

**Officer Involved Shooting of Eduardo Fernandez**

**Alhambra Police Department**

**Officer Michael Plascencia, #260**

**Officer Adam Datilio, #268**

**J.S.I.D. File #17-0054**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**October 5, 2017**

**MEMORANDUM**

TO: CHIEF TIMOTHY VU  
Alhambra Police Department  
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Alhambra, California 91801

CAPTAIN CHRISTOPHER BERGNER  
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1 Cupania Circle  
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Eduardo Fernandez  
J.S.I.D. File #17-0054  
L.A.S.D. File #017-00017-3199-013

DATE: October 5, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 27, 2017, fatal shooting of Eduardo Fernandez by Alhambra Police Department (APD) Officers Michael Plascencia and Adam Datilio. It is our conclusion that Officers Plascencia and Datilio acted in lawful self-defense and defense of others at the time each fired his weapon.

The District Attorney's Command Center was notified of this shooting on January 27, 2017, at approximately 9:05 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department (LASD) Lieutenant Steve Jauch.

The following analysis is based on reports, audio recorded interviews, transcripts of recorded interviews, radio traffic recordings, dash camera recordings, and photographs submitted to this office by the LASD – Homicide Bureau. No compelled statements were considered in this analysis.

**FACTUAL ANALYSIS**

On January 27, 2017, at approximately 7:25 p.m., Lisa F. called 9-1-1 to report that her son, Eduardo Fernandez, "just threatened my life and my husband's life right now." Lisa F. told the 9-1-1 operator her son said, "You better call the police right now and send an ambulance because they're gonna find a dead woman, a dead man, a dead dog, and a dead son." Lisa F. advised that Fernandez has a military background, indicated there are firearms locked in the master bedroom of their home, and said Fernandez pointed a handgun at Edmundo F., Lisa F.'s husband and

Fernandez' father. Lisa F. identified the location of the occurrence as her residence at [REDACTED] West Main Street.<sup>1</sup>

APD dispatch broadcast a radio call of a "domestic" involving Fernandez at [REDACTED] West Main Street. The initial call indicated Fernandez threatened Lisa F. and Edmundo F., had a military background and PTSD, and advised there was a gun at the location. Shortly after this initial broadcast, APD dispatch warned that Fernandez had armed himself with a gun. APD dispatch continued to air information, including an update that Lisa F. heard a gunshot.

Several APD officers, including Officers Michael Plascencia and Adam Datilio, responded to the staging area: a Walgreens parking lot on Main Street located approximately .3 miles east of [REDACTED] West Main Street.<sup>2</sup> While Plascencia and Datilio were in the parking lot waiting for their assignment, they heard gunshots coming from the vicinity of [REDACTED] West Main Street. Plascencia told Corporal Gutierrez, the officer in charge, "We've got an active shooter now." Gutierrez directed officers to several locations to set up a containment.

Plascencia entered his patrol vehicle, left the parking lot, and drove through an alley to the southeast corner of Hampden Terrace and Main Street, across the street and slightly west of the target location.<sup>3</sup> Plascencia parked his patrol vehicle, exited holding his department issued AR-15 rifle, and took cover behind a Mercedes Benz sedan parked facing south on the east sidewalk of Hampden Terrace, south of Main Street. Plascencia looked northeast toward [REDACTED] West Main Street and initially did not see anyone. Plascencia moved toward the body shop located east of the sedan. As he stood near the fence line of the body shop, Plascencia saw Fernandez standing in front of the residence near the open gate to the property. Fernandez was looking to his left and right, scanning the area. Fernandez' arms were at his side and Plascencia did not initially see anything in Fernandez' hands.

Fernandez looked at Plascencia and Plascencia believed they made eye contact. Fernandez raised his right arm in a motion consistent with pointing a pistol. Believing that "it's some type of pistol being raised in my direction," Plascencia began to retreat. As he did so, Plascencia saw a muzzle flash, heard a "pop," and believed Fernandez had fired a gun at him. Plascencia continued to move behind the sedan parked on the east sidewalk of Hampden Terrace and heard additional rounds being fired. As he moved, Plascencia broadcast he was taking rounds.

Plascencia stopped behind the rear wheel well of the parked sedan and took cover. Plascencia positioned himself to get a view of Fernandez without exposing his entire body to him. Plascencia could not initially locate Fernandez. As Plascencia continued to scan the area for Fernandez, Datilio arrived, parked his car, armed himself with his AR-15 rifle, and walked northbound, approaching Plascencia from the rear.<sup>4</sup> Plascencia spoke to Datilio and provided

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<sup>1</sup> [REDACTED] West Main Street is a single family residence located on the north side of Main Street.

<sup>2</sup> Plascencia and Datilio were each working a single man unit, driving a marked black and white vehicle, and dressed in uniform. Both patrol vehicles were equipped with dash cameras which were activated during this incident. Both officers were wearing body worn video cameras. However, neither officer activated his body worn video during the incident.

<sup>3</sup> Datilio spoke to Gutierrez for approximately one minute, left in his patrol vehicle, and responded to the same location as Plascencia.

<sup>4</sup> Datilio heard gunfire while driving to Plascencia's location. Datilio explained his concerns as follows: "One, [Fernandez is] either shooting into the air; two, he's shooting at people across the street, he's shooting at traffic or he's shooting at my partner, Officer Plascencia."

Fernandez' last location. Plascencia then saw Fernandez move from a shadowed area to an area near the open gate to the property. As Plascencia looked through the sight on his rifle, he heard additional gunfire and believed Fernandez was firing his weapon at the officers or other individuals who were in the area.<sup>5</sup> Datilio also saw Fernandez move, focused his attention on him, heard gunfire, and saw muzzle flashes emanating from Fernandez' location. Datilio believed Fernandez was "either shooting at me or my partner or somebody that's on the sidewalk..." In response, Plascencia and Datilio discharged their rifles. As a result, Fernandez dropped to the ground.



Figure 1- Photo depicting Plascencia and Datilio's view of Fernandez' location ( [REDACTED] West Main Street) when they initially engaged him.

Plascencia began to cross Main Street to approach Fernandez and Datilio followed. As Plascencia crossed the street, he transitioned from his rifle to his handgun. Plascencia saw Fernandez laying on his side "inches" from a handgun and a shotgun. Plascencia saw Fernandez lift his head and begin to reach for the handgun.<sup>6</sup> In response, Plascencia discharged his duty weapon as he continued to advance toward Fernandez. Fernandez made one last "abrupt forward jerking movement" and Plascencia continued to fire his weapon. Fernandez "fell back," rolling from his side to face up. Plascencia held his fire, ran to Fernandez, and kicked the weapons away from him.<sup>7</sup>

Plascencia and Datilio handcuffed Fernandez and ensured paramedics were called. Once additional officers arrived, they assisted in clearing the residence. Fernandez was transported to Los Angeles County Hospital. Despite lifesaving attempts, Fernandez succumbed to his injuries at 9:08 p.m.

<sup>5</sup> Cars were driving along Main Street during this incident. The north side of Main Street is primarily residential. Apartments and businesses are located on the south side of Main Street. Genovese's Pizza, located southeast of Fernandez on Main Street, was open and serving customers.

<sup>6</sup> Datilio saw Fernandez "starting to move," but did not see Fernandez' handgun or shotgun until after Plascencia fired his handgun. Datilio explained he was focused on Fernandez, but was also scanning for traffic, people in the area, and "any other threat." Datilio described both weapons as within an arm's reach of Fernandez.

<sup>7</sup> Plascencia did not recall issuing any orders to Fernandez prior to discharging his duty weapons. Datilio recalled Plascencia yelling commands as they approached Fernandez on foot, prior to Plascencia firing his handgun.

On February 7, 2017, Deputy Medical Examiner Ajay Panchal, M.D., performed an autopsy on Fernandez. Dr. Panchal ascribed the cause of death as multiple gunshot wounds. Fernandez suffered five gunshot wounds, two of which were classified as fatal wounds. The first gunshot wound was to the back and was a fatal wound.<sup>8</sup> The path of this wound was left to right, back to front, and upward. A rifle caliber projectile was recovered and associated with this wound. The second gunshot wound was to the right abdomen, which exited and re-entered the right arm. The direction of this wound is left to right and upward. A .45 caliber projectile was recovered and associated with this wound. The third gunshot wound was to the left hip and was a fatal wound. The path of this wound was left to right and upward. A .45 caliber projectile was recovered and associated with this wound. The fourth gunshot wound was to the left leg. The path of this injury was left to right, back to front, and upward. A .45 caliber projectile was recovered and associated with this wound. The fifth gunshot wound was to the left leg. The path of this wound was left to right and upward. An analysis of Fernandez' blood noted the presence of alcohol and methamphetamine.

Plascencia was armed with a department issued AR-15 rifle and a Glock 21 .45 caliber handgun. Plascencia kept his rifle's magazine loaded with 30 rounds. After the incident, Plascencia's rifle contained 21 live rounds. Plascencia kept his handgun loaded with 18 rounds. After the incident, Plascencia's handgun was loaded with 13 rounds. Five .45 caliber cartridge casings were recovered on the asphalt of the westbound lanes of Main Street in front of [REDACTED] West Main Street. The overall evidence suggests Plascencia fired his rifle nine times and his handgun five times.<sup>9</sup>

Datilio was armed with his department approved AR-15 rifle. After the incident, Datilio handed his rifle to Officer Chung, who immediately unloaded the rifle and removed the magazine to render it safe. At that time, Chung indicated the rifle was loaded with one live round in the chamber. Chung secured Datilio's rifle and magazine in his patrol vehicle next to his rifle's magazine. After the incident, Chung provided both magazines to investigators, as he was unable to distinguish between them. One rifle magazine contained 26 rounds and the other contained 28 rounds. Datilio regularly kept the magazine to his rifle loaded with 30 live rounds. The overall evidence suggests that Datilio fired his rifle three times.

Fernandez was armed with a .38 caliber revolver and Mossberg Maverick 12-gauge shotgun. Both weapons were recovered from the sidewalk in front of [REDACTED] West Main Street. At the time the revolver was recovered, it contained three fired cartridges and three live cartridges. One of the live cartridges had a firing pin strike on the primer. At the time the shotgun was recovered, the chamber of the shotgun was empty and the magazine was loaded with five 12-gauge shotgun shells.

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<sup>8</sup> The numbering of the gunshot wounds is arbitrarily sequenced and not indicative of the order in which the wounds were received.

<sup>9</sup> Twelve rifle casings were recovered in the area of Hampden Terrace and Main Street. Collectively, the officers fired twelve rounds, although the number of times each officer fired his rifle has not been conclusively determined.



*Figure 2- Fernandez' shotgun and revolver recovered from the sidewalk.*

Numerous live and expended .38 caliber rounds and/or live and expended shotgun shells and wads were recovered on the sidewalk, on the patio, inside the house, and at other locations on the property.<sup>10</sup> Twenty-three live .38 caliber bullets and a live shotgun shell were clustered together on the sidewalk in front of █████ West Main Street. The north facing glass window to a U-Haul business located on the southwest corner of Hampden Terrace and Main Street sustained a bullet hole. A U-Haul truck and a U-Haul van parked in the parking lot of the U-Haul business each sustained a gunshot impact. A fired bullet was recovered near the right front tire of the truck and another fired bullet was recovered from inside the van. Both bullets were analyzed and found to have been fired from Fernandez' .38 caliber revolver.

Both officers' patrol vehicles were equipped with dash cameras which were activated during the incident. Plascencia parked his vehicle on Hampden Terrace facing north, south of Main Street. This dash camera recorded part of the officers' actions, but did not capture Fernandez.<sup>11</sup> Plascencia exited his patrol car holding a rifle. He took cover facing north near a sedan parked on the east sidewalk of Hampden Terrace. Approximately 20 seconds later, he walked eastbound, out of the camera's view. Sixteen seconds later, he came into view as he quickly traveled westbound through parked cars and then northbound, taking cover and kneeling behind the sedan. Datilio arrived and joined Plascencia. Approximately 25 seconds later, both officers began to travel northbound, out of the camera's view. The dash camera recording does not contain audio.

<sup>10</sup> Fourteen expended shotgun shells and ten expended .38 caliber cartridges were located on or near the property.

<sup>11</sup> Datilio parked his car facing westbound. As such, his camera did not capture any of the incident.



*Figure 3- Dash camera showing Plascencia using the sedan for cover.*



*Figure 4- Dash camera showing both officers using the sedan for cover.*



*Figure 5- Dash camera showing both officers stand and approach Fernandez.*

A cell phone recording taken by a passenger in a car travelling westbound on Main Street depicted some of the officers' actions. The officers are first seen taking cover near a parked vehicle when gunshots are heard. The officers respond by firing multiple rounds from their rifles in a northerly direction. The officers then proceed across Main Street, heading in the direction of █████ West Main Street. As the officers get closer to the residence, they are difficult to see due to the dark lighting. Five additional gunshots are heard.



Figure 6- Cell phone video showing the officers as they take cover.



Figure 7- Cell phone video showing the officers as they approach Fernandez

Randolph M. was sitting outside at Genovese's Pizza with his friends Marco C., Ruben A., and Joe H. when he heard several gunshots. Randolph M. initially believed the shots emanated from a distance away. Several people approached him and said, "Some guy's shooting at us!" Randolph M. looked across Main Street and saw Fernandez walk towards a house. Fernandez entered the house and Randolph M. heard additional gunshots coming from inside the residence. Fernandez exited the house holding "a shotgun on his left and a handgun on the right." Fernandez started firing the handgun "everywhere." Fernandez went inside the house a second time and Randolph M. again heard gunfire coming from inside the location. Fernandez came outside still holding both guns and fired at least four rounds toward the U-Haul business. Randolph M. then heard "a high-powered rifle" being fired from the area of the U-Haul business. Fernandez was hit by the gunfire and "grabbed his chest and turn [sic] around and he fell on the floor." As he fell, Fernandez dropped both weapons. Randolph M. saw two police officers running across the street from the area of the U-Haul business towards Fernandez. The officer who was ahead pulled out a handgun and fired several rounds "toward the guy that was on the floor." At the time the officer fired his handgun, Randolph M. could only see the lower half of Fernandez' body. The officers arrived at Fernandez' location, moved the guns, and handcuffed Fernandez.



Ruben A. was sitting outside at Genovese's Pizza when he heard gunfire. The gunfire sounded as if it was coming from north of his location. Other customers ran to his location and said, "This guy's shooting at us!" Ruben A. initially took cover, but looked across Main Street when there was a break in the gunfire. Ruben A. saw Fernandez holding a handgun and "just firing...everywhere, anywhere, randomly." Fernandez went inside the house, came back outside, and began firing the gun again. Ruben A. explained, "When cars were passing by, he would actually shoot at the cars." Ruben A. heard "returned [sic] fire." Fernandez "turned around and ran back and that's when just I seen [sic] his body fall." Ruben A. saw two police officers running north towards Fernandez. Ruben A. did not hear any more gunfire.<sup>12</sup>

Mario V. was at his home on the south side of Main Street when he heard gunfire coming from the north side of Main Street.<sup>13</sup> Mario V. looked out his window and saw Fernandez standing outside his home firing a long gun. Fernandez was shooting the gun "straight out across the street, up in the air, down..." Fernandez stopped briefly and Mario V. walked out of his home. Mario V. saw Fernandez standing outside his gate. Fernandez began shooting at cars driving by his location. Mario V. went back inside and dialed 9-1-1. As Mario V. was waiting to speak with a 9-1-1 operator, he heard yelling from outside. Mario V. saw two police officers walking in a northeast direction, towards Fernandez. Mario V. saw at least one officer fire his weapon, but indicated, "[Fernandez] was firing at them too." Fernandez fell to the ground. Mario V. did not hear any additional gunfire, but saw the officers move "the weapon away from him."

Lilian C. was inside her home when she heard gunshots.<sup>14</sup> She went outside and walked around the corner. As she did so, she saw Fernandez. Fernandez told her, "Do not come over here! Go back!" Fernandez had something "long" in his hand, but Lilian C. "couldn't really tell what it was." Lilian C. began walking backwards towards her home and saw Fernandez fire a weapon towards the ground. Lilian C. was scared and ran back to her home.

Lisa F. and Edmundo F. spoke to investigators after the incident. Both indicated Fernandez was a veteran of the United States Marine Corps. After Fernandez was discharged, he returned to his parents' home. When Fernandez returned from the Marines, both Lisa F. and Edmundo F. believed Fernandez was an alcoholic and suffering from PTSD. Fernandez had threatened to kill himself several times, and Lisa F. and Edmundo F. previously called the police to their home to assist them with Fernandez.<sup>15</sup> Lisa F. and Edmundo F. had placed a lock on their master bedroom door because Edmundo F. kept his revolver and shotgun in that bedroom and, according to Edmundo F., "I just didn't trust him going into my room."

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<sup>12</sup> Marco C. and Joe H. also observed part of the incident. After hearing gunshots, Marco C. ran behind a brick column. He did not see who was firing the gun initially, but did hear the officer involved shooting. After hearing "a bunch" of gunshots volleying back and forth, Marco C. saw two officers crossing Main Street. Marco C. saw the officers approach Fernandez, who was on the ground, and "kick something." Joe H. heard gunshots and saw Fernandez across the street "shooting everywhere." Joe H. moved back and dialed 9-1-1. As the incident unfolded, Joe H. was on the phone with the 9-1-1 operator. Joe H. saw two officers cross the street "not even taking cover" and approach Fernandez. Of the officers, Joe H. said, "The last thing that they were thinking about was their own personal safety. I think they were just thinking about the rest of us...they just walked right into hellfire."

<sup>13</sup> Mario V.'s home is directly south of [REDACTED] West Main Street.

<sup>14</sup> Lilian C. lives on Huntington Drive, just around the corner from Fernandez' home.

<sup>15</sup> Records provided document APD responded to their home on May 10, 2015; February 17, 2016; August 5, 2016; August 18, 2016; January 7, 2017; and January 12, 2017.

On the date in question, Lisa F., Edmundo F., and Fernandez were watching a movie in their living room. Fernandez said he wanted to go for a walk and left. Fernandez returned with an expensive bottle of alcohol. Lisa F. was upset Fernandez spent so much money on alcohol and a verbal argument ensued. During the argument, Fernandez called Lisa F. a "bitch" and Edmundo F. told Fernandez to leave their home. Fernandez told them, "If you call the police, you make sure that you tell them to bring an ambulance...because there's going to be a dead woman, a dead man, and dead dog, and a dead son." Lisa F. walked outside the home with their dog and Edmundo F. remained in the home. Fernandez motioned toward his rear pants pocket and pulled Edmundo F.'s revolver from his pocket, showing the gun to Edmundo F. Fernandez walked towards the master bedroom. Edmundo F. began to walk to the front door of the house to exit. As he stood near the front door, Edmundo F. heard Fernandez rummaging through items in his room. Shortly after Edmundo F. exited the house, he heard gunshots emanating from inside.

After exiting the house, Lisa F. dialed 9-1-1 and told the police what had occurred. Lisa F. began walking away from the house and encouraged Edmundo F. to join her. Edmundo F. let Lisa F. walk ahead while he remained closer to their home. Edmundo F. saw police arrive at the location. While Fernandez was outside on the patio, he was "shooting up" into the air. Edmundo F. did not believe Fernandez saw the officers because he was looking up at the time. Edmundo F. saw an officer across the street point a rifle at Fernandez and fire. Fernandez was struck by gunfire and fell to the ground with part of his body landing on the sidewalk. The officers crossed the street, heading for Fernandez. As the officers got closer to Fernandez, an officer fired an additional three to four rounds at him. At the time the officer fired the additional three to four rounds, Edmundo F. believed Fernandez was moving "a little bit," and stated, "I don't know if [Fernandez] had his hand on the gun or what..." Lisa F. had walked eastbound, away from their house, and did not see the officer involved shooting.

## **LEGAL ANALYSIS**

"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 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.

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 505. The People have the burden of proving beyond a reasonable doubt that a person did not act in lawful self-defense or defense of another. If the People fail to meet this burden, a jury must find the defendant not guilty. CALCRIM No. 3470.

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Penal Code section 835a. California law permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible

and atrocious felony which threatens death or serious bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470, 477-484. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. *Id.* at 479.

## CONCLUSION

The evidence examined shows that Officers Michael Plascencia and Adam Datilio responded to a "domestic" situation involving Fernandez. That "domestic" call quickly escalated to an active shooter situation as Fernandez armed himself with two firearms and began shooting "everywhere." Both officers recognized the need for an immediate response to save their lives and the lives of all others in the area.

Plascencia, followed shortly by Datilio, responded to Hampden Terrace and Main Street. Plascencia exited his vehicle, looked across Main Street, and saw Fernandez in front of his home. Fernandez fired his weapon at Plascencia. Plascencia retreated and was joined shortly by Datilio. Both officers used a parked sedan as cover as they looked for Fernandez. Fernandez emerged and both officers heard gunfire coming from his direction and believed Fernandez was firing at them. Their belief was both reasonable and accurate; the two expended bullets found just west of the officers' position in the U-Haul parking lot support the conclusion Fernandez was shooting at them. Reasonably in fear for their lives and the lives of those in the area, both officers fired their weapons at Fernandez.

Fernandez dropped to the ground and the officers began to approach, leaving their position of cover. As Plascencia got closer to Fernandez, he saw a handgun and a shotgun close to Fernandez. Fernandez began to reach for the revolver. In fear for his life, his partner's life, and the lives of everyone in the area, Plascencia fired his pistol five times. We find Plascencia's belief that Fernandez was going to arm himself with a gun and fire was reasonable under these circumstances. Fernandez' actions just prior to this moment had endangered the lives and safety of the officers, pedestrians in the area, and those individuals driving on Main Street. As such, Plascencia's belief that Fernandez, who was moving, still posed a life-threatening danger was reasonable.

We conclude that Officers Michael Plascencia and Adam Datilio were placed in reasonable fear for their lives and the lives of others in the area, and acted in lawful self-defense and defense of others when they fired their weapons. We further find that, under these circumstances, Officers Plascencia and Datilio's use of deadly force was reasonable force used to effect the arrest of an active shooter. We are closing our file and will take no further action in this matter.