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August 14, 2018

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**LETTER DECLINING PROSECUTION AFTER INVESTIGATION**

RE: *Officer-Involved Shooting on February 22, 2017, by Austin Police Department Officer Benjamin Rogers #7557 causing death to Morgan London Rankins (DOB 08/25/1986)*

Dear Chief Manley:

The Office of the Travis County District Attorney has reviewed the Austin Police Department Special Investigation Unit (“APD SIU”) investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Austin Police Department Officer Benjamin Rogers fired shots from his pistol that resulted in the death of Morgan London Rankins. This letter is to inform you of my decision to decline prosecution of criminal charges against Officer Rogers. My decision does not limit or address administrative action by the Austin Police Department, or other civil actions, where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

The District Attorney’s Office (“DA”) has reviewed the investigation of the Austin Police Department (“APD”) into this incident pursuant to the officer-involved shooting protocol that is attached and posted on the DA official website. A copy of this letter will also be posted on the DA website.<sup>1</sup>

Based upon the evidence available and the applicable Texas law,<sup>2</sup> I am convinced that a jury following the law would not convict Officer Benjamin Rogers, because the evidence proves the

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<sup>1</sup> <https://www.traviscountytexas.gov/district-attorney/cru>

<sup>2</sup> In arriving at this conclusion, I have relied upon the legal guidelines governing the use of force/deadly force in Texas as set forth in sections 9.32, 9.33 and 9.51 of the Texas Penal Code, the case authority construing those provision, and the United States Supreme Court case authority governing law enforcement use of force. (See applicable Texas Statutes in Appendix)

use of force to be justified under Texas law. The following sets forth the facts determined during our review, identifies the applicable legal rules, and presents the analysis underlying my opinion.

## I. FACTS AND CIRCUMSTANCES LEADING TO AND SURROUNDING MS. RANKINS'S DEATH

Critical to our analysis is the determination of the facts and circumstances leading to and surrounding a shooting incident. In determining these facts and circumstances, we rely on the entire investigative file compiled by APD's Special Investigations Unit<sup>3</sup> (SIU) whose primary responsibility is the independent investigation of all shooting incidents in which an APD officer is involved. In determining the credible facts and circumstances leading to and surrounding the shooting incident resulting in Ms. Rankins's death, we reviewed the entirety of SIU's investigative file to arrive at what we believe is a credible and comprehensive understanding of those facts and circumstances.<sup>4</sup>

Our narration of the facts and circumstances of Ms. Rankins's death is based on our review of supplements and the written and audio statements made by the officer directly involved in this incident—Officer Benjamin Rogers—as well as other officers and civilians who were witnesses. Our narration of these facts and circumstances is also based on a review of the statements of those witnesses, audio and video recordings, audio- and text-recorded 911 calls, APD radio traffic recordings, evidence recovered and developed at the scene, and forensic analyses conducted on recovered evidentiary items. Below, we set forth the facts and circumstances surrounding Ms. Rankins's death based on our review of the credible evidence and information developed in the SIU investigation, including the results of forensic examination, testing, and analyses.

### A. The Initial Emergency 911 Call and Dispatch of Officers

On February 22, 2017, at 5:59 p.m. and 6:00p.m., two telephone calls were made to 911 in quick succession, from the same number. On the first, the caller did not speak, but in the second call, the caller—later identified as Morgan Rankins—requested that the police come to 7905 Appomattox Drive, in south-central Austin.

(Call taker): Austin 911. Do you need police, fire, or EMS?  
 (Caller): Police.  
 (Call taker): To what location?  
 (Caller): 7905 Appomattox Drive. Someone's trying to blow up my house.  
 (Call taker): Is that a house, apartment, or duplex?

<sup>3</sup> APD's Special Investigations Unit (SIU) has the primary responsibility for conducting all "criminal investigations involving all sworn peace officers alleged to have committed a criminal offense within the jurisdiction of the Austin Police Department." See <http://www.austintexas.gov/department/special-investigations>.

<sup>4</sup> This letter will refer to various items reports and information gathered in the SIU investigation, and these items will be released in redacted form in a press release available simultaneously with the public dissemination of this declination letter.

<sup>5</sup> The recitation of the 9-1-1 call is taken from the transcription of the entirety of the call.

(Caller): Someone's trying to blow up my house.  
 (Call taker): OK, how are they doing that?  
 (Caller hangs up).

The call lasted less than a minute, as indicated below, Fig. 1

Comments					
Date	Time	User	Type	Conf.	Comments
2/22/2017	17:59:09	AP6236	Response		OPEN LINE , NOTHING HEARD, NEG TTY , NOI
2/22/2017	18:00:03	AP8173	Response		Duplicate call appended to incident at 18:00:03
2/22/2017	18:00:07	AP8173	Response		[Page] Problem changed from Hang-up Residence to Nature Unknown Urgent by AUSTIN PD [Shared]
2/22/2017	18:00:25	AP8173	Response		male voice gave address..then said someone is trying to blow up my house and hu...noi
2/22/2017	18:01:05	AP8023	Response		F480 CLR
2/22/2017	18:03:38	AP8023	Response		21 RETURNS TO [REDACTED] -- LAST INVOLV 2013 - NOR SHOWING ANY EDP HX [TLETS]: 12177740 - TX [REDACTED] M,U,1 [TLETS]: Results for TTPerson Check Query Performed By Ausbie, Keiona for Unit

Figure 1 Screenshot of CAD call showing call duration.

Police officers were dispatched to the address: time-stamped, computer-generated records indicate that Officer Brian Robinson #7786 (Unit F403) arrived at 6:07, and Officer Gregory Padalecki #4619 (Unit F401) arrived ten seconds later.

Resources Assigned												
Unit	Primary Flag	Assigned	Disposition	Enroute	Staged	Arrived	At Patient	Delay Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
F401	N	17:59:24	0 - Reassigned call	17:59:24		18:08:07			18:11:42			PRE -Empted Unit For Call
F510	N	17:59:25		17:59:25					18:00:15			
F403	N	18:01:53	0 - Reassigned call	18:01:53		18:07:57			18:11:29			PRE -Empted Unit For Call

Figure 2 Screenshot of CAD report showing assigned officers responding to call.

## B. Initial Contact with Morgan Rankins and Subsequent Pursuit

Once on scene, both officers parked their patrol vehicles two to three houses away from 7905 Appomattox Drive. They approached the house together on foot, close to the sidewalk but on the street. Officer Robinson later stated that he saw two white cars in the driveway of the address, one of which was a Dodge Charger. As they approached, that vehicle began to back up, and then Officer Robinson heard the “tires screech.”<sup>5</sup> Officer Robinson was able to see the driver but, because of the car’s tinted windows, was unable to determine if it was a man or a woman. Once out of the driveway, the Charger then went directly toward the two officers at “a high rate of speed.”<sup>6</sup> This incident was captured by Officer Padalecki’s in-car video.

<sup>6</sup> See Sworn Statement of Brian Robinson (“Robinson Statement”), March 3, 2017.



Figure 3—DMAMV screen captures depicting Officers Robinson and Padalecki approaching 7905 Appomattox Drive, and the white Dodge Charger driven by Morgan Rankins toward the officers.

Both officers moved out of the way to avoid being hit, and the Charger sped past them, down Appomattox Drive, before making a U-turn and coming back towards them. This return was captured on Officer Robinson’s in-car camera, which was activated when he initially exited his vehicle at 7905 Appomattox. The driver’s actions appeared intentional to both officers.<sup>7</sup>



Figure 4—DMAMV screen capture depicting Ms. Rankins driving away from Appomattox Drive at high speed.

When the charger passed them a second time and failed to stop at a “Stop” sign, the officers initiated a pursuit for the aggravated assault on them. Officer Robinson called in the pursuit, and was the closest to the fleeing Charger.

<sup>7</sup> The intentional driving of a vehicle towards another in a manner that causes that person to fear for his or her safety may constitute the offense of Aggravated Assault Texas Penal Code §22.02(a), (b). An offense may make a warrantless arrest of any person for an offense committed within his presence or view Texas Code Criminal Procedure Art. 14.0

Numerous traffic violations are captured on Officer Robinson's camera as the Charger sped through the neighborhood before turning north onto Manchaca Road. These violations included speeding, ignoring "Stop" signs, weaving in and out of traffic, and traveling in the lanes designated for oncoming (southbound) vehicles. At one stage, on Manchaca, Officer Robinson's vehicle reached 88 mph in an attempt to maintain the pursuit.



Figure 5—DMADV screen capture showing the speed of Officer Robinson's patrol car during the pursuit.

The Charger subsequently ran a stop light at Manchaca and William Cannon, crashing into a vehicle that was in the intersection. The Charger continued northbound on Manchaca, before executing a U-turn and heading back toward the crash site.

Officer Robinson continued to follow the Charger and made a U-turn also, but was subsequently slowed by vehicles in front of him, and was unable to continue his pursuit. (Officer Padalecki had previously fallen behind, leaving Robinson as the sole pursuer.<sup>8</sup>) According to Officer Robinson's in-car video, he ended the pursuit at 6:15:15p.m.

### C. Involvement of Officer Benjamin Rogers

Officer Benjamin Rogers #7557 (Unit F406) was assigned by the dispatcher to back-up Officer Robinson at 6:12:25p.m.:

<sup>8</sup> See Sworn Statement of Gregory Padalecki ("Padalecki Statement"), March 9, 2017. This statement corroborates that of Officer Robinson as it relates to their actions and observations at 7905 Appomattox and the subsequent pursuit.

Comments					
Date	Time	User	Type	Conf.	Comments
2/22/2017	18:11:42	AP8023	Response		Backed up F403 with F401
2/22/2017	18:12:14	AP8023	Response		F403 FEM DRIVER - SB STONERIVER
2/22/2017	18:12:18	AP8023	Response		F403 30 MPH
2/22/2017	18:12:25	AP8023	Response		Backed up F403 with F406

Figure 6—DMAV screen capture showing the speed of Officer Robinson's patrol car during the pursuit.

Officer Rogers drove toward the area with his lights and sirens, being informed about the pursuit over the radio. He heard that the Charger was heading south on Manchaca, and because he was near Manchaca and Keilbar Lane, he parked his patrol vehicle close by at the edge of the northbound lane, to use spike strips to slow or stop the vehicle. Traffic in both directions stopped to allow Officer Rogers to cross all northbound lanes of Manchaca. He determined that the best course of action was to lay the sticks in the center (turning) lane, to avoid harm to other vehicles and maximize the chances of stopping the Charger. At that time, the Charger began to bear toward him at a high rate of speed, as he stood by the yellow line demarcating the central turn lane from the left of the two northbound lanes:<sup>9</sup>

1146	And realizing she's picking up speed. She's going super-fast. I'm just
1147	gonna leave the sticks and get out of here, go back to the sidewalk, get
1148	behind my car. So I - I lay 'em down, just ditch 'em there, don't even
1149	worry about the handles, start movin' back towards my car and that's
1150	north. And I'm goin' back this way and I'm lookin' at her and she's
1151	comin'. She starts trackin' towards me. She goes around into the
1152	center turn lane and I'm realizing I'm in extreme danger right here. I
1153	need to move faster.

He subsequently heard the tires of the Charger screech, and his DMAV briefly captured the Charger crossing the road in his direction:



Figure 7—Screen capture from Officer Rogers's DMAV depicting the white Charger veering toward him.

<sup>9</sup> Transcript of Interview with Benjamin Rogers ("Rogers Interview"), p.26, ll.1129-1144.

1194 A: I think it was just because of the - the, uh, I think she turned the wheels  
 1195 so hard at such a high speed to try to get me at that last second. But  
 1196 she realized I was movin' faster. What I felt like was she really wanted  
 1197 to make sure she got me. I felt like she was tryin' to kill me. And she  
 1198 turned it so hard that she had no regard for what happened to her at  
 1199 the end of it. She just - she wanted to get me. So I barely - I made it  
 1200 out of the way just barely and, like, she - it seems to me like she didn't  
 1201 even care about what happened to her and her car. She just blew  
 1202 straight in to the curb. There's a telephone pole right there. And she  
 1203 slammed dead center straight into it probably, like, 70 miles per hour if  
 1204 I were to guess.

The Charger hit the pole head-on and jumped into the air, spinning counter-clockwise into a grassy area. Officer Rogers reported this over Frank radio: "She just tried to run me over and wrecked out."

Officer Rogers ran toward the crash site and positioned himself approximately fifteen feet from the vehicle, using his weapon as cover. He explained why he drew his weapon:

1500 and I'm looking around. There's really no cover so the only cover I  
 1501 really have is my firearm if they do jump out and start shooting or  
 1502 something like that. So I get in kinda the same position I would be  
 1503 about maybe 15 feet behind the car. The felony car stop kind of  
 1504 position with my weapon drawn. And I'm still seeing nobody get out so  
 1505 I'm confident that the driver's still in there. So I - I just start giving  
 1506 commands, um, I think - I believe I was saying, "Let me see your  
 1507 hands. Let me see your hands." That's generally my first concern are  
 1508 where are this person's hands? Because we're all trained in the police  
 1509 force that hands are what kill you. So I'm giving these commands. I'm  
 1510 standing there kind of like my body's splitting the - the, uh left side of  
 1511 the car where I can see the driver's side if they exit the driver's side  
 1512 just because that's how we're trained and that's where I'm used to  
 1513 people usually popping out of a car.  
 1514

Officer Rogers later said in his sworn statement that at this time he believed she had tried to kill him, and also that his plan of action was to contain the situation, knowing that back-up was on the way.<sup>10</sup>

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<sup>10</sup> Transcript of Interview with Benjamin Rogers ("Rogers Interview"), p.26, ll.1129-1144.

1548 So I got my gun out and I'm giving commands, "Let me see your  
1549 hands. Let me see your hands." A few moments go by and the - the  
1550 driver steps out of the driver's seat. And I thought it was a male. I  
1551 thought it was a black male - looked like a black male to me. So I had  
1552 just a brief moment of confusion of, "I though (Robinson) said this was  
1553 a female driver." So now I'm - I don't know if there's two people in there  
1554 maybe or if this is the female. I'm not really sure. But I'm confident that  
1555 this is the person that just tried to run me over. And I - I don't think  
1556 there's been any gap in time where anybody could of switched seats or  
1557 anything. So this person is still the person that I feel needs to be  
1558 apprehended. And I'm still giving that person commands, "Let me see  
1559 your hands." And the - the driver is - if I'm over here behind the car she  
1560 steps out and she's facing just like I'm facing here...

Officer Rogers said he was barely able to see her left hand, and was not able to see her right hand at all, and was concerned she might be holding a gun.

1579 A: I'm really concerned about that right hand because I'm thinking, "If it's  
1580 a gun I know the action verse reaction that this person still has the  
1581 jump on me if it is a gun and they do that real fast." I'm thinking, "They  
1582 can probably get a round or two off before I can probably squeeze one  
1583 off." So I'm still saying, you know, "Let me see your hands. Let me see  
1584 your hands." And they're not doing it and, uh, finally the suspect facing  
1585 right - right where they're facing takes a step or two that way and it's,  
1586 like, a wooded area. So I've been in enough foot pursuits for vehicles  
1587 that I'm thinking, "All right, now it's gonna be a foot chase. They're  
1588 gonna make a b-line for the wood line." So as I take a step I'm startin'  
1589 to take a step and put my gun back towards my holster so I can start  
1590 chasing and try to get them before they get in the thick stuff where I  
1591 don't have good visibility anymore. So there's - there's kind of a really  
1592 small gap before it gets thick. Like always if there's a foot chase I'm  
1593 gonna get them before they get to that spot. Just full sprint try to get  
1594 them right there. And we both start takin' our first steps in the same  
1595 moment but instantly she, like button hooks, turns, lifts up a knife in the  
1596 right hand over her shoulder, starts comin' at me super-fast, closing  
1597 the distance super-fast. So, um, when I've already started to go  
1598 towards my holster so I just pull it back u real fast, aim it and, uh, she's  
1599 comin' at me. I'm tellin' her to, "Drop it. Drop it. Drop it." And I realize it  
1600 looks like a knife in her right hand and it looks like she's chargin' me to  
1601 attack me. I feel like she's gonna try to kill me. It felt like she - she's  
1602 tryin' to kill me right now as fast as she can. And I know she's already  
1603 tried to kill me with her car. And, you know, (Robinson) and (Patolacki)  
1604 broadcast that they tried to, you know, she tried to kill them. I'm  
1605 thinkin', "They're - she's just not gonna stop." But I'm tryin' to give her  
1606 every last opportunity to stop. I'm saying, "Drop it. Drop it. Drop it. Drop  
1607 it." 'Til - sorry. Just give me one second.

1608  
 1609 Q: Yeah, take your time.  
 1610  
 1611 A: I tell her last second and I just pull the trigger 'til she stopped. So I let  
 1612 off, I remember, two or three rounds. I think it was three. Which they  
 1613 were rapid succession so she went straight down. And as soon as I  
 1614 realized she was goin' down I stopped firing. She landed and rolled her  
 1615 back and I could see her hands were free. Units start showin' up. I just  
 1616 kept her at gunpoint 'cause I was still afraid she might grab it, stand up  
 1617 and come at me.

At precisely the same moment that Officer Rogers is shouting at Ms. Rankins to show her hands, Officer Arika Austin #7404 (Unit F509) comes onto the radio and states: "Information. A relative said that she is trying to bait police to shoot her. Her name is Morgan Rankins." Officer Rogers's body microphone captures both the commands and the relay of information.<sup>11</sup>

A total of thirteen seconds elapsed between Officer Rogers reporting that the Charger drove at him and wrecked out, and his call of "Shots fired," which his DMAV reflects happened at 6:16:11 and which appears on the CAD at 6:16:22. See Figure 8

2/22/2017	18:16:03	F590	Response	f490 terminated pursuit
2/22/2017	18:16:22	AP8023	Response	F406 SHOTS FIRED
2/22/2017	18:16:35	AP7174	Response	F403 SM WC SHOTS FIRED 170531401
2/22/2017	18:16:49	AP8023	Response	Multi-Agency AUSTIN-TRAVIS COUNTY EMS Incident #: 17053-0375
2/22/2017	18:16:50	AP8023	Response	PT SHOT [Shared]
2/22/2017	18:16:56	AP8023	Response	F406 SUBJ HAS KNIFE [Shared]

Figure 8—Screenshot of Officer Rogers Officer Padalecki CAD report reflecting their responding action of pursuit and shots fired.

Office Rogers stated that Ms. Rankins was between eight and ten feet from him, giving him a clear view of the knife, when he fired his weapon.

1737 I couldn't see, like, details about the knife but I could tell that it was a  
 1738 knife. And it looked, uh, it didn't seem real shiny to me. It seemed  
 1739 kinda more like a grey colored. And, uh, she just had it right here the  
 1740 whole time. And you just - she wasn't makin' any motion. She was just  
 1741 runnin' like this.

He also noted that visibility was good at the moment he fired his weapon:

1774 A: It was - it was pretty daylight still. I could - I could see pretty well like it  
 1775 was just normal daylight. I watched, like, on the heat map it looks dark  
 1776 but it's - it was pretty light out.

Officer Rogers told investigators he didn't have time to consider other use-of-force options.

<sup>11</sup> Transcript of Interview with Benjamin Rogers ("Rogers Interview"), p.26, ll.1129-1144.

2138 A: I felt like she was gonna kill me for sure. And if I would of - I didn't  
2139 wanna - I didn't wanna shoot her but I felt there was no other option  
2140 than to keep my gun out to protect myself or she was gonna kill me  
2141 with that knife.

2142

2143 Q: Okay.

2144

2145 A: There's no way I was gonna put that away and pull out a Taser  
2146 anything else at the time or pepper spray. I wouldn't - I wouldn't put my  
2147 gun away to pull one of those out against a knife.

Officer Rogers told investigators several times that he did not recall hearing Ms. Rankins say anything to him after she exited her vehicle.<sup>12</sup> Moments after he fired, back-up officers arrived and Officer Rogers handcuffed Ms. Rankins with their assistance. Police officers on scene administered CPR to Ms. Rankins, and both the Austin Fire Department and EMS attended the scene. However, the EMS run sheet indicates that she died on scene, at 6:27p.m.

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<sup>12</sup> Officer Rogers's body microphone does capture some words spoken by Ms. Rankins, but she is speaking at the same time as Officer Rogers is shouting instructions. The words "shoot me" can be faintly heard on the recording at 6:16:09 p.m.

#### D. Summary of Timeline of Events and Pursuit

APD had started CPR, and AFD had continued upon their arrival. AFD had placed l-gel airway, and APD had placed bandages over gunshot wounds. Patient had fixed pupils that were about 5 mm, and unresponsive. She had no carotid pulse, and per AFD, and APD, estimated down time was about 10-15 minutes prior to our arrival. Patient had GSW to upper left torso with no exit wound, and lower abdomen, with exit wound, both were about an inch in diameter. TOD was requested and given @ 1827 via Dr. Escott, for injuries incompatible with life by personnel Ender EM2553. APD did not have any info on patient demographics, and to prevent any further contamination of crime scene, EMS cleared out of the area. APD officer signed for DOS of patient. Further assessment, vitals, and interventions as noted.

TIME (P.M.)	EVENT	SOURCE
5:58:34	Initial 911 hang-up call from Morgan Rankins	CAD 170531372
5:59:21	End of 2 <sup>nd</sup> 911 call from Morgan Rankins requesting police	CAD 170531372
6:07:57	Officers Padalecki and Robinson arrive at 7905 Appomattox Drive	CAD 170531372 and Padalecki DMAVs
6:09:20	Pursuit begins	Padalecki and Robinson DMAVs
6:13:05	Pursuit hits 88 mph on Manchaca	Robinson DMAV
6:13:33	Dodge Charger causes wreck at Wm. Cannon and Manchaca	Robinson DMAV
6:14:25	Dodge Charger makes U-turn and goes south on Manchaca	Robinson DMAV
6:14:43	Relative tells Officer Austin that Morgan Rankins is mentally ill. She is trying to bait the officers to shoot her	AUSTIN DMAV
6:15:08	Officer Rogers stops on Manchaca	Rogers DMAV
6:15:12	Officer Robinson terminates pursuit	Robinson DMAV
6:15:49	Relative tells Officer Austin that Morgan Rankin is in possession of a knife	Austin DMAV
6:15:50	Dodge Charger captured on video, swerving toward Officer Rogers and crashing	Rogers DMAV
6:16:07	Officer Austin dispatch that Morgan Rankin is trying to bait the officers to shoot her	Austin DMAV
6:16:22	Shots fired	CAD 170531401 & audio from Rogers DMAV

### E. Path of Pursuit

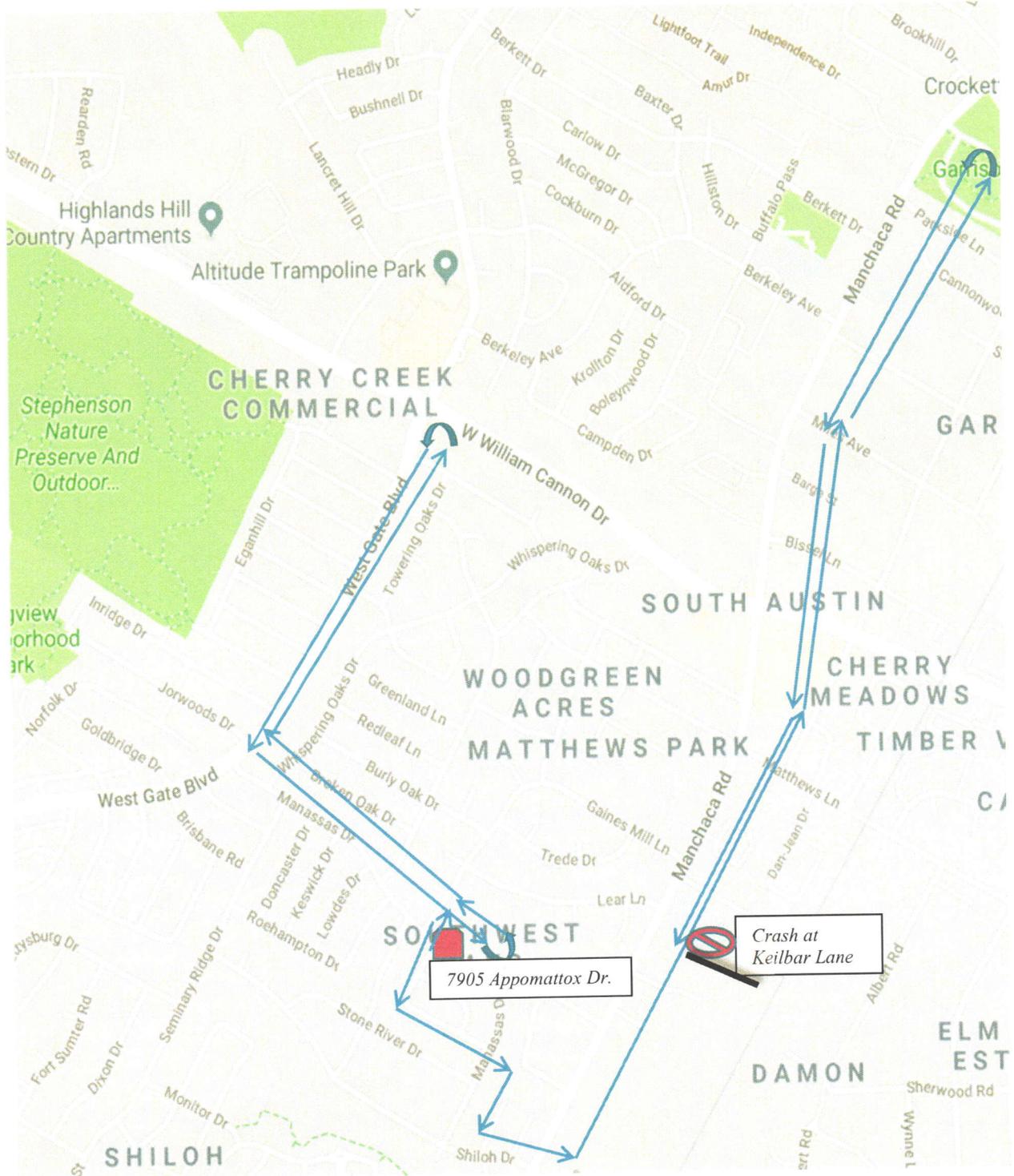


Figure 8—Map showing the path of the pursuit and eventual crash site.

## II. POST-INCIDENT INVESTIGATION

### A. Witness Statements

As part of their investigation, APD's Special Investigations Unit took statements from multiple eye-witnesses at the scene of the crash and shooting.

#### (i) Statement of Aaron Wood

Mr. Wood drove north on Manchaca from his place of work at Soccer Zone. He saw Officer Rogers in the middle of the road setting out spike strips, and then saw the white Dodge Charger traveling southbound. In his sworn statement, Mr. Wood said: "The car moved from the southbound lane to the turn lane, nearly striking the officer. The officer deployed the spike strips and almost got hit." With reference to the speed of the Charger, he said: "She had to be going 80 mph or 70 mph at least. She was going way too fast. She tried to take control of her car and lost control and ended up coming right at me and the guy next to me, doing like 80 mph.... The vehicle was coming that fast at my car I thought it was going to kill me."

Mr. Wood then saw Officer Rogers running into the brush where the Charger had crashed. "As he was running I saw the officer go for his gun. He kept yelling 'Get on the ground' 'Get on the ground.' I got out of my car and stood right by my window. A few seconds later I heard three pops." Mr. Wood did not see the shooting itself, his view being blocked by another vehicle and the location of the crash site.

#### (ii) Statement of Arturo Montemayor

Mr. Montemayor was also headed northbound on Manchaca when he saw Office Rogers's car parked on the right shoulder just past Keilbar. Mr. Montemayor's view was from the inside lane of northbound Manchaca. He stated that he saw Officer Rogers run toward a white vehicle that was in a ditch and "looked as if it had crashed into a tree." Mr. Montemayor reported that the:

Officer stopped running and then slowed down and approached the white car. At that point the driver got out of the white car and walked around toward the back of the car driver's side. When the person got to the rear tail light of the white car, the Officer shot 3-4 times in rapid succession around the person's chest. The person at the time was facing the Officer. The person then fell down. I saw that the person's hands were down but I was unable to see if he had anything in his hands when he got shot. The

Mr. Montemayor stated that Officer Rogers "shot him [sic] from around 12 yards or so," and that "I did not hear any verbalization between the Officer and the person who got shot."

**(iii) Statement of Carlette Satterwhite**

Ms. Satterwhite, who is former military and a former Travis County constable, witnessed the initial northbound chase by APD of the Dodge Charger as she was traveling southbound on the road. Soon after, she saw Officer Rogers laying out spike strips. He reported that:

The driver of the white car was approaching southbound in the lane next to the shoulder I was pulled over on. As the officer was attempting to put out the spike strips the driver of the white car darted toward the officer at a high rate of speed. He was aiming his vehicle directly toward the officer and had no reason to turn the vehicle because his lane of traffic was open and unblocked. I heard multiple pops, shots as the driver ran over the spike strip.

Ms. Satterwhite then saw the officer running “as fast as he could to get out of the way,” and going behind his vehicle. She saw the Charger then go up the curb and hit a telephone pole. At no time did she hear any commands being given by Office Rogers, nor did she see him with his weapon in his hand. In fact, Ms. Satterwhite believed at the time that the driver of the white vehicle was trapped in her car. Ms. Satterwhite added:

I told him what I saw and was asked to stay. There was no reason for the driver to dart toward the officer. The driver went across five lanes, including the median in order to get to the officer. It was like the driver had a death wish. I stayed as long as I did because I was concerned for the officer.

**(iv) Statement of Damarius Ramirez**

Mr. Ramirez was driving north on Manchaca, heading toward Wm. Cannon in the right lane. It was still light, and he saw the white Charger “traveling southbound, cut in front of the red truck, going high-speed, hitting something on the right side of the road and then flip a couple of times in the air.” Mr. Ramirez was unable to see the car after that moment, but he did observe some of the actions of Officer Rogers:

The officer was wearing a police uniform, tall and was white male. The officer stepped out of his car, walked towards where the white car landed. The officer looked like he was in a hurry and that he was going to give aid to the person in the car accident. The officer had a concerned look on his face but didn't look mad. I think the officer pulled his gun out when he got out of his car, but I'm not 100% sure. When the officer got near the car, he said something, but I couldn't hear what was said. I could only see his mouth moving.

Mr. Ramirez said that Officer Rogers fire twice, but he couldn't see what he was shooting at. Nor was he able to see what happened immediately after the shooting.

**(v) Statement of Elina Sachi Edson**

Ms. Edson left her job at Baranoff Elementary School and drove north on Manchaca when she saw Officer Rogers and his police car stopped by the side of the road. "He may have had something in his hands, but I don't know what it was." Soon after, she states that she heard "two loud pops." According to Ms. Edson's statement, she did not see the Charger crash, nor did she see the shooting, just the arrival of police cars immediately afterward.

**(vi) Statement of Kristina Cavazos**

Ms. Cavazos was driving northbound on Manchaca and witnessed Officer Rogers putting out the spike strips (although she says, "I didn't know what he was doing.") She then saw cars stopping and a few seconds later heard "a loud bang and then saw a car flipping in the air and land on the shoulder to my right."

She states that she saw a police officer with a gun in his hand (and believes he exited his police car), and then she saw a person she described as a "guy:"

*get out of the white dodge that had crashed and looked like he was going to start running. I heard the officer yelling and running into the ditch. I initially thought the officer was running to help him, but then saw he had his gun pointed at him. I saw the guy out of the car and then I heard 3 loud bangs.*

She only saw the person who was shot "for a couple of seconds," and while she was unable to hear exactly what Officer Rogers was saying, "but it sounded like, 'Stop' and something else." She put Officer Rogers at approximately ten feet from Ms. Rankins when he fired. Ms. Cavazos was unable to see Ms. Rankins's hands at the time of the shooting, and did not hear her say anything to Officer Rogers. She did see Ms. Rankins take three steps toward Officer Rogers after exiting the car.

**(vii) Statement of Kyra Swartz**

Ms. Swartz, a student at Texas State University, was Officer Rogers's ride-along passenger. She said that after a traffic stop, a call came in of a man complaining that someone was trying to blow up his house. It looked interesting, so they decided to take it. En route they learned of the pursuit, including the claim that the Charger had tried to run over a police officer before fleeing the scene. Officer Rogers activated his lights and sirens and went to "meet up with" the pursuit. They stopped so that Office Rogers could use the spike strip to stop the oncoming car.

I watched as officer Rodgers ran out of the way to avoid being hit by the speeding vehicle. As the charger passed us it veered off the road and stuck a pole that cause it to spin out and end up down a bit in a field. As soon as the car had passed us officer Rodgers started to run towards the charger. As he ran towards the car he moved around to the driver's side of the vehicle at which point I was no longer able to see him.

She then heard "about three or four shots," and after that Officer [redacted] over the radio and that "she had a knife." Officer Rogers later returned to the car to check on her, and when she asked what happened, he stated: "I shot her, she's dead."

**(viii) Statement of Mandi Mojgan Shahvandi**

Ms. Shahvandi was traveling north on Manchaca in the right-hand lane when she saw debris "flying through the air." Like the two or three cars in front of her, she hit her brakes, then pulled to the right shoulder. Her windows were down and she turned her radio down to hear what was happening. She saw a police officer running from the north to southeast.

..... He was running at an angle from in front of a couple cars in front of me towards my right. I saw that he had his weapon drawn and he was shouting something like Stop Right There. The officer was screaming a lot at someone, but I could not see who he was screaming at. There was a fence that blocked my view. The officer ran behind the fence and out of my sight. I heard three pops, seconds after the officer was yelling at someone. I believe it was at 6:14pm. I know that because I called my sister to tell her that I think someone just got shot in front of me. I didn't see at any time, who the officer was chasing or who shot. I saw the officer with his weapon in his hand, running, but I didn't see who he was chasing.

She then waited in her car to give her statement.

**(ix) Statement of Michael Rosales**

Mr. Rosales had just finished delivering a pizza and had turned north on Manchaca. Traffic was at a stop just north of Dittmar, and there was a large Maroon truck in front of his vehicle. He saw a "car flying through the air." He was about to get out and check on the driver when he saw Officer Rogers approach the vehicle with his gun drawn.

..... an over to the White car in the direction of the trunk area. My windows were down in my car, I could hear the Officer using a commanding voice telling someone to put their hands up at least twice. Quickly after hearing the commands, I heard a single shot, I was looking down at the time, and then I looked up and saw a second shot coming from the Officers position. I physically saw the gun fire. The shots were back to back. There was not much time in between. I would estimate milliseconds.

Officer Rogers then "hovered around the suspect," and was joined by another officer, and soon many more arrived.

**(x) Statement of Reginald Bennett**

Mr. Bennett was driving toward his evening class when he was slowed by traffic at the stop light

at Dittmar. As he drove north on Manchaca, he was able to see Officer Rogers's vehicle on the right shoulder.

slowly approached, I saw a White vehicle similar to a Mustang moving at a high rate speed south on Manchaca. The White car cut across (like in a 45 degree angle) the north bound lanes of Manchaca and veered toward the officer. I would guess that the vehicle was angling towards the Officer. The Officer was standing in the road approximately 5 feet away from his vehicle. The White car closely missed the Officer and looked like he lost control and hit the curb. All of a sudden, the White car was spinning and debris was falling towards my right. The car passed the Officer so closely, after the car went by, I saw the officer chasing it with his gun out. It looked like the White car landed in a small decline off the roadway in a valley with trees and brush. The police man ran across, in front of my vehicle, towards the White car. The Officers gun was drawn.

Mr. Bennet then saw a figure get out of the white car, the driver's side. He was shocked because of the high rate of speed at the time of the crash. Mr. Bennett "couldn't see the figure very well."

The figure walked toward the Officer after getting out the White car. I heard the Officer yell something and then a few seconds later I heard three shots. The shots were succession bang, bang, bang with no pauses in between.

Mr. Bennett said he was unable to talk after this incident, as he was in shock, realizing too that had the white car not crashed it would have hit his vehicle.

**(xi) Statement of Richard Reed**

Mr. Reed is a former employee of the Travis County District Attorney's Office who is now in private criminal practice. At about 6:16pm that night he was driving northbound on Manchaca in the left hand lane. Close to Keilbar Street traffic began to slow, and his vehicle came to a stop, too. He then noticed "items moving in a South direction in front of me," but was unable to tell what they were because two cars blocked his view. He thought they might be from a vehicle and that he was witnessing the aftermath of a car crash.

I heard an explosive type noise which wasn't that loud. I did not hear tires screeching or obvious sounds of a crash. I then noticed a light colored vehicle, unknown type, coming to a rest in a wooded ravine to my immediate right. The level of the ravine was lower than my viewing point, thus I could not see much of the vehicle. All I remember seeing is the upper portion of the vehicle.

He could see that the airbag had deployed and saw smoke coming from the vehicle, but had not yet seen the driver. He then saw a police officer moving toward the vehicle, swiftly but not at a run.

I noticed that this Officer was pointing a handgun toward this vehicle while he approached. This Officer had both hands on this handgun. It was my belief that this Officer was anticipating someone emerging from this vehicle. It was clear that this Officer was using his handgun to at least ensure the driver or occupants did not flee the scene. This was my impression. This looked like a felony car stop. I do not recall hearing this Officer saying anything.

At that time, an individual exited from the “far side of the vehicle.” The officer approached this person, who “ran away from the scene in a north-eastern direction toward the wooded tree line.”

This person did run in the general direction of the officer yet bladed off the north east toward the trees. The Officer was still positioned North of this person at this time.

While watching this unfold, I saw this person place both arms and hands upward, not directly above their head up in an upward position. This persons hands appeared to be just above their head and out in front of their body. This was occurring as this person was running from the scene. This person was somewhat facing the Officer while making these motions. This person was approximately five to ten yards away from the Officer with hands raised.

Mr. Reed then saw the officer fire his handgun at the person, hearing three rapid gunshots and seeing the person fall forward onto the ground. The officer then stopped and continued to point his weapon at the fallen person. A second officer then joined the first, and they began administering first aid.

**(xii) Statement of EMS Medic Daniel Ender**

Medic Ender gave a recorded statement on April 18, 2017. He works with Austin/Travis County EMS as a paramedic, and was called to the scene of the shooting. He saw debris close to the scene, and when they arrived they had no information on who was shot or by whom. Members of the fire department were already administering CPR. He observed Ms. Rankins’s wounds and saw that her pupils were fixed and dilated, she had no pulse, and wasn’t breathing on her own. “So we decided at that point to go ahead and call it, so we called for time of death.” They then cleared the scene.

**(xiii) Statement of EMS Medic Kristy Rosenacker**

Medic Rosenacker gave a recorded statement on April 18, 2017. She works with Austin/Travis County EMS as an EMT basic, and was called to the scene of the shooting along with Medic Ender. Her recorded statement corroborates the information given to SIU by Medic Ender.

All of the civilian witness statements are consistent on the significant facts, in terms of the sequence of events and the actions of Ms. Rankins and Officer Rogers.

## B. Crash and Shooting Scene

The Charger crashed at the intersection of Keilbar Lane and Manchaca, and Ms. Rankins was shot close by. As with all Officer Involved Shootings, investigators preserved all relevant evidence and took careful account of where each item was located at the scene.



Figure 9—overhead view of crash site.

- |   |                                      |
|---|--------------------------------------|
| 1. Spike Strip in center lane of 7500 block of Manchaca Road                              | 6. Fired cartridge case in empty lot |
| 2. Officer Rogers's patrol unit in 7500 block of Manchaca Road (not marked on map, above) | 7. White Dodge Charger in empty lot  |
| 3. "Kurgo" strap in empty lot   | 8. Deceased female in empty lot      |
| 4. Fired cartridge case in empty lot  | 9. Knife in empty lot                |
| 5. Fired cartridge case in empty lot  |                                      |

### (i) Crash Investigation

The Austin Police Department's Vehicular Homicide Unit (VHU) aided in the investigation, providing graphics to show the location of the crash/shooting, and locations of the witnesses. (The software program EdgeFX was used to create diagram from particular mapped points.) The VHU also retrieved data from the computer built into Ms. Rankins's Dodge Charger.

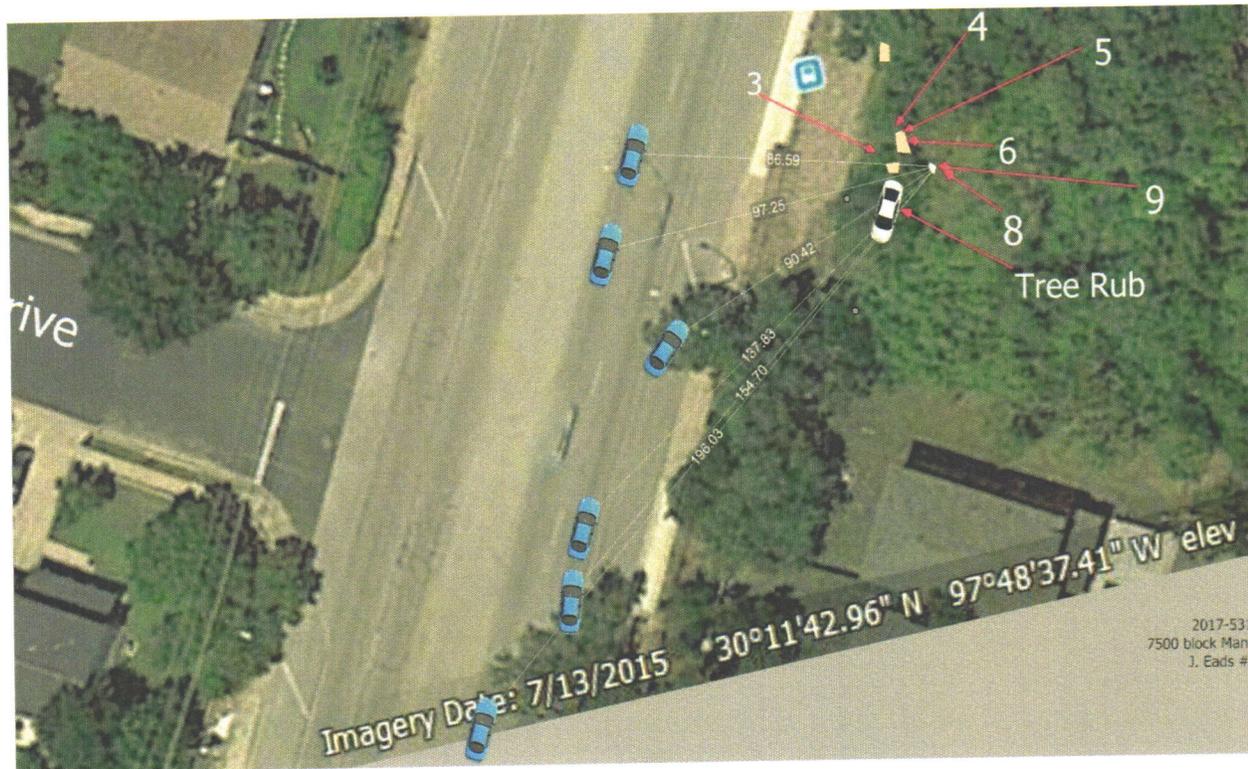


Figure 10—VHU visual reconstruction of crash site.

Investigators with the VHU used the Bosch Crash Data Retrieval Kit to retrieve and analyze information recorded and stored on the Charger's computer. This data included speeds, directional information, and brake application. The computer also recorded that, at the time of the crash, the driver was not buckled by the seat belt.

The pre-crash data showed the following:

- Charger traveling at 83 mph five seconds prior to impact, with the accelerator pedal pressed 68 percent of the way to the floor. At 4.3 seconds prior to impact, the driver released the accelerator pedal. Investigators concluded that this data coincides with the lane change seen in Officer Rogers's dashcam video at 18:15:47.
- At 4.2 seconds prior to impact the Charger's speed reached 85mph, and the driver started steering to the right. This coincides with the Charger straightening out in the inside lane, as visible on the dashcam video at 18:15:49.
- At 3.3 seconds prior to impact, the driver of the Charger again steered to the left. This

coincides with the vehicle's movement toward Officer Rogers, visible at 18:15:50 on the dashcam.

- At 3.1 seconds prior to impact, the Charger is traveling at 81 mph, and the driver pressed the brake pedal.
- At 2.5 seconds prior to impact, the Charger slowed to 72 mph and while the brake pedal was being pressed, the driver pressed the accelerator to 42 percent. The driver was still steering to the left.
- At 2.2 seconds prior to impact, the driver of the Charger released the brake pedal but kept the accelerator pedal pressed 64 percent down, still steering to the left.
- At 2.1 seconds prior to impact, the Charger was still traveling at 72 mph and steered to the right. At this point, the driver pressed the accelerator pedal to the floor and the Electric Stability Control mechanism of the car became engaged. As the investigator explained:

. This means that the sensor was looking for differences between the direction of the steering wheel and the direction the car was headed. The car's computer then tries to make the necessary corrections to bring the vehicle's direction of travel in line with what the driver wanted.

From 2.1 seconds prior to impact until 0.5 seconds prior to impact, the driver kept the accelerator pedal pressed to the floor.

At 0.9 seconds prior to impact, the steering wheel was turned to the right, which was consistent with exposing the left side of the vehicle to a utility pole the car was approaching.

All frontal airbags deployed during this crash event.

Investigators took multiple photographs of the crash scene, including from APD helicopter 'Air One.' The nose of the vehicle is facing south, and the first responders visible are attending to Ms. Rankins.

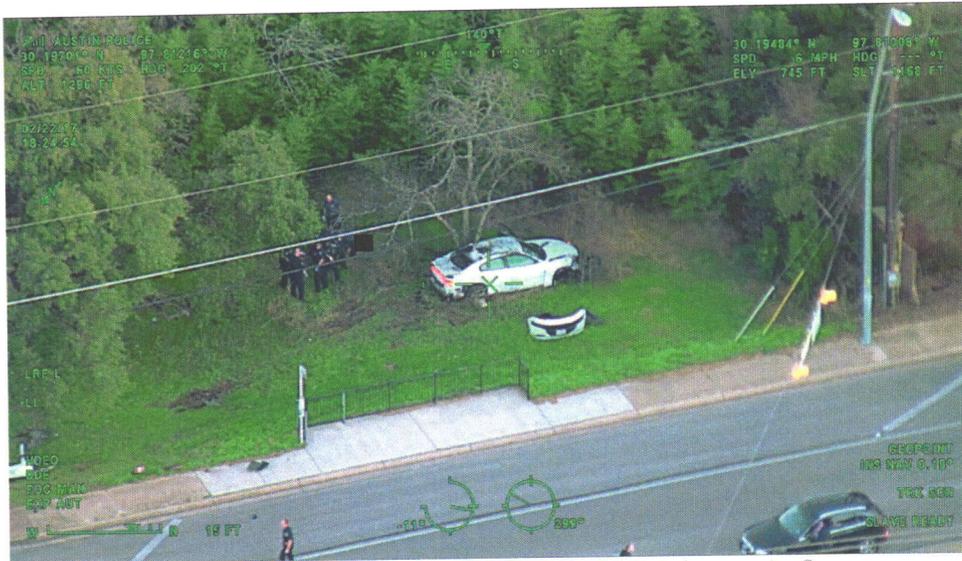


Figure 11—screen capture from video shot by APD's helicopter Air One.

Crime scene technicians on the ground photographed the condition of the Charger after the crash. The first shows the intersection of Keilbar Lane and Manchaca Road (looking south), and the impact against the telephone pole.



Figure 12—Crime scene photo depicting telephone pole struck by white Charger, and rear of Charger after the crash.



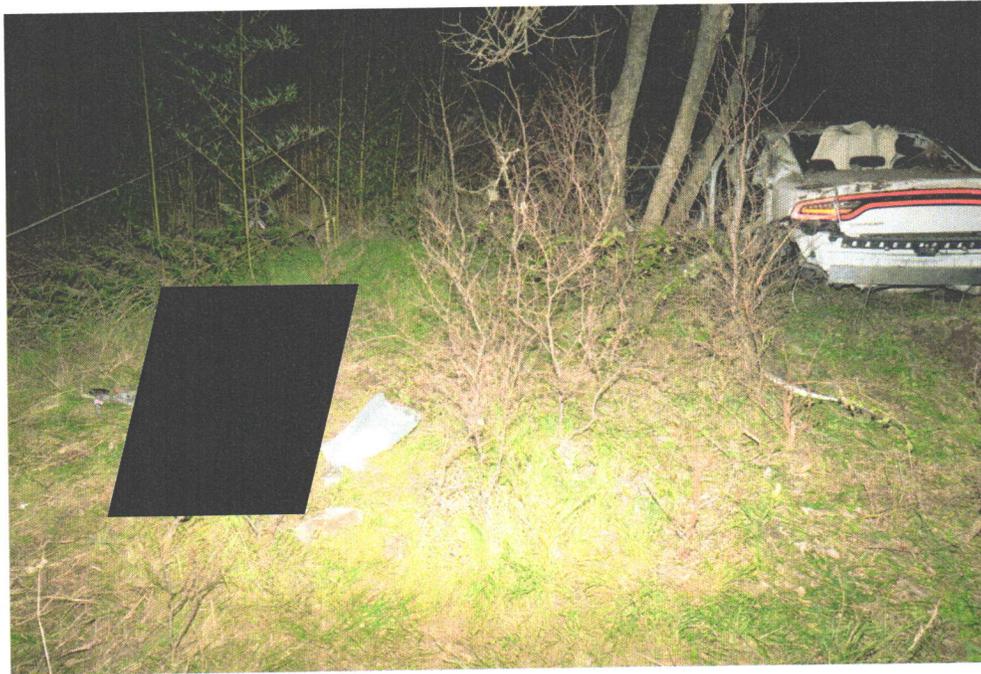
*Figure 13—Crime scene photo depicting white Charger after the crash.*



*Figure 14—Crime scene photo depicting white Charger after the crash.*

**(ii) Shooting Investigation****(a) On-Scene Evidence**

Investigators documented photographically and in their reports the scene of the crash and shooting. For instance, recording the relative locations of the Charger and Ms. Rankins (obscured).



*Figure 15—Crime scene photo depicting white Charger after the crash relative to where Ms. Rankins fell after she was shot.*

As noted previously, Officer Rogers reported that Ms. Rankins had been advancing toward him with a knife in her hand. Police at the scene conducted a search for the knife and located one pressed into the grass under where Ms. Rankins was lying.<sup>13</sup>

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<sup>13</sup> Police were aware that Ms. Rankins was, in fact, carrying a knife: her relative had told Officer Austin this, and she had relayed it to officers over Frank radio at 6:15:15 p.m.



*Figure 16—Crime scene photo depicting knife as it was found at the scene.*

Crime scene technicians placed a tent (#9) beside the knife to show where it lay relative to the scene.



*Figure 17—Crime scene photo depicting knife after it was found at the scene.*

That knife was later examined and measured.

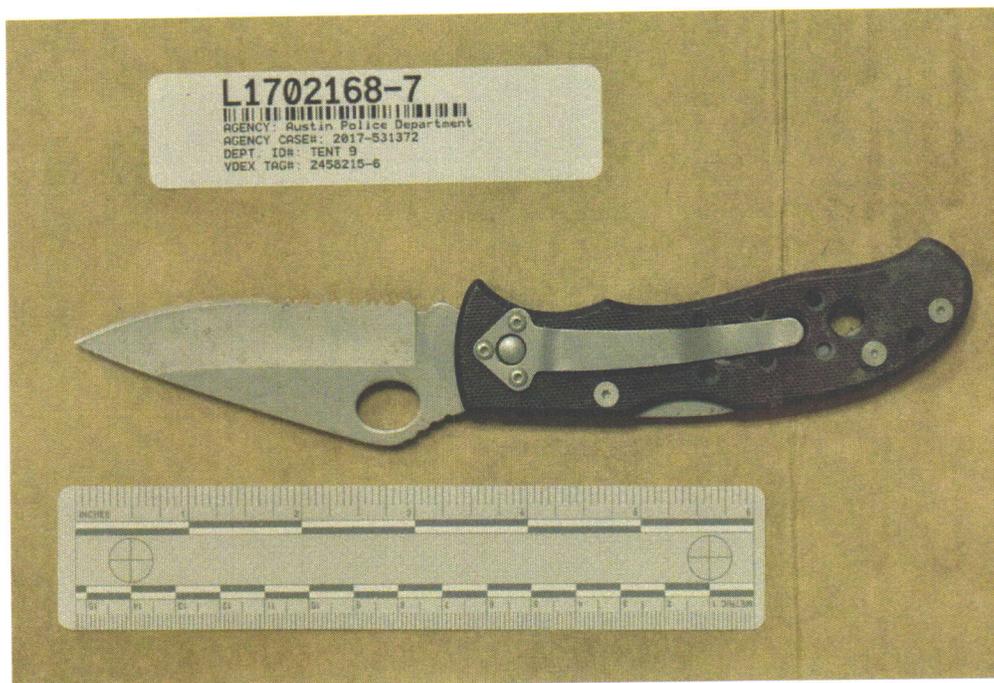


Figure 18—Crime scene photo depicting knife.

Investigators also submitted the knife to Signature Sciences for DNA testing. Specifically, the handle and the blade were swabbed in order to compare any retrieved DNA with a sample from Morgan Rankins (taken at her autopsy). DNA was obtained from the handle but:

**Item 1: Swab from Knife Handle**

The DNA profile obtained from this item is a partial mixture of at least 2 individuals. This mixture is incomplete and is not suitable for comparisons to known reference samples; therefore, no further conclusions can be made.

There was no DNA found on the blade of the knife.

Investigators also searched for evidence relating specifically to the firing of Officer Rogers's weapon, a Smith & Wesson 9mm handgun. As noted in the diagram, above, three were found (tents 4, 5, and 6). Those were collected and turned into evidence for analysis by an APD Firearm and Toolmark Examiner.

**(b) Firearm and Toolmark Evidence**

Officer Rogers reported firing his weapon three times. That was consistent with reports of witnesses, and what can be heard on his body microphone. Furthermore, investigators found three shell casings at the scene that matched the ammunition used by Officer Rogers. Additionally, the magazine taken out of Officer Rogers's gun had capacity to hold seventeen (17) rounds, and when inspected contained fourteen (14). This is consistent with both the number of shots Officer Rogers reported firing and the number of shell casings located by SIU investigators.

Firearm and Toolmark Examiner Steve Aston noted in his report:

Upon examination, the two secondary magazines each contained 17-rounds of live ammunition. The primary magazine contained 14-live rounds of ammunition with an addition live cartridge being located in the pistol's chamber. This was consistent with three shots having been fired during the incident.

Mr. Aston then conducted tests to ascertain whether the three cartridges found at the scene had been fired from Officer Rogers's gun.

Items #3, 4, and 5 (three Speer 9mm Luger +P fired cartridge cases) were examined and microscopically compared on 04/04/2017. Based in agreement of all discernable class characteristics and sufficient agreement of individual characteristics, Items #3, 4, and 5 (three fired cartridge cases) were positively identified as having been fired in Item #1 (Officer Rogers' Smith & Wesson pistol).

Mr. Aston then conducted tests to ascertain whether the two projectiles recovered (from the autopsy, see below) had been fired from Officer Rogers's gun.

Items #21 and 26 (two 9mm caliber projectiles) were examined and microscopically compared on 04/04/2017. Based on agreement of all discernable class characteristics and sufficient agreement of individual characteristics, Items #21 and 26 were positively identified as having been fired from Item #1. (Officer Rogers' Smith & Wesson pistol).

### C. Medical Examiner's Findings

On February 23, 2017, the Travis County Medical Examiner conducted a postmortem examination (autopsy) on Ms. Rankins. The examiner ruled homicide as her manner of death and gunshot wounds as her cause of death.<sup>14</sup> As required by law, the medical examiner issued a death investigation report.<sup>15</sup> The medical examiner identified a total of two gunshot-related wounds to Ms. Rankins, connected to her having been shot twice. The medical examiner noted that Ms. Rankins sustained:

- One penetrating gunshot wound<sup>16</sup> to the left side of the chest;
- One perforating gunshot wound<sup>17</sup> to the left side of her abdomen with corresponding exit wound.

During the postmortem examination, two items of evidentiary value related to the shooting incident were recovered, specifically two bullets.

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<sup>14</sup> "Cause of death" refers to the condition that produced the victim's death while "manner of death" is an interpretive opinion that explains how the cause of death was caused. "Homicide" is one of several manners of death which include accident, suicide, or natural causes. "Homicide" is not a legal denotation as to whether the act leading to the death is or is not criminal.

<sup>15</sup> Travis County Office of the Medical Examiner's Office, Medical Examiner Report No. 17-00846.

<sup>16</sup> A "penetrating" gunshot wound is one that enters but does not exit the body.

<sup>17</sup> A "perforating" gunshot wound is one that enters and exits the body. A single perforating gunshot can have multiple entry and exit points depending upon the trajectory of the bullet and the subject's body position when struck.

The medical examiner determined that both of Ms. Rankins's penetrating and perforating gunshot wounds followed a path of travel that was front-to-back, left to right, and downward.

The medical examiner could not make a determination of relative range of fire distance from examination of the wounds. For each of the wounds, the medical examiner did not notice soot, stippling, tissue searing, or muzzle imprint, any of which would indicate either a contact wound, close, or intermediate range of fire.

In addition to the shooting-related injuries, the examining physician also noted evidence of the first aid administered immediately after the shooting. Finally, the medical examiner's toxicology testing on Ms. Rankins's postmortem blood demonstrate the presence of amphetamines and cannabinoids.

Evidence recovered at the scene and the medical examination corroborate Officer Rogers's reports and other evidence concerning the circumstances leading to and immediately following Ms. Rankins's shooting.

#### **IV. LEGAL ANALYSIS: REASONABLENESS OF OFFICER ROGERS'S USE OF DEADLY FORCE**

The use of deadly force without legal justification would constitute a criminal offense for which prosecution is warranted. In the case of an officer's use of deadly force, to constitute a prosecutable offense would require us to conclude that there are no legal justifications applicable to the credible investigative facts. Here, whether or not the officer's use of deadly force was reasonable depends on whether the investigative facts support the conclusion that a reasonable juror would determine that his use of such force was justified in self-defense, defense of a third person, and/or to effectuate a legitimate law enforcement purpose. For the reasons outlined below, we conclude that a reasonable juror following the law would find the use of force to be justified.

##### **A. Law Governing Use of Deadly Force**

The Fourth Amendment and Texas statutory law govern our analysis of the reasonableness of Officer Rogers's use of deadly force in Ms. Rankins's shooting death. Under the Fourth Amendment, a law enforcement officer's shooting of a person constitutes a "seizure" and, as a consequence, is subject to the amendment's requirement that it be reasonable<sup>18</sup> as that term has been construed by the United States Supreme Court.<sup>19</sup> The Supreme Court has directed that the inquiry is essentially one of objective reasonableness: the question is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."<sup>20</sup>

In conducting our analysis, we are to evaluate the officer's use of force based on the facts and circumstances then existing on the scene and determine "judged from the perspective of a

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<sup>18</sup> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." U.S. CONST. AMEND. IV.

<sup>19</sup> U.S. CONST. AMEND. IV.

<sup>20</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989).

reasonable officer on the scene,” whether a reasonable officer would have used deadly force based on the facts and circumstances viewed from the perspective of the acting officer at the time the force was used.<sup>21</sup> This inquiry must make “allowance for the fact that police officers are often forced to make split-second judgments” and should not be based on the benefit of “the 20/20 vision of hindsight.”<sup>22</sup> In the context of the law enforcement use of deadly force, the basic requirement is that the use of deadly force be limited to situations in which it was immediately necessary.<sup>23</sup>

Texas law incorporates the Fourth Amendment’s reasonableness standard in several statutes applicable to the facts and circumstances of Ms. Rankins’s shooting. Those statutes allow the use of deadly force in self-defense, in defense of third persons, and in order to effectuate a legitimate law enforcement purpose.<sup>24</sup>

## **B. Texas Law Governing the Use of Deadly Force: Chapter 9 and the Reasonableness Standard**

Chapter 9 of the Texas Penal Code provides three basic circumstances under which a law enforcement officer’s use of deadly force is justified: in self-defense, in defense of a third person, or to effectuate a legitimate law enforcement purpose such as an arrest or search. We must evaluate the reasonableness of each officer’s use of force for each shooting sequence.

### **1. Use of Deadly Force in Self-Defense: Texas Penal Code § 9.32**

Section 9.32 of the Texas Penal Code describes the circumstances under which deadly force may be used in self-defense by any person, law enforcement or not. It states:

- (a) A person is justified in using deadly force against another:
  - (1) if the actor would be justified in using force against the other...; and
  - (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
    - 1. to protect the actor against the other’s use or attempted use of unlawful deadly force; or
    - 2. to prevent the other’s imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Section 9.32 expressly predicates the authority to use deadly force on the condition that the actor first have been authorized to use non-deadly force under Section 9.31, which governs the use of non-deadly force. That section, which sets forth the basic reasonableness standard discussed earlier, provides that:

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<sup>21</sup> *Id.* at 396-97.

<sup>22</sup> Our inquiry must consider whether a reasonable officer in the circumstances that Officer Rogers encountered would have reasonably concluded he was in imminent danger from the knife that Ms. Rankins was wielding.

<sup>23</sup> *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

<sup>24</sup> TEX. PEN. CODE §§ 9.32, 9.33, and 9.51 (c).

- (a) ... [A] person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

Only if the actor first satisfies Section 9.32's requirements controlling the use of deadly force can he or she be justified in the use of deadly force.

## **2. Use of Deadly Force in Defense of a Third Person: Texas Penal Code § 9.33**

The use of deadly force to protect a third person calls for what might be best described as a surrogate analysis: the use of deadly force in defense of a third person is authorized only if the actor is justified in the use of deadly force to defend him or herself. As with Section 9.32, this justification is applicable to all persons, whether law enforcement or not. That section provides:

- (a) A person is justified in using force or deadly force against another to protect a third person if:
- (1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect.

## **3. Use of Deadly Force to Effectuate a Legitimate Law Enforcement Purpose: Texas Penal Code 9.51**

The final justification applicable to the facts established here is found in Section 9.51, which governs all uses of force by a law enforcement officer while in the discharge of his or her duties. It is applicable only to law enforcement officers' use of force. Section 9.51 provides:

- (a) A peace officer...is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest..., if:
- (1) the actor reasonably believes the arrest or search is lawful...; and
  - (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known or cannot be reasonably made known to the person to be arrested.

### **C. Analysis: The Facts and Circumstances of Officer Rogers's Use of Deadly Force**

We view the incident in which Ms. Rankins was killed as part of an extended chain of events that began when Officers Robinson and Padalecki arrived at 7905 Appomattox Drive, and includes her apparent attempt to strike them with her car, the subsequent pursuit, her aiming her car at Officer Rogers, her possession and exhibition of a knife, and the shooting itself.

Officer Rogers's conduct in discharging his weapon<sup>25</sup> must be evaluated in terms of its reasonableness under the above-cited statutes. We have concluded that on the credible facts established here that Officer Rogers's use of deadly force in Ms. Rankins's shooting was not unreasonable under the applicable statutes.

### 1. Officer Rogers's Use of Deadly Force in Self-Defense

The facts and circumstances known to Officer Rogers at the time he initially discharged his duty weapon must be considered.

The investigation established that Officer Rogers was the only officer in the block of 7400 Manchaca Road at the time Ms. Rankins was headed to that location. Prior to Ms. Rankin's arrival, Officer Rogers had listened to the radio traffic and was aware of the information provided by the dispatcher and other officers, which kept him updated on the status of the pursuit. In summary, at the time of his encounter with Ms. Rankins, Officer Rogers was aware that:

- The initial 911 call involved someone possibly attempting to blow up a house;
- The subject heading toward him had just attempted to run over two fellow officers;
- The subject heading toward him was evading detention and leading police on a high-speed pursuit;
- The subject heading toward him had put members of the public at risk by driving at high speed and ignoring stop signs and traffic lights;
- The subject heading toward him had crashed into a car being driven by a member of the public and failed to stop.

With this knowledge, Officer Rogers attempted to stop Ms. Rankins on Manchaca Road with the spike strips. But almost as soon as she got to his location, Officer Rogers had reason to believe she was attempting to kill him, too:<sup>26</sup>

So I'm moving back to my vehicle. I'm moving faster just to be safe. And she just keeps trackin' me and keeps trackin' me and keeps turnin' towards me and towards me. And I'm startin' to think, "She already tried to hit (Robinson). She already tried to hit (Patolacki). What if she's tryin' to hit me?"

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<sup>25</sup> Even if the officer's shots had not struck Ms. Rankins, the discharge of his weapon in her direction alone constitutes a use of deadly force and is otherwise a criminal offense if not statutorily justified. "The threat of force is justified when the use of force is justified. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force. TEX. PEN. CODE § 9.04. Here, it is evident that Officer Rogers discharged his weapon and as such there was an actual use of force. *See e.g.*, TEX. PEN. CODE § 22.02 Aggravated Assault (use of a deadly weapon during the course of an assault). An "assault" occurs whenever a person "intentionally or knowingly threatens another with imminent bodily injury..." TEX. PEN. CODE § 22.01. As a use of deadly force, the discharge of a weapon is a threat to use deadly force which is justified only if reasonableness requirements as contemplated by the various justifications for use of deadly force contained chapter 9 of the Penal Code.

<sup>26</sup> See Rogers Interview, ll. 1171-75.

Data obtained by the Vehicular Homicide Unit support this inference, showing that Ms. Rankins's speed was above 70mph, and she was, in fact, turning toward Officer Rogers. And when interviewed he expressly stated that his belief was that Ms. Rankins was trying to kill him.<sup>27</sup>

I think it was just because of the - the, uh, I think she turned the wheels so hard at such a high speed to try to get me at that last second. But she realized I was movin' faster. What I felt like was she really wanted to make sure she got me. I felt like she was tryin' to kill me. And she turned it so hard that she had no regard for what happened to her at the end of it. She just - she wanted to get me. So I barely - I made it

As Officer Rogers called out over Frank radio, "She just tried to run me over and wrecked out." Twelve seconds after that transmission, as Officer Rogers approached the crashed Charger, Ms. Rankins emerged from the vehicle and refused to comply with police commands. Specifically, Officer Rogers called out instructions to Ms. Rankins to show her hands.

At that exact moment, as can be heard on Officer Rogers's body mic, information comes over Frank radio that Ms. Rankins's relative has told police that she is "trying to bait police to shoot her." Officer Rogers, however, speaks over that transmission (in giving commands to Ms. Rankins).

Within seconds, Officer Rogers *does* see her hands, and sees that she is holding up a knife:<sup>28</sup>

And we both start takin' our first steps in the same moment but instantly she, like button hooks, turns, lifts up a knife in the right hand over her shoulder, starts comin' at me super-fast, closing the distance super-fast.

Thus, the evidence indicates that it was only after Ms. Rankins emerged from her vehicle, wielding what Officer Rogers saw was a knife, and quickly advancing towards him, that he discharged his weapon. The investigation further indicates that Ms. Rankins was within 10-15 feet of Officer Rogers when he discharged his weapon. We conclude that under these circumstances, Officer Rogers was justified in using deadly force in discharging his duty weapon at Ms. Rankins. We believe Officer Rogers was justified in doing so on the grounds of: (1) defense of self under § 9.32; (2) defense of third persons under § 9.33; and (3) in order to effect an arrest for an offense under § 9.51.

## **2. Officer Rogers's Use of Deadly Force in Self-Defense—Tex. Pen. Code § 9.32**

We conclude that the investigative facts establish that the facts and circumstances of which Officer Rogers was aware of when he discharged his weapon are sufficient to satisfy the provisions of Section 9.31, thus allowing him to use non-deadly force to defend himself as a prerequisite to his

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<sup>27</sup> Id., ll. 1194-99.

<sup>28</sup> Id., ll. 1594-97.

use of deadly force.<sup>29</sup> Officer Rogers was faced with circumstances in which the danger to him was evident and imminent: he was responding to an active pursuit where he reasonably believed the subject being pursued had tried to run over two officers, and placed members of the public in harm's way. His own interactions with Ms. Rankins reinforced his understanding that his life was in danger: she had swerved toward him and tried to run *him* over at a high rate of speed, and had subsequently ignored his commands while advancing on him wielding a deadly weapon, a knife.<sup>30</sup>

Under these circumstances, we conclude that Officer Rogers “reasonably believe[d] [that] the [use of] force [was] immediately necessary to protect [himself] against the other’s use or attempted use of unlawful force.”<sup>31</sup> There are no facts or circumstances under which Ms. Rankins’s raising up a knife while rapidly approaching Officer Rogers would render her actions a lawful threat of use of force. For these same reasons and under these circumstances, the provisions of Section 9.32 authorizing Officer Rogers’s use of deadly force in discharging his weapon at Ms. Rankins are unquestionably established.<sup>32</sup>

In fact, the investigation supported Officer Rogers’s statement because the knife was recovered, further demonstrating that Officer Rogers reasonably concluded that a danger existed. Under these circumstances, we conclude that Officer Rogers reasonably believed that his use of deadly force was immediately necessary to protect himself against Ms. Rankins’s apparent use or attempted use of unlawful deadly force, or to prevent what he reasonably concluded was the imminent commission of murder if he did not discharge his weapon at her, and that a reasonable jury following the law would also so conclude.

### 3. Officer Rogers’s Use of Deadly Force in Defense of a Third Person

For the reasons that justified Officer Rogers in his use of deadly force in self-defense, we conclude that he was also justified in using deadly force to protect others. Ms. Rankins had already put the lives of two police officers (Robinson and Padalecki) in danger, as well as multiple members of the public by driving at high speed and ignoring multiple stop signs and traffic lights. Even though Ms. Rankins no longer had the use of her car after the crash, she was armed with a knife and moving toward a busy road where multiple members of the public were stationary in their vehicles. It would have been reasonable for Officer Rogers to assume that their lives, and the lives of other

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<sup>29</sup> Under the circumstances then existing and with which the officer was confronted, Officer Rogers’s belief that the use of deadly force was immediately necessary is *presumptively* reasonable under Texas Penal Code § 9.32. Specifically, subsection (b) of section 9.32 provides that “[t]he actor’s belief...that the deadly force was immediately necessary...is presumed to be reasonable if the actor...knew or had reason to believe that the person against whom the force was used...was committing or attempting to commit” murder.

<sup>30</sup> See *Youngblood v. State*, 1997 Tex. App. LEXIS 4533 at 10 (Tex. App.--Dallas 1997, no pet.) (Upholding jury finding that a knife with a “three to four inch blade” was a deadly weapon).

<sup>31</sup> TEX. PEN. CODE § 9.31 (a).

<sup>32</sup> Here, all of the non-exhaustive list of factors the Supreme Court noted in *Tennessee v. Garner*, the leading case on governing the reasonableness inquiry into a law enforcement officer’s use of deadly force are present: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Tennessee v. Garner*, 471 U.S. at 10-12. Ms. Rankins’s conduct involved the reasonably apparent danger of her commission of a violent felony while armed after evincing an intent to engage officers violently rather than submitting to an arrest.

police officers arriving at that location, would be in jeopardy given Ms. Rankins's previous actions, and her possession of a knife.

As noted earlier, Texas Penal Code § 9.33 regulates the use of force in defense of a third person. That section provides that “[a] person is justified in using force or deadly force against another to protect a third person if...under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect...and...the actor reasonably believes that his intervention is immediately necessary to protect the third person.” Having concluded that Officer Rogers was justified in his use of deadly force in order to prevent Ms. Rankins's apparent use or threatened use of deadly force against him in self-defense, we further conclude that Officer Rogers's use of deadly force was also justified in order to defend arriving officers and members of the public who were already on scene from the same apparent danger that he reasonably believed threatened him, and that a reasonable jury following the law would also so conclude.

#### **4. Officer Rogers's Use of Deadly Force to Effectuate a Legitimate Law Enforcement Purpose**

Finally, for the reasons that justified Officer Rogers's use of deadly force to defend himself and others, it is also reasonable for him to have concluded that Ms. Rankins was then engaged in the commission, imminent commission, and attempted commission of several violent criminal offenses. Under Texas law, a peace officer is authorized to arrest any person for any offense committed within his or her presence or view without a warrant.<sup>33</sup>

Based on his observations, Officer Rogers had probable cause to believe, and was authorized to make Ms. Rankins's warrantless arrest for numerous offenses committed within his presence or view, or direct knowledge from other officers, including multiple counts of Deadly Conduct,<sup>34</sup> Aggravated Assault with a Deadly Weapon,<sup>35</sup> and Assault on a Public Servant.<sup>36</sup> The facts and circumstances of which Officer Rogers was aware at the time he discharged his weapon would have also satisfied the probable cause standard that would have allowed him to have taken her into custody and placed her under formal arrest: Ms. Rankins was armed with a knife, and advanced towards the officer's position with it raised and refused directions to put the weapon down. Specifically, we conclude that Officer Rogers formed the reasonable belief that his use of deadly force was “immediately necessary to make or assist in making” Ms. Rankins's arrest. Under these circumstances, it was reasonable for Officer Rogers to believe that his warrantless arrest of Ms. Rankins was lawful.<sup>37</sup>

<sup>33</sup> TEX. CODE CRIM. PROC. art. 14.01.

<sup>34</sup> TEX. PEN. CODE § 22.05.

<sup>35</sup> TEX. PEN. CODE § 22.02.

<sup>36</sup> TEX. PEN. CODE § 22.01 (b) (1).

<sup>37</sup> There is no need to consider section 9.51 (a)'s third requirement because Officer Rogers's identity was reasonably known to Ms. Rankins under the circumstances; he was in full uniform and Ms. Rankins had seen him and his patrol vehicle prior to the crash, and seen Officer Rogers in his uniform after the crash.

For the reasons that justified Ms. Rankins's warrantless arrest, the facts and circumstances then existing also supported Officer Rogers's belief that the use of deadly force to make her arrest was immediately necessary because he also reasonably concluded that Ms. Rankins posed a "substantial risk" that she "would cause death or serious bodily injury" to Officer Rogers if he attempted to arrest or detain her. Under these circumstances, we conclude that Officer Rogers's use of deadly force to effect Ms. Rankins's arrest was justified under Texas Penal Code § 9.51 (a).

For these reasons, Officer Rogers's use of deadly force in this shooting was an objectively reasonable use of deadly force under Texas law, and a reasonable jury following the law would so conclude.

### CONCLUSION

For these reasons, I have concluded that the filing of criminal charges against Officer Rogers is not supportable under Texas criminal law standards because Officer Rogers's use of deadly force in this incident was justified under the circumstances. Consequently, charges will not be filed. We are closing our review and will take no further action in this matter.

We have released a public/press packet that includes videos, witness statements, officer statements, forensic reports, photos and an autopsy report. We have also attached the items and legal citations mentioned in the analysis. This decision will be posted on my Office's website and will be accessible under 'Morgan Rankins' and the date of the incident, February 22, 2017.<sup>38</sup>

Very truly yours,

  
Margaret Moore

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<sup>38</sup> <https://www.traviscountytx.gov/district-attorney/cru>