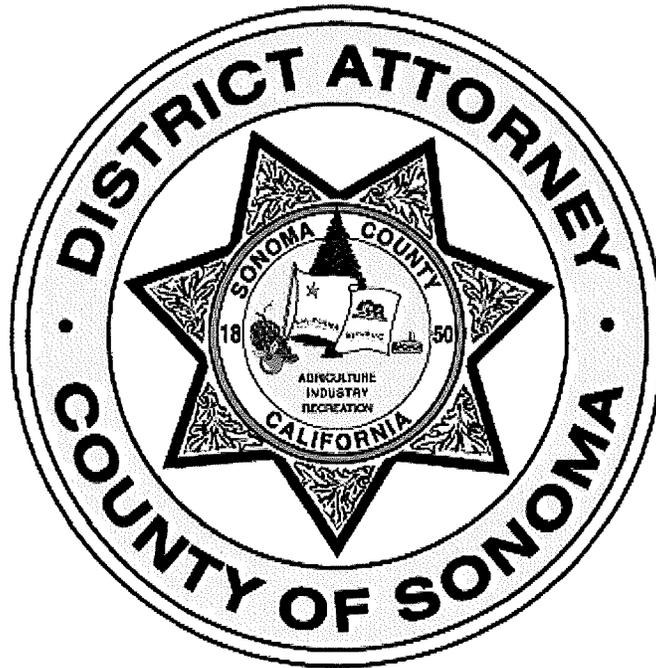


**LAW ENFORCEMENT EMPLOYEE-INVOLVED  
FATAL INCIDENT REPORT**



Employer Agency: Santa Rosa Police Department  
Lead Agency: Sonoma County Sheriff's Department  
Decedent: Hernandez, Roberto  
Date of Incident: May 20, 2015

Report Prepared by:  
SONOMA COUNTY DISTRICT ATTORNEY

RELEASED TO GENERAL PUBLIC

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## I. INTRODUCTION

On May 20, 2015, Roberto Hernandez died as a result of self-inflicted, knife wounds to the throat. Hernandez was 38 years old at the time of his death. The Sonoma County Sheriff's Department Violent Crimes Investigation Unit was notified of the situation at approximately 11:00 pm on May 20, 2015 when Santa Rosa Police Department Chief Schreeder invoked the critical incident protocol. The Sonoma County Sheriff's Department became the lead investigative agency and Detective Jayson Fowler was designated as the lead detective. The Sonoma County District Attorney's Office was also tasked to participate in the investigation.

The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol, an outside law enforcement agency is to investigate officer involved fatalities. Accordingly, members of the Sonoma County Sheriff's Department assumed responsibility for the investigation of this incident. Members of the Sonoma County District Attorney's Office were also assigned to participate in the investigation.

The role of the Sonoma County District Attorney's Office in a law enforcement employee-involved fatal incident is to review the investigation to determine if there exists any criminal liability on the part of the involved parties, including the law enforcement employees; to provide assistance to the investigative agency regarding legal issues; to supplement the investigation when necessary; and when appropriate, to prosecute those persons believed to have violated the criminal law.

Once the investigation is completed, the District Attorney is required to conduct a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreman of the Sonoma County Grand Jury.

The following report has been prepared by the Sonoma County District Attorney. It includes a summary of facts surrounding the death of Roberto Hernandez, statement of applicable law, legal analysis and specific conclusions.

## II. SCOPE OF REVIEW

The sole purpose of this criminal investigation and review is to establish the presence or absence of any criminal liability on the part of any involved party, including the involved law enforcement employees.

## III. STANDARD OF REVIEW

As chief law enforcement officer for Sonoma County, the District Attorney is responsible for reviewing, approving and filing of all criminal cases. The District Attorney's discretion to charge a person with a crime is limited by well-established legal and ethical standards.

The standard to be applied by the District Attorney in filing criminal charges is expressed in a publication of the California District Attorneys Association entitled, *Uniform Crime Charging standards*. It provides:

"The prosecutor should consider the probability of conviction by an

objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.”

Additional restraint on the charging authority is found in *The California Rules of Professional Conduct, Rule 5-110*, which provides that an attorney in government office (this definition includes prosecutors) shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause. The standard for charging a crime is high because the burden of proof required to convict, i.e. proof beyond a reasonable doubt, is the highest burden of proof within the American legal system.

#### IV. SUMMARY OF FACTS

The following is a summary of facts intended to assist the reader in understanding this report and its conclusions. It is not a substitute for the volumes of reports, interviews, and other evidence from which it is derived. It is, however, an accurate summary of what the District Attorney believes the material facts in this case to be.

##### **Background**

Roberto Hernandez (hereafter Hernandez) was born on September 2, 1976. He died on May 20, 2015, as a result of self-inflicted knife wounds to his neck. He was 38 years old at the time of his death. At the time of his death, he was married to Jane Doe #1 (hereafter JD#1) and they shared three children: 15 year-old Jane Doe #2 (hereafter

JD#2), 10 year-old John Doe (hereafter John D#1), and 4 year-old John Doe #2 (hereafter John D#2). The family lived in an apartment in the City of Santa Rosa.

### **Events of May 20, 2015 Prior to 911 Call**

At approximately 6:00 pm Hernandez was washing the family automobile at the apartment where he was observed to be drinking beer. When he went inside the residence at about 8:00 pm, he began accusing JD#1 of cheating on him with one of her coworkers. She denied it, telling him that was untrue and that if he wanted to call the man he would also tell Hernandez that it was untrue. Despite her denial he continued to accuse her of infidelity. He had been falsely accusing her of infidelity for about a year prior to this date, usually when he was intoxicated. Furthermore, he had been physically abusive of JD#1 during the marriage.

At approximately 8:30 pm Hernandez grabbed a knife and began cutting himself on the chest while telling her that he was going to kill himself. JD#1 also became concerned for the safety of herself and her children when she saw him sharpening a knife against another knife.

Hernandez then told their children that JD#1 was going out with another man. JD#1 told him that she was going to call the police if he didn't calm down. He responded by saying that he would kill himself as soon as they entered if she did call them.

Hernandez also turned on all the stove burners which JD#1 turned off. Subsequently, he placed a kitchen knife in the microwave oven and turned it on with the timer set for 32 minutes causing it to spark. JD#1 distracted him and JD#2 turned off

the microwave, took the knife and hid it from her father. JD#1 asked him why he had done that as it could harm them all and he began repeating that his life was over.

JD#1 instructed JD#2 to call 911.

### **The 911 Call**

JD#2 called 911. The call came into Santa Rosa Police Department Dispatch at 10:12 pm. JD#2 told the dispatcher that her parents were arguing and her father was threatening to kill himself. He had done that before. She asked that the police come but not have their sirens activated when they arrived because she thought Hernandez would react badly. JD#2 told the dispatcher that he had been cutting himself on his stomach and chest earlier. She also told the dispatcher that Hernandez had placed a knife in the microwave. She took it out and hid it from him. Her mom was trying to talk to Hernandez. JD#2 was in a bedroom with her two little brothers. In response to that call, officers were directed to go to the Hernandez family apartment.

### **The Events After Police Arrived**

Santa Rosa Police Officers, Luis Pena (hereafter Pena), Eric Ortlinghaus (hereafter Ortlinghaus), and Edward McGinnis (hereafter McGinnis) responded to the dispatch call. They were in full police uniform. Ortlinghaus arrived at 2840 Apple Valley Lane at 10:18 pm, Pena arrived at 10:20 pm, and McGinnis arrived at 10:20 pm immediately after Pena. Pena and Ortlinghaus decided to approach and knock on the door as a result of their concern for the safety of the people inside. JD#1 opened the door in response to the knock. The officers asked where Hernandez was and she signaled to the kitchen area by glancing over her shoulder.

The officers approached and observed Hernandez standing next to the sink holding a beer in his left hand and with his right hand inside the sink. They could hear metal scraping metal coming from within the sink. Hernandez was instructed, in English and Spanish, to show them his hands. He immediately brought his hand out of the sink and he was holding a large butcher knife. It was described as being about 10 inches long with a chrome handle. The officers drew their firearms and instructed Hernandez to drop the knife. Pena then directed JD#1 and the children to stay back. The officers observed that Hernandez had raised the knife and placed it against his throat, putting some pressure in an up and down motion.

By then, McGinnis had entered and was instructed to Tase Hernandez in order to prevent him from hurting himself. As McGinnis drew his Taser and fired, Hernandez increased the cutting pressure. One of the Taser prongs did not make contact with skin and thus it was ineffective. Hernandez continued to inflict damage on himself, never saying anything. He then collapsed but continued to cut at his own throat until he nearly decapitated himself.

The officers had called for medical assistance within 3 minutes of their arrival on scene. Medical assistance arrived but there was nothing that could be done to aid Hernandez and he was pronounced dead at 10:28 pm.

The officers kept JD#1, JD#2, and the two younger brothers in the bedroom and hung a yellow sheet in the entry to the kitchen area so that they would not see Hernandez.

## Autopsy

On May 22, 2015 Dr. A. Jay Chapman performed an External Examination of Roberto Hernandez. An incised wound to the neck as well as superficial incisions and multiple, scattered linear abrasions anterior mid chest were observed. He determined that the probable cause of death was the incised wound to the neck. He described the neck wound as "a 23 cm deep incision that begins in the coronal plane of the mid left ear just inferior to the angle of the left mandible and continues somewhat inferiorly and to the right to end in right mid anterolateral neck." He also noted that "[t]he depths of this wound extensively involve the major musculature of the left neck, including the major vascular structures, the superior most aspect of the larynx, and approximately one half of the esophagus." A test of Hernandez's blood revealed that he was a .21 blood alcohol level at the time of his death.

## V. STATEMENT OF THE LAW

A discussion of legal standards is not applicable to this report, as the cause of death was a self-inflicted incise wound to the neck. No lethal force was applied to Hernandez by the Santa Rosa Police officers, nor did they engage in any conduct that proximately caused Mr. Hernandez' death.

## VI. CONCLUSION

Based upon the statements made by JD#1, JD#2, and the officers it appeared that Roberto Hernandez intended to end his life because he believed his wife was cheating on him. JD#1, JD#2 and, in fact, the officers all did what they could to prevent

that from happening. JD#1 tried to talk to him. JD#2 removed and hid a knife as well as called 911 for help. Officers Pena, Ortlinghaus, and McGinnis tried to get him to drop the knife and to stop cutting himself including administering the Taser, which proved ineffective. However, nothing could stop Hernandez from killing himself. The physical evidence from the autopsy, physical evidence at the scene and witness accounts are consistent with that taking place. Thus, there was no use of lethal force by any of the involved officers that is the basis for any criminal charges. I would add that the officers should be commended for keeping JD#1 and the children safe as well as protecting them from seeing Hernandez after he cut his throat.



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JILL R. RAVITCH  
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