

Non-Fatal Officer Involved Shooting of Edward Rubio
Los Angeles Police Department

Officer Michael Romero, #38768

J.S.I.D. File #21-0300



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

December 20, 2023

MEMORANDUM

TO: CAPTAIN OMAR BAZULTO
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
Los Angeles, California 90012

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Edward Rubio
J.S.I.D. File #21-0300
L.A.P.D. File #F038-21

DATE: December 20, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 20, 2021, non-fatal shooting of Edward Rubio by Los Angeles Police Department (LAPD) Officer Michael Romero. We have concluded that Officer Romero reasonably believed his use of deadly force was necessary to defend against an imminent deadly threat.

The District Attorney's Command Center was notified of this shooting on July 20, 2021, at approximately 11:32 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant Damian Gutierrez.

The following analysis is based on body worn camera video (BWV), witness statements including the compelled statements of law enforcement, preliminary hearing testimony, 911 calls, radio transmissions, photographs and reports. The compelled statement of Officer Romero was not considered in this analysis. Materials were received from the LAPD Force Investigation Division on March 20, 2023, and October 25, 2023.

INTRODUCTION

On July 20, 2021, Edward Rubio was 52-years old, drinking vodka, and was depressed and suicidal. Rubio decided to provoke officers to kill him.

Rubio made two attempts to make officers shoot him. When police first arrived at the apartment, Rubio charged the door and pulled a pair of black metal cutting shears from his waistband area to simulate grabbing a gun. Rubio raised the shears in his right hand and placed his left hand behind the handle. When he reached the door Rubio made a swiping motion and dropped the cutting shears. Romero and Laguna backed up in the hallway and Rubio slammed the door shut.

Shortly thereafter, Rubio exited the apartment holding a kitchen knife with a six-and-a-half-inch blade, raised the knife up to his shoulder with his right hand, placed his left hand behind the base of the handle and advanced to within six feet of the officers. Romero fired his duty weapon three times and Laguna simultaneously deployed his Taser. Rubio received one gunshot wound to his right hip, Taser probes to his left arm and left flank, and one five-second Taser cycle activation. Rubio survived and was charged with one felony count of Penal Code section 245(c) in Los Angeles County Superior Court case number BA497232. The court granted mental health diversion pursuant to Penal Code section 1001.36(b) on March 2, 2022.

FACTUAL ANALYSIS

EDWARD RUBIO'S 911 CALL

Rubio called 911 on July 20, 2021, at approximately 10:14 pm. Rubio told the operator he was “about to kill fucking everybody in this house.” Rubio said he was doing it because he did not want to live any more, and that he would shoot the police that respond. Rubio gave his street address and apartment number without specifying which was the street address. The radio call directed Officers Romero and Laguna using the apartment number as the street address. Romero and Laguna responded and found the address was not a valid location. Rubio did not respond to a callback to clarify the address.

██████████ 911 CALL

Approximately 27 minutes later at 10:41 p.m., ██████████ called 911 and said ██████████, Rubio, was released from the hospital the day before, was being very aggressive, and she wanted somebody to take Rubio back to the hospital for his drinking problem. ██████████ said Rubio was under the influence, seeing things and she was afraid of him. ██████████ said that Rubio did not have any weapons. A radio call for a “390 Man” was generated. A “390 Man” indicates a person is intoxicated.

BODY WORN CAMERA VIDEO

Both Romero and Laguna recorded the entire incident through their BWV. They arrive at the apartment building approximately five minutes after ██████████ 911 call. Both officers are in full uniform.

The video shows ██████████ meet the officers at a stairwell exit that leads up to the apartment. Before the officers enter the building, ██████████ speaks to Laguna in Spanish. Laguna then relays to Romero in English that Rubio was possibly drunk, having delusional thoughts, was in the hospital the day before because of drinking, and confirms that Rubio had called the police. ██████████ also tells them Rubio did not have any weapons.

██████████ leads the way to the apartment through a narrow hallway. ██████████ enters the apartment and holds the door open for the officers. Laguna shines his flashlight into the apartment and steps through the doorway around 10:49 p.m.

Rubio is seated on a couch at the opposite end of the living room. Laguna says, “Hey, what’s up Edward?” Rubio whispers, “Nothing.” Laguna takes a step forward and says, “How are you doing?” Rubio immediately stands and shouts, “Get the fuck out of my house!” Rubio lifts his shirt, reaches toward his waistband, accelerates toward Laguna, shouts, “Get the fuck out! Get out!” and pulls out a pair of black metal cutting shears.



Figure 1: Still image from Romero's BWV shows Rubio advance with the cutting shears.



Figure 2: Still image from Romero's BWV shows Rubio hold the cutting shears with both hands.

Laguna backs-up into the hallway to the right and draws his firearm. Romero, who was standing behind Laguna, still faces Rubio in the apartment. Romero takes a step back and draws his firearm as Rubio advances. Romero commands Rubio to, “Drop whatever you have right now! Drop whatever you have!” Rubio takes a step back and says, “No, No, I’m not.” Rubio raises the cutting shears to his shoulder in his right hand with his left hand behind the handle, advances

toward Romero, and shouts, “Fuck you!” Rubio advances to a step behind the door frame inside the apartment as Romero backs-up down the left side of the hallway. As Rubio reaches the entryway Rubio makes a swiping motion with the cutting shears and drops them. Rubio stays in the apartment. Romero backs-up a few steps down the hallway to the left and broadcasts a back-up request for a “415 man with a knife.” Laguna advises Romero that Rubio “dropped it.” Laguna then calls out to Rubio, “Edward. Hey, relax bro, we’re not gonna hurt you man.”



Figure 3: Still image from Laguna’s BWV shows Rubio swipe the cutting shears down.

Rubio slams the door shut. Laguna repositions next to Romero to the left of the apartment door. Laguna holsters his firearm and draws his Taser.

The BWV shows the apartment door open from the inside and [REDACTED] is heard telling Rubio he has to go to the doctor. Rubio replies that he doesn’t “need to go do shit” and the door shuts again. From the hallway Romero says, “Hey Edward, just come out so we can talk to you, man. You’re not even in trouble yet.”

[REDACTED] exits the apartment and stands at the doorway. [REDACTED] tells the officers, “He says he wants to get killed.”

Both officers direct [REDACTED] to come to them. As [REDACTED] reaches the officers Rubio exits the apartment holding a kitchen knife to his side in his right hand. Rubio clangs the knife against the metal doorframe twice as he turns toward the officers.



Figure 4: Still image from Romero's BWV shows Rubio enter the hallway with the knife.

As Rubio advances Romero commands, "Don't do it! Don't do it!" Rubio ignores the commands and continues to walk toward the officers who begin to back away.



Figure 5: Still image from Romero's BWV shows Rubio advance on the officers and raise the knife. On the right Laguna holds his green Taser with its red laser sight on Rubio's chest. The top left shows Romero hold his firearm pointed at Rubio. [REDACTED] is against the wall on the right.

When Rubio is approximately six feet from the officers Rubio raises the knife up to his right shoulder and puts his left hand behind the handle. Both officers fire their weapons simultaneously. Romero shoots three times in rapid succession and strikes Rubio once in the right hip. Laguna deploys his Taser. Taser probes strike Rubio in his left arm and left flank and trigger an automatic five second electrical impulse cycle.



Figure 6: Still image from Romero's BWV shows Rubio raise the knife into an attack stance as the Taser probes make contact. The red dot is the Taser laser sight for the top Taser probe. The white dot under Rubio's left elbow is the lower Taser probe attached to Rubio's left flank.

Rubio falls forward and onto his right side. When the Taser cycle finishes Rubio throws the knife toward his feet. The total time from when Rubio exits the apartment to when Romero fires his third round is less than three seconds.



Figure 7: Still image from Romero's BWV shows Rubio's knife near his feet.

While checking Rubio for injuries, Laguna asks Rubio if Rubio is hit and Rubio replies, "Am I hit? Fuck, I hope so!"

Rubio was taken to the hospital for treatment [REDACTED].

Before turning off their BWV to make their public safety statements, Romero and Laguna can be heard explaining this was the location of the first 911 call.

COMPELLED STATEMENT OF OFFICER JUAN LAGUNA

Laguna told investigators that while responding to the second 911 call he and Romero realized the address of the call was only two blocks away from the first 911 call and that the two radio calls were possibly related.

Laguna told investigators that the first 911 caller said he (Rubio) was “going to shoot officers if we arrived at his house” and, “That’s the comments that really stuck with me.”

Laguna did not see what type of weapon Rubio initially pulled from his waistband area, but told investigators the movement Rubio made is usually indicative of somebody arming themselves with a weapon like a handgun or knife.

After Rubio slammed the door shut, Laguna tactically redeployed to Romero’s location to prevent a crossfire situation. Laguna described the hallway as “small quarters” and “very tight.” Laguna told investigators the hallway was “maybe a four-foot-wide corridor” with “nowhere to move there.”

Laguna said Rubio exited the apartment and “within a second or two was right on top of us.” Laguna believed Rubio was “an immediate threat.” Laguna told investigators he was “scared.” Laguna believed he and Romero were about to be stabbed and Laguna deployed his Taser.

PRELIMINARY HEARING TESTIMONY OF OFFICER MICHAEL ROMERO

Rubio was charged in felony Complaint BA497232 with one count of Penal Code section 245(c) for assaulting officer Romero. On September 2, 2021, Rubio was held to answer in Department 38 of the Clara Shortridge Foltz Criminal Justice Center. Romero testified at the preliminary hearing. Romero was the only witness called to testify.

Romero testified that during the initial encounter, Rubio pulled a metal object from his right front pants pocket that Romero believed to be a knife. Rubio walked toward them, took a swipe from top to bottom and slammed the door.

Romero testified that during the second encounter [REDACTED] exited the apartment and was walking toward the officers. Rubio then exited the apartment and clanged a kitchen knife against the metal door frame. Romero then described what happened next as the officers and Rubio were approximately 12 to 15 feet away from each other:

“He made visual eye contact with me. He then raised the knife with his right hand above his right shoulder, placed his left hand behind the grip of the knife, and charged in my direction.”

Romero continued:

“I told him, "Don't do it. Don't do it." and he ran towards me with knife in hand.”

Romero testified that as Rubio came to within five to six feet of the officers, Romero fired his service weapon and Laguna simultaneously fired his Taser.

Romero described Rubio’s weapon as a kitchen knife with a six-inch blade and three-to-four-inch handle.

EDWARD RUBIO’S STATEMENT TO OFFICER LAGUNA

Rubio was placed in handcuffs and on his left side. While waiting for paramedics BWV captures Rubio tell Laguna, “I wanted to die tonight.”

EDWARD RUBIO’S STATEMENT IN AMBULANCE

Rubio was transported to Los Angeles County+University of Southern California Medical Center for treatment. Officer Christopher Gonzalez rode in the ambulance. Gonzalez’s BWV captured the following conversation between Firefighter Paramedic Mikel Mattison and Rubio.

Rubio: I just wanted to commit suicide.
Mattison: Oh, you were trying to hurt yourself?
Rubio: Yes.
Mattison: Okay.
Rubio: I wanted to die.
Mattison: You wanted to die?
Rubio: I wanted my mom [unintelligible] forever. Collect the suicide money and...

EDWARD RUBIO’S STATEMENT TO INVESTIGATORS IN HOSPITAL

On July 21, 2021, around 2:00 a.m., Detective Joseph Kirby, Serial No. 36857 and Detective Stephanie Carrillo, Serial No. 35791, interviewed Rubio in the hospital. The interview was audio recorded. Rubio waived his Miranda rights and agreed to speak with them. Rubio told investigators, “But I wanted to commit suicide. I wanted the cop to shoot me and kill me.” Rubio explained that he was on disability, and his life had been unsuccessful. Additionally, Rubio said that he would soon be homeless. Rubio said he had drunk a pint of vodka and considers himself an alcoholic.

Rubio told investigators that he called the cops and planned to “come out with some scissors or a knife or whatever and they kill me.” Rubio explained that the cutting shears were meant to look like a “make-shift gun.” Rubio had the cutting shears in his pants, “Because I wanted them to think I had a gun like a dumb ass.” When the first attempt did not work and the police did not kill him, Rubio then took a knife from the kitchen because Rubio wanted the police to shoot and

kill him. Rubio estimated the final distance between himself and the officers to be five to six feet.

Rubio stated that both officers used a Taser and that Rubio felt two separate Taser activations. Rubio said he was shot while on the ground.

Rubio told investigators that, “I don’t see anything they did wrong. Okay, I really don’t. I think they just did their job.” Rubio additionally asked investigators to do him a favor and tell Romero and Laguna, “There is nothing they did wrong.”

PHYSICAL EVIDENCE

Located at scene was one stainless steel kitchen knife with a six-and-a-half-inch blade, measuring 11.75 inches overall; three discharged .40 caliber casings; three unknown caliber fired rounds; one discharged Taser cartridge with probe wires; and one Taser probe.



Figure 8: LAPD photograph of Rubio's knife.



Figure 9: LAPD photograph of Rubio's vodka bottle.

██████ directed investigators to a 1.75-liter bottle of Taaka vodka in the apartment trash and confirmed it was the bottle Rubio had been drinking.

Medical records indicate Rubio was treated for one gunshot wound to the right hip as a “penetrating injury to the peripheral right gluteal soft tissues.”

THE LAW

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal. 4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal. 4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal. 4th 1073, 1082; *see also*, CALCRIM No. 505.

A peace officer is justified in using deadly force when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

“A threat of death or serious bodily injury is ‘imminent’ when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer’s decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4). Moreover, “[a] peace officer who makes or attempts to make an arrest need not retreat, or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested.” Penal Code section 835a(d).

Additionally, when the use of deadly force appears to be reasonable to defend oneself or others, *actual danger does not need to have actually existed*. CALCRIM No. 505, 3470.

ANALYSIS

Both the available circumstantial and direct evidence support the conclusion that Romero reasonably believed that deadly force was necessary to defend against an imminent threat of death or great bodily injury to himself or Officer Laguna.

Laguna told investigators that Rubio was on top of them within two seconds. The BWV also indicates the time from when Romero clanged the knife to the third round fired by Romero took place within three seconds.

This was a fast moving and dynamic situation within a confined space. Laguna told investigators he was scared he and Romero would be stabbed. During the preliminary hearing Romero was not asked how he felt as Rubio advanced with the knife, but it is reasonable to infer Romero also feared he and Laguna would be stabbed.

Romero knew of Rubio’s threat to shoot responding officers as Rubio advanced with the knife.

Also, as Rubio made direct eye contact with Romero, Rubio put his left hand behind the grip of the knife which can reasonably be interpreted to indicate Rubio intended not just to stab Romero, but to “drive” the knife into Romero using his left hand as a make-shift hilt.

Even if Rubio never intended to cause actual physical harm to anyone else, neither Romero nor Laguna had any way to know that and Rubio’s actions communicated only an intent to kill or injure. It is also reasonable to infer that Romero believed Rubio was carrying out his threat to kill responding officers as he realized Rubio had made the first 911 call. Rubio’s prior threat to kill and actual actions would lead a reasonable police officer to conclude there was an immediate threat to their life.

Romero did not shoot until Rubio raised the knife up in an attack stance. Even as Romero backed up to try to create distance, Rubio made direct eye contact and continued to close the distance. Rubio ignored Romero’s commands, as well as the firearm and Taser pointed directly at him. Romero was in a dynamic, fast-moving situation that took place in less than three seconds. The totality of evidence supports a reasonable belief by Romero that the use of deadly force was necessary within the meaning of Penal Code Section 835a(c)(1)(A) to defend against the immediate threat of death or serious bodily injury posed by Rubio, who advanced to within six feet of Romero and Laguna with a raised six-and-a-half-inch blade inside a narrow hallway that provided no cover or escape for the officers.

Finally, Rubio’s statement that he was tased twice and then shot while on the ground is contradicted by the BWV.

CONCLUSION

For the foregoing reasons, we find that Officer Romero reasonably believed his use of deadly force was necessary to defend against an imminent threat of death or serious bodily injury.