

Sacramento County District Attorney's Office



March 2, 2019



**Officer Involved Shooting
Stephon Clark
March 18, 2018**

Role of the District Attorney In Officer Involved Shootings

- Legal Review is expressly limited to one question: Was a crime committed?
- Same evaluation as done for all criminal cases
- As prosecutors, we take an oath to follow the law and the facts in making a decision
- Jury Instruction (CalCrim 200):
 - Must only decide facts based upon the evidence presented
 - Must follow the law, whether you agree with it or not
 - Must not make decision based upon bias or public opinion



Role of the District Attorney In Officer Involved Shootings

Legal Review does NOT address:

- If there is civil liability
- If any police policy was violated
- If there were other tactics that could have been used by the police



The Investigation

Materials Received for Review

- SPD Report # 18-82449
- CAL DOJ Report BI-SA2018-00012
- 9-1-1 audio recordings
- Dispatch recordings and logs
- Body-worn camera, helicopter, in-car camera, surveillance, and crime scene video recordings
- Photographs and diagrams
- Audio/Video recordings of witness interviews
- Sacramento DA Crime Lab reports
- Cellebrite Extraction Report (Cellphone Analysis)
- Report of Outside Expert David Blake
- Sacramento County Coroner's Report
- Report of Case Review by Gregory Reiber, M.D.
- County of San Diego Medical Examiner's Department letter

Initial Police Response

- 9:10 pm: citizen called 911 to report person walking down 29th Street breaking car windows
 - Clothing description consistent with what Stephon Clark was wearing
 - DNA and other physical evidence shows this person was Mr. Clark
- Mr. Clark was last seen jumping a fence into a backyard
- SPD Officers Mercadal and Robinet dispatched; SSD Helicopter assisted
 - None of officers knew Mr. Clark was the suspect or that his grandparents lived on street
- Officers saw broken car windows and began searching a nearby yard

Overall View of Scene



Car Damage



Neighborhood Search



2018-03-19 T04:20:55Z
AXON BODY 2 X81132605

Neighborhood Search

2018-03-19 T04:23:20Z
AXON BODY 2 X81132605



Observations from Helicopter

- Mr. Clark was seen in another backyard staring into a sliding glass door
 - 89-year-old man was there watching TV
- Mr. Clark was seen smashing rear sliding glass door with large object and the SPD officers were advised of this by the deputy in the helicopter
- Helicopter video activated

Damage to Sliding Door



Helicopter Video

Scene



18MAR2018
21:25:45
UTC-7.0

AUTO

SPA

IR

233

HIGH

AUTO
AUTO

∞

W



24

21

Screen DVR: Started

LOS: Good

RNG 0.2nm NNW
AZM

SEARCHLIGHT

MANUAL	W/ CAMERA
W/ OFFSET	GEOPOINT

Target

Target Address:
7566 29TH ST
SACRAMENTO

Nearest Streets

29TH ST
ELLWOOD AVE
TWILIGHT DR
MEADOWVIEW RD
32ND ST

ETA: 21:25:56

320° 0.2 NM
LEFT 39°
ETE: 8sec

359
W E S
TGT
LOS

Overall View of Scene



Factual Summary

1. Citizen asked for police help
2. Mr. Clark smashed three car windows
3. Mr. Clark jumped fences into backyards
4. Mr. Clark smashed rear slider of a home while helicopter overhead
5. Mr. Clark jumped fence and continued to flee into another yard

Factual Summary

6. Mr. Clark seen looking into another car window
7. Officers were directed to side of house where Mr. Clark was seen
8. Officers approached Mr. Clark; lead officer had gun drawn
9. Mr. Clark fled into backyard and officers pursued him
10. Shooting occurs

Body Worn Camera Video

Factual Summary

11. Officer Mercadal yelled at Mr. Clark, “Hey. Show me your hands. Stop. Stop.”
12. Mr. Clark ran to backyard and rounded the corner of house
13. Officers pursued into dark yard
14. As they rounded the corner, Mr. Clark was at least 30 feet away behind a picnic table
15. In separate interviews after the shooting, the officers described what they saw
 - Mr. Clark was facing them with arms extended in a shooting stance
 - Both believed he was pointing a gun at them
 - Officer Mercadal saw a flash of light, which he believed was a muzzle flash from a gun
 - Officer Robinet believed the flash was light reflecting off a gun

2018-03-19 T04:26:42Z
AXON BODY 2 X81132605



2018-03-19 T04:26:42Z
AXON BODY 2 X81132605



Factual Summary

16. As Officer Mercadal rounded the corner of house, he yelled, "Show me your hands. Gun."
17. Mr. Clark yelled at officers
18. Both officers immediately took cover behind corner of house
19. Officers peered around corner again, Mr. Clark had advanced toward officers
20. Officer Mercadal yelled, "Show me your hands. Gun, Gun, Gun."
21. The Helicopter video shows Mr. Clark advancing toward officers

Helicopter Video





7572

Scene



What Does the Body Worn Camera Show Immediately *After* the Shooting?

17. Demeanor of the officers

18. Spontaneous statements of officers:

- “Show me your hands” and “Let’s see your hands.”
- Mercadal: “You alright? You hit?”
- Robinet: “Yeah, I’m good. He was still pointing when I saw him again. You alright?”
- Mercadal: “Yeah, I’m alright. I don’t think I’m hit or anything.”

19. Officers discuss safe approach to remove the gun

Autopsy and Toxicology

- Cause of death: multiple gunshot wounds
- Toxicology: Alcohol, Xanax, codeine, hydrocodone, marijuana and cocaine metabolite
- Findings reviewed by 4 pathologists, including Chief Pathologist
- Findings supported by two independent pathologists- Dr. Reiber and San Diego Chief Medical Examiner

Crime Lab Testing

- DNA and glass analysis link Mr. Clark to all three car break-ins
- Glass analysis shows Mr. Clark used a cinder block to break rear sliding glass door
- Paint analysis links security grate to grandparents' home and broken Camry window

Cellphone Evidence

- Forensic examination of Mr. Clark's phone
 - Phone calls
 - Text messages
 - Email draft
 - Internet searches
- March 16th domestic violence incident

Friday March 16th Incident

- Police responded to a 911 call (11:52 pm) regarding possible domestic violence
- Salena M. (mother of Mr. Clark's children) reported that Mr. Clark assaulted her
- Police took a report, documented her injuries, and photographed the scene
- Mr. Clark was not there when police arrived
- Mr. Clark was arrestable for this incident and probation violations

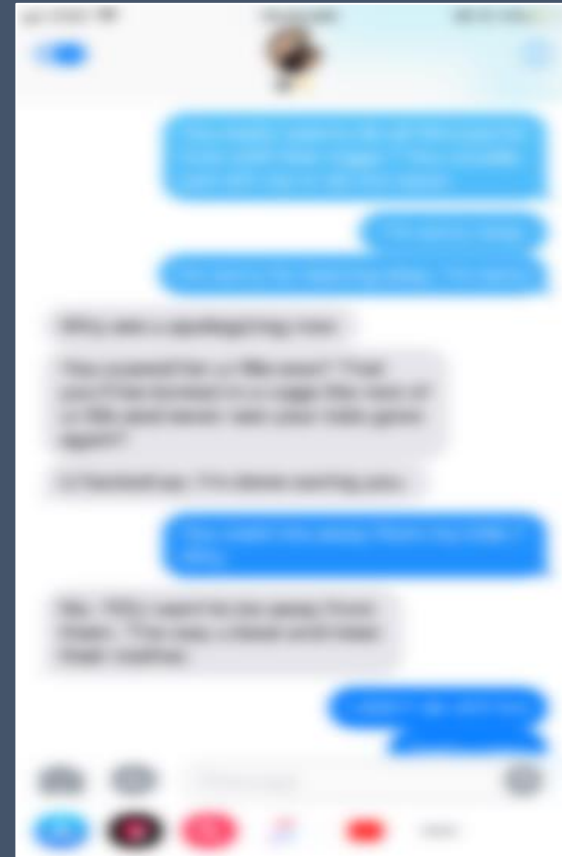
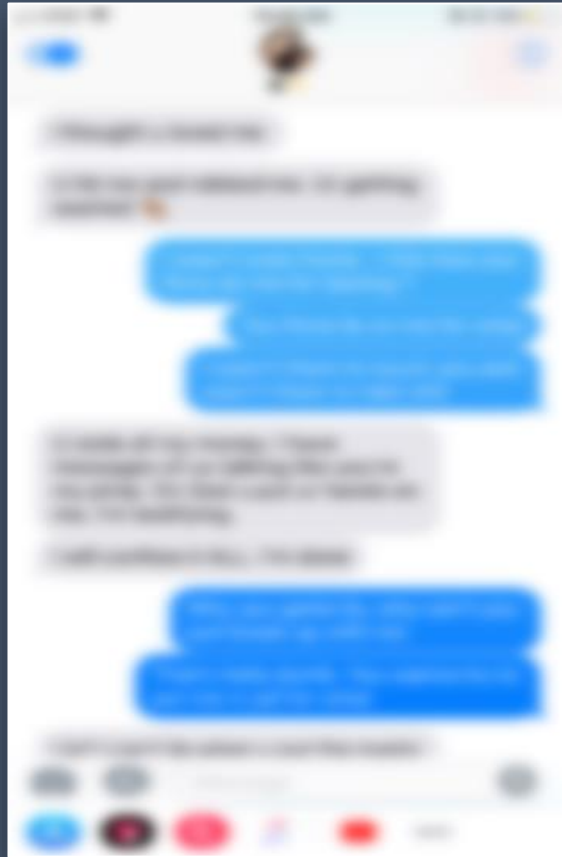
What Does Cellphone Show 48 Hours Leading up to Shooting?

- Mr. Clark tried to call Salena M. 76 times within 12 hours of 3/16 incident
- Calls and texts to Probation Officer
- Searched Sac DA website re domestic violence
- Searched Sac PD website online reporting system
- Drafted an email to law enforcement denying 3/16 incident stating, "...I'm pretty scared I'm going to be put in jail."

What Does Cellphone Show 48 Hours Leading up to Shooting?

- Text messages with Salena re 3/16 incident

Text Messages with Salena M.



What Does Cellphone Show 48 Hours Leading up to Shooting?

- Text messages with Salena re 3/16 incident
- Internet searches regarding suicide
- Text and phone calls seeking drugs

Legal Analysis

- Probable Cause
 - Citizen information
 - Broken car windows
 - Helicopter observations of home break in



Legal Analysis

- A police officer – or any other person – is justified in using *deadly force* if the officer honestly and reasonably believed that he or another person was in imminent danger of death or great bodily injury from the actions of the person who is shot.
- Was the use of deadly force lawful?



Use of Force

U.S. Supreme Court Law

Law requires that we judge the reasonableness of officers' actions based on the circumstances confronting them:

- Recognizing they are often forced to make split-second decisions
- Under tense, uncertain, and rapidly evolving circumstances
- Without the benefit of 20/20 hindsight



Honest and Reasonable Belief

- Conduct of Mr. Clark
- Conduct of the officers
 - Immediately before shooting
 - During shooting
 - After Shooting



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