

INTEROFFICE MEMORANDUM

DATE: August 26, 2013 **PHONE:** (909) 387-8309



FROM: Simon R. Umscheid
Supervising Deputy District Attorney
Central Office – San Bernardino

THRU: Mary Ashley
Chief Deputy District Attorney
Central Division

TO: Gary Roth
Assistant District Attorney-Criminal Operations

SUBJECT: Non-Fatal Officer Involved Shooting:

Involved Officer: Officer Jose Vasquez, San Bernardino Police Department

Injured Suspect: Jeffrey Hernandez, D.O.B. 9/14/72, resident of Porter Street, San Bernardino, CA 92401

Date of Incident: May 1, 2013, 5:53 pm

Location of Incident: Intersection of California Street and Mesa Street, Muscoy.

Investigating Agency: San Bernardino County Sheriff's Specialized Investigation Division, Homicide Unit; Detective Stan Wijnhamer, Case Agent.

Agency Report Numbers: San Bernardino County Sheriff's Case #DR 601300170/ H-2013-038

STAR Number: San Bernardino County D. A. Star #2013-22565

STATEMENT OF FACTS

The following statement of facts is derived from interviews of the Involved Parties and other information and evidence as gathered by the San Bernardino County Sheriff's Specialized Investigation Division, Homicide Unit, during the course of their investigation.

SUMMARY

On May 1, 2013, the San Bernardino Police Department Narcotics Division was conducting surveillance operation at [REDACTED] Porter Street in the Muscoy area of San Bernardino. The investigation was centered on the subject Jimmy Hernandez whom was believed to be involved in the sales of narcotics. The officers involved in the investigation also had received information that Hernandez was known to be armed with a firearm.

Prior to the surveillance there was a briefing held to discuss the investigation. Officer Jose Vazquez was to be partnered with Officer Jose Campos for the surveillance operation. Both officers were wearing San Bernardino Police Uniforms and were assigned to a marked unit. Other officers were assigned in an undercover capacity and were to watch the residence in case Hernandez was seen. Officers Campos and Vazquez were to be notified by the officers if the subject was seen leaving the residence.

While watching the residence, officers saw a subject matching Hernandez' description leave the residence and get into a gold Honda Accord that was parked in the driveway. As the car pulled away from the residence the officers advised Campos and Vazquez via radio that the subject was leaving and it appeared to be Hernandez. Officers Campos and Vazquez pulled their vehicle behind the gold Accord and continued to observe the subject.

As the gold Accord reached the intersection of Porter Street and Darby, it turned right onto Darby. The officers noticed that the vehicle failed to make a complete stop at the stop sign in violation of Vehicle Code Section 22450(a). It was at this point that the officer attempted to initiate a vehicle stop on the car. The officers activated the overhead lights on their unit. Hernandez then ran another stop signal at Darby and State Streets. The officer indicated that the defendant accelerated and was driving recklessly. He ran two more stop signs. As he turned onto Glen View Street he was actually driving on the wrong side of the road.

It was at this point that the officer witnessed Hernandez throw some items out of the car window. Both officers thought that a couple of the items that were thrown from the car's window by Hernandez were firearms. The officers relayed what they had seen via radio out of concern for public safety. The officers continued to follow Hernandez who

continued evasive tactics including running multiple stop signs and driving up to speeds of 70 miles per hour in a residential area.

As Hernandez came upon Mesa Street, he attempted to right hand turn. Due to the speed he was driving, he was unable to make the turn and lost control of the Accord. The vehicle went over the curb and hit a chain link fence in front of a residence. Officer Vazquez positioned the police unit against the rear bumper of Hernandez' vehicle to prevent Hernandez from backing up and continuing to flee.

After coming to a stop, Hernandez opened the door to his vehicle. Fearful that Hernandez would flee on foot, Officer Campos began giving verbal commands to Hernandez to put his hands up in the air. Hernandez did not comply. Officer Campos attempted to grab Hernandez and remove him from the vehicle. Hernandez got out of the vehicle before Officer Campos could gain control of him. Hernandez pushed up against Officer Campos in what Officer Campos described as a football position. At this point Officer Campos was pinned against the door of the Honda. Officer Campos attempted to pull Hernandez' arm behind his back to take control but he was unable to do so; Hernandez kept his hands down by his waist in a position that prevented Campos from seeing them.

As Hernandez continued to push back at Officer Campos, Campos became pinned between Hernandez and the chain link fence and a palm tree. Officer Vazquez was now also engaged in attempting to assist Officer Campos by trying to gain control of Hernandez' hands. Officers Campos and Vazquez were still unsuccessful in attempting to gain control of Hernandez' hands despite multiple attempts. Hernandez still had his hands tucked in his torso area out of view of both officers. Officer Campos was concerned that Hernandez may have been attempting to access a weapon. Officer Campos was attempting to prevent Hernandez from fleeing and from continuing to reach into his waistband area.

Officer Campos was aware that there were people including children across the way from the incident. Officer Vasquez told investigators that he was also concerned that Hernandez may have had a weapon on him. Officer Vasquez also noticed that there were now people standing around in the area. He and Officer Campos both gave multiple commands to Hernandez to show his hands which Hernandez ignored. During the struggle Officer Vazquez noticed that Hernandez had tattoos consistent with gang affiliation including a "Verdugo" tattoo. Officer Vazquez became increasingly concerned that Hernandez was reaching for a weapon he may have been concealing in his waistband area.

Officer Vazquez ordered Hernandez to get on the ground or he was going to shoot him. Vazquez had his gun unholstered and in his hand at this point. Hernandez ignored the commands given by both officers and began to reach for Officer Vazquez' gun. Hernandez was not able to get ahold of the gun itself, but the officer did feel his wrist being pulled. Officer Vazquez pulled his arm holding the gun back trying to get it away from Hernandez' reach. At this point Officer Vazquez believed that Hernandez was

attempting to disarm him.

At this point again Hernandez was attempting to reach for his waistband. Vazquez believed that Hernandez was still intent on arming himself and had a weapon in his waistband area. Officer Vazquez pointed his firearm in a downward motion and pointed it at Hernandez' back. Officer Vazquez fired one round into Hernandez' back area. Hernandez then fell to the ground. It was only at this point that the officers were able to handcuff Hernandez.

Hernandez told officers at the scene after he had been handcuffed that he would "rather die than go back to prison." Medical Aid responded to the scene and Hernandez was transported to Arrowhead Regional Medical Center. Hernandez was interviewed at the hospital by case Agent Detective Wijnhamer and Detective Avila. Hernandez admitted drinking two 40 ounce beers plus another 1-2 cans of beer prior to the incident. He also admitted feeling intoxicated when he got into the car and left the house. He admitted seeing the officers behind him and that they were attempting to stop him. Despite the knowledge of them attempting to stop him, he led the officers on a pursuit prior to losing control and crashing. Hernandez said that the officer did approach him at the scene of the crash. He also admitted knowing that they were officers based on their uniforms.

Hernandez denied resisting or ignoring the officers' commands, stating that the one officer just shot him in the back after he had put his hands in the air. Hernandez denied throwing anything out the window during the pursuit. He also denied ever reaching for the officer's gun during the struggle.

Hernandez was shot one time in the lower back. The bullet entered his small intestine and struck the colon. The bullet was recovered during surgery and was turned over to investigators.

SUMMARY OF **OFFICER ERIK CAMPOS** **INTERVIEW**

Officer Campos was interviewed by Detective Wijnhamer and Detective Gary Hart on the date of the incident. The interview took place in the Detective Bureau interview room at the San Bernardino Police Department.

Officer Campos told the investigators that he was present during the briefing prior to the surveillance operation. The briefing included a description and name of the suspect; Jeffrey Hernandez. Hernandez was believed to drive a gold four door Honda Accord. It was also told to the officers at the briefing that it was believed that Hernandez was believed to illegally possess and carry a .38 caliber handgun in his waistband.

Campos was to be in uniform for the operation and partnered with Officer Jose

Vazquez. They were to be in a marked unit and would remain on the perimeter of the surveillance area in case a traffic enforcement stop was needed.

Officers Campos and Vazquez set up in the area of Macy Street and Porter Street. Officer Campos monitored radio traffic about the operation as it proceeded. They overheard that a Hispanic male subject matching the description of Hernandez was seen leaving the residence and getting into the gold colored Honda. The subject got into the car and started driving towards Macy Street where Campos and Vazquez were located.

Officers Campos and Vazquez pulled in behind the subject and began to follow the car maintaining observation. The gold Honda failed to make a complete stop in violation of Vehicle Code Section 22450(a). Officer Campos, who was the passenger, broadcast that they were going to initiate the traffic stop. Officer Vazquez followed Hernandez and attempted to initiate a traffic stop by using the vehicle's overhead lights. Hernandez failed to yield. He increased his speed and ran a stop sign at the corner of Darby and State streets. He turned onto California and continued to drive erratically.

Officer Campos told the investigators that Hernandez continued to drive down several streets running multiple stop signs. He eventually made a turn onto Glenview Street. As Hernandez made the turn onto Glenview, Officer Campos observed Hernandez throw what appeared to be two guns out of his car. Campos described the guns as being handguns. Campos then broadcast that guns had been thrown from the vehicle. Officer Campos indicated that he had concern that the discarded firearms could pose a danger to public safety.

As the officer continued to follow Hernandez he entered a school area on California Street. Officer Campos observed that there were children in the area. He became concerned about the safety of the children and others that were in the area because Hernandez continued to drive erratically and had reached speeds of about 70 miles per hour.

Hernandez continued to flee from the officers. As he made a turn onto an unknown street (later determined to be Mesa Street), Hernandez lost control of the Accord and crashed into a chain link fence. Officer Vazquez pulled the police unit up behind the Accord in an attempt to prevent the suspect from attempting to flee again. Campos then saw Hernandez open the car door. Campos believed at this point that Hernandez was going to flee.

As Campos approached the vehicle he saw that Hernandez was seated in the front of the Accord. Hernandez had his hands in his torso area outside of Campos' view. Hernandez had his foot outside the car on the ground. Hernandez attempted to push Campos by placing his shoulder into Campos' abdomen. The force with which Hernandez pushed Campos caused him to be pushed into the vehicle's open door. Officer Campos attempted to pull Hernandez' hands into view. Officer Campos was concerned because he could not see Hernandez's hands which were in his waistband

area and out of view.

Campos told the detectives interviewing him that Hernandez continued to push Officer Campos until his back was pressed against the chain link fence. Meanwhile, Campos still tried to gain control of Hernandez's hands while repeating verbal commands. Officer Campos was concerned that Hernandez may be armed with a weapon by his continued resistance to being handcuffed. Officer Campos was also concerned for citizens that were in the area including children.

Officer Campos was unable to reach his firearm because of the position they were in and the fact that he wears a dropdown type holster. As he was attempting to hold onto Hernandez's arm, he hears a single gunshot. At the time Campos was unsure if Hernandez had fired the shot. He then realized that it must have been his partner, Officer Vasquez, based on the fact that Hernandez suddenly lost power in the struggle. They were then able to take Hernandez to the ground and handcuff him.

A search was conducted of Hernandez and no weapons were found. Hernandez asked why he had been shot but apologized for resisting. Medical aide arrived on scene and Hernandez was transported.

SUMMARY OF
OFFICER JOSE VASQUEZ
INTERVIEW

Officer Jose Vasquez was interviewed by Detectives Hart and Bachman at the San Bernardino Police Department. Officer Vasquez relayed the same information as Officer Campos regarding the briefing and assignment on that date. He was partnered with Officer Campos.

Officer Vasquez also relayed that he had been told about Hernandez and the information was that he regularly carried a gun. He and Officer Campos were sitting in their marked unit on the perimeter when he heard over the radio that the suspect had arrived at the residence in question in a gold Honda Accord. Hernandez was not at the location very long when there was a second broadcast that he was leaving in the Accord.

Based on the information that came out, Vasquez knew that Hernandez was headed towards their location. Once the Accord and a second vehicle passed where the officers were located officer Vasquez pulled the unit in behind and started following. Hernandez approached a stop sign at the corner of Macy Street and Darby Street. He observed Hernandez make a turn onto Darby Street without coming to a complete stop. Noting the vehicle code violation, Officer Vasquez attempted to initiate a traffic stop on Hernandez.

Vasquez turned on the car's overhead lights and chirped the siren. He observed Hernandez looked into the rearview mirror and then accelerate to about 40 miles per hour.

Believing that Hernandez may be attempting to evade them, Officer Vasquez turned on the siren. Officer Vasquez told investigators that Hernandez drove down several streets running stop signs and speeding. Vasquez saw that Hernandez appeared to be reaching down towards the floorboard of the car. He then sat back up and extended his arm out of the vehicle throwing a couple of items that appeared to be guns and possible a third item that appeared to be some type of pouch.

Officer Vasquez instructed Officer Campos to broadcast the information about the discarded firearms. Officer Vasquez continued to follow Hernandez as he drove in excess of 70-75 miles per hour. Hernandez turned onto California Street narrowly avoiding a collision with another vehicle. As he turned onto California, Hernandez passed through a school zone where there were people including children in the area.

After passing the elementary school, Hernandez attempted to turn onto Mesa. According to Officer Vasquez, it appeared that Hernandez was going too fast to navigate the turn and lost control of the vehicle. It was at this point that Hernandez's vehicle crashed into the fence. Officer Vasquez positioned the police unit behind the Accord to prevent Hernandez from attempting to back up and flee again.

Officer Vasquez saw the driver's door open to the Accord. In the meantime, Officer Campos had exited their vehicle and was approaching Hernandez. In order to get to the driver's side of the suspect vehicle, Officer Campos had to jump across the hood of the police unit. Officer Vasquez heard Officer Campos identify himself as a police officer to Hernandez and ordered Hernandez to get down on the ground.

As Officer Campos was giving the commands, Hernandez got out of the vehicle and engaged Officer Campos physically. As Officer Vasquez exited the vehicle and approached where Hernandez and Campos were located, Officer Vasquez recognized "IE" and "Verdugo" tattoos on Hernandez's person. He knew from experience that these tattoos were associated with a violent criminal street gang.

As he got to the driver's side area of the vehicle, Hernandez had Officer Campos pushed into the chain link fence. Officer Campos was in a defensive position with Hernandez leaning into Campos at his waist. Officer Campos was attempting to gain control over Hernandez's right arm that was under his torso and out of view.

Officer Vasquez attempted to assist Officer Campos in gaining control over Hernandez. Hernandez continued to struggle against both officers despite Officer Vasquez giving verbal commands to stop resisting. Officer Vasquez was concerned that Hernandez may have had additional weapons on in his person. He believed that it was likely that he did have some other type of weapon. He was not only concerned for his safety and that of Officer Campos, he was also concerned given the number of people who were in the

area. He was also concerned that some of the subjects that had come out of the houses might be affiliated with Hernandez.

Despite having two officers now attempting to gain control over him, Hernandez continued to resist. Both officers continued to give verbal commands not to resist. Hernandez continued to ignore both officers' commands. Officer Vasquez also relayed to investigators that he noticed Hernandez's tattoos including a "Verdugo" tattoo. Officer Vasquez knows from experience that Verdugo is a large criminal street gang with a history of violence.

Officer Vasquez continued unsuccessfully to gain control over Hernandez's arms. Hernandez continued to keep his arms in the area of his waistband and continued to grunt although the officer could not understand what if anything he was saying. Because Officer Vasquez believed Hernandez was attempting to gain access to a weapon on his person, Officer Vasquez drew his firearm and told Hernandez to get on the ground or he would shoot him. Hernandez ignored the commands and then reached for Officer Vasquez's handgun. While Officer Vasquez felt his wrist being pulled, Hernandez was not able to actually grab the gun.

Hernandez continued to resist and reach into his waistband area. At this point Officer Vasquez felt that Hernandez was going to get whatever was in his waistband area. Officer Vasquez, fearing for his safety and that of Officer Campos, pointed the gun at Hernandez and fired one round into Hernandez's lower back area. The gunshot was effective. Hernandez fell to his knees and he was handcuffed. After a search of Hernandez, no additional weapons were located. Medical aid was requested to respond.

After being handcuffed, Hernandez made a comment about preferring to die than to go back. Officer Vasquez took this to mean that Hernandez had been in jail or prison in the past. When asked why he fled, Hernandez stated that he had been drinking and didn't have a license. Hernandez apologized for the incident.

SUMMARY OF SUSPECT HERNANDEZ INTERVIEW

Suspect Hernandez was interviewed by Detective Bachman and Detective Avila at the jail ward at Arrowhead Regional Medical Center on May 2, 2013. Hernandez spontaneously told the investigators before they initiated questioning that he was wrong for leading the officers on a pursuit but they were wrong for shooting him. Hernandez stated he did not have any weapons when he was shot. Hernandez was read his Miranda warnings and waived them, agreeing to speak with the investigators.

Hernandez stated prior to the pursuit he had been visiting people at different locations

but admitted to drinking two 40 ounce beers and another beer or two. He denied any illegal drug use. Hernandez admitted leading the officers on the pursuit and to knowing that the officers were following him. He also admitted into crashing into the stop sign at the end of the pursuit.

Hernandez denied throwing anything from the car during the pursuit. When confronted with the fact that officers recovered "items" from the location where the officer saw him throw them, Hernandez stated that SBPD officer could have put "the gun" anywhere and suggested the officer planted it. The detectives point out in the report that they only referred to the recovered evidence as "items" and never mentioned a gun yet Hernandez knew a gun was recovered despite the fact that he denied pitching anything.

Hernandez stated that after the car crashed he put his hands up while remaining seated in the gold Honda. According to Hernandez, the two officers pulled him out of the car at gunpoint. He says he stated "You got me" to the officer. He stated that the officers gave him commands but that he couldn't remember specifically what they were.

The officer then yelled at him to get down but he was already on his knees. He says that one of the officers then shot him and kicked him in the face. When asked which officer shot him, he stated, "The one missing a bullet." He wasn't sure which officer shot him. Hernandez denied using his body as leverage and fighting with the officers. Hernandez also denied touching either officer's gun. Hernandez admitted being on probation for being a felon in possession for a firearm. He also admitted being a West Side Verdugo gang member but denied being active.

At the time of the interview the investigators did not see any injuries on Hernandez's face indicating he had been kicked or struck in the face.

EVIDENCE LOCATED ALONG PURSUIT ROUTE

At the location where the officers stated they saw Hernandez throw something from his vehicle, a subject picked up the items. That subject attempted to hide two items; both pouches. One of the pouches contained just under an ounce of methamphetamine. The second item contained a digital scale, packaging material and .32 caliber rounds. A .32 caliber handgun was also located in the grass where the officers reported the items had been thrown out of the vehicle.

CASE PENDING

Felony charges including possession for sale and transportation of a controlled substance, possession of a firearm by an ex-felon, felony evading, resisting arrest and attempting to remove an officer's firearm were filed against Jeffrey Hernandez in case FSB1301815. The case is currently pending in superior court.

STATEMENT OF APPLICABLE LAW

Self-Defense/Defense of Others

It is lawful to use force against another person if a person reasonably believes there was imminent danger of bodily injury to himself or someone else. The person must reasonably believe that the immediate use of force was necessary to defend against that danger. That person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation.

In deciding whether the person's beliefs were reasonable, all the circumstances as they were known to and appeared to that person should be considered as well as what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

CALCRIM 3470.

Self-Defense / Assailed person need not retreat

An assailed person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of bodily injury has passed. This is so even if safety could have been achieved by retreating.

CALCRIM 3470

ANALYSIS

The officers in this case attempted to initiate a legal traffic stop on the suspect Jeffrey Hernandez. Instead of yielding, Hernandez chose to flee the officers. In doing so he put his life, the life of the officers and the lives of innocent citizens at risk. While fleeing from the officers he attempted to destroy evidence by discarding narcotics and a loaded firearm. He further put the community at risk by tossing these items in an area where children could have picked them up. During the pursuit Hernandez ignored traffic control devices and exceeded the speed limit creating a risk to others including the officers. He also demonstrated to the officers a willingness to put his own as well as others' lives at risk in order to evade capture.

The pursuit only came to an end when Hernandez lost control of his vehicle and crashed. Hernandez then chose to resist lawful arrest by fighting with the officers. He

ignored multiple commands by both officers to stop resisting and to get down. He even ignored the request to get down when the officer drew his weapon and told him he would have to shoot him if he didn't stop reaching for the officer's gun. The officer was in justifiable fear not only for his safety but for the safety of his partner and the citizens that were in the area. The officer was fearful that Hernandez was trying to get a hold of a weapon based on his movements and resistance. Even after being told that the officer felt threatened enough to use deadly force, Hernandez still persisted in resisting.

Based on the reasonable fear created by Hernandez resisting and reaching for the officer's weapon and reaching towards his own waistband, the officer was justified in firing his weapon in defense of himself and his partner.

CONCLUSION

For the aforementioned reasons, under the laws of self-defense and defense of others, the shooting by Officer Vasquez was legally justified, and no criminal liability exists on his part.

Respectfully Submitted,

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By _____
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Dated: _____

Reviewed by:

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Approved by:

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