

**Officer Involved Shooting of Henry Gilbert  
Los Angeles Police Department**

**Officer Erick Hernandez, #37868**

**J.S.I.D. File #17-0243**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**March 20, 2018**

**MEMORANDUM**

TO:           COMMANDER ROBERT A. LOPEZ  
                  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 Henry Gilbert  
                  J.S.I.D. File #17-0243  
                  F.I.D File #F034-17

DATE:         March 20, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 16, 2017, non-fatal shooting of Henry Gilbert by Los Angeles Police Department (LAPD) Officer Erick Hernandez. We find that Officer Hernandez acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on May 16, 2017, at 10:49 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant Steven Lurie.

The following analysis is based on reports prepared by the Los Angeles Police Department (LAPD) Force Investigation Division submitted to this office by Detectives Christopher Linscomb and Luis Alarcon. The reports include photographs, audio-recorded interviews of witnesses, and radio transmissions.

The compelled statement of Officer Hernandez was also considered.<sup>1</sup>

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<sup>1</sup> Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. Officer Hernandez was interviewed and ordered to submit to questioning concerning the performance of his official duties. Like any other individual, Hernandez possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York, supra*, at 284-285. Because the LAPD ordered Hernandez to answer questions which might expose him to criminal liability, the LAPD compelled Hernandez to participate in an interview. The effect of this legal compulsion is that Hernandez's statement cannot be used against him in a criminal proceeding, nor can any material derived from the compelled interview be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4<sup>th</sup> 704, 715. Further, because the compelled statement is part of Hernandez's police personnel file, his statement is confidential and may not be disclosed absent an evidentiary showing and court order. See *Penal Code* section 832.7.

## FACTUAL ANALYSIS

### Introduction

On May 16, 2017, at approximately 9:45 p.m., LAPD Officers Erick Hernandez and Roberto Ruiz were in uniform and driving in a black police vehicle, in an area known to be claimed by the Rolling 60's criminal street gang.

As they drove down a residential street, Hernandez and Ruiz saw Henry Gilbert standing on a sidewalk in front of a residence, drinking a beer. Hernandez and Ruiz exited their vehicle to talk to Gilbert, who appeared to be nervous and also had a bulge in his front waistband.

Hernandez approached Gilbert and noticed he had a tattoo of a "6" on his arm. This led Hernandez to fear that Gilbert was a Rolling 60's gang member and could be armed.

As Hernandez and Ruiz approached, Gilbert dropped his beer and ran through an opening in an iron gate and toward a door at the rear of the property. Hernandez chased him. Ruiz exited the passenger side of the police vehicle, radioed for backup, and gave chase as well.

The location of the incident is shown in the photograph below:

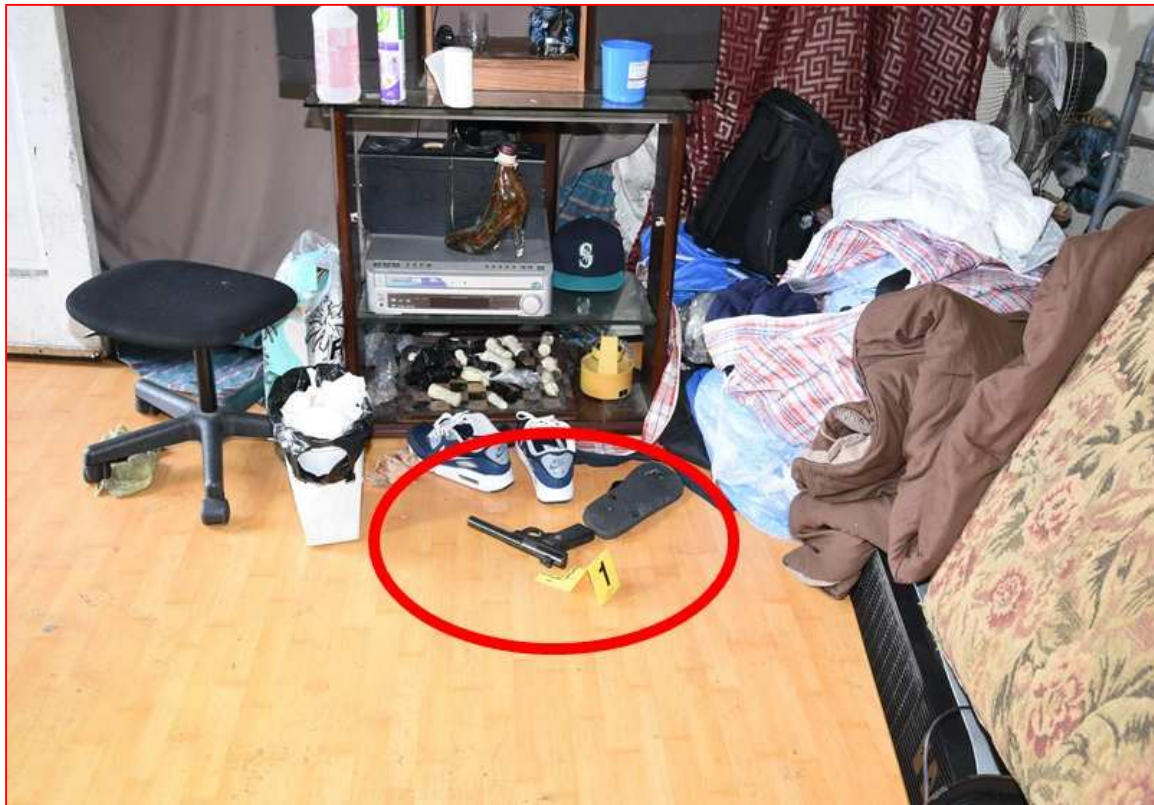


*Figure 1- Photograph of Gilbert's location at the time of the shooting. A discarded beer can is shown circled in red in the foreground. The doorway that Gilbert entered while being chased is shown circled in red in the background.*

During the chase, Gilbert drew a handgun from his waistband and pointed it at Hernandez, who fired three rounds at Gilbert, striking him in the left buttock.

Gilbert continued to run, went through a doorway, through a living room, and toward the back of the residence. He was taken into custody in the backyard.

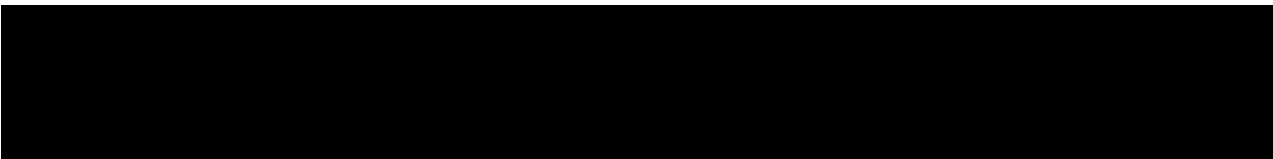
A stolen .22 caliber semiautomatic handgun was located in the living room, several feet from the front door. The gun was loaded with nine rounds in the magazine and one round in the chamber. The safety was “off” and the gun was ready to fire. The gun was located along Gilbert’s escape route and adjacent to blood drops, as shown in the photograph below:



Gilbert was associated with the “Rolling 60’s” gang and was on parole in case number BA423478 for being a felon in possession of a firearm at the time of this shooting. He has been charged in case number BA457436 with assault on a peace officer with a semiautomatic firearm, and being a felon in possession of a firearm. That case is pending a pretrial conference on March 22, 2018. Gilbert was also charged with a parole violation in case number 7PR02854.

**Statement of Officer Erick Hernandez**

Officer Hernandez provided a compelled statement to investigators.





**Statement of Officer Roberto Ruiz**

At approximately 9:30 p.m., Hernandez and Ruiz were on patrol. Hernandez was the driver and Ruiz was the passenger. The two officers were patrolling the area, conducting a crime suppression detail.

As they were driving, the two officers observed Gilbert standing in front of a residence, drinking what was believed to be a can of beer. They decided to contact Gilbert because they believed he was drinking in public. Hernandez pulled over the police vehicle and began to exit the car. As he was exiting, Gilbert threw the beer and grabbed the right side of his front waistband area, holding an L-shaped bulge.

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<sup>2</sup> Testing determined that the white substance was methamphetamine.

Based on his experience, Ruiz believed the bulge could possibly be a concealed handgun. Hernandez yelled at Gilbert, “Hey! Police! Stop!” Gilbert ignored his commands, turned around, and ran through an iron gate. Hernandez ran after Gilbert.

Ruiz exited the vehicle and ran around to the front of the police vehicle. As he was doing so, he radioed for backup.

Gilbert ran toward the front door of the residence. Gilbert was still holding the front right side of his waistband area as he ran. Hernandez yelled, “He’s got a gun! He’s got a gun!” Ruiz saw Gilbert remove a handgun from his waistband area, extend it out, and begin to turn toward the officers.

Ruiz heard Hernandez fire three times. After the shots were fired, Gilbert ran inside the house and turned right. Ruiz told Hernandez that he would cover the front of the house and Hernandez should contain the rear of the house.

As the officers were waiting for backup, Hernandez saw Gilbert running out of the rear of the house. Hernandez yelled at Ruiz, “Hey! He’s over here! He’s over here!” Hernandez yelled at Gilbert, “Hey! Stop! Stop! Get on the ground! Get on the floor! Get on the floor!” Ruiz ran to the rear of the house to back up Hernandez. Gilbert was already on the ground, bleeding from his buttocks area. Gilbert discarded a plastic bag with a white substance inside. Ruiz and Hernandez ordered Gilbert to remain on the ground. When additional officers arrived, Ruiz handcuffed Gilbert and patted him down. There was no handgun located on Gilbert’s person. The officers moved Gilbert away from the home. A second man, Michele B., exited the residence.

Believing that Gilbert’s firearm and other people could be inside the home, a team of officers went inside and conducted a protective sweep. One of the officers noticed a .22 caliber Ruger handgun in plain view on the floor of the living room.<sup>3</sup> The gun was several feet inside the front door, next to blood drops.

### **Injuries**

Gilbert was treated for a single gunshot wound to the buttocks. A sample of Gilbert’s blood was taken and it tested positive for the presence of methamphetamine.

### **The Gun**

A .22 caliber Ruger semiautomatic handgun was located in the living room, several feet from the front door, near fresh blood drops. The gun had nine live rounds in the magazine and one live round in the chamber. The safety was in the “off” position and was ready to fire. The gun had been stolen in a burglary in 2016. A photograph of the gun, the magazine, and the rounds, after they were recovered, is shown below:

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<sup>3</sup> Officer Brett DeOliveira was part of the search team and he was the first officer to notice the gun on the floor in the living room.





A photograph of the gun, when it was recovered with a round in the chamber, is shown below:



### **DNA Analysis**

LAPD swabbed the .22 caliber Ruger pistol and the cartridges. DNA was recovered but it was insufficient to conduct an analysis.

A partial DNA profile was obtained from the magazine of the firearm, but it was a complex mixture and it could not be confirmed nor denied that it matched Gilbert's DNA profile.

### **Gunshot Residue Analysis**

LAPD conducted a gunshot residue analysis of Gilbert's hands and shorts. One sample was damaged during the sample preparation and could not be analyzed. The other samples were inconclusive.

### **Statement of Michele B.**

Michele B. was alone in the residence when Gilbert ran inside. Michele B. is a friend of the owner of the residence, Mohammad R.

Michele B. and Mohammad R. are the only two people who stay at the residence.

At the time of the incident, Michele B. was in the bathroom when he heard two to three gunshots followed by the sounds of a person running through the home. He was not able to physically see the person, but was able to hear him. As he ran through the house, the man said, "You all shot me! I didn't have a gun!" The man was crying and seemed to be in a lot of pain.

After the man ran through the home, Michele B. exited the bathroom, walked to the back door, and noticed that the back door was unlocked. He observed droplets of blood on the floor going from the living room to the back door.

Officers approached to see if there was anyone else in the home. Michele B. made his presence known, exited the house, and cooperated with the officers.

Investigators showed Michele B. a photograph of Gilbert. Michele B. stated that he had never seen Gilbert before.

The investigators also asked Michele B. about the .22 caliber handgun that was located on the floor in the living room. Michele B. responded that he did not own any weapons and neither did Mohammad R. When asked specifically about the presence of a gun in the house before the incident, Michele B. responded, "I didn't see no weapon."

### **Statement of Henry Gilbert**

Investigators talked to Gilbert while he was at the hospital receiving treatment. They attempted to read him his Miranda rights but he declined and said, "I know you don't like niggers." He wanted to know why his rights were being read to him, said "I didn't do shit" and denied assaulting anyone. Gilbert explained that it did not make sense for him to commit an assault because he has "two strikes," and just got released from prison. He asked for a lawyer and



explained that he was distraught about potentially going back to prison. He said that he would rather die than go back to prison.

Investigators photographed a tattoo of a “six” on Gilbert’s arm, as described by Hernandez. Gilbert also has a Rolling 60’s tattoo, framed by assault weapons, on his chest. Those tattoos are shown below:



## LEGAL ANALYSIS

### The Law

California law permits the use of deadly force in self-defense or in the defense of another if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4<sup>th</sup> 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4<sup>th</sup> 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 1073, 1082; *see also*, CALCRIM 505. The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4<sup>th</sup> 1077, 1102. In sum, the United States Supreme Court has long held that, "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 the police 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 examined in this investigation shows that Gilbert was armed with a loaded and operable .22 caliber handgun, drew it from his waistband, had the safety "off," and pointed it at Hernandez, who was chasing him. [REDACTED]

[REDACTED] Therefore, his use of deadly force was justified.

## CONCLUSION

Based on a review of the totality of the evidence in this case, Officer Hernandez acted reasonably and in lawful self-defense and defense of others by shooting at Gilbert when he pointed a loaded handgun at him. Therefore, we are closing our file and will take no further action in this matter.