

**Officer Involved Shooting of Marion Jose Aquino Habana**

**Los Angeles Police Department**

**Officer Jesse Murphy, #35458**

**Officer David Lagesse, #42164**

**J.S.I.D. File #16-0207**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**August 17, 2018**

## MEMORANDUM

TO:                   COMMANDER ALAN HAMILTON  
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 Marion Jose Aquino Habana  
J.S.I.D. File #16-0207  
F.I.D. File #F027-16

DATE:               August 17, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 30, 2016, fatal shooting of Marion Jose Aquino Habana by Los Angeles Police Department (LAPD) Officers Jesse Murphy and David Lagesse. It is our conclusion that Officer Murphy acted in lawful self-defense and Officer Lagesse acted in lawful defense of Officer Murphy.

The District Attorney's Command Center was notified of the shooting on April 30, 2016, at 10:58 p.m. The District Attorney Response Team (DART) responded and was given a briefing and a walk-through of the scene.

The following analysis is based upon investigative reports, analyzed evidence reports, body-worn videos (BWV), photographs, diagrams, and witness statements taken during the investigation by LAPD, and submitted to this office by Detective Kenneth Sanchez. The compelled statements of Officers Murphy and Lagesse, if they exist, were not considered in this analysis.

### **FACTUAL ANALYSIS**

On April 30, 2016, at 9:34 p.m., Orlando V [REDACTED] called 9-1-1 to report that his nephew Marion Jose Aquino Habana was assaulting his girlfriend, Charlene S., in the locked bedroom of his residence.<sup>1</sup> LAPD Officers Jesse Murphy and David Lagesse, both in full uniform, were assigned the "battery/domestic violence in progress" radio call, and responded code three and activated their BWV.<sup>2</sup> Murphy and Lagesse arrived at 9:44 p.m., and were met outside the

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<sup>1</sup> V [REDACTED] resided with his wife and their son [REDACTED] in the City of Los Angeles. In February 2016, Habana moved from the Philippines into V [REDACTED]'s residence. Neither V [REDACTED]'s wife, nor his son, were present at the residence during the incident.

<sup>2</sup> BWV is defined as body-worn video.

apartment complex by V■■■■. He informed the two officers that although it had become quiet, V■■■■ was unable to open Habana's door.

Murphy and Lagesse followed V■■■■ to his residence.<sup>3</sup> Once inside the residence, Murphy ascended a narrow flight of stairs consisting of approximately eight steps which led to a small landing. Against one wall of the landing were three statues on top of a small wooden table. Murphy turned to his right and continued up another three steps to the second floor of the residence. He was followed by Lagesse and V■■■■. As Murphy reached the top of the stairs, he discovered Charlene S. in the first room on the left side of the hallway (Habana's bedroom). She was lying on the floor bleeding from her face and intermittently moaning, coughing, and screaming. Charlene S. reached an arm out toward the officers, and Lagesse entered the room to radio for an ambulance.

In the meantime, V■■■■ indicated to Murphy that Habana was possibly in the bathroom next to his bedroom (further down the hallway on the left side). Murphy knocked and opened the bathroom door, but Habana was not there. Directly across from the bathroom on the right side of the hallway was a closed door to the master bedroom. Murphy opened this door and announced, "Police." As he illuminated the room with his flashlight and announced himself again, the last door at the end of the hallway began to open and Habana was standing behind the partially-opened door.

Murphy instructed Habana, "Hey, let me see your hands, man." As Murphy began to repeat the command, he drew his weapon and quickly backed up toward the stairs. Still inside Habana's bedroom, Lagesse turned his attention from Charlene S. toward the hallway and he began walking to the door. At this point, Habana ran toward Murphy with both hands raised at shoulder level and bent at the elbows. In each hand, Habana was holding a large kitchen knife pointed at Murphy. He moved rapidly past Lagesse, as Murphy continued to quickly back up through the hallway and down the stairs to the small landing next to the statues.<sup>4</sup>



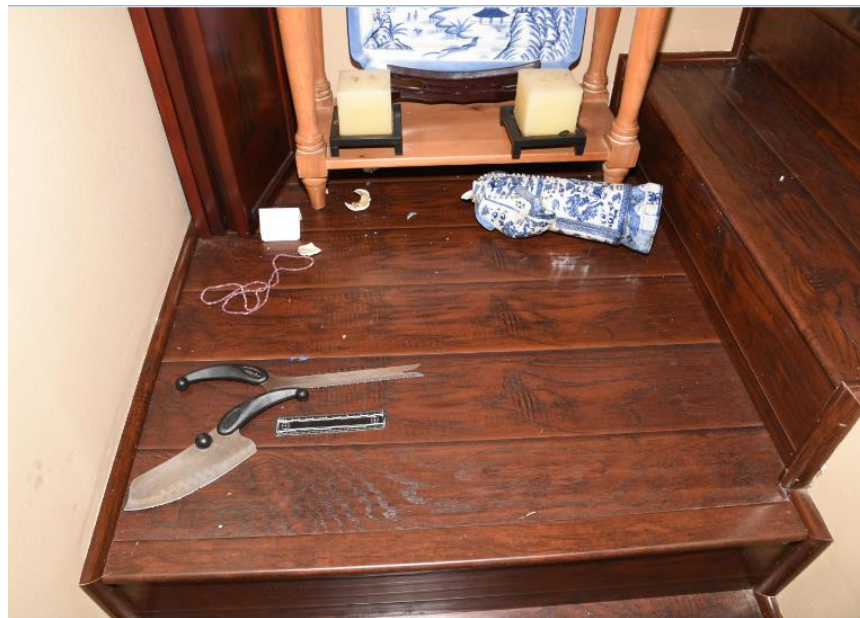
View of Habana and Murphy from Lagesse's BWV

<sup>3</sup> The following narrative is corroborated by Murphy and Lagesse's BWVs.

<sup>4</sup> The statues broke as Murphy crashed into them.

Lagesse drew his weapon and both officers simultaneously fired their weapons at Habana.<sup>5</sup> V■■■■, who was standing behind Murphy, ran downstairs. Habana fell face down on his knees at the top of the stairs, facing Murphy. Approximately four seconds elapsed from the time Habana opened the door and started running toward Murphy, and approximately three seconds elapsed before Murphy crashed into the statues on the landing and both officers fired at Habana.

Habana's hands, which were raised in front of him and above his head, continued to move, and he appeared to still be holding at least one of the two knives. Both Murphy and Lagesse ordered Habana to put the knife down a total of four times before Murphy fired an additional round at him.<sup>6</sup> Habana ceased his movements and, as Lagesse kept his weapon trained on Habana, Murphy ascended the stairs and kicked the two knives onto the small landing. Habana had been armed with two "Miracle Blade III" kitchen knives – one with a 7.5-inch serrated blade, and the other with a 9.5-inch serrated blade.



Small landing next to statues where Murphy ended up and later kicked the knives

Lagesse holstered his weapon and handcuffed Habana's hands behind his back while Murphy, with his weapon trained on Habana, radioed for an ambulance.<sup>7</sup> After this occurred, Murphy holstered his weapon, and Lagesse returned to check on Charlene S's welfare. She was sitting on

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<sup>5</sup> Before unholstering his weapon, Lagesse, who had been holding a flashlight in his right hand, moved it to his left hand.

<sup>6</sup> Murphy was armed with his department-authorized Glock Model 21, .45 caliber semiautomatic pistol, with a maximum capacity of 13 rounds in the magazine and one in the chamber for a total of 14 rounds. The pistol was recovered with 10 live rounds in the magazine and one in the chamber. Murphy fired three rounds during the incident. Lagesse was armed with his department-authorized Smith and Wesson Model M&P9, 9mm semiautomatic pistol, with a maximum capacity of 17 rounds in the magazine and one in the chamber for a total of 18 rounds. The pistol was recovered with 16 live rounds in the magazine and one in the chamber. Lagesse fired one round during the incident.

<sup>7</sup> When the Los Angeles City Fire Department arrived to assess Habana, he was unresponsive and death was pronounced. The Los Angeles County Coroner's Office later determined the cause of death to be multiple gunshot wounds. A toxicology report detected the presence of methamphetamine in Habana's blood.

the floor and repeatedly mumbling pleas for help. Charlene S. appeared to be in pain and disoriented with a bloodied, swollen face and a white charging cable as well as a black charging cable dangling from her neck and shoulders. As she reached out a hand toward Lagesse, he clasped it with his own hand and assured her that an ambulance was on the way. Lagesse stayed with Charlene S. until he was relieved by another officer.<sup>8</sup>

### **Charlene S.**

Charlene S. agreed to visit Habana for a week because his mother had called her to report that Habana was “not okay,” depressed, refusing to eat, drink, or talk to anyone because he felt that Charlene S. was going to break up with him.<sup>9</sup> She arrived on April 29, 2016, and stayed with Habana at his residence. Charlene S. advised him to eat and take his medication.<sup>10</sup> The two had been watching television in Habana’s bedroom when she went to use the bathroom. After she returned, Habana told Charlene S. in Tagalog, “You’re pushing me to trouble.” He held her head and twisted it multiple times before pushing her on the floor and choking her with both hands. Charlene S. yelled at him to stop and kicked him before passing out.<sup>11</sup>

When she regained consciousness, Charlene S. continued to struggle with Habana. During the assault, she also called out to V [REDACTED] for help and could hear him telling Habana to open the door. Habana responded by smiling, wrapping a cord around Charlene S.’s neck, and causing her to lose consciousness again.<sup>12</sup> Charlene S. told investigators that Habana had slapped, pushed, and choked her in the past. This time she felt that he was going to kill her.

Charlene S. next recalled waking up in Habana’s room and calling for V [REDACTED] to help her. The police were beside her inquiring as to her welfare and assuring her that she was going to be okay. Near the time Charlene S. regained consciousness, she also heard gunshots, but did not know what was happening. She eventually saw that Habana was lying next to the door of his room in handcuffs.

### **Yolanda V [REDACTED]**

V [REDACTED]’s wife, Yolanda V [REDACTED], told investigators that in the days prior to Charlene S.’s arrival, Habana had not been eating or drinking, and was starting to hallucinate. He told family members that somebody was going to kill him. On the night of the 29th, when they picked up Charlene S. at the airport and returned home to eat and sleep, Habana paced up and down the stairs until the

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<sup>8</sup> Charlene S. was transported to Mission Community Hospital for her injuries.

<sup>9</sup> Charlene S. told investigators that Habana was on medication to “keep him calm,” and that in the Philippines, he had been placed in a facility twice for cutting his throat and other mental issues. She stated that there were problems with him when he took illegal drugs.

<sup>10</sup> Investigators located Lamotrigine tablets at Habana’s residence along with a prescription to Habana for the drug; it had been prescribed by a doctor in the Philippines. Among its uses, Lamotrigine controls seizures as well as prevents extreme mood swings associated with bipolar disorder. Found in Habana’s room was a clinical evaluation dated February 4, 2014, which referenced a [REDACTED].

<sup>11</sup> Photographs later taken of Charlene S. depicted signs of being choked, i.e., bruising and strangulation marks around her neck and hemorrhaging in both of her eyes.

<sup>12</sup> During the incident, Charlene S. did not see him with any knives.

early morning hours. By the time Yolanda left for work on the afternoon of the 30th, however, Habana was eating and agreed to take his medication.

### **Orlando V**

V had been watching television on the first floor when he heard loud arguing and a banging noise in Habana's bedroom. V went to the room and could hear Charlene S. saying loudly, "Ron, stop! Stop! Stop!"<sup>13</sup> The bedroom was locked and V shouted, "Ron, open the door! Open the door! Open this door!" V kicked the door but was unable to gain access, or obtain any response from Habana. Thereafter, V called both 9-1-1 and Habana's mother, Shirley H.<sup>14</sup> He told Shirley to come to the residence because he felt Habana would listen to her.

When the police arrived, V followed them to Habana's room wherein they discovered Charlene S. lying on the floor. V saw that her mouth was bloody as she called out to him for help. One of the officers called for an ambulance, while the other officer continued searching for Habana. Neither of the officers had their weapons drawn. Eventually, V believed that the officer conducting the search found Habana in the bedroom at the end of the hallway. He heard the officer address Habana with, "Hey you," and then tell him something.

V became scared and started to run downstairs. As he was halfway down the stairs, V told investigators he heard an officer say "Drop the knife! Drop the knife!" Thereafter, he heard approximately three gunshots.<sup>15</sup> V did not see Habana or witness the shooting, and he "[did not] really know what happened." After V ran downstairs, he could not hear anything else and went outside to meet Shirley.

### **LEGAL ANALYSIS**

California law permits the use of deadly force in self-defense or in the defense of others if that person 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.4<sup>th</sup> 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4<sup>th</sup> 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 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.

"The reasonableness of the particular force used must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor* (1989) 490 U.S. 386, 396. "The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments—in circumstances that are

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<sup>13</sup> Habana was called "Ron" by his family and Charlene S.

<sup>14</sup> Shirley told police that her son had a history of mental illness, and in the days prior to the incident, had been experiencing hallucinations and believed that people were out to kill him.

<sup>15</sup> In Murphy's BWV, V can be seen halfway down the stairs around the same time that the initial shots were fired by Murphy and Lagesse. Thereafter, the officers ordered Habana to drop the knife. After these commands, the final round was then fired by Murphy.

tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396-97. The test for whether an officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.” *Munoz v. City of Union City* (2004) 120 Cal.App.4<sup>th</sup>1077, 1102.

The evidence examined shows that Habana’s actions placed Murphy and Lagesse in reasonable and actual fear of imminent death or great bodily harm to Murphy. Beginning with the broadcast of “battery/domestic violence in progress,” coupled with the sight of a bloodied Charlene S. lying on the floor and imploring the police for help, both officers had a reasonable basis to believe that her assailant was violent and posed a physical threat to others. As Lagesse called for an ambulance, Murphy cautiously searched for Habana in a hallway of closed doors. Habana opened the last closed door, and Murphy directed him to show his hands.

Approximately four seconds later, Habana charged toward Murphy while holding two large kitchen knives pointed in Murphy’s direction. Murphy backed up rapidly, crashed into the statues, and fired at Habana to prevent Habana from stabbing him. Simultaneously, Lagesse also fired at Habana. After the initial volley of shots, Habana continued to move his hands and held at least one of the knives. Despite being ordered by both officers to “drop the knife” a total of four times, Habana refused, causing Murphy to fire a final round at Habana.

From the time Habana assaulted Charlene S., causing her to lose consciousness twice, to his charging at Murphy with two large kitchen knives, Habana appeared to be singularly focused on violence. Given that Habana was armed with two knives and charging down the hallway toward Murphy, it would be reasonable for Murphy to believe that Habana was going to try to stab him. Similarly, it would be reasonable for Lagesse to reach the same conclusion.

Murphy and Lagesse believed that Habana posed an ongoing imminent threat of death or great bodily harm to others. This was shown by the fact that even after Habana dropped the knives, Lagesse kept his weapon trained on him until Murphy kicked the knives out of Habana’s reach. Thereafter, Murphy did not holster his own weapon until Lagesse handcuffed Habana. It should finally be noted that during the confrontation, a disoriented and physically-hurt Charlene S. laid just behind Lagesse, and Murphy and Lagesse had no reason to believe that Habana would not have attacked Charlene S. again had they failed to stop him.

## **CONCLUSION**

We find that Officer Murphy acted in lawful self-defense and Officer Lagesse acted in lawful defense of Officer Murphy. We are therefore closing our file and will take no further action in this matter.