

**Officer Involved Shooting of Jose Romero
Long Beach Police Department**

Officer Gerrit Dejongh #5954

Officer Michael Hynes #6290

J.S.I.D. File #16-0450



JACKIE LACEY

District Attorney

Justice System Integrity Division

November 1, 2017

MEMORANDUM

TO: CHIEF ROBERT G. LUNA
Long Beach Police Department
400 West Broadway
Long Beach, California 90802

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

SUBJECT: Officer Involved Shooting of Jose Romero
J.S.I.D. File #16-0450
L.B.P.D. File #16-56538

DATE: November 1, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 4, 2016, fatal shooting of Jose Romero by Long Beach Police Department (LBPd) Officers Gerrit Dejongh and Michael Hynes. It is our conclusion that Officer Dejongh acted in lawful self-defense and that Officer Michael Hynes acted in the lawful defense of another.

The District Attorney's Command Center was notified of the shooting on September 5, 2016, at approximately 1:30 a.m. The District Attorney Response Team (DART) responded and was given a briefing and a walk-through of the scene.

The following analysis is based on investigative materials by the LBPd Homicide Division.

INTRODUCTION

On Sunday, September 4, 2016, at approximately 9:14 p.m., Jose Romero, a United States Army veteran suffering from post-traumatic stress disorder, called 9-1-1 and told the dispatcher that he was going to "commit suicide by cop." Romero confirmed that he was at [REDACTED] Obispo Street, Apartment A, and told the dispatcher he was going to come out of his apartment "running." Romero further told the dispatcher that he had a gun in his hand and that he no longer wanted to live.

Romero remained on the phone with the 9-1-1 dispatcher and gave her several biographical details about himself as she offered to get him help and tried to dissuade him from hurting himself. Romero again told the dispatcher that he wanted the police to shoot him and that he wanted to commit "suicide by cop." As the conversation came to a close, Romero claimed he was no longer in his apartment and was outside hiding between some cars. Romero finished the call by refusing to tell the dispatcher his exact location and then hung up.¹

¹ According to LBPd dispatch recordings, Romero initially called 9-1-1 on a landline.

Based on the information provided by Romero during this call, the LBP Emergency Communications broadcast a request for units to immediately respond to the area of 1601 Obispo Street.

Romero exited his apartment with a cell phone and a knife and began to pace up and down Obispo Street. Romero did not have a handgun as he had claimed.

At approximately 9:16 p.m., Sergeant Jose Flores responded to the request for units and established a command post on Pacific Coast Highway and Obispo Street. Flores, who feared that Romero might ambush LBP officers to provoke a deadly response, directed several units responding to [REDACTED] Obispo Street to first stage at the command post in order to organize a safe approach to Romero's location and to devise a tactical plan for contacting him and taking him into custody.

Flores also requested help from an LBP air unit. FOX2, a helicopter manned by Officers Eric Mifflin and Andrew Vandholt, was dispatched to the area of [REDACTED] Obispo Street in order to monitor Romero's location and to determine whether he was armed. Several other LBP officers also responded to the call and were directed to establish perimeter positions around 1601 Obispo Street.

FOX2 Officers Mifflin and Vandholt spotted Romero and relayed their observations to officers on the ground. Mifflin notified communications division that: 1) Romero had a shiny metal object resembling a knife, or possibly a revolver, in his left hand; 2) Romero had a cell phone in his right hand; and 3) Romero's neighbors were coming out of their residences to watch what was occurring. In addition, Mifflin alerted officers on the ground that an outdoor party with a childrens' "bounce house" was being held at a location close to 1601 Obispo Street. FOX2 continued to circle the area, track Romero and provide updates to the officers on the ground. Romero continued to roam the area and appeared to be making calls on his cell phone.

At approximately 9:52 p.m., Officer Gerrit Dejongh responded to the call involving Romero. Dejongh parked his car at Obispo Street and 15th Street to block off northbound traffic. He then walked north towards Officers Sean Hunt and Michael Hynes, who were already stationed at the intersection of Obispo and Ransom Streets, approximately one half block south of [REDACTED] Obispo Street.

From this vantage point, Dejongh could clearly see Romero was out on the street, armed with an approximately 12-inch long knife, pacing about. Dejongh, along with Hynes and Hunt, stayed posted in the area to monitor Romero, protect citizens and to order vehicular traffic off the street. Each of the three officers stayed as far away from Romero as possible while keeping him within their sight.

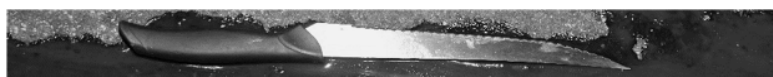


Photo of the Knife Used by Romero

Romero walked towards the three officers several times as they stood on the east side of Obispo Street, and then walked back towards his apartment. Whenever Romero approached, Hunt

repeatedly ordered him to drop the knife he was holding.² Romero did not respond and did not comply with Hunt's orders, but instead continued pacing on Obispo Street. Romero also appeared to make calls on a cell phone he was holding in his hand.

At approximately 10:13 p.m., Romero unexpectedly ran into the courtyard of his apartment complex at [REDACTED] Obispo Street. FOX2 lost sight of Romero due to the poor lighting in the complex courtyard.³ Hunt, Dejongh and Hynes ran north on the east side of Obispo Street to see if they could spot Romero but did not see him. Dejongh, Hunt and Hynes moved to the sidewalk located between [REDACTED] and [REDACTED] Obispo Street in order to maintain a view of the courtyard at [REDACTED] Obispo Street.

A few minutes later, Hunt spotted Romero as he exited his apartment. All three officers watched as Romero walked onto Obispo Street holding his knife with both hands in front of him as if it were a firearm. Romero walked quickly towards Hunt, Dejongh and Hynes. Hynes and Dejongh ordered him to drop the knife. Romero did not comply. He continued to advance towards Dejongh and then raised the knife overhead as he came closer.⁴ In fear for his life, Dejongh fired his service weapon at Romero.⁵ Hynes, who was located a few feet south of Dejongh, also shot at Romero fearing that he would kill Dejongh. Romero was struck by gunfire and fell immediately to the ground.

Witnesses David K. and LaFranz P. videotaped the events leading up to the shooting of Romero. In the videos taken by David K. and LaFranz P., Romero is visible as he walks towards Dejongh holding a knife with his arms stretched out in front of him as if pointing a firearm. David K.'s video captured Romero as he continued to advance towards Dejongh without pausing, and was then shot by Dejongh and Hynes. Statements made by the officers, however, are largely inaudible on David K.'s video recording due to the noise of FOX2 overhead.

In contrast, video taken by LaFranz P. captured two officers ordering Romero to drop his knife moments before he was shot, but did not visually capture the shooting itself because LaFranz P. ducked for cover literally moments before the officer involved shooting occurred.⁶ The shots fired by Dejongh and Hynes, however, are audible in the video taken by LaFranz P.

Numerous residents of the neighborhood surrounding [REDACTED] Obispo Street observed Romero as he advanced towards Dejongh with a knife in his hands pointing forward even as Dejongh repeatedly ordered him to drop his weapon. These witnesses include James H., Randi T., George

² Dejongh and Hynes each heard Hunt repeatedly ask Romero to drop the knife. According to Hunt's report, he referred to Romero by his first name (Jose) in an attempt to establish a rapport with him and at approximately 9:54 p.m., he began to repeatedly order Romero to drop his knife and lay down. Hunt estimates in his report that he repeated these commands for 15 to 20 minutes, but Romero did not comply.

³ Mifflin estimated that FOX2 had been in the air almost an hour when Romero sprinted into the courtyard of his apartment building and disappeared from view.

⁴ Hynes, Hunt and Dejongh each reported seeing Romero raise the knife overhead with his right hand in the last moments before he was shot. Videos taken of the shooting are too dark to discern the last movements of Romero's right arm before he was shot, but three civilian witnesses interviewed, Luis B., Andrea B., and Hugo C., each described Romero as holding the knife overhead moments before he was shot.

⁵ Dejongh estimated Romero was approximately 10 feet away at the time he fired at Romero; Hunt estimated the distance as 10 to 15 feet.

⁶ The identities of the two officers who ordered Romero to drop his weapon are not clear in the video, but two separate voices can be clearly heard ordering Romero to drop his weapon.

D., David K., Steven S., Taylor C., LaFranz P. and Guadalupe C.⁷ . Three other witnesses, Hugo C., Andrea B., and Luis B., observed Romero advance towards the officers holding the knife raised overhead. Two witnesses, James H. and Steven S., described Romero's conduct as a "suicide by cop."

Deputy Medical Examiner Vadims Poukens conducted an autopsy of Romero's body and determined that Romero was struck six times by gunfire in the neck, chin, abdomen, right thigh, right shoulder and left thumb. Poukens found that the path of travel for the bullets which struck Romero's chin, abdomen and right thigh was front to back and downward. He further found that the bullet which struck Romero's neck traveled from front to back, left to right and downward while the shot to Romero's shoulder traveled right to left and downward. Poukens could not determine the path of travel of the bullet which struck Romero on the left thumb. Poukens concluded that the gunshots to Romero's chin and right shoulder proved to be fatal. Toxicology reports for blood samples taken from Romero confirmed the presence of ethanol.

As part of their investigation, LBPD detectives obtained information pertaining to arrests and/or citations sustained by Romero at the Long Beach Veterans Administration Medical Center (LBVAMC). LBVAMC located numerous reports pertaining to disturbances caused by Romero at the LBVAMC, including two instances wherein Romero voiced that he wanted to use the police as a means to commit suicide and asked either for the police to shoot him or stated he would take an officer's gun to provoke his death.

LEGAL ANALYSIS

The use of deadly force in self-defense or in the defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

The test for whether an officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. Reasonableness of force used by an officer depends on the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Graham v. Connor* (1989) 490 U.S. 386, 396. "The reasonableness of the particular force used must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* "The calculus of reasonableness must embody allowance for the fact that police 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." *Id.* at 396-97.

In California, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard. *People v. Mehserle* (2012) 206

⁷ Two other witnesses interviewed (Manuel H. and Julie R.) saw Romero advancing quickly with his arms raised in front of him. However, from their position, they could not tell if Romero had anything in his hands.

Cal.App.4th 1125, 1146 (holding that California law “follows the objective ‘reasonable person’ standard—the trier of fact is required to evaluate the conduct of a reasonable person in the defendant's position [citations omitted] . . . the jury should consider all relevant circumstances surrounding the defendant's conduct. This enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation—but this is not the same as following a special ‘reasonable police officer’ standard.”).

CONCLUSION

The evidence presented in this case shows that Jose Romero engaged in a reckless and deadly course of conduct which placed Officer Dejongh in danger of death or serious bodily injury, and which reasonably caused Officer Hynes to believe that Romero would kill or seriously injure Dejongh, his fellow officer.

Romero contacted 9-1-1 and announced his intention to commit suicide at the hands of a police officer. Romero also made a veiled threat when he informed the 9-1-1 operator that he had a gun and would be hiding outside his apartment between cars, implying that he would lie in wait for any police officers responding to the location. This statement made it reasonable for the responding officers to conclude that Romero was ready to inflict violence not only upon himself but also on any responding officers.

Notwithstanding Romero’s threats and his claim that he was armed with a handgun, the LBPD officers who responded did not immediately use any type of force, but instead cautiously attempted to defuse the situation. Dejongh and Hynes repeatedly ordered Romero to drop his weapon. Moreover, Hunt used Romero’s first name Jose with the hope of establishing a personal connection and persuading Romero to end his armed standoff. Romero, however, did not comply with the officers’ orders and instead advanced towards Dejongh, even after he was given two final warnings to drop the knife he was holding.

In fear for his life, Dejongh fired at Romero when Romero was at a distance of approximately ten feet. Hynes also fired his service weapon based upon the reasonable belief that Romero was advancing forward to stab Dejongh. Given these facts, both officers acted reasonably in firing their service weapons to stop Romero.

Given the totality of the evidence presented, we find that Officer Dejongh acted in lawful self-defense and that Officer Hynes acted in lawful defense of another. We are therefore closing our file and will take no further action in this matter.