

**Officer Involved Shooting of Efrain Herrera Jr.
Los Angeles Police Department**

Officer Raul Gonzalez, #38948

Officer Adrian Cruz, #38885

J.S.I.D. File #16-0024



JACKIE LACEY

District Attorney

Justice System Integrity Division

March 13, 2019

MEMORANDUM

TO: COMMANDER ROBERT E. MARINO
 Los Angeles Police Department
 Force Investigations Division
 100 W. 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 Efrain Herrera Jr.
 J.S.I.D. File #16-0024
 F.I.D. File #F007-16

DATE: March 13, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 17, 2016, fatal shooting of Efrain Herrera Jr. by Los Angeles Police Department (LAPD) Officers Raul Gonzalez and Adrian Cruz. It is our conclusion that Officers Gonzalez and Cruz acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on January 17, 2016, at approximately 6:17 p.m. The District Attorney's Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports prepared by LAPD, submitted to this office by Lieutenant Damian Gutierrez who is assigned to the LAPD Force Investigation Division (FID). The compelled statements of Gonzalez and Cruz were considered in this analysis.

FACTUAL ANALYSIS

Summary of Facts

On January 17, 2016, at approximately 3:00 p.m., Efrain Herrera Jr. was observed pacing back and forth on Norwich Avenue in Panorama City with a large hunting knife in his hand.¹ From 5:07 p.m. to 5:38 p.m., several 9-1-1 calls were made by residents in the vicinity reporting that Herrera was standing outside with a knife in his hand.

At 5:27 p.m., Communications Division (CD) broadcast on Mission Area frequency for any available unit to respond to the incident. Due to lack of available Mission Area units, at 5:30 p.m., CD assigned West Valley Patrol Division uniformed police Officers Raul

¹ Norwich Avenue is a north/south residential street consisting of numerous single-family residences.

Gonzalez and Adrian Cruz to respond to the call. At 5:40 p.m., Gonzalez and Cruz requested an air unit and upgraded their response to Code 3 due to heavy traffic.²

Upon arrival, Gonzalez and Cruz saw Herrera standing on Norwich Avenue. As Gonzalez and Cruz exited their patrol vehicle, Herrera walked towards them armed with a knife. Both Gonzalez and Cruz repeatedly ordered Herrera to stop advancing. Herrera disregarded their orders and quickly advanced towards Cruz, who drew his service weapon and fired one round at Herrera. Simultaneously, Gonzalez moved to place himself to the rear and right of Herrera and deployed his Taser. After Cruz and Gonzalez engaged Herrera as described, Herrera fell to the ground in a prone position. The knife landed near Herrera. Herrera attempted to remove the Taser prongs. He sat up despite repeated orders by Cruz and Gonzalez to remain on the ground. Herrera grabbed the knife and crouched into a charging stance at Cruz. Fearing an imminent attack on Cruz, Gonzalez fired a single round from his service weapon at Herrera. Thereafter, Herrera collapsed and was handcuffed. Later, Herrera was transported to a nearby medical facility where he was pronounced dead.

Statement of Martin A.

On January 17, 2016, Martin A. entered his residence on Norwich Avenue at approximately 3:00 p.m. As he entered, he saw Herrera standing on the street. Martin A.'s father, who was also present at the residence, asked him if he recognized the man standing on the street. Martin A. replied that he did not recognize Herrera. When his friend Brandon came over to visit an hour later, Martin A. sat on a couch near the bedroom window which faced out to the street, and he saw Herrera still standing outside. However, this time, Herrera was holding a "foot long" knife near his right leg and pacing back and forth. Thereafter, Martin A. saw Herrera repeatedly place the knife in his right waistband area and retrieve it. At this point, Martin A. surmised that Herrera was "...probably on something..." Eventually, someone in the household called the police.

When a police vehicle arrived on Norwich Avenue, it was "getting dark" and the police shined a spotlight on Herrera, who was standing on the sidewalk in front of the gate. Herrera placed the knife into his waistband and walked towards the officers. Both officers exited the car and began to walk around their opened front doors, but retreated behind their doors when Herrera unexpectedly advanced towards them. Martin A. heard the passenger officer (Cruz) command Herrera to "Stay right there." Cruz continued to give Herrera commands and informed Herrera that he had a Taser and "...that it was going to hurt." Initially, Herrera stopped approximately five yards away from the police vehicle when Cruz warned him about the Taser. However, after the warning was given, Herrera "took out" his knife, held it at chest level with the blade pointed upward, and quickened his pace toward Cruz. In response, the officers continued to order Herrera to stop and remained behind their respective doors. Herrera did not comply and Martin A. heard a simultaneous Taser activation and a gunshot. After Herrera was tased, he "didn't fall right away." Eventually, Herrera fell approximately two yards from the police

² Code 3 is a mode of response for an emergency vehicle responding to a call. It is commonly used to mean "lights and siren."

vehicle, face first on his chest and rolled into the street. When Herrera fell to the ground, he was no longer illuminated by the patrol vehicle spotlight and Martin A. could not see if Herrera still had the knife in his hand. Approximately 10 seconds later, Martin A. heard another gunshot.

Statement of Brandon A.

On January 17, 2016, between 4:00 p.m. and 5:00 p.m., Brandon A. was parking his car in front of his friend Martin A.'s residence, when he noticed a "big, Hispanic man" standing near a telephone pole. He appeared to have a blank stare while facing Martin A.'s residence. Brandon A. entered Martin A.'s residence, and Evelyn A. (Martin A.'s sister) informed him that Herrera had been standing outside with a knife since 12:00 p.m. that day. Periodically, Brandon A. peered outside and saw Herrera holding a "big" knife.³ At times, Herrera appeared to hide the knife by secreting it somewhere on his body since it appeared that Herrera did not have anything in his hand.

When the first police vehicle arrived, it stopped a "couple feet" away from Herrera. Brandon A. saw Herrera place his hands in his pocket. At this point, the officers exited their vehicle, and walked "...maybe like a foot" away from their doors. They were not holding their guns, but they had their hands on their guns. At the same time, they initiated a conversation with Herrera, who did not verbally respond. It appeared as though the officers were speaking to Herrera, but Brandon A. did not hear the conversation. Thereafter, Herrera "...started walking and from walking he went into jogging and then to...full out like a run with the knife out." Brandon A. explained that he saw Herrera move his right hand near his front right pants pocket and then raise his arm at a 90 degree angle with his fist above his right shoulder. He concluded that Herrera held a knife because he saw something bright and silver when he made the motion with his arm. Subsequently, Brandon A. heard someone utter "Stop!" Immediately after, a Taser was discharged, and then the sound of a gunshot reverberated. Brandon A. noted that even after the Taser was discharged, Herrera took three more steps. When Brandon A. heard the gunshot, Herrera appeared to be eight to nine feet away from the officers. At this point, Brandon A. looked away from the scene because it was too disturbing to continue to watch. After he looked away, he heard a "boom" sound from the impact of Herrera's body falling to the ground.

Statement of Evelyn A.

When Evelyn A. left her residence between 3:00 and 4:00 p.m., she observed Herrera standing across the street on a sidewalk with his arms crossed. She returned home around 5:00 p.m. and saw Herrera standing in the same area holding a ten-inch knife. At 5:07 p.m., she dialed 9-1-1. Evelyn A. joined her brother and Brandon A. in Martin A.'s room. They peered through Martin A.'s bedroom window to monitor Herrera.

When the officers arrived on scene, Herrera stood under a light post across from Evelyn A.'s residence, and held the knife with the blade pointing down next to his right leg. The

³ Brandon A. estimated the knife to be eight to ten inches long.

officer on the driver's side (Gonzalez) exited the car and said something indiscernible. Meanwhile, the officer on the passenger side (Cruz) attempted to exit, and Herrera ran towards him while holding a knife at a 45 degree angle, near the jaw area, with the blade side facing the officers. In response, Gonzalez ran towards the front of the vehicle. Thereafter, she heard the first gunshot and then the sound of a Taser activation, followed by another gunshot. She estimated that ten to twenty seconds after the first gunshot, she heard the Taser activated. Immediately following the Taser activation, Evelyn A. heard the second gunshot. She could not tell which officer fired the shots. According to Evelyn A., Herrera fell to the ground and was "...still fighting them after being tased." However, her view of Herrera after he fell to the ground was obstructed. Although she could hear the officers giving commands, Evelyn A. could not discern what the officers said and explained that she was "...freaking out" as she witnessed this event.

Statement of Monica D.

At approximately 5:30 p.m., Monica D. arrived at her residence on Norwich Avenue, accompanied by her sister Blanca B.,⁴ who was visiting from Mexico. After Monica D. parked her car, she saw Herrera standing on the street across from her house, holding something in his right hand. Monica D. became suspicious of Herrera when she noticed that he repeatedly looked to his left and right, and appeared "enrage[d]." Fearing that Herrera would follow her into her residence, Monica D. and Blanca B. walked to their neighbor Martin A.'s residence. Upon entering, Margarita A. (Martin A.'s mother) told Monica D. that Herrera was holding a knife. Despite an earlier call to 9-1-1 by Martin A.'s family, the delay in police assistance prompted Monica D. to call 9-1-1 again at 5:36 p.m. Monica D. walked into the kitchen area and monitored Herrera through the window. She saw Herrera holding a knife with a six-inch blade in his right hand near his abdomen. At that point, Monica D. made a conscious decision to walk into the living room and remain there in order to avoid witnessing the incident. While she remained in the living room, Monica D. heard the sound of two gunshots but did not witness the shooting.

Statement of Ani V.

At 4:00 p.m., through her bedroom window, Ani V. saw Herrera standing on the curb. Ani V. took a nap and when she awoke 30 to 40 minutes later, she saw Herrera holding a knife with a black handle. He was tapping the knife on his right thigh while continuously looking to his left. Herrera walked towards a parked, yellow SUV, peered inside, and walked back to where he was originally standing. He did this a couple times. Ani V. informed her family of her observations and called 9-1-1 at 5:28 p.m. When the police arrived approximately 15 minutes later, Herrera was standing in front of her neighbor's gate. Ani V. saw both officers open and remain behind their respective doors while speaking to Herrera. In response, Herrera walked towards the car and the officers told Herrera to stop. After Herrera was given this order, he ran between the police car and a parked Lexus. The officer on the passenger side (Cruz) was standing between the Lexus and the rear of the police vehicle. Ani V. did not see a knife in Herrera's hand when he was moving towards the officers. Thereafter, the officer on the driver's side (Gonzalez),

⁴ Blanca B. returned to her residence in Mexico and could not be interviewed.

tased Herrera, causing him to fall to the ground.⁵ She recalled that Gonzalez moved towards the front of the car at some point during this confrontation. While on the ground, Herrera continued to move despite the officers' commands. Ani V. heard the officers give orders, but could not discern what they were saying to Herrera. It appeared that Herrera was attempting to retrieve something from his left shoulder area. At this point, Ani V. heard a gunshot. Ani V. clarified that she did not actually see the officer shoot nor see what Herrera was doing because she was "...hiding out just in case... [of] bullets flying." Herrera stopped moving after the gunshot.

Statement of Arpi V.

At 5:00 p.m., Arpi V.'s sister, Ani V., directed her to look out the window in Ani V.'s bedroom. Arpi V. looked and saw Herrera looking underneath and around a parked, yellow SUV. He was holding "...a pretty big knife" in his right hand, and tapping it behind his thigh. His behavior raised their suspicions so Arpi V. and Ani V. agreed to call 9-1-1. Herrera was standing in front of her neighbor's white fence when the police officers arrived. At this point, Arpi V. was unable to see Herrera's hands so she could not see if Herrera was still holding the knife. Arpi V. saw Herrera walk towards the officers. At that point, the officers stepped out of their vehicle. She heard an officer say, "Freeze. Don't move." As a result, Herrera ran in between a parked Lexus and the police car. It was not clear if Herrera was going towards the officer on the passenger side (Cruz), or if he was merely trying to run past him. Arpi V. then heard a "loud bang" and her sister declared that it was the Taser. Arpi V. was not sure if Herrera held the knife in his hand at that moment, because she was not looking at his hands. The driver's side officer (Gonzalez), who was standing at the front of the police vehicle, activated the Taser and Herrera fell to the ground. Herrera tried to get up and attempted to remove the Taser wires. One of the officers ordered, "Get down. Get down. Freeze. Don't move." However, Herrera continued to move and managed to get himself into a sitting position. Then Arpi V. heard the sound of a gunshot, which appeared to come from Gonzalez' direction. Herrera stopped moving about 30 seconds later.

Statement of Edith V.

Edith V. and her fiancé, Edwin M., were about to leave the house, when Edith V.'s sister, Ani V., informed them that a man with a knife (Herrera) was standing outside. They went into Ani's bedroom where Edith V. saw Herrera standing on the street, looking back and forth, holding a sizable knife, and tapping it against his leg. At some point before the police arrived, Herrera crossed the street and walked by Edith V.'s door. Herrera came close to their window. His odd behavior made Edith V. nervous. Initially, Ani V. called 9-1-1, but Edith V. called again at 5:38 p.m. due to the delay in police response. About 10 minutes after Edith V. called, a police vehicle arrived. Herrera started walking towards the officers. Edith V. was only able to see Herrera's left side and could not see if he was still holding the knife with his right hand. The officers exited the car and ordered Herrera to stop. Herrera turned towards the officers and started running. The officer on the driver's side (Gonzalez) exited the car and tased Herrera, who fell to the ground face-

⁵ Initially, Ani V. thought it was a gunshot until her sister told her that it was a Taser.

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

Autopsy Report

On December 19, 2016, Matthew J. Miller, Deputy Medical Examiner for the Los Angeles County Department of Coroner, performed an autopsy on Herrera and determined the cause of death to be a gunshot wound to the chest, with a gunshot wound of the left lower extremity and methamphetamine toxicity as contributing factors. One of the gunshot wounds entered through the left side of the chest and perforated the heart, creating a rapidly fatal injury. The other gunshot wound perforated the skin and soft tissue of the left hip. Also noted were contusions, punctures, hemorrhage, and embedded projectiles in the skin compatible with a conducted electrical weapon projectile (Taser) wound. Additionally, toxicology analysis revealed the presence of levamisole (a veterinary antihelminthic frequently used to cut cocaine), methamphetamine, and amphetamine (a metabolite of methamphetamine) in the blood. Benzoyllecgonine, (a metabolite of cocaine) was detected in the urine.

[REDACTED]

Photos



[REDACTED]



[REDACTED]

[REDACTED]

Weapons

Herrera was armed with a 12 inch black-handled knife, with a seven inch blade. The knife was recovered on the street between the patrol vehicle and a parked Lexus.⁹



Gonzalez and Cruz were each armed with a department-approved Glock, Model 22, .40 caliber semiautomatic pistol, loaded with 15 cartridges in the magazine and one cartridge in the chamber. A post-incident inspection was conducted on each officer's pistol and it was determined that the firing chamber for each pistol contained a .40 caliber cartridge in the chamber and 14 .40 caliber cartridges in the magazine, which is consistent with each officer firing one round.

Gonzalez was additionally armed with a department-approved X-26P Taser. The Taser was discharged for a five-second duration at 5:48 p.m., and a three-second duration at 5:49 p.m.

Video Surveillance

Some residents were able to capture moments before or after the shooting on their phone video recorders. On video IMG_4466, two female voices can be heard describing the events. One of the voices exclaimed, "...Oh my God...They tased him, but he tried to get up again, so they shot him..."

On the date of the incident, officers from Mission Area Division were equipped with body worn video gear. However, West Valley Patrol Division, to which Gonzalez and Cruz were assigned, had not yet equipped their officers with body worn video gear. Thus, no body worn video exists of the actual encounter involving Herrera, Gonzalez and Cruz.

⁹ The knife blade and handle were swabbed for DNA collection, but due to an insufficient sample, a DNA analysis was not possible.

LEGAL ANALYSIS

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 that he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstance, 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.*

“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. “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 judgements – 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.

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 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.

The evidence examined¹⁰ in this investigation shows that the officers responded to a radio call of a man exhibiting suspicious behavior while armed with a knife, on a residential street. Upon arrival, the officers attempted to make contact with Herrera. However, Herrera immediately walked towards their vehicle, ignoring their commands to stop and show his hands. While advancing at a rapid pace in the direction of Cruz, with his stare fixed on Cruz, Herrera displayed a large knife and held it in a clenched fist at shoulder level. [REDACTED]

[REDACTED] Cruz fired one round at Herrera from his service weapon. At the same time, Gonzalez deployed his Taser at Herrera.

Herrera fell to the ground and dropped his knife, which landed approximately one to three feet away from his hand. Nevertheless, Herrera was not rendered incapacitated. He removed the Taser darts from his body and ignored the officers’ commands to put his hands on his head. The officers continued to give commands [REDACTED]

[REDACTED]

[REDACTED] Gonzalez fired one round from his service weapon at Herrera.

The evidence examined in this investigation shows that each of the involved officers fired their service weapons in response to an imminent deadly threat. Herrera was armed with a knife and either rapidly advancing or running towards Officer Cruz at the time Officer Cruz shot Herrera. Prior efforts to verbally convince Herrera to surrender were ineffective as was Gonzalez’ use of a less lethal alternative, a Taser. Given Herrera’s failure to comply with commands to stop moving even after he was tased, [REDACTED]

[REDACTED]

