

**Fatal Officer Involved Shooting of Donald MacFarlane
Long Beach Police Department**

**Detective David Strohman #5543
Officer Justin Krueger #6152**

J.S.I.D. File #18-0089



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 7, 2020

MEMORANDUM

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

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

SUBJECT: Fatal Officer Involved Shooting of Donald MacFarlane
J.S.I.D. File #18-0089
L.B.P.D. File #180014509

DATE: October 7, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 7, 2018, fatal shooting of Donald MacFarlane by Long Beach Police Department (LBPD) Detective David Strohman and Officer Justin Krueger. We have concluded that Detective Strohman and Officer Krueger acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 7:35 p.m., on March 7, 2018. The District Attorney Response Team (DART) responded to the location, received a briefing regarding the circumstances surrounding the shooting, and conducted a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, medical reports, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted by LBPD Detectives Sean Irving and Benjamin Vargas.

FACTUAL ANALYSIS

On March 7, 2018, at approximately 3:52 p.m., Magdalena, the ex-wife of Donald MacFarlane, called 9-1-1 to report that MacFarlane was threatening to blow up the Federal Building in Long Beach. Magdalena explained that MacFarlane was upset about losing custody of his children, for which he blamed the federal government. Magdalena also said that MacFarlane was armed with a loaded .45 caliber handgun. At the time of the 9-1-1 call, Magdalena was driving her own car following MacFarlane, who was driving a van through Long Beach. The dispatcher told Magdalena to pull over and make contact with police officers, who were directed to her location.

LBPD Officer Manuel Banuelos contacted Magdalena near Long Beach Boulevard and Fourth Street. Magdalena told Banuelos that she had been in the van with MacFarlane earlier that day. She did not see any explosives in the van, but said she did see a .45 caliber semiautomatic

handgun. Magdalena showed Banuelos a photograph of the van which had Oregon plates. Banuelos broadcast this updated information to other units.

LBPD Officer Ignacio Zavala was driving westbound on Ocean Boulevard when he noticed MacFarlane's white Ford Econoline van parked along the north curb in front of 333 West Ocean Boulevard (Long Beach City Hall). Zavala broadcast that he may have located the suspect. Zavala drove past the van and executed a U-turn at Chestnut Place and Ocean Boulevard, then drove back eastbound on Ocean Boulevard to Pacific Avenue where he executed another U-turn to approach the van from the rear. In that interval, Mifflin proceeded eastbound on the other side of Ocean Boulevard, passed the van, and saw MacFarlane seated in the driver's seat. Mifflin executed a U-turn and approached the van from behind. Motor Officer Eric Mifflin and Sergeant Jonathan Steinhauser arrived on scene contemporaneously.

MacFarlane began to pull away from the curb. Mifflin initiated a traffic stop. The van continued a short distance before pulling over to the right curb.¹ Mifflin parked behind MacFarlane and dismounted the motorcycle. Steinhauser pulled alongside of Mifflin. Zavala parked nearby. Steinhauser armed himself with an AR-15 and both Steinhauser and Zavala exited their respective vehicles. MacFarlane got out of the van with a black object in his right hand. Mifflin and Zavala drew their service weapons. MacFarlane faced away from Mifflin, and extended his right arm. Mifflin could see MacFarlane holding something in his right hand and yelled for him to leave the item on the car seat and raise both hands. MacFarlane raised his right hand to the front, at which point Mifflin saw that the object in MacFarlane's right hand was a dark colored handgun.² Mifflin took cover behind his motorcycle and ordered MacFarlane to drop the gun. Steinhauser likewise commanded MacFarlane to drop the weapon. MacFarlane then turned towards Mifflin and put the gun to the side of his own head.

LBPD Officer Steve Gartlan, who arrived a few moments after MacFarlane exited his van, utilized a vehicle-mounted public address system and took over the task of giving orders. Gartlan repeatedly ordered MacFarlane to drop the gun. MacFarlane did not comply. MacFarlane stood by the open driver's side door of the van, with his left hand on the window behind the door and an open palm facing the window. MacFarlane held the handgun in his right hand, with the barrel pointed skyward. MacFarlane began to yell at the officers on scene.

Gartlan asked MacFarlane if there was any way to end the situation without people getting hurt. MacFarlane replied, "I don't want to hurt you, but you all are going to have to kill me!" Gartlan asked MacFarlane if the gun was loaded. MacFarlane nodded in the affirmative. Gartlan pleaded for MacFarlane to remove the magazine from the gun. MacFarlane shook his head left to right and yelled "No!" Gartlan asked MacFarlane if he had any explosives or bombs inside his vehicle. MacFarlane said he did and added, "Soon you will all see how much." Over time,

¹ The Federal Building at 501 West Ocean Boulevard is located 1.5 blocks west of this location. It is not known if MacFarlane had been to the Federal Building that day. He was detained at the south perimeter of the new Long Beach Civic Center construction project, located at 400 West Ocean Boulevard.

² During the investigation that followed the officer involved shooting, it was learned that the pistol was a replica rather than a real firearm. The replica was recovered and booked into evidence by LBPD Officer Anthony De Stefano. Deputies involved in the shooting did not know the pistol was a replica at the time of the shooting.

Steinhauser saw MacFarlane's demeanor change; MacFarlane went from laughing at Gartlan, to looking around nervously.



Figure 1: MacFarlane as he stood in the vehicle doorway.

More LBPD officers arrived, including members of the Hostage Negotiation Team. For approximately one hour, LBPD Hostage Negotiator Officer David Chamberlain attempted to negotiate with MacFarlane. MacFarlane demanded to talk to the “feds” with whom he was angry because – he claimed – they had taken his two daughters away, placed them in federal custody, and both had become pregnant. Chamberlain tried to reassure MacFarlane that they (LBPD) were not the “feds” and that they may possibly be able to help. MacFarlane was adamant that no one could help him, that he did not want help, that the only place he (MacFarlane) was going was to hell, and that officers could not hurt him because he “was already dead.”

At one point, Chamberlain asked MacFarlane how he saw the situation being resolved. MacFarlane responded, "I want you guys to kill me." Chamberlain told him that the police wanted a peaceful solution and for everyone to end up going home safe, including MacFarlane. Chamberlain asked MacFarlane if he was willing to place the handgun on the driver's seat of the vehicle. MacFarlane said that he had super-glued the gun to his hand. Chamberlain asked MacFarlane several times if he would be able to remove the magazine from the gun with his free hand. MacFarlane said that he could not because his hand was glued and one of his fingers was blocking the release.

MacFarlane made comments insinuating that the van contained explosives and that he was going to detonate them, but alternately said he was going to drive away. MacFarlane referred to the van as his security, and said that his “toys” were inside. Asked to elaborate on what he meant by toys, MacFarlane replied “Huge explosives!”³ MacFarlane told Chamberlain, “You’re going to have to kill me!” MacFarlane indicated he was going to get back in the van.

³ LBPD Special Weapons and Tactics (SWAT) Officer Robert Owens reported hearing MacFarlane say that the van was filled with enough explosives to “take out two city blocks.” LBPD Officer David Ebell reported hearing a

LCPD SWAT team member Officer Jeffrey Weber parked a Lenco Bear tactical vehicle in the westbound lanes of Ocean Boulevard to prevent MacFarlane from driving away. A second tactical vehicle, a Lenco BearCat, driven by LCPD SWAT team member Officer Nicholas Dyer (and also occupied by LCPD SWAT team member Krueger), was positioned in the eastbound lanes of Ocean Boulevard with its front end approximately 50 feet away at a 45° angle toward MacFarlane's van to provide a covered observation post. SWAT team members were positioned at both tactical vehicles.

LCPD Detective and SWAT team member Timothy Everts utilized binoculars to observe the handgun that MacFarlane brandished. Everts saw an orange or reddish marking near the tip of the gun, but also observed that it did not resemble a typical toy or replica; rather, it appeared as though markings had been painted onto a real gun, or an attempt had been made to black out existing markings. SWAT Officer Rodolfo Rios, who observed the handgun through the optic on his rifle, described seeing an orange front sight that resembled a fiber optic prototype that one might find on an actual firearm.⁴

Commander Joel Cook noted that there were numerous pedestrians in the area standing behind yellow crime scene tape that had been placed along building fronts south of Ocean Boulevard. Cook noted that an exchange of gunfire would place these pedestrians at risk of harm. In addition, there were numerous citizens viewing the incident from balconies in nearby apartment buildings along Ocean Boulevard, and others watching from behind large glass windows. These spectators were at extreme risk in the event MacFarlane detonated a device. Krueger noted that the scenario was, by its nature, high risk because MacFarlane could begin shooting at any moment and discharge multiple rounds at officers or spectators before officers could react.

Two emergency action teams (EAT) were formed, the first consisting of Officers Rios, Owens, Jeremy Haining, Jason Kirk, James Kloss, Steven Jilek and Christopher Castillo, and the second (EAT), consisting of LCPD Sergeant Aaron Alu and Officers Strohman, Krueger, Daniel Martinez, Nicholas Dyer and K9 Officer Jason Wood. The EATs developed a plan to keep MacFarlane from going back inside of, or moving, the van by utilizing a combination of CS gas,⁵ less lethal direct impact rounds, and vehicle deployment to pin the van in place. If safe to do so, a K9 would be deployed to immobilize MacFarlane. All SWAT personnel were informed of the plan via radio.

MacFarlane became increasingly agitated and began slowly inching his way back into the driver's doorway. He periodically looked back inside the van. Hoping to get MacFarlane into a position that would assist the EAT, Chamberlain tried to encourage MacFarlane to sit down or lay down outside the van, but to no avail. At approximately 5:58 p.m., the order was given to execute the intervention. Martinez deployed the CS gas round, which entered the driver's side rear window and exited the passenger side rear window. Approximately ten less lethal 40mm

similar statement. This statement, along with others made by MacFarlane, as well as the statements made by officers who interacted with him, were corroborated by witnesses residing at nearby apartment buildings.

⁴ Fiber optic sights, often red or light red in color, glow from exposure to ambient light and allow a shooter to acquire a sight picture utilizing front sights in low light conditions.

⁵ CS gas is the common term for the compound 2-chlorobenzalmalononitrile, a cyanocarbon, that is the defining component of tear gas.

sponge rounds were fired by Officers Henry Vong, Rios, Randall Beach, Francisco Vasquez, and Gartlan. As MacFarlane was being bombarded by sponge rounds, the Bear was advanced to fix the front end of the van in position while the armored Suburban simultaneously pinned the van's rear bumper.

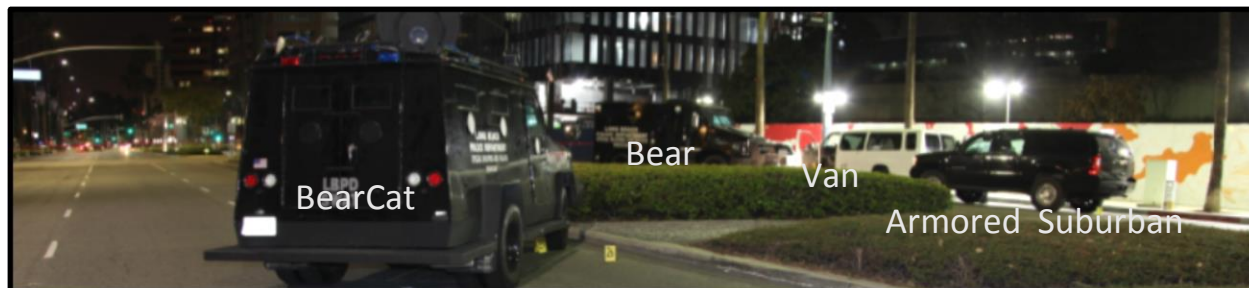


Figure 2: Vehicle positions following the execution of the intervention.

Vong initially fired three less lethal sponge rounds at MacFarlane's abdomen from a distance of about 30 yards. Through the optic of his 40mm rifle, Vong saw MacFarlane flinch from the impact of the sponge rounds, but MacFarlane maintained a grip on his pistol. Concerned that MacFarlane may shoot one of the advancing officers, Vong fired three more sponge rounds in rapid succession at MacFarlane's torso. As he did so, Vong heard three to four louder gunshots.⁶

Chamberlain described MacFarlane as hunching forward after being struck in the abdomen by the first sponge round. Additional rounds caused MacFarlane to fall backwards inside the van doorway. Per Chamberlain, MacFarlane slid down onto the inner step. Still holding the pistol, MacFarlane looked down at his right hand and then looked up (southbound) in the direction of the advancing EAT. MacFarlane began to raise the muzzle of the handgun. Chamberlain believed that MacFarlane was going to try to shoot one of the EAT officers.⁷

Krueger was positioned in the turret of the BearCat. Strohman was at the front of the BearCat in a supported firing position with his rifle braced against the vehicle's hood. Both officers' rifles were equipped with scopes. Given their proximity and equipment, both officers had a clear line of sight and good view of MacFarlane. Krueger and Strohman both saw MacFarlane being struck in the torso by sponge rounds. After being struck, MacFarlane kept the pistol pointing up, but lowered his hands. Then MacFarlane squared his shoulders towards the officers in the BearCat, and pointed the pistol in their direction.

⁶ These were four .223 caliber rounds fired by Strohman and Krueger. Strohman reported that he fired three .223 caliber rounds and Krueger reported firing one.

⁷ Dyer likewise observed MacFarlane move his gun hand down off the window frame, turn, and square his body up toward the officers' location, at which point Dyer perceived MacFarlane as a lethal threat.



Figure 3: MacFarlane pointing gun (circled in red) in direction of Strohman and Krueger.

Fearing for their lives and the lives of fellow officers, Strohman fired three rounds from his assault rifle; Krueger fired one. After being shot, MacFarlane tossed the pistol (which landed about five feet away). MacFarlane collapsed to the pavement. At Everts' direction, K9 handler Officer Michael Parcels dispatched his K9, Storm, who ran to MacFarlane and bit and held MacFarlane's left forearm as officers advanced. Storm maintained the hold until ordered to release about twenty seconds later. Owens and Haining converged on MacFarlane and dragged him to the back of the BearCat where they administered first aid pending the arrival of paramedics.



Figure 4: Replica pistol used by MacFarlane.

Because of the continuing threat posed by a possible bomb inside the van, SWAT personnel were ordered to back away. As directed by Officer Ernest Wolosewicz, Detectives James Kloss and Everts approached the driver's side of the van to conduct a visual inspection for explosive devices. They observed a chair in the very back of the van and several blankets in a pile behind the driver's seat. Kloss and Everts could not discern what was beneath the blankets. Kloss and Everts reported their observations by radio and backed away. Members of the Los Angeles County Sheriff's Department Bomb Squad came forward, inspected the vehicle, and determined that no explosives were present.

Long Beach Fire Department (LBFD) Engine 1 and Rescue 1 were on scene and cleared to enter. They assessed MacFarlane, and transported him to St. Mary Medical Center in Long Beach for medical treatment. MacFarlane succumbed to his injuries and was pronounced deceased at approximately 6:10 p.m.

The medical examiner opined that MacFarlane died from multiple gunshot wounds to the torso. The first gunshot wound entered the right anterior chest, traveled leftward, downward and front to back. The second gunshot wound entered the central anterior chest and traveled front to back. The third gunshot wound pierced the abdomen and traveled leftward, downward, and front to back. MacFarlane sustained two additional gunshot wounds to his arms. The medical examiner opined that a through and through wound to the right wrist may have been paired with the gunshot wound to the central chest as a path could be established by placing the right wrist against the chest (a position corroborated by video footage of the shooting). A toxicology report indicated a presumptive positive test for amphetamines and methamphetamines in the blood. Urinalysis confirmed the presence of amphetamines and methamphetamines.

Four .223 caliber cartridge cases were recovered near Strohman's and Krueger's firing positions. Krueger's M6IC-A5 rifle was examined and found to contain a magazine with 26 live rounds and one round in the chamber. Krueger indicated that he had loaded the magazine with 28 rounds prior to this incident. Strohman's M6IC-A5 rifle was examined and found to contain a magazine with 24 live rounds and one live round in the chamber. Strohman indicated that he had loaded the magazine with 28 rounds prior to this incident. A criminalist compared test fired cartridge casings with those recovered from the scene and confirmed that three of the collected casings were fired from Strohman's rifle, and a fourth was fired from Krueger's rifle. The evidence is consistent with Strohman having fired three rounds, and Krueger having fired one.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right 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 evaluating whether a police officer's use of force was reasonable, 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 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.

In protecting oneself or another, a person may use all the force which that person believes reasonably necessary and that 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. 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. 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 § 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. The officer 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.

Evidence examined in this investigation shows that MacFarlane appeared to be armed with a deadly weapon (a firearm), and claimed to be in possession of a weapon of mass destruction – a claim that could not be objectively verified during the standoff because of MacFarlane’s control of and threat to use both the pistol and the bomb. MacFarlane made statements that he would not be taken alive and threatened to cause harm to others. After numerous attempts to resolve the matter peacefully, officers assessed that further delay would only increase the risk of MacFarlane re-entering the van and causing harm to the public. LBPD accordingly executed a plan designed to disarm MacFarlane utilizing less lethal measures. However, after being struck by sponge rounds, MacFarlane pointed the replica firearm in the direction of officers who reasonably perceived a threat of imminent and serious bodily harm or death and responded with deadly force. While the officers later learned the weapon was a replica firearm, this discovery did not change the reasonableness of the officers’ actions. The officers’ decision to use deadly force in these circumstances was reasonable.

CONCLUSION

We find that Detective Strohman and Officer Krueger acted in lawful self-defense and in defense of others when they used deadly force against Donald MacFarlane. We are closing our file and will take no further action in this matter.