

Lake County Sheriff's Office Shooting Summary Detailing Events That Took Place on September 30th, 2020

On 9-30-20, the South Dakota Division of Criminal Investigation (DCI) was contacted by the Lake County Sheriff's Office and notified of an officer-involved shooting that had occurred near the intersection of SD Hwy 34 and Washington Avenue South in the city of Madison, Lake County, South Dakota. The shooting resulted in the suspect, Benjamin Hernandez, being shot one (1) time. Hernandez survived his injuries. A Lake County Sheriff's Deputy was the officer involved in the shooting. The following is a synopsis of the events that occurred and the investigation that was conducted by the DCI.

Synopsis

On 9-30-20 at about 11:30 AM, Lake County Central Communications received a call from a female identified as the grandmother of Benjamin Hernandez. Hernandez's grandmother reported that Hernandez entered her home, grabbed a shotgun, and left the residence. Hernandez's grandmother reported that Hernandez had a history of suicide attempts and she was concerned about his welfare.

At about 11:35 AM, Lake County Dispatch received a call from a female identified as the mother of Benjamin Hernandez. The caller reported she was with Hernandez in a silver vehicle on the east side of a convenience store in Madison, SD. Hernandez's mother reported she entered the store and went into the bathroom. Ben Hernandez was still in the vehicle, alone, armed with a shotgun.

Madison Police and Lake County Sheriff's Deputies arrived at the convenience store located near 500 10th Street SE in Madison, Lake County SD. Officers located a silver passenger vehicle parked on the east side of the convenience store. Officers parked their marked patrol vehicles a short distance away from the silver passenger vehicle, forming a perimeter and securing the area. Hernandez was found alone in the front passenger seat of the silver Kia Forte passenger vehicle. Officers established communication with Hernandez. DCI Agents were contacted for assistance with negotiations.

The Madison Police Chief reported that two counselors from Community Counseling Services arrived as well and had been in telephone contact with Hernandez. During the communication with Hernandez, officers and counselors repeatedly commanded Hernandez to drop the gun and exit the vehicle. Hernandez stated that he had the loaded shotgun under his shirt with the muzzle under his chin and his toe on the trigger.

DCI Agents arrived on scene and began negotiations with Hernandez who remained inside his vehicle. During this time, officers from the Lake County Sheriff's Office and Madison Police Department continued to secure the scene from approximately 56 feet from Hernandez's vehicle.

During negotiations, Hernandez made numerous threats to kill himself and shoot officers. He also threatened to point the shotgun at officers, saying they would have to shoot him.

Hernandez was observed placing a wallet in his hand and simulated that he was holding a handgun. Hernandez also placed an object (possibly a stocking hat) over his hand and pointed at law enforcement.

After several attempts to compel Hernandez to surrender and disarm himself, a Madison Police Officer fired two less than lethal rounds at Hernandez. One round struck the rear passenger door of the Kia and one round struck Hernandez near his pelvis. After the less than lethal rounds were deployed, Hernandez remained in the vehicle armed with the shotgun. Hernandez pointed the muzzle of the shotgun toward officers with his finger on the trigger.

At about 2:25 PM, a single round was fired by a Lake County Sheriff's Deputy. The Deputy was positioned near his duty vehicle when the Deputy discharged their weapon. This round was fired in a southwest direction from a patrol rifle at a distance of 56 feet. The single round struck Hernandez in the left side of his chest. After approximately 30 seconds, Hernandez dropped the shotgun out of the passenger door. Officers were able to remove Hernandez from the vehicle and administer first aid. Hernandez was transported by ambulance to the Madison hospital, and later flown to Sanford Hospital in Sioux Falls. Hernandez sustained non-life-threatening injuries.

A DCI Agent documented the Lake County Deputy Sheriff was wearing their department issued uniform. The Deputy's uniform, weapons, and magazines were secured, documented, and inventoried. The inventory showed the following:

- One FN15 .223 Patrol Rifle with one live round from the chamber and a magazine containing 24 live rounds.
- One Glock 45 handgun with one live round in the chamber and a magazine with 17 live rounds.
- Deputy's remaining two handgun magazines; each containing 17 live rounds of ammunition.
- Lake County Deputy Sheriff's uniform and ballistic vest.

Review of video and dispatch logs

DCI reviewed numerous video/audio recordings of the incident. These videos include officers' body cameras, dash cameras, and a bystander video. The videos were captured from multiple vantage points.

The DCI was provided a video from a bystander that captured the moments before, during and after the Deputy fired their patrol weapon. The video shows Hernandez seated in the passenger seat of the Kia Forte. The passenger door of the vehicle is ajar. There are numerous law enforcement vehicles in the parking lot. The video clearly shows Hernandez point the shotgun barrel outside the passenger door in the direction of three Lake County Deputies and one Madison Police Officer. The law enforcement officers were located near their patrol vehicles approximately 50 feet north and east of Hernandez.

Law Enforcement Officers instructed Hernandez to drop the weapon multiple times. Hernandez refused to comply with their commands. Hernandez continued to point the shotgun in the direction of the four law enforcement officers. The video shows Hernandez pointing the shotgun in the direction of the Deputy just prior to the Deputy firing their duty weapon.

Hernandez continued to hold the shotgun for approximately 30 seconds after being struck by the Deputy's round. Law enforcement instructed Hernandez to "drop the gun". Hernandez placed his leg outside of the vehicle and eventually dropped the shotgun out of the vehicle and onto the ground.

Law enforcement officers approached the vehicle and moved the shotgun to a safe distance. Hernandez was escorted out of the vehicle and placed on the ground. Hernandez was immediately treated for his injuries and loaded into a waiting ambulance.

Dispatch logs and audio were reviewed and found to be consistent with events documented on video and the Deputy's statements.

Shooting Scene Investigation and Interviews

Based on DCI interviews with the Deputy Sheriff, responding officers, other witnesses, and the scene investigation, the following information was gathered during this investigation.

The incident occurred in the east parking lot of 500 SE 10th Street, Madison, SD. At the time of the shooting, Benjamin Hernandez was seated in the front passenger seat of a gray Kia Forte (SD 43U672). The Kia Forte was parked on the east side of a convenience store facing west. The vehicle had evident bullet and projectile damage on the passenger side and radio console. To the northeast and behind the Kia Forte were two white colored law enforcement vehicles. Parked and faced in a northwest to northeast direction was a Lake County Sheriff's vehicle and directly next to it, facing in a northeast to southeast direction, was a Madison Police Department vehicle.

On the exterior of the rear passenger door of the silver Kia Forte was a penetrating bullet hole defect as well as a larger ricochet impact defect. The large ricochet impact on the rear passenger door was caused by the less lethal projectile that was fired prior to the Deputy discharging their patrol rifle. The bullet defect was consistent with a gunshot fired from the location of the parked law enforcement vehicles, Lake County Sheriff's Office vehicle and Madison Police Department vehicle. The penetrating bullet hole defect on the rear passenger door was consistent with a bullet entrance defect that perforated the exterior sheet metal layer and traveled to the interior of the door. The bullet/bullet fragment perforated the rear passenger door and continued onward toward the front compartment of the vehicle.

The interior rear passenger door panel was removed to gain access to the interior of the door. Examination of the door determined that the defects were consistent with a single fired bullet that perforated the rear passenger door after it penetrated the door, struck the interior door structure support bar (ricochet) and continued to perforate the window motor/component housing and interior rear passenger door panel.

After perforating the rear passenger door, the bullet/bullet fragment continued onward toward the front compartment of the vehicle. With the use of trajectory equipment, it was determined that the bullet pathway was consistent with a shot fired from the area of the Lake County Deputy that fired their weapon.

The scene was photographed, mapped, and processed for evidence. Numerous items were collected as evidence to include:

- One (1) fired .223 caliber rifle casing. This was determined to have been fired from the Deputy's patrol rifle.

- One (1) FN15 .223 caliber patrol rifle with an electronic optic. This was determined to be the Deputy's patrol rifle.
- One (1) Remington Arms 12-gauge pump shotgun with a wooden stock and forearm. The shotgun was loaded with an unfired shotgun shell in the chamber.
- Two (2) fired less than lethal shotgun rounds. They had the same markings as Item #3A had. These rounds were said to have been fired by a Madison PD Officer.

Agents located and collected a liquor bottle that was on the front passenger floorboard. The liquor bottle was found to be a 1-liter bottle of Ron Diaz Spiced Rum with no lid. A very small amount of liquor remained.

On 9-30-20, DCI interviewed the Deputy Sheriff that discharged their weapon during the incident. The Minnehaha County Sheriff's Office assisted by interviewing the DCI Agents that were present during the incident. The Deputy described how they were informed there was a situation occurring at a convenience store in Madison, SD. Lake County Dispatch indicated there was a suicidal male that was armed with a shotgun at the convenience store.

The Deputy responded to the scene. Upon arrival, the Deputy observed numerous law enforcement officers on scene. The Deputy pulled their patrol vehicle into the west driveway where they parked to block the driveway on Highway 34. The Deputy spoke to a female that was seated on the sidewalk near the convenience store. The female was identified as Benjamin Hernandez's mother. Hernandez's mother told the Deputy that her son wanted to die because he was having relationship problems with a female. The Deputy was told that Hernandez was inside a silver vehicle and armed with a shotgun.

The Deputy and additional law enforcement cleared the area of bystanders. The Deputy, armed with their department issued patrol rifle, walked to a position near another Lake County Sheriff's Deputy. The Deputy positioned a marked Lake County Sheriff's vehicle near a Madison PD patrol vehicle in the convenience store parking lot. The position allowed the Deputy to observe the silver vehicle that Benjamin Hernandez occupied. The Deputy stayed at this location for the duration of the incident.

The Deputy was able to see Hernandez in the front seat of the silver vehicle. Hernandez was moving around the vehicle but was primarily seated in the front passenger seat. The Deputy recalled observing Hernandez pointing a wallet in the direction of the Deputy and other law enforcement officers. Hernandez placed the wallet in his hand and simulated that he was holding a handgun.

The Deputy positioned themselves on hood of the patrol vehicle with their patrol rifle. There were two additional Lake County deputy Sheriffs and one Madison Police Officer positioned near the Deputy. Hernandez was placing his hand against his head and acting like he was shooting himself in the head. The Deputy stated that Hernandez continued this activity for a long period of time. Throughout the standoff, the Deputy observed Hernandez making furtive movements and opening the passenger door numerous times.

The Deputy observed a red item that they believed to be a shotgun shell in the hand of Hernandez. The Deputy recalled hearing the sound of the shotgun cycling, which indicated that Hernandez was loading a weapon. Hernandez reclined the passenger seat and opened the

passenger door. Hernandez placed an object (possibly a stocking hat) over his hand and was pointing his hand at law enforcement.

The Deputy recalled Hernandez opening the passenger door to the silver vehicle and presenting a shotgun. The Deputy described how Hernandez began pointing/aiming the shotgun at the Deputy and the three other officers. The Deputy verbalized to other officers that Hernandez was pointing the weapon in their direction.

Hernandez placed both hands on the shotgun and pointed the weapon in a "safe" direction outside the passenger door. Hernandez then placed his hand on the trigger guard and pointed the barrel in the direction of the Deputy and the three additional law enforcement officers.

The Deputy observed Hernandez's finger on the trigger and the barrel of the shotgun was pointed in his direction. The Deputy stated, "When he pointed it at us, I shot." The Deputy recalled seeing the barrel pointed in his direction through his patrol rifle optic just prior to discharging his weapon.

The Deputy fired one round from their patrol rifle in the direction of Hernandez's body. The Deputy stated that Hernandez leaned back, and the shotgun fell outside the passenger door of the vehicle.

The Deputy and additional law enforcement officers approached the vehicle and advised Hernandez to show his hands. Hernandez was taken into custody and immediately treated for his injuries.

On 10-2-20, DCI attempted to meet with Hernandez at the hospital; however, he refused to give a statement.

South Dakota Forensic Laboratory Testing

The .223 caliber shell casing located on scene was determined to be fired from the Deputy's patrol rifle. Ballistic examination was consistent with the Deputy's statement. The shotgun recovered from Hernandez was tested and determined to be operational.

Members of the South Dakota Forensic Laboratory conducted a shooting reconstruction at the scene. Forensic Specialists determined that the bullet trajectory was consistent with a shot fired from the area of the Lake County Deputy that discharged their weapon.

Medical Reports and Criminal History

Benjamin Hernandez was admitted to Sanford Hospital on 9-30-2020 at approximately 3:55 PM via Sanford AirMed. Hernandez sustained a single gunshot wound to the upper left chest. The wound was found to not penetrate the thoracic cavity. Hernandez also had a large area of ecchymosis (bruising) on the right lateral hip, but no other injuries were identified.

Hernandez was discharged on 10-2-20 and recovered appropriately.

Blood and urine samples were taken from Benjamin Hernandez after the shooting incident. The toxicology report from the SD Health Laboratory indicated a blood alcohol level of approximately .243 at the time the sample was collected.

Blood and urine samples were taken from the Lake County Deputy Sheriff after the shooting. Tests of these samples were negative for both drugs and alcohol.

DCI conducted a criminal history check on Benjamin Hernandez. Hernandez was arrested and convicted for crimes including: Possession of a Controlled Substance, Possession of Marijuana, Disorderly Conduct and Simple Assault.

Investigation Results

Based on the totality of the circumstances, a reasonable officer present at the scene utilized deadly force in a situation that was tense, uncertain, and rapidly evolving. Benjamin Hernandez had the means and opportunity to cause serious bodily injury and was a clear and present danger to the Lake County Deputy Sheriff and other law enforcement at the time.

It is the conclusion of this report and the Attorney General that the Lake County Deputy Sheriff was justified in firing their weapon and using lethal force.

Based on the investigation conducted by the DCI, the crime scene reconstruction, evidence collected at the scene, witness statements, and statements made by the Deputy Sheriff, all were found to be consistent with the described events that occurred on 9-30-20 in Lake County, SD.