

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

Officer Jorge Estrada, #39492

J.S.I.D. File #19-0085

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GEORGE GASCÓN

District Attorney

Justice System Integrity Division

August 11, 2021

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: Officer Involved Shooting of Wilfredo Hernandez
J.S.I.D. File #19-0085
F.I.D. File #F005-19

DATE: August 11, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 14, 2019, fatal shooting of Wilfredo Hernandez by Los Angeles Police Department (LAPD) Officer Jorge Estrada. We have concluded that Officer Estrada acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 7:50 a.m. on February 14, 2019. The District Attorney Response Team responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene by Lieutenant Jeff Wenninger.

The following analysis is based on investigative reports, audio recordings of interviews, crime scene diagrams, photographs, surveillance video, and witness statements submitted to this office by LAPD Detectives Jennifer Kim and Al Rosa.¹

FACTUAL ANALYSIS

Summary of the Facts

On February 14, 2019, LAPD Officer Jorge Estrada and his partner, Officer Wilson Mendoza, were in uniform and on foot patrol in a Metropolitan Transit Authority station in Los Angeles. Uniformed Transit Security Officers were also monitoring the train station.

At approximately 6:45 a.m., Wilfredo Hernandez, a 47-year-old man, was upset with the security officers for being denied entry to the train. He walked away. Six minutes later, Hernandez returned, walked through a turnstile toward the security officers, and said in Spanish, "Well, you better shoot me because I'm still coming in here." Hernandez held a three-inch knife in his right hand, as shown in the video surveillance images below:

¹ The involved officers were not equipped with body worn video.

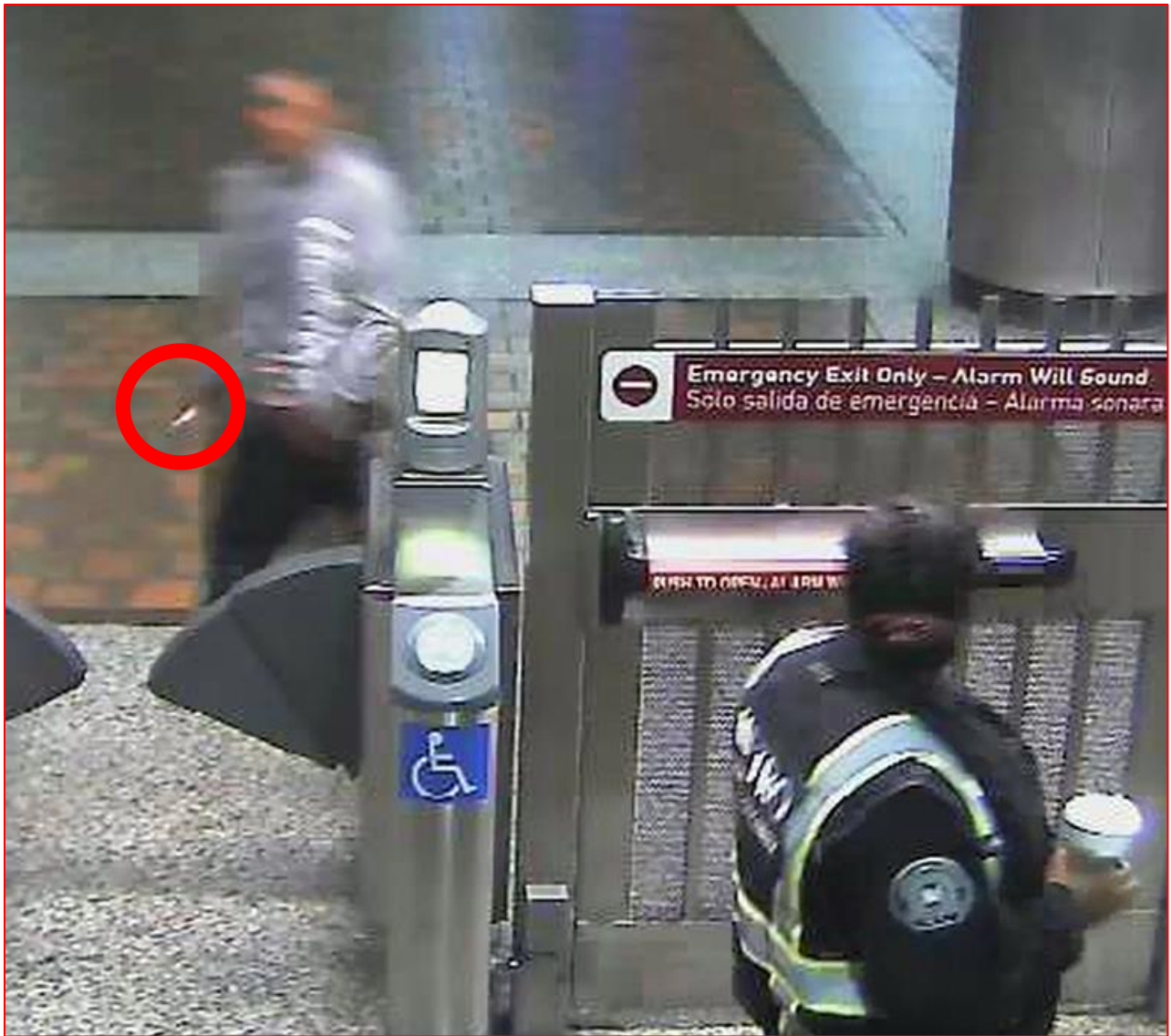


Figure 1- Surveillance Video of Hernandez Wielding a Knife and Walking Toward a Security Officer.



Figure 2- Surveillance Video of Hernandez Wielding a Knife.

One of the security officers ordered, “Get back! Put the knife down!” Another officer commanded, “Stop!” Hernandez did not comply and walked toward the officers and said, “Yeah, yeah” as he jabbed the knife in their direction. One of the security officers shouted, “I need help!” Estrada and Mendoza were called to assist.

Estrada and Mendoza arrived and saw Hernandez in a fighting stance and advancing toward the officers, still holding the knife. Estrada and Mendoza approached Hernandez and split up to distract Hernandez. Estrada attempted to use less-lethal force and deployed his Taser. He commanded, “Stop!” and deployed the Taser twice at Hernandez. Hernandez was struck with one of the Taser darts but it was ineffective in subduing Hernandez.

Estrada ordered Hernandez to put the knife down. Hernandez did not comply. Instead, Hernandez, holding a knife in his right hand, sprinted toward Estrada. Estrada drew his service weapon and backpedaled.

When Hernandez came within a few feet of Estrada he fired his duty weapon twice at Hernandez, striking him in the neck and abdomen. Hernandez was pronounced dead at the scene. The shooting

was captured partially by video surveillance. A photograph taken a moment before the shooting, which shows Hernandez advancing toward Estrada, is shown below:

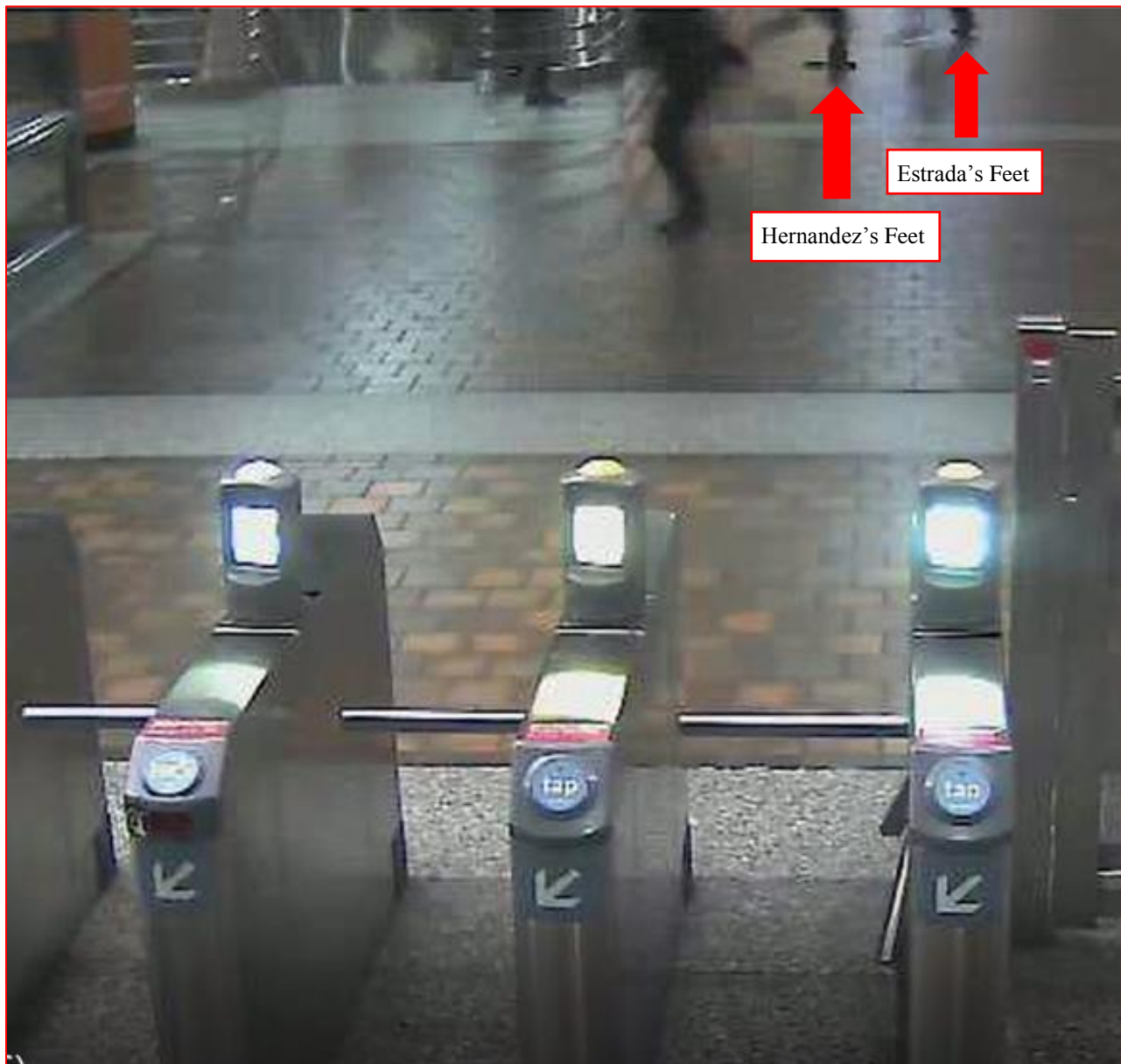


Figure 3- Surveillance Video Showing Hernandez Advancing on Estrada a Moment Before the Shooting.

Hernandez's knife, which was recovered near his body, is shown in the photograph below:



Figure 4- Hernandez's Knife

Postmortem Examination

On February 16, 2019, Deputy Medical Examiner Pedro Ortiz, M.D performed a postmortem examination of Mr. Hernandez's remains. Dr. Ortiz concluded that Hernandez sustained gunshot wounds to the neck and abdomen. The direction of the gunshot wounds was front to back. Both were fatal. A Taser dart was in Hernandez's clothing. A toxicology analysis was performed and determined that Hernandez's blood alcohol content was .14%.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to

the officer likely to inflict great bodily injury upon himself or those acting with him.” *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.” CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

“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 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.

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, 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 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.

Analysis

The evidence reviewed in this investigation shows that Hernandez was agitated, aggressive, and threatened security officers with a knife. Estrada and his partner were called to the location to assist the security officers and unsuccessfully attempted to disarm Hernandez using less lethal force. In response, Hernandez initially retreated. When Hernandez closed the distance to within several feet, Estrada, reasonably in fear for his life, fired his duty weapon.

CONCLUSION

Based on a review of the evidence presented, there is compelling evidence, including video, that Hernandez presented a deadly threat to Estrada and tried to stab him. It was reasonable for Estrada to use deadly force in self-defense and defense of others in response to this deadly threat.