investigators recovered a semiautomatic 9mm pistol near Hernandez's body. It was unloaded with the action open and the slide in locked rearward position (slide lock). Also recovered, from inside Raymond's residence, was a 9mm casing that, according to ballistics testing, was fired by Raymond's pistol.

FACTUAL ANALYSIS

Witness Statements and Video Footage

Hernandez's neighbor, [REDACTED], told investigators that he was inside his residence when he heard shouting and, looking through his window, saw [REDACTED] standing outside taking off his clothes. He heard [REDACTED] say, "I'm bigger than god. King Kong ain't got nothing on me." [REDACTED]

[REDACTED] Hernandez walked outside holding a pistol and interceded, firing one round in the air [REDACTED] Hernandez returned inside, leaving [REDACTED] outside. After police arrived, [REDACTED] saw Hernandez walk back outside holding "a gun in the back on his right hand, on his – covering him [sic] with his back." Hernandez walked toward [REDACTED] and "started, I guess, shielding himself with him. ... Then he stepped out away from his son or – or his grandson and drew his weapon and fired some rounds at the officers. ... That's when your officers opened fire."

Another neighbor who called 9-1-1, [REDACTED], also saw Hernandez fire his gun in the air. [REDACTED] then saw Hernandez approach officers holding the gun behind his back. He did not see the officer involved shooting.

The incident was captured by multiple officers' BWV and one patrol car's digital in car video system. The footage depicts Hernandez walk into the roadway adjacent to his residence, facing the officers, as [REDACTED] lies nearby, face down on the ground. Hernandez holds his right hand behind his back, hidden from view; his left hand is up in the air. He walks sideways toward [REDACTED], who stands up. Both men face the officers and walk side to side and diagonally, gradually walking closer to the officers, who throughout yell various commands to "Stop!" "Get on the Ground!" and "Put your hands up!" [REDACTED] briefly lies back on the ground until Hernandez gestures to him with his visible hand and walks behind him. [REDACTED] stands back up and raises his hands in the air. He is blocking Hernandez from the officers like a human shield. Officers continue yelling commands, which both men ignore. A few seconds later, Hernandez abruptly reaches around [REDACTED] with the once-concealed hand and appears to point a pistol at the officers, exposing the right half of his body. A rapid volley of gunfire is heard, and Hernandez falls to the ground. Unintelligible yelling, apparently from Hernandez or [REDACTED], is heard prior to the shooting.



Figure 1: Dash cam still showing Hernandez concealing his right hand behind his back, with [REDACTED], naked, standing to his left.



Figure 2: Dash camera still showing Hernandez appear to point pistol just before officers open fire.



Figure 3: BWV still showing approximately the same moment as Figure 2.

At the time of the shooting, eight officers were on scene taking cover, facing Hernandez, in a line behind parked patrol cars and a residence. The officers who did not fire their weapons stated the following to investigators. Officer Keno Ramos and Sergeant James Huett saw Hernandez point his pistol toward officers. Sergeant Jessie West saw Hernandez produce the weapon but believes the officers' gunfire stopped him before he actually (in West's words) acquired the target. Officers Jorge Blanco and Paige Kisling were not looking at Hernandez at the moment he produced the pistol and only heard the ensuing gunshots.

Physical Evidence

Investigators recovered an unloaded 9mm semiautomatic pistol near Hernandez's body. It was later test fired and determined to be operable. Inside his residence was a 9mm casing. Ballistics analysis determined it had been fired by Hernandez's pistol. Hernandez's pistol was not tested for the presence of his DNA, and no fingerprints were found on the weapon. Investigators performed a gunshot residue test on Hernandez's hands and face, which revealed the presence of gunshot particles on his skin, indicating Hernandez either discharged a firearm, was in the vicinity of the discharge of a firearm, or touched a surface with gunshot residue particles.

Millan and Byrd were armed with 9mm semiautomatic pistols. Vocke was armed with a semiautomatic Colt rifle. Based on the casings recovered at the scene and round counts of the involved officers' weapons, Millan fired nine rounds, Byrd eight, and Vocke five.

Autopsy

Doctor Vadims Poukens of the Los Angeles County Coroner's Office performed an autopsy and ascribed the cause of Hernandez's death to multiple gunshot wounds. Hernandez suffered seven gunshot wounds, including fatal wounds to the right side of his chest, traveling front to back, and right to left, and the right side of his back, traveling back to front, and right to left. He suffered two nonfatal wounds to his right hip, two to his left wrist, and one to his left hand.

THE LAW

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).

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).

ANALYSIS

Officers responded to the mobile home community with knowledge that a suspect inside had fired a gun. They initially encountered only [REDACTED], who was naked and acting erratically. They ordered him to the ground, and he complied. Shortly after, however, Hernandez emerged from his residence hiding his right hand behind his back. He ignored repeated commands to surrender, to show his hands, and to lie on the ground. He slowly walked closer to the officers, and while effectively using [REDACTED] as a human shield, drew a pistol from behind his back and pointed it at them, according to civilian and law enforcement witnesses, video footage, and a pistol later recovered near Hernandez's body.

Considering the totality of the circumstances known to the officers at the time, including those leading up to the incident, it was reasonable for them to believe that deadly force was necessary to defend against an imminent deadly threat when Hernandez suddenly drew and pointed a pistol at them.

CONCLUSION

For the foregoing reasons, we find that Officers Millan, Byrd, and Vocke acted lawfully in self-defense when they used deadly force against Raymond Hernandez.