

**Officer Involved Shooting of Michael Rogers
Los Angeles Police Department**

Officer David Machain #40643

J.S.I.D. File #17-0024



JACKIE LACEY

District Attorney

Justice System Integrity Division

October 16, 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 Michael Rogers
J.S.I.D. File J17-0024
F.I.D. File #F003-17

DATE: October 16, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 10, 2017, fatal shooting of Michael Rogers by Los Angeles Police Department (LAPD) Officer David Machain. It is our conclusion that Officer Machain acted in lawful self-defense and in lawful defense of another.

The District Attorney's Command Center was notified of the shooting on January 10, 2017, at approximately 6:30 p.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on various reports submitted by the LAPD Force Investigation Division (FID). The compelled statement of Officer Machain was considered in this analysis.

FACTUAL ANALYSIS

On Tuesday, January 10, 2017, at approximately 4:30 p.m., Bryan A. and Herman J. were working their shifts at the front desk of the Luma luxury condominium and apartment complex (the Luma) located at 1110 South Hope Street. Bryan A. and Herman J. received complaints regarding a trespasser, later identified as Michael Rogers, who was causing a disturbance on the fifteenth floor of the complex.

At approximately 4:41 p.m., Bryan A. located Rogers as he exited an elevator on the first floor of the Luma and then escorted him out through an exit leading into an alley immediately south of the building.¹ Rogers walked a short distance west back to South Hope Street where he

¹ As part of their investigation, LAPD detectives obtained video surveillance from the elevator which Rogers rode down to the first floor of the Luma. The video surveillance shows Rogers alone inside the elevator, pacing, and randomly pushing elevator buttons. Rogers was also recorded removing a large knife from his waistband, which he hid moments before the elevator doors opened and he was located by Bryan A.

approached a parked and unoccupied Los Angeles Department of Transportation (D.O.T.) vehicle parked south of the Luma near the mouth of the alley.

The driver of the D.O.T. vehicle, Officer Reginald J., had stopped to cite an illegally parked vehicle. As Officer Reginald J. walked towards the vehicle, he heard someone behind him say, "All I wanna do is die!" Officer Reginald J. turned around and saw Rogers get into the driver's side of his D.O.T. vehicle. He attempted to pull Rogers out of the car, but was unsuccessful.

Bryan A., who was still in the alley, came to Officer Reginald J.'s aid. He opened the door of the D.O.T. vehicle, punched Rogers in the arm and attempted to pull him out. Rogers pulled a large knife out of his waistband.² Bryan A. quickly got out of the D.O.T. vehicle. Fearing that he would be stabbed, Officer Reginald J. immediately backed away from Rogers who exited the driver's side door of the vehicle and walked towards Officer Reginald J. still holding the knife.

At approximately the same time, LAPD Officers Tony Gonzalez and David Machain, were in a marked patrol vehicle driving south on South Hope Street when they were spotted by Officer Reginald J. and Bryan A. Both officers were in full uniform. Bryan A. waved to get their attention and pointed at Rogers.³ Gonzalez and Machain saw that Rogers was holding a large knife.

When Gonzalez stopped the patrol car near the Luma, Rogers jogged towards the car brandishing the knife in his hand. Gonzalez attempted to reverse the patrol car to distance himself from Rogers but was obstructed by a car stopped behind him. Rogers approached the patrol car as he yelled, "Kill me!" Gonzalez accelerated forward as Rogers struck the driver's side of the patrol vehicle with the knife. Herman J., who had been inside the Luma, walked outside in time to see Rogers strike the patrol car.

Gonzalez drove a short distance south on South Hope Street, negotiated a U-turn, and then drove back towards the location where they had encountered Rogers. Before the officers could return, however, Rogers crossed to the west side of South Hope Street and entered a business named Club Pilates. Multiple witnesses inside the club saw Rogers with a knife in his hand yelling, "I want to kill myself." The witnesses fled to a bathroom and back room to avoid being attacked by Rogers. Rogers attempted to open the bathroom door but was unsuccessful.

Witness Herman J., who had seen Rogers enter Club Pilates, stood at the entrance of the business and screamed at Rogers to get his attention. Rogers spotted Herman J. and walked towards him. At approximately the same time, Gonzalez and Machain parked their patrol car outside of Club Pilates. Machain exited the patrol car, stood near the driver's side door frame and told Herman J., along with other civilians near Club Pilates, to leave the area. Moments later, Rogers exited Club Pilates still holding the knife in his right hand. Machain unholstered his service weapon and pointed it at Rogers, while ordering him to "Drop the Knife!" Rogers, who was

² The knife used by Rogers was recovered after the officer involved shooting and was booked into evidence. The knife has a six and a half inch-blade and a five-inch wooden handle.

³ A review of the evidence in this case indicates that the officers were passing by the Luma at approximately 4:47 p.m.

approximately twenty-six feet away from Machain, did not comply with his order and immediately sprinted towards him yelling, "I'm going to fucking kill you!"

When Rogers was approximately fifteen feet away, Machain fired his service weapon once while he began moving backwards to prevent Rogers from stabbing him. Machain again ordered Rogers to drop the knife. Rogers did not comply and instead continued running towards Machain. Machain continued to back up and fired his service weapon at Rogers several more times.⁴ Rogers came within inches of Machain before he finally collapsed. Rogers was shot eight times.⁵

As Rogers laid on the asphalt, he refused to comply with Machain's orders to drop the knife and instead raised it to his (Rogers') throat and to the back of his head. Rogers did not let go of the knife even after he became unconscious and stopped moving.⁶ Rogers was ultimately transported to the California Hospital Medical Center and was pronounced dead by Doctor Phillippe L.

After the shooting, multiple LAPD units arrived at the scene to assist Gonzalez and Machain and to conduct an investigation of the officer involved shooting. Rogers' roommate, Jennifer T., approached an unidentified officer at the scene and told him that she had found a woman with a large laceration on her neck laying on the hallway floor of her apartment which was located close by.⁷ Jennifer T. had also observed coagulated blood under and around the woman's body. LAPD Homicide investigators were assigned to conduct a homicide investigation based on the information provided by Jennifer T.

Based upon video surveillance, interviews of Jennifer T., the inspection of the apartment shared by Jennifer T. and Rogers, and other evidence, LAPD homicide investigators concluded that Rogers had murdered Lisa R., a maintenance worker from his building, sometime between approximately 3:45 p.m., when she and Rogers entered Rogers' apartment, and 4:33 p.m., when Rogers left his apartment alone. Lisa R.'s body was discovered by Jennifer T. at approximately 5:17 p.m. Inside the apartment, LAPD investigators located the knife used by Rogers to stab Lisa R. to death.⁸

⁴ A video surveillance camera without audio, affixed to a parking structure across from the Luma, captured Rogers' interaction with D.O.T. Officer Reginald J., in addition to capturing Rogers running at and then striking Gonzalez and Machain's patrol vehicle with his knife. The video surveillance also captured Rogers charging, knife in hand, towards Machain. Machain is shown momentarily standing next to his patrol vehicle but then backing up while shooting Rogers, who continued to run towards him until he collapsed after being shot eight times. Video of the officer involved shooting was also captured by Luis F., a bystander, who used his cell phone to record Rogers from overhead as he ran towards Machain with the knife yelling, "I'm going to fucking kill you!" Machain is clearly depicted backing away from Rogers, who continued to run towards Machain even as he was shot multiple times. The officer involved shooting was also captured on Machain's body worn camera and was also observed by several witnesses including Herman J., Officer Reginald J., Bryan A., Jorge O., Jorge M. and Melvin M.

⁵ During their investigation, LAPD investigators determined that Machain fired his first round when Rogers was approximately 15 feet away. Machain was forced to quickly walk backwards approximately 31 feet to avoid being stabbed by Rogers.

⁶ The knife was ultimately kicked out of Rogers' hand by Machain and an LAPD officer at the location assigned to Central Division. Machain restrained Rogers' wrist while the other officer kicked the knife out of Rogers' hand.

⁷ At the time Jennifer T. reported the murder to the LAPD officer, she did not know that Rogers was the subject of an officer involved shooting. The officer to whom she first reported the murder was not identified.

⁸ The knife used by Rogers to kill Lisa R. was not the same knife he used to attack Machain.

On January 16, 2017, Deputy Medical Examiner Martina Kennedy conducted an autopsy of Rogers' body and determined that Rogers had suffered eight gunshot wounds. Kennedy concluded that Rogers' cause of death was multiple, fatal gunshot wounds.

Blood samples taken from Rogers' body tested positive for the presence of Fluoxetine and Ethanol.⁹ Rogers' blood alcohol concentration was determined to be 0.101 percent.

Statement of Officer David Machain¹⁰

Officer David Machain was interviewed on January 11, 2017, by LAPD FID detectives regarding his actions during this officer involved shooting. The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and Machain was ordered to do so in the present case. Machain's statement, which is corroborated by Gonzalez and several witnesses who observed the shooting, is summarized as follows.

[REDACTED]

[REDACTED]

[REDACTED]

⁹ Fluoxetine is a selective serotonin reuptake inhibitor (SSRI) used to treat mental health conditions such as depression and obsessive compulsive disorder.

¹⁰ Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. Machain, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against himself. *Uniformed Sanitation v. City of New York, supra*, at 284-285. Because the LAPD ordered him to answer questions which might expose him to criminal liability, the LAPD compelled Machain to participate in an interview. The effect of this legal compulsion is that Machain's statement cannot be used against him in a criminal proceeding, nor can any material derived from the compelled statement be used against him. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because these compelled statements are part of Machain's police personnel file, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.




LEGAL ANALYSIS

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

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

In California, the evaluation of the reasonableness of a police officer's use of deadly force is determined by applying a reasonable person acting as a police officer standard. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146 (holding that California law "follows the objective 'reasonable person' standard—the trier of fact is required to evaluate the conduct of a reasonable person in the defendant's position [citations omitted] . . . the jury should consider all relevant circumstances surrounding the defendant's conduct. This enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation—but this is not the same as following a special 'reasonable police officer' standard.")

CONCLUSION

The evidence reviewed in the present case demonstrates that Officer David Machain reasonably believed that he, his partner and nearby civilians were in danger of being severely injured or killed by Michael Rogers.

When Machain and Gonzalez first observed Rogers near the Luma, they saw that he was armed with a knife and was threatening Officer Reginald J. and Bryan A. Rogers then turned his attention to the officers, charged their vehicle, and struck the vehicle with the knife in his hand.

¹¹ 

Machain also saw Rogers attempt to open the driver's side door of their patrol vehicle as he held the knife outside the driver's side front window. To create distance between themselves and the imminent threat presented by Rogers, Gonzalez and Machain drove a short distance away, turned around and drove back towards the Luma.

By the time Machain and Gonzalez parked and encountered Rogers outside Club Pilates, they were aware that Rogers was armed with a large knife, was acting erratically and aggressively and was not afraid to confront them, regardless of the fact that they were in a marked police vehicle and were uniformed police officers.

When Officer Machain exited the patrol car and ordered Rogers to drop the knife, Rogers clearly communicated to Machain that he intended to kill him by yelling, "I'm going to fucking kill you!" Instead of complying with Machain's command, Rogers ran at Machain with the intention of attacking him. Based on Rogers' statement, his conduct, and the fact that he was armed with a large knife, Machain reasonably concluded that Rogers intended to kill him or his partner.

In order to stop the deadly threat presented by Rogers, Machain unholstered his weapon and shot Rogers as he (Machain) moved backwards. Machain again ordered Rogers to drop the knife. Rogers failed to drop the knife and continued to charge forward, coming within inches of Machain, before he finally collapsed.

Rogers presented an immediate and deadly threat to Officer Machain, Officer Gonzalez and members of the public. Accordingly, Officer Machain's use of deadly force was objectively reasonable and justified. We are therefore closing our file and will take no further action in this matter.