

Fatal Officer Involved Shooting of Roberto Rene Gabriel

Los Angeles Police Department

Officer Oscar Hernandez, #43638

J.S.I.D. File #19-0362



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

March 21, 2022

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 Roberto Rene Gabriel
J.S.I.D. File #19-0362
F.I.D. File #F041-19

DATE: March 21, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 18, 2019, fatal shooting of Roberto Rene Gabriel by Los Angeles Police Department (LAPD) Officer Oscar Hernandez. It is our conclusion that Officer Hernandez acted in lawful self-defense and defense of others at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on August 19, 2019, at approximately 12:25 a.m. The District Attorney Response Team responded and were given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to this office by the LAPD, Force Investigation Division, Body Worn Video (BWV), and third-party video that captured portions of the incident. The officer's departmentally compelled statement was not considered in this analysis.

FACTUAL SUMMARY

On August 18, 2019, at approximately 11:17 p.m., LAPD Officers Adam Mott and Michael Malone were driving in a marked black and white LAPD Sport Utility Vehicle (SUV). They were travelling southbound on Lombardy Boulevard and stopped slightly in the crosswalk at Alhambra Avenue. Roberto Rene Gabriel was walking southbound on Lombardy Boulevard on the east sidewalk. As Gabriel walked towards the corner of Lombardy Boulevard and Alhambra Avenue, Mott, from inside his vehicle, used his flashlight to illuminate Gabriel. Gabriel entered the crosswalk on the north side of the intersection and began to walk west towards the police SUV, still illuminated by Mott's flashlight. Suddenly, Gabriel walked northbound into the street,

out of the crosswalk, and when parallel to the driver's side door of the police vehicle, drew a handgun from his sweatshirt pocket. Gabriel pointed the gun at the police vehicle in a two-handed shooting position and fired one round. The round struck the top portion of the driver's door above the ballistic panel, travelled through the passenger compartment and exited through the open front passenger window. Neither Mott nor Malone were struck by the bullet. This portion of the incident was captured on video surveillance obtained from Organica Creations located at 5201 Alhambra Avenue. The following three images are taken from that video.



Gabriel leaving the crosswalk to approach police SUV



Gabriel holding the handgun in both hands



Gabriel firing single round into the police SUV

After Gabriel discharged his pistol, Mott accelerated and drove south on Lombardy Boulevard. Gabriel ran north on Lombardy Boulevard and twisted his upper body as he ran to face south and appeared to be in a two-handed shooting position pointed back in the officers' direction.

The following video still was taken from the Brooklyn Smog Center located at 5197 Alhambra Avenue, and shows Gabriel running north on Lombardy Boulevard while twisted back in a two-handed shooting stance.

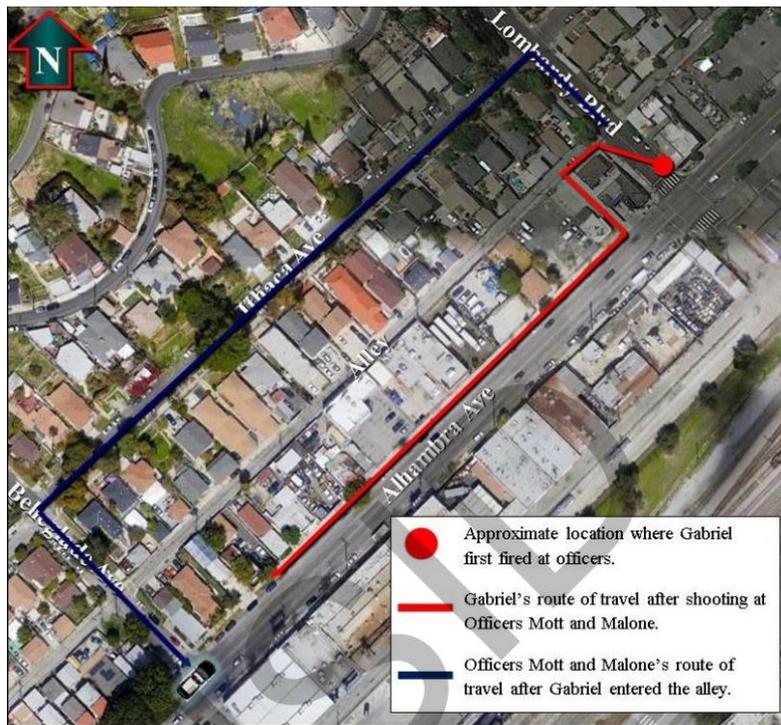


Gabriel twisting his body back towards Mott and Malone in two-handed shooting stance

Gabriel did not fire his weapon at this time. Gabriel ran west into the east/west alley north of Alhambra Avenue and Mott made a U-turn in his police vehicle. Malone broadcast, “Officer needs help!” and “Shots fired!”

Mott and Malone drove northbound on Lombardy Boulevard, briefly stopped at the entrance to the east/west alley, continued to drive northbound on Lombardy Boulevard and turned westbound onto Ithaca Avenue. They drove westbound on Ithaca Avenue and turned left again, southbound onto Belleglade Avenue. Mott stopped the police vehicle at the intersection of Belleglade Avenue and Alhambra Avenue, facing eastbound.

Gabriel, meanwhile, had run through the east/west alley north of Alhambra Avenue, almost immediately turned south and ran through a parking lot, and turned westbound on Alhambra Avenue. The following map shows the approximate routes of Mott, Malone and Gabriel.



Mott and Malone exited their police vehicle. Mott pointed his service pistol eastward and illuminated the north sidewalk with the tactical light attached to his pistol. Mott began to walk eastbound toward the north sidewalk of Alhambra Avenue. Malone pointed his pistol in an eastward direction and began to walk eastbound on Alhambra Avenue in the westbound traffic lanes. Malone broadcast that they had a possible suspect on Alhambra Avenue. As Malone was broadcasting, Gabriel fired one round at the officers. The sound of this gunshot is audible on the BWVs of both Mott and Malone.

In response, Mott fired two rounds at Gabriel. Malone broadcast that additional shots had been fired. Malone walked quickly back to the police vehicle and Gabriel fired an additional round westbound in the officers' direction. This gunshot is audible on Mott's BWV. Mott positioned himself on top of an approximately two-foot-high retaining wall on the north side of Alhambra Avenue and fired an additional two rounds at Gabriel who was standing behind a tree on the north sidewalk of Alhambra Avenue.

Gabriel fired another round at the officers which travelled past Mott and shattered the window of a convenience store on Alhambra Avenue. Malone, now positioned toward the outer edge of the police vehicle's open front passenger door, fired seven rounds at Gabriel, and Mott, still positioned on top of the retaining wall, fired four rounds at Gabriel. Gabriel was not injured by the gunfire and ran away from the officers eastbound on Alhambra Avenue holding a pistol in his right hand.¹

The following video still was captured from a camera located at [REDACTED] Alhambra Avenue and depicts Gabriel running away from Mott and Malone eastbound on Alhambra Avenue with a pistol in his right hand.



Gabriel running eastbound on Alhambra Avenue with pistol in his right hand

Malone broadcast that Gabriel was running eastbound on Alhambra Avenue from Belleglade Boulevard stating, "He's running eastbound on Alhambra from Belleglade. Running back towards Lombardy." Malone also broadcast that Gabriel had a semiautomatic handgun. Mott and Malone got back in their police vehicle and drove eastbound on Alhambra Avenue. Malone broadcast that Gabriel had moved to the south side of Alhambra Avenue, and they stopped their vehicle and exited on Alhambra Avenue in between Belleglade Boulevard and Lombardy Boulevard. They followed Gabriel on foot. As they followed, Gabriel removed his black hoodie sweatshirt and Malone broadcast "...He shed the jacket. He shed the jacket...He just took his black hoodie off. He's got a white shirt on."

¹ Although none of the rounds fired by Mott nor Malone struck Gabriel, and as such are not covered by JSID protocol, the officers' decision to use lethal force was reasonable under these circumstances.

LAPD Officers Mencias and Hernandez were responding to the call broadcast by Mott and Malone in a marked black and white police vehicle. They turned west onto Alhambra Avenue from Lombardy Boulevard as Gabriel was walking eastbound on the south side of Alhambra Avenue. As Mencias and Hernandez drove westbound on Alhambra Avenue, Mott broadcast “Unit stop right there. Stop right there...Just south of you. Stop right there. He’s behind you. He’s behind you.” Mencias stopped the police vehicle in front of a business on the 5100 block of Alhambra Avenue, and he and Hernandez exited their police vehicle.

As Mencias and Hernandez exited their police vehicle, Gabriel turned, faced them, and extended his right arm. In response, Hernandez fired one round, took cover behind his police vehicle, and then fired six more rounds. Gabriel fell to the ground. Mencias, Hernandez, Mott and Malone approached Gabriel. Mott placed his left foot on Gabriel’s gun and slid it away from Gabriel approximately two feet north.

The following diagram shows the approximate positions of Mencias, Hernandez and Gabriel at the time Hernandez fired his weapon.

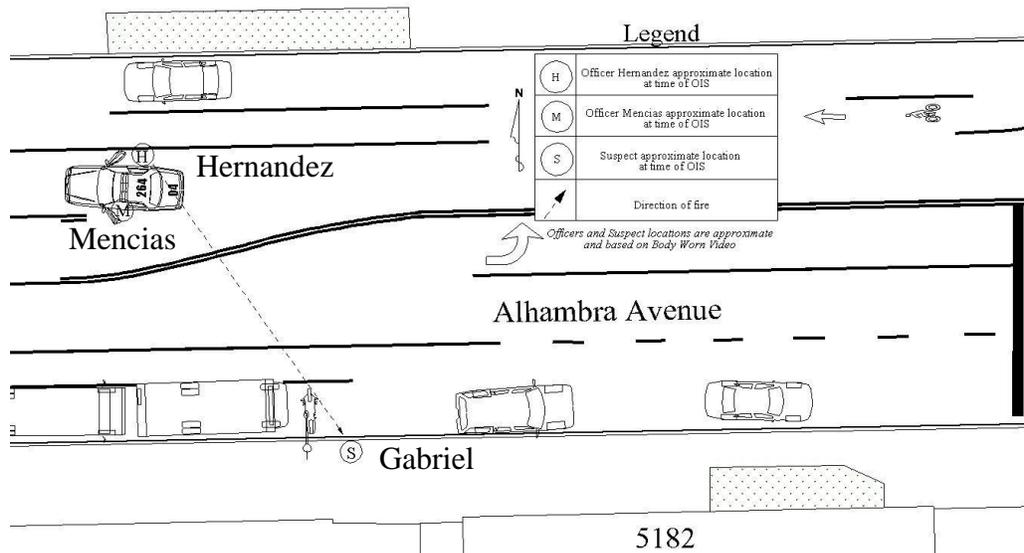


Diagram depicting the positions of the officers and Gabriel

The following video still was obtained from the B [REDACTED] S [REDACTED] C [REDACTED] located on Alhambra Avenue. It shows the locations of Gabriel, Mencias and Hernandez at the time of the shooting.



The 5100 block of Alhambra Avenue

The following video still from Mencias's BWV shows Gabriel's pistol on the ground near him after he was struck by gunfire.



Still image from Mencias's BWV showing Gabriel's firearm

Los Angeles Fire Department (LAFD) responded to the location, provided medical treatment to Gabriel, and transported him to Los Angeles County-University of Southern California Medical

Center (LACUSCMC). Despite lifesaving measures, Gabriel was pronounced dead at 12:17 a.m. on August 19, 2019.

On August 21, 2019, Deputy Medical Examiner Doctor Kevin Young determined that Gabriel sustained three gunshot wounds. All three were deemed fatal, and Dr. Young ascribed the cause of death as multiple gunshot wounds. Two deformed bullets were recovered during the autopsy, and Firearms Examiner Genaro Arredondo with the Forensic Science Division (FSD) determined that these bullets were fired from Officer Hernandez's pistol. Gunshot residue was detected on Gabriel's hands and face.

The pistol recovered next to Gabriel was a 9mm Jimenez Arms Model J.A. Nine semiautomatic pistol. The pistol had an empty magazine inserted and the firing chamber was empty. One discharged cartridge casing recovered from the area of Lombardy Boulevard and Alhambra Avenue, and three discharged cartridge casings recovered from a driveway on the 5100 block of Alhambra Avenue were determined to have been fired from this pistol. Investigators recovered one discharged 9mm cartridge case from Lombardy Boulevard near the intersection of Alhambra Avenue. Firearms Examiner Arredondo later determined that the cartridge case was fired from Gabriel's pistol. Investigators recovered two live 9mm cartridges from the area north of the intersection of Lombardy Boulevard and Alhambra Avenue, and Firearms Examiner Arredondo later determined that they were cycled through Gabriel's pistol.

Investigators recovered three discharged 9mm cartridge cases and four live 9mm cartridges from the sidewalk, planter and driveway area beside a tree on the 5100 block of Alhambra Avenue. Firearms Examiner Arredondo determined that the three discharged cartridge cases were fired from Gabriel's pistol, and that the four live cartridges were cycled from Gabriel's pistol.

Mott was armed with a department-issued 9mm Smith & Wesson Model M&P semiautomatic pistol. Eight discharged cartridge cases recovered from the intersection of Belleglade Avenue and Alhambra Avenue were determined to have been discharged from this pistol.

Malone was armed with a department-issued 9mm Smith & Wesson Model M&P semiautomatic pistol. Seven discharged cartridge cases recovered from the intersection of Belleglade Avenue and Alhambra Avenue were determined to have been discharged from this pistol.

Hernandez was armed with a department-issued 9mm Smith & Wesson Model M&P semiautomatic pistol. Seven discharged cartridge cases were recovered from the street in front of a business on the 5100 block of Alhambra Avenue and were determined to have been discharged from this pistol.

The following picture shows the entrance and path of the bullet fired into Mott and Malone's police vehicle at the crosswalk of Lombardy Boulevard and Alhambra Avenue.



Bullet trajectory through Mott and Malone's police SUV

ANALYSIS

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. Penal Code sections 197-198; CALCRIM No. 505.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

Under California law on the date of this incident, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard, which enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

In evaluating whether a police officer's use of force was reasonable, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 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.

Gabriel approached Mott and Malone as they were seated in their patrol vehicle and, unprovoked and by surprise, fired his 9mm pistol directly at them. As they gave chase, Gabriel hid behind a tree and fired three more rounds at them. The officers returned fire, but Gabriel was not struck and fled. Hernandez responded to assist his fellow officers. When he was notified by Mott that Gabriel was nearby, Hernandez exited his police vehicle and saw Gabriel raise his right hand in Hernandez’s direction, similar and consistent with pointing a handgun. Hernandez fired his duty weapon in response to this deadly threat.

Hernandez was justified in using deadly force when he fired seven rounds at Gabriel. Although no witness directly stated they saw a firearm in Gabriel’s hand just prior to Hernandez firing his duty weapon, the overall evidence suggests that Gabriel was holding a gun at this time. Gabriel had committed a surprise ambush attack with a 9mm firearm against two police officers and had continued to fire at the officers when they pursued him. He was armed with a 9mm pistol, had shown a willingness to use it against police officers, and had raised his right hand up towards Hernandez. It was reasonable for Hernandez to believe that Gabriel had a gun in his right hand when he raised it up based on the previous broadcasts that Gabriel had a semiautomatic handgun and had fired shots at officers. A pistol was recovered next to Gabriel further supporting the reasonableness of Hernandez’s actions. Hernandez was placed in reasonable fear of death or great bodily injury by Gabriel’s actions, and was justified in firing in self-defense.

CONCLUSION

Based upon the evidence, we conclude that Officer Hernandez acted lawfully in self-defense when he fired his weapon.