



Sacramento County District Attorney's Office

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DATE: June 27, 2022

TO: Chief Brandon Luke
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Sheriff Scott Jones
Sacramento County Sheriff's Office
4500 Auburn Boulevard
Sacramento, CA 95841

FROM: Sacramento County District Attorney's Office

RE: Rancho Cordova Police Department Case No. 20-285120
Shooting Officer: Rancho Cordova Police Officer Cameron Lopez #1275
Rancho Cordova Police Officer Nate Jennings #344
Rancho Cordova Police Officer Arielle Fontes #76
Sacramento Sheriff Deputy Myles Antonini #129
Person Shot: Miguel Hernandez (D.O.B. 11/5/97)

The District Attorney's Office has completed an independent review of the above-referenced officer-involved shooting. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Miguel Hernandez. For the reasons set forth, we conclude the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other documentary items. These include Rancho Cordova Police Department report number 20-285120, dispatch logs and audio recordings, 911 and fire calls, witness interview recordings, crime scene photographs, surveillance videos, body-worn camera videos, and Sacramento County District Attorney's Office Laboratory of Forensic Services Physical Evidence Examination.

On September 5, 2020, at approximately 7:22 p.m., Rancho Cordova Police Department (RCPD) Officers Gen Saelee, Marshal Watts and Cameron Lopez were dispatched to a call for service regarding a vandalism that had occurred 15 minutes prior. The text of the call described a Hispanic male adult, 5'08", 150 pounds, with no shirt and black jeans who jumped a fence to the complex and damaged it in the process. The call further stated the subject had a BB gun in his waistband and was currently at the empty lot next to the complex at 10456 Investment Circle. At

approximately 7:26 p.m., Officers Watts and Saelee observed a Hispanic male, later identified as Miguel Hernandez, walking westbound on Investment Circle on the north side of the street. Hernandez matched the description given in the dispatch.

Officer Watts observed Hernandez had what appeared to be a black handgun in his front waistband. Officer Watts stopped his marked patrol vehicle approximately 40 feet from Hernandez, opened his driver's side door, and aimed his department-issued firearm at Hernandez. Officer Saelee parked her vehicle directly behind Officer Watts' patrol vehicle. As Officer Saelee exited her vehicle, she saw a black handgun in Hernandez's waistband. She ran forward to the front passenger side of Officer Watts' vehicle and used the door as cover. Officer Saelee removed her firearm from her holster and aimed it at Hernandez, then voiced over the radio she had Hernandez at gunpoint.

Officer Watts gave Hernandez multiple commands to put his hands in the air and turn away from Officer Watts. Hernandez stood in place and did not react to the commands. Officer Watts did not know whether Hernandez heard him or not, so he yelled louder for Hernandez to put his hands in the air and face away from him. Officer Saelee then directed Hernandez to put his hands in the air and not to reach for the gun in his waistband. Hernandez did not follow the commands and suddenly laid on his stomach. This action concerned Officer Watts because he did not want Hernandez to roll over and shoot Officer Saelee or himself.

Because Hernandez appeared to have a gun in his front waistband, Hernandez was given commands to stand up and raise his hands. Hernandez then stood up, looked at Officer Watts and Officer Saelee, and started to walk away. Officer Saelee saw Hernandez reach for his apparent gun from his waistband, turn his upper body, and point the apparent gun at the officers. Hernandez then walked quickly around the business building where the officers lost sight of him. Officers Saelee and Lopez pursued Hernandez on foot, and Officer Watts pursued in his patrol vehicle.

Officer Lopez voiced via radio that Hernandez was headed towards Folsom Boulevard. Officer Lopez and Officer Saelee ran towards the south side of Bowinkles Restaurant parking lot past the drive-thru lane towards a Mountain Mike's Pizza business. Hernandez then turned around and pointed his apparent gun at Officer Lopez. Officer Lopez gave Hernandez commands in Spanish to drop the gun, but Hernandez still did not respond. Hernandez continued to travel westbound in the Mountain Mike's parking lot. Multiple additional officers arrived on scene, including RCPD Officer Nate Jennings.

Additional commands were given to Hernandez to put his gun down. Officer Lopez took cover behind a pillar in an effort to shield himself from possible shots fired by Hernandez. Officer Lopez was also aware that there were civilians in the parking lot where Hernandez was walking and feared Hernandez may shoot him or an uninvolved civilian. Officer Lopez observed Hernandez point his apparent gun at him. In response, Officer Lopez fired his gun at Hernandez. Officer Lopez believed he fired three to five shots.

Officer Lopez then saw Hernandez walking away from him towards a Firestone tire store. Officer Lopez believed Hernandez was going to shoot at him, even though he did not know why

Hernandez had not shot initially. Officer Lopez fired his weapon again and Hernandez went down to the ground.

Officer Saelee took a position behind a second pillar approximately 10 feet from Officer Lopez. Officer Saelee observed Hernandez point his apparent gun at other officers and at herself. She observed Officer Lopez fire his service weapon at Hernandez and heard additional gunshots immediately to her left where other officers were at the scene. Community Service Officer Kimberly Vogt was nearby and heard Officer Lopez yell, "Put the gun down!" at least two times before she heard two shots, followed by a brief period of silence, then four additional shots.

Officer Arielle Fontes had detained another subject at gunpoint, believing him to be the wanted subject. She heard Officer Lopez tell her she was down-range and to watch out for crossfire. Officer Fontes was confused because she thought she had the right person at gunpoint. She moved back toward her patrol car and heard gunshots. She then saw Hernandez with an apparent handgun in his hand, pointing down. Officer Fontes joined Officer Lopez and had Hernandez at gunpoint. Hernandez had his apparent gun in his hand, and he lifted it. Fearing for her own safety and Officer Lopez', Officer Fontes fired once. She then saw Hernandez go down.

Officer Nate Jennings had responded to the location and parked his marked patrol vehicle to cover Officer Fontes in case she needed help. Officer Jennings heard multiple gunshots fired "a couple hundred yards away." Based on his training and experience, Officer Jennings recognized the shots to come from a semi-automatic style handgun. Fearing for the safety of other officers, he got into his patrol vehicle and drove to the area from which he had heard shots. He observed Hernandez standing in the Mountain Mike's parking lot appearing to engage in a gunfight.

Officer Jennings observed Hernandez in a "shooter's stance," holding what appeared to be a black semi-auto handgun. Officer Jennings saw Hernandez looking down the front side of the apparent handgun, pointing it at multiple officers, including Officer Lopez. Officer Jennings immediately jumped out of his patrol vehicle with his rifle. He attempted to get a good backdrop with no civilians in the way and fired one shot at Hernandez.¹ He saw Hernandez drop to the ground. Officer Jennings kept his rifle in the ready position because he was fearful that Hernandez was going to grab his weapon and begin firing more shots at civilians, officers, or anyone else in the area.

Deputy Myles Antonini had also responded and observed Hernandez with an apparent gun in his right hand standing in the parking lot. Deputy Antonini thought the object was a gun because he saw no markings on it and it was black. As Hernandez was walking, Deputy Antonini saw him swaying his hand holding the apparent gun forward and backwards. Deputy Antonini pulled his marked patrol vehicle over and immediately got out to provide back up to the officers already on scene. He saw Officer Jennings with a rifle, however he did not feel like he had the time to grab his rifle or a less lethal shotgun. Deputy Antonini gave commands for Hernandez to put the gun down. Hernandez did not comply. Deputy Antonini saw Hernandez walk away and then turn around and point his apparent gun directly at Officers Lopez, Fontes, and Mulherin. Fearing for the safety of those officers, Deputy Antonini fired what he believed to be three to five rounds

¹ One civilian at the scene was on the ground laying on his stomach. He was not injured.

towards Hernandez' direction. He saw Hernandez bring the apparent gun down toward his waistband and he hunched over as if he had been struck by a bullet. No further shots were fired.

Officer Saelee saw Hernandez fall to the ground onto his back. Hernandez was given commands not to reach for his gun. Fire Department personnel were requested immediately to render medical aid to Hernandez. Hernandez was lying on his back, slowly moving his body from left to right. He had his apparent handgun about 3 feet next to his left arm. Officer Saelee took cover behind a black vehicle and drew her service weapon. Other patrol units and Officer Saelee approached Hernandez to address his injuries. Officer Jason Kimbrell applied a tourniquet onto Hernandez's upper left leg as his pants were saturated with blood and he was bleeding. The fire department arrived shortly thereafter and transported Hernandez to UC Davis Medical Center for further treatment of his injuries.

At UC Davis Medical Center, it was noted Hernandez had the following injuries: a fracture to the tibia in his left leg above the ankle, a fractured femur with a bullet lodged in his right thigh, a gunshot entry wound with no exit to the right buttocks area (no broken bones), and minor graze wounds to his right abdomen and right upper arm. A blood sample was taken from Hernandez at the hospital. The toxicology report revealed methamphetamine in Hernandez' blood at a concentration of 65 +/- 10 ng/mL.

Officer Kimbrell began to check the businesses in the parking lot where he observed an apparent bullet hole through the left side of the doorframe. Officer Kimbrell spoke to the occupants of that building. An eyewitness there had seen Hernandez walking away from officers on the north side of the building. He heard the officers telling Hernandez to get on the ground. The witness stated Hernandez was not listening. He saw Hernandez get on the ground and then get back up and walk away. He then saw Hernandez run to the southside of the main parking lot and point a gun. The witness heard two gunshots. When the witness closed the front door to the business, he heard a loud noise and felt a sharp pain on his left forearm. Officer Kimbrell observed the witness' left forearm was bleeding. The witness wiped the blood away revealing a small scratch.

Another witness who worked at Bowinkles Restaurant indicated she was behind the counter making a drink when she saw Hernandez outside the store with a black handgun in his hand. She indicated Hernandez pointed the gun towards the El Favorito restaurant. She then ran back into the store to hide and heard two or three gunshots. There was a pause and then she heard three or four more. She indicated there were cameras, but she could not review them since the manager was not present.

A third witness was watching his five-year-old nephew when he saw officers pull into the parking lot. He saw Hernandez with what he described as a black gun. He saw Hernandez point it towards the Mountain Mike's Pizza restaurant and then heard, "pop, pop, pop." Officers instructed the witness to lay down. The witness' brother took the child away right before the gun shots.

Hernandez's "handgun" was located a few feet from Hernandez's left arm when he was taken into custody. It was later determined that the "handgun" was not in fact a firearm. Instead, it

was an automotive timing light gun with the wires removed. It was photographed in its original position, as shown below.



Below is how a similar, intact, device appears:



Round Counts

Each officer's firearm was examined. A round count and examination of casings recovered at the scene indicated that Deputy Antonini fired six rounds.

A round count and an examination of casings and magazines was conducted for Officer Lopez and it was determined he fired approximately 11 rounds.²

A round count was conducted for Officer Fontes and it was determined she fired one round.

A round count was conducted for Officer Jennings and it was determined he fired one round.

Video

Video footage of the incident was reviewed.

A surveillance camera depicts the entrance to the Bowinkle's drive thru. At approximately 7:30:32 p.m.,³ Hernandez is seen walking wearing jeans and no shirt. He has an object in his right hand. Officers can be heard yelling for everyone to "be still." An officer yells "hey" and Hernandez is seen holding his arm straight out pointing an apparent gun. A screen capture from the video is shown below:



² Officer Lopez initially fired five rounds as he was pursuing Hernandez. Officer Lopez then ejected his magazine, reloaded, and fired additional rounds. The ejected magazine was later booked into evidence.

³ It was later determined that the Bowinkle's security camera was off by one hour and 11 minutes. Therefore, the video time stamp displayed a time of 18:19:32.

A man is seated at a table eating as Hernandez walks by. Hernandez does not look at him. A man runs by with a child in his arms and he and the child get into a vehicle. A screen capture of when Hernandez walks by is shown below:



Another view from Bowinkle's surveillance video depicts the drive-thru of the restaurant. At approximately 7:30:35 p.m. (corrected from the video stamp as described above), a female officer is heard directing someone to "get on their knees." A male officer's voice and multiple sirens are heard. Shots are fired and the car at the drive-thru drives away. Officers are seen on camera and more shots are fired.

A surveillance camera from the Mountain Mike's Pizza restaurant showed Hernandez walk through the camera frame at approximately 7:35:16 p.m. as a family with a small child is by a car in the background. Hernandez is seen with no shirt, black pants, and what appears to be a black handgun in his right hand. A screen capture from the video is shown below:



At approximately 7:35:39 p.m., an officer is observed entering into the frame with his gun drawn. He then proceeds to point the gun in the direction Hernandez had walked and fires. Although there is no audio, the officer appears to be yelling. Multiple officers then come into the frame and run in the direction of Hernandez.

Additional footage from the In-Car Cameras of Officer Fontes, Officer Jennings, and Deputy Antonini was reviewed. From this footage, Hernandez is seen walking in the parking lot with an object in his hand. There are multiple audible commands demanding he put the gun down. It appears that Hernandez is shot and he goes down to the ground. It is apparent that he is still trying to move around and get up as additional shots are fired. Hernandez then no longer attempts to get up.

As a result of his actions in this incident, Hernandez was charged in Sacramento Superior Court case number 20MI014604 with a misdemeanor count of exhibiting and drawing a replica firearm on Officer Saelee in violation of Penal Code section 417.4. Hernandez pled no contest to the charge on February 18, 2021, and was sentenced to 150 days in county jail to be served in a residential rehabilitation facility.

LEGAL ANALYSIS

An officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. (California Penal Code section 835a(b); *Tennessee v. Garner* (1985) 471 U.S. 1, 11; *Graham v. Connor* (1989) 490 U.S. 386, 396; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; CALCRIM 2670.) The person being detained or arrested may be subjected to such restraint

as is reasonably necessary for his arrest and detention and has a concomitant duty to permit himself to be detained. (California Penal Code section 834a; *People v. Allen* (1980) 109 Cal.App.3d 981, 985; CALCRIM 2670, 2671, 2672.) Officers do not need to retreat or desist their efforts if the person they are arresting or detaining resists or threatens resistance; nor shall the officer be deemed an aggressor or lose the right to self-defense by use of reasonable force. (California Penal Code section 835a(d).)

Here, Officers Saelee and Watts had been dispatched to an incident involving vandalism. The call further indicated that the shirtless subject may have a BB gun on his person.⁴ When the officers arrived along with Officer Lopez, they observed Hernandez, who matched the description given in the original call, walking with what appeared to be a black handgun in his waistband. The officers had reasonable cause to detain Hernandez to investigate further.

When the officers gave Hernandez multiple commands to put his hands in the air, Hernandez gave no response. Hernandez laid down on the ground. He was given commands not to reach for his gun and to get off the ground. His apparent gun was underneath him in his waistband. He got up and started to run away. When pursued, Hernandez pointed his apparent gun at the officers.

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury. (California Penal Code section 835a(c)(1)(A); CALCRIM 505, 507, 3470.) An officer who uses deadly force must actually believe that force is necessary. The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.) Thus, the officer may employ all force reasonably believed necessary. (CALCRIM 3470.) The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 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. (California Penal Code section 835a(a)(4); *Graham v. Connor* (1989) 490 U.S. 386.)

Here, Hernandez was walking in a public place with what appeared to be a gun in his hand. Initially, he was confronted by officers ordering him to stop and raise his hands. The officers were clearly law enforcement as they were in uniform and had marked patrol vehicles with flashing lights. Hernandez did not follow the commands given by Officers Watts and Saelee to put his hands in the air. In fact, Hernandez first laid down on his stomach with the apparent gun in his waistband, available to be used at any moment. He then suddenly got up, looked at the officers, pointed his apparent gun at them, and walked away.

Officer Lopez pursued Hernandez on foot and yelled at him to drop the gun. Hernandez turned around and pointed his apparent gun at Officer Lopez. Officer Lopez believed his life was in danger and that he needed to protect himself. Officer Fontes joined Officer Lopez and they both

⁴ Pellet guns have long been considered deadly and dangerous weapons under California law. (*People v. Schaefer* (1993) 18 Cal.App.4th 950, 951; *People v. Montalvo* (1981) 117 Cal.App.3d 790, 797.)

shot at Hernandez for fear he was going to fire at them. They acted lawfully in self-defense as Hernandez was pointing what looked like a gun right at them. Officer Jennings and Deputy Antonini also observed Hernandez pointing what they believed to be a gun at Officers Fontes and Lopez. They fired in an effort to protect the lives of their partners and the nearby civilians in the parking lot. It was reasonable for them to believe that deadly force was necessary to respond to the apparent and imminent threat being posed by Hernandez.

CONCLUSION

Applying the controlling legal standards with the factual record, we conclude that Officers Lopez, Jennings, and Fontes, and Deputy Antonini were justified in using deadly force in this situation. Hernandez was walking with what appeared to be a gun visible in his waistband in a public area and a public parking lot where multiple civilians were present including a young child. When confronted by law enforcement officers, Hernandez ignored their commands, fled, and pointed what appeared to be a gun at multiple officers. Given all of the circumstances they encountered, it was reasonable for each officer to believe Hernandez would shoot someone if they did not immediately respond with deadly force. As such, their actions were lawful. Accordingly, we will take no further action in this matter.

Cc: Rancho Cordova Police Department Officer Cameron Lopez #1275
Rancho Cordova Police Department Officer Nate Jennings #344
Rancho Cordova Police Department Officer Arielle Fontes #76
Sacramento County Sheriff's Office Deputy Myles Antonini #129
Sacramento County Sheriff's Office Detective Kevin Lawrence #685
Sacramento County Office of Inspector General