

**Officer-Involved Shooting of Jonathan Christian
Los Angeles Police Department**

Officer Brett Rutkowski, #40190

J.S.I.D. File #14-0529



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 11, 2016

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
Force Investigation Division
Los Angeles Police Department
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Officer Involved Shooting of Jonathan Christian
J.S.I.D. File #14-0529
F.I.D. File #F049-14

DATE: April 11, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 12, 2014, non-fatal shooting of Jonathan Christian by Los Angeles Police Department (LAPD) Officer Brett Rutkowski. We find there is insufficient admissible evidence to prove beyond a reasonable doubt that Officer Rutkowski did not act in self-defense and in defense of others.

The District Attorney's Command Center was notified of this shooting on August 12, 2014, at approximately 11:00 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant Damien Gutierrez.

The following analysis is based on reports prepared by the Los Angeles Police Department (LAPD) Force Investigation Division, submitted to this office by Detectives Ronald Lee and Ronald Granados. The reports include photographs, audio-recorded interviews of witnesses, X-rays, medical reports, and radio transmissions. The compelled statement of Officer Rutkowski was also considered as part of this analysis.

INTRODUCTION

The intersection of 9th Avenue and Jefferson Boulevard in the City of Los Angeles is an area controlled by the Rollin' 30's Harlem Crips, a notorious criminal street gang with approximately 700 to 1000 members and known for violent crime and illegal drug trafficking. Between 2008 and 2013, crime statistics indicated 29 homicides and approximately 1100 robberies and 1075 assaults reported in the 1.5 square mile area that comprises the gang's territory.

On August 29, 2013, after a well-publicized local and federal investigation titled "Operation Thumbs Down", 21 federal indictments were issued and 35 members and associates of the gang were arrested for charges including possession of cocaine base with intent to distribute, conspiracy to distribute cocaine base, being a felon in possession of a firearm, maintaining drug-

involved premises, and unlicensed dealing in firearms. During the investigation, officers also seized in excess of ten kilograms of cocaine base and 32 firearms.

On July 10, 2014, the LAPD Southwest Division Narcotics Enforcement Detail (NED) received a report that drug dealing was going on “all day long” at the intersection of 9th Avenue and Jefferson Boulevard.

On July 17, 2014, federal and local authorities, in a second phase of Operation Thumbs Down, arrested 23 more Rollin’ 30’s gang members and associates based on federal indictments for various drug and firearms offenses.

On July 30, 2014, NED received a report that drug dealing was continuing in the alley adjacent to the intersection of 9th Avenue and Jefferson Boulevard and the dealers were selling to buyers who would arrive in cars, on bicycles, or on foot. NED received a second report that day of drug transactions occurring at a nearby residence where gang members were loitering.

On Monday, August 11, 2014, NED received another complaint that gang members were selling drugs at that intersection.

On Tuesday, August 12, 2014, NED responded to that complaint and directed undercover NED Officers James Moon and Adaniz Cook to conduct a surveillance of the intersection of 9th Avenue and Jefferson Boulevard.¹

FACTUAL ANALYSIS

The Surveillance

At approximately 8:30 p.m., Moon and Cook, who were wearing plainclothes and driving an unmarked car, saw a group of people standing near the intersection. Moon knew from prior experience with the LAPD Gang Enforcement Detail that members of the group were Rollin’ 30’s gang members. Suspecting people in the group may have also been selling drugs, Moon and Cook called NED Officers Brett Rutkowski and Henry Merin to assist in the surveillance. Rutkowski and Merin were also wearing plainclothes and driving an unmarked car. They arrived minutes later and parked around the corner from Moon and Cook where they could also watch the intersection. The four officers were in communication with each other via hand-held radios. Approximately five minutes later, the officers saw Jonathan Christian ride a bicycle up to the group and converse with them.² [REDACTED] Several minutes later, Christian left the group. The four officers followed him.

¹ On August 12, 2014, Detective Rodolfo Chong was the officer-in-charge of Southwest Area NED and had three written reports of narcotics activity in the area of 9th Avenue and Jefferson Boulevard, and a voicemail from a man pleading for assistance to stop the gang members from selling drugs at that location. Chong directed Moon to follow up on those complaints while Chong monitored the operation on the radio.

² Christian has been a member of the Rollin’ 30’s gang since at least 2008. He has gang tattoos that include “Harlem 30’s” on his chest, an “A” on his arm that represents the “Avenue” clique of the Rollin’ 30’s gang, and two thumbs pointed up on his arms, which when put together form an “H”, referring to the “H” in Harlem Crips. On August 15, 2014, Christian admitted to LAPD Detectives McCarty and Waymire that he is a member of the Rollin’ 30’s Crips. [REDACTED]

The Drug Transaction

Minutes later and approximately one block away, Moon and Cook saw Christian approach a man, later identified as Bruce Nash, and drop something into Nash's left hand. Christian and Nash left in opposite directions. Believing that a drug transaction had just occurred, Moon and Cook followed Nash and asked Rutkowski and Merin to detain him.

The Arrest of Nash

Nash walked into a nearby residence and the four officers donned their tactical vests and exited their vehicles.⁴ Rutkowski and Merin went to the front door of the residence and saw Nash inside. Rutkowski asked Nash to step outside and he complied. Rutkowski asked Nash for consent to search him and he agreed. Rutkowski searched Nash's front left pocket and found cocaine base so Rutkowski placed him under arrest. He handcuffed Nash and placed him into Rutkowski and Merin's vehicle for transport to the police station.⁵ Rutkowski informed Cook and Moon of his discovery of cocaine base in Nash's pocket. In turn, Moon and Cook left to find Christian and arrest him for possession for sale of cocaine base.

Moon also asked Rutkowski and Merin to stay in the area for officer safety reasons while they searched for Christian.

The Foot Pursuit of Christian

Rutkowski, Merin, Cook, and Moon returned to the intersection of 9th Avenue and Jefferson Boulevard to look for Christian. They saw him walking with another man, who was pushing a bicycle.⁶ Cook and Moon stopped their vehicle next to Christian near the intersection of 10th Avenue and Jefferson Boulevard, an area illuminated by streetlights, ambient lighting from nearby businesses, and headlights from passing motorists.

Cook exited the vehicle and jogged toward Christian and shouted, "Hey, come here! I'm going to talk to you! Let me see your hands!"⁷ Christian looked at Cook but did not comply with her order. He continued to walk away. Suspecting Christian was preparing to run away, Cook ran past Christian to cut off his escape route, while Moon maneuvered his vehicle to also block Christian from running. Christian turned away from Cook and sprinted past her and Moon's vehicle toward the intersection of 9th Avenue and Jefferson Boulevard, where the officers had earlier seen gang members congregating.

Cook ran after Christian and Moon exited his vehicle seconds later to join the chase.

⁴ Rutkowski, Merin, and Moon donned similar black tactical vests which contained body armor, a "Los Angeles Police" patch embroidered onto the right upper chest area, a police officer's badge patch embroidered on the upper left chest area, and a "POLICE" patch embroidered onto the upper back of their vests. Cook wore a similar vest but had "POLICE" embroidered on the front upper chest and rear upper back area.

⁵ Nash later admitted to detectives he purchased ten dollars of "crack" from Christian, whom he knew as "J-Smash", as he had done in the past. Nash was charged with possession of cocaine base in case number BA428244 and pled no contest to that charge on August 14, 2014.

⁶ Videotape surveillance of the incident, captured from a nearby business, shows the sequence of events starting at this point. The man pushing the bicycle left the scene and has not been identified.

⁷ Christian later said that Cook said, "Come here, fucker!"

Rutkowski and Merin drove up as Christian started to run. Christian ran in the street, past their vehicle, and into oncoming traffic toward the intersection of 9th Avenue and Jefferson Boulevard.

Rutkowski exited his vehicle and also joined the foot pursuit, along with Moon and Cook, while Merin turned his vehicle around to follow.⁸

After one-half block, Christian crossed the street and sprinted around the corner of a building and into a poorly lit driveway between a business and an apartment complex, with Rutkowski chasing approximately 15-20 feet behind. Moon and Cook were behind Rutkowski and ran into the driveway while Moon broadcasted on the radio, “3N21, we are going in foot pursuit of a narco suspect going southbound between 9th and 10th Avenue! Let me get a backup!”⁹

Merin, who was initially trailing the foot pursuit in his vehicle, turned around and returned to the intersection of 10th Avenue and Jefferson Boulevard to secure Moon and Cook’s vehicle, which was left behind at the start of the foot pursuit.¹⁰

Christian ran down the driveway, through a courtyard, past an apartment building, and into an alley, while Rutkowski, Moon, and Cook continued to chase him, ordering him to stop.

Moon and Cook, who were trailing further behind Rutkowski, were concerned that Christian could be armed and the situation could escalate into a use of deadly force, so they drew their service weapons.

Christian circled around an apartment building by making a series of right turns. He ran into a parking lot where his escape route was blocked by a six foot high, chain-link fence. The fence had twisted, barbed ends along the top edge and vertical, aluminum slats, limiting visibility through the fence. Rutkowski, Cook, and Moon approached Christian and ordered him at gunpoint to surrender. Christian did not comply and instead climbed over the fence and jumped down into the courtyard on the other side.

Rutkowski remained alone on one side of the fence while Cook and Moon ran around to the other side of the fence to find Christian.

When Cook and Moon arrived on the other side of the fence they saw Christian partially concealed in an alcove next to a building. Moon and Cook ordered Christian, at gunpoint, to surrender. Christian looked at Moon and periodically exposed his head and hands but moments later sprinted away. He jumped onto the rear bumper of a car parked near the fence and prepared to climb back over to where Rutkowski was still positioned.

Christian jumped on top of the fence and balanced there in a crouching position. Moon and Cook continued to hold Christian at gunpoint and Moon yelled at him, “Jonathan, get off the fence! LAPD! Get down!”

⁸ Merin stayed with his vehicle to maintain custody of Nash who was handcuffed in the backseat.

⁹ Moon’s recorded radio broadcast for backup is time stamped 9:23:20 p.m.

¹⁰ The video surveillance of the incident does not capture the sequence of events after this point.

[REDACTED]

[REDACTED]

[REDACTED] Christian was struck in the buttocks.

Moon and Cook ran toward Rutkowski's position and broadcasted, "N21, shots fired! Shots fired! Officer needs help!" Shots fired!"¹¹ Christian was immediately handcuffed and searched. Nothing was in his waistband and he was not armed. He had twenty five dollars and a cellular telephone in his pockets.

Christian was taken to the hospital [REDACTED]

The incident took place at night in the parking lot of a restaurant. There was minimal lighting provided by a single light fixture attached to a telephone pole approximately 15 to 20 feet away in the adjacent alley.

Christian's Injuries¹³

Christian was struck in the buttocks [REDACTED]

Forensic Examination

A. Rutkowski's Firearm and Ammunition

Rutkowski was armed with a department-issued, .40 caliber Glock Model 22 semiautomatic handgun. It was loaded with 16 department-approved Smith and Wesson Winchester .40 caliber, copper jacketed, 180 grain, hollow point cartridges. He had two additional magazines loaded with 15 rounds of the same ammunition. The bullets from those cartridges consisted of two parts: 1) a lead core, and; (2) a copper jacket. Those parts are designed to remain intact and

¹¹ Moon's recorded radio broadcast "officer needs help" is time stamped 9:24:10 p.m. (approximately 50 seconds after the initial radio broadcast for backup).

[REDACTED]

¹³ Christian filed a claim for damages against the City of Los Angeles and Rutkowski, Moon, Cook, and Merin. That claim culminated in a federal lawsuit filed in case number 2:14-cv-08924-ODW-NRW, which was settled and dismissed on December 9, 2015. The terms and conditions of that settlement are not yet known.

¹⁴ The weight of the fragment was approximately 2 grains of a 180 grain round and is unsuitable for trace evidence testing.

“mushroom” upon impact and penetrate through denim to an average depth of approximately 14 to 16 inches. Christian’s X-rays show that the bullet fragmented immediately upon entry into his body and did not mushroom as designed. The largest fragment penetrated to a depth of approximately 6 to 8 inches.

After the shooting, Rutkowski’s service weapon was inspected and it contained one live round in the chamber and ten rounds in the magazine.

B. The Bullet Impact Marks

In the area where Christian landed after jumping off of the fence, and near Rutkowski’s position during the shooting, were two impact marks on the asphalt, indicating Rutkowski fired downward twice. Those impacts were approximately one foot apart. Between them was a nearly intact but deformed bullet, indicating one of the shots was fired downward, perpendicular to the ground.¹⁵

C. The Copper Jacket Bullet Fragments

A fragment from a copper jacket of a bullet was located approximately 10-15 feet away from the impact marks on the asphalt and in the direction Rutkowski was shooting. A similar fragment was located on the other side of the fence from where the shooting occurred.

D. The Shell Casings

Five .40 caliber cartridge casings were grouped adjacent to the fence line near where Rutkowski was positioned during the shooting.

E. Defects to Christian’s Pants and Underwear

There were three defects to the back of Christian’s pants: (1) a ¼ x ½ inch hole to the right of the middle seam and 3 ¾ inches below the belt line; and (2) two small holes near the left, rear pocket. The defects approximated similar defects to the back of Christian’s underwear.¹⁶ All of the defects contained gunshot residue consistent with a discharged firearm; however, due to the absence of a discernible gunshot residue pattern, muzzle to target distance could not be determined.

Statement of Jonathan Christian

On August 15, 2014, detectives interviewed Christian at the hospital. He was given his *Miranda* rights and agreed to speak with detectives.

_____ and on the street he is called “Head” or “Big Head.” He described his tattoos and said he was from the gang “Harlem 30’s.”

¹⁵ The deformed bullet weighed 178 grains. The termination point of 2 grains of that bullet is unknown.

¹⁶ The two smaller defects on Christian’s pants have intact fibers from edge-to-edge, which is inconsistent with the passage of an intact bullet, but could be consistent with damage caused by a smaller bullet fragment.

He said before the incident he went to the liquor store on the corner of 9th Avenue and Jefferson Boulevard and came out to get a “blunt.”¹⁷ He was walking down Jefferson Boulevard toward 12th Avenue to visit a girl when a man and a woman in plainclothes jumped out of a car. He believed one of them said, “Come here, fucker.” Christian got nervous and ran because there were a lot of shootings in the area with enemy gangs, particularly with the “Harpies” gang, which is always trying to kill them.

Christian ran across the street and circled a building and jumped on top of a fence. Two officers (Moon and Cook) were on one side of the fence. He could not remember exactly what Cook or Moon said to him, but they told him to surrender. A single officer (Rutkowski) was on the other side of the fence and it was dark in the area. One of officers said, “Stop, fucker” and “LAPD” and he noticed a police uniform. Christian knew the people were LAPD because he heard Rutkowski say, “LAPD.” Christian thought, “Fuck, I’m in trouble now.” Rutkowski was pointing a gun at him. Christian was “mad” and said, “Fuck.” He had the choice to jump off either side of the fence but he opted to jump to the side where Rutkowski was standing, in order to surrender. He landed approximately seven or eight feet away from Rutkowski.

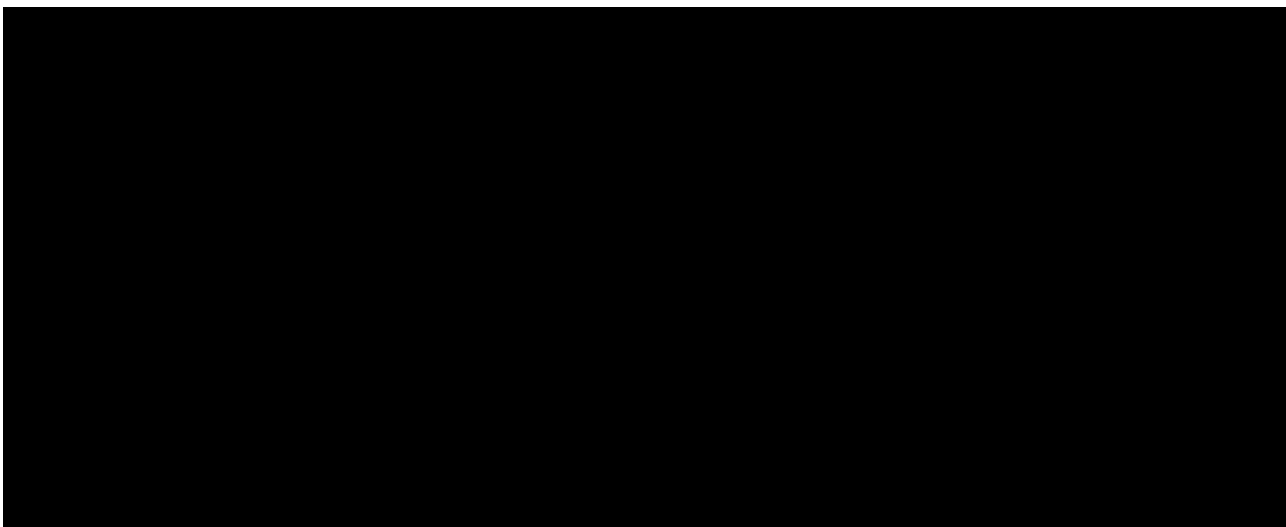
Christian said when he jumped off of the fence his back was toward Rutkowski and he was possibly spinning, but he does not know for sure. Before he hit the ground Rutkowski fired at him three times and he was struck before he hit the ground.

When Christian was on the ground, Rutkowski said Christian “darted” at him.

Christian denied possessing or selling cocaine before the incident but said he had a “blunt” that was on the ground where he fell.¹⁸

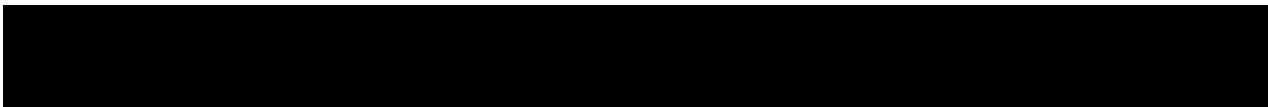
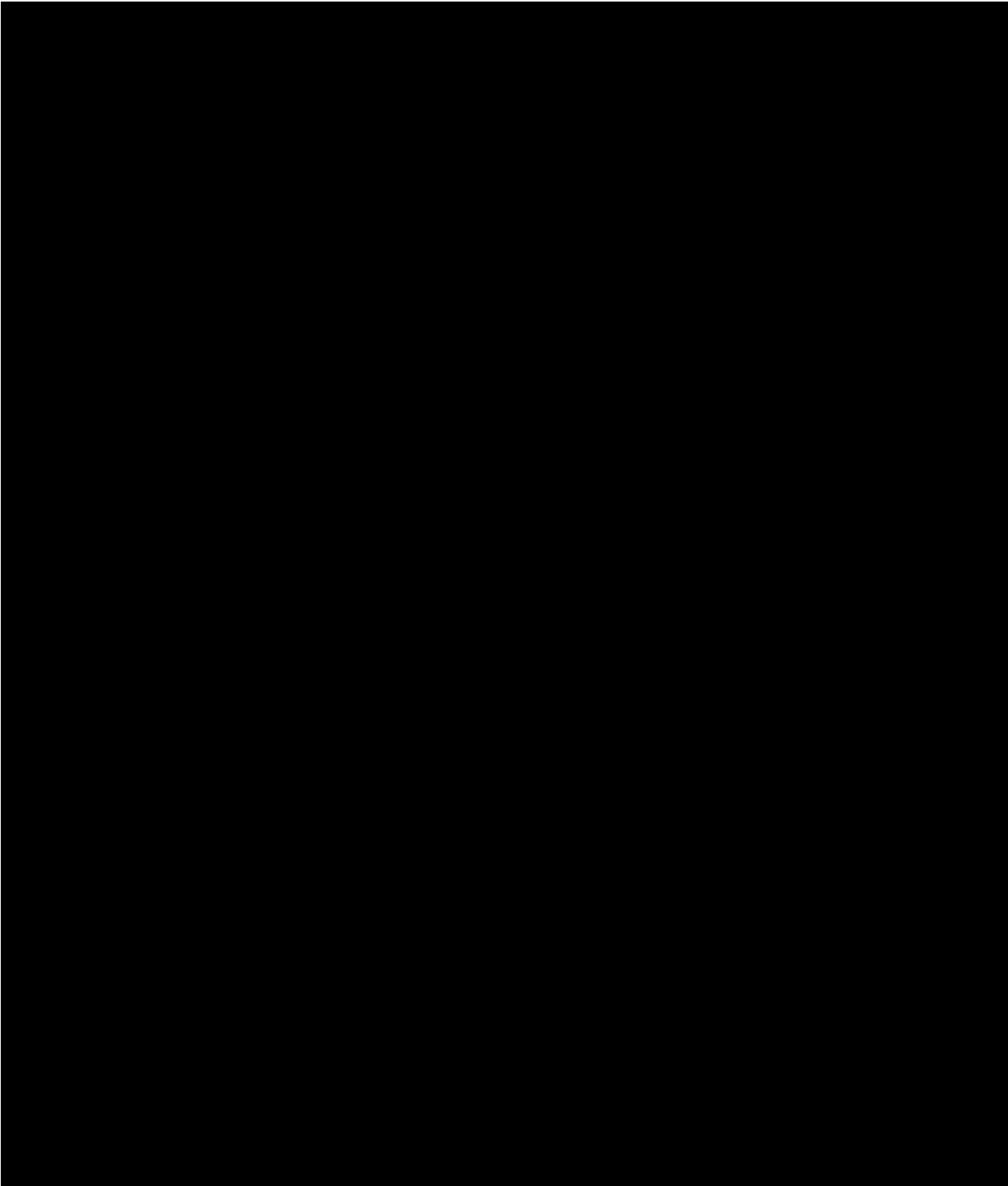
Statement of LAPD Officer Brett Rutkowski

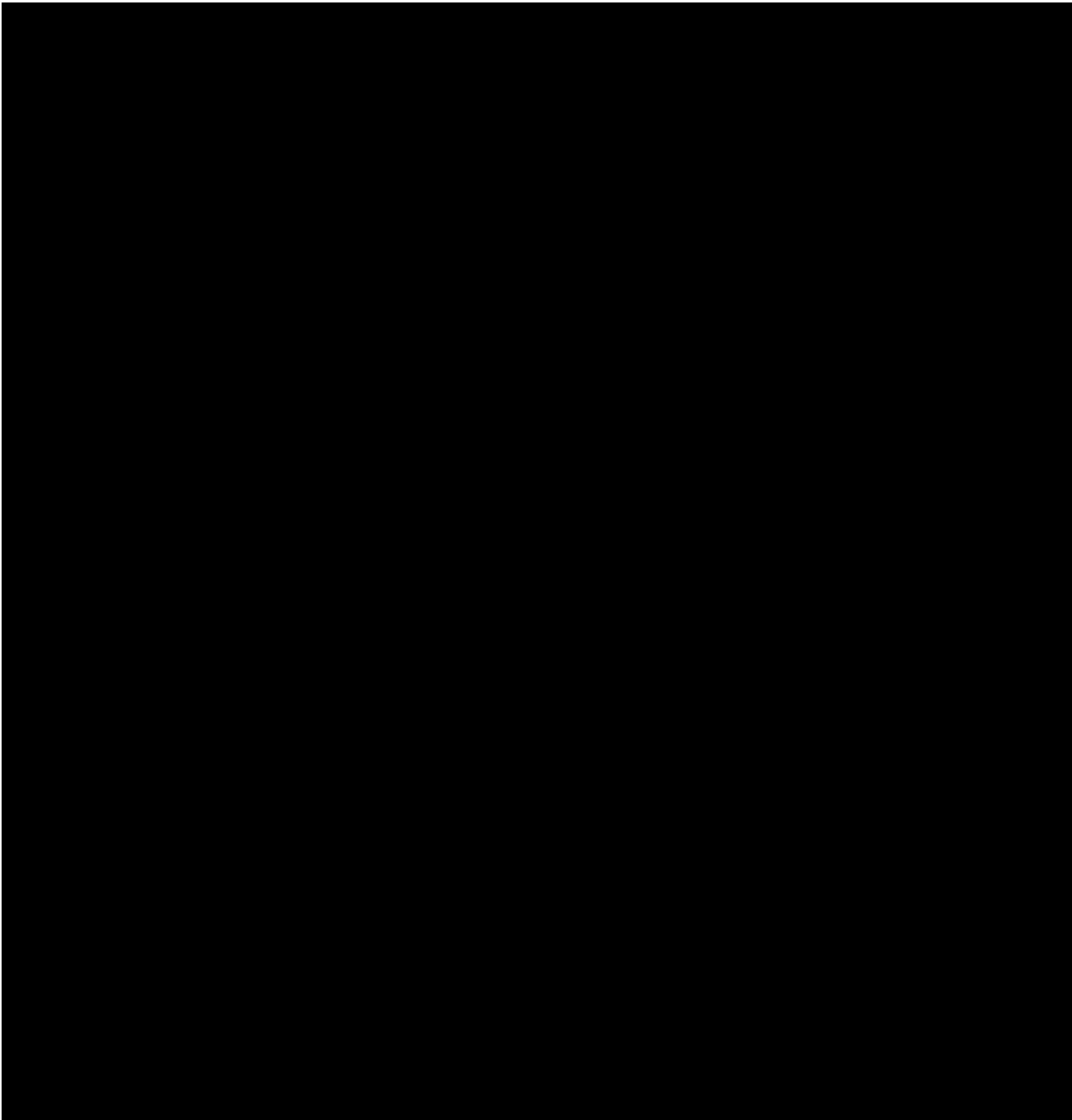
Officer Rutkowski provided a compelled statement to investigators.



¹⁷ A “blunt” is a street term for a marijuana filled cigarette.

¹⁸ Christian said he had a “blunt” in his hand when he was on the fence and he dropped it on the ground when he was shot. He said the officers took possession of the blunt, but there is no record of that item being recovered.





Statement of LAPD Officer James Moon

Officer Moon provided a compelled statement to investigators.

On August 12, 2014, Moon was assigned to NED and partnered with Cook. He was wearing plainclothes and driving an unmarked vehicle.

²⁰ Christian jumped over the fence and stood on top of a barbecue smoker that was against the fence, as confirmed by a visual comparison of the pattern of the soles of his shoes and the shoeprints made in the dust on top of the smoker.

At approximately 9 p.m., Moon and Cook responded to complaints of drug selling activity at the corner of 9th Avenue and Jefferson Boulevard and started a surveillance of that location. Moon saw Christian at the intersection. He knew Christian from a prior arrest for the sale of cocaine base and he knew Christian to be a Rollin' 30's gang member. Moon watched Christian ride a bicycle down 9th Avenue and put something into Nash's left hand. Nash walked away and Christian rode his bicycle toward 9th Avenue and Jefferson Boulevard. Moon, Cook, Rutkowski, and Merin followed Nash to a residence. Rutkowski conducted a consensual search of Nash, found what appeared to be cocaine base in his pocket, and arrested him.

Moon and Cook returned to the intersection of 9th and Jefferson to look for Christian for the purpose of arresting him.

When they arrived at the intersection, Moon and Cook saw Christian walking near the corner of Jefferson and 10th Avenue. Moon stopped next to Christian and Cook exited the vehicle to arrest him. Christian immediately grabbed his waistband and ran away. He ran across the street and Moon broadcasted, "3N21, we are going to be in foot pursuit of a narco suspect going southbound in between 9th and 10th Avenue! Let me get a back up!"

Rutkowski, Moon, and Cook chased Christian into a driveway, into an alley, and into a parking lot area where Christian jumped over a fence. Moon drew his service weapon because he knew Christian was a drug dealer and a gang member and was likely to be armed.

Rutkowski stayed behind while Moon and Cook ran back around the building to find Christian. Moon saw Christian crouching down in an alcove. Moon took cover behind a stairway and ordered Christian, by name, to surrender. Christian poked his head out from around the corner of a building, looked at Moon, and extended his hands at times. Instead of surrendering, Christian sprinted away. He used the bumper of a nearby vehicle to jump back onto the fence. Moon yelled, "Jonathan, get off the fence!" and Christian said, "What do you guys want?"

A few seconds later, Christian lunged off the fence toward Rutkowski, and Moon heard Rutkowski say, "Get back! Get back!" and then gunshots.

Moon broadcasted, "Shots fired! Officer needs help!"

Moon and Cook ran to the other side of the fence and saw Christian on the ground and Rutkowski holding him at gunpoint.

Cook handcuffed Christian, and Moon called for an ambulance.

Statement of LAPD Officer Henry Merin

Officer Merin provided a compelled statement to investigators.

On August 12, 2014, Merin was assigned to NED and was partnered with Rutkowski. He was wearing plainclothes and driving an unmarked vehicle. Merin has been a police officer for seven years.

Cook notified Merin and Rutkowski there were “gangsters” hanging out at 9th Avenue and Jefferson Boulevard and they had received complaints of narcotics activity in the area. Christian was at the intersection and Moon said he recognized him from a prior narcotics arrest.

Rutkowski and Merin drove to the intersection to conduct a surveillance. They saw Christian walk down 9th Avenue and they followed him. Moon and Cook advised they believed Christian had engaged in a hand-to-hand drug transaction with Nash, who went into a nearby residence. Merin, Cook, Rutkowski, and Moon donned their tactical vests and contacted Nash. Rutkowski searched Nash, found cocaine base, and arrested him.

Cook and Moon then returned to the intersection of 9th Avenue and Jefferson Boulevard to locate and arrest Christian. Merin and Rutkowski drove back to the intersection also and saw Christian walking down the street. Moon and Cook drove alongside Christian and stopped, while Merin and Rutkowski observed from approximately 20 yards away. Cook exited her vehicle to arrest Christian but he started running. Rutkowski told Merin to stay with Nash, and he exited the vehicle and chased Christian.

Merin returned to secure Cook and Moon’s vehicle, which was left at the start of the foot pursuit, when he heard approximately four gunshots and an “officer needs help” call. Merin drove down a driveway that dead-ended and looked over a fence and saw Cook, Moon, and Rutkowski taking Christian into custody.

Statement of LAPD Officer Adaniz Cook

Officer Cook provided a compelled statement to investigators.

On August 12, 2014, Cook was assigned to NED and partnered with Moon. She was wearing plainclothes and driving an unmarked vehicle. Cook has been a police officer for six years.

Cook and Moon received complaints of narcotics activity at 9th Avenue and Jefferson Boulevard and went there to conduct a surveillance. After approximately 45 minutes, they saw Christian arrive on a bicycle and go back-and-forth to a nearby alley. Moon said he recognized Christian as a Rollin’ 30’s gang member whom he arrested previously for a narcotics violation. Moon contacted Rutkowski and Merin and asked them to come to the location to assist in a surveillance operation and they arrived a short time later. Christian rode a bicycle on 9th Avenue and they followed. They saw Christian engage in a hand-to-hand narcotics transaction with Nash. Cook, Moon, Rutkowski, and Merin arrested Nash, and Cook and Moon returned to the intersection to look for Christian. Cook and Moon saw Christian walking on Jefferson Boulevard. They stopped alongside Christian and Cook exited the vehicle to arrest him. Cook was wearing her tactical vest with LAPD insignia and identified herself to Christian, who ran away.

Cook, Rutkowski, and Moon chased Christian into a driveway and saw him reach for his waistband. Cook believed the situation could escalate to the use of deadly force so she drew her service weapon. Christian ran down an alley and around a building to a parking lot where he jumped over a fence. Cook doubled-back and went around to the other side of the fence to locate Christian. Moon and Cook saw Christian hiding in an alcove and they ordered to him to stop and show his hands. Christian did not comply and was continuously reaching for his waistband.

Christian jumped back over the fence and she heard Rutkowski yell, “Stay back!” and she heard gunshots. Moon broadcasted, “Officer needs help!”

Cook and Moon ran around to the other side of the fence and saw Christian on his stomach and Rutkowski holding him at gunpoint. Cook handcuffed Christian, and Moon called for an ambulance.

Statement of John Doe²¹

On August 12, 2014, witness John Doe heard a helicopter and exited an apartment to investigate. He saw Christian run into a parking lot and into a dead-end walkway. When Christian could not escape using that route, he ran back into the parking lot area and used the back of a car to step up to the top of the fence. There were officers on both sides of the fence. He heard one of the officers say, “If you jump over the fence I’m going to shoot you.” He saw Christian jump off the fence and he heard gunshots.

Statement of Eugene Hall

On August 12, 2014, at approximately 9:30 p.m., Eugene Hall heard commotion in the back parking lot of the restaurant where he was employed. It sounded like a man and a woman arguing. He held his ear to the back door of the restaurant and he heard, “LAPD! Get down! Get down! Stop, Stop, Stop!” Hall ran into the restaurant and told another employee, Pedro Hernandez, he thought the police were conducting a raid. He exited the back door of the restaurant and it was dark. Seconds later, he heard five gunshots so he “hit the deck” and ran back into the restaurant.

Statement Pedro Hernandez

On August 12, 2014, Hernandez was working with Hall when he alerted him of a commotion in the back parking lot. Hernandez and Hall exited the back door of the restaurant to investigate. It was dark and Hernandez could only see the silhouette of a man dressed in “paramilitary gear” with a gun out and pointing it slightly into the air and yelling, “Get on the ground! Get on the fucking ground!” Seconds later, he saw two muzzle flashes. As he ran back into the building, there was pause and he heard two or three more shots.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death.²²

²¹ Doe expressed concern for his safety and refused to provide his identity.

²² Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chum* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.²³

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that the police are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly involving - - about the amount of force that is necessary in a particular situation.”²⁴

The test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.”²⁵

The right of self-defense is the same whether the danger is real or apparent.²⁶ If a person acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken.²⁷

An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.²⁸

“A defendant may well be mistaken in his assessment of the circumstances; but if reasonably so, he is nevertheless entitled to the defense.”²⁹

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.”³⁰

Analysis

Although Christian was unarmed, he posed a threat to Rutkowski when he was shot, and no criminal liability attaches to Rutkowski’s actions unless the prosecution can prove *beyond a reasonable doubt* he was not actually and reasonably in fear for the safety of himself or others when he fired his weapon.³¹ The prosecution cannot meet that burden in this case.³²

²³ CALCRIM No. 3470.

²⁴ *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

²⁵ *Munoz v. City of Union City* (2004) 120 Cal. App. 4th 1077, 1102.

²⁶ *People v. Toledo* (1948) 85 Cal. App. 2d 577.

²⁷ *People v. Jackson* (1965) 233 Cal. App. 2d 639

²⁸ *Thompson v. Hubbard* (2001) 257 F.3d 896, 899.

²⁹ *People v. Humphrey*, *supra*, 13 Cal. 4th 1073.

³⁰ *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

³¹ *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384.

³² LAPD Chief Charlie Beck’s recommendation to the Board of Police Commissioners on July 21, 2015, was that the use of deadly force by Officer Rutkowski was outside of LAPD policy. The Board adopted that recommendation. It should be noted that a lower standard of proof, the preponderance of the evidence, is used in LAPD administrative determinations of whether the use of deadly force by an officer is reasonable. Compelled statements made by shooting officers can also be used as evidence against them in administrative proceedings, whereas such statements cannot be used in a criminal prosecution.

In sum, there are a number of factors relevant to Rutkowski's perception of the threat Christian presented to him, and the reasonableness of his decision to use lethal force, as follows:

[REDACTED] Christian initially ran in the direction where his fellow gang members were congregating, and drew Rutkowski and his partner officers into a perilous, roundabout foot pursuit down a dimly lit alley, around blind corners, past an inhabited apartment building, and into a dark alley and parking lot. The risk of the officers being led into an ambush or dangerous situation by Christian was palpable.

Second, Christian had just committed a felony and, as demonstrated by his aggressive flight, was highly motivated to escape and possibly harm Rutkowski or whomever was trying to apprehend him.

[REDACTED]

Fourth, Christian was confronted by four police officers, three of whom pointed their guns at him and ordered him to surrender, yet he persisted in trying to escape, indicating his unpredictable, threatening, and highly motivated behavior. The fact that all three officers involved in chasing Christian drew their service weapons and took positions of cover at various times [REDACTED]

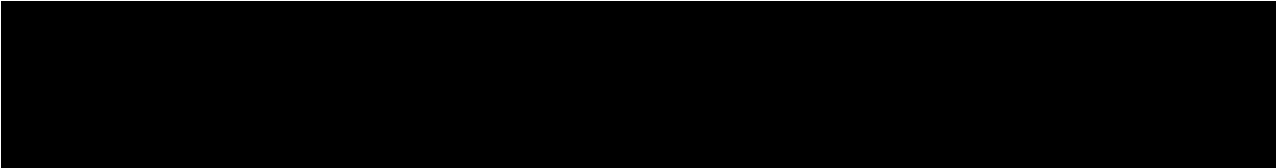
[REDACTED]

Fifth, Christian ran into oncoming traffic, with four officers chasing him, and failed to comply with orders from those officers. They had their service weapons pointed at him, which would have compelled a reasonable person to submit to arrest. Yet Christian continued to run and ultimately jumped twice over a chain-link fence that had barbed, twisted wires along the top edge that could have caused Christian bodily injury. In doing so, Christian demonstrated his desperation and disregard for his own health and safety, indicating his intent to do anything, including harming Rutkowski and his partners, to facilitate his escape.

Sixth, Christian, after being trapped by Rutkowski on one side of the fence and Moon and Cook on the other side, [REDACTED] indicating his frustration, animosity toward the officers, and calculated decision to flee by going through Rutkowski, who was the only officer standing between Christian and escape.

Seventh, Christian climbed onto the fence and stood above Rutkowski in an advantageous tactical position.³³ [REDACTED]

³³ Rutkowski was 27 years old, five feet, nine inches tall, and 160 pounds. Christian was 24 years old, six feet tall, and 180 pounds.



Finally, the lethal immediacy of Christian's threat to Rutkowski by launching himself off the fence at Rutkowski, and his decision to shoot, is supported by the physical evidence. Rutkowski fired his service weapon at Christian five times from a close range of approximately 5 to 8 feet, striking him one time and shooting into the asphalt twice.³⁴ This low "hit ratio" is indicative of fast-changing circumstances, compounded by low lighting conditions, which are relevant to Rutkowski's reasonable perception that he was under attack.³⁵ In sum, the evidence indicates dynamic circumstances in which Rutkowski fired at Christian five times, in close-quarters, missing Christian with four of those gunshots.³⁶

Given the totality of the circumstances, the available evidence is insufficient to prove beyond a reasonable doubt that Officer Rutkowski did not act in self-defense and in the defense of others. Therefore, we are closing our file and will take no further action in this matter.

³⁴ The combination of bullet impact marks on the asphalt where Christian landed, a "mashed" bullet and copper jacket fragments nearby, and small defects to the back of Christian's pants positive for gunshot residue suggest Christian may have been struck with fragmented projectiles off the asphalt.

³⁵ Low light shootings account for at least 60% of police applications of deadly force. Low light conditions also diminish police shooting "hit ratios" by as much as 30%. Low light conditions also account for as many as 75% of all mistake-of-fact shootings. Thomas J. Aveni. (2003) *Officer Involved Shootings: What We Didn't Know Has Hurt Us*.

³⁶ In close quarters, police officers know innately and by training that their own survival rate diminishes because of their proximity to an assailant. In statistics compiled by the New York Police Department, between 1854 and 1979 82% of officers killed in the line of duty were within six feet of their assailants. FBI statistics also show that, between 1991 and 2000, 71% of officers slain were within ten feet of their assailants. *Ibid*.