

Officer Involved Shooting of Albert Dorsey

Los Angeles Police Department

Officer Edward Agdeppa #41000

J.S.I.D. File #18-0456



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 28, 2020

MEMORANDUM

TO: COMMANDER TIMMOTHY NORDQUIST
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: Officer Involved Shooting of Albert Dorsey
J.S.I.D. File #18-0456
F.I.D. File #F059-18

DATE: July 28, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 29, 2018, fatal shooting of Albert Dorsey by Los Angeles Police Department (LAPD) Officer Edward Agdeppa. We have concluded that Officer Agdeppa acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 10:14 a.m. on October 29, 2018. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, transcripts of interviews, audio and video recordings, Body Worn Video (BWV), photographs, crime scene diagrams, forensic reports, medical records, witness statements, and the autopsy report submitted to this office by Los Angeles Police Department (LAPD) Detectives Dimitri Kort and Tim Grabe. The compelled statements of Officer Agdeppa were considered in this analysis.

FACTUAL ANALYSIS

Days Prior to the Shooting

On October 22, 2018, Albert Dorsey purchased a membership at the 24-Hour Fitness located in Hollywood. On October 28, 2018, at approximately 4:30 a.m., Dorsey was walking around the 24-Hour Fitness parking structure yelling. When a security guard approached him and told him he needed to leave, Dorsey punched him in the face and head. The punches knocked the security guard unconscious, and he was hospitalized for several days. LAPD was called and responded to the parking structure, but Dorsey had left the location prior to their arrival. A battery report was taken.

The Day of the Shooting

On October 29, 2018, at approximately 6:54 a.m., Dorsey entered Hollywood 24-Hour Fitness, passed the unmanned front desk without checking in, and entered a women's locker room that was closed for remodeling. A short time later, 24-Hour Fitness employee Luis C. contacted Dorsey and told him to leave the facility.¹ Dorsey walked up to Luis C. and stood extremely close to him in an intimidating manner. This action scared Luis C., and he diffused the situation by stepping away from Dorsey and telling him that he had to leave, but that he could come back at 9:30 or 10:00 a.m. to speak with a different manager.² Dorsey left the location.

At approximately 8:07 a.m., Dorsey returned to the gym, and Luis C. told him he needed to "punch-in," as he walked by the front counter. Dorsey replied, "If I'm going to punch anybody, it's going to be you" and continued walking into the facility. Luis C. asked another employee to call the police, which she did. Based on the call, the LAPD Communications Division (CD) broadcasted a call for service informing officers that a male gym member was at 24-Hour Fitness verbally threatening employees, causing a disturbance, and refusing to leave.

Dorsey entered the same women's locker room he had been in earlier that morning. Two construction workers in the bathroom told him he could not shower there and led him to the men's locker room down the hall, which was also closed for remodeling.³ At approximately 8:21 a.m., Luis C. called 9-1-1 and stated that a gym member was harassing other members, putting his hands on people, and that it was getting "a little more serious." LAPD CD broadcasted that the individual was now attempting to grab people. LAPD Officers Edward Agdeppa and Perla Rodriguez were assigned the call.

Prior to the officers arriving, Dorsey had several negative interactions with other patrons who tried to use the locker room, including one where he threatened to "fuck up" another member. Security guards Jesus L. and Miguel C. came to the location, and Luis C. led them to the locker room where Dorsey was arguing with another member. Miguel C. approached Dorsey and asked him to leave. Dorsey told him he could not leave because he had a business meeting.⁴ At 8:46 a.m., Luis C. called 9-1-1 again and emphasized the urgency of the situation by telling them that Dorsey was "irate" and "trying to fight people." Miguel C. also called LAPD CD and reported that Dorsey was "being real aggressive. He already knocked out the security guard."⁵ CD then broadcasted that Dorsey was now a battery suspect, and Rodriguez acknowledged receipt of the update.

At approximately 9:04 a.m., Agdeppa and Rodriguez arrived at 24-Hour fitness, and spoke to Luis C. Luis C. told them that Dorsey was "a little bit irate and he's not listening. He's already threatened a few members, and he's also assaulted security as well."⁶ Agdeppa and Rodriguez

¹ Dorsey's membership had been suspended due to a sexual assault allegation made by another gym member on October 27, 2018, and the battery on the security guard.

² Dorsey was 6'1" and weighed 280 pounds.

³ Two benches stacked on top of one another had been placed in front of the men's locker room entryway, along with a strip of yellow tape across the doorway and a sign indicating the locker room was closed.

⁴ This appears to be a reference to Dorsey's intention to speak with a different manager of the location about his membership, as Luis C. had suggested.

⁵ Miguel C. did not inform LAPD CD that the battery on the security guard occurred one day earlier.

⁶ Agdeppa and Rodriguez were not informed that the battery occurred one day before this incident.

entered the locker room with Luis C., Jesus L., and Miguel C. following behind. Once in the locker room, Agdeppa approached Dorsey, who was standing in a shower stall, naked, with a towel on his shoulder. Dorsey was holding his phone, which was playing music. Rodriguez stood several feet behind Agdeppa.

First Contact

Agdeppa asked Dorsey what was going on and requested that he put on his clothes, while Rodriguez told him, “They want you out. You gotta get out.” Dorsey ignored them and appeared to be doing something on his phone. Rodriguez then told him to turn off the music, put on his clothes, and leave. Dorsey looked up from his phone and asked, “What’s the problem?” Agdeppa told Dorsey that he was causing a disturbance, and Dorsey replied that he had a “business meeting.” Agdeppa responded that he did not care and needed him to listen to them and put on his clothes. Dorsey moved slowly and appeared to be stalling.

Over the next three and a half minutes, officers stood by as Dorsey failed to get dressed. He repeatedly dried the same parts of his body and slowly walked around the locker room. Agdeppa told him that he needed to hurry up and that he was losing his patience. During this time, Dorsey mostly ignored the officers while they encouraged him to hurry up and put on his clothes. At one point, Dorsey began dancing and Rodriguez told him, “Hurry up! Stop dancing! Hurry up!” Dorsey responded by calling Rodriguez a “bitch,” continuing to dance, and extending his middle finger at the officers.

The Shooting

Due to the fact that Dorsey refused to get dressed and leave, Agdeppa removed a pair of handcuffs from his duty belt, while he and Rodriguez approached Dorsey. Agdeppa grabbed Dorsey’s right arm and handcuffed his right wrist as Rodriguez attempted to control Dorsey’s left arm. Dorsey tensed his muscles and resisted. Rodriguez repeatedly ordered him to stop “tensing up,” as she struggled to bring his left arm around his back so that it could be cuffed.⁷ Dorsey’s size made it difficult to get his wrists close enough together to cuff. Agdeppa connected a second pair of handcuffs to the pair already attached to Dorsey’s right wrist in order to extend the length of the cuffs. However, the officers were still unable to control and cuff Dorsey’s left arm.

The officers continued to struggle to gain control of Dorsey, and the group moved from the shower area and toward the entrance to the locker room.⁸ Agdeppa and Rodriguez used their body weight to push Dorsey against a wall. As Rodriguez attempted to regain control of Dorsey’s right arm, Agdeppa requested an additional unit. Dorsey continued to resist, and six seconds later Agdeppa changed the additional unit request to needing backup.⁹

⁷ Agdeppa and Rodriguez both weighed 145 pounds and are 5’1” and 5’5”, respectively.

⁸ At this point, both officer’s BWV were knocked off their uniforms and fell to the ground. Rodriguez’s BWV landed with the camera lens facing the ceiling and captured parts of the incident for approximately 40 seconds until the parties moved to another area and out of view. Agdeppa’s BWV landed with the lens face down. Both officer’s BWV continued to record audio.

⁹ When an officer requests “back-up,” responding units are authorized to respond “Code Three,” utilizing lights and sirens to get to the location. A request for an “additional unit” does not allow for lights and sirens, and generally conveys a less urgent need for a rapid response.

Dorsey pulled his handcuffed right arm away from Rodriguez's grasp and elbowed her in the face. Rodriguez drew and deployed her Taser for five seconds, striking Dorsey in the back.¹⁰ Rodriguez was unaware the second dart failed to attach to Dorsey, and the Taser appeared to have no effect. Agdeppa and Rodriguez continued to struggle to control Dorsey's left hand and cuff it. As Dorsey tried to turn his body toward the officers, Rodriguez warned him, "Turn around, or I am going to have to use it again."

Dorsey continued to resist and ignored the officers' orders. Agdeppa utilized his Taser in drive-stun mode by placing it on Dorsey's abdomen and activating it for five seconds. The tase appeared to agitate Dorsey and he began to swing at Rodriguez. Rodriguez activated her Taser for a second and third time, which appeared to have no effect on Dorsey. Dorsey hit Rodriguez with his right hand as he attempted to grab her Taser with his left. Agdeppa then used his Taser in drive-stun mode for a second time, which caused Dorsey to turn toward Agdeppa and punch him in the face multiple times. The punches dazed Agdeppa and he lost control of his Taser as he stumbled back into a wall. Dorsey returned his attention to Rodriguez and punched her in the face three to four times. He then pushed her, causing her to fall to the floor and land on her back.

Dorsey stood over Rodriguez and straddled her legs as she laid on the floor. Dorsey had possession of her Taser and held it in his left hand while he leaned over and punched her in the face approximately five times with both hands. Rodriguez feared that Dorsey would tase her in the face or obtain possession of her service weapon. She attempted to block Dorsey's punches and keep the Taser away from her face. As Dorsey punched Rodriguez, Agdeppa unholstered his service weapon and fired five rounds in rapid succession at Dorsey from approximately five to seven feet away.¹¹ Four of the five rounds hit Dorsey and he fell backward and away from Rodriguez.

Dorsey landed with his head against a wall, underneath a vanity table. Rodriguez's Taser remained in the grasp of his left hand.



Figure 1 – Dorsey gained control of Rodriguez's Taser during the struggle and it remained in his left hand after the shooting.

¹⁰ The Taser requires both darts be attached to the target to be effective. Rodriguez believed both darts attached to Dorsey's body but was not sure.

¹¹ Forty-three seconds passed between the first Taser activation and the shots being fired.

Agdeppa broadcasted, "Shots fired! Officer needs help! Suspect down!" over his police radio. At 9:16 a.m., Rodriguez radioed for a rescue ambulance to respond to the scene. Los Angeles Fire Department arrived on scene and pronounced Dorsey dead at 9:25 a.m.

Statement of Officer Agdeppa

When Agdeppa first approached Dorsey, he noticed he was a "very big guy." Agdeppa's goal was to get Dorsey out of the 24-Hour Fitness, detain him, and conduct an investigation into what had occurred. He told Dorsey to put his clothes on and informed him that he needed to leave the location. Dorsey was not responding and acted as if he did not care. When Dorsey started dancing and giving the officers the finger, Agdeppa knew they would not be able to get voluntary compliance. He and Rodriguez grabbed Dorsey and tried to handcuff him.

Dorsey resisted, and Agdeppa and Rodriguez were having trouble handcuffing him because of Dorsey's size and the damp conditions in the locker room. Dorsey continued to ignore their commands and resist, so Agdeppa drew his Taser, removed the cartridge, and put the Taser up to Dorsey's chest, and warned him that he would use it if he kept resisting. Dorsey continued to resist, and Rodriguez deployed her Taser and the darts attached to his back. Agdeppa said he felt a shock from the Taser and let go of Dorsey. Dorsey continued to resist, and Agdeppa used his Taser in stun mode by pressing it to Dorsey's back and activating it.

Dorsey began punching Rodriguez and Agdeppa tried to grab Dorsey's arms to prevent him from hitting Rodriguez. He pushed Dorsey away from Rodriguez, but Dorsey went after her again and started punching her. Agdeppa tried to reengage and Dorsey punched him in the face with his right hand. The punch fractured Agdeppa's nose and the handcuff attached to Dorsey's right hand slammed into the side of his head. The blow knocked Agdeppa back a few feet and caused him to feel dazed.

When Agdeppa regained his focus, he saw Rodriguez on the ground and Dorsey leaning down next to her punching her in the face and head. Rodriguez was unsuccessfully attempting to defend herself by trying to block Dorsey's punches. Agdeppa did not think he could physically overcome Dorsey and the Taser deployments had not been successful. Agdeppa considered using his ASP, but decided against it because of the exigency of the situation:

I observed the suspect standing over her, throwing punches at high velocity just to her face and seeing the chain and the handcuffs hitting her and everything. It looked like he was just trying to kill her, just trying to do as much serious bodily injury to her face and/or kill her.

Agdeppa drew his service weapon, pointed it toward Dorsey, and rapidly fired five rounds to stop him from causing serious bodily injury or death to his partner. He was three to five feet away from Dorsey when he fired.

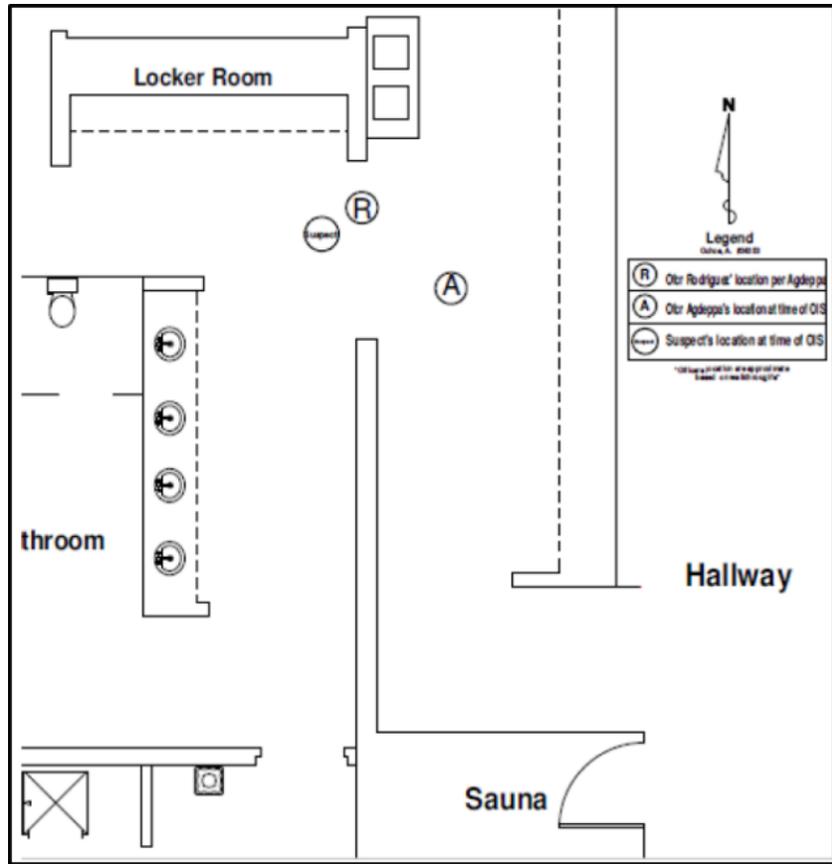


Figure 2 – Diagram of bathroom, including location of involved parties at the time of the shooting, according to Agdeppa.

Statement of Officer Rodriguez

Rodriguez and Agdeppa struggled to control Dorsey as he resisted being handcuffed. At one point during the incident, Dorsey pulled his arm back and elbowed Rodriguez in the face. Rodriguez then drew her Taser and deployed it at Dorsey’s back while still trying to keep hold of him. She did not warn Dorsey that she was going to tase him because she feared that if Dorsey knew he would increase his efforts to break free from their control.

The Taser seemed to have no effect, and Dorsey turned his body and began punching Agdpeppa. Rodriguez activated her Taser again and Dorsey turned toward her and began punching her in the face with one hand while grabbing her Taser with the other. Dorsey pushed Rodriguez to the ground, stood over her, and continued to punch her in the face. Rodriguez attempted to block the punches while trying to keep the Taser, which Dorsey now possessed, away from her face. She then heard Agdeppa scream “something” and heard the shots being fired. Dorsey fell to the ground with the Taser still in his left hand.

Rodriguez thought Dorsey was trying to kill her. Dorsey was punching her and trying to tase her in the face, and she feared he would gain possession of her service weapon and kill her.

Statement of Jesus L.

Investigators interviewed Jesus L. on the day of the incident. Jesus L. was working as a security guard that day, and Dorsey was being aggressive and arguing with a gym member prior to the officers arriving. When the officers arrived, they attempted to get Dorsey dressed and have him leave the facility, but he refused. Dorsey resisted when officers tried to arrest him. Agdeppa drew his Taser and warned Dorsey that he would tase him if he did not comply with their orders. Dorsey resisted the officers, and Rodriguez and Agdeppa both tased him. The Tasers seemed to have no effect and Dorsey began “going back and forth” punching both officers. Agdeppa got hit and “flew” against a wall. Rodriguez was knocked to the ground and Dorsey stood over her, punching her in the face. Dorsey came toward him and Miguel C., grabbing his jacket and Miguel C. by neck. Agdeppa then reengaged with Dorsey and Rodriguez got to her feet.¹² Jesus L. explained what happened next:

[Dorsey] was punching both of them on the side of the head, on the left ear. He punched the lady, and he just kept punching the other officer in the nose. Then he started bleeding from his nose. And when he was punching him, that's when the officer got back up from the floor and he took out his gun and he fired at him.¹³

Agdeppa fired between five and seven rounds at Dorsey from a distance of approximately five feet. Jesus L. says he was standing approximately four feet behind Agdeppa when the shots were fired. Jesus L. felt like the officers “did what they had to do.”

24-Hour Fitness surveillance video shows Jesus L. exiting the locker room and entering a hallway approximately one second after the shooting. In a follow-up interview by investigators, Jesus L. clarified that when he first heard the shots, he was exiting the locker room, had his back to Agdeppa, and did not see him fire. When he heard shots fired, he turned around and saw Agdeppa firing his duty weapon at Dorsey, who was approximately two or three feet from Agdeppa.

Statement of Miguel C.

Investigators interviewed Miguel C. the day of the incident.¹⁴ Miguel C. was working as a security guard and Dorsey had been involved in incidents with other gym members that day. Dorsey had been told to leave multiple times before LAPD arrived. When officers arrived, Dorsey stated, “Well, what the fuck are you guys going to do?” and kept calling Rodriguez a “Bitch.”¹⁵ Rodriguez warned Dorsey that they would tase him if he did not cooperate.

¹² Jesus L. describes Dorsey reaching for Agdeppa’s holstered gun and coming within three inches of it at one point during the incident. He said Agdeppa responded by putting his hand on top of his gun and turning away from Dorsey. It is unclear when this occurred.

¹³ Jesus L. later clarified that Agdeppa was never knocked to the floor, but did hit his back against the wall.

¹⁴ Investigators interviewed Miguel C. again on February 7, 2019. The two statements provided by Miguel C. are contradictory in several material aspects.

¹⁵ These statements, along with many other statements Miguel C. attributes to Dorsey and the officers, cannot be heard on the BWV audio.

The officers attempted to handcuff Dorsey and he resisted while yelling, “What are you going to do? What are you going to do, bitch?” While resisting, Dorsey elbowed Agdeppa in the face and Rodriguez responded by tasing Dorsey. After being tased, Dorsey began punching Agdeppa and he flew against the wall, bounced back, and Dorsey punched him again. Dorsey then punched Rodriguez and she fell to the floor and landed on her back. Rodriguez repeatedly told Dorsey to “Stop!” as he stood over her and punched her while she was on the ground.

Agdeppa approached Dorsey, and Dorsey reached for, and held onto, Agdeppa’s holstered gun. Dorsey was unable to get the gun and Agdeppa pushed Dorsey away from him and said, “Don’t make me do this! Stop!” Dorsey replied by saying, “What the fuck are you going to do?” and “You ain’t doing shit to me!” Dorsey then grabbed Luis C. by the jacket, pushed him, and then grabbed Miguel C. by the neck with one hand and began choking him. Miguel C. pushed Dorsey off him, and Dorsey “went after” Rodriguez again. Agdeppa drew his gun and told Dorsey again, “Don’t make me do this!” Dorsey then reached for Agdeppa’s arm that was holding the gun and Agdeppa told him “Let me go!” and “Don’t make me do this!” Dorsey reached for Agdeppa again and Agdeppa pushed Dorsey away and began shooting. Miguel C. believes Agdeppa fired five rounds and Dorsey fell to the ground and landed under a sink. He never saw anything in Dorsey’s hands.

On February 7, 2019, investigators conducted a second interview with Miguel C. Miguel C. stated that when Dorsey first punched Agdeppa, it caused him to bounce off the wall and fall on the floor. Rodriguez tased Dorsey, who responded by punching her and causing her to fall face down onto the ground. Agdeppa approached Dorsey and was punched again. Rodriguez got to her knees and tased Dorsey a second time. Dorsey grabbed Rodriguez by the hair and punched her in the face multiple times, knocking her unconscious and causing her to fall onto her back.

Agdeppa tased Dorsey again, and Dorsey responded by punching him. As Dorsey punched Agdeppa, Miguel C. grabbed Rodriguez’s legs and attempted to drag her to safety. Miguel C. had dragged Rodriguez approximately one foot when Dorsey grabbed his neck with one hand and began choking him. Agdeppa drew his gun and Dorsey tried to grab it with his free hand but “missed.” Agdeppa fired one round, striking Dorsey. Dorsey then grabbed Agdeppa, prompting Agdeppa to shoot Dorsey a second time. After the second shot, Dorsey let go of Miguel C.’s neck and “walked” backward. It appeared that Dorsey was going to “come back” at them, and Agdeppa shot Dorsey two more times.¹⁶ Miguel C. stated he observed the shooting and described what happened in detail; however, 24-Hour Fitness surveillance video shows him exiting the locker room into a hallway approximately five seconds prior to shots being fired. The inside of the locker room is not visible from the hallway.

Miguel C. expressed fear that Dorsey may have shot them if he gained possession of Agdeppa’s firearm and opined that Agdeppa “had no choice” and “saved lots of lives.”

Statement of Luis C.

Luis C. was working at 24-Hour Fitness on the day of the incident. He had told Dorsey to leave multiple times, had another employee call the police, and called the police himself in an attempt

¹⁶ BWV audio recordings captured the sound of multiple shots being fired in rapid succession with no discernible pauses.

to get Dorsey out of the facility. When officers arrived, Luis C. led them to Dorsey, watched them encourage him to get dressed for a few minutes, and then walked back to the front desk. When Luis C. returned to the locker room, the officers were trying to arrest Dorsey and he was resisting. Luis C. heard multiple Taser activations and saw Dorsey begin to punch the officers and reach out trying to grab the security guards.¹⁷ Luis C. never saw Dorsey actually touch either security guard. Dorsey knocked Rodriguez to the ground and continued punching her.

Luis C. turned and ran away. He explained, “It was evident what was going to happen next because he was such a big guy, and it looked like he was going to do -- it looked like he was going to do some, like, horrible things.”¹⁸ As Luis C. exited the locker room, he heard five gunshots.

Injuries

Agdeppa suffered a one-centimeter laceration to the bridge of his nose and a concussion. He also sustained a three-inch vertical abrasion to the left side of his head above his ear, likely caused by the swinging pair of handcuffs connected to the pair of handcuffs locked on Dorsey’s right wrist. Rodriguez sustained swelling and discoloration to the left side of her face, a half inch abrasion behind the right knuckle of her index finger, a strained left hamstring, and a left knee sprain.

Crime Scene and Ballistics Evidence

Rodriguez’s Taser was recovered from Dorsey’s left hand. Dorsey had one handcuff on his right wrist and the cuff for the left wrist had another pair of handcuffs interlocked. Dorsey had one Taser dart, with wire attached, protruding from the center of his back. Agdeppa’s Taser was recovered from the locker room floor, and his unfired Taser cartridge was recovered from a countertop in the sink area of the locker room. Five expended cartridge casings, head stamped “Win 9mm Luger” were recovered from the locker room floor, along with a bullet jacket fragment and metal lead core from an unknown caliber round. A bullet fragment was recovered from a tiled wall in the locker room. The five cartridge casings recovered from the scene were determined to have been fired from Agdeppa’s service weapon.

Senior Criminalist Cristina Gonzalez conducted bloodstain pattern analysis to determine the relative positions of Dorsey and Rodriguez at the time of the shooting, and to determine if Dorsey was holding Rodriguez’s Taser at the time of the shooting. Gonzalez concluded that the bloodstain evidence indicated that Dorsey was low to the ground with his upper torso in a somewhat upright position when he was shot. Bloodstain patterns on the thighs of Dorsey were consistent with his thighs being in a somewhat horizontal position when he was shot. According to Gonzalez, the projected bloodstain patterns and bloodstains on the pants of Rodriguez are consistent with the

¹⁷ Luis C.’s view was partially blocked by a wall during the incident. In his first interview, Luis C. initially said that Dorsey “tried reaching for the officer’s gun” during the scuffle. Later during that interview, Luis C. stated that Dorsey reached for the officer’s “utility belt,” and he assumed they were reaching for their gun. In a follow-up interview, Luis C. told investigators he did not recall Dorsey reaching for any officer’s belt or gun.

¹⁸ According to Luis C., he was exiting the locker room as shots were fired; however, surveillance video shows him exiting the locker room approximately seven seconds before the shooting.

officer being on the ground, to the south of, and below Dorsey at some time during the shooting incident.

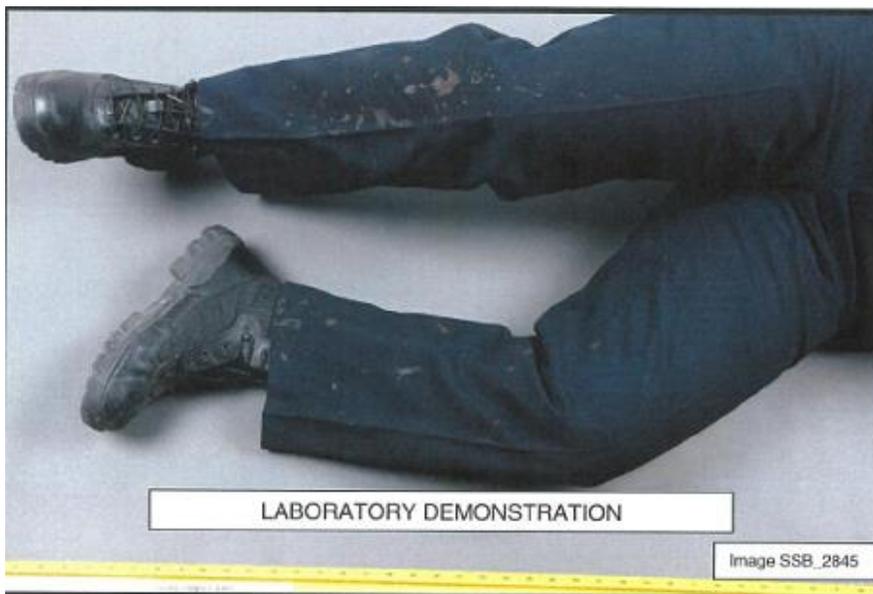


Figure 3 – Bloodstain patterns on Rodriguez’s pants show the likely positioning of her legs at the time of the shooting.

Regarding Rodriguez’s Taser, Gonzalez concluded, “The bloodstain patterns on the Taser gun and on the left hand are consistent with Mr. Dorsey holding the Taser gun at the time of the shooting incident (the blood spattering event).” Dorsey’s left thumbprint was also found on the Taser.¹⁹

Tasers

Axon Data Reports show Agdeppa’s Taser activated two times during the incident, at approximately 9:12:44 a.m. and 9:12:57 a.m., respectively.²⁰ Rodriguez’s Taser activated five times during the incident. The first activation occurred at 9:12:29 a.m., the second at 9:12:45 a.m., the third at 9:12:53 a.m., the fourth at 9:13:01 a.m. and the fifth at 9:13:09. The fourth and fifth activations occurred eleven and three seconds before the shooting, respectively.

Autopsy

An autopsy was performed on November 2, 2018, by Associate Deputy Medical Examiner Zuhha Ashraf under the supervision of Senior Deputy Medical Examiner Odey C. Ukpo. The cause of death was determined to be multiple gunshot wounds. Dorsey sustained gunshot wounds to the neck, chest, shoulder, and abdomen. Dorsey also sustained contusions and abrasions to his left wrist, neck, and chest, along with head trauma to his scalp, likely sustained when his head hit the

¹⁹ An initial fingerprint comparison incorrectly concluded that the latent print found on Rodriguez’s Taser did not belong to Dorsey. This was caused by an insufficient FBI exemplar that was used in the comparison. A subsequent comparison using the coroner’s rolled prints as the exemplar resulted in the print being identified as Dorsey’s.

²⁰ Neither witnesses, Rodriguez, nor Agdeppa describe a second activation of Agdeppa’s Taser during their interviews. Based on the time of the activation, it appears the activation occurred when Agdeppa initially tried to stop Dorsey’s attack on Rodriguez, prior to Dorsey punching Agdeppa.

floor after being shot. The Taser deployment resulted in a single puncture wound to Dorsey's back.²¹

LEGAL ANALYSIS

“An officer may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance.” *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. “Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Id.* (citations and internal quotations omitted). When protecting the public peace, a police officer “is entitled to the even greater use of force than might be in the same circumstances required for self-defense.” *Id.*

“The question is whether a peace officer's actions were objectively reasonable based on the facts and circumstances confronting the peace officer.” *Id.*, at 1102. “The test is highly deferential to the police officer's need to protect himself and others.” *Id.*

The use of a TASER constitutes an intermediate, significant level of force that must be justified by the government interest involved. *Bryan v. MacPherson* (2010) 630 F.3d 805. Use of a TASER is subject to the same reasonableness test as the use of force generally. *See, Hinton v. City of Elwood* (10th Cir. 1993) 997 F.2d 774, 777 (not excessive for officers to use an “electric stun gun” on a man after grabbing him and wrestling him to the ground, because of his active resistance to arrest). The use of a TASER falls within the category of non-lethal force. *Bryan*, supra, 630 F.3d at 823; *See also, Lewis v. Downey* (11th Cir. 2004) 581 F.3d 467, 475.

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.*

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. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer “may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him.” *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was

²¹ Toxicology results indicated the presence of marijuana in Dorsey's blood.

necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.” CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

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

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers 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.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

Officers Agdeppa and Rodriguez responded to radio calls that Dorsey was threatening employees, causing a disturbance, and refusing to leave. They were also advised that he was naked and attempting to grab people. When the officers arrived at 24-Hour Fitness, an employee told them that Dorsey was threatening members and had assaulted a security guard. Upon initial contact, the officers saw Dorsey standing near the showers, drying his body. They asked him to get dressed and leave the location multiple times. It became apparent that Dorsey would not comply, and the officers attempted to legally detain him in order to remove him from the location and conduct a battery investigation.

Dorsey physically resisted the officers for approximately three minutes as the officers used their hands and body weight to try to control and handcuff him. Dorsey was much bigger and stronger than the officers. They were unable to detain him without additional help, and Agdeppa consequently requested backup. Dorsey elbowed Rodriguez in the face, and Rodriguez and Agdeppa attempted to use their Tasers in order to handcuff Dorsey. The Tasers seemed to have no effect on Dorsey and he became more violent.

Dorsey punched Rodriguez and Agdeppa multiple times, cutting Agdeppa's nose, causing him to be dazed and sustain a concussion. The 24-Hour Fitness employees in the locker room were scared and feared what Dorsey might do if he overtook the officers. Dorsey began punching Rodriguez in the face and pushed her to the floor. Dorsey stood over Rodriguez with her Taser in his hand, leaned down, and punched her in the face as she lay on her back trying to defend herself. Dorsey had already caused injuries to Agdeppa, and it was reasonable for Agdeppa to believe that Dorsey would cause great bodily injury or death to Rodriguez and possibly to himself. Under these tense, uncertain, and rapidly evolving circumstances, Agdeppa's decision to use deadly force was reasonable.

CONCLUSION

We conclude that Officer Agdeppa and Rodriguez were justified in their use of force while trying to detain Dorsey. We further conclude that Officer Agdeppa acted lawfully in self-defense and in defense of others when he used deadly force against Albert Dorsey. We are closing our file and will take no further action in this matter.