

**Officer Involved Shooting of Nicholas Moncada  
Whittier Police Department**

**Officer Brian Englund, #378**

**Officer Jose Bolanos, #202**

**Officer Anthony Clay, #507**

**J.S.I.D. File #18-0242**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**January 29, 2019**

**MEMORANDUM**

TO: CHIEF JEFF A. PIPER  
Whittier Police Department  
13200 Penn Street  
Whittier, California 90602

CAPTAIN KENT WEGENER  
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 Nicholas Moncada  
J.S.I.D. File #18-0242  
L.A.S.D File #018-00043-3199-013

DATE: January 29, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 11, 2018, fatal shooting of Nicholas Moncada by Whittier Police Department (WPD) Officers Brian Englund, Jose Bolanos, and Anthony Clay. We find that the officers acted in lawful defense of others.

The District Attorney's Command Center was notified of this shooting on June 11, 2018, at 8:00 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Los Angeles County Sheriff's Department (LASD) Lieutenant Rodney Moore.

The following analysis is based on reports prepared by LASD Homicide Bureau Detectives Troy Ewing and Theo Baljet. The reports include photographs, audio-recorded interviews of witnesses, radio transmissions, recorded telephone calls, and surveillance videotape.

**FACTUAL ANALYSIS**

**Introduction**

On June 11, 2018, Nicholas Moncada was distraught and suicidal over his failed relationship with Lori F., the mother of his two children.

During a planned exchange of the children in the Whittier Police Department lobby, Moncada armed himself with a utility knife, put his arm around Lori F.'s neck, told her to not make a "scene," and threatened to kill her. Surveillance video of that incident is shown below:



*Figure 1- Surveillance Photo of Moncada and Lori F. in the WPD Lobby.*

Moncada walked Lori F. and the children to Lori F.'s vehicle and ordered her to drive them to a local restaurant. On the way there, Moncada looked in Lori F.'s cellular telephone and saw messaging that angered him. Moncada then ordered Lori F. instead to drive them toward a secluded canyon in Whittier. Lori F. believed that Moncada was going to kill her and the children.

When Lori F. drove by a group of construction workers, she stopped the car and ran toward them, screaming for help. Moncada took the wheel of the car and tried to run over Lori F. with the car. She ran away and hid in a nearby residence. A bystander called 9-1-1 and reported that Moncada had a knife and was going to kill the children. A photograph of Moncada's utility knife, which was recovered later by the police, is shown below:



*Figure 2- Photograph of Moncada's utility knife.*

When WPD officers arrived, they saw Moncada clutching his four year old daughter in his arms and holding a knife to her throat. The officers issued multiple commands to Moncada to drop the knife and release the child. Moncada refused, demanded that the officers shoot him, and continued to hold the knife to the child's throat. In fear for the child's life, the officers fired their service weapons at Moncada, killing him. The child was not injured.

### **The 9-1-1 Call**

The 9-1-1 call made by Byron D., the bystander who ushered Lori F. into his residence and confronted Moncada, is detailed as follows:

OPERATOR: 9-1-1  
(screaming in background)

CALLER: Hi. Uh, I live at . . . (out of breath)

LORI F.: Put her down! Put her down! (screaming)

CALLER: A lady's children were just abducted. The husband swears he's going to kill the kids. He just ran into my worker's truck.

LORI F.: He's going to kill me!

OPERATOR: So the male is there as well?

CALLER: I'm sorry?

OPERATOR: The male is there as well or just the female?

LORI F.: Help! Please!

CALLER: The female's here. The husband took the children. Is that your husband ma'am?

LORI F.: Yeah, ex-husband!

CALLER: Your ex-husband? Okay.

LORI F.: He gonna kill my daughter!

CALLER: We need to come in. We need someone up here, like right now.

OPERATOR: Okay, what is her name?

CALLER: What's your name ma'am? Hey! What's your name?

LORI F.: Lori F. (crying)

CALLER: Go in my house! Go in my house!

OPERATOR: How many? How many kids were taken?

CALLER: He's back again! We need somebody here now! How many children?

OPERATOR: How many kids were taken?

CALLER: How many children?

LORI F.: Two children!

CALLER: Two children. He's got a knife. He's armed. He's going to kill the kids.

OPERATOR: What kind of car did he arrive in?

CALLER: It's a white something. White like Toyota.

OPERATOR: And he is there already? Or again?

CALLER: He's got a knife.

OPERATOR: Is he there again, you said?

CALLER: Is he what?

OPERATOR: He's outside of the business?

CALLER: He's in front of my house! He's here right now.

OPERATOR: Okay, what is your name, sir?

CALLER: He's here, right now.

OPERATOR: Okay, what is your name?

CALLER: Byron D. That is a...

OPERATOR: What is your name?

CALLER: Byron D. Send them!

OPERATOR: We'll send someone out there. Thank you.

### **Statement of Lori F.**

Lori F. was the estranged girlfriend of Moncada and the mother of his two children, ages four and seven. In 2017, Moncada battered her, which caused her to get a restraining order. In 2018, Moncada was prosecuted for violating that restraining order.

On June 11, 2018, Moncada had custody of the children and was upset with Lori F. about their failed relationship. Moncada and Lori F. argued on the telephone and, in a recorded telephone call, Moncada indicated that he was suicidal.

At approximately 6:00 p.m., Moncada and Lori F. agreed to meet and exchange the children at the Whittier Police Department. Moncada approached the lobby of the police station with the children and appeared to be very upset. He had an object in his pants pocket. Fearing a confrontation, Lori F. retreated into the lobby of the police station and Moncada entered with the children. There were no police personnel in the lobby at the time.

Moncada wrapped his arm around Lori F. and whispered to her, "Do not make a scene or I will kill you." Moncada walked Lori F. and the children to her vehicle and ordered her to drive them to a local restaurant.

On the way to the restaurant, Moncada looked through messages on Lori F.'s cellular telephone, became enraged, and called Lori F. a whore and a slut. He said to her, "We're not going to eat...you stupid bitch." Moncada held a knife to Lori F. and ordered her to drive to a secluded canyon in Whittier. Lori F. believed that Moncada was going to kill her and the children.

Lori F. drove by a group of construction workers, stopped the car, and ran toward them for help. She yelled that Moncada was trying to kill her and the children and he had a knife. Moncada slid over into the driver's seat and drove toward Lori F., nearly striking her with the vehicle and crashing into a parked car. Moncada drove away with the children.

Lori F. ran to a nearby residence and told the resident that Moncada was trying to kill her and the children. The resident ushered her into the home, told her to hide, and called 9-1-1. While inside, she heard a voice outside say, "You don't want to do this. Put it down." Then she heard a gunshot.

### **Statement of Cynthia C.**

Cynthia C. is Moncada's mother. Moncada told her he was having trouble getting over his relationship with Lori F. On June 2, 2018, Lori F. reported to Cynthia C. and the police that

Moncada was making suicidal statements and he had the children. The police conducted a welfare check and returned custody of the children to Lori F.

#### **Statement of Sandra M.**

Sandra M. is Lori F.'s mother and said that Moncada had "anger problems." Moncada had been a threat to Lori F. and they lived in fear that Moncada would harm Lori F. and the children.

#### **Statement of Juan R.**

Juan R. was a construction worker and saw Lori F. jump out of a car and yell, "He has a knife! He wants to kill me!" Moncada drove away in the car and crashed into a car, nearly striking Juan R. and other construction workers. Lori F. yelled, "He has my kids! He is going to kill them! Call the police!" Moncada drove away then returned and confronted a nearby resident and demanded to speak to his wife. The resident refused. Moncada held a knife to the throat of a little girl and officers ordered Moncada to drop the knife. Moncada responded, "No! Shoot me!" The officers repeatedly told Moncada to drop the knife, and then the officers fired.

#### **Statement of Juan M.**

Juan M. was a construction worker who heard Lori F. screaming that Moncada had a knife. Moncada drove the vehicle toward him and his co-workers and he had to jump out of the way to avoid the vehicle. Moncada drove away, then returned with a child in his arms. He tried to get into a nearby residence where Lori F. had fled. The police arrived and he heard them order Moncada to drop the knife. From his vantage point he could not see Moncada. He heard gunshots and then saw a police officer holding the child in his arms.

#### **Statement of Carlos Z.**

Carlos Z. is a construction worker who was with his co-workers when he saw Lori F. exit a vehicle and yell that Moncada had a knife. Moncada drove toward Carlos Z.'s co-workers, who had to jump out of the way to avoid being struck. Lori F. went into a nearby residence and asked for help. Moncada returned and was holding a child. He believed Moncada had a knife in his pocket. Officers arrived and yelled at Moncada, but Carlos Z. could not understand what was being said, and he was not in a position to see Moncada. The officers fired their weapons.

#### **Statement of Fausto J.**

Fausto J. was standing with his co-workers when he saw Lori F. exit a vehicle. Lori F. yelled that Moncada had a knife and requested help getting her children out of the car. Moncada drove toward Fausto J. and his co-workers and swerved and hit the back of their trailer. Moncada drove away and then returned, holding a child in his arms. He walked toward the house where Lori F. had fled and confronted the resident there. Officers arrived and ordered Moncada to let the child go. He was not in a position to see Moncada at that point, but he heard gunshots.

#### **Statement of Robert Q.**

Robert Q. saw Lori F. exit a vehicle and scream, "He's got a knife! He's trying to kill me! He's going to kill me! My kids are in the car!" Moncada drove away and intentionally tried to hit

several pedestrians. Moncada returned in the vehicle, exited, and removed a child from the vehicle. Lori F. continued to scream, "He's trying to kill me! He's trying to stab me! He's got my kids!" Robert Q. did not hear or see the shooting.

### **Statement of Austin M.**

Austin M. saw Moncada in front of his residence and heard another neighbor state that Moncada had a knife. He saw Moncada wrap his arm around a child's neck and press a knife against the child's throat. Officers ordered Moncada to drop the knife and get down. Moncada replied, "Just shoot me!" Despite multiple orders from the officers, Moncada refused to put the child down and take the knife away from her neck. He heard the officers fire and saw Moncada fall to the ground.

### **Statement of Byron D.**

Byron D. was in his residence and heard Lori F. yell, "He's going to kill me and the children!" He let Lori F. into his residence and ordered her to hide in the house and not to come out. He called 9-1-1 and saw Moncada drive away. Lori F. told him that Moncada was going to kill them all. Byron D. went outside and saw Moncada return, exit the vehicle, and hold a child in his arms. Moncada demanded to enter the residence and was holding a knife in his hand. Byron D. refused to let Moncada in. Several construction workers armed themselves with pipes and assisted Byron D. in guarding Moncada and preventing him from entering the residence to get to Lori F. Byron conversed with Moncada in an attempt to calm him down and "stall" while waiting for the police to arrive. Moncada said Lori F. had cheated on him and he was going to kill her and the children. Moncada said that he wanted Lori F. dead he was also ready to die. Officers arrived and ordered Moncada to release the child. Moncada moved around the side of the house with the child, so Byron D. was unable to see Moncada when the shooting occurred. He heard gunshots and saw an officer run past him with the child.

### **Statement of Officer Brian Englund**

Englund was on patrol when he received a radio call of a domestic violence situation involving a man with a knife. He activated his lights and siren and drove to the location of the call. He saw Moncada holding a knife and clutching a small child, who was crying and appeared to be very scared. Englund ordered Moncada to put the child down. Moncada said, "You're going to have to kill me." Englund feared that Moncada was going to hurt the child so he drew his service weapon and pointed it at Moncada.

Officers Anthony Clay, Steven Johnson, and Jose Bolanos also responded to the call. Clay ordered Moncada to drop the knife and release the child. Moncada did not comply.

Englund radioed dispatch, reported that that they were dealing with a hostage situation, and requested backup.

Moncada put the knife to the child's throat and it appeared that Moncada was going to stab the child. Englund fired his service weapon at Moncada, who fell to the ground and released the child.



Englund carried the child away from the scene.

#### **Statement of Officer Jose Bolanos**

Bolanos was on patrol and responded to a request for backup on a domestic violence call. Bolanos arrived and saw Moncada holding a small child. Moncada was holding a knife to the child's throat and the child was scared and crying. He drew his service weapon, pointed it at Moncada, and ordered him to drop the knife. Moncada said, "You're going to have to shoot me." Fearing for the child's life, Bolanos fired his service weapon at Moncada, who fell to the ground and released the child. Bolanos then provided first aid to Moncada.

#### **Statement of Officer Anthony Clay**

Clay was on patrol and responded to a request for backup on a domestic violence and kidnapping call involving a man with a knife. Upon arrival, he saw Moncada with a knife protruding from his pocket, holding a small child who was crying. Officer Englund ordered Moncada to release the child and attempted to speak with Moncada to de-escalate the situation. Moncada said something about a restraining order and his life being "fucked." Based on Moncada's comments and actions, Clay believed that Moncada was going to do something irrational. Moncada walked backward away from the officers, drew the knife from his pocket, and slowly put it up to the child's throat. Clay ordered Moncada to drop the knife and release the child. Moncada lowered the knife but then raised the knife again toward the child's throat and tightly clutched the child. In fear for the child's life, Clay fired his service weapon at Moncada, who fell to the ground and released the child. The child ran to Englund as Clay and Bolanos provided medical treatment to Moncada.

#### **Statement of Sergeant Thomas Stoner**

Stoner was on patrol and responded to a call of a hostage situation involving a kidnapping and a woman being held at knifepoint. Stoner drove to the scene and heard officers ordering Moncada to drop the knife, and Moncada responding, "You're going to have to kill me." He saw Moncada holding a knife to a child's throat. He saw Moncada take a deep breath and close his eyes and then the officers fired at him. Moncada fell to the ground and the child ran to Englund as other officers provided first aid to Moncada.

#### **Statement of Officer Steven Johnson**

Johnson was on patrol and responded to a request for backup involving a family disturbance and a man holding a knife to a child's throat. He drove to the location and saw Moncada holding the child and a knife. Moncada put the knife to the child's throat, told the officers to shoot him, and closed his eyes. Johnson believed that Moncada was going to cut the child's throat, but he was not in a position to shoot without hitting the child. He heard other officers shoot and Moncada fell to the ground.

#### **Statement of Jane Doe Minor**

The minor, age four, said her father, Moncada, had a knife when he was shot. The officers told him, "Put the little girl down." Moncada replied, "Kill me. Kill me."

### **Statement of John Doe Minor**

The minor, age seven, said his father, Moncada, pointed a knife at Lori F., his mother, when they were in the car. Moncada asked Lori F. if she wanted him to kill the children. When Lori F. ran from the car, Moncada was very angry.

### **Firearms Evidence**

Englund was armed with a Sig Sauer 9mm semiautomatic handgun equipped with a laser sight and an LED weapon light.

Bolanos was armed with a Sig Sauer 9mm semiautomatic handgun equipped with an LED weapon light.

Clay was armed with a Sig Sauer .40 caliber semiautomatic handgun equipped with a weapon light.

Two 9mm cartridge casings and one .40 caliber cartridge casing were recovered at the scene.

Two 9mm projectiles were recovered from Moncada's body.

The firearms evidence is consistent with each officer firing one time, with Englund and Bolanos' gunshots striking Moncada.

### **Postmortem Examination**

On June 16, 2018, Timothy Dutra, M.D. performed a postmortem examination on Moncada's remains and determined that he was shot once in the abdomen, a non-fatal injury, and once in the right flank, which was fatal. Two bullets were recovered from Moncada's body.

### **LEGAL ANALYSIS**

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.

California law also permits any person, including police officers, to use deadly force in self-defense or in the defense of others, and, if someone dies as a result, this is a “lawful excuse” which precludes a conviction for murder. Penal Code sections 197, 198; CALCRIM No. 505. This defense is available if the killer actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; see also *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. 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. 505, 3470. Actual danger is not necessary to justify the use of deadly force in self-defense; if the person’s beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 505, 3470. The prosecution has the burden of *proving beyond a reasonable doubt* that the killer did not act in self-defense. *Id.* (*italics added*).

There is compelling evidence in this case that Moncada held a knife to his daughter’s throat and presented a very real and imminent deadly threat to her. When Moncada refused to release the child and continued to hold a knife to her throat, Officers Englund, Clay, and Bolanos were forced to shoot Moncada to end the deadly and imminent threat to the child’s life.

## CONCLUSION

Based on a review of all of the evidence in this case, we conclude that Officers Englund, Clay, and Bolanos acted in lawful defense of others when they used deadly force against Nicholas Moncada. We are therefore closing our file and will take no further action in this matter.