



# Sacramento County District Attorney's Office

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## MEMORANDUM

DATE: March 2, 2019

TO: Chief Daniel Hahn  
Sacramento Police Department  
5770 Freeport Boulevard, Suite 100  
Sacramento, CA 95822

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SPD 18-82449  
Shooting Officers: Terrence Mercadal #752  
Jared Robinet #520  
Person Shot: Stephon Alonzo Clark (DOB 8/10/95)

The District Attorney's Office has completed an independent review of the above-referenced officer-involved shooting. Issues of civil liability, tactics, and departmental policies and procedures were not considered. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Stephon Clark. For the reasons set forth, we conclude that the shooting was lawful.

The District Attorney's Office received and reviewed written reports and other items, including:

- Sacramento Police Department (SPD) report number 18-82449;
- California Department of Justice (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 and video recordings of witness interviews;
- Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, Controlled Substances Analysis, Forensic Biology, Physical Evidence Examination, and Crime Scene Reports;
- Cellebrite Extraction Report and phone records;
- Report of Outside Expert David Blake;
- Sacramento County Coroner's Report;
- Report of Case Review by Gregory Reiber, M.D.; and
- County of San Diego Medical Examiner's Department letter.

## FACTUAL SUMMARY

On March 18, 2018, David R. and his girlfriend Jacqueline S. were living in a trailer parked in the driveway of 7571 29<sup>th</sup> Street. David R.'s two Ford Explorers, a white one and a dark one,<sup>1</sup> were parked on the east side of 29<sup>th</sup> Street, just in front of the trailer.



*Figure 1 -- Aerial photograph taken on March 19, 2018, showing 29th Street at Ellwood Avenue with relevant houses labeled. David R.'s trailer can be seen in the driveway of 7571 29th Street. The involved vehicles had been removed at this point.*

At approximately 9:00 p.m., David R.'s friend Michael C. and Jacqueline S. were standing in the driveway talking when they observed a male subject walk westbound from Ellwood Avenue, cross 29<sup>th</sup> Street, and approach a gold Toyota Camry parked on the west side of the road in front of 7570 29<sup>th</sup> Street. This male subject was wearing a black hooded sweatshirt with the hood pulled tight over his head.<sup>2</sup> The male subject walked around the back of the Camry to the passenger side, banged on the passenger window, and broke it with something they could not see. The male subject entered the vehicle and sat down.

The Toyota Camry belonged to Shynice T. When she left her vehicle, it was secure and had no broken windows. She did not know Stephon Clark or anyone else who lived nearby. Upon later examination, a metal window security grate was found on the ground adjacent to the passenger side of the vehicle.

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<sup>1</sup> One of the Ford Explorers was described by different witnesses as purple, burgundy, maroon, or black. The paint on the vehicle was very faded and in poor condition. For ease, it will be referred to as the dark Explorer.

<sup>2</sup> Jacqueline S. described the sweatshirt as plain. She thought the subject could have been Hispanic, but she did not get a good look at his face. Michael C. indicated the subject was a black male.





*Figure 2 -- CSI photograph of Shynice T.'s Camry showing damage and metal security grate found adjacent on ground*

After seeing the male subject break the Camry's window, Michael C. entered his own vehicle and drove away. Jacqueline S. entered her trailer where David R. was inside. A few moments later, David R. and Jacqueline S. heard a bang. David R. had a camera with a live feed that monitored his white Explorer.<sup>3</sup> David R. checked the monitor but did not see anything.

Around that time, Saxon R. drove onto 29<sup>th</sup> Street from Meadowview Road and observed the dark Explorer parked along the curb of 29<sup>th</sup> Street. He noticed what appeared to be broken window glass on the ground. Saxon R. saw the driver's door was open and a male subject was in the car with his legs sticking out the driver's door. The male was wearing black pants. Saxon R. thought the person was breaking into the car.<sup>4</sup>

About a minute later, David R. heard another bang, this one sounding much closer to his trailer. David R. looked at his monitor and saw someone standing by his white Explorer. David R. exited just outside his trailer and saw a male subject standing on the driver's side of his vehicle. The glass from the driver's door window had been broken out. The male subject just stared at him. David R. thought the individual might be a black male but could not see his face because he was wearing a black hoodie that was up on his head. David R. thought there might have been red writing on the back of the hooded sweatshirt. The male was wearing black pants that had white on them. David R. did not see anything in the male's hands and did not know what the male used to break his car window.

David R. called back into the trailer for Jacqueline S. to hand him his gun. David R. said this loud enough so that the subject would hear him and it would hopefully scare the person off. Instead, the male subject did not move and just stood there looking at David R.

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<sup>3</sup> This camera was a live-feed monitor and did not have recording capabilities.

<sup>4</sup> Saxon R. did not stop or call the police.



David R. went back into his trailer and grabbed a baseball bat. He exited the trailer and walked toward his truck telling the male subject to get away from his car. The male subject then ran across to the west side of 29<sup>th</sup> Street, proceeded north, and hid behind the garage at 7566 29<sup>th</sup> Street. David R. followed him. When David R. reached that house, the male took off and jumped the fence into the backyard of 7566 29<sup>th</sup> Street. The male peeked over the fence several times. David R. became aware of the damage to his dark Explorer, as well as the Camry across the street, and called 9-1-1.



Figure 3 -- CSI photograph of David R.'s dark Explorer showing broken driver's window



Figure 4 -- CSI photograph of David R.'s white Explorer showing broken driver's window

SPD's Communications Center received David R.'s call at 9:10 p.m. He reported a male subject was going down the street breaking car windows. David R. told the operator the subject had broken the windows on two of his trucks and the window of a car across the street from him. He indicated the subject was hiding in a backyard at 7566 29<sup>th</sup> Street. David R. described the subject as a male in a black hooded sweatshirt, wearing pants with a white stripe or dot design. David R. reported that he could hear the subject jiggling a fence and dogs were barking.

At 9:12 p.m., the call for service was broadcast over SPD's radio to district patrol officers. The information relayed over the radio was of a "car clout"<sup>5</sup> at 7566 29<sup>th</sup> Street, involving a male subject wearing a black hoodie who had broken some car windows and was hiding in the backyard at that address. The dispatcher indicated that the complainant still had a visual of the suspect.

At 9:13 p.m., the Sacramento Sheriff's Department (SSD) helicopter, STAR, advised on SPD's radio that they would assist, and they were en route to the area of 7566 29<sup>th</sup> Street. At 9:17 p.m., Officers Terrence Mercadal and Jared Robinet were dispatched to the call for service. Officer Mercadal's call sign that night was "1 Charles 57" and Officer Robinet's was "1 Charles 54." An SPD dispatcher radioed that the subject was further described as a male, six feet tall, thin build, and wearing a black hooded and dark pants. STAR arrived at the scene at 9:18 p.m., just ahead of Officers Robinet and Mercadal, who also arrived in their respective marked patrol vehicles at 9:18 p.m. Officers Robinet and Mercadal were in full uniform. SSD Deputy Gomez was the observer inside STAR.

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<sup>5</sup> Car clout is a term used to describe the act of breaking into a vehicle.



Officers Mercadal and Robinet contacted David R. on 29<sup>th</sup> Street. He told them he had chased the subject away and pointed out the backyard where the subject had fled. The officers could see two vehicles on 29<sup>th</sup> Street, closer to Ellwood, with their windows broken out and broken glass on the ground.

Upon STAR's arrival at the scene, Deputy Gomez began using the helicopter's infrared camera to search for the suspect. He began searching the yard of 7566 29<sup>th</sup> Street and could not see any heat sources other than two dogs. He also saw a shed but could not tell if the subject was inside. He continued searching the area while Officers Robinet and Mercadal contacted the resident at 7566 29<sup>th</sup> Street and checked the backyard.

That residence, and the other houses on the west side of 29<sup>th</sup> Street, backed up to a large field. Deputy Gomez searched the field to the west and saw a vehicle parked on the northwest side of the field. This vehicle was emitting a heat source and appeared to be occupied. He advised Officers Mercadal and Robinet of this vehicle.<sup>6</sup> Officers Mercadal and Robinet headed back to their patrol vehicles to drive over to that area.

Deputy Gomez continued using the infrared camera and located a subject, later determined to be Stephon Clark, standing at what appeared to be a glass door in the backyard of 7570 29<sup>th</sup> Street. This residence was the second house south of 7566 29<sup>th</sup> Street, where Officers Robinet and Mercadal searched the backyard. At approximately 9:25 p.m., Deputy Gomez activated his onboard video recorder, radioed an update about the location of this subject, and continued his observations. Officers Mercadal and Robinet walked down the street approaching that area.

Deputy Gomez saw Clark looking into the glass door in the backyard of 7570 29<sup>th</sup> Street and then saw Clark pick up an object from directly north of the door. Clark then swung the item at the door, breaking the glass. Eighty-nine-year-old Bill W. lived at 7570 29<sup>th</sup> Street. He was watching television when his rear sliding glass door shattered. Upon later examination, it appeared that the door was shattered with a cinder block that came from the backyard fireplace.

Deputy Gomez radioed his observations to the other officers. He then saw Clark run southbound and jump the fence into the next yard, 7572 29<sup>th</sup> Street. Deputy Gomez radioed that Clark was running toward the front yard, but then realized that Clark was walking and looking into another vehicle. This vehicle was parked along the north side of the residence at 7572 29<sup>th</sup> Street in the side yard section.

Officer Mercadal approached the north side of the residence from 29<sup>th</sup> Street and looked down the driveway. It was very dark, with only sporadic lighting coming from street lights creating shadowy areas, and vehicles blocked his view. Officer Mercadal observed Clark standing behind a dark sport-utility vehicle parked along the side of the house. Officer Mercadal gave Clark loud commands to show his hands because Officer Mercadal could not see whether Clark was holding anything. Clark turned away from the officers and began running westbound. Officer Mercadal yelled at Clark, "Stop! Stop!" Clark continued running and turned south into the backyard out of Officer Mercadal's sight.

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<sup>6</sup> Investigators later believed that this vehicle was not related to the incident.

Officer Mercadal called out, "Over here, Jared" and began chasing after Clark. Officer Robinet heard Officer Mercadal yelling at the suspect, so Officer Robinet ran towards the residence and followed Officer Mercadal into the backyard. There was a narrow path between the northern side of the house and the vehicles that were parked there. Officer Mercadal went around the vehicles and through an opening in a short fence and started to go around into the backyard. He had lost sight of Clark, so he slowed down to tactically approach the corner into the backyard.

There was no lighting in the backyard, including no rear porch light. The moon was a new moon, with only 2% of it illuminated, and weather conditions were mostly cloudy. Officer Mercadal was using the tactical light affixed to his duty weapon for illumination, and Officer Robinet was using his handheld flashlight.<sup>7</sup>

As the officers reached the northwest corner of the house in the backyard, Officer Mercadal came around the corner, leaving a position of cover to look into the yard. Officer Mercadal later described to investigators that as he came around the corner, he could see Clark with the hood of his sweatshirt pulled up and his arms extended out in front of him at chest level consistent with a shooting position. Officer Mercadal saw a metallic reflection or flash of something coming at him from Clark's position, which he thought was a muzzle flash from a firearm, and believed that Clark had shot at him. Officer Mercadal yelled, "Gun," and ducked back behind the corner of the house for cover.

Officer Robinet had also gone around the corner at approximately the same time as Officer Mercadal. Officer Robinet later explained to investigators that as he went around the corner, he saw Clark standing at what he estimated was approximately 15-20 feet away with his hands in an isosceles position,<sup>8</sup> with his hands punched out in front of him holding an object. Officer Robinet was next to Officer Mercadal on his left side. Officer Robinet also saw what appeared to be light reflecting off a metallic object in Clark's hands, and could not tell exactly what it was, but feared it was a firearm based on the way Clark was holding it. Upon hearing Officer Mercadal call out "Gun," Officer Robinet instinctively returned to cover behind the northwest corner of the house.

Officer Mercadal attempted to confirm what he thought he observed by poking his head around the corner. He saw that Clark had moved ten feet or more in the officer's direction and was continuing to advance towards them. Robinet also looked around the corner and saw Clark still in a shooting stance. Robinet felt Clark had the drop on them and was surprised he had not heard gunshots. To protect himself and Officer Mercadal, he fired at Clark. Officer Mercadal saw a bright metallic flash of light in Clark's hands and thought Clark was approaching and shooting at them. Officer Mercadal ducked using the corner of the house as cover, knelt on his left knee, and fired. Officer Mercadal thought he was returning fire because he believed they were being fired upon and shot to stop the threat.

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<sup>7</sup> The tactical light on Officer Robinet's firearm had stopped working earlier while they were at 7566 29th Street.

<sup>8</sup> An isosceles shooting stance is a two-handed technique in which one hand holds a pistol or revolver while the other hand wraps around the first hand in support. Both arms are held straight, with the elbows locked. Viewed from above, the arms and chest of the shooter appear as an isosceles triangle, thus giving the stance its name.



Both officers later indicated they ceased firing after they saw Clark go down. Both initially thought they had fired about five times each.<sup>9</sup> Deputy Gomez broadcast at 9:26 p.m. that shots had been fired.

Clark fell in an area of the backyard just north of a picnic table on a concrete patio, south of the lawn area. Grass was overgrown immediately adjacent to Clark's position, which made it difficult to see Clark from where the officers were located. The officers gave Clark verbal commands to show his hands. They could only see Clark's right hand; his left hand was tucked under his body. Clark did not move. Officers Mercadal and Robinet held their position at the northwest corner of the residence until additional officers arrived. As they waited, Officer Robinet kept cover on Clark while Officer Mercadal performed a tactical reload,<sup>10</sup> then did his own tactical reload.

Officers Taylor and Trujillo arrived on scene at approximately 9:31 p.m. They approached Officers Mercadal and Robinet, and they discussed getting a body bunker<sup>11</sup> to safely approach Clark, fearing that Clark still had a gun. Sergeant Morris arrived shortly thereafter. Clark had not moved or responded to the officers by that point. They approached Clark and provided medical aid. Cardiopulmonary resuscitation (CPR) was started at approximately 9:33 p.m. and continued until Sacramento Fire Engine 16 and Medic 57 arrived. Fire personnel pronounced Clark deceased at the scene at approximately 9:42 p.m.

## Scene

The scene at 7572 29<sup>th</sup> Street and the surrounding houses were secured as responding officers arrived.



Figure 5 -- Screen shot from Sheriff's helicopter infrared video showing scene and location of vehicles

<sup>9</sup> At the scene, Officer Robinet told Sergeant Morris that he did not know exactly, but he thought he had fired about five times. Officer Mercadal told Sergeant Morris he thought he had fired five or six times.

<sup>10</sup> A tactical reload involves removing a partially used magazine from a firearm, even though it may still contain some rounds, to insert a fully loaded magazine.

<sup>11</sup> A body bunker is a portable bullet-resistant shield.

At the end of the driveway at 7572 29<sup>th</sup> Street on the north side of the residence was a six-foot wooden fence lying on the ground making the backyard accessible to the public. A black Chevrolet Yukon was parked on the north side of residence.<sup>12</sup> Numerous unattached metal window security grates were placed on the north side of the house similar to the one located near the Camry.<sup>13</sup> There was a three-foot tall wooden fence just before reaching the grass portion of the backyard with a wooden gate that was unlocked and open providing access to the backyard. There was a concrete area with a covered patio, couches and chairs, and a picnic table under the covered patio. The backyard also had a free-standing brick fireplace.



*Figure 6 -- Aerial photograph taken on March 19, 2018, showing backyard of 7572 29th Street*

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<sup>12</sup> This vehicle was registered to a member of Clark's family.

<sup>13</sup> The residents later explained that the metal window security grates on the house that been replaced, and the original grates, which had been removed from the windows, had been left along the side of the house.





*Figure 7 -- CSI photograph taken during daylight of backyard of 7572 29th Street. The green cone denotes Officer Robinet's approximate position at the time of the shooting. The red cone denotes Officer Mercadal's approximate position at the time of the shooting.*



*Figure 8 -- CSI photograph taken during daylight of backyard at 7572 29th Street showing approximate viewpoint of officers*





*Figure 9 -- CSI photograph taken during daylight of backyard at 7572 29th Street showing area under patio cover*



*Figure 10 -- CSI photograph of backyard during daylight at 7572 29th Street showing south side of house*

Clark was wearing a black hooded pullover sweatshirt. The front of the sweatshirt had a screen-print design of "The North Face Since 1968" in gray lettering with a red line above the wording and another red line within the wording. The hood covered his head. He was also wearing a white t-shirt and black Crisp Denim sweatpants. The sweatpants had white stripes running



down both the outside and the inseam of the legs. Photographs of an identical sweatshirt and an identical pair of sweatpants were found on the internet:



Figure 11 -- Photo found on internet of same type of sweatshirt Clark was wearing.



Figure 12 -- Photo found on internet of same type of sweatpants Clark was wearing

No firearm was located in the backyard during the subsequent investigation, or along the route that Clark took after David R. confronted him. A white Apple cellular iPhone in a black and pink case was located on the concrete near his head.<sup>14</sup>



Figure 13 -- CSI photograph of front of iPhone recovered next to Clark



Figure 14 -- CSI photograph of back of iPhone recovered next to Clark

<sup>14</sup> Body-camera video showed that the phone had initially been under Clark's right hand just next to his head but was moved slightly by an officer when they initially started to examine Clark, secure him, and render aid.

A pair of headphones and an orange prescription bottle that contained 1.04 grams of marijuana were on the ground just north of Clark's body. Ten 9mm casings and ten .40 caliber casings were located in the backyard.<sup>15</sup>

Clark had moved at least 15 feet towards the officers from the south side of the picnic bench to where he was ultimately shot.



Figure 15 -- CSI photograph showing distance of approximately 15 feet from area under porch overhang on south side of picnic bench where Clark could be seen on body-camera footage to where Clark had moved towards officers when he was shot

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<sup>15</sup> Officer Mercadal was equipped with a .40 caliber Sig Sauer P226. Officer Robinet was equipped with a 9mm Glock Model 19.



He was within approximately 20 feet of the officers when he was shot.



Figure 16 -- CSI photograph showing distance of approximately 16 feet corner to edge of concrete

Tommy and Sequita T., Clark's grandparents, reside at 7572 29<sup>th</sup> Street. Clark had been living with them. Clark would often enter the house through the backyard after knocking on the windows to wake them up. On March 18, 2018, Clark had left earlier that evening<sup>16</sup> and they did not expect him to return until around 10 or 11 p.m. They were not aware that Clark had returned to the neighborhood or even that he had been in the backyard that evening until after the shooting.

When interviewed on March 18, 2018, Tommy T. indicated he was lying in bed when he heard someone beating on his bedroom window.<sup>17</sup> He thought the person was trying to break his window. Thompson then heard someone trying to call his name, "Tommy T.," from the backyard.<sup>18</sup> He saw flashlights shining through his window and called the police. Tommy T. was interviewed again on March 19, 2018. He told an investigator he had heard knocking on the window and then heard three or four shots. He said that was all that happened and that he did not remember anything else. When interviewed again on June 5, 2018, by CAL DOJ investigators he said Clark knocked on his window and called out his name.<sup>19</sup> He said he then

<sup>16</sup> Sequita T. was not clear whether she thought Clark left at approximately 5 p.m. or at approximately 8 p.m.

<sup>17</sup> Tommy T.'s bedroom is on the first floor in the northwest corner of the house.

<sup>18</sup> Video evidence shows that Clark ran past and did not knock on Tommy T.'s bedroom window during this time frame.

<sup>19</sup> This interview was recorded. A transcript provided by CAL DOJ notes Tommy T. indicated that when Clark

heard gunshots and saw lightning from the shooting like fireworks. He heard no voices except for Clark's. Tommy T. indicated that Clark would sometimes come to his window and knock on it, and Tommy T. would push the remote to open the garage door so Clark could enter the house.

When interviewed on March 19, 2018, Sequita T. indicated she was at her computer when she heard four gunshots coming from close by and saw a bright light. She immediately ducked to the floor and crawled to her seven-year-old granddaughter (Clark's sister) and laid with her on the floor. She had not heard any sounds prior to the gunshots. Sequita T. was interviewed again by CAL DOJ investigators on June 5, 2018. She indicated that when she heard the gunshots, she also saw flashes of light in the window to the backyard. When describing Clark's personality, she said he made people laugh and she did not see any change in his mood over that weekend. Apart from marijuana, she was not aware of Clark using any illegal drugs. She also was not aware of any domestic violence issues involving Clark.

Investigators examined Bill W.'s residence at 7570 29<sup>th</sup> Street. Investigators found that the rear sliding glass door, which provided entry from the backyard into the residence, was broken, with broken glass on the concrete step underneath the broken door. A broken concrete cinder block was located on the patio near the step leading into the residence, next to pieces of broken glass. A white metal gutter pipe was located in the dirt, just north of the concrete patio and broken sliding glass door.



*Figure 17 -- CSI photograph of Bill W.'s broken rear sliding glass door at 7570 29th Street with cinder block on ground. A gutter pipe is also visible on the ground. The broken sliding glass door had been covered with cardboard at the time this photo was taken.*

knocked on his window, Clark said, "Come and see." However, the recording is more consistent with his name "Tommy T." Furthermore, the CAL DOJ investigator repeats the statement back as "Tommy T.," and Tommy T. confirms, "Tommy T." The notation "Come and see" appears to be a transcription error.



No property was reported missing from any of the vehicles. The two Ford Explorers and Toyota Camry were processed for latent fingerprints. None of the fingerprints lifted matched Stephon Clark. DNA testing linked Clark to blood samples taken from the Toyota Camry, a swab from the steering wheel of David R.'s dark Ford Explorer, a swab from the interior front driver door panel of David R.'s white Ford Explorer, and from a swab from a brick located on the passenger floorboard of David R.'s white Ford Explorer.

Glass samples were obtained from each of the three damaged vehicles, as well as the broken sliding glass door at 7570 29<sup>th</sup> Street. Two glass fragments collected from the Coroner's body bag were indistinguishable from the glass sample collected from the driver side floorboard from David R.'s dark Ford Explorer. Six glass fragments recovered from the red brick located on the floorboard of the white Ford Explorer were found to be similar to the glass collected from the driver's seat of the same vehicle. Three glass fragments collected from the cinder block located in the backyard of 7570 29<sup>th</sup> Street were indistinguishable from the glass collected from below the broken sliding glass door at 7570 29<sup>th</sup> Street.

A paint sample collected from the front passenger side door of the Toyota Camry was similar to the paint sample collected from the metal window security grate located on the ground next to the Camry and to paint reference samples collected from the exterior window trims from the residence at 7572 29<sup>th</sup> Street.

### **Videos**

SSD's STAR helicopter's infrared camera recorded overhead footage of the incident. The recording begins after Deputy Gomez observed Clark break the glass door at 7570 29<sup>th</sup> Street. Times listed were taken from the time source indicated in the upper left-hand corner in the recorded footage. The times listed are approximate. Direction can be identified by the arrow indicating north in the upper left-hand corner.

In the STAR video, at 21:25:45, Deputy Gomez broadcasts, "Just broke the window, running south, running to the south." At that time, Clark can be seen running in a southerly direction in the backyard of the residence at 7570 29<sup>th</sup> Street. Clark jumps the fence into the backyard of the residence at 7572 29<sup>th</sup> Street.



Figure 18 -- Screen capture from STAR video showing Clark jumping the fence from 7570 29th Street to 7572 29th Street

Clark appears to walk toward the front yard of 7572 29<sup>th</sup> Street. At 21:26:12, Clark can be seen looking into the driver's side rear window of a vehicle parked in the north side yard of 7572 29<sup>th</sup> Street.



Figure 19 -- Screen capture from STAR video showing Clark looking into a vehicle along the north side of 7572 29th Street with Officers Mercadal and Robinet visible on the street



At 21:26:23, Officer Mercadal approaches the driveway of 7572 29<sup>th</sup> Street. Officer Mercadal has his firearm down, held in his right hand, pointed in a westerly direction.



Figure 20 -- Screen capture from STAR video showing Officer Mercadal approaching Clark from the street. Clark's position on the side of the house is blocked from the helicopter camera's view

At 21:26:29, Clark can be seen running westbound from Officer Mercadal and then southbound into the backyard of the residence.



Figure 21 -- Screen capture from STAR video showing Clark running towards backyard as Officer Mercadal approaches



Officer Robinet then runs from a southerly direction into the driveway of the residence. At 21:26:34, Deputy Gomez broadcasts, “Okay, let’s get a perimeter on this guy. He’s running south, he is going to hit this field.”



Figure 22 -- Screen capture from STAR video showing Clark running towards the south end of the backyard. Officer Robinet is visible approaching from the driveway, whereas Officer Mercadal's position along the side of the house is not visible

Clark runs beyond the midpoint of the backyard, takes steps in a southwesterly direction, then runs under the patio cover and out of view from the helicopter’s camera.



Figure 23 -- Screen capture from STAR video showing Clark just before he goes under the patio cover and out of view



At 21:26:35, Officers Mercadal and Robinet run westerly through the north side yard of the residence toward the backyard where Clark was. At 21:26:43, Officers Mercadal and Robinet run beyond the northwest corner of the house and a few feet into the backyard. The officers look in a southerly direction, where Clark was last seen in the video.



Figure 24 -- Screen capture from STAR video showing the officers as they initially run into the backyard. Clark is not visible under the patio cover

The officers then take cover at 21:26:45 behind the northwest corner of the residence.



Figure 25-- Screen capture from STAR video showing officers taking cover behind the corner of the house



Because of the helicopter's continuous circular orbit, Clark is not seen on the helicopter video again until 21:26:48, when Clark can be seen moving in a northerly direction along the west wall of the residence towards the officers.



Figure 26 -- Screen capture from STAR video showing Clark visible again now moving in northerly direction towards the officers

As Clark is moving in the direction of the officers, gunfire from the officers can be seen. Clark falls to his knees, then hands, then onto his chest, coming to rest in a westerly direction. At 21:26:54, Deputy Gomez broadcast, “Shots fired, shots fired.”

At 21:27:09, Officer Mercadal broadcast, “We’re going to need additional units, come in from the west to east of this yard.” At 21:27:18, Deputy Gomez broadcast the address and asked for dispatch to request the Fire Department. The SPD Communications Center broadcast, “Copy, Fire starting.” Officers Mercadal and Robinet maintain a position at the northwest corner of the residence, holding Clark at gunpoint. After SPD Communications Center inquired if it was safe for the Fire Department to enter, at 21:28:12, Officer Mercadal responded that it was not. He also noted that he and Officer Robinet were okay and had not been hit. Other officers arrived at the scene. The video thereafter depicts the officers approaching Clark, rendering aid, and securing the scene.

Both Officer Mercadal and Officer Robinet were wearing department-issued body-worn cameras (BWC). These Axon cameras recorded video at 30 frames per second. SPD synchronized Officer Mercadal's and Officer Robinet's video recordings and it appears the timestamp in the video on Officer Robinet's camera is one second behind the timestamp on Officer Mercadal's. CAL DOJ sent the BWC video recordings to the County of Santa Clara Crime Laboratory for enhancement. The audio was enhanced by increasing overall volume and decreasing noise or non-speech sounds. Video frames were processed to increase brightness and enlarge frame size.



Times listed were taken from the time source indicated in the recorded footage.<sup>20</sup> The times listed are approximate.

Officer Robinet's BWC footage starts at 04:18:39, and Officer Mercadal's at 04:18:56. The officers contact David R., who points them in the direction of 7566 29<sup>th</sup> Street. STAR can be heard overhead. The officers walk away from David R. and toward the residence at 7566 29<sup>th</sup> Street.

The videos show the officers asking the resident at 7566 29<sup>th</sup> Street if they can check her backyard for a person who broke some car windows and may have jumped over her fence. Officer Mercadal asks her to stay inside her house for safety purposes. They check the backyard. After determining that the shed was locked and secured, and seeing no one in the backyard, they exit the yard.

At 04:25:26, Officer Robinet approaches his patrol unit and Officer Mercadal walks in the direction of his patrol unit. Seconds later, the officers start walking, then running, southbound along 29<sup>th</sup> Street. At 04:26:06, Officer Mercadal uses his flashlight to illuminate the front area and north side yard area of 7574 29<sup>th</sup> Street. Officer Robinet can be seen standing on the west sidewalk of 29<sup>th</sup> Street, just south of the southeast corner of the fence in front of 7572 29<sup>th</sup> Street. At 04:26:13, Officer Mercadal starts walking northbound in the street near the west sidewalk toward 7572 29<sup>th</sup> Street. Officer Mercadal uses his flashlight to illuminate the front of 7572 29<sup>th</sup> Street as he walks in front of the driveway of the residence.

At 04:26:24, as he approaches the driveway of the residence, Officer Mercadal says, "Over here, Jared. Jared." Officer Mercadal starts walking westerly onto the driveway of the residence and in the direction of the north side yard. Officer Mercadal has his firearm drawn in his right hand and positioned at chest level. Officer Mercadal illuminates the north side yard of the residence as he walks toward it. At 04:26:32, Officer Mercadal yells, "Hey, show me your hands. Stop. Stop. 57, south." At this point, Officer Mercadal was running westerly in the north side yard of the residence. Officer Mercadal continues to run westbound through the north side yard with his firearm extended at chest level. At 04:26:42, Officer Mercadal runs past the northwest corner of the residence and takes a few steps into the backyard. Officer Mercadal looks in Clark's direction. Clark is standing near the southwest corner of the residence, under the patio cover. He is on the opposite side of the yard from the officers, and there is a picnic bench visible between him and the officers. Clark appears to be facing in a northerly direction, towards the officers' position.

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<sup>20</sup> The Axon cameras' timestamp utilizes Zulu Time. Under the Coordinated Universal Time ("UTC"), "Z" (phonetically "Zulu") refers to UTC minus zero hours. Seven hours are deducted from Zulu Time to show Pacific Daylight Saving Time. Pacific Daylight Saving Time commenced on Sunday, March 11, 2018, at 2:00 a.m.



Figure 27 -- Screen shot from Officer Mercadal's BWC with Clark circled visible across yard

For an instance, there is a flash of light emitting in close proximity to Clark.



Figure 28 -- Screen shot from Officer Mercadal's BWC with light in proximity to Clark circled

After chasing Clark into the backyard of 7572 29th Street, a flash of light emitting in close proximity to Clark is also visible in Officer Robinet's BWC footage at 04:26:41.





Figure 29 -- Screen shot from Officer Robinet's BWC with light in proximity to Clark circled

In frames from Officer Mercadal's BWC, at 04:26:43 Clark is still standing under the patio cover near the southwest corner of the residence, south of the picnic table.



Figure 30 -- Screen shot from Officer Mercadal's BWC with Clark circled



*Figure 31 -- Screen shot from Officer Mercadal's BWC with Clark circled*

CAL DOJ prepared close up screen shots of Clark from enhanced versions of the above two frames from Officer Mercadal's BWC. The CAL DOJ investigator noted that in the enhanced photos Clark appears to have raised his lower arms and hands to his chest area, consistent with the officers' descriptions.

At 04:26:43, immediately following the flash of light, Officer Mercadel yells, "Show me your hands. Gun." After reviewing the recording with enhanced audio, SPD and CAL DOJ investigators noted that Clark responded, "Fuck you."<sup>21</sup>

At 04:26:44, Officers Mercadal and Robinet take cover behind the northwest corner of the residence. At 04:26:46, while behind the northwest corner of the residence, Officers Mercadal and Robinet have their respective firearms drawn, positioned at chest level, and pointed in a southerly direction. At 04:26:47, Officer Robinet uses his flashlight to illuminate the area under the patio cover. At this time, Clark is no longer where he was earlier, south of the picnic table. Clark has advanced toward the officers. The white stripes of his sweatpants are visible.

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<sup>21</sup> The officers in their interviews after the shooting indicated that they did not hear Clark say anything during their encounter with him.





Figure 32 -- Screen shot from enhanced version of Officer Mercadal's BWC with Clark circled

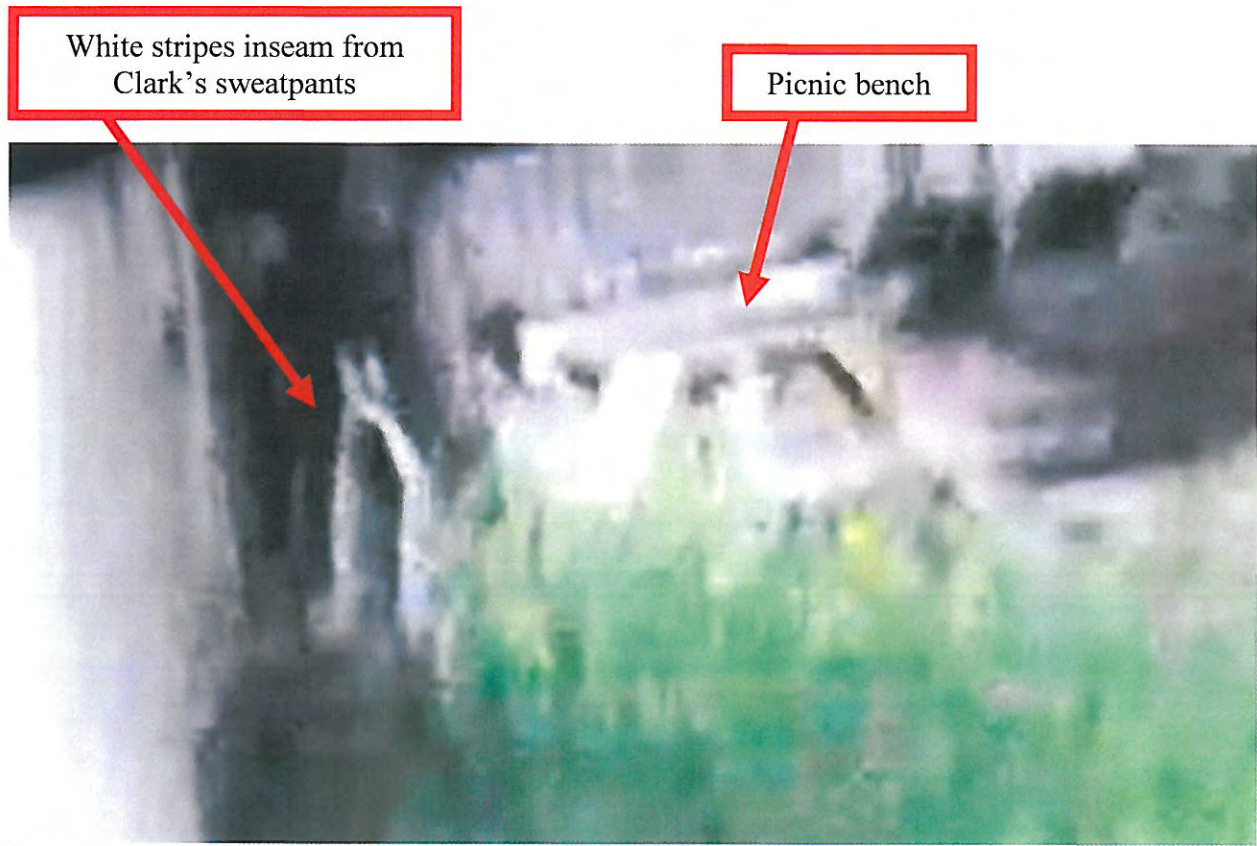


Figure 33 -- Close up from previous screen shot showing Clark no longer behind the picnic bench and advancing towards officers' position

At 04:26:47, Officer Mercadal yells, "Show me your hands. Gun, gun, gun." At 04:26:48, the sounds of gunshots start. Smoke is visible emitting from the area of the officers' firearms. Vegetation in the yard, which was overgrown, blocks the view of rounds striking Clark and Clark falling to the ground.

At 04:26:54, Officer Mercadal broadcasts, "57, shots fired, suspect down." At 04:26:58, Officer Mercadal yells, "Show me your hands." Officer Robinet says, "Let's see your hands." At 04:27:06, Officer Mercadal broadcasts, "57, he is down. No movement. We're going to need additional units, come in from the west to east of this yard." At 04:27:16, Officer Robinet says, "Let's see your hands." At 04:27:20, Officer Mercadal asks Officer Robinet, "You alright? You hit?" Officer Robinet says, "Yeah, I'm good." Officer Mercadal says, "Alright." At 04:27:26, Officer Robinet says, "He was still pointing . . ." Officer Mercadal says, "Oh, shit." Officer Robinet says, ". . . when I saw him again . . . you alright, dude?" Officer Mercadal says, "Yeah, I'm alright. I don't think I'm hit or anything." The officers continue to hold Clark at gunpoint. At 04:27:42, Officer Robinet says, "I got him at gunpoint, dude." Officer Mercadal says, "Alright, you want to, what you want to do?" Officer Robinet says, "Do a tactical reload, okay?" Officer Mercadal says, "Alright, copy." Officer Robinet says, "I think I shot about five times." At 04:27:45, Officer Mercadal started a reload. At 04:27:55, Officer Robinet broadcasts, "Standby." Officer Mercadal broadcasts, "Standby on that, he's still down, he's not moving, we can't see the gun." At 04:27:58, Officer Mercadal completed a reload and returned to hold Clark at gunpoint.

At 04:28:04, Officer Robinet says, "You good?" Officer Mercadal says, "Yeah, I'm good." Officer Robinet says, "Alright, I'm going to reload." Officer Mercadal says, "Alright, go, I got you, go." Officer Robinet says, "You got a light on him?" Officer Mercadal says, "Got him." At 04:28:12, Officer Mercadal broadcasts, "Negative, neither one of us is hit, we're okay, suspect's down."

The officers provide directions for how other officers can find their location. Officers Taylor and Trujillo arrive. At 04:29:05, Officer Taylor asks, "You have the gun?" Officer Robinet says, "We haven't secured it. We are not moving until we have more." Officer Mercadal says, "We don't have it. Do you see it, Jared?" Officer Robinet says, "No, I don't see it." Officer Trujillo asks, "He hasn't moved at all?" Officer Robinet says, "He hasn't moved at all." The officers discuss how to safely approach Clark. At 04:29:50, Officer Trujillo yells to Clark, "We need to know if you're okay. We need to get you medics, but we cannot go over to get you help unless we know you don't have your weapon." In describing to other officers what happened, at 04:30:27, Officer Mercadal says, "He came up, and then he, he kinda approached us, hands out, and then fell down." Officer Robinet says, "Yeah, he was, he was" and then can be seen extending at least one of his arms in front of his chest, in a shooting position. There is further discussion about how to tactically approach Clark. Sergeant Morris arrives on scene. At 04:31:30, Sergeant Morris asks, "What'd he have on him?" Officer Robinet extends both of his arms in front of his chest, in a shooting position and says, "Like this, something in his hands, it looked like a gun from our perspective." At 04:31:50, Officers Mercadal, Sergeant Morris, Officer Robinet, and Officer Taylor started walking towards Clark. At 04:31:52, as the officers approach Clark, Robinet states, "Oh fuck." In the process of handcuffing Clark, officers turned him on his right side, and the cellular phone can be seen near his face. Clark is secured, and CPR is started.



Sergeant Morris inquires as to which officers fired. After learning both Officers Mercadal and Robinet fired their weapons, he directs them to the front of the residence. Officers Mercadal and Robinet walk to the front of the residence and onto the sidewalk. At 04:33:35, Officers Mercadal, Robinet, and another officer were standing in front of 7570 29<sup>th</sup> Street when someone says, "Mute." Officer Mercadal's and Officer Robinet's BWC microphones mute.

ShotSpotter<sup>22</sup> technology in the area captured twenty rounds fired. Times listed are the time the system calculated the trigger was pulled based on environmental conditions at the time of the event. These times precede the time at which the system notified the ShotSpotter operator because of small radio, computational, and network delays. The first shot was fired at 21:26:48.925. The last shot was fired at 21:26:53.428. The twenty rounds were fired by the officers in approximately 4.5 seconds.

### **Blood Alcohol and Toxicology:**

Toxicology testing of samples taken at Clark's autopsy were positive for alprazolam (Xanax), alpha-hydroxyalprazolam (alprazolam metabolite), codeine, hydrocodone, etizolam, ethanol, cannabinoids (delta-9-THC, 11-hydroxy-THC, 11-nor-9-carboxy-THC), and benzoylecgonine (cocaine metabolite). Nicotine, cotinine, diphenhydramine, and promethazine were also detected.<sup>23</sup>

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<sup>22</sup> ShotSpotter is a company that has contracted with SPD to provide a network of sensors in various locations within the City of Sacramento to detect when a gun is fired. Sensors analyze the sound waves of loud noises to determine location and whether the sounds are consistent with gunfire versus that of other loud noises, such as fireworks or vehicle backfires. The information is sent to a ShotSpotter analyst for a final review before being passed along to officers on the street.

<sup>23</sup> A sample of femoral blood taken at Clark's autopsy was tested by the Sacramento County District Attorney's Office Laboratory of Forensic Services on March 22, 2018, and showed an ethanol result of .08%. A toxicology analysis on March 27, 2018, of his femoral blood sample resulted in the following findings:

Delta-9-THC	16 ng/mL (+- 3 ng/mL)
11-Hydroxy-THC	2.3 ng/mL (+- .5 ng/mL)
11-nor-9-Carboxy-THC	236 ng/mL (+- 54 ng/mL)
Benzoylecgonine	60 ng/mL (Cocaine metabolite) (+- 11 ng/mL)
Codeine	120 ng/mL (+- 16 ng/mL)
Alprazolam (Xanax)	82 ng/mL (+- 16 ng/mL)
Etizolam	5.8 ng/mL (+- .5 ng/mL)

The testing indicated that nicotine, diphenhydramine, and promethazine may be present, and a portion of the sample was sent to Central Valley Toxicology for additional testing. The Laboratory of Forensic Services also tested a sample of Clark's urine and confirmed the presence of codeine and hydrocodone. A sample of vitreous fluid was tested and found 32 ng/mL of alprazolam (+- 6 ng/mL). Testing of a liver sample confirmed the presence of alprazolam, etizolam, and codeine. Testing of a sample of chest blood confirmed 12 ng/mL of codeine (+- 2 ng/mL).

Testing results by Central Valley Toxicology on April 5, 2018, of the portion of the femoral blood sample showed a blood ethyl alcohol level of .08% and toxicology results as follows:

Benzoylecgonine	0.05 mg/L [5 ng/mL]
Codeine (free)	0.12 mg/L [120 ng/mL]
Alprazolam	0.076 mg/L [76 ng/mL]

This testing was negative for promethazine.

Testing results by NMS Labs on April 23, 2018, of femoral blood showed a blood alcohol concentration of .091% and toxicology results as follows:

## Autopsy

An autopsy was conducted by Sacramento County Coroner Forensic Pathologist Dr. Keng-Chih Su. He determined that the cause of Clark's death was multiple gunshot wounds. Dr. Su found that Clark had been shot seven times. Clark had gunshot wounds to his neck, right arm, chest, left thigh, and three wounds to his back. Dr. Su noted that he numbered the gunshot wounds for purposes of identification during the autopsy, but the manner he listed them did not represent a chronological order in which the wounds were received.

Regarding gunshot wound #1, the bullet entered at the right lateral neck, eight inches below the top of the head and one-and-a-half inches inferior to the right external auditory meatus. The bullet perforated the soft tissue of the posterior neck and exited at the left lateral neck, nine inches below the top of the head, two-and-a-half inches inferior and one inch posterior to the left external auditory meatus. The direction of this wound was right to left, slightly downward, and front to back.

Regarding gunshot wound #2, the bullet entered at the right lateral posterior arm, eight inches below the top of the head and close to the top of the shoulder. The bullet fractured the right humerus and terminated there. The direction of the wound was right to left and downward.

Regarding gunshot wound #3, the bullet entered at the right back/scapular area, 14 inches below the top of the head and five-and-a-half inches to the right of the midline. The bullet penetrated the soft tissue of the back, perforated, and terminated at the left scapula. The direction of the wound was right to left, back to front, and slightly upward.

Regarding gunshot wound #4, the bullet entered at the right lateral chest in the axillary area, 15 inches below the top of the head and between the middle and posterior axillary lines. The bullet perforated the right lateral third rib, upper lobe of the right lung, left anterior second rib, and terminated at the left lateral chest wall. The direction of the wound was right to left, slightly back to front, and upward.

Regarding gunshot wound #5, this bullet entered at the right lateral back, 19 ½ inches below the top of the head and at the posterior axillary line. The bullet perforated the right seventh rib and lower lobe of the right lung, lacerated the thoracic aorta and left ventricle of the heart, perforated the lower lobe of the left lung and left fifth intercostal space, and exited at the left lateral chest, 18 inches below the top of the head and at the middle axillary line. The direction of the wound was right to left, back to front, and slightly upward.

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Alprazolam	90 ng/mL
Alpha-Hydroxyalprazolam	33 ng/mL
Codeine (free)	200 ng/mL
Hydrocodone (free)	5.9 ng/mL
Delta-9 Carboxy THC	300 ng/mL
Delta-9 THC	22 ng/mL
Promethazine	8.1 ng/mL
Etizolam	7.2 ng/mL

These results were also positive for cotinine and nicotine.



Regarding gunshot wound #6, this bullet entered at the right back/flank area, 20 inches below the top of the head and four inches to the right of the midline. The bullet fractured the posterior right tenth and eleventh ribs and terminated at the thoracic spine at T12. The direction of the wound was right to left, slightly back to front, and horizontal.

Regarding the gunshot wound #7, the bullet entered the left anterior thigh, 24 inches above the bottom of the left heel. The bullet perforated the soft tissue of the left thigh, and exited at the left lateral buttock, 32 inches above the bottom of the left heel. The direction of the wound was front to back and upward.

Chief Forensic Pathologist Jason Tovar and Pathologists Dr. Brian Nagao and Dr. Katherine Raven reviewed the autopsy and concurred with Dr. Su's findings. All three doctors signed the autopsy report along with Dr. Su. In addition, Sacramento County Coroner Kimberly Gin sought independent review from forensic pathologist Dr. Gregory Reiber. All five doctors are board certified forensic pathologists and combined have over fifty years of experience in the field of forensic pathology.

Dr. Bennet Omalu, a pathologist hired by the legal team representing Clark's family, presented findings at a press conference on March 30, 2018. The Sacramento Police Department attempted to obtain a copy of Dr. Omalu's report but was advised that he had not prepared one. Dr. Reiber, in his review of Dr. Su's report and photographs taken during the autopsy, noted that it was clear Clark was struck by seven bullets, not by eight as described by Dr. Omalu. To Dr. Reiber, it was obvious that the exit of the fifth gunshot wound described by Dr. Su was mistaken by Dr. Omalu for an entrance wound on the left side of the chest. Dr. Reiber found this a significant error, as it led to incorrect conclusions by Dr. Omalu regarding the relative positions of Clark and the shooting officers during the event.

Dr. Reiber further found that the illustrative trajectory for gunshot wound #3 supported Dr. Su's conclusion that there was injury only to soft tissues of the back and to the left scapula without spinal injury as asserted by Dr. Omalu in his press conference statements. Additionally, Dr. Reiber found that it was clear from the written and photographic documentation that gunshot wound #7 in the left thigh was delivered from the front. He also found it clear that the other wounds were primarily to Clark's right side, some being directly to the side (#1, #2, and #4) and others being to the right side of the back (#3, #5, and #6). Dr. Reiber wrote, "The predominant right-to-left angles of wounds 1, 3, 4, 5, and 6, along with the slight front-to-back angle of wound 1, do not support the assertion that Clark was shot primarily from behind as asserted by Omalu in his press conference statements."

Dr. Reiber analyzed the STAR helicopter video and found that it allowed correlation of the locations of Clark and the officers with the locations and directions of the gunshot wounds. He wrote:

As officers are stopped at the northwest corner of the house, Clark can be seen walking between the picnic table and the house, toward the officers' position (1:02 to 1:04 [referring to times in a release of the video by SPD]); he is facing their location during this short interval. During this time a flash can be seen from the officers' position,

consistent with a shot being fired. Clark can be seen then turning west around what appears to be a picnic table on the patio, at which time his right side becomes exposed to the officers' position (1:04). Very quickly Clark is [sic] can be seen taking a crouching position and then going down, first to a hands-and-knees position, head facing west and right side to the north, exposed to the officers' position. During this part of the event, more flashes indicate gunshots from the officers' position (1:04+ to 1:05). Clark then quickly collapses to a prone position, head still west and right side facing north, with elbows out. Additional flashes can be seen during this part of the event, both from the officers' position and from beyond Clark's position on the patio, indicating further gunfire and four bullet ricochets from the patio (1:05+ to 1:09). Once he is in a hands-and-knees position, Clark's back is partly exposed to the officers' position and his back becomes more exposed to the officers' gunfire once he is prone.

This leads to the conclusion that gunshot wound 7 to the left thigh was most likely the first shot, sustained either as Clark was walking toward the officers' position with his left thigh raised, or possibly in the crouching position. Considering the officers' shooting position, the upward wound path through Clark's left thigh indicates that it was extended from the hip so that, at the time the bullet struck, his thigh was roughly parallel to the ground rather than perpendicular to the ground as it would be in a full standing position. For this wound to have been sustained after he was already down, in a prone position, would require a ricochet shot. For a ricochet bullet from the officers' position to then travel directly front-to-back into his thigh at the upward angle shown at autopsy, and not create a very atypical entrance wound (clearly not shown by the autopsy) from the bullet being already deformed, is considered an untenable possibility. However untenable, this appears to be Omalu's conclusion as to how this injury was sustained, from his viewing of the video evidence, as related at the press conference.

The fact that the other gunshots hit Clark primarily from right to left, is also very well explained by correlation of the documented autopsy findings and Clark's position as shown in the STAR helicopter video. At no time does the video show Clark to have the left side of his body facing the officers' position as shots are fired, nor does the video show him turning around from a left-facing position, still upright, and putting his back squarely toward the officers as there were further shots fired which then dropped him.

Dr. Reiber found the video evidence provided clear refutation of Dr. Omalu's description of Clark's positioning during the shooting.

The San Diego County Medical Examiner's Department, at the request of the California Department of Justice, also reviewed the Sacramento County Coroner's investigation. San Diego's Chief Medical Examiner found that the Sacramento County Coroner's investigation "was comprehensive, professional, well documented, and correct in its conclusion."



### **Contacts with Law Enforcement**

On March 1, 2018, at 12:47 a.m., SPD's Communications Center received a 9-1-1 call. The caller reported that a male subject had dragged a female subject down a hallway in an apartment at the location. Salena M. lived in that apartment with her two children. Stephon Clark was the father of these children and had been living there with them for a couple of months.

Officers responded and contacted the 9-1-1 caller. He indicated that he knocked on the door of the apartment after hearing a woman scream for help. He looked through a window and saw a male black adult straddling a female black adult on the floor, holding her arms down and yelling in her face. A small child was crying next to the two subjects.

Officers knocked on the door of the apartment. After a significant delay, Clark and Salena M. finally answered. Salena M. and Clark denied any arguing. Because Salena M. did not appear to have been recently crying and had no visible injury, officers departed the location.

On March 16, 2018, at 11:52 p.m., SPD's Communication Center received a 9-1-1 call. Salena M. asked a neighbor to call the police stating her boyfriend hit her. Upon arrival, officers spoke with Salena M. Her statement to a responding officer was recorded on the officer's body-worn camera.

Salena M. reported that she and Clark were arguing and that Clark struck her four to five times on the face. Salena M. said Clark punched her with a closed fist and slapped her. Clark then threw Salena M.'s head against a wall and choked her with both hands. Salena M. went into a closet, sat down, and cried for 10-15 minutes by herself. Clark entered the closet, picked her up, and took her to the bed. When she would not respond to him, he started hitting her again and called her derogatory names. When Clark went back to the closet to get some clothes, she ran out the door of their residence and contacted the neighbor who called the police.

Officers observed a 3" diameter hole in the wall where Salena M. stated Clark had hit her head. The impact had enough force to crack the drywall around the hole. Long brown strands of hair were stuck on the wall around the hole.



*Figure 34 -- CSI photograph showing damage to the wall where Salena M. said Clark threw her head. Long, brown strands of hair are visible in and around the hole.*

Salena M. appeared traumatized and distraught to the officers. She was crying and breathing at a fast rate. The left side of her face was swollen, including under her left eye, cheekbone, and lip.

Clark was not there when police arrived. It was noted that Clark could be arrested on probable cause for domestic violence under Penal Code section 273.5 from this incident. A warrants and records check run on Clark after March 17, 2018, would have indicated that Clark could be arrested for a domestic violence assault on Salena M. regarding the incident on March 16, 2018.

While talking to responding officers, Salena M. referenced the last time the police were at her residence in response to a call from a neighbor on March 1, 2018, she and Clark were hiding and did not initially answer the door. Salena M. admitted to lying to officers that day denying any injury because she was scared of Clark. She stated that Clark had beaten her up on that occasion as well, resulting in a welt on the back of her leg.

### **Probation**

At the time of this incident, Clark was on four grants of probation (two cases were for domestic violence, one case was for loitering for prostitution, and one case was for robbery). His probation conditions included that he obey all laws. Violating his probation in the robbery case could have resulted in him serving time in state prison; violating his probation in the other cases could have resulted in him serving time in county jail. A warrants and records check run on Clark would have also indicated that he could be arrested for violating probation as a result of the incident on March 16, 2018. Salena M. was the victim of Mr. Clark's two prior domestic violence convictions.



## Cell Phone

Salena M. was contacted by SPD investigators by telephone on March 20, 2018. She stated she had not talked with Clark since the police were dispatched to her house on Friday evening (March 16, 2018). Salena M. stated that Clark had exchanged text messages with her. Salena M. indicated the white Apple iPhone recovered next to Clark's body was hers, but that Clark had been using it. She said she did not know the passcode.<sup>24</sup>

The iPhone was sent to Cellebrite, a company that specializes in data extraction, transfer, and analysis of cellular phones and mobile devices, so it could be unlocked and downloaded. The contents of the phone provided by Cellebrite were forensically analyzed by SPD investigators. CAL DOJ investigators conducted an additional download of the phone itself. The redundant examination of the phone was done to ensure accuracy.

Relevant information from Clark's phone from March 16, 2018, leading up to the shooting on March 18, 2018, is summarized below. This summary does not include all calls, messages, or phone activity.

Between March 16, 2018, at 11:52 p.m. (when the call for service regarding the domestic violence incident was received by SPD's Communication Center) and 12:23 p.m. on March 17, 2018, Clark placed 76 outgoing calls to Salena M. On some of those calls, Clark blocked his caller ID by dialing "\*67" and then the number. It appears that none of the calls were connected for more than a few seconds.

Within Clark's phone were several images that appear to be "screen captures" of a text message conversation between Clark and Salena M. The texts do not appear in Cellebrite's message log (like most of the data below). The screen captures appear as follows (light gray text bubbles are messages from Salena M., blue text bubbles are messages from Clark, dark gray boxes denote information redacted for privacy):

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<sup>24</sup> Salena M. agreed to come to SPD headquarters for an interview later that day, but she did not arrive to her scheduled interview. Over the course of the next several months, CAL DOJ investigators attempted to schedule a follow up interview with Salena M. via her attorney, but those efforts were not successful.



Figure 35 -- Screen shot of text messages found in Clark's phone

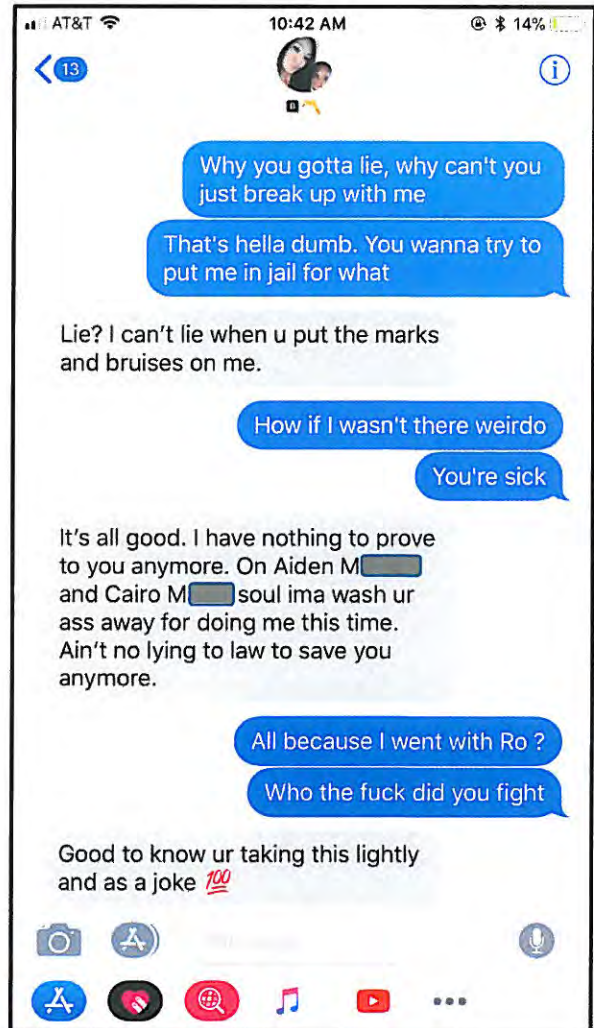


Figure 36 -- Screen shot of text messages found in Clark's phone



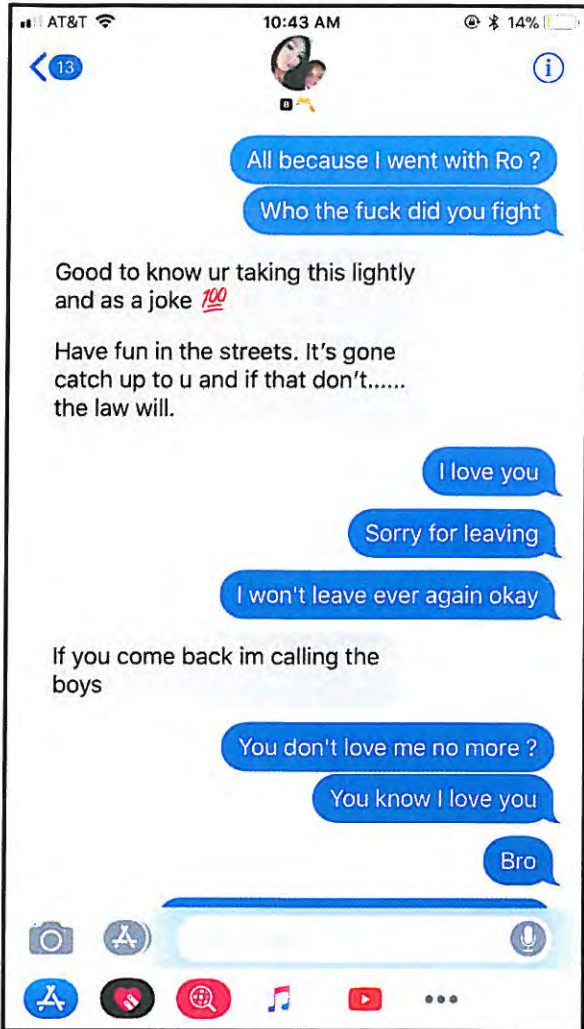


Figure 37 -- Screen shot of text messages found in Clark's phone

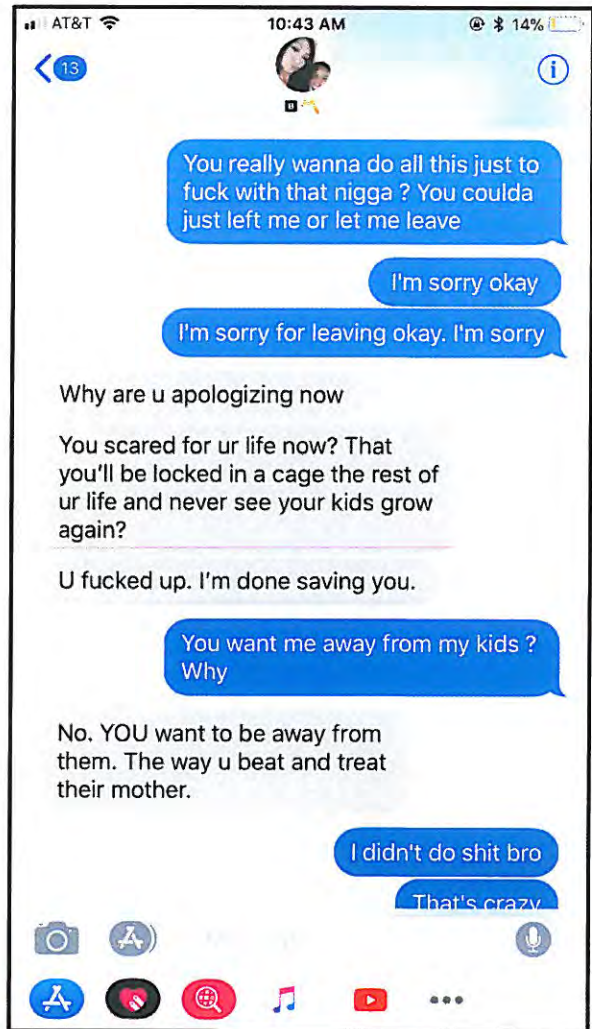


Figure 38 -- Screen shot of text messages found in Clark's phone

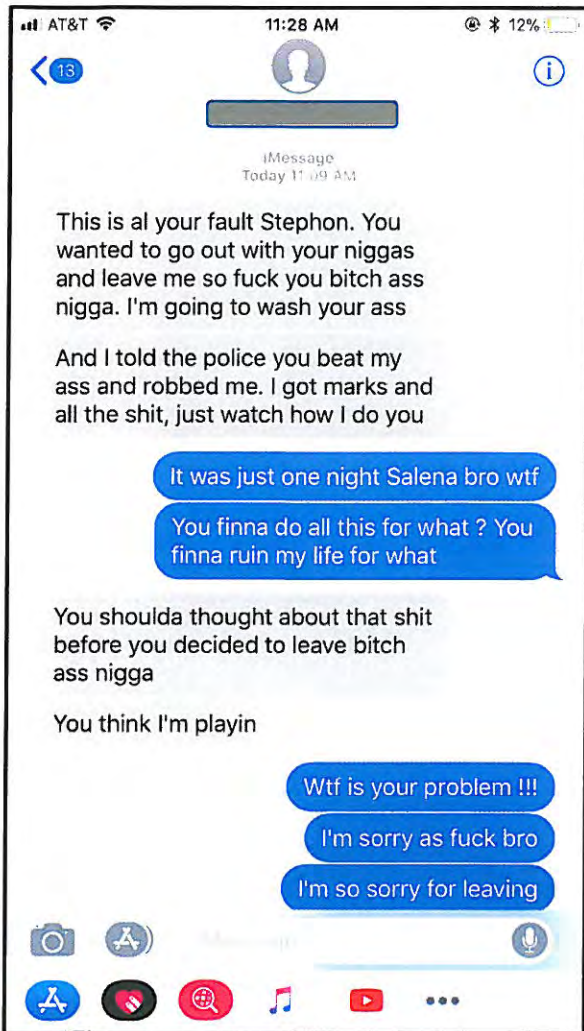


Figure 39 -- Screen shot of text messages found in Clark's phone

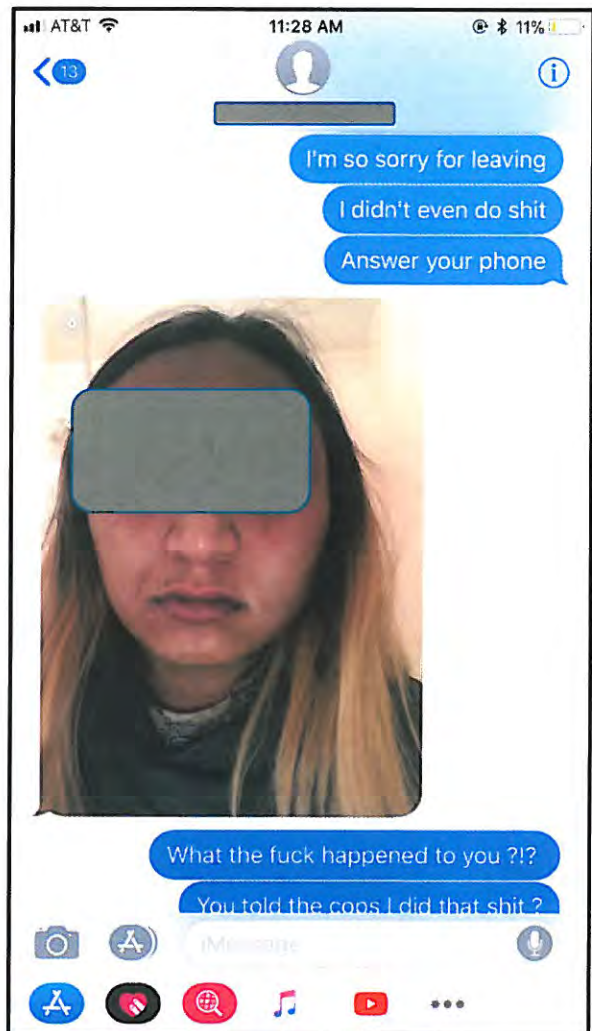


Figure 40 -- Screen shot of text messages found in Clark's phone



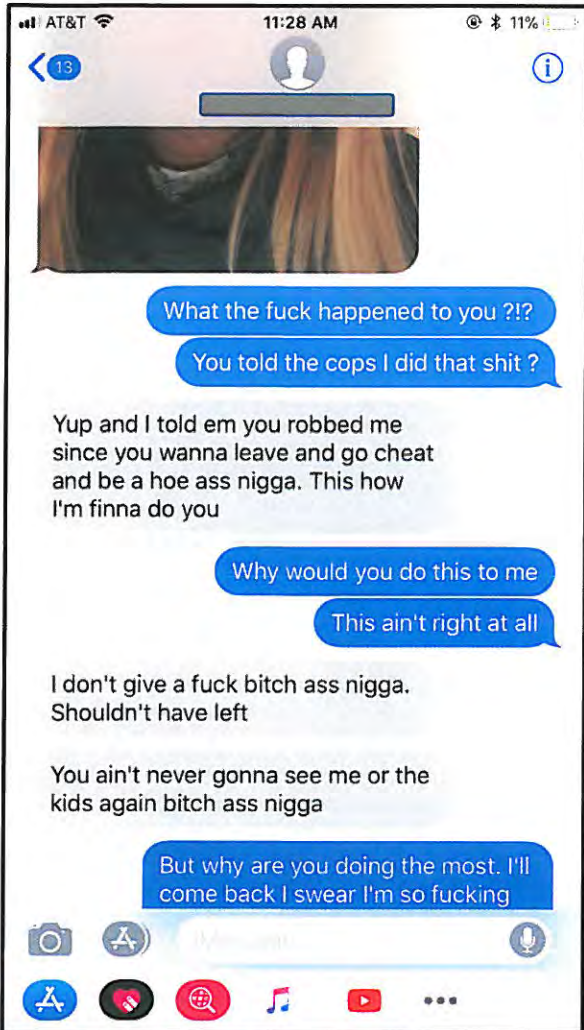


Figure 41 -- Screen shot of text messages found in Clark's phone

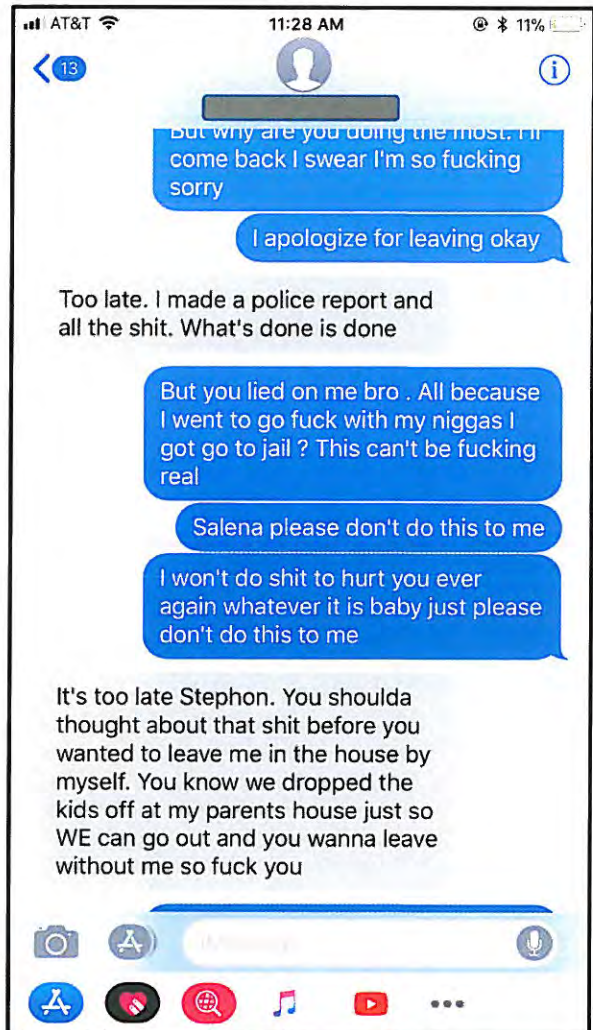


Figure 42 -- Screen shot of text messages found in Clark's phone

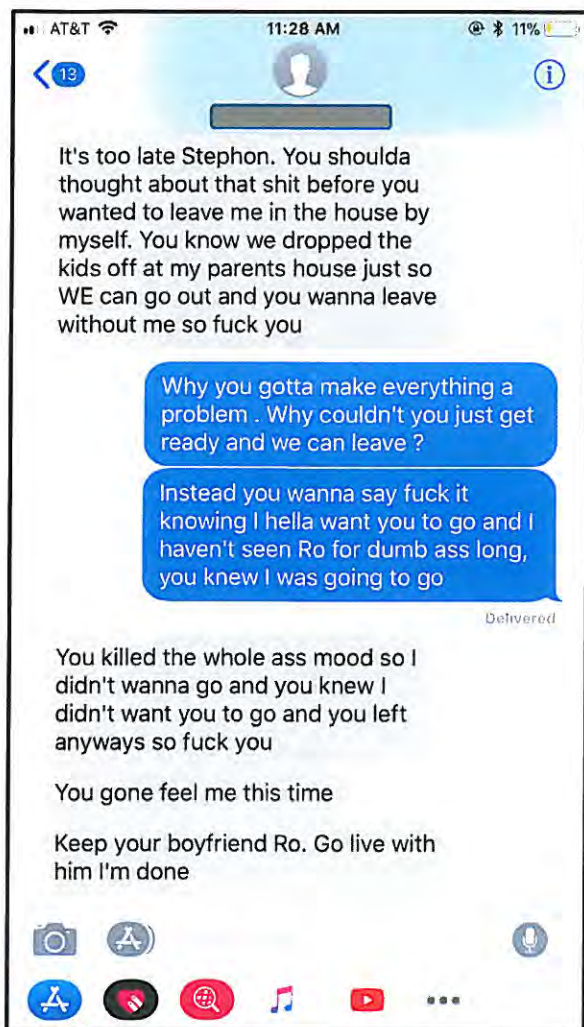


Figure 43 -- Screen shot of text messages found in Clark's phone

While in custody on November 15, 2017, Clark had phone calls with Salena M. that were recorded by the jail monitoring system. He had told her that if their relationship ended, he would want to see his children daily. He emphasized to her if they were not together, he would want to be part of his children's lives and not to keep them away from him.

Screen captures of an additional text message exchange between Clark and Salena M. were also located in the phone. These text messages did appear in the Cellebrite download. According to the download, this exchange began on March 17, 2018, at 12:19 p.m. The screen captures follow:



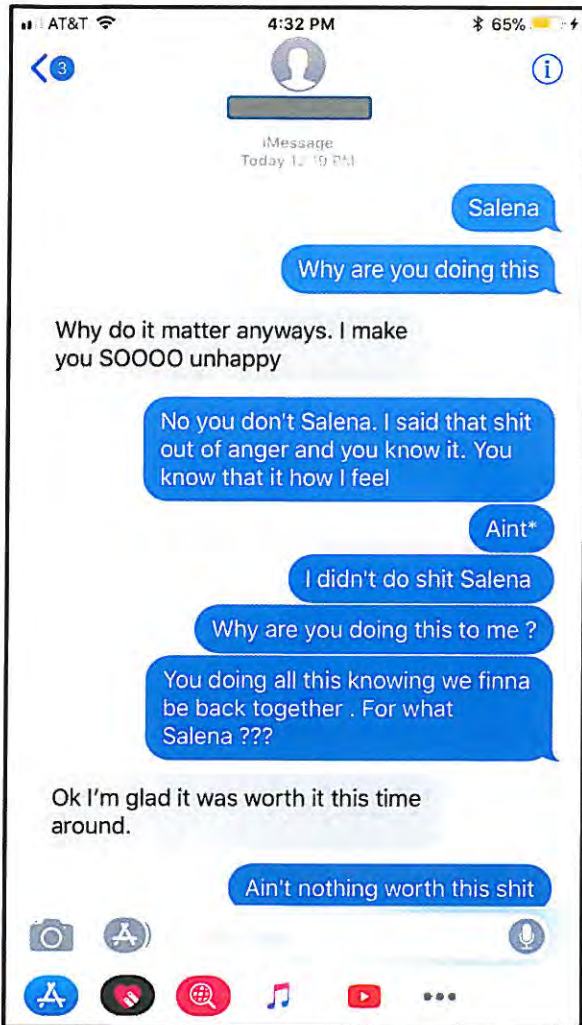


Figure 44 -- Screen shot of text messages found in Clark's phone

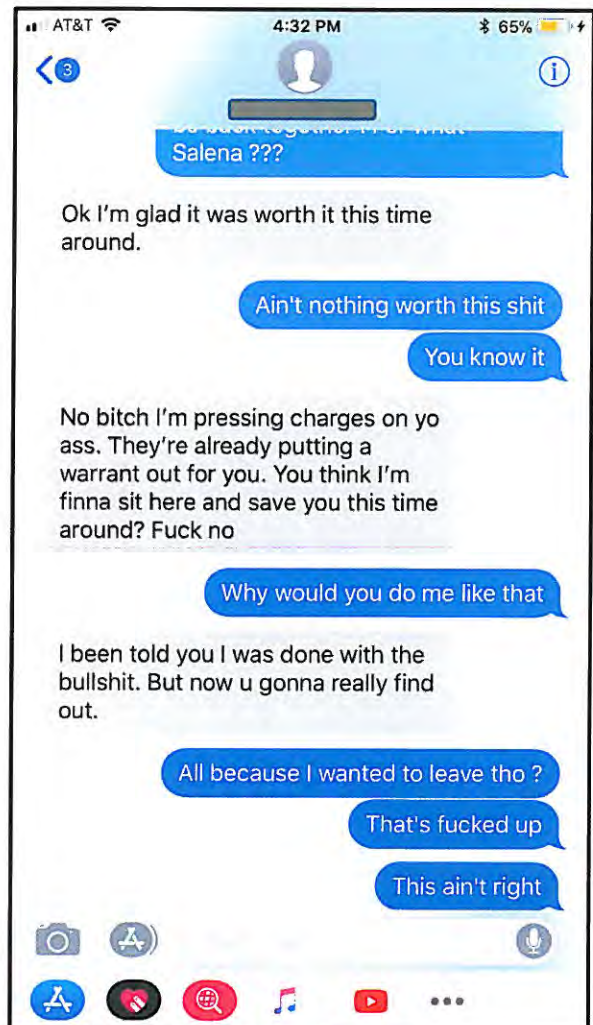


Figure 45 -- Screen shot of text messages found in Clark's phone

At 12:32 p.m., Clark attempted to call Salena M. The call lasted 4 seconds. The activity log from Cellebrite’s report showed two additional messages at the end of this exchange. “Outgoing” indicates a message sent by Clark.

3207	Instant Messages	Outgoing	3/17/2018 12:39(UTC-7)	Thanks
3208	Instant Messages	Outgoing	3/17/2018 12:39(UTC-7)	You successfully let me know you don't love me.

On March 17, 2018, at 1:01 p.m., Clark began searching the internet for “Sacramento district attorney.”

3209	Searched Items	Unknown	3/17/2018 13:01(UTC-7)	sacramento district attorney
3210	Web History	Unknown	3/17/2018 13:01(UTC-7)	sacramento district attorney - Google Search
3211	Searched Items	Unknown	3/17/2018	sacramento district attorney

			13:01(UTC-7)	
3212	Web History	Unknown	3/17/2018 13:01(UTC-7)	sacramento district attorney - Google Search
3213	Searched Items	Unknown	3/17/2018 13:01(UTC-7)	sacramento district attorney
3214	Web History	Unknown	3/17/2018 13:02(UTC-7)	Sacramento County District Attorney - Home

At 1:14 p.m., Clark attempted to call Salena M. again. The call appears to have lasted three seconds. Clark then sent an outgoing audio file, the contents and destination of which are not known.

At 1:36 p.m., the following text message exchange commenced between Clark and Salena M. “Incoming” indicates a message received on Clark’s phone, in this case from Salena M.

3219	Instant Messages	Outgoing	3/17/2018 13:36(UTC-7)	Please don't do this
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At 1:37 p.m., Clark sent a message to his probation officer.

3220	Instant Messages	Outgoing	3/17/2018 13:37(UTC-7)	Hey it's Stephon Clark
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Beginning at 1:38 p.m., Salena M. texted Clark and a further exchange occurred:

3221	Instant Messages	Incoming	3/17/2018 13:38(UTC-7)	U didn't listen to me when I was begging you not to beat me . Smh but now it's please don't do this. Been told you I was giving up
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3228	Instant Messages	Outgoing	3/17/2018 14:01(UTC-7)	What the fuck are you talking about ? You doing all this knowing we finna be back together ! Why ?
3229	Instant Messages	Outgoing	3/17/2018 14:01(UTC-7)	We're inseparable and you know
3230	Instant Messages	Outgoing	3/17/2018 14:02(UTC-7)	I just know, you know you made a mistake taking shit this far

“Smh” is a commonly used abbreviation in text messages for “Shaking my head.”

At 2:01 p.m., Clark attempted to contact his probation officer again. Because it was the weekend and his probation officer was not on duty, Clark’s communications were not reviewed until after the shooting.



Clark's web history shows that at 2:06 and 2:07 p.m., he was at the "Sacramento DA: Domestic Violence" and "Sacramento DA: Resources" websites.

Between 2:36 p.m. and 2:46 p.m., the text conversation with Salena M. continued. A screen capture of this exchange was found in the phone:

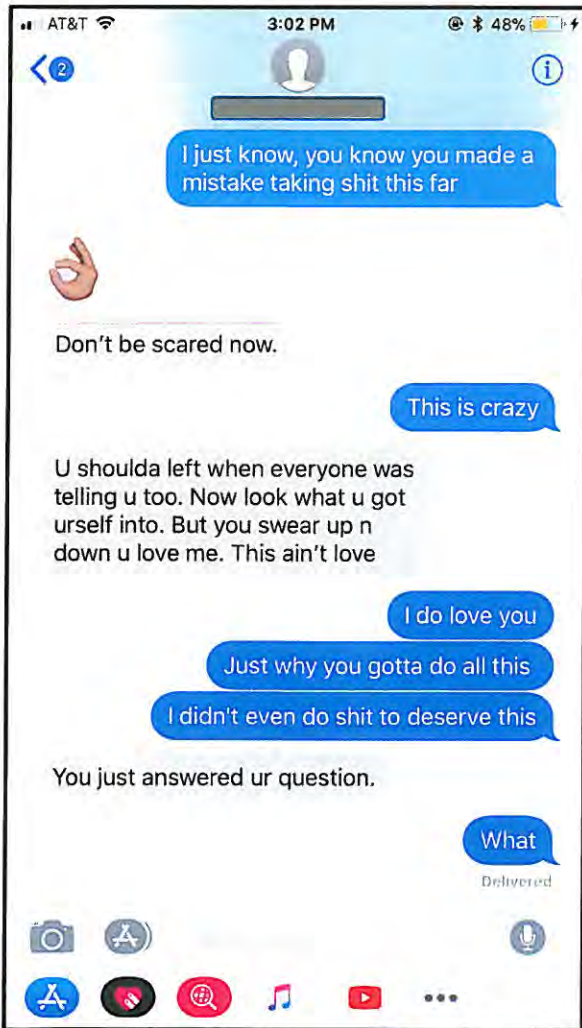


Figure 46 -- Screen shot of text messages found in Clark's phone

At 2:55 p.m., Clark entered the following "note" into his phone:

My name is Stephon Clark. This email is regarding an incident that happened on the night of March 16th, 2018. I'm not one hundred percent sure there was a report made but that is what Salena [M.] has told me and I'm really innocent and I want to defend myself without incarceration. I say this because Salena [M.] and I have had a domestic dispute before that resulted in a misdemeanor corporal injury to a spouse and we have a 'Peace Order' for that case. From my understanding, of she so much as calls from a verbal argument, I can be violated

and in this case she admits to harming herself in the attachments which are text messages from her today, March 17th, 2018. She has told me that she told the police that I harmed her and I wasn't even present. I also have a group of friend that can verify my whereabouts.

The dispute started because she didn't want to go out with me and my friends because my friend was bringing a couple of girls and Salena had a problem with that so she said she didn't want to go anymore. I went out with my friends anyways and left while she was at home. She was upset that I was getting dressed and told me, "I'm going to wash your ass this time". I ignored it and left anyways. She called me and said I wasn't allowed back home and she was calling the cops so I stayed the night out. The next morning, I get all of these texts from her telling me that she called the cops and made a police report and all of this.

Once again, I'm not sure if she really made this fake report but She's done this before so I'm pretty scared I'm going to be put in jail.

My spouse Salena [M.] told me she made a police report against me claiming I hit her and stole from her, this is not the first time she's called the police on me and lied on me about multiple things. Her younger brother has even been there on a couple offs incidents when she called the police on me lying all because I made a video of her and her brother told the cops the truth and they let me go minutes later. Im not sure if there was a report filed but that is what she's telling me so here is some proof of my innocence . I'm sure you guys have proof that this is her cell number in the messages in my attachments. Thank you so much.

Feel free to contact me in regards to this matter.

Clark then included his cell phone number and email address, as well as Salena M.'s cell phone number. There is no record that Clark ever sent this message to either the Sacramento County District Attorney's Office or Probation Department.

At 3:07 p.m., Clark attempted to call his probation officer. The call log shows the call lasted zero seconds.

At 3:24 p.m., Clark made an outgoing call to Amauria H. This call lasted 19 minutes and 13 seconds. When later contacted by investigators, Amauria H. indicated she was in a relationship with Clark for approximately a year, which ended a year prior to his death. She had not seen him since December 2017, but they talked on and off.



At 3:35 p.m., Clark sent a message to Salena M.

4174	Instant Messages	Outgoing	3/17/2018 15:35(UTC-7)	Baby momma pants
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At 3:44 p.m., Clark received an incoming call from Amauria H. that lasted 6 minutes and 30 seconds.

At 4:23 p.m., Clark sent a message to one of his contacts:

4189	Instant Messages	Outgoing	3/17/2018 16:23(UTC-7)	I need a zip
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“Zip” is a term commonly used to refer to an ounce of marijuana.

At 5:17 p.m., Clark’s web history shows he accessed the Sacramento Police online reporting system and the “narrative” page.

At 5:26 p.m., Clark sent a message to his probation officer.

4247	Instant Messages	Outgoing	3/17/2018 17:26(UTC-7)	I have to talk to you. It's urgent
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At 6:58 p.m., Clark texted and attempted to call Salena M.:

4259	Instant Messages	Outgoing	3/17/2018 18:58(UTC-7)	I miss you guys already I can't do this . What do you want me to do to make shot right again ?
4260	Call Log	Outgoing	3/17/2018 18:59(UTC-7)	00:00:02

At 7:30 p.m., Clark placed two outgoing calls and then received at 7:38 p.m. an incoming call from Amauria H. The incoming call lasted 3 minutes and 15 seconds.

At 7:57 p.m., the texts with Salena M. resumed:

4269	Instant Messages	Incoming	3/17/2018 19:57(UTC-7)	Now u wanna make it right. When it’s too late. After you done beat my ass called me all types of faggots bitches, a liar a cheater all this extra shit. Miss me with this fake shit. I’m already knowing you’ll tell me anything to make me not testify against you and I’m not falling for it no more.
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				This is what you chose.
4270	Instant Messages	Outgoing	3/17/2018 19:59(UTC-7)	On God that ain't what it is . You know I genuinely love you and my kids. This isn't our end baby
4271	Instant Messages	Incoming	3/17/2018 20:00(UTC-7)	Ok
4272	Instant Messages	Outgoing	3/17/2018 20:00(UTC-7)	How you finna tell me I don't miss you ?
4273	Instant Messages	Outgoing	3/17/2018 20:00(UTC-7)	You know I do. I wanna cuddle
4274	Instant Messages	Outgoing	3/17/2018 20:00(UTC-7)	Can I come home please
4275	Instant Messages	Outgoing	3/17/2018 20:01(UTC-7)	Let me make shit right please
4276	Instant Messages	Incoming	3/17/2018 20:03(UTC-7)	Lol
4277	Instant Messages	Incoming	3/17/2018 20:05(UTC-7)	U beat my cos u wanted to go out with ur friend SOO bad. And you're so miserable w me. But now u wanna come "home".
4278	Instant Messages	Incoming	3/17/2018 20:05(UTC-7)	Where was ur head at when I was begging you to make shit right last night
4279	Instant Messages	Incoming	3/17/2018 20:05(UTC-7)	☹️🐱
4280	Instant Messages	Outgoing	3/17/2018 20:05(UTC-7)	What the fuck are you talking about
4281	Instant Messages	Outgoing	3/17/2018 20:06(UTC-7)	Why we can't make shit right ? You knew I wasn't going to fucking leave Salena
4282	Instant Messages	Outgoing	3/17/2018 20:06(UTC-7)	You knew
4283	Instant Messages	Outgoing	3/17/2018 20:06(UTC-7)	So why you take this shit this far

From 8:08 p.m. to 8:12 p.m., Clark attempted to call Amauria H. four times. All of these calls lasted zero seconds.

At 8:24 and 8:26 p.m., Clark attempted to contact Salena M.:

4288	Call Log	Outgoing	3/17/2018 20:24(UTC-7)	00:00:03
4289	Instant Messages	Outgoing	3/17/2018 20:26(UTC-7)	Salena



Between 8:36 p.m. and 8:48 p.m., Clark placed five calls to Amauria H. The first four calls each lasted two seconds or less. The last call lasted 28 seconds.

At 8:48 p.m., the texts with Salena M. continued:

4295	Instant Messages	Incoming	3/17/2018 20:48(UTC-7)	I tried but there was no hearing me out. You rather beat my ass to get ur way. You took my ring and started going for ur shit, but I knew u wasn't gone leave. And if u didn't leave no telling what else you would have done to me. My face is already fucked up.
4296	Instant Messages	Outgoing	3/17/2018 20:49(UTC-7)	I didn't take shit from you and I didn't hit you Salena
4297	Instant Messages	Outgoing	3/17/2018 20:49(UTC-7)	Stop saying that shit
4298	Instant Messages	Incoming	3/17/2018 20:50(UTC-7)	You contradict urself in all these messages.
4299	Instant Messages	Outgoing	3/17/2018 20:51(UTC-7)	Are you really done with me Salena ?
4300	Instant Messages	Incoming	3/17/2018 20:55(UTC-7)	Have that same energy you did with me last night in the court room.
4301	Instant Messages	Outgoing	3/17/2018 20:56(UTC-7)	Yes or no Salena

At 8:59 p.m., Clark began researching suicide. The following rows labeled "Searched Items" depict the words Clark typed into the search engine. The rows labeled "Web History" depict the website Clark visited as a result of his searches:

4302	Searched Items	Unknown	3/17/2018 20:59(UTC-7)	how much bleach can i drink before i die
4303	Web History	Unknown	3/17/2018 20:59(UTC-7)	how much bleach can i drink before i die - Google Search
4304	Searched Items	Unknown	3/17/2018 20:59(UTC-7)	how much bleach can i drink before i die
4305	Web History	Unknown	3/17/2018 20:59(UTC-7)	How long would it actually take to die after drinking bleach? - NoStupidQuestions
4306	Searched Items	Unknown	3/17/2018 21:02(UTC-7)	easiest ways to kill yourself
4307	Web History	Unknown	3/17/2018 21:02(UTC-7)	easiest ways to kill yourself - Google Search

4308	Searched Items	Unknown	3/17/2018 21:02(UTC-7)	easiest ways to kill yourself
4309	Web History	Unknown	3/17/2018 21:02(UTC-7)	What is the quickest and easiest way to kill yourself? - Quora
4310	Web History	Unknown	3/17/2018 21:02(UTC-7)	What is the quickest and easiest way to kill yourself? - Quora

At 9:03 p.m., Salena M. responded to Clark's last questions (at lines 4299 and 4301: "Are you really done with me Salena?" and "Yes or no Salena"):

4311	Instant Messages	Incoming	3/17/2018 21:03(UTC-7)	Yes
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Clark then immediately continued his research on suicide:

4312	Searched Items	Unknown	3/17/2018 21:03(UTC-7)	whats carbon monoxide
4313	Web History	Unknown	3/17/2018 21:03(UTC-7)	whats carbon monoxide - Google Search
4314	Searched Items	Unknown	3/17/2018 21:03(UTC-7)	whats carbon monoxide
4315	Searched Items	Unknown	3/17/2018 21:05(UTC-7)	what makes carbon monoxide
4316	Web History	Unknown	3/17/2018 21:05(UTC-7)	what makes carbon monoxide - Google Search
4317	Searched Items	Unknown	3/17/2018 21:05(UTC-7)	what makes carbon monoxide
4318	Searched Items	Unknown	3/17/2018 21:07(UTC-7)	what pills can you die from
4319	Web History	Unknown	3/17/2018 21:07(UTC-7)	what pills can you die from - Google Search
4320	Searched Items	Unknown	3/17/2018 21:07(UTC-7)	what pills can you die from
4321	Web History	Unknown	3/17/2018 21:07(UTC-7)	5 common, over-the-counter medicines that could kill you if you take too much - News 5 Cleveland
4322	Web History	Unknown	3/17/2018 21:08(UTC-7)	Most Commonly Overdosed Drugs

At 9:10 p.m., Clark text messaged multiple people requesting Xanax or Valium:

4323	Instant Messages	Outgoing	3/17/2018 21:10(UTC-7)	Who got Xans ?
4324	Instant Messages	Outgoing	3/17/2018 21:10(UTC-7)	Or Valium



4325	Instant Messages	Outgoing	3/17/2018 21:11(UTC-7)	Who got Xans ?
4326	Instant Messages	Outgoing	3/17/2018 21:11(UTC-7)	Ro
4327	Instant Messages	Outgoing	3/17/2018 21:11(UTC-7)	Who had those Xans ? I need some
4328	Instant Messages	Incoming	3/17/2018 21:11(UTC-7)	6 a pop yellows
4329	Instant Messages	Outgoing	3/17/2018 21:11(UTC-7)	They real ?
4330	Call Log	Outgoing	3/17/2018 21:12(UTC-7)	00:01:11
4331	Instant Messages	Incoming	3/17/2018 21:13(UTC-7)	Shit Katie only had a couple but I can find out
4332	Instant Messages	Outgoing	3/17/2018 21:16(UTC-7)	Oxy ?

At 9:17 p.m., Clark continued his research on suicide:

4333	Searched Items	Unknown	3/17/2018 21:17(UTC-7)	Oxycodone kills you ?
4334	Web History	Unknown	3/17/2018 21:17(UTC-7)	Oxycodone kills you ? - Google Search
4335	Searched Items	Unknown	3/17/2018 21:17(UTC-7)	Oxycodone kills you ?
4336	Web History	Unknown	3/17/2018 21:17(UTC-7)	Oxycodone kills you ? - Google Search
4337	Searched Items	Unknown	3/17/2018 21:17(UTC-7)	Oxycodone kills you ?
4338	Web History	Unknown	3/17/2018 21:17(UTC-7)	Oxycodone overdose: How much amount of oxycodone to OD?
4339	Searched Items	Unknown	3/17/2018 21:18(UTC-7)	how many xanax can kill you
4340	Web History	Unknown	3/17/2018 21:18(UTC-7)	how many xanax can kill you - Google Search
4341	Searched Items	Unknown	3/17/2018 21:18(UTC-7)	how many xanax can kill you
4342	Call Log	Incoming	3/17/2018 21:18(UTC-7)	00:00:58
4343	Instant Messages	Incoming	3/17/2018 21:18(UTC-7)	Nada lol. Already tried
4344	Web History	Unknown	3/17/2018 21:20(UTC-7)	If I will take 30 tablets of xanax, what are the side effects?

The incoming call above that occurred at 9:18 p.m. lasting 58 seconds came from an area code 530 number. Clark sent a text message to the same number with his address while continuing his research and again communicating with this number:

4347	SMS Messages	Outgoing	3/17/2018 21:22(UTC-7)	7572 29th st
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4354	Web History	Unknown	3/17/2018 21:24(UTC-7)	Xanax and Alcohol: A Combination that Could Kill
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4355	SMS Messages	Outgoing	3/17/2018 21:28(UTC-7)	7572 29th st
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4356	Call Log	Outgoing	3/17/2018 21:28(UTC-7)	00:00:09
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4358	Web History	Unknown	3/17/2018 21:29(UTC-7)	How much Xanax will it take to reliably kill you? - Quora
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4360	Web History	Unknown	3/17/2018 21:31(UTC-7)	What are the benefits of taking Xanax? - Quora
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4381	Web History	Unknown	3/17/2018 21:33(UTC-7)	What are the benefits of taking Xanax? - Quora
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4382	Web History	Unknown	3/17/2018 21:33(UTC-7)	What are the benefits of taking Xanax? - Quora
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4401	Searched Items	Unknown	3/17/2018 21:38(UTC-7)	yellow xanax bars mg
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4402	Web History	Unknown	3/17/2018 21:38(UTC-7)	yellow xanax bars mg - Google Search
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4403	Searched Items	Unknown	3/17/2018 21:38(UTC-7)	yellow xanax bars mg
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4404	Web History	Unknown	3/17/2018 21:39(UTC-7)	Xanax (Alprazolam) Drug Information: Description, User Reviews, Drug Side Effects, Interactions - Prescribing Information at RxList
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4405	Web History	Unknown	3/17/2018 21:40(UTC-7)	Xanax (Alprazolam) Drug Information: Description, User Reviews, Drug Side Effects, Interactions - Prescribing Information at RxList
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4406	Web History	Unknown	3/17/2018 21:40(UTC-7)	Xanax (Alprazolam) Drug Information: Description, User Reviews, Drug Side Effects, Interactions - Prescribing Information at RxList
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At 9:45 p.m., the person using the 530 number exchanged calls with Clark and then sent him a text message, apparently as the person arrived at Clark's house.

4407	Call Log	Incoming	3/17/2018 21:45(UTC-7)	00:00:03
4408	Call Log	Outgoing	3/17/2018 21:46(UTC-7)	00:00:01
4409	Call Log	Incoming	3/17/2018 21:46(UTC-7)	00:00:00
4410	SMS Messages	Incoming	3/17/2018 21:46(UTC-7)	Im here

At 10:03 p.m., Clark asked Salena M. if she wanted him to kill himself:

4413	Instant Messages	Outgoing	3/17/2018 22:03(UTC-7)	You want me to kill myself ?
4414	Instant Messages	Outgoing	3/17/2018 22:05(UTC-7)	Salena
4415	Instant Messages	Outgoing	3/17/2018 22:05(UTC-7)	I'm not playin, don't do this

Clark then took the following photo and sent it and the following text message to Salena M.:

4418	Instant Messages	Outgoing	3/17/2018 22:07(UTC-7)	
4419	Instant Messages	Outgoing	3/17/2018 22:08(UTC-7)	Let's fix our family or I'm taking all of these

The markings on these pills are consistent with alprazolam (Xanax).

At 10:09 p.m., Clark called Amauria H. This call lasted 35 seconds.

4420	Call Log	Outgoing	3/17/2018 22:09(UTC-7)	00:00:35
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At 10:11 and 10:12 p.m., Salena M. responded to Clark's message "Let's fix our family or I'm taking all of these" with the following:

4421	Instant Messages	Incoming	3/17/2018 22:11(UTC-7)	Do it idgaf
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4422	Instant Messages	Incoming	3/17/2018 22:12(UTC-7)	I knew u was gone blow my money on drugs anyways.
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The phrase “idgaf” is commonly used in text messaging as an abbreviation for “I don’t give a fuck.” These were the last messages Clark received from Salena M.

Clark then searched for information specific to the “R039” printed on the pills in the photo above:

4423	Searched Items	Unknown	3/17/2018 22:13(UTC-7)	yellow xanax ro39
4424	Web History	Unknown	3/17/2018 22:13(UTC-7)	yellow xanax ro39 - Google Search
4425	Searched Items	Unknown	3/17/2018 22:13(UTC-7)	yellow xanax ro39
4426	Web History	Unknown	3/17/2018 22:13(UTC-7)	R O 39 Yellow - Pill Identification Wizard   Drugs.com

Between 11:47 p.m. on March 17 and 12:03 a.m. on March 18, Clark placed 19 outgoing calls to Amauria H. It does not appear any of these calls were answered.

On March 18, 2019, Clark received a message from an individual noted as "Jun" in his contacts:

4450	Instant Messages	Incoming	3/18/2018 04:07(UTC-7)	What made you text me
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"Jun" was later identified as Janelle T., who resided in Nevada. When contacted by investigators, she stated she was the former girlfriend of Clark. She said Clark contacted her by phone that day, and she had not heard from him since April of 2017. Clark wanted to catch up on their relationship. He told her he was at his grandmother’s house with his family.

Very little activity occurred on the phone the morning of March 18. Relevant phone information begins at 2:18 p.m. Clark sent a text message to the same 530 number he had contacted the previous evening:

4462	SMS Messages	Outgoing	3/18/2018 14:18(UTC-7)	Ow many more bars you got ?
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At 2:21 p.m., Clark conducted more research:

4467	Web History	Unknown	3/18/2018 14:21(UTC-7)	Pill Identification Wizard   Drugs.com
4468	Searched Items	Unknown	3/18/2018 14:21(UTC-7)	how many yellow xanax bars can i take



4469	Web History	Unknown	3/18/2018 14:21(UTC-7)	how many yellow xanax bars can i take - Google Search
4470	Searched Items	Unknown	3/18/2018 14:21(UTC-7)	how many yellow xanax bars can i take

At 2:50 p.m., Clark exchanged messages with Janelle T.

4472	Instant Messages	Incoming	3/18/2018 14:50(UTC-7)	What's your catch behind it
4473	Instant Messages	Incoming	3/18/2018 14:51(UTC-7)	because this happens all the time.
4474	Instant Messages	Outgoing	3/18/2018 14:53(UTC-7)	Just seeing you is the catch baby nelly

At 2:55 p.m., Clark sent messages again requesting Xanax, which included one to the same 530 number:

4475	Instant Messages	Outgoing	3/18/2018 14:55(UTC-7)	I need more
4476	SMS Messages	Outgoing	3/18/2018 14:55(UTC-7)	I need you to pull back up
4477	Instant Messages	Incoming	3/18/2018 14:58(UTC-7)	Ok hold on da
4478	Instant Messages	Incoming	3/18/2018 14:58(UTC-7)	Rq
4479	Instant Messages	Outgoing	3/18/2018 14:59(UTC-7)	Yours and his
4480	Instant Messages	Incoming	3/18/2018 14:59(UTC-7)	Mine
4481	Instant Messages	Outgoing	3/18/2018 14:59(UTC-7)	I need all Xans bitch
4482	Instant Messages	Outgoing	3/18/2018 14:59(UTC-7)	Yours and his
4483	Instant Messages	Incoming	3/18/2018 14:59(UTC-7)	Ok

At 3:37 p.m., Clark attempted to call Janelle T.

4490	Call Log	Outgoing	3/18/2018 15:37(UTC-7)	00:00:00
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At 4:49 p.m., Clark made two more short outgoing calls to the 530 number:

4508	Call Log	Outgoing	3/18/2018 16:49(UTC-7)	00:00:02
4509	Call Log	Outgoing	3/18/2018	00:00:05

			16:49(UTC-7)	
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At 4:07 p.m., Clark conversed with Janelle T. One of those calls was nearly 12 minutes. The calls were followed by a text message from Clark.

4510	Call Log	Outgoing	3/18/2018 16:50(UTC-7)	00:11:52
4511	Call Log	Outgoing	3/18/2018 17:02(UTC-7)	00:00:00
4512	Call Log	Outgoing	3/18/2018 17:02(UTC-7)	00:00:00
4513	Call Log	Outgoing	3/18/2018 17:02(UTC-7)	00:00:00
4514	Instant Messages	Outgoing	3/18/2018 17:03(UTC-7)	We need a conversation. We need you figure this out

In the mist of this conversation, Clark dialed Salena M.'s phone with a “\*67” first (Caller ID blocking):

4515	Call Log	Outgoing	3/18/2018 17:04(UTC-7)	00:00:08
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Janelle T. then responded to Clark's text, and their contacts continued:

4516	Instant Messages	Incoming	3/18/2018 17:05(UTC-7)	We don't need a conversation, I don't want nothing to do with you
4517	Instant Messages	Outgoing	3/18/2018 17:05(UTC-7)	Baby I made a mistake posing you bro my bm
4518	Call Log	Outgoing	3/18/2018 17:05(UTC-7)	00:00:00
4519	Call Log	Outgoing	3/18/2018 17:06(UTC-7)	00:00:00
4520	Call Log	Outgoing	3/18/2018 17:06(UTC-7)	00:00:00
4521	Instant Messages	Outgoing	3/18/2018 17:07(UTC-7)	Jun
4522	Instant Messages	Outgoing	3/18/2018 17:07(UTC-7)	Barn just here me out

At 5:08 and 5:09 p.m., Clark attempted two calls to Salena M. Each lasted zero seconds. In her interview with detectives, Salena M. stated that Clark had tried to call and FaceTime (video chat) her at about 5:00 p.m. on March 18, 2018, but she had missed his call.

At 5:10 p.m., Clark attempted to call Janelle T. The call lasted zero seconds.

At 5:13 p.m., Clark texted Janelle T.:



4529	Instant Messages	Outgoing	3/18/2018 17:13(UTC-7)	What show palace toy wokrb?
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At 5:39 p.m., Clark began sending text messages asking for “weed” and “bars.” “Bars” is commonly used to refer to Xanax pills.

4559	Instant Messages	Outgoing	3/18/2018 17:39(UTC-7)	Sell me some weed
4560	Instant Messages	Incoming	3/18/2018 17:40(UTC-7)	I'm running around how kuvu
4561	Instant Messages	Incoming	3/18/2018 17:40(UTC-7)	Much
4562	Instant Messages	Outgoing	3/18/2018 17:48(UTC-7)	You got bars ?

4573	Instant Messages	Outgoing	3/18/2018 18:48(UTC-7)	Bars ?
4574	Instant Messages	Incoming	3/18/2018 18:49(UTC-7)	Bro no

At 7:00 p.m., Clark sent messages to Amauria H. and attempted to call her:

4576	SMS Messages	Outgoing	3/18/2018 19:00(UTC-7)	Wya
4577	Instant Messages	Outgoing	3/18/2018 19:01(UTC-7)	Baby

4579	Call Log	Outgoing	3/18/2018 19:04(UTC-7)	00:00:05
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“Wya” is commonly used in text messages as an abbreviation for “Where you at?”

Clark received two messages from a different 530 area code number.

4580	Instant Messages	Incoming	3/18/2018 19:20(UTC-7)	Miss you dick
4581	Instant Messages	Incoming	3/18/2018 19:25(UTC-7)	Lmk when I can play with Selena & you again

Clark exchanged messages with Amauria H.

4582	Instant Messages	Incoming	3/18/2018 19:36(UTC-7)	Home
4583	Instant Messages	Outgoing	3/18/2018 19:55(UTC-7)	Uber here no swap

4584	Instant Messages	Incoming	3/18/2018 20:05(UTC-7)	After Jaylen goes to sleep
4585	SMS Messages	Outgoing	3/18/2018 20:07(UTC-7)	Baby
4586	Instant Messages	Incoming	3/18/2018 20:07(UTC-7)	Am I blocked my messages aren't going through
4587	SMS Messages	Outgoing	3/18/2018 20:07(UTC-7)	You blocked me ?
4588	Instant Messages	Incoming	3/18/2018 20:08(UTC-7)	Hello

Amauria H. told investigators that she talked to Clark the night he died. They got into an argument because she would not go see him. He texted her at around six o'clock on March 18th wanting her to come see him, but she was trying to get her son to go to sleep. Her son's name is Jaylen. She indicated she texted him back later but did not receive a reply.

At 8:08 p.m., Clark's phone shows a connection to a Wi-Fi network:

4589	Wireless Network: Location (2)	Unknown	3/18/2018 20:08(UTC-7)	SSID: xfinitywifi BSSID: 00:0D:67:76:56:BE
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At 8:08 p.m., Clark sent a message to Janelle T.:

4590	Instant Messages	Outgoing	3/18/2018 20:08(UTC-7)	Nell
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Also at 8:08 p.m., Clark sent a message to Amauria H.:

4591	Instant Messages	Outgoing	3/18/2018 20:08(UTC-7)	Wya
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Also at 8:08 p.m., Clark received a message from a number that did not appear in his Contacts and which did not otherwise appear in the phone's history:

4592	SMS Messages	Incoming	3/18/2018 20:08(UTC-7)	You not getting my replies cause I'm blocked
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At 8:09 p.m., the phone noted location activity. The GPS coordinates listed are for the apartment complex where he lived with Salena M. This type of location information does not indicate the phone was at that location precisely at the time noted. This activity on the phone appears to be related to the deletion of a location reminder.

4593	Locations	Unknown	3/18/2018 20:09(UTC-7)	(38.616399, -121.519853) com.apple.locationd.bundle- /System/Library/LocationBund les/CarDNDLocationServices. bundle
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At 8:15 p.m., Clark exchanged messages with Amauria H.:

4594	SMS Messages	Incoming	3/18/2018 20:15(UTC-7)	Home I said I'd come after ju went to sleep my mom about to leave
4595	SMS Messages	Incoming	3/18/2018 20:15(UTC-7)	Wth
4596	SMS Messages	Incoming	3/18/2018 20:15(UTC-7)	My messages aren't going through
4597	SMS Messages	Outgoing	3/18/2018 20:15(UTC-7)	Come now then .

At 8:16 p.m., Clark’s phone connected to a wireless network named with Tommy and Sequita T.'s last name. That was the last activity on Clark’s phone prior to the shooting. There is no evidence that the phone sent or received any calls or messages or that Clark took any photos or recorded any video during his encounter with the officers.

**USE OF FORCE AND HUMAN FACTORS ANALYSIS**

The District Attorney’s Office requested that David Blake of Blake Consulting & Training Group assess the use of force and human factors involved in this incident. He provides consultation and expert witness services in police practices, use of force, and human performance science consisting of perception, attention, reaction time, and memory.

Blake is a retired California peace officer with over 20 years of law enforcement experience at both the state and federal levels, including the Livermore Police Department, the San Francisco Bay Area Rapid Transit Police Department, and the Lawrence Livermore National Laboratory Protective Force Division. He has a Master of Science degree in Psychology and is currently a doctoral candidate in Performance Psychology. Blake is certified as a Force Science Analyst by the Force Science Institute.<sup>25</sup> He is a Human Performance Science instructor with the Human Performance Training Institute,<sup>26</sup> and is contracted as a Law Enforcement Practices/Use of Force Expert with Martinelli & Associates.<sup>27</sup> Blake is a California Peace Officer Standards and Training instructor with certifications for Firearms, Arrest and Control, Force Options Simulator, and Reality Based Training. He has been retained as an expert in police practices, use of force, and human factors in California, Texas, Missouri, and New Mexico. Blake is a member of the International Association of Chiefs of Police, American Psychological Association, International Law Enforcement Educators & Trainers Association, Academy of Criminal Justice Sciences, and

<sup>25</sup> The Force Science Institute is a team of physicians, psychologists, behavioral scientists, attorneys, and other professionals who study areas associated with human factors, including human movement, action/reaction times, how the mind works during rapidly unfolding events, and decision-making under stress to provide information on human behaviors to those who are tasked with evaluating and investigating the behavior of individuals involved in those types of events.

<sup>26</sup> The Human Performance Training Institute provides specialized human performance training to the law enforcement, military, aviation, and government communities. The program educates students to assess threat, and to avoid or mitigate errors that lead to accidents or incidents in the work place.

<sup>27</sup> Martinelli & Associates is a training and consulting firm specializing in forensic investigations and law enforcement practices.

the Human Factors & Ergonomics Society. He has also published articles on performance psychology, tactics, and officer safety considerations in various scientific and professional periodicals.

Blake concluded that Officers Mercadal and Robinet reasonably perceived and had probable cause to believe Clark was an immediate deadly threat causing them to fear death or serious bodily injury. Their act of using deadly force, based upon the totality of the circumstances and in response to Clark pointing what they perceived to be a weapon, while also posturing in a recognized shooting position, was reasonable.

Blake noted several objective factors supporting why the officers reasonably perceived that Clark had a handgun and was about to or was shooting at them. First, the BWC frames that DOJ enhanced provide indications that Clark moved in a manner consistent with an isosceles shooting stance as reported by both officers. Second, the BWC videos show evidence of a significant light flash proximal to the shooting, which could be the muzzle flash Officer Mercadal reported perceiving. Third, the BWC videos show that Clark closed the distance on the officers and, based on the orientation of his legs and the variation of his pants' white stripes between frames, that Clark continued to present in a shooting stance with his cellular phone. Fourth, in the STAR video, it appears that when Clark begins to fall forward, both of his hands are positioned together in front of him in a manner consistent with an isosceles shooting stance. Fifth, the officers' behaviors and spontaneous statements are similar, which lends credibility to their individual perceptions and investigatory statements. This includes: (a) Officer Mercadal yelling "Show me your hands" and "Gun," which demonstrates that he believed Clark had a gun; (b) both officers moving quickly to cover appearing to respond to the same threat perception; (c) seconds after the shooting asking each other if they had been hit by gunfire; (d) asking each other if they could see Clark's suspected handgun from their position of cover after the shooting; (e) their heavy breathing proximal to the shooting and for some time afterward consistent with stimulant hormones released after an acute fear response; and (f) their spontaneous statements and descriptions at the scene how Clark presented as if he had a weapon.

Both officers fired their rounds in approximately 4.5 seconds. Officer Robinet fired his first five rounds in approximately 1.4 seconds, delayed for approximately 0.8 seconds, then fired five more rounds in approximately 1.5 seconds. Officer Mercadal fired ten rounds in approximately 2.1 seconds.

Clark moved from a standing to a prone position in approximately 1.8 seconds while shots were being fired. This includes the short period where he crawled forward on his hands and knees. How a body falls to a prone position is unpredictable and can include turning, twisting, and bending at the waist. The STAR video and Clark's final resting place demonstrates that he turned his right side to officers and fell forward on his hands and knees while the officers fired. Blake noted that as an instructor he has witnessed over 100 simulated shootings in a controlled environment in which impact location is determined using laser-based shots or marking cartridges. Officers rarely stop firing immediately upon a body falling and often fail to see certain important aspects of an event that occurs right in front of them. Often, the shots are to the side and back based on the suspect's falling movement.



As can be seen in the STAR video, Officer Robinet stopped firing approximately 0.8 seconds after Clark entered a full prone position, but before Clark ceased all movement. Officer Mercadal stopped firing approximately 1.5 seconds after Clark entered a prone position and approximately 0.5 seconds after he ceased all movement. Laboratory studies have shown that even in a controlled environment, when officers know there is going to be a stimulus to stop firing, officers have fired up to four rounds after the stimulus, with some taking 1.5 seconds to stop. Officers are taught to continue firing until the threat has ceased, which is sometimes trained as when movement has stopped or the suspect has entered the prone position. However, when that perception is ultimately realized varies. Several factors should be considered as affecting perception and response time, such as the weapon in front of the officer's face becoming an obstruction to view impairing reaction time, the ability to perceive a change downrange while the officer is focusing his or her attention on aligning the weapon and firing, and issues specific to these circumstances that could have affected perception and response time, such as vision adaptation (e.g., night vision), debris in the air from the first shots causing reflection from lights, and physiological arousal, attention, and perception (e.g., tunnel vision).

## **LEGAL ANALYSIS**

A peace officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to detain or arrest the person, to prevent the person's escape, or to overcome the person's resistance. (California Penal Code section 835a; CALCRIM 2670.) An officer who detains or arrests a person does not need to retreat or stop his or her efforts if the person resists or threatens resistance. Moreover, using reasonable force does not make the officer an aggressor or cause him or her to lose the right to self-defense. (California Penal Code section 835a.) The person being detained or arrested has a duty to permit himself or herself to be detained, and the person must refrain from using force or any weapon to resist arrest. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; California Penal Code section 834a; CALCRIM 2670, 2671, 2672.)

In the present matter, Officers Mercadal and Robinet were responding to a citizen's 9-1-1 call reporting that an individual had broken into several vehicles. Upon arrival at the scene, they contacted the reporting party, observed damage to vehicles consistent with an automobile burglary, and were pointed in the direction where the suspect fled. While searching for the suspect, they were advised by a Sheriff's deputy observing in a helicopter above that the suspect was in a nearby yard attempting to break into a residence. They were further advised that the suspect had smashed the rear sliding glass door of this residence with an object. The suspect then fled from that yard over a fence into an adjoining residential backyard. The officers at this point were unaware of the suspect's identity or his relationship to that home or its homeowners. The suspect presented a potential danger to the residents of that home.

Video evidence from the helicopter and the officers' BWCs establishes that the suspect who broke the sliding glass door at Bill W.'s residence was the same person who fled into the backyard of 7572 29<sup>th</sup> Street, later determined to be Stephon Clark. DNA and physical evidence also establishes that Clark was the individual who broke into Shynice T.'s Toyota Camry and David R.'s Ford Explorers.

Thus, the officers had sufficient probable cause to arrest Stephon Clark for the felony offenses of attempted residential burglary, auto burglary, and vandalism. The presence of the uniformed officers walking in the neighborhood shining their lights, as well as the police helicopter overhead, provided notice to Clark that Mercadal and Robinet were police officers investigating his activities. Having just committed these offenses and knowing officers were there, and then being ordered to stop by one of the officers, Clark had a duty to submit himself to their detention. He failed to do so.

A peace officer, as well as any person, may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. (California Penal Code sections 196, 197.) California law permits the use of deadly force if the person actually and reasonably believed he or another was in imminent danger of death or great bodily injury. It is the reasonable appearance of danger to the officer, and his honest belief in that danger, which is controlling. If an officer actually believes that deadly force is necessary and that belief is reasonable under the circumstances, the officer's actions are lawful even if it is later determined that the danger did not actually exist. (CALCRIM 505, 507; *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.) Further, the officer need not prove that he had the right to use deadly force. Rather, it is the prosecution which must prove that the officer did not have that right. The question therefore becomes whether the evidence proves, beyond a reasonable doubt, that Officers Mercadal and Robinet did not have an honest, reasonable belief that they were in imminent danger of death or great bodily injury.

In this case, the officers actually believed that their lives were in imminent danger. Both officers described in their interviews to investigators that Clark presented himself in a manner causing them to believe that he was pointing a handgun at them. Officer Mercadal said that as he came around the corner into the backyard, he could see Clark with his arms extended out in front of him at chest level consistent with a shooting position. Officer Mercadal saw a metallic reflection or flash of something coming at him from Clark's position, which he thought was a muzzle flash from a firearm, and he believed that Clark had shot at him. Officer Robinet said that as he went around the corner, he saw light reflecting off a metallic object Clark was holding in his hands in an isosceles shooting position. Officer Robinet feared the object was a firearm based on the way Clark was holding it. After ducking for cover and upon looking around the corner a second time, Officer Robinet saw Clark still in the position consistent with a shooting stance. Thinking that Clark had the drop on them, to protect himself and his fellow officer, Robinet fired at Clark. At approximately the same time, Officer Mercadal saw a bright metallic flash of light in Clark's hands and thought Clark was approaching and shooting at them. Officer Mercadal thought he was returning fire because he believed they were being fired upon and shot to stop the threat.

Objective evidence contemporaneous to the shooting and immediately afterwards demonstrates that their beliefs in the need to use deadly force were actual and honest at the time of the shooting. The BWC videos from both officers support their statements that they saw a flash of light emitting within close proximity to Clark just prior to the shooting. Furthermore, under the law, spontaneous statements made at the time of a startling event or while still in a state of surprise or shock from an incident are considered reliable and trustworthy. This is because the person making the statement would not have had the chance to reflect upon the startling event and fabricate a purposefully false statement.<sup>28</sup>

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<sup>28</sup> See California Evidence Code section 1240.



After coming around the corner into the backyard, when Clark was standing faced toward the officers, Officer Mercadal called out to Clark, "Show me your hands." Officer Mercadal then spontaneously yelled, "Gun." In addition, Officer Mercadal instinctively sought cover. In the STAR video, it appears that Officer Mercadal grabs Officer Robinet and helps pull him to cover. These are the actions of individuals who actually believe that they are faced with an imminent threat.

Rounding the corner again, the officers saw that Clark had advanced upon their position. Officer Mercadal again called out to Clark, "Show me your hands." Officer Mercadal then spontaneously yelled, "Gun, gun, gun." The urgency in his voice manifests both in his tone and his repetition to his fellow officer of the warning that he has observed what he believes to be a gun in Clark's hand. The officers then began firing. These are again the actions of individuals who actually believe they are faced with an imminent threat.

Thereafter, Officers Mercadal and Robinet engaged in further activities consistent with their actual belief. Within moments after firing, the officers checked themselves and each other for injuries, thinking that Clark had or could have fired at them. Both can be heard on their BWC videos having labored breathing, which also demonstrates the physical stress they experienced of believing their lives were in danger. They also conducted tactical reloads to insure their firearms were fully loaded in case they needed to shoot again. They remained in a position of cover for several minutes after the shooting while waiting for backup. They asked for a body bunker because they were concerned Clark could still shoot them as they approached. They discussed whether they could see Clark's gun from their position of cover. Additionally, before they even approached Clark and discovered the cell phone, Officer Robinet described to other officers who had just arrived how Clark had his hands out in front of his body consistent with a shooting position. Officer Robinet's verbal reaction upon approaching Clark and discovering the phone shows his shock and surprise that Clark did not have a gun.

In addition to having an honest belief in imminent danger, Officers Mercadal's and Robinet's beliefs were reasonable under the circumstances.

Clark broke into three vehicles but did not remove any property. In plain view of a police helicopter that had been circling overhead for several minutes, Clark shattered the rear sliding glass door into a residence. Instead of entering that house, he quickly ran away through the yard and over the fence. Unbeknownst to officers, he had jumped into his grandparents' yard where he had been staying. Clark did not appear to be trying to escape the police at that point, because he could have run directly into the backyard to try to gain entry into the house. Instead, he went to the side yard and lingered by one of his family member's vehicles with officers searching for him. There, he looked into a back window of this car, as if he was preparing to burglarize another vehicle. Once Officer Mercadal called out to him and approached, Clark ran into the backyard.

After crossing the yard, Clark chose to stop running even though he would have known that there were no fences blocking either side of his grandparents' house. After crossing the backyard, while the officers were turning the northwest corner of the yard, Clark could have easily run along the south side of the house, where he had a clear path to 29<sup>th</sup> Street and further flight. (See p. 10, Figure 10.)

Instead, Clark turned towards the officers. Clark would have seen that the officers had their guns drawn on him. Officer Mercadal yelled at Clark in a loud voice, "Show me your hands." Officer Mercadal then yelled, "Gun" and dove for cover. Clark would have heard these words from his position and would have seen the officers retreat behind the corner of the house. Clark did not call out to officers identifying what was in his hand or that he was not armed. Clark did not raise his hands above his head. Clark did not act in a manner showing he was submitting to their authority. Instead, Clark advanced upon their position.

Regardless of Clark's true intentions, his actions would cause a reasonable officer under the circumstances to believe he had shifted from flight to fight. Further, the act of taking a shooting stance and advancing towards the officers would be perceived by a reasonable officer as an imminent threat. The STAR and BWC videos clearly show that Clark advanced towards the officers.

The BWC videos from both officers show a flash of light emitting within close proximity to Clark just before Officer Mercadal calls out "Gun." These flashes of light are consistent with the officers' descriptions of seeing light reflecting off a metallic object in Clark's hand or a muzzle flash from a firearm. Given Clark's positioning and an emission of light consistent with reflection from a metallic object in his hands or a muzzle flash, the officers' belief in the need to use deadly force would be considered reasonable.

SPD and DOJ investigators noted that Clark responded to Officer Mercadal's command to "Show me your hands" by yelling, "Fuck you." DOJ investigators and expert David Blake also noted frames from the BWC videos that appear to show Clark moving his hands and arms to a position consistent with a shooting stance. Whether Clark uttered those specific words and whether the video shows Clark's arms in front of his chest are not necessary for our analysis given all of the other circumstances presented in this case. However, this evidence would be available to a jury in evaluating the officers' belief that deadly force was necessary.

Finally, Clark's state of mind would be evidence available for a jury to consider in evaluating whether he acted in a manner consistent with the officers' descriptions and beliefs. Toxicology testing shows that Clark was in an impaired state. Multiple controlled substances and a significant level of alcohol were detected, which would have affected his judgment. His cell phone demonstrates that he was emotional about the ending of his relationship with Salena M. and he was concerned about returning to custody. Comments by Salena M. in text messages indicated that she had filed a police report against him for a domestic violence incident that occurred less than 48 hours prior to the shooting. He wrote a note in his phone which appears to be a draft email apparently intended for law enforcement in which he attempted to address the domestic violence case. In this draft email he stated, "I'm pretty scared I'm going to be put in jail." He also attempted to contact his Probation officer. Clark was fearful of going back to jail and not being able to see his children again.

The contents of Clark's phone further demonstrate that he was researching and threatening to commit suicide. The day before the shooting, after repeatedly trying to call Salena M. and engaging in a series of text messages arguing about their relationship and the recent domestic violence incident, Clark asked her if he should kill himself. He sent her a photograph of numerous Xanax pills, threatening to overdose on them. He conducted numerous internet



searches on various ways to commit suicide, including “What pills can you die from” and “How many Xanax can kill you.” He also visited websites with such information as “Xanax and Alcohol: A Combination that Could Kill” and “How much Xanax will it take to reliably kill you?” During the time frame of these internet searches, Clark also texted various numbers looking for “Xans,” Valium, and oxycodone. The text messages confirm he met someone to obtain drugs. Clark’s toxicology showed a combination of Xanax (alprazolam) and alcohol among other drugs.

Instead of continuing to flee, Clark advanced toward the officers in a manner that, given the circumstances of an active chase with a criminal suspect into a backyard after ignoring numerous commands, would be seen by officers as aggressive and threatening. Furthermore, Clark took a shooting position while holding a metallic object out in front of his body. Clark did not have this phone in his hands moments before, as can clearly be seen in the STAR video as he jumped the fence and walked up to the vehicle in the side yard. Under these conditions, taking his phone out and pointing it at officers like he was holding a gun would lead officers to believe he had a gun and was about to fire upon them.

In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court emphasized that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight and must allow 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, supra*, 490 U.S. at pp. 396-397.) “What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at p. 343 (quoting *Smith v. Freland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347).)

Under these facts, it cannot be said that Officers Mercadal and Robinet were unreasonable in their beliefs that Clark had a gun and was about to shoot them. While it is tragic that Clark in fact was holding a cellular phone, the law judges the officers’ actions based upon the reasonable perception of the threat. The evidence proves that Officers Mercadal and Robinet acted lawfully under the circumstances.

## CONCLUSION

Based on the circumstances of this incident, Officers Mercadal and Robinet had an honest and reasonable belief that they were in imminent danger of death or great bodily injury. Therefore, they acted lawfully in shooting Clark to defend themselves. Accordingly, we will take no further action in this matter.

cc: Xavier Becerra, Attorney General of California  
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