

**In-Custody Death of Ferreol Cardenas**

**Manhattan Beach Police Department**

**Officer Michael Lynch, #20313**

**J.S.I.D. File #15-0289R**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**January 21, 2016**

## MEMORANDUM

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

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

RE: In-Custody Death of Ferreol Cardenas  
J.S.I.D. File #15-0289R  
L.A.S.D. File #014-00067-3199-011

DATE: January 21, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of allegations that Manhattan Beach Police Department (MBPD) Officer Michael Lynch, #20313, committed the crime of assault under color of authority, in violation of Penal Code section 149. For the reasons set forth below, this office declines to initiate criminal proceedings.

The following analysis is based upon documents provided by LASD Internal Criminal Investigations Bureau (ICIB) Detective Louie Aguilera.

### FACTUAL ANALYSIS

On April 10, 2014, at approximately 10:53 p.m., MBPD Officer Michael Lynch was traveling alone in his patrol vehicle when he attempted to conduct a traffic stop on a Chevrolet Trailblazer traveling westbound on Rosecrans Avenue.<sup>1</sup> When Lynch activated his emergency lights, the Trailblazer continued to travel westbound on Rosecrans and then northbound on Continental Circle, which turns into a driveway of a parking lot in the City of El Segundo. The Trailblazer came to an abrupt stop at the entrance to the parking lot and the driver's side door suddenly opened. Ferreol Cardenas jumped out of the driver's side of the Trailblazer and ran away from Lynch's patrol vehicle.<sup>2</sup> Cardenas grabbed his front waist area with his left hand as he ran eastbound

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<sup>1</sup> According to Lynch's incident report, the vehicle did not have license plates, in violation of Vehicle Code section 5200(a), and the driver made an abrupt lane change, which forced Lynch to suddenly brake in order to avoid colliding into the vehicle, in violation of Vehicle Code section 22107.

<sup>2</sup> A search of the Trailblazer resulted in the recovery of multiple fake bank cards in Cardenas' name. There were three bank cards without names on them that were valid accounts in other people's names when swiped with a credit card magnetic reader. A piece of paper with handwritten account numbers for three

along the exterior of the parking structure. Lynch exited his patrol car and gave chase on foot.<sup>3</sup>

Lynch yelled out, “Get on the ground, you are going to get fucking shot! Get on the ground! You’re going to get tased, bro! Get on the fucking ground! Get on the ground now! Get on the ground! Get on the ground now!”<sup>4</sup> According to his report, Lynch deployed his Taser at Cardenas’s back. The Taser was effective and Cardenas fell backwards, landing on his back and bottom area. Assisting units and the El Segundo Fire Department Paramedics arrived on scene and transported Cardenas to the hospital.

#### Lynch’s Incident Report:

After Lynch gave multiple verbal demands, Cardenas finally stopped running but continued to walk at a fast pace. Cardenas had dropped his left hand to his side but now had his right hand in front of his waistband. Lynch was approximately six feet behind Cardenas when Lynch ordered him to stop, get on the ground, and show his hands or he would get tased.<sup>5</sup> Cardenas continued to ignore Lynch’s commands. Lynch deployed his Taser at Cardenas’ back from approximately 3 feet away, due to the fact that Lynch was “too exhausted from chasing Cardenas to physically fight him (a distance later measured of approximately six hundred feet), and [his] fear Cardenas was going to assault [him] with a weapon in his right hand.”<sup>6</sup> Lynch did not see Cardenas strike his head on the ground. Cardenas sat upright and looked in different directions. Lynch ordered Cardenas to lie on the ground but Cardenas continued to ignore Lynch’s orders. Cardenas remained seated upright until assisting units arrived on the scene. Cardenas was transported to Little Company of Mary Hospital in Torrance.

#### El Segundo Fire Department Paramedics:

The El Segundo Fire Department (ESFD) arrived on the scene. Paramedics Kevin Heronema and Rick Towne said there were approximately ten MBPD Officers surrounding Cardenas, who was lying on the asphalt just outside the parking structure.

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bank accounts was recovered in the driver’s side door panel. A scanner was also recovered from Cardenas’ vehicle.

<sup>3</sup> Lynch’s patrol vehicle’s dash camera recorded the incident. In the video, the Trailblazer is seen driving on Rosecrans Avenue with paper plates. The vehicle makes three rapid lane changes from the number 1 lane to the number 4 lane. Lynch activates his emergency lights and follows the Trailblazer northbound on Continental Circle. The Trailblazer continues for a short distance and comes to rest at the entrance to the parking lot. Cardenas immediately exits the Trailblazer on the driver’s side while holding his waistband area with his left hand and runs in an easterly direction toward the parking structure. Lynch chases Cardenas on foot. Cardenas’ left hand remains on his waist area until he runs out of view of the dash camera. Lynch chases Cardenas out of view of the dash camera.

<sup>4</sup> Lynch carried a recorder on his uniform that recorded his verbal commands as he exited his patrol vehicle and gave chase to Cardenas. The foot pursuit and arrest of Cardenas spanned approximately one minute total. Lynch’s verbal commands began when he first exited his patrol car and ended just prior to Cardenas getting tased.

<sup>5</sup> Lynch did not order Cardenas to show his hands, according to the recording from his uniform.

<sup>6</sup> The Device Report for the Taser X26 that Lynch deployed on April 10, 2014, indicated the Taser fired at 10:55 p.m. for five seconds.

An MBPD officer told them Cardenas had been tased. An unknown MBPD officer told them Cardenas never struck his head or lost consciousness. Neither Towne nor Heronema observed any injuries to Cardenas' head. Towne noted that Cardenas seemed "altered" because he was not able to answer questions or communicate. Heronema believed Cardenas stopped talking because he was a suspect and did not want to incriminate himself. Towne and Heronema transported Cardenas to the emergency room pursuant to their policy to take all tased suspects to the emergency room for Taser dart removal.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Autopsy Report:

On May 6, 2014, Los Angeles County Coroner's Office Deputy Medical Examiner Dr. Daniel Augustine conducted an autopsy on Cardenas. Dr. Augustine ascribed the cause of death to blunt head trauma and concluded that, "the deployment of a conducted energy

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7 [REDACTED]

device by an officer resulted in a fall with head injuries and death two weeks later.” Dr. Augustine saw a two-inch occipital skull fracture and an additional one and one fourth inch linear right occipital skull fracture. Dr. Augustine concluded that the manner of death was “homicide”.

On June 2, 3014, Dr. Cho Lwin, a Forensic Neuropathology Consultant, conducted a neuropathology examination of Cardenas. Dr. Lwin concluded that Cardenas’ injuries dated back to 14 days prior to his death, which would be approximately on the date of his arrest.

## **LEGAL ANALYSIS**

Penal Code section 149 provides that “Every public officer who, under color of authority, without lawful necessity, assaults or beats any person” is guilty of a crime.

### Resisting a Peace Officer, Penal Code section 148(a)

It is a crime when any person willfully resists, delays, or obstructs any peace officer in the discharge or attempt to discharge any duty of his office or employment.

Lynch observed Cardenas commit two separate Vehicle Code violations while driving on Rosecrans Avenue. Lynch had reasonable suspicion to stop Cardenas for these violations. Lynch activated his emergency lights and followed Cardenas expecting him to pull over. When Cardenas exited his Trailblazer and fled on foot, Cardenas committed a violation of Penal Code section 148(a).

### Use of Force to Prevent Escape, Penal Code section 835a:

Any peace officer who has reasonable cause to believe a person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A peace officer need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested.

In *Brown v. Ransweiler*, (2009) 171 Cal.App.4th 516, 527, the Court of Appeal held:

An officer “may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance.” (*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102 [16 Cal. Rptr. 3d 521] (*Munoz*), citing Pen. Code, § 835a.) “Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” [Citation.]” (*Munoz, supra*, 120 Cal.App.4th at p. 1109.)

In *Graham v. Conner* (1989) 490 U.S. 386, 396-397, the Court held that use of force cases are to be reviewed using an objective standard of the reasonable officer:

“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. [Citation.] . . . With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,’ [citation] violates the Fourth Amendment. 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.”

Once Cardenas fled his Trailblazer and ignored Lynch’s multiple verbal commands to stop and get down on the ground, Lynch was within his authority to deploy his Taser. Lynch did not know if Cardenas was concealing a weapon in his front waistband and was physically unable to subdue Cardenas by himself.<sup>8</sup> Lynch did not have assisting units at the time. Lynch reasonably feared that Cardenas would either escape arrest or physically overcome Lynch if Lynch caught up to Cardenas and tried to subdue him. Lynch used a reasonable amount of force to stop Cardenas from escaping.

The Medical Examiner, Dr. Augustine, opined that Cardenas received his fatal head injuries as a result of Cardenas falling on his head after being tased by Lynch. [REDACTED]

[REDACTED] However, Lynch wrote in his report that Cardenas did not hit his head after being tased. Since Lynch is the only eyewitness to the event and the responding paramedics did not observe any injuries to Cardenas’ head, the People cannot prove beyond a reasonable doubt that Cardenas hit his head after being tased.

Even if Cardenas fell and hit his head after being tased by Lynch, the People cannot prove causation beyond a reasonable doubt. CALCRIM No. 240 states that an act causes an injury if the injury is the “direct, natural, and probable consequence of the act and the injury would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes.”

When Lynch tased Cardenas, Cardenas was running on a flat surface without any obstacles. Cardenas was tased in a fire lane adjacent to the parking lot, which was also a flat surface. There were no obstacles or ledges from which Cardenas could trip or fall. Cardenas was tased in his back and fell backward. While striking one’s head on the ground is a possible consequence of being tased, the People cannot prove beyond a reasonable doubt that it is a foreseeable and likely consequence of being tased under these circumstances. It is less foreseeable that Cardenas would fall backward and hit the

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<sup>8</sup> Cardenas was six feet four inches tall and weighed 235 pounds. Lynch is six feet tall and weighs 180 pounds.

back of his head on the ground when he was running in a forward motion and was tased in the same direction.

Based on the foregoing, we decline to initiate criminal proceedings against Lynch. We are closing our file and will take no further action in this matter.